

Lancashire County Council

Regulatory Committee

Wednesday, 16th November, 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 last Meeting held on 14th September 2022 (Pages 1 - 6)

4. Guidance (Pages 7 - 32)

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

5. Progress Report on Previous Committee Items (Pages 33 - 36)

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Waness Blades Road to Deans Lane, Lathom (Pages 37 - 100)

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Chatburn Old Road, Chatburn, Ribblesdale Borough (Pages 101 - 138)



8. **Wildlife and Countryside Act 1981** (Pages 139 - 190)
Definitive Map Modification Order Investigation
Addition of footpaths around Glencourse Drive,
Fulwood

9. **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.

10. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 25th January 2023 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston



Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 14th September, 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	J Oakes
T Aldridge	A Clempson
J Burrows	C Towneley
A Cheetham	M Maxwell-Scott
D Howarth	M Clifford
J Parr	

1. Apologies

There were no apologies for absence.

Permanent replacement

County Councillor Mark Clifford replaced County Councillor Loraine Cox on the Committee.

Temporary replacements

County Councillor Cosima Towneley replaced County Councillor Alan Hosker.

County Councillor Matthew Maxwell-Scott replaced County Councillor David O'Toole.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Parr declared a non-pecuniary interest in Item 7 as the application was in her district but not in her electoral division.

County Councillor Towneley declared a non-pecuniary interest in all items on the agenda as she was a member of various rights of way groups active in Lancashire.

County Councillor Cheetham declared a non-pecuniary interest in Item 9 as the application was in her electoral division.



3. Minutes of the Previous Meetings held on 22 June and 10 August 2022

Resolved: That the minutes of the meetings held on 22nd June and 10 August 2022 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

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

5. Progress Report on Previous Committee Items

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

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

Committee noted that the full list of Definitive Map Modification Orders was available on the county council's website and that this would be presented at the first Committee meeting of every calendar year.

Resolved: That the report be noted.

6. Proposed Consultation Process with Parish Councils

Standard letters to Chief Executives/Clerks of Parish/Town Councils and landowners had been prepared, following discussions at previous meetings around clarification of the Definitive Map Modification Order application process and the quality of responses being received from Parish Councils regarding applications in their area. The letters were circulated to Committee.

The letters explained the process for Definitive Map Modification Order applications in a user-friendly manner and included a request for a 'no comments' response from Parish and Town Councils.

In addition, a short YouTube video would be provided explaining what Definitive Map Modification Orders were, the background to the Definitive Map and Statement and an explanation of public rights of way. The video would also include information on what constituted a proper and non-vexatious objection to an application.



Resolved: That the standard letters to Parish/Town Councils and landowners be noted.

**7. 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**

A report was presented on an application for the addition of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm, 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 no modern user evidence had been submitted as part of this application and it was noted that the historical route was no longer accessible between point A and point C. The route E-H had been created as a private road as part of the inclosure process.

It was reported that, whilst the route was consistently shown on all Ordnance Survey maps examined, including the small-scale 1 inch maps, suggesting that it was capable of being used at least on horseback, it was not known whether this use would have been public or private.

Committee were advised to consider whether there was sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating, or whether there was 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.

County Councillor Towneley stated that as this was a historical claim, user evidence was not required to be provided although the letter received from one user was compelling in that the application route had been used for over 21 years. Every part of the route was shown on maps which were publicly available. From the evidence provided, County Councillor Towneley considered that the application route was a public right of way and had been for some years, as it had consistently been shown on publicly available maps for many years. Although the application route was blocked by a stone wall at Point A, it was stated that a diversion could be applied for if it was seen to be a public right of way. To conclude, County Councillor Towneley considered that there was historical evidence of a public right of way along the application route and it was Proposed and Seconded that:

'The Recommendation in the report be not accepted and that the application for a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm to be added to the Definitive Map and Statement of Public Rights of Way, be accepted and promoted to confirmation'.



It was therefore:

Resolved:

- (i) That the application for a Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm, 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 from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-B-C-D-E-F-G-H.
- (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.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Byway to the Queen Mary's Military Hospital Cemetery, Whalley**

A report was presented on an application for the addition of a byway open to all traffic from Mitton Road to the Queen Mary's Military Hospital Cemetery, Calderstones, 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.

A site inspection had been carried out in June 2022.

It was reported that map and documentary evidence supplied in support of the application was limited with no map or documentary evidence supporting the use of the route applied for as a public right of way.

Committee were informed that no route had existed prior to the construction of the cemetery site. One third of the site was the Queen Mary's Military Hospital Cemetery and two thirds was the Calderstones Hospital Cemetery. The Queen Mary's Military Hospital Cemetery was accessed solely by the application route, through the Calderstones Hospital Cemetery site, and was managed by the Commonwealth War Graves Commission.

The whole cemetery site was consecrated ground. There was vehicular access at point A through the gates and a pedestrian gate; both gates were locked due to access in the past resulting in some vandalism of the site. The locked pedestrian gate displayed a sign stating that although staff were not available to provide access, if you required access to the war graves cemetery, the Calderstones Hospital reception held a key to the gate and a telephone number was provided.

Committee Members felt very strongly that members of the public needed access to the war graves and, after a discussion, it was clarified to Committee that everyone



had access through private rights along the route to visit the graves, and that access could not be prevented.

With the agreement of the Chair, a telephone call was made to the number on the displayed sign and it was confirmed that the key to access the site was available at Calderstones Hospital reception. If the planned development of the site went ahead, access through the site was still guaranteed.

The Chair requested that officers ask the keyholder to update the sign to indicate the times when the key would be available. In addition, officers would make enquiries in relation to access through the locked vehicular gate.

The legal officer confirmed that the 1916 documentation referred to access to the cemetery being '...at all times and for all purposes connected with the use and enjoyment of the intended war memorial and cemetery'.

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

Resolved: 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.

The Chair informed Committee of a Heritage Weekend being hosted by Whalley Old Grammar School Community Centre 'A pictorial history of Calderstones through time' taking place on 17th and 18th September from 11.00am until 4.00pm.

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

A report was presented on an 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.

A site inspection had been carried out in March 2022.

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

It was reported that the fact that the route under investigation was not presently recorded did not mean that it did not carry public rights of way. There had been no



legal stopping up of those rights and Committee were therefore advised that the legal maxim "once a highway always a highway " would apply.

It was suggested in the assessment of the evidence that whilst there was some evidence of possible public rights, these rights may be bridleway rights rather than vehicular rights.

It was clarified to Committee that, if it was agreed to record the route as bridleway, this would not affect any private vehicular rights that already existed.

Committee were advised they may consider it appropriate for 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 was sufficiently strong to decide that the Order be promoted to confirmation.

Resolved: 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.

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 16th November 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 16 November 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 16 November 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, 16 November 2022

Part I

Electoral Division affected:
(All Divisions);

Progress Report on Previous Committee Items

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,
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David Goode, 01772 537663, Public Rights of Way Manager,
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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 24th of October 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
804-755	Millennium Green	24/06/2022
804-756	Fine Jane Brook, Halsall	05/08/2022
804-757	Heathy Lane, Downholland	05/08/2022
804-758	Gorsey Lane, Downholland	05/08/2022
804-759	Starrick Track, Priest Hutton	23/09/2022
804-760	Douglas Bank Boatyard, Hesketh Bank	03/10/2022

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 application, the decision notices have been served and the window for appeal is now open.

Reference	Known As	Application Date
804-733	Calderstone Cemetery, Whalley	25/10/2021

Definitive Map Modification Order Applications awaiting Confirmation

Committee has made a decision for these applications, the Orders have been made and Notices of Making served, no objection has been received and the Orders are currently awaiting confirmation.

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

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

Committee has made a decision for these applications, the Orders 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
804-727	Sod Hall Lane, New Longton	28/09/2021
804-728	Hodder Street, Accrington	13/10/2021



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

Committee has made a decision for these applications, the Orders have been made, and subsequently confirmed, the Orders are currently in the window for appeal to the High Court.

Reference	Known As	Application Date
804-440	Cockhill Lane, Foulridge	21/03/2006
804-440	Castle Road, Foulridge	21/03/2006
804-623	Hillside Drive, Newchurch	13/05/2020

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

Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A



Regulatory Committee

Meeting to be held on 16 November 2022

Part I

Electoral Division affected:
West Lancashire East

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Wanes Blades Road to Deans Lane, Lathom**

(Annex 'A' refers)

Contact for further information quoting reference 804-712:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors
Group, Simon.Moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition to the Definitive Map and Statement of a Bridleway from Wanes Blades Road to Deans Lane, Lathom.

Recommendation

- (i) That the application for the addition of a Bridleway from Wanes Blades Road to Deans Lane be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) 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 Bridleway between Wanes Blades Lane and Deans Lane as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way a Bridleway from Wanes Blades Road to Deans Lane, Lathom.

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

West Lancashire Borough Council

West Lancashire Borough Council provided no response to consultation.

Lathom Parish Council

Lathom 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	4726 1195	Open junction with Waness Blades Road
B	4735 1188	Route turns through ninety degrees before reaching bank of River Tawd
C	4725 1177	Route crossed by drainage ditch
D	4726 1169	Open junction with Deans Lane

Description of Route

A site inspection was carried out in July 2021.

The application route commences at an open junction with Waness Blades Road directly opposite the T junction with Wood Lane.

Access onto the route is not restricted and the route runs along a 3-3.5 metre wide track between two fields planted with crops. The route is not separated from the fields by any fencing and there is no evidence of the remains of the old hedge/fence lines seen on the historical maps and photographs detailed below.

On an initial inspection the surface of the route appeared to comprise of compact earth and grass but a closer inspection revealed that the full length between point A and point B was cobbled to a width of approximately 3 metres.

From point A the route extends in a south easterly direction for 100 metres to point B. At point B the route turns to continue in a south westerly direction parallel to a drainage ditch. The first 25-30 metres of the route from point B was grass which had been mowed – as had the surface on the corner at point B and beyond the mown section there was no evidence of a track although it was possible to follow the route along the side of the overgrown drainage ditch along the edge of a field planted with crops to point C.

At point C the route crosses the drainage ditch but there was no culvert or other means of access so it was not possible to continue through to point D.

At point D the exit onto Deans Lane was so overgrown that it was not possible to walk along it back towards point C.

There was no fencing across the route at point C and if the route had not been overgrown it appears that it would have been possible to access point C. Hedges



located at point C were consistent with the start-finish of a bounded route separated from the adjacent fields.

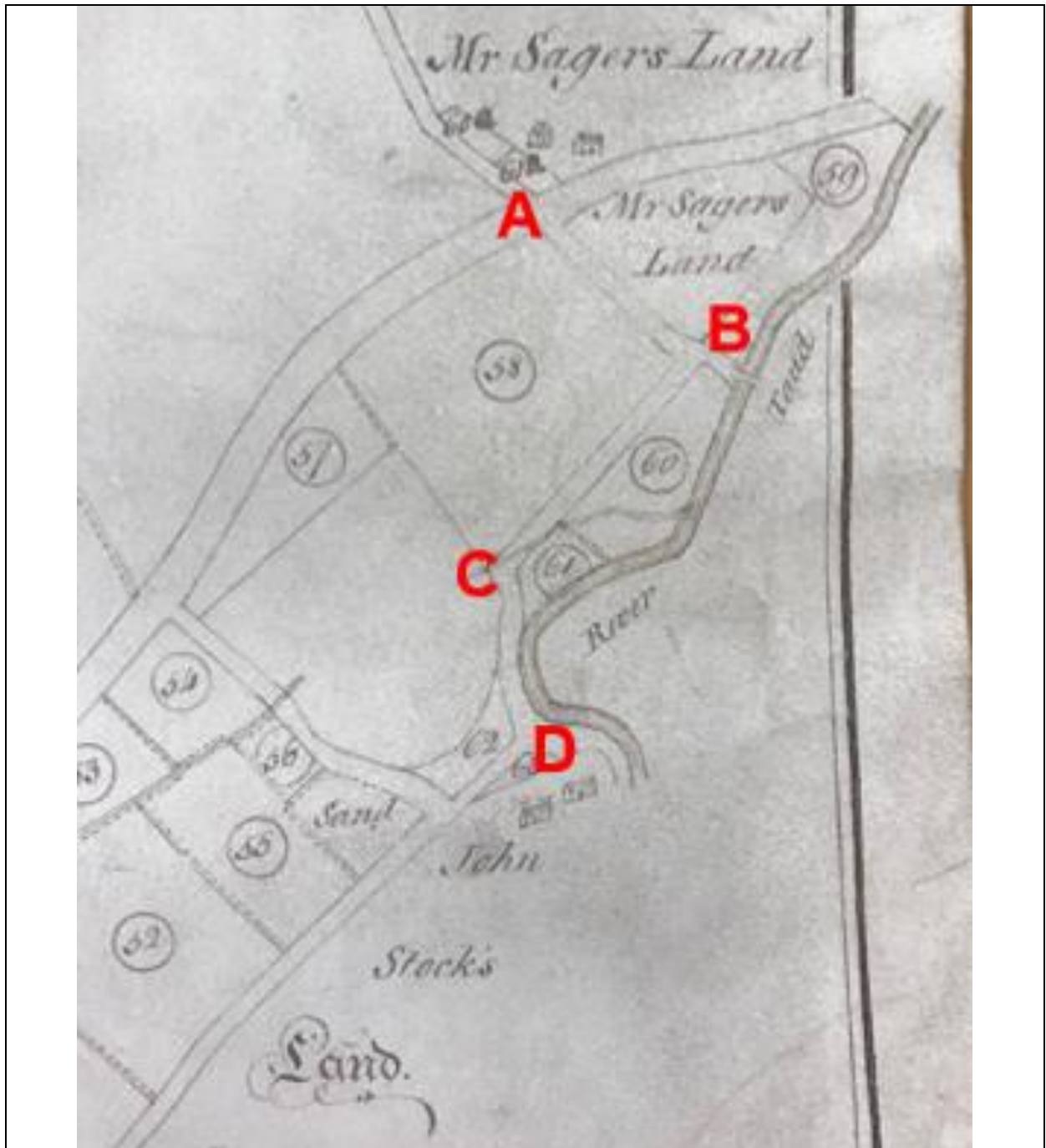
The total length of the route is 340 metres.

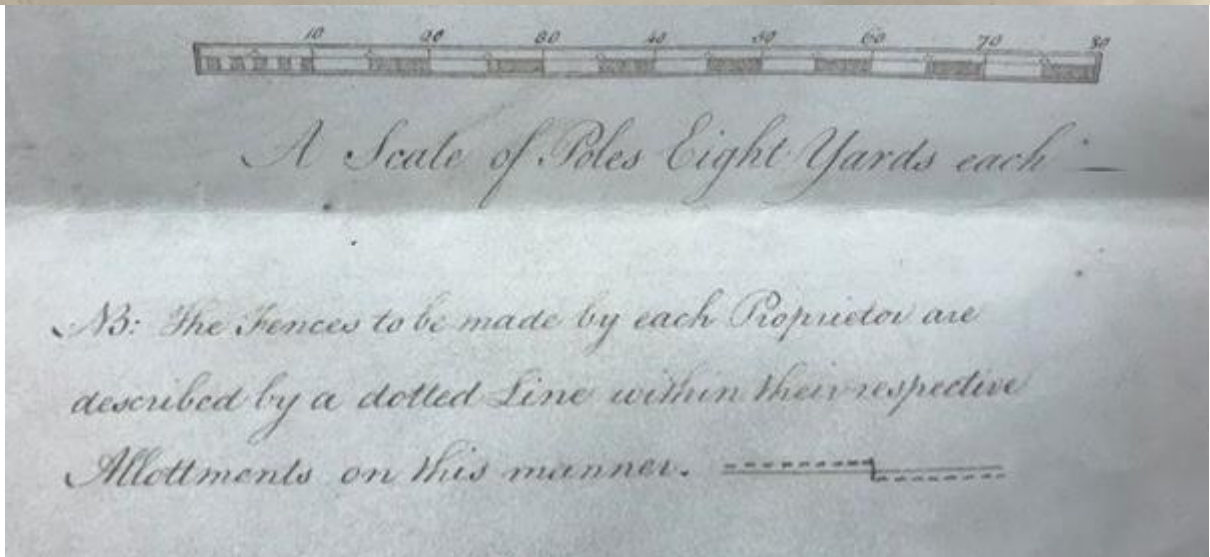
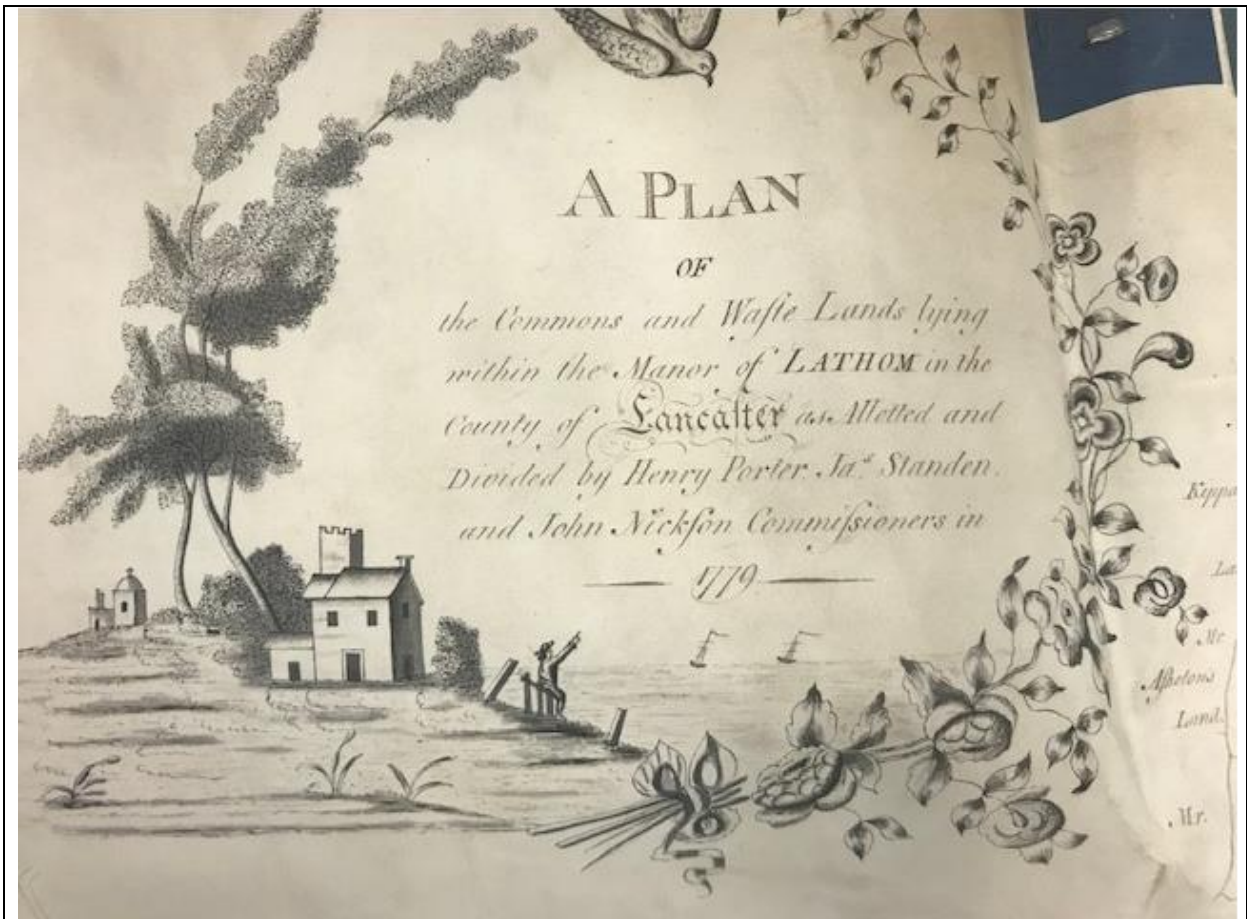
When the route was inspected the Investigating Officer spoke to the farmer who owned land adjacent to the route between points A-B-C. He explained on site that his father had farmed the land prior to him and that the route between A-B was cobbled and had been bounded by trees and hedges until more recent years. He remembered an old wooden bridge across the river south east of point B which fell into disuse many years ago and which provided access to some farm buildings on the other side of the bank. He also recalled that there had been access across the drainage ditch at point C but this was removed quite some time ago when the 'Rivers Authority' used to maintain the ditch.

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
Inclosure Act, Award and Maps	1778-79	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.





<p>Observations</p>		<p>A copy of the 'Act for Dividing and Inclosing the Several Commons and Waste Grounds, within the Manors of Lathom and Skelmersdale, in the Parish of Ormskirk, in the County Palatine of Lancaster' dated 1779 was obtained from the Parliamentary Archives.</p> <p>The Act names the three Commissioners to be appointed to</p>
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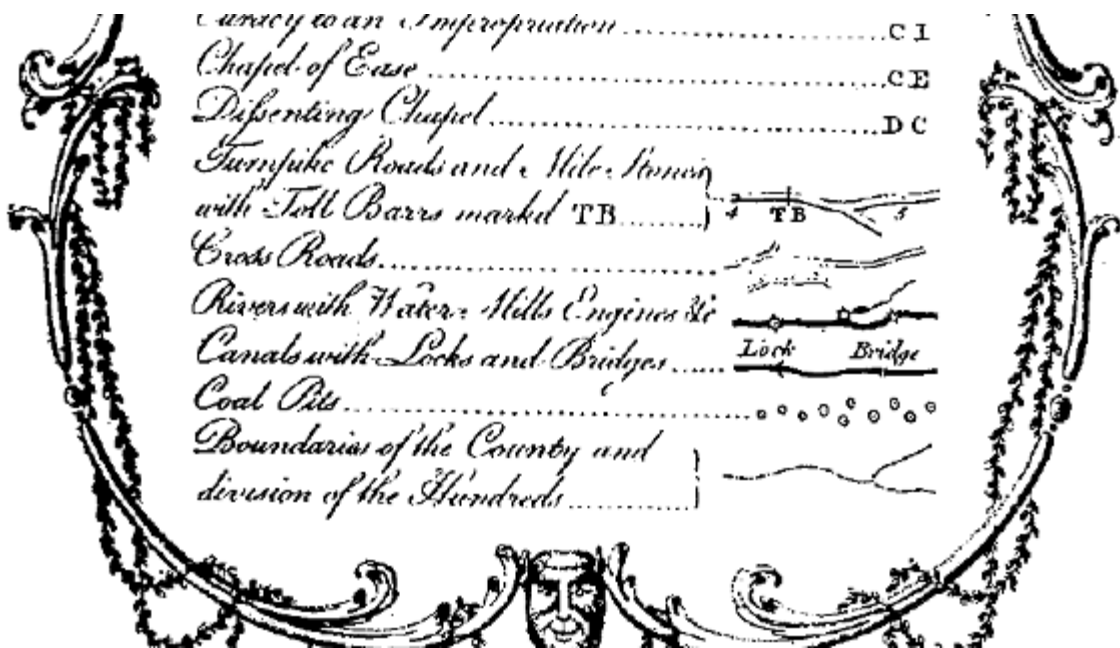


		<p>undertake the inclosure of the land and sets out the procedure to be followed.</p> <p>The Act specifies that the commissioners had the power and authority to set out both public and private roads, highways and footways, in, over and through the common and waste grounds to be inclosed as they thought necessary and for public roads to be sixty feet (18.2 metres) wide between fences and that they should at all times and thereafter be repaired and kept in repair by such persons and in such a manner as the other public highways in the respective manners. It also specifies that all private and bridle roads and footways would be repaired and kept in repair by such person or persons and in such a manner that the Commissioners order and direct.</p> <p>Commissioners did not have the power to alter any existing turnpike roads but did have the power to alter any other existing public or private routes across the land to be inclosed and to set aside 3 acres of land in the parish of Lathom for the purpose of the collection of sand, gravel and other materials for the repair of roads and public highways.</p> <p>The subsequent Inclosure Map and Award for land described as the commons and waste lands in the Parish of Lathom dated 1779 was also inspected.</p> <p>The plan shows the full length of the application route crossed by a watercourse at point C. The route is shown separate from the numbered fields and is without any lines (which may have indicated gates) across it. From point B a route is shown continuing south east across the River Tawd. Land adjacent to the route is numbered as plots 58, 59, 60, 61 and 62 and</p>
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		<p>the names of the persons allocated each of the numbered plots is given in a table labelled as 'References'.</p> <p>There is no key to the map other than a reference to responsibility for fencing each of the prescribed allotments.</p> <p>The Award provides details of how the land to be enclosed is to be divided and allotted. The descriptions of the locations of plots 58, 59, 60 and 61 in the Award all specifically refer to the application route as an 'intended private way or road' and to Waness Blades Road/Hoscar Moss Road as an 'intended public road or highway'.</p> <p>The Award also describes as a 'public road or highway' the application route itself: 'now staked out containing throughout in breadth thirty six foot beginning at the north east corner [illegible word] an allotment numbered 58 upon the said map or plan and leading from thence along the east end and south side of the said allotment and from thence westwards to the vill of Newburgh.'</p>
Investigating Officer's Comments		<p>It appears that the application route may have been set out in relation to the inclosure of land in Lathom. No maps have been located pre-dating the inclosure award from which it is possible to determine whether the route existed prior to this time but the route is described in the Inclosure Award as 'intended' suggesting that it did not exist before this time. The route is described in the Inclosure Award both as an 'intended private way or road' and as a 'public road or highway' and was set out at 36' rather than the 60' required by the Act for a public road. One possible explanation is that it was intended as a public bridleway and private carriageway rather than public</p>

<p>Yates' Map of Lancashire</p>	<p>1786</p>	<p>carriageway. 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>
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Curse to an Imperfection C I
Chapel of Ease CE
Disputing Chapel DC
Turnpike Roads and Mils. Houses with Toll Barrs marked TB TB
Cross Roads
Rivers with Water Mills Engines &c
Canals with Locks and Bridges Lock Bridge
Coal Pits
Boundaries of the County and division of the Hundreds


<p>Observations</p>	<p>Less than 10 years after the land</p>
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		<p>was enclosed a route consistent with the location of Wanes Blades Road is shown along the edge of an area labelled as Hoscar Moss (Horsecar Moss). Unnamed buildings are shown on Wanes Blades Road approximating to the location of Tyrer's Farm which is near to point A on the Committee plan. From Wanes Blades Road a route denoted in the key panel as a cross road is shown extending south through to Newburgh crossing the (unnamed) River Tawd. Between the junction with Wanes Blades Road and the crossing of the river the route shown may have been the application route – or a route broadly consistent with it.</p>
Investigating Officer's Comments		<p>The application route – or a route approximating to it - is shown as part of a longer substantial route which would have been capable of being used on foot, horseback and with horse drawn vehicles in the 1700s. It is depicted as a cross road although it is not known what is meant by the term 'cross road'. However, the only other category of highway shown on the map is turnpike roads so the inclusion of the route on such a small scale map suggests that it existed as part of a substantial through route forming part of the general road network at that time.</p>
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-</p>

issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.



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



Turnpike Roads, thro' enclosed countries

D^o thro' unenclosed d^o

Bye Roads are marked by closer lines, as

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

Churches and Chavels

Observations

The application route is not shown.

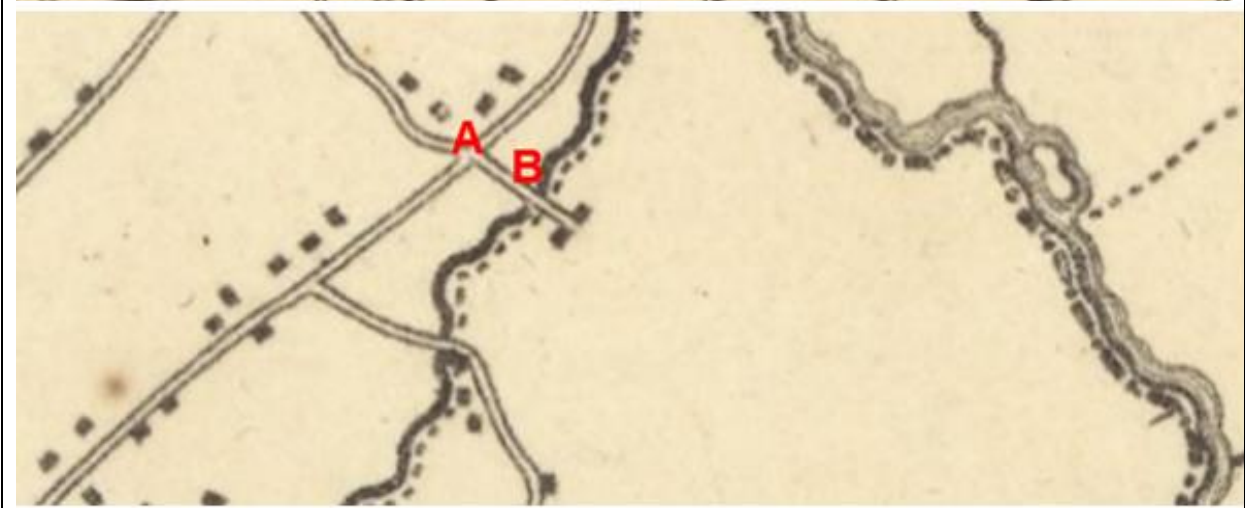
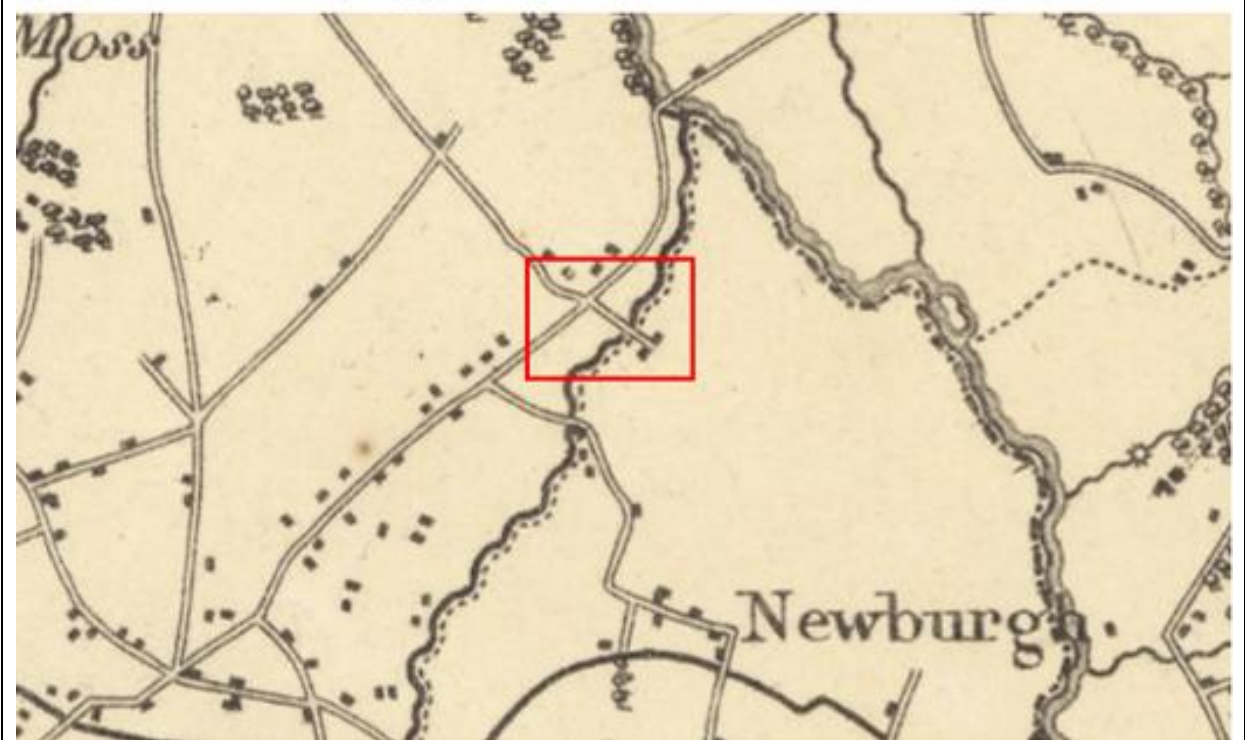
Investigating
Comments

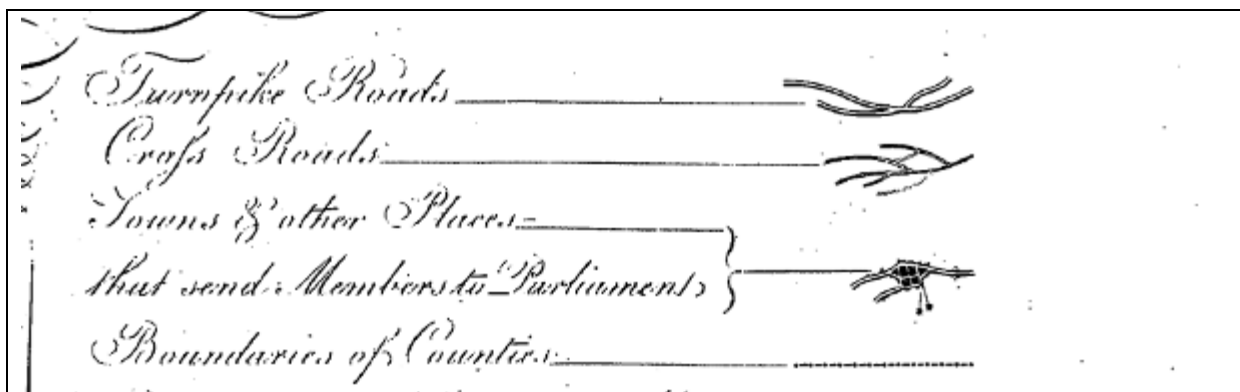
Officer's

It appears likely that the application route existed in 1787 so the fact that it is not shown on this map is possibly because Smith did not consider the route to be a public vehicular route and/or a route of such significance to be included on such a small scale map but possibly because his information

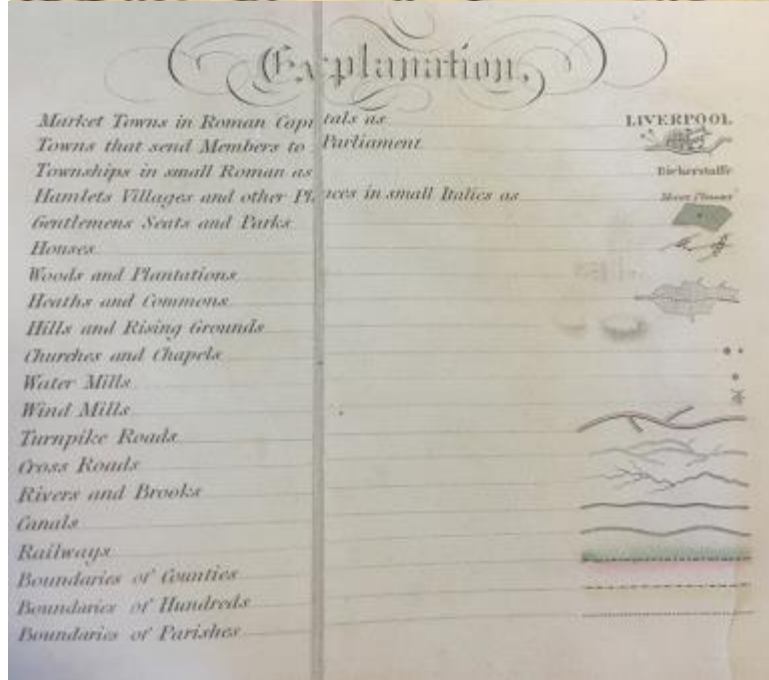


		pre-dated the construction of the roads made following the Inclosure Award less than 8 years earlier.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.





Observations		The application route from point A to point B is shown extending south east from point A at the junction of Wanes Blades Road and Wood Lane to pass through point B and to continue south east to cross the watercourse to provide access to an unnamed property. The application route between point B and point D is not shown.
Investigating Officer's Comments		The application route from point A to point B existed as part of access to an unnamed property but did not appear to form part of a longer through route. Between point A and point B the route was probably capable of being used on horseback and with horse drawn vehicles but despite being shown on Greenwoods Map its use may have been private rather than public at that time.
Hennet's Map of Lancashire	of 1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

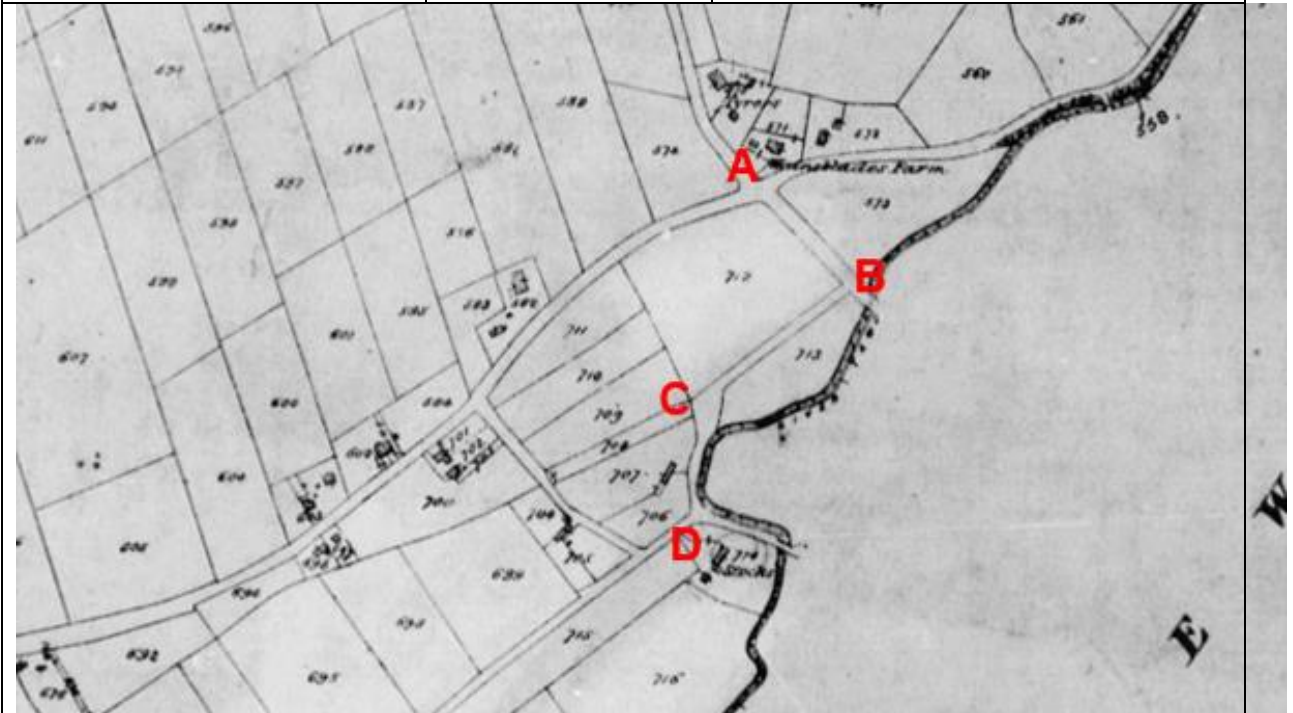


Observations		The application route between point A and point B is shown as part of a longer route crossing the watercourse to provide access to two unnamed properties. The route is denoted as being a crossroad in the map key. The application route from point B through to point D is not shown.
Investigating Officer's Comments		The application route between point A and point B existed as part of a substantial access route in 1818 and was probably capable of



		<p>being used on horseback and with horse drawn vehicles.</p> <p>The application route between point B and point D may have existed but was not considered to be a significant route at that time.</p> <p>It is not fully known what is meant by the term 'cross road'. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths.</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 are no existing, dismantled or known proposals for canals or railways across the land over which the application route runs.</p>
Investigating Officer's		<p>No inference can be drawn with</p>

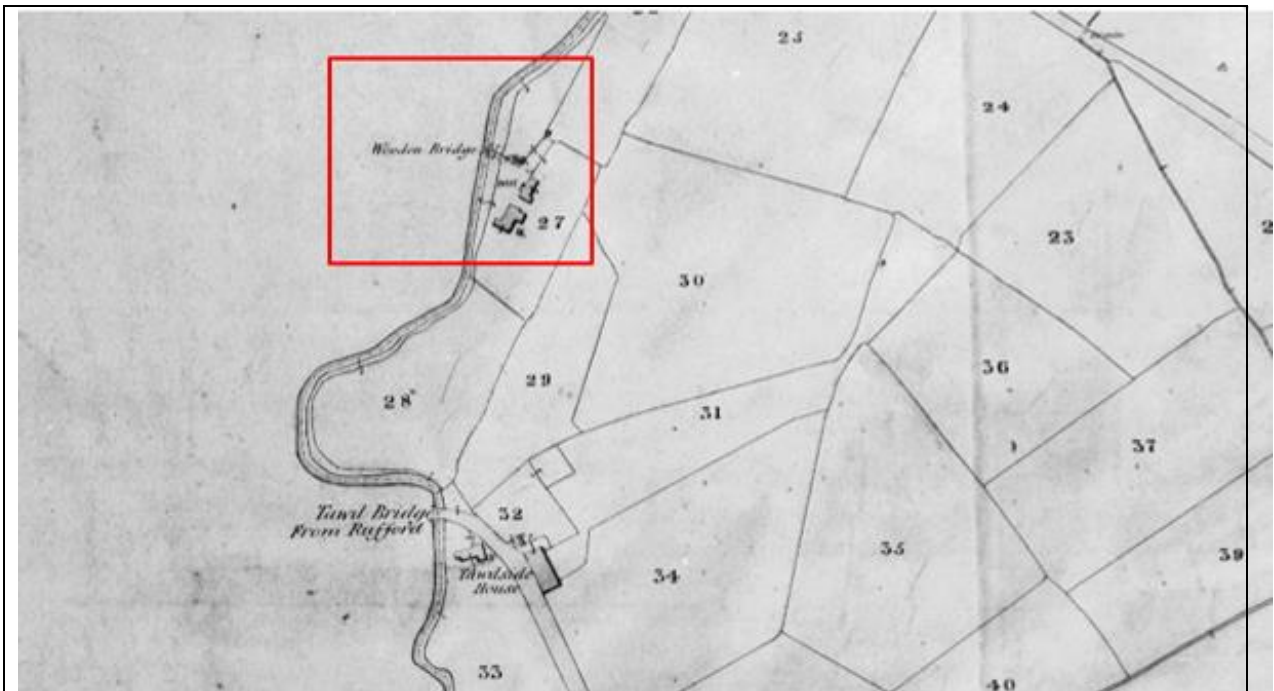
Comments		regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		The Tithe Map for Lathom is dated 1839 and shows the full length of the application route. The route is shown unrestricted at the junction with Wanes Blades Road and Wood Lane at point A and at the junction with Deans Lane at point D. At point B the route which was shown on the early commercial maps is shown continuing south east across the watercourse to the
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		<p>parish boundary. The application route is shown from point B through to point D forming a through route from point A which connects to routes now recorded as public vehicular highways at both ends.</p> <p>The application route is not numbered on the map but passes through land with numbered plots on either side of it. An examination of the Tithe Map for the parish shows that the application route was depicted consistent with how other routes now recorded as public vehicular highways were shown – none of which were numbered on the map or listed in the Tithe Award.</p>
Investigating Comments	Officer's	<p>The Tithe Map shows the full length of the application route existed as a through route in 1839 that would probably be wide enough to be used on horseback and with horse drawn carts.</p> <p>There are no lines shown across the route suggesting that it was not gated and that access was freely available along the full length.</p> <p>The route is not numbered – in line with how other public vehicular routes are shown but this does not necessarily mean that it was because the road was public and there are other routes shown on the map in the same way which have no recorded public vehicular rights so the information provided by the Tithe Map and Award must be considered in the context of all other available evidence.</p>
Tithe Map and Award for Newburgh	1845	Tithe Map for the adjacent parish.



		No.	LANDS AND PREMISES.	CULTIVATION		
<i>(Derby the Earl of Continued)</i>	<i>Waxendale John</i>	<i>4</i>	<i>Pighill Meadow</i>	<i>Cats and One</i>		
		<i>5</i>	<i>Part of Pighill Meadow</i>			
		<i>20</i>	<i>Pickets</i>	<i>Pasture</i>		
		<i>27</i>	<i>House Outbuildings Yard and Orchard</i>			
		<i>30</i>	<i>Big hay and Little hay</i>	<i>Cats</i>		
		<i>35</i>	<i>Middle hay</i>	<i>Potatoes</i>		
		<i>33</i>	<i>Horse Coe</i>	<i>Meadow</i>		
		<i>22</i>	<i>Marked hay</i>	<i>Wheat</i>		
			<i>Waxendale John and Rufford Edward</i>	<i>22</i>	<i>Occupation road</i>	
			<i>Bolton John</i>	<i>102</i>	<i>Collyer and Garden</i>	

Observations

The Tithe Map for Newburgh was also examined to see whether it showed a link through to the application route. The map shows the property accessed via the application route A-B. The application route is off the area of this map but marks the location of a bridge across the River Tawd from which the application route could be accessed. The property shown on the early commercial maps as being accessed by the application route between point A and point B is numbered on the Tithe Map as plot 27 and described as house, outbuildings, yard and



		orchard in the Tithe Award. The property is listed as being occupied by John Baxendale and owned by the Earl of Derby.
Investigating Officer's Comments		The Tithe Map and Award for Newburgh confirm that access to the property east of the watercourse was via the application route A-B and wooden bridge – with no other access shown. It also shows and names 'Tawd Bridge' to which the application route connected.
Cassini Old Series Sheet 108, Liverpool	c. 1840	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.



Old Series sheets used to create this map:

- Sheet 79, N.E. Quarter, first published 7th November 1840
- Sheet 80, N.W. Quarter, first published 1st October 1842
- Sheet 89, N.W. Quarter, first published 20th December 1842
- Sheet 89, S.W. Quarter, first published 1st August 1843
- Sheet 90, N.E. Quarter, first published 1st October 1842
- Sheet 90, S.E. Quarter, first published 8th April 1842

Observations		The full length of the application route is shown. A route is shown continuing south east from point B across the river to buildings named on the map as Tawd Side and another route is shown continuing south west from point C through to Deans Lane consistent with the line of a drainage ditch in existence today.
Investigating Officer's Comments		The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The early (first edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes in case they were needed for defence. 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.
6 Inch Ordnance Survey (OS) Map Sheet 84	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 – 1846 and published in 1848. ¹

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



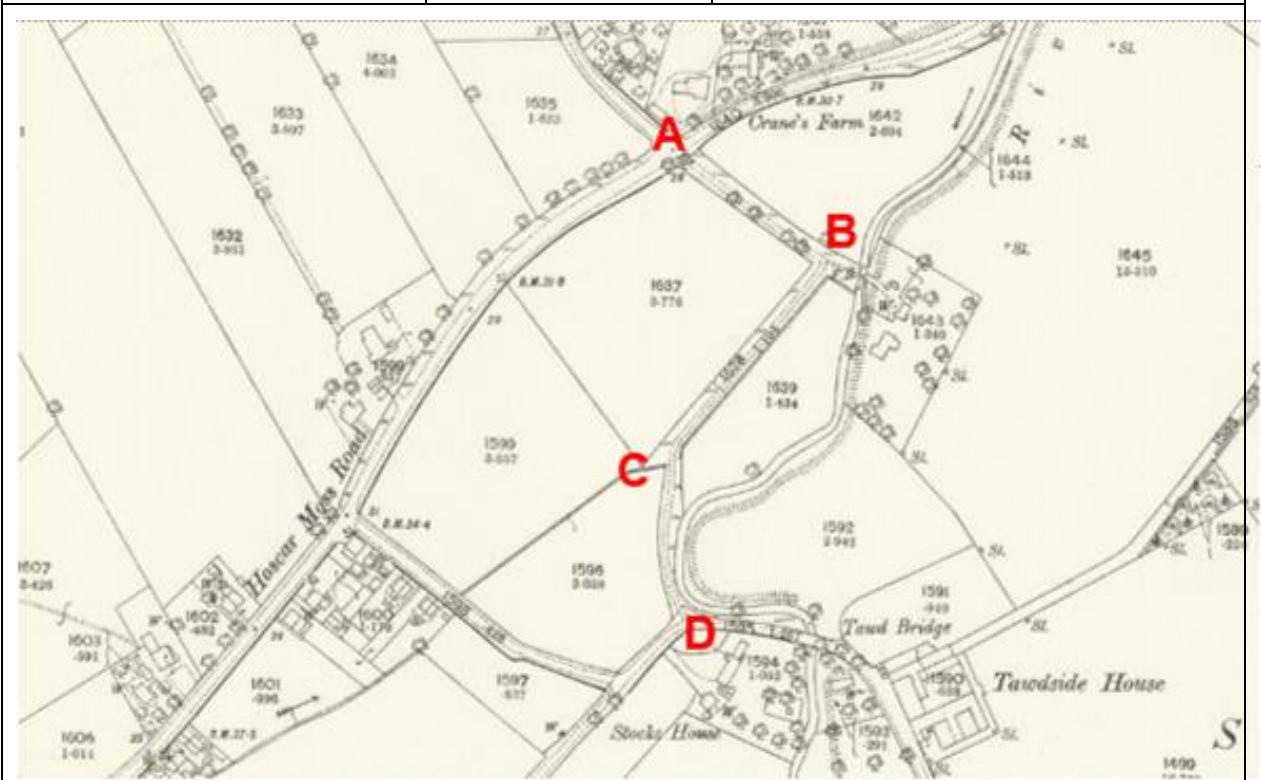


<p>Observations</p>		<p>The full length of the application route is shown from point A through to point D. From point B a route extends south east to a wooden bridge across the River Tawd providing access to some unnamed buildings. Of note was the fact that thickened lines appear to have been drawn along both sides of the route and along both sides of the majority of other bounded routes on the map sheet. A thin strip of fenced off land is shown from point C continuing south west to Deans Lane consistent with the location of a route shown on the Cassini Map detailed above.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a bounded through route connecting at either end to public vehicular highways and providing access to a property east of the route via point B. The route appeared capable of being used in 1845-46. It is considered that a substantial bounded route providing access to and past a number of properties and connecting to a network of</p>



		<p>other public highways. It may have been at least a public bridleway and may have carried public vehicular rights but this must be considered in the context of all other available evidence.</p> <p>The thickened lines shown along both sides of the route is not considered to be significant or indicative of public status on this map and no inference can be drawn from it.</p>
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<p>25 Inch OS Map Sheet LXXXIV.7</p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.</p>
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<p>Observations</p>		<p>The application route is shown as a substantial bounded through route. No solid lines are shown across it suggesting that access was not restricted. Dashed lines are shown across the start of the route at point A suggesting a possible change in surface from Wades Blades Road. Between point A and point B the route is fenced on either side and runs along a strip of land approximately 12 metres wide between fences. At point B the</p>
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		<p>application route turns to continue in a south westerly direction and another route continues straight on from point B for 20 metres to the River Tawd where a bridge marked as a footbridge (F.B) is shown providing the only access to a number of buildings.</p> <p>Continuing from point B the application route runs south west immediately adjacent to a drainage ditch and bounded/fenced on the northern side. The width of the route between the ditch and fence is still substantial – 10 metres – through to point C.</p> <p>At point C the route crosses the drainage ditch by way of a culvert and continues in a generally northerly direction initially fenced on both sides and then on the east side by the River Tawd and fenced on the west side through to the junction with Deans Lane varying in width from between 6 and 12 metres.</p> <p>The route from point A through to point D and including the spur leading to the footbridge from point B has on parcel number allocated to it (1638).</p> <p>Wanes Blades Road and Deans Lane are shown with a thickened line along the south and east sides, but the application route is not shown in this way.</p>
Investigating Officer's Comments		<p>The full length of the application route is shown as a substantial bounded route which appeared capable of being used on horseback and with horse drawn vehicles in 1893.</p> <p>Despite the substantial width of the application route the access bridge across the River Tawd to the east of point A is marked as a footbridge (F.B.) and measures only 1.5 metres wide on the map.. The</p>

		<p>application route has been given a parcel number and acreage suggesting that – as shown by the fact that it was bounded on both sides – it was separated from the adjacent fields. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p> <p>The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that Waner Blades Road and Deans Lane are shown suggests that the application route was not considered to be a well maintained public vehicular road at that time. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route was not shown in this way is not inconsistent with how it was recorded on earlier OS maps and the Tithe Map and is not inconsistent with use of the route by the public at least on horseback.</p>
<p>1 inch OS Map Sheet 84 - Wigan</p>	<p>1896</p>	<p>Small-scale OS map published in 1896.</p>



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

Observations

The full length of the application route is shown as an enclosed through route providing access to the property east of the river from point B. It appears to be depicted on the map as a third-class road or unmetalled road. There are no lines across the route at either end or at any point along it.

Investigating Officer's Comments

This is a map surveyed to show what existed physically. The existence of this substantial road does not in itself show public rights but is consistent with public rights if supported by other evidence. By the late 1800s the small scale 1 inch OS maps had started to gain a significant market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of

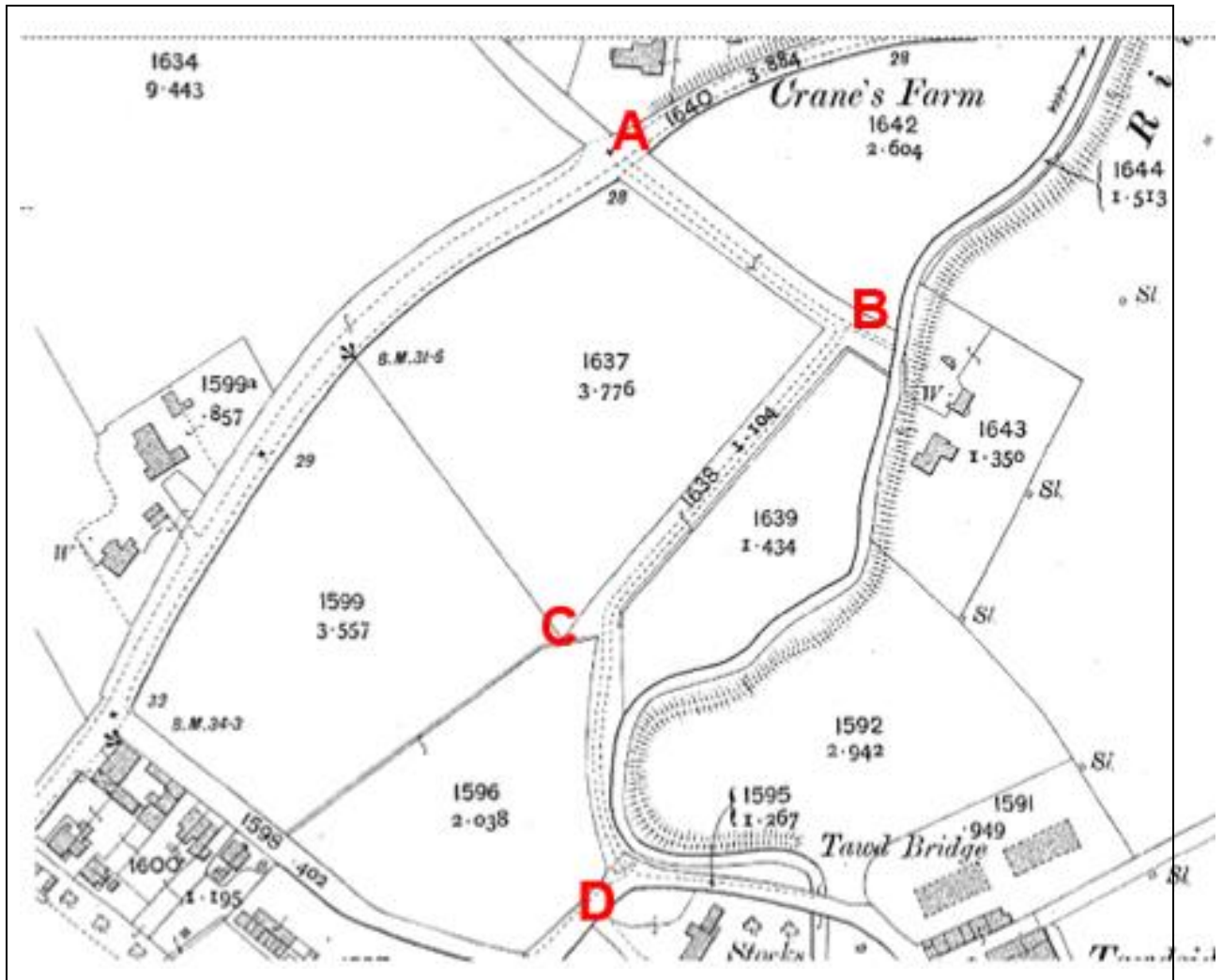


		being used at that time at least on horseback and possibly horse and carts.
Bacons Map of Lancashire	1905	G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.



Observations		A route consistent with that part of the application route from point A through to point B is shown but the rest of the route through to point D is not shown and Deans Lane – to which the route connects at point D - is not shown.
Investigating Officer's Comments		The original scale of the map means that only the more significant routes are generally shown. No inference can be drawn with regards to public rights.
25 inch OS Map Map Sheet LXXXIV.7	1908	Further edition of the 25-inch map surveyed in 1892, revised in 1907 and published in 1908.



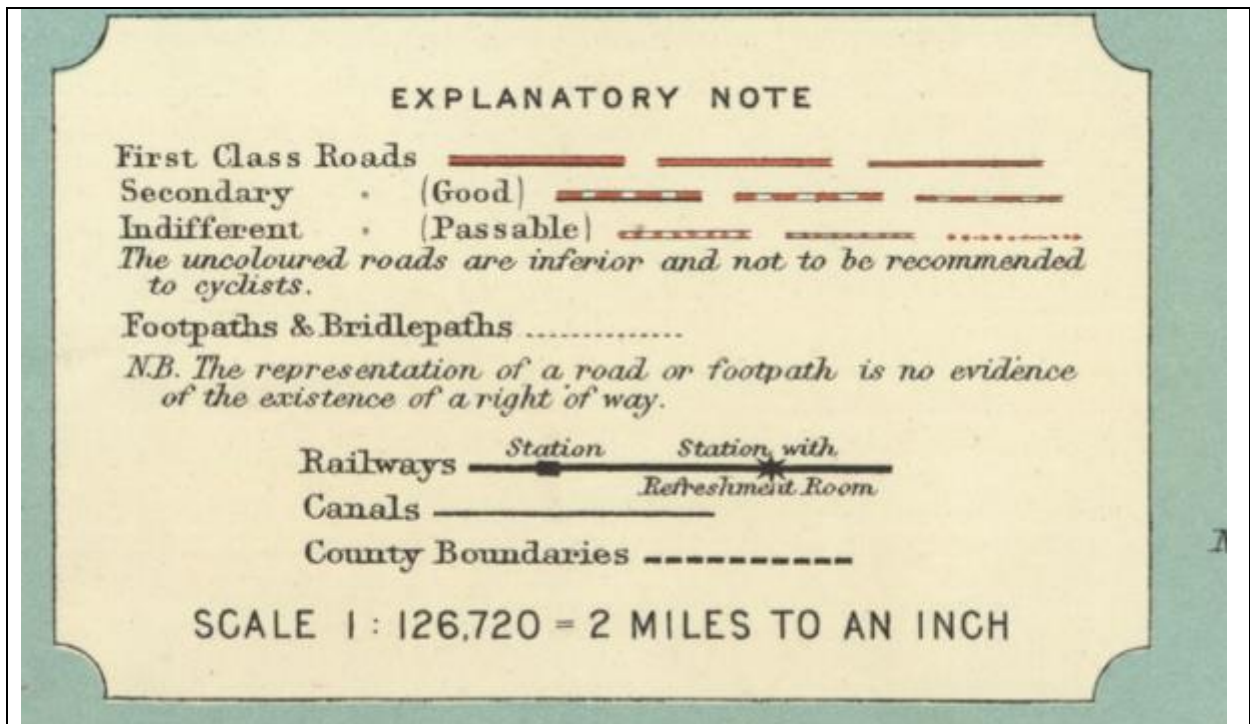


<p>Observations</p>		<p>The full length of the application route is shown in the same way that it is shown on the earlier edition of the OS 25 inch map. The only notable difference is that a footbridge is no longer shown crossing the River Tawd east of point B to provide access to the unnamed property/properties on the east side of the river. No other access is shown to the property from the other side of the river.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial bounded through route in 1907 and appeared to be capable of being used – at least on horseback. The route may no longer have been used to access the property to the east of the river (unless it was possible to ford the river) suggesting that use of the application route was not</p>



		exclusively as access to a property but as a through route which would have been available to the public at that time.
Bartholomew half inch Mapping	1904	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.





Observations		The application route is not shown on any of the three editions of the small-scale Bartholomew maps published between 1904 and 1941.
Investigating Officer's Comments		As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that the route had been purposely omitted by Bartholomew suggesting that if a route did still exist it was not considered to be a significant route at that time and was not considered to be a public vehicular road because footpath users, and to some extent bridleway users, were not the target customers for these maps.
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

		<p>books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Finance Act Map obtained from The National Archives (above)





Finance Act map deposited in the County Records Office

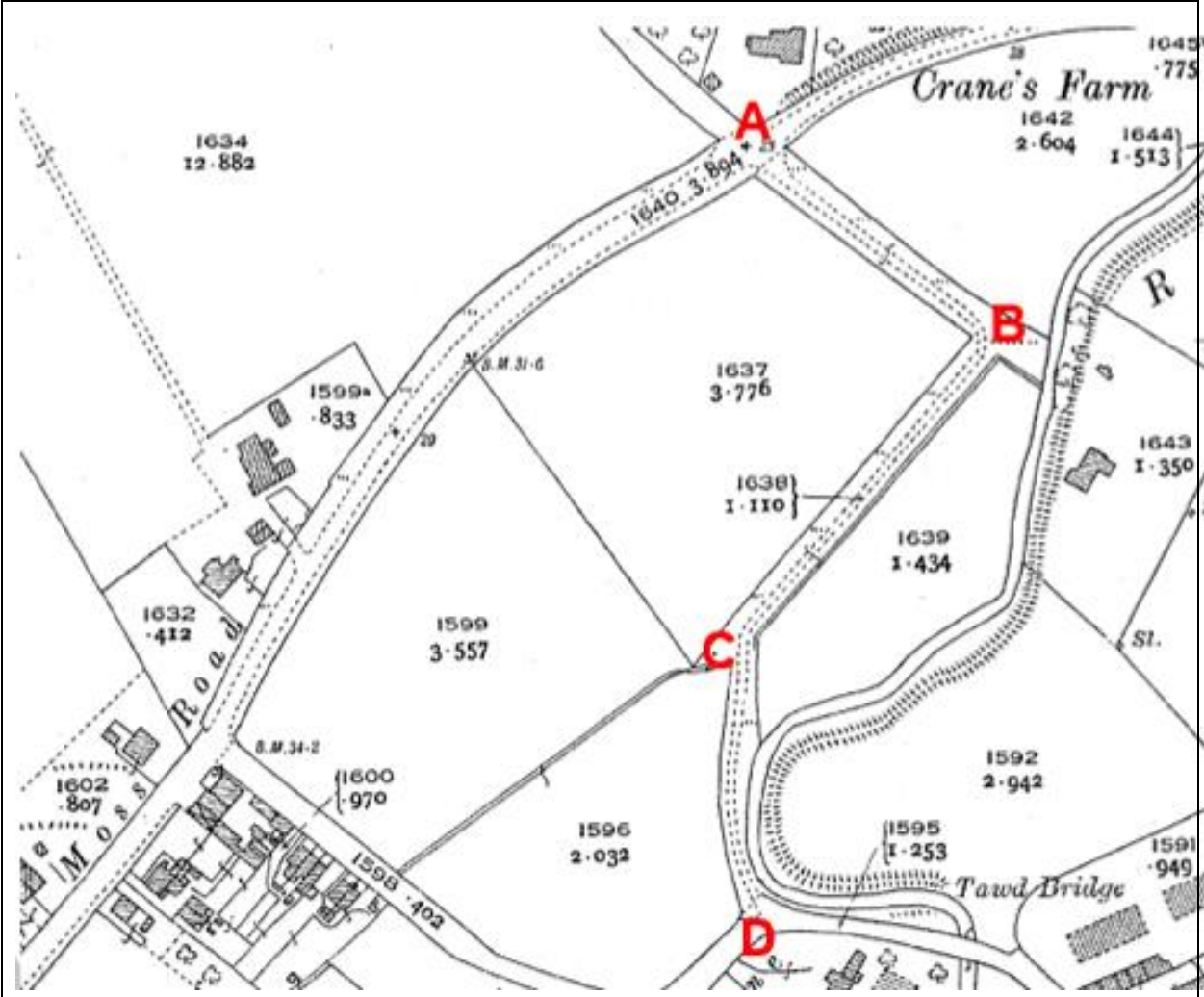
Observations

The applicant submitted an extract of the Finance Act Map obtained from The National Archives but it is of poor quality. The applicant was of the opinion that the map showed the route excluded from the numbered plots between point A and point B but having looked closely at the map extract the Investigating Officer considers that the route looks like it was included in plot 700.

The Map deposited in the County Records Office was also inspected. This map was of better quality but was incomplete. The route was not excluded and appeared to be included with the land numbered as plot 700 on The National Archives map. The plot was not numbered on the County Records Office Map and there is no District Valuation Book for the Parish of Lathom



		available to view.
Investigating Officer's Comments		The Finance Act for the area crossed by the application route is incomplete. The route may have been included in plot 700 but the records are not complete so no clear inference can be drawn.
25 Inch OS Map Map Sheet LXXXIV.7	1928	Further edition of 25-inch map (surveyed 1892, revised in 1927 and published 1928.



Observations		The application route is shown in the same way as it is shown on the earlier editions of the OS 25 inch maps. From point B a track is no longer shown extending south east to the river and there is no footbridge shown across the river. The track (double dashed lines) is shown going round the corner at point B and continuing along the application route suggesting that
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		access was now solely along the application route with no spur off it providing access to the property on the east side of the river.
Investigating Officer's Comments		The application route existed as a substantial bounded route in 1927 which appeared to be capable of being used on horseback and by vehicles – but not necessarily public.
Authentic Map Directory of South Lancashire by Geographia	Circa1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		The application route can be clearly seen on the map as a through route and is named as part of Tawd Lane.
Investigating Officer's Comments		The application route is shown in the atlas consistent with how other routes proven as carrying public vehicular rights are shown. This is the only map examined suggesting that the route was known as a named route (Tawd Lane).
Aerial Photograph ²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



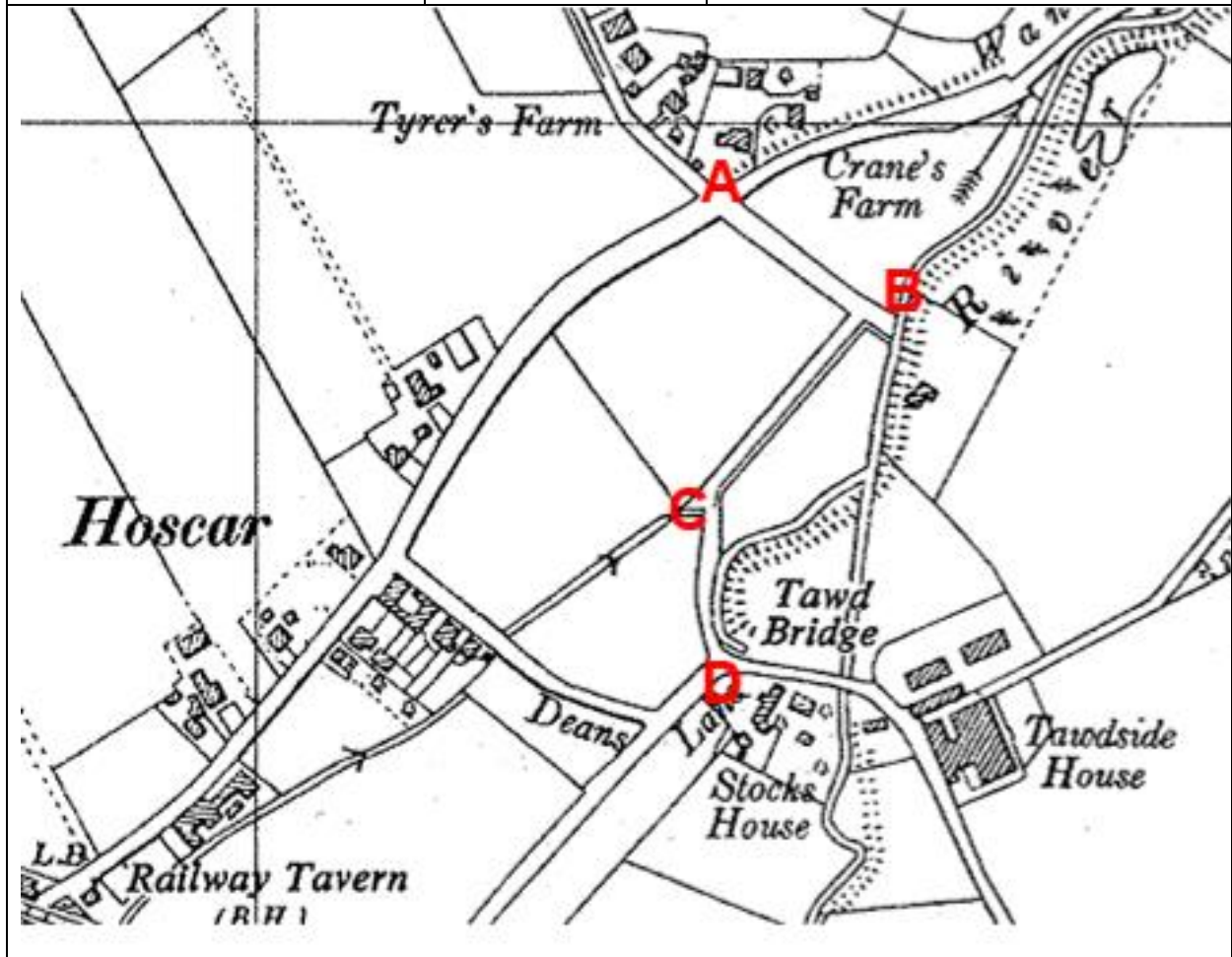


<p>Observations</p>		<p>The application route is visible on the aerial photograph. From point A to point B it is possible to see the boundaries separating it from the adjacent fields but there is little evidence of a worn track. Between point B-C-D the route can be faintly seen but the route does not appear to be separated from the adjacent fields.</p> <p>To the east of the application route it can be seen that work had been carried out to straighten the course of the River Tawd so that it no longer meandered west to run adjacent to the application route between point C and point D.</p>
<p>Investigating</p>	<p>Officer's</p>	<p>The application route no longer</p>



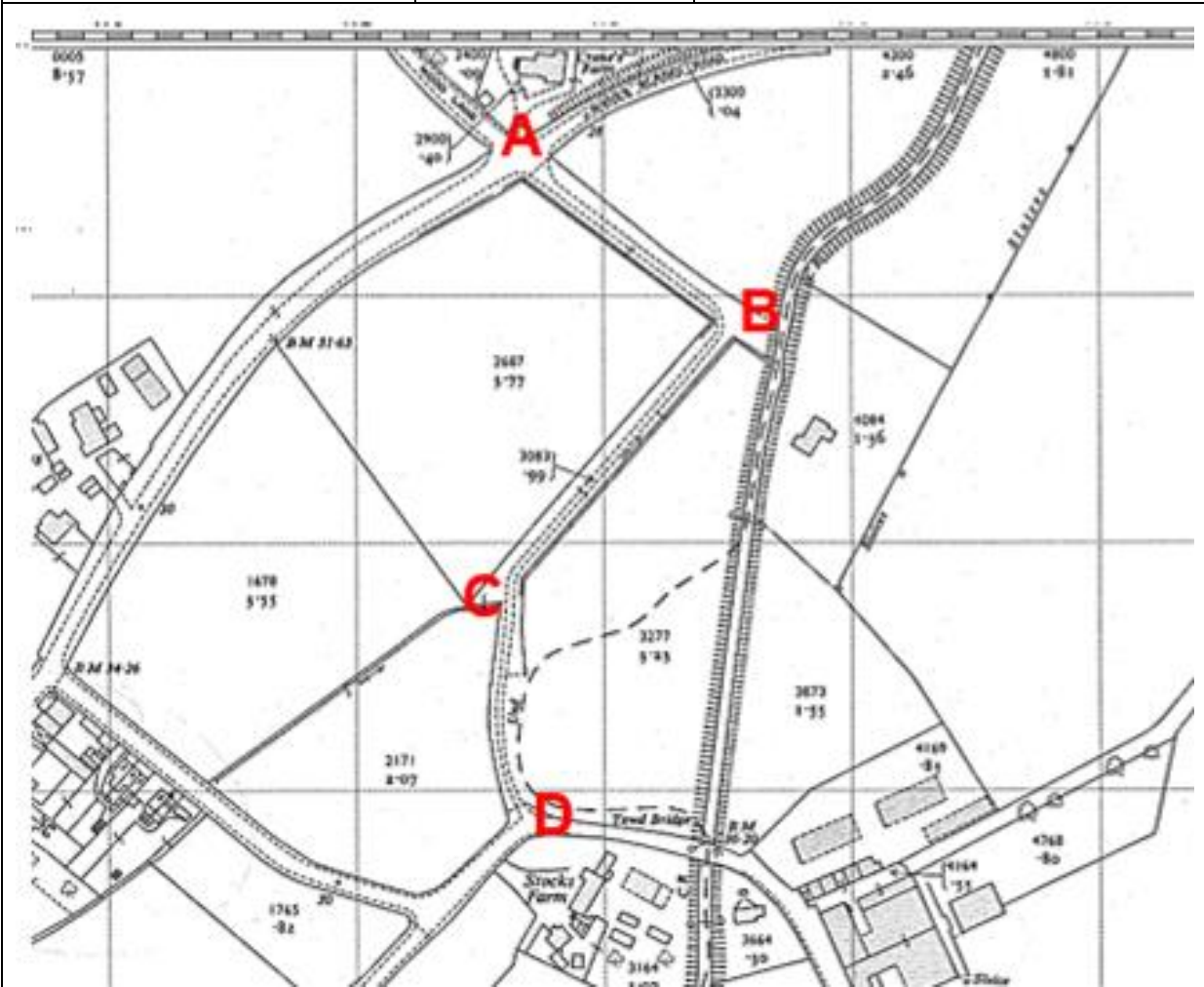
Comments		<p>appeared to be a significant route in the 1940s with no clear evidence of any vehicular use. It may have been possible to pass along the route but the way that it is shown on the photograph is more suggestive of low levels of pedestrian and possibly equestrian use at that time.</p>
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<p>6 Inch OS Map 41SE</p>	<p>1955</p>	<p>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 with major changes revised in 1948 and is probably based on the same survey as the 1930s 25-inch map.</p>
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Observations		<p>The application route is again shown as a substantial bounded route. The alterations to the River Tawd to the east of the route are shown with the remnants of the old course of the river adjacent to the</p>
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		application route between point C and point D. The map was revised for major changes in 1948 – which is most likely to be when the diversion of the river was identified because the 1930s 25 inch OS map did not show it.
Investigating Comments	Officer's	The application route still existed as a substantial bounded route in the 1930s when the map was revised and appeared to be capable of being used at least on horseback at that time.
1:2500 OS Map SD 47 11	1960	Further edition of 25 inch map reconstituted from former county series and revised in 1957 and published 1960 as national grid series.



Observations		The application route is again shown as a largely bounded track unaltered from earlier editions of
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		the OS mapping. The old route of the River Tawd adjacent to the route between point C and point D is no longer shown – the dashed line along the original watercourse marking the parish boundary which originally ran along it.
Investigating Officer's Comments		The application route existed in 1957 as a substantial route which appeared to be capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>The detail and quality of the aerial photograph taken in the 1960s far exceeds that of the one taken in the 1940s.</p> <p>The application route can be clearly seen as a bounded route between points A and B and</p>
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		between C and D. Between point B and point C the route can be seen although it is not clear whether it is bounded on either side. Both the old and new course of the river can be seen although the old course is marked by a line of trees.
Investigating Officer's Comments		The aerial photograph supports the existence of the application route in the 1960s although evidence of use any by vehicles appears to be more likely to be farm machinery/vehicles.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth Pro.



Observations		Whilst the line of the application route can be identified by reference to field boundaries and the drainage ditch between point B and point C the route itself is no longer visible as a bounded route and there is no trodden track visible
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		along it. No bridge/culvert is visible at point C across the drainage ditch. The route appears to have been ploughed between B and D
Investigating Officer's Comments		The application route may have been accessible but no longer existed as a bounded route by 2000 and there is no evidence that it was in frequent use – even on foot.
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 was within an area designated as being part of Ormskirk in the 1950's. Ormskirk was an Urban District Council at that time and no parish survey was

<p>Draft Map</p>		<p>carried out.</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>
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<p>Observations</p>		<p>The application route was not recorded on the Draft Map of Public Rights of Way for Ormskirk and no representations or objections were made relating to it.</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</p>



		<p>which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
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<p>Observations</p>		<p>The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



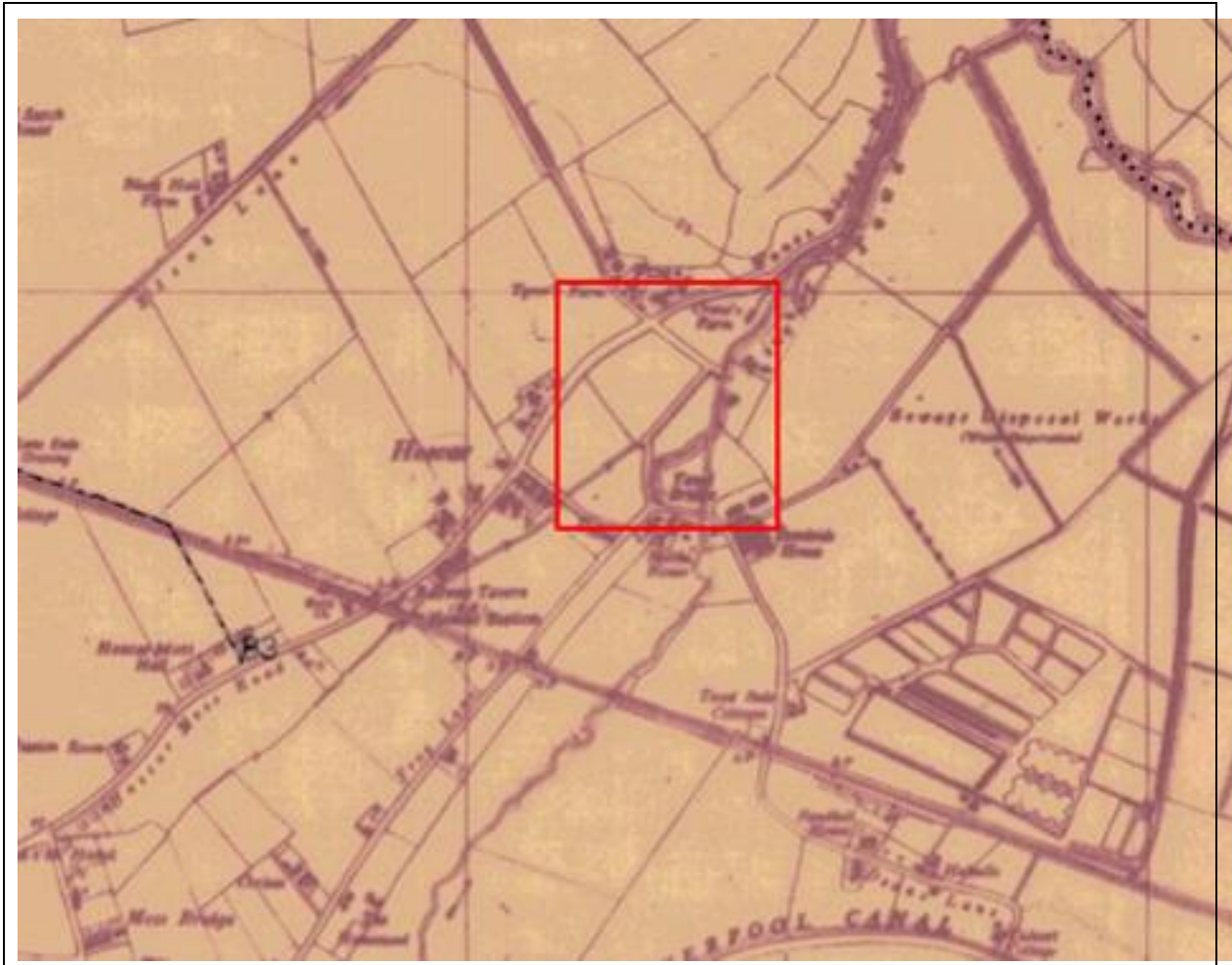
Observations

The route was not shown on the First Definitive Map of Public Rights of Way.

Revised Definitive Map of Public Rights of Way (First Review)

Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 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.





Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to carry a public right of way by the Surveying Authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for rural district highways passed from 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. These were based on existing Ordnance Survey maps and edited to mark those routes



that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

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

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



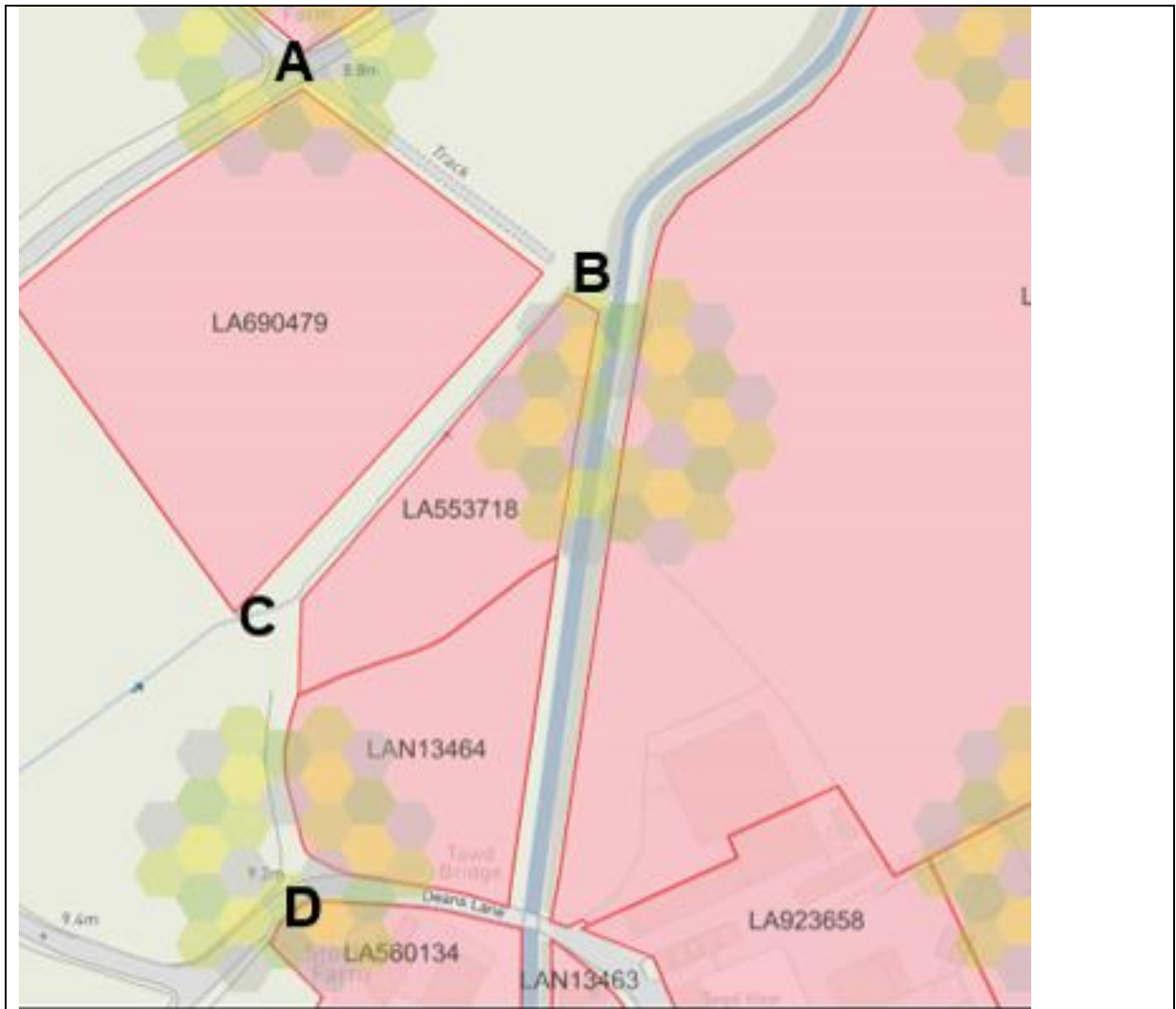
Observations

The application route was within the former Ormskirk Urban District



		so no handover map is available. The application route is not shown on the working sheets nor recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
Highway Stopping Up 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 creating 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		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way). Depositing a map, statement and

		<p>declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		<p>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>
Investigating Officer's Comments		<p>There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.</p>
Land Ownership		<p>Land ownership information obtained from the Land Registry and additional information provided by an adjacent landowner.</p>



Extract of Mapsearch taken from Land Registry website



Extract from Title Plan LA553718

Observations

Ownership of the land crossed by the application route is not registered. The adjacent landowners have been consulted and the owners of Sandyways Farm, located on Hoscar Moss Road close to the application route, has stated that the land has been within their family 'in one way or another since the early 1700s'. They explain that their understanding is that up until 1921 the land was owned by Lord Skelmersdale, and their descendants, the Hankins, were tenants for centuries. They refer to a brief period from the end of 1939 to 1943 when the land was in ownership outside of the family but that it was then purchased by a different connected family member in 1943 and has remained to this day in that ownership. They explained that they held the deeds for the property and state that at no



		<p>time has there been a right of way over the land.</p> <p>The owners of Sandyways farm submitted the title plan for a field in their ownership which is located immediately adjacent to the application route between points B-C (Title LA553718) and state that no (public) right of way is present as it never existed. The Land Registry Title document provides details that this land was registered in 1994 but does not give any further information regarding the land or access to it.</p> <p>The owners of Sandways Farm also provided an extract of an Ordnance Survey map on which a number of plots of land had been marked – not including any land adjoining or forming part of the application route – which the landowner explained contained handwritten notes written by a solicitor stating that there was no evidence of a right of way along the application route They thought this had been completed in the 1980s when they inherited the farm. The copy of the map provided to the County Council was poor and it was not possible to read the handwritten note pertaining to the application route. Neither was it known whether the note referred to public or private right of way.</p> <p>The owners of Sandyways Farm also submitted extracts from two documents understood to be parts of the deeds relating to land now in their ownership.</p> <p>The first was a handwritten extract from what appears to be a conveyance for the sale of Sandyways Farm and approximately 40 acres of land which it refers to as being shown edged red on a plan. The date of the document is not known and the</p>
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		<p>plan referred to has not been submitted. The landowner explained that it was an extract from an agreement between Lord Lathom and Jane Hankin (a descendant of the current landowner) relating to Sandyways Farm and that the document made no mention of right of way.</p> <p>The second extract provided related to the sale of Cranes Farm – which is located on the opposite side of the road to the application route close to point A. The parties to the sale are not detailed and the agreement is not dated. There is again reference to a plan showing the extent of the property but refers to a plan prepared in 1920. The landowner again draws attention to the fact that no right of way was mentioned.</p> <p>The Land registry title documents relating to a plot of land detailed as being under the title LAN13464 (adjacent to the application route between points C-D) makes specific reference to a private right of way along an 'access road' consistent with the location of the application route.</p>
Investigating Comments	Officer's	<p>In relation to the fact that no part of the application route being in registered landownership this can sometimes be an indication that the route was a public vehicular route. However, if land has been held in ownership of one family for a significant length of time this can also account for the fact that it is not registered with the Land Registry.</p> <p>The information provided by the owner of Sandways Farm about ownership of the farm itself is consistent with the Tithe Award records which list the owners of the farm as being the Hankin Family – although they did not own or</p>

		<p>occupy any of the land adjacent to the application route at that time.</p> <p>It is very often the case that conveyance documents contain details of private access rights along a route where the existence of public rights are being investigated. The fact that private rights are detailed in a conveyance is quite normal – even if public rights of way also exist or subsequently come into being so the fact that private rights are detailed in a conveyance is not necessarily indicative of the fact that public rights do not – or could not exist.</p> <p>Where a route came into being as a private occupation route or created as a private route in an inclosure award details of those private rights will often be found in conveyances.</p> <p>The fact that the existence of public rights of way are not included in conveyances is not unusual either – as the purchaser is generally more concerned with protecting private rights of access. In addition, public rights may have come into existence since the sale of the land so no inference can be drawn in this respect.</p>
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

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

No modern or historical user evidence has been submitted in support of the application so it is necessary to consider whether the map and documentary evidence available is sufficient to support the dedication of a public right of way and the site evidence suggests that use of the route as a through route has not been possible for some time.



It appears likely that the route as first set out as a consequence of the inclosure of waste and common ground in the Parish of Lathom in the late 1770s. It is shown on the Inclosure Plan and is referred to in the Inclosure Award both as an 'intended private way or road' and a 'public road or highway'.

The route between point A and point B is shown on a number of small-scale early commercial maps consistent with access to an unnamed property east of the River Tawd and shown to be accessed by a 'Wooden bridge' on the first edition 6 inch map published in 1848 and a 'footbridge' on the first edition 25 inch OS map published in 1893.

The full length of the application route is shown on the Tithe Map dated 1839 as a bounded through route that would probably be wide enough to be used on horseback and with horse drawn carts. It was not numbered, in line with how other public vehicular routes were shown but this does not necessarily mean that it was because the road was public so the information provided by the Tithe Map and Award must be considered in the context of all other available evidence.

Further OS maps examined consistently show that the route existed as a substantial bounded track through to at least the 1960s after which it appears from the aerial photographs examined and recent site evidence, that the use of the route appears to have significantly declined.

The Finance Act records are incomplete although they do suggest that the route may not have been excluded from taxation in the early 1900s.

The cumulative evidence suggests that historically a way existed over the full length applied for which was originally created by the Inclosure Award either as a private occupation road or a highway of some description but which may have been capable of being used by the public on foot or horseback.

On balance the Investigating Officer considered that there was sufficient evidence that public bridleway rights could be shown to exist along the route.

Head of Service – Legal and Democratic Services Observations

Landownership

Ownership of the land crossed by the application route is not registered.

Information from the Applicant

The applicant submitted a number of maps and historical documents in support of their application – all of which have been considered above.

Extract from MARIO (LCC online maps) showing road classification layer
6 inch OS map published 1848
25 inch OS map published 1893
1 inch OS map published 1896
1910 Finance Act Map obtained from The National Archives



Tithe Map of Lathom 1839

Information from Others

Atkins Global responded to consultation to state that they had no objection.

Information from Adjacent Landowners

Registered owners of the adjoining registered land were consulted and one of these owners provided a detailed response.

They noted that the applicant had already contacted them in relation to this application and that they strongly disputed the case put forward.

They noted that the land in their ownership had been within their family since the early 1700s, they hold the deeds for the property and at no time has there been a right of way over this land.

The landowner disputed the applicant's interpretation of the Tithe Map noting that there are dwellings detailed on the maps and asserting that these 'occupational roads' are access tracks to the property in the fields off Deans Lane and likewise for the property that was built after the Tithe Map was produced on the other side of the River Tawd, accessed by a wooden bridge at the end of the track from Waness Blades Road. They note that over time the properties were demolished and the tracks, no longer needed due to changing farming practices, incorporated into fields.

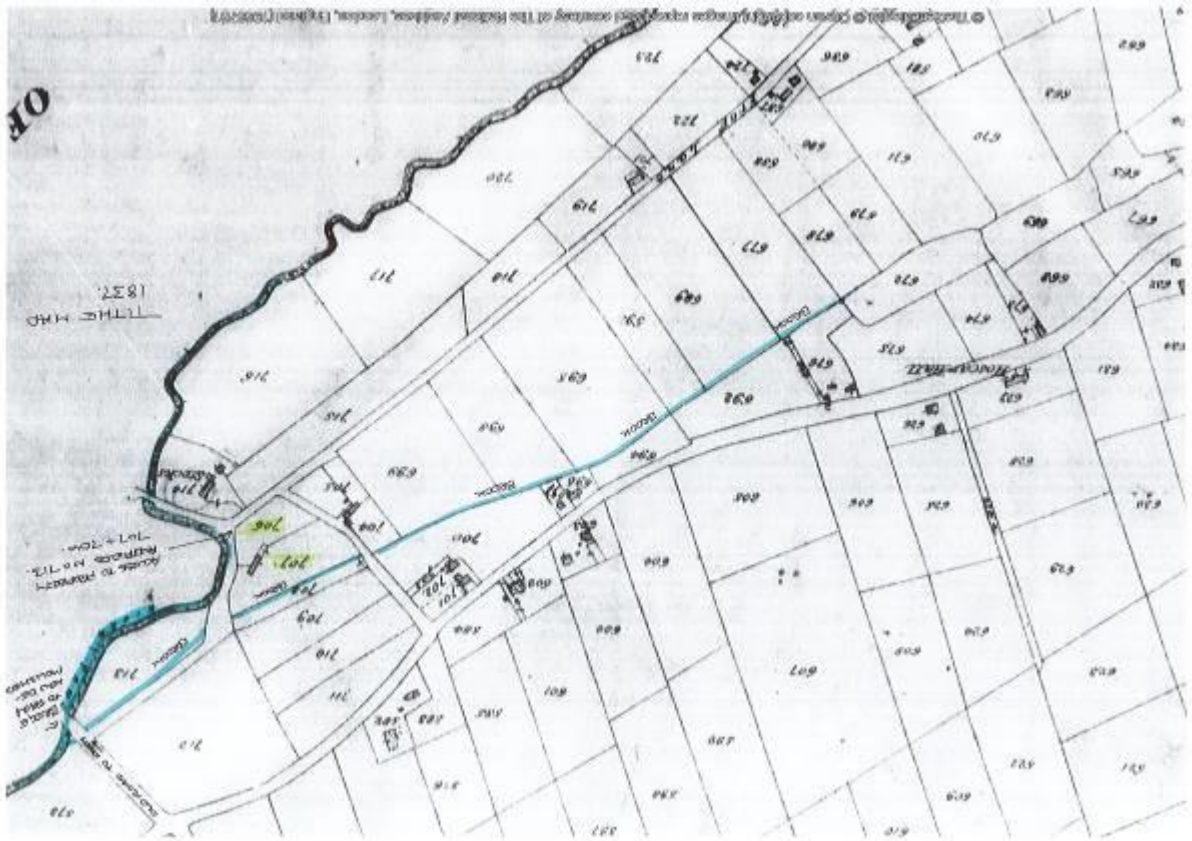
The landowner also noted that the application seems to take no account of a ditch part way along the route, they highlighted that on some maps it is marked and some not. They note this ditch as being very deep and quite wide that directly joins the River Tawd and they asserted that this has been there for many centuries. They opine that the track along the ditch would no doubt have been used for access to field, domestic dwellings and to maintain the waterway.

They note that the application route then appears to follow the course of the old riverbed from this point, the river having been redirected in the late 1960s, straightened out to help prevent erosion. The landowner noted that during these works the responsible authority removed the bridge from the ditch as it was no longer needed.

The landowner included annotated photographs and a copy of the Tithe Map which are reproduced below.







Lancaster: Printed and Published by John Wilson & Co., Stationers.

LANDS	SCHEMATA	Number of Acre or Sq. Ft.	NAME AND DESCRIPTION OF LANDS AND TENURES	TYPE OF CULTIVATION	QUANTITIES IN STATUTE MEASURES				REMARKS
					Acres	Roods	Poles	Square Feet	
St. James's Park	1000	20	Grass	Grass	2	0	0	0	St. James's Park
	1001	1/2	Grass	Grass	1	0	0	0	
	1002	1/2	Grass	Grass	1	0	0	0	
	1003	1/2	Grass	Grass	1	0	0	0	
	1004	1/2	Grass	Grass	1	0	0	0	
	1005	1/2	Grass	Grass	1	0	0	0	
	1006	1/2	Grass	Grass	1	0	0	0	
	1007	1/2	Grass	Grass	1	0	0	0	
	1008	1/2	Grass	Grass	1	0	0	0	
	1009	1/2	Grass	Grass	1	0	0	0	
	1010	1/2	Grass	Grass	1	0	0	0	
	1011	1/2	Grass	Grass	1	0	0	0	
	1012	1/2	Grass	Grass	1	0	0	0	
	1013	1/2	Grass	Grass	1	0	0	0	
	1014	1/2	Grass	Grass	1	0	0	0	
	1015	1/2	Grass	Grass	1	0	0	0	
	1016	1/2	Grass	Grass	1	0	0	0	
	1017	1/2	Grass	Grass	1	0	0	0	
	1018	1/2	Grass	Grass	1	0	0	0	
	1019	1/2	Grass	Grass	1	0	0	0	
	1020	1/2	Grass	Grass	1	0	0	0	
	1021	1/2	Grass	Grass	1	0	0	0	
	1022	1/2	Grass	Grass	1	0	0	0	
	1023	1/2	Grass	Grass	1	0	0	0	
	1024	1/2	Grass	Grass	1	0	0	0	
	1025	1/2	Grass	Grass	1	0	0	0	
	1026	1/2	Grass	Grass	1	0	0	0	
	1027	1/2	Grass	Grass	1	0	0	0	
	1028	1/2	Grass	Grass	1	0	0	0	
	1029	1/2	Grass	Grass	1	0	0	0	
	1030	1/2	Grass	Grass	1	0	0	0	
	1031	1/2	Grass	Grass	1	0	0	0	
	1032	1/2	Grass	Grass	1	0	0	0	
	1033	1/2	Grass	Grass	1	0	0	0	
	1034	1/2	Grass	Grass	1	0	0	0	
	1035	1/2	Grass	Grass	1	0	0	0	
	1036	1/2	Grass	Grass	1	0	0	0	
	1037	1/2	Grass	Grass	1	0	0	0	
	1038	1/2	Grass	Grass	1	0	0	0	
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	1042	1/2	Grass	Grass	1	0	0	0	
	1043	1/2	Grass	Grass	1	0	0	0	
	1044	1/2	Grass	Grass	1	0	0	0	
	1045	1/2	Grass	Grass	1	0	0	0	
	1046	1/2	Grass	Grass	1	0	0	0	
	1047	1/2	Grass	Grass	1	0	0	0	
	1048	1/2	Grass	Grass	1	0	0	0	
	1049	1/2	Grass	Grass	1	0	0	0	
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	1098	1/2	Grass	Grass	1	0	0	0	
	1099	1/2	Grass	Grass	1	0	0	0	
	1100	1/2	Grass	Grass	1	0	0	0	



Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Conclusion

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of a bridleway from Waness Blades Road to Deans Lane, Lathom.

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 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 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. To arrive at a conclusion Committee must consider the position balancing what the documentary evidence shows. It is of note that in 1778-1779 the route is referred to in the Inclosure Award as an 'intended private way or road' and 'public road or highway'. The subsequent maps are consistent with either public or private status but

On balance and given the nature of the evidence it is advised that the evidence is sufficient on balance to show that the application route has public bridleway rights.

The recommendation is that an 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.

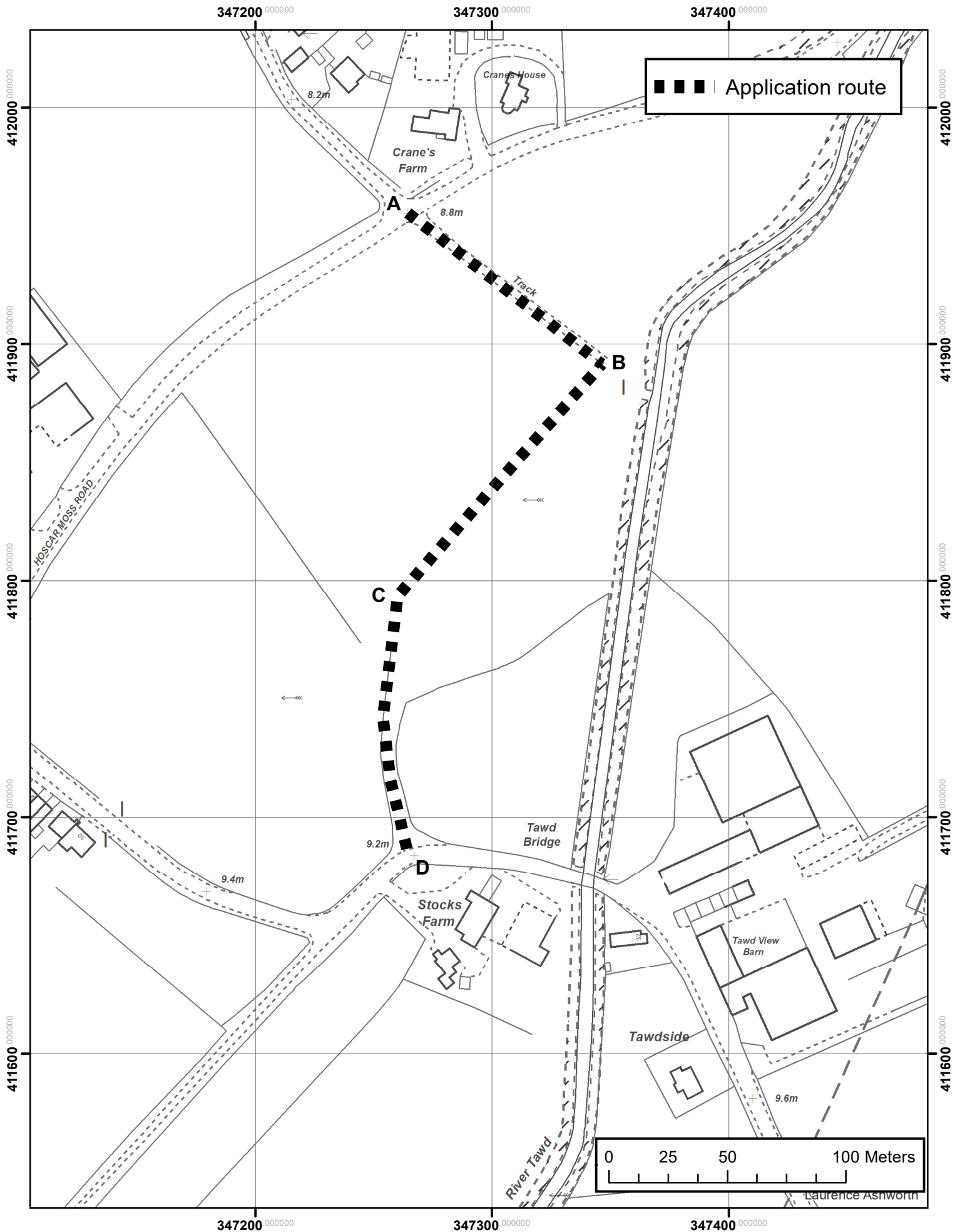
Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-712		Simon Moore, 01772 535604, County Secretary and Solicitors Group

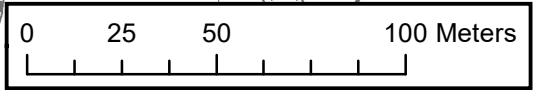
Reason for inclusion in Part II, if appropriate

N/A



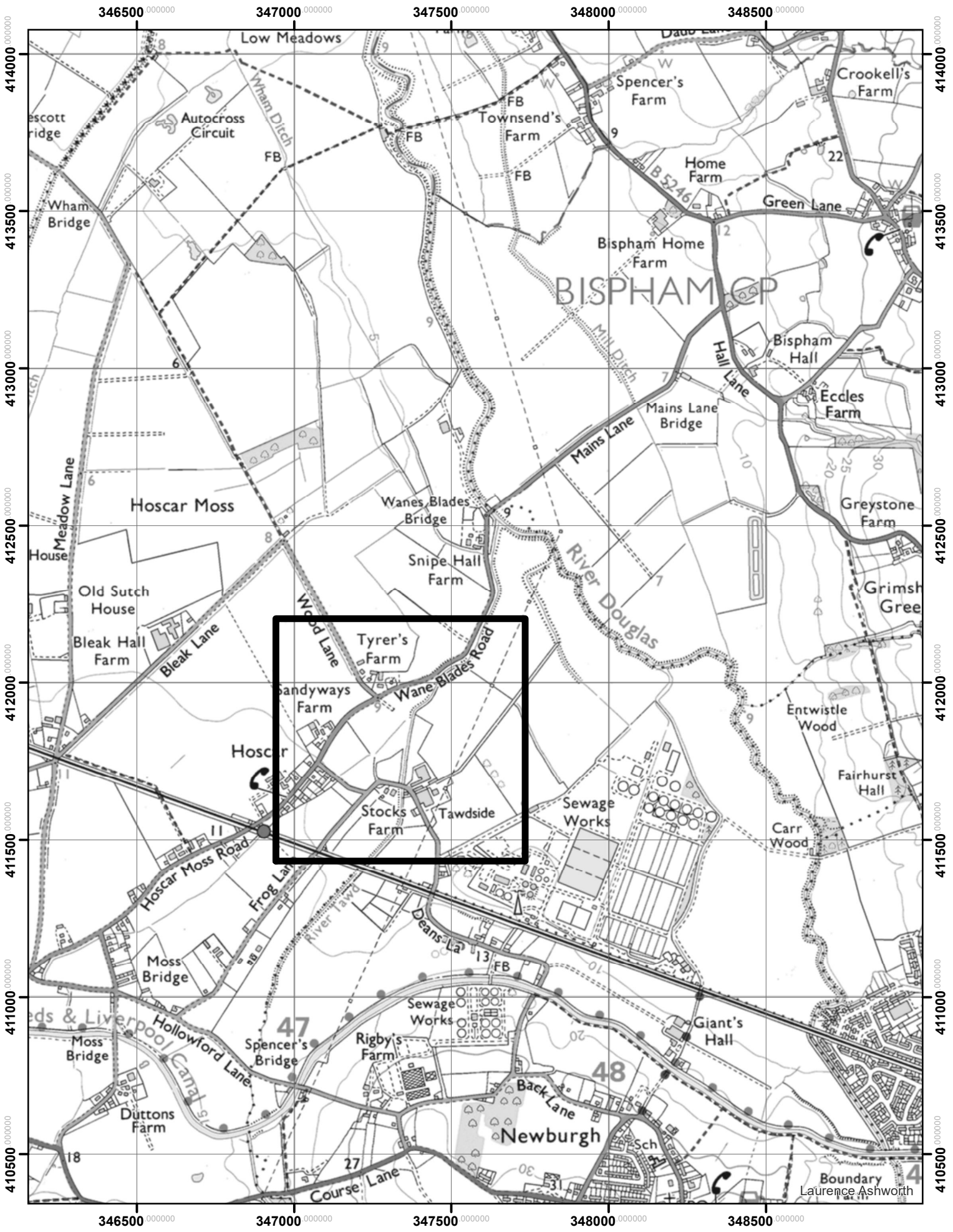


■■■■ Application route



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

Wildlife and Countryside Act 1981
 Addition of Restrictive Byway from Wane Blade Road to Deans Lane, West Lancashire
LOCATION PLAN

1:15,000



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Regulatory Committee

Meeting to be held on 16 November 2022

Part I

Electoral Division affected:
Ribble Valley North East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Chatburn Old Road, Chatburn, Ribble Valley
Borough
(Annex 'A' refers)

Contact for further information quoting reference number 804-710:
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 and investigation for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Chatburn Old Road Chatburn, Ribble Valley Borough.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public rights of Way of a footpath from Chatburn Old Road, be accepted That the evidence of a footpath reasonably alleged following investigation into the other part of route A-X 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 on the Definitive Map and Statement of Public Rights of Way a footpath from Chatburn Old Road as shown on Committee Plan between points X-A-B-C.
- (iii) That the Order be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Chatburn Old Road to junction with footpath 3-11-FP1 and 3-11-FP 13.

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 did not provide an official response to the consultation.



Chatburn Parish Council

The Parish Council are the applicants (please see the information from the applicant section).

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
X	7649 4404	Western end of U22924 (the extant Chatburn section of Chatburn Old Road) and junction with 3-11-FP13 and 3-11-FP14
A	7645 4403	Metal kissing gate
B	7647 4394	Application route turns to continue east across field.
C	7656 4395	Junction with 3-11-FP13 and 3-11-FP1

Description of Route

A site inspection was carried out in April 2022.

When the route was inspected by the Investigating Officer in 2022 it was not possible to walk, or to access, any part of it.

From the western end of the extant Chatburn section of Chatburn Old Road it was possible to access 3-11-FP14 which continued north and also the northern end of 3-11-FP13 located immediately west of newly constructed houses off Hare Hill Croft (marked as point X on the Committee plan) but it was noted that the route of 3-11-FP13 was partially blocked by security fencing and that earth works had damaged the surface of the footpath. An alternative route had been provided around the southern boundary of the properties on Hare Hill Croft which linked back onto the legally recorded line of 3-11-FP1 but there was no access to the point at which the application route joined the intersection of the two footpaths (marked as point C on the Committee plan).

From Chatburn Old Road (point X) it was possible to walk west along the old road for approximately 40 metres to the start of the application route at point A.

The application route leaves the old road to pass through a metal kissing gate which was rusted and appeared to have been damaged so that it was bent out of shape.



Metal security fencing had been positioned across the start of the application route making it impossible to access it.

The total length of the application route is 190 metres.

Another member of the County Council's Public Rights of Way Team had been to the site in April 2021 in response to reports that the public footpaths across the site had been obstructed. They took photographs of the application route at that time which showed that it was possible to use it at that time.

The photographs showed that a clearly defined trodden track existed at that time along what appeared to be consistent with the full length of the application route.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The land crossed by the application route was affected by the extension of the limestone quarries to the west in the 1960s with no evidence that the application route existed prior to that time. For that reason, much of the early map and documentary evidence normally included in the report to Regulatory Committee is not included below.

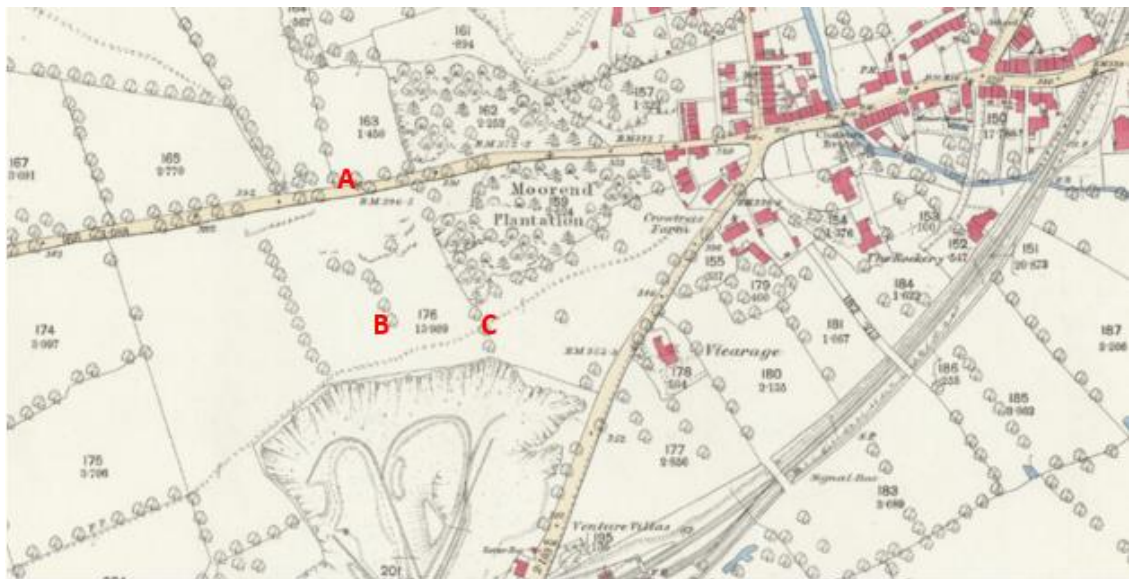
Note: Map insets included below are not to scale.

Document Title	Date	Brief Description of Document & Nature of Evidence
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847. ¹

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



Observations		Chatburn Old Road is shown (but not named) and an unfenced route shown by double pecked lines is shown passing through point C but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1844.
25 Inch OS Map XLVII.7	1886	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1884 and published in 1886.



Observations		Chatburn Old Road is shown (but not named) and an unfenced route shown by double pecked lines is shown passing
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		through point C but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1884.
6 Inch OS Map 74SE	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 and the route through which point C runs are not shown.
Investigating Officer's Comments		The application route did not exist in the 1930s.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War and flown between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.

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





Observations		The application route is not visible as a trodden track on the ground.
Investigating Comments	Officer's	The application route did not exist in 1945-1952. Access may have been available but there is no evidence that there was a defined trodden route.
Aerial Photograph	Circa 1968	The black and white aerial photographs flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.

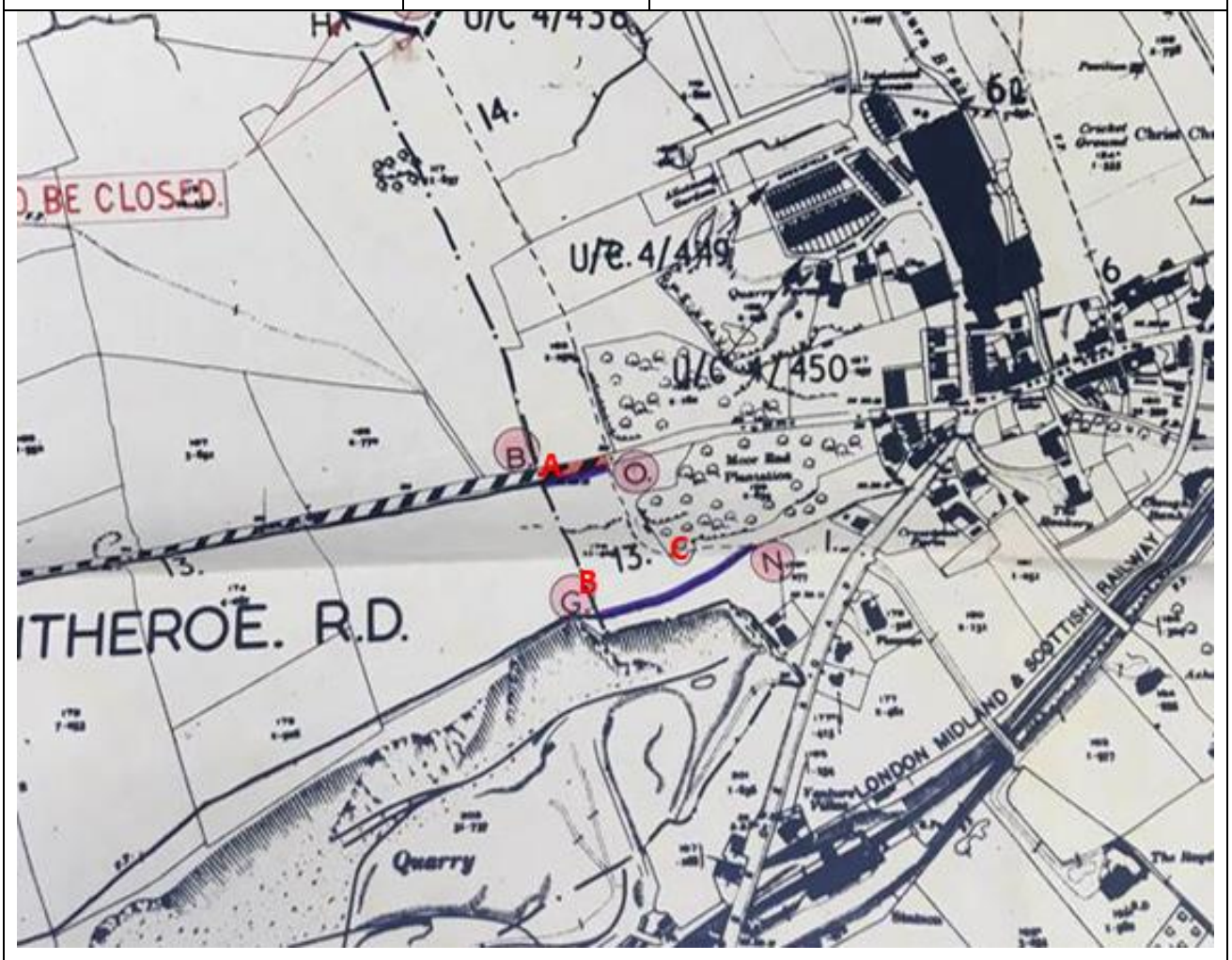


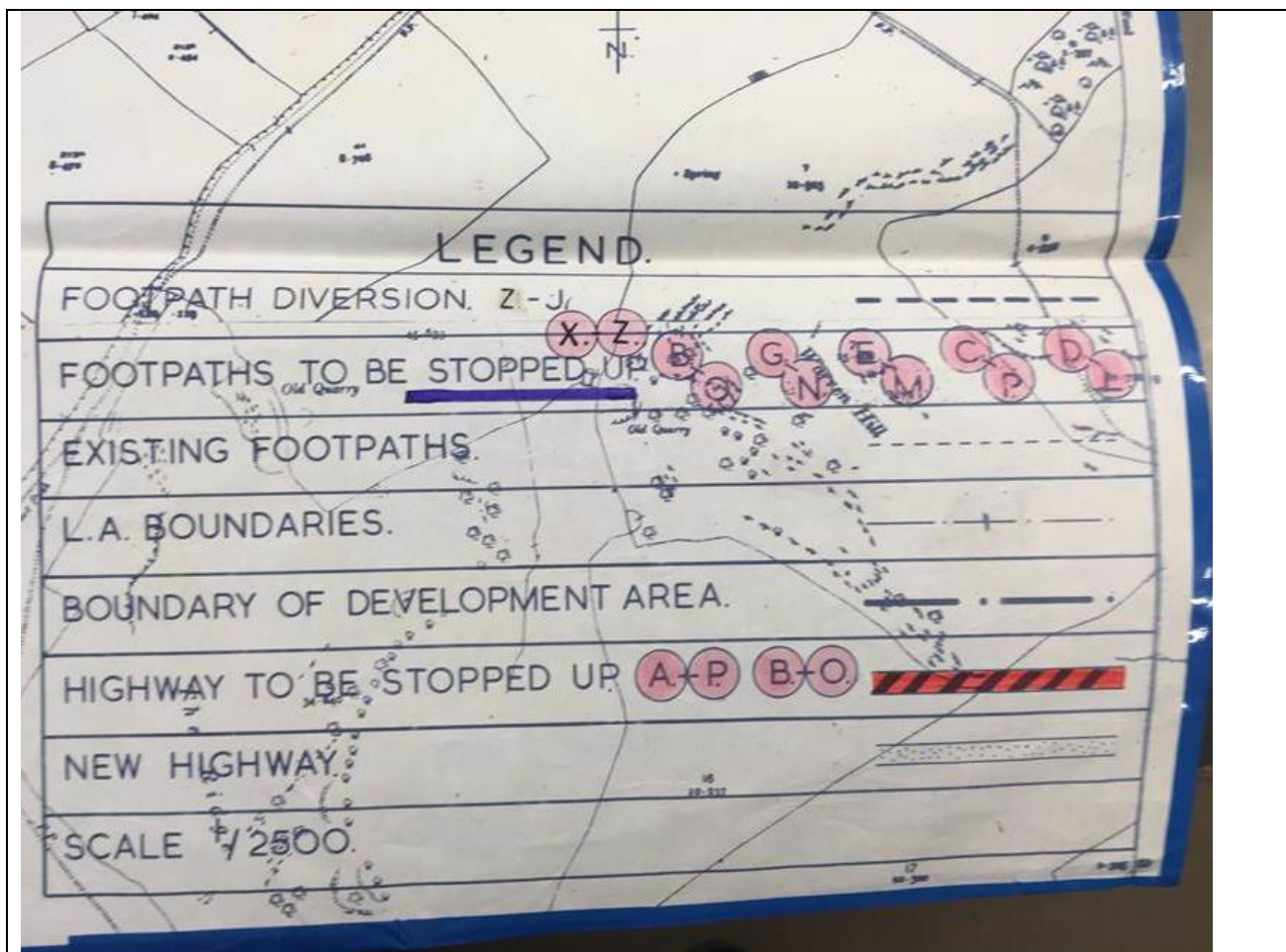
<p>Observations</p>		<p>The quarries to the west of the application route have been extended to the boundary of the application route between point A and point B. West of point A there appears to be access from Chatburn Old Road to the quarry site with a track running parallel to the application route and then along the application route passing through point B to continue south and then east around the edge of the quarry area. The way that the track shows up on the photograph gives the appearance of a route being used by quarry vehicles.</p> <p>The route between point B and point C is not visible on the photograph.</p>
<p>Investigating Officer's Comments</p>		<p>Part of the application route is visible as a significant track on the photograph but appears to form part of a longer route most likely to be used by vehicles accessing the quarry. The application route probably did not exist at this time – although access may have been available along part of it.</p>
<p>Stopping Up Orders</p>	<p>1971</p>	<p>At the request of Lancashire County</p>



Council the Secretary of State for the Environment made an Order under the Town and Country Planning Act 1968 titled 'The stopping Up Of Highways (No 13) Order 1971 on 14th December 1971 to stop up part of Chatburn Old Road and to stop up and divert a number of public footpaths to allow for the expansion of the limestone quarries to the west of the application route.

In addition, an application was made to the Magistrates Court on 16th December 1971 for a stopping up and diversion order under the Highways Act 1959 relating to connected routes outside the limited scope of the 14th December Order. This application was granted.



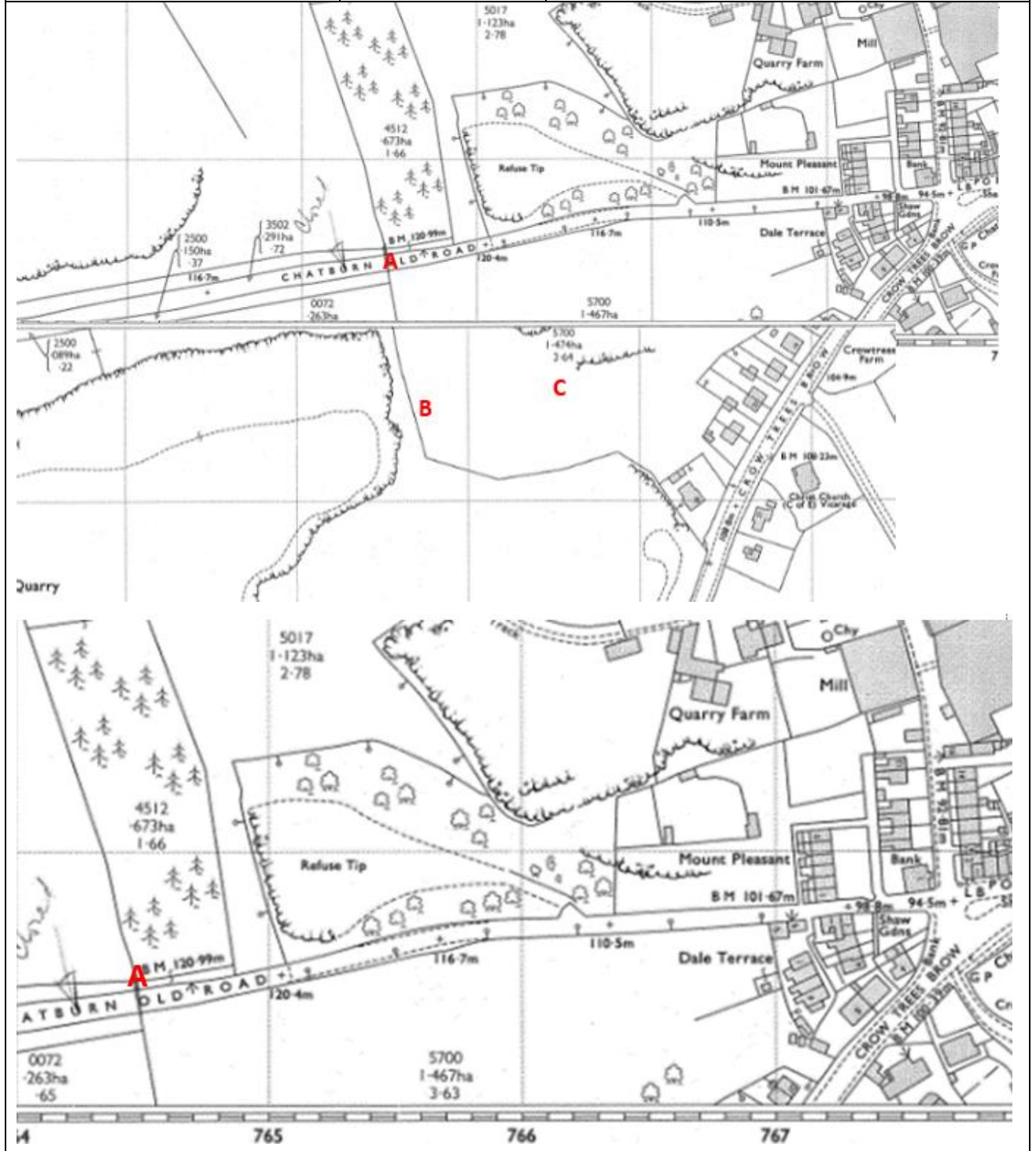


Extracts from the 1971 Order

<p>Observations</p>		<p>The Orders extinguished part of Chatburn Old Road and also parts of 3-11-FP1 and 3-11-FP13.</p> <p>The Orders do not refer to or create any part of the application route and the Order plan does not show the application route.</p> <p>The Orders did however extinguish public rights along that part of Clitheroe Old Road from where it is met by 3-11-FP13 and 3-11-FP14 west to the start of the application route at point A although at the time of writing the current highway records incorrectly show this section of Clitheroe Old Road as being highway.</p>
<p>Investigating Officer's Comments</p>		<p>There is no evidence that the application route existed in 1971. Clarification has been sought from the Highways Team who have confirmed that the section of Clitheroe Old Road from the junction with</p>




		<p>footpaths 3-11-FP13 and 3-11-FP14 west to the start of the application route (X-A on the Committee plan) is not part of the publicly maintainable section of Clitheroe Old Road and that their records require amending.</p>
<p>1:2500 OS Map SD 7643 and SD7644</p>	<p>1974</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1974 as national grid series.</p>



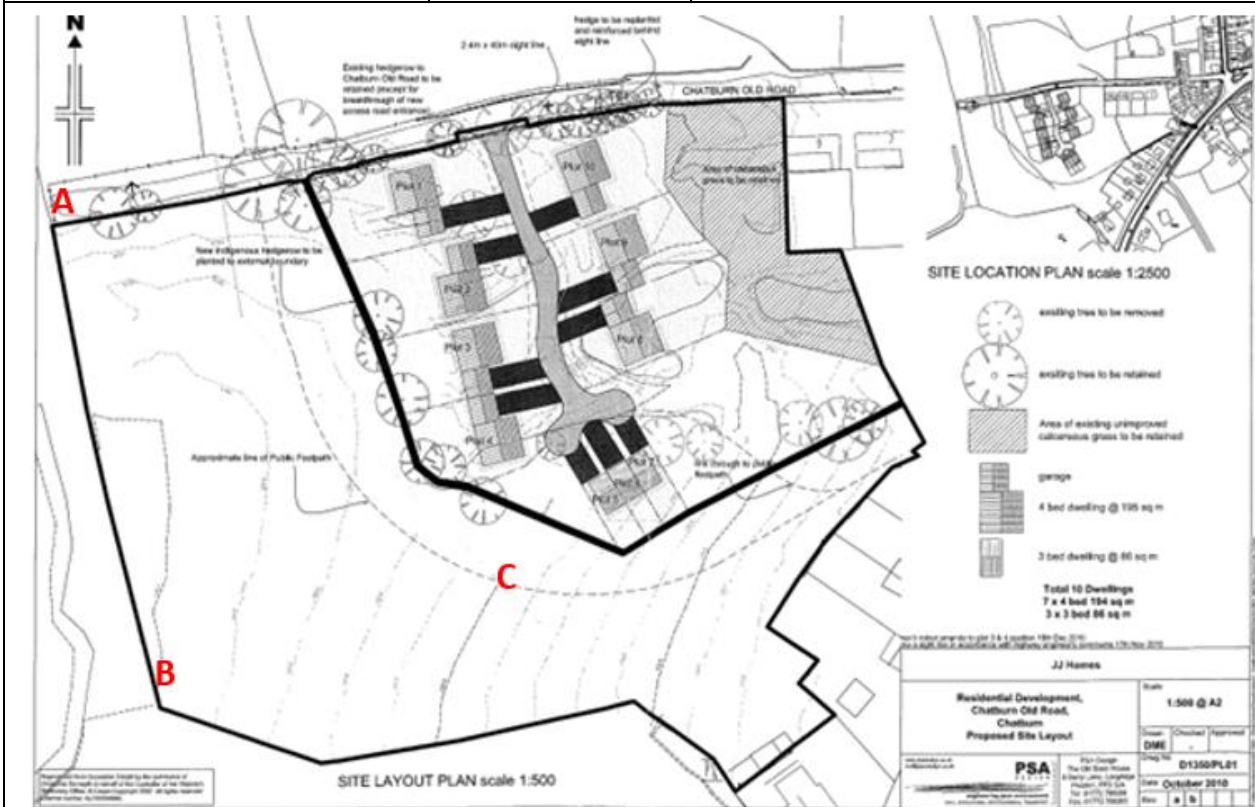
Observations		The application route is not shown. A line is shown across Chatburn Old Road immediately west of point A and a line is shown across the start of the application route at point A.
Investigating Officer's Comments		The land crossed by the application route was surveyed 1 year after the orders were made to extinguish footpaths across it and to close part of Chatburn Old Road. The application route is not shown although it may have been possible to walk the route – if there was access through the fence at point A. There is no route marked on the map however suggesting that there was no evidence on the ground of a trodden route. The line across Chatburn Old Road immediately west of point A suggests that access was prevented or restricted from that point but that it would have been possible to walk along Chatburn Old Road west to reach point A in 1972.
Aerial photograph	2000	Aerial photograph available to view on Google Earth Pro.




Observations		The land crossed by the application route appears to be accessible but there is no trodden track along the route applied for. It is not possible to see from the photograph whether access was
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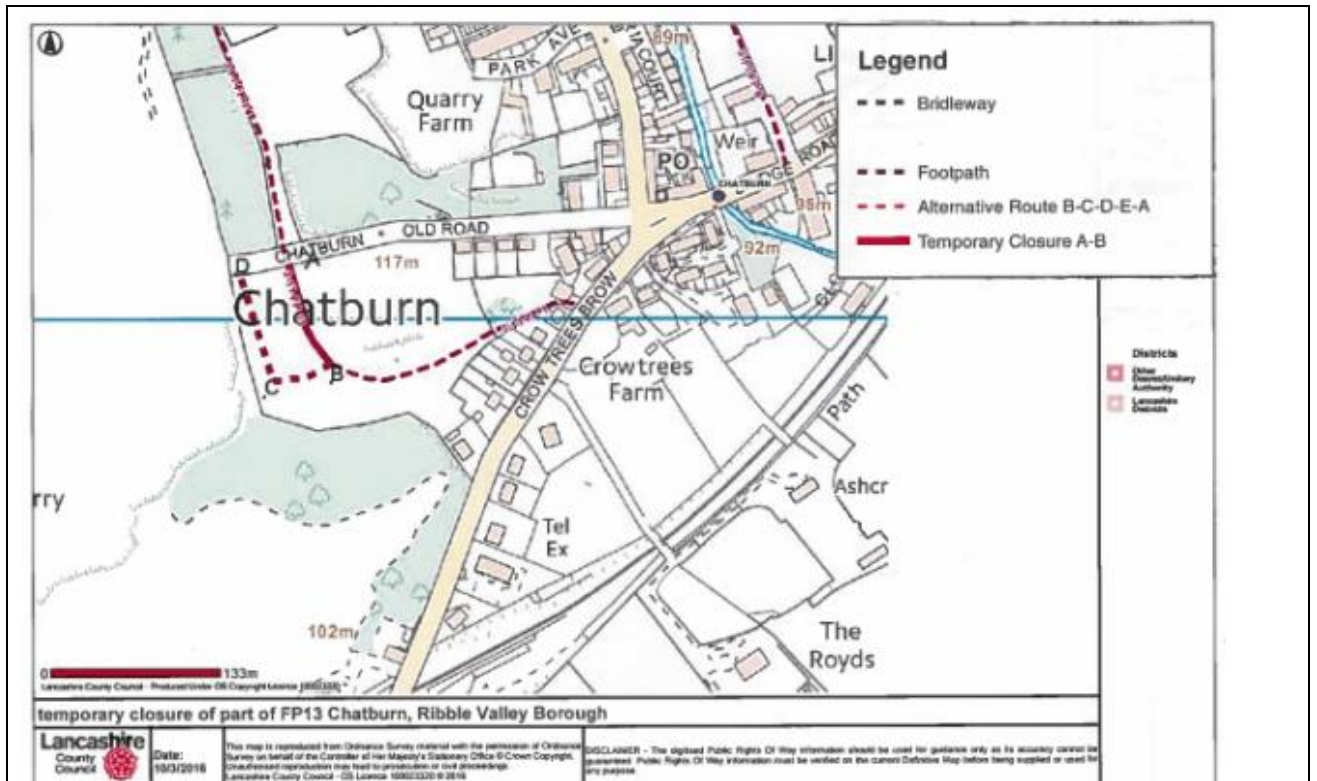
		available at point A. The routes of 3-11-FP1 and 3-11-FP13 are not visible on the photograph.
Investigating Comments	Officer's	If the application route was in use in 2000 it does not appear to have been a well-used route. However, it was also noted that the two existing public footpaths crossing the field are not visible on the photograph and it is not unusual for a rural footpath crossing fields not to show up on an aerial photograph even if it is available and being used.
Aerial Photograph	2003	Aerial photograph available to view on Google Earth Pro.
		
Observations		It is not possible to see whether access was available onto the route at point A. No worn track can be seen along the line of the application route – or the existing public footpaths to which it connects.
Investigating Comments	Officer's	If access was available at point A it appears that the application route could have been used. However, there is no trodden track suggesting that there were not significant levels of use at that time.
Planning Applications affecting the land crossed by the application route	2011-2014	Plan submitted with an application to build houses Ref: 3/2011/0025 which was not granted, and details of a further application made in 2014 Ref:

3/2014/0618 which was approved with further amendments in 2016



Observations		No reference to the existence of the application route was found in the details relating to either application.
Investigating	Officer's	If it did exist in 2011-2014 the application


Comments		route did not appear to have been considered to be a public right of way that was affected by the development.
Aerial Photograph	2015	Aerial photograph available to view on Google Earth Pro.
		
Observations		The application route is not visible on the aerial photograph. A faint line consistent with part of the route of 3-11-FP1 and 3-11-FP13 is visible on the photograph.
Investigating Officer's Comments		The application route may have been accessible but there is no evidence of use looking at the photograph.
Temporary Closure Order affecting part of FP13	2016-2021	Details of a temporary closure order made by Lancashire County Council under Section 14(1) of the Road Traffic Regulation Act 1984, as amended, the effect of which was to prohibit temporarily any pedestrian use of part of Footpath 3-11-FP13.




Plan accompanying the Temporary Closure Order

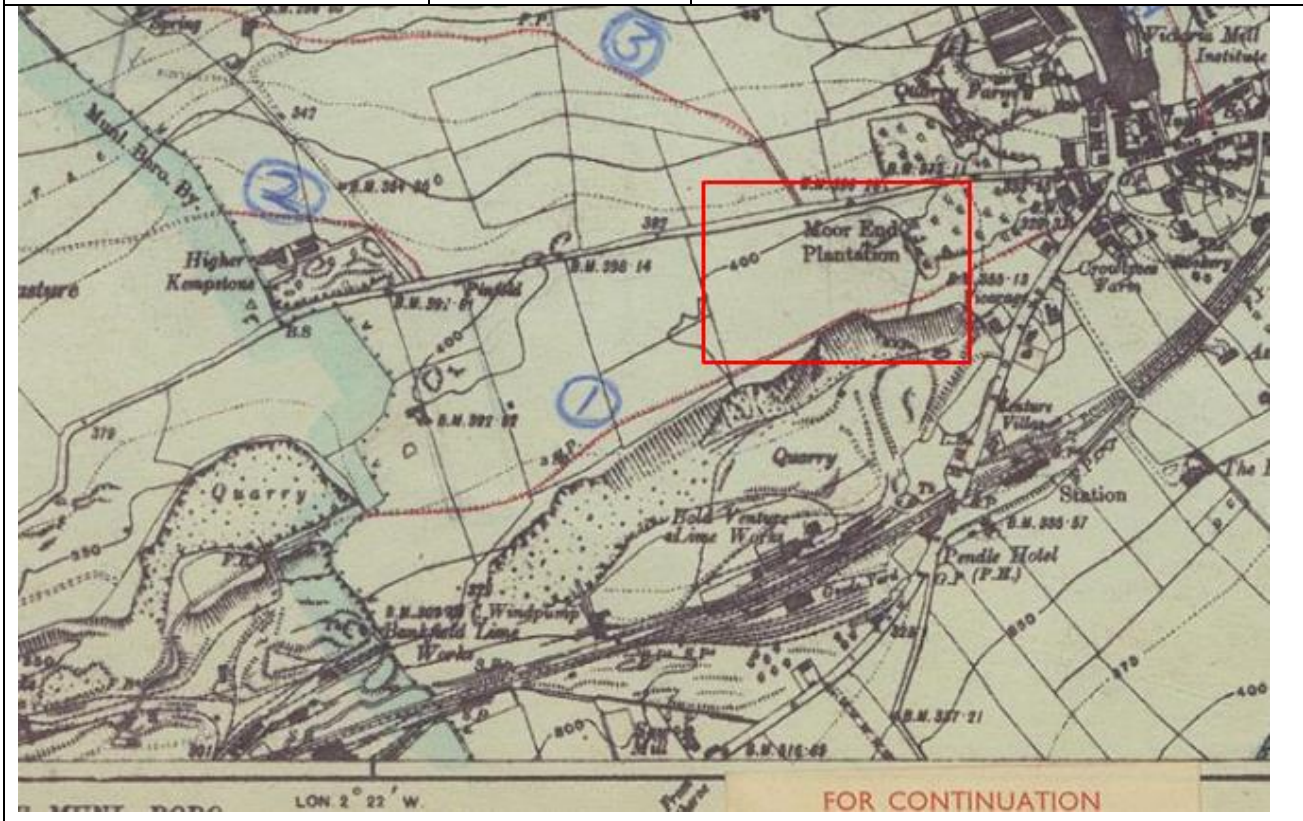
Observations		<p>A request was received in 2016 for the temporary closure of 3-11-FP13 from JJ Homes (NW) LLP. The closure was required due to the construction of 10 new properties initially from 30th March 2016 for 6 months but that extensions to the order would be required as the expected finish date of the development was likely to be December 2017.</p> <p>The Order did not refer to any alternative route. The Order plan showed that an alternative route was to be made available by the developer (shown as B-C-D-A on the above plan) which is the section of Clitheroe Old road extinguished in 1971 (A-D) and part of the application route (D-C) and another section C-B.</p> <p>The Order was originally extended until 24th March 2018 and then again until the 24th March, 2021.</p> <p>The alternative route provided by the developer had not been checked on ground</p>
Investigating Comments	Officer's	The information available on the file does not indicate whether the application route was already available on the ground prior to it being 'provided' as the alternative



		<p>route to 3-11-FP13. Developers often provide alternative routes which may not already exist or may already be highways. The Order Plan does not indicate the status of the alternative route but it does appear that it is being provided as an alternative to a route that has been closed since at least 2016. This does not divert the Footpath 13 rights onto the alternative route. Alternative routes can be on existing highways or none so no inference can be drawn in that respect. There is no information as to whether the alternative route was a permissive route provided with the permission of an owner. Any such permission would not be evident to users.</p>
Aerial Photograph	2018	Aerial photograph available to view on Google Earth Pro.
		
Observations		<p>The construction of the housing development is underway but the application route, which also formed part of the alternative route to 3-11-FP13 at that time, cannot be seen. The route is obscured by tree cover between point A and point B and between point B and point C it appears possible to walk the route but there is no trodden track visible.</p>
Investigating Officer's Comments		<p>The application route cannot be seen as a visible trodden route on the</p>

		<p>photograph. Access may have been available, particularly as the route was also offered as being the alternative route provided to the public in a temporary closure order.</p>
Aerial Photograph	2020	Aerial photograph available to view on Google Earth Pro.
		
Observations		<p>The housing development appears to be close to completion. A trodden track can be seen along part of the application route between point A and point B but the route is not visible between point B and point C.</p>
Investigating Officer's Comments		<p>Access may have been available with care but it is not clear that the full application route or the temporary alternative route were accessible in 2020.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>

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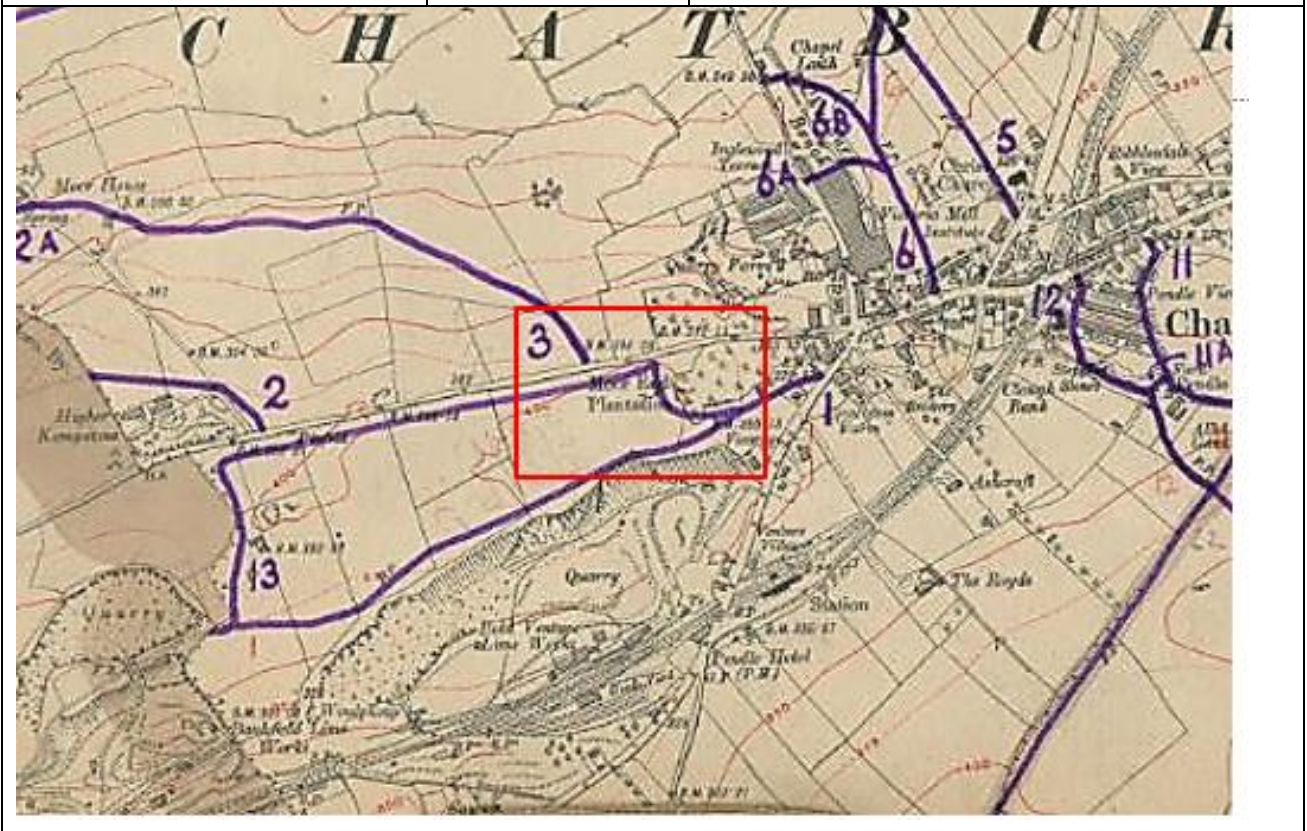


DISTRICT Clitheroe Rural	PARISH Chatburn	No. 1.
MAP SHEET No. 1.	LENGTH	miles
		(to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)		
Field footpath		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
To Clitheroe Borough Boundary. Starts at kissing gate at Moor End in Crow Trees Brow, Chatburn. Passes through three stiles, leads round the edge of the quarry, running parallel to the Olde Road, Chatburn, then turns south to the Clitheroe Borough Boundary. The diversion around the quarry was agreed with the Lancs County as per plans submitted to the Chatburn Parish Council. <i>to revert to original site when quarrying ceases.</i>		
Path well defined to the quarry. All stiles and gates in fair condition.		
SURVEYED BY :-	Name Col. J.F.M. Robinson	A. Hustwaite
	Address Manor House	6 Greenfield Ave.
	Chatburn	Chatburn
Date August, 1950		
50000/F39/4/50		

DISTRICT Clitheroe Rural	PARISH Chatburn	No. 13.
MAP SHEET No.	LENGTH 0.61.	miles
		(to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)		
Footpath		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
Junction footpath No. 1. N of Bankfield line takes in a northerly direction then turning right to run parallel to roadway & branching south to run along western side of Moor End Plantation to join up No. 1. again.		
SURVEYED BY :-	Name	
	Address	
Date		
50000/F39/4/50		

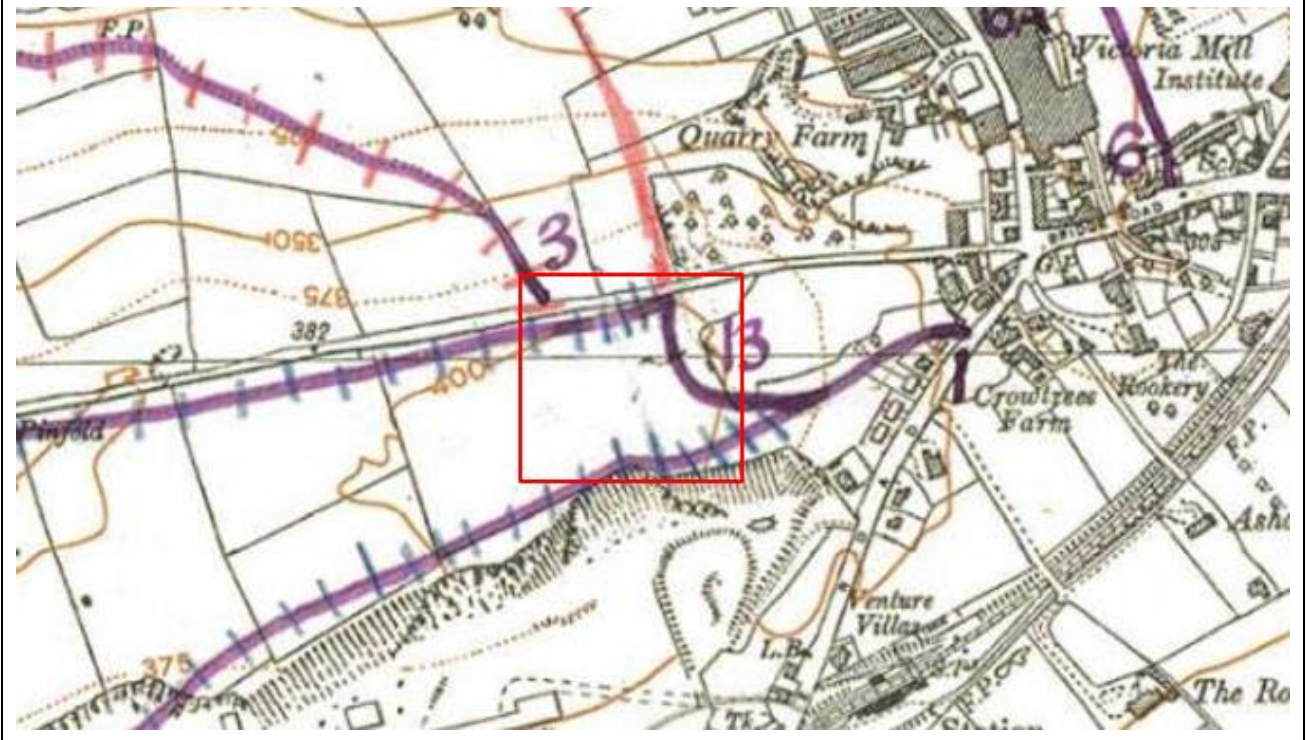
Observations		The application route is not recorded on the Parish Survey Map. A Parish Survey Card dated 1950 describes the route of 3-11-FP1. The route of 3-11-FP13 is not shown on the Parish Survey Map but a handwritten card describes the route of the footpath and it is marked No.13.
Draft Map		The Parish Survey Map and Cards for Chatburn were handed to Lancashire

		<p>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>
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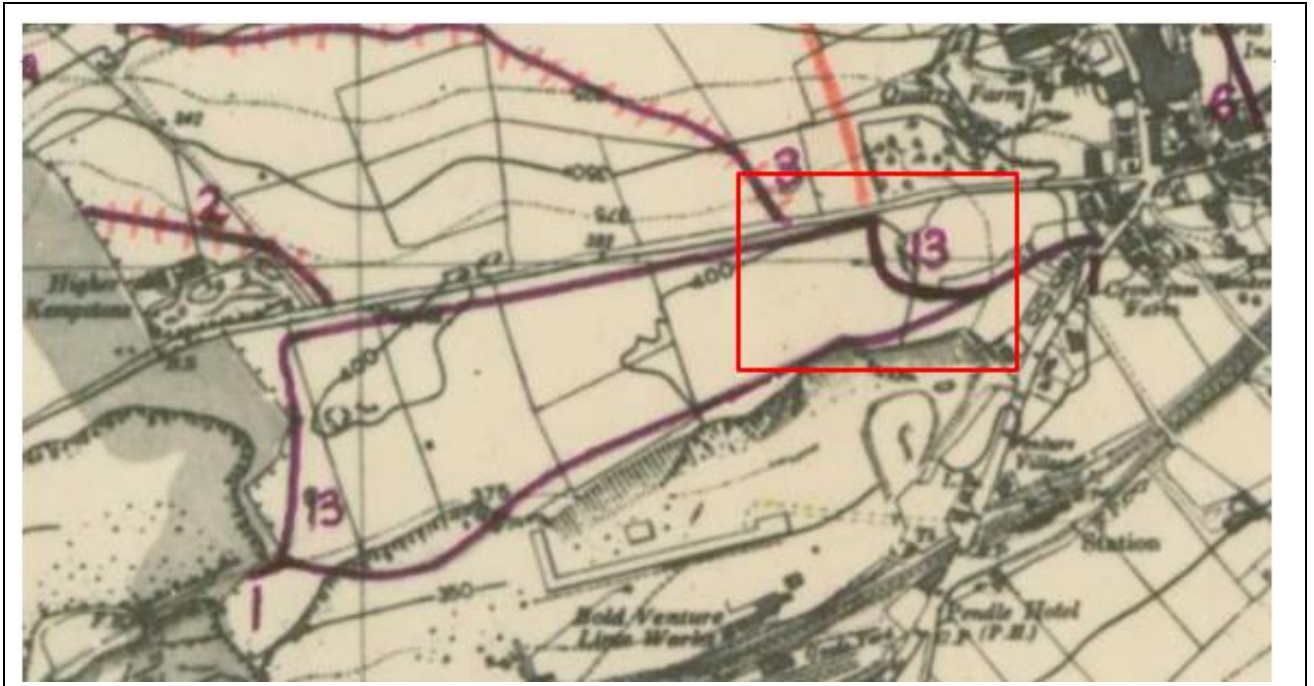


<p>Observations</p>		<p>The application route is not shown on the Draft Map and there is no record of any objections or representations having been made. Footpath 13 is recorded</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended 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</p>

		<p>apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
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<p>Observations</p>		<p>The application route is not shown on the Provisional Map and there is no record of any objections or representations having been made.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



<p>Observations</p>		<p>The application route was not recorded on the First Definitive Map and Statement. Footpath 13 is recorded and reaches the Old Road before running parallel to it westwards.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



Observations		The application route is not recorded on the Revised Definitive Map First Review.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the</p>

		<p>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		<p>The application route is not recorded as a publicly maintainable highway on the County council's highway records.</p> <p>Since the application to record the route shown on the Committee plan between points A-B-C was made, investigations have identified that Chatburn Old Road between the junctions with 3-11-FP13 and 3-11-FP14 (marked as point X on the Committee plan) and the start of the application route at point A is not part of the publicly maintainable section of Clitheroe Road and was legally extinguished in 1971.</p>
Investigating Officer's Comments		<p>The fact that the application route is not recorded as a publicly maintainable highway does not mean that public rights of access do not, or cannot, exist.</p> <p>With regards to the section of Chatburn Old Road between point X and point A it does appear that this route was legally stopped up in 1971 but this does not mean that public rights on foot may not have subsequently been dedicated and this will be considered by the Legal and Democratic Services Observations on the user evidence submitted below.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>

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

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

Summary

This application was based entirely on the submission of user evidence which is detailed below.

No map, photographic or documentary evidence was found to support the physical existence of a route although the application route did cross open land that may have been capable of being walked and shared part of the line with quarry access in 1960s.

Part of the route applied for was understood to have been made available as an alternative to using 3-11-FP13 between 2016-2021 during the construction of a residential housing development which necessitated the temporary closure to the public. In 2021 it appears that the application route was obstructed by security fencing and a different route, which varies from the legally recorded line of 3-11-FP13, was made available.

It was initially considered that Chatburn Old Road extended west as far as point A but whilst investigating this application it became apparent that public rights had been extinguished along the road from point X to point A in 1971. The map and site evidence shows that this part of the road still physically existed after that time and that it appeared capable of being used. The section A-X is not part of the application route but an additional section added following an investigation and confirmation of its use by the users.

Head of Service – Legal and Democratic Services Observations

Landownership

From point A to C the application route runs along land under private ownership of a limited company who has recently acquired same. There is also a caution on the land. A-X is in unknown ownership which is not unsurprising given it is an old highway. There is a caution registered affecting it also.

Information from the Applicant

The Applicant has provided the following information:

1. An application to modify the Definitive Map and Statement to upgrade a footpath at Chatburn Old Road, Chatburn to join an existing footpath which exits at Crow Tree Brow.
2. Map(s) extract marking 'paths'
3. A map showing the route of the 'proposed' modification to the Definitive Map.
4. 15 User Evidence Forms

The 15 user forms have been carefully considered and the information set out below.



Duration of Use

Periods of use vary but together collectively provide evidence of use from the 1990s up to 2021 with no gaps. Periods of use are stated as 1969- 2021; 1960 to 2021; 1980 to 2011 and 2013 to 2021; 1988 to 2010; 1989 to 2019; 2003-2020;1985 to 2021; 1971 to 2021; 1994- 2016; 1970-2021; 2006 to 2021; 1975 to 2016 ; 2000 to 2021; 1984-2001 and 2008-2021 and 2003 to 2021.

There is evidence from users up to the suggested calling into question of 2021 by blocking of the route near the kissing gate.

Frequency of Use

The use of the 15 users vary, with two using the path daily, three using the path weekly, two using the path monthly, two using the path every few month, with one stating once a year, one not specified and four stating they have used the path either daily, weekly, monthly, every few months and yearly.

Daily	Weekly	Monthly	Every few months	Once a year	Not specified	Daily, weekly, monthly, few months, yearly
2	3	2	2	1	1	4

Reasons for Use

Of those who specified their reason for using the route, the most common answer was pleasure. Two users used the route for dog walking, and one user used the route for family walks.

Walks (pleasure, exercise, recreational)	Dog walking	Family walks	Other uses
12	2	1	0

Other Uses of the Route

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

Consistency of the Route

The majority of the 15 users stated that the route had always followed the same route, two stated no, and one did not provide a response.

Yes	No	Don't Know	Not Specified
11	2	1	1



Route Used

Users described their route in their user evidence forms and most were clearly using a route using the kissing gate on Old Road and then following a route alongside the quarry and then turning east to use 3-11-FP13.

14 users provided maps, drawings and aerial photographs within the user forms, the line drawn on the maps, drawings and aerial photographs by at least ten users was sufficiently similar to the line of route on the Committee Plan to give confidence that the use had been of the application route. Since completing their user forms the users have confirmed their use of A-X to link to the highway network supporting the investigation addition of A-X.

Unobstructed use of the Route

4 users were prevented from using the route, with one user specifying the metal clapper was closed. The majority of users indicated that the rest of the route remained accessible.

13 of the 15 users stated they saw no signs or notices restricting or prohibiting access to the route, whereas two stated there was a footpath sign.

12 users stated they were aware of stiles along the route, of which 2 stated they were there from 2017 to present, one stated they were temporary stiles, and one stated the developer installed the stile, and one did not provide an answer.

14 users stated no permission was given or sought to use the route, one user stated permission was given by the landowner.

One user stated the application route is a well-trodden path and has been for as long as he could remember.

Another user stated the footpath has been in use for many years as evidence by the age of the kissing gate at the start.

Another user stated the route was used from the 1960s and now would be a good time for it be recorded as a public right of way.

Another user stated the developer had shut the kissing gate as the original footpath would have run through the proposed development. They further stated the path always went around the quarry as it was unsafe to be ever used to go through it.

Two users stated the application route should be recorded as a public right of way.

Information from the Landowner

The present landowner company of the land where A-C runs has responded.

It says that it did not receive the letter in August informing them of the application. It makes the following points (many which will be considered in Conclusion section below):



1. That the Applicant has not given notice of its intention to make the application and the application is procedurally flawed.
2. The Council refer to this invalidating an application.
3. That the application should not proceed.
4. They state that the application adds a footpath along the line of a footpath stopped up.
5. They note the line of 3-11-FP13.
6. They state that the application is to add a route on the western edge of the field.
7. The line was stopped up.
8. Footpath 3-11-FP13 was temporarily diverted so that it ran along part of the application route.
9. That it is untenable if the application is based on the footpath prior to 1971 and they note that it may be based on the user evidence.
10. The use between 2016 and 2021 cannot be as of right as it was use of an existing footpath as diverted.
11. They consider the user evidence suggests a footpath was known across the field. It was difficult to identify the line and users were diverting from it. The users thought it was already a footpath and there is no sufficiently cogent evidence of use of a new footpath as of right. The plans presented by the users show more than one line and show uncertainty.
12. The application seems generated because of the owner plans to develop. The landowner has no desire to prevent use of a footpath across the site. Any change in alignment necessary will be dealt with under statutory provisions.

Conclusion

Before considering the application of common law and S31 Highways Act 1980 to the evidence it is appropriate to consider the legal points made by the landowner.

The landowner is owner of all the land where the claimed route A-C runs since this year. Some of it had been sold by the same company in 2019 and is now reacquired. It is not known when the original acquisition occurred. It would however appear that before 2020 or 2021 little action was taken by whoever owned the land.

Responses to points raised by the landowner are as follows -

1. It is understood that the Applicant has now given its notice to landowner and certified same to the County Council.
2. An absence of notification to the landowner that the application has been made does not unmake it nor invalidate it. However any appeal or application for a Sec of State direction by the applicant would be invalid.
3. The application, whether valid or not, has brought evidence to the attention of the Surveying Authority so the matter would still need to be considered.
4. (to 7) A stopping-up in 1971 does not prevent new public rights being established since 1971 on the same line as A-X or across the section of footpath near Old Lane.
8. (and 10) In 2016 part of the application route was stated by the developer to be an alternative to 3-11-FP13. This did not move 3-11-FP13 rights onto it and was not in the Order as an alternative. Alternative routes can be on existing highway, on permissive paths or a combination of both but this was



not clear and certainly not clear to any users. Any permissions were not communicated sufficiently to challenge "as of right" use.

11. Given that the application route crosses open ground it is expected that some users may recall slightly varying lines. All users refer to accessing the old kissing gate at point A but it is the case that, whilst at least 10 then refer to the route running alongside the quarry before turning east, a few consider they took a more diagonal line. It is suggested that the evidence from those referring to the line alongside the quarry and then turning east clearly support the claimed line and provide evidence of use. Should an order be made and any objections received this would benefit from more detailed witness statements being taken.

The application made is that the route marked A-B-C has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. It is considered that section A-X should also be recorded.

There is no express dedication in this matter therefore Committee should consider on balance, whether there is sufficient evidence from which to infer a dedication at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years 'as of right' use.

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

There is no map, photographic or documentary evidence to support the physical existence of the route, therefore the evidence for the circumstances and inferred intention is based upon user evidence.

From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public had continued for many years such that on balance there may be sufficient evidence from which to reasonably allege an inference of dedication at common law of this route from all the circumstances. It is suggested that the use has been as of right and no element of permission was introduced when a section of the route was provided as an alternative route to 3-11-FP13. It may be appropriate initially to make the Order and see what further information may be clarified if there are any objections, before promoting to confirmation should Committee be satisfied with the quality of the user evidence. The landowner of today who challenges the application may have further information and being able to prove intention to dedicate may be complex.

Secondly looking at whether there is sufficient evidence from which to reasonably allege a **deemed** dedication under section 31 Highways Act 1980. In order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without



interruption, over the 20-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The applicant has provided evidence from 15 users in support of the application 10 of which clearly refer to use of the route on foot. Only 2 of the users stated that they had used it daily until the 'calling into question' when the route was blocked off; 3 users stated weekly use; 2 users stated monthly use and other less frequently. Some of the users state they had seen others using it and many describe it as a well-used route.

Committee's attention is drawn to the fact that although 10- 15 users can be viewed as a relatively low number, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these users of the route are representative of the public at large.

Their use has to be as of right without permission and it is advised that this would not be affected by the owner offering part of it as an alternative route for a Temporary Closure Order and therefore Committee may consider that the evidence as given does raise a presumption of dedication of a footpath and does satisfy the statutory test.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence of a footpath being able to be reasonably alleged to subsist and therefore make an Order and should no objections be received it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there are any objections it would be appropriate to clarify the user evidence by taking more detailed statements and it is suggested that Committee may consider the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed and further statements from users are taken.

Risk management

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

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



Paper

Date

Contact/Directorate/Tel

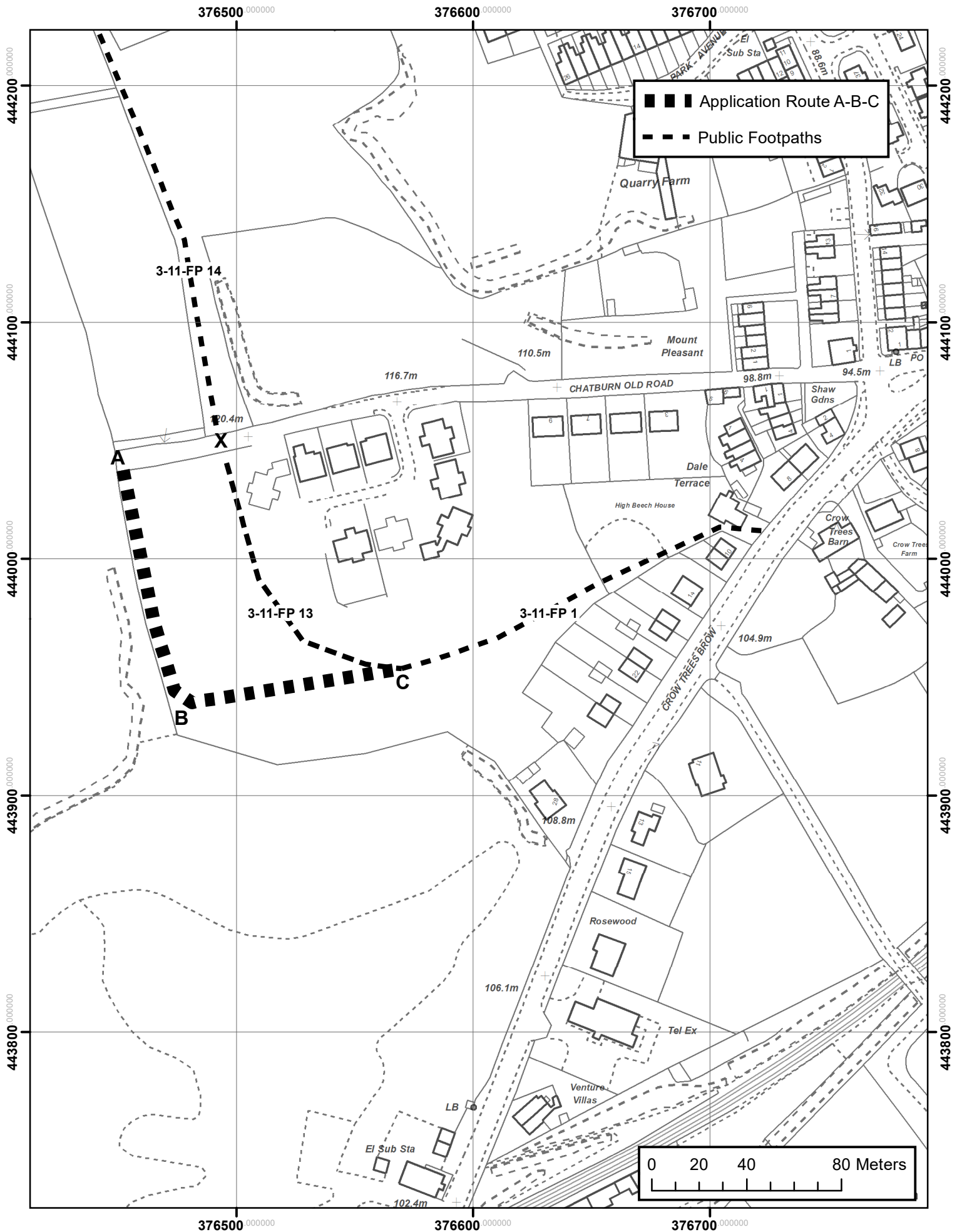
All documents on File Ref:
804-710

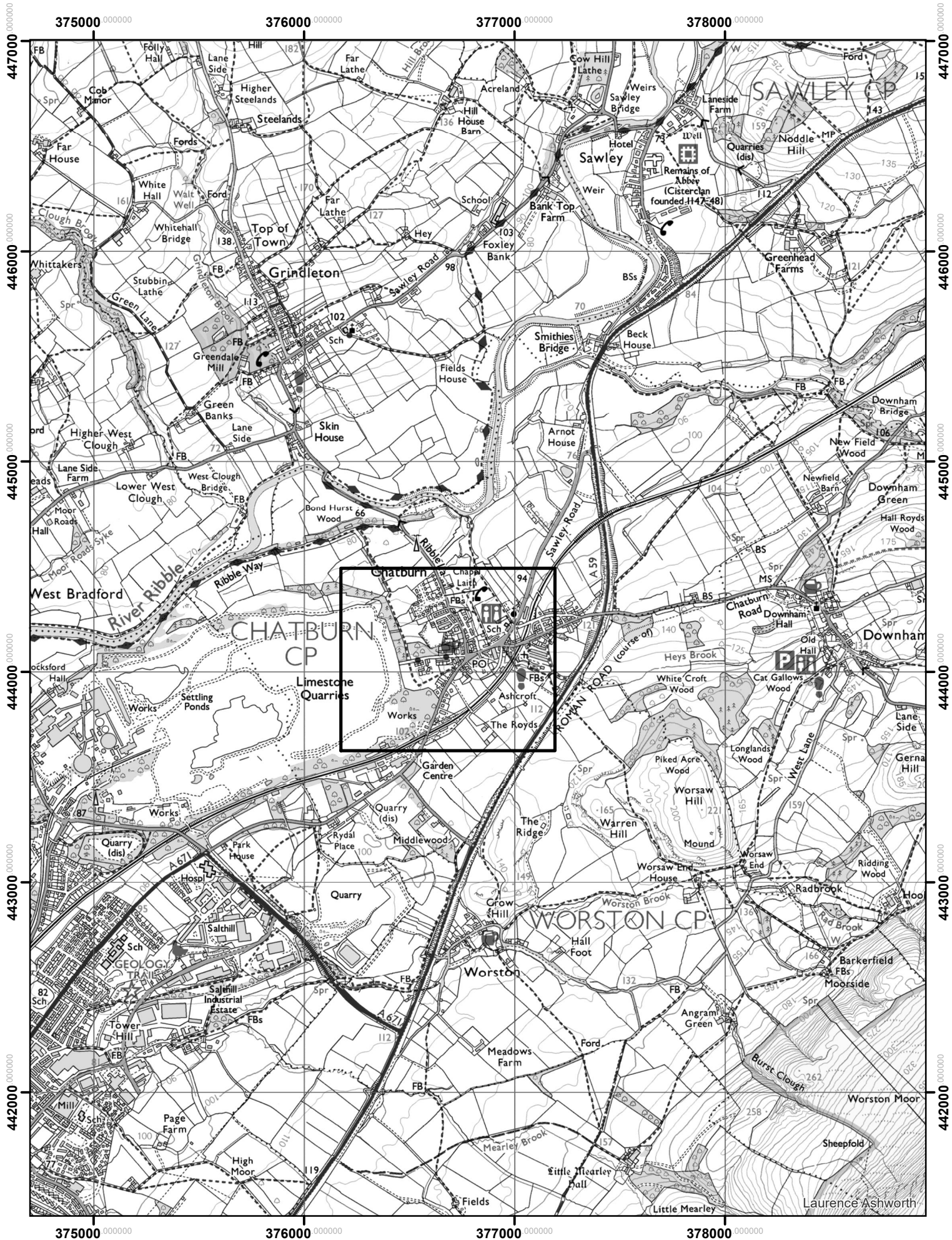
Ansar Sadiq, 01772
532435, County Secretary
and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A







Regulatory Committee

Meeting to be held on 16 November 2022

Part I

Electoral Division affected:
Preston East

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpaths around Glencourse Drive, Fulwood**
(Annex 'A' refers)

Contact for further information quoting file reference 804-699:
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 and investigation into the addition on the Definitive Map and Statement of Public Rights of Way of footpaths linking Watling Street Road, Eastway and Glencourse Drive and into the vicinity of Sandy Brook to the east of Eastway, Fulwood.

Recommendation

- (i) That the application for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Watling Street Road to the bridge over Sandy Brook, Fulwood, be accepted. That the evidence following investigation into other routes 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 a number of footpaths to the Definitive Map and Statement of Public Rights of Way in the vicinity of Watling Street Road, Glencourse Drive and Eastway, Fulwood as shown on Committee Plan between points A-B-C, D-N-E-F-G, N-I, H-E-I-J and M-L-J-K.
- (iii) That the Order(s) be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed and further appropriate work done by officers.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Watling Street Road to the bridge over Sandy Brook.

When investigating the application, it became apparent that routes connecting to the application route – and which users of the application routes describe as using in their evidence – were not recorded as public footpaths and required investigation. (Without investigating these sections, the application route would not link to other recorded public rights.) The routes to be investigated, including the application, are marked between points A-B-C, D-N-E-F-G, H-E-I-J, N-I and K-J-L-M on the Committee plan.

The applicant explained that the original application for three lengths only consisted of the sections which had been blocked off by the landowner and that the applicant had not realised that the other routes being considered were not recorded as public footpaths and that access along them had not been challenged or prevented at the time the application was made.

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”

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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



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

Consultations

Preston City Council

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

County Councillor

County Councillor Anne Hindle responded to the consultation, and stated she was made aware by both the constituents and City Councillor John Browne, and she supports the application for the proposed route to be added to the Definitive Maps Modification Order register, as does Councillor John Browne.

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	5552 3184	Gap adjacent to timber pedestrian gate on north side of Watling Street Road immediately west of 250 Watling Street Road
B	5551 3187	Gap in fenceline
C	5550 3200	Open junction of trodden route with Glencourse Drive, opposite 1 and 3 Glencourse Drive
D	5546 3203	Junction of trodden route with north-east side of Glencourse Drive
N	5546 3203	Gap adjacent to padlocked pedestrian gate approx. 5 metres north of Glencourse Drive
E	5541 3212	Crossroads of paths (visible as trodden lines on the



		grass within the clearing)
F	5539 3216	Footbridge over Sandy Brook
G	5539 3217	'T' junction of trodden paths (route under investigation with 6-1-FP 58) north of Sandy Brook
H	5537 3210	Low timber stile at east side of Eastway
I	5543 3214	'T' junction of trodden paths
J	5570 3214	Junction of trodden path with section of tarmac path running north-south
K	5570 3212	Unmarked point on path at north end of the recorded footpath 6-2-FP 31
L	5568 3216	Footbridge over Sandy Brook with motorcycle barrier at south end
M	5567 3216	Oblique crossroads of paths (route under investigation meets recorded footpath 6-1-FP 58)

Description of Route

The route consists of several paths making up the application routes and those investigated at the same time although not part of the original application.

A site inspection was carried out in November 2021.

Footpath from Watling Street Road to Glencourse Drive – shown between points A-B-C on the Committee plan.

The route commences on Watling Street Road opposite the junction with Carleton Avenue and immediately west of 250 Watling Street Road (point A on the Committee plan).

A trodden path leaves Watling Street Road through a gap in the hedge line immediately west of a padlocked wooden gate which is overgrown and does not appear to have been opened for some time.

A clearly visible trodden path can be followed in a north north westerly direction to the west of the boundary of a plot of land covered by trees. The trodden track passes through a gap in a broken fence line (point B) and continues across an open area of rough grassland which appears not to be maintained. A trodden track consistent with pedestrian use is visible along the line of the route continuing through to Glencourse Drive (point C) where the route exits onto the road through an area planted with trees. The path through the trees to point C is well trodden and edging boards have been laid in the past and surfacing work carried out over the short section (approximately 10 metres) through the trees to Glencourse Drive.

The length of this section is 175 metres.

Footpath from Glencourse Drive to Sandy Brook and Footpath 6-1-58 – shown between points D-E-F-G on the Committee plan.

From the north side of Glencourse Drive (point D) the route is evident as a well-defined trod for a few metres then passes through or adjacent to a wooden



pedestrian gate (point N) which was blocked off and padlocked when the route was inspected in 2021. Adjacent to the gateway was a gap in the wooden fencing where a well-trodden path could be seen which continued in a generally north north westerly direction across an area of rough grassland descending down a grassy slope to cross an unrecorded footpath running east-west to the south of Sandy Brook (point E).

The route is visible as a trodden track and crosses Sandy Brook by means of a substantial wooden footbridge (point F) spanning approximately 10 metres. At the north end of the bridge a bollard has been erected which restricts access onto the bridge but which doesn't prevent pedestrian use. On the north side of Sandy Brook the footpath continues for a few metres to an open junction with recorded footpath 6-1-FP58 (point G).

The length of this section is 150 metres.

Footpath from the pedestrian gate and gap just north of Glencourse Drive to unrecorded footpath running east from Eastway – shown between points N-I on the Committee plan.

From the gap in the fencing and the adjacent pedestrian gate (point N) continuing in a northerly direction across the rough grassland running parallel to the west of the boundary of properties on Glencourse Drive along a trodden track to descend a grassy slope to meet the unrecorded footpath running east-west to the south of Sandy Brook (point I)

The length of this section is 110 metres.

Footpath to the south of Sandy Brook – shown between points H-E-I-J on the Committee plan.

The route starts on Eastway (point H) where it is signed as a public footpath with an old metal public footpath signpost and from where the tarmac footway leads directly to a wooden stile providing access to the start of the route.

From the stile the route continues in a north easterly direction along a compacted earth trodden track, crosses the routes described above at point E and I then in a more easterly direction along the south side of the valley through to a tarmac path at point J.

The length of this section is 350 metres.

Footpath continuing from the north end of Footpath 6-2-FP31 over Sandy Brook to 6-1-FP58 – shown between K-J-L-M on the Committee plan.

The recorded length of 6-2-FP 31 (which is a tarmac footpath which runs north from Moorland Crescent and Watling Street Road) ends at an unmarked point 13 metres south south east of point J at the point marked point K on the Committee plan although on the ground there is no discernible difference between the recorded and unrecorded sections of this path. The route follows this tarmac path to the junction with the earthen path described above (point J) then as a compacted stone surfaced



footpath continues in a generally north westerly direction to cross Sandy Brook via a metal footbridge (point L) approximately 8 metres long with a restrictive barrier at the south end which does not prevent pedestrian access but would prevent or make it difficult for horses, bicycles or motorbikes to cross. From the footbridge the footpath continues a few metres to join 6-1-FP 58 (point M.)

The length of this section is 55 metres.

Map and Documentary Evidence

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

In this particular case the land crossed by the application route was not developed until the 1990s and there is no suggestion that the application route or other routes under investigation existed prior to that time.

For this reason, much of the historical map and documentary evidence normally considered as part of the Committee report is not included below. Several historical maps submitted by the applicant in support of their application are however included.

Note: For the purpose of the research below the routes shown on the Committee plan are all referred to as 'the application route' rather than part application and part route under investigation.

Maps inserted into the report are not to scale.

Document Title	Date	Brief Description of Document & Nature of Evidence
Inclosure Act Award and Maps	1815	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.



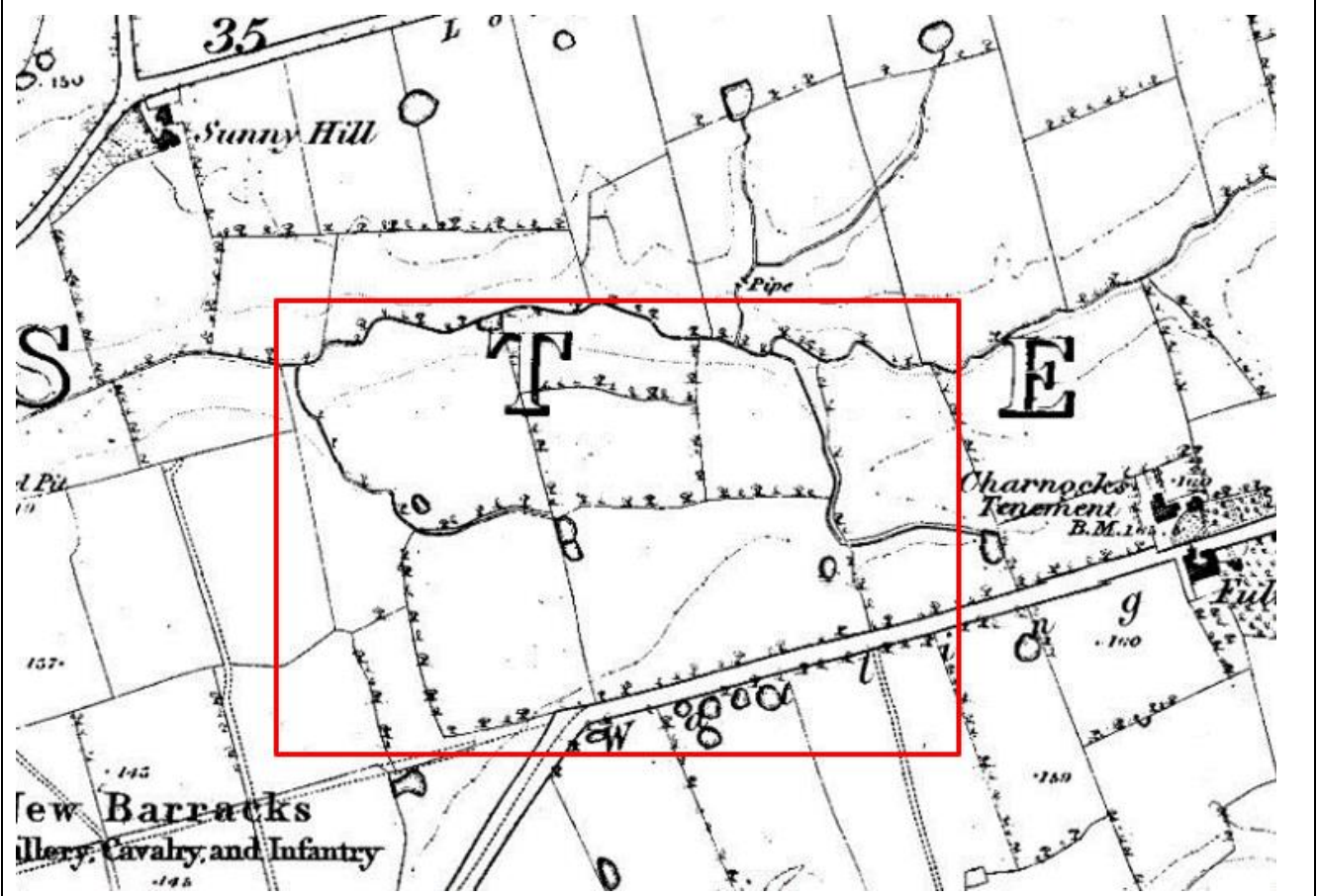
<p>Observations</p>		<p>The applicant submitted an extract from an Inclosure Map showing land crossed by the application route. The map source was not provided but it is noted that the Inclosure Map and Award for Fulwood Moor and Cadley Moor dated 1817 are listed as being available to view at the County Records Office (Ref: AE/1/4) and that the Inclosure Award was made under the provisions of a local Act of Parliament dated 1811.</p> <p>The applicant noted that as part of the Inclosure process most of the land crossed by the application route was allotted to the Estate of William Clayton. Because there is no indication from looking at the map provided that any public or private rights of access were set out across the land affected under the enclosure process and nothing to indicate that this happened on later maps examined the Investigating Officer has not examined the Inclosure Map, award or Local Act of Parliament relating to the</p>
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		enclosure.
Investigating Officer's Comments		The application routes did not exist in 1817 and there is no suggestion that they were created as part of the Inclosure process.
Tithe Map and Tithe Award or Apportionment	1847	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		The applicant also submitted an extract of the Fulwood Tithe Map prepared in 1847 drawing attention to ownership of the land at that time and the fact that the land was described as being used for pasture. The application routes are not shown on the map.
Investigating Officer's Comments		The application routes did not exist in 1847.
6 Inch Ordnance Survey (OS) Map Sheet LXI	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹

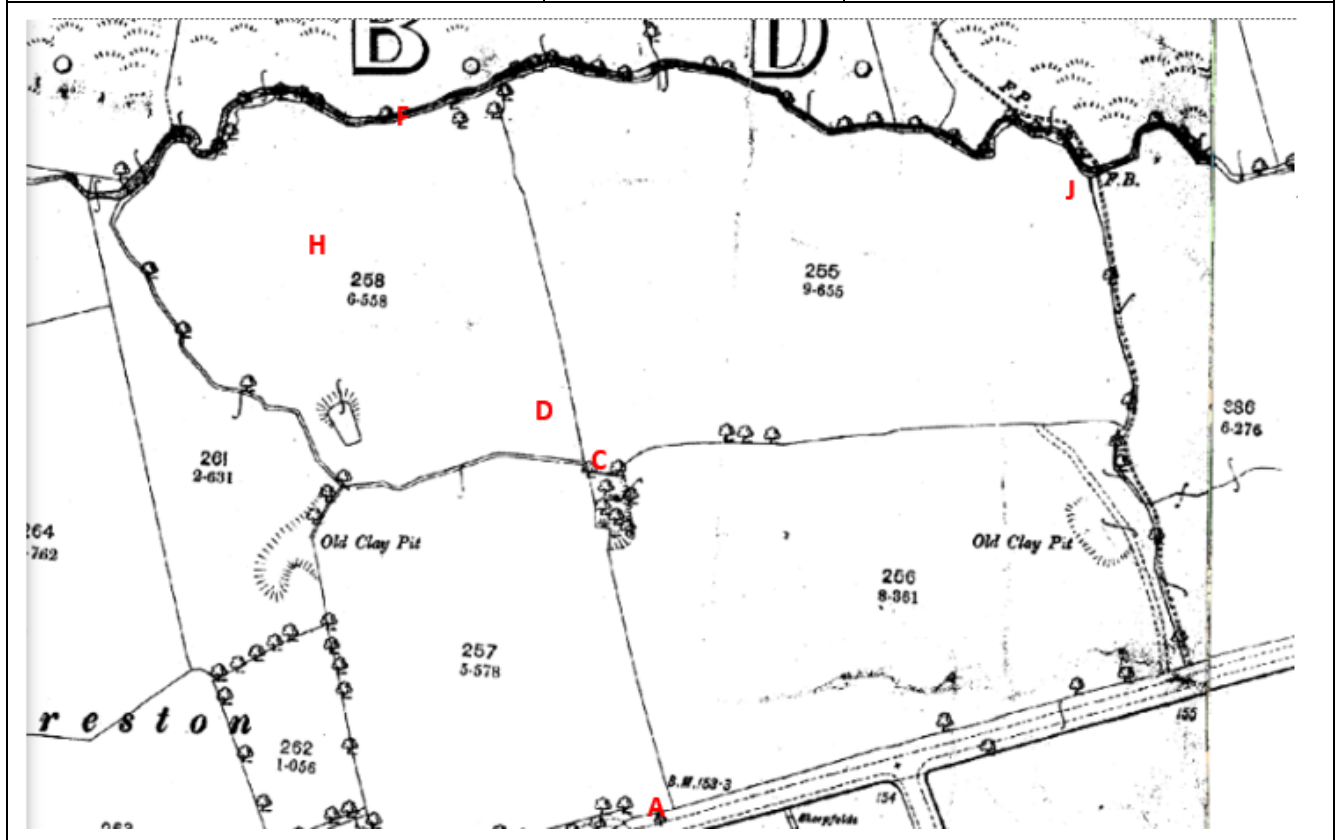


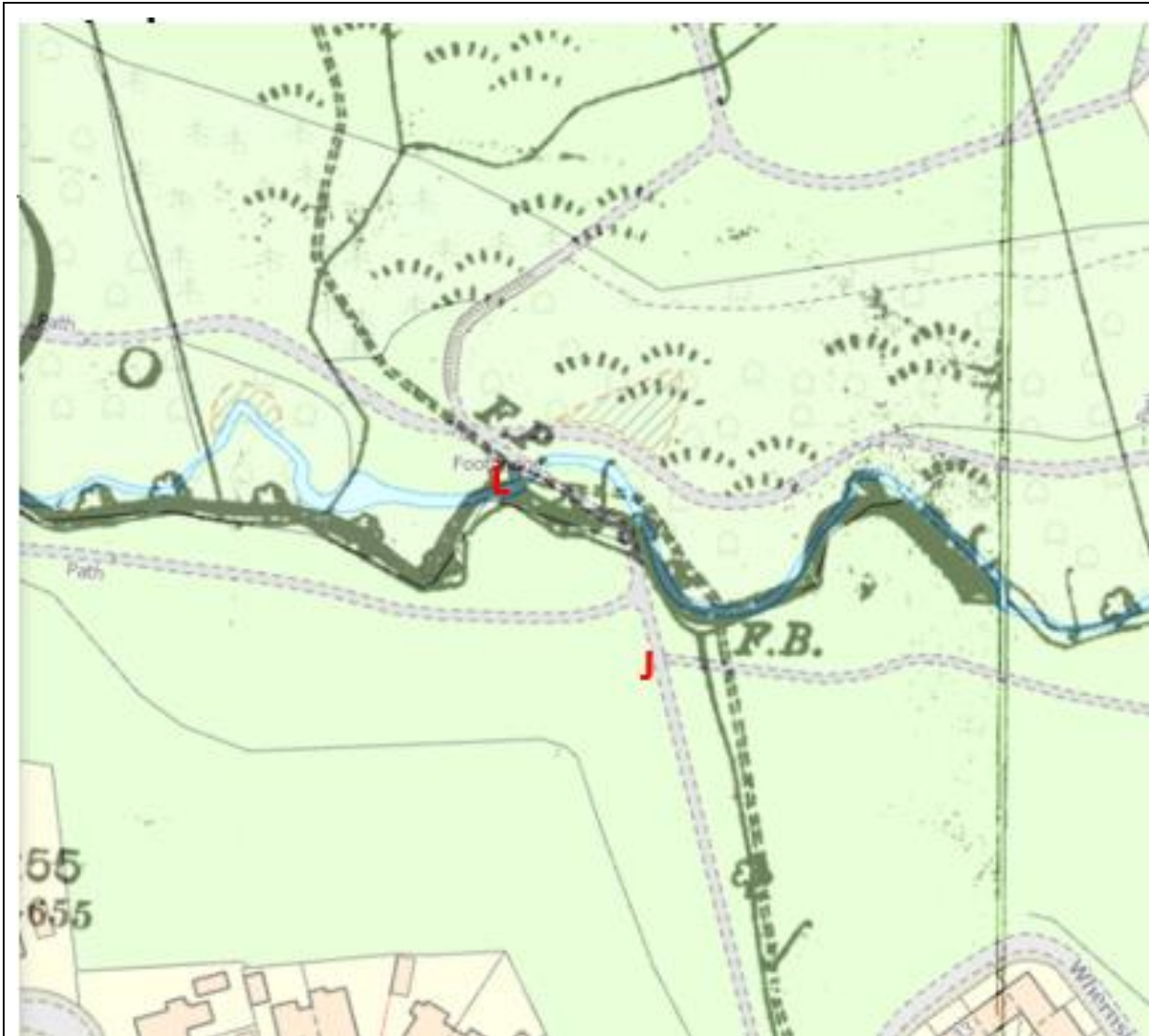
Observations		The land crossed by the application routes is
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¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to 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.



		undeveloped farmland and the application routes are not shown.
Investigating Officer's Comments		The application routes did not exist in 1844-47.
25 Inch OS Map Sheet LXI.6	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1893.





Map overlay showing how Sandy Brook has altered its course since 1890-91

Observations

The application route is not shown although a route described as a footpath (F.P.) is shown consistent with the route recorded as 6-2-FP31 although the exact location of the crossing of Sandy Brook, the bends in the watercourse and the alignment of the route recorded as 6-1-FP18 are slightly different.

The applicant submitted a copy of this map in their evidence drawing attention to the fact that the land crossed by much of the route was within the fields numbered as plots 258 and 257.

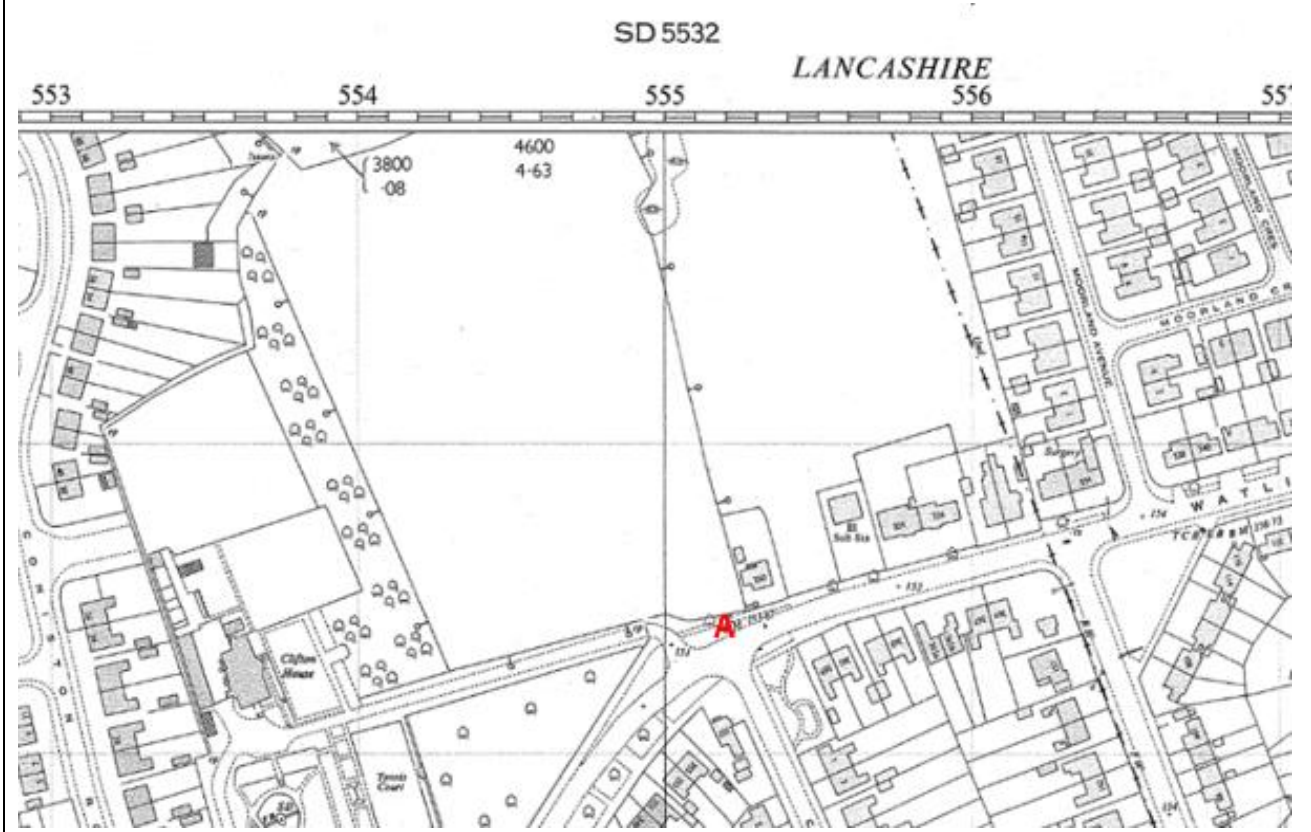
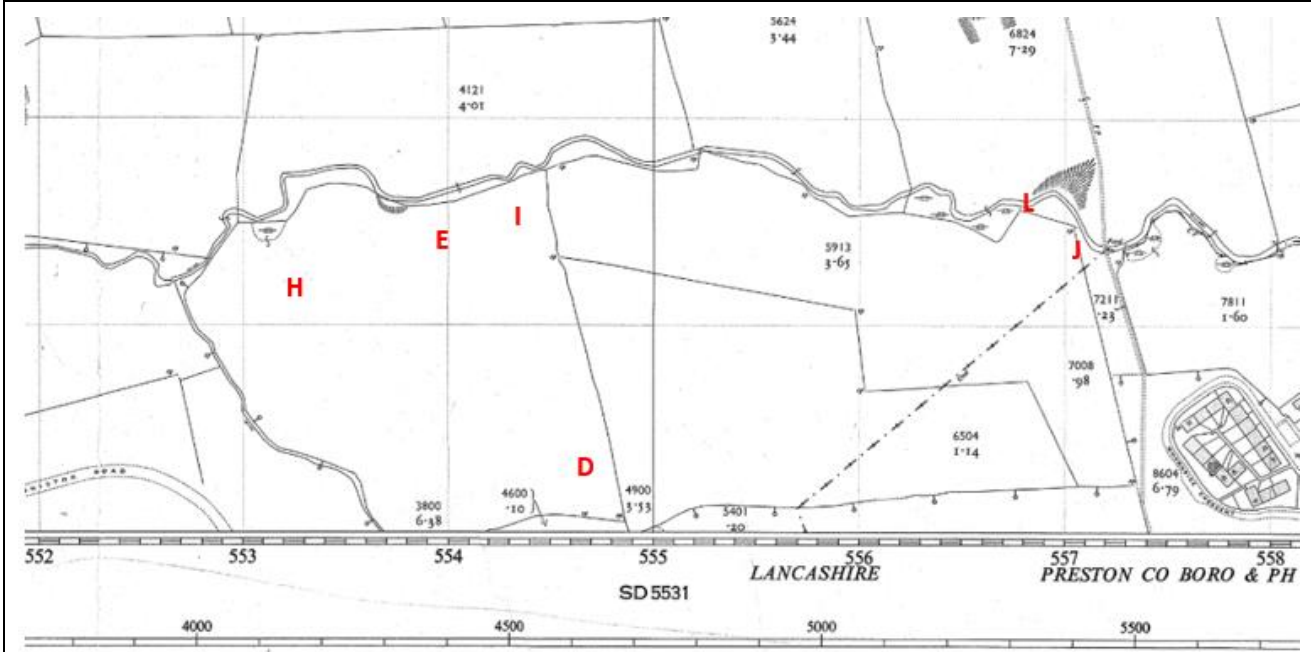


		The applicant explained that information about this land was detailed in an indenture of 4 June 1919 which was included as part of the evidence for the application. Subsequent investigations established that the indenture referred to was not relevant to the application and this was confirmed with the applicant.
Investigating Officer's Comments		The application route did not exist in 1890-91 although a route across Sandy Brook between the routes now recorded as 6-2-FP31 and 6-1-FP18 did exist and was marked on the map as a footpath. That route differed from the one now under investigation – and from that recorded as 6-2-FP31 and was located slightly further east.
25 inch OS Map LXI.6	1932	25 inch OS map revised 1929 and published 1932.
Observations		The application route is not shown and the land is undeveloped farm land although a route did exist across Sandy Brook just east of the existing footbridge (point L).
Investigating Officer's Comments		The application route did not exist in 1929.
25 inch OS Map Sheet LXI.6	1945	25 inch OS map revised 1938 and published 1945.




Observations		The application route is not shown on the map. A route slightly to the east of 6-2-FP31 is shown continuing across Sandy Brook .
Investigating Officer's Comments		The application route did not exist in 1938 although a route did exist across Sandy Brook just east of the existing footbridge (point L).
1:2500 OS Maps Sheets SD 5431-5531 and SD 5432-5532	1958-1969	SD 5431-5531 revised 1958-1968 with further information added 1969 published 1970 and SD 5432-5532 published 1961 part surveyed 1958 and revised

1960.



Observations		The application route is not shown. A route across Sandy Brook is still shown east of the existing footbridge at point L.
Investigating Officer's Comments		The application route did not exist between 1958-1969.
OS Pathfinder 679 (SD43/53)	1991	1:25,000 OS map, compiled



Preston (North) & Kirkham (Lancs)		from larger scale surveys dated between 1956 and 1986. Revised for selected changes 1990 and published 1991.
		
Observations		Eastway (B6241) is shown but Glencourse Drive is not shown. Most of the application route is not shown but a series of thick green dashes to mark the location of a public footpath is shown passing through points K & J then turning north east across Sandy Brook further east of the footbridge (point L) although they don't correspond exactly to what is recorded on the Definitive Map or what appears to have been available on the ground.
Investigating Officer's Comments		The application route probably did not exist in the early 1990s.
Development of housing	1991-1999	Land Registry information including the 1991 Transfer from Commission for New Towns to Fairclough Homes

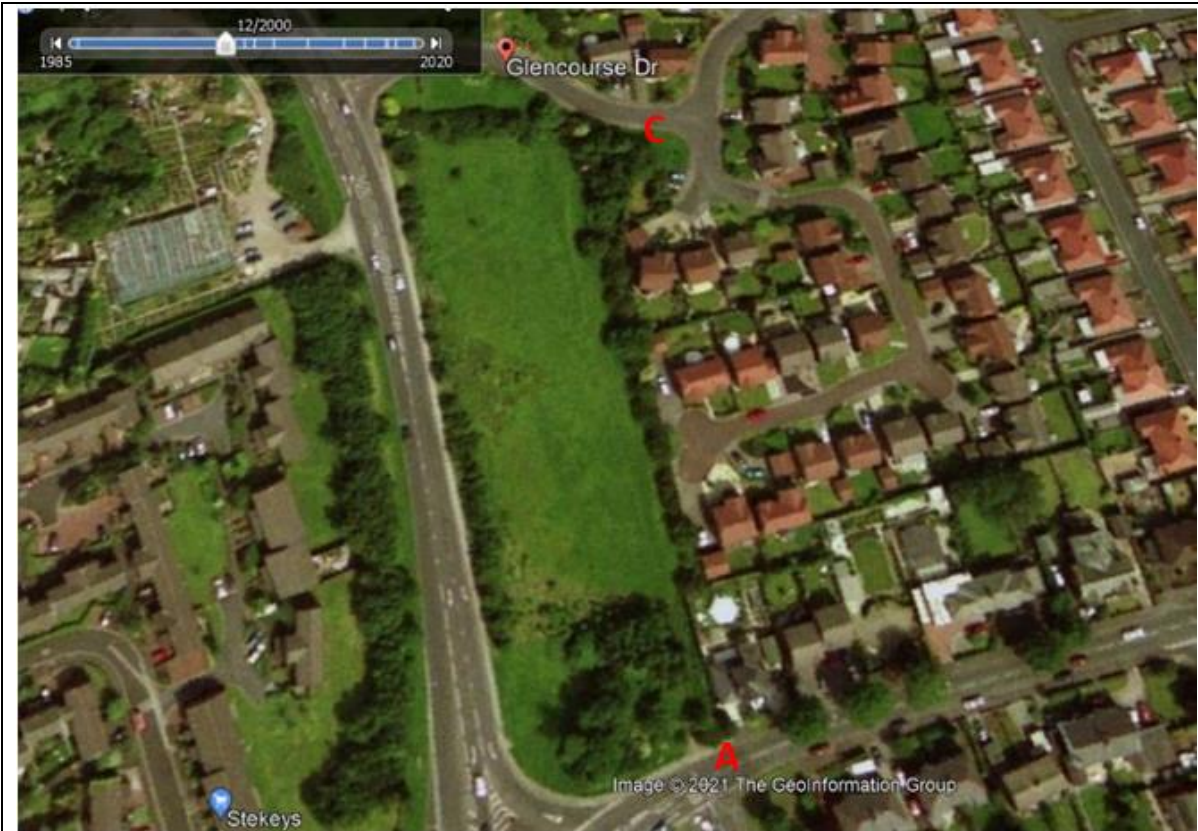


This is a plan of the title of the site also entered from HM Land Registry showing the extent of the site plan on 01 May 2022 at 11:28:25. The site plan shows the site boundaries and the extent of the site plan. It does not show the site plan or any other information.

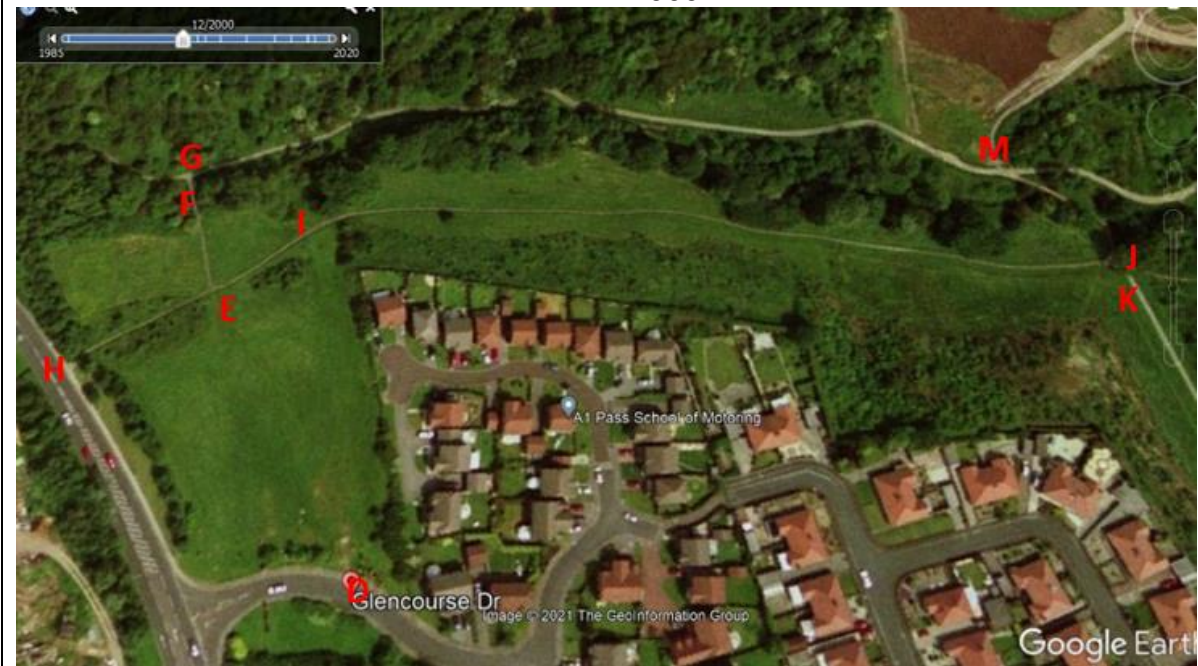
Observations

The houses off Glencourse Drive were constructed in the early 1990s and sold between 1992 and 1996. They were built by Fairclough Homes Limited. The plan showing the land initially developed shows access to the new properties via Moorland Avenue and does not show the access through to Eastway (Glencourse Drive). Adoption records however confirm that Glencourse Drive through to Eastway was built and adopted on 18 January

		<p>1999.</p> <p>The 1991 Conveyance refers to covenants to ensure that the open space areas to the west and north were to remain unbuilt upon and a covenant to them being brought up to a standard and passed to the City Council and a footpath to be made (near to HEF)</p>
Investigating Officer's Comments		<p>At some point between 1991 and 1999 it appears that Glencourse Drive was constructed and access to the application routes from points C and D could have become available. The area where the routes run are on areas transferred as public open space by the Commission for New Towns . The Open Space areas have not been transferred to the City Council and so are not held under statutory provisions for open space giving the public a statutory permission but instead remain held by successors in title to Fairclough Homes bound by the covenants to keep the area unbuilt upon.</p>
Aerial Photographs captured on Google Earth Pro	2000-2020	Aerial photograph available to view on Google Earth Pro.



2000



2000





2002



2002





2009



2009





2015



2015





2017



2017





2020



2020

Observations

The aerial photographs show the land crossed by the application route over a twenty-year period prior to the



		application being made. Despite tree cover – which became more extensive over the years – the application route can be clearly seen at least in part as substantial trodden tracks. The earliest photographs very clearly show the path to the south of the watercourse from point H to point J and also clearly show the routes across the watercourse connecting to the public footpaths on the other side.
Investigating Officer's Comments		The photographs all support the evidence of use submitted in relation to this application and regarding use of the additional routes investigated.
Photographs on LCC Public Rights of Way files	2005	Unlabelled photographs saved on LCC Public Rights of Way File



Observations		In 1986 the Ramblers Association submitted an application to record a route as a public footpath running along the north side of Sandy Brook. The route was subsequently recorded as 6-1-FP58 and a set of photographs saved on the
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		<p>Public Rights of Way electronic files shows the route.</p> <p>The photographs were saved onto the file in September 2005 but do not appear to have been taken at that time as they show the trees without leaves and appear to have been originally taken during the winter. It is more than likely that they were taken before a report was presented to the County Council Public Rights of Way Sub Committee who will have decided whether to accept the application and make the order. If that is correct, then it appears that they were taken between 1986 and 1991.</p> <p>The photograph included in this report shows a bridge providing access across Sandy Brook in the same position that a newer bridge now exists on the application route between points M-L-J. A well-trodden route can be seen leaving 6-1-FP58 to cross Sandy Brook and continue towards point J.</p>
Investigating Officer's Comments		The application route between points M-L-J existed by at least 2005 as a well-trodden route.
Google Street View	2009-2018	Various images captured and available to view on Google Street View.



Point A – 2009



Point A - 2012



Point C – 2009



Point C - 2012



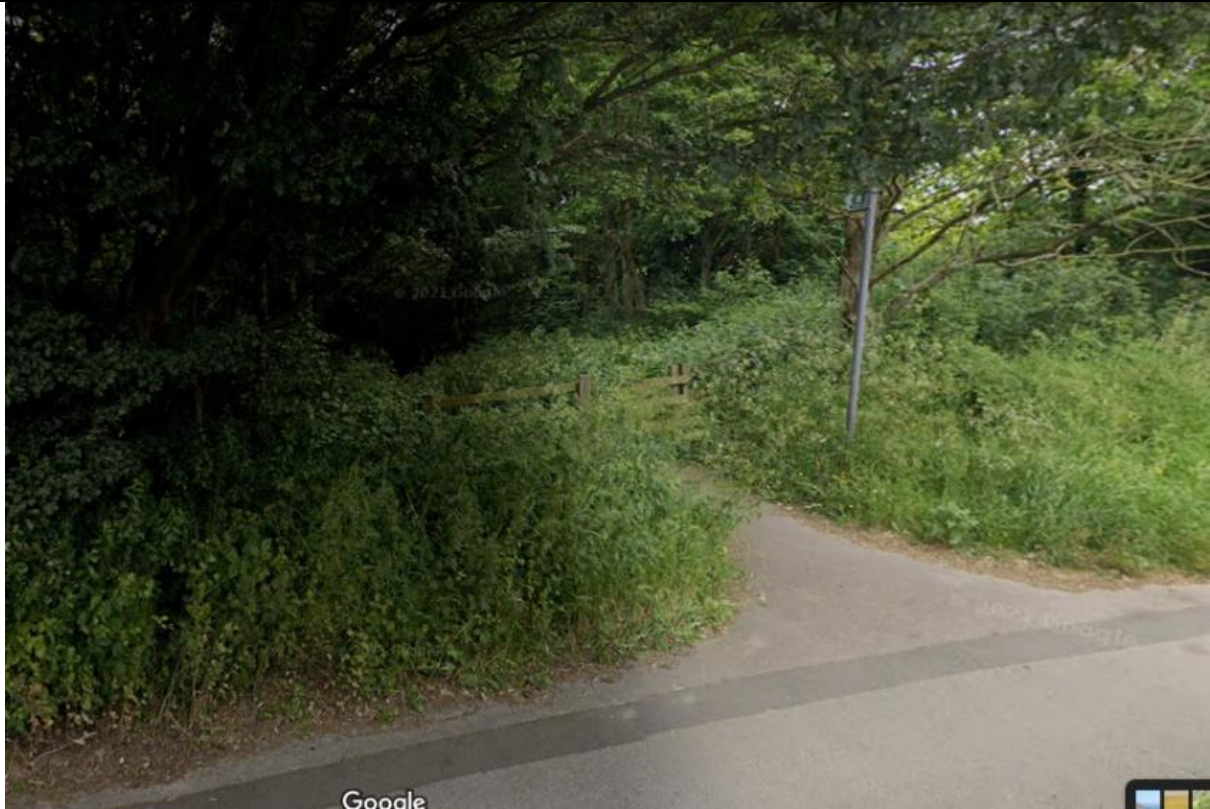
Point D – 2009



Point D – 2012



Point H - 2009



Point H - 2012



Point H - 2018

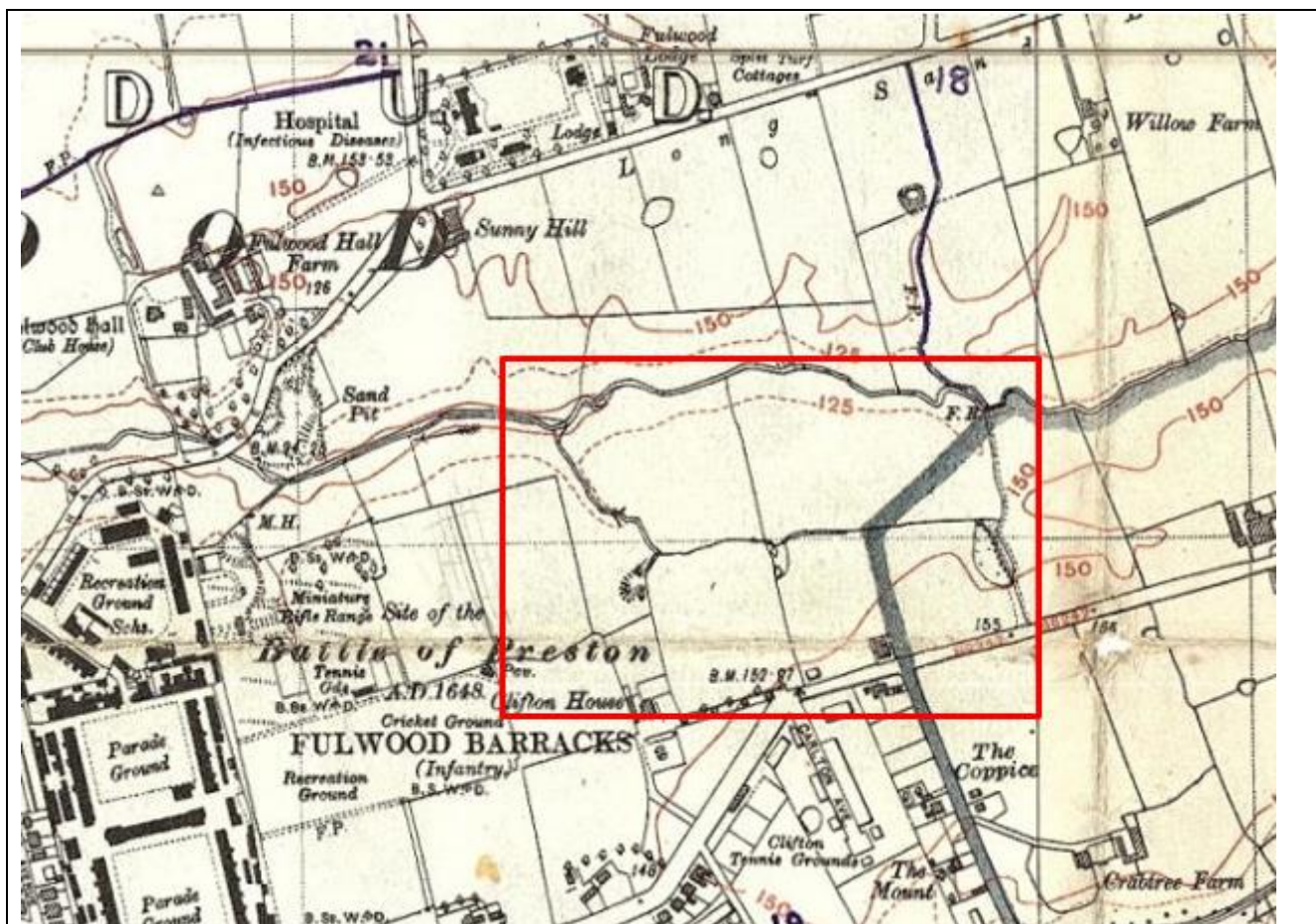
Observations

Further photographs taken during the 20 year period prior to the application being made all show that access onto the application routes was available at points A, C, D and H during that time.
The earliest photograph was



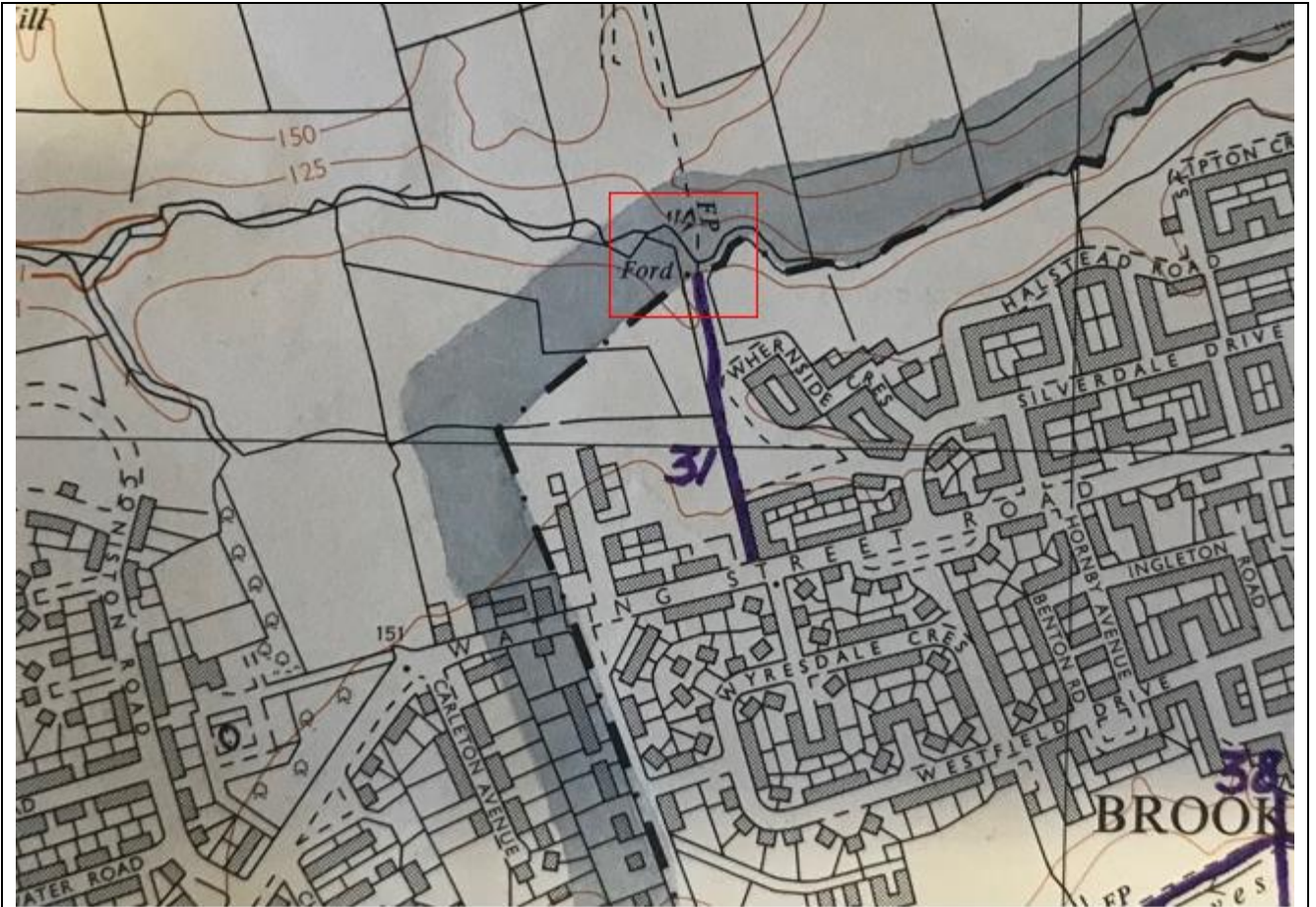
		<p>taken in 2009 and shows that at least since that time the route from Eastway (point H) was signed as a public footpath. Photos of the stile at Eastway (point H) show that it was dilapidated in earlier years but repaired by later shots.</p>
Investigating Officer's Comments		<p>The photographs all support the evidence of use submitted in relation to this application and regarding use of the additional routes investigated. They also indicate that the stile has been maintained in recent years.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or (some) 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, 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</p>

		containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
Draft Map of Fulwood		<p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</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>



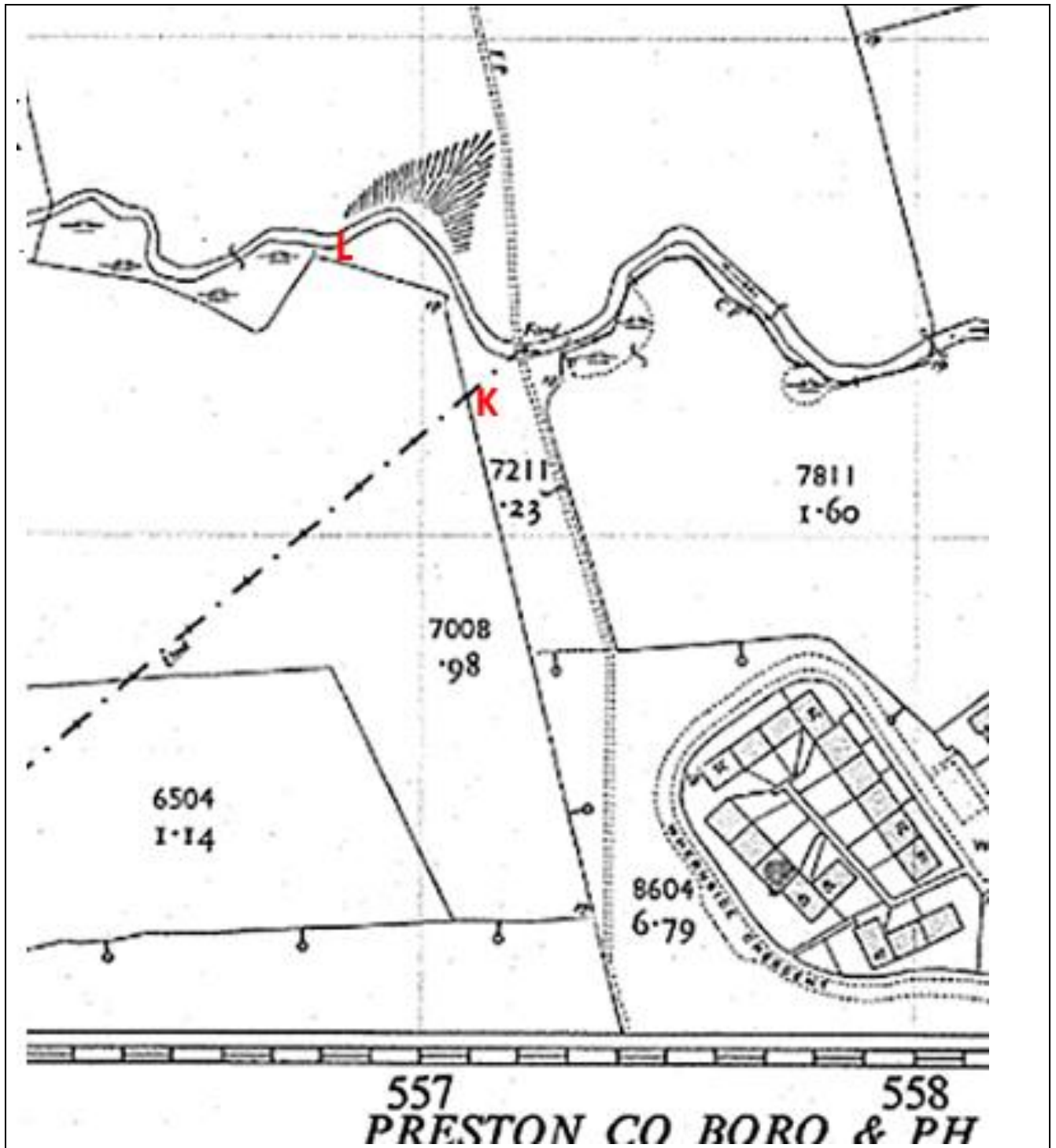
Observations		The application route was not shown and there were no representations made to the county council in relation to it.
Draft Map for County Borough of Preston	1979-1983	A Definitive Map of the area covered by County Borough of Preston prior to 1972 was not prepared until much later. The Draft Map was placed on deposit from 24 th April 1979 with a relevant date of 1 st February 1979.





Draft Map



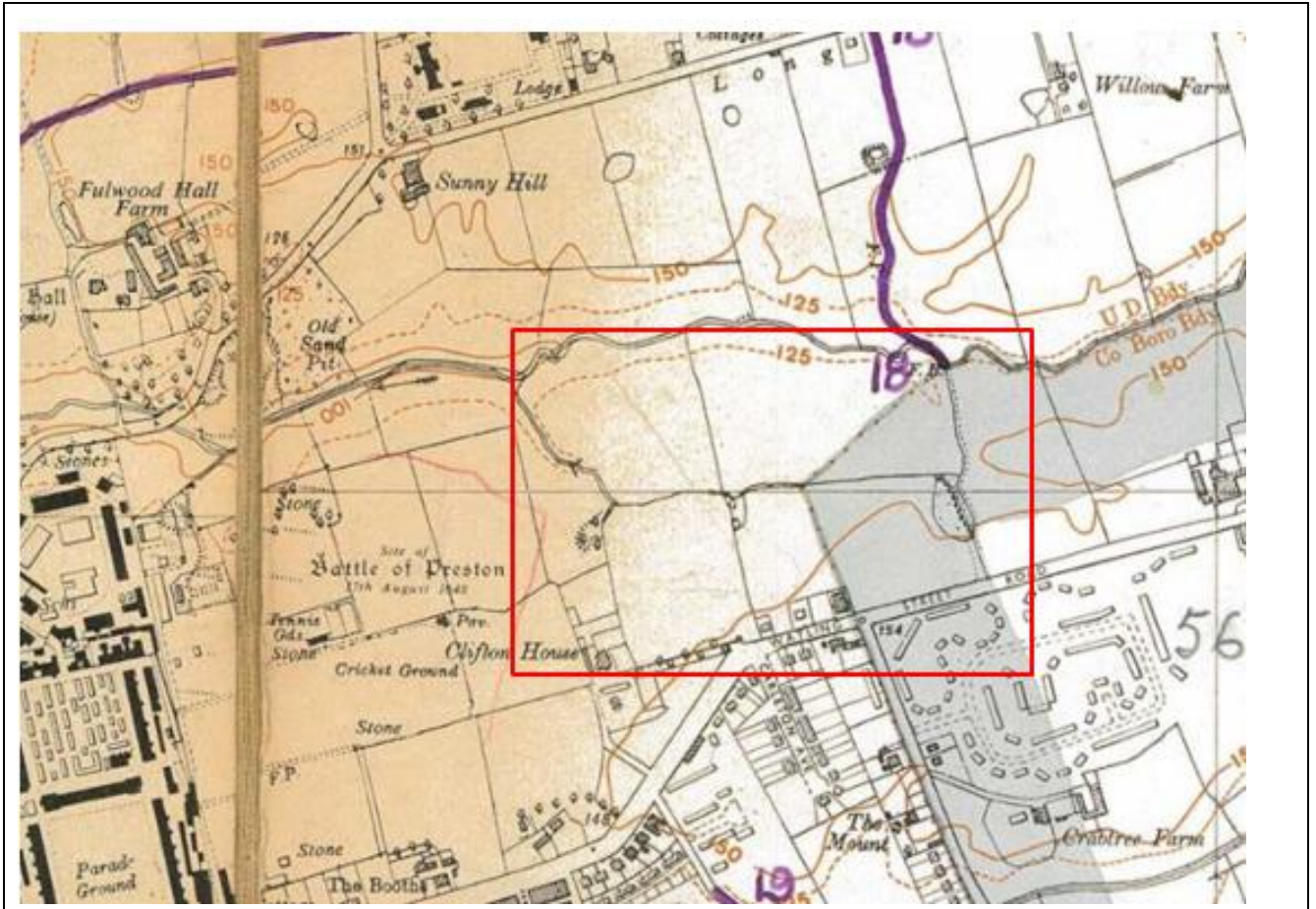


1:2500 OS showing Borough boundary in relation to points K and L

Observations		Only the route now recorded as 6-2-FP31 is shown on this map and is drawn continuing to the Preston-Fulwood boundary which appeared to be in the watercourse at this point.
Investigating Officer's Comments		By the time the Preston County Borough Draft Map was prepared the alignment of the



		<p>footpath recorded as 6-2-FP31 had altered on the ground from the route shown on some of the earlier historical maps and which was reflected on the OS base map used to prepare the map. As a result it appears that although the route recorded as 6-1-FP18 historically crossed the watercourse to continue into Preston (as 6-2-FP31) the two routes do not connect on the Definitive Map because the route recorded as 6-1-FP18 followed the route shown on the OS base map surveyed in the 1930s. In addition, the tarmac route now in use by the public is further west than the recorded route of 6-2-FP31.</p>
<p>Fulwood 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>



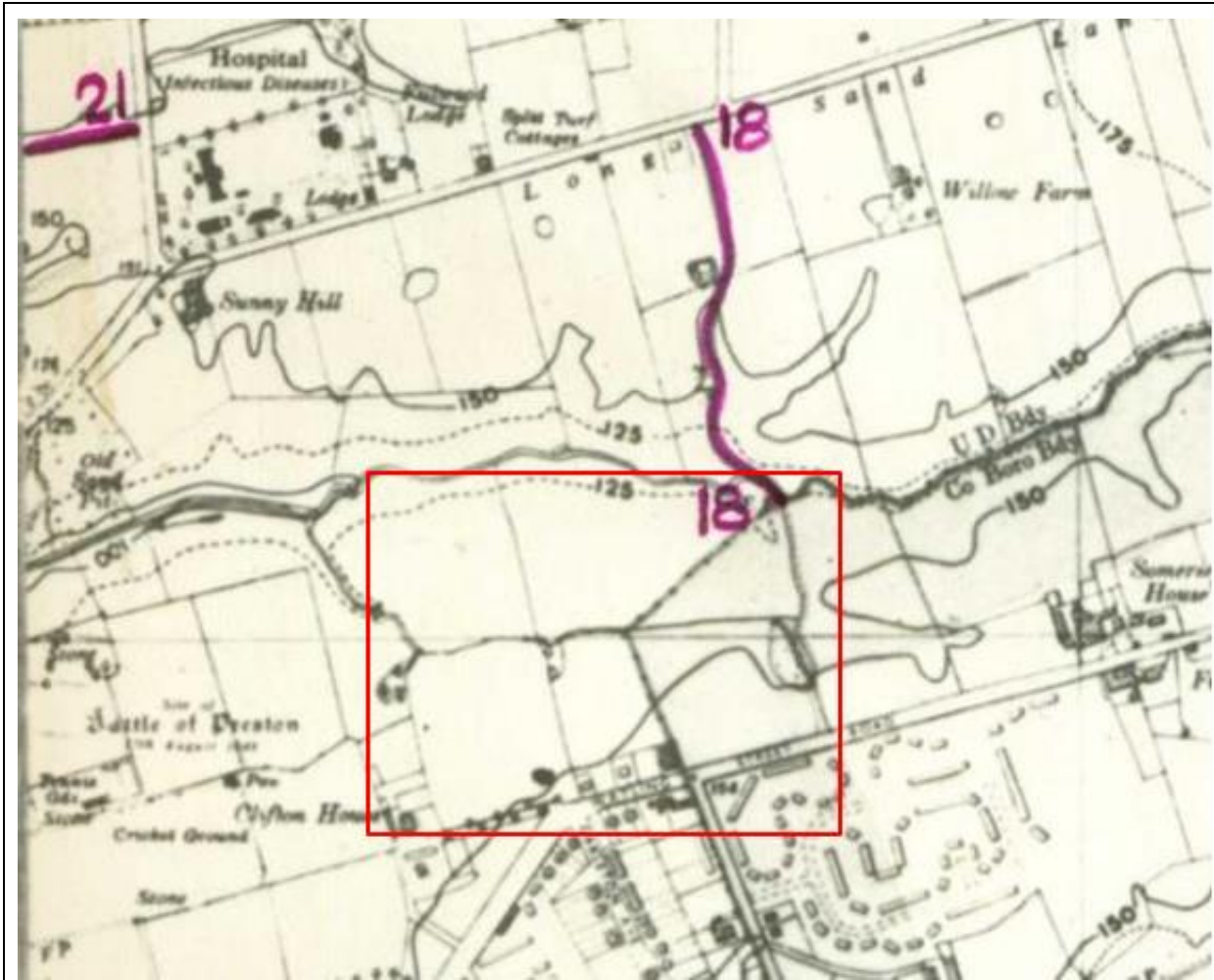
<p>Observations</p>		<p>The application routes are not shown and there were no representation or objections made relating to them.</p>
<p>Preston Provisional Map</p>		<p>The Provisional Map for the area covered by the former Preston County Borough was advertised on 3rd September 1982.</p>





<p>Observations</p>		<p>6-2-FP31 is shown again but it is noted that the route recorded on the Preston Provisional Map does not connect to the route in Fulwood (6-1-FP18) and the route used by the public through points J-K is further west than the recorded route.</p>
<p>The First Definitive Map (excluding Preston County Borough)</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





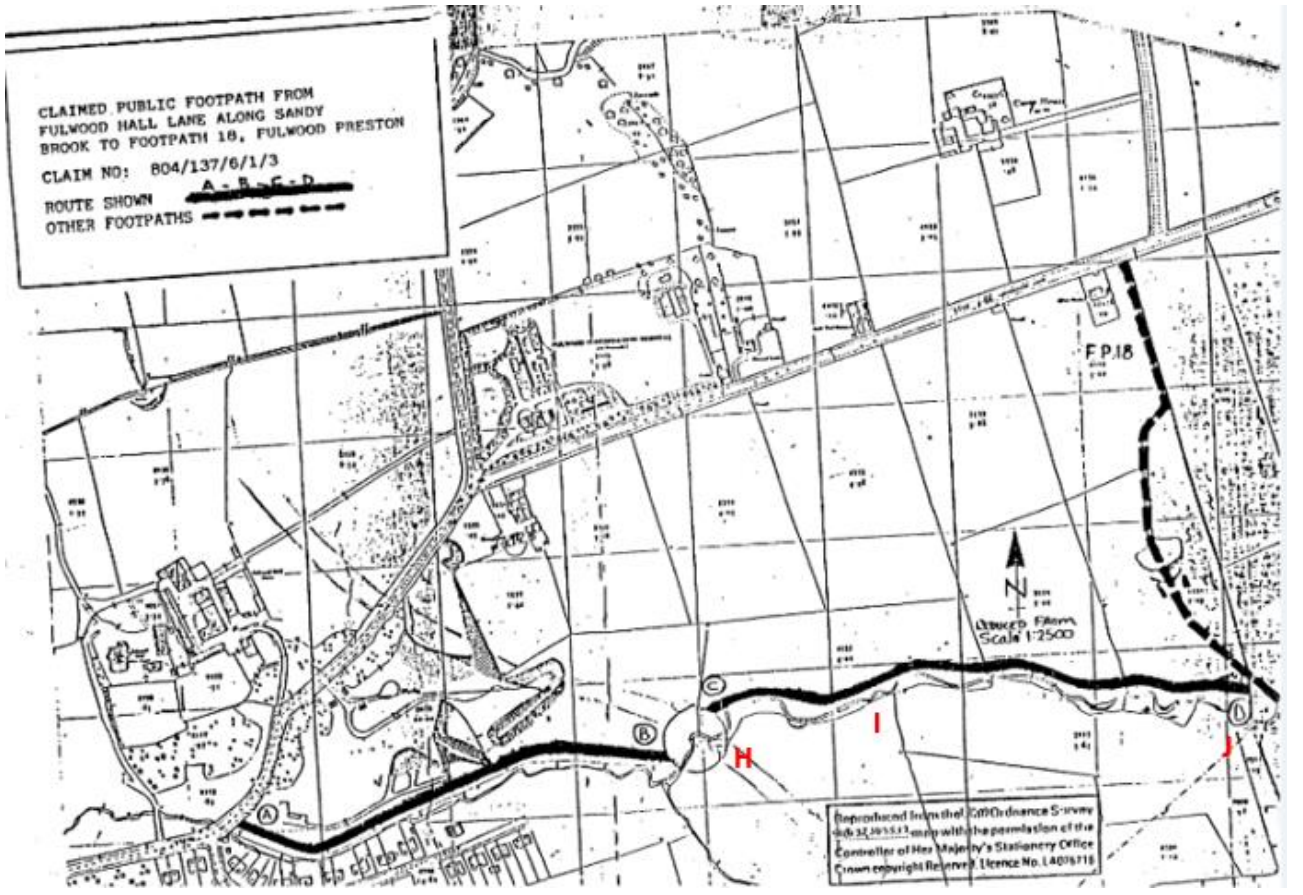
Observations		The application routes were not recorded on the First Definitive Map and Statement.
The Definitive Map for Preston Borough		The Definitive Map for the former Preston County Borough was published on 1 st August 1983 with a relevant date of 1 st February 1979.





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





Observations

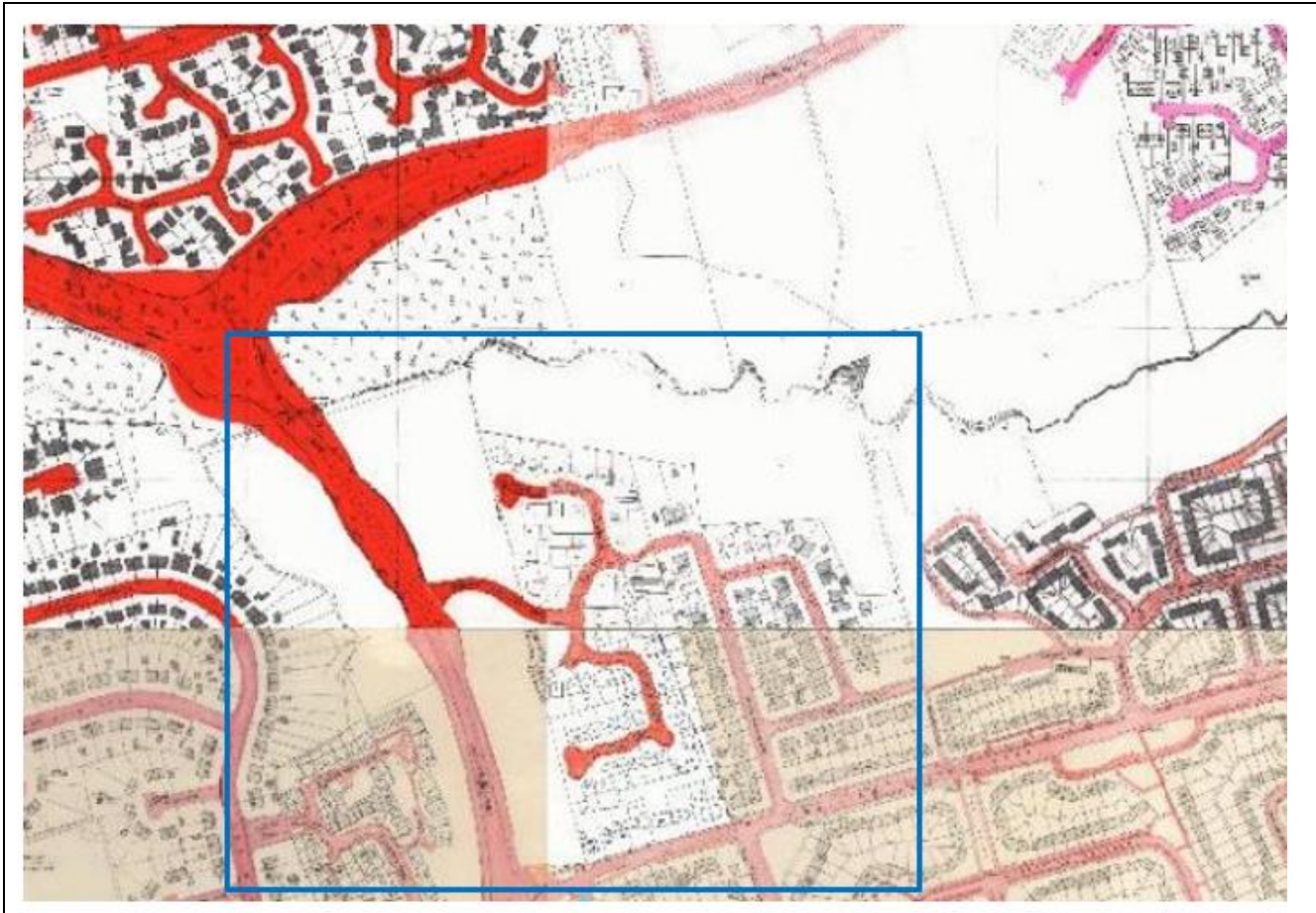
The application route is not shown on the Definitive Map and Statement First Review



		<p>Map.</p> <p>Footpath Fulwood 58 (6-1-FP58) was added to Definitive Map as a result of a DMMO application 804-13 which was made by the Ramblers Association on 16th May 1986. An Order was made and confirmed in 1991 recording the route along the north side of Sandy Brook to which the application route connects to at points G and M.</p> <p>The route was described as crossing Eastway at the roundabout north of the application route. The Order Map did not show Eastway but it appears that an inserted map should have been included to show the route crossing the road which had been constructed following publication of the OS map used. By the time the Order was made in 1991 it appears that Eastway had been built.</p> <p>The Definitive Map (First Review) extract inserted above shows 6-2-FP 31 but as the Revised Definitive Map had a relevant date of 1st Sept 1966 and was published 25th Apr 1975 and the Preston MB map had a relevant date of 1st Feb 1979 and was published later there was no overlap. The fact that the route is shown on the map insert is believed to have been a later addition to the map foil and did not technically form part of the Revised Definitive Map (First Review).</p>
Investigating Officer's Comments		The route has not been shown on a Definitive Map and Statement
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the



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

		creation, diversion or extinguishment of public rights have been found.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on 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</p>



		into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Summary

The map and documentary evidence examined does not support the existence of the routes under investigation until the 1990s. Since the construction of Eastway access may have been available from point H and a 1986 application successfully recorded a route running on the north side of Sandy Brook from Eastway; this showed connections to the application route at points G and M although these were not included in that application as they appear to have been available whereas that application route itself had been blocked.

There are items of path furniture (path edging, stiles, gates and footbridges) which suggest a path had been provided for pedestrians, not merely tolerated. The route is also signposted as a public footpath at point H and photographs show that this has been the case since at least 2009.

At some point between 1991 and 1999 it appears that Glencourse Drive was constructed and access to the application routes from points C and D could have become available.

Google Earth photographs taken between 2000 and 2020 all support the user evidence submitted with this application.

Head of Service – Legal and Democratic Services Observations

Landownership

From A and C the application route runs on land in private ownership. From D and G the application route runs on land in private ownership. From H to part way along the application route section I - J is in private ownership. The remainder of the route to J, and J to K is under City Council ownership. From L to M the application route runs on unregistered private land.

Information from the Applicant

The applicant submitted the following maps and documentary evidence in support of their application:

Statement in support of application dated 2 November 2020 with reference to the following maps and documents:

- An application for Definitive Map Modification Order to record footpaths North of Watling Street Road, Fulwood.
- Inclosure Map of Fulwood Moor and Cadley Moor 1817.
- Fulwood Tithe Map 1847.
- Ordnance Survey 25 inch map dated 1893.
- Details of a covenant of 25 October 1909 between Thomas Croft and Thomas Croft Younger together with plan and additional information about a Court of appeal decision of 4 July 1912 relating to a road to be called Browning Road.
- Planning documentation relating to the development of the Fairways Estate and reference to the areas of public open space.
- 32 User Evidence Forms.
- Photographs.
- Maps(s) extract marking 'paths'.
- A Map showing the route of the 'proposed' DMMO.

An assessment of the maps and documents provided in relation to the application has been carried out earlier in the report. It should be noted that the documentation and plans relating to the construction of Browning Road were examined and found to relate to land elsewhere in Fulwood and were not relevant to the application. This was communicated to the applicant who agreed with the Investigating Officer's findings.

The 32 user forms have been considered and the information set out below.

Duration of Use

The user evidence forms collectively provided some evidence of use of all sections of the routes for different periods of time up to 2020 when part of the route was made inaccessible, and the application to record the right of way was subsequently made, and the investigation into the other routes commenced.

20+ years to 2020)	1 – 19 years	Not specified
23	8	1

Frequency of Use

The use of the 32 users vary, with 13 using the routes daily, 15 using the routes weekly, and 4 stating they have used the routes either daily, weekly, monthly, every few months and yearly.



Daily	Weekly	Monthly	Every few months	Once a year	Not specified	Daily, weekly, monthly, few months, yearly
13	15	0	0	0	0	4

Reasons for Use

Of those who specified their reason for using the routes, the most common answer was pleasure. Six users used the routes for dog walking, and two users for family walks.

Walks (pleasure, exercise, recreational)	Dog walking	Family walks	Other uses
24	6	2	0

Other uses of the Routes

23 users recorded having seen others on foot, 4 recorded having seen others on foot and bicycle. 4 users having seen others on foot, bicycle and horse. 1 user having seen others on foot and horseback.

Consistency of the Routes

The majority of the 32 users stated that the routes had always followed the same routes, and one did not provide an answer.

Yes	No	Don't Know	Not Specified
31	0	0	1

Route Used

In the Committee Plan, the application routes are marked out at different points from A to N highlighting the routes, 20 users provided either a map/drawing/aerial photograph of their own within the users forms, the lines they drew on the maps/drawing/aerial photographs were similar to the routes sections of the routes marked out in the Committee Plan.

Analysis of the routes used indicates good user evidence for A-C, D-G and N-I. Fewer users gave good evidence of using the whole of H-J but some had used sections and only a few indicated use of K-M. All routes have evidence of trodden routes. Evidence of use of K-M is less clear on the ground due to being surfaced.

Unobstructed use of the Routes

1 user was prevented from using part of the routes in October 2020, 1 user did not provide a response. The majority of users stated that route remained accessible.

24 of the 32 users stated they saw no signs or notices restricting or prohibiting access to the route, 1 stated they saw a sign or notice and did not specify what the



sign stated, and 7 stated they saw a sign or notice restricting or prohibiting access to the route from October 2020.

11 users stated they were aware of stiles along the route, or leading to the route from Glencourse Drive, some of those further specified that stiles were along the route in past but were removed in approximately 2015. 18 users stated there were no stiles along the application route, and 3 users did not specify.

22 users stated there are gates along the route, of which 2 users specified the gates were on Watling Street. 8 users stated there was no gates along the application route, 1 user did not specific, and 1 user simply referred to an entry/exit gate.

23 users stated there are no barriers along the application route, 4 stated from October 2020 there were barriers in place, and 5 users did not specify.

All 32 users stated no permission was given or sought to use the route. All 32 users provided individual comments in support of the application, the majority stated they have used the application route for many years for leisure, pleasure and dog walking.

Three users stated Faircloughs' involvement on the land on which part of the application routes run referring to setting money aside for the upkeep of the land and further stating it is a Public Open Space.

One user has used the application route since 1956, for pleasure, shopping and visiting the Anderton Arms Pub.

One user has used the application route to avoid the busy Eastway.

Information from the Landowner

No landowner provided an official response to the consultation.

Conclusion

In this matter there is an application and investigation seeking that these routes be recorded as footpaths on the Definitive Map and Statements because they have already come into existence in law.

There are no express dedications.

Committee is asked to consider dedication through user inferred at common law and or deemed dedication under S31 Highways Act 1980.

Looking firstly at whether dedication can be inferred from all the circumstances. The circumstances supporting the owners' intention to dedicate in this matter does not come from old historical maps but instead from the history of the land being acquired by the New Town and sold to a developer and successors in title but a clear intention that the area be left undeveloped and its use by the public forming the trodden routes on the ground today. The New Town may have intended the route K-M as shown on the maps but no documents have yet been located. The lack of action

taken by owners before 2020 and the public use as of right being sufficient may be the circumstances from which a dedication by owners can be inferred at common law. The inferring of dedication at common law may be particularly appropriate in respect of the sections of route which have arguably not been challenged.

Looking at deemed dedication under S31 Highways Act and the criteria requiring twenty years as of right use prior to a calling into question. It may be considered that the use by the public has been as of right and for sufficient years and there is no evidence of lack of intention to dedicate in the years before 2020 such that a footpath may reasonably be alleged to exist on the sections of route.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence of footpaths being able to be reasonably alleged to make an Order and should no objections be received it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there are any objections the need to clarify the user evidence by taking more full statements may be appropriate and it is suggested that Committee may consider the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed and more full statements from users are taken.

Risk management

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

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-699		Ansar Sadiq, 01772 532435 County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



