

Regulatory Committee

Meeting to be held on 18th September 2019

Part I

Electoral Division affected:
Mid Rossendale

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Kirkdale Avenue to Footpath Rawtenstall 180 and Seat Naze

File No. 804-608

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a Footpath to the Definitive Map and Statement of Public Rights of Way from Kirkdale Avenue, Newchurch to Footpath Rawtenstall 180, in accordance with File No. 804-608.

Recommendation

- (i) That the application for a Footpath from Kirkdale Avenue to Footpath Rawtenstall 180, in accordance with File No. 804-608, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or] Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Kirkdale Avenue, Newchurch to Footpath Rawtenstall 180.

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

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

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

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

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

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

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

Consultations

Rossendale Borough Council

No response received to date.

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	8331 2247	Open junction with Kirkdale Avenue adjacent to the entrance to Home Farm.
B	8331 2251	Junction with unrecorded footpath running east-west along the northern boundary of Home Farm.
C	8331 2254	Stone wall built across the application route.
D	8332 2258	Fence erected across the application route.
E	8333 2264	Open junction of the application route with Footpath Rawtenstall 180.

Description of Route

A site inspection was carried out in June 2019.

The application route commences on Kirkdale Avenue, Newchurch, immediately adjacent to the entrance to Home Farm (point A on the Committee plan).

The route leaves the tarmac footway to pass between a stone wall bounding Home Farm and a low wall bounding a well maintained area of shrubs. The route extends in a northerly direction along a grass surfaced path approximately 1 metre wide, between the two stone walls continuing north along the east side of a building forming part of Home Farm, bounded on one side by the building and on the other side by a low stone wall which is broken in places.

The application runs along the full length of the eastern side of Home Farm and then continues north bounded on both sides by stone walls at a width varying between 1 and 1.4 metres. Immediately north of the point where the route passes Home Farm, a trodden track passing through a broken down section of wall joins the application route from a triangular area of mown grass situated between Kirkdale Avenue and the application route.

Approximately 40 metres along the application route from point A, the route is joined from the west by a narrow path leading from Footpath Rawtenstall 206 and Hillside Drive, along the rear perimeter fence of Home Farm to join the application route at point B on the Committee plan. This path is not recorded as a public footpath but a trodden track exists and there is evidence that vegetation overhanging the path had recently been cleared.

Continuing from point B, the application route continues north as a narrow track bounded by two substantial stone walls at a consistent width of approximately 1.3-1.4 metres, with houses built on the land on either side to point C, where a stone wall

(which appeared to have been recently constructed) has been built across the route preventing access.

The wall across the application route has been constructed in line with the southern boundary of 21 Hillside Drive.

Beyond point C, the line of the application route has been recently dug up with bare earth visible as part of what appears to be substantial building works being carried out to extend the rear of 21 Hillside Drive. There is no evidence of the application route across this section, although a large pile of stone can be seen just to the east of the line of the footpath which appears to be walling stone. Beyond the northern boundary of 21 Hillside Drive, the application route continues north immediately east of the boundary of 19 Hillside Drive, and walls can again be seen bounding the application route, but this part of the route cannot be accessed due to the wall at point C and a fence erected across the route at point D.

The fence at point D prevents access along the route if approaching from point E. Attached to the fence is a sign which states 'NO PUBLIC RIGHT OF WAY PRIVATE GARDEN PLEASE KEEP OUT', and just to the south of the fence there are gaps in the boundary walls on either side of the application route providing access to land to the rear/side of 19 Hillside Avenue and 4 Kirkdale Avenue.

Looking south down the route from point D towards point C, the application route can be seen to the rear of 19 Hillside Drive continuing towards point C bounded on either side with substantial stone walls. However, it appears that directly to the rear of 19 Hillside Drive, a substantial amount of dismantled stone wall could be seen and there was no access to the application route along this section.

Continuing north from point D, the application route rises quite steeply uphill bounded throughout the remainder of its length with substantial stone walls and at a width of approximately 1.4 metres. Close to point D, there are gaps in the walls on either side of the route building rubble comprising of bricks and some glass has been tipped on the route together with some fresh grass cuttings.

Beyond the fly-tipped material, the route continues as a grass surfaced track, uneven in places rising steeply uphill to the open junction with Footpath Rawtenstall 180 at point E. Between point D and point E no gaps or gates were located in the stone walls bounding the route to provide access into the adjacent fields.

The total length of the route is 180 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 application route is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key

but there was no apparent distinction between those which may have been considered to be public or private.



Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.



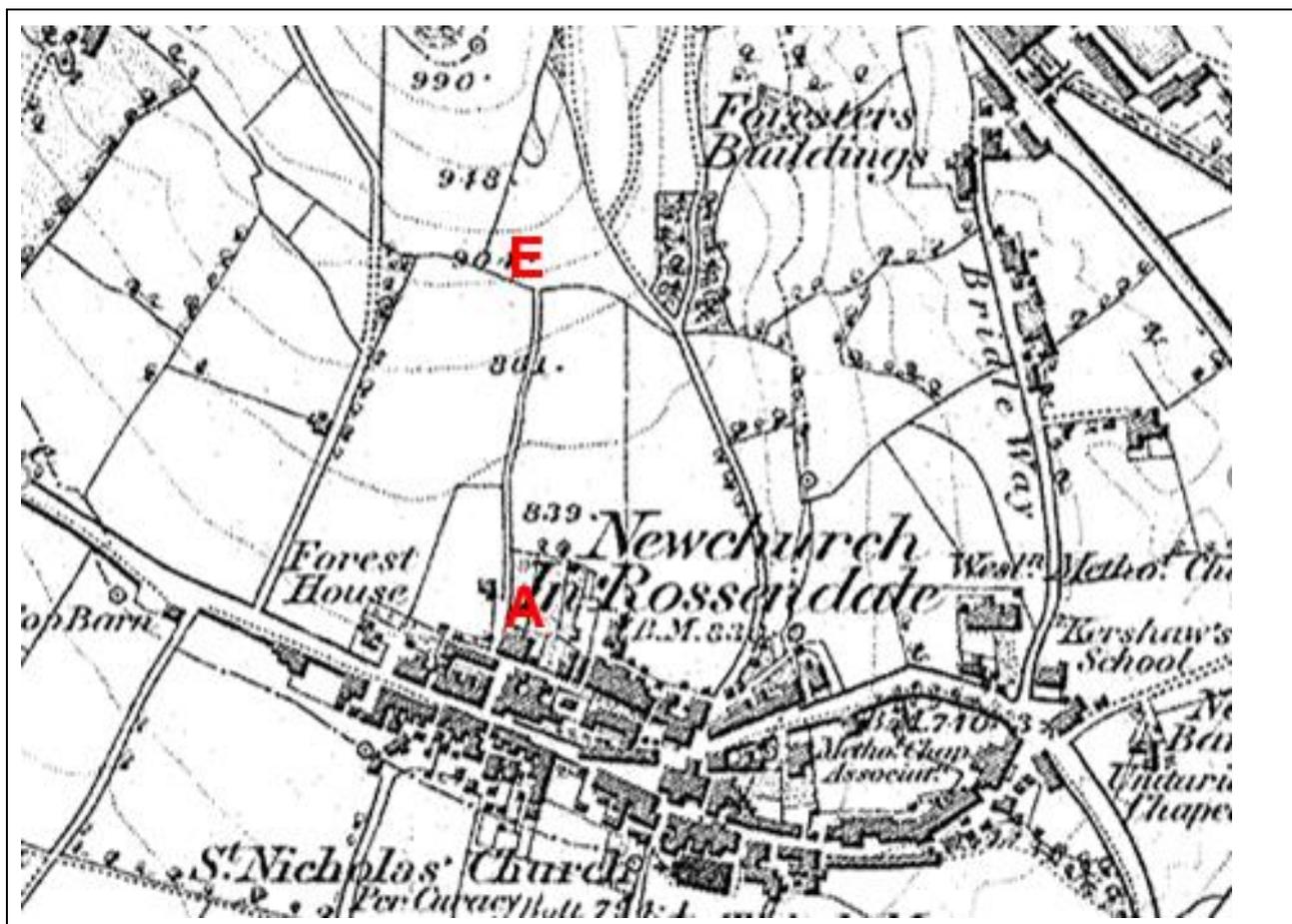
Observations		The application route is not shown.
Investigating Comments	Officer's	The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Hennet's Map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



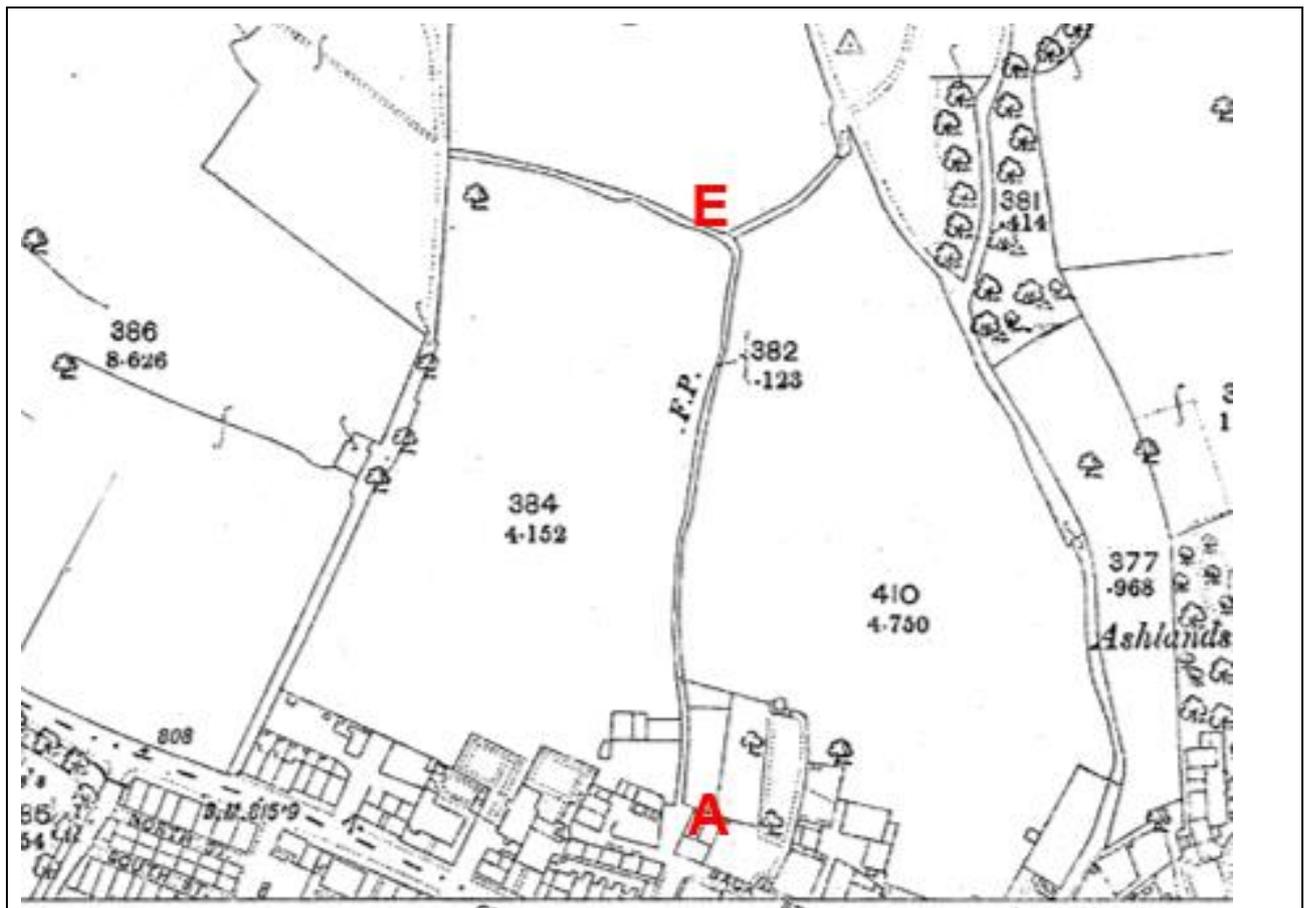
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as major route at the time although it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing, dismantled or proposed railways or canals crossing the land over which the application route runs.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish

		and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map or Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 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 full length of the application route is shown as a bounded route. A building is shown adjacent to the start of the route at point A in the approximate position of Home Farm. From point A the application route is clearly shown extending north to point E where it appears to provide unrestricted access onto an open area of land.
Investigating Officer's Comments		The whole length of the application route existed as a bounded route in 1849.
Cassini Map Old Series	1842-4	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



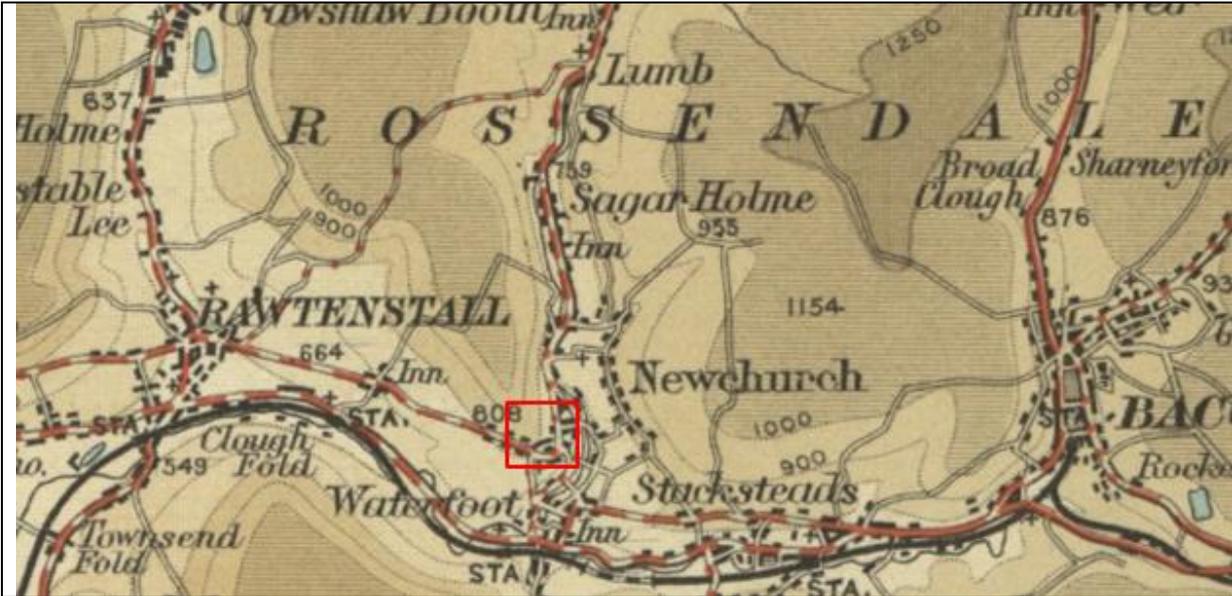
<p>Observations</p>		<p>The application route is clearly shown as an open bounded through route from Back Street through to the junction with the route recorded as Footpath Rawtenstall 180. It is annotated as a footpath ('F.P.') with a parcel number and acreage that includes part of Footpath Rawtenstall 180 extending west from point E. The width of the route measures approximately 0.8 – 1.5 metres wide and is much narrower than many of the other bounded routes shown on the map sheet.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as part of a longer through route in the 1890s and was annotated as being a footpath on the Ordnance Survey map. Whilst the Ordnance Survey clearly stated that the representation on the map of a road, track or footpath was no evidence of the existence of a right of way the fact that the route is shown as a 'footpath' does indicate that the route physically existed at that time and was considered, by the</p>

		<p>Surveyor, to show all the physical characteristics of a route capable of – and used - on foot.</p> <p>The narrowness of the route suggests that, as suggested by the OS, the route was one used on foot and not on horseback or with horse drawn carts.</p>
<p>1 inch OS Map of Rochdale (Sheet 76)</p>	<p>1896</p>	<p>1 inch Ordnance Survey map published 1896.</p>
		
<p>Observations</p>		<p>The application route is shown as the middle of three routes all extending north from Church Street (the main vehicular through route). All three routes are shown as bounded routes which connect to one another.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial bounded route in the late 1800s. The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a significant physical route that was capable of being used on foot and possibly with horses. The route is shown in the same way as the routes on either side of it, and the route of</p>

		Footpath Rawtenstall 180 suggesting that it was considered at that time to be at least a public footpath.
25 inch OS Map Sheet 72-10	1911	Further edition of the 25 inch map re-surveyed in 1891, revised in 1908 and published in 1911.
Observations		The full length of the application route is shown as a through route annotated as a footpath ('F.P.'). The route is shown in the same way as it is shown on the earlier edition of the 25 inch OS map apart from by 1911 there is open access from point E to both the east and west parts of Footpath Rawtenstall 180.
Investigating Officer's Comments		The application route physically existed and appeared to be capable of being used as part of a longer through route in 1911. The width of the route is shown as it is on the earlier edition of the 25 inch map, again suggesting that use would have been predominantly on foot.
Cassini New Series Map	1903-1904	An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping.



Observations		The full length of the application route is shown as a bounded route providing direct access to the route now recorded as Footpath Rawtenstall 180.
Investigating Officer's Comments		The scale of the map means that it is likely that only the most significant public routes where. The fact that the application route is shown suggests that it was a substantial clearly defined bounded route capable of being used at least on foot.
Bartholomew half inch Mapping	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.



Observations		The application route is not shown.
Investigating Officer's Comments		The fact that the application route is not shown on a small scale map produced primarily for the travelling public is not surprising given that the application is for a route to be recorded as a public footpath.
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 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</p>

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.

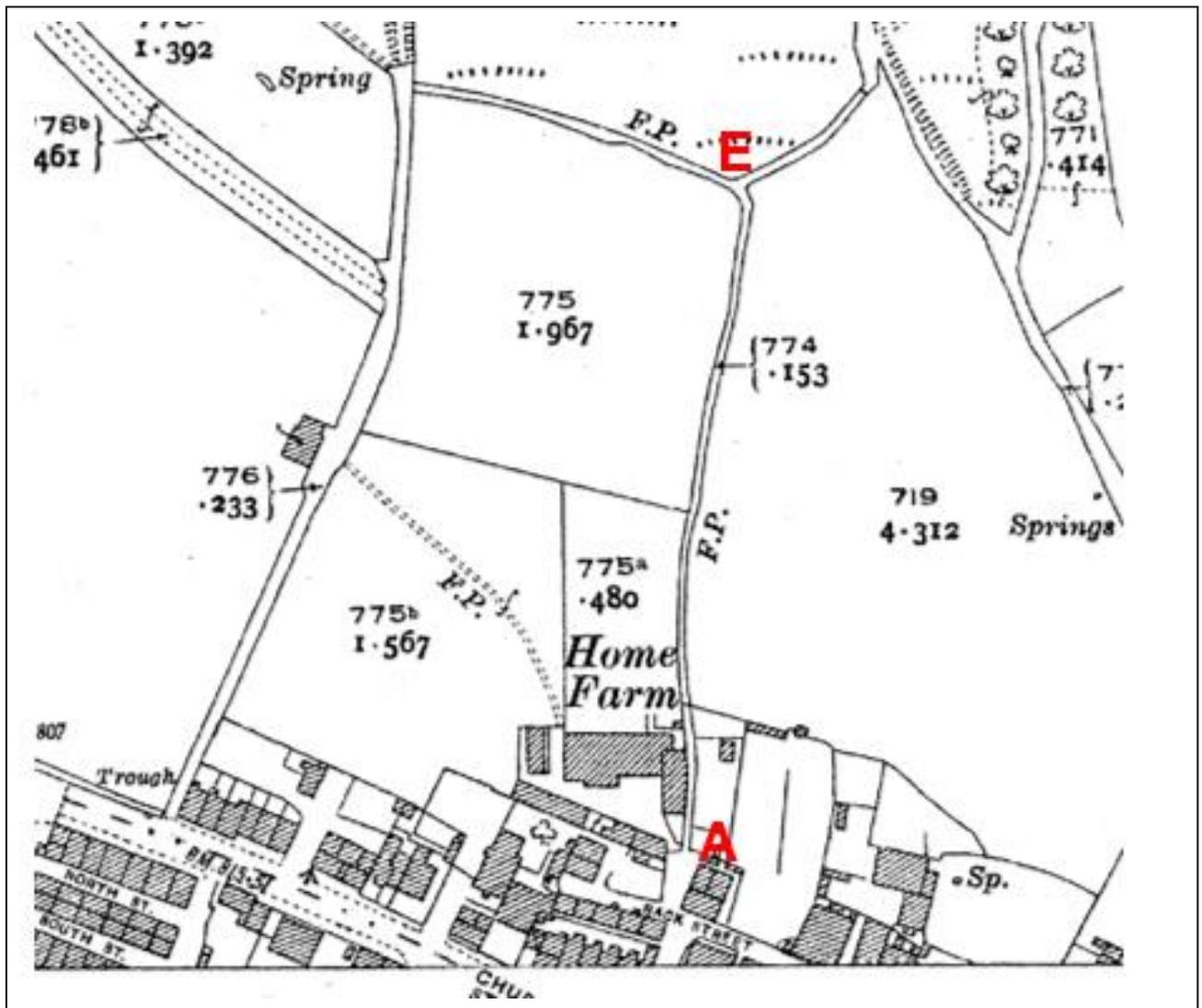


Map deposited in the National Archives

Observations

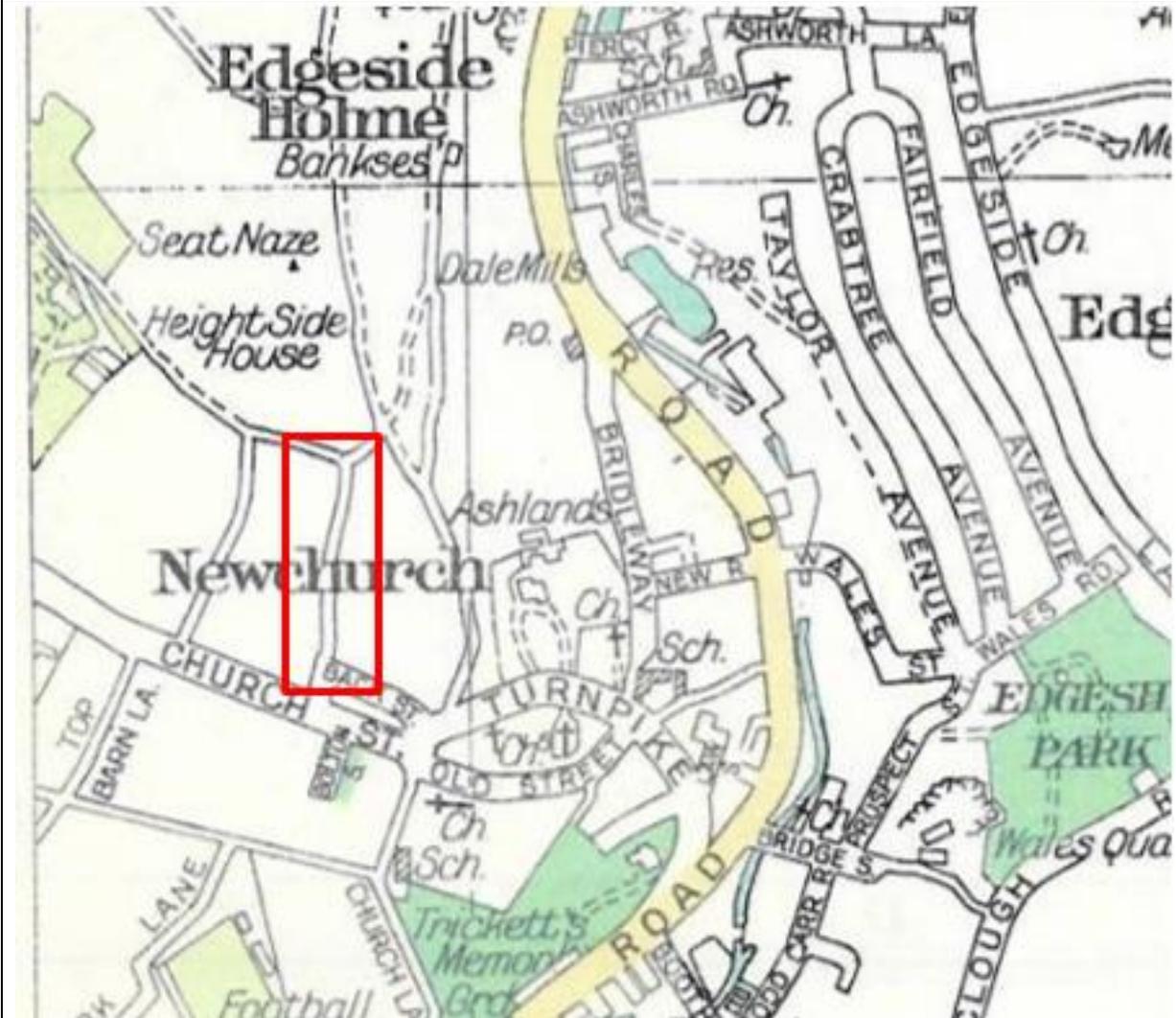
There is no Finance Act Map deposited in the County Records Office but the map deposited in The National Archives was obtained. The application route is not excluded from the numbered plots but it is unclear from the annotation on

		<p>the map which numbered plot it is included in.</p> <p>A thick red line is shown drawn along (and including) the application route marking the boundary between two separately numbered plots.</p> <p>The District Valuation Book was inspected in the County Archives which lists plot 1823 as being owned by HH Bolton, Higbrake, Accrington and described simply as 'land' with no deductions listed for public rights of way or user.</p> <p>Plot 1854 comprises of two entries in the District Valuation Book which describe the property comprising plot 1854 as farm road and land occupied by Joseph Samuel Ashworth and owned by the Trustees of J Hargreaves. The farm road referred to within the plot has a £20 deduction for public rights of way or user but the plot covers a considerable area – including a number of tracks and it is not possible to tell which of these routes is described as the 'farm road'.</p>
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
25 Inch OS Map	1930	Further edition of 25 inch map (re-surveyed 1891, revised in 1928 and published in 1930.



Observations		The application route is shown in the same way as it is on the two earlier editions of the 25 inch OS maps as a narrow bounded through route annotated as a footpath.
Investigating Officer's Comments		The application route existed in the 1930s as a bounded through route connecting to a recognised public footpath at point E and appeared to be capable of being used at least on foot.
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 full length of the application route is shown extending from the route named on the map as Back Street to the junction with Footpath Rawtenstall 180 (not named on the map). The route is shown as being narrower than routes named as public vehicular highways but consistent with how other routes recorded as being public footpaths are shown.

Investigating Officer's Comments

The route existed as a substantial bounded route in the 1930s and appeared capable of being used. The fact that it is shown on a small scale

		Street Atlas produced for sale to the public in the 1930s is suggestive of the fact that routes included carried public rights.
Plan submitted by the applicant	1936	'Builders plan' submitted by the applicant from deed bundle of one of the properties on Greendale.





<p>Observations</p>		<p>A photocopy of a plan was provided by the applicant which had been obtained from the deeds of one of the properties. The plan extract provided does not have a title or date but the applicant has stated that it was drawn up by Law and Grimshaw of Atherton in 1936. Some of the houses shown on the plan were never built but two shown to abut the application route (2 and 4 Kirkdale Avenue) are shown on the plan and were subsequently built.</p> <p>Only 4 Kirkdale Avenue is registered with the Land Registry but the registered titles (LA666145 and LA666146) both stipulate that the land on which the property was built is held in leasehold by the owners of the property and refers to a leasehold agreement between Greendale Land and Building Company Ltd. and George and Florence Ingham dated 14 November 1938.</p> <p>Information from the applicant is that the plan provided was for the construction of housing on a plot of land owned by The Greendale Land and Building Company Ltd. who built some of the houses shown on the plan before running out of money half way through building the estate in approximately 1938.</p> <p>Of significance is the fact that the builders' plan shows the application route running along the edge of the site labelled as a 'public footpath' with the road past 2 and 4 Kirkdale Avenue continuing past the properties to meet the application route suggesting that it was proposed to provide access linking into it.</p>
<p>Investigating Officer's Comments</p>		<p>The plan shows that the application route ran alongside the proposed housing development and was clearly labelled as a 'public footpath'. It is not known where the information as to the</p>

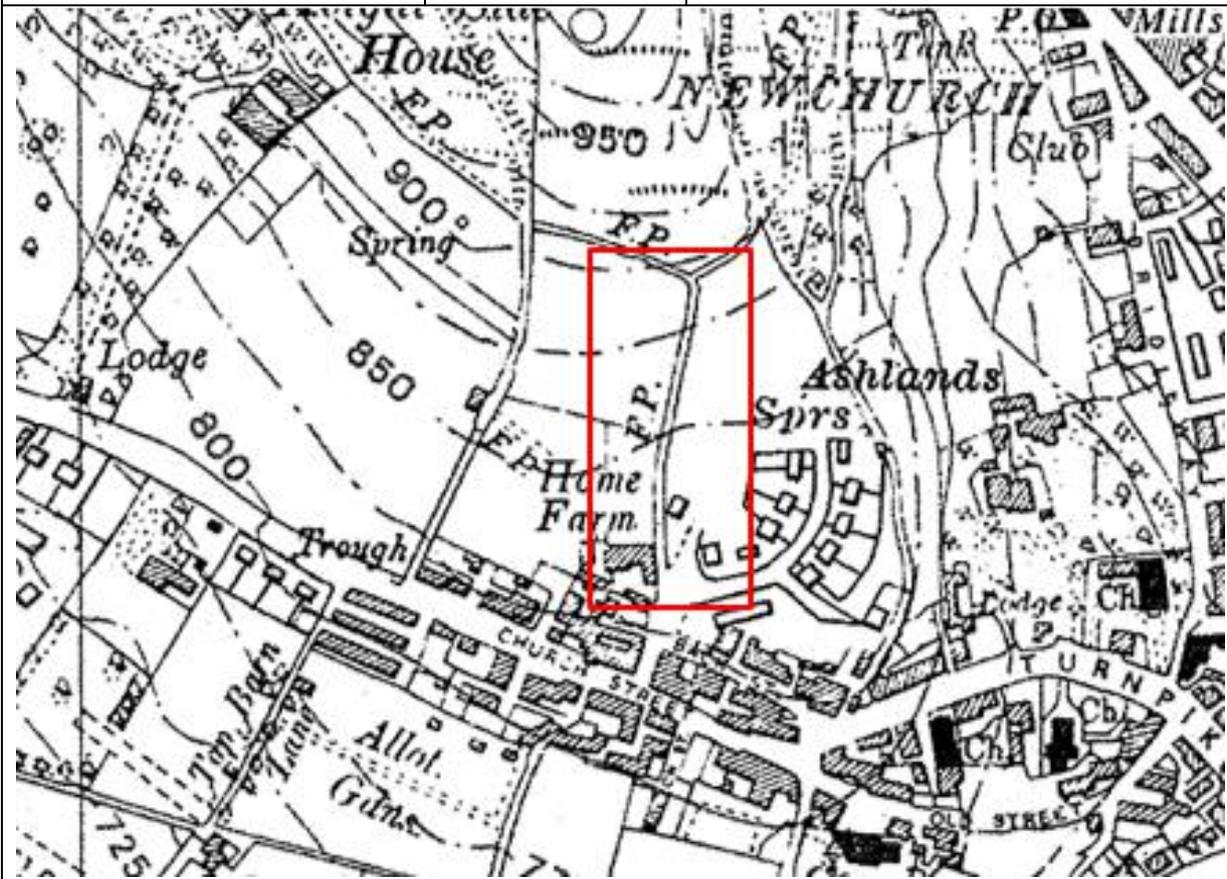
		believed status of the route came from but the fact that it is shown labelled as such suggests that in the 1930s the route existed and was being used by the public on foot and that it was considered by the builders to be a public footpath. The plan does not however indicate whether the builders owned the land crossed by the application route although they do propose to provide a link into it.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



Observations		The aerial photograph is of poor quality and it is not possible to clearly see the application route. Houses on Greendale appear to have been built.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map Sheet 82SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 but was also stated to have been revised for major changes in 1950 and is probably based on the same survey as

the 1930s 25-inch map.



<p>Observations</p>		<p>The full length of the application route is shown as part of a through route connecting to other public highways. The route is again annotated as a footpath (F.P.). Development to the east of the route is shown with the construction of Greendale.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in the 1930s. The revision of the map for major changes in 1950 most probably included the addition of Greendale which is shown drawn in a different cartographical 'style' than the base map suggesting that the construction of Greendale took place sometime between the 1930s but before 1950.</p>
<p>1:2500 OS Map</p>	<p>1962</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published in 1962 as national grid series.</p>



Observations		The application route is shown as a bounded route annotated as a footpath ('FP') in the same way as it is shown on all earlier editions of OS mapping. Two properties – 2 and 4 Kirkdale Avenue – are shown abutting the application route.
Investigating Officer's Comments		The application route existed as a bounded through route connecting to an existing public footpath in 1962 and appeared capable of being used. Properties built on Kirkdale Avenue abut the route but do not interfere with it.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The line of the application route can be seen from the rear of Home Farm through to point E although it is not possible to see whether the full length of the route was accessible.
Investigating Officer's Comments		The application route existed in the 1960s consistent with how it is shown on the OS map published at that time.
Aerial Photograph	1988	Aerial photograph available to view at the County Records Office.
Observations		The aerial photograph covering the area crossed by the application route is not available in the county records Office.
Investigating Officer's Comments		No inference can be drawn.
Aerial Photograph	2000	Aerial photograph available to view on GIS.

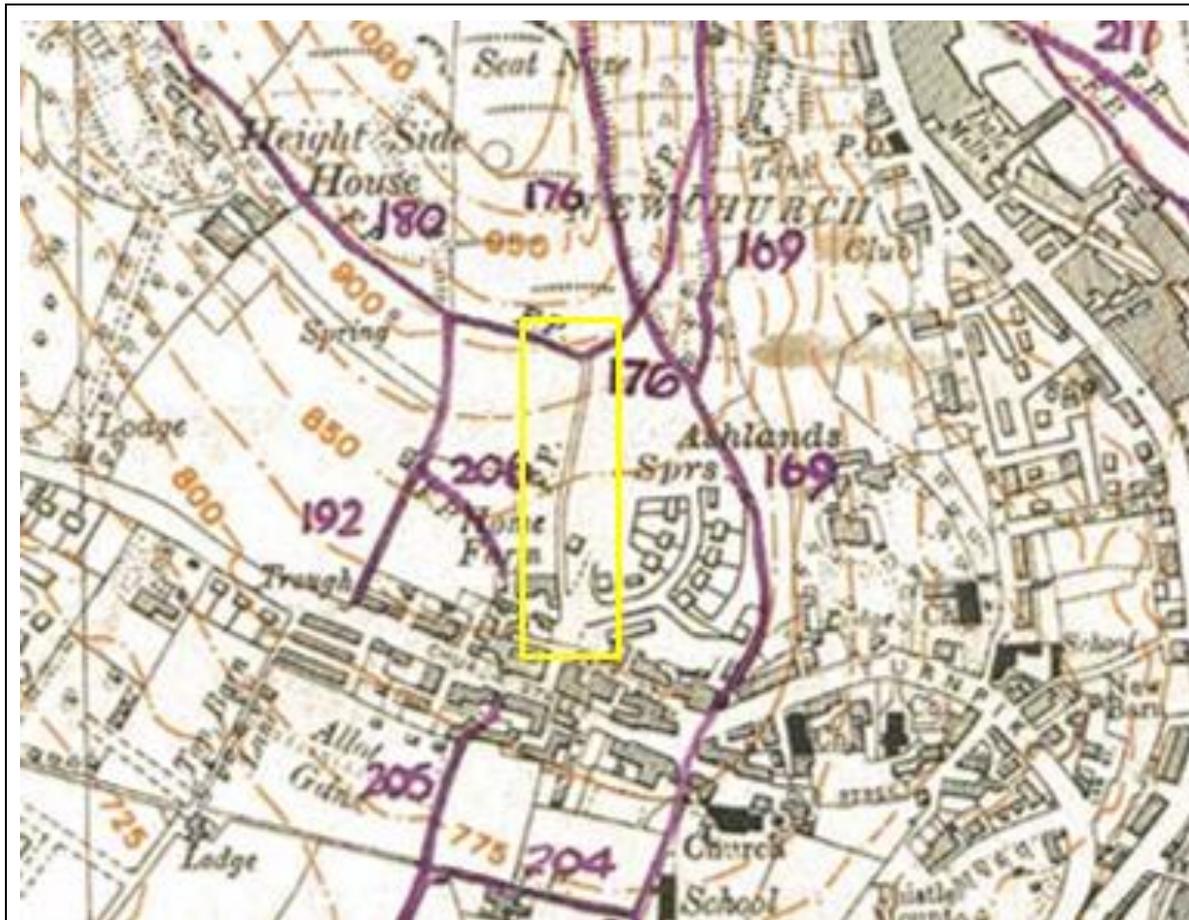


Observations		The application route can only be seen faintly as opposed to the route of Footpaths Rawtenstall 180 and 192 leading north from St Peters Road and an unrecorded track from the northern end of Greendale. The houses on Hillside Drive, which abut the route are shown.
Investigating Officer's Comments		Use of the application route, if possible, does not appear to be by significant numbers of people as there is no evidence of significant levels of footfall.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>

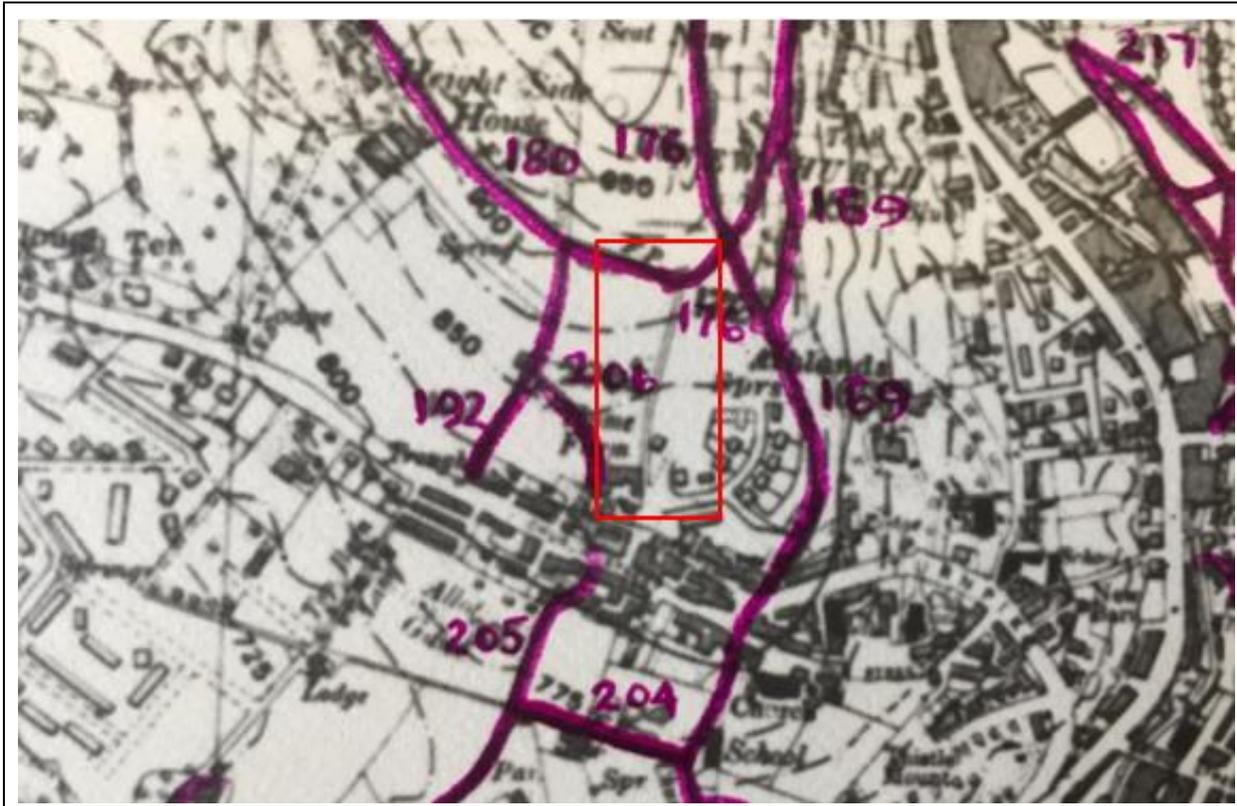
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The application route is within Rawtenstall which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



<p>Observations</p>		<p>The application route was not shown on the Draft Map and no objections or representations were made to the county council 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>



Observations		The application route was not shown on the Provisional Map and no objections or representations were made to the county council about it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.

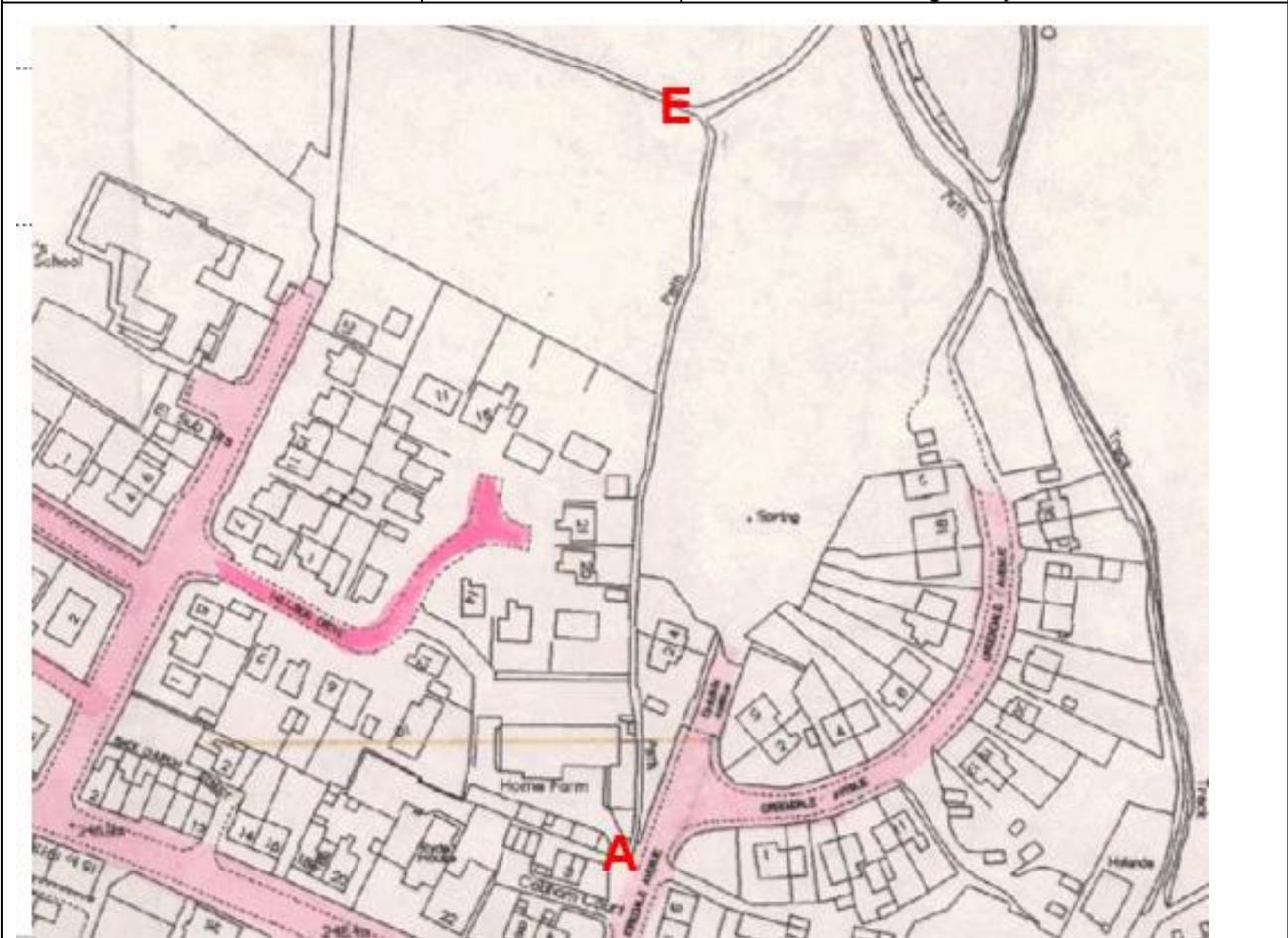


Observations		The application route was not shown on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated 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. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route 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. There were no objections or representations made with regard 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	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

	<p>several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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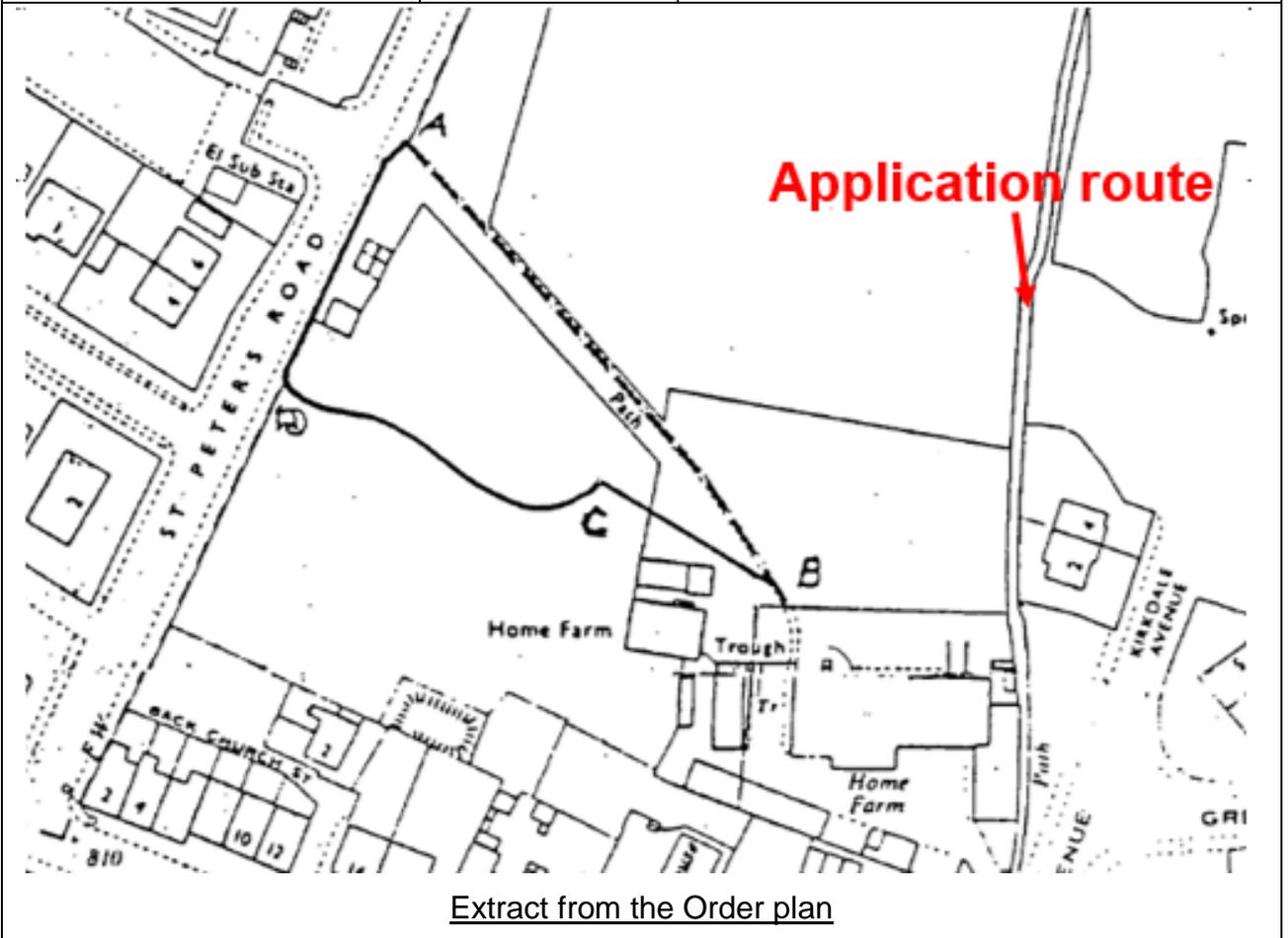
<p>Observations</p>	<p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.</p>
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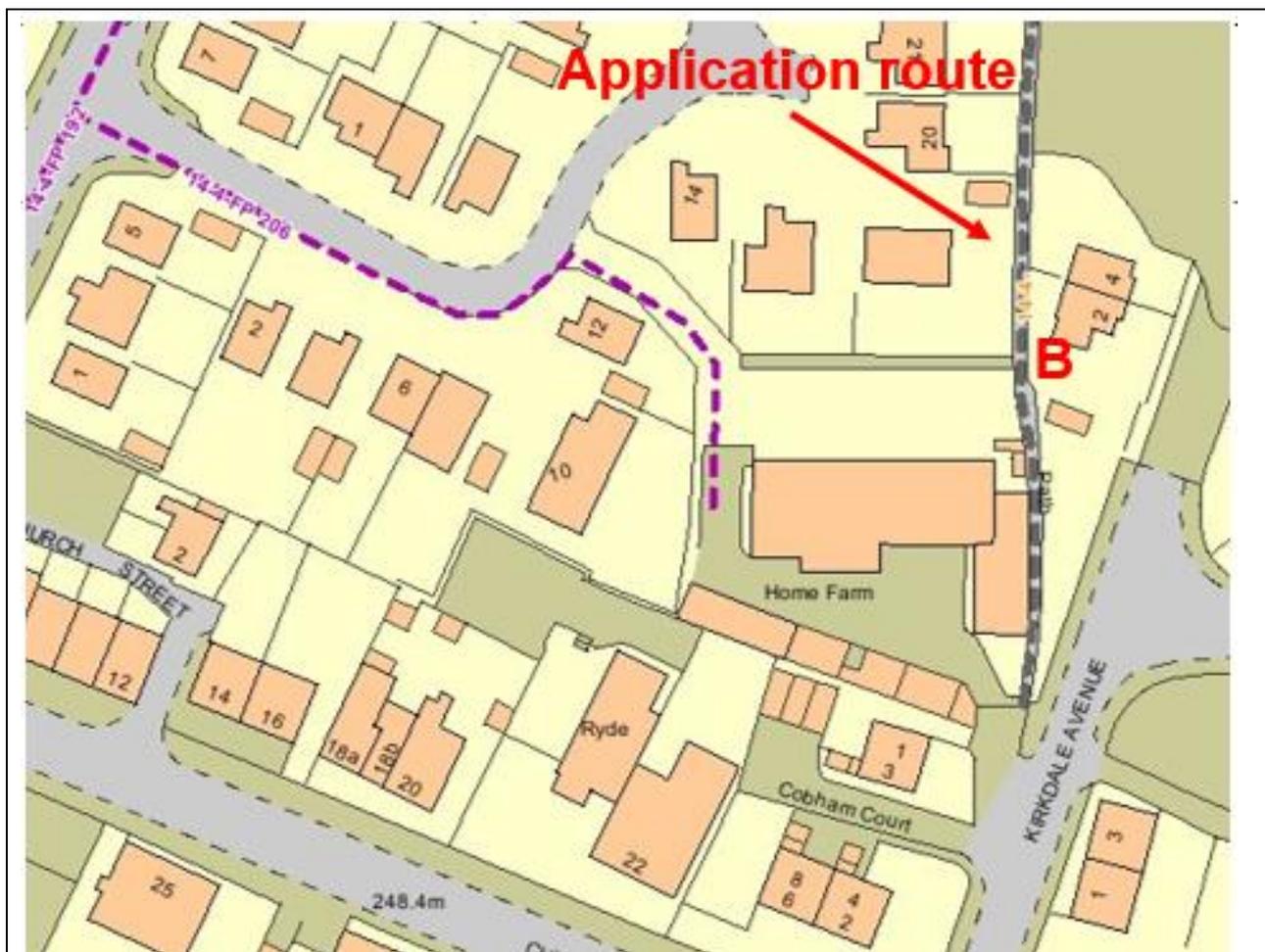
Investigating Comments	Officer's		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Highway Stopping Up Orders		1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the county council since that date.
Observations			A search of records held at the County Records Office was made and no legal Orders affecting the application route were found.
Investigating Comments	Officer's		There is no record of any public rights that may be found to exist along the application route having been legally extinguished.
Land Ownership plans			Plans obtained from the Land Registry.



		<p>999 years. With the owners of the land listed as Greendale Land and Building Company Limited who are the company who are understood to have originally purchased the land on which Kirkdale Avenue and Greendale Avenue were built and who the applicant explained went bankrupt during the construction of the Avenue. It is not known whether the company owned any of the land over which the application route runs but it is clear that when the houses were constructed the application route was not altered or obstructed by the development.</p>
<p>Investigating Officer's Comments</p>		<p>It is not uncommon to find that ownership of land crossed by an enclosed public right of way is not registered and this often, when considered with all other available map and documentary evidence supports the view that the route is a historical public right of way.</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</p>

		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Diversion of Footpath Rawtenstall 206	1986	Diversion order made and confirmed by Rossendale Borough Council in 1986.





Digitised public rights of way map

Observations

When carrying out a site inspection of the application route the Investigating Officer noted that a stone stile existed in the wall adjacent to the application route at point B which provided access onto an unrecorded path which ran along the back of Home Farm to connect to Footpath Rawtenstall 206 and Kirkdale Avenue which a local resident described as a 'public footpath' which was put in when the houses on Kirkdale Avenue were built.

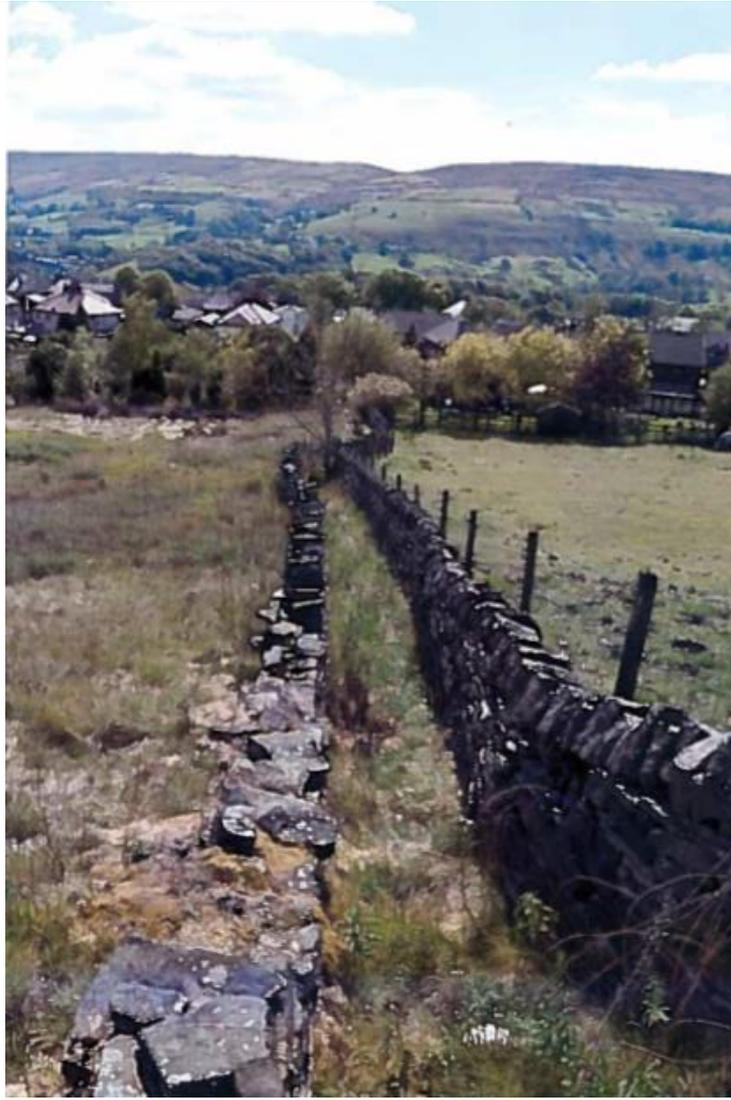
A search through the county council records revealed that part of Footpath Rawtenstall 206 was diverted by Rossendale Borough Council in 1986 to allow for development.

The alternative route created by the Order was shown by a bold solid line on the Order plan and is referred to in the Order Schedule as being between points

		<p>B-C-D. The Order plan does not contain the annotation 'D' or any measurements but the diverted section does not appear to include the link through to the application route.</p> <p>However, the link from Footpath Rawtenstall 206 through to the application route at point B (on the Committee plan) does not appear to have existed prior to the construction of the houses on Kirkdale Avenue and appears to have been purposefully left as a link through to the application route.</p>
Investigating Officer's Comments		<p>The provision of a link through to the application route supports the fact that the application route existed as a route used by the public in the mid-1980s otherwise such a link would not have been provided unless required for some other private need.</p>
Photographs submitted by the applicant	2019	Photographs taken on 16 May 2019

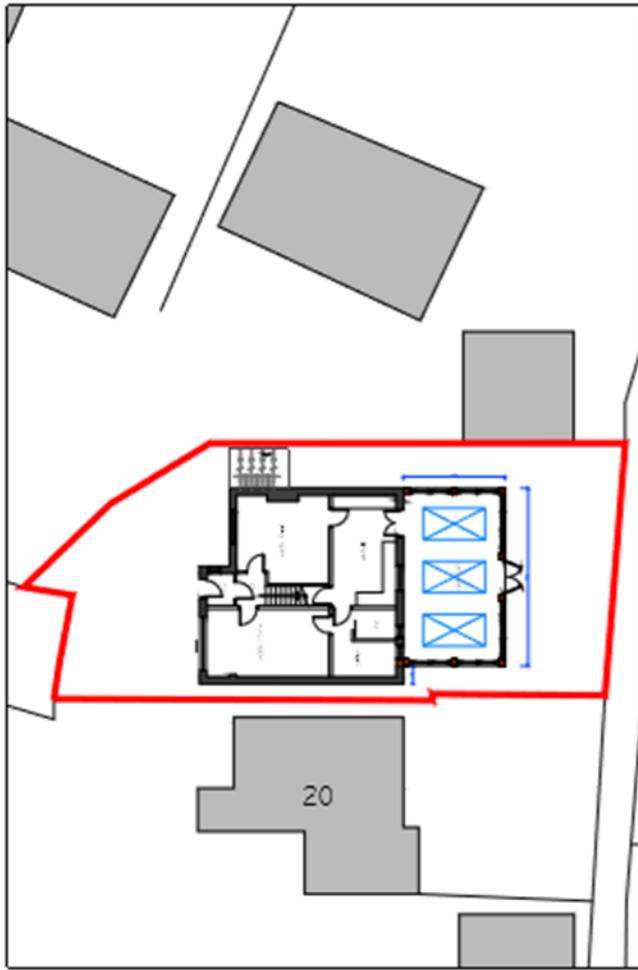


Photograph 1



Photograph 2

Observations		The photographs taken in 2019 show the application route adjacent to Home Farm (from point A) and from point E looking south towards point D. The sections of the route shown on the photographs appear to be open and available to use but the full length of the route is not shown.
Investigating Officer's Comments		The sections of route shown still existed in 2019 and appeared to be capable of being used but no inference can be drawn with regards to the existence of public rights.
Planning 2018/0493	Application 2018	Details of Planning permission granted for a garage conversion and rear orangery to 21 Hillside Drive.



BLOCK PLAN SCALE 1:200



LOCATION PLAN SCALE 1:500

LOCATION AND BLOCK PLAN – 21 HILLSIDE AVENUE. BB4

property which abuts the application route.

The plans submitted as part of the application clearly show the boundary of the property marked in red as being up to but not including the application route. The application route is shown on the base plans but is not referred to.

Planning permission was granted for the development and when the application route was inspected in June 2019 it was clear that work was underway and that at the same time as implementing the planning permission work appeared to have been carried out to remove the walls which previously enclosed the application route to open up a larger area to the rear of the property.

Investigating

Officer's

Whilst implementation of the planning

Comments		<p>permission does not affect the application route it appears that the construction of the orangery would greatly reduce the size of the garden to the rear of the property and that the owners of the property are looking to extend their garden over land forming part of the application route.</p> <p>Consultation letters have been sent to the owners of the property and details of any responses are detailed later in this report.</p>
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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 land crossed by the application route is not in registered land ownership.

Summary

The application route is not shown on any small scale early commercial maps pre dating the Ordnance Survey mapping. This is not however necessarily surprising as the application is for a public footpath – which is not normally shown on such maps which were produced primarily to show routes to be used on horseback and in particular with horses and carts/carriages.

The route is clearly shown on the first edition 6 inch Ordnance Survey map surveyed and published in the 1840s and from the 1890s is clearly shown and labelled as a footpath on the 25 inch OS maps connecting to a network of routes now recorded as public footpaths.

The map and photographic evidence available from the 1840s through to the current time supports the view that the route physically existed and was capable of being used by the public on foot.

In addition, it was identified as a 'public footpath' on a plan prepared in the 1930s for the construction of houses which abutted the route and from which a proposed link into the route was shown.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has submitted the following map and documentary information with the application all of which are considered above:

- 1st edition 25 inch Ordnance Survey map LXXII-10 published 1891

- Builders' plan for Kirkdale Avenue and Greendale Avenue dated 1936
- Modern GIS map extract with application route shown
- Google earth aerial photograph with route marked on dated 2018
- 2 photographs of the route dated 6 May 2019

In addition 21 user evidence forms were submitted by the applicant.

The owner of the farm alongside the route and owners of adjoining properties on Hillside Drive at nos. 20 and 18 support the recording of the route as a footpath and refer to their own use and of seeing others use the application route.

There are 11 users giving evidence of use throughout the twenty year period 1999-2019 with a further 4 using it in 1999 but their use ending before 2019, and a further 5 whose use started sometime before 2019 but continued until 2019.

Some date their use back to the 1970s (8 users in that decade) and the 1980s (12 users) and 1990s – 16 users.

There is the reference to use of a path to the rear of the gardens of Nos 16 and 18 Hillside Drive to reach the application route from Hillside Drive and how the southern section of the route may be more used as a consequence. In the main however there are lots of references to a well used local path along the whole of its length. Most of the users refer to seeing others on the route. They refer to how the route goes to the walking area of Seat Naze and to its use as a dog walking route and for rambling.

There are those who have used it 4-6 times a year and those who use it weekly or even daily. None have seen any signs or had their use challenged in any way until the wall was built on 26th May 2019. There is no suggestion that the route before then had ever been obstructed and the users of the path refer to using it without any permission. Ownership is often referred to as unknown.

Information from Others

One of the residents living immediately adjacent to the route on Hillside Drive replied to the consultation letter explaining that they had lived in Newchurch for almost 50 years and adjacent to the application route since 1990. They state that throughout that time the route has been used regularly by the public, Newchurch residents and visitors to the village. They refer to the fact that the route is shown on maps since the 1800s and that the path was used until recently when it was blocked by residents who they describe as having moved in to the properties relatively recently and who are trying to prevent the community accessing the 'ancient path'.

A further resident of Hillside Drive whose property also abuts the route stated that they had regularly used the route since buying their house in 1999 until it was blocked by neighbours in June 2019. They also refer to the path being shown on an Ordnance Survey map published in 1891.

Information from the Landowner

The land crossed by the application route is unregistered and ownership unknown.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Substantial user evidence
- Adjacent property owners report seeing others using the route on foot for many years
- Absence of signs and notices along the route stating that the route was not public.
- Map and other historical documentary evidence supporting the physical existence of the route since the mid-1800s.

Against Making an Order(s)

Conclusion

The application is that the route A-B-C-D-E has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

It is advised that as there is no express dedication that Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence reveals that the route is not shown on any of the small scale maps but is shown on the first edition 6 inch OS maps of 1830 and 1860. In addition, the route is shown (as part of a larger route) on the 1891, 1911 and 1930 25 inch OS map and is annotated as "footpath" suggesting that at such time the route was physically available and showed all the characteristics of a footpath. The route is shown on Cassini New Series of Maps 1903-1904 and shows the route as a bounded route providing direct access to the now recorded route FP180. The route was also shown on two independent maps being the Authentic Map Directory of South Lancashire 1934 and labelled as a public footpath on Builders Plans dated 1936, suggesting that the route was considered by the builders developing the adjacent land as a public footpath in the 1930s, and that the route physically existed and was capable of being used by the public on foot from at least the mid 1800s. Whilst it was not included on either the Draft, Provisional or First Edition Definitive Map, the reason for it not being included is not known and no

legal orders have been found extinguishing any public rights which may have already existed along it.

Looking at the user evidence, it would appear that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was denied in May 2019 by the construction of a wall across the route which in turn triggered the application. Accordingly, the 20 year period under consideration for the purposes of establishing deemed dedication would be 1999-2019.

The applicant has provided 21 user evidence forms in support of the application, which show use of the route from as early as the late 1960's early 70's. 11 users have provided evidence of use during the period under consideration, with other users having used the route for significant periods of time around the period under consideration. The majority of users refer to having witnessed other users whilst using the route, none of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that the user forms indicate that on balance, the route has been used as of right and without force, secrecy or interruption during the period under consideration. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1999 to 2019.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application and promote the Order to confirmation.

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: 804-608		Joanne Lawson, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A