

Lancashire County Council

Regulatory Committee

Wednesday, 18th November, 2020 at 10.30 am - Virtual Meeting

Agenda

Part I (Open to Press and Public)

No.	Item	
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1.	Apologies	
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2.	Disclosure of Pecuniary and Non-Pecuniary Interests	
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	Minutes of the last Meeting held on 16 September 2020	(Pages 1 - 10)
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4.	Guidance	(Pages 11 - 34)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Progress Report on Previous Committee Items	(Pages 35 - 44)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrading of part of Footpath Bacup 657 (Heald Lane), Weir to Bridleway in connection with the application to record a public right of way from Heald Lane through Weir Lodges to Office Road, Bacup File No. 804-603	(Pages 45 - 120)
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7. Wildlife and Countryside Act 1981 (Pages 121 - 166)
Definitive Map Modification Order Investigation
Addition of Footpath from Wennington Road to
Home Farm Close, Wray with Botton, Lancaster
File No. 804-620

8. Wildlife and Countryside Act 1981 (Pages 167 - 262)
Definitive Map Modification Order Investigation
Addition of a Footpath along dismantled railway
from Footpath Read 11 to Martholme Viaduct, north
of Bridge Heyward Caravan Park, Read
File No. 804-618

9. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

10. Date of Next Meeting

An extra-ordinary meeting of the Committee will be held at 10.30am on Wednesday 2nd December 2020.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 16th September, 2020 at 10.30 am- Virtual meeting

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	J Parr
J Cooney	T Aldridge
P Steen	D Howarth
A Clempson	C Towneley
L Cox	B Dawson

1. Apologies

County Councillor Eaton and County Councillor Towneley paid tribute to County Councillor Malcolm Barron and a minute's silence was held.

No apologies for absence were received.

Membership changes

Permanent changes - County Councillor Ian Brown had been appointed Deputy Chair of the Committee. County Councillor Towneley and County Councillor Dawson were now permanent members of the Committee and were welcomed to the Committee.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Towneley declared a non-pecuniary interest in Item 6, as she was a bridleway officer for her local area (which did not include the area as detailed in Item 6). CC Towneley was also a member of the British Horse Society and Chair of the National Federation of Bridleway Associations.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 11 March 2020 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law

and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

5. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

A report was presented setting out the constitution, membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2020/21.

Resolved: The Committee noted:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 16 July 2020.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Noyna Road to Noyna Hall and Upgrade of Footpath to Bridleway from Noyna Hall to Moss Houses Road, Foulridge, Pendle File No. 804-609

A report was presented on an application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to Bridleway of part of Footpath Foulridge 36 from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609. The routes were shown marked A-B-C-D and D-E-F-G-H-I-J-K respectively on the Committee plan attached to the agenda papers.

A site inspection had been carried out in October 2019.

It was reported that there was insufficient documentary evidence of historical bridleway rights along the route. In addition, it was considered that equestrian use of the route was not representative of the public at large and therefore the evidence did not raise a presumption of dedication of a bridleway, and thus failed the statutory test. Furthermore, the actions of at least one landowner to prevent/discourage equestrian use and use having been by a limited section of the public concluded that the evidence also failed to satisfy the common law test.

Taking all the evidence into account, the Committee considered that it was reasonable to conclude, on the balance of probabilities, that the evidence was

insufficient to show (i) that bridleway rights were reasonably alleged to subsist along the unrecorded section of the route (A-B-C-D) or (ii) that bridleway rights did subsist along the section that was currently recorded as a public footpath (D-E-F-G-H-I-J-K).

Resolved: That the application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath along dismantled railway line from Strongstry
Bridge to Stubbins Station
File No. 804-614**

A report was presented on an application for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station and shown on the Committee plan attached to the agenda papers, between points A-B-C-D-E-F-G-H.

Legal Services had received last minute representations from the current owners of the land who objected to the application. The land owners representation letter was summarised and reported to the Committee by the legal officer, Kerry Hayes.

A site inspection had been carried out in February 2020.

It was reported that the application related to the addition of a footpath along the former track bed of the former East Lancashire Railway, which had opened in 1846. The railway between Ramsbottom and Accrington had ceased to operate in 1966 and the track bed had been removed in approximately 1970-1972. There had been no claim that the application route existed as a footpath prior to the closure of the railway and removal of the railway track. The application was based primarily on the submission of a substantial amount of user evidence. Map and documentary evidence confirmed the existence of the railway and the fact that the rails were still in situ until the early 1970s and the earliest OS map to show the railway as having been dismantled had been published in 1983 (having been revised in 1982).

It was reported that, in 1993, the company owning the land crossed by the application route had applied for planning permission to extend Stubbins Vale Mill which would have interfered with the railway embankment along which the application route ran. Unfortunately, most of the correspondence relating to the granting of planning permission could not be found but it appeared that there had already been use of the railway line by that time by the public, and that the company had acknowledged this use, agreed to it continuing, and appeared to

have been responsible for the construction of wooden steps in diverting the original route to allow for their factory extension.

The Committee noted that, in summary, the available map, documentary and photographic evidence, together with the recollections of the route from the county council project officer looking at the creation of a cycleway along the route, supported the evidence of use submitted.

County Councillor Howarth requested updates on the progress of decisions taken by Regulatory Committee.

Resolved:

- (i) That the application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway at Stubbins Station, in accordance with File No. 804-614, be accepted.
- (ii) That an Order 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 from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-B-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Heapey 27 at Black Lion
Farm, Wheelton, Chorley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Heapey 27, Chorley Borough. The length of the existing path to be diverted was shown by a bold continuous line and marked A-B-C on the Committee plan attached to the agenda papers, and the proposed new route was shown by a bold broken line and marked A-D-E-C.

The Committee noted that, if the diversion was successful, it would remove the footpath that crossed the open farmyard and the small field that was used for grazing and sorting livestock, assisting the applicants with their farm operations. It would also improve the privacy and security at the farm, removing the footpath from the open farmyard that included outbuildings, building materials storage, farm equipment and the parking area for vehicles.

It was reported that consultation with the statutory undertakers had taken place and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Heapey 27, from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E-C on the Committee plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**9. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Wheelton 19 at Clovian
House and Miry Fold Farm, Briers Brow, Wheelton, Chorley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Wheelton 19, Chorley Borough from the route shown by a bold continuous line and marked A-B, to the route shown by a bold broken line and marked A-C-D-E-F on the Committee plan attached to the agenda papers.

The Committee noted that Clovian House and Miry Fold Farm were residential dwellings that were part of a small development on the site that was granted planning permission in 2015. Whilst the development was ongoing, for safety reasons, the footpath was temporarily diverted to the edge of the site, onto the alignment of the proposed new route A-C-D-E-F.

The current owners had not been involved in the original planning application and had only recently become aware that the necessary order had not been made to permanently divert the footpath onto the alternative route that was available to be walked on the ground. Now that the current owners were aware of this, they wished to regularise the situation. If the diversion was successful, it would remove the footpath that ran through the building, boundary fence, hedge and boundary wall of one of the houses and also across the gardens.

It was reported that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Committee were informed that since the report had been drafted, it was no longer proposed that a gate be erected at point D, where the footpath crossed the field boundaries of two separate paddocks. The reason for this was that the footpath would now be fenced off from the paddocks, ensuring the footpath would not be trampled by livestock. It was therefore no longer necessary to install a gate at point D, as the livestock would be separated from the footpath. The gate at point E would still be erected.

The following amendments were therefore reported to Committee:

Page 278: **Points annotating the routes on the attached map**

D	SD 6087 2095	Gate in Point adjacent to the field boundary fence between Clovian House and Miry fold Farm at the south west edge of the field.
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Page 279: **The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:**

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6087 2095 (point D)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6084 2097 (point E)

Page 280: The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6083 2097 and SD 6091 2091 is the right of the owner of the soil to erect and maintain a gates that conforms to BS 5709:2018 at SD 6085 2097. ~~and SD 6087 2095.~~ The width between SD 6083 2097 and SD 6091 2091 is 2 metres."

Page 281: It is felt that, if the Order were to be confirmed, the new path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be ~~a two~~ gates on the new footpath at the points where it crosses the field boundaries of two separate paddocks. The gates will conform to the British Standard for gates, gaps as stiles (BS 5709:2018) and as such will be easy to use.

Page 282: It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The new route will be of adequate width, firm and well drained underfoot with no stiles. The ~~two~~ gates will conform to BS5709:2018.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Wheelton 19, from the route shown by a bold continuous line on the Committee plan and marked A-B, to the route shown by a bold broken line and marked A-C-D-E-F on the map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**10. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Trawden 188 at Parson Lee
Farm, Wycoller Road, Trawden, Pendle Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Trawden 188, Pendle Borough. The length of existing path to be diverted was shown by a bold continuous line and marked on the Committee plan as A-B-C, and that the proposed new route was shown by a bold broken line and marked A-D-E.

It was reported that the current owner was not aware that the recorded route of the footpath was obstructed by an agricultural barn when she purchased the property. All of the existing route and of the new route was owned by the applicant.

The Committee noted that the new footpath would provide similar open views of the countryside and would avoid the need to negotiate the steep embankment and deep ditch. In addition, the new footpath would provide an obvious, safe and convenient footpath away from the buildings at Parson Lee Farm.

It was reported that consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Trawden 188, from the route shown by a bold continuous line and marked A-B-C on the Committee plan, to the route shown by a bold broken line and marked A-D-E.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**11. Highways Act 1980 - Section 118
Wildlife and Countryside Act 1981 - Section 53A
Proposed Extinguishment of Part of the Recorded Route of Footpath
Rawtenstall 205, From Windsor Avenue to Staghills Road,
Rossendale Borough**

A report was presented on an application for an Order to be made under Section 118 of the Highways Act 1980, to extinguish part of Footpath Rawtenstall 205, Rossendale Borough that crossed three properties on a housing estate that was built in the mid 1950's. The length of existing path proposed to be extinguished was shown by a bold continuous line on the Committee plan and marked as A-B-C.

It was reported that the owners of the property had, at no time, ever been made aware that a public right of way recorded on the Definitive Map and Statement for Public Rights of Way crossed their property.

A local authority search, carried out in connection with the sale of the property, revealed that a public footpath was recorded passing through 25 Windsor Avenue and the properties to the rear, 104 and 106 Staghills Road. Rossendale Borough Council and Lancashire County Council do not have any record that a legal order has been made to divert, stop up or extinguish any part of the footpath.

The Committee noted that the proposed Order met the criteria for the extinguishment of a public right of way under Section 118 of the Highways Act 1980, in that it was expedient that the path should be stopped up on the grounds that it was not needed for public use.

It was reported that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Footpath Rawtenstall 205, on the route shown by a bold continuous line and marked A-B-C on the Committee plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the extinguishment order.

12. Urgent Business

There were no items of Urgent Business.

13. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 18 November 2020.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 18 November 2020

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

(Annexes 'A', 'B' and 'C' refer)

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, jane.turner@lancashire.gov.uk

Executive Summary

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

Recommendation

The Committee is asked to note the current Guidance as set out in the attached Annexes and have reference to the relevant sections of it during consideration of any reports on the agenda.

Background and Advice

In addition to any advice which may be given at meetings the members of the committee are also provided with Guidance on the law in relation to the various types of Order which may appear on an agenda.

A copy of the current Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way is attached as Annex 'A'. Guidance on the law relating to certain Orders to be made under the Highways Act 1980 is attached as Annex 'B' and on the actions of the Authority on submission of Public Path Orders to the Secretary of State as Annex 'C'.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Providing the members of the Committee with Guidance will assist them to consider the various reports which may be presented.

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

Paper	Date	Contact/Directorate/Tel
Current legislation		Jane Turner, Office of the Chief Executive 01772 32813
Reason for inclusion in Part II, if appropriate		
N/A		

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way

Definitions

The Wildlife and Countryside Act 1981 gives the following definitions of the public rights of way which are able to be recorded on the Definitive Map:-

Footpath – means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; these rights are without prejudice to any other public rights over the way;

Bridleway – means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; these rights are without prejudice to any other public rights over the way;

Restricted Byway – means a highway over which the public have a right of way on foot, on horseback or leading a horse and a right of way for vehicles other than mechanically propelled vehicles, with or without a right to drive animals along the highway.
(Mechanically propelled vehicles do not include vehicles in S189 Road Traffic Act 1988)

Byway open to all traffic (BOATs) – means a highway over which the public have a right of way for vehicular and all other kinds of traffic. These routes are recorded as Byways recognising their particular type of vehicular highway being routes whose character make them more likely to be used by walkers and horseriders because of them being more suitable for these types of uses;

Duty of the Surveying Authority

Section 53 of the Wildlife and Countryside Act 1981 provides that a Surveying Authority shall keep the Definitive Map and Statement under continuous review and as soon as reasonably practicable after the occurrence of any of a number of prescribed events by Order make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of that event.

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

- b) the expiration, in relation to any way in the area to which the Map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

- c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows –
- (i) that a right of way which is not shown in the Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, a byway open to all traffic; or
 - (ii) that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description; or
 - (iii) that there is no public right of way over land shown in the Map and Statement as a highway of any description, or any other particulars contained in the Map and Statement require modification.

The modifications which may be made by an Order shall include the addition to the statement of particulars as to:-

- (a) the position and width of any public path or byway open to all traffic which is or is to be shown on the Map; and
- (b) any limitations or conditions affecting the public right of way thereover.

Orders following "legal events"

Other events include

"The coming into operation of any enactment or instrument or any other event" whereby a highway is stopped up diverted widened or extended or has ceased to be a highway of a particular description or has been created and a Modification Order can be made to amend the Definitive Map and Statement to reflect these legal events".

Since 6th April 2008 Diversion Orders, Creation Orders, Extinguishment Orders under the Highways Act 1980 (and other types of Orders) can themselves include provisions to alter the Definitive Map under the new S53A of the Wildlife and Countryside Act 1981 and be "combined orders" combining both the Order to divert and an order to alter the Map. The alteration to the Definitive Map will take place on the date the extinguishment, diversion or creation etc comes fully into effect.

Government Policy - DEFRA Circular 1/09

In considering the duty outlined above the Authority should have regard to the Department of the Environment Food and Rural Affairs' Rights of Way Circular (1/09). This replaces earlier Circulars.

This Circular sets out DEFRA's policy on public rights of way and its view of the law. It can be viewed on the DEFRA web site. There are sections in the circular on informing and liaising, managing and maintaining the rights of way network, the Orders under the

Highways Act 1980 and also sections on the Definitive Map and Modification Orders. Many aspects are considered such as -

When considering a deletion the Circular says - "4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements.

These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed.

Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified."

Where a route is recorded on the List of Streets as an Unclassified County Road the Circular says – "4.42 In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights.

However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status."

Definitive Maps

The process for the preparation and revision of definitive maps was introduced by Part III of the National Parks and Access to the Countryside Act 1949.

Information about rights of way was compiled through surveys carried out by Parish Councils (or District Councils where there was no Parish Council) and transmitted to the Surveying Authority (County or County Borough Councils) in the form of Survey Maps and cards.

The Surveying Authority published a draft map and statement and there was a period for the making of representations and objections to the draft map. The Authority could

determine to modify the map, but if there was an objection to that modification the Authority was obliged to hold a hearing to determine whether or not to uphold that modification with a subsequent appeal to the Secretary of State against the decision.

After all appeals had been determined the Authority then published a Provisional Map and Statement. Owners, lessees or occupiers of land were entitled to appeal to Quarter Sessions (now the Crown Court) against the provisional map on various grounds.

Once this process had been completed the Authority published the Definitive Map and Statement. The Map and Statement was subject to five yearly reviews which followed the same stages.

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 1st January 1953 and the first review of the Definitive Map was published in 1975 with a relevant date of 1st September 1966.

Test to be applied when making an Order

The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered.

S53 permits both upgrading and downgrading of highways and deletions from the map.

The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised.

The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. There has to be evidence discovered. The claimed right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B).

This second test B is easier to satisfy but please note it is the higher Test A which needs to be satisfied in confirming a route.

The statutory test at S53(3)(c)(ii) again refers to the discovery of evidence that the highway on the definitive map ought to be shown as a different status.

The statutory test at S53(3)(c)(iii) again refers to evidence being discovered that there is no public right of way of any description after all or that there is evidence that particulars in the map of statement need to be modified.

The O'Keefe judgement reminds Order Making Authorities that they should make their own assessment of the evidence and not accept unquestioningly what officers place before them.

All evidence must be considered and weighed and a view taken on its relevance and effect.

An Order Making Authority should reach a conclusion on the balance of probabilities. The balance of probability test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act.

Recording a “new” route

For a route to have become a highway it must have been dedicated by the owner.

Once a route is a highway it remains a highway, even though it may fall into non use and perhaps become part of a garden.

This is the position until a legal event causing the highway to cease can be shown to have occurred, or the land on which the highway runs is destroyed, perhaps by erosion which would mean that the highway length ceases to exist.

Sometimes there is documentary evidence of actual dedication but more often a dedication can be inferred because of how the landowner appears to have treated the route and given it over to public use (dedication at Common law) or dedication can be deemed to have occurred if certain criteria laid down in Statute are fulfilled (dedication under s31 Highways Act).

Dedication able to be inferred at Common law

A common law dedication of a highway may be inferred if the evidence points clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is on the Claimant to prove a dedication. Evidence of use of the route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether a path has been dedicated. No minimum period of use is necessary. All the circumstances must be taken into account. How a landowner viewed a route may also be indicated in documents and maps

However, a landowner may rely on a variety of evidence to indicate that he did not intend to dedicate, including signs indicating the way was private, blocking off the way or turning people off the path, or granting permission or accepting payment to use the path.

There is no need to know who a landowner was.

Use needs to be by the public. This would seem to require the users to be a number of people who together may sensibly be taken to represent the people as a whole/the local community. Use wholly or largely by local people may still be use by the public. Use of a way by trades people, postmen, estate workers or by employees of the landowner to get to work, or for the purpose of doing business with the landowner, or by agreement or licence of the landowner or on payment would not normally be sufficient. Use by friends of or persons known to the landowner would be less cogent evidence than use by other persons.

The use also needs to be “as of right” which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent

with use as of right. Case law would indicate that the use has to be considered from the landowner's perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway.

Current use (vehicular or otherwise) is not required for a route to be considered a Byway Open to All Traffic but past use by the public using vehicles will need to be sufficiently evidenced from which to infer the dedication of a vehicular route. Please note that the right to use mechanically propelled vehicles may since have been extinguished.

Dedication deemed to have taken place (Statutory test)

By virtue of Section 31 of the Highways Act 1980 dedication of a path as a highway may be presumed from use of the way by the public as of right – not secretly, not by force nor by permission without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during the twenty year period to dedicate it.

The 20 year period is computed back from the date the existence of the right of way is called into question.

A landowner may prevent a presumption of dedication arising by erecting notices indicating that the path is private. Further under Section 31(6) a landowner may deposit with the Highway Authority a map (of a scale of not less than 1:10560 (6 inches to the mile) and statement showing those ways, if any, which he or she agrees are dedicated as highways. This statement must be followed by statutory declarations. These statutory declarations used to have to be renewed at not more than 6 yearly intervals, but the interval is now 10 years. The declaration would state that no additional rights of way have been dedicated. These provisions do not preclude the other ways open to the landowner to show the way has not been dedicated.

If the criteria in section 31 are satisfied a highway can properly be deemed to have been dedicated. This deemed dedication is despite a landowner now protesting or being the one to now challenge the use as it is considered too late for him to now evidence his lack of intention when he had failed to do something to sufficiently evidence this during the previous twenty years.

The statutory presumption can arise in the absence of a known landowner. Once the correct type of user is proved on balance, the presumption arises, whether or not the landowner is known.

Guidance on the various elements of the Statutory criteria;-

- Use – see above as to sufficiency of use. The cogency, credibility and consistency of user evidence should be considered.
- By the public – see above as to users which may be considered “the public”.

- As of right - see above
- Without interruption - for a deemed dedication the use must have been without interruption. The route should not have been blocked with the intention of excluding the users.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a "calling into question" (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

Documentary evidence

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

In assessing whether or not a highway has been dedicated reference is commonly made to old commercial maps of the County, Ordnance Survey maps, sometimes private estate maps and other documents, other public documents such as Inclosure or Tithe Awards, plans deposited in connection with private Acts of Parliament establishing railways, canals or other public works, records compiled in connection with the valuation of land for the purposes of the assessment of increment value duty and the Finance Act 1910. Works of local history may also be relevant, as may be the records of predecessor highway authorities and the information gained in connection with the preparation and review of the Definitive Map.

It should be stressed that it is rare for a single document or piece of information to be conclusive (although some documents are of more value than others e.g. Inclosure Awards where the Commissioners were empowered to allot and set out highways). It is necessary to look at the evidence as a whole to see if it builds up a picture of the route being dedicated as a highway.

It should be noted that Ordnance Survey Maps (other than recent series which purport to show public rights of way and which derive their information from the Definitive Map) contain a disclaimer to the effect that the recording of a highway or right of way does not imply that it has any status. The maps reflect what the map makers found on the ground.

Synergy between pieces of highway status evidence – co-ordination as distinct from repetition would significantly increase the collective impact of the documents.

Recording vehicular rights

Historical evidence can indicate that a route carries vehicular rights and following the Bakewell Management case in 2004 (House of Lords) it is considered that vehicular rights could be acquired on routes by long use during years even since 1930. However, in May 2006 Part 6 of the Natural Environment and Rural Communities Act 2006 came into force. Public rights of way for mechanically propelled vehicles are now extinguished on routes shown on the definitive map as footpaths, bridleways or restricted byways unless one of eight exceptions applies. In essence mechanical vehicle rights no longer exist unless a route is recorded in a particular way on the Council's Definitive Map or List of Streets or one of the other exceptions apply. In effect the provisions of the Act curtail the future scope for applications to record a Byway Open to All Traffic to be successful.

The exceptions whereby mechanical vehicular rights are "saved" may be summarised as follows-

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6th April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

It is certainly the case that any application to add a byway to the Definitive Map and Statement must still be processed and determined even though the outcome may now be that a vehicular public right of way existed before May 2006 but has been extinguished for mechanically propelled vehicles and that the route should be recorded as a restricted byway.

Downgrading a route or taking a route off the Definitive Map

In such matters it is clear that the evidence to be considered relates to whether on balance it is shown that a mistake was made when the right of way was first recorded.

In the Trevelyan case (Court of Appeal 2001) it was considered that where a right of way is marked on the Definitive Map there is an initial presumption that it exists. It should be assumed that the proper procedures were followed and thus evidence which made it reasonably arguable that it existed was available when it was put on the Map. The standard of proof required to justify a finding that no such right of way exists is on the balance of probabilities and evidence of some substance is required to outweigh the initial presumption.

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative Map and Statement of highest attainable accuracy. "The evidence needed to remove a public right from such an authoritative record will need to be cogent. The procedures for defining and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years without being questioned earlier."

Taking one route off and replacing it with an alternative

In some cases there will be no dispute that a public right of way exists between two points, but there will be one route shown on the definitive map which is claimed to be in error and an alternative route claimed to be the actual correct highway.

There is a need to consider whether, in accordance with section 53(3)(c)(i) a right of way is shown to subsist or is reasonably alleged to subsist and also, in accordance with section 53(3)(c)(iii) whether there is no public right of way on the other route.

The guidance published under the statutory provisions make it clear that the evidence to establish that a right of way should be removed from the authoritative record will need to be cogent. In the case of *R on the application of Leicestershire County Council v SSEFR* in 2003, Mr Justice Collins said that there "has to be a balance drawn between the existence of the definitive map and the route shown on it which would have to be removed and the evidence to support the placing on the map of, in effect a new right of way." "If there is doubt that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay."

The court considered that if it could merely be found that it was reasonable to allege that the alternative existed, this would not be sufficient to remove what is shown on the map. It is advised that, unless in extraordinary circumstances, evidence of an alternative route which satisfied only the lower "Test B" (see page 4) would not be sufficiently cogent evidence to remove the existing recorded route from the map.

Confirming an Order

An Order is not effective until confirmed.

The County Council may confirm unopposed orders. If there are objections the Order is sent to the Secretary of State for determination. The County Council usually promotes its Orders and actively seeks confirmation by the Secretary of State.

Until recently it was thought that the test to be applied to confirm an Order was the same test as to make the order, which may have been under the lower Test B for the recording of a "new" route. However, the Honourable Mr Justice Evans-Lombe heard the matter of *Todd and Bradley v SSEFR* in May 2004 and on 22nd June 2004 decided that confirming an Order made under S53(3)(c)(i) "implies a revisiting by the authority or Secretary of State of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage." And that to confirm the Order the Secretary of State (or the authority) must be "satisfied of a case for the subsistence of the right of way in question on the balance of probabilities." i.e. that Test A is satisfied.

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities, that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.

July 2009

Revised basic Guidance on the law relating to certain Orders to be made under the Highways Act 1980

- **Diversion Orders under s119**
- **Diversion Orders under s119A**
- **Diversion Orders under s119ZA**
- **Diversion Orders under s119B**
- **Diversion Orders under s119C**
- **Diversion Orders under s119D**
- **Extinguishment Orders under s118**
- **Extinguishment Orders under s118A**
- **Extinguishment Orders under s118ZA**
- **Extinguishment Orders under s118B**
- **Extinguishment Orders under s118C**
- **Creation Order under s26**

Committee members have received a copy of the relevant sections from the Highways Act 1980 (as amended). The following is to remind Members of the criteria for the making of the Orders and to offer some guidance.

DEFRA's Rights of Way Circular (1/09 version 2) sets out DEFRA's policy on public rights of way and its view of the law. It can be found on DEFRA's web site. Orders made under the Highways Act 1980 are considered in Section 5 where the Guidance says that "the statutory provisions for creating, diverting and extinguishing public rights of way in the Highways Act 1980 have been framed to protect both the public's rights and the interests of owners and occupiers. They also protect the interests of bodies such as statutory undertakers."

Often the legal test requires the Committee to be satisfied as to the expediency of something. It is suggested that for something to be expedient it is appropriate and suitable to the circumstances and may incline towards being of an advantage even if not particularly fair. Something which is expedient would seem to facilitate your achieving a desired end.

Whether something is as convenient or not substantially less convenient may need to be considered. It is suggested that convenient refers to being suitable and easy to use.

Under S40 of the Natural Environment and Rural Communities Act 2006, every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Under Section 11 of the Countryside Act 1968 in the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.

Diversion Order s119

TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the owner, lessee or Occupier.

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is only being moved to another point on the same highway or to another highway connected to it and the point is substantially as convenient to the public.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient in the interests of the owner, lessee or occupier

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the route will not be substantially less convenient to the public.

That it is expedient to confirm it having regard to the effect the diversion would have on public enjoyment of the path or way as a whole.

That it is expedient to confirm it having regard to the effect on land served by the existing right of way (compensation can be taken into account)

That it is expedient to confirm it having regard to the effect on the land over which the "new" section runs and any land held with it (compensation can be taken into account).

Also having regard to any material provision of any Rights of Way Improvement Plan.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

That there is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

GUIDANCE

The point of termination being as substantially convenient is a matter of judgement subject to the test of reasonableness. Convenience would have its natural and ordinary meaning

and refer to such matters as whether the new point of termination facilitated the access of the highway network and accommodated user's normal use of the network.

That the diverted path is not substantially less convenient would mean convenience again being considered. The wording in the Statute allows the diversion to be slightly less convenient but it must not be substantially less so. The length of the diversion, difficulty of walking it, effect on users who may approach the diversion from different directions are factors to be considered.

The effect on public enjoyment of the whole route has to be considered. It would be possible that a proposed diversion may be as convenient but made the route less enjoyable (perhaps it was less scenic). Alternatively the diversion may give the route greater public enjoyment but be substantially less convenient (being less accessible or longer than the existing path).

It may be that the grounds to make an Order are satisfied but the Committee may be unhappy that the route can satisfy the confirmation test. It is suggested that in such circumstances the Order should be made but the Committee should consider deferring the decision on whether to confirm it (if there are no objections) or (if there are objections) whether to instruct officers not to even send the Order to the Secretary of State for confirmation or to instruct to submit the Order to the Secretary of State and promote the confirmation of same. The Council has a discretion whether to submit this type of Order to the Secretary of State. It is not obliged to just because it has made the Order.

Under amended provisions, the "new" section of route will "appear" on confirmation of the Order (or a set number of days thereafter) but the "old" route will remain until the new route is certified as fit for use. It would appear that the public could quickly have the use of a new section which is fit for use as soon as confirmed but if the new route is unfit for use for a long time, the old line of the Right of Way is still there for the public to use.

It is advised that when considering orders made under Section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

It would appear that a way created by a Diversion Order may follow an existing right of way for some but not most or all of its length.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Reference to having regard to the material provisions of the Rights of Way Improvement Plan refers to the RWIP prepared in June 2005. The full document is on the County Council's web site.

Diversion Orders under s119A

TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway otherwise than by a tunnel or bridge

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is being moved to another point on the same highway or to another highway connected to it.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

Whether the railway operator be required to maintain the diversion route.

Whether the rail operator enter into an agreement to defray or contribute towards compensation, expenses or barriers and signage, bringing the alternative route into fit condition.

TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient to do so having regard to all the circumstances and in particular to –

Whether it is reasonably practicable to make the crossing safe for use by them public; and

What arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

A rail crossing diversion order shall not be confirmed unless statutory undertakers whose apparatus is affected have consented to the confirmation (such consent not to be unreasonably withheld).

GUIDANCE

The statutory provisions make it clear that the diversion can be onto land of another owner lessee or occupier

A change to the point of termination has to be onto a highway but the statutory provisions do not insist that the point has to be substantially as convenient (as is the requirement in S119).

The grounds for this type of diversion order refer to balancing the safety of continuing to use the level crossing and whether it could be made safe rather than divert the path. The information from the rail operator is therefore considered to be very important.

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

To be satisfied that it is expedient that the path be stopped up on the ground that the footpath or bridleway is not needed for public use.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient to do so.

To have regard to the extent to which it appears that the path would be likely to be used by the public.

To have regard to the effect which the extinguishment would have as respects land served by the path (compensation can be taken into account).

Where the Order is linked with a Creation Order or a Diversion Order then the Authority or Inspector can have regard to the extent to which the Creation Order or Diversion Order would provide an alternative path.

That there is no apparatus belonging to or used by statutory undertakers under in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

GUIDANCE

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

To be satisfied that it is expedient to confirm means that other considerations other than use could be taken into account perhaps safety, perhaps cost.

An Order can be confirmed if it is thought that, despite the fact that it was likely to be used, it is not needed because of a convenient path nearby.

Councils are advised to take care to avoid creating a cul de sac when extinguishing only part of a way.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Extinguishment Orders under s118A

TO MAKE AN ORDER

An Order under this section can be made where it appears expedient to stop up a footpath or bridleway in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway, other than by tunnel or bridge.

TO CONFIRM AN ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if satisfied that it is expedient to do so having regard to all the circumstances and in particular whether it is reasonably practicable to make the crossing safe for use by the public and what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

GUIDANCE

It is noted that there is not the same requirements as under S118 to consider need for the route. Instead it is safety which is the reason for the Order being made to close the right of way.

Extinguishment Orders under s118B

Section 118B enables footpaths, bridleways, restricted byways or byways open to all traffic to be extinguished permanently by two types of Special Extinguishment Order.

TO MAKE THE FIRST TYPE OF S118B ORDER

The highway concerned has to be in an area specially designated by the Secretary of State.

To be satisfied that it is expedient that the highway be extinguished for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community.

To be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and

That the existence of the highway is facilitating the persistent commission of criminal offences.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

Also having regard to whether and to what extent the Order is consistent with any strategy for the reduction of crime and disorder prepared under S6 Crime and Disorder Act 1998 and

Having regard to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

TO MAKE THE SECOND TYPE OF S118B ORDER

To be satisfied that the highway crosses land occupied for the purposes of a school.

That the extinguishment is expedient for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health or safety arising from such activity.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

That regard is had to any other measures that have been or could be taken for improving or maintaining the security of the school

That regard is had as to whether it is likely that the Order will result in a substantial improvement in that security

That regard is had to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

GUIDANCE

Under S118B there are specific criteria to be satisfied before an Order can take effect and to remove a highway from the network of rights of way. It should be noted that an Order extinguishes the footpath (or other type of highway) permanently. Members of the Committee may also be aware of the power, since April 2006, of the Council to make Gating Orders whereby highway rights remain but subject to restrictions which are reviewed annually and will eventually be lifted.

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

To be satisfied that there is a need for the footpath or bridleway and

To be satisfied that it is expedient that the path be created

To have regard to the extent the path would add to the convenience or enjoyment of a substantial section of the public, or

To have regard to the extent the path would add to the convenience of persons resident in the area

To have regard to the effect on the rights of persons interested in the land, taking compensation provisions into account.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

The same test as above.

GUIDANCE

Again there is convenience to consider.

There may also need to be some consensus as to what constitutes a substantial section of the public.

Persons interested in the land may include owners and tenants and maybe mortgagees.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Regulatory Committee
Meeting to be held on the 18 November 2020

Guidance on the actions to be taken following submission of a Public Path Order to the Secretary of State

Procedural step

Once an Order has been made it is advertised it may attract objections and representations. These are considered by the Authority and efforts made to get them withdrawn. If there are any objections or representations duly made and not subsequently withdrawn the Authority may -

1. Consider that information is now available or circumstances have changed such that the confirmation test would be difficult to satisfy and that the Order be not proceeded with;
2. Consider that the Order should be sent into the Secretary of State with the authority promoting the Order and submitting evidence and documentation according to which ever procedure the Secretary of State adopts to deal with the Order; or
3. Consider that the Order be sent to the Secretary of State with the authority taking a neutral stance as to confirmation

Recovery of Costs from an Applicant

The Authority may only charge a third party if it has power to do so. We can charge an applicant for a public path order but only up to a particular point in the procedure – in particular, once the Order is with the Secretary of State we cannot recharge the costs incurred promoting the Order at a public inquiry, hearing or by written representations.

The power to charge is found in the - **Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

Power to charge in respect of the making and confirmation of public path orders

(1) Where—

- (a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or
- (b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

(a) a charge in respect of the costs incurred in the making of the order; and

(b) a charge in respect of each of the following local advertisements, namely the local advertisements on the making, on the confirmation, and on the coming into operation or force, of the order.

Amount of charge

(1) Subject to paragraphs (2) and (3) below, the amount of a charge shall be at the authority's discretion.

(3) The amount of a charge in respect of any one of the local advertisements referred to in regulation 3(2)(b) shall not exceed the cost of placing one advertisement in one newspaper

Refund of charges

The authority shall, on application by the person who requested them to make the public path order, refund a charge where—

(a) they fail to confirm an unopposed order; or

(b) having received representations or objections which have been duly made, and have not been withdrawn, the authority fail to submit the public path order to the Secretary of State for confirmation, without the agreement of the person who requested the order; or

(c) the order requested was an order made under section 26 of the 1980 Act and proceedings preliminary to the confirmation of that order were not taken concurrently with proceedings preliminary to the confirmation of an order made under section 118 of the 1980 Act; or

(d) the public path order is not confirmed by the authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made.

Policy Guidance on these Regulations is found in Circular 11/1996. Administrative charges can be charged up to the point where the order is submitted for determination and thereafter for advertising the confirmation decision and any separate notice of the Order coming into operation or force.

Careful consideration of stance

Recently there has careful analysis of all the work officers do and the cost of these resources and how to best use the resources.

The above Regulations have been considered and it is advised that the test as to when an Order should be promoted be clarified and applied consistently.

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there is no substantial disbenefits to the public the applicants be able to promote the Order themselves.

This is not the same as considering whether the Order can be confirmed as set out in the statute. It is consideration of what actions the Authority should take on submitting the Order. It is not an easy consideration but officers will be able to advise in each particular matter.

Regulatory Committee

Meeting to be held on 18 November 2020

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

Joanne Lawson, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, joanne.lawson@lancashire.gov.uk

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

Executive Summary

An update on the progress made in relation to matters previously considered by Committee.

Recommendation

The Committee is asked to note the progress report.

Background

At the Regulatory Committee meeting held on 16th September 2020, Members asked whether it would be possible to be updated on the progress made in relation to matters previously presented to them.

This report details progress made since January 2020 in relation to matters decided by Regulatory Committee.

Due to the Coronavirus pandemic, the past 9 months have been particularly challenging in the way that Officers have had to adapt our work including in relation to the progression of Definitive Map Modification and Highways Act Orders. This has resulted in some matters not having being progressed as quickly as we would have liked, due to the fact that we were initially unable to advertise the making or confirmation of legal orders on site or make them available to view at District Council Offices, in addition to the temporary closure of the Planning Inspectorate Offices in Bristol.

However, what the pandemic has taught us is the importance of the local public rights of way network to the health and well-being of the people of Lancashire and the immense value of the work carried out by the Public Rights of Way team both on

the ground in maintaining the network of paths, and the work carried out to keep the Definitive Map and Statement up to date.


While work to progress some of the Orders made by the county council may have slowed down other work to investigate new applications and prepare future reports to be presented to the Regulatory Committee has proceeded apace.

Since January 2020, the county council have received 44 new applications to amend the Definitive Map and Statement and dealt with countless other enquiries from researchers and local people preparing to submit further applications. This is many times the usual number.

Enquiries regarding applications for Highways Act diversion, creation and extinguishment orders are also on the increase. When lockdown began in the spring many landowners reported a sharp rise in numbers of people enjoying the network of public rights of way on their doorstep. Since then, several landowners have made applications to divert paths that have never been a problem in the past. However, the increase in use and concerns about the spread of infection, particularly where paths are within close proximity to homes and working environments, has prompted discussions about the application process, costs and suitability of proposed alternative routes.

Since January 2020, the county council have received over 30 public path order applications and diversion proposal details that are expected to be followed by formal applications in the coming months.

Progress this year so far:

Event	Item	Committee Date
 <p data-bbox="188 1697 619 1798">Order made, no objections received, Order confirmed May 2020 and advertised.</p>	<p data-bbox="641 1697 1056 1798">Investigation into the deletion and addition of part of Footpath Oswaldtwistle 287</p>	<p data-bbox="1109 1697 1348 1731">29th January 2020</p>
<p data-bbox="188 1832 526 1865">Agreement January 2020</p>	<p data-bbox="641 1832 1050 1966">Creation agreement under the Highways Act 1980 for a public bridleway at Dertern Lane, Bolton-le-Sands</p>	<p data-bbox="1109 1832 1348 1865">29th January 2020</p>



Order drafted October 2020	Investigation into what public rights existed over a route from Keighley Road at Parson Lee Farm along Smithy Clough, Trawden	11 th March 2020
Order drafted October 2020	Investigation into the addition of a footpath from Footpath Preesall 1 along the sea embankment and ramp to Fluke Hall Lane, Preesall	11 th March 2020



All Orders drafted September 2020	Addition of a number of footpaths across the former Ingol golf course at Fulwood	11 th March 2020
Decision notices issued September 2020. Unless the decision is appealed by the applicant the matter is now closed.	Addition of public bridleway from Noyna Road to Noyna Hall and Moss Houses Road, Foulridge (rejected).	16th September 2020



Order drafted October 2020

Addition of a public footpath along a dismantled railway line from Strongstry bridge to Stubbins Station.

16th September 2020



Order drafted October 2020

Proposed diversion of part of Footpath Trawden 188 at Parson Lee Farm, Trawden

16th September 2020

Order made October 2020

Proposed extinguishment of part of Footpath Rawtenstall 205 from Windsor Avenue to Staghills Road.

16th September 2020



Enforcement action taken January 2020 to remove fences that obstructed route. Path now open and used.

Public inquiry held September 2019 and Order confirmed to record Footpath at Elmers Green, Skelmersdale.

13th January 2016



Drainage and surface works in 2019-20 following earlier confirmation of Order.

Michael Wife Lane (Byway Open to All Traffic Ramsbottom 276).

31st August 2005



<p>Public inquiry in January. Inspector confirmed the Order with modifications. Objection received to the modification.</p>	<p>Upgrade footpath to bridleway between Cowpe and Rooley Moor Road</p>	<p>22nd October 2014</p>
		
<p>Referred to the Planning Inspectorate Jan 2020 Written representations. Interim decision June 2020.</p>	<p>Bridleway from Cockhill Lane Foulridge to Castle Road, Laneshaw Bridge</p>	<p>Various Committee dates up to 2019</p>
		
<p>Order confirmed and notices issued. Obstruction removed. Path now open and in use.</p>	<p>Footpath at Kirkdale Avenue, Rawtenstall</p>	<p>18th September 2019</p>



Public Inquiry March 2020.
Order confirmed Sept 2020.
Surface maintenance Sept 2020.

Bridleway from Edenfield to
Helmshore Road via Hardsough
Lane, Irwell Vale and Irongate
Lane

6th April 2016



Works completed Sept 2020
following an older confirmed
diversion order

Footpaths around Hey Meadow
on the Bacup/Rawtenstall
boundary.

7th September 2011



Order drafted Sept 2020

Diversion of footpaths in
connection with M6 footbridge
removal near Nans Nook, Forton

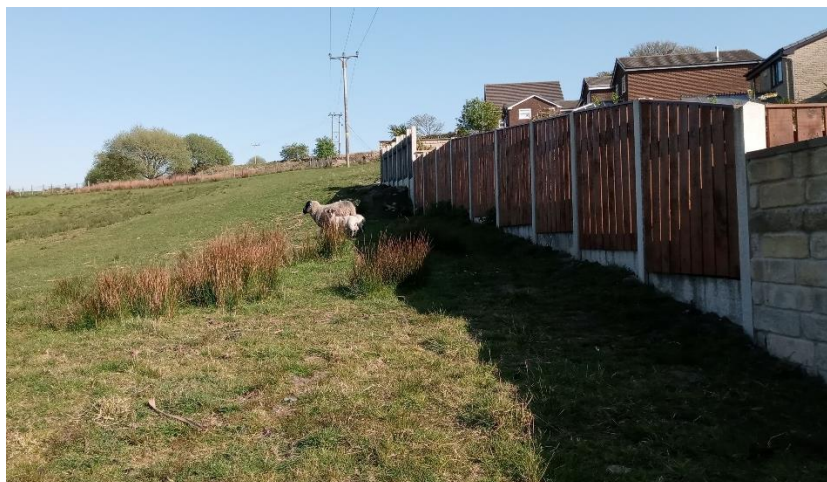
11th March 2020



Works completed following confirmed diversion order Sept 2020.

Footpaths at Simfield Farm, Slaidburn, Ribble Valley.

7th September 2011



Works completed following confirmed diversion order Sept 2020.

Land to rear of Anderton Close and Hardman Close in Cowpe, near Bacup, Rossendale.

27th July 2016



Diversion order confirmed April 2020, works ongoing to construct new route.

Footpath at Cockle Hill, Over Kellet, Lancaster.

26th June 2019



Diversion order confirmed April 2020.

Footpath at Watson Laithe Farm, Hapton, Burnley

13th March 2019

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

Paper	Date	Contact/Directorate/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

Regulatory Committee

Meeting to be held on 18th November 2020

Part I

Electoral Division affected:
Rossendale East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrading of part of Footpath Bacup 657 (Heald Lane), Weir to Bridleway in connection with the application to record a public right of way from Heald Lane through Weir Lodges to Office Road, Bacup

File No. 804-603

(Annex 'A' refers and Appendix 'A' refers)

Contact for further information:

Simon Moore, Paralegal Officer, County Secretary and Solicitors Group,
simon.moore@lancashire.gov.uk

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

Executive Summary

To give consideration to revoking a previous decision of the Regulatory Committee to make an order for the addition of a bridleway to the Definitive Map and Statement of Public Rights of Way from Footpath Bacup 657 (Heald Lane) through Weir Lodges to Office Road, in accordance with File Number 804-603, on the basis that although the Committee considered that there was sufficient evidence to satisfy the test to make the order, information has come to light since that means that the evidence is no longer considered sufficient to support bridleway status. However, the evidence does support the existence of footpath rights along the route.

Recommendation

- (i) That the Regulatory Committee revokes its decision of 13th March 2019 to make an order for the addition of a bridleway to the Definitive Map and Statement of Public Rights of Way.
- (ii) That the Regulatory Committee decides to make an order under Section 53(2)(b) in consequence of events specified in Section 53(3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to record a public footpath along the route A1-B and A2-B-C-D-E as shown on the Plan at Appendix A.
- (iii) That not yet being satisfied that the higher test for confirming the order can be met, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the order.

Background and Advice

The proposed revoking of earlier decision

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for a footpath to be recorded on the Definitive Map and Statement from Heald Lane through Weir Lodges to Office Road, Bacup.

The application was considered by the Regulatory Committee at its meeting on 13th March 2019. Appendix A refers.

Committee was advised as follows:

- There were some inconsistencies in the user evidence over the line taken on the ground but, overall, the user evidence was supportive of 'as of right' use of the application route on foot by a large section of the public for the twenty year statutory period under consideration.
- The common law test for dedication of highway could also be satisfied.
- Whilst the evidence was supportive of a reasonable allegation that a public footpath subsists, the evidence also suggested regular use of the route as a bridleway.
- That use of the route on horse and bicycle appeared to be at such a level that it satisfied the lower test of raising a reasonable allegation that a bridleway subsists and therefore an order should be made recording the route as a public bridleway rather than the footpath for which the applicant had applied.
- That Committee's stance on confirmation of the order (based on whether the evidence supports the higher test that a bridleway does in fact subsist) be considered at a later date once officers had the opportunity to consider the user evidence in more detail.

Having considered officers' advice, Committee decided that an order recording the application route as a bridleway should be made but that, not being satisfied that the higher test for confirming the order could be met at this stage, the matter be returned to Committee at a later date to decide what stance to take regarding confirmation.

To date, that order has not been made. Due to issues in linking this bridleway to another existing bridleway, which was discovered by officers when drafting the order, officers sought to gather some more detailed information, specifically regarding the public's historical use of the application route as a bridleway.

Legal officers contacted the users who had previously indicated they had used the route on a horse. Of the eight responses returned to us, one user specifically stated that they had not ridden a horse along the application route. Seven stated that they had used the route on horseback for the following durations:

- Weekly for 8 years between 1972-80
- Daily until 2000
- Weekly for 15 years between 1995-2010

- Weekly from 2015
- A few times per month between 1998-2003
- Weekly between 1991-2019
- Weekly between 1998-2018

Most users claimed to have ridden along the route at weekly intervals with two of the weekly users having used it for the duration of the twenty year statutory period and one having stopped using it before the period commenced. Of the four users who rode along the route for shorter durations of the statutory period, one used it daily for two years, two weekly for three and fifteen years respectively and one a few times per month for five years.

The route is not located in a particularly remote geographical area. There are vehicular highways and residential dwellings in close proximity and it appears to have been a popular route given that 109 user evidence forms were originally submitted with the application. In the circumstances, officers would expect to see use of the route on horseback by a greater number of users and/or over longer periods.

Officers focussed on the evidence of the users who claimed to have used the route with a horse because cycle use cannot of itself establish a bridleway in law through long use, although it can support an inference that the bridleway had already come into existence before they were able to cycle along it.

In light of the clarity of evidence from the horse riders, officers consider that horse use of the application route is insufficient to support the finding that a bridleway can be reasonably alleged to have come into existence in law. The horse use may, on balance, only be trivial and sporadic. Accordingly, officers recommend that the original decision be revoked.

That an order be made to record the route as a footpath

The Committee is asked to consider again the information in the report at Appendix A. The Committee will note all relevant evidence. There are the large number of user evidence forms with their evidence of use on foot, little mention of permission and no challenge to their use prior to 2018. The user evidence does have its weaknesses and the present owner refers to having taken some actions to block the route prior to 2018, which is the point we have taken to be the calling into question of the route. Even if the owner's actions prior to 2018 were sufficient to call the route into question, it is suggested that it is reasonable to allege that there is still sufficient use prior to any such calling into question to raise the presumption of dedication under s31 Highways Act 1980.

The dedication may be reasonably alleged given the blocking of the route in 2018 (or an earlier calling into question some time between 2012-18) and sufficient 'as of right' use for twenty years before the calling into question such that the dedication

may be deemed in accordance with s31 Highways Act and/or reasonably inferred under common law from use of the route prior to 2012.

The evidence supports the conclusion that it is reasonable to allege that a public right of way subsists along the application route and that its status is one of public footpath. It is advised that the Committee may wish that an order be made to record the route as footpath.

The recommendation

The order recording the route as a bridleway has not yet been made. As discussed above and considering Appendix A, it is suggested that Committee should consider revoking its previous decision, in light of the more detailed evidence, and instead reach a decision to make an order recording the application route as a public footpath.

Whether an order is made recording the application route as a footpath or a bridleway, it is suggested that a decision on confirmation of any order should be deferred to a later date and once officers have had the opportunity to interview users and report back on whether the higher test for confirmation can be satisfied.

Alternative Options

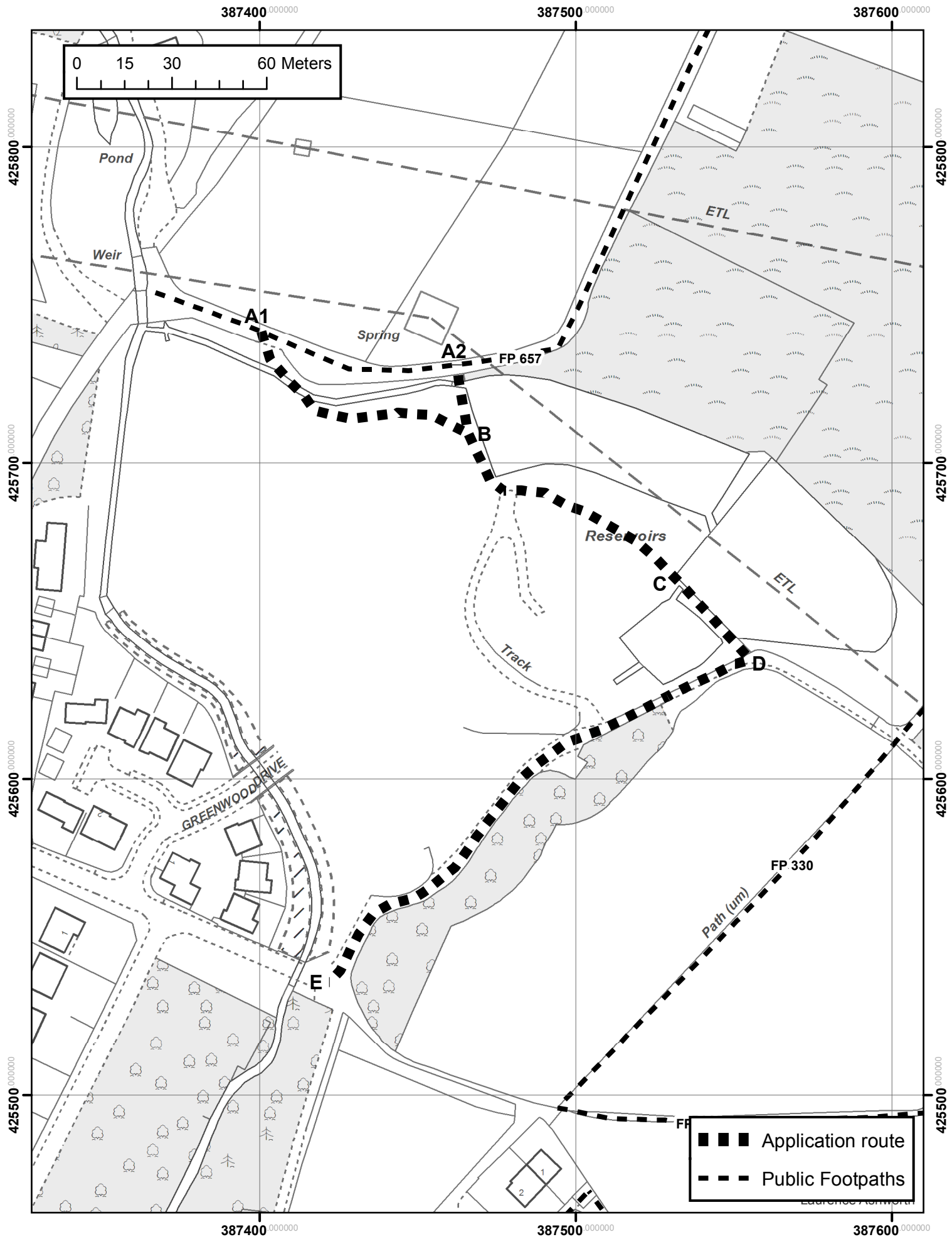
To decide not to revoke the previous decision to make an order recording the application route as a public bridleway.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-603		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Regulatory Committee

Meeting to be held on Wednesday, 13 March 2019

Electoral Division affected: Rossendale East;
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Heald Lane through Weir Lodges to Office Road, Bacup

File No. 804-603

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, Claire.blundell@lancashire.gov.uk

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

Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way for a footpath from Heald Lane through Weir Lodges to Office Road, in accordance with File Number 804-603.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of a Footpath from Heald Lane through Weir Lodges to Office Road, Bacup in accordance with File No. 804-603, be accepted subject to the recording of additional rights discovered.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add a Bridleway from Heald Lane through Weir Lodges to Office Road, Bacup to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A1–B and A2–B–C–D–E.
- (iii) That not being satisfied that the higher test for confirming the Order can be met, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the Order.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Heald Lane through Weir Lodges to Office Road, Bacup and

shown by a thick dashed line between points A1 – B and A2 – B – C – D – E on the Committee Plan.

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

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

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

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

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

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

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

Consultations

Rossendale Borough Council

Rossendale Borough Council have not responded to consultations therefore it is assumed they have no objection to the application.

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

Description of Route

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-01-FP657' or 'Footpath Bacup 657' but are referenced below in the abbreviated form 'Footpath 657' for brevity since all those referred to are in Bacup in Rossendale Borough.

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A1	8740 2574	Unmarked junction with Heald Lane (Footpath 657)
A2	8746 2573	Unmarked junction with Heald Lane (Footpath 657)
B	8746 2571	Unmarked junction of application routes adjacent to reservoir
C	8753 2566	North west point where application route passes between two reservoirs
D	8755 2563	South east of two reservoirs at junction with track leading to Office Road and Lower Wombs Farm
E	8742 2554	Junction of application route with Office Road

A site inspection was carried out in October 2018.

The application was received following the erection of security fencing in August 2018 around a former redundant mill site/industrial site which has been cleared of buildings which was crossed by much of the route. This meant that it was only possible to access a small part of the application route (between points D and E) when a site visit was carried out in October.

The site fenced off included three small interconnected reservoirs which formerly fed the mills and which are located at a higher level than the remainder of the site.

The application route commences on Heald Lane (recorded as Footpath 657) which provides vehicular access to a number of farms. From point A1 on the Committee plan the application route is shown to leave Footpath 657 in a south easterly direction. Access along the route is not possible due to the existence of low stone wall and security fencing and from point A1 no obvious entry onto the application route or worn or trodden track is visible. From point A1 the route crosses a deep

drainage channel (ditch) which flows from the reservoirs at the top of the mill site feeding into the River Irwell. No means of access was visible across the ditch along the line of the application route (or elsewhere) and although it was not possible to walk between point A1 and point B no route could be seen from walking parallel to it along Footpath 657.

A further access point to the application route is located at point A2 on the Committee plan where security fencing has been erected across the start of the route. From point A2 access along the route is blocked by substantial security fencing and immediately beyond the fence a channel appears to have been cut through the trodden path to allow water to flow from the reservoir along the drainage channel to the River Irwell. There was no evidence of a bridge or former means of crossing the ditch but the worn track indicates that until recently this route must have been accessible via a bridge which can be confirmed from Google Streetview and aerial photographs.

From point A2, it was possible to see through the fencing along a clearly defined trodden track consistent with the application route passing through point B and continuing uphill towards point C, but the full length of the route from point B to point C could not be seen.

Between point C and point D the route passes between two further reservoirs – with the more westerly one known locally as 'the tank'. From point C a well-defined trodden track could be viewed extending from point C along the application route between the two reservoirs to point D (where access to the route was blocked by security fencing). Part of the section of land between the two reservoirs had been removed to form a gap which would now prevent access. The earth works appeared to have been carried out recently.

At point D, the application route joins an access track which provides access from Office Road to Lower Wombs Farm (and beyond). From point D, the route applied for runs in a south westerly direction descending gently downhill towards Office Road. The route is bounded on the south side by a wall above which is an area of mature woodland, and to the north it is bounded by the former mill site which has now been cleared and fenced off. The surface of the route is cobbled with parts which consist of compacted stone and patched tarmac.

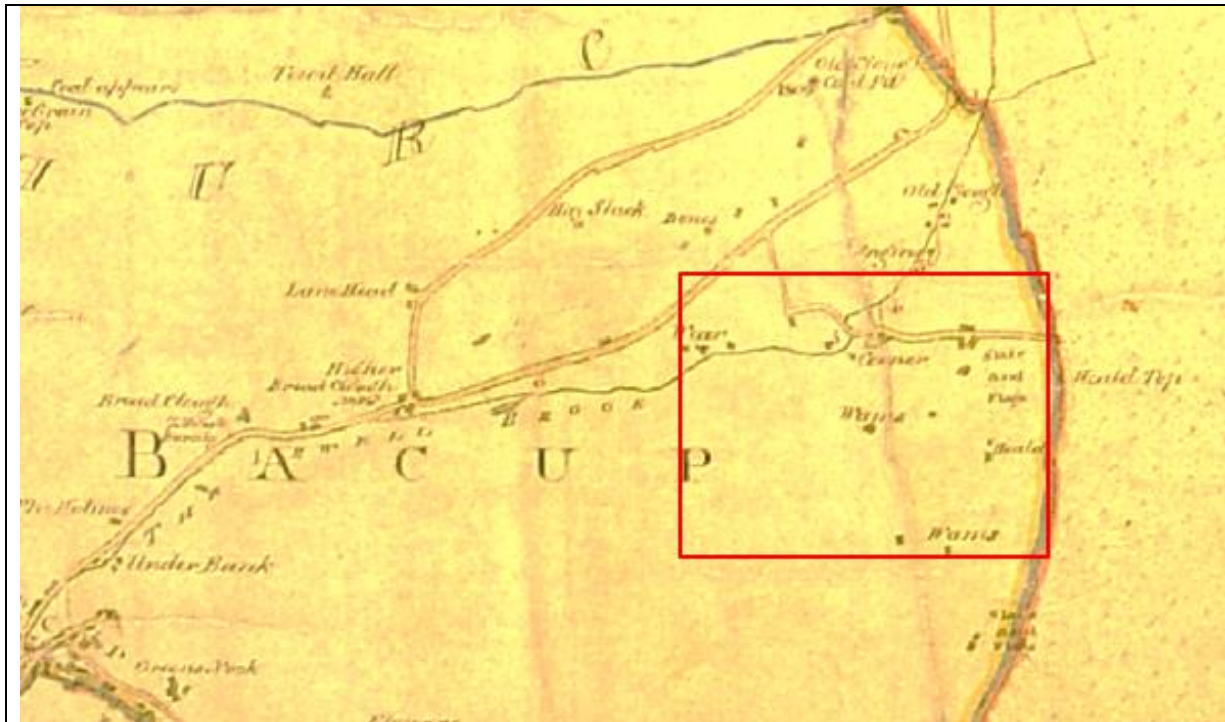
At point E there is a gate post (no gate) at the open junction with Office Road.

The total length of the route is 500 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.

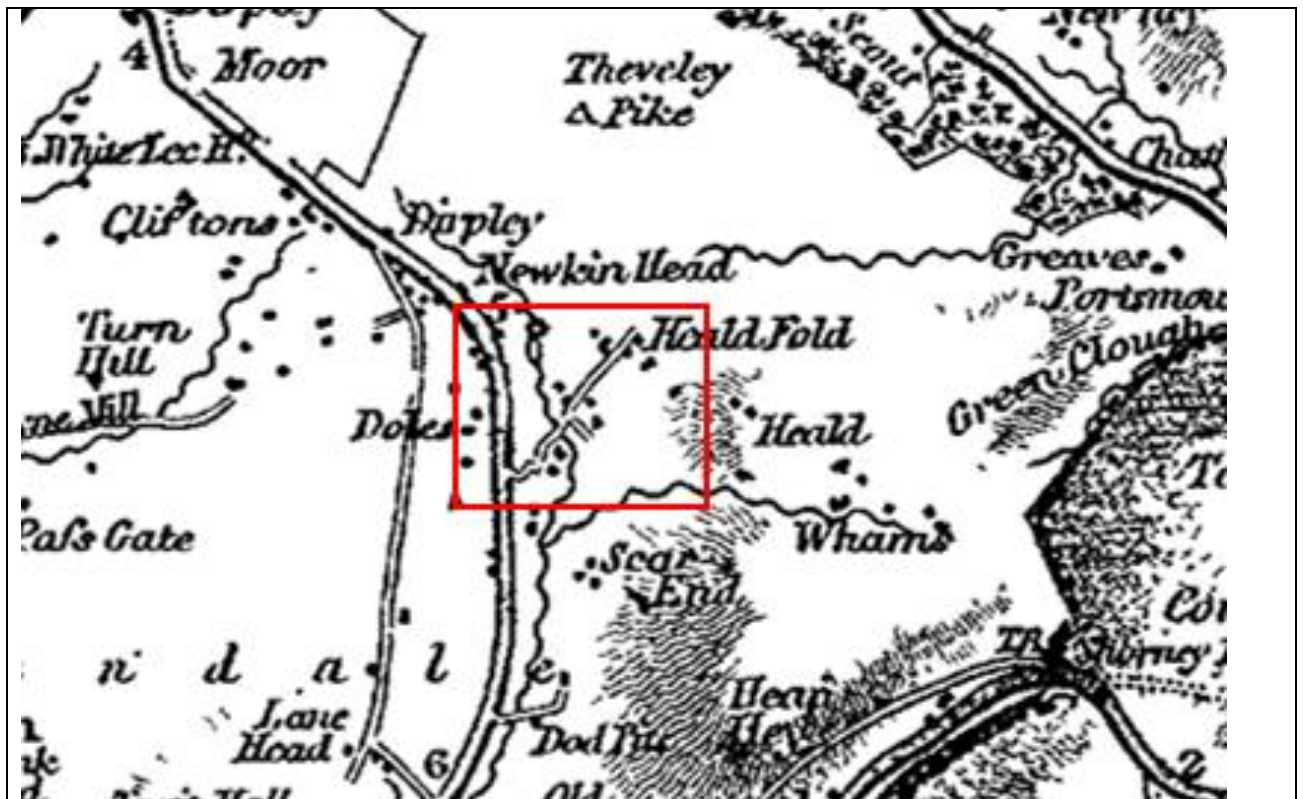
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map	1786	Small scale commercial map. Such maps were



Observations		The application route is not shown and neither is Irwell Springs Mill or the reservoirs.
Investigating Officer's Comments		Footpaths are not shown and although Heald Lane appears not to have existed at the time no inference can be drawn regarding footpaths.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



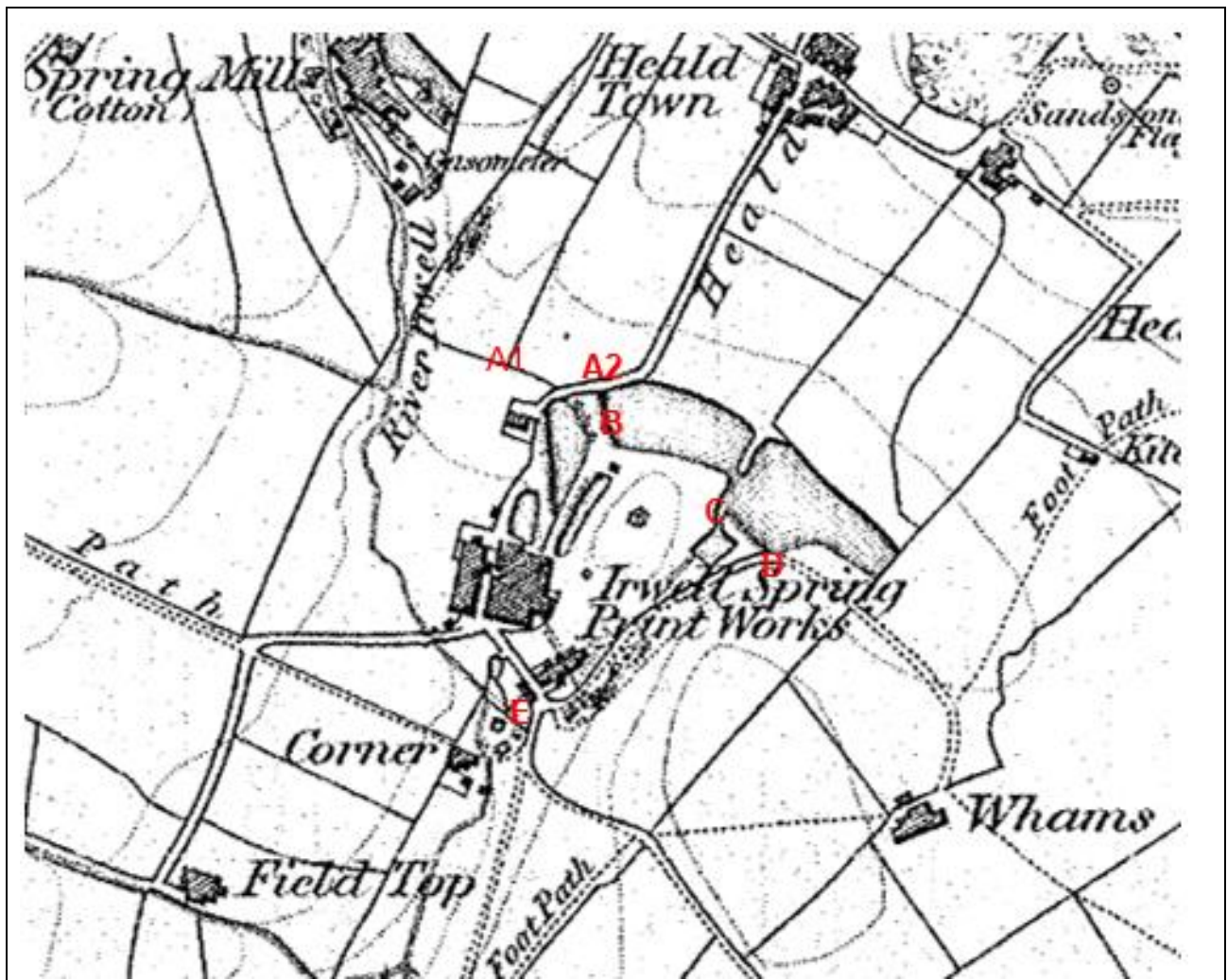
Observations		The application route is not shown. A road is shown passing through 'Weir' and across the river Irwell to pass buildings (unnamed) and is consistent with the route of Heald Lane with 'Wams' shown located to the south.
Investigating Officer's Comments		Footpaths are not shown and no inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



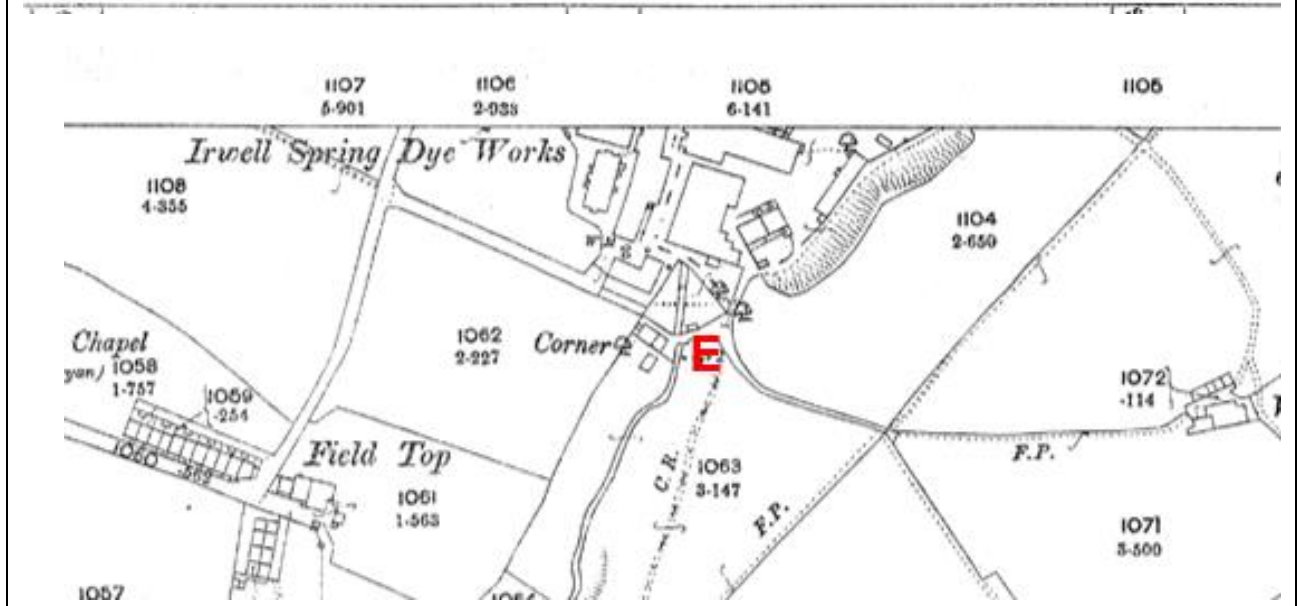
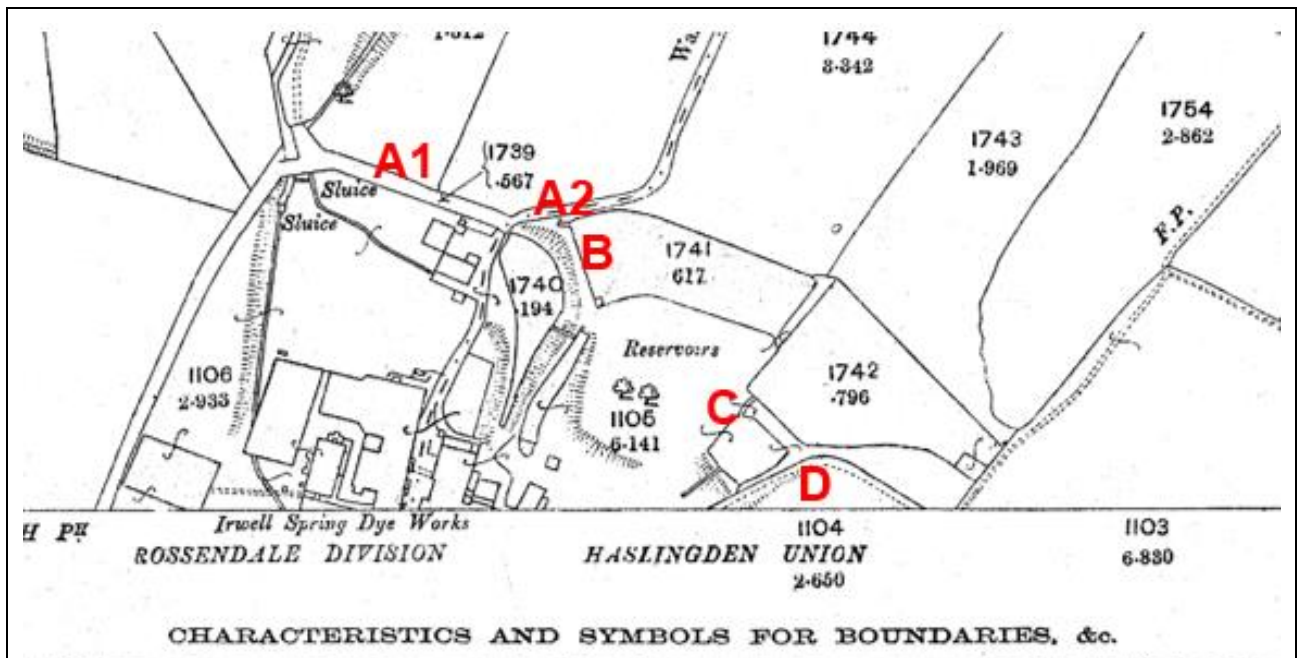
Observations		The application route is not shown. A route is shown leading to Heald Fold and buildings are shown in proximity of the Irwell Springs site.
Investigating Officer's Comments		Footpaths are not shown and no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There were no canals or railway built or proposed to be built on the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale

		maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map and Award for the area crossed by the application route in the County Records Office.
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 in the County or National Archives for the land 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.

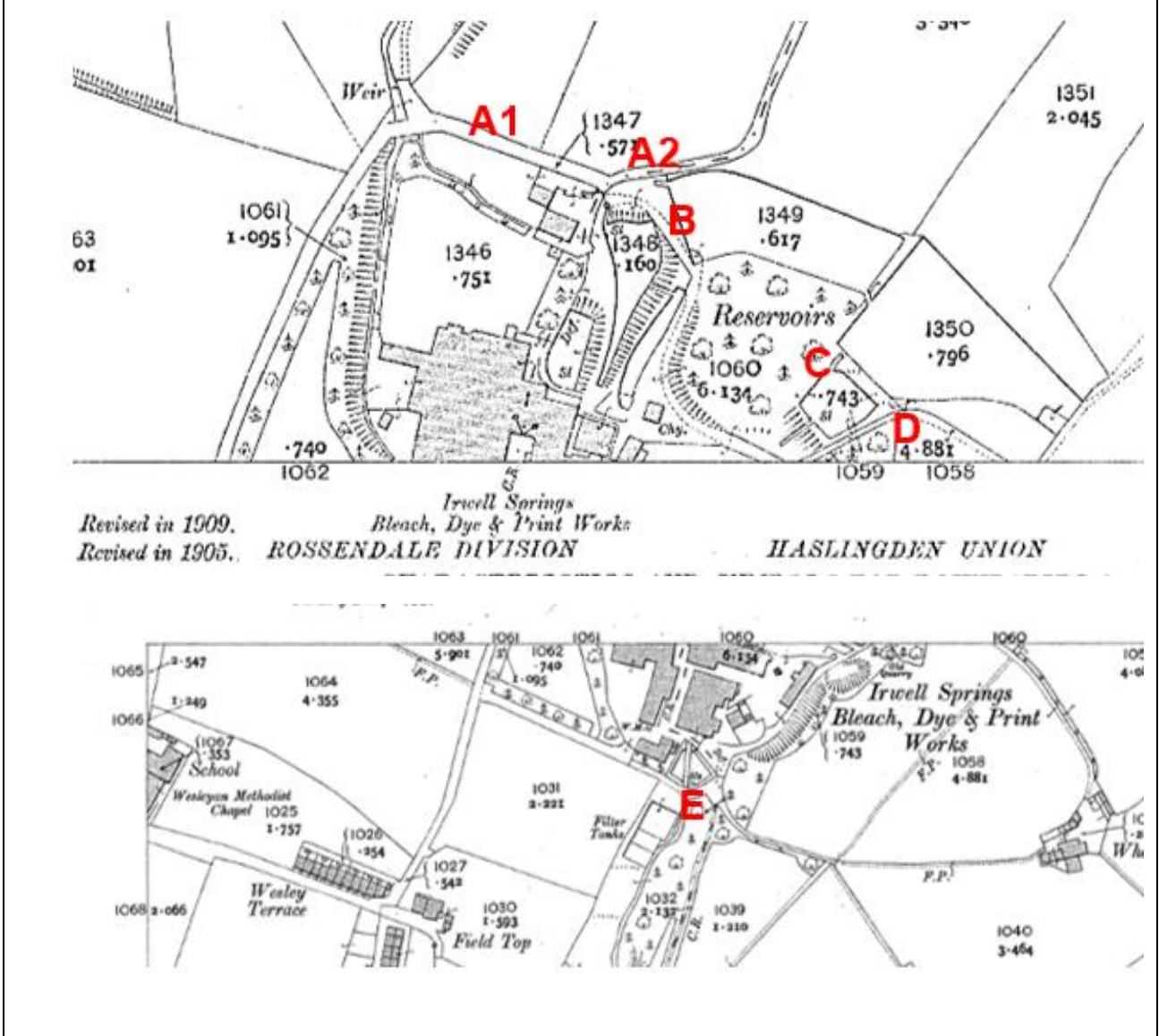


<p>Observations</p>		<p>Irwell Springs is shown and labelled as a Print Works. The three lodges that still exist today are shown and a fourth lodge is shown west of B.</p> <p>The application route is not shown between point A1-B, A2-B or B-C-D and the two lodges between which the route passes between C-D are shown to be connected close to point C.</p> <p>The application route between point D and point E is shown as access to and from Whams and two routes marked as footpaths lead off it.</p>
<p>Investigating Officer's Comments</p>		<p>Part of the application route (D-E) may have been used as a footpath in 1849. The rest of the application route does not appear to have existed at that time.</p>
<p>25 Inch OS Map Sheet 72-04 and 72-08</p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.</p>



<p>Observations</p>		<p>The application route is not shown between points A1-B and crosses land over which buildings are shown. Between points A2-B-C-D the route is not shown and lines are shown across the route at points A, C and D indicating the existence of some form of fence or barrier through which there may (or may not) have been gated access.</p> <p>The application route is shown between point D and point E as part of a longer route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed between point D and point E in 1891 and appeared to be capable of being used.</p> <p>The rest of the route through the Irwell Springs Dye Works site did not exist in 1893.</p>

25 inch OS Map Sheet 72-04 and 72-08	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1909 and published in 1911.
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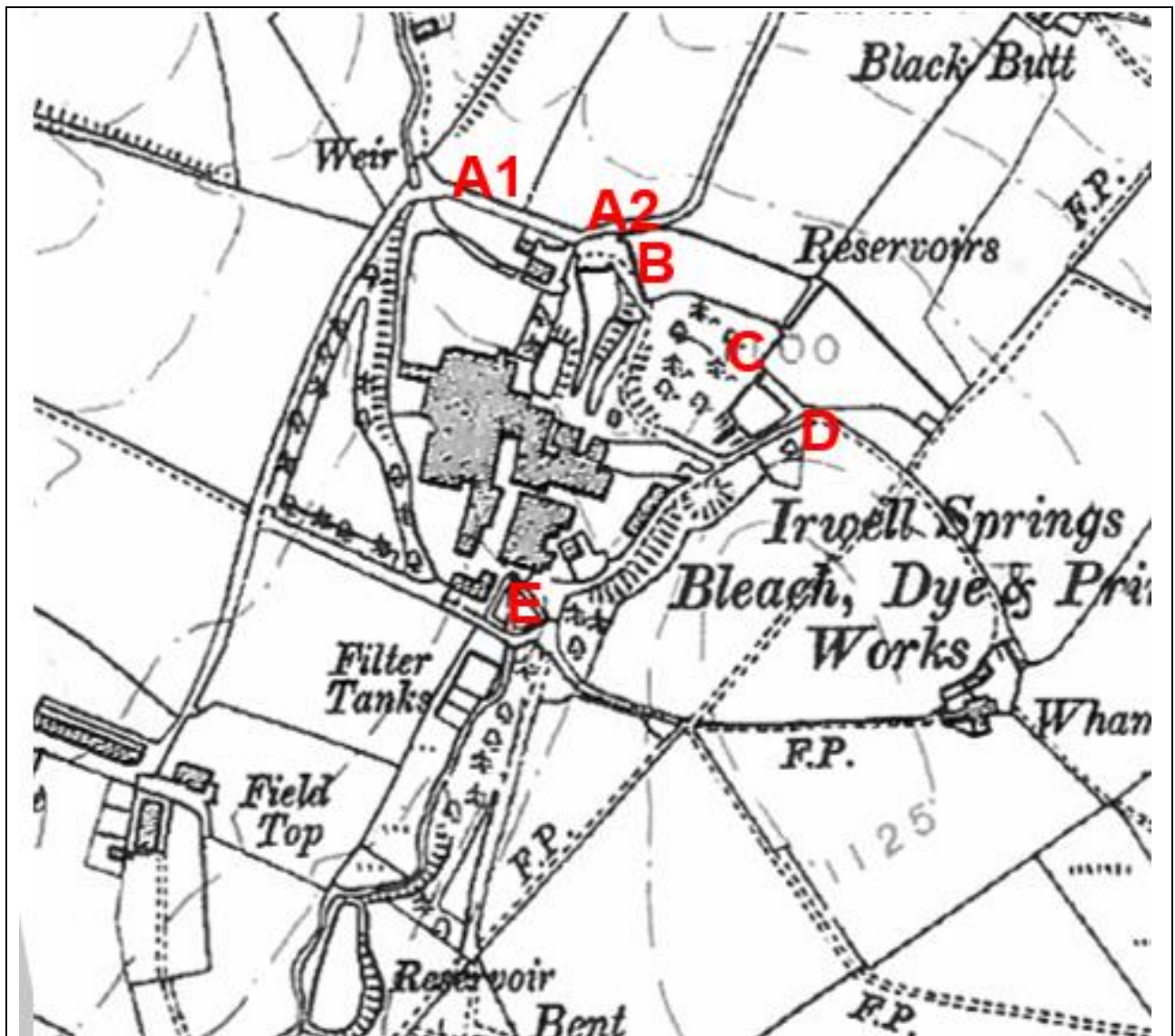


Observations		<p>The application route is not shown between point A1-B or between point A2-B. From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from B-C is not shown and crosses land shown as being wooded. It may have been possible to walk between the lodges from point C-D but no path is shown.</p> <p>The application route between point D and point E is shown as part of a longer route.</p>
Investigating Officer's Comments		<p>The application route probably did not exist between point A1-B and A2-B or B-C-D. The application route existed and appeared capable</p>

		of being used between point D and point E.
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 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>

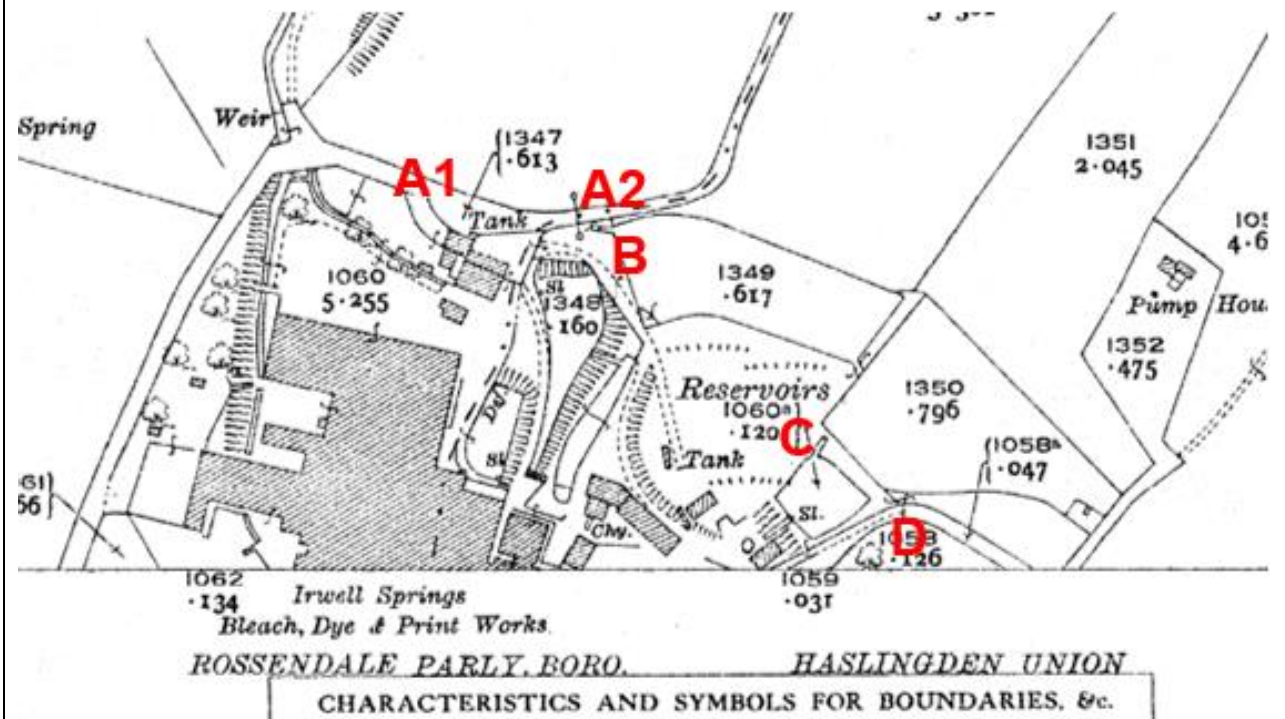


<p>Observations</p>		<p>The Finance Act Maps for the area crossed by the route are not available to view in the County Records Office. A copy of OS Sheet 72.4 obtained from The National Archives in relation to another matter shows the southern part of the Irwell Springs Bleach, Dye and Print works as being within plot 3126 but the Field Book has not been requested.</p> <p>The District Valuation Book deposited in the CRO lists hereditament 3126 as being owned and occupied by Irwell Springs Printing Works Ltd. It is described as comprising of 'Mill and Stables' and no deductions are listed for public rights of way or user.</p>
<p>Investigating Officer's Comments</p>		<p>The Valuation records do not provide any supporting evidence regarding the existence of the route in 1910.</p>
<p>6 inch OS Map</p>	<p>1912</p>	<p>Ordnance Survey map extract submitted by the applicant. The date of the survey and revision of the map was not provided but is likely to be the same as the 25 inch Ordnance Survey map detailed above.</p>



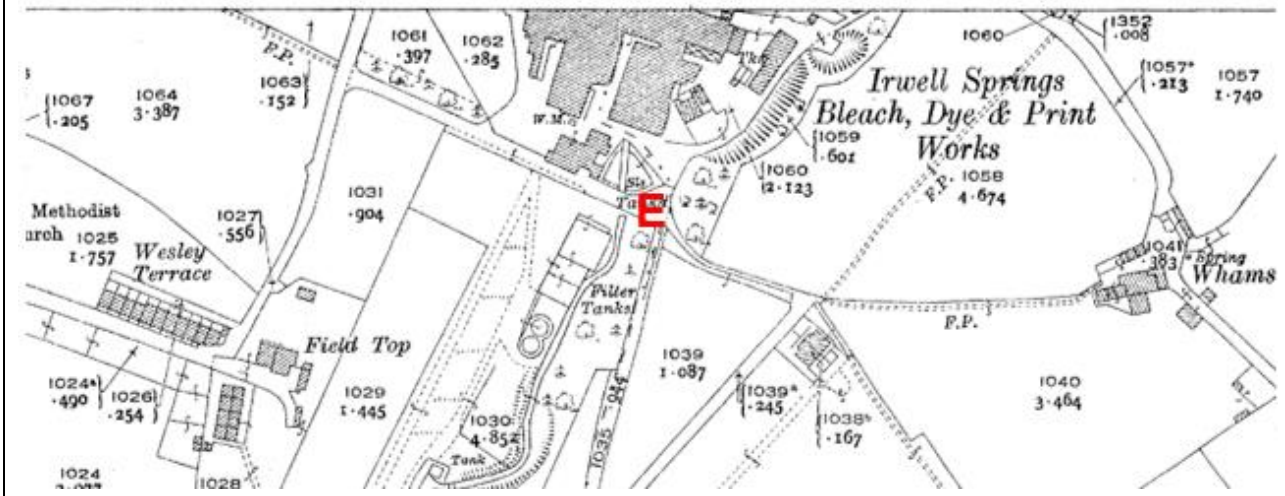
Observations		<p>The application route is not shown between points A1-B or between points A2-B. From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from point B- point C is not shown and crosses land shown as being wooded. It may have been possible to walk between the lodges from point C-D but no path is shown.</p> <p>The application route between point D and point E is shown as part of a longer route.</p>
Investigating Officer's Comments		<p>The application route probably did not exist between points A1-B and points A2-B or points B-C-D. The application route existed between point D and point E as part of a longer route and appeared to be capable of being used.</p>
25 Inch OS Map	1930	Further edition of 25 inch map (surveyed 1891,

revised in 1928 and published in 1928.



1062 .134 Irwell Springs Bleach, Dye & Print Works.

ROSSENDALE PARLY. BORO. HASLINGDEN UNION
CHARACTERISTICS AND SYMBOLS FOR BOUNDARIES, &c.

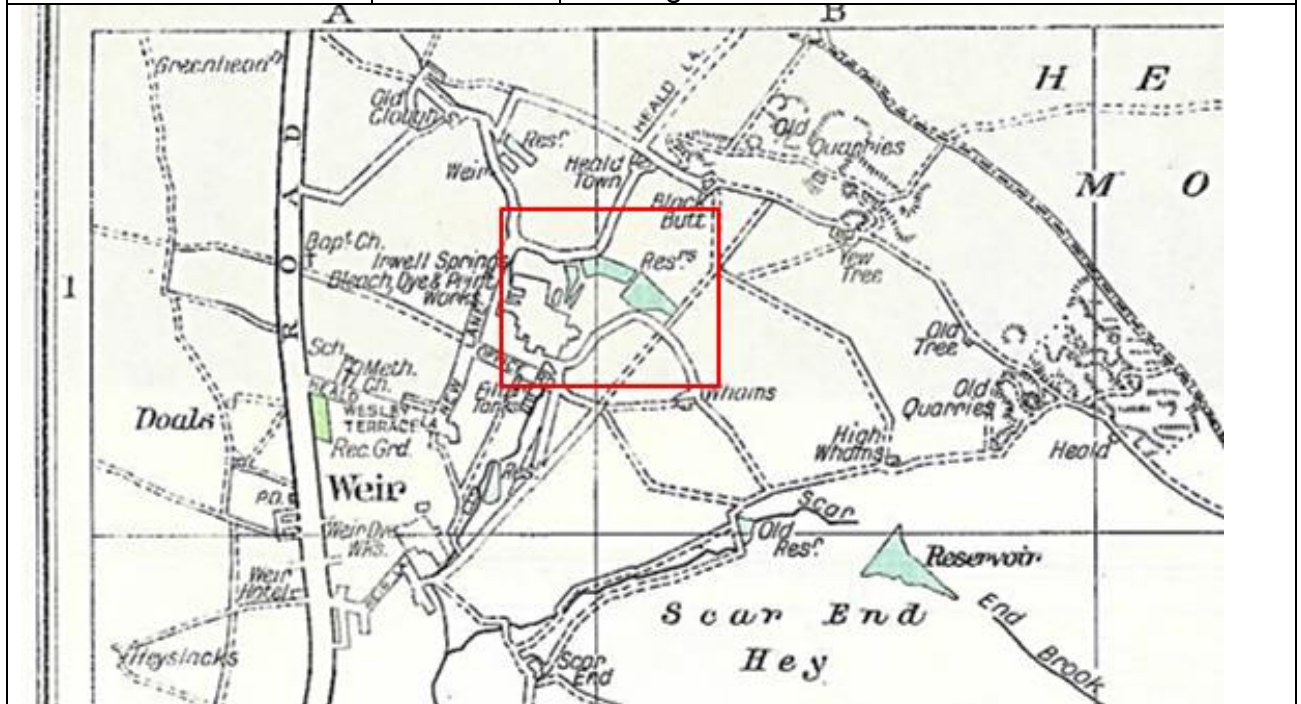


Observations

From point A1 a track consistent with the application route is shown leading to some buildings but it is not clear whether there was access through the buildings and through the enclosed area to the rear of the building onto the marked track which then leads towards point B. The route between point A2 and point B is not shown.

From point B heading south parallel to the reservoir a short section of the application route is shown consistent with the route of a track which then continued south but the majority of the route from point B- point C is not shown. It may have

		<p>been possible to walk between the lodges from points C-D but no worn track is shown and a solid line across the route at point D may indicate the existence of a wall or fencing along the boundary of the site.</p> <p>The application route between point D and point E is shown as part of a longer route and appears to be gated at point E.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably did not exist between points A1-B and points A2-B or points B-C-D. The application route existed between point D and point E as part of a longer route and appeared to be capable of being used.</p>
<p>Authentic Map Directory of Lancashire Geographia</p>	<p>Circa 1934</p>	<p>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'.</p>



<p>Observations</p>		<p>The application route is shown between point D and point E as part of a longer route providing access to Whams and a number of other</p>
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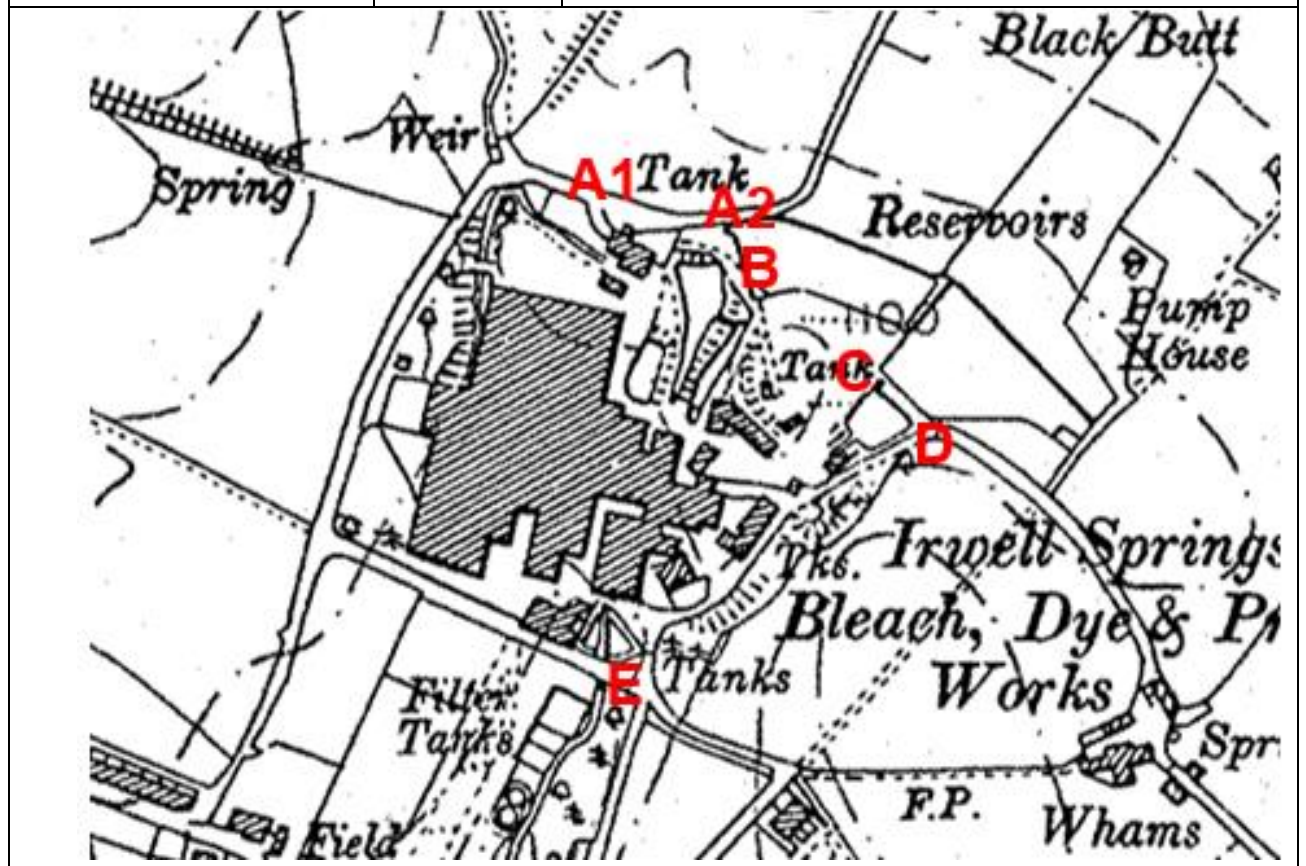
		properties and an old quarry site. The rest of the application route is not shown.
Investigating Officer's Comments		The application route between point D and point E existed as part of a longer through route and is shown consistent with how other routes with recorded public access are shown.
Aerial 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.



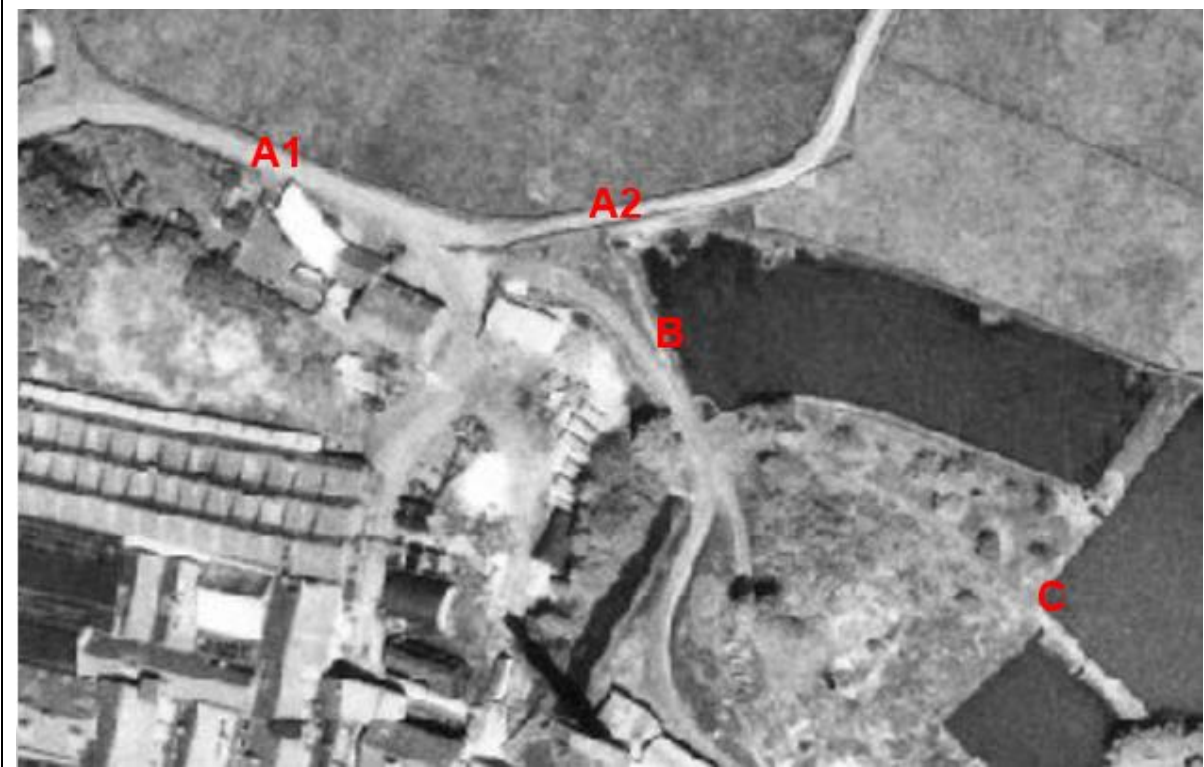
Observations		<p>A faint line is shown from point A1 which is consistent with part of the route between points A1-B but does not appear to be the route applied for. A route from point A2 through to point B cannot be seen but there appears to be a faint route in existence from point B to point C. The strip of land crossed by the route from point C and point D is visible but it is not possible to see whether a trodden track existed along it.</p> <p>Tree cover means that it is not possible to see the</p>
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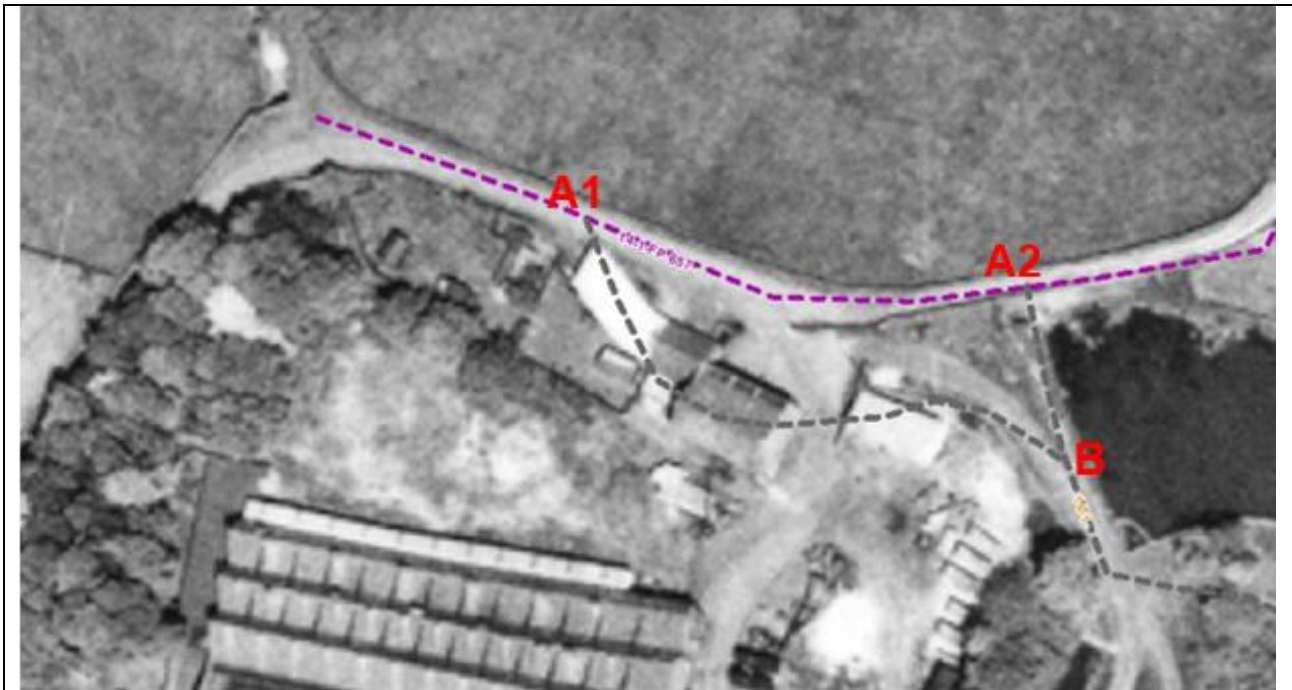
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		application route from point D to point E.
Investigating Officer's Comments		The photograph shows that much of the land crossed by the application route was still a busy mill site in the 1940s and no obvious public access could be seen to exist through the site. No inference can be drawn with regards to the existence of public rights.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



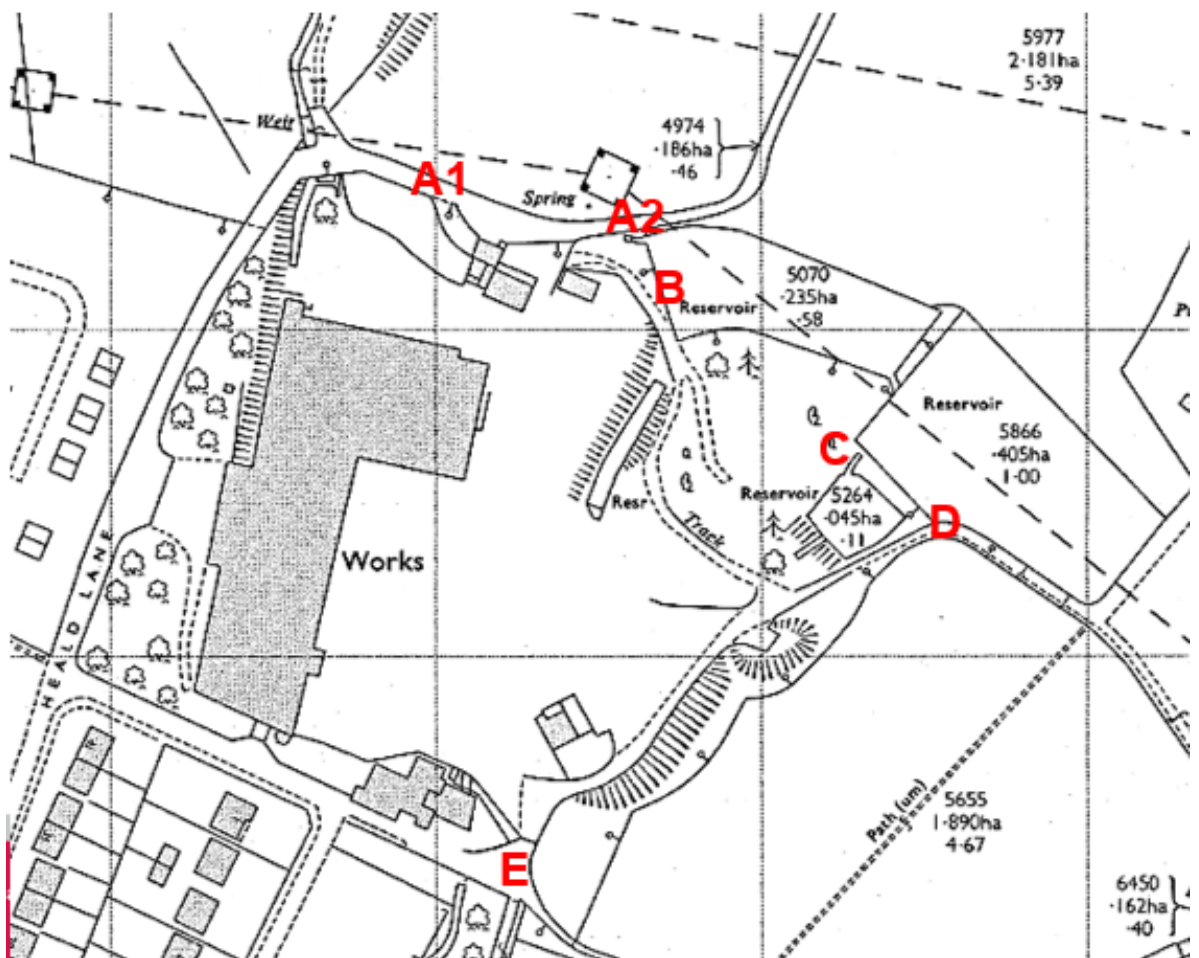
Observations		The application route is shown between point D and point E but the rest of the application route is not shown.
Investigating Officer's Comments		The application route existed between point D and point E as part of a longer route in the 1930s but the rest of the application route through the print works did not.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





Observations		<p>From A1 access appears available to north of buildings through to point B on a slightly different alignment (further north) to the line shown on the committee plan between point A1 and B.</p> <p>A faint track consistent with pedestrian access is also visible from point A2 to B and from point B the application route follows a clearly defined track south to the south west corner of the most northerly reservoir and then a faint track – again consistent with pedestrian use – can be seen extending towards point C. Between point C and point D it appears that it would be possible to walk between the two reservoirs and a faint track is visible. Tree cover at point D makes it impossible to see whether there was access through point D.</p> <p>The track between point D and point E is not clearly visible due to tree cover.</p>
Investigating Officer's Comments		By the 1960s it appears that the application route may have existed across the industrial site from A2 to link to the route between point D and point E.
Extracts from The Bacup Echo	1972	Newspaper extracts provided by the applicant.
Observations		The newspaper cuttings describing plans to develop the site of the former print and dye works as a new industrial site. Owners had cleared the site of buildings that were no longer useable and were looking to erect new buildings and attract

		tenants to the industrial site. No reference was made to the application routes or to public access across the site.
Investigating Officer's Comments		The article demonstrates that by 1972 a number of the former mill buildings had been demolished and some new buildings erected. There is no reference to public access and no inference can be drawn with regards to the existence of public rights.
1:2500 OS Map SD 8625-8725	1977	Further edition of 25 inch map reconstituted from former county series and revised in 1975 and published 1977 as national grid series.



Observations		Many of the original mill buildings appear to have been demolished and a new, large factory ('Works') is shown on the western part of the site. The reservoirs are still shown but no longer appear to be connected to the industrial site for the purpose of providing power. A route may have been available A1 – point B passing to the north of buildings but it is crossed by two lines
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		<p>indicating the existence of walls or fences through which it is not known whether access was available. From just east of point A1 it may have been possible to gain access to a track shown which continued towards point B and then went south to exit onto the application route midway between point D and point E. No route is marked between point A2 – B. From B the application route follows a short section of the track described above and then crosses an open wooded area to point C. Access may have been available between points B and C and point C and point D but there is no indication of a worn track identified on the Ordnance Survey map and fencing could have existed across the route close to point D.</p> <p>The application route between point D and point E is shown but appears to be gated at point E.</p>
Investigating Officer's Comments		<p>Access may have existed across the industrial site following clearance of a number of buildings but the application routes are not shown suggesting that they did not follow well defined tracks which would have been noted by the Ordnance Survey when the map was revised. The application route between point D and point E existed and appeared to be gated at point E.</p>
Aerial photograph	2000	Aerial photograph available to view on GIS.



Observations

By 2000 the mill site had been cleared and grassed over suggesting that clearance was carried out a number of years earlier. The three reservoirs can still be seen to exist.

Between point A1 and A2 a dark line can be seen which appears to be consistent with the line of a ditch/watercourse shown on the modern OS map extending from the north west corner of the most northerly reservoir to feed into the River Irwell. A trodden route appears visible from part way between point A1 and point B extending east and along the route applied for to point B. The route between point A2 and point B is not visible on the photograph.

Between point B-C-D a worn track consistent with

		pedestrian use can be seen. The application route between point D and point E is obscured by trees and cannot be seen.
Investigating Officer's Comments		In 2000 the site crossed by the application route appears to be open and accessible with former industrial buildings all having been demolished some time ago and the area grassed over. Part of the application route between point A1-B-C-D appears to have existed as a worn track on the ground capable of being seen from the air.
Google Street View Image	2009	Google Street View Images available to view online





Observations		<p>The photographs are taken from Heald Lane (FP 657) and show the point at which the application route leaves the lane at point A1. There appears to be a gap in the wall that may have allowed access but no worn track and a ditch can be seen crossing the route shortly after point A1 with no means of access across it visible.</p> <p>The application route from point A2 can also be seen on the photographs. There appears to be access through a gap in the wall at point A2 and the application route can then be seen crossing the reservoir outflow by means of a bridge.</p>
Investigating Officer's Comments		<p>In 2009 access onto the application route was available at point A2 and appeared to be being used but no access is visible at point A1.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.

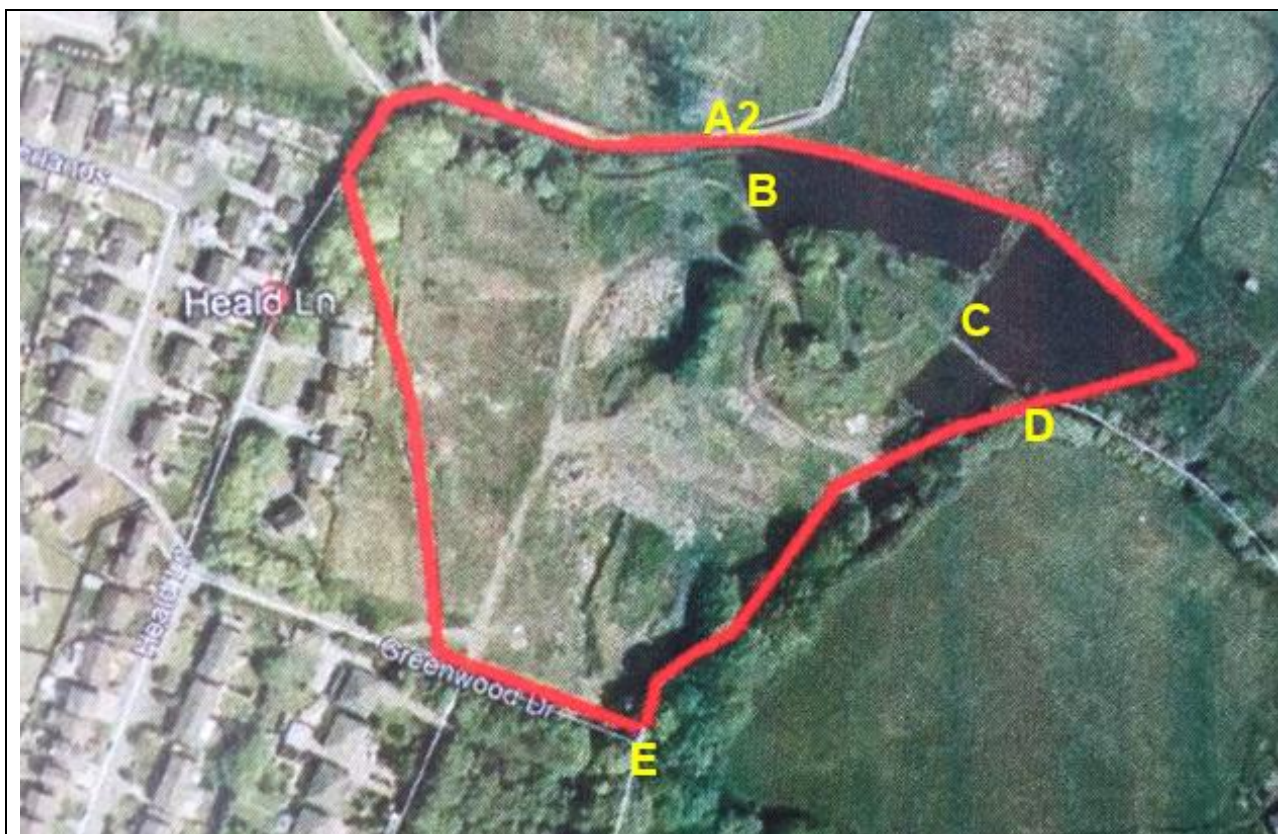


Observations		Fourteen years since the earlier photograph was taken the site appears to be very similar. Access onto the route from Footpath 657 now appears to have shifted from point A1 to point B (which is not visible) to point A2 – point B which is clearly visible as a track consistent with pedestrian use. From point B to point C a faint track can be seen but no track can be seen between the two reservoirs between point C and point D. As with all previous aerial photographs the route between point D and point E is obscured by trees and cannot be seen.
Investigating Officer's Comments		The aerial photograph supports the user evidence in relation to the fact that the route between point A2-B-C-D-E appeared to be capable of being used.
Appeal decision relating to the development of land at Irwell springs	2002	Appeal decision letter submitted by the applicant dated 31 July 2002 following an Inquiry held 11-19 June 2002 into the granting of planning permission for the construction of 44 residential properties on land at Irwell Springs, Weir and associated works.
Observations		Paragraph 45 of the decision letter makes reference to footpath access across the proposed


		<p>development site stating that greater footpath provision would be provided through the site and that the Inspector anticipated that in allowing the residential development to go ahead, the situation for pedestrian usage would not worsen and, in all probability would improve.</p> <p>In allowing the appeal – and thus granting planning permission for a residential development – the Inspector considered that the creation of a footpath through the site should be included as being necessary and reasonable to safeguard the recreational opportunities of the locality.</p>
Investigating Officer's Comments		<p>No specific reference is made to the application route although there is a suggestion that there was already some public use of the site.</p> <p>No inference can be drawn in regard to the application route.</p>
Undated Photograph submitted by the applicant		



Observations		The photograph is undated but clearly shows the application route from point C to point D as an open accessible path which appeared to be very well used.
Investigating Officer's Comments		The photograph showing the application route between point C and point D illustrates what the site looked like at some point prior to it being blocked off but is of limited value as it is undated. No inference can be drawn with regards to the existence of public rights.
Google Earth aerial photograph	2018	Google Earth image included in sale documentation for the sale of the development site crossed by part of the application route.



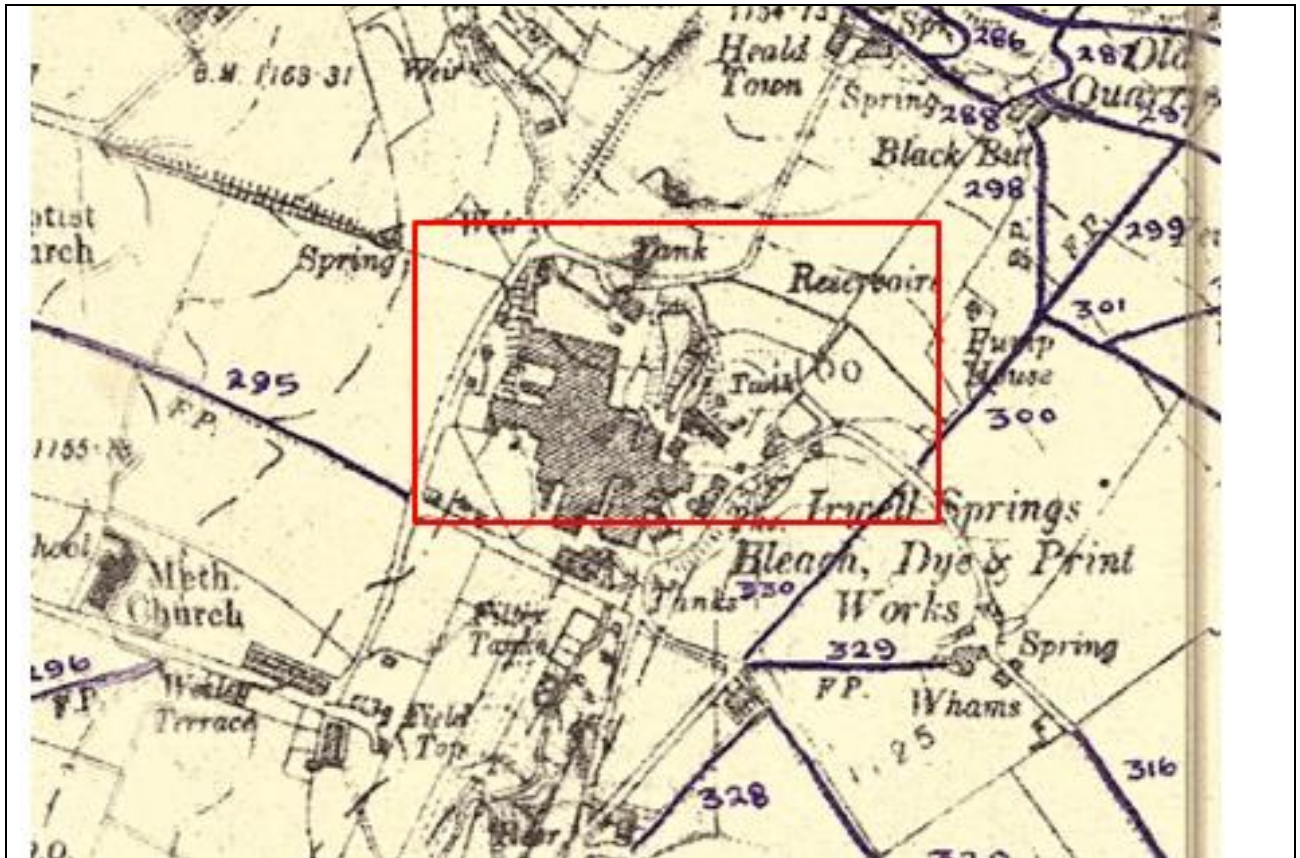
Observations		A number of routes can be seen across the development site. From point A2 to B the application route is not visible but from point B – point C - point D a route consistent with the application route appeared to exist.
Investigating Officer's Comments		The application route from point B-C-D appeared to have existed in 2018 but other parts of the application route can't be seen.
Newspaper article	2018	Report submitted by the applicant published in Rossendale Free Press on 24 th August 2018.
Observations		The report explains that the area known as Weir Lodges, described as a local beauty spot used for decades by families, dog walkers and fishermen, had been fenced off and a metal bridge removed earlier that week by the Irwell Springs Development Corporation. People who had used the routes across the site were invited to contact a representative of Weir Pride (a local community Group) who were hoping to get a route through the site recorded as a public footpath.
Investigating Officer's Comments		There is no specific reference to the application route but the report confirms the blockage of the part of the route and the fact that access had previously existed across the site.
Plan submitted by the	Undated	Undated plan said to be c1900.

applicant		
		
Observations		<p>The origins and purpose of this hand drawn plan are unknown.</p> <p>The application route is shown as part of a longer route between point D and point E. The rest of the application route – across the site of the Irwell Springs Bleach Dye and Print Works is not shown.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Extracts from 'The Journey to Irwell Springs' by Peter Goggins		<p>Book published in 2007 by Rossendale Books describing the author's childhood in Bacup in the 1950s and his return to the area in later life.</p>



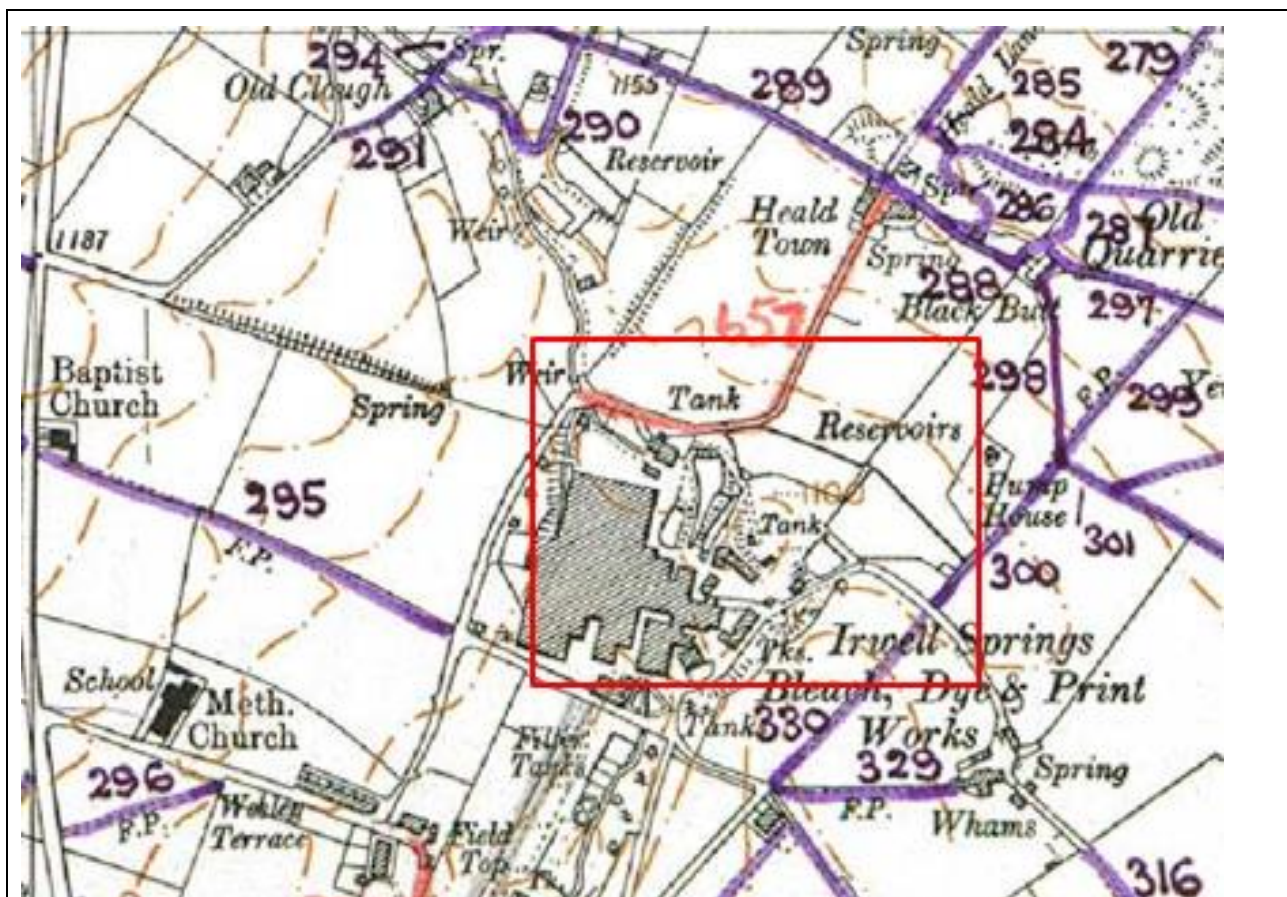
<p>Observations</p>		<p>The book is titled after the area of land crossed by the application route. Irwell Springs was described by the author as also being known as Corner Dye Works, 'a factory complex nestling in a small valley next to the village of Weir' which were served by three lodges or 'springs' and the author describes how, as children, he and his friends would fish and swim in the lodges.</p> <p>Later in the book he explains that fifty years on he lived very close to 'the springs' and the three lodges and still fished there on a regular basis.</p> <p>He expresses concern about the development of the former mill site and the impact this would have on the wildlife and refers to drainage work being carried out in 2007 when an outlet channel was dug from one of the lodges to drain into the River Irwell.</p> <p>A photograph included in the book (undated) shows the application route between two of the lodges between point C and point D.</p>
<p>Investigating Officer's Comments</p>		<p>The book suggests local use of the lodges and area around them for generations by people walking, fishing, swimming and watching wildlife.</p> <p>There is no specific reference to the application route but it appears that access to the site had been available supporting the evidence of use</p>

		forms submitted as part of the application.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		Bacup was a Municipal Borough in the 1950s for which no parish survey map was prepared.
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>



295.	Footpath.	Commences with kissing gate at junction with footpath 297 proceeding south west to junction with footpaths 300 and 301. Condition fair, well defined.	0.09 ✓
300.	Footpath.	Continuation of footpath 299 in a south westerly direction terminating with kissing gate at junction with road to Irwell Springs works. Condition fair.	0.08 ✓
301.	Footpath.	Commences at junction of footpaths 298, 299 and 300 and proceeds east to	0.03 ✓
329.	Footpath.	Commences at Whams Farm, proceeding westerly through kissing gate to kissing gate at junction with footpath 330. Condition good.	0.05 ✓
330.	Footpath.	Continuation of footpath 300 in a south westerly direction terminating at kissing gate at junction with footpath 329. Condition ill defined, grass covered.	0.09 ✓

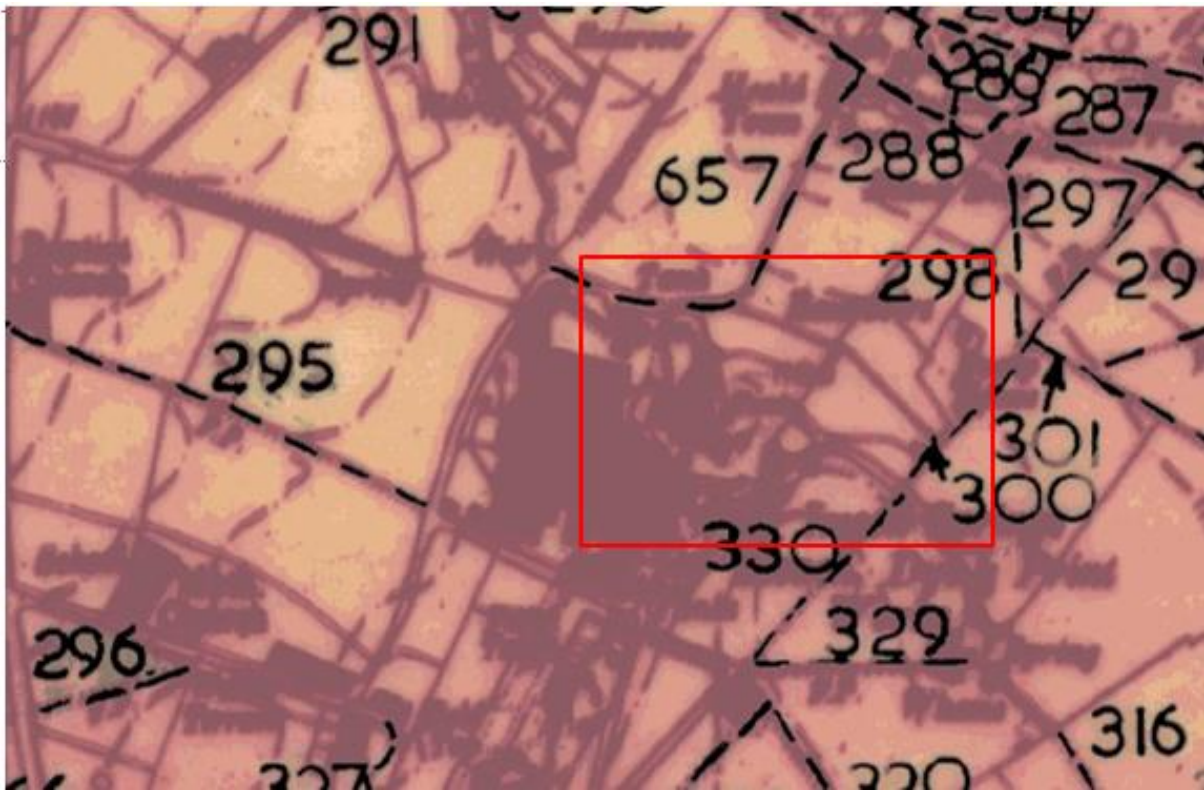
<p>Observations</p>		<p>The route was not shown on the Draft Map and Statement and no representations were made to the county council.</p> <p>FP 657 was not recorded on the Draft Map and a FP 300 and FP 340 are seen to meet the route to Whams Farm (further east along the route from point D) but not cross 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>



657	"	Tramway to the borough boundary from where it continues into Burnley R.D.	0.11
657	"	Commences at north-west corner of Irwell Springs Mill along Heald Lane to jct. with footpath No.289 at Heald Farm.	0.19

Observations		The application route was not shown on the Provisional Map and Statement and no representations were made to the county council. Footpath 657 is now shown.
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 and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map

		<p>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>
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<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p>
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<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<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</p>
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		<p>have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The route is not recorded as being publicly maintainable on the List of Streets by the county council.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The affected land/specified parts of the land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

The first 5 metres (approximately) of the route from point A1 lies on unregistered land. The remainder of section A1-B, all of sections A2-B-C-D, and the bulk of D-E is owned by Irwell Springs Development Limited. The land crossed by the final 5 metres (approximately) of the route (immediately before point E) is privately owned but forms part of adopted highway (Office Road, U3847).

Summary

The application route between points A1-B, A2-B and B-C-D

The map and documentary evidence examined does not appear to support the existence of the application route until sometime in the 1960s when changes began to occur on the site with some of the original mill buildings being demolished and new industrial units built.

Since that time, as the site became vacant and buildings demolished it appears that access may have been more readily available across the site and to the reservoirs and that the application route was used together with a number of other routes across the site.

Access onto the site from point A1 – B looked to be available on the 2000 aerial photograph but the exact alignment of the route could have varied over the years and is no longer evident. Since at least the time when the drainage ditch was constructed from the reservoirs feeding into the River Irwell (possibly in 2007 as suggested in The Journey to Irwell Springs) then access appears to have been along the route between points A2-B rather than points A1-B.

The application route between points D-E

The application route between point D and point E is consistently shown to exist as part of a longer through route providing access to a number of farms and properties and linking to a network of routes now recorded as public footpaths since the mid 1800's.

Whilst it may originally have been gated at point E there is no indication that it could not – or would not – have been used by the public on foot.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted the following documents with the application:

1. 109 user evidence forms

2. 23 letters of support from local residents
3. Book ('The Journey to Irwell Springs' by Peter Goggins) documenting the area
4. Various newspaper articles
5. Photos
6. Various unidentified maps

Once the application was received it was highlighted that a large portion of the user evidence did not expressly refer to the section of the route D-E. The applicant contacted the users to verify the use of this section and many of them subsequently confirmed that they have used all of the route claimed including between points D-E.

User Evidence Summary:

There were 109 user evidence forms received with the application.

46 users have used the whole of the route (A1-B, A2-B-C-D-E). The remaining users have used the top section of the route between points A1 or A2-B-C-D.

Use of the route varies from 1965 through to 2018:

- 58 users have used all or part of the route over a continuous period over 20 years up until 2018.
- Of the 46 users who have used the whole route, 35 have used it in excess of 20 years up until 2018.

Types of use of the route until 2018:

	<i>Daily</i>	<i>Weekly</i>	<i>Every few weeks</i>	<i>Monthly</i>	<i>Every few months</i>	<i>Other</i>
Foot	47	47	1	6	4	1 - "too many to count"; 1 - 3/4 times per year
Bicycle	1	5	-	7	9	-
Horse	4	5	1	2	2	-
Vehicle	-	-	-	-	1	1 - Annually

The main reasons provided for using the route were for pleasure, dog walking, leisure purposes, nature watching, riding and route to/from work and school.

Whilst using the route, users have seen others using the same route in the following manner:

<i>Foot</i>	<i>Bicycle</i>	<i>Horse</i>	<i>Vehicle</i>
74	36	44	4

When asked if the application route has always followed the same line the following answers were received:

<i>Part of route used</i>	<i>No. of users</i>	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
Whole	46	37	4	5
Top section (i.e. excluding D-E)	63	57	2	4

Of those that provided a 'no' to the question 'has the route always followed the same line', the following comments were provided:

- "The pathway leading from Heald Lane has changed slightly and moved by 20 metres – the original entrance was along the lane towards the village through a purpose built entranceway, you would then walk towards the lodges crossing a small stream over stepping stones. In around 2001/2002, the stream was widened from an outflow from the lodges which then joined the colvert which was also opened up at about this time. The banking on the lodge nearest was then strengthened and widened leaving a path along the front of the lodge. The original entrance was blocked up and has remained so."
- "Route altered from a section of stepping stones across the river to a bridge further up when the houses were developed."
- "The route around the lodges has been similar to the routes known today, the access from Heald Lane was slightly lower down and access was across the stream rather than the plate bridge, this was prior to the land being cleared and purchased for development. Access was also gained across the original mill site, walking up from opposite Beaufort Road to meet the path at the lodges. There were also additional pathways that led from the lane leading to Whams Farms to meet the pathways."
- "Since approx. 2005 the stepping stones were removed and a metal plate put in over the river to keep access open. Now barricaded."
- "... when I first moved here there would be some stepping stones over to the left after the lodge and then a short path alongside the River Irwell to a hole in the wall and on to Heald Lane. Since approx. 2005 the stepping stones were removed but a metal plate was put in over the river and so access at the end of the route was then over the plate and then straight across to Heald Lane."

Three users provided that there had been stiles at the top eastern and western entrances of the route up until 10 years ago. One user wasn't sure whether there were or had been any and the remaining users provided that they were not aware of any stiles or gates on the route.

Five users provided that they have seen signs on the route 'private – keep out' which were erected in August 2018. One other user provided that there had been a 'private sign' erected during the time the mill was running.

Two users answered 'yes' to having been given permission to use the route. One user commented - "not permission as such but recommendation from Fiona and Roy

Mulderigg in January 2015". The other user stated that they had been given permission to use the route by Fiona Mulderigg. It is not clear which part of the route the permission was given for as neither Fiona nor Roy Mulderigg are owners of any land crossed by the route.

Seven users stated that they have been prevented/stopped/turned back from using the route. All provided that this was since the erection of the fences in August 2018, one having been prevented by one of the contractors erecting the fencing. Another 19 users provided that locked gates/metal barriers (fencing) which has been erected around the outer perimeter of the area of the development site has prevented them from accessing the route since August 2018.

One user provided that they had been told the route was not public by a landowner – Fiona Mulderrigg. Again it is unclear which part of the route this is in reference to as Fiona Mulderrigg is not a current owner of any land crossed by the route.

Information from the Landowner

Irwell Springs responded to consultations providing the following:

The route between points A1 and B has never been a route or a public footpath;

The route between points A2 and D has been walked over in the past, despite it not being a public right of way and despite both points having had fencing and being blocked on numerous occasions, only for trespassers to break them down every time these have been erected;

Any access to their land has been wholly unauthorised and is regarded as trespass, any evidence that the route has been trafficked is also considered as evidence of trespass. They subsequently object to the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s):

- Wealth of user evidence supporting use of the route as a footpath and/or bridleway on a regular basis.
- Users report seeing others using the route on foot, cycle and horse.
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by the landowners to discourage use of the route until 2018.

- Map and other historical documentary evidence supporting the physical existence of the route between points D-E since the mid-1800s.

Against Making an Order(s):

- Weaker user evidence in relation to section A1-B.
- Possible interruptions to use in relation to section A1-B.
- Lack of corroboratory evidence from maps and other historical documents supporting the physical existence of the route between points A1-B and A2-B-C-D.
- Difficulties in proving intention to dedicate in common law.

Conclusion

The question being considered is whether the route A1-B, A2-B-C-D-E has been used such that it has become a right of way in law.

The land crossed by the majority of the application route (A1-B, A2-B-C-D) was a former print and dye works. The buildings associated with these works had been demolished by the 1970s. After a short time of housing a factory, the land was cleared and grass grew over where the industrial buildings once stood. It appears to have remained like this to the present day. The site is currently owned by Irwell Springs Development Limited (ISDL) and has the benefit of planning permission for a development of residential dwellings. ISDL claims that section A1-B has never been a route walked by the public. They accept that the route from A2-B-C-D has been walked in the past, but claim that this was despite it not being a public right of way. They do not mention the route from point D-E, the bulk of which is within their ownership.

As there is no express dedication along any part of the route, the Committee is invited to consider whether there is sufficient evidence from which a dedication of the route can be deemed under Section 31 of the Highways Act 1980 and/or inferred at common law.

Considering firstly the statutory test; in order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. 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.

The application for a definitive map modification order is a calling into question but the evidence from users suggests that the public's right to use the claimed route had been called into question earlier when Heras-type temporary fencing was erected around the development site, enclosing the route between points A1-B and A2-B-C-D, thus rendering those sections unusable. Several users identify this event as having occurred on 20 August 2018. ISDL in its objection to the application claims

that access has been gained at points A2 and D without authorisation despite it being "*fenced and blocked on numerous occasions*". ISDL does not provide any information as to when the site was fenced and the access points blocked so it is not possible to determine whether any actions to prevent public use of the route were taken by ISDL prior to August 2018 or, if action was taken to challenge public use of the application route, whether it was sufficiently brought to the attention of a reasonable number of users that their use was being challenged. The users are consistent in their evidence that they were not prevented from using the application route until the fencing was erected in August 2018. On balance, therefore, any actions taken by ISDL seem not to have been an effective calling into question until August 2018 and so the 20 year period under consideration for the purposes of establishing deemed dedication would be 1999 to 2018.

All 109 users who completed user evidence forms have used all/part of the application route up to the calling into question of the route in 2018, although Committee may have some concerns about whether the same line was in use over that time, and whether at least part of the route was used for the duration of the 20 year period. There is usually some lack of clarity to be expected from written user forms. Users have not been interviewed and not all attached plans to their user evidence forms. Some users who did attach plans only marked the route from A2-B-C-D or in their written descriptions did not expressly mention A1-B or D-E. This could be because these sections did not exist either at all or during their use of the area, existed but were not used by those individuals or in relation to D-E because it was assumed that this was already acknowledged as a public right of way. ISDL admits that part of the claimed route, between points A2-B-C-D "*has been walked in the past despite it not being a public footpath/public right of way*" and denies that the route from point A1-B has ever been used by the public. Some users describe the application route as having originally been accessed from point A1 (across stepping stones) but that access moved to A2 around 2005 when the stepping stones were removed and a metal plate bridge provided at point A2 across the outflow. After completing their user evidence forms, a significant number of users subsequently submitted plans depicting the application route in full (A1-B, A2-B-C-D-E) and signed to confirm use of the entire route for the duration as indicated in their original user evidence forms.

The duration of stated usage of the route varies from one year to 53 years. 47 users used all/part of the route on a daily basis and 47 weekly. The vast majority report seeing other users of the route (on foot, cycle or horse). Notwithstanding the comments from some users that access at point A2 only became available in the mid-2000s, 35 users have confirmed use of the full length of the claimed route for the duration of the 20 year period under consideration (1998-2018). With the exception of one user, all 35 walked the route on either a daily or weekly basis and all but 4 report seeing others using the route on foot. The users describe using the route for recreational type purposes (e.g. dog walking, playing as/with children, fishing on the lodges/reservoirs, feeding the ducks etc.). This type of use and frequency, together with the significant number of users using the route, is consistent with use of a public right of way.

All 109 users are unanimous in that they have never been stopped or turned back whilst using the route; have never been told by anyone that the route was not public;

and have never encountered any locked gates or barriers (until 20 August 2018). Only one user reports having seen a notice stating that the land is private and that was when the mill was functional (which would pre-date the 20 year period under consideration). With one exception, none of the 109 users have ever asked for or been given permission to use the route. One user indicated that they had permission from Fiona Mulderigg but we have been unable to identify who this is and the extent of their authority to grant permission.

Despite some of the inconsistencies in the evidence, overall the user evidence supports 'as of right' use of the application route by a large section of the public for the 20 year period under consideration.

Section 31 provides the opportunity for a landowner to demonstrate that notwithstanding the evidence of 20 years' use, there is evidence that they had no intention to dedicate the route as a public right of way. The evidence has to be sufficient and the landowner must have taken some overt action such that the reasonable user would have to understand that the landowner was intending to disabuse him of the notion that the land was a public highway. A view needs to be formed as to what the users would reasonably have understood the landowner's intention to be.

According to ISDL (who we understand has owned the land crossed by much of the route since 2012), part of the application route from point A2-B-C-D has been fenced and blocked off on numerous occasions. So there could potentially be examples of actions taken by the landowner prior to August 2018, demonstrating a lack of intention to dedicate but it is unclear whether those actions were sufficiently communicated to the public to make them think that their use was being challenged and to satisfy the statutory rebuttal.

Looking next at dedication of a highway at common law; it is advised that Committee has to consider whether evidence from the maps and other documentary evidence, coupled with the evidence on site and user evidence, indicates whether it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Historical documentary evidence tells us that from at least 1891, section D-E existed as part of a longer route and appeared capable of being used on foot. However, the same does not appear to be true of sections A1-B, A2-B-C-D which during the 19th century lay on the site of the dye and print works. Whilst section D-E is depicted on historical maps, these do not inform us if it carried a public right of way. We must therefore consider the maps in conjunction with other evidence.

Aerial photos show that by the 1960s the application route may have existed across the industrial site from A2 to link to the route between points D-E.

It appears that between 1953 and 1975 when the Definitive Map and Statement was prepared and revised the Surveying Authority did not consider the application route

to be a public right of way as it was not included in any derivatives of the Definitive Map, even though Footpath 657 was included (after having been initially excluded).

The 1977 Ordnance Survey Map appears to show the original mill buildings having been demolished and a new factory constructed on the western part of the site. Access along the claimed route may have been available but the route is not shown on the 1977 OS Map suggesting that they did not follow a well-defined track. Section D-E of the route is shown but there appears to be a gate at point E. The presence of the gate does not negate the existence of a public right of way as there is no suggestion it was a locked gate. The user evidence forms are unanimous in that there have been no locked gates or barriers along the route and there were several users whose use of the route dates back to the 1970s.

The first time the route between B-C-D is documented is on aerial photographs from 2000 which show a worn track consistent with pedestrian use. A2-B is not visible and only part of A1-B appears visible. Multiple users state that access to the application route was originally from point A1, by crossing a small stream over stepping stones, and that access at point A2 became available in the early to mid-2000s, when a metal plate bridge was laid across the outflow and the stepping stones near point A1 removed. From this time, access to the application route shifted from point A1 to A2. The documentary evidence supports these accounts as access to the application route at point A2 can be seen in images from Google Street View taken in 2009, which show a gap in the wall and the plate structure crossing the reservoir outflow. In 2014, aerial photos from 2014 do not show a track between A1-B. However, a track is visible at A2-B consistent with pedestrian use and user evidence. There is a faint track at B-C and no track at C-D. Section D-E is obscured by tree coverage.

In relation to the actions of any of the landowners, we have been unable to identify the owner of the land crossed by the first part of the route from point A1. The majority of the route crosses land owned by ISDL which it acquired in 2012. ISDL claims to have fenced and blocked off the route between A2-B-C-D on numerous occasions. These actions are consistent with a lack of intention to dedicate. User evidence conforms use of the route for a significant period, prior to ISDL's acquisition of the site, but we have been unable to trace previous owners definitively, save to say that we believe that there were at least four corporate owners within the time period the route was used by some of the longer users (i.e. dating back to the 1970s). The evidence from users of historical use of the route and lack of Section 31 statutory declaration from any owner suggests that nothing was done overtly prior to 2018 by any landowner to prevent use of the claimed route by the public.

In conclusion, Committee is advised that the actions of the landowners have been such that it is reasonably alleged that an intention to dedicate the route as highway may be inferred at common law and that user evidence demonstrates an acceptance of that dedication.

Status of public right of way

The application was for the addition of a footpath and the user evidence, whilst fully supportive of a footpath, also suggests regular use of the route as a bridleway. From the 109 user evidence forms submitted, 14 have used either part or the full length of

the application route with a horse, and 22 have cycled along the route on a regular basis. 44 users reported having seen other users with horses and 36 have seen cyclists. Committee is advised that use of the application route on cycle and horse appears to be at such a level to suggest that the public right of way is a bridleway.

Making of an Order and stance on confirmation

The test for making an Order under 53(3)(c)(i) is a low test of whether a public right of way can be reasonably alleged. If there is sufficient evidence to satisfy this, an Order should be made notwithstanding that an authority may consider that there is not sufficient evidence to establish that the right of way does in fact subsist. The test is that if there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot reasonably be alleged to subsist, then the answer must be that it is reasonable to allege that one does exist.

It is therefore suggested that there is sufficient evidence in this matter to make an Order.

Whether there is sufficient evidence to find on balance that the application route subsists is more difficult at the present time. There are some questions over whether use of the route between points A1-B and A2-B is sufficient, consistent and/or interrupted and whether there is evidence of a lack of intention to dedicate. It is suggested that while the Order runs its course, there will be an opportunity for user evidence to be considered in more detail, and a further report presented to Committee, as to whether this higher test for confirmation could on balance be satisfied and what stance the County Council should take in respect of the Order.

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.

Alternative options to be considered

To not make an Order

To make an Order but resolve that the County Council support or oppose the Order to confirmation.

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

Paper

Date

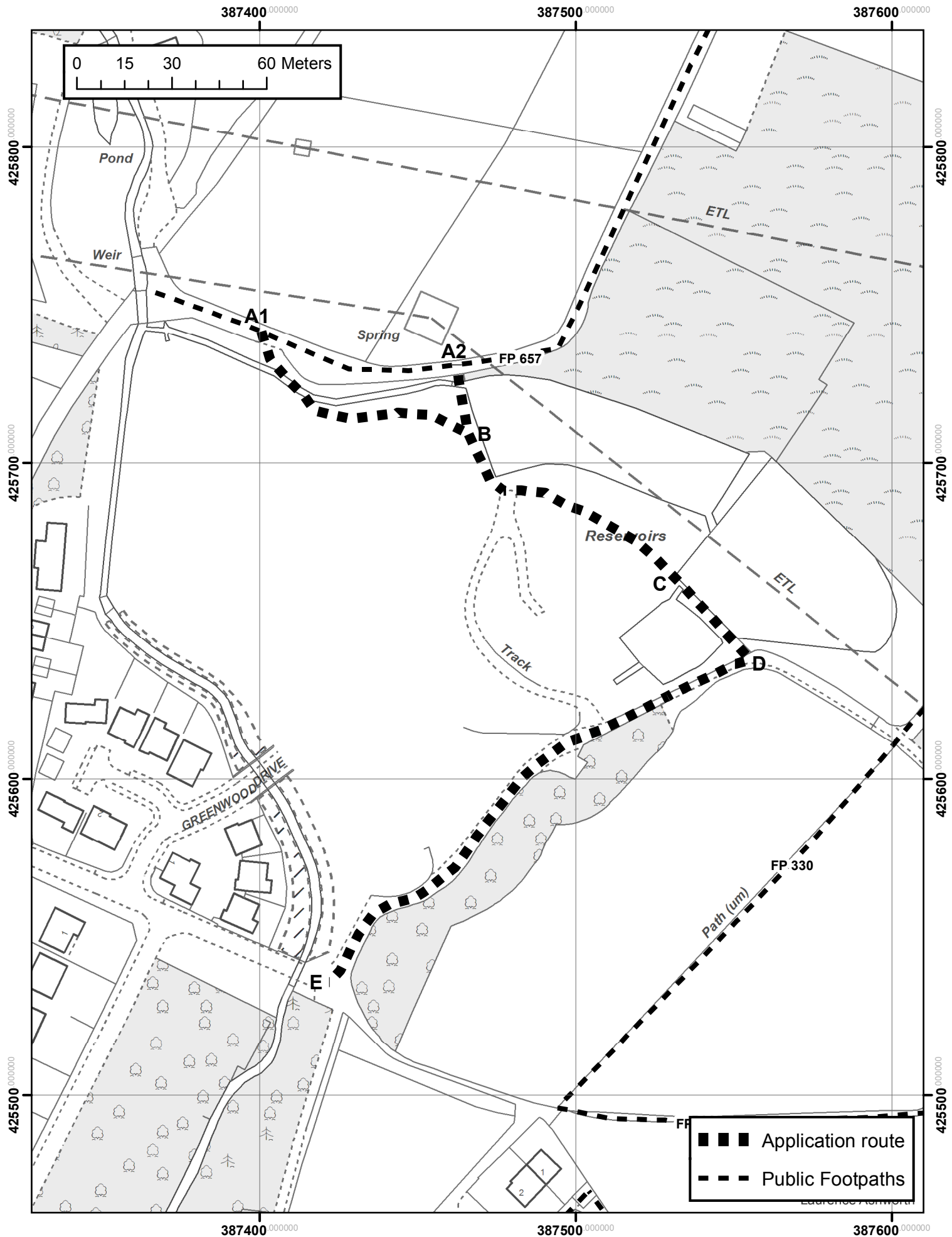
Contact/Directorate/Tel

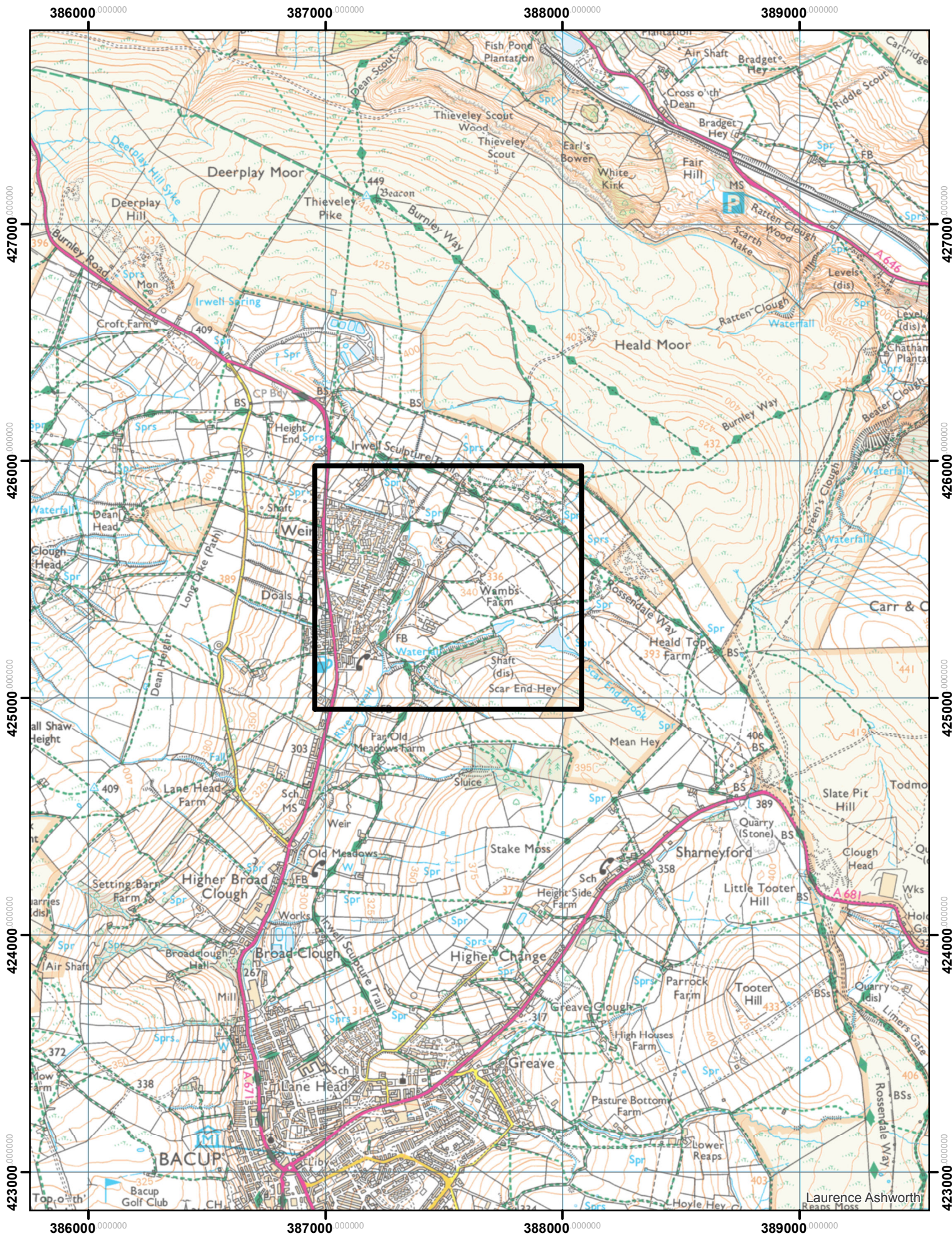
All documents on File Ref:
804-603

Claire Blundell, 01772
535604, County Secretary
and Solicitors Group

Reason for inclusion in Part II, if appropriate

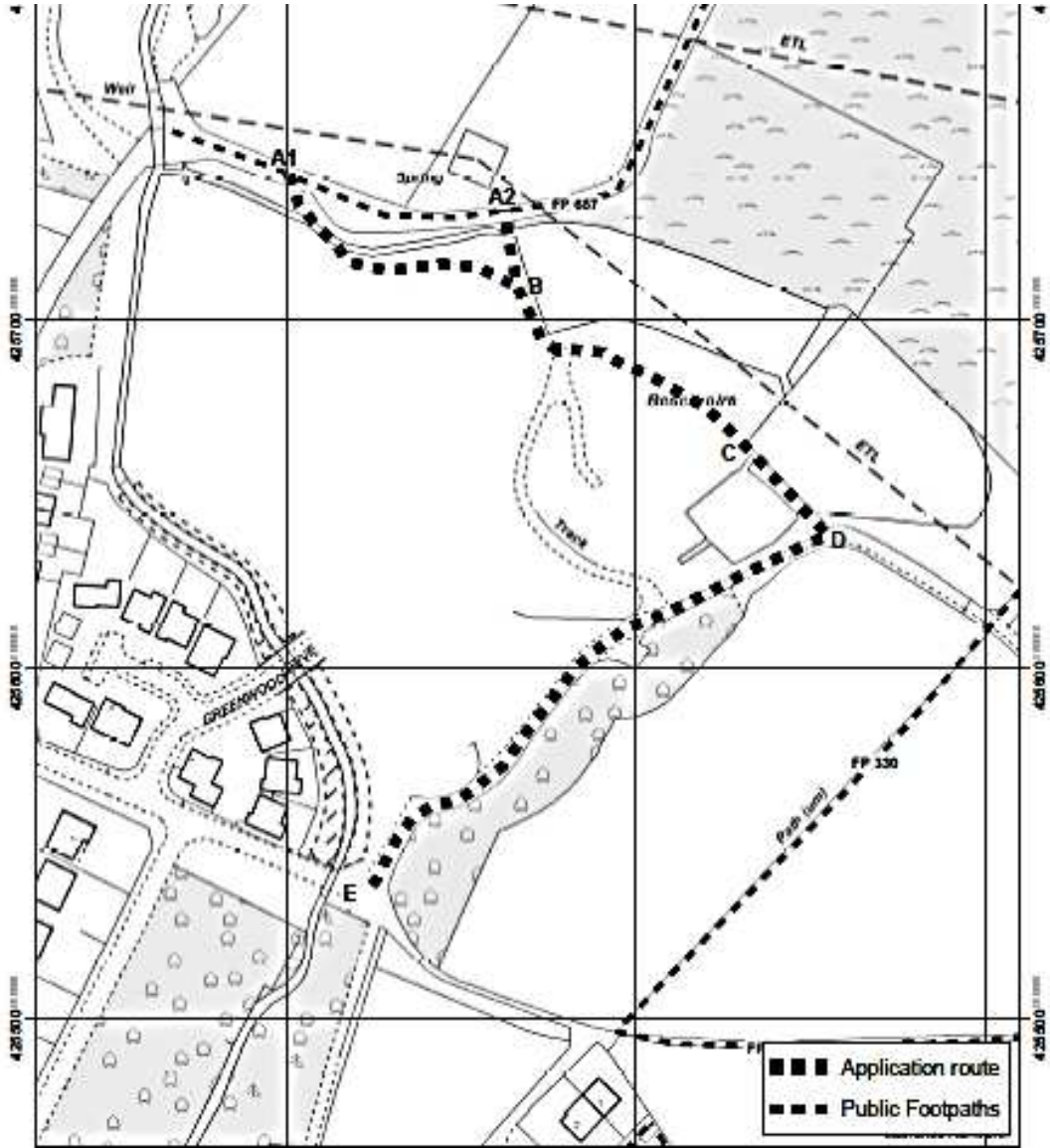
N/A





Wildlife and Countryside Act 1981
Addition of a footpath from Footpath 657 Bacup to Office
Road, Weir

Photographs taken October 2018 unless otherwise stated



Point A1 (2008)





Looking back at the land crossed
between point **A1** and **B**

Point A2 (2008)



Point A2



Between point **A2** and **B**



Between point **A2** and **B**



Between point **C** and point **D**



Between point **C** and point **D**



Point D



Between point **D** and point **E**



Between point **D** and point **E**



Between point **D** and point **E**



Approaching point E



Approaching point E



Point E



Regulatory Committee

Meeting to be held on 18th November 2020

Part I

Electoral Division affected:
Lancaster Rural East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Wennington Road to Home Farm Close, Wray with Botton, Lancaster

File No. 804-620

(Annex 'A' refers)

Contact for further information:

Simon Moore, Paralegal Officer, County Secretary and Solicitors Group,
simon.moore@lancashire.gov.uk, 01772 531280

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

Executive Summary

Application for the addition of a Footpath from Wennington Road to Home Farm Close, Wray with Botton to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-620.

Recommendation

- (i) That the application for the addition of a Footpath from Wennington Road to Home Farm Close, Wray with Botton, in accordance with File No. 804-620, be accepted.
- (ii) That an Order 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 from Wennington Road to Home Farm Close, Wray with Botton on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (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 of a Footpath from Wennington Road to Home Farm Close,

Wray in Botton to be recorded on the Definitive Map and Statement of Public Rights of Way.

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 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

Lancaster City Council

In response to the consultation Lancaster City Council planning highlighted a related planning condition and provided an extract of same, included below. They stated that: "To formally recognise the footpath as a public right of way would reflect the requirement of condition 13 on planning permission 99/00664/FUL – ‘erection of one dwelling’ on land between no 30 & 34 Wennington Road (see below) and confirm its rationale for its imposition (i.e. the City Council’s view of the importance of this pedestrian link)."

13. In accordance with this permission a public pedestrian access from Wennington Road to the land to the south of this site shall be maintained to a minimum width of 2 metres as indicated on the submitted plan and there shall be no direct vehicular or pedestrian access to the development hereby approved on the Wennington Road frontage.
Reason: In the interests of highway safety and to safeguard pedestrian access.

Wray with Botton Parish Council

The parish council are the applicants in this matter and the registered owners of the land between point B and point C.

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	6036 6775	Open junction with Wennington Road
B	6038 6773	End of tarmac and rear boundary of 32 Wennington Road
C	6040 6770	Open junction with Home Farm Close

Description of Route

The application route commences at a point on Wennington Road in the village of Wray (point A on the Committee plan). It runs south-east on a 2m wide tarmac surface path between the walls of properties numbered 30 and 32 Wennington Road with access off the route leading to the front of 32 Wennington Road.

From the rear of the house (32 Wennington Road) the route then opens up and crosses a tarmac area to point B from where it continues as a compact stone surfaced track to point C. At point C the application route meets Home Farm Close and immediately to the west of point C is an access point into a recreation ground/school field.

The total length of the route is 70 metres.

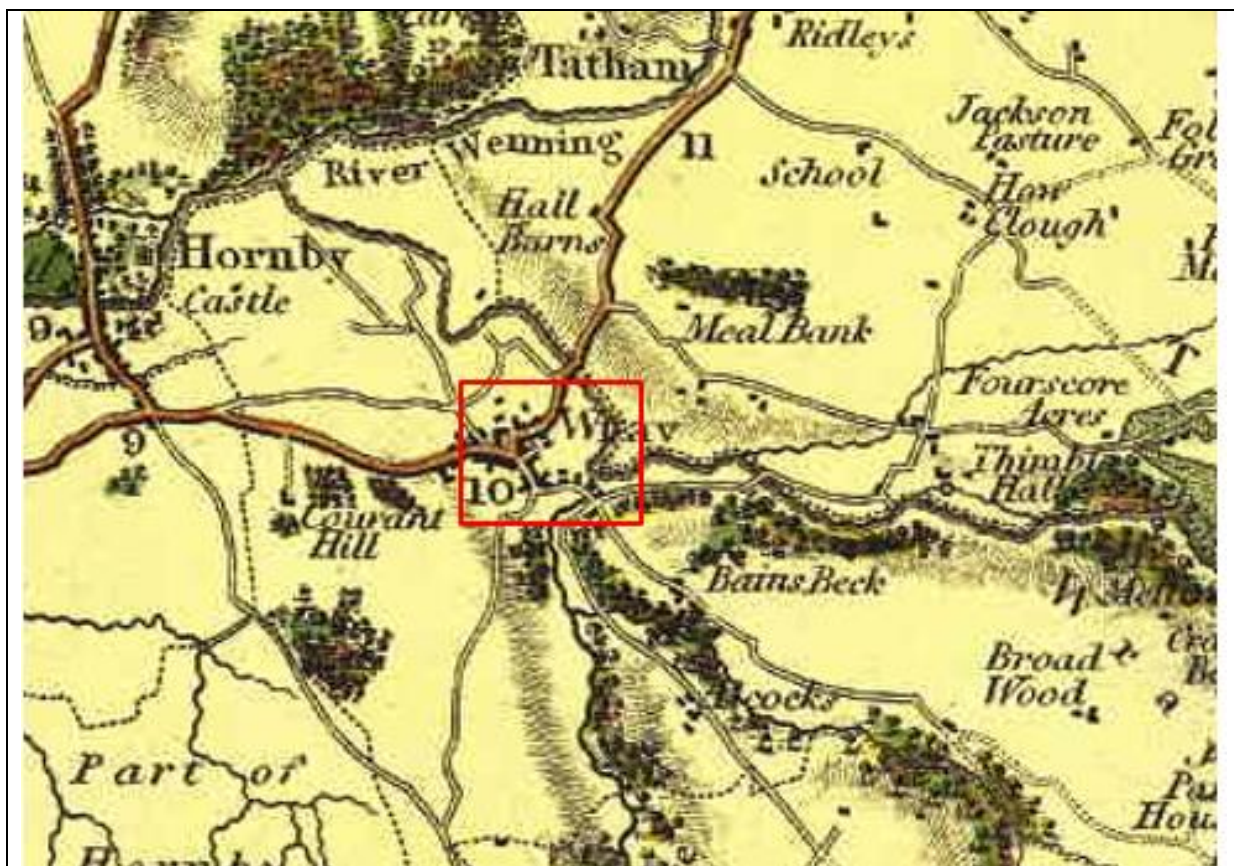
Map and Documentary Evidence

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		Wennington Road can be seen but Home Farm Close is not shown. The application route is not shown but nor are other footpaths.
Investigating Officer's Comments		The application route probably did not exist in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		Wennington Road can be seen but Home Farm Close is not shown. The application route and other footpaths are not shown.
Investigating Officer's Comments		The application route probably did not exist in 1818.
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 7½ 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		Wennington Road can be seen but not Home Farm Close. The application route and other footpaths are not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830.
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 or proposed canals or railways in the area crossed by the application route.

Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment CRO Ref: DRB1/214	1849	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Wray has not been examined as there is no map evidence suggesting the existence of the route at this time.
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 with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. ¹

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



Extract of map

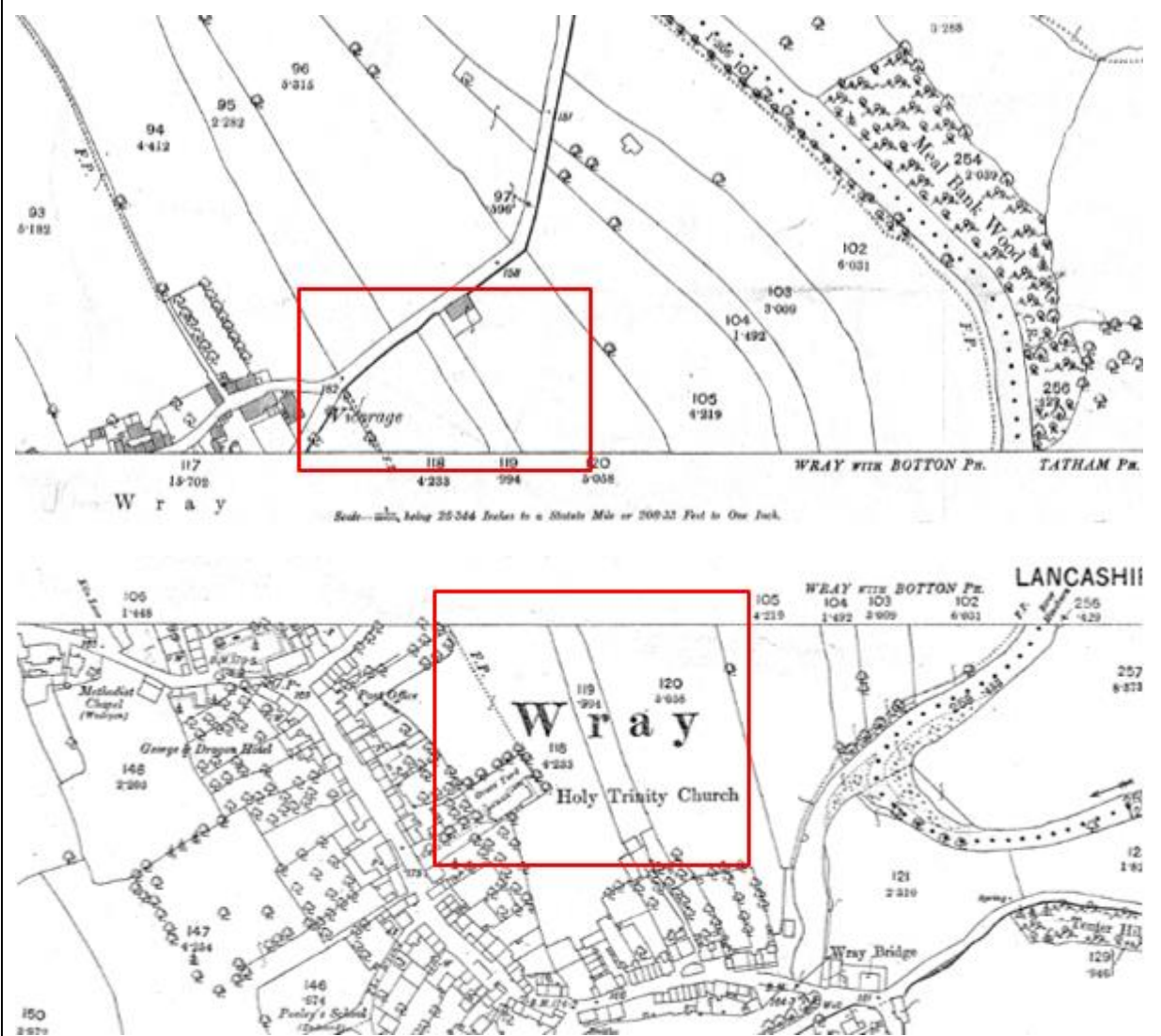


Extract of map with Application route overlaid in red

Observations

The application route is not shown. Wennington Road is shown as a main route through the village but Home Farm Close is not shown. The

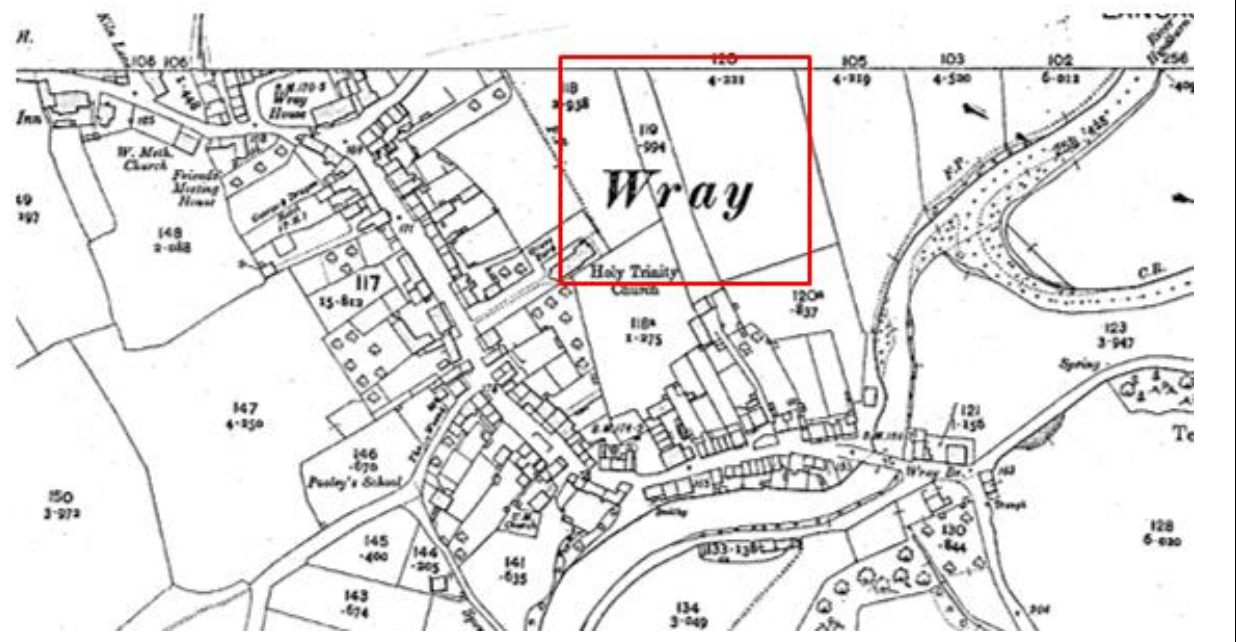
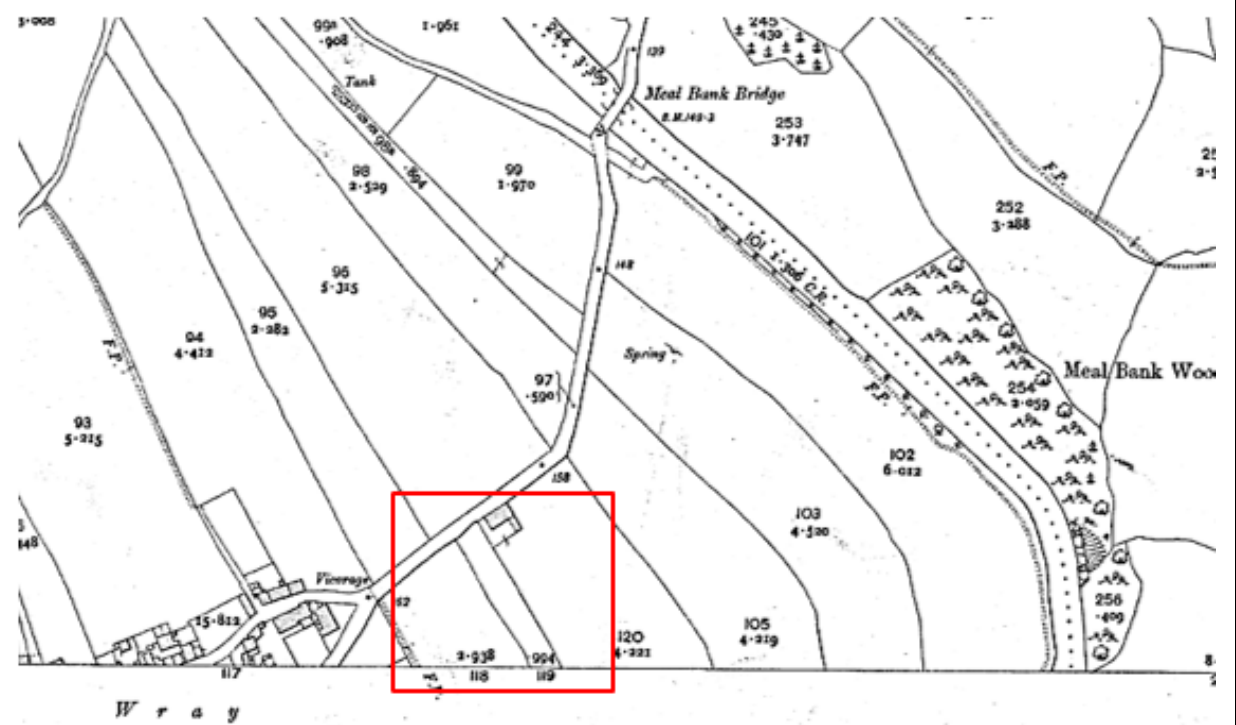
		land crossed by the application route is within a thin strip of land.
Investigating Officer's Comments		The application route did not exist in 1847.
25 Inch OS Map Sheets 25-12 and 25-16	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889-1890 and published in 1891.



Observations		Wennington Road existed but Home Farm Close is not shown. The land crossed by the application route crosses land forming part of a long narrow fenced field (field parcel number 119) but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1891.
25 inch OS Map	1913	Further edition of the 25 inch map surveyed in

Sheets 25-12 and 25-16

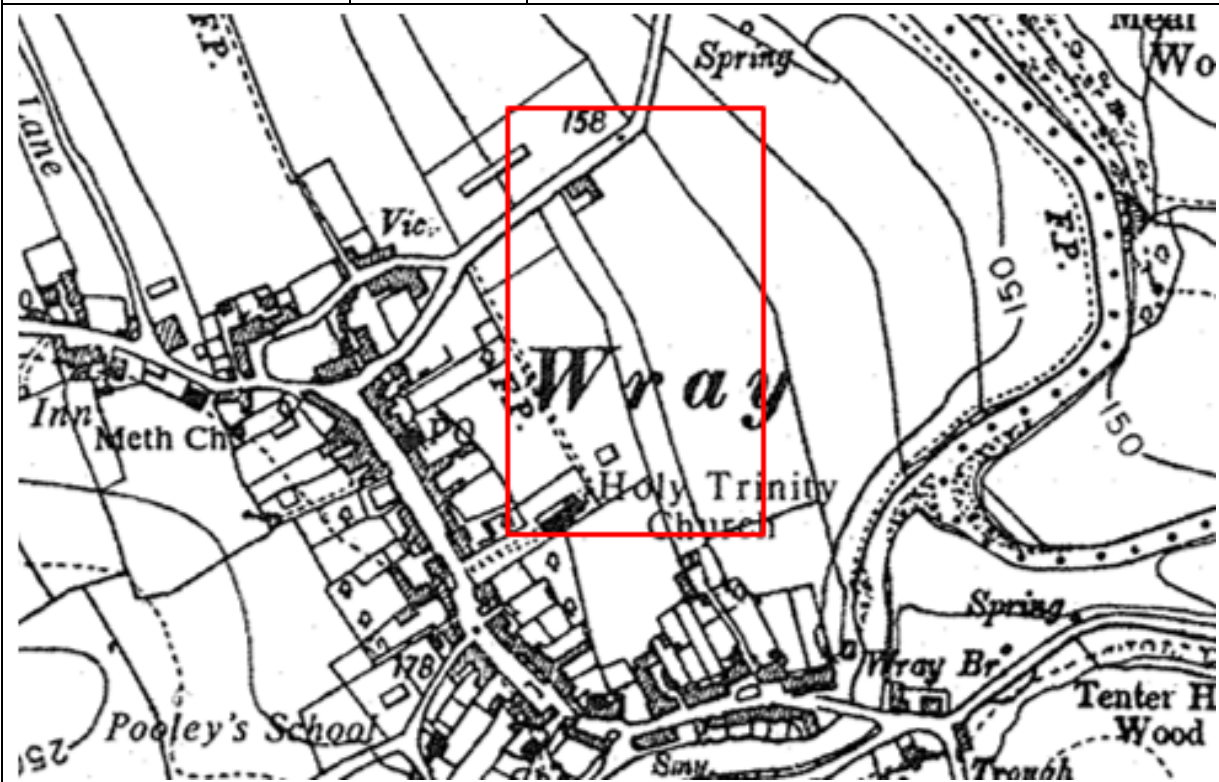
1889-1890, revised in 1910 and published in 1913.



Observations		The application route is not shown and the land crossed by the route does not appear to have altered since the earlier editions of the 6 inch and 25 inch OS maps were surveyed.
Investigating Officer's Comments		The application route did not exist in 1910.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public


		<p>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 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 District Valuation records have not been obtained as there is no map or user evidence from the early 1900s suggesting that the application route existed at that time.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	C.1930	Further edition of 25 inch map.
Observations		A copy of the OS 25 inch (and 6 inch) map prepared in the 1930s for the area crossed by the application route is not available to view.
Investigating Officer's Comments		No inference can be drawn.

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		There is no aerial photograph available to view from the 1940s within the county council's records.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of the application route or public rights.
6 Inch OS Map Sheet 66NW	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

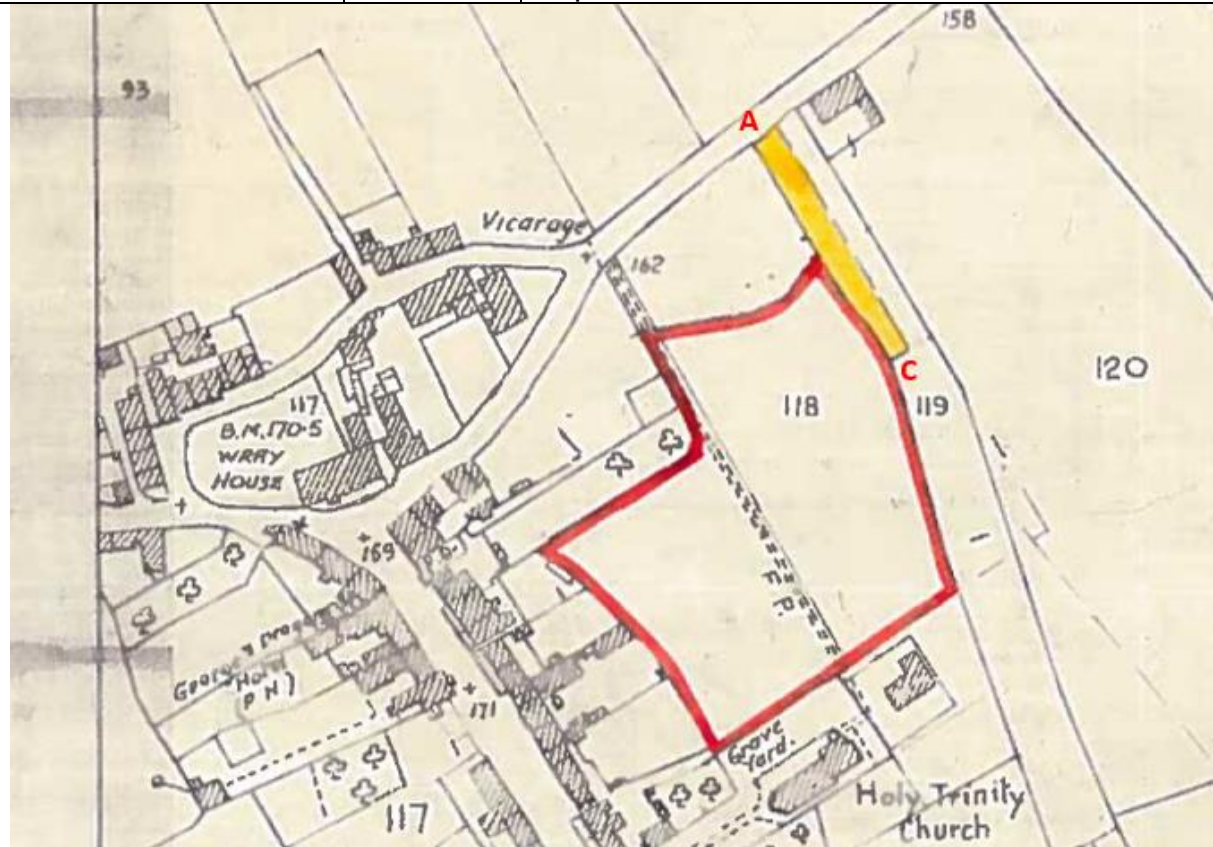


Observations		Home Farm Close and the application route are not shown and the land crossed by the route does not appear to have altered since the earlier editions of the 6 inch and 25 inch OS maps were surveyed in the early 1900s.
Investigating Officer's		The application route did not exist in the 1930s

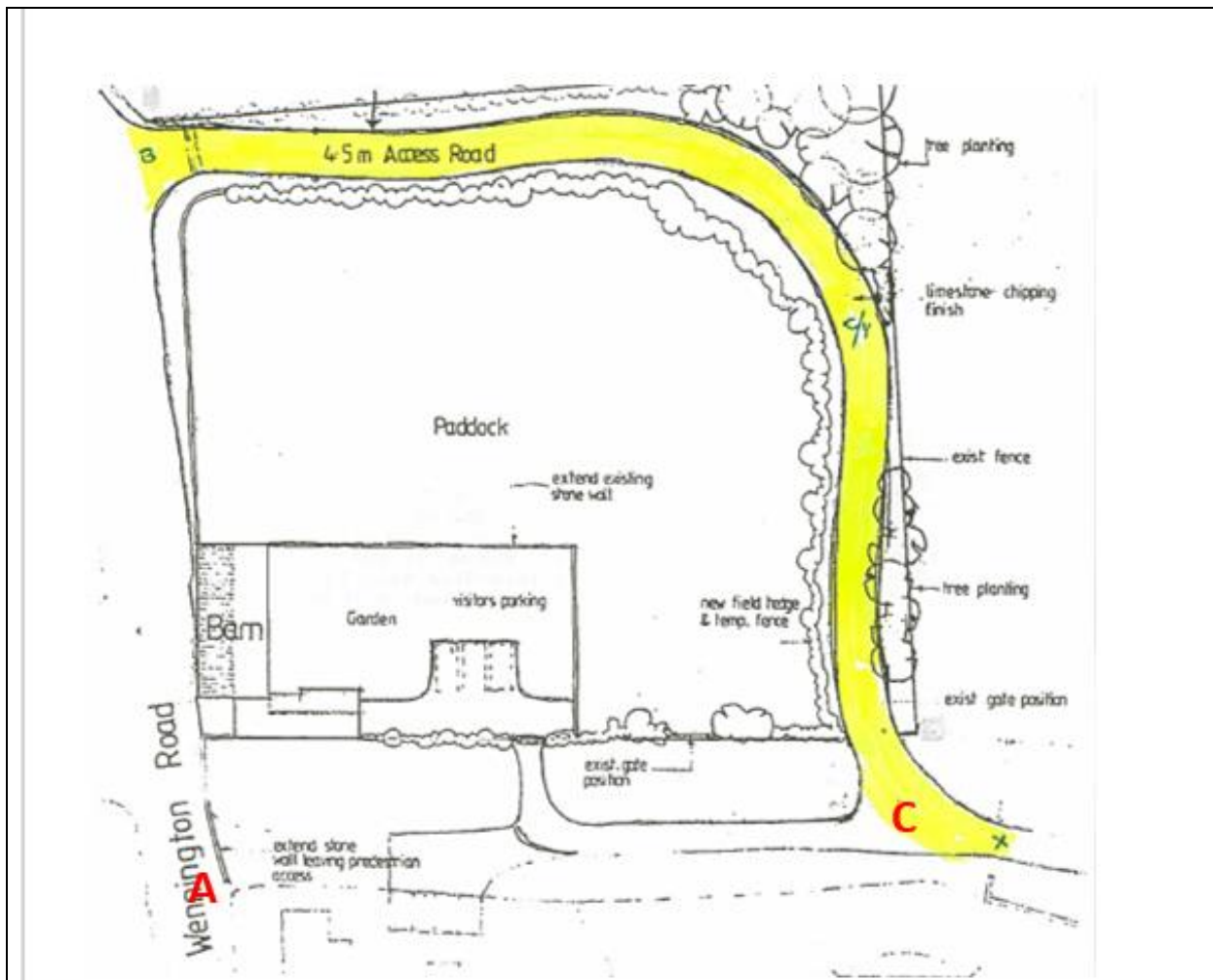
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

Comments		when the survey on which the map is based was carried out.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		Home Farm Close does not exist but the aerial photograph clearly shows a track extending from Wennington Road at point A consistent with the application route passing through point C and continuing directly to Home Farm from where it appears to continue through to Main Street.
Investigating Officer's Comments		The application route existed in the 1960s and appeared capable of being used. It is not known from looking at the photograph whether access beyond point C was just to the farm or whether it was possible to continue through to Main Street.
Deed of Grant of a right of way at Wray	1970	A copy of a Deed of Grant of a right of way submitted by the applicant. The original agreement has been deposited in the county council Deed room and is dated 2 nd April 1970 together with a supplemental Deed dated 6

September 1995



1970 Deed Plan

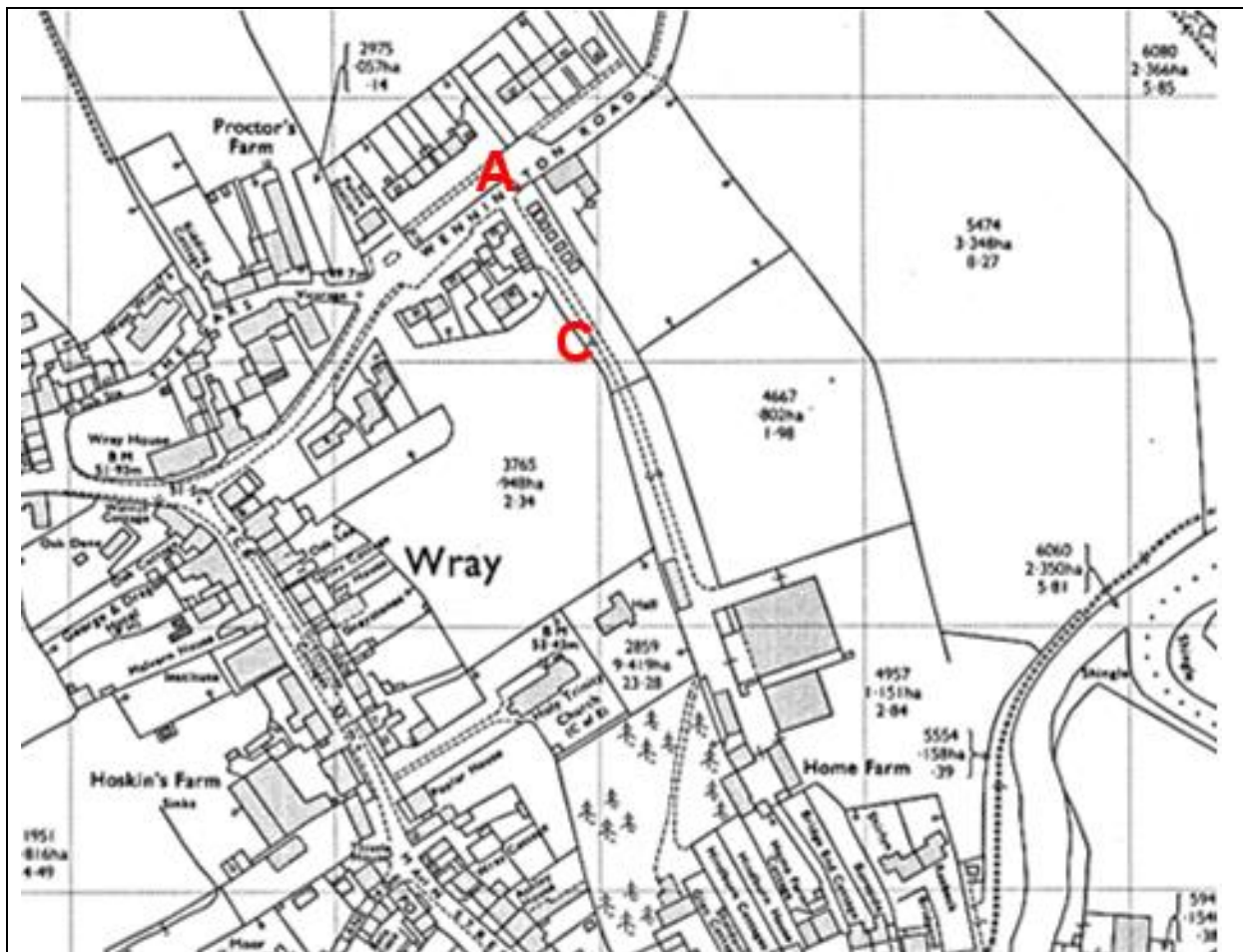


1995 Deed Plan

Observations

The 1970 Deed relates to the granting of a right of way over land coloured yellow on the plan forming part of the agreement. The agreement was made on 2 April 1970 between Mrs P D Holt and Lancashire County Council and contained in it is the provision that Lancashire County council would construct a road on the land coloured yellow and would thereafter maintain and keep it in good repair. The Deed provides for a right of access with or without horses carts and vehicles from the land coloured red on the plan along the land coloured yellow (the road to be constructed by the county council). There is no reference to the dedication of public rights but the road to be constructed is consistent with the application route between point A and point C. The land referred to as being coloured red on the plan is owned by Lancashire County Council and is the primary school playing field immediately west of the application route. Access onto the playing field is currently

		<p>available from point C on the junction of the application route and Home Farm Close.</p> <p>The 1995 Supplemental Deed relates to the original access agreement and explains that the grantor (Mrs Holt) had requested that the county council agree to vary the route of the said right of way to that shown coloured yellow on the 1995 plan) and that the county council had agreed. The plan contained within the agreement indicates that the wall on Wennington Road was to be extended in proximity of point A but notes that a gap was to be left for pedestrian access. There is no reference to the dedication of public rights within the document.</p>
Investigating Officer's Comments		<p>No inference can be drawn regarding the existence of public pedestrian rights. In 1970 the access to the property was for Lancashire County Council as owners of that land not as Highway Authority. That right included vehicular access but did not imply there were no public pedestrian rights.</p> <p>The 1995 variation of the route provided for the construction of a new private access route which subsequently became part of Home Farm Close which was adopted in 2004. At the time of the agreement however it appears that the route was a private access route to allow the county council to access land in its ownership.</p> <p>The 1995 plan indicates that pedestrian access was to be retained at point A and both the 1970 and 1995 plans indicate that access may have been possible along the application route during that time. However neither agreement conveys public rights of access on foot.</p>
1:2500 OS Map SD 6067-6167	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1973 as national grid series.



<p>Observations</p>		<p>The application route existed as a substantial track from point A where access to it is shown as unrestricted. Between point A and point C the route appears to provide access to a row of buildings – possibly garages. Beyond point C the route is shown continuing as a track (gated just south east of point C) to provide access to Home Farm. South of the farm gated access continuing through to Main Street may have been possible along a thin strip of land adjacent to Bridge End cottage.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in the 1960s and formed part of an access track possibly to some garages and also to Home Farm. The route appears to have been wide enough for vehicular access. South of the farm a narrow bounded strip is evident which may have provided pedestrian access through to Main Street.</p>
<p>Planning Permission for the construction of 32 Wennington Road Ref: 99/00664/FUL</p>	<p>1999</p>	<p>A copy of the Planning Permission granted in respect of the construction of 32 Wennington Road was obtained from Lancaster City Council.</p>

improved to an acceptable standard in accordance with the detailed scheme approved in connection with application no's 97/136 and 98/831
 Reason: To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative.

13. In accordance with this permission a public pedestrian access from Wennington Road to the land to the south of this site shall be maintained to a minimum width of 2 metres as indicated on the submitted plan and there shall be no direct vehicular or pedestrian access to the development hereby approved on the Wennington Road frontage.
 Reason: In the interests of highway safety and to safeguard pedestrian access.

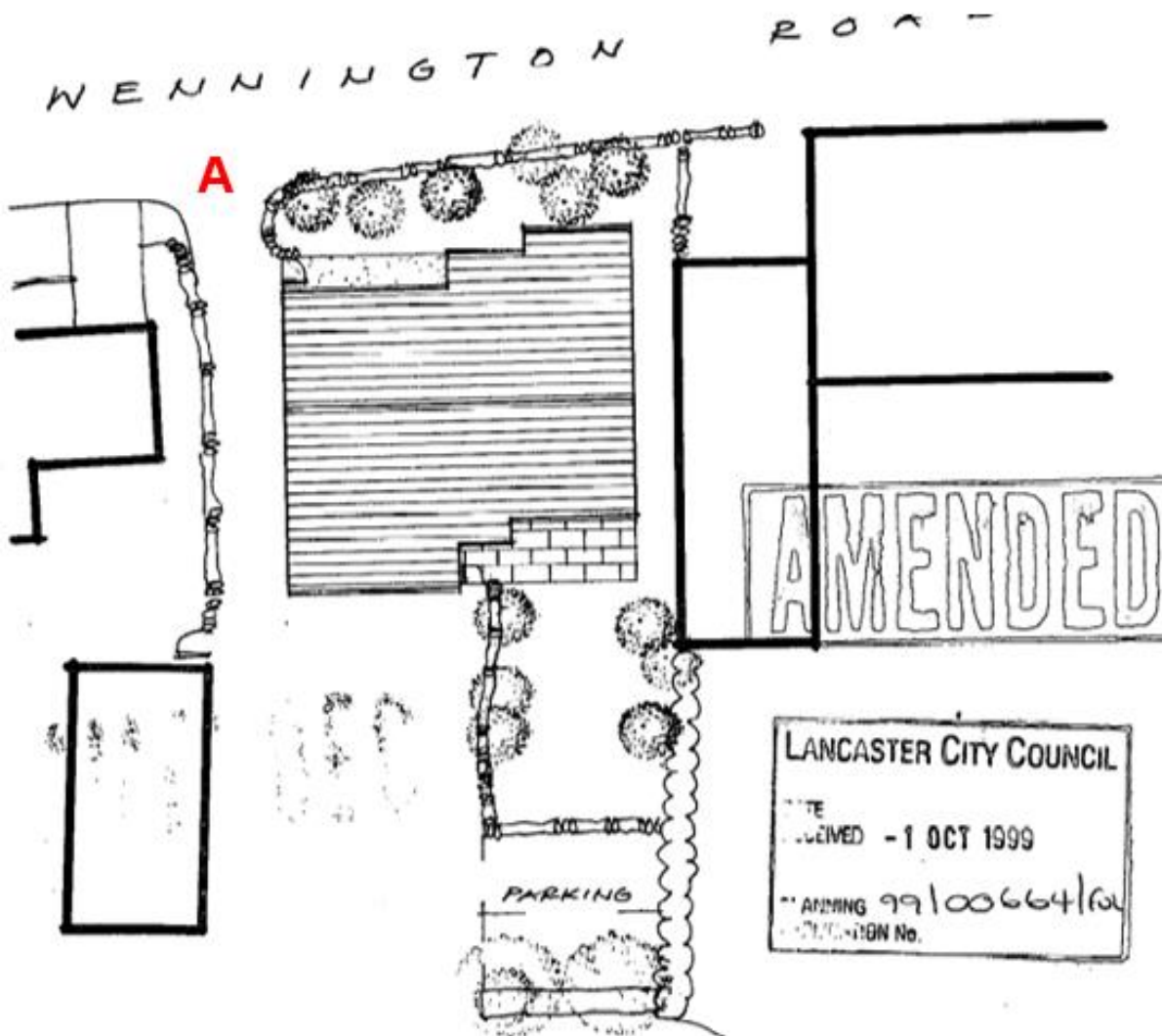
D. Hall
 PL.

Date: 18 October 1999
 PEFULZ


99/00664/FUL

Page 2 of 3

Acting Chief Planning Officer



<p>Observations</p>	<p>A planning application was submitted to Lancaster City Council on 15 July 1999 for the erection of 1 dwelling house (32 Wennington Road) on the strip of land crossed by the application route. Planning permission was granted by the City</p>
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		Council on 18 October 1999 and included a number of conditions. The thirteenth condition listed referred to the fact that a public pedestrian access was to be maintained from Wennington Road to the land to the south of the site. This route was to be a minimum of 2 metres wide.
Investigating Officer's Comments		When planning permission was granted it was subject to maintaining public access from Wennington Road to the land to the south, i.e. along the route between point A and point C and the condition does not make clear whether this was recognising existing public access or the creation of a public access route although it could be argued that use of the word 'maintained' suggests the former. Planning permission specifically provides for this access route which was required to be a minimum of 2 metres wide and the site evidence and user evidence suggest that this requirement was complied with.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		This photograph was taken within 12 months of planning permission being granted to build the

		house. The property does not appear to have been constructed but the application route can be clearly seen between point A and point C. Home Farm Close is shown as well as the access onto the playing field (immediately south of point C).
Investigating Officer's Comments		The application route existed in 2000 and appeared capable of being used. It appeared to provide a link from Wennington Road to Home Farm Close and to the access point onto the playing field.
Google Street View Images	2008-2009	Google Street view images.



Point A - Image captured in 2008

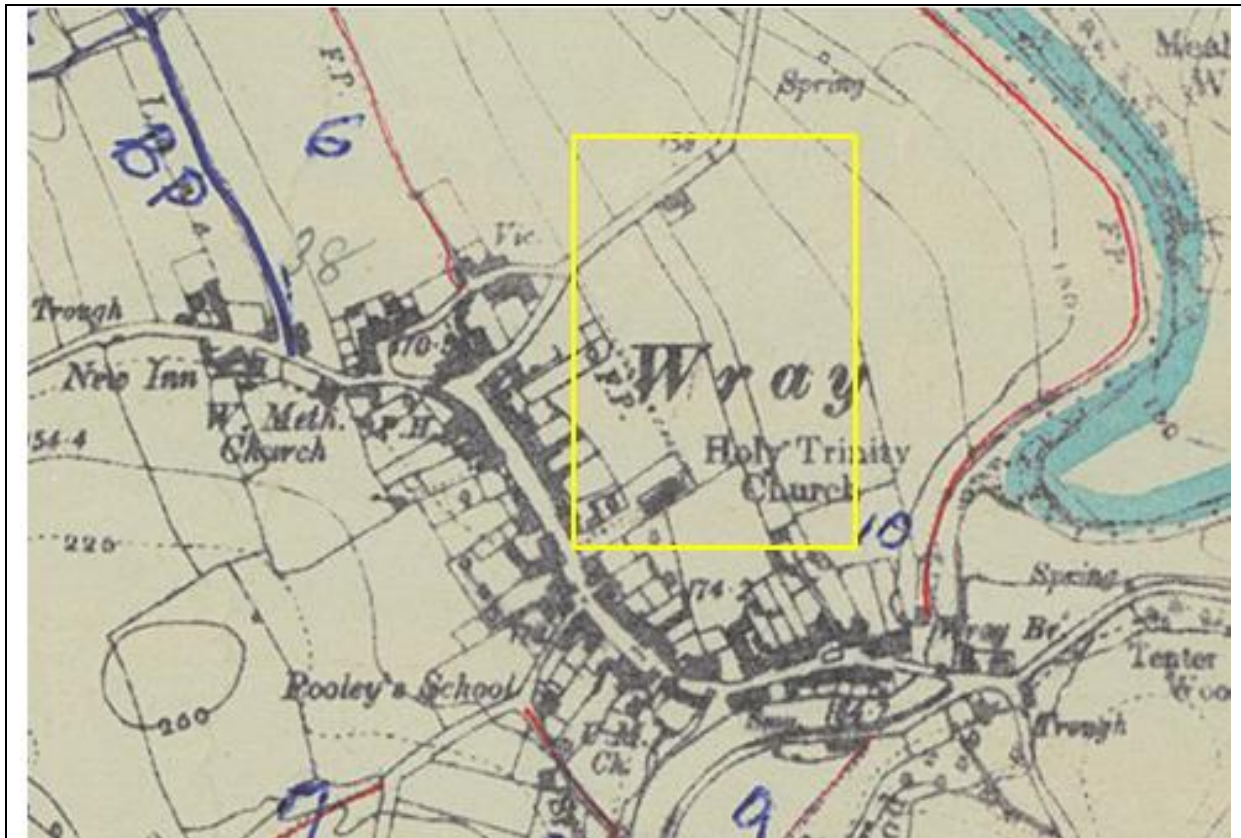


Point A - Image captured in 2009



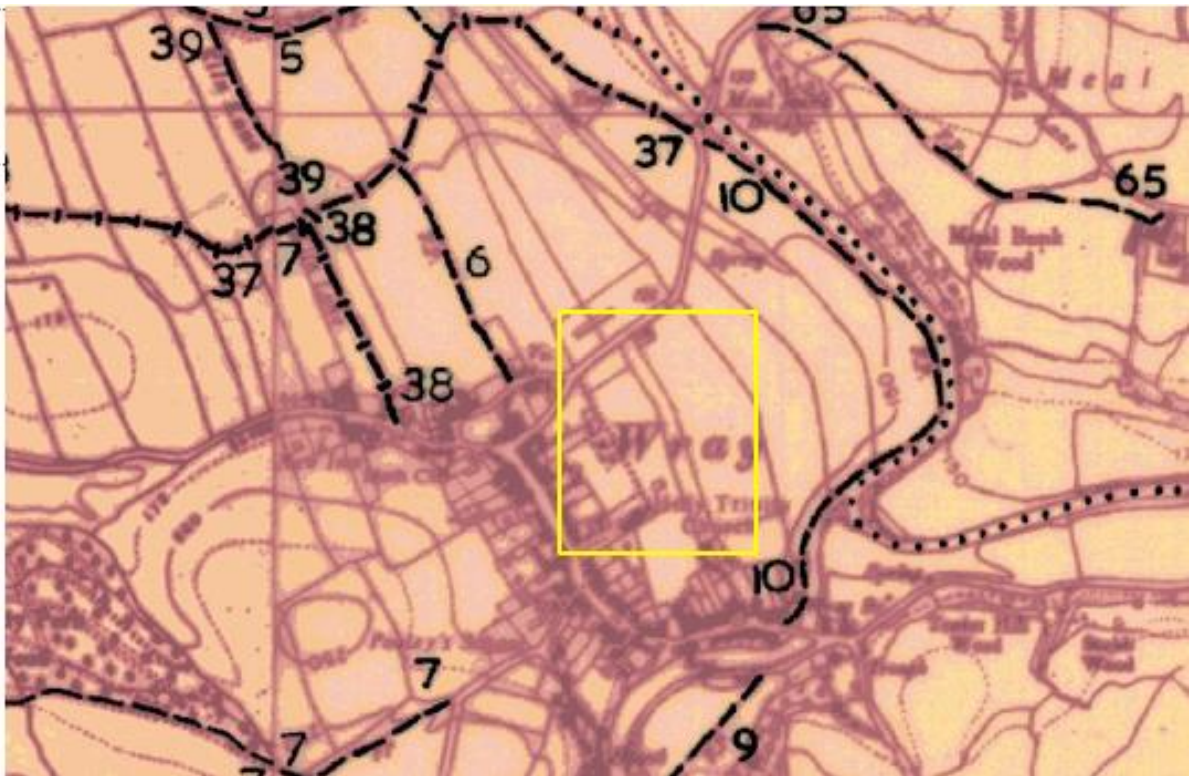
Point C - image captured in 2009

Observations		<p>From point A the application route can be clearly seen down the side of 32 Wennington Road in the photographs taken in 2008 and 2009.</p> <p>Access to the property can be seen from the application route close to point A (gated) but the application route itself appears to be free of any restrictions down the side of the house.</p> <p>The photograph from point C shows the application route in 2009 as a tarmac road leading up to point B.</p>
Investigating Officer's Comments		<p>The application route existed in 2008-2009 and appeared capable of being used.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>

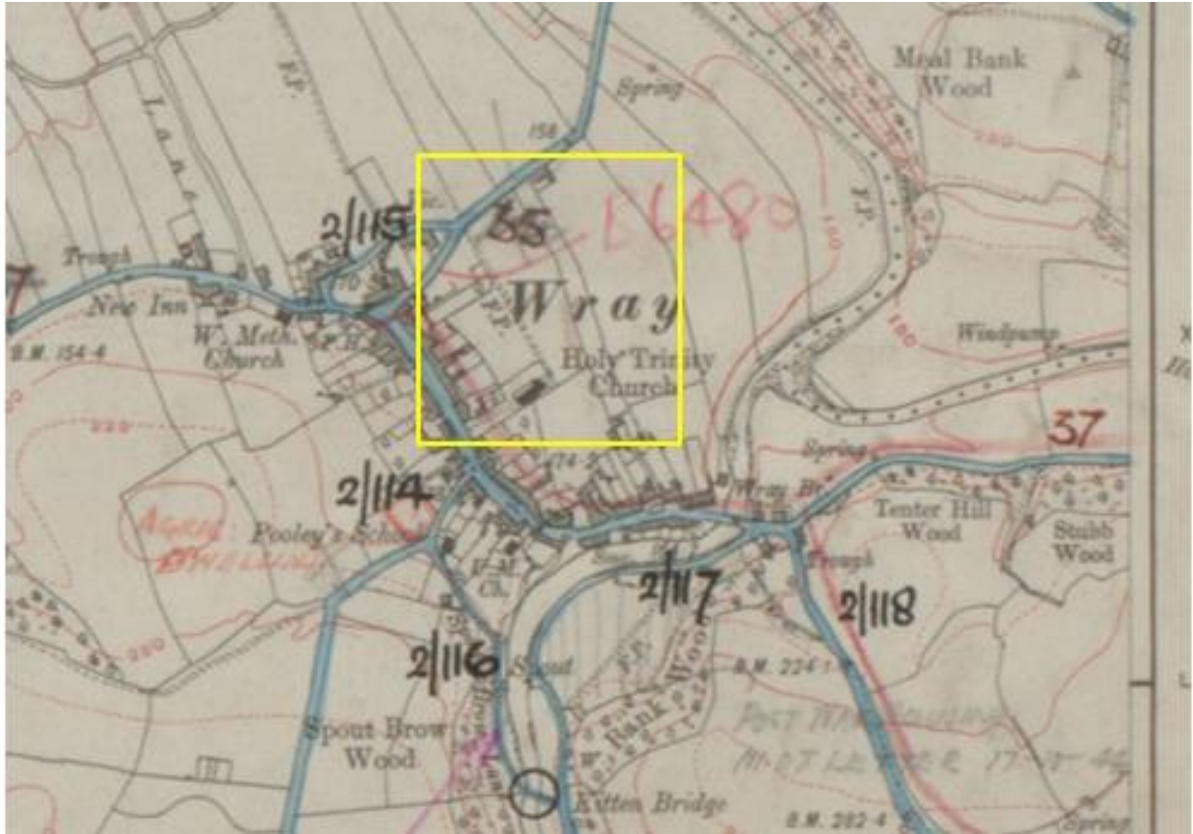


Observations		The application route was not shown.
Draft Map		<p>The parish survey map and cards for Wray with Botton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was not shown on the Draft Map of Public Rights of Way and no representations or objections were made relating to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this

		stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to 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 and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not shown on the Definitive Map of Public Rights of Way (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 footpath by the Surveying authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



1929 Road Transfer Map



LCC highway classification map

Observations

The application route is not recorded as being

		<p>publicly maintainable on the List of Streets by the county council.</p> <p>Home Farm Close was adopted on 1 June 2004 with the properties on Home Farm Close (south of the application route) built in approximately 1998-2001 by G and J Developments Limited.</p>
Investigating Officer's Comments		<p>No inference can be drawn regarding public rights. By 2004 at the latest the application route provided access to and from publicly maintainable highways (from point A and point C) although before that time it provided access to the playing fields adjacent to point C.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980	2019-2020	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>

Thank you to all members for your continued support. If you would like to join our 100 Club please pick up a leaflet in Wray Post Office, Church or phone Sue Wood on 015242 21170.

↖ Carl and Sally Parr of 32 Wennington Road, Wray give notice that the ✱
 gravelled access situated between numbers 30 and 32 Wennington Road,
 which the above landowners have allowed to be used as a permissive path,
 will shortly be permanently closed to the public and gated off.
 As per the house deeds for 32 Wennington Road, access for owners of the
 garages and for residents of numbers 28 and 30 Wennington Road, to the rear
 ↖ entrances of their property, remains unaffected. ✱

FREE – Cream Leather two seater sofa in good order. Deep soft

Observations		<p>In November 2019 the current owners of 32 Wennington Road posted a notice in the local parish newsletter – the Wrayly Mail – stating that a route (the application route) that they had allowed the public to use as a permissive route was to be permanently closed to the public. Immediately prior to this they had contacted the county council seeking clarification as to whether there was a recorded public right of way across their land.</p> <p>Following publication of the newsletter the county council received several phone calls and emails regarding the status of the application route and representatives of the Parish Council explained that they their intention to submit an application to record the route as a public footpath.</p> <p>The owners of the property contacted the county council again in March 2020 requesting information on how to make a statutory declaration and deposit under section 31(6) Highways act 1980. A deposit was submitted to the county council on 1st April 2020 and is currently being processed by Legal and Demographic Services.</p>
Investigating Officer's Comments		<p>The current landowner does not acknowledge the existence of public rights along the application route having blocked it off in late 2019 and submitting a statutory deposit and declaration.</p>

The affected land/specified parts of the 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 between point A and point B has been in the registered ownership of the owners of 32 Wennington Road since 2010.

The land crossed by the application route between point B and point C has been in the registered ownership of Wray Parish Council (the applicants) since 2010.

Summary

No map and documentary evidence supporting the existence or use of the application route prior to the 1960s has been found.

The application route existed in the 1960s - as evidenced by the aerial photograph from that time - as part of a longer access road providing direct access to Home Farm.

A Grant of Deed dated 1970 relates to private access along the application route to gain access to a school field and a supplementary agreement dated 1995 diverted this private right to the route now forming part of Home Farm Close. The 1995 plan indicates that pedestrian access was to be retained at point A and both the 1970 and 1995 plans indicate that access may have been possible along the application route during that time although neither agreement conveyed public rights of access on foot.

The application route is clearly shown as part of the access road referred to in the 1970 grant on the OS map published in 1973 and access appears to have continued beyond point C through Home Farm out to Main Street.

When residential properties were built on the farm site in the late 1990s then the original farm access track was re-routed to the alignment of Home Farm Close which was constructed as part of the development and included use of the private access road constructed following the private agreement made by Mrs Holt and the county council. The original access from point A was retained as a pedestrian link – as clearly specified in the grant of planning permission for the construction of 32 Wennington Road dated 1999 – and appears to have been accessible until its use was challenged in 2019.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In addition to the documentary evidence already presented four user evidence forms were submitted in support of the application, this user evidence is summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1970 and up to 2020. Of the four users three record use of the route for 20 years before the route was called into question in 2019.

Frequency of Use

Three of the users stated weekly use on foot whilst one stated use every few months on foot.

Reasons for Use

One of the users noted use for pleasure, the three other users all noted use to access the local children's playground with children, to access the local playing fields for village events or to access other parts of the village.

One user noted that they had a private right to use the route granted in the deeds to their own property.

Other Users of the Route

All users noted seeing others using the route on foot, in addition one also noted use by people with pushchairs, occasional use by people in wheelchairs and use by motor vehicles.

Consistency of the Route

Three of the users specified that the application route had always followed the same route, one did not specify.

Unobstructed Use of the Route

One user stated that they had never seen any signs, notices, or encountered any barriers and had not been prevented from using the route.

Two other users noted closure of the route in June of 2019, one specifying the route was closed for 3 weeks at this time. Both also noted that the route was closed in February and April of 2020. Both made mention of a notice published in the parish newsletter, the Wrayly Mail, in 2019 stating that the route was not a public right of way and went on to note that the owners had directly communicated that the route was not a public right of way by email and speaking in person respectively.

These two users also noted another resident of the village who had previously used the route being told directly that the intended closure of the route applied to her.

The remaining user noted the installation of a gate but noted this had not prevented use of the route though they believe this to be the owner's intention. They noted that the user now states that the route is not public.

Information from Others

Several utilities providers responded to the consultations to state they had no objection to the application but no further information was provided.

Information from the Landowner

The owners of 32 Wennington Road responded to the consultation confirming their land ownership. They stated that the house was built in the year 2000 and they purchased the property in February of 2010. They highlighted that the property is listed as being of one of 'special interest'. Their understanding is that their property sits on what was once an unmade farm track which led from Wennington Road through to Home Farm, Main Street, Wray.

The owners noted the deed of grant dated 2nd April 1970 which was provided to them by Wray with Botton Parish Council stating that this deed grants access rights to Lancashire County Council, but no other person(s) are granted access.

The owners went on to object to the application on several points.

1. That the land in their ownership is the subject of a deposit under section 31(6) Highways Act 1980 and 15A(1) Commons Act 2006 lodged with Lancashire County Council on 1st April 2020.
2. Since their occupation of 32 Wennington Road the access in question has been closed to the public on several dates; Sunday 6th February 2011, Friday 6th February 2015, Saturday 1st June to Monday 10th June 2019 inclusive, Thursday 6th February 2010 and from Thursday 2nd April to Sunday 5th July 2020 inclusive during the 'lockdown'.
3. They noted that the Parish Council have placed great emphasis on paragraph 13 of a Lancaster City Council letter dated 18th October 1999 which relates to an amendment application dated 1st October 1999 in respect of the original planning permission for the building of 32 Wennington Road, Wray. Paragraph 13 states that a pedestrian access must be maintained to a minimum of 2 metres from Wennington Road to land to the south of the site.

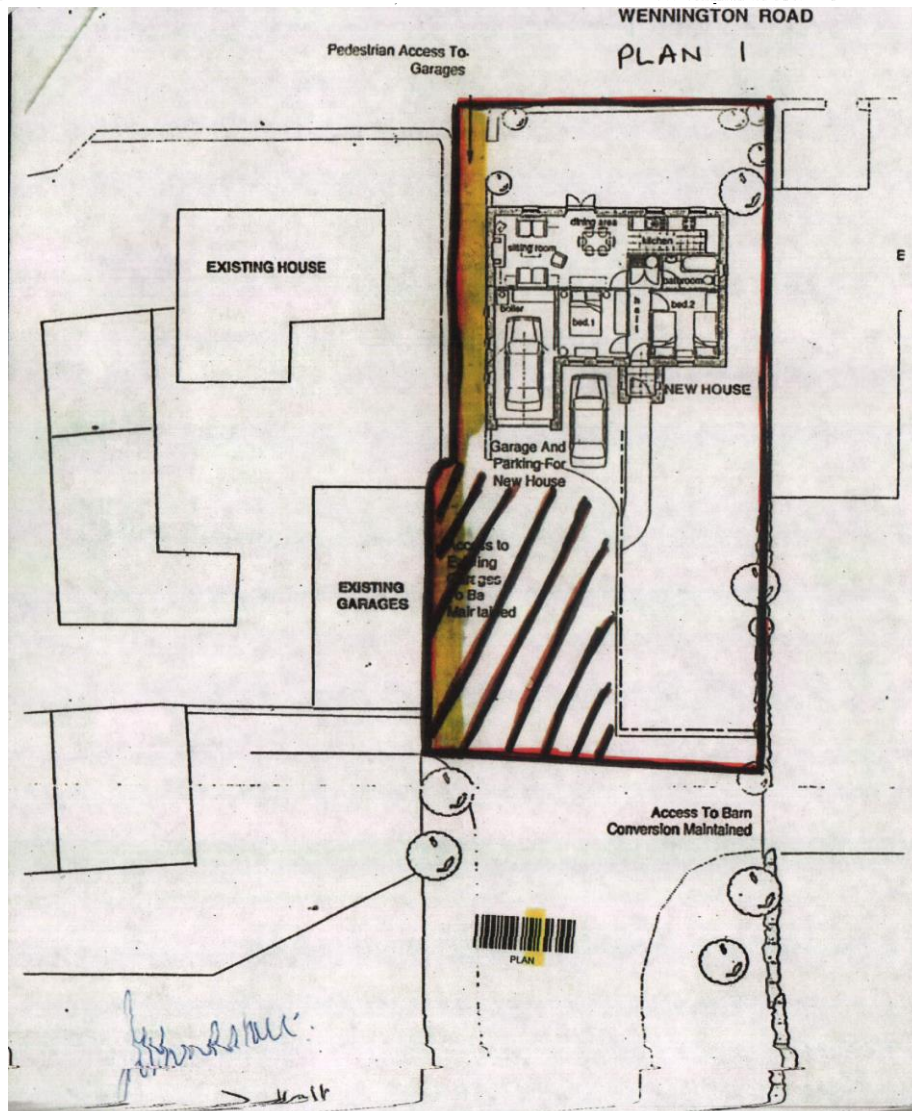
The landowner stated that they had taken several measurements from the building line of 32 Wennington Road to the boundary wall of 30 Wennington Road with the route actually varying in width from a maximum of 1.9m to a minimum of 1.6m. They therefore suggest that the clause at paragraph 13 is null and void. They noted that Lancaster City Council planning have been informed of this fact and asked for their observations but no response had been received. The owners went on to highlight a Land Registry document dated 25th November 1999 that shows the access to be only 1.8m wide and

that such access is for garage users only. A copy of this document was requested and provided, extracts are shown below.

3. Property

All that piece or parcel of land forming part of The Home Farm. Wray more particularly delineated and shown edged red on Plan 1 attached hereto (Plan 1) TOGETHER WITH the benefit of a right of way (in common with the Transferors and all others entitled to a like right) over the track or roadway leading from the land hereby transferred in the position shown for the purpose of identification edged brown on Plan 2 attached hereto (Plan 2) with or without vehicles and TOGETHER WITH ALSO with the full and free right to lay a new sewer or drain to serve the land hereby transferred along the said track or roadway edged brown to the main drain or sewer at the approximate point marked D on Plan 2 and a right of entry with or without workmen and equipment for the purpose of carrying out such works and for the purpose of the future repair maintenance and renewal of the said new sewer or drain laid in pursuance of the right hereby granted and also any existing sewer or drain serving the said land laid thereunder and thereafter the right to the free flow of water soil and effluent through such said new sewer or drain the Transferee or other person or company exercising such right making good all damage occasioned in the exercise thereof AND TOGETHER ALSO with the right to enter such part of the said track or roadway edged brown on Plan 2 with or without workmen and equipment for the purpose of carrying out such works as may be necessary to provide access to the land hereby transferred in accordance with any Planning Permission for the development thereof and to permit the Transferee to carry out such works at its own expense without any obligation on the Transferee to do so SUBJECT TO the following: -

A) A pedestrian right of way 1.8 metres in width shown coloured yellow on Plan 1 for all persons entitled to exercise the same.



4. The owners stated that the whole of the land in question is not suitable for designating as a Public Footpath as it is primarily used for vehicle access,

manoeuvring and parking whilst the Wennington Road end of the route opens directly onto the carriageway of the busy B6480 at a point where there is no footway on either side of the road. They state that safer and alternate access to both the school field and Home Farm Close are easily available.

5. They note that a precedent was set when, following its redevelopment, the opposite end of the former Home Farm track leading onto Main Street, Wray was, despite its use by the public as a cut through, closed off and gated. The owners state that date of this is not known but that it took place within the last 20 years.
6. The owners assert that "granting of a Public Footpath" at this location would possibly have a negative impact on the future sale values of both 32 and 30 Wennington, Road, Wray or make the properties more difficult to sell.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Some user evidence.
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by landowners to discourage use of the route.
- Map and other documentary evidence supporting the physical existence of the route since at least the 1960's.
- Part of the application route is (B-C) is owned by the applicants for the order.

Against Making an Order(s)

- Low number of user evidence.
- Action taken by current landowners of part of the route in 2019 to stating the route was permissive and would be closed which would set a date for S31 dedication and suggest no common law dedication during the current ownership.

Conclusion

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

As there is no express dedication 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 indicates that the route did not physically exist prior to 1960. The route was part of a wider access from Wennington Road to Main Street through Home Farm.

Sufficient as of right use agreed by the owners may be circumstances from which dedication can be inferred. Significantly, planning permission granted in 1999 to construct number 32 Wennington Road contains a planning condition requiring a public pedestrian access to be maintained from Wennington Road to the land to the south of the site. This route was to be a minimum of 2 metres wide, which is the generally accepted width required for the creation or diversion of a public footpath, however it is acknowledged that public footpaths can be accepted measuring less than 2 metres in width.

The planning permission demonstrates that at such time it was considered that a public route already existed and the Local Planning Authority intended for such to be maintained despite the new house being development around it. In addition the planning condition was seemingly accepted by the planning applicant as the condition was never removed or relaxed. As the route continued to be open and available (all be it slightly less than 2 metres in width) the condition was arguably complied with and the users state that they continued to use the route after the construction of the new dwelling up until 2019. Such action demonstrates that in 1999 the planning applicants had knowledge of the public using the route and further showed a willingness to allow the public to continue to use the informal footpath. The breach of planning condition 13 is an issue for the Lancaster City Council as the Local Planning Authority to consider and carryout the necessary enforcement action should they feel it appropriate.

The landowners suggest that part of the route A-B is not suitable as a public footpath as the route is primarily used for vehicular access; however, Committee is reminded that such suitability of a route and the existence of an alternative are not matters to be taken into account when determining the existence of a public right of way. Equally the negative impact on the value of a property although of concern to landowners is not a matter which the Committee can consider. Finally, the owners of the section of route A-B make comparisons to a precedent having been set for a similar route located the opposite site of Home Farm, Committee is reminded that each route is to be considered on its own evidence and that other routes cannot be used as comparisons.

The four users present evidence 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. The current landowners of part of the route A- B have indicated in a letter to Lancashire County Council that the section of route A-B has been closed off on four separate occasions between 1999 and 2019, however, the applicants and the users have not indicated any knowledge of such closures in their user evidence.

Looking next 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 obstructed in 2019; therefore, the 20-year period under consideration for the purposes of establishing deemed dedication would therefore be 1999-2019.

The applicant has provided four user evidence forms in support of the application, which refer to use of the route from as early as 1970. Three users provide evidence of use during the period under consideration. All users have referred to having witnessed other users whilst using the route themselves. Three of the users claim to have used the route on foot weekly and one user claims to have used the route monthly, and three users claim to have used the route 'as of right' with one user claiming to use the route via a private right granted in his property title deeds.

None of the users recall having ever been told that the route was not a public right of way, prior to 2019 nor do any users refer to having been turned back or having asked permission to use the route. 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 1999-2019.

Committee's attention is drawn to the fact that three of the four users claim to have used the route as of right, which can be viewed as a relatively low number. Committee should however note that the Applicant in this instance is the local Parish Council who are themselves representatives of the Wray Villagers. However, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that three users of the route are not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a footpath and fails to satisfy the statutory test.

The current owner of the land crossed by the route between point A and point B has submitted a Statutory Declaration under section 31(6) Highways Act 1980 to Lancashire Council dated 1st April 2020. Section 31(6) of the Highways Act 1980 enables landowners to protect themselves against public rights of way coming into existence, based solely on a period of use by the public but this only protects them from use of the route following submission of the declaration i.e. post 1st April 2020.

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, make an Order 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: 804-620		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

360400 000000

467800 000000

467800 000000

467700 000000

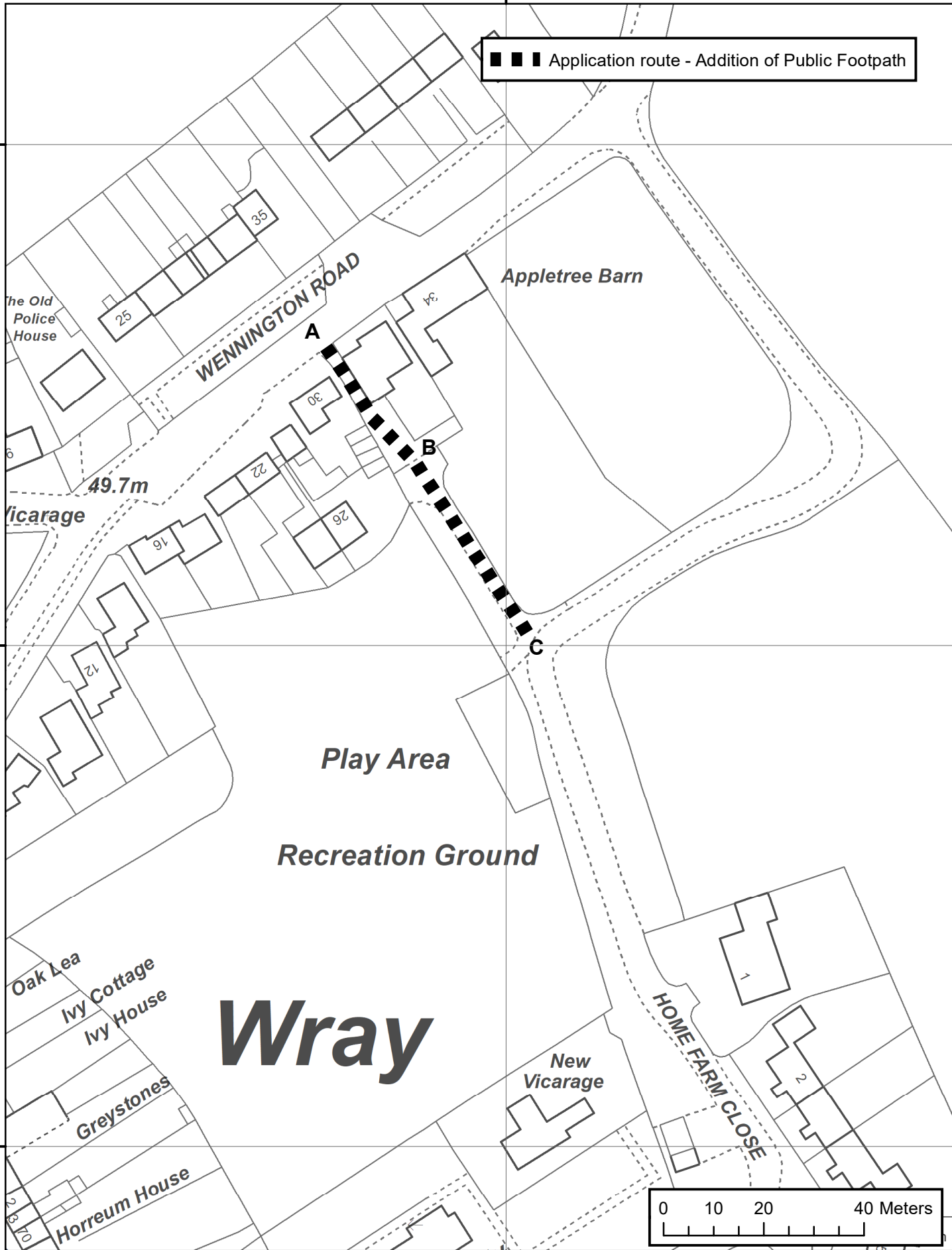
467700 000000

467600 000000

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360400 000000

■ ■ ■ Application route - Addition of Public Footpath



Lancashire County Council

Public Rights of Way PROW@lancashire.gov.uk 01772 530317

Wildlife and Countryside Act 1981 Addition of Public Footpath from Wennington Road to Home Farm Close, Wray with Botton

1:1000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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Wildlife and Countryside Act 1981

Addition of Footpath from Wennington Road to Home Farm Close, Wray

Photographs taken June 2020



Point A

Point B





Between point B and
point C



Point C

Point C





Point C

Regulatory Committee

Meeting to be held on 18th November 2020

Part I

Electoral Division affected:
Ribble Valley North East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Footpath along dismantled railway from Footpath Read 11 to Martholme Viaduct, north of Bridge Heyward Caravan Park, Read

File No. 804-618

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, simon.moore@lancashire.gov.uk

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

Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Footpath Read 11 along the dismantled railway to Martholme Viaduct, Read, in accordance with File No. 804-618.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from the junction with Footpath Read 11 along the dismantled railway to Martholme Viaduct, in accordance with File No. 804-618, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway from Footpath Read 11 to Martholme Viaduct, north of Bridge Heyward Caravan Park, Read.

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 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

Ribble Valley Borough Council

No response was received from Ribble Valley Borough Council.

Read Parish Council

Read Parish Council voted in support of the application but provided no further information.

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	7588 3413	Open junction with Footpath Read 11
B	7586 3413	Metal gate and fence across application route
C	7521 3395	Junction with north eastern end of Martholme Viaduct

Description of Route

The application to record the route as a public footpath has been made based on user evidence predating 2001.

As such how the route looks today – in 2020 – is not necessarily relevant because whilst there is no uncertainty as to the alignment of the application route being along the dismantled railway the existence of any signs, gates, barriers, ditches or overgrowth for example, may now be very different.

Whilst the application route ends at point C – on the boundary of the viaduct – it is noted that in 2020 it is now possible to continue south west from point C to cross the viaduct and continue along the dismantled railway. It should also be considered that the viaduct itself is of interest both for the spectacular view it provides and for the historical railway architecture.

The viaduct is owned by Railway Paths Limited who purchased it in 2001. The applicants explained that since 2017 permissive access onto the viaduct has been allowed from the south western end of the bridge although a barrier remains across the north eastern end of the viaduct (on the land ownership boundary) at point C.

When a previous application was made to record the route (including the section across the viaduct) as a public footpath a site visit was carried out in 2004 by the county council and photographs taken. This inspection forms the basis of the observations detailed below as it gives a better indication of what the route looked like towards the end of the period of time during which public use of the route is claimed (mid 1960s to 2001).

The application route is shown on the Committee plan between points A-B-C and is a total length of approximately 730 metres.

It commences at a point where the access road leading to Bridge Heyward Caravan Park, Heyward House and Squires Cottage crosses a dismantled railway. This is an open junction with Footpath Read 11 (point A on the Committee plan).

The application route extended in a westerly direction across a wide area as a substantial track along the former railway for a short distance to point B, where in 2004 the Investigating Officer reported that the route was crossed by a large metal gate and fencing. The gate was reported as being locked and warning notices stating that the land was private and that persons should not trespass were clearly evident.

At that time it was noted that it was possible to get round the fencing and gate on foot by squeezing through some broken fencing and trees to get back onto the former railway line (application route).

Beyond the gate at point B the application route extends in a generally westerly direction along the dismantled railway. In 2004 it was apparent that this initial stretch was being used by vehicles and a wide (4-5 metres) track was in existence running along the dismantled railway with access branching off the track into adjacent fields and pedestrian access from the caravan park onto the dismantled railway (and application route).

Midway between point B and point C the track became less visible and it was noted that it did not appear to be used regularly by vehicles. It passed through trees along a 4-5 metre wide track to continue to point C where further signage stating that the land was private was evident.

At point C the application route meets the north eastern end of the Martholme Viaduct where in 2004 it was reported that there was a barricade of trees and bushes placed across the end of the structure and an excavated trench to a depth of approximately 1 metre. It was noted at that time that it was possible to climb over the trees and that there were three points where people may have crossed this feature to gain access onto the viaduct.

Details of previous application for a footpath along the same route

In 2002 the county council received an application to add this same route to the Definitive Map and Statement based on user evidence. At that time the application also included claimed use of the route across the Martholme railway viaduct (continuing south west from point C) to link to its junction with land owned by the county council on which there was (and still is) a concessionary bridleway along a former railway line.

The application was rejected by the county council's Regulatory Committee meeting held on 15th September 2004 with further information considered at its meeting on 14th November 2004. Both reports are included as Appendix A to this Committee Report.

Further to the Regulatory Committee rejecting the 2002 application the applicant appealed the decision to The Government Office for the North West.

The Government Office considered the evidence submitted in support of the application and issued a decision letter dated 25 April 2005 (Appendix B to this report). The Secretary of State dismissed the appeal stating that they did not propose to direct the county council to make a Modification Order because based on the evidence before them they did not believe, on balance of probability that a public footpath existed or was reasonably alleged to exist over the claimed route.

This new application to be considered in 2020 relates to most – but not all - of the route considered in 2004-2005.

The original application was made based on user evidence from the 1960s when the railway ceased to exist until late in 2001 when the county council erected a secure fence at the viaduct. This new application is also based on user evidence prior to 2001 with some additional supporting map and documentary evidence.

The objectors to the original 2002 application stated that there was no public right of way along the route and that since the closure of the railway barriers and gates had been in place at various locations along the route and signs erected stating that it was private.

Specific reference was made to a challenge being made to the use of the route by a gate being locked at the viaduct in 1993 and then a substantial fence being erected at the viaduct in 2001. Neither of these structures were located on the application route to be considered in this report although their relevance will be assessed in the section headed Legal and Democratic Services observations.

In addition, in refusing the original application in 2004 it was reported that there was some suggestion of a barrier at 'the Read end' of the application route (point B on the current application route) and an argument put forward by the objectors that whilst barriers and signs erected along the route did not prevent access they argued strongly that they indicated an unwillingness on the part of the landowners to dedicate the route as a public right of way.

In 2020 a new application was submitted for a route commencing at a point on Footpath Read 11 (point A on the Committee plan) extending as far as, but not across, the viaduct – to point C on the Committee plan together with an explanation that the applicants had been successful in getting the Martholme railway viaduct opened up 'to the general public' again in 2017.

Map and Documentary Evidence

The application route is based entirely on a disused railway track. The railway line was built in the second half of the nineteenth century as the Lancashire and Yorkshire Railway, Great Harwood loop, with the line from Great Harwood to Padiham being completed in 1877. The last passenger train ran in 1957, with goods traffic ending in around 1964 with the track removed shortly afterwards.

The usual comprehensive list of maps, plans and other documents examined as part of a Definitive Map Modification application process – dating back to the late 1700s – have not been examined in this case.

The fact that the route could only have come into existence following the closure of the railway in around 1964 is not disputed and whilst modern OS digital mapping shows the route denoted as a 'track' with lines across it at point B and point C it is not known from the map evidence when these structures were erected across the route or whether it was possible to pass through them.

The application is therefore primarily one based on user evidence and whilst modern mapping (post 1960s) confirms the physical existence of the route since that time, the map evidence does not assist in determining what its status may be.

However, items of map and documentary evidence submitted by the applicant are detailed below together with Ordnance Survey maps located by the Investigating Officer followed by a summary of highway records and the Definitive Map records held by the county council.

Aerial photographs are not included as part of the investigation as when they were inspected they provided no assistance in determining the status or existence of the route and tree cover meant that it was not possible to see what access restrictions may have existed along the route at any point in time.

Document Title	Date	Brief Description of Document & Nature of Evidence
OS 1 inch OS map Sheet 95 Blackburn & Burnley	1967	1 inch OS map fully revised 1958, major roads revised 1966 and reprinted 1967



Steep Gradient 1 in 5 or steeper		1 in 7 to under 1 in 5		Marsh
Paths and Tracks				Bracken, Heath & Rough Grassland
Heights in feet above Mean Sea Level	{ surveyed by levelling 275 { not surveyed by levelling 1091			
Triangulation Pillar				Boundaries
Intersection, Lat & Long at 5' intervals (not shown where it confuses important detail)				National Civil Parish Co Boro or Cou
Public Paths	{ Footpath (right of way on foot) { Bridleway (right of way on foot and on horseback)			Publ on
Road used as public path				The

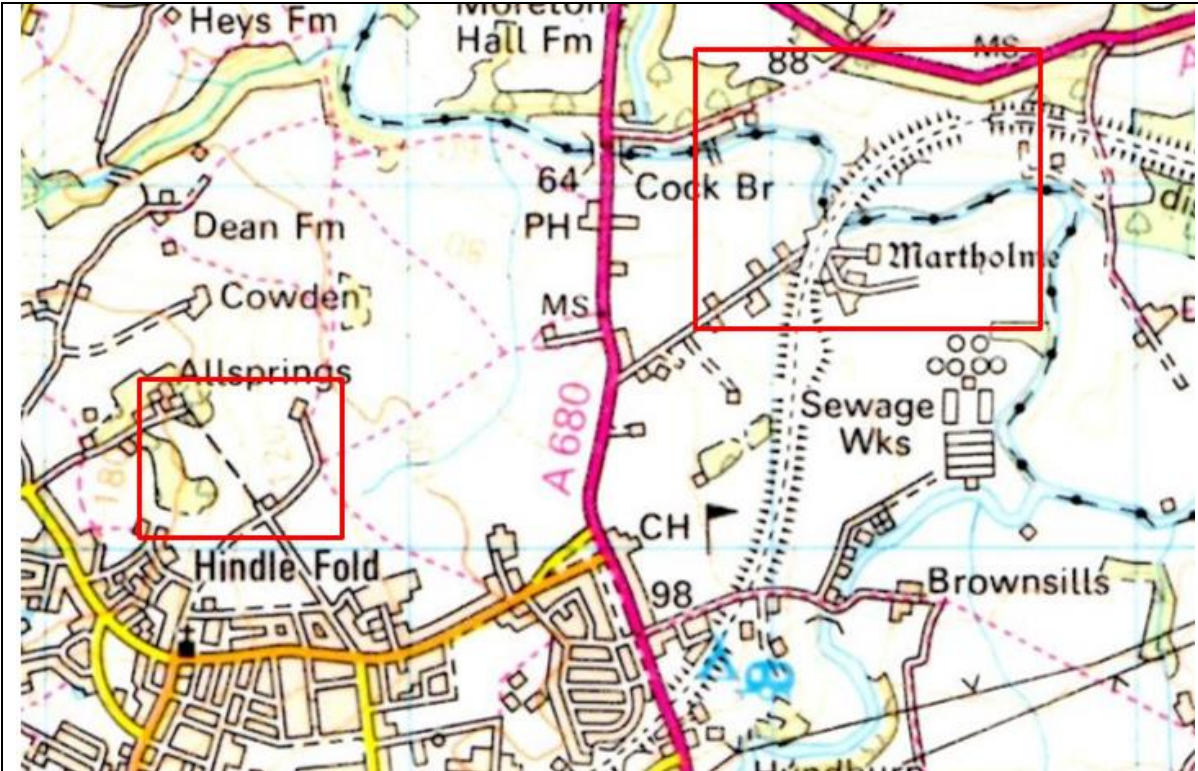
Observations		This small scale OS map clearly shows the former railway line and labels 'Tk of old Rly' (track of old railway) further south. The section of railway line crossed by the application route is shown and a long dashed line is shown along the former railway (including the application route) and denoted in the map key as 'Paths and Tracks'.
Investigating Officer's Comments		This map was revised in 1966 and shows the railway track as having been removed and a track along it. This is consistent with the information regarding the closure of the railway in 1964 and the removal of the track (rails and sleepers) shortly afterwards. It is also consistent with the track bed (ballast and sub-ballast) still being visible. The fact that the application is shown in such a way on this map is consistent with the earliest user evidence provided and suggests that access along the route was possible on foot in 1966.
OS 1:50,000 Landranger Map	1973	Extract of OS Landranger map at a scale of 1:50,000 submitted by the applicant and stated as being the 1973 edition. Date of survey not known.



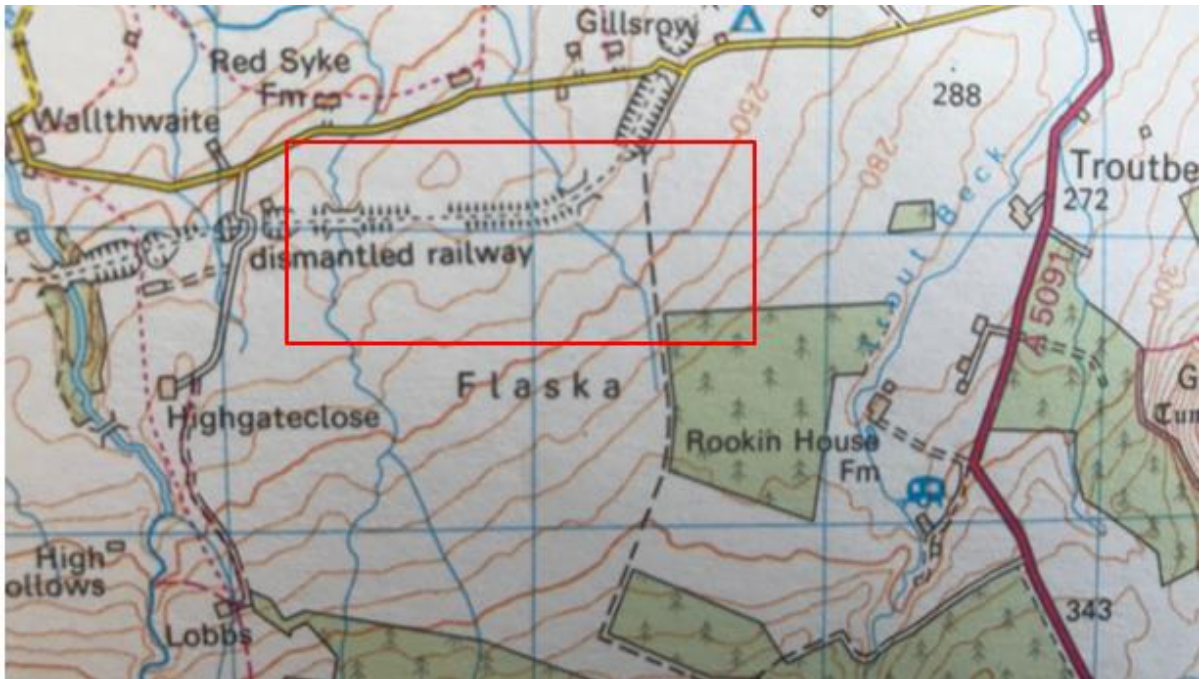
Observations		The map extract provided by the applicant shows the application route in the same way as the earlier
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		1 inch OS map published in 1967. A track (black dashed line) is shown along the former railway bed including not only the application route but also the sections continuing from point A and point C either way along the dismantled railway.
Investigating Officer's Comments		A track is shown on the map which may have been accessible to walk along at the time that the map was published (1973) consistent with the user evidence detailing use of the route at that time. However it is also consistent with the track bed (ballast and sub-ballast) still being on the ground at the time.
OS 1:50,000 Landranger Map	1986	Map extract provided by the applicant and said to be dated 1986. Date of map revision unknown.



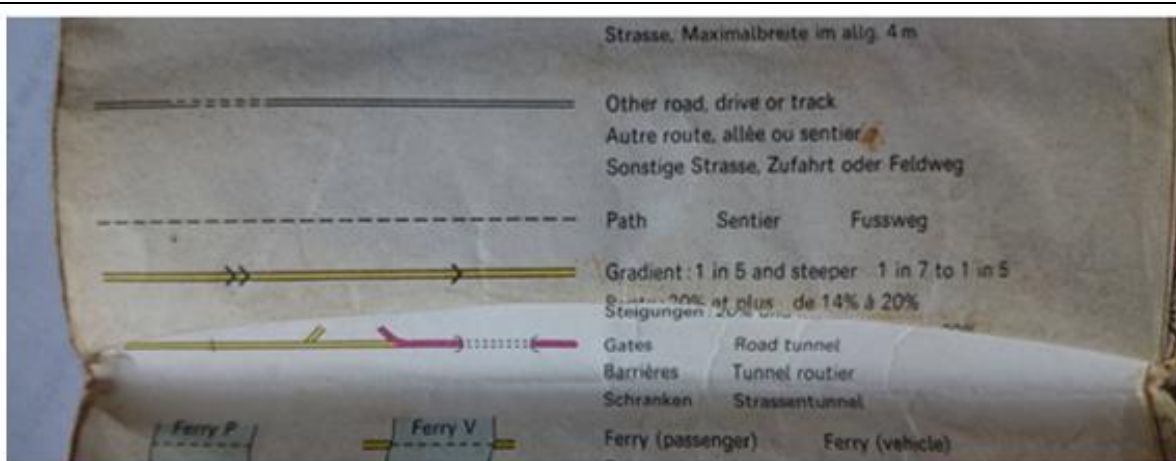


OS Map provided by applicant



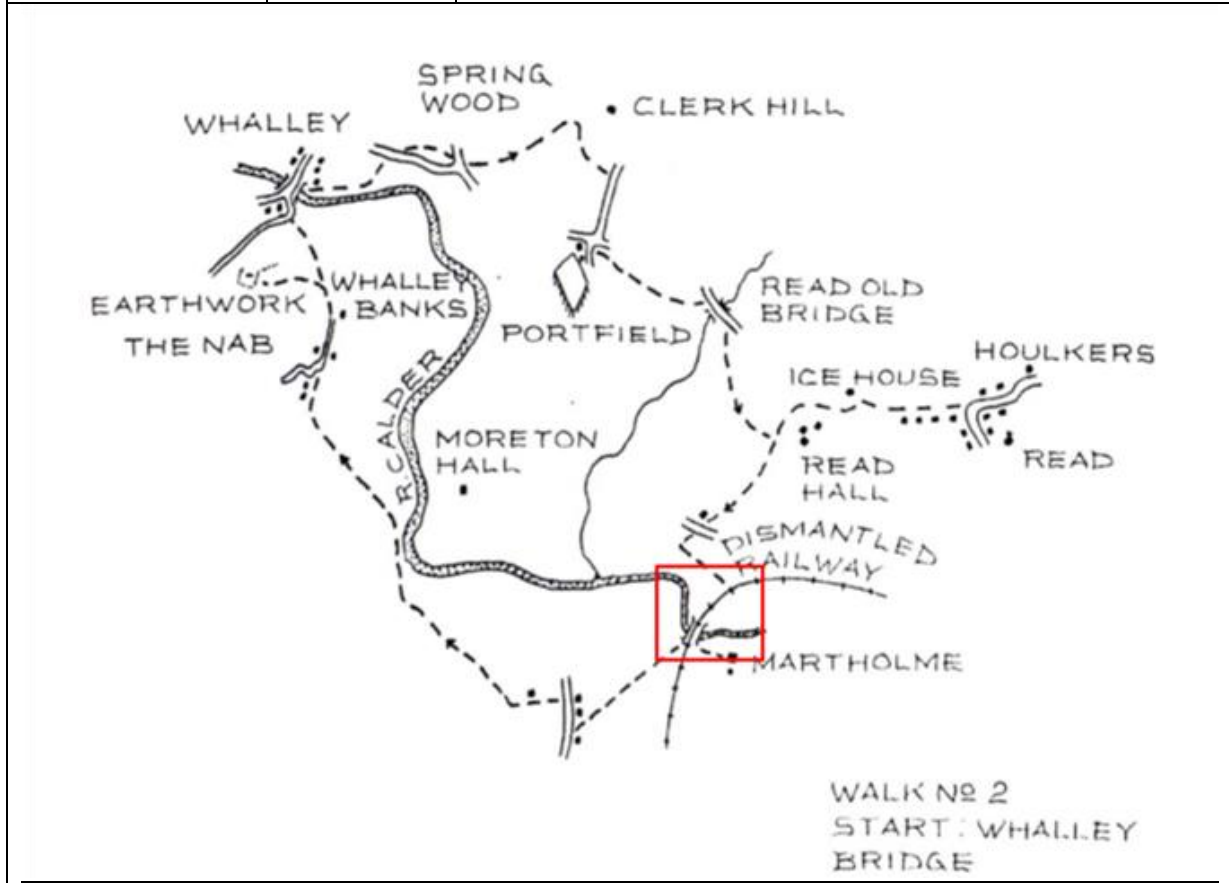
	Other road, drive or track
	Autre route, allée ou sentier
	Sonstige Strasse, Zufahrt oder Feldweg
	Path
	Sentier
	Fussweg
	Gradient: 1 in 5 and steeper
	1 in 7 to 1
	Pente: 20% et plus de 14% à 20%
	Steigungen: 20% und mehr 14% bis 20%

OS Sheet 90 revised 1987 published 1988



<p>Observations</p>	<p>This map extract was provided by the applicant and shows the application route with a short-dashed line along most of its length. The key to the map was not included but there are distinct differences between the length of the dashes shown along the dismantled railway (including the application route) and other dashed lines shown on the map which appear to indicate the existence of paths or tracks and which are clearly shown as longer lines between the spaces.</p> <p>On the OS map provided by the applicant, access along the application route appears to be unrestricted apart from at the end of the embankment which extends west from point A where a line is shown across the route.</p> <p>Looking at a different 1:50 000 OS Landranger map (Sheet 90 – Penrith, Keswick and Ambleside) published in 1988 it can again be seen that a different length of line was used along a dismantled railway as was used to denote a path (as detailed in</p>
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		the map key) nearby. This is in comparison to a further OS Landranger Map published in 1992 which shows the longer dashes along a section of dismantled railway which is clearly denoted as cycletrack as opposed to another section of dismantled railway shown with shorter dashes/lines.
Investigating Officer's Comments		The application route may have been accessible to walk along at the time that the map was published (1986). However, the depiction with short dashes when a long dash version for 'path' was available and used on maps published at that time is inconsistent with depicting a path with significant use. This is further illustrated by the fact that a route labelled as a cycletrack along a dismantled railway (in another part of the country) was also shown depicted with longer dashed lines.
Historical Walks Around Pendle	1988	Extract from a book titled 'Historic walks around Pendle' by John Dixon published 1988 ISBN: 0852 06 9340



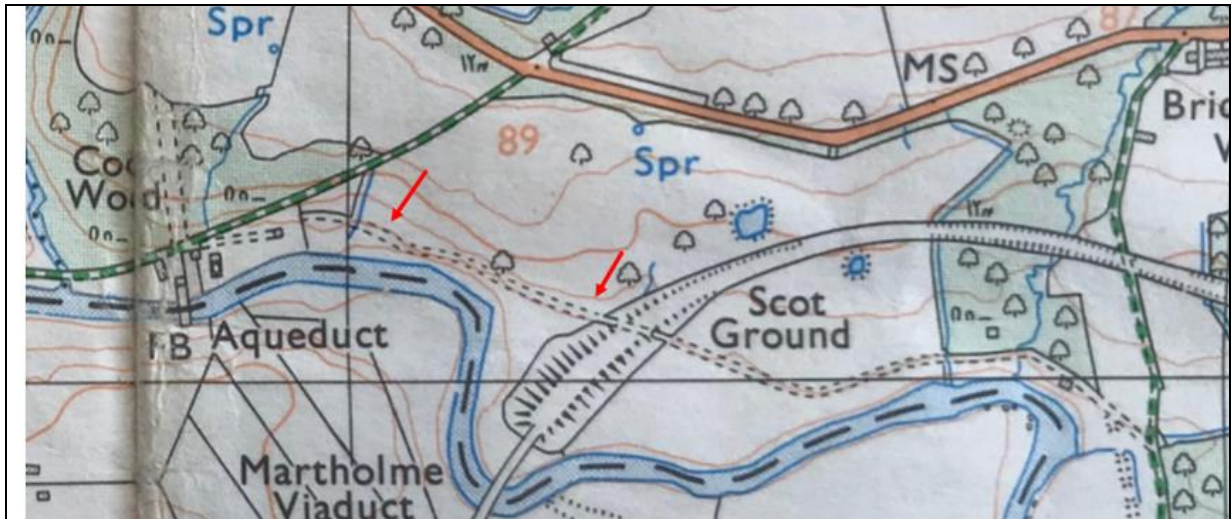
Read Hall to Martholme

Walk down the lane on to road. Cross road to go through a gate opposite. Walk on to go over stile by a gate on the left. Walk across the field directly to go over stile by a tunnel and up the banking on to the disused railway line. Go right and walk along the path to cross the bridge. At the end of the bridge go down the steep banking on the right to the roadway, turn right and walk on to Martholme. (The dismantled railway is now a much used track by walkers from Great Harwood and Padiham).

Extracts from the book



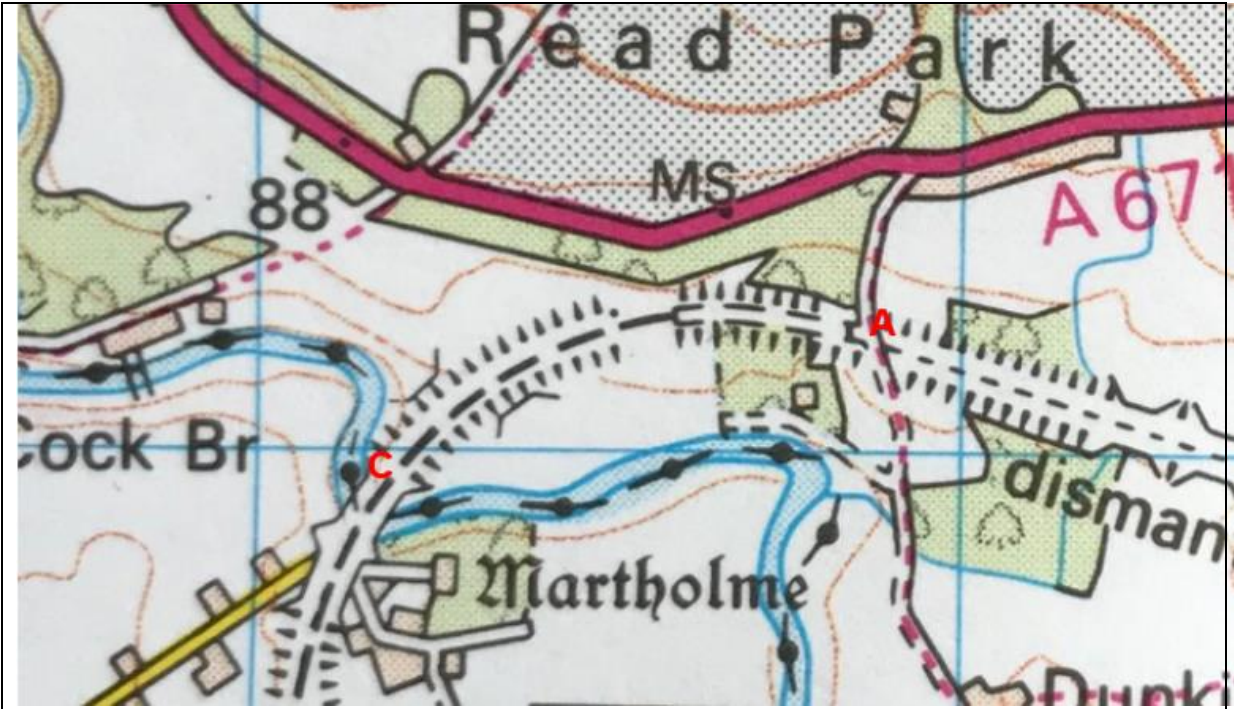
Plan showing recorded public footpaths (in purple) and the approximate route of the path described in the book marked by a series of red circles linking Footpath Read 46 to the application route (grey dashes)

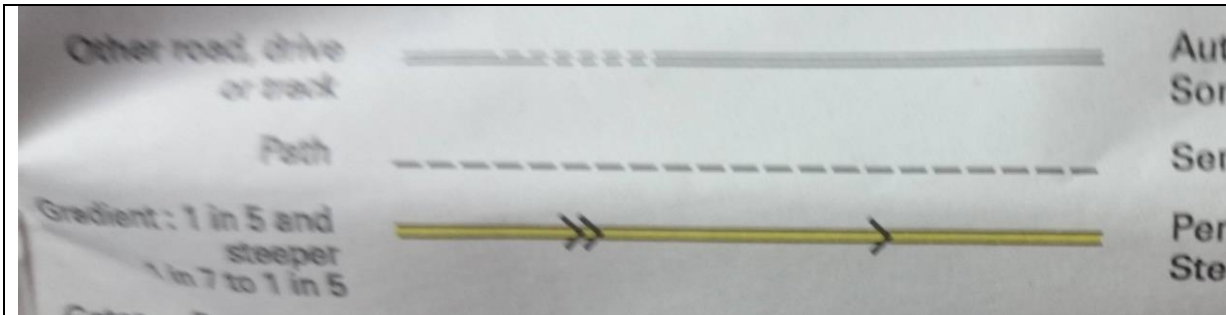


OS Pathfinder Map showing track (denoted with double pecked lines) between Footpath Read 46 and passing under the application route (dismantled railway)

<p>Observations</p>		<p>The author describes a walk around Read and Whalley that includes use of part of the application route. From the description of the walk it appears that having walked from the village of Read past Read Hall on Footpath Read 2 you then crossed Whalley Road to continue a short way along Footpath Read 46. The route is then shown on the hand drawn map to leave Footpath 46 and continue in a south easterly direction across a field to a stile over which it was possible to gain access to the dismantled railway (and application route) part way between point B and point C. The route across the field is not recorded as a public footpath although a track – partly consistent with what is described - is shown on the OS Pathfinder Map 680 (SD 63/73) leading to a tunnel under the dismantled railway which appears to be the tunnel referred to in the book. The walking book then describes the route as continuing along the application route past point C and over the railway viaduct.</p> <p>The writer also notes that the dismantled railway is much used by walkers.</p>
<p>Investigating Officer's Comments</p>		<p>The inclusion of the route in a local walking guide supports the view that the route was used at least on foot by the public in 1988 and that access was available onto the viaduct at point C at that time. It should be noted however that the route onto the dismantled railway (application route) was not recorded as a public footpath and is not evident as a path on OS maps and it is not known by what authority that route – or the application route - were included in the walking guide or whether the author considered them to be part of the public rights of way network or not. The note that the dismantled</p>

		<p>railway was much used by walkers from Gt Harwood and Padiham, the towns at either end of this section of old railway, is not particularly necessary to people following the walk from the book and suggests some certainty in the writer's mind for including it.</p>
<p>Ordnance Survey Pathfinder 680 (SD 63/73) 1:25 000 scale</p>	<p>1988</p>	<p>OS Pathfinder map compiled from large scale surveys carried out between 1955 and 1975, Revised for significant changes 1979, Major Roads revised 1981, selected revisions 1985.</p>
<p>Observations</p>		<p>The map shows the disused railway line between point A and point C. No track is shown along the dismantled railway but access along the route does not appear to be restricted. The old railway is surrounded by a continuous line but no line across the 2 ends of the application route i.e. along the old railway.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and unrestricted access along it appeared to be possible. No inference can be made about whether access onto the route was possible.</p>
<p>OS Landranger 103 Blackburn, Burnley and Surrounding area</p>	<p>1994</p>	<p>1:50,000 OS map revised 1989, reprinted with selected changes 1990-93 with major roads revised 1994.</p>





Observations		The application route is shown with a path (black dashed line) shown extending along about two-thirds of its length. From point A access onto the application route is shown then there is a line across the route at point B. A further line is shown across the route approximately 220 metres west of point B at the end of the section marked as a cutting. The continuation of the old railway eastwards from point A, i.e. away from the application route, is shown as a short-dashed line not as a 'path'.
Investigating Officer's Comments		The application route may have been accessible in 1994 but access may have been restricted at point B and partway between point B and point C.
OS Explorer Map 19 West Pennine Moors 1:25,000 scale	1996	OS Explorer map revised and published 1996.



National trail or Recreational path
 Selected cycle route, off and on road
 Permitted Path
 Permitted Bridleway
 Permitted Bridleway coincident with right of way

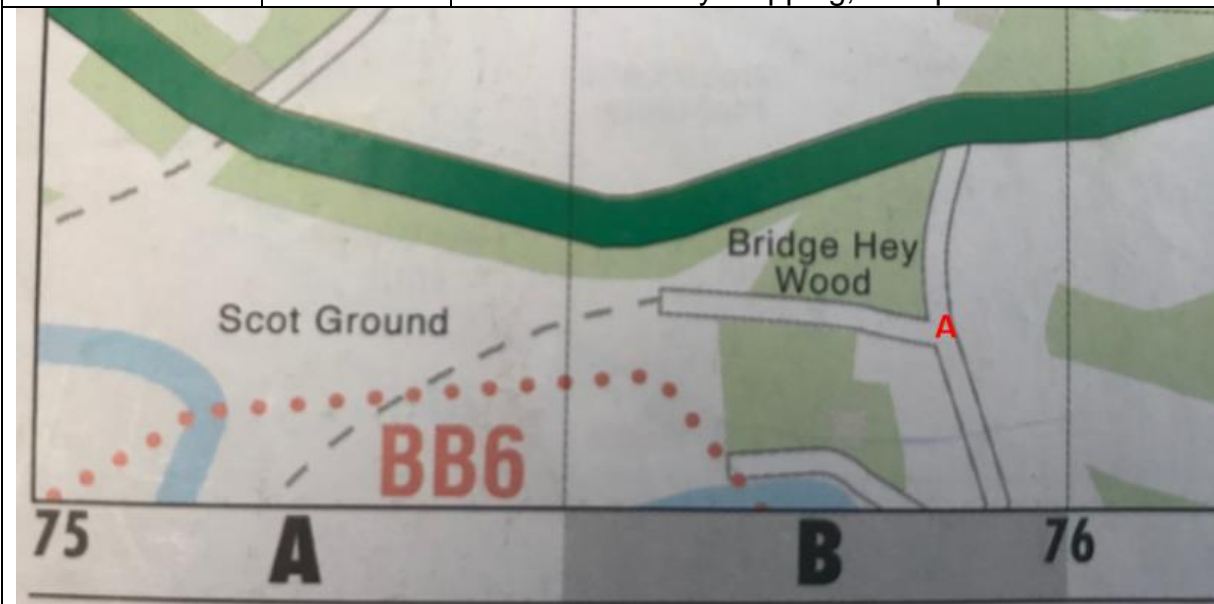
Paths and bridleways along which landowners have permitted public use but which are not rights of way. The agreement may be withdrawn

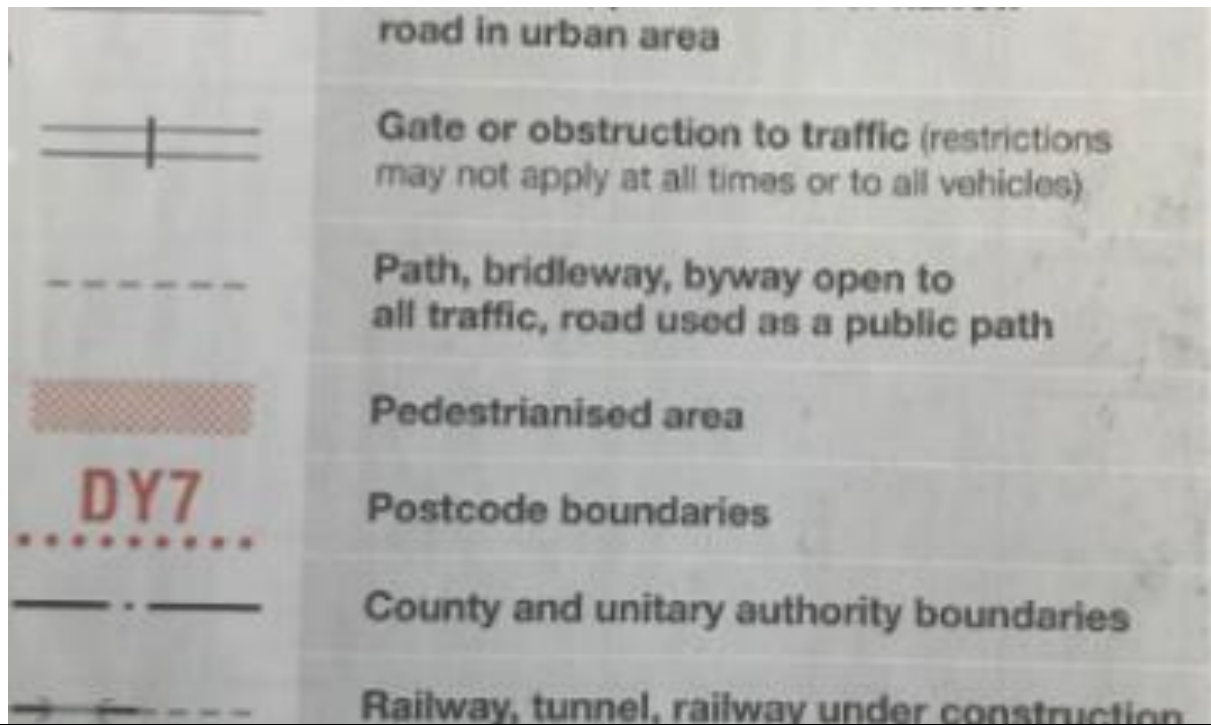
PUBLIC RIGHTS OF WAY
 (Not shown on Scottish sheets)

Public paths {
 Footpath
 Bridleway
 Byway open to all traffic
 Road used as a public path

Information not available in uncoloured areas

Observations		The map shows the disused railway line between point A and point C. No track is shown along the dismantled railway but access along the route is not shown to be restricted at the (unknown) survey date. A route marked as a permitted bridleway is shown along the old railway to the south of Martholme Viaduct. The boundaries of the old railway are shown as unbroken lines
Investigating Officer's Comments		The application route existed and unrestricted access along it appeared to be possible. No access is shown onto the application route except for continuations along the old railway from points A and C.
Lancashire Street Atlas	1997	Street Atlas published by Philip's based on Ordnance Survey mapping, First published 1997





Observations		The application route is shown as a substantial route extending from point A to midway between point B and point C. It is then shown to continue across the viaduct (through point C) marked as a thick dashed line which is defined in the key as being a 'Path, bridleway, byway open to all traffic, road used as public path'.
Investigating Officer's Comments		The application route existed in 1997. The inclusion of the application route as part of a longer route in this street atlas is suggestive of the fact that access was available along the route at that time.

OS Landranger Map	2001	Further map extract provided by the applicant said to be dated 2001. Date of revision not known.
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	Strasse, im allg. unter 4m breit
	Other road, drive or track
	Autre route, allée ou sentier
	Sonstige Strasse, Zufahrt oder Fe
	Path
	Sentier
	Fussweg
	Gradient : steeper than 20% (1 in 5)
	Pente : Supérieure à 20% (1 pour 5)
	Steigung über 20%

Observations		The application route is shown with a path (black dashed line) shown extending along 2/3 of it. From point A access onto the application route is shown with a line across the route at point B. A further line is shown across the route approximately 220 metres west of point B at the end of the section of the section indicated as running along an embankment on the map. A shorter-dashed line is shown along the old railway east of point A.
Investigating Officer's Comments		The application route may have been accessible in 2001 but access may have been restricted at point B and partway between point B and point C. A path, in contrast to the shorter-dashed line, is shown along much of the route.
Definitive Map Records		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. The Parish Survey, Draft, Provisional and First

		Definitive Maps all pre-dated the closure of the railway and therefore do not shown the application route.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The application route is not shown on the Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From the dismantling of the railway through to 1975 there is no indication that the application route was considered to be a public footpath by the Surveying Authority. There were no objections or representations made regarding the route when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>

Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route 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.

The affected land/specified parts of the land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

All of the land crossed by the application route has been in the registered ownership of Mr P Hanson and Mrs J Hanson since 2008 (registered title LAN857376). Prior to this time it was in the registered ownership of other members of the Hanson family.

Of particular interest to the applicants is the exact date from which the Hanson family have owned the dismantled railway. The original application for a footpath across this land referred to ownership of this stretch of the application route commencing following closure of the railway and although not stated in the report – or Secretary of State report - the assumption appeared to have been that this dated back to the track being removed and claimed use of the route being made.

Landownership documentation refers to a conveyance dated 12 October 1979 between British Railways Board and Hilda Hanson and refers to land tinted blue on the Land Registry plan. The land tinted blue is the dismantled railway suggesting that the Hanson family purchased the land crossed by the application route in 1979 and that prior to that time it was owned by British Railways Board.

The landowners have been asked to confirm when exactly they purchased the land crossed by the application route and confirmed that it was circa 1976.

Summary

There is very little map or documentary evidence to support or counter the application to record the route as a public footpath. Ordnance Survey maps confirm the existence of the railway and the fact that once the railway had closed the line was dismantled. The one inch OS map published in 1967 confirms that the railway had been dismantled by that time and shows a 'path' along the former railway line including the application route.

There is no modern map evidence to corroborate exactly when any gates or barriers were erected across the route although a structure is shown across the route at point B on the 1994 edition of the Landranger OS map which was revised in 1989. This shows a line across the route at point B and another at the western end of the embankment midway between point B and point C and these are also shown on later editions of the same map. The Landranger map submitted by the applicant and said to be dated 1986 shows the line across the route at the end of the embankment midway between point B and point C but not at point B. The existence of gates and/or barriers does not necessarily mean that access was prevented along the route but this will require further clarification from the user evidence and from information provided by the landowners and others.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicants explained the reasons why this route would be beneficial but such reasons cannot be considered in connection with a definitive map modification order which must be assessed on whether or not public rights already exist.

The applicants consider that the original application (as reported to the county council's Regulatory Committee on 15th September 2004) had some issues which needed to be redressed. The new application to be considered by Committee will take account of all available relevant written evidence recounting people's recollections of the route. The county council has no reason to believe that those

giving evidence in support of or objection to the application are untruthful in their recollections relating to the route although they will inevitably vary. The new application presented being to Regulatory Committee, whilst taking into account the relevant information available when the first application was considered, is a new application for only part of the original route and with some different evidence to consider. It is not an opportunity to review the original decision, made on the basis of evidence presented at that time and which was reviewed and dismissed by the Secretary of State but it is an opportunity to consider all relevant evidence in support of or against this new application.

32 user evidence forms were submitted in support of the application, 25 with the application, a further 7 on 24th July 2020. The user evidence is summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1965 and up to 2001.

20+ Years	Unambiguous use from 1981 to 2001	1-19 Years
10	6	16

Frequency of Use

The majority of the 53 users stated that they used the route weekly, monthly or yearly with four stating that they used the route daily.

Daily	Weekly	Monthly	Yearly (From 1 to 7 times per year)
4	10	9	9

Reasons for Use

The majority of users specified pleasure or recreation as their reason for using the route. Three users specified dog walking as a reason for use, two noted using the route to commute to work and one mentioned using the route to enjoy local wildlife.

The majority of users recorded their use as on foot, with many also noting use on bicycle.

One user noted using the route on a mobility scooter as well as using it on foot.

One user did not specify how they used the route.

Foot	Bicycle	Foot and Bicycle	Foot and Mobility Scooter	Not Specified
16	4	10	1	1

Other Users of the Route

All users recorded having seen others using the route, with others' use varying from on foot to on horseback and mobility scooter.

Other Users Seen				
Foot	Foot and Bicycle	Foot and Horseback	Foot, Bicycle and Horseback	Foot, Bicycle, Horseback and Mobility Scooter
8	10	4	9	1

Consistency of the Route

The majority of the 32 users stated that the route had always followed the same route, only two recorded an answer of 'no' to this question but both went on to refer to sometimes following a different route branching off at the opposite side of Martholme Viaduct and not relating to the application route.

Unobstructed Use of the Route

None of the 32 users recalled having been prevented from using the route before 2001. From this point many noted they were prevented from using the route by a fence erected across the end of the Viaduct.

Ten users noted a fence blocking the route where it meets Martholme Viaduct with six of these seven stating that the fence was erected in 2001. One user noted a fence and barbed wire at this location circa 1996 or 1997.

Four users stated the obstruction erected at the viaduct in 2001 was a gate, rather than a fence.

Nine users noted a ditch/depression/dip at the end of the viaduct prior to 2001 which did not prevent use.

Two users noted refuse and/or farm waste blocking the route circa 2001, one of these also noted rotting carcasses dumped on the route.

Only one user mentioned stiles though it appears the location of the stile is not along the specific section which forms the application route.

Five users recorded seeing signs/notices along the route. Two noted these as foot and mouth notices erected in 2001. One noted a sign at the caravan park denoting it as an archery area in the 1980s. One noted seeing signs after 2001 but provided no further details and one noted a No Entry sign erected in 2000.

In addition to the user evidence the applicant also provided correspondence route from Burnley and Ribble Valley MPs expressing support for the application route but this correspondence provided no further evidence in support of recording the route.

Information from Others

The acting Head of Estates Management for Railway Paths Limited (RPL) – who own the Martholme Viaduct – responded and explained that they are a charity which holds land with a view to its development as walking and cycling routes.

Martholme Viaduct is held by RPL in isolation from any adjoining land so does not form a part of any route as such. He explained that for many years access to the viaduct was prevented by security gates and fencing at the SW end but that since taking ownership they agreed with a local volunteer group that they would permit limited access if they were able to maintain the deck of the viaduct in a safe condition.

He explained that RPL support 'the creation of a through route' and would prefer this to be open to pedestrians, cyclists and potentially equestrians. However they would oppose the creation of public rights over the viaduct but would however be keen to allow permissive access.

These comments of RPL refer to creation of rights – this is not relevant to whether rights already exists except to indicate that RPL do not wish to dedicate public rights over the viaduct itself which they have owned since 2001.

Friends of Padiham Greenway provided a letter in support of the application noting that the application route falls between the two sections of cycle route 685 which follows the old East Lancs loop line to Great Harwood and Padiham and that these existing routes are used extensively.

Whilst this letter of support states that it is in favour of the application and states use of adjoining public rights of way no further information supporting the existence of public rights over the application route was provided.

Information from the Landowner

The owners of Bridge Heywood Caravan Park over which the length of the application route runs provided further information relating to when the land entered family ownership the stated date of transfer being 10th May 1978.

The owners also stated that they never wished to dedicate the land as 'open to the public' and raised an objection to the application whilst noting the previous refused application.

They highlight a barrier hung on metal posts and locked in place, erected where the application Route meets Dunkirk Farm Lane soon after the land was purchase, along with a home-made wooden painted sign stating 'Private Land No Right of Way'. Photographs were provided, as shown below. This was followed by a new gate and fence in later years.



Old original gate at Dunkirk Farm end of viaduct
(Always kept locked before new gate was made)



Old gate post, behind new gate (closed)

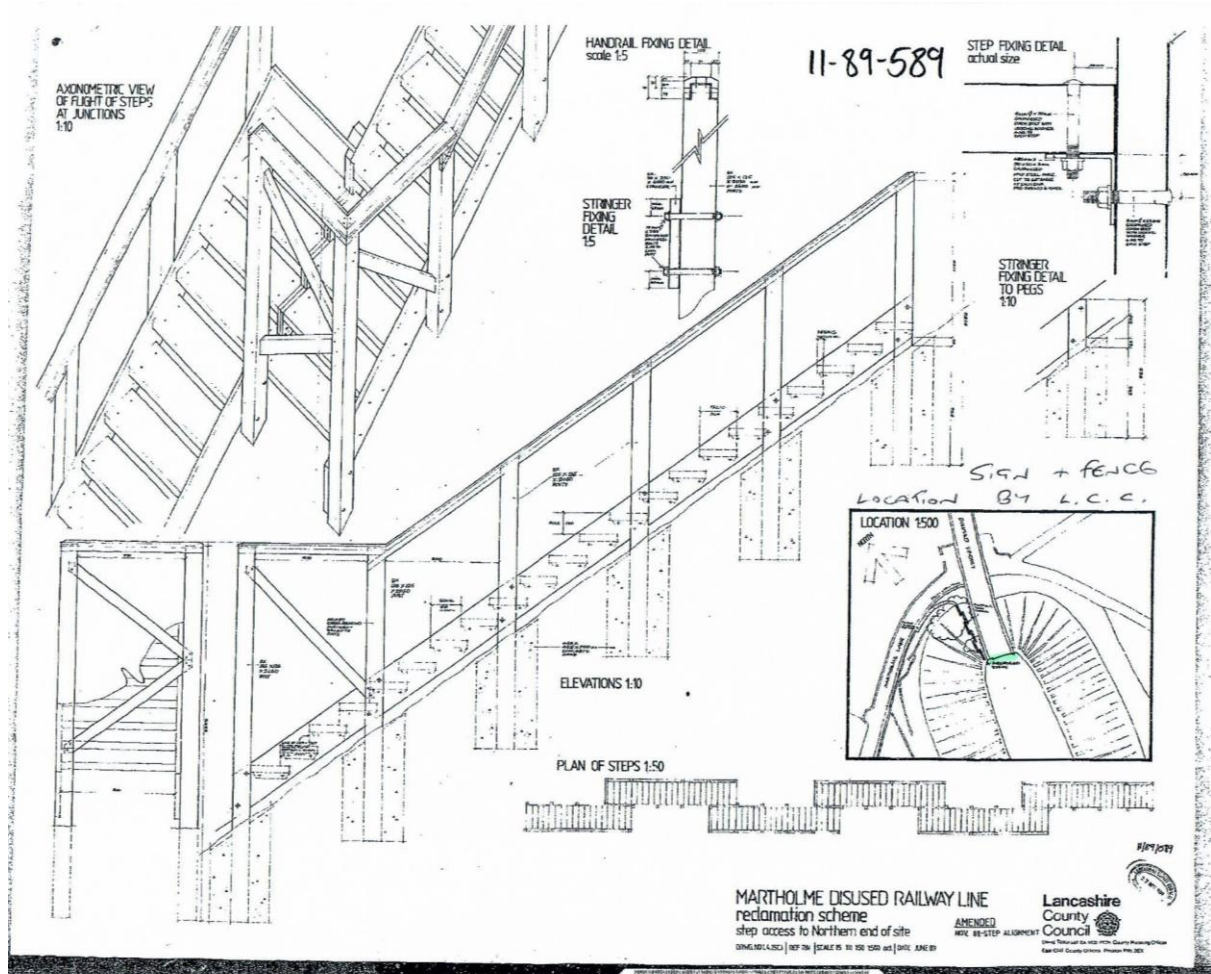


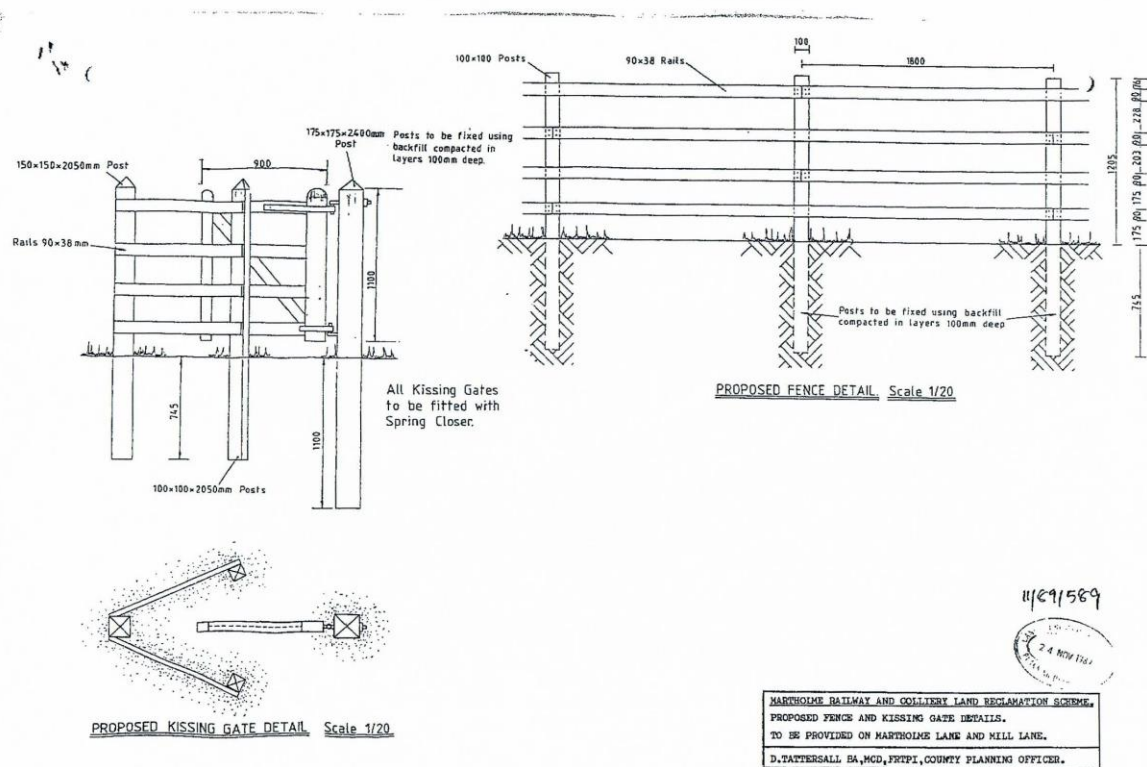
The landowner also states a similar sign was erected where the viaduct meets their land and that brackets and metal cables supporting a mesh fence were erected here, again soon after the land was purchased, a photograph of the fixing points was provided.



The landowner states that over time this fence was disturbed and consequently trees were felled and the ditch noted in the user evidence was dug to create a barrier.

Prior to this the landowner noted a planning application made by Lancashire County Council in 1989 to establish a path to the southern end of the viaduct but not across it, with steps created down to Martholme Lane. The landowner highlights that a wooden fence and sign were erected at this time to prevent access across the viaduct which they believe to have been in the ownership of British Rail at the time. Details of the steps and fence are shown below.





The landowner notes that this wooden fence was eventually replaced in 2001 by the metal fence currently situated at the northern end of the viaduct, erected as a result of the foot and mouth outbreak.

In addition to the landowner's written statement and the photographs and other documents several letters were provided, dating from 2002, written by residents of Bridge Heywood Caravan Park in response to the previous application. In summary these letters state that the land was always understood to be private with no public right of access. Some respondents wrote of concerns of vandalism and loss of privacy were a footpath to be recorded through the caravan park. Some noted the private, no access signs, the gates and other obstructions as well as clear recollections of the landowner and farm workers confronting people and informing them that the land was private.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence forms

Some of the map evidence

Against making an Order

Gates/fencing/barriers across the route

Some of the map evidence

Landowner's actions

Conclusion

Committee is invited to consider whether a dedication of public rights can be inferred, on a balance of probabilities, from all the circumstances at common law or deemed under S31 Highways Act 1980 or whether a public right of way is reasonably alleged to subsist.

Committee will be aware that an application was made in 2002 and included the route currently under consideration. The Regulatory Committee considered the application on 15 September 2004 and it was not accepted. The applicant appealed the decision and on 25 April 2005, the Government Office for the North West considered the application on appeal and dismissed the appeal. The current application relates to most but not the entire route considered previously by the Regulatory Committee. The route claimed is from Point A and ends at point C which is the boundary of the viaduct. Additional map and documentary evidence have been provided and it is therefore necessary to consider this new information along with all previous relevant evidence as a stand-alone application and the Committee's decision must be based on the evidence before it which may lead to the same or a different conclusion to previous decisions.

Looking firstly, at whether dedication can be inferred at common law. It is necessary to look at all the circumstances from which a dedication could be inferred. This can be from how the route was recorded on various documents or from circumstances. It is necessary to consider the period of use and the actions of landowners must also be considered to see whether they acquiesced in the use or whether they demonstrated by taking overt actions that they did not intend the route to be a public highway.

The landowners have taken overt action as there is reference to signs and physical barriers having been put up across the route during the relevant period and evidence to show these were replaced after becoming damaged. It is therefore suggested that to find actual dedication of this route by the owners at Common Law is difficult.

The Head of Service – Planning and Environment has considered the historical map and documentary evidence and concluded there was very little map or documentary evidence to support or counter the application.

Therefore, it is suggested that on balance there is insufficient evidence to infer dedication at common law.

Committee are advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied.

Committee will be aware that in order to satisfy the criteria of S.31 Highways Act 1980, 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.

In support of the application, 32 user forms were provided. Use of the route stems from 1965 until 2001 (when the fence was erected at the end of the viaduct). One user recalls a fence and barbed wire at this location during 1996/1997. Nine users recall a ditch/depression at the end of the viaduct prior to 2001 however; they maintain this did not prevent use. Five users claim seeing a sign/notice along the route and only one of these users state a sign was put up in 2000 stating no entry.

It appears on balance that the route was called into question in 2001 when Lancashire County Council erected a substantial security fence at the viaduct thus challenging the public's right to use the whole of the route. Committee should note that although this application is not claiming a route which continues past the viaduct, the fencing erected at the viaduct brought the whole of the route into question. For the current application under consideration, only one user recalls barbed wire and fencing in around 1996/1997 but states this did not prevent them from using the route but it does indicate the landowners challenging use. The 2004 Committee report found the route was also potentially brought into question in 1993 hence, as this is not a standalone application we can on balance be satisfied that the route was also brought into question in 1993. It is therefore reasonable to conclude that the 20 year periods under consideration would be from 1981-2001 and 1973-1993.

Committee will need to consider whether use was, 'as of right' and uninterrupted. Committee will note that the previous Committee report of 2004 also highlighted that at Point C of the current committee plan there was a barrier, trees and shrubs placed within an excavated trench which the landowners dug in an attempt to discourage use. Users continued to climb over the trees, this is confirmed by the user evidence presented however; it is maintained the trench did not prevent them using the route. The landowners maintain this was done to prevent use and after gate/fencing was damaged. The landowners state that at point B, a gate was placed and Ordnance Survey maps from 1994 support the assertion that access was restricted at Point B and partway between B-C, although again user evidence suggests this did not prevent them using the route. The landowner also states he put up signage along the route clearly stating land was private and replacing gates/barriers however; despite this the route continued to be used. There is also evidence from the tenants of the caravan site that there has always been a fence and gates which have been replaced by barriers along the route, they also suggest that there were signs stating private land - no right of way during the relevant period. On balance, it seems users may have been aware their use was being challenged and despite the challenge, they continued in defiance ignoring the landowner, climbing over dug trenches

avoiding gates/barbed wire and therefore; use was not 'without force' (*nec vi*) but on balance use cannot be said to be uninterrupted.

A presumption of dedication may be rebutted if there is sufficient evidence on the part of the landowner to demonstrate that they had no intention to dedicate a public footpath during the relevant period. It is understood that in 1979 Hilda Hanson purchased the land forming the route from the British Railways Board. It appears that ownership of the route has since run within the Hanson family. The use of the path it seems on balance, has been consistently challenged by the landowner, by the erection of signs, gates and barriers which have been replaced after becoming damaged, In refusing the application in 2004 it was suggested there was a barrier at point B on current application route – objectors argued that whilst barriers and signs erected along the route did not prevent access they argued they strongly indicated an unwillingness on the part of the landowners to dedicate the route as a public right of way.

Committee should also note that the route in question stops at the boundary of the viaduct and does not link both ends of the application route to a public highway. It is understood that the Railway Paths Limited now own the viaduct and have since 2017 agreed with a local volunteer group to permit limited access onto the viaduct allowing users to continue walking onwards to Martholme Lane; however; this is permissive use and as such permission can be withdrawn at any time hence; the application route does not link to a public highway at both ends. There are exceptional circumstances where a public right of way may end in a cul-de-sac, for example at a point of interest. Although it is understood the viaduct offers spectacular views none of the user evidence forms suggest that the route is being used as a cul-de-sac route as no user is turning back on themselves after reaching the viaduct, Most of the user evidence forms have a plan attached to the end of the forms which identifies the route they use. None of the users are claiming to have only used the route subject to this application but instead show their journey continuing past Point C and the viaduct or taking alternative routes, however; it does seem the viaduct itself is a place of public interest as the historical railway structure and views offered at this location could be an aspect enjoyed by users despite them continuing onwards in their journey.

It is suggested to Committee that taking all the relevant evidence into account on balance dedication cannot be inferred under common law nor deemed under s.31 Highways Act 1980 nor can a public right of way on the application route be reasonably alleged to subsist.

Risk management

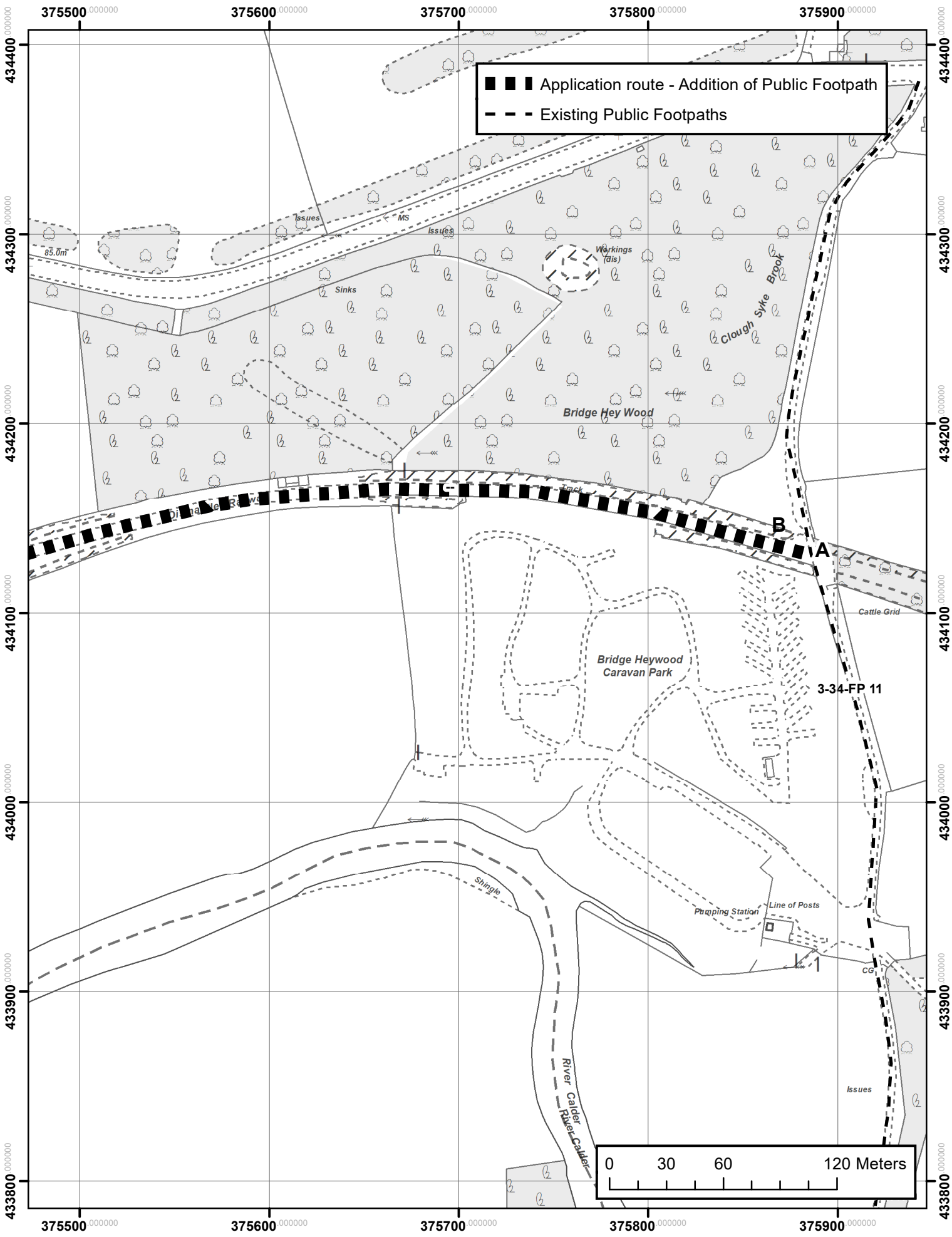
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda 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: 804-618		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Public Rights of Way
 PROW@lancashire.gov.uk
 01772 530317

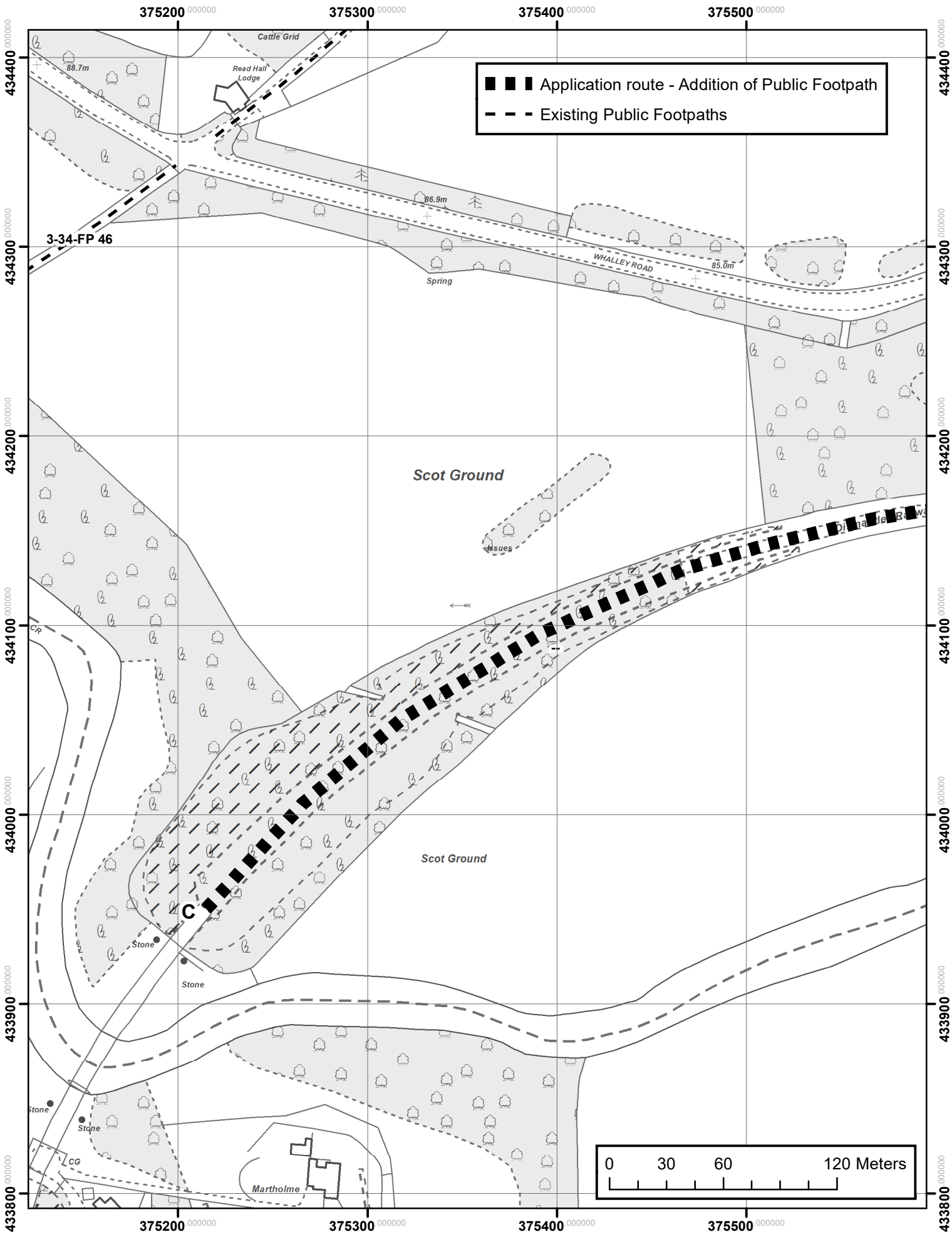
Wildlife and Countryside Act 1981
 Addition of Public Footpath along dismantled railway to Martholme viaduct, Read

1:2,500



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 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
 Addition of Public Footpath along dismantled railway to Martholme viaduct, Read

1:2,500



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Regulatory Committee

Meeting to be held on the 15th September, 2004

Part I - Item No. 5

Electoral Division affected:
Great Harwood and Ribble
Valley North East

Wildlife and Countryside Act 1981

**Claimed Public Footpath from the Southern end of the Martholme Viaduct,
Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble
Valley Borough**

Claim No. 804/392

(Annex 'A' refers)

Contact for further information:

S P Southworth, 01772 533430, Legal Services Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392.

Recommendation

That the Claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392, be not accepted.

Background

A claim has been received for a footpath extending from a point at the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, at its junction with land owned by the County Council on which there is a concessionary bridleway along a former railway line, following the dismantled railway line to a point on Public Footpath No. 11, Read, Ribble Valley Borough, a distance of approximately 900 metres, and shown between points A - C on the attached plan, (GR 7512 3381 to 7589 3413), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Hyndburn Borough Council

The Borough Council has no objections to the application and has no relevant evidence in support of, or contrary to, the application.

Ribble Valley Borough Council

The Borough Council's Countryside Officer comments that the proposals would have the effect of bringing the rights of way network closer to the urban conurbation of Great Harwood and, therefore, the Borough Council has no objections to the proposal.

Read Parish Council

The Parish Council comment that, although there was no official footpath across the viaduct, it had been used by the public for walking access to Great Harwood from Read since the railway was closed in the 1960's.

(The Parish Council has also submitted thirteen 'evidence of use' forms which were presented to them at a meeting in June, 2002, the details of which are contained in the Head of Legal Services Observations.)

Claimant/Landowners/Supporters/Objectors/Others

The evidence submitted by the claimant/landowners/supporters/objectors and others together with observations on those comments is included in 'Advice – Head of Legal Services Observations'.

Advice

Environment Director's Observations

Description of Claimed route

The claimed route is from point A which is on the boundary of land to the south owned by Lancashire County Council. The land is used as recreational public space and includes a concessionary footpath/bridleway, which was established as part of the reclamation of the Martholme railway and colliery, and links Martholme Lane and Mill Lane. Land to the north of point A is the viaduct itself owned by Railway Paths Ltd.

This claim has been considered as linking with the recreational space from which, if the claim were accepted, access could be provided onto and from the route.

However, at the present time, and for a number of years, access to point A has been difficult if not impossible because 20metres to the south of point A across the width of the viaduct and the parapet walls is a security fence, approximately 2 metres high. There is no other way to access point A or leave the claimed route at point A other

than to cross this fenceline. The end of the parapet wall up to the security fence has been coated with anti vandal paint, although it would appear that people have been climbing over the fencing at this point (several footprints are clearly visible in the paint).

At the time of inspection a retired man was using the concessionary path on the Council's land, with his dog, and he made comments that, whilst he was unable to use the route towards Burnley since the security fence was erected, he stated that there were still people who did use the claimed route despite the difficulty in gaining access to it.

From Point A the claimed route crosses the viaduct where there are no discernable features visible, other than the embankment boundary with Martholme Lane below the viaduct structure.

There are paths visible through the grass, which is growing on the former railway. Over the viaduct there is a "main" pathway visible roughly along the centre of the bridge as well as several meandering paths to the sides of this. The width available is approximately 8 metres between the parapet walls.

At the far end of the structure, at point B, ownership changes and there is a barricade of trees and bushes which have been placed across the end of the structure - these appear to have been placed in an area of land which has been excavated to form a trench to a depth of approximately 1 metre. It is possible to climb over the trees and it appears that there are three points where people may have crossed this feature (two on the westerly side and one on the east). A photograph of the end of the parapet wall shows where the growth of brambles etc. leaves an access to one of these crossing points.

The end of the stone parapet wall on the westerly side shows signs of damage underneath the coping stones - this would appear to be caused by the machinery which excavated the trench or positioned the felled trees. The rest of the structure would seem to be in a very good condition, with the walls in good order and only a small amount of shrub growth from the surface and no plants in the stonework.

Beyond the cut trees and the trench the former track bed is clear and open with trees grown up from both sides of a track and stretching off into the distance. This is approximately 5 metres wide. On the easterly side of the route facing users on the route there is a notice fixed to a metal post stating 'Private Property. This land is private property. All persons are warned not to trespass on it'. It is placed at the top of the embankment slope, to the side of where the tracks would have been laid. It appears that this area has been disturbed quite recently and that the trees etc from a length of approximately 10 metres have been removed, presumably the source of those in the barrier. There also is a metal pipe which has been excavated and seems to have been turned to the south and ending over the sloping bank.

The claimed route continues to follow the disused railway line with trees to both sides and a clear, wide path. The surface is firm and even with little surface growth with a pair of faint tracks visible. There was one area where a muddy depression

existed and it was possible to see footprints as well as animal tracks to the side of the puddle in the centre of the track.

There is no height restriction along this section and there is only one tree which has fallen across the route, but with adequate room to pass beneath it.

After a distance of approximately 300 metres the wooded sides disappear and there is a wide, open grassed area with a track approximately 4 metres wide in the centre, with wide areas to both sides with bramble and nettle growth.

After approximately 80 metres an area of land between the former track bed and the field boundary wall on the southerly side has been excavated. A metal pipe had been exposed in the ground and appears to be the same pipe that was exposed at the viaduct and turned out over the slope at point B. On this excavated area are tipped pieces of concrete etc. on the southern side of a very well used vehicular track. There is a metal field gate in the stone wall on the south side, and approximately 70 metres further along on the northerly side there is another metal field gate into a cattle holding pen within the former railway line.

From this point there is a very well used track running towards a caravan park. After approximately 30 metres there are trees growing up both sides of the well-used track. A flight of steps leads down the slope of the bank on the southern side with a handrail made from scaffolding. It leads from the claimed route to a gap in the stone wall which has a green painted metal panel placed across the opening. This has a gateway included in it. There are spikes to the side of the panel and barbed wire to the top and to both sides. To the easterly side of this panel there is an old metal field gate placed across the level area to the side of the stone wall. This is a well-used private access from the caravan site, which is in the same ownership as this part of the former railway land.

The claimed route continues to follow the well-used access track. After approximately 180 metres there is a large, locked, green metal gate across the route with a similar length of fence running from this to the north to the boundary of the former railway land and the woodland. This is also topped with barbed wire. To the south of the gate are two metal mesh security fence panels. The southern most of these was leaning against one of the trees. Fastened to the extended post on the southern side is a notice on the route facing users of the route with the same format and wording to that referred to above at point B.

At a point approximately 1 metre to the west of the above gate, there are two metal stanchions set in the ground, the one on the north side having a bracket fixed to it. The one on the south side has a loop fastened to it, through which a metal tube is linked by a loop onto the post. It appears that this would have been a barrier, closing across the track onto the bracket on the other post. This appears to have been an access control, prior to the erection of the gate. Whilst the metal gate and the attached fences does form a barrier to the claimed route it is possible to pass the end of the mesh panel where it ends short of the stone wall which is the caravan site boundary. This involves passing around or through a multi trunk tree at the bottom of the slope down from the former track bed. Beyond the tree and the mesh panel there is a visible area of trodden growth up the slope between the fence panels, and the

former metal tube barrier, referred to above. This is approximately 1 metre wide and shows signs of use. Whilst the use of the claimed route is obviously discouraged, there was evidence that this point had been used to gain access onto the claimed route, with a worn path clearly visible.

The claimed route passes beyond the gateway and over a wide, open area used extensively by vehicles for parking, turning and for material storage. This extends to join Public Footpath No. 11, Read, over a macadam surfaced occupation road leading to the Caravan Park and farm beyond at point C.

In summary, the concessionary path on the Council's land to the south of this claimed path is very well used all the way up to the security fence. This use is either as a circular walk, down the steps and back along Martholme Lane, or as a cul-de-sac path and returning along the disused railway line. Despite the security fence, there is evidence that people do gain access onto the railway viaduct. This was confirmed to the Rights of Way Officer at the time of inspection by a local resident. The surface of the viaduct is clear, although grassed over, and there are paths clearly visible through the grass.

At the far end of the viaduct there is a barrier of tree and shrubs placed, and whilst this appears to be difficult to cross, it is quite easy to cross, and far less dangerous to anyone who has already crossed the security fence. There is then a warning notice in place, which can only be read by someone who has already crossed the viaduct.

The whole of the next 700 metres approximately is over the disused railway line and is over a clear, grassed track approximately 4 metres wide. This has trees to both sides for the majority of its length, all of which give a clear headroom sufficient to allow for considerable vehicular use which has taken place over approximately 300 metres.

Before reaching the access road that carries Public Footpath No. 11, Read, there is a large metal gate and barrier placed over the claimed route approximately 1 metre beyond a metal tube, open between stanchions, which would appear to have been an earlier obstruction that has been made more effective by the gate etc. It is possible to gain access to the public footpath by passing to the southern side of the barrier and back onto the former railway line. This obstruction is easier to pass than either of the two previous ones, and again it is possible to see that this access has been well enough used to make a route visible on the surface. Facing to the east is a second warning notice.

In conclusion, despite the considerable barriers, there appears to be a significant use of the claimed route.

Documentary evidence

A variety of maps, plans and historic documents were examined to try to determine when the claimed route came into being and to obtain any information that would help determine its status.

The claimed route is based entirely on a disused railway track and viaduct. The line was built in the second half of the nineteenth century as the Lancashire and Yorkshire Railway, Great Harwood loop, the line from Great Harwood to Padiham being completed in 1877. The last passenger train ran in 1957, with goods traffic ending in around 1964.

There is no map or documentary evidence to support or counter the claim. Ordnance Survey maps confirm both the construction dates of the railway, and when the line was dismantled. There is no modern map evidence to corroborate when various types of barrier across the route was erected, but none of them are shown on maps published in 1988 and 2000, although admittedly these are small-scale maps. The fence line erected by the County Council in 1992/3 is not shown on the 2000 map.

Head of Legal Services Observations

Information from the Applicant

In support of the claim, 10 evidence of use forms (from 15 persons) have been submitted.

The forms indicate use of the route for up to 30 years (7); 25 years (3); 21 years; 15 years; 5 years; and 4 years (2).

The usage has been mainly for pleasure purposes, exercise, dog-walking, going to work, bird-watching, and as part of a circular route. The usage ranges from twice daily, daily, 2/3/4/5 times per week, weekly, monthly, and less frequently.

One witness refers to use of the route on a bicycle.

One of the witnesses refers to dozens, even hundreds of people using the route, every week for the past 30 years.

Another of the witnesses refers to use whilst leading walks with groups of Blackburn Ramblers.

Several of the witnesses refer to gates and fences on the route, although it would appear in some references that these were erected in 2001, possibly in response to the outbreak of Foot and Mouth Disease. Witnesses refer to a large steel fence (up to ten feet high) erected by the County Council near the viaduct in late 2001. Witnesses also refer to trees being felled across the route, north of the viaduct, in 2001, causing obstruction to use. One of the witnesses refers to Notices on or near the route,

One of the witnesses refers to an occasion when he was prevented from using the route when trees were being chopped down. The claimant refers to an incident in November, 2001, when he was challenged by the farmer about 100 yards from the eastern end of the route and told that he was trespassing.

The witnesses confirm that they were not working for any owner or occupier of land crossed by the claimed route at the time of using it; they were not visiting the owner or occupier as a relative or friend; they did not seek or obtain permission to use the route; they have not been stopped or turned back whilst using the route (other than detailed above); and they have not come across any locked gate or other obstruction to the route, (again, other than detailed above).

Further evidence in support

In addition to the forms submitted by the claimant, a further 13 evidence of use forms (from 17 persons) have been submitted by the Parish Council.

The forms indicate use of the route for up to 35 years (3); 30 years (4); 25 years (3); 22 years (2); 20 years (2); 13 years (1); and 10 years (2).

The usage has been mainly for pleasure purposes, exercise, jogging, dog-walking, going to visit relatives, and as part of a circular route. The usage ranges from daily, 2/3 times per week, weekly, twice monthly, monthly, and less frequently.

One witness refers to use of the route on a bicycle.

Again, a number of the witnesses refer to gates and fences (wire mesh) along the route, although it would again appear that these were erected in 2001, possibly in response to the outbreak of Foot and Mouth Disease. Witnesses refer to a large steel fence (up to ten feet high) erected by the County Council near the viaduct in late 2001. Witnesses also refer to trees being felled across the route, north of the viaduct, in 2001, causing obstruction to use. One of the witnesses refers to Notices on or near the route, but no further details are given.

One of the witnesses refers to an occasion when he was prevented from using the route when trees were being chopped down.

One of the witnesses refers to there having been a fence and gate at the southern end of the viaduct, but this has been mostly broken down over the years. (A further witness refers to this as having been taken away.) Another witness refers to the erection of a sign reading "Private Property – All persons are warned not to trespass on it" in January, 2002. One witness refers to seeking permission to use the route merely out of politeness.

One witness refers to a notice adjacent to Dunkirk Farm Lane (near point C) stating no public right of way; a ditch being dug next to the viaduct abutment approximately 10 years ago; and having been given permission to use the route, being told it was not a public right of way.

A further witness refers to two signs erected in the late 1990's referring to 'private land – no right of way'; and to a metal bar being bolted across the route on occasions.

The witnesses were not working for any owner or occupier of land crossed by the claimed route at the time of using it; they were not visiting the owner or occupier as a

relative or friend; they did not seek or obtain permission to use the route (other than detailed above); they have not been stopped or turned back whilst using the route (other than detailed above); and they have not come across any locked gate or other obstruction to the route, (again, other than detailed above).

Information from Landowner of the eastern section of the route and other objectors

An objection to the claim has been submitted by the owner of Bridge Hey Wood Caravan Park, Dunkirk Farm, on the grounds that the land has been kept private with the use of signs, barriers and gates, etc, at various points along the claimed route. It is submitted that, after the cessation of railway operations, his late mother bought the land from British Railways to aid farming activities and for the use of owners of caravans on their caravan park (who had access via a gate from the park).

It is further submitted that over two hundred witnesses will back his claim that the land in question has always been closed to the general public.

In that connection, sixteen letters, together with a petition bearing 86 signatures, have been submitted in support of the landowner's objections to the claim.

The signatories to the petition (mainly residents at the caravan park) state that they have always been assured that the land crossed by the claimed route is private land, upon which they have exclusive private access to exercise their dogs, etc. To their knowledge, this land has, for some considerable time, been closed to the public, from the Great Harwood side of the viaduct to the public footpath on the private access road to Dunkirk Farm, by means of signs and barriers which, on occasions, have been broken down.

One of the witnesses who has submitted a letter, with knowledge of the caravan park for over 40 years, submits that, after the closure of the railway line, the stretch of land was bought by Dunkirk Farm for ease of movement of cattle from one pasture to another. At that time, the path became private, and signs to that effect were erected. Subsequently, however, horses, cycles and motor cycles began to be ridden on the land, resulting in the installation of gates. Caravaners are, however, granted permission to use the path to exercise dogs, etc.

Two other witnesses, also with 40 years knowledge of the land, having owned a caravan at the park since 1962, state that barriers and signs stating 'private land – no right of way' have always been placed at both ends of the land. They have, on numerous occasions, witnessed the landowner request trespassers to keep off the land, and have themselves done likewise, (although it is not stated on whose authority they have so done).

Similarly, two witnesses having a tenancy on the site since the late 1960's state that they were only allowed to rent a plot on the caravan site on the understanding that they must not trespass on any other part of the farm property – however, as tenants, they were allowed to walk along the old railway track under strict restrictions.

Dwellers at the park for 22 years have stated that they have always been assured that the land in question was for the use of the people who owned caravans on the

park, as well as for the farmer to gain access to his land and move cattle between fields – not for public use.

Two further witnesses associated with the park for 15 years, and subsequently purchasing a caravan at the park some 9 years ago, state that, during that time, the path in question has always been recognised as part of the caravan park to be used by owners and their visitors for recreation and exercising their pets. During that time it has always had some form of barrier, firstly a fence and padlocked gate, replaced by a pole type barrier, also padlocked, and finally replaced by the present metal fencing and gate. A sign post with the words 'private land – no right of way' has always been in place at the Read end of the track. A sign at the viaduct end was nailed to a tree and similarly read 'private land – no right of way'. It is submitted that, if coming from the south end of the viaduct, one would have to jump down a drop of five feet to continue walking in the Read direction or, alternatively, climb five feet on to the viaduct if walking north to Martholme. It is submitted that the change in ground level was created in 1967 or 1968 when the railway company sold the ballast from under the railway lines and sleepers to outside contractors who removed it.

Other witnesses, residents at the caravan park, have made similar points regarding the granting of permission for caravan owners to use the track; the signs indicating that the land was private property; the presence of fences and gates at either end of the claimed route; and the challenges to users by either the farmer or the residents of the park.

Further submissions have been made on the grounds that the acceptance of the claim, and the confirmation of a subsequent Definitive Map Modification Order, would have an adverse effect upon farming operations, safety, security, peace and tranquillity, nuisance, litter, damage and vandalism at the caravan park, together with the view that there already is an adequate number of other public footpaths in the area.

Further information from officers and files at Lancashire County Council

The County Council owns land immediately to the south of point A. The land was purchased in 1991 although a reclamation scheme of land of the former railway was mooted as early as 1971 when British Railways approached the Council to see whether the Council was interested in acquiring the land. By 1980 discussions involved a large area of land crossed by all the claimed route but in 1981 the owner of the land to the east of the viaduct (the present owner's late mother) is recorded as having informed the Council in writing that she did not wish to sell the land in her ownership as it provides excellent access to her fields on both sides of the railway line and it was recorded that "in general the feeling of the owners seems to be that the proposed public access along the track is not acceptable being, in their view, a further difficulty with which they will have to contend".

Reference is then made "that in view of the objections expressed by the landowners to the proposed footpath link it was not felt reasonable to proceed to acquire land to the east of the viaduct". The scheme was restricted to land south of the viaduct. In a letter to Hyndburn Borough Council, the County Planning Officer, in 1981, explains that he has considered the possibility of a footpath link along the former railway

across Martholme Viaduct but this had not proved feasible “due to objections from landowners and farmers north of the viaduct which will prohibit a formal footpath being created”. However he noted “an informal footpath route already exists and I anticipate this will continue in the future”

Planning application for the scheme was presented to the Development Control Committee in 1989 and reclamation work commenced 1991-3. Further work was done to land near the old railway but lying at a lower level off Martholme Lane and steps were put in to connect these two areas of land.

Recollections of officers on site in 1992/3 is that there was a fence erected near to the Council’s boundary (and point A) between the parapets of the bridge which said fence had a kissing gate in it originally which would have provided access to this claimed route. However this kissing gate was locked in 1993 to prevent access onto the viaduct and beyond. Officers recall that the gate was locked with padlock and chain because of the objections and actions to block the route taken by owners to the east of the viaduct. The route was closed and steps were put in by the County Council down to lower ground from near the southern end of the viaduct. The Council did not intend people to be left with a cul de sac route but created a circular route using the steps. Before the steps the land formed a very steep slope down to the lower ground.

There were clearly concerns about access even for bridleway use and a letter to a local Member of Parliament states that the County Council had no rights of access beyond their boundary and no scope to provide a reasonably long linear ride.

Officers recall that since the reclamation work was completed, the fencing put across the parapets was broken down on occasions but repaired and in September, 2001, it was replaced by the security fencing there today.

In October, 2002, the County Council’s Senior Cycling Officer instigated land ownership investigations with a view to the establishment of a cyclepath along the disused railway line from Great Harwood to Padiham. At the same time support for a possible cyclepath was identified through the REMADE project. (REMADE – Reclamation and Management of Derelict Land in Lancashire – is a countywide partnership project funded by the NWDA.) Sustrans on behalf of Railpaths has subsequently confirmed support for the use of the Martholme viaduct as a cyclepath and indeed Railpaths acquired ownership of the viaduct with the intention of bringing about such use. When the landowner to the east of the viaduct was contacted in 2003 he declined to consider allowing the disused railway line to be used as a cyclepath as he felt that it would exacerbate current problems with vandalism and theft from his caravan park. However, in order to maximise the potential public benefit from reclamation of the former railway line, it remains desirable to secure use for pedestrians and cyclists along the claimed length.

Assessment of the Evidence

The Law – See Annex ‘A’

In Support of the Claim

Evidence of use over many years and frequent
Evidence of use without interruption
Evidence of use without seeing signage
Trodden path
Reference to use despite the barriers

Against accepting the Claim

Actions by the landowners of land at point A (The County Council) - fencing
Actions by landowners of the eastern part of the route – fencing, barrier, felled trees, signage, representations to the County Council at the time of proposed reclamation scheme

Conclusion

For this route to be recorded by an Order as a public footpath it must be considered that it could be reasonably alleged that it has been dedicated as such. As advised, (see Annex A) for such an Order to be confirmed it must be considered on balance of probabilities that the route has been actually dedicated to public use and is in existence.

Dedication can be inferred at Common Law or deemed to have happened with the provisions of S31 Highways Act 1980 being satisfied.

Looking for dedication at Common Law it is necessary to look at all the circumstances from which a dedication could be inferred. In this matter it is suggested that the circumstances would have to be a period of use but the actions of landowners must also be considered to see whether they acquiesced in the use and gave the route over to public use or whether they demonstrated by taking overt actions that they did not intend the route to be a highway.

The route has only been available for use since the 1960s when the railway was dismantled. The land to the east of the viaduct has been in the ownership of a farming family since that time. Lancashire County Council became owners of land at the western end of the route 13 years ago. However it may be considered that the County Council have taken action intending to deny access to the route. The present fence replaced an earlier one with a locked gate. The actions of previous owner of the western end of the viaduct is not known. It may also be considered that the owners to the east of the viaduct have also taken actions demonstrating that they have not regarded the route as public. There is reference to signs, physical barriers and representations made. It is suggested that to find actual dedication of this route by the owners at Common Law is difficult.

Looking secondly at whether, despite what landowners say now, there can be a dedication deemed, this requires that the use has to have been as of right without interruption and without sufficient evidence of landowners not intending to dedicate

the use of the route. The use has to be for twenty years prior to the route being called into question.

It is, therefore, necessary to consider whether there is such a period of twenty years. It is suggested that the route would be called into question by the County Council steel fence in 2001, it is also suggested, working back, that failing to remove the felled tree barrier after the "Foot and Mouth" problems of 2001 would call the route into question and even before that, the fencing off of the route just near point A by the County Council locking the kissing gate would call the route into question in 1993. It may be that the locking of the pole across the route near point C referred to by one of the users could call the route into question but it is advised that the event would have to be sufficient at least to make it likely that some of the users were made aware that their use of the route as highway was challenged. The challenges to use made by the owners could also call the route into question so long as they had the similar effect.

Some users refer to seeing signage in the late 1990s which perhaps would have challenged their use of the route, signage which the landowners say was there throughout their ownership since the track was removed and they purchased the land. If it is considered that such signage was there it may be that its appearance on the route could be an effective calling into question although it must be noted that many users specifically say that they saw no notices or only saw them in recent years and, therefore, even if the notices were there it may be that they failed to challenge use sufficiently to call the route into question for the purposes of S31 Highways Act 1980.

The Committee will have to decide on balance whether there has been a calling into question of the route if a dedication is to be deemed under the Statutory provisions but also even if there is a calling into question and twenty years use prior to it, there still has to be no sufficient evidence of lack of intention to dedicate before a dedication can be deemed to have happened.

The Highways Act 1980 at S31(3) says that "where an owner has erected, in such a manner as to be visible by persons using the way, a notice inconsistent with the dedication of the way as highway" and has "maintained the notice", the notice is "sufficient evidence to negative the intention to dedicate". It may, therefore, be considered that signage has been on this route sufficiently to demonstrate such a lack of intention to dedicate.

In addition case law is clear that other actions not specifically referred to in S31 can also indicate sufficient lack of intention to dedicate and again the representations by the landowners throughout the long period of time leading up to the reclamation scheme may be just such actions. These actions by the landowners would possibly on balance be sufficient to prevent a dedication from being deemed in this matter irrespective of which actual event was taken as calling the route into question.

In this matter it is very probable that the route was used by the public once the railway was dismantled. Signs were possibly unclear or ignored or did not last very long. Likewise challenge of some use was largely ineffective and the locking of the kissing gate led to the fence being broken down. Even the more recent barriers of

the felled trees and the metal fence have not stopped all use. Sometimes persistent use indicates resentment of an interruption and if such defiance is itself acquiesced in by owners, this may indicate that there has been an earlier effective dedication. In this matter it is suggested that such continued use has not been acquiesced in. Barriers have been repaired, replaced and strengthened.

It is suggested that in the end the signs on the route, if considered on balance to have been there as claimed by owners, would be sufficient at law to prevent the use particularly in the 1970s and 1980s from establishing a highway, (basing the calling into question as the locking of the kissing gate in 1993). Case law states that a single act of interruption by the owner is of much more weight upon the question of intention than many acts of enjoyment.

Considering all the information available, on balance, the Committee may feel that the claim is not able to be accepted.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 804/392		S P Southworth, Legal Services Group, Ext: 33430

Reason for inclusion in Part II, if appropriate

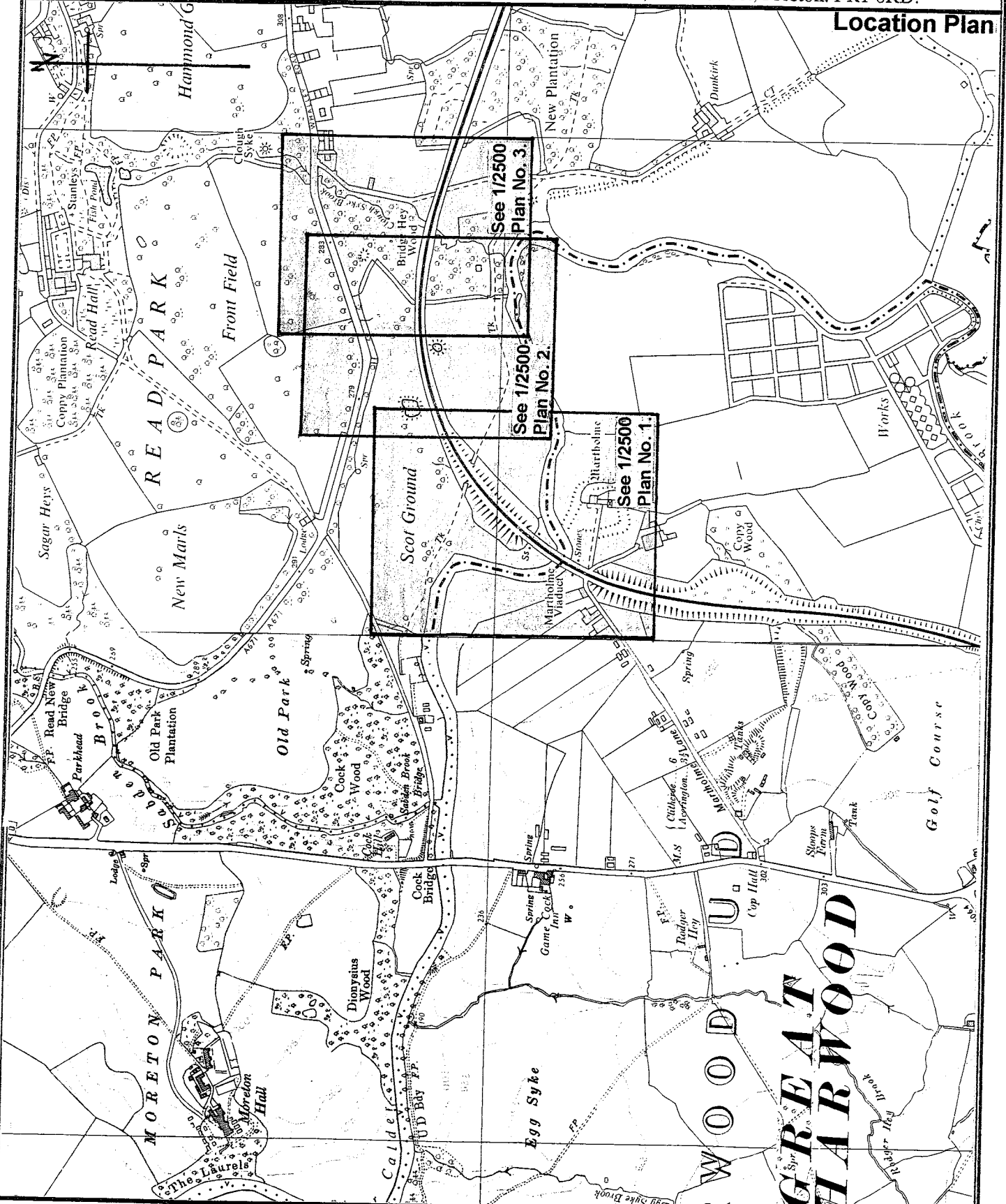
N/A



Wildlife and Countryside Act 1981
 Claimed public footpath from Martholme Lane, Great Harwood,
 Hyndburn Borough to Public Footpath no. 11 Read, Ribble Valley Borough
 Claim no. 804/392

G. Harding B Eng, C Eng, FICE, FIHT, MIMgt. Director, Environment Directorate,
 P.O. Box 9, Guild House, Cross Street, Preston, PR1 8RD.

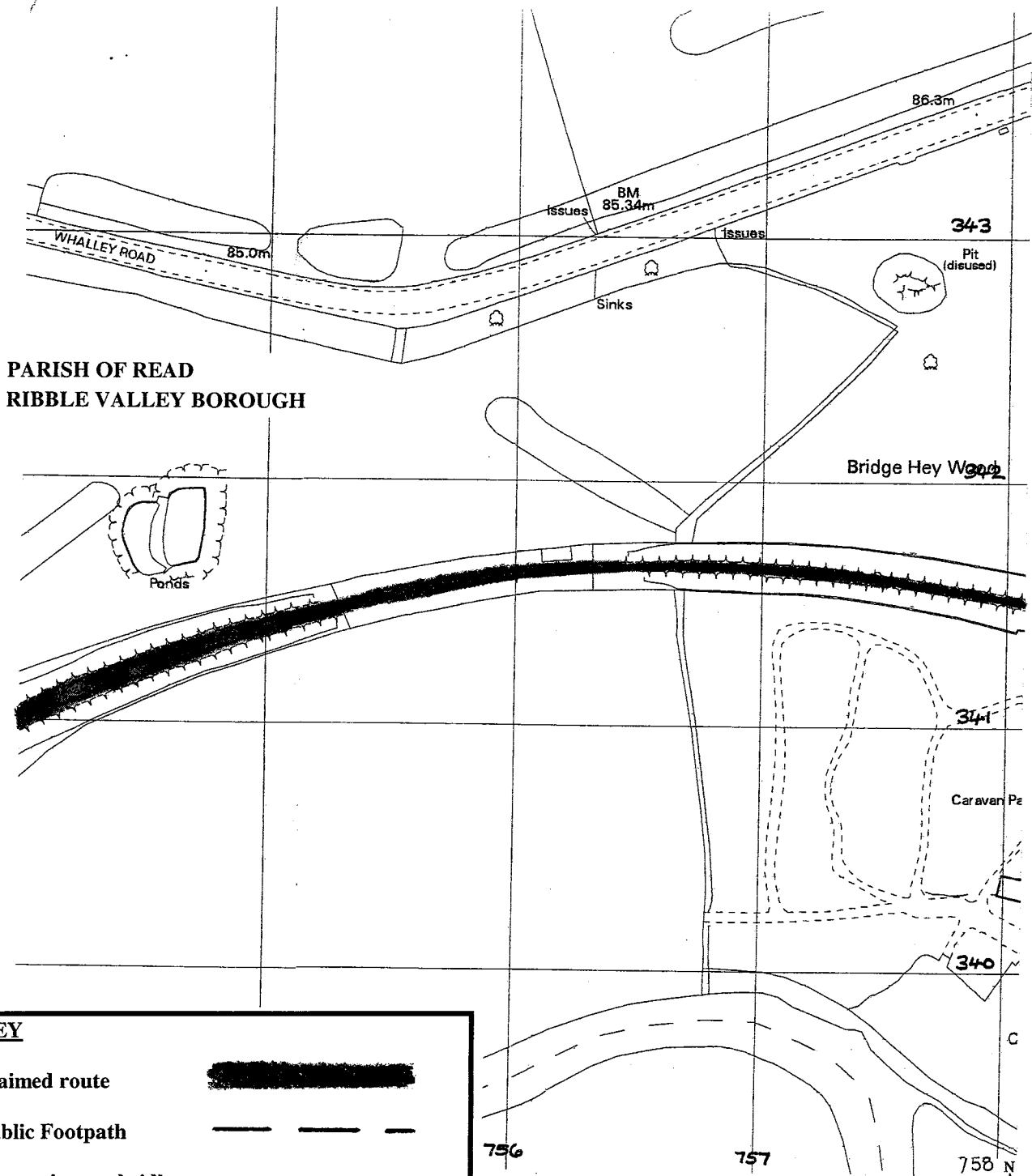
Location Plan




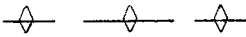


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Part of Sheet No.
SD 7533

PLAN 2

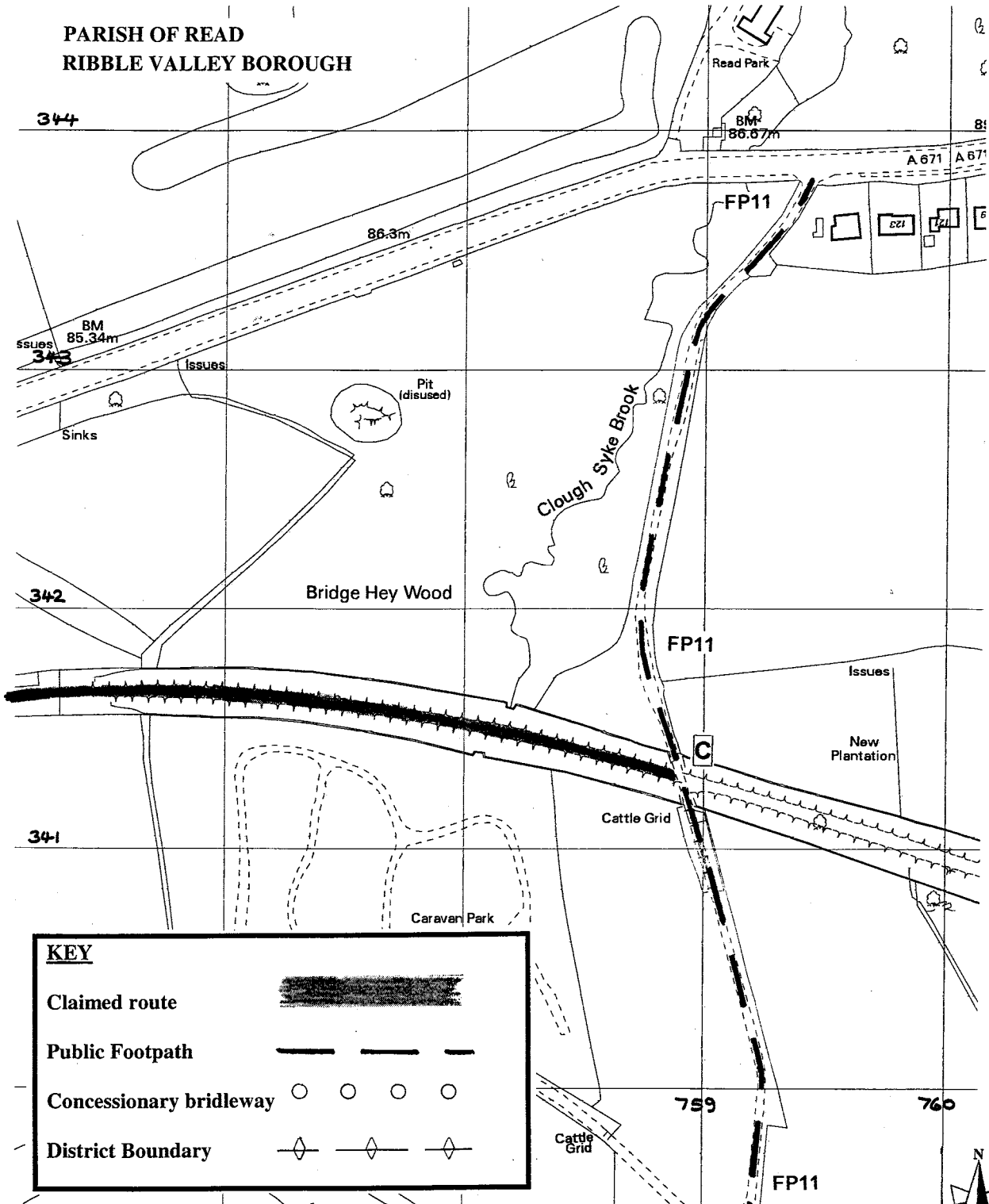


KEY	
Claimed route	
Public Footpath	
Concessionary bridleway	
District Boundary	



PLAN 3

**PARISH OF READ
 RIBBLE VALLEY BOROUGH**

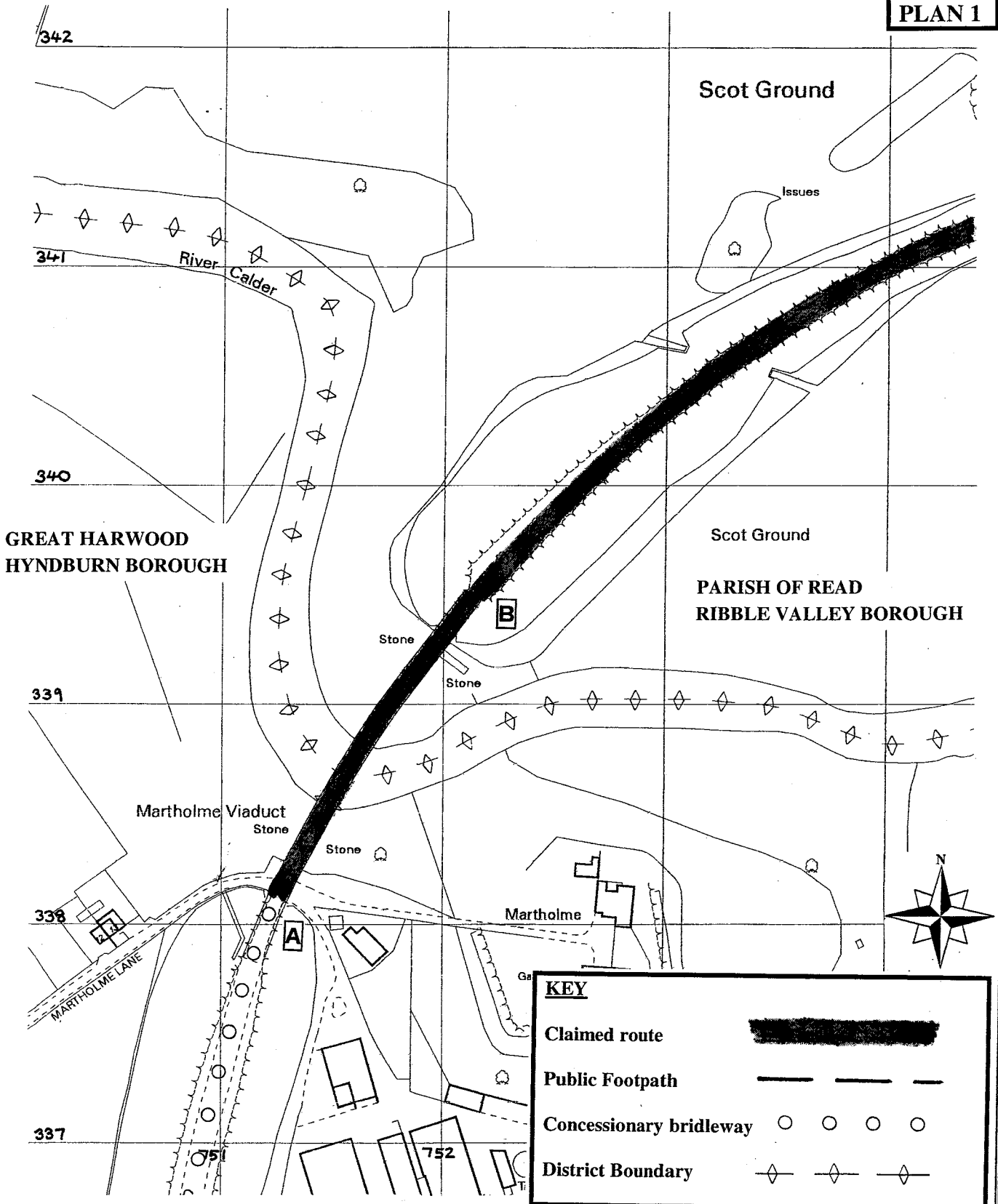




Wildlife and Countryside Act 1981
 Claimed public footpath from Martholme Lane, Great Harwood,
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 Claim no. 804/392

G. Harding B Eng, C Eng, FICE, FIHT, MIMgt. Director, Environment Directorate.
 P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD.

PLAN 1

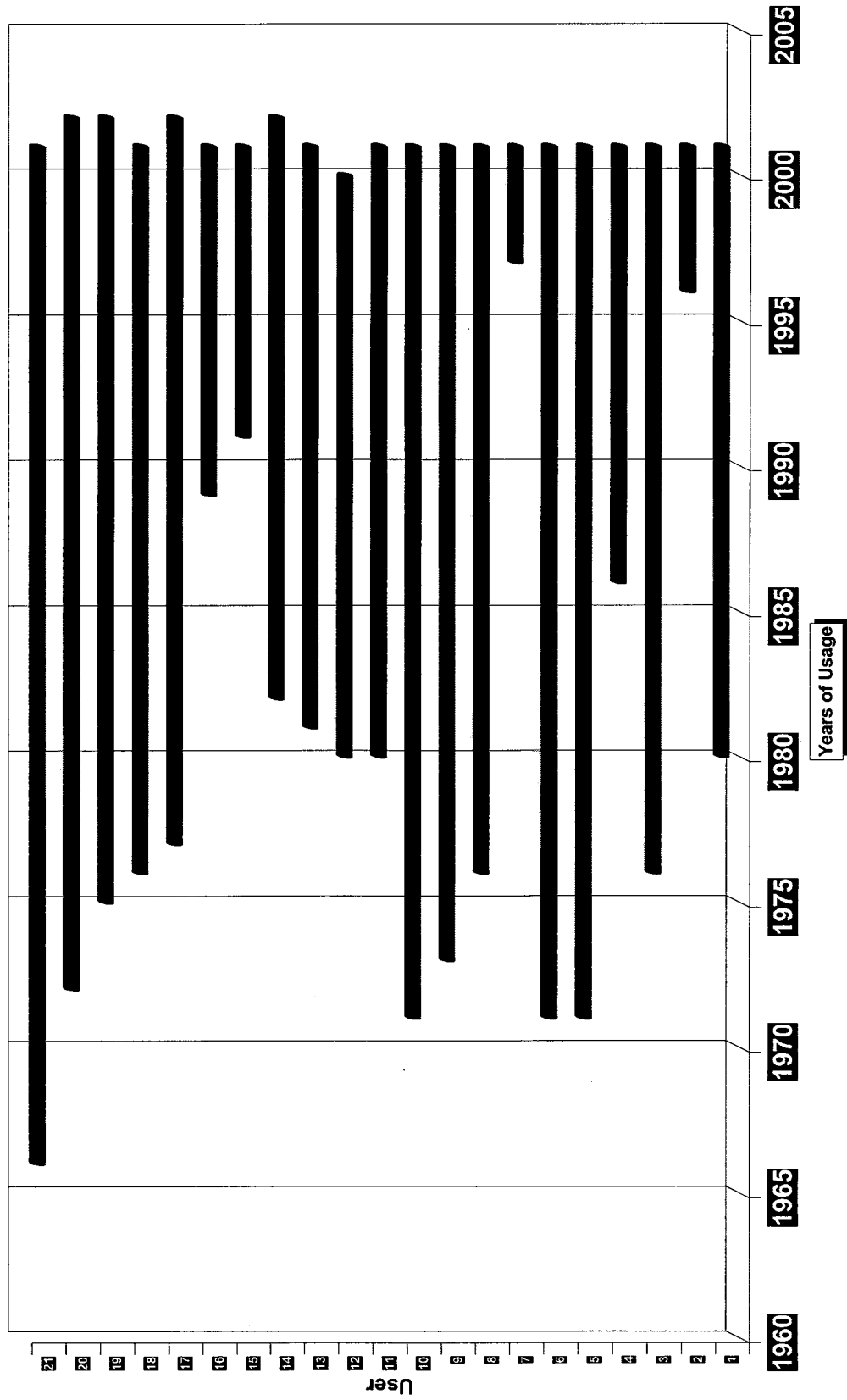


KEY	
Claimed route	
Public Footpath	
Concessionary bridleway	
District Boundary	

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Part of Sheet No.
SD 7533

USER CHART re application for DEFINITIVE MAP MODIFICATION ORDER for footpath over and east of Martholme viaduct



CLAIMED PUBLIC FOOTPATH
from MARTHOLME LANE, GREAT HARWOOD, HYNDBURN BOROUGH
to PUBLIC FOOTPATH No. 11, READ PARISH, RIBBLE VALLEY
BOROUGH.

Length of claimed: -

900metres approximately.

Description of Claimed route: -

The claimed route is from point **A** which is to the north end of the very well used Lancashire County Council recreational, concessionary footpath/bridleway, which was established as part of the reclamation of the Martholme Railway and Colliery, and which links Martholme Lane and Mill Lane.

Access to this claimed route is either from the disused railway from the south, or from the west where there are a series of flights of steps. These are entered from Martholme Lane through a square opening in the wall with a stone paved surface, then over a worn path in the grass banking, past a Lancashire County Council notice board before going up the timber and stone steps with timber posts and double half round timber handrails.



At the top of the steps there is a stone surfaced path on the disused railway line and a timber seat placed to the east of this path and facing to the east and overlooking the valley of the River Calder.



Just to the north of the top of the steps is the end of the stone parapet walls of the viaduct and placed across the width of the viaduct and the parapet walls is a security fence, approximately 2 metres high. The end of the parapet wall up to the security fence has been coated with anti vandal paint although it would appear that people have been climbing over the fencing at this point. (several footprints clearly visible in the paint)

Point **A** is approximately 35 metres from the end of the viaduct where there are no discernable features visible, other than the embankment boundary with Martholme Lane below the viaduct structure.

There are paths visible through the grass, which is growing on the former railway. At the time of inspection a retired man was using the concessionary path, with his dog, and he made comments that whilst he was unable to use the route towards Burnley since the security fence was erected, he stated that there were still people who did use the claimed route despite the difficulty in gaining access to it.

Over the viaduct there is a “main” pathway visible roughly along the centre of the bridge as well as several meandering paths to the sides of this. The width available is approximately 8 metres between the parapet walls.



At the far end of the structure, at point **B**, there is a barricade of trees and bushes which have been placed across the end of the structure, these appear

to have been placed in an area of land which has been excavated to a depth of approximately 1 metre.



Although this barrier is intended to stop public use, it is possible to climb over the trees and it appears that there are three points where people have crossed this feature. (Two on the westerly side and one on the east) A photograph of the end of the parapet wall shows where the growth of brambles etc. leaves an access to one of these crossing points.



The end of the stone parapet wall on the westerly side shows signs of damage underneath the coping stones, this would appear to be caused by the machinery which excavated the trench or placed the trees. The rest of the structure would seem to be in a very good condition, with the walls in good order and only a small amount of shrub growth from the surface and no plants in the stonework.

Beyond the cut trees the former track bed is clear and open with trees grown up from both sides of a track and stretching off into the distance. This is approximately 5 metres wide. On the easterly side there is a notice fixed to a metal post stating: -

PRIVATE PROPERTY
THIS LAND
IS
PRIVATE PROPERTY.
ALL PERSONS ARE
WARNED
NOT TO TRESPASS ON IT

This is placed at the top of the embankment slope, and to the side of where the tracks would have been laid, and it appears that this area has been disturbed quite recently and that the trees etc from a length of approximately 10 metres have been removed and presumably are the source of those in the barrier. There also is a metal pipe which has been excavated and seems to have been turned to the south and ending over the sloping bank.

The claimed route continues to follow the disused railway line with trees to both sides and a clear, wide path. The surface is firm and even with little surface growth with a pair of faint tracks visible. There was one area where a muddy depression existed and it was possible to see footprints as well as animal tracks to the side of the puddle in the centre of the track.



There is no height restriction along this section and there is only one tree which has fallen across the route, but this still allows adequate room to pass beneath it.

After a distance of approximately 300 metres the wooded sides disappear and there is a wide, open grassed area with a track approximately 4 metres wide in the centre, with wide areas to both sides with bramble and nettle growth.



After approximately 80 metres the an area of land between the former track bed and the field boundary wall on the southerly side, has been excavated,

and a metal pipe had been exposed in the ground, this appears to be the same pipe that was exposed at the viaduct and turned out over the slope. Point B.

On this excavated area there has been tipped pieces of concrete etc. on the southern side of a very well used vehicular track.



There is a metal field gate in the stonewall on the south side, and approximately 70 metres further along on the northerly side there is another metal field gate into a cattle holding pen within the former railway line.

From this point there is a very well used track running towards a caravan park. After approximately 30 metres there are trees growing up both sides of the well used track and there



There is a flight of steps down the slope of the bank on the southern side with a handrail made from scaffolding, this leads to a gap in the stone wall where there is a green painted metal panel placed across the opening. This has a gateway included in it. There are spikes to the side of the panel and barbed wire to the top and to both sides. To the easterly side of this panel there is an old metal field gate placed across the level area to the side of the stone wall. This is a well-used private access from the caravan site, which is in the same ownership as this part of the former railway land.



The claimed route continues to follow the well used access track. After approximately 180 metres there is a large, locked, green metal gate with a similar length of fence running from this to the north to the boundary of the former railway land and the woodland. This also has barbed wire on top of this. To the south of the gate there are two metal mesh security fence panels. The southern most of these was leaning against one of the trees.



Fastened to the extended post on the southern side there is a notice with the same format and wording to that referred to above at point **B**.



The claimed route passes through the gateway and over a wide, open area used extensively by vehicles for parking, turning and for material storage. This extends to join public footpath number 11, Read Parish that is

over a macadam surfaced occupation road leading to the Caravan Park and farm beyond at point C.



At a point approximately 1 metre to the west of the above gate, there are two metal stanchions set in the ground, the one on the north side has a bracket fixed to it.



That on the south has a loop fastened to it, through which a metal tube is linked by a loop onto the post. It appears that this would have been a barrier, closing across the track onto the bracket on the other post. This appears to have been an access control, prior to the erection of the gate.



Whilst the metal gate and the attached fences does form a barrier to the claimed route it is possible to pass the end of the mesh panel where it ends short of the stone wall which is the caravan site boundary.



This involves passing around or through a multi trunk tree at the bottom of the slope down from the former track bed.



Beyond the tree and the mesh panel there is a visible area of trodden growth up the slope between the fence panels, and the former metal tube barrier, referred to above. This is approximately 1 metre wide and shows signs of use.



Whilst the use of the claimed route is obviously discouraged, there was evidence that this point had been used to gain access onto the claimed route, with a worn path clearly visible.

Environment Directorate comments:

The concessionary path to the south of this claimed path is very well used all the way up to the security fence. This use is either as a circular walk, down the steps and back along Martholme Lane, or as a cul-de-sac path and returning along the disused railway line.

Despite the security fence, there is evidence that people do gain access onto the railway viaduct. This was confirmed to the rights of way officer at the time of inspection by a local resident.

The surface of the viaduct is clear, although grassed over, and over this there are paths clearly visible over this.

At the far end of the viaduct there is a barrier of tree and shrubs placed, and whilst this appears to be difficult to cross, it is quite easy to cross, and far less dangerous to anyone who has already crossed the security fence.

There is then a warning notice in place, which can only be read by someone who has already crossed the viaduct.

The whole of the next 700metres approximately is over the disused railway line and is over a clear, grassed track approximately 4 metres approximately

wide. This has trees to both sides for the majority of its length, all of which give a clear headroom sufficient to allow for considerable vehicular use which has taken place over approximately 300 metres.

Before reaching the access road that carries footpath no. 11, Read Parish, there is a large metal gate and barrier placed over the claimed route approximately 1 metre beyond a metal tube, open between stanchions, which would appear to have been an earlier obstruction that has been made more effective by the gate etc.

It is possible to gain access to footpath 11, by passing to the southern side of the barrier and back onto the former railway line.

This obstruction is easier to pass than either of the two previous ones, and again it is possible to see that this access has been well enough used to make a route visible on the surface.

Facing to the east there is a second warning notice.

In conclusion, despite the considerable barriers, there appears to be a significant use of the claimed route.

Regulatory Committee

Meeting to be held on the 10th November, 2004

Part I- Item No. 5

Electoral Division affected:
Great Harwood and Ribble
Valley North East

Wildlife and Countryside Act 1981

**Claimed Public Footpath from the Southern End of the Martholme Viaduct,
Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble
Valley Borough**

Claim No. 804/392

(Annex 'A' and Appendix 'A' refer)

Contact for further information: S P Southworth, 01772 533430, Legal Services
Group

Executive Summary

The claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392.

Recommendation

That the Claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392, be not accepted.

Background

A claim has been received for a footpath extending from a point at the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, at its junction with land owned by the County Council on which there is a concessionary bridleway along a former railway line, following the dismantled railway line to a point on Public Footpath No. 11, Read, Ribble Valley Borough, a distance of approximately 900 metres, and shown between points A - C on the attached plan, (GR 7512 3381 to 7589 3413), to be added to the Definitive Map and Statement of Public Rights of Way.

A Report on this matter was presented to the Committee at their Meeting on the 15th September, 2004, when, in order that further information could be obtained with regard to the future public access to the route, it was resolved that consideration of the Claim be deferred.

Advice

Subsequent to the Meeting of the Committee held on the 15th September, 2004, information has been obtained from the Environment Director regarding future public access to the route.

The Great Harwood – Burnley railway has been identified through the REMADE project (Reclamation and Management of Derelict Land in Lancashire) to restore derelict and neglected land for soft use. From a cycling perspective the old railway line is seen as an important link to major employment sites at Altham, Simonstone and Shuttleworth Mead as being an attractive leisure route. The route is very important, increasing cycling levels in East Lancashire. By providing a route from two urban areas in the countryside, it will also be important for walkers and, possibly, horse riders. Developing the old railway is in line with the Rights of Way Improvement strategy to provide routes into the countryside.

The Environment Director, in partnership with Sustrans, is negotiating to acquire the section of the railway between Burnley and Padiham from Network Rail. It is foreseen that this section will be done in the next three years, and that between Simonstone and Martholme within the next ten years, although Compulsory Purchase Orders may be required to build it.

Considering the additional information given above, the Committee may feel that that further information does not offer further assistance in a determination as to whether the route may have already become a public footpath; and that the Report presented to the Committee on the 15th September, 2004, should be reconsidered; and, on balance, the Committee may feel that the Claim is not able to be accepted.

Alternative options to be considered

N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 804/392		S P Southworth, Legal Services Group, Ext: 33430

Reason for inclusion in Part II, if appropriate

N/A



GOVERNMENT OFFICE
FOR THE NORTH WEST

Stephen Southworth
Legal Services Group
Lancashire County Council
PO Box 78
County Hall
Preston
Lancashire, PR1 8XJ

City Tower
Piccadilly Plaza
Manchester
M1 4BE

Tel: 0161 952 4337
Fax: 0161 952 4255

igarland.gonw@go-regions.gsi.gov.uk

25 April 2005

Your Ref: LSG4/prow/sps/804/392
Our Ref: PNW/5063/529/44

Dear Sir

**WILDLIFE AND COUNTRYSIDE ACT 1981 : SECTION 53 AND SCHEDULE 14
APPEAL AGAINST LANCASHIRE COUNTY COUNCIL'S REFUSAL TO ALLOW A
MODIFICATION TO THE DEFINITIVE MAP IN RESPECT OF CLAIMED FOOTPATH
FROM MARTHOLM VIADUCT, GREAT HARWOOD, HYNDBURN TO PF NO.11, READ,
RIBBLE VALLEY BOROUGH, CLAIM NO: 804/392**

I enclose a copy of the Secretary of State's decision letter in respect of the above-named appeal.

Yours faithfully

I GARLAND





GOVERNMENT OFFICE
FOR THE NORTH WEST

Mr L Willan
12 Chatburn Close
Great Harwood
Blackburn
Lancashire
BB6 7TL

City Tower
Piccadilly Plaza
Manchester
M1 4BE

Tel: 0161 952 4231
Fax: 0161 952 4106

Our ref: PNW/5063/529/44

mfarquhar.gonw@go-regions.gsi.gov.uk

25 April 2005

Dear Sir

**WILDLIFE AND COUNTRYSIDE ACT 1981; SECTION 53 AND SCHEDULE 14
CLAIMED FOOTPATH FROM MARTHOLME VIADUCT, GREAT HARWOOD, TO PF
NO. 11, READ.**

1. I am directed by the Secretary of State for Environment Food and Rural Affairs to refer to your appeal under section 53 of and paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 against the decision of the Lancashire County Council not to make an order to modify the definitive map and statement for the area by adding to it footpath, about 900 metres in length, along part of the route of a dismantled railway line between the southern end of Martholme Viaduct, Great Harwood, and public footpath no. 11, Read. The route of the claimed footpath is shown on the attached plan, running between points A, B and C.

2. All the representations which you and Lancashire County Council and other interested parties have submitted about the appeal have been fully considered.

Appellant's case

3. The application which you made to Lancashire County Council (LCC) was made on the basis that a right of way had been established by uninterrupted use by the public. In support of this you provided ten user witness statements and a letter of support from Read Parish Council who provided a further thirteen witness statements. You point out too that the use of the route is also supported by Ribble Valley Council.

4. In your view the statements provide evidence of uninterrupted use of the path from the 1960s, when the railway became disused and the track was lifted, to late in 2001, when the LCC erected the secure fence at the viaduct. You say that during that period the only other barrier encountered was a traffic barrier at the Read end of the route. The comments made by the landowner conflict with the evidence of users who



provided statements, few of whom report having seen any signs indicating that the land was private.

5. In your view the LCC have given too much weight to the comments made by the landowner and tenants of the caravan site as opposed to the evidence of use of the route.

Objections to the application

6. LCC report that the owner of the land objected to the application on the ground that the land has been kept private since it was acquired following closure of the railway and that signs to this effect, barriers and gates have been in place at various places along the route. That objection was supported in sixteen letters and a petition containing 86 signatures. Those further letters also state that barriers and signs have been in place stating clearly that no public right of way existed over the route.

LCC case

7. LCC say that their reasons for refusing the application are fully set out in the report considered by committee. They say that use of the route has only been available for use since the 1960s, when the railway was closed and the track lifted, and that use appears to have commenced shortly after that. They say that any use of the path might be regarded as having been brought into question in about 1993, when a gate in a fence at the viaduct was locked, thereby preventing access to the viaduct, or in 2001, when a more substantial security fence was put in place. They point out, however, that claimed use of the path during the relevant period is countered by the evidence provided by and in support of the owner of the land. That information suggests that use of the path has been challenged consistently by the landowner, by the erection of signs and barriers, which shows a lack of intention by the landowner to dedicate the route as a public right of way. In the circumstances LCC say they are not persuaded that dedication of the route as a public right of way can be inferred at common law or by meeting Highways Act tests.

8. The report acknowledges that LCC have in the past investigated the possibility of establishing a cycle route along the claimed route and that this remains a desirable aim. It states too that this idea was supported by other parties. However, that does not provide evidence to support the claim the subject of this appeal.

Appraisal

9. All the representations submitted about the appeal have been fully considered.

10. It is noted that in this case no historic or other documentary evidence has been provided and so the claim relies entirely on whether or not a public right of way has been acquired by uninterrupted use.

11. The user evidence forms which you submitted in support of the application do indicate that the route appears to have been used by members of the public for a period

in excess of twenty years; that is from some time in the 1960s and 1993 when use of it appears to have been brought into question by the locking of the gate in the fence at the viaduct. Conversely, however, it is not clear that the claimed use has been uninterrupted. Some of those who provided statements indicate that at least one barrier prevented access at the Read end of the path. In addition, the owner of the land crossed by the route, supported by tenants of the caravan site, has stated that barriers and signs have been in place during most if not all of the relevant period making clear that the land was private and that no public right of way existed over the route. Although you argue that any barriers in place prior to 2001 did not prevent access to the route, it is considered that the existence of those barriers, and of the signs which he argues were in place, indicates strongly an unwillingness on the part of landowners to agree to public access or to dedicate the route as a public right of way.

12. You mention that LCC and the Borough and Parish Councils and others have expressed support for the idea of this route being opened for use, possibly as a cycleway. However, that is a separate issue for LCC or others to consider and is not considered relevant to the determination of your appeal, which is against LCC's refusal to make an order to add the path to the definitive map.

13. For those reasons it is considered that the evidence which you provided in support of your appeal does not, singularly or cumulatively, cause the Secretary of State to believe, on balance of probability, that a public footpath exists or is reasonably alleged to exist over the claimed route. After careful consideration of the representations made the Secretary of State concludes that there is insufficient evidence to support your claim that the definitive map and statement for the area should be modified by adding to it a footpath over the route described above and shown on the attached plans. The Secretary of State does not propose, therefore, to give any direction to Lancashire County Council to make a modification order and hereby dismisses your appeal.

13. A copy of this letter has been sent to Lancashire County Council.

Yours faithfully



M Farquhar

Authorised by the Secretary of State
to sign in that behalf

Wildlife and Countryside Act 1981

Addition of Footpath from Footpath Read 11 to Martholme
viaduct

Photographs taken 2020 and 2004 as indicated

Point A in 2020



Point A in 2004



Point B in 2020





Signs located at point B in
2020

Same sign located at point B in 2004



2020 - Remains of older barrier which predated 'newer' metal gate at point B





Gate and older barrier across the route at point B - 2004

Beyond point B with caravan park immediately to the south (2020)



Private access onto the application route from the caravan park – same access point photographed in 2004 and 2020





Between point B and point C –
just beyond the caravan park
2020

Between point B and point C 2020



Work being undertaken to clear vegetation from the dismantled railway 2020



Application route along the dismantled railway 2004



2020 – Application route approaching Martholme Viaduct and point C



Application route along dismantled railway in 2004



Approaching point C - 2020



Point C with mound of earth and trench preventing access to Viaduct 2020



2004 – Approaching point C



2020 - Beyond point C – trench dug abutting the viaduct which is securely fenced off preventing access to the application route



2020 - Sign visible at point C looking back along the application route



2004 – Sign close to point C – shown on photographs taken in 2020

