

Lancashire County Council

Regulatory Committee

Wednesday, 14th September, 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

1. Apologies

2. Disclosure of Pecuniary and Non-Pecuniary Interests

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3. Minutes of the Previous Meetings held on 22 June and 10 August 2022 (Pages 1 - 14)

4. Guidance (Pages 15 - 40)

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

5. Progress Report on Previous Committee Items (Pages 41 - 44)

6. Proposed Consultation Process with Parish Councils

Verbal report.

7. Wildlife and Countryside Act 1981 (Pages 45 - 112)
Definitive Map Modification Order Investigation
Addition of Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm



8. Wildlife and Countryside Act 1981 (Pages 113 - 152)
Definitive Map Modification Order Investigation
Addition of Byway to the Queen Mary's Military
Hospital Cemetery, Whalley

9. Wildlife and Countryside Act 1981 (Pages 153 - 212)
Definitive Map Modification Order Investigation
Investigation into public rights on a section of
Holme Lane and Holme Bridge, Rawtenstall

10. Urgent Business

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

11. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 16 November 2022 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

County Hall
Preston

L Sales
Director of Corporate Services



Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 22nd June, 2022 at 10.30 am in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	L Cox
T Aldridge	C Towneley
J Burrows	S Clarke
A Cheetham	B Yates

1. Welcome and Apologies

Apologies for absence were received from County Councillor Parr, County Councillor Howarth and County Councillor Oakes.

Temporary changes

County Councillor Stephen Clarke replaced County Councillor Alan Hosker.

County Councillor Barrie Yates replaced County Councillor Alf Clempson.

County Councillor Cosima Towneley replaced County Councillor David O'Toole.

2. Appointment of Chair and Deputy Chair

Committee noted the appointment by the County Council on 26 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

A report was presented setting set out the constitution/membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2022/23.

Resolved: The Committee noted:

- (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.

4. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Towneley declared a non-pecuniary interest in Items 8, 9 and 10, as she was Chair of the National Federation of Bridleway Associations. It was noted that the items on the agenda were not associated with this Group and that County Councillor Towneley had no personal association with the applications.

5. Minutes of the last Meeting held on 9 March 2022

Resolved: That the minutes of the meeting held on 9 March 2022 be confirmed and signed by the Chair.

6. 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.

7. 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 included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

Resolved: That the report be noted.

**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**

A report was presented on an 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, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E-F-G-H.

A site inspection had been carried out in January 2022.

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

It was reported that a lot of map and documentary evidence had been examined although there were some documents that would have been useful to find and there were a number of inconsistencies in the records located which made it difficult to decide on balance whether bridleway or public vehicular rights existed.

The application was in relation to whether the route carried higher rights than the footpath it was currently recorded as and the legislation required that, to make an Order, a bridleway or restricted byway was found to subsist on balance.

Committee noted that there was no user evidence presented and so the evidence considered was historical documentation and whether there was 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.

On balance, and given the nature of the evidence, Committee were advised that the evidence of it having become a higher status for the public was insufficient. Committee were reminded that, if there were tolls paid to use this route, payment of a toll (whilst the route showed as being available to the public) would be use with permission, and a toll required yet not paid would probably be use by force. The Recommendation was therefore that no Order be made on the basis of the evidence available.

County Councillor Towneley stated that the route had not been stopped up, that toll use demonstrated that public use would have been expected and that there was no obvious deviation. County Councillor Towneley therefore considered there was a high probability that this had always been a public route with higher rights than a footpath.

Committee were informed that there had been a barrier at Sod Hall to collect tolls, as shown in the photograph provided and as shown as TP on Ordnance Survey maps. The Tithe records also showed the central section of the route as a private road and railway records referred to it as an occupation road with private ownership. It was reported that officers had examined a large amount of historical evidence and had concluded that, although finely balanced, there had not been enough evidence to indicate that higher rights existed.

County Councillor Towneley stated that if this was a public road maintainable at private expense, she would have expected at that time that the landowners would have either constructed an alternative route which would have been handed over to the local authority, or would have purposefully blocked the route if they had not wanted the public to use it. Although a barrier may have been present at some point, County Councillor Towneley considered that this did not negate the fact that since, before and during that period, no further action had been taken to stop the public using the route.

It was therefore Proposed and Seconded that:

'The Recommendation in the report be refused and that the 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 be approved.'

County Councillor Salter confirmed that Committee had considered all the evidence in detail and referred specifically to point A through to just beyond point G being excluded from the Finance Act taxation process in the early 1900s, and suggested that this may have been an indication it was a public vehicular route and confirmed that Committee had previously made decisions based on Finance Act evidence. County Councillor Salter added that, looking at the evidence, Committee may consider that the route carried higher rights of restricted byway, and asked whether this was something Committee could look at. David Goode confirmed that Committee could consider this, based on the evidence presented, and added that the effect of the Natural Environment and Communities Act would have removed any carriageway rights for mechanically propelled vehicles along the route.

Following confirmation to Committee of the specific definitions for bridleway and restricted byway, after a discussion, County Councillor Towneley considered that higher rights than bridleway existed and withdrew her original Proposal. Based on the evidence presented in the application, it was therefore Proposed and Seconded that:

'The Recommendation in the report be refused and that the addition of restricted byway and upgrading of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane) to the Definitive Map and Statement of Public Rights of Way be approved.'

Upon being put to the Vote, the Motion was Carried.

Resolved:

- (i) That the Recommendation in the report be refused.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record on the Definitive Map and Statement of Public Rights of Way a restricted byway and upgrading to restricted byway of 7-1-FP50 and 7-7-FP51 (Sod Hall Lane), as shown between points A-B-C-D-E-F-G-H on the Committee plan.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Recording of a Bridleway at Mill Lane and Hall Lane, Farington**

A report was presented on an application for the upgrade of footpath to, and addition of, bridleway to the Definitive Map and Statement of Public Rights of Way along part of Mill Lane and Hall Lane, Farington, South Ribble, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E-F-G-H-I and points D-J.

The application was based entirely on historical map and documentary evidence. With that in mind, Committee were advised that how the application route looked 'today' was not necessarily relevant when considering whether public rights exist. However, a site inspection had been carried out in December 2020 to see what the route looked like at that time, and to identify any remaining historical features.

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 there was no modern user evidence submitted as part of the application and Committee noted that since some point in the 1950s, the application route between point G and point I had not been in existence on the ground.

Committee also noted that there was further significant development taking place on the land crossed by the application route, and that how the route looked today was quite different to how it may have looked in the past.

The application was in relation to whether the sections of this route A-F and J-D carried higher rights than the footpaths they were presently recorded as, and whether section F-I was a route carrying bridleway rights needing to be added to the Definitive Map and Statement of Public Rights of Way.

Taking all the evidence into account, on balance, and given the nature of the evidence, Committee decided that the evidence of and inference of dedication at

common law was, on balance, sufficient such that the application route sections carried bridleway rights for the public, and decided that an Order be made to record A-F and J-D and F-I as bridleways. Despite the issues surrounding the stopping up of rights along F-I in the 1950's, Committee decided that there was sufficient evidence that public rights along Section F-I were at least bridleway rights.

Resolved:

- (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.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Hodder Street, Accrington**

A report was presented on an application for the addition of a footpath to the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a junction with 11-1-FP 49, as shown on the Committee plan attached to the agenda papers between points A and B.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be. Committee noted that the land crossed by the application route was 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 provided in the Committee reports was not included for this application.

Committee were advised they may be content, on balance, to find sufficient evidence to be able to reasonably allege an inference of dedication by the previous landowner of a footpath under common law and that an Order be made. As the confirmation test was a higher test, Committee were advised that, should they agree to an Order being made, once the objection period was over and user evidence more clear, the matter could be returned to Committee for a decision as to what stance to take regarding the confirmation of the Order.

The Chair informed Committee that, on the site visit, she had spoken to a local resident who lived within sight of the application route. The resident stated that mothers and children regularly used the route to get to local schools, to avoid crossing busy roads and that another resident had conducted a survey and had received 400 signatures in favour of maintaining the footpath.

County Councillor Towneley queried whether the route should be recorded as a restricted byway as it was used by all and led elsewhere. County Councillor Towneley pointed out that the evidence presented in the report could not be re-submitted so it was important to take all this evidence into account when considering whether higher rights than a footpath existed.

David Goode informed Committee that seeing others using the route on horseback had much lower evidential value than someone using it themselves, as they would not be aware if the users had permission from or they were related to the landowners. For this location, it was reported that the evidence was quite low, and that legislation required that there had to be a sufficient number of people using the route and that, without full evidence of horseback use, Section 31 of the Highways Act 1980 could not be satisfied.

Committee were reminded that they needed to consider what rights existed along the route, rather than what the general public may want. Horse use in recent years would need to be looked at, in addition to when landownership changed.

County Councillor Salter referred to the motorised wheelchair daily use on the route from the user evidence, and queried what period this covered and what standard would be required on the route for wheelchair users. County Councillor Salter stated that all evidence received, following the end of the statutory period for representations and objections, needed to be considered prior to Committee making a decision on this application.

Committee noted that the route being used daily by a motorised wheelchair user implied that the route had already met a certain standard and it was noted that the county council had to establish when the 'use' that led to the inferred dedication began, as this indicated the nature of the route.

It was re-iterated to Committee that there was sufficient evidence to make an Order for a footpath and that, if this was agreed, the Order would then be advertised, providing an opportunity for users to make representations to be considered at a future Committee, where it could be decided whether higher rights than a footpath existed, as well as what stance the county council should take towards confirmation.

Resolved:

- (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.

11. Urgent Business

There were no items of Urgent Business.

12. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 14th September 2022 in Committee Room B – the Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 10th August, 2022 at 10.30 am
in Ribble Suite, The Exchange, 4th Floor, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	D Howarth
T Aldridge	J Oakes
J Burrows	A Clempson
A Cheetham	E Pope

1. Apologies

Apologies were received from County Councillor Cox and County Councillor Parr.

Temporary replacement

County Councillor Pope replaced County Councillor Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting

It was noted that the minutes of the meeting held on 22 June 2022 would be included in the agenda for the meeting to be held on 14 September 2022.

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. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale

A report was presented on an application for the addition of a Restricted Byway from Lee Lane, Bispham to Bentley Lane, Hilldale, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan between points A-B-C-D-E-F.

A site inspection had been carried out in July 2021.

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

Committee were advised that there was sufficient evidence that this route was already regarded as part of the highway network in the early nineteenth century, and that it continued to be recorded as such on the various documents examined and that, on balance, a dedication by an owner many decades ago could be inferred. In addition, disuse of a route did not take away the public rights. There had been no legal stopping up of those rights and it was therefore advised that the legal maxim "once a highway always a highway " would apply; landowners' comments of today did not affect where this old highway ran.

County Councillor Pope informed Committee that he had been approached by a Hilldale Parish Councillor who had expressed concern that the Parish Council had not been consulted on this application. In addition, the occupier of the school house and a local farmer had been in touch and stated that the iron railings across Dark Lane had been there since the late 1940s as it was a dangerous track with a drop behind the railings of 20-30 feet.

County Councillor Pope proposed that the item be deferred until the Parish Council had been given the opportunity to provide their comments.

County Councillor Oakes referred to the 'once a highway, always a highway' legal maxim and stated that the route could be made safe but asked for assurance on steps to be taken to ensure Hilldale Parish Council had the opportunity to comment on the application.

It was reported that Hilldale Parish Council had been consulted in October 2021, but that they had not provided a response.

County Councillor Salter questioned whether the county council's consultation process with parish councils needed reviewing and stated that the quality of information provided to them was essential in order for them to be in a position to provide comments. David Goode agreed that the consultation process needed reviewing as it was the county council's responsibility to ensure consultees were provided with sufficient information on the proposals. In addition, it was important to make it clear to parish councils that a response was expected. It was noted that parish councils often provided no comments on applications although it was appreciated that they were in a difficult position as they often represented opposing views from landowners and residents.

David Goode suggested that the county council could provide a short online training video that parish councils could refer to when considering these type of applications and the Chair asked for definitions of footpaths, bridleways, restricted byways and byways open to all traffic to be included within any guidance.

After a discussion, Committee were informed that, should they agree to make an Order but not to promote the Order to confirmation (as set out at Recommendation iii of the report), the matter could be returned to Committee once representations had been received from the parish council, for a decision on what stance to take regarding confirmation.

David Goode suggested that a proposed new consultation process be brought to the next meeting for the Committee to see. The Chair asked for the new process to include the request that parishes acknowledge receipt of the consultations. It was noted that general public rights of way training for parish councils was also planned.

A vote took place on the proposal for deferral of this application. Upon being put to the Vote, the Motion was Lost.

It was therefore:

Resolved:

- (i) That the application for a Restricted Byway along Dark Lane be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Restricted Byway along Dark Lane as shown on Committee Plan between points A-B-C-D-E-F.
- (iii) That not being satisfied that the higher test for confirmation can be met with the information available, the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath at Cuerden Hall**

A report was presented on an application for the addition of a footpath from Shady Lane to Berkley Drive, Cuerden passing through the grounds of Cuerden Hall, 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-E-F.

Site inspections had been carried out in March 2020 and November 2021.

The application was based on the submission of modern user evidence. However, to properly consider the matter it had been necessary to understand the history of the land crossed by the application route, and to examine a variety of maps, plans and other documents to discover when the route came into being, and to try to determine what its status may be.

It was reported that the Section 31(6) deposit submitted by Cuerden Valley Park Trust in 2000 covered that part of the route between point E and point F, indicating that the owners of the land had no intention to dedicate a public right of way across this land since at least 2000.

At point E, the application route ended on Berkeley Drive, which provided access to Cuerden Valley Park and was owned by Cuerden Valley Trust. It was noted that Berkeley Drive was not recorded as a public right of way or publicly maintainable highway.

David Goode answered questions from Committee.

Taking all the evidence into account, Committee were advised that the difficulties in finding dedication by the Cuerden Valley Trust of E-F affected the whole application route. It was reported that A-E had had some use and it appeared that signage indicating a lack of intention on that section was relatively recent but that, without E-F, the route was not able to be recorded as a highway.

It was therefore advised that Committee not accept the application and that no Order be made.

Resolved: That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Shady Lane to Berkley Drive, Cuerden, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Sections of Footpath from Mitton Road to Calderstones Drive, Whalley**

A report was presented on an application for the addition of sections of footpath from Mitton Road to Calderstones Drive, Whalley, 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-E-F and E-H.

A site inspection had been carried out in April 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.

It was reported that Committee was considering two separate application routes - A-C and D-F/H - both of which were connected to recorded highways at each end.

Committee's attention was drawn to the fact that, although 12 users could be viewed as a relatively low number, guidance from the Planning Inspectorate indicated that use of a route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these 12 users of the route were representative of the public at large, and therefore the evidence does raise a presumption of dedication of a footpath and does satisfy the statutory test.

Taking all of the evidence into account, Committee were advised that, on balance, they may consider there was sufficient evidence to make an Order but, due to a slightly low number of user evidence received, they may consider that, on balance, there was not sufficient evidence such that the higher test for confirmation could be met and that it should not proceed to promote to confirmation at this stage. With this in mind, Committee were advised that, if they were not satisfied that the higher test for confirmation could be met with the information available, the matter should be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

David Goode answered questions from Committee and, after a discussion, it was:

Resolved:

- (i) That the application for the addition of footpaths from Mitton Road to Calderstones Drive, Whalley be accepted.
- (ii) That an Order(s) 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 footpath sections from Mitton Road to Pendle Drive and from Pendle Drive to Calderstones Drive as shown on Committee Plan between points A-B-C, D-E-F and E-H.
- (iii) That, following the order making and notice period, the matter be returned to Committee to decide what stance to take regarding confirmation.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 14th September 2022 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on Wednesday, 14 September 2022

Part I

Electoral Division affected:
(All Divisions);

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

Brief 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.

Detail

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 14 September 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 Wednesday, 14 September 2022

Part I

Electoral Division affected:
(All Divisions);

Progress Report on Previous Committee Items

Contact for further information:

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

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

Brief Summary

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

Recommendation

The Committee is asked to note the progress report.

Detail

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

A summary of the current progress on Definitive Map Modification Order applications is provided below, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on the 26th of August 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
804-751	Pool Foot to Grange, Singleton	02/08/2022
804-752	Plex Moss, Downholland	09/08/2022
804-753	Engine Lane, Great Altcar	22/08/2022
804-754	Acres lane, Great Altcar	22/08/2022

Definitive Map Modification Order Applications Where a Decision has Been Taken not to Make an Order, Notice has Been Served and the Window for Appeal is Now Open

Committee has made a decision not to make an Order for this applications, the decision notices have been served and the window for appeal is now open.

Reference	Known As	Application Date
804-697	Cuerden Hall, Preston	21/02/2021

Definitive Map Modification Order Applications awaiting Confirmation

Committee has made a decision for this application, the Order has been made and Notices of Making served, no objection has been received and the Order is currently awaiting confirmation.

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

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

Committee has made a decision for these applications, the Order have been made and Notices of Making served since the last update report was presented to the Committee, the Orders are currently open to statutory objections.

Reference	Known As	Application Date
804-689	Limers Lane, Gt Harwood	11/01/2021
804-643	Stoneyroyd, Whitworth	30/06/2020

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

Committee has made a decision for this application, the Order has been made, and subsequently confirmed, the Order is currently in the window for appeal to the High Court.



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

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
804-653	Moss Lane, Overton	20/08/2020

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 Wednesday, 14 September 2022

Part I

Electoral Division affected:
Lancaster Rural North

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over
Kellet via Kirk House Farm
(Annex 'A' refers)**

Contact for further information quoting file reference number 804-657:
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 addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm.

Recommendation

That the application for the addition on the Definitive Map and Statement of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway on the Definitive Map and Statement of Public Rights of Way from Kirkby Lonsdale Road to Nether Kellet Road in the parish of Over Kellet.

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

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

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

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

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

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

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

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

Consultations

Lancaster City Council

Lancaster City Council did not provide an official response to the consultation.

Over Kellet Parish council

Over Kellett Parish Council stated they do not have any further evidence to provide regarding the historical status of the proposed route. However the route should be supported in principle but expressed concerns over safety particularly for horse riders, as both ends of the proposed route join the highway. Councillors further stated they feel the route would be better suited to use as a Footpath rather than a Bridleway.

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	5233 6949	Wall at side of Nether Kellet Road just north of farm entrance
B	5240 6953	Concrete track meets tarmac yard
C	5245 6951	Fence between yard and field
D	5253 6951	Edge of field adjacent to stile for Footpath 1-24-FP13
E	5263 6956	Field gate into enclosed lane
F	5279 6962	Stile in northern boundary and gate in southern boundary where track is crossed by 1-24-FP 10
G	5287 6966	45° bend in track
H	5292 6983	Open junction of Sands Lane with Kirkby Lonsdale Road

Description of Route

A site inspection was carried out in January 2022.

The application is based on historical map and documentary evidence and as such the route under investigation differs slightly from what now exists on the ground.

The application route leaves Nether Kellet Road few metres north of the bend in the road where the current entrance to Kirk House is located.

The two photographs inserted below show the start of the application route as it on the earliest Ordnance Survey maps published (in the 1840s) and how it appeared to remain through to the 1960s and in the year 2000:





1960s (above)



2000 (above)

The photographs show the original entrance to Kirk House from point A and show that a route through the farmyard and past Kirk House appeared to be accessible.

At some point since the year 2000 the farm has been substantially redeveloped. The property is now the location of a business selling agricultural farm machinery with additional barns and offices constructed and further plans to convert some of the old farm buildings to houses about to be implemented.

The physical entrance to the property is now situated south of the application route along a tarmac access road which is gated for security purposes.

The 'new' route can be clearly seen on the aerial photographs taken between 2017-2019 running to the south of the application route:





The application route at the roadside is now blocked by a stone wall (point A) and is no longer accessible. Beyond the stone wall is an open tarmacked area which formed part of the original access road to the farm.

The route extends in a north easterly direction past the gable end of some farm buildings soon to be renovated and redeveloped as part of some residential dwellings. It continues across an open concrete surfaced area towards Kirk House curving to continue in a more easterly direction to pass between buildings used as garages and past the house and then along a concrete driveway to pass alongside a stone building on the south and enter a tarmac yard (point B).

The route now continues across a tarmac area which previously formed part of a field (see 1960s aerial photograph above). The route crosses the tarmac to pass directly through a large farm building which has only very recently been erected and is not shown on the Ordnance Survey map used to produce the Committee plan. There is no access through the building and to the rear the building is fenced off from the field by a post and rail fence (point C).

From the entrance to the tarmac yard (point B) alternative access is available to the field (and point C) via a large field gate north of the application route although this gate is kept locked by the landowners.



From point C the application route continues east along the edge of the field. The surface of the route is grass with no evidence of recent use by farm vehicles and no trodden track or evidence of hoof prints (or bicycle or other vehicular use) although it is slightly sunken, in the manner of tracks once subject to significant use.

At point D the application route is crossed by 1-24-FP 13 which crosses the field boundary south of the application route via a waymarked ladder stile.

Beyond point D the application route continues in a north easterly direction following the edge of the field to a wooden field gate hung on stone posts and tied shut with bailing string (point E).

Beyond the gate the application route is approximately 5 metres wide, bounded on either side, initially by old stone walls covered in moss, and is overgrown with very little evidence of any recent use. After approximately 30 metres the bounded route turns ninety degrees south east and then another 90 degrees to continue north east (where a metal field gate provides access to an adjacent field.)

From this dogleg the route continues north east approximately 5 metres wide and bounded by hedges on either side – with evidence of use by farm vehicles accessing the field via the gate on the dog leg - to where it is crossed by 1-24-FP 10 (point F). Here stiles provide access through the hedges for the footpath to cross the application route and a metal field gate alongside the stile on the south side provides access to the field.

From point F the bounded route continues for a further 85 metres to a 45° bend (point G) from where access to two further fields is provided via metal gateways in the boundary hedge. The route continues in a north north easterly direction for a further 170 metres to an open junction with Kirkby Lonsdale Road (point H). Between point G and point H the route has been surfaced with compacted stone and there is evidence of recent vehicular use to access the adjacent fields.

The total length of the route is 780 metres.

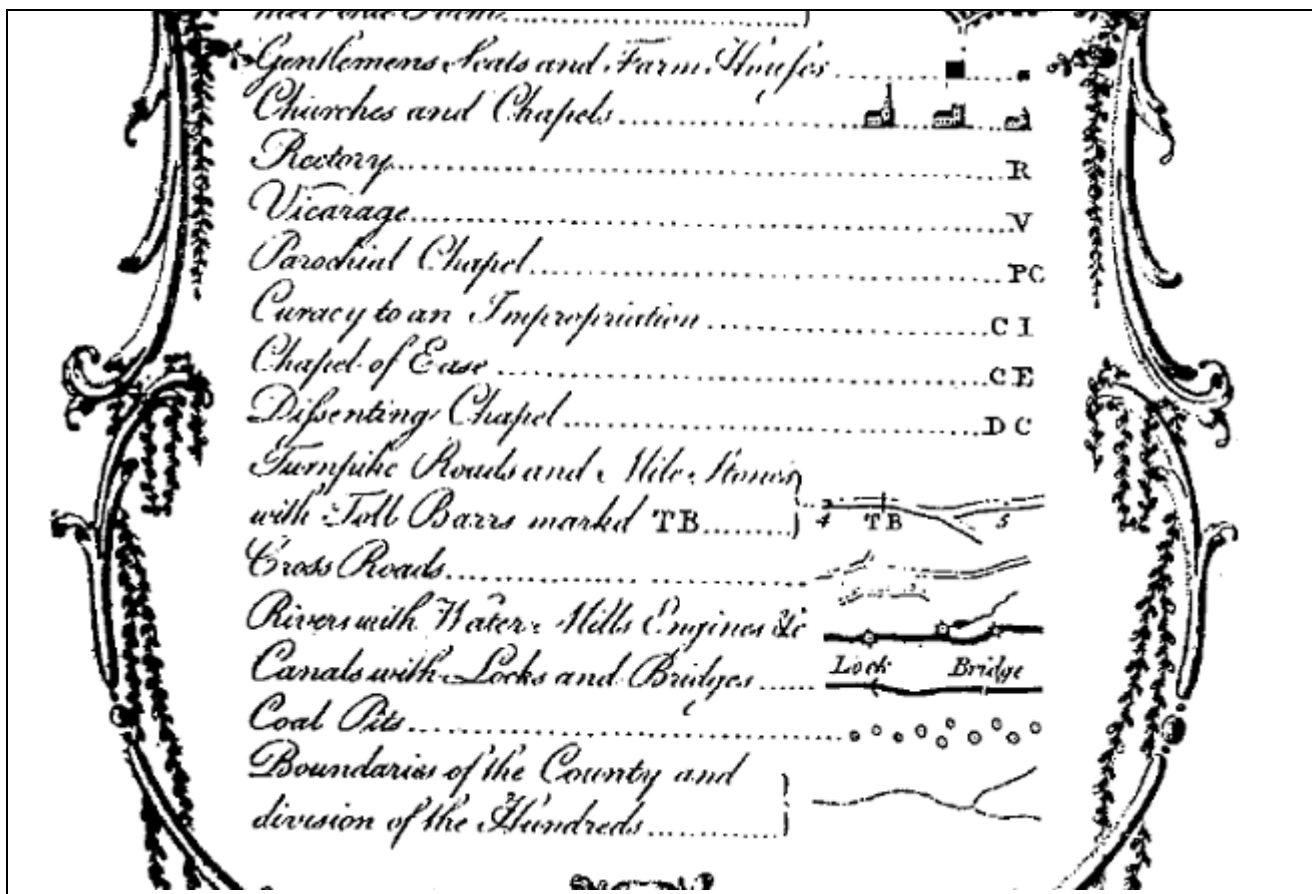
Map and Documentary Evidence

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

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







<p>Observations</p>		<p>A route broadly consistent with the western end of the application route is shown extending east from Nether Kellet Road to provide access to an unnamed building and church (labelled 'PC', defined as 'Parochial Chapel' in the legend). The parish church on Nether Kellet Road (St. Cuthbert's Church) is not shown on the map although church records indicate that the church existed on the existing site (west of Nether Kellet Road) since at least the 11th century. The application route is not shown as a through route extending through to Kirkby Lonsdale Road.</p>
<p>Investigating Officer's Comments</p>		<p>The exact location of the church as shown on this small-scale map is likely to be incorrect. The unnamed building shown could be Kirk House ('kirk' meaning 'church') with the start of the application route – providing access to the building – existing in 1786. The full length of the application route probably did not exist – or if it did, was not considered to be a significant public highway at that time.</p>

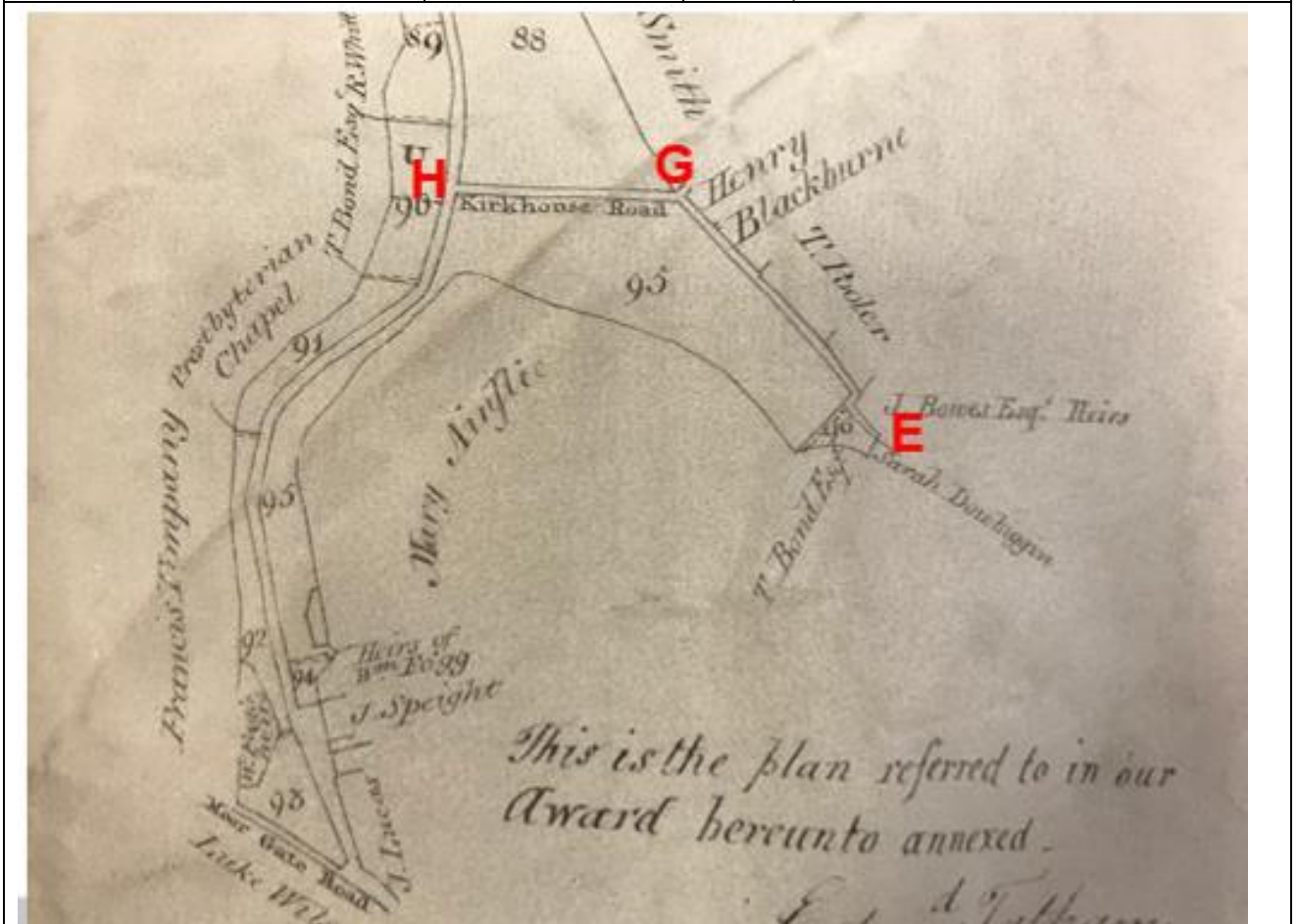


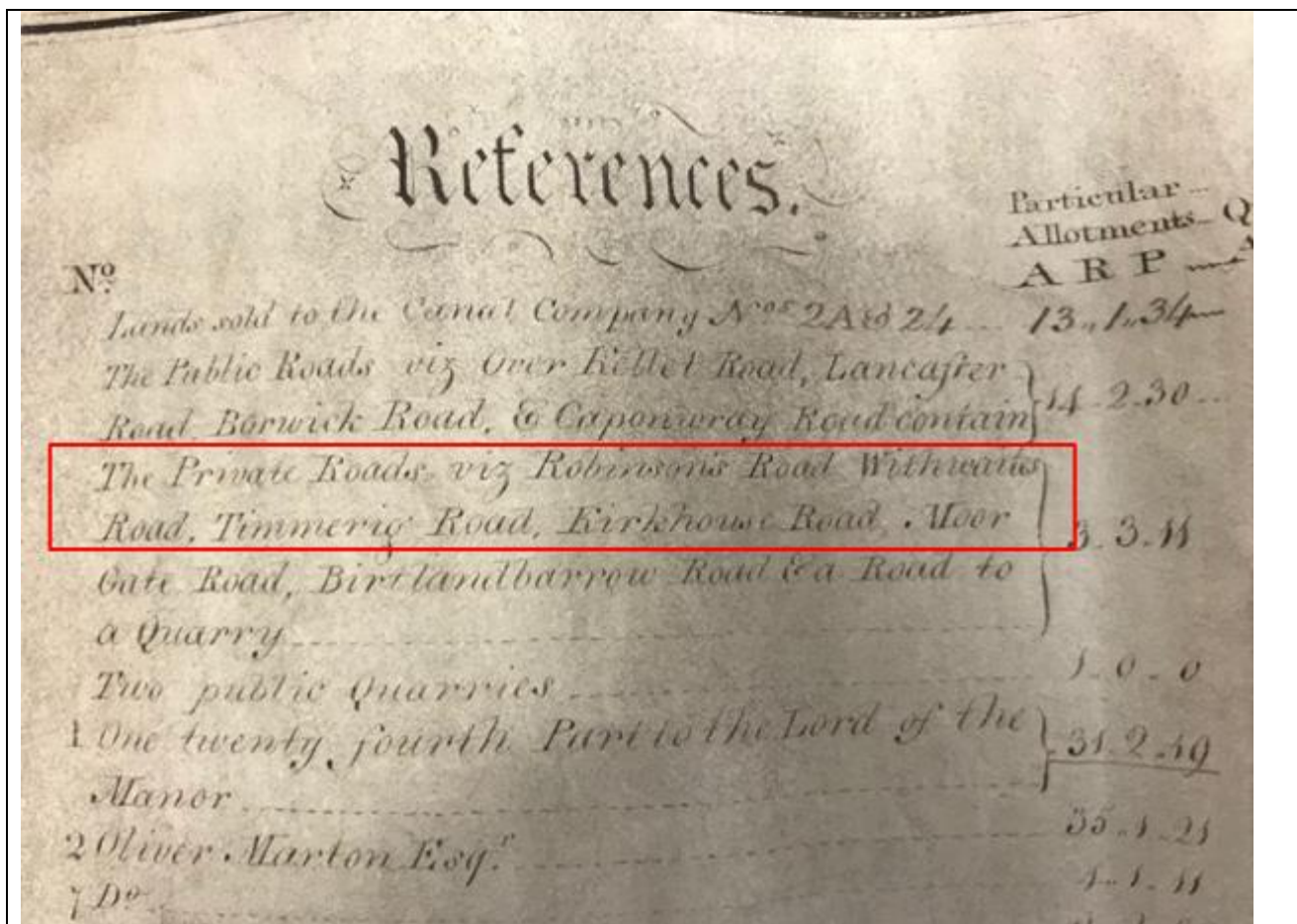
Inclosure Map and Award

1805

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.

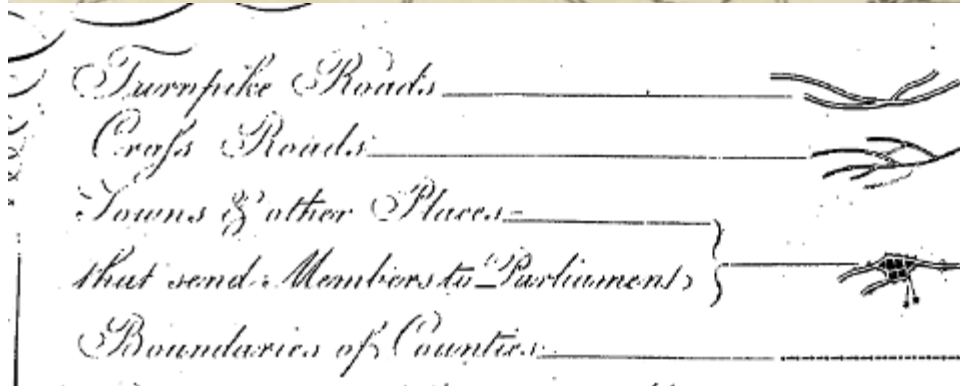
Over Kellet Moor was enclosed by a private Act of Parliament dated 1779 (volume 2). The Inclosure Award is available to view at the CRO (Ref: AE/5/9) and is dated 1805.





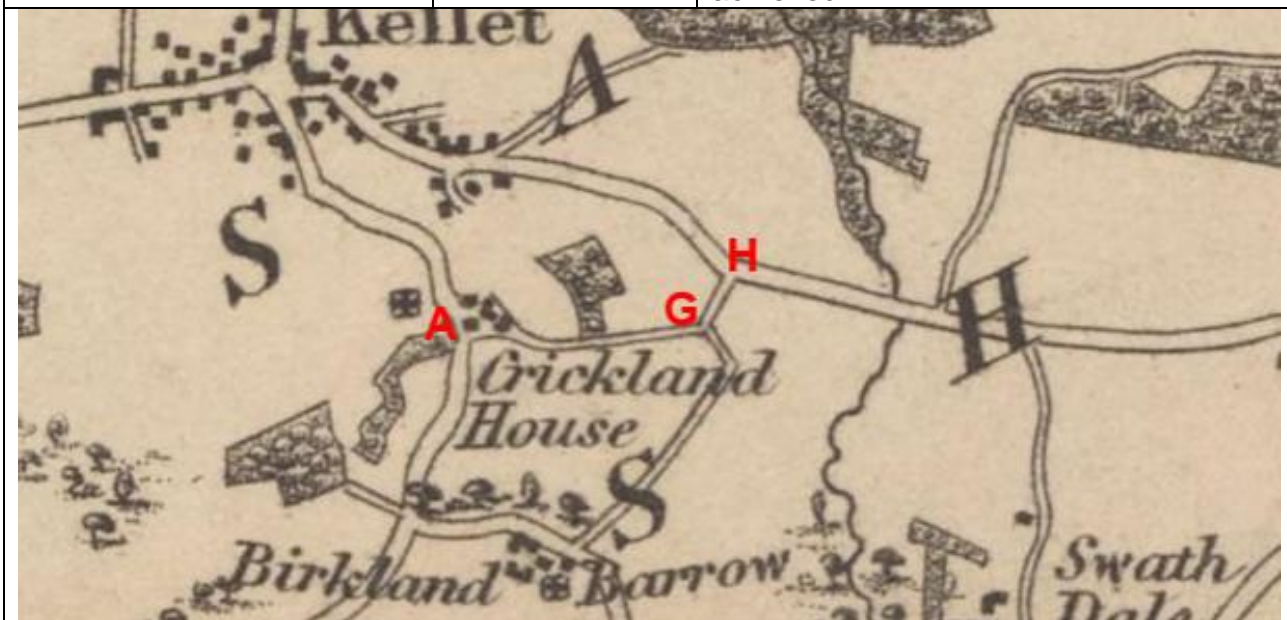
Observations		<p>The Inclosure Award map covers the area over which the application route runs between point E and point H. The rest of the land crossed by the application route is not shown.</p> <p>The route is shown leading from Kirkby Lonsdale Road at point H as a bounded route named as Kirkhouse Road providing access to land at point G and point E with the names of landowners written on the map.</p> <p>Kirkhouse Road is stated to be a private road in the key to the map. The rest of the application route (E-A) is not shown although the fact that the route is named as Kirkhouse Road is suggestive of a route leading through to land forming part of Kirk House.</p>
Investigating Officer's Comments		<p>The application route from point H through to point E appears to have been created as part of the inclosure process to provide access to various plots of land in different ownerships. It is named on the map and specified as being a private road. The rest of the application route is</p>

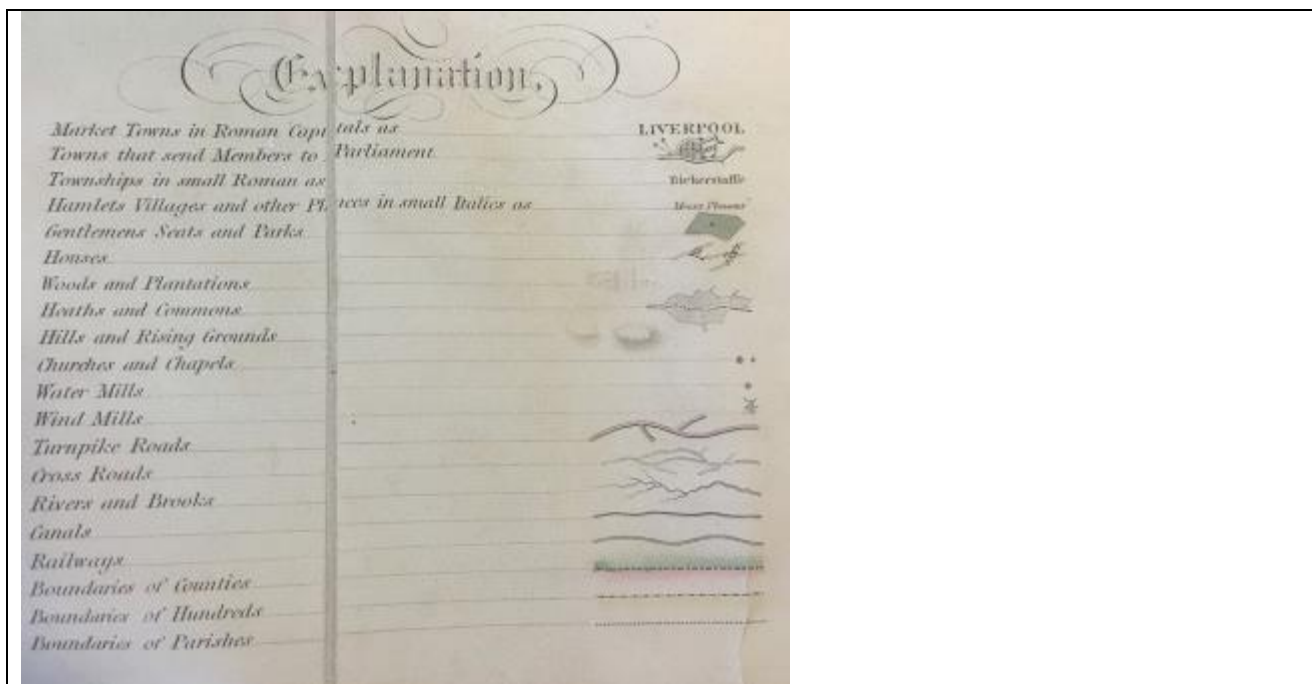
		not shown and the land crossed by it does not appear to have been included in the inclosure. The name of the private road 'Kirkhouse Road' suggests that it may have provided a link through to Kirk House but does not indicate that a public through route existed at that time.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown. A cluster of three buildings are shown approximating to the position of Kirk House but no access route is shown.
Investigating Officer's Comments		The application route – or parts of it – may have existed in 1818 but was not

		considered by Greenwood to be a route of sufficient significance to be included on his map. However, the fact that the route is not shown on such a small-scale map is not inconsistent with the existence of public bridleway rights at that time.
Hennet's Map of Lancashire	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

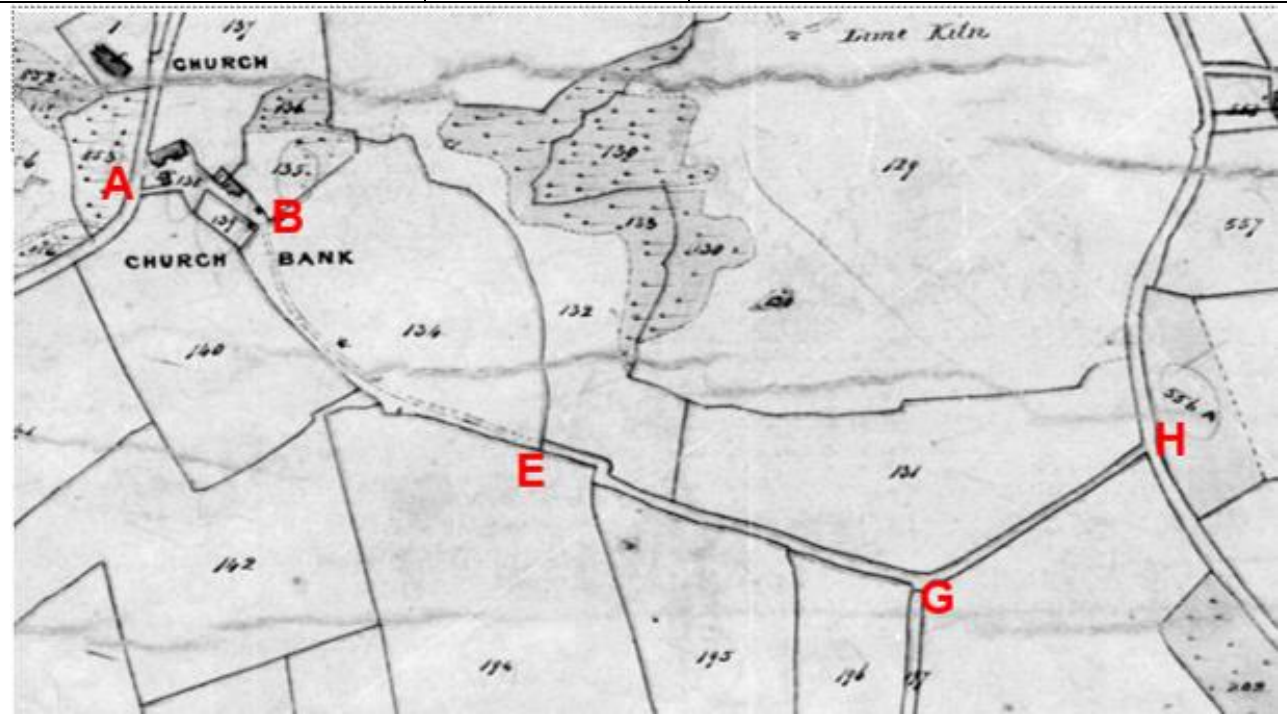




<p>Observations</p>		<p>A route approximating to the application route is shown as a cross road between Nether Kellet Road and Kirkby Lonsdale Road.</p> <p>The location of St Cuthbert's Church is shown as being to the west of Nether Kellet Road and the application route is shown to pass between a cluster of unnamed buildings east of point A. A route – also depicted as a cross road - is shown extending from point G through to Birkland Barrow Road.</p> <p>The application route and the route from point G through to Birkland Barrow Road are shown as being narrower than Nether Kellet Road and Kirkby Lonsdale Road on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1818 providing a link between two roads that are now recorded as public roads.</p> <p>The fact that the route is shown as being narrower than Nether Kellet Road and Kirkby Lonsdale Road is unlikely to be a correct representation of width but more likely to indicate the use or possible status of the route. As the route is shown to be narrower on the map this may indicate that although passable on horseback or possibly with horse and cart, the route received less frequent use or was of a lower standard than the</p>

		<p>routes to which it connected. Details regarding width are better sought from the first edition 6 and 25 inch maps detailed below.</p> <p>The route is shown on the map as a cross road. 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 suggesting that the application route may have been considered to be a public route in 1830 – or was at least a substantial route at that time.</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>There were no canals or railways built – or proposed to be built – over the land crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Tithe Map and Tithe Award or Apportionment	1847	<p>Maps and other documents were produced under the Tithe Commutation</p>

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>From point E through to point H the application route is shown as a bounded route but is not numbered. A line is shown across the route at point E but no line is shown at the junction with Kirkby Lonsdale Road.</p> <p>The route continuing south from point G is shown and numbered 197 as a dead end rather than continuing through to Birkland Barrow Road as it did on Hennet's Map. This short section of bounded route is described as a lane in private ownership. Another part of the route – no longer providing a connection through to point G is also shown on the map from Birkland Barrow Lane numbered as plot 179 and also described as a lane in private ownership.</p> <p>Kirkby Lonsdale Road is numbered 311 which is listed in the Tithe Award as being a road in the Township of Over Kellett with the inference that it, and several others listed with it, were public roads through the parish. The application route is not numbered although it was noted that not all roads known to carry public vehicular rights were numbered and that some – like Kirkby Lonsdale Road – were long roads passing through the parish with only one number written at some point along them – in this case approximately 700 metres east of point G.</p>
Investigating Comments	Officer's	<p>Access appears to have been possible from point A through to point H in 1847. From point A to point B the application route provided access to properties and was part of a numbered plot which was owned and occupied, and which was described as a yard with no suggestion that a public through route existed across it. From point B an unfenced track is shown through to point E. This part of the application route is not numbered separately and crosses a pasture field which is owned and occupied and for which tithes were payable. It physically existed and may have been accessible to the public but public use cannot be</p>

		<p>inferred from the information available. The remainder of the route from point E to point H is shown as a substantial bounded route consistent with how it is shown on the Inclosure Map. The route is not numbered, and the applicant considered that as it was not gated (shown with a line across it) at point H it was continuous with Kirkby Lonsdale Road which was listed as a public road. The Investigating Officer was of the view that the evidence presented by the Tithe Map and Award was not conclusive and needed to be considered in the context of other available evidence. The fact that it is not numbered may suggest that it was considered to be part of the public vehicular network but may also be because of ownership. Its appearance suggests, that it was probably accessible, at least on horseback, but the information available is insufficient to infer that public bridleway rights existed or that the route between point E and point H was considered to be part of the public vehicular highway network.</p>
<p>6 Inch Ordnance Survey (OS) Map Sheet 25</p>	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.¹</p>

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





Observations		The full length of the application route is shown passing through Kirk House. Between point B and point E the route is not bounded (fenced). From point E through to point H the route is bounded (fenced) and is shown consistent with how it was first shown on the Inclosure Map. The route is not named on the map and no lines (gates) are shown across it.
Investigating Officer's Comments		The full length of the application route existed and appeared capable of being used in 1844-45.
Cassini Map Old Series Sheet 97 Kendal and Morecambe	1852-1865	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.





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



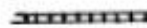
Windmill



Lighthouse



Railways



Cuttings



Embankments



Tramways and freight-only railways



Woodland



Parkland



Foreshore: sand; boulders; rocks



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

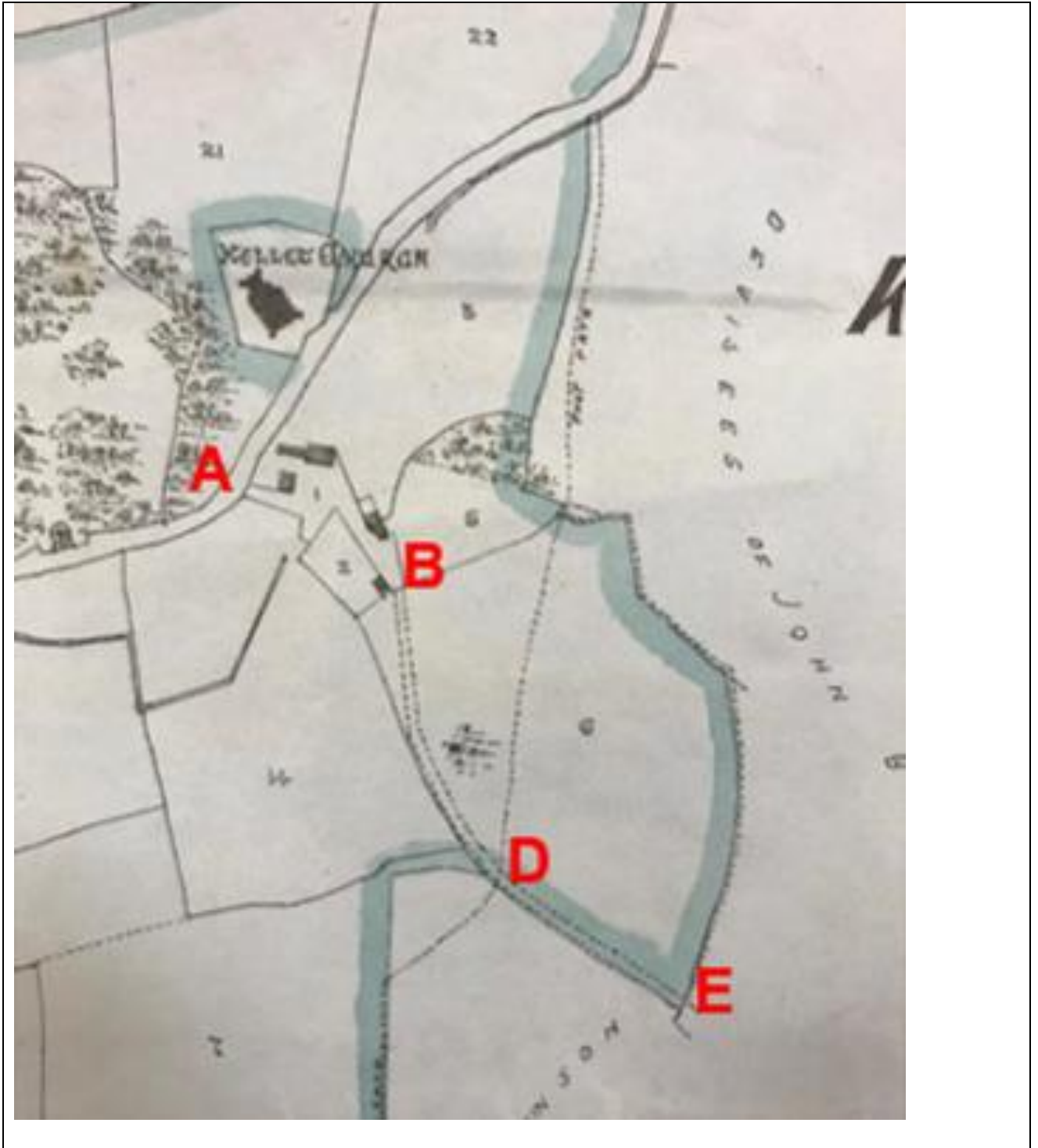
Observations

The full length of the application route is shown passing through Kirk House. The route is depicted as a 'road' in the map



		key. Footpaths and bridleways are not shown.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers. The inclusion of the route on those maps suggests that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public or private and the map key (legend) made no distinction between the two.
Sale Plan CRO Ref: DDHH 1/429	1861	Sale Plan deposited in the County Records Office.





REFERENCE

No	Names of Fields	Table Measure			Cust 7 gals		
		a	r	q	a	r	q
1	House Barn Stable & Yard	0	1	29	0	1	3
2	Garden	0	0	36	0	0	22
3	Goose Bank	3	0	11	1	2	24
4	Plantation	0	1	28	0	1	2
5	Garden	0	2	33	0	1	30
6	Turn Cragg	5	3	30	3	2	41
7	Acres	4	3	2	2	3	30
8	Little Close	2	2	19	1	2	21
9	Birklandbarrow Close	3	3	6	2	1	14
10	Over Oaks Meadow	3	3	8	2	1	15
11	Birklandbarrow Close	3	2	37	2	1	8
12	Low Acre	5	2	27	3	2	0
13	Acres Brow	2	2	37	1	2	30
14	Meadow Bottoms	4	3	21	3	0	2
15	Great Meadow	4	1	19	2	3	4
16	Pye Croft	7	0	38	4	1	29
17	Three Acres	4	1	18	2	2	31
18	Oaks	1	2	39	1	0	12
19	Cocks Wood	6	2	15			
	Land in it	2	2	12			
20	Church Stacks	2	0	30	1	1	16
21	Field above Church	4	1	28			
	Wood in ditto	0	2	8			
22	Church Bank	3	1	30	2	0	19
24	Griggara Allotment	17	0	28	10	2	16
25	ditto ditto	11	1	24	7	0	5
	Total	109	1	8	67	1	36



TO BE SOLD

BY AUCTION,

BY MR. GEORGE DANSON,

AT THE "BEAR & STAFF INN,"
LANCASTER,

On Tuesday, the 1st of Oct. next,

AT 3 O'CLOCK IN THE AFTERNOON.

A FREEHOLD ESTATE CALLED "KIRKHOUSE."

SITUATE IN THE TOWNSHIP OF OVER KELLET, (NEAR THE CHURCH).

Comprising superior Farm House, Farm Buildings, and 100a. 1r. 8p. of Land, Statute Measure, now in the possession of MR. JOHN ROBINSON, as Lessee thereof, for a term of years, of which above 2 years are yet unexpired.

Situated at the entrance of the English Lake Scenery, and partaking very much of its character, this Estate commands extensive views of Morecambe Bay, and of the exquisite scenery around, and presents the choice of many sites for a first-class Residence. Strata of Limestone lie under most parts of the Estate, and the situation is airy and healthy. It is within 2 miles of Carnforth Station, where the Lancaster and Carlisle and Ulverston and Lancaster Railways unite, and is about 7 miles from Lancaster.

Mr. BELL, of Over Kellet (the Owner) will show the Estate, and all further particulars may be obtained from him, or at the Office of Mr. C. T. CLARK, in Lancaster, where a plan of the property may be seen & lithographed plans obtained.

Lancaster, September 12th, 1861.

CLARK, PRINTER, GAZETTE OFFICE, MARKET STREET, LANCASTER.

Observations

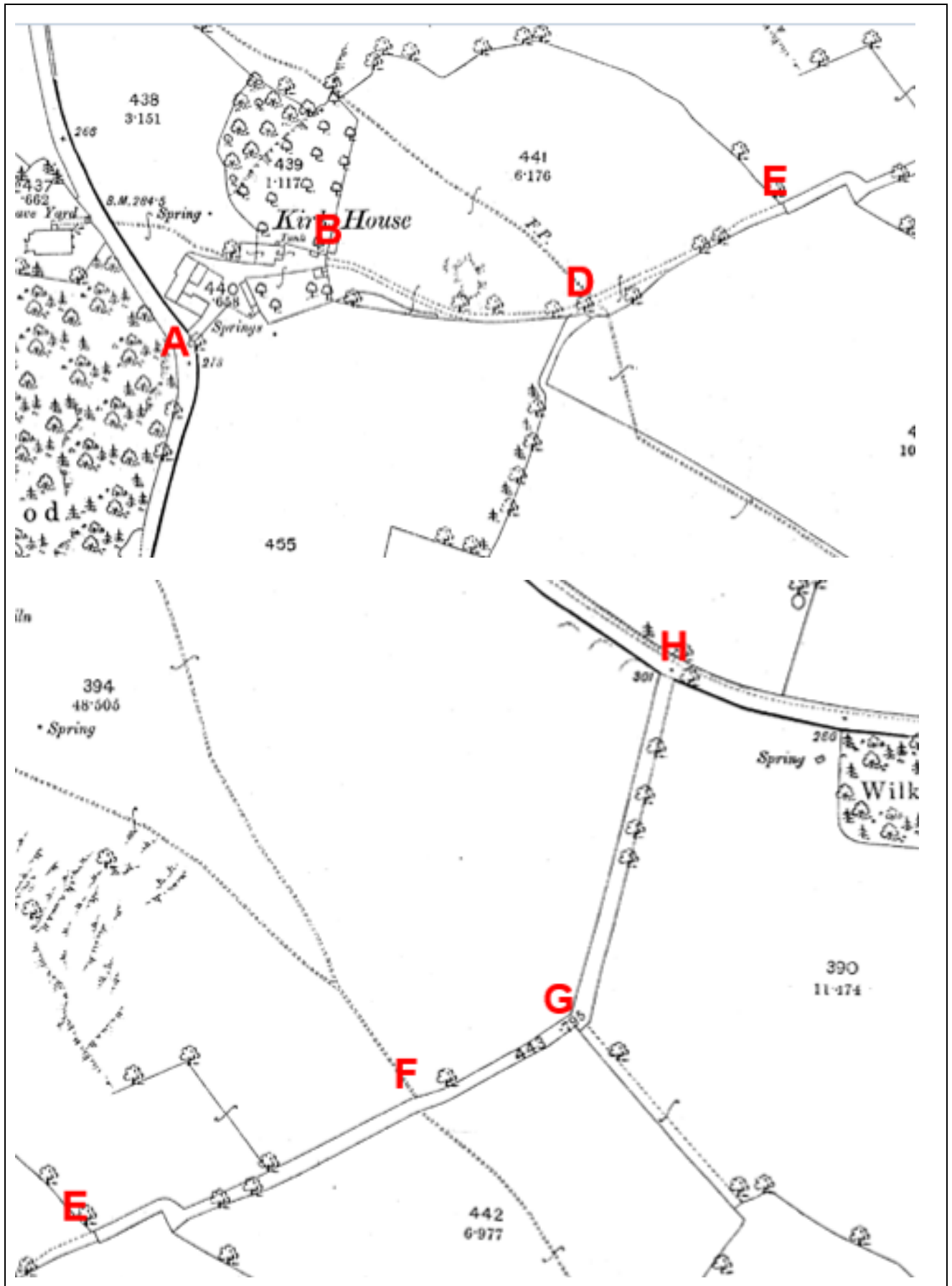
Details of the sale of Kirk House in 1861 were located in the County Records Office.

The plan of the land to be included in the sale included the land crossed by the application route between point A and point E.

Between point A and point B the plan shows the buildings located adjacent to the route and shows that the land




		<p>crossed by the application route appeared to be accessible. Lines are shown across the route at point A and point B and the area crossed by the application route is numbered as part of plot 1 which is described as 'House, Barn, Stable & Yard' with no reference to a public right of way.</p> <p>The application route between point B and point E is shown as an unfenced track through to point E but is not labelled. In contrast, the route now recorded as 1-24-FP13, crossing the application route at point D, is shown and labelled as a footpath.</p> <p>The poster advertising the sale of the property makes no reference to any public rights of way across the land to be sold. It lists the current owner of the property as Mr John Bell.</p>
Investigating Officer's Comments		<p>A route from point a through to point E is shown to exist on the sale plan but there is no indication whether this was a public or private route.</p> <p>The fact that the area crossed by the route between point A and point B is described as part of the immediate curtilage of the house does not suggest that a significant public through route existed through the yard at that time.</p> <p>The Tithe Award detailed above lists Mr John Bell as the occupier of the land now to be sold but by 1861 it appears that he owned the land.</p> <p>The route now recorded as 1-24-FP13 is shown and labelled as a footpath passing through the land to be sold suggesting that this may have been recognised as a route which was used by the public in contrast to the application route which, although shown, is not labelled and although it appears that a route may have continued beyond point E no ongoing destination is labelled – again more suggestive of private rather than public use at that time.</p>
25 Inch OS Map Sheet XXV.5	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.



Observations		The application route is shown. From point A to point B the route passes
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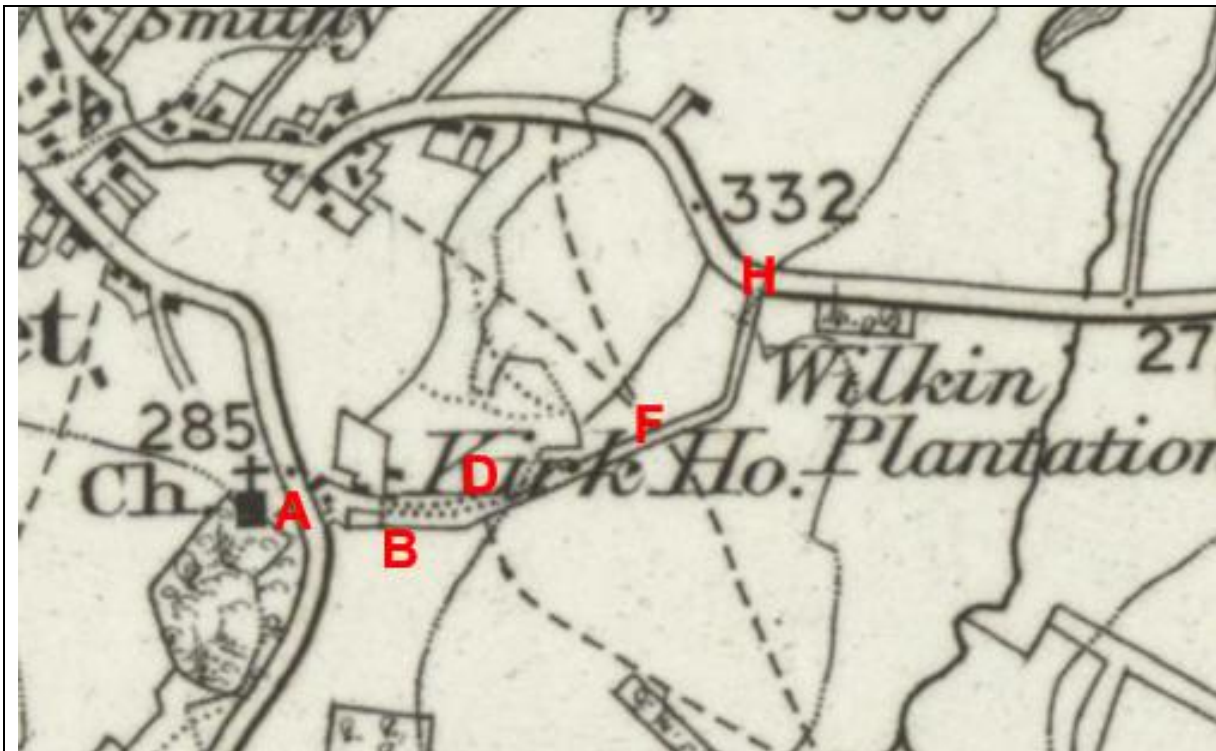


		<p>through what appears to be a farmyard.</p> <p>Lines are shown across the application route at point A and point B although the route between these two points appears to have been accessible. From point B an unfenced track consistent with the application route existed through to point E and was crossed by a route labelled as footpath at point D (1-24-FP13).</p> <p>A line is shown across the application route at point E and beyond point E the route is shown as a significant fenced route with a parcel number and acreage. A further route labelled as a footpath is shown crossing the application route at point F (1-24-FP 10).</p> <p>At point H the route meets Kirkby Lonsdale Road where a dashed line is shown across the end of the route.</p> <p>Nether Kellet Road and Kirkby Lonsdale Road are both shown with a thickened line along the east/south side of the boundary of the road but the application route is not shown with any thickened lines along it.</p>
Investigating Officer's Comments		<p>The application route existed in 1890 and may have been capable of being used at least on horseback.</p> <p>Gates appear to have existed across the route at points A, B and E which may have restricted access but not necessarily have prevented it. The existence of gates across a public right of way was not (and still is not) uncommon, particularly in rural areas where they were required to control livestock.</p> <p>Footpaths are shown to directly cross the application route at point D and point F suggesting that there was access (possibly public) across but not necessarily along the application route at that time.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway</p>

		<p>status so the fact that a dedicated parcel number is shown for the route between point E and point G is not evidence of public – or private status.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east side of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that no part of the application route is shown in this way suggests that it was not considered to be a primary route used by horse drawn vehicles at that time and is not inconsistent with the view that the route was not intended to be shown as part of the public vehicular highway network on the Tithe Map detailed above. It is not however inconsistent with use of a route on horseback (or on foot).</p>
<p>6 inch OS Map Sheet 25</p>	<p>1894</p>	<p>6 inch OS map surveyed 1890 and published 1894.</p>
		
<p>Observations</p>		<p>The application route is shown passing out of the farmyard at point B through to point G. Between point A and point B access through the farmyard appears to have been possible and a further route</p>



		<p>consistent with how footpaths were shown (which was also shown on the 25 inch OS detailed above) is shown leading from Kirk House directly to the church to the north of the application route A-B. Footpaths are shown crossing the application route at point D and point F.</p>
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used although it is not possible to know from looking at the map whether this use was public or private.</p> <p>Two routes subsequently recorded as public footpaths are shown crossing the application route at point D and point F suggesting that pedestrian access may have been available across – but not necessarily along the application route at that time.</p> <p>A further route is shown from Kirk House leading directly to the church – which is not recorded as a public footpath – and it is not known whether use of this path at that time was public or private although it does appear to be directly from the property suggesting private use.</p> <p>The generic name 'Kirk House' is believed to have referred to a house near a church or associated with the church. In this particular case if the property was linked to the church at that time a direct path to the church would be expected.</p>
1 inch OS Map Sheet 59	1898	1 inch OS map surveyed 1842-48, revised 1896 and published 1898.



<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Fenced	Unfenced	<i>Ch...</i>
" " <i>Second Class</i>				"
" " <i>Third Class</i>				"
<i>Unmetalled Roads</i>				<i>Win...</i>
<i>Footpaths</i>				<i>Ligh...</i>
<i>Railways, Single Line</i>				<i>Bea...</i>
				<i>Let...</i>
				<i>Cont...</i>

Observations		The application route is shown. The scale of the map means that the detail of how the route is shown between point A and point B has been lost but beyond point B an unfenced 'road' can be seen continuing through to at least point D and then a fenced route beyond through to point H. The bounded section of route is shown to be narrower than the public vehicular routes known as Nether Kellet Road and Kirkby Lonsdale Road.
Investigating Officer's Comments		The application route existed in 1896 and appeared to be capable of being used. 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 – may have had public rights for those travellers.
25 inch OS Map Sheet XXV.5	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The application route is shown in the same way as it is shown on the 1 st edition 25 inch map.
Investigating Officer's Comments		The application route existed in 1910 and appeared to be capable of being used at least on horseback.
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

1905





EXPLANATORY NOTE

Motoring Roads	}	Through Routes		Motor Ferries	
		First Class Roads			
		Secondary			
		Indifferent		(Passable for cyclists)	

The uncoloured roads are inferior and not to be recommended.

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

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

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

Canals

County Boundaries

1920





Best Motoring Routes ————
 Good Secondary Roads ————
 Serviceable Roads ————
 Other Roads ————

Ministry of Transport Numbers **A 586**
 Footpaths & Bridlepaths
N.B. The representation of a road or footpath is no evidence of right of way.

1941

Observations		The application route is not shown on any of the three maps published by Bartholomew between 1905 and 1941.
Investigating Officer's Comments		The fact that the application route is not shown on the maps suggests that it was not useable as a public vehicular highway in the early 1900s. the maps do not generally show routes used as footpaths or bridleways at that time so no inference can be drawn in that respect.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined.



		<p>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). Land could be excluded from taxable plots for certain reasons.</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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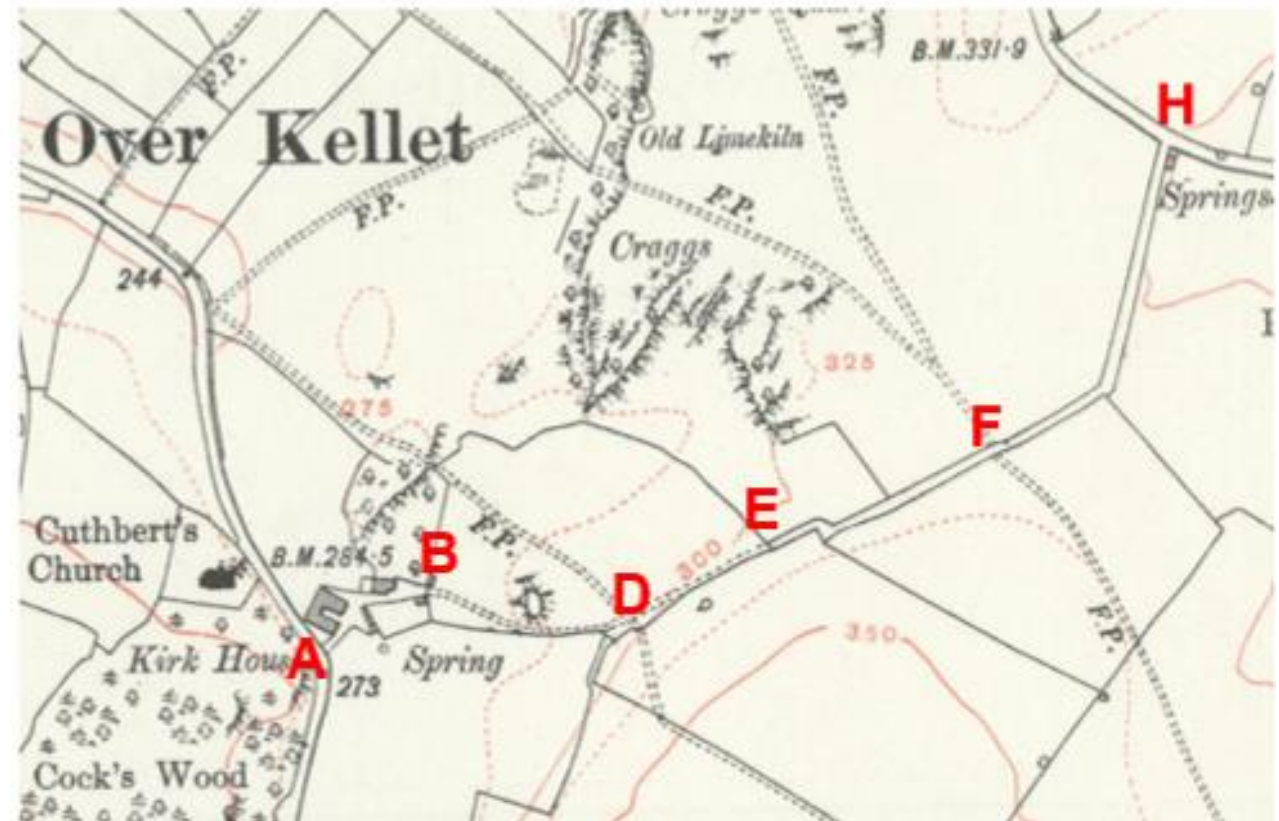


<p>Observations</p>		<p>Between point A and point E the application route is included within part of hereditament 63 which also includes a plot of land immediately to the south of the application route between points E-G (but not the route itself).</p> <p>The District Valuation book lists the owner of hereditament 63 as J Lee Booker and the occupier of the property and land as John Baker. The hereditament is described as 'house and buildings and land' at 'Kirk house' and a deduction of £25 was listed for public rights of way or user.</p> <p>Between point E and point H the application route is excluded from the numbered plots.</p>
<p>Investigating Officer's Comments</p>		<p>The application route between point A and point E was included in a large, numbered plot for which details of a landowner and occupier were given. This suggests that the route was not considered to be a public vehicular route at that time. A deduction was however made for the existence of public rights of way across the plot.</p>

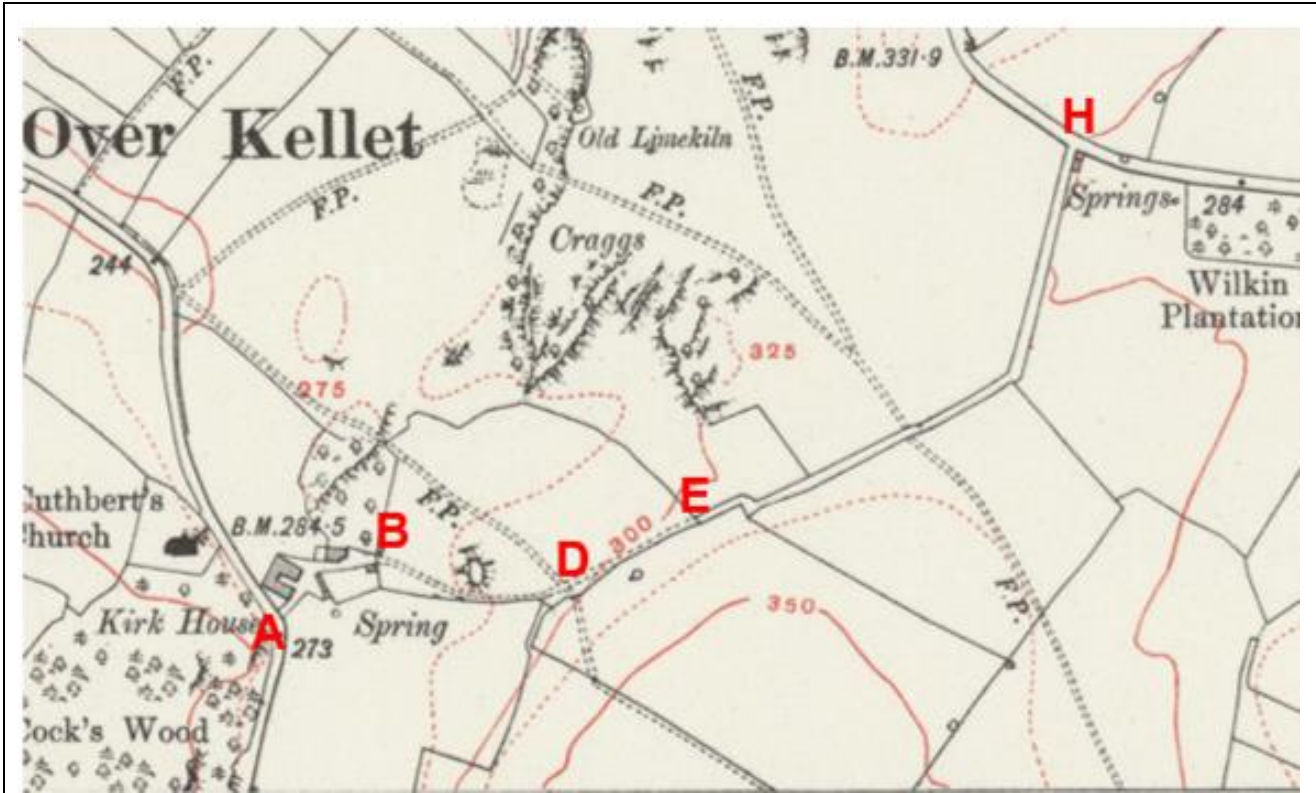


		<p>Whilst this deduction may be relevant it is not possible to determine which route – or routes – the deduction related to. Plot 63 was in two parts and was crossed by two substantial lengths of routes marked on the OS base map as footpaths and which are now recorded as 1-24-FP13 and 1-24-FP10. It is therefore possible that the deduction related to those paths only so beyond confirming that the land crossed by the application route between point A and point E was in private ownership and that the owners acknowledge the existence of unspecified public rights of way across that land it is not possible to know whether they considered that the application route carried public rights or not.</p> <p>The application route between point E and point H was physically separated from the adjacent land at the time of the valuation and is considered to have been originally created as a private occupation road as part of the inclosure process. Although the exclusion of a route from the numbered hereditaments (plots) is often considered to be good evidence of the fact that the route was believed to carry public vehicular rights it is noted that the rest of the route is not excluded in this way.</p> <p>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 there is another example in the adjoining parish (Green Hill Lane, Nether Kellet) where this appears to have happened. The exclusion of the route may not be evidence of public vehicular rights 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>
6inch OS	1916	6 inch OS Sheet revised 1910-1911 and





Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Officer's comments		The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
6 Inch OS Map Sheet XXV NW	c.1934	Further edition of 25 inch map revised in 1910-1911 and published circa 1934.



Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Officer's Comments		The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
1932 Rights of Way Map	1934	The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale



Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



Lunesdale Rural District Council.

Public Footpaths. Parish of Over Kellet. Feb. 1924.

1. From Hall Farm, Carnforth Road, to Carnforth. (Opposite Vicarage).
2. From Higher Keer Bridge to Capernwray Old Hall. Along left bank of Keer.
3. From Higher Keer Bridge to Hare Tarn.
4. From Capernwray Road, near Old Lime Kiln to Old Lane, thro Plot 551. Joins here Footpath No. 5. from Capernwray Cottages.
5. From Capernwray Cottages, to plot 300, through plantation and continuing through Plots 301, 364. Joins Old Lane, continues along Lane to Plot 3490 thro Parkers Yard, crosses Kirkby Lonsdale Road-over Green-thro 399-past Craggs-thro 394, 443, and joins Footpath from Church View, continues thro 442 and 461, and branches or branch comes into lane between Swarthdale and Walled Garden, the other turns S.E. comes into Kirkby Lonsdale - Nether Kellet Road, just south of Swarthdale Plantation.
6. From Church View, Kirkby Lonsdale Road to join No. 5 in Plot 364.
7. From Church View to Village Hall.
8. From Village Hall to Swarthdale, joining No. 5 at point where No. 6 joins No. 5.
9. From Wesleyan Chapel to Nether Kellet Road. (at Plot 404a).
10. From School (408) Over Kellet Seeds to Nether Kellet, joining Carnforth Nether Kellet Road near Town End Farm.
11. From Carnforth Road to Lower Kellet Road, below Leaspers Wood.
12. From Kirk House to Birklandbarrow.

Observations

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



		(numbered 5 and 8) were recorded as crossing the application route at point D and point F. Neither description of the routes recorded referred to the application route.
Investigating Comments	Officer's	The application route was not considered to be a public footpath in the 1930s but this does not necessarily mean that it was not considered to be a bridleway or possibly a public carriageway at that time.
6 inch OS Sheet XXV NW	1942	Revised 1910-1911 and published circa 1942.
Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Comments	Officer's	The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
1 inch OS Sheet 89 – Lancaster and Kendal	1947	Small scale OS map revised 1920 and published 1947.



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

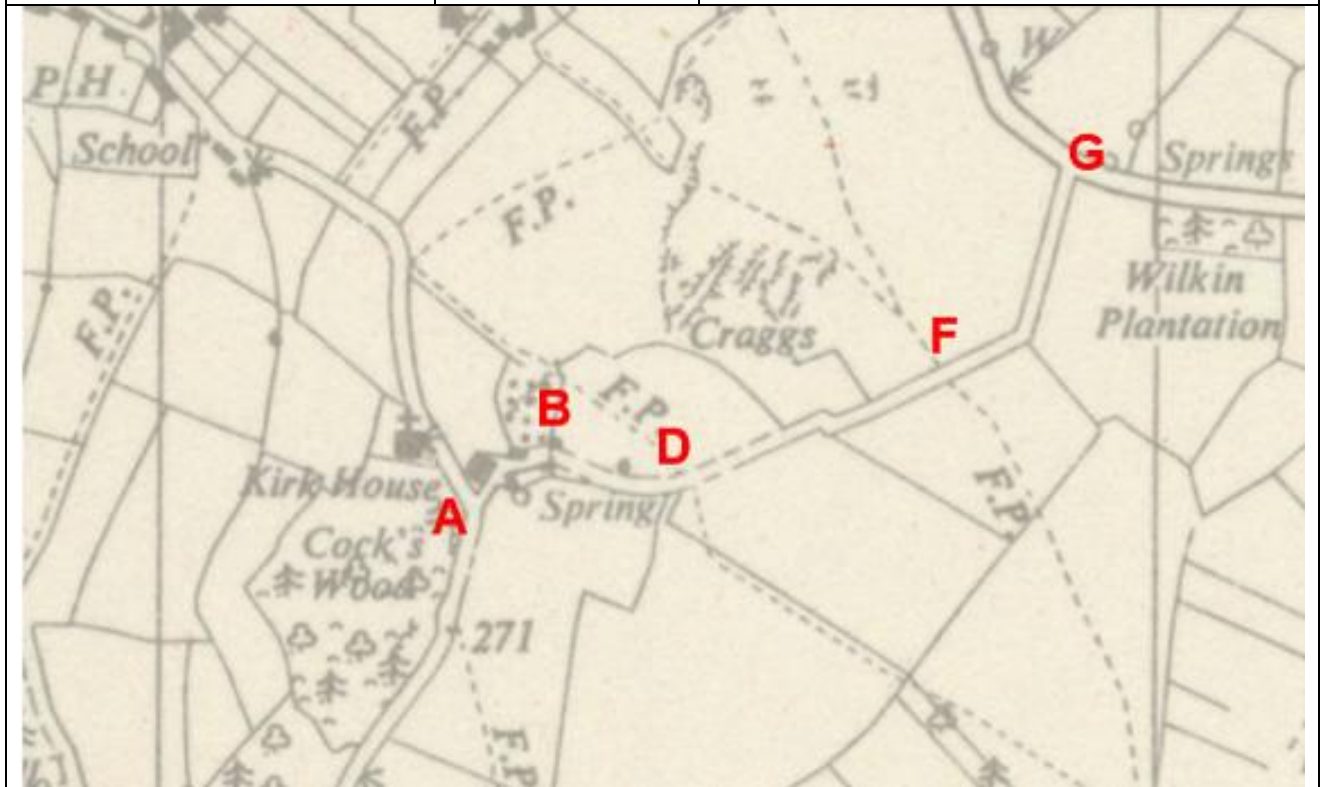
1014.

Observations

Between point A and point B access appears to be available between the buildings and from point B a double pecked line is shown through to point D. Between point D and point F the route is not shown and the words 'Kirk House' have been written. From point F through to point H the route is shown consistent with how minor roads are shown on the map. Routes considered by the OS to be

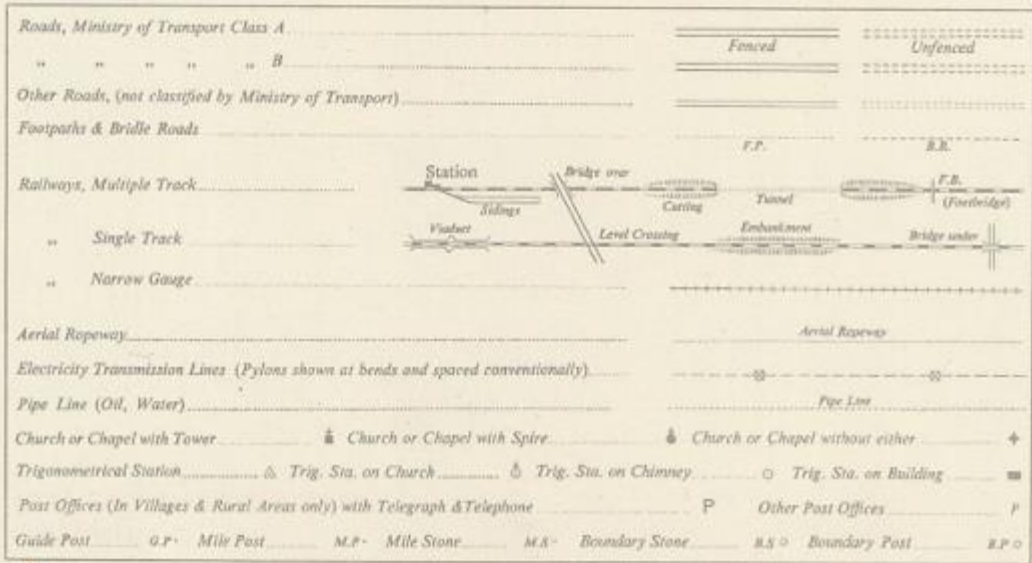


		footpaths and bridleways were shown on the map by a single dashed line and it is noted that no part of the application route was shown in this way.
Investigating Comments	Officer's	The application route existed in 1920 and appeared to be capable of being used at least on horseback. The fact that the middle section of the route (between point D and point F) is not shown is more likely to be because of the scale of the map and the fact that the name of the property 'Kirk House' was written there. OS maps before and after this date do not show a break in the route.
1:25,000 OS map Sheet 34/56	1948	OS sheet published 1948, date of revision not known.



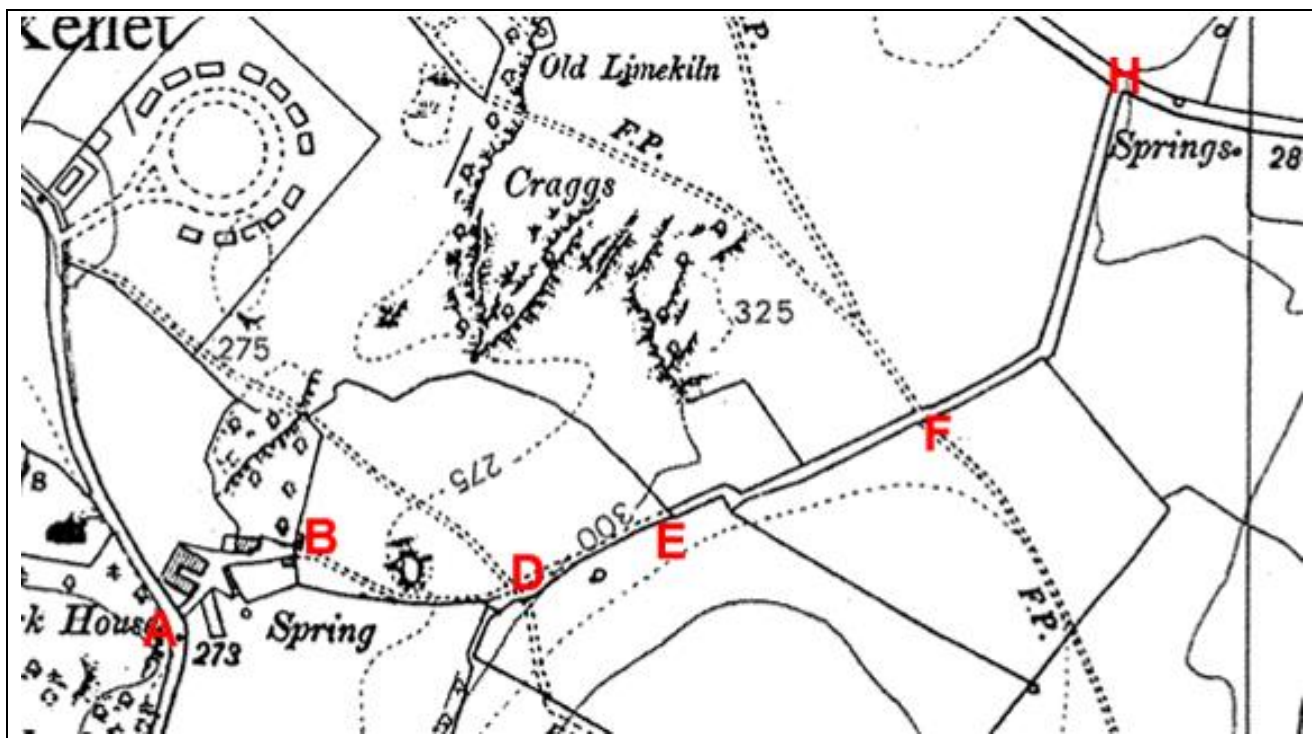
The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

SHEET 34/56



<p>Observations</p>		<p>The application route is shown as a substantial through route gated at point B. It appears to be shown as 'other roads (not classified by The Ministry of Transport)'.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably existed when the map was published and appeared to be capable of being used at least on horseback.</p>
<p>6 Inch OS Map Sheet 56NW</p>	<p>1956</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



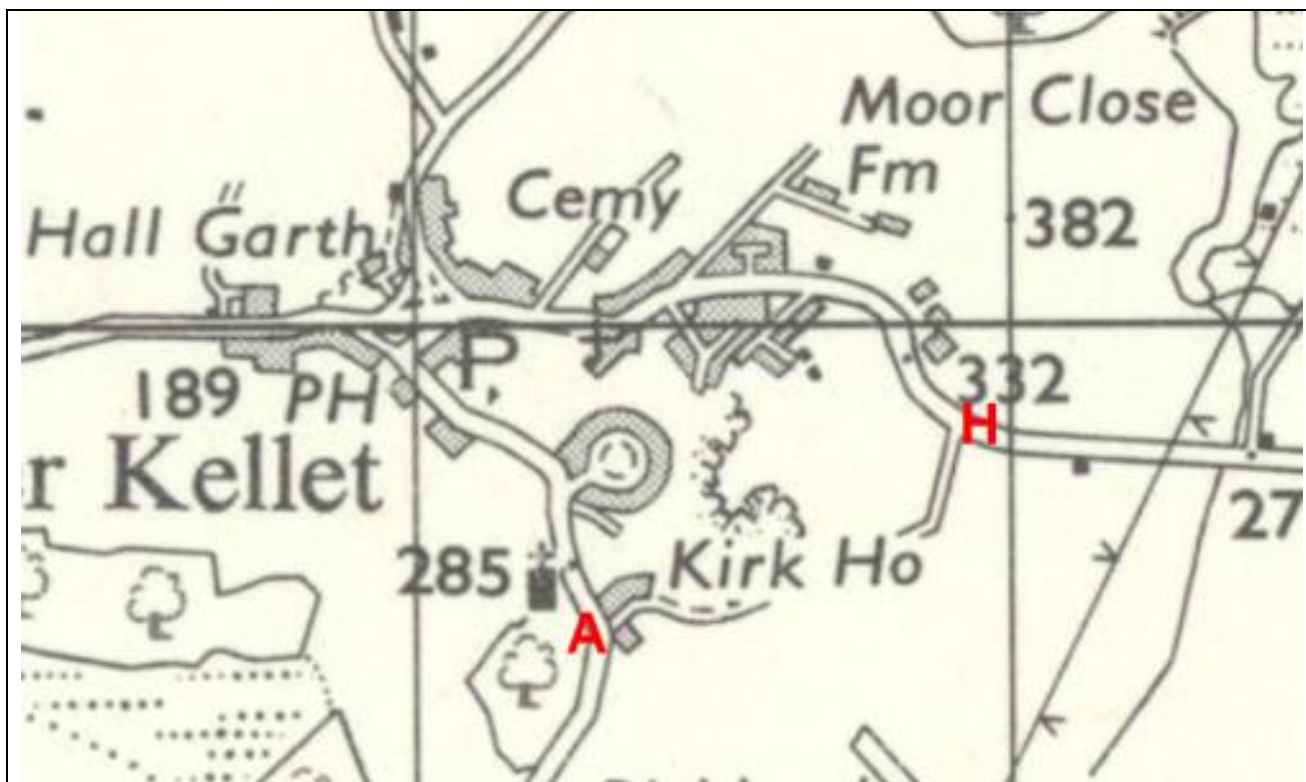


Observations		The application route is shown and was gated at point B and point E. Routes annotated as footpaths (F.P.) crossed the application route at point D and point F but the application route was not annotated.
Investigating Officer's Comments		The application route existed before 1930 and appeared to be capable of being used at least on horseback.
1 inch OS Map Sheet 89 – Lancaster and Kendal	1957	OS map revised 1950-1957 and published 1957.





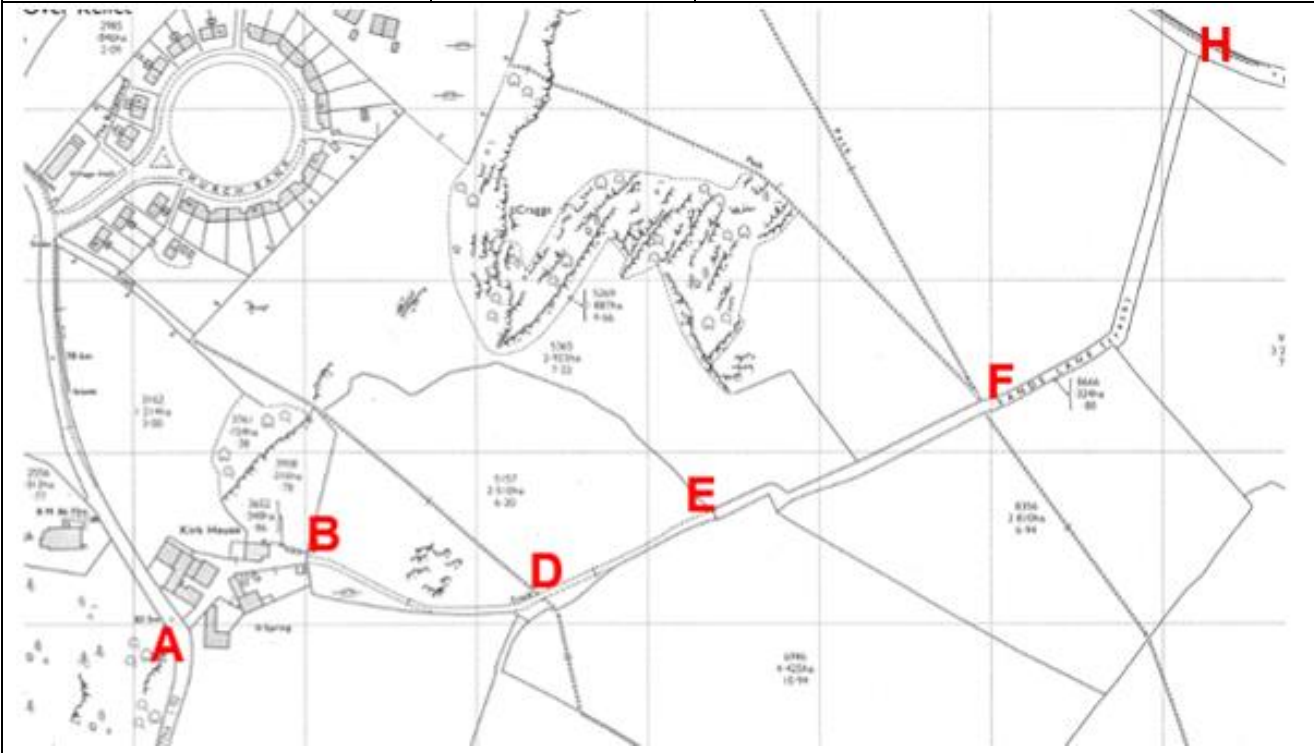
Observations		The application route is shown as a substantial route with a gap in the middle (between point D and point F) where the words 'Kirk Ho' have been written.
Investigating Officer's Comments		The application route existed in 1950 – 1957. Evidence from maps pre and postdating this small-scale map suggest that there was no actual gap in the route between point D and F but that the style of this particular map meant that detail was often blanked out where labelling was inserted.
1:25,000 OS Maps Sheet 89 – Lancaster and Kendal	1965	OS maps both revised 1950-1964 and published 1965 at 1:25, 000 scale.



Observations		Further OS maps submitted by the application to show the application route as a substantial route.
Investigating	Officer's	The application route existed in 1950 –

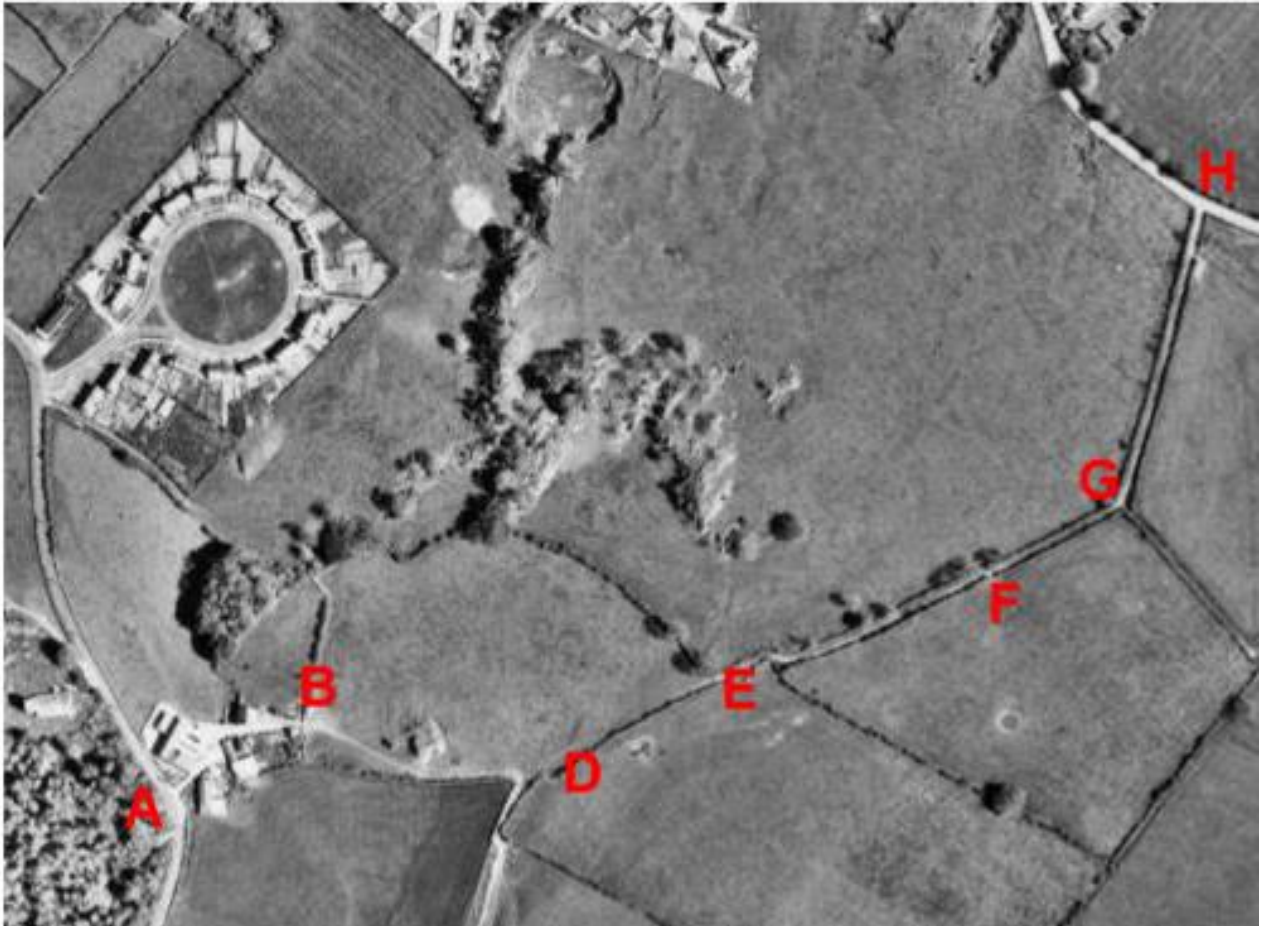


Comments		1964. Evidence from maps pre and postdating these small-scale maps suggest that there was no actual gap in the route between point D and F but that the style of these particular maps meant that detail was often blanked out where labelling was inserted.
1:2500 OS Map OS Sheet	1970	Further edition of OS map reconstituted from former county series and revised in 1969 and published in 1970 as national grid series.




Observations		Further OS map showing the full length of the application route. Lines are shown across the route at point A, point B and point E and the route is labelled as a 'track' close to point D and between point F and point H where it is also named as 'Sands Lane'. The routes recorded as 1-24-FP 13, 1-24-FP 10 and 1-24-FP 11 are all shown crossing the application route and labelled as paths.
Investigating Comments	Officer's	The application route existed in 1969 and had remained unaltered from when it was first shown on the earliest edition of the OS 6inh and 25-inch maps. Between point E and point H it was named on the map as Sands Lane although this is the first reference that the Investigating Officer has found referring to the route as

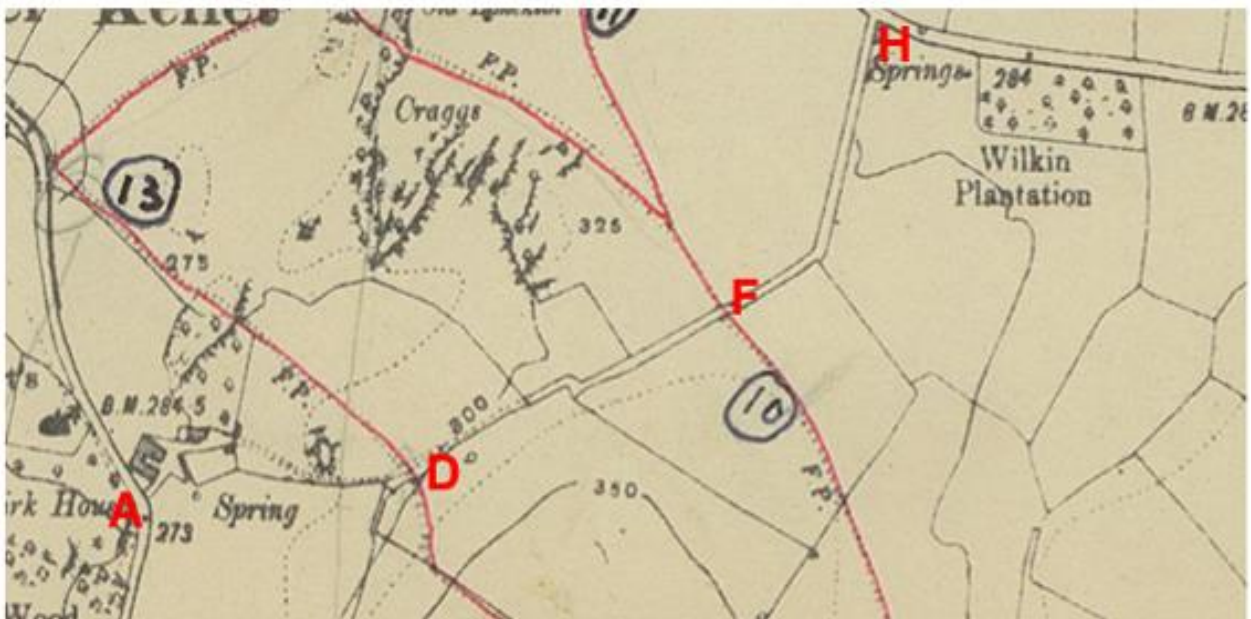
		being known as Sands Lane. The only other reference to it having a name was 'Kirk House Road' as described in the Inclosure Award and Map detailed earlier in this report.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route is visible along most of its length although the section along the field edge from point D to point E is barely visible as a trodden track. A clearly visible track extends from point B along the line of the application route before turning south through a field boundary just before point D consistent with use by agricultural vehicles accessing fields south of the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights but the aerial photograph supports the existence of the application route in the 1960s and the fact that it appeared capable of being

		used on horseback at that time.
1:50,000 OS map	1982	Date of map revision unknown and the extract below is a copy of the map submitted by the applicant from their own collection and annotated by them.
		
Observations		The application route is shown as a substantial through route.
Investigating Officer's Comments		The application route existed in the early 1980s and appeared to be capable of being used.
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 *Lunesdale* PARISH *Overkellat.* No. *H.13.*
 MAP SHEET No: *3, +4* LENGTH *80 7/8* miles
 BRIEF DESCRIPTION (Field F.P. or otherwise) (to two decimal places)
F.P.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).

From Overkellat - Nether Kellat Road at Village Hall, Over Kellat South Eastth direction of Swarthdale Hall, passing close to North side of Kirk House Farm, through styles to corner of plantation (483 on xxv 9) and continuing through Swarthdale bottoms joining other footpaths (FP) 461-481. Continuing to the Swarthdale - Lower Addington road exist beyond parish boundary by gate to road. Good condition.

SURVEYED BY:— Name *W.A. Murphy.*
 Address *Church View. Overkellat Nr. Barnforth.*

Date *Aug 1950.*

9000010314130

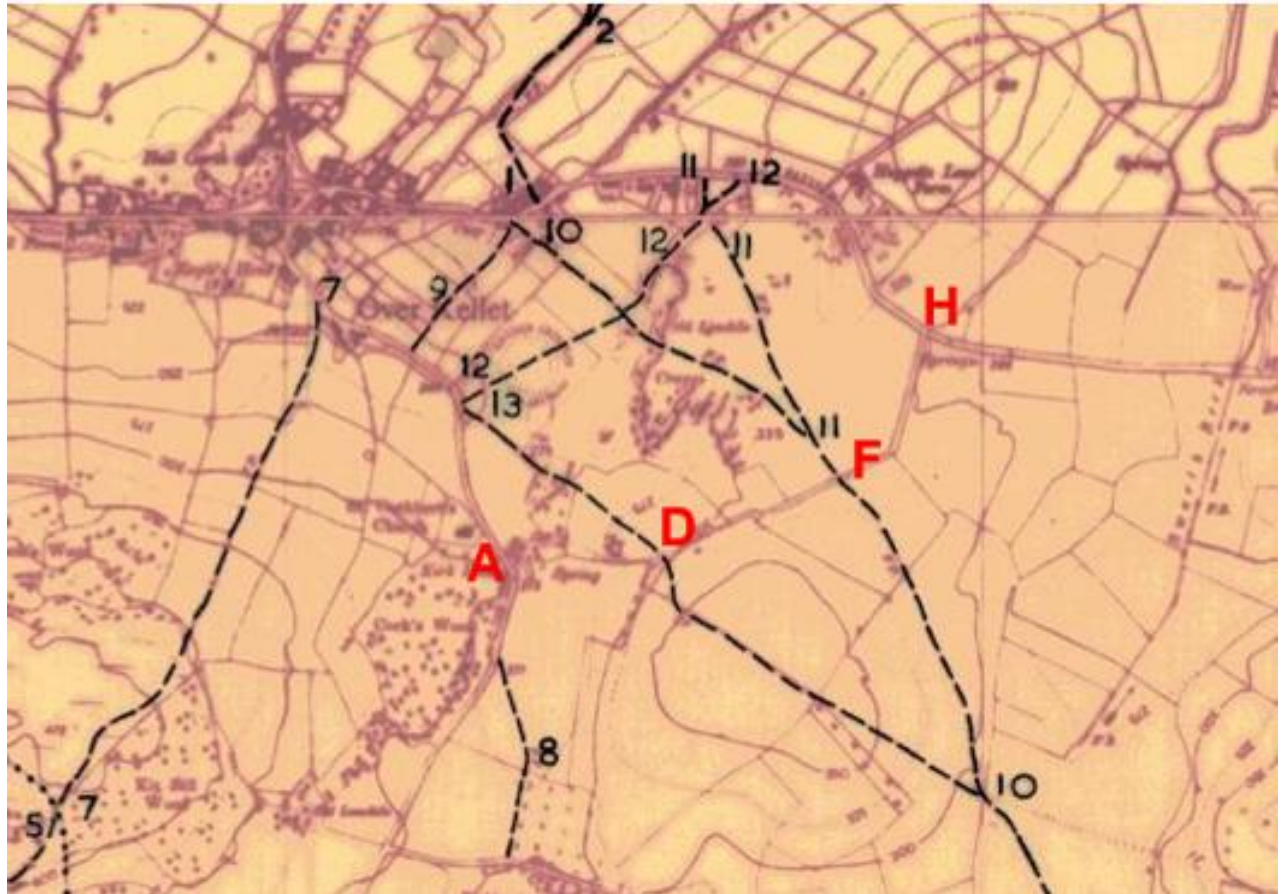


DISTRICT <i>Limesdale</i>	PARISH <i>Over Kellet.</i>	No. <i>10.</i>
MAP SHEET No. <i>3. + 4</i>	LENGTH <i>0.7 1/4</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise) F.P.		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>F.P. starting on "Top Green" in Over Kellet village passing N.E. of Cragg House & cottage through stile into "Craggs Field" keeping south of old Lime Kiln - direction then generally South east through Swarthdale land (as on Sheet No. 11.) to join other F.P. to Swarthdale Hall & on to Swarthdale Road by Cottage. - Good condition throughout.</i>		
SURVEYED BY :— Name <i>W. a. Murphy.</i>		
Address <i>Church View - Over Kellet Nr. Barnforth.</i>		
Date <i>August 1950.</i>		
<small>XXXXX F 20 400</small>		

<p>Observations</p>		<p>The application route was not recorded as a public right of way on the parish survey map. Of significance is the fact that two routes recorded as public footpaths are shown to cross the application route with no indication that they joined it. The numbering of the two routes was not split by the application route – which was often the case if a route met a public vehicular highway. There is no reference to the crossing of the application route in the descriptions of the footpaths written on the parish survey cards and no reference to the footpaths crossing a named route at points D or F.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Over Kellet were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</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</p>



		reject them on the evidence presented.
Observations		The application route was not recorded on the Draft Map and there were no objections to the fact that it was not included.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not recorded on the Provisional Map and there were no objections to the fact that it was not included.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded as a public right of way on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



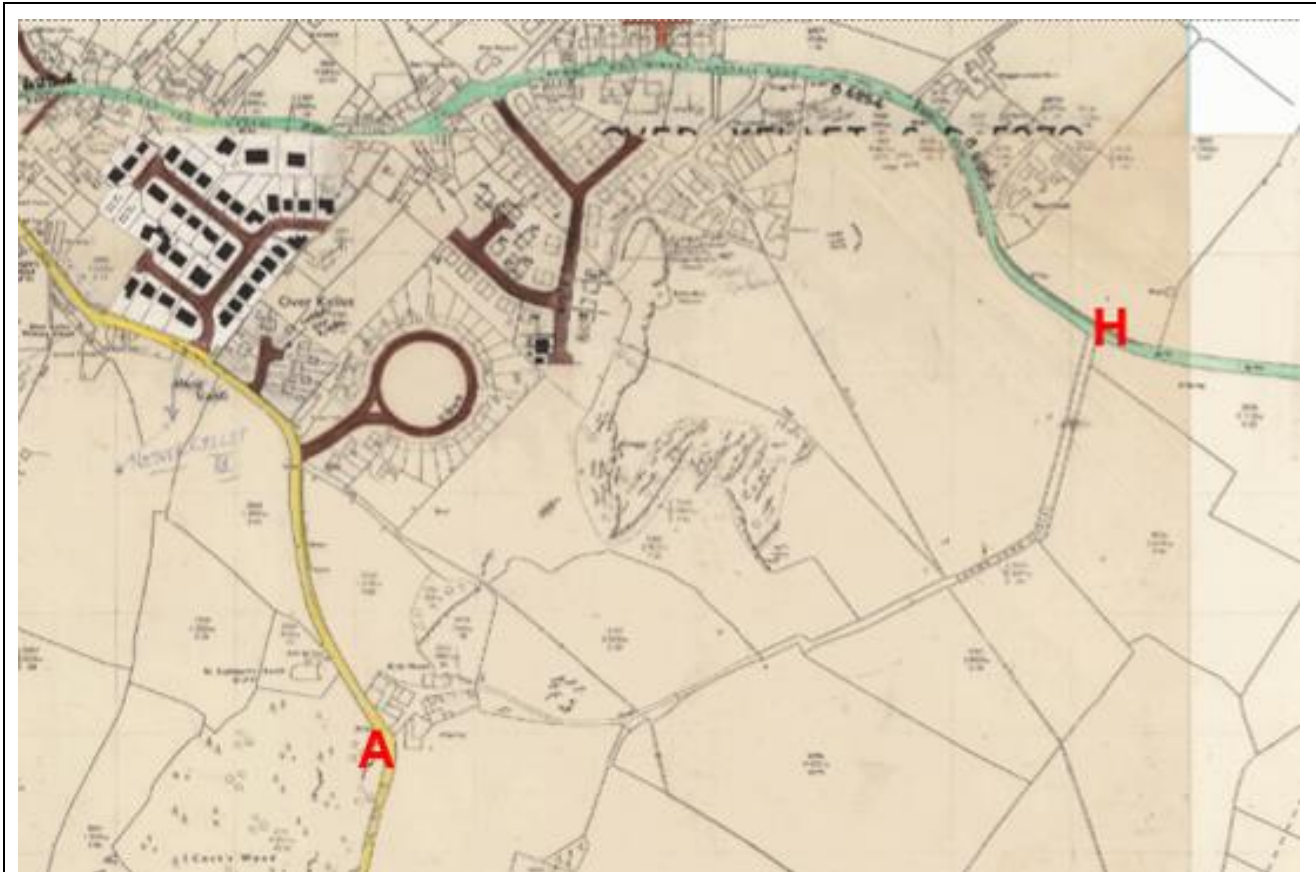
Observations		The application route is not recorded as a public right of way on the Revised Definitive Map (First Review).
Investigating Officer's Comments		The application route was not considered to be a public right of way during the preparation of the First Definitive Map in the 1950s through to the 1960s. Of note is the fact that public footpaths were recorded crossing the route at point D and point F but there was no public right of way recorded to link the two footpaths between point D and point F or to exit onto Nether Kellet Road via point A or Kirkby Lonsdale at point H.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county previously maintained by the district council. 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 public 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 List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway on the List of Streets does not necessarily mean that it does not carry public rights of access.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found.
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

No modern user evidence was submitted as part of this application and it is noted that the historical route is no longer accessible between point A and point C. A



consultee detailed below (see Information from others) refers to using the route on foot from 1948 to the late 1960s/early 1970s. The map and documentary evidence supports the fact that the route could have been used during this time but does not tell us whether this use was public or private.

The application is for a public bridleway and as such it would not be necessarily expected that it would be shown on any of the small scale early commercial maps or later small-scale maps such as Bartholomew's.

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

In conclusion, part of the route was shown on Yate's Map of 1786 providing access from point A to a cluster of buildings now known as Kirk House. No through route was shown on that map and it appears that the application route from point E to point H was created as a private road as part of the inclosure process as shown and named as Kirkhouse Road on the Over Kellet Inclosure Map dated 1805.

By 1830 the full length of the route physically existed (as evidenced by the fact that it was clearly shown on Hennes's Map) and it appeared to have remained unaltered since that time. Changes to the entrance to Kirk House and obstruction of part of the historical application route between point A and point C, detailed at the start of the report, having occurred at some point since 1970.

Whilst the route is consistently shown on all OS maps examined, including the small-scale 1 inch maps, suggesting that it was capable of being used at least on horseback, it is not known whether this use would have been public or private. Gates were consistently shown across the route at point B and point E with some maps also indicating that access from Nether Kellet Road at point a may also have been gated.

The route is consistently shown to pass through a farm (Kirk House) which was in private ownership with the land crossed by the route A-B described in both the Tithe Award prepared in 1847 and on a sale plan dated 1861 as a yard. Neither document refers to the existence of a public right of way through the farm although the route did appear to have been accessible.

Finance Act records from the early 1900s show that the land crossed by the application route between point A and point E was still in private ownership and the route was not excluded from the land to be taxed. A deduction of £25 for public rights of way was claimed although it is not known which – or how many routes this applied to and two substantial lengths of public footpath crossed the plot so it is not possible to infer that the deduction related to the application route.

The application route between point E and point F was excluded but ownership of this route is not registered, and no historical records have been found to confirm ownership. In addition, this route was created as a private road in 1805 so it is more than probable in this case that it was excluded because it was a private joint occupation road not in any particular ownership. Modern day site evidence is



consistent with this view with access to adjacent fields being via the application route E-H.

The records relating to the preparation of the Definitive Map and Statement do not record the route as a public right of way and there was no objection raised to the fact that the route was not recorded. Of significance was the fact that public footpaths were recorded which crossed the route at point D and point F but there was no suggestion that the application route formed a link between the two.

To conclude, the map and aerial photographs examined all suggest that the route may have been available to be used since the early 1800s and that whilst originally part was created as a private occupation road that in reality it would at least have been used to access Kirkby Lonsdale Road from Kirk House and could possibly have been used as a link from Nether Kellet Road, through Kirk House through to Kirkby Lonsdale Road. However, the availability to the public without evidence of any actual use is insufficient to infer such quality and quantity of public use that could evidence dedication of public rights and there is no evidence which does not have an alternative explanation consistent with private occupation road created by the Inclosure Award.

Head of Service – Legal and Democratic Services Observations

Landownership

From point A to E the application route is in private ownership, from point E to H the application route runs along land which is unregistered. The northern and southern parts of the land that border the unregistered land from point E to H are in private ownership.

Information from the Applicant

The applicant submitted extracts from the following maps and documents in support of their application (all of which have been considered earlier in this report):

Hennet's Map of Lancashire 1830

6 inch Ordnance Survey maps published in 1847, 1894, 1916 and 1942

25 inch Ordnance Survey maps published in 1891 and 1913

1 inch Ordnance Survey maps published in 1898, 1947 and 1955

1:25,000 Ordnance Survey maps published in 1948 and 1965

1:50,000 Ordnance Survey map published in 1982

Tithe Records 1847

Inland Revenue Valuation Records – finance (1908-1910) Act 1910

Lancashire County council Road Status map (MARIO)

Land registry plan

London Gazette search results

Information from Others

One adjacent landowner responded to the consultation by returning the map marking out the area under their ownership, no further comments were provided.



One adjacent landowner who stated they use the lane of which the application route follows to access their 50 acres of land which is farmed regularly, most of it is mown 3 times per year, and the grass will be trailed away down the application route, and a few days later a tanker load of slurry will return. The adjacent landowner further states the lane is very narrow without passing places, if a horse met a tractor then the horse would need to turn around and back track, the adjacent landowner makes reference to the new highway code recommendations are to leave a 2 meter gap when passing a horse.

Another adjacent landowner stated the proposed bridleway does not affect them although part of the boundary does run along part of the lane, they have no objections. However commented that horses exiting the lane onto Kirby Lonsdale Road may present a hazard to traffic.

One person who has stated he is neither landowner or tenant is in favour of the application route being recorded on the Definitive Map and states he used the path himself – and sometimes with his children - from 1948 to the late 1970s -early 1980s, along Sands Lane and also from where it crosses footpath 13, through Kirkhouse Farm yard. He explained that he recalled that opposite the farmhouse back door there were two upright stone pillars through which the path passed up to the church opposite the farm. He further states according to his mother this was used as an access to attend St. Cuthberts church and coffins were also carried for burial there in the late 19th and 20th century. He referred to a gate at the of end of Sands Lane where the access has been blocked for some time, however he recounted that he used to walk the route and although he was never stopped by the previous owners they were never pleased to see him and kept dogs close to the route to deter people. He also explained that he understood that the route across the fields from Swarthdale – which is partly recorded as Footpath 13 – was used to get to the church and that he had raised the fact that the first part of the route from Swarthdale was not recorded on the Definitive Map with his local Parish Council.

Information from the Landowner

One landowner responded through their Solicitor and highlighted part of the land he owns is currently being leased to a tenant, and further stated the application route passes through the landowner's property which is currently a residential farmhouse, through the garden as well as passing alongside a current development site, whereby the use of heavy machinery is operated on a daily basis.

Conclusion

In this matter there is an application that the route be recorded on the Definitive Map and Statement as a bridleway.

There is no express dedication in this case.

As such committee must examine whether there is an inferred dedication under common law or a deemed dedication by statute under section 31(1) Highways Act 1980.



Committee is therefore is advised to consider whether there is sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating or whether there is evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate from which dedication could be deemed under S31 Highways Act 1980.

Committee will appreciate the importance of the words 'sufficient evidence' with regard to their findings.

'User evidence' was not submitted as part of the application although a letter was received as part of the consultation process detailing one person's possible use of the route on foot. However, it is considered that one account of use of any route without sufficient detail must be classed as trivial and sporadic and cannot be sufficient to satisfy the criteria under s31 Highways Act 1980 and the Committee is advised to instead consider if an inference of dedication is possible on balance of the all the evidence at common law.

The majority of the evidence to be deliberated therefore is historical documentation and whether there is sufficient evidence from which to infer on balance that the owner of this old route intended the route to be a bridleway or other highway open to the public.

The evidence has been summarised and evaluated earlier within the report. It is sometimes difficult to evaluate whether there is sufficient evidence of it being dedicated as public. There is insufficient user evidence in this case and so the evidence comes from balancing what the documentary evidence shows.

As such, on balance and given the nature of the evidence it is advised that the evidence of it having become a public bridleway is insufficient.

The recommendation is that no Order be made based on 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 risks associated with the decision making process.

Local Government (Access to Information) Act 1985

List of Background Papers

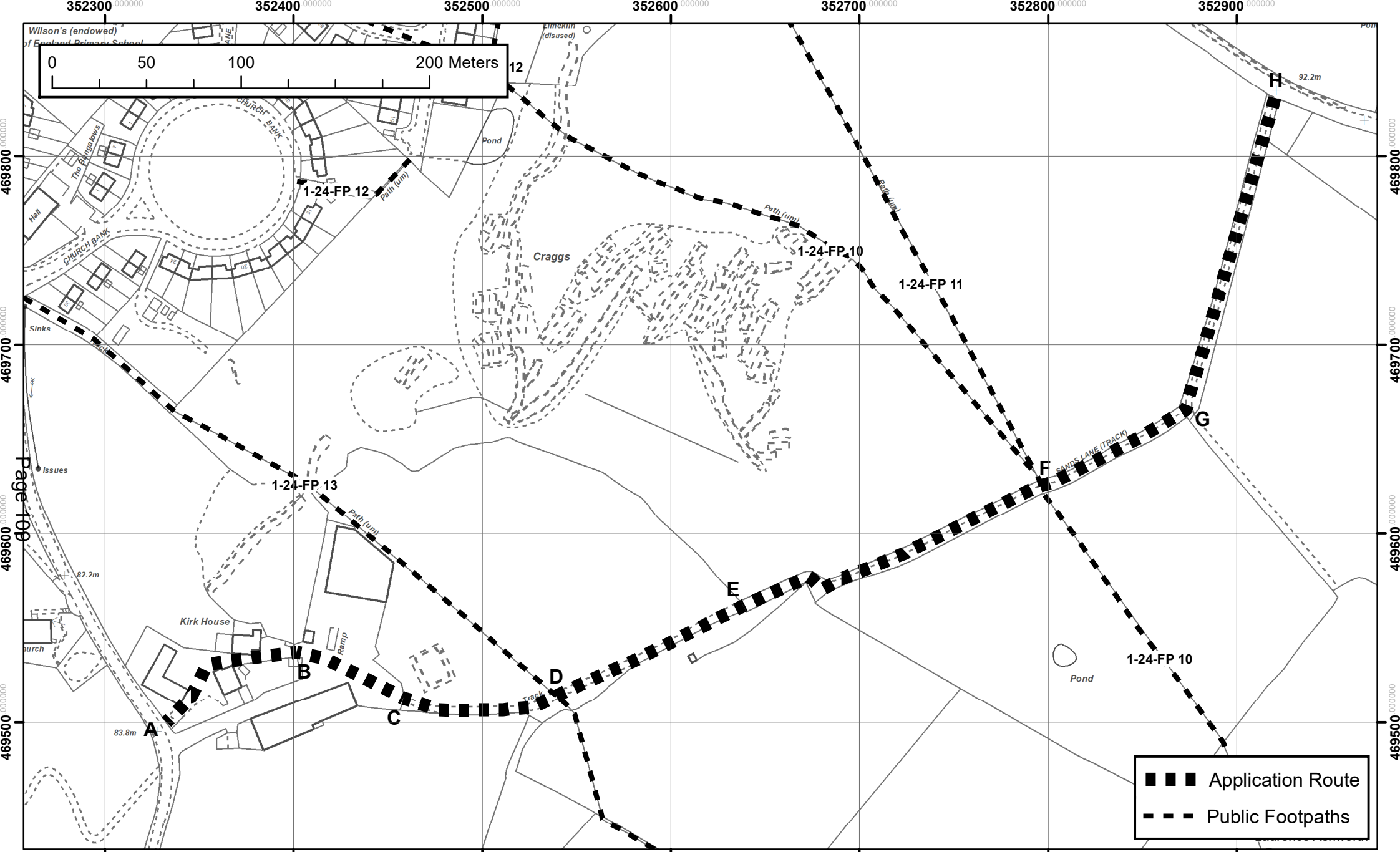
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-657		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group



Reason for inclusion in Part II, if appropriate

N/A





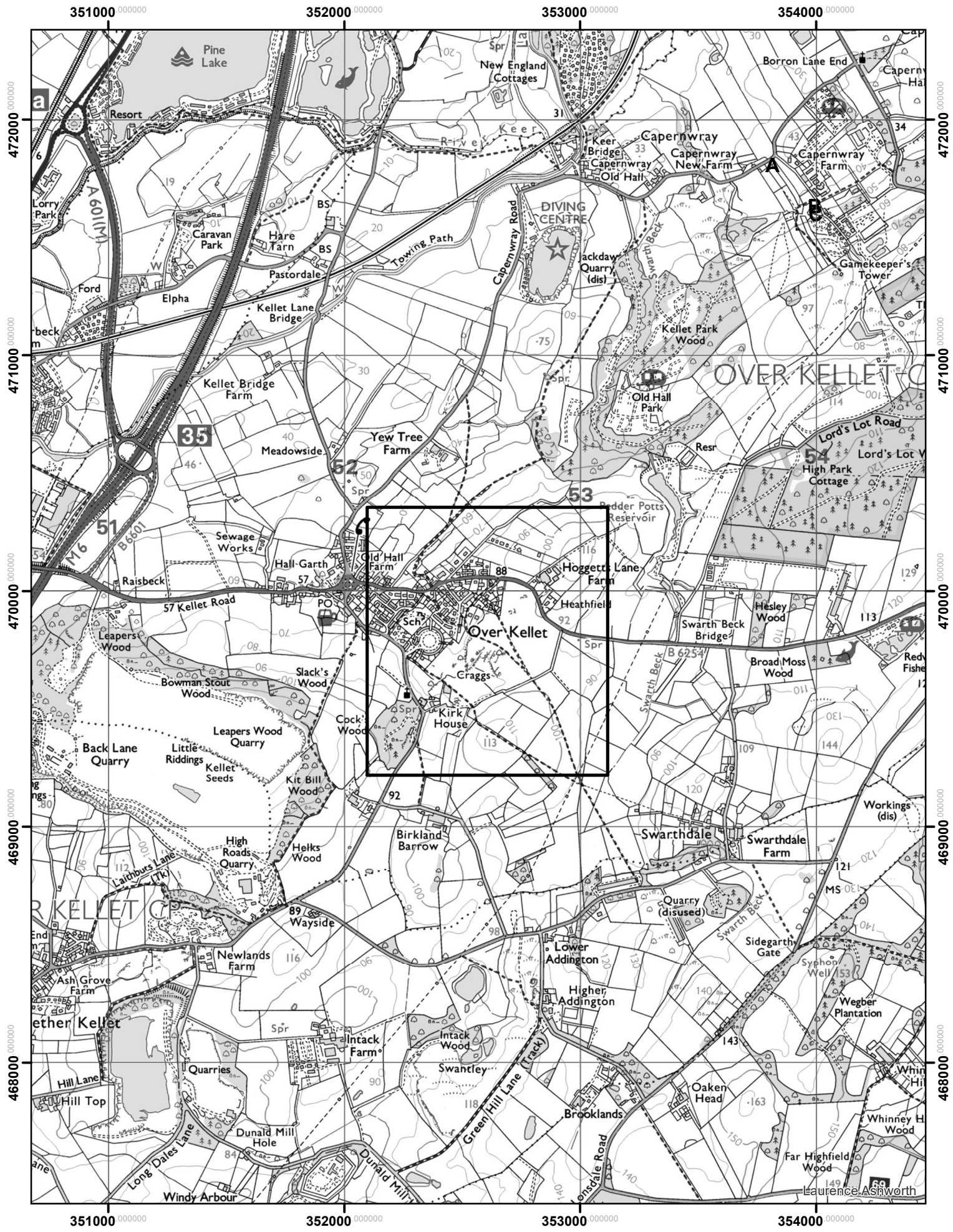
Public Rights of Way
 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
 Addition of Bridleway from Nether Kellet Road through Kirk House to Kirkby Lonsdale Road, Over Kellet

1:2,500



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 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
 Addition of bridleway through Kirk House, Over Kellet LOCATION PLAN

1:20,000

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Regulatory Committee

Meeting to be held on Wednesday, 14 September 2022

Part I

Electoral Division affected:
Ribble Valley North East

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Byway to the Queen Mary's Military Hospital Cemetery, Whalley
(Annex 'A' refers)**

Contact for further information quoting file reference 804-733:
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

Addition to the Definitive Map and Statement of Public Rights of Way of a byway from Mitton Road through Calderstones Cemetery to the Queen Mary's Military Hospital Cemetery, Whalley.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic from Mitton Road through Calderstones Cemetery to the Queen Mary's Military Hospital Cemetery, Whalley be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition on the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic (BOAT) from Mitton Road to the Queen Mary's Military Hospital Cemetery, Calderstones, Whalley.

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

Ribble Valley Borough Council

Ribble Valley Borough Council provided no response to consultation.

Whalley Parish Council

Whalley 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	7267 3758	Gated entrance to cemetery grounds at junction with Mitton Road
B	7276 3759	Route passes through the Lych Gate
C	7290 3758	Gated entrance to Queen Mary's Military Hospital Cemetery

Description of Route

A site inspection was carried out in June 2022.

The total length of the application route is 225 metres and it passes through Calderstones Cemetery to provide access to the Queen Mary's Military Hospital Cemetery.

The route starts at a junction with Mitton Road (point A on the Committee plan) immediately north of a dismantled railway.

Vehicular access to the cemetery is via the driveway into the site across which large metal gates are located which were locked on the day that the route was inspected. Adjacent to the larger gates is a pedestrian gate – which was also locked and on which a weathered printed notice had been attached.

The information on the notice contained details of the current arrangements relating to how to access the War Graves Cemetery by calling at the reception at Calderstones Hospital to collect a key to the pedestrian gate.

Once through the gate (which was unlocked for the Investigating Officer by a contractor who was cutting the grass in the Queen Mary's Military Hospital Cemetery) the route continues along a gravelled roadway approximately 4 metres wide passing through an area of woodland. The surfaced driveway was becoming overgrown and encroached with grass and plants from the sides with no evidence of any frequent recent vehicular use (except that of the contractor accessing the Remembrance Park for maintenance purposes).

After approximately 80 metres the overgrown gravelled roadway diverged to pass either side of two small buildings (formerly Church of England and Roman Catholic chapels) between which was located the lych gate (point B). The area immediately approaching the lych gate was overgrown with long grass although it was possible to continue up to and through the lych gate which was not actually 'gated'.





Beyond the lych gate the the application route continues in a straight line in a generally easterly direction along a compacted stone surfaced track to the gated entrance to the Queen Mary's Military Hospital Cemetery (point C).

Between point B and point C the area to the north and south of the track is rough unmaintained grassland with no remaining evidence of any of the graves which are located there. The track itself is becoming overgrown with no evidence of any recent maintenance of the cemetery grounds.



The wooden gates providing entry to the Queen Mary's Military Hospital Cemetery were open the day that the route was inspected, and a contractor was cutting the grass. The contractor explained that he visited the site on a weekly basis to carry out maintenance work.

A sign on the gateway leading into the Military Hospital Cemetery referred to the fact that there were Commonwealth War Graves within the site and the stone cross memorial was located centrally within the site.



The only access to the Military Hospital site was via the application route.

Map and Documentary Evidence

An examination of the First Edition 6 inch and 25 inch Ordnance Survey (OS) maps reveals that the cemetery did not exist in the 1800s and there is no evidence that a route existed prior to its construction. Many of the early commercial maps and documents normally included in this type of report are therefore not included as they are not relevant to determining when the route came into being or in determining what its status may be.

A detailed account of the history of the land crossed by the application route is available on a website set up by the applicants (The Friends of Calderstones Cemetery - <https://www.calderstones-cemetery.co.uk/>)

Of particular significance on the website is the information regarding the origins of the cemetery.

It documents that when Calderstones Hospital was built in 1915 it had its own private 3-acre cemetery, one third of which was to become the Queen Mary's Military Hospital Cemetery in which 33 service personnel are buried. The remaining two thirds of the site is the Calderstones Hospital Cemetery, in which at least 1172

former patients and staff members are believed to be buried or have had their ashes interred and it is that part of the cemetery through which the application route runs.

The adjoining Queen Mary's Military Hospital Cemetery – which is accessed solely via the application route - is separate and managed by the Commonwealth War Graves Commission. It is well maintained and cared for (as witnessed by the Investigating Officer in June 2022) in contrast to the Calderstones Hospital Cemetery.

When passing between points A-B-C the Investigating Officer found no evidence that the site was a cemetery other than the existence of the overgrown lych gate and former chapel buildings at point B. The overgrown field through which the application route passes between points B and C is described, on the website as the burial ground containing 1172 bodies of the hospital patients who had been buried or had their ashes interred in the cemetery between approximately 1920 and 1989 but no evidence of this could be seen.

Photographs on the website show how this area previously looked:



[above] Undated photograph looking west to the lych gate at point B



[above] Undated photograph showing rows of gravestones to the south of the application route B-C



[above] Photograph taken in 1977/78 showing the route between point A and point B leading up to the lych gate



[above] Photograph taken in 1977/78 showing the application route from the lych gate eastwards (point B towards point C)

Since the sale of the cemetery in 2000 it is documented that all 600 plus gravestones were removed as part of various plans to open a private cemetery and ownership of the site appears to have changed on numerous occasions.

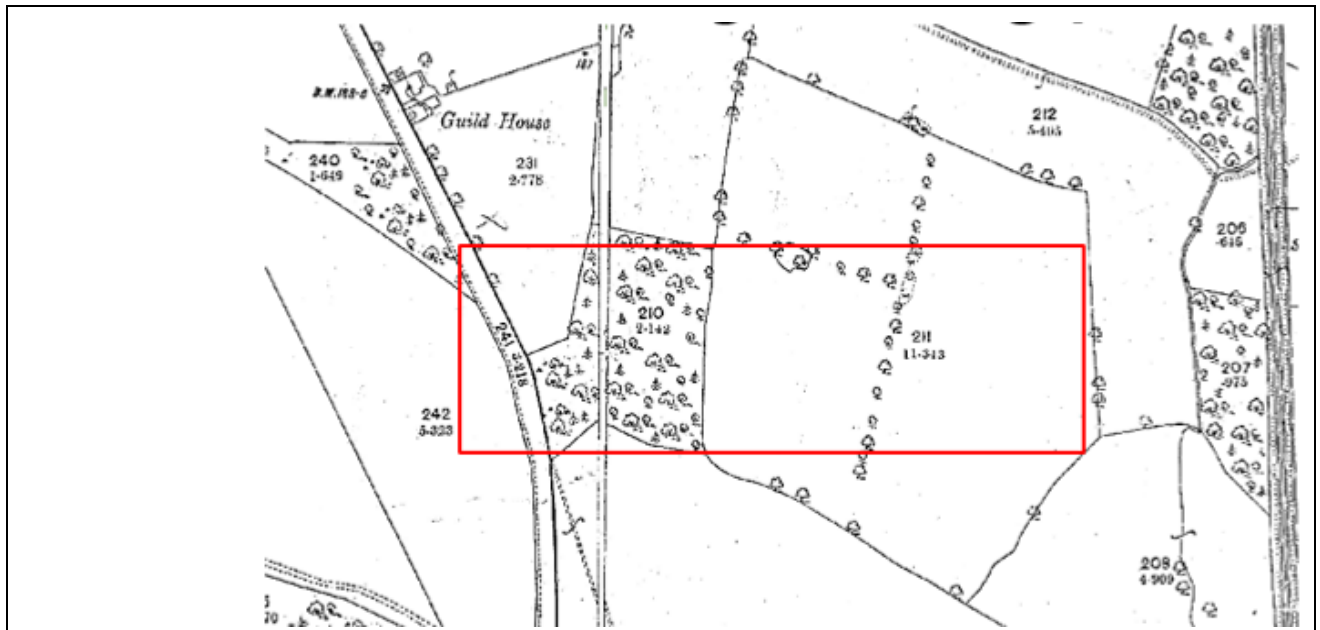
Full planning permission for the construction of a crematorium was given by the Ribble Valley Borough Council and in 2017 preliminary construction work began.

In January 2018, it is documented on the website that it was discovered that the whole cemetery site, including the Queen Mary's Military Hospital section, was consecrated ground, having been consecrated by the Bishop of Burnley in 1916, and that no construction work could proceed without the Bishop of Blackburn, in whose diocese the cemetery is located, agreeing to remove the consecrated status of the cemetery.

Construction work ceased and during 2018-9 applications to request the partial de-consecration of the cemetery were considered, the Bishop of Blackburn made his decision and the consecrated status of the cemetery was retained meaning that construction work no longer recommenced.

Document Title	Date	Brief Description of Document & Nature of Evidence
25 Inch OS Lancashire Sheets LV.5 and LV.6	1894	The earliest Ordnance Survey 25 inch map for this area surveyed in 1892 and published in 1894. ¹

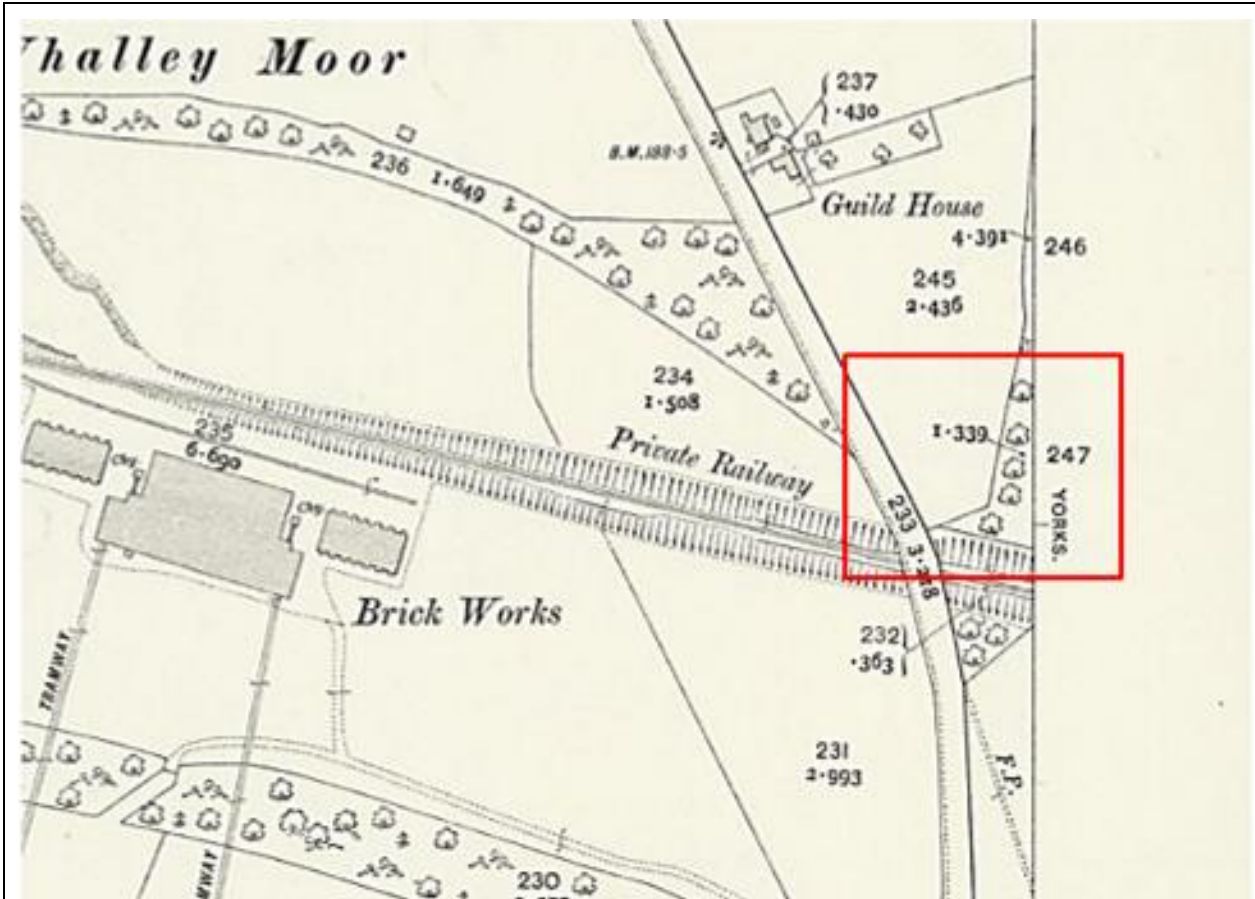
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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



Observations		Neither the cemeteries nor the application route is shown.
Investigating Officer's Comments		The application route did not exist in 1892.
25 inch OS Lancashire Sheets LV.5 and LV.6	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.

legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

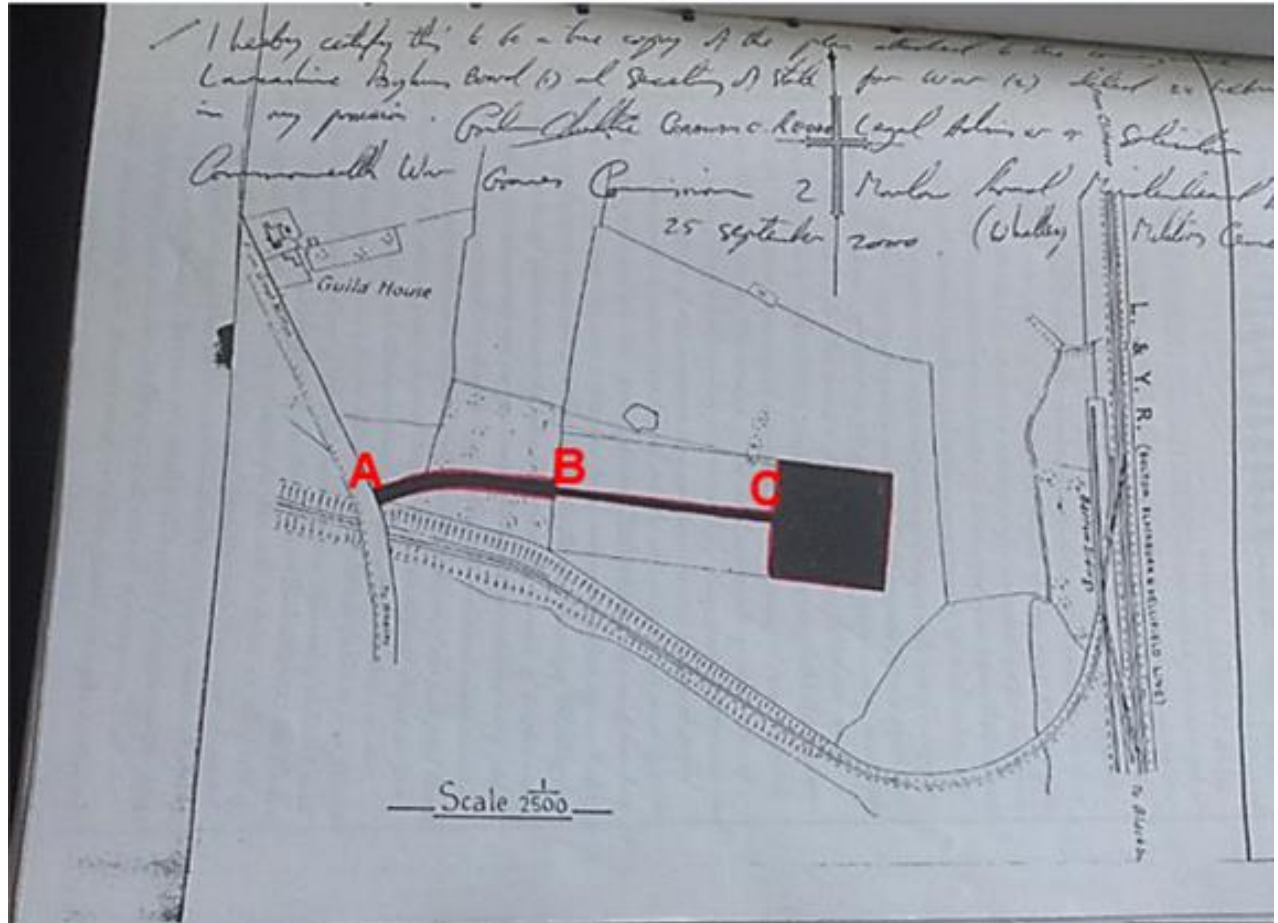




Observations		Neither the cemeteries nor the application route is shown.
Investigating Comments	Officer's	The application route did not exist in 1910.



1916 Indenture	1916	Plan and transcript of an Indenture (written agreement) submitted by applicant in support of their application. Original documents held by the Commonwealth War Graves Commission.
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Photograph of plan included as part of the Indenture

I hereby certify this to be a true copy of the original conveyance in my possession

**Graham C Reddie
 Legal Adviser and Solicitor
 Commonwealth War Graves Commission
 2 Marlow Road
 Maidenhead
 Berks
 25.9.2000**

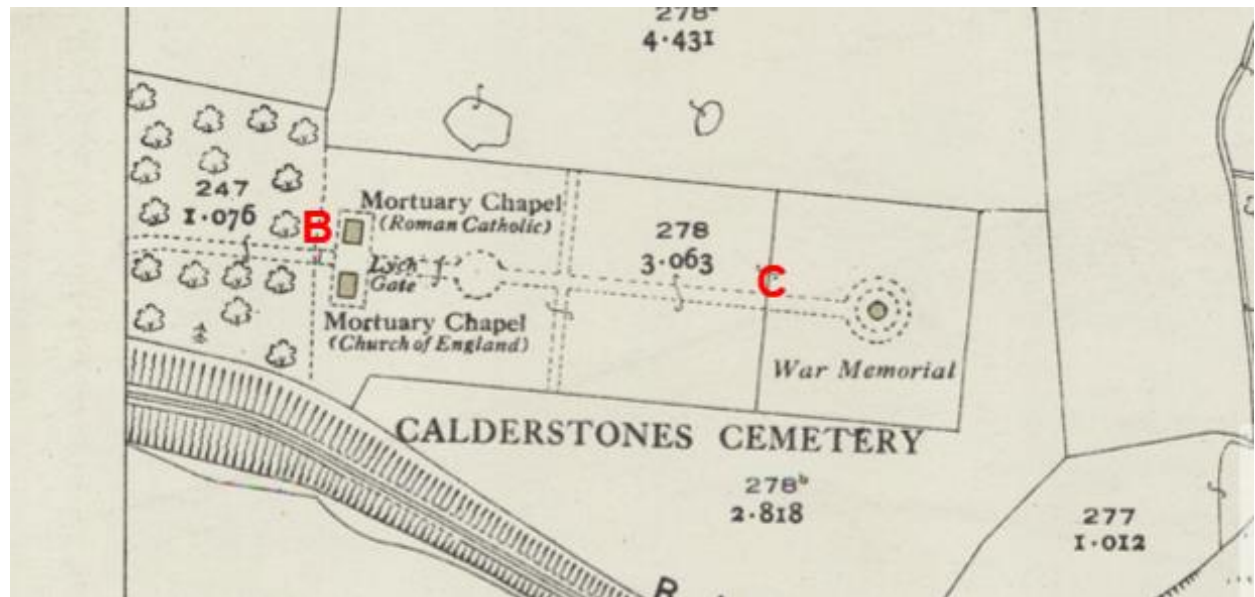
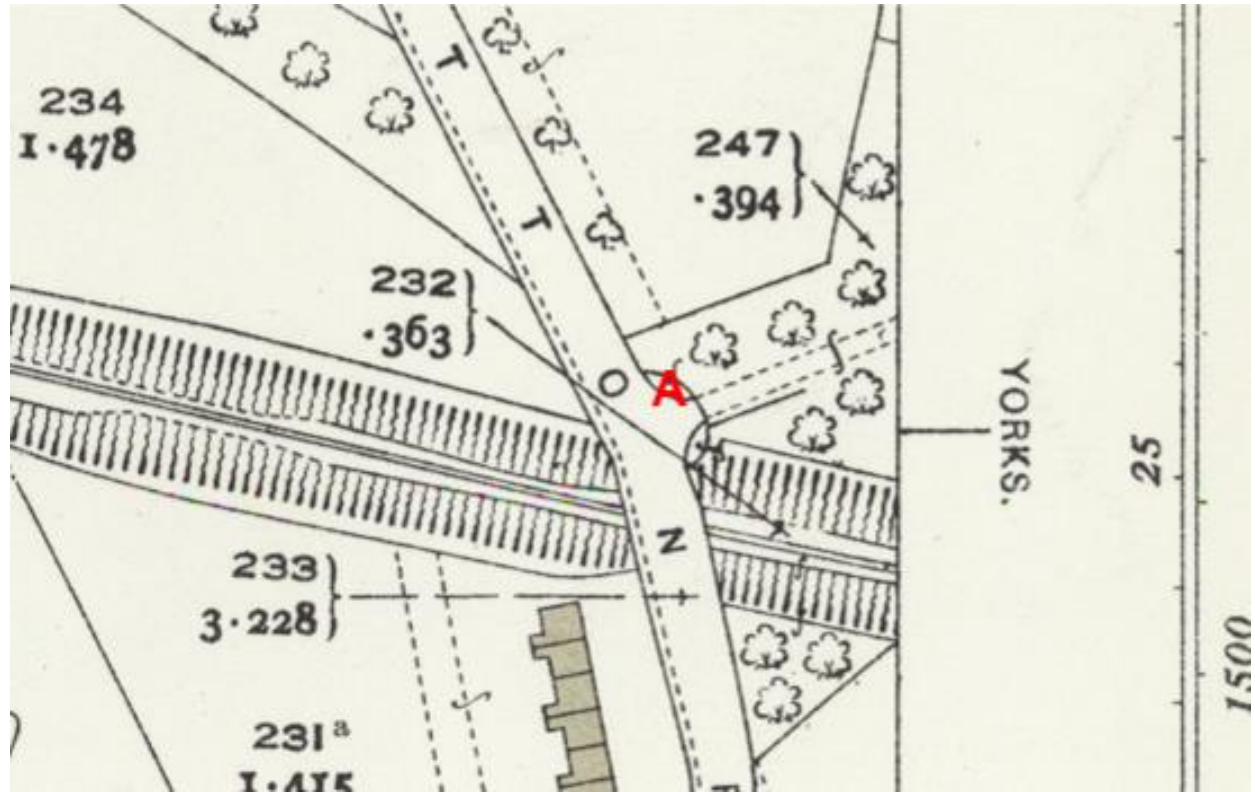
Applicant submitted transcript of Indenture which was provided by the Commonwealth War Greaves Commission and certified by them.

Observations		The transcript of an indenture (agreement) dated 24 th February 1916 between the Lancashire Asylums Board
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		<p>(vendors) and the Secretary of State for the War Department details the transfer to the Secretary of State of the land which subsequently became the Queen Mary's Military Hospital Cemetery.</p> <p>The agreement refers to a 'right of way' along the route coloured red on the plan (the application route) and states that the vendors (the Asylum Board) were required to construct a 'road' over which the said right of way was to be granted and to maintain the road to ensure that it was fit for traffic travelling to and from the burial ground. It did not specify the type of traffic or whether this use was public or private.</p> <p>For a payment of £110 the Vendors were to transfer to the Secretary of State for the War Department the piece of land which is now known as the Queen Mary's Military Hospital Cemetery 'together with a right of way at all times and for all purposes connected with the use and enjoyment of the said piece of land conveyed over the strip of land coloured dark red on the plan' (the application route).</p>
Investigating Officer's Comments		<p>It appears that in 1916 there was effectively a split in the cemetery whereby the land east of point C was 'separated' off from the hospital cemetery to be used specifically as a site for a war memorial and as a cemetery to bury soldiers. From that time onwards it was owned as a separate plot but with access rights created along a roadway to be constructed by the Asylum Board 'at all times and for all purposes connected with the use and enjoyment' of the intended war memorial and cemetery.</p> <p>There is no specific reference to the creation of public rights and it is stated that the right of way was along a roadway which was required to be suitable for use by 'traffic' to and from the burial ground.</p> <p>The 'right of way' was to be open at all times and was for the use and enjoyment of visiting the intended memorial/cemetery but such visitors could perhaps be regarded as private (to</p>

		this particular destination) or as public (because it would be open to everyone).
25 Inch OS Lancashire Sheets LV.5 and LV.6	1932	Further edition of 25 inch map (surveyed 1892, revised in 1929 and published in 1932.



Observations		The application route is shown with lines across the route at point A and point C. A lych gate is shown at point B. The war memorial is shown beyond point C with access via the application route A-C.
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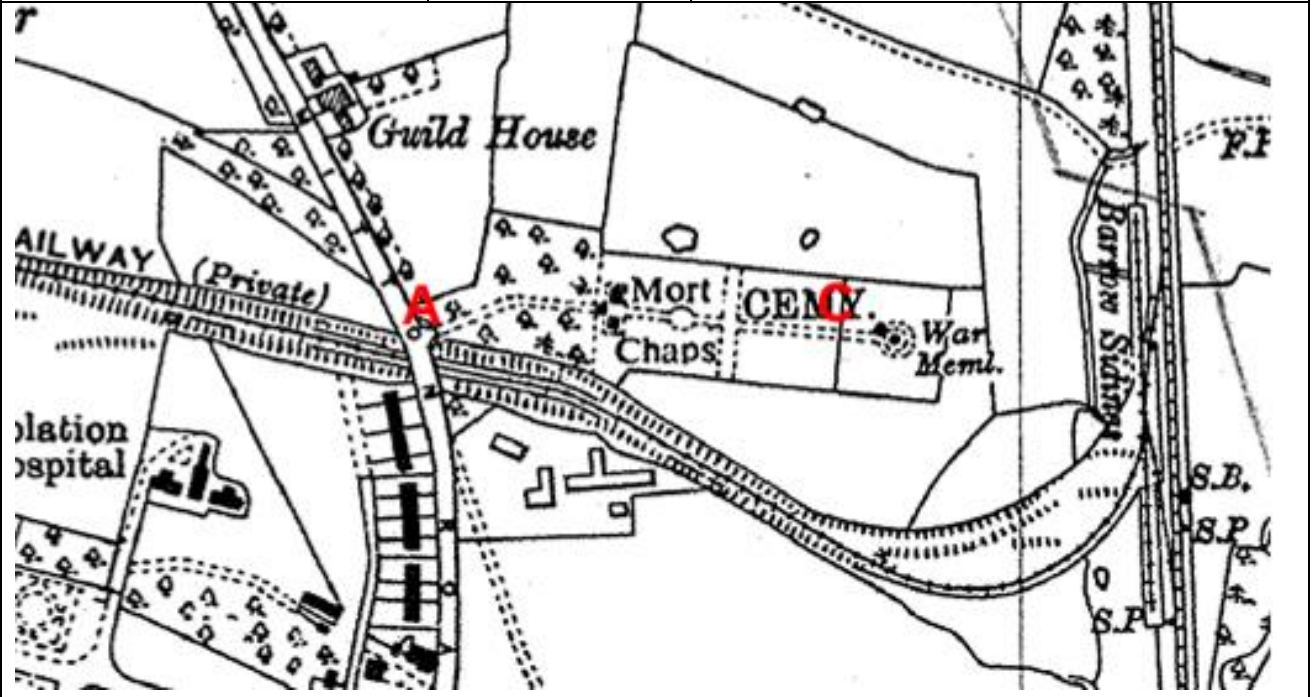
Investigating Comments	Officer's		The application route existed by 1929 and appeared to be capable of being used. Lines across the route at point A and point C suggest the existence of gates – which may – or may not have been accessible. A lych gate was traditionally a roofed gateway to a churchyard, formerly used at burials for sheltering a coffin until the clergyman's arrival.
Aerial Photograph²		1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.



Observations			The application route from point A to point B cannot be clearly seen due to tree coverage. From point B to point C – and continuing to the war memorial – the application route can be clearly seen.
Investigating Comments	Officer's		The application route existed in the 1940s and appeared to be capable of being used although it is not possible to

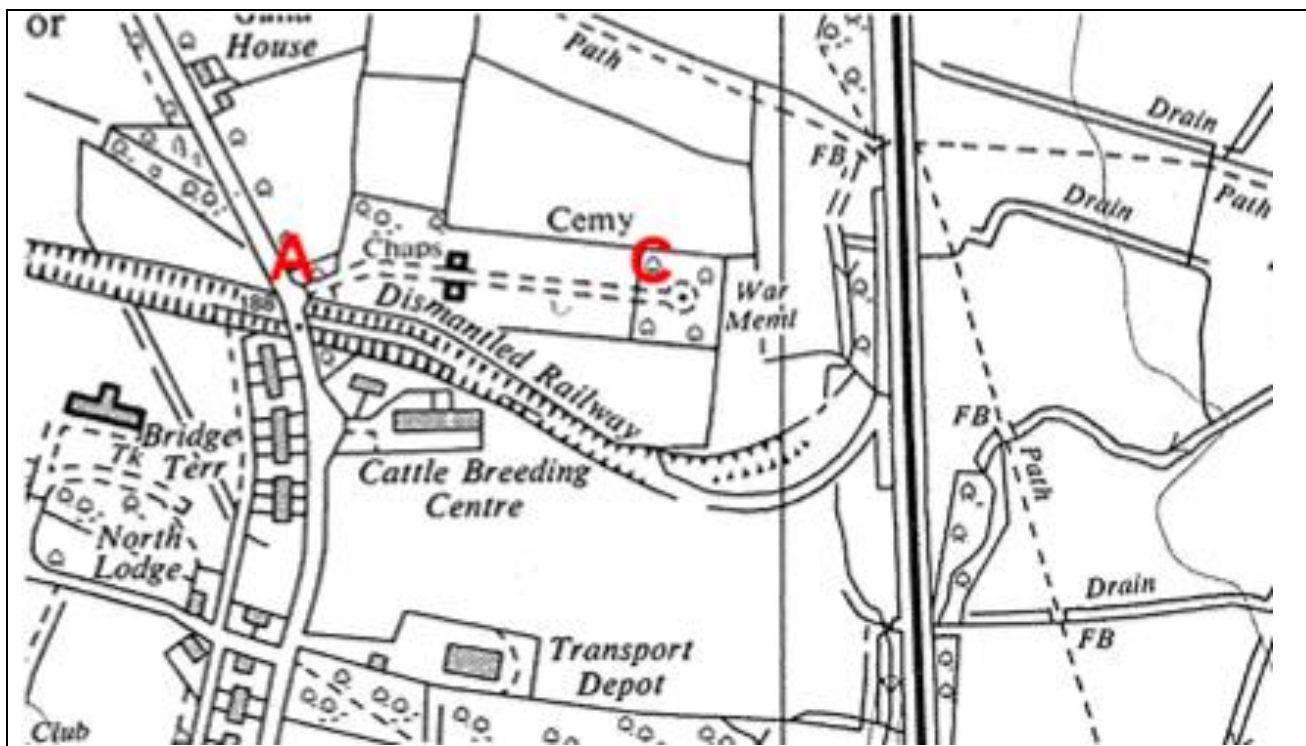
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

		determine from the photograph whether unrestricted access was available.
6 Inch OS Map Sheet SD 73NW	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.

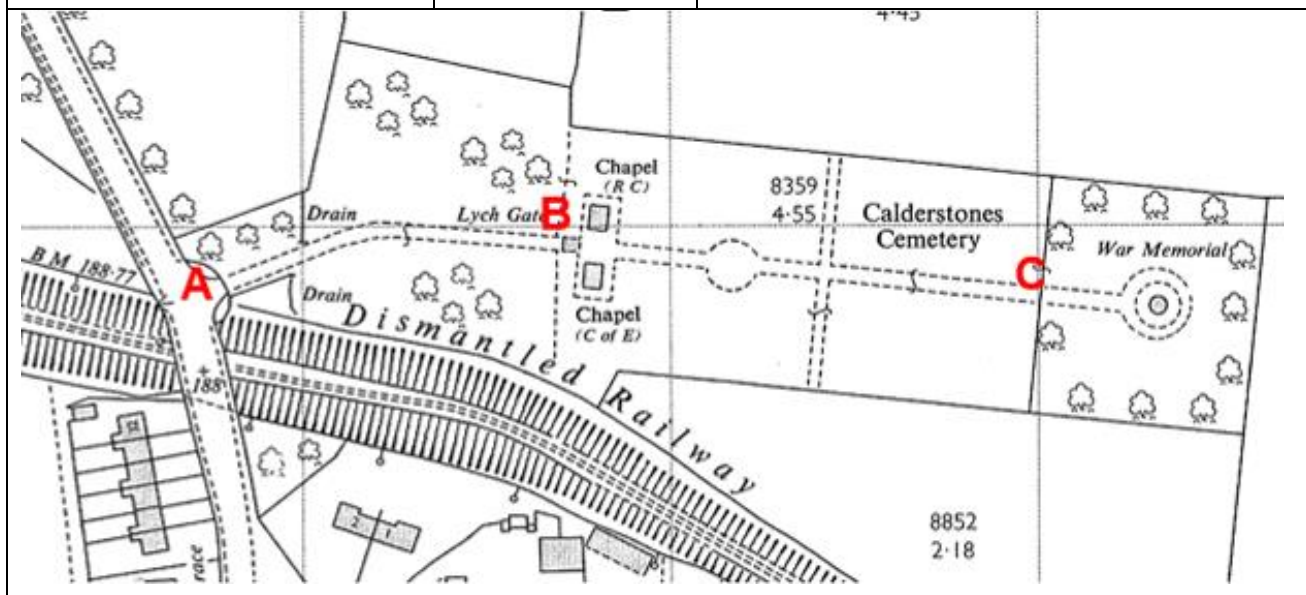


Observations		The application route is shown gated at point A and point C.
Investigating Officer's Comments		The application route existed in the 1930s and appeared to be capable of being used.
6 Inch OS Map Sheet SD 73NW	1970	6 inch OS map revised 1969 and published 1970.





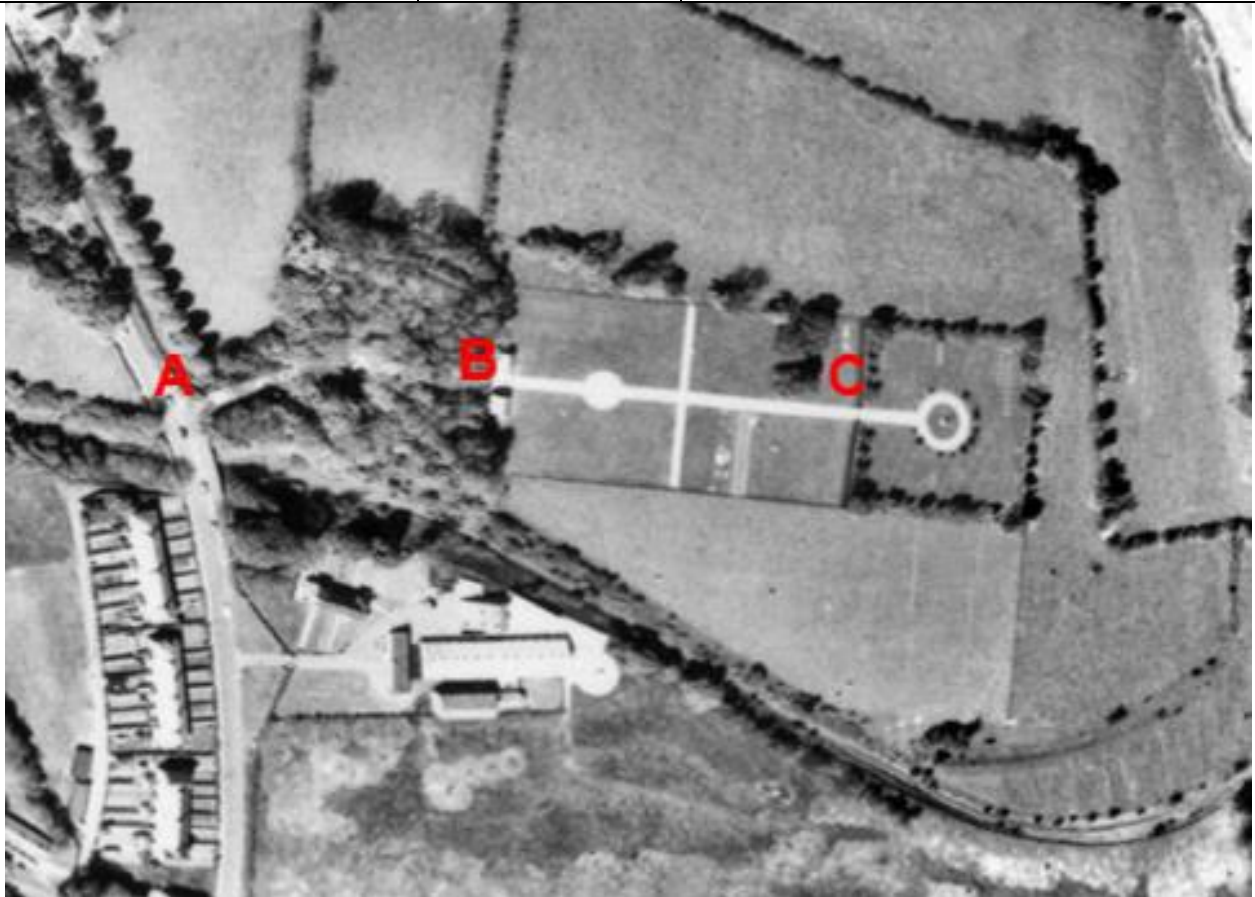
Observations		The application route is shown in the same way that it is shown on earlier editions of OS mapping and provides the only access to the war memorial located east of point C.
Investigating Officer's Comments		The application route existed in 1969 and appeared capable of being used.
1:2500 OS Sheet SD 7237 & SD7337	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published in 1968 as national grid series.




Observations		The application route is shown in the same way that it is shown on earlier
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		editions of OS mapping and provides the only access to the War Memorial located beyond point C.
Investigating Officer's Comments		The application route existed in 1968 and appeared capable of being used.
Aerial photograph	1960s	Black and white aerial photography available to view on GIS and 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. Most images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.



Observations		The application route can be clearly seen and provides access to the War Memorial east of point C.
Investigating Officer's Comments		The application route existed in the 1960s and appeared to be capable of being used although it is not possible to determine from the photograph whether unrestricted access was available.

Google Earth Pro Aerial Photograph	2000	Image captured in 2000.
 <p style="text-align: center; font-size: small;">Image © 2022 The GeoInformation Group</p>		
Observations		The application route cannot be seen between point A and point B due to tree coverage. From point B to point C the route is clearly visible.
Investigating Officer's Comments		The application route existed in 2000 and may have been capable of being used although it is not possible to determine from the photograph whether unrestricted access was available.
Aerial Photograph	2017-2019	Aerial photography provided by Ordnance Survey's MasterMap Imagery layer. Images flown between 2017-2019.



Observations		The route between point A and B is not visible due to tree coverage. From point B to point C a faint track can be seen but it is clear from looking at the photograph that the area was no longer being maintained. This is in stark contrast to the Queen Mary's Military Hospital Cemetery which can be clearly seen as a well-maintained area.
Investigating Officer's Comments		The application route was still the only access to the Queen Mary's Military Hospital Cemetery although it is not possible to determine from the photograph whether unrestricted access was available.
Cover of the Beachcroft Wansbroughs Sale Pack	2000	Copy document provided by the Applicant.

Disposal of Surplus Property

by the

Secretary of State for Health

Sale Pack relating to
Calderstones Cemetery Whalley

Copyright © Beachcroft Wansbroughs, September 2000

Observations

This single page cover sheet is listed as an item submitted in support of the application. It is dated September 2000

		and appears to be the title page of a document prepared by Beachcroft Wansbroughs Solicitors for the sale by the Secretary of State for Health of Calderstones Cemetery in Whalley. It describes the cemetery as 'surplus property'.
Investigating Officer's Comments		The page submitted tells us that prior to 2000 the land crossed by the application route was owned by the Secretary of State for Health and that it was to be sold as it was no longer required. It does not provide any specific information about the application route although the fact that the land was owned prior to 2000 by the Secretary of State may have been relevant if user evidence had been submitted in support of the application (as the land would have been considered in law to be 'Crown land' to which certain exceptions may have applied). The page submitted does not assist in determining whether any public rights of access exist along the application route.
Further Conditions of Sale – Lot 35 – Calderstones Cemetery	2000	The applicant submitted a 5-page extract from the Beachcroft Wansbroughs Sale Pack which related specifically to the sale of Calderstones Cemetery. The document referred to a plan but this was not included.
Observations		The five-page extract refers to the land to be sold being shown on a plan and edged in red although no plan was submitted by the applicant. It describes this land as having been purchased by the Lancashire Asylums Board in three parts – with two parts purchased in 1906 with reference to 1906 Conveyance 1 and 1906 Conveyance 2 and another in 1915 – referred to as the 1915 Conveyance. It continues by stating that the sale of the land is to be subject to the transfer of any rights which are still capable of being assigned or transferred as listed in 10 deeds and documents listed. This list includes the two 1906 conveyances and the 1915 conveyance in addition to a number of others. It also includes in the list '3.6 A sentence of Consecration

		dated 1916'. Copies of the 10 deeds and documents listed are not included.
Investigating Comments	Officer's	The extract submitted in support of the application makes no specific reference to the application route or to the existence of public rights. It does however refer to the fact that the land was consecrated in 1916 and that any benefits or rights detailed in the 10 listed deeds and documents – which were still capable of being assigned or transferred – were to be transferred on completion of the sale suggesting that if any rights of public access were included in those documents, they would still exist following sale of the land.
Land Registry TR 1 Form	Undated but believed to be circa 2000	The applicant submitted an undated Land Registry TR 1 Form. The TR1 form is a legally binding document that transfers ownership of a property from one party to another. On completion of a sale the information contained on the TR1 form will then be used when the transfer is registered at the Land Registry and is noted on the Official Copy Entries. As part of the conveyancing process a Land Registry TR1 form must be sent on completion to the Land Registry by the seller's conveyancer to help finalise the sale.

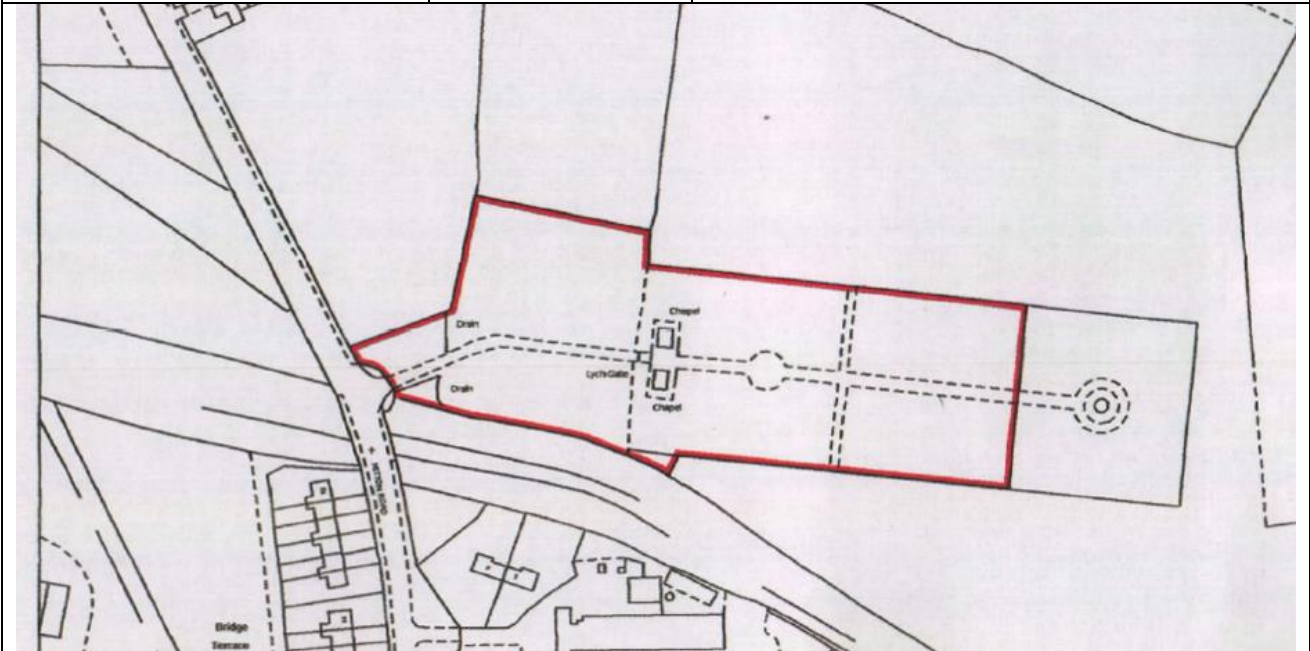
- 12.1 The Property is sold subject to but with the benefit of (as the case may be) the agreements declarations rights covenants and obligations contained mentioned or referred to in the deeds and documents listed below, insofar as they are capable of being assigned or transferred still capable of being enforced and affect or relate to the Property:-
- 12.1.1 The 1906 Conveyance
- 12.1.2 The Second 1906 Conveyance
- 12.1.3 A Conveyance dated 26 June 1908 made between the Lancashire Asylums Board (1) and the Lancashire and Yorkshire Railway Company (2)
- 12.1.4 The 1915 Conveyance
- 12.1.5 A Conveyance dated 24 February 1916 made between the Lancashire Asylums Board (1) and His Majesty's Principal Secretary of State for the War Department (2)
- 12.1.6 A Sentence of Consecration dated 30 June 1916
- 12.1.7 A Conveyance dated 14 October 1955 made between the Minister of Health (1) and the Milk Marketing Board (2)
- 12.1.8 A Conveyance dated 5 December 1966 made between the Minister of Health (1) Charles Dearden (2) and George Brownlow and Minnie Brownlow (3)
- 12.1.9 A Conveyance dated 14 July 1969 made between the Secretary of State for Social Services (1) and Milk Marketing Board (2)
- 12.1.10 A Conveyance dated 16 June 1972 made between the Secretary of State for Social Services (1) and George Brownlow and Minnie Brownlow (2)

Observations		<p>The form has been partly completed. It lists the seller as The Secretary of State for Health and describes the property to be sold (Calderstones Cemetery) in the same words as it is described in the 2000 Sale document detailed above. It refers to a plan of the property to be sold – which was not included.</p> <p>The form is not signed or dated. No Title number is given and there are no details of the purchaser. Documented on the form is the fact that the land was to be sold subject to various provisions set out in the 10 deeds/documents listed – which are the same as those listed in the Sale document listed above.</p>
Investigating Officer's Comments		<p>The form was submitted in support of the application but makes no specific reference to the application route or to the existence of public rights. No plan is included so it is not clear what was the extent of land to be sold i.e. whether it was inclusive of the Queen Mary's</p>



		<p>Military Hospital Cemetery or not. It does however refer to the fact that the land was consecrated in 1916 and that any benefits or rights detailed in the 10 listed deeds and documents – which were still capable of being assigned or transferred – were to be transferred on completion of the sale. This suggests that if any rights of public access were included in those documents – which were still capable of being transferred - they would still exist following sale of the land.</p> <p>The fact that the seller is listed as being The Secretary of State for Health is compatible with the information considered above in that the cemetery was sold by the Secretary of State in 2000 and before that time was owned and maintained as part of the hospital site.</p>
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Land Registry documentation Title LA585518



Observations

Since the sale of Calderstones Cemetery by the NHS the Friends of Calderstones Cemetery have recorded 28 changes to the recorded ownership of the site <https://www.calderstones-cemetery.co.uk/copy-of-blank-page-land-registry-records/> - all of which are said to be documented under consecutive title documents registered as LA 58818.

		<p>The Investigating Officer has not had sight of all these changes – although it was noted that title documents taken from the Land Registry in 2016, 2017, 2019 and 2021 have been posted on the website. These documents were inspected, and it was found that none included any reference to a right of access across the site in the Charges Register which is said to contain details of any charges and other matters that affect the land.</p> <p>The Investigating Officer checked on the Land Registry website and the most recent Register of Title for the land crossed by the application route has an edition date of 15 October 2019.</p> <p>It records the fact that the land was first registered with the Land Registry on 21st March 2001 and the site is described as the 'Ribble Valley Remembrance Park, Mitton Road, Whalley, Clitheroe'.</p> <p>The plan showing the boundary of the site shows that all the application route is included and a note in the Title document refers to the fact that the plan showing the boundary of the site was revised in 2006. This revision appears to have been of the Ordnance Survey base map only – and not the boundary of the registered site.</p> <p>The owner (Title Absolute) is registered as being Remembrance Parks Construction Limited who are recorded as having purchased the site on 15th October 2019.</p> <p>When originally registered in 2001 (and over subsequent changes in registration since) only two charges or matters affecting the land to be registered were recorded. The first was in reference to a conveyance made in 1955 between the Minister of Health and the Milk Marketing Board which it is stated was not produced at first registration.</p> <p>The second refers to rights granted in 1972 by the Secretary of State for Social Services to George and Minnie Browlow relating to the drainage of adjacent land.</p> <p>No reference is made to the Indenture made in 1916 relating to a right of way</p>
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		along the roadway 'at all times and for all purposes connected with the use and enjoyment' of the Queen Mary's Military Hospital Cemetery.
Investigating Comments	Officer's	The cemetery crossed by the application route has been in private ownership since 2001. The existence of a public right of way would not normally be included in Land Registry documentation. However the Investigating Officer would normally expect documented private rights of access – or in this case – details of a right of access and maintenance responsibilities relating to a road crossing the land to be included in the Land Charges Section.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an 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		The application route is not recorded on the parish survey map.

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

		<p>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 recorded as a public right of way.
Investigating Officer's Comments		The application route was not considered to be a public right of way which should be recorded on the Definitive Map during the preparation of the First Definitive Map in the 1950s through to the 1960s.
Highway Adoption Records including maps derived from the 1929 Handover Maps	1929 to present day	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

		<p>county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The application route is not recorded as a publicly maintainable highway in the County Council records.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it is not a public right of way.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under		The owner of land may at any time deposit with the County Council a map

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

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

Summary

The application did not exist until at least 1916 when an agreement was made between the Lancashire Asylum Board and Secretary of State for the War Department for the creation of the war memorial and cemetery which was to be accessed along a roadway to be constructed by the Asylum Board. This right of way



was to be accessible at all times and for all purposes in connection with the use and enjoyment of the Queen Mary's Military Hospital Cemetery.

That same year the land crossed by the application route was consecrated and has remained as such ever since.

No user evidence was submitted as part of the application although it appears that access may have been available along the route since its construction in the early 1900s – if the gates at points A, B and C were not locked. Any such use would have been 'by right' (i.e. the right given in the document described above) not 'as of right' and therefore would not be of a quality from which to infer or presume dedication.

Calderstones Cemetery was in the ownership of the NHS until 2001 when it was sold to a private company. Documentation produced in preparation for that sale listed rights affecting the land – including reference to the 1916 indenture which created a right of way along the application route to access the Queen Mary's Military Hospital Cemetery but Land Registry documentation following registration of the land in 2001 did not include details contained in the 1916 indenture and only referred to two matters affecting the land to be registered.

The Commonwealth War Graves Commission, in correspondence with the Calderstones NHS Trust in 1994, replied to what appears to have been an invitation for them to purchase the Queen Mary's Military Hospital Cemetery from the NHS Trust. They clearly make the point that they already owned it and that should the rest of the cemetery (which did not include war graves) be sold then they wished to be kept informed because of the potential affect on their access. They clearly explain in that letter that they had the benefit of a right of way over the application route and a covenant that stated that the NHS should maintain the roadway and the Queen Mary's Military Hospital Cemetery. Whilst no reference was made to public rights this is not unexpected in this context.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the application route is owned by Remembrance Parks Construction Limited.

Information from the Applicant

The applicants submitted the following documents in support of their application:

1. A copy of the front page of the Beachcroft Wansboroughs 'Sale Pack relating to Calderstones Cemetery Whalley'.
2. A copy of the 'Further Special Conditions of Sale - Lot 35 Calderstones Cemetery, Mitton Road Whalley'.
3. A copy of the Land Registry TR1, 'Transfer of whole of registered title'
4. A copy of the 1916 Indenture which the applicant claims clearly confirms the establishment and location of the right of way.
5. A photograph of a copy of the location map of the right of way taken from the original Sale Pack.



6. A copy of a letter dated 19 May 1994 from the Commonwealth War Graves Commission to Calderstones NHS Trust explaining that they own the Queen Mary's Military Hospital Cemetery and have a right to access the cemetery along the roadway through Calderstones Cemetery (the application route) and also that the NHS Trust would maintain the roadway and the Queen Mary's Military Hospital Cemetery in a 'decent state'.

The applicant also referred to the fact that there was an 'enormous amount of photographic and documentary evidence available to support the existence and use of the Right of Way' on the website calderstones-cemetery.org.uk.

Information from Others

No information has been provided by others.

Information from the Landowner

An employee acting on behalf of the landowners (Remembrance Parks Construction Limited) emailed the County Council when they were first notified by the applicants of their intention to submit the application to record a public footpath across their land.

They explained that it was their understanding that the right of way was established in 1916, specifically for those wishing to visit Queen Mary's Military Hospital Cemetery (QMMHC) and that at that time the land was owned by the NHS (it was in fact owned by the Lancashire Asylums Board at the time) and the cemetery established for the burial of those patients from the hospital who died. They explained that a third of the cemetery was passed over to the Secretary of State for the burial of soldiers, as the hospital was initially used as a military hospital and that the right of way gave access to those wishing to visit QMMHC.

They understood that the cemetery remained in operation right through to 2000, when it was sold to the public sector and that 'presumably, during the operation of the cemetery access was available to QMMHC, during operational hours of the cemetery only'.

They further commented that construction had started on their site but, due to a number of problems, had stalled at present. They explained that access in the past had resulted in some vandalism of the site, so they had placed gates on the access and provided keys to the War Graves Commission, who maintain QMMHC, and they were happy with the access arrangements. Further to this, they had placed a notice on the gate and made arrangements with the local hospital for any individuals wishing to access QMMHC, by asking them to collect a key from reception at the hospital. This, they stated, had occurred on a very limited number of occasions since 2017 and they had received no complaints.

They stated that they were still hoping to progress the development of the site and that access would continue to be provided to QMMHC. They stated that should the crematorium be built it would be open throughout normal operational hours, including weekends and access to QMMHC would be back to normal, or better.



Whilst the site was being developed, health and safety dictates that they would need to control access through the site but they would continue to provide access to anyone who requested it during the period of development.

As current landowners they did not believe that there was a legal right of way in place, other than a private arrangement consented to in the original sale of the land. They consider that the original sale document is sufficient to ensure that themselves and any subsequent purchasers of the land, maintain the access to QMMHC.

They consider that the applicants wish to disrupt the development of their site but hope that they have explained the background and their commitment to show that access to QMMHC will be continued upon completion of the development, in much the same way it has been provided since 1916 without the need for this application to record a public right of way being needed.

In response to further consultation Remembrance Parks Construction Limited reiterated the information provided above, again noting the covenant in their title documents to maintain access to QMMHC which has been in place since 1916 and reaffirming that they fully intend to continue to comply with this.

Assessment of the Evidence

The Law - See Annex 'A'

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

Conclusion

There is no express dedication of public rights and no user evidence forms have been provided in support of this application. However, there is evidence of private rights and even if there was user evidence it would be very difficult to satisfy the criteria under s.31 Highways Act 1980 and instead Committee will need to consider on balance whether dedication may be inferred at Common Law.

Committee is advised to consider whether the evidence presented above from the map and other documentary evidence coupled with the evidence on site does on balance indicate that the route should be recorded as a public right of way.

Map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report.

The cemetery and war memorial came into existence in 1916 and it would appear that access may have been available along the route from such time (provided that the gates at points A, B and C were not locked) until the cemetery portion of the route was first sold in 2000 into private ownership.

The Commonwealth War Graves Commission appear to have the benefit of a right of way over the application route and a covenant that stated that the NHS (the then owner) should maintain the roadway. Such right of way was to be accessible at all

times and for all purposes in connection with the use and enjoyment of the Queen Mary's Military Hospital Cemetery.

Map and documentary evidence supplied in support of the application is limited with no map or documentary evidence supporting the use of the route applied for as a public right of way in addition gates are referred to at various points along the route with photographic evidence confirming their existence and still in situ today.

Evidence from the current owners, does not indicate that the owners (or previous owners) intended dedicating highway rights. Reference has been made by the owner that the land held no public right of way with access being for the purpose of visiting the war memorial and associated graves. Over the years the owners have stated that a number of signs were erected. Any use for the purpose of visiting the cemetery or memorial would be 'by right' not 'as of right' and there is no other reason to use that cul de sac from Mitton Road. Accordingly, it is advised that no inference of a dedication of highway under common law can be drawn.

In addition, the claimed route is situated on consecrated ground, previously it has argued that it is not be possible to presume the dedication of a public right of way across consecrated ground as consecration sets the land aside for sacred purposes only. Any other use of the land would require the grant of a faculty from the Chancellor of the diocese. In this case there is no evidence of the existence of such a faculty and, although in some circumstances it may be possible to presume the existence of a so-called 'lost faculty' it is not clear whether a faculty could dispose of a permanent interest in the land or simply grant a licence for its use which could be revoked by another faculty at some time.

The Consistory Court of a diocese has the jurisdiction to hear and determine proceedings for obtaining a faculty. In the case of Diocese of Worcester – Parish of Longdon: Church of St Mary dated (04.11.2010) it was confirmed that a right of way may only be dedicated over consecrated land subject to it being authorised by the grant of an appropriate faculty by the Consistory Court. If no faculty has been granted, no dedication over consecrated ground – whether actual or deemed - can have occurred.

In view of the landowner's consultation response above, it would appear that no such faculty has been granted. The Committee is therefore advised that, on the basis of the information available at the time of writing, a byway on the claimed route from point A to C on the plan cannot be deemed to have been dedicated.

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

Risk management

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

the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-733		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate


N/A



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372800.000000

372900.000000

 Application route
 Public Footpaths

437700.000000

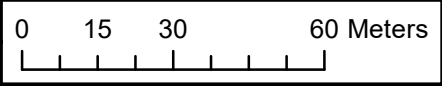
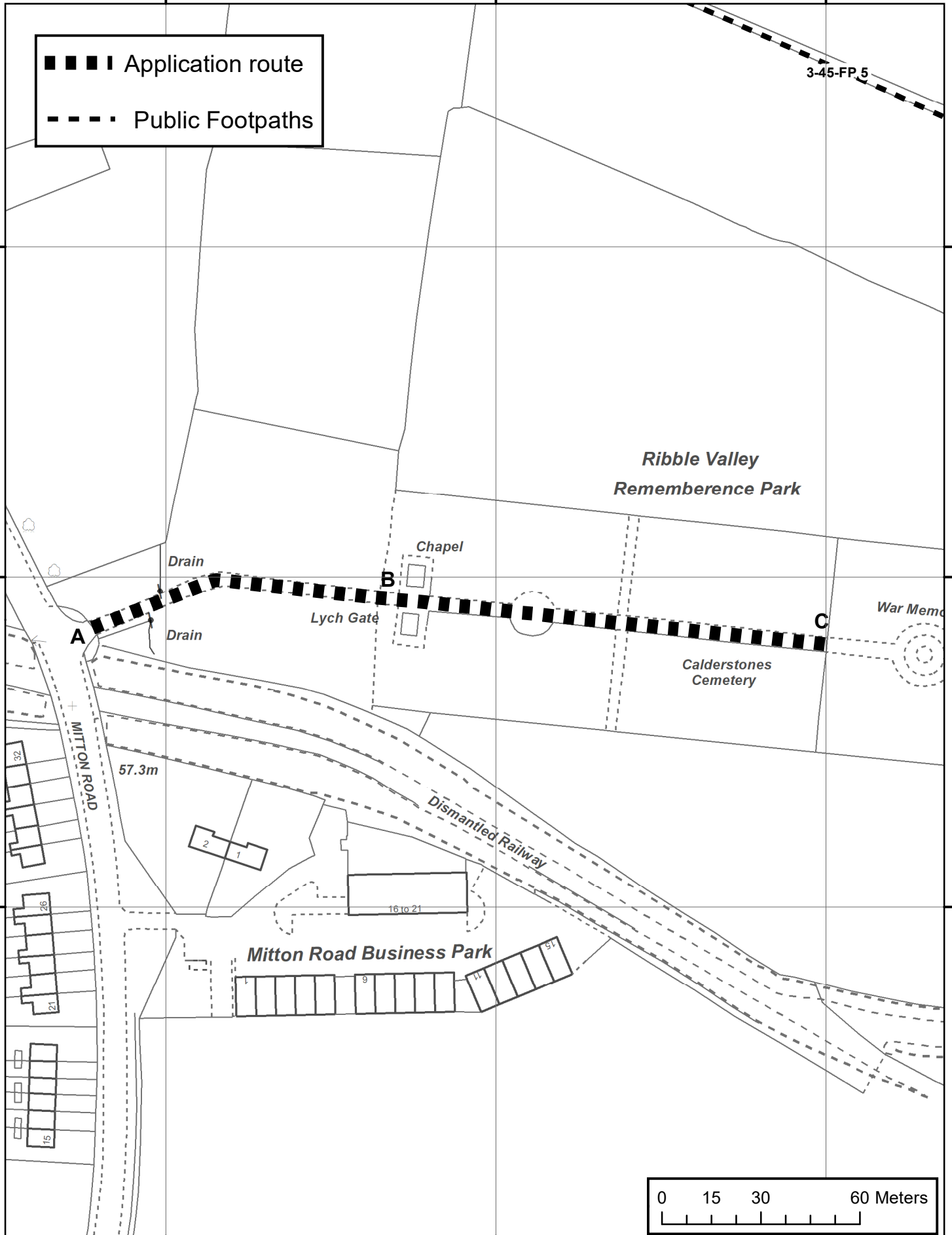
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Public Rights of Way
 PROW@lancashire.gov.uk
 01772 530317

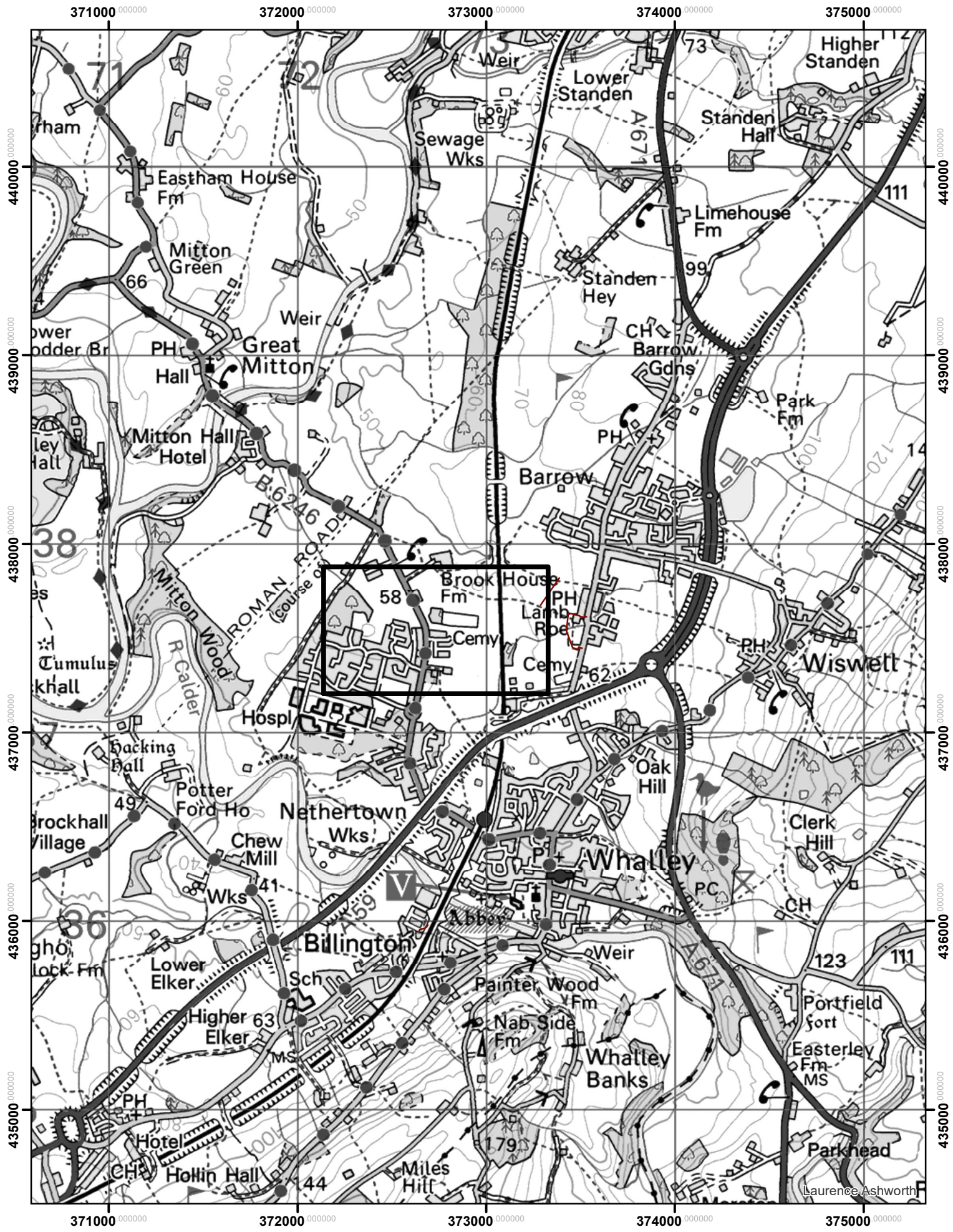
Wildlife and Countryside Act 1981
 Addition of byway open to all traffic (BOAT) from Mitton Road to the
 Queen Mary's Military Hospital Cemetery

1:1,500



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Wildlife and Countryside Act 1981
 Addition of byway open to all traffic (BOAT) from Mitton Road to the
 Queen Mary's Military Hospital Cemetery

1:25000



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Regulatory Committee

Meeting to be held on Wednesday, 14 September 2022

Part I

Electoral Division affected:
Rossendale South

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Investigation into public rights on a section of Holme Lane and Holme Bridge,
Rawtenstall**
(Annex 'A' refers)

Contact for further information quoting file reference 804-744:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors
Group, Simon.Moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Investigation into the existence of public rights on a section of Holme Lane and Holme Bridge, Rawtenstall (shown on the Committee plan between points annotated as points A-B-C) following a request by the County Council's Highway Asset Team for consideration to be given as to whether the route should be recorded on the Definitive Map and Statement of Public Rights of Way.

Recommendation

That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to record bridleway on that part of Holme Lane shown on the Committee plan between points A-B-C.

Detail

At the request of the County Council Asset Management Service an investigation was carried out by the Principal Lawyer in Legal and Democratic Services into the highway status of part of the route known as Holme Lane including the bridge over the River Irwell (as shown on the Committee plan by a bold dashed line between points A-B-C).

Considering all the evidence, the recommendation made by the Principal Solicitor to the Highway Asset Service was not to include the section of Holme Lane or the

bridge on the List of Streets but to notify the Public Rights of Way Manager in Planning and Environment to ask for consideration to be given to recording the route (and surface of the bridge) as a bridleway on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Rossendale Borough Council

Rossendale Borough Council provided no response to consultation.

Landowners/Supporters/Objectors



The evidence submitted by the 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	8006 2199	Junction of route under investigation with 14-4-BW311 and 14-4-FP315
B	8010 2195	Western end of Holme Bridge
C	8011 2195	Eastern end of Holme Bridge

Description of Route

The route investigated is approximately 70 metres long and a site inspection was carried out in March 2022.

It commences at the junction of 14-4-FP315 and 14-4-BW311 south of Langbrook View (point A on the Committee plan).

From the junction at point A, to the west 14-4-BW311 gives access to Holme Manor (a residential care home), Holme Villa and Holme Terrace which comprises 10 residential terraced houses and then continues to cross the A682 which cuts across the route.

From the junction at point A, to the north east public footpath 14-4-FP315 passes between Holme View and properties collectively known as The Holme and follows the bank of the River Irwell to New Hall Hey and is included as part of the route of Irwell Vale Sculpture trail.

The route under investigation runs in a south easterly direction from the junction with the footpath and bridleway (point A) along a street-lit tarmac road which is also included as part of the Irwell sculpture trail. It provided access to further property and to stables before crossing the river Irwell via a stone bridge known as Holme Bridge (points B-C on the Committee plan).

When the route was inspected in March 2022 there was evident damage to the north eastern parapet of the bridge (which was still in use) with temporary barriers running along the length of it.

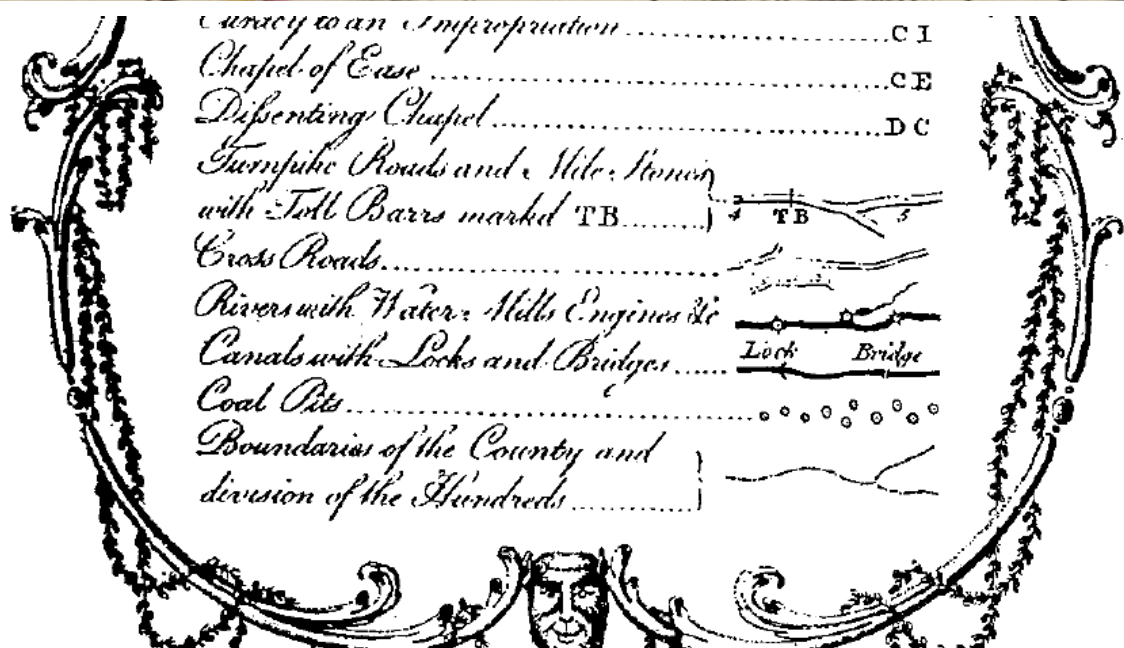
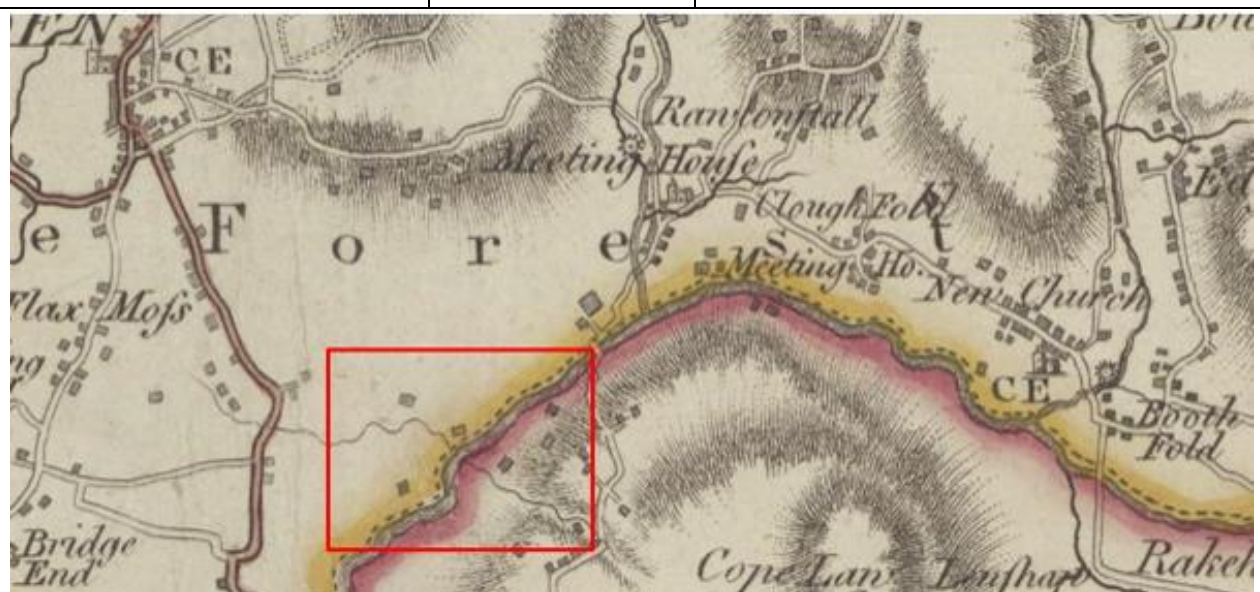
Map and Documentary Evidence

Various 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 route is



not recorded on any county council highway records and investigating it required investigation into the full route.

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



Observations		The route under investigation is not shown although a number of large (un-
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		named) buildings are shown on either side of the River Irwell and close to the watercourse known as Langwood Brook which runs parallel to the route under investigation between point A and point B. No access to the buildings or across the river is shown.
Investigating Officer's Comments		The route was not considered by Yates to form part of a substantial public vehicular route at that time. It may have existed – at least in part – to provide access to the large buildings shown on the map.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



Note: The map was not drawn with north at the top like most maps reproduced in this report

EXPLANATION


Market Towns with the Distance from London

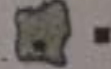
in Measured Miles as **BLACKBURN**

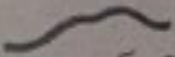
209 ¹/₂


Churches and Chapels +

Turnpike Roads 

Cross Roads 

Parks & Gentlemens Houses 

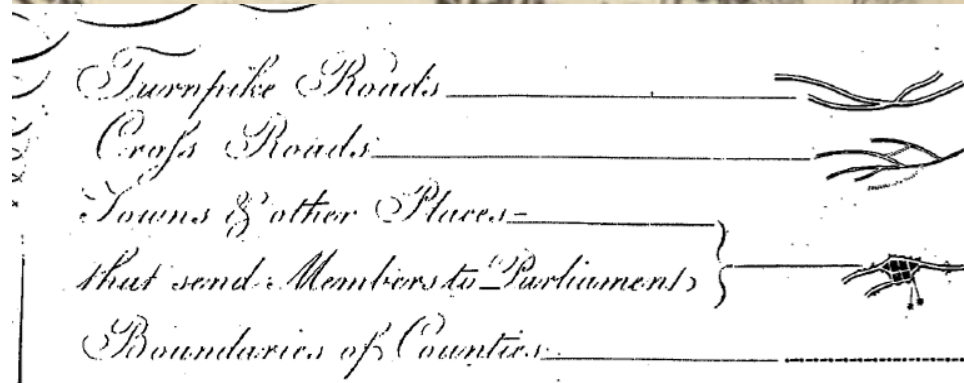
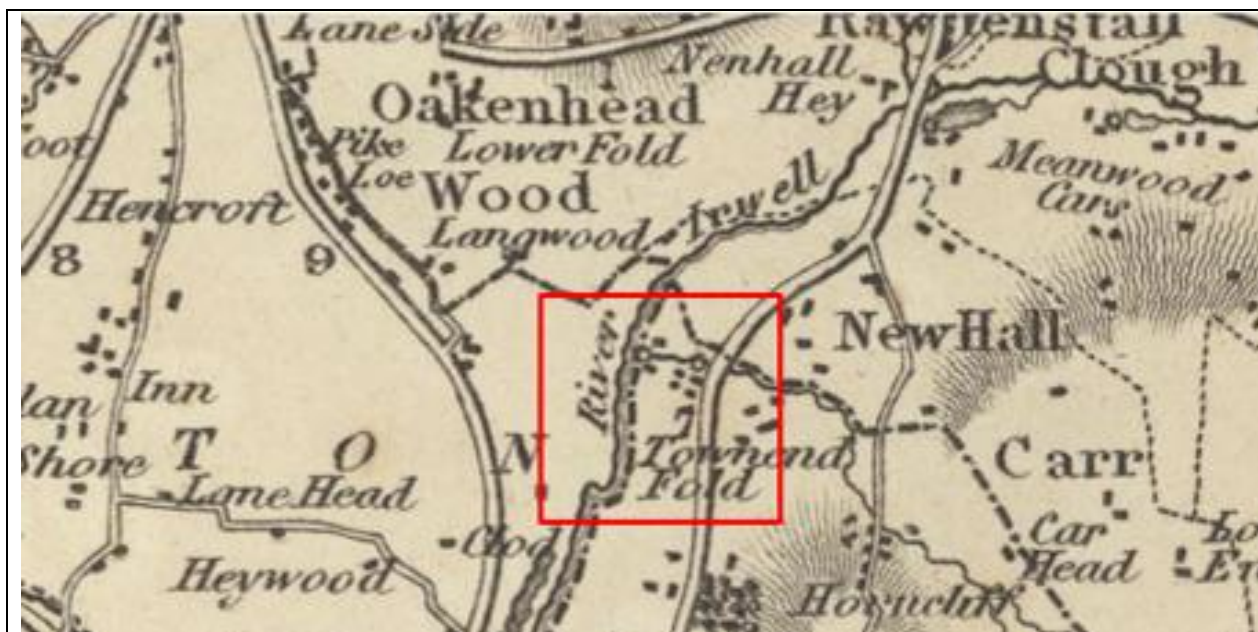
Navigable Canals 

Rivers 

NB. The figures on the Turnpike Roads express the Distance in measur'd Miles between one Market Town and another

Observations		Townsend Fold is shown and buildings labelled as Holme Mill are shown on the opposite side (east) of the River Irwell to the route under investigation. A bridge across the river is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1804-1810 particularly as no mill is shown on the west side of the river.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

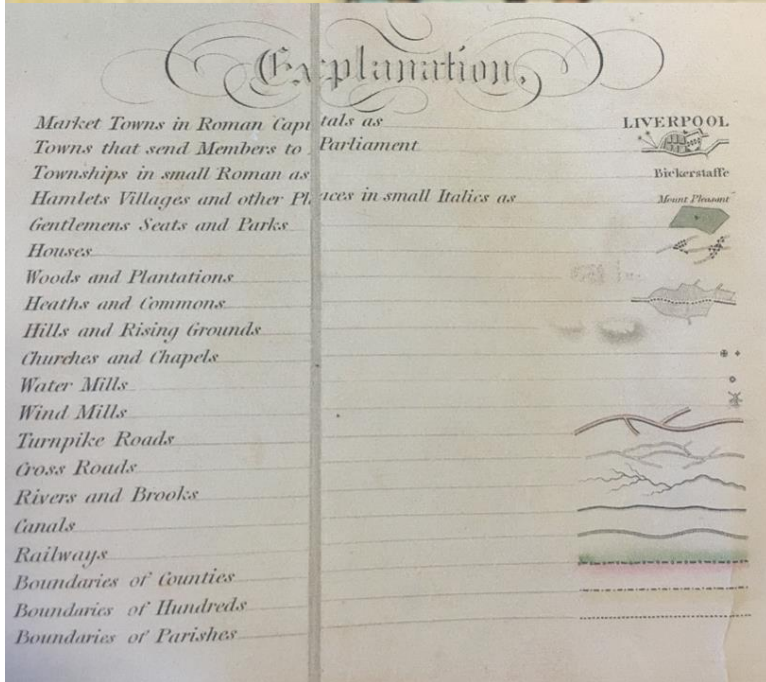




Observations		Townsend Fold exists just off the main road (Bury Road) which was shown as a Turnpike Road. The watercourse (Langwood Brook) and a number of buildings are shown between Bury Road and the River Irwell but the bridge is not shown and the route under investigation on the west side of the bridge (A-B) is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1818 and if it did exist did not appear to have been considered to be a significant public route by Greenwood.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys, but his mapping of the county's communications network was generally considered to be the clearest



and most helpful that had yet been achieved.



Observations

Townsend Fold is not shown and no properties are shown west of Bury Road (on the east side of the River Irwell). West of the river is 'Holme' with a cul de sac road nearly reaching it from the main road (Manchester Road) to the west. The route under investigation – including the bridge – is not shown.

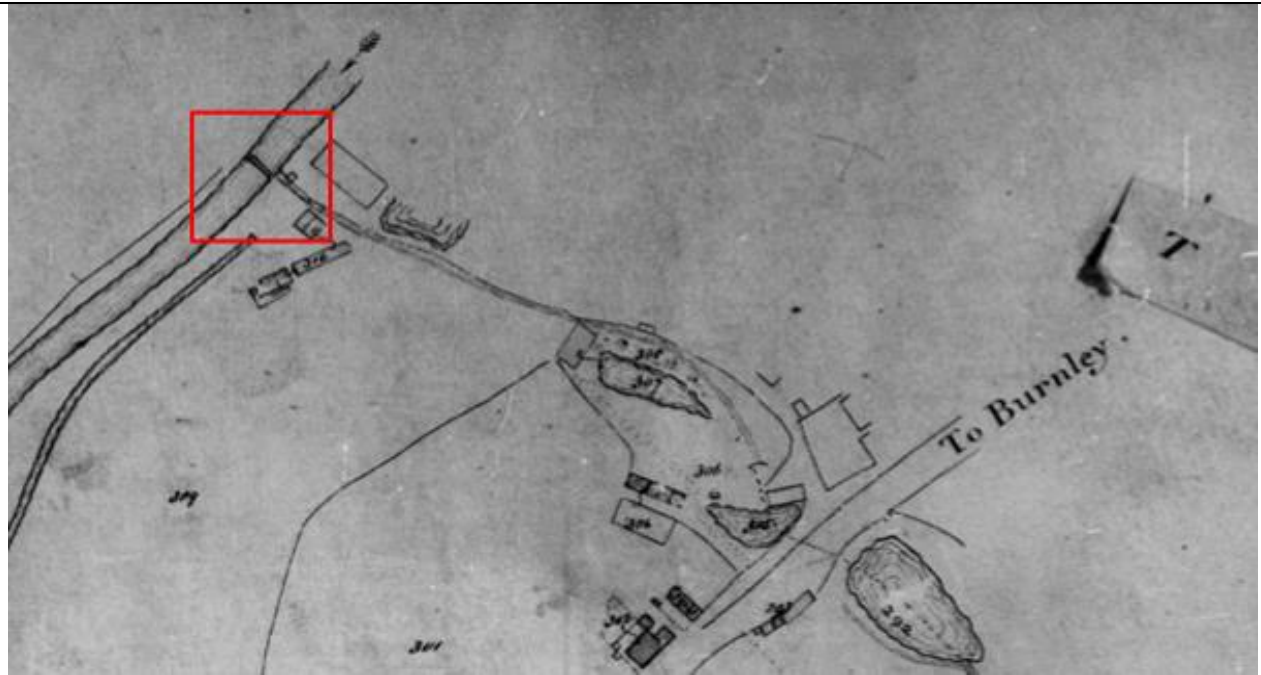
Investigating Officer's

The route under investigation probably did



Comments		not exist in 1830 or if it did exist was not considered to be a significant public route by Hennem.
Information about Holme Bridge and ownership of The Holme from the Holme Manor website		The property known as 'The Holme' and located around point A includes a former farmhouse now used as a residential care home. The website for the care home provides an interesting section on the history of the property. http://holmemanor.co.uk/history
Observations		<p>The information below in italics is taken from the web site:</p> <p><i>The Townsend family lived in Townsend Fold from the 1600's onwards and they owned property and cotton mills, land in Waterfoot (Townsend ST) is named after them. Their main residence was The Holme, which was a mansion demolished in the early 1960's but up to the 1950's the Townsend family still lived there.</i></p> <p><i>There are photos of The Holme, which had a beautiful fountain outside, there are photos of Townsend Fold all taken around a hundred years ago, possibly 120 years ago. There are photos looking toward the Manor and you can see the remains of a huge gate which was a toll gate across Holme Lane, the Townsends collected a toll.</i></p> <p><i>The two Townsend brothers who built the newer part of Holme Manor, which was Holme Farm, were Jonathan and Richard Townsend. There are two date stones at the Manor which bear their initials and the date of 1828.</i></p> <p><i>Jonathan Townsend was a church warden at St James 1817 - 1820, 1822 - 1825 (there is a memorial to the family within the church itself). He donated the 4th bell in 1830, along with his brother Richard he owned Townsend Fold Mill.</i></p> <p><i>The Holme Bridge which brings traffic over the Irwell has a datestone of 1830 with Jonathan and Richard's initials on it.</i></p> <p><i>In a deed traced for Joshua Townsend</i></p>

		<i>(died 1828), of the Holme and for Joshua Townsend (his son and heir) in 1805 there is mention of cottages, 2 barns, a fulling mill, carding engine and outhouses.</i>
Investigating Officer's Comments		<p>The information detailed on the website refers to land and property on both sides of the River Irwell being owned by the Townsend Family with Holme Mill and Townsend Fold Mill on the eastern side and The Holme – described as the family home being located west of the river. Holme Bridge is dated 1830 and is marked with the initials of the owners of The Holme strongly suggesting that the bridge was a private bridge for access to The Holme.</p> <p>No further information has been found with regards to the reference to a toll gate from where the Townsends collected tolls for use of Holme Lane although it was not uncommon in the late 1700s and early 1800s for landowners to set up private toll roads for which they allowed access for payment of a toll. However it does suggest that the lane did not have public rights.</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>

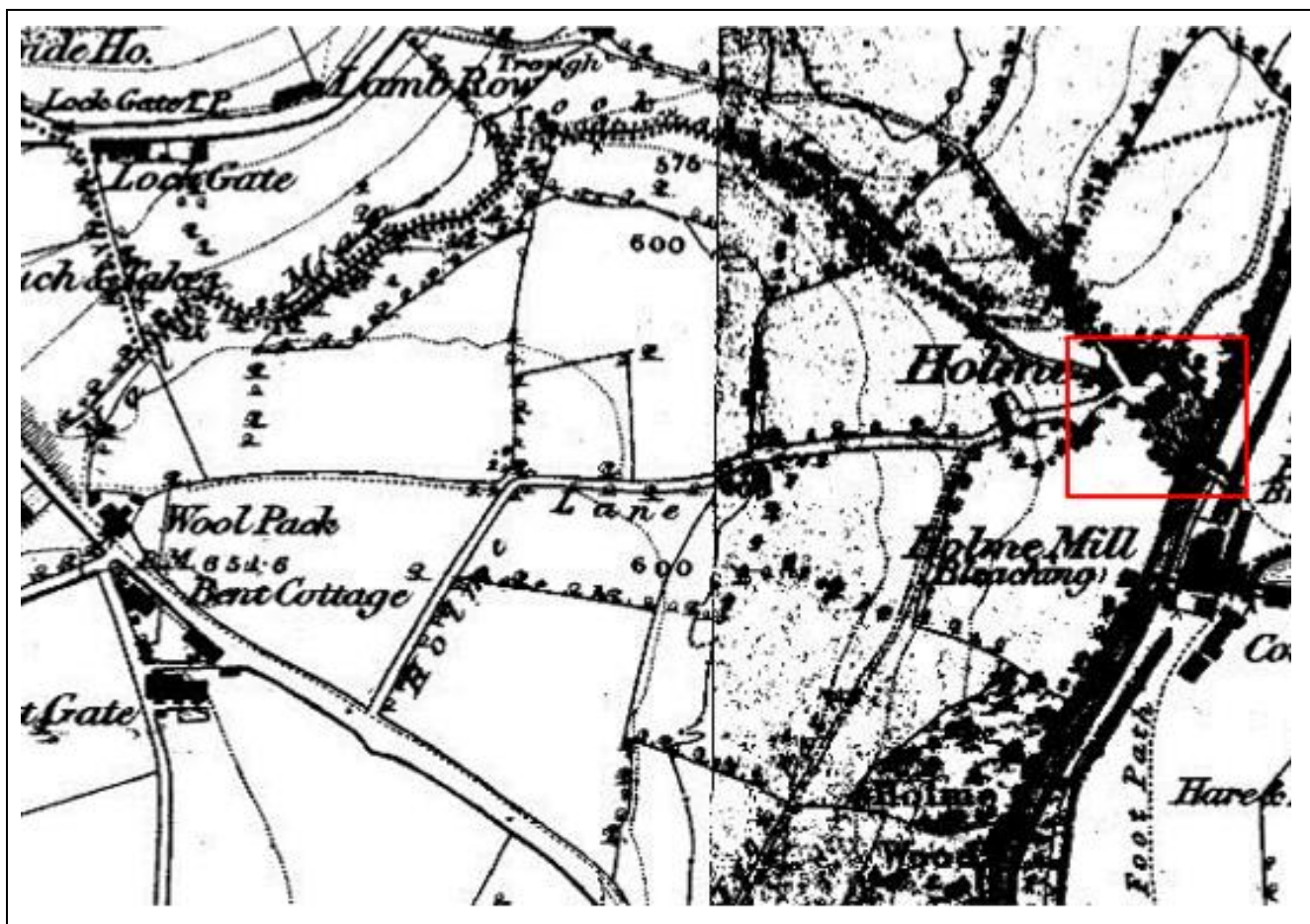


Observations		<p>There is no Tithe Map for the area crossed by the route under investigation (A-B). However, the Tithe Map for Tottington Higher End is the earliest map examined that shows a bridge across the River Irwell consistent with the one under investigation (Holme Bridge).</p> <p>No route is shown continuing west from the bridge and no route is shown from Bury Road through Townsend Fold to the bridge – with just the watercourse known as Langwood Brook shown. The numbered plots between Bury Road and the River Irwell – including the land over which Holme Lane is now located – is all listed as being in the ownership of John and Richard Townsend.</p>
Investigating Officer's Comments		<p>A bridge existed across the river in 1838 but there is no indication from the Tithe Map and Award that it carried a public right of way.</p>
Inclosure Act Award and Maps		<p><u>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.</u></p>
Observations		<p>No inclosure map or award was found for</p>

		the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Canal and Railway Acts	1844	Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		<p>Holme Lane to the east of the River Irwell is crossed by the London and Yorkshire Railway (Bacup Branch) adjacent to Townsend Fold Siding. At this point the railway crosses Holme Lane on a level crossing.</p> <p>A search of the railway records deposited in the County Records Office has not been made because although a plan of the proposed railway is known to have been deposited in the County Records Office there is no book of reference available to provide any information about the plots shown on the plans.</p>
Investigating Officer's Comments		The railway crosses part of Holme Lane since adopted as a publicly maintainable highway; the records have not been searched because the plan on its own will not assist in this matter.
6 Inch Ordnance Survey (OS) Map Sheet 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1847 and published in 1849. ¹
















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





<p>Observations</p>		<p>A route is shown passing through Townsend Fold and across the railway. It then continues as an unfenced route passing Holme Mill and crossing Holme Bridge (points B-C). Beyond the bridge the route continues – although the exact alignment appears to be 'tangled' with what appears to be a culverted section of Langwood Brook – to point A where a number of buildings are shown titled 'Holme'. Continuing west from point A a bounded route continues past further buildings and is named on the map as Holme Lane continuing through to a junction with Manchester Road near Bent Gate.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed as a substantial route in 1844 and appeared to form part of a longer route providing access to a cotton mill and bleach mill and also a number of smaller properties. It also appeared to form part of a through route from Bury Road to Manchester Road – which were both shown as Turnpike Roads at that time and</p>



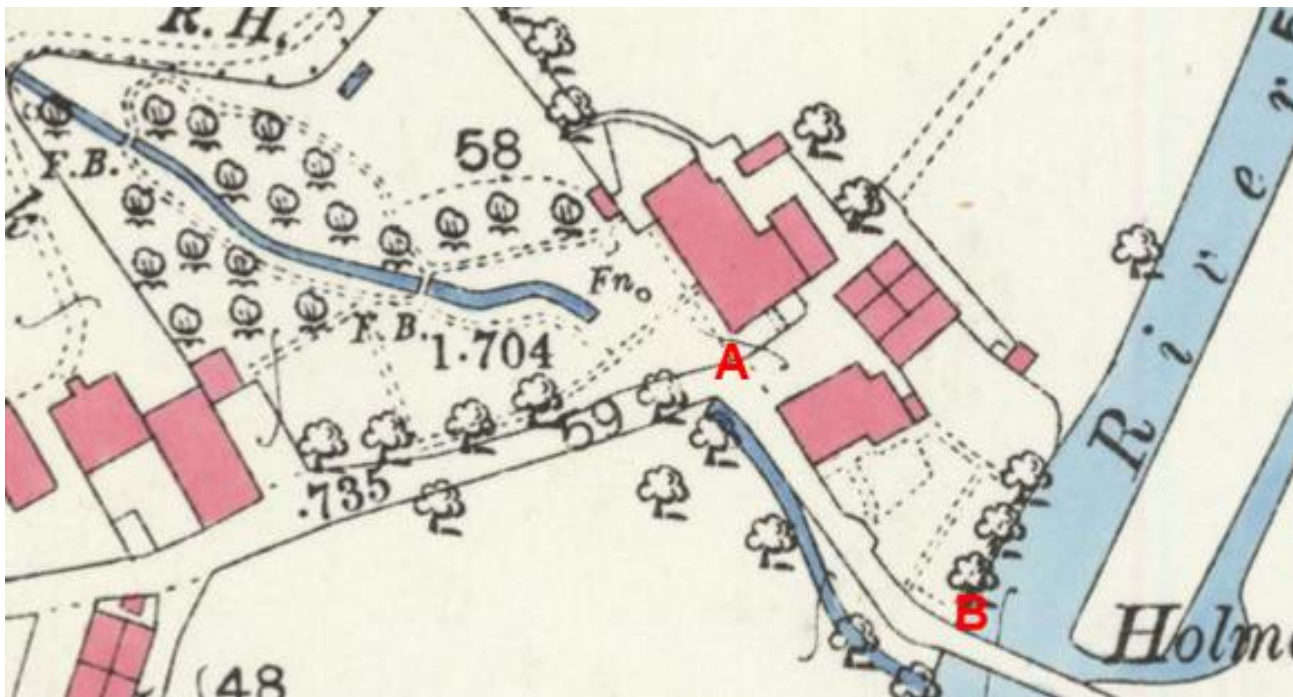
Turnpike or main roads 	Railways 
Other roads 	Cuttings 
Unfenced roads 	Embankments 
Mileages; turnpike gates; toll gates S T.P T.G.	Tramways and freight-only railways 
County boundaries 	Woodland 
Parish or township boundaries (on some sheets only) 	Parkland 
Church 	Foreshore: sand; boulders; rocks 
Windmill 	
Lighthouse 	

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

Observations		No route is shown from Bury Road across the railway through to Holme Bridge (B-C). West of the river buildings are shown but not named and a route consistent with Holme Lane (as shown on the first edition 6 inch OS map above) is shown through to Bent Gate.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers. In this instance the route under investigation from point A-B can be seen but it is shown in the context of a route which extends to Holme (not named on the map) from Bent Gate. It is not shown as part of a longer through route and although the bridge – and route from Bury Road across the railway to point C are known to have existed at this time they are not shown suggesting that this route may not have been considered to be a



		public vehicular through route in the mid-1800s.
25 Inch OS Map Sheet LXXII.13	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



Observations		The route under investigation is clearly shown. It is shown as part of a bounded through route providing access to a number of properties and continuing as a significant route west from point A (now recorded as 14-4-BW 311) past Holme Terrace and other unnamed buildings to continue through to Manchester Road at Bent Gate as a bounded route named on
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		<p>the map as Holme Lane.</p> <p>The bridge (B-C) is clearly shown and is named as Holme Bridge and no lines are shown across the route – or across the route continuing west from point A as 'Holme Lane'. The route now recorded as 14-4-FP315 is shown on the map as a footpath (F.P.).</p> <p>No part of the route under investigation – or the longer route extending from Bury Road across the railway through to Manchester Road at Bent Gate is shown as being shaded or denoted by a thickened line on the east/south side.</p> <p>The property immediately north of point A is not named but is understood to have been the family home of the Townsends who owned the mills and the surrounding land and was known as 'The Holme'. The OS map shows the formal gardens and a fountain understood to have been located at the front of the property.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1891 and appeared to be capable of being used on horseback and with horse drawn vehicles at that time. It provided access to a number of properties along the route but also linked two significant public vehicular routes (Bury Road and Manchester Road).</p> <p>The fact that it was named as part of a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>No lines were shown across the route – or the continuation of the route (apart from at the railway level crossing) suggesting that access was not restricted at that time.</p> <p>The route is not shown coloured or shaded suggesting that it was not considered to be a public vehicular route kept in good repair by the Highway Authority at that time. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route is not shown in this way suggests at the very least that it was not maintained to the same good</p>

		standard as the public roads to which it connected or that it was maintained privately.
1 inch OS Map Sheet 76 Rochdale	1896	Small scale OS map published in 1896.



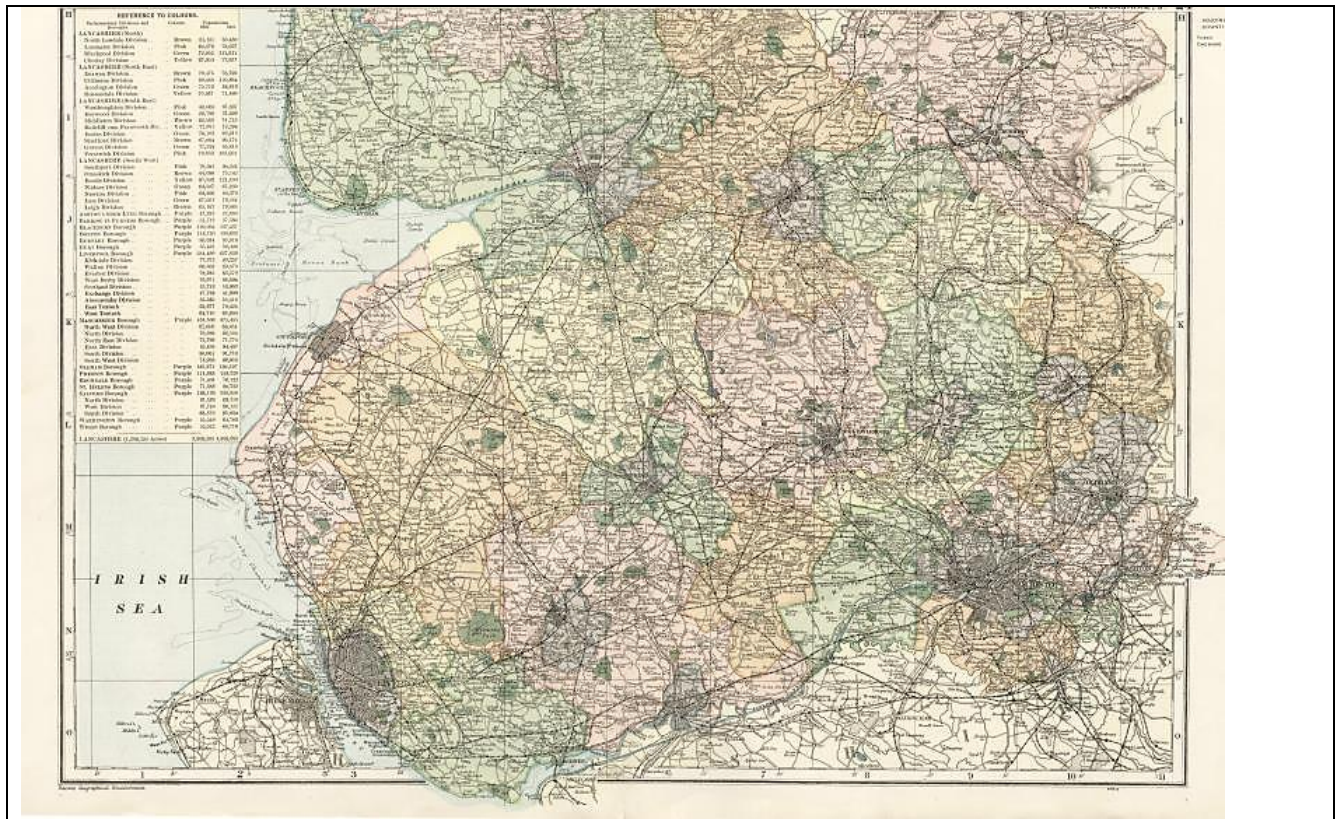
<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Unfenced	.....	Chuo
" " <i>Second Class</i>.....			.....	"
" " <i>Third Class</i>.....			.....	"
<i>Unmetalled Roads</i>.....			.....	Wine
<i>Footpaths</i>.....			.....	Ligh
<i>Railways, Single Line</i>.....			.....	Ligh
			.....	Beac
			.....	Let
			.....	Cont

Observations		The route under investigation is shown as part of a longer route depicted as a third class road and providing a link from Bury Road to Manchester Road across the railway and River Irwell (via Holme Bridge).
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s

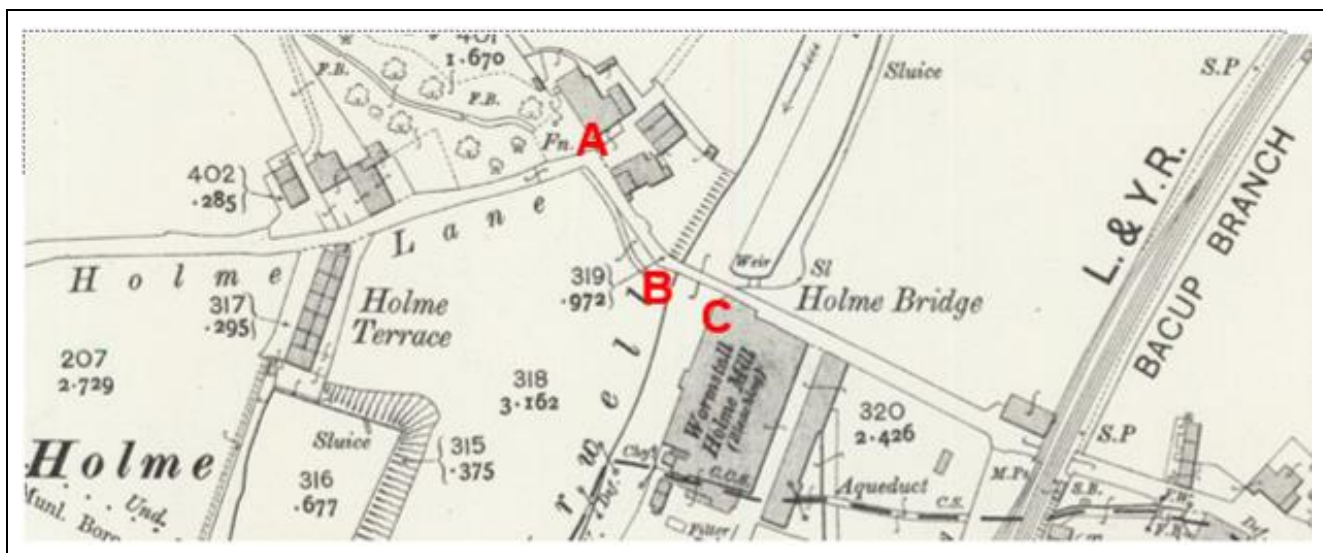


		<p>would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the route under investigation - had public rights for those travellers.</p>
<p>Bacon's Map of Lancashire</p>		<p>G W Bacon was a publisher of maps and in 1890 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.</p>





<p>Observations</p>		<p>The route under investigation is not shown and neither is the rest of the route from Bury Road through to Manchester Road. The mill buildings and houses are not shown either.</p> <p>The second map extract inserted above is an extract of the map published illustrating how only the most significant routes could be included.</p>
<p>Investigating Officer's Comments</p>		<p>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 the routes shown were often considered to be public through routes. The route under investigation is not shown suggesting that it was not considered to be a significant public through route to be included on such a small-scale map. Maps pre and post dating this atlas do however confirm the existence of the route at that time.</p>
<p>25 inch OS Map Sheet LXXIII.13</p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.</p>






<p>Observations</p>		<p>The route under investigation is again shown as part of a longer through route known as Holme Lane. No restriction on access is shown along the section under investigation but it is noted that a gate is now shown across Holme Lane west of point A (on the section now recorded as 14-4-BW311).</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1908 and appeared to be capable of being used.</p> <p>The existence of gates along a public route would not have been considered unusual in the early 1900s 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>Bartholomew half inch Mapping</p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic 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</p>




small scale map was inferior to Bartholomew at that time for the use of motorists.

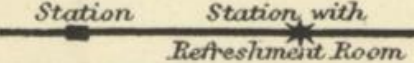




EXPLANATORY NOTE

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

Footpaths & Bridlepaths 

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

Railways 
Canals 

County Boundaries 

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

1904





EXPLANATORY NOTE

Motoring Roads	}	Through Routes		Motor Ferries	
		First Class Roads			
		Secondary			
		Indifferent		(Passable for cyclists)	

The uncoloured roads are inferior and not to be recommended.

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

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

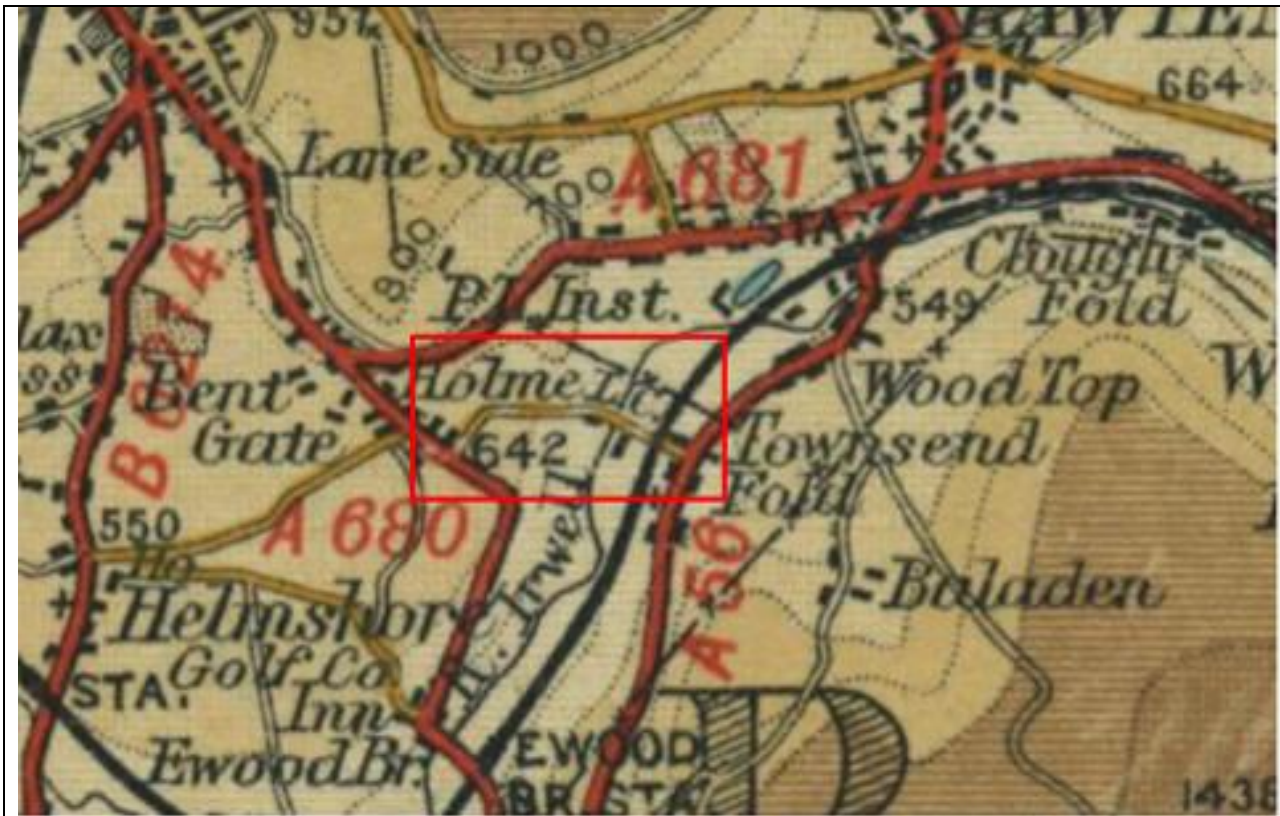
Railways Station Station with Refreshment Room L.C. (Level Crossing)

Canals

County Boundaries

1920





Best Motoring Routes		Ministry of Transport Numbers	A 586
Good Secondary Roads		Footpaths & Bridlepaths	
Serviceable Roads		<i>N.B. The representation of a road or footpath is no evidence of right of way.</i>	
Other Roads			

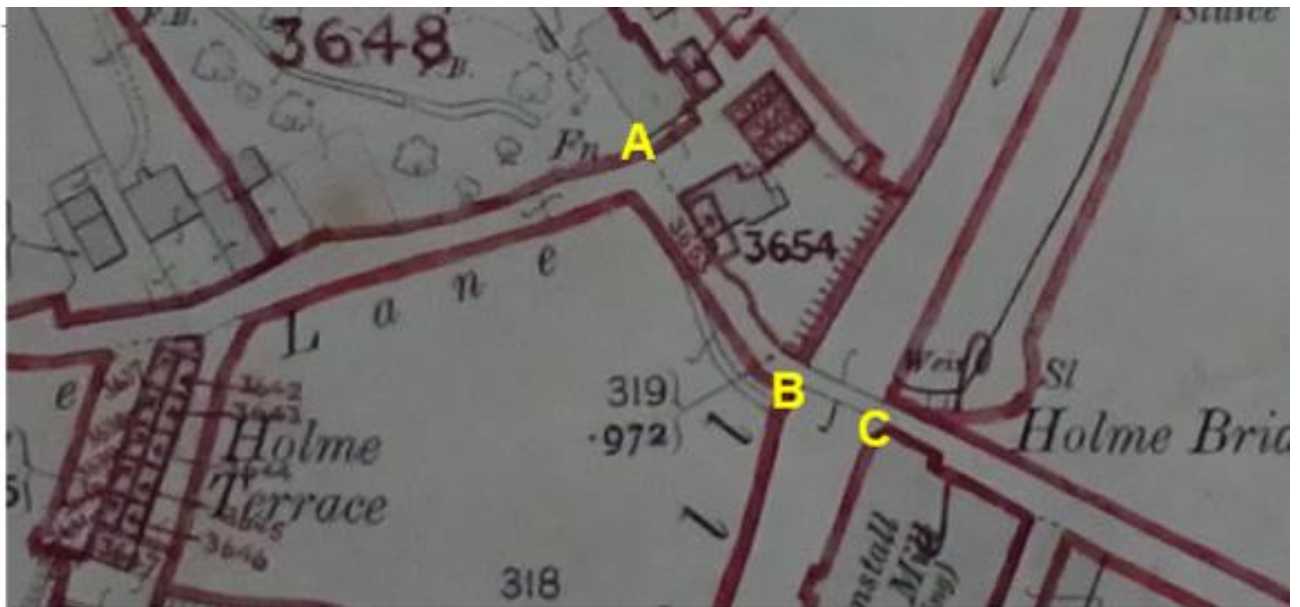
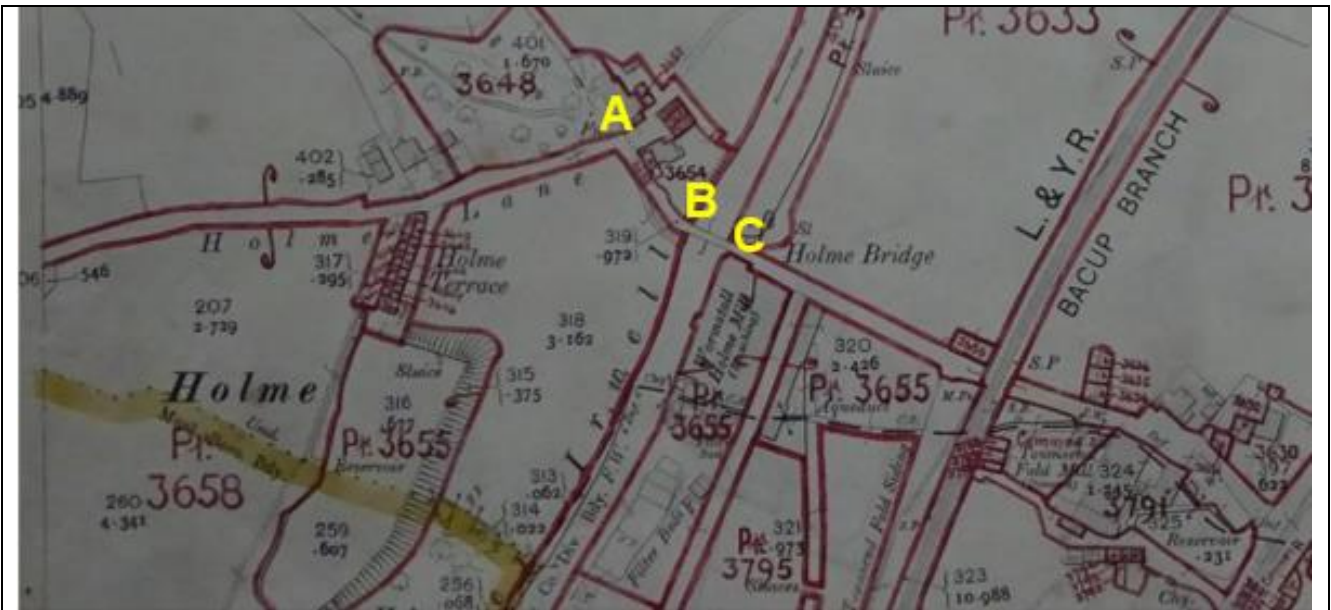
1941

<p>Observations</p>		<p>All three maps published show the route under investigation as part of a longer through route.</p> <p>The map published in 1904 shows the route as an uncoloured road which is defined as being inferior and not to be recommended to cyclists. By 1920 it is shown as being 'indifferent' but defined as a route passable for cyclists and in 1941 it is defined as a serviceable road.</p>
<p>Investigating Officer's Comments</p>		<p>Whilst the key to the map states that the representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as an uncoloured /indifferent/serviceable road on all three maps suggests that it existed as a through route and was considered to be more than a footpath or bridleway in the early 1900s. It does however suggest that its surface – as a through route - may not have been suitable for more modern</p>



		<p>motorised vehicles. Reference to the route being passable by cyclists does imply some acceptance of public vehicular use as cyclists did not have a public right of access along routes considered to be footpaths or bridleways at that time.</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). Some land could be excluded.</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>



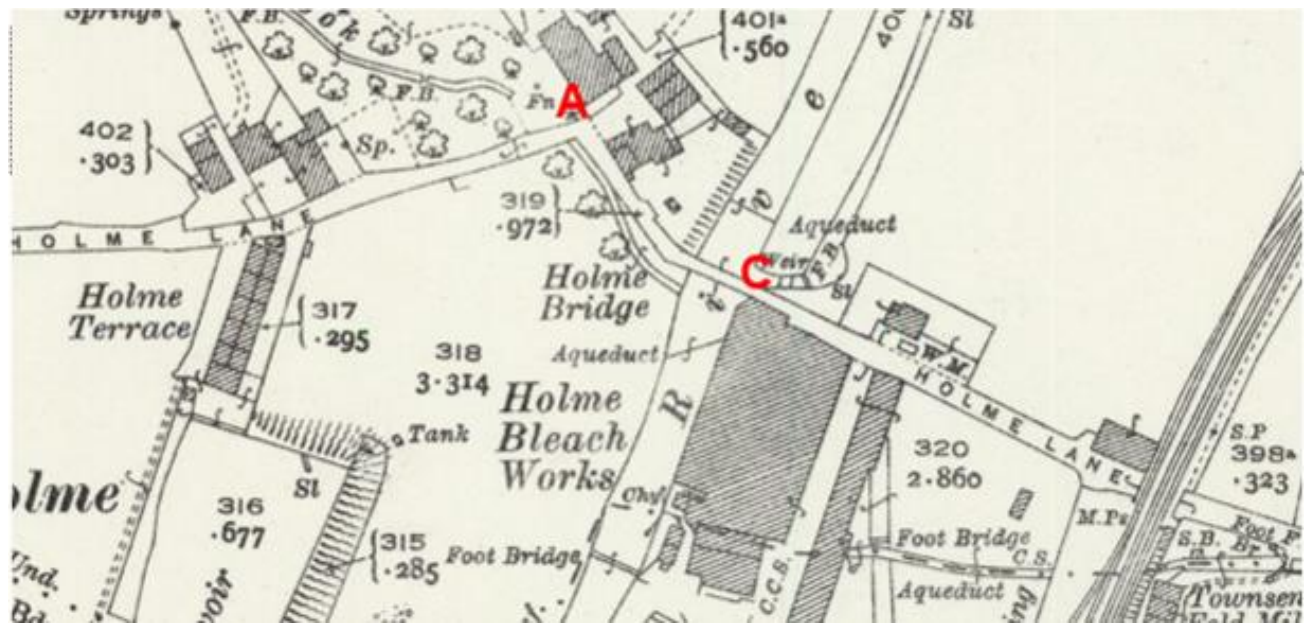


<p>Observations</p>		<p>The route under investigation is not included in a taxable hereditament plot and is shown consistent with how the rest of Holme Lane from Bury Road through to Manchester Road is shown but also how back alleys, occupation roads and the river are all one excluded area on this sheet.</p> <p>Between point B and point C the bridge itself is contiguous with both the lane and the river.</p>
<p>Investigating Officer's Comments</p>		<p>Exclusion of the route is consistent with it carrying public rights.</p> <p>Guidance given to surveyors stated that parcels 'should continue to be exclusive</p>



		<p>of the site of external roadways.' In this instance although all the route known as Holme Lane – from Bury Road through to Manchester Road including the bridge B-C) is shown excluded it has to be considered in the context of other excluded areas on this sheet many of which could not be highway. Numbered plots split by the route west of point A would ordinarily suggest that the route was considered to have public vehicular rights as public footpaths and bridleways were normally included in numbered plots but this has to be taken with some caution given how many non-highways were also excluded on this sheet.</p>
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<p>25 Inch OS Map Sheet LXXII.13</p>	<p>1930</p>	<p>Further edition of 25 inch map (surveyed in 1891, revised in 1928 and published in 1930.</p>
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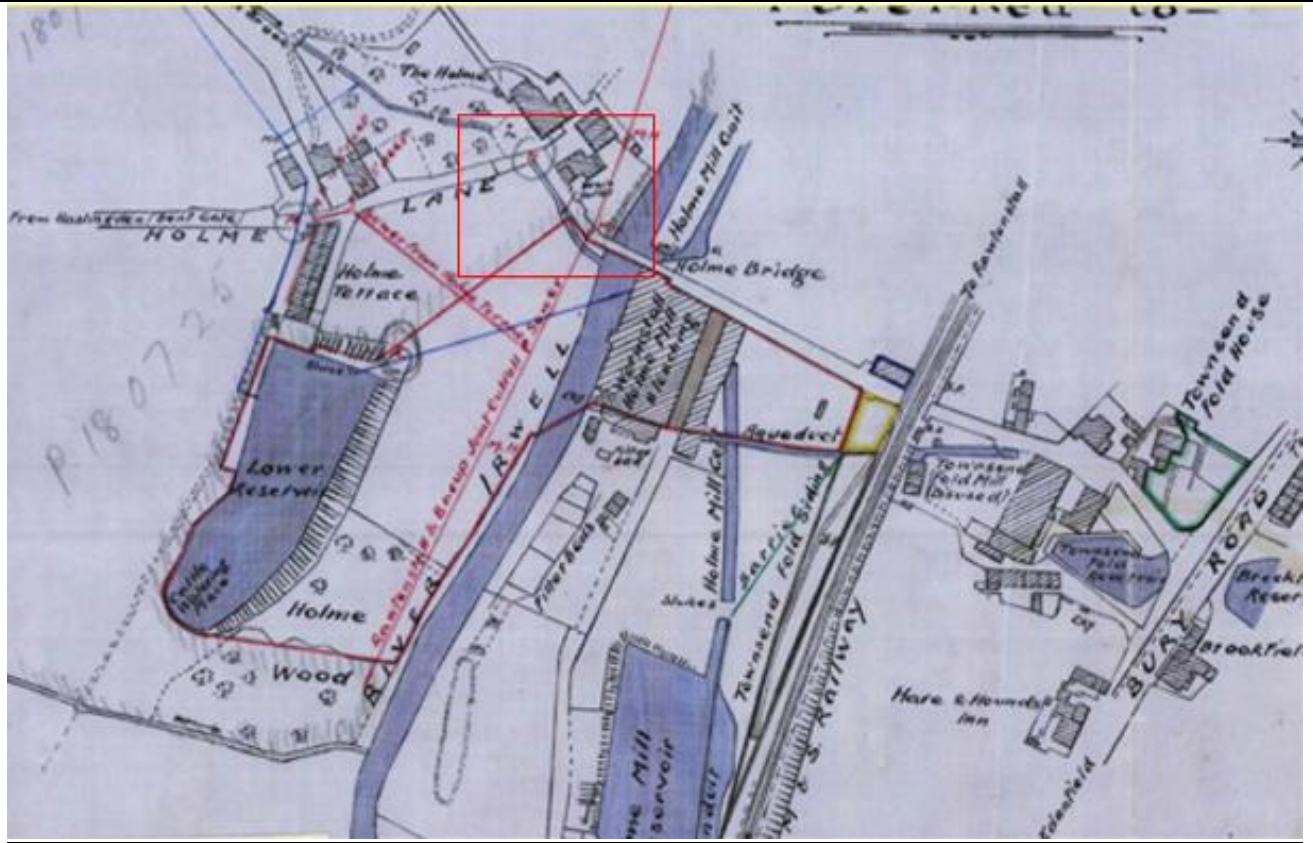


<p>Observations</p>		<p>The route under investigation is again shown as part of a longer through route which is named as Holme Lane west of point A and also east south east of point C. A gate is still shown across the route west of point A.</p>
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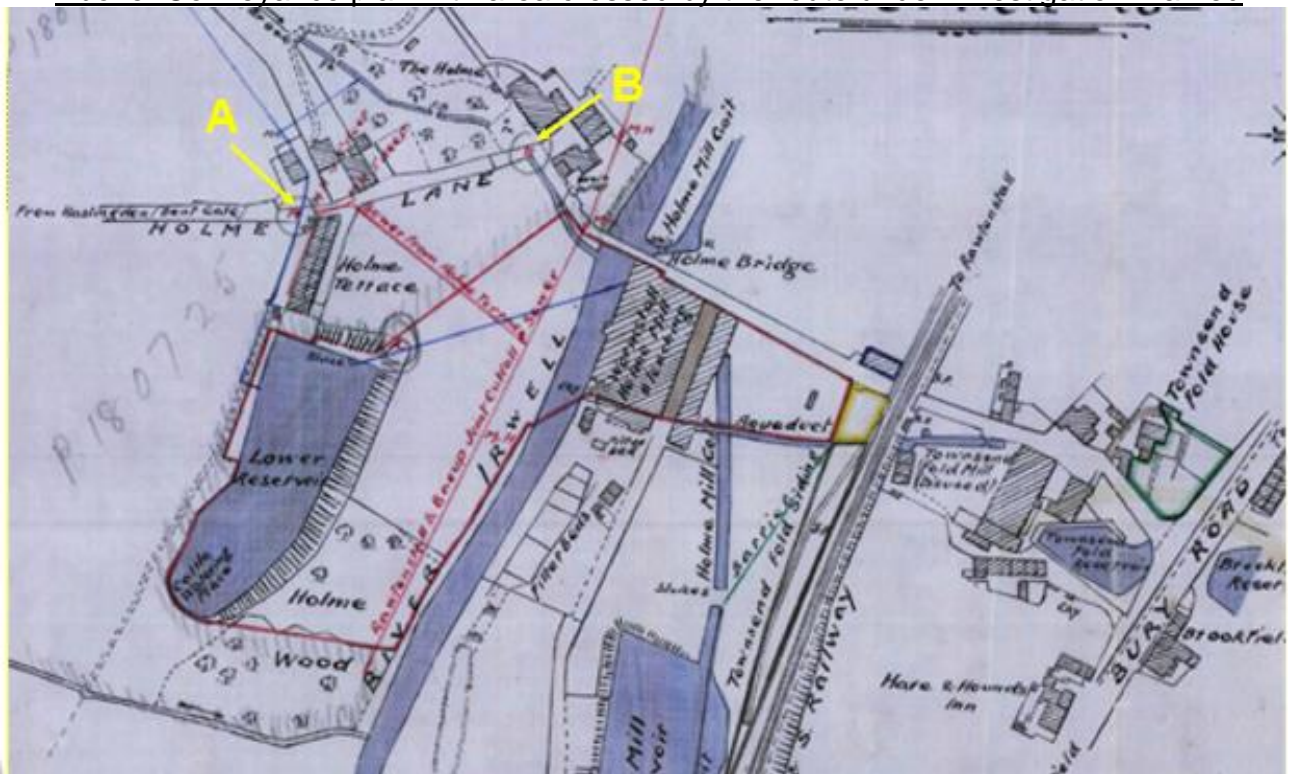
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed as part of a longer substantial through route in 1928 and appeared to be capable of being used at least on horseback and probably by vehicles at that time.</p>
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<p>Conveyance</p>	<p>1931</p>	<p>Conveyance of land on both sides of the river sold by the owners of The Holme to</p>
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the Bleachers Association.



Above: Conveyance plan with area crossed by the route under investigation marked



Above: Conveyance plan with points A and B as referred to in the conveyance document

Observations

The conveyance in 1931 wherein GH Townsend and HA Townsend of The Holme sold land and gave rights to the Bleachers Association which were buying



		<p>in effect the old mill on both sides of the river.</p> <p>This included a right of way at all times and for all purposes on foot and with vehicles across the vendors' land onto a particular section of Holme Lane (the section between The Holme and Holme Terrace, i.e. between A and B on the conveyance plan which is west of point A on the Committee Plan).</p>
Investigating Officer's Comments		<p>The conveyance did not include any provisions relating to access along the route under investigation – including use of Holme Bridge and linking to the section of Holme Street recorded on the List of Streets (east south east of point C) nor elsewhere on Holme Lane itself.</p> <p>However the lack of right of way given by the conveyance for access onto a section of Holme Lane implies that there was a belief that vehicular rights, public or private, already existed on that section of Holme Lane. The purchasers did not already own property adjacent or accessed from it but it is not known what private rights the Bleaching Works already had.</p> <p>If there were public rights on that section (between Holme Terrace and The Holme) there must have been public rights leading to that section but we do not know whether this was from Bury Road or from Manchester Road or as a through route.</p> <p>The plan included as part of the conveyance does confirm the physical existence of the route under investigation at that time and does indicate that it formed part of a longer route known as Holme Lane.</p>
Authentic Map Directory of South Lancashire by Geographia	Circa1934	<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</p>

		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'.
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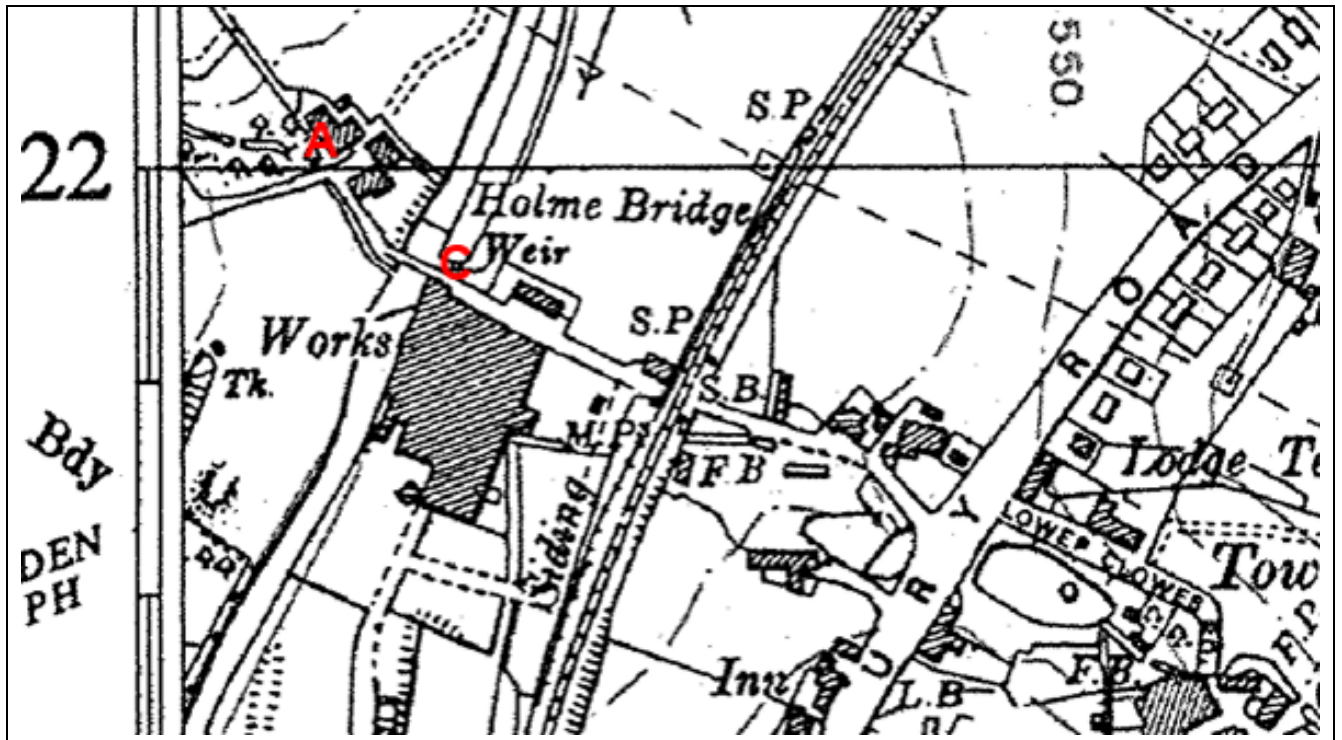


Observations		The route under investigation is shown as part of a longer route with Holme Bridge named on the map and the route from The Holme to Manchester Road named as Holme Lane. A line is shown across the route at point A but this is not consistent with how this junction is shown on any other map examined and there is no key to this atlas explaining what this means, although convention at the time suggests it indicates a gate or other barrier.
Investigating Officer's Comments		The route is shown in an atlas consistent with how other routes carrying public vehicular rights are shown but also consistent with how some other routes not carrying vehicular rights are shown.
Aerial Photograph ²	1945-1952	The earliest set of aerial photographs

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.

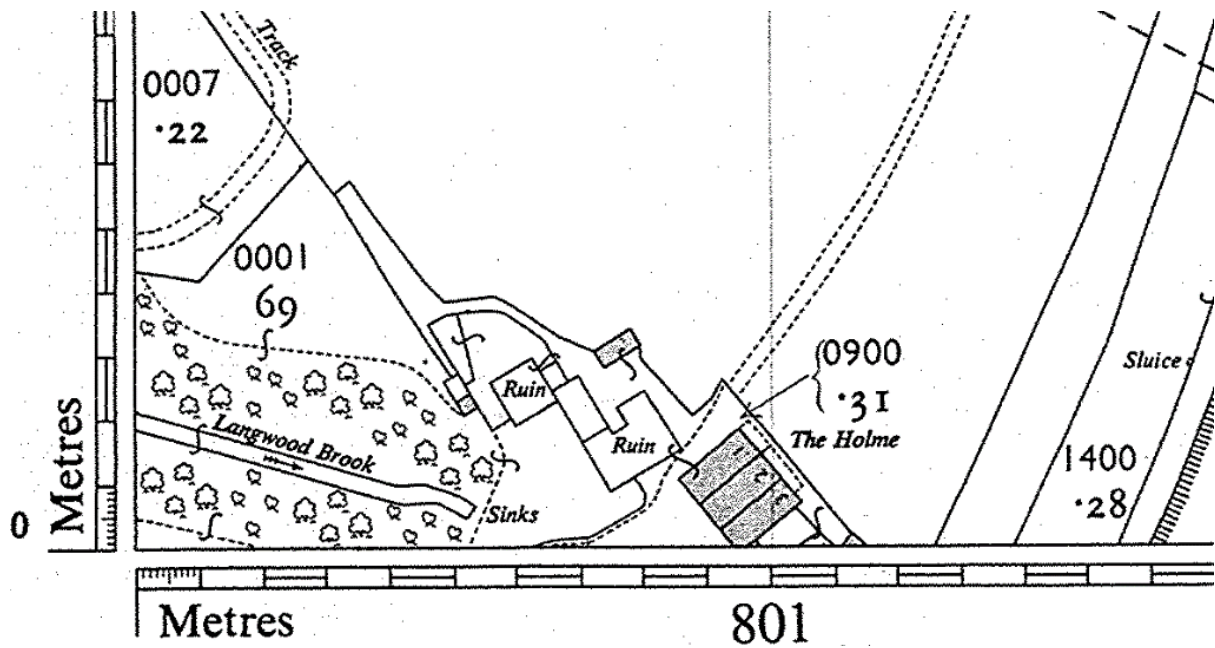
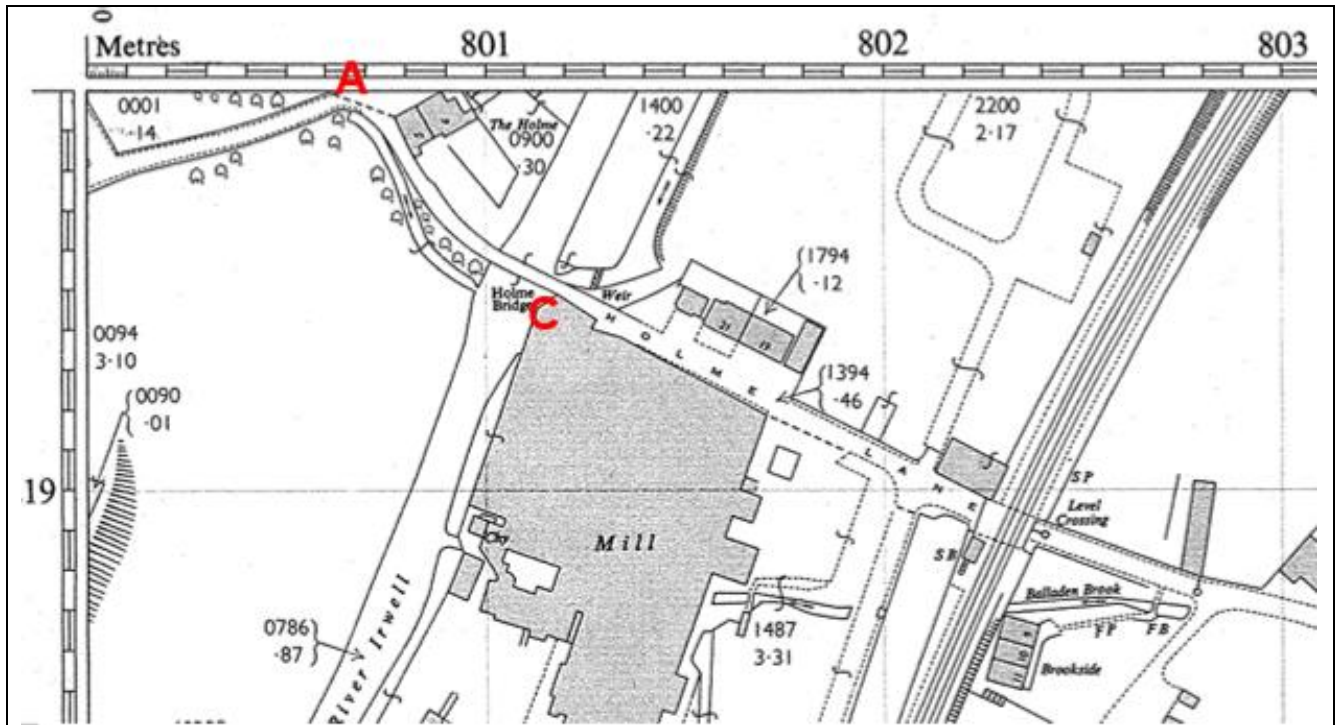


		available was taken just after the Second World War and photographs taken between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.
		
Observations		The quality of the aerial photograph is very poor. A route leading from Bury Road across the railway to Holme Bridge can be seen and the route extending east from Manchester Road towards point A can be seen but the route under investigation cannot be seen on the photograph.
Investigating Officer's Comments		Use of the route under investigation, as part of a through route from Bury Road to Manchester Road, may have declined by the 1940s.
6 Inch OS Map Map Sheet 82SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

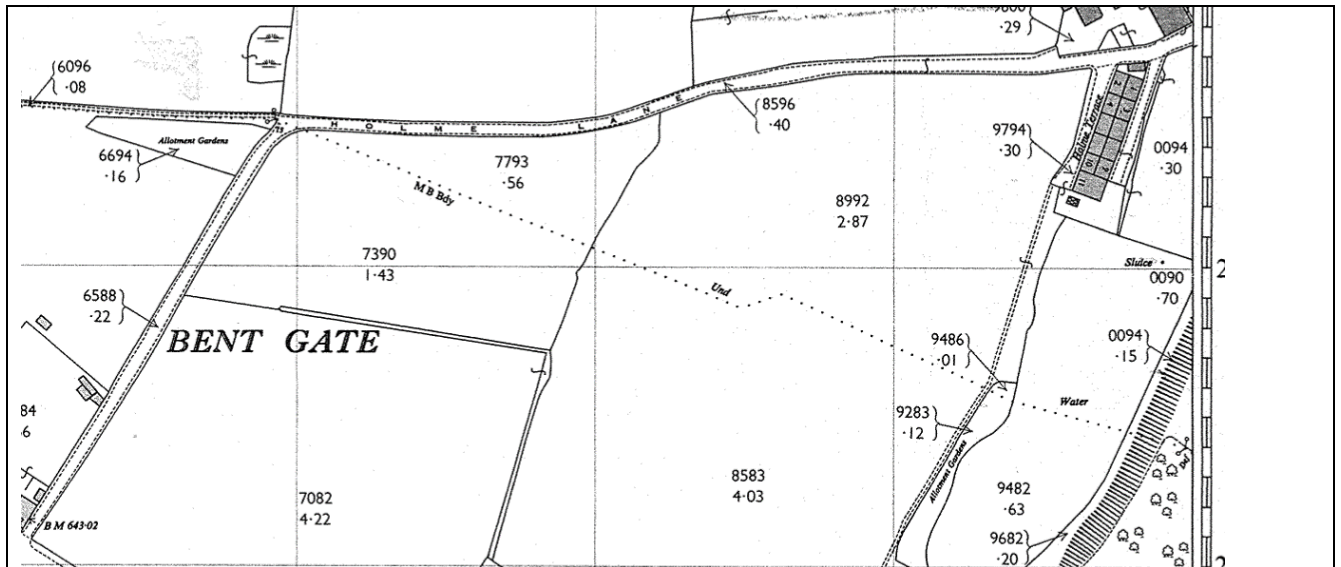


Observations		The route under investigation is shown as part of a substantial longer through route on the map.
Investigating Officer's Comments		The route appeared accessible at least on horseback and probably by vehicles in the 1930s.
1:2500 OS Map Map Sheet SD 8021 & 8121	1963	Edition of 25 inch map reconstituted from former County Series, revised in 1960-61 and published in 1963 as National Grid Series.





Extract from SD 8022 published 1962 showing 'Ruin'



Extract of Sheet SD 7921 published 1963 showing Holme Lane west of point A

<p>Observations</p>		<p>The route under investigation is still shown as part of a substantial through route and is named as Holme Lane west of point A and again east of Point C. No lines (gates) are shown across the route.</p> <p>North of point A the buildings believed to be the former home of the mill owners are shown as ruins.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed as part of a longer through route in the 1960s and appeared to be capable of being used on horseback and with vehicles at that time.</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. 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 Ribble Valley district.</p>





<p>Observations</p>		<p>The photograph clearly shows the bridge across the river (B-C) but the route through to point A is obscured by trees. The house shown in ruins north of point A on the OS map detailed above appears to have been demolished and the site cleared. The route of Holme Lane continuing either way towards Bury Road and Manchester Road can be clearly seen. The section from the bridge to Bury Road has the large industrial property where the bleaching works once was but otherwise few properties along it and the sewage works had not yet been constructed.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in the 1960s and appeared to be capable of being used – as part of a longer route – at least on horseback and possibly by vehicles.</p>
<p>The Manchester – Burnley Trunk Road (Edenfield – Rawtenstall Level crossing by-pass) Side Road Order 1964</p>	<p>1964</p>	<p>Order made by the Minister of Transport to provide for the construction of the A56.</p>

7	Bent Gate	A length of Holme Lane starting at its junction with Manchester Road (A.680) and extending north-eastwards for 137 yards	R) S)
7	Bent Gate	A length of Holme Lane starting at a point 207 yards north-east of its junction with Manchester Road (A.680) and extending north-eastwards for 40 yards	R) S)
7	Holme	That part of Holme Lane which lies 294 yards north-east of its junction with Manchester Road (A.680)	R) S)
8	Holme	A length of Public Footpath No. 310 starting at a point 90 yards north-west of its junction with Holme Lane and	T



Observations		The Order made by the Minister of
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		<p>Transport to allow for the construction of the A56 did not directly affect the route under investigation.</p> <p>It is relevant however in that the proposed new road crossed Holme Lane to the west of the route under investigation effectively cutting off access from Bury Road through to Manchester Road along the route detailed in this report.</p> <p>The Order extinguishes public rights along Holme Lane from Manchester Road (with the exception of the points at which it was to be subsumed into the A56) but refers to it as 'Holme Lane' in the Order schedule and not as Bridleway 367 and Bridleway 311 and it lists the new highways to be created in its place as being those shown on the plan labelled R and S which are the routes now recorded as 14-2-FP365 (part) and 14-4-FP367. The schedule clearly states that new highways created are to be footpaths unless otherwise stated.</p>
Investigating Comments	Officer's	<p>The Order made by the Minister of Transport does not appear to acknowledge the existence of any public vehicular or bridleway rights which may have existed at that time. It legally extinguishes public rights along that part of Holme Lane north east from Manchester Road without specifying what those rights were and creates only public footpaths to connect to the remaining section of Holme Lane which was recorded as a public bridleway at that time. This could suggest that use of the route by the public was predominantly on foot at that time.</p> <p>The Secretary of State has stated that such Orders stand as the time for challenging any errors has passed and it is not known whether any challenges were in fact made at that time.</p>
Highways and Transport Committee Minute	January 1972	

Observations

Improvement of Holme Lane (827).

The Borough Surveyor reported that the Development Committee had agreed to proceed with the improvement of Holme Lane from Bury Road to the railway level crossing as soon as possible, and had, therefore, requested this Committee to consider going out to Tender for the above work and he asked the Committee for authority to go out to tender and for the Chairman and Vice-Chairman to accept a tender which is received.

Resolved—That the Borough Surveyor be given authority to invite tenders for the improvement of Holme Lane and that the Chairman and Vice-Chairman be authorised to accept a tender.

Signed at a meeting of the Committee held on the
12th day of January 1972 (being the next

Investigating Officer's Comments

The minute does not specify whether this section of the lane (east of the route under investigation) was publicly maintainable highway. The note refers to the Development Committee decision being reported to the Highways and Transport Committee which could imply that the lane was not adopted at the time (otherwise it would simply be a maintenance decision for the latter Committee).

Decision to Adopt Part of Holme Lane

November 1972

Adoption of Holme Lane from Bury Road to the river bridge (immediately east of the route A-C)

STREET NAME	DISTRICT	O.S. NO: SD	MAP REF.	LENGTH (Metres)	WIDTH (average metres)	SITUATION AND REMARKS	DATE OF ADOPTION
Holme Lane	H	SD7921 NE	79612182	148	5	From Manchester Road to by-pass slip road.	-
Holme Lane	R	SD8021 NW	80352183	340	5	From Bury Road to Bridge over River Irwell.	Nov. 1972 Min. 70A
Holme Street	B	SD8521 NE	85802178	120	9	Stacksteads - From Farholme Lane to	14th Jan 1972

Observations

An extract from Rossendale Borough Council's Street Register (undated) lists Holme Lane from Bury Road to the Bridge over the River Irwell (point C) as a highway adopted in 1972. It also includes an entry for Holme Lane from Manchester Road to the by-pass slip road although no adoption date is listed for this section. The route under investigation is not included in



		the Register.
Investigating Comments	Officer's	<p>The adoption of the route from Bury Road to the Bridge (point C) implies it was not previously publicly maintainable and by extension nor was the route A-C which was not adopted at that time. There were only a few procedures under the Highways Act 1959 whereby a route could become maintainable at public expense (adopted).</p> <p>The reference to an actual date of adoption east of the bridge in the 1970s would indicate that it was probably adopted following private street works. So the implication is not just that it was not maintainable, but also that it was not a vehicular public highway before then. Even if it were a bridleway or footpath technically maintainable at public expense it could still be classed as a "private street" for private street works (Schedule 24 of the 1959 Act)</p>
Lancashire Council Transport Report	County Highways and Committee	1986
		A report was taken to the March 1986 meeting of the Highways and Transport Committee concerning the liability for the repair of the collapsed northern parapet of Holme Bridge and in connection with that the status of Holme Road.
<p><u>RECOMMENDATION</u></p> <ol style="list-style-type: none"> 1. That, in order to obviate the immediate dangers to highway users, the necessary works be carried out to Holme Bridge to restore it to its condition prior to the recent impact damage, the cost thereof to be included in the Bridge Maintenance Estimates for 1986/87. Done with 2 May 86 2. That a further report be presented to a future meeting of the Committee on the structural and other works necessary to the bridge and the central section of Holme Road to bring them up to a satisfactory standard with a view to them being adopted as highway maintainable at public expense. Mueshan? 3. That the County Surveyor in conjunction with the Chief Executive Clerk be authorised to continue his investigations into the status of the route and his endeavours to ascertain the ownership of the bridge and the person(s) responsible for the recent impact damage. 4. That in view of their responsibility arising from the closure of the alternative access to Holme during the construction of the Rawtenstall/Edenfield By Pass the Department of Transport be approached on the question of costs involved in both the immediate and the ultimate works to the bridge. 		
Observations		The status of the route under current investigation A-C was described as the



		<p>middle of 3 sections, with east of point C being adopted in 1972 and west of point A being formerly bridleway (with a short section of unclassified road in Haslingden) but closed by the Side Roads Order in the late 1960s.</p> <p>The bridge was said to be inscribed 'J & R T 1830'.</p> <p>The report puts forward that in order to assert and protect the public rights the highway authority would need to step in where no owner of a bridge could be found and that temporary works should be carried out on a 'without prejudice' basis. It suggests that Rossendale Borough Council and residents should have ensured that the bridge access was taken into account when the bypass was built.</p> <p>The recommendation was that temporary works be carried out, a report be prepared on works necessary to bring the bridge up to adoptable standards, that the status be investigated and the DoT approached since their bypass has removed the alternative access.</p>
Investigating Officer's Comments		<p>The inscription suggests the bridge was private, many highway bridges are similarly inscribed with LCC or WR (West Riding). The report did not reach any conclusions concerning the status.</p> <p>As the recommendation is for works on the route A-C to the appropriate standard with a view to it being adopted this clearly implies that it was not previously publicly maintainable. It does not mention dedication or creation of public rights which suggests either they already existed (and since it was not recorded on the Definitive Map and Statement the implication is that they might have been vehicular rights) or that the rights would be created/dedicated along with the adoption.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p>

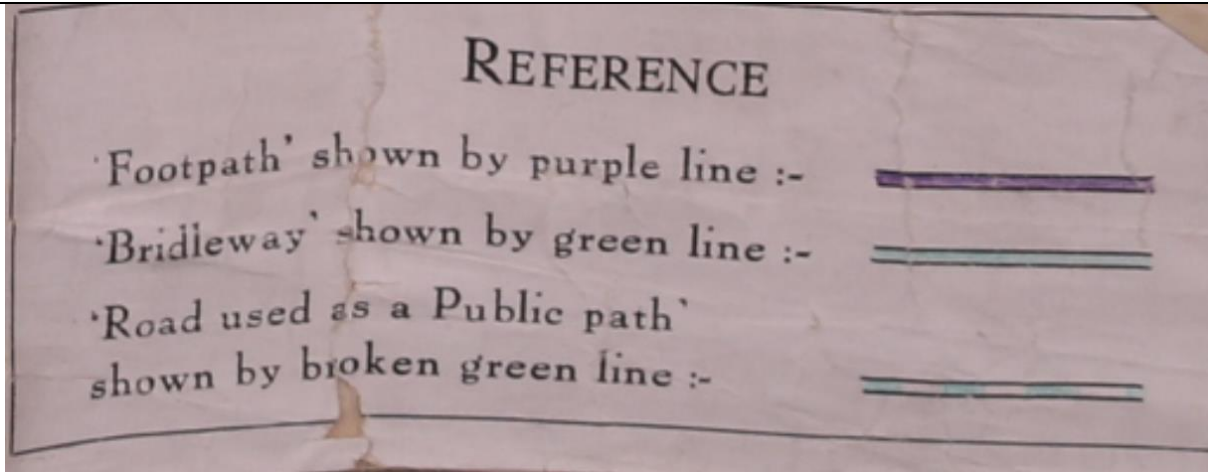
		Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an 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		Rawtenstall is a former municipal borough for which no parish survey map was prepared.
Draft Map		A Draft Map was prepared by Rawtenstall Municipal Borough Council and passed to Lancashire County Council. 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.



1. No. of path.	2. Kind of path.	3. Position.	4. Length in miles to 2 place decimals.	5. Other particulars (if any) (Limitations or conditions affect- ing the public right-of-way).
309. ✓	Footpath	From Holme Lane along river bank via. Warth to Swood Bridge.	✓ 0.56	none known
310. ✓	Footpath	From Holme Lane W. of river bank in N.W. direction via. Langwood to Haslingden see above.	✓ 0.33	none known
311. ✓	Bridleway	From Bury Road along Holme Lane from W. of river in westerly direction to F.P. No. 312.	✓ 0.46	none known
312. ✓	Footpath	Continuation of S.R. No. 311 along Boro' Boundary to Bent Gate.	✓ 0.13	none known
313. ✓	Footpath	From Haslingden New Road near Old Row S. via. Single Holme to Mill.	✓ 0.15	none known
314. ✓	Footpath	From E. of Alms houses to river.	0.21	none known
315. ✓	Footpath	From E. end of Cow Lane via. Single Holme along N.W. side of river to Holme Lane.	0.25 0.45	none known
316. ✓	Footpath	From Haslingden New Road W. of Brynbella to junction with F.P. No. 315.	✓ 0.11	none known
317. ✓	Footpath	From junction with F.P. No. 315 E. along river bank to Mill.	✓ 0.15	none known
318. ✓	Footpath	From Bury Road to river across via. stepping stones (now in bad condition) to junction with F.P. No. 317.	✓ 0.18	none known
319. ✓	Footpath	From Bury Road N. of Cowpe's Farm W. to junction with F.P. No. 309 at Holme Mill.	✓ 0.15	none known
320. ✓	Footpath	From Bury Road at Jelly Hall S. to Haslingden Old Road.	✓ 0.09	none known
321. ✓	Footpath	From Union Road near Union Farm S.W. via. Lower Pike Law to Haslingden New Road at	✓ 0.46	none known

Draft Map and Statement for Rawtenstall





NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
Particulars required for the Statement to be annexed to the Draft Rights of Way Map.
Section 27(4).
HASLINGDEN MUNICIPAL BOROUGH.

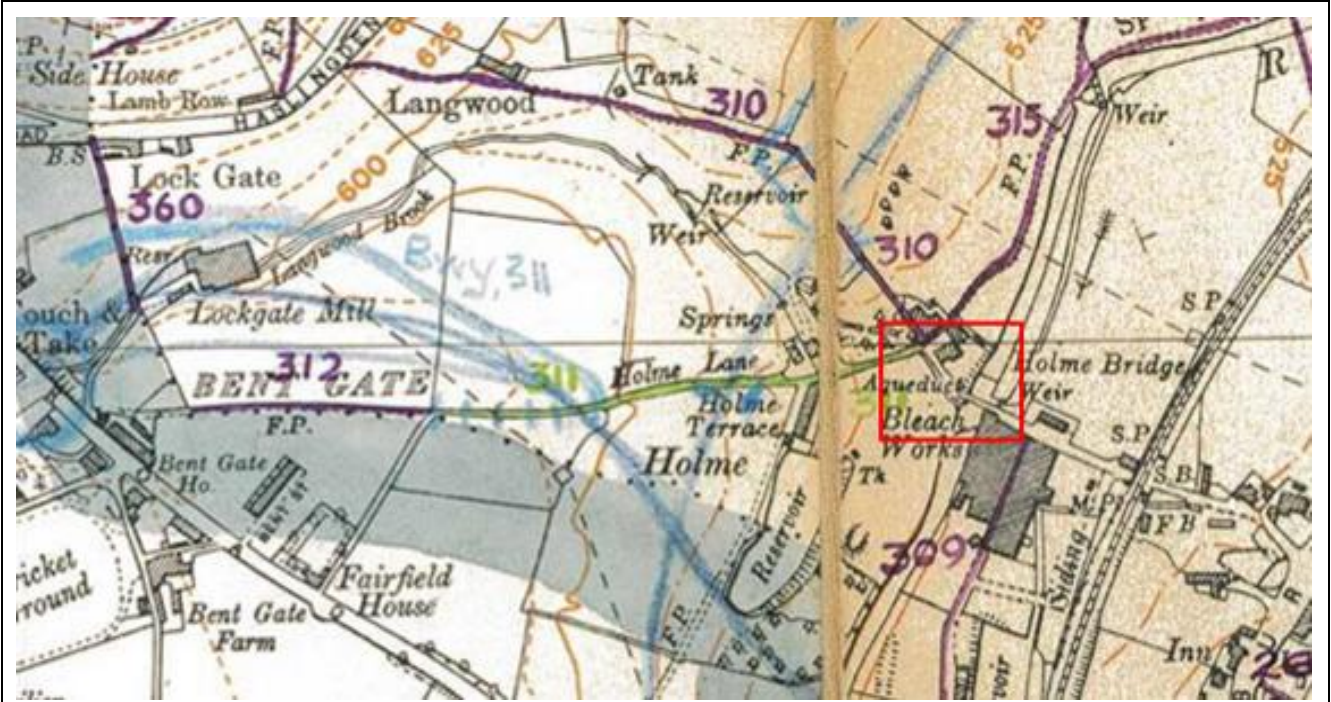
1. No. of Path.	2. Kind of Path.	3. Position.	4. Length in miles to 2 places of Decimals.	5. Other particulars (if any). (Limitations or conditions affecting the public right of way).
361	Footpath.	From junction of paths 358, 345 & 359, at "The Fields" to junction of paths 362 & 363.	.12 ✓	
362	Footpath.	From Broadway to junction of paths 361 & 363.	.22 ✓	
363	Footpath.	From Broadway, near Pilkington Terrace, to junction of paths 361 & 362.	.14 ✓	
364	Footpath.	From Lodge Street, near Syke Hill to Broadway.	.18 ✓	
365	Footpath.	From Manchester Road, near Bentgate to Borough Boundary.	.06 ✓	
366	Footpath.	From Manchester Road, near Bentgate to Borough Boundary.	.03 ✓	
367	Footpath. Bridleway.	From Manchester Road, near Fairfield House to Borough Boundary.	.02 .10 ✓	
368	Footpath.	From Holcombe Road, near Higher Mill to Helmsford Road, near Pixmoor House.	.47 ✓	

Draft Map and Statement for Haslingden

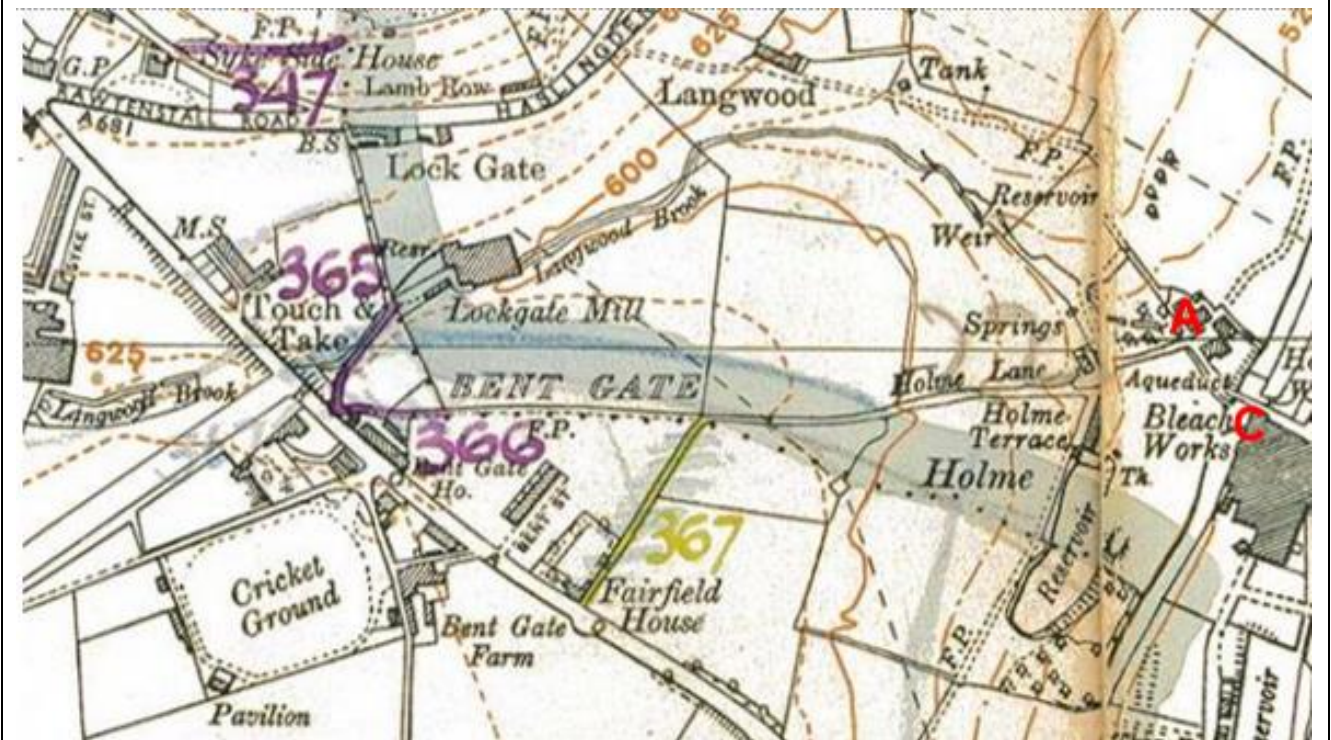
<p>Observations</p>	<p>The Draft Map for Rawtenstall showed a bridleway recorded along part of Holme Lane. The bridleway was drawn on the map starting at point A on the Committee plan and extending in a westerly direction past Holme Terrace through to the Borough boundary. The Draft Statement however described the route as being "From Bury Road along Holme Lane from W. of river in westerly direction to F.P. No. 312". The bridleway was said to be 0.46 miles long but the green line drawn on the map is only 0.23 miles long.</p> <p>If measured from Bury Road crossing the</p>
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		<p>railway and continuing over the river to point A on the Committee plan and then west to the junction with Footpath 14-4-312 it is a distance of approximately 0.43 miles which still differs from the measurement on the Draft Statement (0.46 miles) but is closer to the route being from Bury Road along Holme Lane and it is possible that the full length of the route from Bury Road to the borough boundary was considered to be a bridleway at that time.</p> <p>The Draft Map for Haslingden recorded the length of Holme Lane from Manchester Road to the Borough boundary as public bridleway, connecting to the bridleway along the Rawtenstall section of Holme Lane, suggesting that at the time the Draft Maps were prepared either the through route or from Manchester Road to The Holme was considered to be a public bridleway and not a public vehicular route.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Provisional Map – Rawtenstall



Provisional Map - Haslingden

<p>Observations</p>		<p>The Provisional Map sheets show the same as the Draft, i.e. bridleway in Haslingden from Manchester Road to the boundary and in Rawtenstall from the boundary to the Holme. The Statement accompanying the Map remained</p>
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		unaltered. Blue pencil lines can be seen on the map suggesting some possible changes to be made where the bypass cut across the network west of point A but these annotations were presumably added much later (the bypass was opened in 1978, nearly 20 years later).
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The First Definitive Map does not record the route under investigation (A-B-C) as a public right of way. The bridleway along Holme Lane as far as point A is shown in the same way as it is shown on the Draft and Provisional Maps but is still recorded in the Definitive Statement as starting on Bury Road and being 0.46 miles long.
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



		<p>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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<p>Observations</p>		<p>The route under investigation is not shown on the Revised Definitive Map (First Review). The Definitive Statement remained unaltered and still described the bridleway starting on Bury Road and running along Holme Lane.</p>
<p>Investigating Officer's Comments</p>		<p>Inconsistencies between what was shown on the maps and what was recorded in the accompanying statements make it difficult to infer any particular status for the route under investigation.</p>
<p>Highway Records</p>	<p>Adoption 1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district</p>

councils, and later from urban district and borough councils, to the County Council. The maps showing those roads formed the basis of subsequent highway maintenance maps although the originals no longer exist. In some cases, including Rossendale, maintenance was subsequently carried out by the district (Rossendale Borough Council) under an agency agreement so the maps were held by them.

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, these 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 public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.





<p>Observations</p>		<p>The route under investigation is not recorded as a publicly maintainable highway on the List of Streets.</p> <p>Holme Lane from Bury Road up to the eastern end of the bridge (point C) is recorded in the List of Streets ledger as being adopted in 1972 and is likely to have been adopted following private street works.</p> <p>The coloured mapping received from Rossendale Borough Council – who previously maintained public highways throughout the District under an agency agreement - did have colouring on the bridge but this was not the length recorded in the ledger and so has been corrected by the County Council Highways team and today's List of Streets does not have the bridge or remainder of the route under investigation identified as a route maintainable at the public expense.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is not recorded as a publicly maintainable highway on the List of Streets does not mean that it does not carry public rights of access so no inference can be drawn.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace</p>

		and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found.
Investigating Officer's Comments		If any unrecorded rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's		There is no indication by the landowners

Comments		under this provision of non- intention to dedicate public rights of way over this 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.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the route under investigation it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route under investigation was, at the time of the Act not recorded as a public footpath or bridleway and was not on the List of Streets (maintained at public expense) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route under investigation (A-B-C) and to be recorded on the Definitive Map and Statement would be restricted byway, with public rights with non-mechanically propelled vehicles, horses or on foot. The route extending west from point A was recorded as a public bridleway at the time of the Act but does not appear to have been used mainly by the public in MPVs and therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route would be restricted byway.

Summary

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

In conclusion, the evidence available suggests that on balance there appears to have been a significant through route which was originally created as private access to and from Holme Mill, the mill owners' property and mill workers' houses – all of which were located along it but which also provided a through route linking two significant public vehicular routes which may have been subsequently used by the public.

This public use may on balance have been bridleway use rather than vehicular.

Consideration of the long route from Bury Road to Manchester Road would indicate on balance it did not carry public vehicular rights. The through route is shown excluded from the Finance Act mapping. Even given the difficulties in trusting the accuracy of some of the mapping it is inescapable that the full route was excluded



from taxable plots indicating some public use but this may have been bridleway. The possible reference to it being bridleway is there when the Definitive Map and Statement were being created.

The section affected by the Bypass being considered less than a vehicular highway. The section from Bury Road to the bridge only becoming adopted vehicular highway in the 1970s.

Head of Service – Legal and Democratic Services Observations

Landownership

The majority of the route under investigation crosses land in private ownership, a short section from a point half way between point B and point C and point C crosses land which is unregistered.

Information from Others

Information discovered through the council's investigation is detailed above.

Information from the Landowner

No further information has been provided by the landowners.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

Here there is no express dedication or user evidence so Committee is asked to consider whether there is sufficient evidence from maps and documents on balance that a dedication and acceptance can be inferred at Common Law to have already happened.

In this matter Committee is referred to the evidence and summary and appraisal of historical maps and documents set out above.

The fact that the route under investigation is not presently recorded does not mean that it does not carry public rights of way.

There has been no legal stopping up of those rights and so it is advised that the legal maxim "once a highway always a highway " will apply.

It is suggested in the assessment of the evidence that whilst there is some evidence of possible public rights these rights may be bridleway rights.

Committee may consider it appropriate an Order be made for the route marked A-C to be added to the Definitive Map and Statement as a bridleway and that the evidence is sufficiently strong to decide that the Order be promoted to confirmation.

If Committee is persuaded that there is sufficient evidence of an old vehicular highway between point A-C Committee is reminded the Natural Environment and Rural Communities Act 2006 will have extinguished modern mechanically propelled rights leaving the route to be appropriately recorded on the Definitive Map as a Restricted Byway.

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.

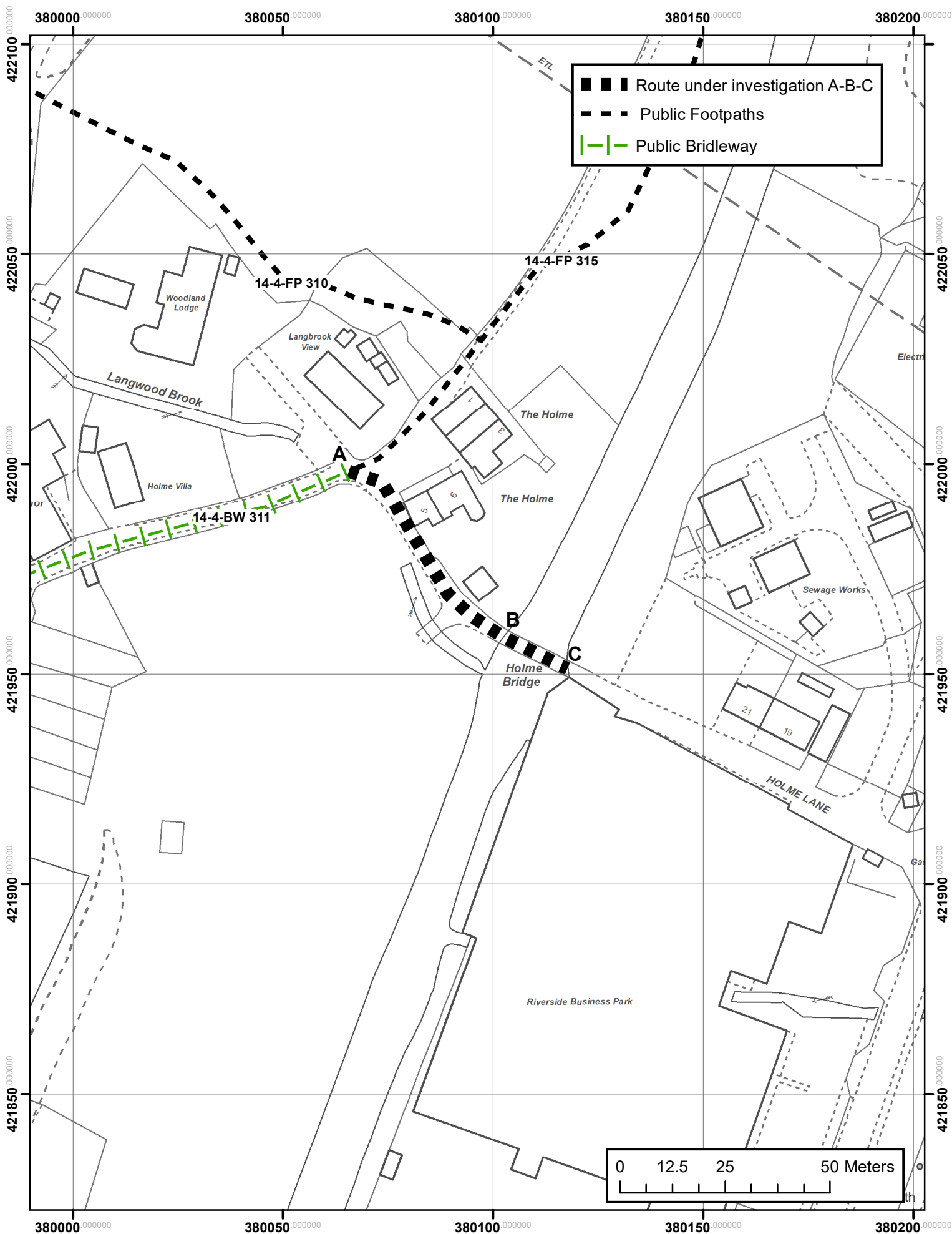
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-744		Simon Moore, 01772 531280, County Secretary and Solicitors Group

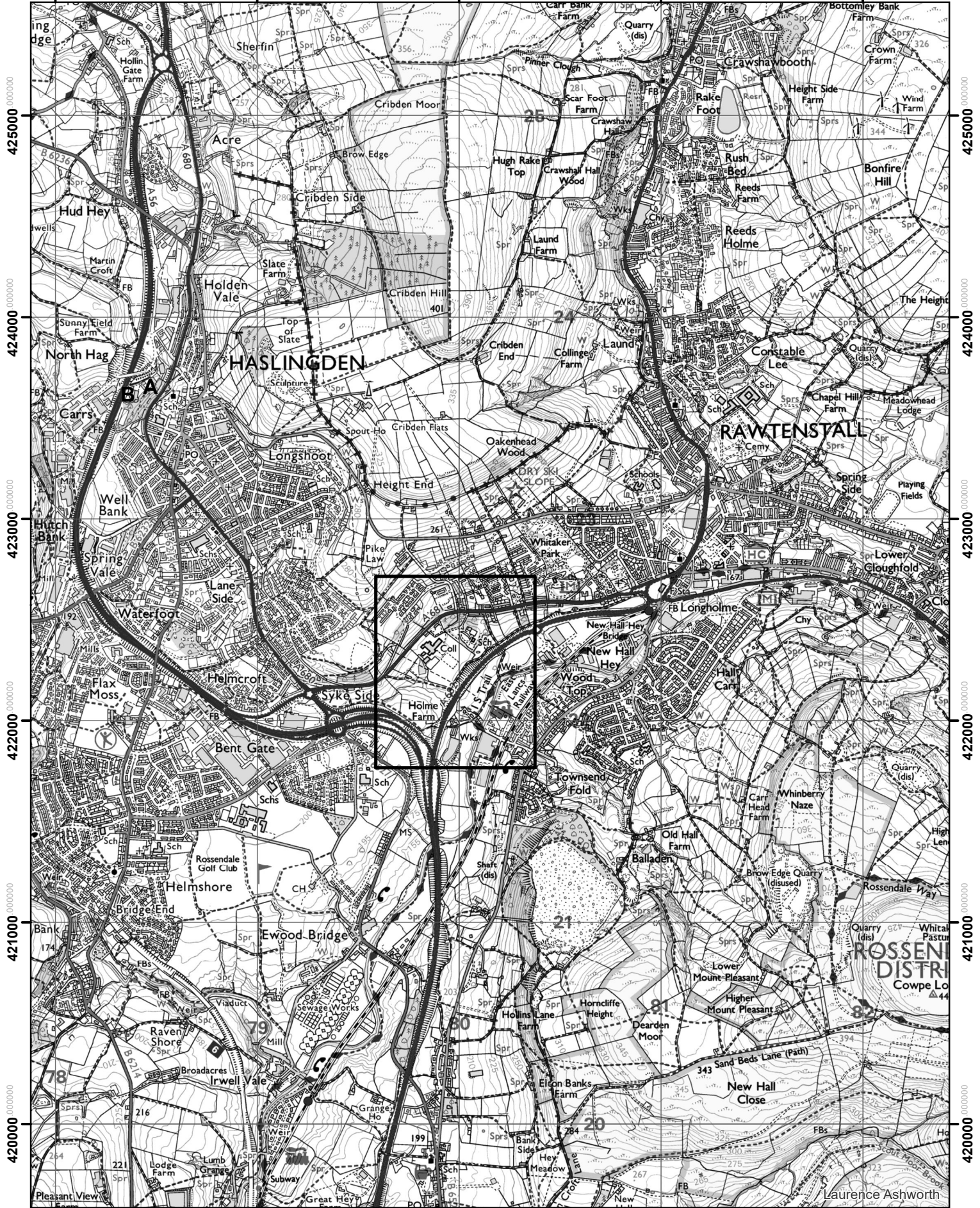
Reason for inclusion in Part II, if appropriate

N/A





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

Wildlife and Countryside Act 1981
 Investigation into public rights on Holme Lane, Rawtenstall

1:24000



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