

Lancashire County Council

Regulatory Committee

Wednesday, 2nd December, 2020 at 10.30 am in Virtual Meeting

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
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The minutes of the last meeting held on 18th November 2020 will be included on the agenda for the meeting to be held on 27th January 2021.

4.	Guidance	(Pages 1 - 24)
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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.	Update on the Progress of Decisions taken by the Committee	(Pages 25 - 28)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application to record a Bridleway from Blackwood Road to Greens Lane, Bacup, Rossendale Borough File No. 804-589	(Pages 29 - 120)
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7.	Highways Act 1980 - Sections 26 and 118 Wildlife and Countryside Act 1981 - Section 53A Replacement (by Creation and Extinguishment) of Footpaths Rufford 9 and 18 at Brick Kiln Farm, West Lancashire Borough	(Pages 121 - 160)
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8. Urgent Business

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

9. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 27th January 2021.

County Hall
Preston

L Sales
Director of Corporate Services

Regulatory Committee

Meeting to be held on 2 December 2020

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

Contact for further information: Jane Turner, 01772 32813, Office of the Chief Executive, jane.turner@lancashire.gov.uk

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following “legal events”

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 2 December 2020

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 2 December 2020

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

Joanne Lawson, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, joanne.lawson@lancashire.gov.uk

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

Executive Summary

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

Recommendation

The Committee is asked to note the progress report.

Background

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

The report presented to Regulatory Committee on 18th November 2020 detailed progress made since January 2020, in relation to matters decided by Regulatory Committee and as that meeting was only 2 weeks ago there is not much progress to report.

It was reported last time that the county council had received 44 new applications to amend the Definitive Map and Statement and dealt with countless other enquiries from researchers and local people preparing to submit further applications. This is continuing and the new instances include:

Bridleway along Hall Lane and Mill Lane, Farrington
Bridleway along Westby Lane, Out Rawcliffe
Restricted Byway along Ashton Lane and Broad Lane, Out Rawcliffe
Footpath through Harris Park, Preston
Restricted byway along Limers Lane, Great Harwood

We are also expecting two applications from the Ramblers in north of the County and an application in Cuerden. The British Horse Society is still working on unrecorded (a.k.a. 'lost') bridleways in various parts of the County.

The extinguishment of the footpath through this house at Stagghills is proceeding, having been decided by Committee in September 2020, the Order made in October and we are currently in the period during which objections can be made, although we are not expecting any.



The Diversion Order for footpath Poulton-le-Fylde 4 received an objection and we are currently trying to mediate between the objector and Network Rail with a view to reaching an agreement and getting the objection withdrawn so that the Order can be confirmed.



Flip Road – Cob Castle Road – Moor Lane, Haslingden

This was upgraded from footpath to bridleway on documentary evidence but has some significant practical issues. It runs from Carr Industrial Estate across the moors to Roundhill Road which has fast traffic and is unpleasant for non-motorised users so it would not be one we would particularly promote but we do need to make it convenient for horses to use. This has some challenges with drainage and unstable retaining walls as well as the usual vegetation and unsuitable structures in the way.



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

Paper	Date	Contact/Directorate/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

Regulatory Committee

Meeting to be held on 2nd December 2020

Part I

Electoral Division affected:
Rossendale East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

**Application to record a Bridleway from Blackwood Road to Greens Lane,
Bacup, Rossendale Borough**

File No. 804-589

(Annex 'A' refers)

Contact for further information:

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

Hannah Baron, 01772 533478, Public Rights of Way Mapping Officer,
hannah.baron@lancashire.gov.uk

Executive Summary

Application to record a bridleway on the Definitive Map and Statement from Blackwood Road to Greens Lane, Bacup, in accordance with File No. 804-589.

Recommendation

- (i) That the application to record a Bridleway on the Definitive Map and Statement from Blackwood Road to Greens Lane, Bacup, in accordance with File No. 804-589, be accepted with modifications
- (ii) That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) & (ii) of the Wildlife and Countryside Act 1981 to record a bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-I-J (via Bacup 535 and 536)
- (iii) That being satisfied that the higher test for confirmation can be met the above Order be promoted to confirmation.
- (iv) That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) & (ii) of the Wildlife and Countryside Act 1981 to record a bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points E-F-G-H-I
- (v) That not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to Committee to decide what stance to take regarding confirmation of the Order.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was submitted to the County Council in August 2017 by the Forest of Rossendale Bridleways Association to record a bridleway from Blackwood Road to Greens Lane, Bacup, on the Definitive Map and Statement of Public Rights of Way.

The application comprises an upgrade from footpath for its majority and small sections of addition where the route currently has no recorded legal status.

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

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

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

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

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

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

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

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

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway,

restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

In the course of investigating the application officers discovered evidence of unrecorded public rights on alternative branches which were not part of the application but are inextricably linked to it. The discovery of such evidence triggers the duty of the surveying authority under S53(3)(c) to investigate and where appropriate make an Order.

Consultations

Rossendale Borough Council

Rossendale Borough Council did not respond to our letters of consultation, therefore it is assumed that they have no comments to make on the application.

Parish Council

There is no Parish Council for the area affected.

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	8497 2146	Open junction with Blackwood Road (U7778)
B	8505 2144	Adjacent to the terraced properties of Pleasant View
C	8516 2136	Unmarked 5-way junction of paths close to adjacent field gates
D	8523 2133	Fork in path near to Law Head properties
E	8535 2135	Padlocked field gate with private property sign
F	8536 2131	Padlocked field gate with private property sign
G	8556 2120	Field gate next to open gap
H	8556 2120	Junction with track providing access to Sheep House Farm
I	8557 2121	Unmarked junction with Bacup 536
J	8560 2122	Unmarked point on track within a cul-de-sac of residential

		properties
K	8560 2124	Open junction with Greens Lane (U7857)

Description of Route

Site inspections were carried out in January and November 2018.

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-01-FP585 or 'Footpath Bacup 585' but are referenced below in the abbreviated form 'Bacup 585' for brevity since all those referred to are currently recorded as footpath in Bacup, Rossendale.

The application route commences as Bacup 585 at Point A, a junction with Blackwood Road (U7778) at a wide opening with a stoned surface. Just within the entrance there is a Lancashire County Council 'No Unauthorised Parking' notice, which specifies the properties located along the track - 'Pleasant View leading to Lawhead, Sheep House Farm and Moss Farm'. There is no public footpath signpost at this point.

The route leaves Blackwood Road and follows a gentle incline heading generally east for approximately 30 metres where it passes a public footpath signpost on the left. The route then sweeps south east for a further 35 metres to pass the terraced properties of Pleasant View, at point B. The track then continues south east for 140 metres, enclosed by fences at a substantial width, with fields either side. The surface is broken in parts with large potholes. To the north of the track, the route passes 'Lancashire Jubilee Woodland – Frost Holes Wood'. A woodland welcome notice is also attached stating 'by agreement of the owner you are welcome to walk in these woodlands', a stile in the fence provides access to the adjacent field. This does not form part of the application route but illustrates that the surrounding area is promoted to be used by the general public and land adjacent is a designated woodland. The route passes through an unmarked 5-way junction of paths (Bacup 585, 583, 684, 533 and 582), point C. To the north and south of the track field gates provide access to the adjacent fields.

The application route then continues as Bacup 533 for a further 75 metres to where the stone track forks (point D) and the application route, now Bacup 530, veers north east for 50 metres passing the properties of Law Head then continues as Bacup 534 east for 80 metres as the route passes Law Head's associated land and out-buildings.

The route then takes a sharp turn south off the track at point E through a field gate. At this point the application route is not a currently recorded public right of way, and is inaccessible due to a padlocked gate with wire stock proof fencing, which is topped with barbed wire and an attached notice which states "PRIVATE PROPERTY – NOT A PUBLIC RIGHT OF WAY – SOME HORSES ALLOWED THROUGH WITH OUR PERMISSION". The application route continues through the gate and along a less defined dirt track adjacent to a boundary wall for 35 metres to reach a second padlocked gate, which has the same private property notice, lock and barbed wire. Access was denied at this point but on a later site visit this gate was un-padlocked

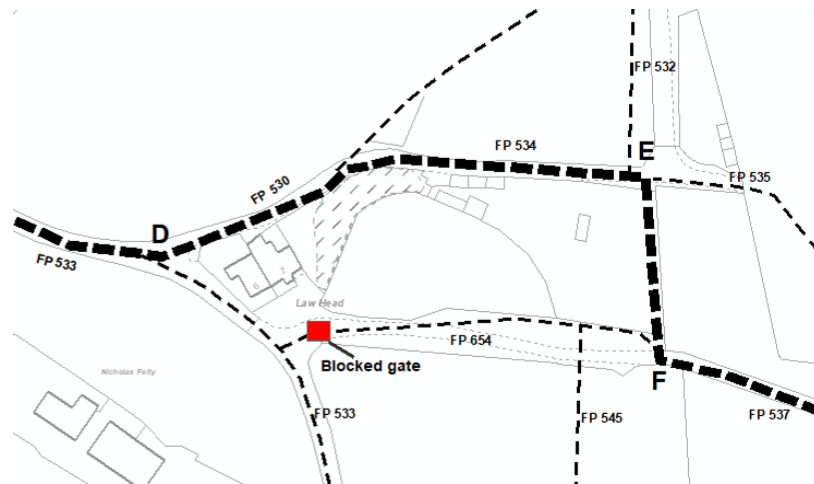
and open. Immediately after the gate, at Point F, it meets a track currently recorded as public footpath.

The route then turns sharply again to head south east along Bacup 537, a grassed fenced track which has a trodden width within an overall fence to fence width of 3.5 metres. This continues for approximately 230 metres until it reaches a large field gate with an open gap directly next to it at point G, approximately 1.3 metres wide. The route continues for a further 5 metres as Bacup 537 to join up to a stoned track at point H, which provides access to nearby Sheep House Farm. The route then heads north east for 13 metres along another section of unrecorded public right of way, to the junction with Bacup 536 at unmarked point I. The route then passes residential properties as Bacup 575 for 30 metres to point J, then turning north as an unrecorded public right of way to conclude at the junction with Greens Lane (U7857) at point K. There were no signposts indicating the route was a public footpath at this point.

The total length of the application route is approximately 765 metres.

The route had a single public footpath signpost which was located midway between point A and B, however there was no signpost visible from Greens Lane. The route was not waymarked as a public footpath. It was also obstructed by locked gates with barbed wire at two particular points (E and F), making it impossible for users on horseback (and foot and cyclists) to use the full length of the application route.

Notices were attached to the locked gates stating that the land is private property and only some horses were allowed through with permission. It was, however, open and available on the ground to be used on horseback between points A to E, and from points F to K. Pedestrians are able to use Bacup 654 and Bacup 533 as an alternative to bypass points E to F, which is located south of the properties at Law Head. However equestrians are unable to do so due to an obstructed pedestrian gate close to the junction of Bacup 654 with Bacup 533. There is a large boulder (marked as the red indicator below) just in front of the gate to the west which appears to have been purposely situated so that the gate can only be opened wide enough to let one pedestrian user through at a time. The plan below illustrates the approximate locality of this with the alternative route.





Another option to the blocked section E-F is via Bacup 535 and 536 which runs east from point E along a vehicular access track to Moss Farm, sweeping south east along a driveway within the curtilage then east south east over a grassed area and passing behind the farmhouse, over a stile and along a 2.5m to 3m wide lane enclosed by stone walls. The lane bends south east where after 130m the wall on the south west side ends, alongside the garden of 7 Greens Lane. The surface has been raised to form a link between the garden and the rough land to the south west with makeshift gates erected across the path both sides of the link. From that point the width has been encroached to about 1.5m by a post and wire fence. After a few metres a pipe covered with rocks has been laid across the surface of the path between the garden and the land on the south west. The path continues at an encroached width of 1.5m with the post and wire fence giving way to a post and rail fence alongside no. 6 Greens Lane at the corner of which it joins the application route (point I).

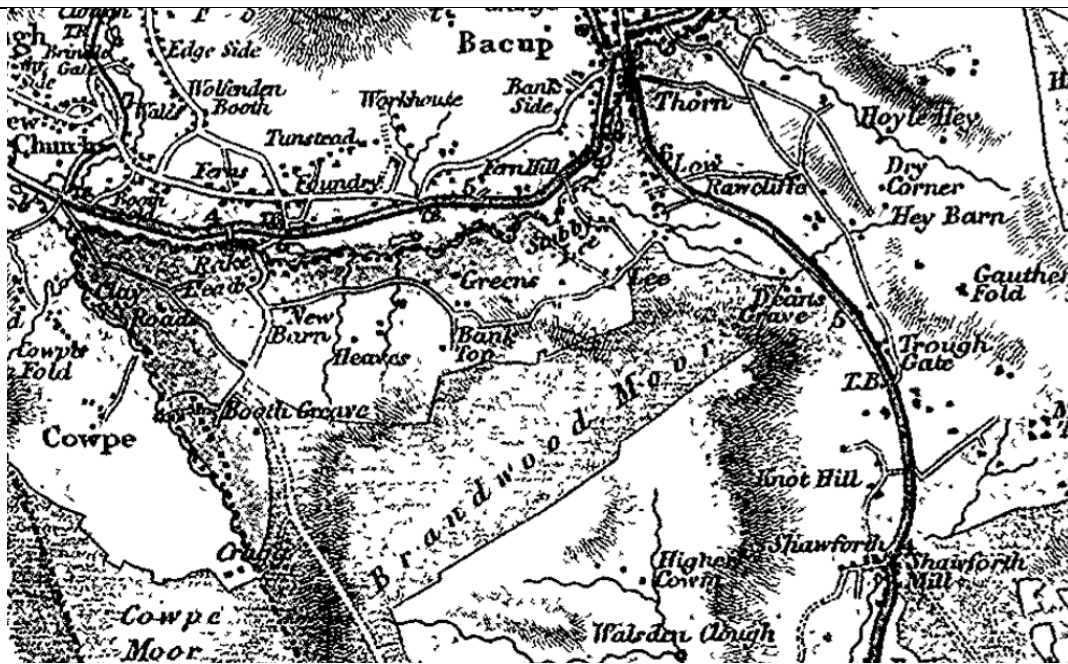


Map and Documentary Evidence

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.

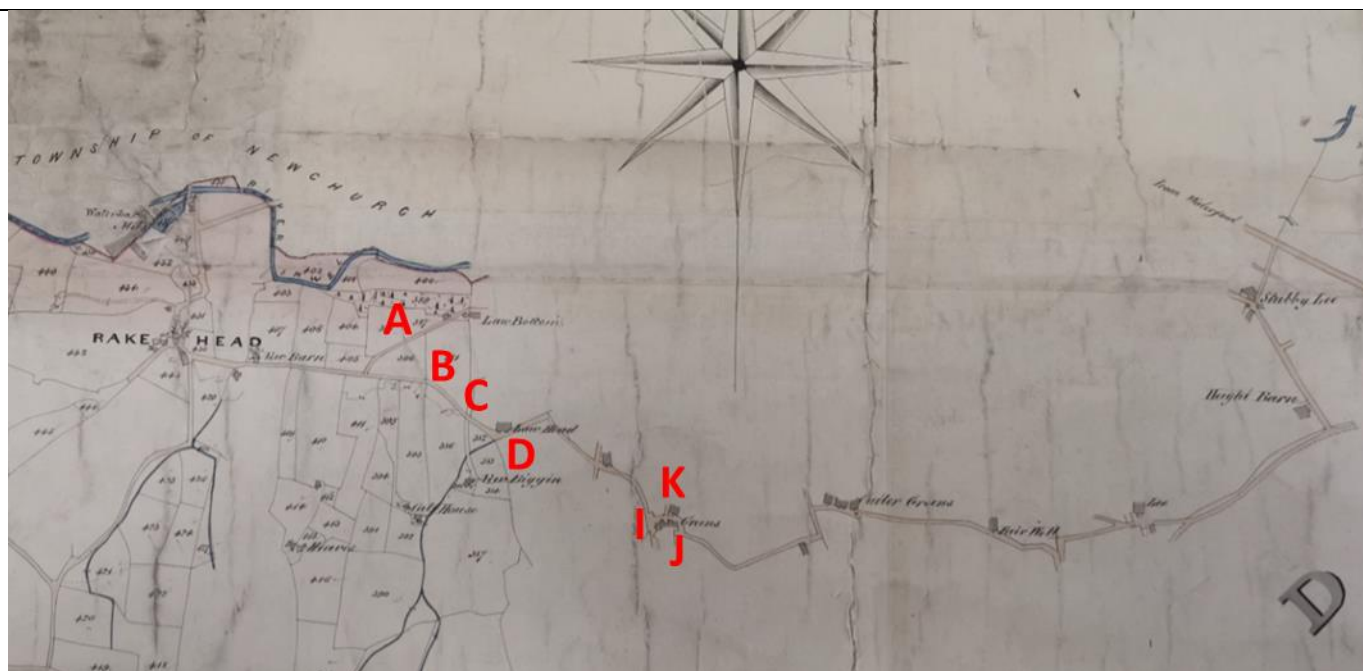
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced 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 on Yates' Map. Rakehead Lane and Rooley Moor Road are shown in the vicinity of Rakehead Fold, which are located west of Blackwood Road. Blackwood Road does not appear to exist at this time.
Investigating Officer's Comments		The application route did not exist as a major route at this time, although it may have existed as a smaller route which, due to the limitations of scale and purpose for which the map was drawn, meant that it would not have been shown. No inference

		can therefore be drawn.
Inclosure Act Award and Maps	Post 1801	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 Act Award or Map available to view at Lancashire Archives for the area of Bacup.
Investigating Officer's Comments		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.
		
Observations		The application route is not shown on Greenwoods Map. Rakehead Lane and Rooley Moor Road can be seen which are located west of Blackwood Road, but Blackwood Road still did not exist at this time.
Investigating Officer's Comments		The map is of a small scale which did not show the application route as a significant route at this time so no inference can be drawn.
Hennet's Map of Lancashire	1829	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829. 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.



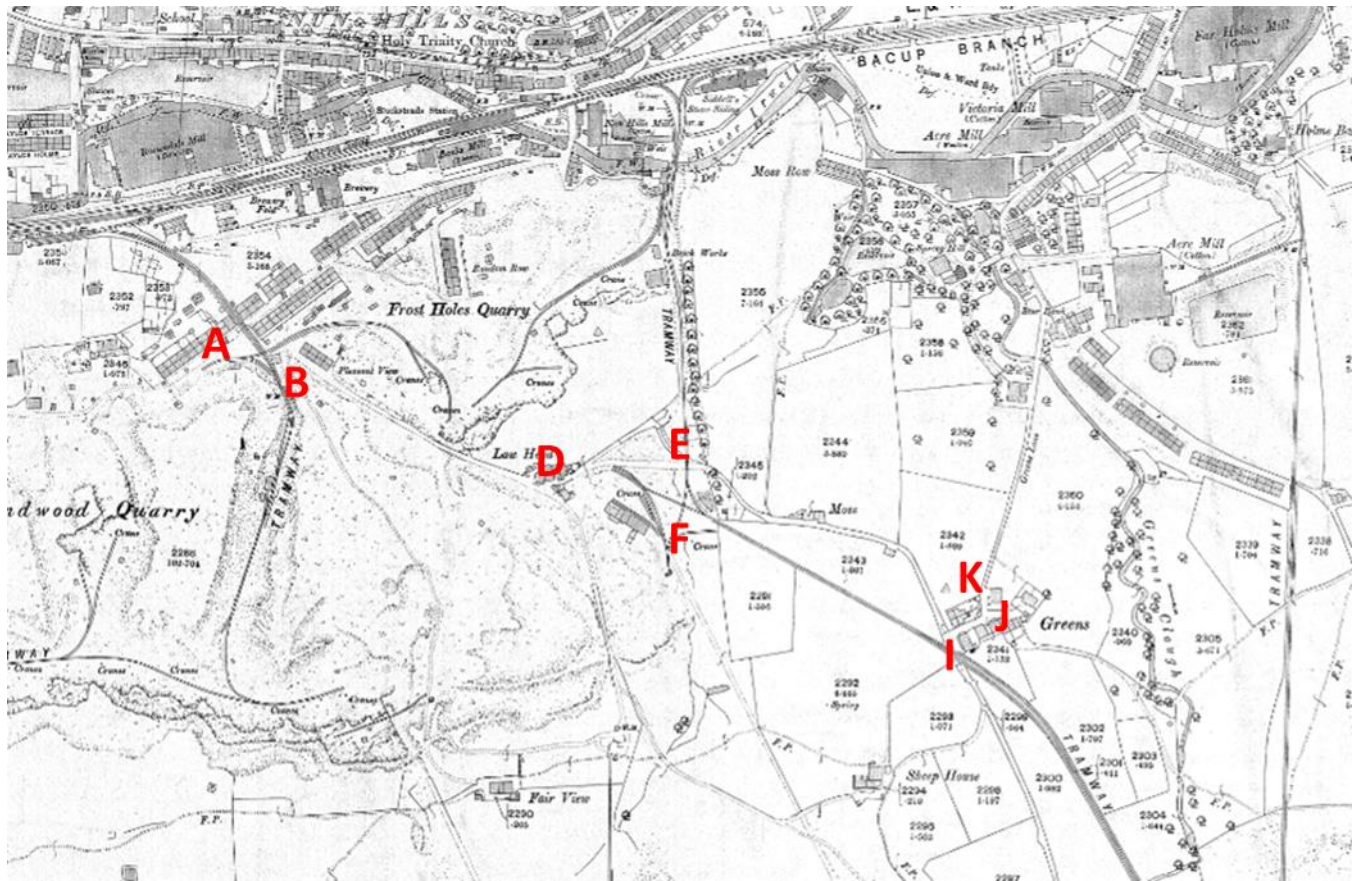
Observations		As the previous maps show, Rakehead Lane and Rooley Moor Road can be seen. A further significant route is now shown which connects from Rakehead to New Barn, Greens and onwards to Stubblelee. Part of this route coincides with Blackwood Road. The eastern section of this route as it heads south east towards Greens appears to coincide with part of the application route, particularly between points C and D. The historical route then appears to follow Bacup 536 which then heads to Greens.
Investigating Officer's Comments		This map is of such a scale that it is difficult to accurately align the historical route as shown on the map with the current day application route. The surrounding areas of New Barn and Greens have been annotated suggesting that the area was becoming more developed at the time. A section of the application route appears to be in existence along this historical route, particularly at points C-D and I-J. However the route to Greens appears to follow Bacup 536 rather than the application route.
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 area surrounding the application route was, as the subsequent Ordnance Survey maps show, heavily quarried at a time. Quarrying began for local needs, where stone was excavated from the surrounding moorland. As the industrial

		<p>revolution hit, the demand for stone increased dramatically, and the size and number of quarries increased dramatically. A network of tramways were created to transport the stone from the quarry, which connected up to other tramways in the area and ultimately the main railway line, Lancashire and Yorkshire Railway (L&YR Bacup Branch) which was in close proximity to the application route, for easy transportation.</p> <p>The application route is found within an area where Brandwood Quarry and Frost Holes Quarry were excavated. Richard Siddall owned a number of quarries within the area, including Law Head and Greens, and with fellow quarry owner Henry Heys owning the neighbouring Brandwood Quarry. The scale of the activity resulted in a dramatically altered landscape.</p> <p>Brandwood Moor Tramway was originally along the line of Bacup 537. It is unclear when the tramway ceased operation, however this route was recorded on the draft map, the earliest map in the Definitive Map process following the National Parks and Access to the Countryside Act 1949, as a public footpath.</p> <p>http://www.valleyofstone.org.uk/journey/heritatesites/brandwoodmoortramways</p> <p>http://www.bacuptimes.co.uk/quarrying.htm</p> <p>There is no canal in the near vicinity to the application route.</p>
Investigating Officer's Comments		<p>The tramway information gives an insight into the previous use of the land over which the application route runs. It is unclear when the tramway ceased operation. Use by the general public on Bacup 537 could only have started after this time.</p>
Tithe Map and Tithe Award or Apportionment	1853	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>

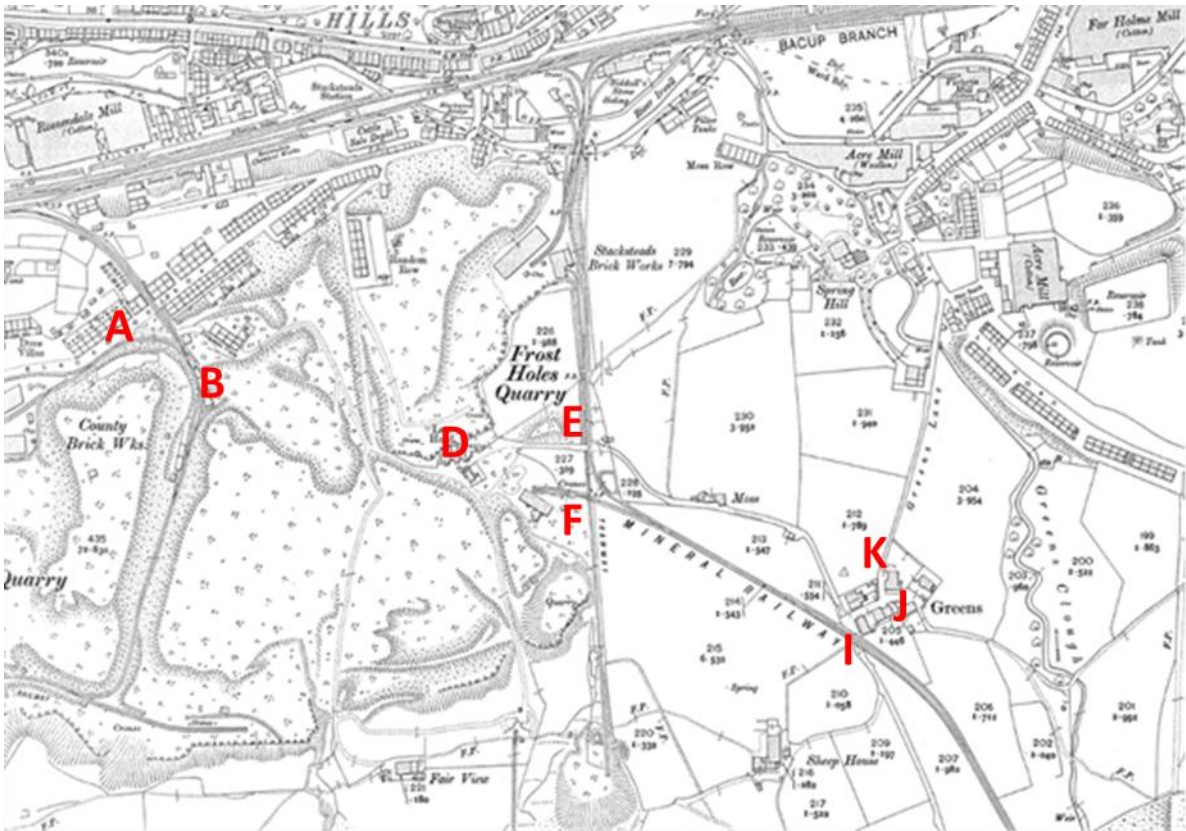


Observations	<p>The Tithe Map for Spotland is dated 1853.</p> <p>Similar to Yates map, a substantial route is shown from Rakehead, passing New Barn to Law Head, continuing to Greens and onwards to Cutler Greens and Stubble Lee. This coincides with the application route between points B-C-D and I-J-K. The route is coloured yellow which is normally indicative that the route was considered to be a vehicular highway. However there is no key to the Tithe map and the route is not numbered, nor does it appear in the Tithe Schedule which accompanies the map. The route is coloured the same as the rest of the road network but the lack of key means that it is not possible to know exactly what the colour of the route signifies.</p> <p>The lanes are not named on the map, but this is consistent with other roads which are shown on the map.</p> <p>(REF – DRM 1/91)</p>
Investigating Officer's Comments	<p>The route under investigation historically existed in part, particularly as a substantial route leading from Rakehead towards Law Head and onwards to Greens, which are annotated on the map. This part of the route is coloured yellow and appears to have been regarded as a higher status route than footpath by Spotland Parish in 1853, potentially as a bridleway or carriageway.</p> <p>The other sections of the application route probably did not exist at this time. The historical track which the Tithe Map shows coincides with the application route between points B-C-D, part of D-E and I-J-K, and that also investigated via Moss Farm to point I (Bacup 535 and 536) and shows these were the main access routes at the time. The sections of the application</p>

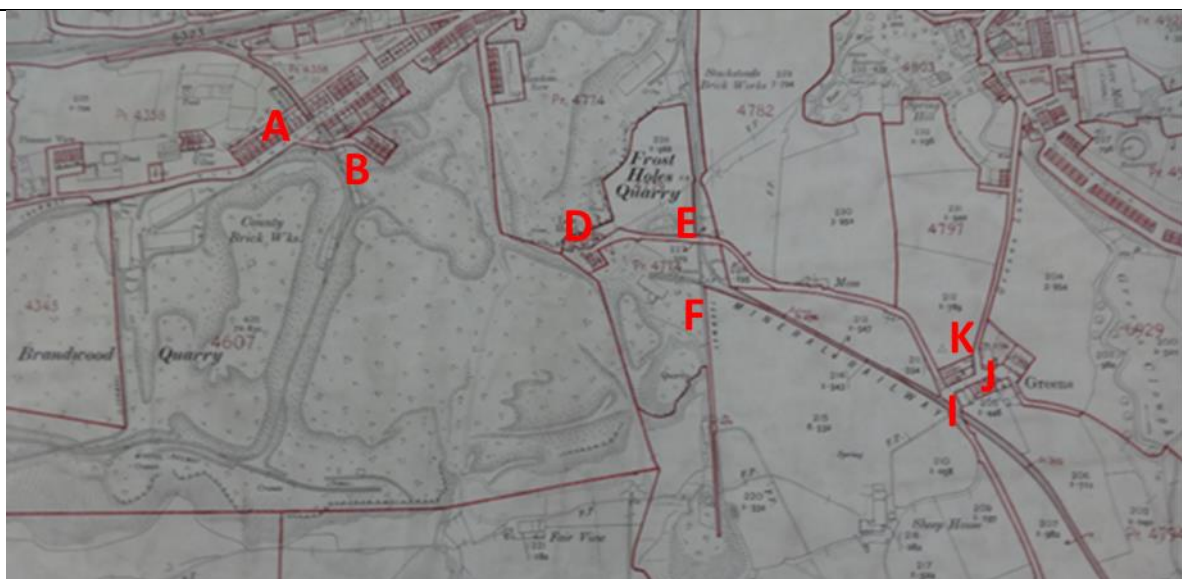
		which provided access. The surrounding routes connect the locations but do not follow the application route as a through route. The surrounding land was quarried at this time.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Re-surveyed in 1891 and published in 1893.



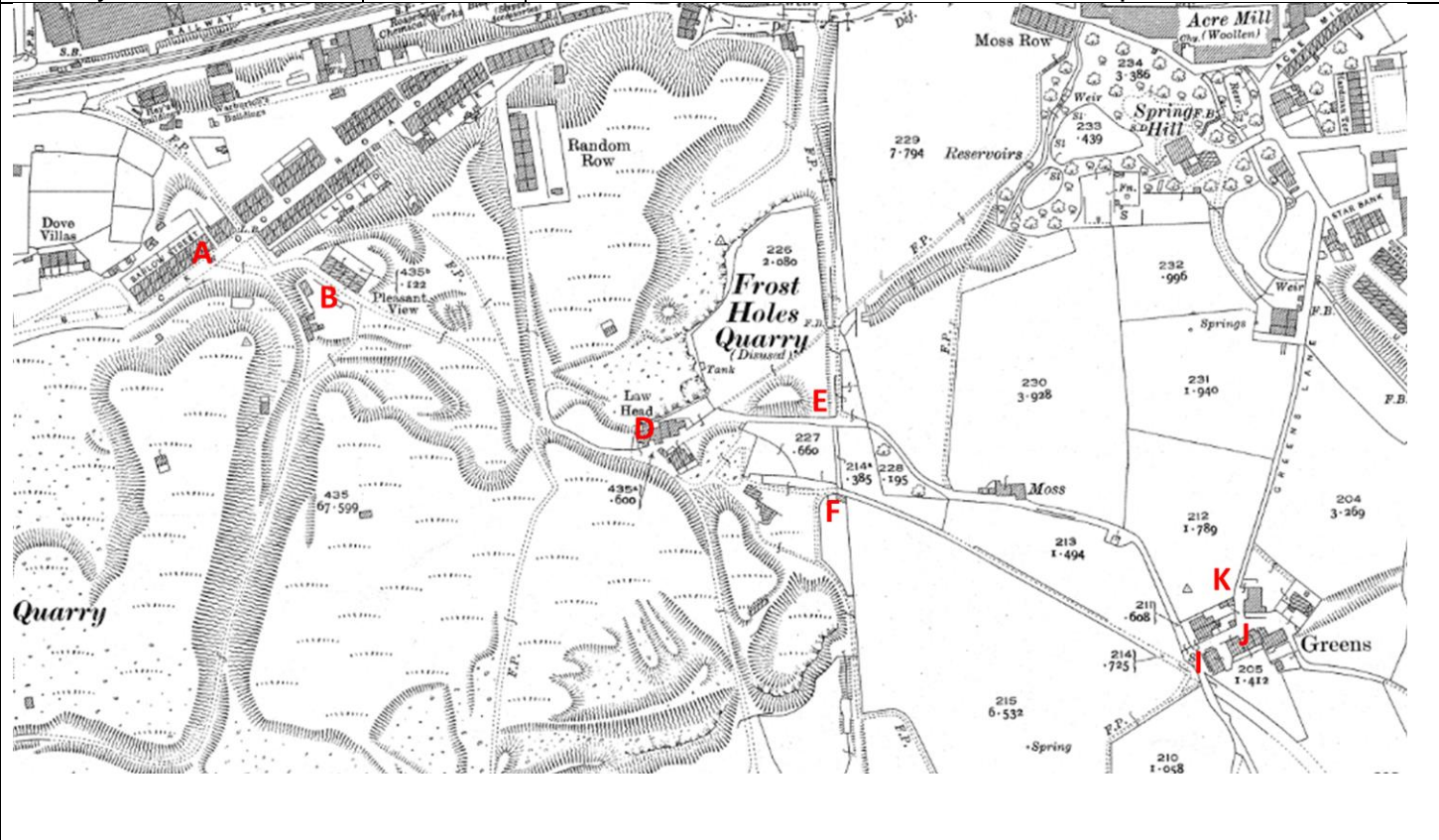
Observations		<p>This area of land was heavily quarried as this time, with Blackwood Quarry, Frost Holes Quarry and Greens Quarry located within the immediate area. A number of connecting tramway lines can now be seen. A branch of the tramway joins the Lancashire & Yorkshire Railway (L&YR Bacup Branch).</p> <p>Blackwood Road at point A, Pleasant View at point B, Law Head at point D and Greens at point J and K can be seen. The application route appears to be available for use from point A to point E although this involves crossing tram tracks. The connecting route from Law Head to Greens is not the current application route, instead the available route at this time follows Bacup 535 and 536, an established route further north, passing Moss to Greens. Bacup 537 existed as a tramway at this time.</p>
Investigating Officer's Comments		The application route appears to be in existence from Blackwood Road at point A, over the tram tracks, passing Pleasant View and Law Head to point E. However, there was

		no route shown for the unrecorded section between E and F, and from G onwards was a running tramway at this time. It is apparent the way to get to Greens was via Bacup 535 and 536 which was a bounded track north of the application route, which then joined points I, J and K.
25 inch OS Map	1910	Further edition of the 25 inch map re-surveyed in 1891, revised in 1909 and published in 1910.
		
Observations		The application route can be seen as a double pecked line from point A at Blackwood Road, passing the properties of Pleasant View. However the land was still heavily quarried at the time and between points B and C the application route is not shown but a connecting track on a different line is shown. The application route is shown as a track from point C to Law Head (D) and point E. No way is shown on E-F adjacent to or on the tramway or F-I which is shown as a mineral railway. To access Greens the public would had to have use what is now recorded as Bacup 535 and 536, the bounded track via Moss to Greens. The application route between points I-J-K is shown as it is today.
Investigating Officer's Comments		Part of the application route appears to be available for use, however due to the quarry and tramline other parts do not. Use appears to have been possible from point A at Blackwood Road to point B and also C to E but not B to C which was quarried. E-F does not appear to be accessible. Due to the

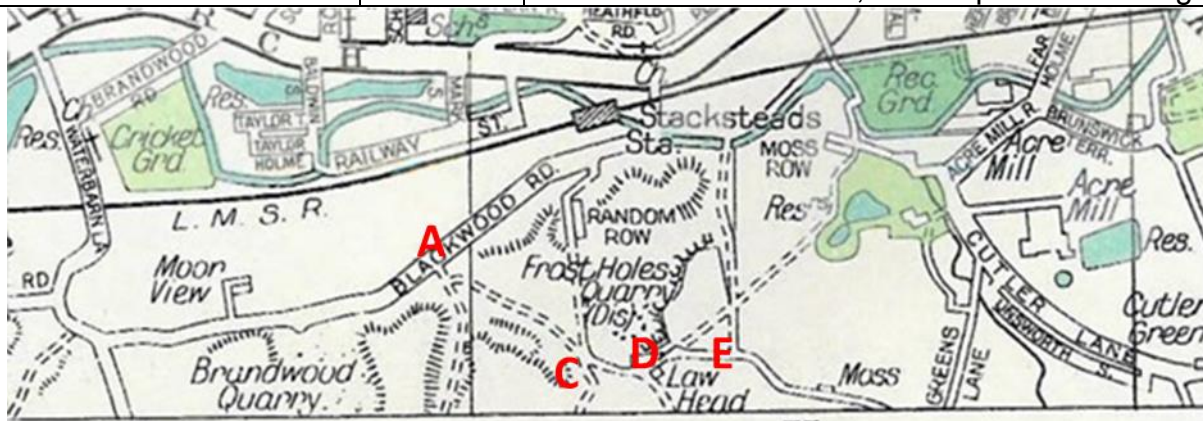
		<p>existence of the tram/railway lines over the application route between points F-H that section would not have been available, the bounded track further north (now Bacup 535 and 536) gave access to Greens. The section at Greens I-J-K appears to have been usable.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> <p>(Ref: DVBU/1/2/3 (Valuation Book) + DVBU/2/1 (Map LXX11.15))</p>



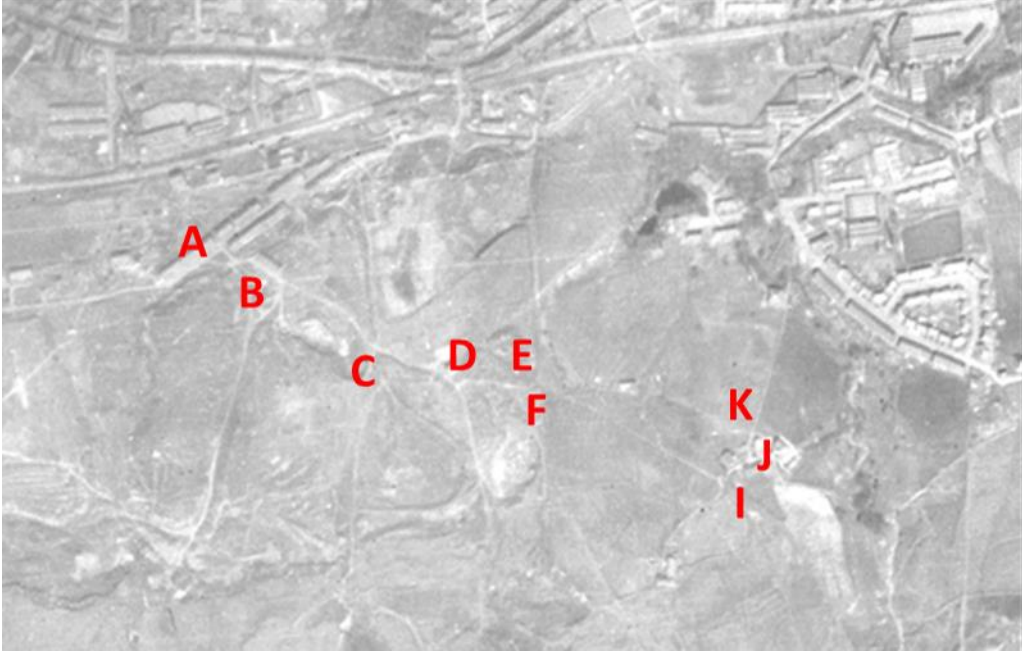
Observations	<p>The Finance Act Map was not available to view at Lancashire Archives. The relevant sheets had previously been obtained from the National Archives and therefore officers had access to electronic copies of the relevant section. The base map used for the Finance Act information was the 1910 Ordnance Survey 25" considered above.</p> <p>The application route was split up into different numbered hereditaments – 4607, PR4774 and 4787, with some sections being excluded and un-numbered.</p> <p>Between Blackwood Road, point A, to Pleasant View terraced properties, point B, and from Law Head, point D to E, and at Greens, points I-J-K are shown on the map as being excluded sections from the numbered hereditaments. (Similarly the alternative route Bacup 536 from D to Greens is excluded). It should be noted that the surrounding routes, such as Blackwood Road and Greens Lane which are currently recorded public roads, are shown in the same way.</p> <p>A copy of the relevant field book entries has been located at Lancashire Archives.</p> <p>PR - 4607 – This section of land was owned by Henry Heys and occupied by W.G.A Lloyd. The land description was quarries and the original total value was £3290. There were no deductions for a right of way.</p> <p>PR - 4774 – This included the railway. This section of land was owned and occupied by Richard Siddall. It was described as a quarry, named Frost Holes. Its original total value was £786 and there were no deductions for a public right of way.</p> <p>4787- This section was owned by Thomas Waite and occupied by Richard Siddall. Original total value was 800 and there were no deductions for a public right of way.</p>
Investigating Officer's	The fact that some parts of the application route are shown as

Comments		<p>being excluded from the numbered hereditaments is good evidence that in 1910 the surveyor completing the initial valuation, and the adjoining landowners in completing the appropriate forms as part of the Finance Act process, either considered that part of the route to be outside the boundary of their ownership or that it was a public highway that should be exempted from the valuation process. Routes believed to be either public footpath or bridleway were normally included within numbered hereditaments so the fact that part of the route was excluded may provide good evidence that public vehicular rights may have existed along those excluded parts of the route. In the absence of any other supporting evidence it may, however, be that the route comprised largely of a shared access road that none of the adjoining landowners claimed to own and which may or may not have also carried public rights of some sort.</p>
25 inch Ordnance Survey Sheet	1930	<p>Further edition of 25 inch map (resurveyed in 1891, revised in 1928 and relevelled in 1928. Printed and published in 1930.</p>
		
Observations		<p>The application route can be seen for its majority, from Blackwood Road at point A through to point E at Law Head. There is a bounded section to the east of points E and F which appears to be the remnants of the tramline and is adjacent to the application route E-F. Between points F to I, the old tramline, appears to be available for use and is a continuation of Bacup 654. It also continues to points I-J-K which also appear to be available for use. The alternative route via Moss (Bacup 535 and 536) is still in situ.</p>

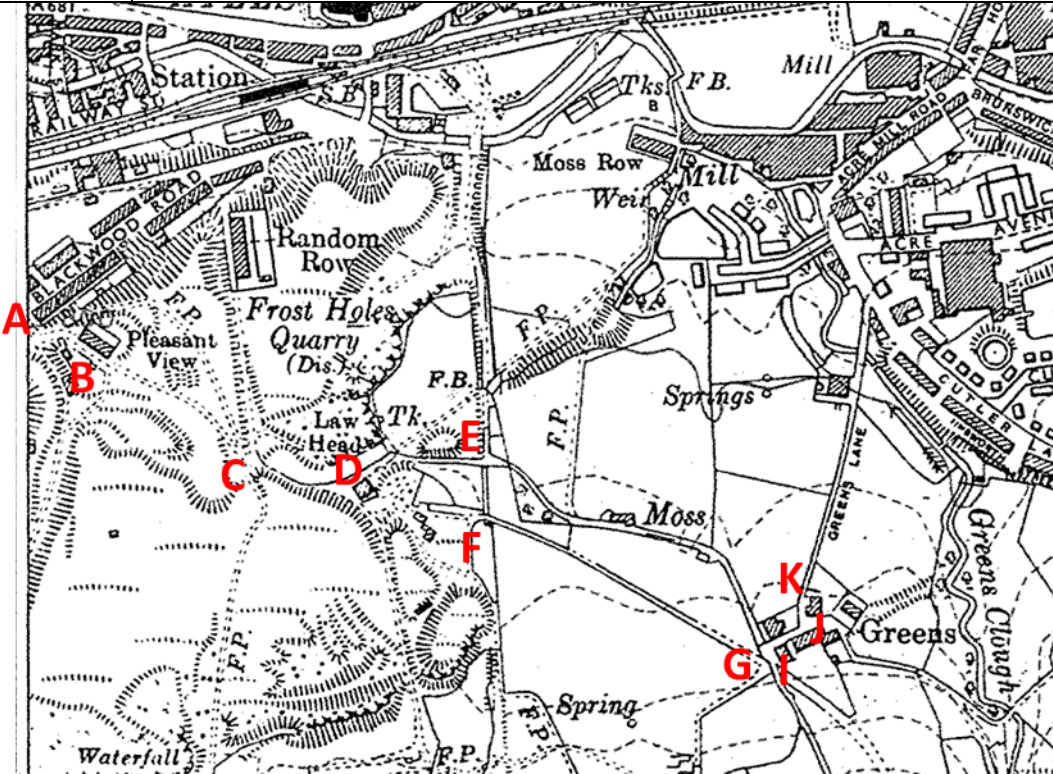
Investigating Officer's Comments		The application route appears to have been available for use in 1930 for the majority of the route as does the lane via Moss. There is no indication that E-F was available for use, adjacent to an enclosed strip, but the rest of the route seems available to be used.
Authentic Map Directory of South Lancashire by Geographica	1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>

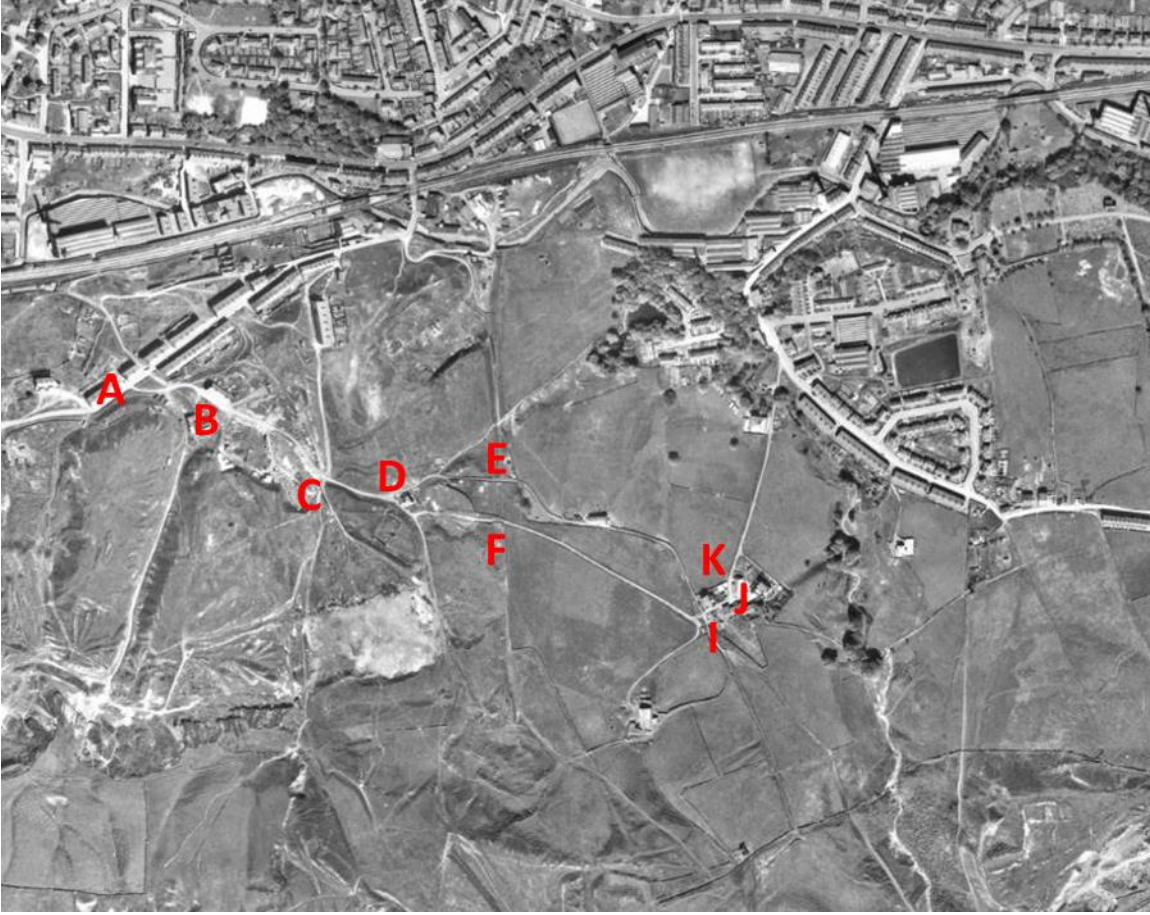


Observations		A route can be seen from Blackwood Road at point A, leading to Law Head at point D. The route echoes the previous maps in following Bacup 535 and 536 and not the application route
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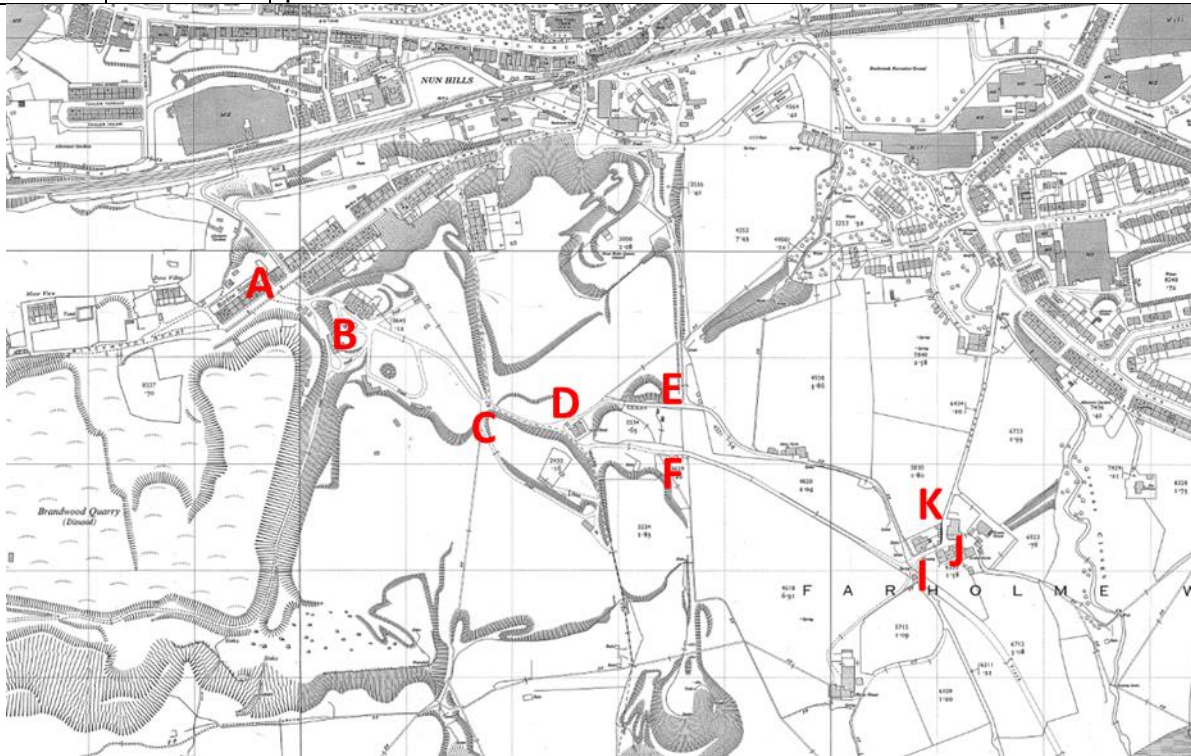
		up to point I at Greens. The tramway is not shown. It is likely by this time the quarries had ceased operation, as indicated by 'Frost Hole Quarries (Dis)' and 'Old Quarries'.
Investigating Officer's Comments		The application route could be used from Point A to E and I to K. The map does not show the application route from point E to I, but the alternative Bacup 535 and 536 provides access to Greens, as shown previously.
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 the GIS. The clarity is generally very variable.
		
Observations		The clarity of the 1940 aerial photograph is sufficient for tracks to be seen along the length of the application route from point A at Blackwood Road to Law Head at point D and then direct via point F (but not via point E) to Greens at point I and onto K. A line can be seen from point F to I. Bacup 654 (the route south of Law Head now blocked with the boulder) can be seen.
Investigating Officer's Comments		Tracks can be seen on this aerial photograph which suggests that the local area had a network of routes which were used at this point in time. However, it does not help in determining the status of the routes, and given the area's long history of being a working quarry with long term scarring of the ground this means that we can only infer that the tracks may have been used, but cannot infer any status. The sections of the application route which appear to have been in most use are


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.

		A-B-C-D and F-G-H-I-J-K.
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		<p>The application route is shown from Blackwood Road, point A, as a double pecked track leading past Pleasant View at point B to Law Head at point D, where the route then becomes a bounded track towards point E. The unrecorded section E-F is adjacent to the enclosed strip and has solid lines across either end. From point F the route continues bounded by a mixture of continuous and pecked lines and leads to Greens at point I.</p> <p>The historical route following Bacup 535 and 536 via Moss is still in existence. The area north of Law Head is still annotated as Frost Holes Quarry (disused), but the former tramways are no longer annotated as such.</p>
Investigating Officer's Comments		The application route is shown in its entirety except E-F. The boundaries of the route vary between pecked and continuous lines. Use could have been possible at this time along the full application route except E-F about which is not possible to make any inference. The alternative E-I via Moss is shown.

Aerial Photograph ³	1960s	The black and white aerial photograph taken in the 1960s.
		
Observations		<p>The 1960 Aerial Photograph is much clearer than the previous one taken in 1940. The application route can clearly be seen as a well-defined route from Blackwood Road, point A, to Green Lane at point K, with the exception of the unrecorded track at Law Head (points E to F) which does not appear to be a significantly used section at this time. Bacup 535 and 536 (historical track via Moss) is still available.</p> <p>An approximation to Bacup 654 (the route south of Law Head now blocked with the boulder) appears to be well used leading onto Bacup 537 at point F, the disused tramway.</p>
Investigating Officer's Comments		<p>It is likely that the sections of the route most visible are those routes which have had most usage, including probable vehicular access along the wider tracks to access the surrounding land and properties. The application route appears to be in use for its majority, with the exception of the missing link at Law Head, points E to F, but it is not possible to infer the</p>

³ 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.

		status.
1:2500 OS Map	1963	OS 1:2500 map part surveyed 1960 and revised 1961, published in 1963.
		
Observations		<p>The majority of the application route appears to be an open and accessible track from Blackwood Road, point A, to Greens Lane, point K. The track at Point B is annotated 'Pleasant View' and 'CR' annotated at point C, meaning a boundary runs on the 'centre of road'. This does not give an inference as to whether it is a public or private road. At Law Head the application route is available at point D to E, however the link between E and F is not shown. The application route from point F to I appears to be a continuation of a route labelled 'track' which continues along Bacup 654 (south of Law Head). The route is not annotated as footpath, but does appear to be an enclosed track for its majority. The route shown as a link past Moss Farm to Greens, as shown on previous maps, appears to still be available.</p> <p>The land is no longer annotated as Frost Holes Quarry. Brandwood Quarry is shown to the west.</p>
Investigating Officer's Comments		<p>The route is shown as a double pecked track for its majority. However it again lacks the middle interconnecting section between point E and F and therefore the full length of the application route may not have been used at this time. The route could probably have been used by equestrians from point A to E, and from F to K. The route previously shown linking to Greens via Moss Farm is still in existence, now labelled as a footpath suggesting that it was less well used by this time, and</p>

		the route shown to the south of Law Head (Bacup 654) may have been used as an alternative.
Aerial Photograph	1990	Aerial photograph available at Lancashire Archives.
		
Observations		A track is very clearly defined from Blackwood Road, point A, heading to Law Head at point D then to point E. Near Point E there appears to be the remnants of the tramline as shown on the previous 1:10,560 1956 OS map, and the application route E-F lies adjacent to the enclosed strip of old tramway and is not visible on the photo. The route then continues from point F along the old tramline which is a well-defined stretch to join up to Greens at point I before Greens Lane at point K. Bacup 654 (south of Law Head) appears to be open for use and well defined, as does the route to Moss Farm, and less so through to Greens.
Investigating Officer's Comments		This indicates that parts of the application route were well-used, although we are unable to determine a status from this use. The enclosed strip parallel to E-F appears to be the remnants of the tramline rather than the track used more recently.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth.



Observations		The application route is shown in its entirety as a well-defined track from Blackwood Road to Greens Lane. The unrecorded section between points E and F is shown on the 2000 aerial photograph, albeit it appears to be less significant than the rest of the route, it is not gated. Bacup 535, 536 and 654 are also shown.
Investigating Officer's Comments		The route continues to be shown as an open wide track for its entirety, including between points E and F which is shown on the aerial as an open track with no gates or obstructions. It appears that the route was open and accessible for use at this time, probably could have been used by equestrians. Bacup 535, 536 and 654 also exist although it is not possible to tell whether there was equestrian use.
Google Earth Images	2005 and 2013	Still aerial images taken from Google Earth, dated January 2005 and April 2013 (shown chronologically), showing the constructed track between points E and F.

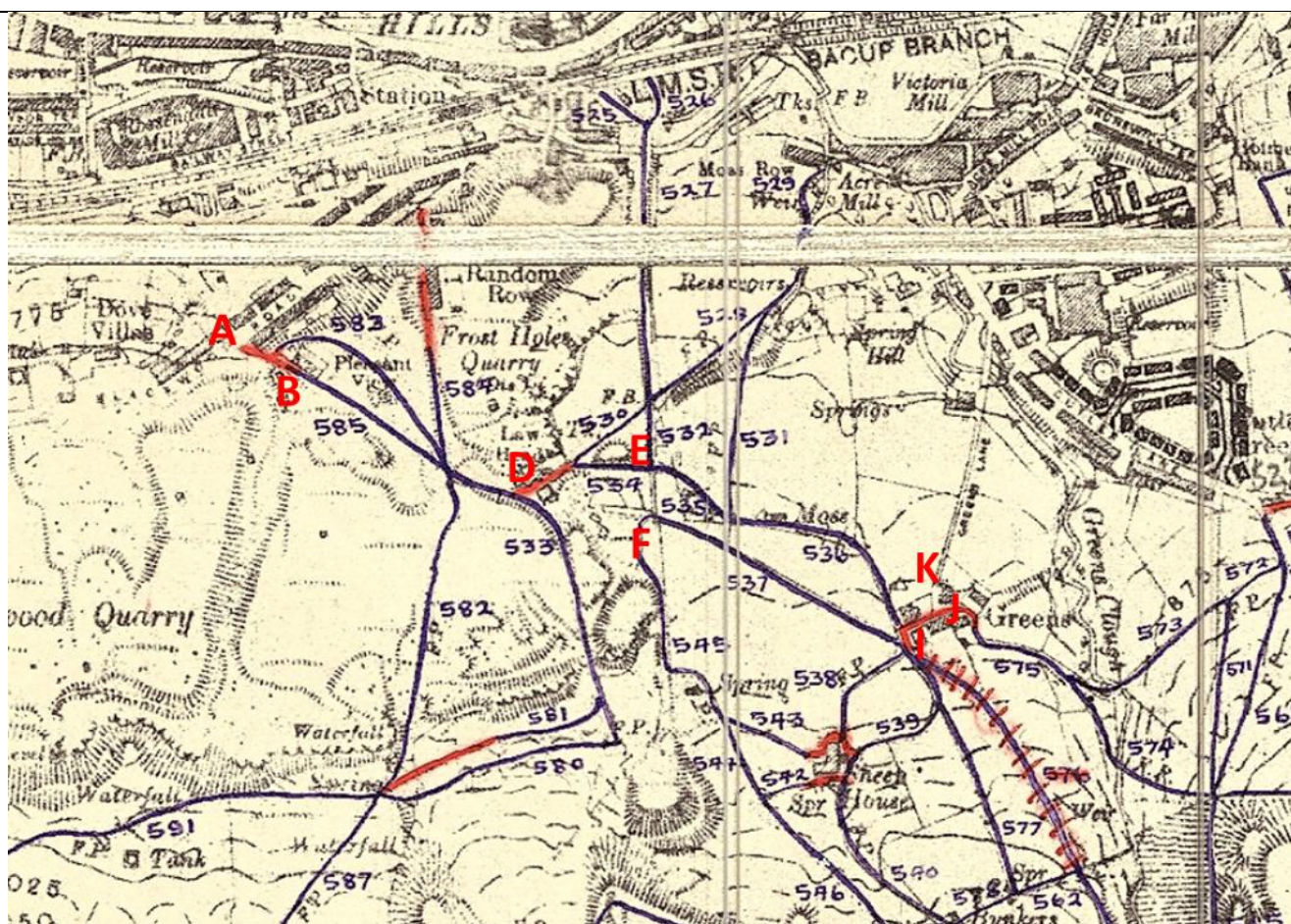


Observations		The images taken from both 2005 and 2013 show the track at Law Head between points E and F. Both of the images show that no gates are in situ. To the east of the track appears to be the remains of the tramline, and could explain the previous bounded strip shown on the 1930 Ordnance Survey. This shows that the more recently constructed track was further west.
Investigating Officer's Comments		Gates are not shown to be obstructing the route between points E and F in 2005 and 2013, suggesting that the route

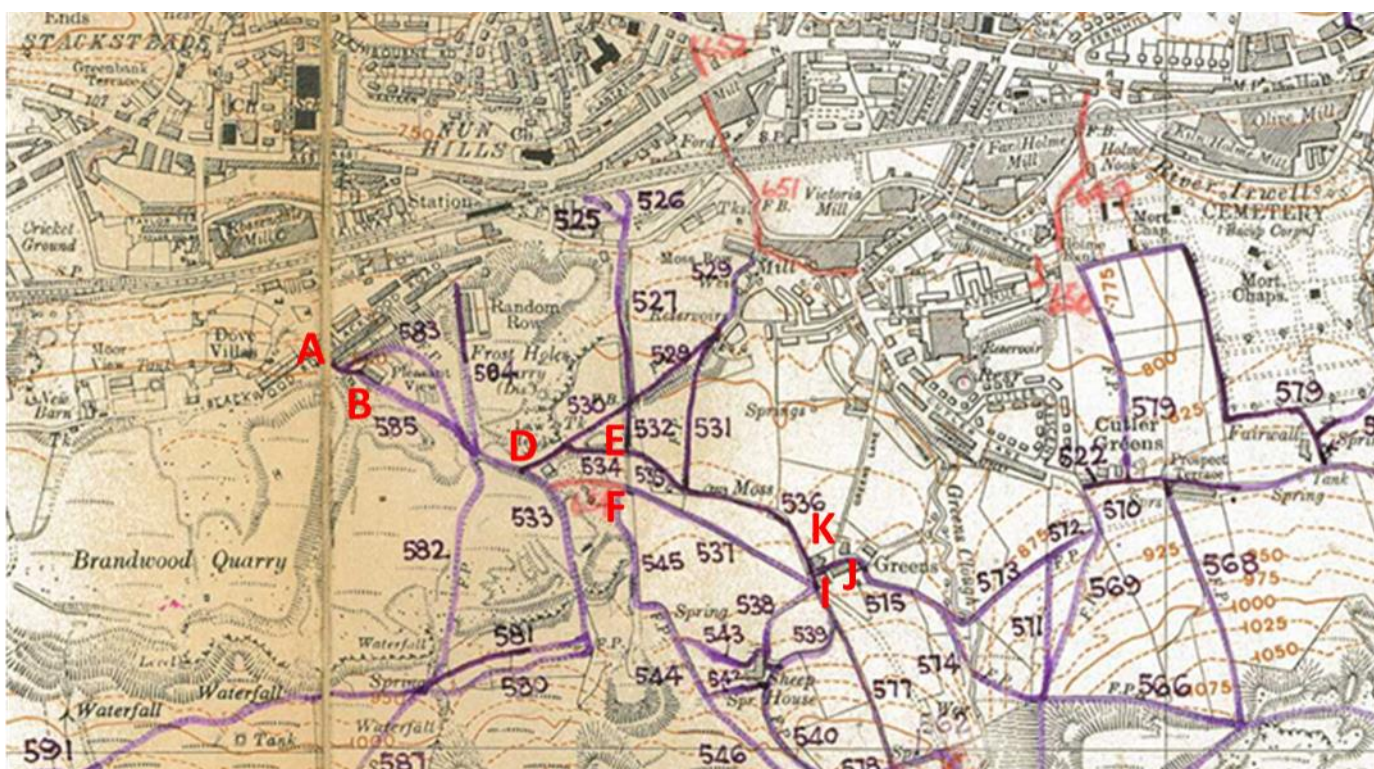
		was open and available to be used.
Google Street View	2009	Photographs captured by Google Street View dated March 2009.



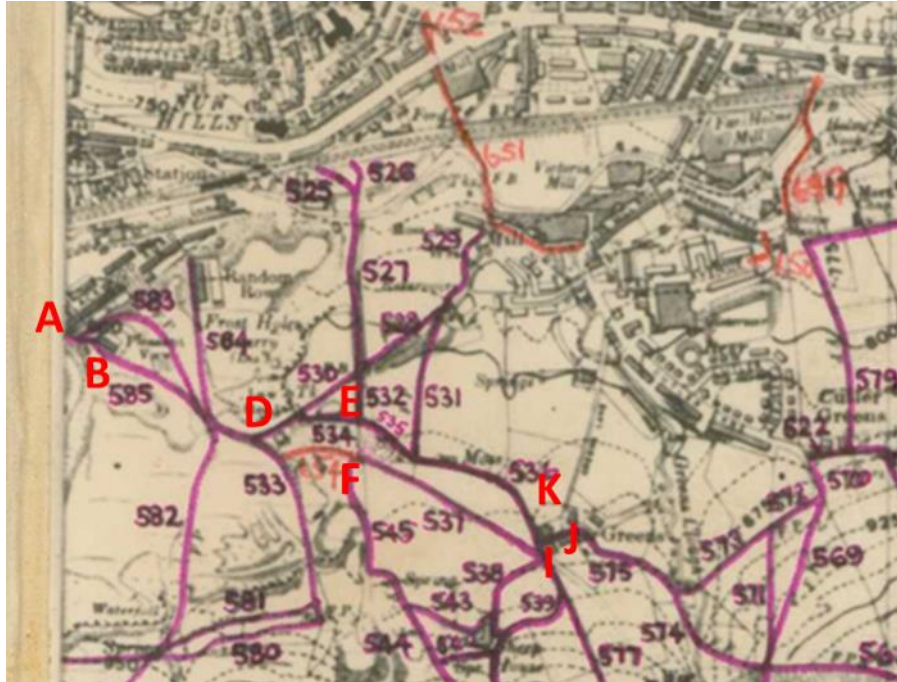
Observations		Photographs captured in March 2009 show that access was available onto the application route from Blackwood Road, point A, and was wide, open and accessible through to Law Head near point D. Street View did not go past point C so the rest of the route cannot be seen. Street View was not available to view from Greens Lane. However, it appears that from Blackwood Road the route is accessible and could have been used by equestrians.
Investigating Officer's Comments		Access onto the route was accessible from point A in 2009. As only part of the route was available to view on Street View no inference can be made with regards to the rest of the route and whether it could be used by equestrians as a through route or from Greens Lane in 2009. But from the images shown, use was open and appears available for equestrians to use from Blackwood Road to point C.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Bacup is a Municipal Borough and therefore a Parish Survey was not compiled.
Draft Map		<p>Lancashire County Council then prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



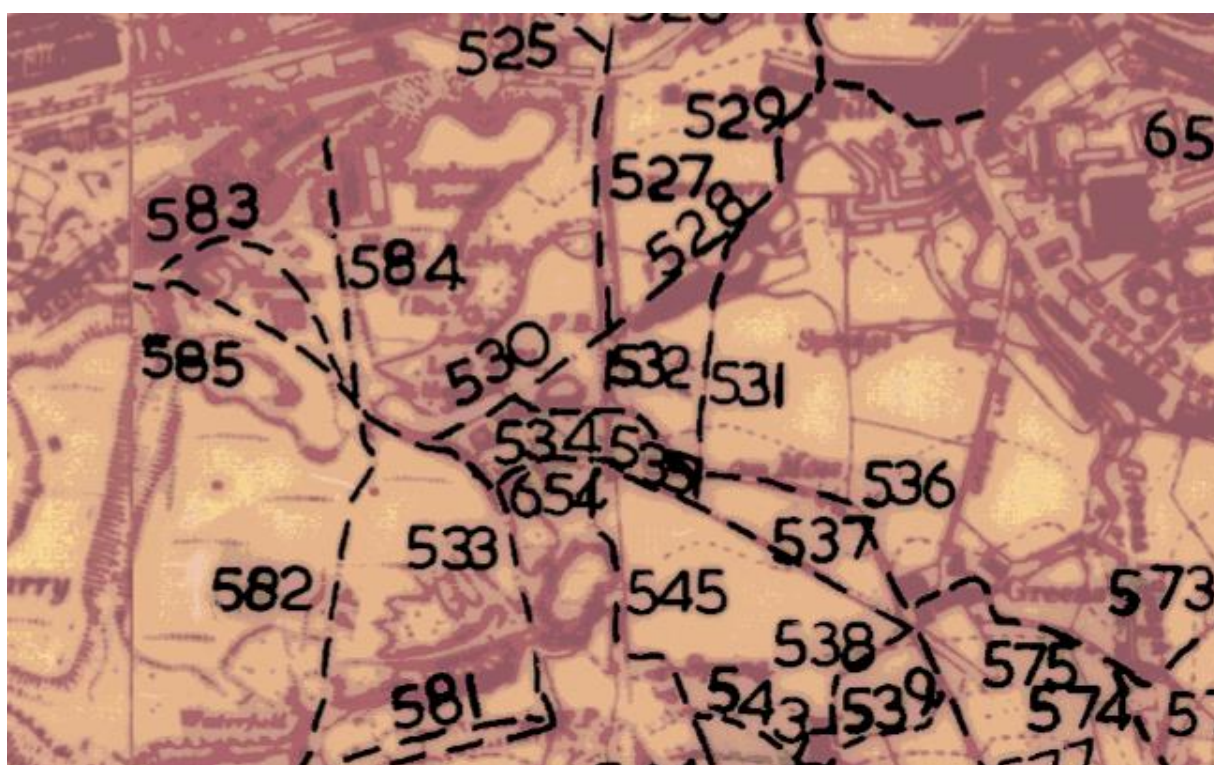
Observations		The majority of the application route was shown on the Draft Map, recorded as public footpaths 585, 533, 530, 534, 537 and 575 Bacup. Several additions in red can be seen linking routes to other public rights of way or other highways. Between points E and F and between J and K the route was not recorded, nor was footpath 654 to the south of Law Head which was shown to be in existence on the OS maps.
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 at this stage had to be made to the Crown Court.



Observations		The footpaths previously recorded on the Draft Map for the application route are shown in purple on the Provisional Map including those marked up in red on the Draft. More additions in red are shown on the Provisional in the immediate area, such as the route south of Law Head which is now labelled as Bacup 654, but a way between points E and F and between J and K are not shown.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route was shown on the First Definitive Map and Statement recorded as public footpaths as the previous Draft and Provisional maps. The parts applied for addition, between points E and F and between J and K, were not recorded. The red additions on this map appear to be the same additions as shown on the Provisional 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 can be seen on the Revised Definitive Map (first review) as public footpaths 585, 533, 530, 534, 537 and 575 Bacup. There is a sheet boundary near to point A and the route does not seem to be shown joining up to Blackwood road. However the Definitive Statement (which accompanies the map) states it proceeds to Blackwood Road.

The unrecorded section at Law Head between points E and F is not shown nor is J-K.

The Definitive Statement describes each individual path. Some give more detail than others, but in this case the description was helpful, particularly in recording structures on the routes at the time. Evidence of a recorded stile etc. could suggest that access was unavailable for equestrians.

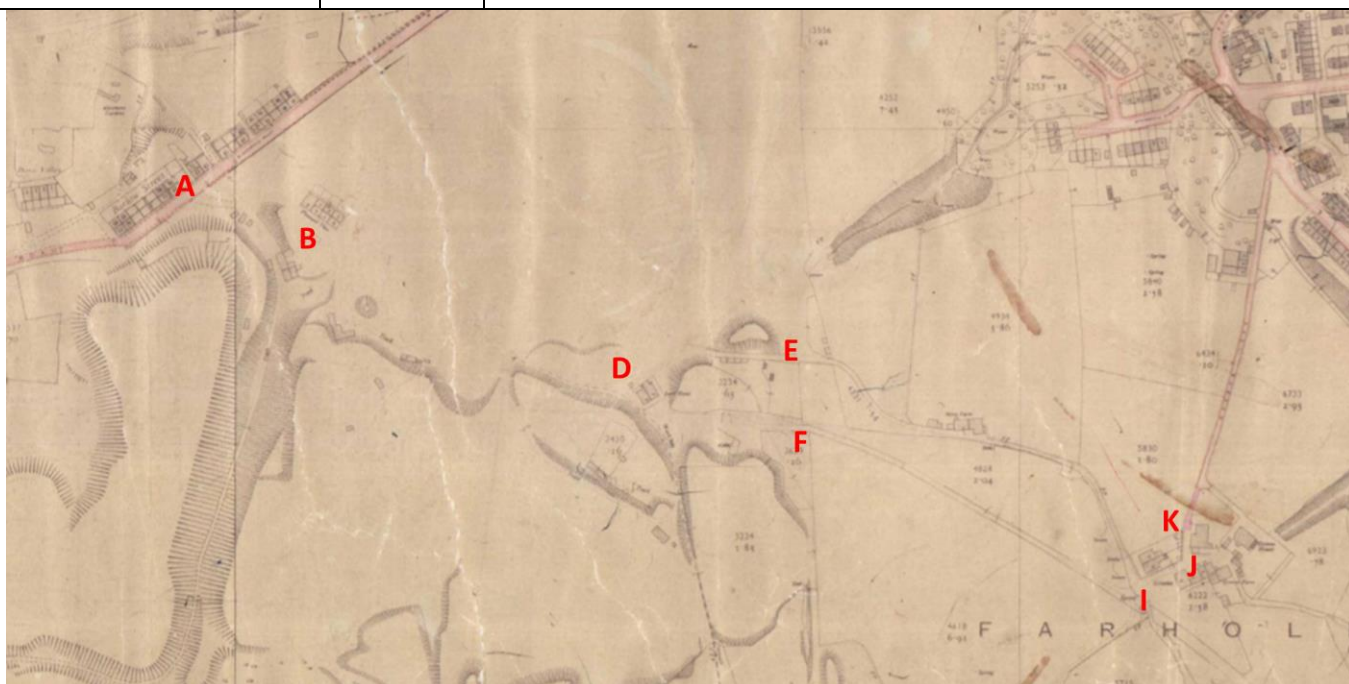
Bacup 585 (A-B-C) – 'Starts at junction of footpaths 533 and 582 and proceeds north-west to Blackwood Road in good condition.' [*i.e. No stiles or gates across the way*]

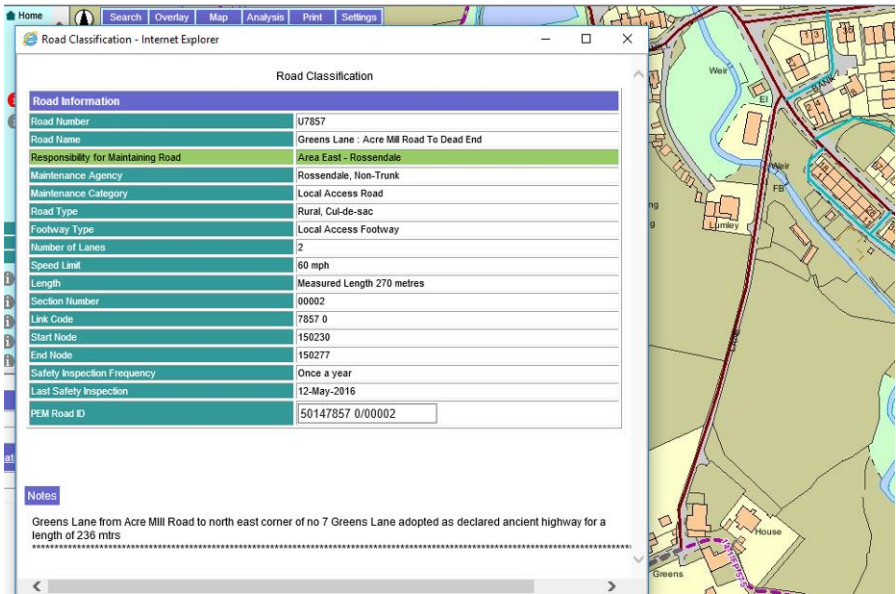
Bacup 530 (D-Bacup 534) – 'Commencing from footpath 527 via a stile proceeding due south-west and terminating via stile at Law Head at junction with footpath 533'. [*i.e. a stile was recorded on the application route west of Law Head*].

Bacup 533 (C-D) – 'Commencing via a field gate to the west of Law Head and proceeding due south via a further field gate (obstructed) to terminate at Branchwood Tip.' [*Field gate across the application route west of Law Head*]

		<p>Bacup 534 (Bacup 533 to E) – 'Commencing from Law Head and proceeding due east to terminate at the junction with footpath 532.' <i>[No stiles or gates across that part of the application route]</i></p> <p>Bacup 535 (E to Moss) – 'Continuation of footpath 534, proceeding due south-east to terminate at junction with footpath 531.' <i>[No stiles or gates across this part of E-I]</i></p> <p>Bacup 536 (Moss to I) – 'Continuation of footpath 535, proceeding due east, passing on the south side of Moss Farm, here turning south east to terminate at Greens. In good condition.' <i>[No stiles or gates across this part of E-I]</i></p> <p>Bacup 537 (F-H) – 'Starting to the south-east of Law Head via field gate, proceeding due south-east passing through another field gate after 100 yards, terminating at Greens via a stile and field gate'. <i>[Field gate near F. Stile and field gate near G at Greens.]</i></p> <p>Bacup 575 (I-J) – 'Starting at the junction of footpath 573 and 574 and terminating via a field gate and stile at Greens, junction with footpath 536. In good condition.' <i>[Field gate and stile on H-I at Greens.]</i></p>
Investigating Officer's Comments		<p>From 1953 through to 1975 there is indication that most of the route was considered to be a public right of way on foot by the Surveying Authority. There were no objections or representations made with regards to the route being recorded on the maps as public footpaths when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. There was nothing recorded on any of the maps to show a route existed between points E and F or between J and K, nor were there any objections or representations made for it not being recorded.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into</p>

		question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any landowner under this provision of non-intention to dedicate public rights of way over their land.
Lancashire County Council Highway Records	1929 and onwards	<p>In 1929 the responsibility for non-county highways passed from district and borough councils to the county councils. 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 coloured and annotated to mark public highways.</p> <p>A highway marked on the map is good evidence but many highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date list of streets maintained at public expense.</p>



Observations	<p>The scanned maps that form part of the highway maintenance records. The plans were made to show the routes considered to be publically maintainable, and coloured such routes in red. Blackwood Road and Greens Lane are both coloured this way, with the remainder of the application route unrecorded. Greens Lane appears to stop at point K. It is unknown when these maps were compiled, or whether they were working documents. Sections of Greens Lane appear to be more vibrant in colour, particularly the section furthest south which could mean that this section was added at a later date, although this is unknown.</p> <p>This information has since been digitised and formed the basis of the highways classification layer, which is also available on the Lancashire County Council website. This digital route shows Greens Lane coloured brown, and a brief description of the road in county council records describes Greens Lane as 'from Acre Mill Road to a dead end' with a note that the length from the east corner of no.7 Greens Lane was adopted as declared ancient highway for a length of 236 metres (point K on the application route)..</p> <p>The digital road classification information ends at point J, at the junction with Bacup 575..</p> 
Investigating Officer's Comments	<p>The highway records do not show the application route to be a highway maintainable at public expense as a road. The highway records inspected in terms of Greens Lane appear to be slightly inconsistent in terms of its end points. The scanned adoption plan shows Greens Lane terminating at point K, however the digital highway records show the route terminating at point J, Both plans show that Greens Lane was considered to be highway maintainable at public expense, and to avoid</p>

		any uncertainty and creating a disconnected route, the application route had been extended to point K, to meet the highway as shown on the adoption plan.
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The affected land is not designated as access land or common land under the Countryside and Rights of Way Act 2000. Nor does it cross a site of Special Scientific Interest or Biological Heritage.

Landownership

Ownership of the land crossed by the application between points C-D, F-G-H-I, J-K and part of the width of I-J is unregistered as is a small area north of point I.

The land between points A and just east of C is registered to The Lancashire County Council of County Hall, Preston, PR1 8XJ.

Summary

From the documentary evidence inspected, it is apparent that the application route, in parts, has been in existence for a substantial amount of time. The route potentially dates back to the early commercial maps, particularly Hennet's, with a route shown from Rakehead to Greens. The Tithe map is also very clear in showing a bounded and coloured track which supports a route passing through Law Head to Greens, although this doesn't exactly coincide with the application route, hence our consideration of additional sections. The Ordnance Survey maps offered good understanding of the surrounding land around Law Head and Greens, and gave an insight into its change of use over the years from quarried land to farmland.

The area in which the application route is situated was originally within quarried land, where a network of tramlines assisted the transportation of the quarried material to the nearby railway. The application route was shown on these maps, in parts, from at least 1893. Some parts were shown as bounded, whilst others were shown as double pecked lines indicating that the route at the time was not enclosed. There was no map evidence for the section of route between points E and F, which corresponds with the information from others, in it being recently (1998) constructed by a former landowner. There was some user evidence that Bacup 654 was previously used before the track E-F was constructed.

J-K Is already recorded as a general purpose vehicular road by the Highways Dept and has therefore not been considered below.

First, considering the route A-B-C-D-E-I-J via Bacup 535 and 536, past Moss Farm, which appears to be the route for which the strongest evidence exists:
With minor exceptions (detailed below) this route has existed continuously at least since the 1840s, was coloured on the Tithe Award map and was excluded from the Finance Act map hereditaments. Much of it has been used by the horse riders providing evidence both before and after the change of route at Law Head. Although suggestive of public carriageway exclusion from the hereditaments is not conclusive

and similarly the Tithe Map colouring suggests carriageway but the text of the Award was unavailable.

The exceptions are as follows:

A-B did not exist until the 1890s so was not on the Tithe but was on Finance Act map.

B-C was on the Tithe but not the Finance Act map because that land was quarried around 1910 (this section was on the 1890s map and earlier and was on 1930s and later but not available around 1910).

However, A-B-C is owned by Lancashire County Council and unless Members of the Regulatory Committee express that they object to such use there is no evidence to counter that which suggests common law dedication can be inferred.

From point E for about 60m west the route did not exist until the 1890s so was not on the Tithe (the route at that time ran a little to the north) but was excluded on the Finance Act map. It could be argued that the presumption of regularity applies, i.e. although no documents were found to show that the highway was legally diverted from the line shown on the Tithe Award to that shown on the Finance Act map there is no evidence to suggest that it was not done properly and legally and there seems to be a dearth of documentation of that area for the late 19th Century. This line is also supported by user evidence and not called into question.

Overall there is quite a bit of evidence suggesting carriageway, and hence restricted byway, and all of this route is on either coloured on the Tithe Award map or excluded from hereditaments on the Finance Act map most but not all is on both for the full length. We consider the evidence shows at least bridleway but we are not confident to say that on the balance of probabilities it shows restricted byway rights exist.

Secondly, branching off this path is the track E-F created in 1998 leading to the former mineral line F-G-H and through to rejoin the above route at Greens (point I). This is based on user evidence from 1998 through to the rights being called into question in 2014 or 2015 so there is not enough time for statutory dedication (Section 31 of the Highways Act 1980) but the inference of common law dedication inferred from use during 1998-2009, when the property changed hands, is supported by the letter from the previous owner. However, this is effectively a letter of retrospective dedication after her ownership ceased. Furthermore some users regarded use of this section as with permission. These elements are sufficient to raise a reasonable allegation that bridleway rights subsist, and hence an Order made to add a bridleway, but we are not confident at this stage that the higher test for confirmation can be met nor of the test for making an Order to upgrade footpath to bridleway.

Thirdly, the way via E-F was only created initially for private use, and only became used by the public on horseback, as a result of an unlawful obstruction (even assuming only footpath rights existed) of the way which had been used prior to 1998, i.e. via Bacup 654 south of Law Head to point F. There is therefore the possibility that at the time that this right was called into question by the way being blocked to

horses bridleway rights had already arisen. However, although this might be the case we do not have sufficient evidence to reasonably allege such rights.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The application was supported by the following:

1. Letter of dedication from previous landowner (Ada Swift)
2. 17 User Evidence Forms
3. Map of the route

Letter of Dedication

The letter of dedication is from Ada Swift who between April 1995 and April 2009 lived at 7 Law Head, Stacksteads. She provides that in 1998 her access to the field via Bacup 654 was locked to them by a newcomer so they constructed a new track through the meadow. This route went around the north of the house on Bacup 530 and 534 then along a new track E-F. They allowed horse riders to use the new path freely and without permission until they moved out of the property in April 2009 and there were no gates at all.

User Evidence Forms

The application route use varies between the years 1986 and 2016.

- 16 of the 17 users confirmed usage of the full length of the route on horseback for the following years:
1998 – 2011 – (1) Monthly
1998 – 2015 – (7) (4 weekly and 3 monthly)
- 6 users used the application route separately on a weekly basis between the following years: 1986 – 2015; 1991 – 2016; 1997 – 2016; 1999 – 2016; 1998 – 2014; 1999 – 2014
- 2 users used the application route separately on a daily basis between the following years: 2002 – 2015 and 2012 – 2015.
- 1 user used the route on a horse drawn vehicle monthly from 1998 - 2010
- 4 of the 17 users also used the route on bicycle for the following years:
2008 – 2015; 2002 – 2015; 2014 - 2015 - Weekly
1997 – 2016 - Monthly
- 13 of the 17 users have also used the route on foot

Only 2 of the 17 user evidences provided in the application cover usage of the route by bike or horseback for a 20 year period or more.

7 users provide that the route has not always followed the application route. They comment that before 1998 they would use the route below Law Head along Bacup 654/533 from 537 joining back up with Bacup 585 rather than the application route to the north of Law Head via Bacup 535 / 534. This was because a gate at the junction

of Bacup 654 & 533 was obstructed with a boulder in 1998 preventing use on bike or horse, only opening wide enough to allow access for pedestrians.

4 users provide that around the same time that the gate was obstructed in 1998, the then owners of 7 Law Head created the track running from Bacup 537 north to Bacup 535/534 (F-E) that could be used to connect the route back up to Bacup 533 and 585 continuing to Blackwood Road.

When using the route, all 17 of the users provided that they saw other users also using the same route on foot and on horse, 13 users provided that they saw people using the route on bicycle or horse drawn vehicle and 2 users claim to have seen motorised vehicles of which one was a motorbike. 14 of the users answered yes to the other users they saw using exactly the same route as the claimed route that they were also using. 2 users provided that they saw other cyclists and horse riders using the same route as them but that pedestrians would carry on along FP 654 below Law Head and joining back onto the route on FP 585 as they could get through the gate. 1 user answered no and provided that they saw walkers taking the FP 654 route as they could pass through the gate.

9 users provide that in the summer of 2015 gates were erected and locked by the current owners at points E and F. This is on the track that was created by the Swifts (previous owners). This has prevented them from taking the route since that time. 2 of the users were given the code to the combination locks on the gates but haven't used them as they were deterred by having to dismount their horse and by the barbed wire on the fence.

1 user was given the code to open the gates and used the route up until 2016 when the combination locks were changed to padlocks.

14 users answered yes to meeting landowners whilst using the route. Most chats were general pleasantries or about their dogs or horse related, depending on the landowner. 1 user provides that the landowner where the gates have been erected and locked, told them that they were *"stopping the route to dog walkers allowing their dogs to chase their horses and foul the footpath."*

4 users answered yes to having been given permission to use the route between points E-F. 1 was permission from the previous owner, another provided that they had had permission from both the previous and current owner and the 2 other users were referring to the current owner giving them permission to use the route. 3 of these users were provided the combination for the locks on the gate.

1 user answered yes to having been turned back on the route, but this was by notice erected on the gate, not by a landowner.

7 users provide that they saw notices erected saying *"Private property. Not a public right of way. Some horses allowed through with our permission"*. The notices were erected by the current owners on the gates at points E and F (either end of the track created by the Swifts).

8 users provide that there is a barrier/gate with a gap wide enough for horses to fit through but not wide enough for a vehicle at the eastern end of the route at the top of Greens Lane (point H).

Other Evidence from Users:

- Prior to 1998 when Bacup 654 was blocked that was the route used by horse riders, i.e. south of Law Head. Initially it was blocked by a locked gate then later a boulder restricting how far a gate could open. The gate was near the junction of Bacup 654 & 533.
- After 1998 the owner, whose private access was also stopped by the obstruction, created a track E-F to connect the track to the south of Law Head with the track to the north, and horse riders started to use that.
- Some users said that they knew the owner or that they were 'allowed' to use it
- In spring/summer of 2015 two gates were installed. These were locked by combination locks.
- Some were given the code when combination locks were fitted.
- In late summer/autumn 2016 the combinations locks were replaced by padlocks.

Evidence from Landowners and Others

Letter of objection – Mr and Mrs Garner

They purchased the property in 2009 being aware of the existing footpaths at the front and to the rear. They were immediately aware of neighbours walking through the area E-F as there weren't any gates on and the existing footpath via Moss Farm was gated. They informed people it was private property and not a public footpath but were not in a position to put gates up at the time. They didn't have any further problems with people trespassing after that.

Mrs Garner joined Stacksteads Friendly Riders around 2011/12 and met more locals through the riding club. She allowed on occasion for the ride to go through the property and all riders were made fully aware they were riding on a footpath by permission on the 2 occasions. There were only 2 rides which went through in the few years SFR existed around 2013/14. Mrs Garner gave permission for some of the members who are neighbours access on occasion on horseback only. They used the designated footpaths if they were walking their dogs etc.

Unfortunately due to several incidents occurring, gating the area became a priority in 2013/ 2014. It was taped off in 2014 and the fence and gates were completed in 2015. A sign advising it was private property was erected. Some horses were allowed through with permission initially using combination locks. These locks didn't work well so were replaced with key locks. No keys were given out and the gates are only unlocked for the tractor since 2015.

In January 2016 the gates were unlocked for permissive access by a group of horses who were protesting against an existing bridleway being surfaced with tarmac.

Letter of support - Mrs Swift

Ada Swift lived at no 7 Lawhead between the years 1995 and 2009. In 1998 access to her field via Bacup 654 was locked by a neighbour so she constructed a new track through the meadow (E-F). This way went around to the north of the house. She allowed horse riders to use the new path freely and without permission until she moved out on the 7th April 2009. There were no gates.

Letter of support - Mrs Sykes

Mrs Sykes used the application route from July 1999 on foot, leading horses and on horseback. Saying E-F was always accessible and there were no gates in place until the last couple of years. She was given the code to the combination lock by the landowner and allowed through riding and leading ponies. She says she was never refused access by either the current or previous landowner.

Mr G Bithell sent a letter of support.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

1. Route A-B-C-D-E-I-J

- Map and other documentary evidence indicates that most sections of the route (via Bacup 536) have existed continually since at least the 1840's.
- Most sections of the route excluded from the hereditaments on the 1910 Finance Act Map.
- Most of the route coloured on the Tithe Award Map.
- Evidence of use on horseback of A-E.

2. Route E-F-G-H-I:

- Track between E-F built in 1998 by former landowner and not gated at that time.
- The Aerial Photograph (2000) appears to show that at that time the entirety of the route (including E-F) was open and accessible for use, including possible equestrian use.
- Google Images 2005 and 2013 – gates are not shown to be obstructing the route between points E-F suggesting that the route was, at these times, open and accessible for use.
- Inference of dedication at Common law relating to use between 1998 and 2009 supported by letter from previous landowner.

Against Making an Order(s)

1. Route A-B-C-D-E-I-J:

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2. Route E-F-G-H-I:

- User evidence from 1998 through to the rights being called into question not sufficient to satisfy the 20 year period for deemed dedication under s31 Highways Act 1980.
- No map evidence for section of the route E-F.
- Route E-F created initially only for private use and only became used by members of the public on horseback as a result of unlawful obstruction of the way used prior to 1998 (via Bacup 654).
- Use of the route in 2013/2014 between E-F with permission of landowners. who made users aware that this section of the route was not bridleway.
- Section of the route E-F taped off in 2014 with padlocked gates with barbed wire and Notices from 2015.

Conclusion

The application is to add a bridleway between points E-F and H-I of the route, which are not currently recorded as a public right of way. Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, is sufficient to show that a public bridleway which is not shown in the Definitive Map and Statement subsists (the higher test for confirming an order) or is reasonably alleged to subsist (the lower test for making an order).

The remainder of the route under consideration between points A-B-C-D-E, F-G-H and I-J is currently recorded as public footpath. The application is to upgrade these sections of footpath to bridleway, as it is suggested that the sections of public footpath carry higher public rights. Section E-I, for which evidence of higher rights was found, is also currently recorded as footpath. Committee must consider whether, on the balance of probability, the evidence discovered, when considered with all other relevant evidence available, shows that the existing public footpath ought to be shown as a public bridleway and that the Definitive Map and Statement requires modification to reflect this.

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

Inferred Dedication at Common Law

Firstly looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report from the various map and documentary evidence coupled with the evidence on site does, on balance, indicate how the route should be recorded.

Initially considering the route A-B-C-D-E-I-J. With minor exceptions, as detailed in the Summary section of the report, the analysis of the map and documentary evidence indicates that the route A-B-C-D-E-I-J (via Bacup 535 and 536) has existed continually since at least the 1840's.

The Finance Act Map 1910, although not conclusive, adds further weight that the route under consideration was a public route and the fact that it was excluded from the taxable numbered plots is good evidence that the route carried public carriageway rights.

In addition to this, the route was coloured on the Tithe Award Map indicating that the route appears to have been regarded as a higher status than a footpath, potentially a bridleway or carriageway.

All of the route, except E-I, has been used on horseback, with evidence provided in respect of both before and after the changes at Law Head.

Committee will note that whilst there is some evidence to suggest carriageway, and therefore restricted byway, it is considered that although the evidence shows at least bridleway, it cannot be said with any certainty that on the balance of probabilities, restricted byway rights exist.

In relation to the route from points E-F, which Committee will note was established in 1998, leads to points F-G-H and then re-joins the route at point I. It is suggested that the inference of dedication at common law relating to use between 1998 and 2009 is supported by a letter from the previous landowner.

On balance, the map and other documentary evidence may in itself be considered sufficient to conclude that the route A-B-C-D-E-I-J was at least a historical public bridleway and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. However, should Committee have any reservations as to the strength of the map and documentary evidence it may wish to also consider deemed dedication under Section 31 Highways Act 1980.

Deemed Dedication under s31 Highways Act 1980

Committee will be aware that in order to satisfy the criteria for Section 31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter, the evidence indicates that access to the route was denied in 2014 with the taping off of the route and the subsequent presence of the locked gates at points E and F of the route from 2015. Accordingly, it is suggested that the 20-year period under consideration for the purposes of establishing deemed dedication would be 1994-2014.

The applicant has provided seventeen user evidence forms in support of the application, which refer to regular use of the route from 1986. Whilst only two of the seventeen users claim to have used the route on cycle or horseback for the whole of the 20-year period under consideration or more, all seventeen users do however provide that they witnessed others using the route on foot or horseback. Sixteen of the seventeen users also confirmed use of the full length of the route on horseback on a regular basis.

Thirteen of the seventeen users also refer to having used the route on foot with a small number of the users referring to use on a pedal cycle or by horse drawn vehicle. Others refer to having seen other users on bicycles or horse drawn vehicles. Two users also refer to having seen a motorised vehicle, one being a motorbike.

Seven of the users state that the route has not always followed the claimed line and provide that prior to 1998, due to a gate at the junction of Bacup 654 and 533 being obstructed by a boulder and preventing use on horseback or bicycle, they used an alternative route.

Nine of the users make reference to the gates being erected and locked at points E and F of the route. This has prevented their use of the route E to F since that time. Four of the users refer to having been given permission to use the route between points E and F and one user refers to having been turned back on the route as a result of the notice erected on the gate. Seven of the users state that they saw the notices attached to the gates at points E and F of the route. Eight of the users also refer to a barrier/gate at point H of the route but state that whilst this is not wide enough for vehicular access, it is wide enough for equestrian use.

Committee will note the letter of objection from the current landowners which states that on purchasing the property in 2009 they informed neighbours walking the route E-F that this was private property and not a public right of way. However, Committee will also note that only one user refers to having been turned back on the route and this was as the result of a notice on the gate in 2015 and not with reference to a conversation with a landowner.

Three letters were received in support of the application. The first letter is from the previous landowner, stating that she allowed use of the new path that she constructed from E-F in 1998, freely and without permission until she moved in 2009. The second letter of support also provides further evidence of unobstructed use of the route from July 1999 on foot, leading a horse and on horseback, including use of E-F until the gates were put in place. A third letter of support was also received

Whilst the 20-year period for deemed dedication under s31 highways Act 1980 cannot be satisfied in relation to the section of the route E-F as a result of its creation in 1998 and the rights being subsequently called into question in 2014, Committee will note the position regarding inferred dedication of this section of the route as outlined above.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the criteria under section 31 Highways Act 1980 cannot be satisfied.

However, Committee may consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication at common law.

Committee is therefore advised to accept the application, with modifications.

In relation to the route A-B-C-D-E-I-J (via Bacup 535 and 536) Committee is advised to make an Order and promote the Order to confirmation.

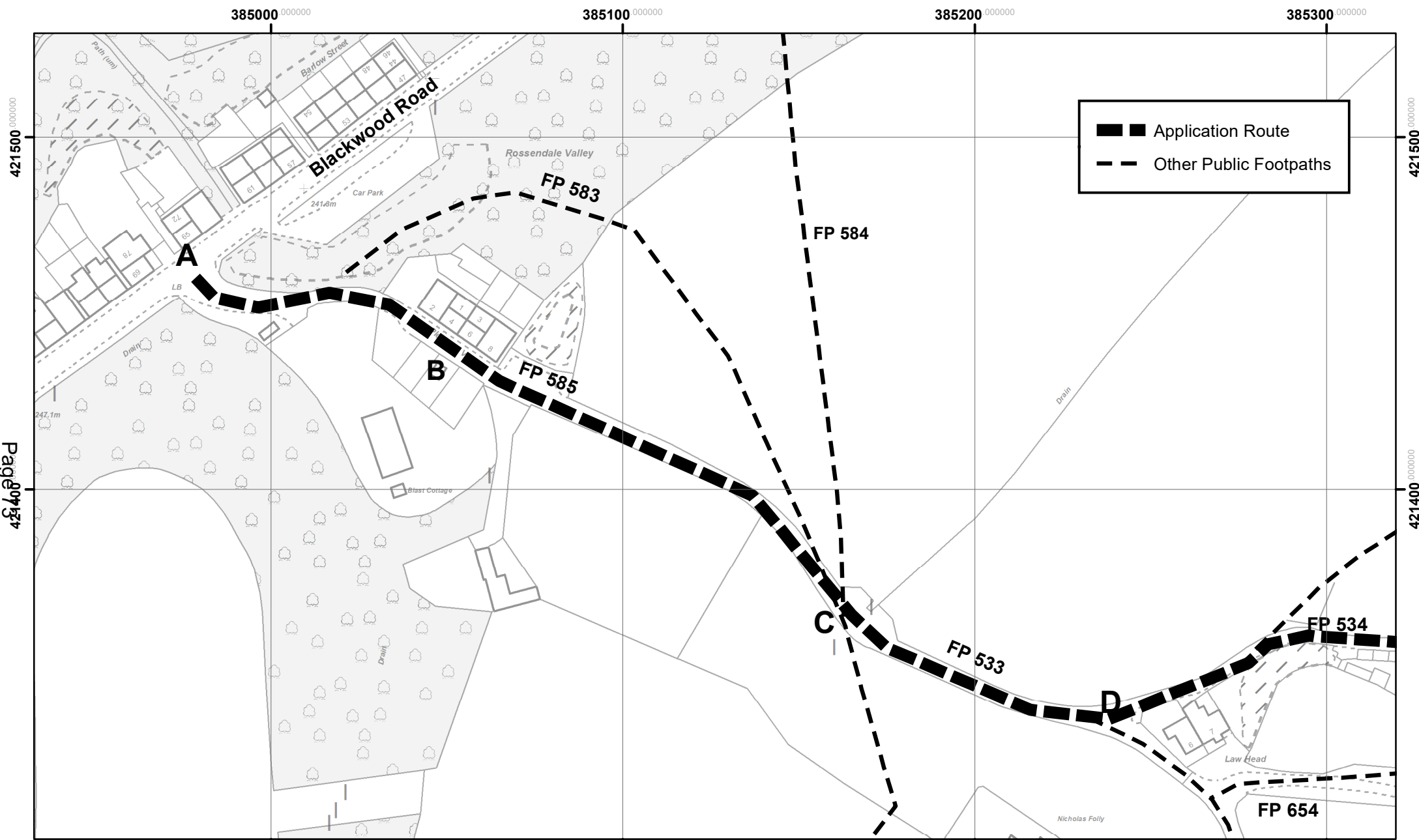
In relation to the route E-F-G-H-I Committee is advised to make an Order but, not being satisfied that the higher test for confirming the said Order can be satisfied, for the matter to be returned to Committee to decide what stance to take regarding confirmation of the Order.

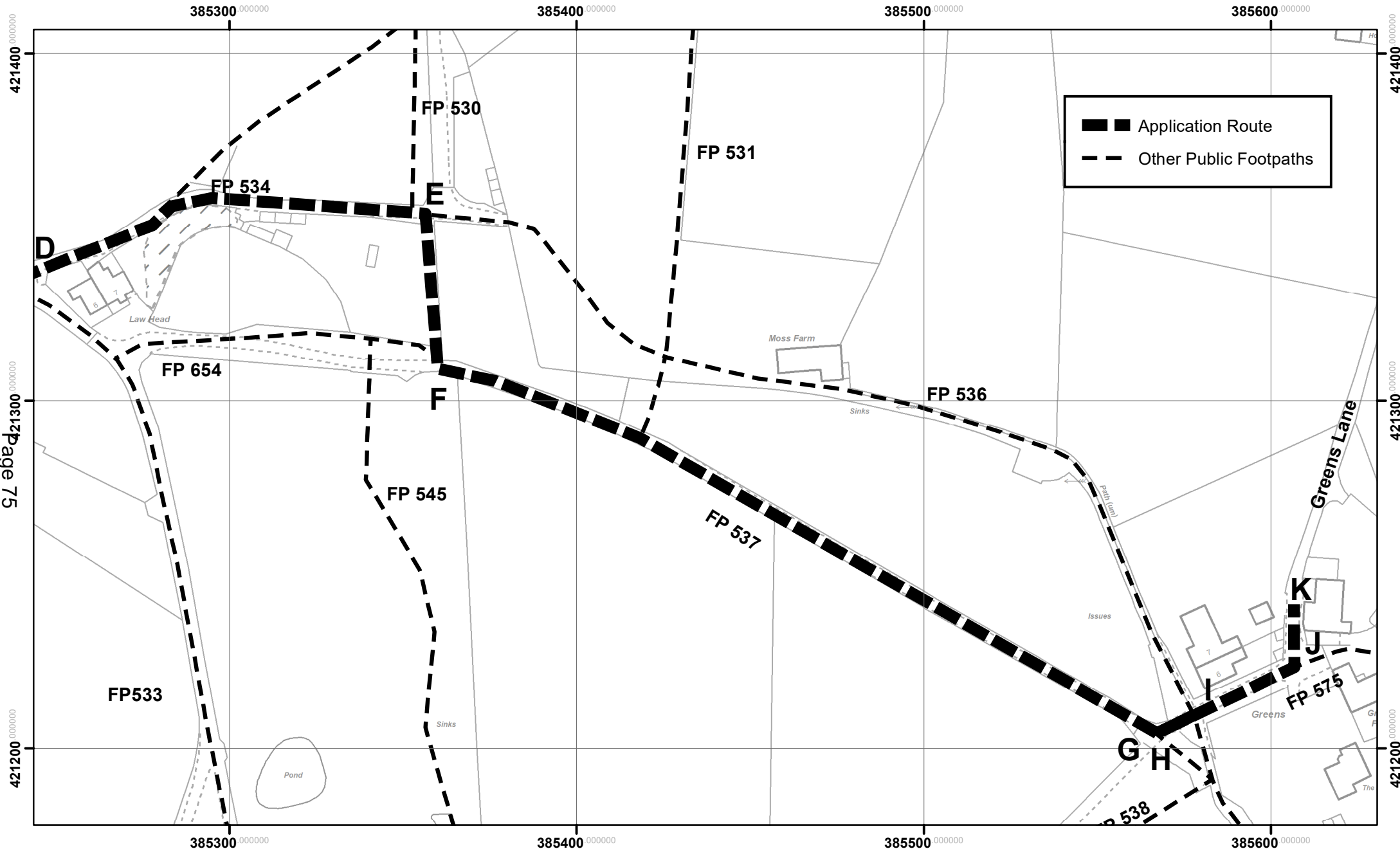
Risk management

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: 804-589		Simon Moore, 01772 531280, County Secretary and Solicitors Group
Reason for inclusion in Part II, if appropriate		
N/A		





Wildlife and Countryside Act 1981

Application to record a Bridleway from
Blackwood Road to Greens Lane, Bacup,
Rossendale Borough

Photographs taken 2018 and 2020

Point A – Blackwood Road



Notices at Point A



Between Point A and B



Looking back to Point A at Blackwood Road



Heading towards Point B



Point B – adjacent to the properties at Pleasant View



Heading towards Point C



Looking back to Point B



Point C



Looking towards Law Head at Point D



Point D



Notice near Point D



Point D – Passing Law Head



Between Point D and E



Approaching Point E



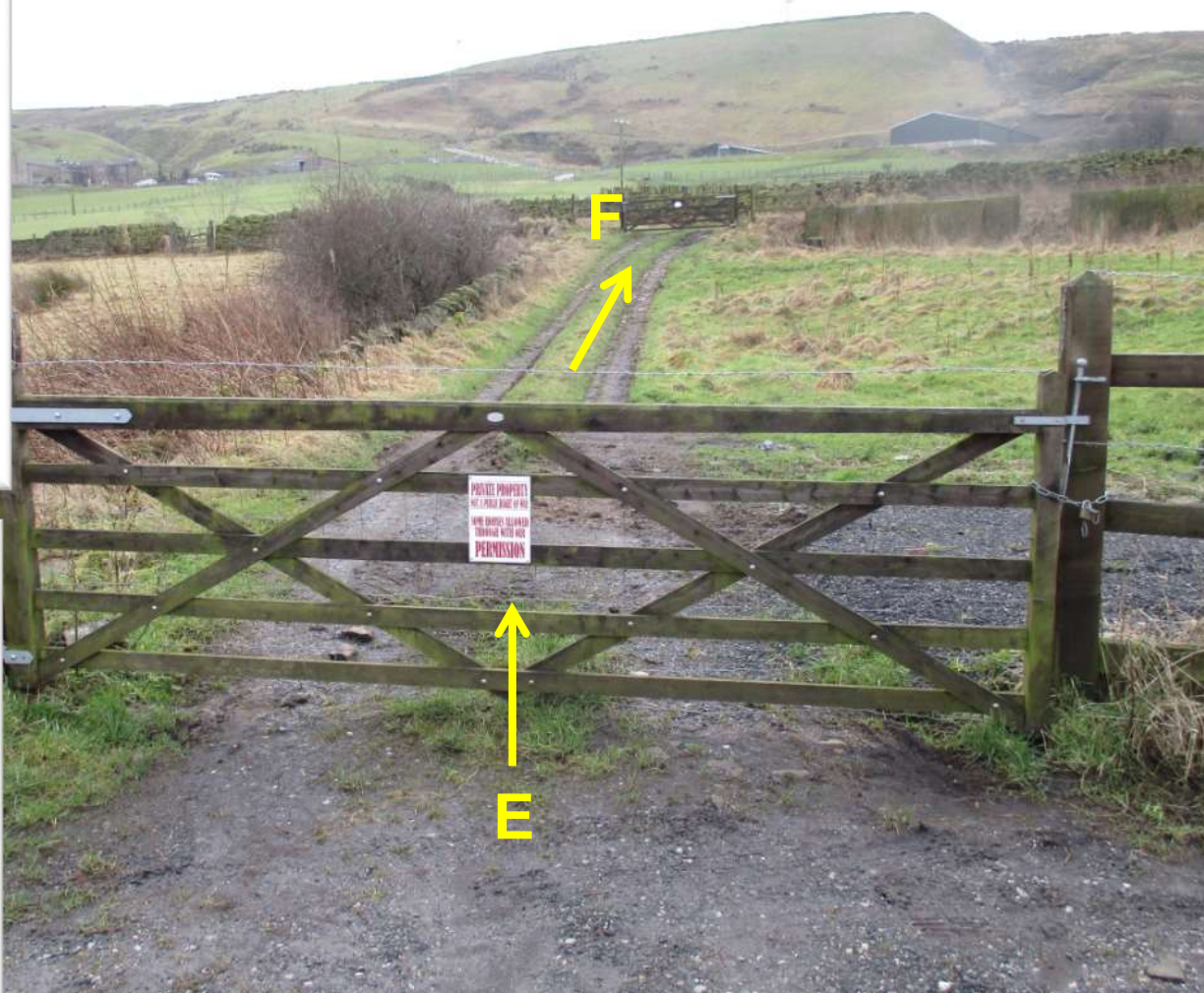
Bacup
535/536 via
Moss



Point E



PRIVATE PROPERTY
NOT A PUBLIC RIGHT OF WAY
SOME HORSES ALLOWED
THROUGH WITH OUR
PERMISSION



F

E



Looking towards Point **F**



Point F



From Point F looking towards point G



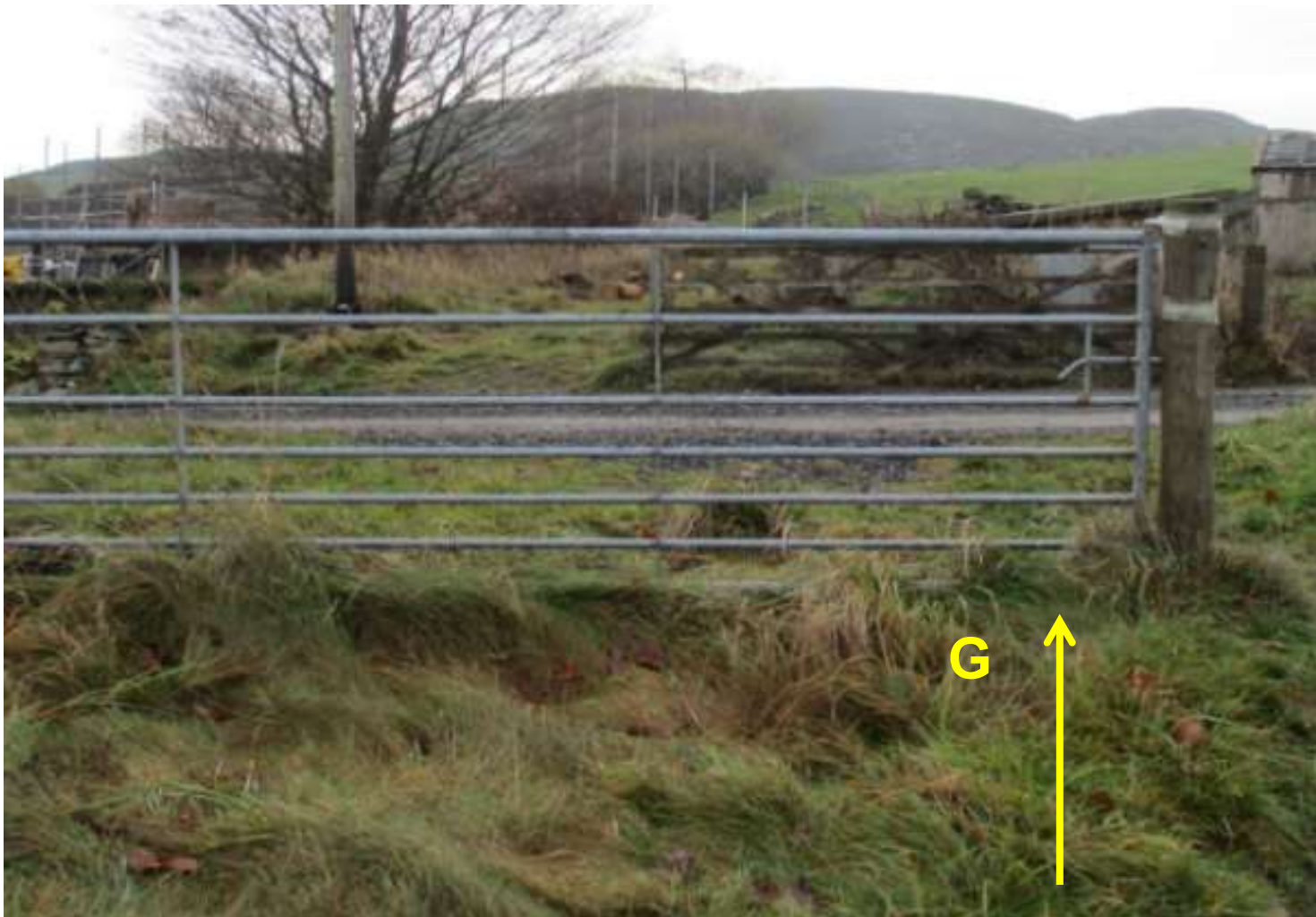
Between points F and G



Looking back towards point F



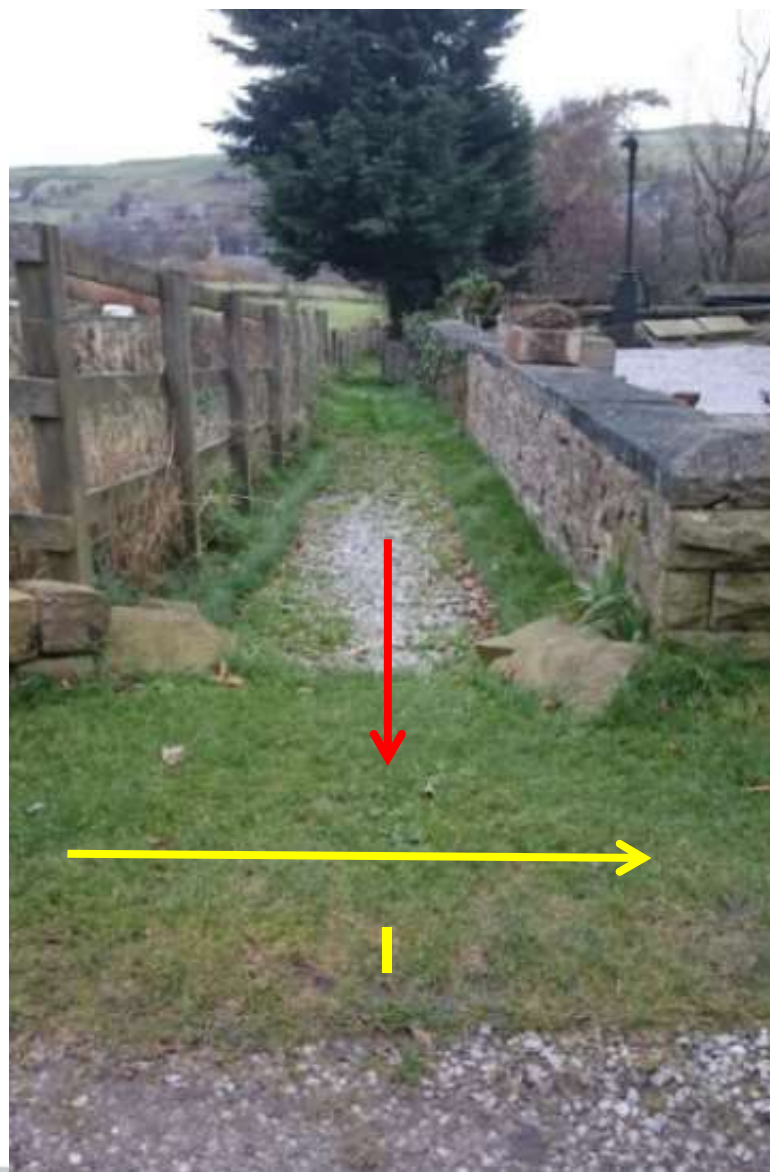
Point G



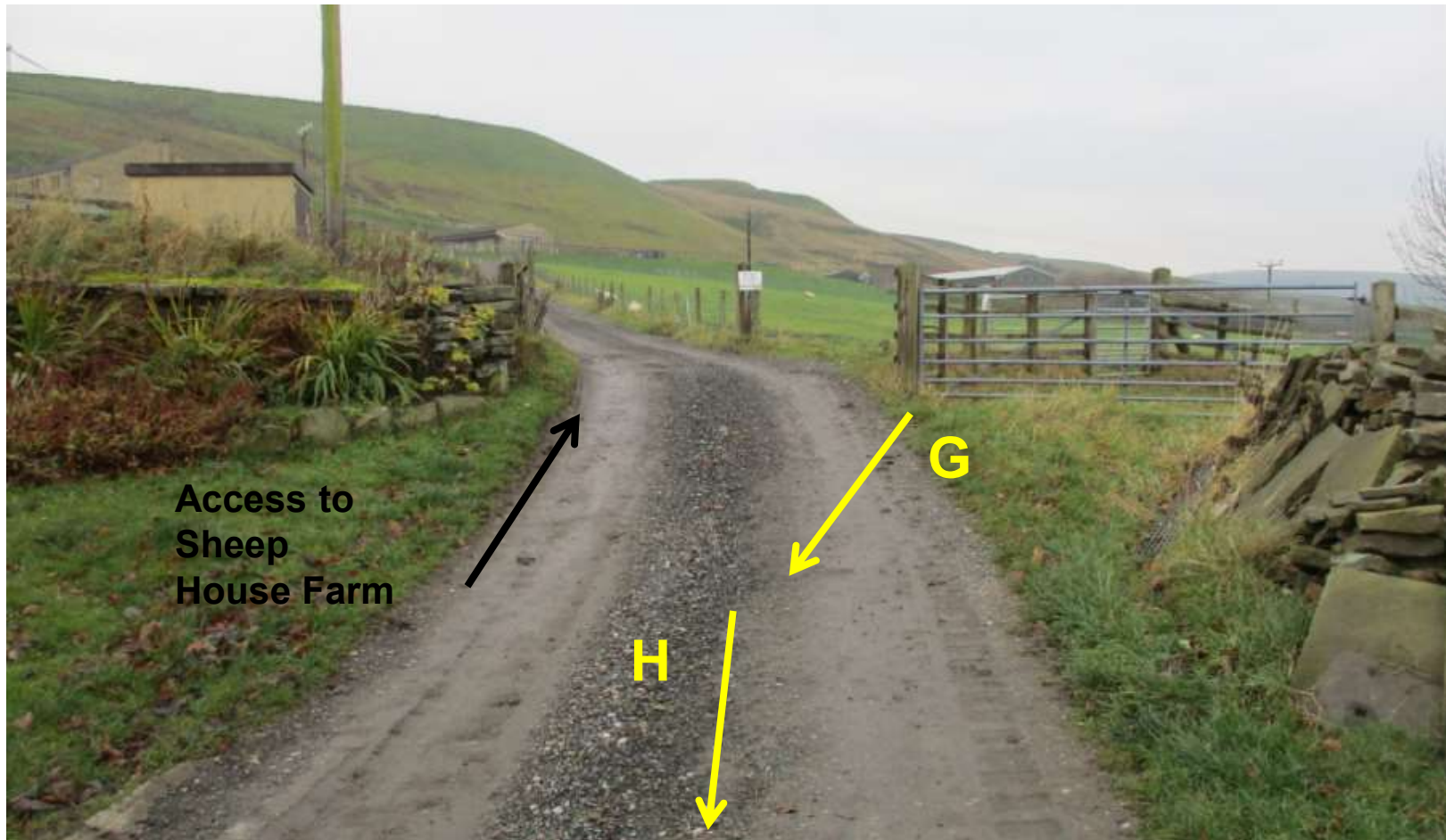
Point H and Point I



Point I – Junction with Bacup 536



Looking back to point G and H



Between Point I and J



Point K at Greens Lane



Bacup 535 and 536 – Via Moss Farm

Approaching Point E



Past garden of Moss Farm and looking back to gate



Passing through Moss Farm to stile



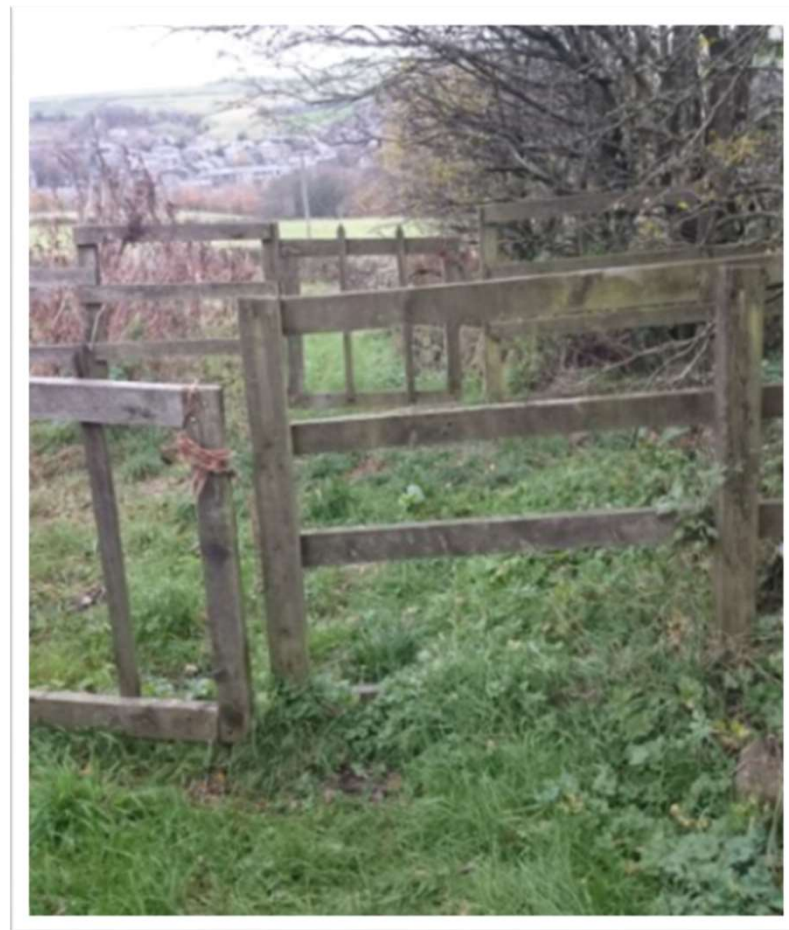
Bounded path towards Point I



Looking back at Moss Farm



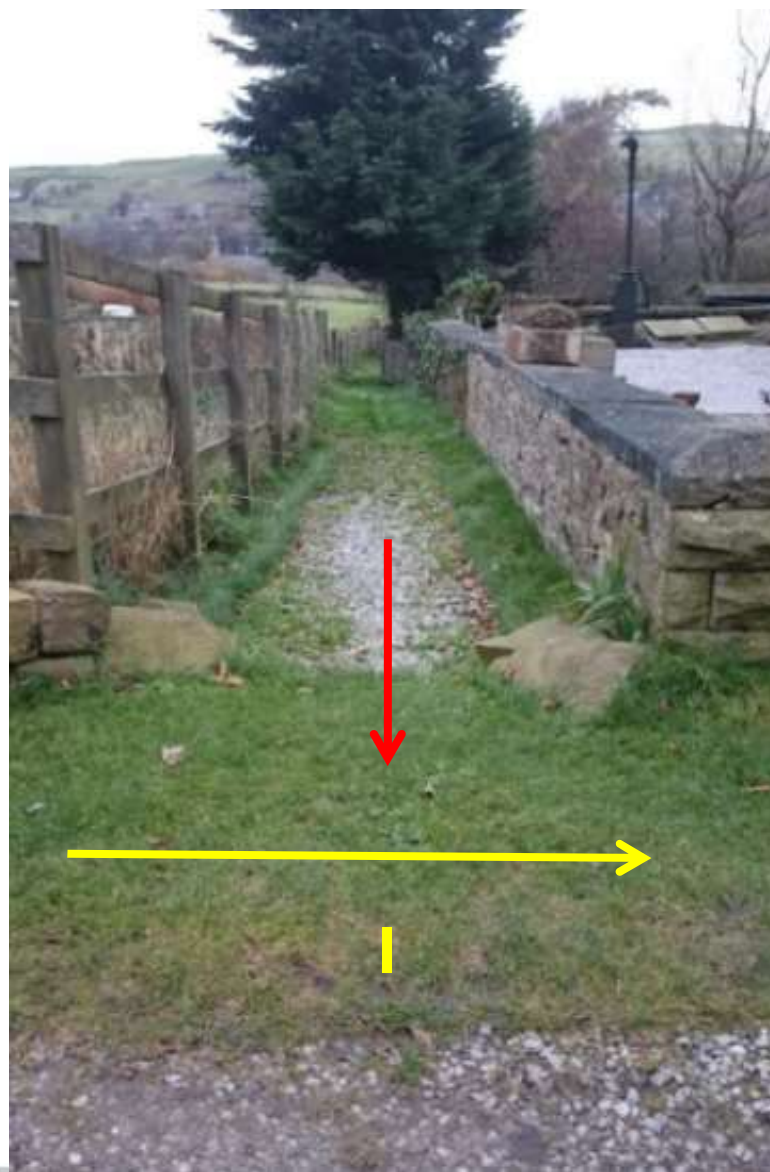
Heading towards Point I - gates



Heading towards Point I – Pipe covered with rocks



Junction with Point I



Bacup 654 – South of Law Head

Point D at Law Head



Boulder and gate on entrance to Bacup 654, South of Law Head





Looking back to Law Head



Heading towards Point F



Point F



Regulatory Committee

Meeting to be held on 2 December 2020

Part I

Electoral Division affected:
Burscough and Rufford

Highways Act 1980 – Sections 26 and 118
Wildlife and Countryside Act 1981 – Section 53A
Replacement (by Creation and Extinguishment) of Footpaths Rufford 9 and 18
at Brick Kiln Farm, West Lancashire Borough
(Annexes 'B' and 'C' refer)

Contact for further information:

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Executive Summary

The proposed replacement of the routes of Footpaths Rufford 9 and 18 by Public Path Creation and Extinguishment Orders at Rufford, West Lancashire Borough.

Recommendation

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 26 of the Highways Act 1980 to create new lines of Footpaths Rufford 9 & 18 as shown by bold broken lines and marked F-E and C-D on the attached map; and
- (ii) that a concurrent Order be made under Section 118 of the Highways Act 1980 to extinguish the old lines of Footpaths Rufford 9 & 18 as shown by bold continuous lines and marked G-H and A-B on the attached map.
- (iii) That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Planning Inspectorate and that the Authority seek confirmation of the Orders and if necessary promote them at public inquiry.
- (iv) That provision be included in the Orders such that they are also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the creation and extinguishment.

Background

The county council has been in discussion with the owners of Brick Kiln Farm regarding a proposal to move a narrow and difficult public footpath from the northeast side of Rufford Boundary Sluice to an improved path on the southwest side and to remove a public footpath passing through the farm yard, replacing it with one along a farm track which is a continuation of Sluice Lane.

Footpath Rufford 9 on its current alignment on the northeast bank of Rufford Boundary Sluice is narrow and runs between the edge of the sluice and boundary fences. In places the footpath is not wide enough for two people to pass comfortably and it is not possible to see end to end to ascertain if someone is coming in the opposite direction before starting to walk the footpath. For many years the county council have considered ways to improve this path but it has not proved possible due to the restricted width and close proximity to the edge of the bank, sections of the footpath are eroding and falling away into the sluice; it will always be vulnerable to erosion.

The field to the southwest of the sluice is part of Brick Kiln Farm and the owners have agreed that the footpath can be moved onto their land, improving the safety and enjoyment for the users of the footpath.

As part of the improvement scheme, it is proposed to create a new route for Footpath Rufford 18 following a farm track continuing from Sluice Lane to link with Footpath Rufford 17 and to extinguish the current route of Footpath Rufford 18 that passes through the farmyard and the 'Fiddler's Lancashire Crisps' food production site.

The lengths of footpath to be created are shown by bold broken lines and marked F-E and C-D and the lengths of footpaths to be extinguished are shown by bold continuous lines marked G-H and A-B.

Consultations

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

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

Advice

Annotation points and descriptions of the routes on the attached map

(All lengths and compass points given are approximate).

Point	Grid Reference	Description
A	SD 4584 1517	Junction of current Footpath Rufford 9 with Sluice Lane.
B	SD 4568 1532	Junction of current Footpath Rufford 9 with Brick Kiln Lane.

C	SD 4584 1516	Junction of new Footpath Rufford 9 with Sluice Lane, 5 metres southwest of Sluice Lane Bridge.
D	SD 4567 1531	Junction of new Footpath Rufford 9 with Brick Kiln Lane near the southwest end of Brick Kiln Lane Bridge.
E	SD 4579 1511	End of adopted section of Sluice Lane and end of new Footpath Rufford 18.
F	SD 4520 1465	Junction of new Footpath Rufford 18 with Footpath Rufford 17.
G	SD 4518 1471	Junction of Footpaths Rufford 16, 17 and current Footpath Rufford 18.
H	SD 4563 1528	Junction of current Footpath Rufford 18 with Brick Kiln Lane.

a) Description of new length of Footpath Rufford 9

Footpath as described below and shown by a bold broken line C-D on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
C	D	NW	220	3 metres with the exception of SD 4577 1522 to SD 4574 1525 that will be 2.5 metres and a 0.5 metre length at point D that will be 1 metre wide	Compacted stone with grass margins No limitations and conditions

b) Description of existing footpath, Footpath Rufford 9 to be extinguished

Footpath Rufford 9 as described below and shown by a bold continuous line marked A-B on the attached map.

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

c) Description of new length of Footpath Rufford18.

Footpath as described below and shown by a bold broken line F-E on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
F	E	E then NE	830	3	Compacted stone No limitations and conditions

d) Description of Footpath Rufford 18 to be extinguished.

Footpath Rufford 18 as described below and shown by a bold continuous line marked G-H on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
G	H	Generally NE	750	The entire width

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for:

a) Rufford 9 be amended to read as follows:

"Kind of Path:
Footpath

Position:
From a junction with Sluice Lane southwest of Sluice Lane Bridge at SD 4584 1516 northwest for 220 metres along the southwest side of Rufford Boundary Sluice, the north east side of the footpath being 1 metre from the edge of the sluice, to the junction with Brick Kiln Lane at SD 4567 1531.

Length:
0.22 km

Other Particulars:

No limitations. Width 3 metres with the exception of SD 4577 1522 to SD 4574 1525 that is 2.5 metres and a 0.5 metre length at SD 4567 1531 that is 1 metre wide."

b) Rufford 17 be amended to read as follows:

"Kind of Path:
Footpath

Position:
Junction with Footpath 16 to junction with Footpath 18 at SD 4520 1465

Length:
0.07 km

Other Particulars:"

c) Rufford 18 be amended to read as follows:

"Kind of Path:
Footpath

Position:
From junction with Footpath 17 at SD 4520 1465 along a stone farm track east for 210 metres then north east for 620 metres to a junction with the adopted section of Sluice Lane at SD 4579 1511

Length:
0.83 km

Other Particulars:
No limitations. Width 3 metres"

d) Rufford 16 be amended to read as follows:

"Kind of Path:
Footpath

Position:
Curlew Lane to junction with Footpath 17

Length:
0.72 km

Other Particulars:"

Criteria satisfied to make and confirm the Orders

The realignment or replacement of the current line of a public path with a new line can only be achieved using a diversion order under S119 of the Highways Act 1980 where

there is a common 'pivot' point along the old and new routes. The same may be achieved where there is no such point using concurrent creation and extinguishment orders under S26 and S118 of the same Act. However the criteria under the legislation are not exactly the same and those for the relevant Sections must be met in order to make and confirm such orders. It should be noted that for concurrent orders the test can be applied taking into account the effect of the other order even though taken on its own such an order might fail.

Annex B of the Committee papers contains detailed guidance relating to the tests and criteria for orders to be made and confirmed under the provisions of the Highways Act 1980 Sections 26 and 118.

In summary, and with regards to this particular proposal, the relevant points to consider are that the Authority can make a public path creation order and public path extinguishment order where it appears to the Authority that it is expedient to create/extinguish them having regard to:

- a. To be satisfied that there is a need for the footpath i.e. the extent to which the paths to be created would add to the convenience or enjoyment of a substantial section of the public or to persons resident in the area;
- b. The extent to which the paths to be created would be in the interests of the public;
- c. The effect the creation would have on the landowners;
- d. Whether the paths to be extinguished are not needed for public use;
- e. The Rights of Way Improvement Plan;
- f. The needs of agriculture, forestry;
- g. The effect on the natural beauty or biodiversity of the area;
- h. Conservation of flora, fauna and geological & physiographical features;
- i. The needs of people with disabilities.

In considering that it is expedient to extinguish the routes A-B and G-H and whether they are needed for public use and the extent to which they are likely to be used, it is advised that regard may be taken with respect to the associated Creation Order that will provide C-D and E-F.

Considering A-B and C-D these routes are parallel, separated only by the sluice and connected at each end by highway, however the proposed route would be wider and able to be maintained to a higher standard making it substantially more convenient for walkers. The new route would be safer as walkers would not be squeezed between fences and hedges and the edge of the sluice bank and the new path, being set back 1 metre from the edge of the sluice, would be less susceptible to erosion. The distance would be virtually the same regardless of the walkers' overall route. The views of the sluice and across the fields would be almost the same. It is therefore concluded that the creation of C-D would be to public benefit with improved convenience and enjoyment and therefore, A-B would not be needed for public use.

Considering F-E and G-H both these routes take the walker from Curlew Lane via the same footpath (Rufford 16) in the west to the Rufford Boundary Sluice in the east and connect either directly or via the footpath alongside the sluice to both Brick Kiln Lane and Sluice Lane. Current use appears to be predominantly recreational, either to take exercise and enjoying the open countryside, or dog walking. The route via G-H is a

longer route than following Brick Kiln Lane and Tootle Lane to Curlew Lane and Curlew Lane itself suggests no likely start or end point for a journey. Although G-H forms part of a route which avoids walking along roads (Brick Kiln, Tootle and Curlew Lanes) these lanes are safe to walk with good sight lines, verges/footways and mostly no boundary hedges/fences. There is both visitor and commercial traffic to Fiddler's Lancashire Crisps on the eastern part of G-H. The alternative via F-E would form a longer route if using the path as a loop, such as for dog walking – which could be either an advantage or disadvantage according to preference but as a route from Curlew Lane it would be a slightly shorter route if heading into Rufford via Sluice Lane and slightly longer if heading into Rufford via Brick Kiln Lane. As a predominantly recreational route the distances are less important than the surfaces, especially for dog walking which has to be done in all weather conditions. Both the current and new routes are along good firm surfaces. A significant factor for dog walking is that there has been conflict between the needs of the owners to ensure hygiene in the food production area and the needs of dog owners in the neighbourhood to take their dogs out. Moving this path from the farm yard and access will improve convenience and enjoyment for the public by removing such conflict or unease as well as benefitting the farmer. It is therefore concluded that the creation of F-E would be to public benefit with improved convenience and enjoyment and therefore G-H would not be needed for public use.

The Rights of Way Improvement Plan (ROWIP) states (aim 1.0) that Lancashire County Council should consider the needs of reduced mobility, dexterity and sight impaired when delivering our services. Moving the path from the narrow northeast side of the sluice to a safer path on the southwest side and keeping the paths with no structures (stiles and gates) and on firm surfaces are the measures which best contribute to this aim and this proposal is in line with it. Another aim (3.0) in the ROWIP is to increase the provision of 20-30 minutes walks. If this new route was to be used in conjunction with a return leg via Curlew, Tootle and Brick Kiln Lanes or as a there-and-back route to avoid any road walking it would meet this length of walk for a good part of the residential area in Rufford. Although we hope the current situation, whereby we are encouraged to take exercise locally in order to restrict the spread of Covid19 virus, is temporary, awareness of the importance of exercise and numbers of people using the network of public rights of way, has increased and demand for such routes is likely to remain beyond the pandemic.

If Committee decide to make the proposed Orders and, subsequently, if no objections are received, or if the proposed Orders need to be submitted to the Planning Inspectorate for confirmation, it is considered that it is expedient to create and extinguish the public footpaths as described, having regard to the extent to which the creation and extinguishment would have as respects land served by the path. The county council are not aware that the footpath proposed to be extinguished are used as access to land. Furthermore, it is advised that the extinguishment would not have an adverse effect on land where the route runs at the moment.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present public footpaths, of which we are aware at the time of writing.

It is advised that the proposed Orders, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and

geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

It is felt that there would be no adverse effect on the land served by the existing routes or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However the owners of Brick Kiln Farm have agreed to the proposal without compensation and any potential claim from elsewhere is unlikely and would be minimal.

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

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

Should the Committee agree that the proposed Orders be made and, subsequently, should no objections be received to the making of the Orders, or should the Orders be submitted to the Planning Inspectorate for confirmation, it is considered that the criteria for confirming the Orders can be satisfied.

The whole of the routes to be created and extinguished are situated on unregistered land, however the new routes are considered to be within the boundary of Brick Kiln Farm. Notices will be erected on site directed at any owner or occupier of the land in case there is another owner.

The proposal is put forward by Lancashire County Council and so all advertising and administrative charges incurred by the county council in the order making procedures and any other costs incurred including in bringing the new footpaths into a fit condition for use for the public will be covered by existing budgets.

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

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

Risk Management

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

Alternative options to be considered

To not agree that the Orders be made.

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

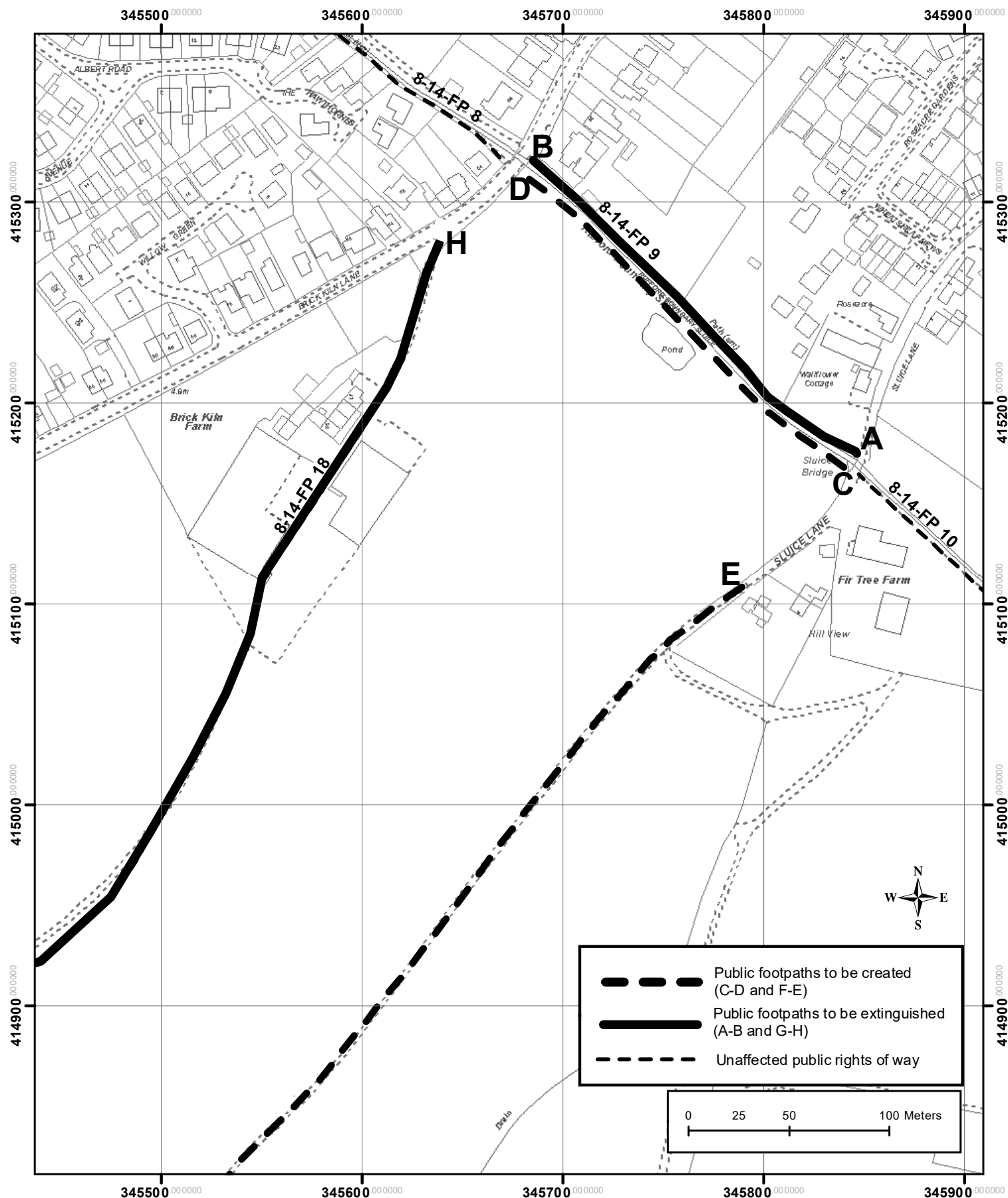
To consider securing the dedication of the new routes (C-D and E-F) in a public path creation agreement pursuant to section 25 Highways Act 1980. However, because the owners of Brick Kiln Farm are agreed to the already proposed approach and the land being unregistered, it is suggested that to make concurrent Orders to create the new route and extinguish the old is best.

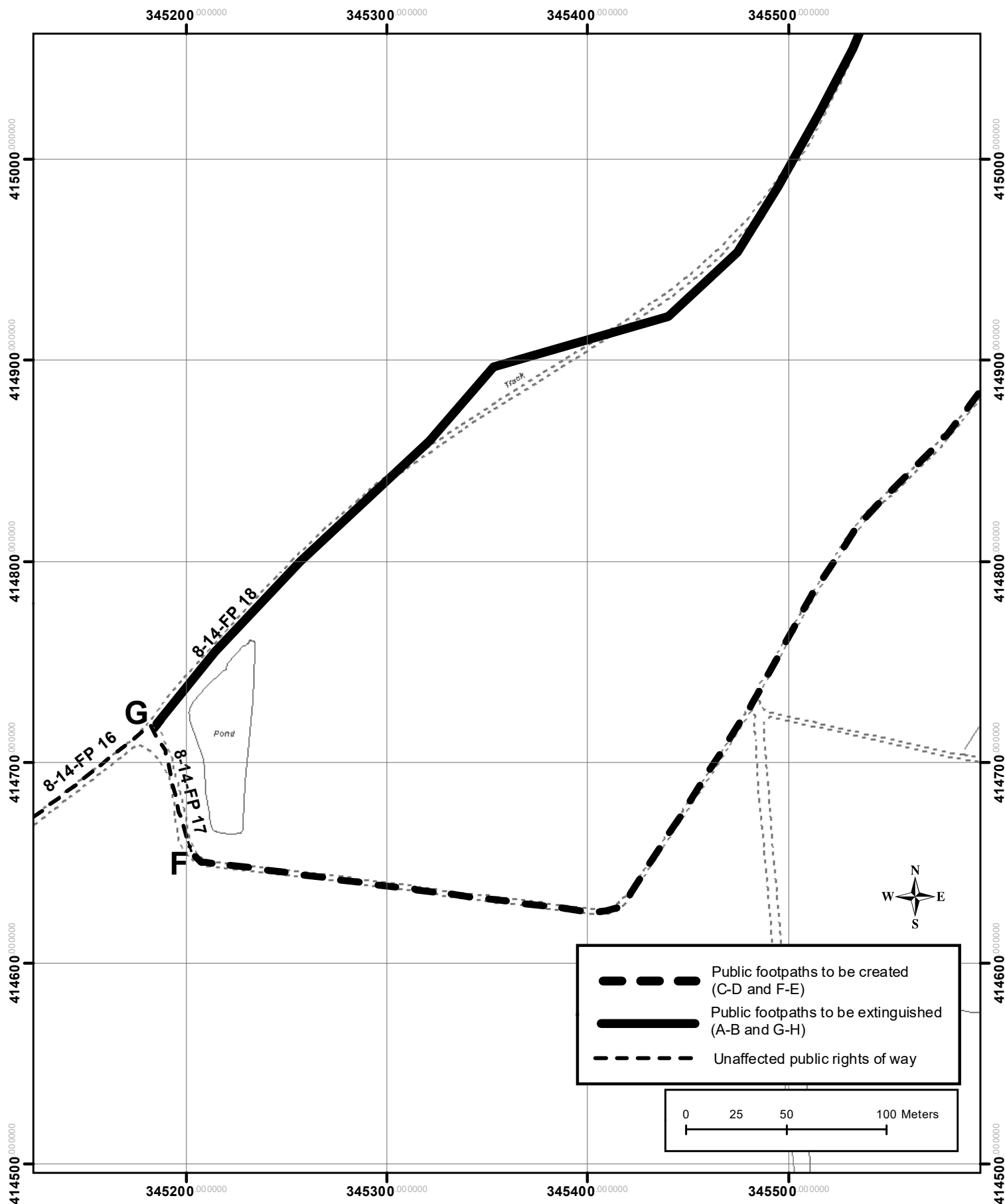
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
File Ref: 211-728		Planning and Environment Group
File Ref: 8-14-FP18		Mrs R J Paulson, 01772 532459

Reason for inclusion in Part II, if appropriate

N/A





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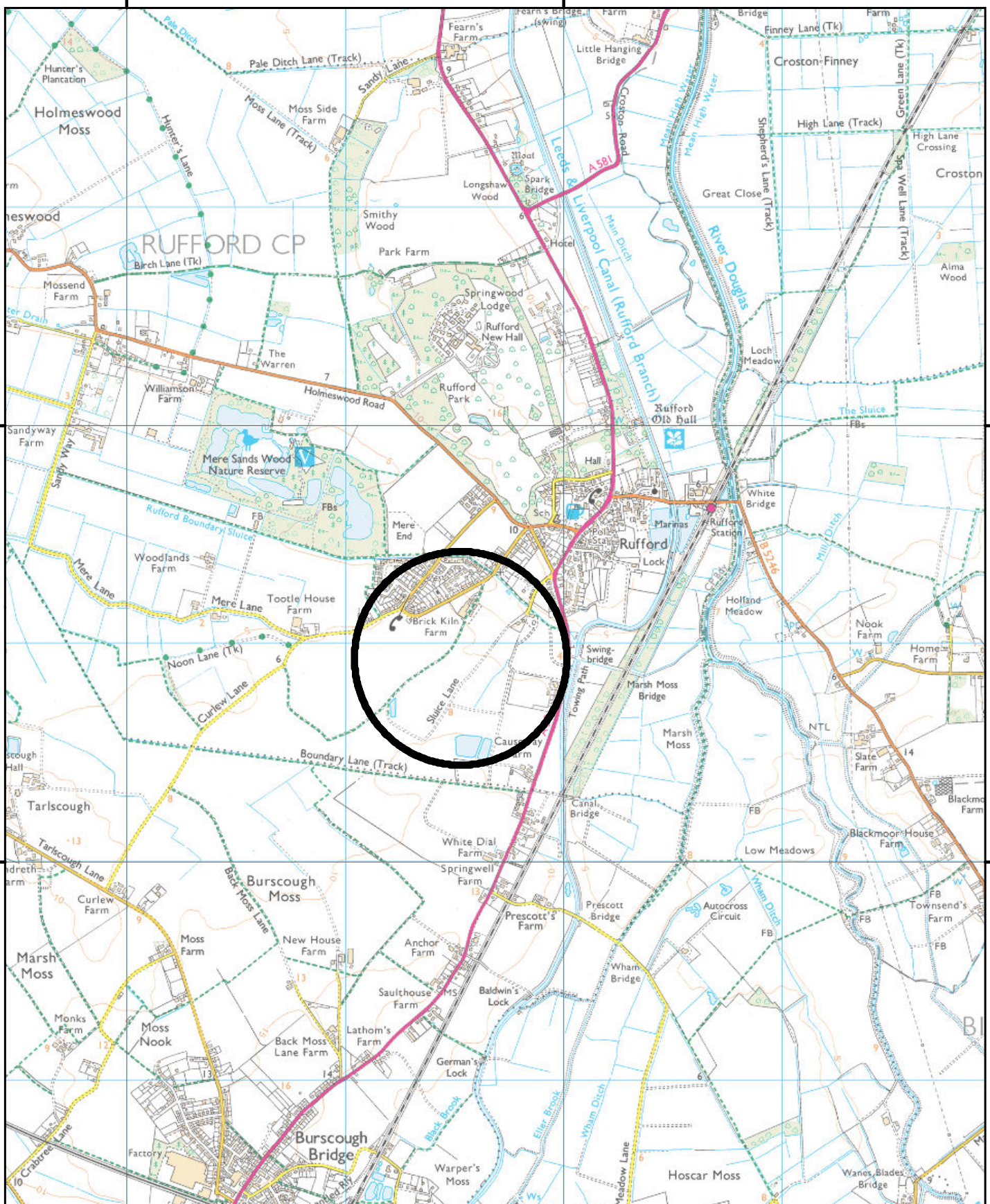
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**Highways Act 1980 – Sections 26 and 118
Wildlife and Countryside Act 1981 – Section 53A**

**Replacement (by Creation and Extinguishment)
of Footpaths Rufford 9 and 18 at Brick Kiln Farm,
West Lancashire Borough**

A-B
and
C-D

Red line: existing footpath
Yellow line: proposed footpath























H-G
and
E-F

Red line: existing footpath
Yellow line: proposed footpath

















