

Lancashire County Council

Regulatory Committee

Wednesday, 15th September, 2021 at 10.30 am in Committee Room 'A' - The Tudor Room, County Hall, Preston

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 23rd June 2021** (Pages 1 - 8)
- 4. Guidance** (Pages 9 - 34)
Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.
- 5. Progress Report on Previous Committee Items** (Pages 35 - 42)
- 6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway on Snuff Mill Lane, Stodday, Lancaster** (Pages 43 - 102)
- 7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Restricted Byway along Limers Lane, Great Harwood** (Pages 103 - 150)
- 8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Bridleway between Liverpool Road and Northern Avenue, Much Hoole** (Pages 151 - 212)

9. **Wildlife and Countryside Act 1981** (Pages 213 - 278)
Definitive Map Modification Order Investigation
Investigation into public rights from Mill Hill Farm to
Haunders Lane, Much Hoole

10. **Highways Act 1980 - Section 119** (Pages 279 - 288)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Hothersall
13 at Welch House Barn, Hothersall, Ribble Valley
Borough

11. **Highways Act 1980 - Section 119** (Pages 289 - 298)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Briercliffe
163 at Musty Haulgh Barn, Granville Street, Burnley
Borough

12. **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.

13. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 17th November 2021.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 23rd June, 2021 at 10.30 am in
The Savoy Suites, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	M Goulthorp
T Aldridge	C Haythornthwaite
J Burrows	D Howarth
A Cheetham	J Oakes
L Cox	S Whittam

1. Apologies

Apologies were received from County Councillor Jean Parr.

2. Appointment of Chair and Deputy Chair

That the appointment by the County Council on the 27 May 2021 of County Councillors S Hind and M Salter as Chair and Deputy Chair of the Committee respectively, for 2021/22, be noted.

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

A report was presented setting out the constitution, membership and Terms of Reference of the Committee, and the programme of meetings for 2021/22.

Resolved:

The Committee noted:

- (i) The constitution and membership of the Committee, following the Full Council annual meeting on 27th May 2021.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for 2021/22.

4. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

5. Minutes of the last Meeting held on 10th March 2021

Resolved: That the minutes of the meeting held on 10 March 2021 be confirmed and signed by the Chair.

6. 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.

7. Progress Report on Previous Committee Items

A report was presented providing an update on the progress made in relation to matters previously considered by Committee.

The Committee noted that although the term 'applications' had been used for convenience, these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981, but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

It was reported that applications were taken in order of priority and not chronological order.

Committee were informed that there had been a large increase in the number of applications, due to a greater awareness of the public of public rights of way during the Covid pandemic and the cut off point for applications being 2026.

Resolved: That the report be noted.

8. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway along Lord's Lot Road, Over Kellet

A report was presented on an application for the addition of a Bridleway along Lord's Lot Road, Over Kellet to be recorded on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-W-H. This was referred to as the 'application route' and the similar route A-W-X joining Borwick Road a little further south as the 'amended route'.

Committee noted that a previous application had been considered by the County Council in 1985, not long after the 1981 Act introduced continuous review of the Definitive Map and Statement. This application had been rejected. The current

application was supported by much more evidence and the understanding of evidence for definitive map modification orders had developed considerably since 1985.

A site inspection had been carried out in September 2020.

A variety of maps, plans and other documents had been examined to discover when the route came 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.

Over Kellett Parish Council had indicated that they supported the application but has sought reassurance that, should the DMMO be approved, the road surface would be adequately maintained. A question was raised about who would be responsible for this. An explanation was provided to Committee, although it was noted that the maintenance issue could not be taken into account when considering whether public rights existed.

Taking all the evidence into account, Committee was advised that, on balance, there was sufficient evidence from which a dedication of a public bridleway between points A-W-X could be inferred at common law, but not between points W-H. It was suggested that Committee may therefore consider making an Order to add a public bridleway to the Definitive Map and Statement accordingly, and to promote the Order to confirmation.

Resolved:

- (i) That the application for the addition of a Bridleway along Lord's Lot Road, Over Kellet be accepted with amendment.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way, a Bridleway along Lord's Lot Road, Over Kellet as shown on Committee Plan between points A-W-X.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Recording of Bridleway from Twist Moor Lane via Wood's Fold
Farm, Withnell to Bolton Road**

A report was presented on an application for the addition of a Bridleway and upgrade to Bridleway of Footpath Withnell 49 from Twist Moor Road past Wood Folds Farm, Withnell to Bolton Road (A675) 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.

A site inspection had been carried out in January 2021.

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.

Taking all the evidence into account, it was suggested that both the lower and higher tests could be met for the route marked A-G, such that an Order to that affect should be made and promoted to confirmation.

In relation to the route F-H, Committee were informed that, due to the lack of user evidence, at this time it was suggested that there was insufficient evidence of the use of this part of the route to be satisfied that a right of way “subsists” or was “reasonably alleged to subsist” and further, that the higher confirmation test could be met at this time.

Resolved:

- (i) That the above application be accepted in part subject to the status of restricted byway between points A-F-G.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade to restricted byway Footpath Withnell 49 from Twist Moor Lane past Wood's Fold Farm, Withnell to A675 on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order(s) be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath between Aspen Lane and Mill Lane near West
End Primary School**

A report was presented on an application for the addition of a footpath from Aspen Lane (also recorded as Bridleway Oswaldtwistle 300) to Mill Lane (also recorded as Footpath Oswaldtwistle 23 and F6365), 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.

A site inspection had been carried out on 10th September 2020.

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.

Taking all of the evidence into account, it was suggested to Committee they may, on balance, consider that the provisions of Section 31 of the Highways Act 1980 cannot be satisfied. However, in the alternative, Committee were advised they may consider that it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

After a discussion, a proposer, seconder and vote, it was:

Resolved:

- (i) That the application for a public footpath from Aspen Lane to Mill Lane, in accordance with File No. 804-641, 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 to the Definitive Map and Statement of Public Rights of Way a Footpath from Aspen Lane (Bridleway Oswaldtwistle 300) to Mill Lane (Footpath Oswaldtwistle 23) as shown on Committee Plan between points A-B.

After further discussion and clarification as to Recommendation (iii), a proposer, seconder and vote, it was:

Resolved:

- (iii) That not being satisfied that the higher test for confirmation can be met with the information available the matter be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed.

**11. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Footpath from the junction with Footpath Rawtenstall
206 leading from Hillside Drive to Footpath Rawtenstall 392**

A report was presented on an application for the addition of a Footpath from the junction with Footpath Rawtenstall 206 leading from Hillside Drive, Newchurch, to the junction with Footpath Rawtenstall 392, 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 and B.

An amended Location Plan (copy attached) had been circulated to the Committee prior to the meeting.

A site inspection had been carried out in 2019.

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 in support of the making of an Order were provided to Committee. There was no evidence examined against the making of an Order.

Committee noted that Rossendale Borough Council had not responded to the county council's consultation. County Councillor Cheetham reported that many of the Borough Council's historical records had been lost in the 1978 floods and that this may have been the reason why no response had been received.

A query was raised by County Councillor Whittam about the site inspection and the fact that this took place in 2019. It was explained that sites were visited as soon as possible after applications had been received.

CC Burrows raised a safety issue about the stone steps along the route being slippery in wet weather, Committee were informed that safety was a separate issue to making a decision on whether public rights existed or not. However, if a public right of way was thought to exist, then anything dangerous on the route would be considered after this had been confirmed. Committee noted that, in this case, slipping on the steps would not be a public liability issue.

The Chair had noted on the site visit that some of the wood had come away from the fence and that nails were exposed and asked that, if an Order was made, how would these issues be rectified. David Goode confirmed that it would be the responsibility of the owner of the fence to make it safe although as county council officers were aware of the problems, they could go out to the site and rectify this.

Taking all of the evidence into account, it was recommended that Committee accept the application as, on balance, deemed dedication under Section 31 could be satisfied or dedication inferred from all the circumstances, including the use by the public and that an Order be made.

Resolved:

- (i) That the application for the addition of a public footpath from Footpath Rawtenstall 206, leading from Hillside Drive, to Footpath Rawtenstall 392 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 Footpath Rawtenstall 206 near Hillside Drive to Footpath

Rawtenstall 392 on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A and B.

(iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**12. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition and Deletion of Footpath Hoghton 11, Chorley**

A report was presented on an investigation into the addition to and deletion from the Definitive Map and Statement of Public Rights of Way of part of Footpath Hoghton 11, Chorley.

The route to be determined was shown on the Committee Plan attached to the agenda papers with the suggested part addition between points A-B-C-D-E and part deletion between points E-F-G.

An initial site inspection had been carried out on 3rd August 2018, with a further site inspection on 23rd November 2018.

The Committee noted that a query had been received by the Public Rights of Way team in July 2018, regarding the recorded position of Public Footpath Hoghton 11, Chorley. The query had arisen from the sale of a property where a CON 29 Local Authority Search had highlighted the existence of a footpath which had been recorded on the Definitive Map and Statement as going directly through the property. The property itself, three terraced cottages, appeared to have been in existence for over 100 years, and therefore it was apparent that an investigation was required to determine the correct legal line of the footpath.

Committee were informed that, overall, the evidence supported the conclusion that, on 1st September 1966, no public right of way existed along the section of Footpath Hoghton 11, depicted between E-G, and that a simple drafting error with regard to the recording of the exact line of the footpath resulted in the path being drawn on the Definitive Map and Statement along the line E-G instead of line A-E.

Resolved:

- (i) That an Order be made pursuant to Section 53(2)(b) of the Wildlife and Countryside Act 1981 to add to and delete from the Definitive Map and Statement parts of Footpath Hoghton 11 as shown on the Committee Plan.
- (ii) That the Order be promoted to confirmation.

13. Urgent Business

There were no items of Urgent Business.

14. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 15th September 2021.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 15 September 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).

In deciding whether it is expedient to confirm a public path diversion order in the exercise of the power conferred by section 119(6) of the 1980 Act, the decision-maker must have regard to the effect of the matters specified above (and any material provision of a rights of way improvement plan) and may have regard to any other relevant matter, including if appropriate the interests of the owner or occupier of the land over which the path currently passes, or the wider public interest. The expediency test therefore brings in having regard to various issues. This approach was confirmed as correct by the Court of Appeal this year (2021) in *The Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs*.

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 15 September 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 been 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 15th September 2021

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

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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 4th June 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
804-492	Horncliffe View	07/11/2008
804-588	Coppull 30/31	28/07/2017
804-596	Unrecorded route between Burnley Road and 14-1-FP378	12/06/2018
804-606	Sandy Lane, Aughton	08/03/2019
804-617	Deletion at Browns Houses	25/03/2020
804-621	Park Street, Brierfield	11/05/2020
804-631	Little Hoole Track FP8	23/05/2020
804-632	Altcar Lane and Tithe Barn Lane	26/05/2020
804-633	Snape Lane	27/05/2020
804-634	Green Lane, Beaumont	03/06/2020
804-635	Buckstone Old Turnpike	06/06/2020
804-636	Sandy Lane, Tatham Fells	08/06/2020
804-637	Shaw's Lane Pilling	12/06/2020
804-638	Park Side School Lane, Tatham	12/06/2020
804-639	Kitshaw Lane, Tatham	16/06/2020
804-640	Ned's Lane, Pilling	18/06/2020
804-644	Far Lodge Lane, Quernmore	10/07/2020
804-645	Bank Top Lane	23/07/2020
804-646	Crook Dale Lane	21/06/2020
804-647	Cragg Lane	21/07/2020
804-649	Braiddale Bank Lane	27/07/2020
804-650	Wood Yard	02/07/2020
804-651	Threagill Lane Warton	14/08/2020
804-652	Snuff Mill Lane	17/08/2020
804-653	Moss Lane Bridleway Upgrade	20/08/2020
804-654	Wrayton Old Road	24/08/2020
804-655	First Terrace, Sunderland Point	07/09/2020
804-656	Holleth Lane, Forton	16/09/2020
804-657	Sands Lane, Over Kellet	23/09/2020
804-659	Harris Park	16/10/2020
804-660	Broad Lane, Out Rawcliffe	26/10/2020
804-661	Ashton Lane, Out Rawcliffe	26/10/2020
804-662	Westby Lane, Out Rawcliffe	26/10/2020
804-663	Hall Lane and Mill Lane, Leyland	09/11/2020
804-664	Skipton Road, Trawden	11/11/2020
804-665	Hales Rushes Road, Out Rawcliffe	30/11/2020
804-666	Hornbys Lane, Out Rawcliffe	30/11/2020
804-667	Alder Lane, Out Rawcliffe	30/11/2020
804-678	Hobsons Lane, Over Kellet	04/12/2020
804-679	Millhouses Road, Wray with Botton	04/12/2020
804-680	Tatham Rectory, Tatham	04/12/2020
804-681	Bannister Lane, South Ribble	27/12/2020
804-682	Napthal Lane, South Ribble	27/12/2020
804-683	Brooks Lane, South Ribble	27/12/2020
804-684	Lodge Lane, South Ribble	27/12/2020
804-685	Flensburg Way Track, South Ribble	27/12/2020
804-686	Moss Lane, South Ribble	27/12/2020

804-687	Napthal Crossing, 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
804-692	Holt Mill Road to Lenches Road	14/01/2021
804-693	DMMO Addition of Bridleway Harry Barn Lane	25/01/2021
804-694	Roman Road, Burrow Leck and Tunstall	05/02/2021
804-695	Out Moss Lane Morecambe	10/02/2021
804-696	DMMO Wham's Lane, Morecambe	08/02/2021
804-697	Cuerden Hall	21/02/2021
804-698	Lingart Lane, Barnacre with Bonds	09/03/2021
804-699	DMMO Watling Street Road - Sandy Brook	02/11/2020
804-700	Calderstone Drive	03/03/2021
804-701	DMMO Rakes Head Lane, Slyne with Hest	05/03/2021
804-702	Moss Lane, Heaton with Oxcliffe	06/04/2021
804-703	Moss Gate Lane, Heysham	06/04/2021
804-704	Clay Lane	07/04/2021
804-705	Sandy Lane, Mawdesley	09/04/2021
804-706	Wood Lane, Hoscar, Lathom, West Lancs	10/04/2021
804-707	Dark Lane, Sills Farm	16/04/2021
804-708	Cock Bridge	19/04/2021
804-709	Lady Alice's Drive	03/05/2021
804-710	Old Road, Chatburn	04/05/2021
804-711	Eyes Lane, Newburgh	23/05/2021
804-712	Deans Lane, Lathom	16/06/2021
804-713	Brick Kiln Ln, and Sluice Ln, Rufford	16/06/2021
804-714	New House Farm, Burscough	17/06/2021
804-715	Back Moss Lane, Burscough	17/06/2021
804-716	Lamorna, Red Cat Ln, Burscough	24/06/2021
804-717	Rose Mount	08/07/2021
804-719	Boundary Lane (South), Rufford	03/08/2021
804-719	Boundary Lane (South), Rufford	03/08/2021
804-720	Boundary Lane (North), Rufford	03/08/2021
804-721	Tannersmith Lane to Wrennels Lane	15/08/2021
804-722	Sollom Lane, Rufford	21/08/2021
804-723	Whitley Road	24/08/2021

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
804-146	Cheshire Lines	18/12/1986
804-332	Sainsbury Deepdale	05/01/1998
804-332(B)	Sainsbury Deepdale	10/10/2016
804-382	Cumeragh Lane	10/10/2016
804-405	Bazil Point	04/09/2003
804-419	Missing link Walton-le-Dale 24 to Brindle 52	26/08/2005

804-448	Whitworth BW	01/01/2001
804-456	Owlet Hall Farm	19/10/2006
804-457	Hullet Hall South	19/10/2006
804-458	Hullet Hall North	19/10/2006
804-499	Width of BW 17 Halsall	01/09/2009
804-573	Botton Head	10/10/2016
804-594	Old Clay Lane	14/02/2018
804-603	Weir Lodges, Bacup	22/10/2018
804-613	Middle Gill Footpath	04/12/2019
804-616	Croston Close Road	04/02/2020
804-619	Hall Lane, Longton	30/04/2020
804-622	Hardman Close, Rossendale.	02/05/2020
804-624	Green Hill Lane	20/05/2020
804-625	Haunders Lane, Much Hoole	20/05/2020
804-626	Watery Lane, Hoole	20/05/2020
804-627	Liverpool Road, Much Hoole	21/05/2020
804-628	Borwick Hall Bridge	21/05/2020
804-629	Proctor Moss Road	22/05/2020
804-630	Green Lane, Leck	26/05/2020
804-643	Stoneyroyd, Whitworth	30/06/2020
804-689	Limers Lane Great Harwood	11/01/2021
804-691	Farington Hall Wood	08/01/2021

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
804-340	Broughton 6	03/06/1988
804-432	Piggy Lane	21/12/2005
804-558	Long Ing	23/07/2014
804-589	Law Head	25/08/2017
804-648	Twist Moor Lane	02/06/2020
804-601	PF 11 Hoghton, Chorley	23/07/2018
804-641	Aspen Lane, Oswaldtwistle	23/06/2020
804-623	Hillside Drive, Newchurch	13/05/2020

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
804-642	Lord's Lot Road	06/07/2020

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

Committee has made a decision on these applications, the Order has been made and Notices of Making served, the Order is currently open to statutory objections.

Reference	Known As	Application Date
804-379a	Ingol Golf Course 1	11/12/2000
804-379b	Ingol Golf Course 2	11/12/2000
804-658	Grane Road, Rossendale	10/09/2020

Definitive Map Modification Order Applications Awaiting Confirmation

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

Reference	Known As	Application Date
804-360	Old Tram Bridge	24/08/1999
804-404	Fishwick golf course	20/07/2003
804-610	Goodshaw Avenue	02/07/2019
804-379c	Ingol Golf Course 3	11/12/2005
804-379d	Ingol Golf Course 4	11/12/2000
804-379e	Ingol Golf Course 5A	11/12/2000
804-379	Ingol Golf Course	10/10/2016
804-611	Smithy Clough / Parson Lee	05/09/2019

Definitive Map Modification Order in the High Court Appeal Period

Committee has decided these applications, Orders have been made and confirmed but the confirmation notice period has not yet expired.

Reference	Known As	Application Date
804-502	Pilling slipway	01/12/2009
804-599	Waingate Road/Waingate Lane	26/06/2018
804-440	Foulridge - Cockhill Lane	21/03/2006

Definitive Map Modification Order Applications Awaiting Determination by the Planning Inspectorate

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

Reference	Known As	Application Date
804-505	Spendmore Lane	14/12/2009
804-578	Packet Lane	16/03/2016

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
804-421	Loveclough	15/03/2005
804-427	Sunnyside Ave	12/09/2005
804-454	Kellett Lane to Ranglet Road	04/09/2006
804-465	Salterforth Lane	01/05/2007
804-466	St Joe's	25/07/2007
804-472	Old Hive deletion	08/04/2008
804-473	Melbourne social club	26/11/2007
804-478	Ball House Lane	28/11/2008
804-491	Newburgh	02/10/2008
804-494	Stoopes Hill	12/01/2009
804-496	Moorside School Bowerham Rd Barton Road	26/05/2009
804-498	Preston Grasshoppers	05/08/2009
804-500	Chapel Lane	10/09/2009
804-507	Dark Lane Earby	02/12/2009
804-509	Nans Bucks Thurnham	01/02/2010
804-517	Clitheroe Grammar	08/08/2011
804-518	New Loveclough	14/01/2015
804-526	Banks	12/07/2012
804-527	Banks	12/07/2012
804-528	Banks	12/07/2012
804-529	Banks	12/07/2012
804-530	Banks	12/07/2012
804-531	Banks	12/07/2012
804-540	Buckhurst Road	23/11/2012
804-541	Coronation Field	07/12/2012
804-542	Coronation Field	07/12/2012
804-543	Coronation Field	07/12/2012
804-544	Sandy Brook	08/02/2013
804-546	Union Road	28/08/2013
804-547	Sales's Lane	18/09/2013
804-550	Friends Meeting House	17/01/2014
804-555	Glasson Basin	18/02/2014
804-557	Ormerod Street - Gamble Road	05/06/2014
804-561	Upgrade PF 21 Wrightington	17/12/2014
804-563	Penwortham Girls School	15/04/2015
804-565	Wiswell Moor	10/06/2015
804-566	Mount Pleasant Lane and Thwaite Brow Lane	01/06/2015
804-579	Guy Street	22/04/2016
804-582	Wellbrow Drive	26/09/2016
804-591	Lathom High School, Skelmersdale	11/09/2017
804-592	Aldcliffe Hall Drive	03/01/2018

804-600	Ayrefield Road to Footpath 2 Upholland	03/07/2018
804-607	Six Acre Lane	14/05/2019
804-614	Stubbins Halt	21/12/2019
804-379a	Ingol Golf Course 1	11/12/2000
804-379b	Ingol Golf Course 2	11/12/2000
804-379e	Ingol Golf Course 5B	11/12/2000
804-658	Grane Road, Rossendale	10/09/2020

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

Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
Lancaster Central

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway on Snuff Mill Lane, Stodday, Lancaster

(Annex 'A' refers)

Contact for further information quoting the reference number 804-652:

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 of a bridleway along Snuff Mill Lane from the end of the section recorded as U11870 to the Lune Estuary Path, Stodday near Lancaster.

Recommendation

- (i) That the application for the addition of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path, be accepted subject to the recording of restricted byway rights and inclusion of the section of the historical route crossing the former railway (Lune Estuary Path) to provide access to the salt marsh.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a restricted byway along Snuff Mill Lane from the section recorded as U11870 to the salt marsh as shown on Committee Plan between points A-B-X-C-D.
- (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 bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path at Stodday near Lancaster.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

Lancaster City Council

Lancaster City Council provided no response to consultation.

Aldcliffe with Stodday Parish Council

Aldcliffe with Stodday Parish Council noted a keen interest in the use and future of this route. It is understood that the Parish Council has recently improved the surface of the route.

The Parish Council's consultation response first expressed that the council was cautiously positive about this application believing that public bridleway status is unlikely to have a significant impact on existing levels of use of the path, particularly by riders.

However the response went on to clarify that on balance the Parish Councillor feel that footpath status is more appropriate due concerns over damage to the surface were horse traffic to increase.

Concern was also expressed that the drainage ditch, which runs adjacent to almost the full length of the path, could present a hazard to users, especially horses, and feel that this needs to be considered in assessing its suitability as a bridleway. Councillors suggested that some form of fencing to delineate the edge of the path would be helpful.

The Parish Council stated that they would welcome the County Council's adoption of the path as a PRow.

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	4625 5873	The end of the length of Snuff Mill Lane recorded as U11870, at the entrance to the Water Treatment Works.
B	4618 5871	Padlocked metal barrier restricting access to 1.5 metres width.
X	4590 5868	Point at which a gate historically existed across the route following the construction of the railway and which now marks the boundary of land owned by Lancashire County Council.
C	4585 5864	Junction of Snuff Mill Lane with the Lune Estuary Path (disused railway) where a metal padlocked gate with adjacent small gap restricts access.
D	4584 5859	Point on the edge of the salt marsh at the southern end of former ramped access (no longer exists)

Description of Route

A site inspection was carried out in October 2020.

The application route is approximately 425 metres long and was described by the applicant as terminating at the junction with the Lune Estuary Path. However, when investigating the application it became apparent that the historical route of Snuff Mill Lane extended as far as the salt marsh and did not stop at the railway (now the Lune Estuary Path). The route under investigation is therefore that shown on the Committee Plan between points A-B-X-C-D and is about 475 metres long.

The route under investigation starts at the western end of the section of Snuff Mill Lane which is recorded as a publicly maintainable vehicular road (U11870) and which is tarmacked up to point A. At point A there is access leading from Snuff Mill Lane to the water treatment works situated north of the route.

The route under investigation itself extends in a westerly direction from point A along a stone surfaced track approximately 4 metres wide and bounded by hedges. It continues for approximately 75 metres with evidence that the route is regularly used by farm vehicles accessing a field to the south of the route via a field gate immediately east of point B.

At point B a padlocked metal barrier across the route restricts access to approximately 1.5 metres. The gap to the side of the barrier is wide enough to allow walkers, cyclists, horse riders and motorbikes to pass through and a worn track past the barrier suggested that this was in regular use.

Beyond point B the route under investigation continues west as a route bounded by hedges – mostly overgrown. Whilst the width between the boundary hedges remains consistently at approximately 4 metres the useable track is much narrower – averaging 1.5 – 2 metres wide and overgrown along either side. There is a solid stone surface to the route which runs adjacent to an unnamed watercourse for approximately 130 metres to a point at which the watercourse is culverted. In places the surface of the route was muddy with some standing water and particularly where the watercourse was overgrown and required clearing.

At the time of inspection the culvert appeared to be blocked and water was running down the route under investigation like a stream. The water was approximately 20-30cm deep extending across the full width of the route for approximately 125 metres before running off the route to the north and back into the culvert.

Beyond the flooded section the route under investigation continued as a compact stone surfaced track in a south westerly direction towards the dismantled railway.

In the trees on the north side of the route under investigation, just before reaching a gate at point C, are two metal signs – barely visible in the overgrowth. They are standard red bordered triangular signs, as described in the Highway Code and Traffic Sign Regulations, warning anyone heading west along the route under investigation about the presence of horse riders and humps on the route for 1½ miles. The position of the signs and reference to 1½ miles suggests that the warning

signs refer to hazards to be encountered when joining/continuing along the Lune Estuary Path which runs north and south from point C.

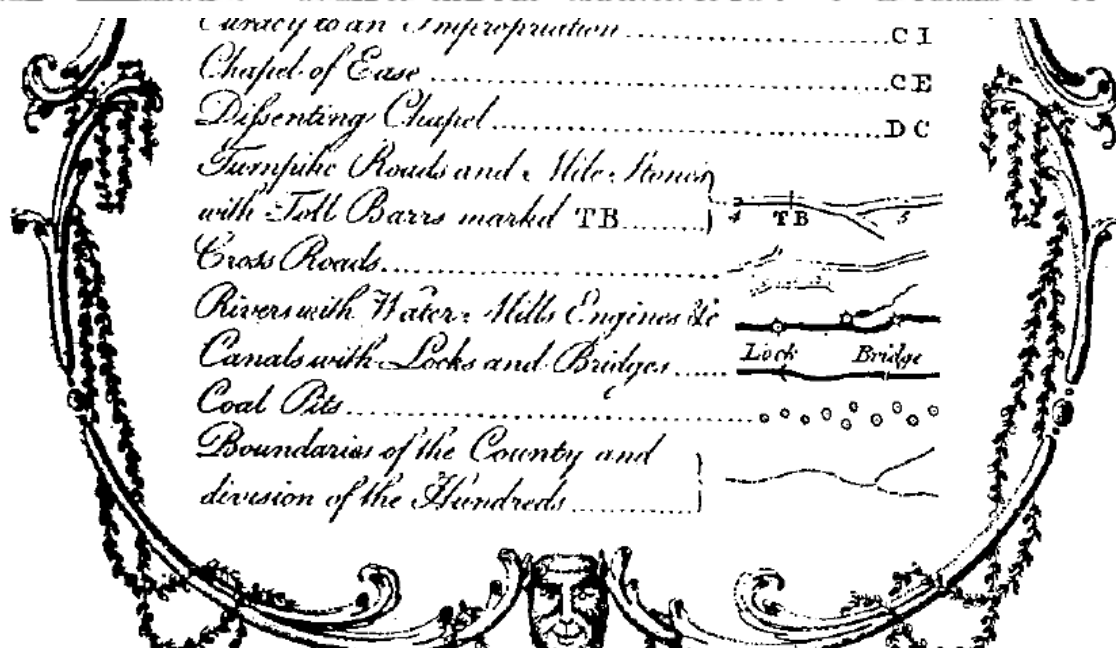
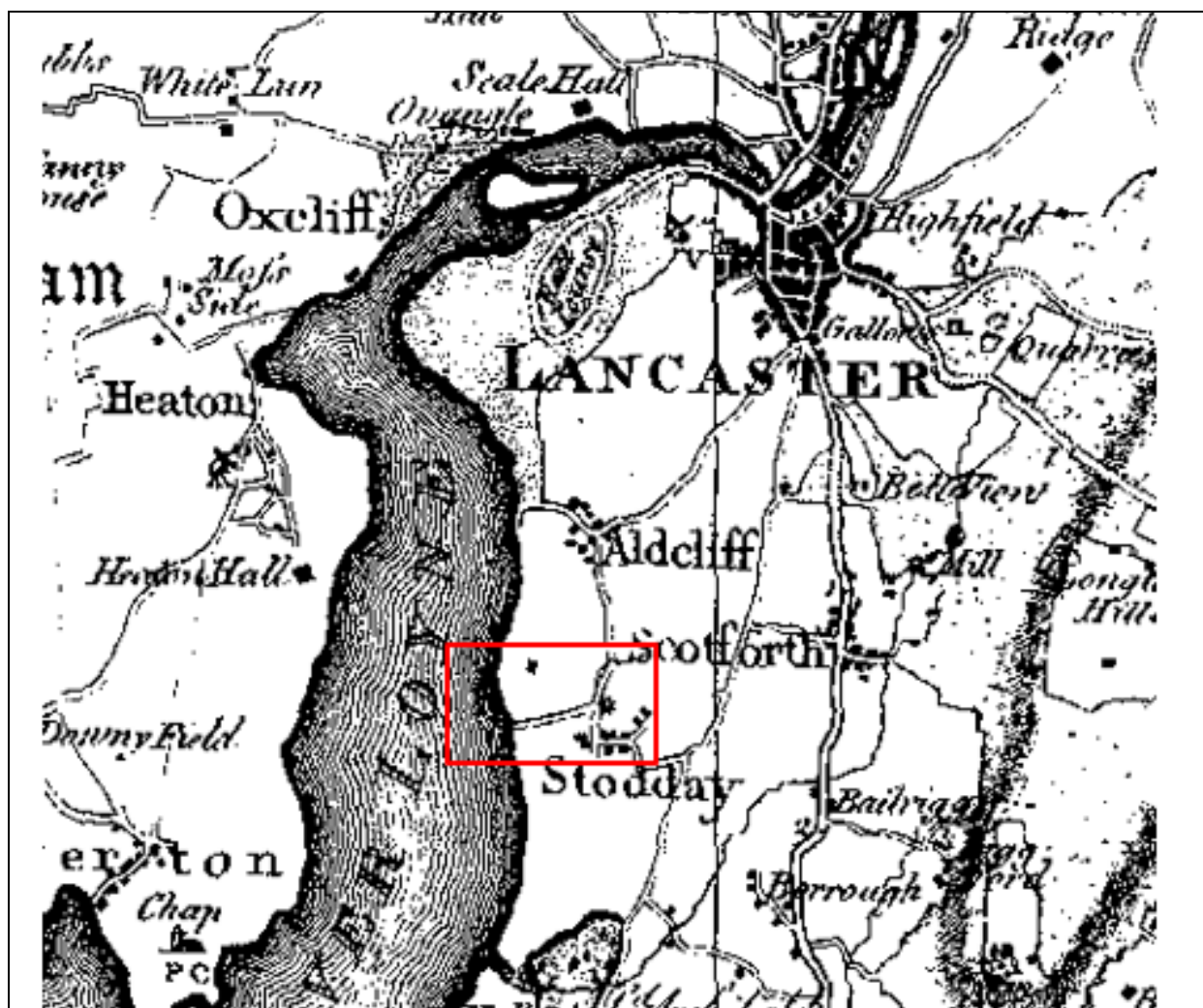
Immediately before reaching the Lune Estuary Path a padlocked metal field gate is located across the route (point C) with a well-worn track passing through a smaller gap to the side. The route under investigation meets the multi-user path and a blue and white sign points back along the route towards point A with the word 'Stodday'.

The application route was described as ending at the junction with the Lune Estuary Path but the route under investigation crosses the path (dismantled railway) and continues west into a circular area raised above the salt marsh where picnic benches and tables have been placed. There is no physical evidence of the former railway crossing at point C and no evidence of the buildings which are shown to have existed following the construction of the railway, either close to point C or to the route which provided access from point C into the picnic area. The shape of the ramp remains although its shape is softened and the masonry is no longer visible and it is now overgrown and impassable.

Map and Documentary Evidence

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

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



Observations

The route under investigation is shown as part of a longer route depicted as a 'cross road' on the map. It is shown providing access out to the estuary.

		The railway (along which the Lune Estuary Path now runs) is not shown.
Investigating Officer's Comments		The route under investigation existed in 1786 and is shown as a cross road. It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. The fact that the route is shown on the map suggests that it was of a substantial nature capable of being used at that time by horses and horse drawn vehicles.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

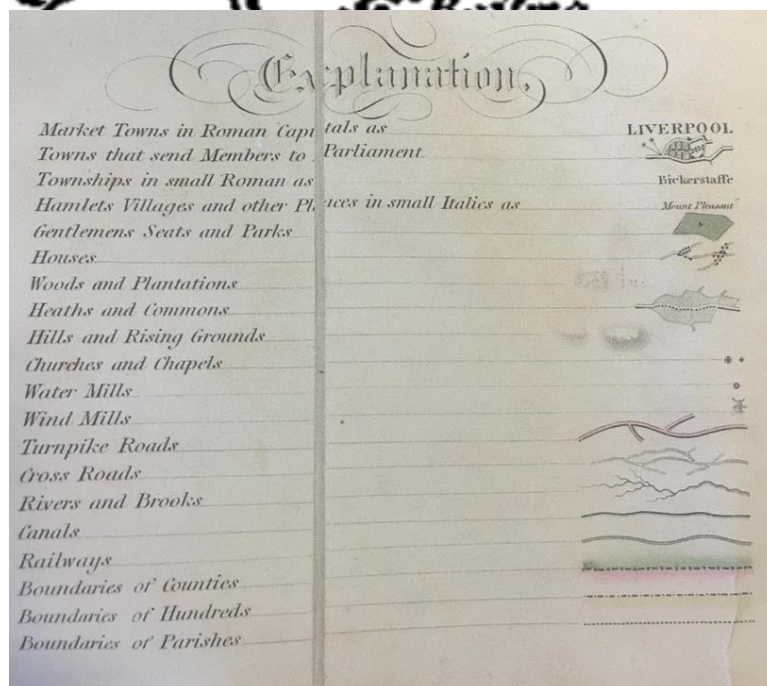


Turnpike Roads _____
 Cross Roads _____
 Towns & other Places _____
 that send Members to Parliament } _____
 Boundaries of Counties _____

Observations

The route under investigation is shown on this small-scale commercial map as part of a longer route extending west from Stodday to the estuary. It is shown by Greenwood as a 'cross road'.

Investigating Comments	Officer's		<p>The route under investigation existed in 1818 providing access from the hamlet of Stodday direct to the estuary. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway at that time. It is unlikely that a map of this scale would show footpaths.</p> <p>It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.</p>
Hennet's Lancashire	Map of	1830	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>



Observations		Only the first part of the route under investigation is shown (as a cross road) extending west from Stodday towards the estuary.
Investigating Officer's Comments		It is not known why only part of the route extending west from Stodday is shown. However, the fact that part of the route is shown suggests that it did

		<p>exist in 1830, at least in part and without an obvious reason to stop, and was of a substantial nature capable of being used at that time.</p> <p>That part of the route shown is considered by Hennessey to be a cross road. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p>
Tithe Map and Tithe Award or Apportionment for Ashton with Stodday	1842	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>

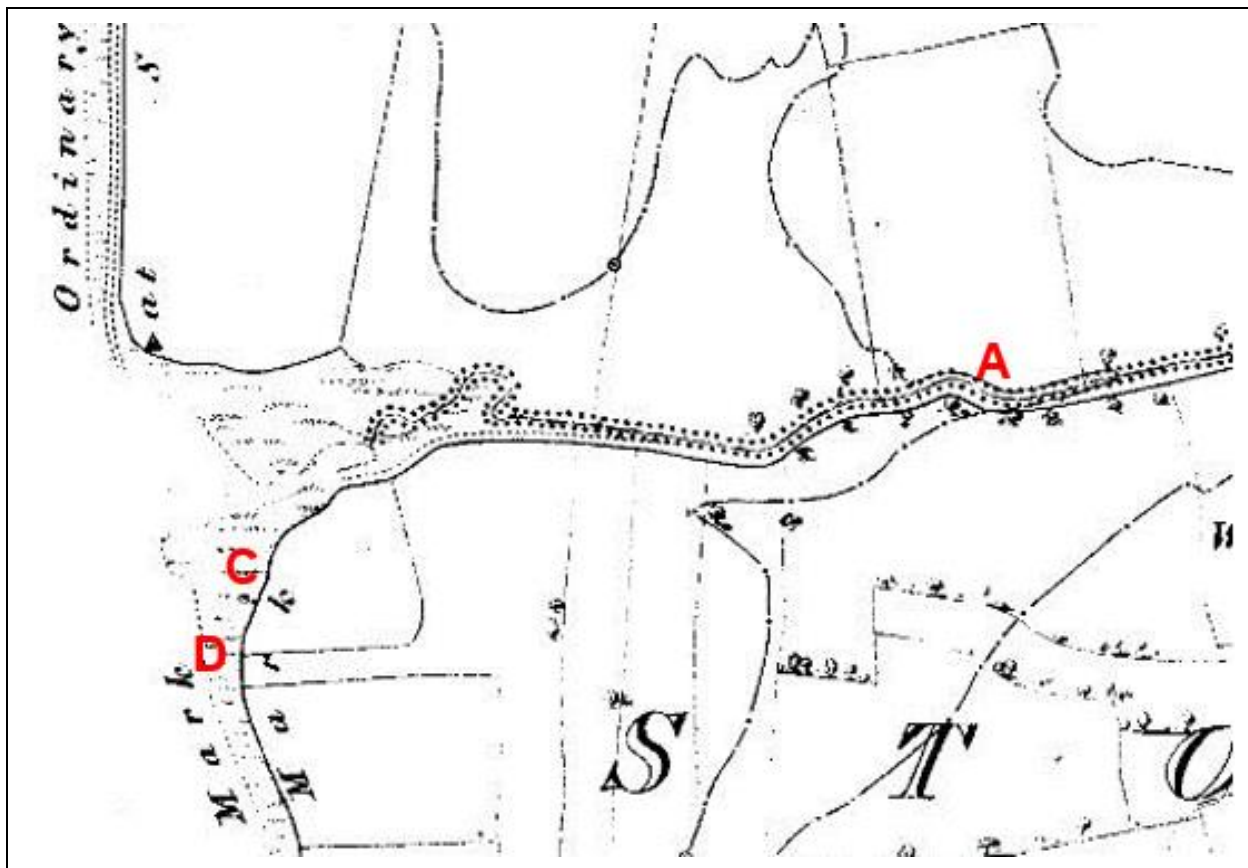


Observations		A copy of the Tithe Map obtained from The National Archives for Ashton with Stodday was included with the application and was annotated by the applicant. The route under investigation is shown as part of a longer route linking to Stodday village and then extending west to an area of land marked as the marsh and providing access to the 'sand' and River Lune (the estuary). The route is shown as a bounded route and is shown in the same way as other roads known to carry public vehicular rights in the parish. The roads shown on the Tithe Map are not numbered and are not listed in the apportionment.
Investigating Officer's Comments		The route under investigation existed as part of a longer route providing access from Stodday village to the salt marsh in 1842 and appeared to be capable of being used. The fact that it was not numbered and included in the Award is consistent with how other routes with known public vehicular

		rights are shown suggesting that the route was considered to be a public road at that time.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award or Map was found for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 34	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹



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



Observations		The route under investigation is shown as part of a longer route providing access from Stodday to the salt marsh. A watercourse is shown forming the northern boundary of part of the route. No gates (lines) are shown across the route.
Investigating Officer's Comments		The route under investigation existed in 1844-45 and appeared to be capable of being used on horseback and most probably with horse drawn vehicles. It provided access to the salt marsh – from which it would have been possible to fish, scavenge or to graze animals – and appears to have been a substantial route at that time.
London and North Western Railway – Glasson Dock Branch PR32/14/32 – London and North Western Railway plans and book of reference.	1878	Railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless

		<p>they really were public rights of way.</p> <p>Preparation of the Books of Reference involved a high level of public consultation required by the standing orders. The plans and books of reference had to be deposited with Parliament prior to the bill receiving its first reading. Notice of the application for a bill had to be published once in the London Gazette newspaper and for three successive weeks in the county newspaper. The railway company's solicitors had to write to everyone who owned land within the line of deviation (including the Surveyor of Highways). Copies of the plans, sections and books of reference in duplicate had to be sent to the clerk of the peace for each county so they could be made available for public inspection. Relevant extracts also had to be sent to the office of the Parish Clerk and office of the Board of Trade. Any alterations to the original plans required a repeat of the original advertising and consultation process. This high level of public consultation and advertisement means that railway plans were highly accurate and the statutory process required for the authorisation of railway schemes was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard.</p> <p>The process followed was at least as thorough as any other system to record public rights at the time. Although, in themselves, railway plans are not conclusive proof of the existence of rights of way, the inclusion of the route on the plans and reference to it being a public road is very good evidence, when considered alongside all other available evidence, that the route was a public road by at least the 1870s.</p> <p>The railway opened in 1883 to transport goods and people from Glasson Dock to Lancaster. The</p>
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		railway closed to passengers in 1930 but remained in operation carrying goods until 1964. The line was subsequently sold and was purchased by Lancashire County Council who redeveloped it as a multiuser trail in the early 1970s.
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London & North Western Railway
(RAILWAYS AND WIDENINGS.)

BOOK OF REFERENCE

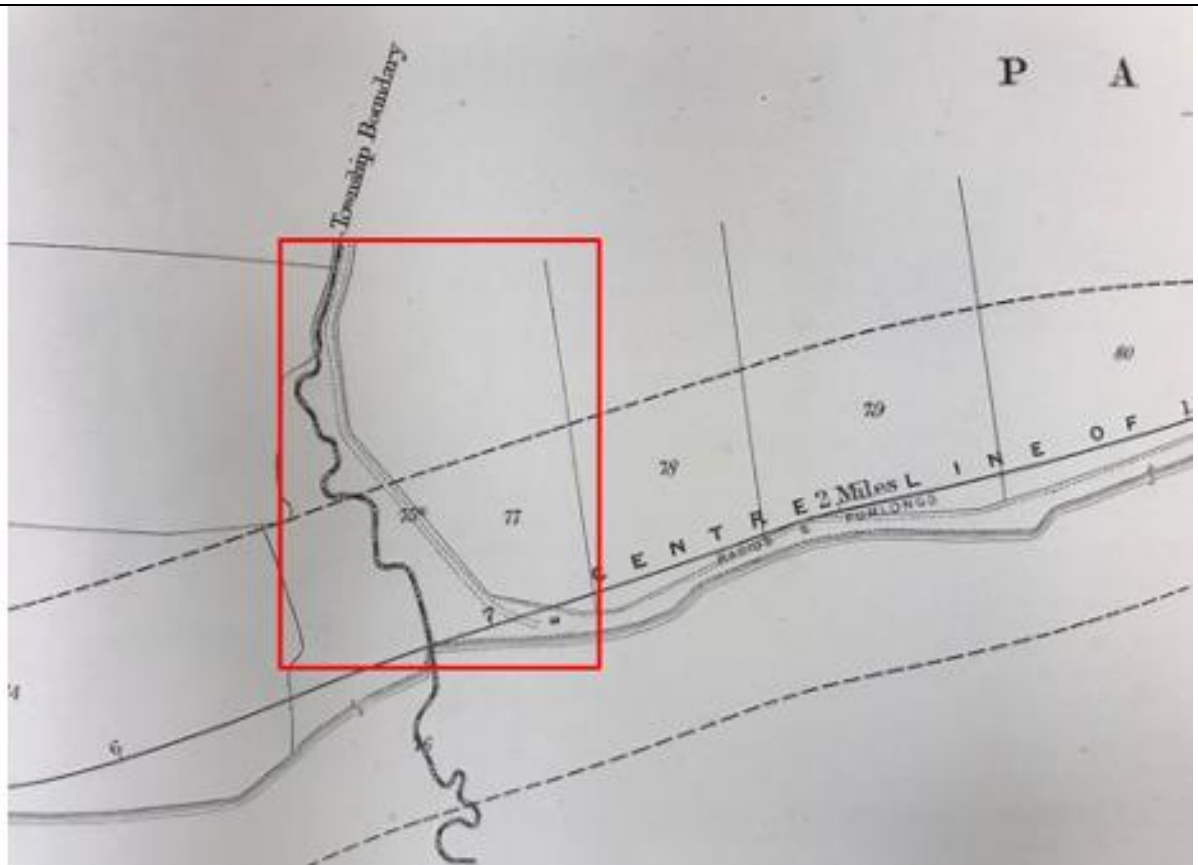
TO

*Plans and Sections of the Glasson Dock
Railways.*

SESSION 1878.

R. F. ROBERTS,
EUSTON STATION,
LONDON.

*P. Sk.
At one block November 29th 1877*



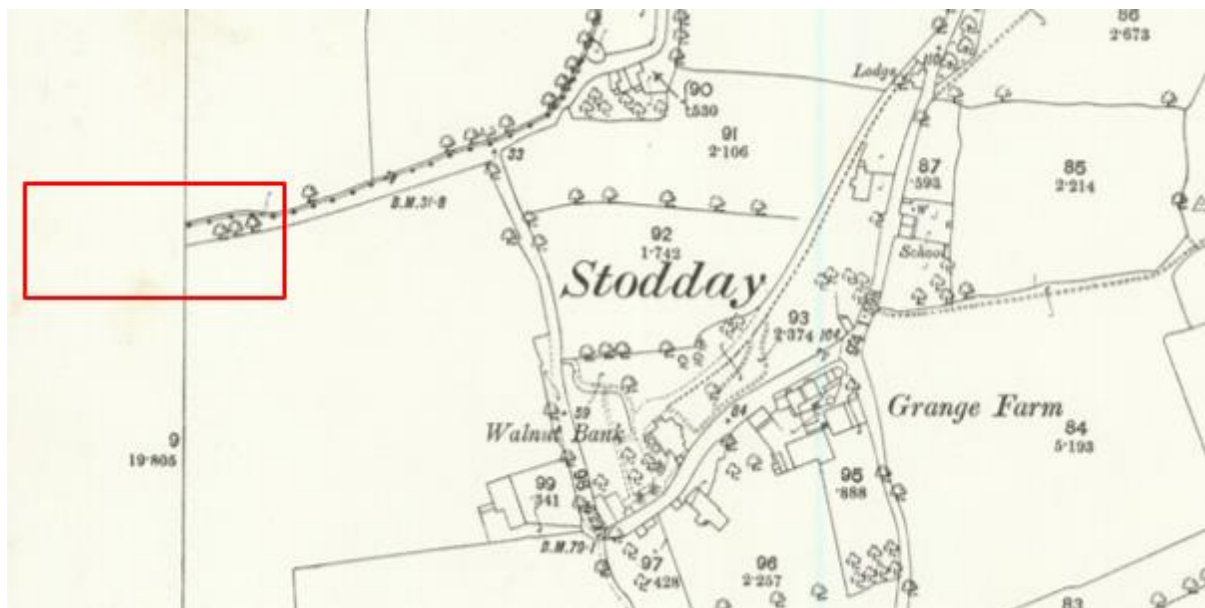
75A	Public road	The Surveyor of Highways for the Township of Ashton-with-Stodday, viz., Thomas Spekeman
Observations		<p>The route under investigation crosses a former railway track which is now part of the Lune Estuary Path.</p> <p>This multiuser path was constructed along what was originally the London and North Western Railway – Glasson Dock Branch.</p> <p>Railway Acts and Plans are held at the House of Lords library in London. A search of the House of Lords records has not been made but Lancashire Records Office hold a number of records relating to this particular railway, including maps and plans and a book of reference prepared prior to the construction of the railway dating from 1887 and these documents have been examined.</p> <p>The strip plans show the route of the proposed railway from Lancaster through to Glasson Dock. They show in detail the land affected by the proposed railway and each field or parcel of land crossed is numbered – including any roads.</p> <p>A route is shown on the plan passing through the area marked as being affected by the construction of the railway and extending out onto the salt marsh. It is numbered 75a on the plan.</p> <p>The book of reference accompanying the map provides a brief written description of each of the numbered plots (e.g. arable field), details of the owner, lessee and tenants (if applicable). Plot 75a – the route under</p>

		investigation – is listed as 'Public Road' in the ownership of the Surveyor of Highways.
Investigating Officer's Comments		The route under investigation was clearly identified as being affected by the construction of the railway. It was listed as a public road in the book of reference providing strong evidence of its historical public status.
25 Inch OS Map Sheet 34.2	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.






Extracts from Sheet 34.2



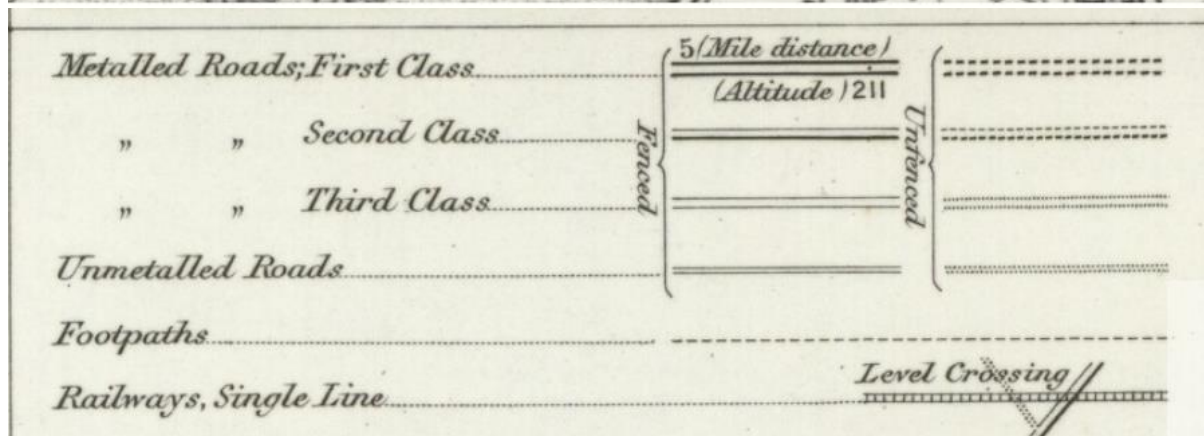
Extract from Sheet 34.3

Observations		The route under investigation is again shown as part of a longer bounded
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		<p>route providing access from the village of Stodday to the estuary. No physical change to the route – known as Snuff Mill Lane - is indicated at point A (the point to which the route of Snuff Mill Lane is now recorded as an unclassified county road) and west of point A the route extends as a bounded lane unchanged from how it has been previously shown, through to point X.</p> <p>Beyond point X significant changes are shown to the western end of the route following the construction of the railway from Lancaster to Glasson Dock.</p> <p>At point X a line is shown across the route under investigation suggesting the existence of a gate. Beyond point X the route follows an enclosed section of road which appears to have been raised to run along the top of a man-made embankment from which there is direct access to some buildings immediately south of the route.</p> <p>The route continues past the building to the railway line (point C).</p> <p>The route under investigation then crosses the railway line from where a ramped access turns south parallel to the railway to provide access to the salt marsh at point D.</p> <p>Bench marks can be seen located midway along the route between point A and point C and one is also marked close to point C.</p>
Investigating Comments	Officer's	<p>By the time that the survey was carried out for the First Edition 25 inch map the railway had been constructed separating the western end of the route which was shown on earlier maps as providing access from Stodday to the salt marsh/estuary.</p> <p>The fact that a substantially constructed route is shown crossing the railway to provide access to the salt marsh suggests that the railway company had been required to</p>

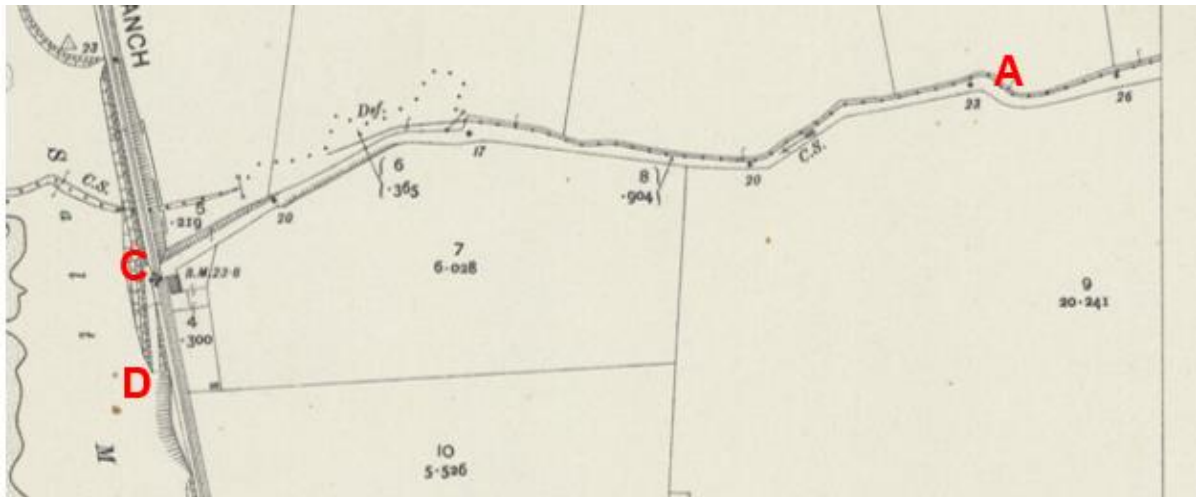
		<p>maintain this access along a route identified by them as a public. Such a crossing point is unlikely to have been created just for pedestrian use and is indicative of continuing use by horses and horse drawn vehicles at that time.</p> <p>A gate appears to have been erected across the route at point X – on the modern-day boundary of land now owned by Lancashire County Council. The existence of gates along a public route (even a public road) would not have been considered unusual in the 1800s particularly in the proximity of railways. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private fields and consequently it cannot be assumed that a bench mark is indicative of a public right of way</p>
6 inch OS Map	1895	Further edition of the 6 inch map, surveyed 1844-5, revised 1890 and published 1895.
		
Observations		<p>The route under investigation is shown as part of a longer substantial bounded route. There was no indication that the characteristics of the route altered at point A from the rest of the route leading to/from Stodday. The ramps up to the railway and down onto the salt</p>

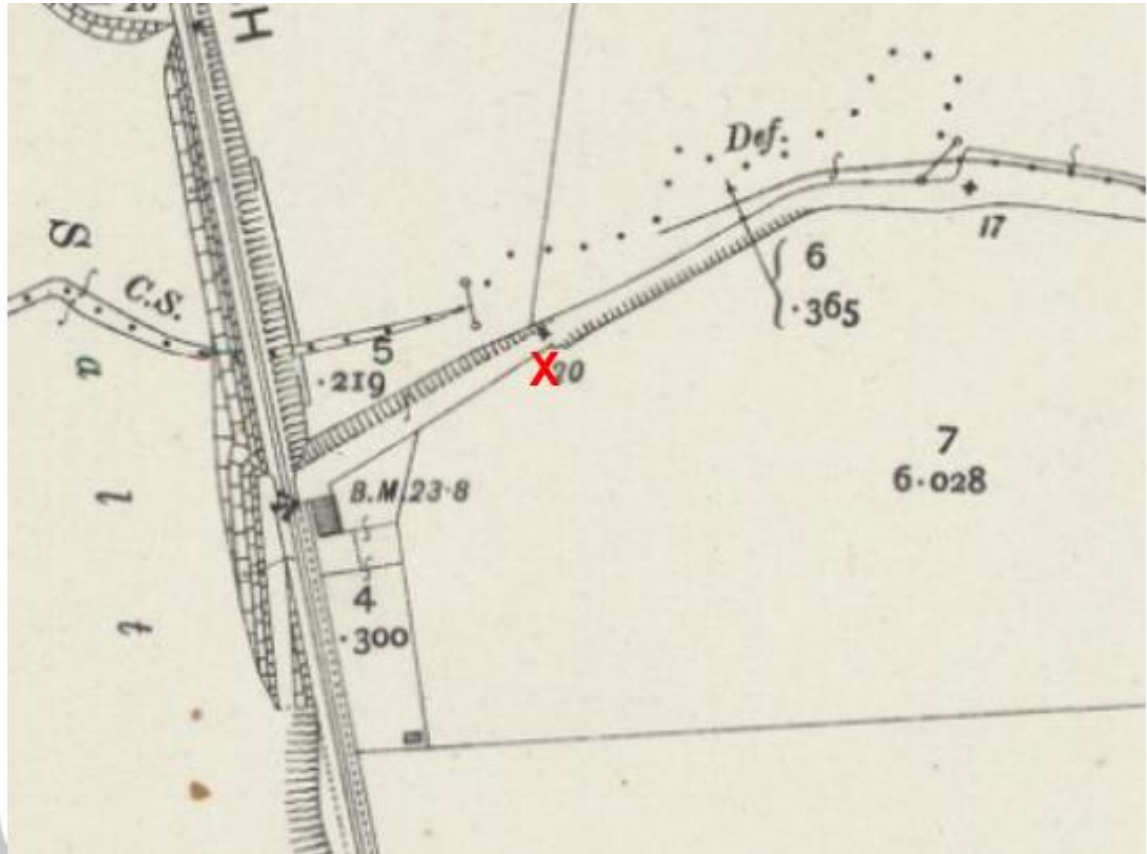
		marsh/estuary can be seen from point C to point D.
Investigating Officer's Comments		The route under investigation existed in 1890 as part of a longer route providing access to the salt marsh/estuary.
1 inch OS Sheet 59 - Lancaster	1898	1 inch OS map surveyed 1842-48, revised 1896 and published 1898.



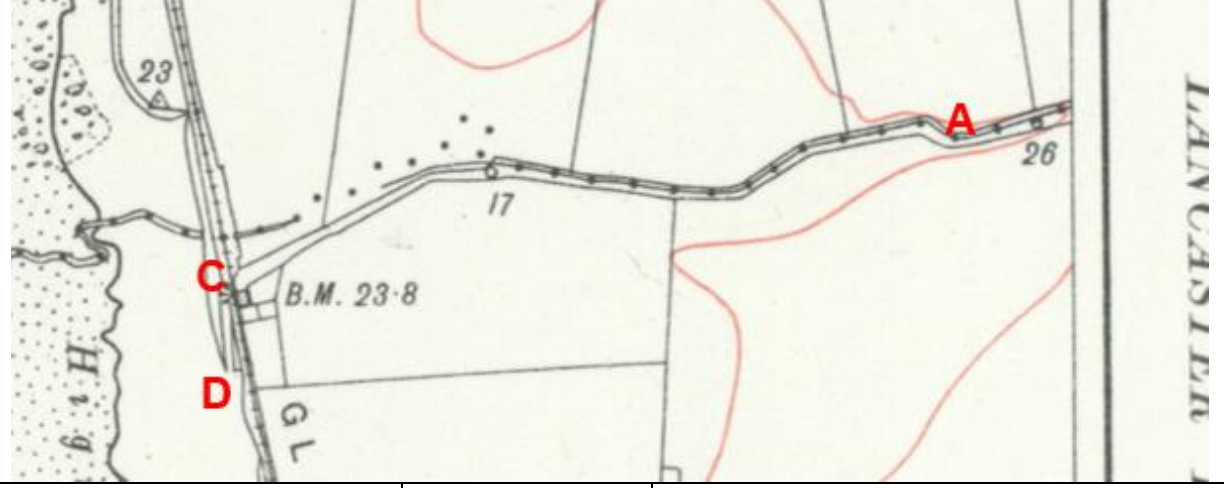
Observations		The route under investigation is clearly shown as a fenced third-class road or unmetalled road – although it does appear to be thinner than routes through Stodday. The route is shown terminating at the railway (point C) and neither the level crossing nor access to the salt marsh/estuary is shown.
Investigating Officer's Comments		The small-scale one inch OS map was predominantly published with the main

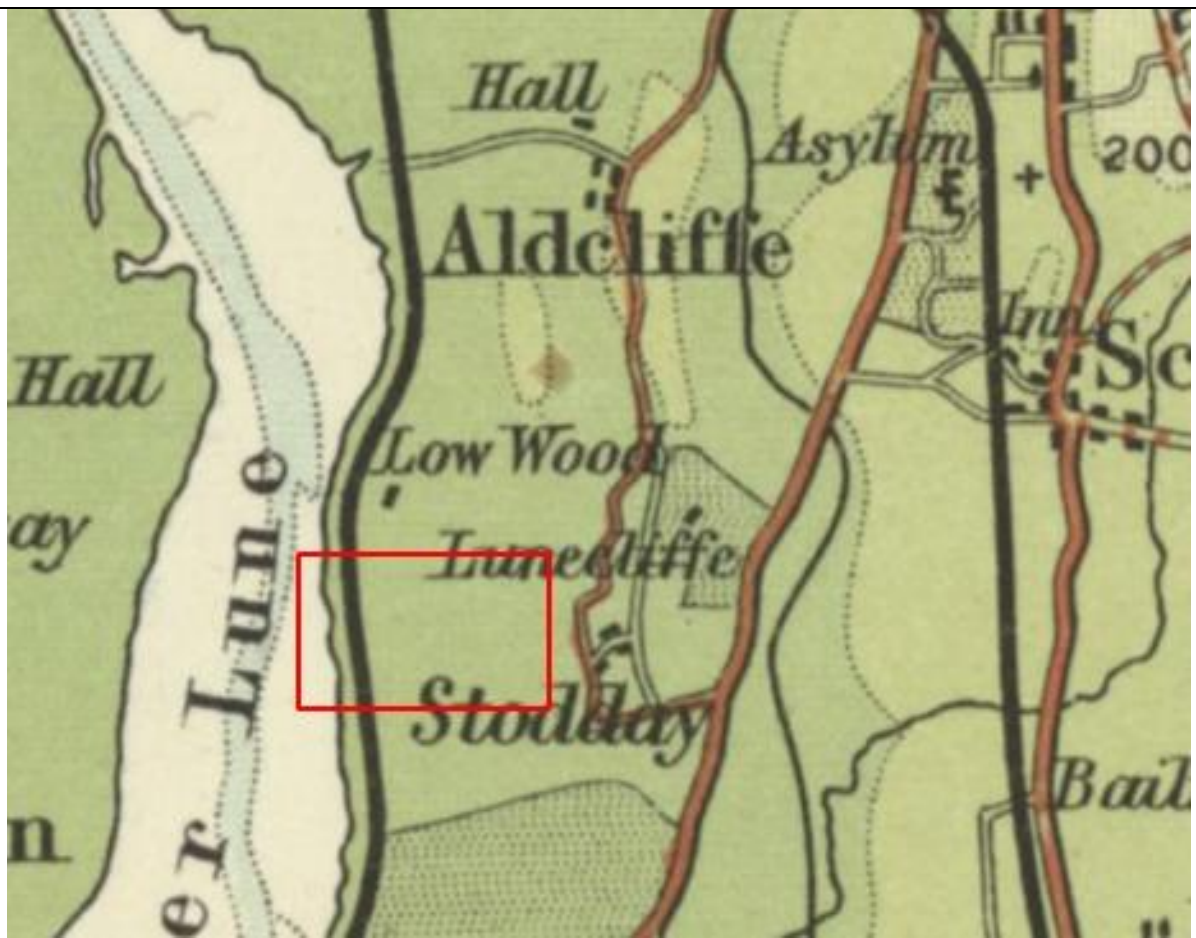
		<p>market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.</p> <p>The fact that the crossing of the railway at point C is not shown is most likely due to the small scale of the map – particularly as it is shown in detail on large scale maps of that era.</p>
<p>25 inch OS Map Sheet 34.2</p>	1913	<p>Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.</p>



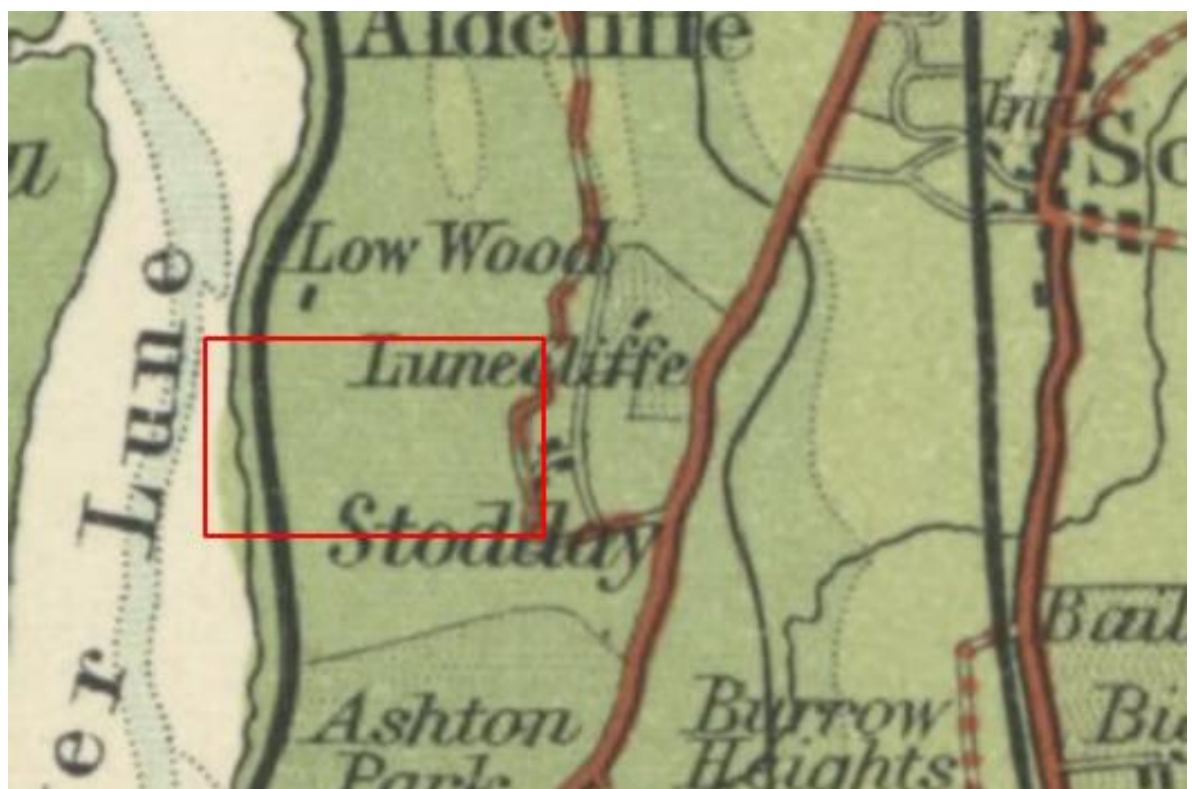


Observations		The route under investigation is shown in the same way as it is shown on the earlier edition of the 25 inch OS map with the exception that the gate shown on the earlier edition of the map at point X is no longer shown.
Investigating Officer's Comments		The route under investigation existed in 1910 as part of a longer route providing access across the railway from point C to the salt marsh at point D and appeared to be capable of being used at least on horseback and probably by vehicles.
6 inch OS Map 34 NW	1916	6 inch OS map surveyed 1845, revised 1910 and published 1916.

		
Observations		The route under investigation is again shown as part of a longer bounded route continuing through to the salt marsh via the ramped access between point C and point D.
Investigating Officer's Comments		The route under investigation existed in 1910 as part of a longer route and appeared to be capable of being used at least on horseback – and probably with vehicles.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



Sheet 5 – North Lancashire & Isle of Man published 1905



Sheet 5 – North Lancashire & Isle of Man published 1920



Sheet 31 – North Lancashire published 1941

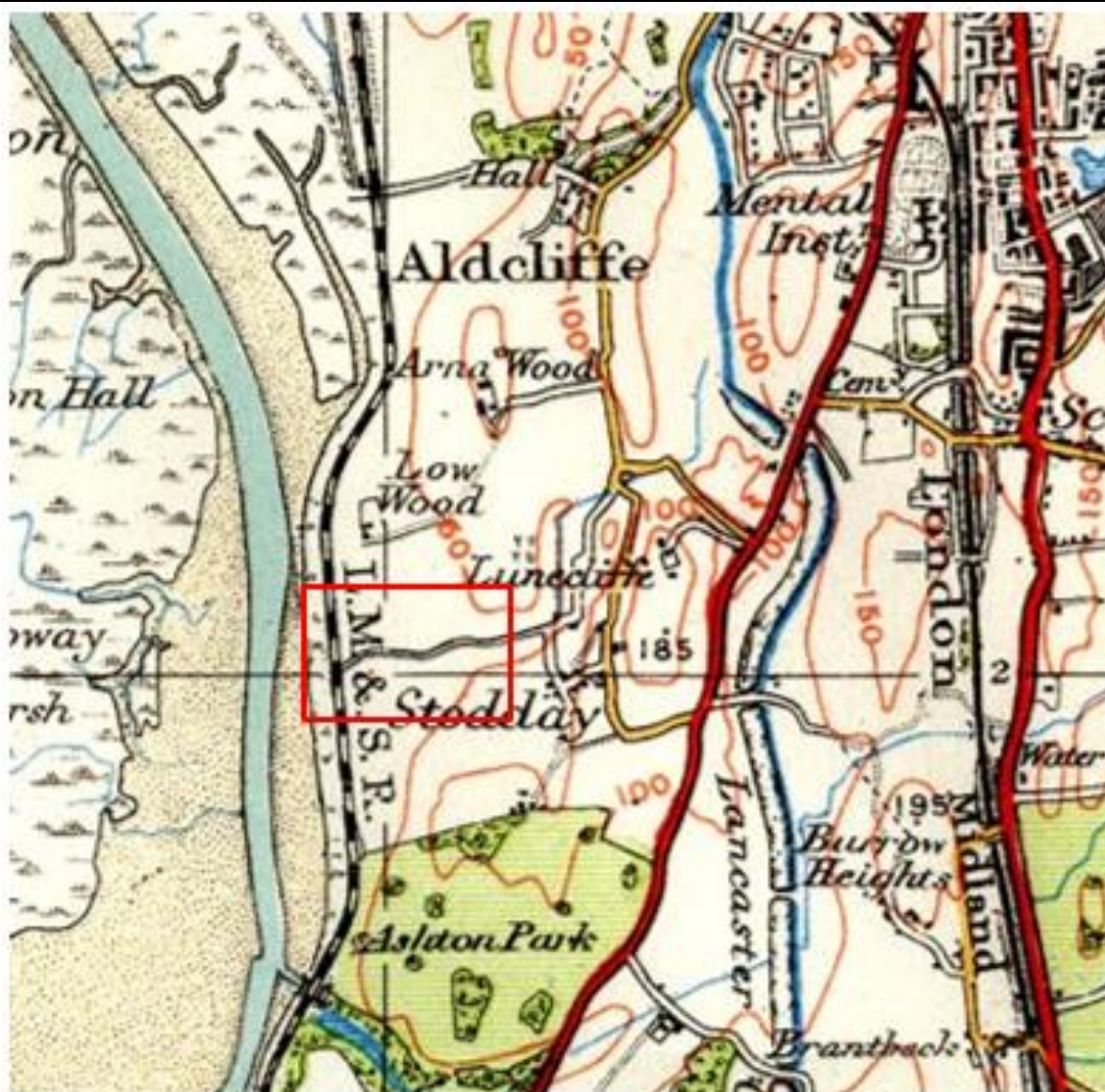
Observations		Neither the route under investigation nor the public road east of point A known as Snuff Mill Lane are shown on the 1/2 inch maps inspected.
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p> <p>The fact that the route is not shown on any of the three map editions inspected is not surprising given the small scale of the maps and the purpose for which they were published. The route did not provide a through route for motor vehicles or access to a site of particular interest and predated the closure of the railway and construction of the Lune Estuary Path so would not have been of particular interest to motorists or to cyclists at that time.</p>
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not

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



Observations		The route under investigation is not excluded from the numbered hereditaments. Between point A and point X it is included as part of plot 9
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		<p>which is listed in the Valuation Book as being owned by Lord Ashton and occupied by Mr Mackereth. It is described as 'land' and was at 'Waterside' (a nearby farm to the south-east) with a £4 deduction listed for public rights of way or user.</p> <p>Between point X and point D the route is within plot 52 again listed under the ownership of Lord Ashton and occupied by Mr Mackereth. It is described as being a 'cottage', also at 'Waterside' with a note that all details regarding any deductions are included in the valuation for plot 9.</p> <p>East of point A Snuff Mill Lane is also included as part of plot 9.</p>
Investigating Officer's Comments		<p>In 1910 it does not appear that the route was considered by the valuation officer and/or landowner to be a public vehicular route which should be excluded from the taxation process. It does appear however that public rights were acknowledged to exist across the land crossed by the route under investigation as a deduction of £4 was made. No details regarding which route or routes the deduction applied to are provided so no inference can be drawn.</p>
1 inch OS Map	1918	<p>Further 1 inch OS map submitted by applicant. Date of survey and revision not known.</p>



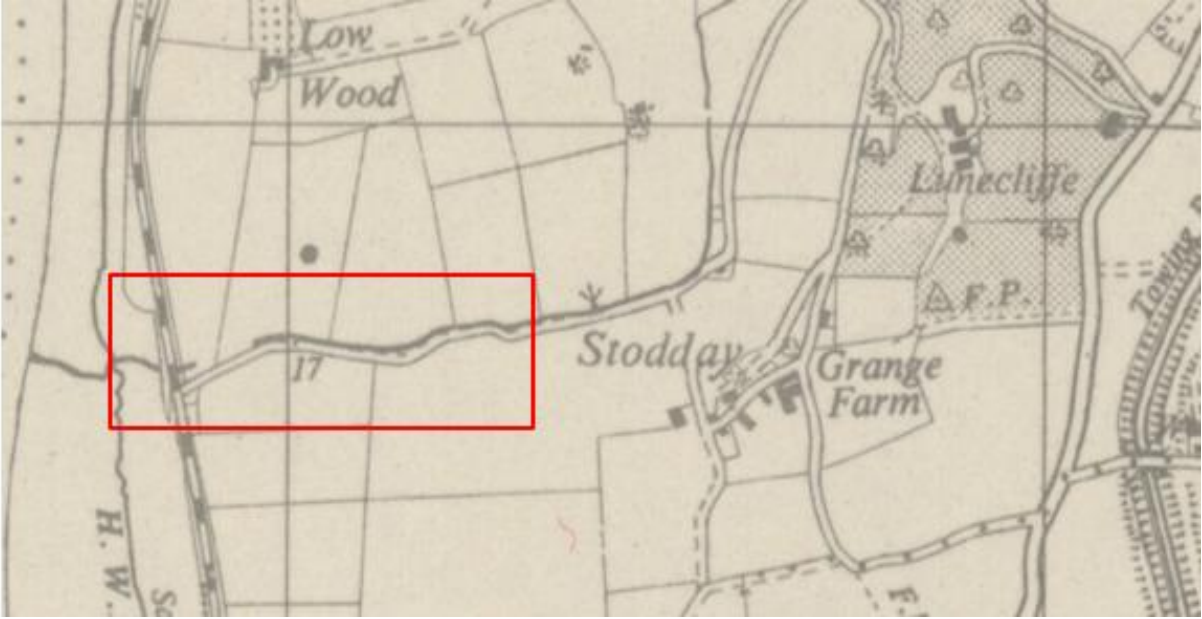
Observations		The route under investigation is shown as part of a bounded route although shown to be narrower than the acknowledged public roads through Stodday. It is shown extending as far as (but not across) the railway.
Investigating Officer's Comments		The route under investigation existed and appeared capable of being used. The fact that the route is not shown to cross the railway and provide access to the salt marsh is due to the scale of the map – as it is shown to continue onto the marsh on larger scale maps produced at this time.
1 inch OS Map	1947	Further edition of the 1 inch map revised 1920 with later corrections, published 1947.



Ministry of Transport Roads	A.6	B.5253
Other Motor Roads		
" " " narrow	Good	Bad
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates	TOLL	
Road Mileage	5	

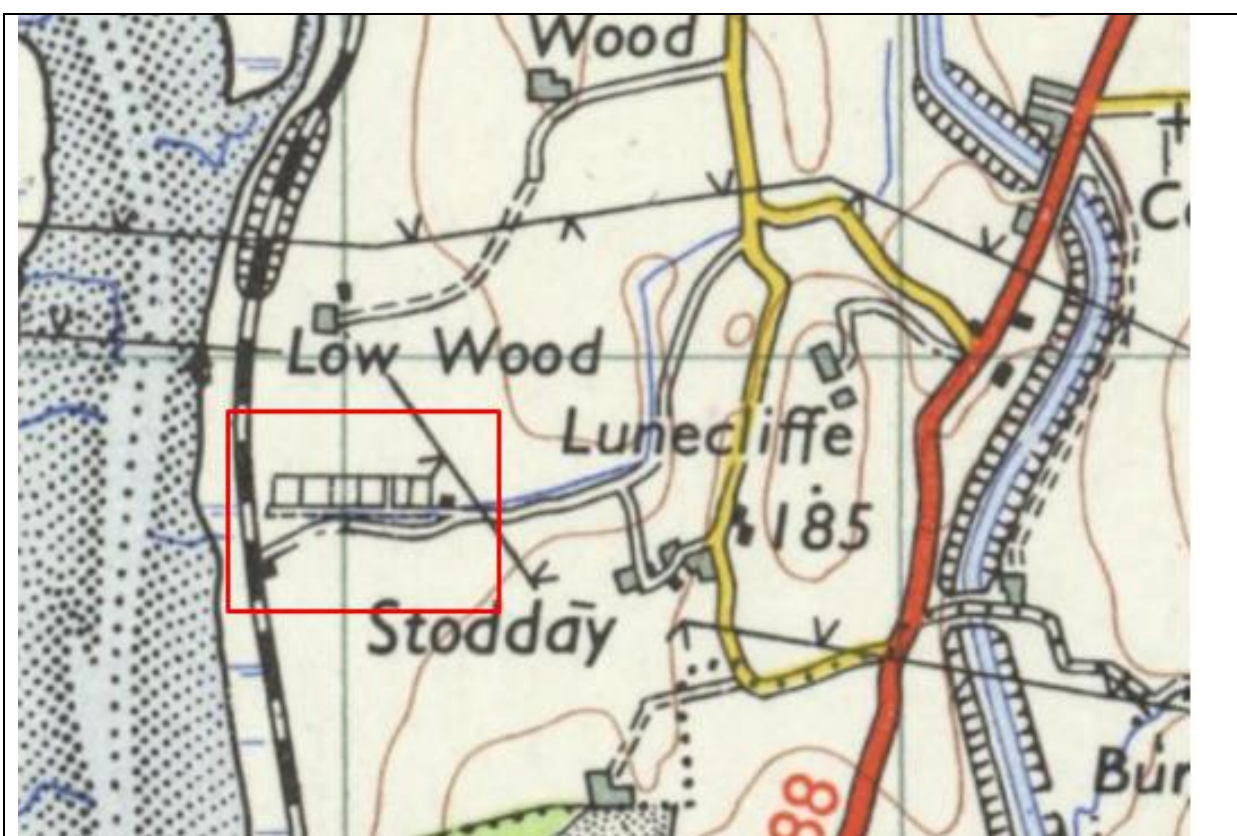
Observations

The route under investigation is shown to exist as part of a longer route and appears, from the map key, to have

		been shown as a 'Minor Road'.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and motor vehicles at that time.
1:25 000 OS Map Sheet 34/45	1947	OS map submitted by applicant. Date of survey and revision not known but likely to be 1930s. Published 1947.
		
Observations		Further small-scale OS map showing the full length of the route under investigation existing as part of a longer route providing access to the salt marsh. The buildings shown on earlier maps immediately south east of point C are no longer shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and motor vehicles at that time.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



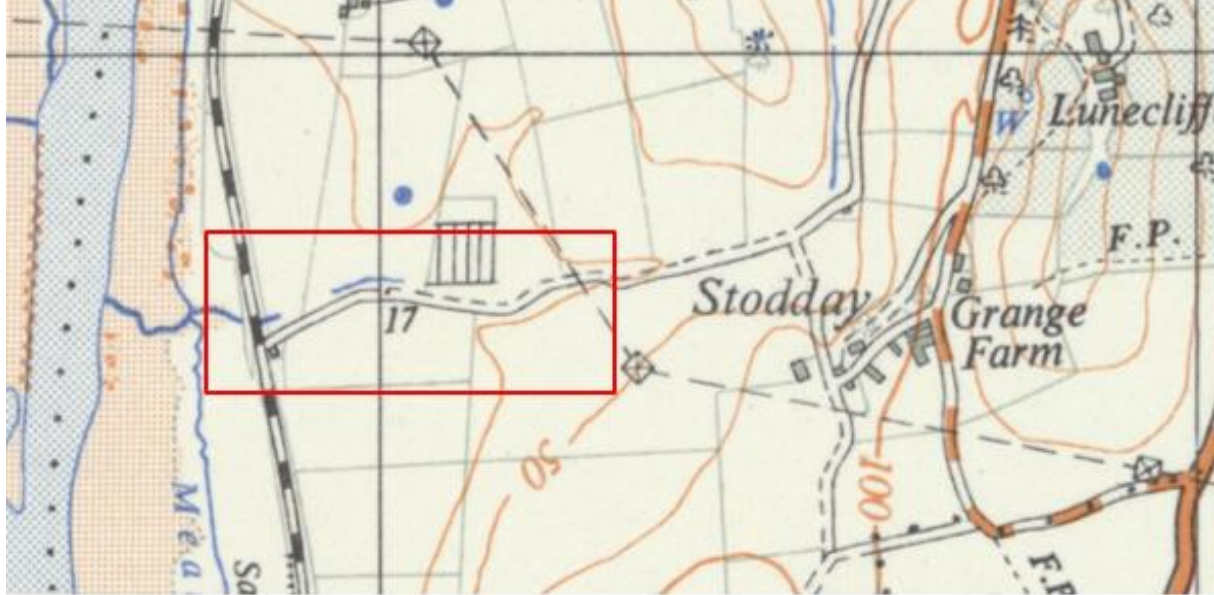
Observations		The full length of the route under investigation is shown existing as part of a longer route which provided access to the salt marsh. The buildings shown on earlier maps immediately south east of point C are not shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and vehicles at that time.
1 inch OS Map Sheet 94 - Preston	1961	1 inch map revised 1958 and published 1961.

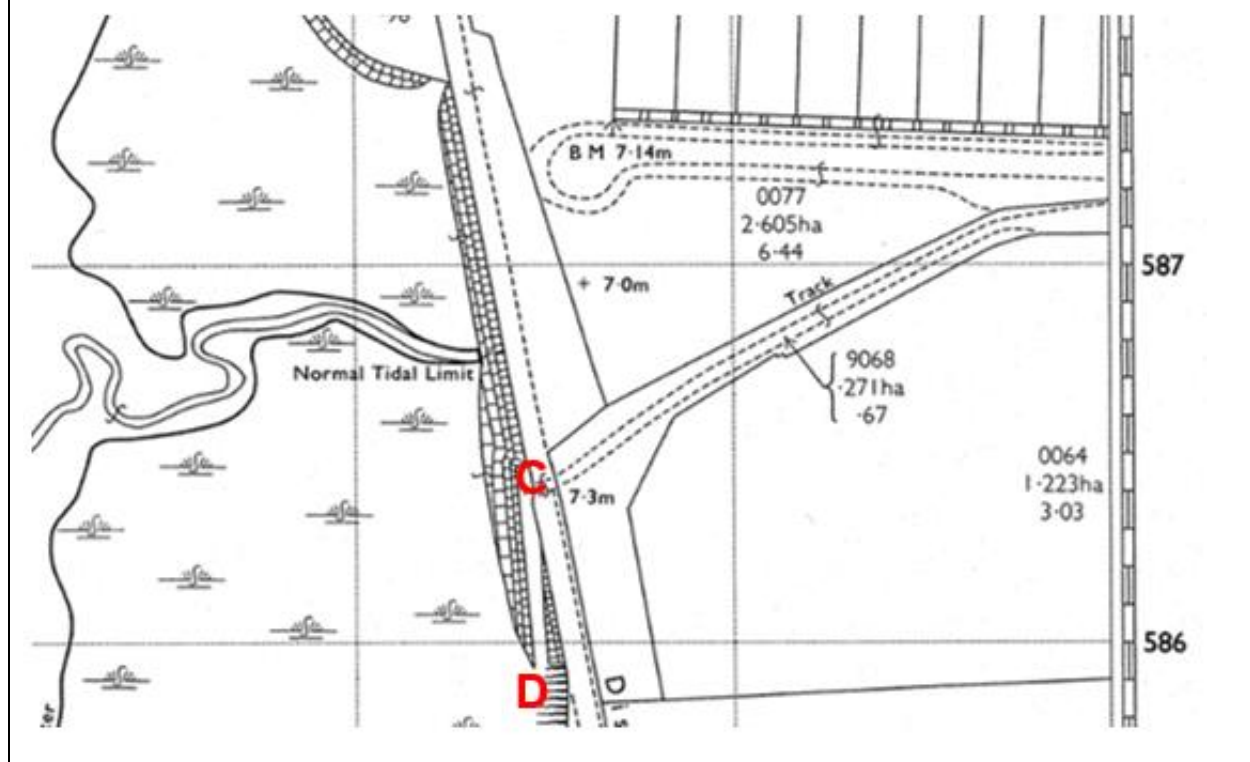
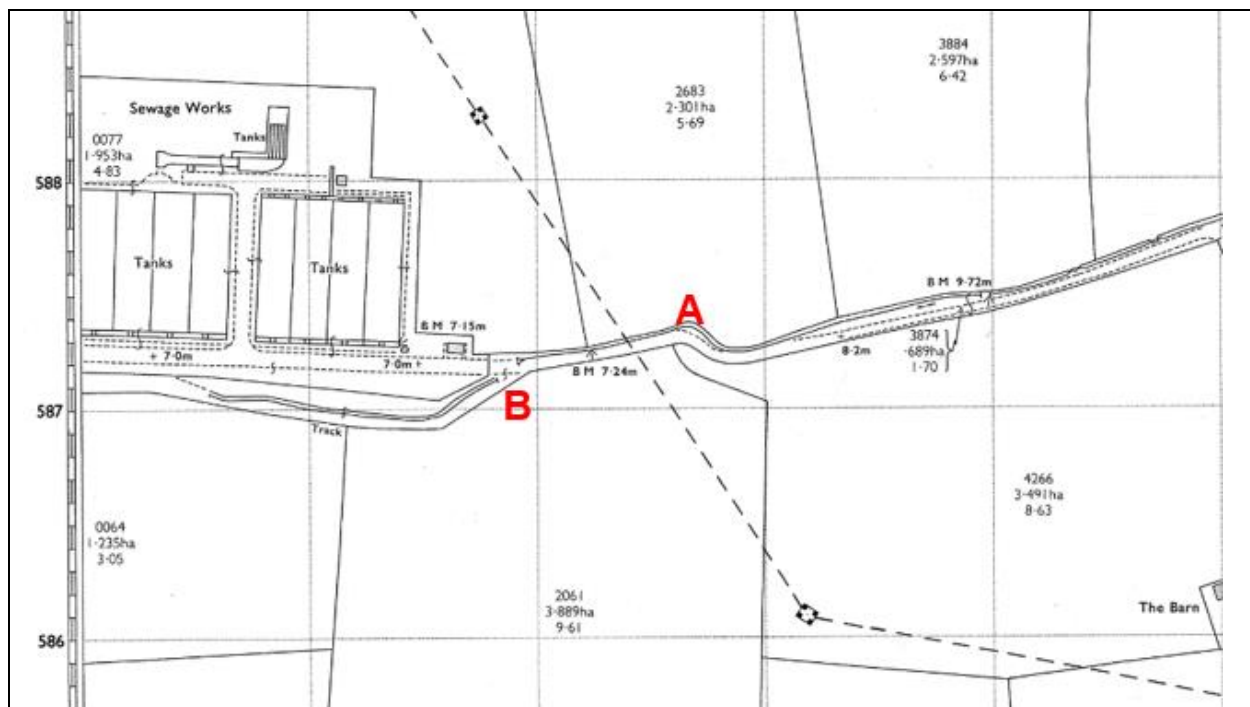


Ministry of Transport, Motorway		M 1 or A 6 (M)	
" " " Trunk		A 6 (T)	
" " " Class 1		A 584	Railw
" " " " 2		B 5269	
Roads	14 ft of Metalling & over (not included above)		Wood
	Under 14ft of Metalling, Tarred	TOLL	
	" " " " Untarred	Gate	Orchard
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Electric (with pylons)
Under construction			Pipe L
Steep Gradient 1 in 5 or steeper		1 in 7 to under 1 in 5	Marsh
Footpaths and Tracks			
Heights in feet above Mean Sea Level		surveyed by levelling	275 Rough

Observations

The route under investigation is again shown as part of a longer route. The sewage works immediately north of the route are shown with access to them via the route. The route is shown as a minor untarred road in the map key. However C-D is not shown, possibly due to the limitations of scale but the map is quite detailed and perhaps the ramp had fallen into disrepair (it would

		be subject to tidal erosion at times.)
Investigating Officer's Comments		The route under investigation existed as far as the railway (point C) and appeared to be capable of being used in 1958.
1:25 000 OS map SD 45 NE	1966	OS 1:25 000 map revised 1910-1965, published 1954 and reprinted 1966.
		
Observations		The route under investigation is again shown as part of a longer route and appears to have been revised since first being printed in 1954. The sewage works are shown north of the route – although they appear to have been under construction at the time. Much of Snuff Mill Lane, except the western end, is shown unfenced on the north side. The access to the salt marsh C-D is not shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in 1966.
1:2500 OS Map SD 4658-4758 and SD 4458-4558	1970-1971	1:2500 OS map reconstituted from former county series and revised in 1970 and published in 1970-71 as National Grid Series.



Observations

The route under investigation is again shown but is labelled as a 'track'. Access to the sewage works can be seen from the route at point B. The railway is no longer shown and the track appears to have been removed. A line is shown across the end of the route at point C although a series of dashed lines passing through the solid

		line at point C suggests that there may have been a gate through which it was possible to access the former railway line and from which it was possible to cross to continue between point C and point D along the ramped access onto the estuary.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in 1970.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



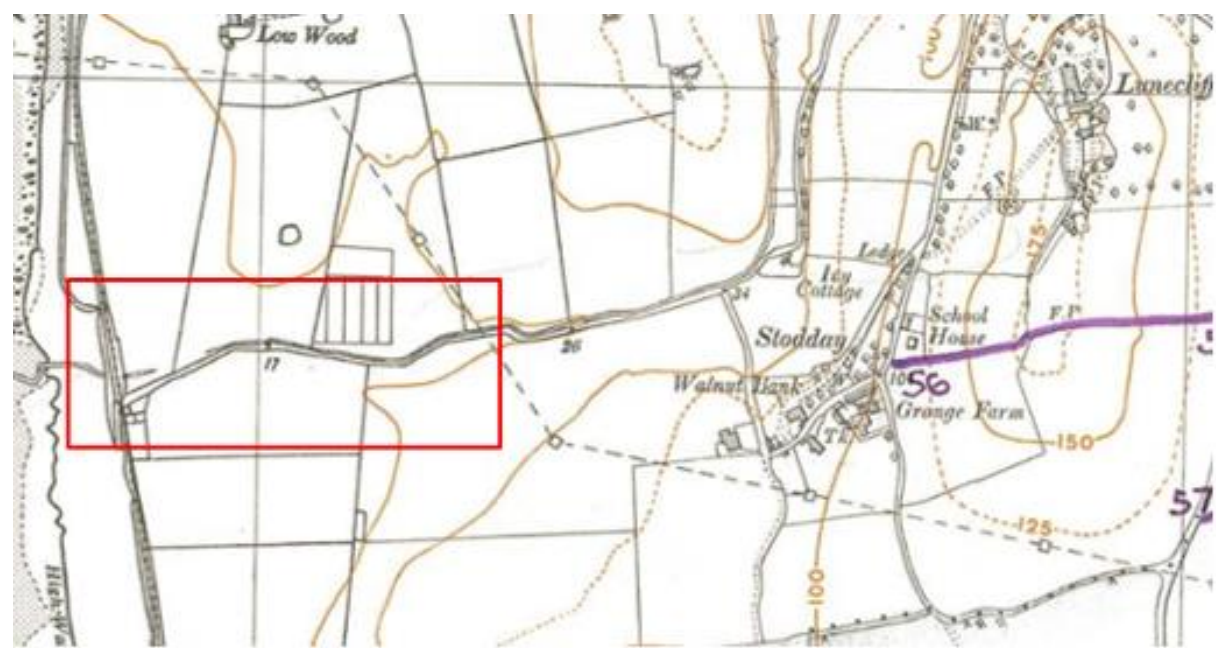


Observations		<p>The length of the route under investigation from A to C can be clearly seen consistent with a route being used by vehicles.</p> <p>The railway ceased to operate in 1964 and from enlarging the aerial photograph it appears it was taken some time after then as the sleepers and rails look to have been removed. Use does not appear to have been along the old railway but looks to cross it to continue out onto the salt marsh. The ramp between points C and D, originally constructed when the railway was built, is not evident and presumably had disintegrated or been removed.</p>
Investigating Officer's Comments		The route under investigation existed in the 1960s and it appeared to be being used by vehicles at that time.
Aerial Photograph	2016	Aerial photograph available to view on

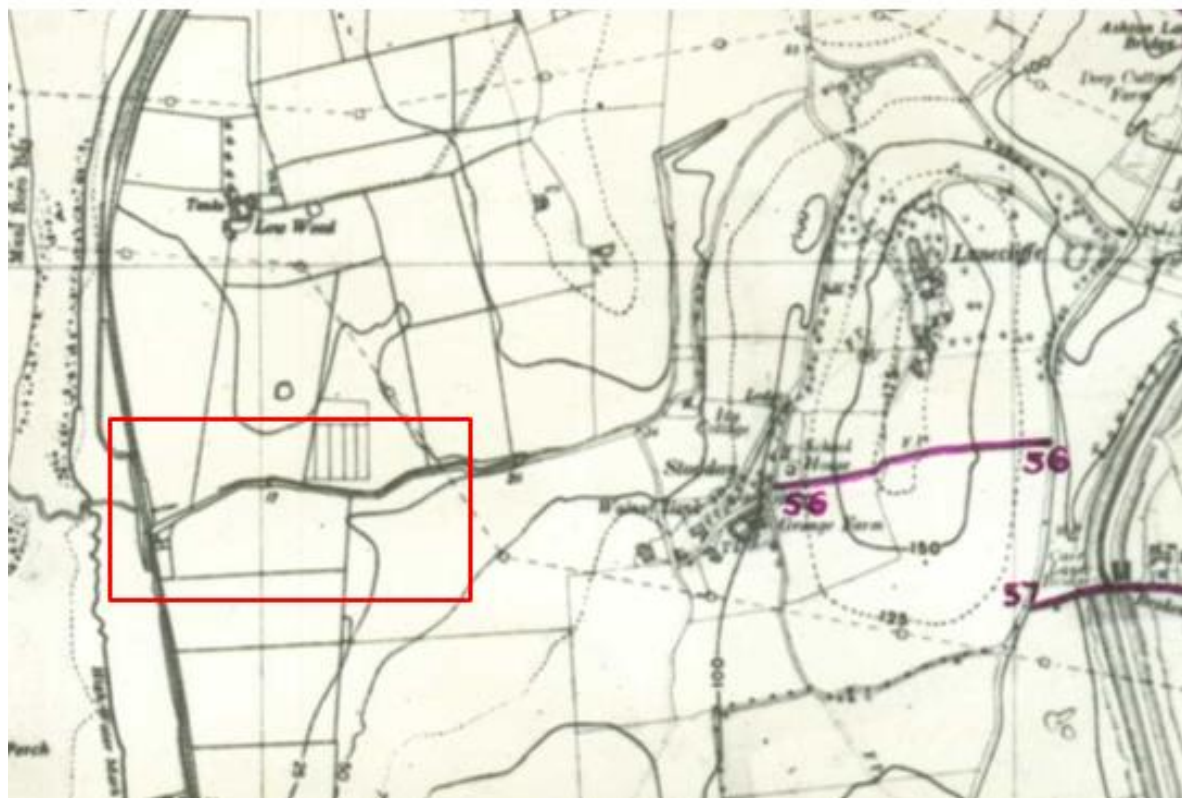
		GIS.
		
Observations		Most of the route under investigation is still visible but only looks to be being used by vehicles between point A and point B. The route onto the salt marsh is no longer visible but the picnic area west of point C can be seen.
Investigating Officer's		Use of the route under investigation by

Comments		vehicles had significantly decreased by 2016 and C-D had ceased to exist on the ground.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The area crossed by the route under investigation (Aldcliffe) was within Lancaster Municipal Borough for which no parish survey map was drawn.
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

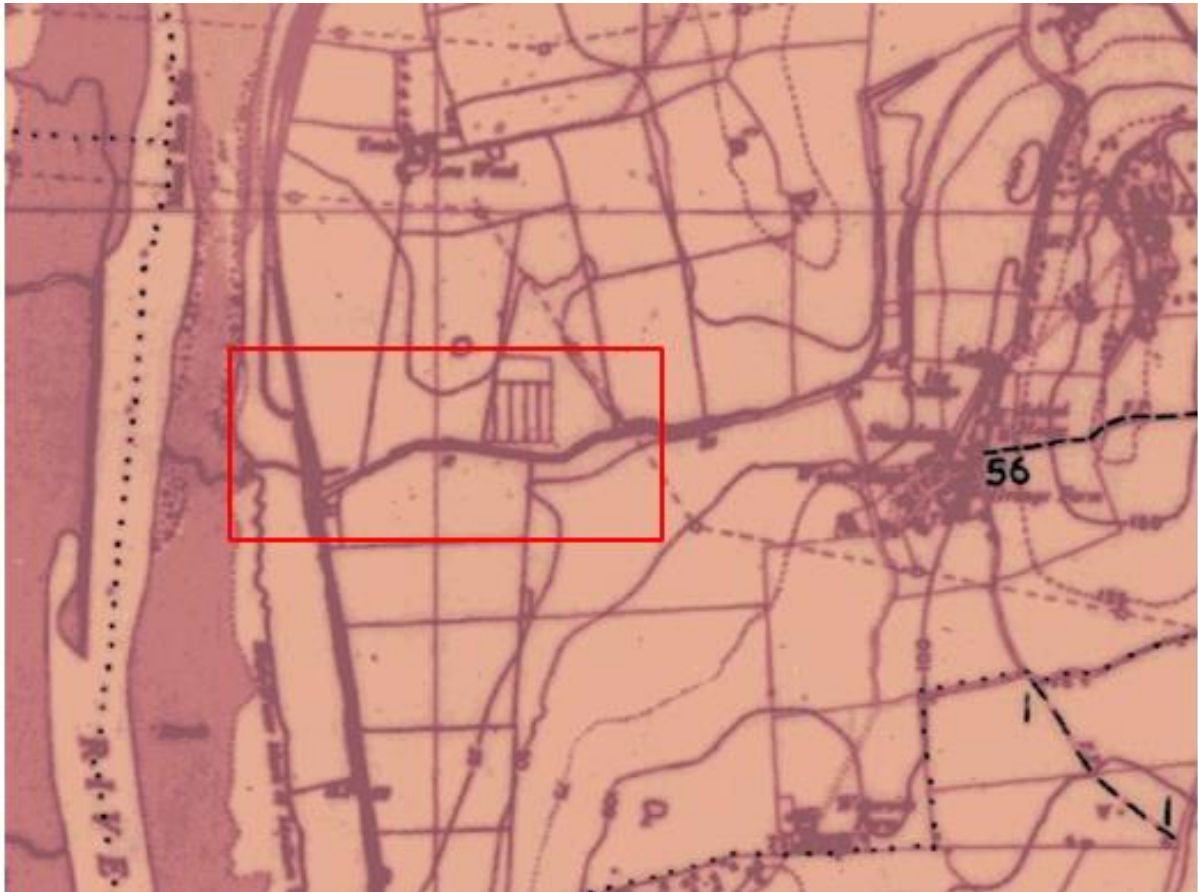
		made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way and there were no representations made in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The route under investigation was not recorded on the Provisional Map of Public Rights of Way and no representations were made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The route under investigation was not recorded on the First Definitive Map of Public Rights of Way.
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.



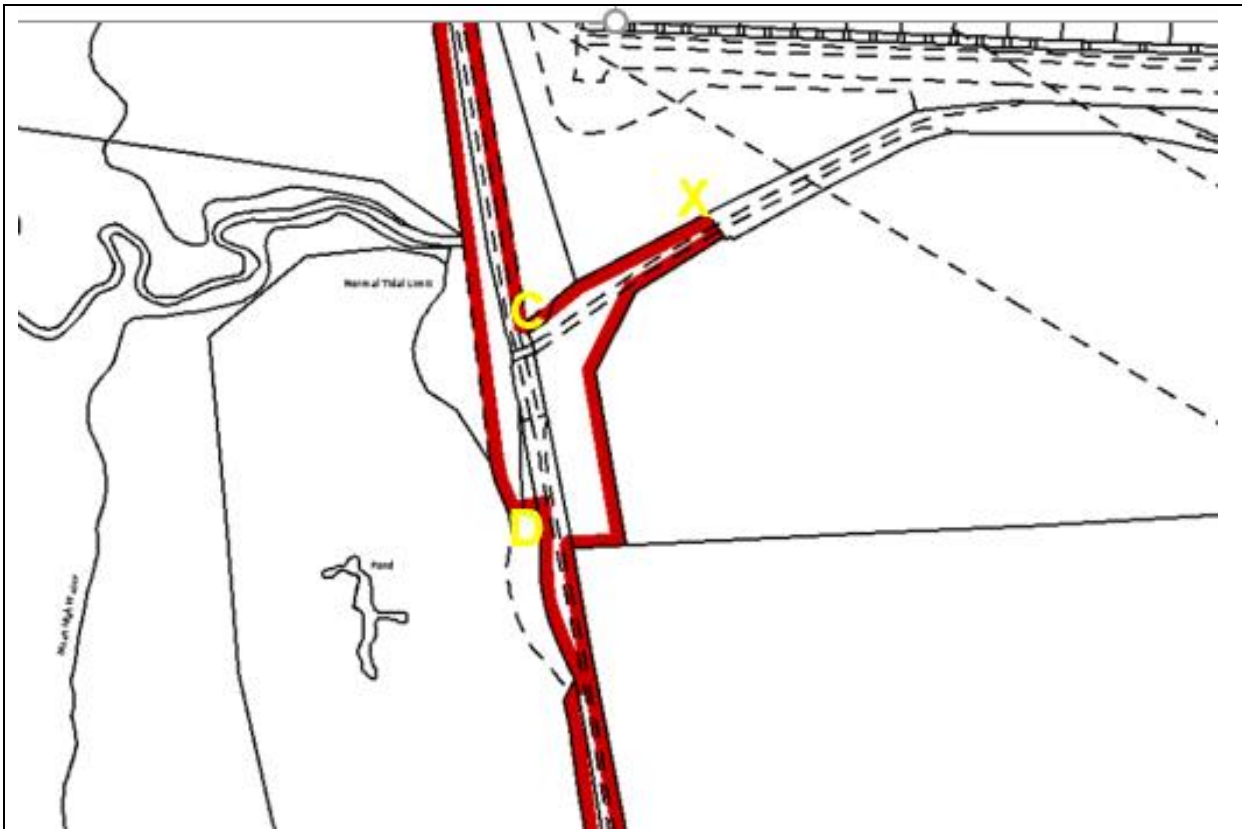
Observations		The route under investigation is not recorded as a public right of way on the Revised Definitive Map.
Investigating Officer's Comments		The route under investigation was not recorded as a public right of way as part of the process of compiling the Definitive Map and Statement.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils, and later from the urban and metropolitan boroughs, to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of these highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that had been maintainable by the districts. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public</p>

		<p>highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The county council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		The route under investigation is not recorded as a publicly maintainable highway in the county council's highway records.
Investigating Officer's Comments		The route under investigation is not recorded as a publicly maintainable highway in the county council's highway records.
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 records relating to the stopping up, diverting or creation of public rights along the route under investigation were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>



Extract from Land Registry plan for title LAN 87191

Observations		Ownership of the route under investigation between point A and point X is not registered and is not known. Between point X and point D the land crossed by the route is owned by Lancashire County Council who purchased it from the former railway company.
Investigating Officer's Comments		When ownership of a route is not known and not registered, in contrast to land either side, it can provide supporting evidence of public status – particularly historical vehicular routes. In this case landowners were listed in the Finance Act documentation in 1910 but not in the 1842 Tithe Award where it appeared to be considered to be part of the general road network. The route between point X and point D was originally listed in the railway records from 1878 as being a public road under the ownership of the Surveyor of Highways but due to the fact that the railway was laid across the road and a ramped crossing point constructed

		<p>then future ownership of that land by the rail company would be expected.</p> <p>The Investigating Officer is therefore of the opinion that the landownership details support the application for recording the route as a public right of way.</p>
Lune Estuary Path		<p>The dismantled railway was acquired from British Railways by Lancashire County Council in 1971 and included purchase of the route under investigation between point X and point C and the ramped access onto the salt marsh between point C and point D.</p>



Sign located at point C (2018) indicating that the route under investigation provided access to Stodday



Photographs taken in 2018 showing flooding across the route under investigation

Observations

The county council's records indicate that following closure of the railway in 1964 the line had been used as a footpath by the public and that the county council subsequently purchased the railway line to ensure future use for recreational purposes. Work to surface the route and to provide a car park, picnic site and toilet block was carried out between 1971 and 1975. During that time use of the dismantled railway was restricted to pedestrians with barriers prohibiting use by cyclists and horse riders.

User evidence has not been submitted as part of this application but it appears that since the closure of the railway – and particularly since the construction of the Lune Estuary Path – the route

		<p>under investigation could have been used by walkers, cyclists and horse riders to gain access to the multiuser path at point C. Reports were submitted to the county council in 2018 regarding the fact that the route was flooded due to a lack of maintenance of the adjacent stream. Photographs submitted with the report show the flooded section and also show that the route had been signed at point C in such a way as to infer that the route was also a designated cycle track.</p> <p>The county council Public Rights of Way team responded to the report explaining that the route was not recorded as a public right of way and that we had no record of it being a designated cycle track.</p>
Investigating Officer's Comments		<p>There appears to have been use of the route in more recent times by people on foot, horseback and bicycle to link Stodday with the designated Lune Estuary Path. No specific user evidence has been submitted and it is considered that modern day use made of the route is use of a route which was historically dedicated as a public right of way.</p>

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

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist or it is reasonably alleged that they subsist, along the route under investigation it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route was, at the time of the Act not recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expenses) and we have no evidence that any of the other exemption to the blanket extinguishment of MPV rights applies. Therefore, in the event that public carriageway rights are shown to exist and the appropriate

status for the route under investigation to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

The application has been made based entirely on historical map and documentary evidence.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

However, in this case there appears to be strong and consistent evidence from the 1800s suggesting that the route was believed to be and was capable of being used as a public vehicular route at that time.

It is shown in its entirety as a cross road on two key small-scale commercial maps – Yates' Map published in 1788 and Greenwood's Map of 1818 and partially shown on Hennet's Map of Lancashire published in 1830.

It is consistently shown as part of Snuff Mill Lane continuing west from the adopted section of Snuff Mill Lane with no discernible difference in how it is shown east or west of point A.

Most significantly it is depicted as a road on the Tithe Map of 1842 and in the Railway plans and sections and book of reference compiled in 1878 it is clearly recorded as a public road. When the railway was subsequently built a substantial ramped access was constructed to provide access across the railway from the route under investigation to the estuary consistent with the requirement to provide a substantial crossing point for the 'public road'.

Maps and photographs post-dating the construction of the railway consistently show that the route existed and appeared capable of being used. Since the construction of the sewage works north of the route in the mid-1950s and the removal of the railway lines in the 1960s use of the route by vehicles appears to have diminished from point B through to point C although site evidence suggests that it is still frequently used by walkers, cyclists and horse riders accessing the Lune Estuary Path.

Head of Service – Legal and Democratic Services Observations

Landownership

From A to X the application route crosses land which is unregistered. From X to D the route crosses land in the ownership of Lancashire County Council.

Information from the Applicant

The applicant has submitted the following map and documentary evidence in support of the application:

Yates' Map of Lancashire 1788

Greenwood's Map of Lancashire 1818
Hennet's Map of Lancashire 1830
Ordnance Survey 6 inch maps published in 1848, 1895, 1916 and 1966
Ordnance Survey 25 inch maps published in 1891 and 1913
Ordnance Survey 1 inch maps published in 1898, 1918, 1947 and 1961
Ordnance Survey 1:25 000 maps published in 1947 and 1966
Tithe Map and Award for Ashton with Stoddy 1842
Lancashire County Council Road status map (MARIO)
Land Registry ownership records
'Recent' photographs of the route under investigation

Information from Others

County Councillor Gina Dowding noted her support for the position taken by the Aldcliffe with Stodday Parish Council.

The Ramblers Association noted that before the parish council improved the track it used to flood quite frequently but it is now much improved and suitable for use as a bridleway. The Association made no objections and would support an Order being made.

The local Right to Ride representative noted that the route is currently used a lot by walkers and cyclists and had always thought the route to be a public right of way.

United Utilities responded to consultation to state that the route did not affect any of their assets and that they had no objection.

Information from the Landowner

Lancashire County Council Estates were consulted as landowners of part of the route. It was acknowledged that LCC, as Highway Authority, will have responsibility to maintain the route in the future if an Order is made and confirmed; no objection was put forward against the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Historical documentary evidence.

Against Making an Order(s)

No particular evidence against.

Conclusion

Highways are created following a dedication by an owner and acceptance by the public. Here there is no express dedication or modern user but Committee is asked

to consider whether there is sufficient evidence on balance that a dedication and acceptance can be inferred at Common Law to have happened many many decades ago and lead to how the route was recorded on the various documents.

It is suggested that the evidence of a historical vehicular route is sufficiently strong in this case. This route historically went to the estuary which would have been a place of public resort and it is advised that this is acceptable in legal terms as a termination point for a highway.

The application was for a bridleway but it is advised that the evidence would indicate that the route was a vehicular public highway. The Natural Environment and Rural Communities Act 2006 will have extinguished any mechanically propelled vehicular rights and it is advised that the appropriate status to be recorded would be restricted byway.

During the investigation it became clear that the evidence was for a route onto the saltmarsh rather than only to the railway line. The application was initially for that part of the route A-C. Officers invite committee to consider that an Order be made taking the route onto the saltmarsh A-D. This extension of the route under investigation is invited because of the evidence discovered and as the duty is to, by order make such modifications to the map and statement as appear to them to be requisite, it is appropriate that the evidenced length of the historical route be recorded on the Definitive Map and Statement.

Issues about overgrowth and flooding can be addressed once it is established whether public rights exist and its physical state today or in recent times is not relevant as to whether this route is a highway from the 18th century or earlier.

It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted 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: 804-652		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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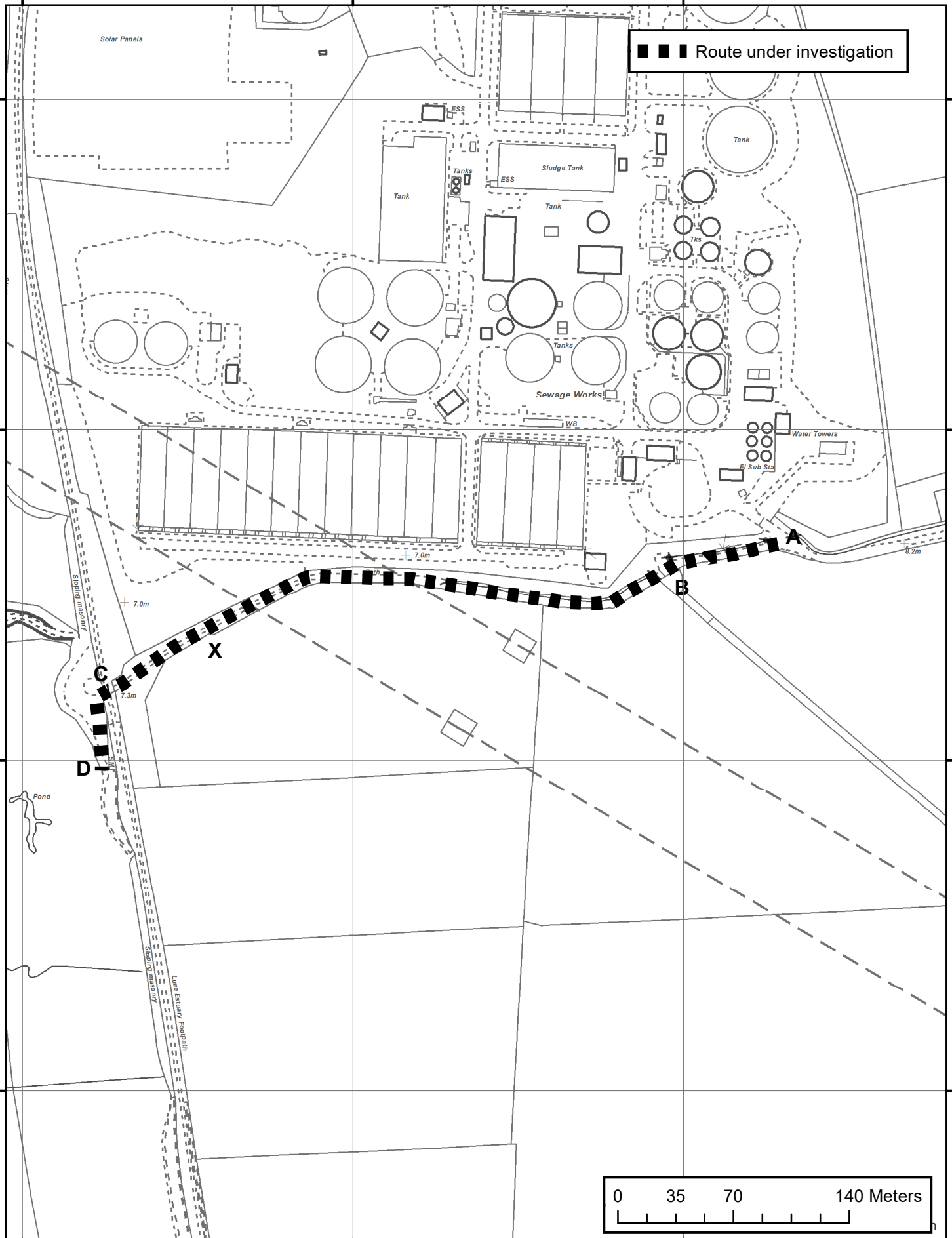
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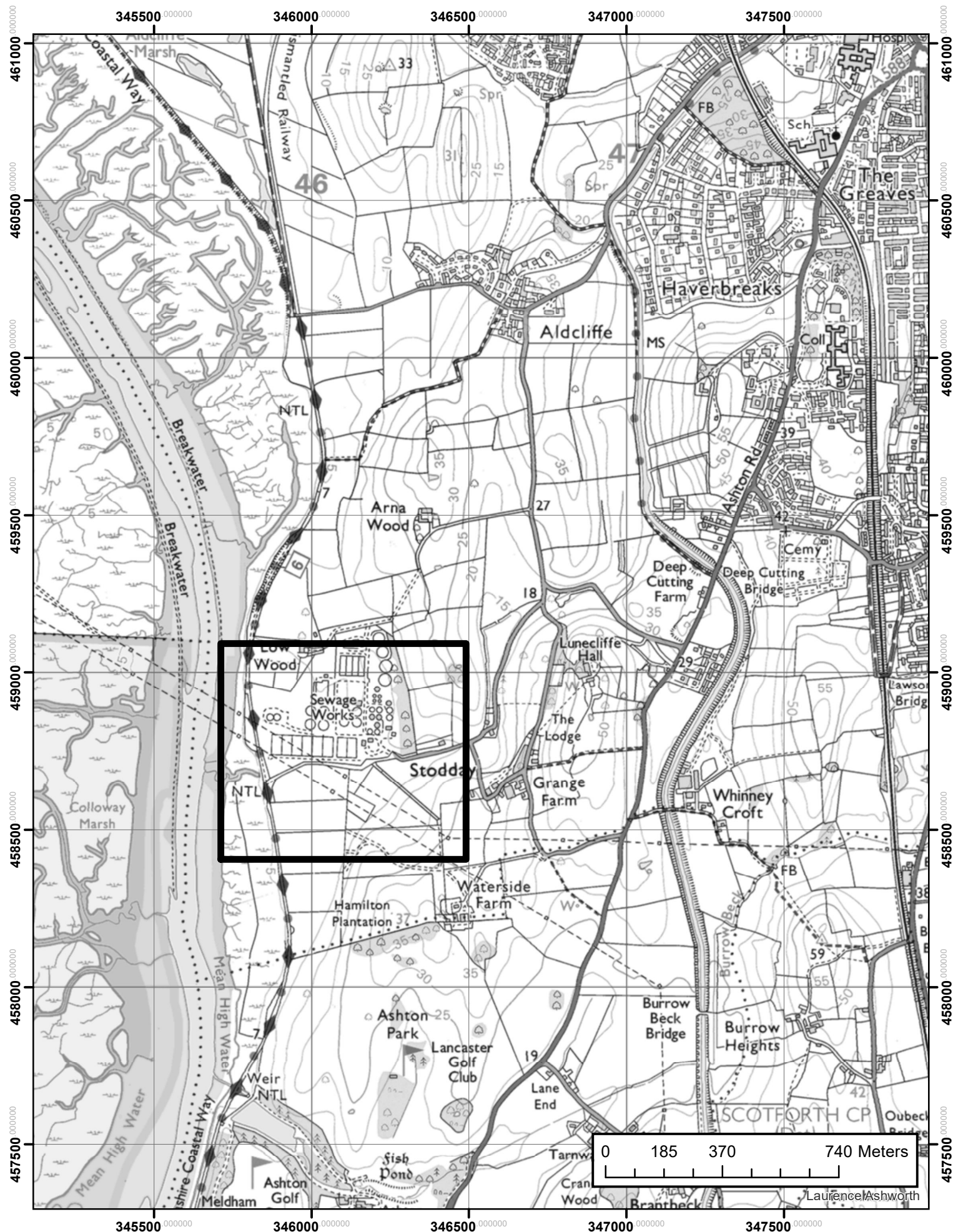
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Solar Panels

 Route under investigation




Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
Great Harwood, Rishton and
Clayton-le-Moors

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Restricted Byway along Limers Lane, Great Harwood

(Annex 'A' refers)

Contact for further information quoting the reference number 804-689:

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

Investigation into the existence of public rights of access along Limers Lane, Great Harwood.

Recommendation

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to record on the Definitive Map and Statement of Public Rights of Way a restricted byway along Limers Lane, Great Harwood as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

It was brought to the attention of officers that Limers Lane, between Blackburn Old Road and Clinkham Road, Great Harwood was not recorded on the Definitive Map and Statement of Public Rights of Way and was not recorded on the county council's List of Streets as a publicly maintainable highway.

Having looked at the fact that the route was included on a number of old commercial maps officers considered that the route may in fact be a public highway and that its legal status should be investigated.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

Hyndburn Borough Council

Hyndburn Borough Council provided no response to our consultation.

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	7240 3283	Open junction with Blackburn Old Road adjacent to Blackleach Farm
B	7238 3269	Point at which Footpath 11-4-FP96 meets Limers Lane
C	7242 3255	Point at which Footpath 11-4-FP98 meets Limers Lane
D	7241 3236	Open junction with Clinkham Road

Description of Route

A site inspection was carried out on 1st February 2021 and the total length of the route is 500 metres.

The route commences at point A on the Committee Plan on Blackburn Old Road adjacent to a property known as Blackleach Farm.

From Blackburn Old Road the route under investigation ascends gently along a roughly tarmacked access track which provides access into Blackleach Farm. The route under investigation leaves the tarmac access track approximately 15 metres from point A and continues in a generally south westerly direction along an unsurfaced track around the back of the property. The route is bounded on both sides and was largely overgrown with brambles at the time it was inspected although there was a narrow trodden track down the centre indicative of pedestrian use.

In places the bounded route opened up with less vegetation but the grassy surface was wet and boggy.

As the route curves to continue in a more southerly direction it is joined via a wooden stile with stone posts on either side at point B by Footpath 11-4-FP96. A trodden track leads from the stile to continue onto the route.

Between point B and point C the route continues as a bounded track which was boggy underfoot and overgrown in places.

At point C the route is joined by Footpath 11-4-FP98 and again there was evidence that the footpath was being used and that people were continuing along the route under investigation on foot.

From point C the route continues – still bounded by a combination of fences, overgrown hedges and broken stone walls - to cross a culverted watercourse and

then ascend uphill to continue for approximately 70 metres along a stone surfaced track which provides direct access from an adjacent field along the route to point D.

At point D the route meets the cobbled surface of Clinkham Road.

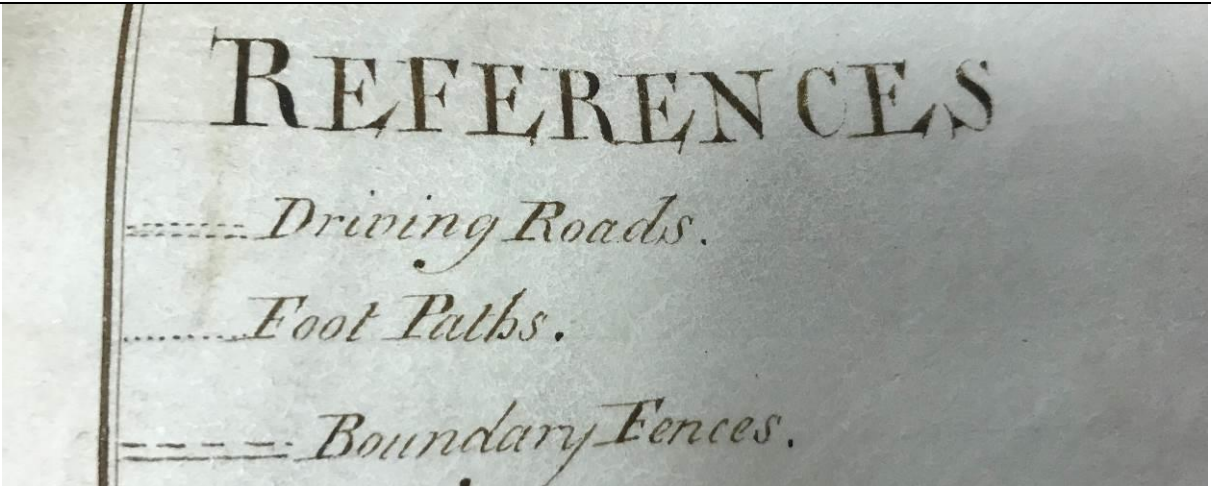
In summary, whilst now largely out of repair the bounded route appeared to be one of some antiquity which would, if maintained be wide enough to be capable of being used by vehicles. There were no gates across the route and no signs indicating whether it was considered to be public or private.

Map and Documentary Evidence

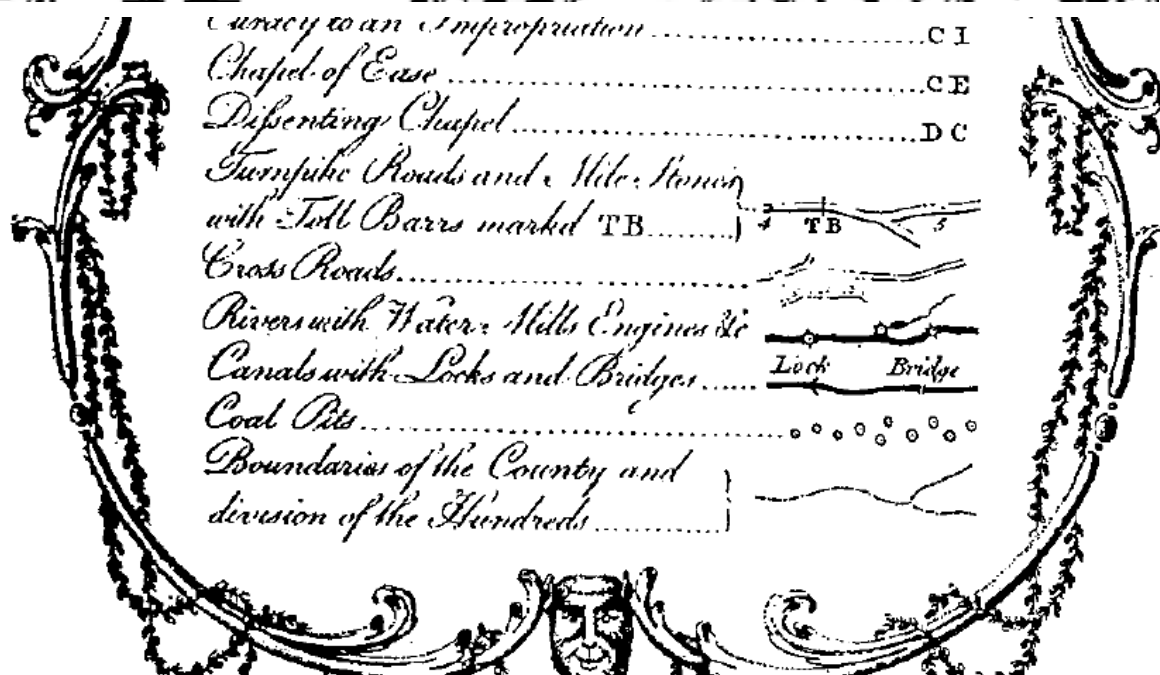
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Agreement County Records Office Reference: DDHE 75/6	1762	The map may be that from the Inclosure Award referred to in the agreement or may have been a modified version used in this agreement. This document appears to be an agreement between two landowners to divide some of the common lands between them although some land shown in yellow is referred to as still being in dispute. This document is not thought to actually be an Inclosure Award itself.



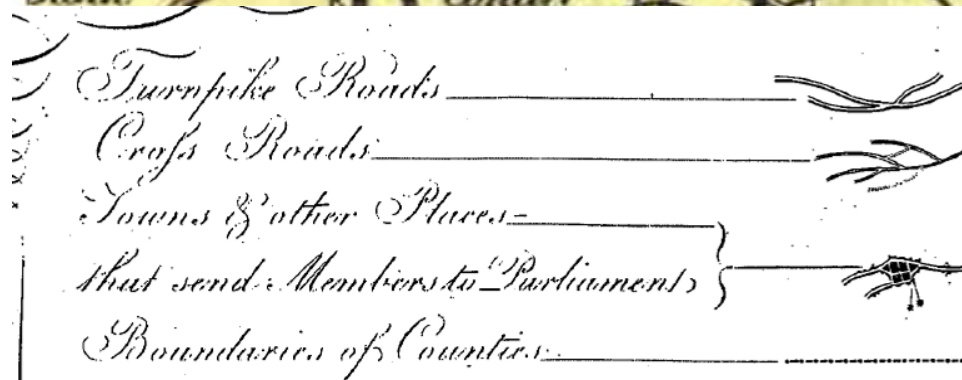
		
Observations		<p>This is the earliest map examined which shows Limers Lane. The Map is titled 'A Map of Great Harwood Moor. According as the same as is apportioned and allotted to Sir Thomas Hesketh Baronet and Alexander Norwell Esquire ..'. It is dated 1762 and its purpose seems to be to resolve a dispute between landowners following on from an Inclosure Award for the apportionment of an area crossed by the route under investigation.</p> <p>The route under investigation is not named but is clearly shown on the map in the same way as the public vehicular routes to which it connects. There is no specific reference in the agreement to the route but there is reference to existing 'high roads' although the location of these is not specifically detailed. Reference is made to routes which crossed the land to be inclosed which were shown on the map as foot paths and driving roads but the route under investigation itself is not mentioned.</p>
Investigating Officer's Comments		<p>The route under investigation existed as a substantial route in 1762. It appears that it probably already existed prior to the inclosure of land in the area and it is shown on the map in the same way as other public vehicular routes to which it connects suggesting that it formed part of a historical network of routes used by the public prior to 1762. The owners of the common were content it be shown in this way.</p>

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.
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Observations		A route denoted in the map key as a
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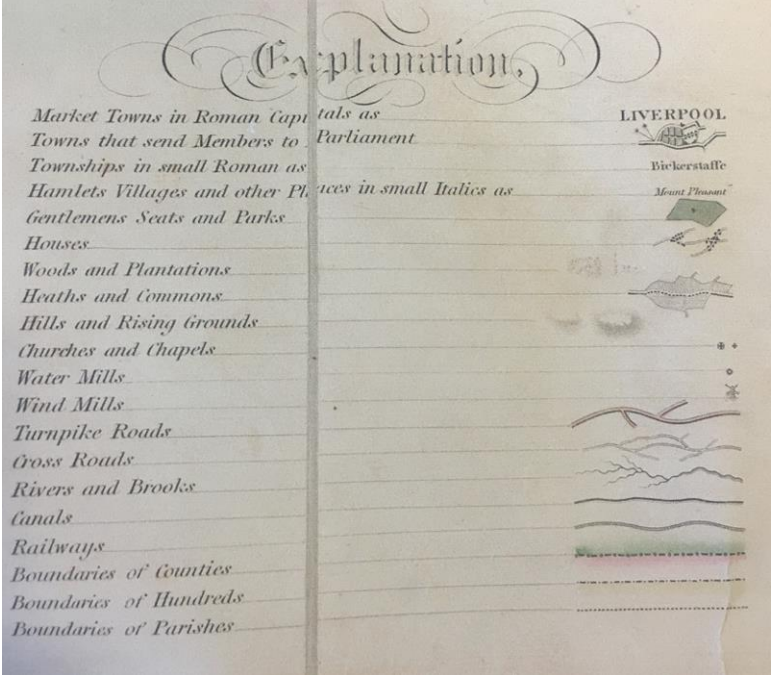
		cross road and consistent with the route under investigation is shown between Blackburn Old Road and Clinkham Road.
Investigating Officer's Comments		<p>The route under investigation existed in 1786.</p> <p>It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway at that time. It is unlikely that a map of this scale would show footpaths. It is not known what Yates meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.</p>
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The route under investigation is shown as a cross road on the map. The section of Clinkham Road which leaves Blackburn Old Road west of point A is not shown and access to and from the hamlet labelled as 'lower town' from Blackburn Old Road appears to be either via the route under investigation or by taking the longer route through Great Harwood.
Investigating Comments	Officer's	Limers Lane existed as a substantial through route in 1818. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is

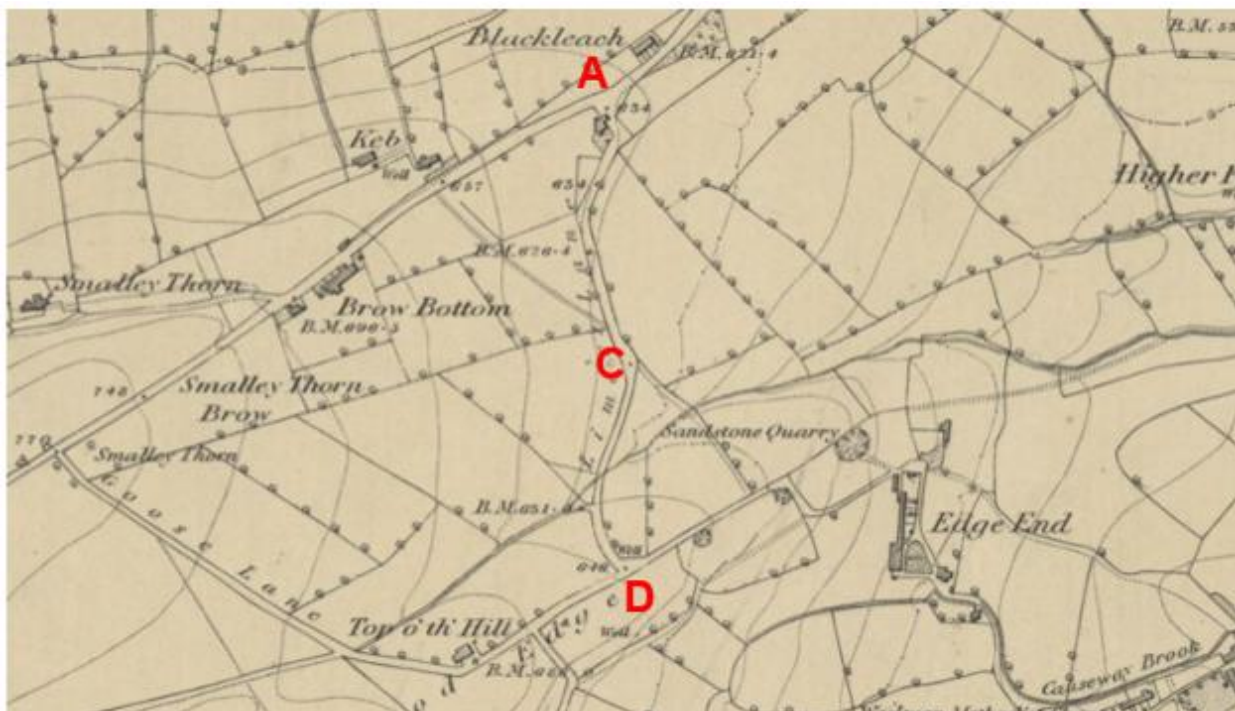
		unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



		
Observations		Only the start of the route under investigation from point A is shown.
Investigating Officer's Comments		It is not known why the rest of the route was not shown on the map – as it had been shown on the two earlier maps inspected and is known to have existed at this time as it is subsequently shown on the first edition 6 inch Ordnance Survey map detailed below. It may have been that Hennet did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing or dismantled/disused canals or railways in the area

		crossed by the route.
Investigating Officer's Comments		No inference can be drawn in this respect.
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 deposited in the County or National Archives for Great Harwood.
Investigating Officer's Comments		No inference can be drawn in this respect.
6 Inch Ordnance Survey (OS) Map Sheet 63	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1846 and published in 1848. ¹

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

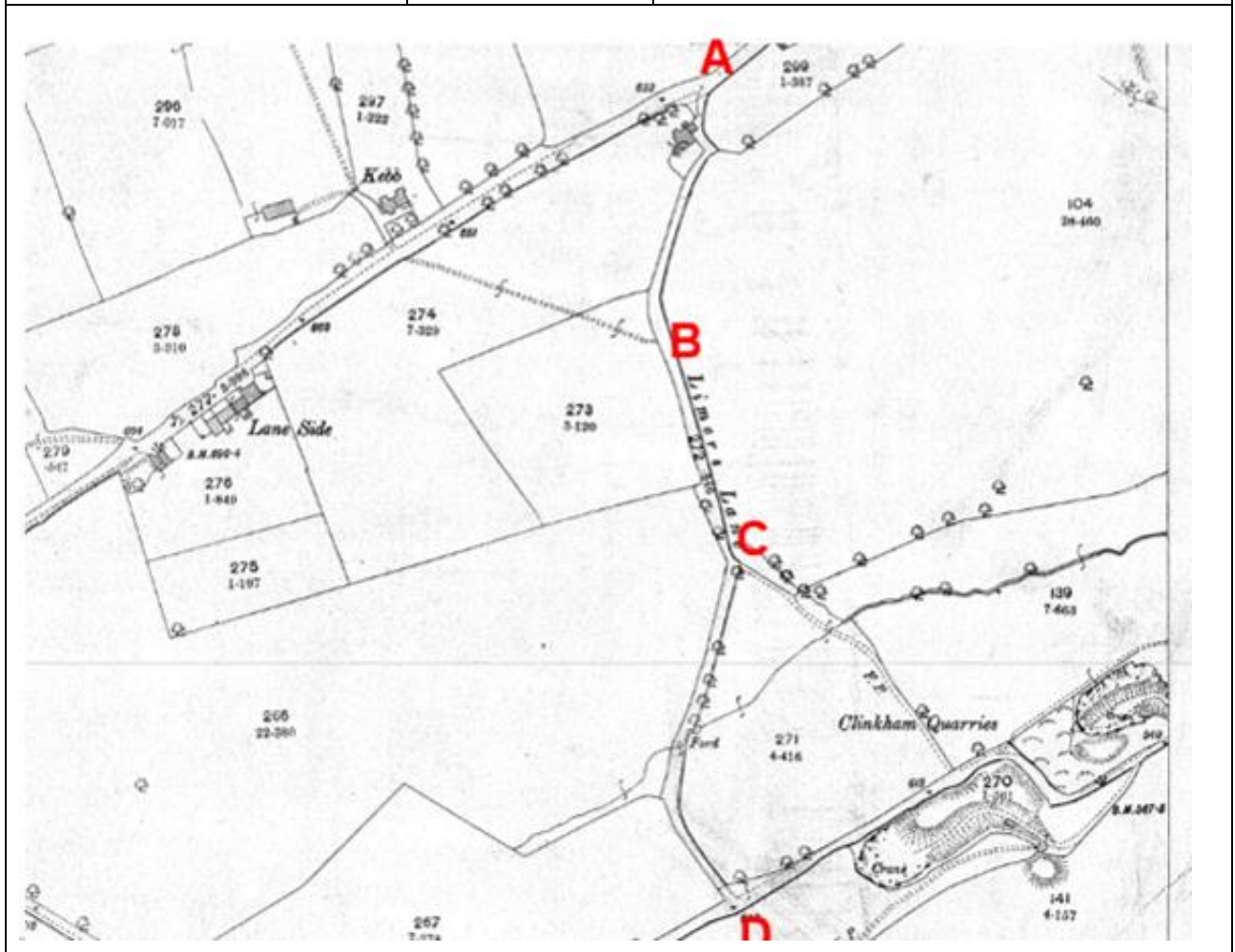


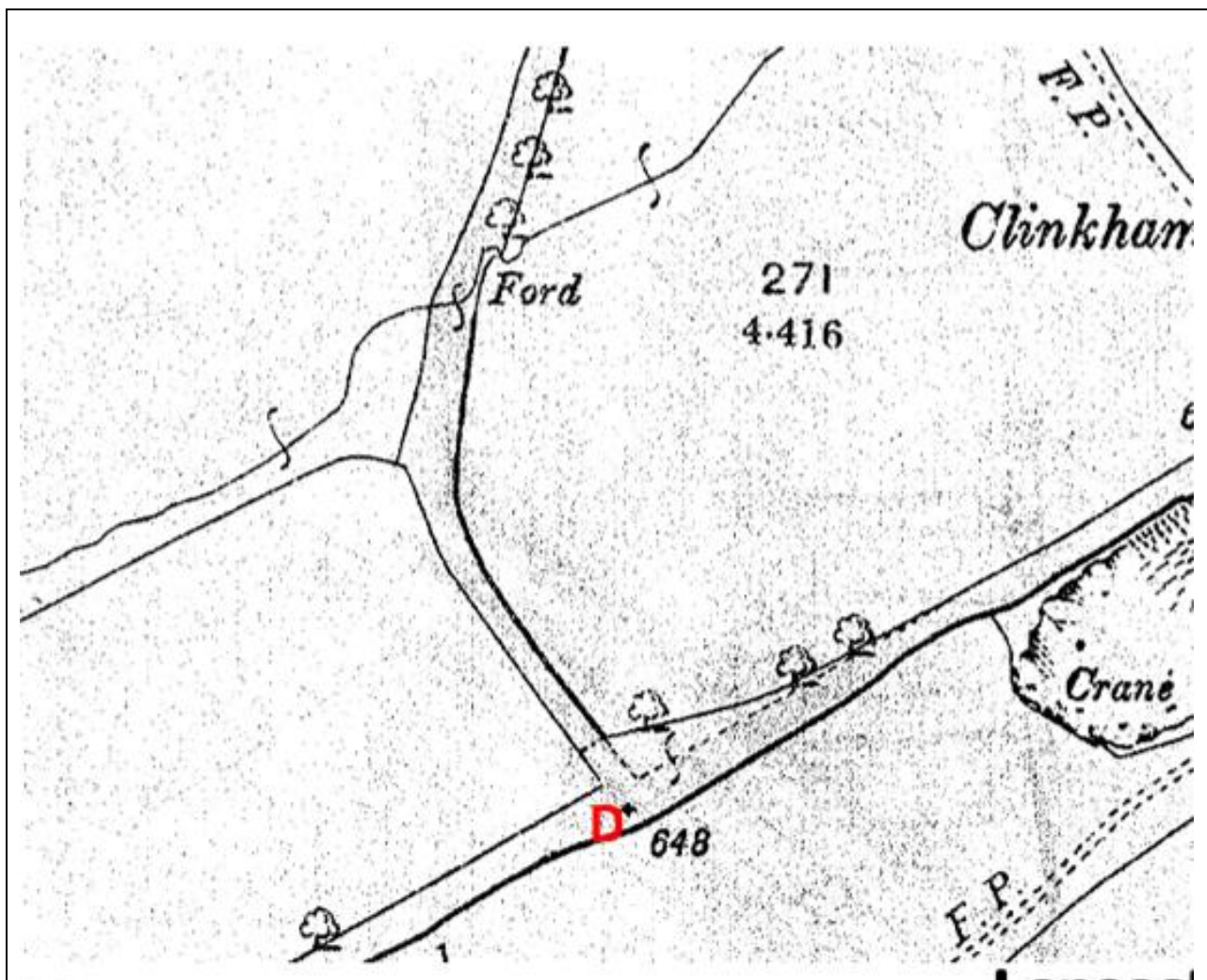
Observations		<p>The full length of the route under investigation is shown as a substantial bounded through route connecting to public vehicular highways at either end. The route is named on the map as Limers Lane with a property shown immediately adjacent to the route at point A.</p> <p>Access onto the route is shown as being open and unrestricted at either end and there are no lines shown across the route at any point which may indicate the existence of gates.</p>
Investigating Officer's Comments		<p>The whole length of the route under investigation is shown in the same manner of the general road network and it is reasonable to conclude that it existed as a substantial route in the 1840s which would have been wide enough to be used by vehicles by the public. Its appearance on the map is consistent with how other connecting public vehicular highways are shown and the fact that it was named on the map suggests that it was known locally as a name route which is often suggests a route is known and used by the public but is not conclusive of that fact.</p>

**25 Inch OS Map
Sheet 63-1**

1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1892 and published in 1893.





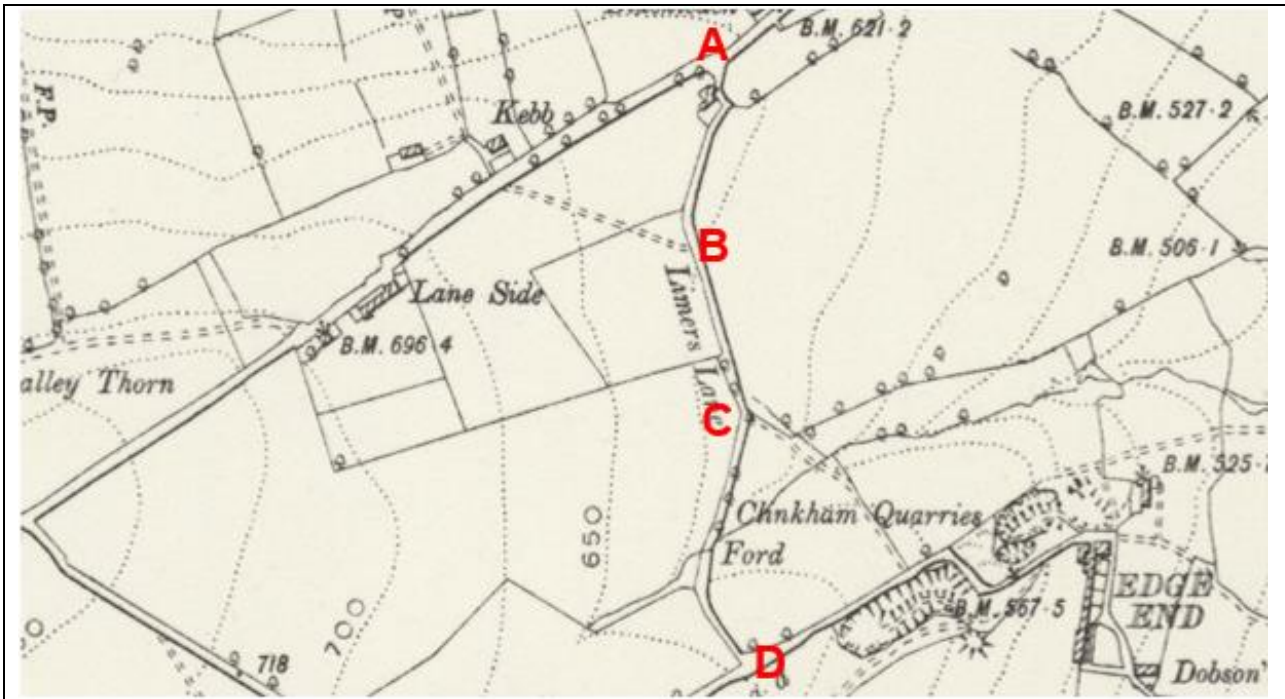
Observations

The full length of the route under investigation is shown. No solid lines are shown across the route which suggests that it was not gated. However, dashed lines are shown across the route at point A and close to point D suggesting a change in surface. A ford is also marked where a watercourse crosses the route approximately 100 metres north of point D.

The route is named on the map as Limers Lane and a thickened line is shown along the eastern side of the route.

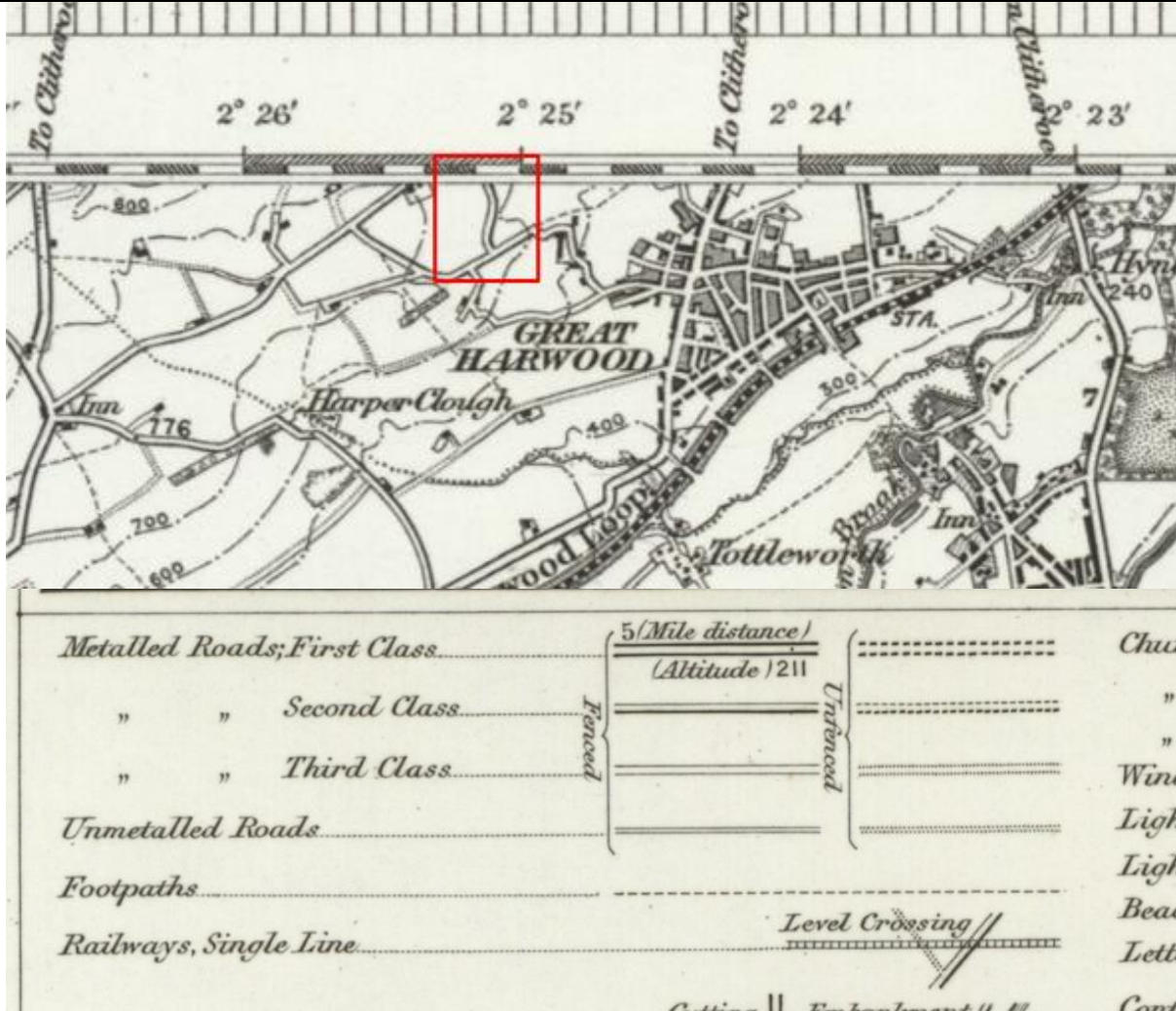
The two routes now recorded as Footpaths 11-4-FP96 and 98 which connect to the route under investigation at point B and point C are both shown – with the route of 11-4-FP98 from point C labelled as a footpath (F.P).

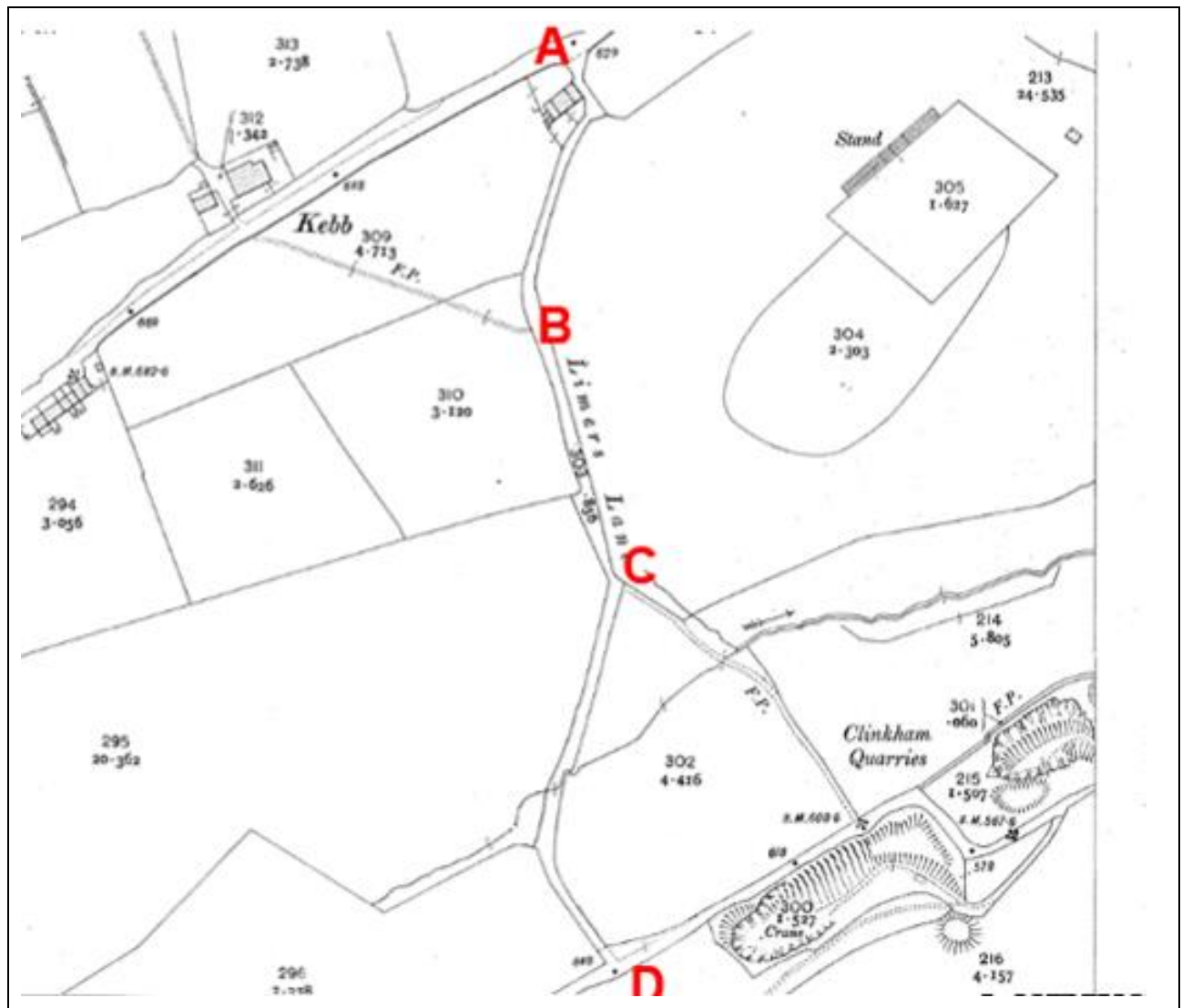
		A separate parcel number and acreage is allocated to the route from the land on either side.
Investigating Comments	Officer's	<p>The route under investigation existed as a substantial route in the late 1800s and is shown consistent with how other public vehicular routes were shown. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over then at a trot so the fact that the route is shown in this way is consistent with how it was included on early small scale commercial maps and indicated that the route was probably capable of being used by the public with vehicles at that time.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is again consistent with use of the route by the public at least on horseback at that time. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>
6 inch OS Sheet 63 NW	1895	Surveyed 1890 to 1892 and published 1895.

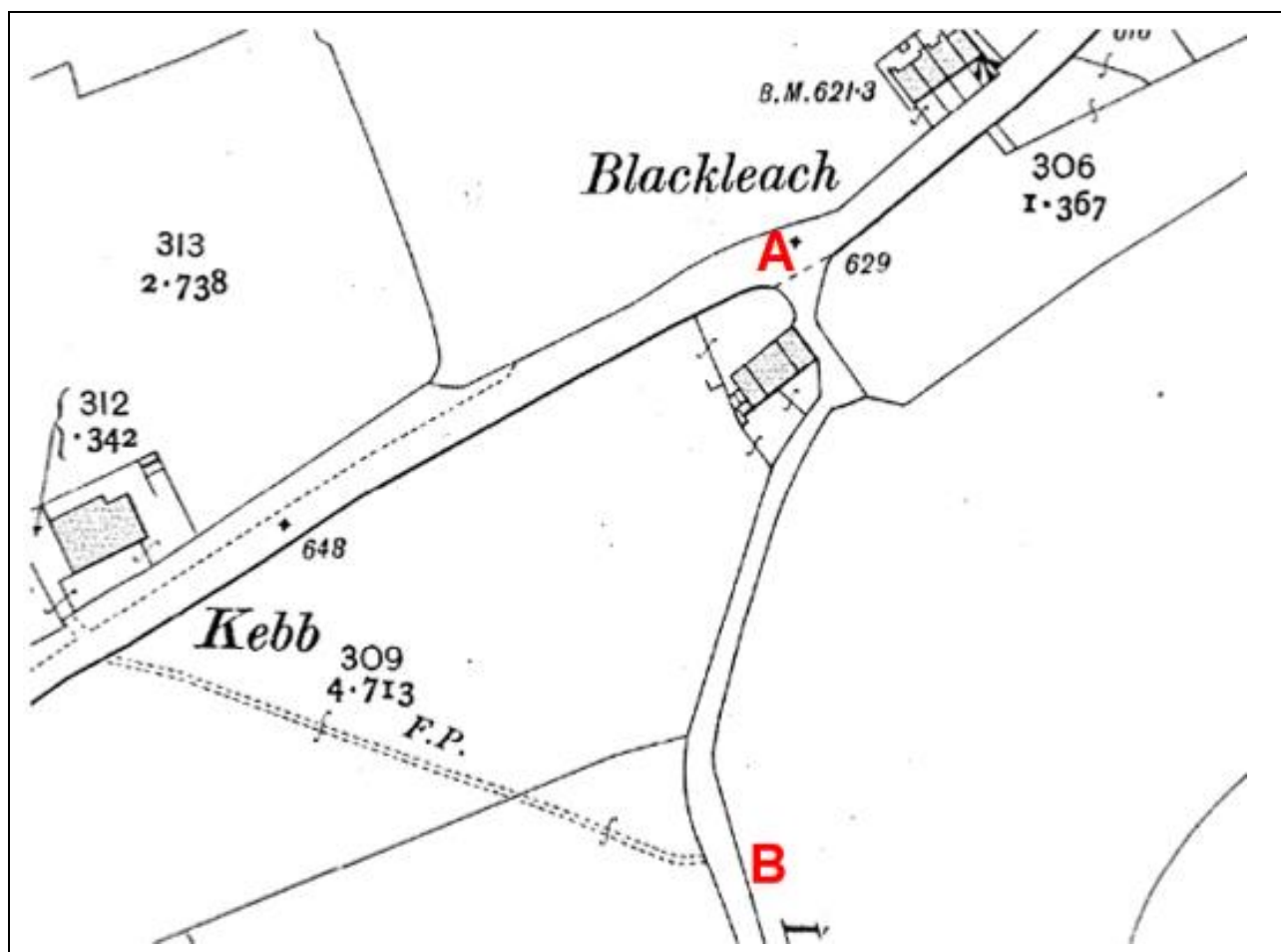


Observations		This map was most likely derived from the same survey as the 25 inch OS Map published in 1893. It again shows the route under investigation as a substantial named and bounded through route consistent with how other public vehicular routes were shown. Shading is still shown
Investigating Officer's Comments		Limers Lane existed in 1895 and appeared to be capable of being used on horseback and with vehicles.
1 inch OS Map Sheets 68 and 76	1896-1898	Small scale Ordnance Survey maps published 1896-1898. Date of survey not given.



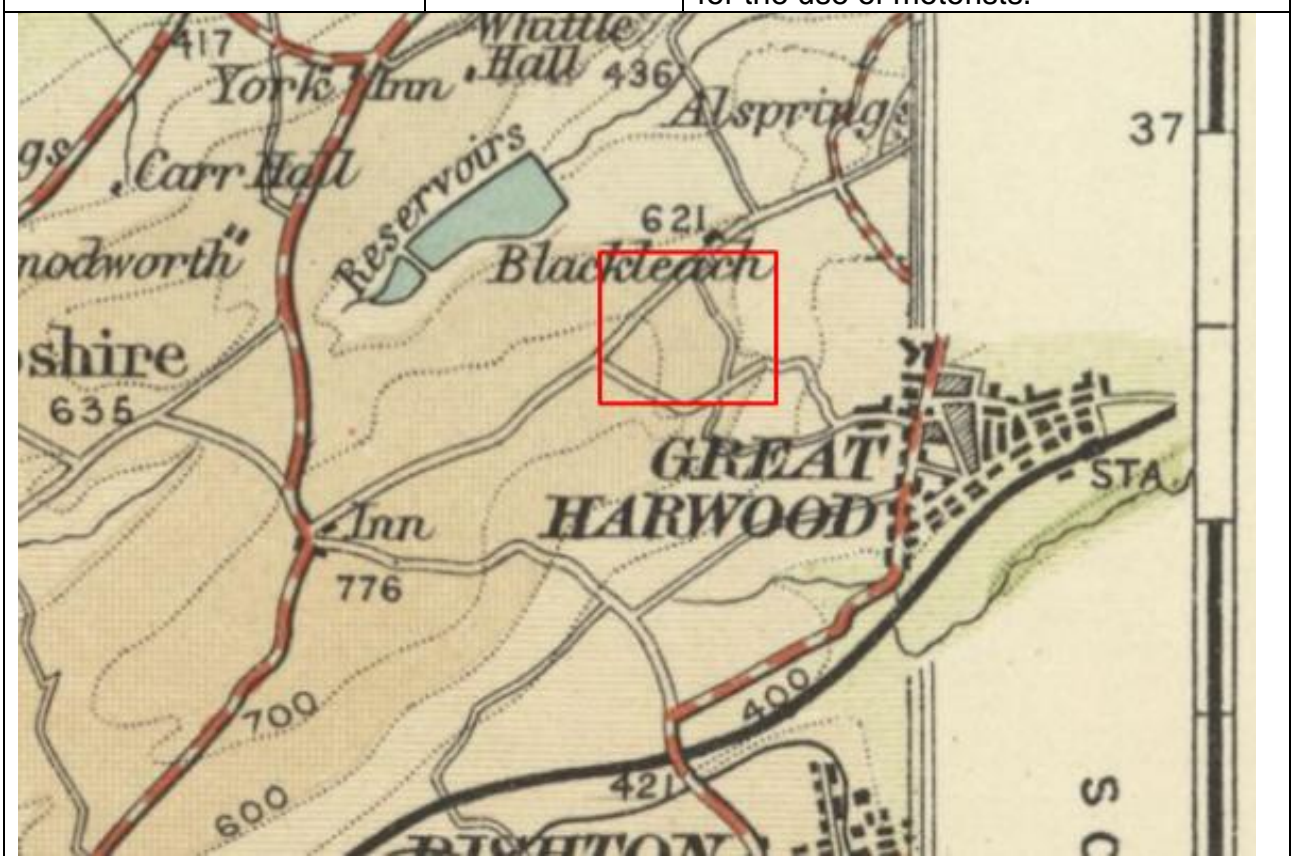
		
Observations		The route under investigation is shown as a second class metalled road.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case Limers Lane - had public rights for those travellers.
25 inch OS Map Sheet 63-1	1912	Further edition of the 25 inch map surveyed in 1890-92, revised in 1909 and published in 1912.

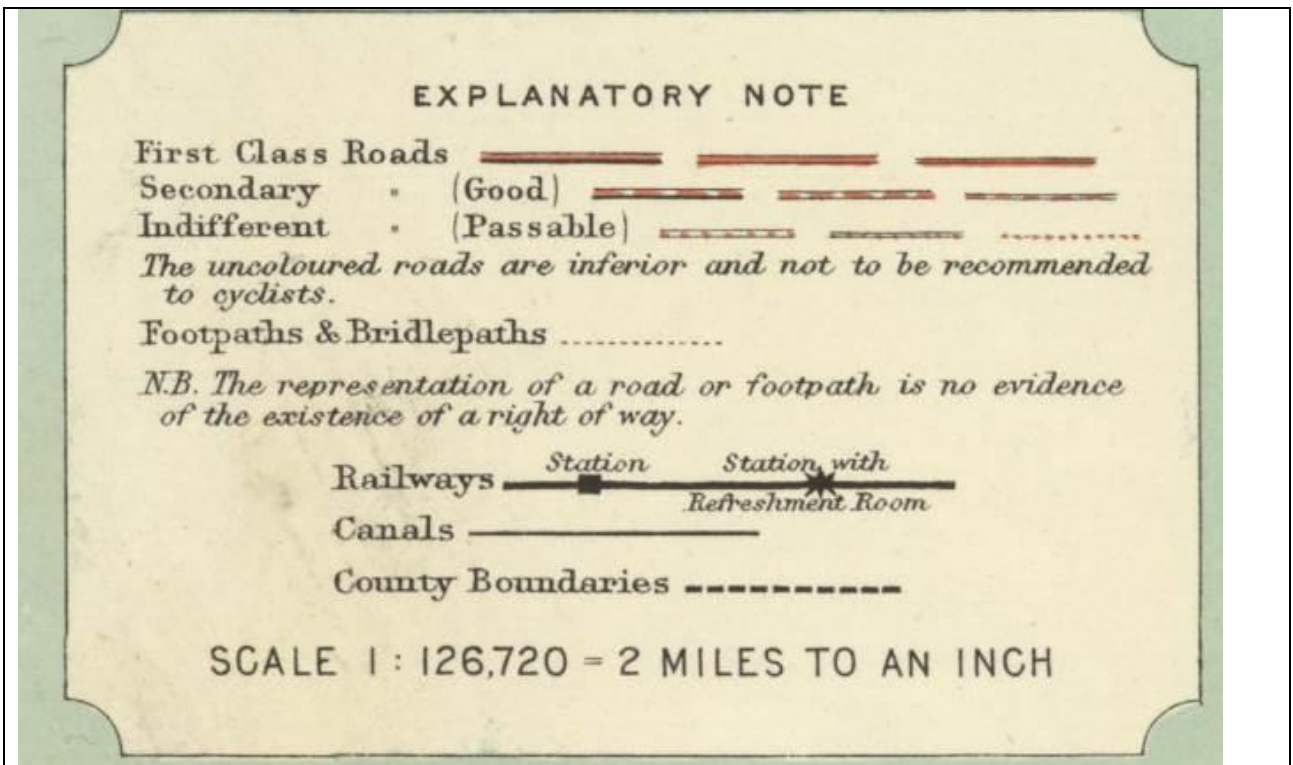




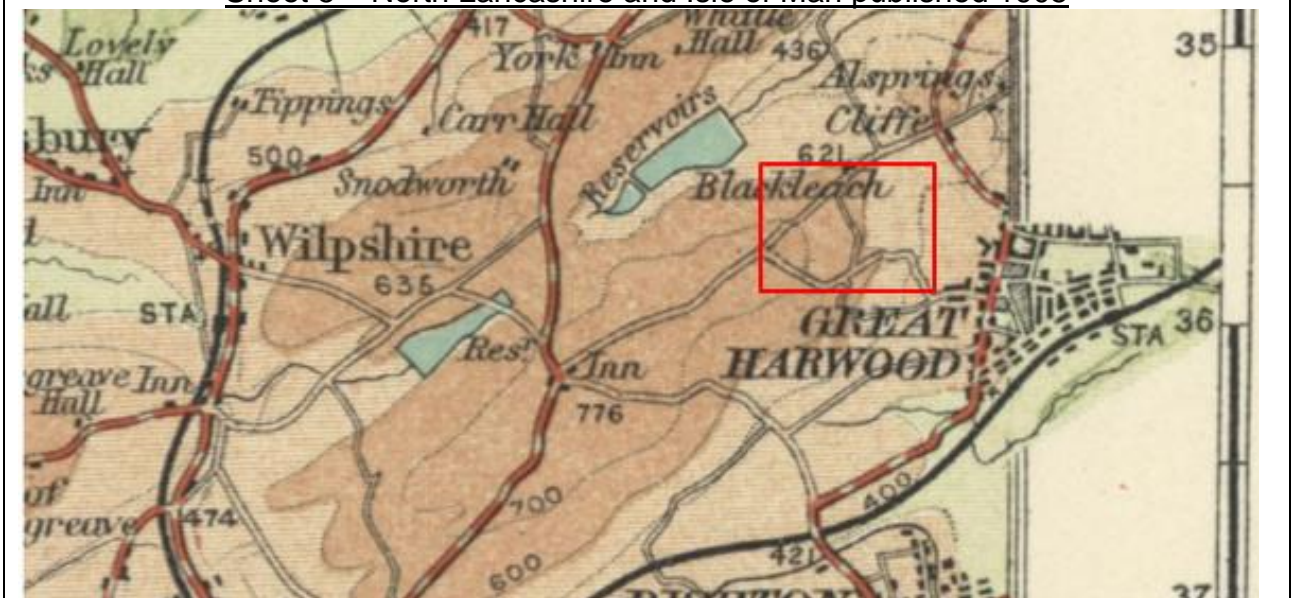
Observations		<p>The route under investigation is shown in the same way as it is shown on the first edition of the 25 inch map although the thickened lines previously used to indicate the administrative status of roads are no longer shown on this map series by the Ordnance Survey. Both footpaths recorded as meeting Limers Lane are annotated as footpaths on the map. A change of surface condition is indicated at point A and just south of point D suggesting that the route may have been surfaced to a different standard to that of Blackburn Old Road and Clinkham Road.</p>
Investigating Officer's Comments		<p>Limers Lane existed as a substantial named through route in 1909 and appeared capable of being used on horseback and with vehicles.</p>
Bartholomew half inch Mapping	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in</p>

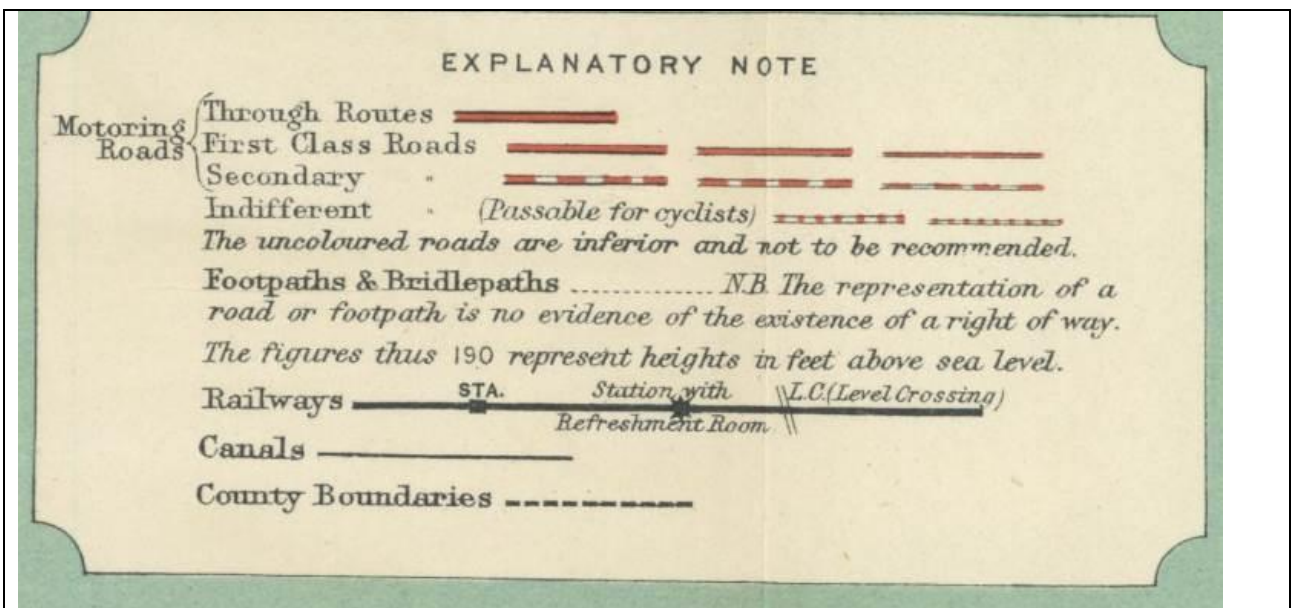
their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



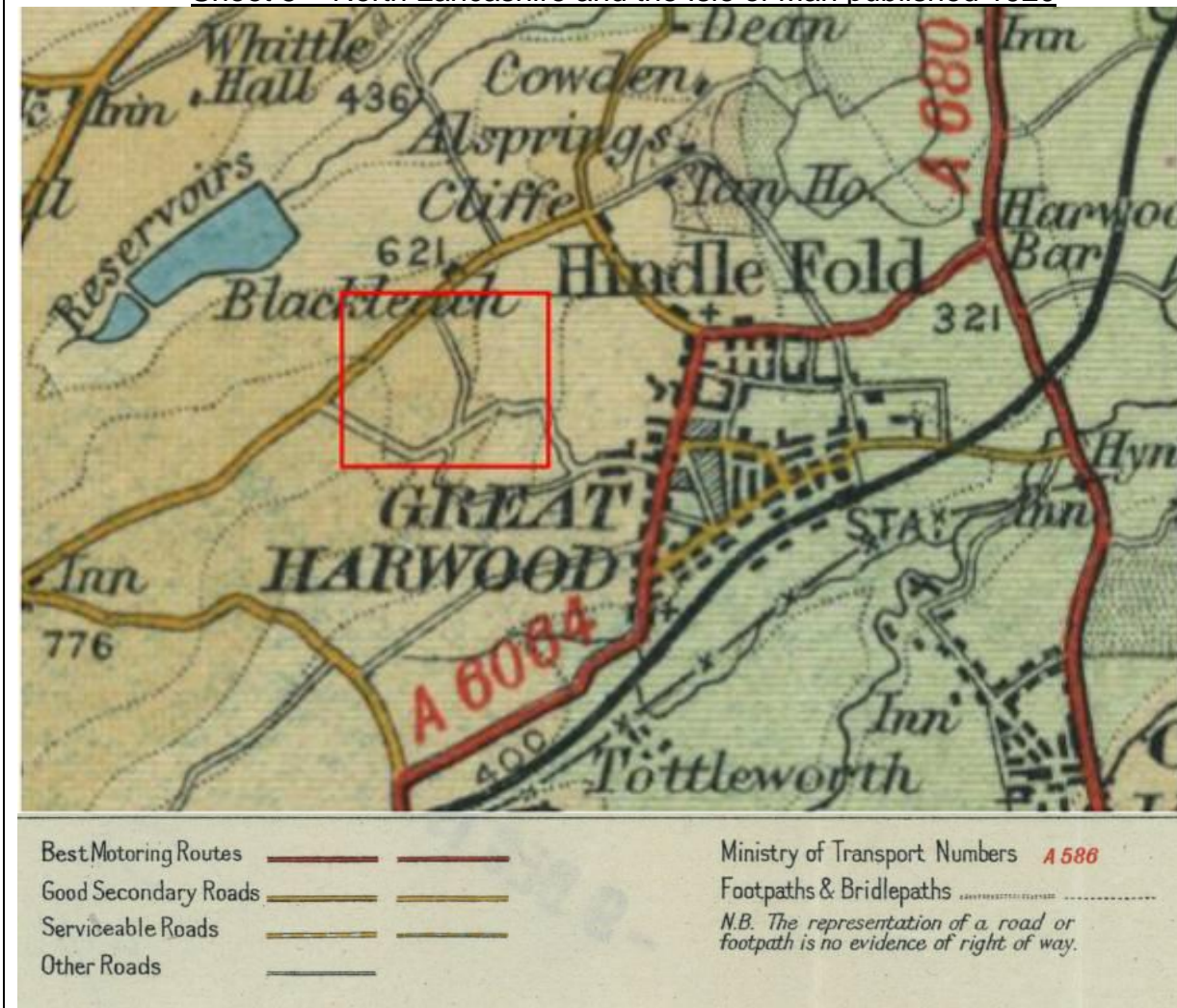


Sheet 5 – North Lancashire and Isle of Man published 1905





Sheet 5 – North Lancashire and the Isle of Man published 1920



Sheet 31 – North Lancashire published 1941

Observations		The route under investigation is shown on all three maps. It is shown as an uncoloured road in 1905 and 1920
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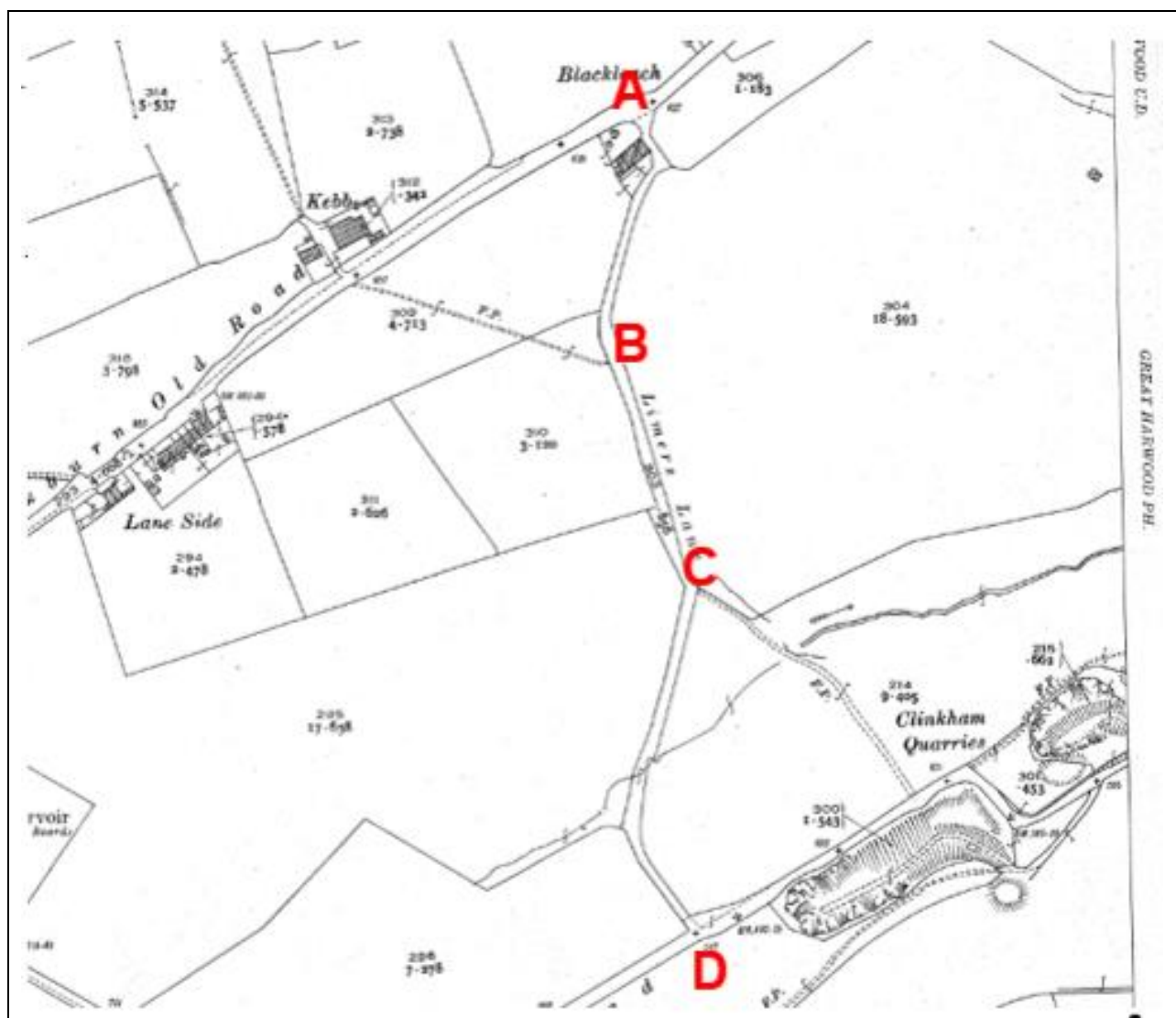
		<p>which is described in the map key as being inferior and not to be recommended to cyclists. All three map keys include symbols to indicate routes considered to be footpaths and bridleways although very few are actually shown. The 1941 map shows the route under investigation as 'other roads'.</p>
Investigating Officer's Comments		<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.</p> <p>Whilst the key to the map states that the representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as a road connecting to other public vehicular highways suggests that it was considered to be a public highway in the early 1900s.</p>
Finance Act 1910 Map The National Archives Ref: IR133/2/124	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>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</p>

		<p>books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		The full length of the route under investigation is shown excluded from the numbered plots in the same way that Blackburn Old Road and Clinkham Road are excluded with the exception of the first 35 metres from point A. From point A it appears that the plot of land numbered parcel 306 to the east of the route is also excluded with no number allocated to it with no indication on the OS base map used to prepare the map why this may be.
Investigating Comments	Officer's	The map prepared under the provisions of 1910 Finance Act shows the whole of the route excluded from adjacent land in private ownership. The Act required all land in private ownership to be recorded so that it could be valued and the owner

		<p>taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route may indicate that public use was known but not necessarily vehicular status. Whilst there may be other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership - but in this instance there is no evidence to suggest that the route derived from the Inclosure process and current landownership details show landownership is unregistered and unknown, indicating that the route's status was more likely than not excluded because it was considered to be public. In this instance therefore the exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. There are no other reasons evident to account for its exclusion</p>
25 Inch OS Map Sheet 63-1	1931	<p>Further edition of 25 inch map (surveyed 1890-92, revised in 1929 and published in 1931.</p>

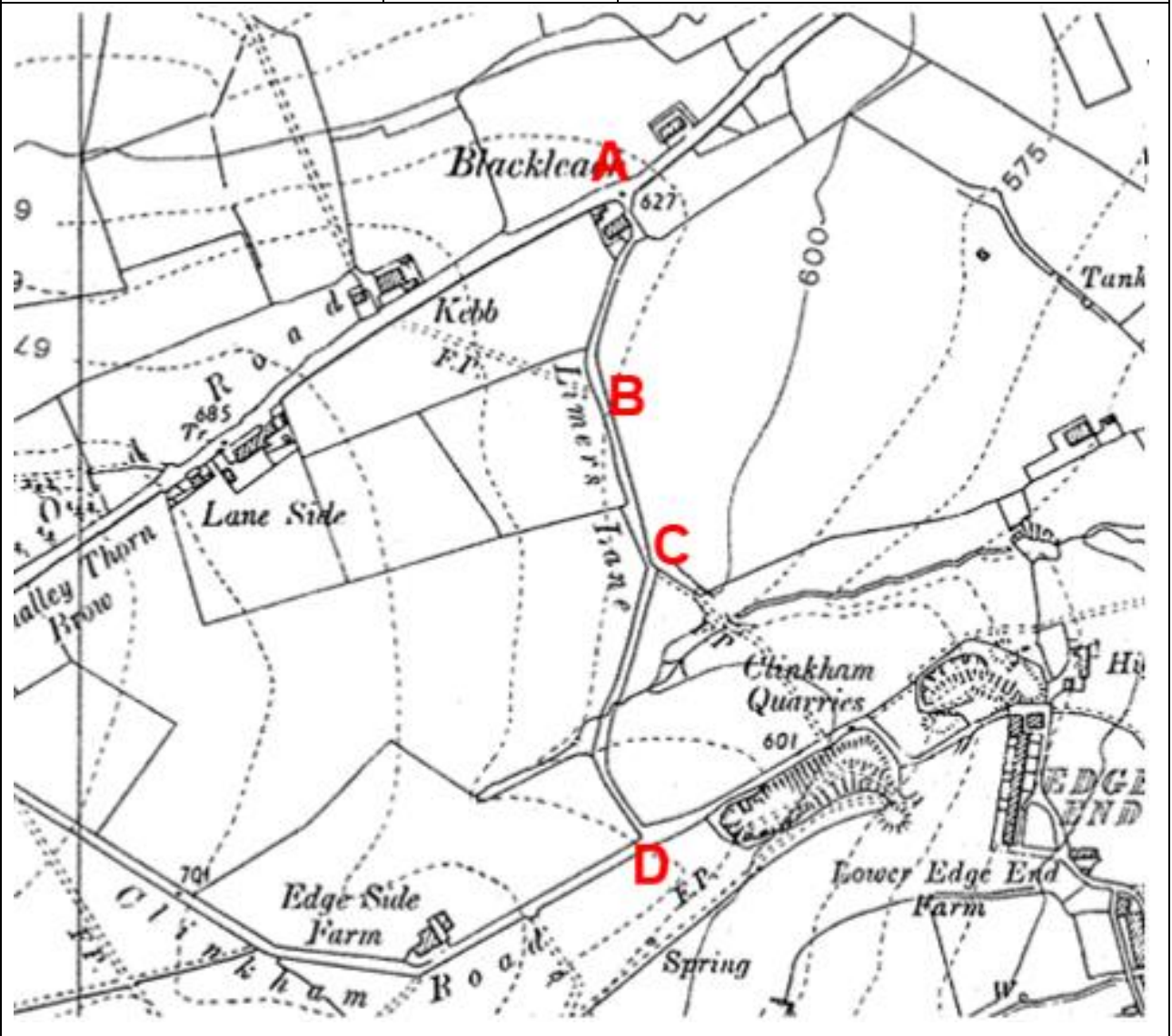


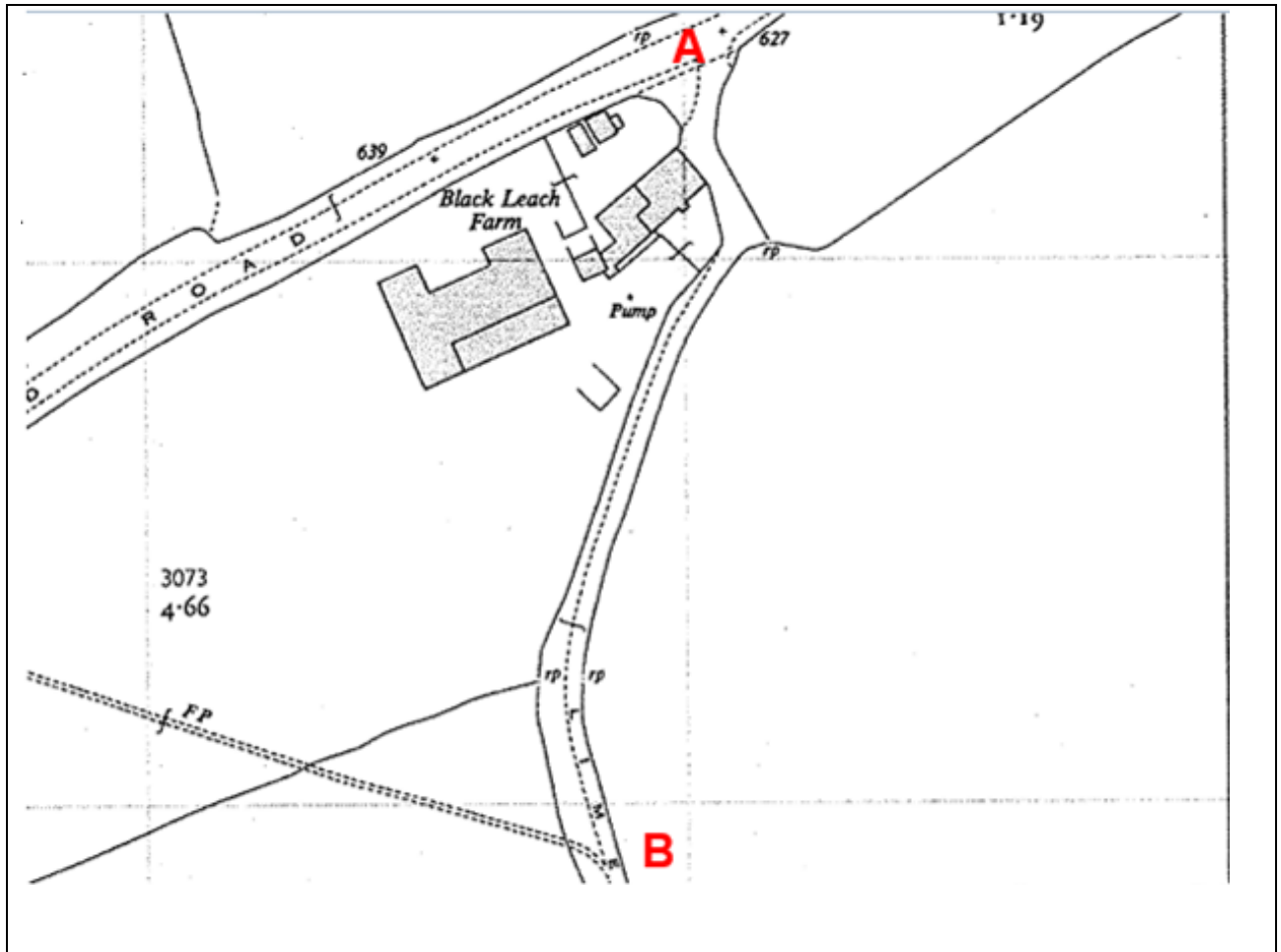
Observations		The full length of the route under investigation is again shown in the same way as it is shown on earlier editions of OS mapping.
Investigating Officer's Comments		The route existed in 1929 and appeared to be capable of being used by horses and vehicles.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

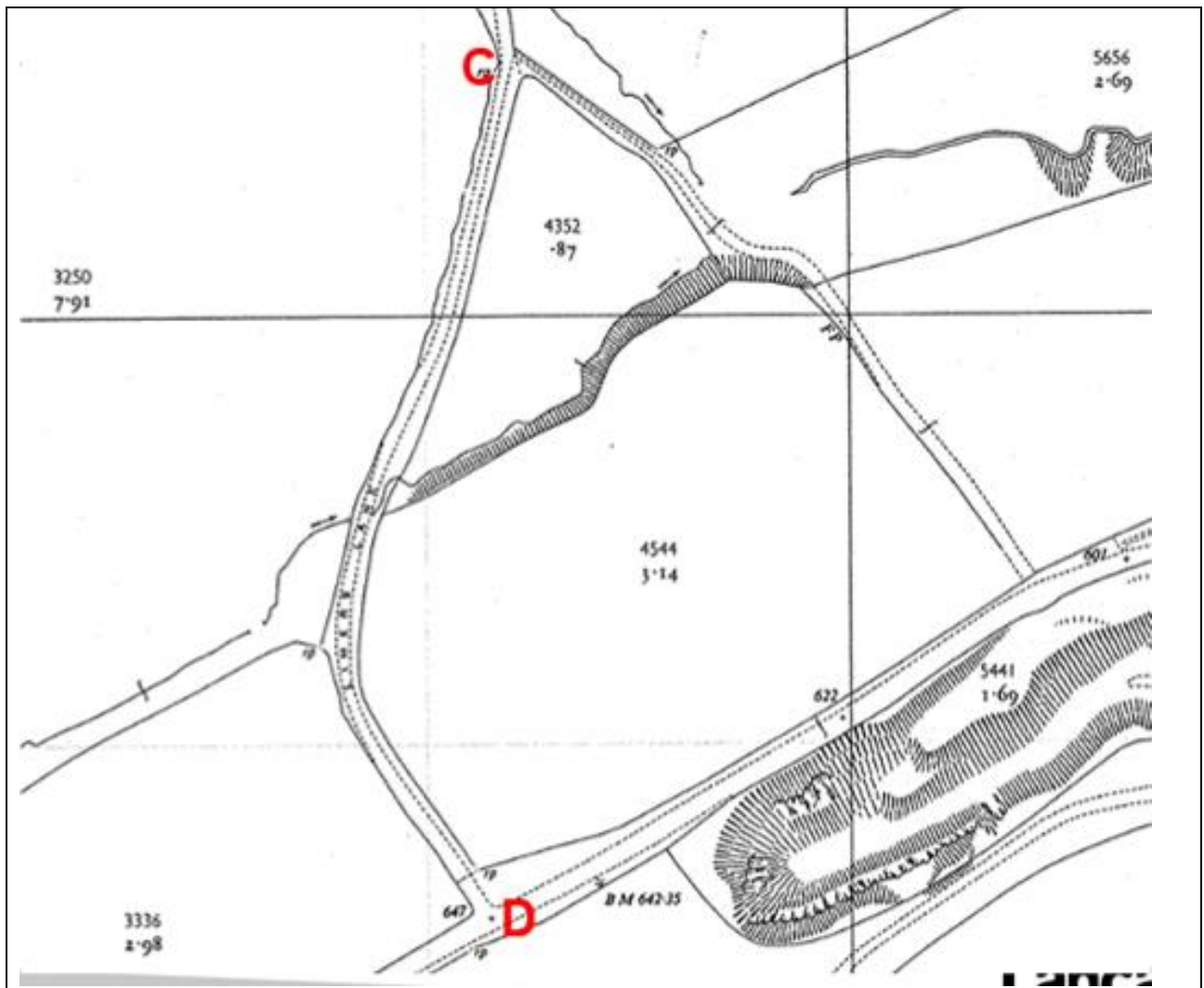
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



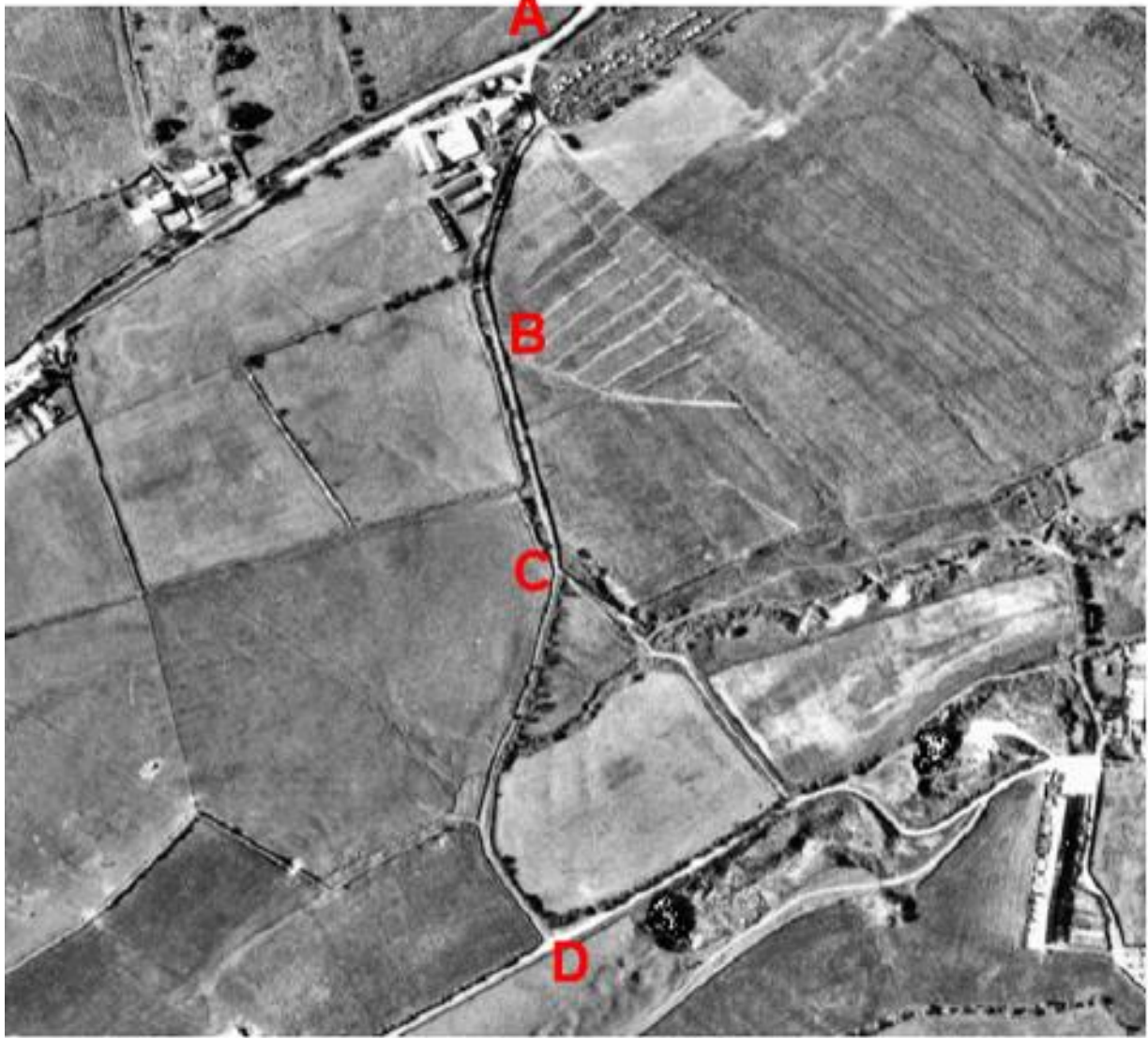
Observations		<p>The route under investigation can be seen on the photograph. It is possible to see that it was a bounded route consistent with how it was shown on the OS maps considered above. From point A access onto the route and into Blackleach Farm is very clearly shown suggesting that this was quite heavily used by vehicles. Beyond the farm however the route does not appear to be heavily used – particularly by vehicles and gives the appearance of a route more likely to have been used at that time on foot and possibly on horseback.</p>
Investigating Officer's Comments		<p>It is not possible to determine from the aerial photograph whether the full length of the route was passable in the 1940s.</p> <p>However, the surface is not clearly visible suggesting that use of much of its use by the 1940s may have been on foot or possibly on horseback but suggesting that use by the public had declined.</p>


6 Inch OS Map Map Sheet SD 73SW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The route under investigation is again shown as a substantial bounded route and is named on the map.
Investigating Officer's Comments		The route under investigation existed in the 1930s and appeared to be capable of being used.
1:2500 OS Map Sheet SD 72 32	1957	Further edition of 25 inch map reconstituted from former county series and revised in 1956 and published in 1957 as national grid series.





Observations		<p>The full length of the route under investigation is shown as a named route. From point A access onto the route remains unaltered from previous editions of the map and provides access to Black Leach Farm. Beyond the farm however the route – whilst still shown an enclosed lane the boundaries of which are unaltered – is now shown with a broken dashed line along it through to point C and then largely with parallel dashed lines between the solid boundaries of the lane. This suggests that a much narrower trodden width now existed and that possibly a narrow track had now formed with grass/vegetated sides indicative of much lower levels of use.</p>
Investigating Comments	Officer's	<p>The route under investigation existed in 1956 but consistent with how the route</p>

		is shown on the aerial photograph taken in the 1940s, use of the route appears to have declined – particularly by vehicles.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The route under investigation can be seen on the photograph. It is more visible than it was on the 1940s photograph but not as wide or visible as the public vehicular routes to which it connects.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of the route in the 1960s. The fact that it is more visible than it was in

		the 1940s may be because of an increase in vehicular use again. It appears highly unlikely that the route, having seen a decline in use, had been surfaced to make it suitable for modern day traffic but the way that it appears in the 1960s would be consistent with the increased use of mechanical farm machinery which could then use the route to access the adjoining fields.
Aerial Photograph	2014	Aerial photograph available to view on GIS.
		
Observations		The line of the route can be seen with access from point A to Blackleach Farm visible and also the section from point D extending north to the ford clearly visible. The remainder of the route cannot be seen with trees obscuring sight of the route.
Investigating Officer's Comments		It is not possible to determine from the aerial photograph whether the full length of the route was passable in 2014.
Definitive Map Records		The National Parks and Access to the

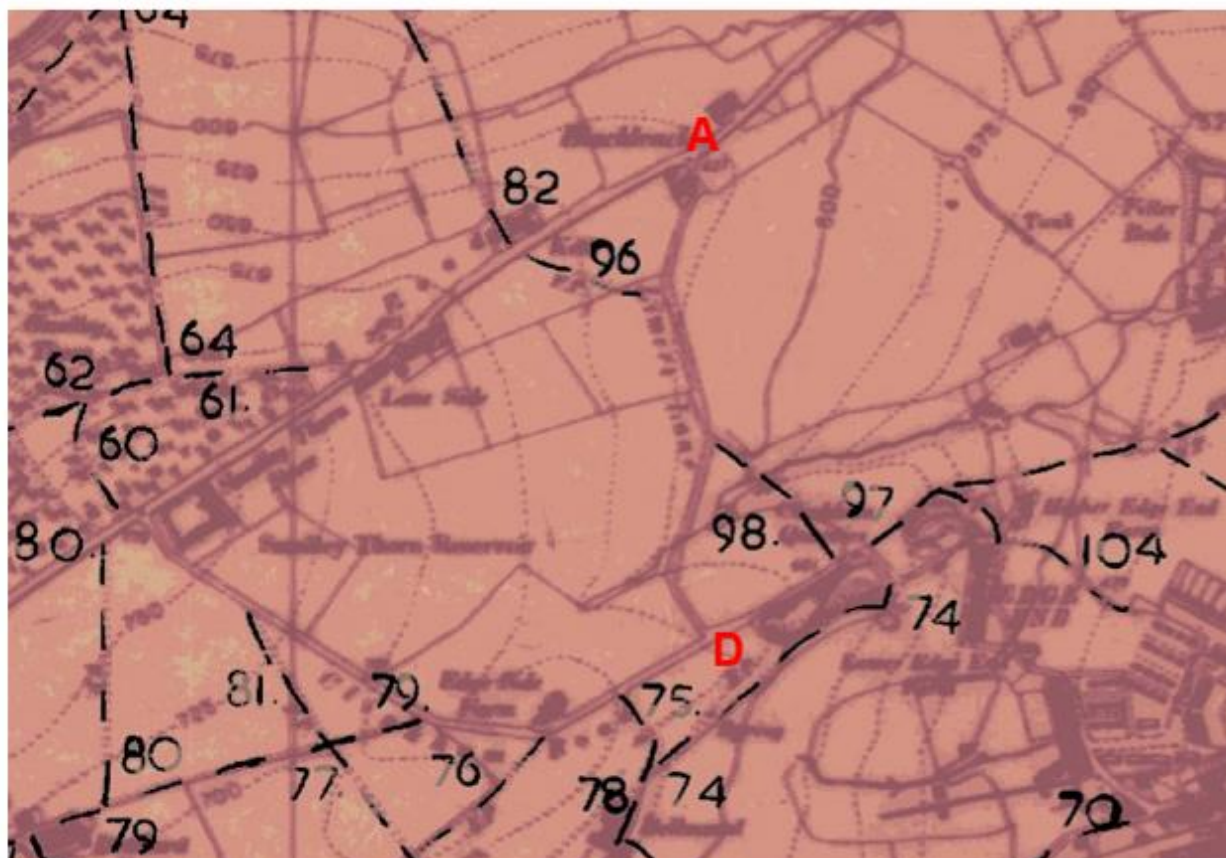
		<p>Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Great Harwood was an Urban District Council in the 1950s for which no Parish survey maps or cards were produced.</p>
Draft Map		<p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



Is path	Kind of path.	Position	Length (Miles)	Other part
• 96.	Footpath	Starts at Gap in stone wall on Blackburn Old Road over field through F.G. and K.G. and ends at Gap in wall on Limers Lane.	0.10	
• 97.	Footpath	Branches off Clinkham Road across Higher Edge End Farm and ends in Lowerfold.	0.36	
• 98.	Footpath	Starts at Gap in wall in Limers Lane and ends at F.G. and Gap in Clinkham Road.	0.12	
• 99.	Footpath	Ash path through allotments commencing		

Observations		<p>The route under investigation is not shown on the Draft Map. Of significance however is the fact that two public footpaths are shown to start/finish on the lane.</p> <p>11-4-FP96 is shown to connect to the lane at point B and is described in the Draft Statement as ending at the gap in the wall on Limers Lane. 11-4-FP98 starts at point C on the lane and is described in the Draft Statement as starting at a gap in the wall on Limers Lane. The two footpaths are clearly shown and numbered as being separate routes which both met Limers Lane implying that the lane was considered to be a public vehicular by Great Harwood Urban District Council, i.e. it must have had some public rights yet was not recorded as footpath or bridleway.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The route under investigation is not shown on the Provisional Map and no representations about it were made.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
Observations		<p>The route under investigation is not shown on the First Definitive Map and Statement.</p>
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the</p>

		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.
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Observations		The route under investigation is not shown on the Definitive Map of Public Rights of Way (First Review).	
Investigating Comments	Officer's	From 1953 through to 1966 there is no indication that Limers Lane was considered to be a public footpath, bridleway or RUPP (road used as a public path) by the Surveying Authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.	
Highway	Adoption	1929 to present	In 1929 the responsibility for district

<p>Records including maps derived from the '1929 Handover Maps'</p>	<p>day</p>	<p>highways passed from rural district 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. Urban district councils handed responsibility to the County Council later and the maintenance sheets combined these sources.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		The route under investigation is not recorded as a publicly maintainable highway on the county council's List of Streets
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of way. It is possible that its early history was not known
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 records relating to the stopping up, diverting or creation of public rights along the route were found.

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

None of the land affected by the investigation is in registered ownership.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on Limers Lane, it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. Limers Lane was, at the time of the Act not recorded as a BOAT and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for Limers Lane to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

This investigation has been carried out based entirely on historical map and documentary evidence.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

However, in this case there appears to be strong and consistent evidence from the mid-1700s onwards suggesting that the route was believed to be and was capable of being used as a public vehicular route at that time.

It was first shown to exist on a map accompanying an agreement dated 1762 where it appears to have already existed as a substantial through route consistent with how other public vehicular routes are shown at that time. It is shown in its entirety as a cross road on two key small-scale commercial maps – Yate's Map published in 1788 and Greenwoods Map of 1818 and partially shown on Hennet's Map of Lancashire published in 1830. These maps were produced primarily for travellers and would not have served the purpose unless most of the ways shown were available to the public. The depiction of Limers Lane in the same way as known public carriageways suggests Limers Lane is also public carriageway.

It is then consistently shown as a substantial through route linking to other public vehicular routes on all OS maps examined. It is consistently named as Limers Lane and shown ungated and consistent with how other public vehicular routes were shown. On the 1st edition 25 inch OS map it is shown with a thickened line down the east side to denote a metalled public road for wheeled traffic, kept in proper repair by the local highway authority.

It is also shown on Bartholomew's small-scale maps in the first half of the 1900s as a road – although use of the route may have declined by that time as a consequence of the surface being noted as being inferior. Bartholomew's maps were produced to a significant degree for cyclists (who were only allowed on carriageways) and had a system of revision from user information. The depiction of Limers Lane on these maps supports it being public carriageway.

It is also clearly shown excluded from the numbered hereditaments/plots on the Finance Act Map prepared in the early 1900s consistent with the view that it was a public highway – most probably vehicular.

In the 1950s Great Harwood Urban District Council recorded two public footpaths which terminated on the route suggesting that they did not consider that Limers Lane required to be recorded as a public right of way on the Definitive Map and Statement because public vehicular rights existed along it.

Since the mid-1950s the maps and aerial photographs examined indicate that use of the route declined, particularly with vehicles and recent site evidence now suggests that it is some time since the route has been used as a vehicular though route with only the short section from point A leading directly into Blackleach and a short section from point D used by farm vehicles to access an adjacent field are accessible to vehicles. However, any decline in use would not remove any public rights already existing.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

There is no applicant in this instance as this is a self-started investigation.

Information from Others

The Green Lane Association opined that the route should be recorded as an unclassified country road, based on the available map evidence and that these carriageway rights account for why it is not shown on the Definitive Map, owing to this higher status.

The adjoining landowners were consulted, those who responded confirmed the land in their ownership, some noted private access rights along parts of the route to gain entry to their land and their own regular use of the lane. Some highlighted continued public use of the route as a footpath with one landowner recollecting use by vehicles about 40 years ago until lack of maintenance led to much of the route becoming overgrown.

Cadent Gas responded to our consultation stating that there was no record of apparatus which may be affected.

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

Information from the Landowner

There are no registered landowners.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute.

Dedication and user are questions of fact to be determined from the evidence. In this matter there is no modern user from which to deem a dedication under S31 Highways Act and so Committee is invited to consider whether there is sufficient evidence from which to infer dedication at Common Law. In common law the owners' intention has to be proved on balance of probabilities. The evidence in this matter relates to how this route is shown on various maps and documents and whether this indicates that the owner of this route must, on balance, have given this route up for public use.

Committee is referred to the details of and assessment of the documentary evidence concerning this route and the summary prepared by officers in the Public Rights of Way Team.

In this matter there are a lot of consistent documents supporting the existence of a vehicular highway. When taken in totality it is suggested that there is a sufficient body of evidence to support the existence of an old carriageway route along Limers Lane. Use in vehicles as recently as 1980s is referred to but because of the route being a connection between highways for many decades Committee is invited to consider that there was sufficient public use back in the eighteenth century to create the highway.

The documentary evidence is supportive of the route under investigation being a very old vehicular highway and the rights have never been stopped up. By virtue of the Natural Environment and Rural Communities Act 2006 the public rights for mechanically propelled vehicles are extinguished and the appropriate status for the old vehicular route to be recorded is as restricted byway which is reflected in the recommendation

Risk management

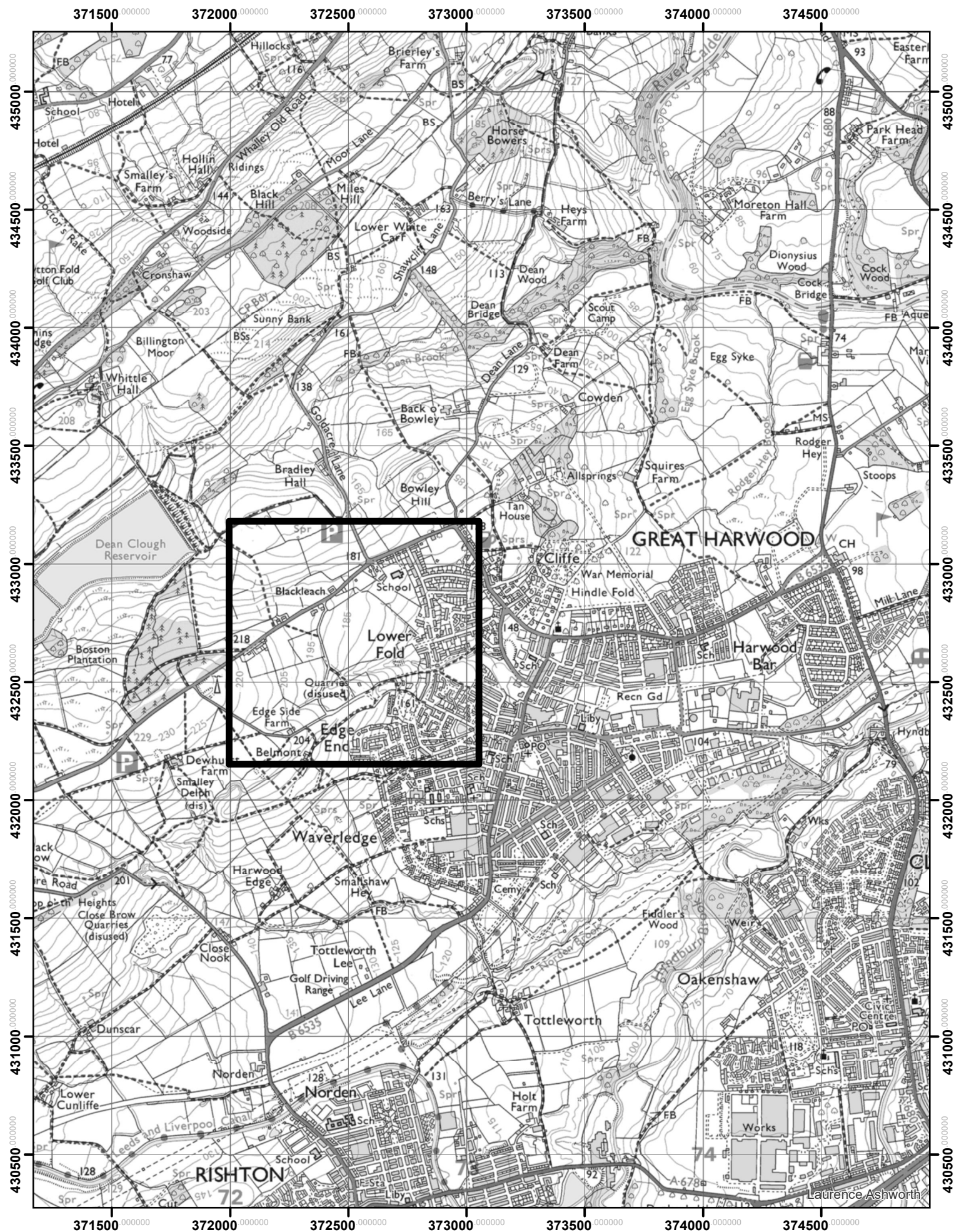
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there are 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: 804-689		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
South Ribble West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Bridleway between Liverpool Road and Northern Avenue, Much Hoole

(Annex 'A' refers)

Contact for further information quoting reference 804-627:

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 upgrading of existing public footpaths on the Definitive Map and Statement of Public Rights of Way from Liverpool Road to the junction with Northern Avenue which continues through to the junction with Smithy Lane, Much Hoole.

Recommendation

- (i) That the application for to upgrade 7-8-FP 30 and part of 7-8-FP 29 to bridleway on the Definitive Map and Statement of Public Rights of Way be accepted save for rights for restricted byway and section D to E instead be an addition of restricted byway on a different line instead of an upgrade of part of 7-8-FP30.
- (ii) That an Order be made pursuant to Section 53 (2)(b) in consequence of events specified in Section 53(3)(b) and/or Sections 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a restricted byway along the route marked red as shown on Committee Plan between points D and E and marked "historical route" on the Committee plan and to upgrade to restricted byway parts of 7-8-FP 30 and 7-8-FP 29 shown between points A and D also E and H on the Committee Plan.
- (iii) That being satisfied that the higher test for confirmation can be met in respect of the addition and the test for confirmation be met in respect of the upgraded sections, the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the upgrading of the public footpath shown on the Definitive Map and Statement from Liverpool Road to the junction with Northern Avenue which continues through to the junction with Smithy Lane, Much Hoole as a footpath on the Definitive Map and Statement.

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

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

- "it ought to be there shown as a highway of a different description"

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 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

South Ribble Borough Council

South Ribble Borough Council provided no response to our consultation.

Much Hoole Parish Council

Much Hoole Parish Council provided no response to our consultation.

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	4660 2266	Open junction of 7-8-FP30 with Liverpool Road (A59)
B	4667 2267	Point on application route adjacent to south east corner of rear boundary fence of 3 Brooklands
C	4668 2268	Metal kissing gate
D	4683 2269	Point on application route at which the currently accessible route diverges from 7-8-FP30 and 'historical route' marked by a dashed coloured line on the Committee plan
E	4684 2273	Junction of 7-8-FP30 and 'historical route' with the access road to Greenfield
F	4686 2273	Field gate across application route
G	4687 2274	Junction of 7-8-FP30 and 7-8-FP29 (the application route) with 7-8-FP27 and 7-8-FP28
H	4699 2274	Junction of 7-8-FP29 with Northern Avenue
D-X	4683 2269 to 4685 2270	Route currently used by the public in lieu of D-E

Description of Route

A site inspection was carried out in June 2021.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '7-8-FP29' or 'Much Hoole Footpath 29' but are referenced below in the abbreviated form FP29 for brevity since all those referred to are in Much Hoole.

The application submitted to the county council specifically referred to the application route being the routes recorded as FPs 30 and 29 and no user evidence was submitted in support.

The application route commences at a point on the eastern side of Liverpool Road, running to the north of and adjacent to a watercourse which is to the north of 211 Liverpool Road and which flows west under the carriageway of Liverpool Road.

At point A the route is signposted as a public footpath in accordance with its recorded status. Attached to the signpost is a circular sign providing additional information and a map of the route and other routes connecting to it which was designed and erected by Much Hoole Parish Council as part of a parish initiative a number of years ago. Also attached to the signpost is a typed notice notifying users that part of the path has eroded and that a parish council repair team would be on site shortly to fix it.

From point A the route follows a compact stone surfaced path bounded to the north by substantial wooden fencing separating the route from the residential properties on Brooklawns. To the south there is a sharp vegetated drop down to the watercourse which runs parallel to the route.

At point B the fencing bounding 3 Brooklawns curves round to continue north away from the application route and between point B and point C the application route continues adjacent to the watercourse and bounded by a hedge to the north.

At point C the route is crossed by a metal kissing gate where there is a further notice warning of damage to the surface of the path and evidence of the surfaced path being washed away into the watercourse. Immediately beyond point C the watercourse is culverted to the south of the application route.

Beyond point C the application route continues in an easterly direction along a wide strip of land (approximately 10 metres wide) mostly overgrown with a narrow (1-1.5 metre wide) stone surfaced path along the middle through to point D.

At point D the recorded route of FP30 turns north to continue along the boundary of the property known as Greenfield to exit onto the access road leading to Greenfield at point E.

On site the application route is not visible or accessible. Instead the land crossed by the application route appears to have been fenced off just north of point D some time ago and is now very overgrown. A stone surfaced path continues from point D in an easterly direction to point X on the Committee plan where it meets the recorded route of FP27 and the only accessible link then turns north along FP 27 to pass through a further metal kissing gate and to re-join the application route at point G.

Between point D and point E the recorded route of FP 30 is not accessible and neither is the route shown on the Committee plan labelled as the 'Historical route' which runs parallel to FP 30 but on the west side of the boundary of Greenfield from points D to E.

From point E the continuation of the application route is accessible and forms part of the access road leading directly to Greenfield. At point F the route is crossed by a metal field gate which was open when the route was inspected.

At point G the application route meets the footpaths recorded as FP 27 and 28 and then continues east as a wide compacted earth and stone access road recorded as FP 29.

Approximately 95 metres east of point G the application route provides access on the south side to a recently constructed housing development known as Turnpike Close and from this point through to point H the route has a tarmac surface.

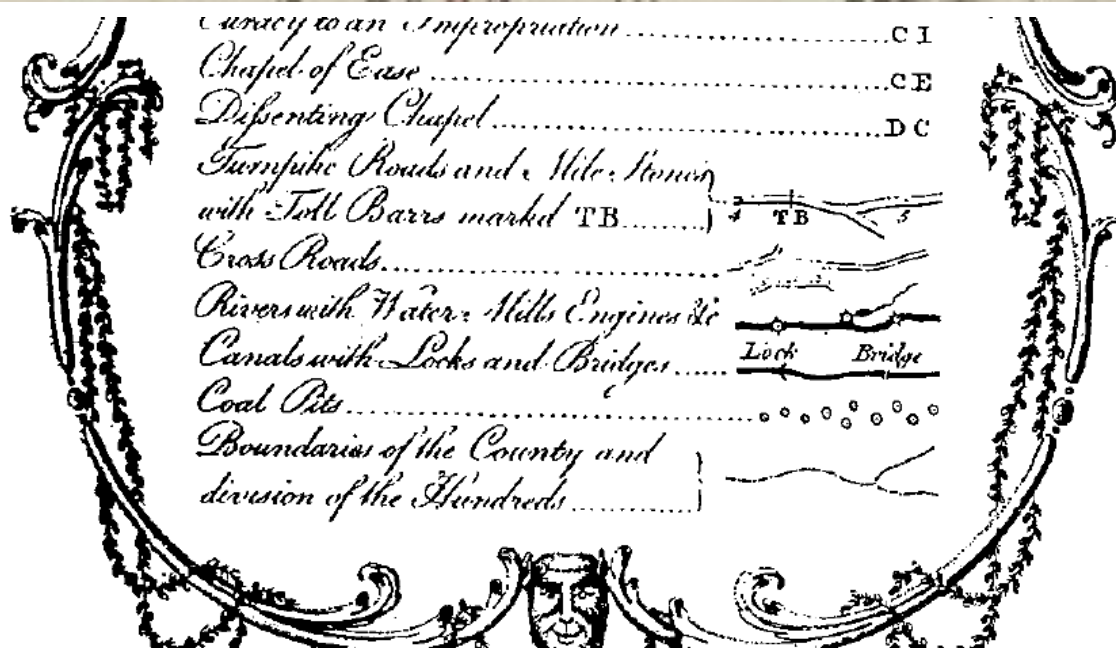
At point H the route joins the western end of Northern Avenue which is recorded as a publicly maintainable vehicular highway. A public footpath signpost is located at point H pointing west along the application route and a further circular information notice is attached to the signpost similar to the one located at point A.

The total length of the route A-B-C-D-E-F-G-H is approximately 450 metres.

Map and Documentary Evidence

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

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

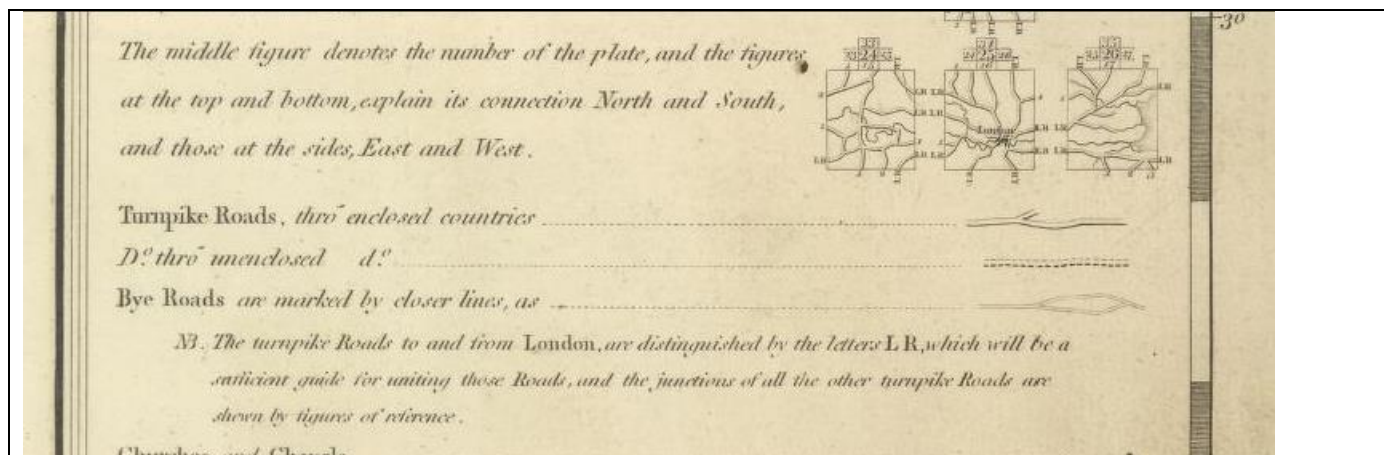


Observations		The application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Cary's Map of Lancashire	1787	John Cary was described as 'the most

representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.

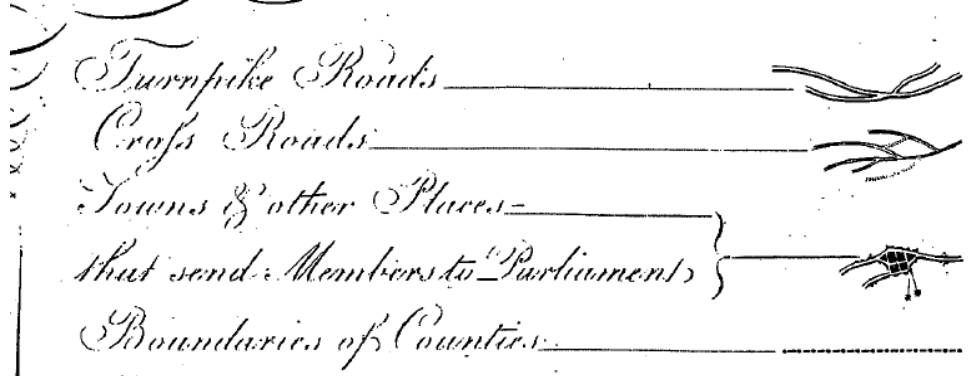
In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.

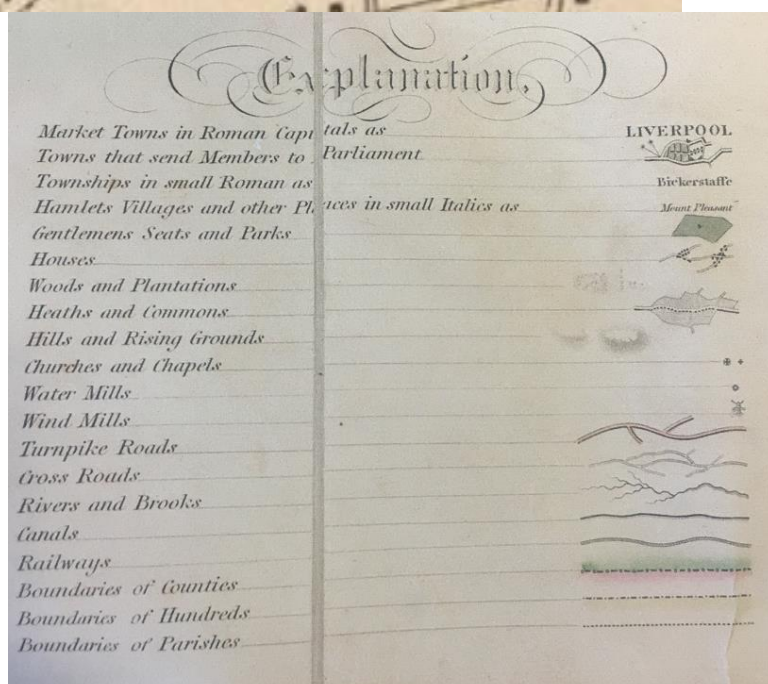
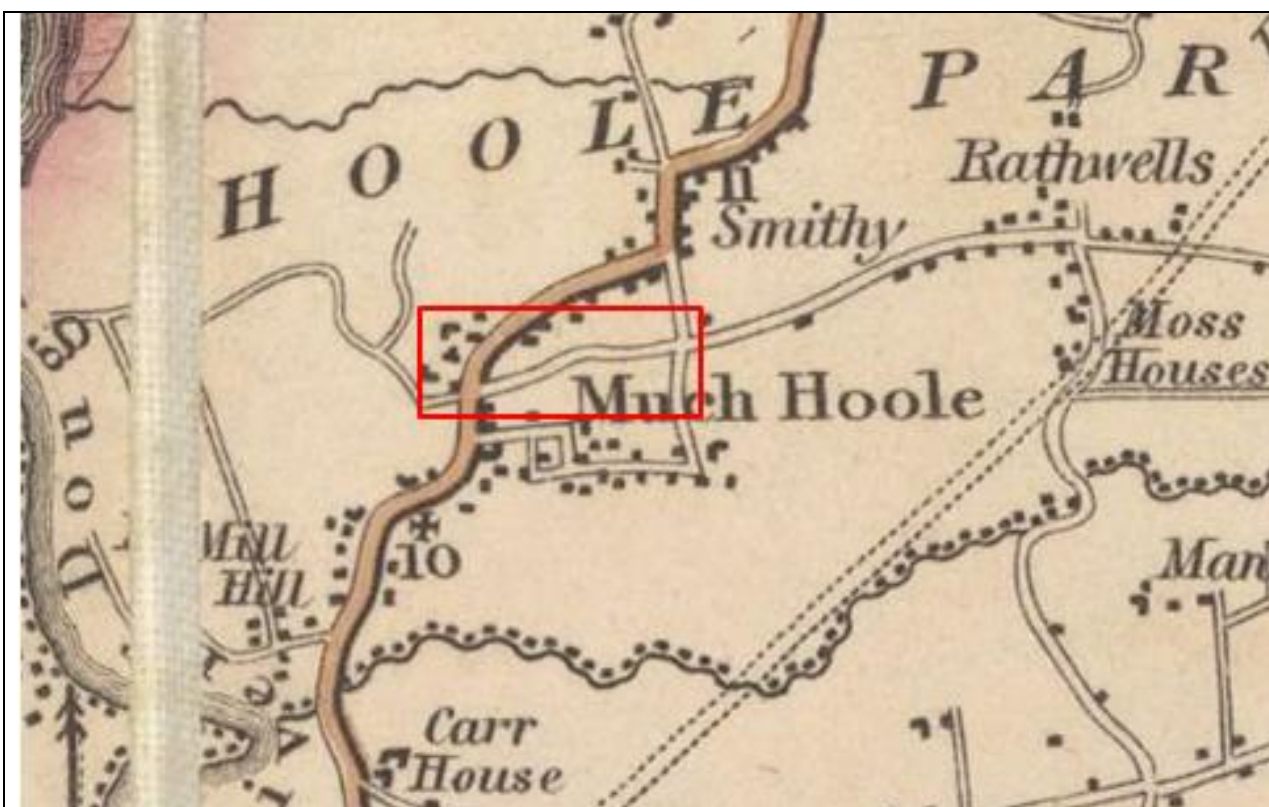




Observations		The application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



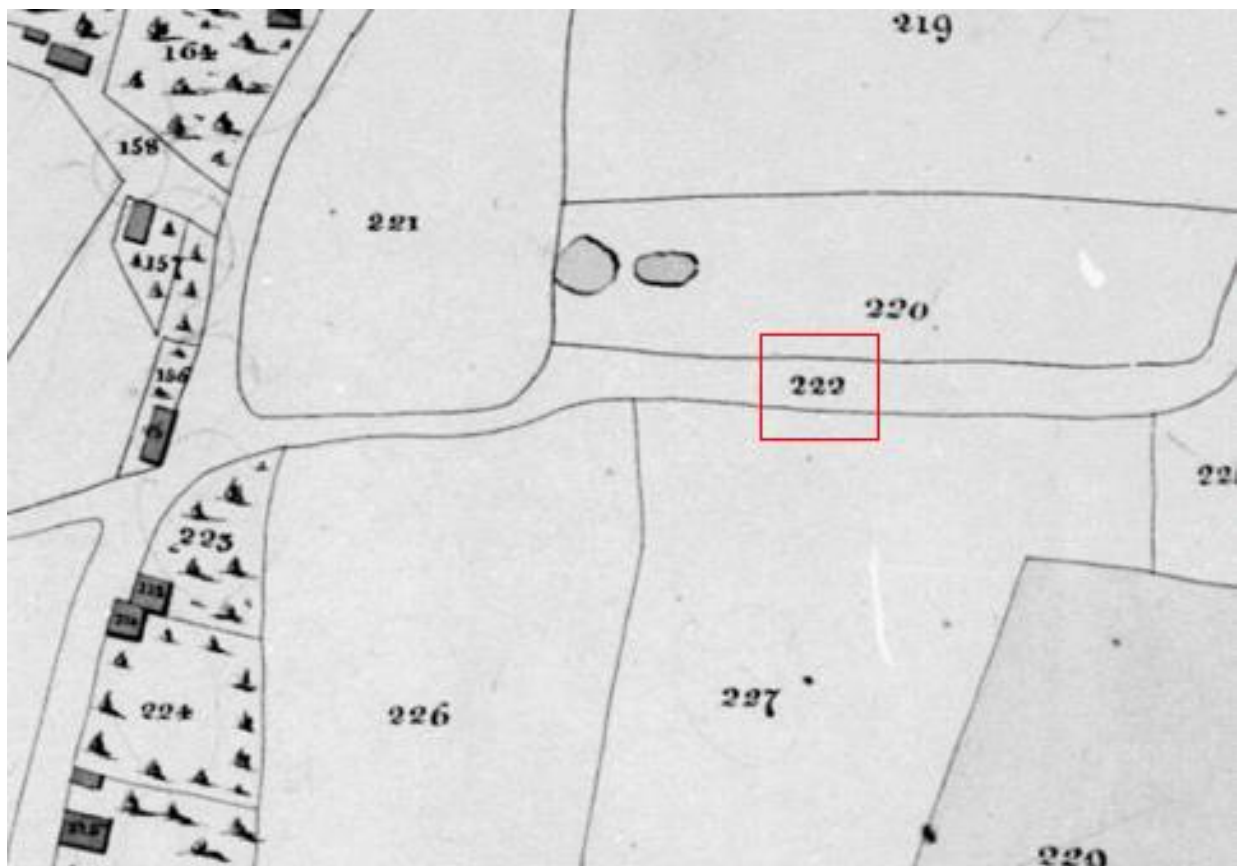
		
Observations		The application route is not shown on the map although a short stub possibly indicating the start of a route can be seen extending west from Smithy Lane consistent with the eastern end of Northern Avenue.
Investigating Officer's Comments		The application route probably did not exist as a through route at the time or if it did exist, was not considered to be a substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The full length of a route similar to the application route is shown as a cross road consistent with how other routes now recorded as public vehicular routes are shown. However, although linking the same points the alignment is different.
Investigating Comments	Officer's	It is not fully known what is meant by the term 'cross road'. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross

		<p>road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths suggesting that a route existed as a substantial through route which was considered to be more than a public footpath at that time. The pronounced 90 degree bend is not shown on the route but this is considered to be the limitations of small scale mapping at this time and Hennet's style of mapping – other examples can be seen on the same extract in the depiction of the junction of Brook Lane with Liverpool Road and the square at Lunds Lane/Town Lane.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1841	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are</p>

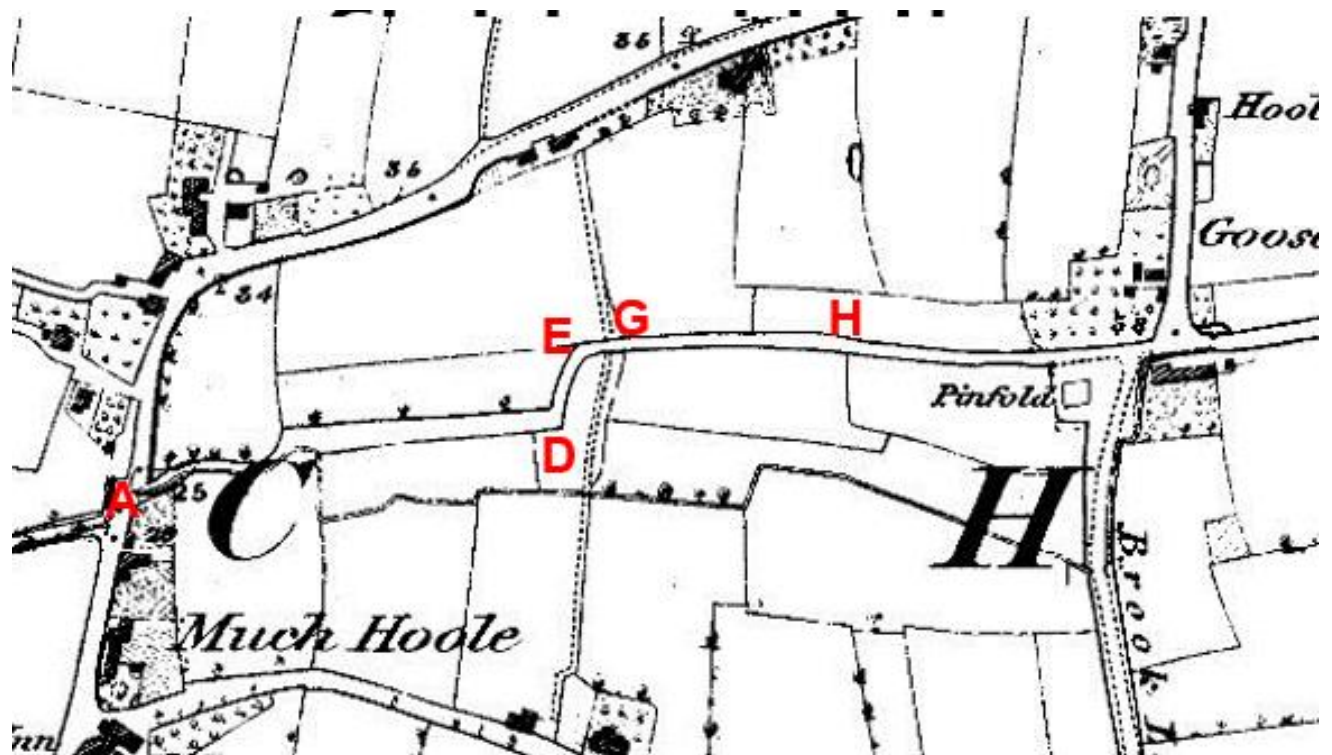
usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps often show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



177	177	177	177	177	177
123	Road				
59	"				
96	"				
132	"				
222	"				
237	"				
376	"				
379	"				
374	"				
383	"				
399	"				
471	"				
535	"				
697	"				
232	"				
714	"				

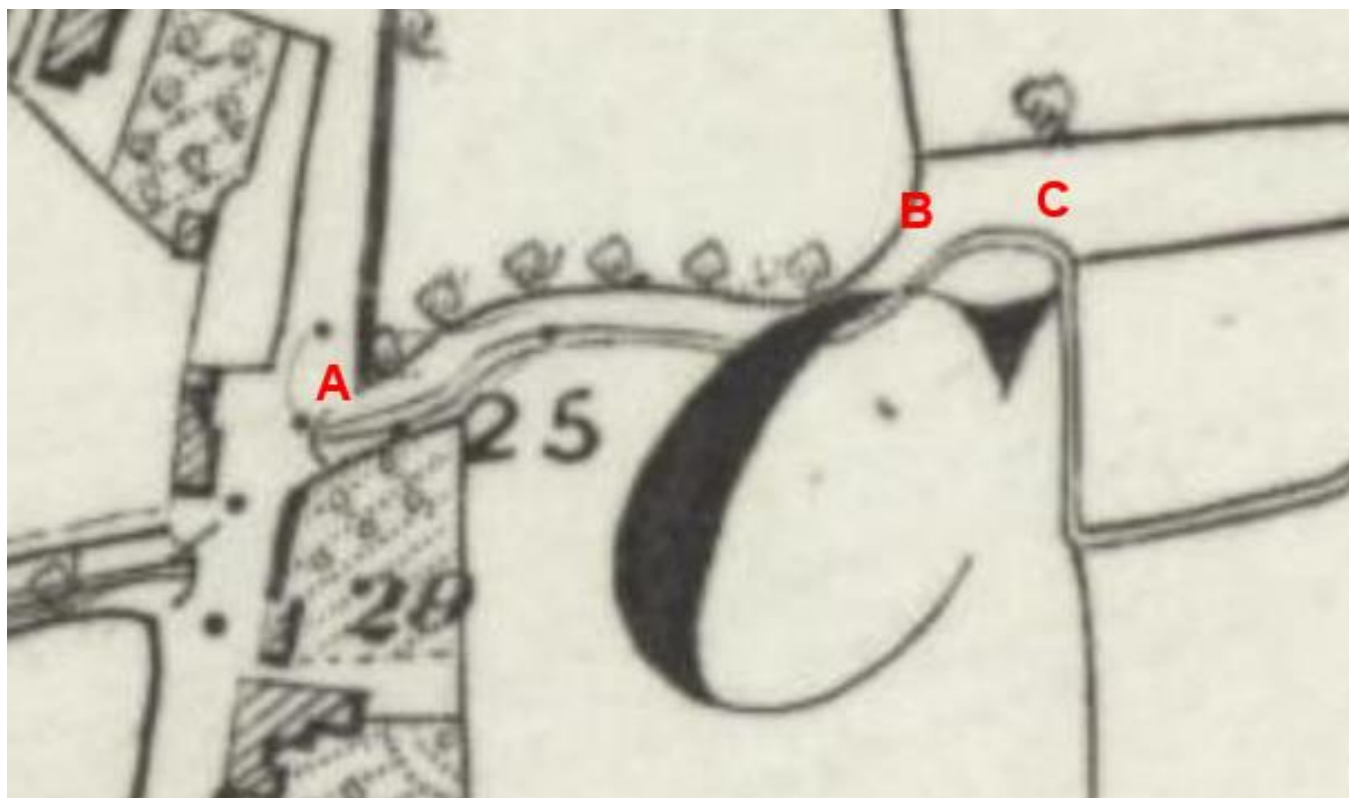
Observations		<p>A route consistent with the application route or approximating to the full length of the application route starting on Liverpool Road and then continuing through to the junction with Smithy Lane appears to be shown as a substantial bounded through route and is numbered as plot 222 and is listed at the end of the Tithe Award as a road.</p> <p>The list comprises 17 routes which are labelled at the end of the Award as 'Road'. Looking more closely at the 17 routes listed, 12 of those routes are now recorded as vehicular highways for all or most, or in 1 case some, of their length, 2 routes (including the application route) are subject to applications to be upgraded, 1 is recorded as footpath and 2 have no recorded public status and of which there is no physical trace.</p>
Investigating Officer's Comments		<p>A route existed in 1841 which was similar to the application route, listed as 'road' and was probably considered to be part of the public highway network at that time.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming</p>

		medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land 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 68	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1845 and published in 1848. ¹



OS map extract taken from map in LCC possession

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.



Map extract taken from map deposited at the National Library of Scotland

Observations		There is a fenced through route between Liverpool Road and Smithy Lane crossed by a less significant north-south route at point G. The application route does not exactly follow this route between points D-E as the applicant relied on where the public footpath is recorded parallel but further to the east. The western end A-B is shown on this slightly later, more precise Ordnance Survey map as being narrower than on the Tithe Map and a watercourse is shown running within the south side of the enclosed strip. At its narrowest point the available width is about 17' (5 metres). There are no lines shown across the route and it was open to the highway network.
Investigating Comments	Officer's	The application route existed in 1844-1845 consistent with how it is depicted on the Tithe Map prepared only a few years earlier. It is shown as part of a significant fenced through route crossed by a less significant north-south route at point G suggesting that it would have been capable of being used at least on horseback at that time and possibly with horse-drawn

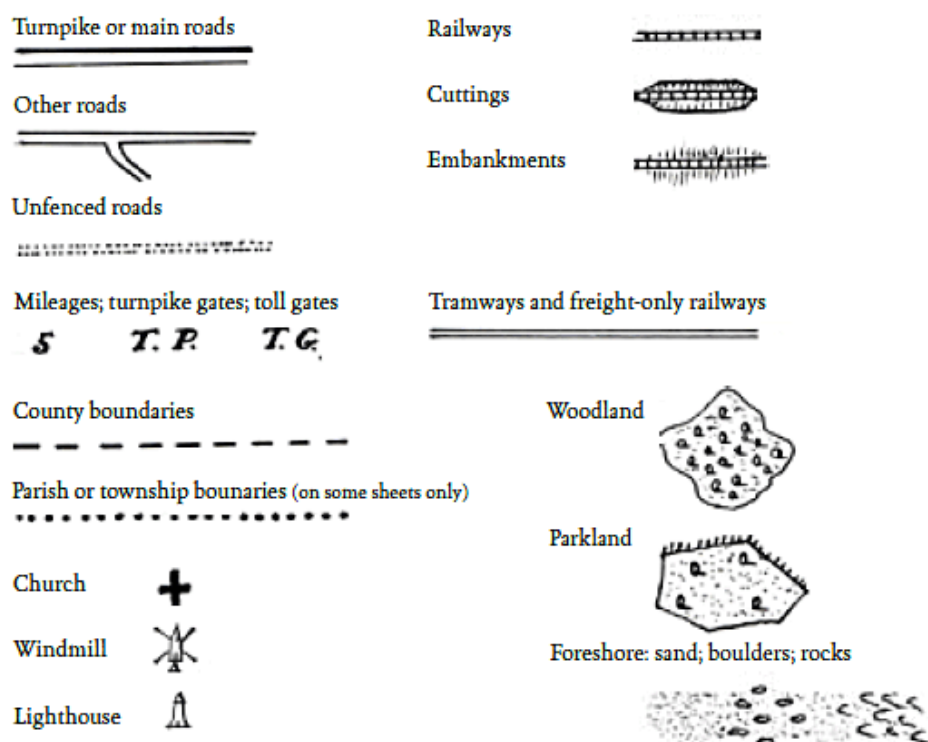
		vehicles. There were no gates at the ends or along the route.
Cassini Map Old Series	1842-1852	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Old Series sheets used to create this map:

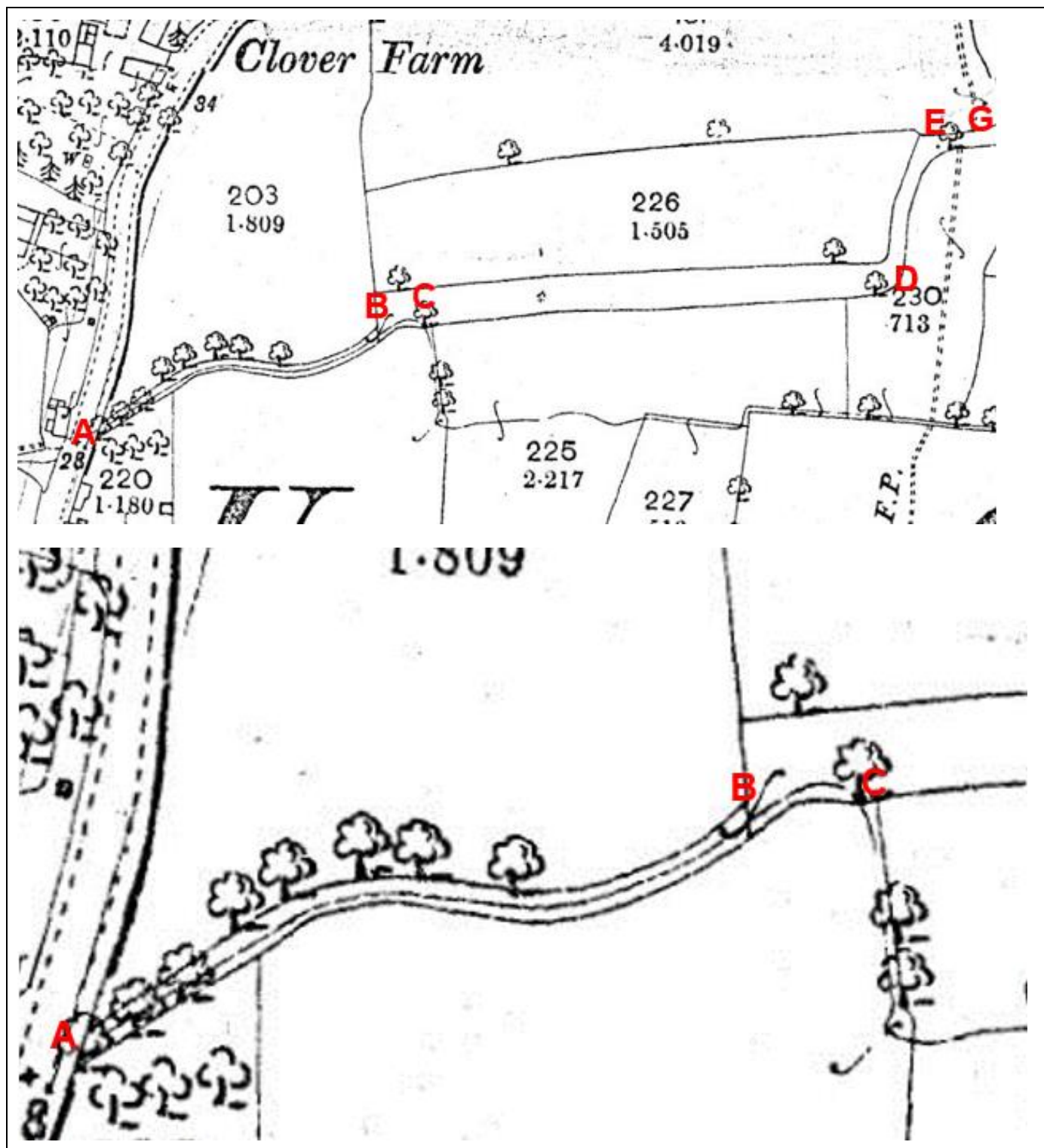
Sheet 89, N.E. Quarter, pub. 20th February 1843
 Sheet 89, N.W. Quarter, pub. 20th December 1842
 Sheet 90, N.E. Quarter, pub. 1st October 1842
 Sheet 91, N.E. Quarter, pub. 31st December 1852
 Sheet 91, N.W. Quarter, pub. 31st December 1852
 Sheet 91, S.E. Quarter, pub. 30th June 1852
 Sheet 91, S.W. Quarter, pub. 31st December 1847.

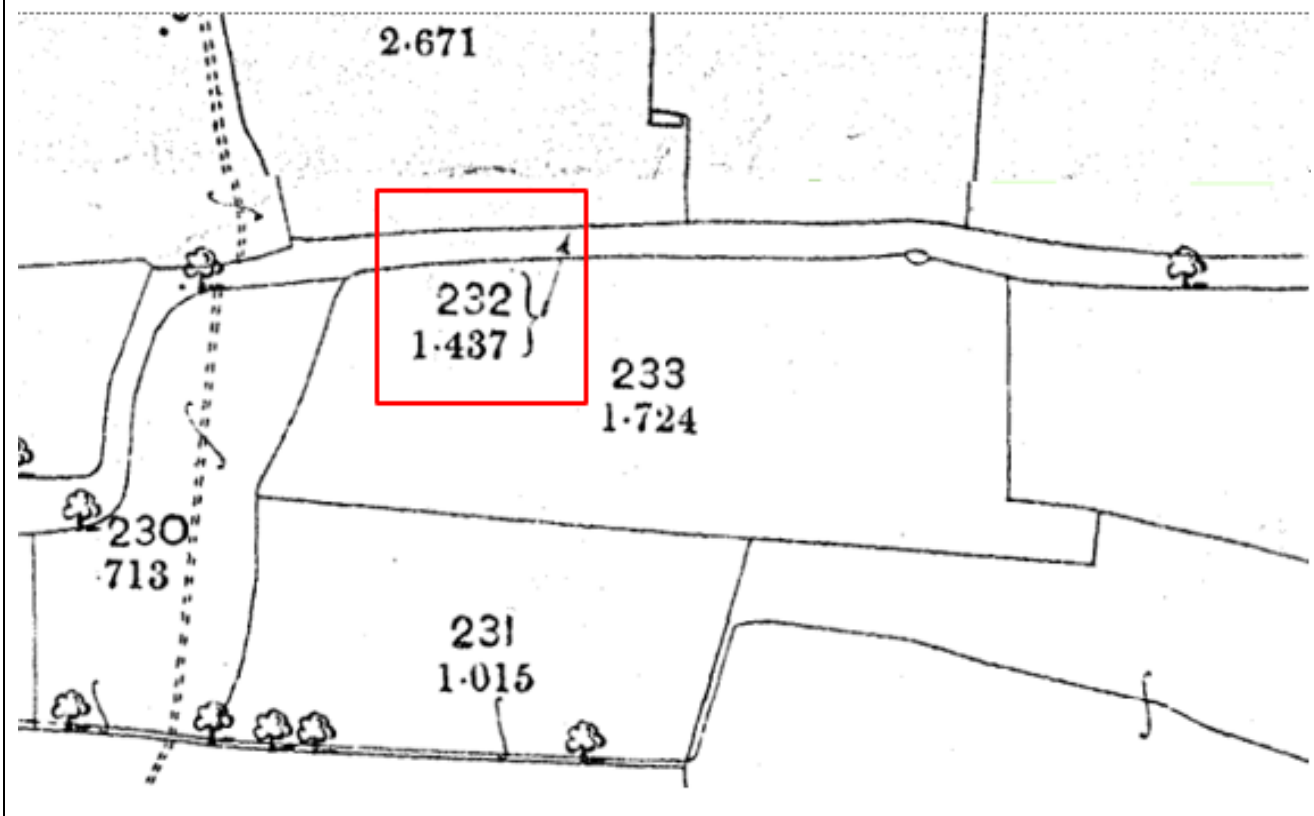
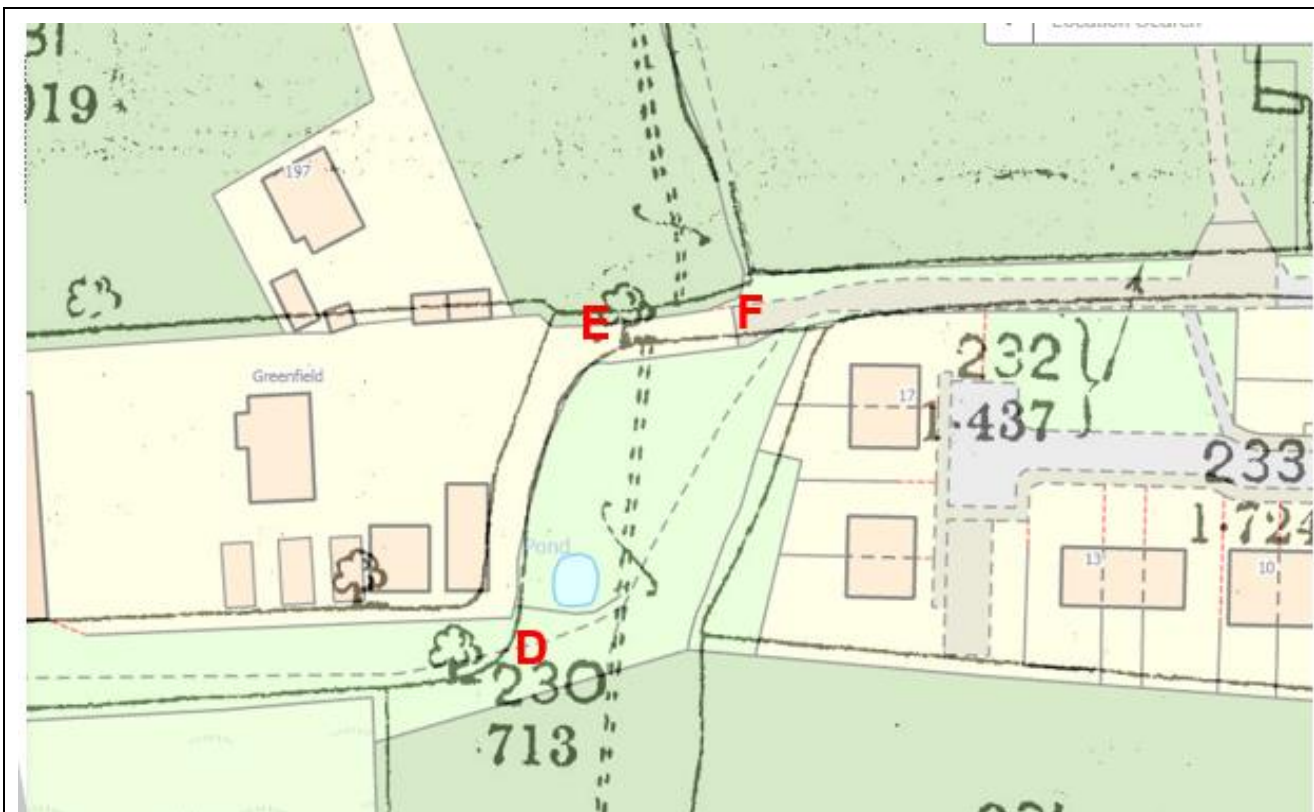
possible that any one Cassini map might contain more than one style or abbreviation of symbol (and, indeed, other variations of design).

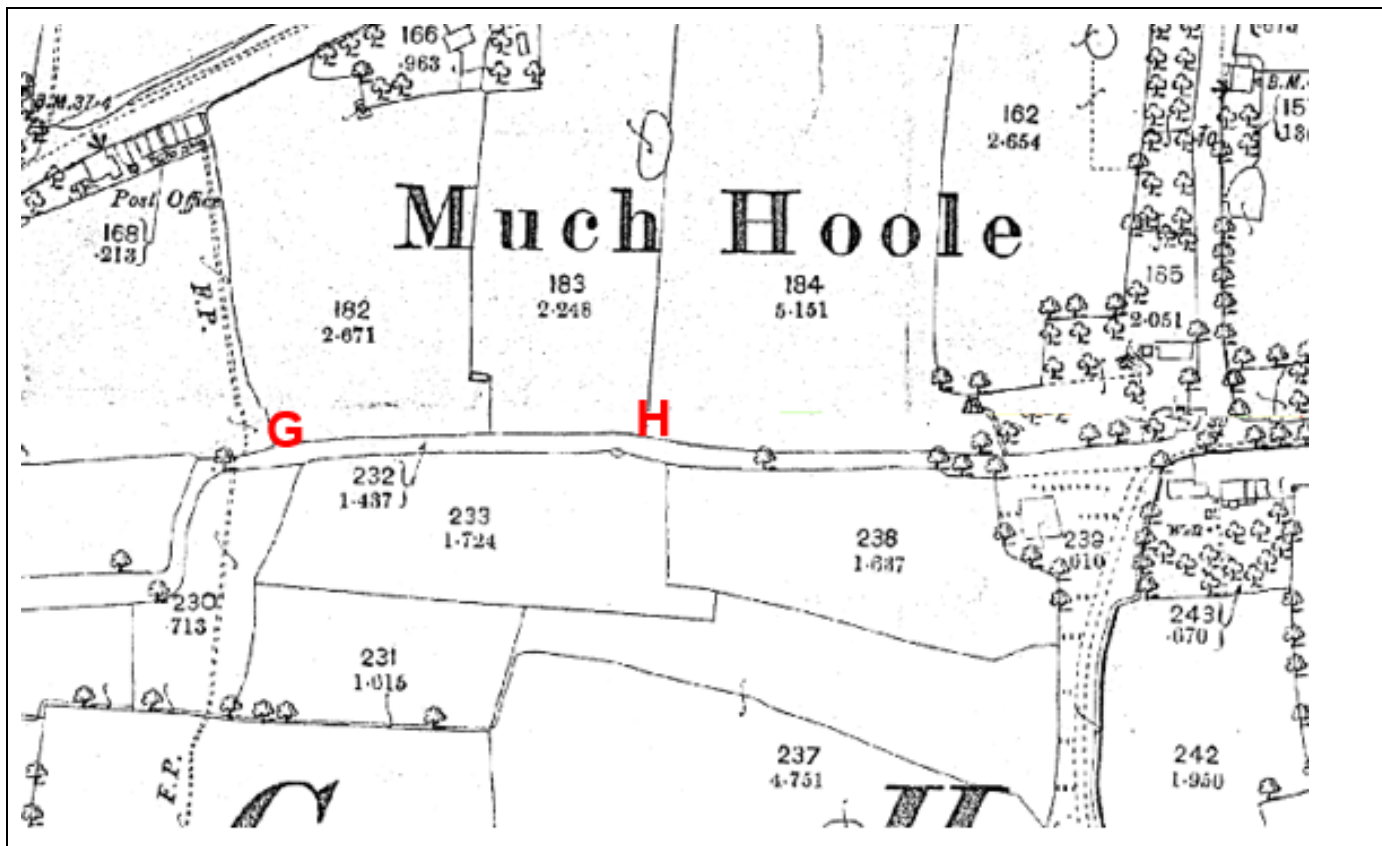


The publishers would like to thank Dr Richard Oliver (B.A., D.Phil., F.B.Cart.S.) of the University of Exeter for his invaluable help in creating this legend and other aspects of this article. This legend © Cassini Publishing Ltd & Richard Oliver.

Observations		The full length of a route roughly consistent with the application route appears to be shown as part of a longer through route described in the map key as 'other road' connecting to public vehicular highways at both ends.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown, including the application route, had public rights for those travellers.
25 Inch OS Map Sheet LXVIII.15	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.







Observations

The First Edition 25 inch OS map provides much more detail than previous maps inspected.

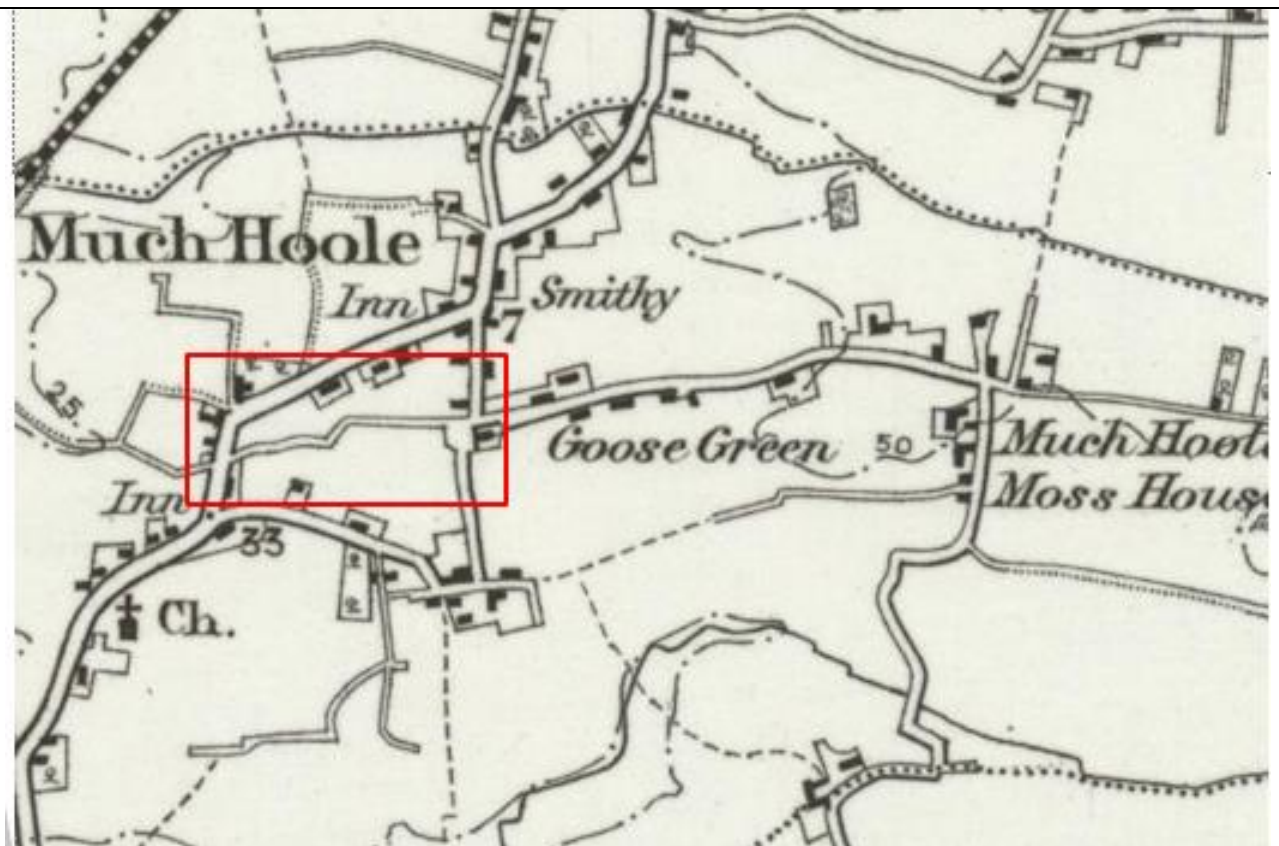
A route consistent with that shown between Liverpool Road and Smithy Lane is shown on the map. The route appears to be shown with lines across it at point A and point B and is enclosed between the two points with a watercourse running within the enclosed strip. The watercourse joins the route at point C (as it still does today) from the south. The strip on the north of the stream is significantly narrower than in 1845.

From point B to point D a wide enclosed strip of land is shown consistent with how the route is still bounded today.

From point D to point E a route is shown turning north and then east fenced from adjacent fields. With the benefit of being able to view a digital overlay of the first edition 25 inch map with a modern OS base map it can be seen that the route which existed in the late 1800s – and which is most likely to be the route depicted on the Tithe Map and earlier small scale OS maps

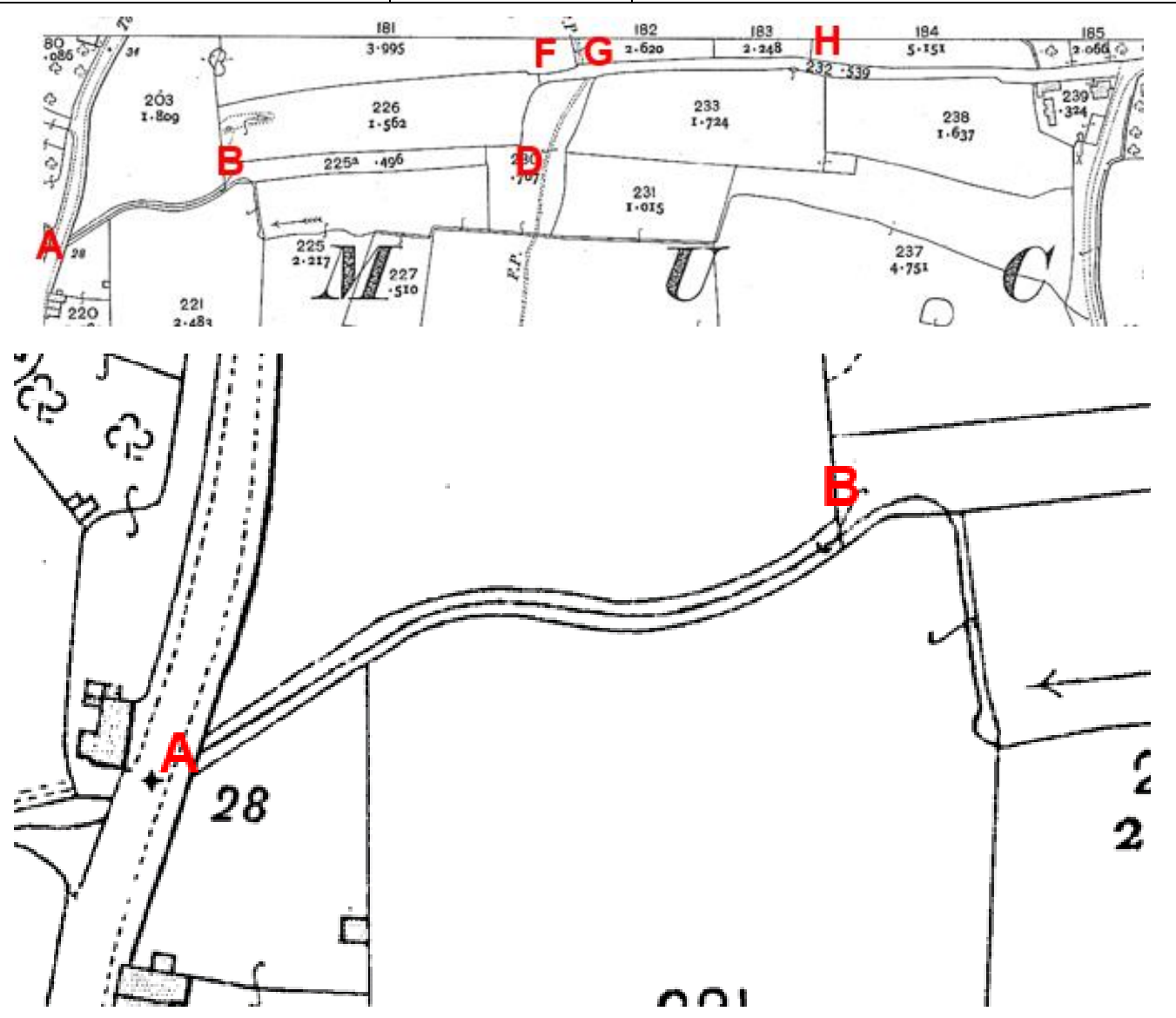
		<p>– differs from the route recorded as part of FP30 (the application route) between point D and point E and ran to the west of the existing boundary of the property known as Greenfield as marked on the Committee plan as the 'Historical route'.</p> <p>The application route between point D and point E (along the property boundary) is not shown on the 1893 map.</p> <p>From point E passing through points F, G and H a fenced off route is shown continuing through to the junction with Smithy Lane.</p> <p>Two routes labelled on the map as footpath (F.P) are shown to cross the application route between points E and H which are on slightly different alignments from the routes now recorded as FPs 27 and 28.</p> <p>The route shown is not named and there is no thickened line shown along the south or eastern side of it unlike how Liverpool Road and Smithy Lane are shown.</p> <p>One parcel number (232) is shown for the route which appears to relate to the full length – including the section between point A and point B.</p> <p>No evidence of a surfaced or worn track or path within the bounded strip is shown (by pecked lines) which is in contrast to most of the nearby roads.</p>
Investigating Comments	Officer's	<p>A route existed as a substantial fenced route in the 1890s but varied from the application route between point D and point E – following what is marked on the committee plan as being the 'Historical route'.</p> <p>Gates may have been present at point A and point B although the existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The Planning Inspectorate Consistency</p>

		<p>Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p> <p>The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that Liverpool Road and Smithy Lane are shown suggests that the route was not considered to be a well maintained vehicular road at that time. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1844 and 1912. The OS specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route was not shown in this way suggests that even though it was considered as a 'road' in the Tithe Award it may not have been passable with horse drawn vehicles throughout its full length – or was not/no longer considered to be a public road at that time.</p> <p>The width between A-B available for use scales at only 5 to 8 feet in width which would mean that by this time use by vehicles was unlikely and even on horseback may have been extremely challenging.</p>
1 inch OS Map Sheet 75 - Preston	1896	Small scale 1 inch OS, Revised New Series.



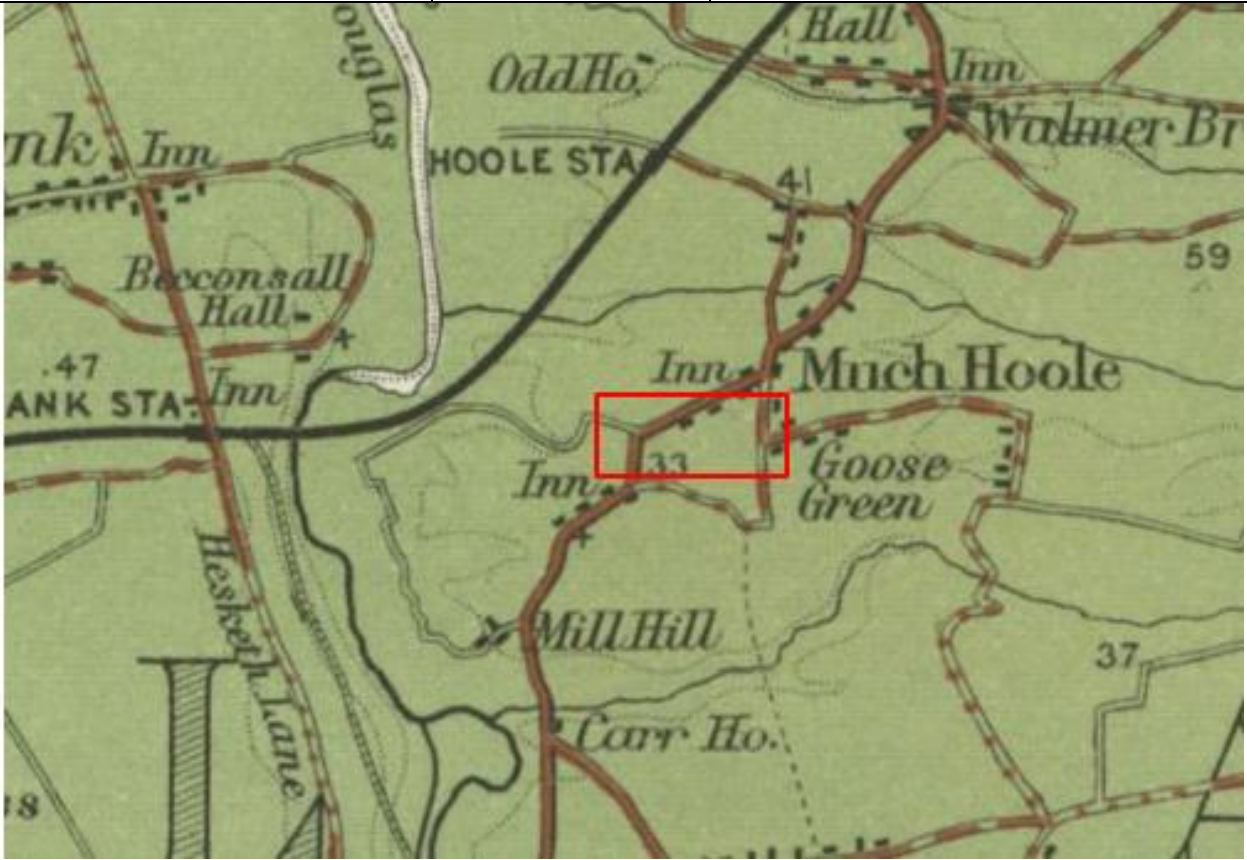
<i>Metalled Roads; First Class</i>	Fenced	5 (Mile distance) (Altitude) 211	Unfenced	Ch...
" " <i>Second Class</i>				"
" " <i>Third Class</i>				"
<i>Unmetalled Roads</i>				Wind
<i>Footpaths</i>				Ligh
<i>Railways, Single Line</i>				Bea
				Let
				Cont

Observations		<p>The scale of this map means that it is not possible to see the same amount of detail as is available on the 25 inch OS map detailed above although both maps were likely to have been published from the same survey.</p> <p>A fenced route is shown consistent with how third class or unmetalled roads are shown.</p>
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the</p>

		through roads shown – and in this case the application route – most probably via the 'Historical route' D-E – was available for those travellers.
25 inch OS Map Sheet LXVIII.15	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.
		
Observations		By 1909 there are several significant changes to the route. The route remains unaltered between point A and point B – fenced with the watercourse within it. A line is shown across the route at points A and B and at point B the land crossed by the application route is again shown braced with the parcel of land numbered 225a – along which the application route runs. West of point D a further line is shown

		<p>across the route forming the eastern boundary of parcel 225a.</p> <p>From point D the historical fenced route which ran along the eastern side of parcel 226 is no longer shown; the western boundary of the route has been removed and the historical route 'absorbed' into parcel 226 as indicated by overlaying the two maps and by reference to the acreage for plot 226 increasing from 1.505 in 1893 to 1.562 on this map.</p> <p>The application route (FP30) is not shown between point D and point E along the fence bounding plot 226 and the historical route is not shown as a physical track on the ground.</p> <p>A line is shown across the application route at point F and the footpaths shown to connect to the application route have altered slightly from the earlier edition of the OS 25 inch map and are now shown to meet the application route at point G.</p> <p>From point F through to Smithy Lane the application route is shown as part of parcel 232.</p>
Investigating Comments	Officer's	<p>It appears that the Historical route between D and F had been incorporated into the parcel 226 and may not have been passable to any traffic. The application route between those points is not shown and no inference can be made. The remainder of the route is unchanged from previous maps.</p>
Bartholomew half inch Mapping	1904-1941	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map</p>

was inferior to Bartholomew at that time for the use of motorists.



EXPLANATORY NOTE

First Class Roads —————
 Secondary " (Good) - - - - -
 Indifferent " (Passable)
The uncoloured roads are inferior and not to be recommended to cyclists.
 Footpaths & Bridlepaths
N.B. The representation of a road or footpath is no evidence of the existence of a right of way.

Railways ———

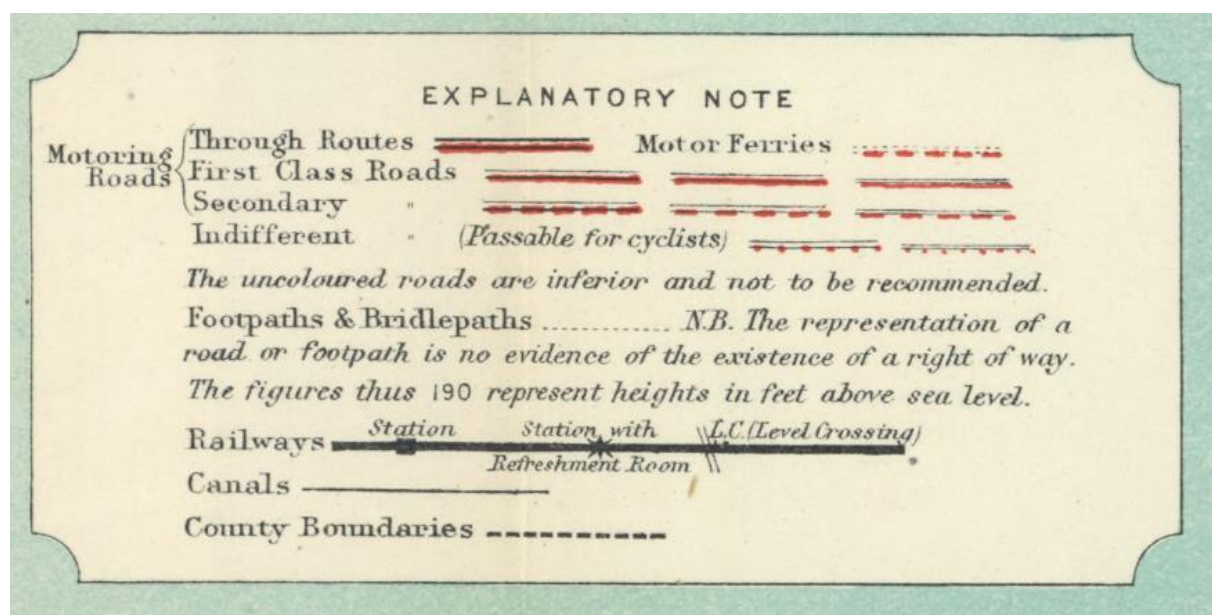
Canals ———

County Boundaries - - - - -

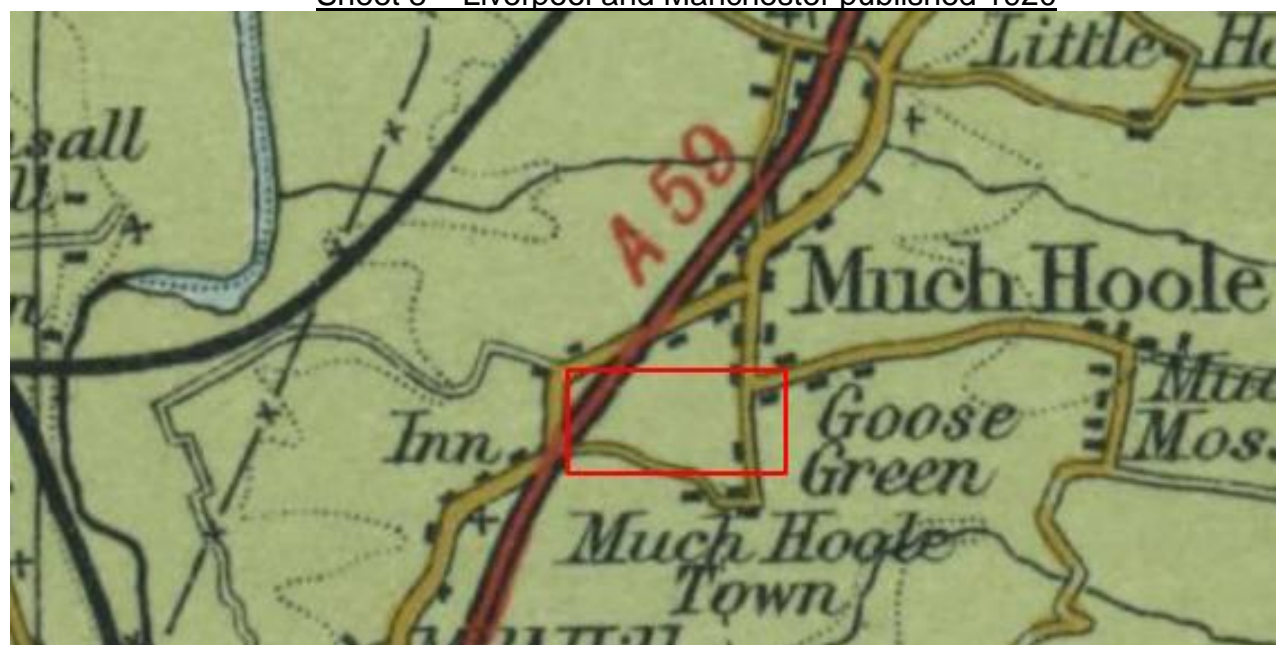
Station ■ Station with
Refreshment Room ★

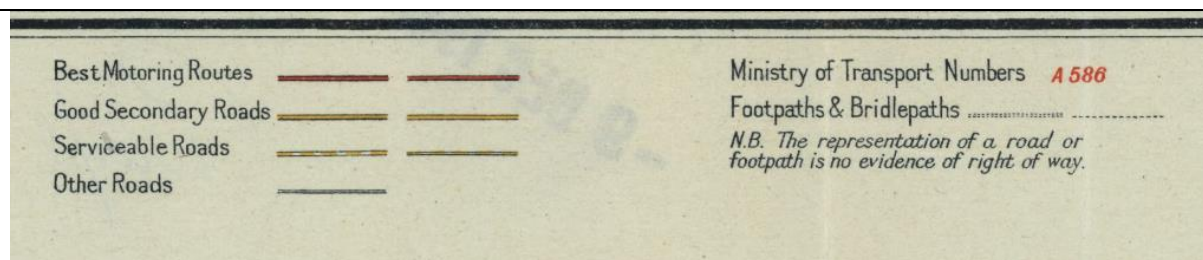
SCALE 1 : 126,720 = 2 MILES TO AN INCH

Sheet 8 – Liverpool & Manchester published 1904



Sheet 8 – Liverpool and Manchester published 1920

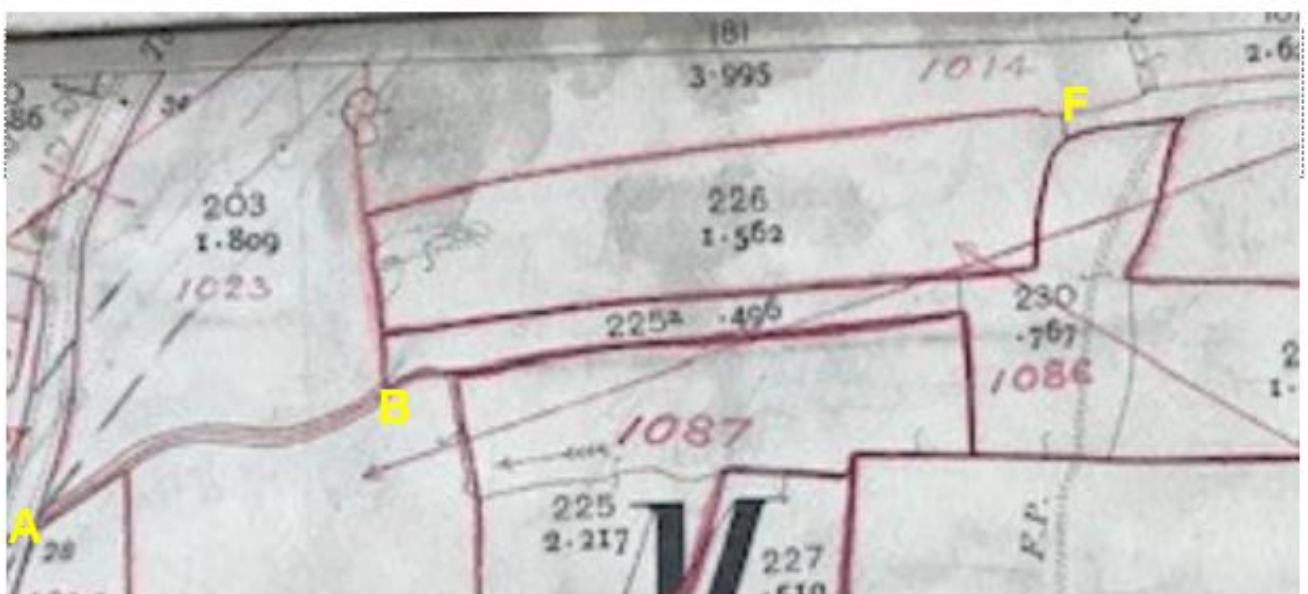
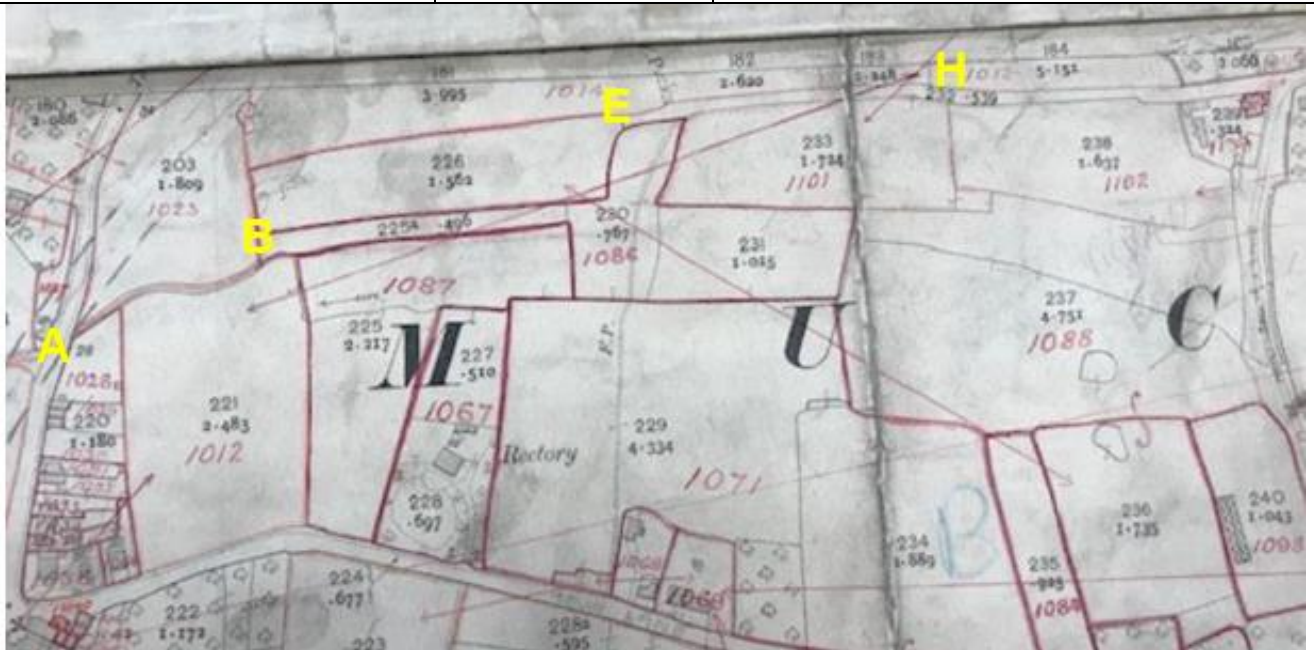


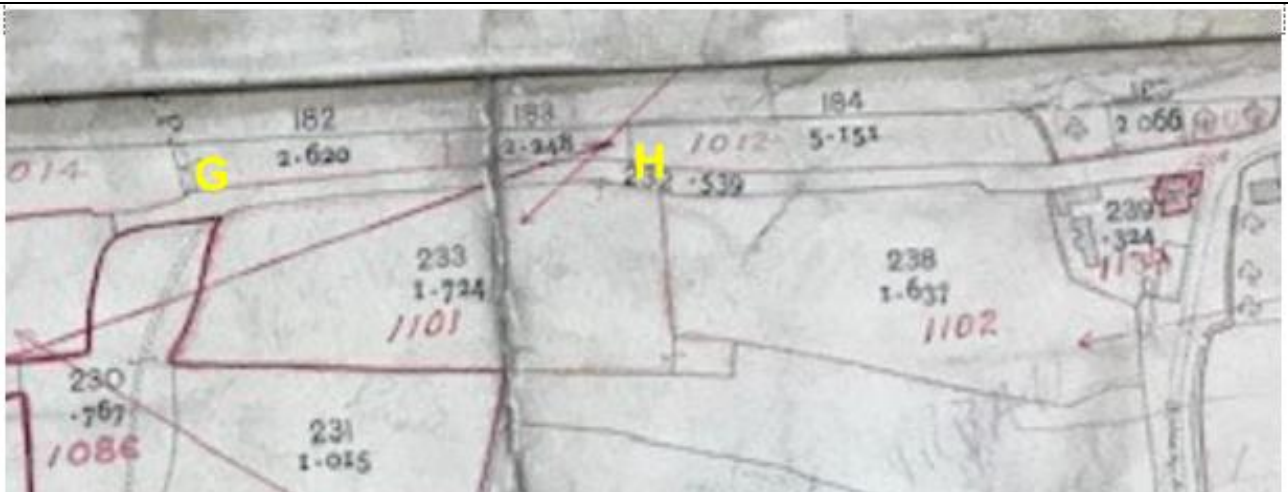


Sheet 31 – North Lancashire published 1941

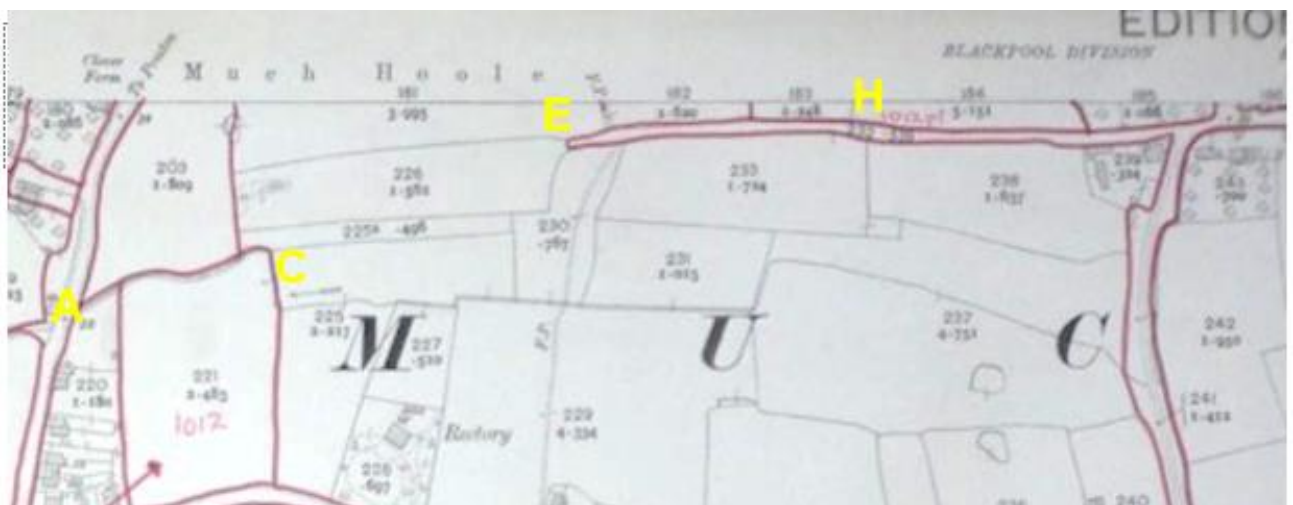
Observations		The application route (including the Historical route D-E) is not shown on any of the three editions of the small-scale Bartholomew maps published between 1904 and 1941.
Investigating Officer's Comments		As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that the route had been purposely omitted by Bartholomew suggesting that if a route did still exist it was not considered to be a significant route at that time and was not considered to be a usable public vehicular road because footpath – and to some extent bridleway - users were not the target customers for these maps.
Finance Act 1910 Map TNAs Ref IR 133/5/80	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant</p>

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.



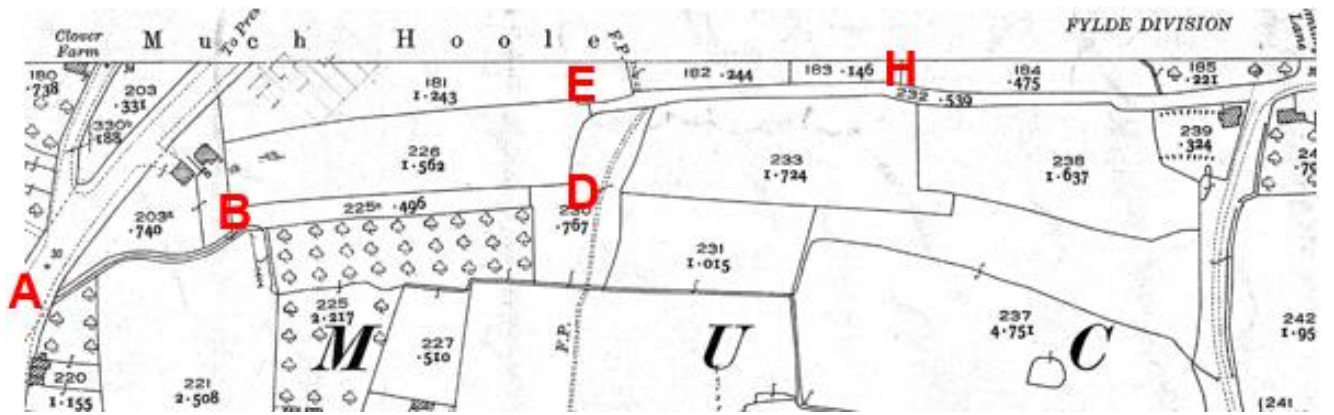



Extracts of Map deposited in the County Records Office



Map deposited in The National Archives

<p>Observations</p>		<p>The map deposited in the County Records Office was difficult to read.</p> <p>It appeared to show the route between point A and point B partly within hereditament 1023 From point B to point D the application route is within plot 1086 and the 'Historical route' D-E appears to be part of a split hereditament numbered 1089. There were no deductions for public rights of way or user recorded in the District Valuation book for the hereditaments listed above.</p> <p>From point E to point H and through to Smithy Lane the drawing of the lines bounding the hereditaments appears incomplete but the numbering is done in such a way to suggest that the application route may not have been included. The map deposited in the National Archives was</p>
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		largely incomplete. Between point A and point C the application route is shown as part of hereditament 1012 and between point E and point H through to Smithy Lane the application route is shown excluded.
Investigating Comments	Officer's	<p>There are some inconsistencies between the two sets of records and neither map appears complete.</p> <p>The records held by the county records office suggest that the landowners did not acknowledge the existence of any public rights along the route from point A to point E when the records were compiled and is unclear with regards to how the route from point E through to point H was to be shown.</p> <p>The map deposited in the National archives shows the route from point E to point H as being excluded suggesting that this part of the route may have been considered as a public vehicular highway that should be exempted from the valuation process but the map is incomplete and the information included on it differs from the County Records office map and the rest of the route is not excluded so no clear inference can be drawn.</p>
25 Inch OS Map LXVIII.15	1931	Further edition of 25 inch map (surveyed 1892, revised in 1929 and published in 1931.
		
Observations		The land crossed by the application route (and Historical route D-E) remained unaltered from the earlier (1911) edition of the 25 inch map.
Investigating Comments	Officer's	It appears that access along the full length of the application route (and Historical route

		D-E) may not have been possible – at least on horseback in the 1930s.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<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.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
		
Observations significant route at that time.		The application route between point A and point G is not shown. From point G through to the junction with Smithy Lane (passing through point H) an unnamed route is shown which looks to continue just past point G west to the edge of the page.
Investigating Comments	Officer's	<p>The route between point A and point G is not shown suggesting that it was not a significant route at that time. The route from point G through to Smithy Lane existed in the 1930s and is shown in the atlas consistent with how other nearby routes of various statuses are shown. No inference can be made regarding the nature of use (i.e. whether it was on foot, horseback or vehicle) at that time.</p>

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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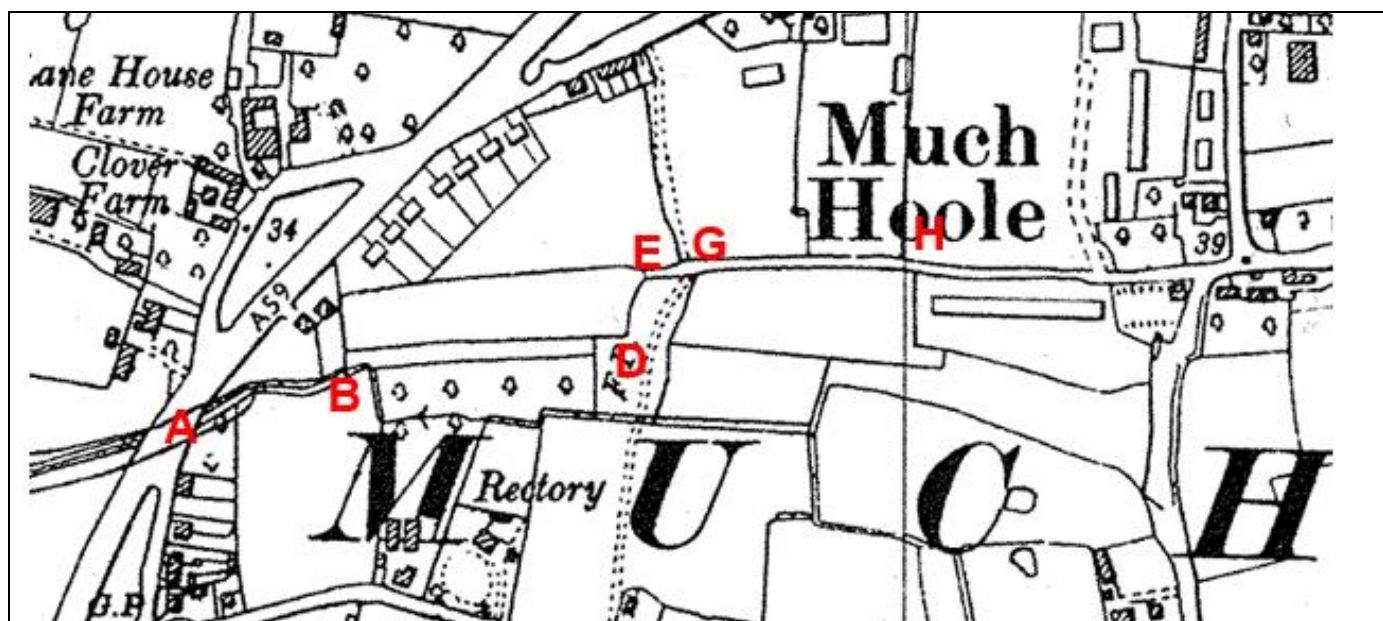


² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

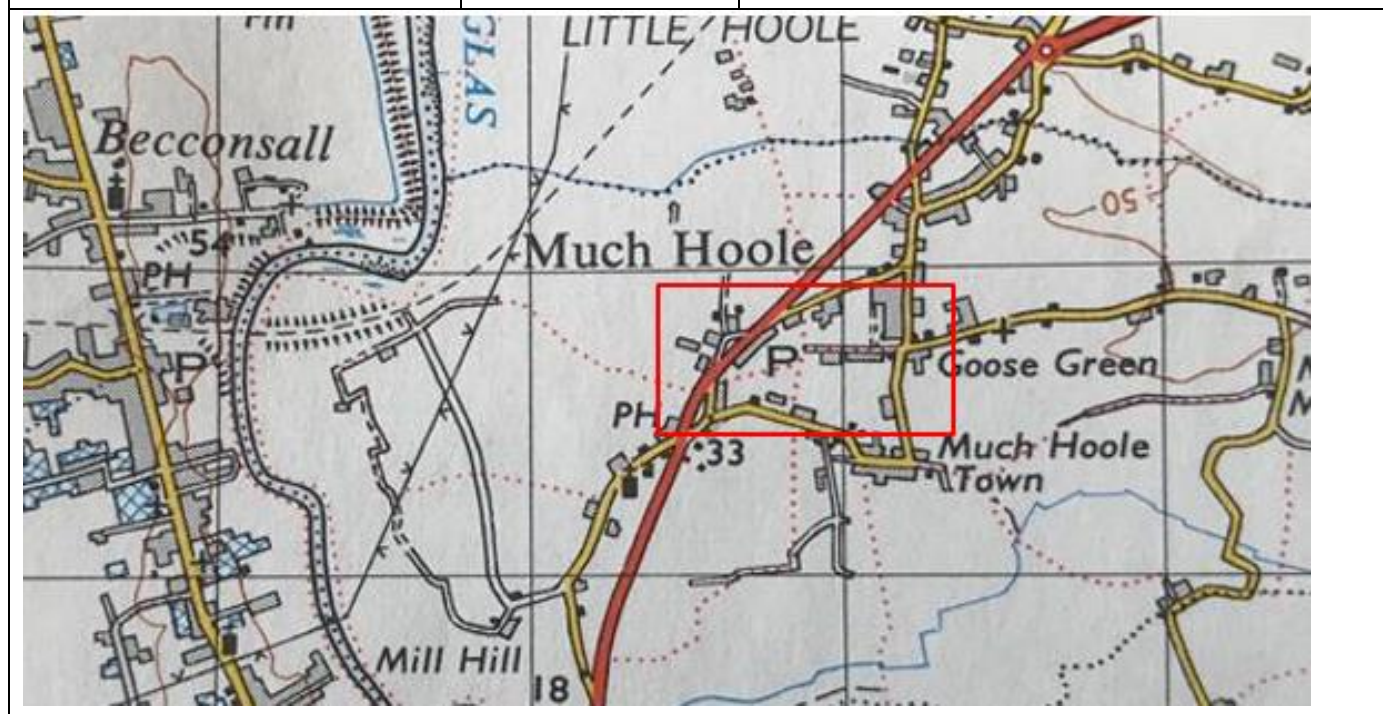


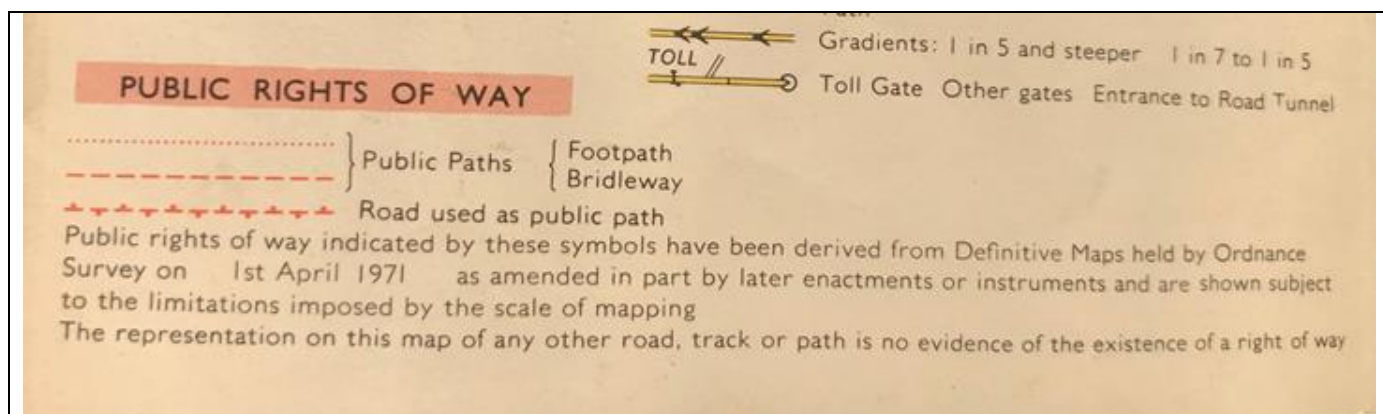
Observations		The application route is not visible as a worn track between points A-B-C. East of point C a worn track can be seen consistent
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		<p>with the application route which looks like it gives access to a plantation immediately south of the route. The visible track appears to be consistent with low levels of vehicular use – most probably farm machinery – and continues through point D to point X and then north east to point G.</p> <p>The application route from point D to point E (along the field boundary) is not visible. A faint line can be seen from point D along the west side of the field boundary – consistent with the Historical route D-E.</p> <p>From point E-G-H and continuing through to the junction with Smithy Lane the application route is visible.</p>
Investigating Comments	Officer's	<p>It is not possible to determine from the aerial photograph whether the full length of the route was passable in the 1940s.</p> <p>The surface is not visible along the full length suggesting that use of much of its use by the 1940s may have greatly diminished or ceased except for use by farm vehicles between point C and point D and along the section from point E though to point G and onwards to Smithy Lane.</p> <p>The photograph provides no evidence of use of the application route between point D and point E.</p>
6 Inch OS Map Sheet 42SE	1955	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>

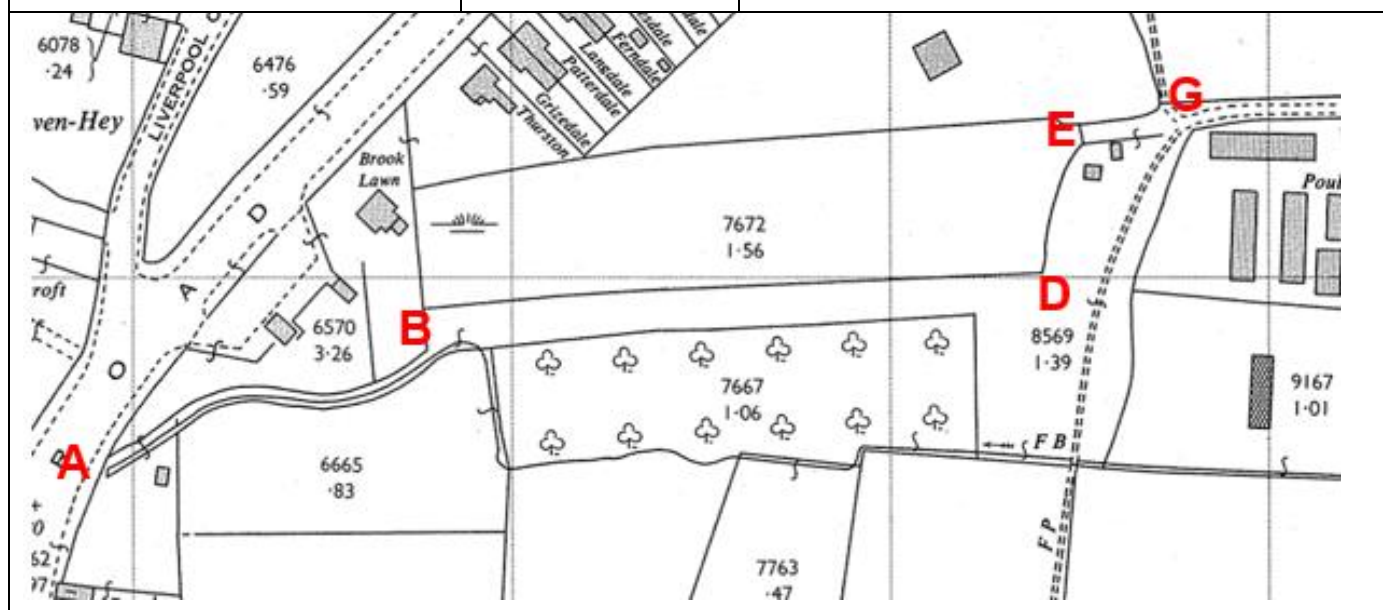


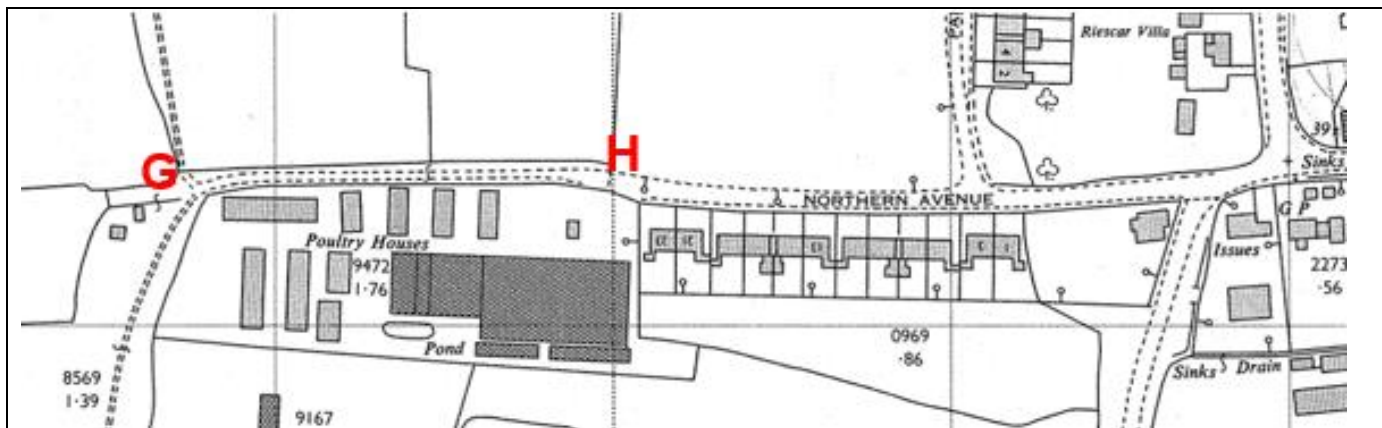
Observations		The application route is shown in the same way as it was depicted on the 1931 25 inch OS map from which this map derived.
Investigating Comments	Officer's	It appears that access along the full length of the application route (and Historical route D-E) may not have been possible – at least on horseback in the 1930s.
1 inch OS Sheet 94 - Preston	1961	One-inch to the mile, 7 th Series OS map published 1961.





Observations		The land crossed by the application route is not shown in detail due to the scale of the map. A series of red dots consistent with the location of the route indicate the existence of the route which, by the 1960s, had been recorded on the Definitive Map and Statement as a public footpath. The key to the map explains that routes denoted by red dots were Public Paths – in this case footpaths with the information provided having been derived from Definitive Maps.
Investigating Officer's Comments		No inference can be drawn with regards to whether the route was accessible on the ground or what higher (than footpath) public rights may have existed at that time.
1:2500 OS Map SD 4622-4722	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published 1964 as national grid series.

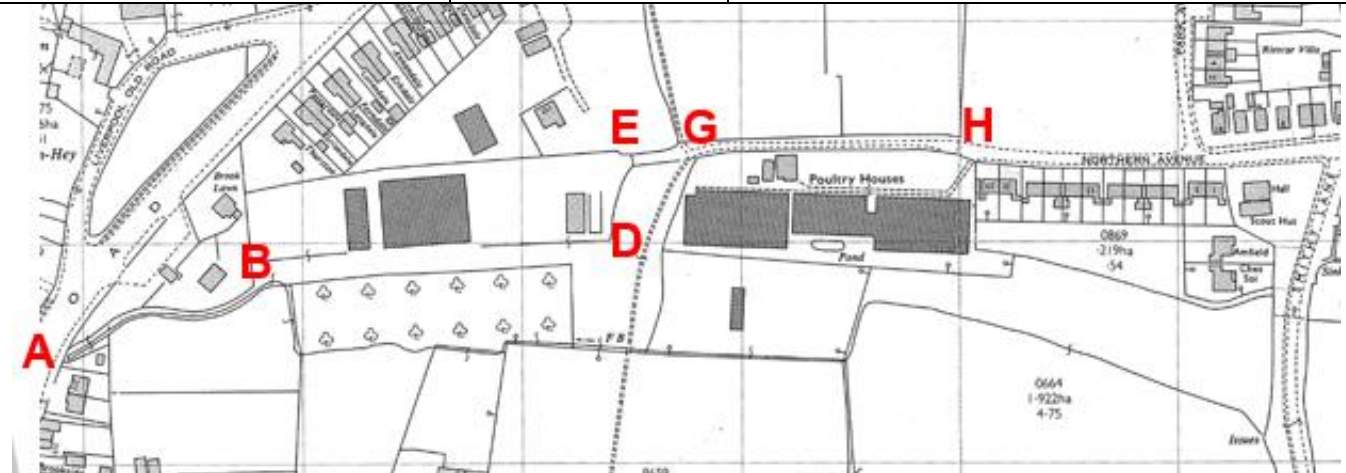




Observations		A fenced off strip containing the watercourse is shown between point A and point B and access appears unrestricted at point B continuing through to point D. FP 27 (and FP 28) is shown as a double dashed line annotated as footpath (F.P) indicating that a trodden track consistent with pedestrian use was visible on the ground. No such markings are present to indicate the application route from point A through to point D. Between point D and point E neither the application route (along the boundary) or Historical route (west of the boundary) are shown and a line is shown across the application route just east of point E. From point E-H-G the route is shown as part of a longer access road and east of point G the route is now named on the map as Northern Avenue.
Investigating Officer's Comments		It appears that access along the full length of the application may have been possible depending on whether access was available through the fence line at E but no 'trodden' route was shown on the map between point A and point E suggesting that any use of the route was quite low in numbers along this section.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



<p>Observations</p>		<p>The 1960s aerial photograph is useful in relation to considering what was shown on the OS map published at that time. The route is not visible between point A and point B although the line it takes can be identified by the hedge-line. Between point B and point D a strip of land is visible which appears to be accessible and traces of a trodden track can be seen along it which increases in clarity as you approach point D – possibly indicating some vehicular use to access adjacent fields. From point D a track can be seen consistent with the application route on the east side of the fence-line but</p>
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		it looks like the route taken then veered off the application route to point G. From point G to point H the application route can be clearly seen. The historical route between point D and point E does not appear to exist.
Investigating Comments	Officer's	No inference can be made with regards to the existence of public rights but the aerial photograph suggests that a route may have existed in the 1960s consistent with the fact that it was recorded as a public footpath at that time but that it received little use between point A and point D. Beyond point G the route showed up on the photograph consistent with the fact that it appeared to be used as access to the adjacent poultry farm and fields.
1:2500 OS Map SD 4622-4722	1978	Further edition of 25 inch map reconstituted from former county series and revised in 1977 and published 1978 as national grid series.
		
Observations		The land crossed by the application route appears not to have altered from the earlier edition of the OS map published in the 1960s.
Investigating Comments	Officer's	It appears that access along the full length of the application may have been possible depending on whether access was available through the fence line at E but no 'trodden' route was shown on the map between point A and point E suggesting that any use of the route was quite low in numbers along this section.
Google Earth Pro	2007-2009	Aerial photographs available to view on Google Earth Pro.



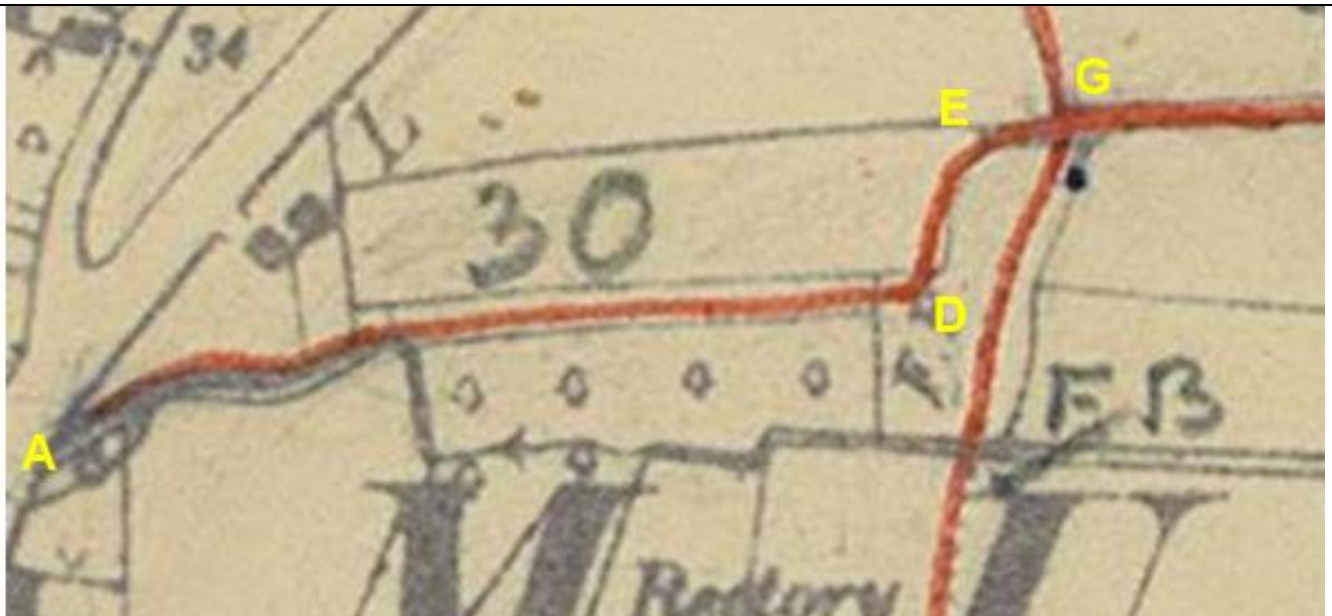
2007



2009

Observations		<p>The images obtained from Google Earth show that in 2007 a route consistent with pedestrian use was visible between point B and point D and a slightly more prominent line visible between points D-X-G.</p> <p>In 2009 a very prominent route is shown indicating that the route had been surfaced – consistent with the modern day site evidence of a stone surfaced pathway (now partially overgrown). The surfacing work appears to have been carried out recently and the line of the path is consistent with the trodden track which was visible in 2007 between points D-X-G.</p>
Investigating Comments	Officer's	<p>No inference can be made with regards to the existence of public rights but the aerial photograph suggests that a route may have</p>

		<p>existed in 2007 which was consistent with the fact that it was recorded as a public footpath at that time but that the trodden route from point D carried was to point X and point G rather than along either the application route or historical route.</p> <p>The photograph taken in 2009 shows that work had been carried out to surface the route consistent with how a route recorded as a footpath would be surfaced. Of note was the fact that the surfacing followed the trodden track which was visible on the ground in 2007 from point D through point X to point G rather than the application route (definitive footpath) or historical route – suggesting that neither was in use as part of the pedestrian route in 2009.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



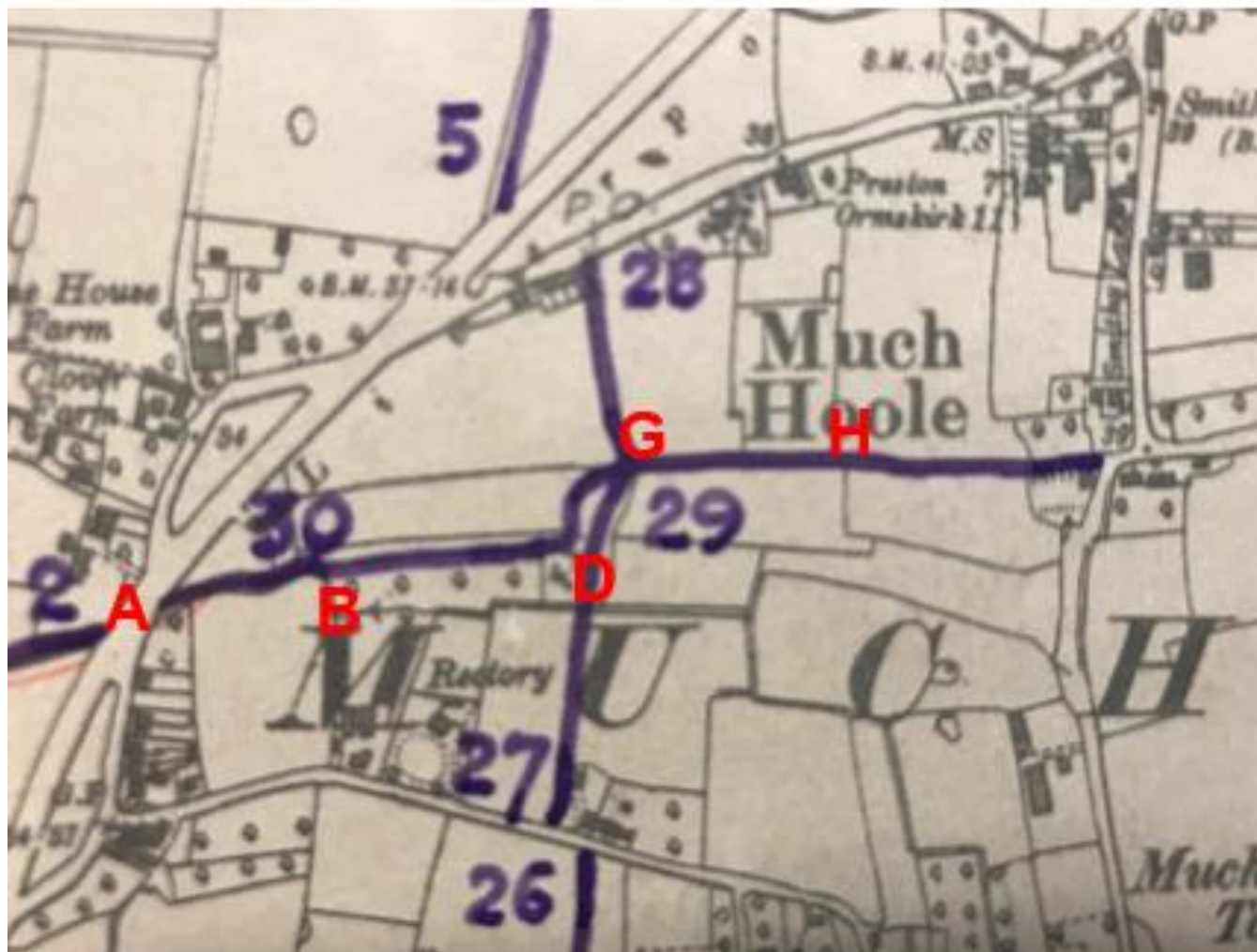
DISTRICT	<i>Preston Rural District</i>	PARISH	<i>Mack Hoole</i>	No.	<i>30</i>
MAP SHEET No.	<i>2</i>	LENGTH	miles		
BRIEF DESCRIPTION (Field F.P. or otherwise)		(to two decimal places)			
<i>Field F.P.</i>		<i>7 F.P.</i>			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>Northern to Lth Rd.</i>					
<i>S.P. Behind cabin belonging to J Ball</i>					
<i>Overgrown Bad condition Existence of right of</i>					
<i>way denied by J Ball</i>					
<i>Shows - more across footpath</i>					
SURVEYED BY :-		Name <i>M K Pendlebury</i>			
		Address <i>Mack Hoole C E School</i>			
Date		<i>5 9 50</i>			

0000/F39/4/50

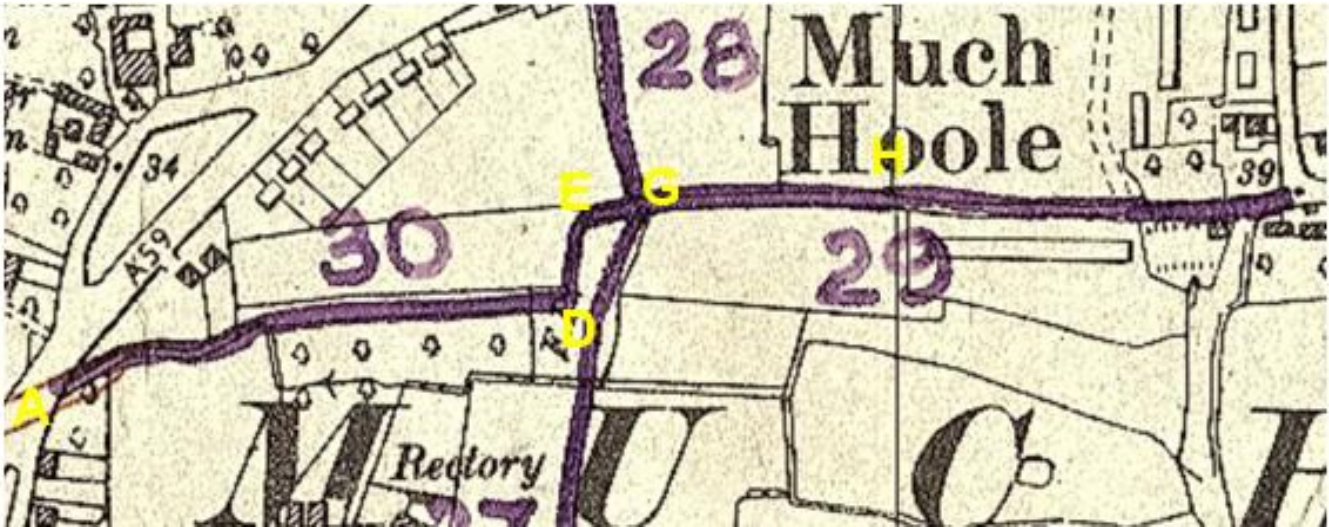
DISTRICT <i>Preston Rural District</i>	PARISH <i>Much Hoole</i>	No. <i>29</i>
MAP SHEET No. <i>2</i>	LENGTH	miles
BRIEF DESCRIPTION (Field F.P. or otherwise)	(to two decimal places)	
<i>Unmade road</i>	<i>? F.P.</i>	
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<i>junction of 30 28 27 & 29</i>		
<i>Road for Council Houses Very bad condition</i>		
<i>- large pools of water</i>		
<i>boundary Road?</i>		
SURVEYED BY :—	Name <i>Ira Barker</i>	
	Address <i>Much Hoole</i>	
Date <i>9 50</i>	<i>Much Hoole N. Preston</i>	
<small>50000/F39/4/50</small>		

Observations		<p>The application route was recorded as a public footpath on the Parish Survey Map. Between point A and point B the line drawn appears to run to the north of the enclosed route containing the watercourse and between point D and point E the line drawn on the map corresponds more to the Historical route (west of the fence/hedge). The parish survey card for FP 30 describes the route as a footpath which was overgrown, little used and disputed by J Ball.</p> <p>From point G through to Smithy Lane the application route is included as part of FP 29 described as an unmade road providing access to council houses and was in bad condition. It was recorded as a footpath.</p>
Draft Map		<p>The parish survey map and cards for Much Hoole were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect</p>

		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.
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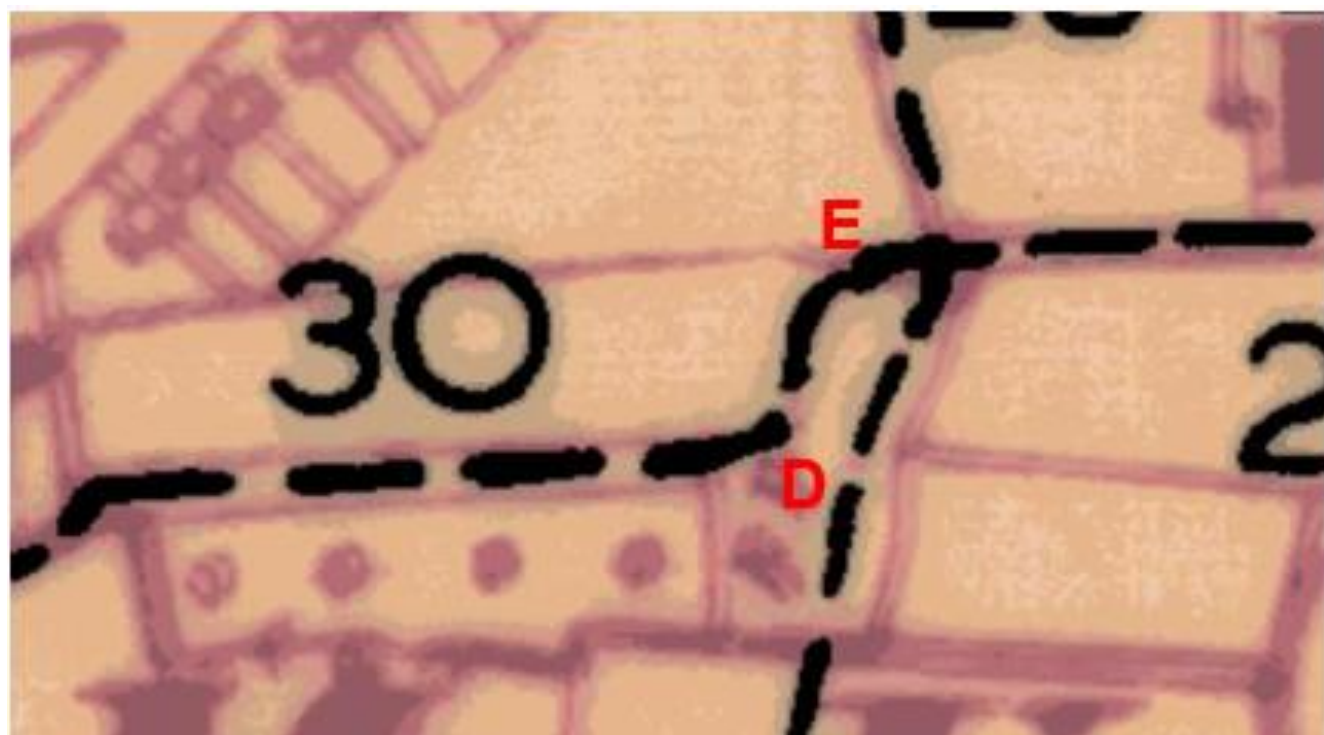
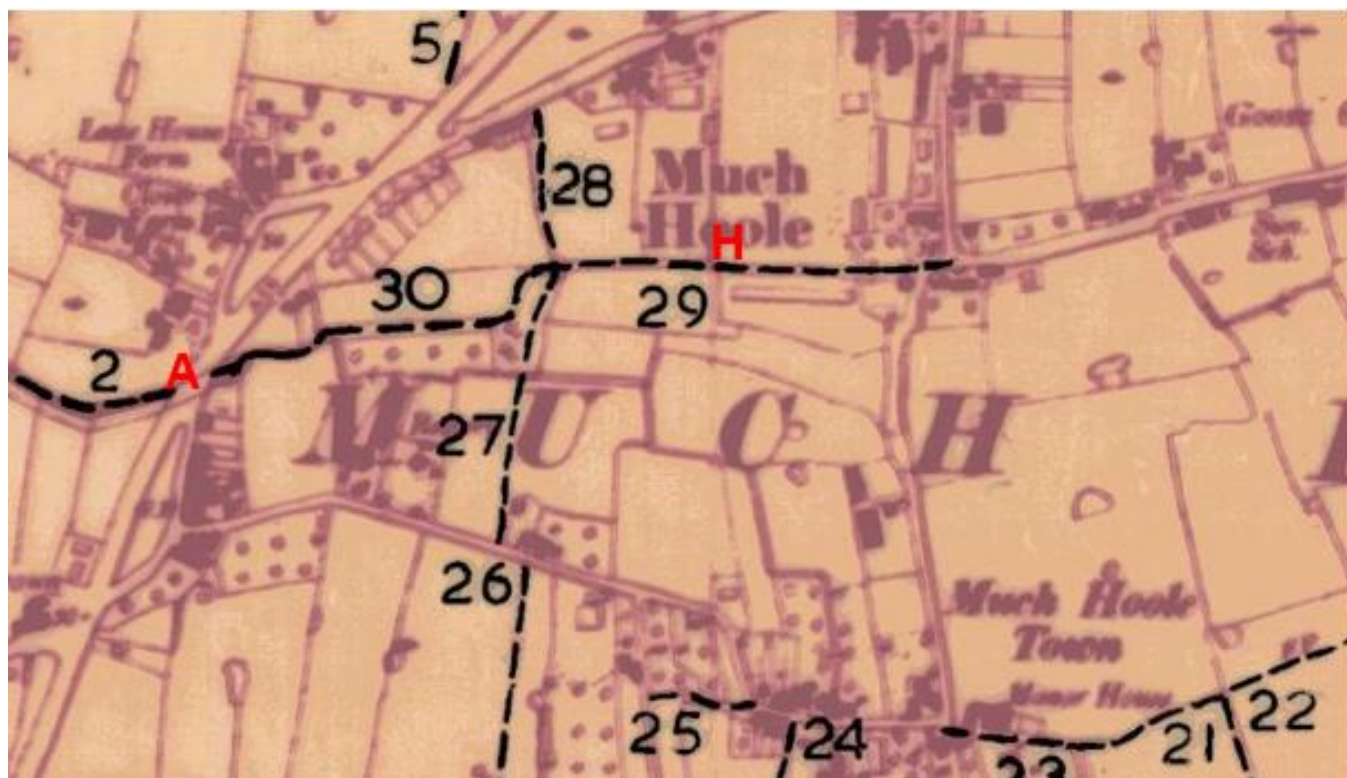


Observations		<p>The application route was recorded as Footpath 30 and part of Footpath 29 on the Draft Map. A thick purple pen was used to draw the route on a small scale (6 inch to 1 mile map). The route of Footpath 30 between point A and point B was shown along the bounded route which contained the watercourse. The route from point D through to point G was shown along the field boundary.</p> <p>No representations were made to the County Council about how either numbered footpath was shown.</p>
Provisional Map		Once all representations relating to the publication of the draft map were resolved,

		<p>the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
		
Observations		<p>The application route was recorded as a public footpath on the Provisional Map. Again, the use of a thick purple pen makes it difficult to determine the alignment of the route between point D and point E.</p> <p>There were no representations made regarding how the application route was recorded.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Observations		The application route was recorded as a public footpath. The scale of the map and thick purple pen used to prepare the hand drawn map means that it is not possible to be certain which side of the fence line the route was recorded to go between point D and point E.
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.



<p>Observations</p>		<p>The application route is recorded as a public footpath. Between point D and point E the Investigating Officer considers that the hand drawn line denoting the route of the footpath is astride the fence line (the digitised map of public rights of way shows it to the east – it is not known why).</p>
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		At the time that the Definitive Map and Statement of Public Rights of Way was prepared, that part of the route of FP 29 now recorded as a public vehicular highway named as Northern Avenue had not been adopted by the County Council – hence it's inclusion on the Definitive Map.
Investigating Comments	Officer's	<p>From 1953 through to 1975 there is no indication that the application route was considered to be anything other than a public footpath. There were no objections or representations made with regard to what was shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>At each stage of the Definitive Map process section D-E is shown on the field boundary with no clear indication whether the intention was to show it on the west or east.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Handover Map





Observations		The first 20 metres of the application route, west of point A, now crosses land that is part of the publicly maintainable Liverpool Road. From A to point H the application route is not recorded as a publicly maintainable highway on the county council's highway records.	
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 Orders	Stopping Up	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.	

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

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

The Natural Environment and Rural Communities Act 2006

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

that the evidence shows that, on the balance of probability, public carriageway rights subsist or it is reasonably alleged that they subsist, along the application route via the Historical route D-E it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route was, at the time of the Act was recorded as a public footpath with the exception of the Historical route D-E which was not recorded and neither the application or Historical route were on the List of Streets (maintained at public expenses) and we have no evidence that either was used mainly by the public with MPVs at that time. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights for non-mechanically propelled vehicles, horses or on foot.

Summary

This investigation has been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

In this particular case the application was for the route recorded as Footpath 30 and part of Footpath 29 to be upgraded to bridleway.

It is finely balanced but there appears to have been a public carriageway established by the mid-19th Century as evidenced by the Tithe Award and supported by Hennet and the Ordnance Survey maps (First Edition 6" and 1" Cassini reproduction). Over the next 100 years the use and availability of the route reduced - the stream encroaching between A-B, which may or may not have prevented use of part of the width, the Historical route between D-E being incorporated into the field which means that it may or may not have been available, and gates (or possibly fences) being erected at points along the route. Modern use is only possible on foot and more recently the infrastructure has been improved but the used route between D-G is not on either the Historical route or the application route.

The First Edition 25 inch map – surveyed in 1892 – provides the most precise detail from which it can be seen that the route depicted on the early mapping detailed above (as a bounded route) varied from the application route between point D and point E, the historical route lying to the west of the boundary and the Definitive Map route being on the boundary.

By the early 1900s – as evidenced by the Second Edition 25 inch OS map – the bounded track between point D and point E no longer existed and a number of fences appear to have been erected across the route suggesting that it may no longer have been accessible along the full length to vehicles or on horseback. The Finance Act 1910 evidence is incomplete and inconsistent and only supports E-H being carriageway or bridleway.

Map and documentary evidence from the early 1900s onwards is not strong in support of the assertion that the route applied for was or could be used by the public as a bridleway and there is no modern user evidence in support of the application supporting the dedication of bridleway rights.

We therefore conclude that the carriageway rights were established by mid-19th Century and subsequent falling out of use has not removed these. However the effects of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles. The correct status would therefore be restricted byway following the Historical route not the application route between D-E. There is no evidence for supporting higher rights on the application route between D-E.

Head of Service – Legal and Democratic Services Observations

Landownership

From its western end to point B the application route crosses land owned by Jones Homes (Lancashire) Limited. From point B to point E the route crosses land owned by Isherwood Developments Limited. From point E to point H the route crosses land where there is a caution registered under title LAN139664 but the ownership remains unknown. Notices have been posted and no owner has come forward.

If a decision is made to make an Order to record a highway along the historical line the owners of that section will be informed and should they have any relevant information causing officers concern that the decision is flawed the information will be brought to the attention of the committee before an Order is made. They are already aware of the application.

Information from the Applicant

The applicant submitted the following map and documentary evidence in support of their application:

- Hennet's Map of Lancashire 1829
- 6 inch OS map published 1848
- 1 inch OS map published 1896
- 25 inch OS map published in 1893, 1911 and 1931
- 1 inch OS map published 1961
- Finance Act Map 1910
- Tithe Map and Award 1841
- Modern digital mapping showing the recorded route of 7-8-FP30 and 7-8-FP29
- Photographs of the route taken April/May 2020

Information from Others

Atkins Global, Cadent Gas and Virgin Media responded to consultations stating they had no objections.

Information from the Landowners

One of the landowners responded to consultation to raise an objection, they questioned the line of the application route not following the existing route on the ground, noting that the line of the application route in part runs through an area of well established trees which block use of this line.

They went on to note that part of the application route is only 1.1 metres wide, being bounded by a high fence on one side and a steep descent to a brook on the other.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Mapping evidence of a route in existence
Tithe Map evidence

Against Making an Order in respect of Pre-1890s vehicular route
Evidence is limited

Against Making an Order in respect of a dedication of vehicular or bridleway after 1890
Changes to the route.
Inconsistent Finance Act information.

Conclusion

Committee is asked to consider whether there is sufficient evidence from which to infer that a dedication must have happened many many decades ago for the route to be shown on various documents in the way that it was and consider what status the highway was .

Common Law inference is drawn from all the circumstances including documentary evidence.

From the report Committee can see that there is good but limited evidence of this being a pre-1890 vehicular highway which then lost width and boundaries, appears gated and began to be inconsistently recorded ending up recorded as a footpath apart for one short section where the footpath was recorded as being along a boundary instead of on the west side.

Unless stopped up by proper legal process a highway remains where it was dedicated even if no longer used. The rights still remain. The legal maxim is "Once a highway always a highway".

This is a finely balanced evaluation given the limited evidence pre-1890.

If Committee is content that there is sufficient evidence of an old vehicular highway between A and H the Natural Environment and Rural Communities Act 2006 will have extinguished modern mechanically propelled vehicular rights leaving the route to be appropriately recorded as a restricted byway.

If committee is content that there is sufficient evidence of an old pre-1890 vehicular highway A-H Committee is invited to consider that the line of that highway was along the historical line noted on the Committee Plan rather than the Definitive Map line of FP30 between points D-E.

It is suggested that on balance there is sufficient evidence for an Order to be made and promoted to confirmation in accordance with the recommendation.

Risk management

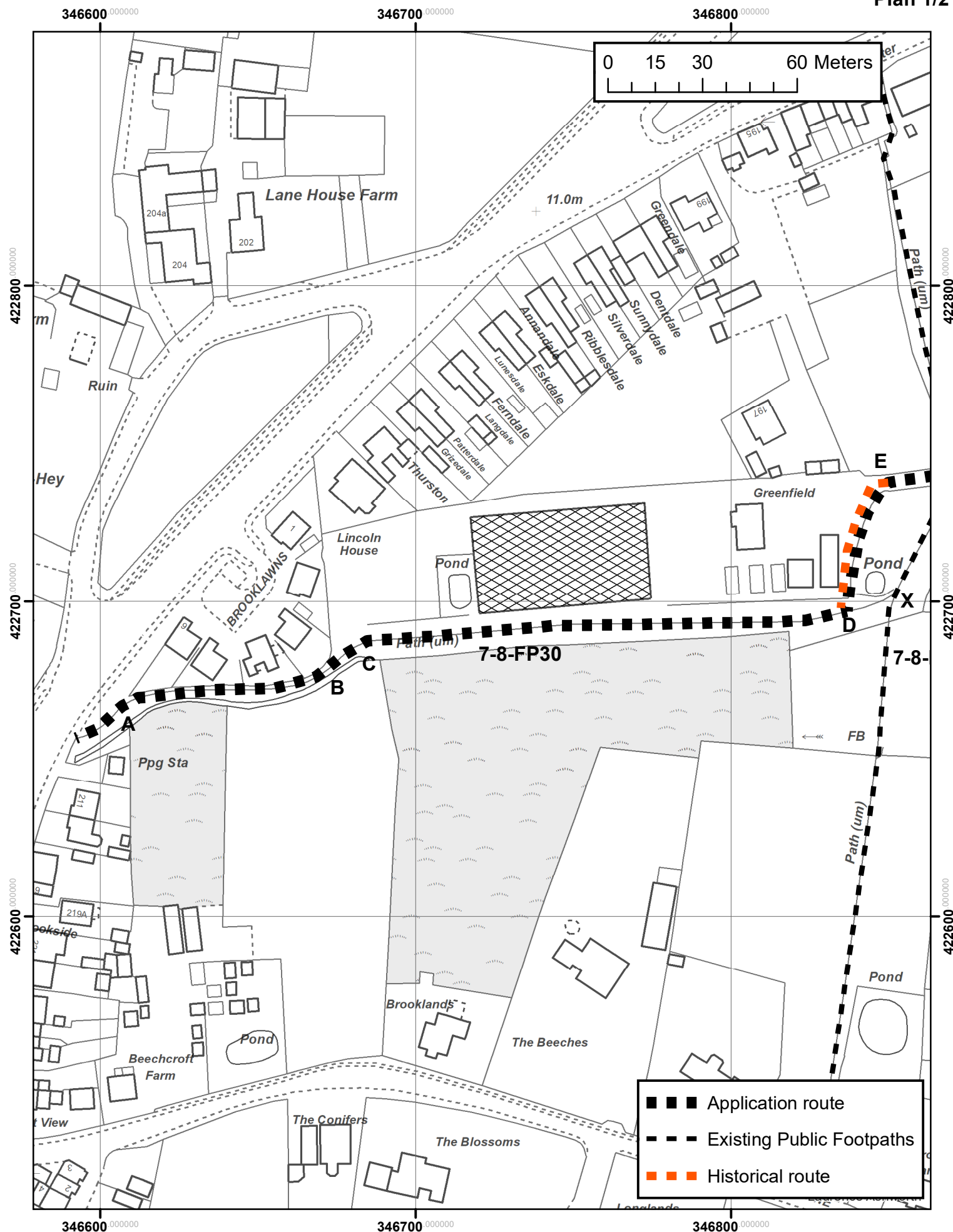
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

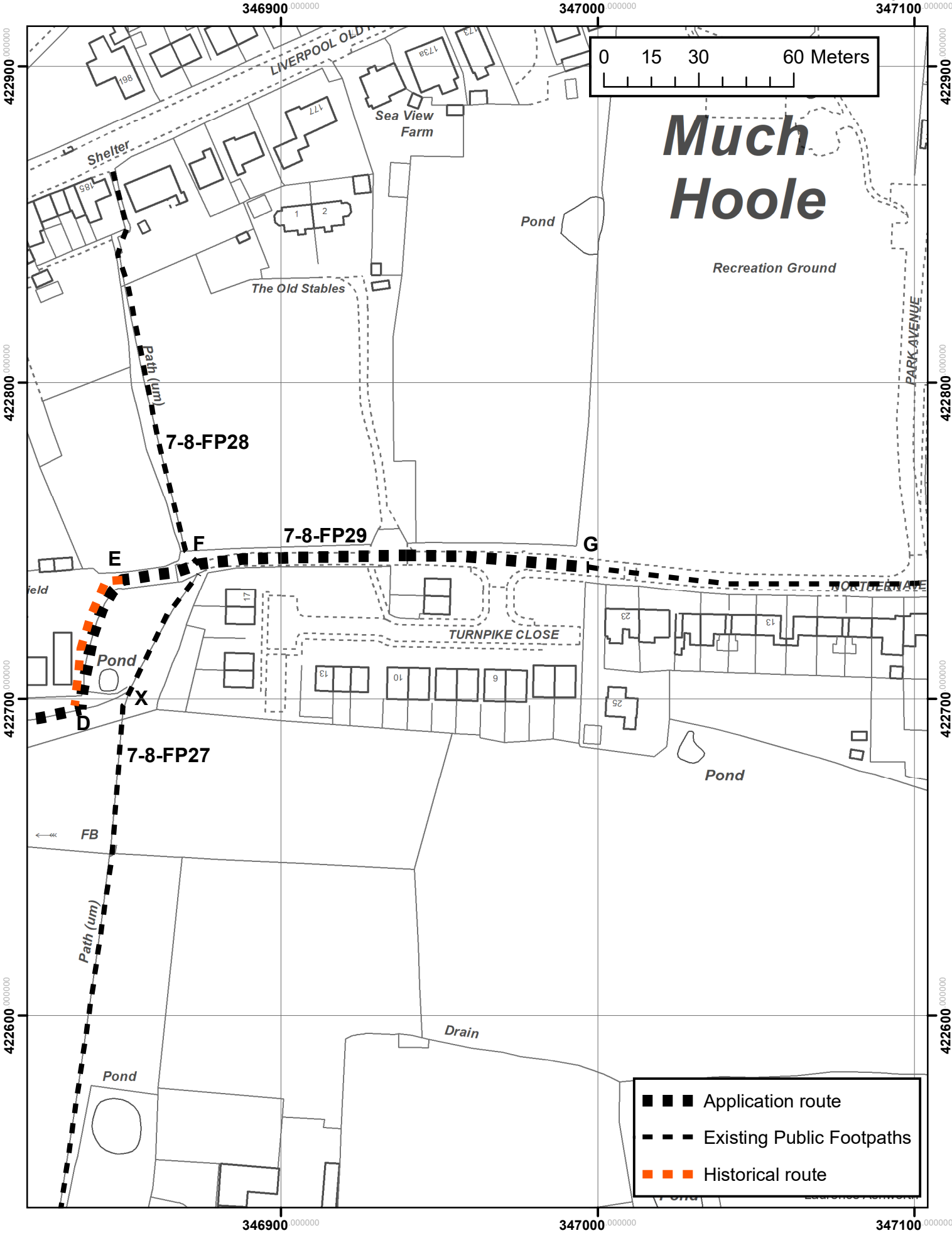
Local Government (Access to Information) Act 1985 List of Background Papers

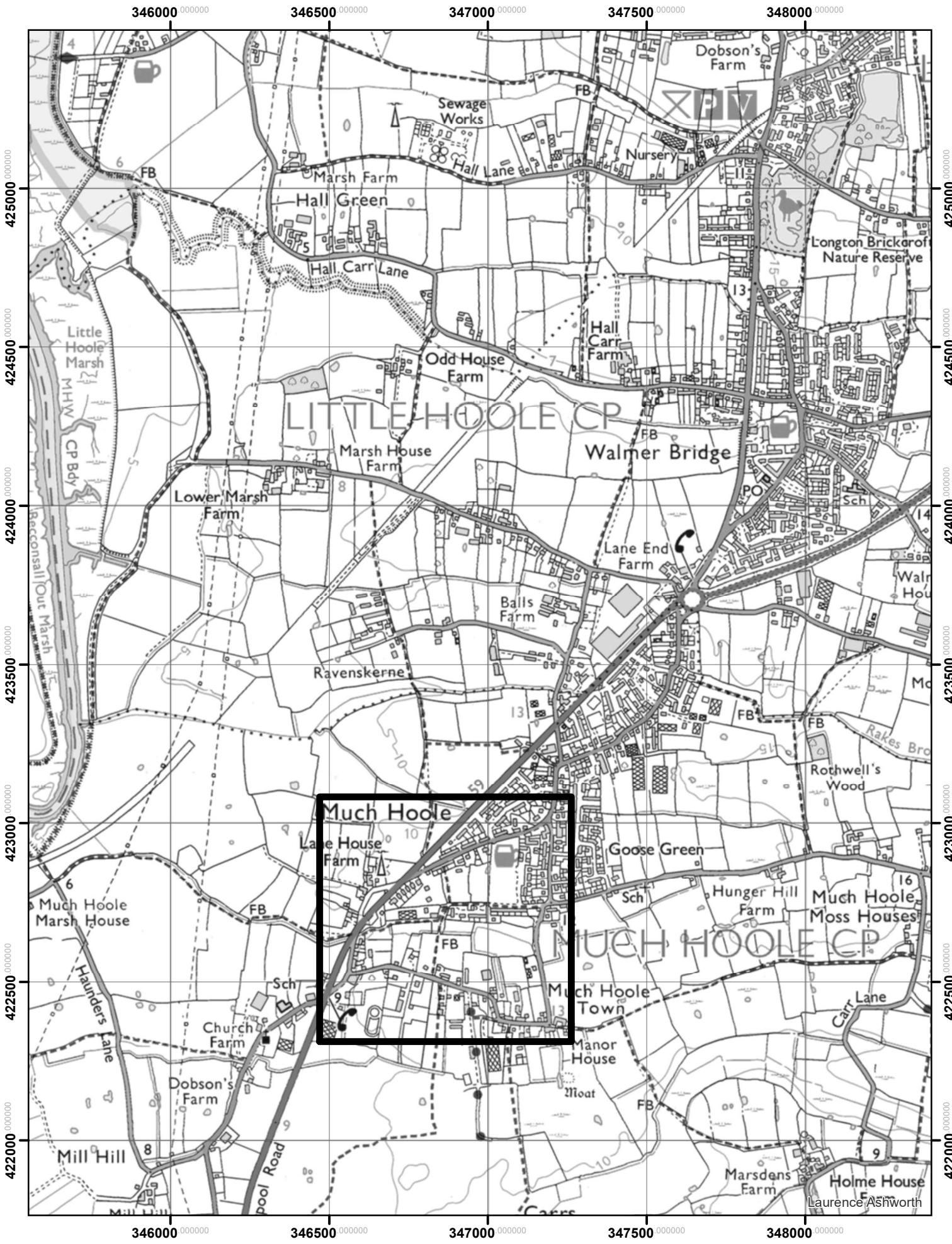
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-627		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A







Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
South Ribble West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Investigation into public rights from Mill Hill Farm to Haunders Lane, Much Hoole (Annex 'A' refers)

Contact for further information quoting the reference number 804-625:

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

Investigation into an application to upgrade a footpath and add a bridleway on the Definitive Map and Statement of Public Rights of Way from Mill Hill Farm to Hannings Farm, Haunders Lane, Much Hoole.

Recommendation

- (i) That the application for the addition of a bridleway and upgrading of part of Footpath 7-8-FP3 be accepted with modification to recognise carriageway rights.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b)) and Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade a footpath to restricted byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order(s) be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record a bridleway from Mill Hill Farm off Haunders Lane, Much Hoole, through Marsh Farm to Hannings Farm.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 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

South Ribble Borough Council

South Ribble Borough Council was consulted but no response was received.

Much Hoole Parish Council

Much Hoole Parish Council was consulted but no response was received.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4556 2215	Open junction with U3142, known as Mill Hill Farm
B	4554 2226	Point at which Footpath 7-8-FP3 joins the track
C	4549 2241	Track peters out (C-D has been ploughed)
D	4553 2242	Track becomes discernible as field edge strip (D-E)
E	4547 2254	Application route crosses a culvert
F	4540 2258	Bend in route as it passes Marsh Farm
G	4550 2274	Unmarked point at which 7-8-FP3 terminates at junction with Haunders Lane (U1314) adjacent to Hannings Farm

Description of Route

A site inspection was carried out in April 2021.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form 7-8-FP3 or Footpath Much Hoole 3 but below it is referenced in the abbreviated form 'Footpath 3' since the only recorded public right of way referred to is Footpath Much Hoole 3.

The application route commences at the northern end of the unclassified county road (UCR) referenced U3142, known as Mill Hill Farm at point A on the committee plan adjacent to a field boundary/ditch to the west.

The U3142 leading to point A is an unsurfaced compacted earth track used predominantly by farm machinery to access adjacent fields. At point A there is no discernible difference between the U3142 and the start of the application route.

Beyond point A the application route continues as a substantial track through to point B where Footpath 3 joins the track from the east. Signs indicating the presence of ground nesting birds and the requirement to keep to marked footpaths were located at this point.


Beyond point B the route continues as a substantial farm track through to point C where the track ends and the route continues around a ninety degree bend along the edge of a recently ploughed and harrowed field in an easterly direction for approximately 40 metres to point D where the route then turns ninety degrees again to continue in a north north westerly direction along the field edge through point E and continues as a 3-3.5 metre wide grass track between farm buildings to Marsh Farm (point F). From point F the route continues along a compacted earth/stone

surfaced track through to Hannings Farm where (point G) the application route ends at the unmarked junction with the road recorded as U1314 Haunders Lane.

The total length of the route is 810 metres.

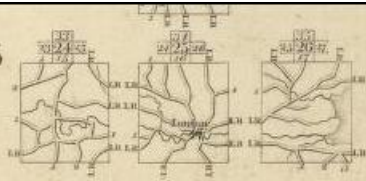
Map and Documentary Evidence

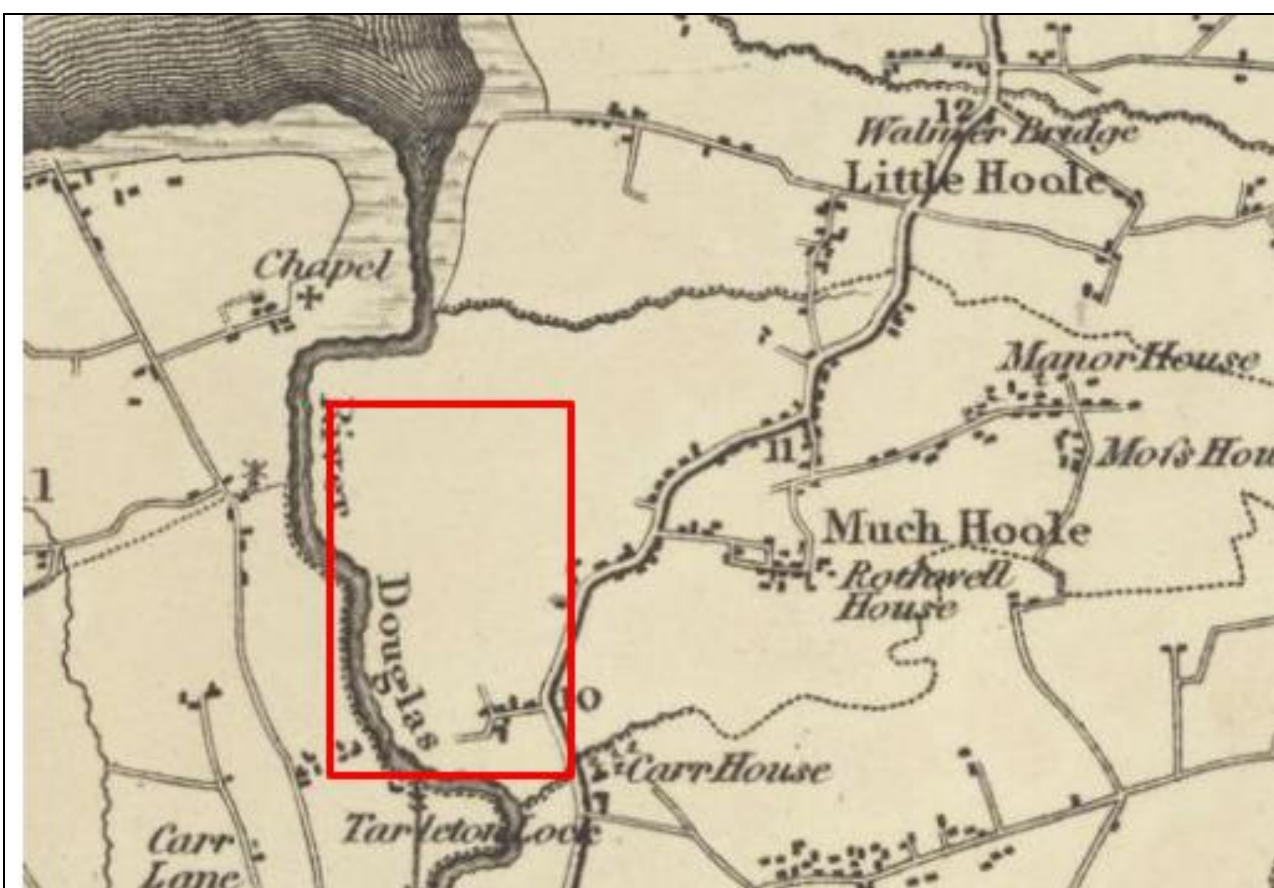
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.




Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was

		not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



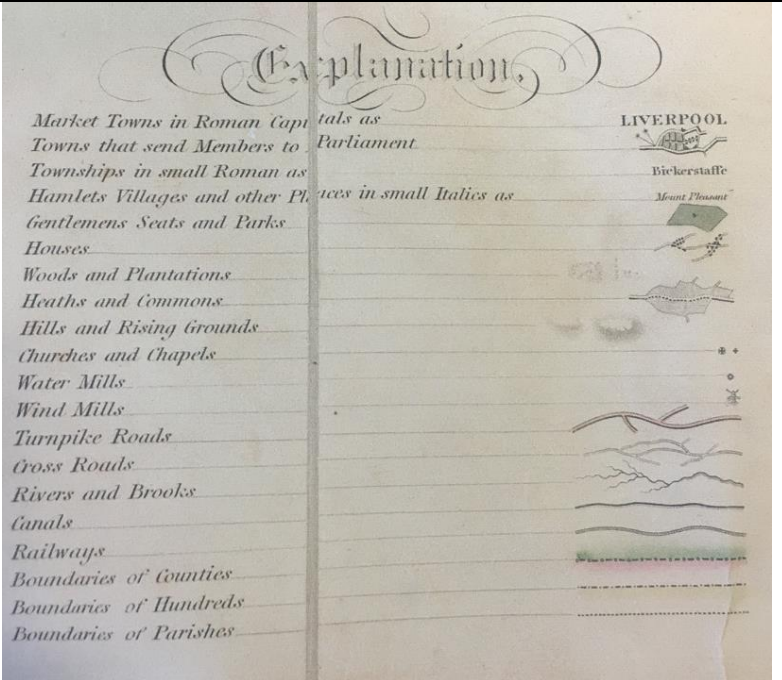
<p><i>The middle figure denotes the number of the plate, and the figures at the top and bottom, explain its connection North and South, and those at the sides, East and West.</i></p>  <p><i>Turnpike Roads, thro' enclosed countries</i></p> <p><i>D.^o thro' unenclosed d.^o</i></p> <p><i>Bye Roads are marked by closer lines, as</i></p> <p><i>N. The turnpike Roads to and from London, are distinguished by the letters L.R, which will be a sufficient guide for uniting those Roads, and the junctions of all the other turnpike Roads are shown by figures of reference.</i></p> <p><i>Churches and Chavels</i></p>			
Observations			The application route is not shown.
Investigating Officer's Comments			The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Greenwood's Map of Lancashire	1818		Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



<p> <i>Turnpike Roads</i> _____  <i>Cross Roads</i> _____  <i>Towns & other Places</i> _____ <i>that send Members to Parliament</i> } _____  <i>Boundaries of Counties</i> _____ </p>		
Observations		The start of the U3142 appears to be shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist as a through route at the time or if it did exist, was not considered to be a substantial public vehicular route by Greenwood.
Hennet's Map of Lancashire	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his

		mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
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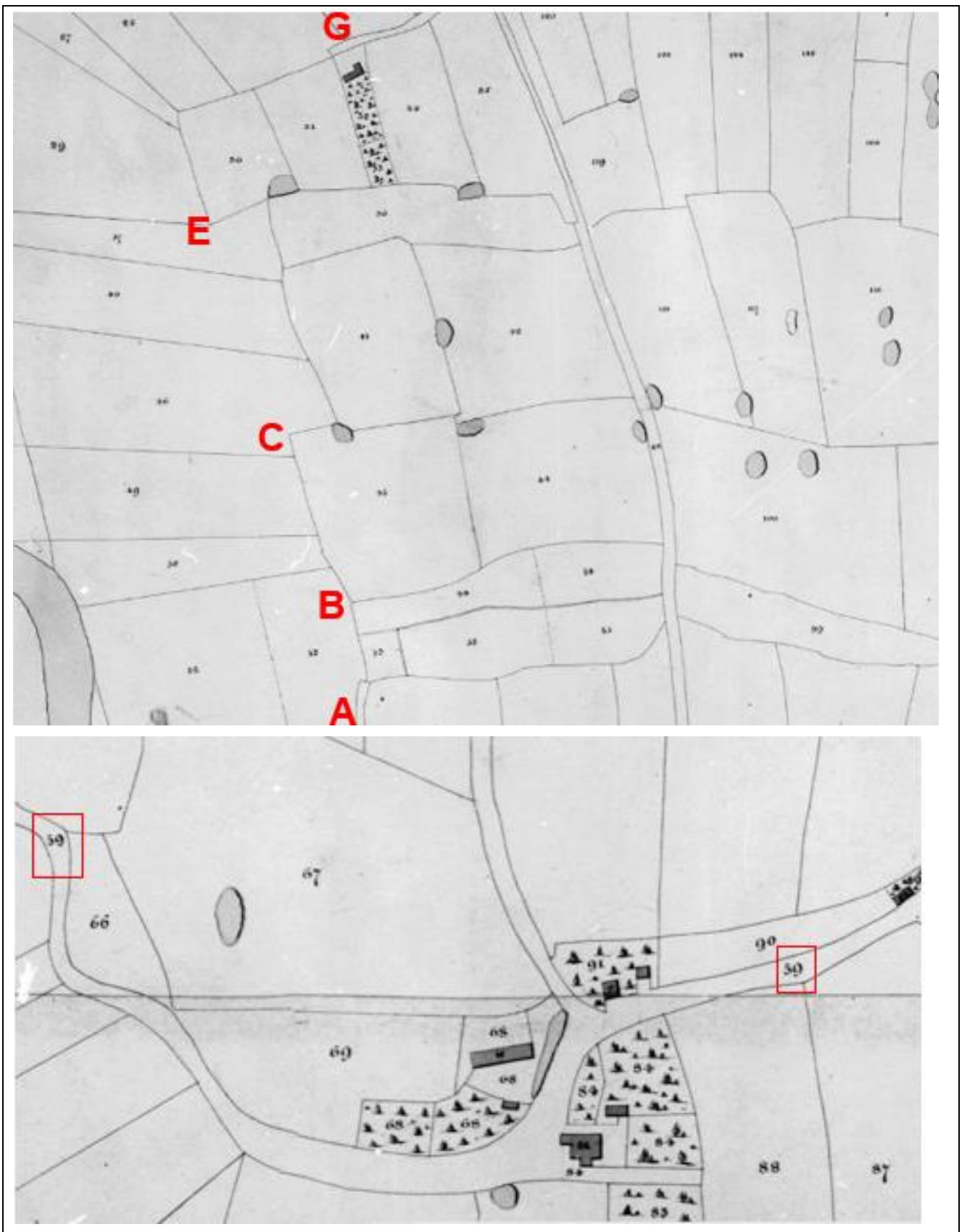


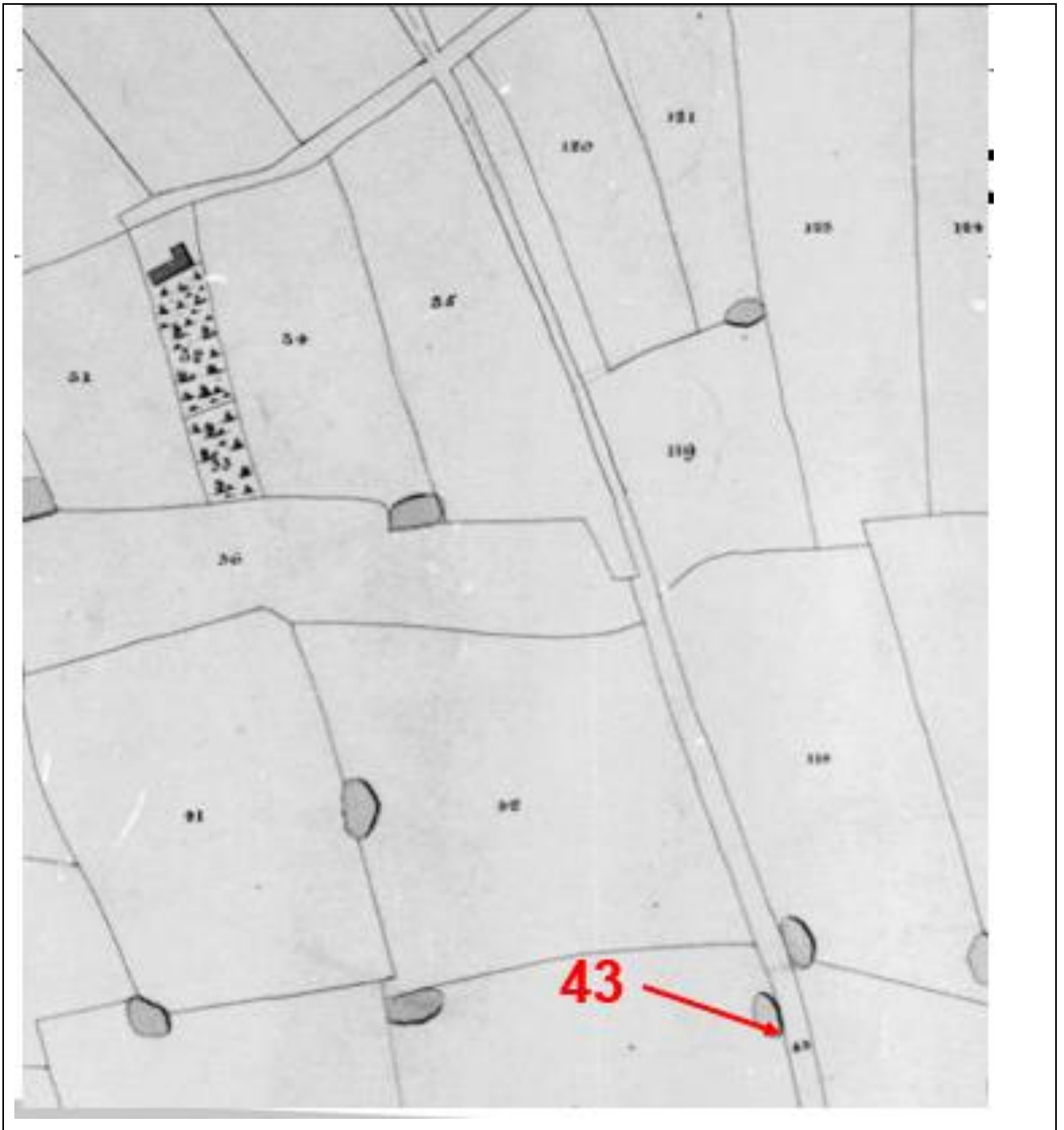
	 <p><i>Market Towns in Roman Capitals as</i> <i>Towns that send Members to Parliament</i> <i>Townships in small Roman as</i> <i>Hamlets Villages and other Places in small Italics as</i> <i>Gentlemens Seats and Parks</i> <i>Houses</i> <i>Woods and Plantations</i> <i>Heaths and Commons</i> <i>Hills and Rising Grounds</i> <i>Churches and Chapels</i> <i>Water Mills</i> <i>Wind Mills</i> <i>Turnpike Roads</i> <i>Cross Roads</i> <i>Rivers and Brooks</i> <i>Canals</i> <i>Railways</i> <i>Boundaries of Counties</i> <i>Boundaries of Hundreds</i> <i>Boundaries of Parishes</i></p> <p>LIVERPOOL Bickerstaffe Mount Pleasant</p>	
Observations		<p>The area crossed by the application route was partially on the fold of the map but despite this a route can be clearly seen leaving Haunders Lane consistent with the U3142 through to the approximate position of point A. From there through to the approximate position of point G the application route is not shown although Haunders Lane is shown. The word 'Douglas' was written on the map over the area through which the application route would have run.</p>
Investigating Officer's Comments		<p>The routes connecting to the application route at point A and point G are both shown on the map as cross roads and existed in 1830. It is not fully known what is meant by this term but as the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and</i></p>

		<p><i>turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>The application route is not shown on the map which may have been that it did not exist or that if it did exist it was not considered to be part of a public vehicular through route however this could have been because of the labelling of the River Douglas at this point.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1841	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be</p>

inferred.







Waste	Waste	727	Waste land	Uncultivated	17	1	23			
		123	Road		2		24			
		59	"		2	1	7			
		66	"		10	2	33			
		152	"		2	1	25			
		153	"		2		30			
		222	"		1		33			
		351	"			1	8			
		376	"				12			
		379	"			3	17			
		378	"		1	3	13			
		383	"		9		21			
		399	"		2		17			
		471	"		3	1	28			
		533	"		1		36			
		697	"		1	1	27			
		752	"			2	31			
		714	"		1	1	4			
					17	2	36			

Observations

The U3142 from Haunders Lane is shown as a bounded route passing through point A to part way between point A and point B and is numbered as plot 59 on the Map. The Tithe Award lists plot 59 as 'Road' for which no land owner or occupier is listed and no tithes are payable. Haunders Lane is also shown on the Tithe Map with the number 43 and is listed as 'Road' in the Tithe Award and appears to include that part of Haunders Lane which provides access to Hannings Farm and to the application route at point J.

Marsh Farm is not shown on the Tithe Map and the application route from part way between point A and point B through to just west of point G is not shown.

Both the U3142 and Haunders Lane are included in a list at the end of the Award of 'Roads'. The list comprises 17 routes which are labelled at the end of the Award as 'Road'. Looking more closely at the 17 routes listed, 12 of those routes are now recorded as vehicular highways for all or most, or in 1 case some, of their length, 2 routes (including the application route) are subject to applications to be upgraded, 1 is recorded as

		footpath and 2 have no recorded public status and of which there is no physical trace.
Investigating Officer's Comments		<p>The application route from point A through to midway between point A and point B existed in 1841 and was considered to be part of the public vehicular highway network at that time.</p> <p>The remainder of the application route did not exist as an enclosed way in 1841.</p>
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Cassini Historical Map Old Series Preston & Blackpool Sheet 102	1842-1852	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Old Series sheets used to create this map:

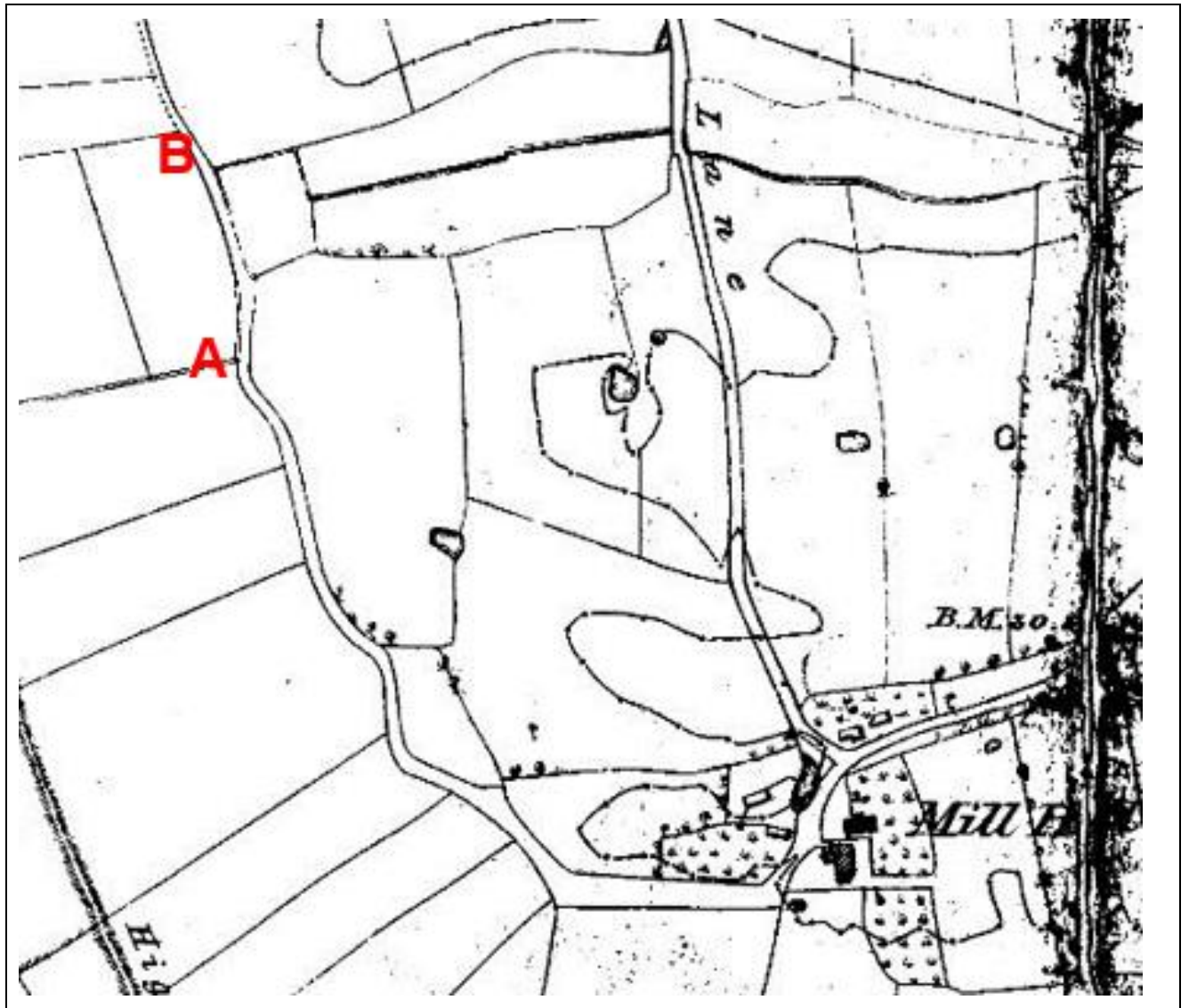
Sheet 89, N.E. Quarter, pub. 20th February 1843
 Sheet 89, N.W. Quarter, pub. 20th December 1842
 Sheet 90, N.E. Quarter, pub. 1st October 1842
 Sheet 91, N.E. Quarter, pub. 31st December 1852
 Sheet 91, N.W. Quarter, pub. 31st December 1852
 Sheet 91, S.E. Quarter, pub. 30th June 1852
 Sheet 91, S.W. Quarter, pub. 31st December 1847.

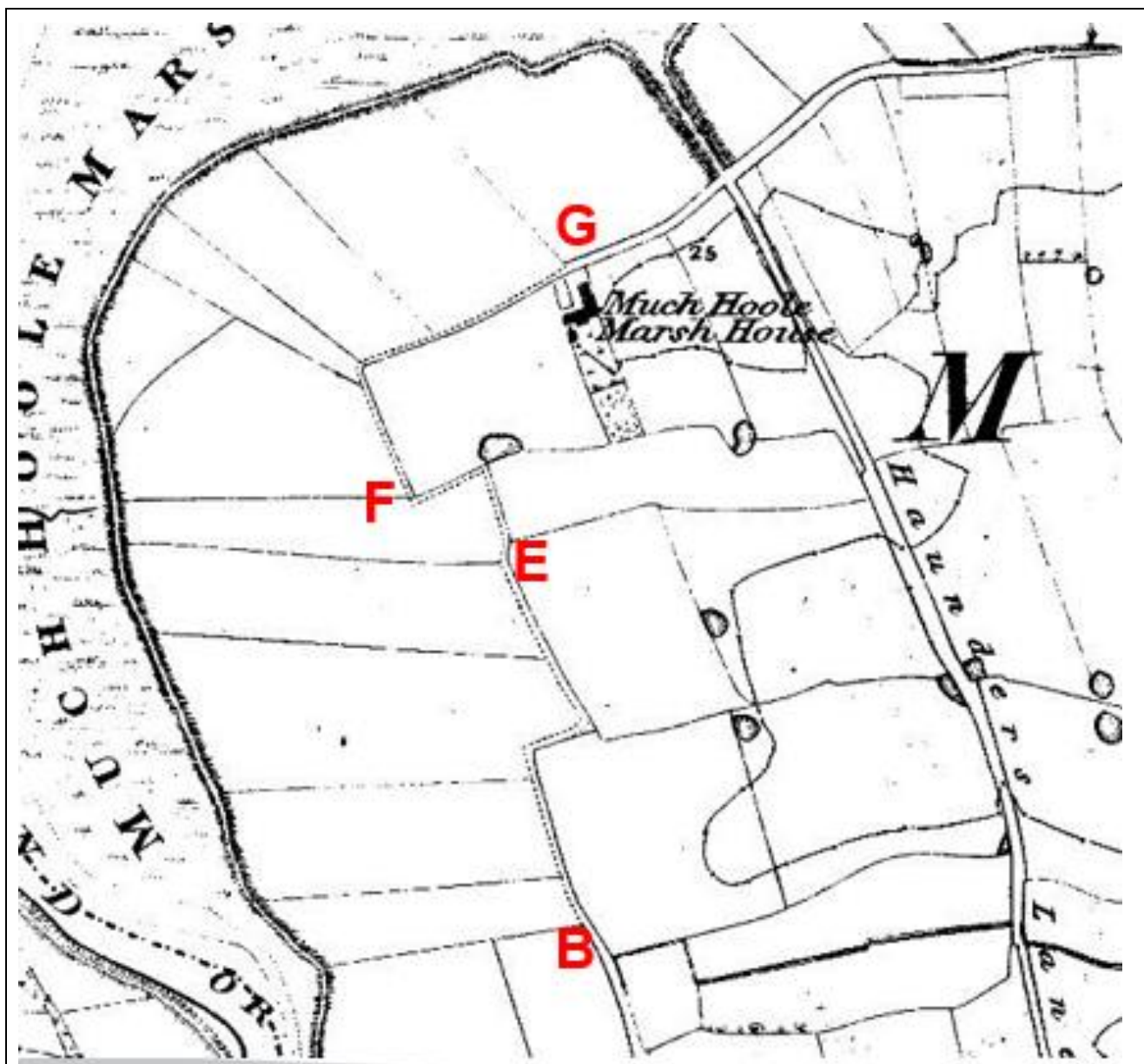
Observations

The full length of the application route is shown as part of a substantial

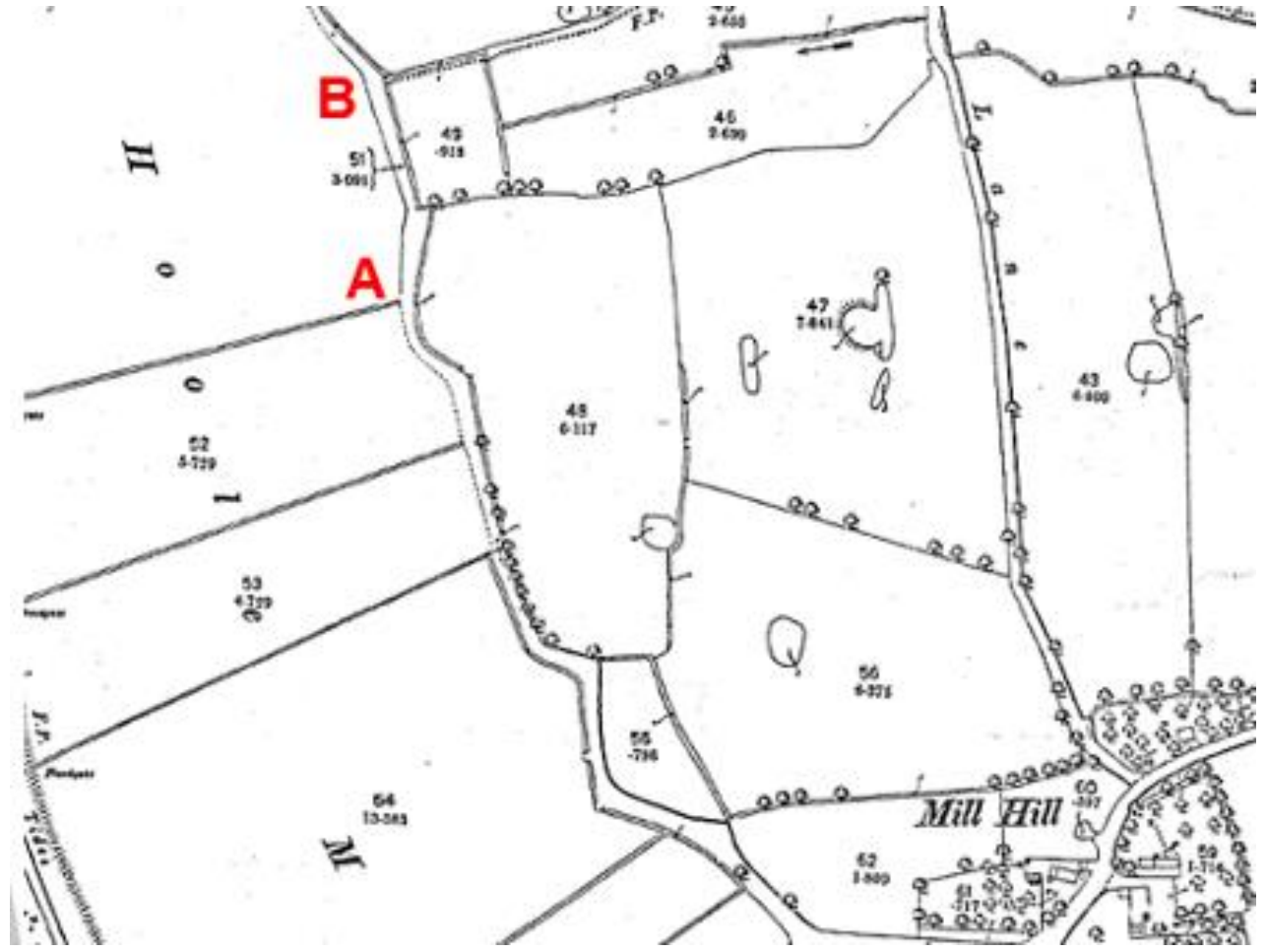
		bounded through route. Hannings Farm is labelled as Marsh House.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (first edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes. The inclusion of the route on those maps suggests that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public, private or military.
6 Inch Ordnance Survey (OS) Map Sheet 68	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

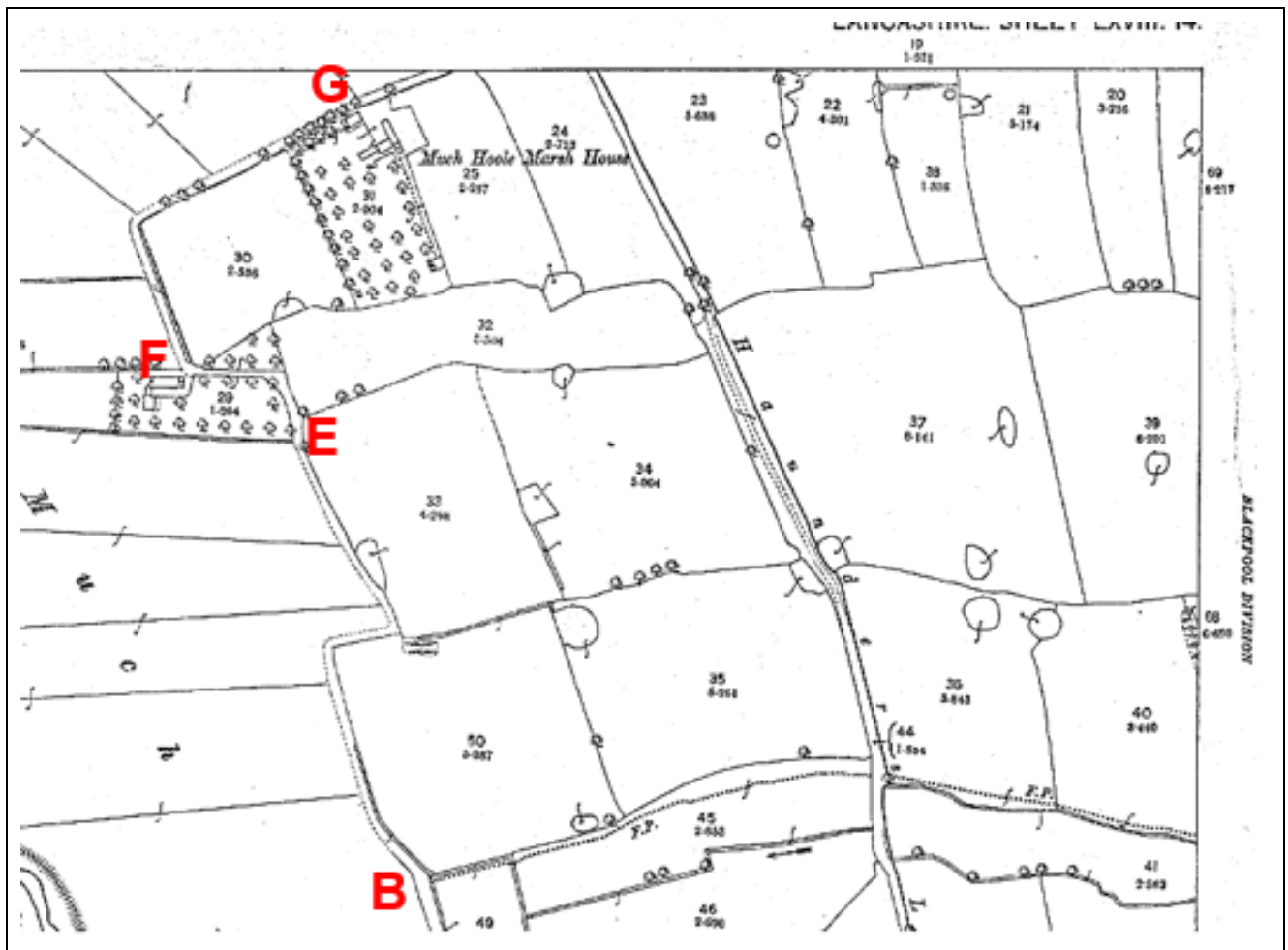
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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





Observations		<p>The full length of the application route is shown as part of a longer route. From point A to point B the route is shown largely bounded on both sides. Beyond point B through to point G the route is shown following the field edge bounded on one side and open to the fields it passes through on the other. Marsh Farm is not shown and Hannings Farm is shown and labelled as being Much Hoole Marsh House.</p>
Investigating Comments	Officer's	<p>The full length of the application route existed as a through route in 1844-45 and appeared to be capable of being used. The fact that it was a through route suggests it was for traffic</p>

		travelling from one farm to the next, not simply an occupation road.
25 Inch OS Map LXVIII.14	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-1892 and published in 1893.
		



Observations

The full length of the application route is shown largely unenclosed.

Between point E and point F the route is shown as an enclosed route through woodland and buildings are shown in the location of the modern day property known as Marsh Farm. Hannings Farm is shown labelled as Much Hoole Marsh House and from point F through to point G and then continuing along Haunders Lane the route is shown with a thickened line along the south and east side.

One parcel number is shown near point B – parcel number 51 acreage 3.091 relates to the full length of the application route and also to the U3142 south of point A and Haunders Lane extending east from Mill Hill Farm through to the edge of the map sheet and also to Haunders Lane east of point G through to the edge of

		the map sheet.
Investigating Comments	Officer's	<p>The full length of the application route existed in 1891-92 as a substantial through route which appeared to be capable of being used on horseback and with horse drawn vehicles at that time. It provided access to and past a number of properties located along it. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status. The fact that the route is given one parcel number which appears to extend beyond both 'ends' of the application route and along routes now recorded as public vehicular highways does suggest however that the route was seen as a through route and not as piecemeal sections. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The application route is shown with a thickened line from point F to point G. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that part of the route is shown in this way is consistent with how it was included on early small-scale OS maps and indicated that the route was probably capable of being used by the public with vehicles at that time. The fact that the middle section of the route was not shown with a thickened line may indicate that as a field edge track bounded largely on just one side that this section was perhaps less well maintained or that</p>

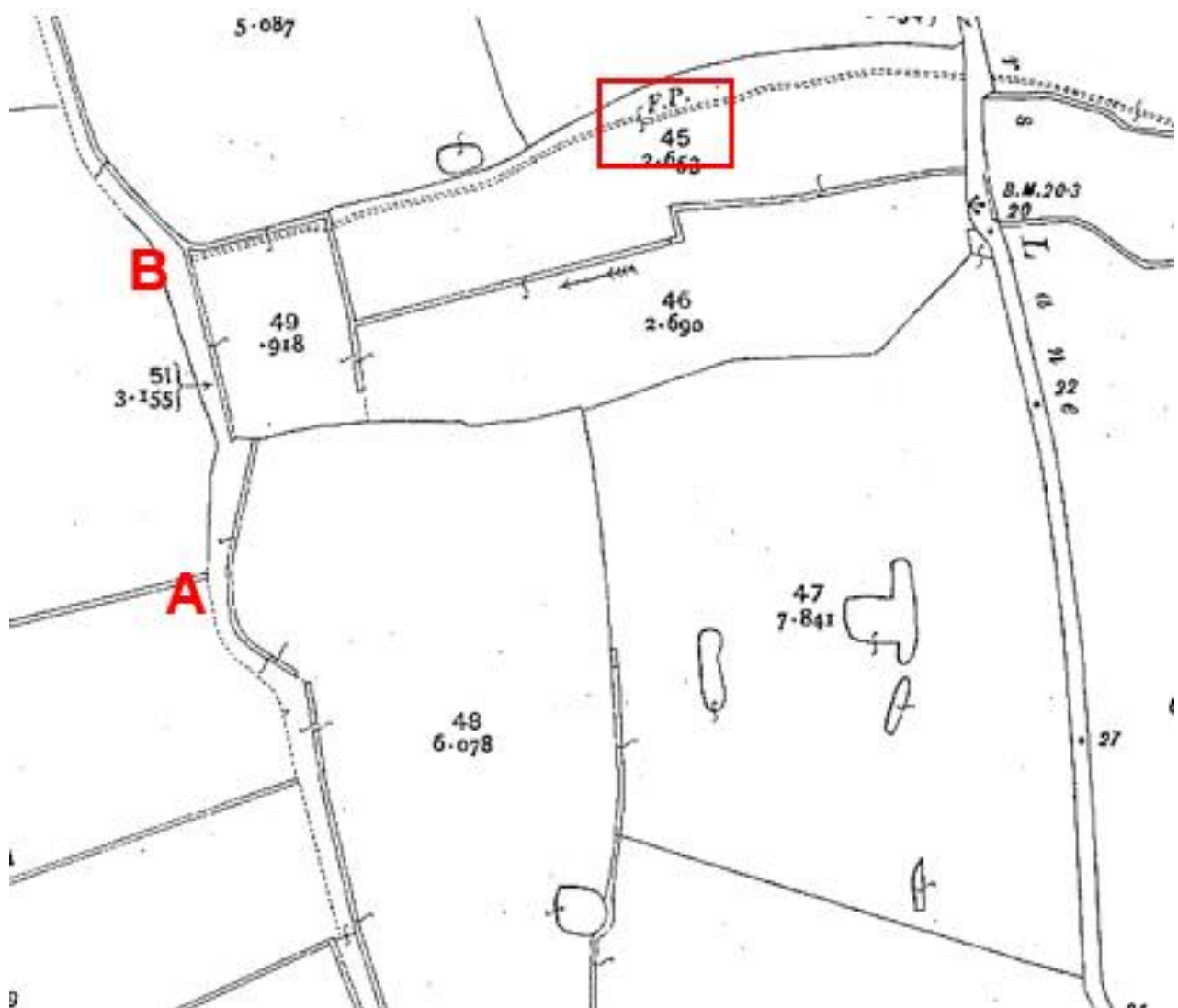
		the surface varied seasonally.
1 inch OS Map Sheet 75	1896	1 inch OS Revised New Series map Published 1896.



<i>Metalled Roads; First Class</i>	<i>5 (Mile distance)</i>	<i>Chuo</i>
<i>" " Second Class</i>	<i>(Altitude) 211</i>	<i>"</i>
<i>" " Third Class</i>	<i>Fenced</i>	<i>"</i>
<i>Unmetalled Roads</i>	<i>Unfenced</i>	<i>Wine</i>
<i>Footpaths</i>		<i>Ligh</i>
<i>Railways, Single Line</i>	<i>Level Crossing</i>	<i>Ligh</i>
		<i>Beac</i>
		<i>Letta</i>
	<i>Cutting Embankment </i>	<i>Cont</i>

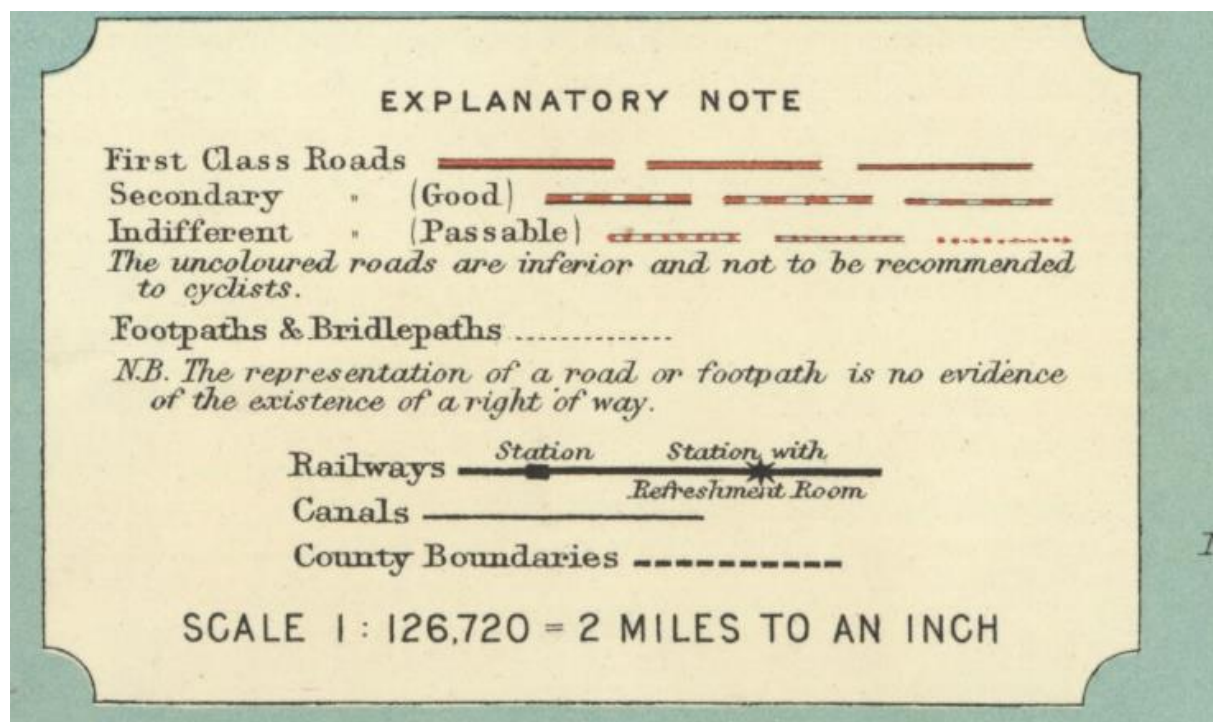
Observations		The application route is shown as part of a defined through route shown consistent with how Haunders Lane is shown as a third class or unmetalled road.
Investigating Comments	Officer's	This is a map surveyed to show what existed physically. The existence of this substantial road does not in itself show public rights but is consistent with public rights supported by other evidence.

		By the late 1800s the small scale 1 inch OS maps had started to gain a significant market being the travelling public so the inclusion of most of the route on this map is suggestive of a through route that was capable of being used at least on horseback and possibly by horse and carts.
25 inch OS Map LXVIII.14	1911	Further edition of the 25 inch map surveyed in 1891-1892, revised in 1909 and published in 1911.

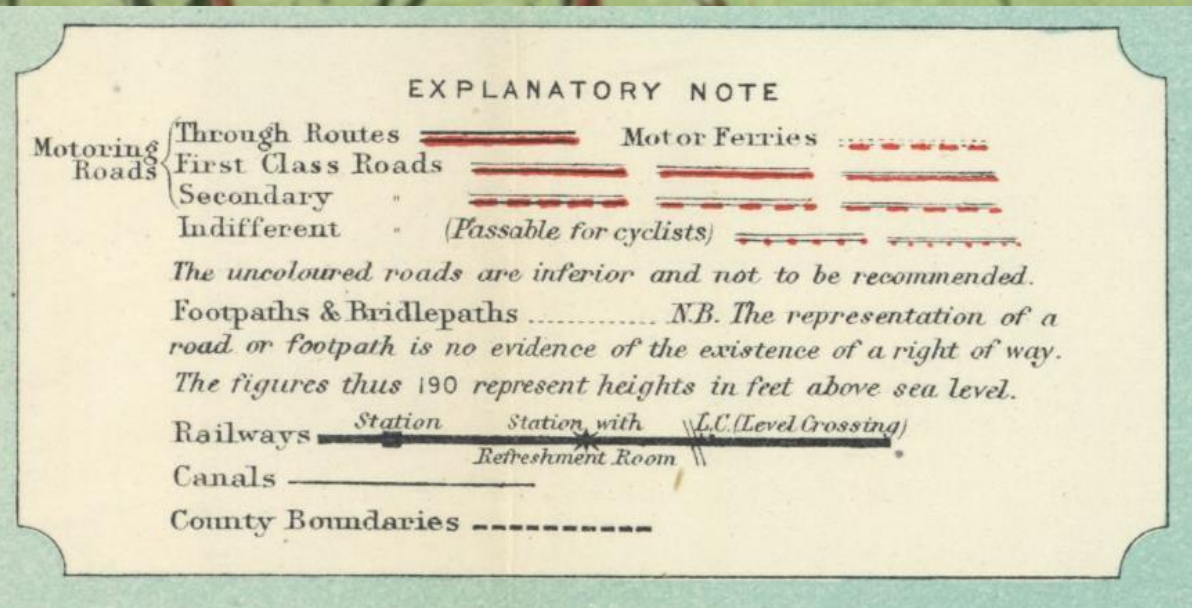


Observations		The full length of the application route is shown in the same way as it is shown on the earlier edition of the 25 inch map. A route annotated as a footpath (FP) consistent with the route of Footpath 3 is shown joining
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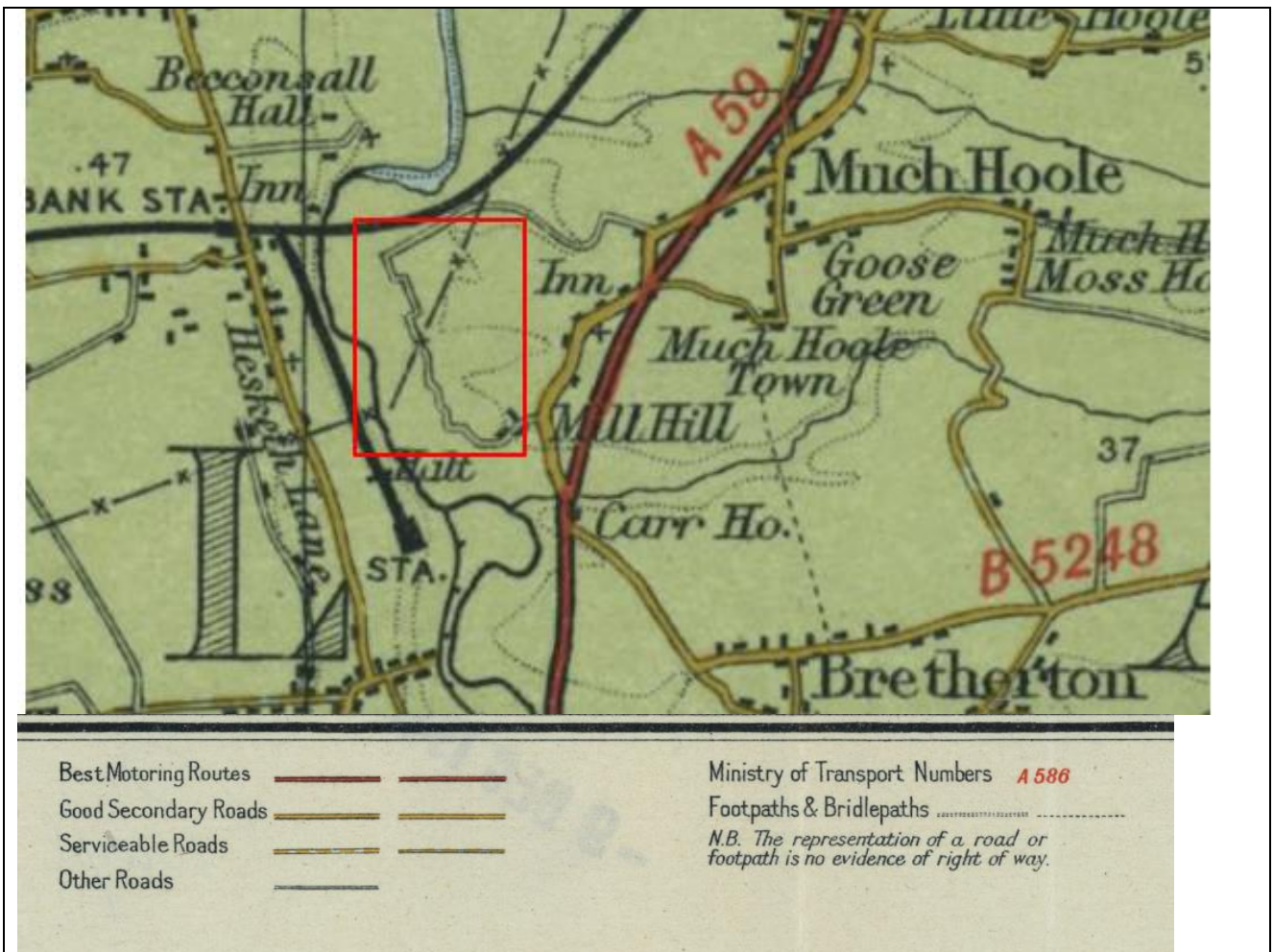
		the application route at point B. The application route itself is not annotated as a footpath.
Investigating Officer's Comments		The application route existed as a part of a substantial through route in 1909 and appeared capable of being used.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



Published 1905




Published 1920



Published 1941

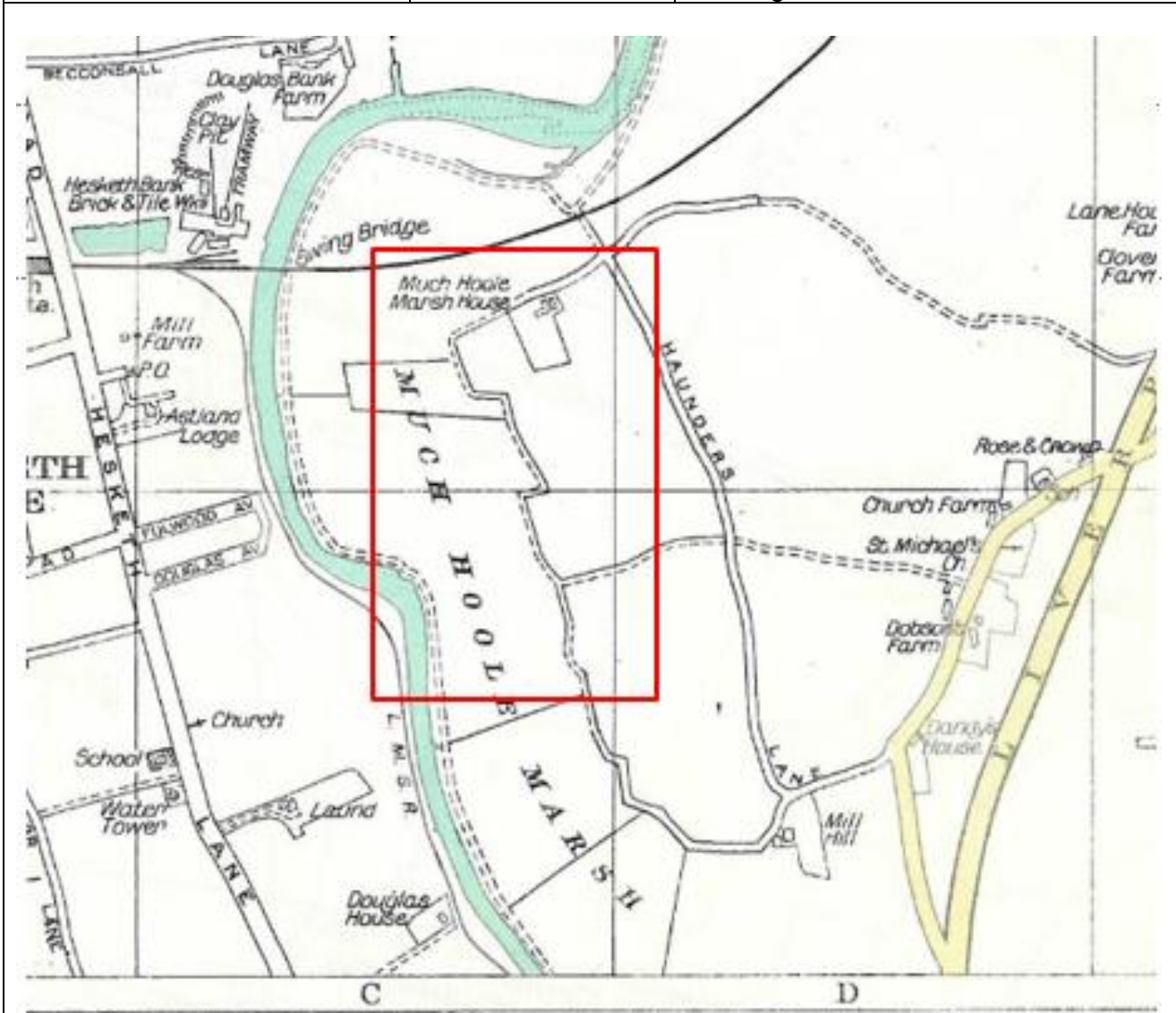
Observations		The application route is shown on all three maps as part of a an uncoloured (inferior) or 'other road'. Of significance is the fact that Haunders Lane (a public vehicular road) which ran parallel to the application route in a more direct north - south line was not shown on any of the three map editions but the application route was shown.
Investigating Comments	Officer's	OS maps dated before and after the publication of Bartholomew's Maps confirm the physical existence of the application route and Haunders Lane over this period. As Bartholomew's Maps were derived from the Ordnance Survey maps of that time Haunders Lane may have been purposely omitted by Bartholomew at that time suggesting that the application route was the more significant route at that time and was

		capable of being used and considered to be a public vehicular road – albeit of inferior standard to those more widely recommended for use.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that</p>

		no right of way existed.
		
Observations		The full length of the application route is shown excluded from the numbered plots in the same way that Mill Hill Farm and Haunders Lane are excluded.
Investigating Comments	Officer's	The map prepared under the provisions of 1910 Finance Act shows the whole of the route excluded from adjacent land in private ownership. 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 the accompanying valuation books

		<p>provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route may indicate that public use was known but not necessarily vehicular status. Whilst there may be other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership - but in this instance there is no evidence to suggest that the route derived from the Inclosure process, indicating that the route's status was more likely than not excluded because it was considered to be public.</p> <p>In this instance therefore the exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.</p>
25 Inch OS Map LXVIII.14	1931	Further edition of 25 inch map, surveyed 1891-1892, revised in 1929 and published in 1931.
Observations		The application route is shown as it is on the earlier 25 inch OS maps.
Investigating Officer's Comments		The application route existed as a substantial route in 1929 and appeared to be capable of being used by horses and vehicles.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<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.</p> <p>The introduction to the atlas states that the publishers gratefully</p>

		acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.
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Observations		The full length of the application route was shown.
Investigating Officer's Comments		The application route is shown in the atlas consistent with how other nearby routes of various status' are shown. No inference can be made.
Aerial Photograph ²	1940s	The earliest set of aerial photographs

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.

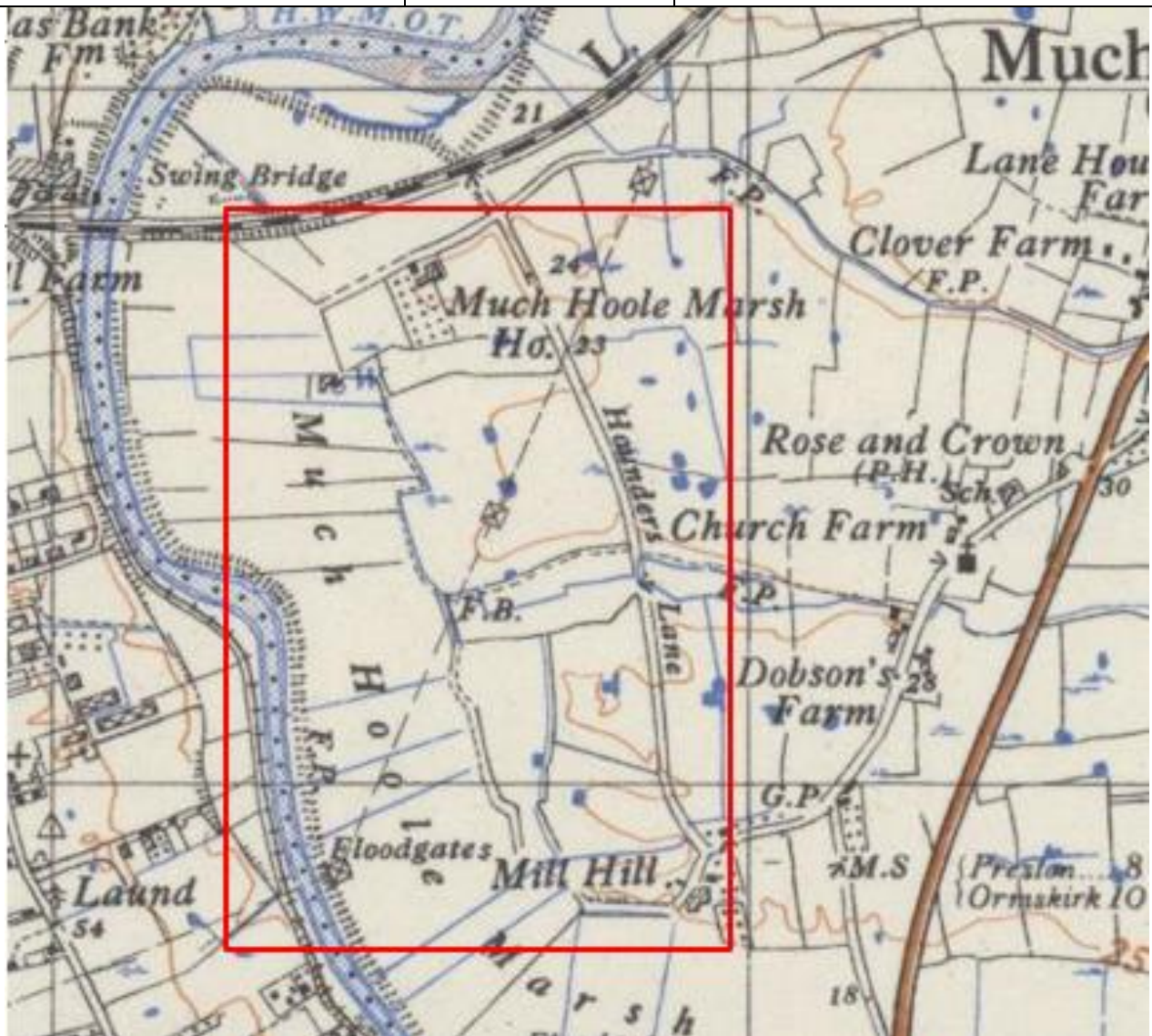
		available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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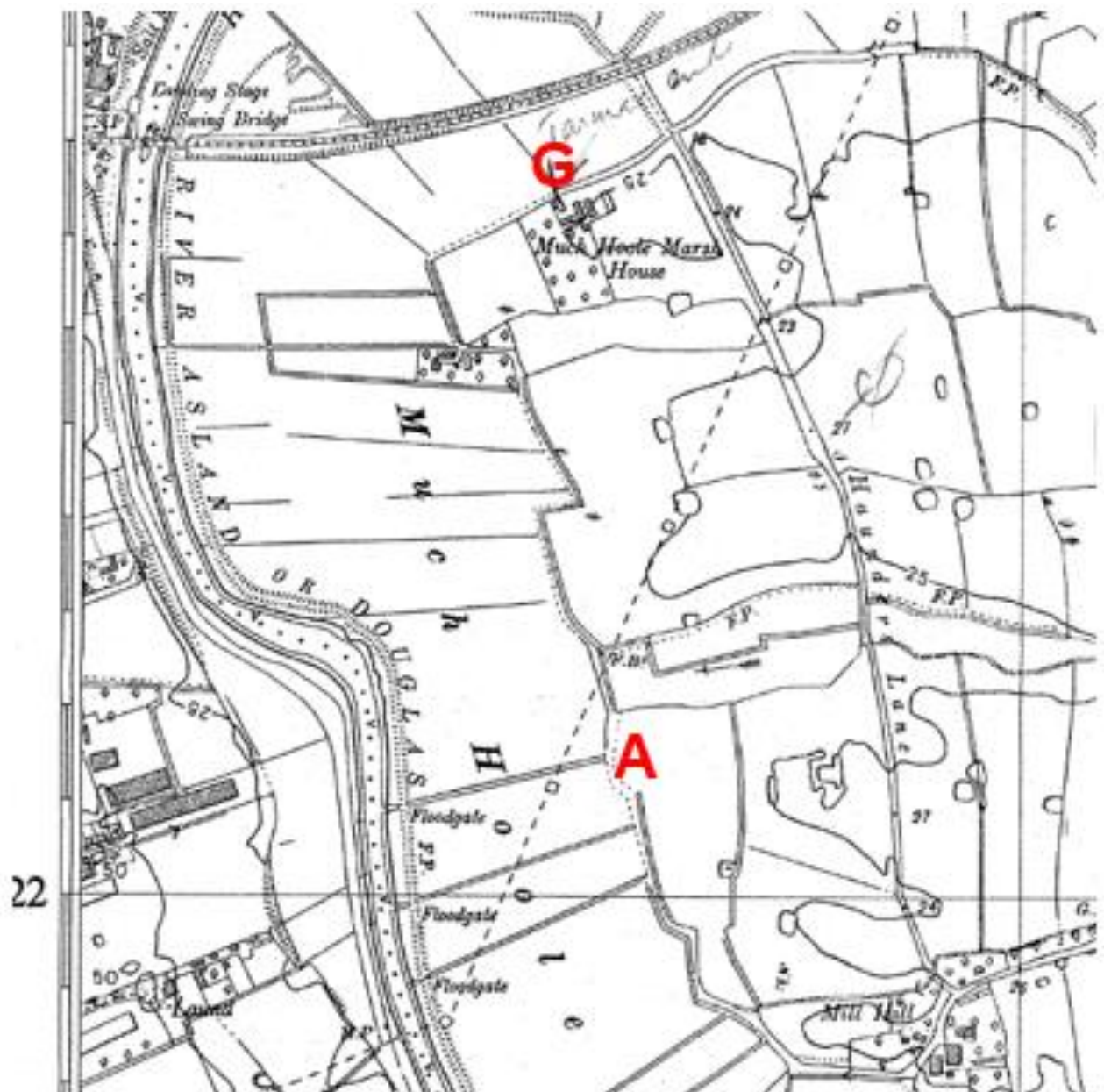
<p>Observations</p>		<p>The application route can be seen on the photograph consistent with how it was shown on the OS maps considered above. From point A the route does not appear to be heavily used – particularly by vehicles and gives the appearance of a route more likely to have been used at that time on foot and possibly on horseback and farm machinery through to point C from where it is more clearly visible through to point G. Haunders Lane running in a straight line to the east of the application route is far more visible suggesting more visible suggesting that it was the route used predominately by vehicular traffic by the 1940s.</p>
<p>Investigating Officer's Comments</p>		<p>It is not possible to determine from the aerial photograph whether the full length of the route was passable in the 1940s.</p> <p>However, the surface is not clearly</p>

		visible along the full length suggesting that use of much of its use by the 1940s may have been on foot or possibly on horseback together with low levels of use by farm vehicles and suggesting that other use had declined.
1:25000 OS Map 34/42 - 15046	1946	Small-scale OS submitted by the applicant.

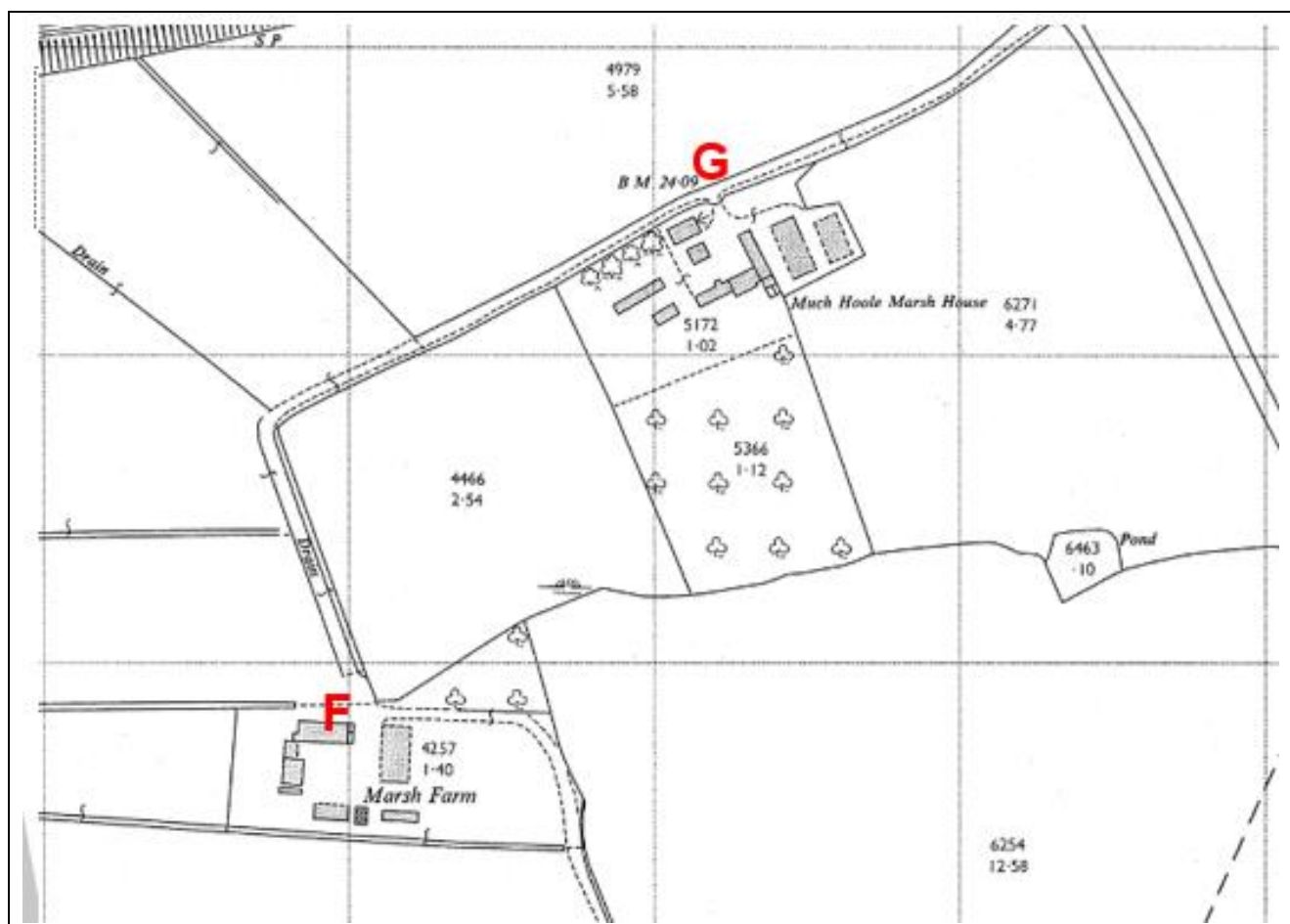


Observations		The full length of the application route is shown but appears to be less significant than on earlier maps examined. Use as a through route by vehicles may have declined from the past as supported by the 1940s aerial photograph.
Investigating Officer's		The full length of the application route

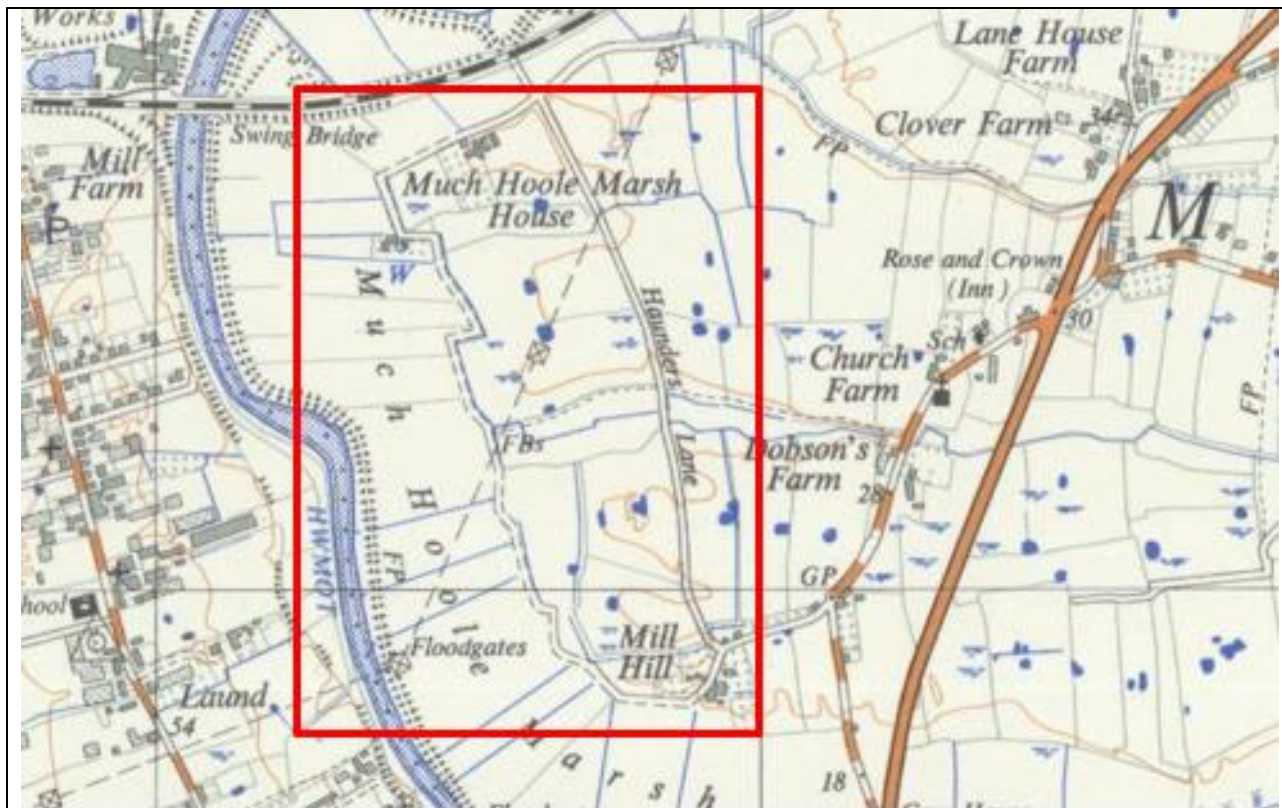
Comments		existed and appeared to be capable of being used.
6 Inch OS Map Sheet 42SE	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



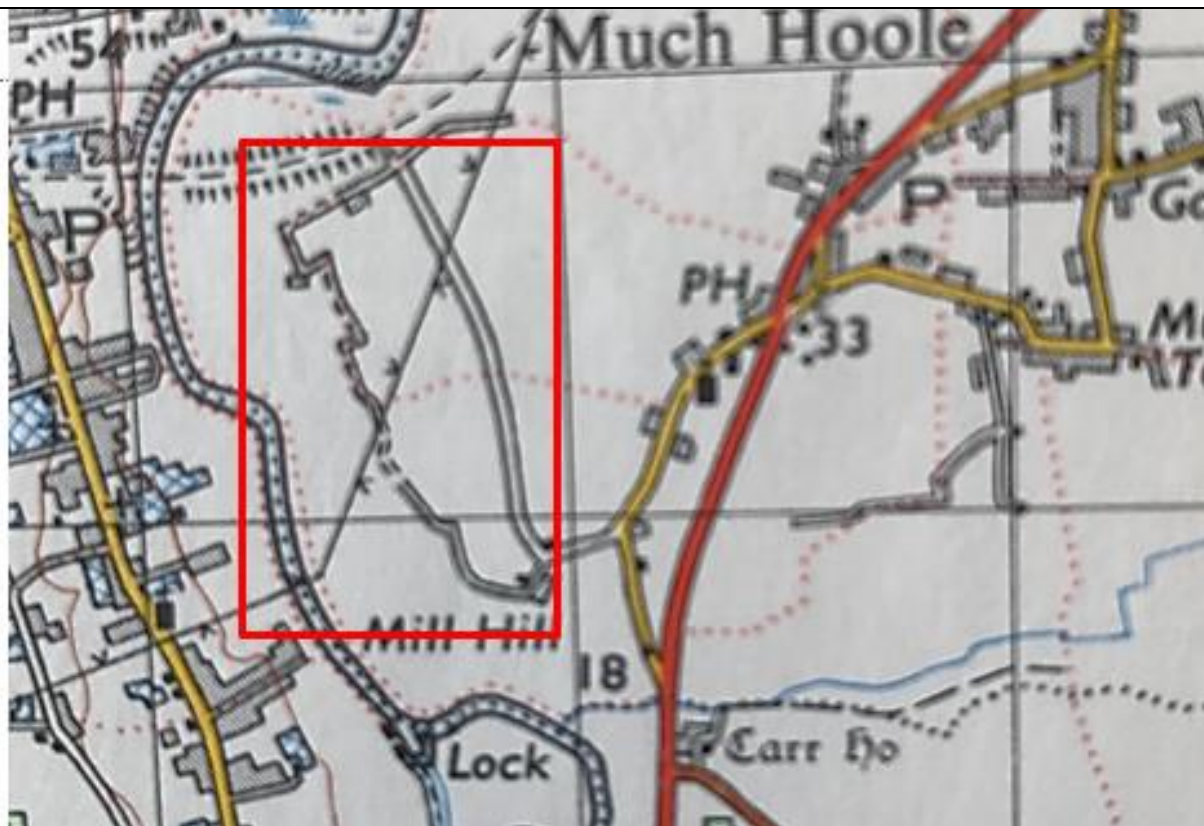
Observations		The application route is shown consistent with how it is shown on other OS maps at this scale. The origin of the handwritten note
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Observations		The application route is shown consistent with how it is shown on other OS maps at this scale.
Investigating Comments	Officer's	The application route existed in the 1960s and appeared to be capable of being used.
1:25, 000 Map SD 42	1968	Revised 1967 and reprinted 1968.



Observations		A further small-scale OS map showing the application route as being part of a substantial through route suggestive of a route capable of being used at least on horseback.
Investigating Comments	Officer's	The application route is shown to have existed physically but no inference can be drawn regarding public rights.
1 inch OS Preston Sheet 94	1969	1 inch OS map made and published 1961 and reprinted 1969.



ABBREVIATIONS		ROADS & PATHS	
P	Post Office	M6 or A1(M)	Motorway
PH	Public House	A 59(T)	Trunk Road
CH	Club House	A 584	Main Road
.MP	Mile Post	B 5269	Secondary Road
.MS	Mile Stone	A 886	Narrow Trunk or Main Road with passing places
TH	Town Hall, Guildhall or equivalent	14 ft of metalling or over (not included above)	
PC	Public Convenience (in rural areas)	Under 14 ft of metalling tarred and untarred	
		Minor Road in towns, Drive or Unmetalled Road (Unfenced roads are shown by short pecks)	
		Under construction	
		Path or track	
		Gradients: 1 in 5 and steeper 1 in 7 to 1 in 5	
		TOLL	Toll Gate Other gates Entrance to Road Tunnel
ANTIQUITIES			
VILLA	Roman Antiquity (AD 43 to AD 420)		
Castle	Other Antiquities		
+	Site of Antiquity		
X	Site of Battle (with date)		
1066			
PUBLIC RIGHTS OF WAY			
.....	Public Paths	{	Footpath (right of way on foot)
-----		{	Bridleway (right of way on foot and on horseback)
+++++	Road used as public path		
Public paths and roads used as public paths have been derived from Definitive Maps available on 1st January 1969			
The representation of any other road, track, or path is no evidence of the existence of a right of way			

Observations		This small-scale OS map shows the full length of the application route as an unmetalled and partially unfenced route.
Investigating Comments	Officer's	The 189 OS map sheets in this 1 inch map series are described by the OS

		as giving a detailed topographical picture of the country. The maps are described by the OS as showing 'virtually all roads' with colours used to indicate road classification, types of surface and width. The sheets were regularly revised and important road changes added whenever a sheet was reprinted. The fact that the application route is shown on the map therefore suggests a route of a substantial nature which appeared capable of being used at least on horseback.
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 on the photograph. It is more visible than it was on the 1940s photograph but not as wide or visible as the public vehicular routes to which it connects.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of the route in the 1960s. The fact that it is more visible than it was in the 1940s may be because of an increase in vehicular use again. It appears highly unlikely that the route, having seen a decline in use, had been surfaced to make it suitable for modern day traffic but the way that it appears in the 1960s would be consistent with the increased use of mechanical farm machinery which could then use the route to access the adjoining fields.
Aerial Photographs	2000-2017	Aerial photographs submitted by a landowner objecting to the application.

2000 Picture of Mill Hill Farm



2017 Picture of Mill Hill Farm:



Observations		<p>The two photographs were submitted by a landowner to illustrate lack of use of the footpath. The photographs are incorrectly labelled as being pictures of Mill Hill Farm but are actually of Marsh House and cover the area crossed by the application route leading from point D towards point E and then through the farm to point F and then part of the access road to and from the farm leading to Hannings Farm at point G.</p> <p>Neither photograph shows a track consistent with the application route leading from point D to point E and then through to point F.</p>
Investigating Officer's Comments		<p>The photographs suggest little or no use of the route in 2000 and 2017. Lack of use would not remove any existing public rights.</p>
Photograph of sign submitted by a landowner	undated	<p>Photograph submitted by a landowner considered by them to show that the landowners had no intention of dedicating the route.</p>




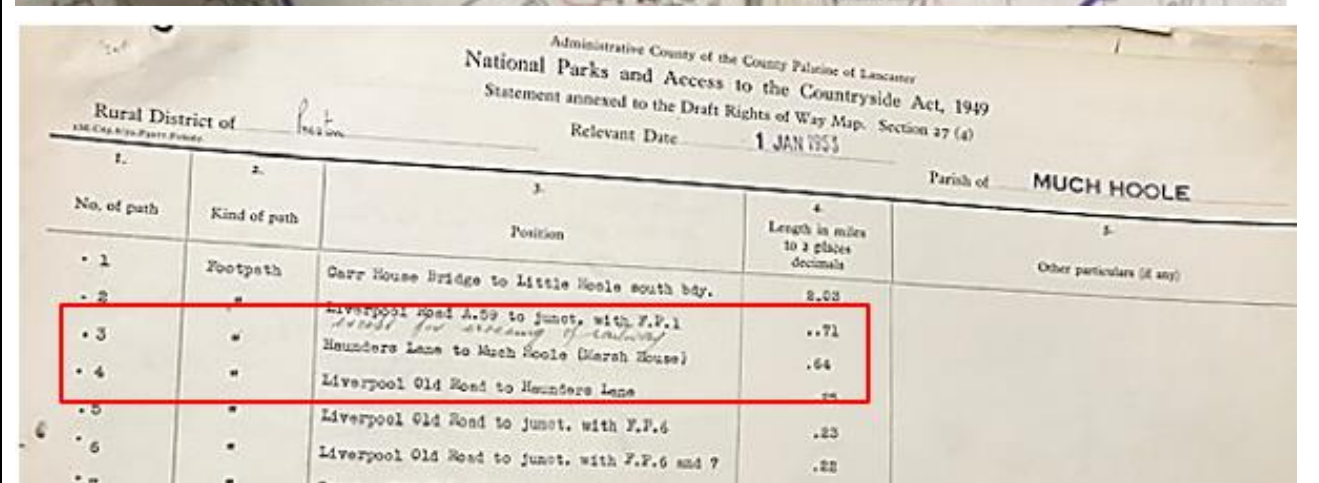
Observations		The photograph shows a sign that is attached to a gate across Mill Hill Farm (U3142) south of the application route. When the application route was inspected by the Investigating Officer in 2021 the sign was still in existence attached to the gate and the gate was open. The gate is not on the application route but is on the unclassified county road leading to point A.
Investigating Officer's		The sign may certainly deter any

Comments		modern use of the application route but no 'modern' user evidence is being considered as part of this investigation. It also indicates that the landowner at the time the sign was in place did not intend to dedicate public rights. However, the sign does not remove or negate any existing public rights and its existence on the U3142 – to which there is a public right of access - will be reported to the County Council's Highways team for appropriate action.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.

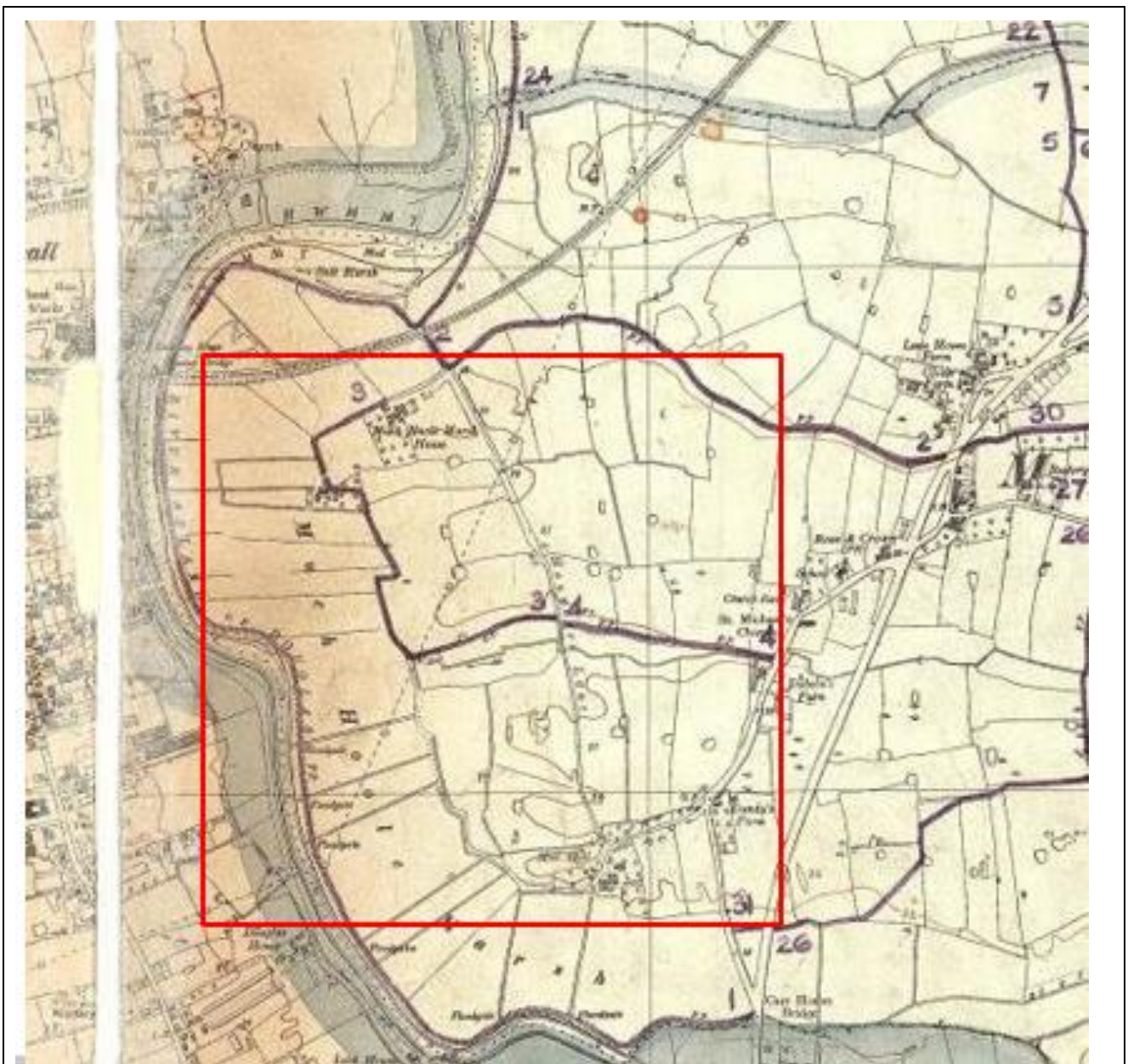
DISTRICT <i>Preston Rural District</i>	PARISH <i>Much Hoole</i>	No. <i>3</i>
MAP SHEET No. <i>1</i>	LENGTH miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise) <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <i>Field F.P.</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>Haunders Lane to Farm</i> <div style="background-color: black; width: 100%; height: 40px; margin-top: 5px;"></div>		
<p><i>This F.P. leads from Haunders Lane & is a continuation of F.P. 4 into field and across footbridge linking up & along Marsh Lane. Some stiles in need of attention - (in frequent use).</i></p>		
SURVEYED BY :—		
Name <i>Fred Barker</i>		
Address <i>Church Villa</i>		
Date <i>2nd May 1951</i>		
<i>Hoole B. Preston</i>		
<small>90000/F39/4/50</small>		

Observations	<p>The application route between point A and point B is not shown on the parish survey map. In addition, part of the route leading from Marsh Farm to Haunders Lane from point F is also not recorded.</p> <p>From point B through to the access road leading from Marsh Farm to Haunders Lane at point G the route is recorded as Footpath 3.</p> <p>The Parish survey card records Footpath 3 as crossing fields from Haunders Lane and 'linking up and following' a route referred to as 'Marsh Lane' which, by reference to the plan, must be the application route from point B at least through to Marsh Farm at point F.</p>
Draft Map	<p>The parish survey map and cards for Much Hoole were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4</p>

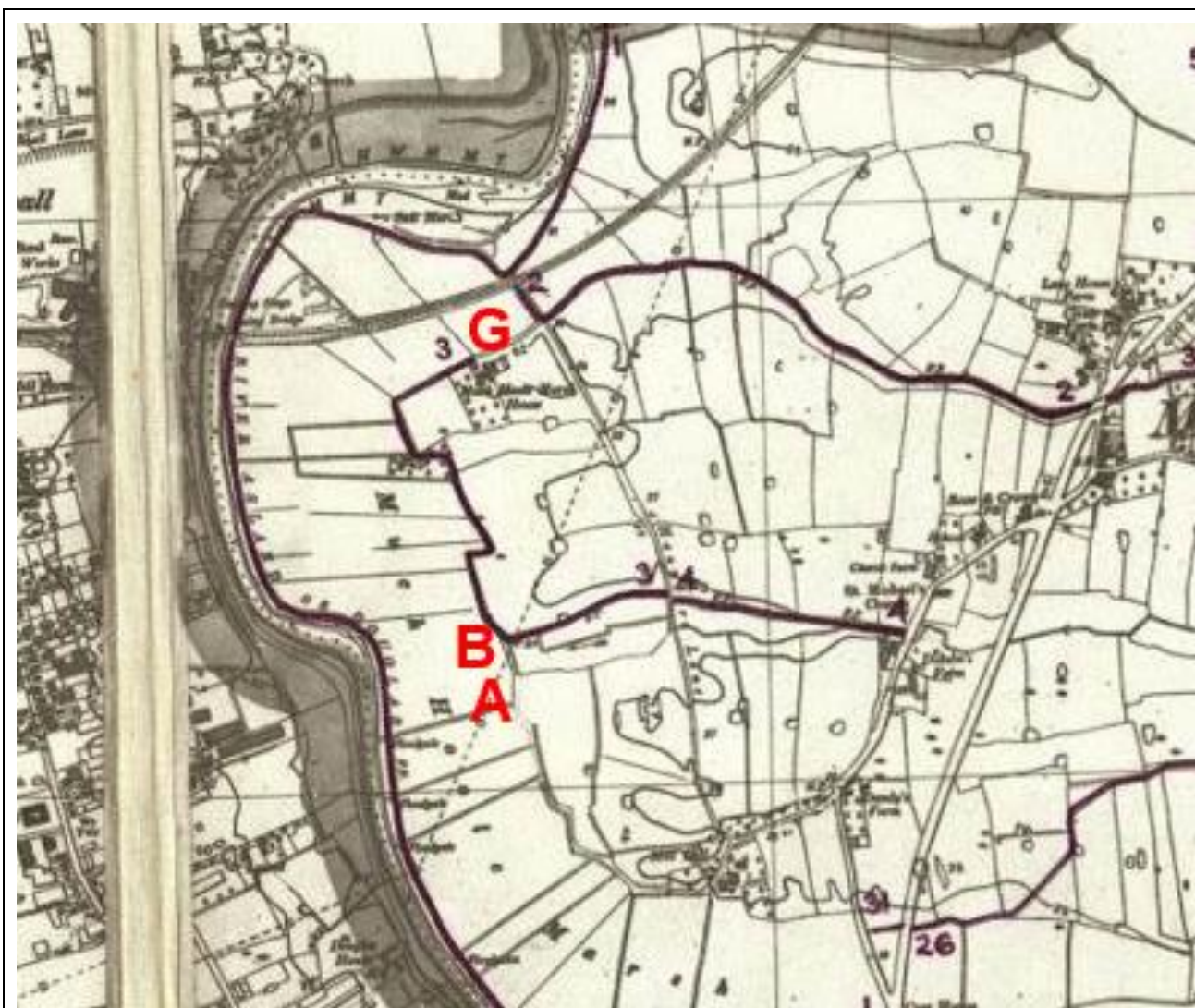
		months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
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Observations		The application route from point B to point G is shown as part of Footpath 3 which is described in the Draft Statement as being from Haunders	

		<p>Lane to Much Hoole (Marsh Farm). The route of the footpath is shown as having been extended through to point G since it was originally drawn on the Parish Survey Map. The application route between point A and point B is not shown and there were no representations or objections to what was shown or omitted.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>

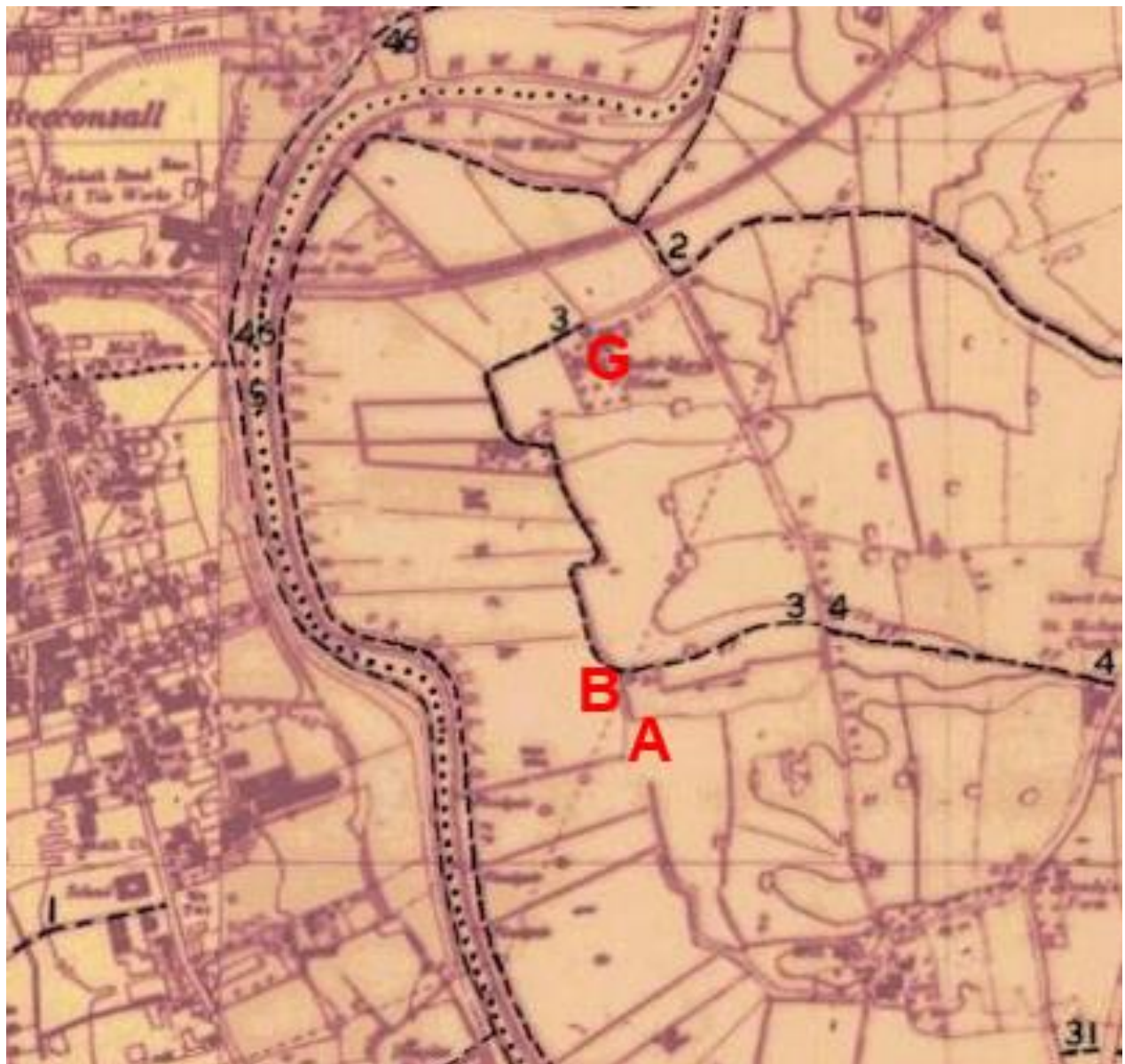


Observations		The application route between point A and point B is not shown on the map. The application route between point B and point G is recorded as a public footpath and no representations or objections were made.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route between point A and point B is not shown. The application route between point B and point G is recorded as Footpath 3.
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.



PARISH OF MUCH HOOLE

Administrative County of the County Palatine of Lancaster

National Parks and Access to the Countryside Act, 1949

Review of Definitive Rights of Way Map

Date of Review 1st September 1966

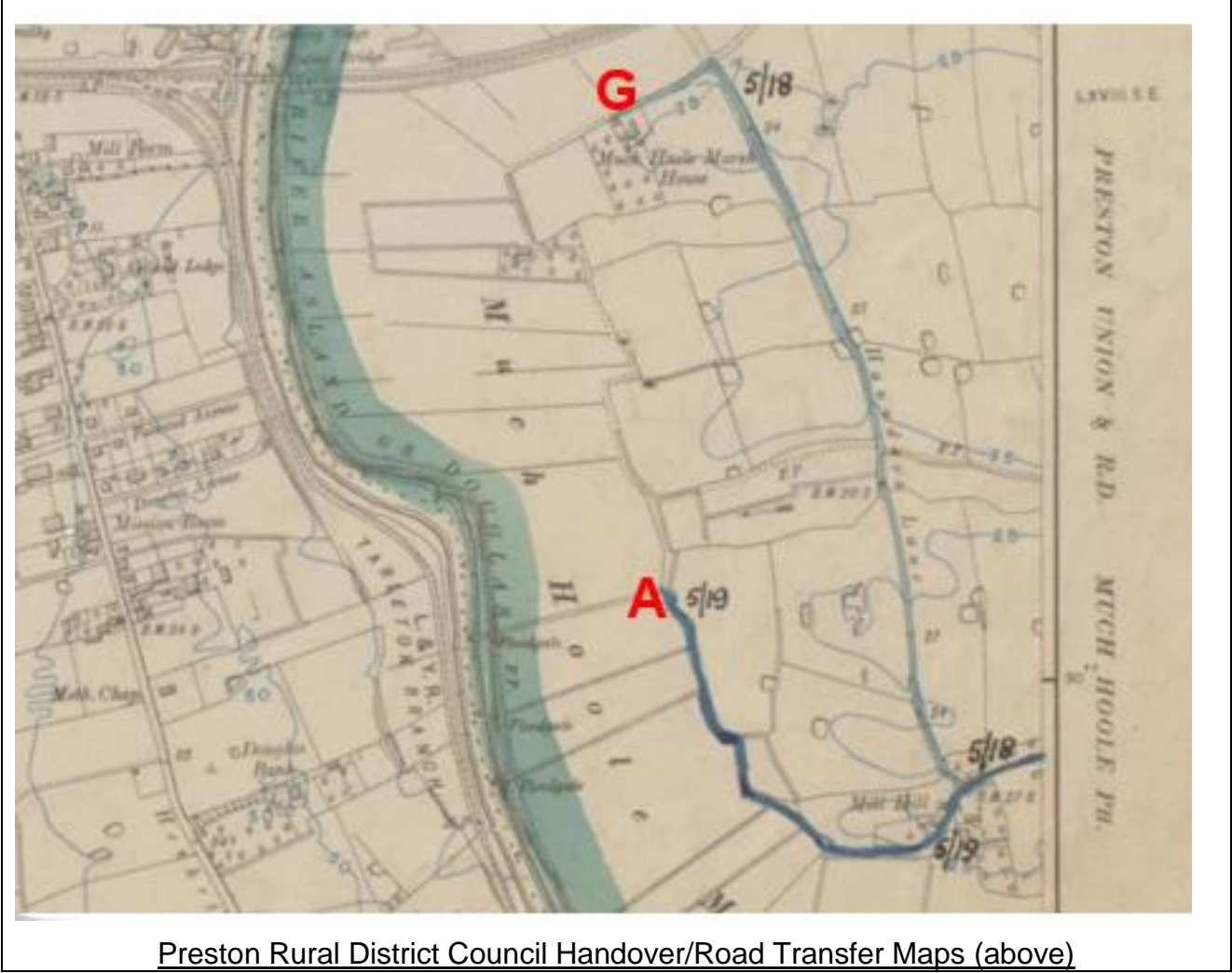
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	DEFINITIVE MAP Other particulars (if any)
1	Footpath	Carr House Bridge to Little Hoole south boundary	2.03	
2	"	Liverpool Road, A.59 to junction with Footpath 1 except for crossing of railway	0.11	
3	"	Haunders Lane to Much Hoole (Marsh House)	0.64	
4	"	Liverpool Old Road to Haunders Lane	0.23	
5	"	Liverpool Old Road to junction with Footpath 1	0.23	

Observations

The application route between point A and point B is not shown. The

		application route between point B and point G is recorded as Footpath 3.
Investigating Comments	Officer's	<p>From 1953 through to 1975 there is no indication that the application route between points A-B was considered to be a public right of way which should be recorded on the Definitive Map by the Surveying Authority whereas the application route between point B and point G was considered to be a public footpath. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or</p>

		not.
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Preston Rural District Council Handover/Road Transfer Maps (above)



Lancashire County Council highway adoption records

Observations		The application route is not recorded as being a publicly maintainable highway (other than as a public footpath from point B to point G).
Investigating Comments	Officer's	The fact that the application route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of way and the fact that only footpath rights were recorded between points B and G does not preclude the existence of other rights.
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 Officer's Comments		If public rights – or higher 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 question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.

Investigating Comments	Officer's		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over their land.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the route it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs.

Section A-B is not recorded as a public right of way on the Definitive Map and Statement and section B-G was, at the time of the Act recorded as a public footpath and we have no evidence that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for the application route to be recorded on the Definitive Map and Statement would be restricted byway, with public rights for non-mechanically propelled vehicles, horses or on foot.

Summary

This investigation has been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

In this particular case the early commercial maps do not show the application route. The full length of the application route is shown on the small-scale Old Series Cassini map which is significant as these maps were reproduced from the OS First Edition 1 inch maps and suggests that a substantial through route existed along the application route by the mid-1800s which would appear to have been capable of being used although it does not indicate whether such use was public or private.

The route is consistently shown on all OS maps examined – including those at a small-scale. In the early 1900s it was shown excluded from the Finance Act taxation process consistent with the view that it was a public highway – most probably vehicular and is shown on all three editions of Bartholomew's maps as a minor through route whilst Haunders Lane (a public vehicular route) was not shown.

Of particular interest is the fact that the route passes through farmland and was partly unenclosed yet remained largely unaltered and when Marsh Farm was built

adjacent to the route at point H the route remained unaltered with the buildings positioned along either side of the route but not interfering with it in any way.

Whilst it would appear that the route would be predominantly used for agricultural purposes both in the past and in more recent times it is a through route and does provide access to and past a number of properties and connect to public vehicular highways. Whilst it is perhaps not an obvious through route for the public connecting to places of interest it does appear that it is a route of some antiquity and that it was considered to be and used in the past as a public through route.

Head of Service – Legal and Democratic Services Observations

Landownership

The majority of the length of the application route crosses land which is unregistered, A short section at the very northern end is within title LAN162796 which is the registration of a caution referring to the owner being a Mr Holden since 1982 and held for a partnership.

Information from the Applicant

The application submitted was based entirely on map and documentary evidence.

The applicant submitted copies of the following documents in support of their application:

Hennet's Map of Lancashire 1829
Extract of the 6inch OS map published 1848
25 inch OS map LXVIII.14 published 1896, 1911 and 1931
1 inch OS map published 1896
Bartholomews ½ inch map published 1904
1:25))) OS maps published 1955 and 1968
1 inch OS 7th Series Map of Preston published 1961
Finance Act Map ref IR 133/5/79
Tithe Map of Much Hole 1841

All maps and documents submitted have been considered earlier in this report.

Information from Others

Residents of a property on Liverpool Old Road object to the application on the basis that having been residents in the area for over 60 years the bridleway would not add any enjoyment to the public or to residents of the area.

The owner of another property on Liverpool Old Road explained that they had been a resident in the area for over 20 years and had no knowledge of the route being used as a bridleway and considered that a bridleway would not add to the enjoyment of residents of the area or the public.

A representative of Cape Limited – who own land adjacent to the route – explained that he had lived in the area for over 40 years and had no knowledge of the route being used for over 40 years and that there was no intention to dedicate the route. He considered that the bridleway would serve no purpose to the public or to local residents.

The owner of another property on Liverpool Old Road objected to the application and explained that they had lived in the area for 50 years and had not seen horses using it. They considered that there was no benefit of 'making the route a bridleway' to the public or local residents.

Information from the Adjoining Landowners

The owners of Hannings Farm object to the application on the basis that the route has never been used as a bridleway. They submitted aerial photographs from 2000 and 2017 which they considered illustrated the lack of use of the route and the fact that there was no need for a bridleway and referred to the sign on the gate near Mill Hill which stated that the land was private and that trespassers would be prosecuted indicated that there was no intention to dedicate it as a bridleway.

The owner of Marsh Farm explained that they had been a resident in the area for over 50 years and had no knowledge of the route being used for anything more than its 'specified purpose'. They considered that a bridleway would not add to the enjoyment of residents of the area or the public.

A further landowner stated that he did not consider that there was sufficient evidence to make an order and that there was no evidence of use of the route as a bridleway for 20 years or more and no real evidence a bridleway existed in the past. In addition, he raised a number of practical concerns about the fact that the route was regularly used by large farm machinery which would conflict with use on horseback and bicycle and was concerned about safety. He also considered that if an order was made this would set a precedent for further applications for routes to be recorded along private tracks.

Acland Bracewell Land Agents objected on behalf of one of the landowners affected by the application (Lilford 2005 Limited). They stated that the route had not been used by horses and that use of the land was restricted to agricultural use and is the principal route used by large farm machinery to gain access to the adjacent fields. They considered the route to be entirely unsuitable for use on horseback or bicycle due to the fact that it passed right through Marsh Farm which was a working farm which also had a licence to breed dogs, that the route was used by farm machinery, was narrow with blind bends in places and because of the potential impact on ground nesting birds.

Assessment of the Evidence

The Law - See Annex 'A'

In support of Making an Orders:

Map and other documentary evidence

No particular evidence against

Conclusion

It is advised that there is no express dedication in this matter, Committee should therefore consider, on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied

Looking at deemed dedication under S31 Highways Act 1980, Committee will be aware that in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

Committee will note that there is no user evidence for this matter, rather that the evidence is of a historical vehicular highway which came into existence over 150 years ago.

Looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report of the various map and documentary evidence does, on balance, indicate that the route was dedicated to public use and used by the public.

From the information above in the report it is suggested that Committee has sufficient evidence on balance that the route was a historical public route available as a vehicular highway which at present is recorded as a Footpath in respect of points B-G and unrecorded in respect of points A-B on the Definitive Map and Statement.

The fact that part the application route is not presently recorded as any publicly maintainable highway does not mean that it does not carry public rights of way and the fact that only footpath rights were recorded between points B and G does not preclude the existence of other higher rights.

There is no evidence that a legal stopping up of any part of the route has ever taken place.

There are points made about signage and modern user however, the gate and sign indicating "Private land" are on a public vehicular highway leading to point A not on the application route A-G.

It is advised that lack of use in more recent decades would not remove any existing public rights. The legal maxim "Once a highway always a highway " would apply as unless stopped up by proper legal process a highway remains where it was dedicated even if no longer used.

"Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper." (Harvey v Truro RDC 1903 2 Ch 638)

The suitability or otherwise of the route for horses and/or cyclists is not something that can be taken into account if highway rights are shown to exist. It will be addressed should Committee decide to make an Order and that Order be confirmed.

If Committee is content that there is sufficient evidence of an old vehicular highway between point A-G the Natural Environment and Rural Communities Act 2006 will have extinguished modern mechanically propelled rights leaving the route to be appropriately recorded as a restricted byway.

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

In conclusion, it is advised that there is sufficient evidence from which to infer a vehicular highway was already dedicated on this route many many decades ago and Committee may consider it appropriate that an Order be made for the route marked A-B to be added to the Definitive Map and Statement as a restricted byway and for the route marked B-G to be upgraded from a footpath to restricted byway on the Definitive Map and Statement and that the evidence is sufficiently strong to decide that the Order be promoted to confirmation.

Risk management

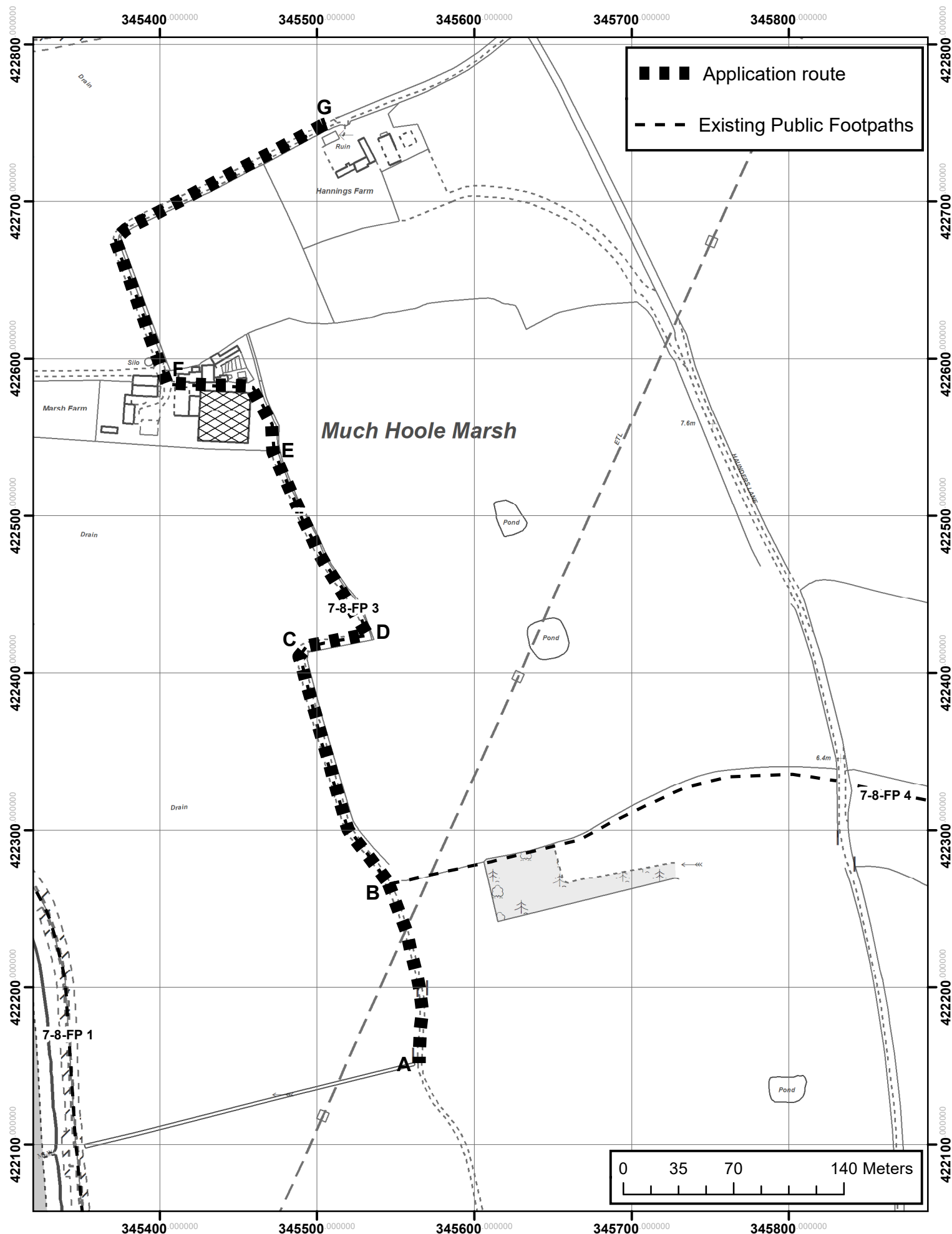
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

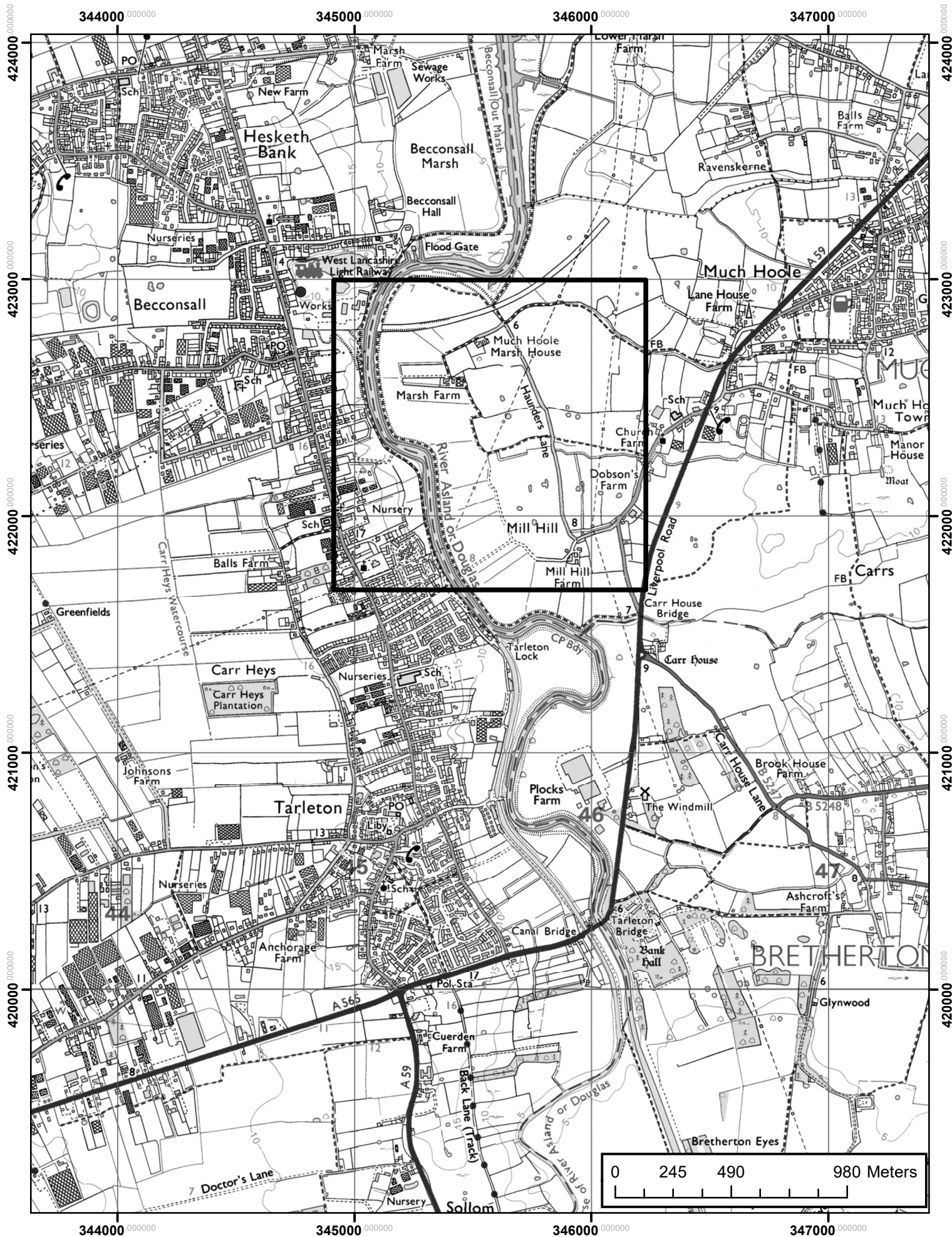
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-625		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





Regulatory Committee

Meeting to be held on 15 September 2021

Part I

Electoral Division affected:
Longridge with Bowland

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Hothersall 13 at Welch House Barn, Hothersall, Ribble Valley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

01772 532459, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Hothersall 13, Ribble Valley Borough.

Recommendation

- (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 Hothersall 13, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The prospective owners of the residential property of Welch House Barn, Hothersall Lane, Longridge have applied to Lancashire County Council for an Order to be made

under Section 119 of the Highways Act 1980, to divert part of Footpath Hothersall 13, Ribble Valley Borough.

The recorded alignment of the footpath is along the driveway, through the residential and private garden areas of the property. It is proposed that the footpath is diverted to run along the edge of the adjacent field.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B, and the proposed new route is shown by a bold broken line and marked A-C-B.

Consultations

Ribble Valley Borough Council and Hothersall Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Ribble Valley 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.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6197 3585	Point on the access track immediately west of the entrance to Welch House Barn.
B	SD 6203 3581	Point in the northern corner of the pasture field that adjacent to the eastern boundary of Welch House Barn.
C	SD 6203 3581	Point in the south east corner of the field at Welch House Barn.

Description of existing footpath to be diverted

That part of Footpath Hothersall 13 as described below and shown by a bold continuous line marked A-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	ESE	70	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-C-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	Generally ESE	75	2	Grass
C	B	SW	5	2	Grass

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6197 3585 (adjacent to point A)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6203 3581 (Between points C and B)

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 Order should also specify that the Definitive Statement for Footpath Hothersall 13 be amended to read as follows:

The 'Position' column to read:

"Hothersall Lane to SD 6197 3585 at Welch House Farm, generally east south east to SD 6203 3581, then south west for 5 metres to SD 6203 3581 then to a junction with footpath Hothersall 14.

(All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.56km"

The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6197 3585 and SD 6203 3581 is the right of the owner of the soil to erect and maintain a gate that conforms

to BS 5709:2018 at SD 6197 3585 and SD 6203 3581. The width between SD 6197 3585 and SD 6203 3581 is 2 metres."

Criteria satisfied to make and confirm the 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.

With the exception of a small area of land, approximately 2 square metres at point B, all of the land crossed by the existing footpath and of the proposed new footpath is currently owned by the vendors of the property. When the sale is completed this land will be in the ownership of the applicants. The owners of the land at point B have been consulted and have confirmed that they will not raise any objection to the diversion proposal.

The proposed diversion is expedient in the interests of the owner of the land, as it would remove the footpath that runs along the driveway, through the residential and private garden area of the property. The new footpath is proposed to run outside the residential area, enabling the existing obstructions on the footpath to be retained and provide the residents with an improvement in privacy and security.

Currently parts of the footpath proposed to be diverted are obstructed and the owner of the land has made the proposed new footpath available as an alternative route.

Under normal circumstances the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed new route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances such as this, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of users. It is suggested that due to the close proximity of the route that is available on the ground to the route proposed to be diverted does not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

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. In this case, the proposed diversion will not alter the points of termination of Footpath Hothersall 13, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Footpath Hothersall 13 is not to come into force until the county council has certified that any required work to the new footpath 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 route, of which we are aware at the time of writing.

It is advised that the proposed Order, 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 applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs that are incurred in bringing the new site of the footpath into a fit condition for use for the public.

If Committee decide to make the proposed Order and, subsequently, if no objections are received, or if the proposed Order needs to be submitted to the Planning Inspectorate for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that if the Order were to be confirmed, the new path the path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be two gates on the new footpath, one adjacent to point A and one located between points C and B. The gates will conform to the British Standard for gates, gaps as stiles (BS:5709:2018) and as such they will be easy to use.

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. The new footpath will provide the improved open views of the countryside and provide an obvious, safe and convenient footpath away from the driveway, the buildings and private garden area at Welch House Barn. Therefore, users of the footpath are likely to find the new footpath easier to use and feel more comfortable than if they were to use the existing route.

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. It is noted that all owners of the land crossed by the existing and proposed new footpath are in full agreement with the diversion proposal, therefore such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

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

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'.

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

Stance on Submitting the Order 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 and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

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 Order be made.

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

To agree that the Order be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Planning Inspectorate promoted to confirmation by the county council.

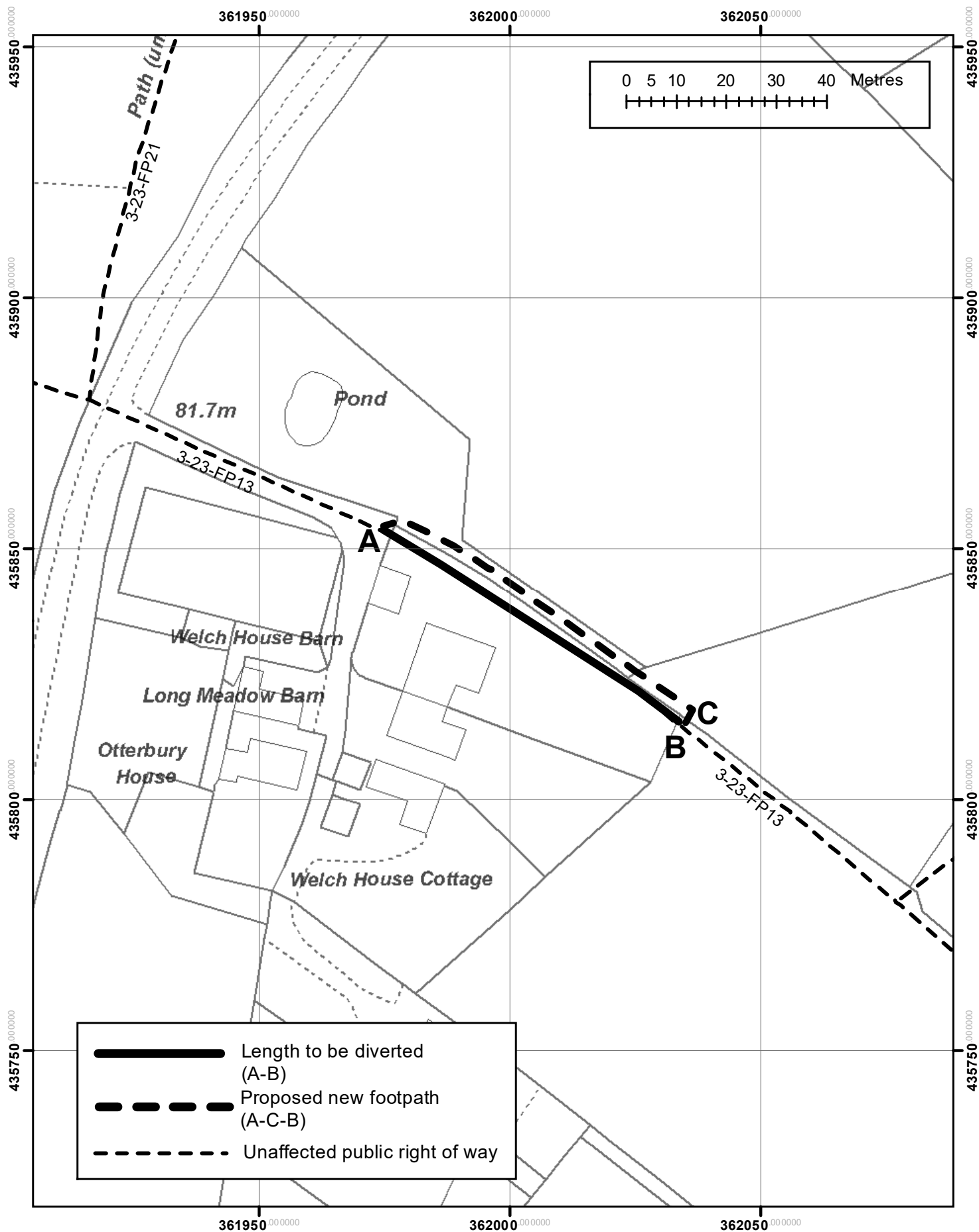
Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211-703		Planning and Environment Group
File Ref: 3-23-FP13		Mrs R J Paulson, 01722 532459

Reason for inclusion in Part II, if appropriate

N/A

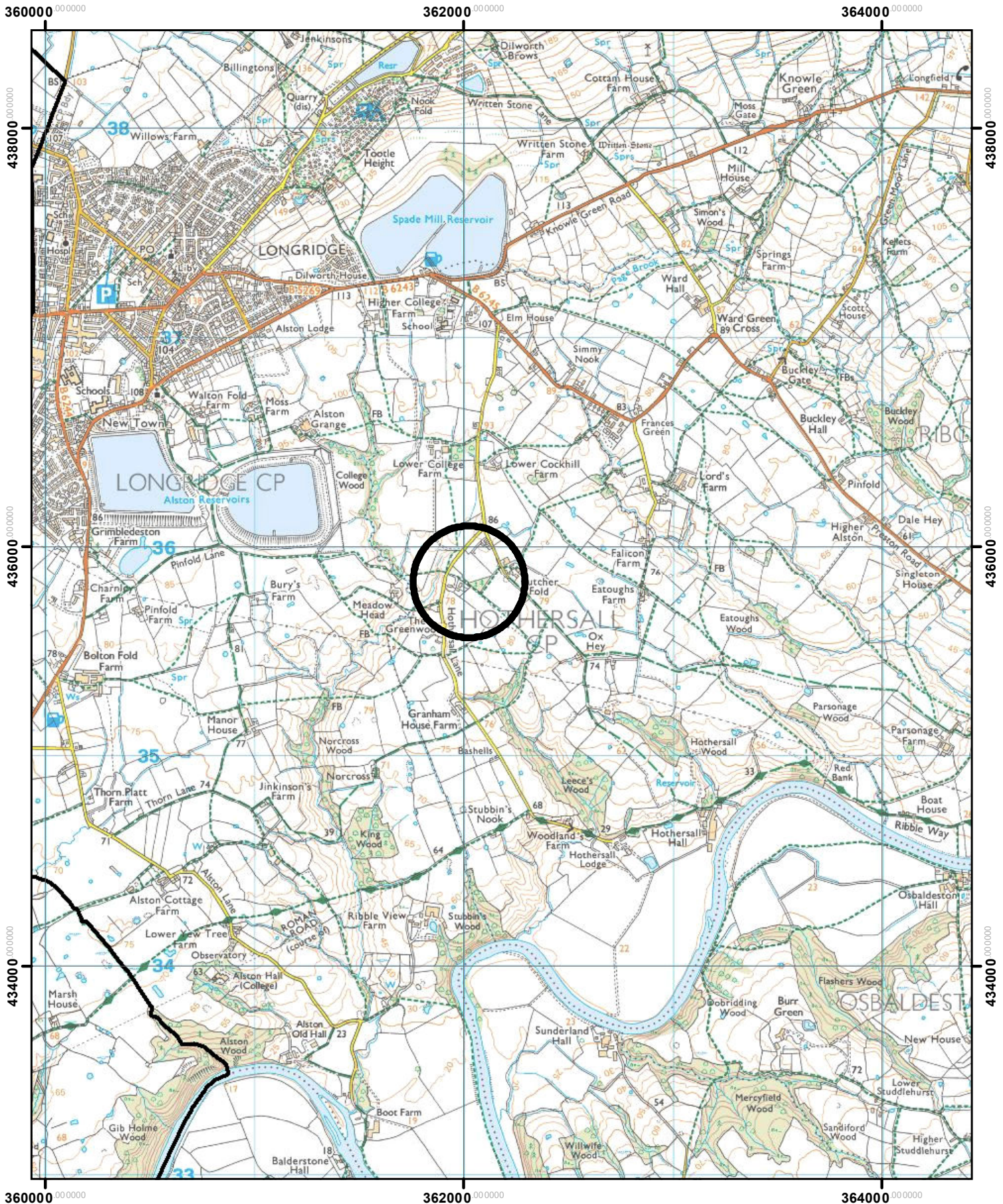


Andrew Mullaney
Head of Planning
and Environment
Lancashire County Council

Highways Act 1980 Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed diversion of part of Footpath Hothersall 13
at Welch House Barn, Hothersall.

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Location Plan
 Highways Act 1980 – Section 119
 Wildlife and Countryside Act 1981 – Section 53A
 Proposed diversion of part of Footpath Hothersall 13
 at Welch House Barn, Hothersall.



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Regulatory Committee

Meeting to be held on 15 September 2021

Part I

Electoral Division affected:
Burnley Rural

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Footpath Briercliffe 163 at Musty Haulgh Barn, Granville Street, Burnley Borough

(Annexes 'B' and 'C' refer)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

01772 532459, ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Footpath Briercliffe 163, Burnley Borough.

Recommendation

- (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 Briercliffe 163, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The owners of the residential and agricultural smallholding, Musty Haulgh Barn, Granville Street, Briercliffe have applied to Lancashire County Council for an Order to

be made under Section 119 of the Highways Act 1980, to divert part of Footpath Briercliffe 163, Burnley Borough.

The recorded alignment of the footpath crosses a private garden, courtyard, a paddock and part of the footpath is obstructed by a barn that was erected before the current owners purchased the property. A footpath around the barn has been provided as a temporary measure to ensure that public access through the site, albeit not on the legal alignment.

It is proposed that the new route created by the diversion order A-C-B will have the status of public footpath in the first instance, then subsequently, it is proposed that Lancashire County Council will be asked to consider entering into agreements with the applicants and owners of adjacent land crossed by some of the connecting footpaths to dedicate a bridleway that will link to the highway network.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B, and the proposed new route is shown by a bold broken line and marked A-C-B.

Consultations

Burnley Borough Council and Briercliffe Parish Council have been consulted and at the time of writing, their responses are awaited. The Peak and Northern Footpaths Society and the Burnley 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.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 8650 3442	Junction of Footpaths Briercliffe 152, 153, 163 and 164.
B	SD 8635 3425	Point on the track immediately west of the southern end of the strip of woodland.
C	SD 8635 3443	Point on the track immediately to the west of the strip of woodland, 20 metres west of the north west corner of the field.

Description of existing footpath to be diverted

That part of Footpath Briercliffe 163 as described below and shown by a bold continuous line marked A-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally SW	220 metres	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-C-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	W	150	3	Grass
C	B	S	175	3	Stone surface

The public footpath to be created by the proposed Order 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 Order should also specify that the Definitive Statement for Footpath Briercliffe 163 be amended to read as follows:

The 'Position' column to read:

"Junction of Footpaths Briercliffe 152, 153, 163 and 164 at SD 8650 3442, running west for 150 metres to SD 8635 3443 then south for 175 metres to SD 8635 3425 then to junction of footpath 166.

(All lengths and compass points given are approximate)."

The 'length' column be amended to read:

"0.68km"

The 'Other Particulars' column be amended to read:

"There are no limitations between SD 8650 3442 and SD 8635 3425 and the width between those points will be 3 metres."

Criteria satisfied to make and confirm the 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.

All the land crossed by the existing footpath (A-B) and approximately half of the proposed new footpath (A-C) is in the ownership of the applicants. The remainder of the new route crosses land that is in the ownership of Burnley Borough Council. At the time of writing we have yet to receive confirmation in writing but it is anticipated that they will not raise any objection to the diversion proposal because whilst C-B is not currently recorded as a public right of way, the land is held by the Borough Council for the purpose of public access.

The proposed diversion is expedient in the interests of the owners of the land, as it would remove the footpath that runs across the garden, courtyard and agricultural building. The new footpath is proposed to run outside the residential and working area of the property, enabling the existing obstructions on the footpath to be retained and provide the residents with an improvement in privacy and security.

Currently parts of the footpath proposed to be diverted are obstructed and the owner of the land has provided an alternative route to provide public access around the obstructions.

Under normal circumstances the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed new route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances such as this, the restoration of the route is considered to be impracticable, disproportionate or not in the interests of users. It is suggested that due to the close proximity of the route that is available on the ground to the route proposed to be diverted does not adversely affect the ability to evaluate the merits of the diversion when comparing both routes.

In this case, the proposed diversion will not alter the points of termination of Footpath Briercliffe 163, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Footpath Briercliffe 163, is not to come into force until the county council has certified that any required work to the new footpath 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 route, of which we are aware at the time of writing.

It is advised that the proposed Order, 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 applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs that are incurred in bringing the new site of the footpath into a fit condition for use as a public footpath.

If Committee decide to make the proposed Order and, subsequently, if no objections are received, or if the proposed Order needs to be submitted to the Planning Inspectorate for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that if the Order were to be confirmed, the new path the path or way will not be substantially less convenient to the public in consequence of the diversion. The new route is approximately a third longer than the existing, however the increased width, the firm surface and reduced gradient of section C-B would be easier to negotiate than the unsurfaced length of the slope at the southern section of the existing route A-B. There will not be any gates on the new route.

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. The new footpath will provide similar views and provide a safe and convenient footpath away from the driveway, buildings and garden at Musty Haulgh Barn. Therefore, users of the footpath are likely to find the new footpath easier to use and feel more comfortable than if they were to use the existing route.

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. No such loss is not expected and if a claim were to arise, the compensation is underwritten by the applicants.

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

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'.

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

Stance on Submitting the Order 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 and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

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 Order be made.

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

To agree that the Order be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Planning Inspectorate promoted to confirmation by the county council.

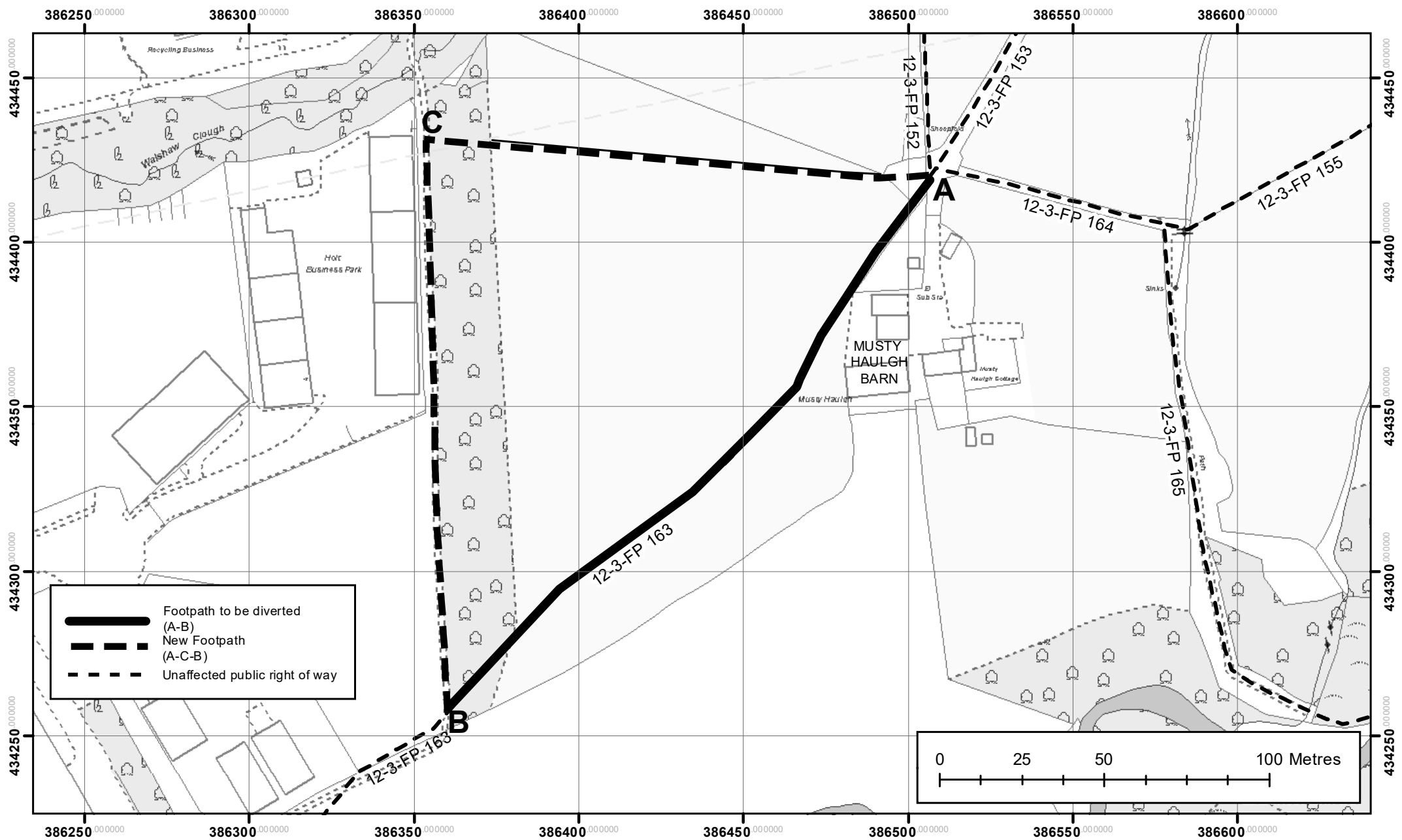
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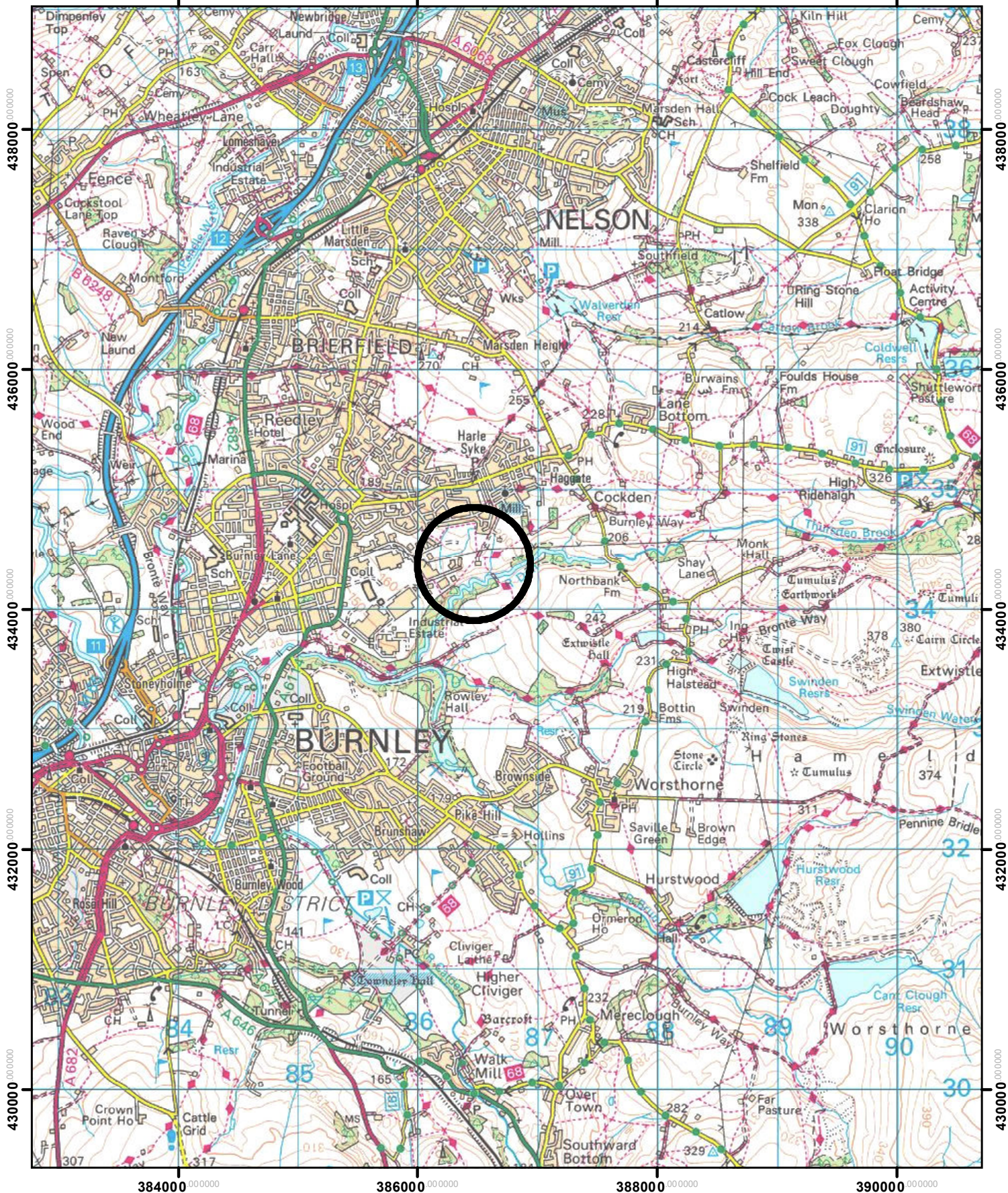
List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211-725		Planning and Environment Group
File Ref: 12-3-FP 163		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A





Location Plan
 Highways Act 1980 – Section 119
 Wildlife and Countryside Act 1981 – Section 53A
 Proposed diversion of part of Footpath Briercliffe 163
 at Musty Haulgh Barn, Granville Street, Briercliffe.



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