

Lancashire County Council

Regulatory Committee

Wednesday, 9th March, 2022 at 10.30 am in Committee Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

3.	Minutes of the last Meeting held on 26 January 2022	(Pages 1 - 6)
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4.	Guidance	(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.	Progress Report on Previous Committee Items	(Pages 33 - 36)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway West of Buckstone House from Junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane	(Pages 37 - 114)
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7.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Footpath along Whitworth Rise, Whitworth	(Pages 115 - 150)
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8. Wildlife and Countryside Act 1981 (Pages 151 - 202)
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to
Black Bull Lane through Harris Park

9. Wildlife and Countryside Act 1981 (Pages 203 - 254)
Definitive Map Modification Order Investigation
Addition of Footpath through Farington Hall Wood,
Leyland

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 22 June 2022 at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Agenda Item 3

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 26th January, 2022 at 10.30 am
in Committee Room 'A' - The Tudor Room, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

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

1. Apologies

There were no apologies for absence.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 17 November 2021

Resolved: That the minutes of the meeting held on 17 November 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 Previous Committee Items

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

The Chair informed Committee that appointments had recently been made to the following posts which would help considerably with processing applications in a timely manner:

- Legal team - 2 Solicitors and 1 Paralegal
- Public Rights of Way team – 1 Public Path Order Officer and 2 Maintenance and Enforcement Officers

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.

Resolved: That the report be noted.

**6. 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 and B.

Committee had not considered this application at their meeting in November 2021 because several user representations had been received following the publication of that agenda, which had not allowed officers to analyse the user evidence received and it had been:

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.*

This report included details of the user evidence submitted which had now been analysed by officers.

A site inspection had been carried out in June 2020.

Together with the maps and documents provided by the applicant, 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.

In relation to the safety concerns raised by the owners of Intack Farm, particularly in relation to the use of scramblers or motorcycles should bridleway rights be

recorded along the route, it was clarified that this could not be taken into account when determining whether public rights of way existed. However, if the Committee agreed that bridleway rights existed along the application route, then the county council would work with the landowners to manage any misuse of the land.

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

The Committee were reminded that when looking at the criteria for a deemed dedication under Section 31 of the Highways Act 1980, use of the route needed to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a 20 year period immediately prior to the route being called into question.

It was reported that analysis of the user evidence concluded that there was no evidence of a continuous 20 year use by the public to deem dedication by either looking at the 20 year period from the date of the application (2000-2022) or from when the large stone blocks/boulders had been put in place (1971/2-1991/92).

When balancing the evidence received or discovered, the Committee were advised that they may consider it reasonable to conclude, on the balance of probabilities, that the evidence was insufficient to show that bridleway rights did subsist, along the application route.

Taking all the evidence into account, the Committee was recommended to reject the application and to not make an Order to record bridleway rights.

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

**7. 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**

A report was presented on an application for the addition of a Bridleway from Snape Lane, Warton to its continuation as Bridleway Yealand Conyers 17 to the Definitive Map and Statement of Public Rights of Way, as shown between points A-B on the Committee plan attached to the agenda papers. However, it was reported that the investigation had discovered evidence that both the application route and the continuation bridleway should be recorded as restricted byway, as shown between points A-B-C-D on the Committee plan.

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. No user evidence had been submitted.

Committee were informed that, 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 appeared to be an error. It was therefore considered that the length A-D was a through route and that A-B was the same status as B-D.

Details of the evidence provided in support of making an Order on route A-B were provided to Committee. There was no evidence against making an Order.

Details of the evidence provided both in support of, and against making an Order on route B-D to upgrade to restricted byway were provided to Committee.

Committee were advised that the evidence contained within the report suggested that public rights existed over the full length of the route, from A to D, connecting two public vehicular highways. It was therefore suggested that A-B carried public rights being part of the route A-D.

Taking all of the evidence into account, and noting how the route had been recorded on the old county maps and other documents and the investigations of the officers in the Planning and Environment service, it was suggested to Committee that on a balance of probabilities there was sufficient evidence that the whole route (including the sections B-D which were already recorded as a Bridleway) ought to be shown as a restricted byway. Committee were advised they may therefore feel it appropriate to accept the recommendation and decide that an Order be made and promoted to confirmation.

Resolved:

- (i) That the application be accepted with additional rights and 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.

8. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath along Hobson's Lane, Over Kellet

A report was presented on an application for the addition of a Footpath along Hobson's Lane, Over 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-B. Point C had also been marked on the Committee plan and referred to in the map and documentary evidence in the report.

A site inspection had been carried out in September 2021.

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

Committee noted that points B-C had been recorded as footpath since 2007, due to a diversion order to the original footpath.

County Councillor Oakes asked whether the county council would be liable for maintenance of the route, should Committee consider that public rights existed on the route. It was reported that, although this was not a factor to be taken into account when deciding whether public rights existed, the county council would have a responsibility to maintain it if the route was thought to have come into existence before 1949.

Taking all the evidence into account, Committee were informed that it appeared a route had probably existed since the late 1700s, and that it may have been capable of being used by the public, but that there was insufficient evidence available from which to deduce that public footpath rights existed.

As there was insufficient map and documentary evidence – and no user evidence – Committee were advised to reject the application and to not make an Order adding a public footpath along Hobson's Lane, Over Kellet, to the Definitive Map and Statement of Public Rights of Way.

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

9. Highways Act 1980 - Sections 25/26 Creation or Dedication of Bridleway on Green Hill Lane Nether Kellet

A report was presented in relation to a 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 had commenced.

A decision on whether there was enough evidence to show that bridleway rights existed along Green Hill Lane, currently recorded as Footpath Nether Kellet 11, had been considered earlier on the agenda. The Committee had:

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

Despite Committee's decision, it was not possible to conclude with certainty at the moment whether bridleway rights already existed on Footpath 11 Nether Kellet. However, if no appeal was made and no further new evidence presented

or any Modification Order made was determined for confirmation, at some future date this would become sufficiently clear.

In the meantime, as directed by Committee, officers confirmed that the information, evidence and test for creation of a bridleway on Green Hill Lane were being considered. It was noted that these 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 was not a decision to be taken lightly and appropriate care would be taken by officers and, at the appropriate time, officers would bring a further report to Committee.

Resolved: Committee heard the presentation of the report and had no comment.

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 9th March 2022.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 9 March 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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet

wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 9 March 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 9th March 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

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

Brief Summary

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

Recommendation

The Committee is asked to note the progress report.

Detail

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

A summary of the current progress on Definitive Map Modification Order applications is provided below, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on the 21st of February 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.

Reference	Known As	Application Date
804-734	Finney Lane, Croston	05/02/2022
804-735	Shepherd's Lane, Croston	06/02/2022
804-736	Cottage Lane, Croston	06/02/2022
804-737	Green lane, Spa Well Lane, Croston Moss	06/02/2022
804-738	High Lane, Sumner's Lane, Croston Moss	06/02/2022
804-739	Moor Head Lane	21/02/2022
804-740	Lentworth BW Borwicks Lane	21/02/2022

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

Committee has made a decision not to make an Order for this application, the decision notices have been served and this decision is currently open to appeal by the applicant.

Reference	Known As	Application Date
804-624	Green Hill Lane, Nether Kellet	20/05/2020

Definitive Map Modification Order Applications awaiting notification of the Confirmation of the Order

Committee has decided these applications, the Orders have been made and confirmed and the confirmation now requires notification and advertising.

Reference	Known As	Application Date
804-611	Parson Lee, Smith Clough	05/09/2019
804-379c	Ingol Route 3	10/10/2016
804-379d	Ingol Route 4	10/10/2016
804-379e	Ingol Route 5A	10/10/2016

Definitive Map Modification Order Applications in the Window for Appeal to the High Court following Confirmation

Committee has decided this application, the Order has been made and confirmed and the confirmation has been advertised. The Order is now in the window for appeal to the High Court.

Reference	Known As	Application Date
804-578	Packet Lane, Bolton-le-Sands	16/03/2016

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.

Reference	Known As	Application Date
804-627	Liverpool Road, Much Hoole	21/05/2020

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

Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Lancaster Rural North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway West of Buckstone House from Junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane

(Annex 'A' refers)

Contact for further information:

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

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

Brief Summary

Application for the addition of a bridleway west of Buckstone House from junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane.

Recommendation

That the application for the addition of a bridleway west of Buckstone House from the junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway on the Definitive Map and Statement of Public Rights of Way west of Buckstone House from the junction with Bridleway Priest Hutton 14 to the junction with Cinderbarrow Lane.

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

No consultation response was received from Lancaster City Council.

Priest Hutton Parish Council

No consultation response was received from Priest Hutton Parish Council.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description

A	5205 7424	Open junction with Bridleway Priest Hutton 14
B	5227 7466	Metal Field gate across the route
C	5235 7486	Metal Field gate across the route
D	5237 7495	Metal field gate across the route at the junction with Cinderbarrow Lane

Description of Route

A site inspection was carried out in September 2020.

Access to the start of the route (point A on the Committee plan) is along the route recorded as Bridleway Priest Hutton 14 which starts on Burton Road at Greenlands Farm.

On approaching point A there is no discernible difference in the nature of the route of Bridleway Priest Hutton 14 ('the bridleway') and that of the application route and both are bounded on either side by hedging providing for a strip approximately 8 metres wide along which a stone surfaced track approximately 3 metres wide can be found.

At point A 'the bridleway' turns to continue west and then continuing as Bridleway Yealand Conyers 20 turns north, crosses the Lancaster Canal and M6 motorway continuing as Bridleway Yealand Conyers 20 to exit onto the A6 opposite the junction with Dykes Lane.

The application route extends from point A continuing north north east along the track for approximately 500 metres rising gently uphill enclosed on both sides, mainly with hedges, although the eastern side has a section of stone wall on the approach to B, and also field gates allowing access to pasture fields on both sides.

There is a field gate across the track at Point B and the top of the feature known as the Buckstone (thought to be a large 'erratic' boulder deposited by a retreating glacier in the last ice age) is just visible over the trees on the western side.

From point B to point C (approximately 200m) the hedge on the western side of the route continues, but it has been largely removed on the eastern side and the route continues along the field edge to point C where it is crossed by a further field gate in the hedge line.

From point C the route continues for approximately 100 metres north east across a pasture field to a gateway in the hedge line at point D and passes through the field gate onto Cinderbarrow Lane.

The total length of the route is 800 metres.

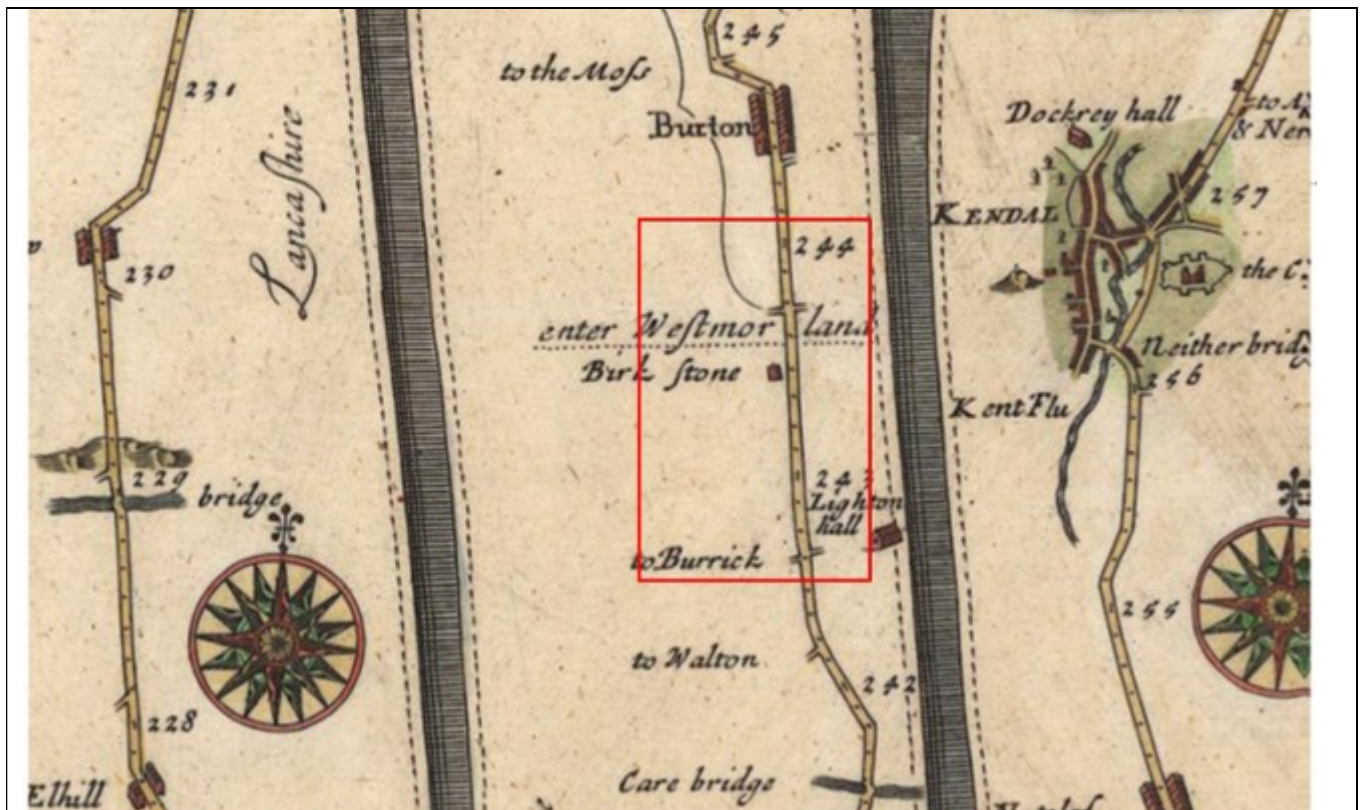
Map and Documentary Evidence

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
Ogilby Map London to Carlisle (1675) Sheet 38 – Garstang to Carlisle.	1675	<p>John Ogilby produced the first helpful road maps of England in 1675. These maps were in strip form for the major roads showing wayside features, river crossings and side road entrances. They were in constant use for over 100 years with little attempt to bring them up to date and were eventually replaced by Cary's maps and some early county maps when turnpiking changed the road network comprehensively.</p> <p>Most of the major roads shown are still in existence today – but the side roads with destinations may be of relevance to rights of way investigators.</p> <p>The road map was first popularised by John Ogilby (1600-1676), Scotsman, dancing master (until his accident), Deputy Master of the Revels, publisher, and cartographer, who published his Britannia in 1675. This showed all the main routes radiating from London, together with a handful of cross-country routes (e.g. York to Lancaster, Carlisle to Tynemouth, Oxford to Cambridge). Like the old Automobile Association personalised route-maps, they are strip maps which concentrate on the roads, orienting the traveller with a compass rose, and showing side roads, landmarks, and the type of terrain, hills to be surmounted and rivers to be crossed. The scale was a standard inch-to-a-mile. The maps are 415mm wide x 329mm high, and the pages they are printed on even larger: it is difficult to imagine anyone other than a well-attended gentleman using them in transit. Ogilby also provides written information about the distances, terrain, 'Backwards turnings to be avoided', the major places of interest, market days, and whether the traveller is likely to find suitable 'entertainment', i.e. hospitality.</p>

Source: Lancaster University - <https://www.lancaster.ac.uk/quakers/maps/roadmaps.html>

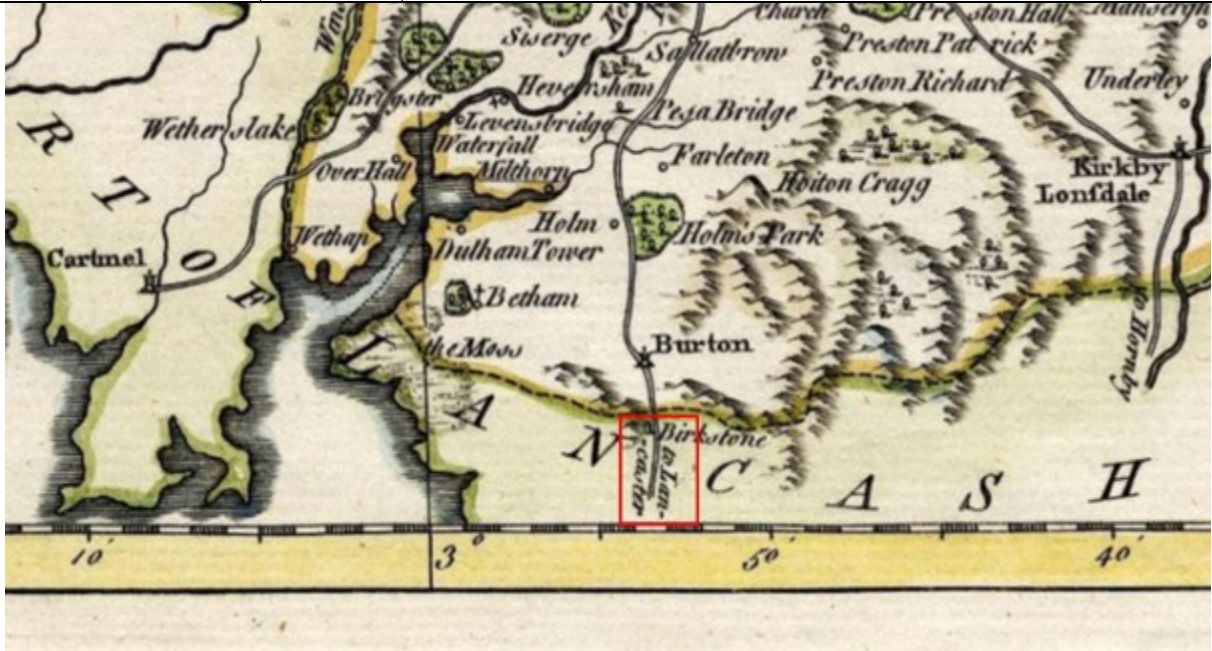


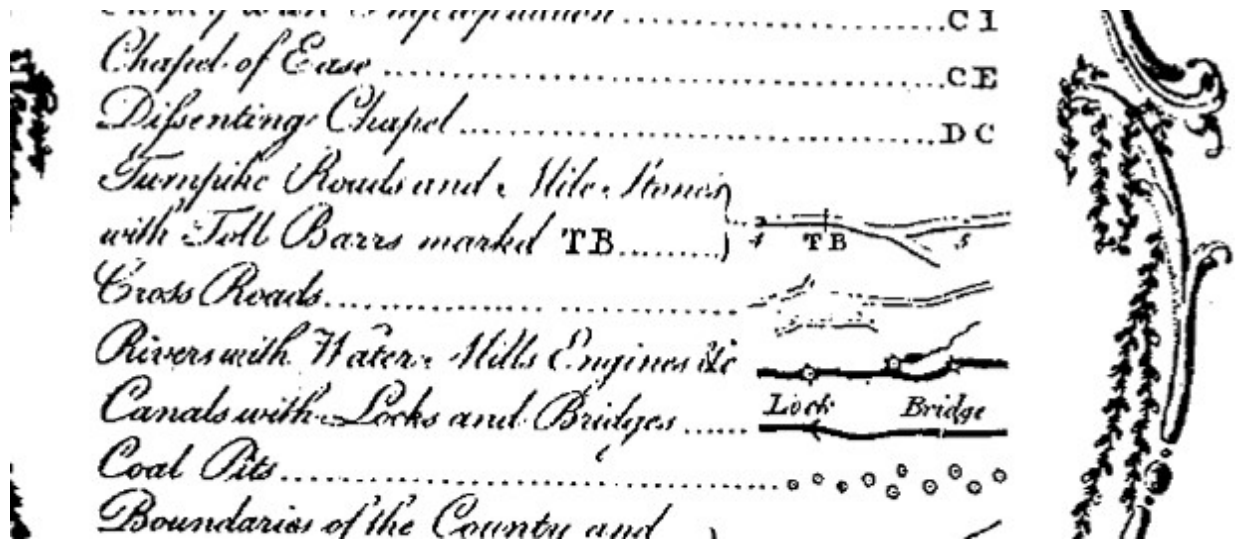


Observations		The map shows the route of the road from London to Carlisle on a series of strips with key features located along the route marked. The section of the road between Borwick and Burton is shown as a straight route crossing the boundary from Lancashire to Westmorland just north of a feature marked as 'Birk Stone'. Further south from 'Birk Stone' it was noted that 'Lighton Hall' was marked on the map – seemingly consistent with the location of Borwick Hall but the words 'Lighton' and 'Burrick' transposed. n.b. 'Walton' = 'Warton' and 'Care' = 'Keer'
Investigating Officer's Comments		This is the earliest map examined. It shows a road passing Birk Stone, believed to be the 'Buck Stone' marked on later Ordnance Survey maps, and is the earliest map suggesting that the application route may have been part of an old public carriageway.
Bowen Map of Westmorland	1762	Small scale commercial map of Westmorland showing market towns, rivers, roads and distances. Such maps were on sale to the public and hence to be of use to their customers the routes shown are likely to have been 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		This small scale map shows a road coming south out of Westmorland into Lancashire to Lancaster. The road passes through the word 'Birkstone' which is believed to be the 'Buck Stone' labelled on modern day Ordnance Survey maps immediately to the west of the application route.
Investigating Officer's Comments		The map shows a road leading out of Westmorland into Lancashire. The fact that the road is shown on a map of this scale, which was published for use by the travelling public at that time, suggests that it was a significant public carriageway in the mid-1700s. The scale of the map makes it impossible to be certain of the exact alignment of the route, or whether it included the application route, but the fact that the map again

		specifically includes reference to Birkstone and taken in conjunction with map evidence documented below it is suggestive that the application route existed as part of the main carriageway leading from Lancashire into Westmorland at that time.
Kitchins Map of Westmorland	1766	Further small scale commercial map of Westmorland.
		
Observations		A further small scale commercial map of Westmorland showing a road from Westmorland to Lancashire referenced by its proximity to 'Birkstone'.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is suggestive that the application route existed as part of the main carriageway leading from Lancashire into Westmorland in 1766.
Yates' Map of Lancashire	1786	Small scale commercial map of Lancashire.



Observations		<p>This is the earliest map examined which was published specifically to cover Lancashire.</p> <p>A route consistent with the alignment of the application route is shown as a major road, more prominent than other roads in the area. Milestones are marked and it is wider than a cross road so it appears to be shown as a turnpike road according to the key. The milestone (9) corresponds to the 9 mile marker on the later diversion plan (q.v.) The map pre-dates the construction of the Lancaster Canal and the Birkstone/Buckstone is not shown.</p>
Investigating Officer's Comments		<p>Taken in conjunction with other map evidence documented in this report it is highly indicative that the application route existed as part of a substantial carriageway in 1786.</p>
John Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal</p>

plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.



and those at the sides, East and West.

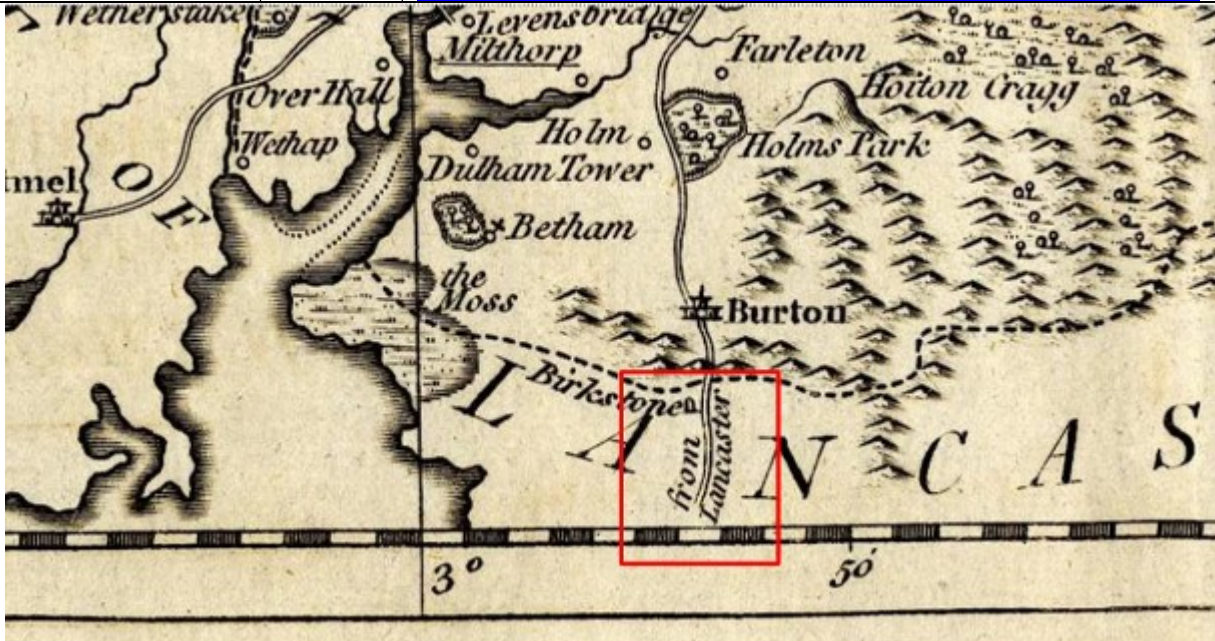
Turnpike Roads, thro' enclosed countries
D. thro' unenclosed *d.*
 Bye Roads are marked by closer lines, as

N.B. The turnpike Roads to and from London, are distinguished by the letters L.R. which will be a sufficient guide for uniting those Roads, and the junctions of all the other turnpike Roads are shown by figures of virescence.

Churches and Chapels

Observations

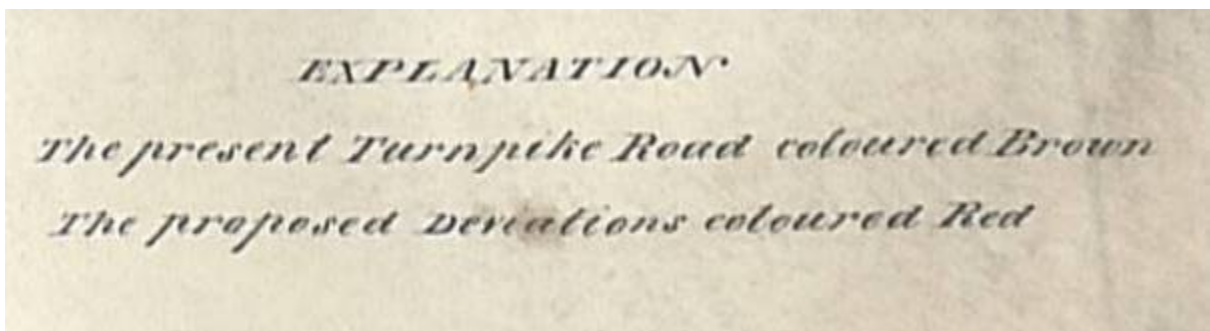
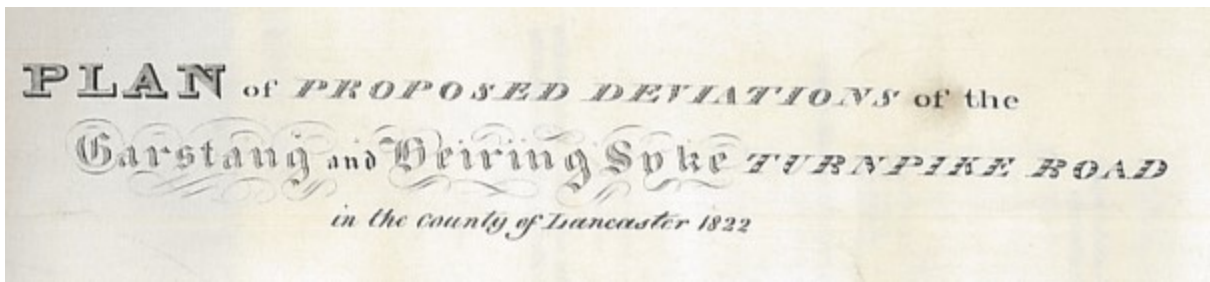
Cary's Map was published at a scale of 8 miles to 1 inch. It shows the main north – south route as a turnpike road and is consistent with the alignment of how it is shown on earlier maps but the scale of the map means that it is difficult to conclude

		from just looking at this map in isolation whether the application route forms part of the road shown.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is indicative that the application route existed as part of a substantial carriageway in 1787.
Lodge's Map of Westmorland	1795	Further Small scale commercial map of Westmorland Source: Lakes Guides http://www.lakesguides.co.uk/html/maps/mapsfram.htm
		
Observations		This small scale map shows a road extending south through Burton and out of Westmorland into Lancashire to/from Lancaster. The word 'Birkstone' which is believed to be the 'Buck stone' labelled on modern day Ordnance Survey maps is written on the map just to the west of the route. The scale of the map means that it is difficult to conclude from just looking at this map in isolation whether the application route forms part of the road shown.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is suggestive that the application route existed as part of a substantial carriageway in 1795.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



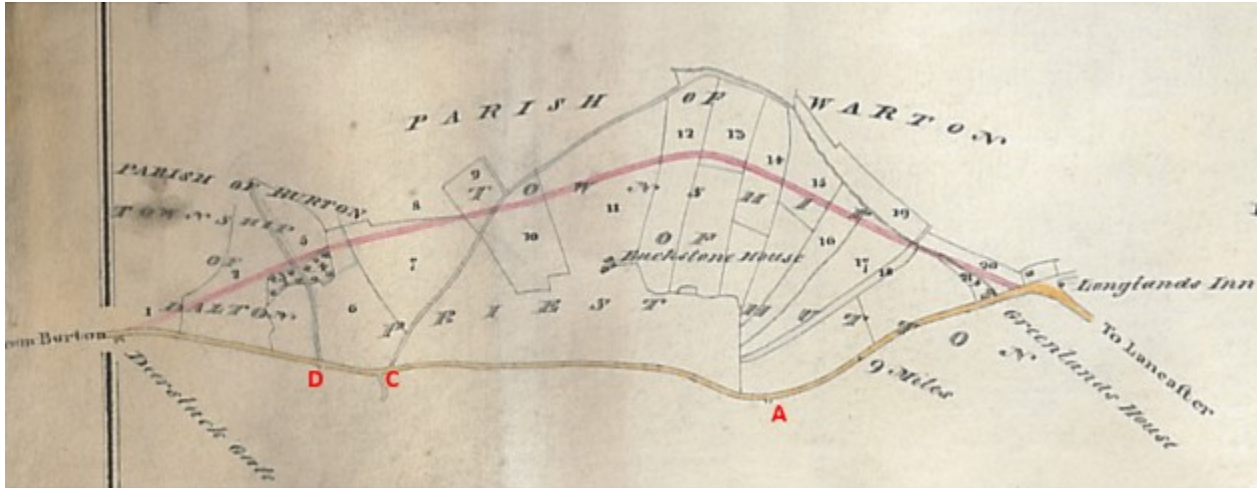
- Turnpike Roads _____
 Cross Roads _____
 Towns & other Places _____
 that send Members to Parliament } _____
 Boundaries of Counties _____
 Boundaries of Hundreds & Manors _____
 Boundaries of Townships & Parishes _____
 Market Towns, in Roman Capitals as _____ COLNE
 Parish & Townships, in small Roman as _____ Winevall
 Villages & other Places, in small Italian as _____

Observations		<p>Although still drawn at a small scale Greenwood's Map provides the more detail than earlier maps from which it is possible to identify the application route as being part of the original road, shown more prominently than other roads in the area as a turnpike road. This map was drawn after the Lancaster Canal was constructed and the canal is shown to the west of the application route with the series of locks north of Tewitfield clearly marked. The convergence of what are now known as Burton Road, Chapel Lane and Bridleway Priest Hutton 14 can be seen south of point A with the toll road extending north along the modern-day route of 'the bridleway' to point A. From point A the road is shown following the alignment of the application route to point C where it is crossed by a route denoted in the map key as a 'cross road' (visible now only as the curved hedge line) and continues to point D where it is crossed by Cinderbarrow Lane – again recorded as a cross road in the map key. The toll road is then shown to continue north past Herring Syke to Burton in Kendal. The modern-day alignment of Burton Road (A6079) which now runs to the east of the application route through to Herring Syke is not shown.</p>
Investigating Officer's Comments		<p>The application route was part of a public vehicular carriageway in 1786. The modern route of the A6079 (Burton Road) did not exist.</p>
Garstang and Heiring Syke Turnpike Road	1750 - 1823	<p>Turnpike Acts to establish, renew and divert the Turnpike and a Plan deposited in the County Records Office Ref – Q/DPD/S/69.</p>



Be it Remembered that in pursuance of and in obedience to the standing Orders of the Honourable the House of Commons made with respect to Turnpike Roads & Edward first Deputy Clerk of the Peace for the County of Lancaster do make this my Memorial upon this plan to denote that the same was lodged in the Office of the Clerk of the Peace kept at Preston in and for the said County this Thirtieth day of September One thousand eight hundred and Twenty Two.

J. H. H.

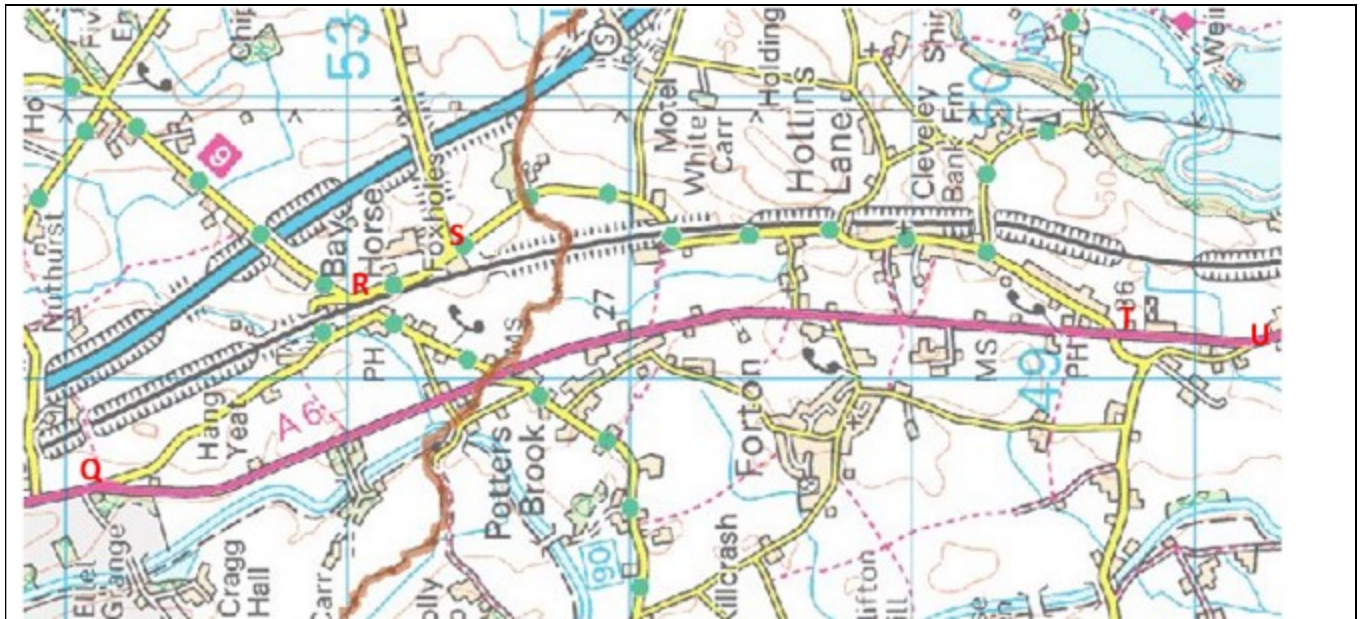


Priest Hutton - Plan showing proposed deviation in red with current toll road coloured brown and modern OS showing current public vehicular roads



Proposed deviation of toll road in Galgate with modern OS map showing new route constructed and the retention of old toll road as a public vehicular route





Proposed deviation of toll road in Ellel with modern OS map showing new route constructed and the retention of the old toll road as a public vehicular route

Observations

From the late 17th century, Parliament increasingly took responsibility for repairing and maintaining roads from parishes who often could not afford it and were becoming no longer the main users. Turnpike Acts authorised a trust to levy tolls on those using the road and to use that income to repair and improve the road. They could also purchase property to widen or divert existing roads. The trusts were not-for-profit and maximum tolls were set. The 'turnpike' was the gate which blocked the road until the toll was paid.

The 1750 Act

The application route is shown on early commercial maps as part of the Garstang and Heiring Syke Turnpike Road. The Turnpike Act authorising the original road is dated 1750 and titled 'An Act for repairing and widening the Road from Preston to Lancaster and from thence to a place called Heiring Syke that divides the Counties of Lancaster and Westmorland' and is deposited in the Parliamentary Archives (catalogue reference HL/PO/PU/1/1750/24G2n33).

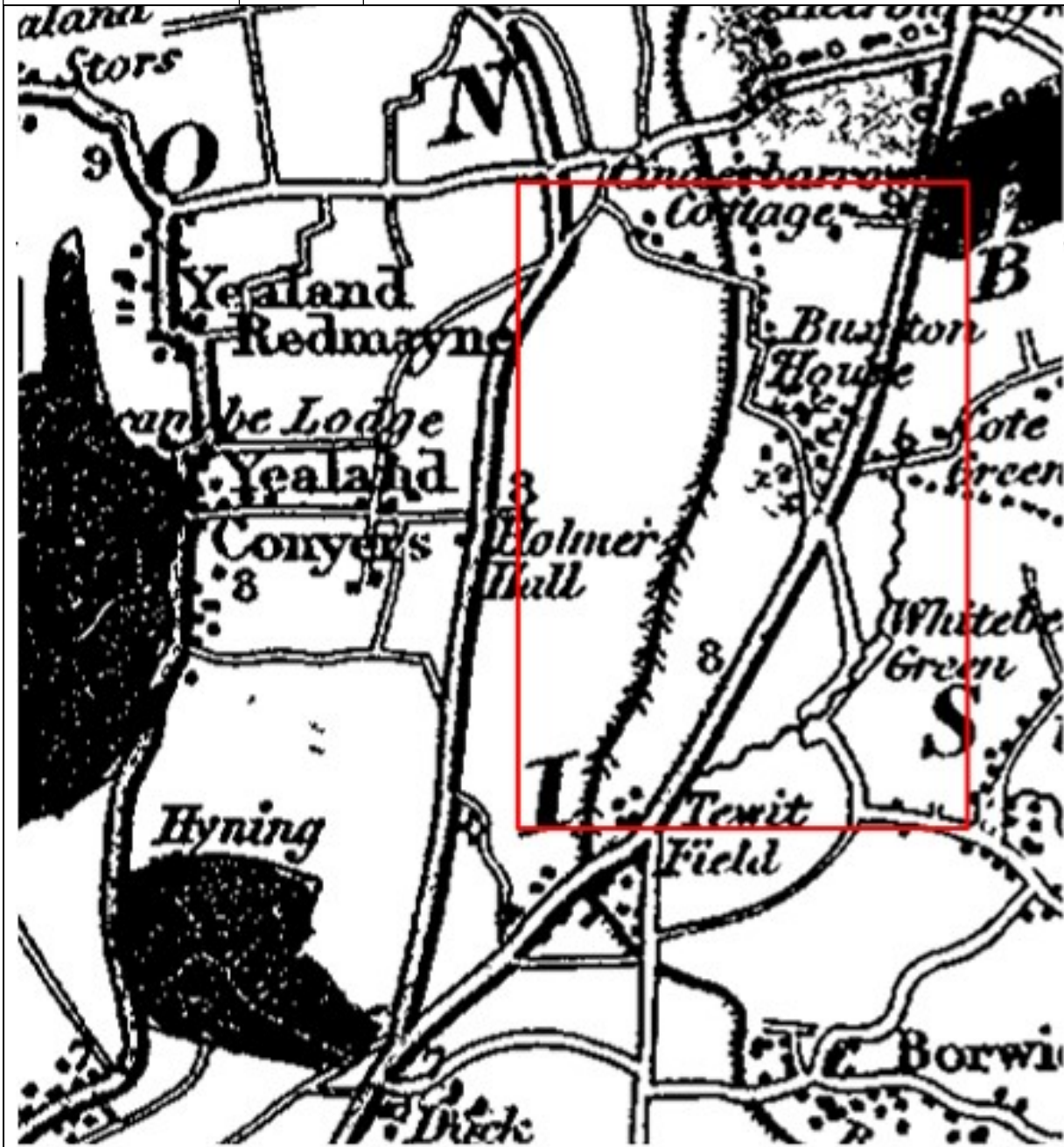
A copy of the Act has been obtained from the Parliamentary Archives. This public Act dates from 1750 and provides for the turnpiking of a road described as commencing in Preston City Centre, extending north past Garstang to Lancaster and then continuing through to a place called Heiring Syke on the boundary between Lancashire and Westmorland. The route is not described in detail and there is no reference to the application route itself but the wording of the Act indicates that the route from Preston to Heiring Syke did already exist but that the roads were in very poor condition in places rendering use by

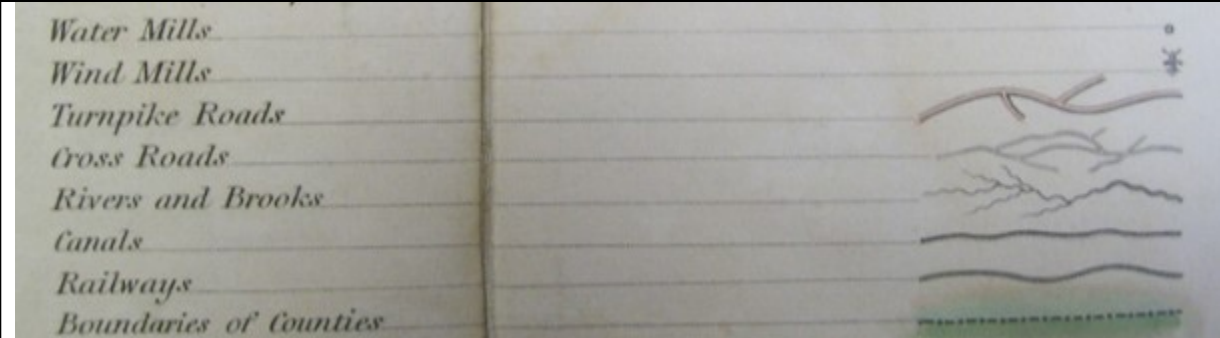
		<p>horse drawn vehicles particularly during the winter months dangerous and at times impossible.</p> <p>The Act dealt with the appointment of trustees and provided for the erection of toll houses and turnpikes on the side of the road and for tolls to be taken from those using the road which would then be used for the ongoing maintenance of the road. The Act provided that the road was to be repaired, widened and amended as necessary and provided for the purchase of land where it was necessary to widen or to divert the route. Where a new section of route was provided, and once work had been completed and the new road brought up to the required standard, the new road became part of the public highway network and the trustees were given the power to sell the land over which the 'old' route ran.</p> <p>Several further Acts relating to the turnpike road were made between 1750 and 1822 but it appears, as indicated on the early commercial maps detailed above, that the turnpike road came into existence and that the application route appeared to be part of the road that became part of it.</p> <p><u>The 1822 Act</u></p> <p>In 1822 came a general Act dealing with all sorts of turnpike issues nationally. It repealed the 1750 Act.</p> <p>Section 88 provided that “...when any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any Act of Parliament contained, or otherwise, to which the old road was subject, and shall be deemed and taken to be a common highway, and shall be repaired and maintained as such; and the old road shall be stopped up, and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose land adjoin thereto... but if such old road shall lead to any lands, house, or place, which cannot, in the opinion of the said trustees or commissioners, be conveniently accommodated with a passage from such new road, which they are hereby authorised to order and lay out if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect...”</p> <p><u>The 1823 Act</u></p> <p>A further Parliamentary Act “...for more effectually repairing and improving the Road from the Town of <i>Garstang</i> to the Town of <i>Lancaster</i>, and from thence to a Place called <i>Heiring Syke</i>, and the Road from the Guide Post in the Township of <i>Slyne with Hest</i> to <i>Hest Bank</i>, all in the County Palatine of <i>Lancaster</i>” dated 12th May 1823 was submitted by the applicant and has</p>
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		<p>been considered by the Investigating Officer.</p> <p>The Act refers specifically to the three sections of the turnpike road which were detailed in a plan prepared the previous year and deposited in the County Records Office.</p> <p>Paragraph V of the Act authorises the Trustees to execute deviations, notwithstanding the repeal of former Acts – including the 1750 Act detailed above.</p> <p>One of the deviations listed is described as “one Part or Portion thereof lying in the Townships of Dalton and Priest Hutton, between a certain place called Deerslott Gate, and another certain place called Longlands Inn in order to avoid passing over a hill called Buckstone Hill;” This description fits with the plan of the proposed deviation detailed on the plan above and as such relates to the application route.</p> <p>Paragraph V concludes by discharging the Trustees from further repair work to the sections of road that will be bypassed (i.e. the application route):</p> <p>“...and that from and after such several Diversions shall be completed, the said Trustees shall be and they are hereby discharged from any further Repair, Care or Management of the said Parts or Portions of the said District of Road, which shall by or in consequence of such Diversions be abandoned as Parts or Portions of the Line of the said District of Road.”</p> <p>Plans deposited in the County Records Office titled as being for the proposed deviation of the Garstang to Heiring Syke Turnpike Road are dated 1822. The plans show 3 sections of the route which were planned to be diverted:</p> <ol style="list-style-type: none"> 1. A section between Deerslack Gate, Dalton & Longlands Inn, Priest Hutton; 2. A section between Bailrigg Lane, Scotforth & Horse Block, Ellel; 3. A section between Satt Oak, Ellel & Forton Smithy. <p>All three of the proposed deviations have been looked at as part of this investigation.</p> <p>In respect of the application route it can be seen from the plan that it was shown as being part of the turnpike road in 1822 and that it was proposed to construct a new section of turnpike road starting at Longlands and Greenlands. The new road is shown to the east of the application route along a route consistent with the modern-day route of Burton Road to a point north of the junction with Cinderbarrow Road near to Deerslet from which the toll road continued on its original alignment. All of the application route is included in the section of turnpike road from which it was proposed to deviate.</p> <p>A comparison of what is shown on the plan with what exists today shows that from Burton Road at Greenlands Farm the first section of road labelled as being the turnpike road in 1822 is now recorded as part of a public bridleway up to point A.</p>
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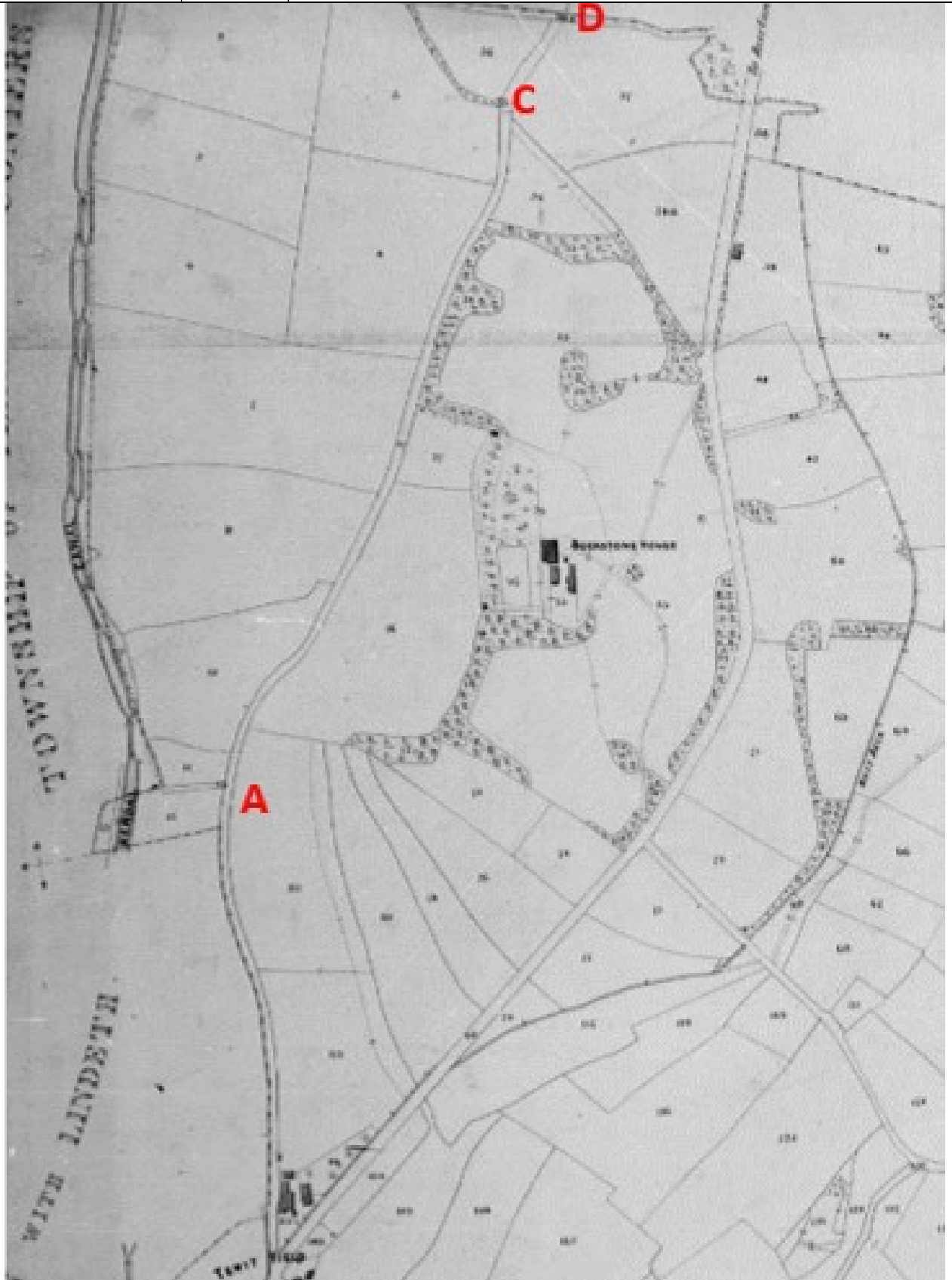
	<p>Beyond point A the application route still physically exists as a bounded route to point B and continues across fields to point D where it exits onto Cinderbarrow Lane. From Cinderbarrow Lane through to Heron Syke there is no trace of the old route on the ground although the route can be seen on Google Earth images.</p> <p>This is in contrast to the other two sections of the 1822 turnpike road where the pre-diversion route can both be clearly seen (with some minor deviations due mainly to the construction of the railway) as public vehicular roads that are still in existence today with the route proposed to be built in 1822 now in existence as part of the A6 between Garstang and Lancaster.</p>
<p>Investigating Officer's Comments</p>	<p>The Act dating back to 1750 implies that the road from Preston to Heiring Syke was already in existence as a public carriageway at that time. The early map evidence available is suggestive of the fact that the application route formed part of this pre-turnpike route and the fact that it was subsequently diverted in the 1820s to avoid Buck Stone 'hill' suggests that it probably wasn't a newly created/amended part of the 1750 route but was more likely to have been part of the original historical road.</p> <p>The 1822 Act provided for any sections which were diverted were stopped up as highways although provision was made for access rights to be preserved.</p> <p>The 1823 Act provided for three deviations to the existing toll road and also provided for the fact that the newly created deviations would become part of the turnpike road and would be maintainable by the trustees as such. The "abandoned" sections of former turnpike road, including the application route, are not described as stopped up in that Act but if the 1822 General Act then applied they were stopped up. The other two old turnpike sections, at Galgate Hill between Scotforth and Galgate, south of Lancaster and at Salt Oak Hill and Foxholes Hill between Ellet Grange Gates and Middle Hollins, Forton are still public vehicular roads to this day but we have no information as to why that may be although the most southerly section did link a number of small settlements.</p> <p>The plan confirms that in 1822 the application route formed part of the turnpike road. It shows that it was proposed to construct three sections of new road which would replace the sections of existing turnpike road and all three sections appear to have been subsequently constructed.</p> <p>The 1822 Act made specific provisions for the stopping up of diverted sections.</p> <p>A search of records held by the Lancashire Archives office and</p>

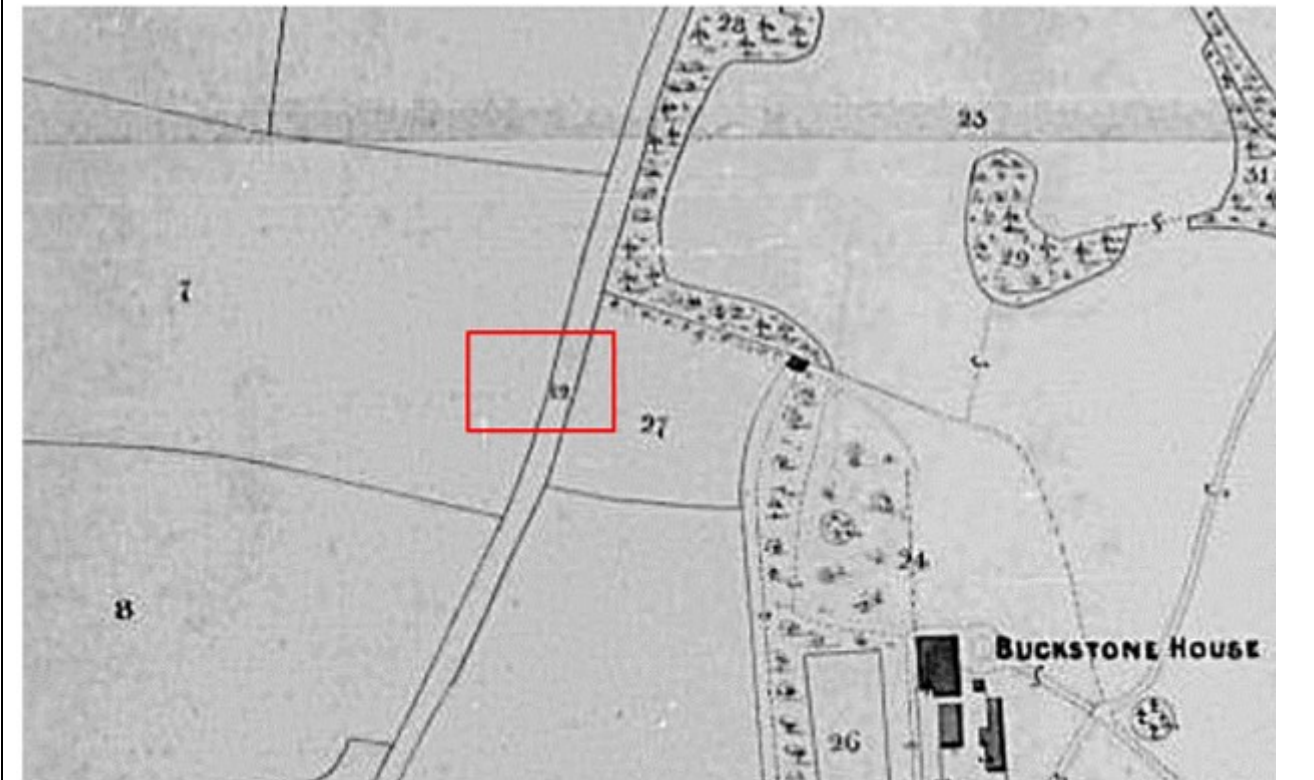
		The National Archives was carried out but no specific records relating to the sale of the land crossed by the application route by the Trustees of the Turnpike Trust were found.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

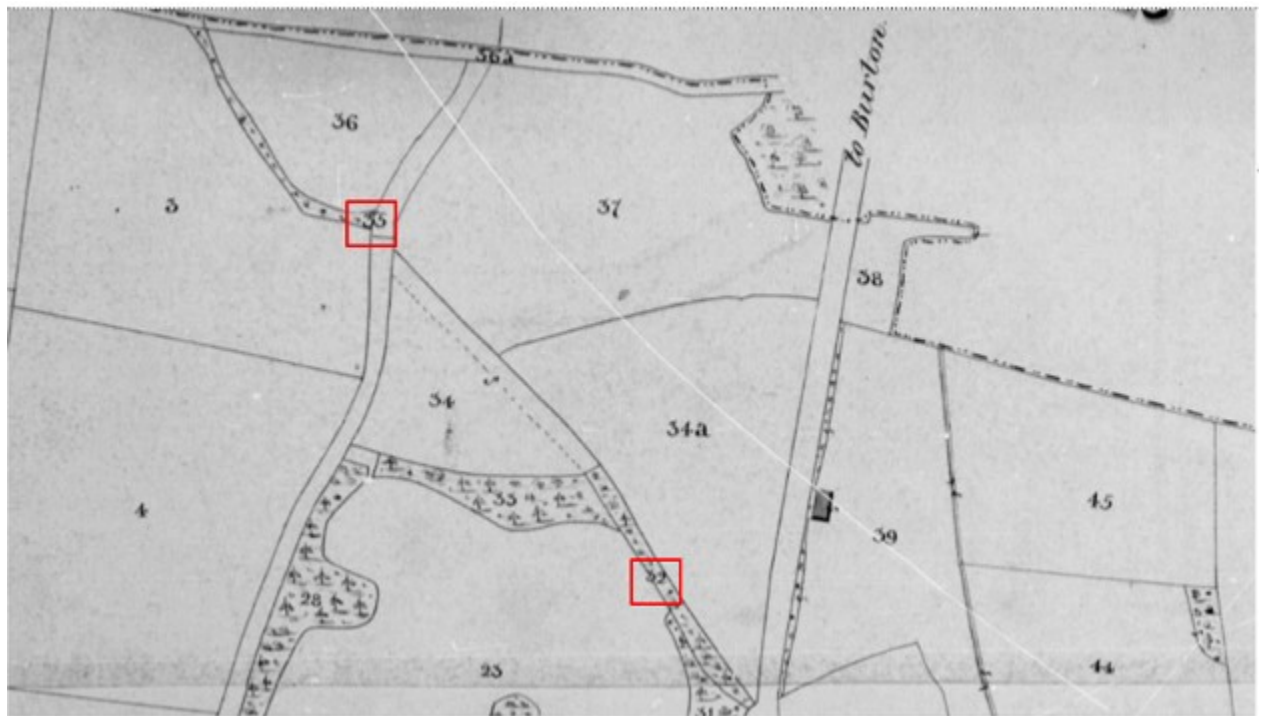


		
Observations		Seven years after the Act to allow for the deviation Hennet's Map shows the newly diverted section of the Turnpike Road although the road through to Cote Green is shown too far south and out of position and the east west route known as Cinderbarrow Road is also out of position. The Map also shows the Ulverston and Carnforth Turnpike (the current A6) further west which had not previously been shown on any of the maps examined. A property labelled as Buxton House is shown west of the diverted turnpike road. The former route of the turnpike road, i.e. the application route, is not shown.
Investigating Officer's Comments		The property labelled as Buxton House, presumably Buckstone House, is shown. No route broadly consistent with the application route is shown suggesting that the application route no longer formed part of the Turnpike road and may no longer have been in use for the public at the date of the survey for the 1830 map.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The Lancaster Canal lies to the west of the application route but none of the early plans inspected provided any information about the status of the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1846	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.







LANDOWNERS.	OCCUPIERS.	referring to the Plan.	NAME AND NUMBER or LANDS AND PREMISES
<i>Burrow Thomas Christoper (continued)</i>	<i>Richard Baines (continued)</i>	8	<i>Old Field</i>
		11	<i>Old Field</i>
		12	<i>Lane & Old Turnpike</i>
		15	<i>Hagworm Close Top</i>

11	Old Field	Arable	2	214	14	14	5 th
12	Lane & Old Turnpike Road		2	28			
15	Hagworm Close Top	Arable	3	15	5	9	

Extracts from the Tithe Award for plot 12 (the application route between point A and point C)

Public Roads & Waste Ground	1	Road					
	69	Whitbeats Green					2 3
	121	Greenlands, (Cotters Dale)					3 2
	155	Pinfold					
	351	Public Roads					14 1
							15 3 2

Extract from the Tithe Award showing numbering of routes considered to be Public Roads

28	Plantation	1	14				
29	Plantation	1	32				
30	Plantation		30				
31	Plantation	1	16				
32	Plantation (Old Road)	1	14				
33	Plantation	2					
35	Plantation (Old Road)	1	32				
53	Plantation		16				
54	Plantation	1	14				
56	Plantation		18				
61	Plantation		23				
62	Plantation		35				
70	Plantation		36				
		1					
		32	3	1		4	4

Extract from the Tithe Award for the old route of Cinderbarrow Lane

Observations	<p>The Tithe Map is the earliest map examined to show the re-routed turnpike road in detail running to the east of the application route along the current alignment of Burton Road. It is numbered as plot 80 on the Tithe Map and as a Turnpike Road in the Tithe Award.</p> <p>The Tithe Map also shows the route of the old turnpike road from Greenlands on Burton Road through to point A. The word 'FIELD' is written across the start of the route and it is not possible to see whether access onto the route was gated or not. At point A the route of 'the bridleway' is drawn leaving the old turnpike road to continue west towards the canal. The number 12 has been written on the route at point A.</p> <p>Between point A and point B the application route is shown as a bounded route and is numbered 12 to the west of Buckstone House which is accessed from the new turnpike Road (Burton</p>
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		<p>Road) with no access shown from the application route.</p> <p>Plot 12 is listed as “Lane and Old Turnpike” in the Tithe Apportionment, with no Tithe payable and looks to extend from at least point A as far as Point C where a gate is shown across the route. Of significance is the fact that Plot 12 has an owner and an occupier listed in the Tithe Award and the route is not included in the separate list found at the end of the Award titled Public Roads and Waste Grounds. The landowner is listed as being Christopher Thomas Burrow who owned Buckstone House at that time and when a search was made at the County Records Office papers were found which related to the Burrow Estate and in particular the sale of land by the Trustees of the Heiring Skye Turnpike Trust to Mr Burrow of Buckstone House, Priest Hutton in 1838 (CRO Ref: DDX 2743/MS3393 and DDX 2743/MS3394). Neither document related to the sale of this plot of land but the fact that part of the old turnpike road is listed in the Tithe Award as being owned by an adjacent landowner does suggest that following the diversion of the turnpike road the land crossed by the route was subsequently sold.</p> <p>Beyond point C the application route is shown on the Tithe Map to continue – still bounded on either side - to point D where another line is shown across the route at the junction with Cinderbarrow Road. This section of the route is not numbered although the number 35 is written just beyond point C where a narrower bounded strip is shown extending in a generally north westerly direction through to Cinderbarrow Road. Plot 35 is listed as “Plantation (Old Road)” and most probably refers to the Old Cinderbarrow Road which crossed the old turnpike from south east to north west and is shown on the map with trees. The numbering and description of the south eastern section as plot 32 appears to substantiate this view.</p> <p>Cinderbarrow Road is numbered as plot 36a and described as a public road in the Township of Dalton whereas other routes now considered to be public vehicular routes are numbered 351.</p>
Investigating Officer's Comments		<p>The turnpike road was still in existence in 1846 but had been diverted onto the route now forming part of Burton Road as described in the Act of Parliament which provided for the deviation of the route in 1823.</p> <p>The full length of the application route still existed in 1845 but was gated at point C and point D. Land crossed by the route was listed as being owned and occupied and although no tithes were payable the route was not listed as a public road. Instead it was described as 'Lane and Old Turnpike'.</p> <p>The way that the route is depicted on the Tithe Map and in the Tithe Award suggests that it was no longer considered to be a public road. It was however described as a lane and despite being gated it is not shown to be overgrown or as a plantation as were plots 32 and 35.</p>

Inclosure Award Maps	Act and	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 18	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. ¹



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



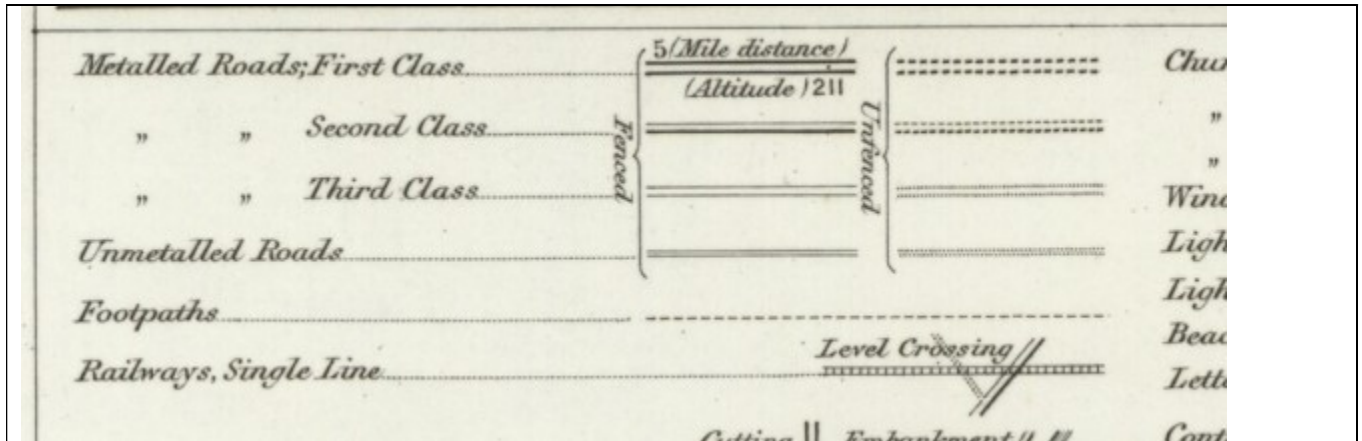
Observations

The full length of the application route is shown as part of a longer route extending from Burton Road at Greenlands through to Cinderbarrow Road at point D. The turnpike trust road is shown on the new alignment running to the east of the application route and is clearly labelled as such and is shown with a thicker line along the south/east side to indicate its status as a turnpike road.

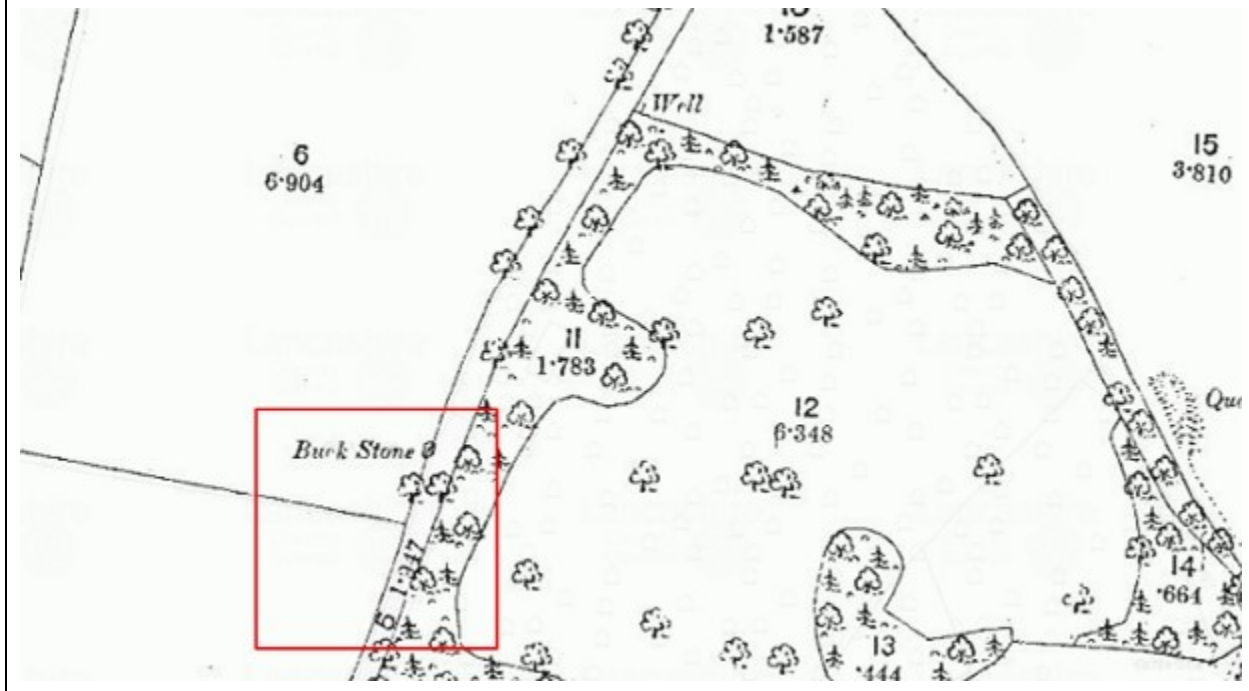
From Greenlands the route of the former turnpike road is shown and access onto it from the new turnpike road appears to be open although the width may have been restricted by a pipe crossing (culvert). The route is shown extending north bounded on the east side but it is not clear whether it was also bounded on the west side as this is shown with a dotted line indicating

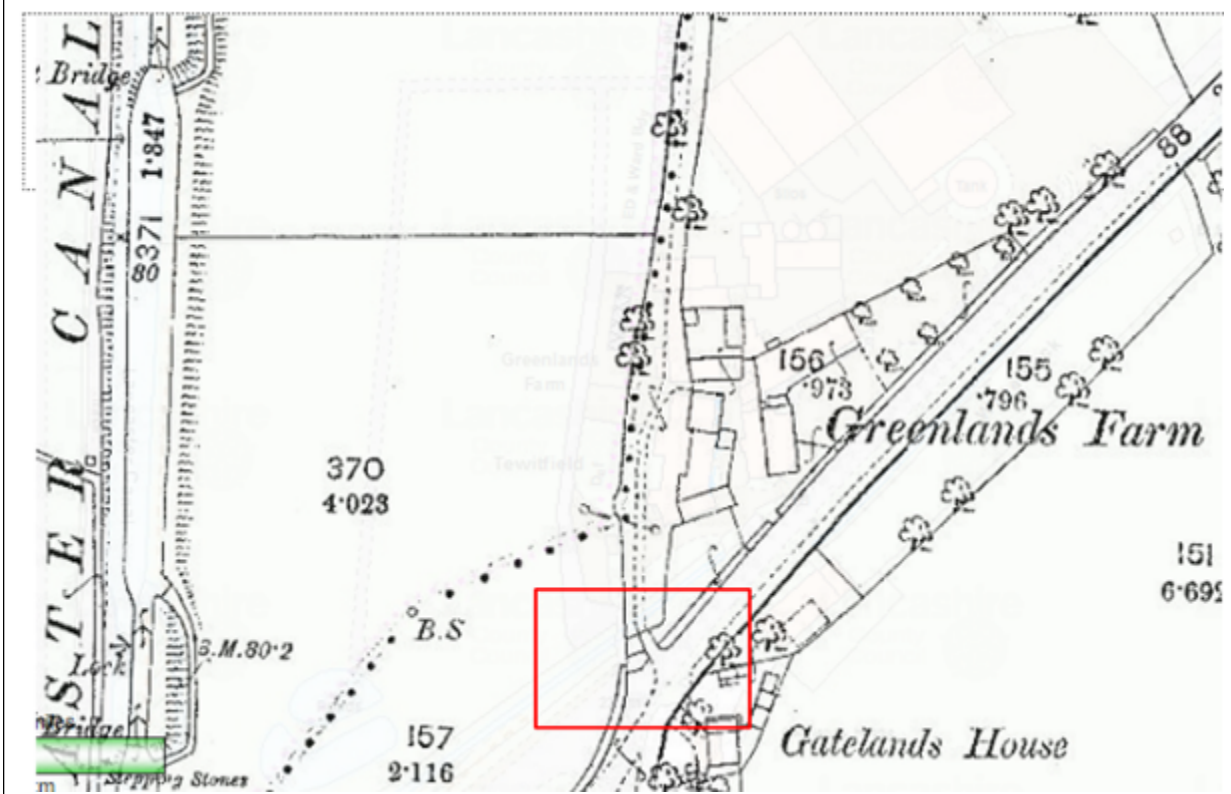
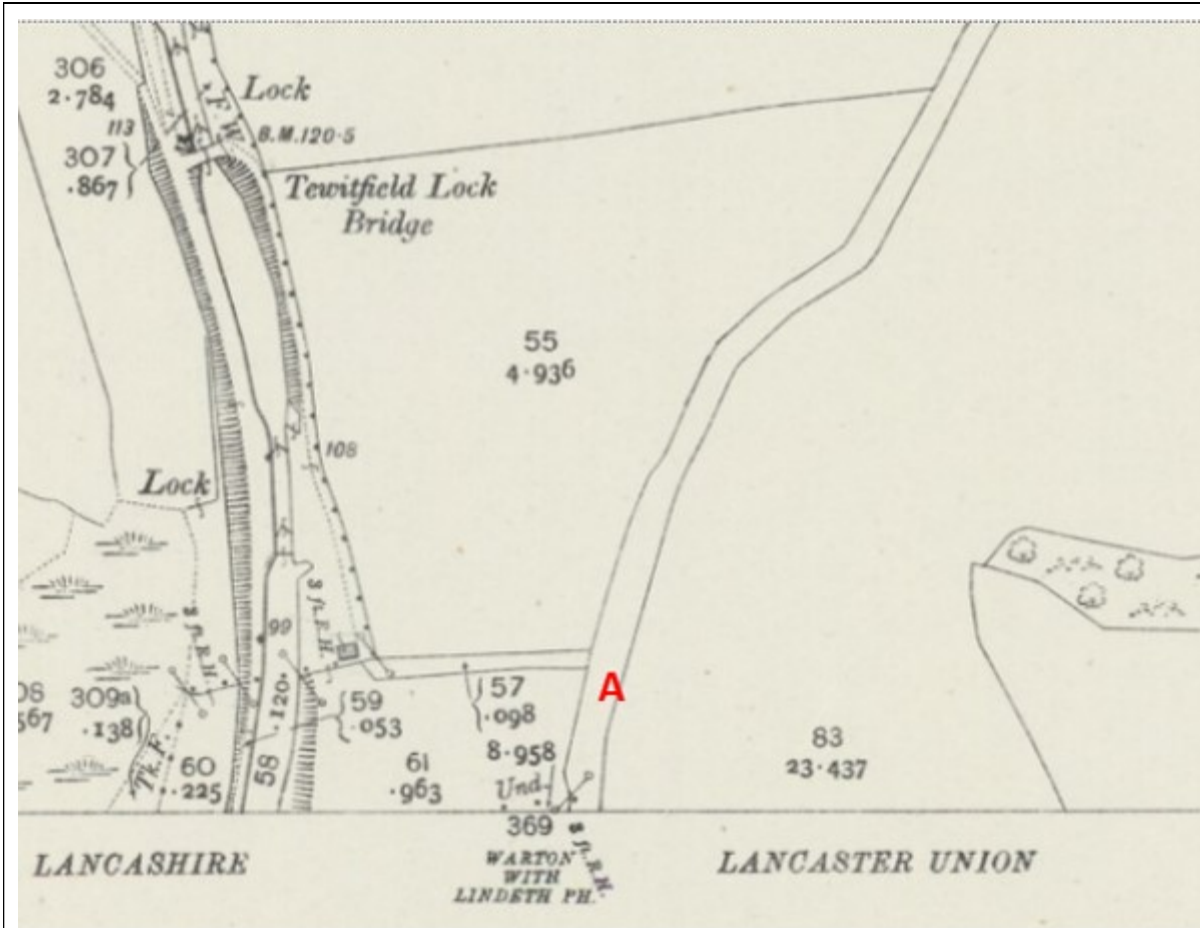
		<p>the parish boundary between Priest Hutton and Warton most of the way up to point A. Cinderbarrow Lane at point D is also shown in a similar way as the county boundary runs along the north side of the lane suggesting that both may have actually been bounded routes but that only the parish and county boundary notations were shown, i.e. given precedence by the cartographer.</p> <p>From point A the route now recorded as Bridleway Priest Hutton 14 continues west towards the canal. The application route is clearly shown extending north east as a bounded route consistent with how other routes with public vehicular access are shown all the way through to point D where an open junction with Cinderbarrow Lane is shown. No lines indicating the existence of gates are shown across the route and the Buckstone is marked as a physical feature part way along the route.</p>
Investigating Officer's Comments		<p>The application route no longer formed part of the Turnpike Road in 1844-45 but still existed as part of a substantial route that appeared capable of being used on horseback and as a carriageway at that time. Whether there was public use is not known, gates may have existed; however it is unlikely that public use continued; the trustees would not have wanted travellers to avoid the tolls, the old route was no longer maintained and the new route would have been better, possibly significantly so, which is why it was diverted.</p>
1 inch OS Map Sheet 39 - Kendal	1898	Small scale 1 inch OS map published in 1898.





Observations		The application route is shown as part of a longer route starting on Burton Road at the Inn at Tewitfield heading north through to Cinderbarrow Lane at point D. It appears to be depicted as a third class road (fenced) consistent with the width of Cinderbarrow Road and Chapel Lane which runs south from the Inn at Tewitfield. The turnpike road is shown running to the east of the application route.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the application route - had public rights for those travellers.
25 Inch OS Map Sheet XIX.9	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.





Observations	The application route is shown.
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	<p>From Burton Road adjacent to Greenlands Farm access onto the route of the old turnpike road ('the bridleway') is now gated and is more clearly shown as crossing a culvert which reduces the available width to approximately 3.5 metres.</p> <p>At point A 'the bridleway' turns to continue west through what appears to be a gate (a line across the route) towards the canal. The application route extends in a north north easterly direction from point A as a bounded route passing the Buck Stone to point C where a line is shown across the route suggesting the existence of a gate, and then continues – still as a bounded route – through to point D where it appears to have been gated to exit onto Cinderbarrow Lane. The gate at point C is shown with a braced symbol across it indicating that the field parcel number shown between point A and point C also included the section of bounded route between point C and point D.</p> <p>Burton Road and Cinderbarrow Lane are both shown with thickened lines down the south/east side of the road indicating that they were considered to be publicly maintainable carriageways. The application route is not shown in this way.</p>
<p>Investigating Officer's Comments</p>	<p>The application route still existed as a substantial through route which appeared to be capable of being used on horseback and with vehicles in 1891 although it looks to have been gated at two locations (point C and possibly point D) at that time.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The Planning Inspectorate Consistency 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 and in this particular case two parcel numbers are listed split by a gate part way along the route.</p> <p>The route is not shown with a thickened line to one side on the black and white edition of the map in the way that Burton Road and Cinderbarrow Lane are shown suggesting that the application route was either no longer considered to be a public road at that time and/or that its use had declined and its surface was now inferior to that of the newer section of Turnpike Road (Burton Road) and newly aligned Cinderbarrow Lane. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot.</p>

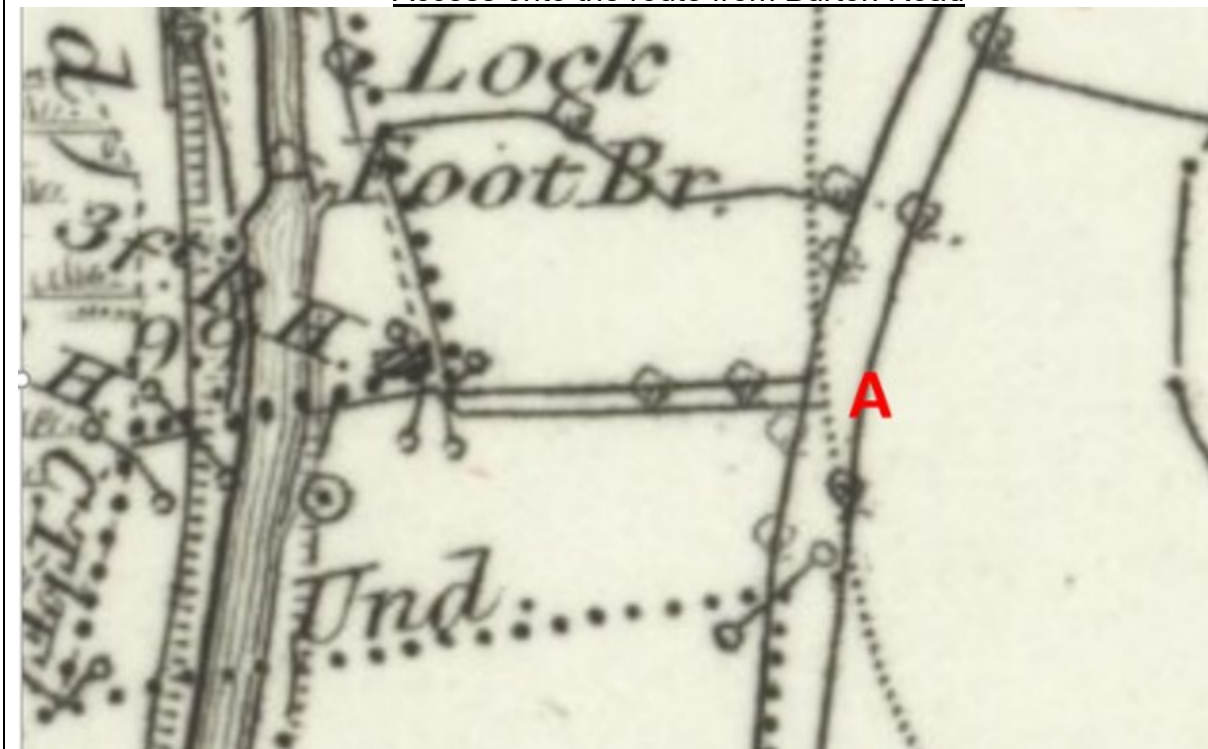
The fact that the route was not shown in this way is consistent with how it appeared to be recorded in the Tithe Award as a 'lane' and 'old turnpike road' and that whilst it was probably passable by horse drawn vehicles – it may not have been considered – or to be used - as a public road at that time. The way it is shown on the map is not, however, inconsistent with use of the route by the public. However the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.

6 inch OS 1894 OS 6 inch map sheet 19 (XIX) surveyed 1844-5, revised 1890 and published 1894.

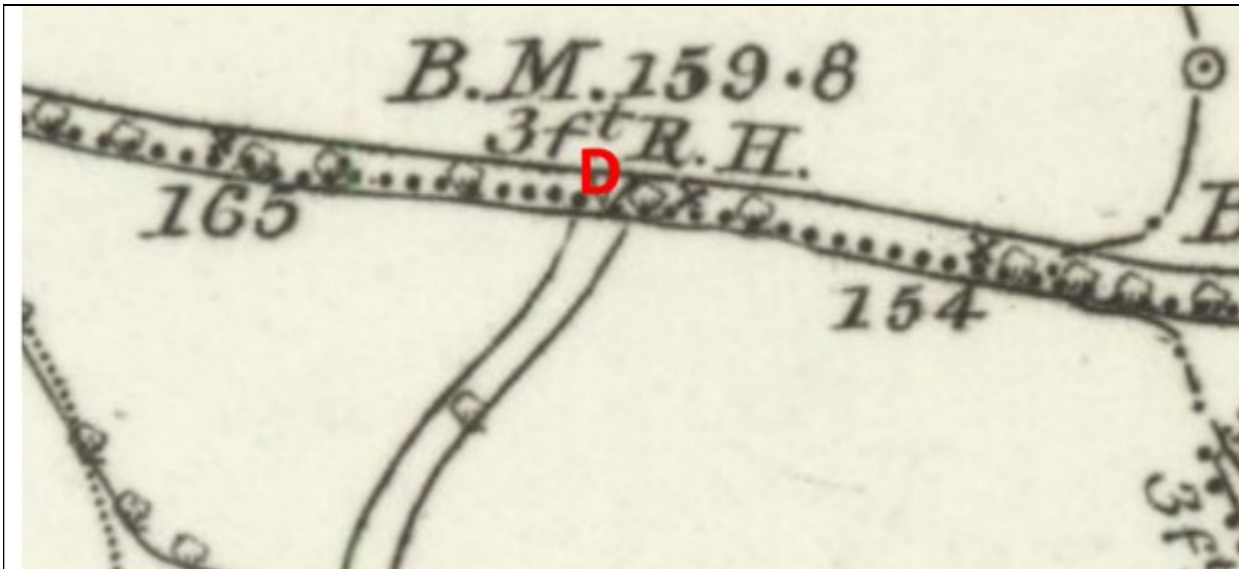




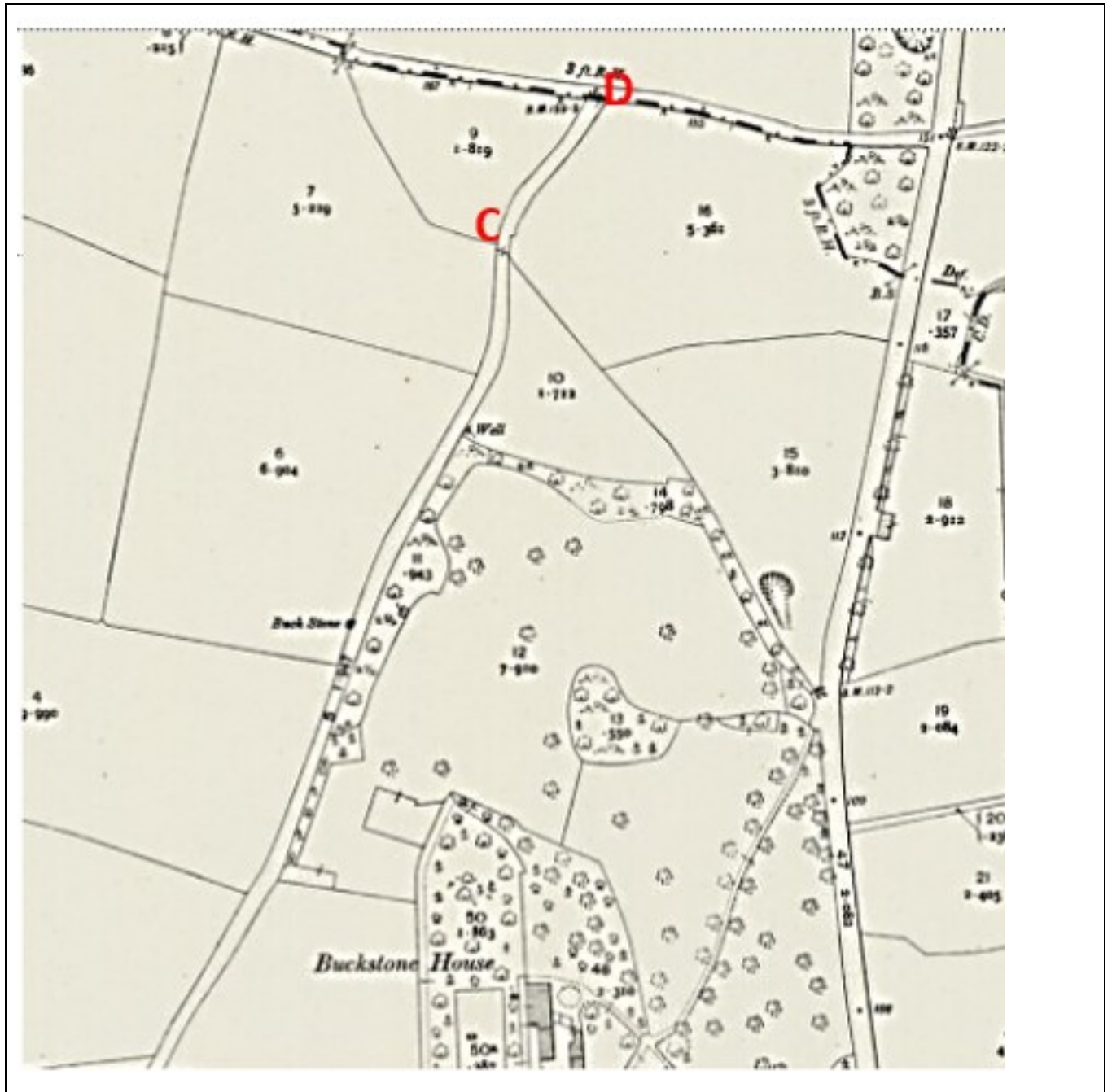
Access onto the route from Burton Road



Point A

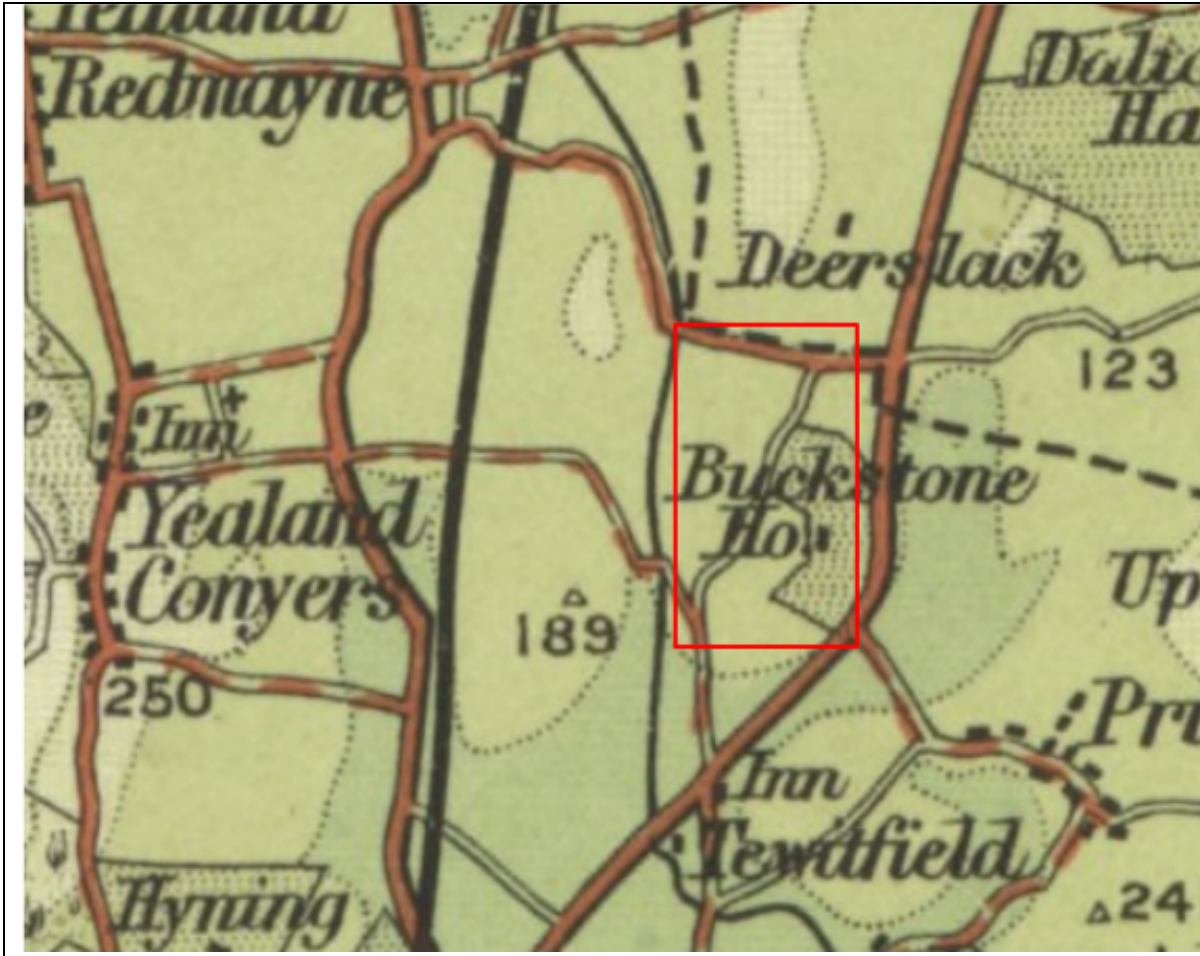


Observations		The application route is shown largely unaltered from how it is shown on the earlier 6 inch map and 25 inch map. Gates are shown across the start of 'the bridleway' at Greenlands farm (where it was significantly constricted) and at point D but no gate is shown at point C.
Investigating Officer's Comments		The application route existed as part of a longer substantial bounded route in 1890 and appeared to be capable of being used at least on horseback but was gated at both ends and at point C showing on the larger scale OS of 1891. However the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.
25 inch OS Map Sheet XIX.9	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1911.



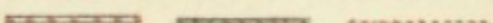
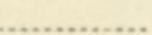




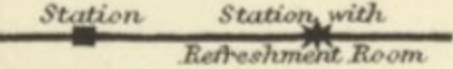
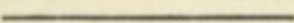
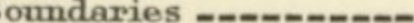
Observations		The application route is shown as a bounded route gated at point C and point D. The old turnpike is also shown gated and constricted where it left the new turnpike south of the application route.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910 and appeared to be capable of being used. Gates were across the route and the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.
Bartholomew half inch Mapping	1905-1941	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



EXPLANATORY NOTE

First Class Roads 
 Secondary (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 Isle of Man published 1905



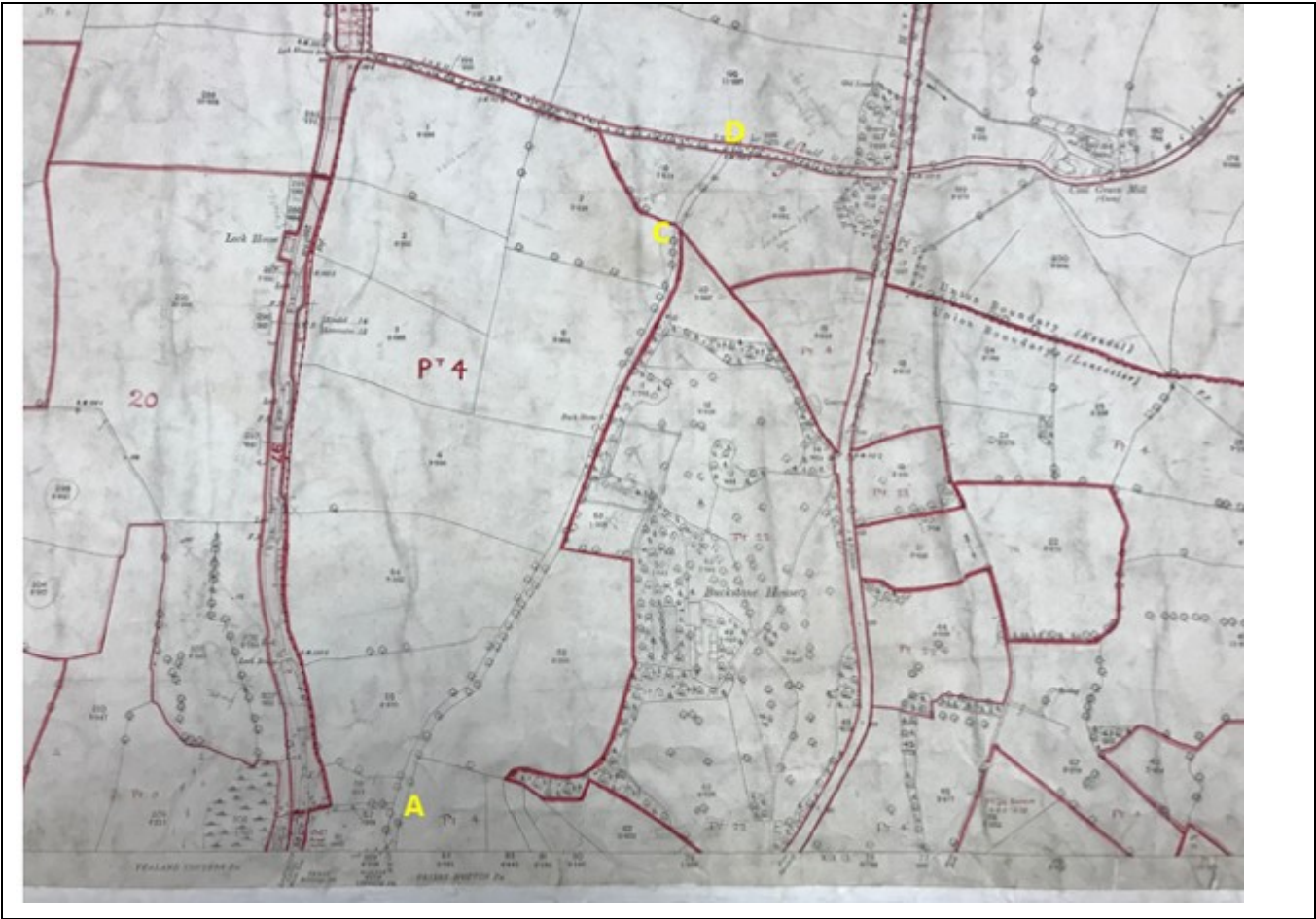
Sheet 5 – North Lancashire and Isle of Man published 1920

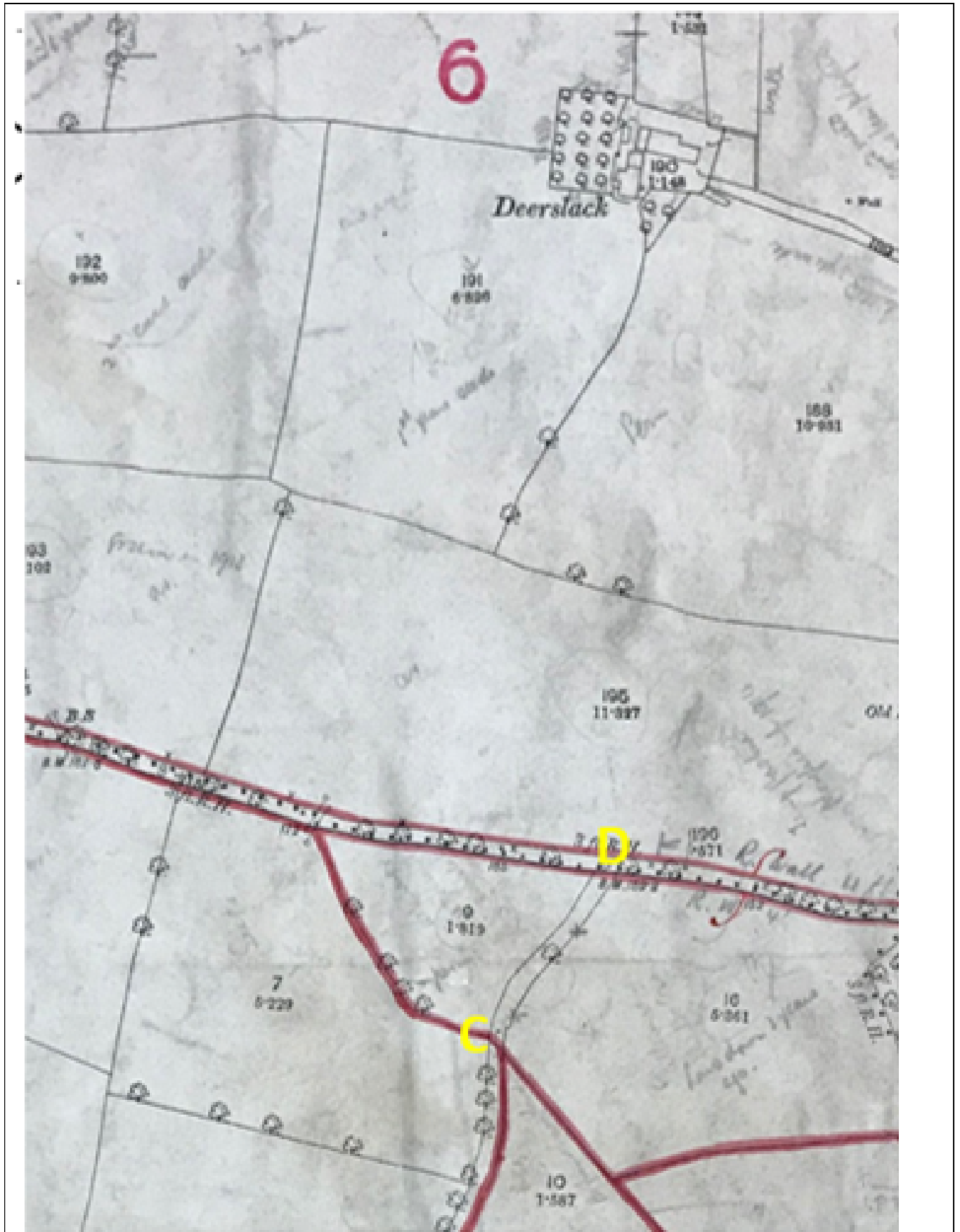


- | | |
|----------------------|--|
| Best Motoring Routes |  |
| Good Secondary Roads |  |
| Serviceable Roads |  |
| Other Roads |  |

Sheet 31 – North Lancashire published 1941

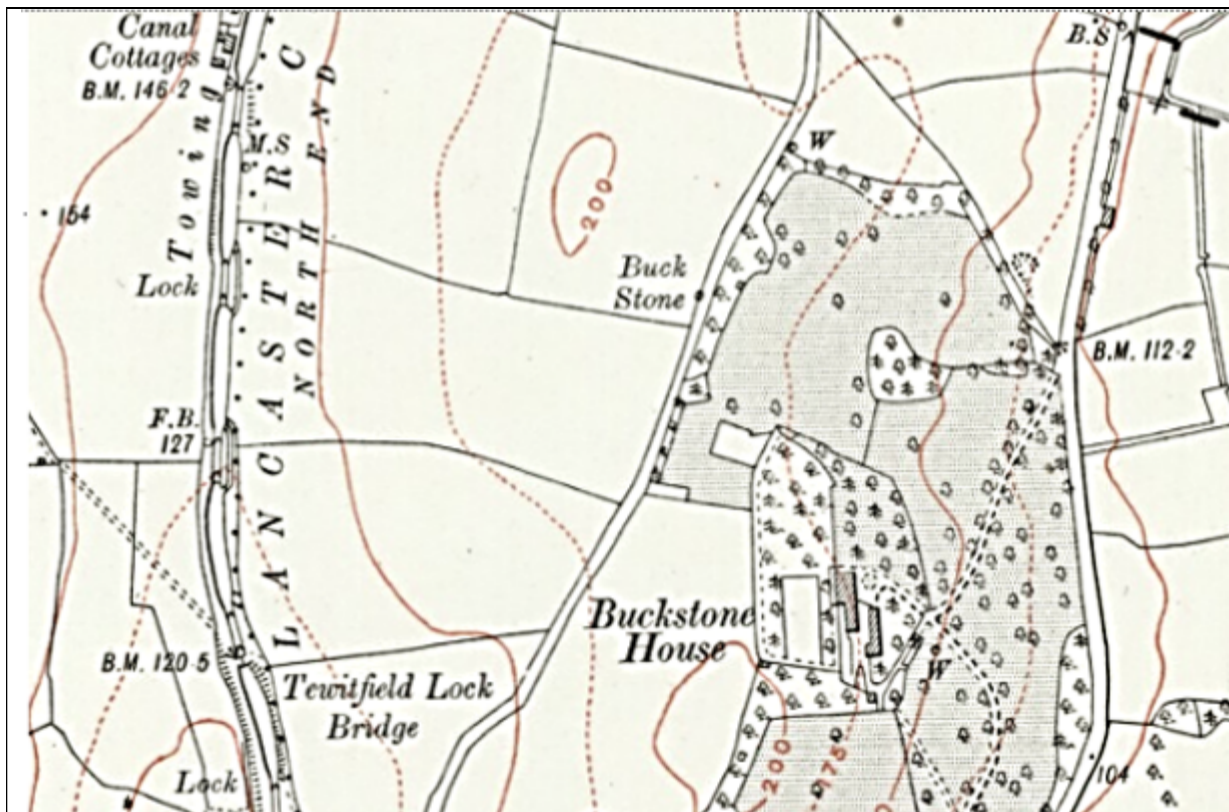
Observations		The application route was shown as a bounded route on all three maps. In 1905 and 1920 it is shown as an uncoloured road described as inferior and not to be recommended for cyclists. Bridleways and footpaths – where shown – were depicted with a single dashed line and in 1940 double unbroken lines are described as 'other roads'. 'The bridleway' leading to point A from Burton Road on all three maps is shown as a road considered to be serviceable or passable.
Investigating Officer's Comments		The application route existed as a substantial bounded route in the early to mid-1900s and appeared to be considered as a road, albeit not well maintained. 'The bridleway' leading to point A appeared to be in better condition and possibly better used.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>





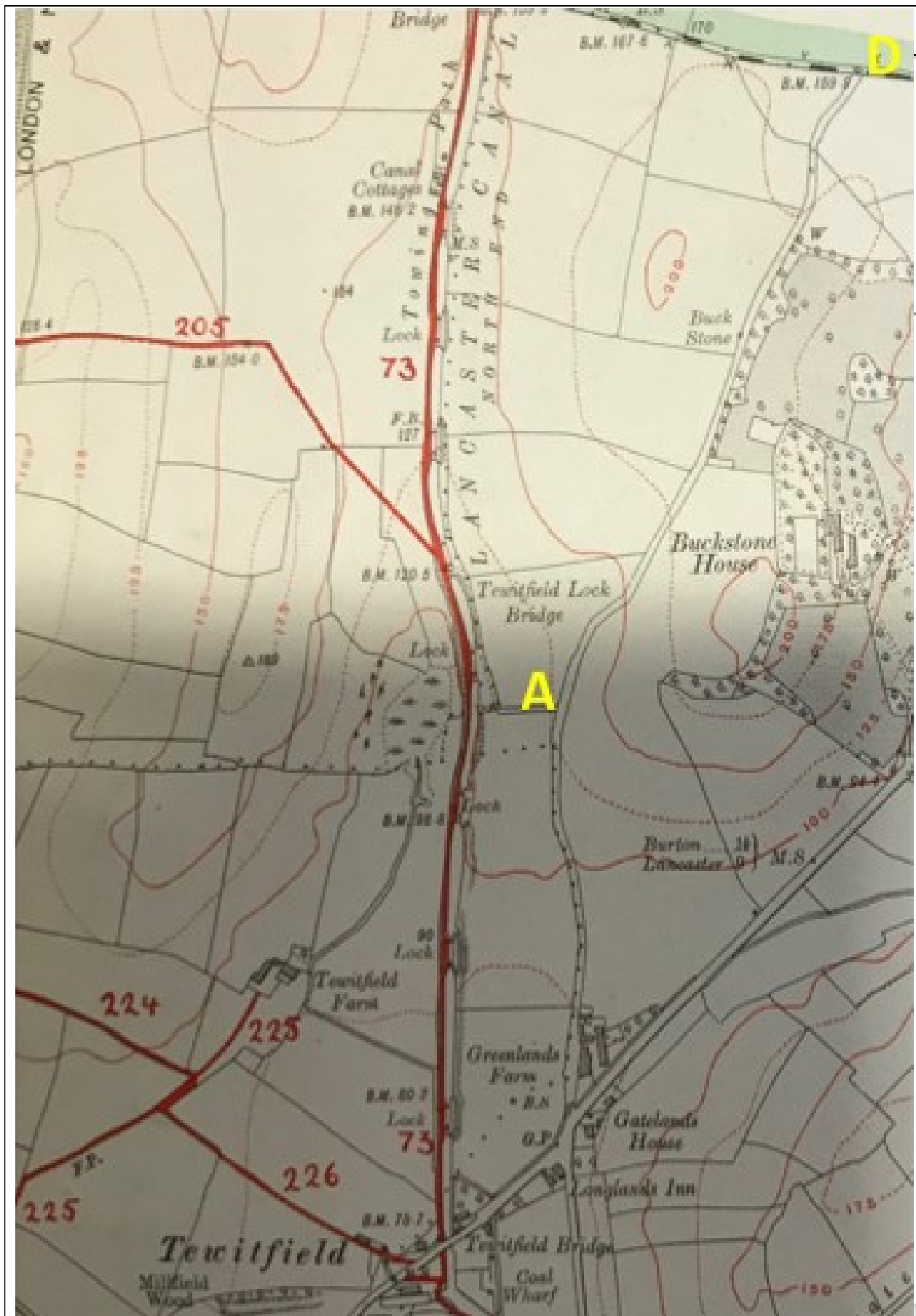
Observations		None of the application route is excluded from the numbered plots. Between point A and point C the application route is
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		<p>included in a large and disjointed plot numbered as plot 4. The land is recorded in the District Valuation book as being owned and occupied by Stephen B Harris and sons and their address stated as 'Greenbank' at Over Kellet, Carnforth. Buckstone House and the grounds surrounding it are numbered separately indicating that by the early 1900s the land crossed by the application route between point A and point C was no longer in the same ownership as Buckstone House (as it was when the Tithe Map was prepared). Plot 4 is described simply as 'buildings and land' and a £3 deduction is listed for 'public rights of way and user'.</p> <p>The remainder of the route (between point C and point D) is included in plot 6 which continues north of Cinderbarrow Lane. Plot 6 is described in the District Valuation Book as being owned and occupied by Smith and Gore, Commissioners, Chester and no deductions are listed.</p>
Investigating Officer's Comments		<p>No part of the application route is excluded from the numbered plots suggesting that in the early 1900s the route was not considered to be a public vehicular highway which would be excluded from the taxation process. The land crossed by the route is all included in two large plots for which ownership details are provided – consistent with the fact that the land was recorded as being in private ownership in the Tithe Award and also in the current landownership records held by the Land Registry. A small deduction is made for public rights of way for plot 4 but it is noted that this plot is large and there is no way of knowing exactly which route – or routes – the deduction applied to. No deduction is claimed for plot 6 suggesting that there were no public rights of way across the land or that the landowner at that time did not admit to their existence.</p>
6 inch OS	1919	Sheet XIX.SW revised 1910-11 and published 1919



Observations		The application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps. Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910-1911 and appeared to be capable of being used.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways

		<p>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>
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Observations

The application route is not shown on the map as a public right

		of way and it is noted that the route of 'the bridleway' is not shown either. The canal towpath however is shown.
Investigating Officer's Comments		The application route was not recorded on the map of public rights of way prepared by or for Lancaster Rural District Council. This may suggest that the route was not in use by the public at that time – or possibly that it was considered to be a public vehicular highway that would not be recorded on a map of this nature. The fact that it is not shown on the 1929 Handover Map detailed below however suggests that the former reason was more likely in this instance.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph of the area crossed by the application route is available to view in the county council's records.
Investigating Officer's Comments		No inference can be drawn.
6 inch OS	1945	Sheet XIX SW revised 1910-11 published 1945

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



Observations		The application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps. Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910 and appeared to be capable of being used.
1 inch OS Map Sheet Lancaster & Kendal	1947	1 inch OS map revised 1920 with later corrections and published 1947.

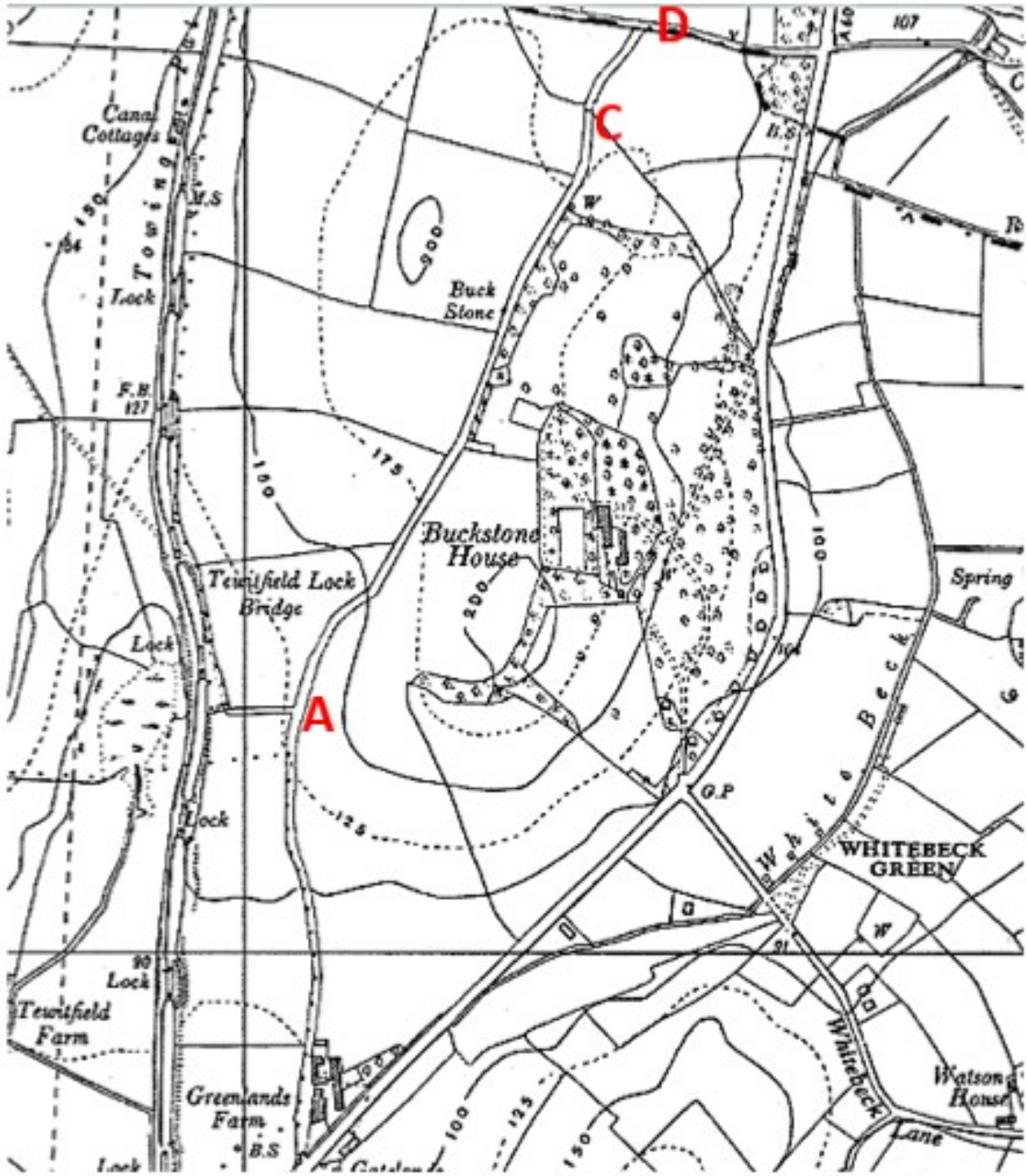


Ministry of Transport Roads	A.6	B.6254
Other Motor Roads		
" " " narrow	Good	Bad
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates	TOLL	
Road Mileage	5	

1014.

Observations		The application route is shown as part of a longer route between Burton Road and Cinderbarrow Lane. Its width suggests that it was depicted as 'Other Motor Road' in 'Bad' condition in the key.
Investigating Officer's		The application route existed as part of a substantial through route in the 1920s and appeared to have been considered to be

Comments		a public vehicular route which, even if in poor condition was capable of being used.
6 Inch OS Map 57SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). The part of the map crossed by the application route was revised before 1930 with parts also revised between 1930 and 1945 and revised for major changes in 1951.



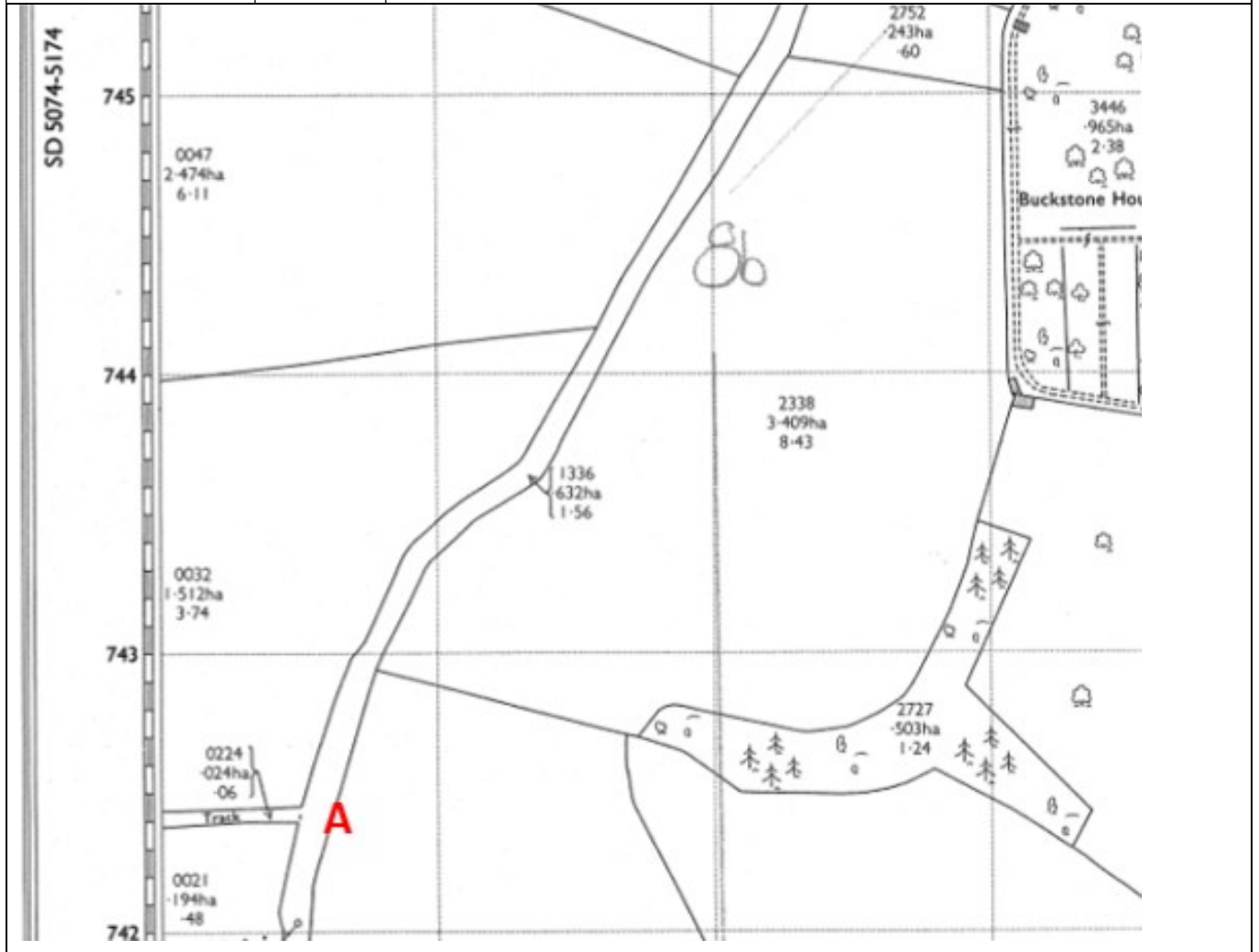
Observations		The application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps.
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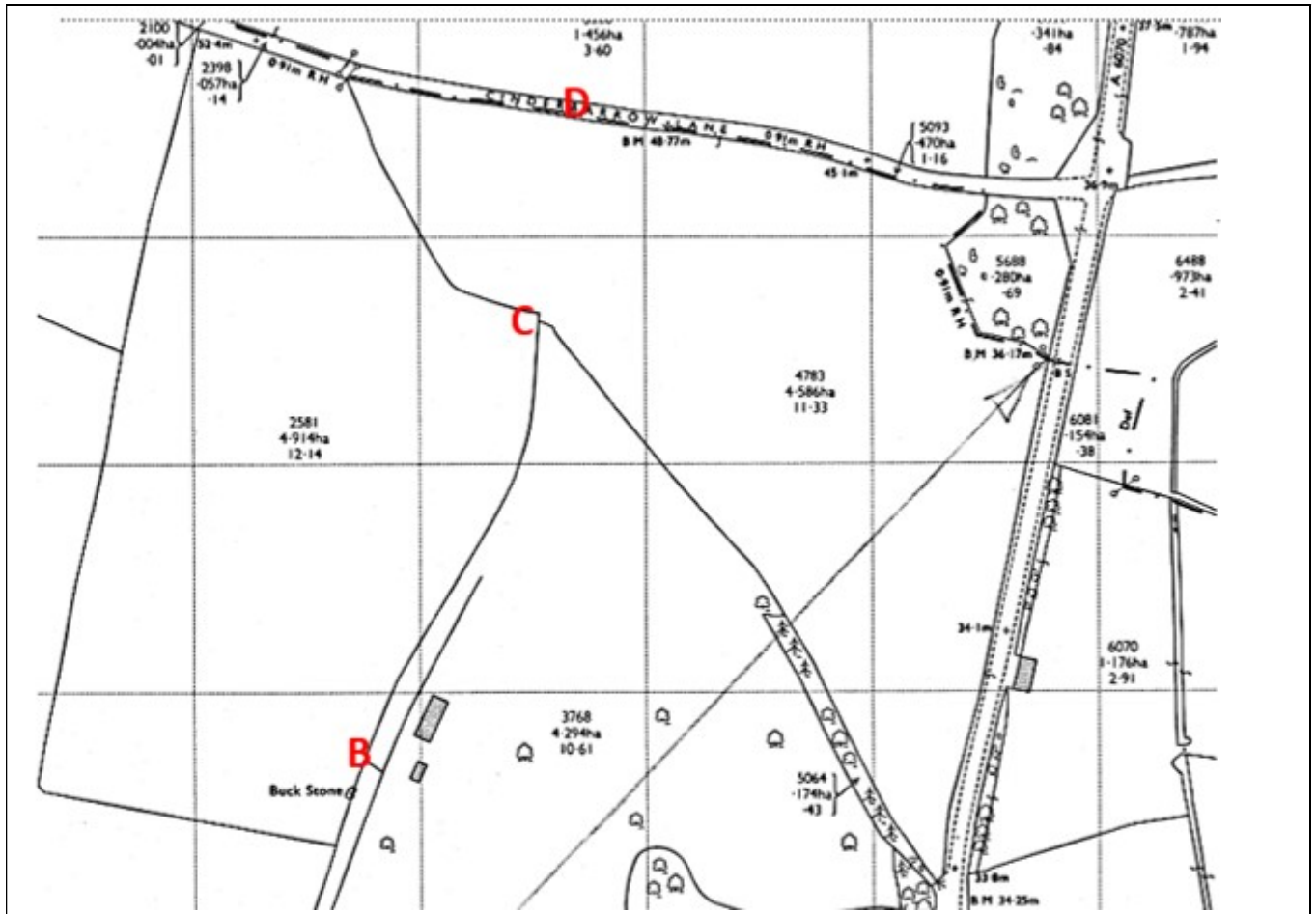
		Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route before the 1930s and appeared to be capable of being used.
1 inch OS Map	1955	OS 1 inch map sheet 89 – Lancaster and Kendal, fully revised 1950-51 and published 1955



Roads	Ministry of Transport, Trunk	A 6 (T)	
	" " " Class 1	A 590	
	" " " " 2	B 6254	R
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "	TOLL	W
" " " " Untarred " "	Gate		
Minor Roads in towns, Drives and Unmetalled Roads			O
(Unfenced Roads are shown by pecked lines)			
Steep Gradients 1 in 5 or steeper	1 in 7 to under 1 in 5		El
Footpaths and Tracks			(v) Pi
Heights in feet above Mean Sea Level	surveyed by levelling	275	M

Observations		The application route is shown as a substantial bounded route and appears in the map key to be depicted as an unmetalled road.
Investigating Office's Comments		The application route existed as part of a substantial through route in the 1950s and appeared to be capable of being used.
1:2500 OS Map SD 5274-5374	1970	Further edition of 25 inch map reconstituted from former County Series and revised in 1969 and published 1970 as National Grid Series.



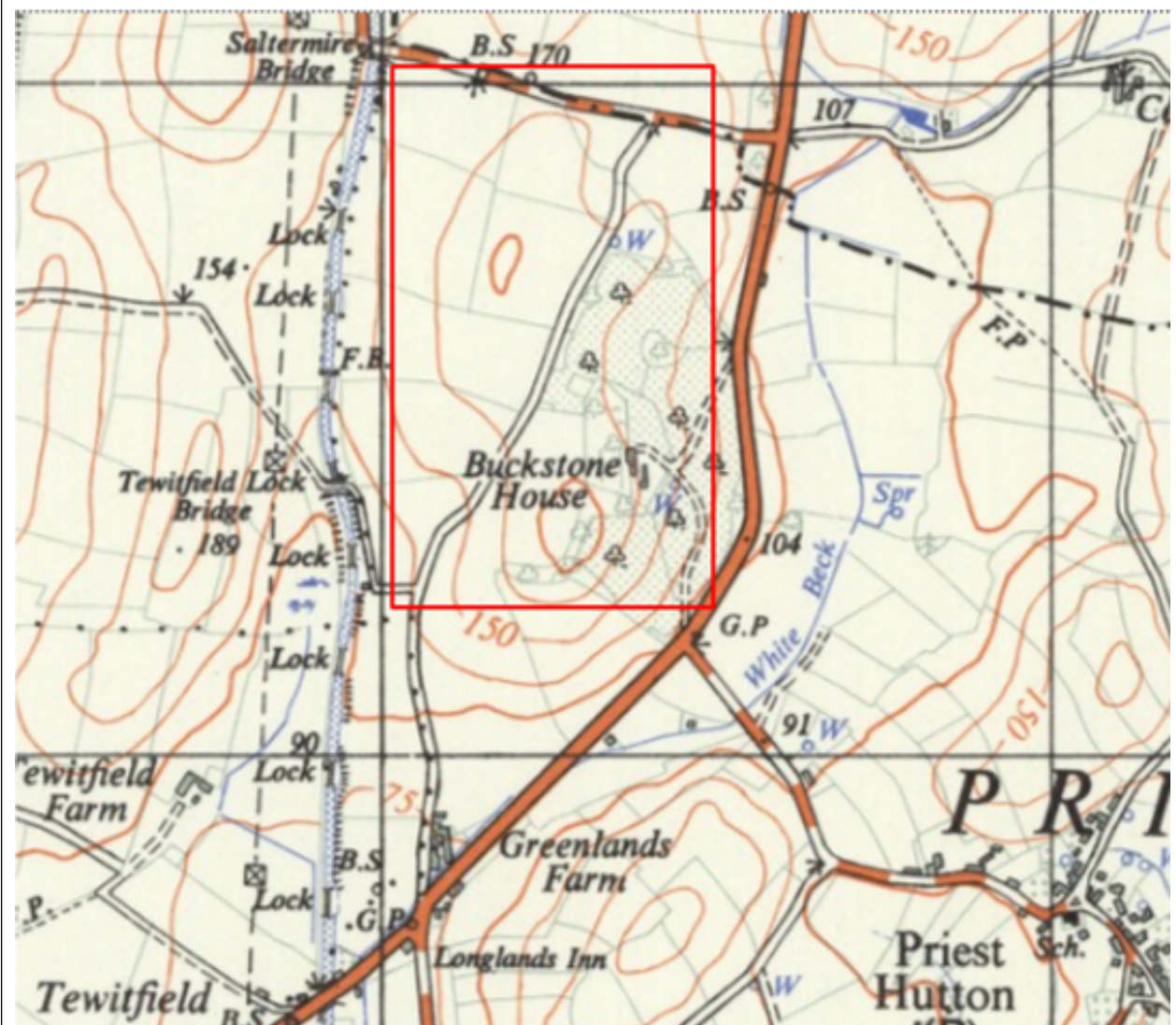


Observations		The application route is still shown as a substantial bounded route between point A and point B. Beyond point B the route is no longer shown as a bounded route for the full length between point B and point C and from point C to point C there is no evidence of the route on the map.
Investigating Officer's Comments		Use of the full length of the application route may have declined – or may no longer have been possible by the late 1960s with no evidence of the existence of the route between point C and point D where it exits onto Cinderbarrow Lane.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.




Observations	The aerial photograph taken in the 1960s shows that there still appeared to be significant use of the route from Burton Road
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		adjacent to Greenlands Farm passing through point A and continuing to point B where there appeared to be a worn access point through to the field to the west where the Buck Stone was situated and also access into the field to the west where a building was located. Beyond point B it was possible to see the line taken by the application route and the fact that field boundary along the east side of the route had been removed. A faint track could be seen between point C and point D.
Investigating Officer's Comments		Access along the full length of the application route may still have been possible in the 1960s although vehicular use appears to have declined significantly – if not completely - beyond point B.
1:25,000 OS map	OS 1961	OS Sheet SD 57 revised 1938-1960 and published 1961.



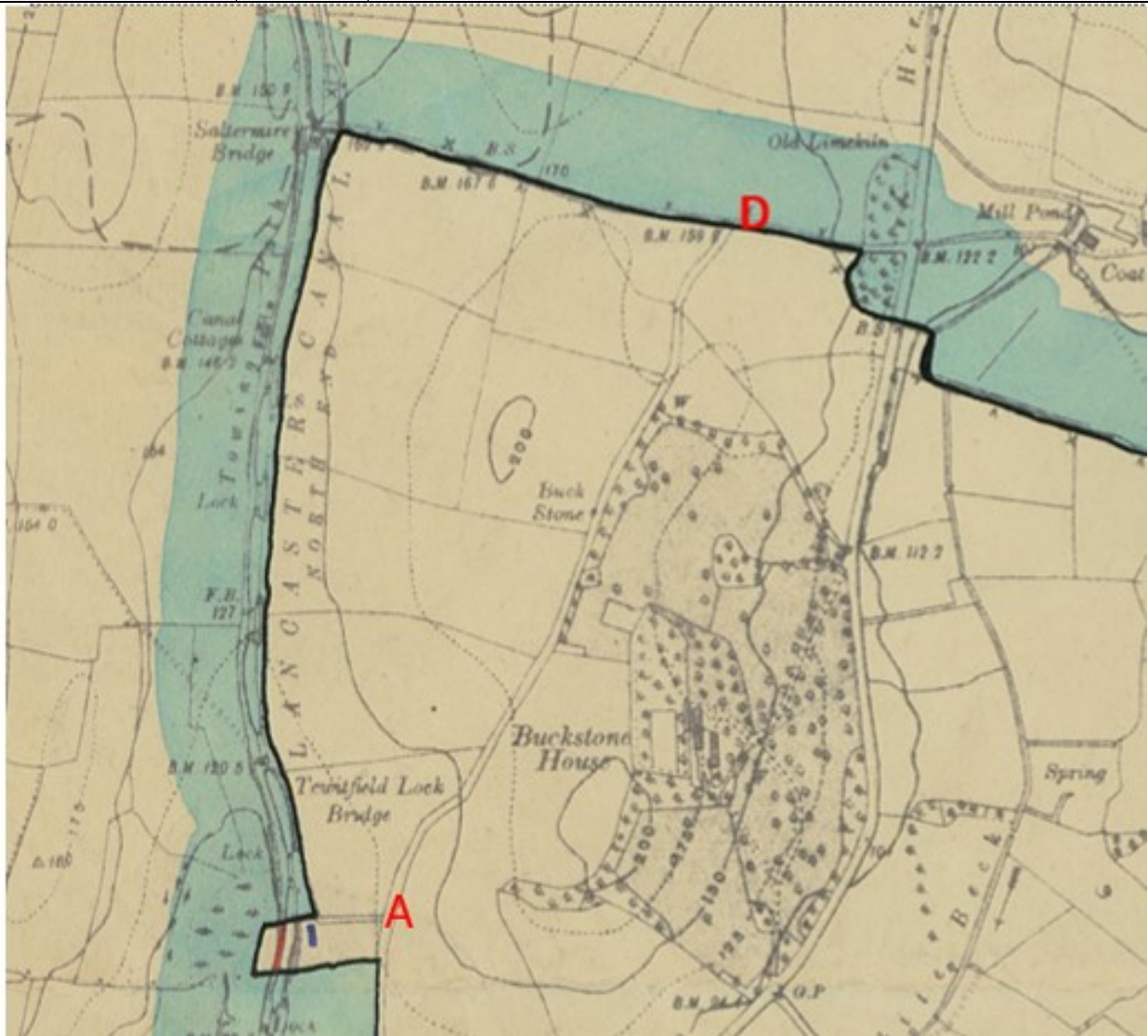
Observations		The full length of the application route is shown as a substantial bounded route providing access from Burton Road adjacent to Greenlands Farm through to Cinderbarrow Lane.
Investigating Officer's		This map sheet was revised between 1938 and 1960 and appears to show the route prior to the changes shown on the

Comments		<p>1960s aerial photograph and the OS 1:2500 OS map published in 1970 detailed above.</p> <p>At the time that the map was revised the application route existed as part of a substantial through route and appeared to be capable of being used by vehicles.</p>
Aerial Photograph	2000	Aerial photograph captured in 2000 and available to view on Google Earth Pro.
		
Observations		<p>The application route between point A and point B can be clearly seen as a bounded route. The surface of the route is visible and it appears consistent with the fact that vehicular use was still being made of the route through to point B. Beyond point B the route is only faintly visible suggesting that there may still be some use of the route on foot or horseback but that it was no longer being used as a vehicular through route.</p>
Investigating Officer's Comments		<p>The application route still existed in 2000 with some vehicular use from Burton Road through to point B but use of the route from point B onwards had significantly declined and may no longer have been possible.</p>
Aerial Photograph	2016	Aerial photograph available to view on GIS.



Observations		The application route can still be clearly seen as a bounded route between point A and point B although the stone surface track appears less visible. Beyond point B and between point B and point C the route is hardly visible.
Investigating Officer's Comments		The application route no longer appears to be used as a through route from Burton Road to Cinderbarrow Lane.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts

		<p>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 was not recorded as a public right of way by Priest Hutton Parish Council as part of the preparation of the Parish survey Map.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Priest Hutton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions</p>

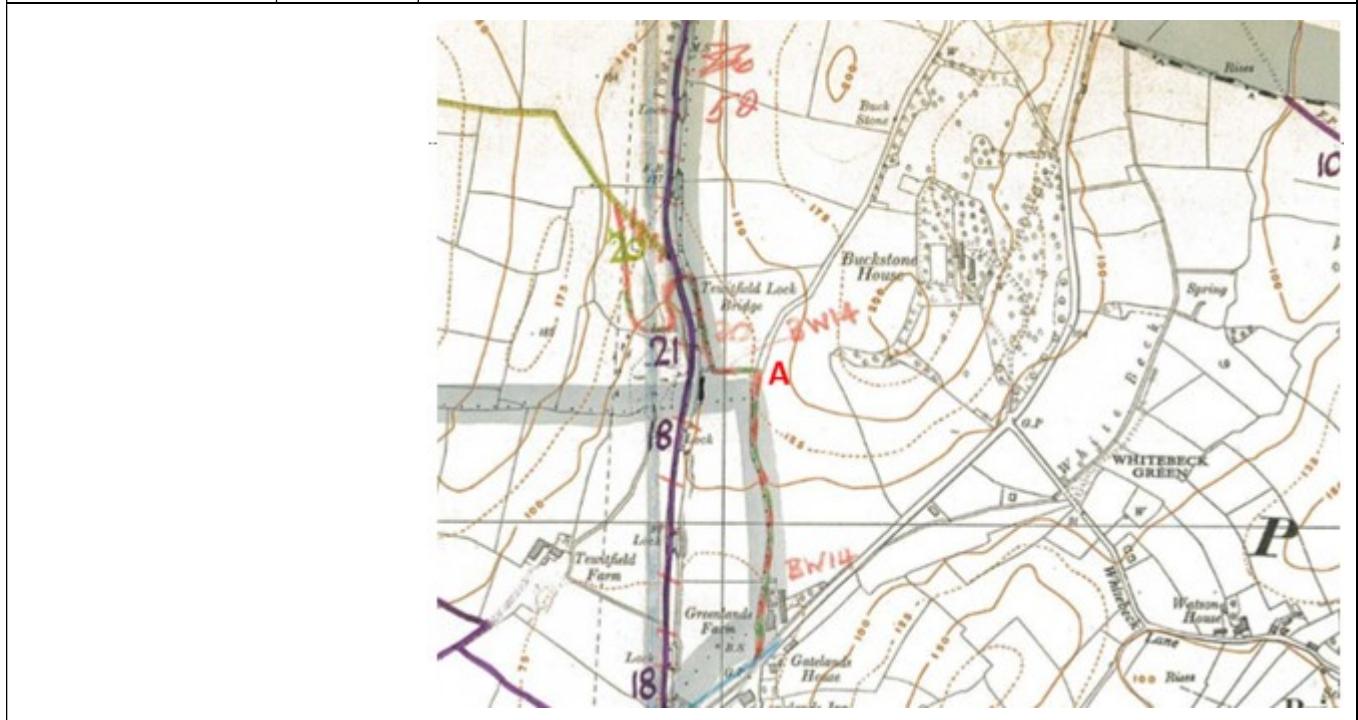
or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



Observations The application route was not recorded as a public right of way on the Draft Map of Public Rights of Way and no objections or representations were made relating to it.

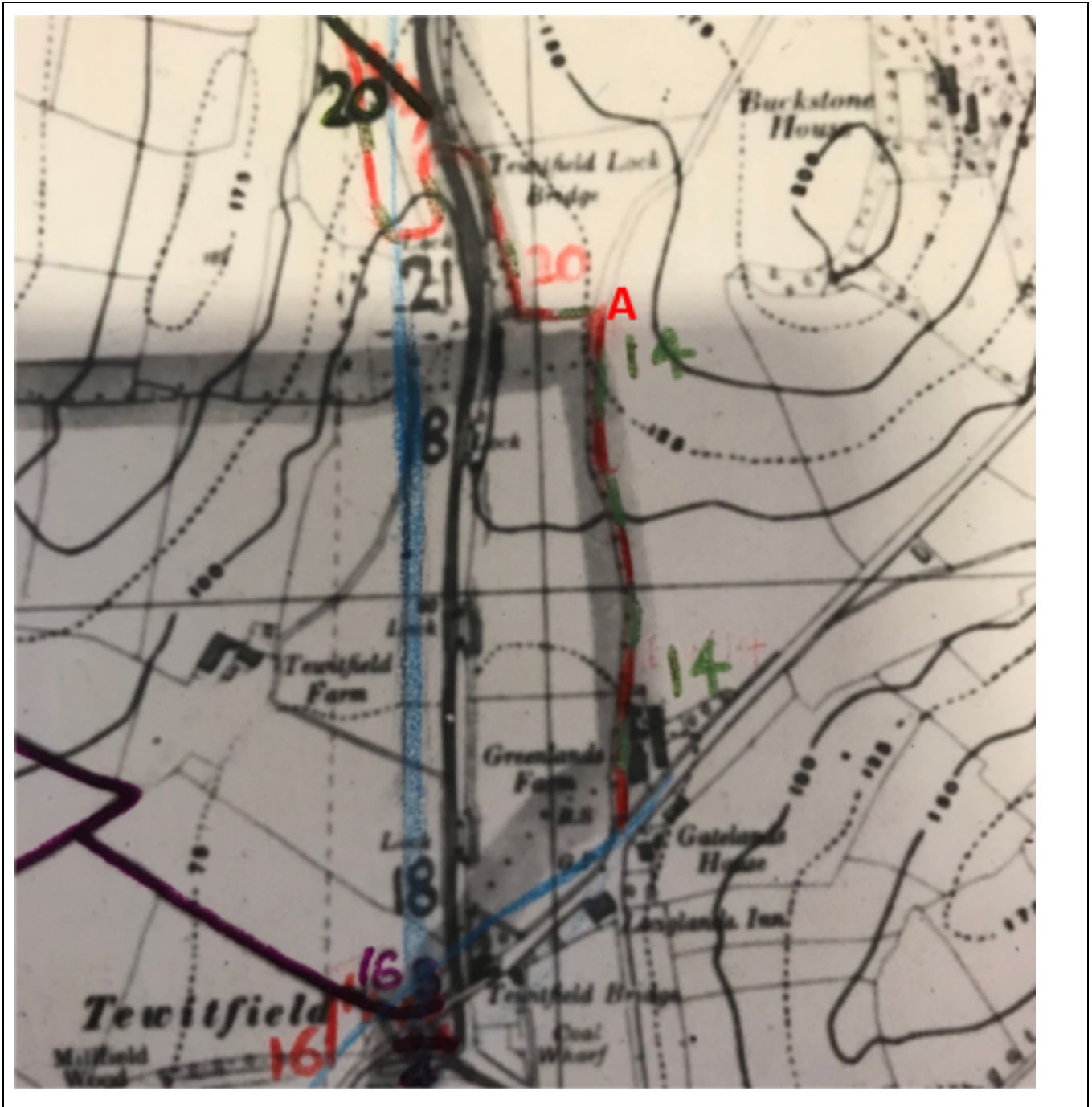
Provisional Map Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only

		landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
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Observations		The application route is not shown on the Provisional Map. A route recorded with the number 14 and annotated as a 'BW' (bridleway) is shown from Burton Road at Greenlands Farm leading to point A and then turning to continue west. This route appears to have been added after the Provisional Map was drawn and is not listed in the Provisional Statement. No representations or objections were found regarding the fact that the application route was not shown or relating to the addition of the route numbered 14.
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The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
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REVISED MAP - AMENDMENTS.

FOOTPATHS.



BRIDLEWAYS.



DELETION OF FOOTPATHS,
AND BRIDLEWAYS.



NEW AND DIVERTED FOOTPATHS.



NEW AND DIVERTED BRIDLEWAYS.



REFERENCE

'Footpath' shown by purple line :—



'Bridleway' shown by green line :—



'Road used as a Public path'
shown by broken green line :—



100.C/34.5/11.P/182.1/27763

14	"	Bridge	0.00	
13	"	From footbridge over River Keer to Parish Boundary near railway	0.07	
* 14	Bridleway	From E.V. 26 (Yardland Green) through Grounded Farmyard to Carter/Kiddel land No. 70	0.20	New Bridleway included as a result of a representation by Priest Hutton & Yealand Congen Parish Councils.
			176	

07
30
176
New Bridleway included as a result of a representation by Priest Hutton & Yealand Congen Parish Councils.

Extracts from First Definitive Statement for Priest Hutton

19	"	boundary	0.00	
20	Bridleway	Rose Acre Lane to A.6 near Parish Boundary A.6 near Holmer Cottages to junction with path No. 21 on canal near Teatfield Lodge Bridge	0.27	
22	Footpath	Leighton Road to Parish Boundary at Crag Foot	1.17	
23	"	Junction with Path No. 12 near sheepfold		

90 Part diverted due to proposed motorway construction - and extended to link up with B.P. 14 (Preston Station).

Extracts from First Definitive Statement for Yealand Conyers

<p>Observations</p>	<p>The application route is not shown on the First Definitive Map and there is no reference to it in the First Definitive statement. The 1949 Act also required the surveying authority, once its Definitive Map was published, to periodically review it. The intention of the review was to keep the Definitive Map up to date, by adding new public rights of way, or ones omitted from the previous map, and by deleting paths which had been closed under a confirmed statutory order.</p> <p>A similar procedure to that involved in the preparation of the original definitive map was adopted, involving the seeking of information from parish, rural district, urban district and municipal borough councils.</p> <p>The review of the Definitive Map was carried out in three stages, as previously involving the publication of a Revised Draft Map, a revised Provisional Map and a Definitive Map. A new relevant date was set for this revised map establishing the date of the review. In Lancashire the relevant date of the first review Definitive maps is 1st September 1966.</p> <p>As relatively new changes to the original definitive map had occurred in the period from 1st January 1953 to the 1st September 1966 a copy of the original maps, amended to show these changes, was published and the Draft Revised Map (First Review) on 1st June 1967. As before, any person could inspect the revised map and statement and make representations or objections.</p> <p>Following determination of objections or representations made at the first review draft map stage a provisional revised map (first review) was published on 6th April 1973 allowing</p>
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		<p>opportunity for landowners, tenants or lessees to make application to the Crown Court (replacing Quarter Sessions) for declarations concerning routes shown on the map.</p> <p>The First Definitive Map and Statement were used to prepare the Revised Draft Map so the additional routes/amendments drawn on this map and shown in the map key relate to the review of the Map following its publication as the First Definitive Map.</p> <p>In this particular case it can be seen that Bridleway Priest Hutton 14 was not recorded on the First Definitive Map but was shown as a later edition to the Map and described as a 'New and Diverted Bridleway' in the map key. The handwritten note recording the addition of the bridleway in the Definitive Statement questions the fact that BW 14 was included as a result of a representation made by Priest Hutton and Yealand Conyers Parish Councils. The Statement for BW 20 Yealand Conyers refers to the fact that it had been diverted and extended to link to BW 14 Priest Hutton as a result of the motorway construction.</p> <p>No further information could be found regarding the addition of BW 14 along the former turnpike road and no reference was found to the application route itself.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



RURAL DISTRICT OF LANCASTER.

PARISH OF PRIEST HUTTON.

ADMINISTRATIVE COUNTY OF THE COUNTY FREEHOLD OF LANCASTER:
National Parks and Access to the Countryside Act, 1949
Review of Definitive Rights of Way Map

Date of

~~1950~~

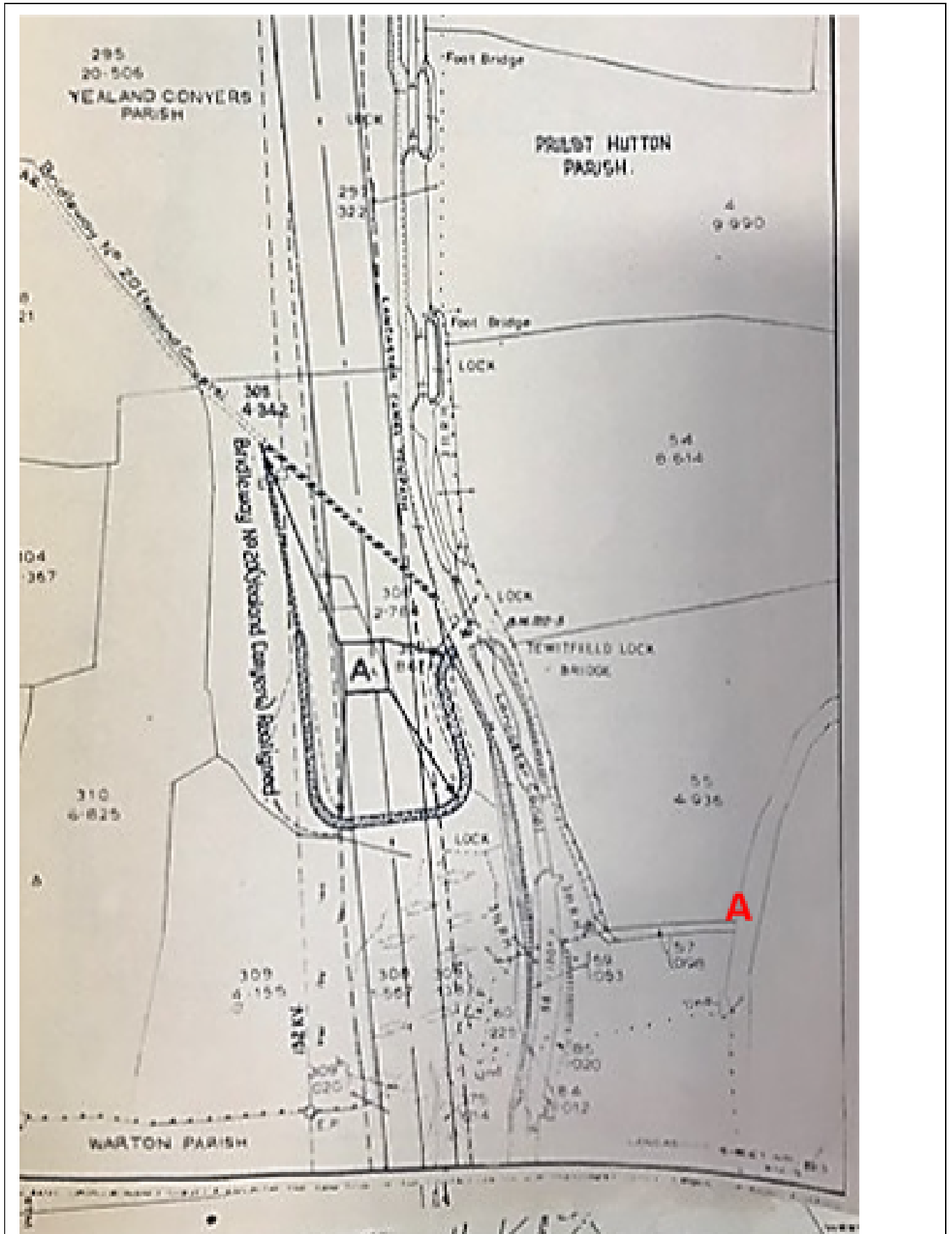
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	DEFIN Other
5	Footpath	Kirkgate Lane to Parish Boundary.	0.10	
6	"	Up Hall Occupation Road to jct. with path Nos. 7 and 8.	0.07	
7	"	Jct. with path Nos. 6 and 8 to jct. with path Nos. 9 and 10.	0.25	
8	"	Jct. with path Nos. 6 and 7 to Parish Boundary.	0.31	
9	"	Jct. with Path Nos. 7 and 10 to Westmorland boundary.	0.68	
10	"	Jct. with Path Nos. 7 and 9 to Coat Green Mill (Westmorland).	0.16	
11	"	Beech House to Parish Boundary.	0.04	
12	"	North of Thwaite Wood to Starricks Railway Bridge.	0.60	
13	"	From footbridge over River Keer to Parish boundary near Railway.	0.07	
14	Bridleway	From D.W.20 (Yeland Conyers) through Greenlands Farnyard to Burton/Kendal Road A.6070.	0.30	

RURAL DISTRICT OF LANCASTER.

PARISH OF YEALAND CONYERS.

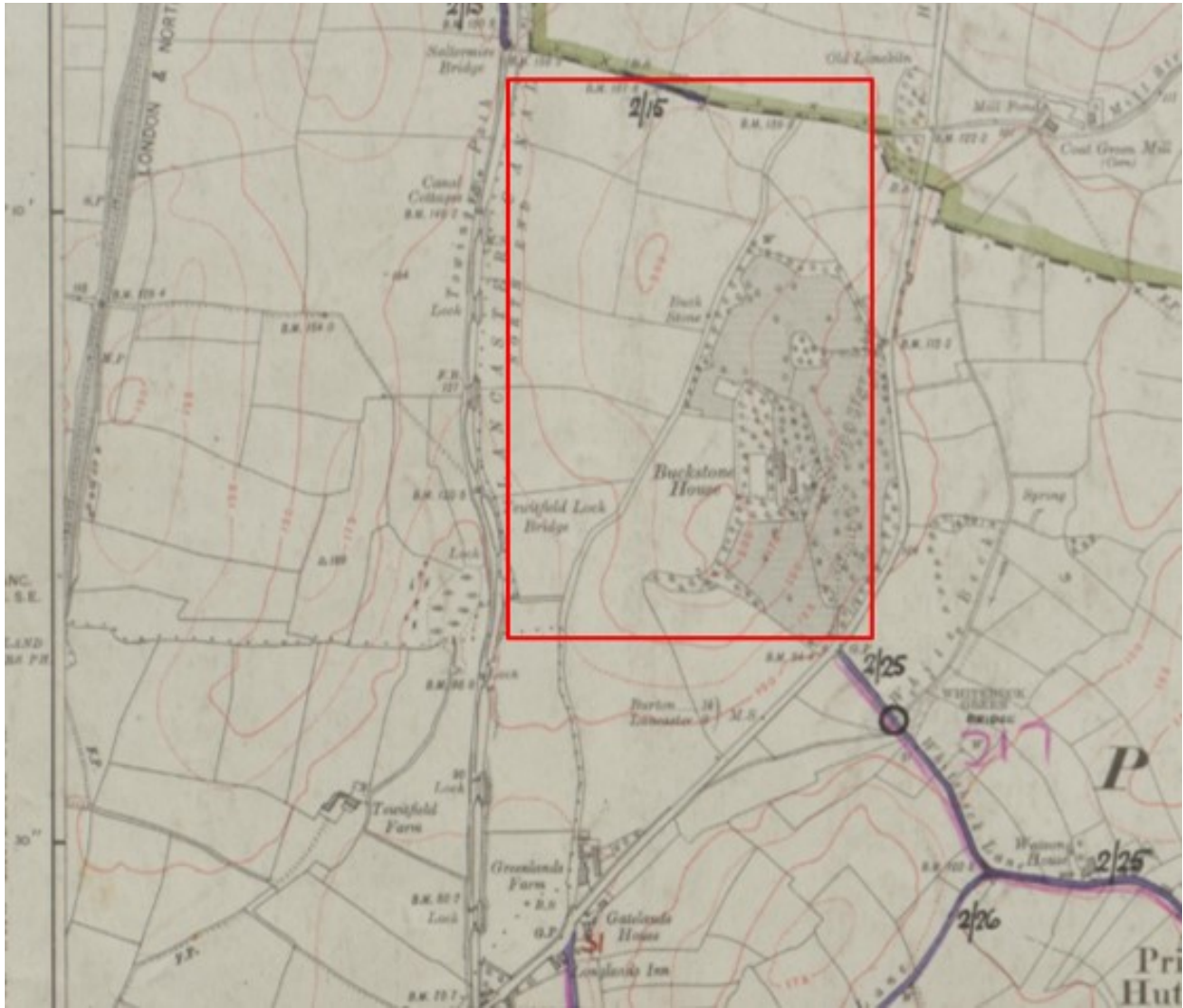
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	Other parti
13	Footpath	Junction with path Nos.12 and 14 to Parish Boundary near Flat Wood.	0.10	
14	"	Junction with path Nos.12 and 13 to Parish Boundary towards Round Top.	0.17	
15	"	Yealand Conyers opposite Dykes Lane 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 Acra Lane near Blencratha to Parish Boundary.	0.25	
19	"	Rose Acra 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.)	0.60	
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 is not shown on the Revised Definitive Map (First Review). The Bridleway recorded as Priest Hutton 14 is shown on the map and is described in the Definitive Statement with no reference to the application route or origins of the route recorded as a bridleway.
Investigating Officer's Comments		The application route was not considered to be a public right of way which should be recorded on the Definitive Map during the preparation of the First Definitive Map in the 1950s through to the 1960s.
The East of Carnforth – West of Killington Reservoir Special Road (Carnforth – Farleton Side Roads) Order 1967	1967	Side Roads Order made to accommodate the construction of the M6 Motorway through land adjacent to the application route.



Observations		The Side Roads Order does not include reference to the
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		application route. It does however divert Bridleway Yealand Conyers 20 to accommodate the construction of the motorway and the timing of this diversion – in 1967 links in with the revision of the First Definitive Map and addition of Bridleway Priest Hutton 14 to the Definitive Map.
Investigating Officer's Comments		The diversion of Bridleway Yealand Conyers 20 may explain why the route of the former turnpike road from Greenlands Farm to point A and then east towards the canal and motorway was recorded as a bridleway in the 1960s. It seems reasonable that the Parish Councils realised that Bridleway Yealand Conyers 20 did not link to another route through Priest Hutton and so this section was added as a bridleway when the map was reviewed
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



1929 Handover Map

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.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Highway Stopping Orders	1835 - 2014	Up 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		A search of the records held by the London Gazette has been made and no reference to the application route has been found. Orders deposited in the County Records Office have also been searched and no orders have been found relating to the

		extinguishment of the diversion of the application route.
Investigating Officer's Comments		No records relating to the stopping up, diverting or creating of public rights along the route were found. If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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). 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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Landownership

Ownership of the full length of the application route is registered.

The route between point A and point C is in the registered ownership of Greenlands Farm. Between point C and point D the land crossed by the application route is in private ownership.

Summary

From a search of available historical maps and documents it appears that the application route was a road from at least the time of Ogilby's 17th Century map and later formed part of the turnpike road between Lancaster and Kendal from the mid-18th Century until 1823 when an Act of Parliament provided for the creation of a new section of road as a diversion of this section of the turnpike which was subsequently built and was shown as the turnpike road on the Tithe Map prepared in 1846 and the first edition 6 inch OS map surveyed and published around the same time.

It is not certain that Ogilby's map showed only carriageways but as the main, or only, road heading north on the west side of the country the London-Carlisle road must have been carriageway. The turnpiking and de-turnpiking of the application route would return the route to its former status unless declared otherwise in the relevant Acts and in the absence of any stopping up of the rights it would have remained as a public carriageway.

The 1823 Act of Parliament provided for the deviation of the original turnpike road at several sections and stated that once the new section of road had been constructed that the original route would no longer form part of the turnpike road or be required to be maintained by the turnpike trust but this did not make clear whether rights were stopped up. However, an Act to amend the general laws for regulating Turnpike Roads in England had just been passed in 1822 and would apply and stop up the old turnpike highway sections.

This is consistent with the fact that the old turnpike route did not serve anywhere which was not served by the new route with the exception of the canal locks and those could be reached via the bridleway from Tewitfield. This access would possibly have been private access not public as at the time there was no continuation west of the canal shown on the maps.

The route between point A and point C is then described as a lane in private ownership in the Tithe records and is also recorded as being owned as part of a larger plot of land in this way in the Finance Act records from the early 1900s. All of the land crossed by the application route is shown consistently from the date of the Tithe Award to be in private ownership.

Hennet's map of 1830 was the first following the diversion of the Turnpike. This does not show the former route, although from other mapping it is evident that it still would have been visible as a physical feature, suggesting that Hennet did not regard it as being in use as a public vehicular carriageway or bridleway.

Bartholomew maps throughout their existence showed the application route to exist but depicted it as uncoloured and hence not recommended for cyclists, suggesting that it was not in use as a carriageway.

Ordnance Survey since that time continued to show all or most of the application route as an enclosed route which appeared capable of being used until at least the mid-1900s from when onwards the section north of point C in particular appears to have been subsumed into the fields and although falling out of use the remains of

the route are still visible. The route had gated sections and it is not known if access were possible.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant provided map and documentary evidence which has been considered above.

Information from Others

Cadent gas responded to consultation to state they had no objection to the application.

Information from the Landowner

The owner of the land from point C to point D responded to consultation to confirm the land in their ownership but did not provide further comment.

Summary

No modern or historical public user evidence has been submitted so in these circumstances neither a presumption of dedication of a public right of way under section 31 nor inference of dedication from use can be considered.

It is therefore necessary for Committee to consider whether the map and/or documentary evidence is sufficient to support the inference of dedication of a public right of way under common law.

It appears that the application route was part of a public road from at least the time of Ogilby's Map 1675.

That road was turnpiked. Following the Turnpike Act 1750 the route formed part of the turnpike road between Lancaster and Kendal from 1750 until 1823.

The earlier Turnpike Acts relating to this road are stated to have been repealed in favour of the provisions set out in Turnpike Roads Act 1822 which came into force January 1823. The 1822 Act made specific provisions for the stopping up of old lengths should the highway be diverted

In 1823 an Act of Parliament provided for the creation of a new section of turnpike road, a deviation to the existing turnpike road which was subsequently built and was then shown as the turnpike road on the Tithe map prepared in 1846 and the first edition 6 inch OS map surveyed and published around the same date.

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 process stopping up or diverting the rights has been made.

In this case committee is advised to consider whether the public rights on the application route remain on that line or were stopped up when the highway diverted onto a new line by virtue of the Acts of 1822 and 1823. Should the stopping up be evidenced Committee should consider whether the old route became a highway again and that the evidence in documents since 1823 is sufficient for dedication to be inferred.

It is advised that the provision in the 1822 Act is that highway rights were stopped up around 1823 by statutory provision.

It is suggested in considering the evidence presented and the summary of the Investigating officer that Committee may consider that there is insufficient evidence of the route becoming dedicated again as a public highway since 1823 even though the route remained in physical existence for many decades.

Accordingly, the recommendation is that Committee reject the application and that no Order is made.

Risk management

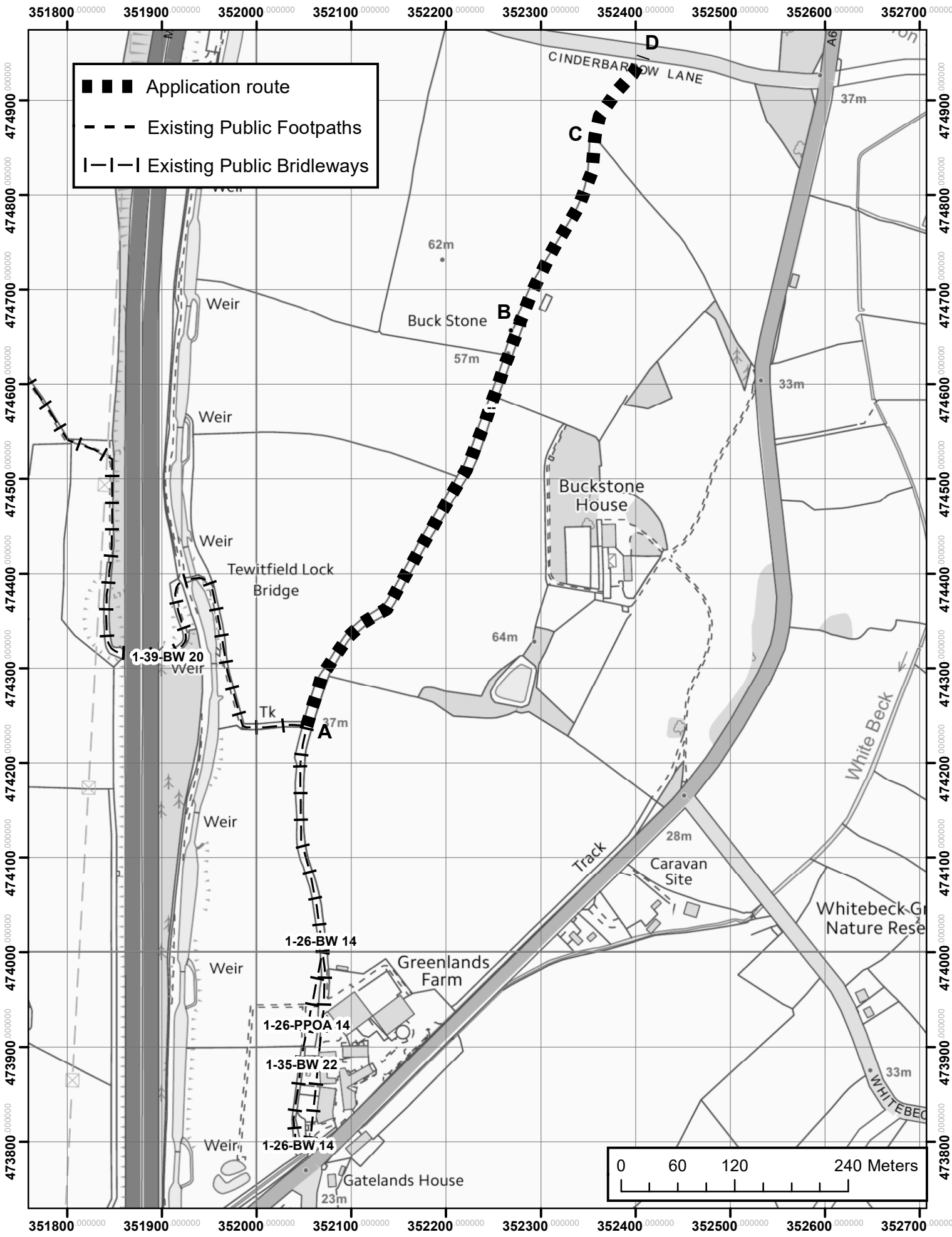
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda 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: 804-635		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



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

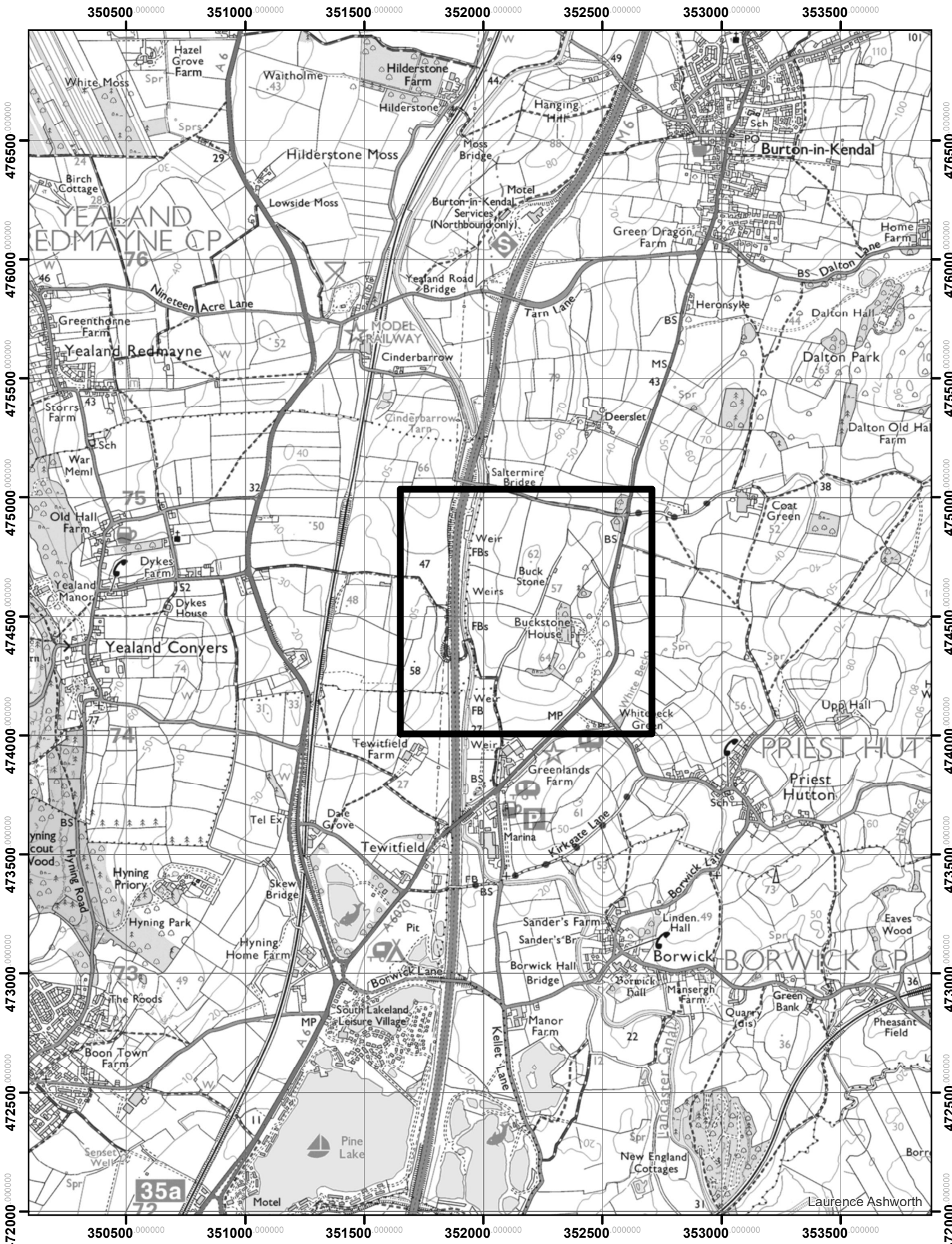
Wildlife and Countryside Act 1981
 Addition of Bridleway from Bridleway Priest Hutton 20 to Cinderbarrow Lane, Priest Hutton

1:5,000



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 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
 Addition of bridlway from Priest Hutton BW 14 to Cinderbarrow Lane LOCATION PLAN

1:20,000



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Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Whitworth and Bacup

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Footpath along Whitworth Rise, Whitworth (Annex 'A' refers)

Contact for further information quoting the reference number 804-643:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors
Group, simon.moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer,
Environment and Planning Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a footpath to the Definitive Map and Statement of Public Rights of Way from Market Street to Stoneyroyd via Whitworth Rise, Whitworth, Rossendale.

Recommendation

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

Detail

An application has been received to record a public footpath on the Definitive Map and Statement of Public Rights of Way along Whitworth Rise, Whitworth in the Borough of Rossendale.

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

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

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

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

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

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

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

Consultations

Rossendale Borough Council

Rossendale Borough Council provided no response to consultation.

Whitworth Town Council

Whitworth Town 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	8868 1842	Open junction with Market Street
B	8872 1842	South end of passage between buildings
C	8872 1842	North end of passage between buildings
D	8872 1843	Open junction with Stoneyroyd

Description of Route

A site inspection was carried out in April 2021.

The application route starts at a point on Market Street, Whitworth between 554 Market Street and 1 Whitworth Rise (point A on the Committee plan).

The route is approximately 3.5 metres wide and tarmacked with a street sign indicating that is known as Whitworth Rise.

The route ascends along the tarmac road in an east south easterly direction providing direct access to properties 1,3 and 3 Whitworth Rise on the south side of the route and to a tarmacked area used to park cars. A sign close to point A indicates that parking is private. On the north side of the route there is access into the side of the property numbered 554 Market Street and to the rear is a building on which there is a sign saying 'Citizens Advice Bureau' but which now appears to have been converted into residential properties.

Just past 3 Whitworth Rise the application route curves northwards to continue across the tarmac area used for parking to point B at the rear of the former Citizens Advice Bureau building. From point B the route continues for approximately 5 metres between the former Citizens Advice Bureau building and a garage accessed from Stoneyroyd along a tarmac strip bounded by the buildings and measuring approximately 0.5 metres wide. At point C the route ascends some concrete steps and continues for a further 7 metres along a flagged footway adjacent to a recently erected wooden fence to exit onto Stoneyroyd at point D.

The total length of the route is approximately 50 metres.

The fence and gate referred to by the applicant as having been erected and obstructing the route in 2020 were no longer in place and access along the full length of the route was available when inspected in April 2021.

The concrete steps have been properly formed presumably by an owner. These steps make it easier, or perhaps make it possible, for people to pass along this section of the application route.

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 constrained the routes that could be shown.
Observations		The application route is not shown.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		The application route is not shown.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The application route is not shown.
Investigating Officer's Comments on the early commercial maps detailed above		The application route is not shown on any of the early commercial maps examined suggesting that it did not exist as a major route at the time. It may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get

		the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing or proposed canals or railways affecting the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	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.



Observations		The Tithe Map of Spotland covers the area crossed by the application route. Market Street is shown but Whitworth Rise and Stoneyroyd are not shown and the land crossed by the application route is a plot of land numbered 273 which was listed as being owned by Thomas William Lloyd and occupied by Abram Hill.
Investigating Officer's Comments		The application route did not exist in 1845.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There are no Inclosure Award records for the area containing the application route deposited at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.

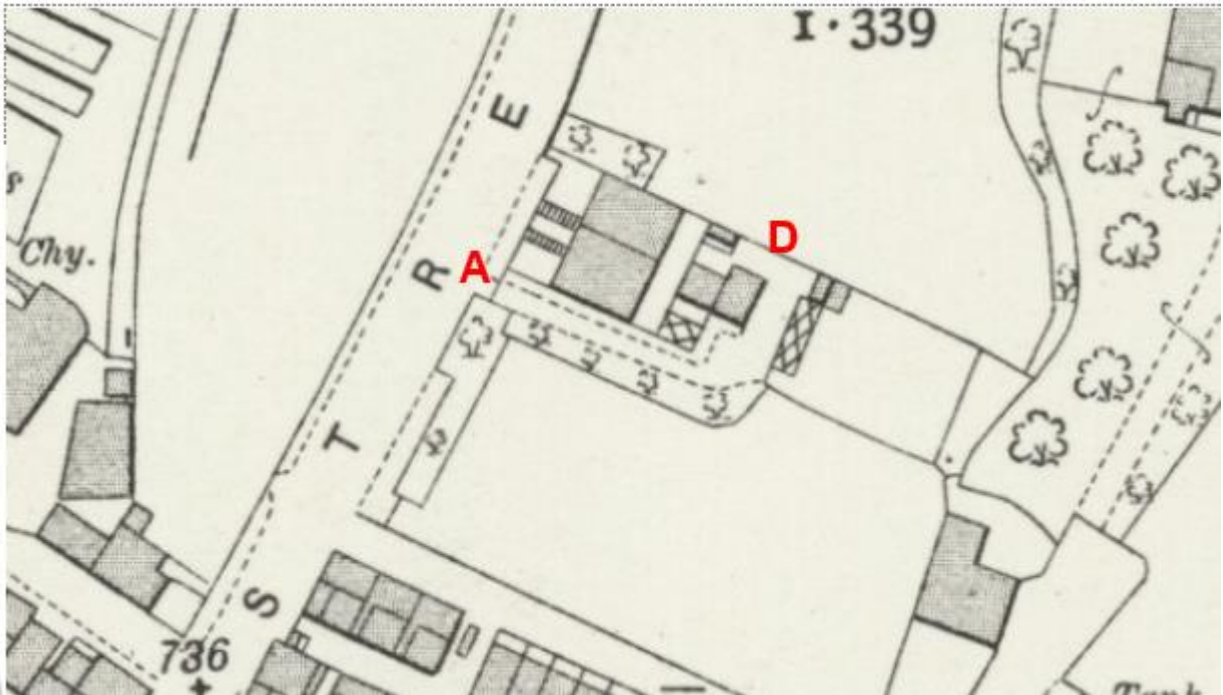
6 Inch Ordnance Survey (OS) Map Sheet 80	1851	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1848 and published in 1851. ¹
		
Observations		The application route is not shown. The land over which it runs is part of a field east of the Turnpike Road.
Investigating Officer's Comments		The application route did not exist at the time of the OS survey (1844-48).
25 Inch OS Map Sheet 80.8	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.

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



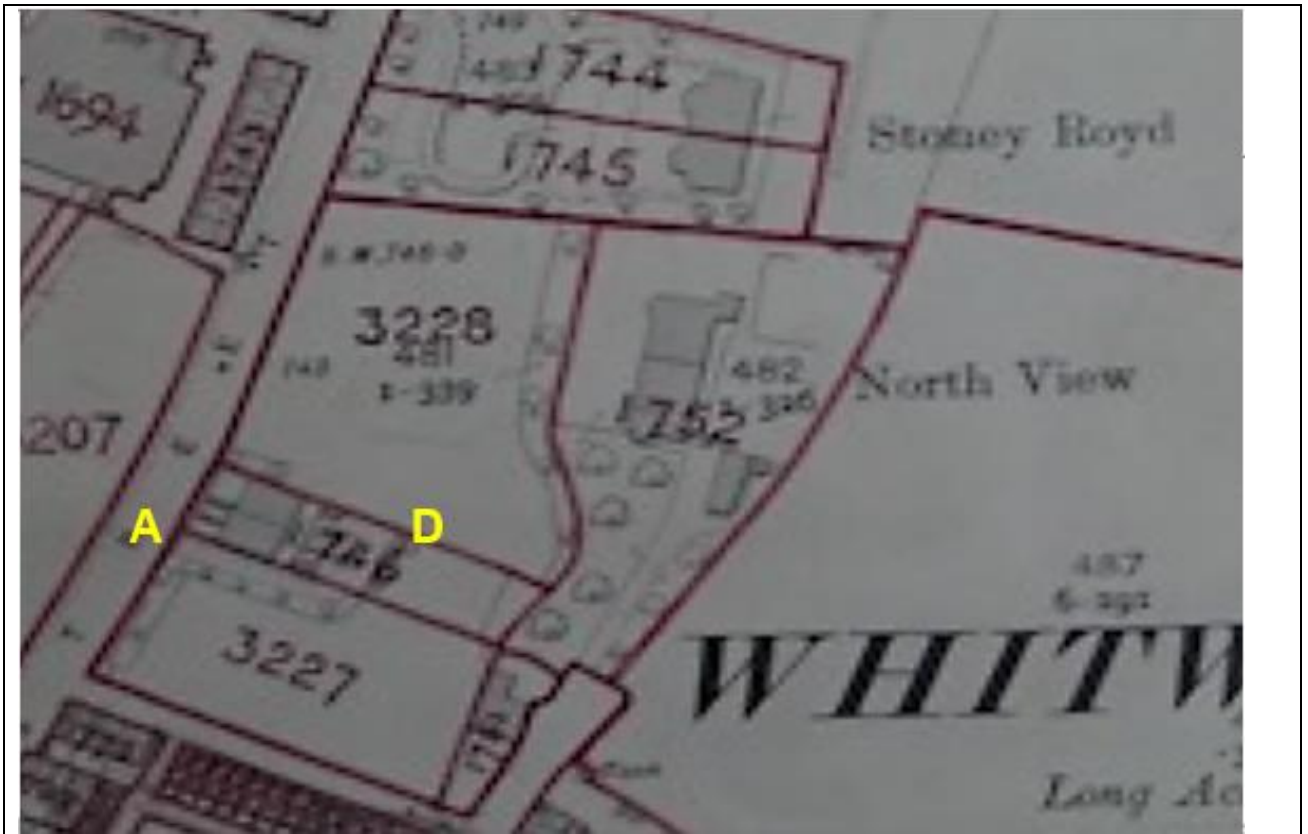
<p>Observations</p>		<p>A route is shown marked by dashed lines consistent with the application route between point A and point B. From point B through to point D there is a wide strip of land between buildings. A building on the same footprint as the current building abutting the north west side of the application route between point B and point C is shown but there is a wide gap and access is not restricted to a narrow accessway as it is now. At point D a line is shown across the end of the application route and Stoneyroyd is not shown. At point A a solid line is also shown across the start of the route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1891 although the available width was much wider than it is today between point B and point C. The route may have been gated at point A although it is not clear whether a gate or some other form of access restriction would have been locked or closed at that time. A line is also shown across the route at point D and there is no evidence on the map of a route extending beyond point D suggesting that the line at point D was more likely to be a fence or wall. The existence of the buildings in proximity to</p>

		the route and the fact that the route did not exist on earlier maps examined suggests that the route was constructed as access to the buildings and not as a through route. Whilst the route may have been accessible it is unlikely that it was used as a public route at that time.
25 inch OS Map Sheet 80-8	1910	Further edition of the 25 inch map surveyed in 1891, revised in 1909 and published in 1910.

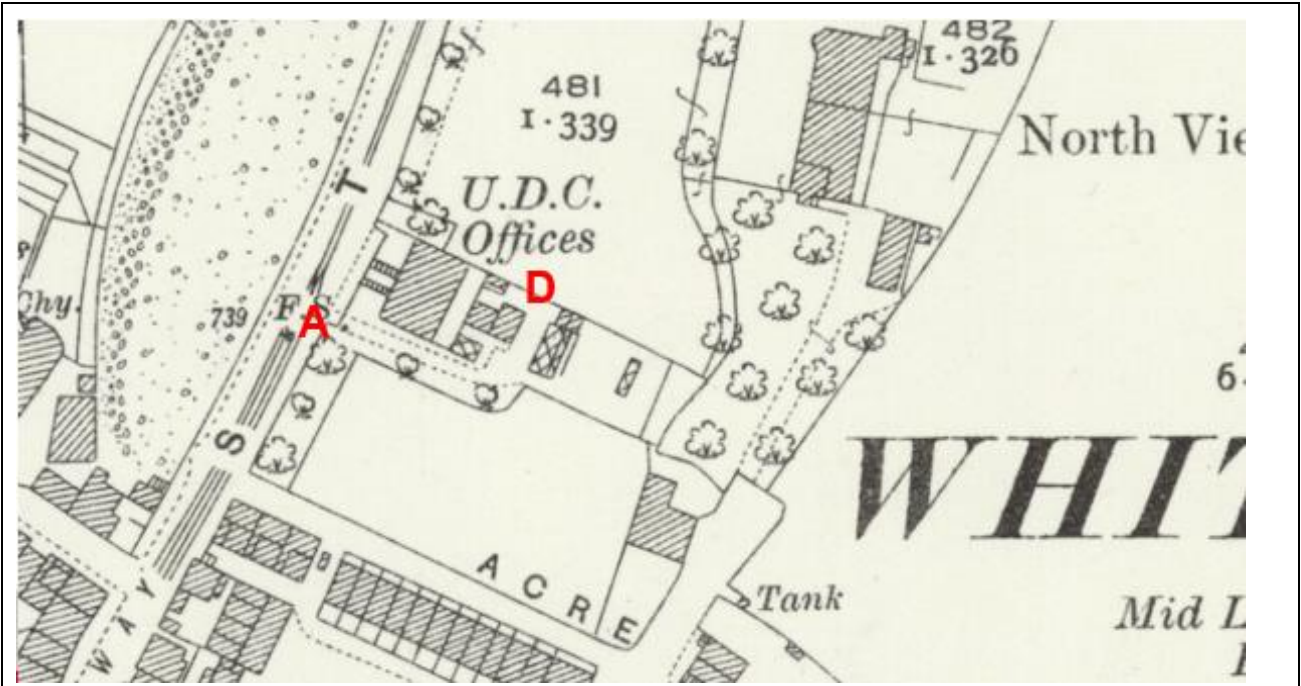


Observations		The application route is shown in the same way as it is shown on the earlier 25 inch OS map detailed above.
Investigating Officer's Comments		The application route existed in 1909 but was unlikely to be used as a public through route and did not provide access to a place of public interest at or from point D.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field books

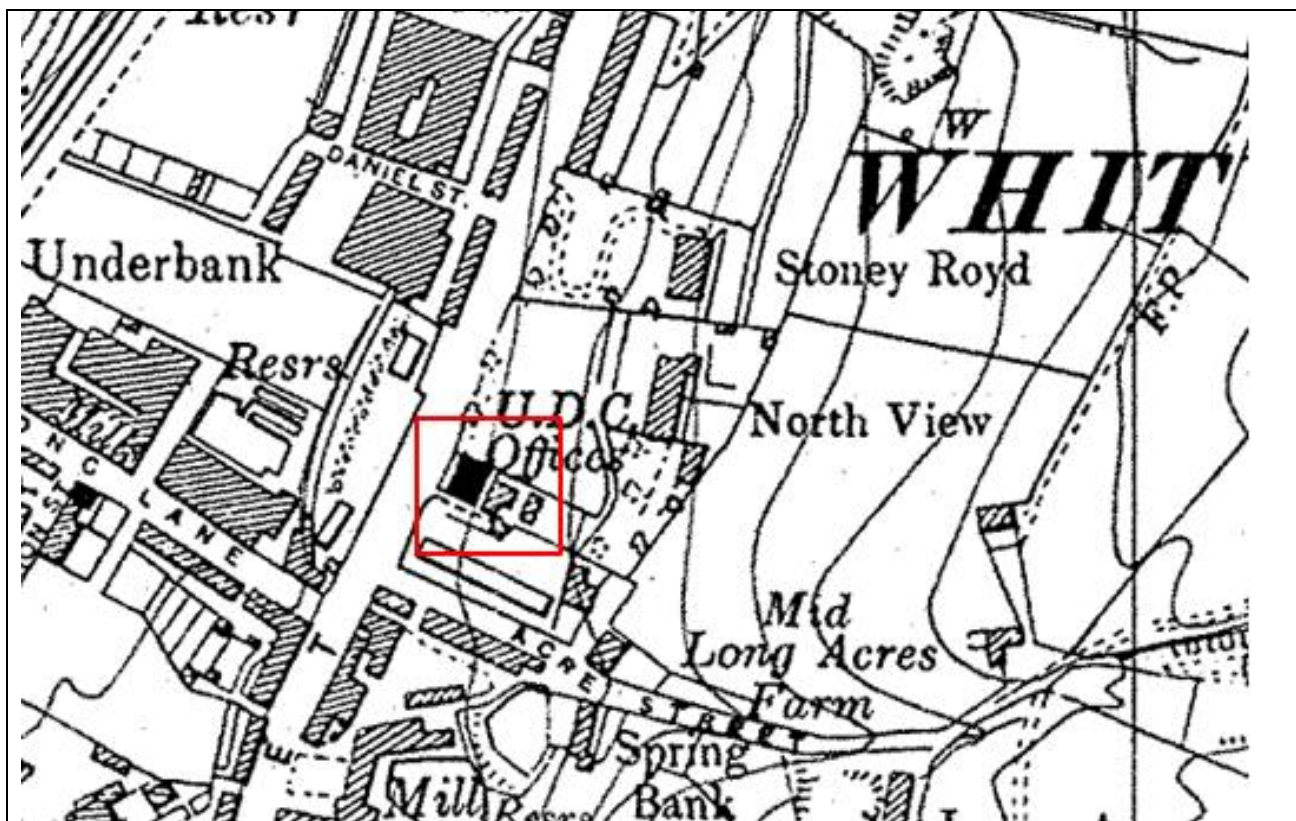
		<p>produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax 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>
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Observations		The application route was not excluded from the numbered plots but is shown as part of plot 3227 and 786. No deductions are made for public rights of way or user for either of the numbered plots.
Investigating Officer's Comments		It appears that in the early 1900s the owners of the land crossed by the application route did not acknowledge the existence of any public rights over the land at the time of the valuation.
25 Inch OS Map	1929	Further edition of 25 inch map (surveyed 1891, revised in 1928 and published 1929.



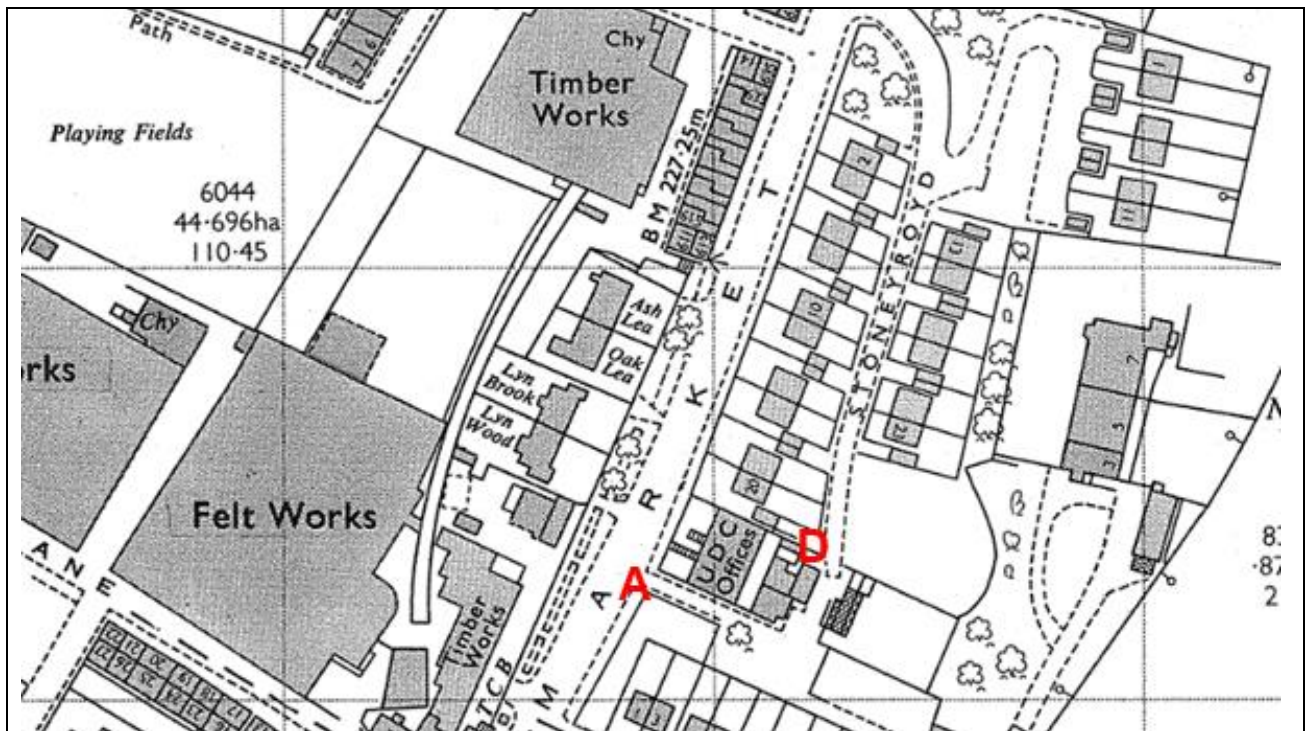
Observations		The application route is shown in the same way as it is on earlier editions of the 25 inch OS mapping. The buildings accessed by the route are labelled as Urban District Council Offices. No ongoing route beyond point D is shown.
Investigating Officer's Comments		The application route existed in 1928 but was unlikely to be used as a public through route. It may have been used as access to the Urban District Council Offices although these were more likely to have been accessed by the public direct from Market Street itself.
6 Inch OS Map	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.



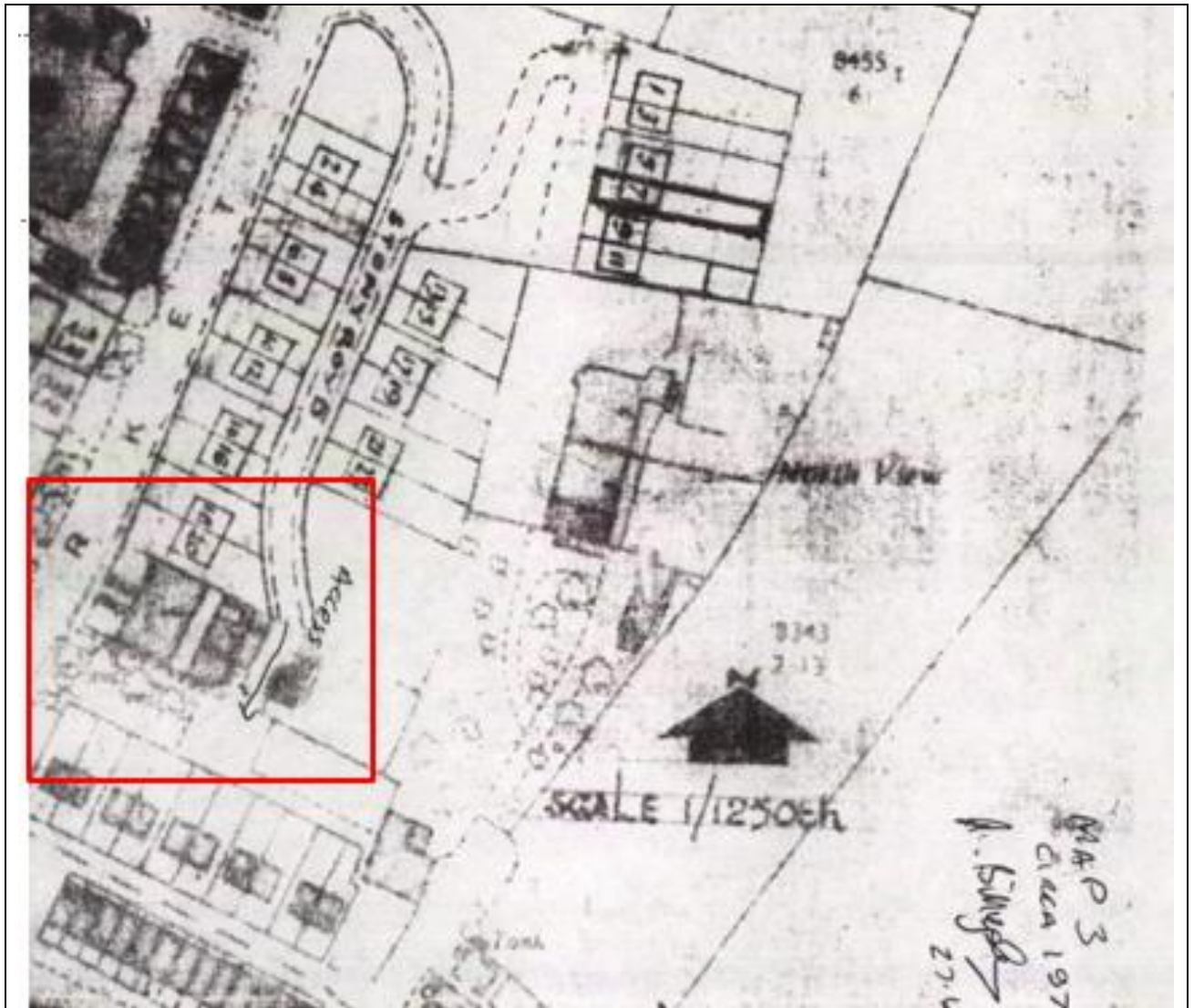
Observations		The smaller scale 6 inch OS map shows access available along the side of the UDC Offices consistent with the application route but does not show a through route continuing from the boundary of the property at point D.
Investigating Officer's Comments		The application route probably did not exist as a public route in the 1930s.
1:2500 OS Map Sheet SD8818-8918	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published 1964 as national grid series.



Observations		The application route is again shown in the same way as it is on earlier editions of the 25 inch OS mapping. The buildings accessed by the route are still labelled as Urban District Council Offices. No ongoing route beyond point D is shown.
Investigating Officer's Comments		Access between point A and point D appears to be available but the map provides no evidence of a through route beyond point D.
1:2500 OS Map Sheet SD8818-8918	1970	Further edition of 25 inch map reconstituted from former county series revised and published in 1970 as national grid series.



Observations		The application route is again shown in the same way as it is on earlier editions of the 25 inch OS mapping. The buildings accessed by the route are labelled as UDC Offices. Stoneyroyd is shown on the map with houses built along it. The southern end of Stoneyroyd is shown leading into the area at the rear of the UDC Offices at point D.
Investigating Officer's Comments		By 1970 a through route existed from Market Street to Stoneyroyd which appeared to be capable of being used.
Undated plan submitted by applicant	c.1970	



Observations		The applicant submitted a plan which he described as dating from circa 1970 which showed access from Stoneyroyd through to Market Street. The plan is undated and appears to have been reproduced from a 1:1250 OS map with Stoneyroyd and the houses built along Stoneyroyd drawn onto it. The word 'Access' and arrow pointing from Stoneyroyd along the application route have been added by the applicant to show that access was available from Stoneyroyd to Market Street along the application route at that time.
Investigating Officer's Comments		The plan appears to show that from the time Stoneyroyd and the houses along it were built access was available along the application route.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth Pro.



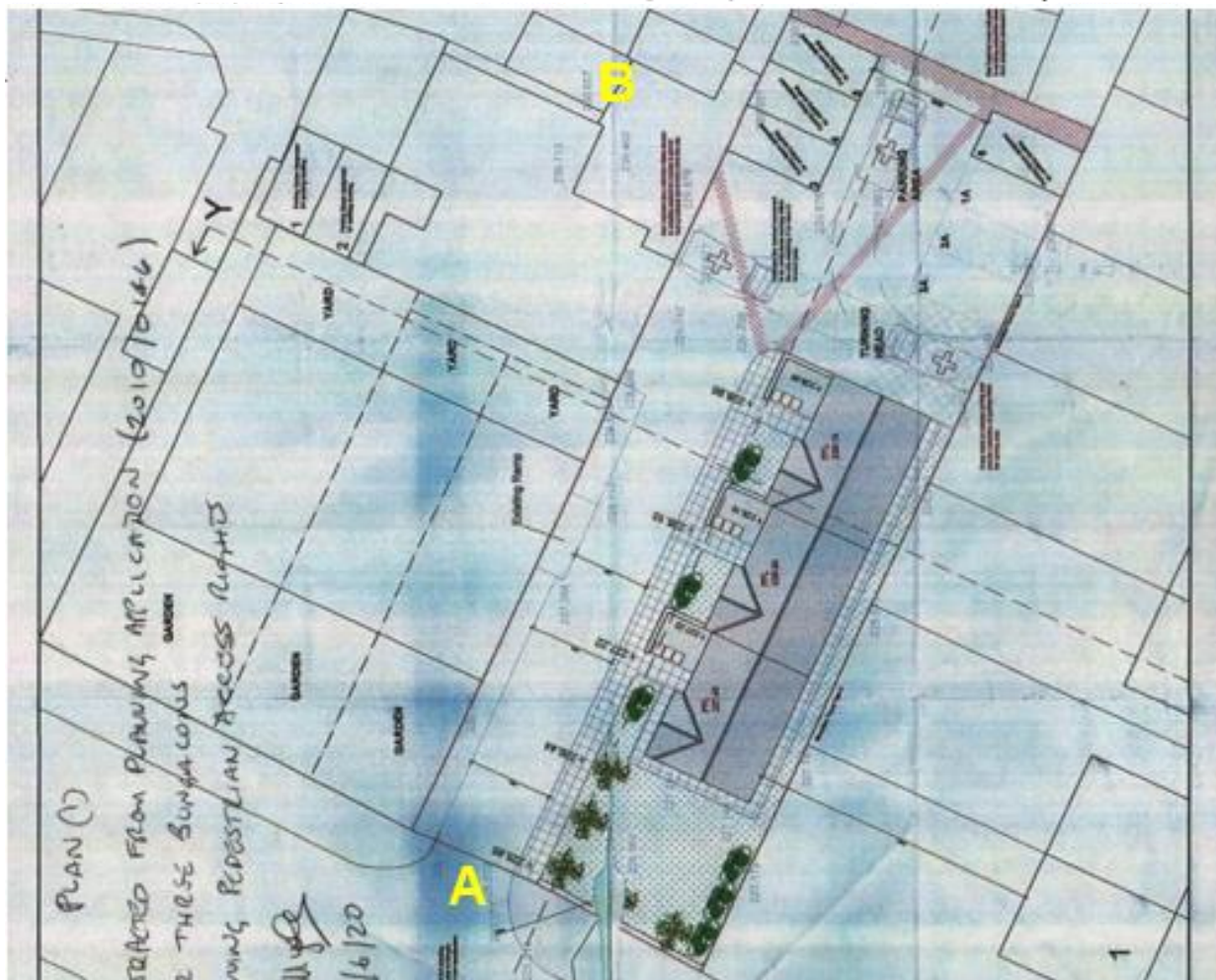
Observations		Most of the application route can be seen between point A and point B. The buildings between which the route passes from point B are shown but the route itself cannot be seen. The flagged path between point C and point D can be seen.
Investigating Officer's Comments		The application route probably existed in 2000 but by that time the route between point B and point C had been significantly reduced in width by the construction of a garage.
Planning appeal into the planning permission to build properties 1-3 Whitworth Rise	2010	The applicant provided a copy of The Planning Inspectorate's decision on application Ref. APP/B2355/A/10/2137171

Access, Parking and Vehicular Turning Arrangements

6. I have noted the Council's concerns on this issue. However, the evidence weighs compellingly in favour of the proposed scheme. The design of the access, the turning facility and the parking provision have all been subject to thorough discussions and negotiations between the Appellant and both the Council and Highway Authority. In terms of parking provision the three spaces which would serve the new bungalows would meet the requisite standard of the Highway Authority. The development would also incorporate four spaces for the units which were recently created by the conversion of the adjoining former Council Offices. The turning facilities have been carefully designed in order to accommodate turning arrangements for emergency vehicles in accordance with requirements set out by the Council's own highway engineers. The entrance to the site is wide, with good visibility and, in my view, would provide an acceptably safe main access to the development. Finally, I note that existing pedestrian links through the site, which are clearly of concern to local people, are to be retained and are clearly delineated as such on the submitted drawings. I am convinced, therefore, that, on this issue, the proposals before me would operate safely and without harm to future residents and existing pedestrians.

Conclusions

7. I am convinced, therefore, that the proposed development would be an appropriate addition to the urban fabric of this settlement and would not cause any detriment to interests of acknowledged importance. I have carefully



Observations		The application to build three small
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		<p>residential properties adjacent to the application route and accessed directly from it was considered by the Planning Inspectorate in 2010.</p> <p>Reference is specifically made in the Planning Inspector's decision letter to existing pedestrian links through the site and local concern about them. The Planning Inspector does not comment on the nature or legal status of these links but is satisfied, in allowing the appeal, that pedestrian links will not be harmed by the development and that pedestrian links were clearly delineated on the submitted drawings.</p> <p>The drawing submitted shows delineated pedestrian access along the front of the three properties to be constructed which then crossed the development site to the boundary of the site towards point B and also south east to another pedestrian link between Acre Street and Stoneyroyd.</p> <p>The properties were subsequently built although the pedestrian routes marked on the plan were not clearly delineated on the ground when the route was inspected in 2021.</p>
Investigating Officer's Comments		Existing use of the application route by pedestrians was specifically referred to in 2010 which concurs with the user evidence submitted in support of the application.
Planning Application 2016/0217		This application is on Rossendale BCs web site and is in respect of the former Citizen Advice Offices. The plan refers to the "garage buildings with access from Stoneyroyd"
Investigating Officer Comments		The reference to access to highway concurs with the user evidence submitted in support
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or

		<p>municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>There is no parish survey map or parish survey cards for Whitworth as the area was a former Urban District Council.</p>
Draft Map		<p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route was not shown on the Draft Map and there were no formal objections or other comments about its omission.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route was not shown on the Provisional Map and there were no formal objections or other comments about its omission.</p>

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



Observations		The application route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1966 there is no indication that the application route was

		considered to be public by the Surveying Authority, Town Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up. 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>Both within and outside the rural districts there were later highway maintenance sheets, as shown, although not all are still available.</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 maintenance sheets. Stoneyroyd is adopted. The dedication agreement is not available at present.
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 so no inference can be drawn.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating 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.
Statutory deposit and declaration made under		The owner of land may at any time deposit with the County Council a map and

<p>section 31(6) Highways Act 1980</p>		<p>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>There are no Highways Act 1980 Section 31(6) deposits 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 a landowner under this provision of non-intention to dedicate public rights of way over his land.</p>
<p>Photographs of the route submitted by the applicant</p>		



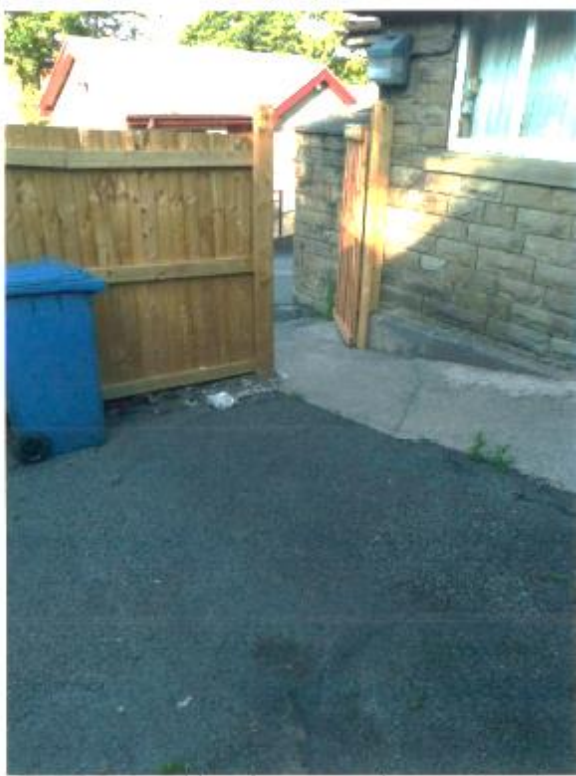
Start of Route



Steps down to ginnel



Looking back through ginnel



Exiting ginnel heading towards exit through fence



Ginnel exit and former CAB building



View Down Whitworth Rise



Approaching Market St



Looking back up Whitworth Rise

<p>Observations</p>	<p>The applicant submitted a number of undated photographs taken to show the route applied for. When the route was</p>
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		inspected by the Investigating Officer in 2021 the route appeared to be the same as is shown on the photographs with the exception of the photograph showing he fence and gate erected in 2020 across the route which has now been removed.
Investigating Officer's Comments		The photographs assist in confirming the route applied for by the applicant but provide no evidence regarding the legal status of the route.

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

The map and documentary evidence confirm the existence of what appeared to be an accessible route between point A and point D since the 1890s.

However, the 'route' appears to have been originally built in the context of access to a number of properties and there is no suggestion of the existence of a through route until Stoneyroyd and the houses located along it were built in the 1960s. The earliest map confirming the existence of a through route was the 1:2500 OS map revised and published in 1970.

At some point between 1970 and 2000 the garages at the southern end of Stoneyroyd were built but access was retained from Stoneyroyd through to Market Street via the application route – albeit via a very narrow path between points B-C-D.

A Planning appeal determined in 2010 for the development of land crossed by the application route makes reference to pedestrian use of a route through the site consistent with the application route.

The application is based on a substantial body of user evidence which is detailed below and in summary, this user evidence – dating from the late 1960s onwards - is supported by the map and photographic evidence considered above and the Investigating Officer found nothing to suggest that the route could not – or was not in use throughout the years referred to in the user evidence.

Head of Service – Legal and Democratic Services Observations

Landownership

The application route crosses land in private ownership from point A to C but for a very short section at point B, which is unregistered. From point C to D the application route crosses land which is unregistered.

Information from the Applicant

The applicant submitted map and documentary evidence in addition to 17 user evidence forms to support the application. The map and documentary evidence has been considered above. The 17 user evidence forms, recording use by 18 users, will be summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1966 and up to 2020 when the application to record the right of way was made.

20+ Years including the years 2000 to 2020	1-19 Years
16	2

Frequency of Use

The majority of the 18 users stated that they used the route weekly or daily, all users recorded their use as on foot.

Daily	Weekly	5 times per week
12	5	1

Reasons for Use

The majority of users noted using the route to access shops and services in the town including the medical centre and chemist and the bus stop for onward transport. 3 noted use for pleasure and 2 noted use for dog walking.

Other Users of the Route

All 18 users stated that they had seen others using the route on foot.

Consistency of the Route

All 18 users recorded that the application route has always followed the same route. One did note it had narrowed over the years.

The route width was generally recorded as varying from 0.5 metres wide at its narrowest to a width of 6.7 metres at its widest. 4 users recorded this greater width as being only 5 metres.

1 user stated that the route width varied, being 1 metre at its narrowest. Another gave a width of 29 inches or 73 cms. Another user specified that the route was 500mm wide at its narrowest and another gave the varying widths as 2.5 feet to 6.7 metres.

Unobstructed Use of the Route

None of the 18 users recorded any stiles along the route, 1 gave the answer 'unknown'. Gates were recorded by 2 users; these being installed in part of the fencing which prompted the submission of this application. 1 user again answered 'unknown' to the question regarding gates and another replied with 'N/A'.

There was a general consensus regarding the obstruction of the route with a majority of users noting two fences one erected roughly at point B on the committee plan around 1st May 2020 and another erected to block the ginnel roughly at point C on the committee plan, this being erected around 6th June 2020.

Only 2 users did not recollect these fences replying 'unknown' and 'N/A' respectively.

Of the 18 users 16 stated that barriers had prevented them from using the route with most specifying the fence erected to block the ginnel as being the cause of the obstruction.

Many users recorded being stopped or turned back but this related to the barriers/fencing erected across the route, no one recorded being stopped or turned back by other causes.

Most users did not recollect signs/notices along the route stating it was not public, nor did they record being told that it was not public. 1 user provided no response to these questions.

2 users did record that neighbours were told by developers that the ginnel would be closed and 2 recorded that neighbours had also been prevented from using the route by the obstructions.

Information from Others

BT Openreach advised that they do have apparatus in the area.

Information from the Landowner

The owners of Whitworth Rise responded to consultation to confirm their land ownership and stating that they could not see any reason to object. They noted that they planned to erect a remotely controlled electronic vehicle barrier for 'resident vehicle car parking' which would leave space for pedestrian access.

Conclusion

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

There is no express dedication in this matter therefore Committee should consider on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient

twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly, looking at whether dedication could be inferred at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. Committee is advised to consider whether the evidence presented within this report from the various maps, and other documentary evidence coupled with the evidence on site and user evidence indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way. Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

The Head of Service – Planning and Environment has considered the historical map and documentary evidence and concluded that while it is clear that an accessible route A-B has existed since the 1890's, there is no suggestion of the existence of a through route until Stoneyroyd and the houses located along it were built. The OS map dated 1970 is the only map as evidence to show evidence of a through route from A-D from the 1970's. There is also a plan from circa 1970. The access onto Stoneyroyd initially was wide but within a few years had been narrowed between a new garage and existing building.

The section B-C of the route as applied for and in existence on the ground today was formed as a result of the garage being erected at the time the development was being concluded. Steps were put in on the route. The garage is in one of the property titles on Stoneyroyd. A planning application in 2010 made reference to a pedestrian use of a route through the site consistent with the application route. The aerial photographs also provide some assistance in relation to the route but only from 2000 onwards. A planning application in 2016 also refers to it being an access from Stoneyroyd. Part of the route is unregistered, and the remainder is owned by different land owners. From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public has continued for many years such that on balance there may be sufficient evidence from which to infer dedication at common law of this route from all the circumstances.

Secondly looking at whether there is deemed dedication under section 31 Highways Act 1980 – in order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without interruption, over the 20 year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter, the evidence indicates that the route was obstructed in 2020 by the erection of fencing and gates at points B and C in May and June 2020 which called the route into question and prompted the submission of this application. Therefore the 20 year period under consideration for the purposes of establishing deemed

dedication would be from 2000 – 2020. The applicant has provided evidence from 18 users (via 17 user evidence forms) in support of the application which refer to regular use of the route from as early as 1966 with the majority of the 18 users stating that they used the route weekly or daily on foot. All 18 users recorded that the application route has always followed the same course and none of the users refer to having seen signs or notices along the route advising that the route was not public.

Committee will note that the owners of Whitworth Rise have been consulted, and have not submitted an objection.

In conclusion, taking all of the evidence into account, Committee on balance may consider that the provisions of section 31 Highways Act 1980 can be satisfied. Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, that an Order be made and as it is on balance sufficient evidence such that the higher test can be met that the Order be promoted to confirmation.

Risk management

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

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

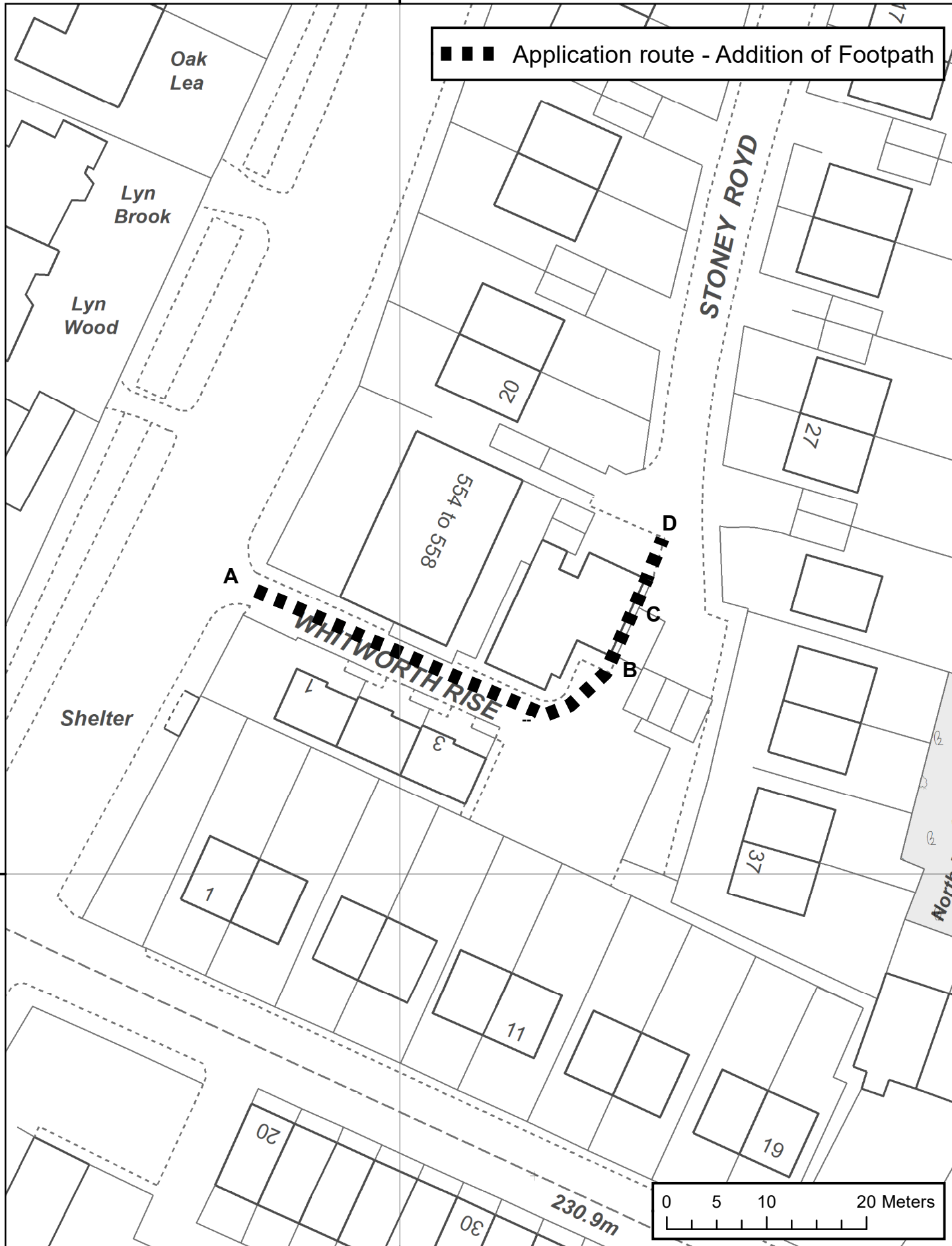
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-643		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

388700 000000

■ ■ ■ Application route - Addition of Footpath



418400 000000

418400 000000

388700 000000



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

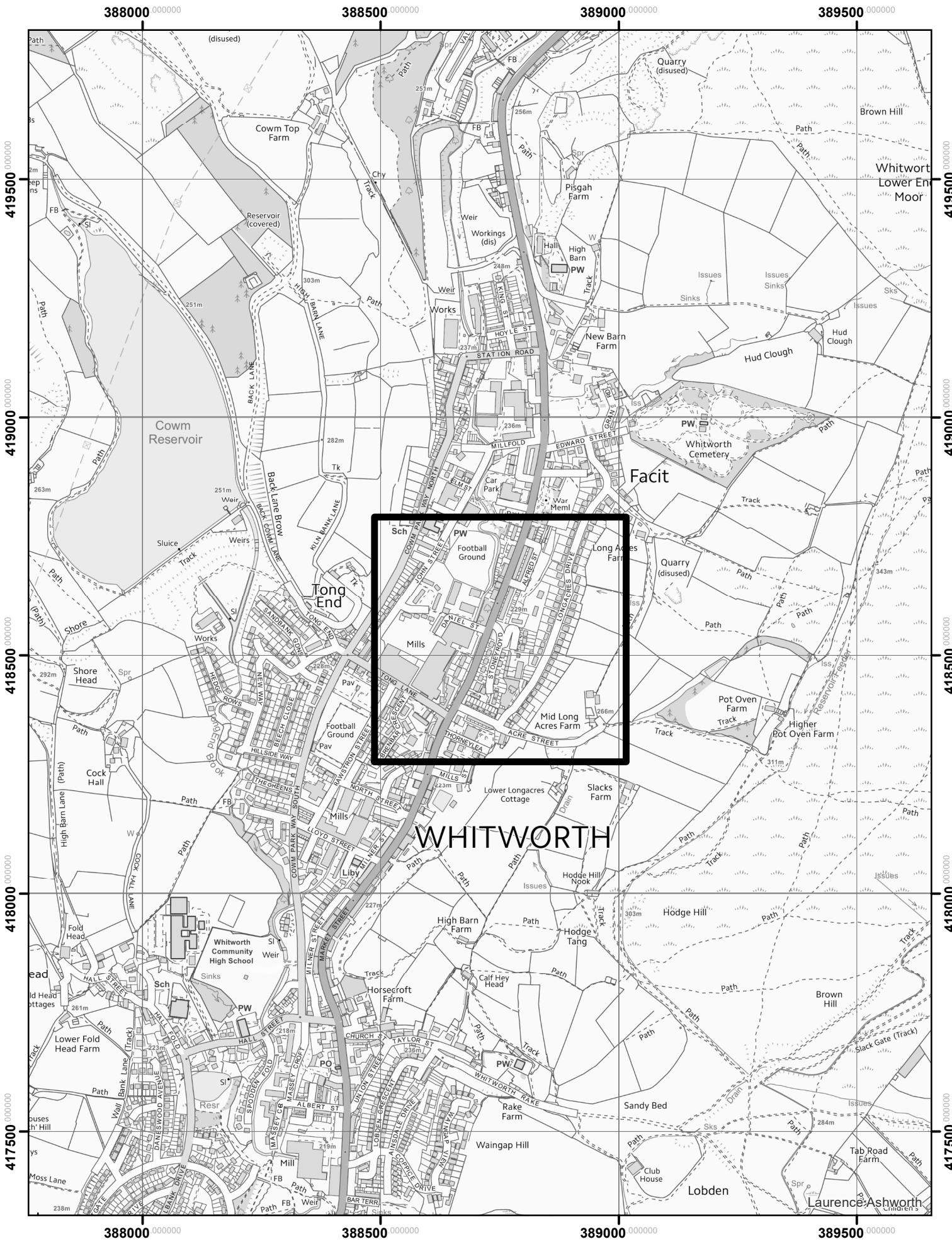
Wildlife and Countryside Act 1981
Addition of Footpath from Market Street to Stoney Royd along Whitworth Rise, Whitworth
Application 804-643

1:500



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 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
Addition of Footpath from Market Street to Stoney Royd along Whitworth Rise
LOCATION PLAN

1:10,000



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Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Preston North

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Black Bull Lane through
Harris Park
(Annex 'A' refers)

Contact for further information quoting reference 804-659:
Simon Moore, 01772 531280, Paralegal Officer, Legal, Governance and Registrars,
Simon.Moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a Footpath on the Definitive Map and Statement of Public Rights of Way from Garstang Road to Black Bull Lane through Harris Park.

Recommendation

That the application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Garstang Road to Black Bull Lane, be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath from Black Bull Lane to Garstang Road to be added to the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Preston City Council

Preston City 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	5318 3228	Junction with Garstang Road (A6)
B	5302 3235	North east corner of unnamed building
C	5291 3236	Boundary between Harris Park and Queens Drive County Primary School

D	5282 3237	Junction with Black Bull Lane
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Description of Route

A site inspection was carried in September 2021. The total length of the route is 420 metres.

Application route between point A and point C

Between point A and point C the route crosses land known as 'Harris Park' to which public access is prevented by gates at point A.

Access was allowed into the site by the current landowners so that a site inspection could be carried out to look at what the site looks like at present.

The site is now securely fenced and access controlled via the gates at point A. Notices are located close to point A and at other points within the site explaining that the site is private with no public access and no public right of way.

From point A the application route follows a well-maintained tarmac roadway into the site and curves round in a generally northerly direction to continue past the front of the old school/orphanage building where a monument is located dedicated to the memory of children who were homed at the orphanage and who were subsequently killed in the First and Second World Wars.

The tarmac road goes past the former chapel and then bends west and then north between buildings now comprising of private residential properties before continuing west across a tarmac area to the rear of further private residential properties to an unnamed building (point B).

At point B the original building identified on all Ordnance Survey (OS) maps since the orphanage was built is still in existence but is boarded up and appears unused. A tarmac roadway continues past the building towards point C but ends at a mound of overgrown earth just north of an open area of grassland which was formerly used as a cricket pitch and playing field.

Beyond the end of the tarmac there is little evidence of a worn track and the strip of woodland is overgrown. It is possible to push through the trees and overgrowth to the approximate position of point C but there is no evidence of an old gap or gateway and access through to the County Primary School is prevented by metal fencing erected along the edge of the tarmac carpark.

Signs indicating that there is no public right of way and that the land was private were located in the woodland at the rear of the County Primary School and also behind the houses backing onto the former playing field and cricket pitches where it was apparent that residents had previously accessed the land via gates in their garden fences.

Application route between point C and point D

The western part of the application route crosses land owned by Lancashire County Council and forming part of Queens Drive County Primary School.

Following a request for clarification of the route through the school grounds, the route applied for was marked on a map by the applicant as follows:



The route applied for starts/ends on Black Bull Lane at point D on the Committee plan.


When the route was inspected by the Investigating Officer access from point D was blocked by the presence of a mature hedge on the boundary of the school site. East of the hedge the application route follows the boundary of the school adjacent to the fence separating it from the adjacent residential property (104 Black Bull Lane). No trodden track was visible and the route crossed an area of well-maintained grass to the south of the tarmacked vehicular access into the school car park.


The application route turned due south to continue along the grass where it was further obstructed by fencing which surrounded the school site. Beyond the fence the application route continued around the south side of the school carpark but access to or from the carpark onto the route was prevented by fencing. The application route ran parallel to the car park through a strip of land planted with trees to point C.

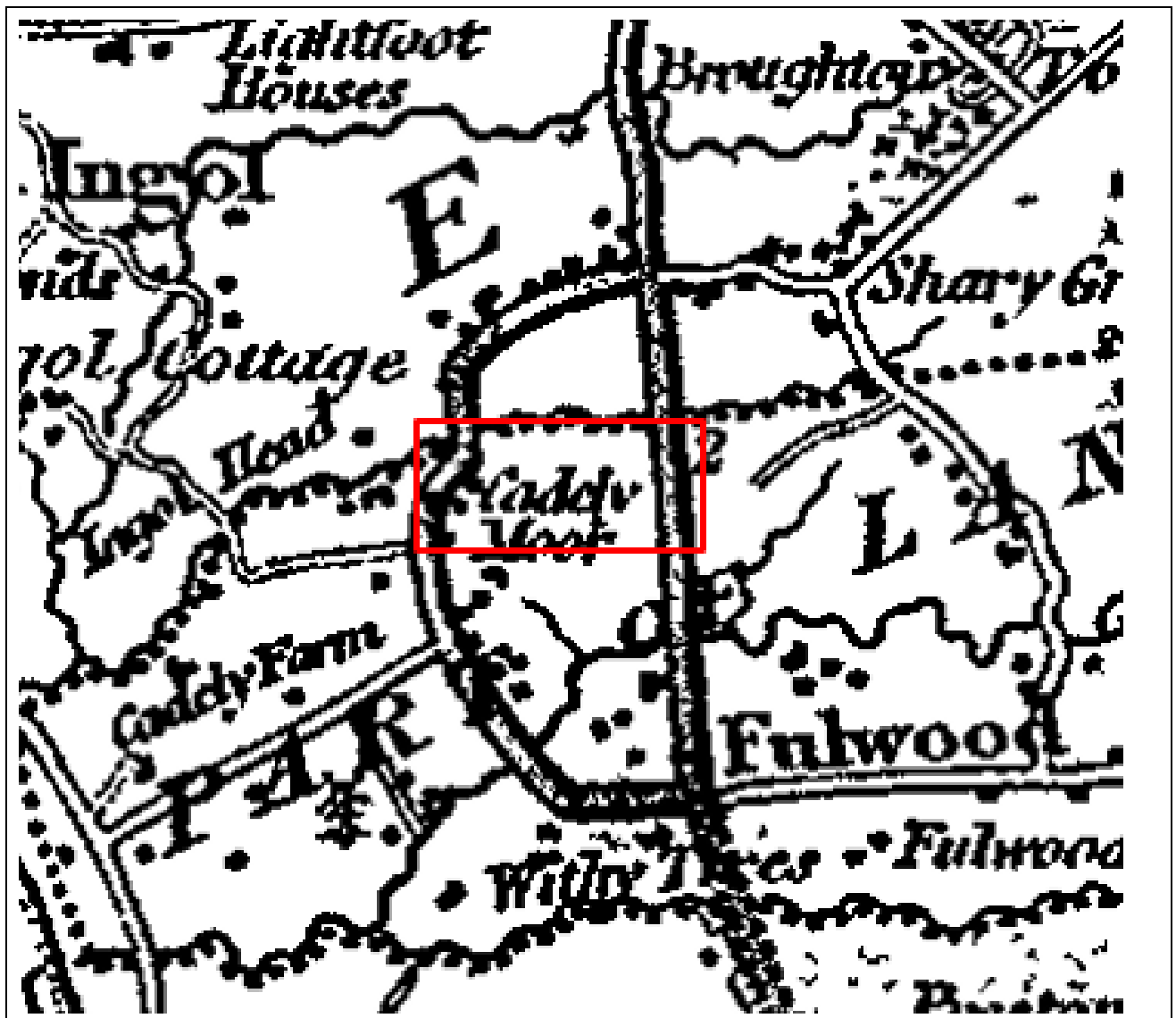
Whilst it was possible to gain access to parts of this route from the school carpark and school driveway the route itself was blocked by a hedge at point D and fencing which ran along the edge of the tarmac immediately north of the boundary shown on the OS maps examined (of which there was very little evidence) with no evidence of recent use.

Map and Documentary Evidence

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

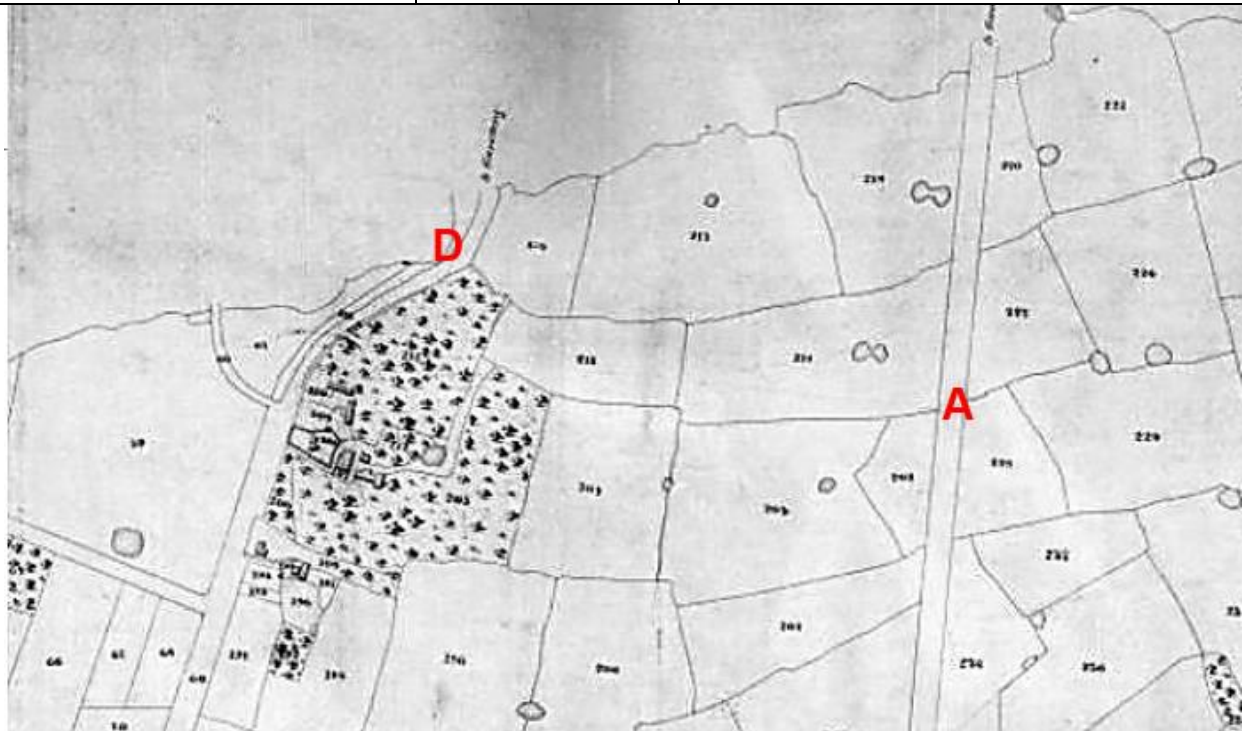
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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

		neither is Garstang Road or Harris Park.
Investigating Comments	Officer's	The application route probably did not exist in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
		
Observations		The application route is not shown and neither is Garstang Road or Harris Park.
Investigating Comments	Officer's	The application route probably did not exist in 1818.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The application route is not shown and neither is Harris Park. However, Garstang Road (the A6) is now shown as a turnpike road providing a direct north - south link in favour of the more circuitous route via Black Bull Lane to the west.
Investigating Officer's Comments		The application route probably didn't exist in 1830 although both Black Bull Lane and Garstang Road (to which the route connects) existed by that time.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of

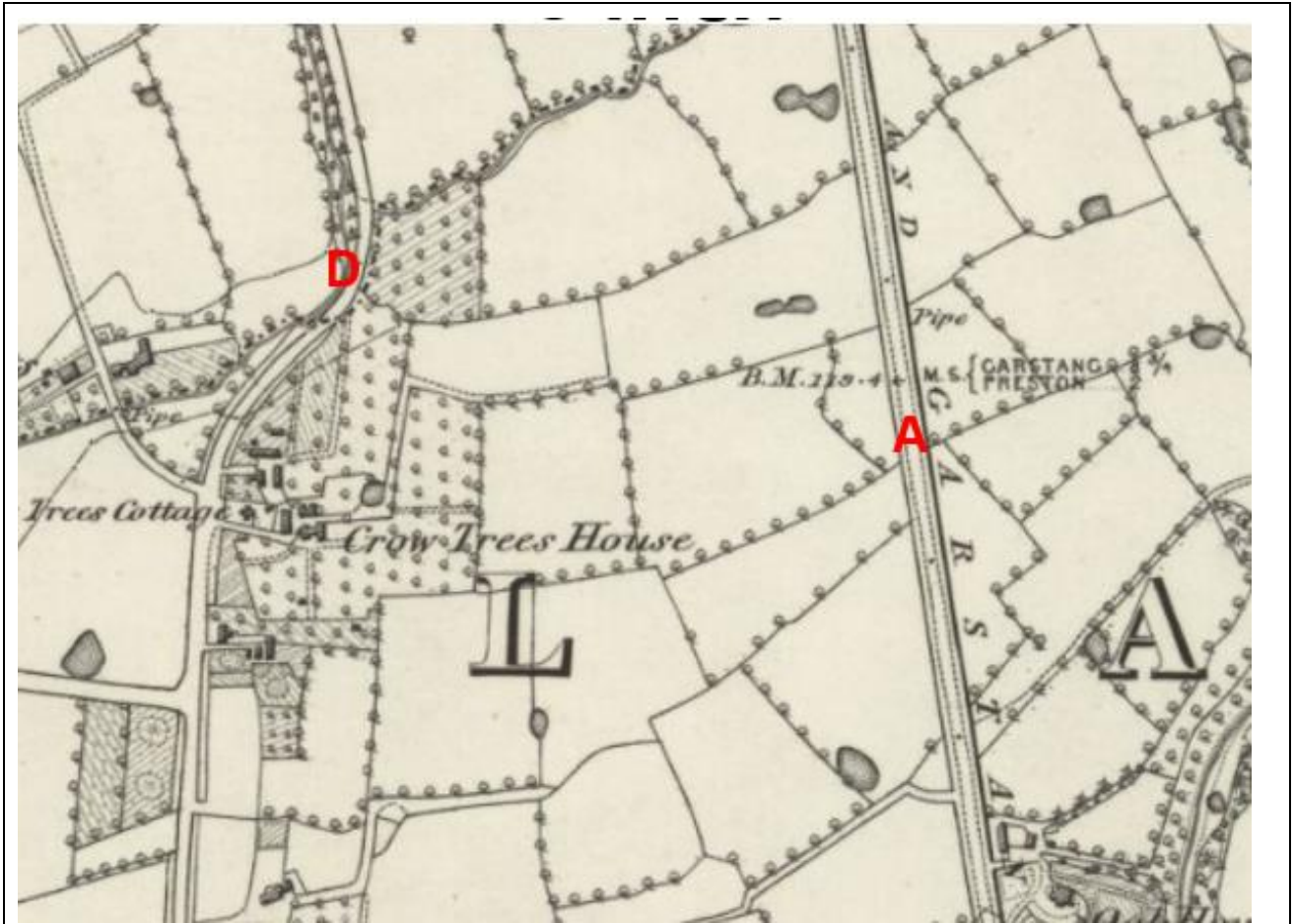
		way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1847	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



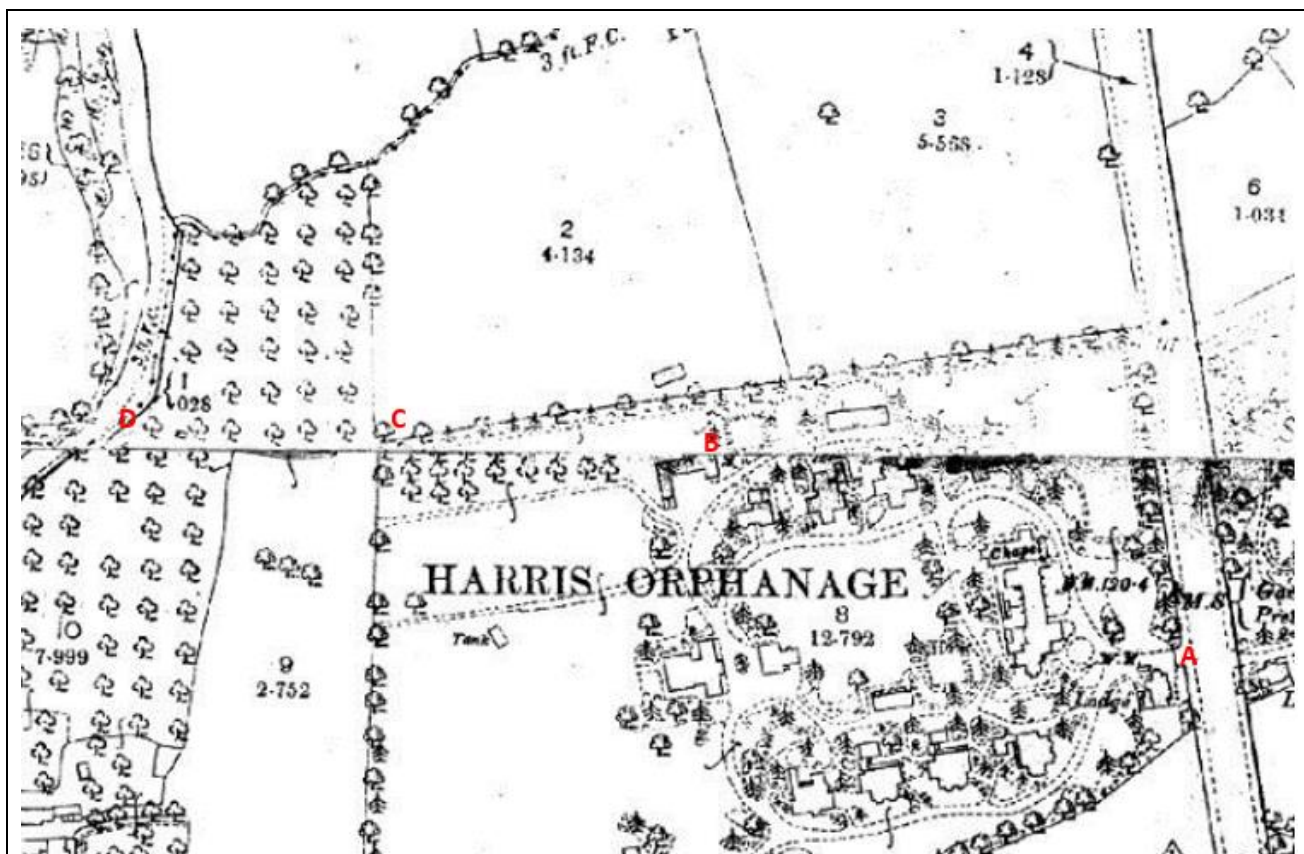
Observations		The application route is not shown. The land crossed by the route is shown as
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		being a network of fields and no reference to the existence of a footpath is included in the Tithe Award.
Investigating Officer's Comments		The application route probably did not exist in 1847.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure award available to view at the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 61	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1847 and published in 1849. ¹

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



Observations		The application route is not shown. The land crossed by the route is shown as being a network of undeveloped fields and woodland.
Investigating Officer's Comments		The application route did not exist in 1844-47.
25 Inch OS Map Sheets LXI-1 and LXI-5	1893-1895	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1893 with a reprint in 1895.



Observations

By 1890-91 there had been significant changes to the land crossed by the application route.

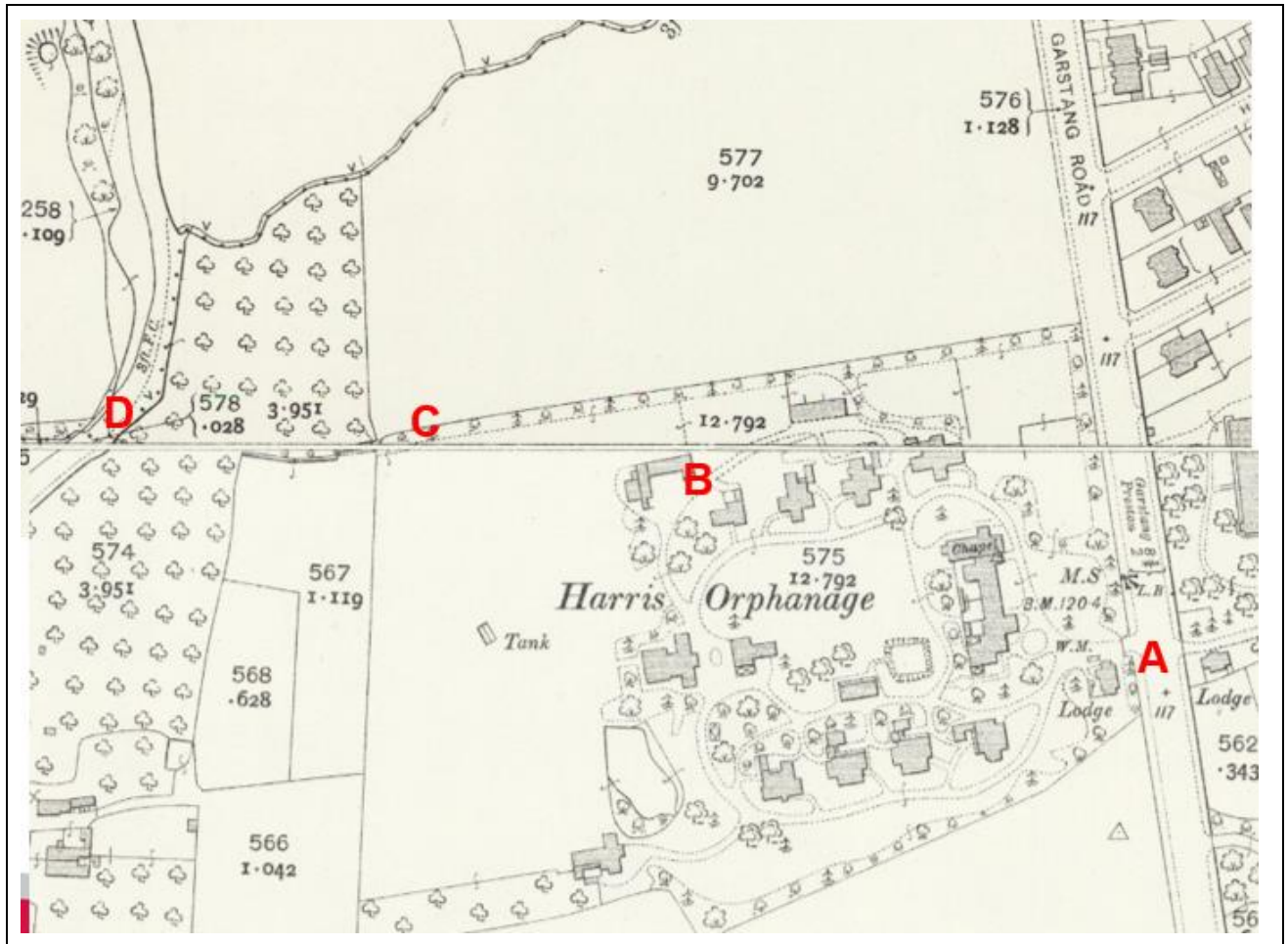
The Harris Orphanage had been built on the site crossed by the application route.

Access to the orphanage site from Preston Road was from point A which was shown as being gated.

Beyond point A the orphanage site, which comprised of a number of buildings, was set out linked by a number of unfenced roads.

The application route follows one of these roads (marked by double pecked lines) past the lodge which was situated just west of point A and then curving to continue in a generally northerly direction to the east of a large building and chapel to continue west along the road and then north along a roadway between two unnamed buildings. The route turns west along the roadway to the south of a long rectangular building towards point B initially along the roadway and then

		<p>leaving the roadway to continue west to pass the north east corner of a building (point B).</p> <p>From point B the application route is not shown on the map and crosses an area of woodland to the northern boundary of the Harris Orphanage site at point C.</p> <p>At point C the application route crosses a fence and then continues west crossing a further fence to pass through an orchard to join Black Bull Lane (point D). There is no evidence of the application route between points B-C-D.</p>
Investigating Comments	Officer's	<p>It may have been possible to walk along the application route between points A-B although the route was gated at point A and passed through the grounds of an orphanage which was unlikely to have been made available for public access.</p> <p>No through route existed to Black Bull Lane and the application route from point B through to point D did not exist in 1890-91.</p>
25 inch OS Map Sheets LXI-1 and LXI-5	1912	Further edition of the 25 inch map surveyed in 1891-1892, revised in 1910 and published in 1912.



Observations		The land crossed by the application route is shown largely unaltered from when the earlier edition of the 25 inch OS map was drawn.
Investigating Officer's Comments		The application route probably did not exist in 1910.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was</p>

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).

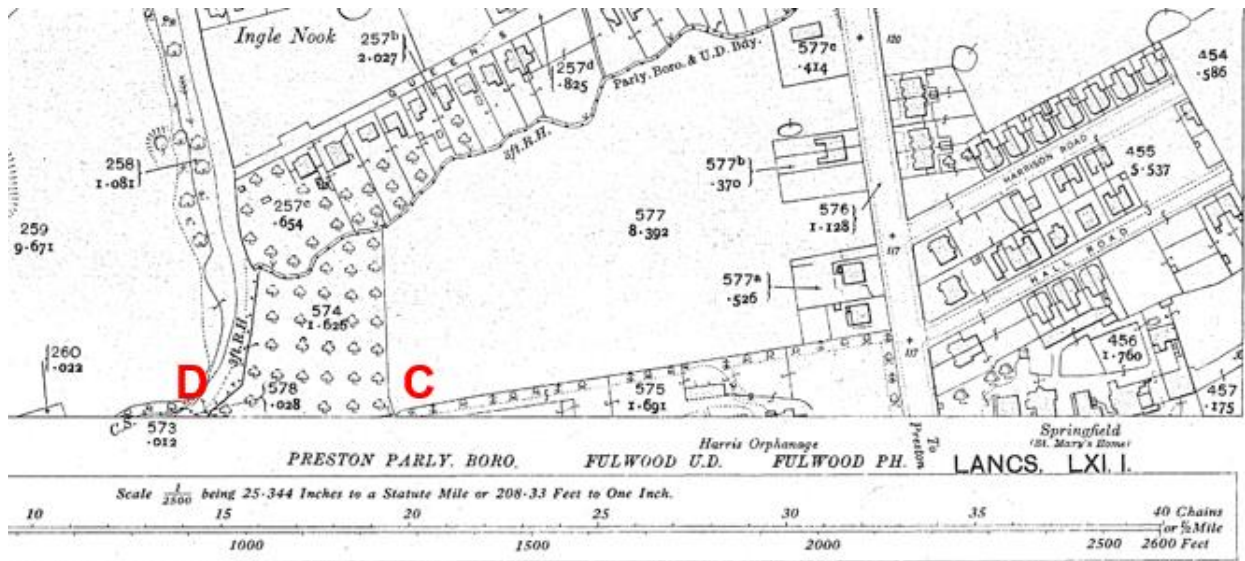
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey 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.



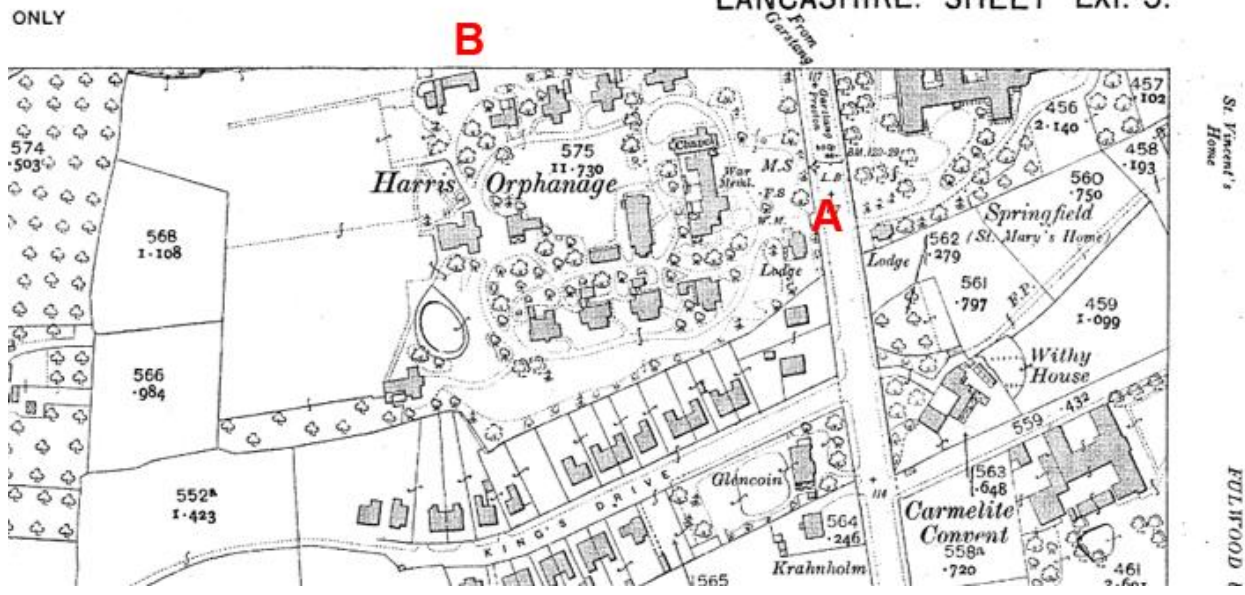


<p>Observations</p>		<p>Only the 25 inch OS sheet LXV.1 was available to view at the National Archives and this map was incomplete with the area crossed by the application route not marked up.</p> <p>The County Records Office only holds the 25 inch OS sheet LXV.5 which is also incomplete.</p> <p>No 1:500 scale maps could be found in either record office for the area crossed by the application route although the fact that this was an urban area and the 25 inch OS sheets are incomplete suggests that they were probably produced at the time.</p> <p>The District Valuation Book for Fulwood appears to have been in two parts with only the book referenced as being 'Book 2' being available. This lists details for numbered plots 965-1489 (stated as being renumbered 579-1195 in the catalogue) but without knowing what numbers were allocated to the land crossed by the route this is of no value.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn with regards to the existence of public rights.</p>
<p>25 Inch OS Map Sheets LXI-1 and LXI-5</p>	<p>1931</p>	<p>Further edition of 25 inch map (surveyed 1891-1892, revised in 1929 and</p>

published in 1931.



LANCASHIRE. SHEET LXI. 5.



Observations		The land crossed by the application route had not altered since the earlier edition of the 25 inch OS map was published.
Investigating Officer's Comments		The application did not exist in 1929.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare'

		<p>named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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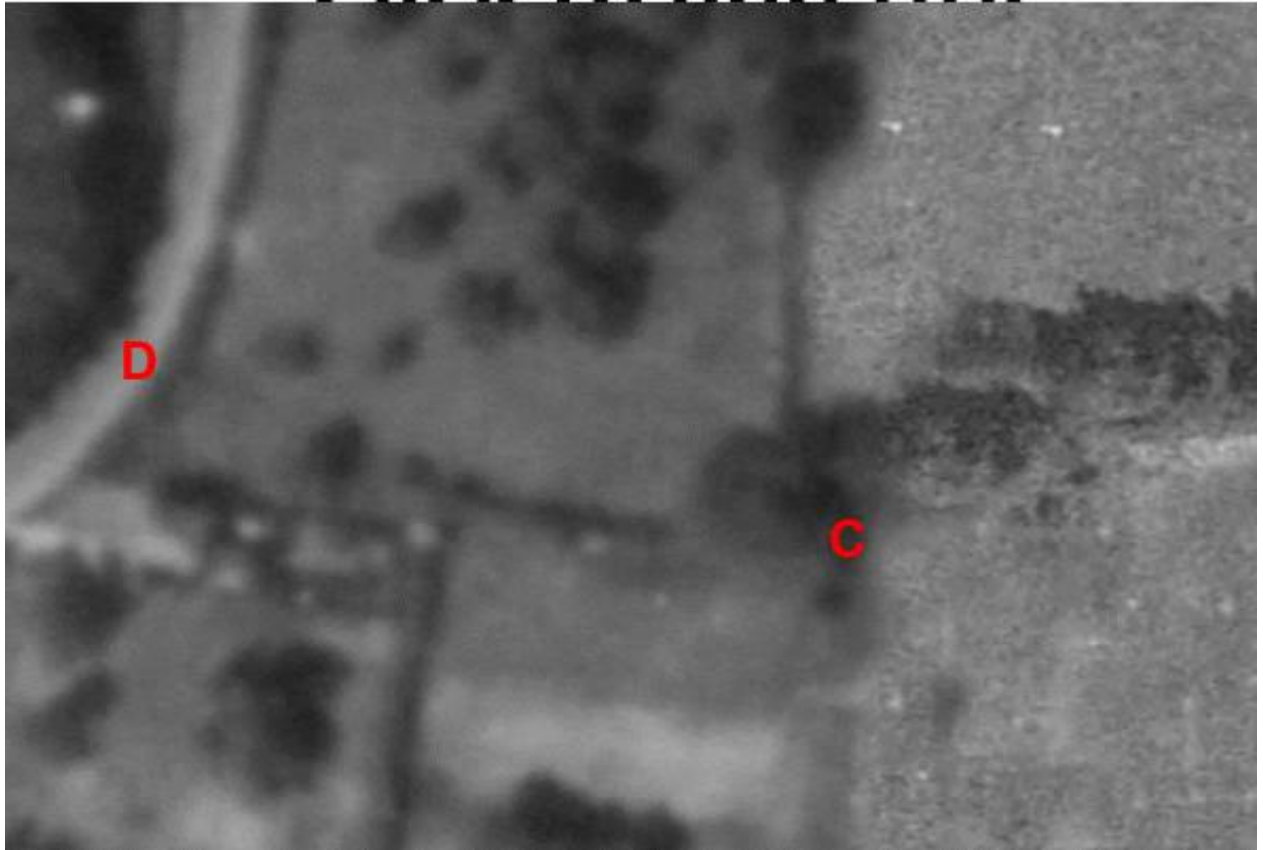
<p>Observations</p>		<p>The Harris Orphanage is shown with the road network around the buildings. Access to the orphanage site is from Garstang Road at point A – with a solid line across the entrance. There is no indication that a through route existed from Garstang Road to Black Bull Lane.</p>
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<p>Investigating Officer's Comments</p>		<p>It would be unusual for a footpath to be shown on such a small scale map which was primarily published to show public vehicular routes but the map does not support the view that the application route existed in the 1930s or that there was open access from Garstang Road..</p>
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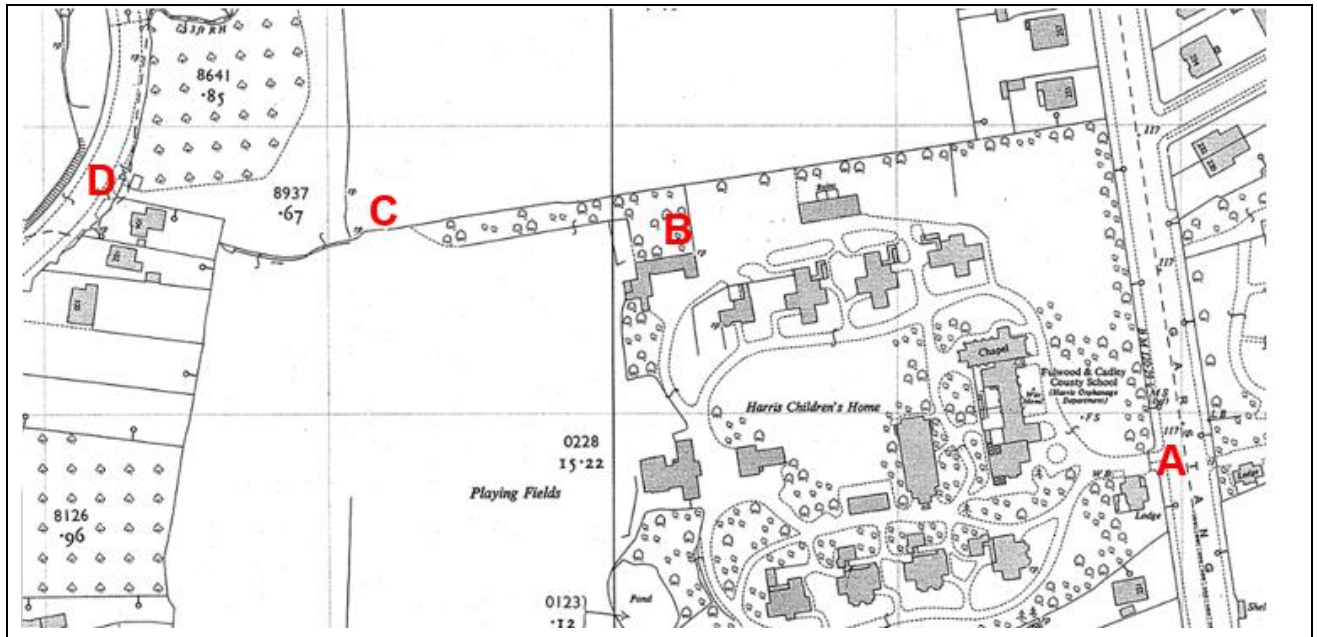
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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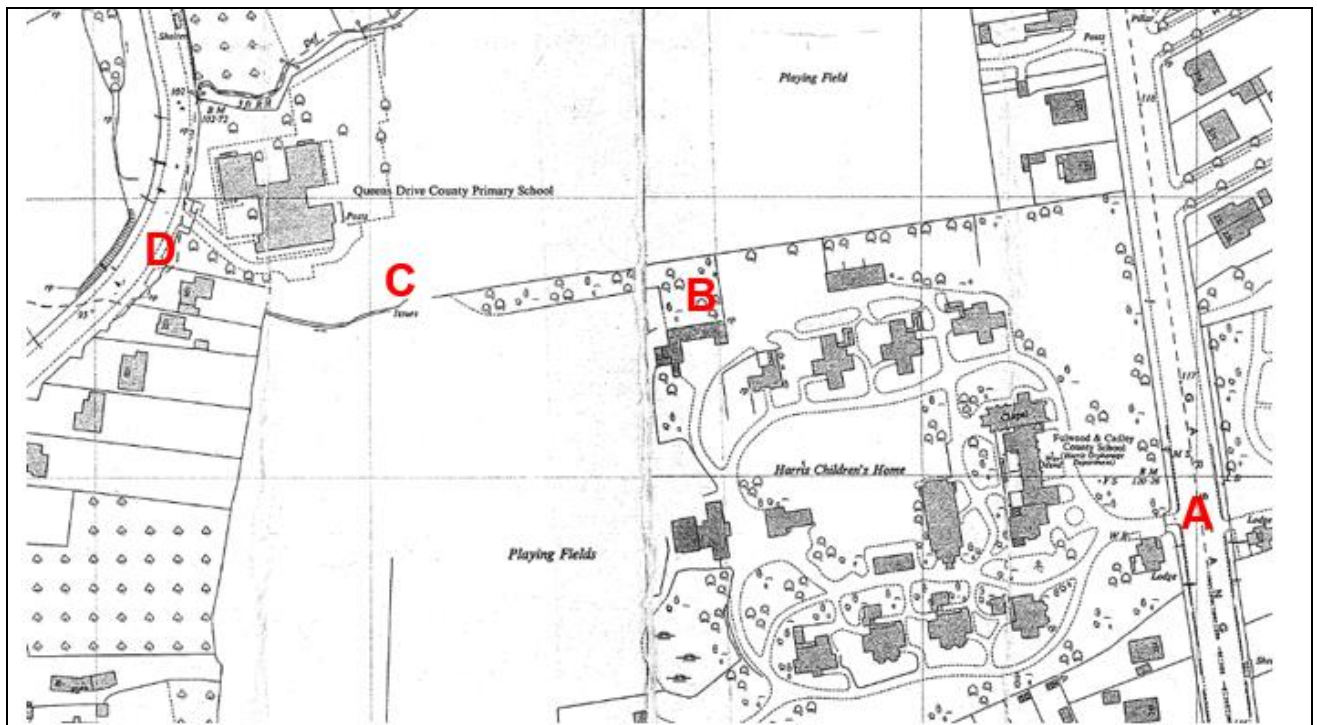
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



Observations		The orphanage buildings and associated road network can be clearly seen but a link from the constructed roads past point B and then continuing along the application route through to Black Bull Lane at point C cannot be seen.
Investigating Officer's Comments		The application route did not exist in the 1940s.
1:2500 OS Map SD 5232-5332	1961	1:2500 scale OS map reconstituted from former county series and part surveyed 1958 and published 1961 as the national grid series.



<p>Observations</p>		<p>The entrance to the orphanage – now renamed as Fulwood and Cadley County School (Harris Orphanage Department) is still shown gated at point A.</p> <p>Once through the gate access appears to be available along the application route to point B but a line (fence) is shown across the route at point B and beyond point B there is no evidence of the application route with further lines shown across it.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably did not exist in the late 1950s.</p>
<p>1:2500 OS Map SD 5232-5332</p>	<p>1969</p>	<p>Further 1:2500 OS map revised in 1968 and published 1969 as national grid series.</p>



<p>Observations</p>		<p>The former Harris Orphanage – now renamed as a school and children's home – is shown unaltered with gated access at point A and a line across the application route at point B and a further line across it just west of point B.</p> <p>Significant changes to the land are shown off Black Bull Lane where Queens Drive County Primary School had been built with access to the school along a gated driveway just north of point D.</p> <p>The application route is not shown between point B and point C but a break in the fence-line at point C is shown through which it would be possible to access the playing field to the west of the children's home.</p> <p>The application route between point C and point D is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist in 1968 but it may now have been possible to access the playing field west of the children's home via the driveway to the school and the gap in the fence-line at point C.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



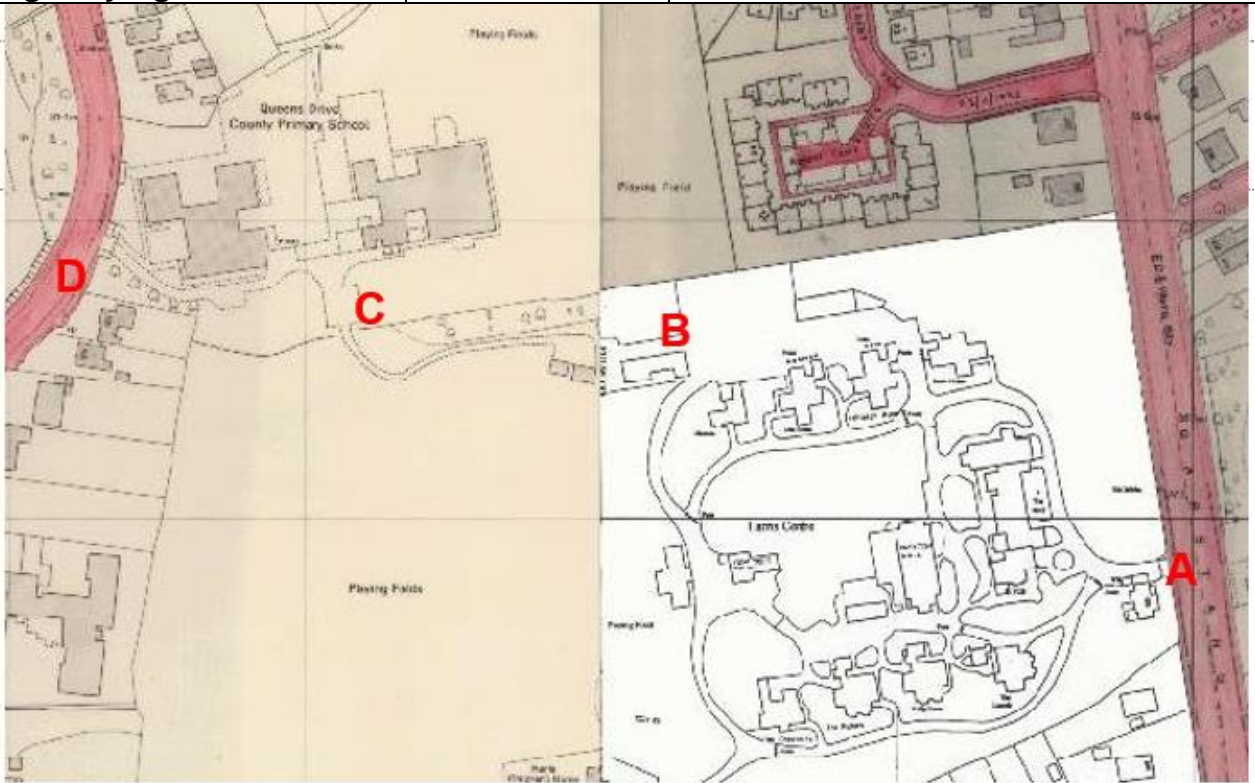
<p>Observations</p>	<p>This photograph taken in the 1960s predates the construction of the school but shows that links may have already started to form between Black Bull Lane and the site of the Harris orphanage/children's home. Access along the application route from point A to point B appears unaltered and</p>
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		<p>no route is shown from point B through to point C.</p> <p>At point C it appears that there may have been a gap in the hedge-line through which it could have been possible to access the playing fields to the west of the children's home.</p> <p>The application route is not shown as a trodden route from point C to point D although access to the field appears open and tracks are shown leading off Black Bull Lane north east of point D – one of which appears to lead towards point C.</p>
Investigating Officer's Comments		The application route did not exist as a through route in the 1960s although it was noted that some access may now have been available from Black Bull Lane passing through point C to the playing fields.
1:25,000 OS Pathfinder 679 – Preston (North) & Kirkham (Lancs)	1991	OS map compiled from larger scale surveys dated between 1956 and 1986 and revised for selected changes 1990 and 1991. Reprinted 1991.




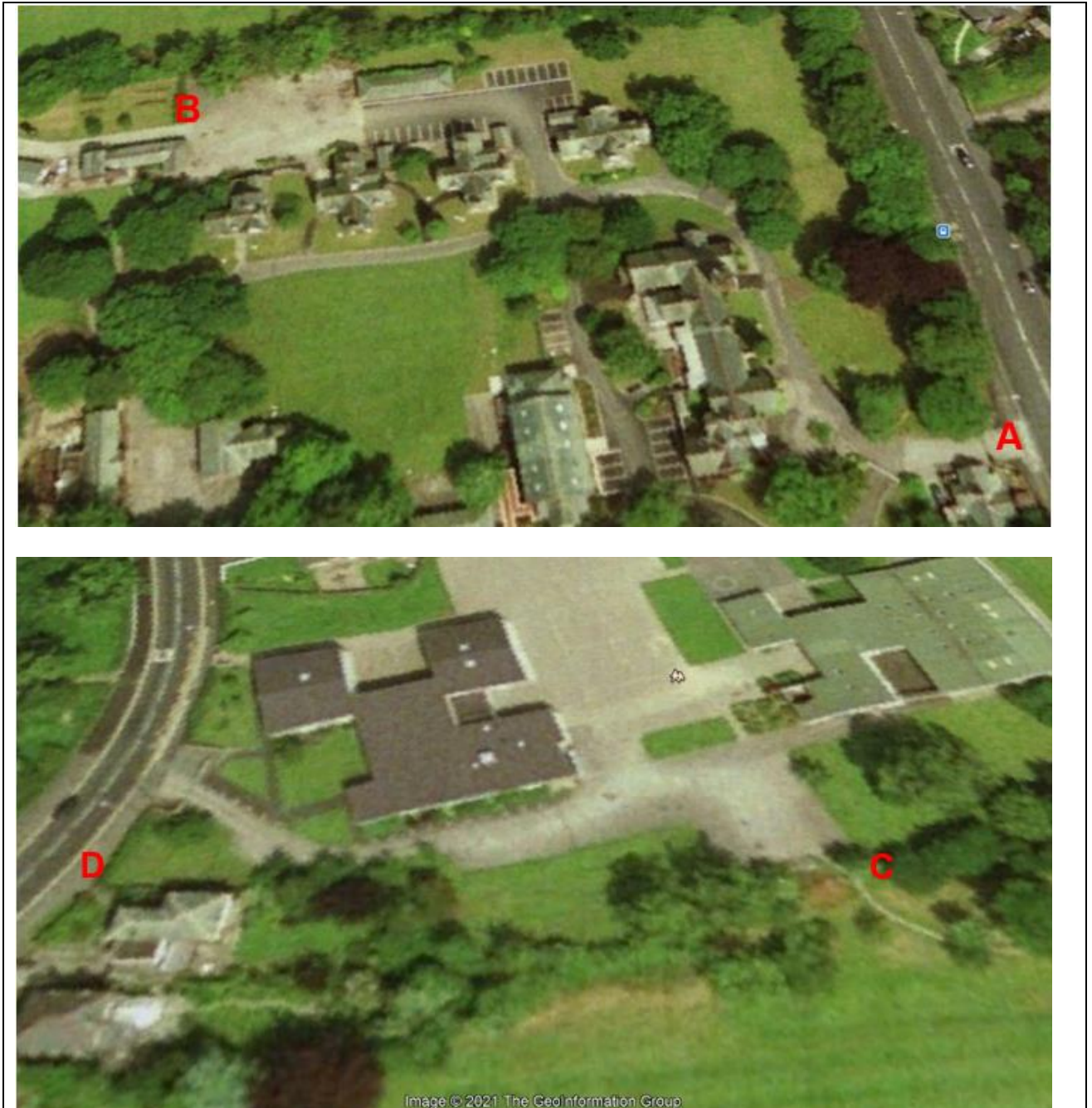
Observations		Whilst difficult to enlarge and retain clarity of the image it is possible to see that in 1991 there appeared to be access at point C between the playing fields
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		west of the children's home and the school. It is not possible to see clearly whether the exact route claimed by the applicant was accessible. There does not appear to be access through the children's home.
Investigating Officer's Comments		The map supports the user evidence submitted in respect of the fact that access appeared to be available between the playing fields and the school but it is not possible to tell exactly what through-route, if any, was available or whether use was public or private.
Computer generated OS base map used by LCC Highways for recording highway rights	Undated	Undated computer generated OS map.




Observations		This computer generated map is undated. It shows the application route gated at point A. From point A it shows a route consistent with the application route through to point B and approximately to point C. At point C there is unrestricted access leading through to the County Primary School from where it appears that it may have been possible to exit onto Black Bull Lane north of point D via school driveway which was shown to be gated.
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Investigating Comments	Officer's	<p>This type of map was commonly printed in the 1990s but this cannot be confirmed. It does however appear to be broadly consistent with what is shown on the aerial photograph taken in 2000 as detailed below.</p> <p>The map supports the application submitted from point A through to point B but is suggestive of a different route being taken through the school grounds than the one applied for and possibly a slightly different line between B and C. The application route from point C to point D is not shown and did not appear to exist.</p>
Google Earth Pro Images	2000	Aerial photograph taken in 2000.
		



<p>Observations</p>	<p>The aerial photograph clearly shows the application route between point A and point B although it was not possible to be certain whether the gate at point A was closed.</p> <p>From point B an access track can be seen approximating to the application route running the length of the building and beyond to pass another smaller building and a car parking area. Beyond the parked cars a worn track consistent with pedestrian use can be seen extending through point C onto a tarmac area (now used as a car park) from</p>
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		<p>where it appeared possible to walk along the driveway of the County Primary School to exit onto Black Bull Lane.</p> <p>The application route between point C and point D was not shown and there did not appear to be any access onto Black Bull Lane at point D.</p>
Investigating Officer's Comments		<p>In 2000 a through route probably existed from point A along the application route to point B, approximated to the application route to point C and then continuing through the school grounds to exit onto Black Bull Lane via the school driveway if the gates were unlocked.</p> <p>The application route between point C and point D did not exist in 2000.</p>
Google Earth Pro images	2002	Aerial photographs taken in 2002.
		



<p>Observations</p>		<p>From point A to point B the application route can be seen and remained unaltered. Access from midway between point B and point C and through point C onto the County Primary School carpark is no longer visible due to the growth of trees and bushes.</p> <p>The application route from point C to point D is not shown to exist as a trodden track on the photograph and no access appears available through the boundary at point D.</p>
<p>Investigating Officer's Comments</p>		<p>Use of a route linking from the Harris buildings to the County Primary School appears to have declined since 2000 and may have been no longer possible.</p> <p>The application route between point C and point D did not exist.</p>
<p>Google Earth Pro image</p>	<p>2009</p>	<p>Aerial photographs taken in 2009</p>



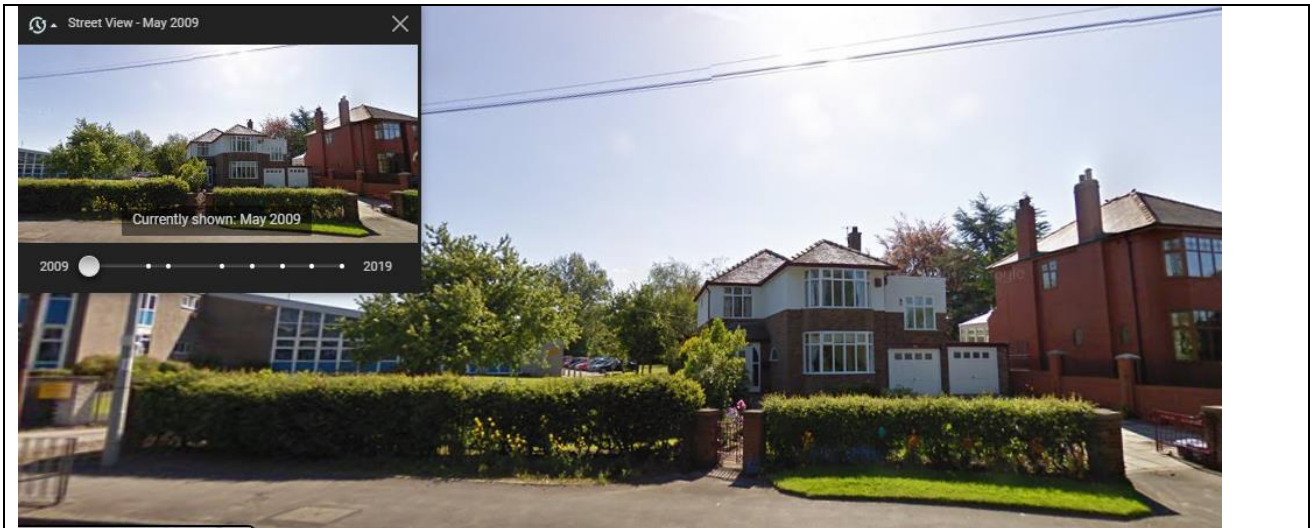
<p>Observations</p>	<p>The gate to the site at point A is open and it appears possible to access the application route through to partway between point B and point C. From here the route through to point C cannot be seen due to the trees so it is not possible to confirm whether a trodden route through to point C and into the County</p>
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		Primary School grounds was available. The application route between point C and point D is not visible although it appears that access would have been available through to Black Bull Lane via the school driveway if the gates were unlocked.
Investigating Officer's Comments		Access to the route appeared available at point A but the photograph does not assist in confirming whether there was access through point C in 2009. The application route between point C and point D did not appear to have existed at that time.
Google Earth Pro Image	2015	Aerial photographs taken in 2015.





<p>Observations</p>		<p>The gate to the site at point A is again photographed as being open and it appears possible to access the application route through to partway between point B and point C. From here the route through to point C cannot be seen due to the trees so it is not possible to confirm whether a trodden route through to point C and into the County Primary School grounds was available. The application route between point C and point D is not visible although it appears that access would have been available through to Black Bull Lane via the school driveway if the gates were unlocked.</p>
<p>Investigating Officer's Comments</p>		<p>Access to the route appeared available at point A but the photograph does not assist in confirming whether there was access through point C in 2015. The application route between point C and point D did not appear to have existed at that time.</p>
<p>Google Street View Images</p>	<p>2009</p>	<p>Google Street View image</p>



<p>Observations</p>		<p>This photograph was taken in 2009 and shows the application route at point D. No access is shown to exist through the hedge at point D with access to the school grounds being via the entrance to the school which was located to the left.</p>
<p>Investigating Officer's Comments</p>		<p>There was no access to or from the application route from point D in 2009.</p>
<p>Definitive Map Records</p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<p>Parish Survey Map</p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards,</p>

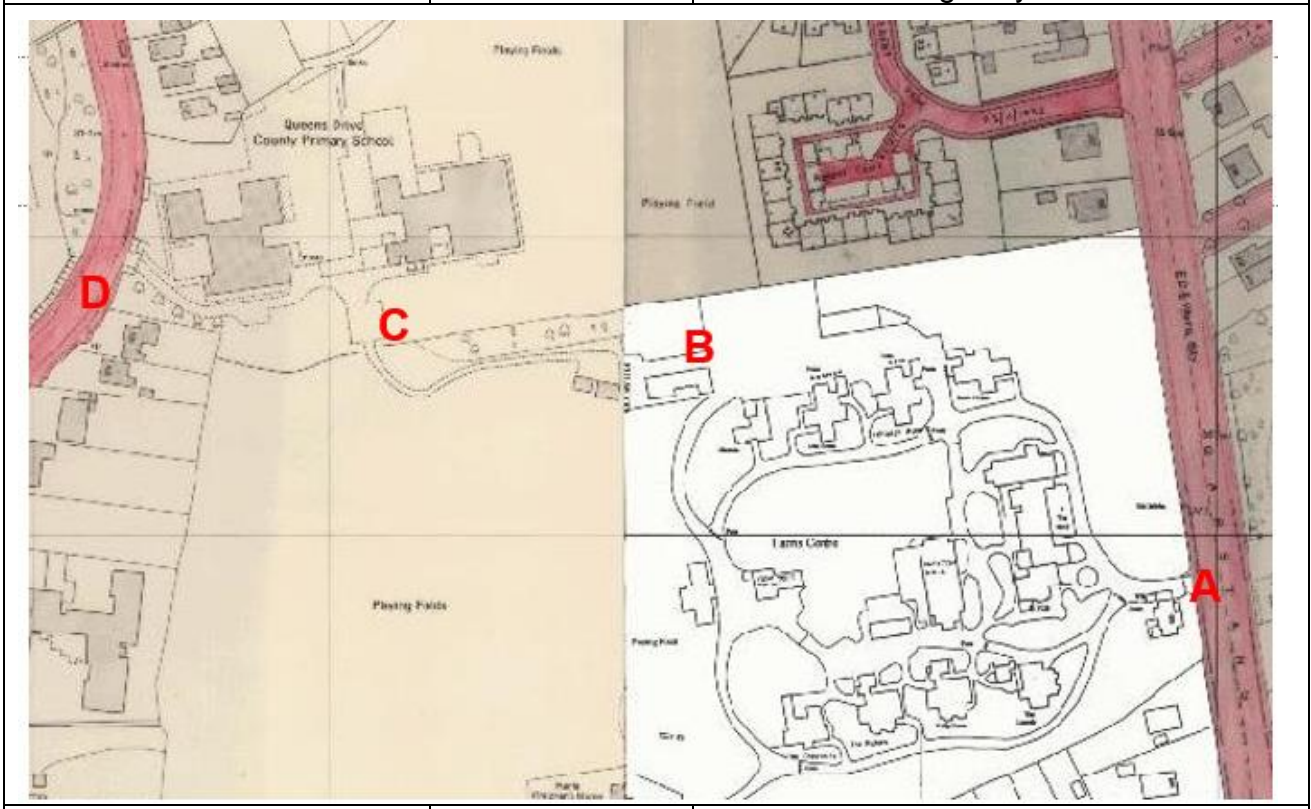
		often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown and there were no representations made to the county council in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown and there were no representations made to the county council in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised

		<p>Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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Observations		The application route is not shown.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council.

<p>Handover Maps'</p>	<p>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>
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<p>Observations</p>	<p>The application route is not recorded as</p>
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		a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn regarding public rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on</p>

		anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20-year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Summary

This application was submitted based on the submission of user evidence which will be considered later in this report.

Although the application is based on 'modern user evidence' our investigations also look back at the history of the land crossed by the application route, often spanning a substantial period of time, to determine whether historical public rights can be inferred and whether the available map and documentary evidence supports the user evidence submitted.

In this particular case the application route is not shown on any of the small scale early commercial maps, Tithe Map or early Ordnance Survey maps examined and no part of it appeared to have existed until at least the late 1880s when the Harris Orphanage was built.

There appears to be no suggestion from the applicant – and no evidence from our investigations – that a public through route was in use from Garstang Road (the A6) through the orphanage grounds to exit onto Black Bull Road until at least the mid to late 1960s when Queens Drive County Primary School was built, and a gap was shown on the OS 1:2500 scale map suggesting access may have been available between the school and the playing fields on the west of the children's home at point C.

Map and documentary evidence in support of the application is limited.

The maps consistently show a gate across the route at point A and it is not known whether this was left open or whether access was available.

A route from point A through to point B is consistently shown and remained largely unaltered from the 1890s to the present time but it is not until 2000 that we have any definite evidence of a route consistent with the application route existing on the ground through to point C (Google Earth Pro aerial photograph).

Between point C and point D there was no map or documentary evidence supporting the existence of the application route on the line claimed. From the time that the school was constructed in the late 1960s however, access did appear to have been possible along the school driveway between Black Bull Lane and point C if the school gates were not locked.

Taking all the map and documentary evidence into account there is insufficient evidence from which it is possible to infer that public rights exist and no support that a route between point C and point D on the line applied for could have been used.

There is evidence that a link between the two sites existed at least for a period of time between 1960 and 2000 at point C and that it may have been possible to travel on foot from Preston Road at point A through to Black Bull Lane via the entrance to the primary school but any assertion of the existence of a route used will rely solely on the quality and consistency of the user evidence provided.

Head of Service – Legal and Democratic Services Observations

Landownership

Between point A and point C the application route crosses land on which the Harris Orphanage was built.

The land on which the orphanage was built was acquired in 1881 by the Harris Trustees and what was described as a village homes-type orphanage was built for 120 children with the first child admitted in November 1888.

In 1940 the orphanage school was leased by Lancashire County Council and after the Second World War the orphanage was renamed the Fulwood and Cadley County School (Harris Orphanage Department). It closed in 1982 and was then leased to Preston Polytechnic, in 1985 being bought outright by them and used for student accommodation. The Polytechnic subsequently became the University of Central Lancashire who converted the buildings to office use and owned the properties and grounds until they were sold in 2007 to the current landowner.

Between point C and point D the application route crosses land in the ownership of Lancashire County Council.

Information from the Applicant

In addition to the map evidence already considered the applicant submitted 11 witness statements which detail various routes and access points onto Harris Park including access of residents through back gates in their gardens. These statements relate to varied routes which do not generally or wholly conform to the route as applied for.

In the interest of clarifying the situation the applicant was provided with the councils standard user evidence form with the request that these be completed by those who had submitted witness statements. 6 forms were returned, and they are detailed below, the forms referred back to plans which had been provided with the witness statements which showed various and differing routes into and across the park so it is again not clear that these users are referring exactly to the route as applied for. One user worked at the Conference Centre at Harris Park so potentially had private rights of access across the park.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1967 and up to 2010 with users noting use from 1967 to 2009, 1970 to 1980, early 1990s to late 1990s, 1995 to 1998, 1997 to 2007 and 1998 to 2010 respectively though not all users appear to have used exactly the same route.

Frequency of Use

All of the users recorded use ranging from several times a week to daily use. 3 users recorded use on foot several times a week, 2 recorded use from Monday to Friday each week, 1 recorded daily use.

Reasons for Use

2 users recorded use for pleasure, 2 recorded use for commuting to work, 1 recorded use walking to school and another recorded use taking children to school.

Other Users of the Route

All users recorded having seen others using the route on foot.

Consistency of the Route

1 user stated that the route had always followed the same line, the 5 remaining users stated that they did not know. All 6 users stated that they did not know how wide the route was.

Unobstructed Use of the Route

No users recorded having been stopped, turned back, told the route was not public, nor did they record seeing signs or notices along the route.

No users recalled barriers or stiles but 3 recorded gates. 1 recorded a gate to access the park at the back of Orchard Court which was not always locked, it was noted that residents of Orchard Court had a key for this gate. 1 user noted a gate in their back garden through which they access the park with family. 1 user noted a gate in a friend's back garden accessing the park, stating that this gate was never locked. This reflects the differing routes and points of access recorded by the various users.

Information from Others

An adjoining landowner at the western end of the route responded to consultation. They recalled the changing ownership and use of the land affected by the route, noting that Harris Park was private enclosed property with no through access. They went on to state that the fence along the border with Queens Drive primary school had become dilapidated over the years but that this border was re-established with the current fence 10 years ago. They clarified that the school has always been private property and not an access route to anywhere.

The adjoining landowner also raised privacy and security concerns as the application route runs along the boundary of their land alongside the bedroom and main living room of their house. Safety concerns regarding the exit onto Black Bull Lane were also noted.

The adjoining landowner concluded; "The proposed route has never been a general right of way and never became one as it was never needed or used as such. There has always been more than adequate existing access routes for pedestrians wanting to pass between Garstang Road and Black Bull Lane. Kings Drive providing access, with the additional benefit of the zebra crossing at the Black Bull Lane exit and Queens drive providing access for the Primary School, the Leisure Centre and the Academy."

Councillor Woollam responded to consultation giving his support to the application. He stated that the application seeks to reinstate an unofficial pathway through the site that was used, un-challenged, for a period of approximately 50 years which provided a permanent connection to the heritage of the site for the people of Preston and all year-round access to the War Memorial, of which only two days a year are currently permitted. It also seeks to create safe access for school children to walk to school, away from extremely busy roads.

The war memorial was bought by the friends of the orphans, who attended the Harris orphanage and it would be very disrespectful to move or prevent public access to this important historic site. In the past people were allowed to walk through the beautiful grounds stopping to pay respects at the war memorial dedicated to former residents of the Harris Children's Home who bravely laid down their lives for their country in the great wars. I have discussed this issue with many members of the public who have visited the memorial on many occasions and there is very strong opposition to preventing access.

This historic site has the biggest collection of Grade 2 listed assets in Preston, 12 in all, and are all part of the legacy of Edmund Harris, which is vitally important to the heritage of the people of the City of Preston. In Councillor Woollam's opinion, residents of Preston must always have access to this site and enjoy not only the Grade 2 listed buildings but also the listed park and gardens. There would be a considerable amount of resentment by the people of Preston if access should be denied.

Information from the Landowner

The owners of Harris Park objected to the application on the basis that there is no evidence to suggest that the legal test in Section 31 of the Highways Act 1980 has been satisfied, nor that dedication at common law has occurred, and therefore they contend that there is no legal basis on which an order could be made to add the application route to the Definitive Map.

Their response included a Statutory Declaration from a Partner at Bhailok Fielding Solicitors who acted for Harris Park Limited on the acquisition of the land known as Harris Park in 2007, details of which are summarised below.

The declaration commented on the legal test to establish the existence of public rights and provided a description of the site along with a detailed history and details of the changing use of the land from 1888 to the present day.

Signs reading "Private No Public Right of Way" were noted as being erected by the previous landowner (UCLAN) in October 2001; it was suggested that this should constitute the calling into question of public rights along the route. One sign was situated at the front entrance to the site on Garstang Road and then others facing Queens Drive School presumably where people had attempted to access the site and again another sign on the opposite side of the field facing Kings Drive. In 2014 the owners erected ten new signs around the site.

The declaration also went into great detail regarding access points to the site corresponding to points A and C on the committee plan.

Access at point A

It was noted that there is evidence to support the conclusion that the access into the site from Garstang Road was gated up to at least the time when Harris School closed in June 1984 (and beyond into 1985 at the earliest). This evidence includes:

Orphanage and school use of the site, and the recollections of former pupils and parents. It is argued that public access would have been incompatible with the sites use as a children's home and primary school (1888 to 1984). Garstang Road is, and was, a very busy, heavily trafficked road and it would have been necessary to keep the site secure to ensure the children's safety.

A brochure provided with the consultation response which shows a picture of school children in 1968 crossing Garstang Road from Harris School and this shows white mesh gates across the entrance, which appear to have just been opened to allow the children to leave the site to cross the busy road.



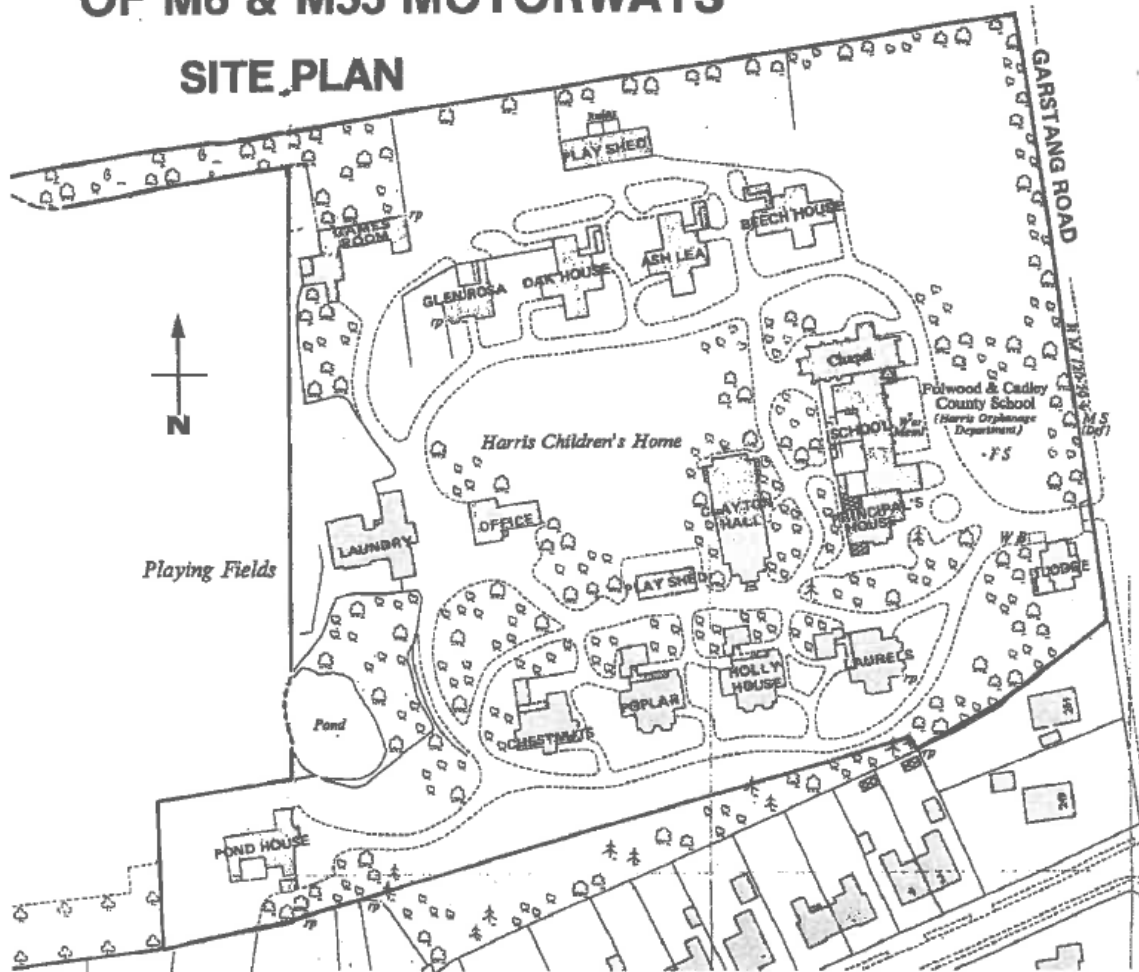
School children crossing the road.

This picture showing a few pupils sporting their new 'Diddy jackets' appeared in the Lancashire Evening Post in 1968.

It is argued that these gates, or their replacements, would need to have been maintained by the Trustees and the Council during the period that the site was used as an orphanage and school, to protect the safety and privacy of the orphans and pupils.

A copy of the sales particulars of the site from November 1984 when the Trustees were trying to sell the buildings at the front of the site which state that "The Club has no access through the grounds of the vendors but it would be the Trustees' wish to retain a vehicular and pedestrian right of access through the site to the playing fields upon a line or road to be agreed". The particulars go on to say that, "In fact 8 of the houses were at that time subject to a tenancy to the Council for accommodation for students at Lancashire Polytechnic but full vacant possession is to be given by September 1985". There is a plan of the site attached to the sales instructions and on it is a thin black line drawn across the entrance to the site from Garstang Road. It is argued that this indicates the existence of a gate across the entrance, and this view is supported by further evidence.

**1½ MILES SOUTH OF JUNCTION 32
OF M6 & M55 MOTORWAYS**



Reproduced from the Ordnance Survey map with the sanction of the Controller of H.M. Stationary Office. Crown copyright reserved.

There is also an aerial photograph on the front of the sales particulars. This is of poor quality, however a copy of the same photograph was found online in the Conservation Area appraisal prepared by Preston Council in November 2007. In the appraisal the photograph is said to have been taken in 1981, then at the back of the appraisal there is a list of figures which describes the photograph as "Aerial view of Harris Park looking north c1982".



This photograph shows a white car turning into the site off Garstang Road and there being a black structure barring its entry which is most likely to be the gates referred to by various ex pupils and parents of the school. This photograph was clearly taken in the early 1980s whilst at least the school, if not the orphanage, was still running and shows that the site was gated.

Finally, on 15 January 1985, a number of buildings on the site including the lodge and gateway were listed as Grade II listed buildings. The general description refers to Harris Park being added as Grade II to the schedule of a list of buildings of special architectural and historic interest in the area. After a description of the property it then goes on to state "The perimeter of the whole of which is enclosed by brick walls, stone copings and entrance pillars to vehicle and pedestrian gateways which have wrought iron gates" It is argued that this implies that both gateways were gated but there is a more detailed description of the lodge and gateway which were separately listed as follows:

"Gate peers – 4 inner making carriage gateway flanked by pedestrian gates and two outer all red brick heavily banded with sandstone square section around 3 meters high with hemispherical tops the innermost bearing ornamental iron lamp holders. Iron spear railing gates".

In addition to this evidence it was noted that on 10th January 1991 planning permission and listed building consent was obtained for change of use from a former chapel and school building to a conference centre which included alteration to the

access to the site. This application included the relocation of the main gate and gatepost to form a wider access. The plans attached to the application indicate that by 1990 the gate had been removed.

Once UCLAN's use of the site ended in August 2010 the owners were able to place a new gate across the access into the site from Garstang Road, which was controlled by a code. A condition was attached to the planning permission for the new gate which required the gate to be opened on Armistice Day/Remembrance Sunday to allow access to the war memorial on the site. It is argued that if the Council had considered that there was a public right of way across the site, then they would have no reason to impose the condition.

Access at point C

The cut through between the site and Queens Drive Primary School was blocked off in 2001. Evidence of this is contained in the letter from a Mr Duckworth to UCLAN dated 11 November 2001 in which he states that UCLAN have "erected a five foot plus concrete fence along the boundary between the Harris and Queens Drive Primary School".

When the partner first visited the site in 2005 they noticed that the fencing between the site and Queens Drive Primary School had been removed. This was discussed with UCLAN's solicitors and they stated that there had been incidents of anti-social and criminal behaviour taking place on the site, and youths trespassing on to the site at night. Discussions had been ongoing with the police to erect further fencing to prevent this.

The Council erected the current fencing between the site and Queens Drive Primary School in 2010 following liaison with the owners and the head teacher of Queens Drive Primary School. The Council applied for planning permission for the fence. The owners contributed the sum of £6,312.25 towards the cost of the fence and on 29 November 2010 the Bursar of Queens Drive Primary School wrote to the owners stating, "The fence does seem to be preventing people from walking between the properties and therefore reducing trespass. Many thanks again for your co-operation over recent months".

The statement prepared by Ms J Webster, the head teacher of Queen's Drive Primary School, in support of the application states that she requested that a gate be placed in the fence to allow access on to the site from Queens Drive Primary School; the Partner is not aware of any such request having been made, and it would seem inconsistent for such a request to have been made, given the purpose for constructing the fence.

In addition this declaration highlighted responses to letters sent by UCLAN to local residents regarding the gates leading from their gardens onto Harris Park. One response clarified that the gates were to allow access to the site to facilitate maintenance of garden hedges, the side facing the park having not been previously maintained by the university or Harris Children's Home. Another respondent did state that they had used the gate to access and stroll around the grounds but no public right was claimed at the time.

UCLAN wrote to the latter resident to outline their plans for the site and to note that it had in recent years noticed an increase in the number of people who had no right of entry to the site but who were attempting to use it in order to gain access to areas outside the university boundaries such as Queens Drive. They pointed out there were no public footpaths for the use of the general public and that was why the university felt it was right to state that these were private grounds and that there was no public right of way for individuals.

This led to a string of letters in which UCLAN maintained that there was no public right of way across the site.

Conclusion

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

For both tests, there is a requirement for any public use of the route being considered to be 'as of right', which is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission of any kind.

Looking first 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 October 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 was originally provided by 11 individuals each stating that they used various routes and access points. The applicant was therefore asked to clarify the position as to the exact route applied for and in response 6 of the LCC user evidence forms were resubmitted by the applicant.

From the user evidence submitted no user has used the route throughout the entire statutory period but user evidence has been submitted dating back to 1967. In addition, none of the users show evidence of use of the route beyond 2010, Committee should note that such date is 10 years short of the 2020 statutory end date. Whilst there is evidence of use covering some of the statutory period, the volume of users providing evidence is extremely low and the variation in the route used is also unclear. In addition, some users appear to have accessed the route via private gardens and one user accessed the site arguably via a private right due to being employed by the owners of the site at the time. In the circumstances, the evidence of use is too low to be considered representative of the public at large and to evidence sufficient use beyond trivial and sporadic from which to deem dedication by the owners.

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 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 footpath and thus fails satisfy the statutory test.

Consideration must then be given to whether on balance 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 evidence and the physical features of the site does on balance indicate that footpath rights should be recorded.

Early map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report. The orphanage was constructed in the late 1880's and used as such up until 1982, due to its nature it would have been necessary for the site to be gated and private. The applicant suggests that the route was not used by the public before the late 1960's when the Primary School was constructed. The OS 1:2500 scale map shows access may have been available between the school and the playing fields on the west of the then children's home at point C. However the maps examined consistently show a gate across the route at point A but what is not known is if this gate was ever locked. It is not until 2000 that evidence of a route A to C is shown on a Google aerial photo.

Map and documentary evidence in support of the application is limited with no map or documentary evidence supporting the use of the route applied for between points C to D.

Evidence from the owners, previous owners and adjacent owners does not indicate that the owners or previous owners intended dedicating highway routes. Reference has been made by the owner and former owners that the land always being private with no public access is something which is supported by the adjacent land owner. Over the years a number of signs stating the land is private have been erected on site with two signs in 2001 and a further 10 in 2014, historical sales particulars and old photos have also been provided by the owners in support of their case. Accordingly, it is advised that no inference of a dedication of highway under common law can be drawn.

Committee is therefore advised that none of the circumstances support an inference of a dedication of highway under common law at any point prior to the submission of the application.

In conclusion, and having considered all of the evidence discovered, a dedication of a public footpath along the application route can neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee is advised to reject the application and not make an Order adding a public footpath to the Definitive Map and Statement.

Risk management

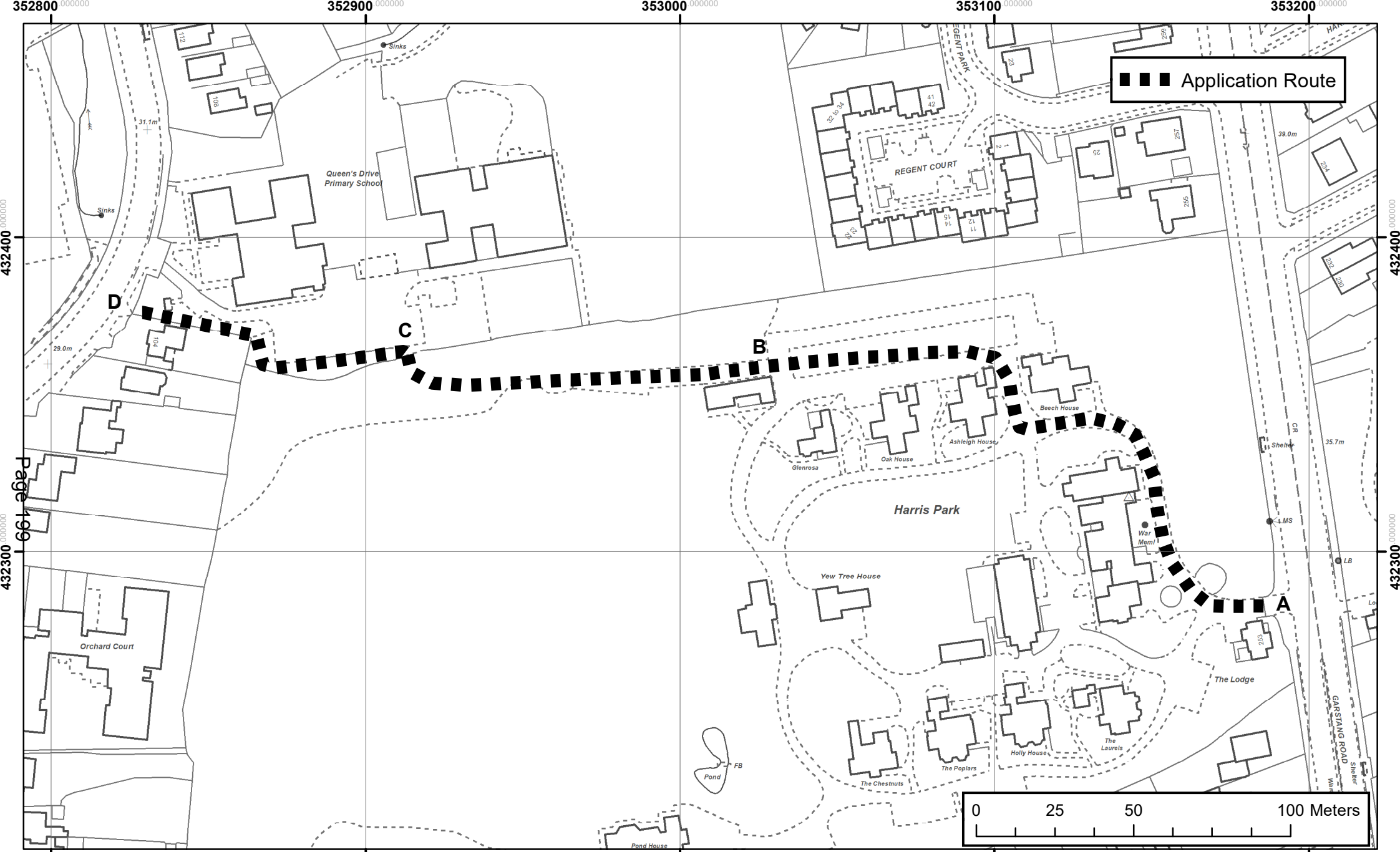
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-659		Simon Moore, 01772 531280, Legal, Governance and Registrars

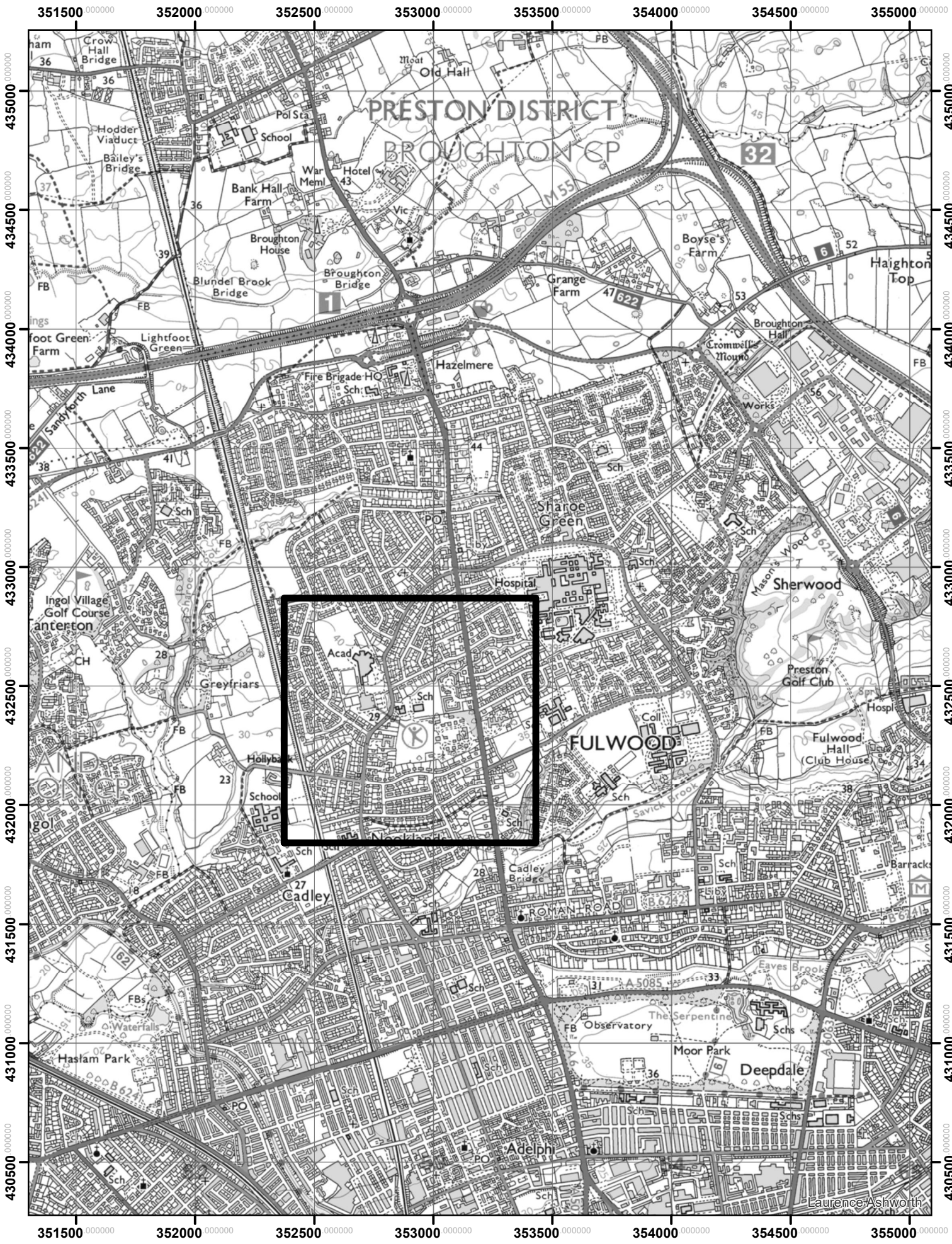
Reason for inclusion in Part II, if appropriate

N/A



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

Wildlife and Countryside Act 1981
 Addition of footpath from Black Bull Lane to Garstang Road passing through Harris Park
LOCATION PLAN

1:20,000



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Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Farington East

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath through Farington Hall Wood, Leyland (Annex 'A' refers)

Contact for further information (quoting ref. 804-691):
Ansar Sadiq, 01772 532435, Paralegal Officer. Legal Governance and Registrars,
ansar.sadiq@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a Footpath through Farington Hall Wood, Leyland to the Definitive Map and Statement of Public Rights of way for Lancashire.

Recommendation

- (i) That the application for a footpath through Farington Hall Wood, Leyland be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or] Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add footpaths through Farington Hall Wood on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D and E-F.
- (iii) That being satisfied that the higher test 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 of a footpath through Farington Hall Wood on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

Consultations

South Ribble Borough Council

South Ribble Borough 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	5372 2324	Kissing gate providing access into the woodland at junction with Leyland Footpath 35 (Hall Lane)
B	5380 2323	Junction of paths
C	5384 2318	Application route crosses stream
D	5384 2318	Unmarked point on boundary of two different landownerships
E	5378 2322	Junction with Bluebell Wood
F	5379 2322	Kissing gate providing access into the woodland adjacent to 9 Bluebell Wood

n.b. 'Bluebell Wood' and 'Parish Gardens', mentioned below, are names of roads on the housing estate.

Description of Route

A site inspection was carried out in February 2021.

The route commences at a point on Hall Lane (Leyland Footpath 35) where access is prevented by a recently erected wooden fence and padlocked gate (point A). From the gate the application route enters Farington Hall Wood and runs in a generally east north easterly and then south easterly direction through the woodland to the rear of residential housing. A further access point into the woodland was included as part of the application route from a point at the northern end of Bluebell Wood, point E on the Committee plan, across a grassed area for approximately 5 metres to a wooden kissing gate providing access to the woodland at point F.

When the application route was inspected in February 2021 it was found that access to the woodland through which the route ran had been blocked by wooden fencing at points A and F and that it was not possible to walk the route.

Parts of the route could be viewed from looking over the fencing and a kissing gate existed at point F behind which the fencing which prevented access had been built.

Photographs included later in this report, and submitted by the applicant show the route prior to it being obstructed in November 2020 and these photographs together with recently produced OS mapping show that a surfaced pathway existed from point A along the route applied for passing through point B to point C and to point D. In addition, the photographic and map evidence show that a surfaced route – together with steps down a steep slope – existed between points F-B.

On the day of inspection it was still possible to access point D and point C on the application route via a network of paths through the more south easterly part of Farington Hall Wood accessed from Parish Gardens. This part of the woodland is in separate landownership from the application route and a number of surfaced paths run through it which link to the application route at point D. Entering this part of the woodland from Parish Gardens there is a sign welcoming people to the wood and stating this area of open space is managed and maintained by Greenbelt Group Ltd.

One of the stone surfaced paths through the woodland which is described as open space on a sign located at the entrance into the woodland from Parish Gardens leads to point D which is an unmarked point at the top of a flight of wooden steps which then lead down a slope to a watercourse at point C. At point C there appear to be the remains of a path across the stream extending north west. However, a newly erected wooden fence prevents access along the application route from just north of point C.

The total length of the application route is approximately 180 metres.

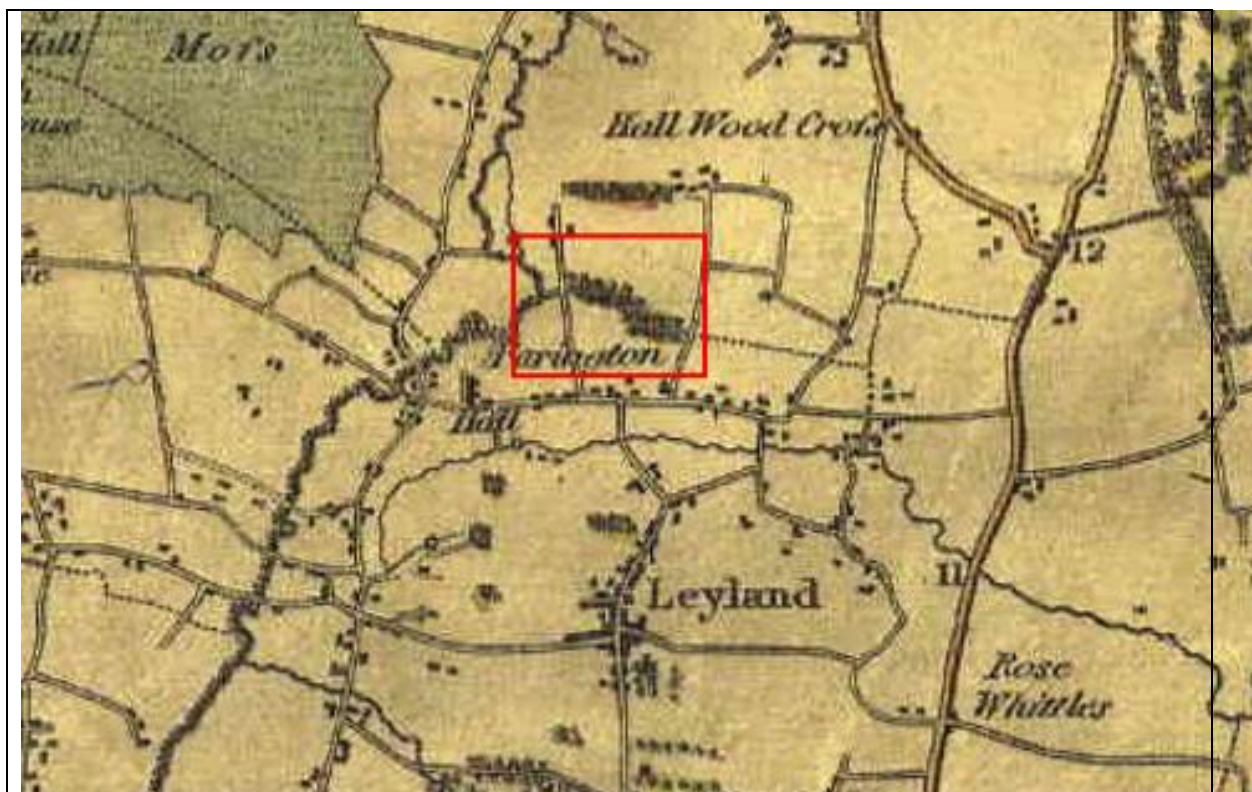
Map and Documentary Evidence

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

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



Observations		The application route is not shown. Hall Lane is shown extending north towards Farington Hall and a watercourse can be seen crossing Hall Lane in proximity to point A but Farington Hall woods and the route are not shown.
Investigating Officer's Comments		The application route did not exist as a major route at that time although – as we are investigating an application for a footpath – it is possible that the route did exist but, due to limitations of scale and the purpose for which the map was drawn meant that that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown but Hall Lane is clearly marked passing through point A and the woodland through which the application route runs is also shown to exist.
Investigating Officer's Comments		Access into the woodland may have existed in 1818 from point A but the application route, if it did exist – at least in part - is not shown.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

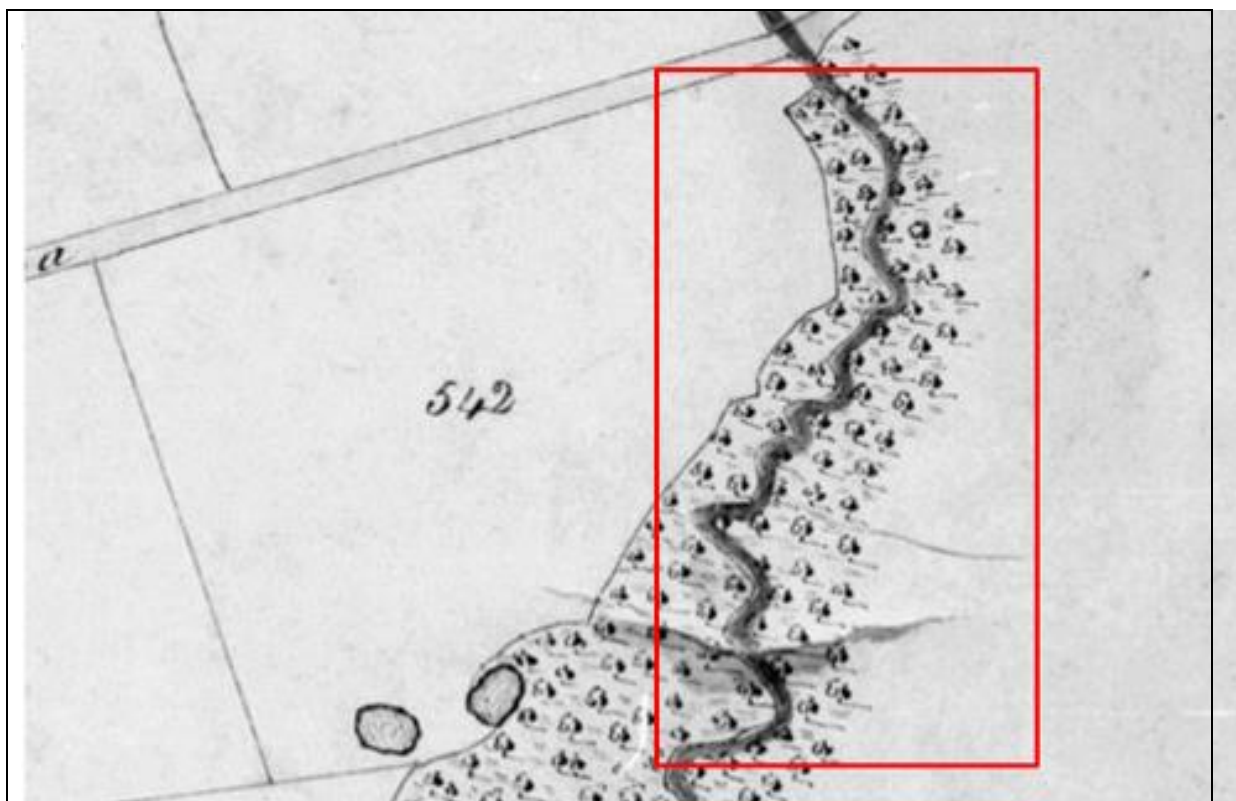


Observations		The application route is not shown. Hall Lane and the watercourse passing through the woodland are shown but the woodland itself is not clearly marked.
Investigating Officer's Comments		The application route did not exist as a major route in 1830 although it may have existed in part as a minor route so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways in existence across land crossed by the application route and no known proposals for either a canal or railway to have been constructed across the land in the past.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or	1838	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land

Apportionment

capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





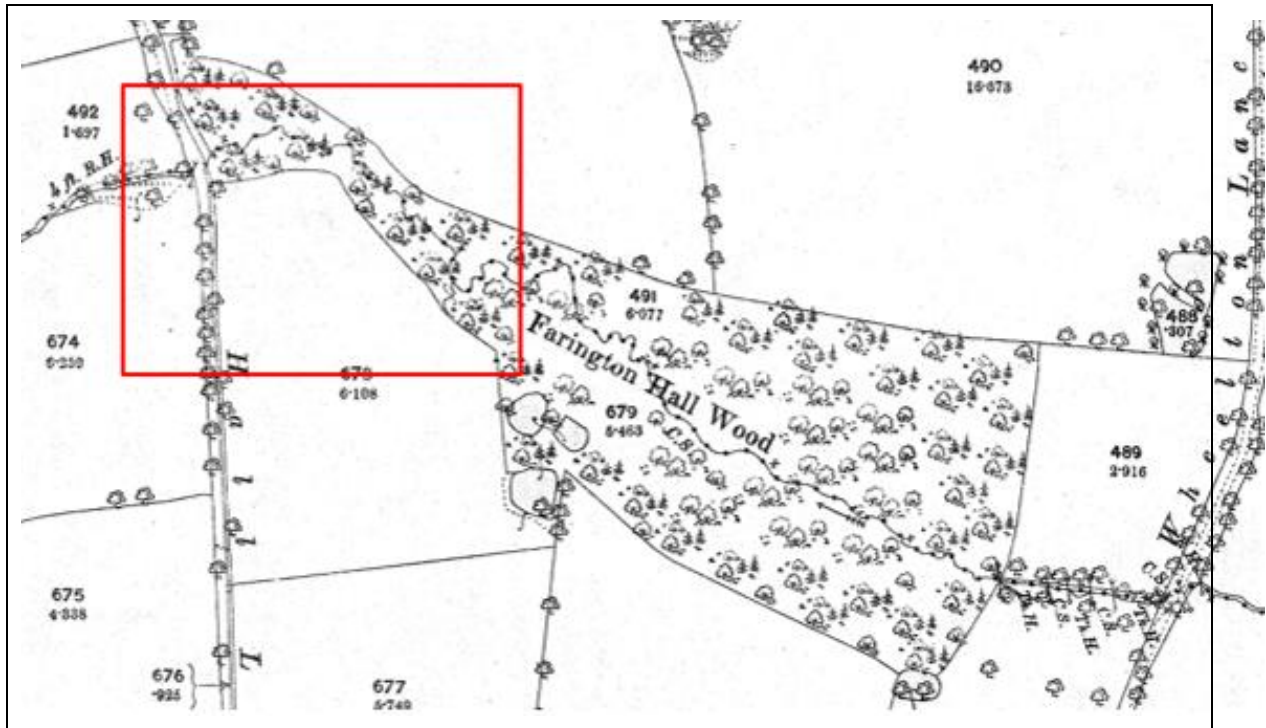
Observations		The application route is not shown. Hall Lane is marked passing through point A suggesting that access to the woodland may have existed from point A but there is no indication of a path through the wood and the land now developed for housing – including Summerfield and Bluebell Wood is shown as fields with no footpaths marked.
Investigating Officer's Comments		The application route probably did not exist in 1838.
Inclosure Act and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.

6 Inch Ordnance Survey (OS) Map Sheet 69	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1846 and published in 1848. ¹
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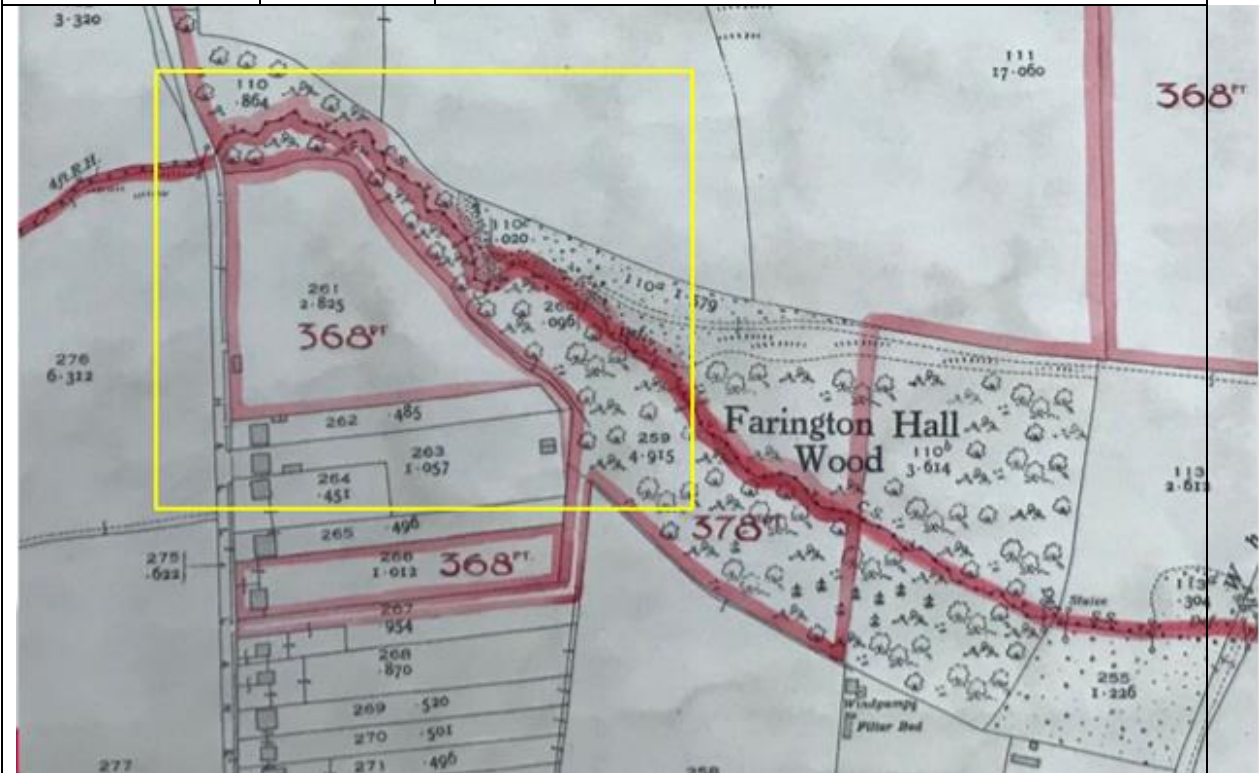
Observations		Hall Lane and Farington Hall Wood are shown but the application route is not shown and there are no other footpaths shown through the woods.
Investigating Officer's Comments		The application route probably did not exist in 1848.
25 Inch OS Map Sheet LXIX.10	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.

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

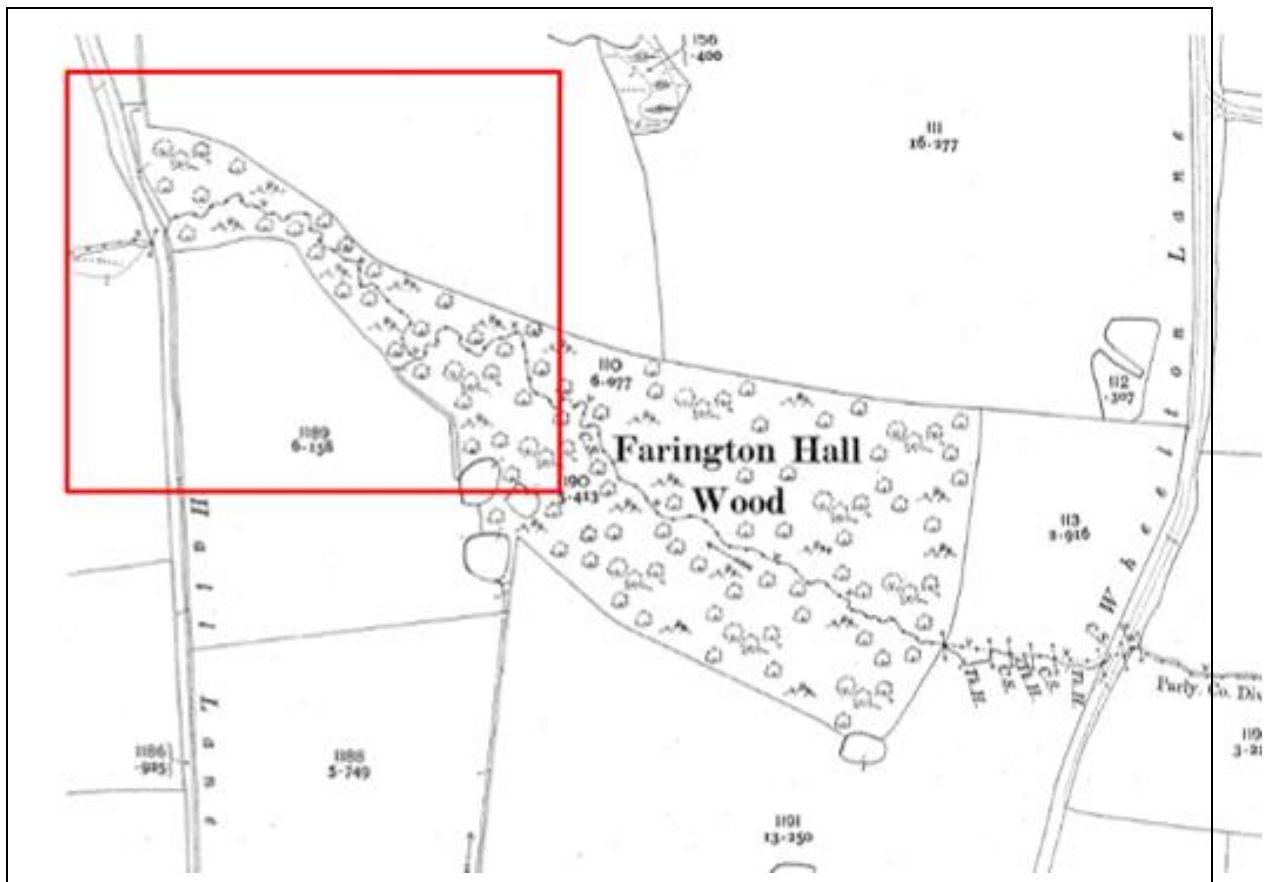


Observations		Hall Lane and Farington Hall Wood are shown but the application route is not shown and there are no other footpaths shown through the woods.
Investigating Officer's Comments		The application route did not exist in 1894.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not</p>

		<p>recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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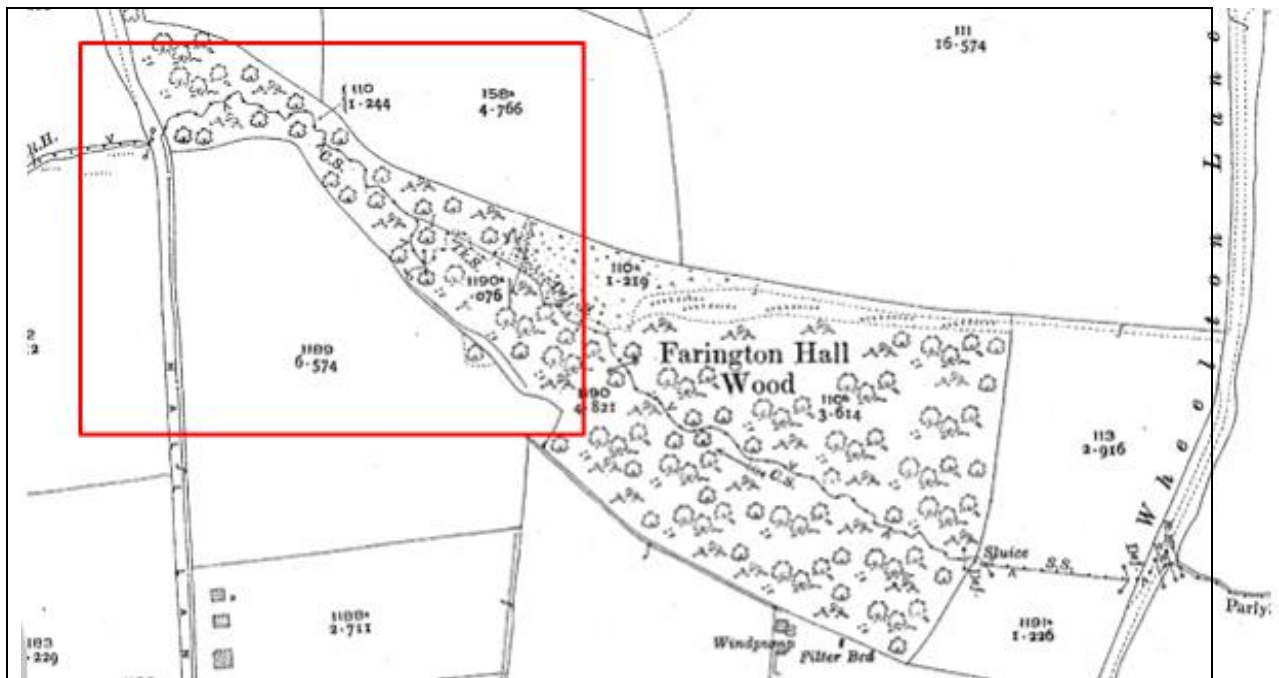
<p>Observations</p>		<p>The land crossed by the application route is within plot 378 with the exception of the short section leading from Blue Bell Wood which lies within plot 368. Neither plot lists any deductions for rights of way or user.</p>
<p>Investigating Officer's Comments</p>		<p>The landowner did not appear to acknowledge the existence of a public right of way across the land over which the application route runs when the 1910 valuation was carried out.</p>
<p>25 Inch OS Map Sheet LXIX.10</p>	<p>1911</p>	<p>Further edition of 25 inch map (surveyed 1893, revised in 1909 and published in 1911).</p>



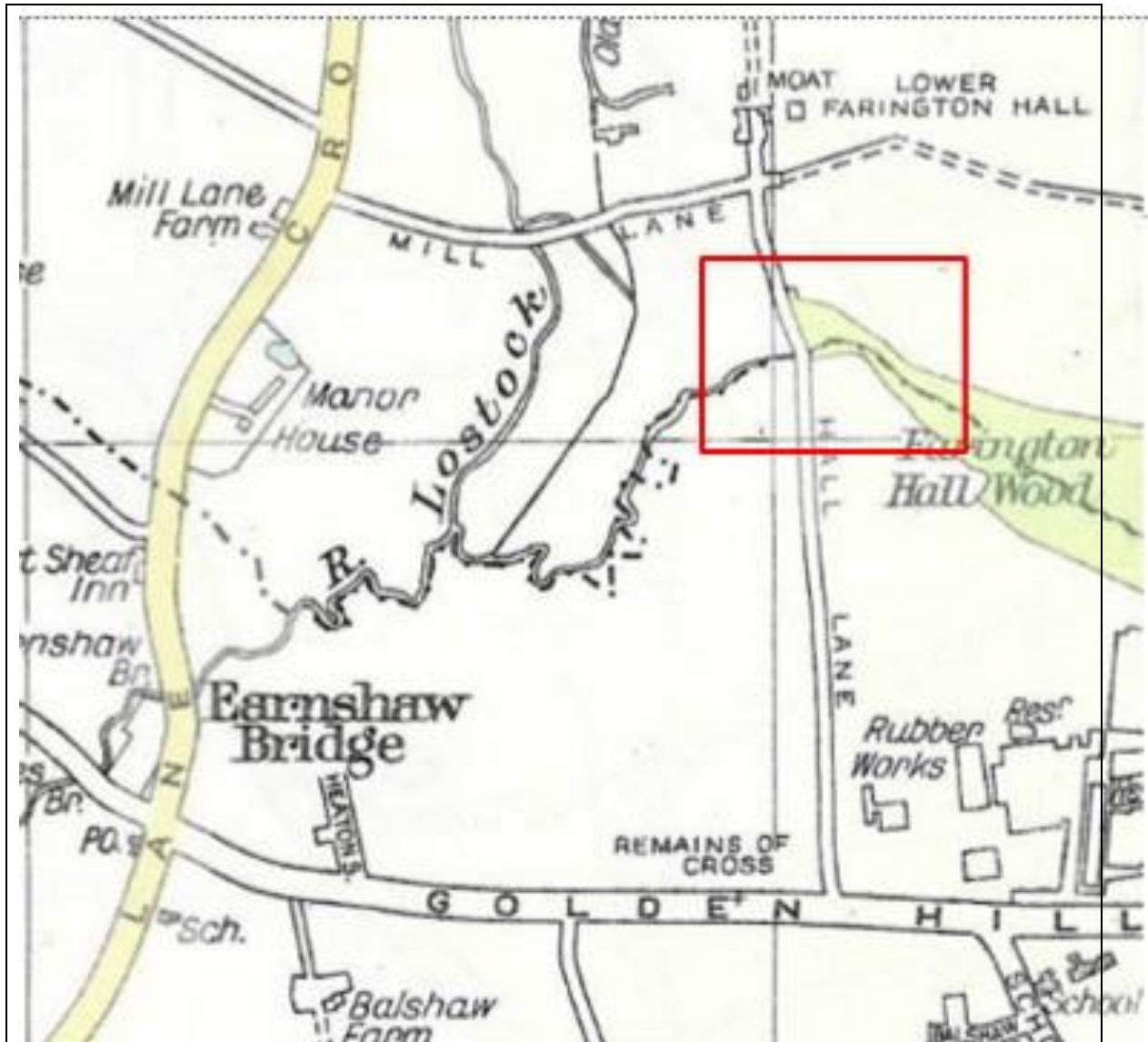
Observations		Hall Lane and Farington Hall Wood are shown but the application route is not shown and there are no other footpaths shown through the woods.
Investigating Officer's Comments		The application route probably did not exist in 1909.
Aerial Photograph	1929	Aerial photograph submitted by the applicant and available to view on the internet https://britainfromabove.org.uk/en/image/EPW026421



Observations		The photograph shows the woodland and Hall Lane. The land to the south of the woodland can be seen as fields and in the foreground is the Golden Hill Rubber Works.
Investigating Officer's Comments		The photograph was submitted by the applicant to help to explain the history of the land over which the application route runs illustrating that in the early 1900s the land around the woods was fields. The photograph does not show the application route which, even if it did exist in part at least, would be obscured by trees.
25 inch OS Sheet LXIX-10	1931	OS 25 inch map surveyed in 1893, revised in 1928 and published in 1931.

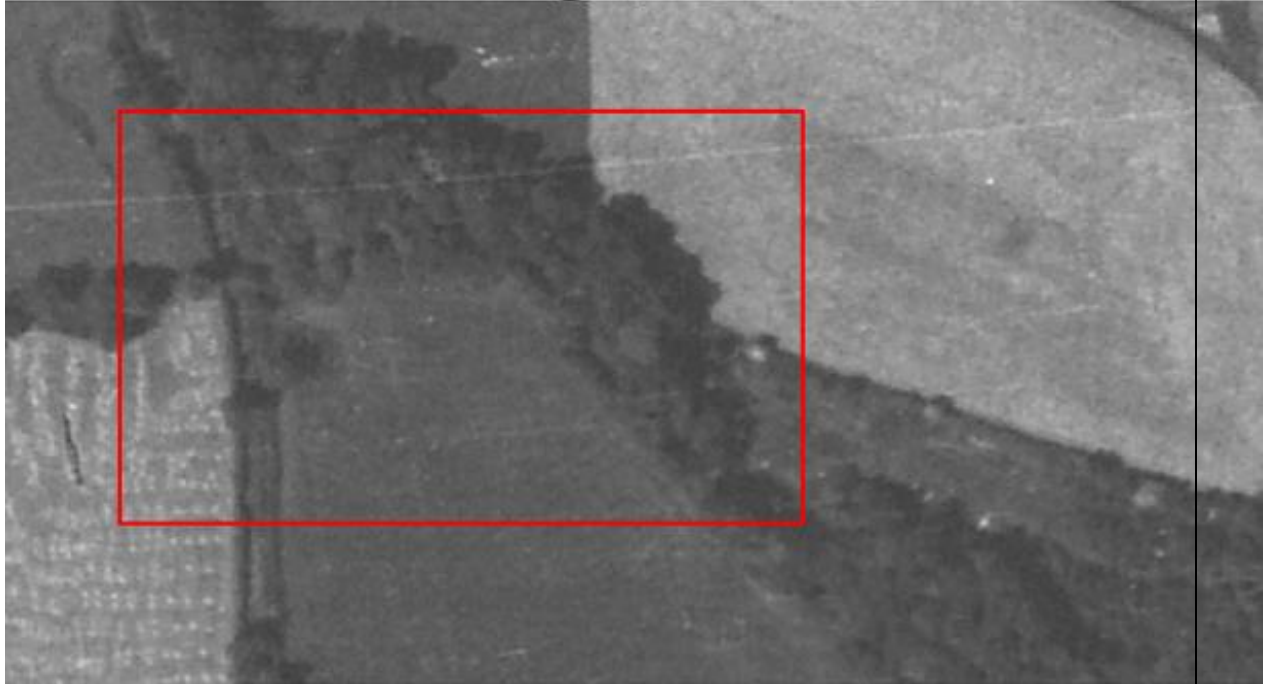


Observations		The land appears unaltered from how it was shown on earlier editions of OS mapping. Hall Lane and Farington Hall Wood are shown but the application route is not shown and there are no other footpaths shown through the woods.
Investigating Officer's Comments		The application probably did not exist in 1928.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

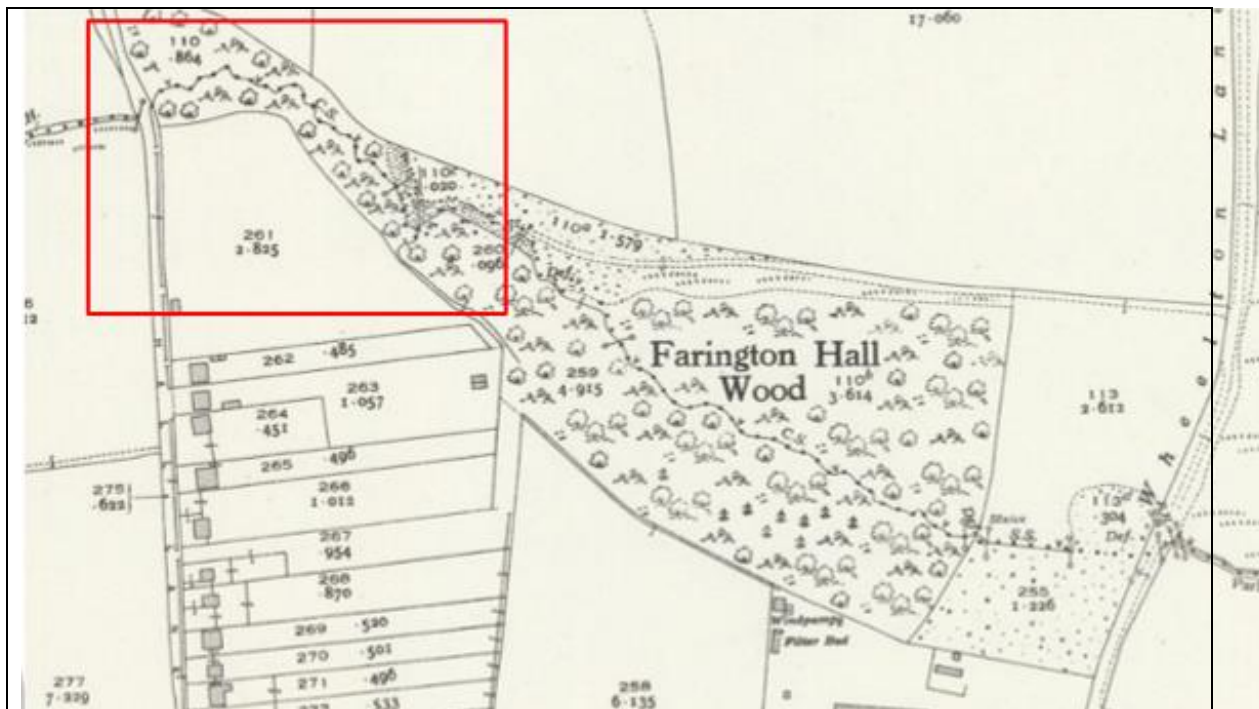


Observations		The application route is not shown.
Investigating Officer's Comments		This map would be unlikely to show woodland footpaths so no inference can be drawn.
Aerial Photograph²	1940s	The earliest set of aerial photographs generally looked at as part of applications were taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

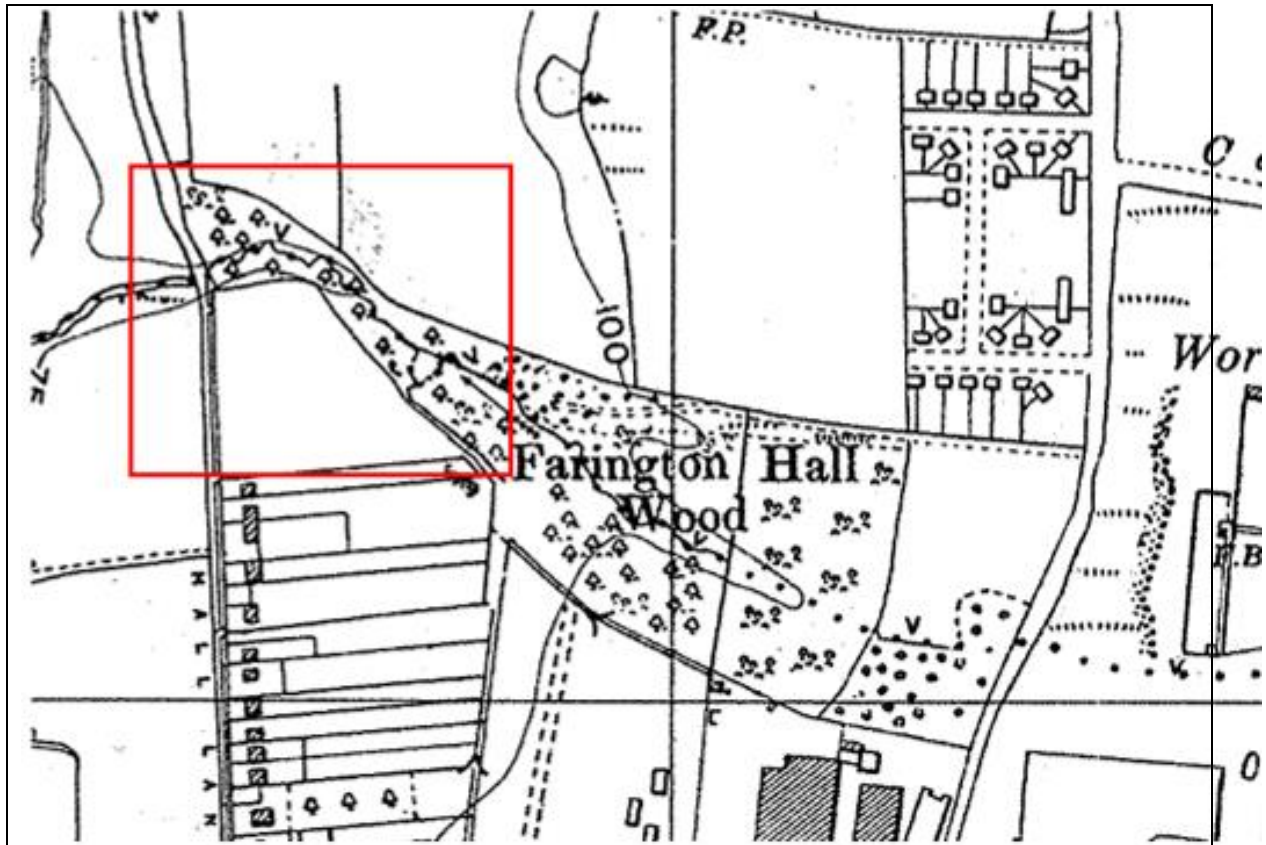
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



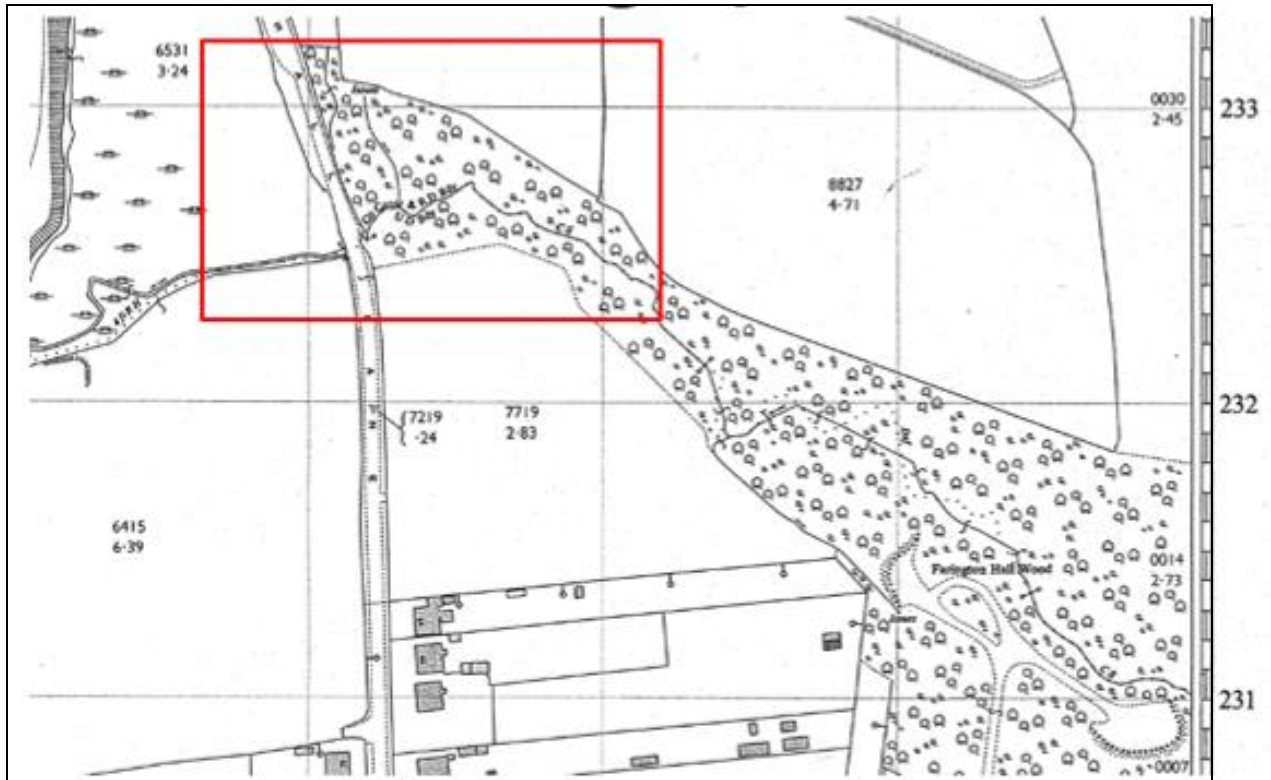
Observations		The aerial photograph shows the woodland in full leaf and as such it is not possible to see whether any paths exist under the tree cover. There is little indication of any paths leading to or from the woodland which would have suggested that the public were accessing the woods to walk.
Investigating Officer's Comments		No inference can be drawn regarding the existence of the application route through the woodland but there is no indication from the surrounding fields of trodden paths leading to or from the woodland in the 1940s.
25 inch OS Map Sheet LXIX.10	1940	25 inch OS map surveyed 1893, revised 1938 and published 1940.



Observations		The application route is not shown. A track is now shown leading from Wheelton Lane extending west into Farington Hall Wood but does not connect to the application route and is shown to end on the north side of the watercourse.
Investigating Officer's Comments		The application route probably did not exist in 1938.
6 Inch OS Map Sheet 52SW SD	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945.



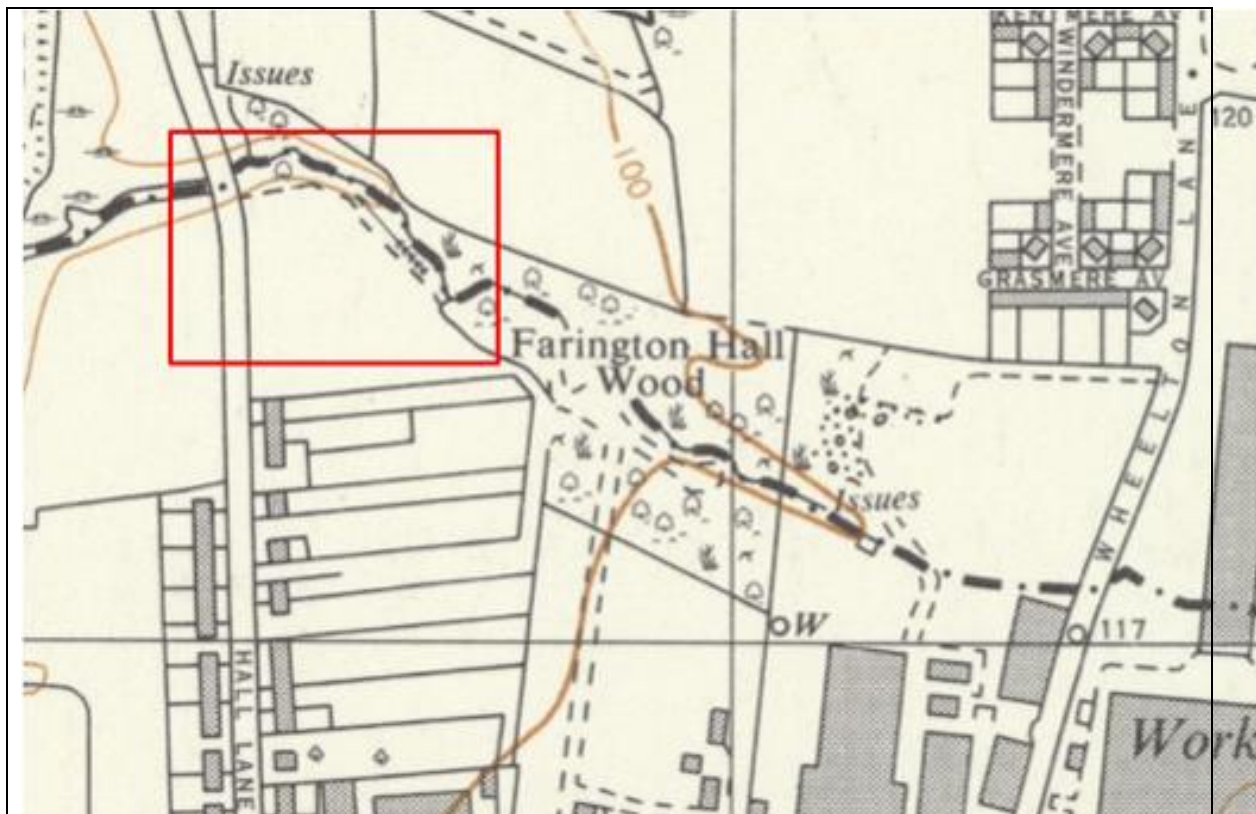
Observations		The application route is not shown. Tracks are shown leading into and through the wood east of the land crossed by the application route suggesting that access may now have been more easily available to the woods but there is no indication that the application route existed as a defined route.
Investigating Officer's Comments		The application route probably did not exist in the 1940s.
1:2500 OS Map SD 5223-5323	1964	Further edition of 25 inch map reconstituted from former county series part surveyed in 1960-61, revised in 1962 and published in 1964 as national grid series.



Observations		The application route is not shown. Tracks exist into and through the woods further east but are not shown connecting to the application route.
Investigating Officer's Comments		The application route probably did not exist in the early 1960s.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



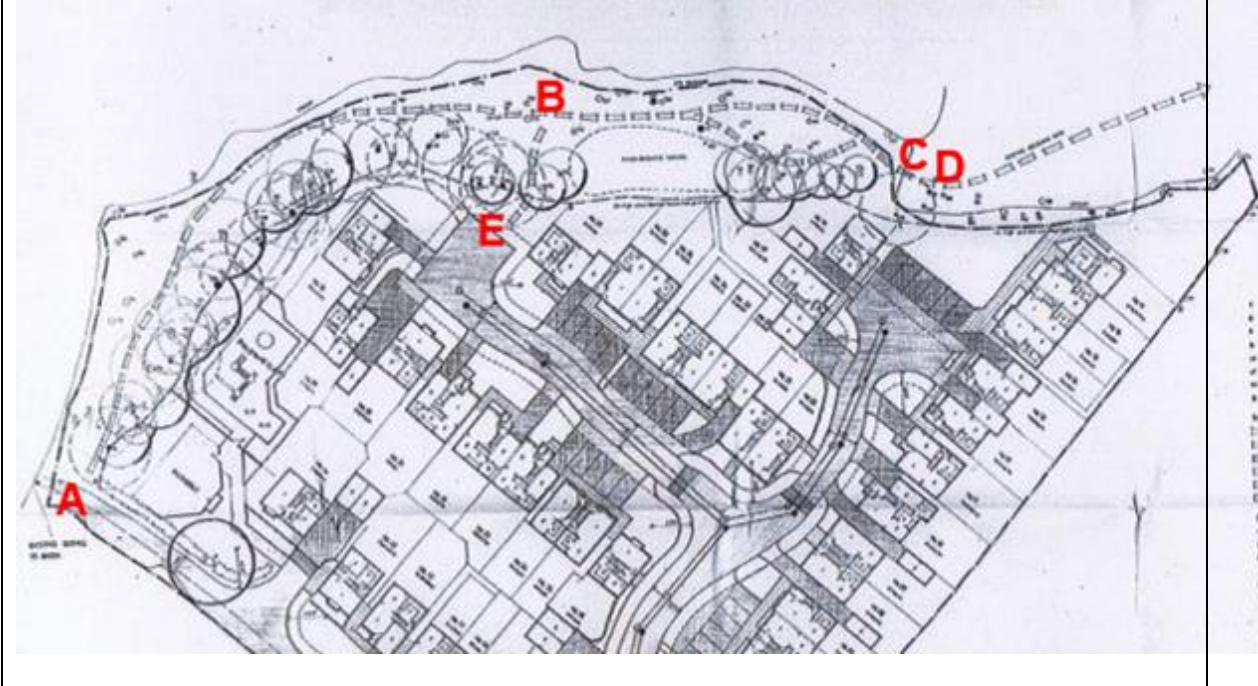
Observations		The application route is not visible although it is noted that the photograph was taken during the summer months and the trees are in full leaf. A track can be seen south east of the application route passing through a more open area of the woodland and a very faint path can be seen between Mill Lane and the woodland crossing the field south of the application route.
Investigating Officer's Comments		The aerial photograph does not help to establish whether the application route may have existed in the 1960s. It appears that there may have been some access to the woodland – and use of paths through it but whether this use was public or private and whether the application route – or any part of it existed, is not known.
1:10,560 Map Sheet 52SW	OS SD 1967	OS map revised 1960-1965 and published 1967.

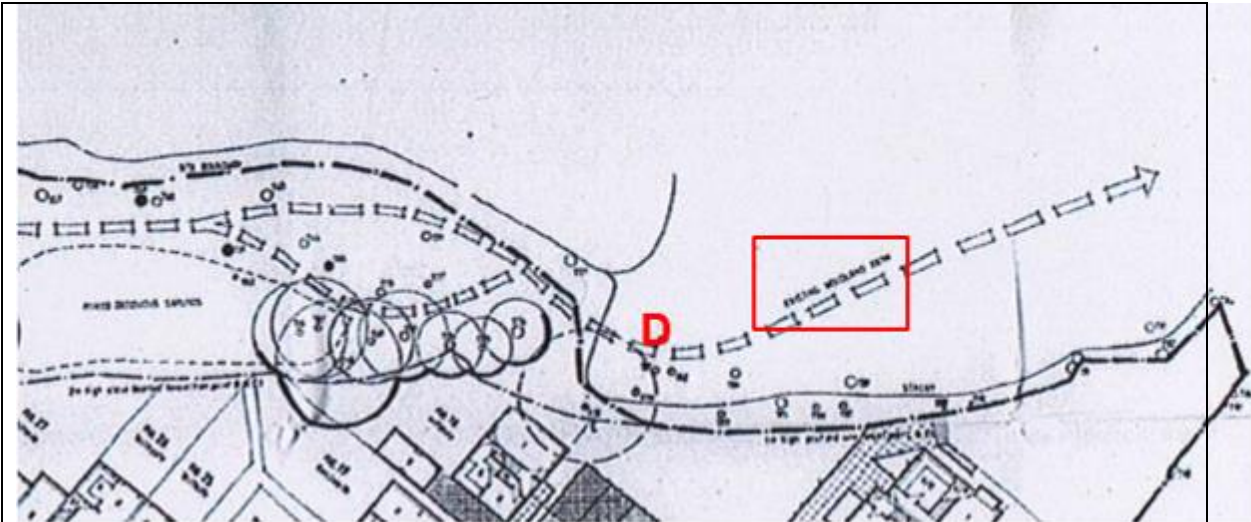


Observations		The application route is not shown. Again, routes are shown into and through the woodland east of the land crossed by the application route but the route itself is not shown.
Investigating Officer's Comments		The application route probably did not exist in the 1960s.
OS Pathfinder 688 (SD 42/52) Preston (South) & Leyland 1:25 000	1988	OS map compiled from large scale surveys carried out between 1956 and 1973, revised for significant changes 1977, major roads revised 1978 and selected revisions 1981 and 1986.



Observations		The application route is not shown and the land immediately to the south of the woodland crossed by the application route is still undeveloped.
Investigating Officer's Comments		The application route probably did not exist in the 1980s.
Planning Application	1995	Planning application 07/1995/0674 for 44 dwelling houses, access roads and public open space.





Observations

The applicant submitted extracts from the planning permission granted to Chapeltown Developments in 1995 for the development of the land immediately south of the woodland in 1995.

The planning application submitted to and subsequently agreed by South Ribble Borough Council was referenced 07/95/0674.

The Investigating Officer made contact with South Ribble Borough Council (SRBC) who provided a copy of the original planning report, Decision Notice and Plans.

The SRBC report details the land affected by the application as comprising approximately 1.3 hectares at the northern end of Hall Lane. The site is described as comprising of an open field, most recently used for grazing but prior to that was a private playing field for 'BTR' and part of the adjacent woodland named in the report as Farington Hall Wood which was stated to be protected by a woodland Tree Preservation Order.

With regards to access the report refers to the existence of the public footpath along Hall Lane which was to be retained as a pedestrian route. It then gives details of four areas proposed as 'Public Open Space' one of which is described as that part of Farington Hall Wood within the application site 'with new properly constructed paths' and goes on to say that all four of the sites would be offered for adoption to SRBC.

A quotation included within the report is taken from the applicant's arboricultural method statement and states that there was an existing public access to the woods from Hall Lane and that there existed through the woodland informal routes which, as a

		<p>result of frequent use, had led to the exposure of tree routes and soil erosion. The report continues by stating that new public routes would be created leading from the development to the woodland trails which would themselves be upgraded and further into the report it states that the existing point of access from Hall Lane would be upgraded by the provision of a stile and kissing gate and that the existing route through the woodland would be surfaced.</p> <p>The Decision Notice was issued by SRBC who approved the application on 7th February 1996 stating that the areas shown edged green on the approved plan must be laid out in full in accordance with the approved details as public open space and retained as such thereafter and that the area designated as public open space within Farington Hall Wood must be completed within 1 year from which any property on the site was first occupied.</p> <p>The development was completed and from the site photographs and map evidence it appears that the routes were surfaced and that access was 'formalised' at point A. In addition it appears that access was provided from the newly built houses on Bluebell Wood via the application route between point E-F-B when the houses were built.</p>
Investigating Officer's Comments		<p>The report prepared by SRBC in deciding whether or not to approve the application clearly refers to the fact that the application route already existed prior to the submission of the application as a substantial path through the woodland which was accessed from Hall Lane. Reference to the planning application map confirms that this access was at point A and that the route that existed was along the line A-B-C-D. The fact that use of the route was described as being frequent – which had led to the exposure of tree roots and soil erosion – suggested that this was already a well-used footpath by 1995. The application route between points E-F-B however, was clearly only constructed as part of the development following planning approval being granted in 1996.</p>
Aerial Photographs	2000 - 2020	Aerial photographs available to view on Google Earth Pro spanning the 20 year period 2000 – 2020.



2015

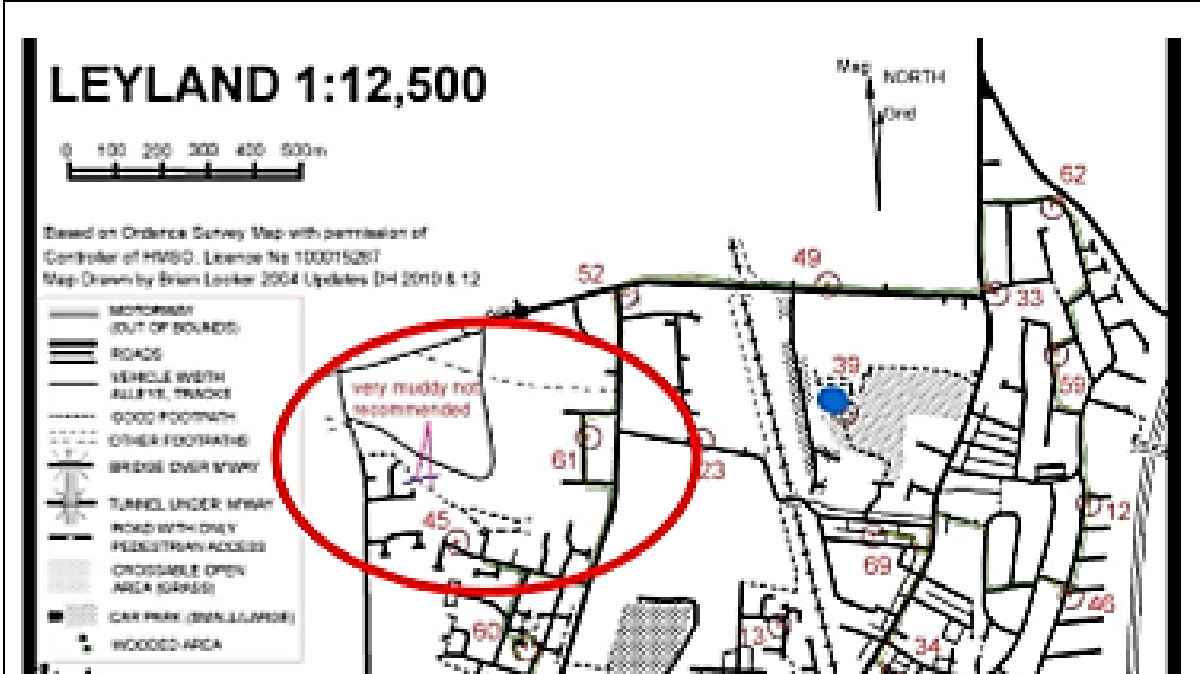
<p>Observations</p>	<p>Aerial photographs dated 2000, 2005, 2007, 2009, 2015, 2017 and 2020 which show the land crossed by the application route where viewed on Google Earth Pro. The photographs spanned the 20 year period prior to the route being blocked by fencing. The fact that the route ran through a woodland means that it was not possible to see whether the application route existed on any of the photographs</p>
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		taken during that time other than the photograph taken in 2015. The 2015 image shows traces of what appeared to be a significant track along part of the route between point A and point C.
Investigating Officer's Comments		The photographs are of very little assistance in determining whether the application route physically existed and was capable of being used in the 20 years prior to it being blocked.
Sales Brochure in association with the development		Extract from Sales Brochure published by Chapeltown Developments in 1996/1997.



Observations		A photograph of a plan contained in a sales brochure for the development was submitted by the applicant. The Investigating Officer has not had sight of the whole document, but the extract submitted shows a plan of the site with the full length of the application route shown passing through the woodland and linking to the housing estate described as a nature trail.
Investigating Officer's Comments		The plan submitted suggests that the full length of the application route would be in existence when the properties were being sold. There is no indication on the plan that the 'nature trail' was regarded as a

		public footpath but it is shown continuing east from the development suggesting that access was not exclusive to residents of the development.
South Ribble Orienteering club map	2012	Map submitted by the applicant and available to view online.



Observations		<p>The orienteering map produced by South Ribble Orienteering club is based on OS mapping. The applicant included it as supporting evidence drawing attention to the fact that the application route was shown on the map and part of it was annotated as 'very muddy not recommended'.</p> <p>The Investigating Officer obtained a copy of the map and on close inspection it appears that the application route is marked on the map as part of a longer route continuing south east from point D. The application route is marked on the map as a 'Good Footpath' south of an area of land described as being very muddy and not to be recommended.</p>
Investigating Officer's Comments		<p>The fact that the route is marked on the map suggests that it was being used by the public in 2012 and that its existence was known locally. The description of the route as a 'good footpath' however appears to refer more to its condition and is not indicative of its public status.</p>
Work carried out to surface the route	2014	Details regarding work carried out by South Ribble Borough Council and Lancashire County Council in 2014.

Environment and Community Projects

Farington Hall Wood

The team have been working with South Ribble Borough Council to improve access within Farington Hall Wood in Leyland. Contractors have rebuilt 169 metres of footpath within the woodland, replacing edging and laying new stone. A new ditch crossing and steps have reconnected the paths, allowing residents to enjoy this important recreational resource.

Paradise Park

LCC have continued to work with South Ribble

<p>Observations</p>		<p>The applicant submitted an extract from a bulletin published by Lancashire County Council's Environment Directorate in 2014 detailing work carried out in South Ribble. Within the bulletin was a section titled Farington Hall Wood where it was documented that the County Council's Environmental Project Team had been working with South Ribble Borough Council to improve access to the woodland.</p> <p>The Officer involved in the work recalled that Lancashire County Council funded the work on what he described as being an existing trodden path which linked from Hall Lane at point A through to an existing network of paths south of point D. This would appear to be the application route. He explained that the work to surface the paths and to provide steps and a ditch crossing was done following agreement from the landowner who he recalled at that time being the developer who built the houses north of the route. The County Council Officer explained that prior to the work being carried out the application route already existed on the ground but was muddy with some particularly boggy sections. He recalled that the project was carried out to enhance existing public access to the wood And there was not any restriction on access while work was carried out</p>
<p>Investigating Officer's Comments</p>		<p>The County Council were involved in a project to improve existing public access to the woodland in 2014. The County Council Officer confirmed that work carried out was along the application route and funded on the basis that there was continuing public</p>

		<p>access along the route.</p> <p>There is no suggestion that the work to improve the paths in 1995/1996 was not carried out and the bulletin refers to 'rebuilt' and 'replacing' clearly indicating that the footpath had been created previously and benefited from restoration. It is not uncommon for constructed routes within woodlands to deteriorate quite quickly and to become muddy due to the fact that in dense woodland the path may not get much sunlight and is sheltered from the wind leaving it more prone to becoming wet and boggy and not drying out as readily as paths that are more exposed to the elements. 20 years is about the expected timescale for such infrastructure needing repair and renewal. The fact that the County Council part funded this work suggests that the route was being well used and that the landowner at that time was allowing open access as was required as part of the planning conditions to be implemented. It does not however appear that the land had been transferred to SRBC as public open space as it was suggested could be done in consideration of the original planning application.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The land crossed by the application route is part of the former urban district of Leyland for which no parish survey was carried out.</p>
Planning	2020	<p>Contact was made with SRBC Planning Compliance</p>

Compliance Issues		and Monitoring Officers following submission of the application regarding the erection of the fence and to obtain information about the designation of the land as public open space.
Observations		<p>The SRBC Planning Officer explained that they had been contacted regarding the erection of the fencing across the application route in November 2020. They confirmed that the conditions were complied with at the time of the development and that the access route through the woodland was already there prior to the development.</p> <p>Following the recent sale of the land and obstruction of the application route SRBC reviewed the conditions attached to the planning permission 07/1995/0674 to see whether the conditions regarding the provision of public open space were enforceable.</p> <p>SRBC Solicitors reviewed the conditions and advised that there was no detail in respect of the 'access' to the open space and that because the land fenced off – through which the application route runs – is in private ownership, the Public Open Spaces Act 1906 did not apply. They considered that the wording of the old condition allowed scope for considerable arguments against its interpretation, and advised that on balance, the planning condition would be difficult to enforce. SRBC considered that the term 'Public Open Space' (POS) might only refer to the land being retained as public amenity space, which would prevent development on the land, but not necessarily mean rights for public access. They were also concerned that the wording 'in perpetuity' was not used when drafting the condition and so it was possible that it would not stand up to scrutiny in court at present. With regards to the fencing which obstructs the application route SRBC considered that it was lawful under Statutory Permitted Development rules.</p>
Investigating Officer's Comments		For the purposes of determining whether or not a public right of way exists if it was not generally considered POS any use of the way by the public could not be mistaken for using it as POS and more likely to be acquiescing to dedication.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings

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

		Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		The application route does not appear to have been considered to be a public path which should have been recorded on the Definitive Map and Statement during the relevant period.
Highway Adoption Records including maps derived from the '1929	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils and later that of the urban districts and boroughs passed 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.

<p>Handover Maps'</p>		<p>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 public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>The provenance of the plan for Leyland is not known, this may have been or derived from the time of the handover but became the working plan for highway maintenance. The application route is not shown.</p> <p>The application route is not recorded as a publicly maintainable highway on the List of Streets.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of way so no inference can be drawn.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records</p>

		Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		<p>Prior to the application route being fenced off in November 2020 no Highways Act 1980 Section 31(6) deposits had been lodged with the county council for the area over which the application route runs.</p> <p>On 26th January 2021 the current landowner emailed Lancashire County Council with an application to submit a deposit under the 1980 Act. This deposit was still in the process of being dealt with at the time this report was written.</p> <p>In his email, the landowner said that he completed on the purchase of the land in October 2020 and</p>

		subsequently notified 'locals' that access was not permitted. He stated that he subsequently erected fencing on 22 nd November which prevented access but that this was subsequently vandalised. He explained that he purchased the land from the Duchy of Lancaster and that being Crown land, would not have been subject to anyone claiming public rights of access across it.
Investigating Officer's Comments		Prior to January 2021 there was no indication by any landowner under the provisions set out in the Highways Act 1980 of non-intention to dedicate public rights of way over this land. Other issues raised by the current landowner with regards to landownership and challenges to the public's use of the route will be discussed later in this report.
Photographs submitted by the applicant	2020-2021	A selection of the photographs of the application route submitted by the applicant showing the route before and after it was obstructed in November 2020.



Looking towards Hall Lane (Leyland Footpath 35) from the application route – November 2020



Looking towards Hall Lane (Leyland Footpath 35) from the application route – December 2020



Undated photograph submitted February 2021 of application route from point A



Ditch crossing at point C and steps leading to point D prior to installation of the fence. Photograph undated.



Route at pont C showing ditch crossing stated to have been constructed by LCC in 2014. Photograph taken November 2020



Point B looking up steps to point F November 2020



View of application route between point B and point A November 2020



Application route with spur to Bluebell Wood shown – November 2020



Further photograph showing the constructed path between point A and point B – November 2020

Observations		The photographs submitted show the route as it existed before and during the time in which it was being fenced off.
Investigating officer's Comments		The photographs are useful in confirming the existence of a surfaced path through the woodland and existence of kissing gates at point a and point F. They support the information given in the user evidence forms and the existence of a route as shown on modern OS base mapping.

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

Landownership

The application route between points A-B-C and F-B

The applicant makes reference to the field on which the houses were built being used as football pitches and being owned by 'the Iddon brothers'.

Ownership of this land prior to 1990 seems to have been with BTR Property Holdings and the Land Registry title states they sold to Marland Bros Ltd in 1990.

The land crossed by the application route between points A-B-C and F-B was in the registered landownership of Chapeltown Estates Limited (Title LA652563) from 01.03.1996. Chapeltown Estates Ltd changed its name to Chapeltown Homes Ltd in 1998. This registration remained until recently even though property escheated to the Crown in 2010 and was sold in 2020.

The Registered Title refers to a number of restrictive covenants which the current landowner has referred to, one of which relates to the requirement to maintain a concrete post and three strand fence between point A and point B on the Land Registry plan which would effectively cross the application route at point C and to at all times to repair, maintain and where necessary replace this fence. The covenant does not appear to include the requirement for fencing across the start of the route at point A (as marked on the Committee plan).

Information obtained from Companies House shows that Chapeltown Homes Limited was dissolved on 8 December 2010.

It is understood from the Duchy that when Chapeltown Homes Limited went into administration the liquidators discharged their interest and the land reverted to the Duchy of Lancaster.

The current owner of the woodland between points A-B-C and B-F purchased the site from the Duchy of Lancaster in October 2020. He is now the registered owner.

The application route between point C-D

A thin strip of land crossed by the application route between point C and point D is registered as Title LA 935671 and is owned by Taylor Wimpey Developments Limited who purchased a large plot of land in 2003 as part of 'The Oaks' Development. All but the thin strip of land crossed by the application route was subsequently sold off when the development was completed with the woodland east of point D sold to Greenbelt Ltd and retained as public open space with footpath works funded through leaseholder charges to properties on 'The Oaks'.

Signage from 'The Oaks' into the woodland suggests that access is available to the public at large stating 'Welcome: this area of Open space is managed and maintained by Greenbelt Group Ltd.'

The application route between point E and point F

The land crossed by the application route is in private ownership and was purchased by the present owner in February 2017.

Summary

The woods through which the application route runs have existed since at least the early 1800s and have largely remained unaltered.

However, no map or documentary evidence pre-1995 supports the view that the application route was in existence before that time and although there may have been access to and through the woodland earlier than 1995 the Investigating Officer found insufficient evidence from which to infer that a public footpath existed.

In 1995 planning permission was granted for the development of a housing estate on fields between Hall Lane and the woodland and as part of the application process the developer submitted a report relating specifically to Farington Hall Wood. The report made a number of references to an existing trodden path through the site consistent with the application route between points A-B-C-D and as part of the development the landowners proposed to surface the path and to provide additional links to the development. It therefore appears that a route did exist through the woodland prior to 1995/1996 consistent with the user evidence submitted.

The application route between points E-F-B did not however exist prior to the construction of the properties on Bluebell Wood.

Map and documentary evidence, together with site photographs supplied as part of the application all confirm that the full length of the application route existed following the development of the site with links to public highways at point A and point E and that the route continued from point D along a network of paths through the woodland to the south east which is managed privately as public open space.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant provided the following information:

1. An Application to modify the DMMO to add footpath(s) in Farington Hall Wood
2. Map(s) extract marking existing 'paths'
3. A Map showing the route of the 'proposed' DMMO.
4. A 20 page background document – within it are pictures, maps and further commentary supporting the application.
5. Photographs of the 'proposed' footpath fenced off
6. A spreadsheet listing the User Evidence Statements collected to date.
7. Scanned copies of the physical forms collected.
8. 84 user Evidence Forms.

The 84 user forms have been carefully considered and the information set out below

Duration of Use

The user evidence forms collectively provide evidence of use going back as far 1960 and up to 2020 when the application route was blocked by the current landowner of A-D and B-F, and the application to record the right of way was made. All refer to use up to 2020 but their periods of use depend on when they started to use the route.

Started to use the route or more probably only A-D prior to 1995	Started to use the routes A-D and E-F-B between 1995 - 2010	Started to use the routes between 2010 and 2020	Not Specified
11	46	26	1

Frequency of Use

The majority of the 84 users stated that they used the route daily or weekly, with two stating that they used the route more than once per day. One user specified that they used the route twice a month and six did not specify.

More than once daily	Daily	Weekly	Fortnightly	Monthly	Every few months	Not Specified
2	37	28	1	5	5	6

Reasons for use

Of those who specified their reason for using the route, the most common answer was pleasure/leisure/exercise/recreational closely followed by do walking. Others noted family walks, walking to the shops and six did not specify.

All but eight stated the use of foot, one stated use as foot and horseback, three stated use as foot and bicycle, and 4 did not specify.

Dog Walking	Pleasure/Leisure/Exercise/Recreational	Walking to the shops	Family Walks	Not Specified
36	40	1	1	6

Other Users of the Route

The majority of the users recorded having seen others on foot whilst using the route, nineteen users recorded having seen others using the route on foot & bicycle. Three have stated they saw others using the route for access to the shops i.e. Morrisons.

Consistency of the Route

The majority of the 84 users stated that the route had always followed the same route, of those seven stated they don't know, one stated no and sixteen did not specify.

Has the Application Route Always Followed Same Course?			
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Yes	No	Don't know	Not Specified
60	1	7	16

Route Used

In the Committee Plan, the proposed footpath was marked out at different points from A to F highlighting the route, the users illustrated on the plan provided within the user evidence forms where they would walk along the route.

A,B,C,D,E,F (Full length of the route)	Part length of the route	No map	Illegible map	None stated
62	1	10	1	10

Unobstructed use of the Route

None of the 84 users recalled having been prevented from using the route. 55 have specified they were only prevented from using the route in November 2020 onwards.

All but eight of the users had seen either no signs nor notices restricting or prohibiting access to the route. Seventy-one have stated they saw the private land signs after November 2020, which prompted the application.

69 users were aware of no stiles along the route, one responded they didn't know, five stated yes and nine did not specify.

75 users stated there are kissing gates at Hall Lane and Bluebell Wood, nine did not specify.

50 of the users have expressed they have the right to use the land as a footpath, and believe they were given permission under the Bluebell Housing Public Open Space ref:07/95/0674.

Information from Landowners

There are two landowners who have a registered interest in this matter who have responded.

The landowner of section E to F responded to the consultation, first confirming his landownership, he states that the footpath running from the Bluebell Wood cul-de-sac runs through which he is the owner.

This landowner stated he does not have any objections to the DMMO, so long as the footpath follows its original line (he refers to the map of the footpath illustrated in the committee plan).

He further stated that "In fact, the kissing gate entrance to the set of steps leading down into the woodland falls on my land and I have decided not to fence off that area of my land. This is with the view that there is overwhelming evidence of the footpath's being used and maintained for decades. As such I expect that there is a high probability of the footpath becoming official and reopening once again."

As such he expects it is very likely the proposed footpath will become official and re-opened to the public again.

The landowner of section A to C and B to E confirmed his additional landownership of A-D and B-F stating that the Land Registry the title of the additional land was transferred to him on 8 March 2021. (The Title instead refers to his purchase being October 2020), this landowner had parts of the land fenced off at points that crossed the proposed footpath.

This landowner went on to state that his interpretation of the extract from the Official copy of the Register (please see below) that any 'rights' assumed up to the date have been extinguished and the vendor/purchase had no intention to give permitted access going forward.

(22.08.1990) The Conveyance dated 7 August 1990 referred to above contains the following provision:-

"IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:-

(i) Any rights easements quasi-rights quasi-easements and privileges enjoyed as at the date hereof by the property hereby conveyed over under or through the Retained Land and all other neighbouring and adjoining land of the Vendor and the Purchaser shall be extinguished forthwith

This landowner left a post on 'The Leyland Hub' stating he had purchased part of Farington Woods, and he had carried out an inspection on the site and had noticed some trees have fallen, resting on a tree that is upright, and as a result of this he had it fenced off, he acknowledged that he had blocked part of the route and cited health and safety concerns.

This landowner also stated the following in his correspondence:

The following are details of the covenants contained in the Conveyance dated 7 August 1990 referred to in the Charges Register:-

Between the points marked 'A' and 'B' on the said plan a concrete post and three strand wire fence not less than four feet in height or such other type of boundary demarcation as may be specified by the local Planning Authority

(v) In the event of any breach non-observance or non-performance of the covenants set out in clause 2 (i) hereof to permit the Vendor to enter

upon so much of the property hereby conveyed as may be reasonable for the purpose with or without workmen plant or machinery to remedy such breach non-observance or non-performance as aforesaid and forthwith upon written demand therefor to pay the costs of the Vendor or the Purchaser as the case may be of such remedial works as aforesaid together with interest at 5% per annum above the Base Rate for the time being of the Midland Bank PLC from the date of demand to the date of actual payment

NOTE: The land edged blue and coloured blue in part referred to above is edged yellow on the title plan. The points A, B, C and D referred to are lettered A, B, C and D on the title plan

(Application route point C is on title plan line A-B.)

The landowner of section A to C and B to E states that the above would imply that the land was intended from 7th August 1990 to have some form of fencing in place to enclose the said piece of land, to the point where if a fence was not to be erected then the seller could carry out the action themselves and recharge that to the purchaser.

This landowner went on to state that Chapelton Homes Limited went into liquidation in 2010, and as a result the land fell into the ownership of the Duchy of Lancaster. He further states The Duchy of Lancaster is protected from Public Rights of Way applications, to which he suggests that the 20-year period of unrestricted use has technically been restricted due to the special circumstances in change of ownership to the Crown until the change of ownership in 2020. This landowner argues that the 20-year trigger point would start from when he purchased the land.

Since he has purchased the land this landowner has made it clear to the public that access is now restricted, thus challenging any public rights. He believes the evidence submitted has implied that South Ribble Borough Council laid a hard surface through the plot of land at some point between 2010 and 2020. This landowner wanted confirmation from South Ribble Borough Council, that they contacted The Duchy of Lancaster seeking permission, and if it was granted in order to lay the surface in the first instance. To which he further adds that it is his opinion that during the process of laying of the surface access was restricted and as such there would have been a break in the qualified period.

Conclusion

As there is no express dedication the Committee are invited to consider whether S31 deemed dedication provisions can apply and also consider whether any dedication can be inferred at common law from all the circumstances.

In this matter the application route links to existing highway at point E and A but also reaches a point of public resort at D namely the land managed as Public Open Space.

Looking at S31, in this application the route is affected by the ten-year period when the main section of the route was held by the Duchy. There is a calling into question in 2020 by fences being erected across the route by the owner of A-C and B-F but S31 cannot apply to the Duchy as under S327 Highways Act for the Highways Act provision to apply to the Crown there would need to be an agreement with the Duchy which there was not.

Use in the period before 2010 is still significant but does not end with a calling into question such that users were in any way appraised of any challenge and so S31 is difficult to apply to any periods of use in this matter.

Turning however to looking at whether dedication can be inferred from all the circumstances at common law, it is the case that highways can still be inferred at common law on Crown land so before and even while the Duchy held the land dedication may be able to be inferred from the circumstances

The circumstances in this matter from which a landowner's intention might be inferred on balance would seem to be the use by the public as of right, the intention expressed in the owners' planning application and the nature walk promoted in their site plan by Chapeltown when they purchased 1995/6, the physical creation of route E-F and the use to 2020 and the work on the route in 2014.

It is advised that Committee may be content that use has been by the public and use by sufficient number in particular from 1995 through the ownership of Chapeltown Estates Ltd (later called Chapeltown Homes Ltd). The numbers of users is high – see above. The use was such as might reasonably have been expected if the way had been unquestionably a public highway. The use would have appeared open to the owner.

The use has to have been as of right. There is no suggestion that use was secretive or involved forcibly getting onto the land. However, there is reference to users thinking they had permission given the nature of the Public Open Space reference on land to the east. It is advised that this is not actual permission from the owner, but instead it is a perception of there being no challenge to their use.

It appears that notwithstanding the reference in the conveyance to a requirement for a fence there was no fence erected across the application route in consequence of this and the route remained without restriction until the fence erected in 2020 by the current landowner.

Common law needs consideration of evidence of an intention to dedicate. Where there is satisfactory evidence of user by the public dedication may be inferred but here in addition there are actual actions taken by the owner. Irrespective of any private covenant to fence point C in the title, there was clearly no such fence given the public use and there is the way the route is described in Chapeltown's planning application, there is the reference to the route being a nature trail and linking further east in the sales brochure. There is the work done on the ground in 2014 by the County Council to improve the existing route. The registered owner remained showing as Chapeltown but actual ownership had passed to the Duchy who took no issue with the works to improve the existing public use along the application route.

The works will not have impacted or interrupted use as it is normal practice to take mitigation measures to ensure public safety rather than try to prevent use during minor works.

As the route passes into different ownership at the brook C-D Taylor Wimpey have made no comment and have for many years acquiesced in public use across their strip of land at this location.

The section E-F likewise is in a different ownership and the owner seems content that the route will be available for public use again (see above). It is taken that he says that he decided not to remove the set of steps or fence off that area of his land. This part of the route will have originally been in Chapeltown ownership and constructed as an access for use.

It is therefore advised that there may be considered to be sufficient evidence from which to infer dedication at common law on balance from all the circumstances including the use by the public during the Chapeltown ownership and possibly even 2010-2020 when it was held by the Duchy. The recommendation is therefore 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 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: 804-691		Ansar Sadiq, Legal Governance and Registrars Service. 01772 532435

Reason for inclusion in Part II, if appropriate

N/A

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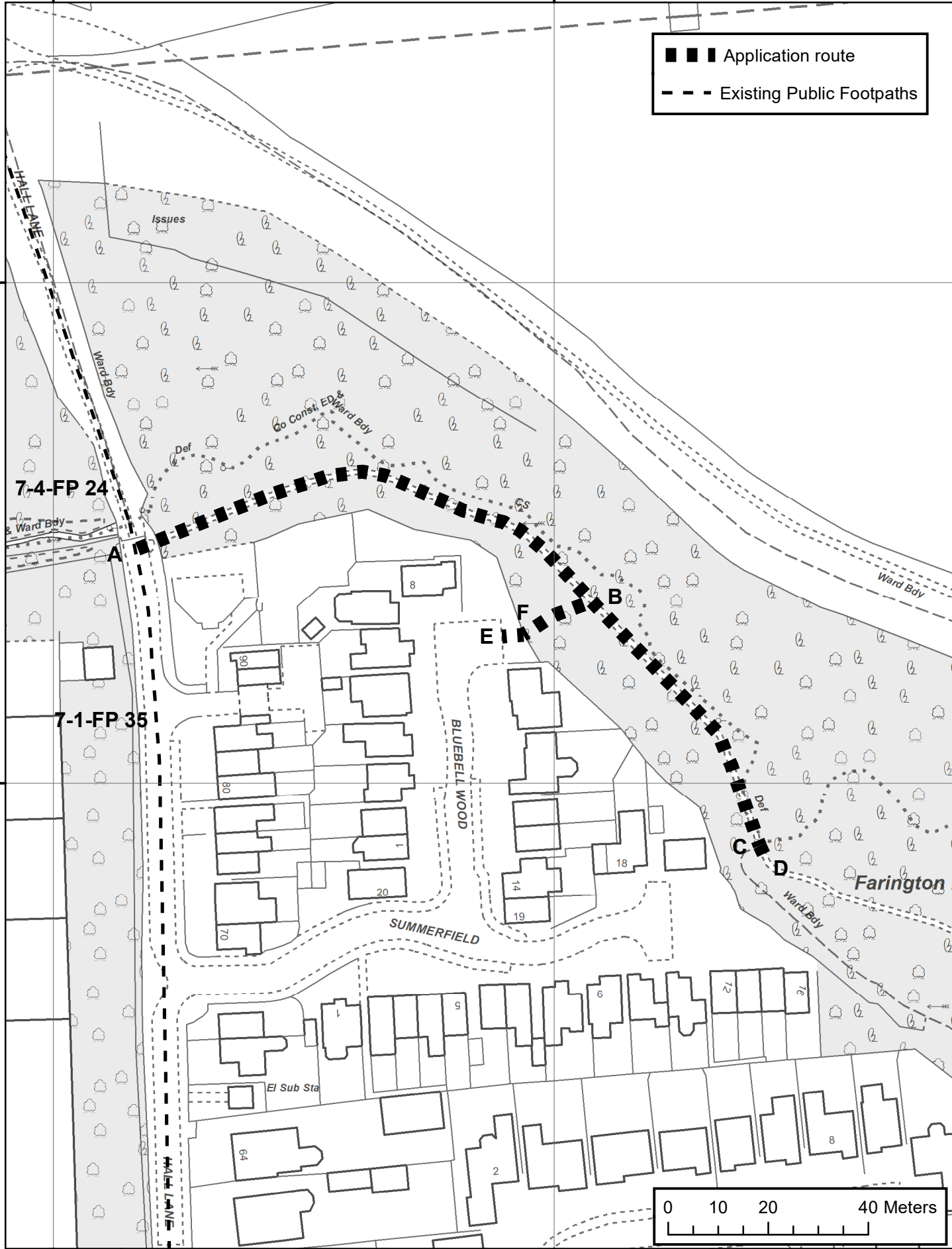
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■ ■ ■ Application route
 - - - Existing Public Footpaths



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

Wildlife and Countryside Act 1981
 Addition of footpaths through Farington Hall Wood, Leyland

1:1,000



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Public Rights of Way
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 01772 530317

Wildlife and Countryside Act 1981
 Addition of Footpaths through Farington Hall Wood, Leyland LOCATION PLAN

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