

# Lancashire County Council

## Regulatory Committee

Wednesday, 26th January, 2022 at 10.30 am in Committee Room 'A' - The Tudor Room, County Hall, Preston

### Agenda

#### Part I (Open to Press and Public)

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

3.	<b>Minutes of the last Meeting held on 17 November 2021</b>	(Pages 1 - 6)
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4.	<b>Guidance</b>	(Pages 7 - 32)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	<b>Progress Report on Previous Committee Items</b>	(Pages 33 - 36)
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6.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrade of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway</b>	(Pages 37 - 88)
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7.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Public Right of Way from Snape Lane, in the Parish of Warton to its Continuation as Bridleway Yealand Conyers 17</b>	(Pages 89 - 140)
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**8. Wildlife and Countryside Act 1981** (Pages 141 - 196)  
**Definitive Map Modification Order Investigation**  
**Addition of Footpath along Hobson's Lane, Over**  
**Kellet**

**9. Highways Act 1980 - Sections 25/26** (Pages 197 - 198)  
**Creation or Dedication of Bridleway on Green Hill**  
**Lane Nether Kellet**

**10. 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.

**11. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 9 March 2022 at County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 17th November, 2021 at 10.30 am in Committee Room 'C' - The Duke of Lancaster Room, County Hall, Preston**

#### **Present:**

County Councillor Sue Hind (Chair)

#### **County Councillors**

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

#### **1. Apologies**

There were no apologies for absence.

#### **Temporary changes**

County Councillor Mark Clifford replaced County Councillor Terry Aldridge.

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

No pecuniary or non-pecuniary interests were disclosed.

#### **3. Minutes of the last Meeting held on 15 September 2021**

**Resolved:** That the minutes of the meeting held on 15 September 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.

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

## **5. Progress Report on Committee Items**

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

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

The Chair informed Committee that funding had now been made available for an additional Public Path Order Officer, which should help with the delay in processing applications.

**Resolved:** That the report be noted.

## **6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into Public Rights on Moss Lane, Overton**

A report was presented on an application for Footpath Overton 1 – known as Moss Lane - to be upgraded to Bridleway on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-F.

A site inspection had been carried out in October 2020.

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

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

Committee were advised that if they were content there was sufficient evidence of a vehicular highway along the application route, then 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.

**Resolved:**

(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.

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

A report was presented on an application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B.

It was reported that, since the agenda had been published, several user representations had been received which had not yet been analysed by officers. As the application presented was based solely on documentary evidence, it was proposed that the report be deferred to the next meeting, to allow officer analysis of the recent user evidence received, and for Committee to be provided with complete information in order to consider both the application to record existing bridleway rights or to create new bridleway rights.

**Resolved:** That the report be deferred to the next meeting to allow officers to consider the options of a Definitive Map Modification Order application for bridleway, or the creation of a bridleway, on Footpath Nether Kellet 11 (Green Hill Lane), as shown on the Committee plan attached to the agenda papers between points A-B.

**8. 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**

A report was presented on an 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 to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-E.

A site inspection had been carried out in September 2020.

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

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

Committee were advised that there was sufficient evidence from which to infer a vehicular highway had already been dedicated on this route over 200 years ago and that they may consider it appropriate that an Order be made for the route marked A-E to be added to the Definitive Map and Statement as restricted byway. In addition, Committee were advised that the evidence was sufficiently strong to decide that the Order be promoted to confirmation.

**Resolved:**

(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.

**9. Urgent Business**

There were no items of Urgent Business.

**10. Date of Next Meeting**

It was noted that the next meeting would be held at 10.30am on Wednesday 26<sup>th</sup> January 2022.

L Sales  
Director of Corporate Services

County Hall  
Preston







## Regulatory Committee

Meeting to be held on 26 January 2022

Electoral Division affected:

All

## Guidance for the members of the Regulatory Committee

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

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, [jane.turner@lancashire.gov.uk](mailto: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 1<sup>st</sup> 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 6<sup>th</sup> 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 26 January 2022

## **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 26<sup>th</sup> January 2022

**Part I**

Electoral Division affected:  
All

### Progress Report on Previous Committee Items

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, [simon.moore@lancashire.gov.uk](mailto:simon.moore@lancashire.gov.uk)

David Goode, 01772 537663, Public Rights of Way Manager, [david.goode@lancashire.gov.uk](mailto: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.

#### Detail

At the Regulatory Committee meeting held on 16<sup>th</sup> 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 the 4<sup>th</sup> of January 2022. 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.

<b>Reference</b>	<b>Known As</b>	<b>Application Date</b>
804-730	Long Lane, Hoghton	22/10/2021
804-731	Ridley Lane, Ulnes Walton	02/11/2021
804-732	Pump House Lane, Ulnes Walton	02/11/2021
804-733	Calderstones Cemetery	25/10/2021

## **Definitive Map Modification Order Applications Awaiting Order Notification**

Committee has made a decision on these applications; Orders have been made since the last update report was presented to the Committee and Notices of Making now need to be served.

<b>Reference</b>	<b>Known As</b>	<b>Application Date</b>
804-623	Hillside Drive, Newchurch	13/05/2020
804-689	Limers Lane, Great Harwood	11/01/2021
804-625	Haunders Lane, Much Hoole	20/05/2020

## **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 since the last update report was presented to the Committee; the Order is currently open to statutory objections.

<b>Reference</b>	<b>Known As</b>	<b>Application Date</b>
804-652	Snuff Mill Lane	17/07/2021

## **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 since the last update report was presented to the Committee. It is now awaiting submission to the Planning Inspectorate for determination.

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

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

<b>Paper</b>	<b>Date</b>	<b>Contact/Directorate/Tel</b>
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None

Reason for inclusion in Part II, if appropriate

N/A



## Regulatory Committee

Meeting to be held on 26<sup>th</sup> January 2022

### 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](mailto: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](mailto: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.

#### Detail

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.

This report has been drafted to include user evidence submitted after the matter was deferred at the Regulatory Committee meeting held on the 17<sup>th</sup> of November 2021.

## **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
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<b>Yates' Map of Lancashire</b>	1786	<p>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.</p>
		
<b>Observations</b>		<p>The application route is not shown and crosses land denoted as 'Halton Moor' on the map.</p>
<b>Investigating Officer's Comments</b>		<p>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.</p>
<b>Nether Kellet Inclosure Award</b>	1815	<p>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</p>

used clauses and applying these to each local act unless otherwise stated.  
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.

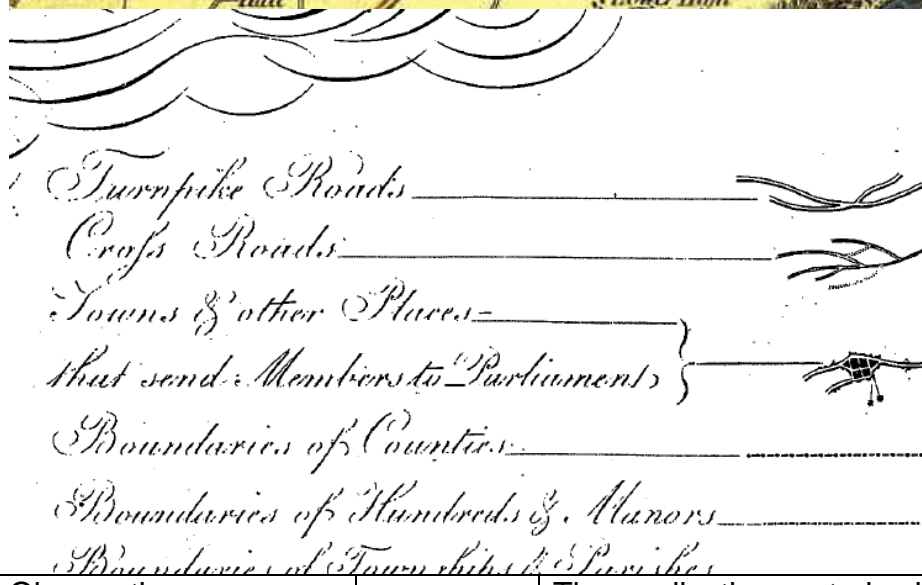
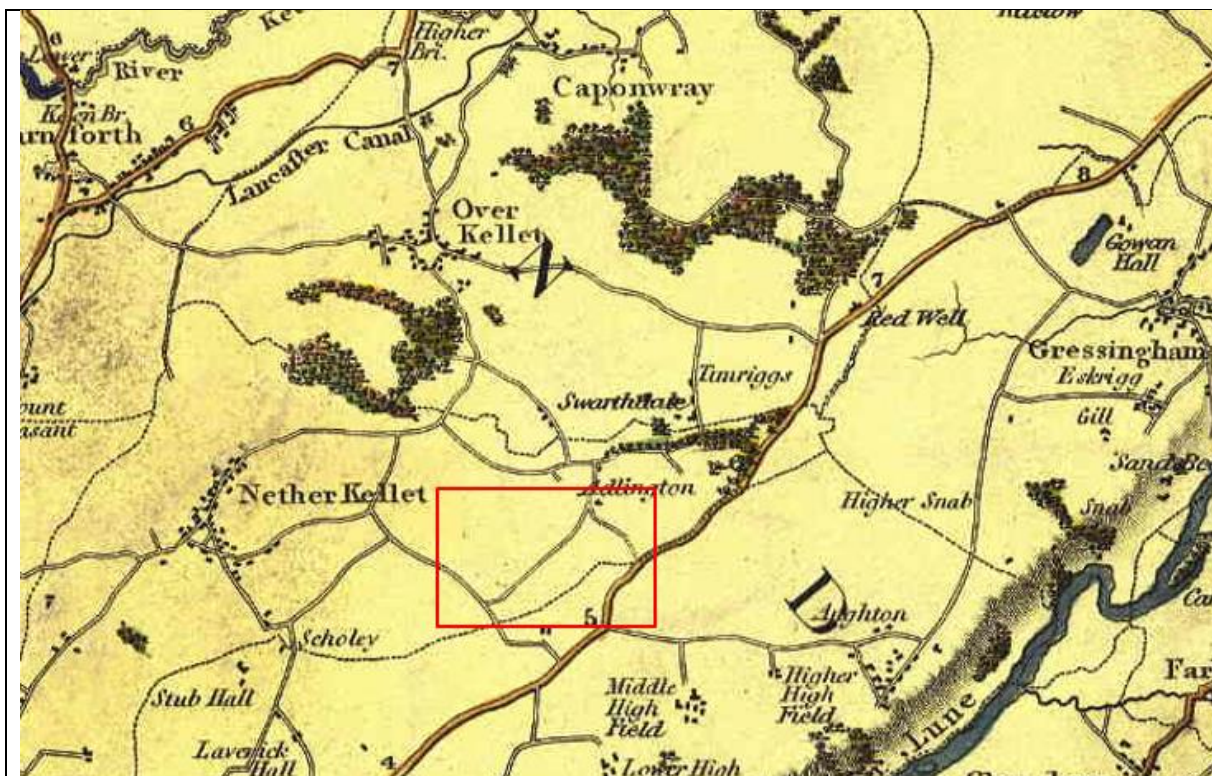




This Plan was signed by Edmund Jackson and William Miller the  
 commissioners this nineteenth day of August one thousand  
 eight hundred and fifteen in the presence of us  
 Rich<sup>d</sup>. Jackson  
 John Fisher

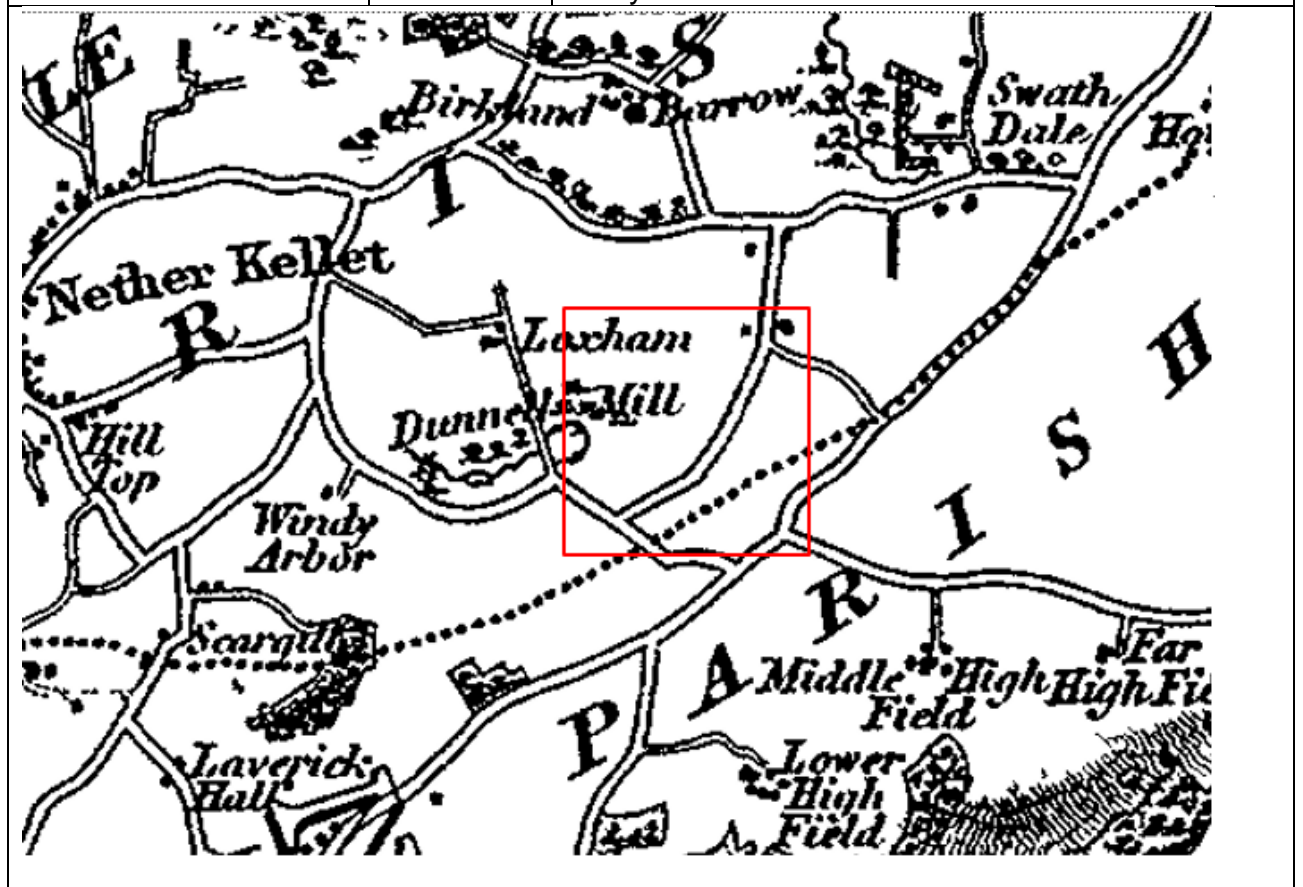
Observations		The land crossed by the application route was inclosed under a local Act of Parliament dated 1810 although a copy of the Act has not been found. The subsequent Inclosure Award and Map
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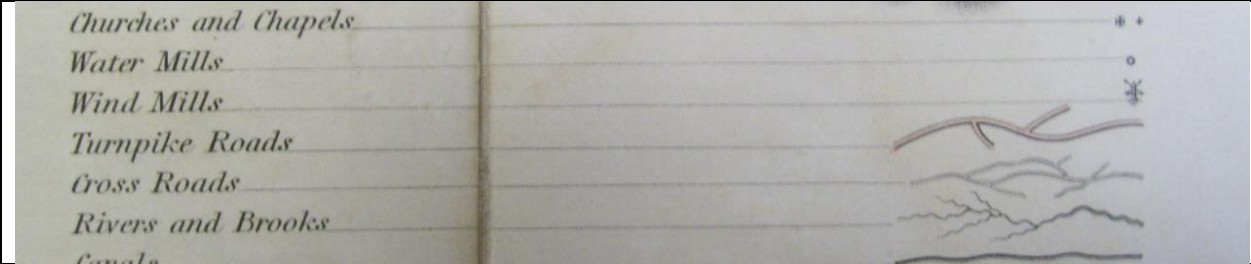
		<p>are available to view in the County Records Office (CRO Ref: AE/5/8) and are dated 1815.</p> <p>The Inclosure Map clearly shows the full length of the application route as a bounded route named Green Hill Lane. One gate is shown across the route approximately 220 metres from point B.</p> <p>The Inclosure 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>
<b>Greenwood's Map of Lancashire</b>	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>



Observations		The application route is shown as a through route on Greenwood's 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 been 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>
<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<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.



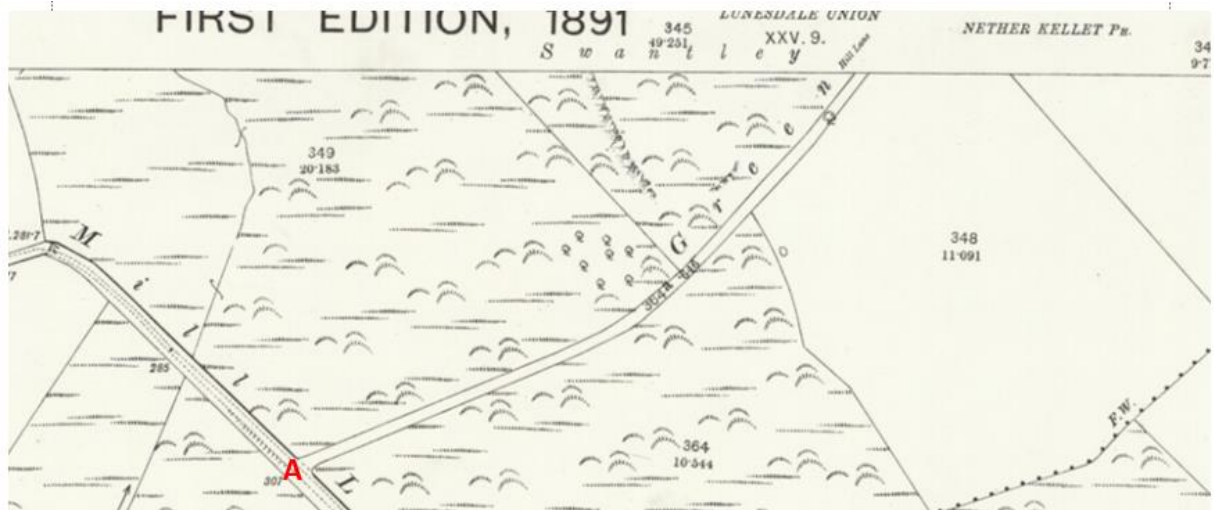
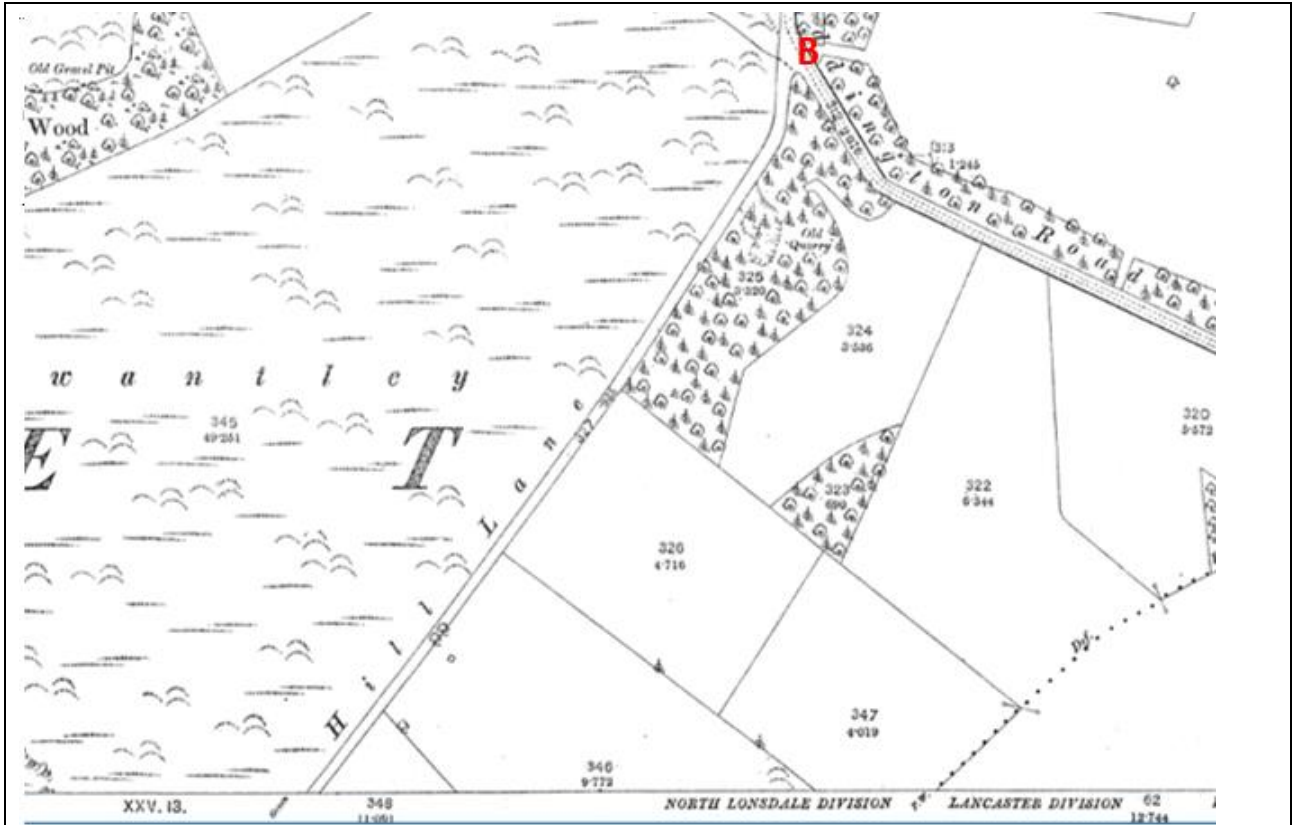
Observations		There were no canals or railways built – or proposed to be built – over the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	Maps and other documents were produced under the Tithe Commutation 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>

<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet 25</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>
		
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.
<b>25 Inch OS Map</b> <b>Sheets 25.9 and 25.13</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.

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



<p>Observations</p>	<p>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</p>
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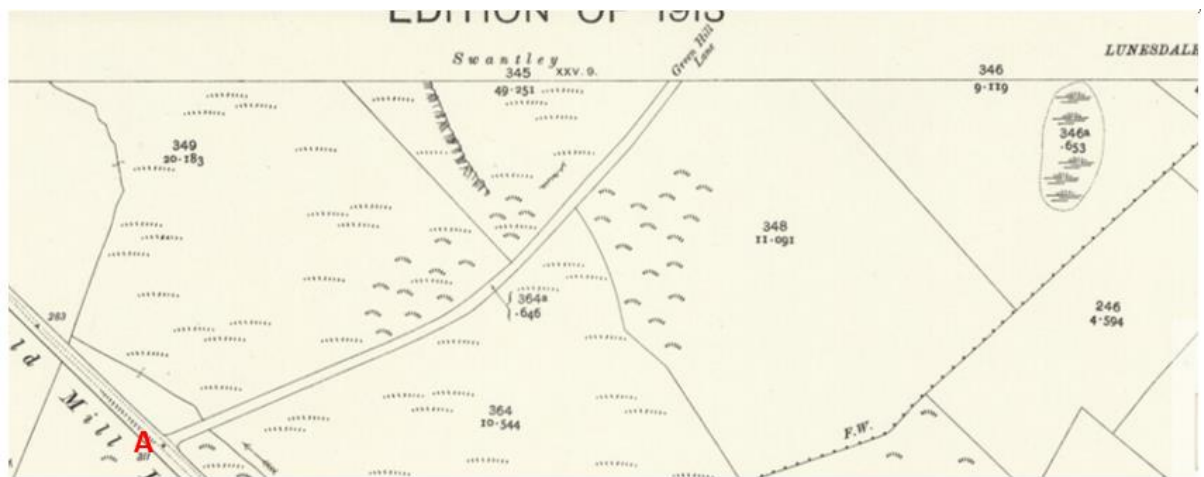
		B) where the application route meets Dunald Mill Lane and Addington Lane.
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used at least on horseback.</p> <p>Shading and colouring were often used to show the administrative status of roads 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>
<b>1 inch OS Map Sheet 59 Lancaster</b>	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	Fenced	Unfenced	-----	Ch
” ” <i>Second Class</i>				-----	
” ” <i>Third Class</i>				-----	Wa
<i>Unmetalled Roads</i>				-----	Li
<i>Footpaths</i>				-----	Li
<i>Railways, Single Line</i>				Level Crossing	Be
” <i>Two or more Lines</i>				Cutting	Co
				Embankment	Be
				Bridge Over	
				Bridge Under	

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.
<b>25 inch OS Map</b>	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 <sup>st</sup> 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.
<b>Bartholomew half inch Mapping</b>	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      (Good)   
 Indifferent    (Passable)   
*The uncoloured roads are inferior and not to be recommended to cyclists.*   
 Footpaths & Bridlepaths .....   
*N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*

Railways   
 Canals   
 County Boundaries -----

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

Sheet 5 – North Lancashire and the Isle of Man 1905



EXPLANATORY NOTE

Motoring Roads {
 

- Through Routes
- First Class Roads
- Secondary "
- Indifferent " *(Passable for cyclists)*

*The uncoloured roads are inferior and not to be recommended.*

Footpaths & Bridlepaths ..... *N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*

*The figures thus 190 represent heights in feet above sea level.*

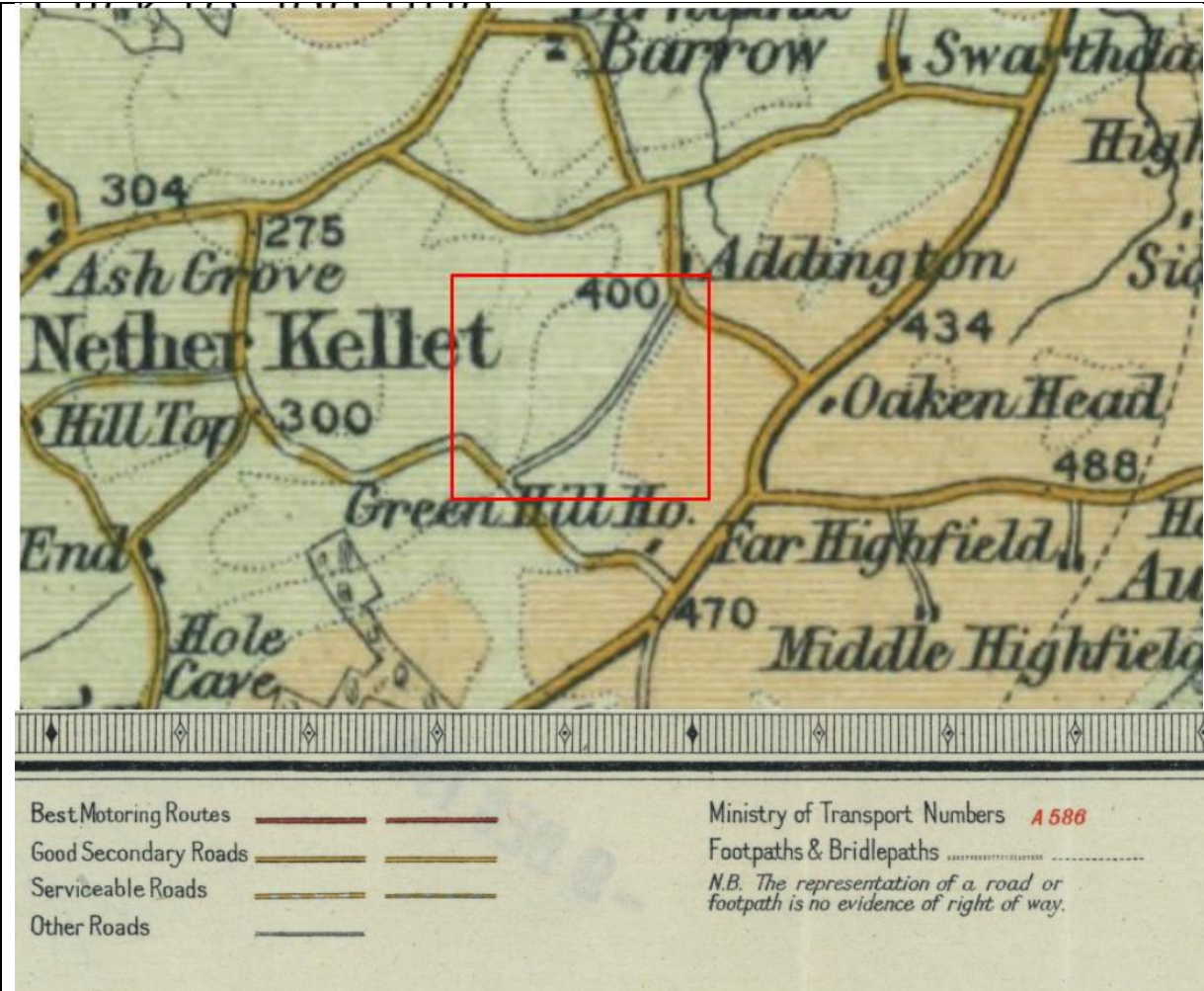
Railways 
STA.
Station with Refreshment Room
|| L.C. (Level Crossing)

Canals

County Boundaries

Sheet 5 – North Lancashire and Isle of Man 1920

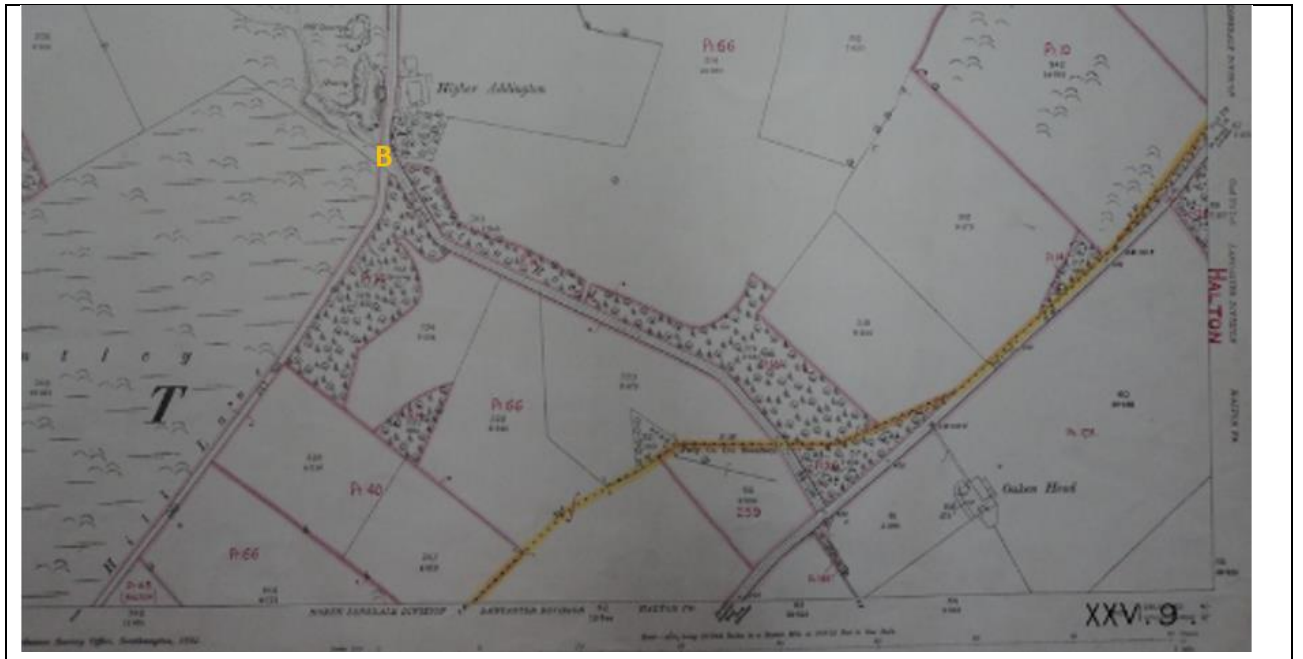


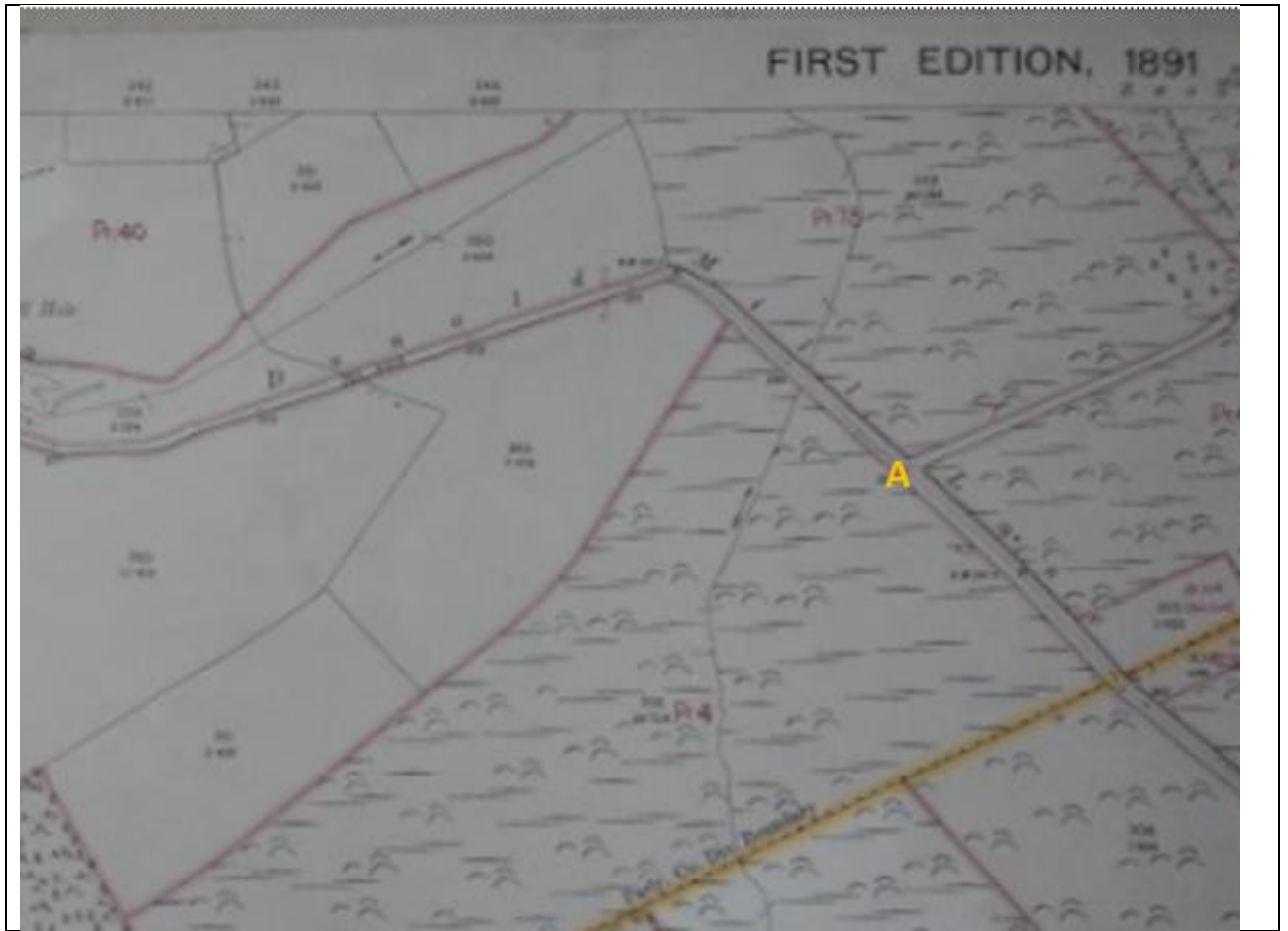


Sheet 31 – North Lancashire – published 1941

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>
<b>Finance Act 1910 Map</b>	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>
<p><b>1932 Rights of Way Map</b></p>		<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.

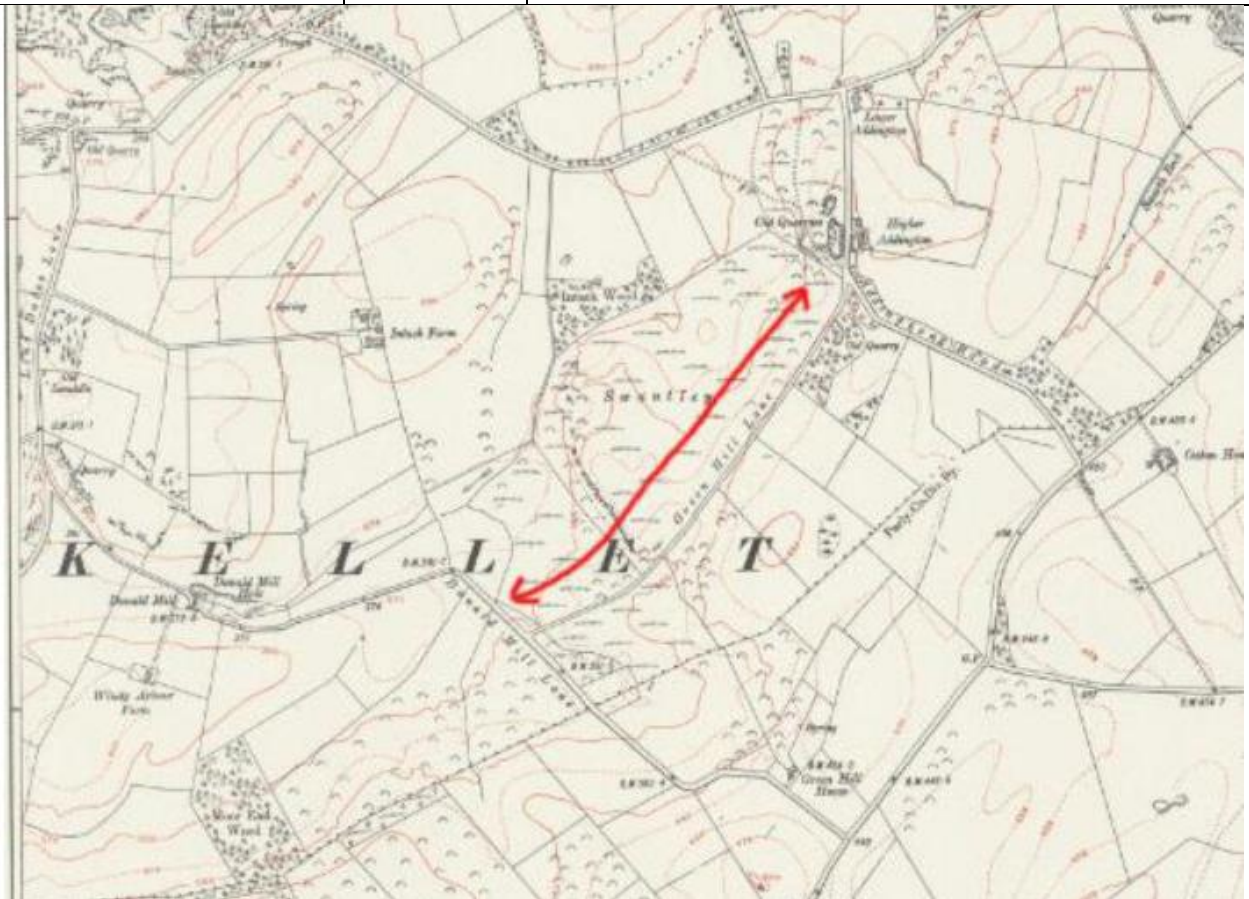
Nether Kellet Parish.

1. Withbutts 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.
<b>Aerial Photograph<sup>2</sup></b>	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.
<b>6 inch OS Map</b>	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
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<sup>2</sup> 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	<b>A.6</b>	<b>B.6254</b>
Other Motor Roads		
" " " narrow	Good	Bad
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates	TOLL	
Road Mileage	5	

1014.

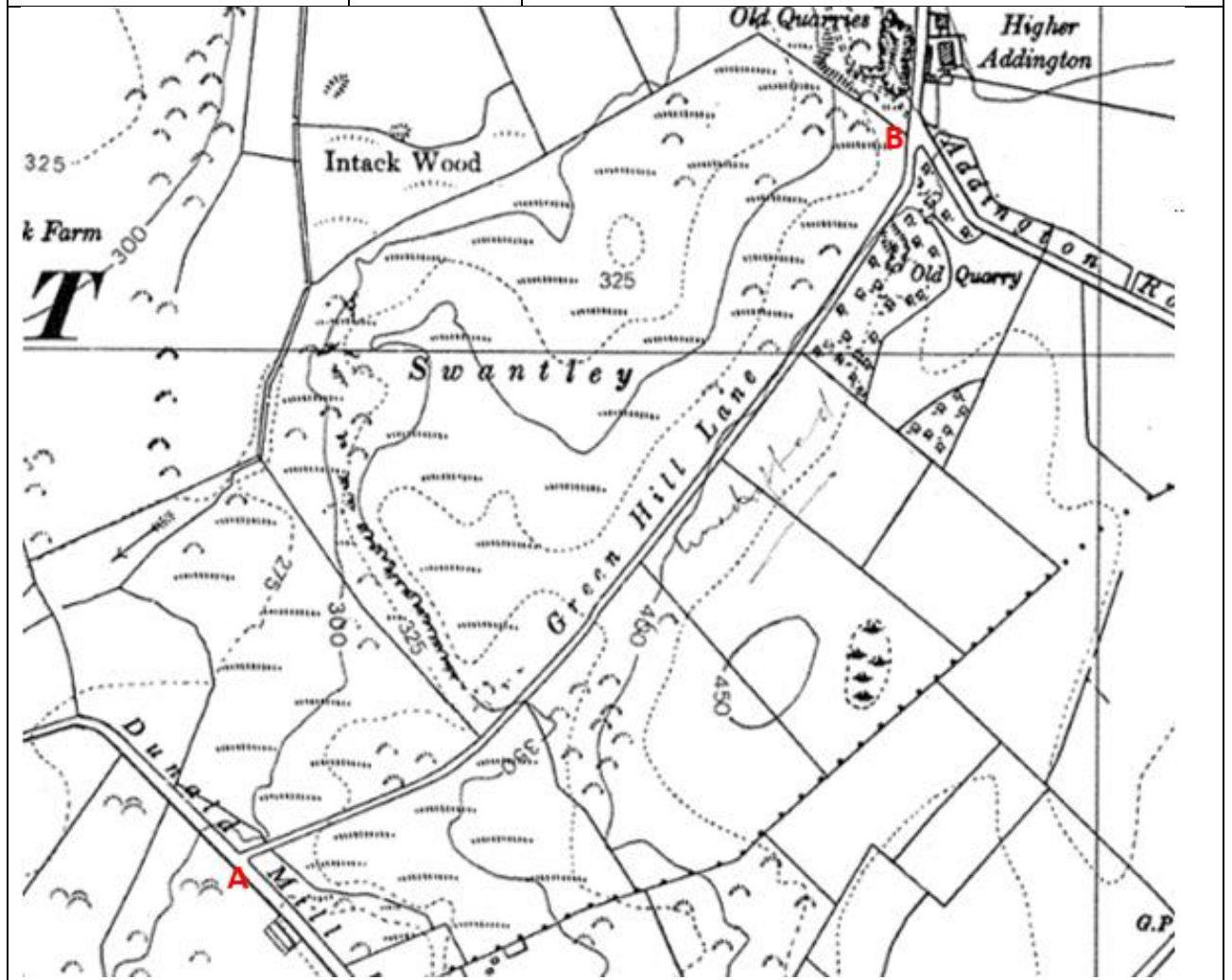
Observations		The full length of the application route is shown as a Minor Road. Bridle and Footpaths are shown on the map denoted by a single dashed line.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the first half of the 1900s. 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.
<b>1 inch OS Map Sheet 89 – Lancaster and Kendal</b>	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)	Yellow line
	Under 14ft of Metalling. Tarred " "	TOLL Gate
	" " " " Untarred " "	White line
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)	White line
Steep Gradients 1 in 5 or steeper	Yellow line with double arrow	
	1 in 7 to under 1 in 5	Yellow line with single arrow
Footpaths and Tracks	Dashed line	

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.
<b>6 Inch OS Map Sheet 56NW</b>	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.

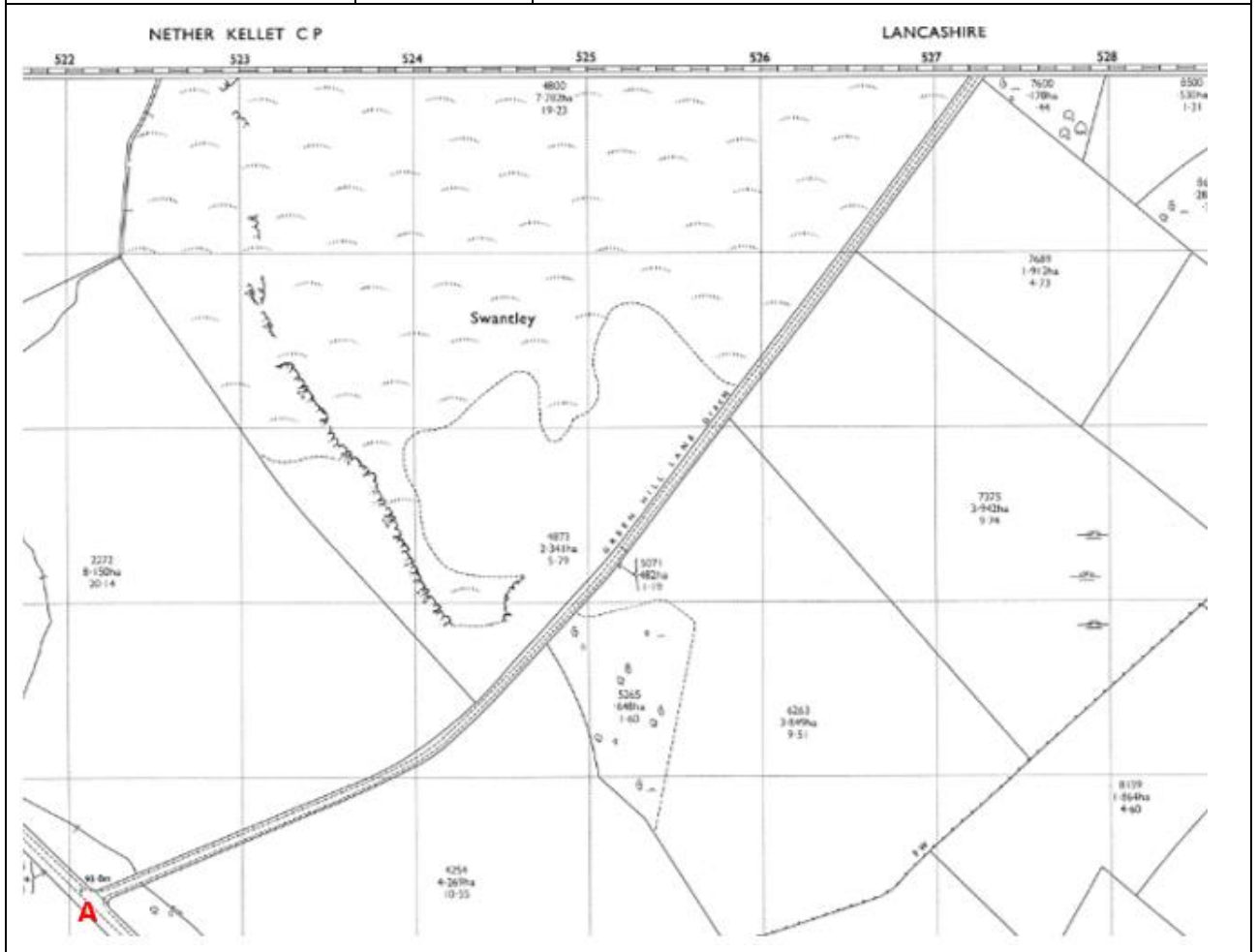


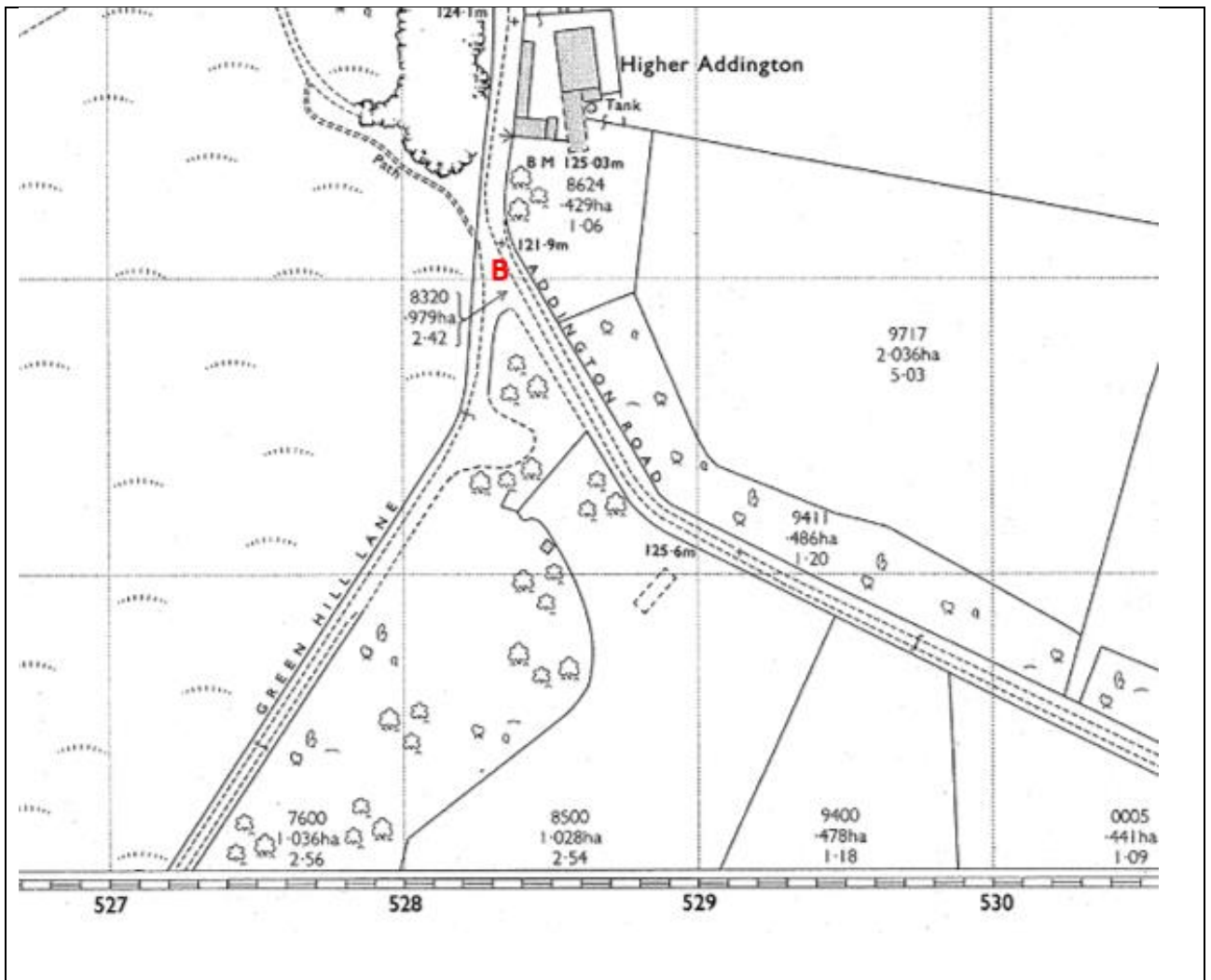
Observations		The application route is shown as a substantial named bounded through route which remained unaltered from earlier editions of OS mapping. No gates are shown across the route.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles 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.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



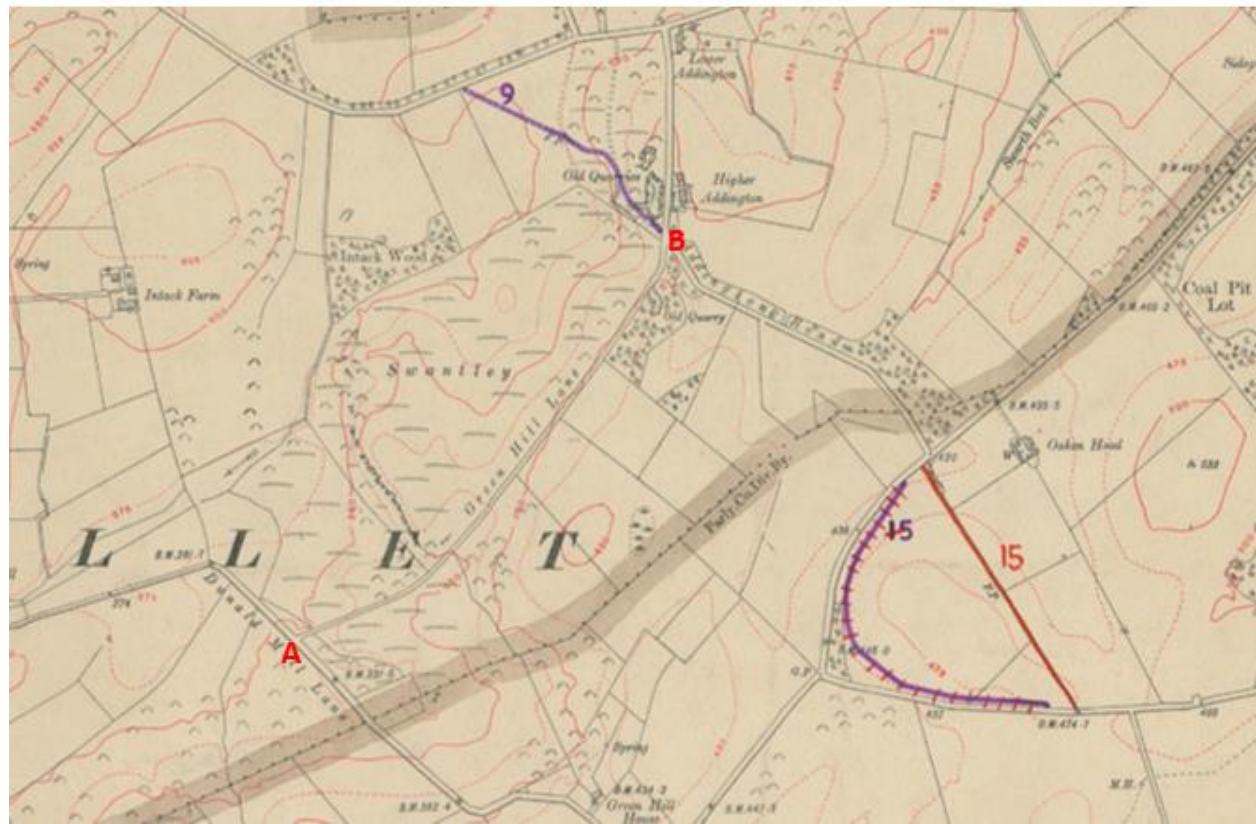
Observations		The application route is visible along most of its length – although partially obscured by trees on the approach to point B. The track appeared more open and less overgrown than it is at present although it is not known what time of year the photograph was taken.
Investigating Officer's 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.
<b>Definitive Map Records</b>		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.
<b>Parish Survey Map</b>	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>
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<p>Observations</p>		<p>The application route is not shown on the parish survey map.</p>
<p><b>Draft Map</b></p>		<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” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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.
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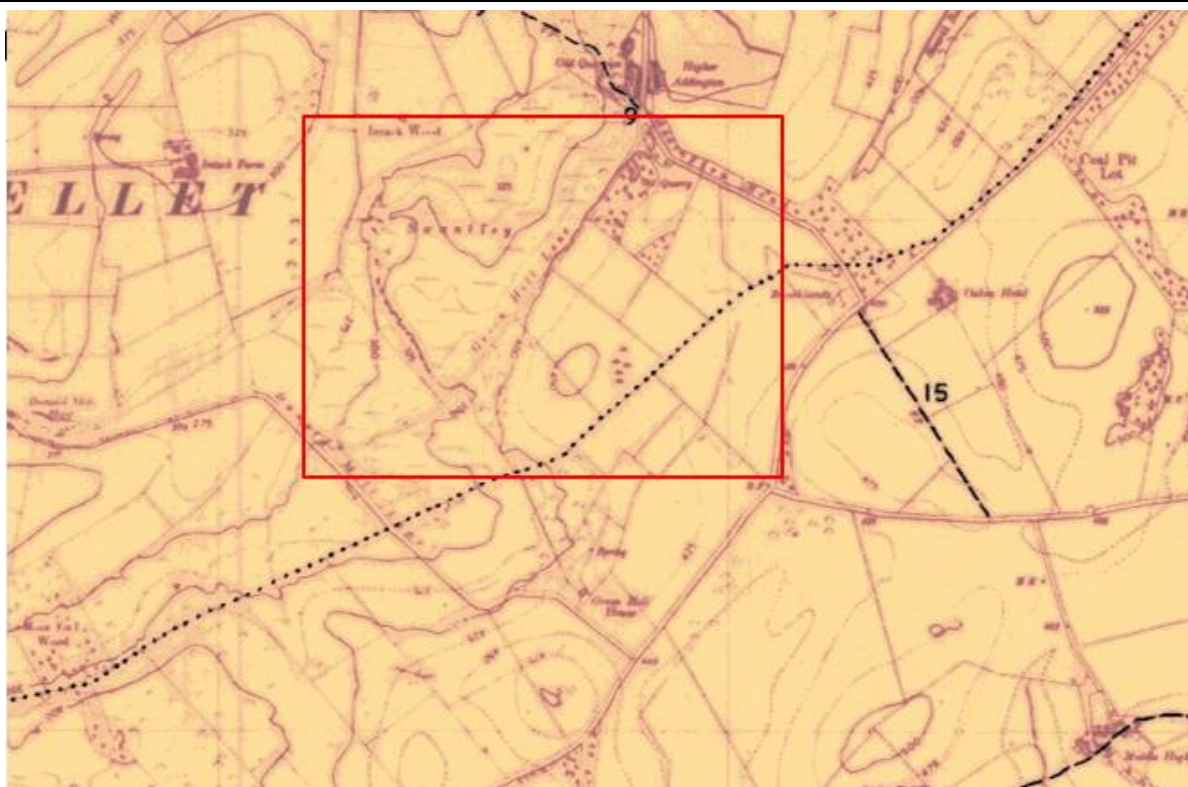


Observations		The application route was not shown on the Draft Map of Public Rights of Way and no representations or objections were made relating to it.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional 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.
<b>The First Definitive Map and Statement</b>		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.



**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<sup>th</sup> 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<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



**Observations**

The application route is not shown on the Definitive Map of Public Rights of Way (First Review) 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>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.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	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.
<b>Highway Stopping Up Orders</b>	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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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.
<b>Written statement of Mr Robert Moser</b>	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 Hain 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 1998

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 20<sup>th</sup> 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.
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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 20<sup>th</sup> Century (and locking of a gate in 1976). However on all OS maps inspected no gates are show 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.

## User Evidence

5 user evidence forms were submitted following the Regulatory Committee meeting held on the 17<sup>th</sup> of November 2021.

### Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1962 and up to 2016. Users note use of the route from 1962 to 1970, 1988 to 1991, 1988 to circa 1992, 2010 to 2010 and 2012 to 2016 respectively.

### Frequency of Use

3 of the 5 users stated that they used the route weekly on horseback with one of these 3 noting use 2 to 3 times a week. 1 user noted use monthly during the summer and 1 user noted use ever few months.

### Reasons for Use

All users recorded use of the route for pleasure, 1 noted use for exercise, 1 noted use for exercising horses.

### Other Users of the Route

All but 1 user noted seeing others using the route.

1 user noted seeing others using the route on foot but clarified that acquaintances had mentioned using the route on horseback, cycling and walking.

1 user noted seeing others using the route on foot, horseback and by bicycle/horse drawn vehicle.

1 user noted seeing others using the route on foot and horseback.

1 users noted seeing others using the route on horseback only.

### Consistency of the Route

All 5 users record that the application route has always followed the same route.

### Unobstructed Use of the Route

3 users noted an obstruction to the route by large stone blocks preventing gates from being opened fully. 1 user noted that these blocks were installed around the early 1990s. Only 2 users noted that this prevented their use of the route.

1 user noted fences along the route which did not form a true obstruction as it was possible to pass around them.

2 users recalled gates at each end of the route, 2 noted gates only at the Addington Road end, 1 did not recall any gates along the route.

These inconsistencies may be explained by the disparate periods of time during which the users were familiar with the route.

No users recorded seeing notices or being turned back other than by the aforementioned obstruction.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

- 1815 Inclosure Map and Award sets it out as a 'private or occupation road'
- Subsequent map evidence is consistent with it being either a public road or a private road
- The 1841 Tithe Map did not distinguish between private and public roads
- Only 2 users have used the route on horseback in last 20 years
- Insufficient equestrian use overall from which to infer dedication of bridleway rights
- No recent site evidence to suggest the route is being used on horseback

## **Conclusion**

Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, shows that the existing public footpath ought to be shown as a public bridleway and that the Definitive Map and Statement requires modification to reflect this.

Committee will need to firstly consider on balance whether dedication may be inferred at Common Law.

Committee is therefore advised to consider whether evidence from the old maps and other documents together with user statements and the physical features of the site does on balance indicate that bridleway rights should be recorded.

Evidence from the 1815 - Inclosure Map and Award suggests the application route was originally created as a private occupation route, there is no evidence to suggest public rights at this time. Some three years later, The Greenwood's Map of 1818 shows the full length of the route physically 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 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.

Various equestrians have indicated that they have ridden this route but not in significant numbers or frequency.

Taking all the documentary evidence into account and noting how the route was recorded on the old maps, it is suggested to Committee that there is insufficient evidence to infer dedication of additional public rights at Common Law.

As there appears to be insufficient documentary evidence of historical bridleway rights along the route, the determination of the upgrade to bridleway depends on the evidence of public use of the route and whether this indicates that a public bridleway can be presumed to have been dedicated in accordance with section 31 Highways Act 1980.

Looking next at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. This application is before committee following an application made to the County Council in 2020, therefore the 20-year period under consideration for the purposes of establishing deemed dedication would be 2000-2020.

As to whether the application route was used by the public as of right and without interruption for the relevant 20 year period, user evidence has been provided by five individuals, all of whom indicate equestrian use.

No user has used the route throughout the entire statutory period. The users indicate use of the route in some years but not continuously between 1962 and 2016.

Three out of five users mention the route being obstructed by large stone blocks or boulders preventing the gate from being fully opened, two of whom indicate the obstruction was put in place in the 1990s and two note this obstruction prevented their use of the route. The two other users' only use was in years prior to the obstruction.

Three users pre-date the Statutory period by many years, referring to use in 1962-1970, 1988 -1991 and 1988 to 1992. One user used the route for under 1 year of the 20 year statutory period (Spring 2010). One user indicates she used the route for 4 years of the Statutory Period (2012-2016).

If Committee disregards the evidence of the 3 individuals who had not used the route during the statutory period, essentially, Committee is presented with evidence of two individuals, one of whom only used the route for under 1 year.

Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. In this case, Committee may consider that equestrian use of the route is not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a bridleway and thus fails satisfy the statutory test.

In conclusion, when balancing the evidence received or discovered in support of an application, Committee may consider that it is reasonable to conclude, on the balance of probabilities, that the evidence is insufficient to show (i) that bridleway rights are reasonably alleged to subsist or (ii) that bridleway rights do subsist, along the application route.

In conclusion, Committee is recommended to reject the application before it today and not make an Order to record bridleway rights.

### **Risk management**

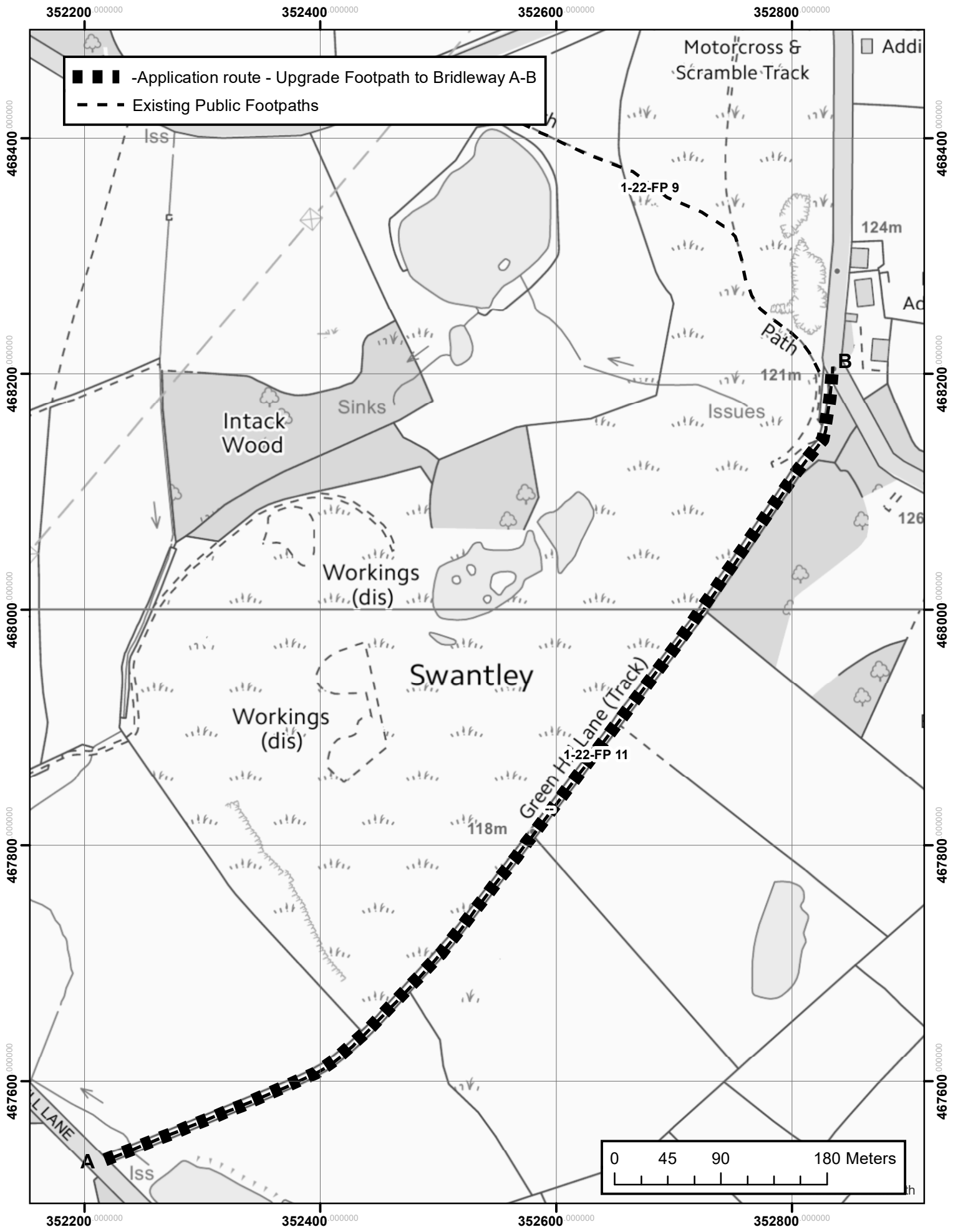
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda 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



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

Wildlife and Countryside Act 1981  
 Upgrade to Bridleway of Footpath Nether Kellet 11 (Green Hill Lane)  
 File 804-624

**1:4,000**

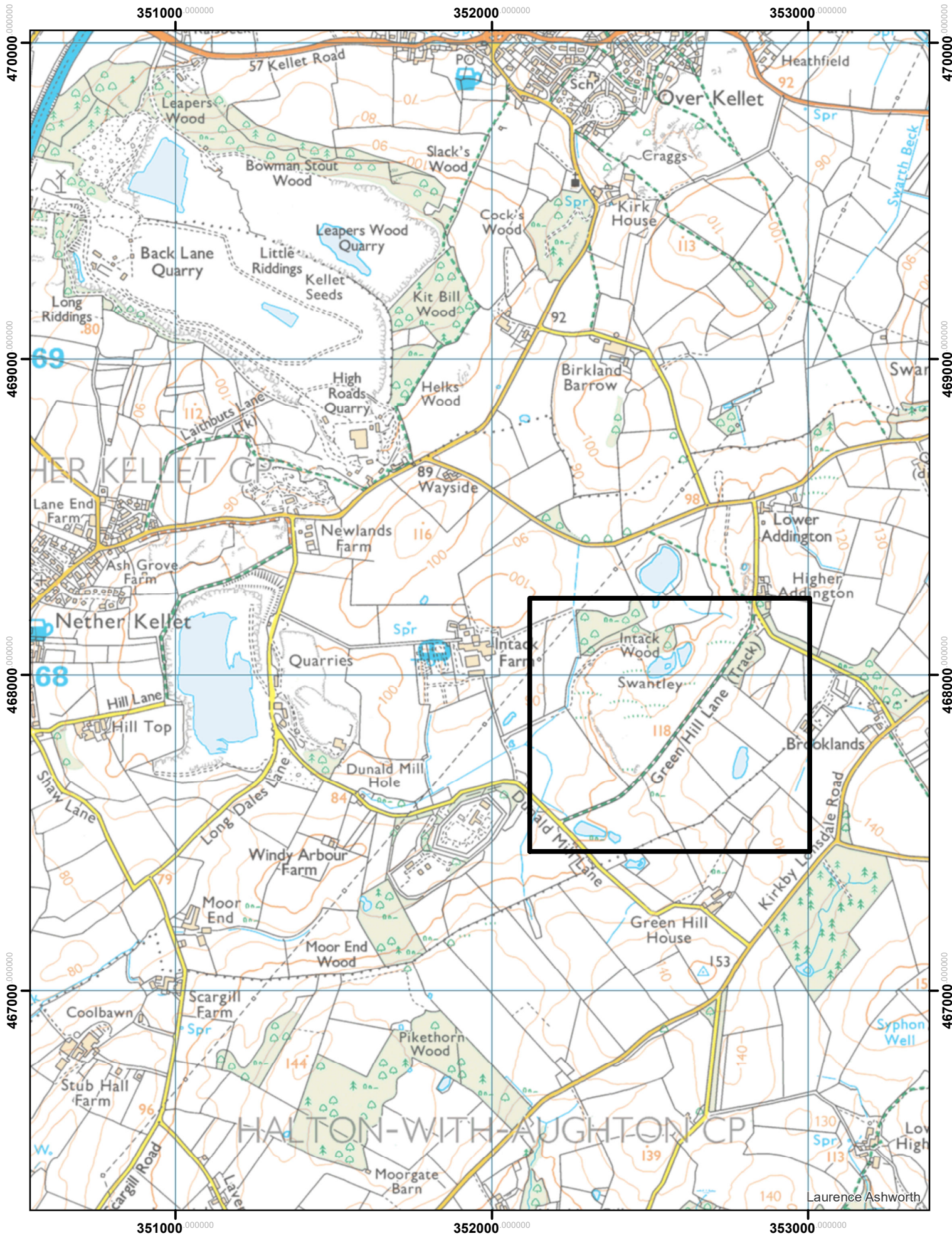


The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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## Regulatory Committee

Meeting to be held on 26<sup>th</sup> January 2022

### Part I

Electoral Division affected:  
Lancaster Rural North

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Public Right of Way from Snape Lane, in the Parish of Warton to its**  
**Continuation as Bridleway Yealand Conyers 17**  
**File No. 804-633**  
(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal Services,  
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

Determination of an application for the addition of a Bridleway from Snape Lane, in the parish of Warton to the parish boundary from where it continues as Bridleway Yealand Conyers 17.

### Recommendation

- (i) That the above application be accepted with additional rights and additional length included.
- (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 from Snape Lane, Warton to the parish boundary and to upgrade its continuation from Bridleway to Restricted Byway Yealand Conyers 17 as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

### Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a Bridleway from Snape Lane to the parish boundary from where it continues as

Bridleway Yealand Conyers 17. However the investigation has discovered evidence that both the application route and the continuation bridleway should be recorded as restricted byway.

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 will only be made to upgrade a highway shown on the Definitive Map and Statement 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 provided no response to consultation.

### Warton Parish Council

Warton Parish Council provided no response to consultation.

#### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

#### **Advice**

#### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5096 7401	Open junction of track with Snape Lane, Warton
B	5096 7414	Unmarked point where parish boundary crosses the track and where Bridleway Yealand Conyers 17 starts
C	5090 7464	Wooden field gate across route
D	5090 7465	Open junction with Dykes Lane

#### **Description of Route**


The application route commences at an open junction of a track with Snape Lane (point A on the Committee plan). From Snape Lane the route runs along a clearly defined track in a northerly direction for approximately 125 metres. The track is just in the parish of Warton with the boundary with Yealand Conyers running along the western side. There is a compacted stone base to the track throughout, which is 2.5 to 3 metres wide, partially grassed over and running between hedges which are 6 to 8 apart (measured between the bases of the hedges). The hedges separate it from the adjacent fields, with a row of mature trees along the western boundary and field gates allowing access to pasture fields on both sides.

At the junction with Snape Lane there is a wooden bridleway sign pointing along the route. After 125 metres (point B) the parish boundary (not discernible) turns eastwards across the track beyond which there is already a bridleway recorded along the track but there is no discernible distinction between Bridleway Yealand Conyers 17 and the application route. This bridleway continues north in the same manner as the application route all the way through to Dykes Lane with site evidence (with hoof prints and footprints visible) that it is used as a through route from Snape Lane to Dykes Lane. About 10 metres before Dykes Lane is a field gate (open at the time of inspection and also open when the Google Streetview image was captured in June 2009). A bridleway fingerpost is adjacent to this gate pointing along the track towards Snape Lane.

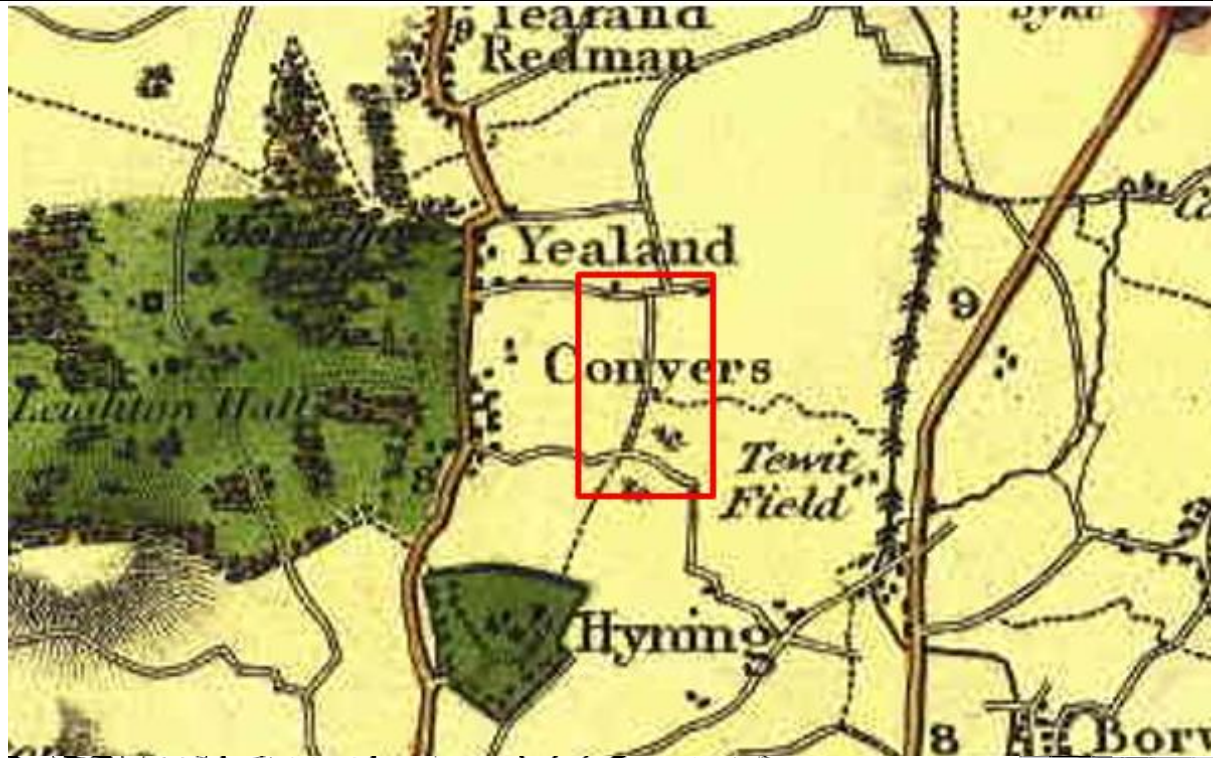
Both the route shown on the application A-B and the continuation as bridleway Yealand Conyers 17 which was investigated as a consequence, are considered below.

### 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
<b>Yates' Map of Lancashire</b>	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 nor B-D is not shown and neither is Snape Lane. Part of Dykes Lane is shown – but not the full length.
Investigating Officer's Comments		The application route may not have existed in 1786 or it may have been that Yates did not consider the route to be a public highway or that it was not surveyed, as surveys were expensive.
<b>Greenwood's Map of Lancashire</b>	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.

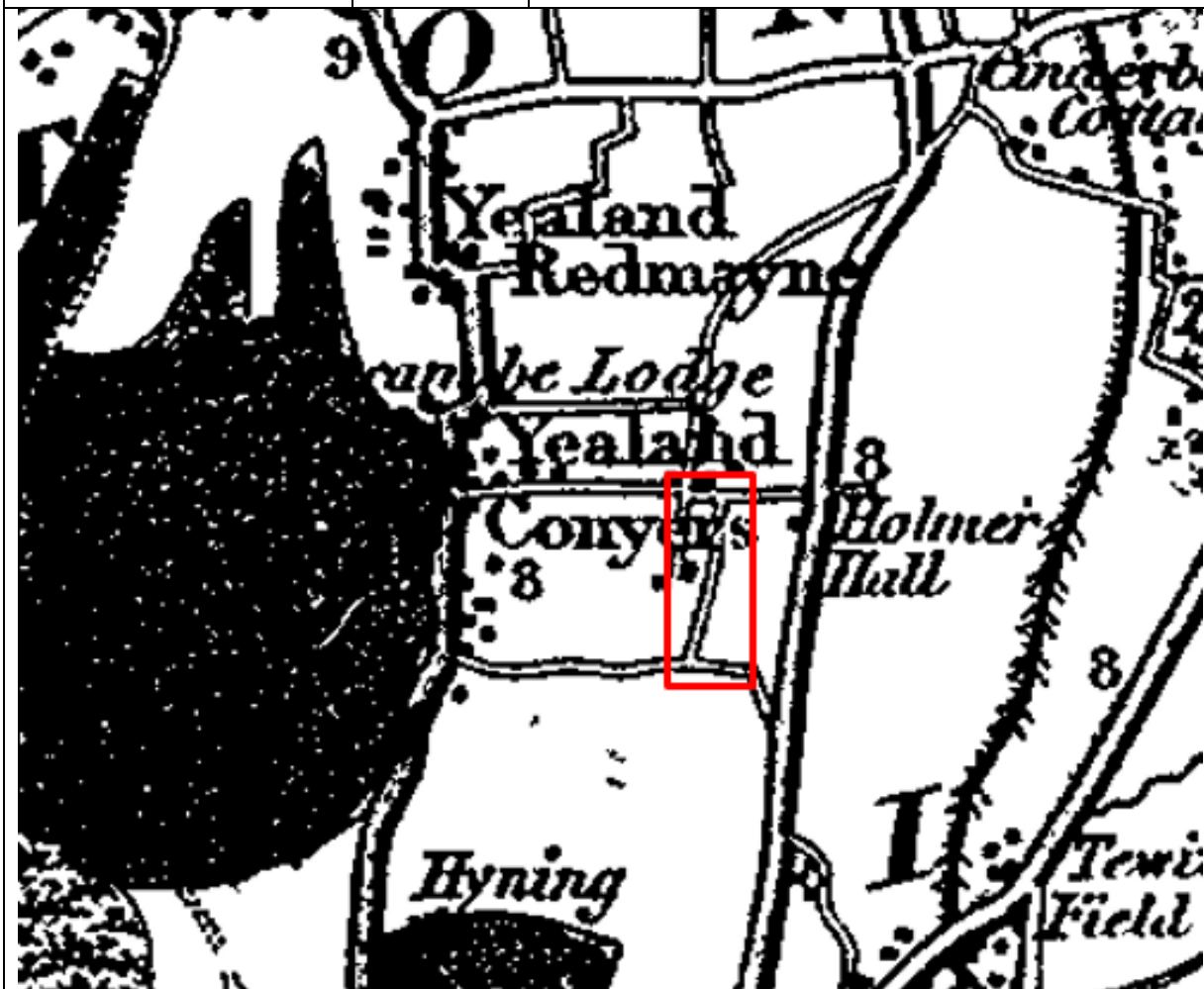


## Explanation

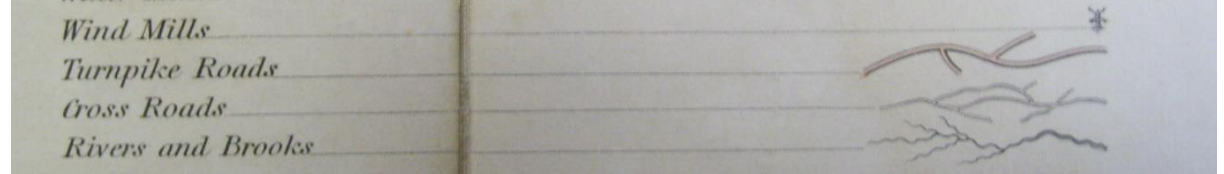
    	<p>Turnpike Roads</p> <p>Cross Roads</p> <p>Towns &amp; other Places—</p> <p>that send Members to Parliament</p> <p>Boundaries of Counties</p> <p>Boundaries of Hundreds &amp; Manors</p>	    
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<p>Observations</p>		<p>The application route is shown as part of a through-route from Snape Lane through to Dykes Lane. The parish boundary is shown running along the application route between point A and point B (approximately where it still does today). The full through route A-D is shown as a 'cross road' on the map in the same way that most of the connecting vehicular road network is shown.</p>
<p>Investigating Officer's Comments</p>		<p>It is not known what Greenwood meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads.</p>

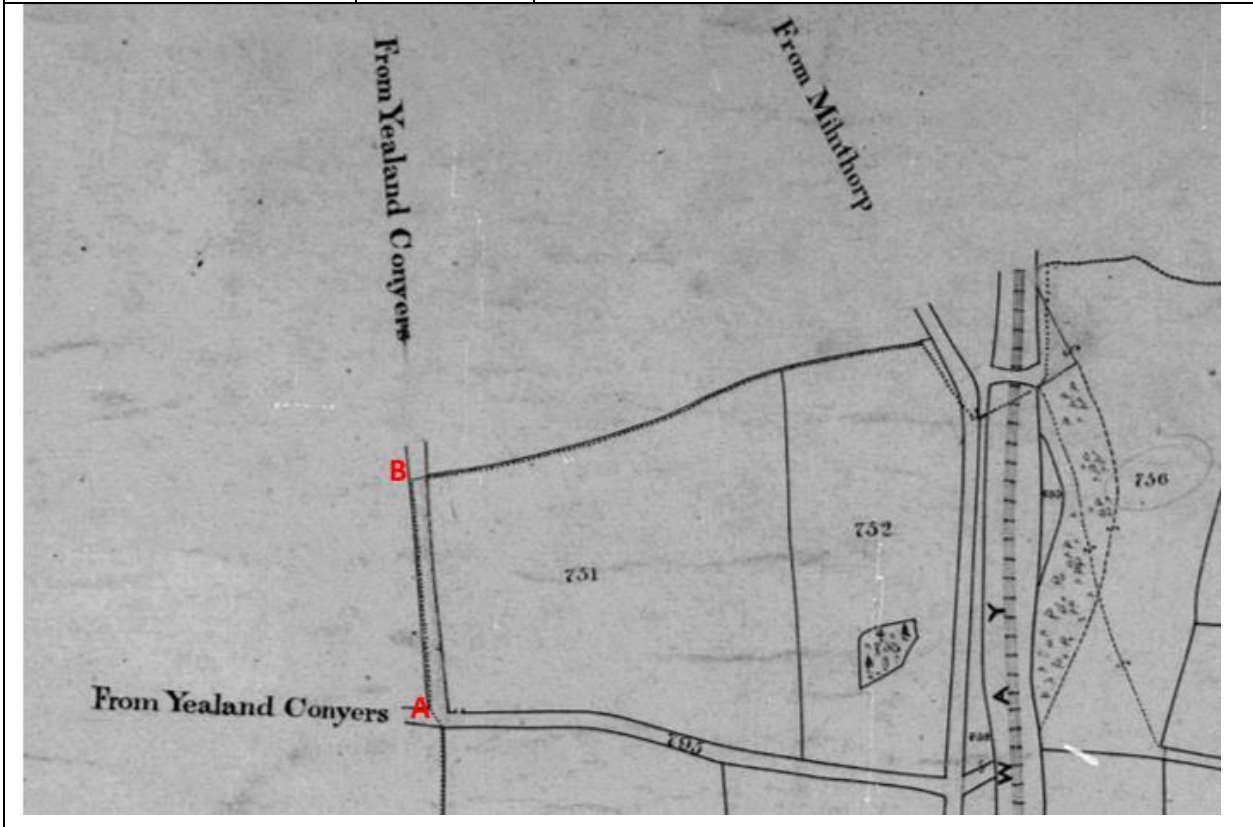
		The fact that the route is shown as part of a longer through route is evidence that it existed in 1786 and that it was of a substantial nature capable of being used at that time. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route 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. The route as shown is indistinguishable from the vehicular road network of the area.
<b>Hennet's Map of Lancashire</b>	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	<p>The application route is again shown as part of a through-route from Snape Lane to Dykes Lane. The route A-D is shown as a 'cross road' on the map in the same way that most of the connecting vehicular road network is shown.</p>
Investigating Officer's Comments	<p>The application route existed in 1830 as part of a longer through route. 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 the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths. It is considered likely that Hennessey'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 its inclusion on the map the application route was considered to be a public bridleway or carriageway in 1830. The route as shown is indistinguishable from the vehicular road network of the area.</p>
Canal and Railway Acts	<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations	<p>The land crossed by the application route was not affected by the construction of a railway or</p>

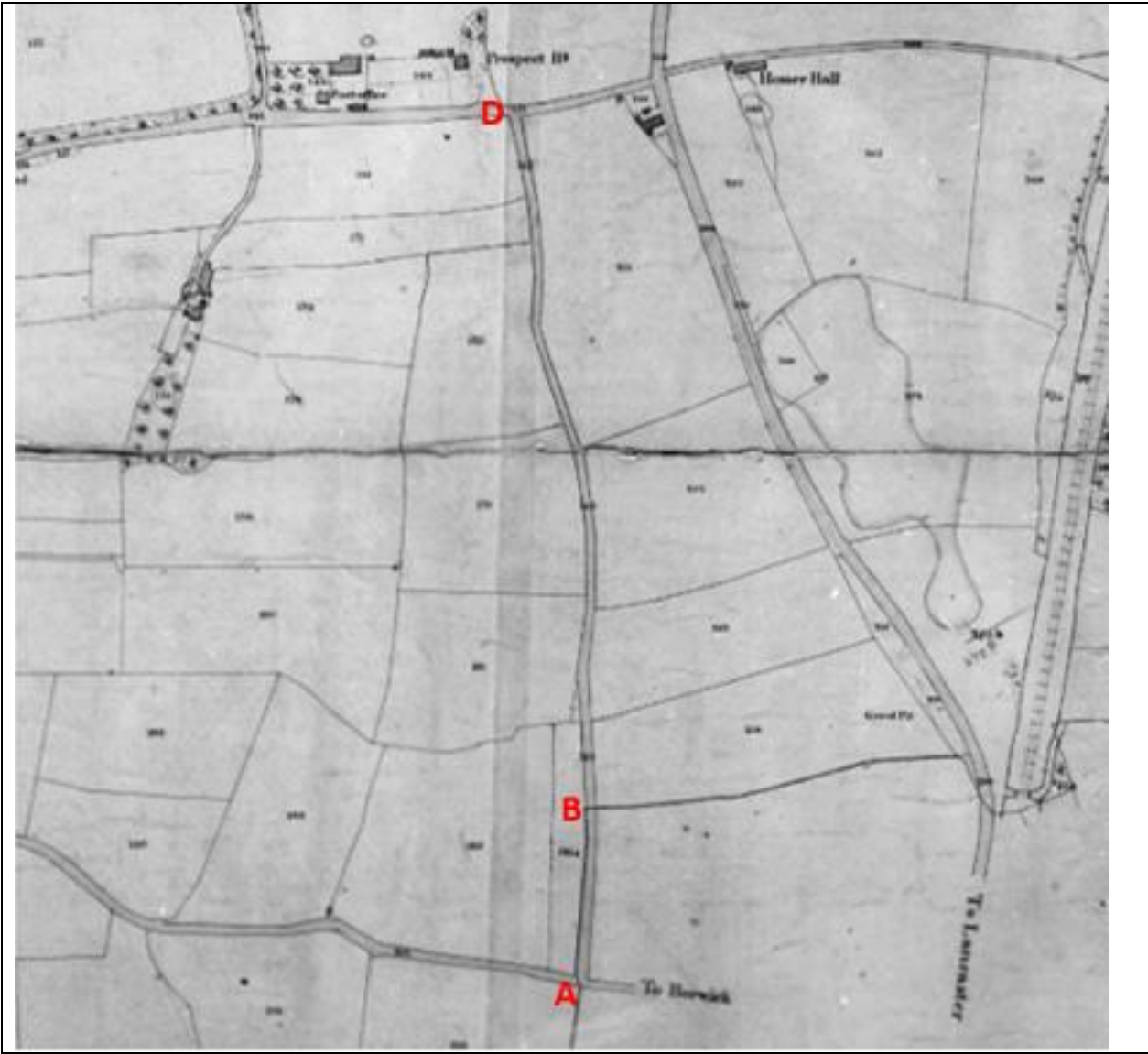
		canal and no proposed canals or railways have been identified.
Investigating Officer's Comments		No inference can be drawn.
<b>Warton with Lindeth Tithe Map and Tithe Award or Apportionment</b>  <b>CRO Ref: DRB1/195 (map dated 1846)</b>	1845	Maps and other documents were produced under the Tithe Commutation 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.



	<i>Robert Higginson</i>	415	<i>Cottage &amp; Garden</i>				1	28	
<i>Roads Rivers and Waste Grounds</i>		127	<i>Wood Hill Watering Place</i>				1	15	
		164a	<i>Watering Place</i>					30	
		204	<i>Watering Place</i>					10	
		248	<i>Shore</i>				1	25	
		282a	<i>Quarry Grounds</i>				1	15	
		338	<i>Quarry</i>				1	3	
		449	<i>Public Watering Place</i>					2	20
		458	<i>Public Watering Place</i>				1	6	
		1177	<i>Point of River Steer and</i>	}			10	5	
		"	<i>Waste adjoining</i>						
		795	<i>Roads Rivers and Waste</i>	}			50	16	
			<i>Ground</i>						
							70	3	28

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Observations		<p>The application route A-B is shown between unbroken lines which may have indicated a bounded route. It is shown as commencing at an open junction with Snape Lane through to point B on the parish boundary (marked by a dotted line). Beyond point B the route is shown to continue into the adjoining parish and is labelled 'From Yealand Conyers' indicating that the route continues to (and from) Yealand Conyers. The continuation of other routes – now acknowledged as vehicular roads – are also labelled in the same way indicating where the routes are coming from.</p> <p>The application route A-B appears to be part of the road network parcel numbered 795 and detailed in the Tithe Award as a 'Road' with no landowner listed and no Tithe payable.</p>
Investigating Officer's Comments		<p>The application route existed in 1854 as part of a route to/from Yealand Conyers. It appears to have been considered as part of the public road network at that time.</p>
<b>Yealand Conyers Tithe Map and Tithe Award or Apportionment</b> <b>CRO Ref: DRB 1/219</b>	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>





<i>Public Roads and Wash Ground</i>		157 213 269 270 312 313 315 317 318 320 321 325 326	<i>Waste and Pound          Roads          Washing Place          Lane to Honors          Public Road          Public Road          Public Road          Lane and Pool          Public Road          Public Road          Public Road          Public Road</i>	<table border="1"> <tr><td>18</td></tr> <tr><td>16</td></tr> <tr><td>5</td></tr> <tr><td>12</td></tr> <tr><td>6</td></tr> <tr><td>37</td></tr> <tr><td>19</td></tr> <tr><td>3</td></tr> <tr><td>20</td></tr> <tr><td>28</td></tr> <tr><td>17</td></tr> <tr><td>9</td></tr> <tr><td>9</td></tr> </table>	18	16	5	12	6	37	19	3	20	28	17	9	9
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Observations		The Tithe Map for the adjoining parish (Yealand Conyers) shows the route B-D numbered as 315 linking with the section A-B in the other parish. The Tithe Award lists it as a public road which is consistent with the Tithe Award for Warton considered above.
Investigating Officer's Comments		The route B-D existed as a public road in 1846 and this linked to application route A-B.
<b>Inclosure Act Award and Maps</b> Inclosure by agreement Warton with Lindeth 1740 (PR	1740	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

2768/2).		provide conclusive evidence of status.
Observations		The Inclosure Award does not relate to the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1845	The earliest Ordnance Survey 6 inch map for this area, surveyed in 1845 and published in 1848. <sup>1</sup>

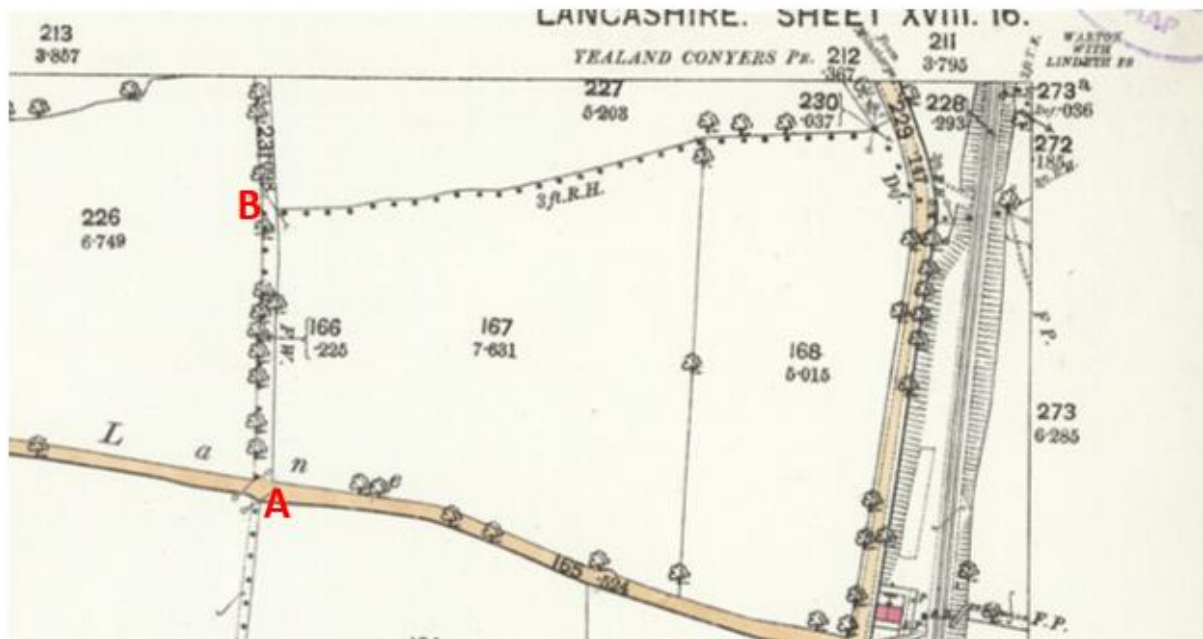


<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



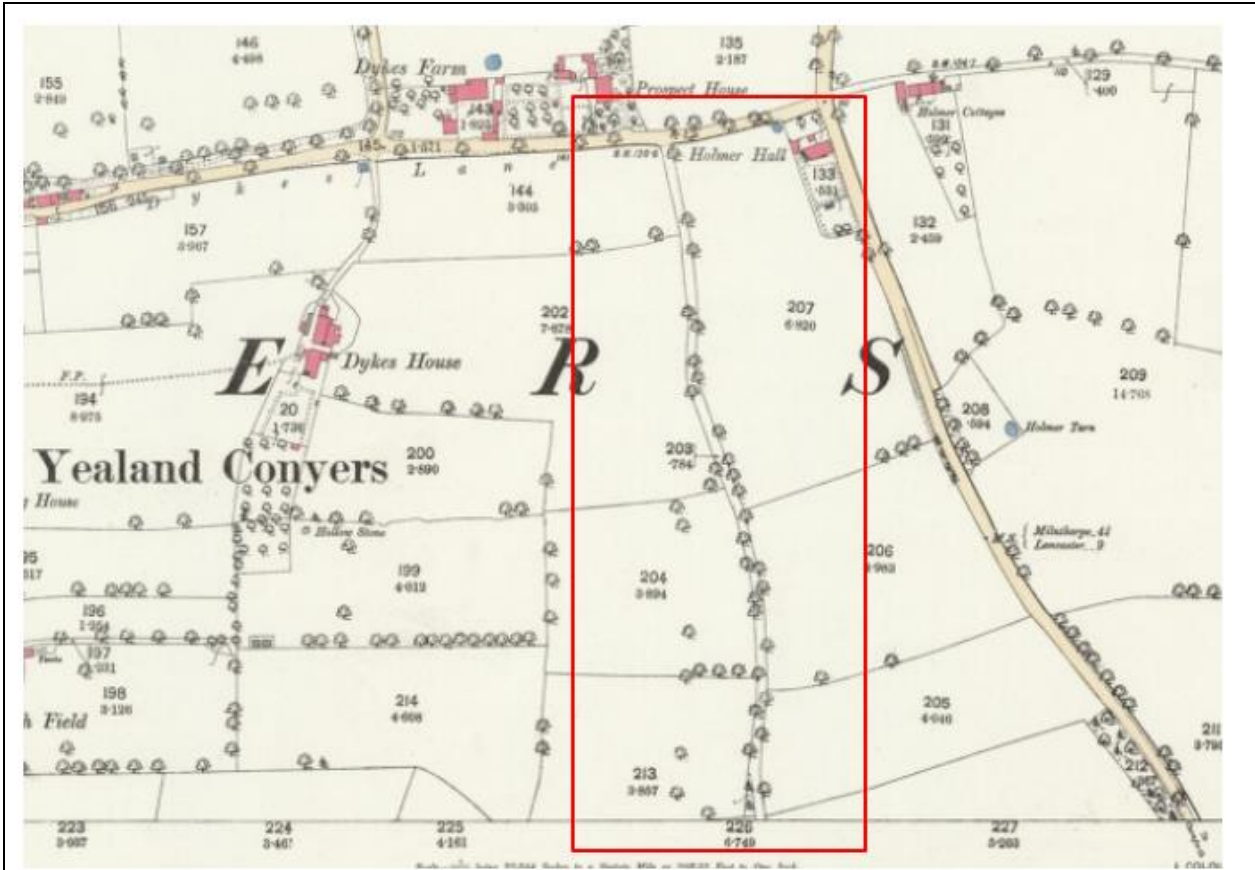
<p>Observations</p>	<p>The application route forming a through route with B-D is shown from Snape Lane through to Dykes Lane. Snape Lane and Dykes Lane are named on the map but the application route is not although the application route is shown to be a similar width to Snape Lane and Dyke Lane. Most but not all vehicular roads, and indeed most bridleways, on this sheet are named.</p> <p>No lines are shown across the route which suggests that it was ungated and available for use.</p> <p>Running parallel to the route but further east is the route now recorded as the A6 which at that time was a turnpike road.</p>
<p>Investigating Officer's Comments</p>	<p>The route A-D existed in 1845 and appeared to be capable of being used by horses and horse drawn vehicles at that time.</p> <p>It is considered that a substantial bounded through route connecting recognised public vehicular roads at both ends would have been at least a public bridleway and may have carried public vehicular right – particularly as it provided an alternative route between Snape Lane and</p>

		Dykes Lane from travelling along the turnpike road. It is not known whether there is any significance to the fact that it isn't named when most carriageways and bridleways on that map sheet are.
<b>25 Inch OS Map Sheet 18.16</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.



Extract from OS 25 inch sheet XVIII.16



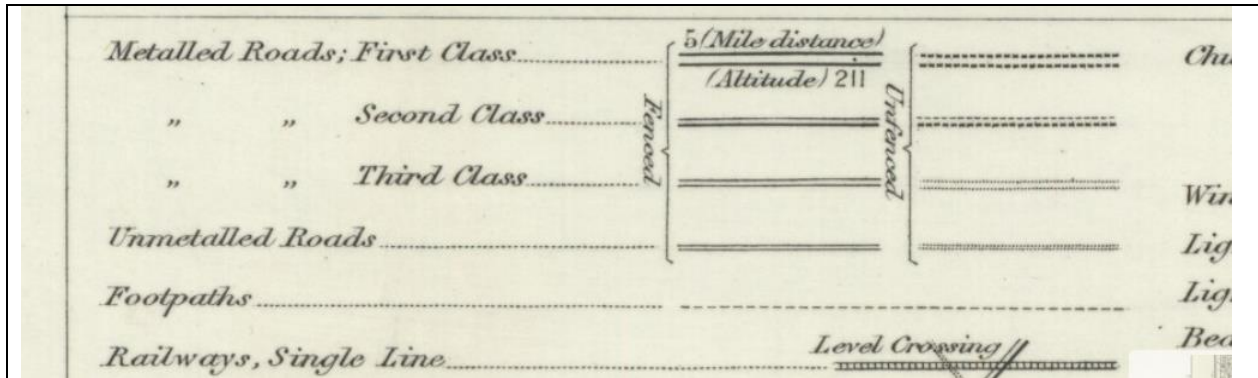


OS 25 inch XVIII.12 surveyed 1889 published 1891 showing application route

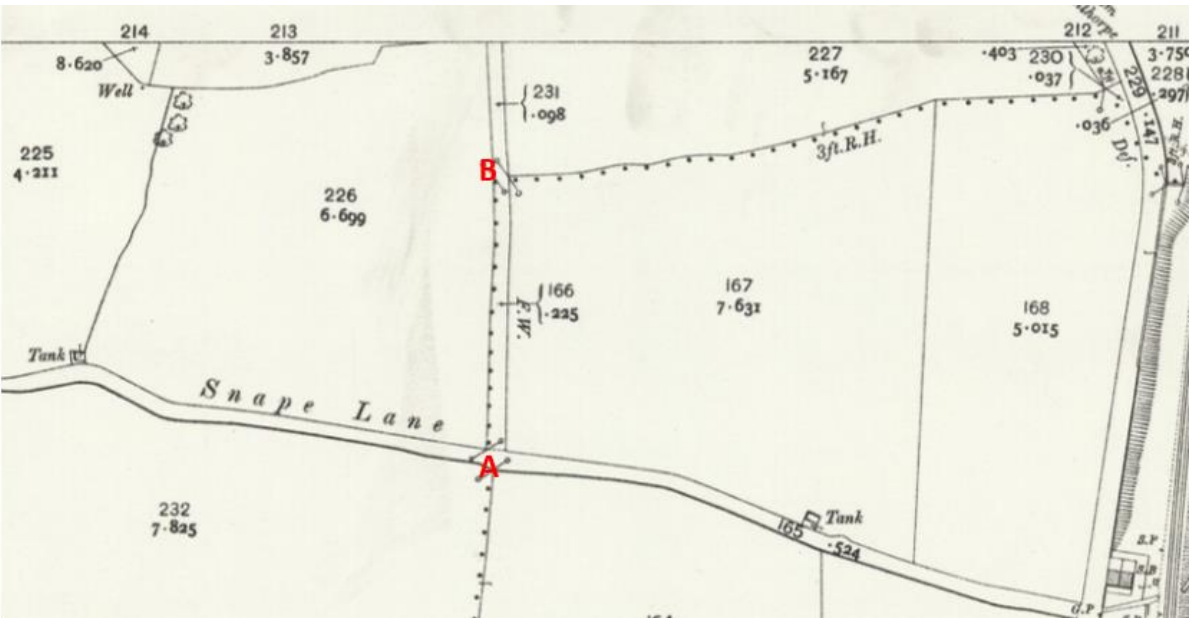
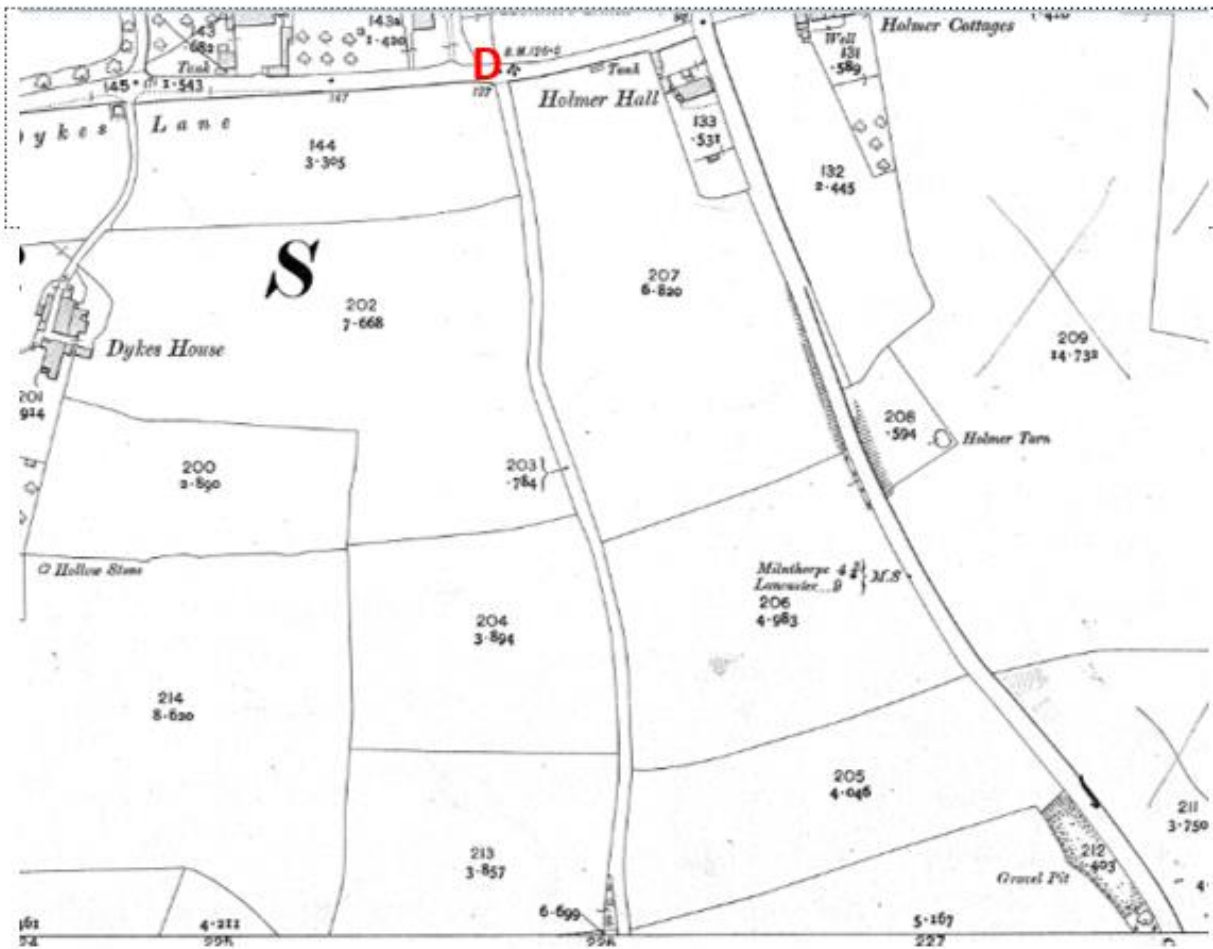
<p>Observations</p>		<p>The application route and length B-D together are shown as a bounded through route between Dykes Lane and Snape Lane. No lines are shown across the application route or the rest of the route which would indicate the existence of gates. The route is not named on the map unlike most carriageways and bridleways on these 2 sheets, particularly the southern one.</p> <p>The application route A-B has been labelled with the parcel number 166 and B-D has two further separate parcel numbers (231 and 203) due to the fact that the route is split across two separate map sheets.</p> <p>Snape Lane and Dykes Lane are both shown on the map(s) with a thickened line along the south side and are both coloured. The application route is not shown coloured or with a thickened line along the east side.</p>
<p>Investigating Officer's Comments</p>		<p>The route A-D existed in 1889 as a bounded through route which appeared capable of being used on horseback and probably by vehicles. Unlike Snape Lane and Dykes Lane it was not</p>

		<p>shown shaded or coloured on the map. 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 a thickened line 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 not shown in this way suggests that either it was possibly not as well maintained or surfaced, or that it was not maintained by the Highway Authority.</p> <p>With regards to the inclusion of parcel numbers 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>
<p><b>OS 1 inch Map Sheet 49 – Kirby Lonsdale</b></p>	<p>1898</p>	<p>OS 1 inch map surveyed 1845-7, revised 1899 and published 1898.</p>





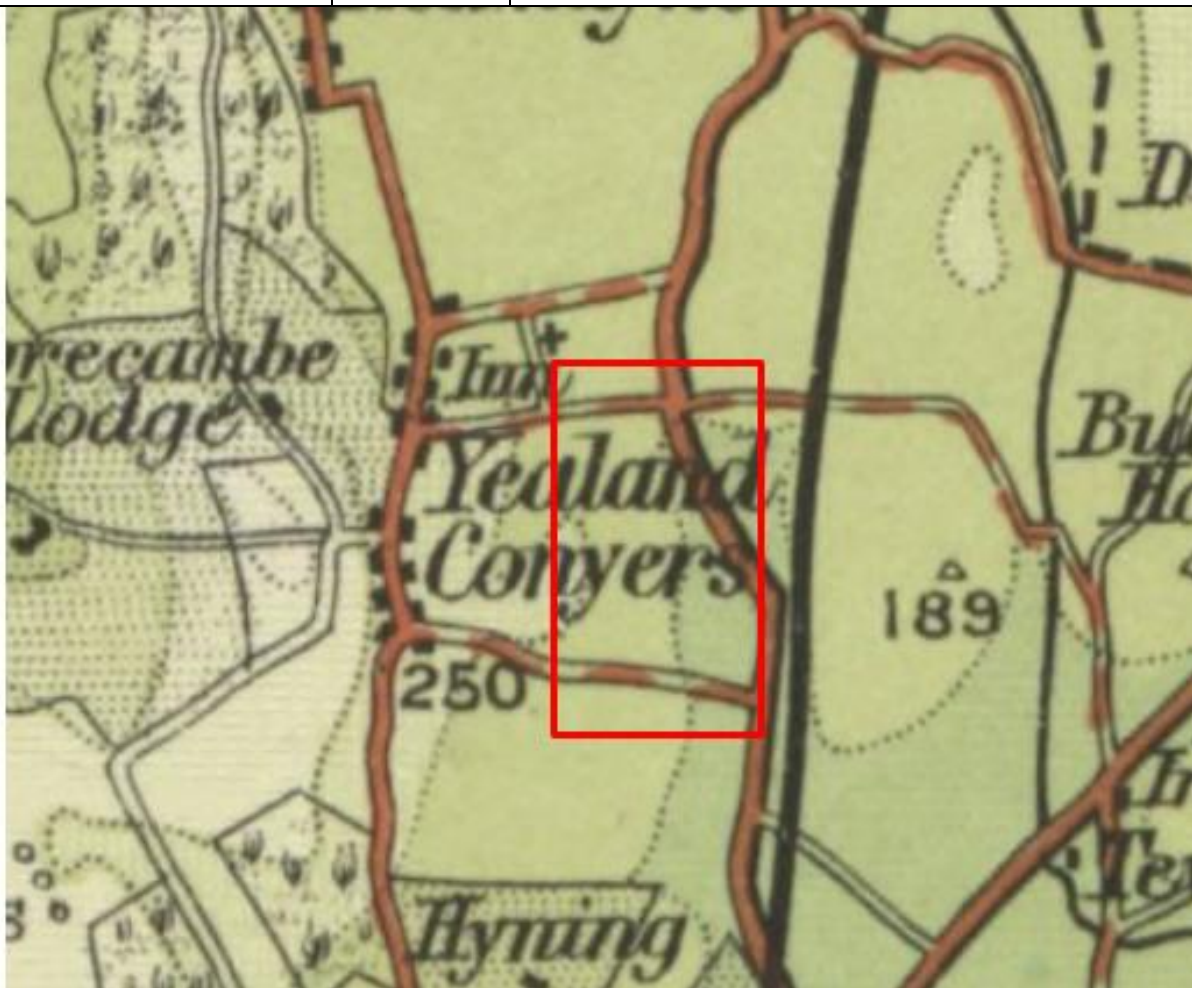
Observations		The application route is shown as part of a through route A-D. It is shown as being open and unrestricted and in the map key is denoted as being a third class road.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route A-D on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
<b>25 inch OS Map</b>	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1910 and published in 1913.



Observations

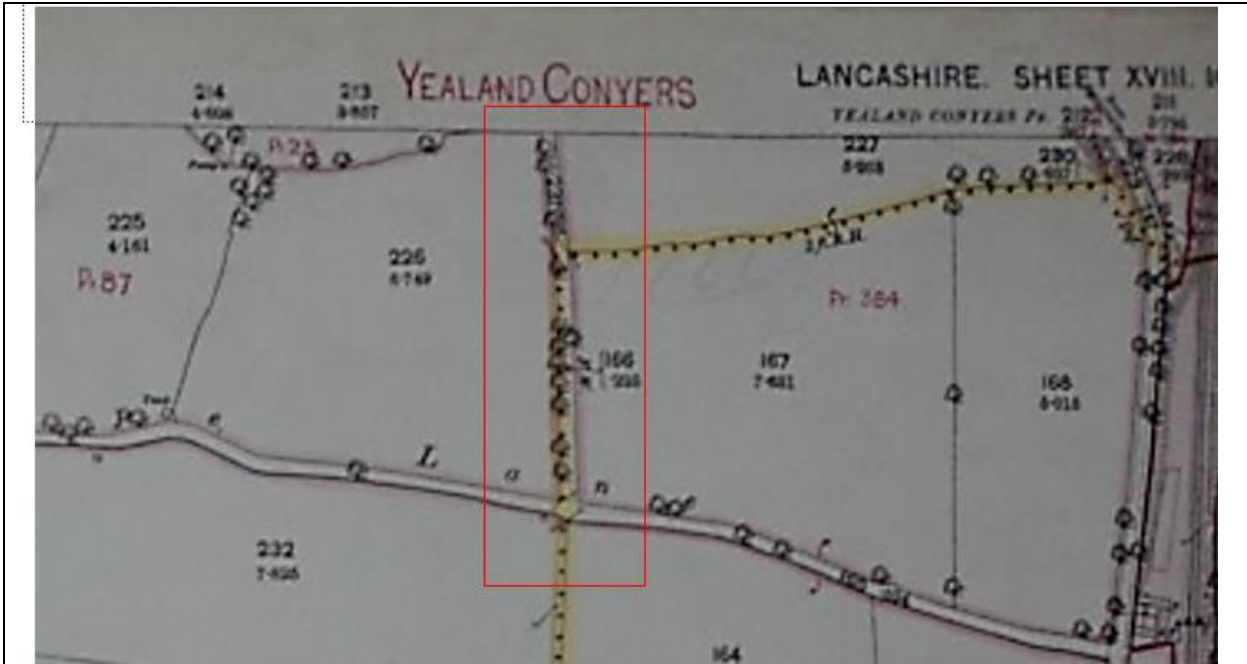
The route A-D is shown in a similar way to the earlier edition of the OS 25 inch map. However, there are broken lines across each end indicating a change of surface between Snape

		Lane / Dykes Lane and the route under investigation which is consistent with the latter being unmetalled.
Investigating Officer's Comments		The application route existed as part of a longer through route in 1910 and appeared to be capable of being used on horseback or with carts.
<b>Bartholomew half inch Mapping Sheet 5 – North Lancashire</b>	1905	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



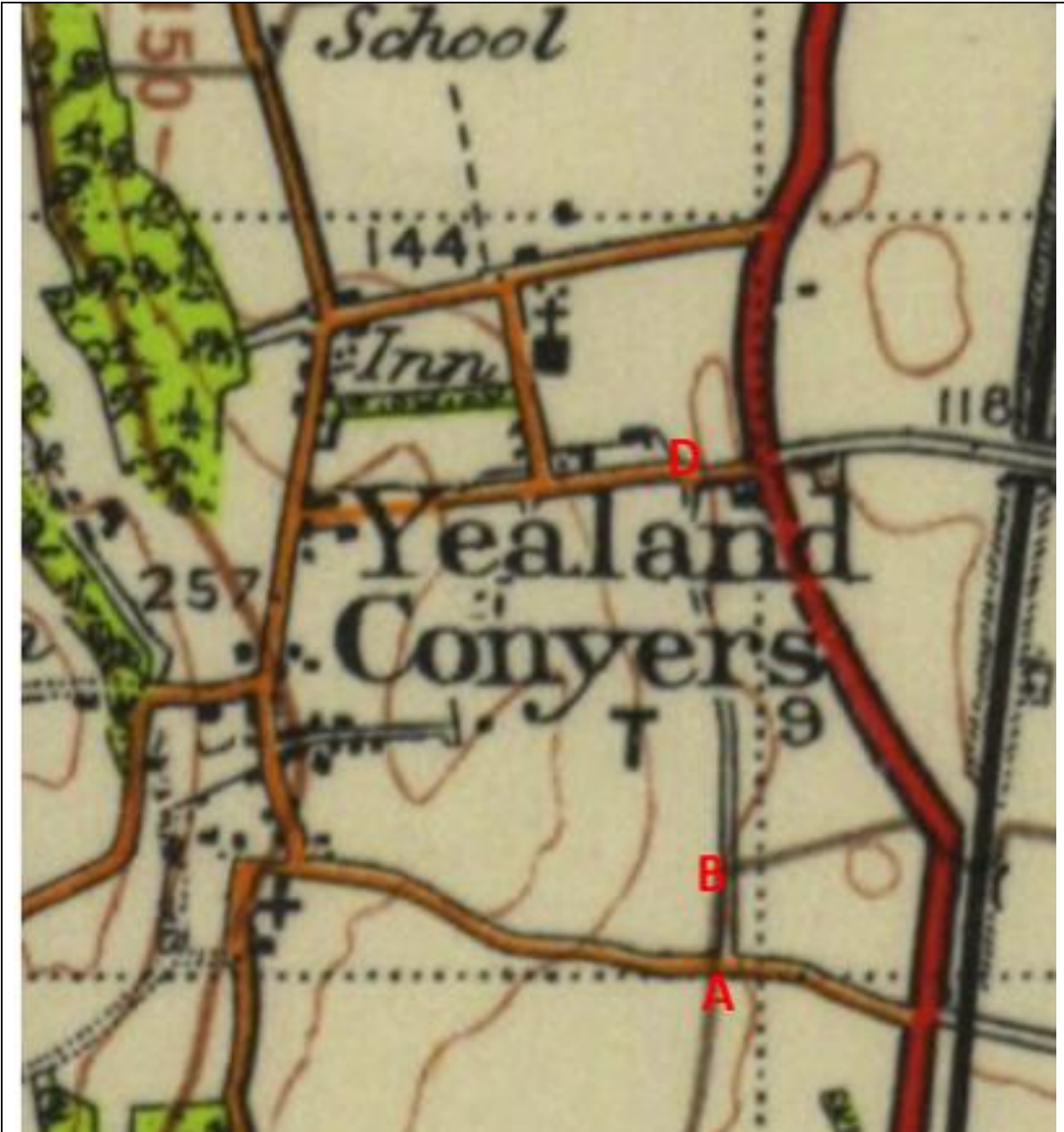
Observations		The application route is not shown.
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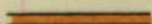

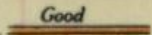
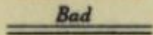
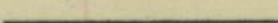
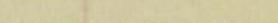



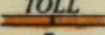


Investigating Officer's Comments		<p>The application route is not shown but its physical existence at that time is confirmed by the fact that it is clearly shown on OS maps revised and published both before and after the date of Bartholomew's map. The fact that the route is not shown on this small scale map – produced primarily for the purpose of motoring and cycling suggests that the route was not considered to be suitable for vehicular traffic at that time.</p>
<b>Finance Act 1910 Map</b>	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 quality of photographs of the Finance Act Map plans is poor but it appears that the route under investigation is excluded from the adjacent hereditaments along the full length and that the most northerly section is excluded from a plot (21) which it bisects.
Investigating Officer's Comments		The exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public vehicular rights. Numbered plots split by the continuation of the route give further weight to the belief that the full length of the route was considered to have public vehicular rights (as public footpaths and bridleways were normally included within the numbered plots).
<b>1 inch OS map Sheet 89 Lancaster &amp; Kendal</b>	1947	Further edition of 1 inch OS map revised 1920 and published 1947.

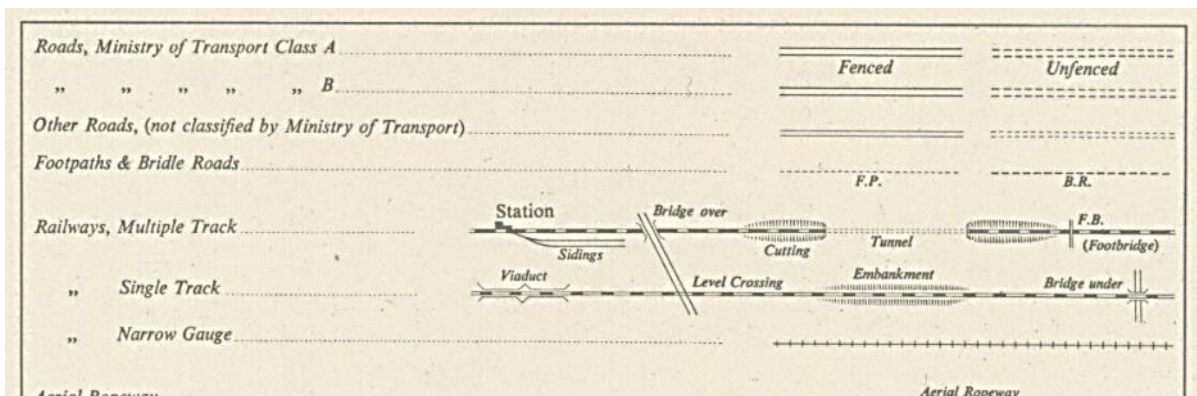
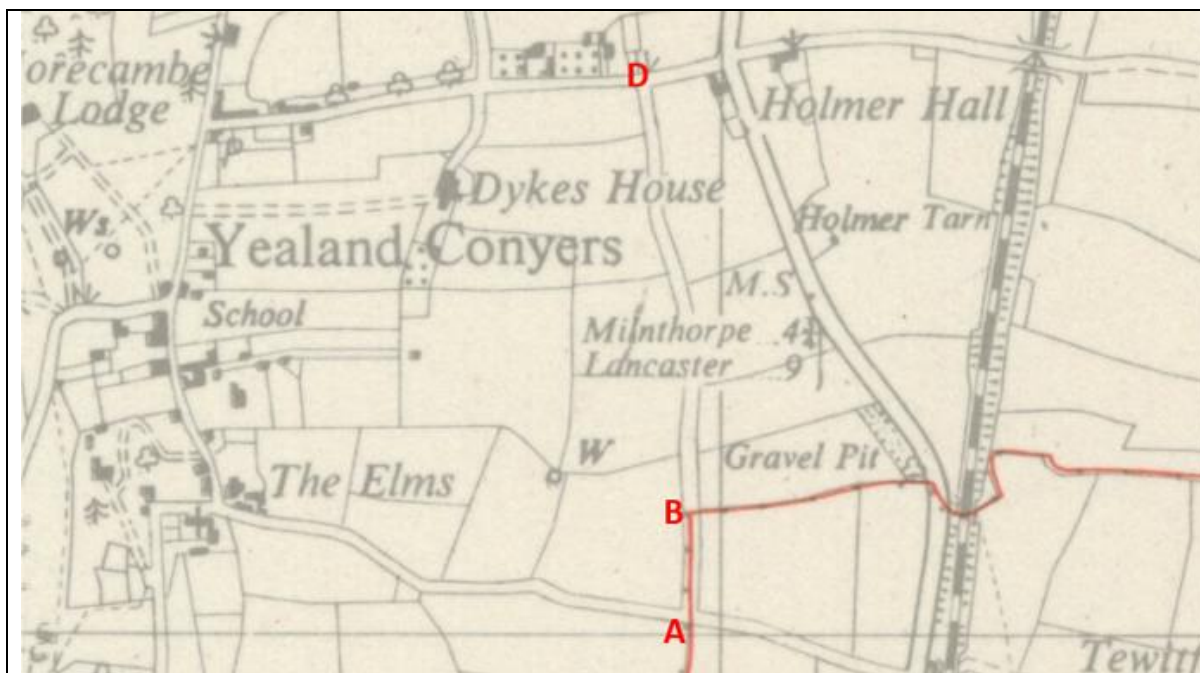




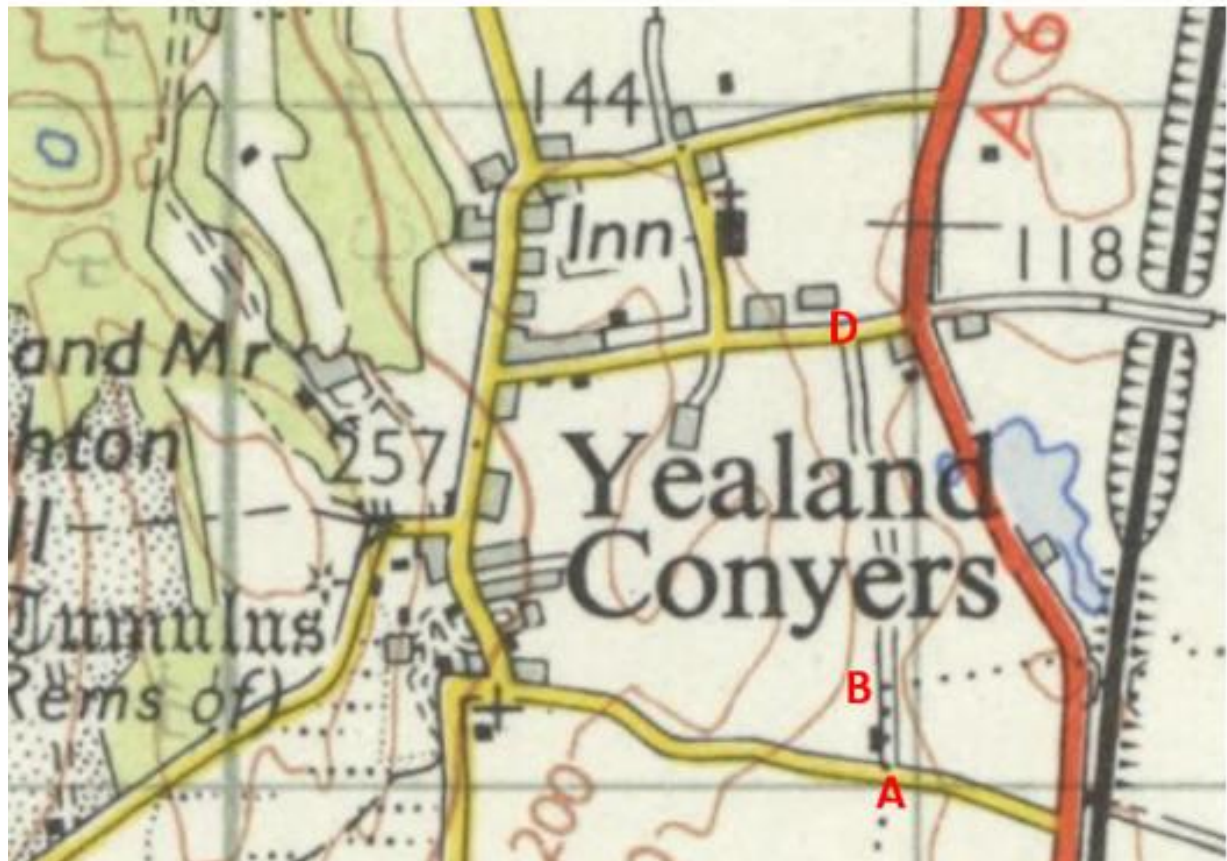
Ministry of Transport Roads			Railways, Double Line
Other Motor Roads			" Single Line
" " " narrow			Mineral Lines & T
Minor Roads			Electricity Transm (with pylons spaced con
Bridle & Footpaths			Pipe Lines (water)
Unfenced Roads are shewn by dotted lines			Wood 
Gradients steeper than 1/4			Orchard 
Toll Gates			Quarry 
Road Mileage			

1014. Observations The application route is shown as part of a

		through route A-D described in the map key as a 'minor road' as opposed to 'Bridle & Footpaths'.
Investigating Officer's Comments		The route existed in 1920 and appeared to be capable of being used. The depiction of the route on the map as a 'Other Motor Roads narrow Bad' suggests use by vehicles at that time.
<b>6 Inch OS Map</b>	1945	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 1910-11 and published 1945.
Observations		The route A-D is shown in the same way as it is shown on earlier maps as a through route between Snape Lane and Dykes Lane.
Investigating Officer's Comments		The route existed in 1910-11 (when the map was surveyed) and appeared to be capable of being used by horses or vehicles.
<b>1:25,000 OS Map Sheet 34/57</b>	1947	1:25,000 map published 1947, date of survey not known.

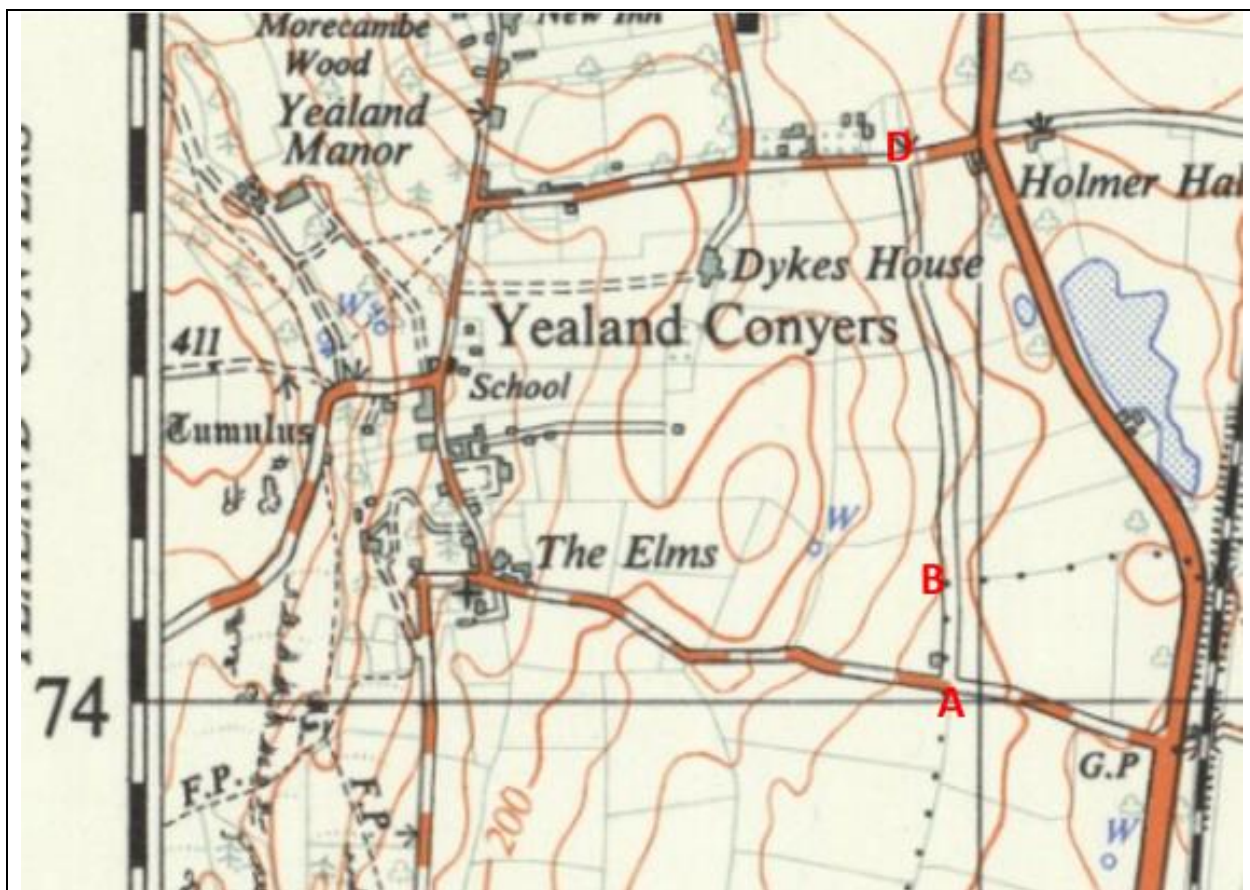


Observations		The application route together with route B-D are shown as a bounded through route depicted in the map key as a road (as opposed to a footpath or bridleway).
Investigating Officer's Comments		The route A-D existed and appeared to be capable of being used on horseback or with vehicles.
<b>1 inch OS map Sheet 89 Lancaster &amp; Kendal</b>	1955	1 inch OS map revised 1950-51, published 1955.

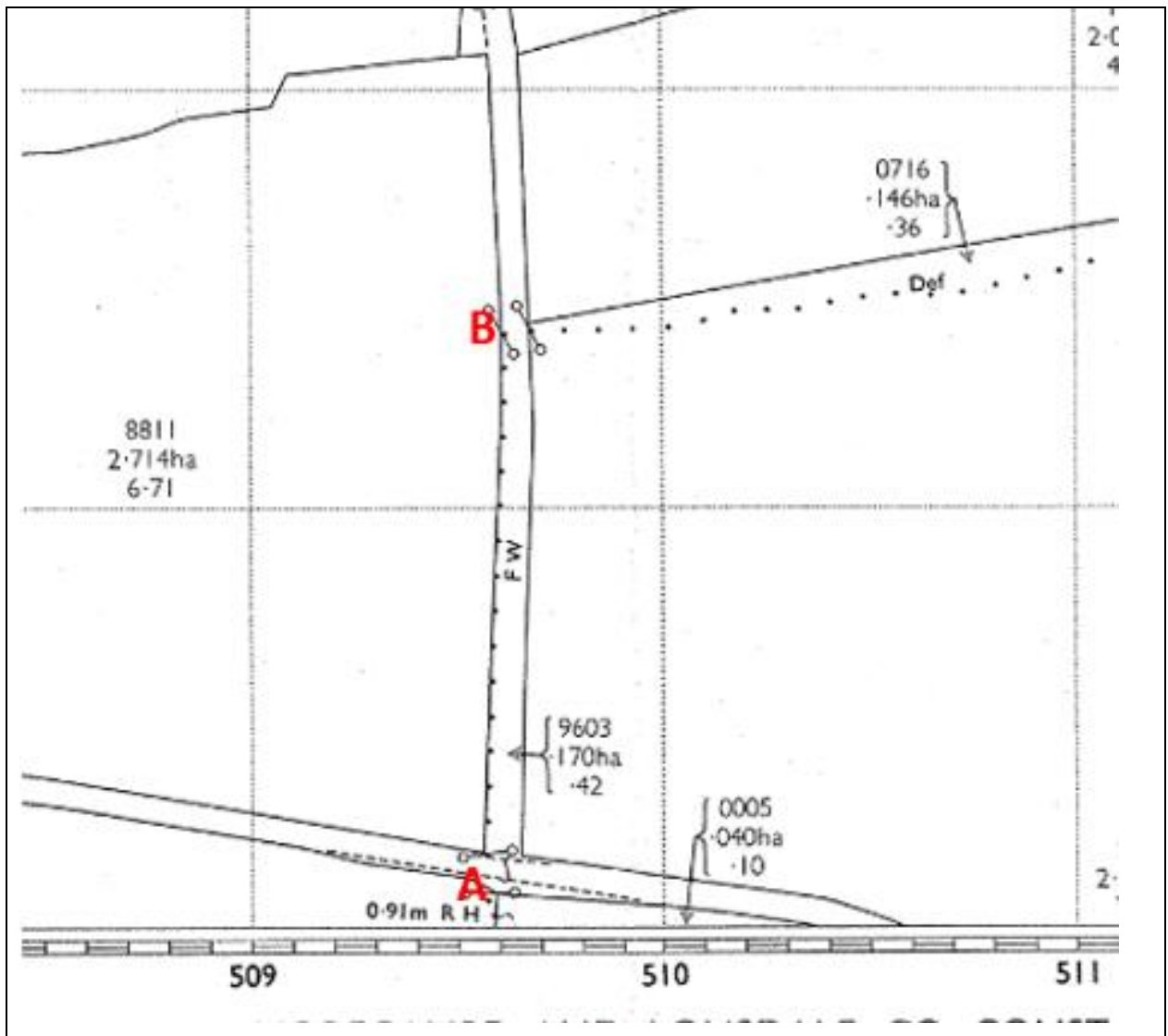


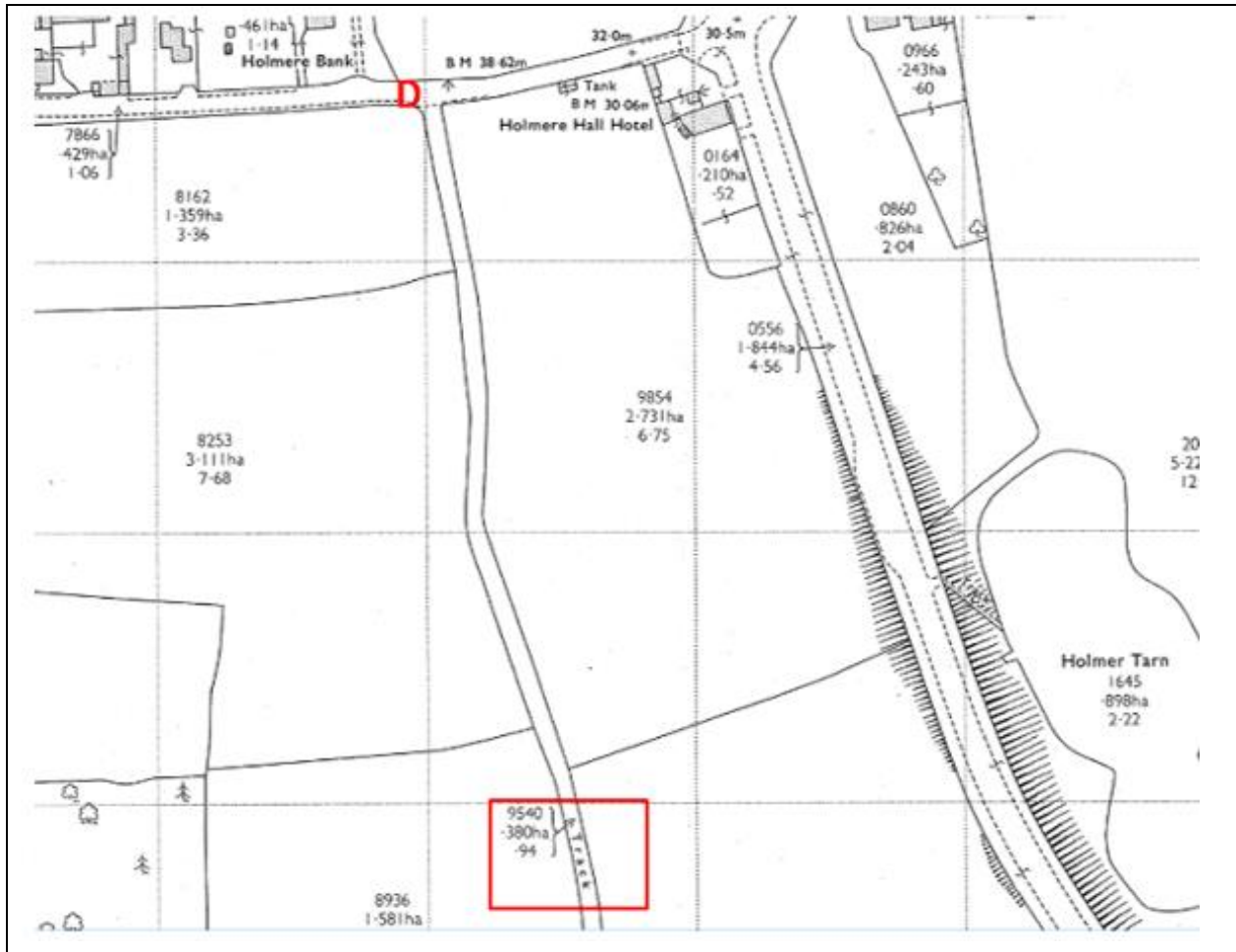
Roads	Ministry of Transport, Trunk	A 6 (T)	Railways	Multiple Tra
	" " " Class 1	A 590		Single "
	" " " " 2	B 6254		Narrow Gau
	14 ft of Metalling & over (not included above)	TOLL		Wood
Under 14ft of Metalling. Tarred " "	Gate	Orchard	Electricity Transmission L (with pylons spaced conventi Pine Lines (water)	
" " " " Untarred " "				
Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)				
Steep Gradients 1 in 5 or steeper	1 in 7 to under 1 in 5			
Footpaths and Tracks				

Observations		This small scale map again shows the route A-D as a bounded through route and shown as 'untarred' or 'unmetalled'.
Investigating Officer's Comments		The route A-D existed as an untarred or unmetalled through route which appeared to be capable of being used by vehicles (it is depicted as a road not a footpath or track) and the inclusion of the route on such a small scale OS map as a road suggests that it was recognised as a route used by the public.
1:25,000 OS Map SD 57	1961	OS 1:25,000 map revised 1938 and published 1961.



Observations		The application route and B-D is again shown as a through route on the map.
Investigating Officer's Comments		The route A-D existed and appeared to be capable of being used.
<b>1:2500 OS Map SD5074-5174</b>	1972	Further edition of 25 inch map reconstituted from former county series and revised in 1971 and published 1972 as national grid series.



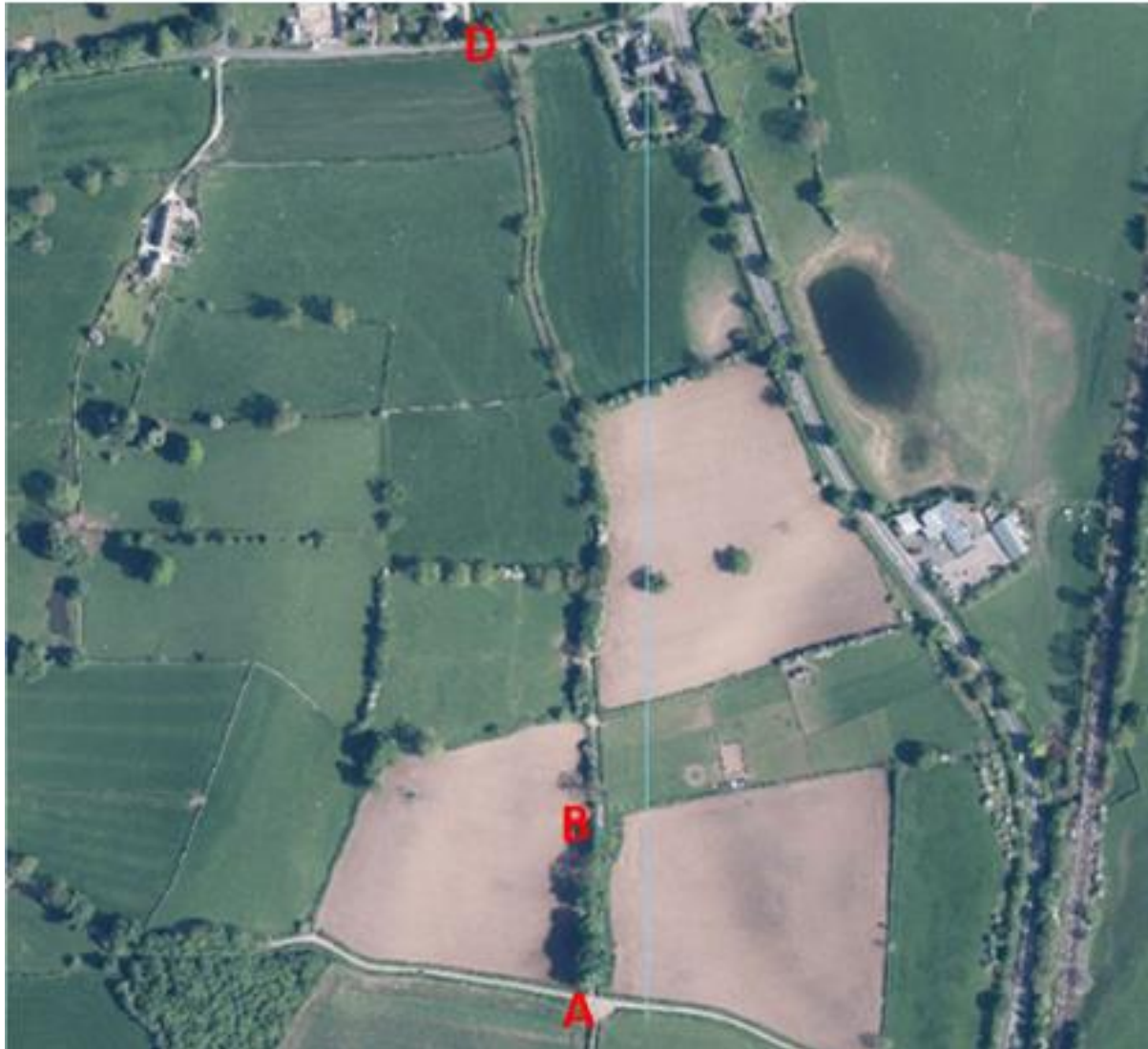


Observations		The route A-D is clearly shown as a through route in the same way as it is shown on all earlier editions of OS mapping.
Investigating Officer's Comments		The route A-D still existed in the 1960s and appeared capable of being used on horseback. A changed of surface is shown at both ends and the route is labelled as a 'track'.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



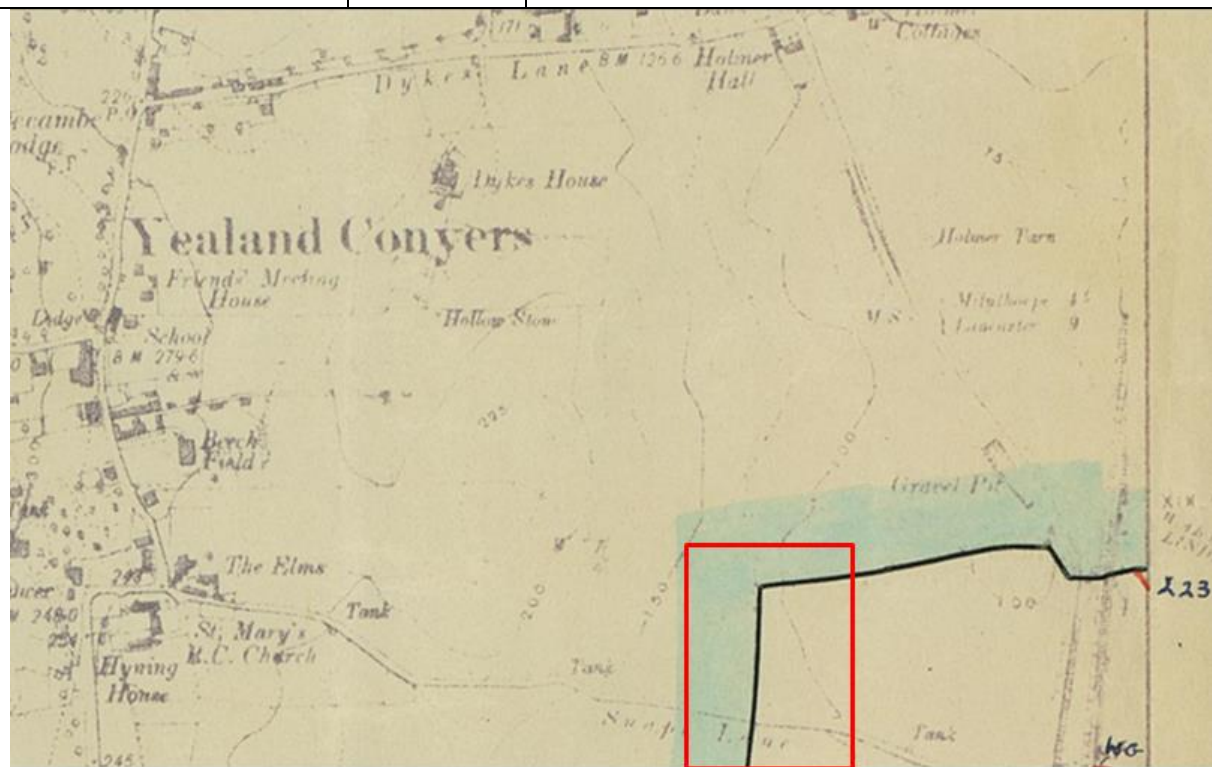
Observations		The line of the route A-D can be seen marked by trees. The route is visible but does not appear to be receiving significant levels of use, particularly from vehicles, which would show up much more clearly.
Investigating Officer's Comments		The application route still existed in the 1960s as part of a longer through route A-D and its appearance was consistent with a route used on horseback.
<b>Aerial Photograph</b>	2016	Aerial photograph available to view on GIS.



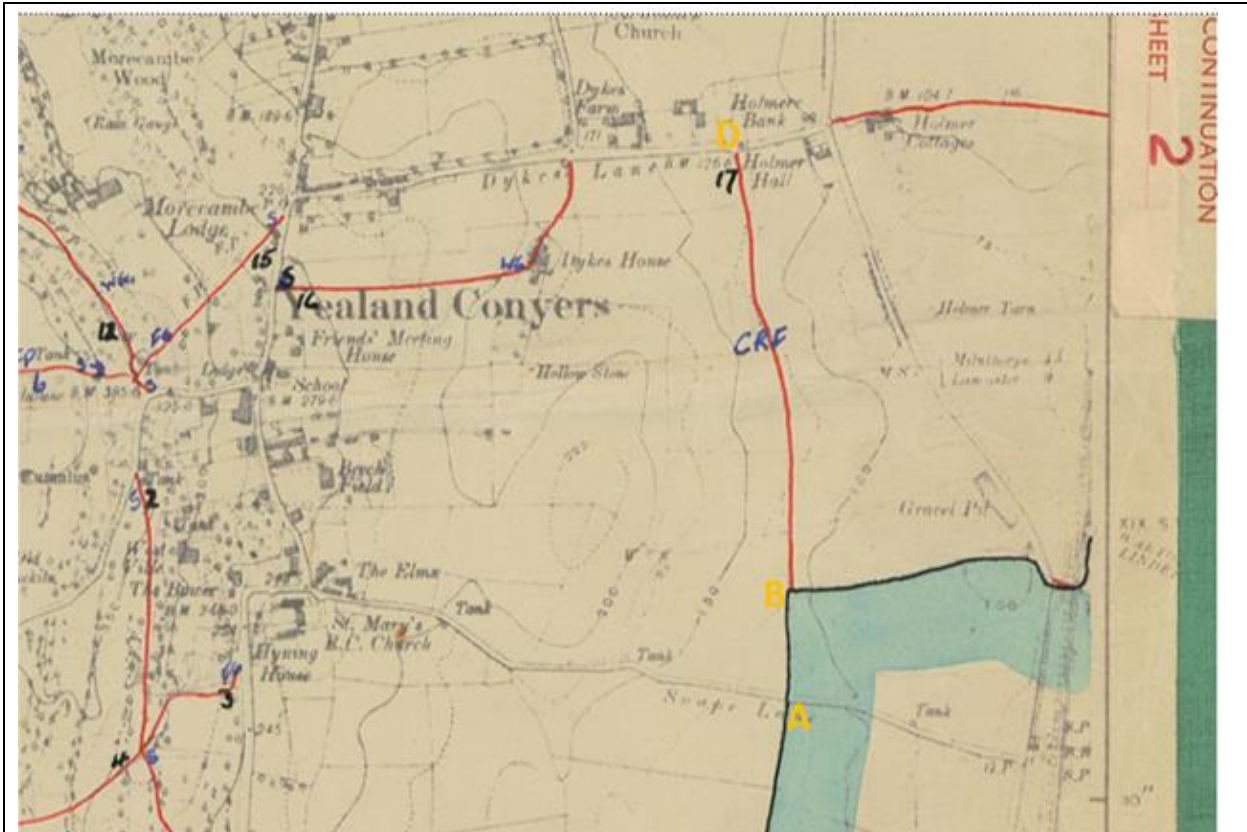


Observations		The application route is partially obscured by trees but a track can be seen intermittently. It is not possible to see from the photograph whether any gates or barriers may have existed across the route.
Investigating Officer's Comments		The application route still existed in 2016 as part of a fairly wide through route A-D.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	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.



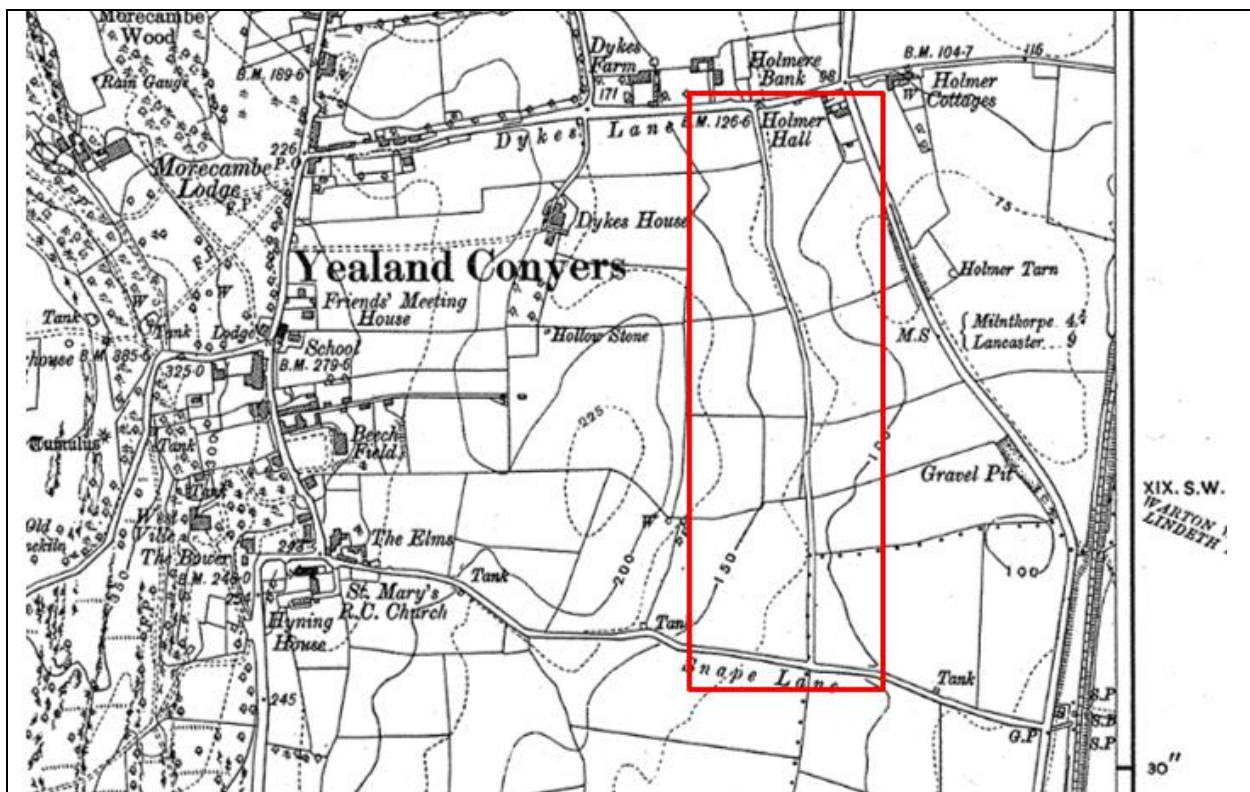
Warton Parish Survey Map



Yealand Conyers Parish Survey Map

DISTRICT	<i>Lancaster Rural</i>	PARISH	<i>Yealand Conyers</i>	No. <i>17</i>
MAP SHEET No.	<i>1</i>	LENGTH	<i>0.33</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>O.B.F.</i>			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).				
<i>From Dykes Lane. East of Holmer Bank continues along Green Lane to Parish Boundary with Horbar.</i>				
SURVEYED BY :-	Name	<i>J. Procter</i>		
	Address	<i>18, The Meadows, Yealand Redmayne, Carnforth</i>		
Date	<i>June 1957.</i>			

Parish Survey card for 17 Yealand Conyers



OS 6 inch Quarter Sheet 18SE revised 1910-11 published 1911 used as base map for Parish Survey Maps

Observations

The application route A-B is not shown on the Parish Survey Map completed by Warton Parish Council. The quality of the copy of the 6 inch OS map used for the survey is quite poor and in particular quite faded. Whilst it is acknowledged that this map is over 70 years old it is not actually possible to see the route leading south from Dykes Lane south to Snape Lane – over which the application route runs. In addition to this a thick line has been drawn denoting the boundary of the parish and this is also heavily shaded – further obscuring sight of the application route A-B. OS maps dated before and after the 1950s (when the parish survey was completed) confirm the existence of the route on the ground at that time and a different copy of the same 6 inch map used to compile the parish survey map confirms that the route was actually drawn on the map.

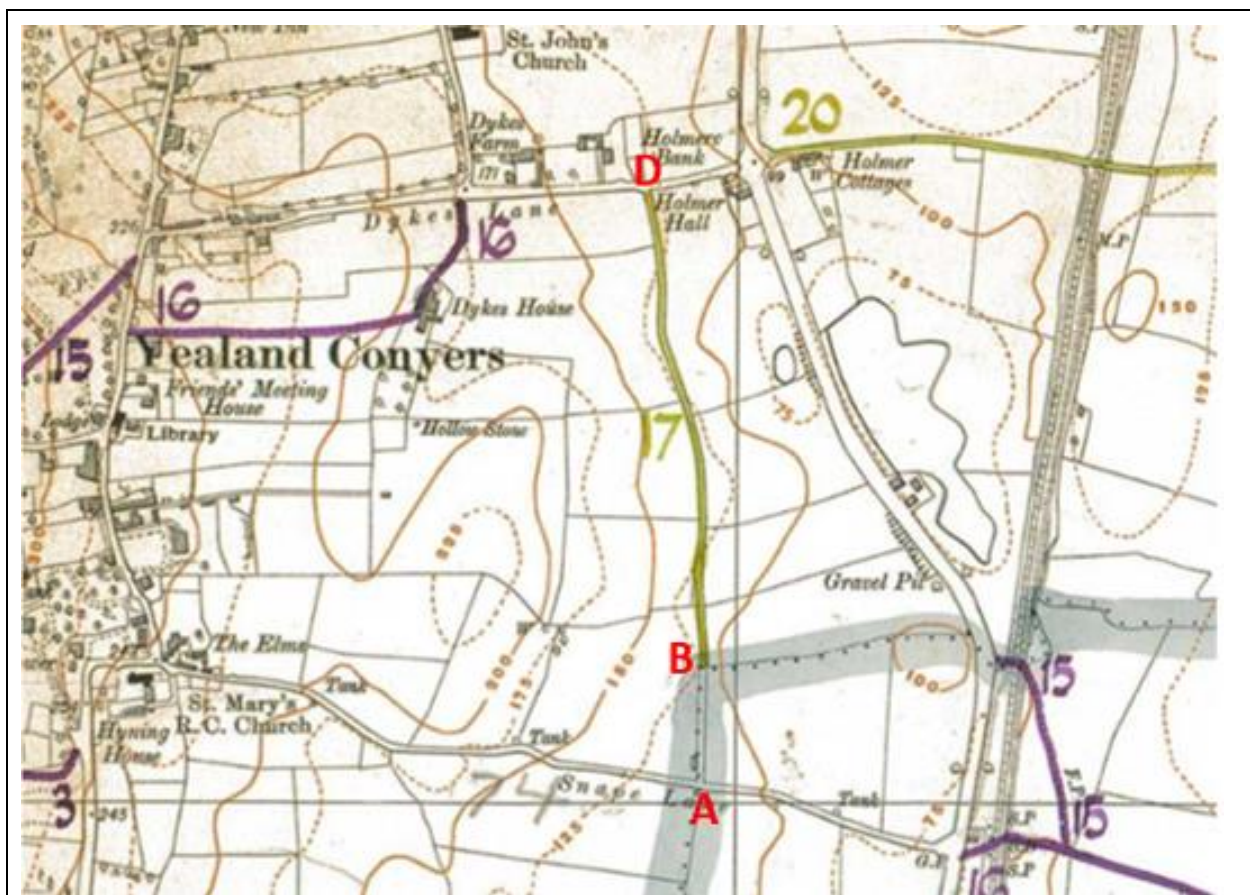
In addition, the route B-D is clearly marked on the Parish Survey Map completed by Yealand Conyers Parish Council with the route described as running from Dykes Lane to the parish boundary.

Whilst the Yealand Conyers survey card does not include a note to say that the route continues

		<p>from the parish boundary to Snape Lane it does not suggest that the route terminated at the parish boundary either.</p> <p>Given that the map and documentary evidence examined prior to the 1950s all (with the exception of a few large scale commercial maps) confirmed the existence of the route it appears that the omission of the application route A-B on the Warton Parish Survey map could have been an error due to the fact that the route was not clearly visible on the base map and was obscured by the marking used to denote the parish boundary or it could have been that Warton considered it to be vehicular and therefore not to be recorded. Yealand Conyers recorded B-D as CRF (cart road mainly used on foot) – a term which was always uncertain in respect of public vehicular rights and was abandoned officially in 1949 in favour of the equally ambiguous RUPP (road used as public path).</p>
<b>Draft Map</b>		<p>The parish survey map and cards for Warton parish (and Yealand Conyers) 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” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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>



<p>Observations</p>		<p>The application route A-B was not shown on the Draft Map and no objections were received to the fact that it was not shown.</p> <p>The route B-D in Yealand Conyers was shown on the Map as a public bridleway (having been recorded initially on the parish survey map as a 'Cart Road Footpath' or CRF) and was described as going to 'the parish boundary'.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		Only B-D was recorded on the Provisional Map and there were no objections to the omission of A-B.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route A-B was not recorded on the First Definitive Map but the route to the north B-D was.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> 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.



RURAL DISTRICT OF LANCASTER.  
PARISH OF YEALAND CONYERS.

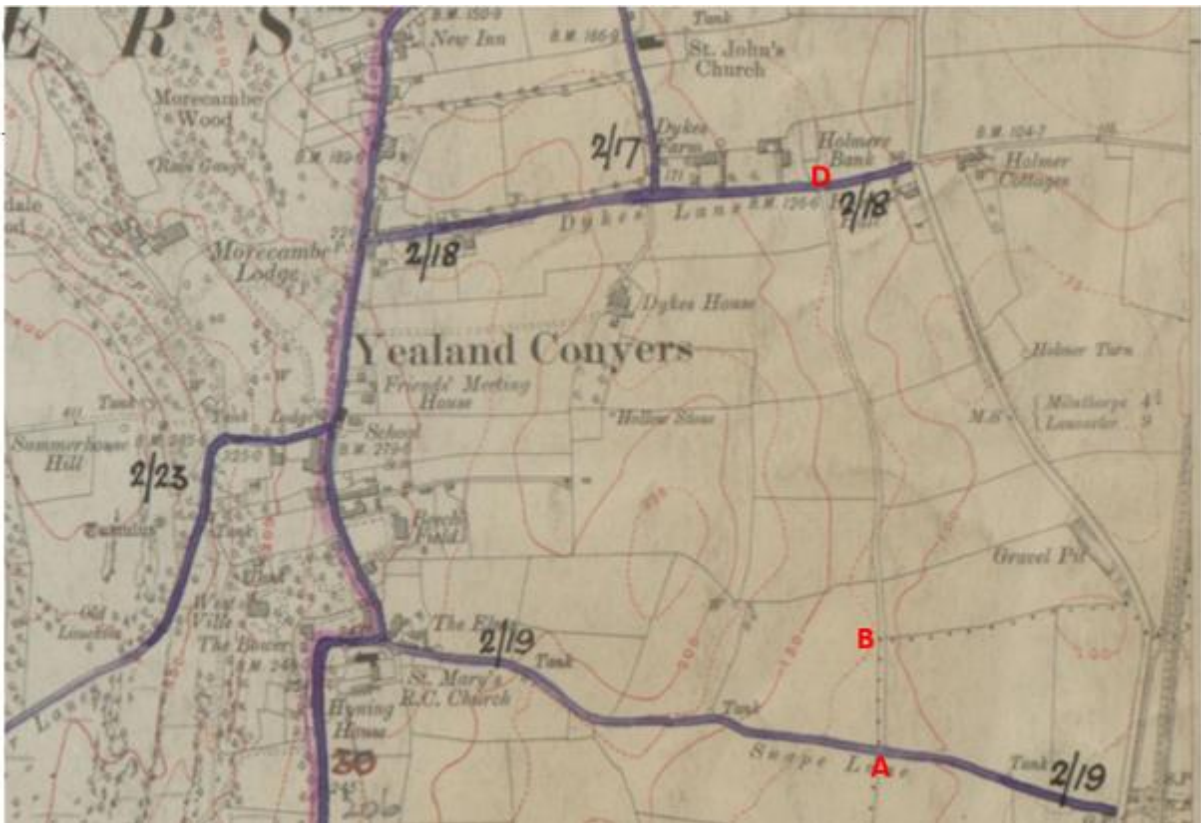
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
13	Footpath	Junction with path Nos.12 and 14 to Parish Boundary near Flat Wood.	0.10	
14	"	Junction with path Nos.12 and 13 to Parish Boundary towards Round Top.	0.17	
15	"	Yealand Conyers opposite Dykes Lane to junction with path No.6 and 12.	0.17	
16	"	Yealand Conyers near "Greenways" to Dykes Lane.	0.30	
17	Bridleway	Dykes Lane near Holmer Bank to Parish Boundary.	0.33	
18	Footpath	Rose Acre Lane near Blencratha to Parish Boundary.	0.25	
19	"	Rose Acre Lane to A.6 near Parish Boundary.	0.27	
20	Bridleway	A .6 near Holmer Cottages via Bridge over proposed motorway and canal bridge to link up with Bridleway 14. (Priest Hutton.)	0.90	
22	Footpath	Leighton Road to Parish Boundary at Crag Foot.	1.17	
23	"	Junction with Path No.12 near Sheepfold to junction with path No.10 via Deepdale Pond.	0.30	

Observations

The application route A-B is not recorded on the Revised Definitive Map First Review although B-D from the parish boundary through to Dykes



		Lane is recorded as a public bridleway.
Investigating Officer's Comments		The application route A-B was not considered to be a public path which should be recorded on the Definitive Map from the 1950s through to the 1960s or was omitted through oversight.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	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 highway was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many 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 public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



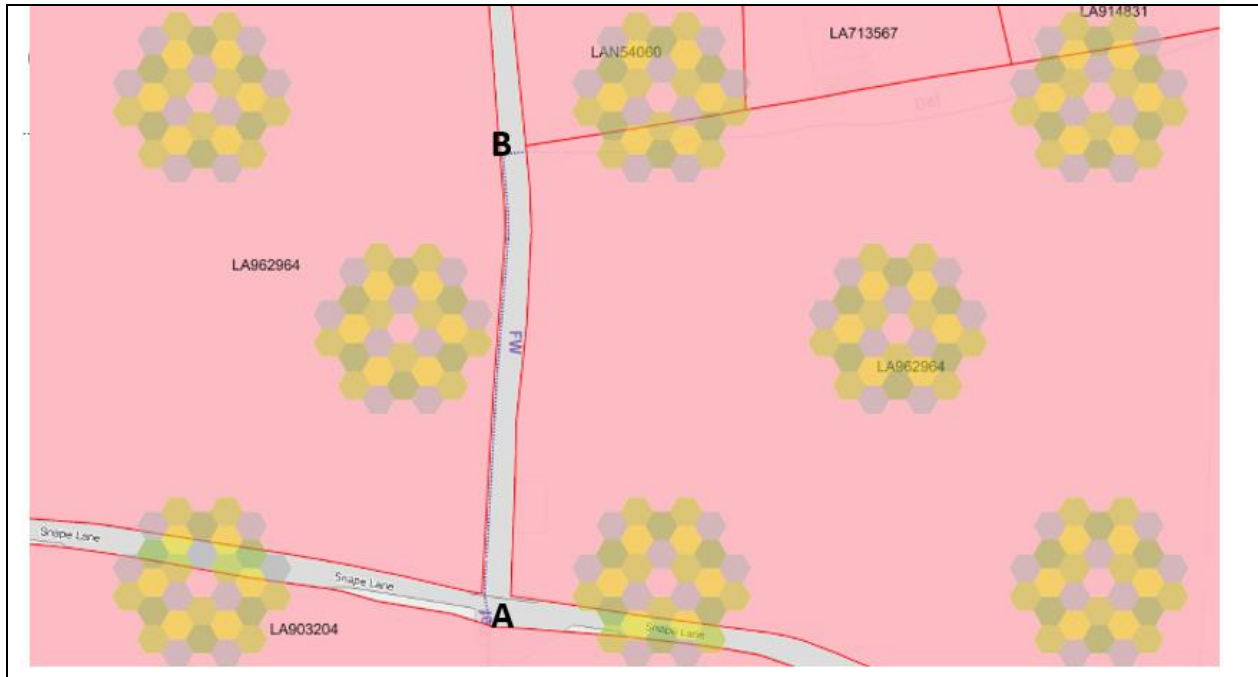
Handover Map



Highway adoption plan

Observations		The application route nor length B-D 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.
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.
<b>Highway Stopping Up Orders</b>	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 application route were found.

Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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.
<b>Landownership</b>		Information about ownership of the land crossed and abutting the route was obtained from the Land Registry.



Observations		Ownership of the land crossed by the application route and of length B-D is not registered but it is noted that land on either side of part of the application route is in the same ownership and is registered under the same title deed (LA 962964).
Investigating Officer's Comments		<p>The fact that ownership of the land crossed by the route A-D is not registered is consistent with the information provided in the Warton Tithe Award whereby the route was numbered separately to adjacent land and listed in the Tithe award as a Road. It is also consistent with the information provided in the District Valuation Records (Finance Act records) whereby the application route was excluded from the valuation process.</p> <p>The fact that ownership of the route is not registered – or otherwise known – is consistent with the view that the route carried public bridleway or carriageway rights.</p>

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

### Landownership

Ownership of the land crossed by the application route A-B and the length further north B-D is unregistered.

### 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-B and points B-D it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route between point A and point B was, at the time of the act not recorded as a public right of way and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the 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.

This is also the case for the application route from point B to point D - which at the time of the act was recorded on the Definitive Map and Statement as a public bridleway but was not on the List of Streets (maintained at public expenses). It does not appear to have been used mainly by the public in MPVs and there is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the 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.

## **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 often 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 this particular case no user evidence was submitted, and it is necessary to look solely at the map and documentary evidence available.

Of particular significance in explaining why part of the route (A-B) was never recorded as a public right of way on the Definitive Map appears to be the fact that it runs alongside the parish boundary between Warton with Lindeth and Yealand Conyers before turning to continue east along a field boundary.

In conclusion it appears that the application route has consistently shown as part of a route A-D which existed as a through route from at least 1818 and was shown on two early small scale commercial maps (Greenwoods map 1818 and Hennets Map 1830) as a cross road providing an early indication that the route was considered to be part of the public vehicular network at that time.

Further confirmation of this view is given by the depiction of the route in the relevant Tithe Maps and Awards. It is shown as a substantial bounded route on the Warton

Tithe Map of 1845 and appears to have been considered to be part of the road network. Further confirmation of this view is given by the Tithe Map and Award for Yealand Conyers 1846 which shows the route through to Dykes Lane which is clearly listed in the Tithe Award as a public road.

Since that time the route is consistently shown as a substantial bounded through route on all OS maps inspected.

The Finance Act Maps provide further evidence that the route was considered to be a public through route – probably vehicular - in the early 1900s.

The Handover Maps and county council highway records do not record the route as a publicly maintainable highway – possibly suggesting that by the 1900s use of the route by vehicles had diminished in favour of the two surfaced lanes (Dykes Lane and Snape Lane) providing access to the A6.

In light of all the available map and documentary evidence and from experience of dealing with other similar cases on and along parish boundaries, the omission of the application route from the Definitive Map appears to be an error. It is considered the length A-D was a through route and A-B was the same status as B-D. It makes no sense that a public bridleway was recorded to exist from Dykes Lane to the parish boundary (point B) but did not continue through to Snape Lane (point A). The parish boundary runs along part of the application route which could explain why it was originally omitted – as Warton Parish Council may have thought it an extension of Bridleway Yealand Conyers 17 – and believed that it would be recorded as part of that route.

The evidence considered in this matter would indicate that on balance the route A-D carried vehicles and the correct recording of the full route A-D should be as restricted byway.

## **Head of Service – Legal and Democratic Services Observations**

### Information from the Applicant

The applicant provided photographs and a number of extracts from maps and documents in support of the application all of which have been considered earlier in this report.

The maps and documents submitted comprised:

- Greenwoods Map of Lancashire 1818
- Hennets Map of Lancashire 1830
- 6 inch OS maps published in 1848, 1919, 1945
- 25 inch OS maps published in 1895 and 1913
- 1 inch OS maps published in 1898, 1947, 1955
- 1:25, 000 OS maps published in 1947 and 1961
- Warton Tithe Map and Award 1845
- Finance Act Map Sheet

## Information from Others

The Ramblers Association responded to our consultation to state that they have no objections. It was noted that members of the association had walked this bridleway several times and the track continues from the end of the currently recorded section to the road with no marked changes. They consider the fact that it currently stops at the parish boundary (Warton) to be an admin error (or anomaly) from the past.

One of the adjoining landowners responded to consultation, providing a copy of the consultation plan shaded to confirm the land in their ownership.

## Information from the Landowner

The entire length of the application route crosses unregistered land. Landowner of actual route is unknown.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of Making an Order(s) on A-B

- Map and other documentary evidence
- Absence of signs and notices along the route in relation to the restriction of public use
- Absence of action taken by landowners

#### Against Making an Order re A-B

- No points to make

#### In Support of Making an Order on B-D to upgrade to restricted byway

- Map and Documentary Evidence

#### Against making an Order on B-D to upgrade to restricted byway

- Potentially Evidence of one gate at point C but in recent years

## Conclusion

Highways require dedication by an owner and acceptance by the public. Here there is no specific dedication document and no user evidence.



The investigation has involved not only the unrecorded section A-B and what rights it may carry but also whether B-D is correctly recorded as bridleway. It is strongly advised that A-B will be the same status as B-D.

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

Common Law inference is drawn from all the circumstances including documentary evidence as in this matter.

From the above information contained in the report, the above evidence suggests that public rights exist over the full length of the route, from A to D, connecting two public vehicular highways. It is therefore suggested that A-B carries public rights being part of the route A-D.

The fact that the application route is not presently recorded 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.

The gate at point C on the recorded bridleway section does not appear to have existed historically and would not indicate a lack of intention to dedicate many years ago and in any event seems to be unlocked and open.

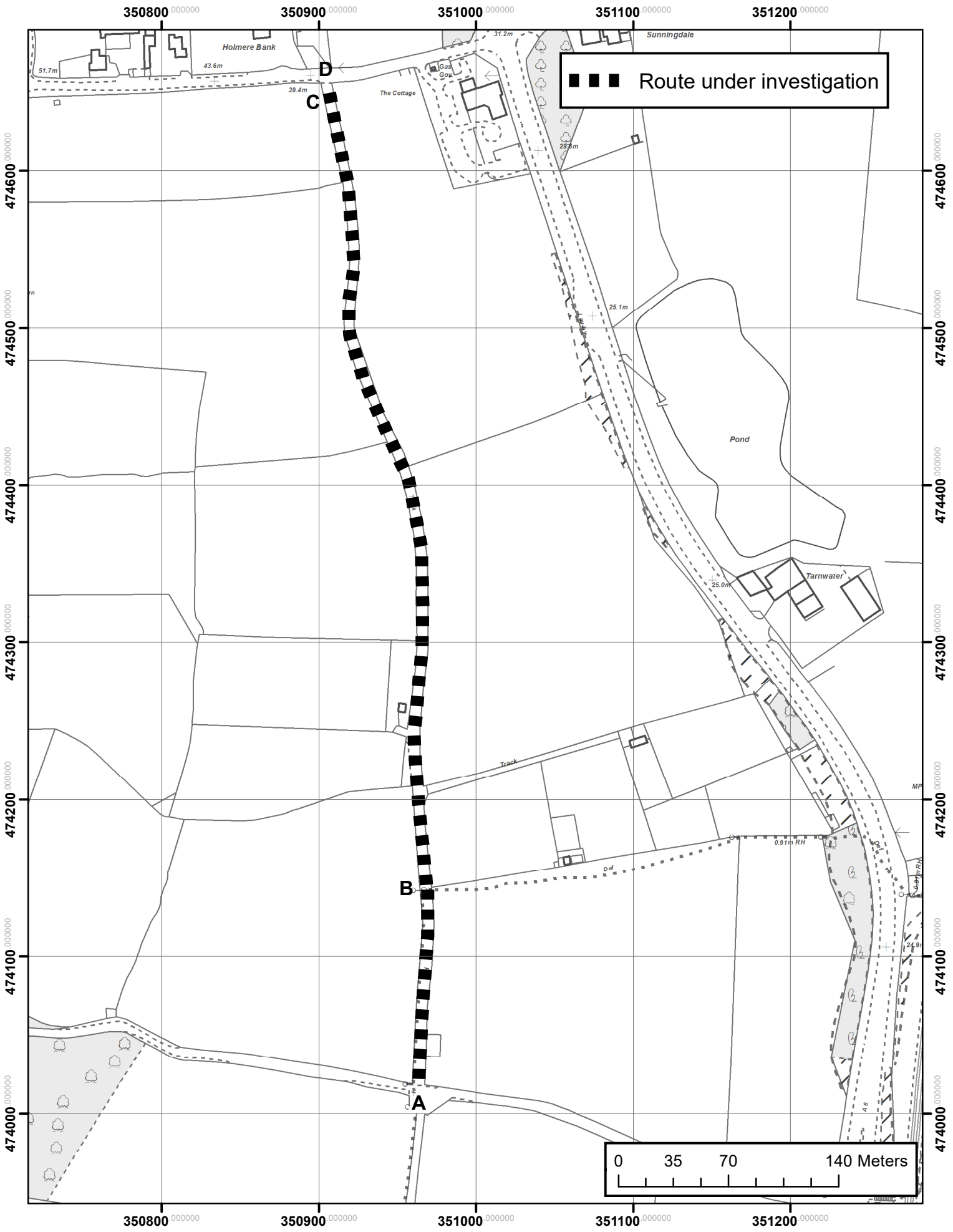
If Committee is content that A-B is part of a bridleway through route an Order could be made just to record that. However if Committee is content that there is sufficient evidence of an old vehicular highway between points A-D, the introduction of section 67 of Natural Environment and Rural Communities Act 2006 will have extinguished mechanically propelled rights leaving the route A-D to be appropriately recorded as a restricted byway. Taking all of the evidence into account and noting how the route was recorded on the old county maps and other documents and the investigations of the officers in the Planning and Environment service, it is suggested to Committee that on a balance of probabilities there is sufficient evidence that the whole route (including the sections B-D which are already recorded as a Bridleway) ought to be shown as a restricted byway. Committee may therefore feel it appropriate to accept the recommendation, decide that an Order be made and 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 relevant documents on File Ref: 804-633		Simon Moore, 01772 531280, Legal and Democratic Services
Reason for inclusion in Part II, if appropriate		
N/A		



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

Wildlife and Countryside Act 1981  
 Public Right of Way from Snape Lane, Warton to Dykes Lane, Yealand Conyers  
 Application 804-633

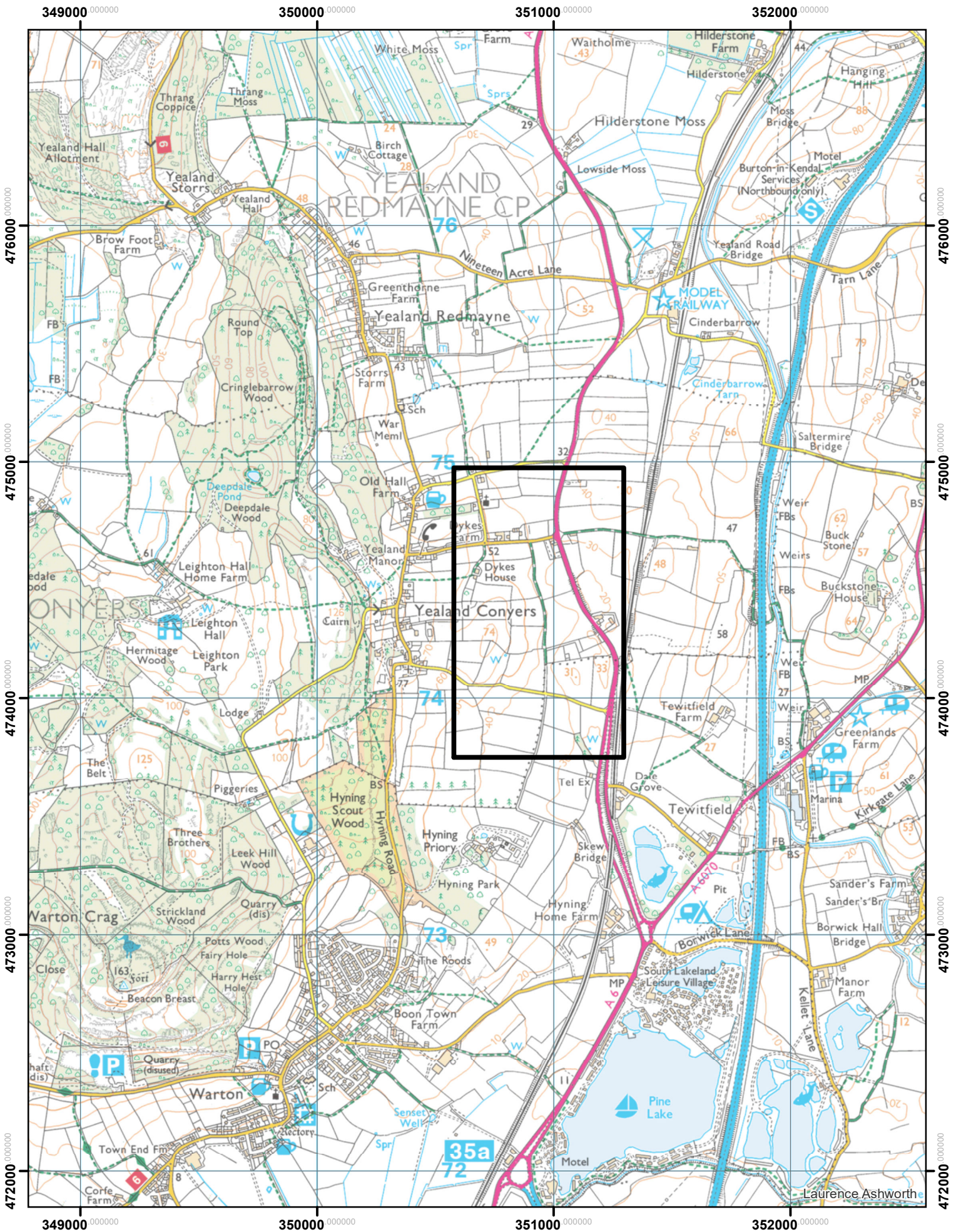
1:3,000



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

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## Regulatory Committee

Meeting to be held on 26<sup>th</sup> January 2022

### Part I

Electoral Division affected:  
Lancaster Rural North

### **Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath along Hobson's Lane, Over Kellet (Annex 'A' refers)**

Contact for further information quoting reference number 804-678:  
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#### **Brief Summary**

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath along Hobson's Lane, Over Kellet.

#### **Recommendation**

That the application for the addition on the Definitive Map and Statement of Public Rights of Way of a Footpath from the junction of Borrton Lane U18835 and Capernwray Road U18835 along Hobson's Lane to a junction with 1-24-FP15 be not accepted.

#### **Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from the junction of Borrton Lane U18835 and Capernwray Road U18835 along Hobson's Lane to a junction with 1-24-FP15.

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

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

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

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

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

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

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

## **Consultations**

### Lancaster City Council

Lancaster City Council provided no response to consultation.

### Over Kellet Parish Council

Over Kellet Parish Council provided no response to consultation.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

## **Advice**

### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	5382 7184	Open junction of Hobson's Lane (the application route) with Borrton Lane and Capernwray Road
B	5398 7167	Junction with 1-24-FP 15
C	5400 7164	Point on 1-24-FP 15 at which the original route of the footpath crossed Hobson's Lane

### **Description of Route**

A site inspection was carried out in September 2021.

The application route is shown on the attached plan by a thick dashed line between point A and point B. Also marked on the Committee plan – and referred to in the map and documentary evidence below - is point C.

In 2007 the route originally recorded as 1-24-FP 15 was diverted under a legal process. As a result that part of Hobson's Lane from point C to point B is recorded as a public footpath and is therefore not included as part of the application route.

The applicant did not submit any modern user evidence in support of the application and so the relevance of point C in considering the history of the route is important as prior to 2007 the basis of the application was that use was made of the route A-B-C to link to the footpath recorded as 1-24-FP 15 prior to it being legally diverted onto part of Hobson's Lane.

At point A the public vehicular road changes name from Capernwray road to Borrton Lane at the junction with the application route – known as Hobson's Lane.

From point A the route extends in a south easterly direction. The junction with the public vehicular road is wide and unrestricted. Access onto the application route is along a tarmac road. The road is 9 metres wide at point A bounded by well maintained stone walls on either side.

The full width is tarmacked but it appears that the original route had been widened and on examination of older maps it is evident that the application route extends only along the north eastern half of the tarmac road to a width of approximately 5 metres – as indicated by a slight change in the tarmac.

After approximately 30 metres the tarmac road splits with a wall running centrally. The application route follows the tarmac road along the north east side of the wall whilst an access road leading directly to Hobson's House runs parallel but on the south west side of the wall.

The application route provides access to Capernwray House Farm, including a large number of industrial/farm buildings located immediately north of the route, continuing as a tarmac road through to point B.

At point B a wooden stile is located in the hedge on the south west side of the application route which is waymarked as part of 1-24-FP 15. From point B the route of 1-24-FP 15 continues along Hobson's Lane to point C where it is crossed by a large wooden gate with gap sufficient for pedestrians to pass through as it enters a caravan park. The route between B and point C appears not to be used as vehicular access to the caravan park or to Hobson's House – although it would be wide enough to sustain such use.

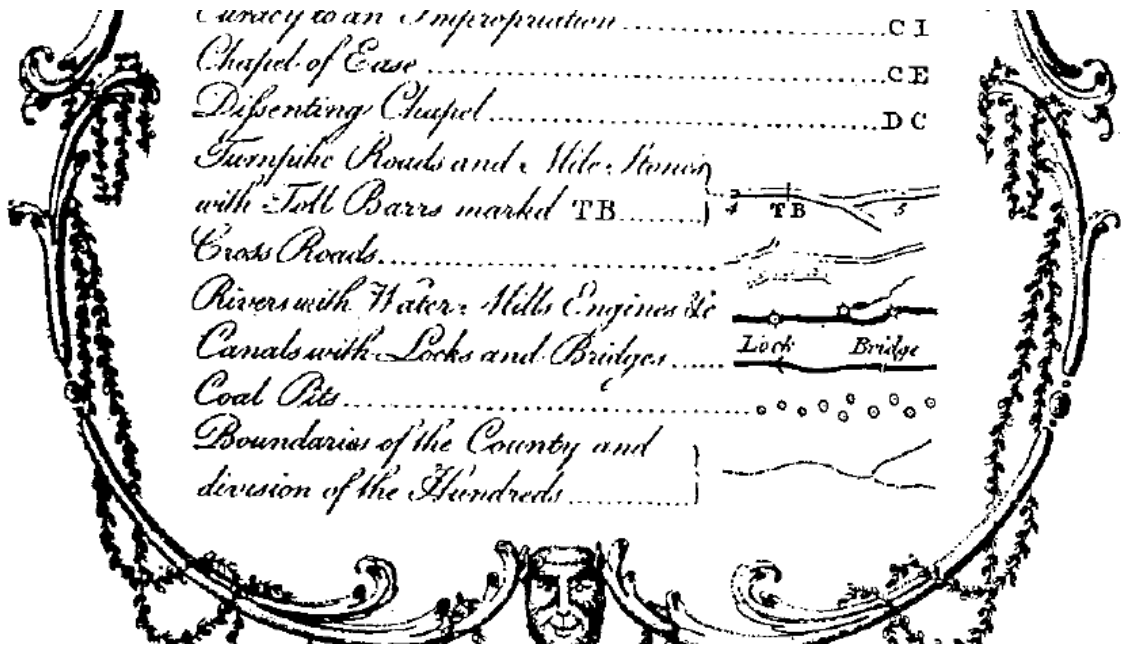
The total length of the application route (A-B) is 240 metres.

### Map and Documentary Evidence

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

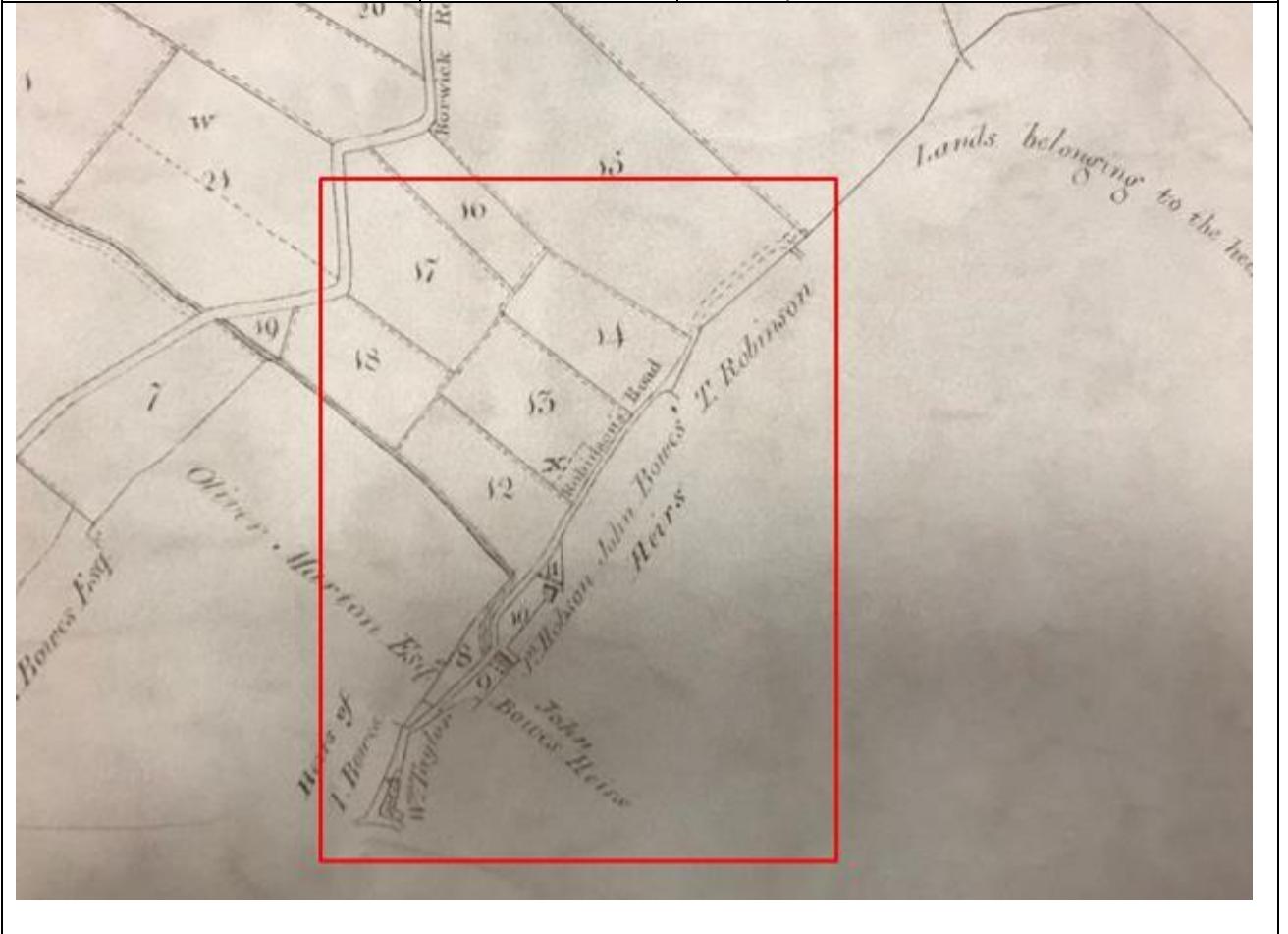
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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

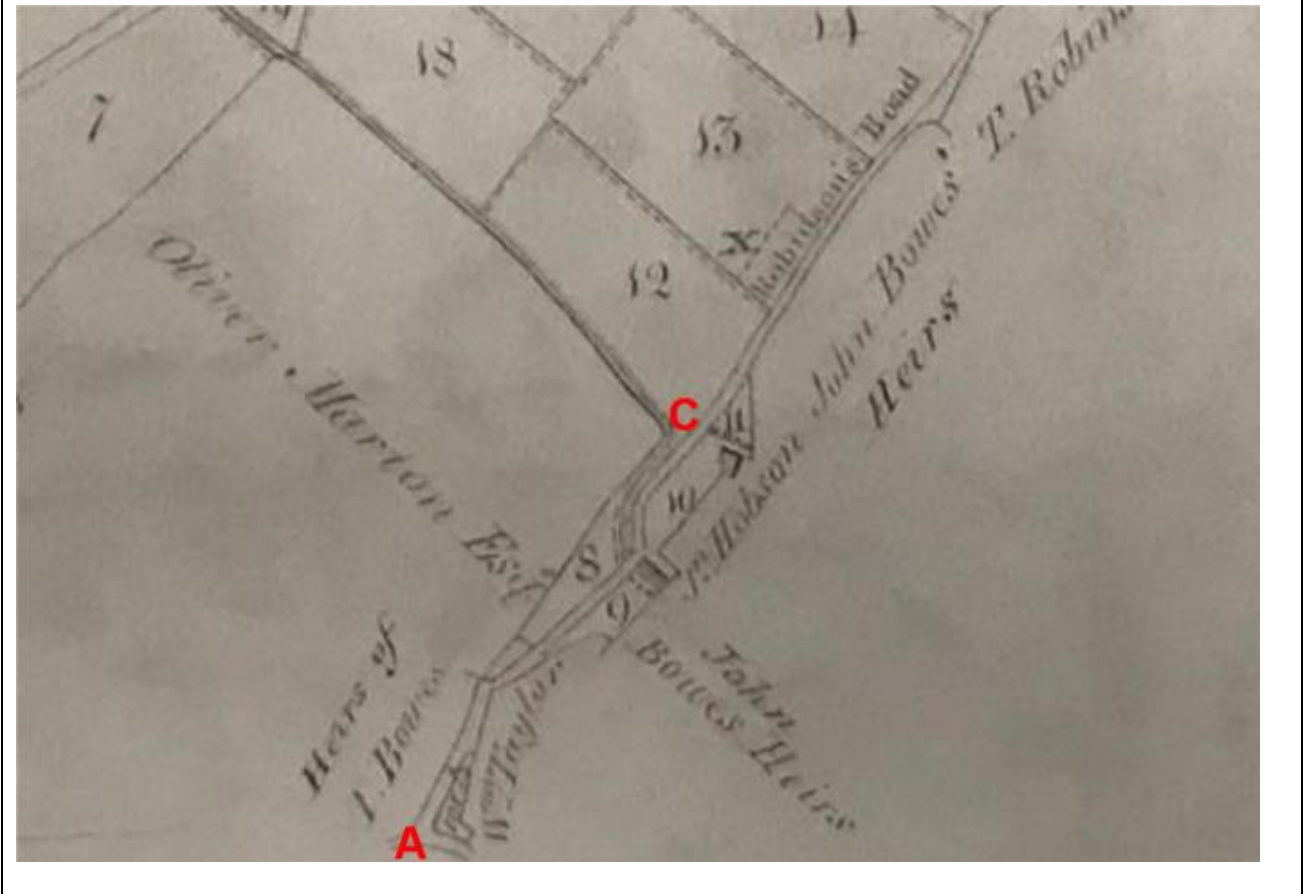




Observations		A route consistent with the application route is shown extending from Borron Lane at point A to provide access to an area of moorland. The route is shown as a cross-road although it is noted in this instance that it is not shown as a through route but provides access to a large area of moorland instead. No building (Hobson House) is shown but there is a square area of land shown immediately to the west of the route at its southern end which may have been where the property was located.
Investigating Comments	Officer's	The application route existed in 1786. 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 route did not form part of a through route so although access may have been the route may have been used by a limited number of people who required access to the moor.
<p><b>Over Kellet Inclosure Act Award and Maps</b>  <b>CRO Ref: AE/5/9</b></p>	1805	<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> <p>Over Kellet Moor was enclosed by a private act of parliament dated 1779 (volume 2). The Inclosure Award is available to view at the CRO (Ref: AE/5/9) and is dated 1805.</p>





# References.

N<sup>o</sup>

Particular  
Allotments - Q  
A R P

<i>Lands sold to the Canal Company N<sup>os</sup> 2A &amp; 24</i>	13. 1. 3/4
<i>The Public Roads viz Over Kibbet Road, Lancaster Road, Borwick Road, &amp; Caponwray Road contain</i>	14. 2. 30
<i>The Private Roads viz Robinson's Road Withwaite Road, Timmerig Road, Kirkhouse Road, Moor Gate Road, Birtlandbarrow Road &amp; a Road to a Quarry</i>	3. 3. 11
<i>Two public Quarries</i>	1. 0. 0
<i>1 One twenty fourth Part to the Lord of the Manor</i>	31. 2. 19
<i>2 Oliver Marton Esq.</i>	35. 1. 21

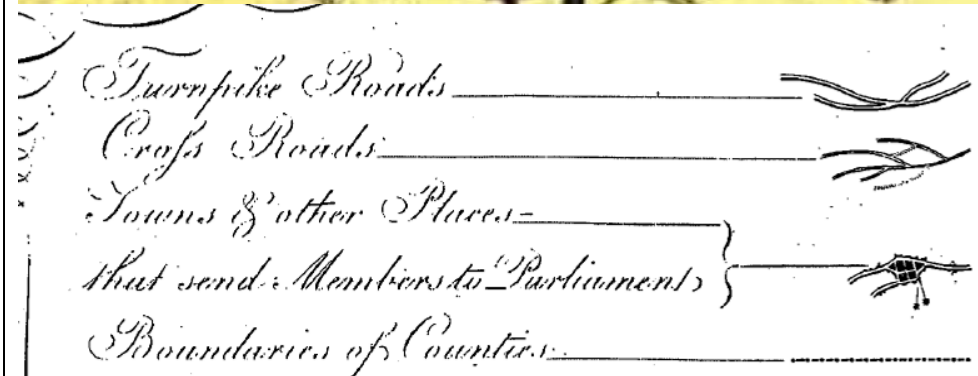
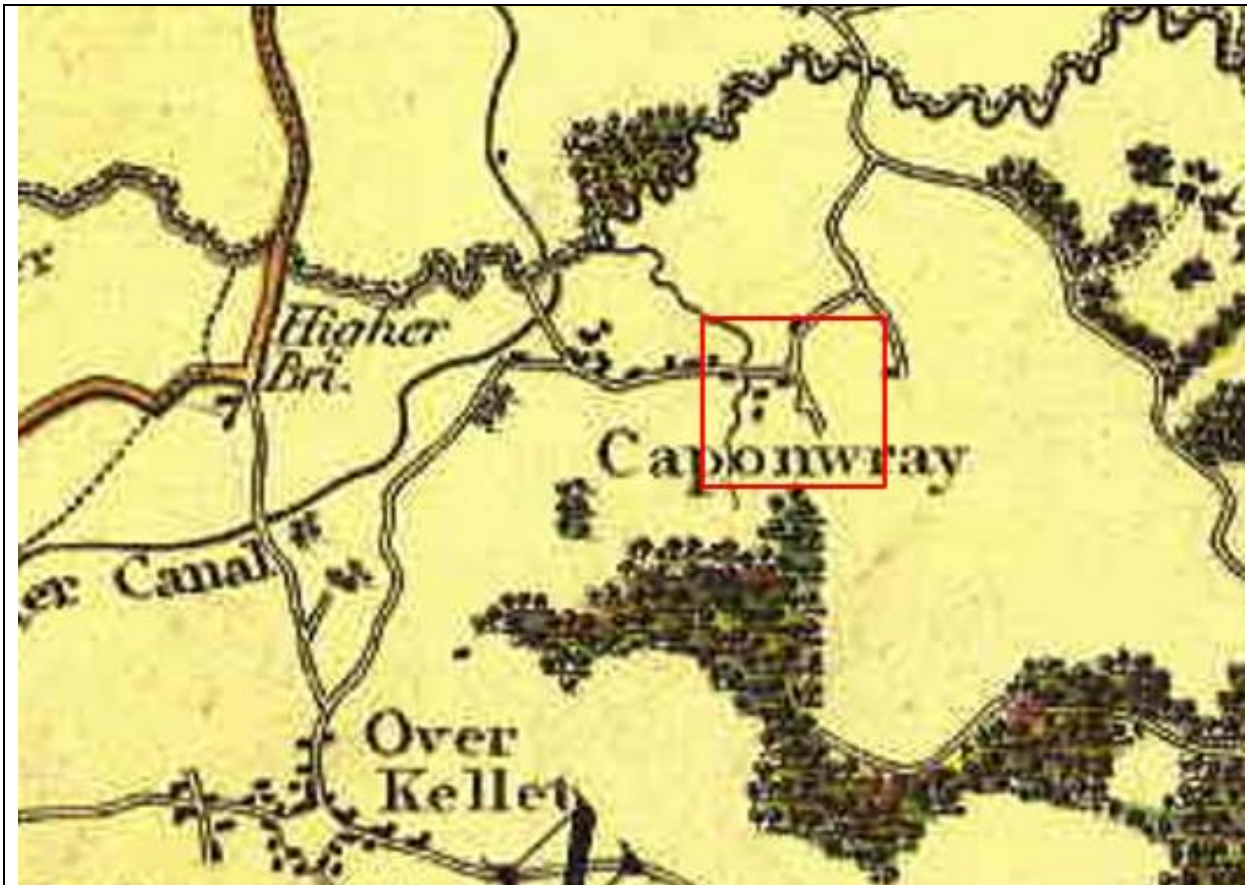
The Inclosure Award map shows the area over which the application route runs although it is clear that the land to be inclosed is largely to the east of the route.

A route consistent with the application route is shown from point A extending from the junction with Capernwray Road to point C where an unnamed building is shown adjacent to the route which approximates to the location of Hobson's House (point C). The route between point A and point C is shown to zig zag between plots numbered 8, 9 and 10 - all of which are listed on the Map as having been inclosed and Awarded to private individuals.

Beyond point C the route is shown to continue and is named as Robinson's Road (it is not clear whether this name also applied to the application route) providing access to two plots inclosed as part of the process (allotments 15 and 30) and to land outside the remit of the inclosure which is marked on the map as being owned by the Heirs of J Barrow Esq.

Robinson's Road is described on the

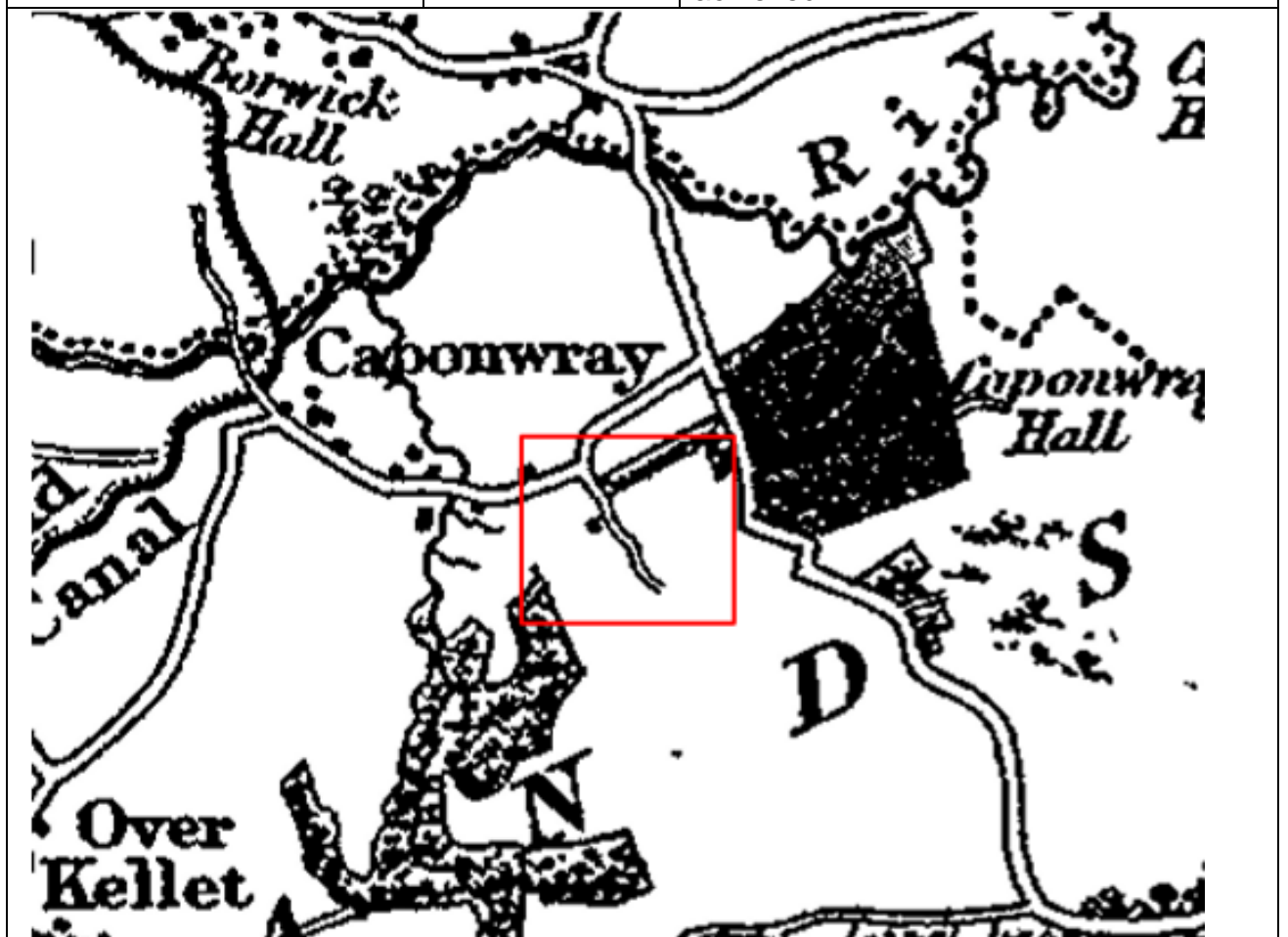
		<p>Inclosure Map as a Private Road and is described in the same way in the Inclosure Award which specifically refers to the creation of a private road to be known as Robinson's Road and set out at a width of 20 feet. The route is described as starting at the junction with Capernwray Road and running in a south easterly direction on the west side of allotments 8, 12, 13 and 14 and over the south west end of allotment 15.</p>
		<p>A route largely consistent with the application route from point A appears to have been acknowledged – or possibly created - as part of the inclosure process as access to allotments and to land outside the remit of the inclosure Award. It is named on the map as Robinson's Road and specified as being a private road.</p> <p>A building consistent with the location of Hobson's House is shown and there is reference to a landowner named Jonathon Hobson on the map which may explain the origins of the name 'Hobson House' and 'Hobson Lane'. It also appears apparent that the route named as Robinson's Road would have provided access to land not affected by the Inclosure suggesting that the route may – at least in part – have existed prior to the Inclosure process being carried out – particularly as the start of the route from point A is shown on Yate's Map published in 1786. The application route does not however appear to have been considered to be a public route at that time.</p>
<b>Greenwood's Map of Lancashire</b>	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>

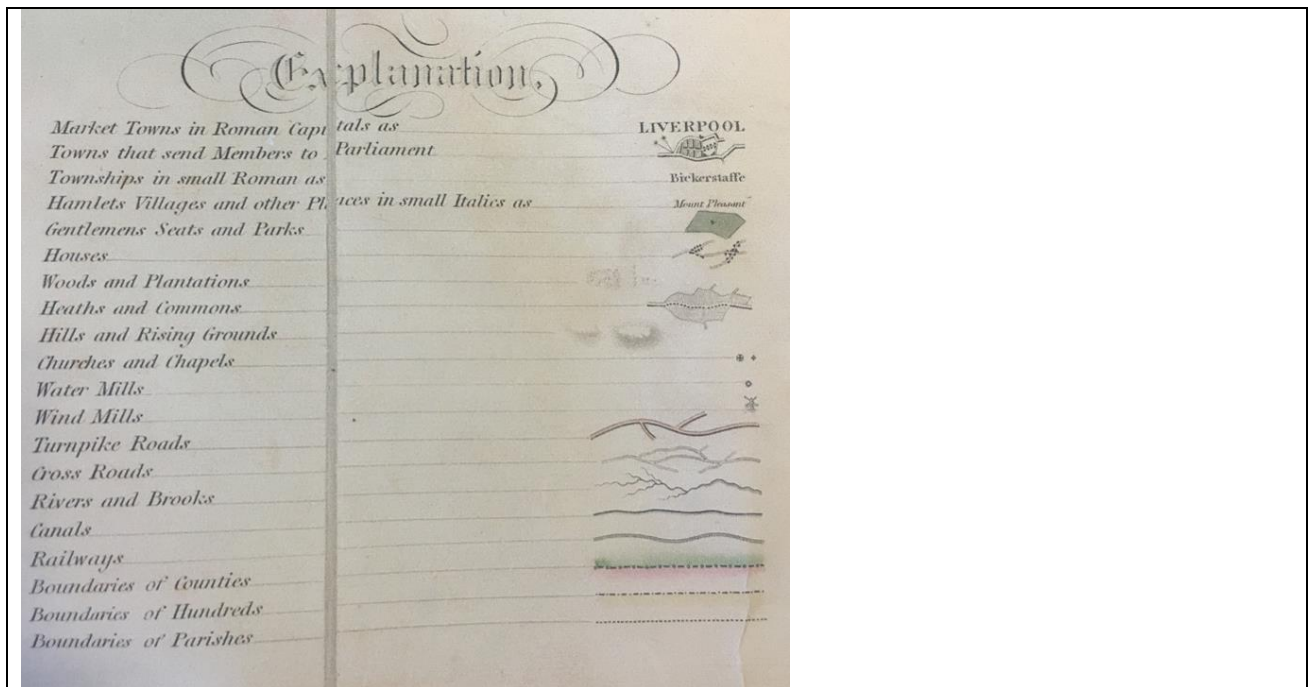


Observations		The application route is shown as a cross road providing access to an open area of land. It appears to have been extended since it was originally shown on Yates' map which is consistent with how it was shown on the Inclosure Plan.
Investigating Comments	Officer's	The application route existed in 1818 providing access onto an open area of land. Greenwood was known to record both public and private routes and in this instance the route is shown leading directly onto land – not as a through route – so its inclusion on the map does not indicate that the route was necessarily considered to be a public



<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<p>one. Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>
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<p>Observations</p>		<p>The application route is shown providing access to and past Hobson House – which is shown but not named on the map. The route is shown as a cross road leading onto an open area of land.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial route in 1830 providing access to a property and to an open area of land. It is shown as a cross road but it is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths so if a footpath – or footpaths existed as a continuation of the road, or leading off it they were not likely to be shown.</p>

<b>Canal and Railway Acts</b>		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 land crossed by the application route was not affected by any existing or proposed canals.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	1840	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.



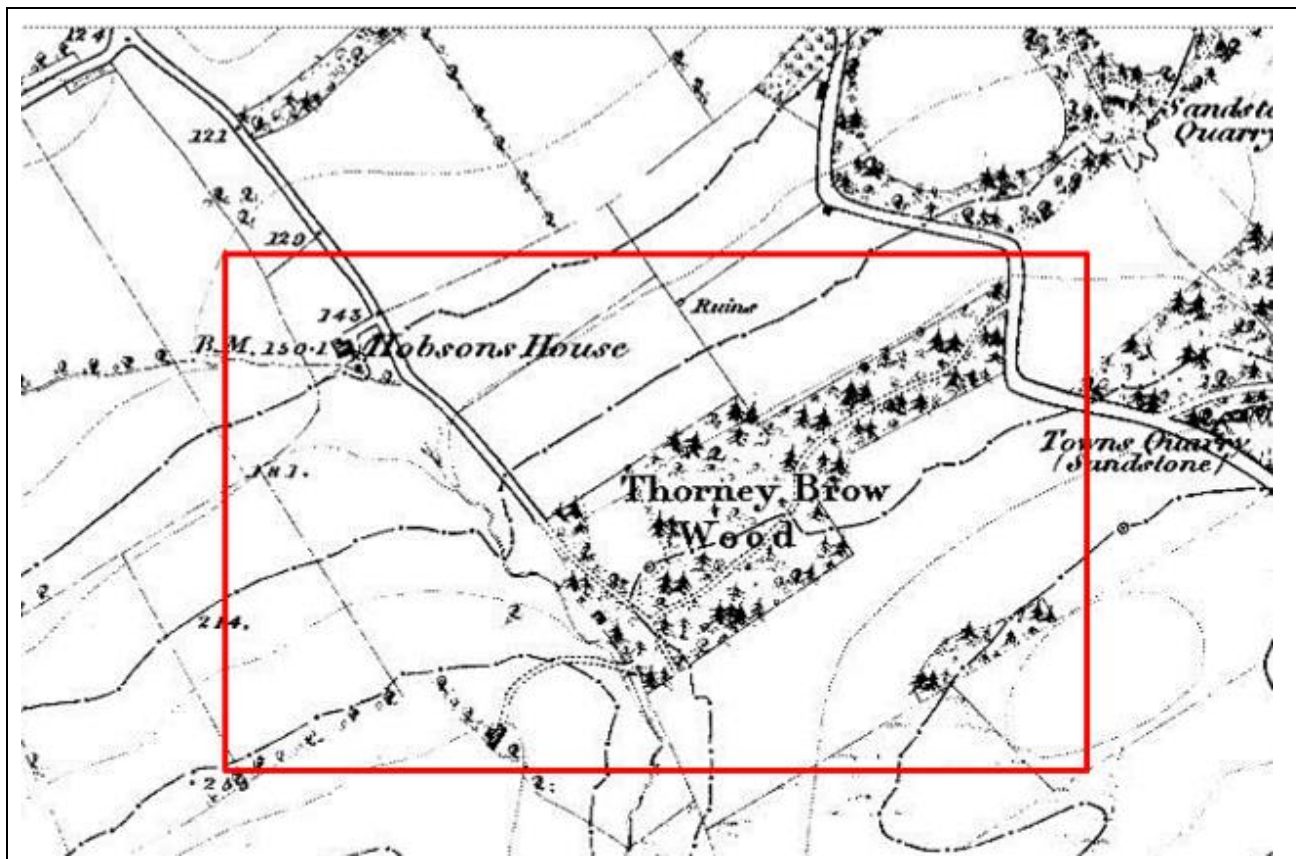
Township of Over Kellet	Mary Waines	475	Two Cottages	5	1
	Empty	462	Garden	11	1
				16	2
	Thomas Hobne	46	Cottage	2	1
	Themselves	7	School	2	
		11	Parish and Waste	5	
		274	Waste	11	
		475	Road	0	
		810	Roads	48	29
		811			
		874	Quarry	2	28
		866	Lane	3	28
	879	do	1	15	
			48	26	

Observations		<p>The application route is shown as part of a longer bounded route which provides access to Hobson House (plot 466 – owned by James Park and occupied by John Cannon) and to land at the south end of the road which was owned and occupied by George Marton Esq.</p> <p>The road – including the application route – is not numbered.</p> <p>An examination of the Tithe Map as a whole shows that a significant number of roads known to carry public rights are not numbered although a few are and the Tithe Award specifies them as being in the ownership of the Township with no tithes payable.</p>
Investigating Officer's Comments		<p>The application route existed as part of a longer route providing access to Hobsons House and land in private ownership. Access may have been</p>

		available to the public but there is no indication that any through routes – on foot or otherwise, existed at that time.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet 25 (XXV)</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>



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



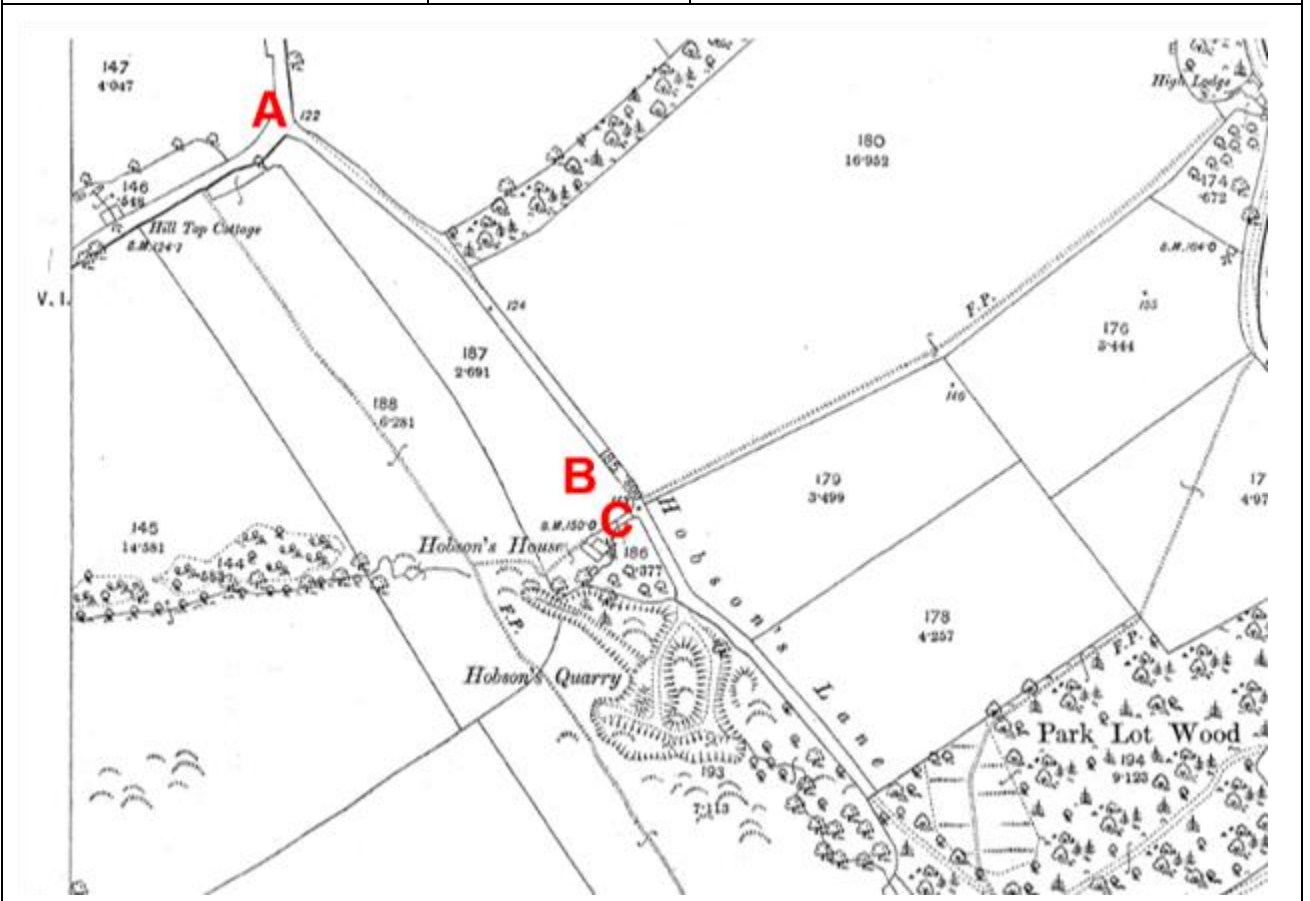
<p>Observations</p>		<p>The application route is shown on the map as part of a longer bounded route providing access to Hobson's House and continuing south east to provide access to Thorney Brow Wood and to an unnamed building (identified as the Game Keeper's Tower on later editions of the map). An unfenced track is shown passing through the wood leading to Borwick Road.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1844-45 as part of a longer route which, for the first time, is shown as a through route connecting to Borwick Road as well as providing access to properties and land. The route appears to have been capable of being used – at least on foot.</p>
<p><b>Cassini Map Old Series</b></p>		<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>



**One-Inch sheets used to create this map.**  
 Sheet 91, N.E. Quarter, pub. 31st December 1852  
 Sheet 91, N.W. Quarter, pub. 31st December 1852  
 Sheet 98, N.E. Quarter, pub. October 1864  
 Sheet 98, N.W. Quarter, pub. April 1865  
 Sheet 98, S.E. Quarter, pub. March 1865  
 Sheet 98, S.W. Quarter, pub. January 1864

Observations		The application route is shown on the map as part of a longer substantial route. The route is shown extending as far as some woodland but no through route is shown.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those

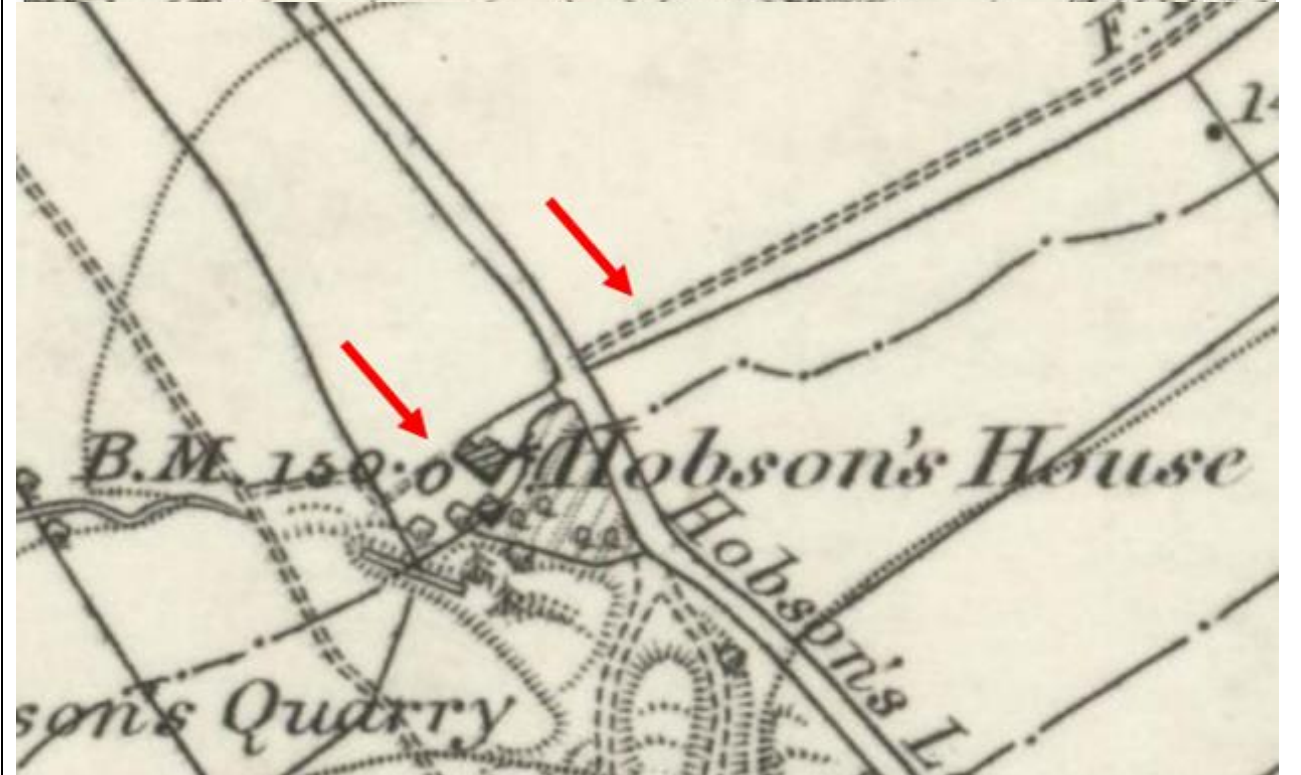
		<p>travellers.</p> <p>Whilst the application route is shown – suggesting that it would be capable of being used – it is not shown as a through route suggesting there may have been little or no public use made of it. Footpath are not generally shown on a map of this scale so it is necessary to look at a larger scale map (for example the 6 inch OS detailed above) to see whether any other routes connecting to the application route existed.</p>
<p><b>25 Inch OS Map</b> <b>Sheet XXV.2</b></p>	<p>1891</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.</p>



<p>Observations</p>		<p>The application route is shown on the map as a substantial bounded route providing access to Hobson's House, Hobson's Quarry and Park Lot Wood.</p> <p>The route is not gated at point A and access onto it appears to be available. Beyond point C the route is named as Hobson's Lane through to the gated access into Park Lot Wood. The full</p>
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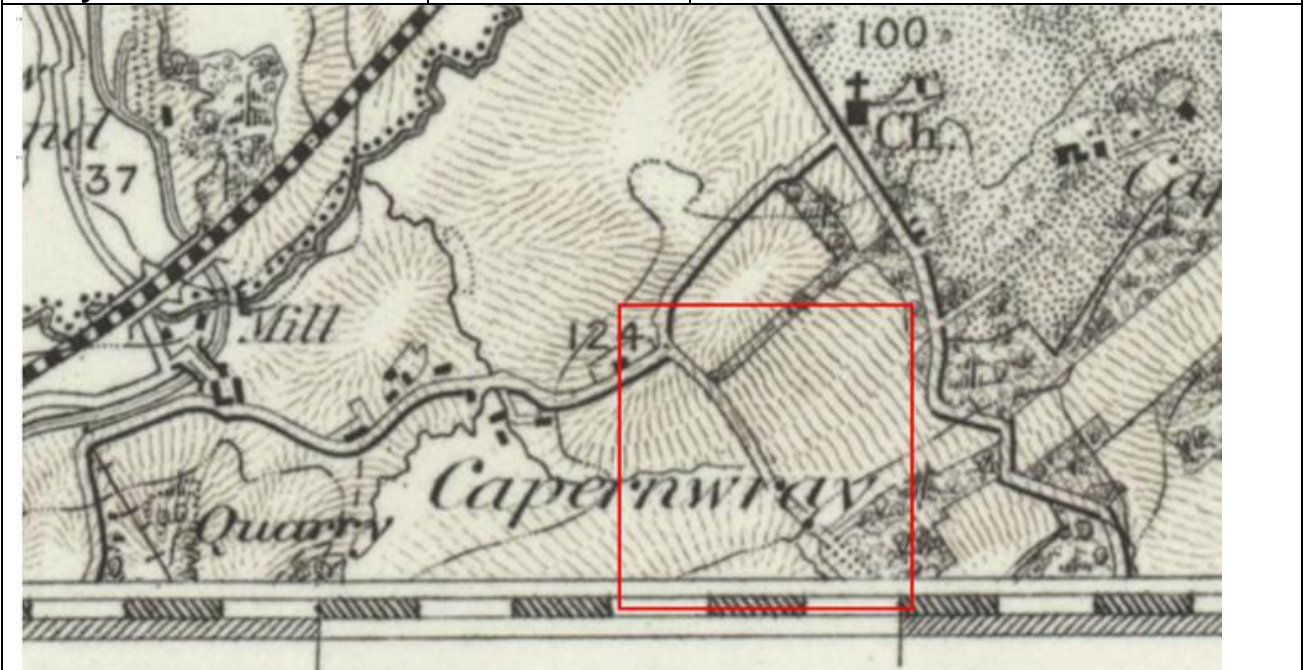


		<p>length of the bounded route from point A through to the gate into Park Lot Wood has one Parcel number and acreage.</p> <p>Of significance is the fact that a number of routes labelled as footpaths are shown on the map. A footpath is shown running parallel to the application route/Hobson's Lane from Borrton Lane to a point to the west of Hobson's Lane where it meets a footpath which started further east at High Lodge on Borwick Road, crosses Hobson's Lane at point C and then continues past Hobson's House through to a junction with the footpath from Borrton Lane. A further footpath is shown from that junction continuing south south east to the Game Keeper's tower and then east through Park Lot Wood where a number of routes are shown continuing through to Borwick Road.</p> <p>The application route is not shown with a thickened line down the south/east side in contrast to Borrton Lane and Borwick Lane which are both shown with a thickened line down one side.</p>
Investigating Officer's Comments		<p>The application route existed in 1890. It is shown on the map as Hobson's Lane suggesting that it was known locally by that name and it is intersected by footpaths which could be used by crossing – but not necessarily travelling along – the application route.</p> <p>It is not shown with a thickened line along the east side suggesting that it was not a metalled public road kept in good repair by the highway authority. Its depiction is not inconsistent with use of the route by the public if other evidence indicates such use.</p>
6 inch OS Map Sheet 25	1894	OS 6 inch map surveyed 1890 and published 1894.

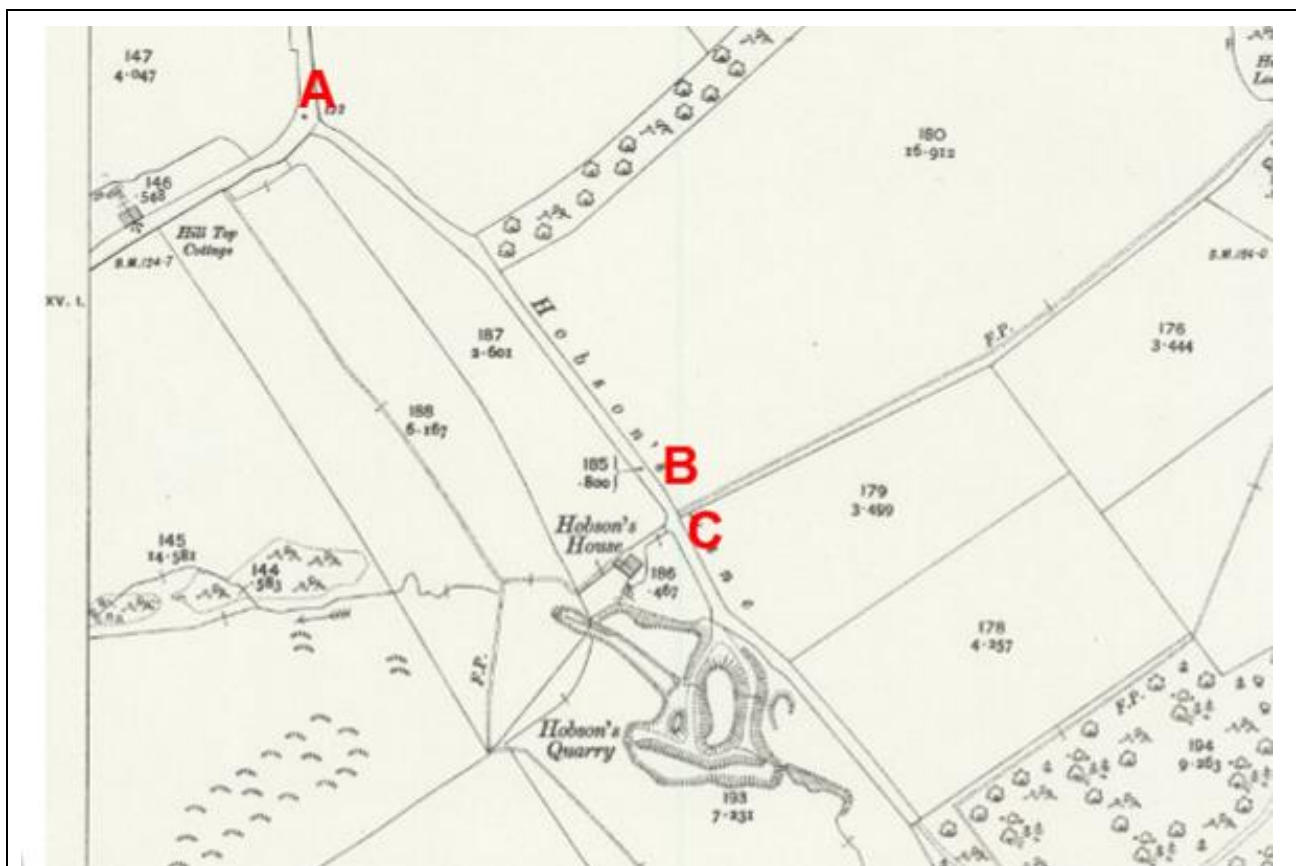


Observations		The application route is shown as part of a longer substantial fenced route providing access to Hobson's House, Hobson's quarry and Park Lot Wood. In the same way as it is shown on the larger scale 25 inch OS map detailed above.
Investigating Comments	Officer's	This map was submitted along with many others by the applicant who

		<p>considered that it showed the footpath from High Lodge (1-24-FP 15) terminating on Hobson's Lane with the inference that it would then have been necessary to walk along Hobson's Lane (and depending on the direction taken - the application route).</p> <p>On close examination of the map, and recognising that it was produced as a result of the same survey (1890) as the 25 inch OS map detailed above, the map does show a route crossing Hobson's Lane and continuing west to meet the path shown starting on Capernwray Road and continuing around the quarry.</p> <p>The 6 inch OS confirms the existence of the application route as part of a substantial bounded track which appeared capable of being used. It does not however appear that it would be necessary to have used the route on foot to get to Capernwray Road as an alternative route – marked on the map as a footpath was shown.</p>
<p><b>1 inch OS Map Sheet 49 Kirby Lonsdale</b></p>	<p>1898</p>	<p>1 inch OS map surveyed 1843-57 and published 1896.</p>



Observations		The application route is again shown as part of a longer route leading to an area of woodland.
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 roads shown were accessible at least on horseback. This is not necessarily an indication of whether use made of the route was public or private.
<b>25 inch OS Map Sheet XXV.2</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.

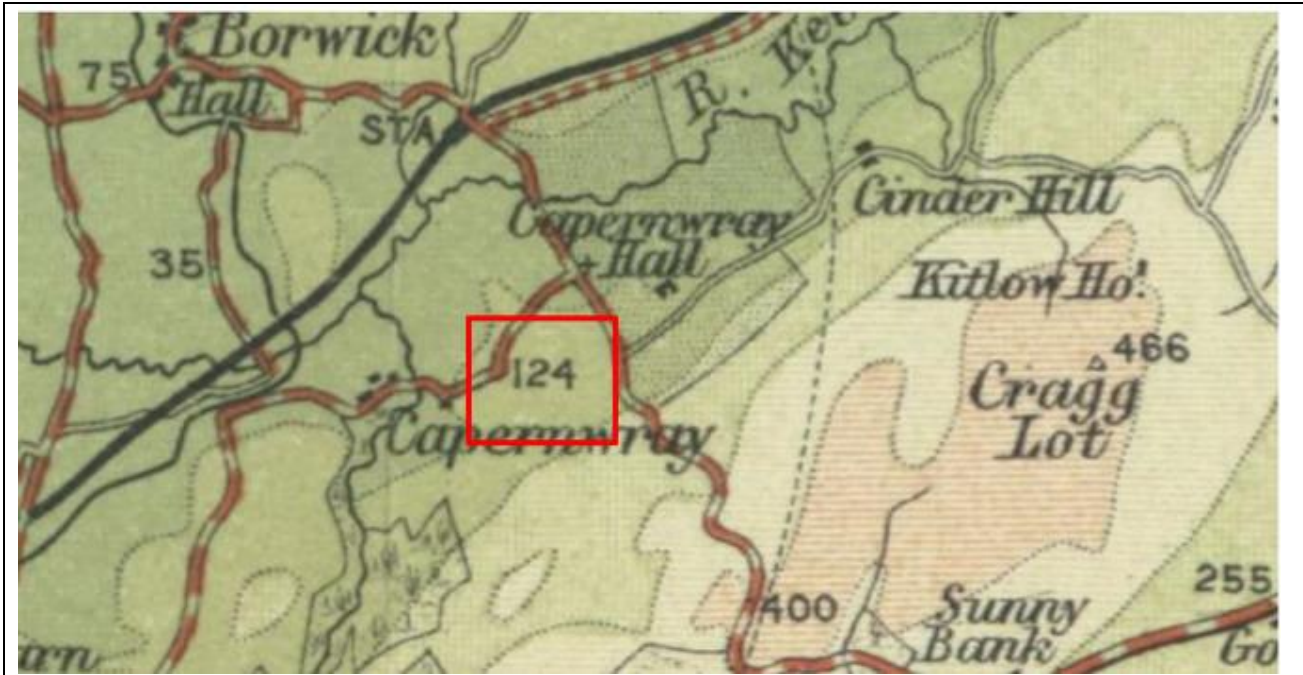


<p>Observations</p>		<p>The application route is shown and named as part of Hobson's Lane. The footpath crossing the lane at point C is shown from the east and then passes to the north of Hobson's House to continue around the quarry which is shown as having been extended since the 1890s. The footpath from Capernwray Road which runs parallel to Hobson's Lane to meet the footpath circumnavigating the quarry is also shown.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1910 as part of a longer route which appears to have been capable of being used. A network of routes labelled as footpaths are shown crossing Hobson's Lane and running parallel to it suggesting pedestrian use – whether public or private – was made of these paths. It is not known from looking at the map whether they were used in addition or instead of the application route and continuation of Hobson's Lane.</p>
<p><b>Bartholomew half inch Mapping</b></p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic</p>

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



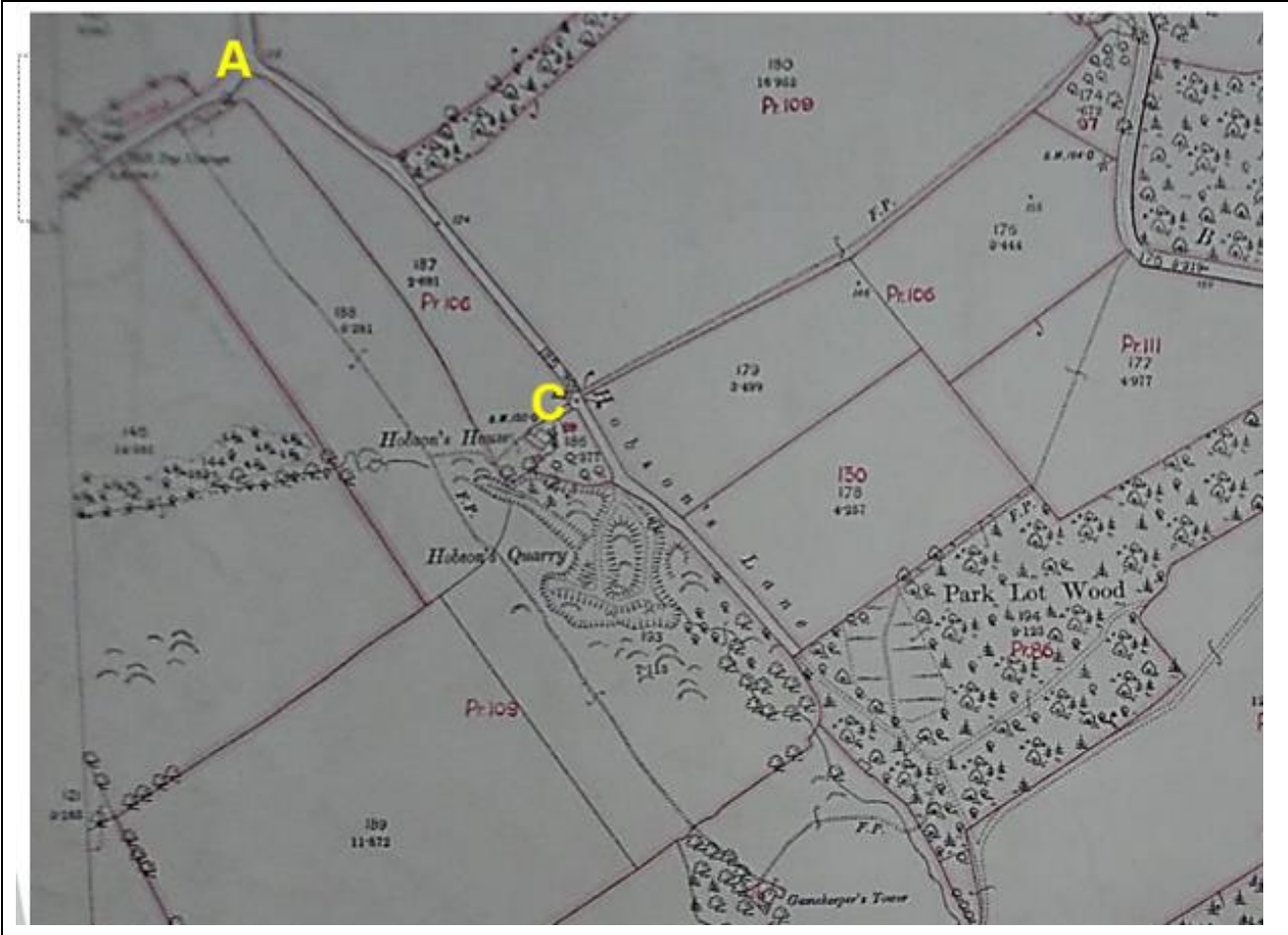
1941

Observations		The application route is not shown on any of the three editions of the small-scale Bartholomew's maps published between 1905 and 1941.
Investigating Comments	Officer's	As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that the route had been purposely omitted by Bartholomew

		<p>suggesting that if a route did still exist it was not considered to be a significant route at that time and was not considered to be a public vehicular road. It may have been used as a footpath but footpath – and to some extent bridleway – users were not the target customers for these maps so routes used by the public on foot – and possibly horseback – would not necessarily be shown.</p>
<p><b>Finance Act 1910 Map</b></p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public 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</p>

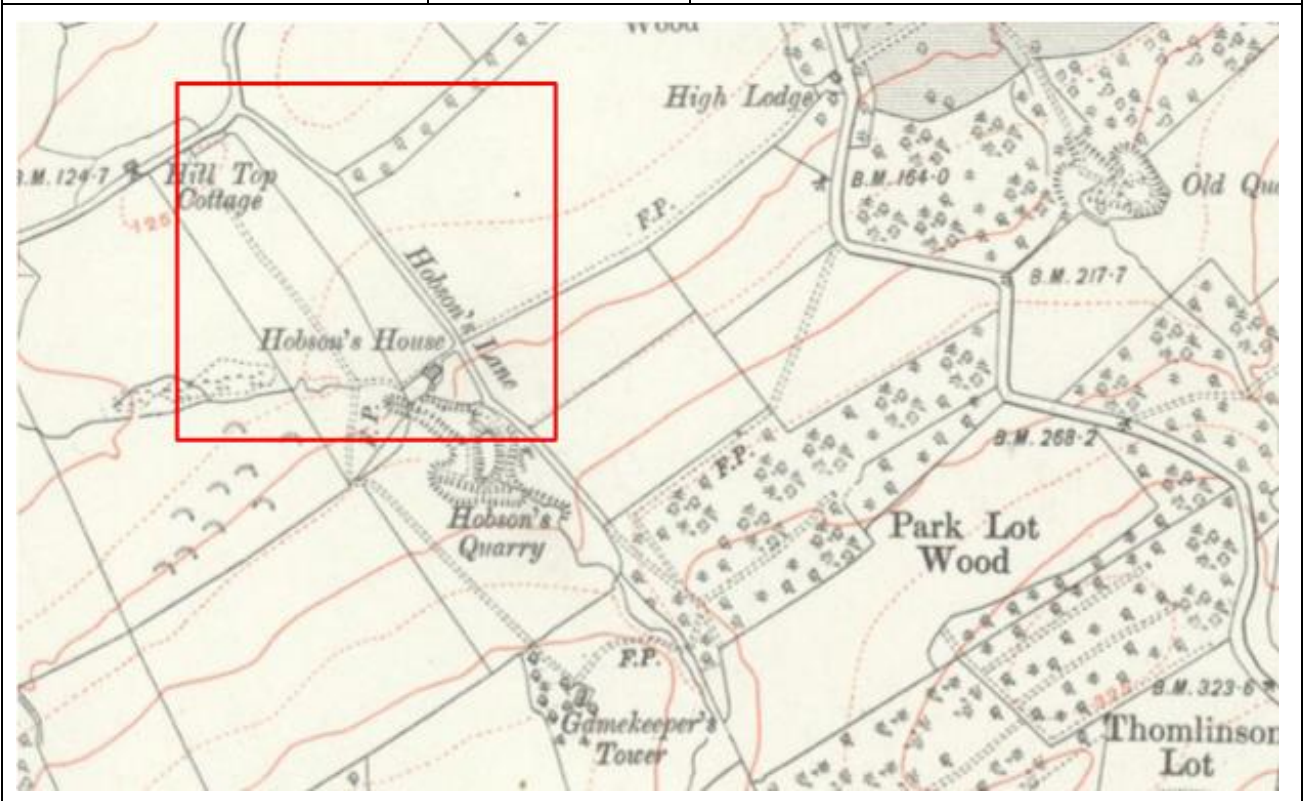


	<p>reduction was claimed this does not necessarily mean that no right of way existed.</p> <p>Instructions given to the surveyors at that time said that parcels 'should continue to be exclusive of the site of the external roadways' advising that roadways were routes 'subject to the rights of the public'.</p> <p>The exclusion of a route may therefore indicate that public use was known but not necessarily vehicular status.</p> <p>There were however other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership (shared occupation roads with no single owner).</p>
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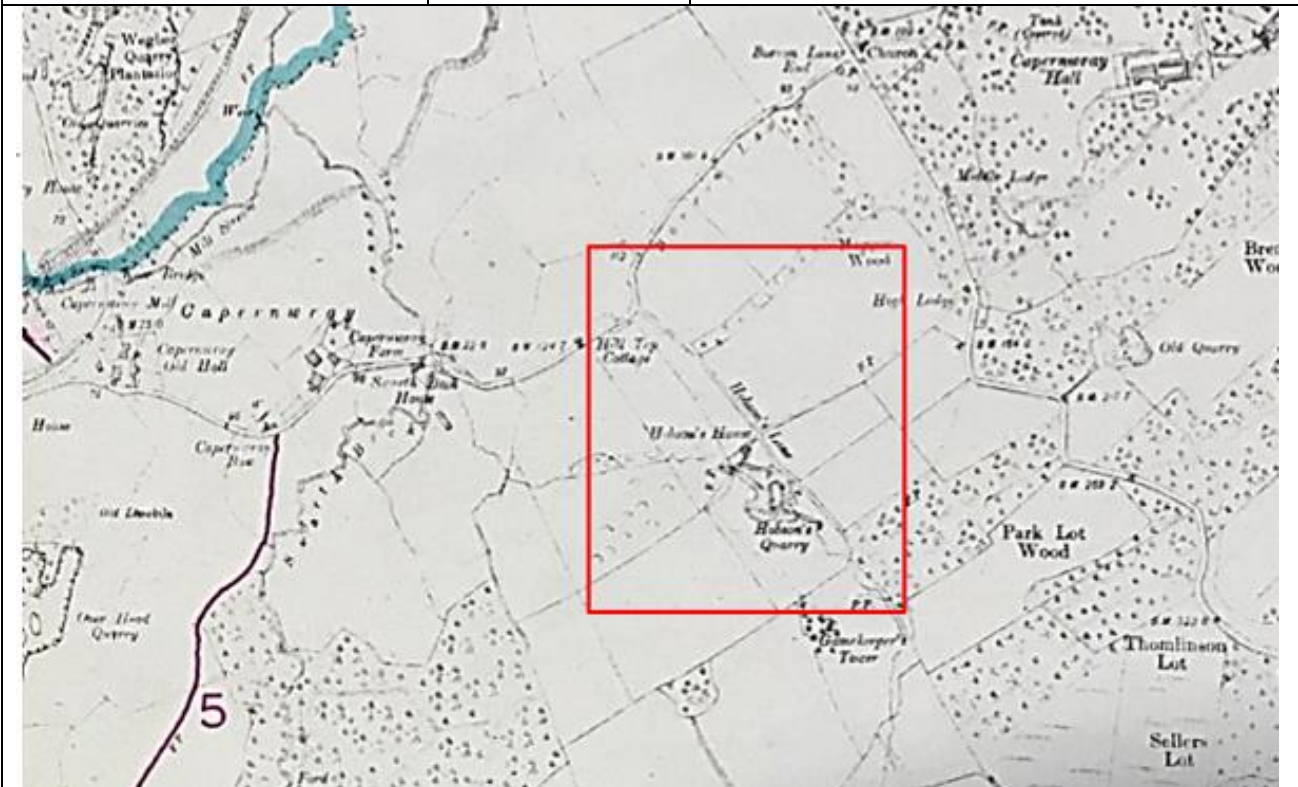
Observations	<p>The full length of Hobson's Lane – including the application route – is shown excluded from the numbered plots in the same way that Borron Lane, Capernway Road and Borwick Road are shown.</p>
Investigating Officer's	The map prepared under the provisions

Comments		of the 1910 Finance Act shows the whole of the route excluded from adjacent land which was acknowledged to be in private ownership. In this case the application route including the section B-C may have existed in some form prior to inclosure as suggested by its inclusion on Yates' map and the fact that ownership is unknown. In this instance therefore the reason for the exclusion of the route from the taxable hereditaments is uncertain.
<b>6 Inch OS Map XXVNW</b>	1916	Further edition of 6 inch map (surveyed 1844-45, revised in 1910-1911 and published in 1916.



Observations		The application route is again shown as part of a longer route (Hobson's Lane) providing access to Hobson's House, a quarry, Gamekeepers Tower and a network of routes marked as footpaths (F.P.s).
Investigating Officer's Comments		The application route existed and appeared to be capable of being used in 1910-11.
<b>1932 Rights of Way Map</b>		The Rights of Way Act 1932 set out the mechanism by which public rights of way

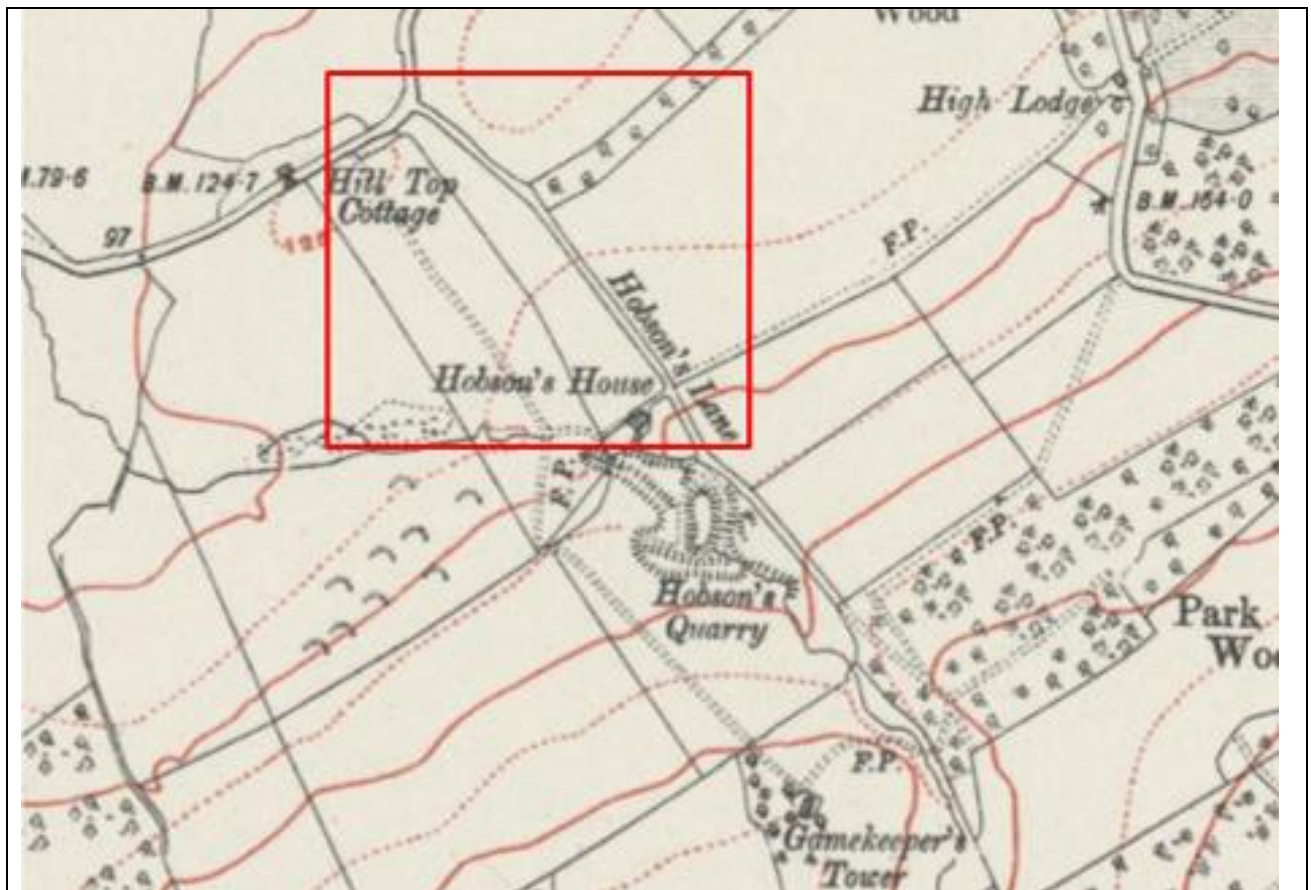
could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime 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.



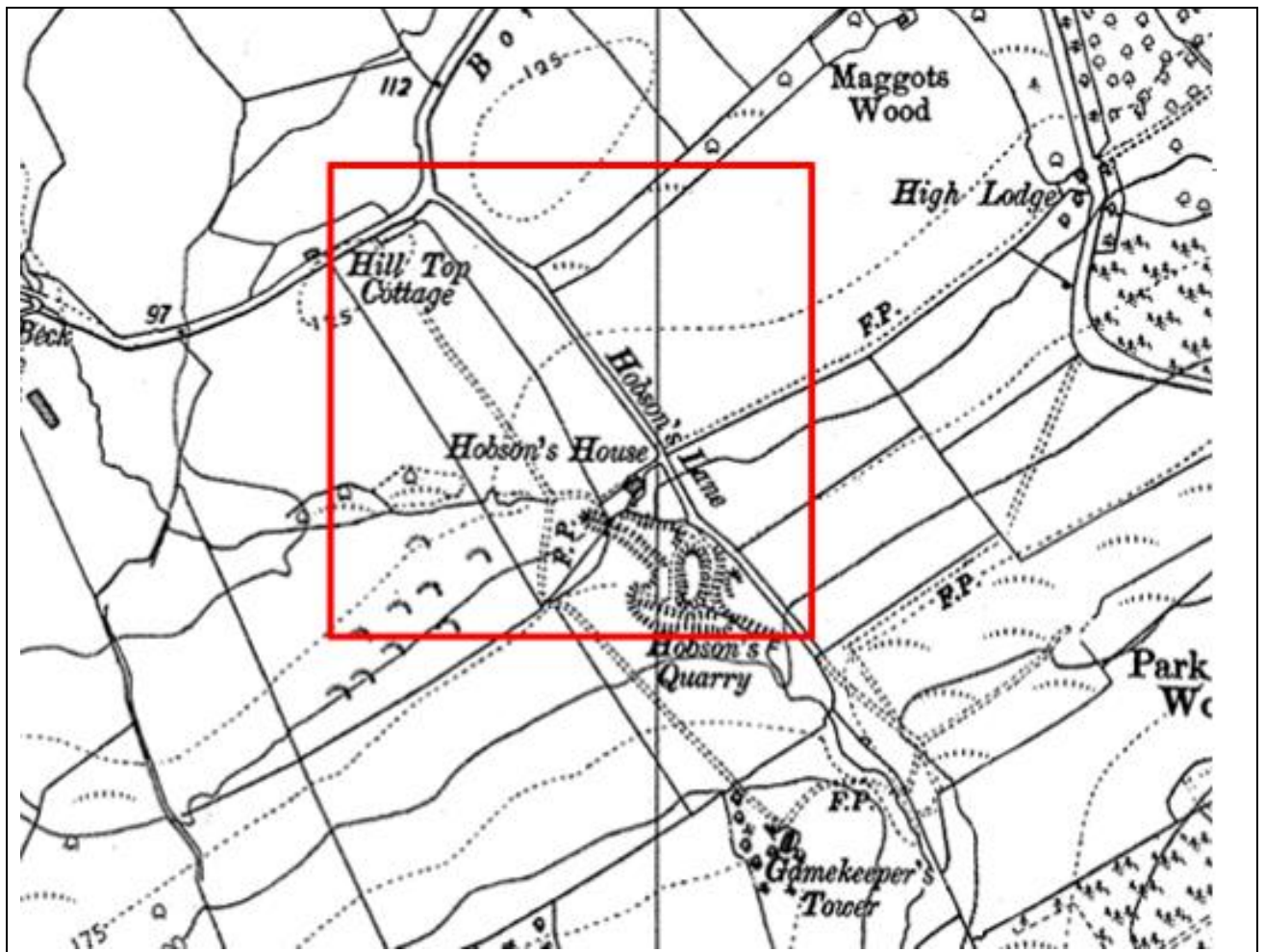
Observations

The application route is not shown on the map prepared in 1934 by Lunesdale Rural District Council. The accompanying list of routes is titled as Public Footpaths. 'Parish of Over Kellet. Feb. 1934'. The route recorded as 1-24-

		FP 15 which crosses Hobson's Lane is not shown either.
Investigating Officer's Comments		The application route was not considered by the Rural District Council to be a public footpath in 1934.
<b>6 inch OS Map Sheet XXV NW</b>	1934	Further 6 inch OS map surveyed in 1844-45, revised 1910-1911 and published circa 1934.
Observations		The application route is again shown as part of a longer route (Hobson's Lane) providing access to Hobson's House, a quarry, Gamekeepers Tower and a network of routes marked as footpaths (F.P.s).
Investigating Officer's comments		The application route existed and appeared to be capable of being used in 1910-11.
<b>6 inch OS Map Sheet XXV NW</b>	1942	Further 6 inch OS map surveyed in 1844-45, revised 1910-1911 and published circa 1942.



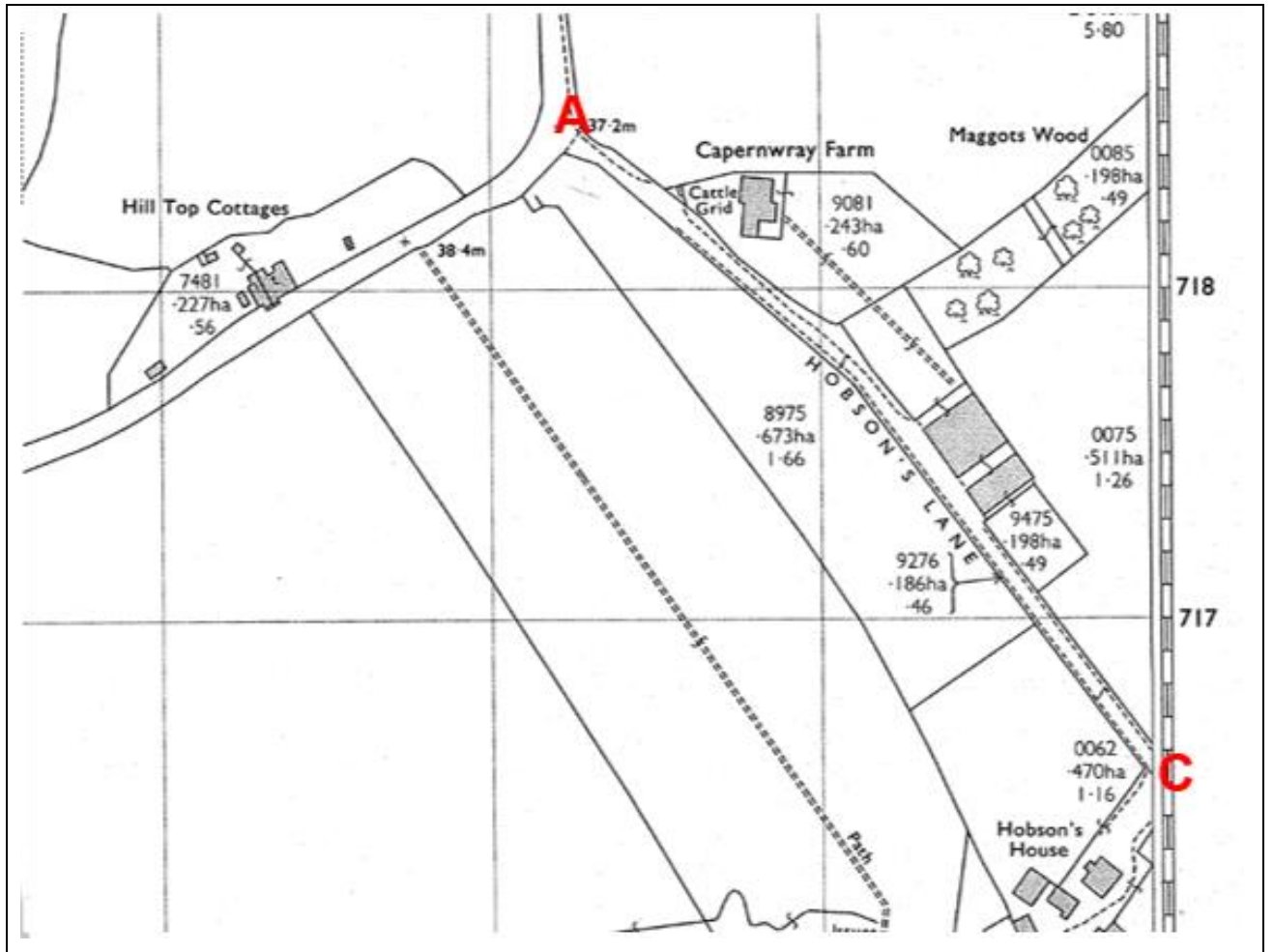
Observations		The application route is shown in the same way as it is shown on earlier editions of the 1:25,000 inch map detailed above.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used in 1910-11.
<b>6 Inch OS Map Sheet 57SW</b>	1956	The OS base 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.



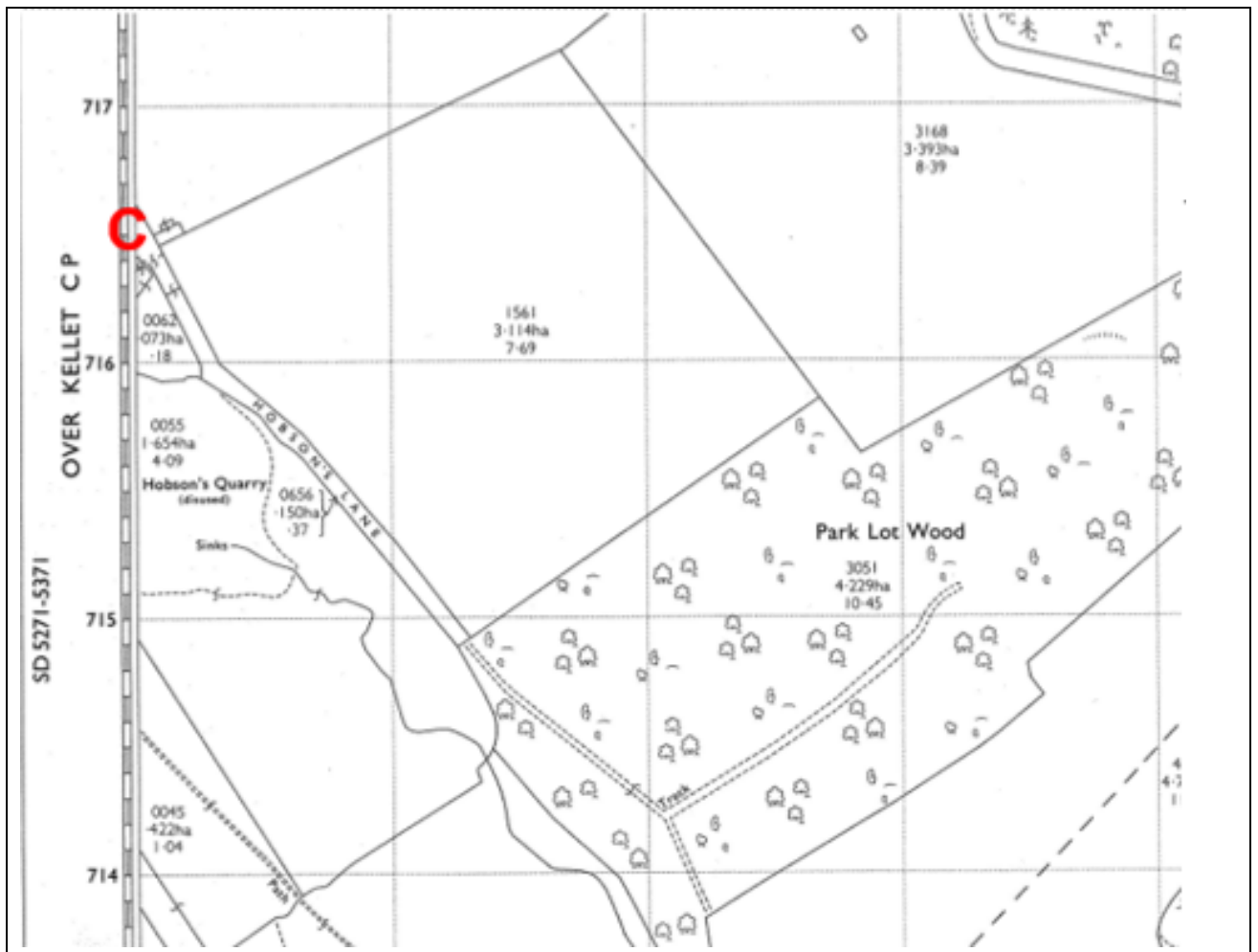
Observations		The application route is shown in the same way as it is shown on earlier editions of the 6 inch map detailed above.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used in before 1930.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



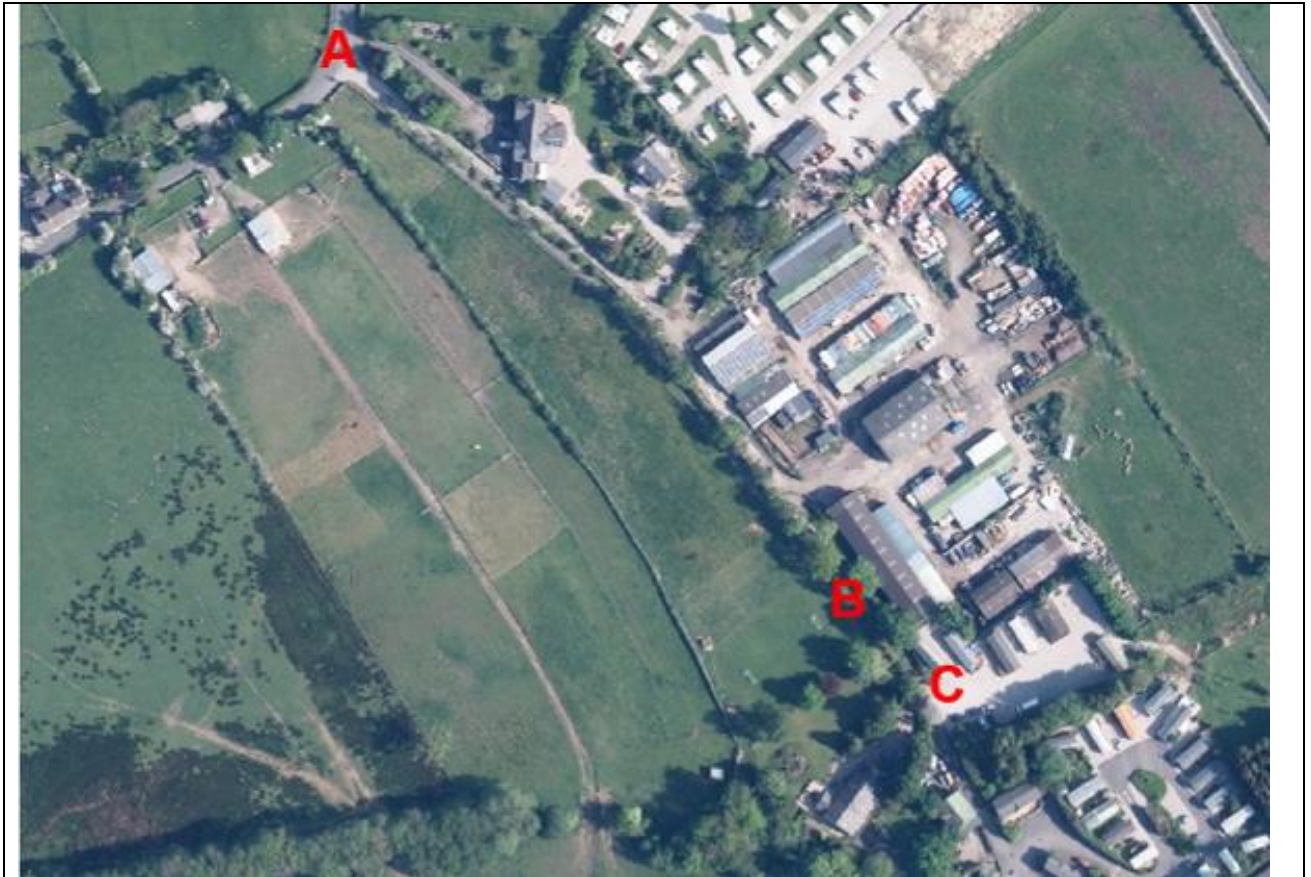
Observations		The application route can be clearly seen on the photograph leading to Hobson's House at point C. Beyond point C the lane is barely visible.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of the application route existed in the 1960s and appeared to be capable of being used. The way that it is clearly shown suggests regular used by motor vehicles to access Hobson's House.
<b>1:2500 OS Map SD 5391 7176 and SD 5471 5571</b>	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1971 as national grid series.





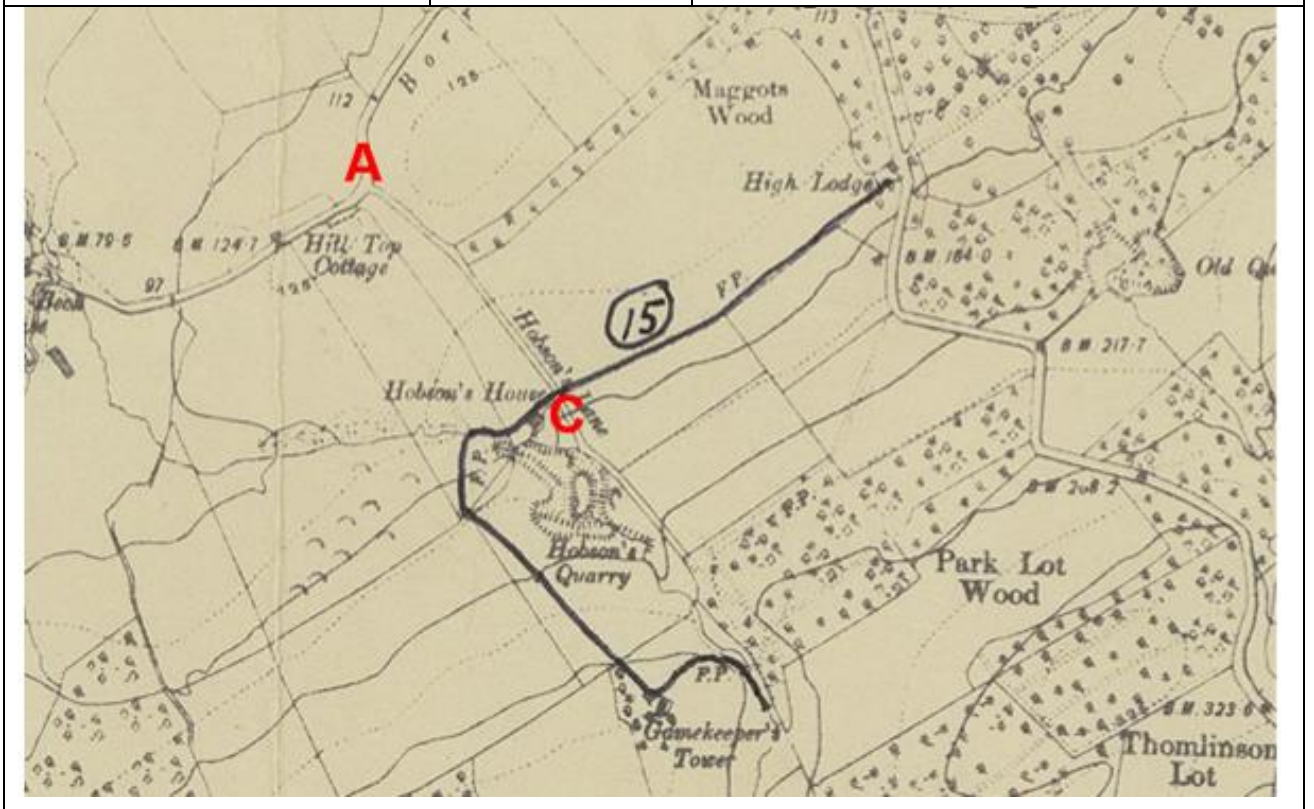


<p>Observations</p>		<p>The application route is again shown as part of a substantial bounded route known as Hobson's Lane. Capernwray Farm and two additional large buildings have been built on land to the east of the route and are accessed from it.</p> <p>A path is still shown running parallel to Hobson's Lane across the adjacent fields which connects to the path recorded as 1-24-FP 15 – which, although only partly shown on the map, crosses Hobson's Lane at point C. Tracks are shown continuing from the south east end of Hobson's Lane into Park Lot Road.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1969 and may have been capable of being used. As is the case with earlier OS maps examined, it is not known from the map whether this use would have been public or private.</p>
<p><b>Aerial Photograph</b></p>	<p>2014</p>	<p>Aerial photograph available to on GIS.</p>



<p>Observations</p>		<p>A photograph taken in 2014 shows the extent of development that had taken place in the area surrounding – and accessed by – the application route. The application route can be seen between point A and point B although access through to point C is obscured by trees. The access road running parallel to the application route can also be seen.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 2014 and appeared to have been capable of being used. As is the case with earlier aerial photograph examined, it is not known from the photograph whether this use would have been public or private.</p>
<p><b>Definitive Map Records</b></p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the</p>

		early 1950s.
<b>Parish Survey Map</b>	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.



No. 15.

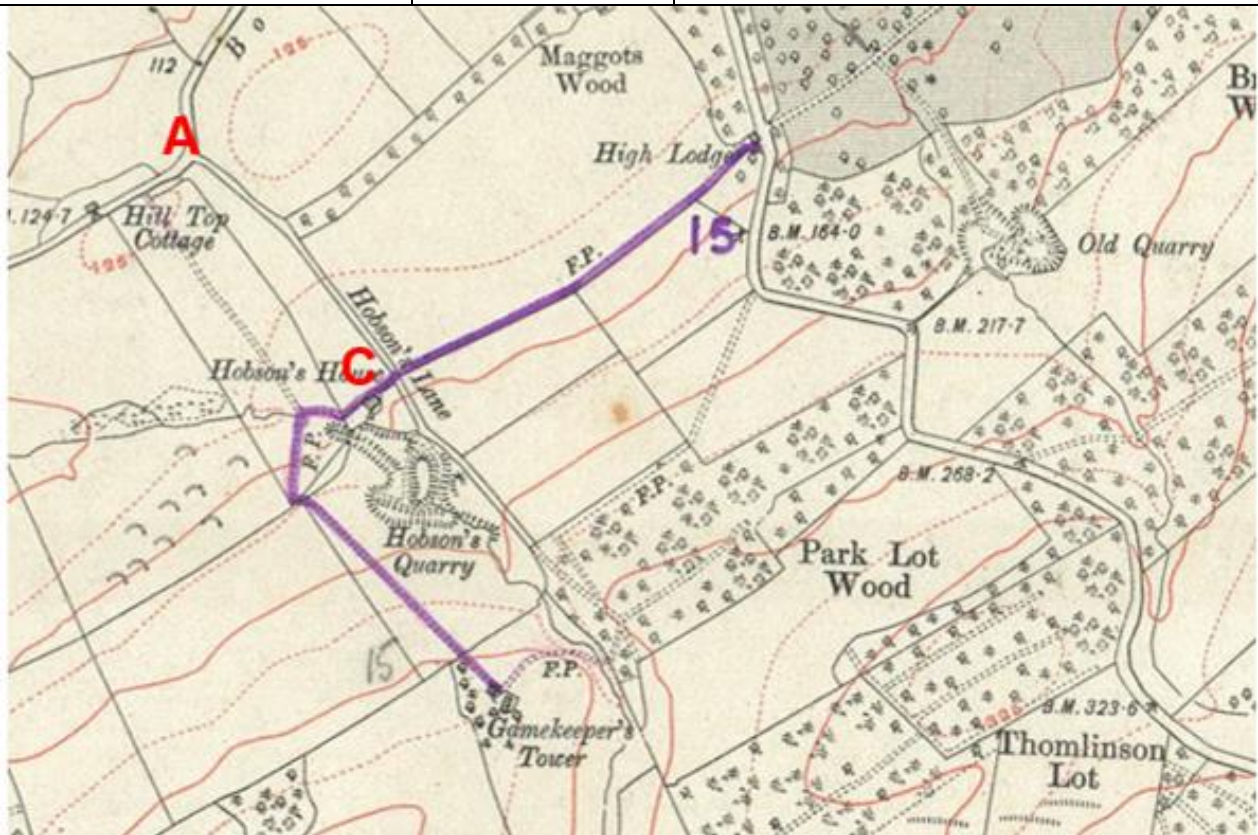
FP from High Lodge Capemorey on Sunnybank - Bowick Rd crossing Hobsons Lane passing NW of Hobsons House turning round Hobsons Quarry leading to gamekeeper's tower - continues in the direction of Tomlinsons Rd. Coming to occupation of this land by W.A.E.C. during war this pathway has been lost, much timber being removed & fields altered - requires re-defining.

?? Wilbott.

Level '58

Observations		The application route was not recorded on the Parish Survey Map by Over Kellet Parish Council. The footpath numbered as Footpath 15 was described as crossing Hobson's Lane.
Investigating Officer's Comments		The Parish Council did not consider that the application route was a route which should be recorded on the Definitive Map and Statement in 1958. In addition, it appears that there was no indication that the Parish Council considered that Hobson's Lane was a public road. The Footpath was described as crossing Hobson's Lane and given one number (15). Normally, paths were numbered from the junction with one public highway with another so it would have been more likely to see this path numbered - and described as two separate paths if Hobson's Lane was considered to be a public road.
Draft Map		The parish survey map and cards for Over Kellet were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.  The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these

		objections, and recommendations made to accept or reject them on the evidence presented.
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Observations		<p>The application route was not shown on the Draft Map and there were no representations or objections to what was shown or omitted.</p> <p>The route of Footpath 15 was shortened and shown to terminate at the Gamekeeper's Tower.</p>
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Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
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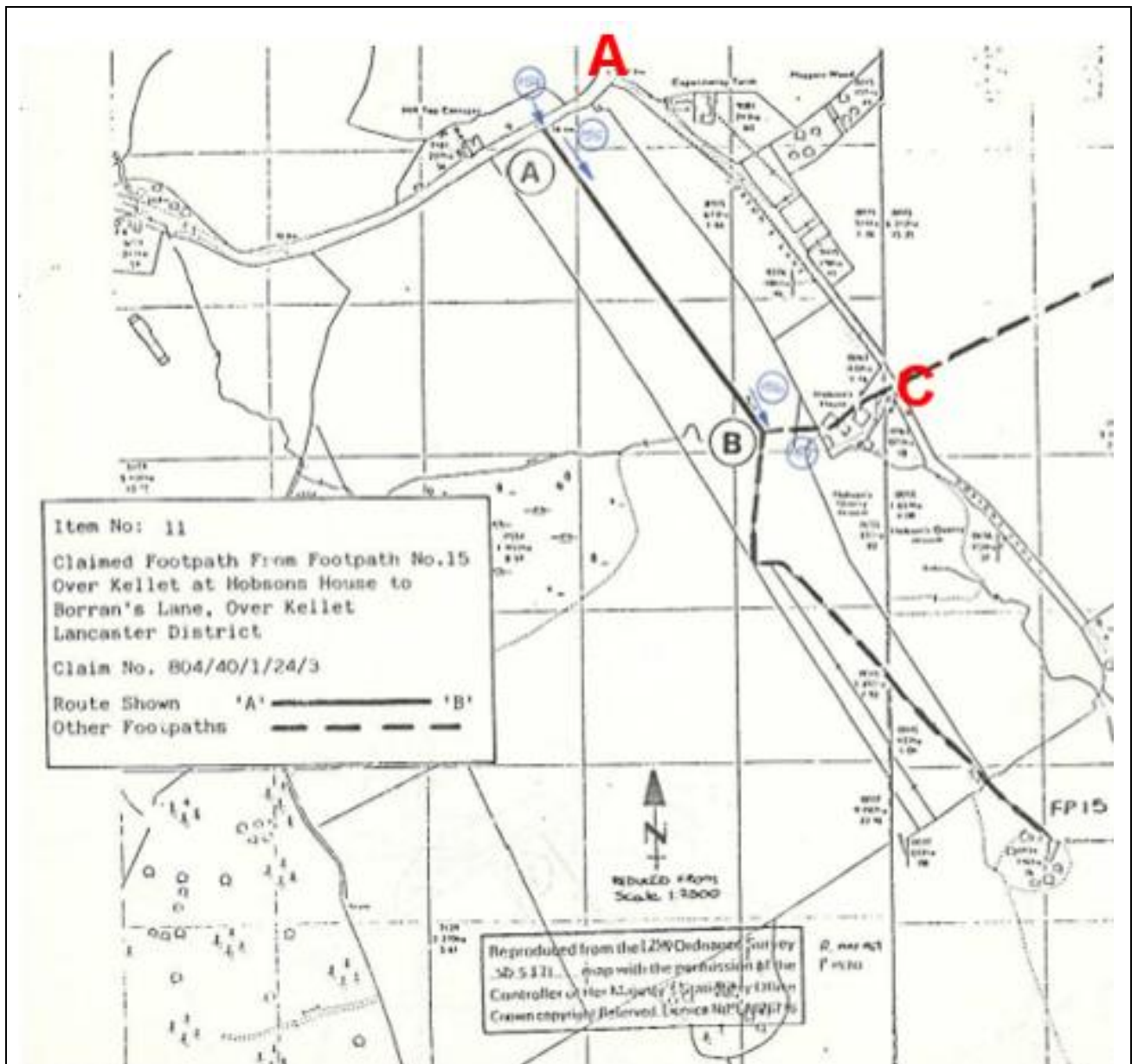
Observations		<p>The application route was not shown on the Provisional Map and there were no representations or objections to what</p>
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		was shown or omitted.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 <sup>th</sup> 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 <sup>st</sup> 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.



RURAL DISTRICT OF LUNESDALE  
PARISH OF OVER KELLET.

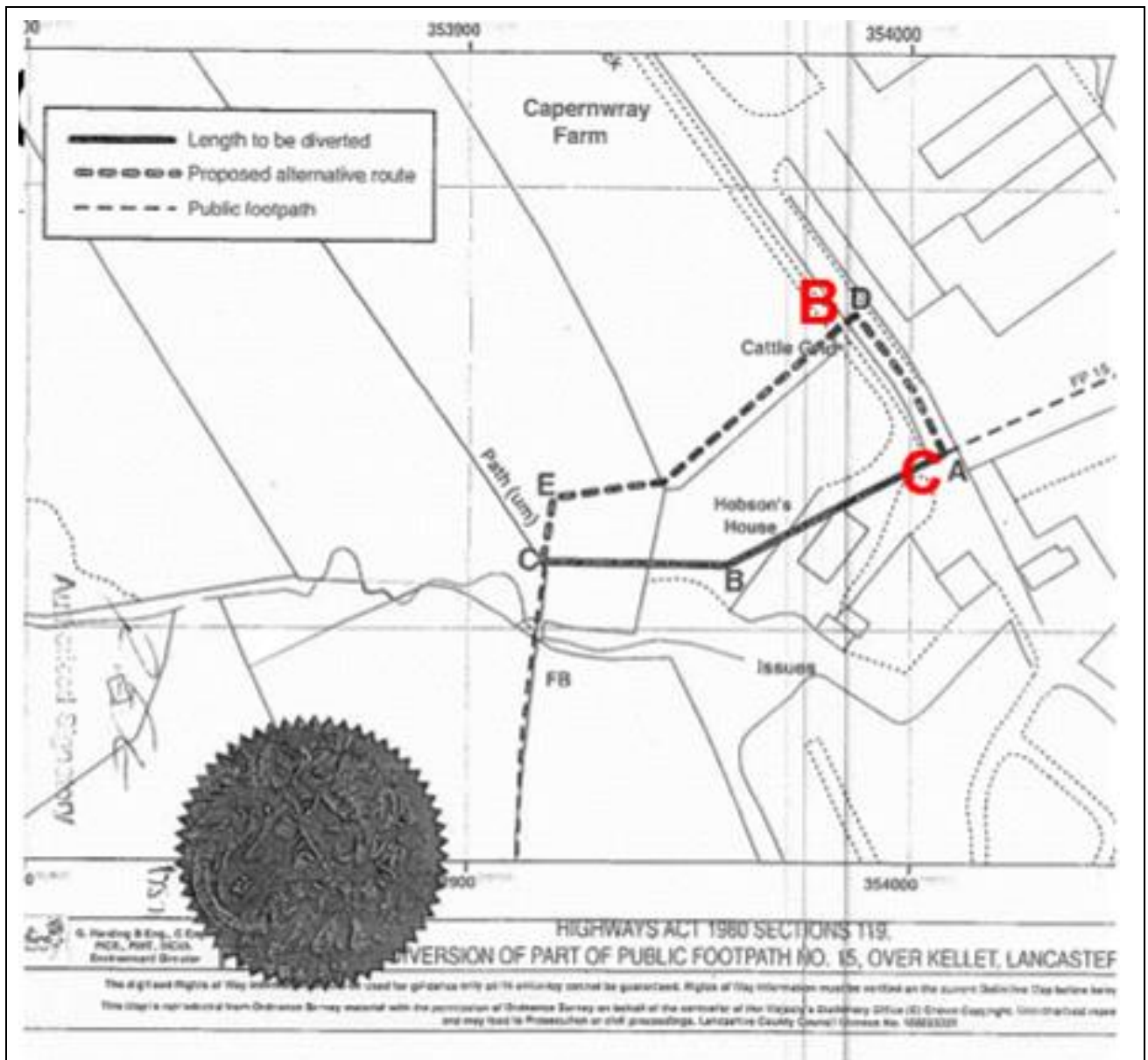
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
12	Footpath	From Carnforth-Kirkby Lonsdale Road Class 11 B.6254) about 100 yards east of Church View south westerly to Class 111 Road 208 about 250 yards east of School.	0.31	
13	"	From junction Class 111 Road 208, and Footpath No.12, to parish boundary, west of Swarthdale.	0.80	
14	Bridleway	From Carnforth to Kirkby Lonsdale Road (Class 11 B.6254) west of Redwell Inn, south-easterly to Parish Boundary.	0.09	
15	Footpath	From Borwich Road (Class 111 No.207) at High Lodge; to Hobson's House, thence to Gamekeepers Tower.	0.58	
Observations			The application route is not shown.	
Investigating Comments		Officer's	From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way which should be recorded on the Definitive Map 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.	
Definitive Modification Application		Map Order	1983	Application submitted on 20 <sup>th</sup> July 1983 by Over Kellet Parish Council to record a footpath running parallel to A-B-C from a point on 1-24-FP 15 near Hobson's House to Borrans Lane.



<p>Observations</p>	<p>In 1983 Over Kellet Parish Council submitted a number of applications to record additional routes as public rights of way on the Definitive Map and Statement. They did not submit an application to record the application route but they did, however submit an application to record the route shown on many of the OS maps detailed earlier in this report which ran across the field parallel to the application route from Capernwray Road to a junction with 1-24-FP 15.</p> <p>The application was one of the very first to be received by the County Council following implementation of the Wildlife</p>
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		<p>and Countryside Act 1981. It was based on very limited evidence and was rejected by the County Council's Public Rights of Way Sub Committee at that time.</p> <p>A newspaper article found on the Public Rights of Way parish files explained that although the parish council believed that the route was a public footpath they had decided not to appeal the decision of the County Council due to a lack of available evidence.</p> <p>No reference to the application route was found as part of the investigation carried out.</p>
Investigating Officer's Comments		<p>Given the number of applications submitted by the parish council at that time, it appears that the application route was possibly not considered to be a public right of way that should be recorded on the Definitive Map and Statement at that time.</p> <p>The amount of information available and expertise in researching the existence of public rights has greatly developed since the early 1980s suggesting that additional information may have been sought if the application was being investigated now.</p>
<b>Highways Act 1980 Public Path Diversion Order</b>	2007	Order made and confirmed by Lancashire County Council in 2007.



<p>Observations</p>		<p>In 2007 the County Council made an Order at the request of the owners of Hobson's House to legally divert 1-24-FP 15 away from their property. The alternative route agreed ran along Hobson's Lane between points B-C on the Committee plan. The Order was confirmed recording a public right of way on foot between point B and point C. A search of the county council's public rights of way files was made but no reference was found to any existing public rights existing – or believed to be in existence – along the application route.</p>
<p>Investigating</p>	<p>Officer's</p>	<p>The application being considered by the</p>

Comments		County Council is for a Footpath between point A and point B on the Committee plan. As a public right of way was recorded as a result of the 2007 Diversion Order between point B and point C it is not necessary to include this section of the route in a Definitive Map Modification Order unless it was considered that the evidence suggested the existence of higher public rights (bridleway or vehicular) along the route A-C.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	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 being a publicly maintainable highway.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of way.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found other than the diversion order detailed above.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.

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

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

### 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 often 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.

The application is for public footpath and as such it would not be necessarily expected that it would be shown on any of the small scale early commercial maps. However, in this particular case the route is shown on Yates' Map of 1786 and is shown consistent with how routes now forming part of the general road network are shown.

The route was, however shown by Yates as leading to a dead end casting doubt on whether it would have been used as a public vehicular route at that time.

Of significance is the fact that the route – or one from which the application route appears to have derived - is then shown on an Inclosure Map dated 1805 and is described as a private road. It is not entirely clear whether the application route (in some form) existed prior to the inclosure of the land – at least to point C – but the Inclosure Map and Award do indicate that it was not considered to be a public route at that time.

The later commercial maps published by Greenwood in 1818 and Hennet in 1830 again show the application route and the extension of the route past Hobson's House providing access to some open land – but not as a through route.

Whilst the application route may have been accessible on foot in the 1700s and early 1800s, its inclusion on these early maps it is not considered sufficiently indicative of a route considered to be a public highway at that time - particularly with reference to the creation of a private road – albeit possibly south of point C – in the Inclosure Award and Map.

The Tithe Map prepared in 1840 shows that the application route existed as part of a longer route providing access to Hobson's House and land in private ownership. Access may have been available to the public but there is no indication that any through routes – on foot, or otherwise existed at that time and the Tithe Award provided no useful information regarding which routes shown on the map were considered to be public roads or whether they carried any other type of public rights.

From the 1840s onwards the application route is consistently shown on all OS maps examined as part of a substantial bounded route named on the larger scaled maps as Hobson's Lane which appeared to be accessible – certainly on foot.

With regards to its inclusion on the Ordnance Survey maps, it has generally been considered that OS maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888. Despite this there is now a growing awareness by academics that by the end of the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted – particularly through routes - were likely to be public to some extent. However, it remains the case that the main inference from these maps in this particular case is the existence of a route providing access to and from Hobson's

House, Hobson's quarry and to privately owned woodland and a Gamekeepers Tower.

Whilst the OS maps clearly show that the route existed they also show that other routes – marked as footpaths (F.P's) ran adjacent to the route and crossed the route providing a network of linking paths which could be used without requiring the use of the application route.

More recent evidence from the 1950s suggests that when the Definitive Map and Statement of Public Rights of Way were being prepared the application route was not recorded and more significantly the route recorded as 1-24-FP 15 was shown – and described – as crossing Hobson's Lane – with no apparent recognition that Hobson's Lane was a public route that did not need to be recorded on the Definitive Map and Statement.

User evidence was not submitted as part of the application and no evidence of historical use by the public was found as part of this investigation. The route was not recorded as a public right of way as part of the Definitive Map process and historically the land crossed by the application route was access to a house, quarry and Gamekeepers Tower.

Whilst the site evidence concurs with the fact that the route could have been used by the public on foot no historical or modern day evidence suggesting such use has been submitted.

In conclusion, a range of OS, commercial maps and other documents were examined which seem to suggest that the route probably came into existence to provide access to and from Hobson's House which was subsequently extended as a private road to access inclosed land.

It was shown excluded as part of the Finance Act valuation in the early 1900s but this piece of evidence seems at odds with other evidence examined and insufficient on its own to infer public rights.

Taking all the evidence into consideration it appears that a route probably existed as since the late 1700s and that it may have been capable of being used by the public but that there is insufficient evidence available from which to deduce that public footpath rights existed.

## **Head of Service – Legal and Democratic Services Observations**

### **Landownership**

The entire length of the application route crosses land which is unregistered.

Information from the Applicant

The Applicant provided the documentary evidence listed below, most of which has been discussed above.

- Greenwood Map (1818)
- Hennet Map (1829)
- Ordnance Survey Maps – 6 inch England and Wales (Drawn scale 1:10,560) 1847, 1890, 1910/11 (pub1916) and 1910/11 (pub 1942).
- Ordnance Survey Maps – 25 inch England and Wales (Drawn scale 1:2,500) First Edition 1890 and 1910 Edition.
- Ordnance Survey Maps – 1 inch England and Wales (Drawn scale 1:63,360) 1898, 1947 (pub) and 1955 editions.
- Ordnance Survey Maps – 1:25,000 maps of Great Britain
- Pub. 1947 (34/57-A); surveyed/revise 1910-1951, pub 1952 (SD57 (34/57 – B));
- surveyed/revise 1910-1960, pub. 1952, reprint 1961 (SD57 – B/\*)
- Evidence from Tithe, Inclosure and Inland Revenue Valuation Records
- Tithe Records, 1840, ref DRB1/118. Tithe map and Apportionments
- Inclosure Records and Award, 1805, ref AE 5/9.
- Inland Revenue Valuation Records – Finance (1908-1910) Act 1910, IR 133/3/44
- Lancashire County Council Road Status Map (MARIO)
- The Gazette – Stopping Up Orders search returning no results
- Parish Survey record card, IC0010240151 for L.1-24-FP15
- Google map of Hobson’s Lane: indicating commercial properties
- Ordnance Survey Maps – 1:25,000 maps of Great Britain
- Aerial Photos of the Applicant Route, 1960s and 2000s
- Record of Gamekeeper’s Tower: A Grade II Listed Building in Capernwray, Lancashire
- Recent photographs of the Application Route (2)

The recent photographs of the route are included below.

**D5. Recent photograph of the Application Route – looking north-west from B (right of hedge)**



*Source: Applicant’s own image, 2020*



**D6: Recent photograph of the Application Route – looking south-east from A**



Application route on the left.

*Source: Applicant's own image, 2020*

**Information from Others**

No information was provided by others.

**Information from the Landowner**

None of the landowners provided a response to consultations.

**Assessment of the Evidence**

**The Law - See Annex 'A'**

Insufficient map and documentary evidence to support the presumption of the existence of public rights on the route.

**Conclusion**

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 the evidence presented above from the map and other documentary evidence coupled with the evidence on site does on balance indicate that the route should be recorded as a public footpath.

Evidence from the 1805 Inclosure Map and Award suggests the application route or one from which the application route appears to have derived was originally created as a private access route, there is no evidence to suggest public footpath use at this time. The Greenwood's Map of 1818 and the 1830 Hennes's Map of Lancashire later

show the route as a "cross road" providing access only to an open space with no through route access, indicating the route continued to be a private access route.

The route is first shown as a through route on the 1847 OS Map and thereafter is consistently shown on all the OS maps examined and referred to as Hobsons Lane. The OS maps clearly show the existence of other surrounding routes marked as footpaths which appear to offer existing convenient public routes available for use instead of the application route.

The Finance Act Map of 1910 shows the application route was excluded, this could be 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 1840 does not add any further weight and therefore nothing can be inferred about public status from this map.

Significantly when the Definitive Map and Statement of Public Rights of Way were being prepared in the 1950's the application route was not a route recorded as a public footpath despite it appearing to be capable of being used on foot at that time.

Taking all the evidence into account Committee is advised that there is insufficient map and documentary evidence – and no user evidence – and to reject the application and not make an Order adding a public footpath to the Definitive Map and Statement.

### **Risk management**

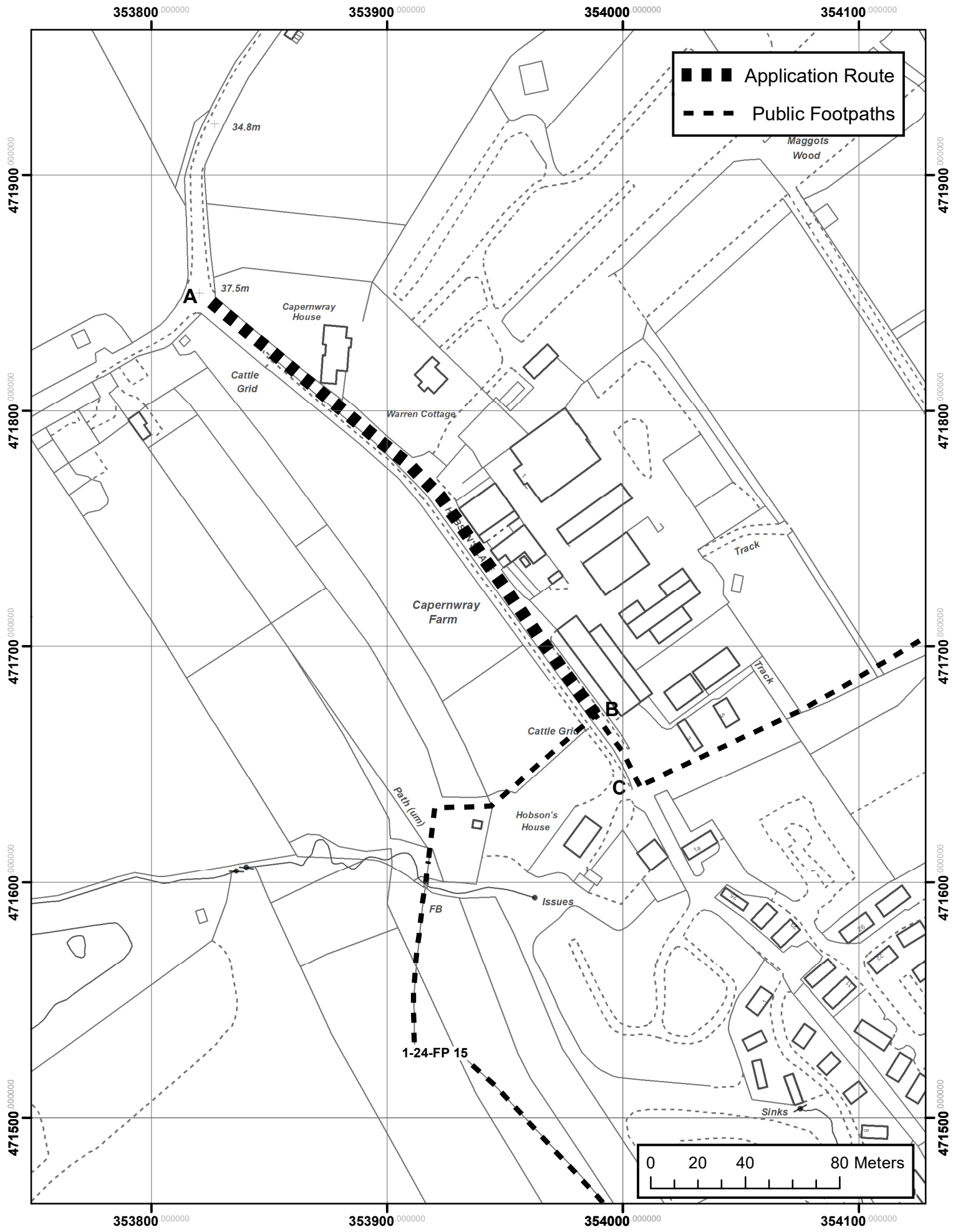
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda 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**

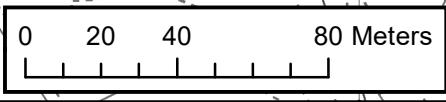
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-678		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Application Route  
 Public Footpaths



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

**Wildlife and Countryside Act 1981**  
**Addition of Footpath along Hobson's Lane, Over Kellet**

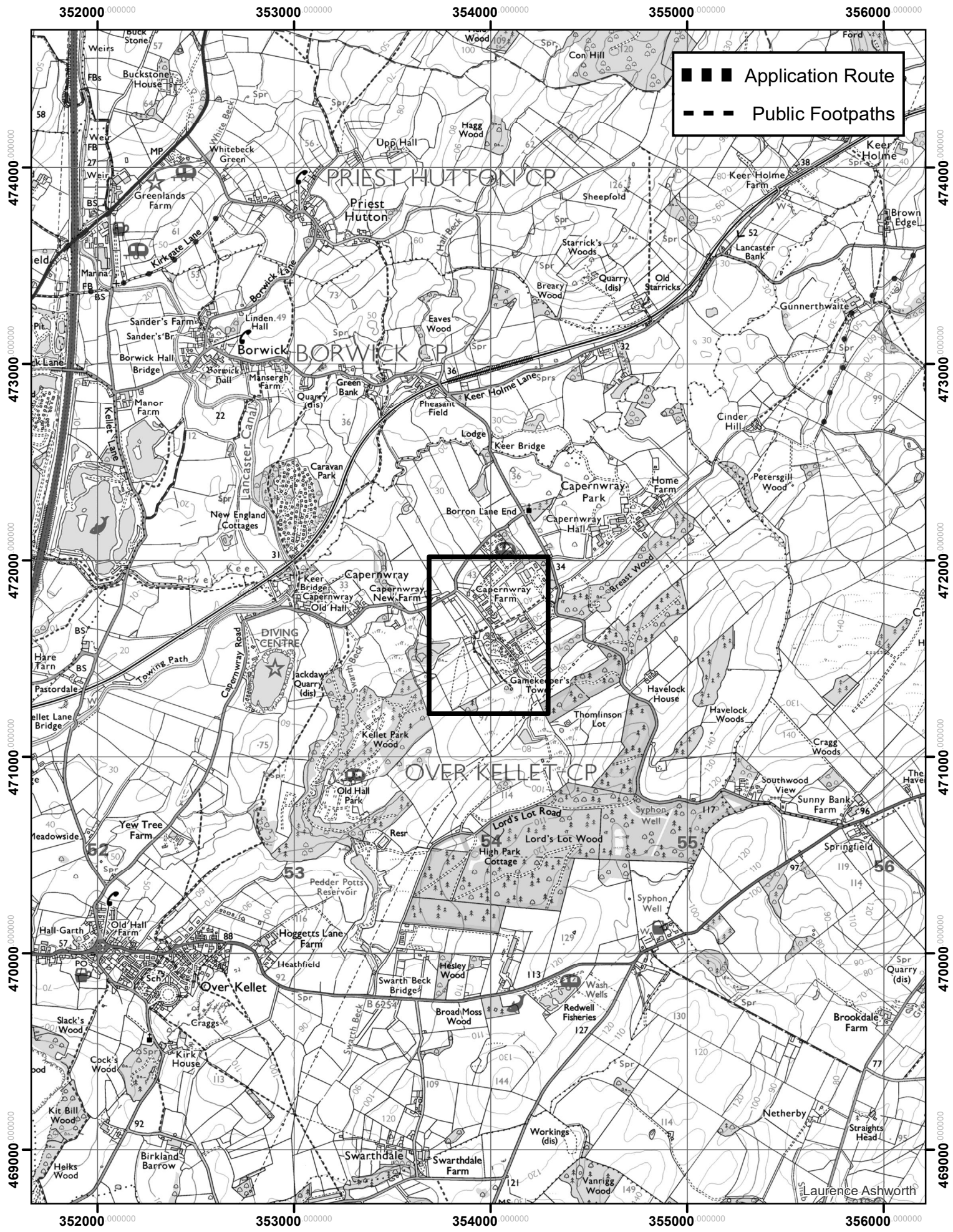
**1:2000**



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**Lancashire**  
County Council

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

Wildlife and Countryside Act 1981  
Addition of Footpath along Hobson's Lane, Over Kellet

**1:24000**



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## Regulatory Committee

Meeting to be held on 26<sup>th</sup> January 2022

**Part I**

Electoral Division affected:  
Lancaster Rural North

### Highways Act 1980 – Sections 25/26

#### Creation or Dedication of Bridleway on Green Hill Lane Nether Kellet

(Annex 'B' refers)

Contact for further information,

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Jayne Elliott, Planning and Environment, 01772 537663

[jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

#### **Brief Summary**

Request from the Committee that officers consider the possibility of the creation of bridleway rights on Footpath Nether Kellet 11 known as Green Hill Lane, and confirmation that consideration has commenced.

#### **Recommendation**

That officers continue to consider the possibility of the creation by Order or Agreement of public bridleway rights along Footpath Nether Kellet 11, and to bring a further report back to Committee at the appropriate time.

#### **Detail**

A decision on whether there is enough evidence to show that bridleway rights exist along Green Hill Lane, currently recorded as Footpath Nether Kellet 11, was considered by Regulatory Committee earlier on the agenda. The Committee will have made a decision regarding the making of a Definitive Map Modification Order on this route.

If the decision was that no Order be made, that decision may still be appealed.

If the decision was that an Order be made, the Order would need to be made in accordance with statutory procedure, and the Order be confirmed or not confirmed.

It is therefore not possible to conclude with certainty at the moment, despite the Committee decision, whether bridleway rights already exist on Footpath 11 Nether Kellet. However, if no appeal is made and no further new evidence presented or any Modification Order made is determined for confirmation, at some future date this will be sufficiently clear.

In the meantime, officers confirm that the information and evidence and tests for creation of a bridleway on Green Hill Lane are being considered, as directed by Committee.

Investigations may indicate a freehold owner and the possibility of a creation by agreement. Alternatively, to create a new type of highway on private land by Order is not a decision to be taken lightly and appropriate care will be taken by officers and, at the appropriate time, officers will bring a report to Committee.

**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		