

Lancashire County Council

Regulatory Committee

Wednesday, 17th November, 2021 at 10.30 am in Committee Room 'C' - The Duke of Lancaster 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 15 September 2021	(Pages 1 - 12)
-----------	--	-----------------------

4.	Guidance	(Pages 13 - 38)
	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 Committee Items	(Pages 39 - 42)
-----------	---	------------------------

6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into Public Rights on Moss Lane, Overton	(Pages 43 - 108)
-----------	---	-------------------------

7.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrade of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway	(Pages 109 - 160)
-----------	--	--------------------------

- 8. Wildlife and Countryside Act 1981** (Pages 161 - 224)
Definitive Map Modification Order Investigation
Addition of Restricted Byway from Borwick Hall
Bridge to the River Keer near Capernwray Old Hall

9. Urgent Business

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

10. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 26th January 2022 at County Hall, Preston.

County Hall
Preston

L Sales
Director of Corporate Services

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 15th September, 2021 at 10.30 am in Committee Room 'A' - The Tudor Room, County Hall, Preston

Present:

County Councillor Sue Hind (Chair)

County Councillors

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

1. Apologies

There were no apologies for absence.

Temporary changes

The Chair welcomed County Councillor Alf Clempson to the Committee.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 23rd June 2021

Resolved: That the minutes of the meeting held on 23 June 2021 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

The Committee's attention was drawn to the addition of a paragraph to Annex B in relation to Public Path Diversion Orders made under the Highways Act 1980.

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

5. Progress Report on Previous Committee Items

A report was presented providing a summary of the progress made on Definitive Map Modification Order applications, the data of which had been extracted from the statutory register on 4th June 2021.

The Chair pointed out that the progress reports included updates on both previous and future Committee items and that it was intended to include all matters relating to the Wildlife and Countryside Act 1981 and the Highways Act 1980.

County Councillor Goulthorp stated that some of the DMMO applications awaiting submission to the Planning Inspectorate in his division had been outstanding for a long time. David Goode explained that this was an onerous process, especially for the legal team who had to factor in the possibility of these applications leading to a public inquiry or hearing. The applications were not all sent to the Planning Inspectorate straight away but had to be timetabled in without impacting on similar other applications. A high number of Definitive Map Modification Order applications were received with only a small number of officers to deal with them. The county council were currently looking to increase the amount of officer time to deal with these applications.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway on Snuff Mill Lane, Stodday, Lancaster

A report was presented on an application for the addition of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path at Stodday near Lancaster, to be added to the Definitive Map and Statement of Public Rights of Way.

The Committee noted that the application route was approximately 425 metres long and had been described by the applicant as terminating at the junction with the Lune Estuary Path. However, when investigating the application, it had become 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 was therefore that as shown on the Committee Plan attached to the agenda papers, between points A-B-X-C-D, and was approximately 475 metres long.

A site inspection had been carried out in October 2020. Since that time, the Parish Council had undertaken work to alleviate the flooding on part of the route.

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.

Committee noted that the application had been made based entirely on historical map and documentary evidence and that no user evidence was available.

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

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

Resolved:

- (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.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Restricted Byway along Limers Lane, Great Harwood**

A report was presented on an investigation into the existence of public rights of access along Limers Lane, Great Harwood, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

Committee noted that it had been 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 had been 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.

A site inspection had been carried out on 1st February 2021 at which whilst 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.

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.

County Councillor Howarth queried how this matter had to come to light and was concerned about the amount of officer time involved with the investigation. Committee were advised that a county council officer had come across this issue, whilst dealing with reports about two public footpaths that linked to the route. It was explained that the Public Rights of Way Team tried to prioritise routes involving potential restricted byways and bridleways, due to the public benefit to the greatest number of people.

The Chair reported that on the recent site visit, the route had been mown and was well cared for, with a wide path, making the route much easier to walk.

The Committee noted that the documentary evidence was supportive of the route under investigation being a very old vehicular highway and that the rights had never been stopped up. By virtue of the Natural Environment and Rural Communities Act 2006, the public rights for mechanically propelled vehicles had been extinguished and the appropriate status for the old vehicular route to be recorded was advised to be restricted byway.

CC Oakes asked that, if the Recommendation was accepted by Committee, what would the required standard for this path be. It was reported that as the lane was in a rural location and likely to be used by walkers, cyclists and horseriders, it would be maintained at an appropriate level for these users.

Resolved:

- (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.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Bridleway between Liverpool Road and Northern Avenue, Much
Hoole**

A report was presented on an application for the upgrading of existing public footpath to bridleway from Liverpool Road to the junction with Northern Avenue,

Much Hoole, on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-H.

A revised second page of the Committee plan is attached due to a slight error in the labelling of the letters. It should be noted however, that all the information in the report considered by Committee was correct and there is no change to the route or it's length.

Committee noted that the application was for the route recorded as Footpath 7-8-FP30 and part of Footpath 7-8-FP29 to be recorded as bridleway, and that the route D-X as shown on the Committee Plan had not been included on the application.

It was reported that there was a discrepancy between what was recorded as public footpath on the Definitive Map and Statement and what was thought to exist historically.

A site inspection had been carried out in June 2021.

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

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

Committee were advised that this was a finely balanced evaluation, given the limited evidence pre-1890.

County Councillor Salter asked that, if the Recommendation was approved, would Committee have the opportunity to consider a further Order for a more suitable route. Committee were informed that this would be a Diversion Order if public rights were shown to exist and also if the alternative route was suitable for the public to use. However, it was reported that the route on the ground seemed to be accepted by the public, and that they would continue to use the route available and may not be aware of the historical route.

County Councillor Howarth asked who was responsible for keeping paths safe and accessible if they were subject to erosion, noting that, in this case, the Parish Council had carried out the repairs. Committee were advised that if the path was publicly maintainable, then the county council would be responsible for maintenance as Highways Authority. It was noted, however, that any maintenance issues should not be taken into account when deciding whether or not public rights existed.

Committee were advised that if they were content there was sufficient evidence of an old vehicular highway between A and H, the Natural Environment and Rural Communities Act 2006 would have extinguished modern mechanically propelled

vehicular rights, leaving the route to be appropriately recorded as a restricted byway.

In addition, if Committee were content that there was sufficient evidence of an old pre-1890 vehicular highway A-H, they were 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 7-8-FP 30 between points D-E.

Resolved:

(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.

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

A report was presented on an investigation into an application to upgrade a footpath and add a bridleway from Mill Hill Farm off Haunders Lane, Much Hoole, through Marsh Farm to Hannings Farm, on the Definitive Map and Statement of Public Rights of Way, as shown between points A-B-C-D-E-F-G on the Committee plan attached to the Agenda papers.

A site inspection had been carried out in April 2021.

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

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

CC Clempson queried whether a better route could be used, given the fact that the route went through Marsh Farm. Committee were informed that this could not be taken into account when deciding solely whether public rights existed or not, but that a separate application to divert the route would be made if the route was not considered convenient for the public and the landowner.

It was pointed out to Committee that the route between points B and G going through Marsh Farm was currently recorded as a public footpath. In addition, whilst perhaps not an obvious through route for the public connecting to places of interest, it appeared it was a route of some antiquity and that it was considered to be and used in the past as a public through route.

In conclusion, Committee were advised that there was sufficient evidence from which to infer a vehicular highway was already dedicated on this route many many decades ago, and that they 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 was sufficiently strong to decide that the Order be promoted to confirmation.

Resolved:

- (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.

**10. 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**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Hothersall 13, Ribble Valley Borough. The applicants were the prospective owners of Welch House Barn, Hothersall Lane, Longridge.

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

The Committee noted that the recorded alignment of the footpath was along the driveway, through the residential and private garden areas of the property.

The Committee were informed that the new footpath would provide improved, open views of the countryside and an obvious, safe and convenient footpath away from the driveway, buildings and private garden area at Welch House Barn.

CC Parr queried why the issue of the footpath's route had not arisen when planning permission was being sought for the annex. It was reported that although the footpath should have been diverted prior to the construction of the annex, it was not uncommon for this not to happen.

CC Howarth expressed concern that Committee were being asked to take a decision on this application, without having sight of any consultation responses. In this case, a previous diversion application had been received but the informal consultation response had concluded that the diversion was too long so the route had been amended to what was now being recommended. It was therefore not expected that any adverse comments or objections would be received for the new proposed route. Although the informal consultation stage was recommended and not mandatory, this was undertaken in order to try and avoid any objections being received at the formal consultation stage and, subject to no objections being made at the informal stage, the recommendation to Committee was that an Order be made. However, Committee were advised that should any adverse comments or objections be received, then these would come back to Committee for consideration.

David Goode informed Committee that where applications were received that were in the interest of the landowner rather than being of benefit to the public, then the landowner would bear the costs for the works.

CC Salter appreciated that the new route had some significant advantages but expressed concern that some informal consultation responses were still awaited and asked that applications be brought to Committee once deadline dates had passed. It was reported that this request would be taken on board for future reports.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath 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.

**11. 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**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Footpath Briercliffe 163 at Musty Haulgh Barn, Granville Street, Burnley.

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

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

Committee were informed that, since the report had been written, the following amendment needed to be made:

Page 291 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

*** With the exception of a length of 1m located 10m to the west of Point A, where the width will be limited to 1.6m.**

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

'The 'Other Particulars' 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 **'with the exception of a length of 1m located 10m to the west of Point A, where the width will be limited to 1.6m'**."

It was proposed that the new route created by the diversion order A-C-B would have the status of public footpath in the first instance, then subsequently, it was proposed that Lancashire County Council 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 would link to the highway network.

Committee noted that, although the diversion would create a longer route, it would be easier to negotiate than the current route and the public would feel more comfortable in not having to pass through the residential and working areas of the farm.

CC Salter appreciated that there was a need for the route to be diverted, but expressed concern that the new route would require some loss of trees and that the current footpath was a much more scenic route than the proposed route which was near to industrial buildings. Subject to whether any other Committee Members shared these concerns, CC Salter stated that he would be minded to ask officers to look at the diversion again and defer the report to a later Committee.

It was reported that since the report had been written, Burnley Borough Council had confirmed they had no objection to the proposal. Briercliffe Parish Council, Burnley Bridleways, the Ramblers Association and the County Councillor for the Burnley Rural electoral division had confirmed they supported the diversion. The letters of support were read out to Committee.

CC Cheetham was pleased to see the collective positive responses from organisations to the consultation, and stated that many horseriders and cyclists had said they would like to see more routes that were easier to use.

CC Oakes commented that it was helpful to have the consultation responses and moved the Recommendation which was subsequently seconded.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath 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.

12. Urgent Business

There were no items of Urgent Business.

13. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 17th November 2021.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 17 November 2021

Electoral Division affected: <u>All</u>
--

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 17 November 2021

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

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

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

Regulatory Committee

Meeting to be held on 17th November 2021

Part I

Electoral Division affected:
All

Progress Report on Committee Items

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

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

Brief 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.

Details

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, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on 1st November 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 Added to the Register Since Last Committee

These applications have been added to the statutory register since the last update report was presented to the Committee:

Reference	Known As	Application Date
804-724	Cragg Hall	17/08/2021
804-725	Chorley Road to 9-3-FP 7	17/09/2021
804-726	Cotton Tree Lane	13/09/2021
804-727	Sod Hall Lane, New Longton	28/09/2021
804-728	Hodder Street, Accrington	13/10/2021
804-729	Lenches Road, Colne	14/10/2021

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
804-641	Aspen Lane, Oswaldtwistle	23/06/2020
804-601	PF 11 Hoghton, Chorley	23/07/2018

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

Committee has made a decision for this application, the Order has been made and Notices of Making served, the Order is currently open to statutory objections:

Reference	Known As	Application Date
804-648	Twist Moor Lane	02/06/2020

Definitive Map Modification Order Applications Awaiting Determination by the Planning Inspectorate

Committee has decided this application, the Order has been made and statutory objections received. It has been submitted to the Planning Inspectorate for determination:

Reference	Known As	Application Date
804-529	Banks	12/07/2012

Definitive Map Modification Order Applications Awaiting Submission to the Planning Inspectorate

Committee has decided this application, the Order has been made and statutory objections received. It is now awaiting submission to the Planning Inspectorate for determination:

Reference	Known As	Application Date
804-642	Lord's Lot Road	06/07/2020

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

Paper	Date	Contact/Directorate/Tel
-------	------	-------------------------

None		
------	--	--

Reason for inclusion in Part II, if appropriate		
---	--	--

N/A		
-----	--	--

Regulatory Committee

Meeting to be held on 17th November 2021

Part I

Electoral Division affected:
Heysham

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into Public Rights on Moss Lane, Overton (Annex 'A' refers)

Contact for further information:

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

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

Brief Summary

Investigation into the Public Rights on Footpath Overton 1 – known as Moss Lane - following an application to upgrade it to Bridleway.

Recommendation

- (i) That the application for the route recorded as Footpath Overton 1 (Moss Lane) to be recorded on the Definitive Map and Statement of Public Rights of Way as a Bridleway, be accepted subject to carriageway rights also being recognised.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Overton 1 (Moss Lane) from Footpath to Restricted Byway on the Definitive Map and Statement of Public Rights of Way.
- (iii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

Details

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for Footpath Overton 1 to be upgraded to Bridleway on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order 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

Lancaster City Council

Lancaster City Council did not respond to consultation.

Overton Parish Council

Overton Parish Council responded to our consultation with an objection to the application.

The grounds for opposing the application were stated as:

1. The fields traversed by Footpath Overton 1 are primarily used for grazing, horse traffic will disturb grazing livestock.
2. Horses will trample the surface of Footpath Overton 1 to the detriment of other users.

3. The exit from Footpath Overton 1 onto Downeyfield Road is at a dangerous bend. Currently the exit to Downeyfield Road is via a stile which discourages rapid exit. Upgrading to a bridleway will involve the provision of a gated exit/entrance with the risk of horses waiting on the carriageway and the risk of livestock escaping if the gate is left open.

4. Walkers and riders will use the gate and there is a risk of livestock escaping onto the road at this dangerous location.

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	4316 5912	Junction with Downeyfield Road immediately to the east of Downeyfield Bridge
B	4321 5892	Route crossed by a wooden stile and metal field gate
C	4325 5875	Bend in the stream and path
D	4345 5844	Route crossed by a wooden field gate and stile
E	4349 5838	Route crossed by a metal field gate
F	4351 5833	Open junction with Middleton Road immediately east of Middlepool Bridge

Description of Route

A site inspection was carried out in October 2020.

The route commences at a point on Downeyfield Road immediately to the east of Downeyfield Bridge (point A on the Committee plan). Immediately adjacent to the end of the stone abutment of the bridge is a wooden stile and large metal double field gates which were locked and blocked by a large boulder at the time of inspection.

From point A the route extends in a south south easterly direction along the edge of a pasture field with a wooden post and wire fence along the west side which encloses Lades Pool stream.

At point B the route is crossed by a further metal gate with a wooden stile alongside it. The route continues in a south south easterly direction following the fence along the west boundary of the field.

Between point B and point C there are some signs of what appears to have been an old hedge-line along the stream edge and some raised sections of land in the field immediately to the east of the route which give the impression that the route had, at some point in the past, been separate from the field.

At point C, near the parish boundary between Overton and Heaton with Oxcliffe, the stream – and path – turn to continue in a more south easterly direction.

From point C to point D the route follows the edge of the field with further evidence of old hedges which appear to have largely been removed. Where the stream bends away from the route there is a wooden post and wire fence running along the west side of the route and as the stream bends round to continue once more along the side of the route the route itself becomes enclosed on either side by hedges for parts of the length as it approaches point D.

At point D the route is crossed by a further wooden field gate and stile beyond which a stone surface track is enclosed between hedges and fencing with a small sheep-handling unit constructed along the side of the lane. The route continues to point E as a stone surfaced track separate from the adjacent fields to point E where there is a large metal field gate (open on the day that the route was inspected).

Beyond point E the route is open and forms the access to two residential properties and farmland. This section has been tarmacked but is in poor repair. At point F the route meets Middleton Road at an open junction immediately east of Middlepool Bridge.

The total length of the route is 880 metres. It is recorded as a public footpath and is currently signed as such at point A and point F.

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.



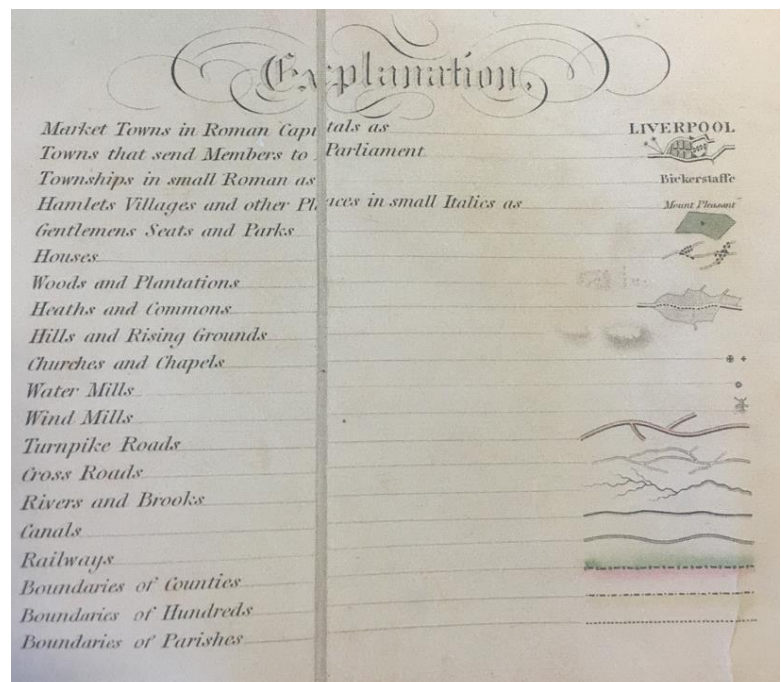
Observations		The full length of the application route is shown as a cross road linking to two roads now recorded as public vehicular highways. The quality of the map extract when enlarged is quite faint but close examination does show that the route is shown with lines along either side consistent with how a cross road is shown on the map.
Investigating Officer's Comments		The application route existed in 1786 and was 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. This small scale map only appeared to show the more significant routes and did not generally show routes currently recorded as public footpaths. This suggests that the route was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles as a through-route at that time.
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 application route is clearly shown as a through route linking to other routes now recorded as public vehicular highways. It is shown on the map as a
--------------	--

		cross road.
Investigating Officer's Comments		The application route existed as a substantial route in 1818 forming part of a direct link to the village of Overton. 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 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.

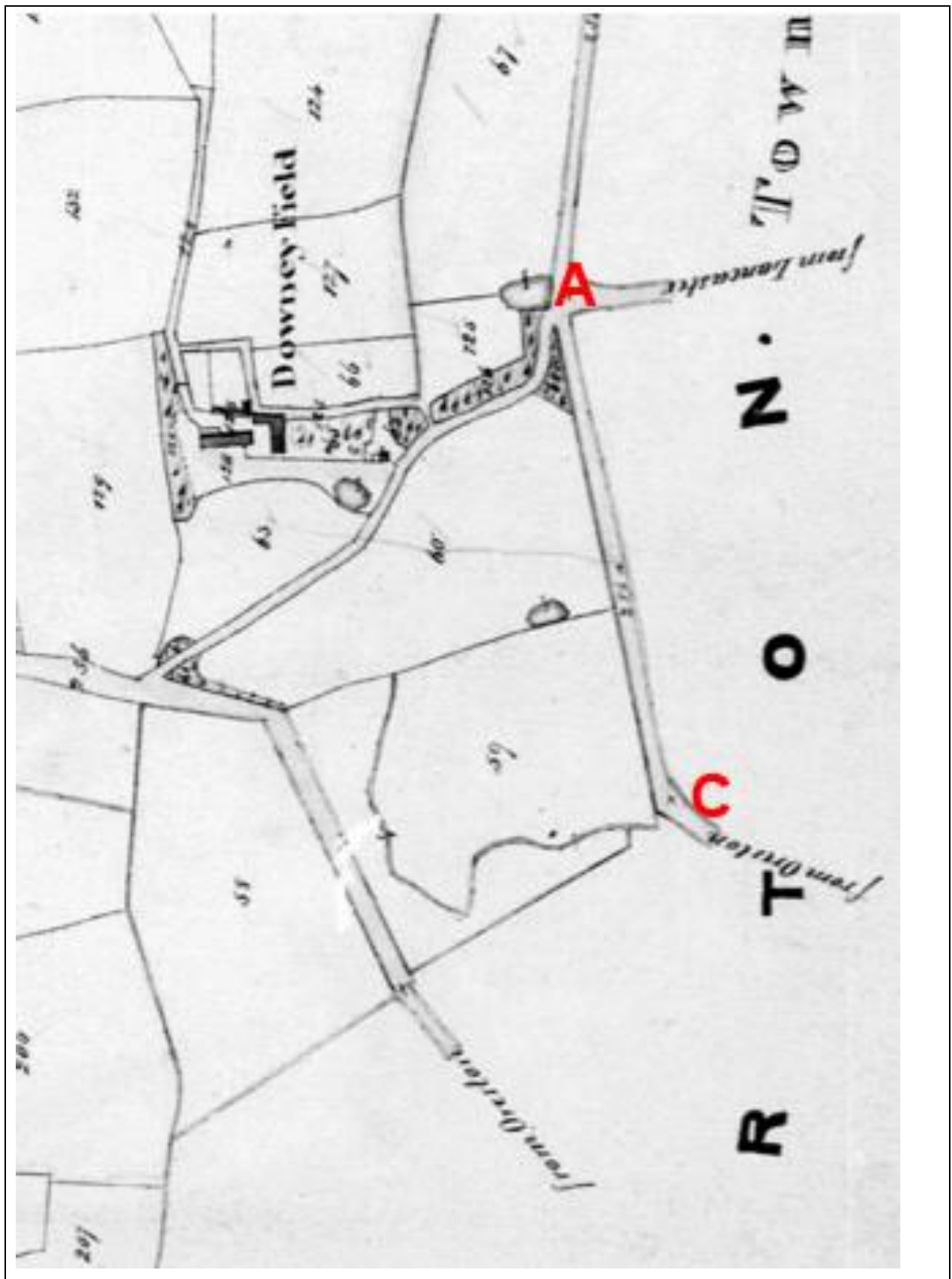


Observations

The full length of the application route is shown but it is shown to be noticeably narrower than the public vehicular routes to which it connects and there appears to be a line across the end of the route at point F. The key to the map indicates that routes shown were either turnpike roads or cross roads and in

		this instance it appears that the application route was shown as a cross road.
Investigating Officer's Comments		<p>The application route existed in 1830 as a significant route and it is unlikely that a map of this scale would show footpaths.</p> <p>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]</i> Judge Howarth examined various maps from 1777-1830 including Greenwood's, Bryant's and Burdett's 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."</p> <p>The route is shown as a through route on this and other small scale commercial maps but these maps do not show width variations so the fact that the route is shown to be narrower than other routes to which it connects cannot be taken, on its own, as a clear indication as to its width. Better detail of widths and existence of gates for example is not available until the route is considered on maps produced at higher scale.</p> <p>The way the route is shown may however indicate that by the 1830s the better used – or more suitable – route for horse drawn vehicles was looping west via Downeyfield Road and Middleton Road.</p>
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		The application route does not cross land affected by the construction of any railways or canals and there are no known proposals to construct either in the past.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment Overton Tithe Map and Award 1844 Middleton Tithe Map 1844 Heaton with Oxcliffe Tithe Map 1841	1841 - 1844	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.





Extracts from the Tithe Map for Middleton 1844

CC.—Lancs: Printed and Published (By Authority) by Wm. G. & Co., Stationers, 10, Abchurch Lane, London, E.C. 4.

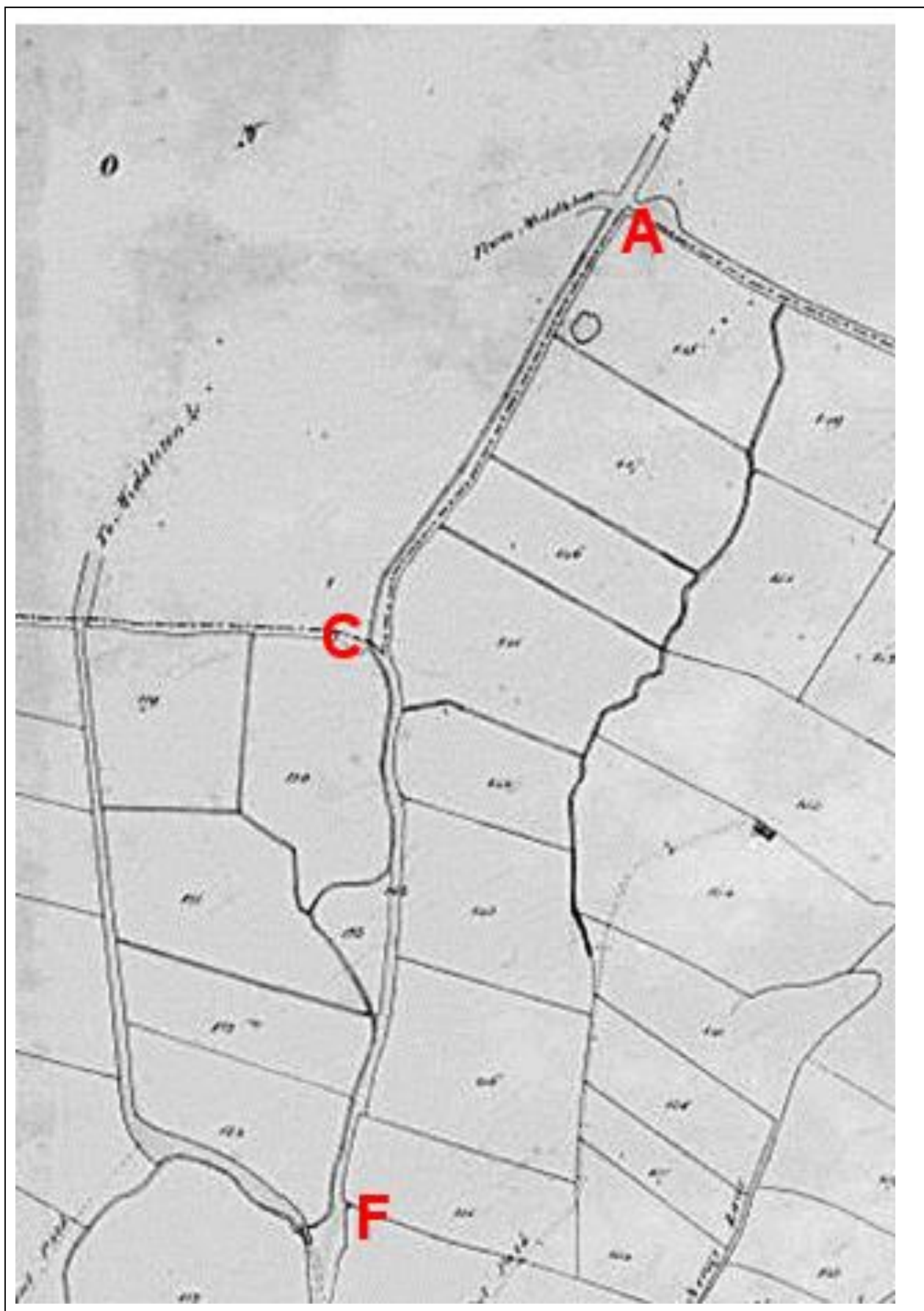
LANDOWNERS.	OCCUPIERS.	Number subscribing to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES BY STATUTE MEASURE.			Amount of Area Change signified by the amount of the change in the figures in the columns.			
					A.	R.	P.	A.	R.	P.	
Antistbury Estate and Dedon (Continued),	Robert Richardson (Continued),	305	Brought forward	Pasture	37	3	12	5	3	8	
		306	Little Elm Tree	Pasture	5	1	1	1	4	9	
		307	Great Elm Tree	Pasture	2	1	1	1	4	9	
		308	Waste Dale	Pasture	4	1	34	1	4	2	
		309	Waste ad ^l Rush Dale	Pasture	6	1	10	9	6	0	
		310	Marsh on the side	Pasture	2	9		9	10	4	
					1	2	15	1	2		
					27	3	55	8	5	17	1
	Himself	288	House Garden Hawthorn Plantations &c.		1	2	51				
Surveyors of the Highways of the Township of Middleton		169	Road to Heytham		5	3					
		256	d ^o to Lancaster		11	3	16				
		256a	Lane		2	2	34				
					15	10					
The Township of Middleton		25	Waste				14				

A
 1064.1
 1064.2
 1064.1

The Genesologist © Crown copyright images reproduced courtesy of The National Archives, London, England

Surveyors of the Highways of the Township of Middleton		169	Road to Heytham
		256	d ^o to Lancaster
		256a	Lane

Extracts from Middleton Tithe Award





Extracts from the Tithe Map for Overton 1844

William Thompson	William Thompson	139	Cross Close	06
	Joseph Woodhouse	329	Croft	06
	William Jackson	306	House Smithy & yard	
	Unoccupied	321	House and garden	
<hr/>				
Surveyors of the Highways		142 and 143	Public Roads	
<hr/>				
		144	Waste	

Extract from the Tithe Award for Overton 1844

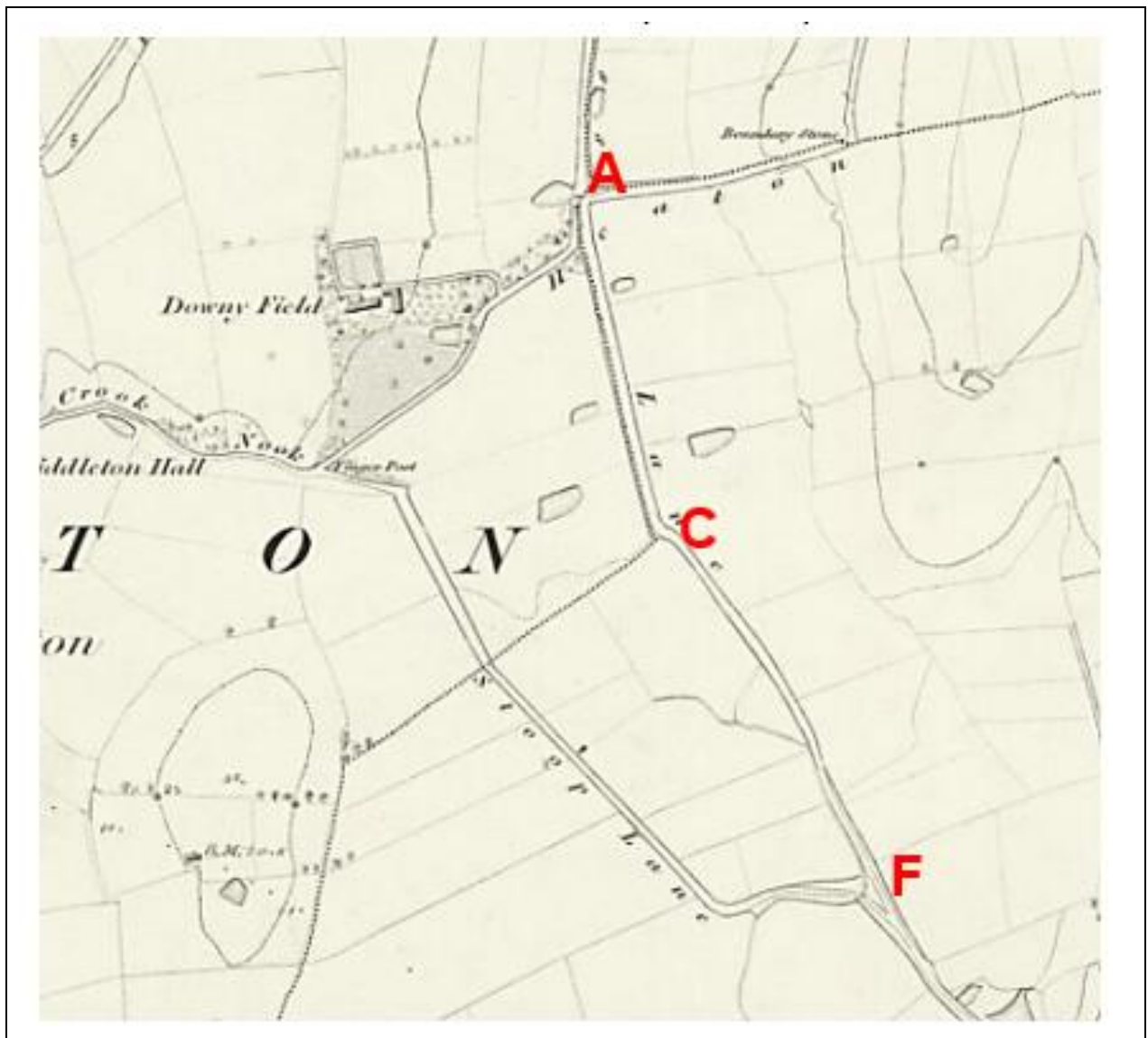


Extract from Tithe Map for Heaton with Oxcliffe 1841

<p>Observations</p>		<p>The full length of the application route is shown on the Tithe Map for Overton 1844 and is numbered as plot 142. The Tithe Award lists plot 142 as being owned by the Surveyors of the Highways and lists the route as a public road.</p> <p>Significantly Point A is a junction of a number of routes with the continuations labelled "From Middleton", "To Meadup" and "To Lancaster".</p> <p>In addition, on the Middleton Tithe Map 1844 the northern section of the application route between point A and point C is shown as Plot 256a and listed in the Apportionment as owned by the Surveyors of the Highways and described as a 'lane'. It is labelled "from Overton".</p> <p>Finally, on the Heaton with Oxcliffe Tithe Map, prepared several years earlier in 1841, the start of the route at point A is shown and is labelled "from Overton".</p>
<p>Investigating Officer's Comments</p>		<p>A substantial bounded route physically existed that would probably be wide enough for vehicles (carts) in the 1840s</p>

		<p>and which was regarded as a public road through Overton in 1844.</p> <p>It is not shown as being gated suggesting access was freely available along the full length.</p> <p>It is rare to find evidence of a route on three separate Tithe Maps but in this case we not only have reference to the existence of the route on three maps but we also have a consistent view of the fact that it was considered to be a public road in the early 1840s.</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 medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No inclosure award was found for the area crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
6 Inch Ordnance Survey (OS) Map Sheet 34	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.¹</p>

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 whole length of the route is shown as part of a longer through-route. No barriers are shown across the route suggesting that it was ungated and access unrestricted. The full length of the application route is shown as an enclosed route connecting to other routes now recorded as public vehicular highways. The route – and the continuation of a route north of point A - are labelled on the map as 'Moss Lane'.
Investigating Officer's Comments		The full length of the application route existed and appeared to be capable of being used in 1848. Its shared name suggested it was contiguous with the road to the north of point A. It is considered that a substantial bounded route connecting to a network of other public highways would have been at least a public bridleway and probably carried public vehicular rights.
25 Inch OS Map Sheet 34.1	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.



Observations

The full length of the application route is shown. It is labelled as being called Moss Lane but appears to be less significant than on earlier maps examined. The route appears to be gated at point A and at point B and between these two points the route is shown fenced off from the watercourse but as part of the fields numbered as plots 15 and 16. Beyond point B the route still appears to be bounded on both sides but the map shows that the surface of the route from point B through to point D was considered to be rough pasture. A further gate is shown close to point D beyond which the route continues between fences and numbered as parcel 43 through another area marked as rough pasture to point F.

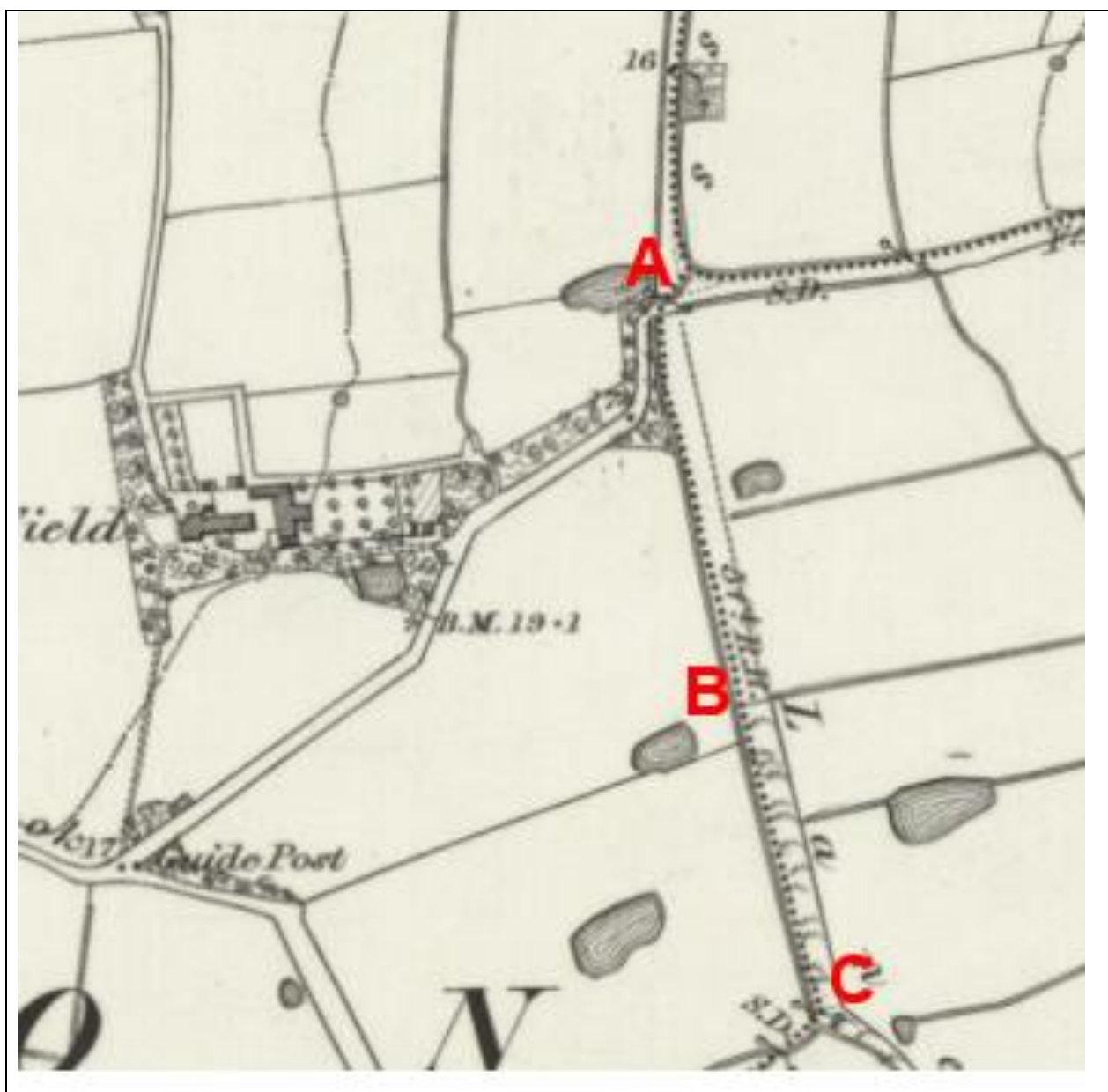
Downeyfield Road and Middleton Road (Stoop Lane) are both shown coloured on the map with a thickened line along the south and east side but the application route is not shown in this way.

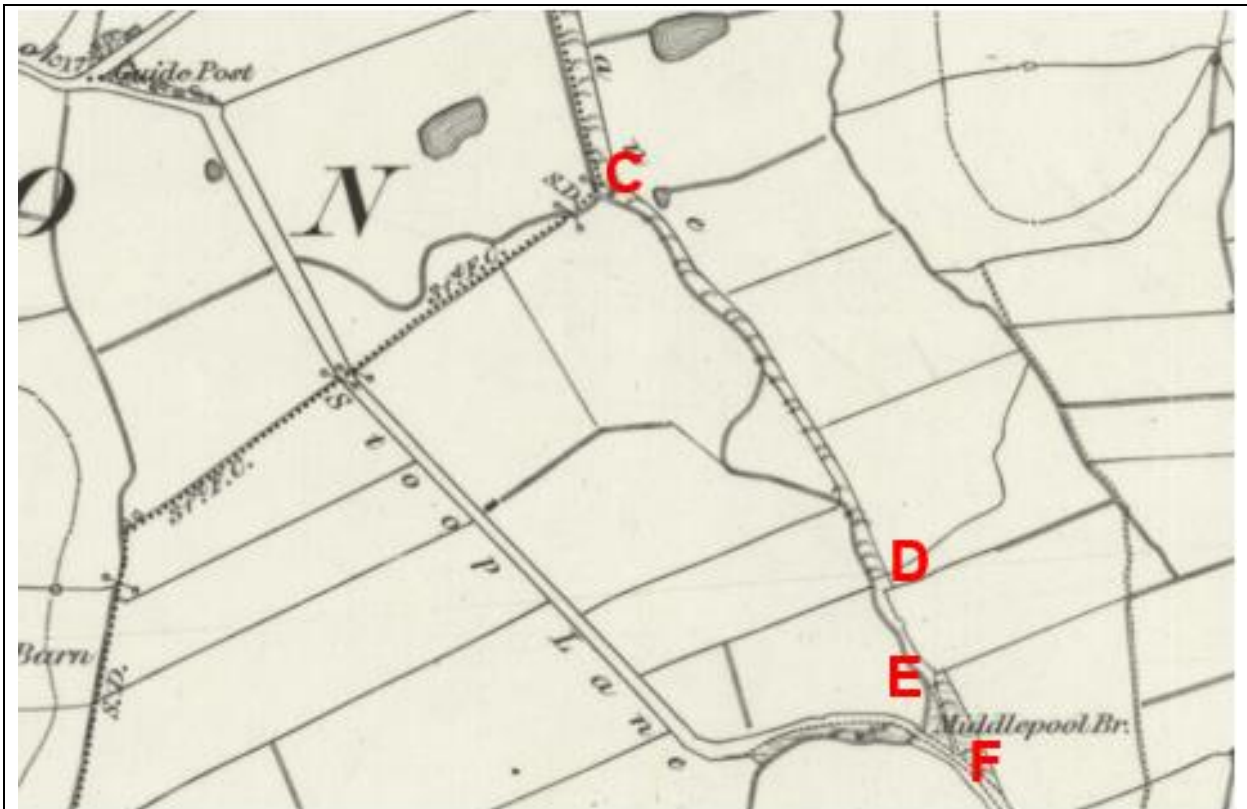
Investigating

Officer's

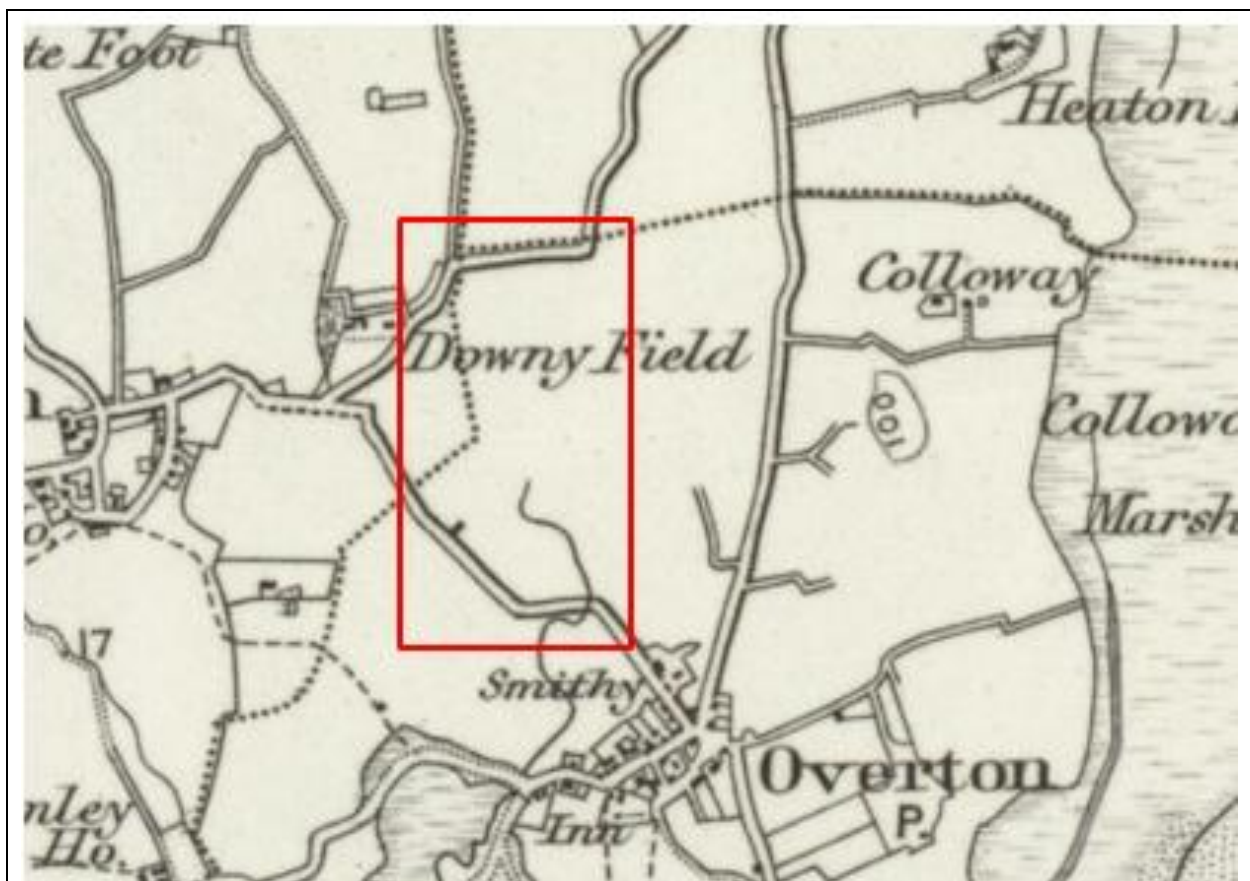
The application route still existed in

Comments		<p>1890 but use appeared to have declined as indicated by the fact that the surface was shown as rough pasture – probably indicating that it was wet and boggy and no longer easy to use with vehicles or possibly even on horseback.</p> <p>The fact that it was still named as a lane on the map is evidence that even if use had declined it was still known locally by that name.</p> <p>The fact that the route is now shown gated and not separated from the adjacent fields between point A and point B also suggests that public use may have declined. However 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>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 them at a trot so the fact that the route is not shown in this way suggests that by the late 1800s use of the route – which had previously been recorded on the Tithe Map and Award as a public road and shown on early small scale commercial maps – had declined.</p>
6 inch OS Sheet 34	1895	6 inch OS map surveyed 1890 and published 1895.

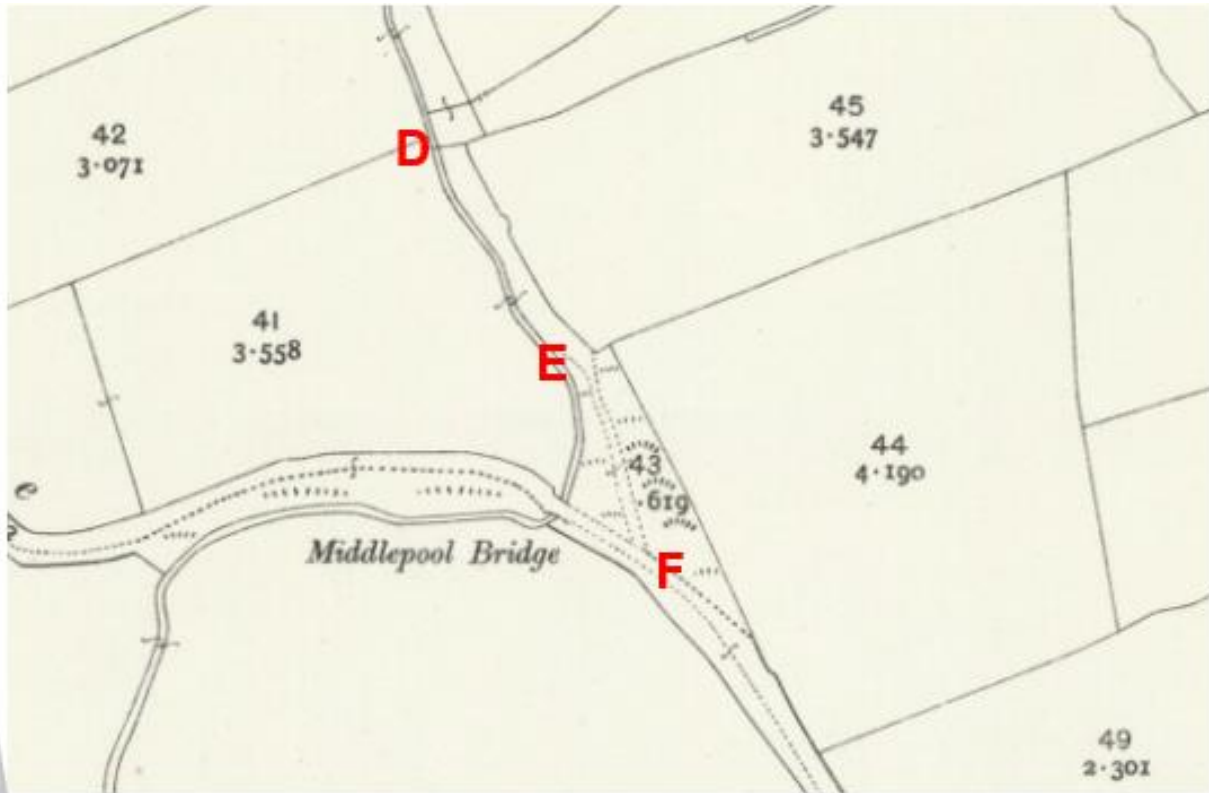




Observations		The full length of the application route is shown in the same way as it is shown on the 25 inch OS map published four years earlier and both maps had a survey date of 1890 suggesting that they were compiled from the same survey.
Investigating Officer's Comments		The application route existed in 1890 and appeared to be capable of being used on foot and possibly horseback. Use by vehicles appears to have declined and may now have been too difficult with public vehicular traffic travelling along Downey Field Road west from point A to the Guide Post at the junction with Stoop Lane (Overton Road) to point F.
1 inch OS Map Sheet 59 Lancaster	1898	Small scale OS map revised 1896 and published 1898.



Observations		The application route is not shown.
Investigating Officer's Comments		<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 through roads shown had public rights for those travellers. The fact that the application route is not shown suggests that it was no longer suitable for vehicular use and/or that it was not considered to be a public vehicular route at that time.</p> <p>The fact that the route is not shown is not inconsistent with the existence of routes which were used on foot or possibly on horseback at that time.</p>
25 inch OS Map Sheet 34.1	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		<p>The full length of the application route is shown. The route is again shown to be gated at point a and point B and between these two points the route is labelled with the word 'footpath'.</p> <p>Between point B and a further gate at point D the route is shown enclosed and is labelled as 'Moss Lane'. Between point D and point E the route is shown as a track passing through an area of rough land but is open and not gated.</p>
Investigating Comments	Officer's	<p>The application route existed in 1910 and appears to have altered very little since the earlier 25 inch map was produced. The only significant difference is the labelling of the route between point A and point B as a footpath. This gives an indication as to the routes physical appearance as it appeared to the surveyor at that time and suggests that a trodden track may have existed along this section which was indicative of use of the route on foot. Again, the way that the route is shown on the map suggests that use of the route with vehicles – and possibly</p>

		on horseback had declined or possibly stopped altogether.
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.



1905



1920



1941

Observations		The application route is not shown on any of the three maps published by Bartholomew between 1905 and 1941.
Investigating Officer's Comments		The fact that the application route is not shown on the maps suggests that it was not usable as a public vehicular highway in the early 1900s. The route does not generally show routes used as footpaths or bridleways at that time.
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

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

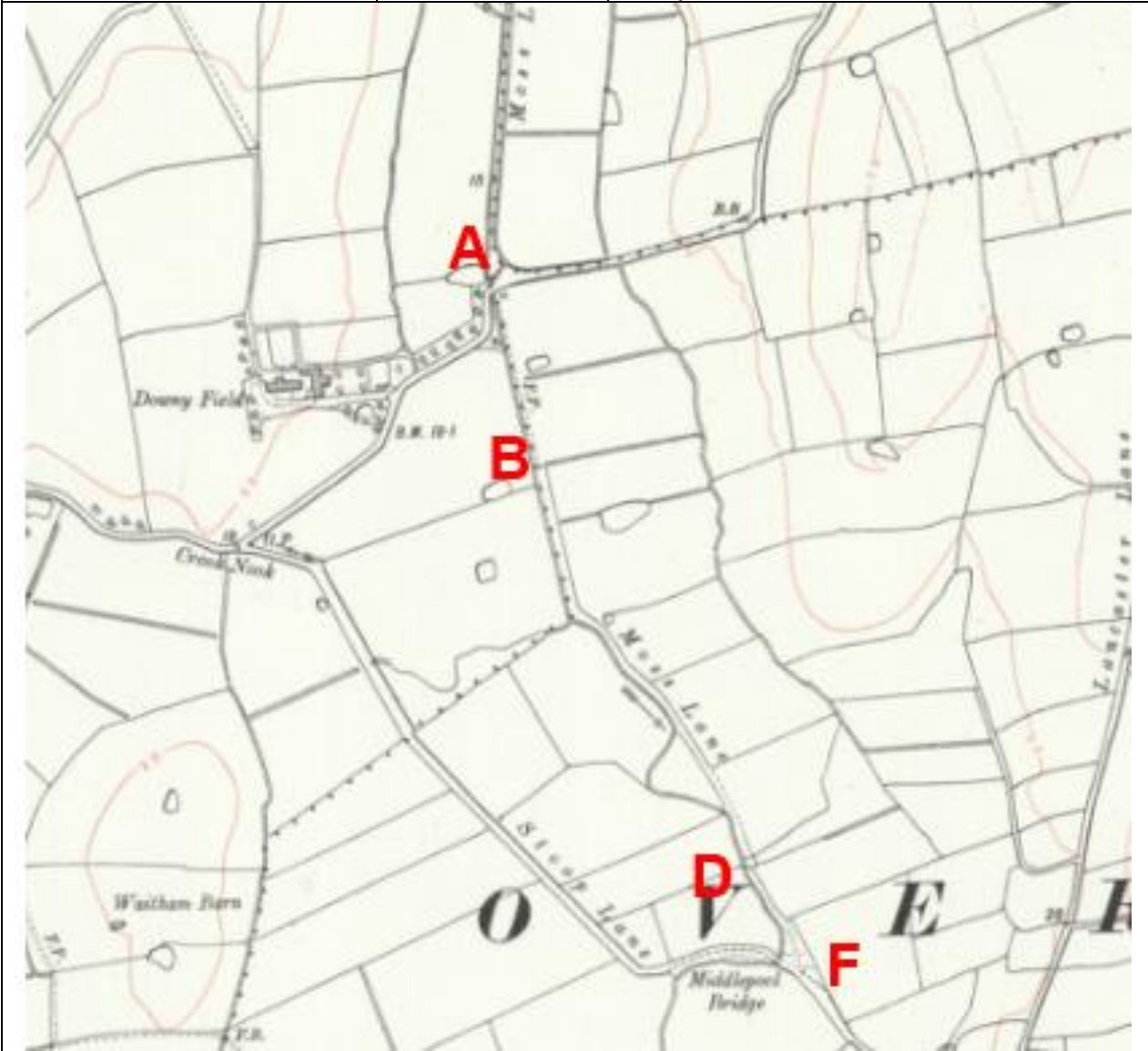


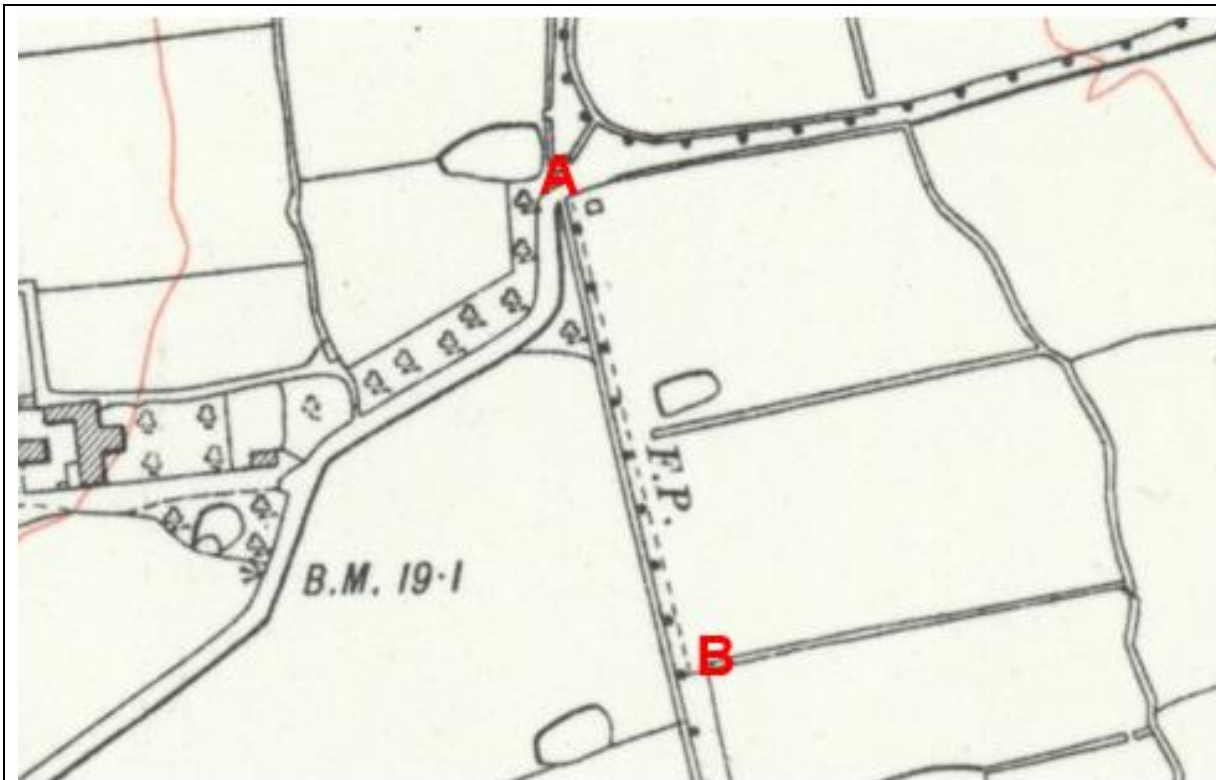


<p>Observations</p>		<p>Between A and point B the land crossed by the application route is included in the numbered plot 81. The District Valuation book lists this plot as being owned by James Curwell and occupied by James Gardner. It was described as 'land' and no deductions were claimed for public rights of way or user.</p> <p>Between point B and point D the land crossed by the application route is included in plot 2 which is listed as being owned by Thomas Ireland and occupied by Samuel Jackson. It was described as 'land' and no deductions were recorded for public rights of way or user.</p> <p>From point D to point F the route is excluded from the numbered plots.</p>
<p>Investigating Officer's Comments</p>		<p>It appears that the owners of the land crossed by the application route between point A and point D did not acknowledge the existence of any public rights over the land crossed by the application route at the time of the</p>

		<p>valuation.</p> <p>Between point D and point F the application route was physically separated from the adjacent land in the early 1900s and although the exclusion of a route from the numbered hereditaments (plots) is often considered to be good evidence of the fact that a route was believed to carry public vehicular rights it is noted that the rest of the route was not shown in this way so this view must be weighed up in relation to all available evidence and on balance it appears that the route was not considered to be a public vehicular through route in the early 1900s.</p>
--	--	--

6 inch OS Sheet 34 NW	1916	6 inch OS surveyed 1845, revised 1910 and published 1916
--------------------------	------	--






Observations		This further edition of the 6 inch OS map shows the full length of the application route in the same way that it is shown on the 25 inch OS map published in 1913. Both maps were prepared following a survey in 1910 so it is not surprising that they show the route in the same way.
Investigating Officer's Comments		The application route existed in 1910 and appears to have altered very little since the 1890s. The only significant difference is the labelling of the route between point A and point B as a footpath suggests that a trodden track may have existed along this section which was indicative of use of the route on foot. The way that the route is shown on the map suggests that use of the route with vehicles – and possibly on horseback - had declined or possibly stopped altogether.
1 inch OS Map	1918	Map extract submitted by applicant and published 1918. Date of survey not known.



Observations		The application route is shown as a single dashed line in the same way as other routes in the area which are now recorded as footpaths.
Investigating Officer's Comments		The application existed in 1918 and appeared to be capable of being used, at least on foot.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD,


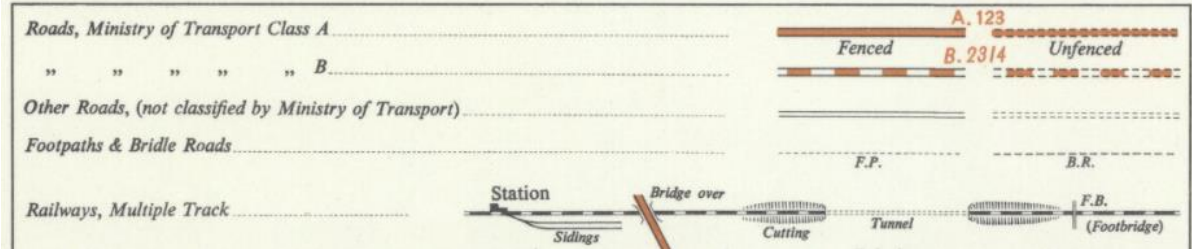
		Burnley RD, Garstang RD and West Lancashire RD.
		
Observations		The application route is recorded as a footpath on the map prepared by Lancaster Rural District.
Investigating Officer's Comments		The application route was considered to be a public footpath in the 1930s.
1 inch OS Map	1947	Small scale OS map fully revised in 1920 and published in 1947.

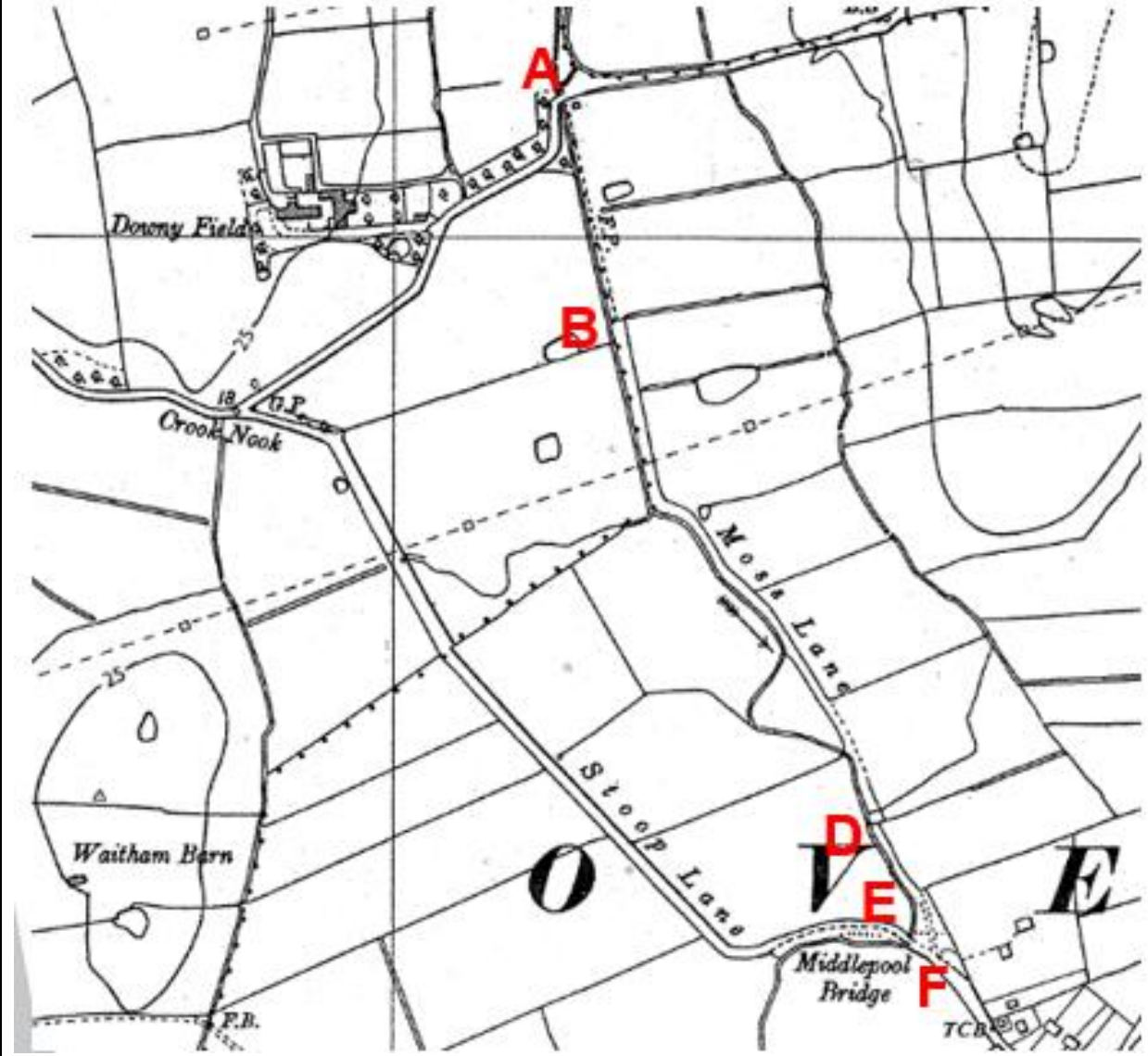



Ministry of Transport Roads	<u>A.6</u>	<u>B.5253</u>	Ra
Other Motor Roads	<u> </u>	<u> </u>	
" " " narrow	<u>Good</u>	<u>Bad</u>	Ma
Minor Roads	<u> </u>		El
Bridle & Footpaths	<u> </u>		(wit
Unfenced Roads are shewn by dotted lines			Pi
Gradients steeper than $\frac{1}{4}$	<u>→</u>		We
Toll Gates	<u>TOLL</u>		On
Road Mileage	<u>5</u>		Qu

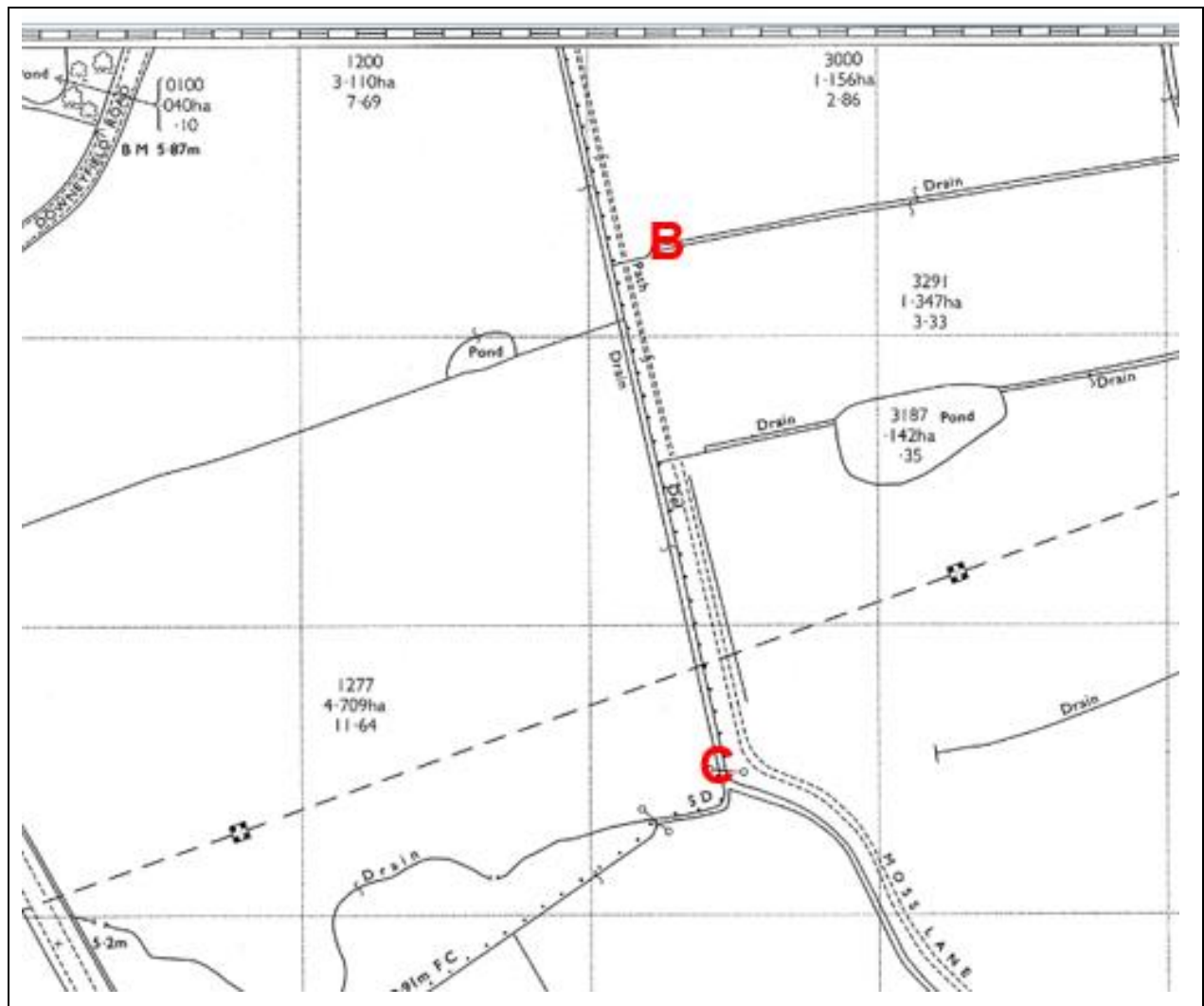
Observations		The application route is shown on the map denoted by a dashed line which was indicated as being a footpath or bridleway in the map key.
Investigating Comments	Officer's	The application route existed in the 1920s and appeared to have been considered to be a footpath or

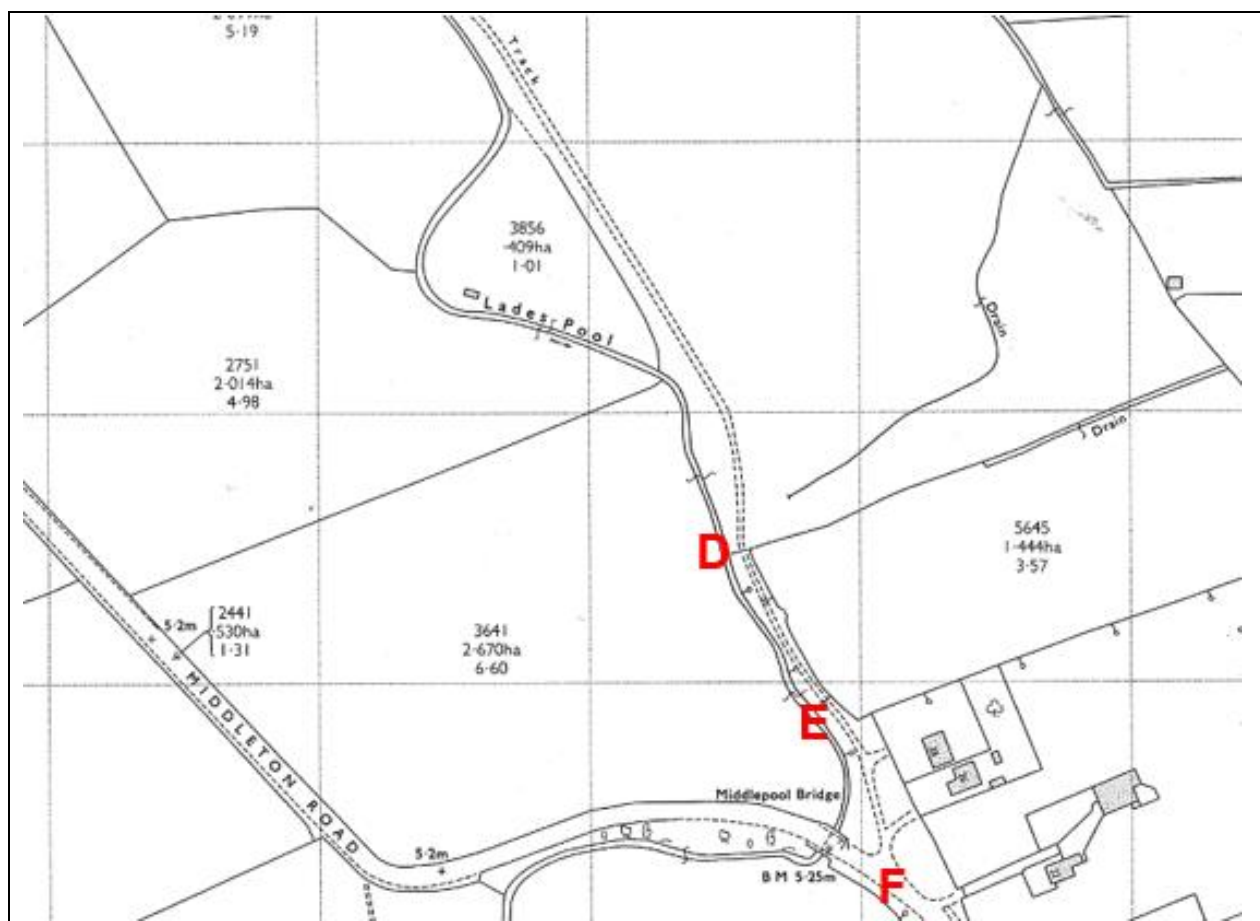
		bridleway.
1:25,000 OS Map Sheet 34/45	1947	Further OS map extract provided by the applicant. Published in 1947 but date of survey not known.

		
		
Observations		The application route is shown. It appears, with reference to the map key, to be shown as 'other road' as opposed to other routes on the map shown by single dashed lines and denoted as footpaths (FP) and bridleways (BW).

Investigating Comments	Officer's		The application route existed in the 1940s. Its physical appearance as a partially enclosed track may have been the reason why it was shown as 'other road'. As with all OS maps examined the OS disclaimer indicated that the showing of a route as a footpath, bridleway or road was not indicative of its public status.
6 Inch OS Map Map 45NW		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 in the same way that it is shown on the earlier

		OS maps examined.
Investigating Officer's Comments		The application route existed in the 1920s and appeared to be capable of being used at least on foot.
1:25,000 OS Map SD 45	1966	OS map revised 1910-1965 and published 1966.
		
Observations		The application route is shown as a single dashed line.
Investigating Officer's Comments		The application route existed in the 1960s and appeared to be capable of being used, at least on foot.
1:2500 OS Map SD 42-58 – 43-58	1972	Further edition of 25 inch map reconstituted from former county series and revised in 1970 and published 1972 as national grid series.





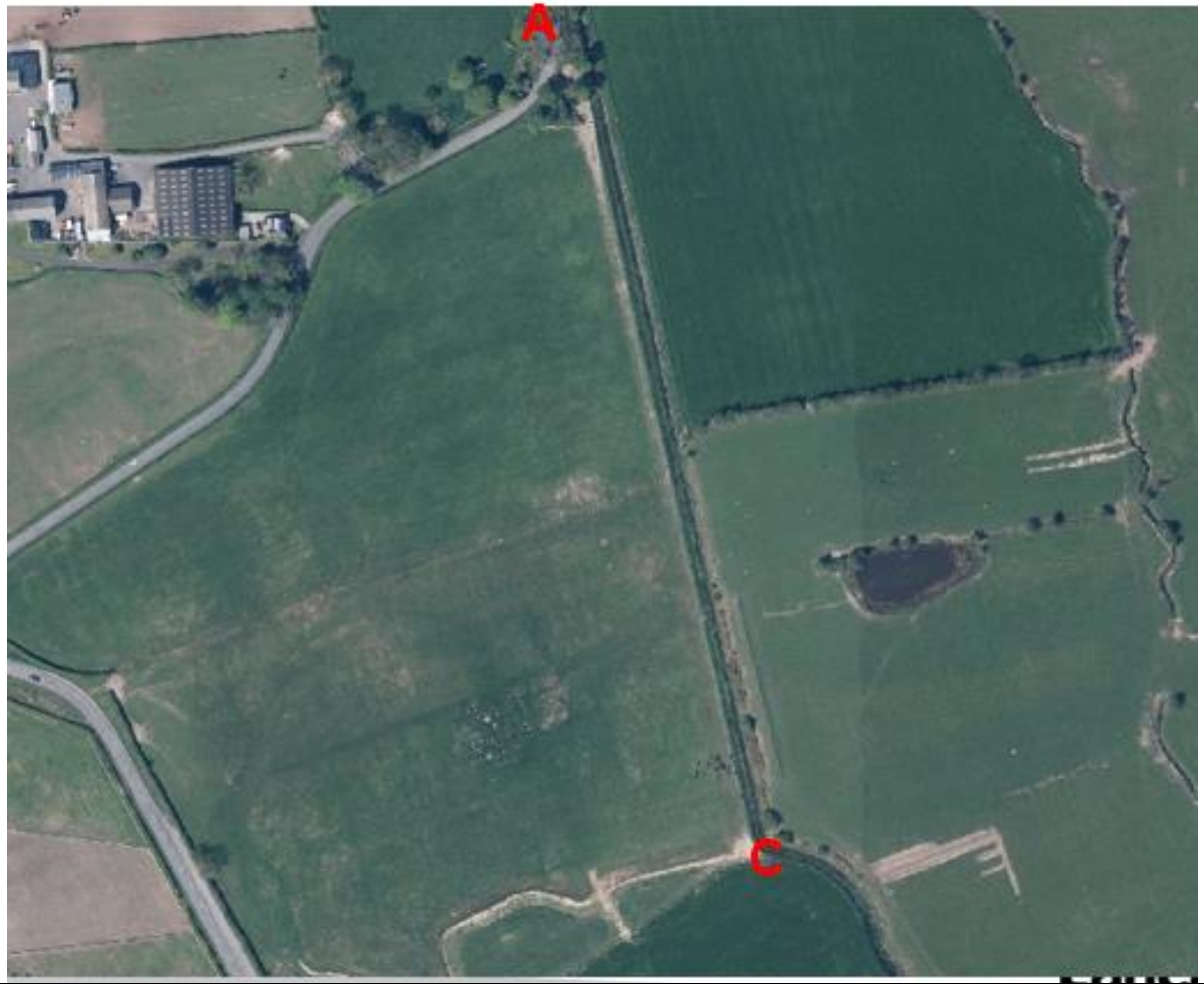
<p>Observations</p>		<p>The OS map sheet showing the start of the route from point A could not be found. However at route marked as a 'path' is shown leading from the direction of point A to point B on the lower sheet. A line is shown across the route at point B and also 65 metres south south east of point B from where the route is then shown as a 'track' and also labelled as Moss Lane. A further line is shown across the route at point D and between point E and point F the route now provides access to two residential properties both accessed via point F.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in the early 1970s and appeared capable of being used at least on foot but there were more structures across the route – it is suggested that it is more likely that these were gates because the formerly enclosed route was more likely to have been used for access to those fields with animals and this is consistent with</p>

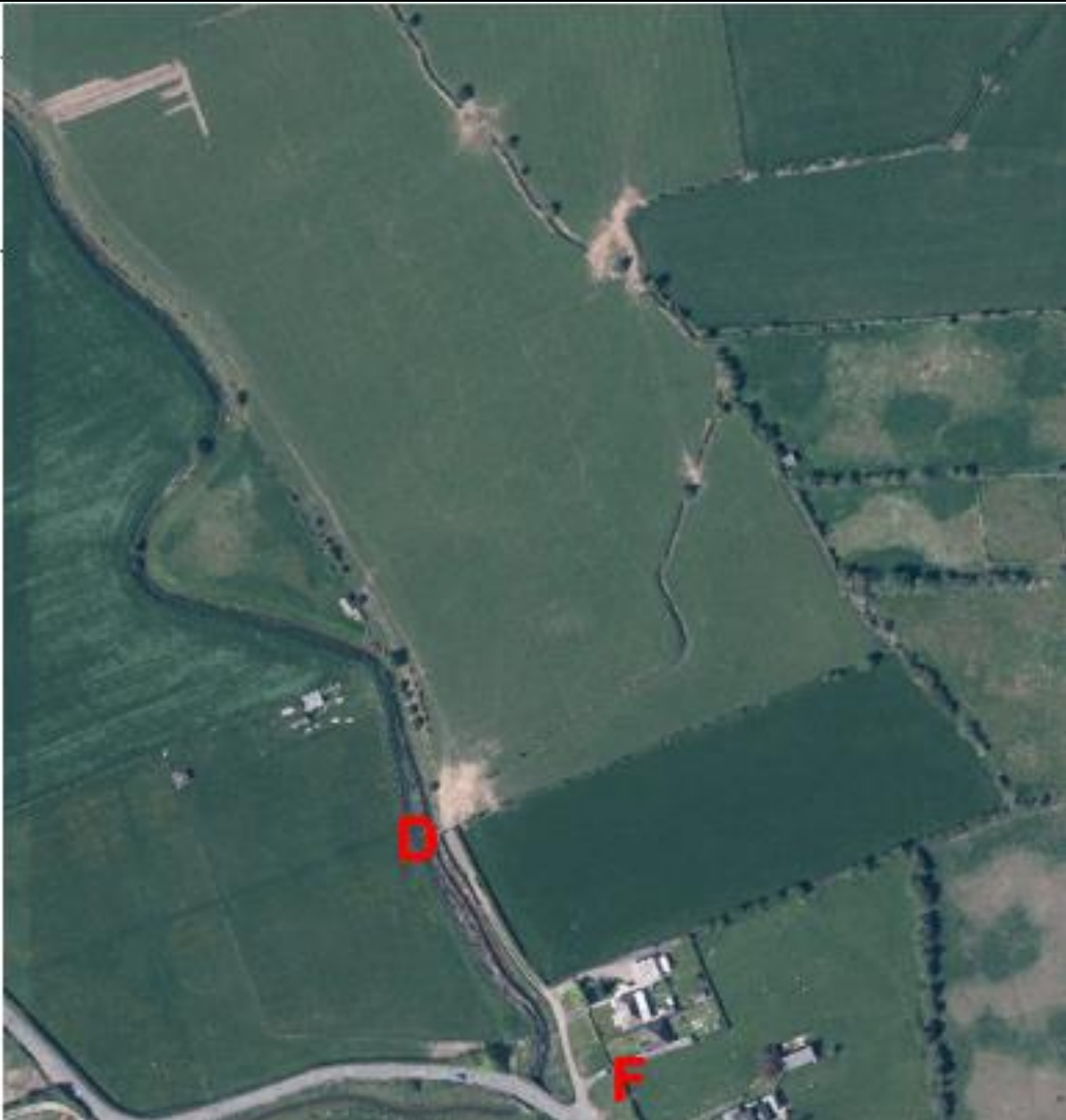
		what is observed today.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





Observations		Parts route can be seen as a worn track on the photograph – particularly the southern section between points D-E-F. Traces of a more substantial bounded route that existed in the past appear visible between point B and point C.
Investigating Officer's Comments		The land crossed by the application route appears to be accessible with traces of a path in places suggestive of low levels of pedestrian use. The southern end of the route appears to have been used more frequently with vehicles – or possibly by animals – gaining access to the fields.
Aerial Photograph	2016	Aerial photograph available to view on





Observations		A faint trodden track appears visible along parts of the route from point A through to point B suggestive of low levels of pedestrian use. From point D through to point F the route is much more visible as a track used by vehicles to access properties and fields.
Investigating Officer's Comments		The application route existed in 2016 and appeared capable of being used on foot throughout its full length with evidence of vehicular use over the southern section between point D to point F.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive

		<p>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	Lancaster Rural District	PARISH	Overton	No.	1
MAP SHEET No.	1	LENGTH	0.56 miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)					
Field F.P.					
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
Starts from Downeyfield Bridge, over stile, following dike side, over stile (in bad repair) - across pasture field to Middlepool Bridge on Middleton Rd.					
SURVEYED BY :-		Name	R. Braid		
		Address	The Bungalow Overton.		
Date		Feb. 27 th 1951			

Observations		The application route was recorded as a public footpath by Overton Parish council in 1951. The parish survey card produced at that time describes the route as a field footpath.
Draft Map		The parish survey map and cards for

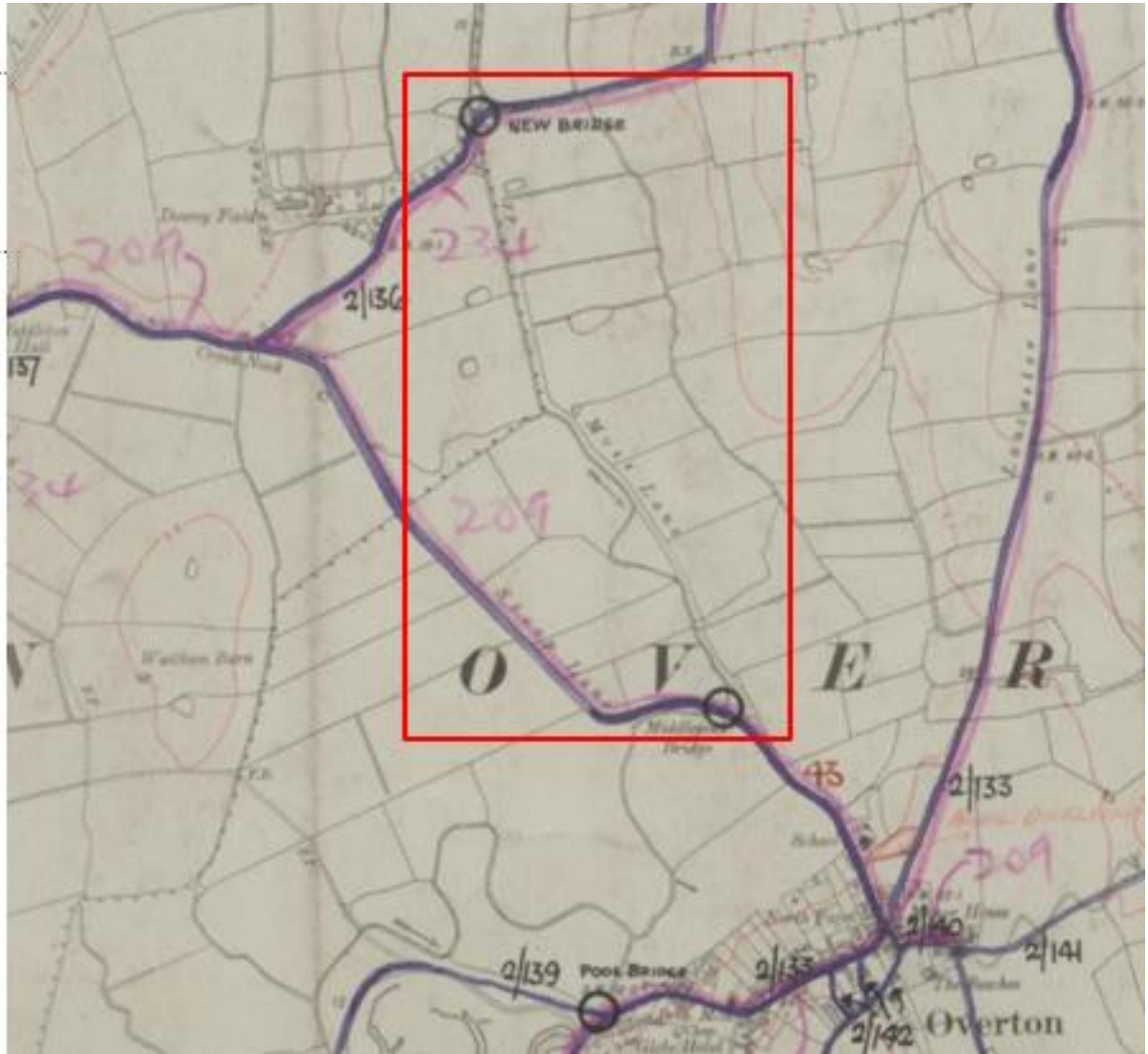
		<p>Overton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was recorded as a public footpath on the Draft Map and no objections of representations were made relating to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was recorded as a public footpath on the Provisional Map and no objections of representations were made relating to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route was recorded as a public footpath on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and

		Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
		
Observations		The application route is recorded as a public footpath on the Revised Definitive Map (First Review).
Investigating Officer's Comments		The application route was considered to be a footpath during the preparation of the First Definitive Map and Statement in the 1950s through to the 1960s.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were

		<p>public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
--	--	---



Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map. The route is a publicly maintained footpath which is on the Definitive Map and Statement of Public Rights of Way.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway on the List of Streets does not mean that it does not carry public rights of access other than those rights currently recorded on the Definitive Map.
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 Officer's Comments		If any unrecorded 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 application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

The affected land 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 along the application route 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 recorded as a public footpath 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, if public carriageway rights are shown to exist and the appropriate status for the application route 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.

Landownership

From point A to point D the application route crosses title LAN107739 from point D to point F the application route crosses land which is unregistered.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is usually the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, a range of commercial maps and other documents were examined which seem to suggest that the application route existed in its entirety as a through-route from the late 1700s or early 1800s. The early commercial maps - Yates' Map of 1786, Greenwood's Map of 1818 and Hennet's Map of 1830 all consistently show the route as a cross road and the inclusion of the route on all three maps suggests that in the mid-1700s through to at least 1830 the route appeared to form part of the public vehicular highway network.

This view is given further weight by the fact that the full length of the route is recorded as a public road owned by the Surveyors of the Highway on the Overton

Tithe Map produced in 1844. In addition, on the Middleton Tithe Map 1844 the northern section of the application route between point A and point C is also listed in the Apportionment as owned by the Surveyors of the Highways and described as a 'lane'. Also, on the Heaton with Oxcliffe Tithe Map, prepared several years earlier in 1841, the start of the route at point A is shown and is labelled "from Overton" suggesting that it was considered to be a public vehicular route from Overton.

The application route is clearly shown on the first edition 6 inch OS map published in 1848 and is labelled as part of Moss Lane.

However, by the late 1800s it appears from the map evidence available, that use of the route declined in favour of using the route along Downeyfield Road and Middleton Road. No legal Orders have been found extinguishing public rights along the application route and it is suggested that whilst Downeyfield Road and Middleton Road may have been repaired and maintained, the application route, which ran adjacent to a watercourse and was potentially wet and boggy underfoot simply fell out of use by people travelling by horse or with horses and carts.

Ordnance Survey maps from the late 1800s onwards show gates across the route and the fact that it appeared to become somewhat overgrown. Over time boundaries separating the route from the adjacent fields were removed and the route –whilst still named as Moss Lane was also labelled as a path and track.

By the 1950s when the parish survey was carried out as part of the preparation of the Definitive Map the route was described as a field footpath and recorded as a public footpath. This appears to be consistent with the use made of the route at that time but does not reflect the historical use of the route as a public road.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant provided copies of the following maps and documents in support of the application:

- Yates' Map of Lancashire 1788
- Greenwood's Map of Lancashire 1818
- Hennet's Map of Lancashire 1830
- 6 inch OS maps published in 1848, 1895 and 1916
- 25 inch OS maps published in 1891 and 1913
- 1 inch OS maps published in 1898, 1918 and 1947
- 1:25,000 OS maps published in 1947 and 1966
- Overton Tithe Map and Award 1844
- Middleton Tithe Map and Award 1844
- Heaton with Oxcliffe Tithe Map 1841
- Finance Act Map 1910
- Land ownership information obtained from the land registry
- Lancashire county council List of Streets
- Search of stopping up orders from the London Gazette
- Recent (2020) photographs of the route

Information from Others

One of the adjoining landowners responded to confirm the land in their ownership with a request for a clarification of the DMMO process. This information was provided.

The local Cycling UK Right to Ride representative responded to our consultation to state that they had no objection to the application.

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

We received communication from Thomas Hayton Winkley Solicitors on behalf of an affected party requesting further information regarding the application and details of how to submit evidence pertinent to the application. Despite this, no further submission has been received.

Information from the Landowner

Representatives acting on behalf of the owner of the field crossed by the application route between point A and point B responded to the consultation objecting to the application.

They explained that the landowning family purchased the field in 1966 and the route had not been used as a bridleway since that time. In addition, they refer to work carried out by the Water Board between 1932 and 1966 to widen the watercourse running alongside the application route. In their opinion the work carried out took a strip of land approximately 12 foot wide from the western side of the field including the land they described as being the 'old road' and they now consider that the old route no longer physically exists.

In addition, they express concerns about gates being left open and livestock escaping.

The owner of the land between points B-E responded to the consultation stating strong opposition to the application.

They went on to state that in their opinion there was no sign of the route ever having been a lane, just an open field with the footpath running down the side.

Concerns raised related to the use of the field for grazing cattle, the landowner believing that if the application is successful use as a bridleway will lead to gates being left open.

It was noted that on occasion the landowner had to lock the gate accessing the field to prevent access by illegal poachers driving vehicles around the field and shooting the wild hare population.

The landowner also noted sheep handling pens on the application route and that use as a bridleway would cause great inconvenience.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Consistently shown as a cross road on three key early commercial maps suggesting that it existed as part of the public vehicular network until at least the mid 1800s.

Tithe Map and Award evidence from 1844 of the route being considered to be a public road.

Substantial map and documentary evidence supporting the physical existence of the route with an acknowledgement that use as a public vehicular route had declined by the late 1800s.

Against Making an Order(s)

No evidence against making the order

Conclusion

As there is no express dedication and no modern or historical public user evidence has been submitted in these circumstances a presumption of dedication of a public right of way under section 31 cannot be relied upon. It is therefore necessary for Committee to consider whether the map and/or documentary evidence is sufficient to support the dedication of a public right of way under common law.

In this case the route marked A-F is currently recorded as a footpath. The applicant applied for the route to be upgraded to a bridleway but it should be noted that as always Officers from the Planning and Environment Group consider what rights the available map and documentary evidence shows rather than whether or not it supports a particular status.

The evidence presented in this report is sufficiently strong to suggest that a public vehicular route historically connected two other public vehicular highways.

Yates, Greenwood and Hennet each depict the route as a "cross road" which suggest the route in the late 1700's / early 1800's was a substantive route, forming part of the public vehicular network, although it should be noted that Hennet showed the route drawn narrower than other adjacent routes. Further evidence to support the view that the route formed part of the public vehicular network is also reflected in the fact that the full length of the route is recorded as a public road owned by the Surveyors of the Highway on the Overton Tithe Map produced in 1844, and that it was later considered significant enough to be named on the first 6 inch OS Map 1848 as part of "Moss Lane" (although private roads can be named too).

Subsequent editions of the OS maps appear to reflect that use of the route for some reason had declined by the late 1800's and gates appear to be shown at various points along the route. The possible presence of gates across the route by the OS is not inconsistent with a public route in a rural area and the route appears to be depicted in such a way that it appears to have been capable of being used on horseback.

The representations made by the Parish Council and landowner concerning the practical issues are, of course, important but they are not relevant to the issue of what public rights already exist in law. These concerns raised may, however, be addressed by the future management of the route should an Order be made and confirmed.

A comparison of the modern day field boundaries and position of the watercourse adjacent to the route between point A and point B with what is shown on the First Edition 25 inch OS map indicates that the watercourse remains the same although the sloping banking has been extended. However there is still a lot of the width of the old road/application route which has been incorporated into the modern field and even if the historical width was 'lost' onto the sloping bank it would still not affect the assessment of documentary evidence.

In conclusion, there is no single document which offers irrefutable evidence in its own right to determine this application. Collectively, there is a large body of evidence which supports the physical existence of the route from points A to D since at least 1786 and of it being capable of being used on foot, horseback and by vehicles into the 19th Century. The evidence suggests that historically the route formed part of the public vehicular network but that over time alternative vehicular routes were used.

If Committee is content that there is sufficient evidence of a vehicular highway along the application route then 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.

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

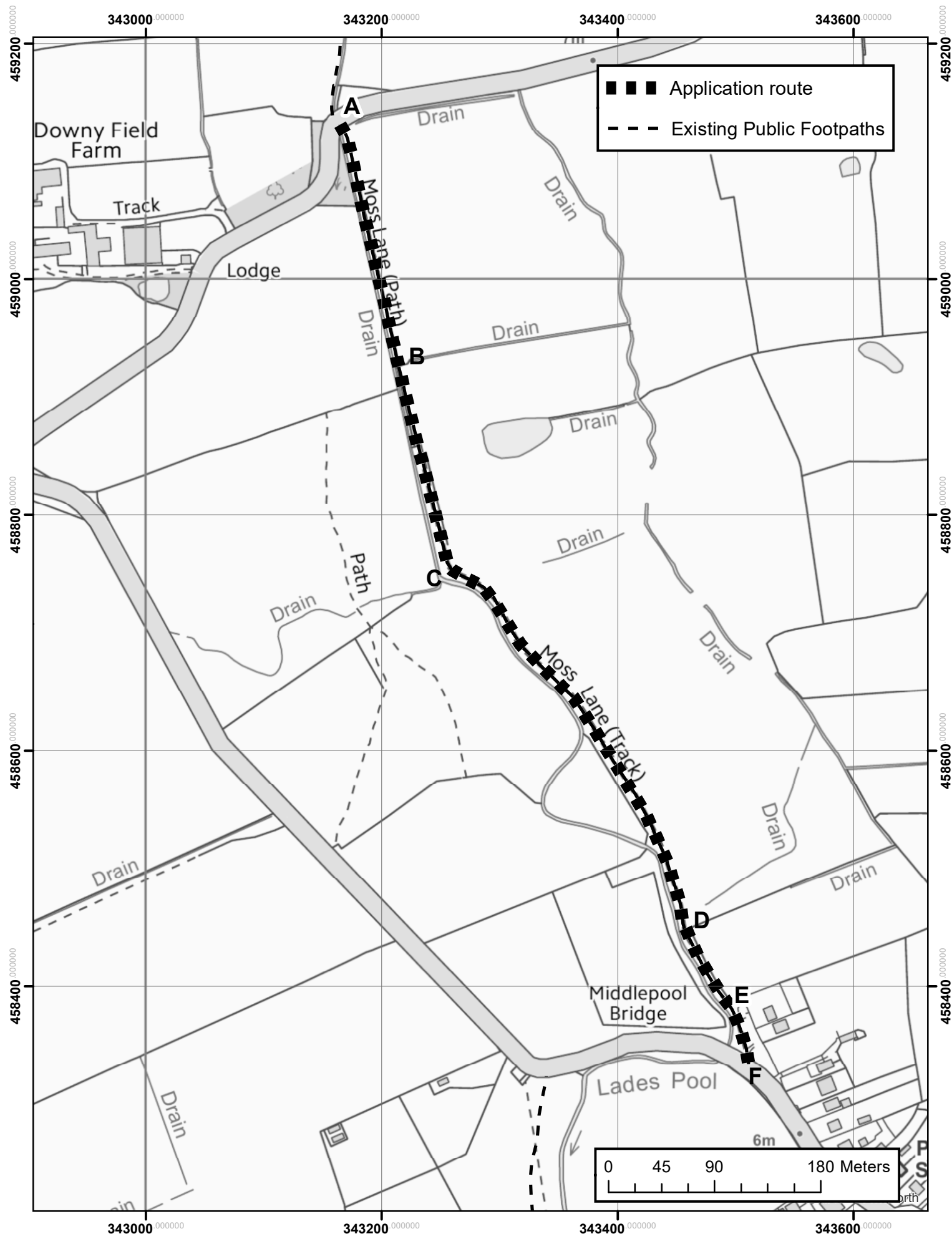
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

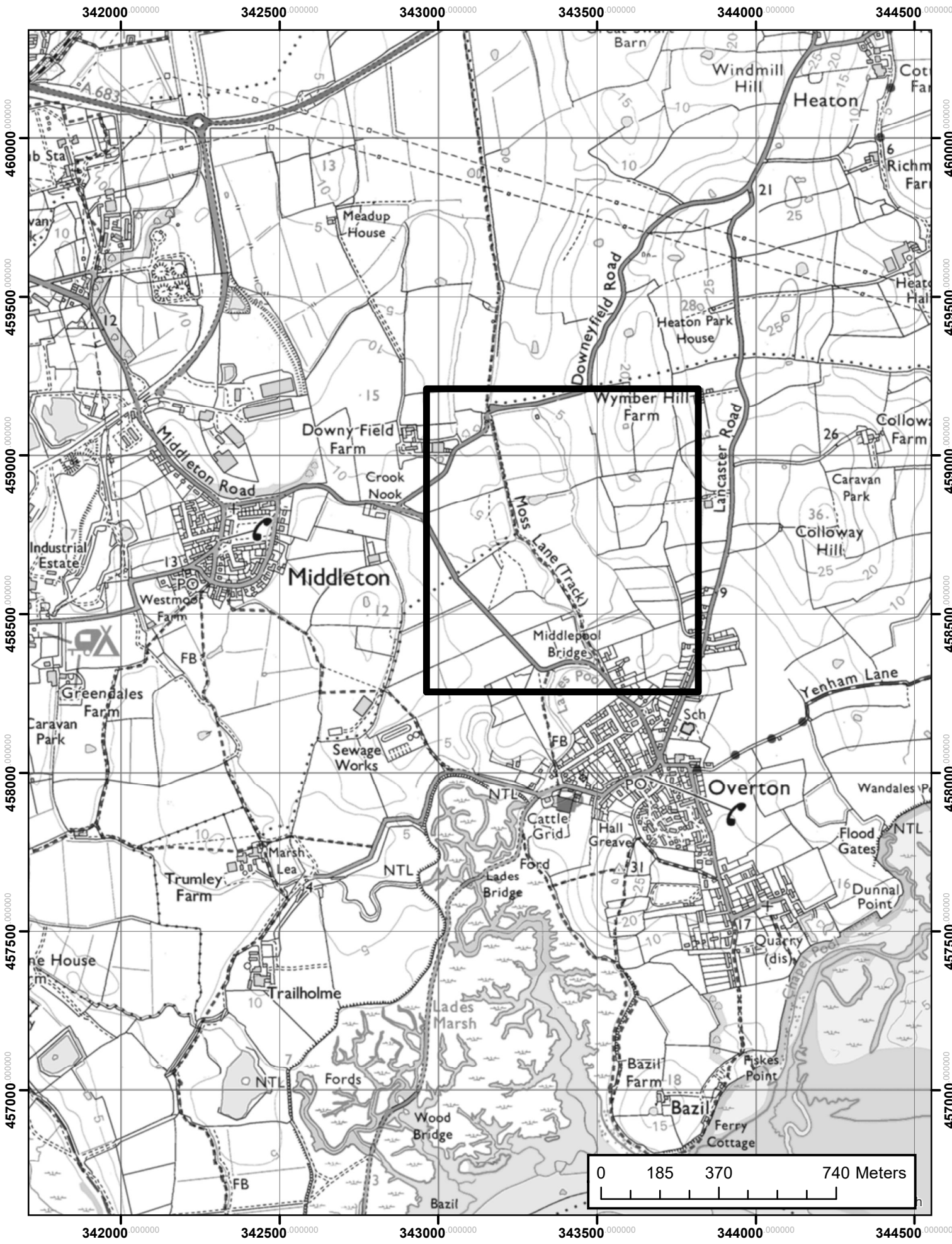
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-653		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 17th November 2021

Part I

Electoral Division affected:
Lancaster Rural North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrade of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway

(Annex 'A' refers)

Contact for further information, quoting File Ref. 804-624:

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

Brief Summary

Application for the upgrading of Footpath Nether Kellet 11 known as Green Hill Lane to be upgraded to Bridleway.

Recommendation

That the application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway be not accepted.

Details

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway on the Definitive Map and Statement of Public Rights of Way.

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

An order for upgrading 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 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.

Nether Kellet Parish Council

Nether Kellet Parish strongly object to the application.

They refer to the fact that a similar request was made some years ago and was refused. They comment that the footpath currently gets very muddy and in places is very narrow and boggy and that by allowing horses to use it would cause issues for walkers and horses.

The council also noted that many years ago the footpath was used by motorised vehicles but since then the ground conditions have deteriorated and it is currently only fit for use by walkers.

Applicant/Landowners/Supporters/Objectors

The evidence comments submitted by the applicant/landowners/supporters/objectors and observations on those 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	5221 6753	Junction with Dunald Mill Lane
B	5283 6819	Junction with Addington Road

Description of Route

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form 01-22-011-FP' or 'Footpath Nether Kellet 11' but can be referenced following that in the abbreviated form 'Footpath 11' for brevity.

A site inspection was carried out in June 2020.

The Application route is approximately 930 metres long and approximately 6 metres wide throughout. It is largely walled on both sides, with field gates allowing access to pastures on both sides.

It commences at a junction with Dunald Mill Lane (point A on the Committee plan) where there is a fence across the entrance to the route into which a 1.52m pedestrian gate – authorised by the county council in 2010 – has been inserted.

The route is signed as a public footpath and although overgrown in places is passable throughout the full length on foot. There is no recent site evidence to suggest that the route is being used on horseback although bicycle tracks were evident.


Beneath the undergrowth, there appears to be a stone base to parts of the route, which is particularly apparent where vehicles seem have been accessing it from point B to gain entrance to adjacent fields.

At the junction with Addington Road (point B), there is a field gate with a stile to the left side (not legally authorised) and the route is again signposted as a Footpath.

Map and Documentary Evidence

The application is based on map and documentary evidence. Together with the maps and documents provided by the applicant 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 constrained the routes that could be shown.
		
Observations		The application route is not shown and crosses land denoted as 'Halton Moor' on the map.
Investigating Officer's Comments		The application route, if it did exist, was not considered by Yates to be a significant public vehicular route at that time. It may have existed as a private access or public footpath or bridleway but such routes were not normally shown due to the scale and purpose for which the maps were published.
Nether Kettering Inclosure Award	1815	Between 1545 and 1880 the old system of farming scattered arable strips and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of the land. The process of Inclosure began by agreement but by the early 18th century a process developed by which a Private Act of parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of 2 main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

		<p>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.</p>
--	--	--



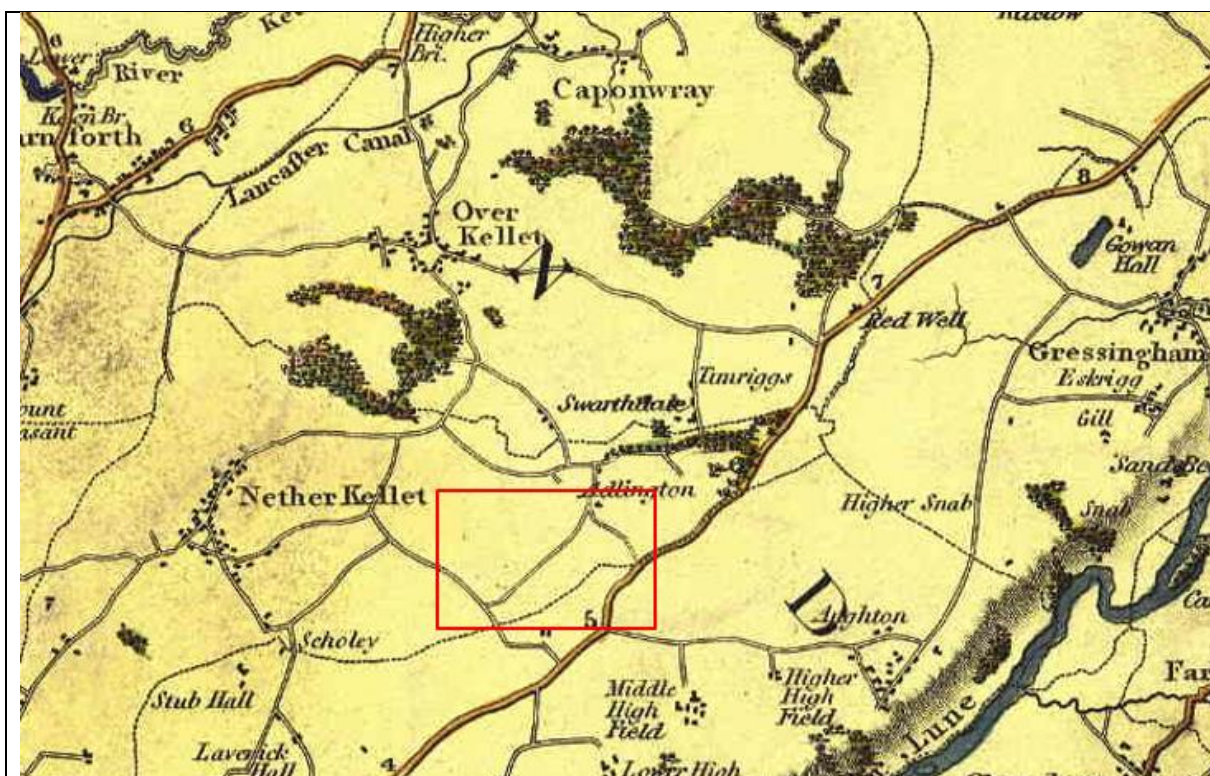


This Plan was signed by Edmund Jackson and William Miller the
 commissioners this nineteenth day of August one thousand eight hundred and fifteen in the presence of us
 Rich^d. Jackson
 John Fisher

Observations

The land crossed by the application route was
 inclosed under a local Act of Parliament dated
 1810 although a copy of the Act has not been
 found. The subsequent Inclosure Award and Map

		<p>are available to view in the County Records Office (CRO Ref: AE/5/8) and are dated 1815.</p> <p>The Inclosure Map clearly shows the full length of the application route as a bounded route named Green Hill Lane. One gate is shown across the route approximately 220 metres from point B.</p> <p>The Inclosure Award details the public and private roads to be laid out as part of the inclosure process. Within the Award the Commissioners specifically set out a route described as a 'private or occupation road' to be known as Green Hill Road which corresponds to the application route. The Commissioners state that the route shall 'hereafter be used' by the owners and proprietors of the lands adjoining it for the occupation of those lands 'and no other persons'. The Award also specifies that the route is to be privately maintained by the owners (or their heirs) of adjacent numbered plots.</p>
Investigating Officer's Comments		<p>Evidence from the Inclosure Map and Award therefore suggests that the application route was originally created as a private access route as part of the inclosure of Nether Kellet Moor. Since its creation, it may have been capable of being used by the public on horseback but there is no evidence to suggest that it was specifically dedicated as a bridleway (or footpath) when originally constructed.</p>
Greenwood's Map of Lancashire	1818	<p>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>



Turnpike Roads _____

Cross Roads _____

Towns & other Places _____

that send Members to Parliament } _____

Boundaries of Counties _____

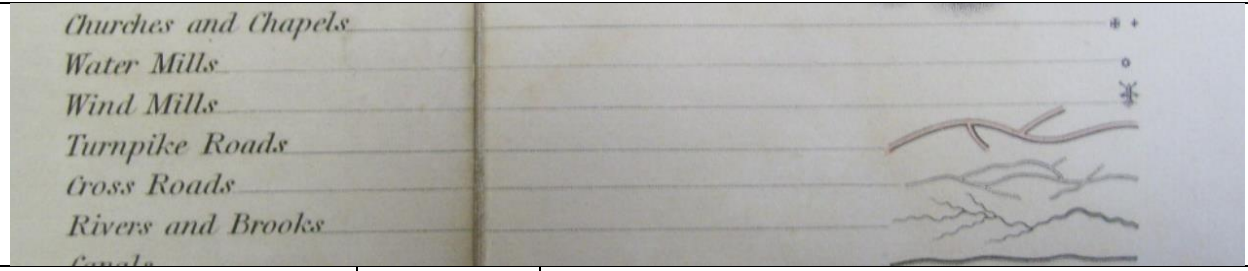
Boundaries of Hundreds & Manors _____

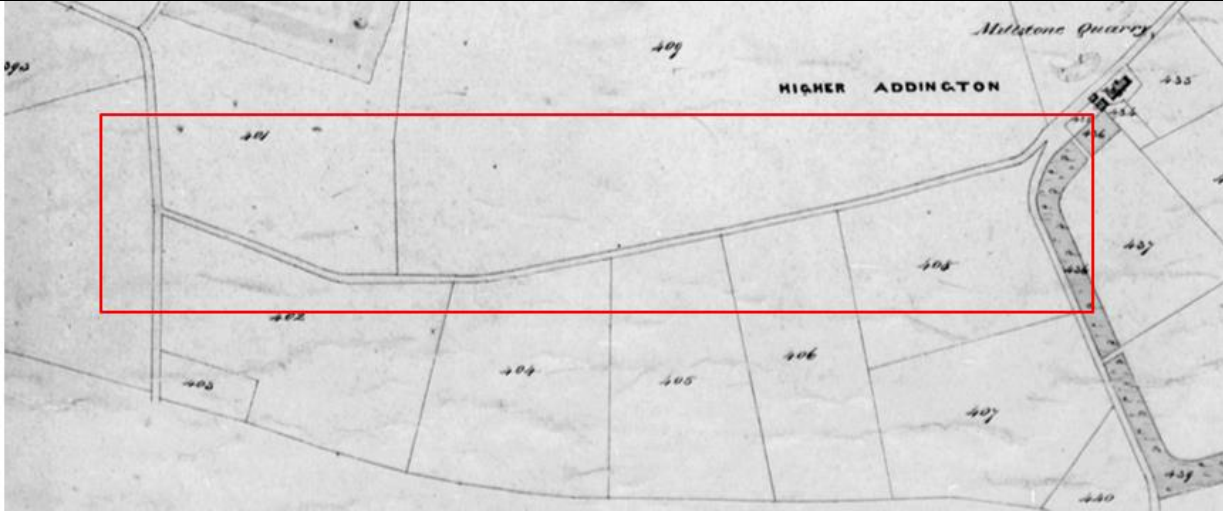
Boundaries of Townships & Parishes _____

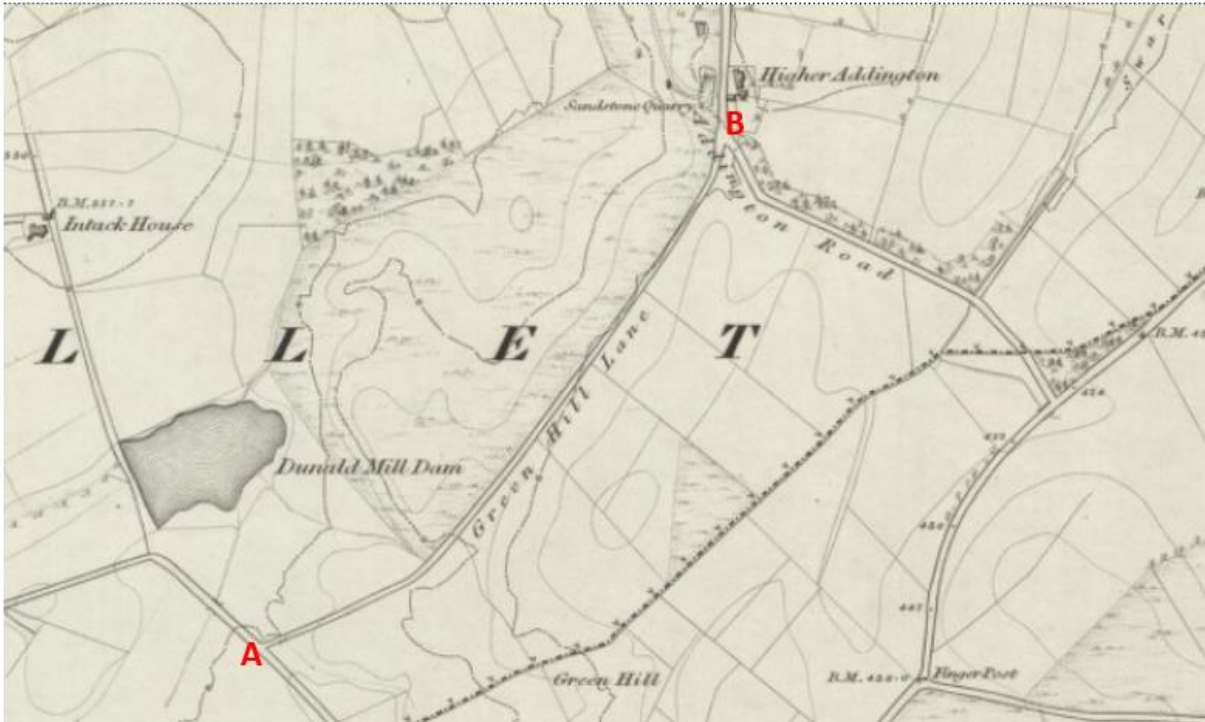
Observations		The application route is shown as a through route on Greenwoods Map connecting to public vehicular highways and is shown as a cross road.
Investigating Officer's Comments		The application physically existed in 1818 having seemingly being constructed as part of the inclosure of Halton Moor. The inclusion of the route on a small scale map commercially produced map of this kind is generally taken as being suggestive of the fact that the route is likely to have had the appearance of a carriageway and it is unlikely that a map of this scale would have shown footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross

		<p>roads' and 'turnpike roads' according to the key in the map.</p> <p>As the route was constructed as part of the inclosure process as a private or occupation road its inclusion on this map suggests that following on from its construction it was a significant route capable of being used on horseback and vehicles in 1818 and even though documented as private in practice it may have been accessible to the public since being constructed. The scale of the map means that if a gate did exist across the route (as shown on the Inclosure plan) it would not be shown.</p>
Hennet's Map of Lancashire	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 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.</p>

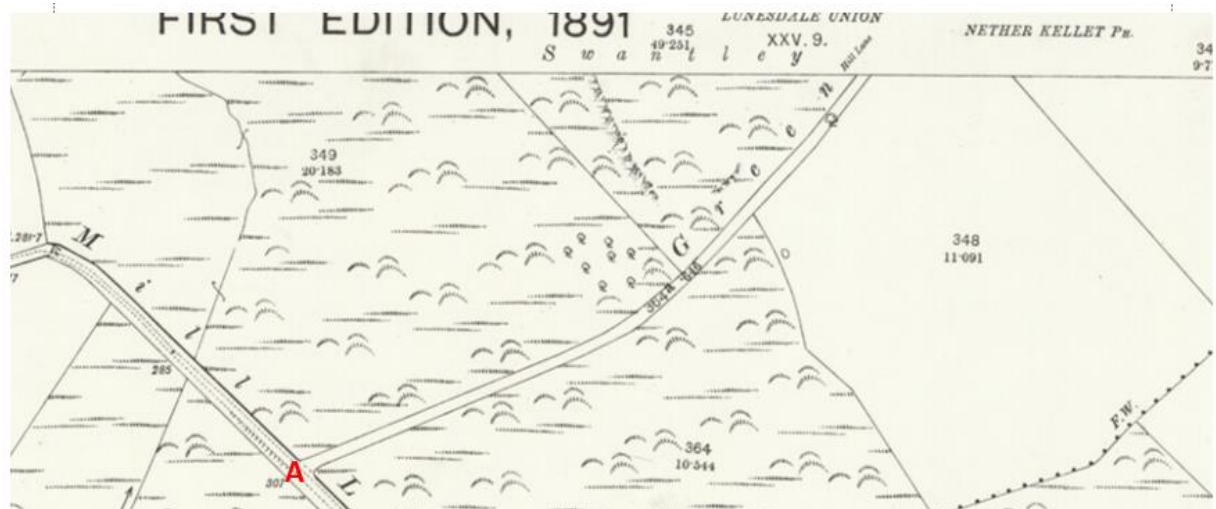
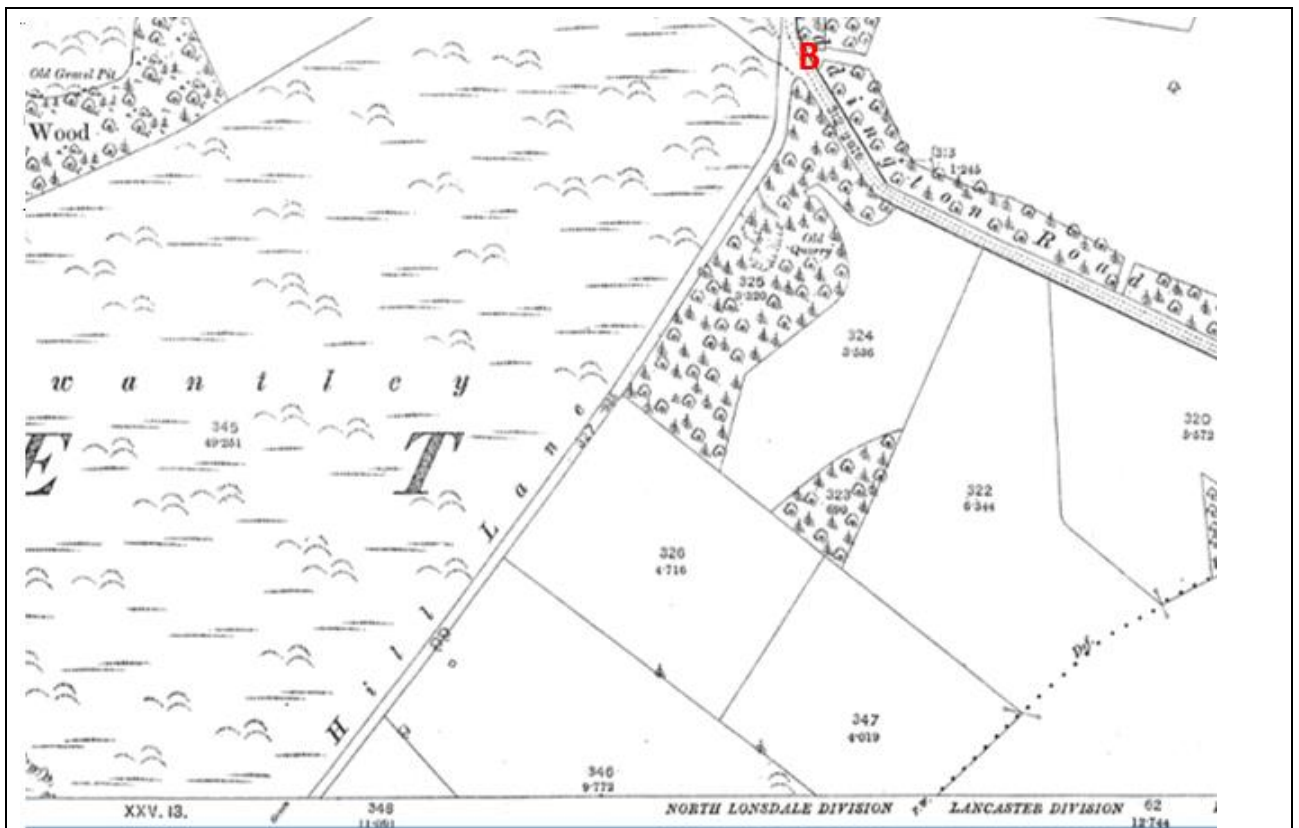


		
Observations		The whole of the application route is shown as a through-route connecting vehicular public highways and is depicted on the map as a cross road.
Investigating Officer's Comments		<p>The application route existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant 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 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 a right to use it.'</i></p> <p>It is unlikely that a map of this scale would show footpaths. The map was drawn 15 years after the route first came into existence as a private occupation road. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the application route may by 1830 have been considered to be a publicly available bridleway or carriageway even if public rights did not exist.</p>
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.

Observations		There were no canals or railways built – or proposed to be built – over the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1841	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		<p>The application route is shown on the Tithe Map as a substantial bounded through route connecting to roads now recorded as public vehicular highways. No lines are shown across the route at either end or at any point along it.</p> <p>The application route is not numbered but neither are the public roads to which it connects.</p> <p>The Tithe Award provides no numbered list of routes considered to be public roads.</p>
Investigating Officer's Comments		<p>The application route existed in 1841 and appeared to be capable of being used on horseback and possibly with vehicles at that time.</p> <p>The Tithe Award did not list public roads but both private and public roads were shown and were not numbered which is consistent with how the application route is shown.</p> <p>No inference can be made.</p>

6 Inch Ordnance Survey (OS) Map Sheet 25	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. ¹
		
Observations		<p>The application route is clearly shown as a bounded through route. No lines are shown across the route suggesting that it was ungated and access unrestricted.</p> <p>The fact that the route is bounded on both sides by solid lines indicates that it was physically separated from the adjacent farm land. It appears to be of a substantial width consistent with how other routes now recorded as public vehicular highways are shown.</p> <p>The route is clearly named on the map as Green Hill Lane.</p>
Investigating Officer's Comments		The full length of the application route existed and appeared capable of being used in 1844-45.
25 Inch OS Map Sheets 25.9 and 25.13	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.

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

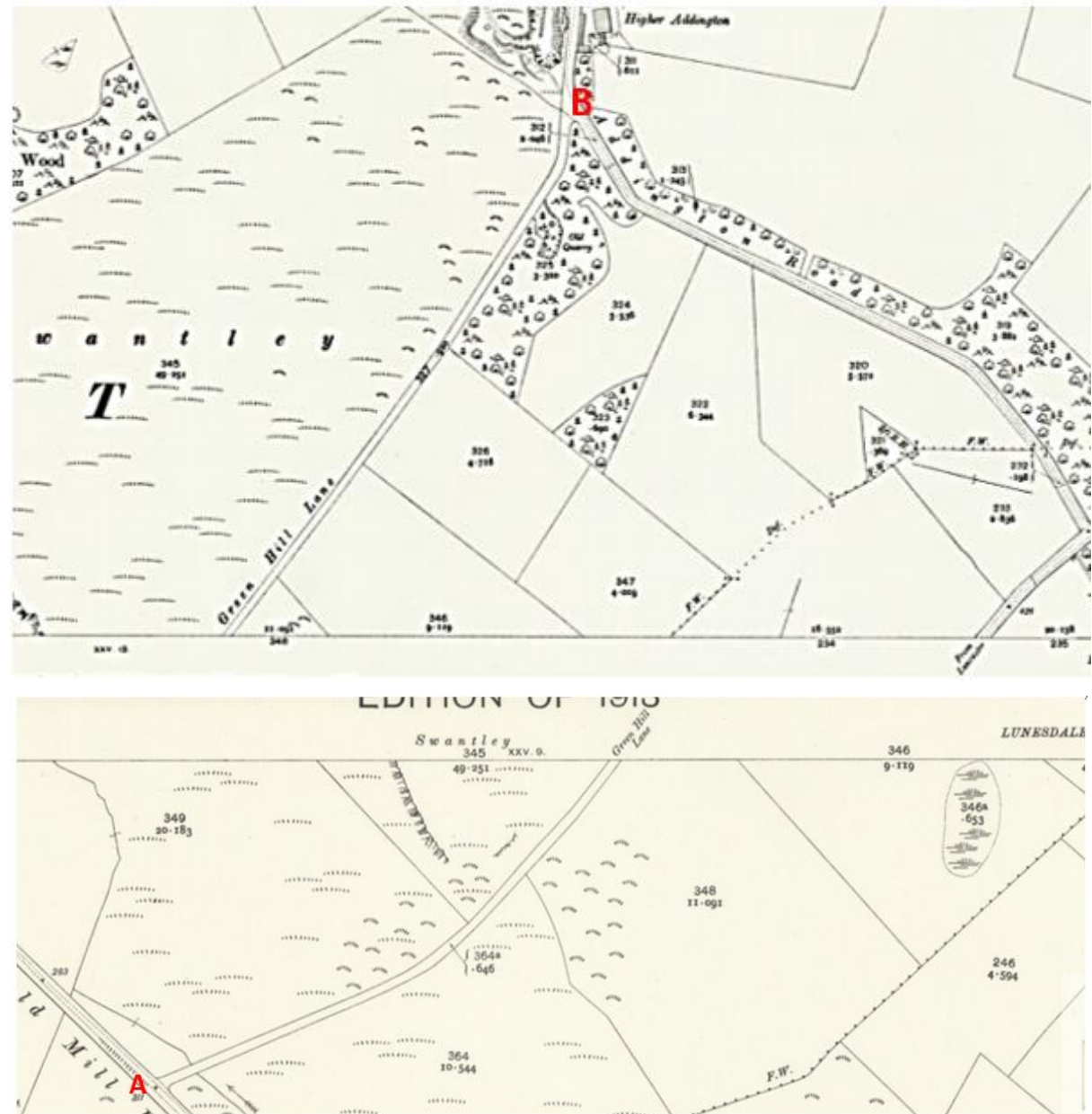
The application route is clearly shown as a bounded through route named 'Green Hill Lane'. No lines are shown across the route which would have indicated the existence of gates or barriers which may have prevented or restricted access. Unlike the public two vehicular routes which the application runs between (Dunald Mill Lane and Addington Lane) the application route is not shown with a thickened line down the down the south and east side of the route. A separate parcel number is allocated to the route and a possible change in surface is indicated at either end (point A and point

		B) where the application route meets Dunald Mill Lane and Addington Lane.
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used at least on horseback.</p> <p>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 side 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 is not shown in this way suggests that it was not considered to be a primary route used by horse drawn vehicles at that time but is not inconsistent with use of the route as a bridleway.</p> <p>The Planning Inspectorate Consistency Guidelines state "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 so the fact that the route is shown with a separate parcel number is not necessarily relevant to the public status of the route.</p> <p>The fact that the route was named as Green Hill Lane on the map is evidence that after being named as such in the Inclosure Award of 1815 it was still known locally by that name and is consistent with knowledge and use of the route by the public at least on horseback at that time.</p>
1 inch OS Map Sheet 59 Lancaster	1898	Small scale 1 inch OS map surveyed 1842-48, revised 1896 and published 1898.

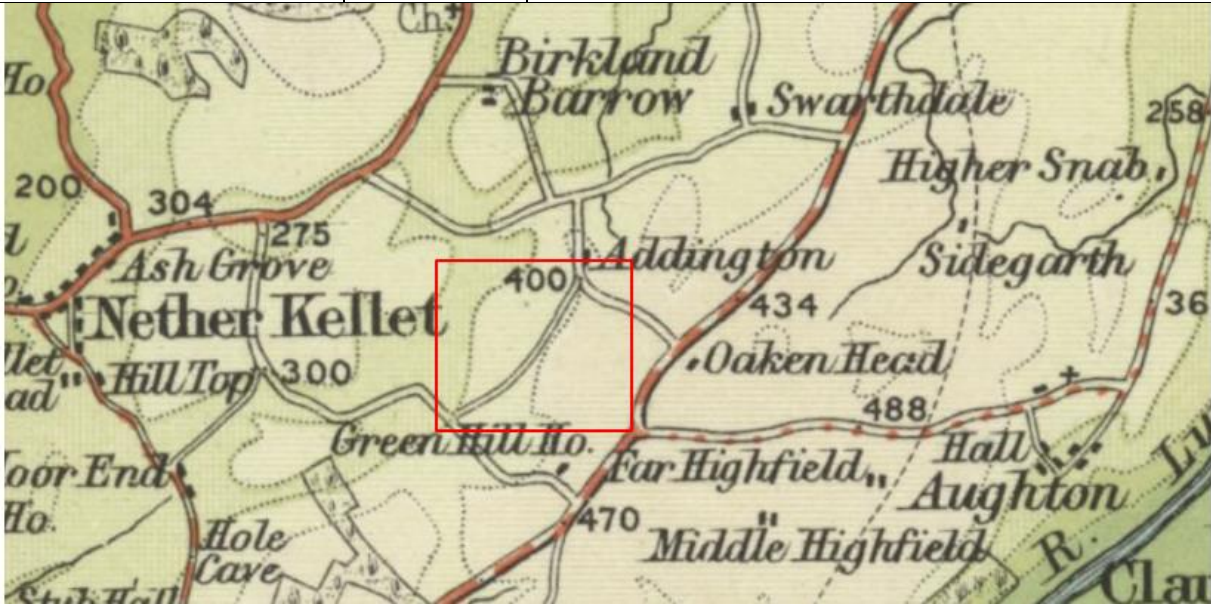


<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Unfenced	Ch
" " <i>Second Class</i>			Wa
" " <i>Third Class</i>			Li
<i>Unmetalled Roads</i>			Li
<i>Footpaths</i>			Be
<i>Railways, Single Line</i>		Level Crossing	Le
" <i>Two or more Lines</i>		Cutting Embankment Bridge Over Bridge Under	Co Be

Observations		The full length of the application route is shown – but it and the nearby roads are not named. It is shown as a bounded route consistent with how an unmetalled road is shown - it appears to the Investigating Officer to be shown as being narrower than the depiction used for a metalled third class road. A line is shown across the route at point A and another at the first field boundary on the south side.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the application 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. A solid line across a route normally indicates the existence of a gate or some other form of restriction so there were 2 gates shown across the lane. However, no other maps before or after this show

		lines across the route at these points, although if a gate did exist it does not necessarily mean that it was in a closed position or prevented the route from being accessed by the public.
25 inch OS Map	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1911 and published in 1913.
		
Observations		The application route is shown in the same way as it is shown on the 1 st edition 25 inch map.
Investigating Officer's Comments		The application route existed in 1911 and appeared to be capable of being used at least on horseback.
Bartholomew half inch Mapping	1905-1941	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.



EXPLANATORY NOTE

First Class Roads

Secondary

Indifferent

(Good)

(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

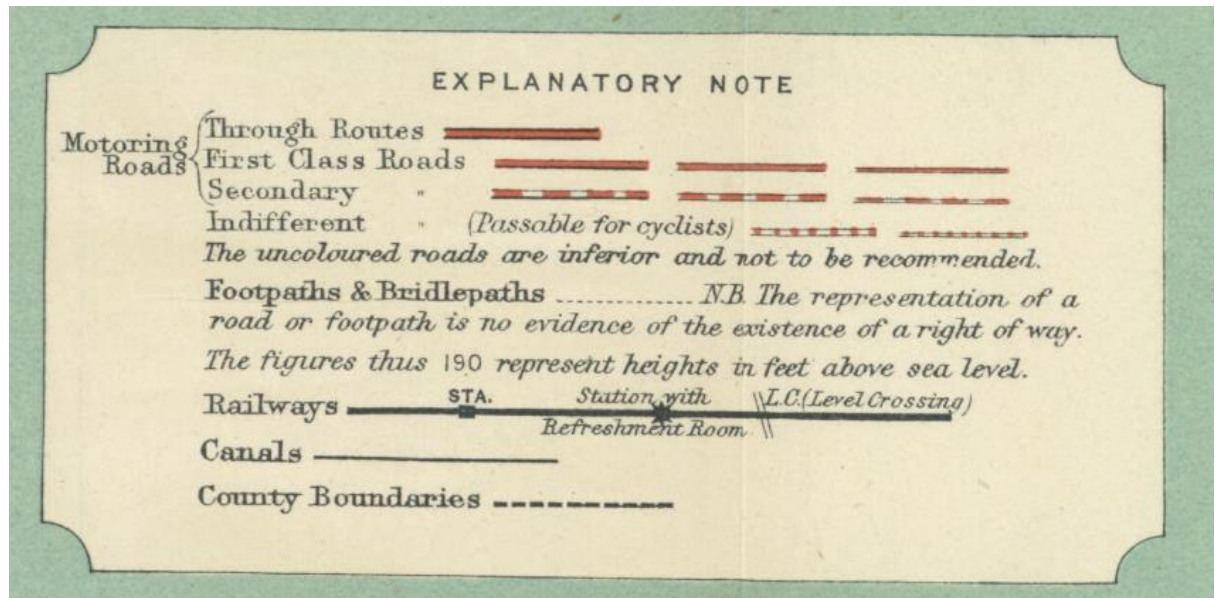
Station

Station with Refreshment Room

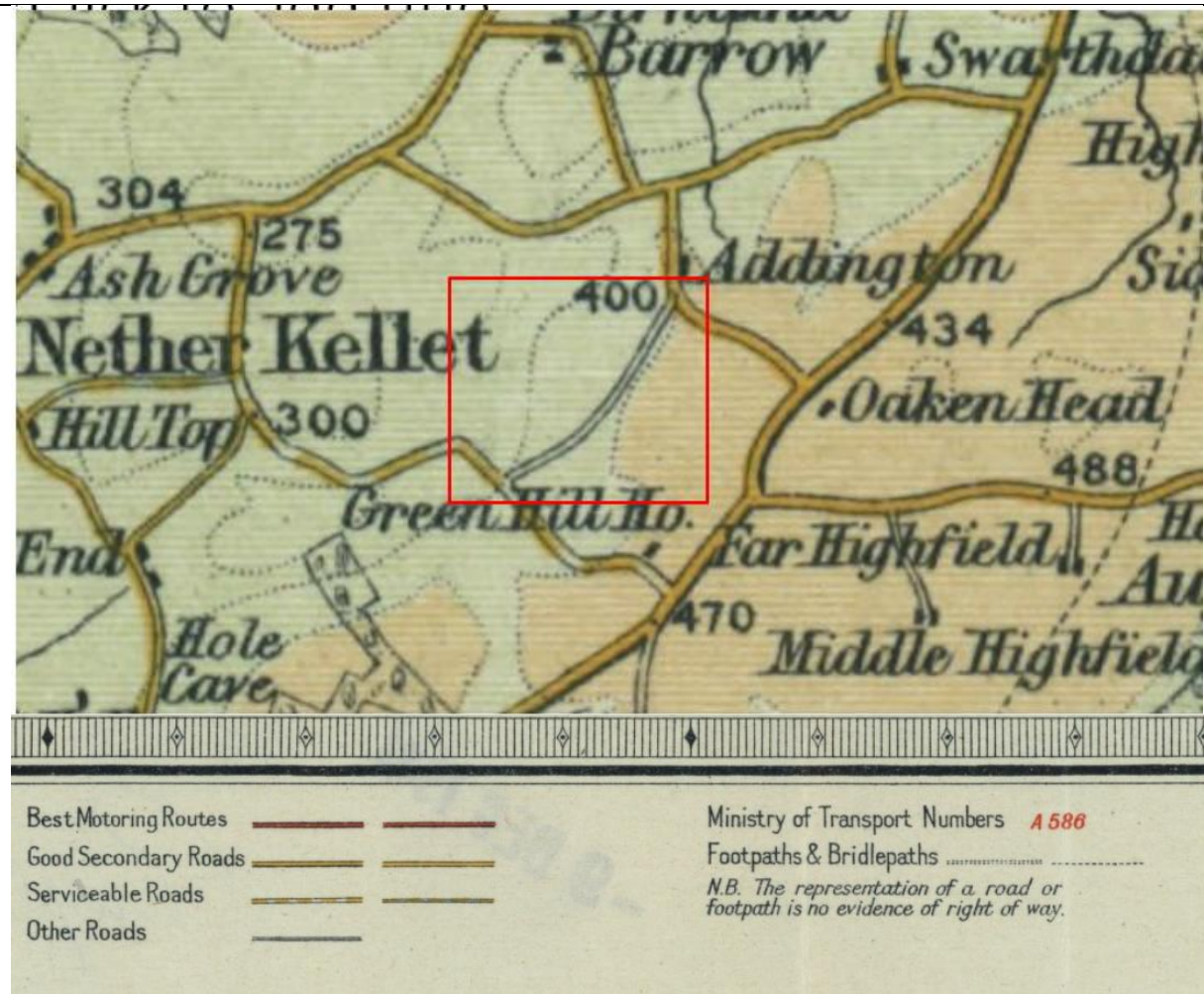
SCALE 1 : 126,720 = 2 MILES TO AN INCH

Sheet 5 – North Lancashire and the Isle of Man 1905

Page 125



Sheet 5 – North Lancashire and Isle of Man 1920

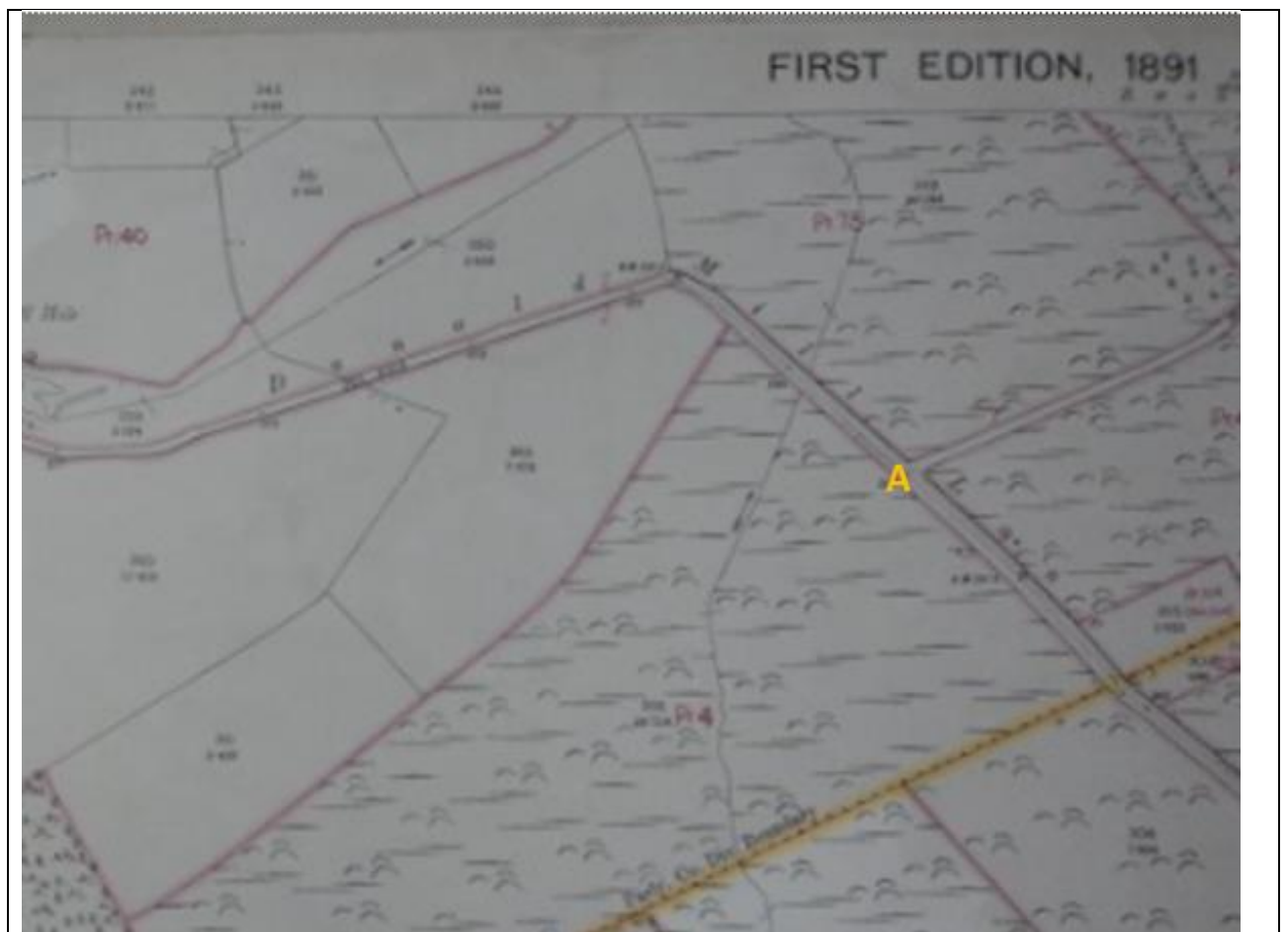


Sheet 31 – North Lancashire – published 1941

Observations		The application route is shown as a substantial bounded through route on all three editions of Bartholomew's Map. It is shown as an uncoloured road on the map sheets published in 1905 and 1920 with a note in the key panels explaining that uncoloured roads were inferior and not to be recommended to cyclists. The ½ inch map published in 1941 shows the route as 'other road' as opposed to a footpath or bridleway.
Investigating Officer's Comments		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>Whilst the key to the maps states that the representation of a road, bridleway or footpath is no evidence of a right of way the fact that the route is clearly shown as a through route on all three maps suggests that it was capable of being used – at least on horseback – through the first half of the twentieth century.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>







Observations		The full length of the application route is shown as being exempt from the numbered hereditaments.
Investigating Officer's Comments		<p>The map prepared under the provisions of the 1910 Finance Act obtained from the National archives shows the whole of the application route excluded from adjacent land in private ownership.</p> <p>The instructions given to the surveyors (Instruction No. 560) stated that the numbered parcels of land should 'continue to be exclusive of the site of the external roadways'. Roadways for this purpose 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. In this instance the full length of the application route is excluded from the assessable parcels of land for which taxes may have been payable, indicating that the route's status was probably considered to be public at that time and suggesting that if this was so that the</p>

		<p>route would have carried at least public bridleway rights.</p> <p>However, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; but this has not been a consistent approach and needs to be looked at carefully in context with all other available evidence particularly where a route, which was originally created as part of the inclosure process, then appears to have been open and available for public use thereafter.</p>
1932 Rights of Way Map		<p>The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>

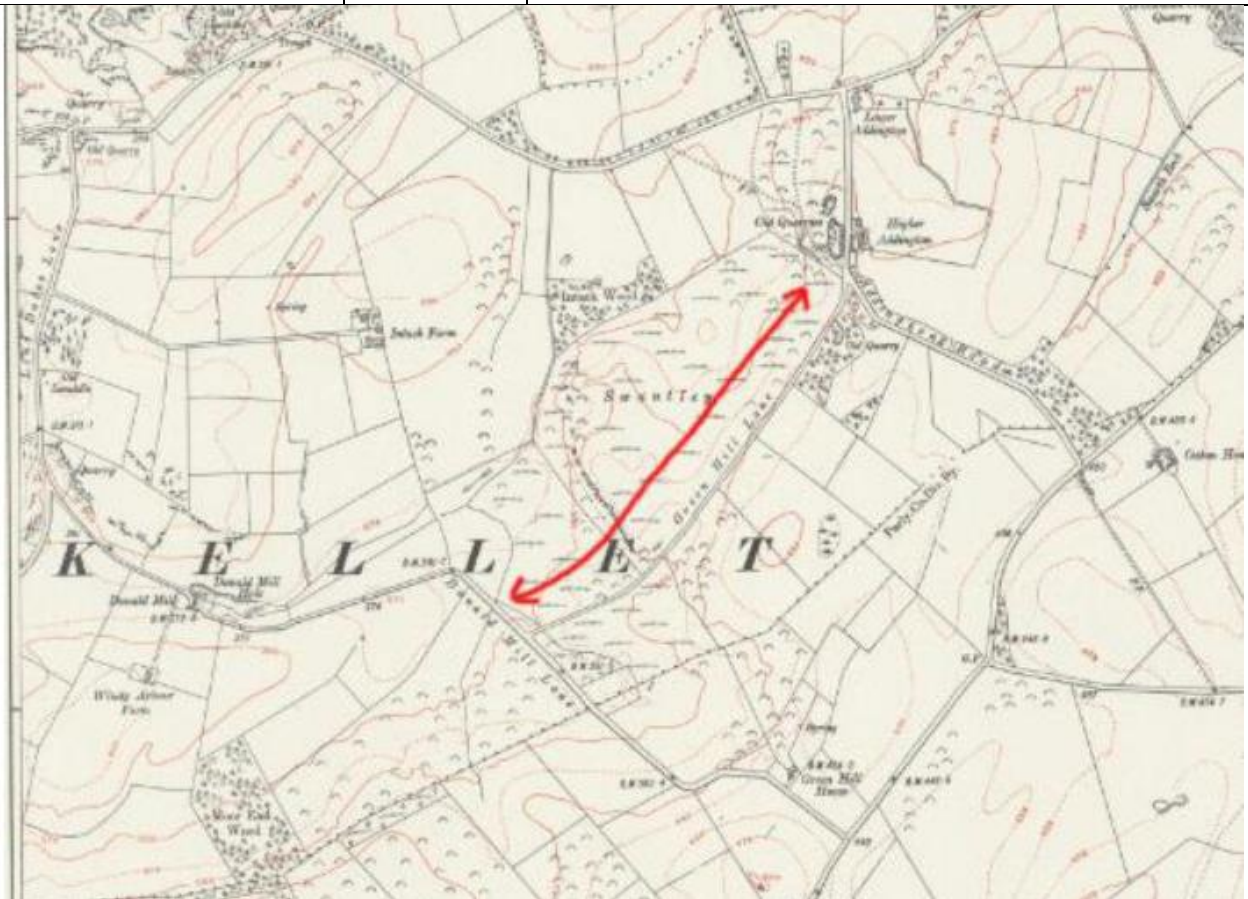


Lunesdale Rural District Council.
Public Footpaths.
Nether Kellet Parish.

1. Withbatts Lane to Over Kellet.
2. End of Whorleys Lane across fields to Thwaite
3. Hallfield Lane.
4. Lawson's Farm to Lancaster Road.
5. Lawson's Farm to Beaumont Cote.
6. Back Lane to Thwaite House Farm.

Observations		The typed list accompanying the map specifically refers to public footpaths. The application route was not recorded as a public footpath on the maps prepared for Nether Kellet parish by Lunesdale Rural District Council.
--------------	--	---

Investigating Officer's Comments		The application route was not considered to be a public footpath in the 1930s but this does not necessarily mean that it was not considered to be a bridleway or public carriageway at that time.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No photograph of the area crossed by the application route is available.
Investigating Officer's Comments		No inference can be drawn.
6 inch OS Map	1943	6 inch OS map extract provided (and annotated) by the applicant. OS Sheet Lancashire XXV.SW surveyed 1845, revised 1910 and published circa 1943.



Observations		The application route is shown as a substantial named bounded through route which remained
--------------	--	--

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.

		unaltered from earlier editions of OS mapping. No gates are shown across the route.
Investigating Officer's Comments		The application route was still known as Green Hill Lane and appeared capable of being used by horses and possibly vehicles in 1910 (date of revision of the map).
1 inch OS Map Sheet 89 Kendal and Lancaster		Small scale 1 inch OS map revised 1920 with later smaller revisions, published 1947.



Ministry of Transport Roads	<u>A.6</u>	<u>B.6254</u>
Other Motor Roads	<u> </u>	<u> </u>
" " " narrow	<u>Good</u>	<u>Bad</u>
Minor Roads	<u> </u>	
Bridle & Footpaths	<u> </u>	
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$	<u> </u>	
Toll Gates	<u>TOLL</u>	
Road Mileage	<u>5</u>	

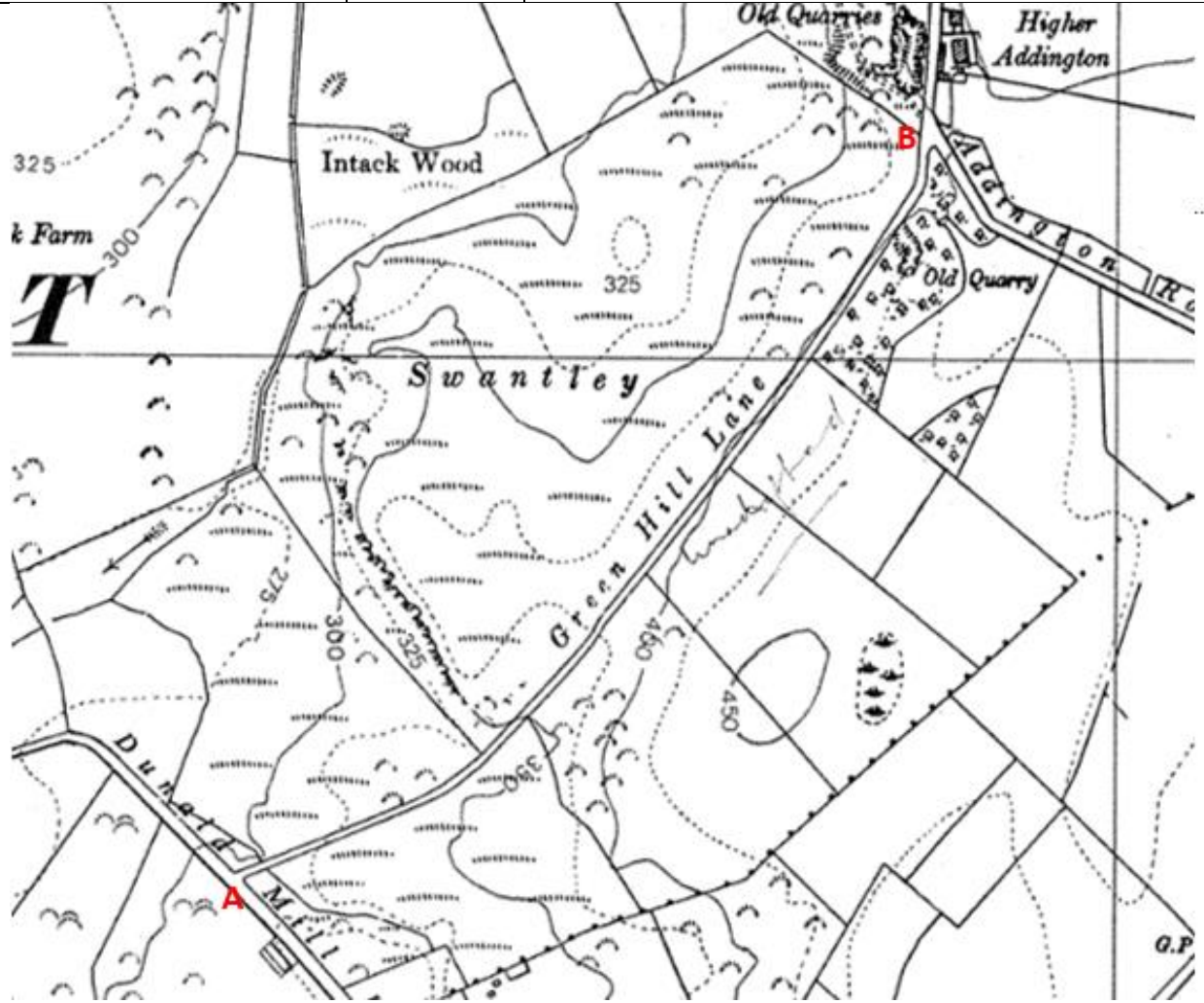
1014.

Observations		The full length of the application route is shown as a Minor Road. Bridle and Footpaths are shown on the map denoted by a single dashed line.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the first half of the 1900s. Its inclusion on the map as a minor road not a bridle or footpath is suggestive of a route considered to be at least a public bridleway and probably a public vehicular route at that time.
1 inch OS Map Sheet 89 – Lancaster and Kendal	1955	Further 1 inch OS map revised fully 1950 and published 1955.



Roads	Ministry of Transport, Trunk	A 6 (T)
	" " " Class 1	A 590
	" " " " 2	B 6254
	14 ft of Metalling & over (not included above)	
	Under 14ft of Metalling. Tarred " "	TOLL
	" " " " Untarred " "	Gate
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)	
Steep Gradients 1 in 5 or steeper		
Footpaths and Tracks		

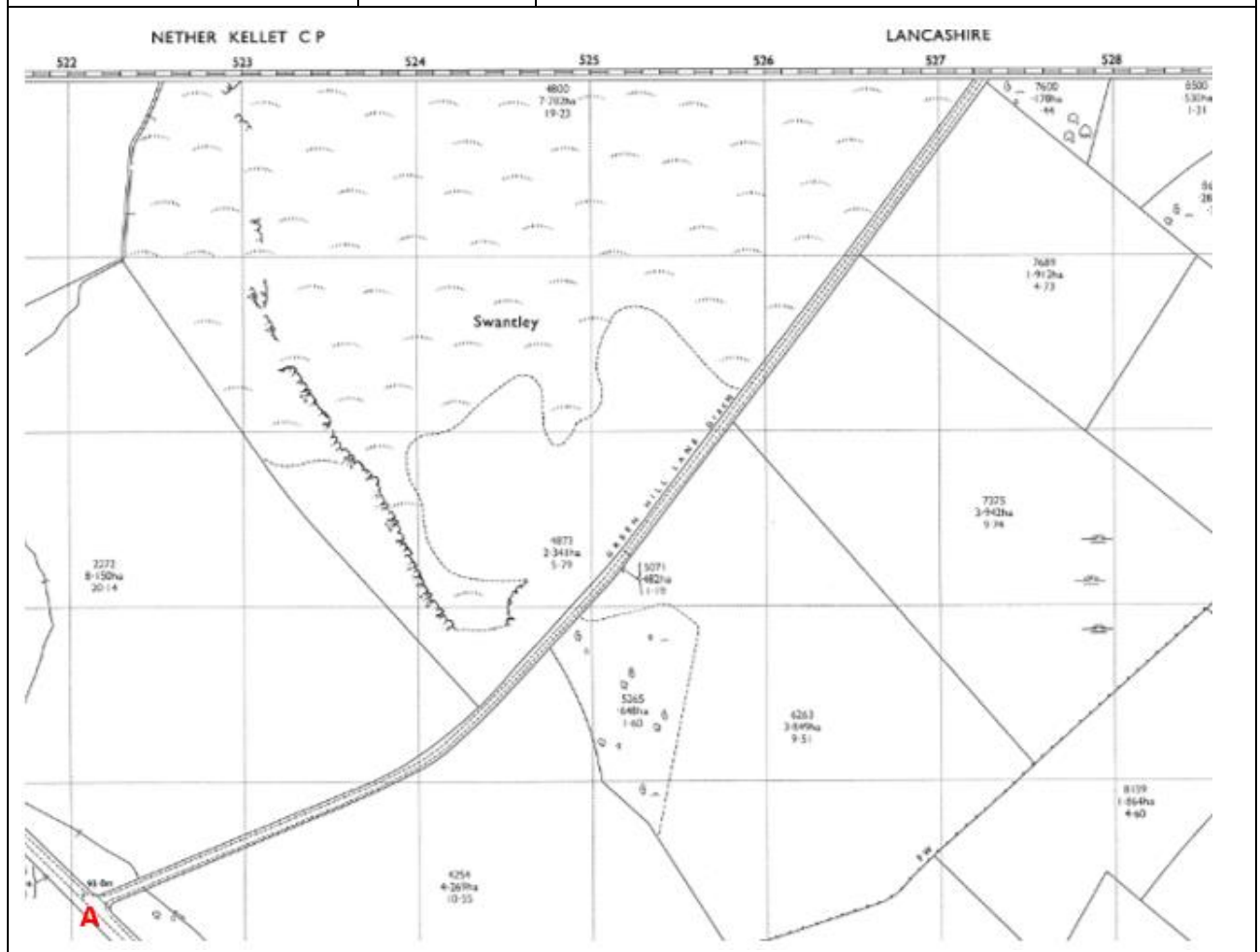
Observations		The application route is shown as an unmetalled road.
Investigating Officer's Comments		The inclusion of the route on this map as an unmetalled road is again highly suggestive of a

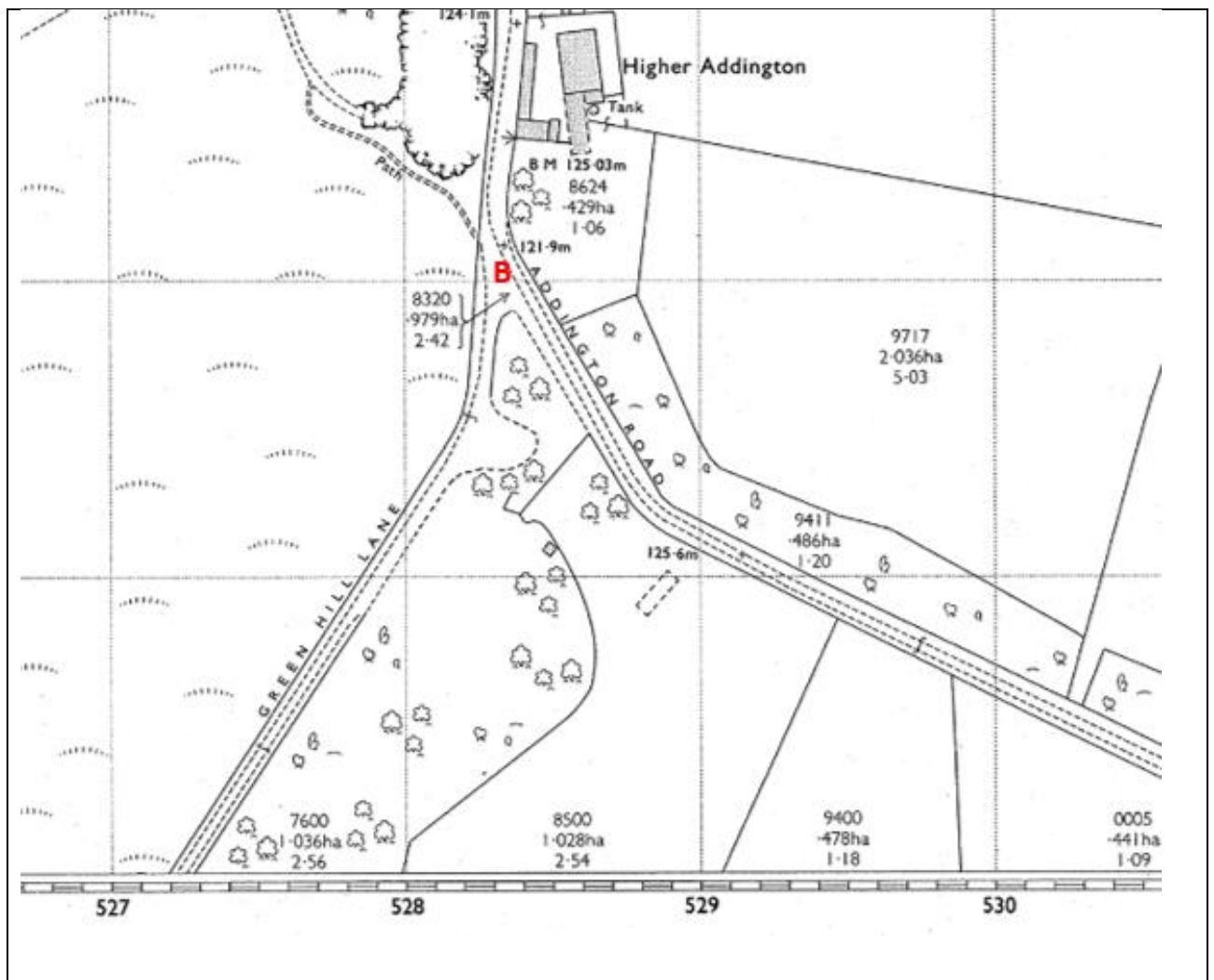
		route which would have been capable of being used on horseback and possibly vehicles in the mid 1950s. This concurs with the evidence provided by Mr Robert Moser detailed later in this report regarding the view of the parish council that the route was used by vehicles in the 1950s when the Parish Survey map was prepared.
6 Inch OS Map Sheet 56NW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The application route is shown as a substantial named bounded through route which remained unaltered from earlier editions of OS mapping. No gates are shown across the route.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the 1930s.

**1:2500 OS Map
SD 5267-5367 and SD
5268-5368**

1970

Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as national grid series.





Observations		The application route is still shown as a substantial named bounded through route unaltered from earlier editions of OS mapping.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the late 1960s.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

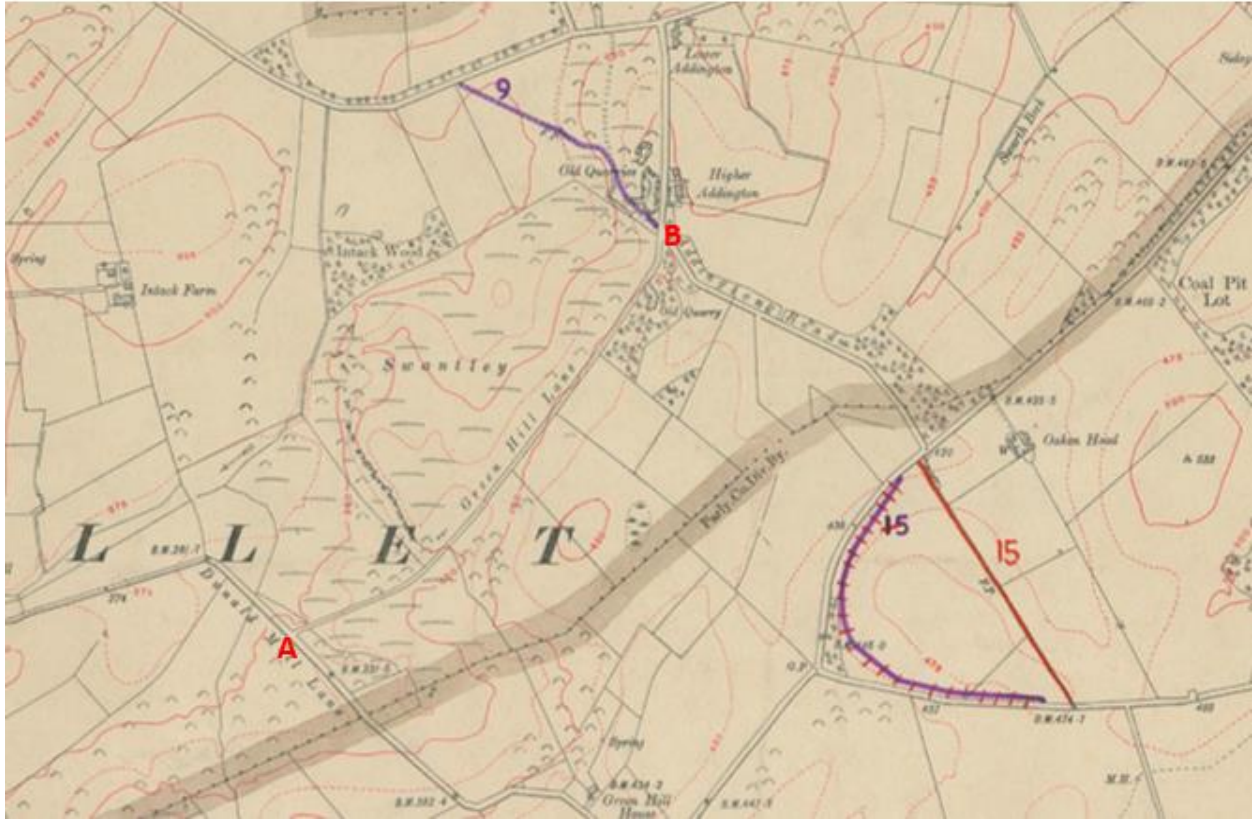


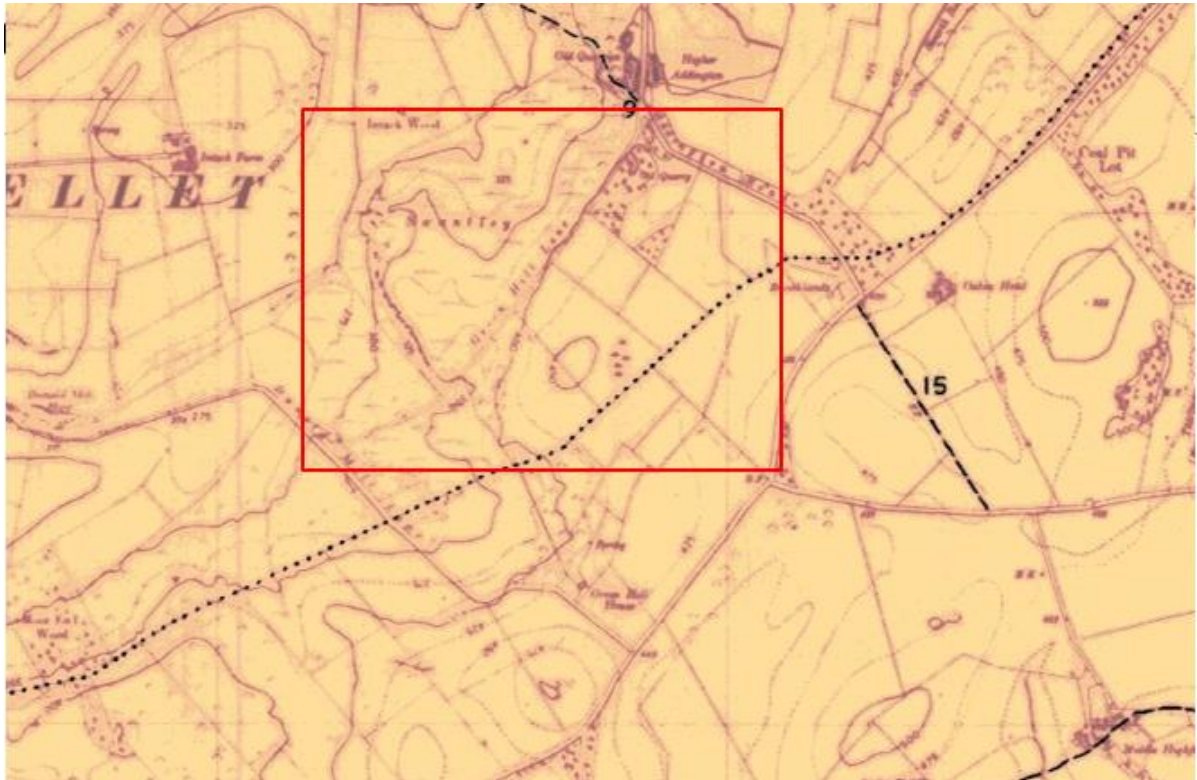
Observations		The application route is visible along most of its length – although partially obscured by trees on the approach to point B. The track appeared more open and less overgrown than it is at present although it is not known what time of year the photograph was taken.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights but the aerial photograph supports the existence of the application route in the 1960s and the fact that it appeared to be capable of being used.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an

		<p>urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
--	--	--



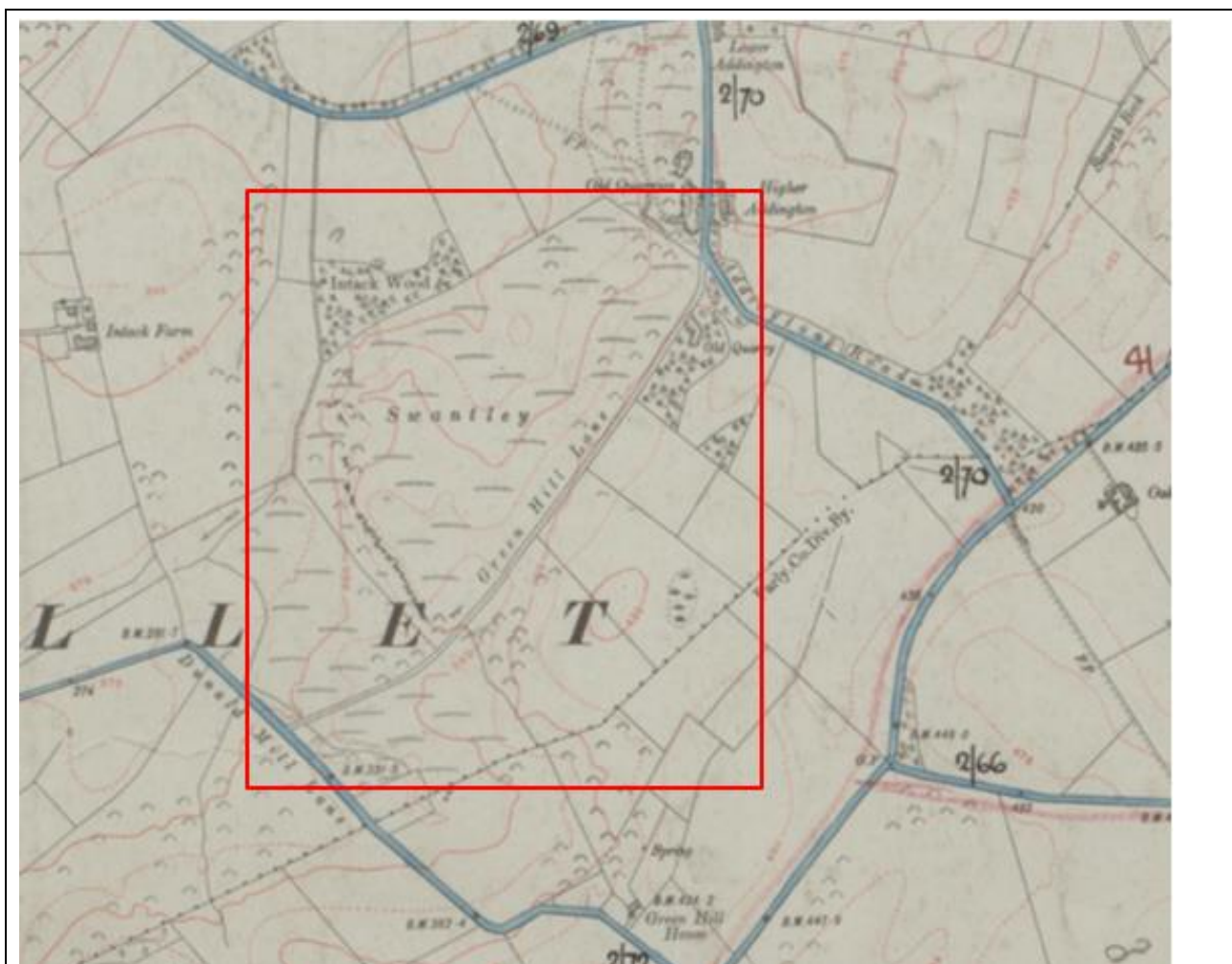
Observations		<p>The application route is not shown on the parish survey map.</p>
Draft Map		<p>The parish survey map and cards for Nether Kellet were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings</p>

		were held into these objections, and recommendations made to accept or reject them on the evidence presented.
		
Observations		The application route was not shown on the Draft Map of Public Rights of Way and no representations or objections were made relating to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map of Public Rights of Way.

<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. 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>
		
<p>Observations</p>		<p>The application route is not shown on the Definitive Map of Public Rights of Way (First Review) and from 1953 through to 1975 there is no indication that the application route was considered to be a public footpath by the Surveying authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. However, in 1985 an application (referenced 804-129) was made by Nether Kellet Parish Council to record the route as a public footpath based on modern user evidence. Whilst some of the maps and documents now under consideration were considered - namely the Inclosure Award and Map,</p>

		<p>Yates', Greenwood's and Hennessey's commercial maps and the first edition 6 inch and 25 inch OS maps - the application was based primarily on modern user evidence of the route on foot. The matter was considered by the County Council's Public Rights of Way Sub Committee in July 1990 and the application accepted. A Definitive Map Modification Order subsequently made in 1991. Objections were received to the Order but it was confirmed by the Secretary of State following a public inquiry in 1994. The Inspector based his decision on user evidence concluding that the route had been dedicated as a public footpath by at least the early 1970s prior to an effective challenge to that use made in 1976 by the locking of a gate.</p> <p>In 1997 a further application was made by The North Lancashire Bridleways Association to upgrade the route to public bridleway (application 804-328). A further report was presented to the County Council's Public Rights of Way Sub Committee whereby the same map and documentary evidence was considered together with user evidence submitted by the applicant and reference to user evidence submitted in support of the original Order. Having considered the matter – and in particular the user evidence – the Sub Committee rejected the application. This decision was appealed by the applicant but was upheld by the Government Office for the North West.</p>
Investigating Officer's Comments		<p>The application route was not recorded as a public right of way as part of the process of compiling the Definitive Map and Statement. The route was however subsequently recorded as a public footpath following on from one of the earliest applications made to the county council following the implementation of the provisions of 'continuous review' set out in the Wildlife and Countryside Act 1981.</p> <p>The decision to record the route as a public footpath was made on the basis of 'modern' user evidence predating 1976 but did not fully consider the history of the route since its creation as a private occupation road in 1815. Many of the maps and documents now under consideration as part of this third application had not been previously considered or, whilst initially considered, are now being looked at again in light of more recent public</p>

		inquiry decisions and guidance when researching historical public rights.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map. Although now recorded on the Definitive Map and Statement as a public footpath, the Order made to record it as such was made on the basis of modern use of the route and so the route is not currently regarded as a publicly maintainable footpath.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
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

		(other than the Definitive Map Modification Order detailed above).
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>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Written statement of Mr Robert Moser	1994	Written Statement provided by the applicant with attention drawn to the fact that Mr Moser states that he was a member of Nether Kellet Parish Council in the 1950s when the Parish survey Map was drawn.

COPY

Mr Robert Moser, 37 Main Road, Nether Kellett. I am a member of Nether Kellett Parish Council.

I have lived in Nether Kellett since 1938. I worked on Moor End Farm which was part of the Butler-Cole Estate and then in the 1940's I worked for the estate itself. I have a copy of the sale plan of the estate and Green Hill Lane is clearly excluded from the estate.

I have seen a copy of the plan and can confirm that I was familiar with the Lane. I used it with vehicles and for driving livestock and for walking. I have walked it with my wife and children many times.

I worked for the estate until 1957. I continued to use the Lane afterwards for pleasure walking.

The Lane was always open at both ends and could be used by the public with or without vehicles. It is sometimes called an 'occupation road' but that is not its true status. It is a public road. It was at one time used to get access to the Sandstone Quarry near Higher Addington and also the Mill stone quarry.

There were never any gates on the Lane until 1976. When the gas main was being laid tipping started in the old quarry near Higher Addington. Mr Gatt put a gate at the east end of the Lane to stop the fly tipping. I was a member of the Parish Council at the time. We made enquiries of the County Surveyor's Department and were told there would be no objection to a gate provided it was left unlocked. There were never any signs except one which I think was put up by the Lancaster City Council saying 'no tipping'.

When I worked for the estate people used to use the Lane and I was never aware of anyone asking permission to use it or of anyone being stopped from using it. As far as I am concerned it has always been a public road and I fully support the Council's application to have the Lane put on the definitive map as a public footpath. I was a member of the Parish Council in the 1950's when the definitive map was first publicised. We did not at that time think to have the path put on the map since we were only concerned with paths that could be used on foot, and this was a lane that could be used with vehicles as well.

Signed R Moser

Dated 26th March 1996

Observations

The written statement is said to have been obtained from papers relating to the previous application to add the route to the Definitive Map.

A check of the County Council's records confirms that Mr Moser was one of the County Council's witnesses who gave evidence at the public inquiry held in 1994 to determine the Order to be made to record the route as a public footpath. This statement appears to have been prepared in relation to that.

Mr Moser refers to the fact that he had lived in Nether Kellett since 1938 and worked on the land crossed by the application route from the 1940s until 1957. He refers to a sale plan for the Butler-Cole Estate which showed the application route

		<p>excluded from the land to be sold and that during the time he worked on the land he drove vehicles and livestock along the route.</p> <p>Of significance – is the fact that he explained that he was on the Parish Council when the parish survey map was compiled and that the understanding at that time by the Parish Council was that the routes to be shown on the map were those believed to be footpaths. He states that the Parish Council at that time did not think that the application route needed to be recorded because they were only concerned with paths used on foot and that the application route was used by vehicles.</p>
Investigating Officer's Comments		<p>The Estate plan referred to by Mr Moser has not been seen and a copy could not be found in the county council's records. The fact that the application route is said to be excluded from the land to be sold is however consistent with the current land registry records which show the route unregistered and the earlier Tithe and Finance Act records which both exclude the route from numbered plots for which landownership details are recorded. Exclusion of the route from the sale of adjacent land – particularly if the sale related to land on either side of the route is good evidence however of the fact that the route was considered to be more than a public footpath and that since its original creation it possibly now carried public vehicular rights.</p> <p>The information supplied by Mr Moser also appears to confirm that the route could physically have been used by vehicles – and by inference (although he does not specifically refer to it) – by horses in the mid 20th Century.</p> <p>Inspection of the Parish Survey Map prepared by Nether Kellet Parish Council in the 1950s confirms Mr Moser's explanation that the Parish Council only recorded routes considered to be footpaths indicating that if the Parish Council believed the route to be used by vehicles they were not recorded. There was a lack of clarity (nationally) surrounding the survey for the 1949 Act and the last minute introduction of the term RUPP (road used as a public path) in place of CRF/CRB (cart road mainly used as footpath/bridleway) without a clear definition led some parishes to record them as footpath/bridleway and some simply not to record them; this makes any inference difficult</p>

		without supporting evidence which is sparse in this case.
--	--	---

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

Landownership

The entire length of the application route crosses land which is unregistered. The adjacent farmland, Intack Farm, is in private ownership under title numbers LA754058, LAN87332, LA827444 and LAN79806.

Summary

A significant amount of additional map and documentary evidence has been considered as part of this application compared to the previous two applications. In addition, map and documentary evidence previously available has been reconsidered in light of more recent guidance relating to its significance in relation to the interpretation of public rights.

The application route did not exist until 1815 when it was created as a private/occupation road as part of the inclosure process.

By 1818 the full length of the route existed (as evidenced by the fact that it was clearly shown on Greenwoods Map) and it appears to have remained unaltered since that time.

Although a gate was shown on the Inclosure plan approximately 220 metres south west of point B) there is no map or documentary evidence post-dating the preparation of the Inclosure plan to suggest that a gate actually existed at this point.

Evidence presented at the public inquiry in 1994 and further to the appeal to the Government Office North West in 2000 confirm the existence of gates in the mid to late 20th Century (and locking of a gate in 1976). However on all OS maps inspected no gates are shown and the application route is shown as an unrestricted through route which appears to have been wide enough to have been used by horses and vehicles since its construction. A gate at point A has now been authorised by the county council for stock control purposes.

The application route is clearly shown on early small scale commercial maps and on the Tithe Map produced in 1841. However, this particular Tithe Map shows what appear to be private access roads (culs de sac to buildings) in the same manner as the public roads.

The route is consistently shown on all OS maps examined – including the small scale 1 inch maps – and also on Bartholomew's maps where it is consistently shown as an uncoloured road suggesting that it was capable of being used – at least on horseback – through the first half of the twentieth century.

Finance Act records (not previously available when the matter was first considered) from the early 1900s suggest the good possibility that it was considered to be public carriageway at that time. However, it is also possible in this case that it was excluding a private joint occupation road not in any particular ownership.

The records relating to the preparation of the Definitive Map and Statement submitted from a former parish councillor involved in the preparation of the parish survey map, suggest that the route was not initially recorded because of a belief that it was more than a public footpath – and was used by vehicles.

Land ownership records do not confirm ownership of the route although the Inclosure Award details private liability for the maintenance of the route. The fact that ownership is unregistered and owners not identified in legal documents such as the Tithe Award and Finance Act Maps again are consistent with the route being considered to be more than a public footpath. Reference was also made to an Estate plan documenting the sale of the estate through which the application route runs. The county council have not had sight of this plan as part of the current investigation but again, it is mentioned that the sale of the land excluded the application route which is consistent with the current landownership details available through the land registry.

To conclude, the map and aerial photographs examined all suggest that the route may have been available to be used since 1815 and that whilst originally created as a private occupation road that in reality it was more likely to have been used – at least until more recent times on horseback and possibly with vehicles. However, the availability to the public without evidence of any actual use is insufficient to infer such quality and quantity of public use that could evidence dedication of public rights and with the exception of Mr Moser's statement, which does not mention bridleway rights, there is no evidence which does not have an alternative explanation consistent with private occupation road created by the Inclosure Award.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

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

Greenwood's Map of Lancashire published 1818
Hennet's Map of Lancashire published 1830
6 inch Ordnance Survey map published 1847
6 inch Ordnance Survey Map published 1943
25 inch OS map published 1891

One-inch OS map published 1898
One inch OS map published in 1947
One inch OS map published 1955
Bartholomew's Half Inch to the Mile Maps
Tithe Records 1841
Inland Revenue Valuation Records - Finance (1908-10) Act 1910
Lancashire County Council List of Streets

Land Registry documents

Parish Councillor Statement of Mr Moser dated 26th March 1990

All maps and documents provided by the applicant have been considered and details are included earlier in this report.

Information from Others

Virgin Media Services responded to our consultation stating that their plant should not be affected by the application.

Information from the Landowner

The adjoining landowners of Intack Farm sent a reply to our consultation via their solicitor, [Oglethorpe Sturton & Gillibrand LLP](#).

It was clarified that since 1947 the owners of Intack Farm have at all times believed that the lane was within their ownership and in the alternative consider that they have acquired ownership over many years by adverse possession or by estoppel since 1947.

It was advised that the owners of Intack Farm have now been maintaining and repairing the lane, including the repair and maintenance of the gates and all of the fencing and other structures at their own cost for a period of in excess of 70 years.

The owners of Intack Farm contested the idea that the lane had been used as a 'busy thoroughfare' from 1947 to date, or that members of the public had ridden horses (or otherwise) on Greenhill Lane, for at least a period of 30 years (counting back from the British Horse Society's notice). They also deny that the lane has ever been used by vehicles or carriages since at least 1947 and they aver that such a contention is impractical and unrealistic.

The idea that Greenhill Lane had been used for vehicles for the quarry was also questioned, the owners stating that the entrance to the quarry was on the Baxter's lane opposite Greenhill Lane.

The owners of Intack Farm also raised safety concerns should bridleway rights be recorded along Greenhill Lane along with concern regarding fly tipping, use by scramblers or motorcycles, particularly in relation to the wellbeing of livestock in the adjoining fields. They also highlighted the changes necessary to facilitate access on horseback, such as gate fastenings, boulders in the lane, they expressed a need for the council and/or the British Horse Society to complete the works necessary for their farming business to continue as before, should bridleway rights be recorded along the lane.

Assessment of the Evidence

The Law - See Annex 'A'

In support of making an Order

Against making an order

- 1815 Inclosure Map and Award
- Written statement of Mr Robert Moser – in relation to the drawing up of parish survey map

Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the section of footpath from points A-B to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee will note that previously the application route was recorded as a public footpath, as a result of an application and subsequently determined at a public inquiry in 1994. Thereafter, a further application was made to record the same route as a bridleway, this application was determined by the Government Office for the North West (GONE) on 27 February 2001 and was not accepted.

Committee should note that we are required to consider the current application due to the additional documentary map evidence presented.

Turning now to consider the current application, Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

As there is no express dedication and no user evidence forms have been provided in support of this application, it is not possible to satisfy the criteria under s.31 Highways Act 1980 and instead Committee will need to consider on balance whether dedication may be inferred at Common Law.

Committee is therefore advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.

Evidence from the 1815 - Inclosure Map and Award suggests the application route was originally created as a private access route, there is no evidence to suggest bridleway use at this time. Some three years later, The Greenwood's Map of 1818 shows the full length of the route existed and it appears to have remained unaltered since that time.

The application route appeared on the early small scale commercial maps. The application route is depicted as a through route connecting to vehicular public highways and as a cross road on the 1830 -Hennet's Map of Lancashire. The Hennet's Map was produced 15 years after the Inclosure Map and the map depicted through routes that were generally available to the public in carts or on horseback therefore;

the inclusion of the application route on the map in 1830 suggests it may be possible to infer route was accessible to the public even if public rights did not exist.

The route appears consistently on the OS maps and supports the fact there were no gates on the application route hindering access and it was a through route which is likely to have been wide enough to have possibly been used by horses and vehicles.

The application route is unregistered and owners were not identified in legal documents such as the Tithe Award and Finance Act Maps. The Finance Act 1910 records from the early 1900s show the application route was excluded, this is again good evidence on balance that the route was considered to be public carriageway at that time. However, it is also possible in this case that it was excluding a private joint occupation road not in any particular ownership. The Tithe Map produced in 1841 does not add any further weight and nothing can be inferred about public status from this map.

A statement submitted by Robert Moser a former parish councillor who was involved in the preparation of the parish survey map, purports to support the application however the wording of the statement is not corroborative evidence in support the application for a bridleway, as Mr Moser states he believes the route to be a public road therefore it should be recorded as a public footpath and he explains the route 'could' be used by vehicles so there is no evidence that the application route 'was' used by the public hence this adds no further weight in support of the application. There is no further evidence presented to support the actual use of the application route as a bridleway.

Taking all the evidence into account and noting how the route was recorded on the old County maps, it is suggested to Committee that there is insufficient evidence to infer dedication that the route ought to be shown as a highway of a different description and the claim should be rejected.

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.

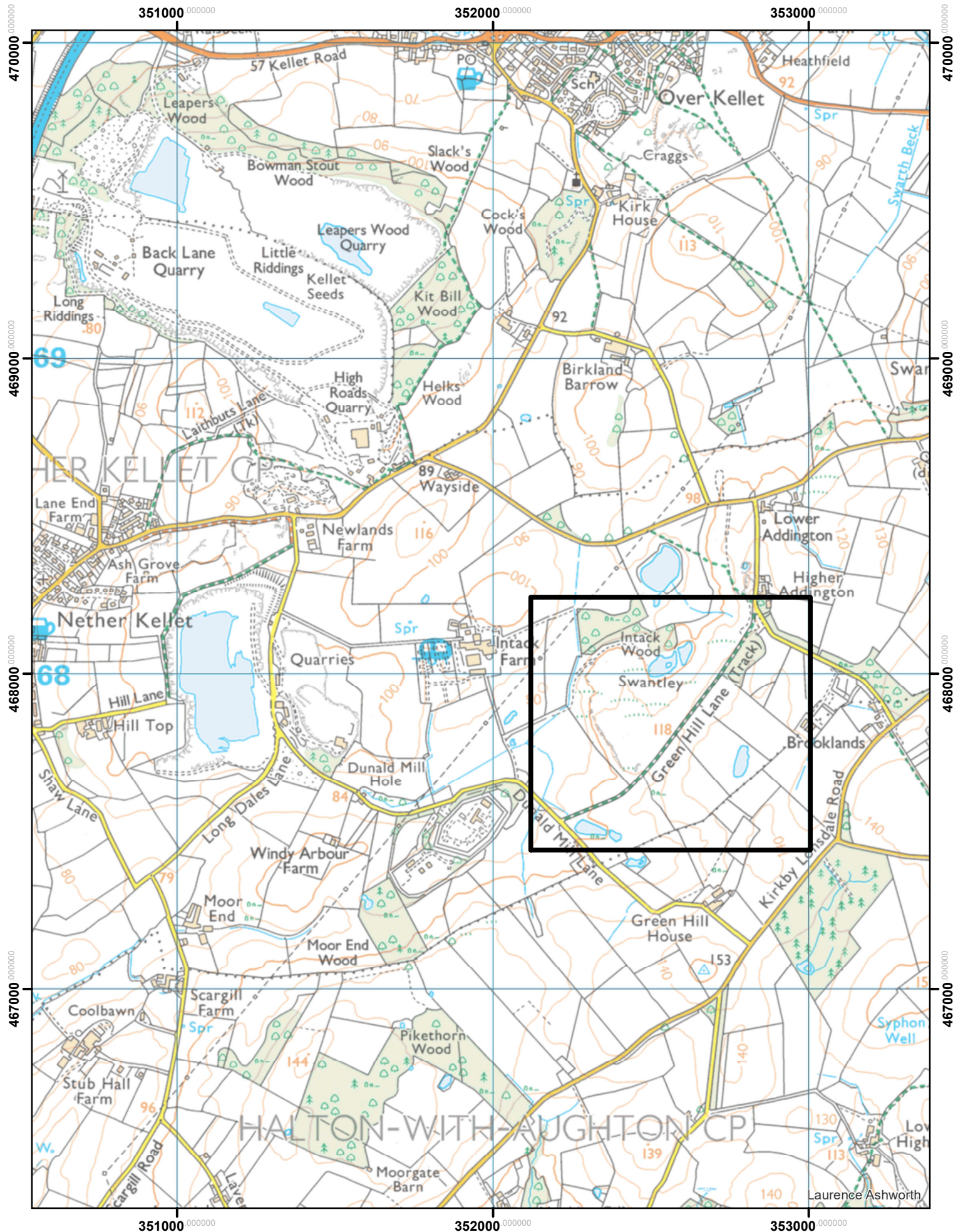
Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-624		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A



Regulatory Committee

Meeting to be held on 17th November 2021

Part I

Electoral Division affected:
Lancaster Rural North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Restricted Byway from Borwick Hall Bridge to the River Keer near Capernwray Old Hall

(Annex 'A' refers)

Contact for further information: (file reference 804-628)

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

Brief Summary

Application to consider the addition of Restricted Byway from Borwick Hall Bridge, Borwick to the south side of the ford crossing of the River Keer and junction with unclassified county road U50230 near Capernwray Old Hall, Nether Kellet to the Definitive Map and Statement of Public Rights of Way.

Recommendation

- (i) That the application for the addition of Restricted Byway from Borwick Hall Bridge, Borwick to the south side of the ford crossing of the River Keer and junction with unclassified county road U50230 near Capernwray Old Hall, Nether Kellet, be accepted
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add a Restricted Byway from Borwick Hall Bridge to the south side of the ford crossing of the River Keer and junction with unclassified county road U50230 on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Details

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a Restricted Byway from Borwick Hall Bridge, Borwick to

the south side of the ford crossing of the River Keer and junction with unclassified county road U50230 near Capernwray Old Hall, Nether Kellet on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Lancaster City Council

Lancaster City Council provided no response to our consultation.

Borwick Parish Council

The Clerk to the Council responded to our consultation to state that they have no objection to the application. They did note that currently many dog walkers park at the Borwick Hall Bridge end of the route, sometimes posing problems for vehicle

access for farmers and that perhaps some restrictions could be implemented to manage this issue. They also noted that they believe that the ancient pack bridge at Capernwray is under Lancashire County Council control and that if this application is successful the bridge should remain maintained and secure. The Clerk to the Council clarified that these comments were made on his own behalf without recourse to the Parish Council.

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	5241 7295	Open junction with Borwick Lane immediately west of Borwick Hall Bridge
B	5243 7272	Junction with Footpath Borwick 9
C	5244 7266	Junction with Bridleway Borwick 13
D	5267 7261	Junction with Footpath Borwick 8
E	5287 7189	Junction with unclassified county road U50230 on south side of ford crossing of the River Keer.

Description of Route

A site inspection was carried out in September 2020.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '07-01-BW13' or 'Bridleway Borwick 13' but are referenced below in the abbreviated form 'Bridleway 13' for brevity since all those referred to are in Borwick in the District of Lancaster.

The application route – which has been signposted as bridleway - commences at a junction with Borwick Lane immediately to the west of Borwick Hall Bridge (point A on the committee plan). It passes over a wide surfaced area immediately adjacent to the Lancaster Canal where, on the day of inspection, a number of cars had been parked.

The route descends adjacent to the canal in a south easterly direction along a tarmac road before continuing in a generally south south westerly direction bounded on either side by hedges to the junction with Footpath 9 at point B.

At point B the tarmac surface ends and the application route continues south along a compact stone surfaced road – still bounded on either side by hedges – for approximately 60 metres to point C where it meets the northern end of Bridleway 13.

From point C the route turns through a 90° bend to continue east then east south east – still as a bounded stone surfaced roadway - to point D where it meets the southern end of Footpath 8. The application route then continues in a general southerly direction for a further 450 metres to a point where the surfaced track bends south west providing access to a fishing pond and the application route rises gently uphill to continue as a bounded track in a south south easterly direction. From the point at which the fishing pond is accessed the surface of the application route alters – indicative of the fact that from this point onwards there appears to be very little use of the route by vehicles. Whilst the width of the route remains to be approximately 6 metres what appears to have been a stone surface is now largely grassed over with a narrow central worn strip consistent with pedestrian, bicycle and equestrian use.

A short distance before point E the route passes directly under a railway viaduct and crosses the River Keer via a ford. On the day the route was inspected a horse was seen entering the river via a graded slope immediately north of the railway bridge and was then ridden along the river under the railway bridge to exit the river at point E.

Recent work on the railway viaduct has seen a concrete walkway constructed underneath the viaduct and piles of stones placed in the river at the base of the viaduct arches. This appears to have altered the original entry/exit to and from the ford on the northern bank and has extended the ford crossing by approximately 5 metres from how it appeared when the route was inspected and photographs taken in 2009.



Photograph taken in 2009

Passing under the railway



Photograph taken in 2020

Pedestrian access was available under the railway arch along the concrete walkway and then across the river via a packhorse bridge.

Immediately south of the ford crossing point is point E from where the route continues in a south south easterly direction along a track recorded on the List of Streets as unclassified county road U50230 in the parish of Over Kellet to Capernwray Road.


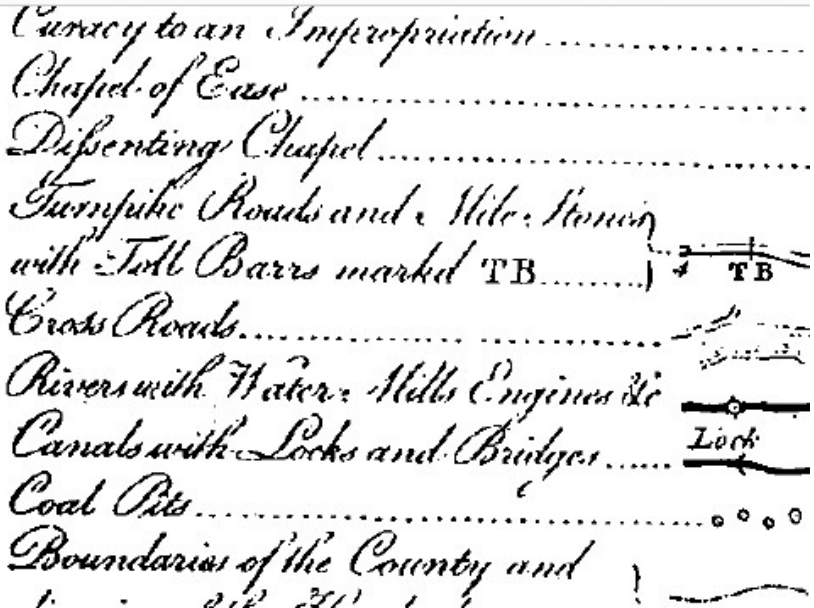
From an inspection of the route it was clear that it was regularly used by walkers, riders, cyclists as a through route and other motor vehicles for access purposes.

Map and Documentary Evidence

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

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

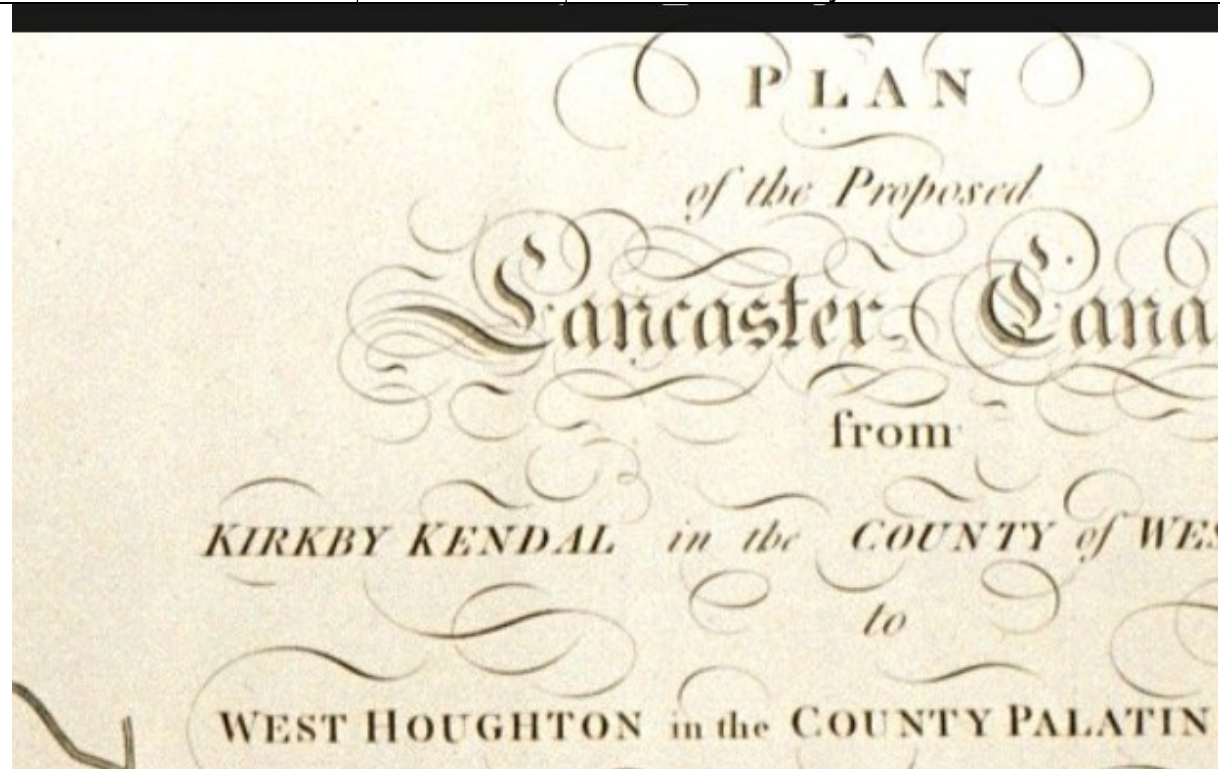


	
<p>Observations</p>	<p>The map predated the construction of the Lancaster Canal and railway. The application route is shown as part of a route extending north from the hall marked on the map at Capernwray. The first part of this route is consistent with the route recorded as unclassified county road U50230 from Capernwray Road north to cross the River Keer (at point E). It then continues north broadly consistent with the application route to the approximate bend in the route at point D and then in a more north westerly direction towards point C. The remainder of the route through to point A on Borwick Lane is not clearly shown although when the map was enlarged it did appear to show a route crossing a watercourse and continuing north to the approximate location of point A. That part of the application route shown on the map is depicted in the map key as a 'cross road'.</p>
<p>Investigating Officer's Comments</p>	<p>A route broadly consistent with the application, possibly as a through route, appeared to have 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 map of this scale suggests that it existed as a substantial route and appears to have formed a through route as part of the general road network. The depiction of the route on this commercially produced small scale map suggests that the route was considered to be public highway and travellers using such a map were likely to be on horseback or horse-drawn vehicle.</p>

Construction of the Lancaster Canal

1791-1792

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

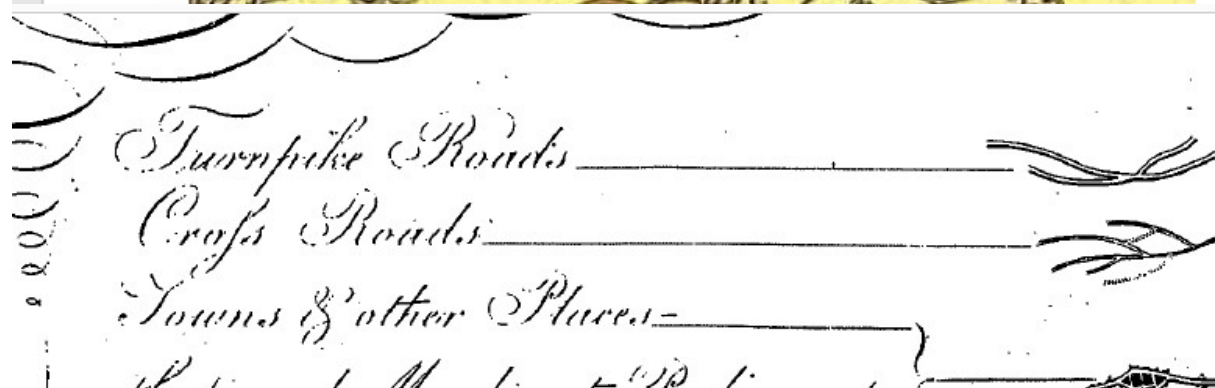
The line of the proposed canal was first surveyed in 1772. In 1791 the proposed line was resurveyed and a final survey was carried out later the same year by John Rennie.

A small scale plan surveyed in 1791 and 1792 by John Rennie is available to view at the maritime museum in Lancaster and online. The plan shows the full length of the proposed Lancaster Canal from Kendal to West Houghton. The plan shows the canal passing through Borwick towards Capernwray and Over Kellet and also shows the River Keer. It appears to show key public roads crossing the proposed canal including part of the application route.

It shows Capernwray Hall with a route extending from the Hall over the canal (Capernwray Bridge) and then crossing the River Keer (point E) before continuing north towards point D from where the route appears to lead towards the canal and stops.

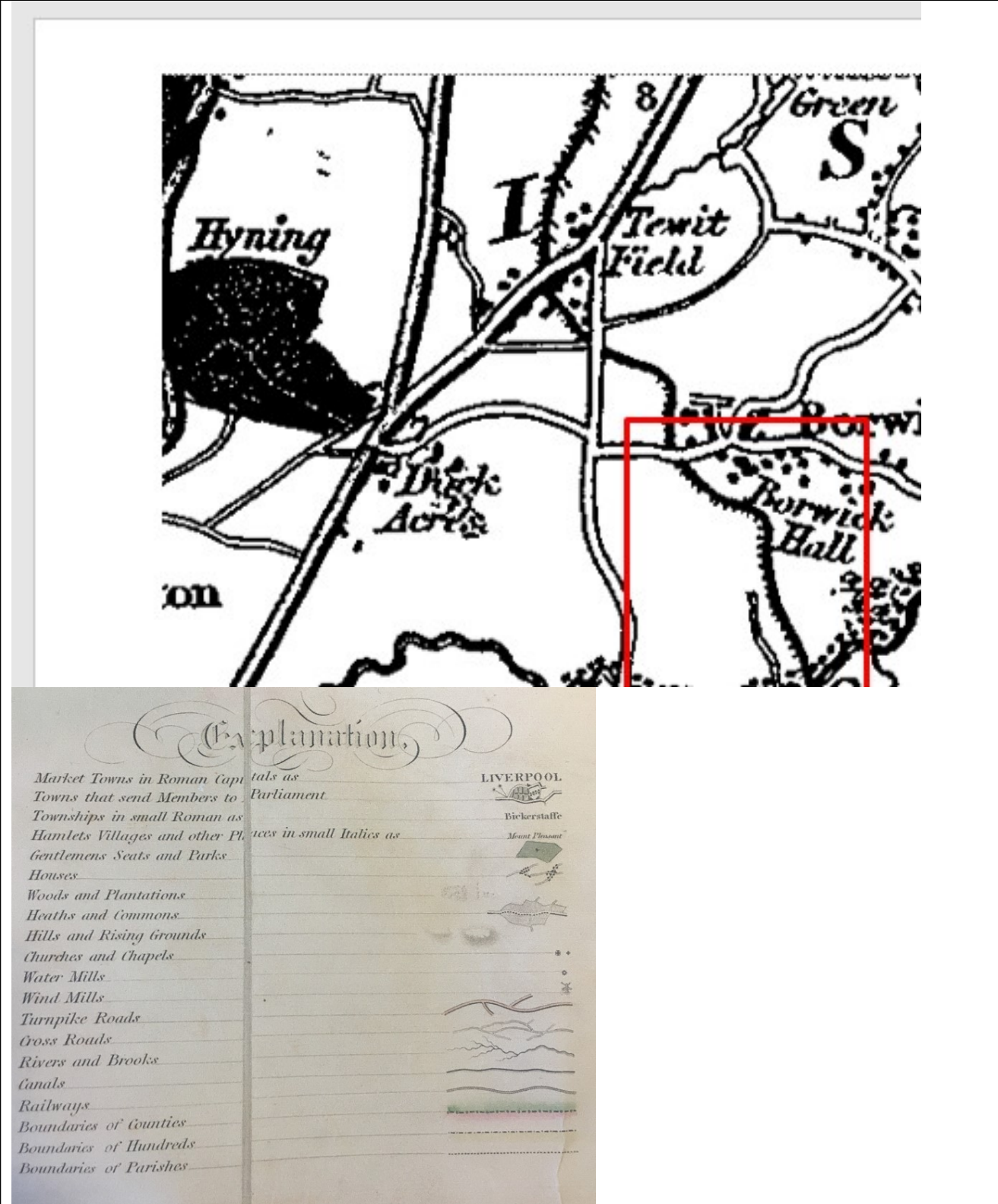
In 1792 the promoters of the canal sought an Act of Parliament to allow its construction. It received

		the Royal Assent on 11 June 1792, and was entitled 'The Westmoreland Canals Act 1792 - <i>'An Act for making and maintaining a navigable canal, from Kirkby Kendal in the County of Westmorland, to West Houghton in the County Palatine of Lancaster, and also a navigable branch from the said intended canal at or near Barwick, to or near Warton Cragg, and also another navigable branch, from, at or near, Galemoss, by Chorley, to or near Duxbury in the said County Palatine of Lancaster'</i> . (Ref:32 Geo.111c. 101). A copy of the Act has been deposited in the County Records Office (CRO Ref: CBP 11804/59) but makes no specific reference to the application route.
Investigating Officer's Comments		The application route – or at least part of it – appears to have existed prior to the construction of the canal.
Inclosure Act Award and Maps	1816	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		The Inclosure Award for Borwick does not cover the area of land affected by this application.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
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.



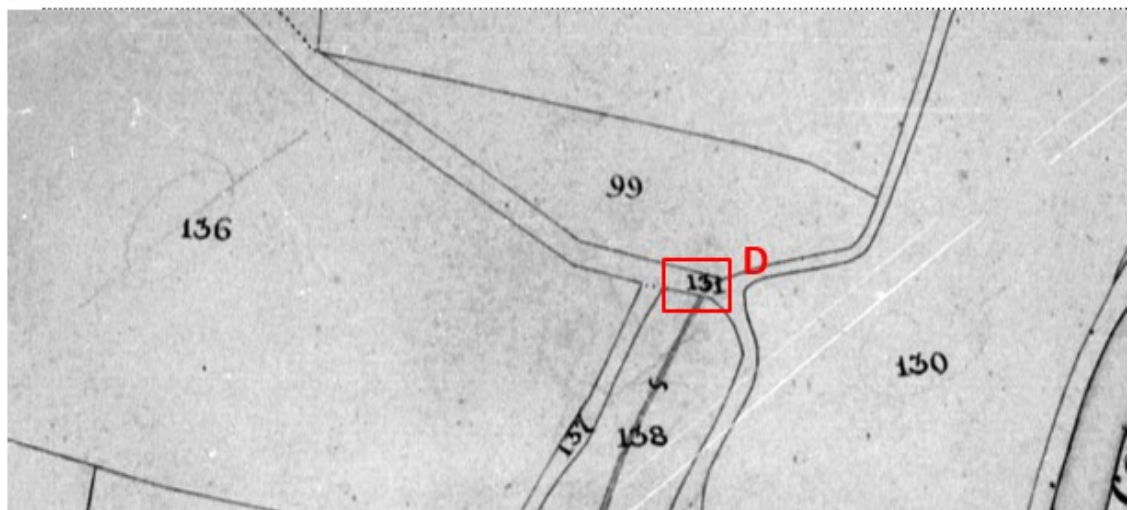
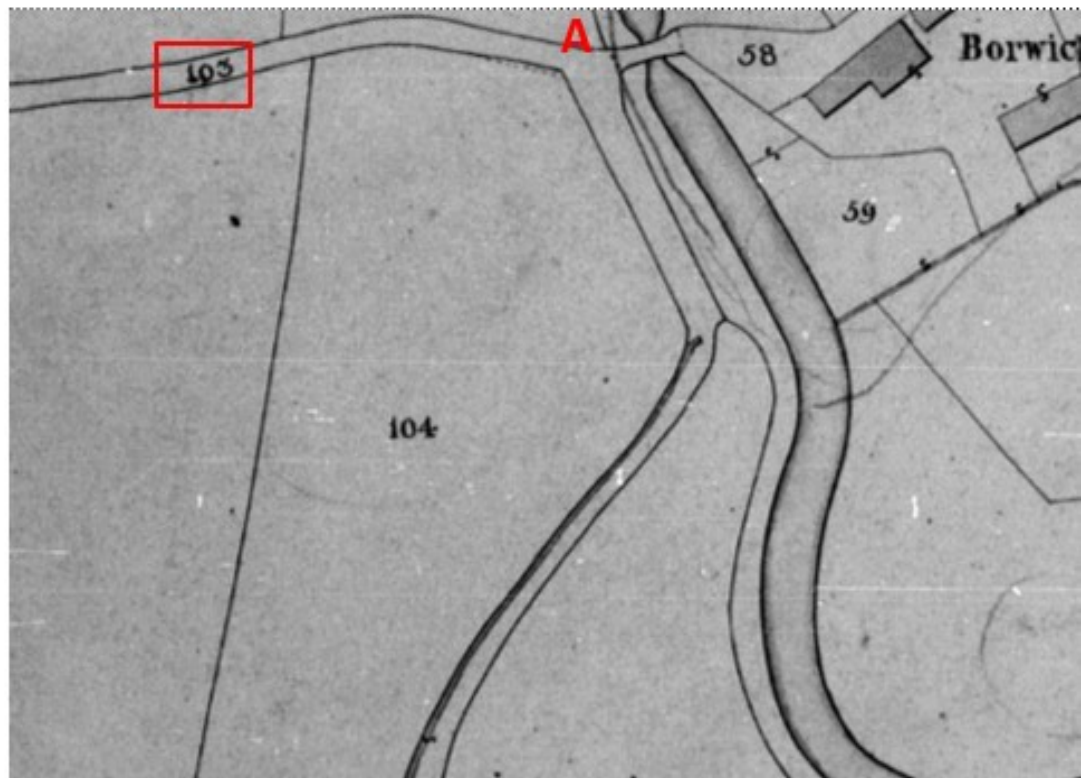
Observations		The canal is shown and the route from Capernwray Road north to point E (UCR 50230) is shown leading to the river at point E but the application route itself is not shown.
Investigating Officer's Comments		The route – or at least part of the route – may have existed in 1818 (as shown on Yate's Map and the canal plan) but was not considered by Greenwood to be a route of sufficient significance to be included on his map. The fact that the route is not shown on such a small scale map is not inconsistent with the existence of public bridleway rights at that time.
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

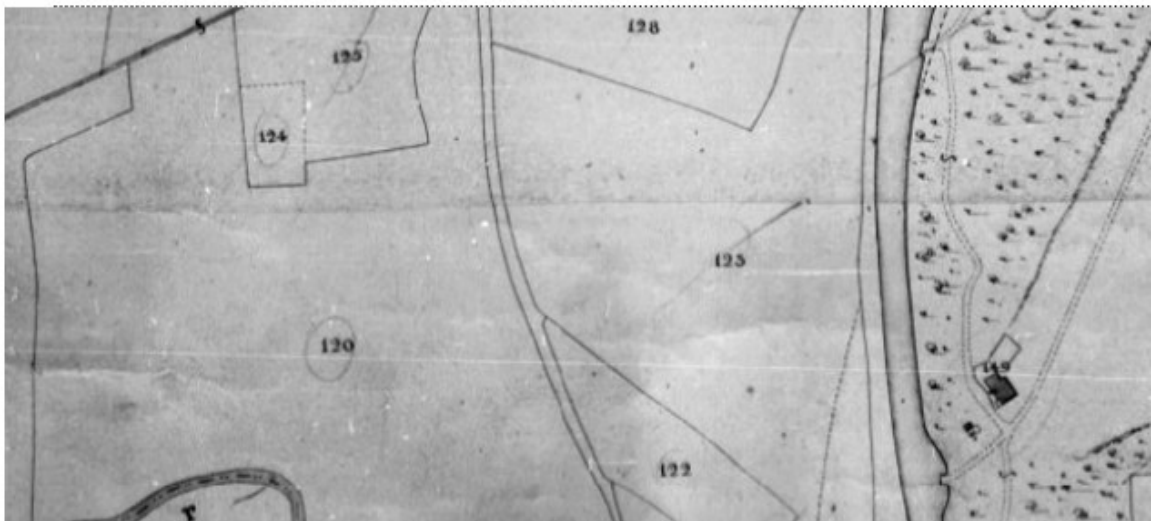
		hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
--	--	--



Observations		Only part of the application route is shown. The
--------------	--	--


		<p>route from point A through to point D is not shown. A route is shown consistent with the earlier canal plan (Rennie's Map) extending from Capernwray Road north along UCR 50230 to cross the river at point E and continue north towards point D. The route then ends and is not shown as a through route or a route providing access to a named or marked property.</p>
Investigating Officer's Comments		<p>At least part of the route existed in 1830 but it is not shown as a through route. The route, if it did exist in its entirety did not appear to have been considered by Hennessey as a significant public vehicular route at that time. It may however have existed as a private access route or as a public footpath or bridleway but such routes were not normally shown due to the scale and purpose for which the maps were published.</p>
Borwick Tithe Map and Tithe Award or Apportionment	1846	<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>





Townson Agnes	William Mops	6	Little Oldfield	Arable
Watson Jane	James Heslam	9	Slack	Arable
Public Roads Wastes &		7	Public Road & Old	
			Turnpike	
		48	Pinfold	
		58	Public Road	
		64	Public Road & Green	
		72	Public Road	
		103	Public Road	
		131	Public Road	
		248	Road	
		259	Road	

Observations	<p>The Tithe Map shows the full length of the application route as a bounded through route. The route is numbered 105 close to point B and 131 close to point D.</p> <p>There are no lines drawn across the application route and it is shown as a wide enclosed road consistent with how it is shown on the first edition 6 and 25 inch Ordnance Survey maps detailed below.</p> <p>In the written Award (schedule) that accompanies the map, the application route is listed under the section titled Public Roads and Waste located at the end of the Award. Both award numbers 103 and 131 are included in the list and are specifically referenced as 'Public Road' with no land owner or occupier listed and no tithes payable.</p> <p>From point E the route is shown to continue into the adjacent parish (Over Kellet) A bridge is shown consistent with the location of the</p>
--------------	---

		packhorse bridge at point E but it also appears that it would have been possible to pass through the river adjacent to the bridge at this point
Investigating Officer's Comments		<p>It appears that a substantial bounded route physically existed that would probably be wide enough for vehicles (carts) in the 1840s and appears to have been regarded as a public road in 1846.</p> <p>It is shown as being not gated suggesting that access was freely available along the full length. A clearly defined list of roads is grouped together and provided in the Tithe Award. Roads are numbered separately but no landowner or occupier is listed. The other roads listed correspond to ways that are still recorded as public vehicular highways today providing further evidence that in 1842 the application route was considered to be part of the public highway network.</p> <p>No tithes are payable for the route but it is accepted that this does not necessarily mean that it was because the road was public.</p>
Over Kellet Tithe Map	1840	Tithe Map and Award for the adjacent parish.
<p>isn't relevant (looks like it's the river)</p> 		
Observations		The Tithe Map shows the continuation of the application route from point E south along the route now recorded as an unclassified county road. The route is not numbered but appears to be shown consistent with other public vehicular roads in the parish. A bridge consistent with the location of the packhorse bridge is shown on the map at point E of set in such a way as to indicate the existing of a ford crossing point adjacent to it.
Investigating Officer's Comments		Inspection of the Tithe Map for the adjacent parish confirms the existence of the continuation of the

		route through to Capernwray Road.
6 Inch Ordnance Survey (OS) Map Map Sheets 19 and 25	1847	The earliest Ordnance Survey 6 inch maps for this area surveyed in 1844-45 and published in 1847. ¹



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



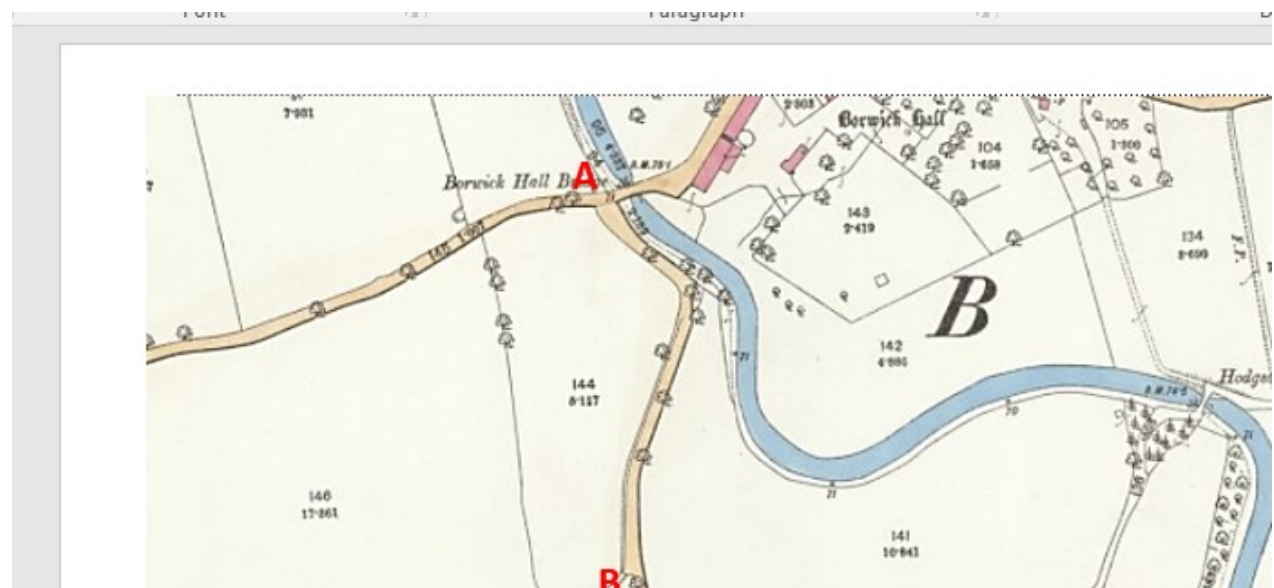
Observations	The whole length of the application route is shown
--------------	--

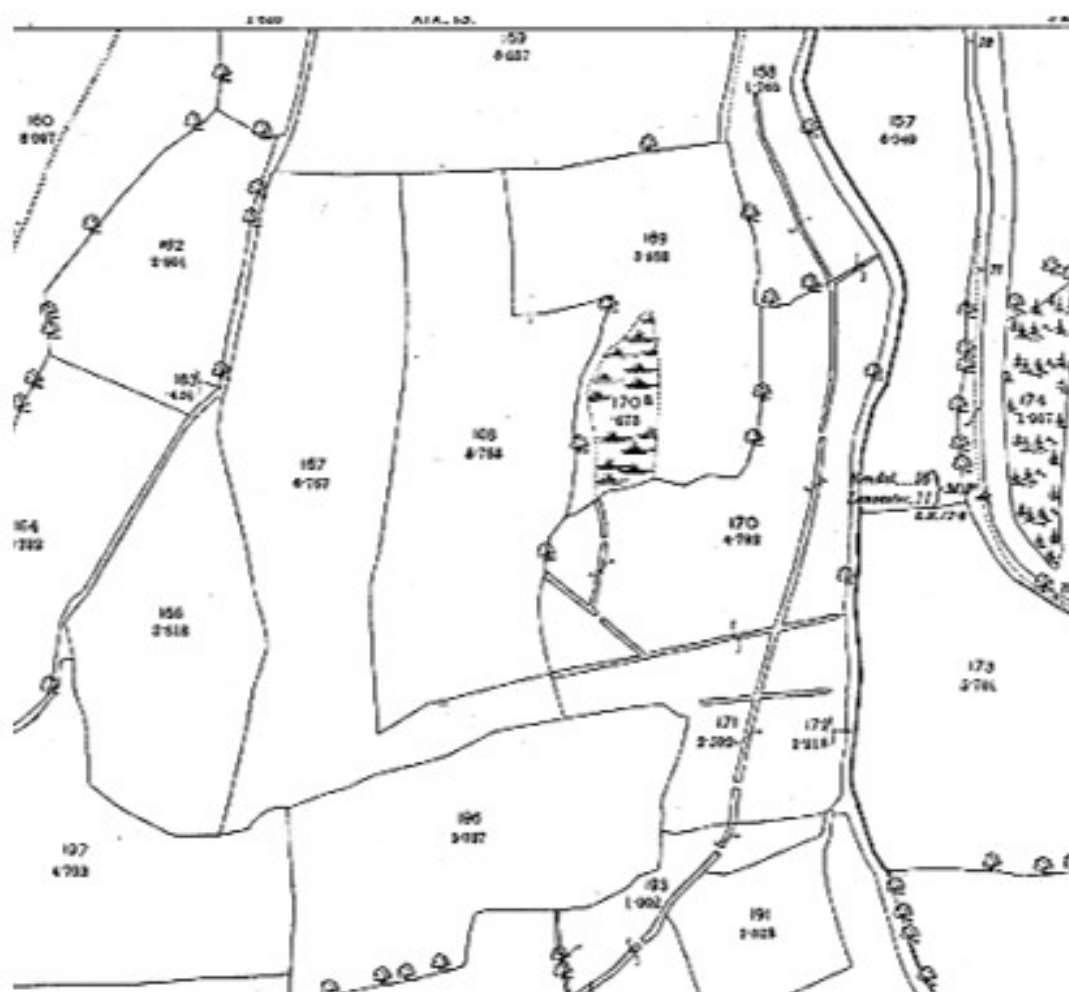
		<p>as a through route. No barriers are shown across the route suggesting that it was ungated and access unrestricted.</p> <p>The full length of the route is shown bounded on either side by solid lines indicating that it was physically separated from the adjacent farmland. It appears to be of a substantial width consistent with how other routes now recorded as public vehicular highways are shown.</p> <p>A bridge is shown offset from the route across the river at point E suggesting the existence of a ford crossing point and pedestrian access via a bridge.</p>
Investigating Officer's Comments		<p>The full length of the application route existed and appeared to be capable of being used in 1844-45. It is considered that a substantial bounded through route connecting to two other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p>
Cassini Map Series Kendal and Morecambe	Old and 1852-1865	<p>The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.</p>



Observations		The full length of the application route is shown
--------------	--	---

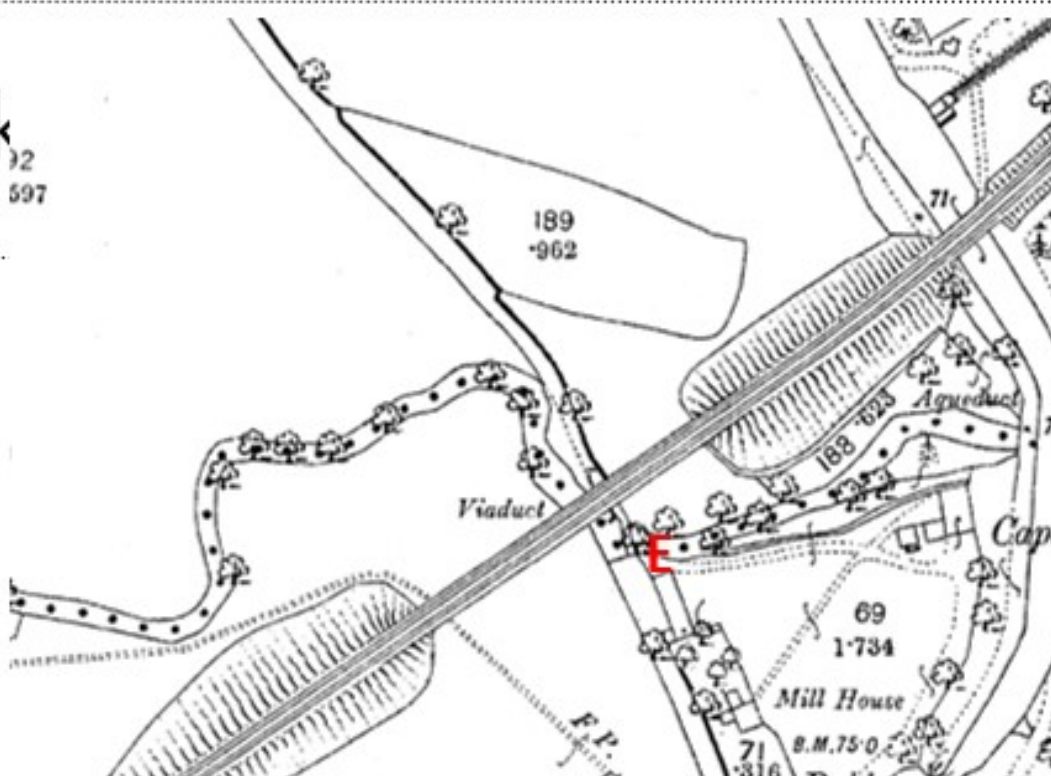
		connecting to public vehicular highways at either end.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.
Furness and Midland Joint Railway Carnforth and Wennington Branch	1860-1870	Construction of railway with viaduct crossing the application route at point E.
Observations		The construction of the Carnforth to Wennington branch of the Furness and Midland Joint Railway was agreed in 1862 with The Furness and Midland Railway Act receiving royal assent the following year. The line consists of 9.5 miles of track running from Carnforth to Wennington and was opened in 1867. It is still in operation today. A viaduct was constructed to carry the railway over the top of the River Keer and application route at point E. However no records relating to the construction of the viaduct have been found.
Investigating Officer's Comments		No inference regarding the existence of public rights can be made.
25 Inch OS Map Sheets XIX.3 and XXV.1	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 to 1890 and published in 1891.



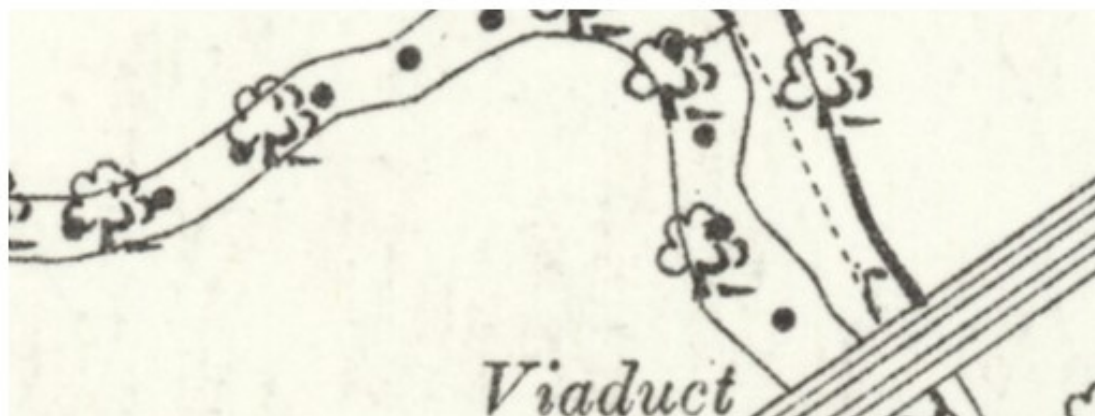


Click

92
597



CLICK TO ADD TITLE



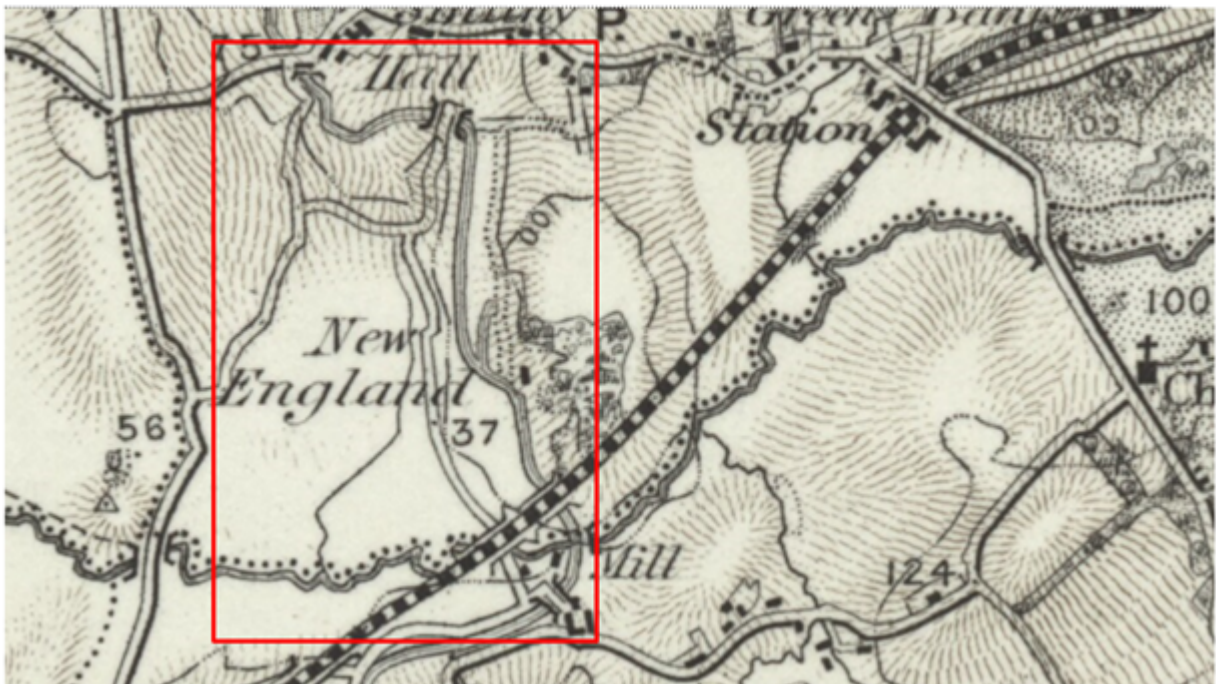
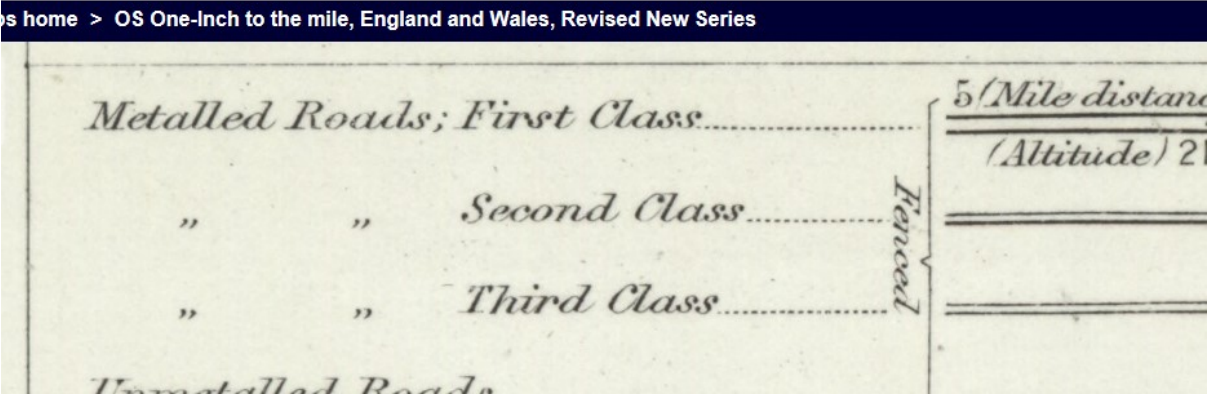
Observations


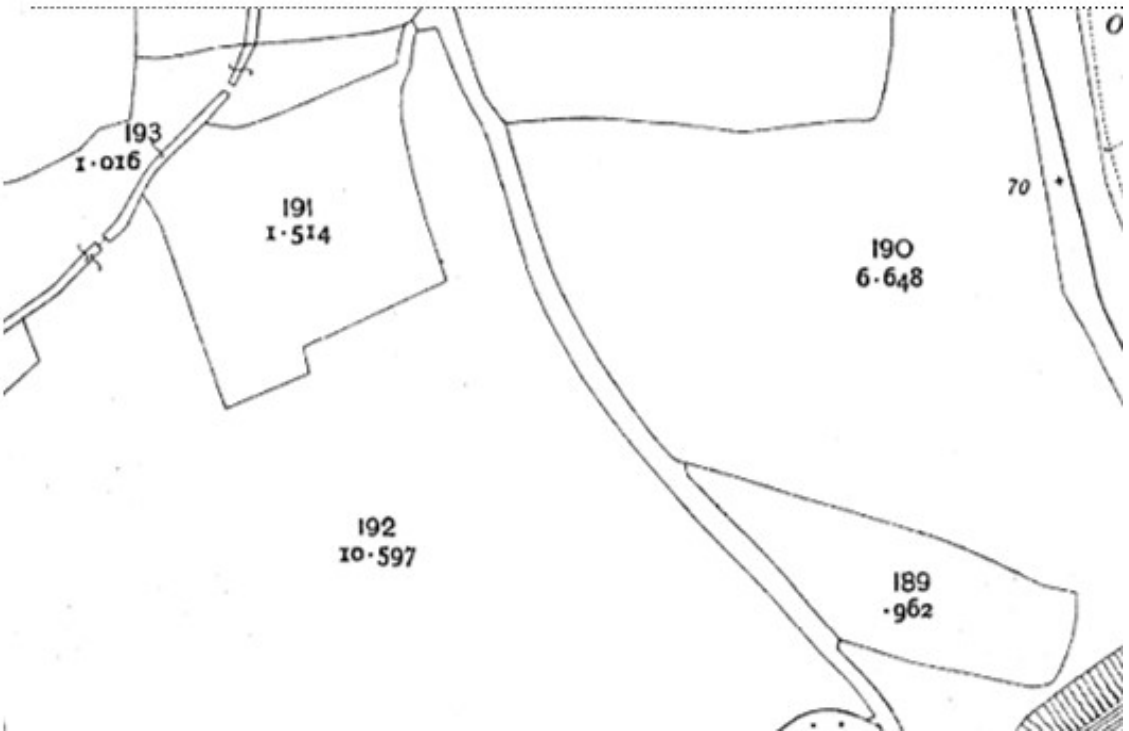
The full length of the application route is shown.

The copy of the OS map sheet for the northern end (showing the route between point A and point D) is coloured as was consistent with the way that routes considered to be public roads at that time were shown. In addition, on both map sheets the route is shown with a thickened line along the south and east side.

No gates or barriers are shown across the

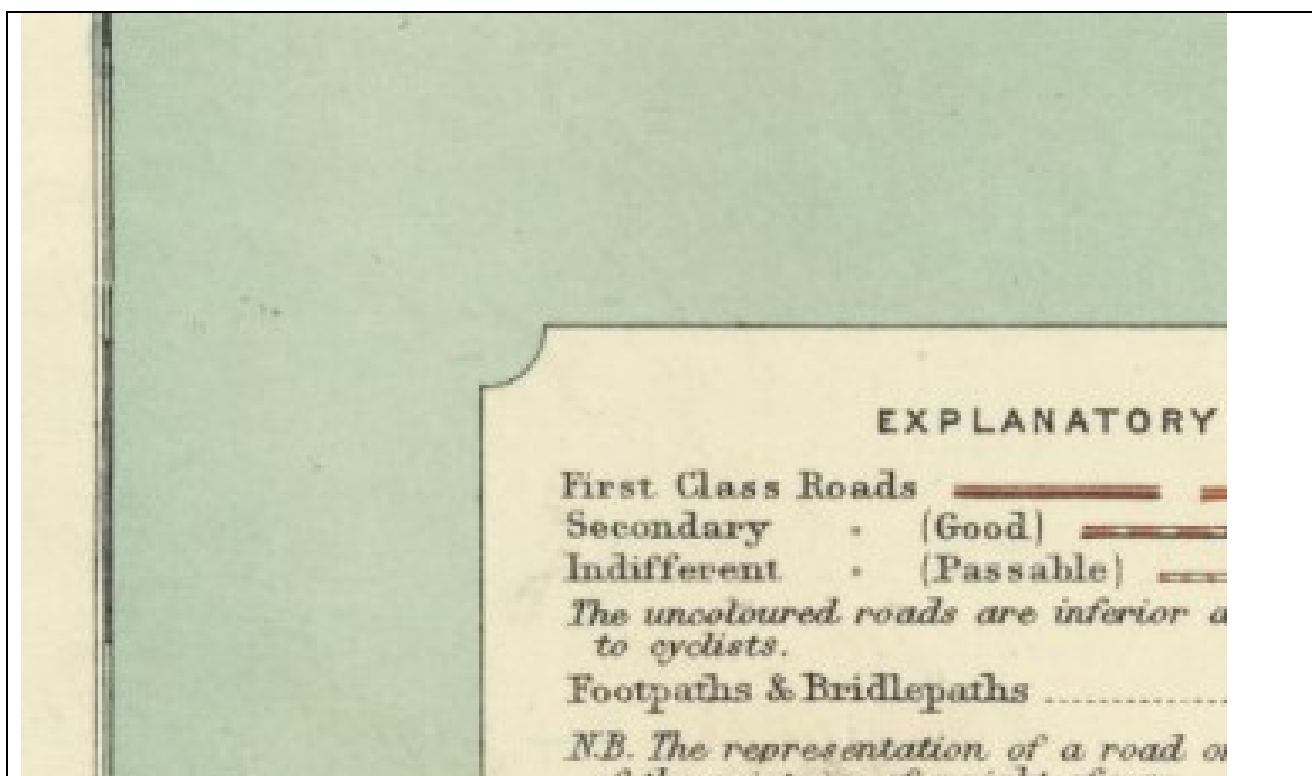
		<p>application route suggesting that it was freely accessible along the full length. However, since the publication of the earlier 6 inch OS map the railway has been built and is shown passing over the top of the application route and River Keer on a viaduct in the proximity of point E. At point E – where the route leaves the river via the unmarked ford crossing a line has been drawn across the route and it is not clear whether this indicates the river bank or the existence of a gate at this point.</p> <p>A number of routes are shown connecting to the application route all of which are now recorded as public rights of way - Footpath 9 (point B), Bridleway 13 (point C), Footpath 8 (point D). None are shown coloured or shaded suggesting that the application route was considered to have higher public rights of access (i.e. carriageway).</p> <p>Two OS parcel numbers (and acreage) can be seen along the route – numbers 139 and 172 – both extending as far as the OS sheet boundary.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1890 as a significant through route to which other routes – now recorded as public rights of way – joined.</p> <p>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 them at a trot so the fact that the route was shown in this way is consistent with how it was recorded on the Tithe Map and Award and how it was shown on earlier small scale maps and indicated that the route was probably capable of being used by horses and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The route is given separate parcel numbers and acreages on each sheet; 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>
1 inch OS Map	1898	1 inch OS map Sheet 49 – Kirby Lonsdale surveyed 1843-57, revised 1890 and published

		1890.
 <p>os home > OS One-Inch to the mile, England and Wales, Revised New Series</p> 		
Observations		The full length of the application road is shown as a third class road connecting to public vehicular routes at both ends.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the application route on this map is suggestive of a route that was capable of being used at least on horseback and possibly horse and carts.
25 inch OS Map XIX.3 and XXV.1	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1930.

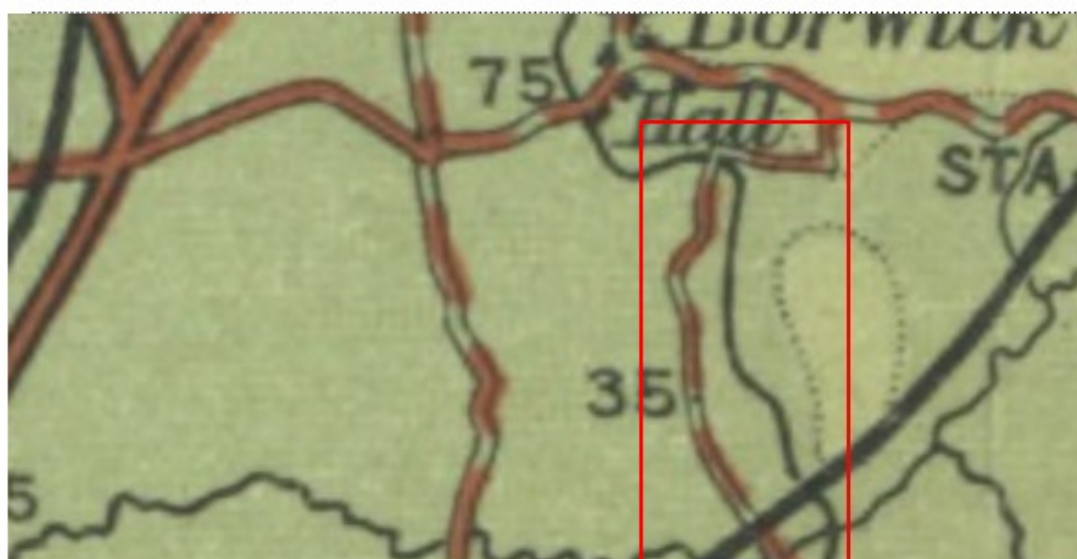
Font	Paragraph	
		
		
<p>Observations</p>		<p>The full length of the application route is shown with no lines across it which would have suggested the existence of gates. A change of surface is indicated at point A by a dashed line across the start of the route and the existence of a ford crossing point and pedestrian bridge are</p>

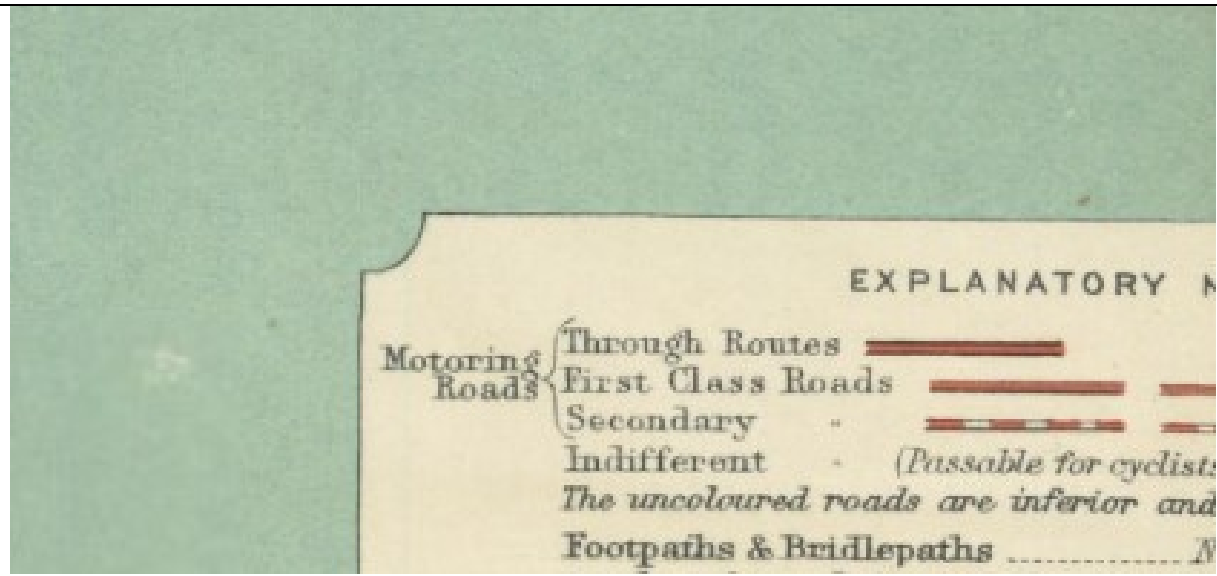
		marked at point E.
Investigating Officer's Comments		The full length of the application route existed in 1910 as a significant through route to which other routes – now recorded as public rights of way – joined.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for 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.



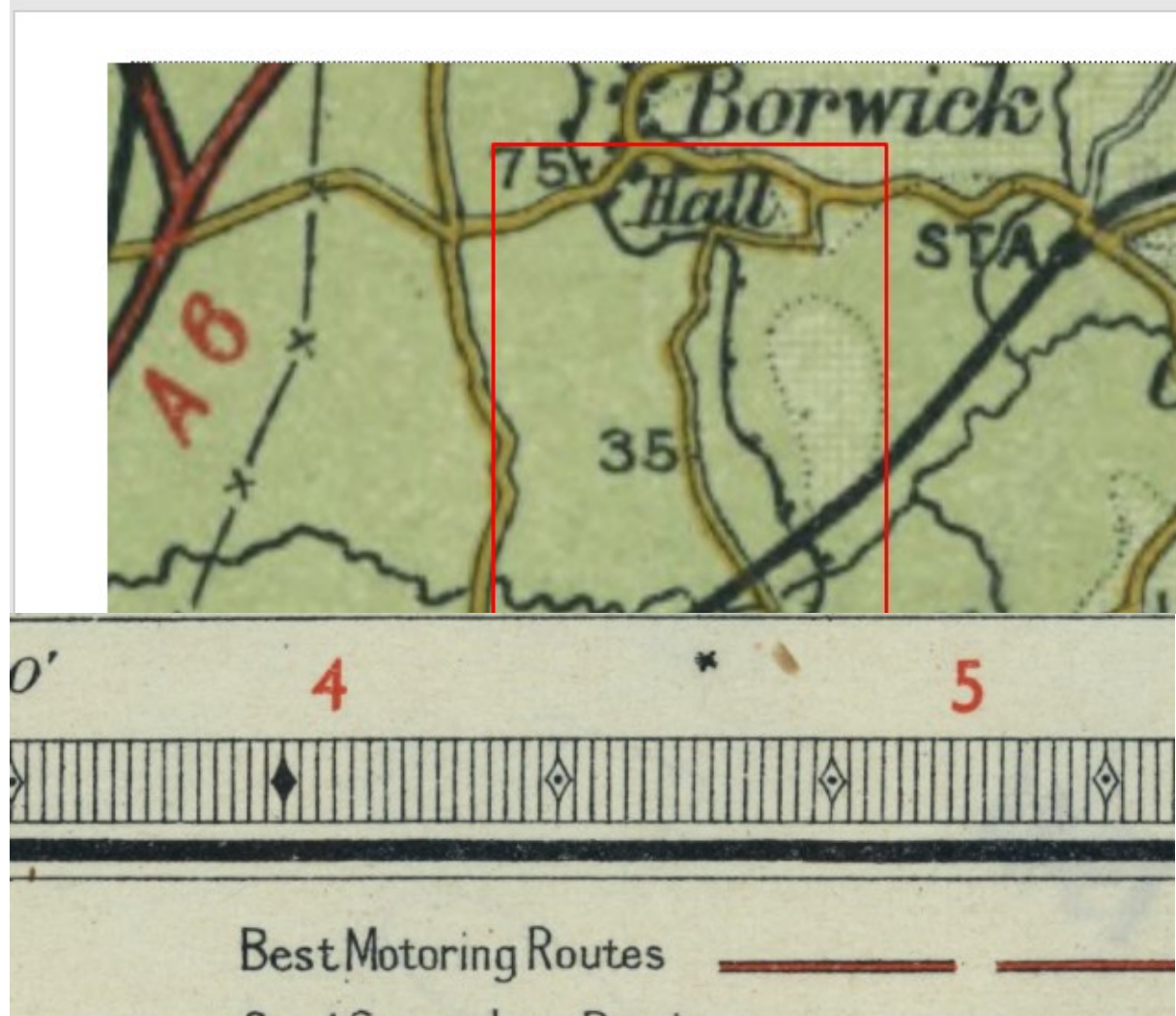


Sheet 5 – North Lancashire and the Isle of Man published 1905





Sheet 5 – North Lancashire and Isle of Man published 1920



Sheet 31 – North Lancashire published 1941

Observations	All three map editions show part of the application route. None of the maps show the start of the application route from point A through to point D.
--------------	--

		<p>They all show a route commencing east of Borwick village which crosses the Lancaster canal via Hodgson's bridge and then links to the application route via the route now recorded as Footpath 8 at point D. From point D south to point E – and continuing through to Capernwray Road the application route is shown as a 'secondary road'.</p>
Investigating Officer's Comments		<p>Despite not being shown on these maps, OS maps pre and post-dating Bartholomew's maps confirm the existence throughout this time of the application route between point A and point D. There is no other map evidence supporting the existence of an equally substantial alternative route to Borwick route via Hodgson's Bridge, east and then north to exit onto Borwick Road as shown on Bartholomew's maps although the canal bridge and a partially unenclosed route are shown. From point A to point D the application route is not shown suggesting either an error in depicting the northern section of the application route (presumably the later maps copied it from the earlier one) or a deterioration in the surface condition for use by cyclists and motorists – we do not know which. The application route from point D to point E was however shown to exist and it is possible that whilst the exact route shown by Bartholomew was different north of point D that there was an understanding that a public carriageway existed between Capernwray Road and Borwick Road.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction 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</p>

		<p>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>
--	--	---





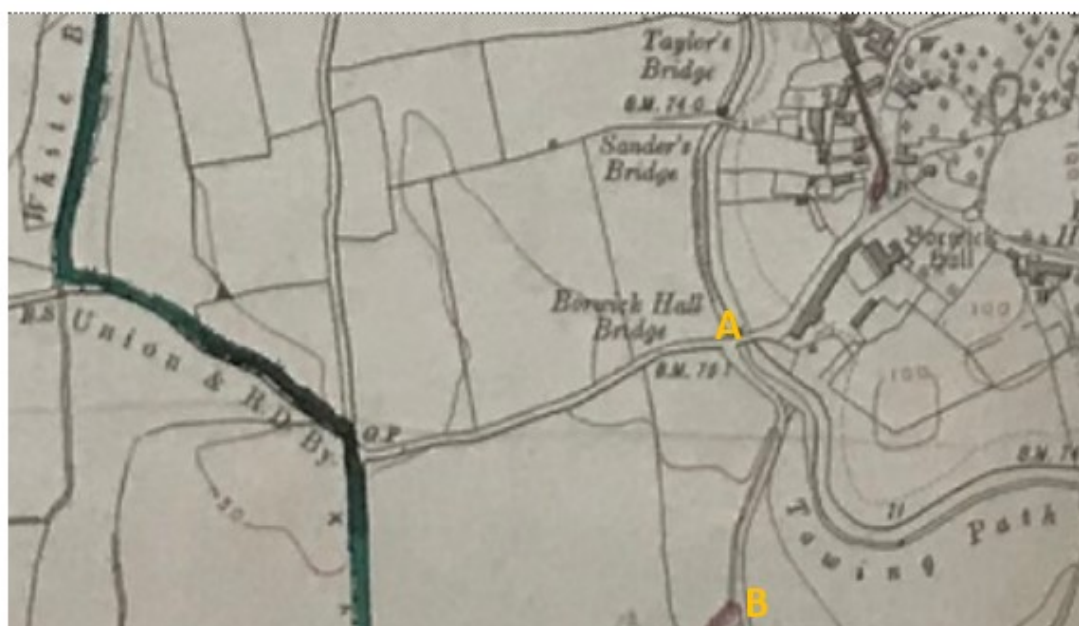
Observations

The full length of the application route is shown as being exempt from the numbered hereditaments with a number of adjacent plots braced on either side of the application route.

Investigating Officer's Comments

The map prepared under the provisions of the 1910 Finance Act obtained from The National Archives shows the whole 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 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 external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a

		<p>route indicates that public use was known but not necessarily vehicular status. In this instance all of the application route is shown outside privately owned land, indicating that the application routes status was believed to be public.</p> <p>Numbered plots split by the route give further weight to the belief that the route was considered to have public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p>
1932 Rights of Way Map		<p>The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>



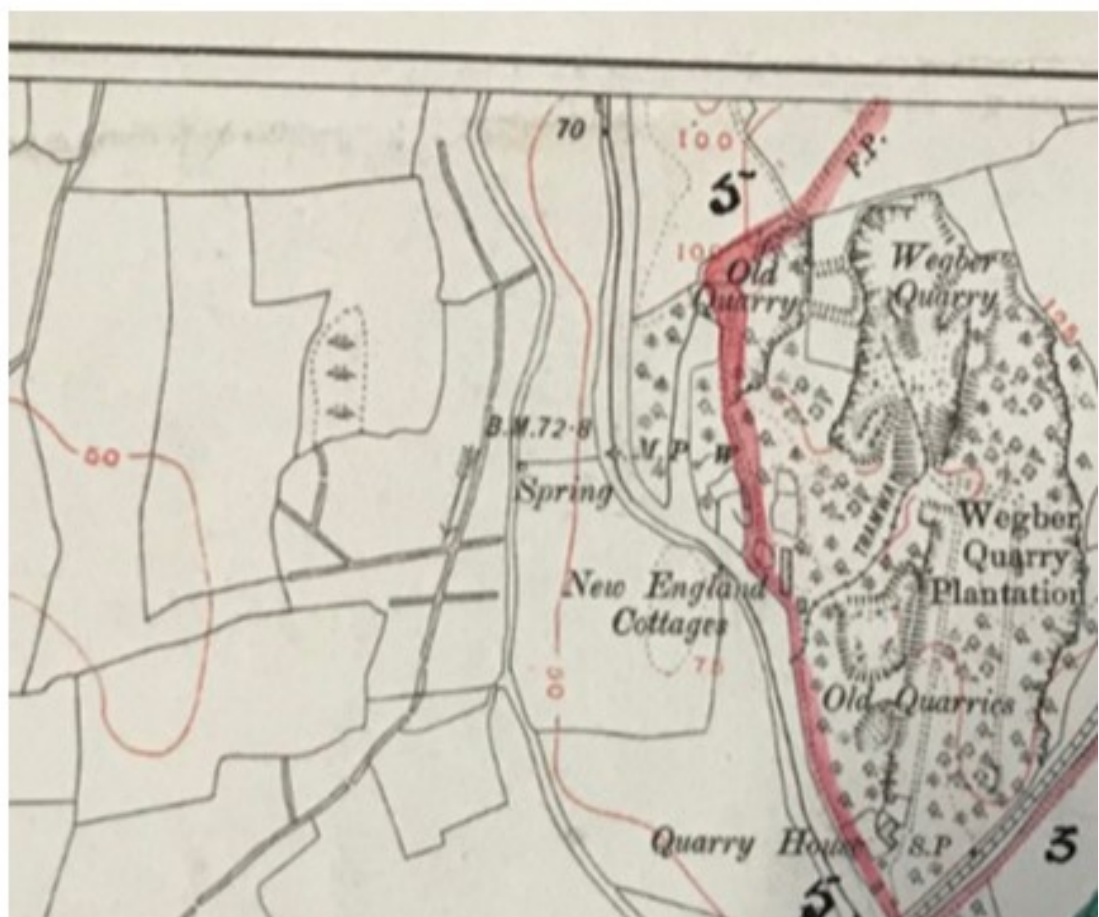
Lunesdale Rural District Council.
 Parish of Borwick. Footpaths as marked
by the Parish Meeting in 1934.

No.1. Borwick Village to Kirkgate Lane.
 No.2. St Mary's Church to Hornby Road near Mar
 No.3. From Priest Hutton near Beech House across
 and the L.M.S.Ry, along the side of the r

Font

121

Paragraph



Observations

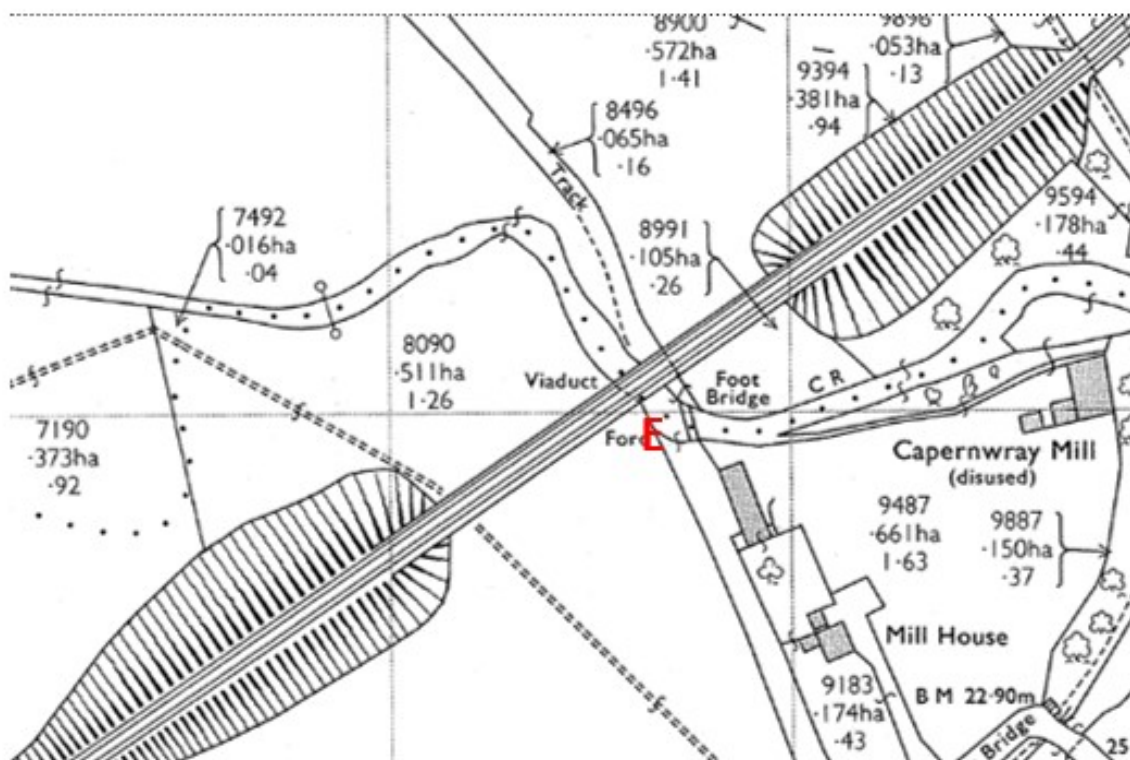
A map and list of public rights of way in the Parish of Borwick was inspected. Both appear to have been compiled at a parish meeting in 1934. The application route is not shown marked on the map and is not listed as a Footpath. One route is shown connecting to the application route at point

		B. This route is numbered on the map as route 4 and is described as a footpath from Over Kellet to Borwick Road across the fields to a 'lane' from Borwick Hall to Capernwray. The 'lane' referred to is the application route.
Investigating Officer's Comments		The application route was not considered to be a footpath in 1934 but appeared to be a more significant public route described as a 'lane'. The fact that the footpath numbered 4 was shown to stop at the junction with the application route (at point B) suggests that the parish council at that time considered that the application route was a public route – most probably a public carriageway that did not require to be recorded on the rights of way map which is consistent with how the application route is shown on the 1929 Handover Map detailed later in this report.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		There is no aerial photograph available to view in the county council's records for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map 57SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

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.



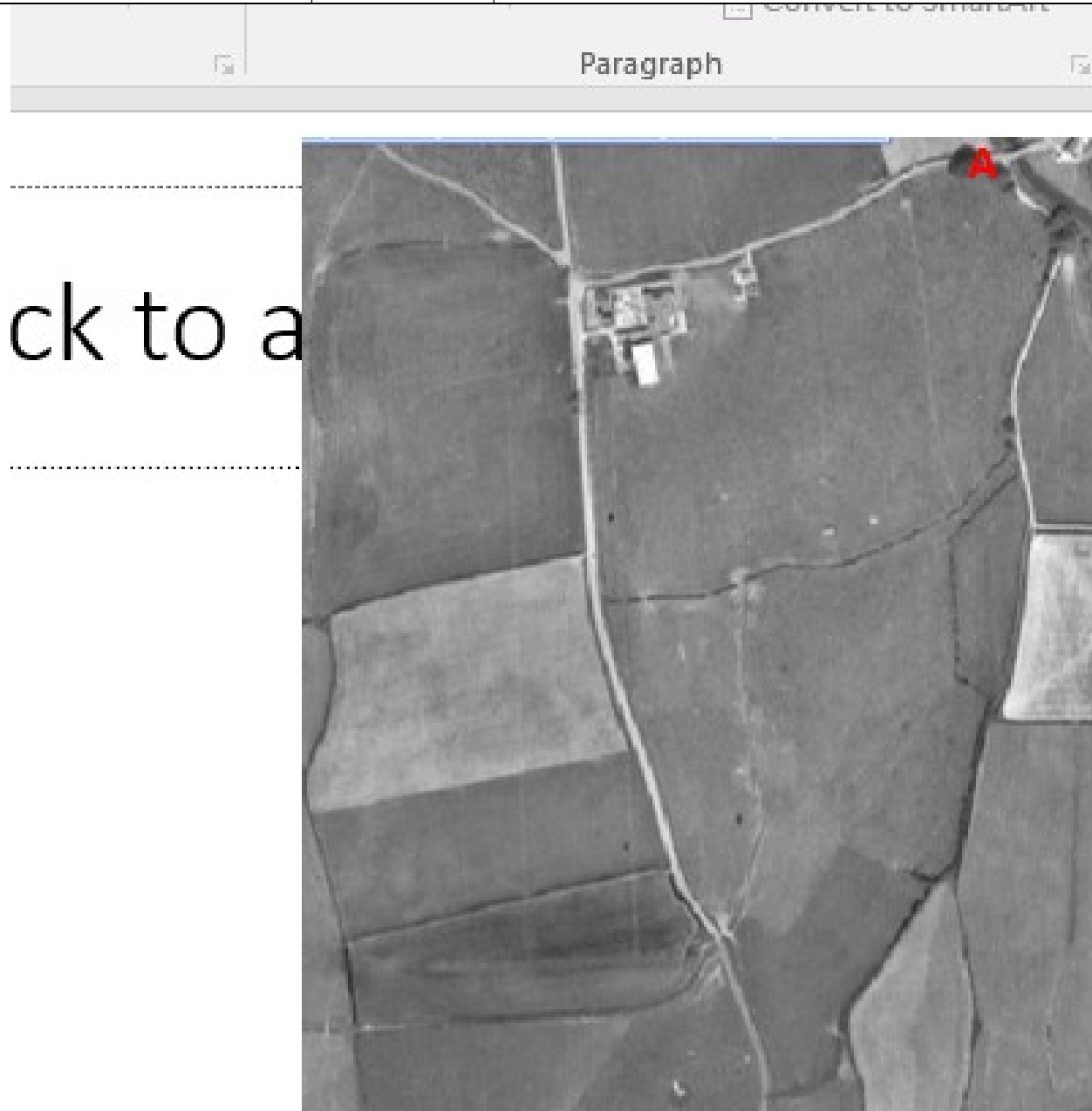
Observations		The full length of the application route is shown as a significant bounded through route consistent with how it was shown on earlier OS maps.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used at least on horseback and most probably by vehicles at that time.
1:2500 OS Map SD 5272-5372 and SD 5271-5371	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as national grid series.



Observations

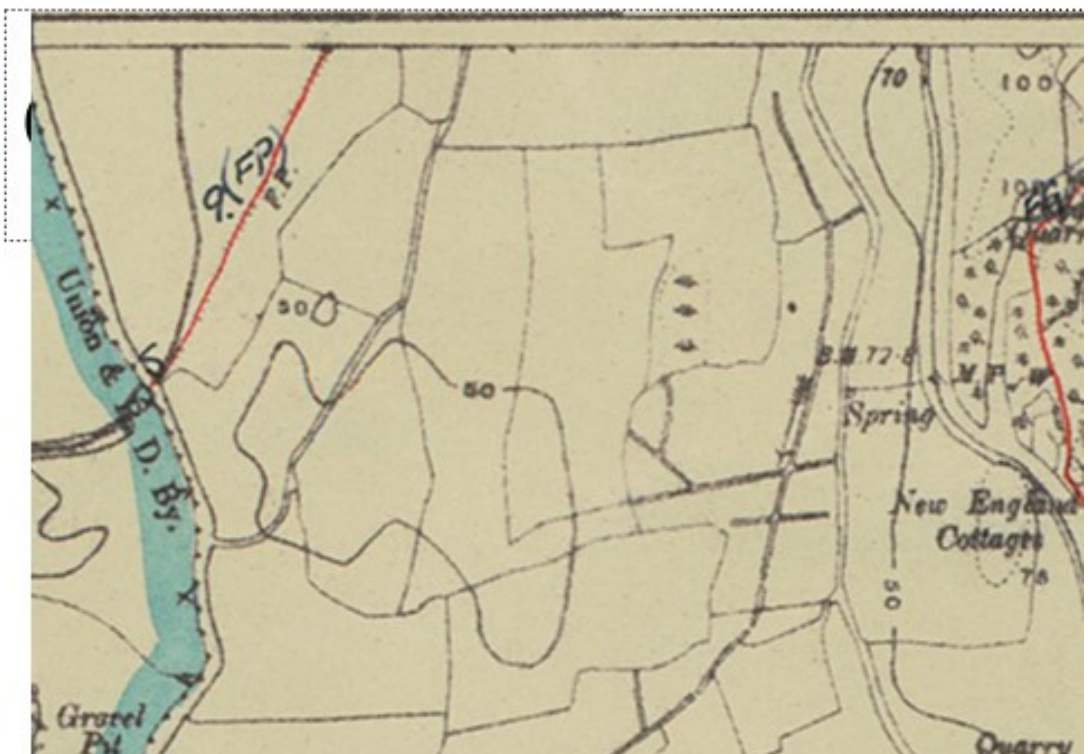
The application route remained unchanged from earlier editions of OS mapping. The whole route is

		shown as a substantial bounded through route although the inclusion of the word 'track' just north of point E suggests that use by vehicles of the full length of the route may have started to diminish.
Investigating Officer's Comments		The application route still existed in the 1960s although its use as a through route by vehicles may have declined.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route is visible on the photograph although there is a distinct difference in how visible the northern section is to how faintly the southern section leading to point E can be seen.
--------------	--	---

Investigating Officer's Comments		The application route existed in the 1960s but – as appeared to be the case on the 1960 edition of the OS map detailed above – the southern section of the route leading to point E appears to be far less visible consistent with the fact that it was no longer being used, or was infrequently used, by vehicles. The northern end of the route from point A is far more prominent on the photograph consistent with vehicular use – possibly providing access to fields.
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.

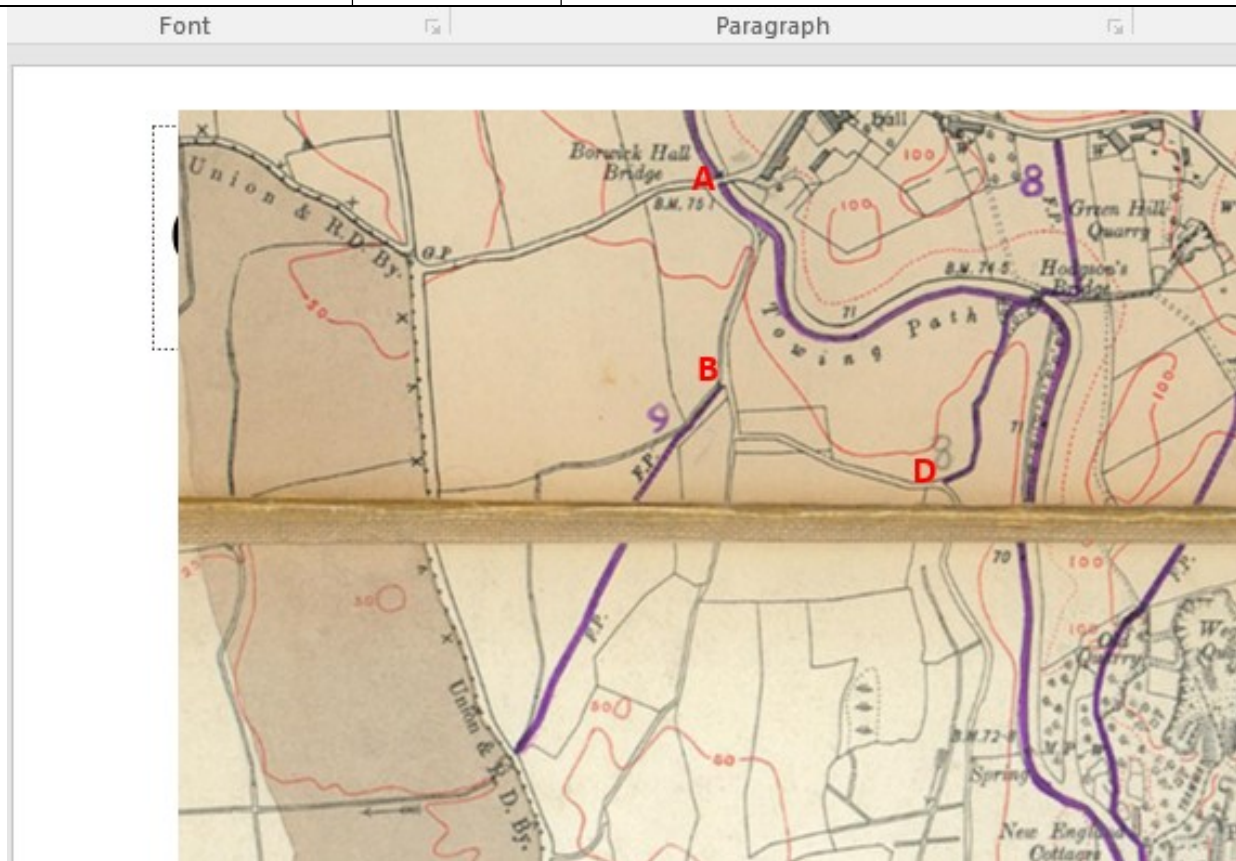


DISTRICT <u>Lunesdale Rural</u>		PARISH <u>BORWICK</u>
MAP SHEET No. <u>I 4 II</u>		LENGTH (to t
BRIEF DESCRIPTION (Field F.P. or otherwise)		
<u>Field footpath.</u>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<u>Starts on cartroad from Borwick Hall Canal Br</u> <u>packhorse bridge over River Lees where stream e</u> <u>Entry via stone stile. Then along hedge side</u> <u>diagonally across field to wooden stile on</u> <u>Borwick to Over Kellat.</u>		
<u>Stiles in fair condition - path undefined.</u>		
SURVEYED BY: Name <u>Th...</u>		

DISTRICT <u>Lunesdale Rural</u>		PARISH <u>BORWICK</u>
MAP SHEET No. <u>I</u>		LENGTH (to t
BRIEF DESCRIPTION (Field F.P. or otherwise)		
<u>Field footpath.</u>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<u>Starts near Croftlands over wooden stile & goe</u> <u>garden hedge & field fence to wooden stile.</u> <u>field by wall side & via stone stile &</u> <u>bank & cartroad over canal bridge (Hodgson</u>		
<u>Stiles in good condition & path fairly well</u>		

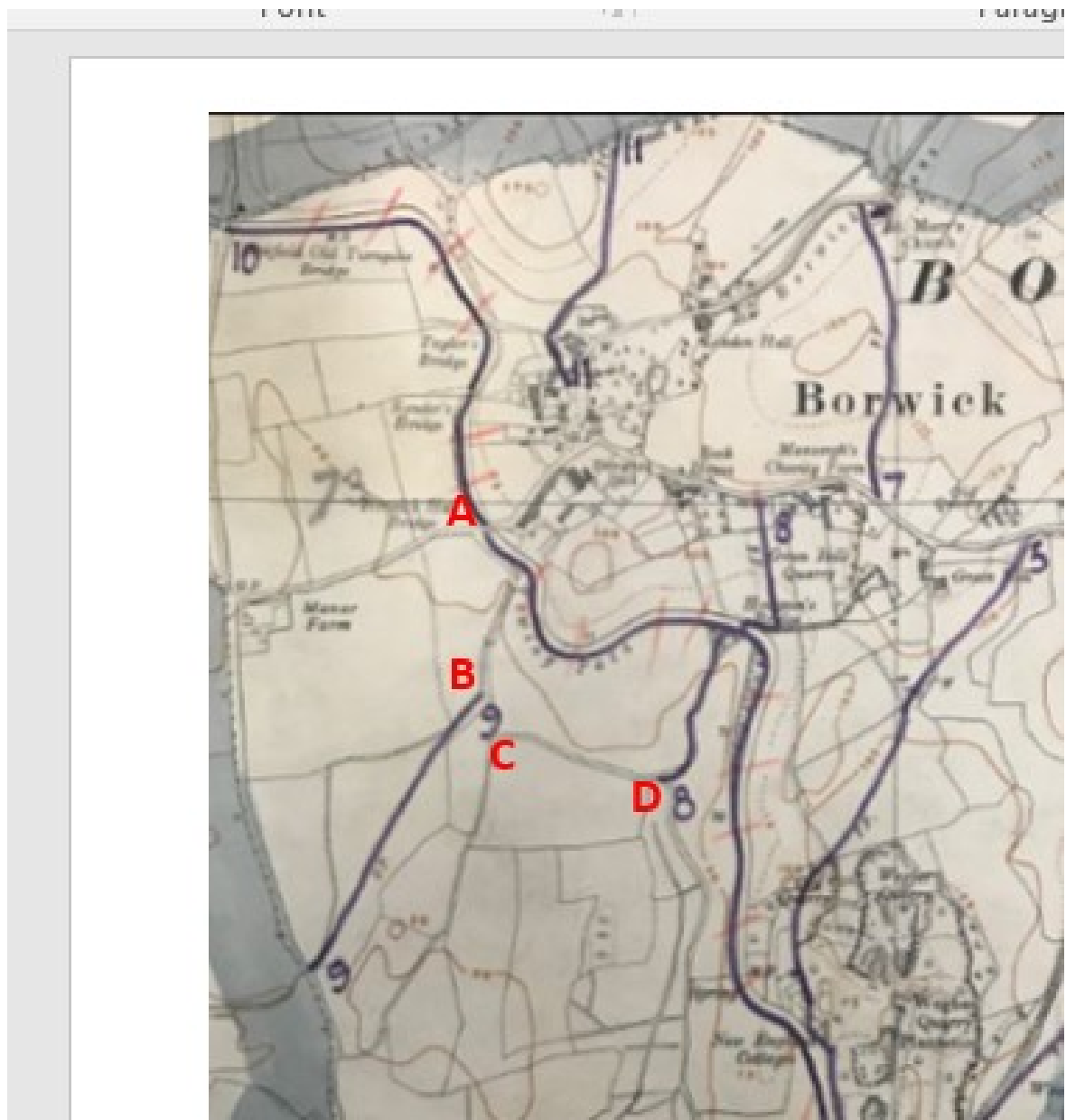
Observations	<p>The application route is not recorded on the parish survey map with the exception of a very short stretch from point D extending for a few metres in a south easterly direction to the bottom of the map sheet and drawn in a different colour to the footpaths, apparently as a later amendment. The description of Footpath 8 on the survey card does not reflect that amendment and only describes the footpath as far as Hodgson Bridge (i.e. not as far as point D and not along part of the application route).</p> <p>A footpath numbered '9' on the parish survey map is shown starting on the application route at point</p>
--------------	--

		B. It is described in the parish survey card as starting on the 'cart road' from Borwick Hall Canal Bridge to the packhorse bridge (i.e. the application route).
Draft Map		<p>The parish survey map and cards for Borwick were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>




Observations		<p>The application route is not shown on the Draft Map but two routes marked as public footpaths are shown to connect to it at point B and point D. Both are listed in the Draft Statement as meeting the application route which is described as Unclassified County Road 2/29. There were no objections to the fact that the application route</p>
---------------------	--	--

		was not shown on the Draft Map.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The application route is not shown and there were no objections to the fact that it was not included.
The First Definitive		The Provisional Map, as amended, was published

Map and Statement		as the Definitive Map in 1962.
		
Observations		The application route was not recorded on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



5

"

From Class III Road 207, west of Green Bank via New England Cottages to junction with footpaths 4 and 6.

0.68

6

"

From junction with footpaths 4 and 5, to Parish Boundary near Capernwray Mill.

0.04

7

"

From Class III Road 207 at Mansergh's Charity Farm to Class III Road Bowditch Lane.

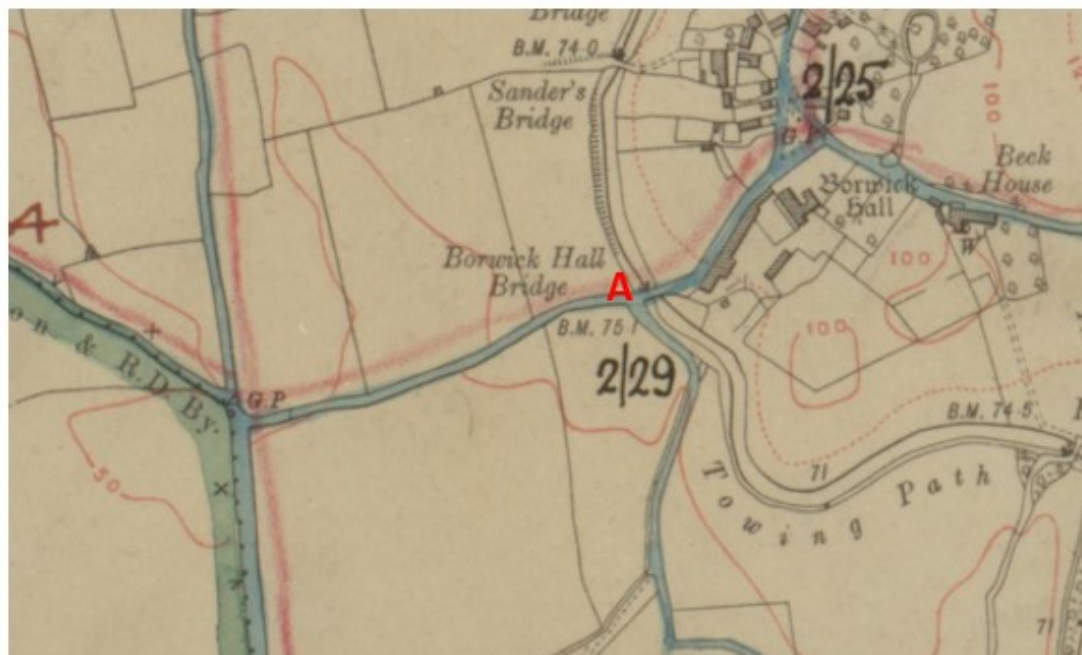
Observations

The application route is not shown on the Revised Definitive Map (First Review). Footpaths 8 and 9 are shown on the Map and the Statement accompanying the map describes both as meeting the application route which is described as being Unclassified County Road 2/29.

Since the publication of the Revised Definitive Map and Statement it has been under continuous review with a process whereby amendments to the map could be made as a result of applications made under the provisions of the Wildlife and

		<p>Countryside Act 1981.</p> <p>Two such applications were made by Over Kellet Parish Council on 15th July 1983 (File No. 804-45). The first route considered as part of that application was the route now the subject of this application. The original application sought to record the route as a Byway Open to All Traffic but was rejected by the County Council's Public Rights of Way Sub Committee 'on the grounds that it is already a highway of higher status' as it was already shown in the County Surveyor's records as an unclassified county road 2/29.</p> <p>A second part of the application related to a route extending south south west from point C on the application route to Kellet Lane as a byway open to all traffic. This application was accepted by the Public Rights of Way Sub Committee and an Order subsequently made.</p> <p>A Definitive Map Modification Order was made on 18 November 1986 and sought to record the route as a Byway Open to All Traffic. The Order received objections and was subsequently referred to the Planning Inspectorate for determination. The Order was confirmed on 22 December 1995 but amended to record the route as a bridleway.</p> <p>The description of the route to be added to the Definitive Map and Statement and included in Part II of the Order reads as follows:</p> <p style="text-align: center;">Lane, Borwick, Lancaster District, a distance of approximate between approximately ¹ - 8 metres wide, shown marked A-B on the map annexed hereto. ²</p> <p style="text-align: center;">● <u>PART II</u> <u>MODIFICATION OF THE DEFINITIVE STATEMENT</u> <i>Bridleway</i> Byway open to all traffic extending from unclassified road r Lane, Borwick, Lancaster District, a distance of approximate</p> <p>With the application route now being considered is clearly described in the Order as Unclassified Road 2/29.</p>
Investigating Officer's Comments		<p>The application route was not considered to be a public right of way which should be recorded on the Definitive Map during the preparation of the First Definitive Map in the 1950s through to the 1960s.</p> <p>Further consideration was given to the matter in 1985 following receipt of an application to record the route as a byway open to all traffic. At that time it was determined to reject the application based on the fact that the route was recorded in</p>

		the county council's records as an unclassified county road.
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>



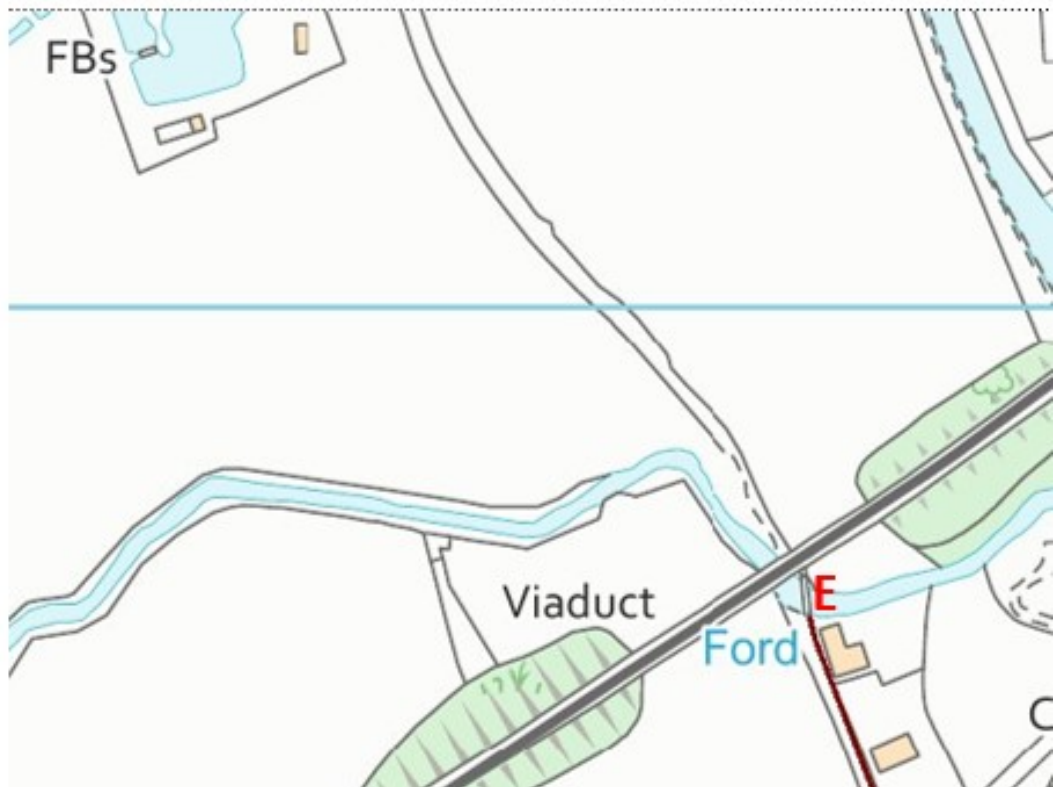
Click



1929 Handover Map



LCC Highway 'adoption plans'



LCC Highways digitised road classification record

ADOPTED UNCLASSIFIED COUNTY ROAD				
Name <i>Un-named Rd.</i>		Parish		
Road Ref. No.	Description of Adopted Length	Date Adopted	Total Yards	Total Mile
<i>2/29</i>	<i>Junct. C507 at Bowick - Junct. 2/30 at Capetnurray.</i>	<i>1949</i>		<i>.90</i>

Road Classification	
Road Information	
Road Number	U50230
Road Name	Track From : Capernway Road To Via
Responsibility for Maintaining Road	Area North - Lancaster
Maintenance Agency	Lancaster, Non-Trunk
Maintenance Category	Local Access Road
Road Type	Rural, Cul-de-sac
Footway Type	Local Access Footway
Number of Lanes	2
Speed Limit	60 mph
Length	Calculated Length 1592 metres
Section Number	00002
Link Code	502300
Start Node	161350
End Node	161330
Safety Inspection Frequency	Once a year
Last Safety Inspection	30-Nov-2016
PEM Road ID	1001502300/00002

Observations

The application route is shown on the 1929 Handover Map labelled as route 2/29. This is consistent with the fact that the route is not then recorded on the 1932 Rights of Way Map but that the map showed a footpath (Footpath Borwick 9) leading to the 'lane'. It is also consistent with the information provided in the Parish Survey cards drawn up in the 1950s which refer to Footpaths starting/terminating at their junctions with unclassified county road 2/29.

The set of county council highway maintenance maps for this area (based on 1956 National Grid Series maps) is incomplete and the sheet SD5272, covering most of the application route, has not been located and is presumed lost. However, sheet SD5271 shows the route up to the boundary with the missing sheet coloured brown, which was the colour used for the unclassified vehicular roads maintainable by the county council.

The county council's digital highway records are based on these sheets and reflect the 'missing' part of the road.

A handwritten card was located in the archived file relating to the public inquiry into the confirmation

		<p>of the Order to record Bridleway Borwick 13 refers to the application route as being an adopted unclassified county road.</p> <p>South of point E the route continuing from the ford crossing to the junction with Capernwray Road is currently recorded by the Highways team as a publicly maintainable highway referenced U56230 described as being from Capernwray Road to 'dead end'.</p>
Investigating Officer's Comments		<p>Inquiries have been made with the Highways Section and searches made of records deposited at the County Records Office and London Gazette to determine why the application route was previously recorded as being maintainable at public expense but is no longer recorded as such but no information found.</p> <p>It appears that a map sheet onto which adopted public highways were drawn is missing which may account for its apparent removal from the records.</p> <p>It appears that the apparent removal of the application route from the digital record post-dated the application to record the route as a byway open to all traffic in 1983 otherwise the Public Rights of Way Committee would not have rejected the application to record the route as a byway on the grounds that it was an unclassified county road.</p> <p>It is now accepted that being recorded on the list of publicly maintainable streets is not conclusive of vehicular status <i>per se</i> but this was recorded as a class 4 road not a footpath/footway and an inference can be drawn, together with other factors, of vehicular status.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>No records relating to the stopping up, diverting or creation of public rights along the route were found.</p>
Investigating Officer's Comments		<p>If any unrecorded public rights exist along the route they do not appear to have been stopped up</p>

		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 application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Landownership		Current records of landownership obtained from the Land Registry.
Observations		With the exception of the first 100 metres (approximate) from point A the rest of the application route has no registered landowner and no information has been provided regarding any unregistered landownership. This is consistent with earlier historical records – namely the Finance Act 1910 records and Tithe Map and Award records dated 1846 neither of which listed the land crossed by the application route under private ownership.
Investigating Officer's Comments		The fact that the majority of the route – with the exception of a short section immediately adjacent

		to the Lancaster Canal – has no known landowner is consistent with the large body of map and documentary evidence suggesting that the application route was a historical public carriageway.
--	--	--

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

Landownership

The 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 application route between point A and point E it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs.

The route was recorded as an unclassified county road from 1929 and was still recorded as such in 1986 but it is not recorded on the digital record which dates from circa 1990 and later. It is therefore not known whether it was still recorded as such in 2006. The effect of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles (MPV) from carriageways which were not recorded on the List of Streets (subject to other conditions which are not relevant here) at that time. The fact that the route apparently should have been so recorded in 2006 and the fact that we can find no legal authority for its removal does not exempt the way from the extinguishment of these rights. Furthermore the legislation requires evidence that a carriageway was exempt from the extinguishment rather than the other way round so in the absence of a record of it being on the List of Streets in 2006 the MPV rights are extinguished.

Summary

The application route has existed – probably as a through route since at least the late 18th Century and was considered to be a public road when the Tithe Map was prepared in the 1840s. By the 1840s the full length of the route existed on the alignment now claimed and appears to have remained unaltered since that time.

The route appears to have been wide enough to be used by horses and vehicles since it was shown on the early commercial maps, the Tithe Map and first edition OS maps.

Finance Act records from the early 20th Century suggest that it was considered to be public carriageway at that time.

The 1929 handover records show it as part of a longer route for which the County Council were responsible for the maintenance. Its status as an unclassified county road was confirmed as part of the preparation of the Definitive Map in the 1950s and again in the late 1980s when an application was first made to record it as a byway open to all traffic. The status of unclassified road is not in itself conclusive of vehicular rights but taken in this context is suggestive of carriageway status.

The map and aerial photograph examined all suggests that the route may have been available to be used since the 18th Century.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted a number of historical maps and documents in support of their application. These have been considered by the Investigating Officer and comments on most are included above.

The documents submitted are as follows:

Yates's Map of Lancashire 1786

Hennet's Map of Lancashire 1830

6 inch Ordnance Survey (OS) maps published in 1847 and 1916-1919

25 inch OS map published 1891

1 inch OS maps published 1898, 1947 and 1955

1:25,000 OS maps published 1947 and 1961

Bartholomew's ½ inch maps published 1905, 1920 and 1941

Tithe Map and Award for Borwick 1846

1910 Finance Act Map

Landownership plans obtained from the Land Registry

Information from Others

The local Cycling UK Right to Ride representative responded to consultation to state that they had no objection.

An adjoining landowner responded to consultation to clarify the purpose of the application and the effect on private rights of access but did not provide any further information regarding whether or not public rights exist.

Atkins Global responded to consultation to state that they have no objection to the application.

Information from the Landowner

The landowner provided no response to consultation.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Map and other documentary evidence.

Against Making an Order(s)

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.

In this matter there is no modern user evidence 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.

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 unrecorded in respect of points A-E on the Definitive Map and Statement.

The fact that the application route is not presently recorded as any does not mean that it does not carry public rights of way.

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

If Committee is content that there is sufficient evidence of an old vehicular highway between point A-E 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, i.e. that an inference of dedication can on balance be made, then it is advised that the way should be recorded as restricted byway.

In conclusion, it is advised that there is sufficient evidence from which to infer a vehicular highway was already dedicated on this route over 200 years ago and Committee may consider it appropriate that an Order be made for the route marked

A-E to be added to 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: 804-628		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

