

Lancashire County Council

Regulatory Committee

Wednesday, 22nd June, 2022 at 10.30 am in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No.	Item	
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1.	Apologies	
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2.	Appointment of Chair and Deputy Chair	
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To note the appointment by Full Council on 26th May 2022 of County Councillor Sue Hind and County Councillor Matthew Salter as Chair and Deputy Chair of the Committee respectively, for 2022/23.

3.	The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee	(Pages 1 - 4)
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4.	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.

5.	Minutes of the last Meeting held on 9 March 2022	(Pages 5 - 12)
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6.	Guidance	(Pages 13 - 38)
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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.

7.	Progress Report on Previous Committee Items	(Pages 39 - 42)
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8.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway and Upgrading of Footpath known as Sod Hall Lane, South Ribble	(Pages 43 - 140)
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9. Wildlife and Countryside Act 1981 (Pages 141 - 210)
Definitive Map Modification Order Investigation
Recording of a Bridleway at Mill Lane and Hall Lane,
Farington

10. Wildlife and Countryside Act 1981 (Pages 211 - 240)
Definitive Map Modification Order Investigation
Addition of Footpath from Hodder Street,
Accrington

11. 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.

12. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 14th September 2022 in Committee Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on Wednesday, 22 June 2022

Part I

Electoral Divisions affected:
None

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

(Appendix 'A' refers)

Contact for further information:

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Brief Summary

This report sets out the constitution/membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2022/23.

Recommendation

The Committee is asked to note:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 26 May 2022.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

Detail

The county council at its annual meeting on 26 May 2022 agreed that the Regulatory Committee shall comprise 12 county councillors on the basis of 7 Conservative, 4 Labour and 1 Liberal Democrat/Green Member.

The following county councillors have subsequently been nominated to serve on the Committee for the 2022/23 municipal year.

County Councillors

T Aldridge	D Howarth
J Burrows	A Hosker
A Cheetham	J Oakes
A Clempson	J Parr

L Cox
S Hind

M Salter
C Towneley

A copy of the Committee's Terms of Reference is set out at Appendix 'A'.

In October 2021, Full Council agreed the following programme of meetings for the Committee, with all meetings to be held at County Hall, Preston, commencing at 10.30am.

- 22 June 2022
- 14 September 2022
- 16 November 2022
- 25 January 2023
- 8 March 2023

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no risk management implications arising from this report.

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		

The Regulatory Committee

The Committee comprises twelve County Councillors and deals principally with claims relating to public rights of way and various licensing and registration functions (except registration functions relating to Social Services).

Meetings are open to the public but they may be excluded where information of an exempt or confidential nature is being discussed – see Access to Information Procedure Rules set out at Appendix ‘H’ to this Constitution.

Terms of Reference

The Committee shall carry out the following functions:

Public Rights of Way

1. To determine applications under S53 of the Wildlife and Countryside Act 1981 and to decide whether to make and promote to confirmation Orders thereunder.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
 - (a) to authorise creation of footpaths, bridleways or restricted byways by agreement under Section 25;
 - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths, bridleways and restricted byways under Section 26;
 - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118; with the exception of those which are delegated to the Head of Service for Planning and Environment;
 - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
 - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
 - (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
 - (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119; with the exception of those which are delegated to the Head of Service for Planning and Environment;
 - (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
 - (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
 - (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;

- (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4)).
- 3. To decide whether to make orders and promote to confirmation to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
- 4. To decide whether to make orders and promote to confirmation orders to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.

Other Licensing Registration and Regulatory Functions

- 1. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
- 2. To establish Sub-Committees to undertake any part of the Committee's functions.

Common Land and Town and Village Greens

- 1. To decide whether to exercise the Council's powers under the Commons Registration Act 1965 to alter the Register in respect of applications.
- 2. To make recommendations to the Cabinet on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
- 3. To make decisions on applications and proposals as determining authority under Part 1 Commons Act 2006 save for those under Regulation 43 of the Regulations thereunder.
- 4. To decide whether to apply to the Secretary of State as owner for de-registration of Common Land or Town or Village Green under Section 16 of the Commons Act 2006.
- 5. To decide whether to take steps and what steps to take to protect unclaimed common land or town or village greens against unlawful interference and whether to institute proceedings under Section 45 of the Commons Act 2006.
- 6. To decide whether to apply to the Court for orders against unlawful works on common land under Section 41 of the Commons Act 2006.

Lancashire County Council

Regulatory Committee

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

Present:

County Councillor Matthew Salter (Chair)

County Councillors

T Aldridge	D Howarth
J Burrows	J Oakes
A Cheetham	S Whittam
L Cox	R Swarbrick
C Haythornthwaite	N Hennessy

1. Apologies

Apologies were received from County Councillor Alf Clempson.

Temporary changes

County Councillor Matthew Salter took the Chair in County Councillor Sue Hind's absence.

County Councillor Rupert Swarbrick replaced County Councillor Sue Hind.

County Councillor Sue Whittam replaced County Councillor Mike Goulthorp.

County Councillor Nikki Hennessy replaced County Councillor Jean Parr.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Anne Cheetham declared a non-pecuniary interest in Item 7 as she was very familiar with the application route and had used it on many occasions.

3. Minutes of the last Meeting held on 26 January 2022

Resolved: That the minutes of the meeting held on 26 January 2022 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law

and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

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

5. Progress Report on Previous Committee Items

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

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

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway West of Buckstone House from Junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane

A report was presented on an application for the addition of a bridleway west of Buckstone House from the junction with Bridleway Priest Hutton 14 to the junction with Cinderbarrow Lane to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D.

A site inspection had been carried out in September 2020.

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

Committee were informed that no modern or historical public user evidence had been submitted so in these circumstances neither a presumption of dedication of a public right of way under section 31 nor inference of dedication from use could be considered. It was therefore necessary for Committee to consider whether the map and/or documentary evidence was sufficient to support the inference of dedication of a public right of way under common law.

Committee's attention was drawn to the Turnpike legislation, the details of which had been provided in the report.

Committee were advised to consider whether the public rights on the application route remained on that line or were stopped up when the highway diverted onto a new line by virtue of the Turnpike Acts of 1822 and 1823. Should the stopping up be evidenced, Committee were advised they should consider whether the old

route had become a highway again and whether the evidence in documents since 1823 was sufficient for dedication to be inferred.

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

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

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Footpath along Whitworth Rise, Whitworth

A report was presented on an application for the addition of a footpath from Market Street to Stoneyroyd via Whitworth Rise, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D.

A site inspection had been carried out in April 2021.

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

Committee were informed that a Planning appeal determined in 2010 for the development of land crossed by the application route, made reference to pedestrian use of a route through the site which was consistent with the application route.

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

County Councillor Cheetham informed Committee that the ginnel was used by a substantial amount of pedestrians and not just those who lived on Whitworth Rise.

Taking all of the evidence into account, Committee were advised that, on balance, they may consider that the provisions of Section 31 Highways Act 1980 could be satisfied. Committee were also advised that they may consider it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

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

Resolved:

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

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Black Bull Lane
through Harris Park**

A report was presented on an application for the addition of a Footpath from Garstang Road to Black Bull Lane through Harris Park, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D.

A site inspection had been carried out in September 2021.

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

It was reported that map and documentary evidence in support of the application was limited, with no map and documentary evidence supporting the use of the route applied for between points C to D. In addition, the amount of user evidence received was too low to be considered representative of the public at large and to evidence sufficient use beyond trivial and sporadic from which to infer dedication by the owners.

County Councillor Burrows queried whether the small amount of user evidence received was due to the fact that the route had been blocked off. It was explained to Committee that, as there was insufficient map and documentary evidence, the county council needed to find evidence of a dedication of a public right of way, prior to the route being blocked off, which had to be representative of the public at large and of sufficient quality. The amount of user evidence received was an indication of whether or not the landowner acquiesced to the dedication of dedicate public rights. For routes being used by members of the public, a landowner had the option of letting this continue, they could give users permission to use the route or they could do something to stop the use of the route by the public, i.e. they could take action to make it clear they were not prepared to dedicate. The concept around the length of time was that this must

be long enough to allow the landowner to be in a position to make a decision on whether or not to dedicate public rights.

County Councillor Swarbrick queried whether the application may have been an attempt to create a safe route to Queens Drive Primary School and asked whether Committee could deviate from the Recommendation in the report, in order to facilitate this. Committee were informed that they were required to consider specifically whether public rights existed or not and that whether the public wanted to use the route or not could not be taken into account. A separate process would be used whereby it may be considered that no public rights existed but that the county council had reason to create those rights.

As it had been over 10 years between the time the route had been closed off and the date the application had been received, together with the lack of user evidence, County Councillor Howarth proposed that the Recommendation in the report be approved.

County Councillor Hennessy asked whether the county council could ask members of the public for user evidence. It was noted that, although the applicant had been asked to clarify the evidence submitted, it was for the applicant, not the county council to seek more user evidence. However, should the application be rejected, the applicant would be able to appeal the decision or to submit another application containing more user evidence.

Having considered all of the evidence discovered, Committee were informed that a dedication of a public footpath along the application route could neither be deemed under Section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee was advised to reject the application and not to make an Order adding a public footpath to the Definitive Map and Statement.

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

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath through Farington Hall Wood, Leyland**

A report was presented on an application for the addition of a Footpath through Farington Hall Wood, Leyland, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D and E-F.

Site inspections had been carried out in February 2021 and March 2022. At the February 2021 site inspection, access to the woodland through which the route ran had been blocked by wooden fences at points A, C and F so it was not possible to walk the route. At the March 2022 site inspection, some of the fencing had been broken making access available at point A and at point C-D.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be. A substantial amount of user evidence had been received for this application.

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

The Committee were informed they were required to specifically consider the evidence presented as to whether public rights on the route existed or not and that account could not be taken of whether it was a pleasant route to walk.

County Councillor Howarth supported the Recommendation in the report stating that the route had previously been used as a public asset and a large amount of user evidence over a long period of time had been submitted.

In relation to County Councillor Cheetham's comments on the importance of bluebell preservation, the Officer stated that although the bluebells may attract members of the public to walk the route, Committee were only required to consider the context of this and whether it supported the user evidence.

Following a query from County Councillor Hennessy, it was reported that a new landowner had purchased a strip of woodland and installed fencing which had prevented public use of the route, prompting the application to be submitted. There had been no recorded public right of way when the landowner had purchased the land, which had been fenced off for the landowner's private use. Committee noted that if the application route was considered to be a public right of way, once the process had run its full course, then the landowner would be required to remove the fences that obstructed the route where public rights had been established.

Taking all the evidence into account, Committee were advised that they may consider there to be sufficient evidence from which to infer dedication at common law, on balance from all the circumstances including the use by the public during the Chapeltown ownership and possibly even 2010-2020 when it was held by the Duchy. The recommendation was therefore that an Order be made and promoted to confirmation.

Resolved:

- (i) That the application for a footpath through Farington Hall Wood, Leyland be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or] Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add footpaths through Farington Hall Wood on the Definitive Map and Statement

of Public Rights of Way as shown on Committee Plan between points A-B-C-D and E-F.

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

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 22nd June 2022.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 22 June 2022

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 22 June 2022

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

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

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

Regulatory Committee

Meeting to be held on 22nd June 2022

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

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

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

Executive Summary

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

Recommendation

The Committee is asked to note the progress report.

Background

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

A summary of the current progress on Definitive Map Modification Order applications is provided below, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on the 26th of May 2022. The register can be viewed at <https://dmmo.lancashire.gov.uk/>

It should be noted that although the term 'applications' has been used for convenience these are not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but include some cases where sufficient evidence has been discovered or presented to the county council to indicate an investigation is appropriate.

Definitive Map Modification Order Applications Added to the Register Since Last Committee

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

Reference	Known As	Application Date
804-736	Cottage Lane, Croston	06/02/2022
804-737	Green lane and Spa, Well Lane, Croston Moss	06/02/2022
804-738	High Lane, Sumner's Lane, Croston Moss	06/02/2022
804-739	Moor Head, Over Wyresdale	21/02/2022
804-740	Meeting House and Borwicks, Over Wyresdale	21/02/2022
804-741	Vicarage Fold, Wiswell	01/03/2022
804-742	Cockerham Crossing, Winmarleigh	07/03/2022
804-743	Sands Bottom, Nether Wyresdale	07/03/2022
804-744	Holme Lane, Rawtenstall	08/03/2022
804-745	Reservoir Rd to Burns, Barnacre	14/03/2022
804-746	Green Lane, Morecambe	21/03/2022
804-747	Lock Bridge Lane, Easington	24/03/2022
804-748	Hemers lane, Caton	29/03/2022
804-749	Forge Mill Lane, Caton	29/03/2022
804-750	High Moor Lane, Caton	29/03/2022

Definitive Map Modification Order Applications where a decision has been taken not to make an Order, Notice has been served and no appeal submitted

Committee has made a decision not to make an Order for these applications, the decision notices have been served and no appeal has been submitted, these matters have thus been closed.

Reference	Known As	Application Date
804-624	Green Hill Lane, Nether Kellet	20/05/2020
804-659	Harris Park, Fulwood	16/10/2020

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

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

Reference	Known As	Application Date
804-623	Hillside Drive, Newchurch	13/05/2020

Definitive Map Modification Order Applications Awaiting Order Notification

Committee has made a decision on this application; the Order has been made and Notices of Making now need to be served.

Reference	Known As	Application Date
804-653	Moss Lane, Overton	20/08/2020

Definitive Map Modification Order Applications which have been Confirmed, the Notice Period has expired and the matters closed

Committee has decided these applications, the Orders have been made and confirmed and no appeal having been made these matters have now been closed.

Reference	Known As	Application Date
804-379c	Ingol Route 3	10/10/2016
804-379d	Ingol Route 4	10/10/2016
804-379e	Ingol Route 5A	10/10/2016
804-538	Cowpe Rd to Rooley Moor Rd	10/11/2012

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

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

Reference	Known As	Application Date
804-652	Snuff Mill Lane, Stodday	17/08/2020

Definitive Map Modification Order Applications Awaiting Submission to the Planning Inspectorate

Committee has decided this application, the Order has been made and statutory objections or representations received since the last update report was presented to the Committee. It is now awaiting submission to the Planning Inspectorate for determination.

Reference	Known As	Application Date
804-625	Haunders Lane, Much Hoole	20/05/2020

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

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

Regulatory Committee

Meeting to be held on 22nd June 2022

Part I

Electoral Division affected:
Moss Side and Farington

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway and Upgrading of Footpath known as Sod Hall Lane,
South Ribble
(Annex 'A' refers)

Contact for further information quoting file reference 804-727:

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

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

Brief Summary

Application for the addition of bridleway and upgrading of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane) to the Definitive Map and Statement of Public Rights of Way.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway and upgrading to bridleway of 7-1-FP50 and 7-7-FP51, be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of bridleway along the route known as Sod Hall Lane commencing at the junction with the western end of Jane Lane (Leyland) to the junction with Long Moss Lane (Longton).

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

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

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

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

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

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

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

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

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

Consultations

South Ribble Borough Council

South Ribble Borough Council provided no response to consultation.

Longton Parish Council

Longton Parish Council provided no response to consultation.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5141 2338	Junction of application route with the north west end of Jane Lane (U5419)
B	5130 2334	Junction of application route with route recorded as 7-1-FP 50 at Gate House Farm
C	5129 2337	Junction of application route with 7-1-FP 1a
D	5123 2360	Gate across application route on south side of railway crossing
E	5123 2962	Gate across application route at north side of railway crossing 5 metres south of a junction with 7-1-FP 37
F	5114 2395	Junction of application route with 7-1-FP 48
G	5109 2421	Junction of application route with 7-7-FP 45, just inside Longton parish boundary and adjacent to the remains of 'the round house'
H	5111 2481	Open junction of the application route with Long Moss Lane (U5422)

Description of Route

A site inspection was carried out in January 2022.

The application route commences at an unmarked point at the north west end of Jane Lane (U5419) – point A on the Committee plan.

Jane Lane starts at a point on Longmeanygate and extends north north west and then west south west for a distance of approximately 275 metres to point A. It is a tarmacked single carriageway public road. Midway along it a sign had been erected saying 'Access only Whitegate Farm Gate House Farm The Gate House No turning'.

Point A is located at the junction with the entrance to White Gate Farm and continues along a tarmac roadway past the property for a further 100 metres to the entrance of Gate House Farm (point B) where the route then turns through a 90-degree bend to continue in a dead straight line in a north north westerly direction for approximately 900 metres through to the junction with Footpath 7-7-FP45 (point G).

From the entrance of Gate House Farm the route continues along a tarmac roadway in good condition and is recorded as a public footpath (7-1-FP 50). After approximately 30 metres a field footpath (7-1-FP 1a) joins the route (point C).

The application route continues along the tarmac roadway to where it crosses a single railway line known as Sod Hall Crossing. The railway junction is gated at either side (point D and point E) with smaller metal pedestrian gates adjacent to vehicular gates. The tarmac surface comes to an end a few metres before reaching

the gates (point D) at the entrance to the driveway of the residential property known as 'The Gate House'.

A few metres north of the railway line (at point E) a further field footpath (7-1-FP 37) joins the application route.

From the crossing the application route continues north north west – still recorded as 7-1-FP 50 – along a compacted stone surfaced track separated from the adjacent fields by a mixture of hedges and fencing. From a junction with Footpath 7-1-FP 48 (point F) the application route continues as a substantial track past a track leading to Singletons Farm and then past Heath House Farm to a sharp corner and junction (point G).

Point G is located just north of the parish boundary between Leyland and Longton. A footpath (7-7-FP 45) coming from the west meets the application route at point G 15 metres north of the location of the former 'Round House'. The 'Round House' no longer exists but is referred to at length in the map and documentary evidence detailed later in the report.

The application route turns to continue east north east for 40 metres and then turns again to continue north in a dead straight line for a further 575 metres to Long Moss Lane (point H).

From the corner (point G), on the land immediately north of the route, there is an area of rough uncultivated land which was where Sod Hall was located (now no longer in existence).

The application route is still recorded as public footpath but because it is now within the parish of Longton this section is numbered 7-7-FP 51.

The route continues in a dead straight line unfenced from the adjacent fields but raised up on a constructed roadway above the level of the fields on either side. The surface of the roadway is a mix of compacted stone and tarmac with evidence of regular vehicular use to gain access to and from Heath House Farm and other properties accessed from the route on the approach to Long Moss Lane (point H).

The application route passes Willow Farm and approximately 40 metres from Long Moss Lane a speed hump has been placed across the route together with signage, facing anyone leaving Long Moss Lane, stating that the road is private and a no through route.

Where the application route meets Long Moss Lane (point H) adjacent to Adlington Gate Farm it is signed as a public footpath. In addition a street sign gives the name of the route as being Sod Hall Lane underneath which a separate sign with the same colour lettering but which looks to have been added at a later date states 'Privately owned road. No through route. No parking please'.

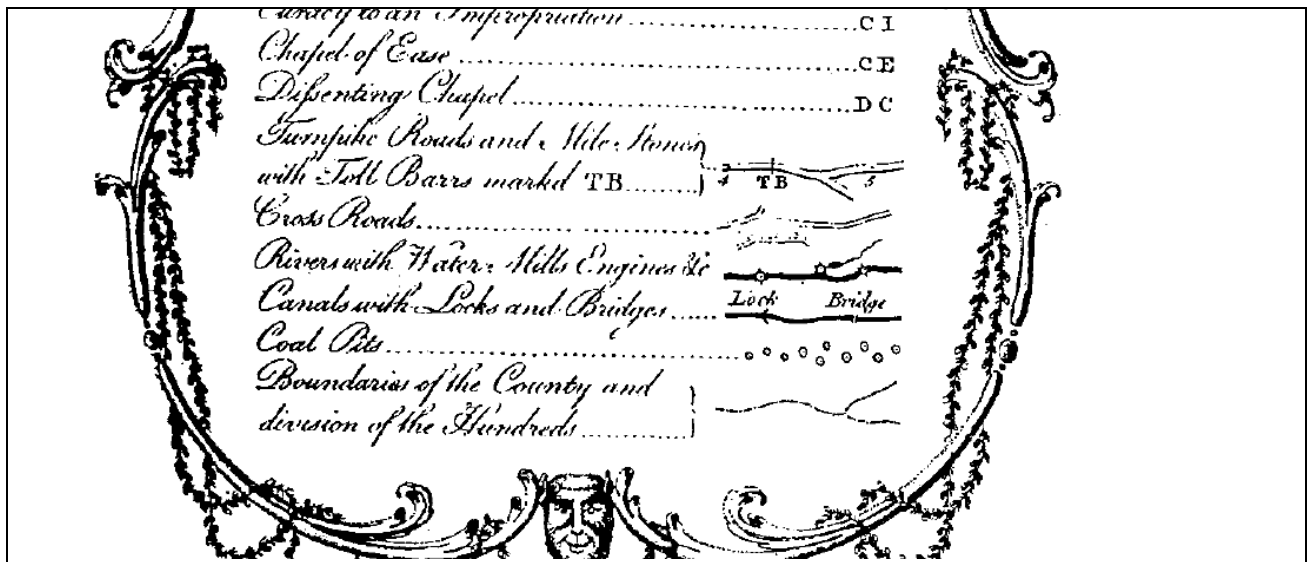
The total length of the route is 1.6 kilometres.

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.

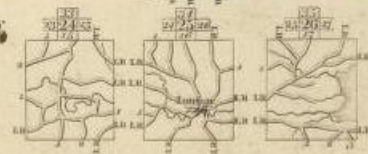




Observations		<p>The application route is not shown. Sod Hall – which was accessed by the application route is shown and Long Moss Lane is shown on the map with an unnamed building in the approximate location of Adlington Gate House which is adjacent to point H.</p> <p>The land crossed by the application route is shown as moss land and Jane Lane and Longmeanygate – to which the application route connects - are not shown.</p>
Investigating Officer's Comments		<p>The application route in whole or part may have existed in 1786 as access to Sod Hall (perhaps G-H) but if so was not considered by Yates to be a significant public route which should be included on the map.</p>
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



The middle figure denotes the number of the plate, and the figures at the top and bottom, explain its connection North and South, and those at the sides, East and West.



Turnpike Roads, thro' enclosed countries

D.^o thro' unenclosed d.^o

Bye Roads are marked by closer lines, as

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

Churches and Chapels

Observations		The application route is not shown and a large area crossed by the application route is not shown including roads shown by Yates on a map published around the same time.
Investigating Officer's Comments		The application route probably did not exist at that time. A route considered to be a public footpath or bridleway at that time would not normally be shown on a map of this scale but in this instance a large area crossed by the route is blank so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated within the key panel.

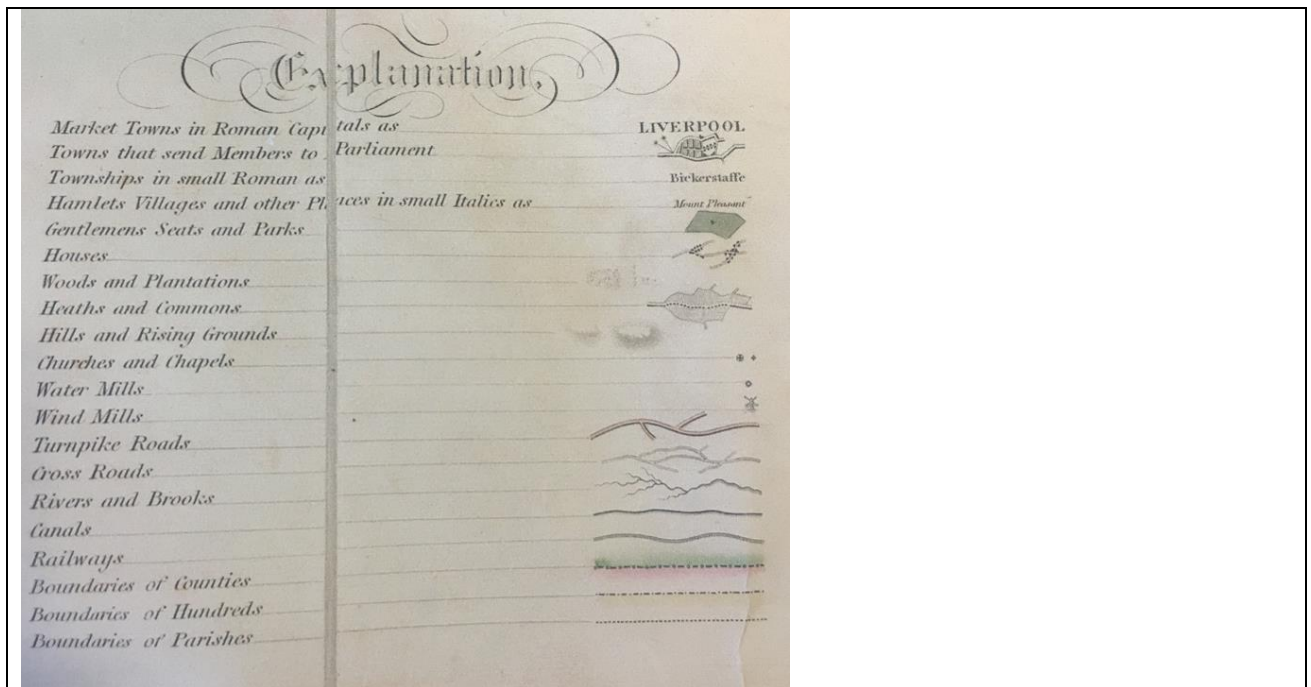


Turnpike Roads _____
 Cross Roads _____
 Towns & other Places - _____
 that send Members to Parliaments } _____
 Boundaries of Counties _____

<p>Observations</p>		<p>The map clearly shows the full length of the application route connecting to Longmeanygate and Jane Lane in the south and Long Moss Lane in the north. Properties are shown (and named) along the route with Gate House close to point A, Heath House and Sud Hall located along the route and Adlington Gate close to point H. The route appears to split an area of moss land and is shown as a cross road on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial through route in 1818 providing access to a number of properties along it. The inclusion of the route on a small scale commercially produced map of this kind is normally suggestive of the fact that the</p>

		<p>route is likely to have been considered to have been a public carriageway or at least a bridleway although it is accepted that not all of the routes shown by Greenwood were public. It is unlikely that a map of this scale would show footpaths.</p> <p>It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key in the map.</p>
<p>Hennet's Map of Lancashire</p>	<p>1830</p>	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>

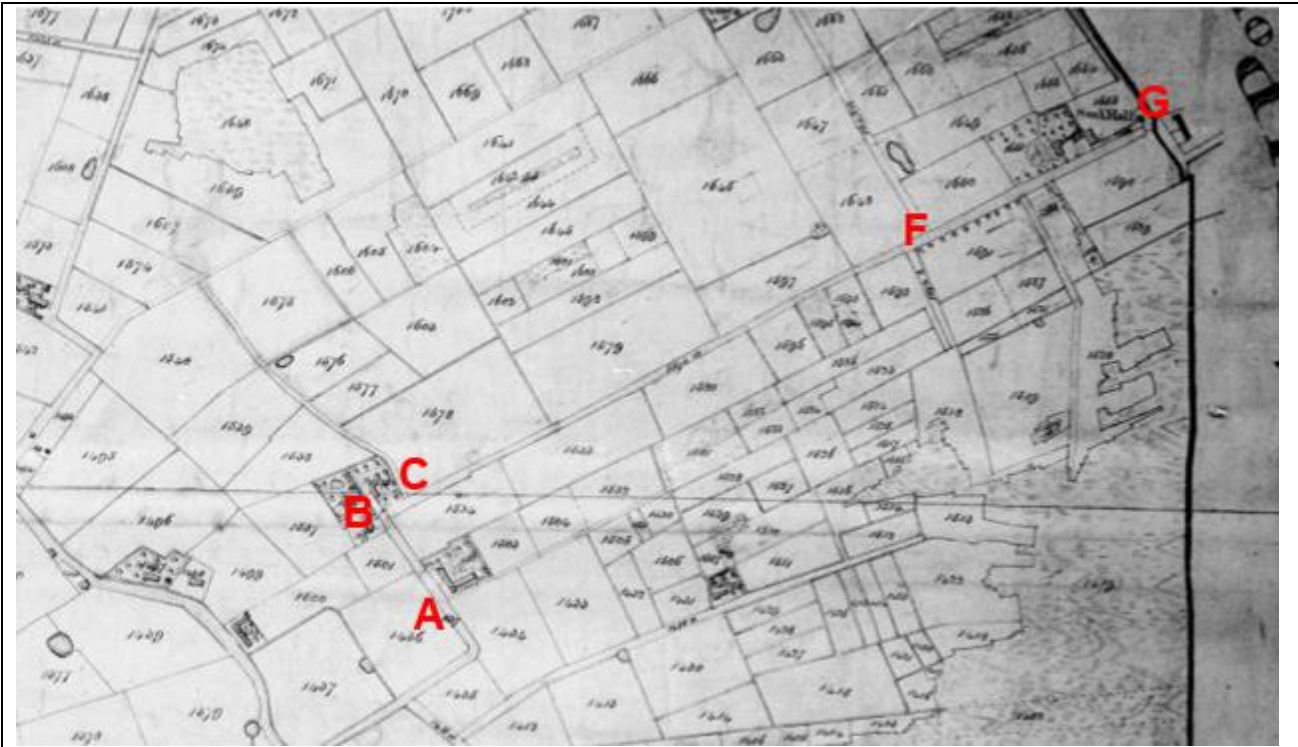




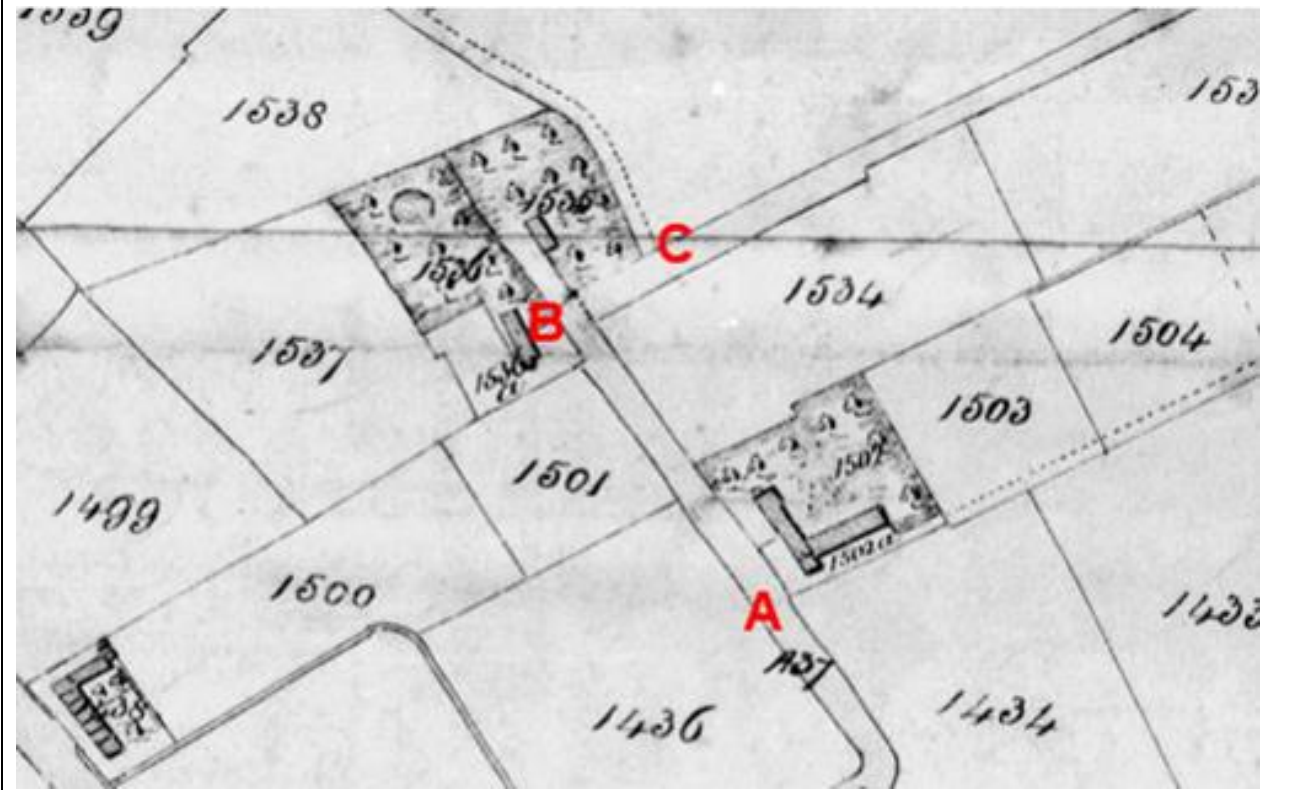
<p>Observations</p>		<p>The application route is clearly shown as a cross road in the same way that other routes with public vehicular rights of access are shown. However the alignment around Gate House and what is now Jane Lane is shown differently. The route is shown providing access to and past a number of unnamed properties and to Sod Hall which is named on the map. The route is shown passing between two areas of moss land named as Leyland Moss and Farrington Moss.</p>
<p>Investigating Officer's Comments</p>		<p>The application route, albeit with a different alignment at the southern end, existed in 1830 as a significant route and it is unlikely that a map of this scale would show footpaths.</p> <p>The route is shown as a cross road and it is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for</i></p>

		<p><i>the benefit of wealthy people and were very expensive. There was “no point showing a road to a purchaser if he did not have the right to use it.”</i></p> <p>The fact that the route is shown as a through route connecting at either end to public vehicular roads suggests that it was not just a private access road to Sod Hall and in fact other properties are shown (but not named) on the map. The route is clearly shown as crossing between two areas of moss land and the way that it is shown suggests that it would have been capable of being used on horseback and with horse drawn vehicles at that time.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>Early maps of the area crossed by the application route and the general topography of the land suggest that the application route – or at least part of it – was probably created as part of inclosure of Leyland Moss. Despite an extensive search the Investigating Officer has been unable to find any details about it other than a reference to a survey of Leyland Moss c. 1697.</p> <p>No plans showing land to be enclosed have been found but it appears from an examination of the early commercial maps detailed above that inclosure of much of the land crossed by the application route may have occurred between 1786 and 1818.</p> <p>Longton Moss was enclosed in 1761. No inclosure plan of the area crossed by the application route has been found but the Longton Inclosure Award describes a number of routes which were created as public highways and private roads which were located near to the application route, but which do not fit the description of the route itself. The earliest 1-inch Ordnance Survey map detailed below shows the route cutting through Longton Moss between</p>

		<p>point G and point H and the first edition 6-inch OS map (also detailed below) suggests that the application route passed through Leyland Moss between point A and point G and passed through Longton Moss between point G and point H.</p> <p>Sod Hall existed in 1786 (Yate's Map) but no further information about the origins of the hall has been found and the access road to and from the hall is not shown on that map.</p> <p>The inclosure of the various moss lands was probably undertaken in a series of private agreements. No plans of the land inclosed have been found so not possible to determine whether the route was created as a public or private route as part of an inclosure process. Whilst the route clearly linked to other routes recorded as public vehicular highways providing a direct through route as well as access to land and properties situated either side of it no further information about when the route first came into existence or why has been found.</p>
Investigating Officer's Comments		<p>Whilst it appears likely that some or all of the route originally came into being as part of the inclosure of the moss lands the County Council have been unable to find any evidence relating to whether the route was created in this way or exactly when and whether it was created as a public or private route so no inference can be drawn in this respect.</p>
Tithe Map and Tithe Award or Apportionment	1838	<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>



Extract from Tithe Map for Leyland



Extract of Tithe Map for Leyland



Extract from Tithe Map for Leyland



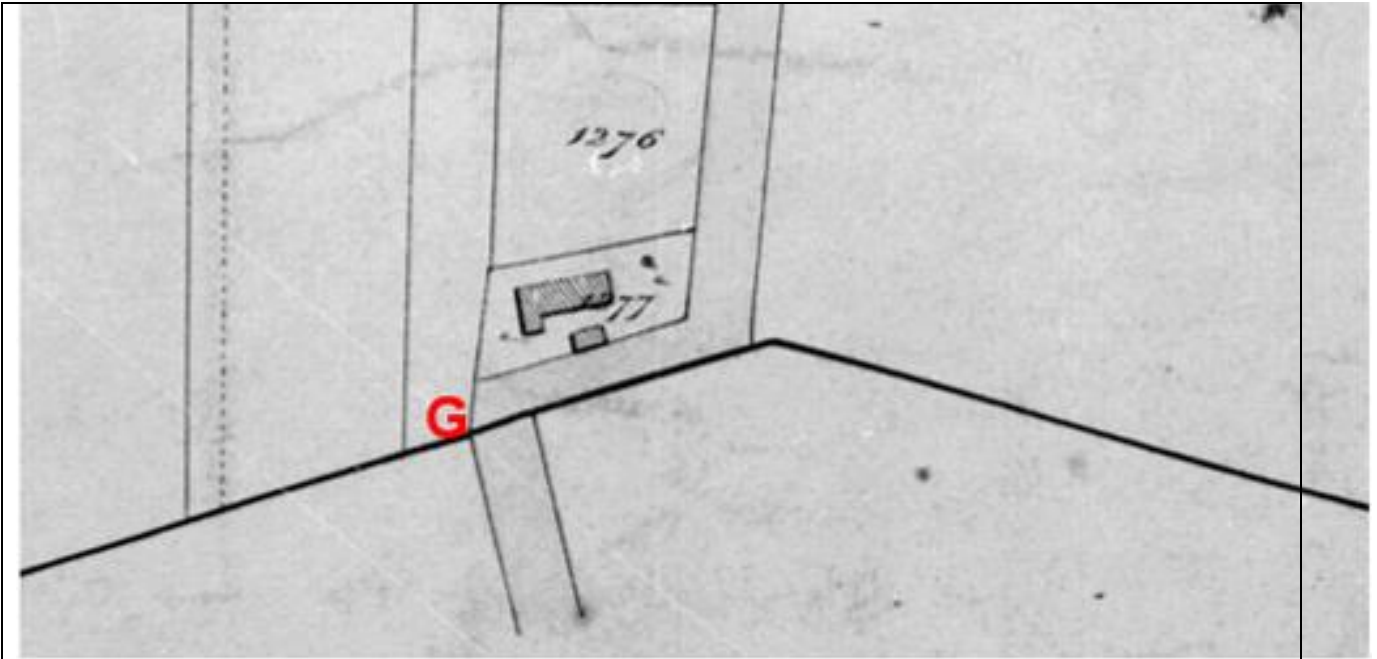
Extract from Tithe Map for Leyland

Plan.	LANDS AND PREMISES.	CULTIVATION.	STATUTE MEASURE.			PAYABLE TO VICA	
			A	R	P	A	S
	<i>Highways (Continued)</i>	<i>Brought forward</i>	80	2	13		
<i>A 35</i>	<i>Puttinton or Cocker Green Road</i>		1	-	3		
<i>A 37</i>	<i>Seat of Red Hall Lane</i>			2	38		
			82	1	114		
	<i>Public Roads within the Township</i>						
<i>A 10</i>	<i>Highes Fairfield Road</i>			2	25		
<i>A 19</i>	<i>bow Lane</i>			2	16		

Extract from Tithe Award for Leyland



Extract from the Tithe Map for Longton



Longton Tithe Map

<i>Highways and Public Roads within the Townships</i>	1359		9. 2. 20
	1360		9. 1. 36
			116. 1. 8
			114. 4. 7
	1361		

18-202

Extract from Tithe Award for Longton

<p>Observations</p>		<p>The application route crosses land in the Township of Leyland between point A and point G and land in the parish of Longton between point G and point H. The Tithe Maps and Awards for both Leyland and Longton were prepared in 1838.</p> <p>The Tithe Map and Award for Leyland was inspected and shows the route from point A</p>
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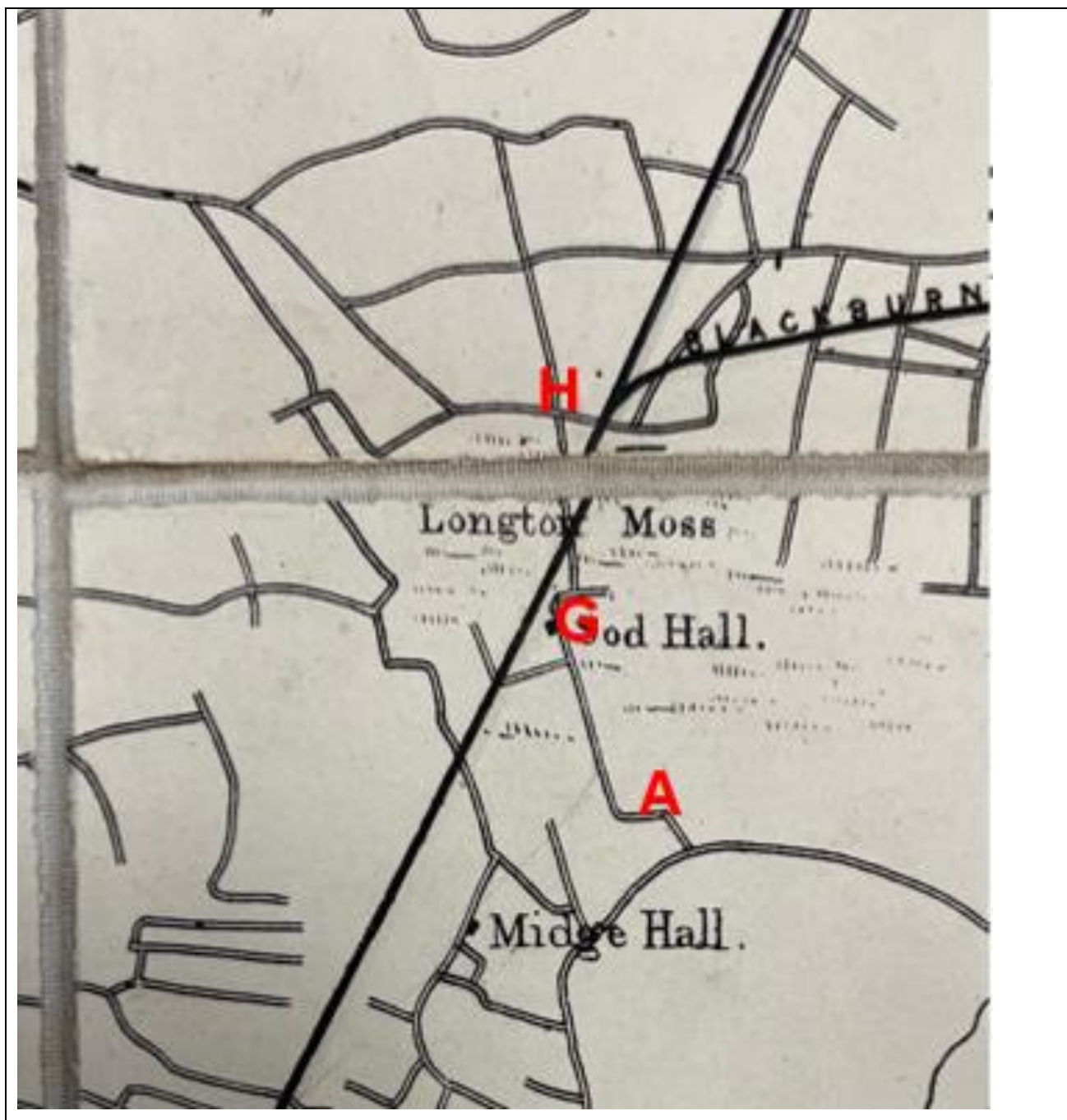
		<p>to point G.</p> <p>It shows the route now known as Jane Lane numbered as plot A37. There is no line across the route at point A but there is a dashed line across the route at point B. In the Tithe Award plot A37 is described as being 'Part of Sod Hall Lane' in a list of highways within the township. The area of the road is listed as being 2 rods/roods and 38 perches/poles which the Investigating Officer has estimated to be about 3000 metres squared which, if the route was approximately 7 metres wide throughout would suggest a length in the region of 430 metres which would include the full length of Jane Lane plus the application route through to at least point C – or a bit beyond.</p> <p>The list of highways included in the Tithe Award comprises of 29 routes most of which are specifically named. An examination of the routes listed, whether they still exist today and what their legally recorded public status is has been made; this shows that those routes, other than where areas had been substantially altered by redevelopment, still existed and were mostly still known by the same name and were recorded as publicly maintainable highways. A separate list of 8 other routes was also included in the Tithe Award titled as being a list of public roads (as opposed to public highways). Again, other than two routes which no longer existed due to substantial development, all except one of the other routes are recorded as publicly maintainable highways on the List of Streets.</p> <p>Beyond point C and point F another number is shown within the boundaries of the application route (1594a) which is listed in the Tithe Award as 'Sod Hall Road' and 'Road' and as being owned by John Green Heir and occupied by 'themselves'. It is not listed as public highway in the separate list found at the end of the Award but is included within the body of the award. No tithes were payable.</p>
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		<p>7-1-FP 1a is shown as a single pecked line joining the application route at point C. It is not numbered separately but crosses several fields which are each individually numbered.</p> <p>A bounded route consistent with the start of 7-1-FP 48 at point F is shown and is numbered as plot 1648a. It is described as a 'lane' which is privately owned by the Heirs of John Green and occupied by Thomas Singleton and is not included in the list of highways at the end of the Tithe Award.</p> <p>A further route leaving the application route to extend east just before reaching point F is numbered 1594b and described as a 'Road' owned and occupied by the Heirs of John Green and is not included in the list of highways at the end of the Tithe Award.</p> <p>A line is shown across the application route just before the parish boundary at point G.</p> <p>Sod Hall is named as being the buildings to the west of the application route where the farm now known as Heath House Farm is located and is numbered as plot 1651 owned by the Heirs of John Green and occupied by Peter Blackwell – described simply as 'House and garden' in the Tithe Award.</p> <p>To the right of the words 'Sod Hall' a small round building can be seen on a plot of land numbered as 1652. This is described in the Award as 'House and Garden' owned by the Heirs of John Green and occupied by John Bamber.</p> <p>Beyond point G the continuation of the application route is shown for a short distance beyond the parish/township boundary, but no ongoing destination is labelled.</p> <p>The remainder of the route (from point G to point H) is shown on the Longton Tithe Map. It is shown in such a way as to indicate that it continues beyond the parish boundary at point G (along the application route shown on the Leyland Tithe Map). A property is shown close to point G which is</p>
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		<p>not named but is numbered as plot 1277 which was described as 'House and Garden' owned by John Green and occupied by James Dobson.</p> <p>The application route from point G through to point H is shown with no lines across it and is not numbered which is consistent with how other roads now recorded as public roads are shown on the Longton Tithe Map.</p> <p>It was noted that there was only one location where a road appeared to have been numbered on the whole sheet and this was located in a fairly central point in the village of Longton close to the parish church where the number 1361 has been written on the public vehicular road now known as Liverpool Road. The Tithe Award simply stated that the number 1361 had been assigned to Highways and Public Roads within the township.</p>
Investigating Officer's Comments		<p>The Tithe Maps confirm the physical existence of a substantial route which existed in 1838. The route may have been gated just south of point G but appeared to be capable of being used by vehicles at that time.</p> <p>The start of the route appears to have been considered to be a public highway which was described as 'Part of Sod Hall Lane' but the numbering and description also appears to include Jane Lane – which was not numbered separately and may have only included the application route between point A and point B as a dashed line is shown across the route at point B. Beyond there – through to point G the route appears to have been considered to be a road which was privately owned and occupied. This part of the route was not included in the separate list of highways which was included at the end of the Tithe Award for which no landowners or occupiers were specified. Two properties situated at the northern end of this part of the route (close to point G) are listed as being in the same ownership as the road together with other routes described as roads and lanes which provided access to</p>

		<p>adjacent fields.</p> <p>In contrast, from point G through to point H the route is not numbered, and no landownership details are given. Vehicular roads passing through the parish were not individually numbered with the inference being that the application route from point H to point G, because it was not numbered, was considered to be a public highway when the Tithe Map and Award was prepared in 1838.</p>
<p>Canal and Railway Acts</p>	<p>1845-1849</p>	<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>

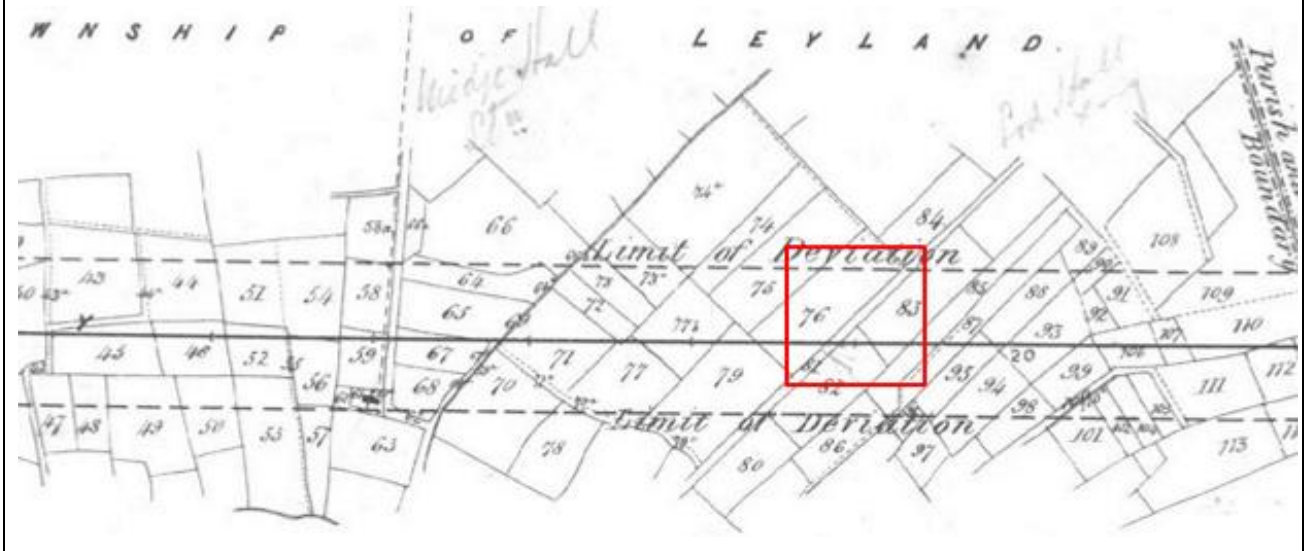




Liverpool, Ormskirk and Preston No 1840 072
9&10 Vict c381

PLANS & SECTIONS
OF THE PROPOSED
LIVERPOOL, ORMSKIRK & PRESTON RAILWAY,
WITH BRANCHES,
ALL IN THE COUNTY OF LANCASTER,
1845. (1846 Act.)

JOSEPH LOCKE, F. R. S., ENGINEER.



69	Occupation Road ...	James Nower Farrington, Richard Knowles, James Knowles, Thomas Rainford, and Esther Rainford	John Green and Dorothy Green	Robert Moss, John Deacon, otherwise John Heaton, John Bennett, and Richard Bennett
70	Meadow Field ...	John Green and Dorothy Green	...	William Bennett
71	Arable Field ...	John Green and Dorothy Green	...	William Bennett
71A	Private Road and Foot-path ...	John Green and Dorothy Green	...	William Bennett
72	Arable Field ...	John Green and Dorothy Green	...	William Bennett
73	Arable Field ...	John Green and Dorothy Green	...	William Bennett
73A	Moss Land ...	John Green and Dorothy Green	...	John Deacon, otherwise John Heaton
74	Arable Field and Turbary ...	John Green and Dorothy Green	...	Thomas Singleton
74A	Arable Field and Private Road ...	John Green and Dorothy Green	...	John Deacon, otherwise John Heaton Thomas Parkin, Robert Moss, Samuel Norris, William Clithero,

XXXVII. And be it enacted, That it shall be lawful for the Company to construct the said Railways and Branch Railways across and on the Level of the following Turnpike Roads and public Carriage Roads; that is to say,
 In the Township of *Maghull* in the Parish of *Halsall*, the Road numbered 34:
 In the Township of *Rufford* in the Parish of *Rufford*, the Road numbered 51.

XXXVIII. And be it enacted, That, for the greater Convenience and Security of the Public, the said Company shall erect and permanently maintain either a Station or Lodge at the Points where the said Railway shall cross on the Level any of the before-mentioned Roads.

XXXIX. And

Roads to be crossed on a Level.
 Station or Lodge to be erected at Points of crossing.

Extract from the Liverpool, Ormskirk and Preston Railway Act 1846

<p>Observations</p>		<p>The railway line between Preston and Walton was proposed by the Liverpool, Ormskirk and Preston Railway and authorised in 1846; later that year the railway company was amalgamated with the East Lancashire Railway (ELR), which opened the line in 1849.</p> <p>A search of the information in the County Records Office was made. A small scale plan was found showing the route of the proposed railway dated 1845 which showed the railway crossing the application route north of Sod Hall between point G and point H.</p> <p>When the railway was built several years later the route altered and the line was constructed across the application route south of Sod Hall between point D and point E.</p> <p>The Plans, Sections and Book of Reference relating to the construction of the railway are deposited in the Parliamentary Archives. Copies are also</p>
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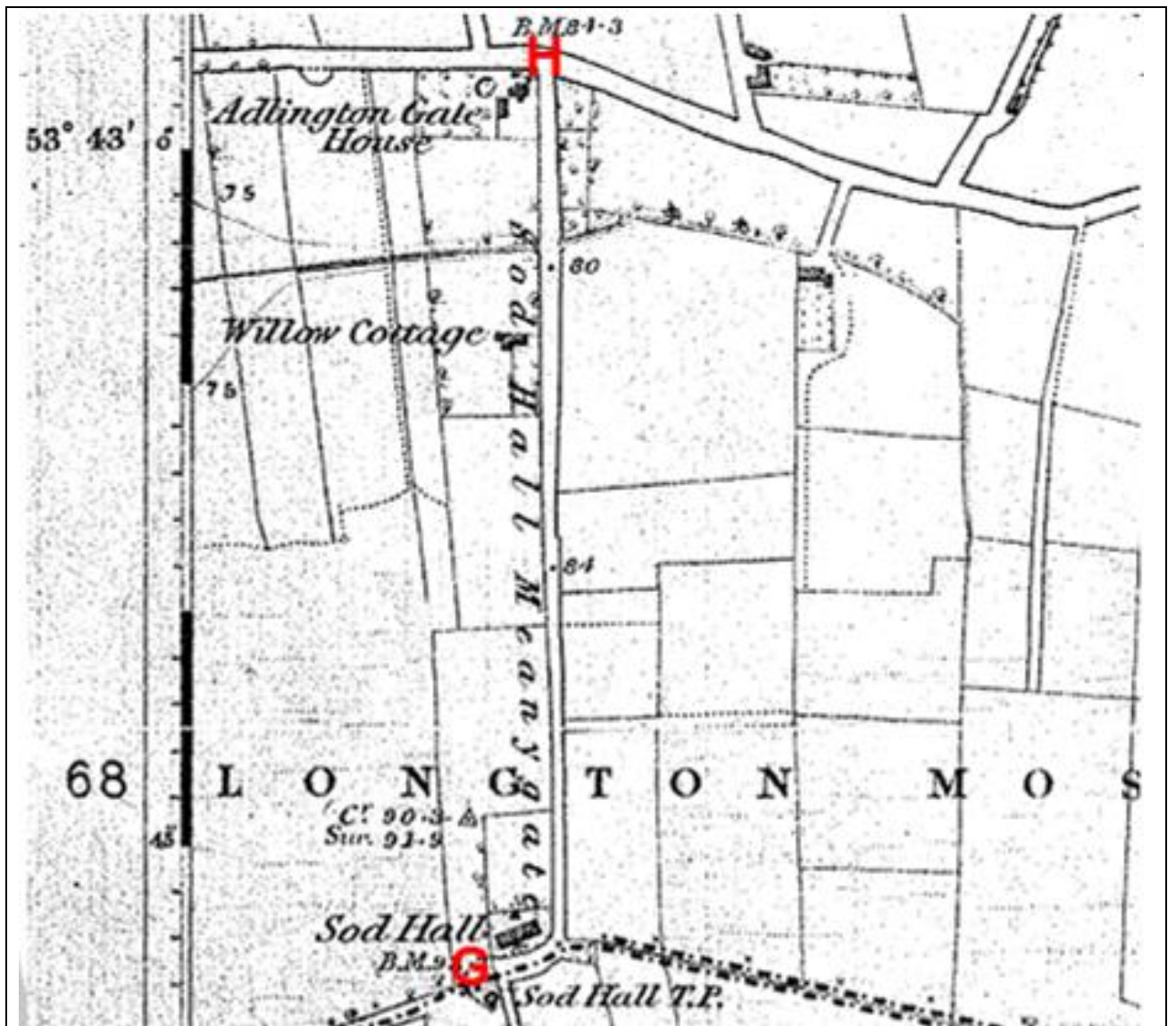
		<p>held by Network Rail.</p> <p>The plans and book of reference are dated 1845.</p> <p>The route of the railway is shown on the plans but has been altered from the original plan detailed above and is now shown crossing the railway between point D and point E.</p> <p>The strip plan shows the proposed railway crossing the application route which was numbered 81 on the plan. The application route is listed in the Book of Reference as being a 'Private or Occupation Road' and as being owned by John and Dorothy Green and as being occupied by six others – John Bamber, William Bennett, John Bennett, Peter Blackwell, Robert Sharpe and James Holden.</p> <p>The plan also shows the route now recorded as 7-1-FP 1a joining the application route at point C numbered as 71a which is described in the Book of Reference as a 'Private Road and Footpath' owned by John and Dorothy Green and occupied by William Bennet.</p> <p>It also shows the route now recorded as 7-1-FP 37 joining the application route at point E running along the edge of fields numbered 74a, 74, 75 and 76 which is described in the Book of Reference as a 'Private Road and Footpath' again crossing land owned by John and Dorothy Green and occupied by a number of named individuals.</p> <p>No details are given with regards to how the railway would cross the 'Private or Occupation Road' but as will become evident when looking at OS maps post-dating the construction of the railway a level crossing was provided and a 'gate House' constructed alongside.</p> <p>The enabling legislation for the construction of the railway was the 'Liverpool, Ormskirk and Preston Railway Act 1846' which is available to view in the County Records Office.</p> <p>The Act makes only one reference to roads</p>
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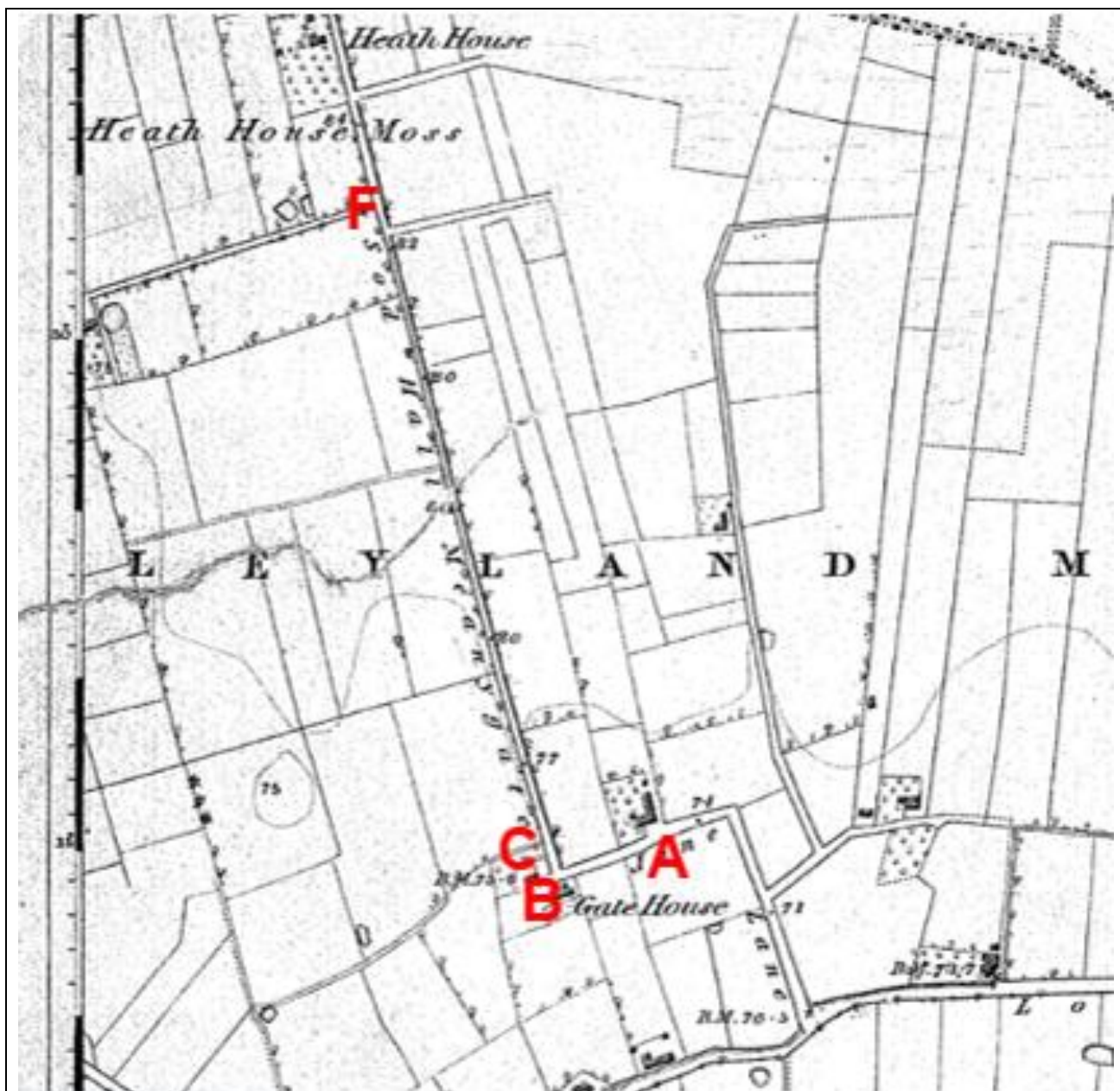
		<p>to be crossed on the level making specific reference to two public carriage roads/Turnpike Roads in Maghull and Rufford which it was stated could be crossed on the level but that stations or lodges should be erected at both for the safety of the public. No other routes are specifically mentioned in the Act.</p> <p>With regards to railway crossing generally Section 71 of the Highway Act 1835 stated that where a railroad crossed a highway for Carts or Carriages, the railway company was to provide good gates and employ someone to open and shut the gates so that users of the highway were not exposed to danger. Section 46 of the Railways Clauses Consolidation Act of 1845 enabled highways to be crossed on the level, with s47 providing that level crossings for carriageways had to be gated and manned.</p>
Investigating Officer's Comments		<p>One of the reasons that railway plans are held to be such strong evidence of what they show is the high level of public consultation required by the standing orders. The plans and books of reference had to be deposited with Parliament prior to the bill receiving its first reading. Notice of the application for a bill had to be published once in the London Gazette newspaper and for three successive weeks in the county newspaper. The railway company's solicitors had to write to everyone who owned land within the line of deviation (including the Surveyor of Highways). Copies of the plans, sections and books of reference in duplicate had to be sent to the clerk of the peace for each county so they could be made available for public inspection. Relevant extracts also had to be sent to the office of the Parish Clerk and office of the Board of Trade. Any alterations to the original plans required a repeat of the original advertising and consultation process. This high level of public consultation and advertisement means that railway plans were highly accurate. The statutory process required for the authorisation of railway schemes was exacting and the book of reference and deposited plans made in the course of the</p>

		<p>process needed to be of a high standard</p> <p>The application route is shown and referenced as a private or occupation road as opposed to just a private road.</p> <p>Standing Orders did not provide a standardised description to be attributed to each class of route. While 'public footpath' and 'private carriageway' provide clear and uncontentious descriptions, some are more ambiguous. 'Lane', 'Occupation Road' and 'Waste' are just three such examples. In this case the ownership of the application route and most of the adjacent land is listed as being John and Dorothy Green which is not inconsistent with the information provided in the Tithe Award several years earlier which detailed ownership as being the Heirs of John Green. Whilst the Tithe listed it as being owned and occupied by the Green family the Book of Reference lists 6 other individuals who occupied the route. This would make perfect sense given the fact that the purpose of the Railway Plan and Book of Reference was to list all those that would be affected by the construction of the railway across the route. The reference to a route being an 'occupation road' is ambiguous but in this context could refer to the fact that the route, whilst in private ownership, had private rights of access along it for named persons to gain access to land and/or properties. This would not be inconsistent with a route originally created as part of a private enclosure agreement.</p> <p>Network Rail offered the view that it was described as private because that was what it was and that the term 'occupation road' was included because it existed prior to the railway. This view however is not consistent as some routes shown on the plans to exist prior to the construction of the railway were simply described as private.</p> <p>Elsewhere on the map roads known to be public vehicular routes – and crossed by the proposed railway – were listed in the Book of Reference as public roads owned by the Surveyor of Highways for the particular Township. Private Roads were generally listed as being owned by listed</p>
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		<p>individuals who were also listed as occupiers whereas occupation roads generally listed the owners and then a different list of names as being occupiers of the route.</p> <p>In conclusion therefore, it appears that the railway records do not support the application route being a public vehicular route at that time. There was no reference to the route being considered more than an occupation route and no reference to any acknowledged public use at that time.</p> <p>The relevance of the construction of the railway crossing on the level with gates and what appears to be a gatehouse (lodge) will be discussed in relation to landownership later in this report.</p>
<p>6 inch Ordnance Survey Map Sheet 69</p>	<p>1848</p>	<p>The earliest 6 inch OS sheet for this area was surveyed in 1844-1846 and published in 1848.¹</p> <p>However it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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





(Above) Extracts from the 6 inch OS Sheet 69 surveyed 1844-1846 and published 1848
 Source: Lancashire County Council's own map collection

Observations

The full length of the application route is shown as a substantial bounded through route.
 Jane Lane is named on the map with the word 'Jane' written through point A.
 At point B a property known as the 'Gate House' is shown.
 A footpath denoted by a single pecked line is shown joining the route at point C and between point C and point F the route is named as Sod Hall Meanygate with land on either side labelled as part of Leyland Moss.
 A track is shown connecting to the

		<p>application route at point F (now recorded as 7-1-FP 48) with a property known as Heath House shown south of point G and accessed from the application route.</p> <p>Just south of the parish boundary near point G there is a small round building on the west side of the application route opposite a label 'Sod Hall T.P.' with what appears possibly to be a broken line or constriction across the application route at that point.</p> <p>Continuing from point G the route passes to the south of a large building labelled as Sod Hall which is not shown on earlier maps and then the application route turns directly north passing through an area labelled as Longton Moss. The route is named as 'Sod Hall Meanygate' and continues through to point H to exit onto Long Moss Lane adjacent to Adlington Gate House.</p> <p>The railway line is not shown.</p>
Investigating Officer's Comments		<p>The application route existed when the land crossed by the route was surveyed in 1844-46 and appeared to be capable of being used at least on horseback.</p> <p>It provided access to several properties and to enclosed fields but also acts as a direct link across the moss land from a public vehicular route in Leyland through to Long Moss Lane in Longton.</p> <p>The route is clearly named on the map as Sod Hall Meanygate both north and south of the buildings that collectively appear to be known as Sod Hall.</p> <p>The meaning of the word 'meanygate' is not known although several explanations have been found. The application route links to Longmeanygate via Jane Lane in the south which is now recorded as a public vehicular highway but which was not shown on Yates Map of 1786 and could, perhaps have been created at the same time as the application route.</p> <p>One explanation was that it was the name for a common pasture or walk for cattle, another that it was a reference to a main gateway. 'Gate' was the old Norse name for a road but the significance of 'meany' in that context is not known. One explanation</p>

		<p>put forward by Leyland Historical Society in an article detailed later in this report was that a road described as a 'Meanygate' was one which was originally built as a toll road but the Investigating Officer found nothing to indicate why the route was named as it was. The naming of the properties at either end of the route as Gate Houses may also be significant to its origins and relate to some sort of restrictions placed on access along the route. However it is not unusual for private estates to have had gatehouses. Of particular significance is the fact that 'Sod Hall T.P' is written opposite a small round building just south of point G. It is suggested that the letters 'T.P.' when found on an Ordnance Survey map were used either to mark the location of a telegraph pole or referred to the existence of a Turn Pike (see <i>Richard Oliver's book Ordnance Survey maps: a concise guide for historians. 3rd edition London: Charles Close Society, 2013</i>).</p> <p>In this instance, as the survey was undertaken in 1844-46 when the telegraph system was very much in its infancy and it is suggested that it is unlikely to be a telegraph pole, particularly a name one. It is more likely to have referred to a toll bar/gate suggesting that a toll was charged for use of the route at that time. In the early 1800s it was a relatively common practice for turnpikes to be set up and tolls charged with the intention of using the money to repair a road. Most of the turnpike roads that we are generally familiar with were regulated and eventually run through Turnpike Trusts but there appeared to be nothing to prevent a private landowner from allowing access along a route in his ownership and to charge for that use. Although the route was not a turnpike it appears that the OS at that time often used 'T.P.' for any toll gate rather than specifically a turnpike. Evidence for a toll road in 1844-46 would militate against it being a vehicular highway at that time but whether tolls were charged for pedestrians or horses is unknown.</p>
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6 inch OS Map Sheet 69 surveyed 1844-1846 and published 1848 available to view on National Library of Scotland website - <https://maps.nls.uk/view/102343970>

<p>Observations</p>		<p>The application route is shown in the same way as it is shown on the first edition map with the exception that this map shows the railway cutting across the route between points D-E with the word 'Gate House' written alongside it although on close inspection an actual 'house' or building does not appear to be shown. The toll gate is still labelled close to point G.</p>
<p>Cassini Historical Map Old Series Sheet 102 Preston & Blackpool</p>	<p>1842-1852</p>	<p>The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.</p>



Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Turnpike or main roads



Other roads



Unfenced roads



Mileages; turnpike gates; toll gates

S T.P. T.G.

County boundaries



Parish or township boundaries (on some sheets only)



Church



Windmill



Lighthouse



Railways



Cuttings



Embankments



Tramways and freight-only railways



Woodland



Parkland



Foreshore: sand; boulders; rocks



Old Series sheets used to create this map:

Sheet 89, N.E. Quarter, pub. 20th February 1843

Sheet 89, N.W. Quarter, pub. 20th December 1842

Sheet 90, N.E. Quarter, pub. 1st October 1842

Sheet 91, N.E. Quarter, pub. 31st December 1852

Sheet 91, N.W. Quarter, pub. 31st December 1852

Sheet 91, S.E. Quarter, pub. 30th June 1852

Sheet 91, S.W. Quarter, pub. 31st December 1847.

Observations		<p>This map is based on the earliest 1 inch Ordnance Survey map of the area crossed by the application route which is available to view.</p> <p>The full length of the application route is shown as a substantial route identified on the map key as 'other roads'. It is shown in the same way as other routes now known to carry public vehicular rights are shown.</p> <p>The land was surveyed following the construction of the railway which was known to be post 1845 and the railway line is shown crossing the application route south of Sod Hall between point D and point E. Next to the crossing are the words 'Gate House'.</p> <p>The route is not named on the map. Sod Hall is shown (and named) but there is no reference to a toll road.</p>
Investigating Officer's Comments		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers or possibly that they were at least substantial routes that could have been used at least on horseback.</p>
Census Records and Leyland Chronicles article written by Joan Langford (Attached to this report as	1851-71 Census Records. Undated Article	Census information is often looked at in relation to family history. Records go back every 10 years until 1841, which was the first year to ask for personal information. Census records can tell us the name,

Appendix 1)

Census material obtained from thegeneologist.co.uk which has copies of census material deposited in The National Archives

gender, age on the date of the census, occupation and birthplace of people living in a particular property. They will also show who they were living or staying with on the night of the census.

From 1851 the person's relationship to the head of the household and marital status are shown, as well as whether they have a disability and from 1891 the person's employment status is shown. This shows whether they were employed, an employer or neither – and from 1901, 'home worker' was added as a category.

Census records have been taken for many years to keep track of the country's population. They do not generally assist in the investigation of public rights of way but may, on occasion, help to piece together who may have used a route and why.

40	Syland	James Bell	Head	42	Ag. Lab.	Amesbury, Wilts
		Mary	Wife	37		Do
		John	Son	2		Do
		Harriet	Daughter	1		Do
41	Sod Hall	Robert Welch	Head	47	Rail. Gate Keeper	Amesbury, Wilts
		Maria	Wife	44		Do
		Alfred	Son	11		Do
		Jane	Daughter	7		Do
42	Sod Hall	James Whigham	Head	47	Ag. Lab.	Amesbury, Wilts

Highlighted entry reads: "Rail. Gate Keeper"

(Above) Extract from the 1851 Census – Sod Hall

No. of Schedule	Road, Street, &c., and No. or Name of House	HOUSES		Name and Surname of each Person	Relation to Head of Family	Condition	Age of		Rank, Profession, or Occupation
		Inhabited	Uninhabited (Us. or Building (B.))				Male	Female	
				Sarah Wilson	Wife	Un	11		Farmer's Wife
				John W. G.	Son		10		Do
				William A. B. G.	Wife		11		Scholar
140	Sod Hall Crossing 1			Robert Welch	Head	Mar	40		Railway Porter
				Maria	Wife	Mar	39		Porter's Wife
				Ellen	Wife	Mar	11		Do
				Jane	Wife	Mar	12		Do
				Maria	Wife	Mar	7		Scholar
				John W. G.	Son		7		Do
141	Sod Hall Crossing 1			John Whigham	Head	Mar	45		Farmer 1/10 acres
				Maria	Wife	Mar	49		Farmer's Wife
				John	Son	Mar	28		Do

Highlighted entry reads: "Railway Porter"

(Above) Extract from the 1861 Census – Sod Hall Crossing

Page 26		The undermentioned Houses are situate within the boundaries of the						Local Board, or [Provisional Commission District] of	Enumeration No.
[Civil Parish/Township] of		Municipal Borough of		Municipal Ward of		Parliamentary Borough of		Town of	Village, Hamlet, or Town
No. of Schedule	ROAD, STREET, ALLEY, or No. or NAME of HOUSE	HOUSE No. or No. of HOUSE	NAME and Surname of each Person	RELATION to Head of Family	CON-DITION	AGE	Rank, Profession, or OCCUPATION	WEEKS WORKED	
109	Sod Hall Lane	1	Major G. G. G. G.	Wife	Married	25	Railway Labr	Consecration, 10 weeks	
			Margaret G. G. G.	Wife	Married	3		Consecration, 10 weeks	
			John G. G. G.	Wife	Married	11		Consecration, 10 weeks	
110	Sod Hall Lane	1	John G. G. G.	Wife	Married	27	Foreman of 12 Men	Consecration, 10 weeks	
			John G. G. G.	Wife	Married	27	Foreman of 12 Men	Consecration, 10 weeks	

Highlighted extract reads: "Railway Labr"

(Above) Extract from 1871 Census – Sod Hall Lane

CENSUS OF ENGLAND AND WALES, 1911.													
Before writing on this Schedule please read the Examples and the Instructions given on the other side of the paper, as well as the headings of the Columns. The entries should be written in ink.													
The contents of the Schedules will be treated as confidential. Strict care will be taken that no information is disclosed with regard to individual persons. The returns are not to be used for proof of age, or in connection with Old Age Pensions, or for any other purpose than the preparation of Statistical Tables.													
NAME AND SURNAME	RELATIONSHIP to Family	AGE last Birthday or last day of the year	PARTICULARS as to MARRIAGE				PROFESSION or OCCUPATION of Person aged 15 years and upwards				BIRTHPLACE of every person	NATURALITY of every person born in the United Kingdom	INFIRMITY.
			Married	Single	Widow	Divorced	Principal Occupation	Industry or Service with which worker is connected	Whether Engaged, Working or Idle	Whether Engaged, Working or Idle			
David Jiden	Head	41	Married					Railway Platelayer	Leyland Co.	Worker	Lancashire	English	
Margaret Jiden	Wife	39	Married							Worker	Lancashire	English	
Jane Ann Jiden	Daughter	21	Single					Woolen Weaver	250	Worker	Lancashire	English	
William Jiden	Son	19	Single					Woolen Weaver	295	Worker	Lancashire	English	
Stella Jiden	Daughter	15						Woolen Weaver	250	Worker	Lancashire	English	
Thomas Jiden	Son	3									Lancashire	English	
James Jiden	Son	5 months									Lancashire	English	

Head of household occupation reads: "Railway Platelayer"

(Above) Extract from 1911 Census – Sod Hall Crossing, Midge Hall, Leyland



Farington Roundhouse c1904



Sod Hall Meanygate c1904 looking north. Heath House on the left, the Roundhouse and Sod Hall in the distance

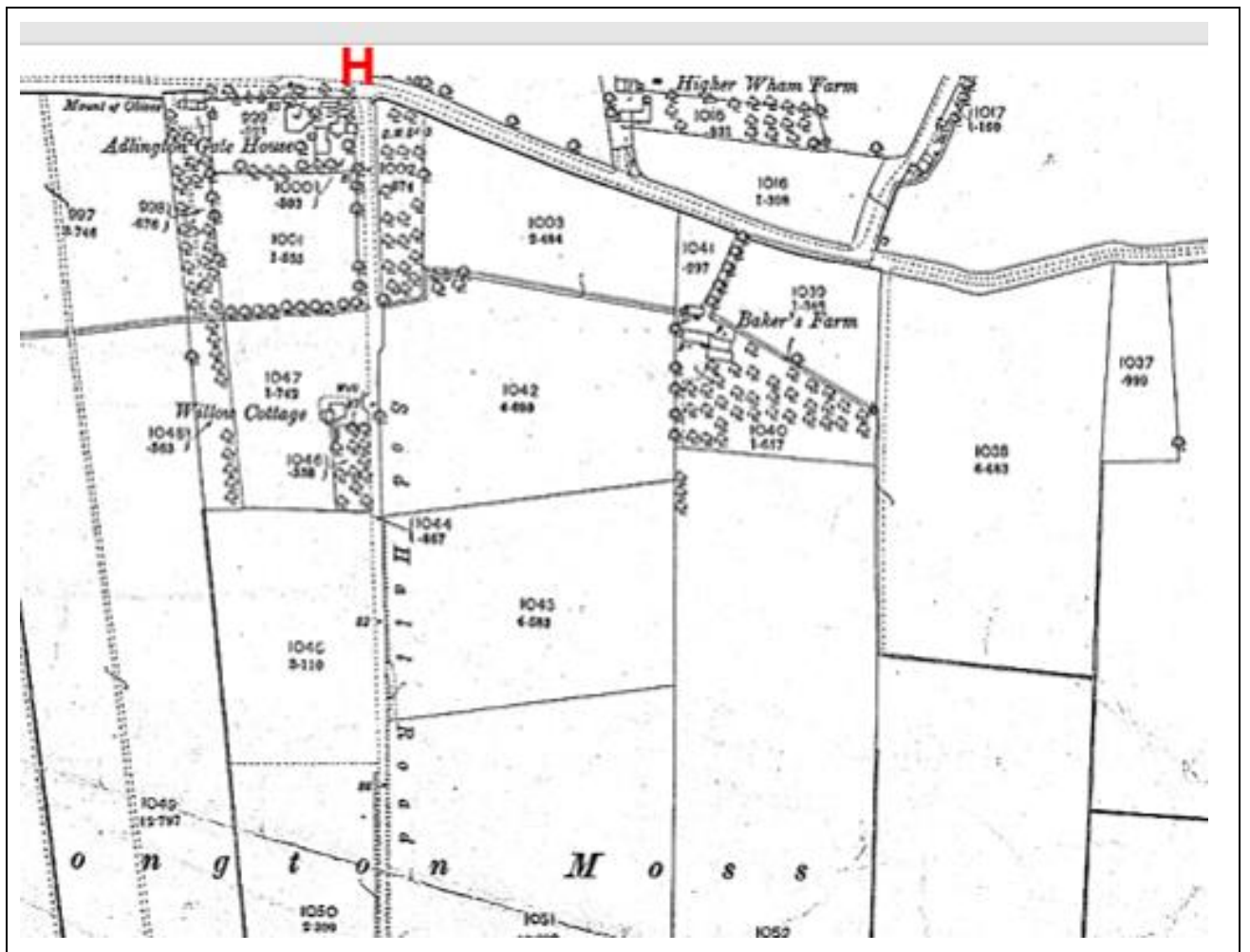
Observations

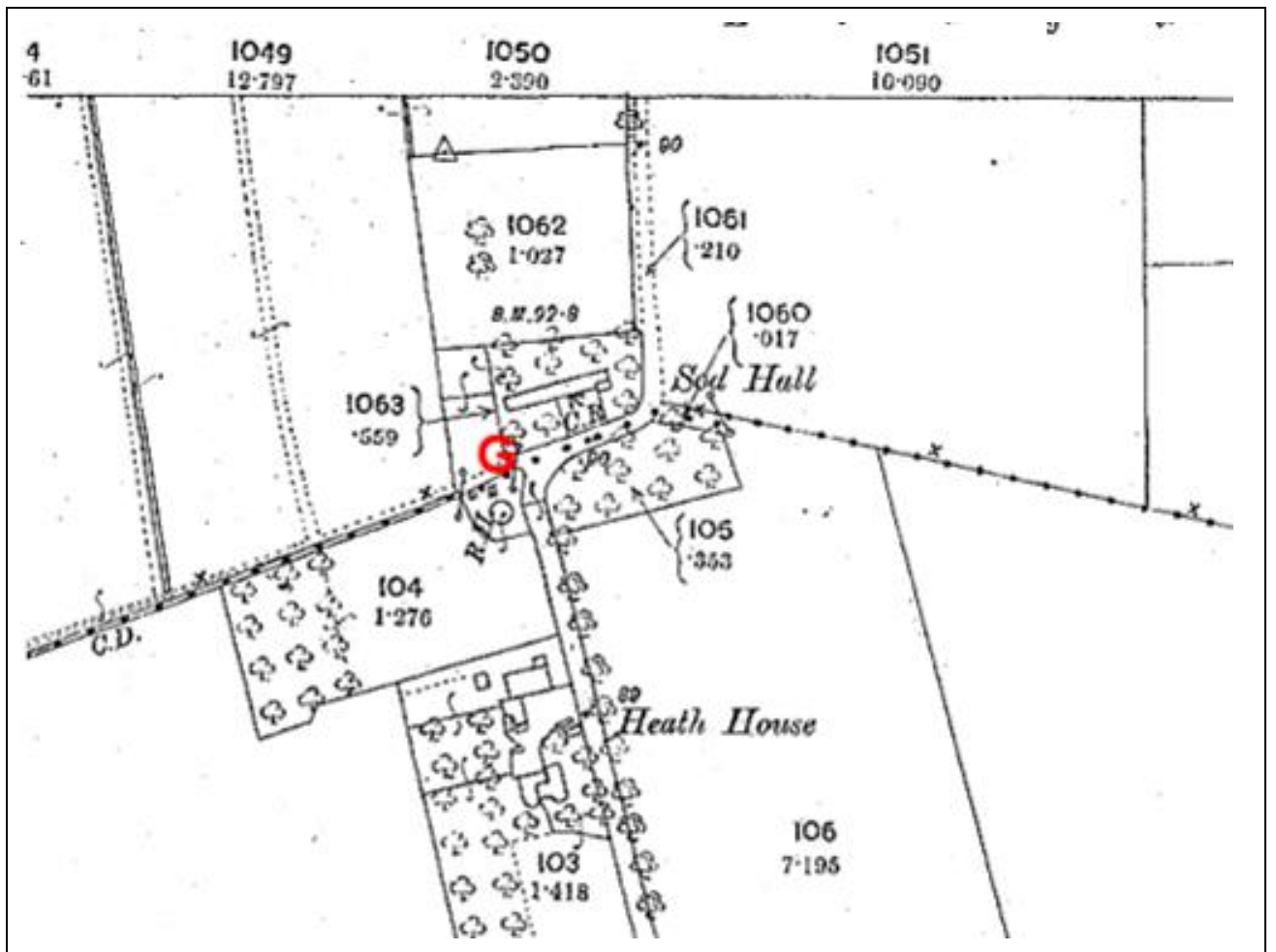
Census records were examined for 1861 following sight of an article published by Leyland Historical Society about the history of the 'Round House' located close to point G.

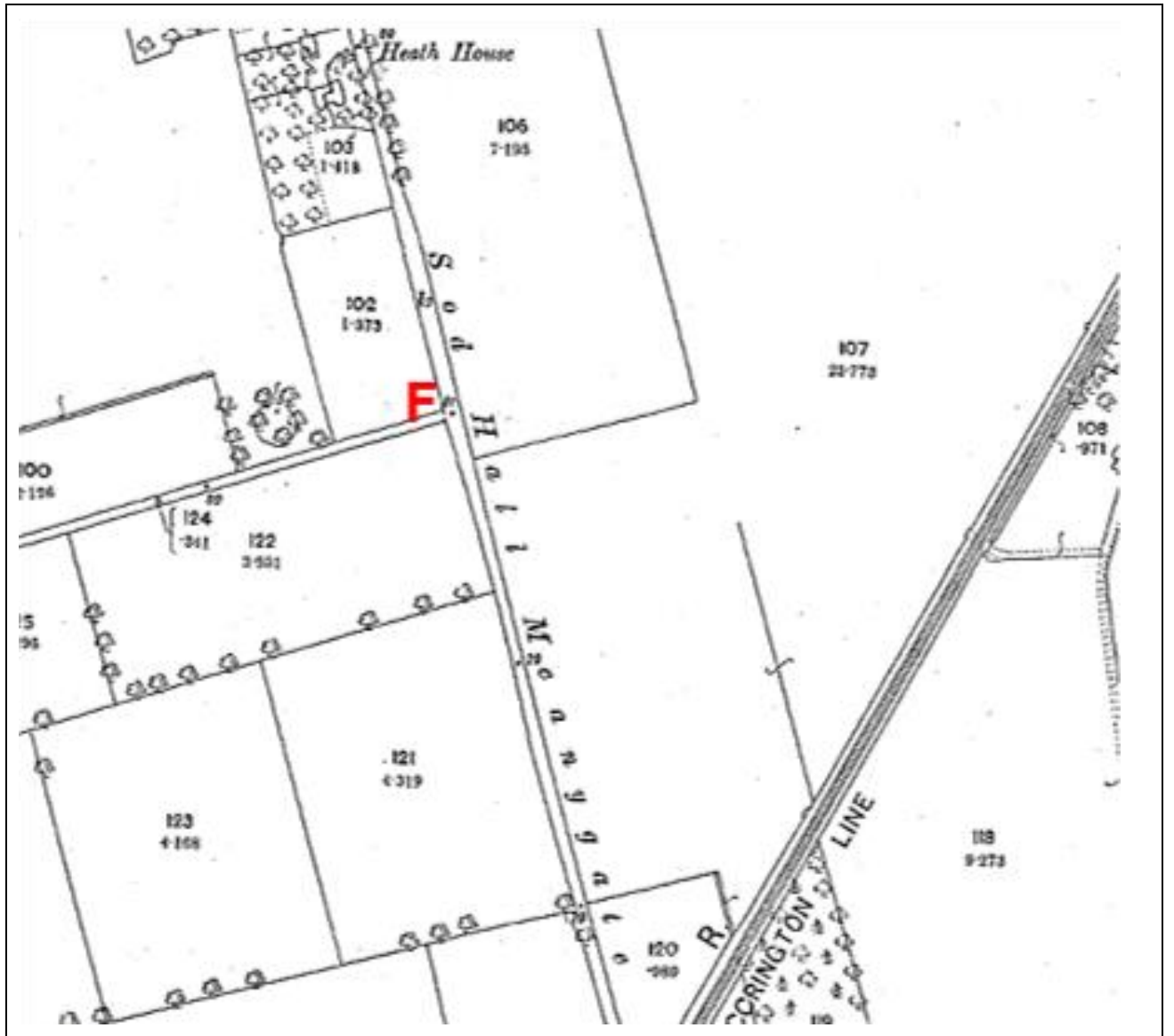
The author of the article (Joan Langford) explained that for some time it had been thought that the round house may originally have been a toll house and considered that this theory was backed up by the 1861 census which described the property as 'Moss Toll Bar' which was occupied at that time by Richard Taylor and his family. The author of the article explained that she had looked at further entries on the census records and for other evidence but had found no factual written evidence of tolls being collected there. She referred to some oral evidence – with recollections of people living on the moss in the early 1900s recalling that up until the 1930s the owner of the round house had at least attempted

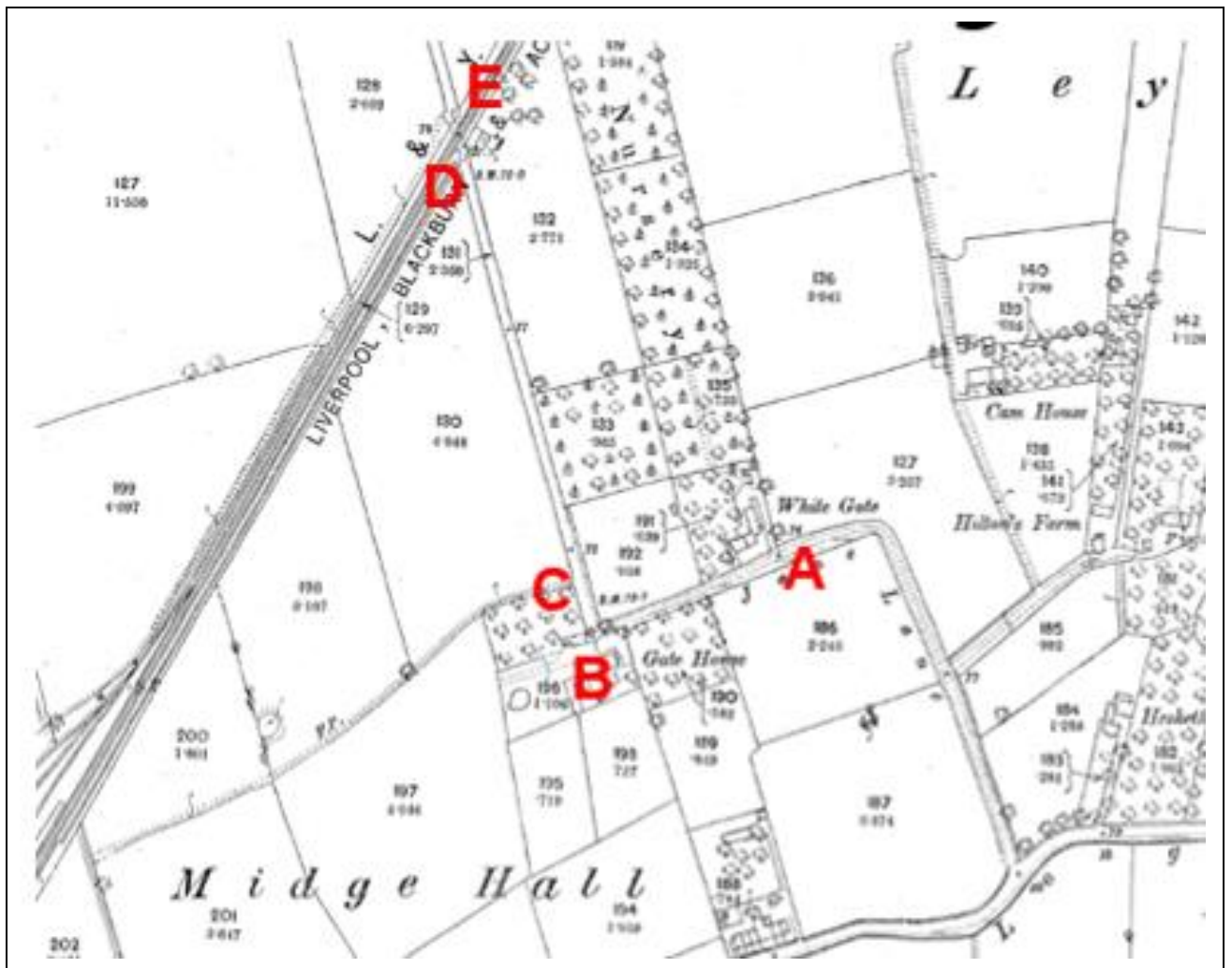
		<p>to collect tolls for the upkeep of the road but no further information on the matter had been found.</p> <p>A photograph included in the article shows the round house in 1904, with a gate across the application route and Heath House Farm in the distance.</p> <p>A further photograph also dated 1904 shows the substantial nature of the route past Heath House Farm at that time.</p> <p>Census records were also searched to see whether any information could be found relating to the 'The Gate House' adjacent to the railway crossing (D-E). The 1851 census includes an entry for 'Sod Hall' in Leyland with the occupiers being detailed as Robert Dobson who was 30 years old, his wife Alice and their two children – Ellen and Jane. Robert Dobson's occupation was listed as 'Railway Gate Keeper'.</p> <p>The 1861 census was examined to see whether this gave any further details. The property address was now described as 'Sod Hall Crossing' and it was still occupied by Robert and Alice Dobson who now had 4 children. Robert Dobson's occupation was now described as 'Railway Porter'.</p> <p>By 1871 the occupiers are listed as Robert Catterale who is described as being a 'Railway labourer' his wife and two children. Only one more census was found detailing the inhabitants of Sod Hall Crossing. The census was dated 1911 and details the property being inhabited by David Iddon - who's occupation was listed as being a Railway Platelayer - his wife and 5 children.</p>
Investigating Officer's Comments		<p>The census information relating to the building known locally as 'The Round House' is consistent with the description of the property as a toll house on the First Edition 6 inch OS maps detailed above and is certainly suggestive of some possible restriction or condition of access but like the author of the article published by Leyland Historical Society, the Investigating Officer was unable to find any other references to the early history of the route under investigation.</p> <p>The two photographs included in the article published by the historical society and</p>

		<p>reproduced above are useful in picturing the route over 100 years ago – particularly with reference to the maps to be examined later in this report - and confirming the existence of a gate across what was (and still is) a substantial route.</p> <p>If a toll was charged (lawfully) then it cannot have been a highway for whatever status of user a fee was payable.</p> <p>With regards to the railway crossing the records are interesting. They detail who occupied the property described as Sod Hall Crossing over a 60-year period soon after the railway was built. The records do not confirm ownership but as each of the occupiers worked for the railway in some capacity it appears likely that the Gate House was owned by the railway and rented out during that time. The first occupier listed in 1851 – soon after the railway was built – is described as being the Railway Gate Keeper suggesting that initially, at least, the level crossing was manned by a gatekeeper. Later occupants are all described as working for the railway but with no specific reference to the crossing so there is no clear inference that can be drawn about the nature of the use made of the application route at that time. The last occupant listed (in 1911) was described as a platelayer and it is possible that the property was simply used at that time to house a worker with responsibility for maintaining that section of the railway line.</p>
<p>25 Inch OS Map LXIX.5 and LXIX.9</p>	<p>1894</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.</p>









Observations

The application route is shown – although it is unclear from the map where the route labelled as Jane Lane ended and Sod Hall Meanygate began.

Between point A and point B the application route is shown consistent with the way that Jane Lane is shown – with double pecked lines within fenced boundaries suggesting that the route had distinct grass verges along either side. From the Gate House at point B the route continues in a north north westerly direction fenced but with no indication that a narrower track existed within the boundary of what was fenced.

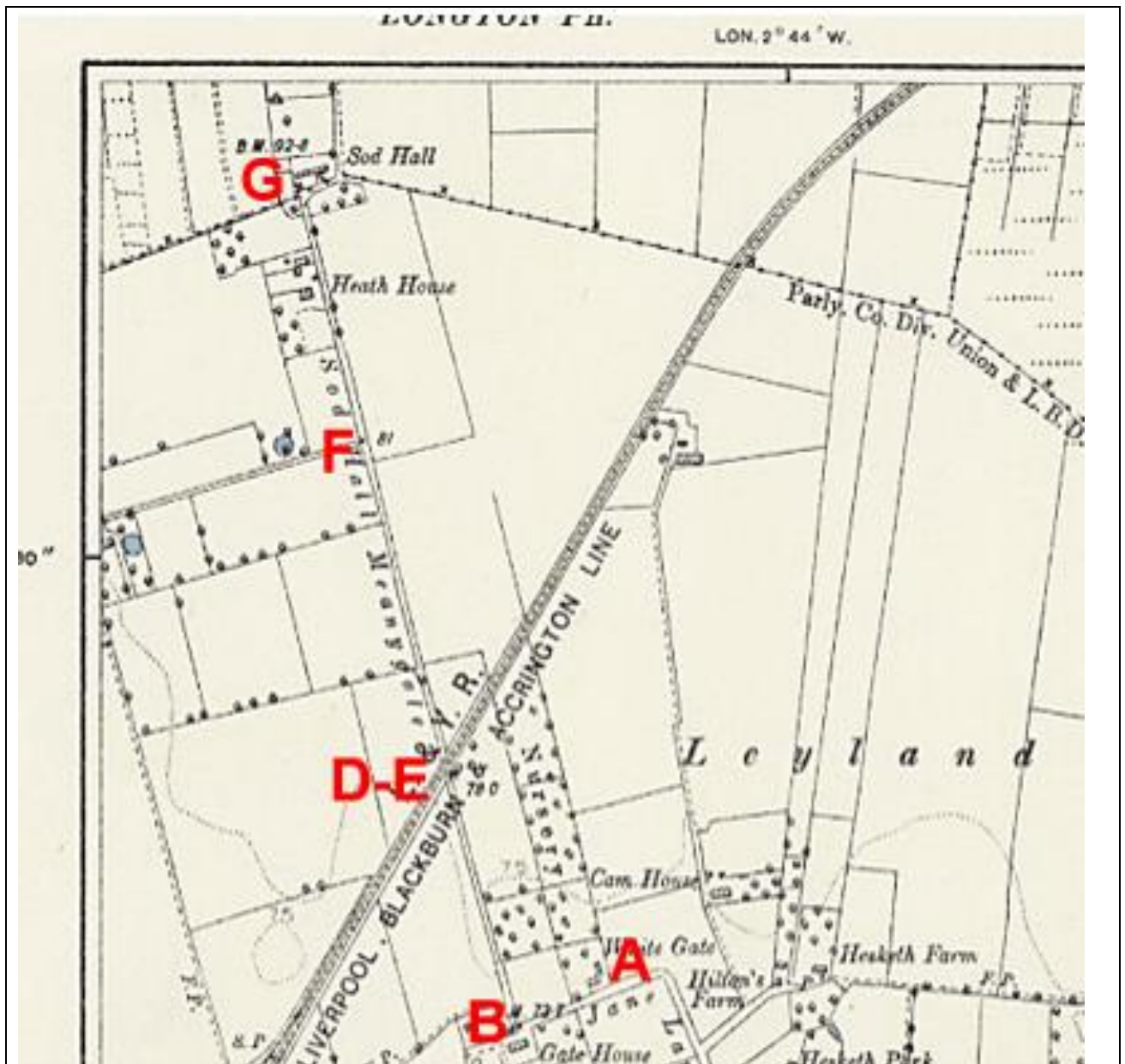
The route was crossed by the railway and lines are shown across the route at either side of the railway (D & E) and an unnamed building is shown adjacent to the route at point D.

Beyond the railway the bounded route continues past Heath House and is named

		<p>on the map as Sod Hall Meanygate. Just before reaching the bend in the route at point G a line is shown across the route suggesting that it was gated at this point and immediately to the west of the gate is a circular building with the letters 'R.H.' marked next to it.</p> <p>From Point G the application route passes Sod Hall and turns north to Long Moss Lane. The route north of Sod Hall is named on the map as Sod Hall Road and crosses Longton Moss. Much of it is unfenced but is raised above the level of the moss land until it passes Willow Cottage.</p> <p>The route is not shown with a thickened line along the south or east side of it.</p>
Investigating Officer's Comments		<p>The application route existed in 1893 as a substantial named through route linking to public vehicular roads at either end providing access to several properties. It was gated at the railway and close to point G but appeared to be capable of being used by horses and by horse drawn vehicles at that time.</p> <p>It is not known why it was now labelled as Sod Hall Meanygate south of Sod Hall and Sod Hall Road north of Sod Hall but the fact that it was named as a road on the map is evidence that it was known locally by that name and is often considered to be consistent with use of the route by the public at least on horseback at that time.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>In this particular case the existence of gates is more interesting as the gates across the level crossing appear to have been constructed with safety in mind and not just for the control of livestock (as the application route was fenced off from adjacent fields).</p> <p>The railway information detailed earlier in</p>

		<p>the report does not indicate that the route was considered to be a public road but did refer to occupational 'or' private use so the existence of the gates could be explained by this but the fact that a gate house was built and occupied by railway workers is suggestive of public use of the application route over and above use as a public footpath.</p> <p>The second gate – just south of point G is located at the point at which the earlier OS maps marked the existence of Sod Hall toll gate.</p> <p>On this larger scale map a circular building is shown annotated with the letters 'R.H.'. The applicant made a number of references to this building being called the 'Round House' – which is not disputed but the Ordnance Survey used the abbreviation 'R.H.' to mark the existence of something called a 'Road House' (see Dr Richard Oliver's book <i>Ordnance Survey maps: a concise guide for historians</i>. 3rd edition London: Charles Close Society, 2013), although it is noted that 'R.H.' is more often found to mark the root of a hedge. The Investigating Officer has not been able to find a clear definition of what a 'Road House' was in the late 1800s but it is certainly not incompatible with the view that the existence of the gate and house (known locally as the Round House) related to the collection of tolls (payment) at some point in the past.</p> <p>No part of the application route – or Jane Lane – is shown with colouring or thickened lines along the south or east side. Shading and colouring were often used to show the administrative status of roads on the 25 inch maps prepared between 1884 and 1912. The fact that the route is not shown in this way suggests that it was not considered to be a public vehicular route at that time – or possibly, if it was a public route, it was not considered to be of a good enough standard of repair and/or was not repairable by the highway authority.</p>
<p>6 inch OS Map Sheets LXIX.SW and LXIX.NW</p>	<p>1894</p>	<p>6 inch OS map surveyed in 1893 and published 1894.</p>






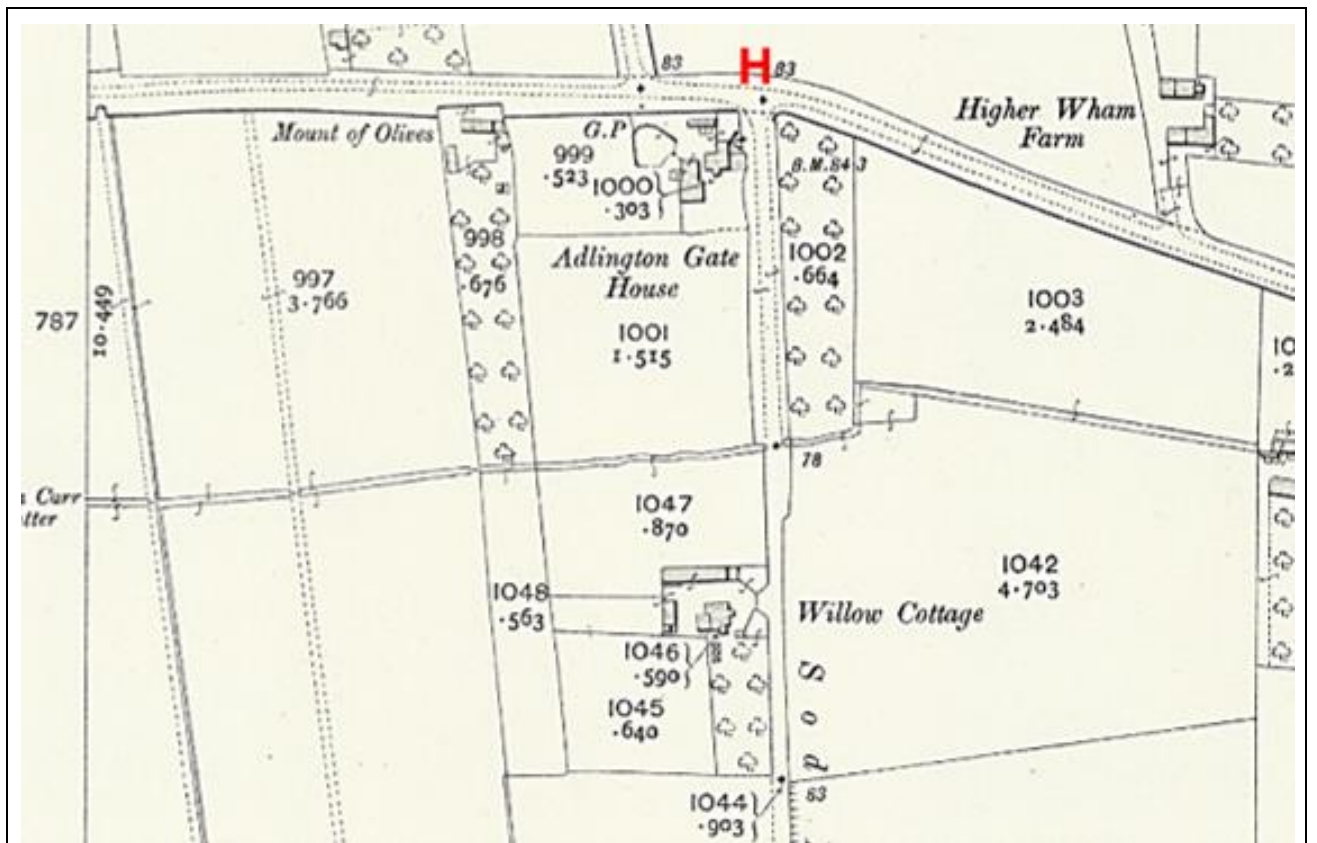
Observations		The application route is shown in the same way that it is shown on earlier OS maps examined with the exception that the 'Round House' is no longer labelled T.P. but now there is a line across the route at that point.
Investigating Officer's Comments		The route existed in 1893 and appeared to be capable of being used. The map derived from the same survey as was carried out for the 25 inch OS map detailed above (and published at the same time) so the fact that the Round/Road House (R.H.) was not marked is most likely due to the scale of the map and not because it no longer existed (at least physically).
1 inch OS Map	1896	1 inch OS map first published 1896 date of

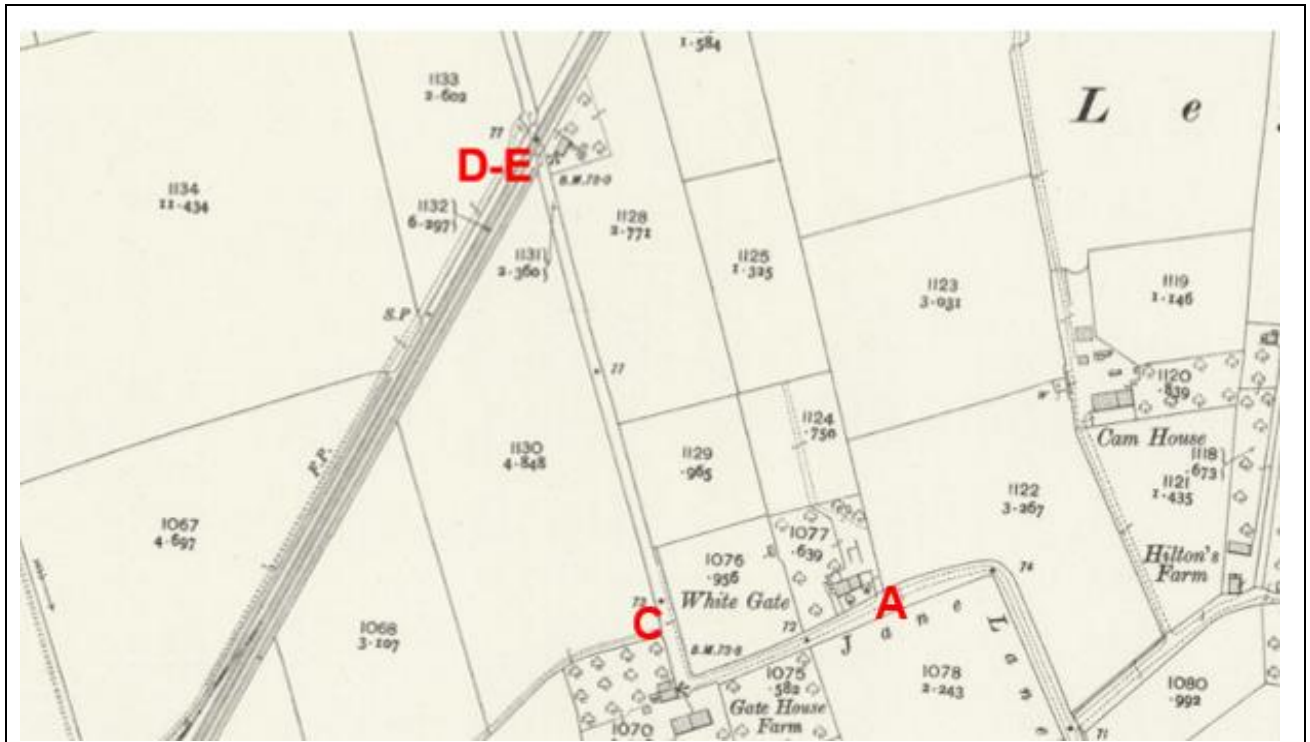


<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Fenced	Unfenced	Churo
" " <i>Second Class</i>				"
" " <i>Third Class</i>				"
<i>Unmetalled Roads</i>				Wind
<i>Footpaths</i>				Ligh
<i>Railways, Single Line</i>				Ligh
				Beac
				Letta
				Cont

Observations		The full length of the application route is shown as an unmetalled – or possibly as an 'other road'.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the application route – were accessible to those travellers.
Bacons Map of Lancashire	1905	G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the

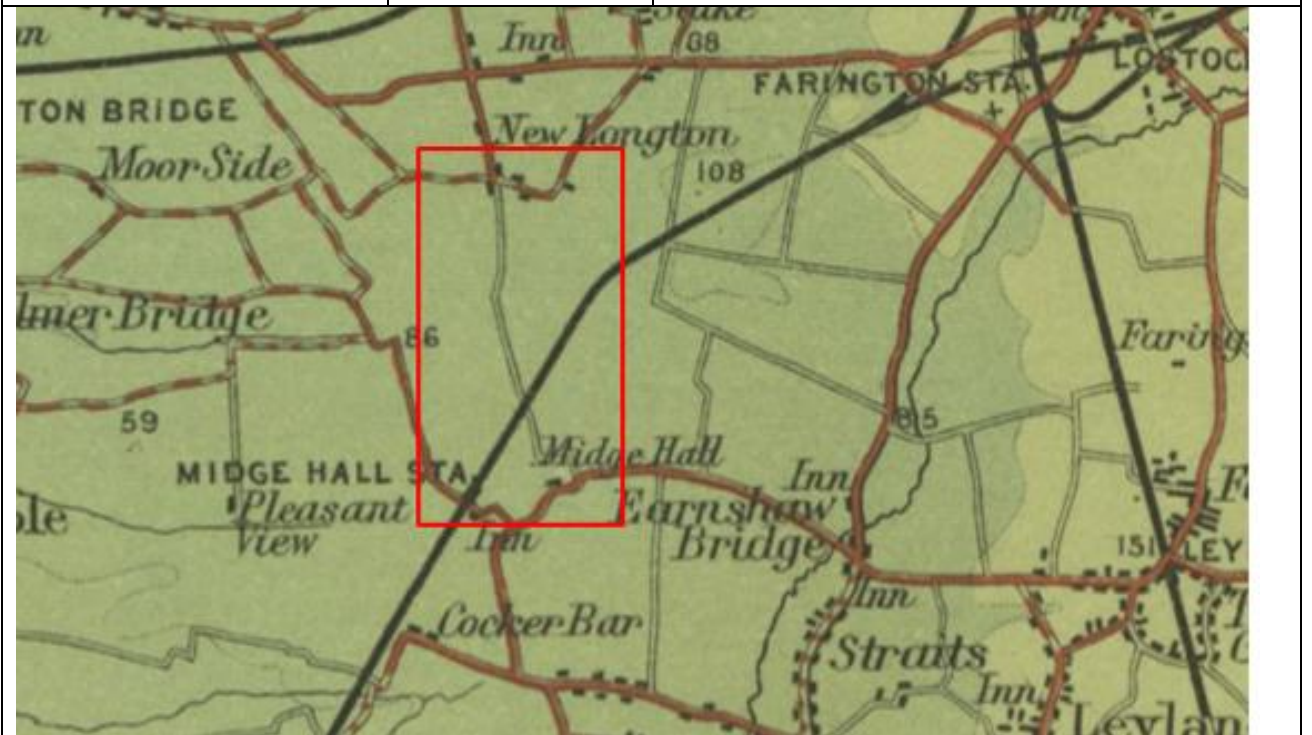
		title states, the maps he published were derived from Ordnance Survey maps.
		
Observations		The application route is clearly shown.
Investigating Officer's Comments		<p>GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes. The application route is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles. Its inclusion on a map of this nature is suggestive of public use.</p>
25 inch OS Map LXIX.9	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.








Observations		The application route is shown in the same way that it was shown on the earlier edition of the 25 inch mapping with a gate just south of point G and the Round House/Road House (R.H.) shown.
Investigating Officer's Comments		The application route existed as a substantial through route in 1909 and appeared to be capable of being used on horseback and with vehicles.
Ordnance Survey Object Names Book The National Archives Ref: OS35/3940 and OS35/3938)		When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.
Observations		The Object Names Books for the OS Sheets covering the area have not been obtained from the National Archives as part of this investigation.

Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.


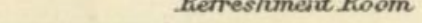



EXPLANATORY NOTE

First Class Roads 
Secondary (Good) 
Indifferent (Passable) 
The uncoloured roads are inferior and not to be recommended to cyclists.

Footpaths & Bridlepaths

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

Railways  Station  Station with Refreshment Room

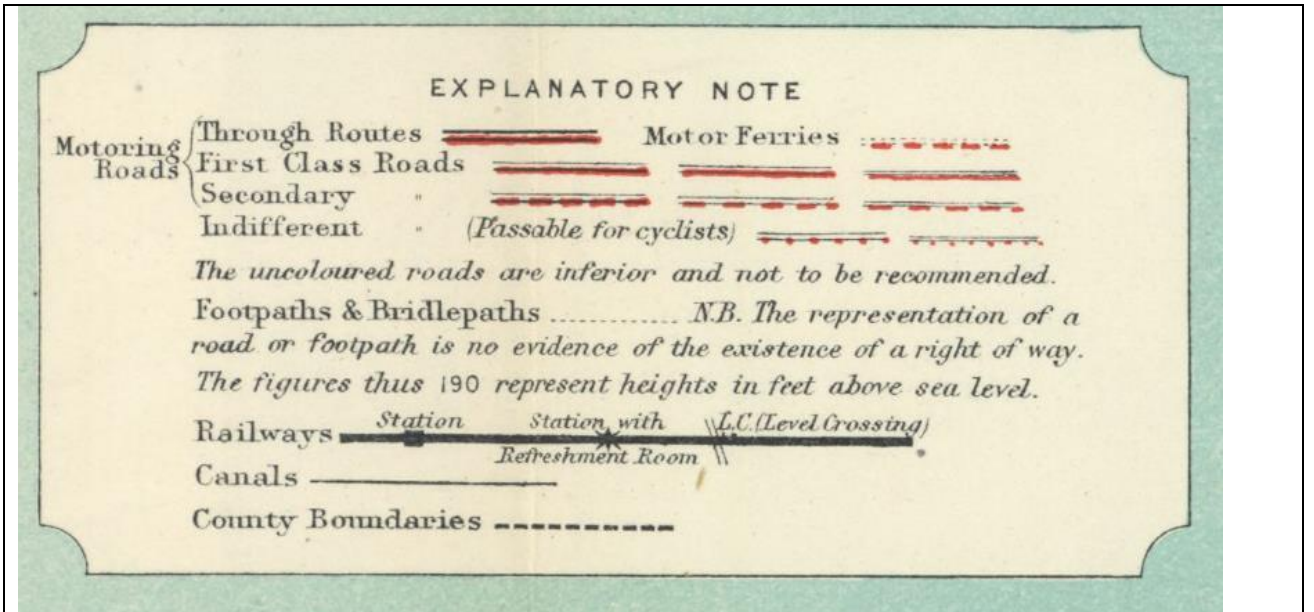
Canals 

County Boundaries - - - - -

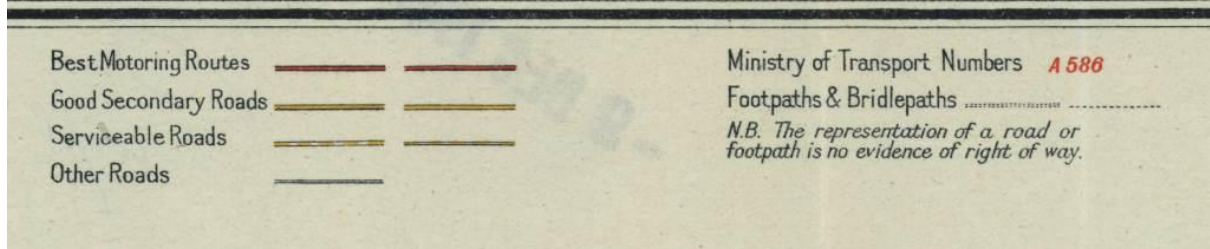
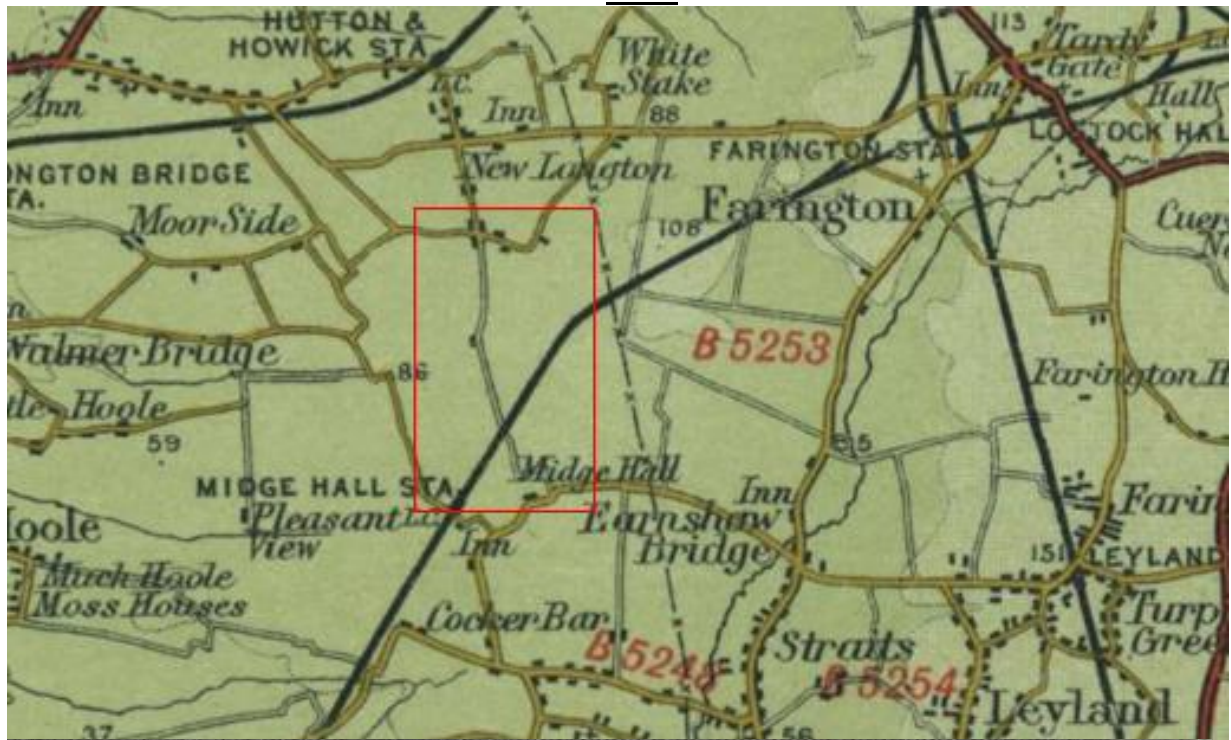
SCALE 1 : 126,720 = 2 MILES TO AN INCH

1904





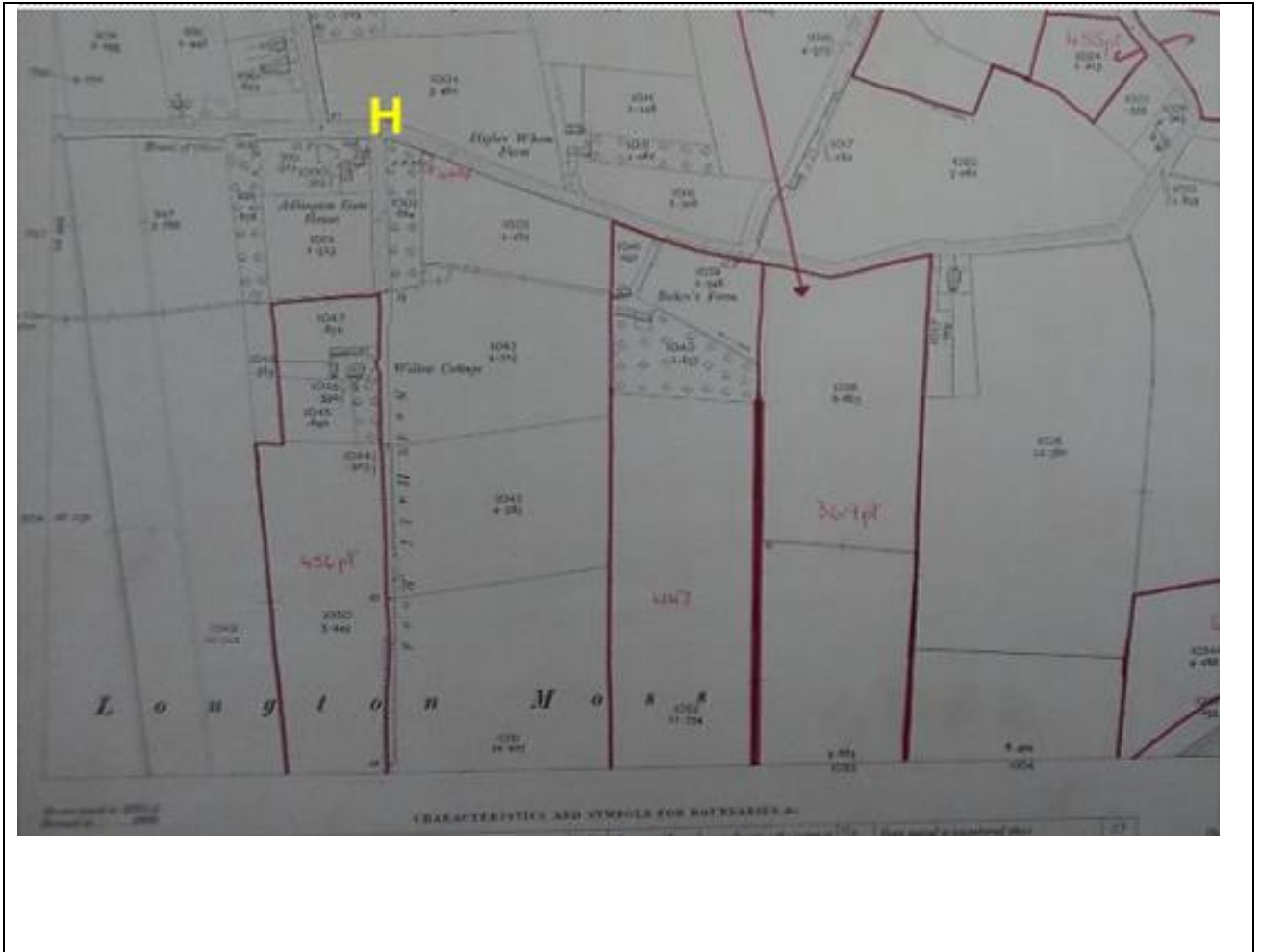
1920

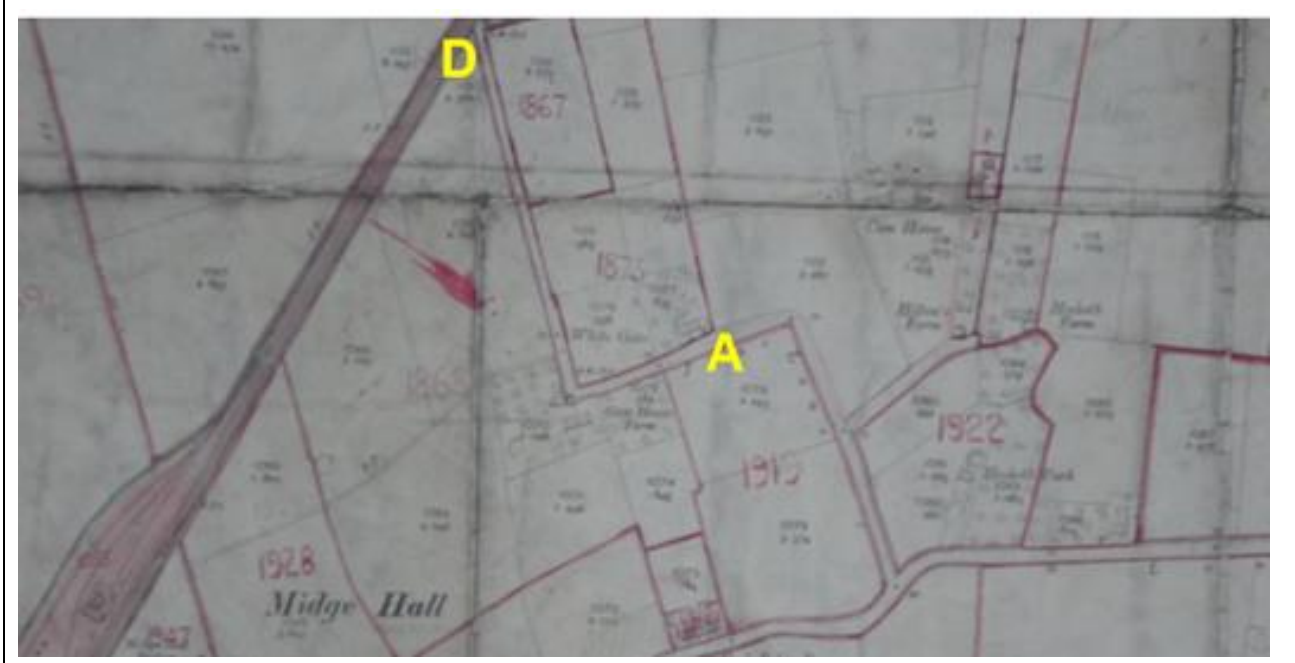
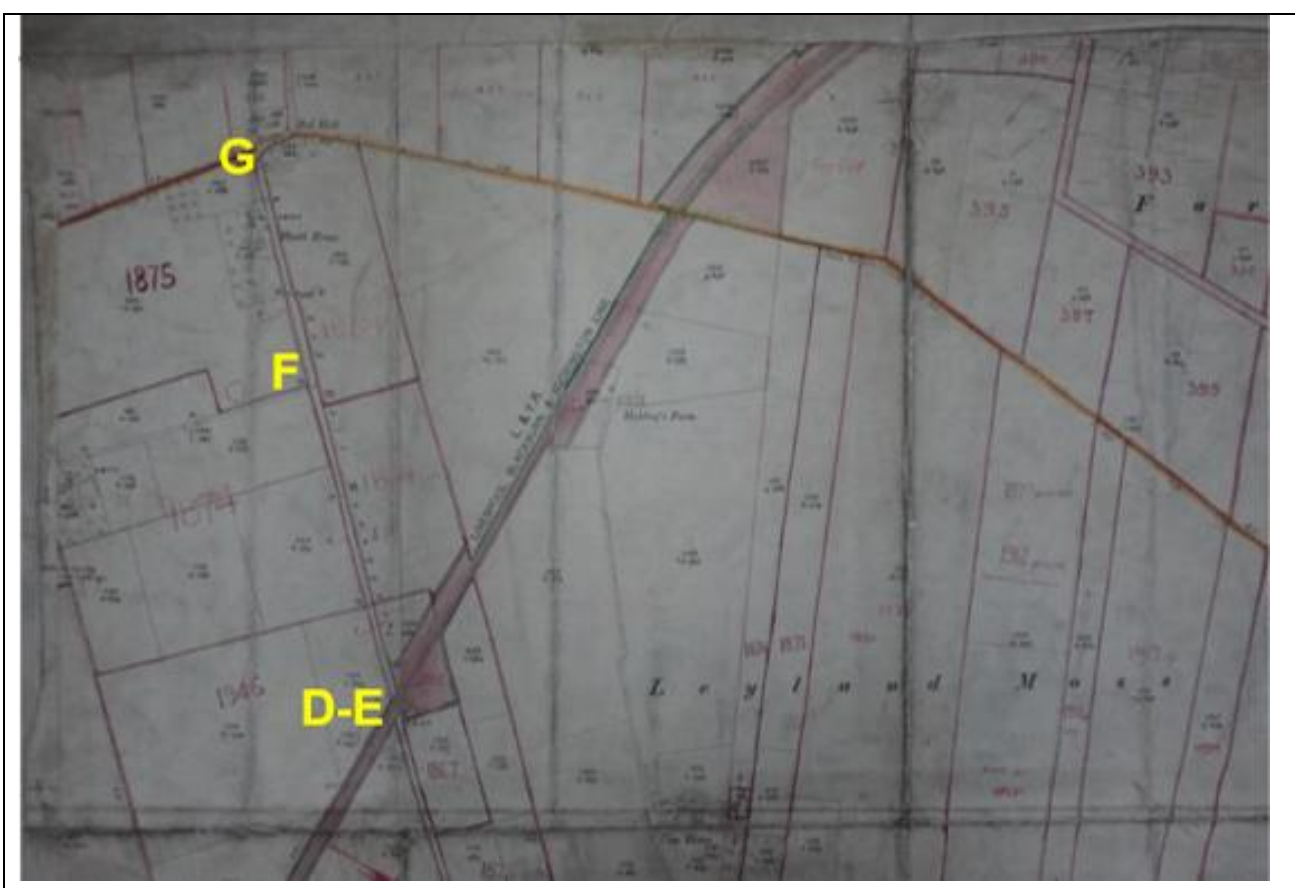


1941

Observations		The application route is shown on all three maps categorised as an uncoloured (and inferior) road or 'other road'.
Investigating Officer's Comments		The maps support the physical existence of the route but the way that they are depicted

		<p>suggests that they were not considered suitable for 'modern day' motorised vehicles. They may have been accessible – and capable of being used – on foot and horseback but whether such use was public or private would require the provision of additional supporting evidence.</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>



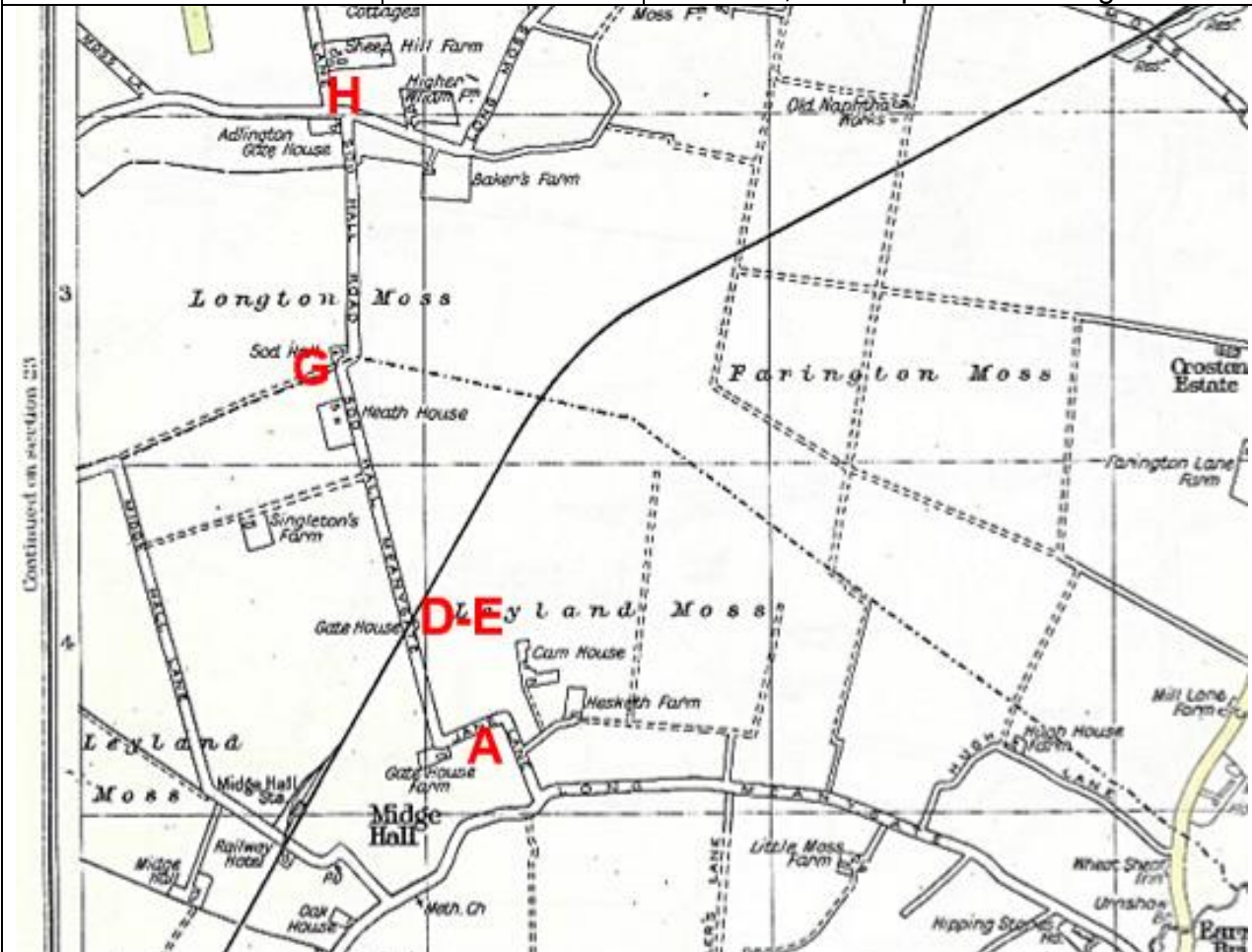


<p>Observations</p>	<p>The route crosses two separate Ordnance Survey Sheets.</p> <p>The sheet showing the southern section of the route shows the route (and Jane Lane) excluded from the numbered plots from point A through to just north of Sod Hall and point G. Some of the land on either side of the route is braced and numbered</p>
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		<p>as one parcel. The railway and house immediately adjacent to the application route at point D are included in a numbered plot owned by the Railway Company.</p> <p>The map of northern section of the route from just north of Sod Hall through to Long Moss Lane is incomplete. Some of the land to the west of the application route is shown bounded and numbered but the application route and land to the east has not been marked up and the map is clearly incomplete.</p>
Investigating Officer's Comments		<p>The exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of public vehicular rights. Numbered plots split by the route give further weight to the belief that the route could have been considered to have public vehicular rights (as footpaths and bridleways were normally included within the numbered plots).</p> <p>However, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments. Whilst this is not a consistent approach. The exclusion of the route may not therefore necessarily be evidence of public vehicular rights existing but this does not necessarily mean that a bridleway may not have existed along the route and this needs to be looked at carefully in context with all other available evidence.</p> <p>The fact that the property known as the Gate House adjacent to the railway crossing (D-E) was owned by the Railway which confirms the view that it had been occupied by a number of different people who had worked for the railway since at least 1851 and again raises the question as to why a gatehouse would be provided by the railway if the route was private.</p> <p>Unfortunately, the map showing the northern end of the application route is incomplete and as such no inference can</p>

		be drawn from it regarding the application route north of Sod Hall.
25 Inch OS Map LXIX.5 and LXIX.9	1931	Further edition of 25 inch map (surveyed 1892-93, revised in 1929 and published in 1931.
Observations		The application route is shown in the same way as it is shown on earlier editions of the OS 25 inch maps although it was noted that the property adjacent to the railway – and recorded as being in the ownership of the rail company in the Finance Act documentation is now named on the map as the Gate House.
Investigating Officer's Comments		The application route existed as a substantial through route in 1929 and appeared to be capable of being used on horseback and with vehicles. The naming of the property adjacent to the application route at the railway as The Gate House may have some significance regarding the control of public or private access across the railway.
Authentic Directory of Lancashire Geographia	Map of South Lancashire by	Circa 1934 An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a

complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations

The full length of the application route is shown as part of a longer through route named on the map as Sod Hall Meanygate south of Sod Hall and as Sod Hall road north of Sod Hall. The railway is shown with the word 'Gate House' alongside it. The route is shown in the same way as other routes with public vehicular rights are shown.

Investigating Officer's Comments

The application route is shown in the atlas consistent with how other nearby routes carrying public vehicle rights are shown suggesting that access was available along the route in the early 1900s.

Aerial Photograph²

1945-1952

The earliest set of aerial photographs available was taken just after the Second World War and flown between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.



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





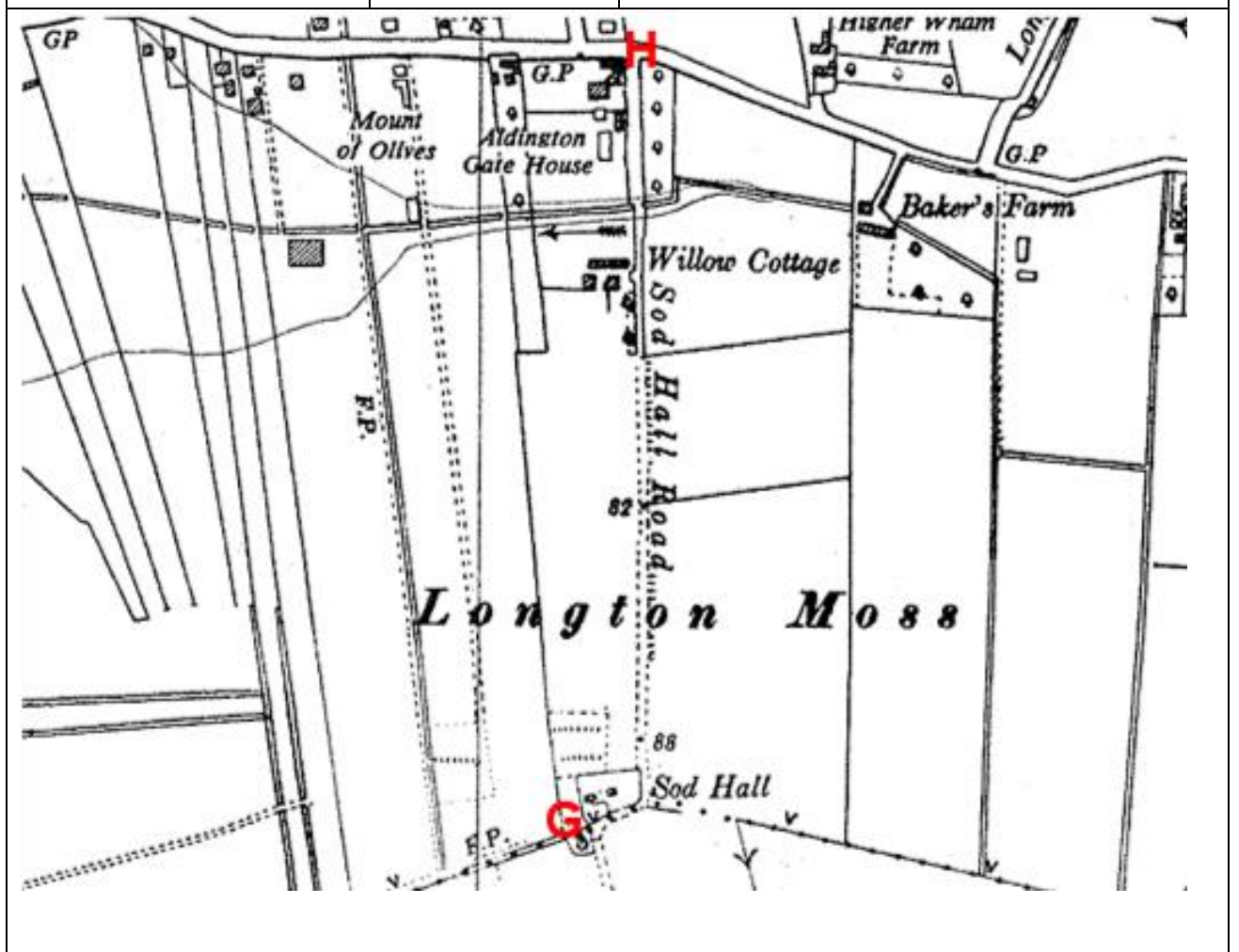
Observations

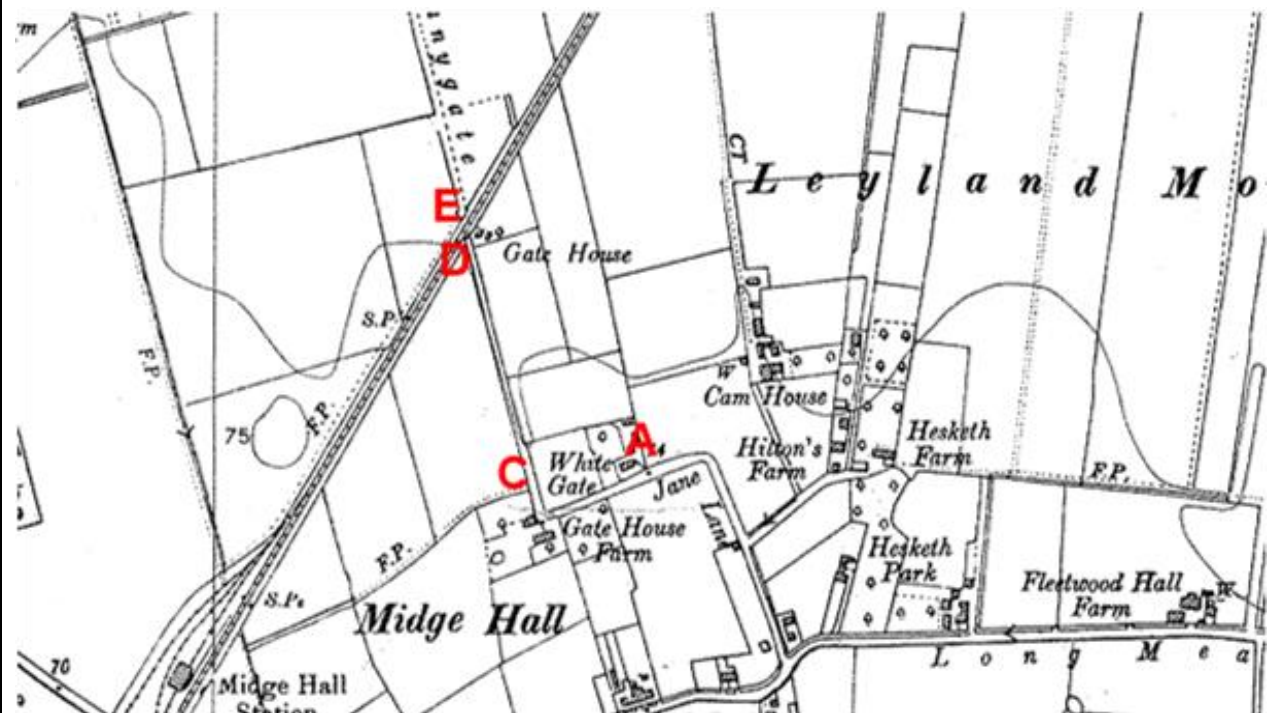
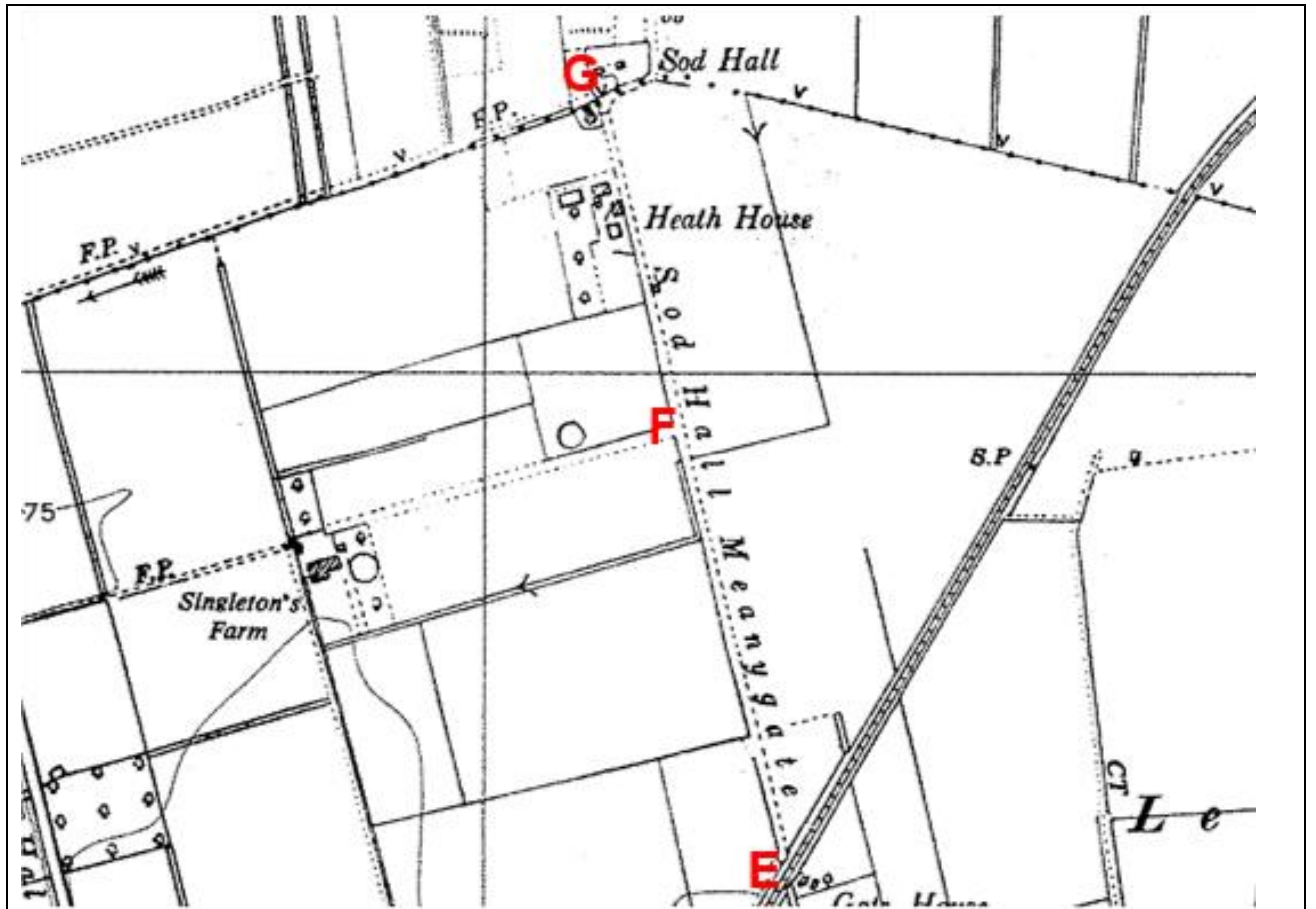
The application route is visible on the aerial photograph. From point A to point B the route is clearly visible and not discernibly different from Jane Lane east of point A. A faint line can be seen connecting to the route at point C suggestive of use of the route recorded as 7-1-FP 1a being used on foot.

From point B to the railway crossing at points D-E the route is visible but less so than the section A-B.

The route is visible passing the Road House/Round House south of point G but it is not possible to see if it is gated.

		The section from Willow Farm to point H is clearly visible.
Investigating Officer's Comments		<p>The application route existed in the 1940s and its appearance is consistent with a route which could have been used on horseback and with vehicles. It did not appear to be heavily used by vehicular traffic but its appearance was more suggestive of a route used by vehicles to access farmlands and adjacent fields.</p> <p>The photograph does not assist in knowing whether use of the route was public or private.</p>
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

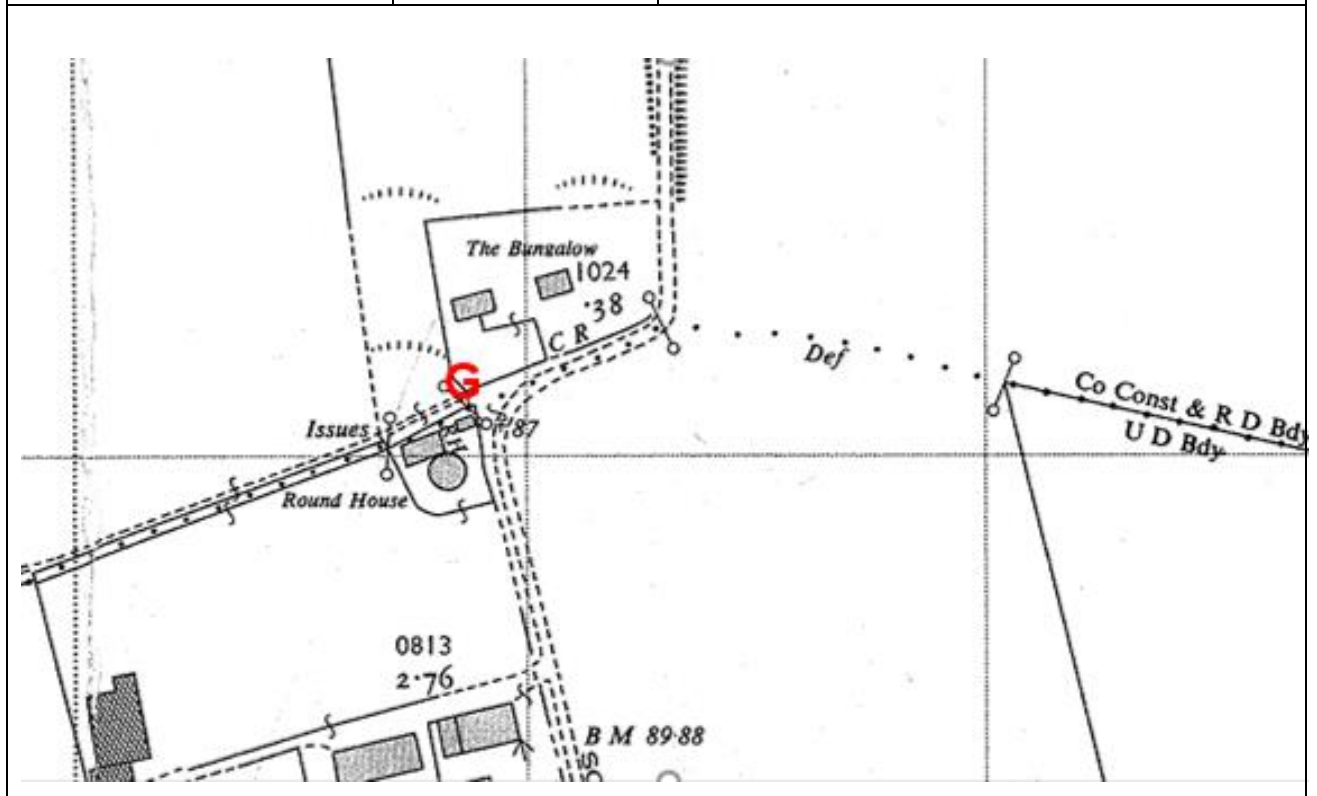


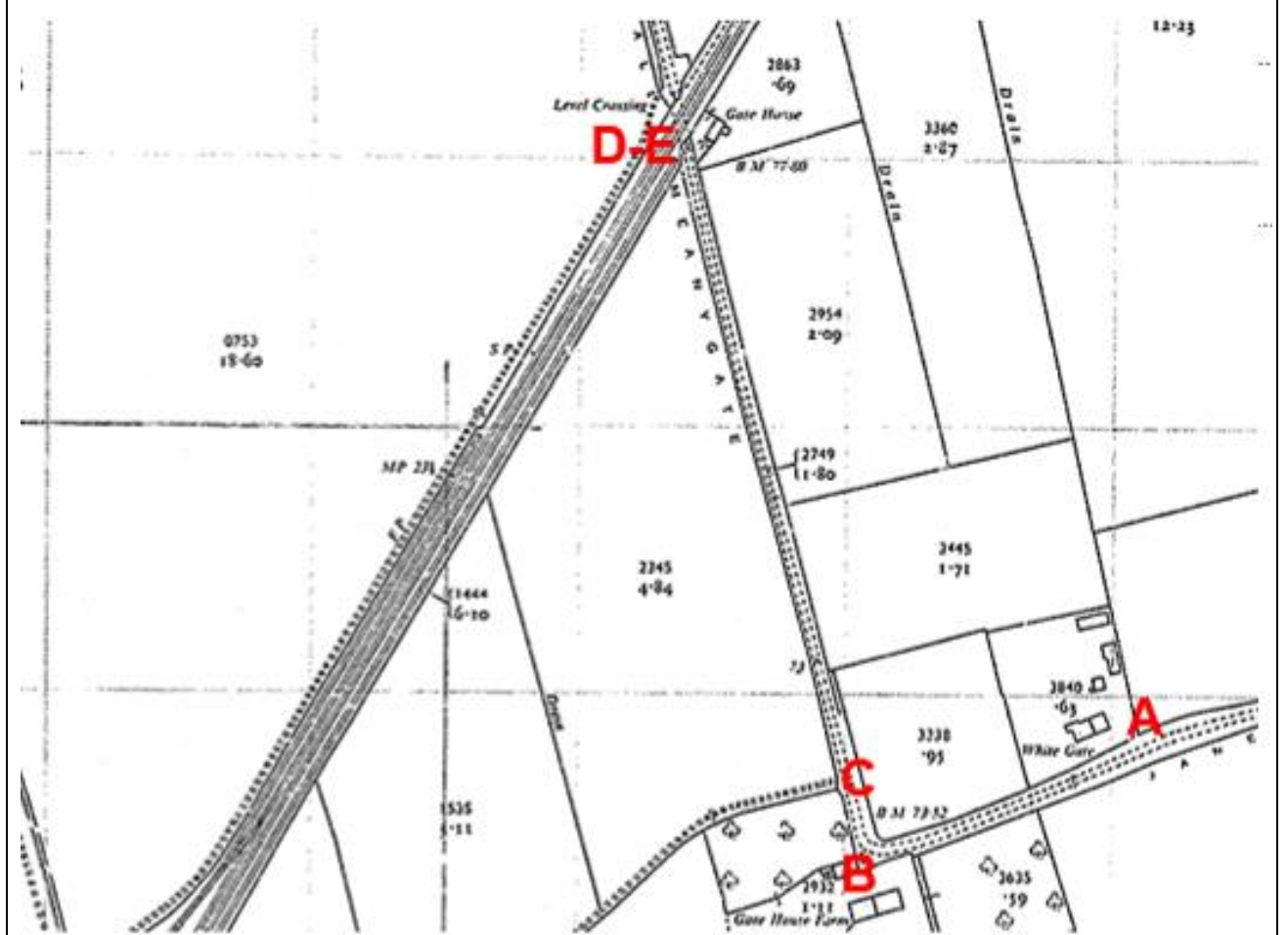
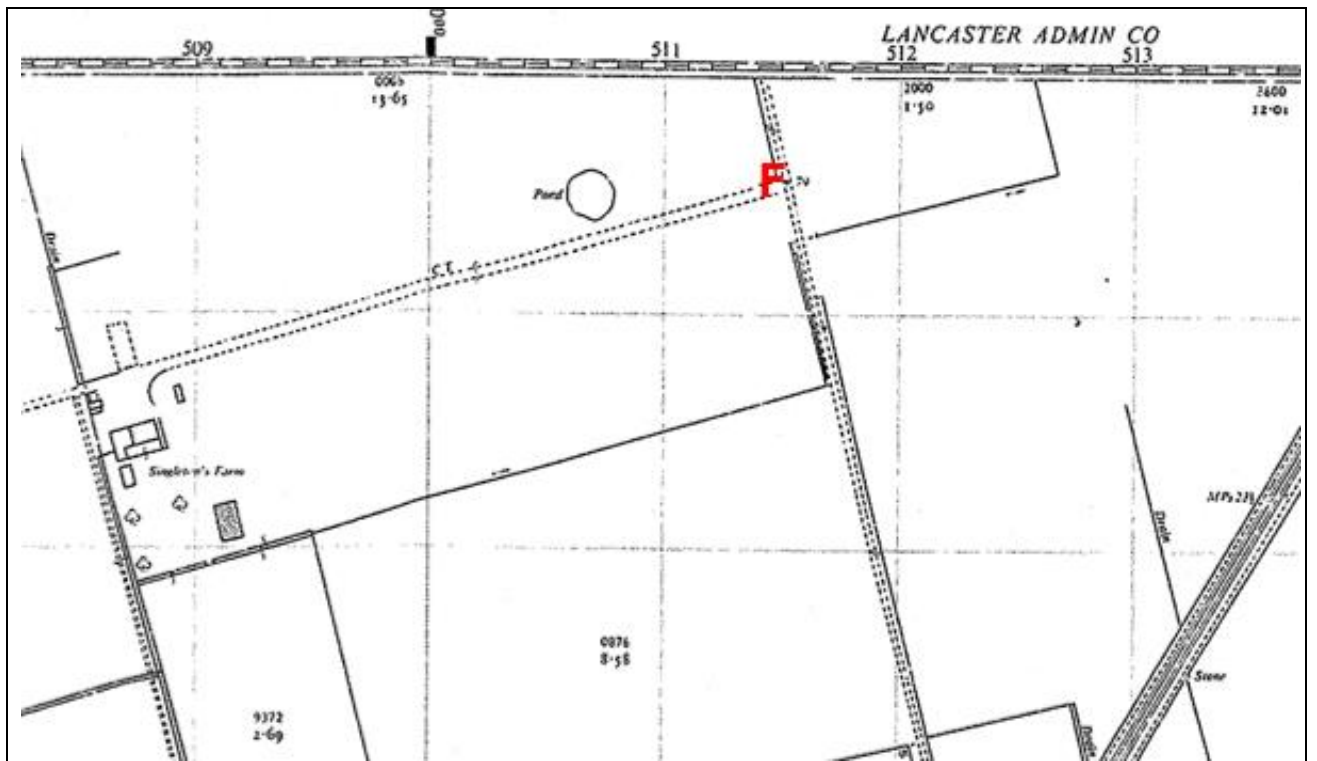


Observations

The application route is shown as part of a longer route consistent with how it is shown on other OS maps. A gate house is shown adjacent to the railway and the route is

		named as Sod Hall Meanygate south of point G and Sod Hall Road north of point G. A line is shown across the route just south of point G.
Investigating Officer's Comments		The application route existed in the 1930s and appeared to be capable of being used.
1:2500 OS Map SD 5023-5123 and SD 5024-5124	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series.





Observations		The full length of the application route is shown – and named - on the map in the
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		<p>same way as it is shown on earlier editions of the OS mapping.</p> <p>A level crossing is marked at the railway (D-E) with the building adjacent still labelled as the Gate House.</p> <p>No gate is shown across the route just south of point G and the round building is now both marked as RH (Road House) and is named as Round House. Sod Hall is not shown but a building known as 'The Bungalow' is shown where it previously stood.</p>
Investigating Officer's Comments		The application route existed as a substantial through route in the 1960s and appeared to be capable of being used.
Aerial photograph	1960s	Aerial photography flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district and the 1968 images mainly covering Ribblesdale district.



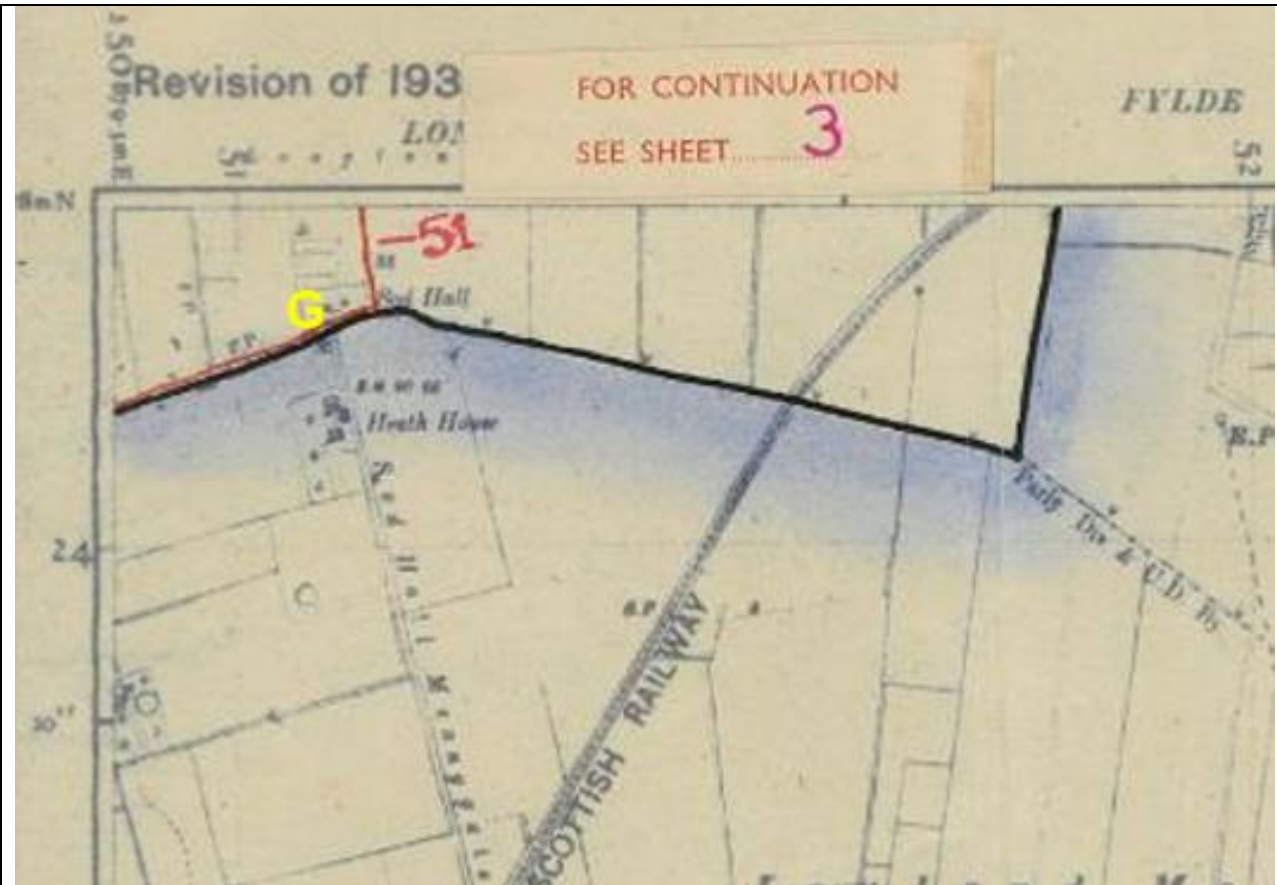




<p>Observations</p>		<p>The full length of the application route can be seen but it is clear that some parts received much more vehicular use than others – which were barely visible.</p> <p>The photograph suggests that infrequent or little use was made of the route as a through route by vehicles but that access was predominantly to properties situated along the route with lower levels of vehicular use made of other parts – consistent with farm vehicles accessing adjacent fields.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and appeared to be capable of being used as a through route – at least on foot</p>
<p>Definitive Map Records</p>		<p>The National Parks and Access to the Countryside Act 1949 required the County</p>

		<p>Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>





DISTRICT-	<i>PRESTON RURAL</i>	PARISH	<i>LONGTON.</i>	No.	<i>51</i>
MAP SHEET No.	<i>3 & 5</i>	LENGTH		miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)				(to two decimal places)	
<i>East track & F.P.</i>				<i>2 F.P.</i>	
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Leans South side of Long Moss Lane, east track deeply rutted, well above level of fields, to Sod Hall, at bend, no access from bend.</i>					
SURVEYED BY :-		Name	<i>Janet Lunnalshurst</i>	<i>Mr. Wareing</i>	
		Address	<i>Map Lane</i>	<i>Schose Lane</i>	
			<i>Ketton</i>	<i>Longton</i>	
Date	<i>June 1951.</i>				

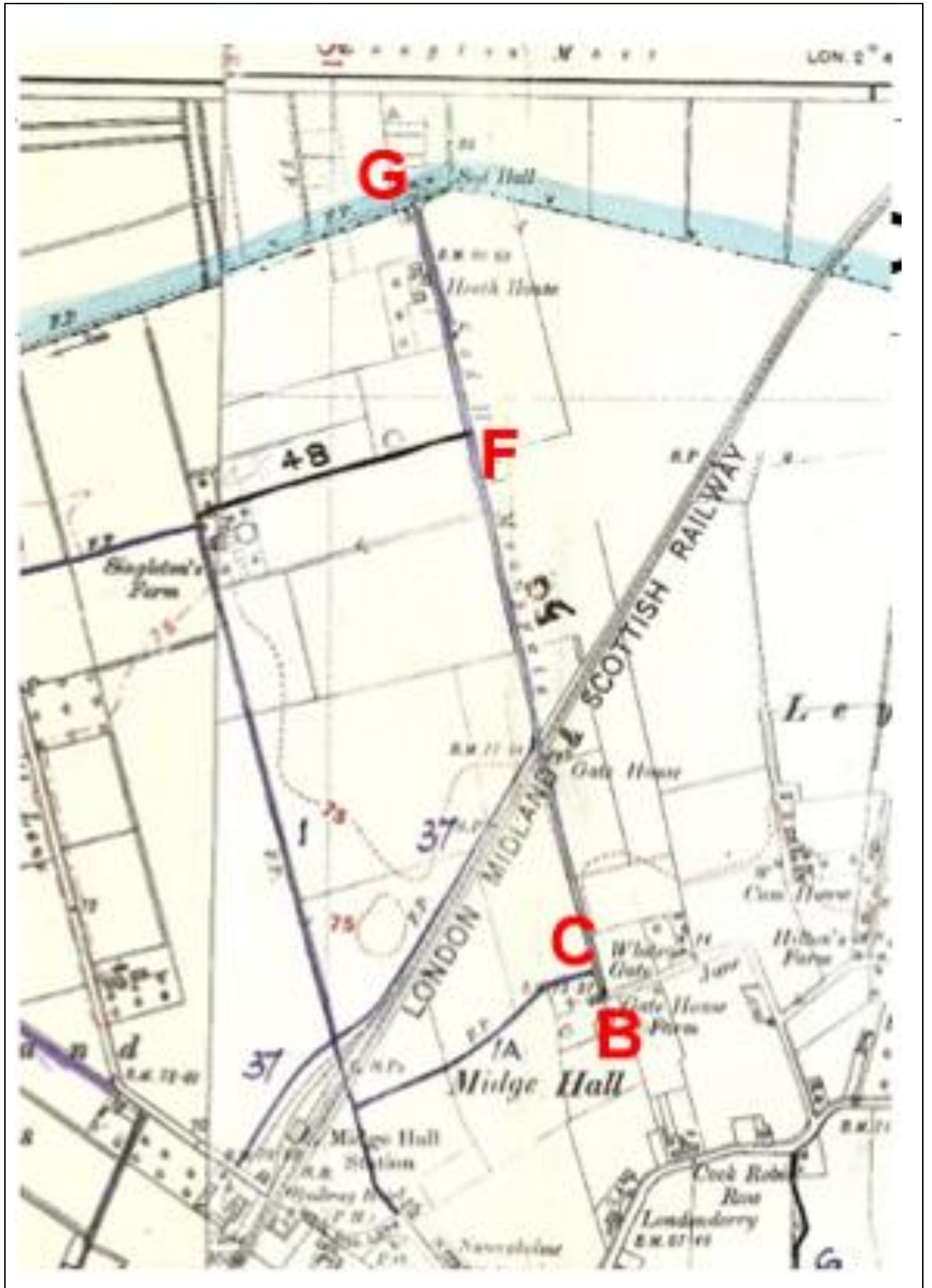
DISTRICT	<i>PRESTON RURAL</i>	PARISH	<i>LONGTON.</i>	No.	<i>45</i>
MAP SHEET No.	<i>4</i>	LENGTH	miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>Field F.P.</i>			<i>FP</i>	
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Midge Hall Station Rd. running East</i>					
<i>footpath useable up to Mr. H. Hestelth's ground - onwards this is</i>					
<i>overgrown with nettles &c. but no stile or indication</i>					
<i>exists, also a plank is required at Station Rd end.</i>					
<i>Manning is required on Mr. Hestelth's, Mr. J. Bambers & Mr.</i>					
<i>R. Bamfords land.</i>					
SURVEYED BY :-	Name	<i>Thomas Bretherton Skipton Raw Lane, New</i>			
	Address	<i>3 Brookhall Long Moss Lane Longton</i>			
Date	<i>27/11/1950.</i>				

Observations

Leyland was a former urban district for which no parish survey map was prepared. North of point G the route crossed land within the parish of Longton and the application route was recorded as a public footpath numbered as route 51. The parish survey card was completed in 1950 and on it the route was described as a cart track and footpath. The status of the route appears to have been questioned as a question mark was marked with what appears to be a later edition of the numbering and status written in purple stating 'FP'. The route was described as 'leaves south side of Long Moss Lane, cart track deeply rutted well above level to Sod Hall at bend, no access from bend.'

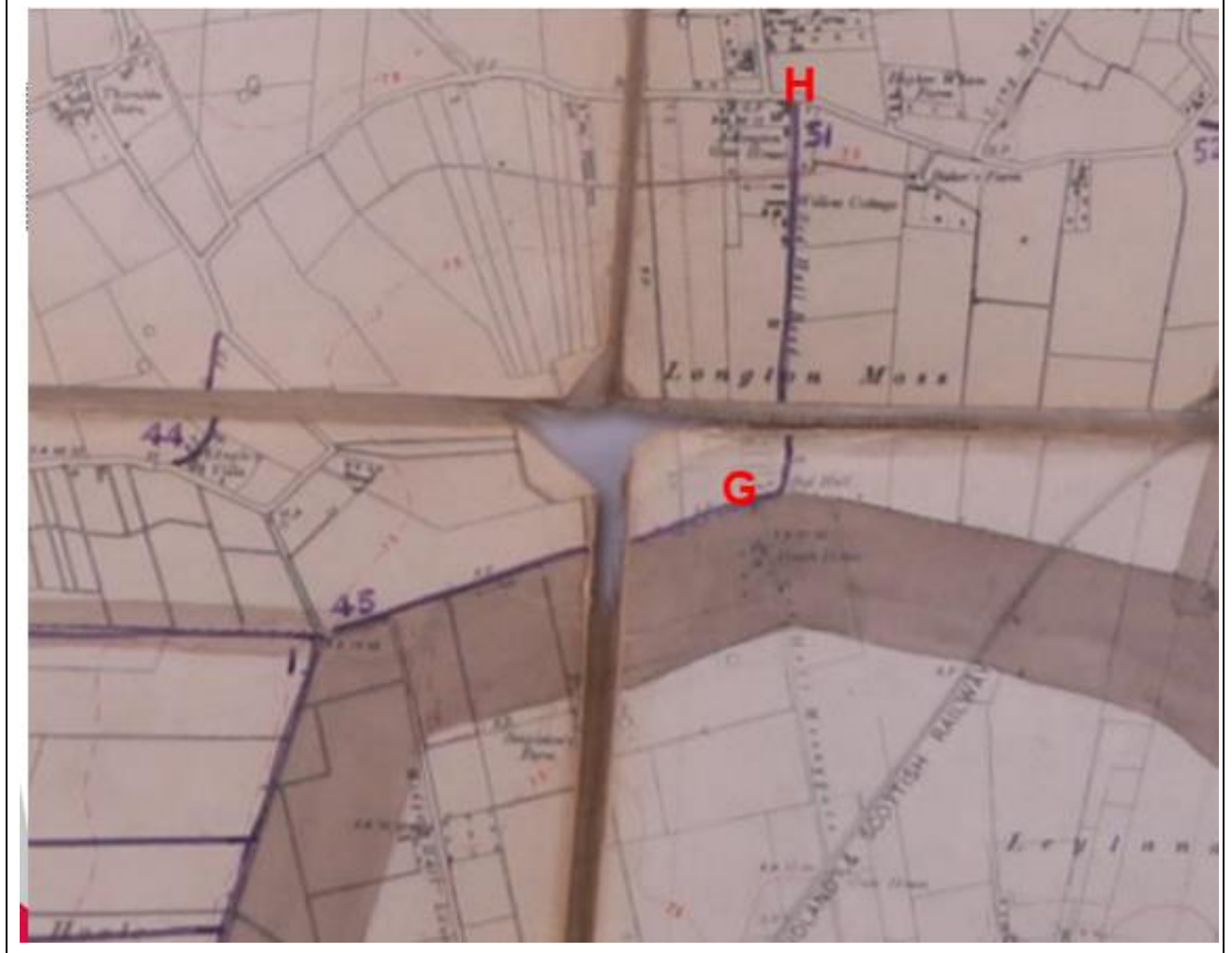
The bend referred to above appears to have been 40 metres east north east of point G at the point at which the route from point H turned west south west towards point G indicating that from point G through to the bend was recorded as part of the route numbered as Footpath 45. On the parish survey card this route was described as being from Midge Hall Station Road running east. It was described as being useable up to a certain point and then overgrown with no indication it existed. The

		point at which it ended – or the fact that it is shown running along part of the application route is not referred to.
Draft Map		<p>The parish survey map and cards for Longton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



		Leyland Urban District boundary, thence into Chorley Rural District through Altcar Farm to Holt Brow.	0.23
46	"	From Leyland Lane north of and parallel to Altcar Lane joining footpath No.29.	0.16
47	"	From Leyland Lane along Emnie Lane. (the private road to Leyland Urban District Council Sewage Disposal Works).	0.24
48	"	From Sod Hall Meanygate west to Singleton's Farm joining Path No.1 to Midge Hall Lane.	0.11
49	"	From Dunkirk Lane south joining Slater Lane east of Mouldings Farm.	0.18
50	"	From Leyland Boundary at Sod Hall along Sod Hall Meanygate south across the railway to Jane Lane opposite Gate House Farm.	0.58
51	"	From Longmeanygate, along Millers Lane and Paradise Lane south past Paradise Farm to Cocker Lane.	0.59
52	"	From Hollins Lane west through Nook Farm joining path No.17.	0.04
54	"	From Footpath No.9 north to join path No.8.	0.07

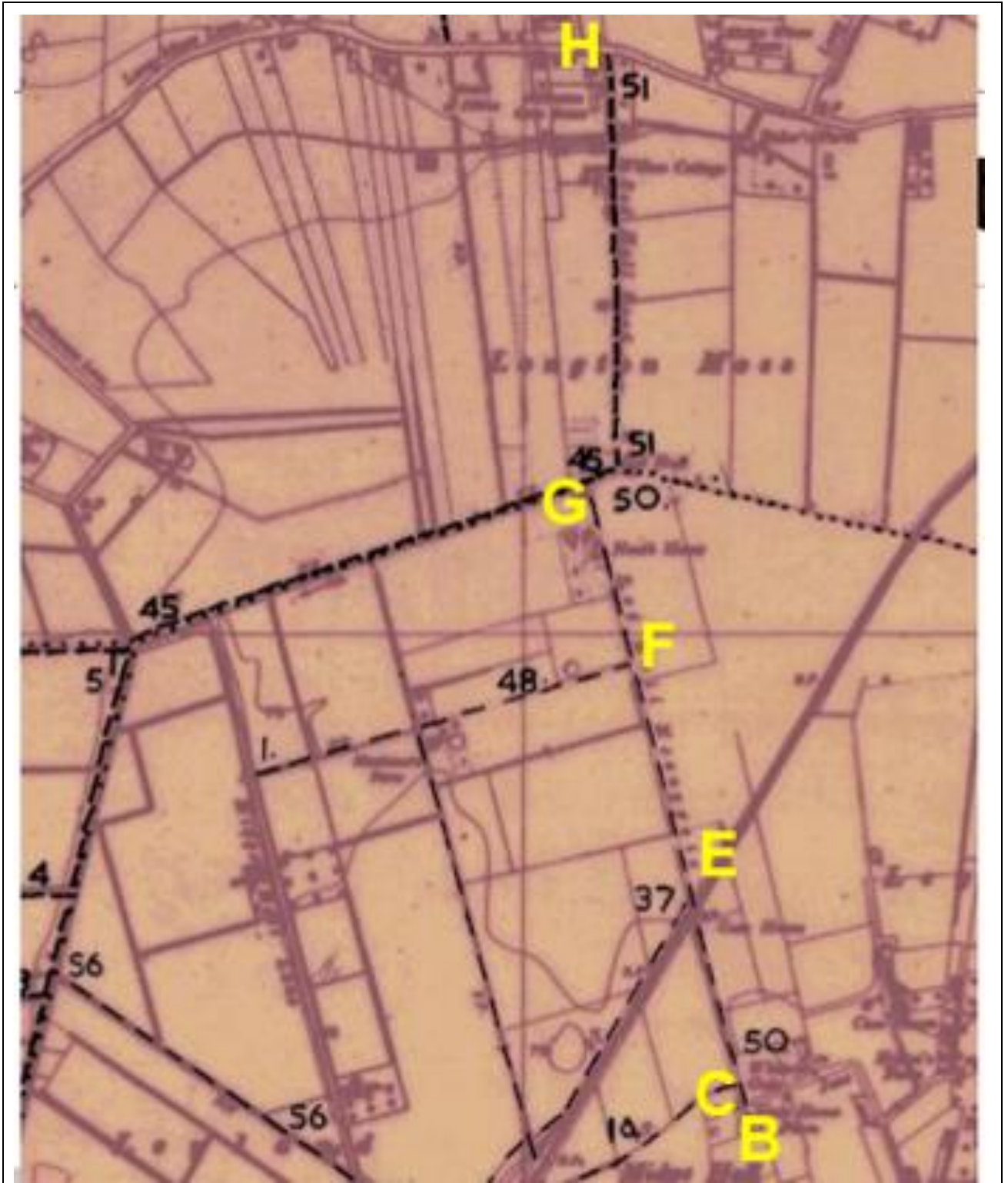
Draft Map and Statement for Leyland UDC



44	"	Gill Lane (near Anglo Villa) to unnamed road	0.13
45	"	Midge Hall Lane to Sod Hall Road	0.38
46	"	Moss Lane (opposite Hugh Barn Lane) to Brownhill Lane	0.18
47	"	Chapel Lane to Hutton Parish south boundary	0.11
48	"	Gill Lane to Little Hooles Parish north boundary	0.20
50	"	Gill Lane (opposite Cotton Lane) to Little Hooles Parish north boundary	0.13
51	"	Sod Hall Road to Leyland Boundary	0.38
52	"	Unnamed road to Farington Parish west boundary	0.11

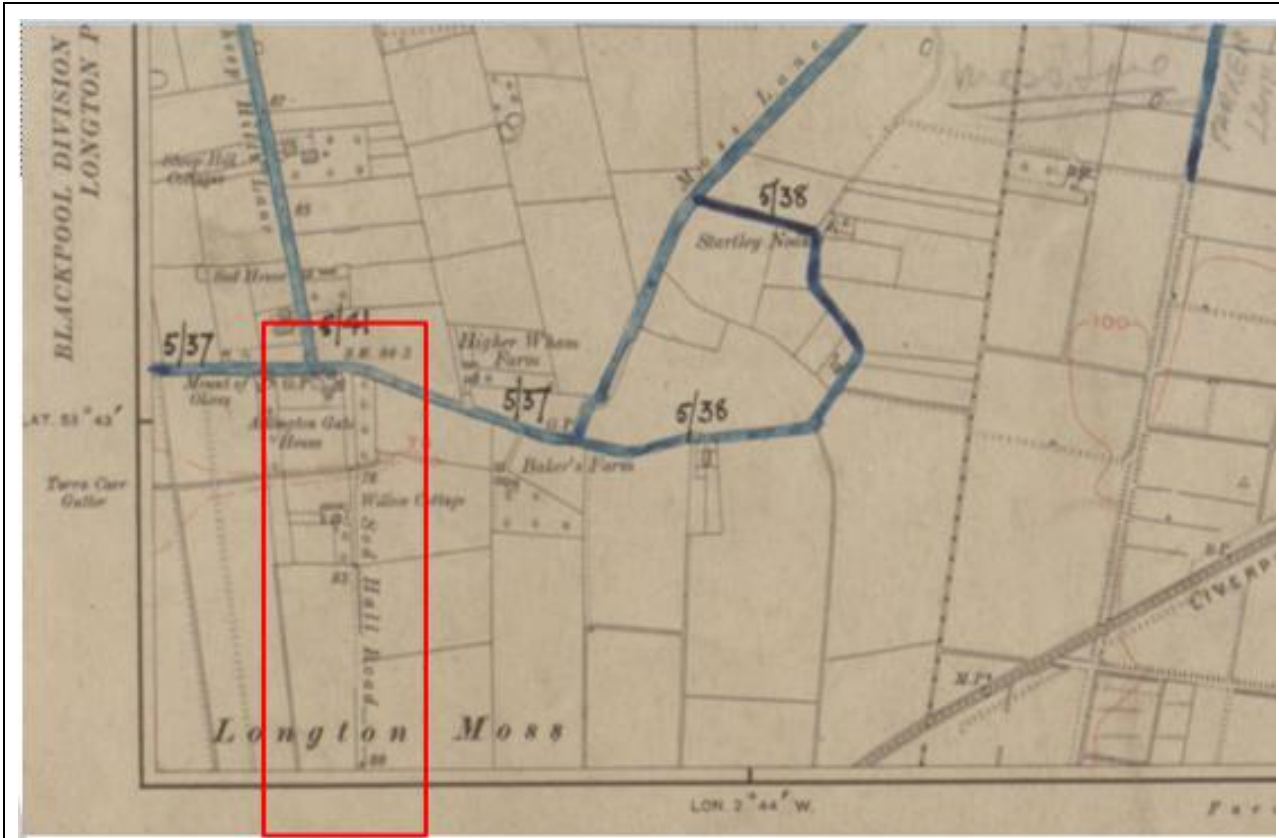
<p>Observations</p>		<p>Leyland Urban District Council recorded the application route from point B through to point G as a public footpath numbered 50. It was described as running from the parish boundary (point G) along Sod Hall Meanygate across the railway to the junction with Jane Lane opposite Gate House Farm (point B on the Committee plan). The application route between point A and point B was not shown on the Draft Map and was considered to be part of Jane Lane.</p> <p>The Draft Map for Preston Rural District shows the application route from point G to point H as public footpath. The Draft Statement describes Footpath 45 running from Midge Hall Lane to Sod Hall Road and Footpath 51 as being Sod Hall Road to Leyland boundary. The boundary appears to run along Sod Hall Lane from point G east north east for 40 metres to the bend.</p> <p>There were no objections or representations made relating to how the application route was shown.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to</p>

		be made to the Crown Court.
Observations		<p>The application route was recorded as a public footpath from point B through to point H. The section between point A to point B was not recorded on the Provisional Map.</p> <p>There were no objections or representations made relating to how the application route was shown.</p>
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was recorded as a public footpath from point B through to point H. The section between point A to point B was not recorded on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



Observations		The application route is recorded as a public footpath from point B through to point H. The section between point A to point B is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's		The application route was considered to be

Comments		<p>a footpath from point B through to point H during the preparation of the First Definitive Map and Statement in the 1950s through to the 1960s.</p> <p>The application route between point A and B was not recorded on the Definitive Map and appears to have been considered to be part of Jane Lane.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils, and later from urban district and borough councils, to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district maintained highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>





<p>Observations</p>		<p>The application route from point A to point G is within Leyland which was a former urban district for which there was no 'Handover Map'.</p> <p>The application route between point G and point H is not recorded as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map for Longton.</p> <p>The current highway records detailing routes considered to be publicly maintainable do not show any part of the application route and Jane Lane is recorded as ending at point A.</p> <p>The application route from point B through to point H is however a publicly maintained footpath which is on the Definitive Map and Statement of Public Rights of Way.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the application route is not recorded as a publicly maintainable highway on the List of Streets does not mean that it does not carry public rights of access other than those rights currently recorded on the Definitive Map.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held</p>

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

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

Summary

This investigation has been carried out based entirely on historical map and documentary evidence with no modern user evidence – or details indicating historical public use on horseback - submitted.

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

In this case a lot of map and documentary evidence has been examined although there are some documents that it would have been useful to find and a number of inconsistencies in the records located which makes it difficult to decide on balance whether bridleway or public vehicular rights exist.

The application route appears to have come into existence in the late 1700s or early 1800s with the topography of the surrounding land suggesting that it was probably constructed in relation to private enclosure agreements relating to land known as Leyland Moss and Longton Moss. No plans or details of the agreements have been found so it has not been possible to find out whether this was actually the case and whether it was created as a public or private route or whether part of the route providing access to Sod Hall pre-dated any enclosure agreements (as Sod Hall was shown on Yates Map of 1789 seemingly surrounded by moss land).

The full length of the route is clearly shown on Greenwoods Map in 1818 and Hennessey's Map in 1830 as a cross road providing access to and past a number of properties and appeared to be capable of being used on horseback and with horse drawn vehicles as a through route at that time.

It is then shown clearly on the Tithe Maps for Leyland and Longton (1838) where the route between point A-B appeared to be considered to be public vehicular highway – as did the route from point G to point H. From point B through to point G however the route was listed as being privately owned and occupied and not listed as a public vehicular route.

In 1846 a railway was built across the route (D-E) confirming the existence of the route prior to the railway but referring to that part of the route listed as being in private ownership on the Tithe Map as a 'Private or occupation road'. Details of landowners and occupiers are given again suggesting that this part of the route at least could have been created as part of the enclosure of Leyland Moss with private rights of access given to owners of adjacent land.

The nature of the level crossing (D-E) is interesting. It appears to have been constructed as a gated crossing with adjacent gatehouse which was owned by the Railway Board. As such, this appears consistent with what would be required where a railway crossed a public vehicular highway and the earliest found census information (1851) for a property named in the census as 'Sod Hall Crossing' was

occupied by a Railway Gate Keeper. Later census records detail the same or other occupiers of the property all working for the railway but not specifically as a gate keeper. However, the requirement for such an arrangement for a public carriageway does not necessarily imply that it could not be required in other circumstances.

The evidence that the route had a toll gate at Sod Hall suggests there were not public vehicular rights. Ordnance Survey maps in 1840s show round building known as the Round House and mark it as the site of a turn pike (T.P) in the mid-19th Century. An article published by the Leyland Historical Society discusses the origins of the building and the belief that it was used to try to collect tolls although this may not have been very successful. The fees should have been for the upkeep of the road which was named on the maps as Sod Hall Meanygate south of point G but Sod Hall Road north of point G.

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

The route is consistently shown on all OS maps examined – including those at a 1" scale and is also shown on small scale commercial maps published in the 1900s (Bartholomew's Maps and the Authentic Map Directory of South Lancashire by Geographia suggesting that it existed as a substantial through route capable of being used by horses and vehicles and with no reference at that time to the existence of a toll gate.

In the early 1900s it was shown excluded from the Finance Act taxation process from point A through to just beyond point G (on the map edge) which is often good evidence that a route was considered to be a public vehicular highway at the time the survey was carried out. There were however notable exceptions – one being where ownership of a route was perhaps unclear and the route carried numerous private rights to access land and property previously enclosed. The Finance Act records for the northern section of the route were incomplete so the full picture of how the route was considered at that time is unknown. However this contradicts the private ownership indicated 50 years earlier.

Aerial photographs from the 1940s and 1960s perhaps help to explain why the route was recorded as a public footpath as parts appeared to be little used by vehicles and there is reference to overgrowth in the parish survey card.

No modern or historical user evidence was submitted in support of this application and on balance the Investigating Officer considered that although very finely balanced there was insufficient information from which to infer that public bridleway rights exist.

Head of Service – Legal and Democratic Services Observations

Landownership

From Point A to a point roughly equidistant before points E and F the application route crosses land which is unregistered. From this point to point F the route crosses land in private ownership. From point F to a point just south of point H half the width of the route crossed registered land in private ownership. From this point to point H the route crosses land in private ownership.

Information from the Applicant

The information provided by the applicant has been considered in the assessment of map and documentary evidence above.

Information from Others

Network Rail object to the application on the basis that;

- Their historical records show that upon construction of the railway, Sod Hall Lane was a private road and the crossing was provided to maintain access for the adjacent landowners. It has been accepted that public rights have been established and recorded as on foot only, but that these have never been any more than that.
- If the route were to become a bridleway, the infrastructure at the crossing would need to be reconsidered. Items such as mounting blocks and accessible bridle gates are usually required, and in addition, the sighting distances may not be sufficient as the distance required for equine users is further than for pedestrians.
- There would be an unacceptable increase in risk at the crossing, where the sighting may be deficient, and the use of the crossing changes and possibly increases. The mitigation measures that may be required, such as telephones or warning lights would result in a huge cost to Network Rail (and ultimately to the taxpayer).

With regards to the property known as the Gate House adjacent to the application route on the south side of the railway (D-E) Network Rail provided information regarding the railway company purchasing the land adjacent to the railway in 1903 explaining that there was already a cottage there, so this was not built by the railway company;

LOT 3. The COTTAGE or Dwellinghouse with the outbuildings and Garden situate on the East side of Sod Hall Meanygate, Midge Hall, Leyland in the County of Lancaster and on the South side of and adjoining the Lancashire & Yorkshire Railway containing in statute measure 2 roods 23 perches and now in the occupation of Mr. David Iddon as tenant thereof and coloured green on the Sale Plan.

Extract provided by Network Rail

Network Rail explained that the property was purchased with a right of way along the track that leads to it (the application route) as follows;

The purchasers of the above lots will be entitled to a right of way for themselves their servants workmen and others at all times and for all purposes over and along Sod Hall Meanygate aforesaid as the same has been heretofore used and enjoyed.

Extract provided by Network Rail

Therefore they consider that the road was not considered to be a public highway at that time, because they would not have needed to include this provision.

They refer also to a 1969 conveyance between British Rail and Mrs Dickenson which is silent as to the road and its possible status.

Information from the Landowner

Several owners of land crossed by and adjacent to the route responded to consultation to confirm the land in their ownership.

Assessment of the Evidence

The Law - See Annex 'A'

This application is concerned whether this route carries higher rights than the footpath it is presently recorded as.

The legislation requires that to make an Order a dedication as bridleway or perhaps restricted byway is found to subsist on balance.

There is no user evidence presented and so the evidence considered is historic documentation and whether there is sufficient evidence from which to infer on balance that the owner of this old route across the Moss intended the route to be more than a footpath open to the public for use without permission, force or secrecy.

The evidence is detailed earlier in the report and considered and summarised above. On balance and given the nature of the evidence it is advised that the evidence of it having become a higher status for the public is insufficient.

If there were tolls paid to use this route Committee is reminded that payment of a toll (whilst the route shows as available to the public) would be use with permission and a toll required yet not paid would probably be use by force.

The recommendation is that no Order be made on the basis of the evidence available.

Risk management

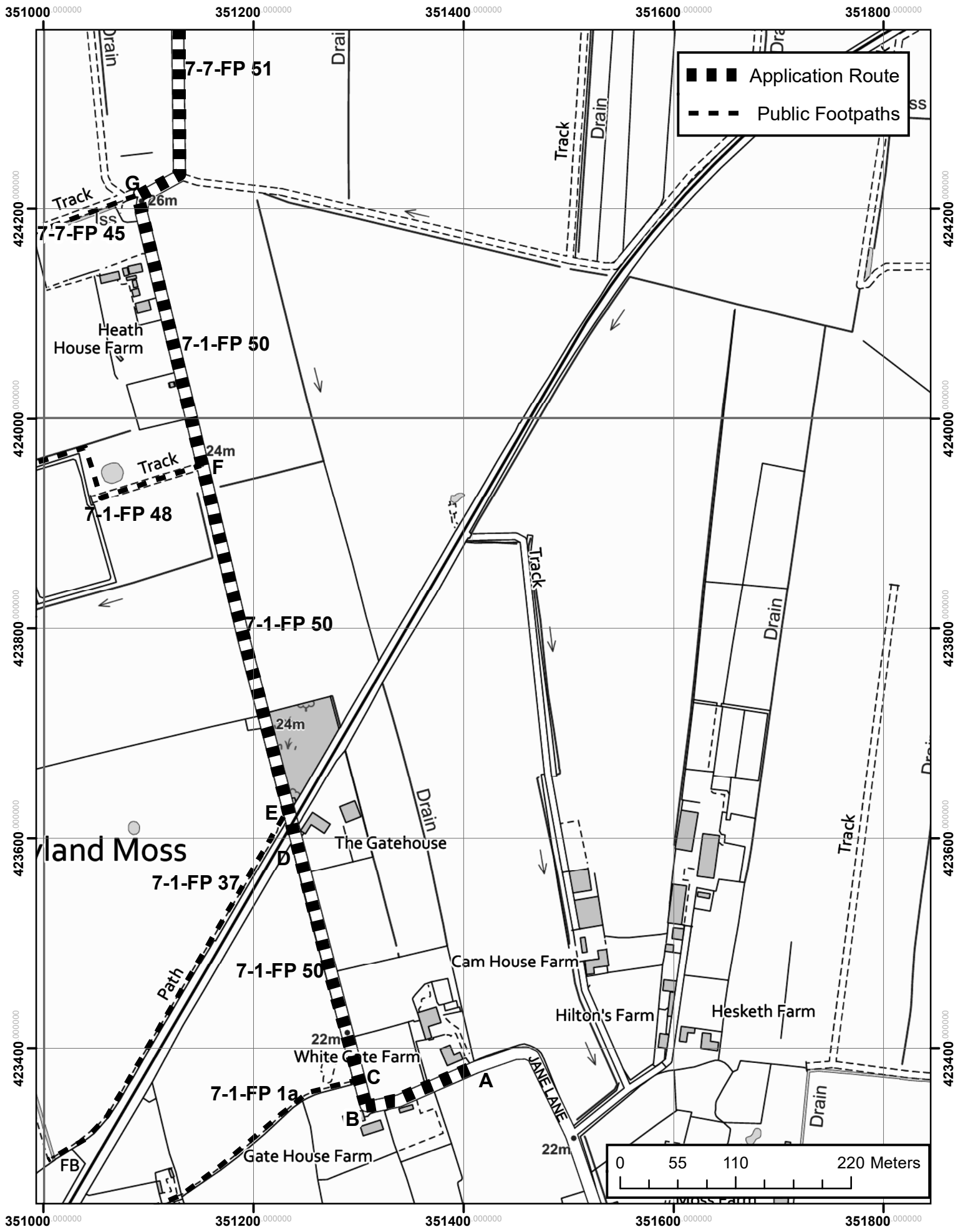
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risk 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: 804-727		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate


N/A



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

Wildlife and Countryside Act 1981
 Addition and upgrading of Footpaths to Bridleways along Sod Hall Lane, Leyland / Longton

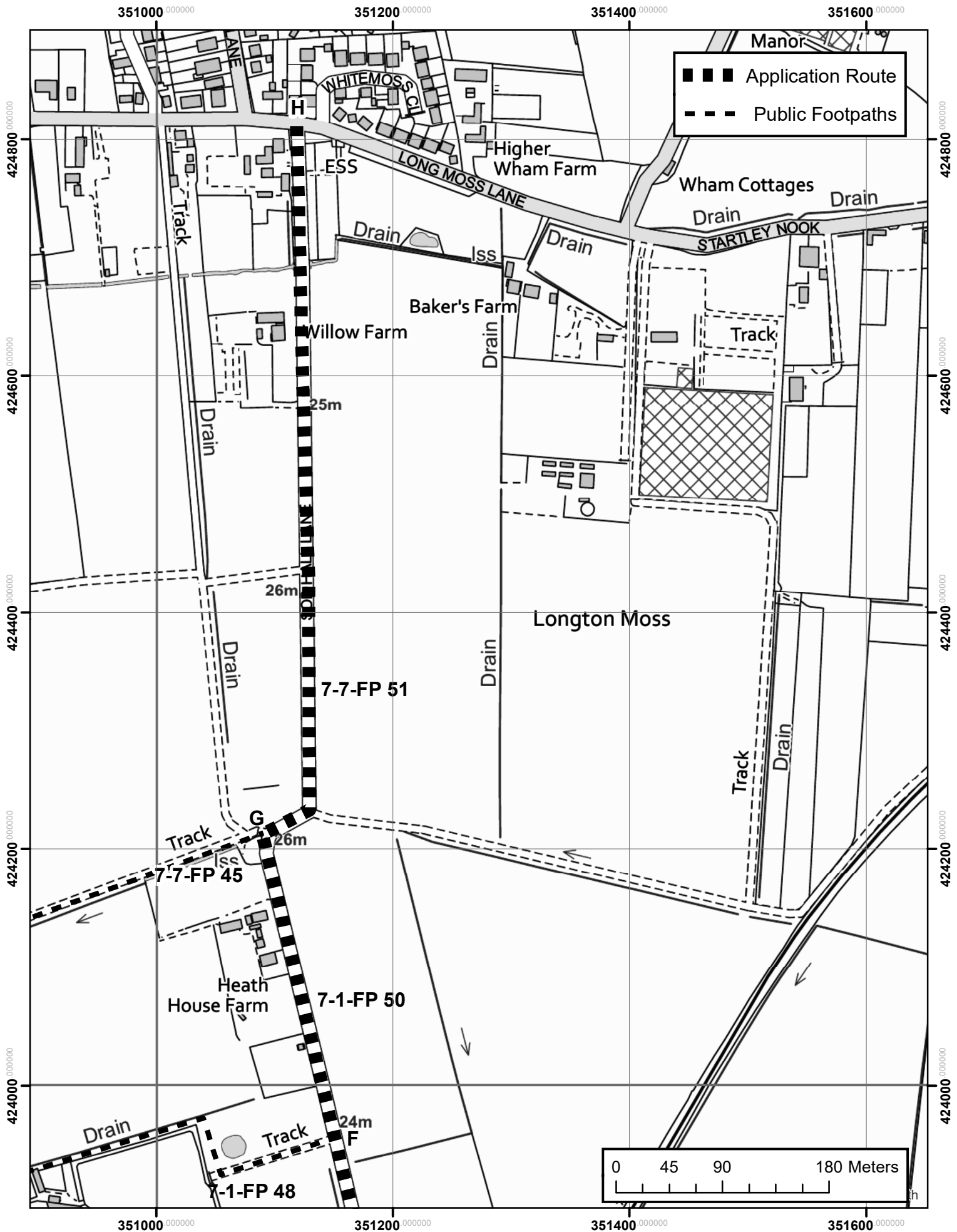
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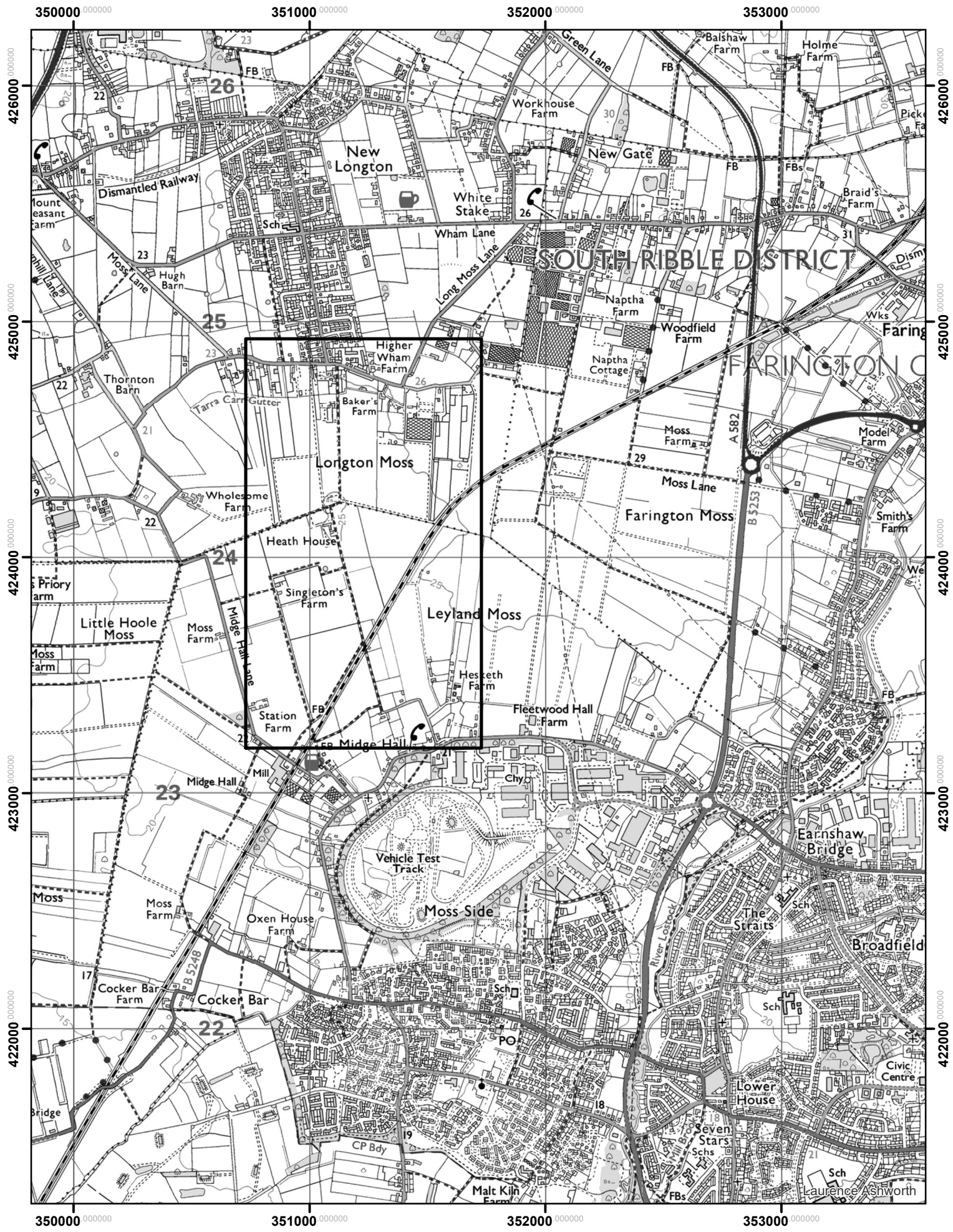


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Plan 1/2





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

Wildlife and Countryside Act 1981
 Upgrade and Addition of brideway on Sod Hall Lane, Leyland and Longton LOCATION PLAN

1:20,000

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Regulatory Committee

Meeting to be held on 22nd June 2022

Part I

Electoral Division affected:
Moss Side and Farington

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Recording of a Bridleway at Mill Lane and Hall Lane, Farington

(Annex 'A' refers)

Contact for further information quoting file reference no. 804-663:

Ansar Sadiq, 01772 532435, Paralegal Officer, County Secretary and Solicitors Group, Ansar.Sadiq@lancashire.gov.uk

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

Brief Summary

Application for the upgrade of footpath to, and addition of, bridleway on the Definitive Map and Statement of Public Rights of Way along part of Mill Lane and Hall Lane, Farington, South Ribble.

Recommendation

- (i) That the application for a Bridleway along part of Hall Lane and Mill Lane, Farington to be recorded on the Definitive Map and Statement of Public Rights of Way, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record a Bridleway along part of Mill Lane and Hall Lane, Farington on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H-I and points D-J.
- (iii) That being satisfied that the test for confirmation (which for additions is higher than the test for making the Order) can be met the Order be promoted to confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record a Bridleway along part of Hall Lane and Mill Lane, Farington on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

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

Consultations

South Ribble Borough Council

South Ribble Borough Council acknowledged receipt of the consultation letter, however did not provide an official response to the consultation.

Farington Parish Council

Farington Parish Council did not provide an official response to the consultations.

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	5336 2338	Open junction of Footpath Farington 7 (the application route) with Mill Lane (U10695)
B	5340 2337	Open junction with Footpath Farington 20
C1	5342 2337	Western end of Footbridge across the River Lostock with bollard restricting access
C2	5343 2337	Eastern end of footbridge with gate restricting access
D	5366 2343	Junction of application routes immediately south of site of former Farington Hall
E	5370 2343	Point on application route where a line is shown across the route on historical mapping
F	5381 2347	Point at which the application route diverges from the route of Footpath Farington 7
G	5395 2351	Point on application route where a line is shown across the route on historical mapping
H	5397 2352	Fence across application route preventing access along the route
I	5425 2354	Junction with Wheelton Lane (U5635)
J	5371 2325	Junction with Hall Lane (U5460)

Description of Route

The application under consideration is based entirely on historical map and documentary evidence. With that in mind how the application route looks 'today' is not necessarily relevant when considering whether historical public rights exist.

A site inspection was however carried out in December 2020 to see what the route looked like at that time and to identify any remaining existing historical features.

The route recorded on the Definitive Map and Statement as Footpath Farrington 7 starts at the junction of Mill Lane with Croston Road. The application route does not include the first 165 metres of adopted vehicular section of Mill Lane recorded on the county council's List of Streets.

The application route therefore commences at the eastern end of the adopted section of Mill Lane just east of the junction of Brookside and Mill Lane (point A on

the Committee plan). The application route extends in an easterly direction across a roughly tarmacked area passing between 15 Mill Lane and Mill House School to a junction with Footpath Farington 20 which passes between Mill House School and Brookfield (point B).

The route continues as an enclosed route past Brookfield to cross the River Lostock via a substantial concrete footbridge which would be wide enough for horses, bikes and motorcycles to cross but was not wide enough for other vehicles. At the western end of the footbridge (point C1) a concrete post has been positioned within the surface of the route restricting access. A sign located adjacent to this point reads 'No horses No motorbikes'.

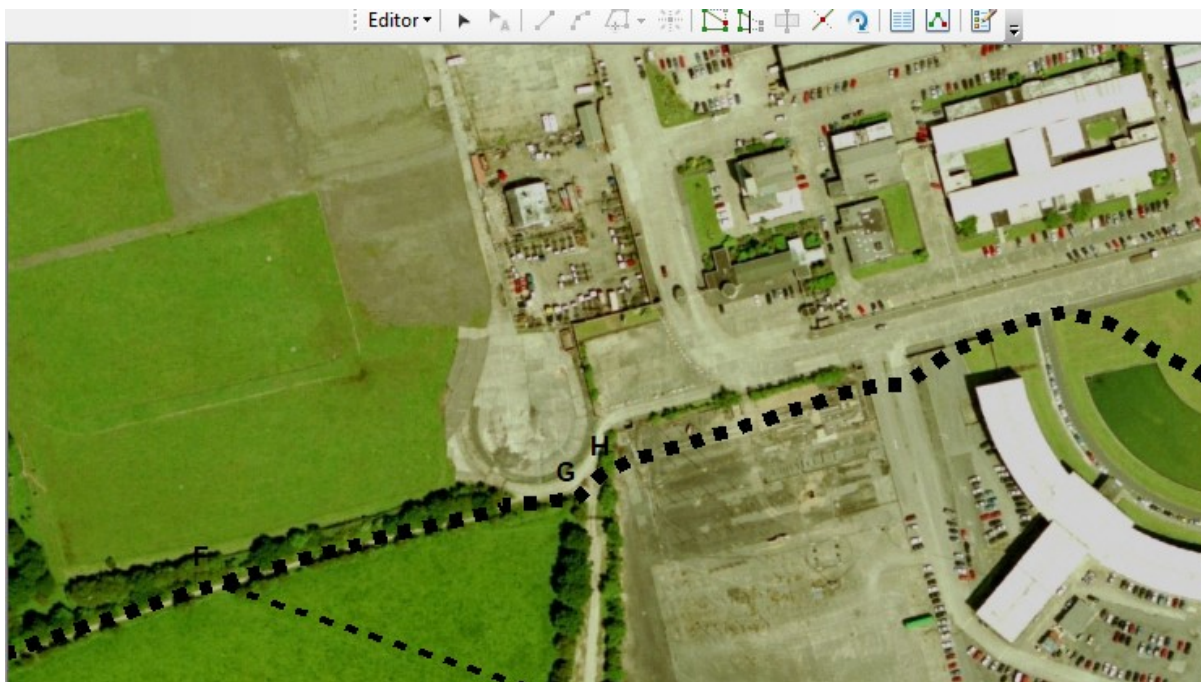
At the eastern end of the bridge (point C2) is a wooden kissing gate which further restricts access to the route.

Beyond the bridge the route continues as a stone surfaced path approximately 1-1.5 metres wide through an overgrown area of open grass and woodland. The route widens as it continues east with the remains of what appear to be tree/hedges bounding the route. The surface is largely stoned but poorly drained and boggy in places and the width between the boundary trees/hedges generally about 4-5 metres through to a junction (point D).

Point D is the cross roads of two parts of the application route both being double hedged lanes at this point (Mill Lane and Hall Lane)The way recorded as Footpath Farington 7 continues east along a substantial tree lined route. The surface is hard but covered with a thin layer of mud suggesting that it has been surfaced in the past. Evidence of tyre tracks, hoof prints and bicycle tracks suggest recent use by a variety of users. The route continues to a gap in the hedge line (point F) through which Footpath Farington 7 diverges from the application route to cross an area of rough grassland.

The application route continues along a substantial bounded track to the edge of a concrete and tarmac surfaced route around the perimeter fence of an industrial site (point G). It then continues for a short distance to where access is prevented by wire mesh fencing (point H) although it is possible to gain access onto Centurion Way from a little further north).

From the fence (point H) to its junction with Wheelton Lane (point I) the application route is not accessible with the exception of short sections which coincide with Centurion Way and cross open land forming part of Lancaster House but the historical route is no longer in existence. To understand what the site now looks like it is easier to see an aerial photograph taken since the land was developed in the 1950s (as detailed more thoroughly later in the report):



The other section of route applied for is known as Hall Lane and commences on the parish boundary between Leyland and Farington.

Hall Lane commences on Golden Hill Lane and extends north along a largely tarmac roadway also recorded as Footpath Leyland 35 to the Farington boundary (point J). This route is also recorded as a publicly maintainable highway on the county council's List of Streets and is not included as part of the application.

The application route starts at the Leyland/Farington boundary (point J) which is just north of a locked gate and adjacent kissing gate located across the northern end of Hall Lane/ Footpath Leyland 35. The route rises gradually uphill following a compact surface track with woodland and open grassland on either side. Much of the route is not bound by walls/fences or hedges although the final 65 metres before the junction (point D) is bounded on either side by mature, overgrown hedges approximately 7 metres apart.

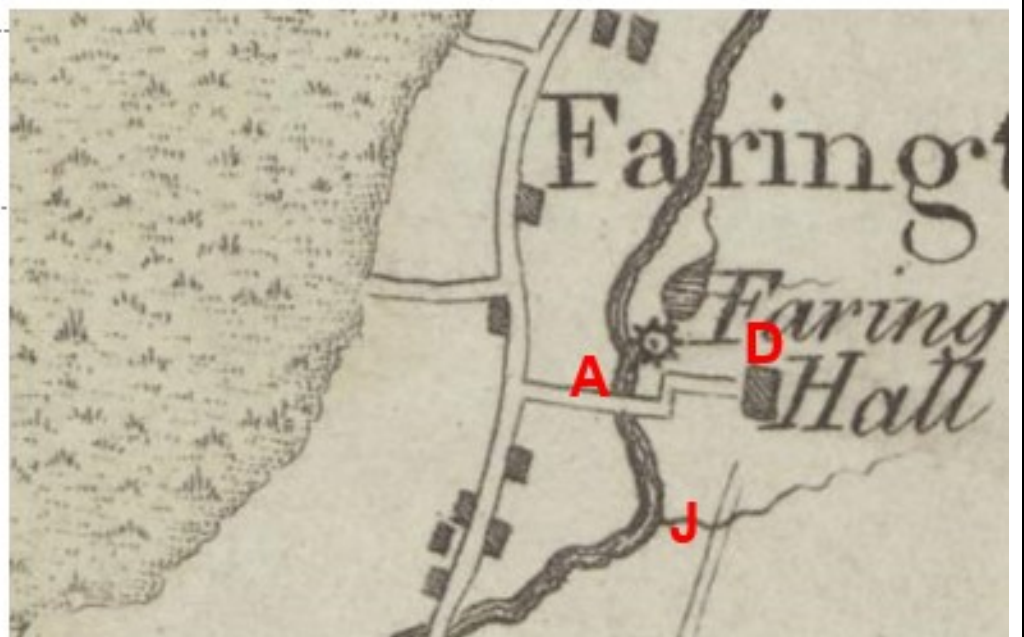
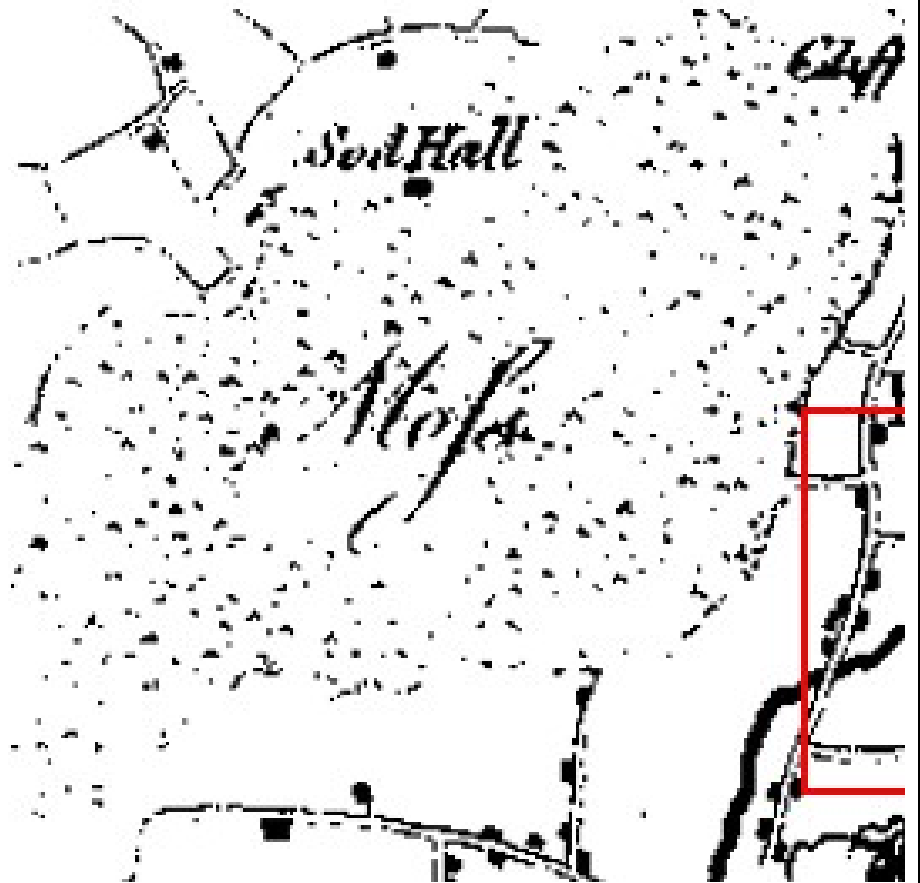
The route reaches a junction (point D) with the section of the application route which runs from west to east and looking straight ahead (northwards) is the former entrance to Lower Farington Hall (now demolished).

Map and Documentary Evidence

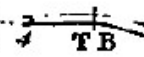
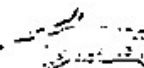
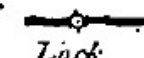
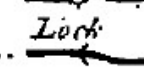

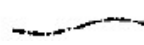
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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.



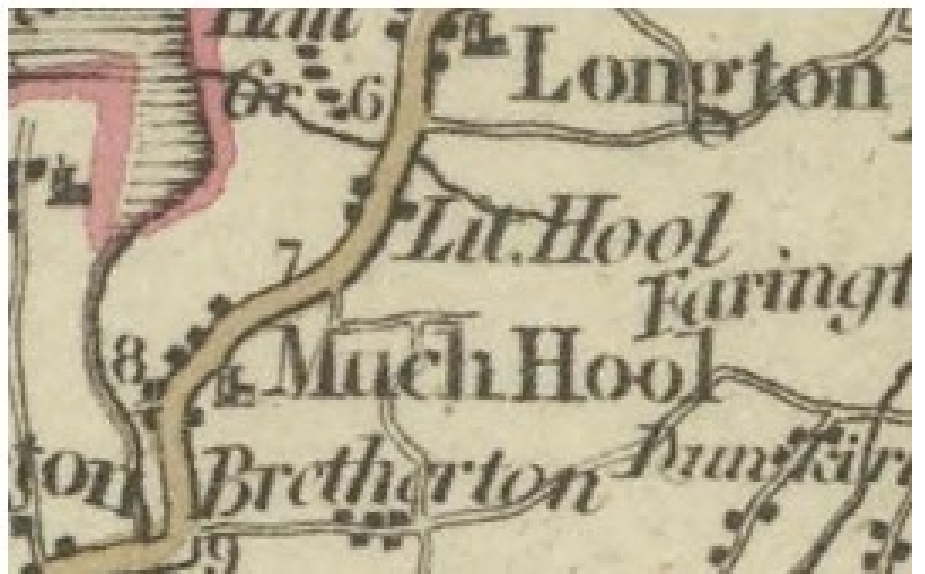


Curacy to an Impropriation
Chapel of Ease
Dissenting Chapel
Turnpike Roads and Mile Stones
with Toll Bars marked TB  TB
Cross Roads 
Rivers with Water Mills Engines &c 
Canals with Locks and Bridges  Lock
Coal Pits 
Boundaries of the County and 

<p>Observations</p>		<p>A route approximating to the application route is shown extending east from Croston Road along Mill Lane and passing through point A and across the river to continue to Farington Hall. A water wheel and reservoir are shown north of the route between point A and point D and appear to be accessed from the application route.. A route is then shown continuing east to Wheelton Lane marked as point I on the map extract but with the caveat that this is an approximation of the route on a small-scale map. A further route is shown leading from Golden Hill Lane approximating to the route of Hall Lane to point J. From point J a route is shown leading towards point D and Farington Hall.</p>
<p>Investigating Officer's Comments</p>		<p>The application route from point A to point I appeared to have existed in 1786 providing access to and from Farington Hall and the water wheel (which was described as the location of a corn mill on later maps) and linking to two public vehicular routes (Croston Road and Wheelton Lane). The application route from point J to point D also appears to have existed – at least in part - providing access to Farington Hall.</p> <p>The sections of application route shown are shown as cross roads leading to the corn mill and Farington Hall and it is not clear from the map whether they all connected to one another at point D or whether they were providing access to the Hall only.</p> <p>It is not known what is meant by the term 'cross road' but as the only other category of highway shown on the map is turnpike roads it is thought that a route shown as a cross road on a small scale privately produced map of this nature would have carried at least public bridleway rights. Routes to corn mills were in use by the public bringing their corn to</p>

		be ground. Routes considered to be footpaths were unlikely to have been shown on such a small-scale map although it is also possible that they were shown because they coincided with access to a significant private property named on the map as Farington Hall.
Cary's Map of Lancashire	1787	John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.

CA



Sheet 72. (Cary's England, Wales, and Scotland).

GEOREFERENCE T

The middle figure denotes the number of the plate, and the figures, at the top and bottom, explain its connection North and South, and those at the sides, East and West.



Turnpike Roads, thro' enclosed countries
D^o thro' unenclosed d^o

Observations		No part of the application route is shown.
Investigating Officer's Comments		The application route, if it did exist, was not considered to be a significant public vehicular route by Cary.
Greenwood's Map of Lancashire	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

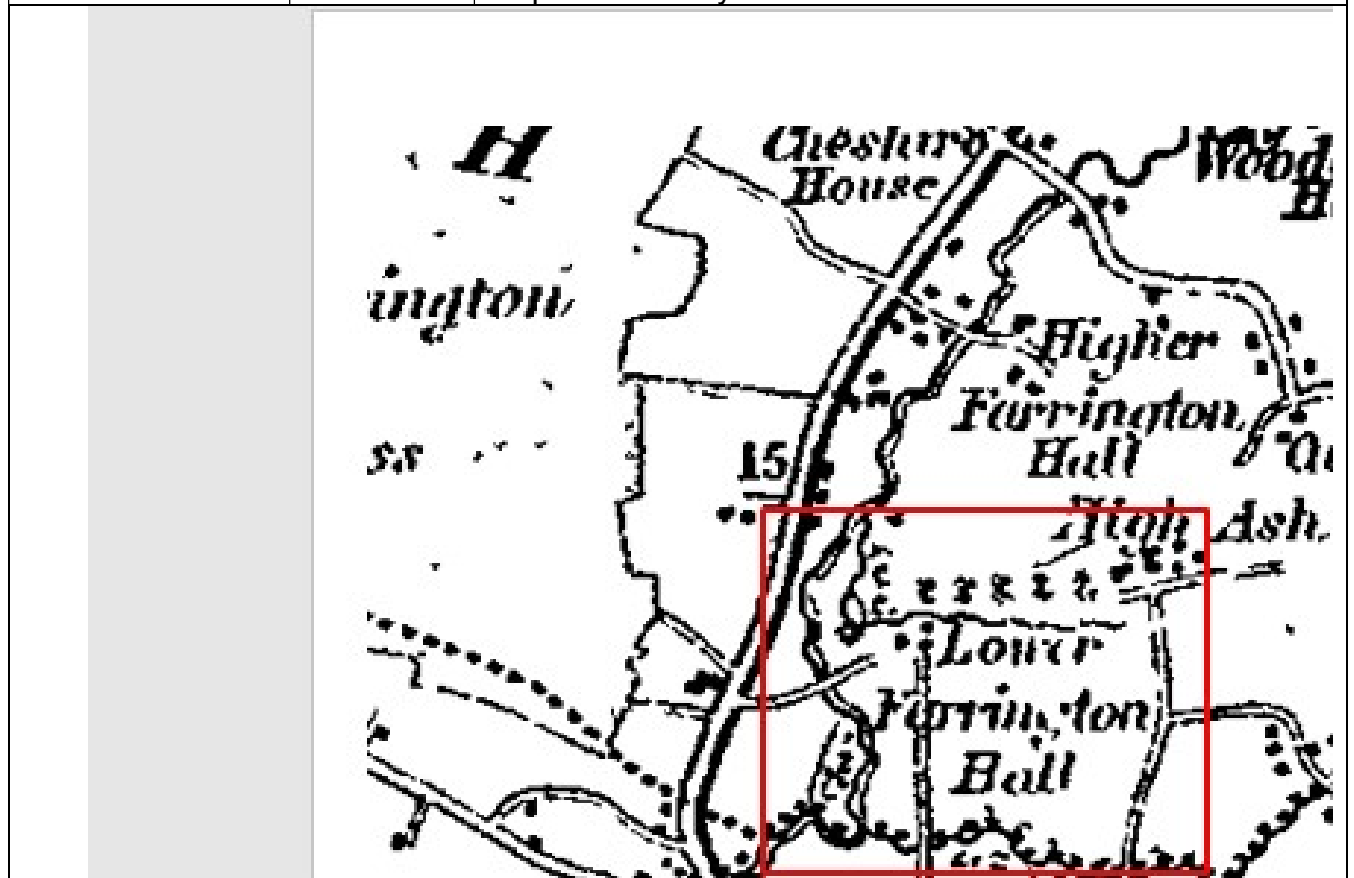


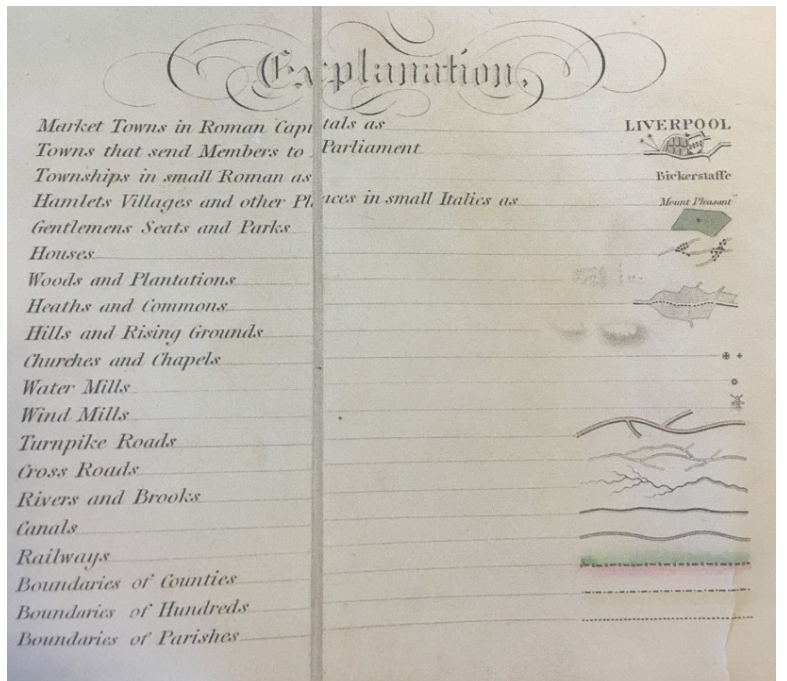


Turnpike Roads _____
 Cross Roads _____
 Towns & other Places - _____
 R. 1. M. 1. P. 1.

<p>Observations</p>		<p>Mill Lane is shown as a cross road from Croston Road extending east and passing through point A to cross the river at point C. Beyond point C the application route is not shown. The Mill is shown (as indicated by a water wheel). Farington Hall is not named on the map although buildings are shown which are accessed from Golden Hill Lane and then north along Hall Lane. The river has a different course from today. Hall lane is shown as a cross road passing through point J and continuing north to the unnamed buildings which approximate with the location of Farington Hall. The application route from point C passing through point D (not identified on the map) through to point I is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>Yates' Map suggested the existence of much of the application route in the late 1700s a route to a corn mill was likely to be public although it is noted that other sections of the route may have been included on that map because it provided access to Farington Hall and not necessarily – or not only – because it was considered to be a public vehicular route. Greenwood only shows parts of the route approximating to</p>

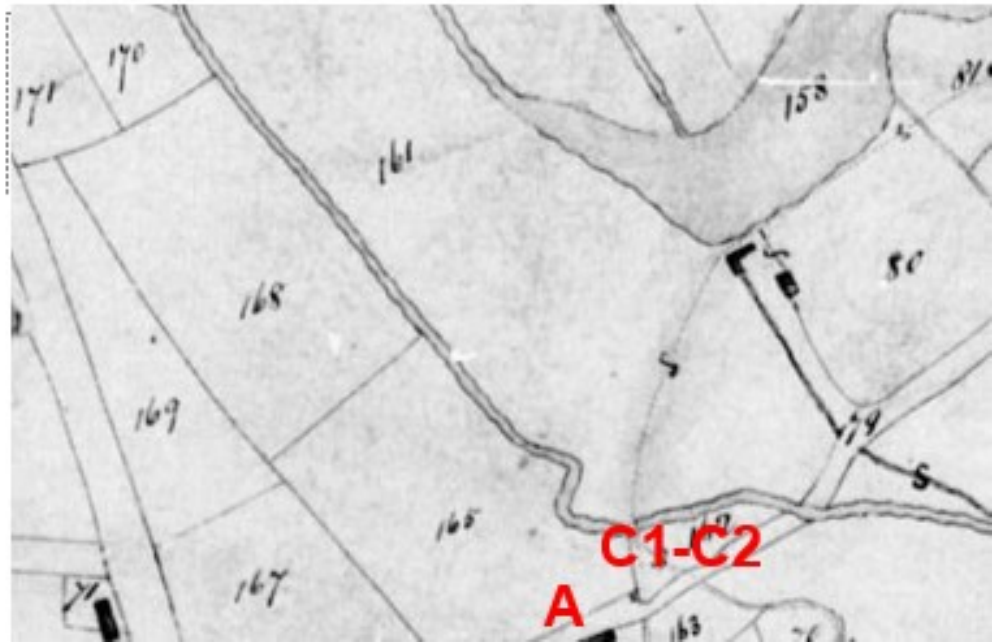
		<p>the sections from A to point C and from point J to point D suggesting that he may not have considered the application route from point C through to point I, if it did exist, to be a public vehicular route. The route to C would have provided access to the corn mill</p> <p>Routes considered to be footpaths were not normally shown on maps of this era and scale.</p>
<p>Hennet's Map of Lancashire</p>	<p>1830</p>	<p>Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>





Observations		The application route from point A towards point D and from point J to point D are both shown as cross roads and appear to provide access to the corn mill and Lower Farington Hall. The application route from point D to point I is not shown although north of point I the start of a route leading west towards Lower Farington Hall is shown.
Investigating Officer's		The application route from point A towards point D and from J to point D existed as substantial routes capable of

Comments		<p>being used at least on horseback in the 1830s. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals or railways.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Farington Tithe Map and Tithe Award or Apportionment TNAs reference IR 29/18/122	1839	<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>



<u>Roads</u>	
47	Public road
57	Road
67	Road
✓ 79	Road
91	Public road
94	Public road
129	Public road
148	Occupation road
202	Public road
211	Road

Observations

Between point A and the watercourse shown on the Tithe Map east of point C1-C2 the application route is shown as part of a longer bounded road which starts at the junction with Croston Road where access onto the route is gated. The route is numbered as plot 756 on the map and in the Tithe Award plot 756 is listed as being owned by Robert Snell esquire and occupied by Robert Holdin. Robert Snell was owner of the Hall It is described in the Award as a lane for which no tithes were payable.

This section of the application route gives access to the corn mill (which is not numbered on the Tithe Map) and crosses three watercourses. The river has a different course from today. The route can be seen to continue to point D as a bounded route numbered as plot 79 on the map. A line is shown across the route at point D. The Tithe Award describes plot 79 as a road with no ownership or occupier listed. Details for plot 79 are contained in a specific list of roads within the Award although it is noted that whilst some are specifically described as public roads, others – including the application route - are described just as roads and others are described as occupation roads, moss roads or turnpike road. Some are labelled on the map in one way and listed differently.

Between point D and point E and point D to point J the application route is shown contained in plot 82 which is listed as being owned by Robert Snell, occupied by Thomas Webster and is described as a fold and lane for which tithes were payable.

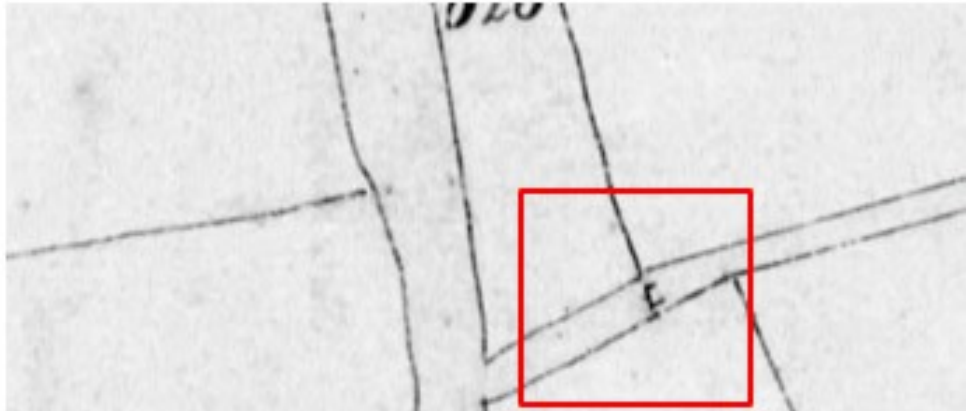
	<p>Between point E and point I the application route would cross two fields numbered as plots 16 and 88 but is not shown.</p> <p>Plot 16 is listed in the Award as being owned by Robert Snell and occupied by Thomas Webster and is described as being known as Dove Cote Park and listed as pasture land for which tithes were payable.</p> <p>Plot 88 was listed as being owned by Robert Snell and occupied by Thomas Beardwood and was described as Little Royal and as pasture for which Tithes were payable.</p>
Investigating Officer's Comments	<p>In 1839 it appears that the application route between point A and point D existed as a longer route starting on Croston Road which was gated at the junction with Croston Road and also at point D. It appeared to be of a substantial nature and was bounded from the adjacent farmland. The western part of the route (from A to the river crossing east of point C2) was described as a lane but was listed in the body of the Award as being in private ownership. No tithes were payable but this is not necessarily surprising if the bounded route was not cultivated or grazed at that time. It does however suggest that the route may have been accessible – at least on horseback – at that time.</p> <p>Between the river crossing east of point C2 and point D the route is described as a road for which no landownership details are provided. It is included in a list titled 'Roads' at the end of the Tithe Award. The list consists of 25 numbered routes named as either public road, road, occupation road, moss road, moss occupation road or turnpike road. No landowner or occupier details are given for any of the routes listed and none are specified as being owned by the Township or Surveyor of Highways as is sometimes stated. An analysis of the 25 routes listed confirmed that most of those routes listed as public roads still exist as public vehicular routes today although there were a couple of instances where the routes were recorded as public footpaths for which Definitive Map Modification Order applications had been made and the original routes had been altered slightly where land had been developed. Some of the routes listed as public roads were also labelled as occupation roads on the Tithe Map and this appeared to be the case particularly across Farington Moss where the layout of the road network was clearly suggestive of land that had been inclosed with routes created to provide access to the land and across the moss. The application route between C2 to D was not described as being a public road but its inclusion on the map and the fact that it is described in the Tithe Award as a 'road' with no owner is again suggestive of a route which would have been accessible at least on horseback. Four routes</p>

		<p>(including the application route C2-D) were described in the Tithe Award simply as 'roads' three of which are currently recorded as public footpaths with DMMO applications made to upgrade them and one route no longer physically exists. As the section of application route described as a road is not part of a longer through route described as a public road in the Tithe Award it is probably not a public carriageway but may have been accessible on horseback. Between point J and point D and including the route between point D and point E the land crossed by the route is all recorded in private ownership and described as a fold and lane for which tithes were payable. The way that this part of the route is recorded is suggestive at that time of a private route to the property listed within the adjacent plot 81 which was owned and occupied by the same people. The application route between point E and point I probably did not exist in 1839.</p>
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<p>Leyland Tithe Map and Award</p>	<p>1838</p>	<p>Extracts from the Tithe Map and Award for Leyland.</p>
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Click to add



Click to add t

<i>Snell Robert Inquis</i> (continued)	<i>Thomas Webster</i>	<i>539 Great Park</i> <i>540 Great Park</i> <i>541 Wood field</i> <i>542 Wood</i> <i>542 1/2 acres</i> <i>543 1/2 acres</i> <i>544 Little Park</i>
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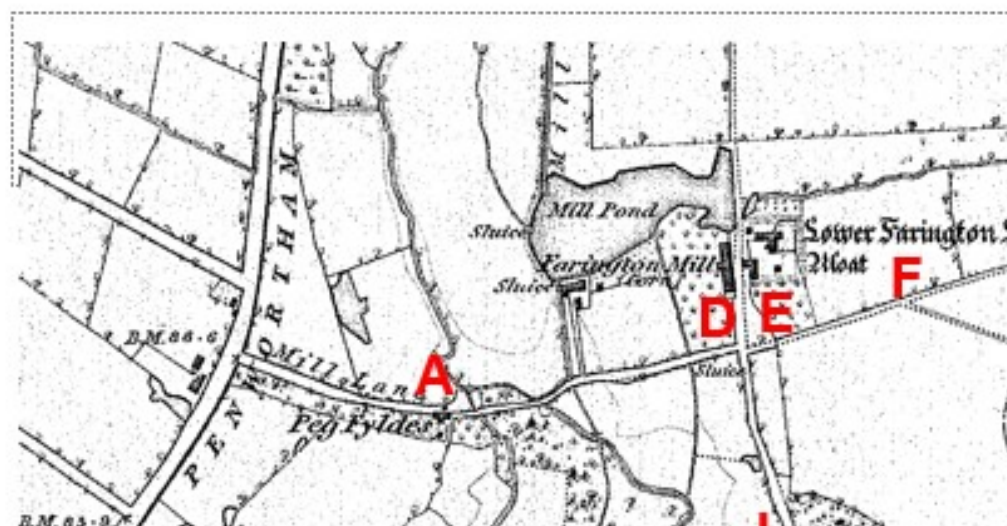
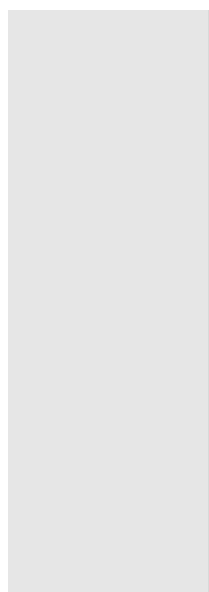
Observations

The applicant submitted extracts from the Tithe Map for Leyland as part of their supporting documentation. The application route is entirely within the parish of Farington but the route leading from point J through to point D starts on Golden Hill Lane in Leyland. The route leading to point J is shown on the Tithe Map for Leyland as a bounded route leading through to the parish boundary with Farington. From here the route is shown in such a way to indicate that it continues into Farington at point J (i.e. along the application route). It is not clear from the map whether access along the route was restricted in some way close to the junction with Golden Hill Lane. The route recorded in Leyland is numbered on the Tithe Map as plot 629a and the Tithe Award lists this plot as being owned by Robert Snell and occupied by Thomas Webster. The 'plot' is described as being Farington Hall Road for which no tithes were payable.

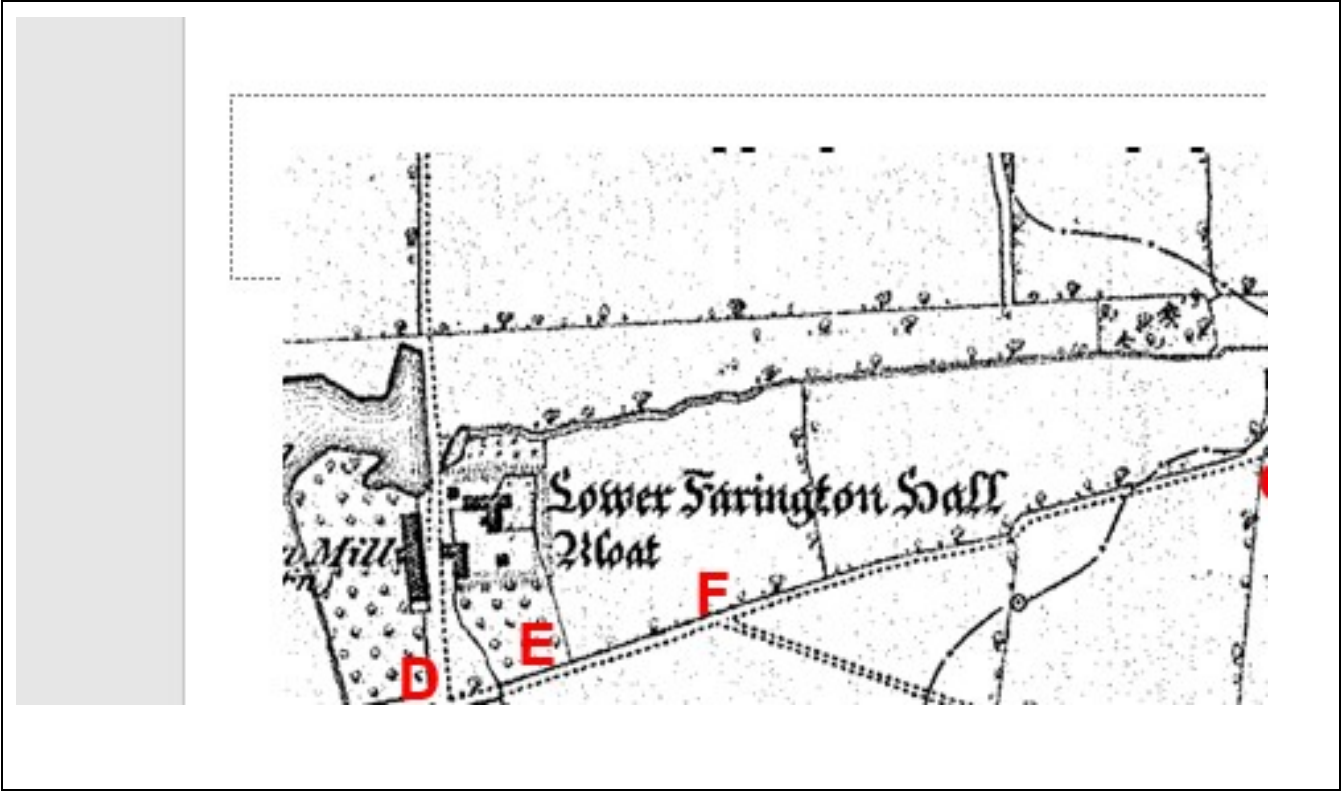
Investigating Officer's Comments

The information provided in the Leyland Tithe Award is consistent with that obtained from the Farington Tithe Award dated one year later. It appears that the full length of Hall Lane from Golden Hill Road passing through point J and point D and providing access to Lower Farington Hall was in the ownership of Robert Snell who owned the Hall itself. This suggests that the route probably originated as

		the access road to the Hall. The fact that it was in private ownership suggests that it was not considered to be a public vehicular route at this time although access may have been available along it. It is not unusual for a bounded route not to be subject to the payment of tithes particularly if it was not grazed by animals or used to grow crops.
Inclosure Act and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure award available to view at the County Records Offices for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 69	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1846 and published in 1848. ¹



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

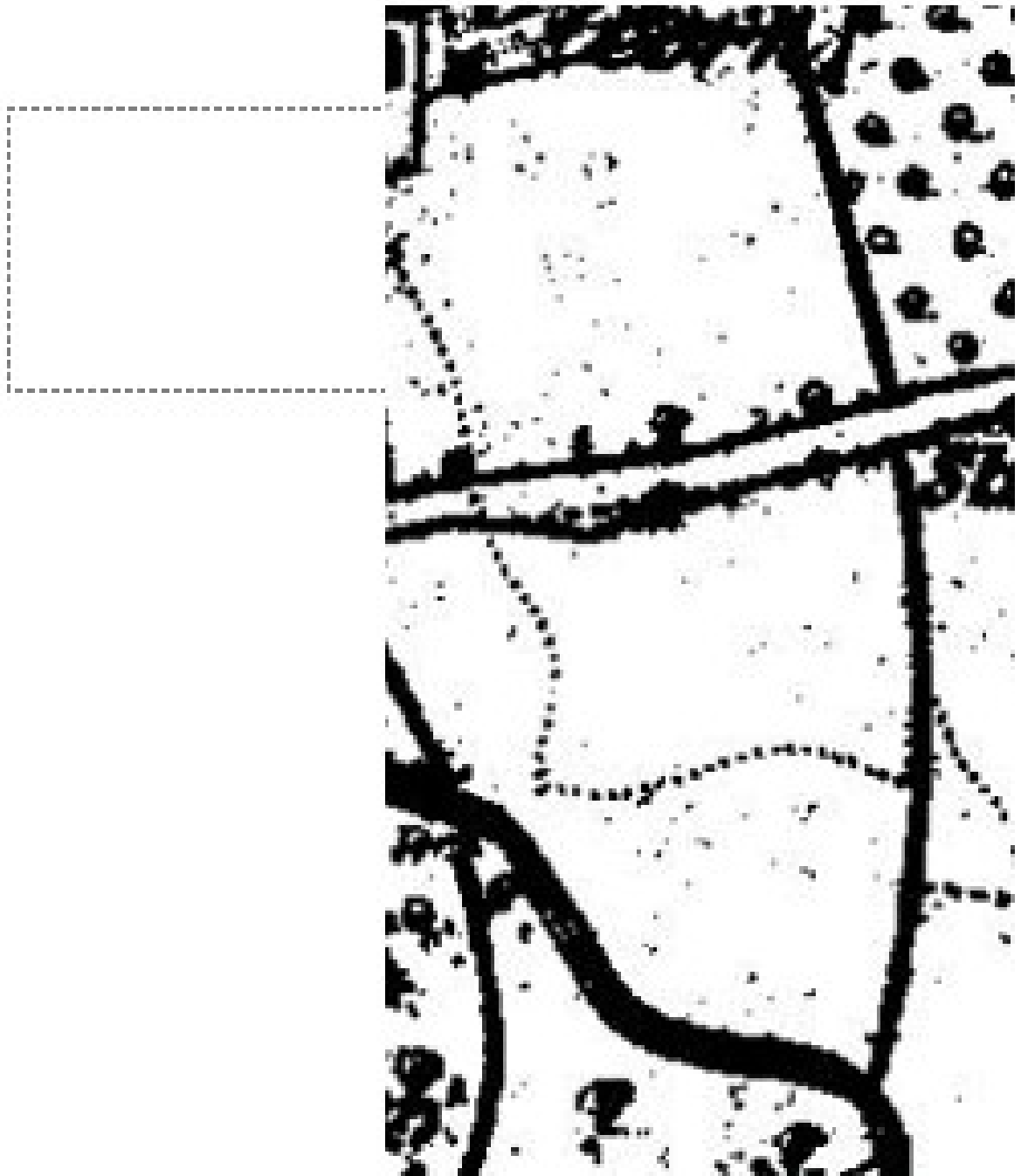


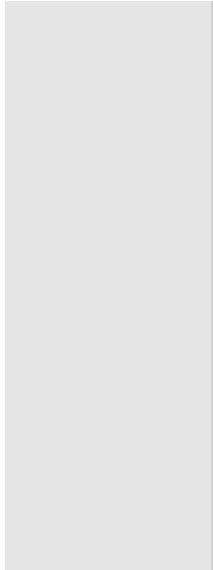






Paragraph





Observations

This is the earliest OS map available to view and it shows the full length of the application route.

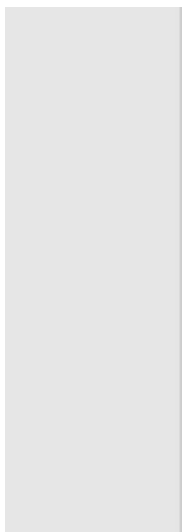
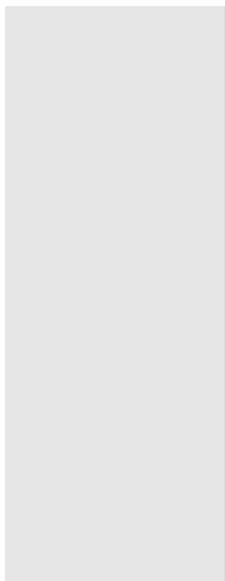
Between point A and point D the route is shown as part of a longer route which starts on Croston Road and which is named as Mill Lane between the junction with Croston Road and point B.

At point B there appears to be a line across the route and east of there the application route continues along a narrower bounded route providing access to Farington Corn Mill and on to point D.

From point D there is access north to Lower Farington Hall and east from point D the application route continues to point E where it is crossed by a solid line likely to indicate the existence of a gate. Beyond point E an unenclosed route depicted between a continuous line and a dashed line can be seen along the south side of a field boundary to point F where the route now recorded as Footpath Farington 7 is clearly shown extending in a generally east south easterly direction through to Wheelton Lane.

From point F the application route continues along the south side of a field boundary and passing through two field boundaries before reaching Wheelton Lane at point I. Extending north from Golden Hill Lane is Hall Lane which is shown as a narrow, bounded lane to point J. At point J the route crosses the parish boundary and it is unclear whether there is a line across the route indicating the possible existence of a gate or whether the line denotes the parish boundary. The application route extends north as a continuation of Hall Lane to the open junction of routes at point D and also providing direct access from Golden Hill Lane to Lower Farington Hall.

Investigating Officer's Comments		The whole of the application route existed in the mid-1840s and despite being gated in a number of places it may have been accessible on horseback throughout the full length and possibly with vehicles. The route between point A and point D provided access to a corn mill – which may have led to its name (Mill Lane) and the route between point J and point D provided direct access to Lower Farington Hall and appears to have formed part of the route named Hall Lane suggesting that the origins of the routes may have been as access to the mill and hall.
25 Inch OS Map Sheet LXIX.10	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.

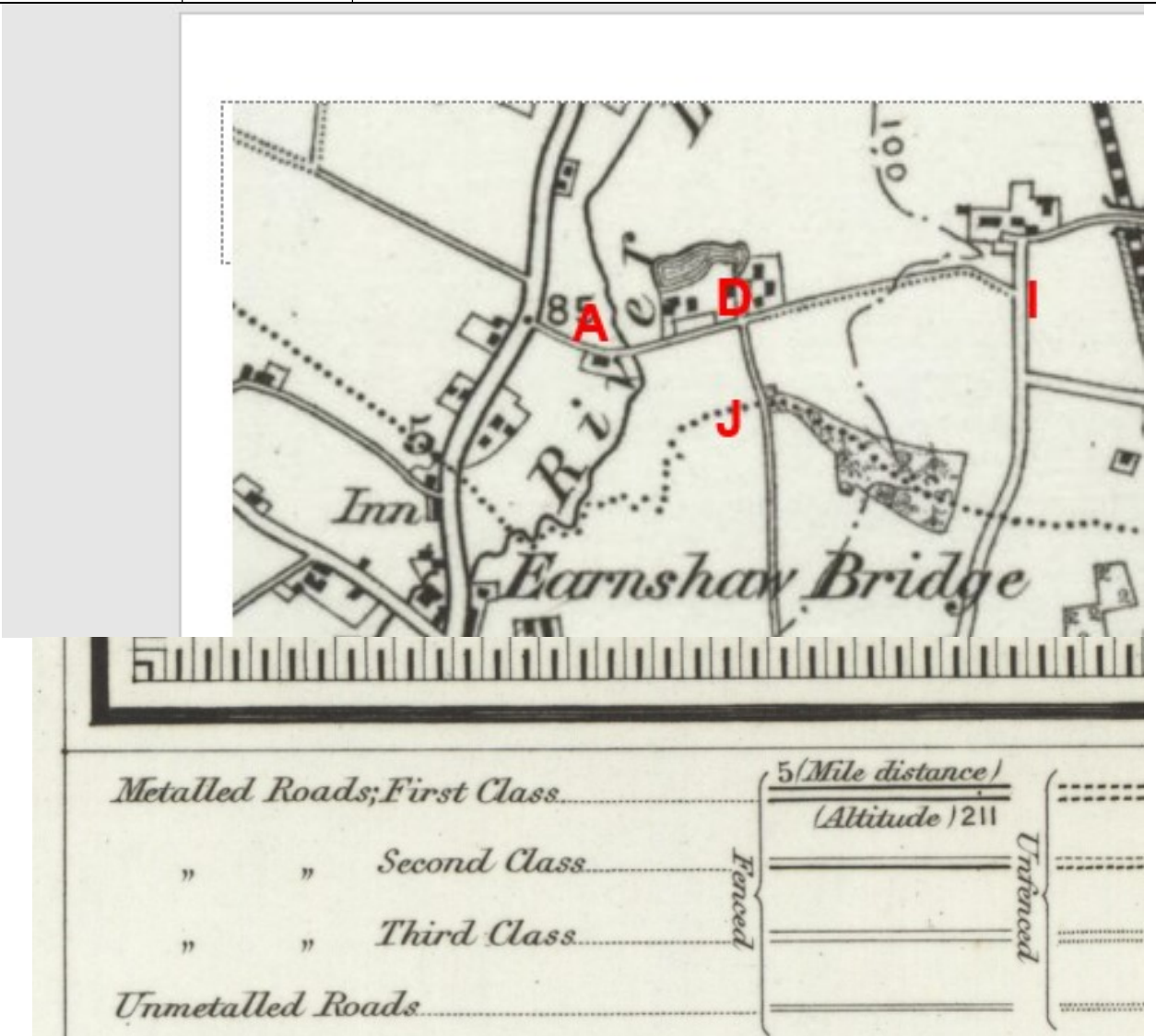


Observations		The full length of the application route is shown. Between point A and point D the route is shown as part of a longer substantial route named on the map as Mill Lane. It
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	<p>provides access to a number of properties – including Farington Corn Mill and Lower Farington Hall and is shown to cross 4 watercourses. Although bounded on both sides no part of Mill Lane from Croston Road passing through point A to point B is shown with a thickened line along the south side of the route. No lines are shown across the route, suggesting that it was not gated.</p> <p>Between point D and point J the application route is shown as part of a longer bounded route which starts on Golden Hill Road and extends directly north to the entrance to Lower Farington Hall and the junction of routes at point D. It is named on the map (south of point J) as Hall Lane and no lines are shown across it suggesting that it was ungated. It is not shown with a thickened line along the eastern side.</p> <p>From point D the application route continues east for a short distance as a bounded route to point E where it appears to be gated at the entrance to a field. A track (indicated initially by double pecked lines and then for the most part between a single pecked line and the boundary of three fields) is shown along the full length from point E through to point I. The route crosses two field boundaries between point E and point I and is also shown with a line across it at point I suggesting the existence of gates. At point F the route now recorded as Footpath Farington 7 is shown branching off from the application route and is annotated with the letters 'F.P.' (footpath).The application route is not annotated F.P.</p>
Investigating Officer's Comments	<p>The application route existed in 1893 and may have been capable of being used on foot or horseback and possibly with vehicles. The fact that it was named as part of Mill Lane and Hall Lane on the map is evidence that it was known locally by those names and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The route between points A-D and D-J appear much more significant in terms of access to the properties along them but they connect at point D and are shown as being capable of being used as through routes and not just access to specific properties suggesting the at the public could have used them at this time.</p> <p>The application route from point E through to point I was shown but not named and not enclosed along the edge of a number of fields (suggesting it was less well used – landowners were more likely to fence off well used ways from their fields). It was gated in 4 places. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position</p>

although this is not necessarily a true reflection of what may have been the position on the ground.
 No part of the application route was shown denoted by thickened lines along the south and eastern side. Shading was often used to show the administrative status of roads on 25 inch maps prepared – primarily between 1884 and 1912 and all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The application route is not shown in such a way.

1 inch OS Map Sheet 75 - Preston 1896 Small-scale 1 inch OS map.



Observations The application route between points A-D and points D - J is shown as part of an enclosed unmetalled road. The route between point D and point I is also shown as an unmetalled road which was unfenced along the southern side.

Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the application route - had public rights for those travellers.
Bacons Map of Lancashire	Published c. 1905	G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.

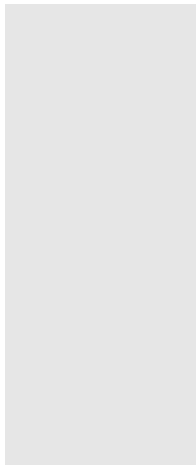
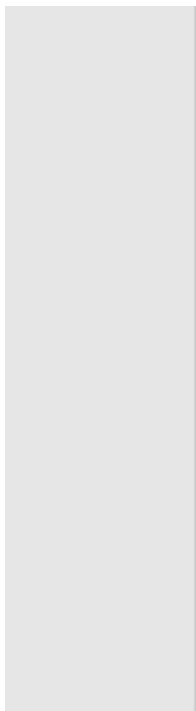
Bacon colours equate to parliament



Observations		Bacon's small-scale map also appears to show the application route as part of a longer through route between point A and point D and from point D to point J. The application route between point D and point I is not shown although it was noted that the section of map crossed by this part of the route was filled with the name of a place or property.
Investigating Officer's Comments		Bacon's maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes. The application route between point A and point D and point D and point J is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it

		<p>existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles.</p> <p>The fact that the application route was not shown between point D and point I may just have been because it was obscured by the labelling but may also be because it was possibly seen as a lesser route, suggesting that it was not, in the early 1900s, considered to be part of a significant or main public vehicular through route. It may, however have existed as a footpath or bridleway at that time.</p>
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<p>25 inch OS Map Sheet LXIX.10</p>	<p>1910</p>	<p>Further edition of the 25 inch map surveyed in 1893, revised in 1909 and published in 1910.</p>
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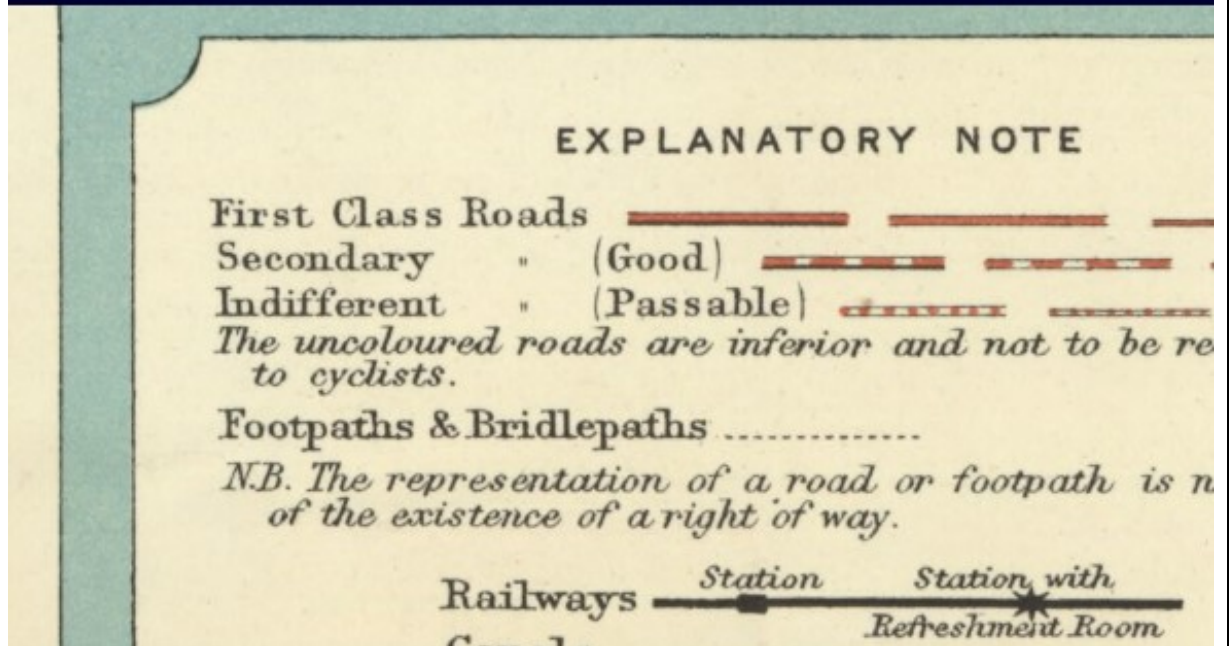


<p>Observations</p>		<p>The application route is shown in the same way as it was shown on the earlier edition of 25 inch mapping published in 1894.</p>
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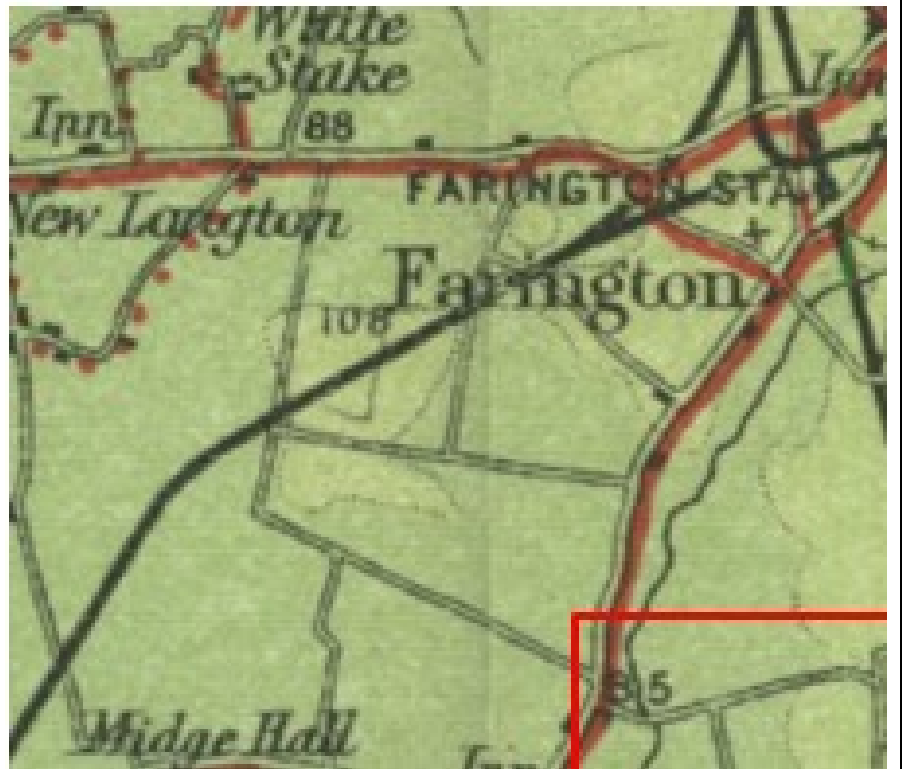
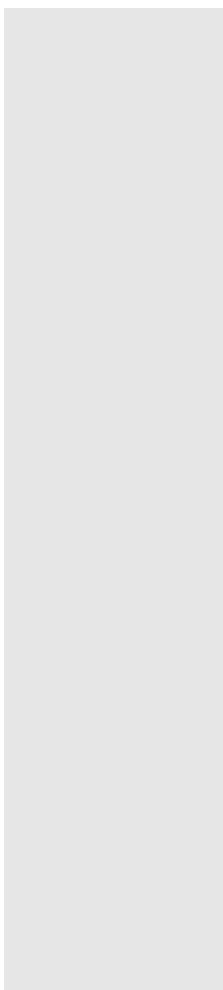
Investigating Officer's Comments		The application route existed in 1909 and appeared to be capable of being used at least on horseback. Its physical appearance suggested a route used as more than just a footpath.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling, and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

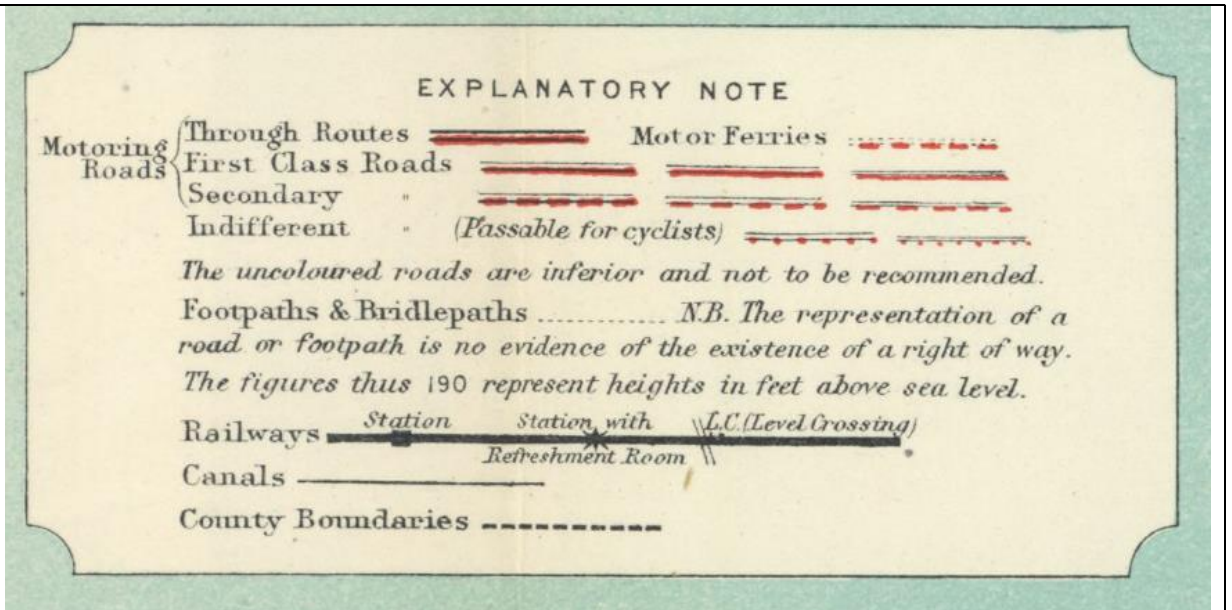
Sheet 8 Mancheste





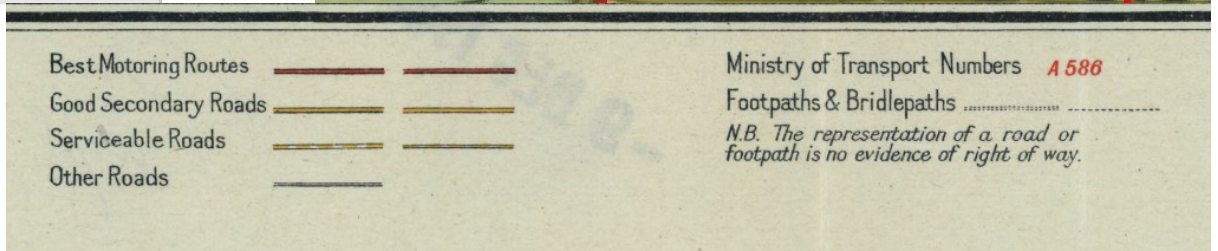
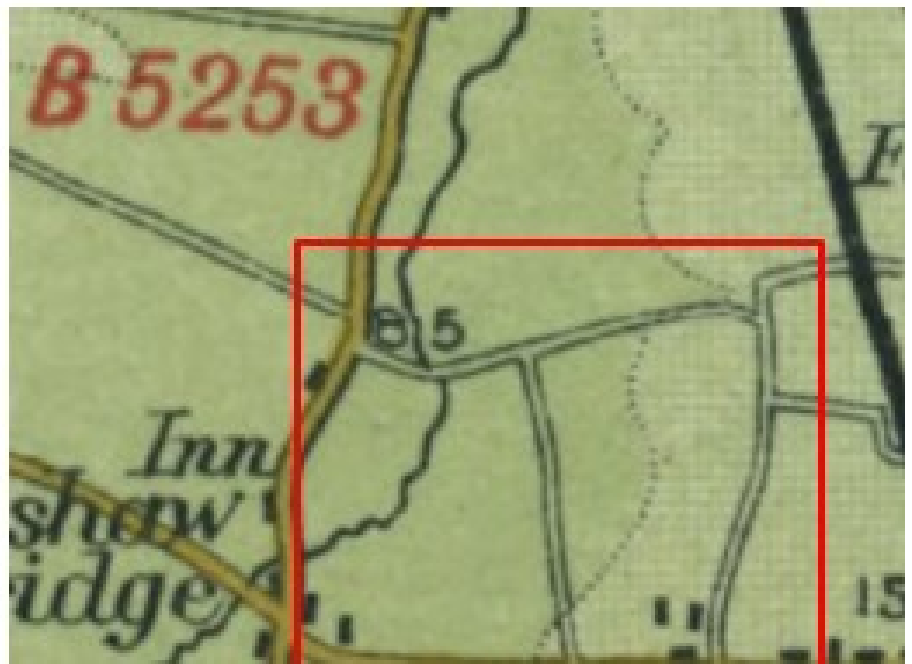
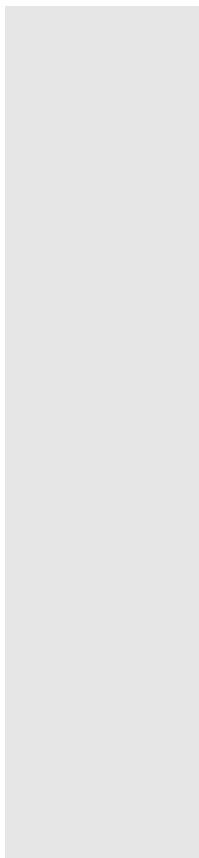
Map published in 1904





Map published in 1920

1

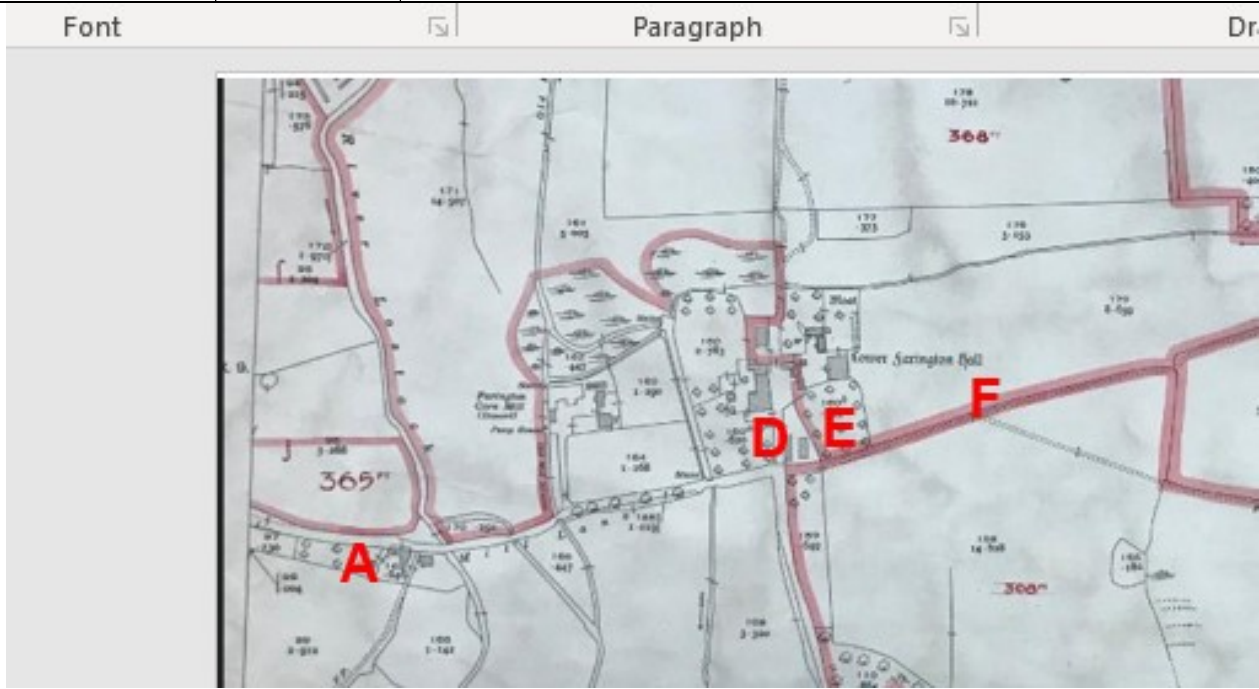


Map published in 1940

Observations		The application route is shown on all three map editions
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		<p>published in 1904, 1920 and 1940. It is shown as part of a longer route with no distinction between how the later adopted and unadopted sections of Mill Lane and Hall Lane are shown. The routes are shown as uncoloured 'roads' and it is noted in the key to the 1904 and 1920 maps that they are not to be recommended for cyclists. Routes considered to be footpaths and bridleways are shown separately in the map key. The 1940 map shows them as 'other roads'.</p>
Investigating Officer's Comments		<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being reviewed by Bartholomew as some routes were improved to cope with increasing traffic whilst others were virtually abandoned and fell into disrepair. Before 1920, few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered suitable for horse drawn vehicles or early motor cars, to be shown. The inclusion of the route on this map as an uncoloured or other road is evidence that the route existed as a substantial route which appeared to be considered as being more than a footpath or bridleway. It was not denoted as being a public vehicular route of a good enough standard to be recommended for cyclists but its inclusion as an uncoloured road suggested that it physically existed as a substantial route in the early 1900s which would have been capable of being used at least on horseback.</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</p>

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.



Observations

The Finance Act maps deposited at the County Records Office and The National Archives were inspected. Unfortunately, both maps appeared to be incomplete.

The land crossed by the application route between point A and point E and from point D to point J has not been annotated on either map.

Between point E and point I the map deposited at the County Records Office shows the route passing through two numbered plots. These plots are both quite large and are numbered as plots 280 and 368. The District Valuation book for Farington is listed as being missing in the County records office so it was not possible to check to see who was listed as owning this land and whether any deductions were claimed for public rights of way.

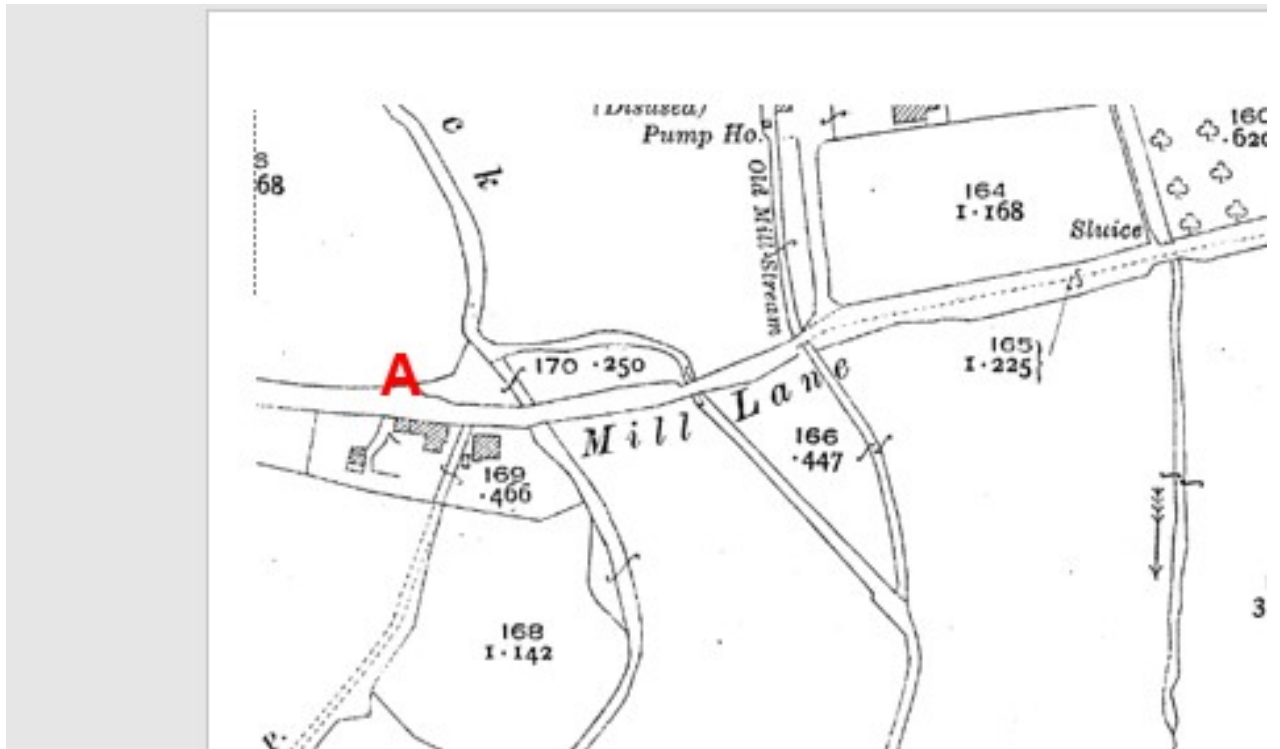
Investigating Officer's Comments

No inference can be drawn with regards to the application route between points A-D-E and D-J.

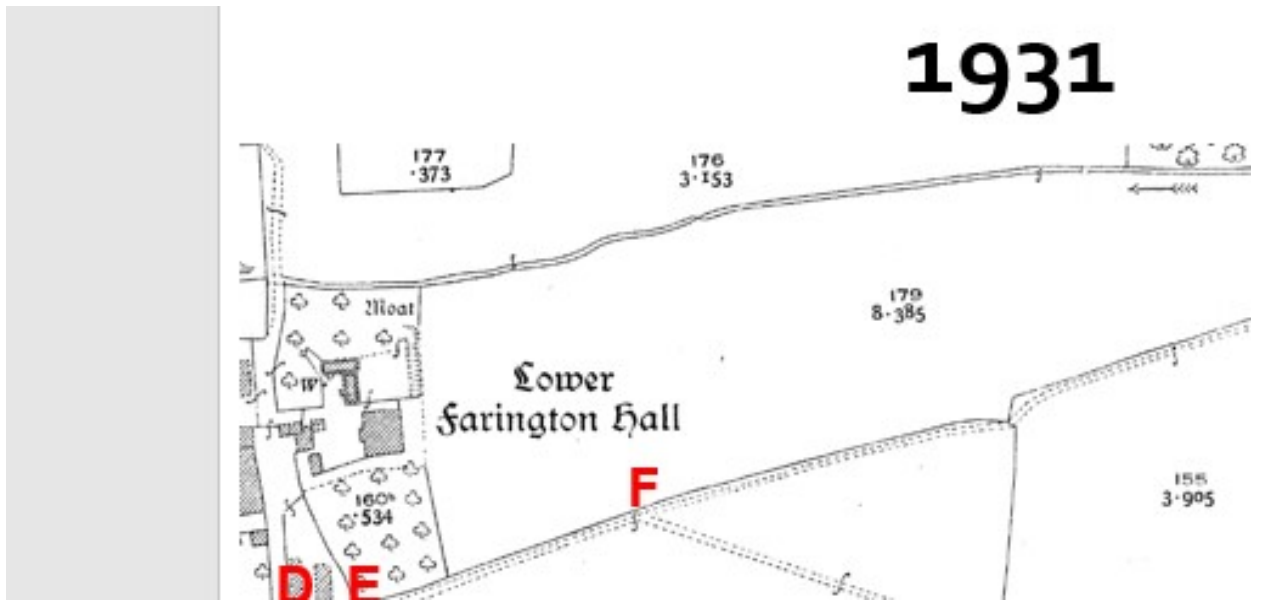
With regards to the application route between point E and point I it was not excluded from the numbered plots but it is not known whether any deductions were claimed for public rights of way. The fact that the route was not excluded from the numbered plots may however suggest that in the early 1900s the route between point E and point I was not

		considered to be a public vehicular highway. This view should be treated with caution however as the maps were clearly incomplete.
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25 Inch OS Map Sheet LXIX.10	1931	Further edition of 25 inch map, surveyed 1893, revised in 1928 and published in 1931.
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1931

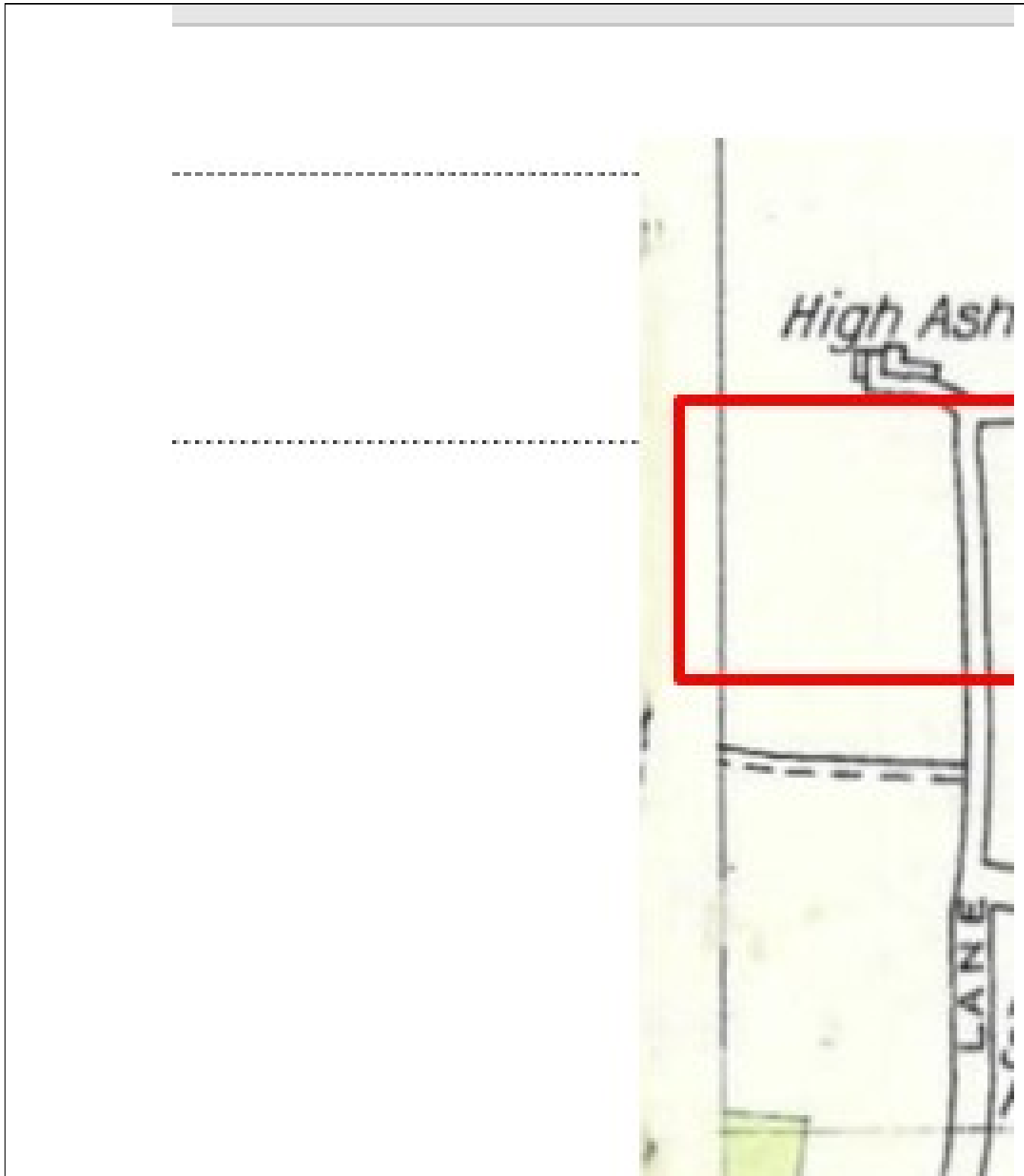


Observations		The application route is shown in the same way as it is shown on earlier editions of the 25 inch OS maps.
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Investigating Officer's Comments		The application route existed in 1928 and appeared to be capable of being used at least on horseback. Its physical appearance suggested a route used as more than just a
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Authentic Map of South Lancashire by Geographia	Circa 1934	<p>footpath.</p> <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>
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<p>Observations</p>		<p>The application route between point A and point E is shown consistent with how other routes with public vehicular rights are shown. The routes are named as Mill Lane and Hall Lane and are shown to connect at point D indicating the existence of a through route.</p> <p>A line is shown across the route at point E and then the application route is shown extending as far as point F. Beyond point F the application route is not shown and the</p>
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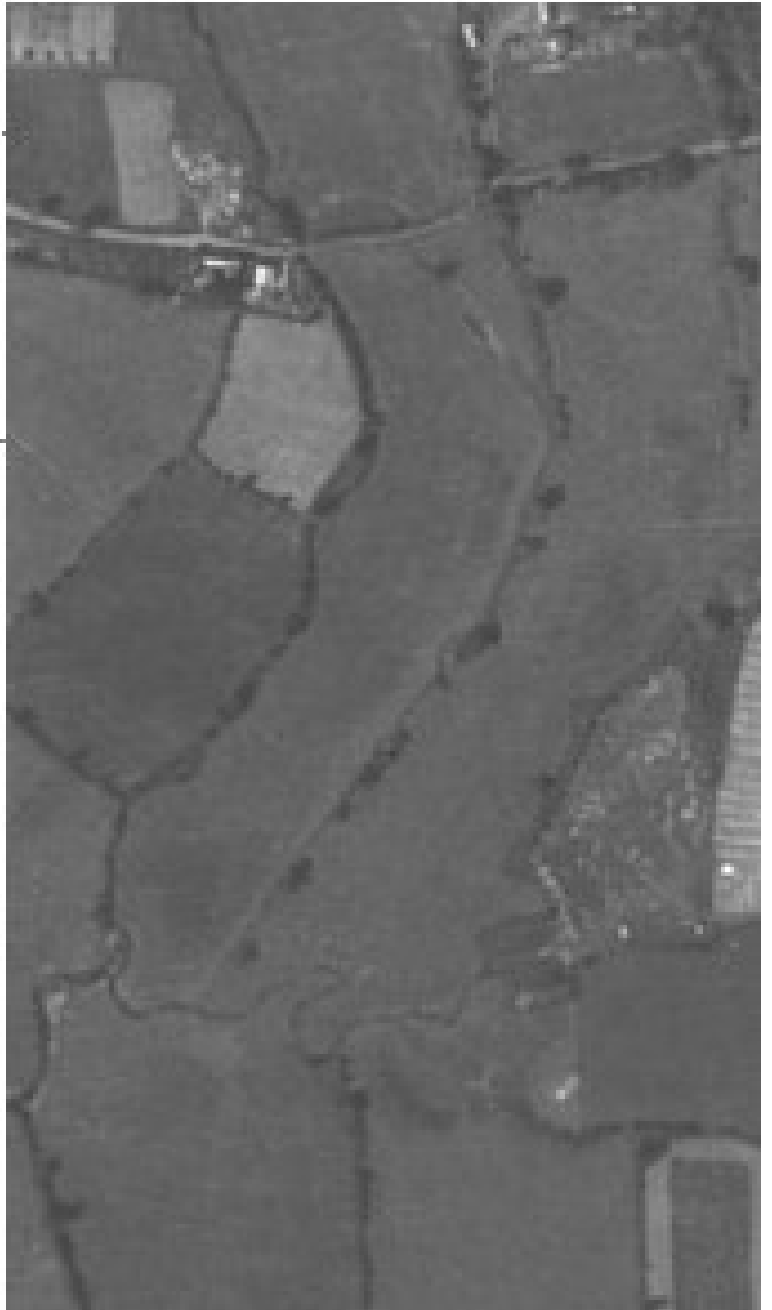
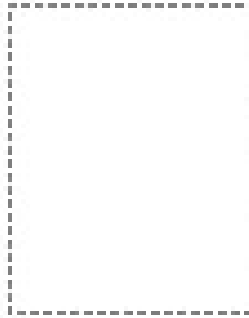
		only route shown continuing from point F is the route now recorded as Footpath Farington 7.
Investigating Officer's Comments		The application route between point A and point D and point F and point D is shown consistent with how other routes recorded as public vehicular routes were shown. This small-scale map was produced primarily to show public vehicular routes although other substantial routes were sometimes shown. It was not unusual for routes considered to be footpaths or bridleways not to be shown. The fact that the route of Footpath Farington 7 was shown suggests that it may have existed as a substantial track at that time and that the application route from point E to point I was a less significant route.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



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



Paragraph

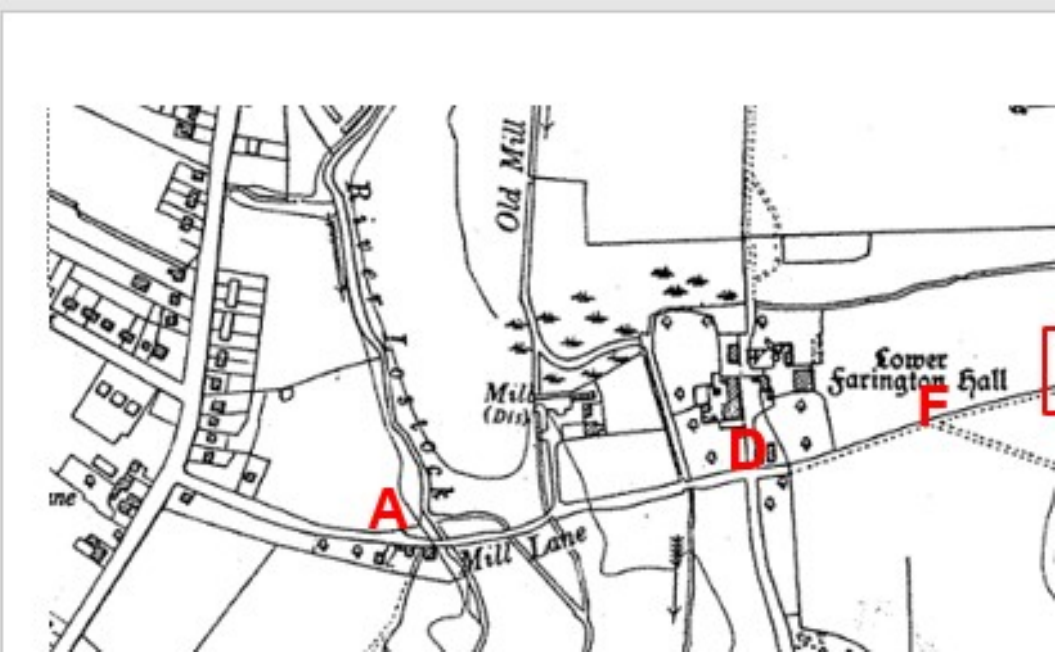
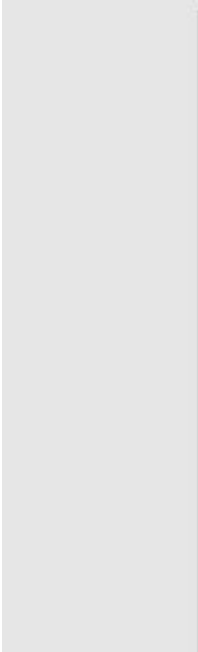


Observations

The 1940s aerial photograph covering the area crossed by the application route is of good quality.

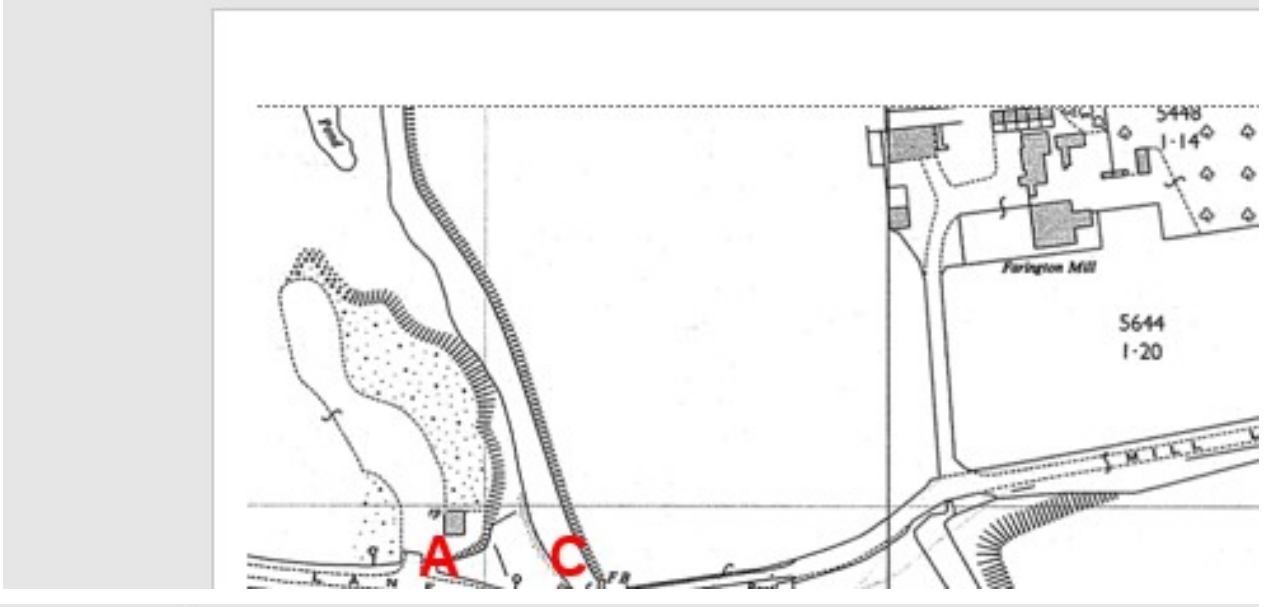
From Croston Road to point A Mill Lane can be clearly. From point A through to point D the application route can be seen as an extension of Mill Lane showing up on the photograph consistent with a route used by low levels of vehicles. From point D to point J the application route can also be seen and appears wide enough to be used by

		<p>vehicles accessing Lower Farrington Hall and Mill Lane. South of point J there have been significant developments along the east side of Hall Lane with a number of properties now shown.</p> <p>From point E the application route can be clearly seen through to point F but beyond point F the more prominent route is that of Footpath Farington 7 which shows up on the photograph consistent with a route receiving low levels of vehicular use. The application route between point F and point I can be seen but shows up as a much fainter line, more consistent with use on foot and horseback.</p>
Investigating Officer's Comments		The application route may have been accessible but it appears to be more consistent with low level vehicular use.
6 Inch OS Map Sheet 52SW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised 1930 -1945.



Observations		The application route is shown in the same way as it is shown on earlier maps examined. Farington Mill is now shown as disused. The application route between point F and point I is labelled as a cart track (CT) whereas the route of Footpath Farington 7 is marked as a footpath (F.P.).
Investigating Officer's Comments		The application route existed in the 1930s and appeared to be capable of being used at least on horseback and possibly with vehicles. The route between point F and point I was specifically labelled as a cart track as opposed to a footpath indicating evidence of a route on the ground indicative of such use. The annotation used by the OS does not however indicate whether this use was public or

		private.
1:2500 OS Map	1964	Further edition of 25 inch map reconstituted from former county series and revised in 1960-61 and published in 1964 as national grid series.





<p>Observations</p>		<p>Significant changes had occurred by the 1960s. Between point A and point D the route is still labelled as Mill Lane but is shown to be narrower than on earlier OS maps and more significantly the bridge at point C is labelled as being a footbridge and two posts are marked as being located on the route suggesting that vehicular access through to point D was no longer possible.</p> <p>The route between point D and point K appears unaltered and provided access to Lower Farington Hall, Farington Hall Farm and to buildings marked on the map as being Farington Mill but also provided a through route (albeit restricted by bollards and a footbridge) linking to Mill Lane and to the eastern section of Footpath Farington 7.</p>
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		<p>From point D heading east there is no longer a line shown across the application route at point E and the application route is now bounded on both sides with the addition of a fence/hedge/wall on the south side of the route through to point G.</p> <p>From point G through to point I the application route is no longer shown on the map and the route does not appear to be accessible. A route extending north east for a short distance from point G is shown leading onto Centurion Way.</p>
Investigating Officer's Comments		<p>Access along the application route from point A through to point D now appears to be limited with no through route available to most types of vehicles due to the fact that posts are shown to exist in the route and the bridge over the River Lostock is shown to be narrower and described as a footbridge. The route may still have been accessible on horseback but is unlikely to have been used by vehicles other than for access to the Mill via point D.</p> <p>The application route between point D and point J remained unaltered and still appeared to be capable of use at least on horseback and by vehicles accessing the Farington Hall Farm and Farington Mill.</p> <p>From point D to point G an ungated bounded route is now shown which appeared to be wide enough for use on horseback and with vehicles. From point G access along the application route was no longer possible from at least the early 1960s and it was necessary to divert following the track onto the western end of Centurion Way.</p>
Aerial photograph and historical information	Unknown	<p>An undated aerial photograph of the eastern end of the application route and some information about the history of Lower Farington Hall was found on the Leyland Historical Society website.</p> <p>https://www.leylandhistoricalsociety.co.uk/photographs.html</p>

<https://www.leylandhistoricals>



Font

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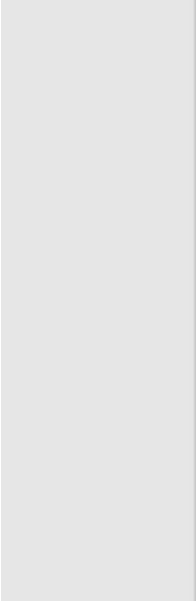

Paragraph

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Observations

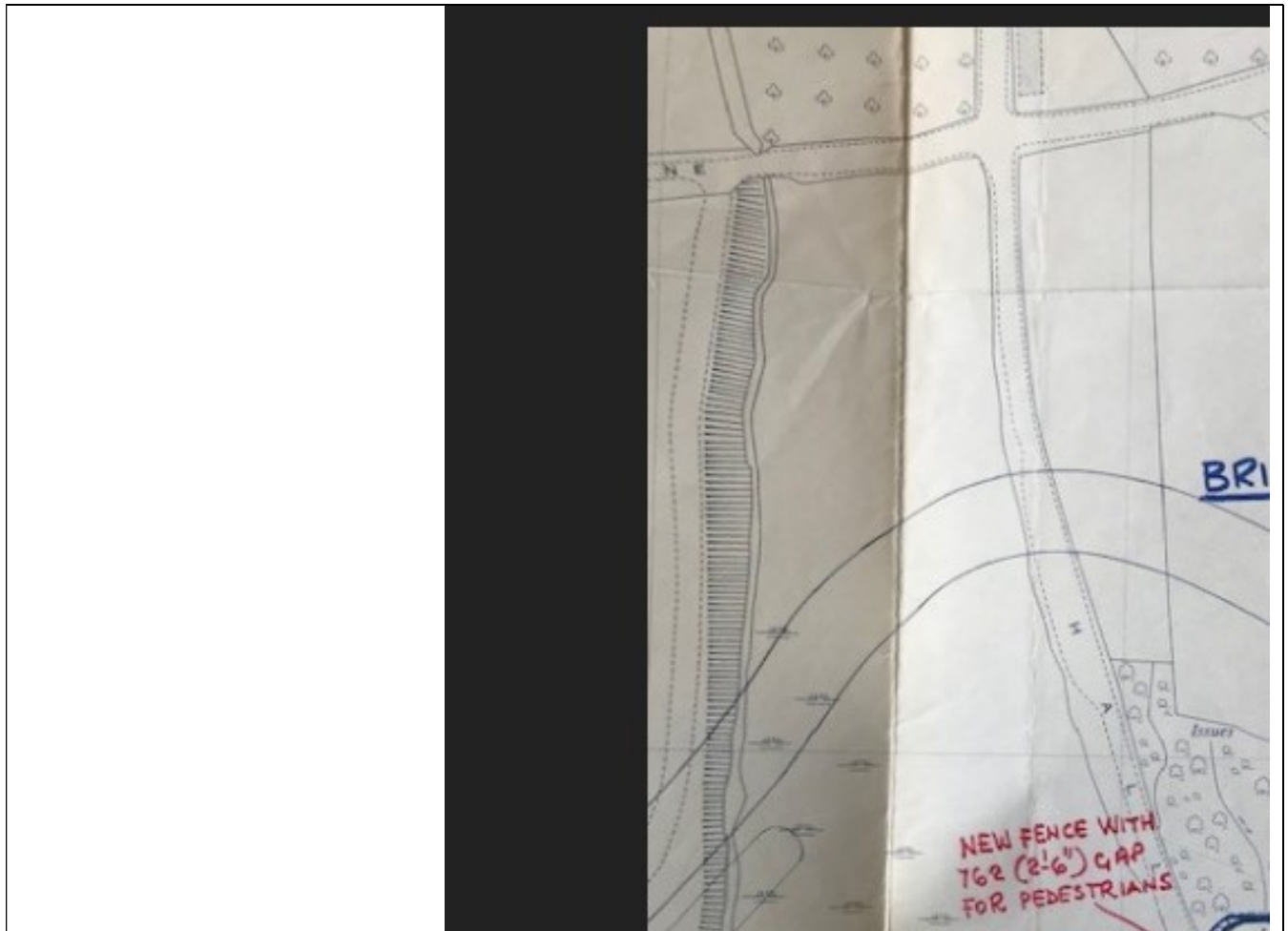
The undated aerial photograph is titled 'Leyland Motors – Spurrier Works' and shows the huge site that had been constructed including the test track used in the development and production of cars which was constructed to the north of part of the application route. The area highlighted on the photograph shows the application route between point F and point G as a

		<p>substantial roadway which appeared capable of being used by vehicles and which connected to what is now known as Centurion Way north east from point G. The photograph also shows that at that time the application route east of point G was no longer in existence on the ground.</p> <p>The Leyland Historical Society website also contained information about Hall Lane and Lower Farington Hall stating that Hall Lane as its name suggested was the lane that led down to the hall. The hall was stated as being the first home of the Faringtons and that it remained their home for at least 370 years. It was also said that before the hall became part of the old Ministry of Supply Tank Factory (later Leyland Motors) test track site, it was used as a farmhouse for many years and that the farmhouse was last owned by a family called Forshaw, the grandfather having brought the farm from the previous owners, a family named Wright, in about 1920.</p>
<p>Investigating Officer's Comments</p>		<p>The photograph helps to illustrate the changes that had occurred to the eastern end of the route since the publication of the 1:2500 OS map detailed above in the early 1960s and the fact that the route between point E and point G was altered substantially at some point since the 1950s.</p> <p>The background information regarding the antiquity and history of the hall is useful in putting into context why the routes may have originally come into being but the fact that they provided access to the hall does not necessarily mean that they could not have become public rights of way at some time in the past.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>
	<p style="text-align: right;">1960s</p> 	


1960



Observations		<p>The photograph clearly shows the application route between point A-D-G and J-D and also the fact that the route no longer existed on the ground between point G and point I.</p> <p>In contrast to earlier maps and photographs examined the route between point A and point D now appears to be narrower and less significant than the route between point D and point G which exited onto Centurion Way.</p>
Investigating Officer's Comments		<p>The application route existed between points A-D, D-J and D-G and appeared to be capable of being used at least on horseback. The application route between point G and point I no longer existed.</p>
Erection of barrier on Hall Lane	1977	<p>Correspondence found on LCC public rights of way files regarding the erection of a barrier at point J.</p>



<p>Observations</p>	<p>Correspondence between South Ribble Borough Council and Lancashire County Council in 1977 relates to a request made to the Borough Council by British Leyland Truck and Bus Company to erect a barrier at the boundary of their site at point J on Hall Lane.</p> <p>The purpose of the barrier was to prevent vehicular traffic along Hall Lane from point J due to recent problems with fly tipping on their site.</p> <p>Correspondence with the County Council related to consideration as to whether it was necessary to apply to the Magistrates Court for a stopping up order to allow for the erection of the barrier. However, it was concluded that a stopping up order was not required as the route was a public footpath with private vehicular rights and that no evidence had been presented to the contrary. It was also noted that vehicular use of Mill Lane through to Hall Lane was no longer possible due to the fact that the bridge across the river was a footbridge. In their response Lancashire County Council had suggested that consideration be given to allowing horses to use the route but it was stated that the Company were not willing to dedicate it as a public bridleway at that time.</p>
<p>Investigating Officer's</p>	<p>The owners of land crossed by the application route in the 1970s did not consider the route to be a public vehicular</p>

Comments		route or a public bridleway but accepted that public footpath rights existed.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth Pro.
<div style="border: 1px solid gray; padding: 5px;"> <div style="display: flex; justify-content: space-between; font-size: small; margin-bottom: 5px;"> Font Paragraph DR </div>  </div>		
Observations		The application route (with the exception of the route between point B and point I) is still visible in 2000. The hall and corn mill no longer exist and the section leading immediately east from point A is only faintly shown suggesting use of that short section may have been predominantly on foot, bicycle or horseback.
Investigating Officer's Comments		The application route (with the exception of the route between point G and point I) existed and may have been capable of being used in 2000 although it is not possible to see whether any access controls such as gates, stiles or barriers existed at that time.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often

containing considerable detail exist for most parishes but not for unparished areas.



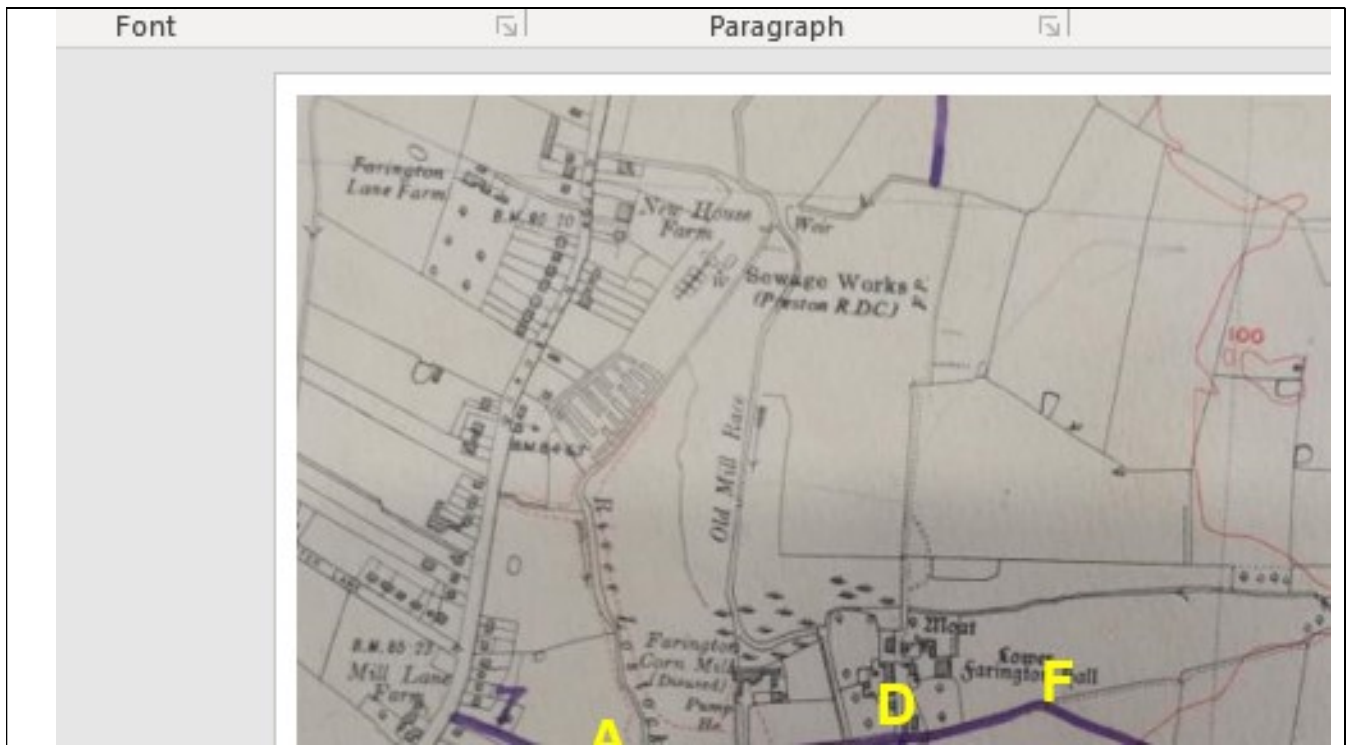
DISTRICT PRESTON RURAL	PARISH FARINGTON, NORTH WARD	No. 4.
MAP SHEET No. 2.	LENGTH	miles
BRIEF DESCRIPTION (Field F.P. or otherwise)	(to two decimal places)	
Guide paths etc. (CRF and F.P.)		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<p>Path starts on left hand side of Barnwater from Brook head, almost opposite Barnwater lane, with a notice saying "Footpath only", since the first part was previously a bye-road. The track is metalled until it reaches the River Looket, where it is crossed by a poor bridge; continues down towards a track leading to an old corn mill & farm buildings. Just beyond here a very bad bridge crosses the river (another part of the previous stream) & the track soon crosses path no. 3. Continuing until a field gate is reached, leading to a pasture. Keep to the left hand hedge until another gate is reached, when two paths go forward to Wheeler lane, with stile into the next field & on to the road (Wheeler lane).</p>		
SURVEYED BY:—	Name	Miss J. Craven
	Address	Ashdley House Lane Farlington Moss in Preston.
Date	April 1951.	
50000.F39/4/50	NOTE Both bridges are in a state of collapse, and very unsafe.	

DISTRICT	<i>Preston Rural</i>	PARISH	<i>Farington</i>	No.	<i>24</i>
MAP SHEET No.		LENGTH		miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)			<i>FP</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>junction with FP no. 7 near lower Farington Hall to parish bay.</i>					
<i>location</i>					
SURVEYED BY:—		Name			
		Address			
		Date			
50000/F39/4/50					

DISTRICT	<i>PRESTON RURAL</i>	PARISH	<i>FARINGTON, NORTH WARD.</i>	No.	<i>3.</i>
MAP SHEET No.	<i>1 and 2.</i>	LENGTH		miles	
BRIEF DESCRIPTION (Field F.P. or otherwise)			<i>Field path east track. (CRB)</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Footpath starts on west side of border lane, just past Incliffe Nurseries, runs between high hedges to stile into pasture, continues along left hedge until another stile is reached, and then along right hand hedge to gate & stile, continuing across private road to farm, rough swing-gate, over pasture field, to stile, along right hand hedge, + across pasture to a spring, thence over a stile, where turn left, following hedge around ploughed field until a gate opening is reached, along right hand hedge through ploughed field to stile leading to farm, over a curved track + a small stream (stile here) into farm fields (Farington lower hall, + orchard), carry straight through along curved track (crossing footpath no: 4) path now becomes hedges, beyond the wood + second stream. (General condition fair + well marked)</i>					
SURVEYED BY:—		Name <i>Miss L. H. Craven</i>			
		Address <i>"Sheralley" Foulds Lane Farington Moor, Preston</i>			
		Date <i>Easter 1951.</i>			
50000/F39/4/50					

Observations	The application route between point A and point F was recorded as part of Footpath 7 on the parish survey map. The route between point F and point I was also shown but then crossed out. When the parish survey card was completed in 1951 it appears that the route recorded as Footpath 7 was considered to be in poor condition. It is described by the surveyor as a 'bridle path etc (CRF and FP)' which is somewhat confusing as it suggests that the surveyor considered it to be a bridlepath and also a cart road used as a footpath and a footpath – possibly reflecting
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		<p>the use at that time. It is noted that in 1951 a 'footpath only' sign was in position on the route close to the junction with Croston Road and that from Croston Road through to point C1 on the application route the route was metalled. There is also a reference to it previously being a 'bye road'. Beyond point C1 the route is described as a track passing over two bridges (one at point C1-C2) which were in very poor condition and also refers to an old mill and farm. The route is described as continuing to a field gate marked on the survey map at point E and that it then continued along the edge of a pasture field to a stile and gate from where two paths 'went forward' to Wheelton Lane.</p> <p>The application route between point J and point D is shown on the parish survey map but is not numbered. A Parish Survey Card for Footpath 24 was located but this is not dated and has been completed in different handwriting from the survey card for Footpath 7. The route is described as a footpath from junction with footpath 7 near Lower Farrington Hall to the parish boundary.</p> <p>In addition, a route is shown on the parish survey map which extends south to pass through Lower Farrington Hall (farm) and is numbered as Footpath 3. The Parish Survey card for this route describes the application route from point D to point J as part of FP 3. The route as a whole is described as a field path and cart track (CRB <i>i.e. cart road bridleway</i>) described as passing through the farm on a cindered track to become Hall Lane beyond the wood and second stream.</p>
Draft Map		<p>The parish survey map and cards for Farington were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



Observations

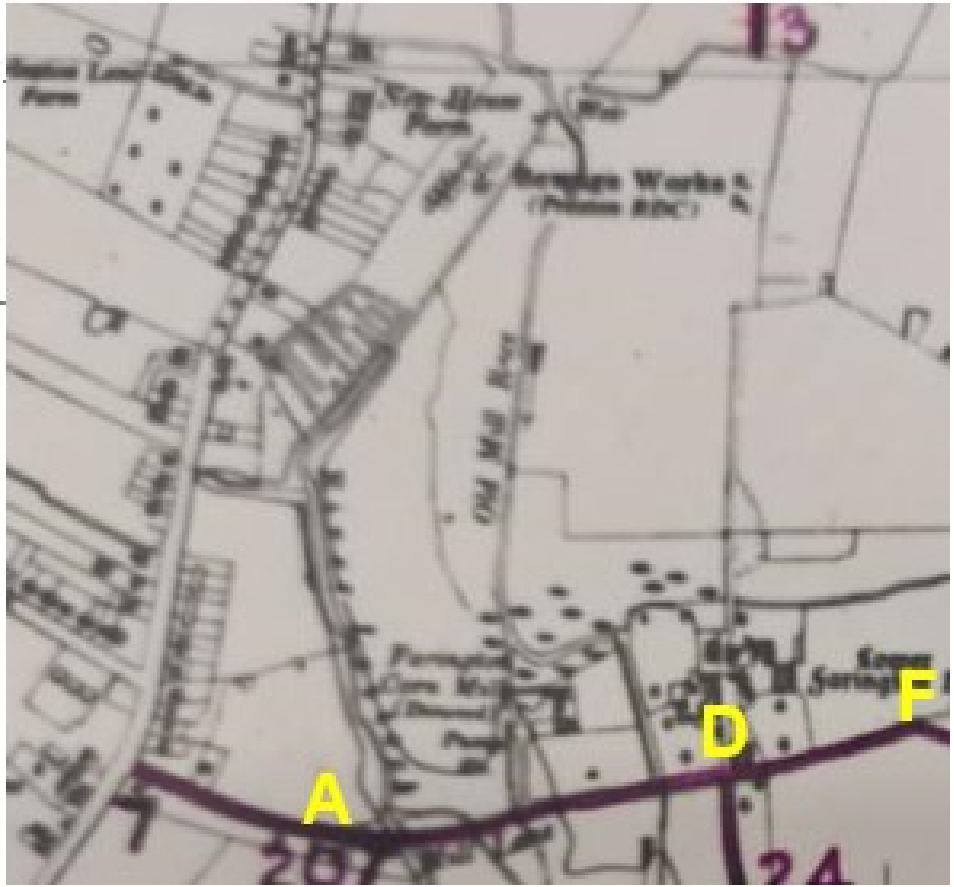
The Draft Map for Farington shows the application route between points A-D-F and D-J as public footpath. It does not show the application route between point F and point I and does not show the route of Footpath 3 passing through Lower Farington Hall.

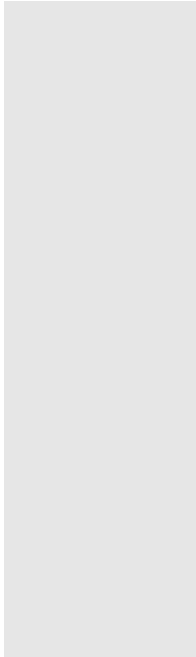
The Ramblers Association objected to the fact that a number of paths – including the application route between point F and point I – were not shown on the Draft Map. The grounds for objection were listed as being that a number of paths crossing the site of a new factory at Farington were stopped up by order of the Ministry of Transport under the Supplies and Services (Defence Purposes) Act 1951 in February 1952. The Ramblers Association submitted that the stopping up under the 1952 order did not permanently close the paths but merely stopped them up for the duration of the Supplies and Services (Defence Purposes) Act 1951.

The 1951 Act s2 provides for Orders to stop up Highways but the power has now ended under the Emergency Laws (Repeal) Act 1959 and the effect of existing Orders ended after a further 2 years unless made permanent under Town and Country Planning Act.

Information found on LCC files includes a letter from Preston Rural District Council (RDC) to LCC in 1957 explaining that the Ministry of Supply had negotiated with the RDC for the permanent closure of certain footpaths at Farington within the perimeter of the Tank factory site

		<p>under the Supply and Services (Defence Purposes) Act 1951.</p> <p>The following year a LCC memorandum confirmed that the Minister of Transport and Civil aviation made an order titled 'The Stopping Up of highways (County of Lancaster)(No 37) Order 1958 (S.I. 1958 N. 1994) for the permanent stopping up of a length of road and footpaths in Farington.</p> <p>The Order has not been located but its Notice in the London Gazette is available. It is likely that the section F-I was a section stopped up given the way it was "removed" from the parish map along with others further north. If the lines of these are considered against the 1960s aerial they are within the perimeter of the tank factory.</p> <p>It therefore appears that some rights on the application route section F-I were stopped up. It is suggested that the rights stopped up were footpath rights - as the continuation of the route west from point F was recorded as a footpath in the 1950s. However, it should be noted that the Order made reference to the stopping up of a length of road and footpaths but no specific details have been found. The legislative provision under which it was made ended.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route between points A-D-F and D-J was shown on the Provisional Map as a public footpath. The application route between point F-I was not shown. No objections or representations were made in relation to what was shown.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>

Font		Paragraph	
			
Observations		The application route between points A-D-F and D-J was recorded as a public footpath. The application route between point F and point I was not recorded.	
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.	



6	"	Parish boundary (near Woodcock Hall) to Fowler Lane (near Railway Bridge)	0.47
7	"	Croston Road (near Mill Lane Farm) to Wheelton Lane	0.67
8	"	From U/c. County Road No. 5/70 to jct. with	
	"	boundary to continue in next parish as Footpath 52	0.13
24	"	Jct. with footpath 7 near Lower Farington Hall to Parish boundary.	0.12
25	"	Preston Road to Parish boundary	0.13

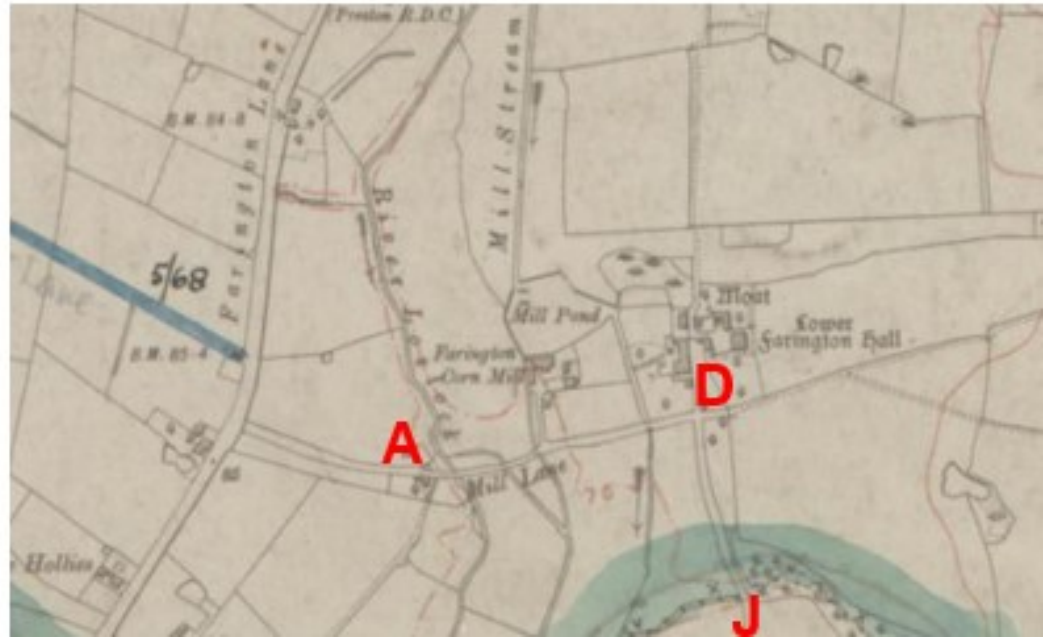
Observations		The application route is recorded on the Revised Definitive Map and Statement as a public footpath except the section from point F to point I which, having initially been identified as a footpath by the parish council, was permanently stopped up (as a footpath) by the Minister of Transport and Civil Aviation.
Investigating Officer's Comments		<p>Since 1953 through to 1975 there is no evidence that the application route A-D-F and D-J was considered to be anything other than a footpath although inconsistencies used in the terminology written on the parish survey cards do suggest a belief that the route could have been used as a bridleway in the past.</p> <p>The application route between point F and point I was considered to be a footpath in the 1950s and footpath rights were stopped up as part of a legal process. Further points regarding this will be made below.</p>
Highway Adoption Records including maps	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within

derived from the '1929 Handover Maps'

the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.



Handover Map for Farington Sheet 69 SW



LCC 'adoption records'

Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
Highway Stopping Up	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court

Orders		are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		<p>The 1952 and 1958 orders detailed above in relation to the Draft Map of Public Rights of Way stopped up public footpath rights along the application route between point F and point I.</p> <p>An Order titled The Stopping up of Highways (County of Lancaster)(No.11) Order 1969 was also found in the county councils records. It was made on 29th July 1969 and related to the stopping up and diversion of parts of Footpath 7, 24, 3 and 9 Farington including parts of the order route A-F J-D. Although the Order was confirmed the alternative routes were never provided and the order never became operative. The Order plan indicates that F-I was not in existence as a right of way.</p>
Investigating Officer's Comments		footpath rights recorded along the application route A-F J-D do not appear to have been subsequently diverted or extinguished by this Order–
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any of the landowners under this provision of non-intention to dedicate public rights of way

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

Summary

There was no modern user evidence submitted as part of the application and it should be noted that since some point in the 1950s the application route between point G and point I has not been in existence on the ground.

It should also be noted that there is further significant development taking place on the land crossed by the application route and that how the route looks today is quite different to how it may have looked in the past.

When the route was inspected in 2020 it was accessible on foot between points A-D-G and D-J.

As user evidence is not being considered it is necessary to look at the map and documentary evidence available.

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

The earliest map examined which appeared to show the three sections of the application route was Yates' Map of 1786. Later commercial maps published in the early 1800s also showed the route between points A-D and D-J as part of longer routes linking to public vehicular highways and providing access to Lower Farington Hall. The inclusion of the route on these early maps suggests that it existed as a substantial route which would have been capable of being used at least on horseback in the late 1700s-early 1800s at least between points A-D and points D-J.

The Tithe Map and Award for Farington and Tithe Map and Award for Leyland - which indicated that the route continued south beyond the parish boundary - provide useful information confirming the existence of the application route between points A-D-E and points D-J in the 1830s. The Tithe Map for Farington also suggests that the route between point E and point I did not exist at that time. The sections of route which did exist were numbered with details included in the Tithe Award. Some inconsistencies are recorded – the first part of Mill Lane – which included the application route between points A-B-C and partway to point D – is listed as a lane in private ownership with no tithes payable. The remaining section of Mill Lane through to point D is listed as a 'road' with no recorded owner or occupier and no tithes payable and the section from point J to point D and point E is described as a fold and lane in private ownership for which tithes were payable.

Taken as a whole, and in context of the ownership of the hall itself, it is considered that the routes A-D and J-D-E did not appear to have been considered as public vehicular highways in the 1830s and that although they physically existed and may

have been capable of being used, they originated as access to Lower Farington Hall and Mill.

With regards to its inclusion on the Ordnance Survey maps, it has generally been considered that OS maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888. Despite this there is now a growing awareness by academics that by the end of the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, it remains the case that the main inference from these maps is the existence of the route providing access to and from Lower Farington Hall and Mill but it does appear that a through route existed over a considerable period of time of substantial character which could have been accessible to the public – at least on horseback – since the mid-1800s.

The First Edition 6 inch OS map surveyed between 1844-46 shows that the application route between point E and point I also existed by that time. This part of the route however was quite different in character, being a track along the edge of pasture fields which was not enclosed until significant changes occurred in the 1950s. From the 1840s through to the 1950s it appeared that this part of the route passed through a gate at point E and then passed through a further three field boundaries before exiting onto Wheelton Road. It may have been capable of being used on horseback and with vehicles but was only considered to be a footpath in the 1950s when it was included in an order to stop up public rights under the Supply and services (Defence Purposes) Act 1951.

The whole of the route is shown on the Bartholomew maps produced in the first half of the 1900s suggesting that it existed as a substantial route which appeared to be considered by that time as being more than a footpath or bridleway. Its inclusion as an uncoloured road suggested that it physically existed as a substantial route in the early 1900s which would have been capable of being used at least on horseback

Up until the mid-1950s it appears that Mill Lane from point A to point D and Hall Lane from point J to point D were capable of being used by vehicles and formed the access to and from the mill buildings and the hall which became a working farm. Since the 1950s use of the route by vehicles declined with the former bridge across the river at point C being replaced with a footbridge and barriers erected in the 1970s to prevent unauthorised vehicles from point J.

In conclusion, a range of OS, commercial maps and other documents were examined which seem to suggest that the application route between points A-D and D-J probably came into existence to provide access to Lower Farington Hall and Mill and that the eastern section of the route from point E-I came into being in the 1840s as a less substantial route providing access to a number of fields and through to Wheelton Lane. Since that time it is consistently shown to exist on small scale OS maps and the Bartholomew maps examined which is suggestive of public vehicular use during that time despite the fact that it did not appear to be considered to be a public vehicular through route when the Tithe Map was produced.

Taking all the evidence into consideration it appears that the route probably existed as a public bridleway since the mid-1800s but that the evidence available was insufficient from which to deduce that public vehicular rights existed but are on balance sufficient to consider that the route could have been used on horseback by the public.

From point F-I however it appears that public rights – at least on foot – were extinguished in the 1950s but not permanently. This point is dealt with below.

Head of Service – Legal and Democratic Services Observations

Landownership

Information from the Applicant

The Applicant provided the following information:

1. An application to modify the DMMO to add a bridleway and an upgrade to a bridleway in Hall Lane and Mill lane.
2. Map(s) extract marking existing 'paths'
3. A Map showing the route of the proposed DMMO.

Information from Others

There are no official responses to the consultation from others.

Information from the Landowner

There are 4 landowners, and 4 adjacent landowners that were consulted for this application, whereby 3 responded.

One landowner responded to our consultation through their legal representatives, who state they object to a path being laid across all land in their possession, and further stated that should there be a route going through their car park it would make their premises less secure and may increase the vulnerability to the staff's cars to theft. As in recent years whereby the landowners have had issues dealing with traveller community taking residence on their land verbally abusing staff, and furthermore burglars who stole cables causing hundreds of thousands of pounds worth of damage. Therefore, the premises has undergone some changes over the years to make it burglar/squatter proof. The landowner themselves further added they are concerned as the gates are locked at night, and that the proposed route would leave a gap in their fence. The Landowner further states a path being laid through the meadow as this would encourage members of the public to walk their dogs across company property, with dog litter being a concern to staff health and safety, especially as the landowner is looking to use the front lawn area to re-wild to encourage wildlife, and feel if it is open to the public then their staff cannot enjoy this and do not want members of the public walking their dogs or fouling there.

Another landowner (representative of the landowner) stated initially that they object to the proposal, as Lancashire Business Park is privately owned and only Wheelton

Lane is adopted, none of the roads within the Business Park are currently adopted. The landowner's representatives further state from a health & safety point of view it would not be safe to encourage horse riders to enter an area that is regularly used by HGV's, thus further adding to their objections.

The land west of Lancaster House is leased by LCDL to Amazon, who have submitted a planning application to SRBC with the intention to construct a car deck on site.

The landowner's representatives further state land further to the west, is privately owned and is being developed by Caddick.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

This application concerns whether the sections of this route A-F and J-D carry higher rights than the footpaths they are presently recorded as and that section F-I is a route carrying bridleway rights needing to be added to the Definitive Map and Statement

There is no user evidence presented and so the evidence considered is historic documentation and whether there is sufficient evidence from which to infer on balance that the owner of these sections of route linking highways and giving access to the Hall and the corn Mill intended the route to be more than a footpath open to the public for use without permission, force or secrecy.

The evidence is detailed earlier in the report and considered and summarised above. On balance and given the nature of the evidence it is advised that the evidence of and inference of dedication at common law is on balance sufficient such that application route sections carry higher bridleway rights for the public and the Committee may consider that an Order be made to record A-F and J-D and F-I as bridleways.

Section F – I however, even though the evidence of dedication at common law as a bridleway many many decades ago is possibly on balance sufficient, footpath rights were stopped up in 1958. The Order has not been found but the Notice shows it was made under S2 of the Supplies and Services (Defence Purposes) Act 1951. Changes made under that provision were to last as long as an Act of 1945 existed. That Act ceased to exist in 1959. It would seem that in law the stopping up ceased. It is suggested that there is sufficient evidence that the public rights along that route are at least bridleway rights.

Despite the issues surrounding stopping up of rights in the 1950s it is suggested that Committee consider that there is sufficient evidence and that an Order be made.

Risk management

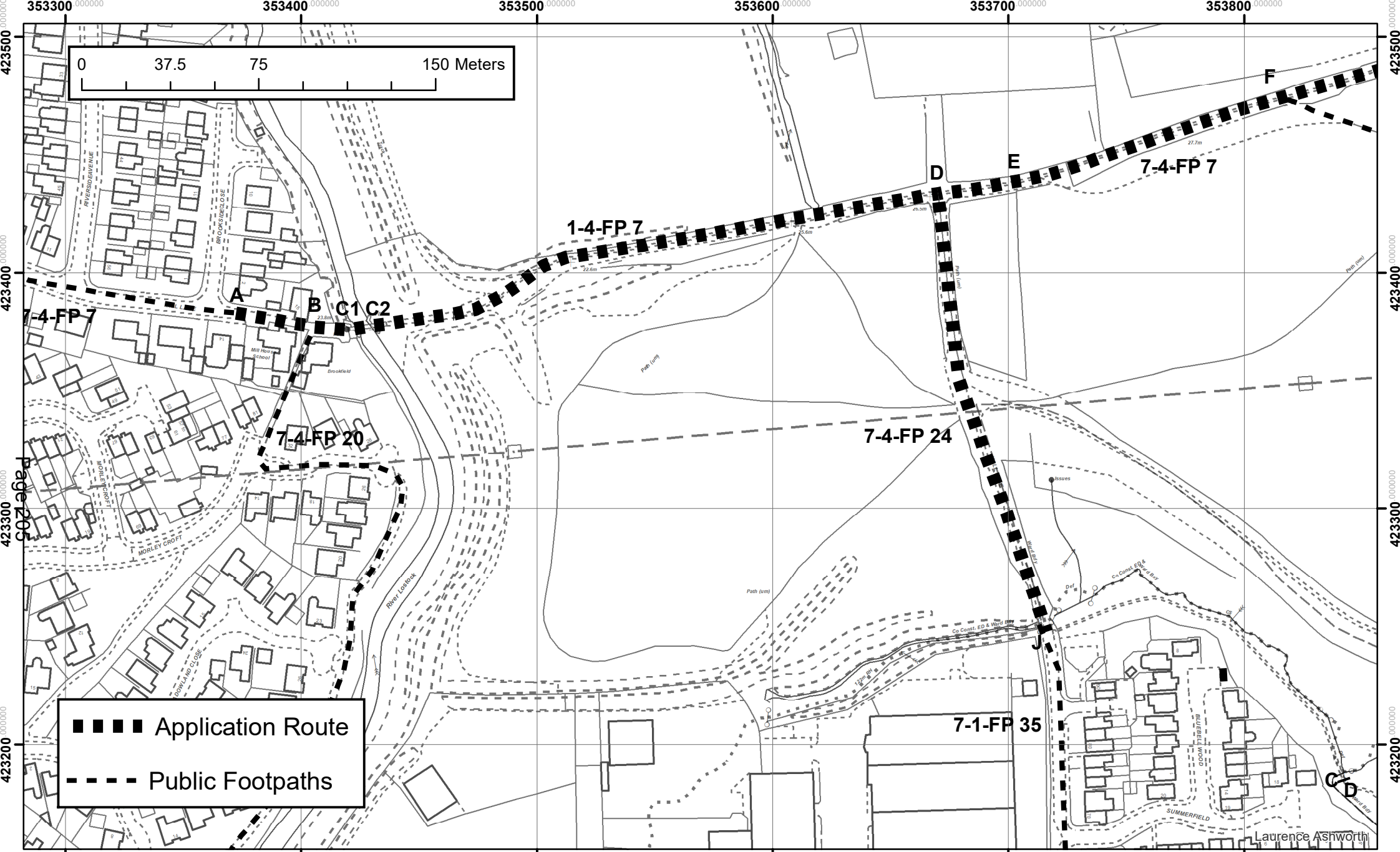
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-663		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group


Reason for inclusion in Part II, if appropriate

N/A

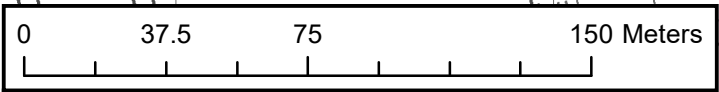



Public Rights of Way
 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
Recording of a bridleway at Mill Lane and Hall Lane, Farington

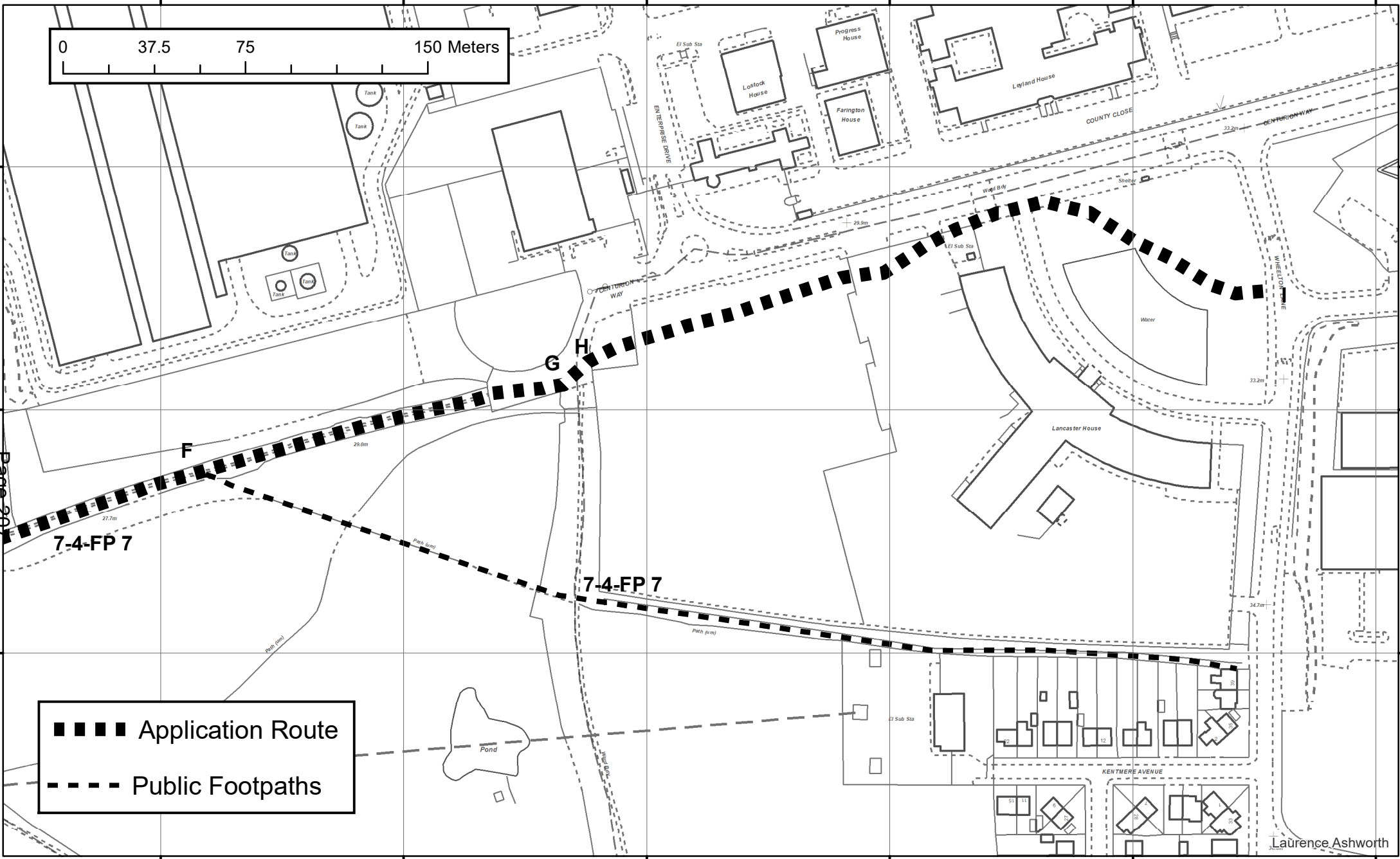
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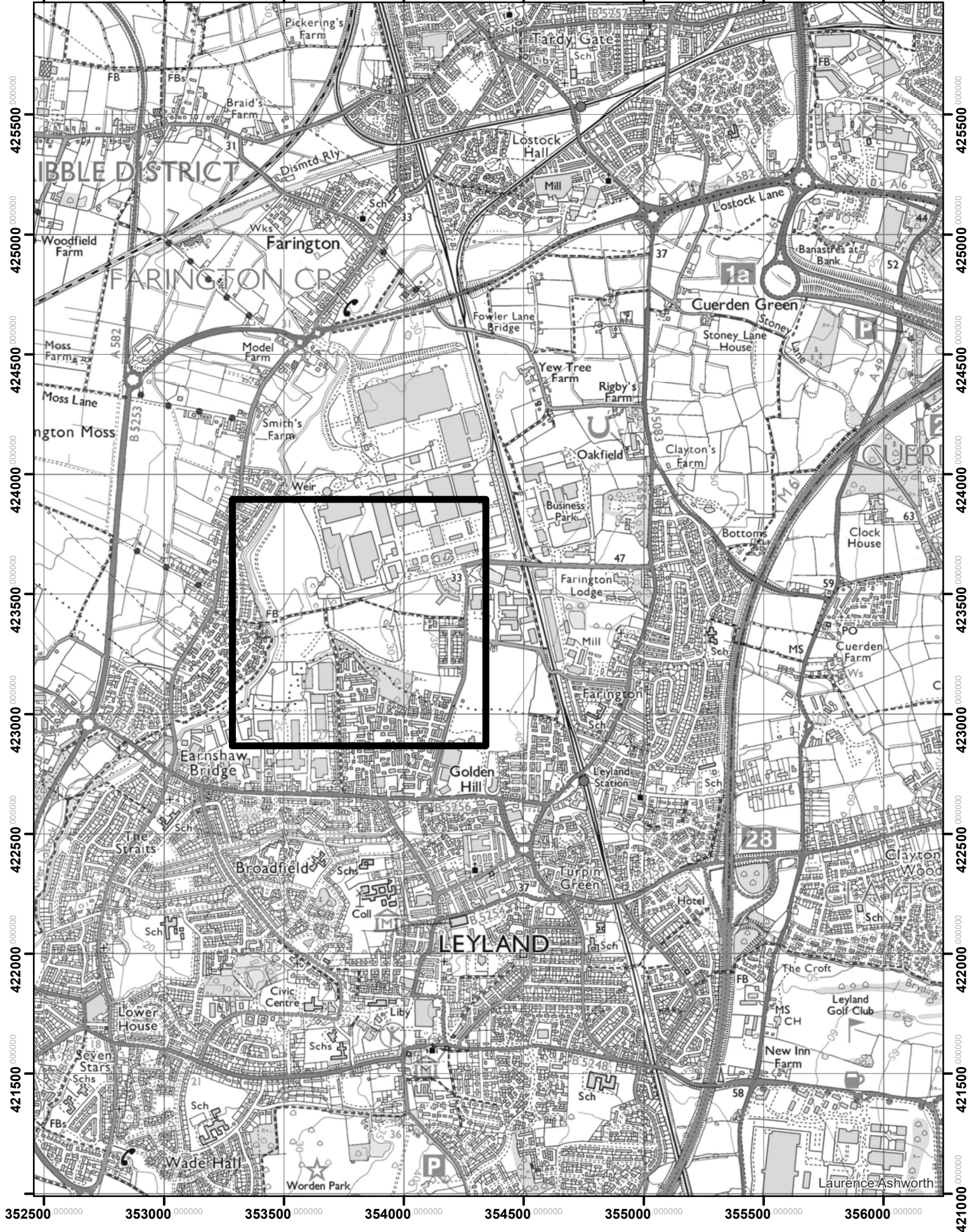
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 Application Route
 Public Footpaths



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

Wildlife and Countryside Act 1981
 Upgrade and addition of Bridleway along Mill Lane and Hall Lane, Farington
 LOCATION PLAN

1:20,000



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Regulatory Committee

Meeting to be held on 22nd June 2022

Part I

Electoral Division affected:
Accrington South

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Hodder Street, Accrington (Annex 'A' refers)

Contact for further information quoting file number 804-728:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, Simon.Moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a junction with 11-1-FP 49.

Recommendation

- (i) That the application to add a footpath on the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a point on 11-1-FP 49 be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath along the route marked between points A and B on Committee Plan.
- (iii) If committee is not satisfied that the higher test for confirmation can be met it is suggested that once the statutory period for objections and representations to the Order has passed there will have been opportunity for further information to have been submitted and a further report presented as to whether this higher test for confirmation could on balance be satisfied and what stance the authority should take in respect of the Order.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Hodder Street, Accrington to a junction with 11-1-FP 49 on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Hyndburn Borough Council

Hyndburn Borough Council provided no response to consultation.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7685 2877	Junction with Hodder Street
B	7687 2874	Junction with 11-1-FP 49

Description of Route

The application route commences at a point on Hodder Street, at the front of 85 Hodder Street (point A on the Committee plan).

From point A the route leaves the stone flagged footpath to cross Hodder Street to continue south east along a roughly tarmacked track adjacent to 48 Hodder Street to terminate at point B where it meets 11-1-FP 49 (which continues south east across a playing field and west south west along the rear of properties on Hodder Street.)

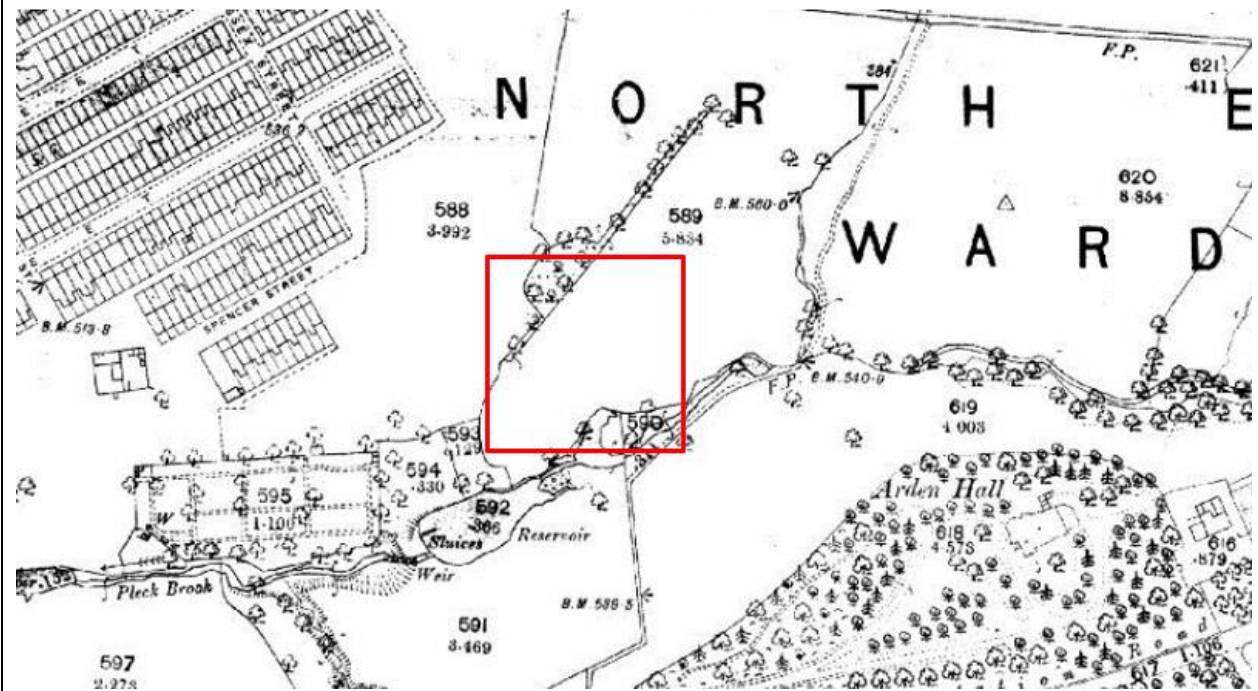
The total length of the route is 30 metres.

Map and Documentary Evidence

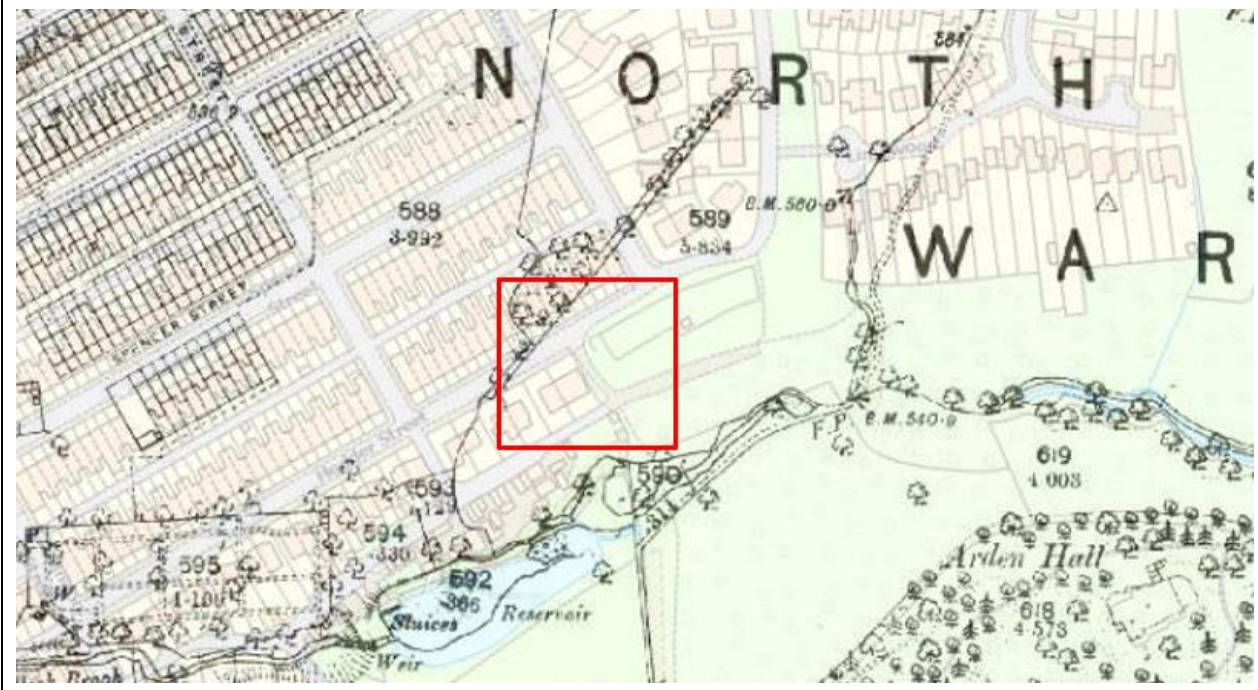
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The land crossed by the application route is shown to be undeveloped until at least the mid-20th Century with no evidence that the application route existed. For that reason, much of the early map and documentary evidence normally included in the report to Regulatory Committee is not included below.


Document Title	Date	Brief Description of Document & Nature of Evidence
25 Inch OS Map Sheet LXIII.15	1893	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.</p> <p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of</p>

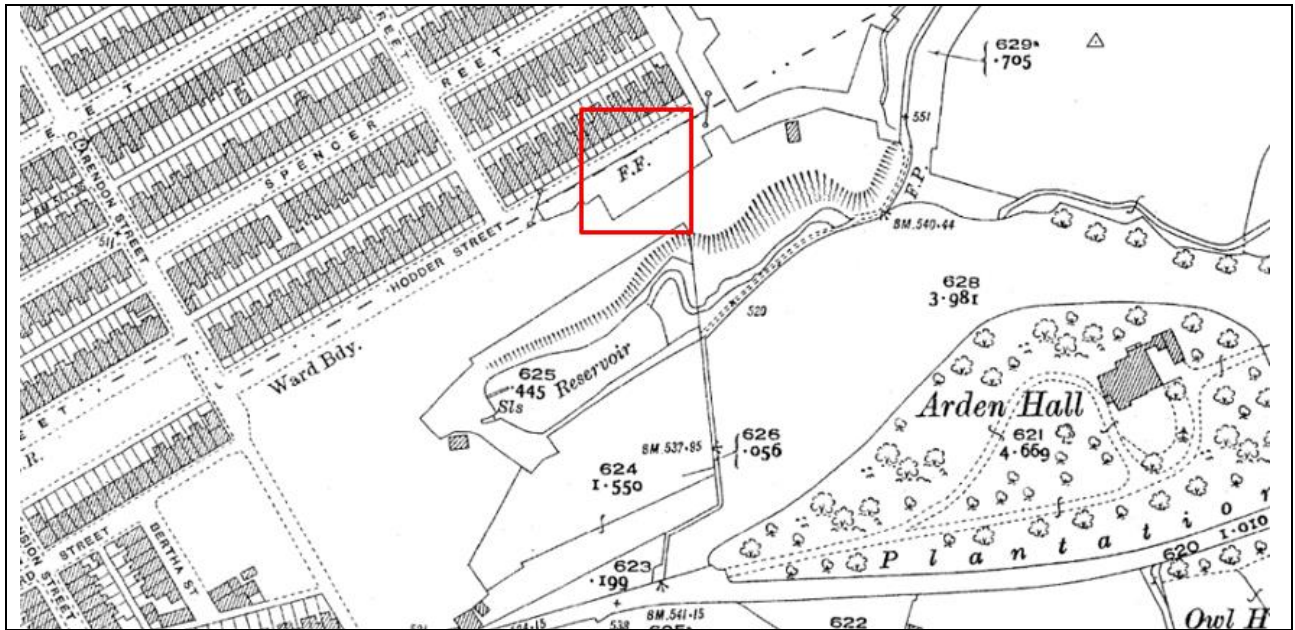
routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



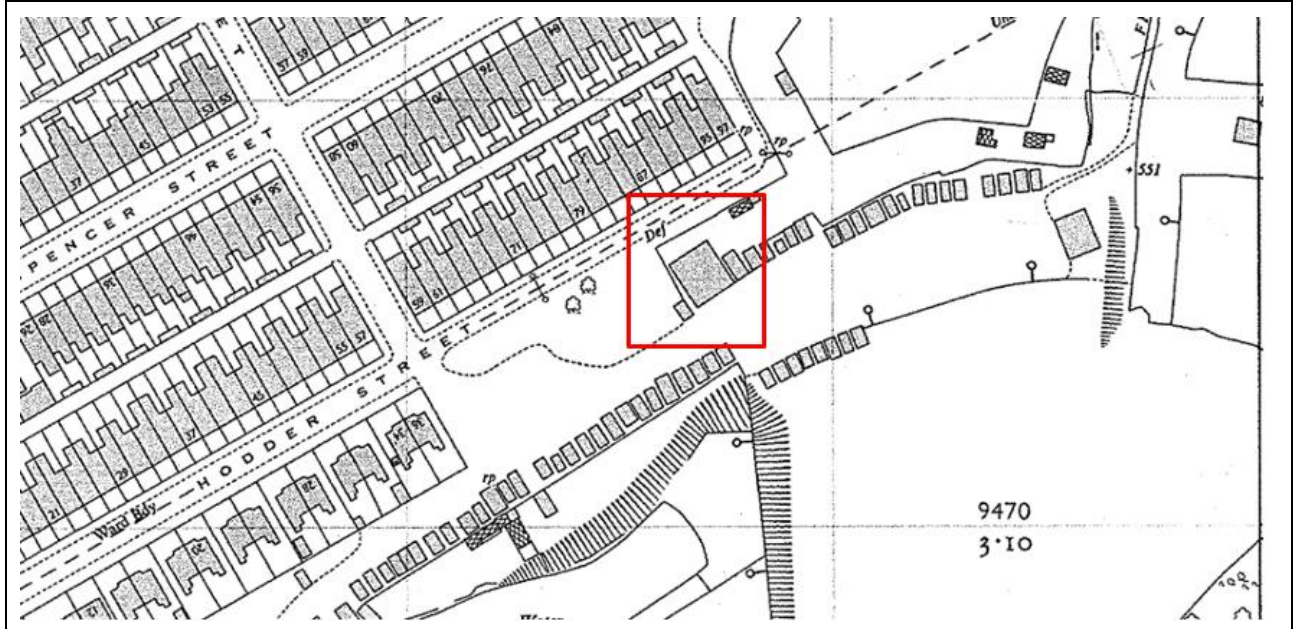
Extract of 25 inch OS map



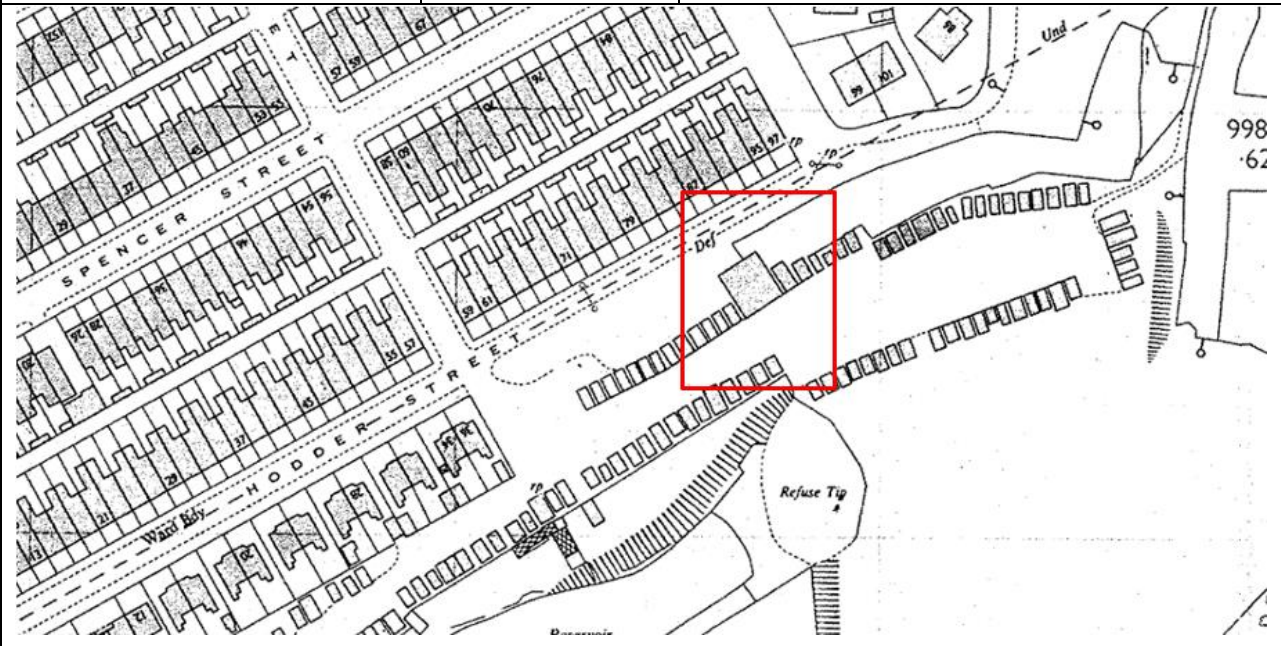
<u>25 inch OS map overlaid with modern GIS mapping</u>		
Observations		The area crossed by the application route was undeveloped. Hodder Street and the application route are not shown.
Investigating Officer's Comments		The application route did not exist in 1893
25 inch OS map Sheet LXIII.15	1912	25 inch OS map surveyed 1890-91, revised 1909 and published 1912.
		
Observations		Substantial development has taken place in the past 19-20 years. Hodder Street is shown and named together with rows of terraced housing built along the north side of the street. A reservoir has been built south west of where the application route is now situated. The application route is not shown and neither is the footpath (1-11-FP 49) to which it connects.
Investigating Officer's Comments		The application route did not exist in 1909.
25 inch OS map Sheet LXIII.15	1931	25 inch OS map surveyed 1890-91, revised 1929 and published in 1931.



Observations		Further development has taken place with further housing built along Hodder Street but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1929.
1:2500 OS Map SD 7628-7728	1962	OS map part surveyed 1956, revised in 1961 and published in 1962.



Observations		The application route is not shown. Buildings consistent with rows of individual garages used for cars are shown with a larger building shown in the location crossed by the application route and a solid line is shown across the land crossed by the application route
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		suggesting that the garages were fenced off from Hodder Street with access to the garages provided east and west of the application route.
Investigating Officer's Comments		The application route probably did not exist in 1961.
1:2500 OS Map SD 7628-7728	1969	Further edition of OS 1:2500 map part surveyed 1956, revised 1968 and published 1969.
		
Observations		Further garages are shown to the west of the larger building situated where the application route is now located. The fencing of the garage site has been altered and there is now a line shown between the back of the larger building and the adjacent garage.
Investigating Officer's Comments		The application route is not shown. The type of barrier is not known and no inference can be drawn without other evidence
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		A photograph taken in the 1960s (exact date not known) reflects what was shown on the OS 1:2500 map detailed above. Of significance is the fact that a worn track can be seen leaving Hodder Street to pass along the east side of the larger building through a narrow gap between the adjacent garage which then continues south east through the garages and out onto an open field.
Investigating Officer's Comments		The application route – or a route broadly consistent with it - appears to have existed in the 1960s.
1:1250 OS Plan SD 7628	1985	OS plan dated 1985 used to prepare the Land Registry Title plan for 48 Hodder Street.

H.M. LAND REGISTRY		TITLE NUMBER	
		LA547369	
ORDNANCE SURVEY PLAN REFERENCE	SD7628	SECTION H	Scale 1/1250
COUNTY LANCASHIRE	DISTRICT HYNDBURN		© Crown copyright 1985
Observations		<p>The Land Registry Title for 48 Hodder Street (LA547369) suggests that the property was built in or around 1985 and sold to the current landowners in 1988. The title plan shows the property and at that time it appears that the large building shown on earlier 1:2500 OS maps may still have existed with a narrow gap between the eastern boundary of 48 Hodder Street and the building broadly consistent with the application route.</p>	
Investigating Officer's Comments		<p>The application route appeared capable of being used in 1985 although its width appears much narrower than it is today.</p>	
Aerial Photographs available to view on Google Earth Pro	2000-2018	<p>Aerial photograph available to view on Google Earth Pro.</p>	



2000



2005



2011



2015



2018

Observations		Aerial photographs taken in 2000, 2005, 2011 and 2018 all show the application route which appeared to be open and available to use.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photographs all suggest that the route was in existence and capable of being used from at least the year 2000 consistent with the evidence of use submitted in support of the application.
Google Street View	2009-2011	Google Street View images of the application route.



2009

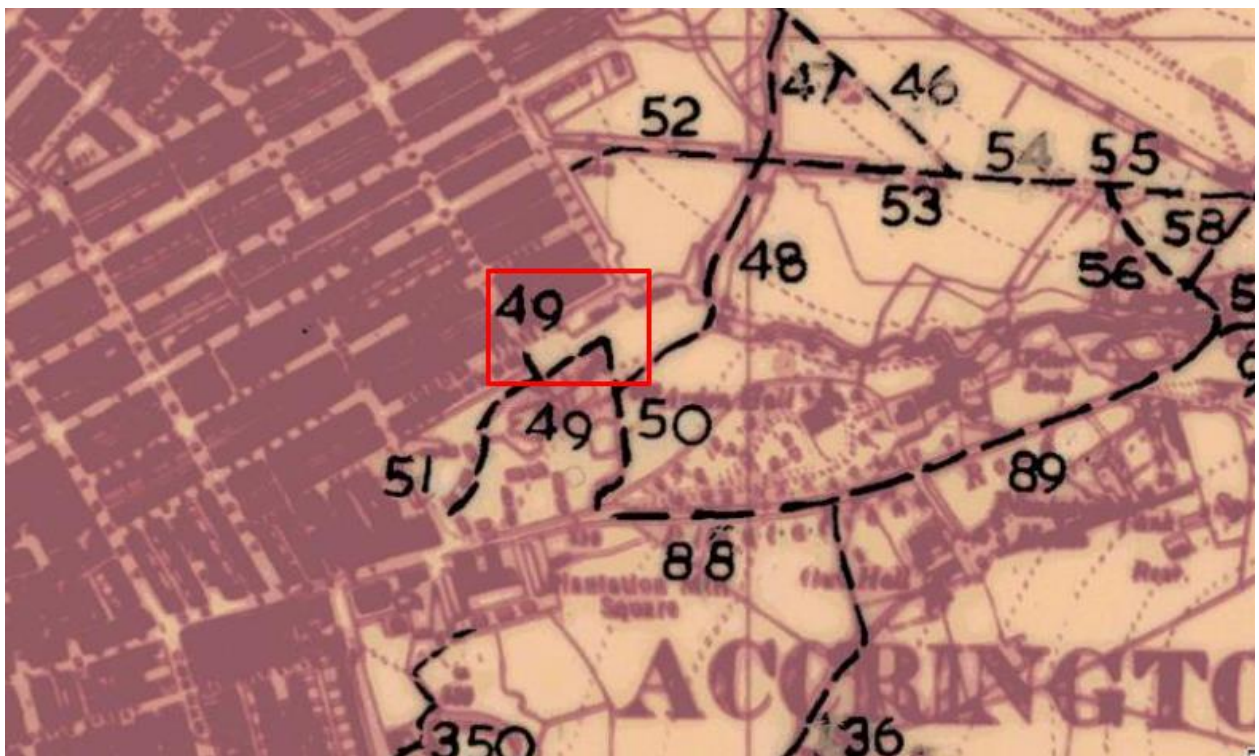


2011

Observations		The images taken in 2009 and 2011 both show the application route open and available to use at that time.
Investigating Officer's Comments		Whilst no inference can be made with regards to the existence of public rights the images support the user evidence submitted in support of the application.
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		Accrington is a former Municipal Borough for which no parish survey was carried out.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route is not shown on the Draft Map and no representations were made to the County Council relating to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route is not shown on the Provisional Map and no representations were made to the County Council relating to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
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,

		<p>extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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Observations		The application route is not shown on the Revised Definitive Map First Review.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way which should be shown. There were no objections or representations made with regards to the fact that it was not shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the

Handover Maps'

purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A similar transfer of maintenance responsibility from urban district and borough councils took place later and the working maps of maintainable highways were derived from these records.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.





Observations		The application route is not recorded as a publicly maintainable highway on the county council's highway records. (It is noted that the older record suggests a wider extent of Hodder Street is highway but colleagues in Highways inform us that this was checked and corrected when the GIS version was made.)
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear

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

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

Summary

There is insufficient historical map and documentary evidence from which public rights can be inferred.

The map and documentary evidence does however support the user evidence submitted with regards to the fact that a route physically existed and appeared to be capable of being used possibly from the mid to late 1960s past a large garage and then across open ground after the garage was demolished and certainly for the past 21 years as evidenced by the sequential Google Earth Pro aerial photographs.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the application route is in a private ownership plot with a short section at point B crosses land owned by Westdale Lancashire Limited which is recently dissolved. The present owners acquired in 1997. Ownership prior to 1997 is presently unknown.

Information from the Applicant

The applicant provided bundle of documents with the application, these included;

- A survey of use of the application route conducted on 15th September (presumably in 2021) between 0700 and 1900. This recorded an average frequency of use as one user every 2.5 minutes. A total of 290 instances of use were recorded.
- A letter confirming the local authority used the route.
- A photograph from 1984 showing the access to the route.



- 2 maps showing the route from Alltrails & Outdoor Active.

- Aerial google images of the route.
- A copy of crime statistics for the area.
- Photographs of the application route showing no signs or barriers in place.



- An OS map extract showing the route.
- A petition signed by 506 people who wish for access to be protected.

- 53 completed user evidence forms which are summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1949 and up to 2021 when the application to record the right of way was made.

20+ Years (Including the years 2001 to 2021)	20+ Years (Not including the years 2001 to 2021)	1-19 Years (Including use up to and including 2021)	1-19 Years (Not Including use up to and including 2021)
43	1	8	1

Use of Route up to 1996

The table below considers use of the route prior to the acquisition of the land by the current landowner's family in 1997.

20+ Years (Including the years 1976 to 1996)	20+ Years (Not Including use up to and including 1996)	1-19 Years (Including use up to and including 1996)	1-19 Years (Not Including use up to and including 1996)
15	1	20	1

15 used the route from 1976 (or before) through 1996, representing a full 20 years use (or more) up to 1996.

1 user used it for 20 years prior to 1996 but had stopped using it before 1996.

20 other users used the route through 1996 but their use started after 1976 so their use does not represent a full 20 years.

1 user used it for less than 20 years before 1996 and had also stopped using it prior to 1996.

Method of Use

All but one of the users recorded use on foot, the remaining user recorded use by motorised wheelchair. Seven of the users on foot recorded additional use by pedal cycle, one user on foot recorded use by motorised vehicle.

Frequency of Use

The table below shows the frequency of use recorded on foot.

More than once Daily	Daily	Weekly	Monthly	Every few months
2	27	13	6	7

The user using the route with a motorised wheelchair recorded daily use.

Frequency of use varied for those recording additional use of the route by methods other than on foot. One user recorded daily use by pedal cycle for a period of ten years. One recorded use two to three times a week by pedal cycle. One recorded weekly use by pedal cycle. One recorded monthly use by pedal cycle and two recorded use by pedal cycle every few months. One recorded use by pedal cycle once per year. The user recording use by car noted that they used the route weekly.

Reasons for Use

Reasons for use were generally leisure and walking for pleasure. Dog or pet walking was mentioned by eleven users. Many users noted use of the route to access the local playing fields, as part of a route to visit friends and the local allotments. Two noted use as part of a longer walk to reach the coppice nearby. Eight users noted use of the route to access the local school and four users recorded use of the route when travelling to work.

Other Users of the Route

All fifty three users recorded seeing use by others.

Nine users stated that they had seen others using the route on foot only.

Two users recorded others using the route on foot and horseback.

Three users recorded others using the route on foot and bicycle.

Five users recorded others using the route on foot and bicycle/horse drawn vehicle. Of these. Two of these users also recorded others using the route by electric wheelchair and one of them noted use by disability scooters and prams.

Ten users recorded others using the route on foot, horseback and bicycle. Of these users two noted use by others in wheelchairs, one of these noted use by "disability vehicles" and pushchairs. One user additionally recorded others "dangerously" using the route by motorbike.

Twenty one users recorded others using the route on foot, horseback and bicycle/horse drawn vehicle. Of these three noted others using the route with mobility scooters and prams, one also noted use by wheelchairs.

Three users recorded others using the route on foot, horseback, bicycle/horse drawn vehicle and motorised vehicles. Two of these users specified others using the route by motorised wheelchair, one also noting use with prams.

Consistency of the Route

The majority of the fifty three users stated that the route had always followed the same route. One stated no but did not elaborate. Three stated that they did not

know. One stated that there used to be a large garage "to the left hand side". One of the users answered yes but clarified the route was now wider, clarifying that it had been wide enough for a "double buggy" circa 1980.

Unobstructed Use of the Route

None of the fifty three users recorded having been prevented from using the route due to obstructions.

None of the users recalled seeing any signs stating the route was not public, or otherwise.

One user noted gates along the route at the "top of the back of Hodder Street".

Seven users noted stones or concrete blocks placed on the route, these were noted as restricting vehicular use of the route.

One user noted being told the route was not public by an "unknown lady" in July 2021.

This user also noted that they were turned back at this time whilst a mini digger was working adjacent to the route. Another user also recalled being turned back in the summer of 2021 when two people were cutting down trees in the summer of 2021.

Information from Others

The residents of the adjoining property, 48 Hodder Street, provided information with the landowner's response to consultation which is detailed below.

They noted that the land in question has become a dumping ground for local allotment holders and householders making the area look an eyesore.

They went on to note that the landowners have made several attempts to clean up the land and put in concrete sections to try to restrict access to people with wheelbarrow, vehicles etc. to prevent this dumping but all to no avail. In fact, the council have had contractors put a path across the land which has made it easier to traverse a wheelbarrow onto the land to dump rubbish. They believe that there was never a designated footpath at the side of their house and so should never have happened.

They noted that people have been pulling down and removing section of the herras fencing erected at the site for no other reason but to "cause destruction to private property and laziness that prevents them from walking a maximum of 200 yards to go onto the designated footpath six house down or the footpath, also put in by council contractors 200 yards higher up the thoroughfare." They note having to secure the fence at least 3 times with ties to the lamp post, using more secure tie each time but every time these have been forcefully removed. They state that only about 8 properties will be affected by the erection of a dwelling on this land and "these householders will have a maximum of an extra 200 yards to walk which as

these householders are using the path to walk their dogs this should not be much of an issue as the dogs would get a bit extra exercise."

They went on to opine that the route is "not extremely widely used as anyone wanting access to the football pitch area use the signposted designated footpath at the rear of the houses on Hodder Street and the people who come along Waddington Road use the top path adjacent to the most easterly allotment which has a hard compacted surface suitable for prams etc."

The resident of 48 Hodder Street noted local efforts to record use of the route and to form a petition in support of the application.

They also noted a noise issue "for the past number of years due to people using the land as a cut through then shouting to each other at all times of day and night."

Information from the Landowner

Prior to consultation the landowner of the majority of the land crossed by the application route contacted Lancashire County Council.

They confirmed the land in their ownership and advised that they had applied to Hyndburn Council for planning permission for a dwelling to be built on the affected land.

The landowner accepted that it appeared that Hyndburn Borough Council had made the application route a footpath, however the landowner opined that this was done illegally and attached correspondence from Hyndburn Borough Council the body of which is copied in below.

Re: Land adjacent to 48 Hodder Street, Accrington

Further to your letter of 18th October 2021. I can confirm that sometime in March 2014 the Council completed improvements to the footpath that runs along the playing field between Plantation Street and Hodder Street including what appeared to be a continuation of the footpath on land adjacent to 48 Hodder Street.

You informed the Council soon after that the land adjacent to 48 Hodder Street belonged to yourself and you called into the office with proof to that effect. The Council then removed the materials that had been laid on your land as requested.

Unfortunately, I don't have any recollection or information of the Travellers you refer too.

Should you require any further information, please do not hesitate to contact me at this office.

The landowner refers to his father demolishing the old garage on the site. They give evidence of having erected barriers and fencing, having put large rocks/stones across the path and having put up private land signs which have been removed. The landowner stated that they had often placed barriers of various descriptions across the plot to block the pathway, specifying tree trunks, big rocks and fencing but, clarifying that they do not live on site they pointed out these obstructions were often pulled down, dragged out of the way or removed by force. The landowner went on to clarify that after the recent discussion with Hyndburn Borough Council they had

"ripped up the footpath and secured the plot only for the fencing to be dismantled yet again."

The landowner noted a previous planning application from May 2012 which was withdrawn prior to any conclusion but noted that the application is registered with Hyndburn Borough Council.

It was clarified that although the land was purchased in 1997 it was not registered with the Land Registry until January 2002 and the landowner stated that at this point there was no footpath across the plot.

Following our consultation, the aforementioned landowner provided a response laying out much of the information already noted and again providing a copy of the letter from Hyndburn Borough Council mentioned above.

In this response to consultation the landowner stressed that there was no intention to dedicate the land and again pointed out the barriers erected at various times stating that use could not be 'as of right' and that users of the route were trespassers. The Owner provided comments from an alleged community Facebook group concerning the footpath which advocates the removal of the rocks.

Assessment of the Evidence

The Law - See Annex 'A'

The application in this matter seeks to find that a footpath already exists in law along this route.

There is no dedication agreement but there is user evidence and some supporting documentary evidence of the availability of a route and evidence of a trodden path on aerial photograph. Committee is advised to consider both inference of dedication at common law from all the circumstances including use, and deemed dedication under S31 Highways Act. Committee is advised that a deemed dedication under S31 requires 20 years use to be called into question and be without interruption and there be insufficient evidence of an owners intention to dedicate a highway route. Inference at Common Law requires sufficient evidence on balance of an intention to dedicate which can come from acquiescence in use by the public over several years and taking no action.

The user evidence is detailed in the report and the information provided from the present owners who have owned the land crossed by the route since 1997.

The actions said to be taken by the owners since 1997 and their effect on users are not clear regarding dates and effect. One sufficient action taken by an owner can mean that many years of use by the public are not sufficient to evidence that the route has become a highway in law. Various actions may turn out to have affected sufficient users to be a calling into question, or a sufficient interruption or sufficient evidence of an intention not to dedicate. It is always difficult to assess whether use may be as of right and without interruption ending in a calling into question when user evidence is silent as to any real difficulties until perhaps recent years and yet

owners actions are referred to. Some actions by the landowner are corroborated by the next-door owner but they do refer to use referring to people using the land as a cut through.

Prior to the present owners acquiring the land in 1997, there is still good evidence of use and a trodden line in the 1960s photograph and no reference to any action by the owner. It may be that Committee may consider that there is sufficient evidence from which to infer a dedication at Common Law prior to 1997 evidenced by said use. This was use of a narrow pathway.

It is considered that the Committee may be content on balance to find sufficient evidence to be able to reasonably allege an inference of dedication by the previous owner of a footpath under common law and that an Order be made. As the confirmation test is a higher test it is advised that once the objection period is over and user evidence more clear that the matter is returned to Committee for a decision as to what stance to take regarding the 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: 804-728		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

- Application route A-B
- Route identified on aerial photograph taken in the 1960s
- Public Footpaths

