

Lancashire County Council

Regulatory Committee

Wednesday, 10th March, 2021 at 10.30 am - Virtual Meeting

Agenda

Part I (Open to Press and Public)

No.	Item	
-----	------	--

1.	Apologies	
----	------------------	--

2.	Disclosure of Pecuniary and Non-Pecuniary Interests	
----	--	--

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 27th January 2021	(Pages 1 - 6)
----	--	---------------

4.	Guidance	(Pages 7 - 30)
----	-----------------	----------------

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 31 - 36)
----	--	-----------------

6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Warburton Street to Grane Road, Haslingden	(Pages 37 - 104)
----	---	------------------

7.	Highways Act 1980 Section 119 Wildlife and Countryside Act 1981 - Section 53A Diversion of Footpaths Bacup 415 and 416 and part of 417 and Creation of a Public Footpath at Greave Clough	(Pages 105 - 158)
----	--	-------------------

8.	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.

9. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 23rd June 2021.

County Hall
Preston

L Sales
Director of Corporate Services

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 27th January, 2021 at 10.30 am - Virtual Meeting

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	L Cox
P Steen	J Parr
J Marsh	D Howarth
A Clempson	B Dawson MBE

1. Apologies

Apologies were received from County Councillor Towneley.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Parr declared a non-pecuniary interest in Item 6 as Wellbeing was part of her Cabinet Member portfolio for Lancaster City Council.

County Councillor Eaton and County Councillor Steen declared a non-pecuniary interest in Item 8 as the application route was in their electoral divisions.

3. Minutes of the Meetings held on 18th November and 2nd December 2020

Resolved: That the minutes of the meetings held on 18th November 2020 and 2nd December 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. Progress Report on Previous Committee Items

Following a query from County Councillor Howarth, it was confirmed that future update reports would include information on how many applications were outstanding. In addition, Members were advised they could contact either David Goode or Kerry Hayes anytime on the progress of any application.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath at Fenham Carr, Lancaster City File No. 804-615

A report was presented on an application for the addition of a Footpath at Fenham Carr, Lancaster City, to be recorded on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E-F-G-H-J-K-C and H-I.

A site inspection had been carried out on 21st January 2020.

It was reported that the area crossed by the application route was known as Fenham Carr and was formerly part of the grounds at Moor Park Hospital. Following closure of the hospital, Fenham Carr was incorporated into the adjacent Williamson Park in 1997.

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

Details of the evidence examined both in support of, and against, the making of an Order were provided to Committee.

It was reported that there was no map or documentary evidence to support the view that public rights existed over the application route prior to 1997 when most of the land crossed by the route was transferred to the ownership of Lancaster City Council. However, much (but not all) of the application route existed as a substantial route prior to this time which may have been available to the public and would support any user evidence submitted whose use pre-dated 1997.

Since 1997, most of the land crossed by the application route had been managed as public open space by Lancaster City Council and use of the application route would have been "by right" (not "as of right").

Whilst there was evidence of use covering more or less the entire statutory period, the volume of users providing evidence was extremely low, considering the location of the route within a public park. In the circumstances, the evidence of use was advised to be too low to be considered representative of the public at

large, and to evidence sufficient use beyond trivial and sporadic, from which to deem dedication by the owners.

Taking all the evidence into account, Committee were advised that a dedication of a public footpath along the application route could neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee was advised to reject the application and not make an Order adding a public footpath to the Definitive Map and Statement.

Resolved: That the application for the addition of a Footpath at Fenham Carr, Lancaster City, as shown on the Committee plan between points A-B-C-D-E-F-G-H-J-K-C and H-I, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Public Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall File No. 804-610**

A report was presented on an application for the addition of a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall, to be recorded on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E.

A site inspection had been carried out in August 2019.

Various maps, plans and other documents had been examined to discover when the route had come into being, and to try to determine what its status may be.

Details of the evidence examined both in support of, and against, the making of an Order were provided to Committee.

It was reported that the route was consistently shown to exist on all maps and photographs examined from the 1840s through to the current day, supporting the user evidence submitted as part of the application. Google Street images dated 2009 showed the start of the route from point A as being a well-defined surfaced track and access at point E being clear of vegetation – again consistent with the user evidence and the fact that several users referred to the route no longer being maintained and recently becoming overgrown and more difficult to use (as evidenced by the site inspection carried out in 2019).

Taking all the evidence into account, it was suggested that the Committee may be content that dedication of a footpath could be inferred at common law from all the evidence including the use and/or that a dedication of a footpath may be deemed from the more modern user of the route under S31 Highways Act 1980.

Resolved:

- (i) That the application for a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall to be recorded on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-610, 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 Goodshaw Avenue to Goodshaw Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Part of Footpath Bacup 486 at land off Rockcliffe Road,
Rossendale**

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 Bacup 486, Rossendale 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 C-D-B, as shown on the Committee plan attached to the agenda papers.

It was reported that the small residential site comprised of a new estate road and 26 residential dwellings. The footpath ran along the south eastern side of the site, from Rockcliffe Road (U7885), then as the land slopes down, the footpath cut across an area of rough ground, continuing down a flight of old stone steps, then passing under a disused railway bridge and then alongside a stream to join New Line (A6066).

The Committee noted that the diversion, if successful, would remove the footpath from the rough ground, at the perimeter of the development site, and away from the steepest part of the slope that had been formed as part of the development. In addition, it was noted that users would find the new length of footpath more enjoyable than the existing footpath which currently ran over rough grassland that was, in places, wet and muddy, and that, in contrast, the new footpath would have a properly constructed firm surface that was safe and convenient for use in all weather conditions.

It was advised that the effect of the Order was compatible with the material provisions of the county council's Rights of Way Improvement Plan.

Committee were informed that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

The Chair wished to place on record his thanks to officers for all their hard work on this diversion. County Councillor Steen thanked the Chair for promoting the opening of the footpath and the officers for their work on it.

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 Bacup 486, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked C-D-B, 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 Planning Inspectorate and that 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. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 10th March 2021.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 10 March 2021

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 10 March 2021

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 10 March 2021

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

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

David Goode, 01772 537663, Public Rights of Way Manager, david.goode@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.

A summary of the current progress on Definitive Map Modification Order applications is provided below, this data was extracted from the statutory register on 24th February 2021. The register can be viewed at <https://dmmo.lancashire.gov.uk/>

It should be noted that although the term 'applications' has been used for convenience these are not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but include some cases where sufficient evidence has been discovered or presented to the county council to indicate an investigation is appropriate.

Definitive Map Modification Order Applications in Queue for Initial Checking

These applications are under investigation, awaiting consultations and may require further Notices of Application to be served by the applicant.

Reference	Known As	Application Date
804-588	Coppull 30/31	28/07/2017
804-617	Deletion at Browns Houses	25/03/2020
804-631	Little Hoole Track FP8	23/05/2020
804-649	Braiddale Bank Lane	27/07/2020
804-653	Moss Lane Bridleway Upgrade	20/08/2020
804-654	Wrayton Old Road	24/08/2020
804-655	First Terrace, Sunderland Point	07/09/2020
804-633	Snape Lane	27/05/2020
804-634	Green Lane, Beaumont	03/06/2020
804-635	Buckstone Old Turnpike	06/06/2020
804-656	Holleth Lane, Forton	16/09/2020
804-632	Altcar Lane and Tithe Barn Lane	26/05/2020
804-638	Park Side School Lane, Tatham	12/06/2020
804-640	Ned's Lane, Pilling	18/06/2020
804-650	Wood Yard	02/07/2020
804-651	Threagill Lane Warton	14/08/2020
804-652	Snuff Mill Lane	17/08/2020
804-596	Unrecorded route between Burnley Road and 14-1-FP378	12/06/2018
804-637	Shaw's Lane Pilling	12/06/2020
804-645	Bank Top Lane	23/07/2020
804-636	Sandy Lane, Tatham Fells	08/06/2020
804-639	Kitshaw Lane, Tatham	16/06/2020
804-644	Far Lodge Lane, Quernmore	10/07/2020
804-646	Crook Dale Lane	21/06/2020
804-647	Cragg Lane	21/07/2020
804-663	Hall Lane and Mill Lane, Leyland	09/11/2020
804-664	Skipton Road, Trawden	11/11/2020
804-678	Hobsons Lane, Over Kellet	04/12/2020
804-686	Moss Lane, South Ribble	27/12/2020
804-695	Out Moss Lane Morecambe	10/02/2021
804-696	DMMO Wham's Lane, Morecambe	08/02/2021
804-659	Harris Park	16/10/2020
804-679	Millhouses Road, Wray with Botton	04/12/2020
804-684	Lodge Lane, South Ribble	27/12/2020
804-666	Hornbys Lane, Out Rawcliffe	30/11/2020
804-681	Bannister Lane, South Ribble	27/12/2020
804-661	Ashton Lane, Out Rawcliffe	26/10/2020
804-662	Westby Lane, Out Rawcliffe	26/10/2020
804-657	Sands Lane, Over Kellet	23/09/2020
804-685	Flensburg Way Track, South Ribble	27/12/2020
804-687	Napthal Crossing, South Ribble	27/12/2020
804-692	Holt Mill Road to Lenches Road	14/01/2021
804-660	Broad Lane, Out Rawcliffe	26/10/2020
804-667	Alder Lane, Out Rawcliffe	30/11/2020
804-683	Brooks Lane, South Ribble	27/12/2020
804-688	Parker Lane, South Ribble	27/12/2020

804-690	A59 Tarleton to Bretherton parish boundary	11/01/2021
804-693	DMMO Addition of Bridleway Harry Barn Lane	25/01/2021
804-665	Hales Rushes Road, Out Rawcliffe	30/11/2020
804-682	Napthal Lane, South Ribble	27/12/2020
804-694	Roman Road, Burrow Leck and Tunstall	05/02/2021
804-606	Sandy Lane, Aughton	08/03/2019
804-621	Park Street, Brierfield	11/05/2020
804-680	Tatham Rectory, Tatham	04/12/2020

Definitive Map Modification Order Applications Awaiting Committee Reports

These applications have been investigated and are waiting on the finalisation of committee reports and to be considered by the Regulatory Committee.

Reference	Known As	Application Date
804-457	Hullet Hall South	19/10/2006
804-458	Hullet Hall North	19/10/2006
804-456	Owlet Hall Farm	19/10/2006
804-146	Cheshire Lines	18/12/1986
804-405	Bazil Point	04/09/2003
804-573	Botton Head	10/10/2016
804-332	Sainsbury Deepdale	05/01/1998
804-448	Whitworth BW	01/01/2001
804-499	Width of BW 17 Halsall	01/09/2009
804-332(B)	Sainsbury Deepdale	10/10/2016
804-382	Cumeragh Lane	10/10/2016
804-419	Missing link Walton-le-Dale 24 to Brindle 52	26/08/2005
804-626	Watery Lane, Hoole	20/05/2020
804-613	Middle Gill Footpath	04/12/2019
804-625	Haunders Lane, Much Hoole	20/05/2020
804-643	Stoneyroyd, Whitworth	30/06/2020
804-648	Twist Moor Lane	02/06/2020
804-601	PF 11 Hoghton, Chorley	23/07/2018
804-623	Hillside Drive, Newchurch	13/05/2020
804-624	Green Hill Lane	20/05/2020
804-628	Borwick Hall Bridge	21/05/2020
804-622	Hardman Close, Rossendale.	02/05/2020
804-629	Proctor Moss Road	22/05/2020
804-603	Weir Lodges, Bacup	22/10/2018
804-616	Croston Close Road	04/02/2020
804-619	Hall Lane, Longton	30/04/2020
804-630	Green Lane, Leck	26/05/2020
804-641	Aspen Lane, Oswaldtwistle	23/06/2020
804-642	Lord's Lot Road	06/07/2020
804-594	Old Clay Lane	14/02/2018
804-627	Liverpool Road, Much Hoole	21/05/2020
804-691	Farington Hall Wood	08/01/2021
804-658	Grane Road, Rossendale	10/09/2020

Definitive Map Modification Order Applications Awaiting Order Making

Committee has made a decision on these and they are awaiting Order making.

Reference	Known As	Application Date
804-432	Piggy Lane	21/12/2005
804-589	Law Head	25/08/2017
804-558	Long Ing	23/07/2014
804-340	Broughton 6	03/06/1988
804-610	Goodshaw Avenue	02/07/2019
804-611	Smithy Clough / Parson Lee	05/09/2019

Definitive Map Modification Order Applications Awaiting Order Notification

Committee has made a decision on these, Orders have been made and Notices of Making now need to be served.

Reference	Known As	Application Date
804-502	Pilling slipway	01/12/2009
804-379a	Ingol Golf Course 1	11/12/2000
804-379b	Ingol Golf Course 2	11/12/2000
804-379c	Ingol Golf Course 3	11/12/2005
804-379d	Ingol Golf Course 4	11/12/2000
804-379e	Ingol Golf Course 5	11/12/2000
804-379	Ingol Golf Course	10/10/2016

Definitive Map Modification Order Applications in the Window for Appeal Against Decision

Committee has made a decision for these applications. For those where a decision was taken to make an Order (blue) the Order has been made and Notices of Making served, the Order is currently open to statutory objections. For those where a decision was taken not to make an Order (orange) the Notices of Decision have been served and there is opportunity for the applicant to appeal the decision.

Reference	Known As	Application Date
804-609	Cockhill Lane to Moss Houses, Noyna Hall	09/06/2019
804-620	Wennington Road, Wray	30/04/2020
804-615	Williamson Park	09/01/2020
804-614	Stubbins Halt	21/12/2019

Definitive Map Modification Order Applications Awaiting Confirmation

Committee has decided these applications, Orders made are now awaiting confirmation.

Reference	Known As	Application Date
804-404	Fishwick golf course	20/07/2003
804-360	Old Tram Bridge	24/08/1999

Definitive Map Modification Order Applications Awaiting Confirmation Notification

Committee has decided these applications, Orders made and confirmed, Notices of Confirmation now need to be served.

Reference	Known As	Application Date
804-599	Waingate Road/Waingate Lane	26/06/2018

Definitive Map Modification Order Applications Awaiting Submission to the Planning Inspectorate

Committee has decided these applications, Orders have been made and statutory objections received. They are now awaiting submission to the Planning Inspectorate for determination.

Reference	Known As	Application Date
804-454	Kellett Lane to Ranglet Road	04/09/2006
804-427	Sunnyside Ave	12/09/2005
804-466	St Joe's	25/07/2007
804-473	Melbourne social club	26/11/2007
804-517	Clitheroe Grammar	08/08/2011
804-527	Banks	12/07/2012
804-550	Friends Meeting House	17/01/2014
804-531	Banks	12/07/2012
804-540	Buckhurst Road	23/11/2012
804-542	Coronation Field	07/12/2012
804-530	Banks	12/07/2012
804-528	Banks	12/07/2012
804-546	Union Road	28/08/2013
804-526	Banks	12/07/2012
804-544	Sandy Brook	08/02/2013
804-557	Ormerod Street - Gamble Road	05/06/2014
804-529	Banks	12/07/2012
804-563	Penwortham Girls School	15/04/2015
804-561	Upgrade PF 21 Wrihington	17/12/2014
804-500	Chapel Lane	10/09/2009
804-505	Spendmore Lane	14/12/2009
804-507	Dark Lane Earby	02/12/2009
804-547	Sales's Lane	18/09/2013
804-518	New Loveclough	14/01/2015
804-541	Coronation Field	07/12/2012
804-543	Coronation Field	07/12/2012
804-555	Glasson Basin	18/02/2014

804-491	Newburgh	02/10/2008
804-478	Ball House Lane	28/11/2008
804-579	Guy Street	22/04/2016
804-509	Nans Bucks Thurnham	01/02/2010
804-496	Moorside School Bowerham Rd Barton Road	26/05/2009
804-472	Old Hive deletion	08/04/2008
804-465	Salterforth Lane	01/05/2007
804-498	Preston Grasshoppers	05/08/2009
804-578	Packet Lane	16/03/2016
804-582	Wellbrow Drive	26/09/2016
804-592	Aldcliffe Hall Drive	03/01/2018
804-421	Loveclough	15/03/2005
804-591	Lathom High School, Skelmersdale	11/09/2017
804-494	Stoopes Hill	12/01/2009
804-565	Wiswell Moor	10/06/2015
804-566	Mount Pleasant Lane and Thwaite Brow Lane	01/06/2015
804-600	Ayrefield Road to Footpath 2 Upholland	03/07/2018
804-607	Six Acre Lane	14/05/2019

**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 10 March 2021

Part I

Electoral Division affected:
Rossendale West

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Warburton Street to Grane Road, Haslingden (Annex 'A' refers)

Contact for further information, quoting file no. 804-658:
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, 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 of a Footpath from Warburton Street to Grane Road, Haslingden.

Recommendation

- (i) That the application for the addition of a Footpath from Warburton Street to Grane Road, Haslingden be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Warburton Street to Grane Road on the Definitive Map and Statement of Public Rights of Way as shown on the 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 to the Definitive Map and Statement of Public Rights of Way of a Footpath from Warburton Street to Grane Road, Haslingden.

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

Rossendale Borough Council

Rossendale Borough Council provided no response when consulted.

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	7788 2243	Open junction with Warburton Street
B	7794 2244	End of bounded route adjacent to 24 Warburton Buildings
C	7796 2249	Junction with Grane Road

Description of Route

A site inspection was carried out in October 2020.

The application route commences at the southern end of Warburton Street at its junction with Musbury View. It leaves Warburton Street at Point A on the Committee plan to run in an east north easterly direction along the front the terraced properties numbered 6 – 24 Warburton Buildings for approximately 50 metres to point B. The route is approximately 1.5 metres wide and is bounded on both sides by stone walls with a continuous wall along the south side and a discontinuous wall providing individual access to the front of the properties numbered evenly as 6 – 24 Warburton Buildings on the north side.

Between point A and point B the application route is tarmacked with two street lights located along it.

The route passes through a gap adjacent to 24 Warburton Buildings at point B. This gap had metal security fencing across it when the route was inspected in 2020 but the fencing appeared to have been moved so that it was possible to squeeze through it to continue along the route.

Beyond point B the application route continues in a north easterly direction along the eastern edge of the car park of a former Cantonese restaurant (now closed).

It runs for approximately 50 metres along the edge of the carpark in a straight line to Grane Road (point C). Moss and grass had started to grow on the tarmac along the route but it was otherwise available and there were traces of markings in the tarmac which may have possibly marked the route as separate from the parking area in the past.

At point C a 2 metre wide gap existed between the wall bounding the former carpark and the remains of a wall and planted area. A section of metal security fencing had been placed across the gap at point C which extended along the site to the corner of the former restaurant building (240 Grane Road) including blocking the vehicular access to the former car park – which was separate to the access point at point C.

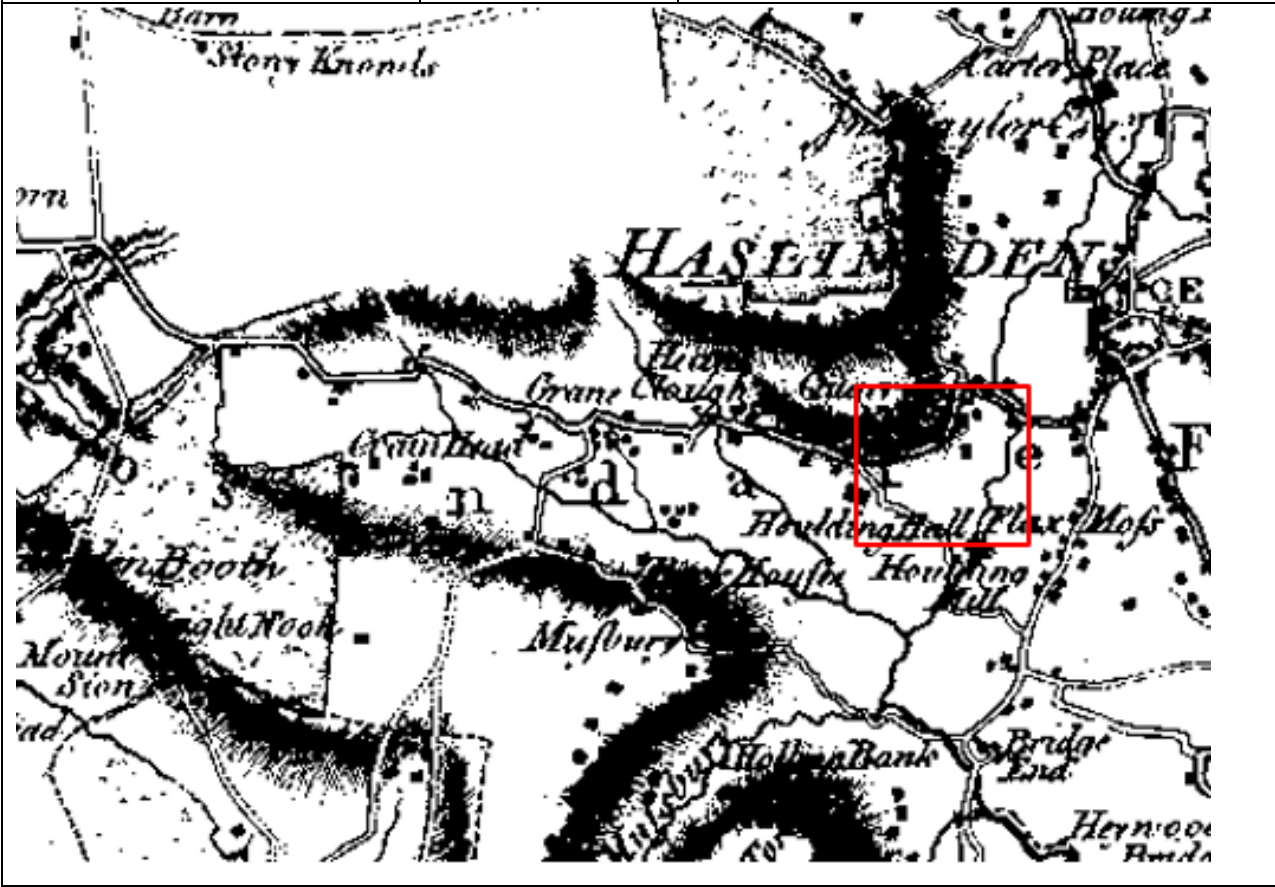
A sign on the car park states that the car park was for the use of Valley Cantonese customers only and that wheel clamping was in operation. It made no reference to

the application route and no other signs existed indicating whether the route was considered to be public or private.

The total length of the route is 100 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.
 <p>The image is a black and white reproduction of a historical map, identified as Yates' Map of Lancashire from 1786. The map shows a network of roads and rivers in the HASTEN DEN region. A prominent feature is a large, dark, irregularly shaped area in the center, which is the site of the application. A red rectangle is drawn around this area, indicating the location of the application route. Other labeled locations include Stone Knolls, Carter Place, Houlden Hall, and Misbury. The map is detailed with various symbols for buildings, fields, and water bodies.</p>		
Observations		The application route is not shown. The later development either side of the application route is not shown.

Investigating Comments	Officer's		The application route probably did not exist at this time although if it did exist it would have been very unlikely for a route considered to be a footpath to be shown on such a small scale map.
Greenwood's Map of Lancashire	Map of	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. Grane Road is shown but the houses (Warburton buildings) and Warburton Street are not shown.
Investigating Comments	Officer's		The application route probably did not exist in 1818.
Hennet's Map of Lancashire	Map of	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

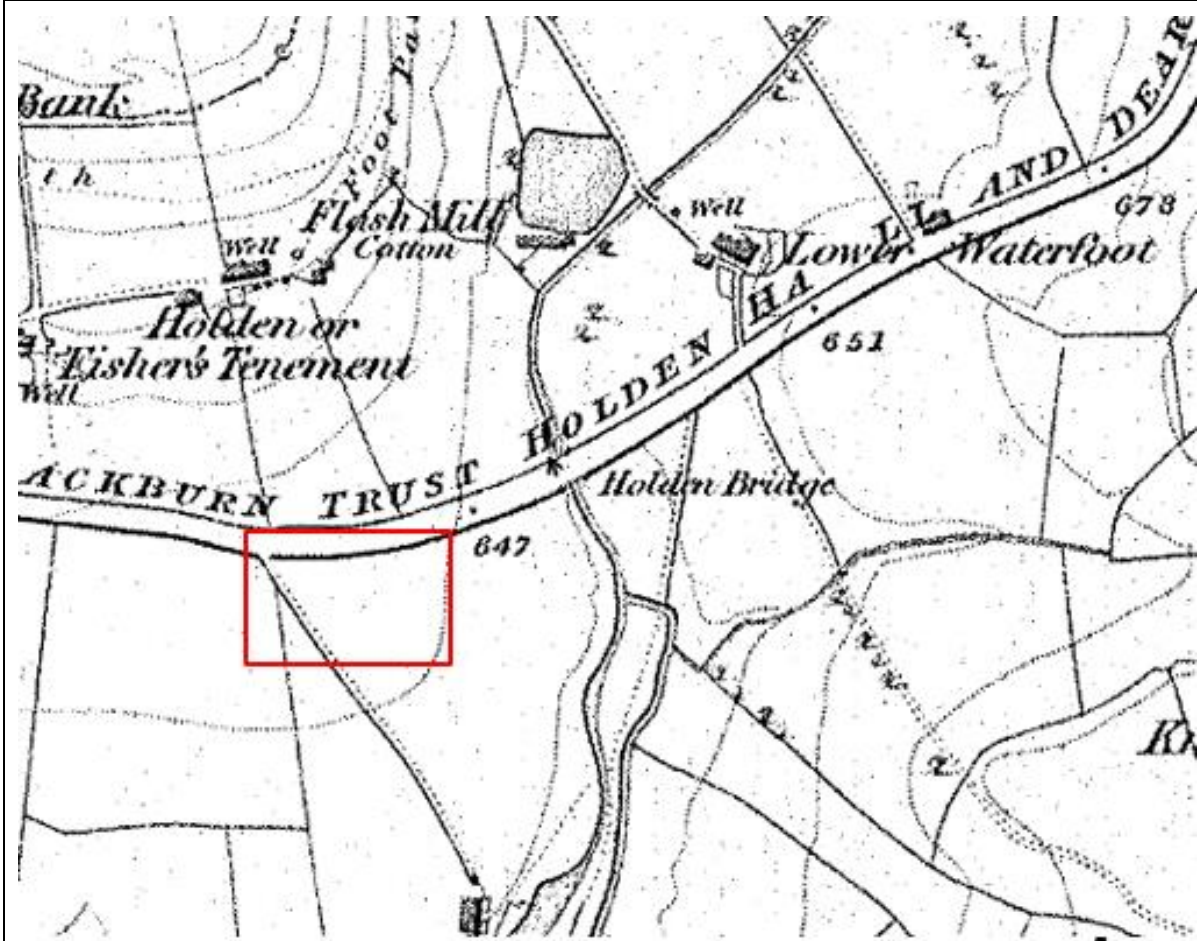
		<p>hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>
--	--	---



<p>Observations</p>		<p>The application route is not shown and the later development on either side of the route is not shown. Some buildings may have existed on the land crossed by the application route but the scale of the map means that it is not possible to determine whether any part of the application route existed.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably did not exist in 1830 because although such a path would be unlikely to be shown, the pattern of buildings which matches the line of the application route did not exist.</p>
<p>Canal and Railway Acts</p>		<p>Canals and railways were the vital infrastructure for a modernising</p>

		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		The land crossed by the application route was not affected by any existing or proposed canals. The East Lancashire Railway was built to the east of the route in the late 1840s and was in existence until the 1960s but did not cross the land affected by the application.
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 available to view in the County Records Office 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.
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

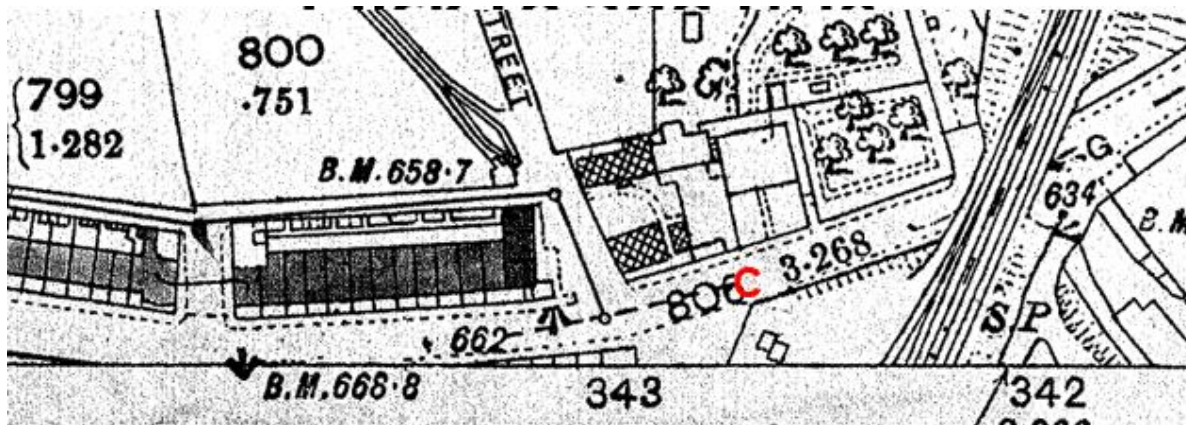
		can provide conclusive evidence of status.
Observations		There is no Inclosure Award available to view at the County Records office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 71	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1845 and published in 1849. ¹



Observations		The application route is not shown. Warburton buildings and Warburton Street are not shown and the land crossed by the application route is
--------------	--	---

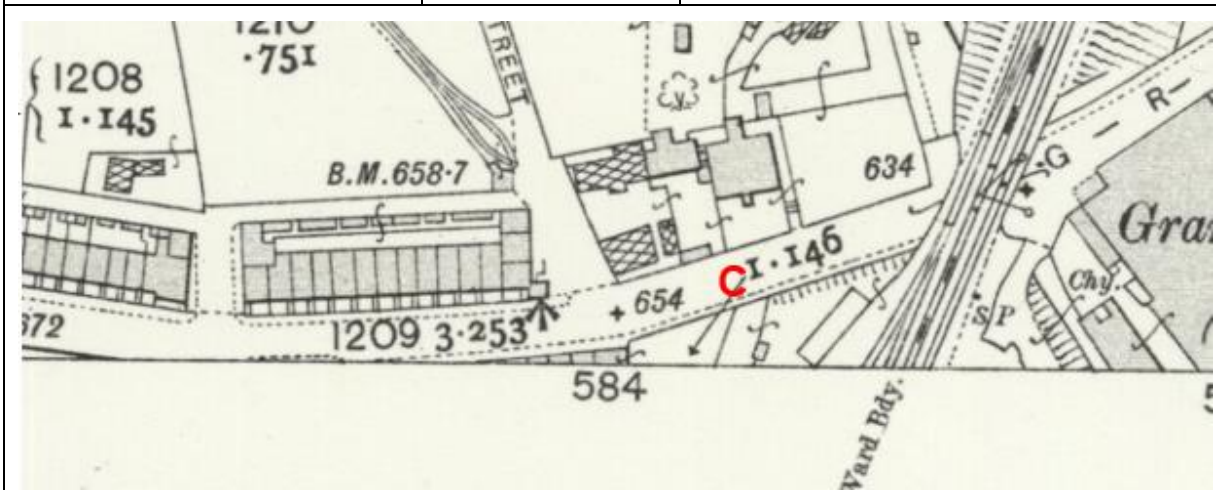
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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.

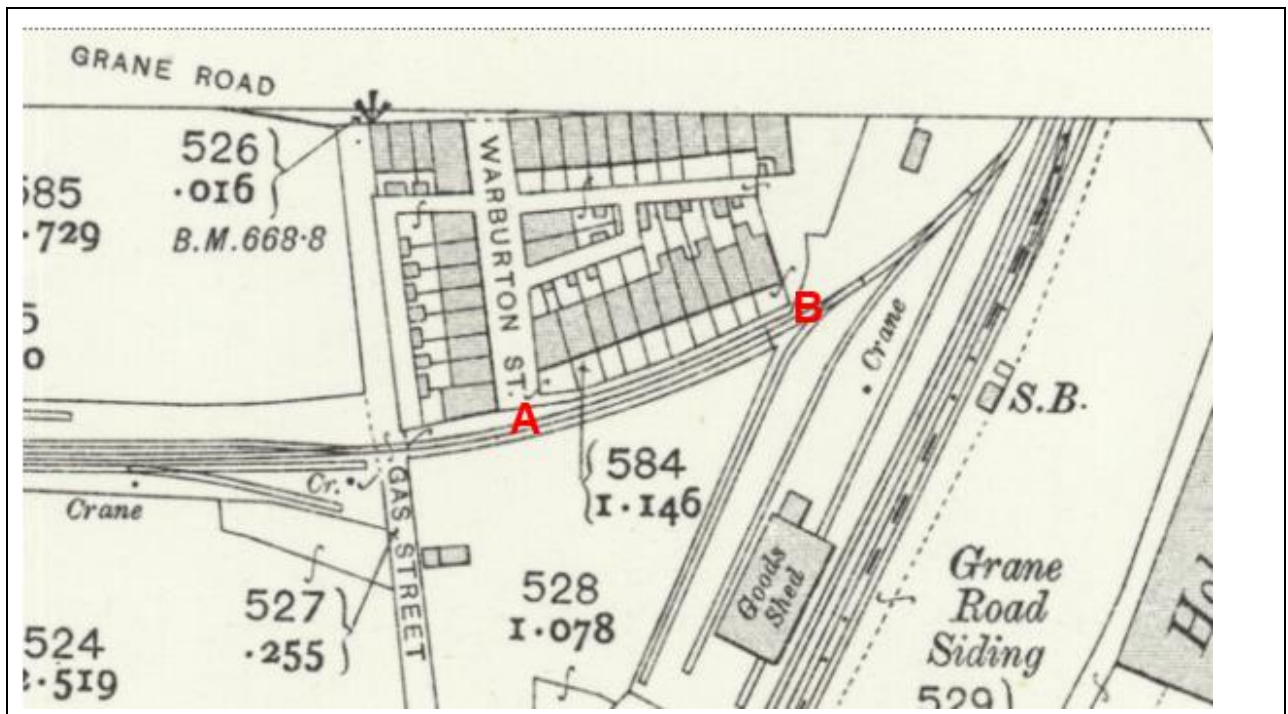
		undeveloped.
Investigating Officer's Comments		The application route did not exist in 1844-45.
25 Inch OS Map Sheets 71-12 and 71-16	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



Observations		Significant changes had taken place since the survey undertaken in 1844-45. Warburton Street had been built and so had the rows of houses now referred to as Warburton Buildings. The application route is shown as a narrow bounded route from point A to point B between the properties and a railway branch line. Access onto it appears to be open and unrestricted at point A and point B. The application route between point B and point C is not shown. Access from point B appears to be available to an area of open land to the east of the rows of houses with open access onto Crane Road – indicated by pecked lines at
--------------	--	---

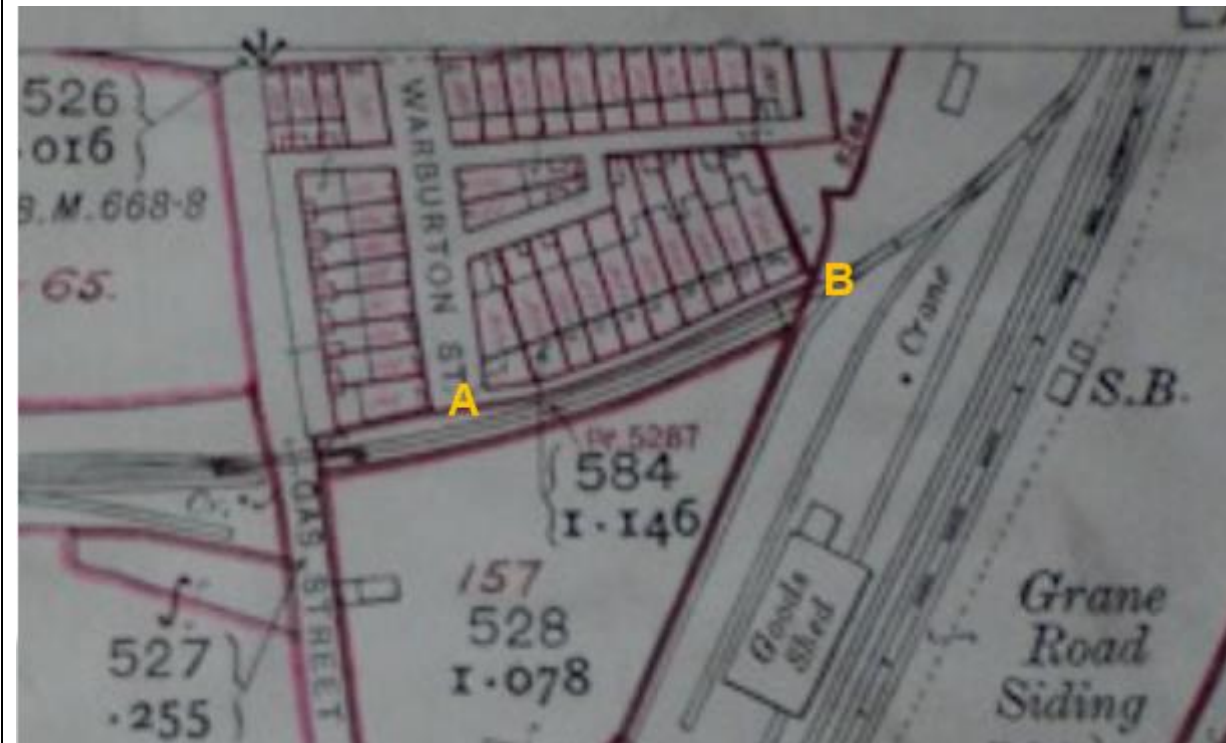
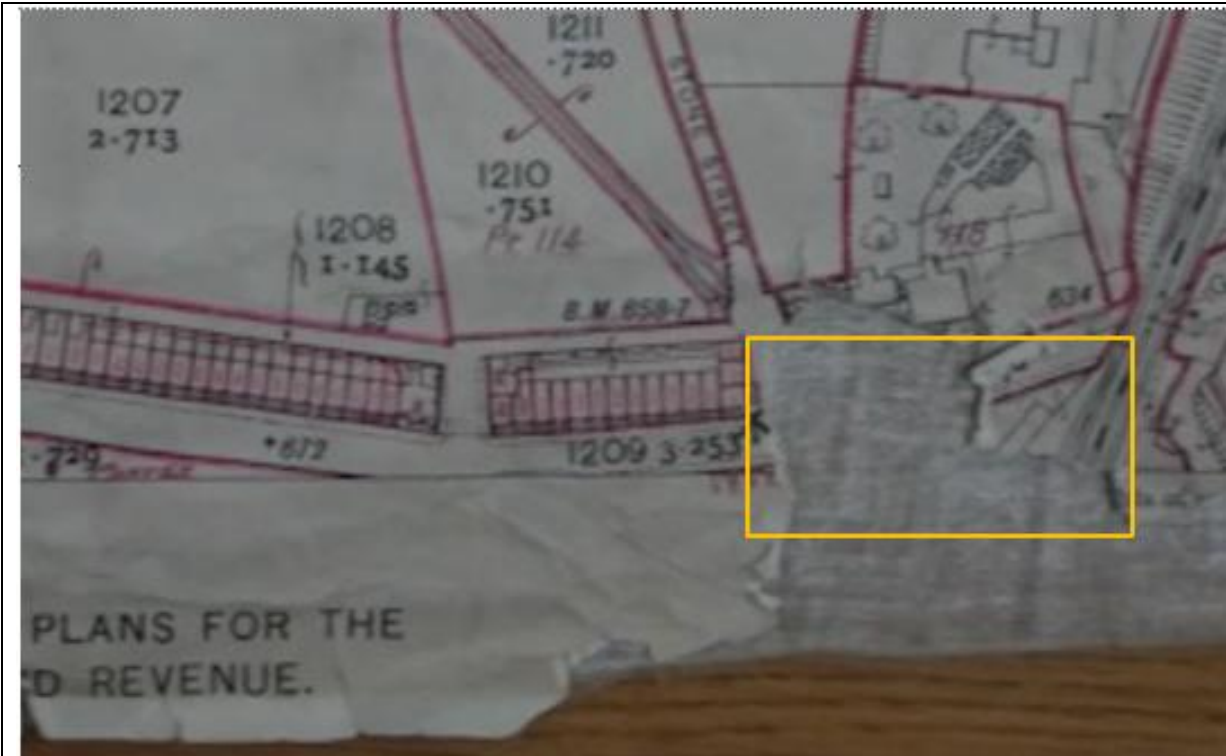
		<p>point C.</p> <p>The East Lancashire Railway Clifton Junction to Accrington line is shown to the east of the application route with a boundary wall extending from immediately east of point B to point C which 'kinked' just beyond point B to cross the application route.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed in 1891 and appeared capable of being used. Between point B to point C a route may have been available across an open area of land but it would not have been along the application route. Access onto Grane Road was shown open and unrestricted.</p>
25 inch OS Map Sheet 71-12 and 71-16	1911	<p>Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.</p>





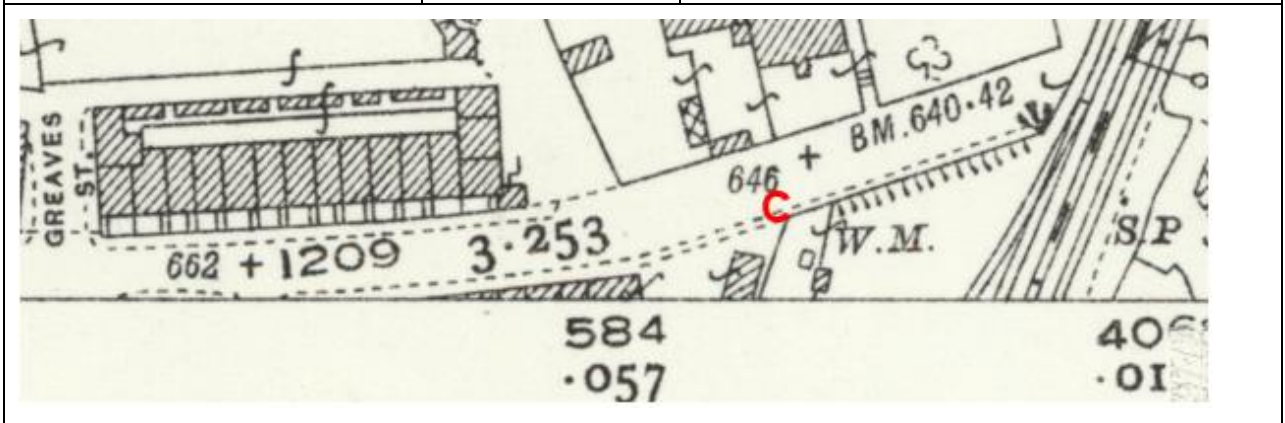
<p>Observations</p>		<p>The application route is shown in the same way as it is shown on the First Edition 25 inch OS map between point A and point B. Between point B and point C the route is not shown but access appears to be available across an open area of land. A line is shown across the route at point C suggesting that the land was now bounded along the side of Grane Road and north east of point B the wall protrudes out across the line of the application route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route between point A and point B existed in 1909 and appeared capable of being used. Between point B to point C a route may have been available across an open area of land but not along the application route and there is no indication that access would have been available onto Grane Road at point C.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<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</p>

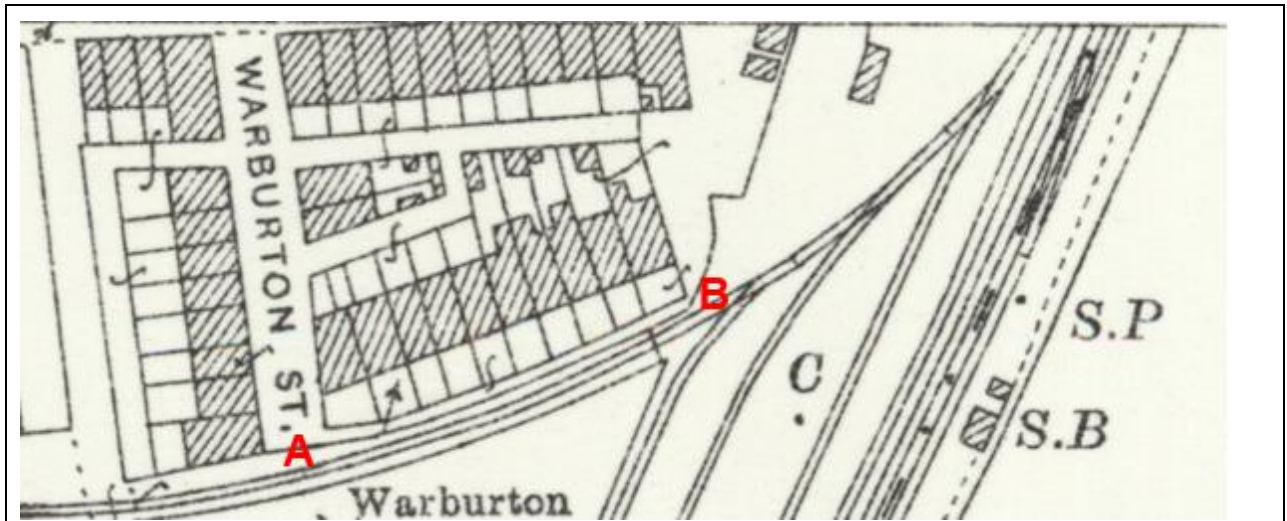
		<p>right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if 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 application route between point A and point B is excluded from the numbered plots. Beyond point B the route is largely included in a numbered plot but even when enlarging the map it was not possible to read the number. The map sheet showing the land crossed by the application route where</p>
---------------------	--	---

		it exits onto Grane Road at point C was badly damaged and it is not possible to see what was originally drawn.
Investigating Comments	Officer's	<p>The fact that the application route is excluded between point A and point B is suggestive of, but not conclusive of, public carriageway rights although the physical width would have restricted any vehicles to narrow ones such as handcarts and bicycles. The fact that it was excluded however, and the fact that the route provided direct access to the front of 10 individual properties and that ownership is unregistered (and unknown) is suggestive of a route considered to be a public route.</p> <p>No inference can be drawn with regards to the existence of public rights between point B and point C as the application route was not excluded and the poor quality of the maps examined means that it is not possible to check any information recorded in the District Valuation Book.</p>
25 Inch OS Map Sheets 71-12 and 71-16	1930	Further edition of 25 inch map (surveyed 1891, revised in 1928 and published in 1930.





<p>Observations</p>		<p>The application route is again shown between point A and point B with open access at both ends. Between point B and point C the application route is not shown and the boundary line shown on earlier editions of the map is still shown extending out across the route together with two buildings that are now shown built on the route approaching point C. Access onto Grane Road at point C is still open and accessible and it appears possible to get from point B to point C but on a different (undefined route) to the west of the application route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed between point A and point B in 1928. Access may have been available between point B and point C – but not along the line applied for.</p>
<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa1934</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-</p>

		important thoroughfares'.
Observations		The application route is not shown.
Investigating Officer's Comments		No inference can be drawn. It would be unusual for a narrow path to be shown on such a small scale map which was primarily published to show public vehicular routes.
Aerial Photograph ²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

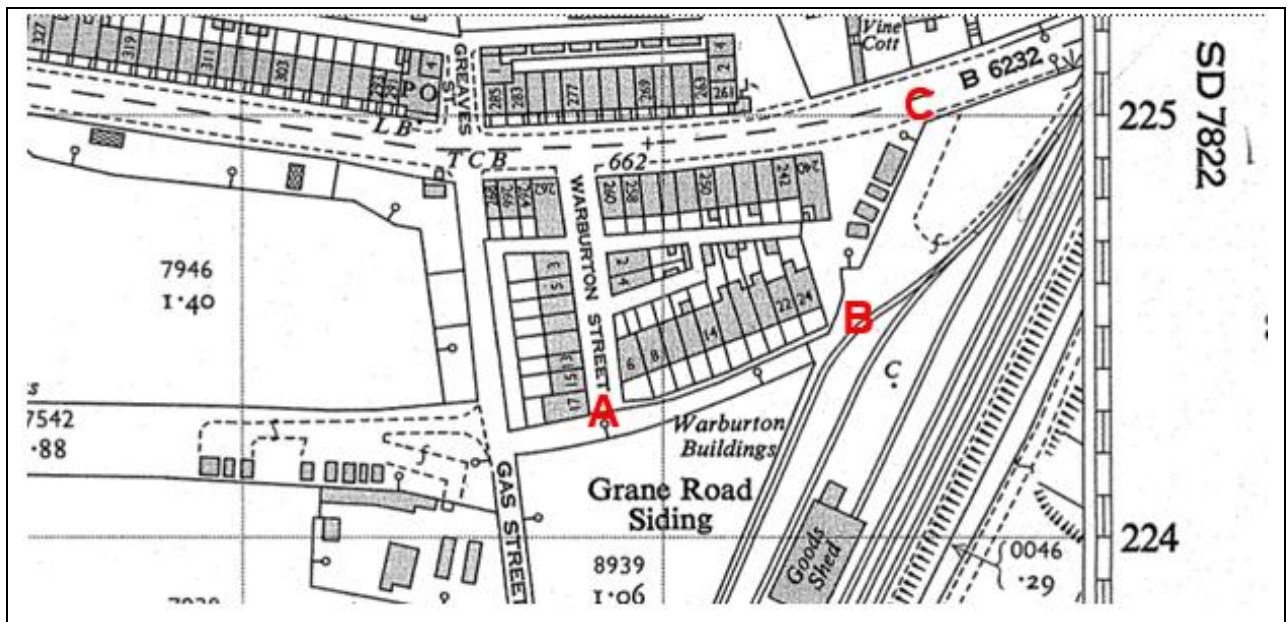
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



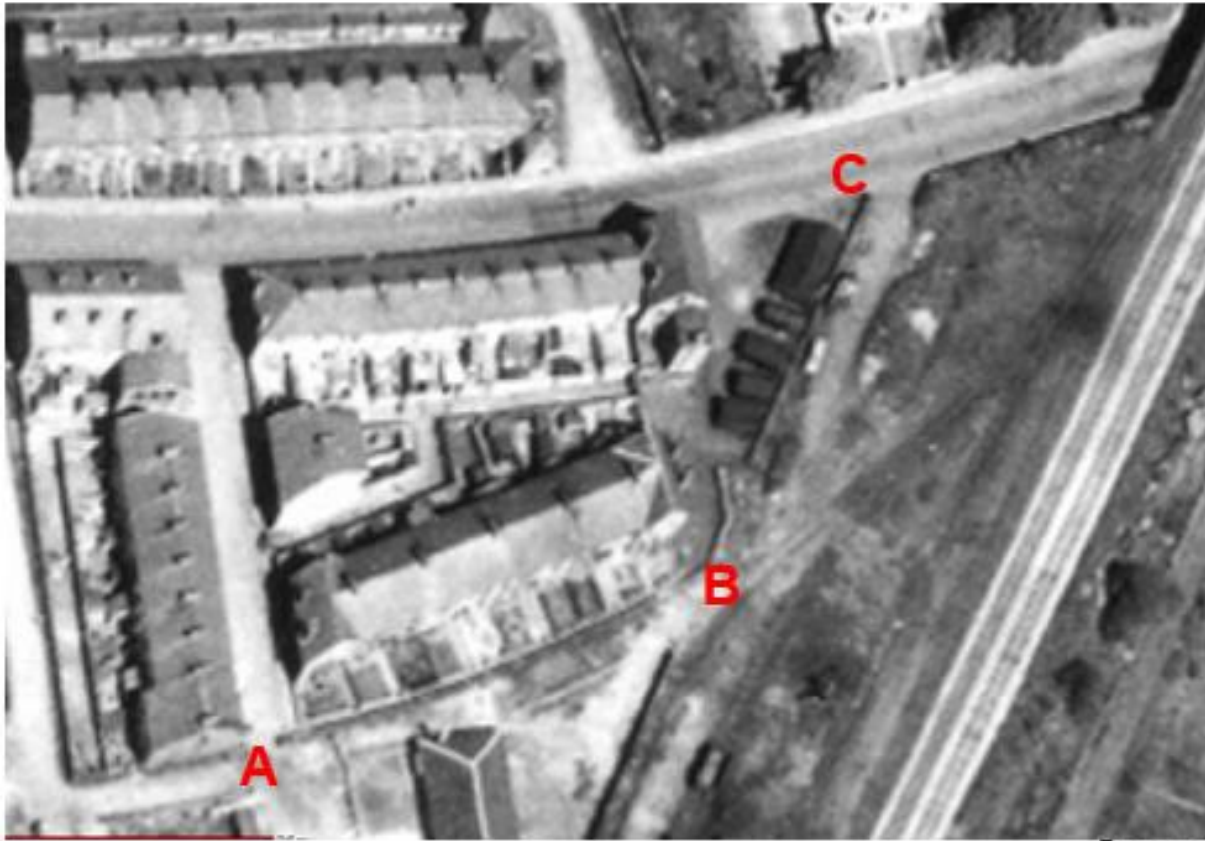
Observations		<p>The earliest aerial photograph available to view.</p> <p>It is just possible to make out the shape of the rows of houses and the railway line but the application route cannot be seen.</p>
Investigating Officer's Comments		<p>The application route, if it did exist was not a significant route which showed up on a photograph of this scale.</p>
6 Inch OS Map Map Sheet 72SE	1965	OS 6 inch map revised 1960-61 and published 1965.



<p>Observations</p>		<p>The application route is not shown between point A and point B as a bounded route. A line is shown across the route at point B. The application route is not shown between point B and point C and the same kinked boundary line is shown obstructing the line of the application route. A gap in the line at the roadside is shown at or close to point C.</p>
<p>Investigating Officer's Comments</p>		<p>The limitations of scale prevent any inference about section A-B of the route but between point B and point C part is unavailable due to the kink in the wall so the route was not accessible along its full length in the early 1960s.</p>
<p>1:2500 OS Map Map Sheet SD 7790 2243</p>	<p>1962</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1962 as national grid series.</p>



Observations		The application route between point A and point B is shown as being open and available. Beyond point B the line of the application route is blocked by the kink in the boundary line and by some buildings. Access onto Grane Road at point C was open.
Investigating Officer's Comments		The application route existed between point A and point B in 1961. Access may have been available between point B and point C – but not along the application route itself.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route can be seen between point A and point B and appears to extend out into the open area at point B. The application route between point B and point C is not shown and access is not available along the route due to a kink in the wall and a number of buildings which look like sheds or garages. Access from point B around the buildings onto Grane Road appears to have been available.
Investigating Officer's Comments		The application route existed between point A and point B. Beyond point B the application route did not exist although access to Grane Road may have been available along a different route.
OS base map	1980	OS base map used for Land Registry plan. SD 7722 at a scale of 1:1250 enlarged from 1:2500. Published 1980, date of revision not known.

ISTRY		LA 465751	
ID 7722	SECTION B	Scale 1/1250 Enlarged from 1/2500	
DISTRICT ROSSENDALE		© Crown copyright 1980	



Observations		The application route is shown between point A and point B as shown on all earlier editions of OS mapping. Between point B and point C the line of the application route is still shown as being unavailable due to the position of the boundary fence and buildings.
Investigating Officer's Comments		The date that the map was surveyed is unknown but it was published in 1980 and was used as the base for a land registry plan prepared in relation to land purchased in 1981 suggesting that the wall line protruding out across the route was correct at that time. It appears likely that the application route between point B and point C was not available to use at that time.
Aerial Photograph	2000	Google Earth Pro image dated 31 December 2000.



<p>Observations</p>		<p>This aerial photograph shows the line of the application route between point A and point B although it is not possible to see whether the route is available and free from any obstructions or restrictions on a photograph like this. Between point B and point C the former wall and buildings across the application route are no longer there and the railway line has been dismantled and the land redeveloped. Two vehicles look to have been parked across the application route but if they were not there it appears that the route would be available to use and access to Grane Road looks to be available at point C.</p>
<p>Investigating Officer's Comments</p>		<p>The whole length of the application route appears to have been available in 2000.</p>
<p>Aerial Photograph</p>	<p>2003</p>	<p>Google Earth Pro image captured on 16th April 2003.</p>



Observations		The image is not good quality. A line indicating the application route can be seen between point A and point B but detail of the route cannot be seen. Between point B and point C a route appears to be available and of significance is that an separate access point to the wider (vehicular) access can be seen at point C.
Investigating Officer's Comments		The application route appeared to be available to use between point B and point C in 2003. It was not possible to see the enclosed route between point A and point B so no inference can be drawn from the photograph in that regard.
Aerial Photograph	2005	Google Earth Pro image captured 31 December 2005.



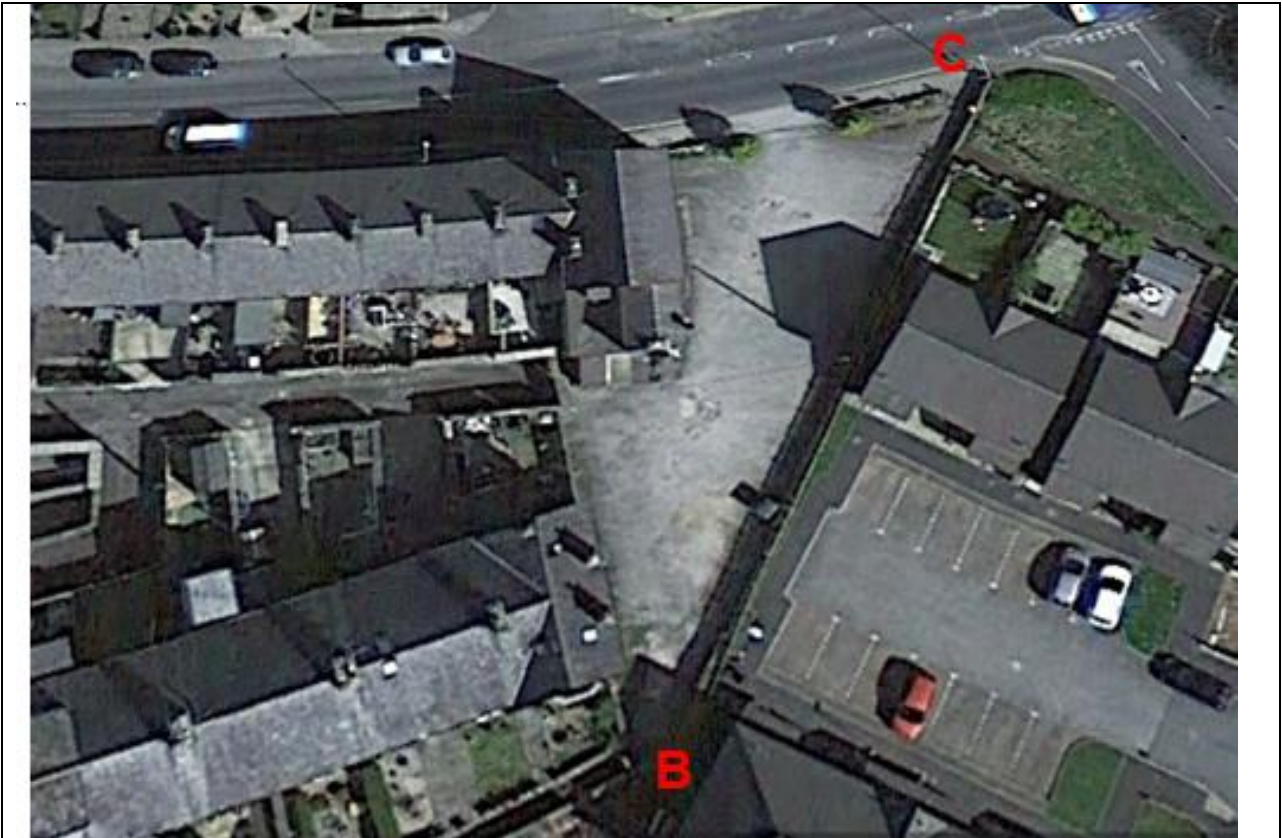
Observations		The line of the application route between point A and point B can be seen although it is not possible to see whether the route is available and free from restrictions. Between point B and point C it appears that the route was available to use and access to Grane Road was available at point C.
Investigating Officer's Comments		The whole length of the application route appears to have been available in 2005.
Aerial photograph	2011	Google Earth Pro Image captured 4 th August 2011.



Observations		The line of the application route can be seen between point A and point B although because of its width and the fact that it was enclosed by walls it is not possible to see whether access was available or unrestricted. Between point B and point C it appears that the application route was available to use with access onto Grane Road at point C.
Investigating Officer's Comments		The whole length of the application route appears to have been available in 2011.
Aerial photograph	2013	Google Earth Pro image captured 4 th June 2013.



Observations		The land crossed by the application route appears unaltered from when the earlier aerial photograph was taken in 2011.
Investigating Officer's Comments		The whole length of the application route appears to have been available in 2013.
Aerial Photograph	2014	Google Earth Pro image captured 22 April 2014.



<p>Observations</p>		<p>The application route between point A and point B is shown in the same way as it is shown on the earlier Google Earth images. Between point B and point C shadows cast from the adjacent wall and buildings make it difficult to see the route. An object appears to have been placed on the route between point B and point C although it is not possible to determine from this photograph what this was. Google Street view images included later in the report show a commercial refuse bin on two later photographs dated 2017 and 2019 which would be consistent with the shape and size of the object seen here. Access around the object appears to be available and the access onto Grane Road at point C can be clearly seen.</p>
<p>Investigating Officer's Comments</p>		<p>Access along the application route appeared to have been available in 2014 with a slight deviation around an unknown object between point B and point C..</p>
<p>Aerial Photograph</p>	<p>2014</p>	<p>Aerial photograph available to view on Lancashire County Council mapping.</p>



Observations		A further aerial photograph taken in 2014 appears to confirm what was shown on the Google Earth Pro image above.
Investigating Officer's Comments		Access along the application route appeared to have been available in 2014 with a slight deviation around an unknown object between point B and point C.
Aerial Photograph	2018	Google Earth Pro image captured 28 th June 2018.



<p>Observations</p>		<p>The application route is shown again between point A and point B in a similar manner to all previous images examined. A white mark at point B can be seen but it is unclear what this is and whether it was a gate which may have restricted access. Shadows can be seen across the route between point B and point C but the application route does appear to be largely free of obstruction.</p>
<p>Investigating Officer's Comments</p>		<p>Access along the application route appeared to have been available in 2018 with a slight deviation around an unknown object between point B and point C.</p>
<p>Photographs provided by the applicant</p>	<p>1976-1980</p>	<p>The applicant provided copies of a number of photographs showing the land crossed by the application route between point B and point C.</p>



Photograph 1 – described by applicant as showing the rear of 240-242 Grane Road in 1976



Photograph 2 – Described by applicant as being the rear of 242 Grane Road in 1979



Photograph 3 – Described as being a photograph of access to the old railway siding before Holden Place was built and the words 'open gate wall been altered' dated 1980



Photograph described by applicant as showing land to the rear of 240 Grane Road and dated 1980

Observations		The four photographs submitted by the applicant show the land crossed by the application route between point B and point C. They do not show the exact line of the route as claimed and where taken at a time when the line of the application route between point B and point C did not appear to be available. They show children on the land which became the car park for the Cantonese restaurant but there is no indication whether the use being made of that land was by permission or by right. Wooden garages/sheds are shown along the line of the route between point B and point C (photograph 1 and 3) confirming that in the 1970s until at least 1980 the route claimed between point B and point C was not available to walk on the ground.
Investigating Officer's Comments		The application route between point B and point C did not exist in 1976-1980.
Google Street View	2009-2019	Series of Google Street View images showing the application route from point C looking back towards point B taken over a 10 year period from 2009 to 2019.





2010



2016



2017





2019

<p>Observations</p>		<p>The photographs all show the application route from point C across the car park to point B. A car can be seen parked on the route on the photographs taken in 2009 and 2010 and it appears that a commercial refuse bin was also located on a strip of rough grass hard up against the wall on the route of the application route on the photographs taken in 2017 and 2019.</p>
<p>Investigating Officer's Comments</p>		<p>The application route consistently appears to have been available for use over the 10 year period 2009-2019 between point B and point C although it may have been necessary to walk around a refuse bin and the occasional parked car.</p>
<p>Definitive Map Records</p>		<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</p>

		Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The application route is in Haslingden which is a former Municipal Borough for which no parish survey map was prepared.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was shown on the Draft Map and no representations were made to the County Council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was

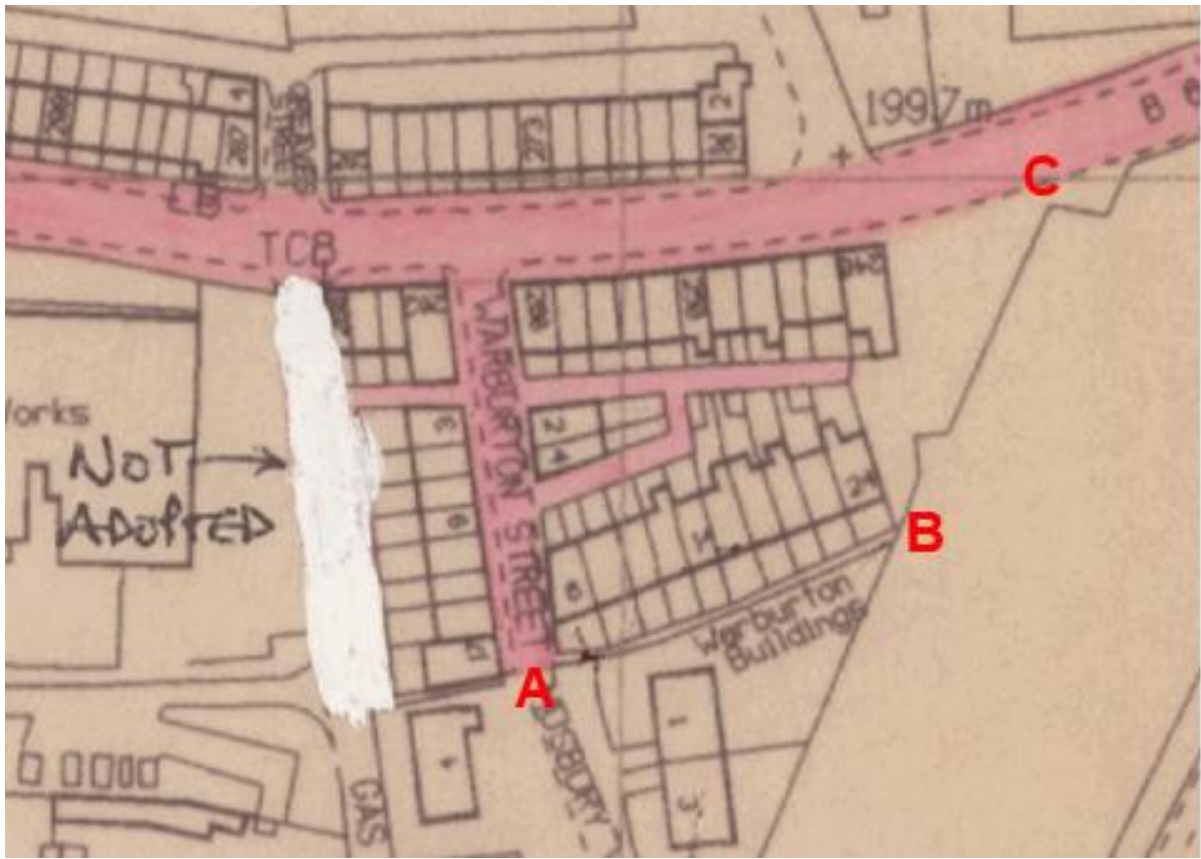
		published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was shown on the First Definitive Map.
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 Revised Definitive Map First Review.
Investigating Comments	Officer's	From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way that should be recorded on the Definitive Map by the Surveying Authority. There were no objections to the fact that the route was not recorded 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	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.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.





Road Classification

-  A Roads
 -  B Roads
 -  C Roads
 -  Footways
 -  Motorways
 -  Trunk Roads
 -  Unclassified Roads
 -  Unadopted Roads
 -  Cycle Tracks
 -  Alley Gated Streets
- Districts**
-  Other District/Unitary Authority
 -  Lancashire Districts

Road Information	
Road Number	F6615
Road Name	Footpath Fronting No 6 To No 24 Warburton Buildings
Responsibility for Maintaining Road	Area East - Rossendale
Maintenance Agency	Rossendale, Non-Trunk
Maintenance Category	Remote Footway
Road Type	Urban, Divergent Footway
Footway Type	Outside Lancashire or Unadopted Roads
Number of Lanes	0
Speed Limit	Unknown
Length	52.194 metres
Section Number	00001
Link Code	F66150
Start Node	278369
End Node	278370
Safety Inspection Frequency	Not Inspected
Last Safety Inspection	
PEM Road ID	5014F66150/00001

Observations

The application route is not recorded as

		a publicly maintainable highway on the county council's List of Streets.
Investigating Comments	Officer's	The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Comments	Officer's	If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
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</p>

		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Landownership

The length of the application route from 6 to 24 Warburton Buildings (between point A and B on the Committee plan) crosses land which is unregistered, from 24 Warburton Buildings (between point B and point C) the application route crosses land registered under title numbers LA465751 and LA840093.

Summary

The application was submitted primarily on the basis of user evidence pre-dating the obstruction of the route at point B and point C in 2019.

Whilst there is no map and documentary evidence from which dedication of the route can clearly be inferred it is clear that the route from point A through to point B has existed since at least 1891 and that access along it has consistently appeared to be available providing direct access to the houses known as Warburton Buildings but also through point B onto an area of land adjacent to 240 Grane Road from which it appeared that it was possible to exit onto Grane Road – but not necessarily via the application route B-C.

The current registered owner of the land crossed by the application route between point B and point C (with the exception of a small area owned by the Places for People Homes Ltd.) purchased the property in 1981 and it appears that at some point between then and 2000 the site was cleared of the buildings (garages/sheds) that previously existed across the route.

No further dated OS map sheets were found from which it was possible to date the changes.

From 2000 onwards the aerial photography and Google Street View images consistently show that the application route crossed a car park with what appeared to be a dedicated pedestrian access point clearly separate to vehicular access at point C. Despite the occasional car parked across the route and the bins located on it a route, although not adjacent to the wall where the bins stood, appears to have been available between point B and point C approximating to the application route from at least 2000.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant provided the following supporting information:

1. A letter of support from Grane Residents' Association.
2. A letter of support from the former leader of Grane Youth Group
3. A 1986 Youth Group list relating to a trip to Morecambe
4. A 1985 Youth Group letter
5. Map extracts which have been considered above.
6. Historic photographic evidence which has been considered above.
7. Modern photographic evidence which has been considered above.
8. 14 user evidence forms.

The 14 user evidence forms are summarised below. Of the forms submitted 3 included use by couples for a total of 17 users.

Type of Route

The majority of users stated that they believe the route should be recorded as footpath with only one user varying from this, believing that the route should be recorded as a restricted byway.

The majority of users recorded use of the route on foot only with only one couple recording that they used the route by car on a weekly basis.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1940 and up to 2020. The route appears to have been called into question in 2019 when the route was reportedly blocked but two users, recording their use in a single user evidence form reported continued use of the route in 2020.

Two users recording their evidence in a single user evidence form did not specify the years which they had used the route but stated that they had used it for 45 and 53 years respectively.

One user, having used the route from approximately 1940 to 2019 noted being a tenant of the then landowner in the period 1972-1979.

20+ Years Including the years (1999 to 2019)	1-19 Years	Other
13	2	2

Frequency of Use

The majority of the users stated that they used the route daily with one user stating that they used the route 4 to 6 times per day.

More than once daily	Daily	Weekly
1	12	4

Reasons for Use

The majority of users specified pleasure and use as an access route as their reasons for using the applications route. 5 users noted using the route to get to work. One user noted dog walking.

Other Users of the Route

All users recorded having seen others using the route on foot. In addition to use on foot 2 users noted seeing others using the route on bicycle, 1 user noted use on bicycle and by horse drawn vehicle and 2 users noted use by motorised vehicles.

Consistency of the Route

All users specified that the application route had always followed the same route, 8 users provided an estimate width with this ranging from 1 to 2 metres.

Permissive Use of the Route

4 users noted having permission to use the route, 2 noted this in relation to having a key to the gates of the carpark. 2 noted that they had received permission from LCC and the owners of the Valley Cantonese restaurant.

Unobstructed Use of the Route

Several users noted obstructions along the route though many did not record any obstruction and only some recorded the obstructions as having prevented them from using the route.

Route Obstructed			
Mentioned Barriers	Mentioned Gates	Not Obstructed	Not Specified
6	4	6	1

Of the 6 users who mentioned barriers all noted those erected in 2019 and further recorded that these had prevented continuing use of the route.

Of the 4 users who mentioned gates 2 specified gates leading onto Holcombe Road, 1 noted a gate next to 240 Grane Road, locked at night and otherwise sometimes left open and unlocked. The final user simply stated that the gate was sometimes locked. None of these 4 users noted that the gate had prevented their use of the route.

Of the 17 users 2 noted having been informed recently that the route was not public in conjunction with the erection of barriers.

3 users noted being turned back though this was in relation to finding the route obstructed by the barriers.

Information from Others

The letter of support from the Grane Resident's association states that the route has been in use for over 40 years and that members of the association have used the route since 1991 when delivering newsletters and relevant information.

The letter of support from the former leader of Grane Youth Group noted that the youth group leaders used the route for similar purposes in distributing leaflets and other paperwork. The list relating to a trip to Morecambe and the letter dated 1985 are presented as evidence of this.

Tapestart Limited responded to confirm freehold interest (subject to long leasehold interests) in land adjacent to the application route at Warburton Buildings, they provided no further comment at this stage.

Cadent Gas responded to consultation to state they had no objection.

Atkins Global responded to consultation to state they had no objection.

United Utilities responded to alert the council to a waste water pipe near the application route.

Rosendale Ramblers responded to consultation to state they had no objection and saw the application as a positive development.

Information from the Landowner

One of the affected landowners responded to confirm their landownership and to raise an objection to the application.

The landowner clarified that on purchasing the property in 2019 he understood that the legal rights of crossing the land were fully investigated by their solicitor. It was found that there were no rights reserved over any part of the land and local searches carried out by the solicitor proved no access roads across the land. The landowner went on to state that the openings in the boundary walls around the property are for the benefit of the property 240 to enter and exit through.

The landowner clarified that they had erected the Heras fencing to secure the property and make it a safe work site due to extensive refurbishment work on the property with site traffic likely to cause risk to the public. The landowner noted that there have been cases of fences being moved, cut, fence bases being stolen and CCTV tampered with.

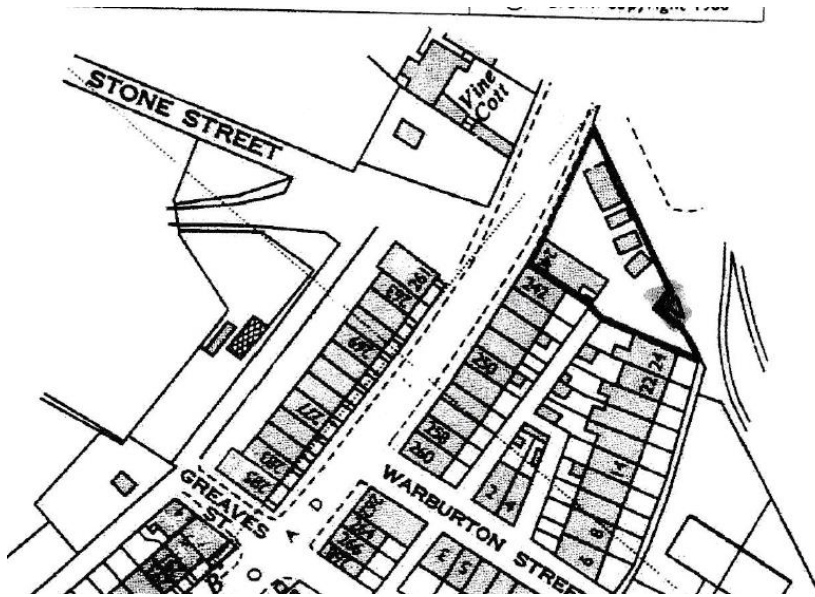
The Landowner also noted problems encountered by the previous landowner who ran a Cantonese restaurant claiming numerous issues with the Warburton Building and Grane Road residents when trying to secure the property from trespassers.

In addition, the landowner noted that the property is currently in the process of a planning application, with a view to accommodate vulnerable people and that the development as planned will not be viable if the application is successful.

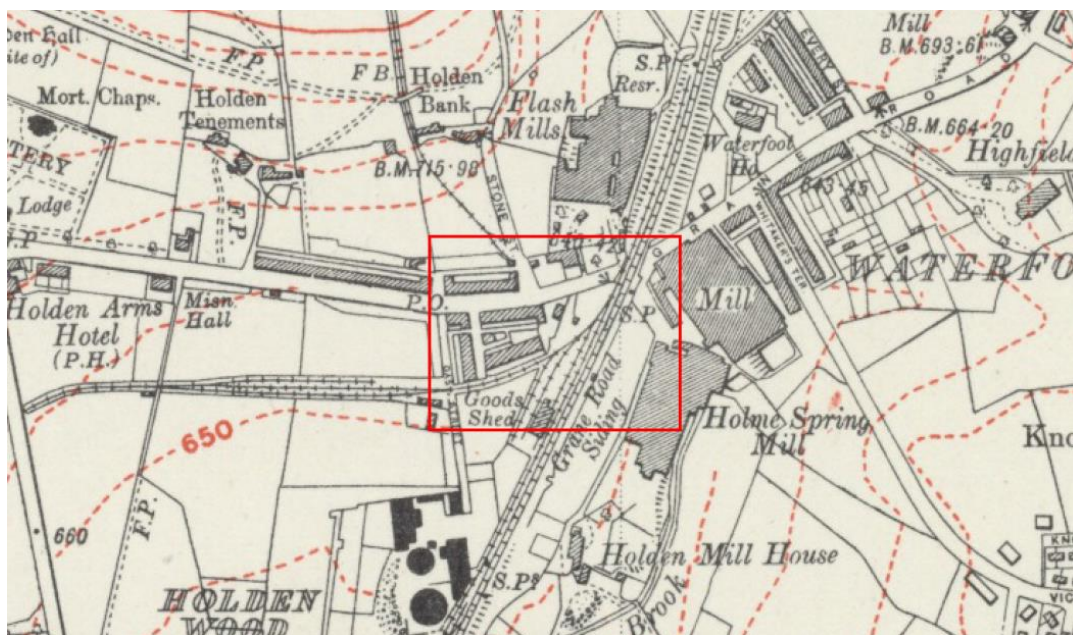
The landowner also noted that according to their understanding the reason that some of the residents cross the property is because they park their vehicles on Holden Place. They stated that this has been a contentious issue between the residents of Holden Place and Warburton Buildings and that the residents of Holden Place applied for double yellow lines to be installed and therefore parking in this area will soon not be possible removing the need to cross the land via the application route. In conjunction with this the landowner noted a meeting with Councillor David Stansfield where they explained the situation, discussed the documents and Councillor Stansfield is reported to have concluded that the landowner was correct in their position regarding any access.

The landowner also provided some insight into the development of the area in relation to access along Grane Road and Warburton Street: "Historically the tramline ran along the Southernly point and up across Grane Road. I believe the tramline was open access at the bottom of Warburton Street, as there were various goods shed in the vicinity, and this would ease access to the sheds for the loading of materials such as sandstone flags quarried from Hutch Bank Quarry. Later when the tramline was decommissioned, it was an open field but still open access from the bottom of Warburton Street along the original tram line route. Then when the Holden Place and Musbury View houses were built, any access points linking Warburton Street to Grane Road, other than the main road access, were closed off."

In a further email the landowner provided two map extracts, one the Title Plan for 240 Grane Road (below), the landowner noted the existence of the out buildings/garages and also that within the deeds it is noted that the property is 'bounded by the railway sidings'.



An OS map extract was also provided by the landowner illustrating the out buildings and a further view of the surrounding areas which shows the open land to the East.



The significance of both maps is included in the analysis of the map and documentary evidence above.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence and letters of support.
- Absence of signs and notices along the route stating that the route was not public.

- Absence of action taken by landowners until 2019 to discourage use of the route.
- Aerial Photographs and Google Street View Images from 2000.

Against Making an Order(s)

- Objects, structures and potential car parking between points B and C of the route which may have caused users, at times, to deviate from the application route.

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.

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

Firstly looking at whether there are circumstances from which dedication could be inferred at common law, Committee is advised to consider whether the evidence presented within this report from the various maps and other documentary evidence coupled with the evidence on site and user evidence, indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The Head of Service – Planning and Environment has considered the historical map and documentary evidence and concluded that, whilst it is clear that the route A-B has existed since at least 1891 and that it would appear that at some point between 1981 and 2000 the route B-C was cleared of buildings that previously existed across the route, there is no map or documentary evidence from which dedication of the route can be clearly inferred.

The Aerial photographs and Google Street View images provide some assistance in relation to the route approximating B-C but only from 2000 onwards.

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

Secondly looking at deemed dedication under section 31 Highways Act 1980, Committee will be aware that in order to satisfy the criteria for s31, there must be sufficient evidence of use of the claimed route by the public, as of right (without force, secrecy or permission) and without interruption, over the 20 year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The 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 this matter, the evidence indicates

that access to the route was obstructed at points B and C in 2019; therefore, the 20 year period under consideration for the purposes of establishing deemed dedication would be 1999-2019.

The applicant has provided 14 user evidence forms in support of the application (3 of which comprise of use by couples), which refer to regular use of the route from as early as 1940. A number of letters have also been provided in support of the application.

All 17 users have provided evidence of use of the application route during the period under consideration. The main purposes stated for use of the route were for pleasure and use as an access route, use of the route to get to work and dog walking. The majority of users stated that they had used the route on foot daily. 4 of the users also expressed that they had used the route weekly, 1 user more than once a day and another 4-6 times per week. One couple refer to having used the route weekly by car however, from the information provided this use would appear to be via the car park area adjacent to no. 240 Grane Road to the rear of their property at no. 242 Grane Road rather than via use of the application route itself.

All users refer to having witnessed others using the route on foot, with 2 users also referring to have witnessed bicycle use, 1 user noting use on bicycle and horse drawn vehicle and 2 users noting use by motorised vehicle.

All of the users state that the application route has always followed the same course.

Several of the users make reference to obstructions along the route. However, none of the users refer to any gates or barriers of relevance that prevented use prior to the route being called into question in 2019. 2 of the users also report use of the route in 2020 despite the erection of the barriers. None of the users refer to having seen signs or notices along the route.

Whilst 2 of the users note having been informed that the route was not public, this was in conjunction with the erection of the barriers in 2019. None of the users recall having ever been told that the route was not a public right of way prior to 2019. Again, whilst 3 of the users refer to having been turned back when using the application route this is in relation to their finding the route obstructed by the 2019 barriers.

Committee will note that 4 of the users referred to having permission to use the route. However, the 2 users (both of the same address) who refer to having had permission from the owners of the Valley Cantonese and LCC as 'owner of the path' provide no further detail in this regard and both stated that they had never been told that the route was not public. With regards to the other 2 users (again, both of the same address) whilst reference is made to permission having been given, this is with reference to access to the car park for the purposes of unloading their car, and not with reference to the application route.

Committee will note that an objection has been received from one of the landowners. However, whilst this objection is acknowledged, it is submitted that the concerns

raised are not relevant considerations under either section 31 Highways Act 1980 or under Common Law.

In conclusion, taking all of the evidence into account, Committee on balance may consider that the provisions of section 31 Highways Act 1980 can be satisfied, and 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: 804-658		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

377900 000000

422500 000000

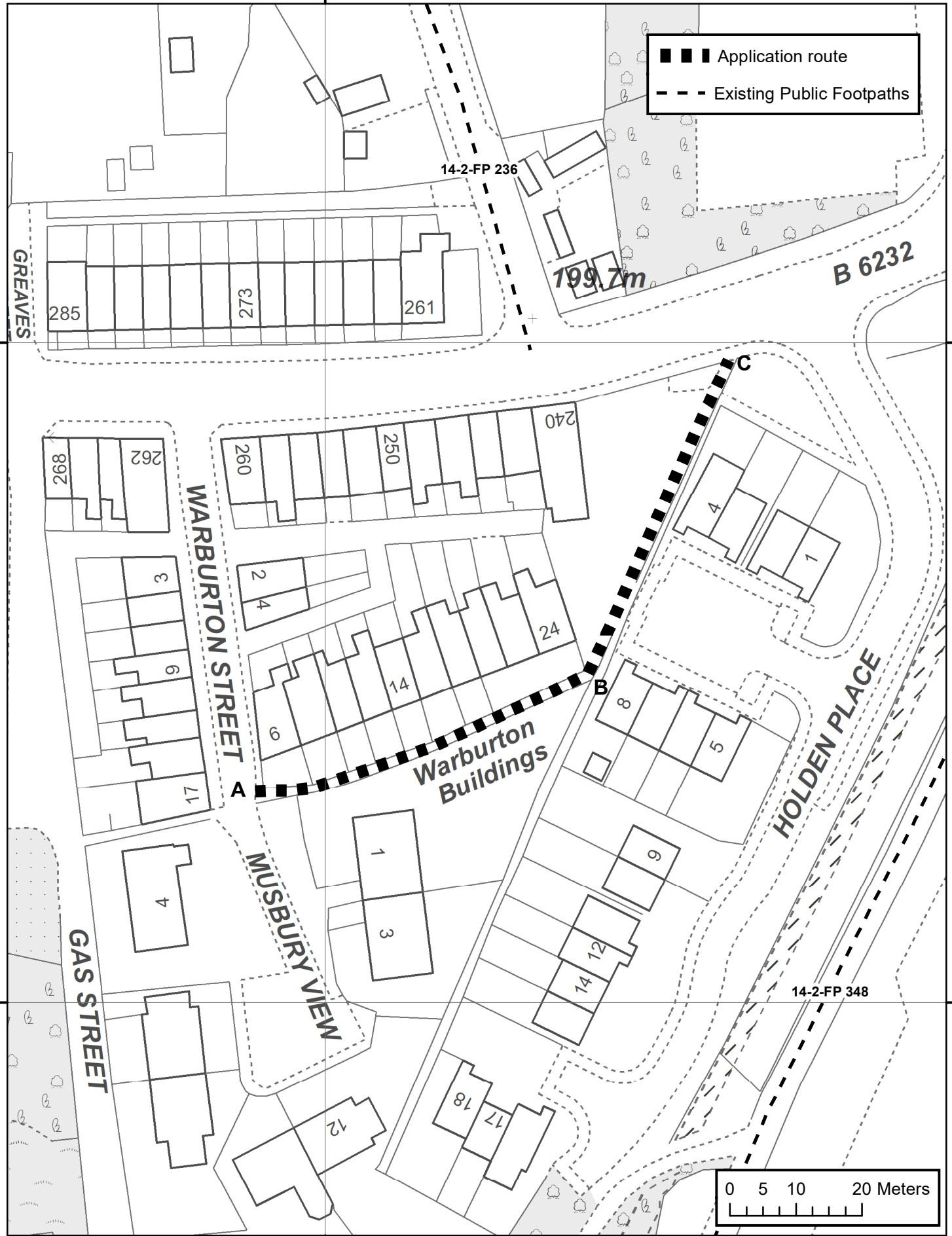
422500 000000

422400 000000

422400 000000

377900 000000

Application route
 Existing Public Footpaths



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

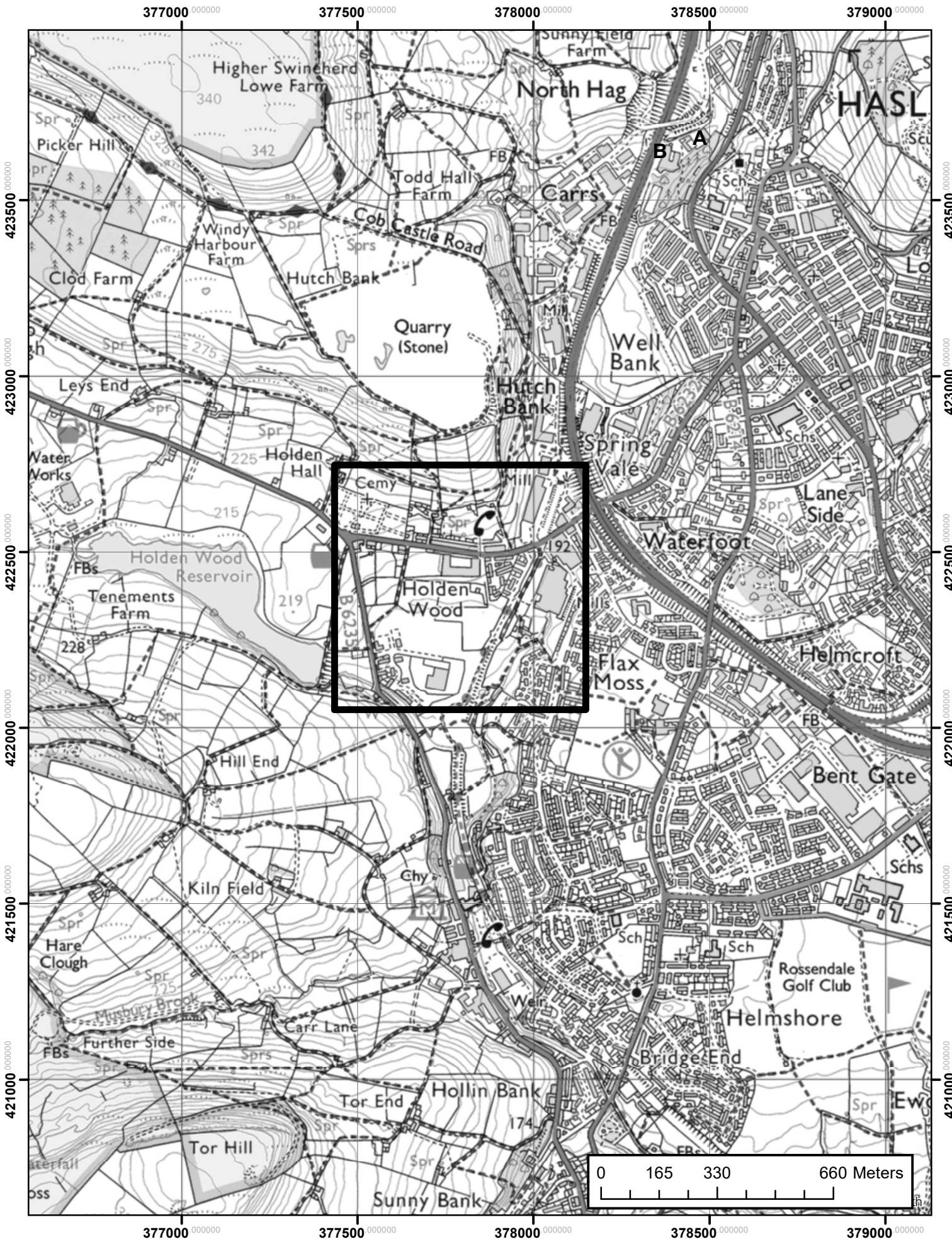
Wildlife and Countryside Act 1981
 Addition of Footpath from Warburton Street to Grane Road, Haslingden

1:750



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.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



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

Wildlife and Countryside Act 1981
 Addition of Footpath from Warburton Street to Grane Road, Haslingden LOCATION PLAN

1:15,000



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.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Wildlife and Countryside Act 1981

Addition of Footpath from Warburton Street to Grane Road, Haslingden

Photographs taken October 2020



Point A



Between point A and point B



Between point A and
point B



Point B



From point B looking
towards point C



Between point B and point C



Between point B and point C



Approaching point C



Point C

Sign located on car park close to the application route



Regulatory Committee

Meeting to be held on 10 March 2021

Part I

Electoral Division affected:
Rossendale East
Whitworth and Bacup

Highways Act 1980 Section 119

Wildlife and Countryside Act 1981 – Section 53A

Diversion of Footpaths Bacup 415 and 416 and part of 417 and Creation of a Public Footpath at Greave Clough (Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group
07917 836628, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of Footpaths Bacup 415, 416 and part of 417 and creation of a public footpath at Greave Clough, Rossendale.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations an Order be made under Section 26 of the Highways Act 1980 to create a new length of footpath shown by a bold broken line and marked D-H on the attached map.
- (ii) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert Footpaths Bacup 415, 416 and part of 417, from the routes shown by bold continuous lines and marked C-B-A and G-B to the routes shown by bold broken lines and marked C-D-E-F and G-E, on the attached map.
- (iii) That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Planning Inspectorate and promoted to confirmation, if necessary at public inquiry.
- (iv) That provision be included in the Orders 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 creation and diversions.

Background and Advice

Greave Clough is a recreational site in the ownership of Lancashire County Council, located in the Rossendale Valley between Todmorden Road and Coal Pit Lane.

The site consists of a steep sided wooded valley with a fast-flowing stream that separates the two sides of the valley. The recorded routes of the footpaths lead to the former crossing point of the stream at the north east edge of the site, where there used to be a set of stepping stones. The stepping stones washed away many years ago and the land has eroded in several places, and as such, much of the southern side of the valley is impassable.

The county council has provided a footbridge at the south west side of the site, at a point where the stream flows between two retaining walls that provide a firm foundation for the footbridge.

The diversion proposal, if successful, will move the recorded routes of the footpaths away from a deep gully and the steep impassable side of the valley, to cross the stream at the footbridge, providing a safe and convenient crossing point to link the two sides of the site. The creation of a length of footpath will provide pedestrian access Todmorden Road at the north west corner of the site.

The lengths of existing path to be diverted are shown by bold continuous lines and marked on the attached map as C-B-A and G-B, and the proposed new routes are shown by bold broken lines and marked C-D-E-F and G-E.

Consultations

Rossendale Borough Council has been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Rossendale branch of the Ramblers have been consulted and at the time of writing, their responses are also awaited.

The consultation with the statutory undertakers has been carried out and, at the time of writing, no objections or adverse comments on the proposal have been received.

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 8793 2359	Junction of Footpath Bacup 415 and Coal Pit Lane.
B	SD 8784 2361	Junction of Footpaths Bacup 415, 416 and 417.
C	SD 8784 2361	Point on Footpath Bacup 417 west of the stream and approximately 5 metres to the west of point B.
D	SD 8770 2350	Unmarked point in the woodland approximately 10 metres north of the footbridge.

E	SD 8771 2347	Unmarked point in the woodland approximately 10 metres northwest of Coal Pit Lane.
F	SD 8772 2346	Junction of new Footpath Bacup 417 and Coal Pit Lane.
G	SD 8778 2351	Unchanged junction of Footpath Bacup 416 and Coal Pit Lane.
H	SD 8765 2351	Junction of new Footpath Bacup 415 and Todmorden Road.

Description of existing footpaths to be diverted

That Footpaths Bacup 415, 416 and part of 417 as described below and shown by bold continuous lines marked A-B-C and B-G on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally WNW	90	The entire width
B	C	W	5	The entire width

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
B	G	Generally SW	125	The entire width

Description of new footpaths

Footpaths as described below and shown by bold broken lines C-D-E-F, G-E and H on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
C	D	Generally SW	180	2	Soil and grass surface
D	E	Generally S	45	2	6 metre span timber footbridge, compacted stone, soil and grass surface
E	F	SE	10	2	Soil and grass surface

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
G	E	Generally WSW	90	2	Soil and grass surface

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH	OTHER INFORMATION
D	H	Generally WNW	55	2 metres With the exception of a 0.5 metre length at H where the width is 0.8 metres	Soil, grass surface and stone steps

The footpath to be created by the proposed Orders will not be subject to any limitations and conditions.

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Orders should also specify that the Definitive Statement for Footpaths Bacup 415, 416 and 417 be amended to read as follows:

Footpath Bacup 415

The 'Position' column to read:

"Footpath commencing at the junction with Footpath Bacup 417 at SD 8770 2350, running generally west for 55 metres ascending the slope and up a couple of stone steps and a gap in the stone wall at the junction with Todmorden Road at SD 8765 2351. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.05 km"

The 'Other Particulars' column be amended to read:

"The footpath has no limitations and is 2 metres wide, with the exception of a 0.5 metre length at SD 8765 2351 which is 0.8 metres wide".

Footpath Bacup 416

The 'Position' column to read:

"Footpath commencing at the junction with Coal Pit Lane at SD 8778 2351, running generally west south west for 90 metres to the junction with Footpath

Bacup 417 at SD 8771 2347. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:
"0.09 km"

The 'Other Particulars' column be amended to read:

"The footpath has no limitations and is 2 metres wide".

Footpath Bacup 417

The 'Position' column to read:

"Footpath commencing at a junction with Coal Pit Lane (footpath Bacup 418) at SD 8772 2346 and running north west for 10m to SD 8771 2347 then generally north for 45m down the slope, crossing the stream via a footbridge to a junction with footpath Bacup 415 at SD 8770 2350. The path then runs generally north east for 180m to SD 8784 2361 and climbs to the west and after a distance of 110 yds. passes through a gap in the wall to meet Todmorden Road A681. (All lengths and compass points given are approximate)."

The 'length' column be amended to read:
"0.23 km"

The 'Other Particulars' column be amended to read:

"Between SD 8784 2361 and SD 8772 2346 the footpath has no limitations and is 2 metres wide".

Criteria satisfied to make and confirm the Creation Order

It is advised that the proposal meets the criteria for the creation of a public footpath under section 26 Highways Act 1980, i.e. that it appears to Lancashire County Council that there is a need for a footpath over land in their area and they are satisfied that it is expedient that the path should be created, having regard to:

1. The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
2. The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of provisions as to compensation contained in section 28.

Greave Clough is located on the north east edge of the urban area of Bacup, close to several housing estates and residential properties on Todmorden Road.

A stone wall separates the north western side of the site from Todmorden Road. Currently the only recorded access point from the site from that side is a gap in the wall where footpath Bacup 417 meets the road. The proposed footpath D-H would

provide a link from the footbridge to an additional gap in the wall to provide a further access point at Todmorden Road opposite Footpath Bacup 370 that leads to the wider countryside around Todmorden Old Road.

D-H would link to the new footpath to be created by diversion (F-E-D), providing the shortest and most convenient route crossing the site between Coal Pit Lane and Todmorden Road. It would also provide opportunities for short circular walks via the woodland.

As such, it is suggested that the new footpath D-H would add to the convenience or enjoyment of persons resident in the area.

The creation of the footpath is at the request of the owner, Lancashire County Council, and is consistent with the use of the land as a recreational site. No other persons with an interest in the land are known and therefore it is not anticipated that any claim for compensation under section 28 of the Highways Act 1980 will be received.

Criteria satisfied to make and confirm the Diversion Order

To make an Order under section 119 of the Highways Act 1980, the county council must be satisfied that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path, or part of, should be diverted.

The proposed diversions are considered to be expedient in the interests of the owners of the land, as they would replace use of the stepping stones which were washed away over 70 years ago with a proper footbridge and make safe the footpaths that run along a deep gully and the steep impassable side of the valley where the ground is unstable.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a diversion order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public. The proposed diversion will alter the point where Footpaths Bacup 415, 416 and 417 meet and place them at another point on the same path or a path connected to it and these points would be substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes Footpaths Bacup 415, 416 and part of 417, is not to come into force until the county council has certified that any necessary works to provide the surface of the new footpaths has been carried out.

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 routes, of which we are aware at the time of writing.

It is felt that, if the Order were to be confirmed, the new paths or ways will not be substantially less convenient to the public in consequence of the diversion because the new routes will be on land that is accessible, crossing the stream at the footbridge that provides a safe and convenient crossing point to link the two sides of the site, whereas the existing footpaths are either impassable or very difficult underfoot due to the undulating or unstable terrain.

It is for that same reason that it is suggested that if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole.

Both Orders

Should the Committee agree that the proposed Orders be made and, subsequently, should no objections be received to the making of the proposed Orders, or should the proposed Orders be submitted to the Secretary of state for Environment, food and rural Affairs for confirmation, it is considered that the criteria for confirming the Orders can be satisfied.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However, such loss is not expected as the land is in the ownership of the county council and no other persons with rights to the land are known.

It is advised that the proposed Orders, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The land crossed by the existing routes and the new routes is in the ownership of Lancashire County Council. The county council will bear all advertising and administrative costs in the Order making procedures, any compensation if necessary and any costs that are incurred in bringing the new site of the footpaths into a fit condition for use for the public.

It is 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. Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'. The Rights of Way Improvement Plan (ROWIP) states (aim 1.0) that Lancashire County Council should consider the needs of reduced mobility, dexterity and sight impaired when delivering our services.

The new routes will be of adequate width, firm and well drained underfoot with no gates or stiles. The gradient of the new footpaths is an improvement on the existing footpaths. There are couple of steps where the new footpath will meet Todmorden Road that might exclude the use by some people with limited mobility. It is considered that the steps will provide the safest and most convenient means of accessing the site at point H due to the difference in height between the woodland and the road. The new footpaths will be substantially more accessible and easier to use than the existing recorded routes.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Orders.

Stance on Submitting the Orders for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit but it is suggested that in this instance the promotion of these Orders to confirmation in the event of objections is undertaken by the county council.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B and C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Diversion and Creation Orders be made, or to agree that the Diversion Order but not the Creation Order be made.

To agree the Orders be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

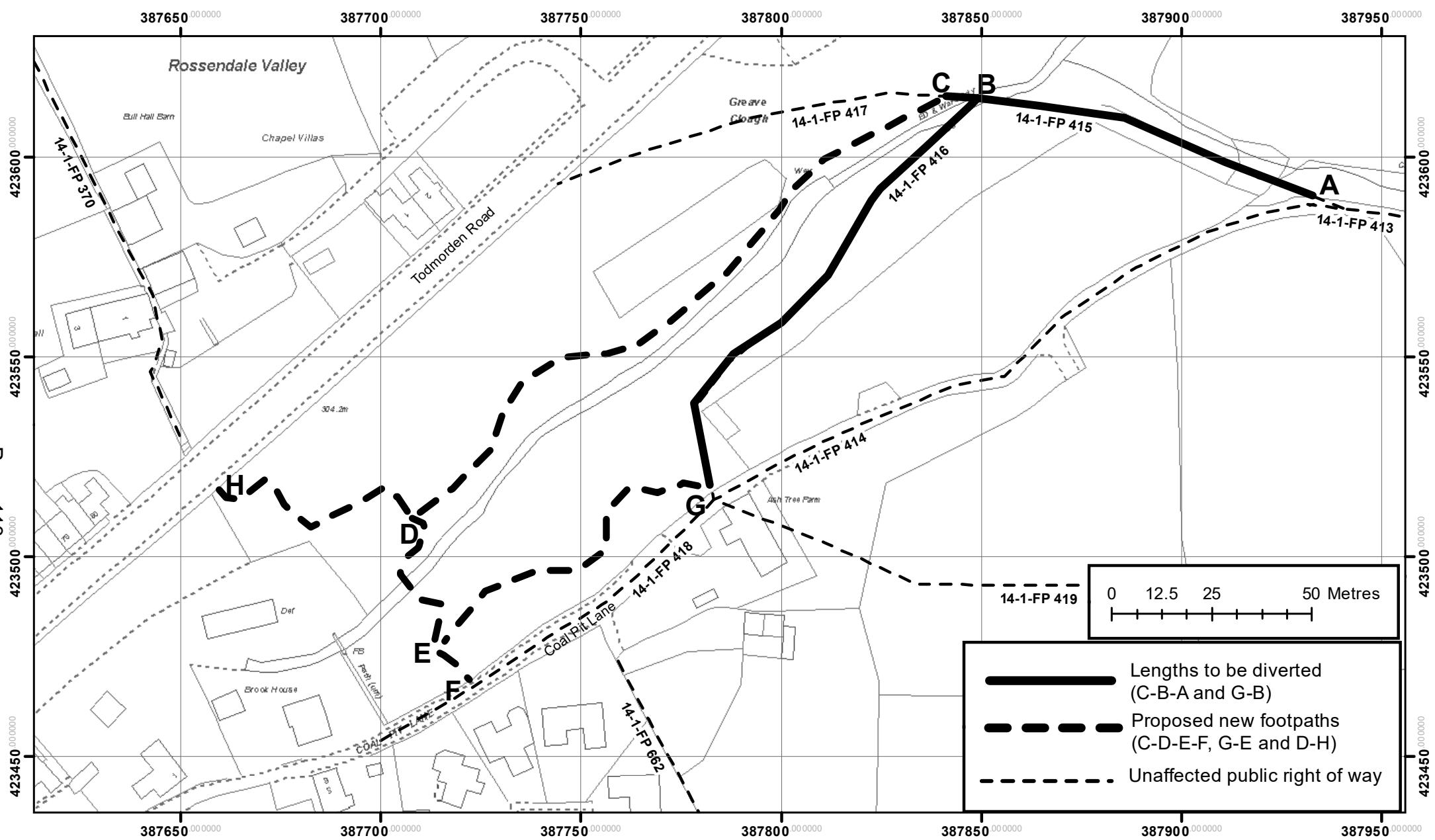
To consider securing the dedication of the new route (D-H) by means of a public path creation agreement pursuant to section 25 Highways Act 1980.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211-731		Planning and Environment Group
File Ref: PRW-14-1-415		Mrs R J Paulson, 07917 836628

Reason for inclusion in Part II, if appropriate

N/A



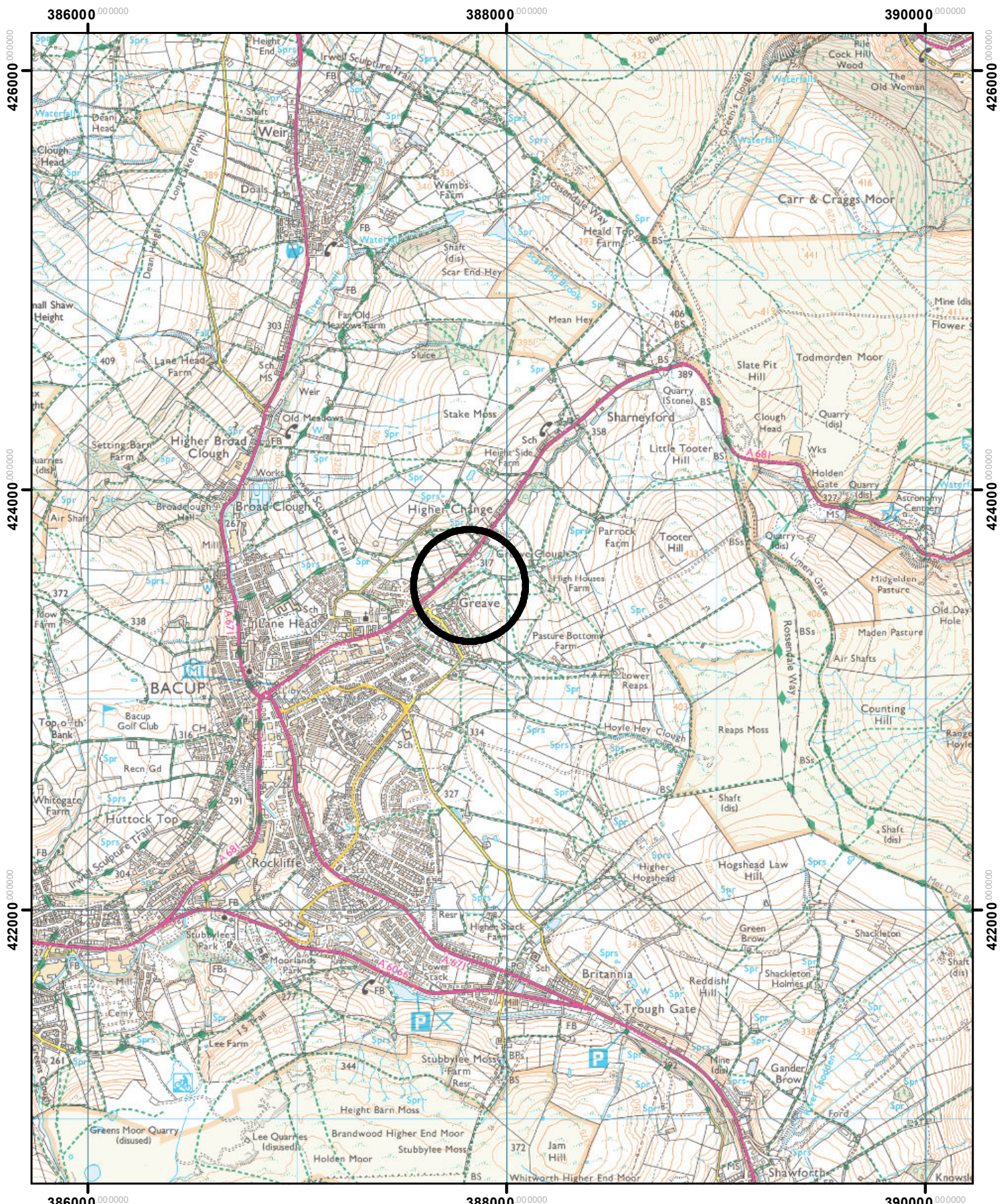
Andrew Mullaney
 Head of Planning
 and Environment
 Lancashire County Council

Highways Act 1980 Section 119
 Wildlife and Countryside Act 1981 – Section 53A
 Diversion of part of Footpaths Bacup 415 and 416 and part of 417 and Creation of a Public Footpath at Greave Clough.

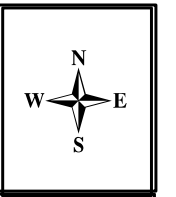
Drawing No:
 211-731v3
 Scale 1:1250 @A4



This Map is reproduced from the 1:1250 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320
 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.



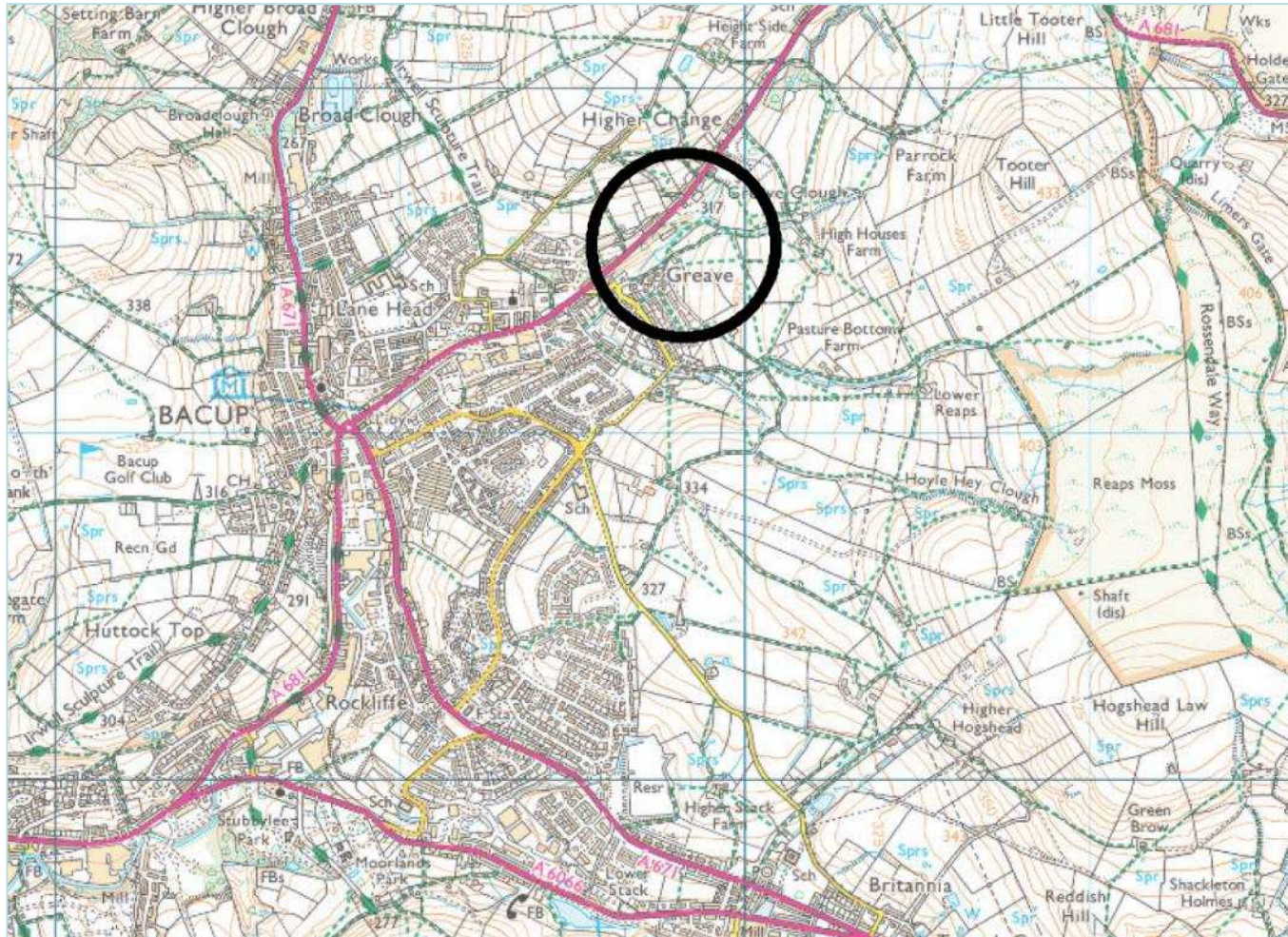
Location Plan
 Highways Act 1980 – Section 119
 Wildlife and Countryside Act 1981 – Section 53A
 Diversion of part of Footpaths Bacup 415 and 416 and
 part of 417 and Creation of a Public Footpath at Greave Clough



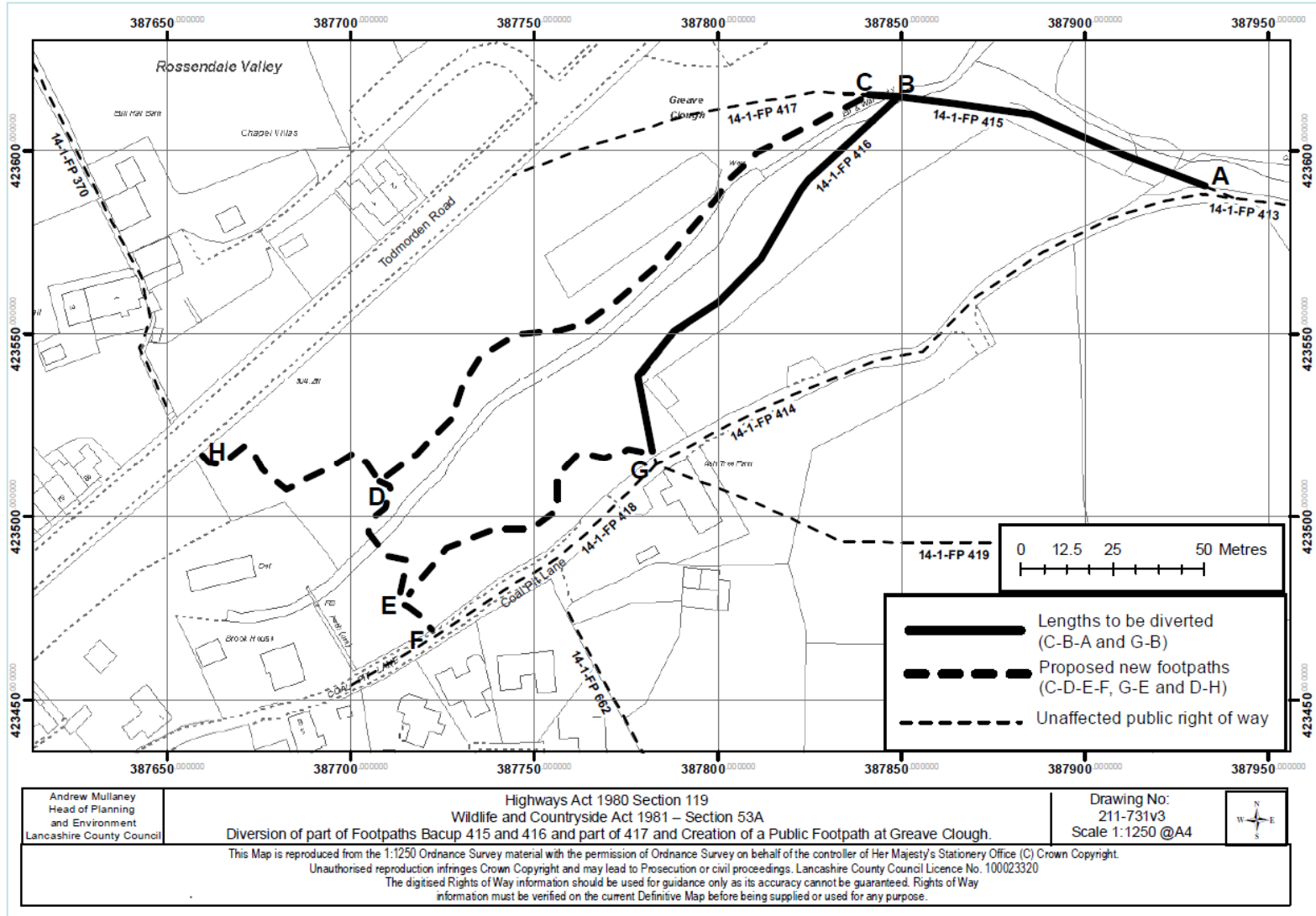
The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.
 Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.
 This Map is reproduced from the 1:24,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

**Highways Act 1980 Section 119
Wildlife and Countryside Act 1981 Section 53A**

**Diversion of Footpaths
Bacup 415 and 416 and part of 417 and Creation
of a Public Footpath at Greave Clough**



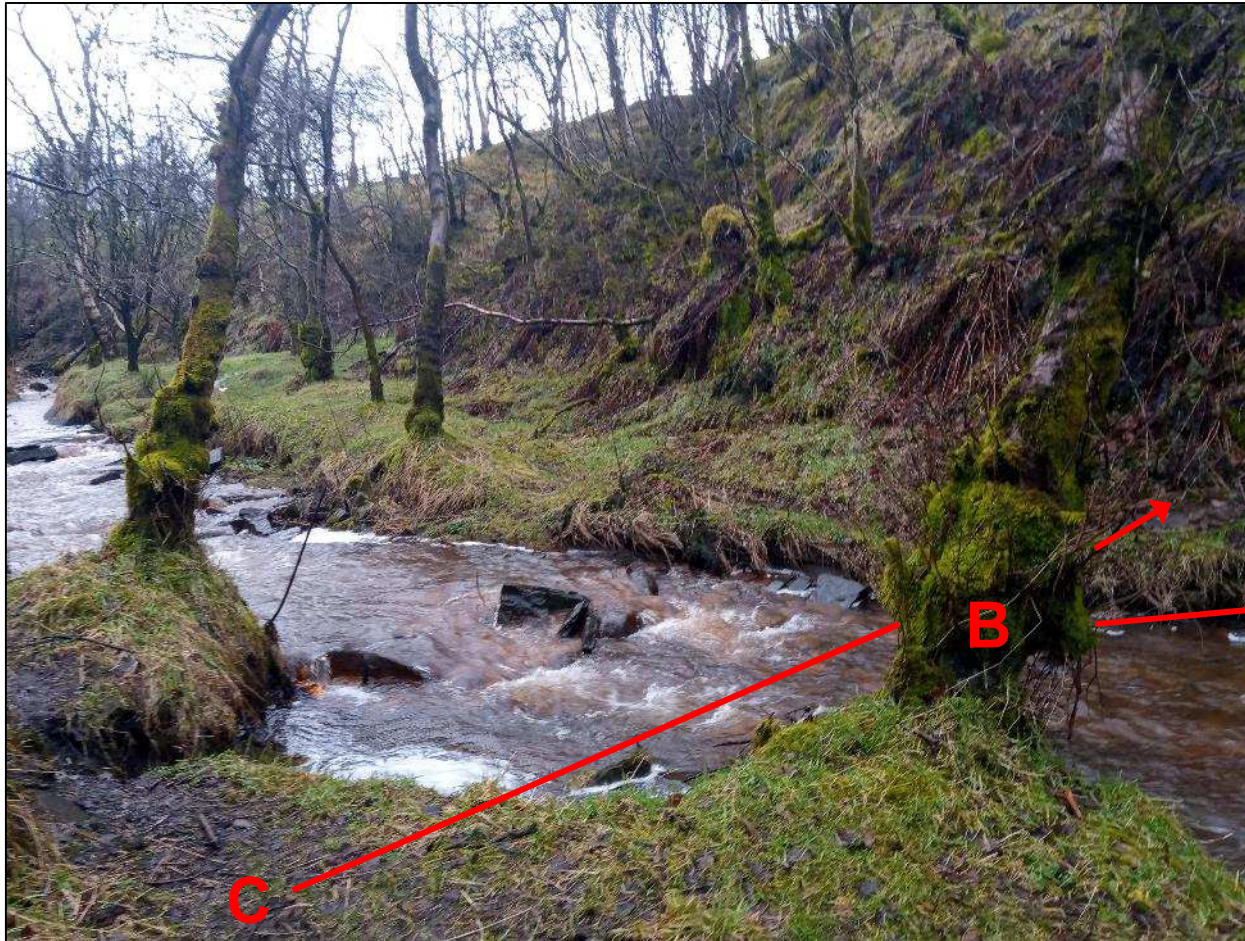
This Map is reproduced from the 1:24,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



Footpath to be diverted

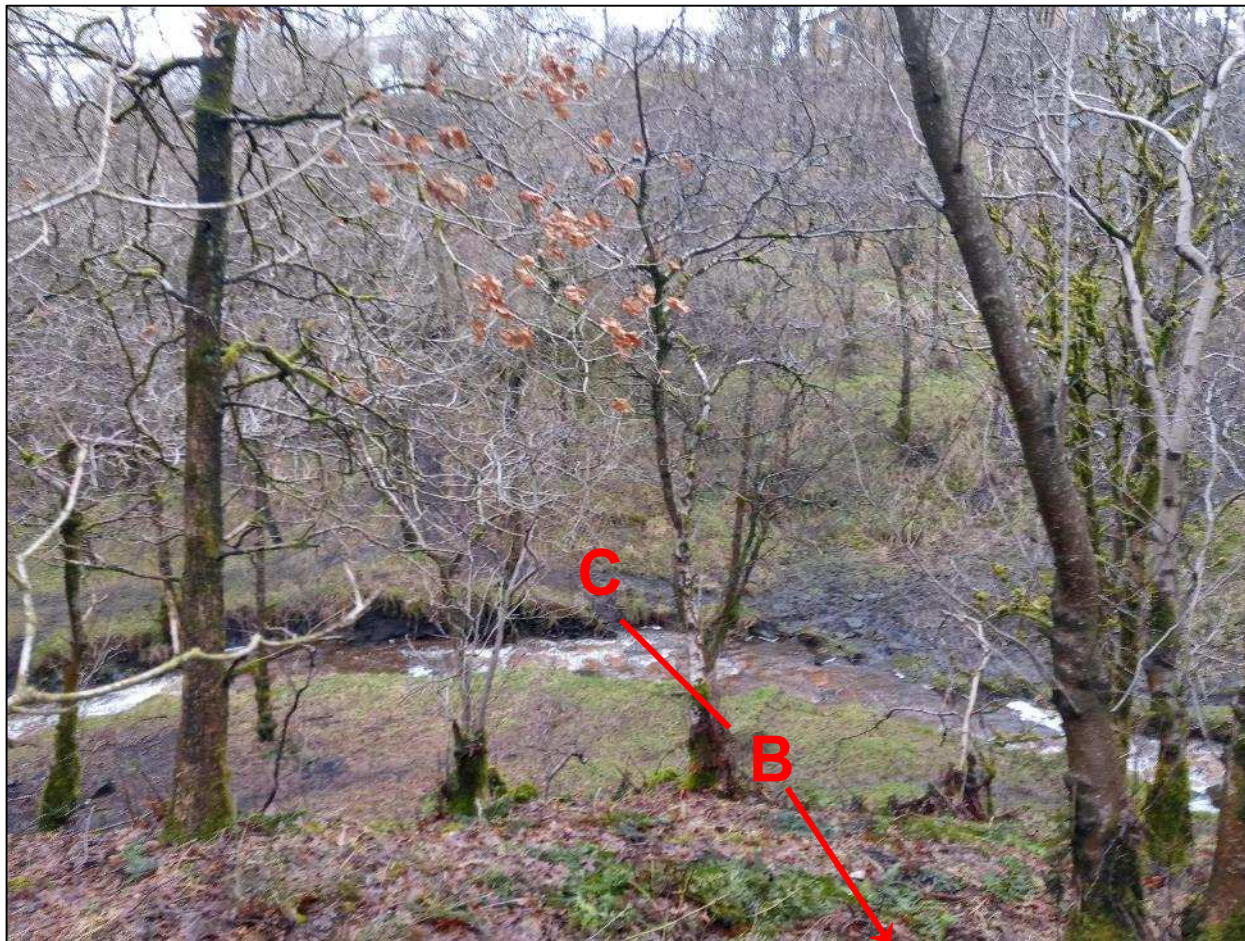
C-B-A

Junction of Footpaths Bacup 415, 416 and 417 at point B



From the top of the slope, looking back at points B and C

6



Continuing towards point A, looking back in the direction of points B and C

7



Continuing towards point A



Continuing towards point A



Point A at junction of Footpaths Bacup 413, 414 and 415



Proposed new route C-D-E-F

From point C, looking in the direction of point D



Continuing towards point D



Continuing towards point D



Continuing towards point D



Reverse view, looking back in the direction of point C



Continuing towards point D



Point D



Continuing towards point E



Continuing towards point E



Looking south west from the footbridge



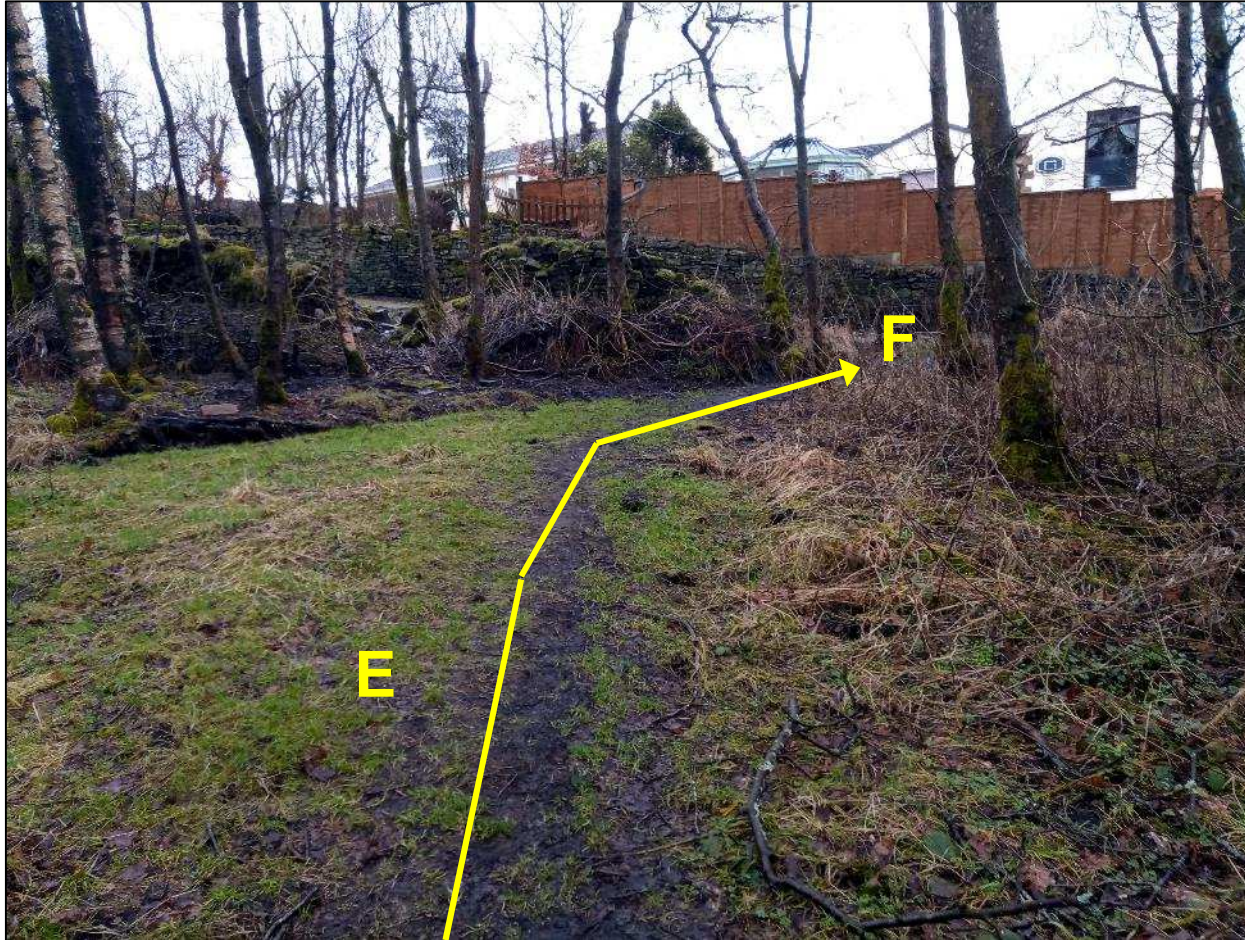
Looking north east from the footbridge



Continuing towards point E



Point E, continuing towards point F



Junction with Footpath Bacup 418 (Coal Pit Lane) at point F



Footpath to be diverted

G-B

Junction of Footpaths Bacup 416 and 418 (Coal Pit Lane) at point G



From point G, looking in the direction of point B



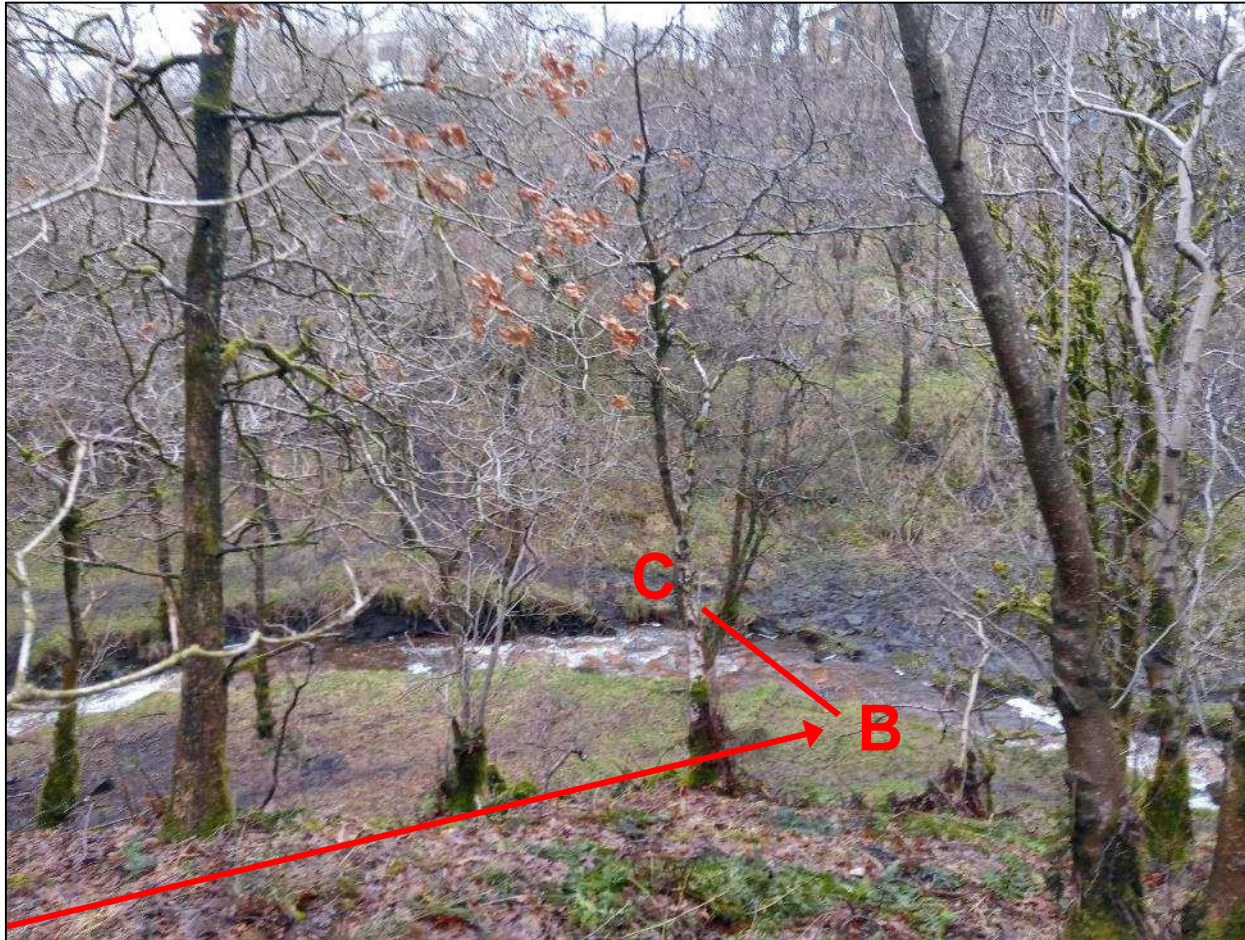
Continuing towards point B



Continuing towards point B



From the top of the slope, looking down towards points B and C



Proposed new route G-E

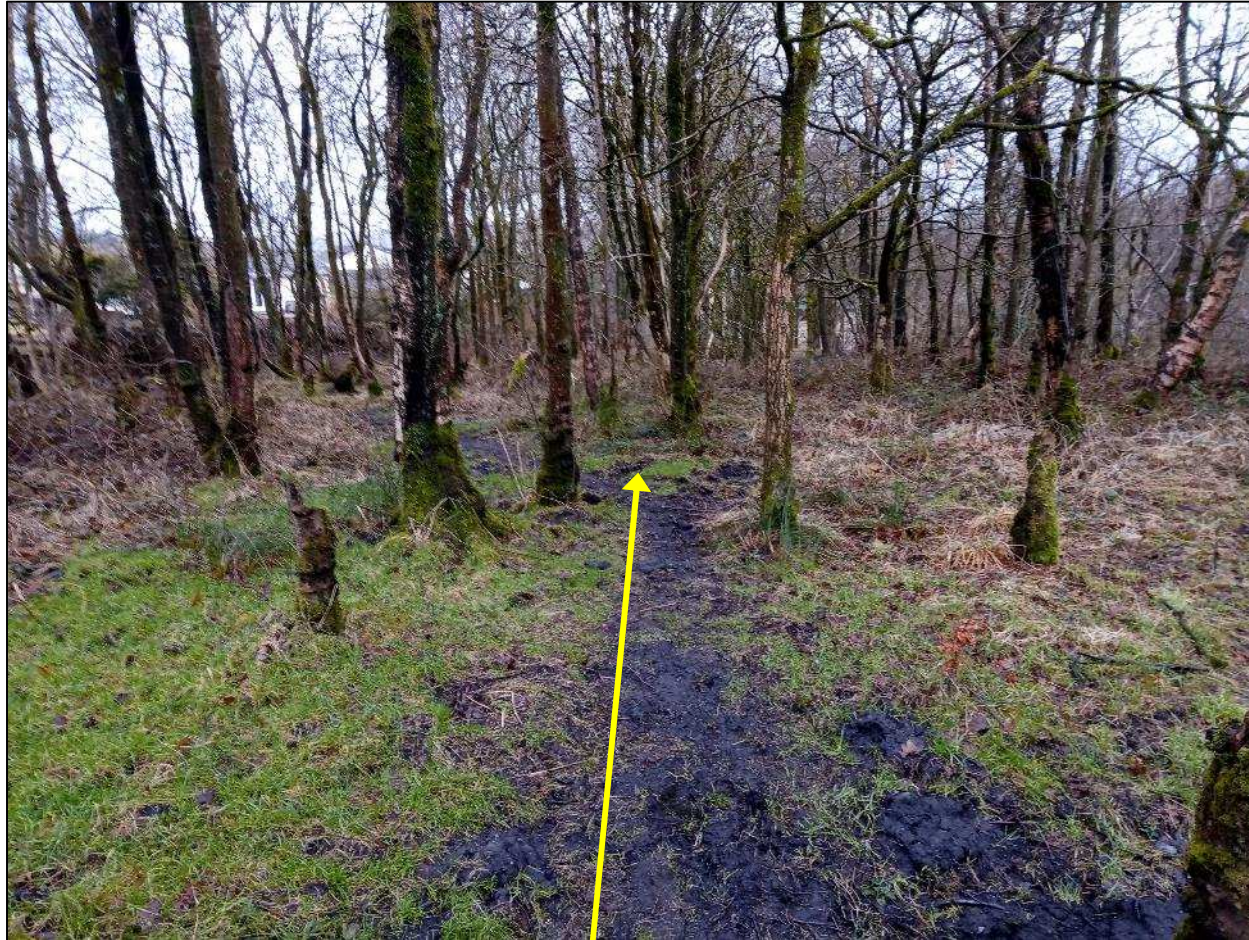
Junction of Footpaths Bacup 416 and 418 (Coal Pit Lane) at point G



Continuing towards point E



Continuing towards point E



Point E



Proposed new route H-D

Point H at junction with Todmorden Road



Continuing towards point D



Continuing towards point D



Point D



