

**Lancashire County Council**

**Regulatory Committee**

**Wednesday, 25th January, 2023 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 16 November 2022** (Pages 1 - 8)

**4. Guidance** (Pages 9 - 34)

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 35 - 38)

**6. Wildlife and Countryside Act 1981 Definitive Map Modification Order The Lancashire County Council Footpath from Aspen Lane to Mill Lane near West End Primary School, Oswaldtwistle, Definitive Map Modification Order 2021** (Pages 39 - 80)

**7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrade to bridleway of footpath from Haunders** (Pages 81 - 140)



**Lane to Liverpool Road, Much Hoole**

8. **Wildlife and Countryside Act 1981** (Pages 141 - 232)  
**Definitive Map Modification Order Investigation**  
**Addition of Bridleway from Rakes Head Lane to**  
**Hasty Brow Road, Slyne with Hest**
9. **Wildlife and Countryside Act 1981** (Pages 233 - 296)  
**Definitive Map Modification Order Investigation**  
**Addition of Bridleway from Waness Blades Road to**  
**Deans Lane, Lathom**
10. **Wildlife and Countryside Act 1981** (Pages 297 - 372)  
**Definitive Map Modification Order Investigation**  
**Recording Bridleway on First Terrace, Sunderland,**  
**Overton**

11. **Urgent Business**

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the 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.

12. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 8<sup>th</sup> March 2023 in Committee 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, 16th November, 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
J Burrows	A Clempson
A Cheetham	M Clifford
D Howarth	C Towneley
J Parr	L Cox

**1. Apologies**

Apologies were received from County Councillor Terry Aldridge.

**Temporary replacements**

County Councillor Cosima Towneley replaced County Councillor Alan Hosker.

**2. Disclosure of Pecuniary and Non-Pecuniary Interests**

No pecuniary or non-pecuniary interests were disclosed.

**3. Minutes of the last Meeting held on 14th September 2022**

**Resolved:** That the minutes of the meeting held on 14<sup>th</sup> September 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.

The Chair informed Committee that she would welcome more training on Regulatory matters and considered that future training should be mandatory for both Committee



Members and any substitute Members. It was noted that any changes to the Terms of Reference would need to be approved by the Political Governance Working Group then Full Council. The Chair invited comments from Committee. The suggestion of further training was welcomed and officers tasked with arranging same.

In response to a question, Jane Turner, Principal Lawyer, informed Committee that a right of appeal on a Regulatory matter could stem from where a decision was taken not to make an Order and that this may be referred to the Secretary of State (who may direct Committee to make an Order). If an Order was approved, there was a 6 week objection period and, if any objections were received, they would be passed onto the Secretary of State through the Planning Inspectorate office, for a decision on confirmation. It was reported that this may take the form of a public inquiry to investigate the evidence and then a decision would be made by the Secretary of State. There was also always the possibility of a Committee decision being challenged, as any decision taken by an authority could be subject to judicial review, if it took into account something it should not have taken account of, or disregarded something it should not have disregarded and therefore reached a conclusion that it should not have reached.

**Resolved:**

- (i) That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.
- (ii) That future training for Regulatory Committee Members and any substitute Members should be mandatory and that arrangements be put in place to amend the Committee's Terms of Reference.
- (iii) That a training session be organised for Committee Members and any other Members intending to act as substitutes on the Committee.

**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.

County Councillor Towneley asked whether future progress reports could include whether the applications were for bridleway, footpath or restricted byway.

The Chair reported that, following consideration of the Calderstones Cemetery application at the September meeting, she had requested that the padlocked gates be left open on 11<sup>th</sup> November, in order for people to pay their respects on Remembrance Day. However, the gates had remained locked.



County Councillor Clempson, Champion for Armed Forces and Veterans, reported that he had been extremely disappointed about the gates being locked and considered that access to the cemetery should be available 365 days a year, as should any war/military graves. The Committee were informed that some veterans had helped the family concerned to gain access and that County Councillor Clempson would write a letter to the owners of the site on behalf of the county council (and possibly involve the War Graves Commission), to ensure this situation did not reoccur.

The Chair thanked County Councillor Clempson on behalf of the Committee and all those who had close links with the Calderstones cemeteries.

**Resolved:** That the report be noted.

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

Jayne Elliott reported that, since the publication of this report, she had been asked to examine the paper copy of the Inclosure Award written on parchment, to check the wording of a larger proportion of the Award, in addition to the photographs previously examined.

A transcript from a substantial part of the Award had now been made from the Records Office document. Examining the additional information had significantly altered the officers' views and therefore required further investigation and evaluation with regards to making an Order. The fuller transcript provided greater context that the application route was set out as a private and not public route as had been indicated in the Committee report.

In light of this, it was necessary for officers to re-examine the documents previously inspected and it was therefore requested that the application be deferred to the next meeting of the Committee.

Jayne Elliott confirmed that she would inform the applicant of the up to date situation.

Following a discussion, it was:

**Resolved:** That the item be deferred to the next meeting of the Committee.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Chatburn Old Road, Chatburn, Ribble Valley  
Borough**



A report was presented on an application and investigation for the addition of a footpath from Chatburn Old Road Chatburn, 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 April 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. 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 was not included in the Committee report.

It was reported that it had initially been considered that Chatburn Old Road extended west as far as point A but, on investigation, it had become apparent that public rights had been extinguished along the road from point X to point A in 1971. The map and site evidence showed that this part of the road still physically existed after that time, and that it appeared capable of being used. The section A-X was not part of the application route, but had been added to the Recommendation, following an investigation and confirmation of its use by the users. The route had been fenced off at point A which had prompted the application.

Committee were advised that the user evidence from the 1960s needed to be considered as there was no map, photographic or documentary evidence found to support the physical existence of the route.

Committee noted that the landowner had raised some legal points in relation to the application and that these had been addressed within the Committee report.

There had been no prevention of use of the route until recently.

Taking all of the evidence into account, Committee were advised, on balance, they 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 was able to be satisfied and the Order able to be confirmed. However, if there were any objections, it would be appropriate to clarify the user evidence by taking more detailed statements, and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed and further statements from users were taken.

**Resolved:**



- (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.

**8. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of footpaths around Glencourse Drive, Fulwood**

A report was presented on an application and investigation into the addition of footpaths linking Watling Street Road, Eastway and Glencourse Drive and into the vicinity of Sandy Brook to the east of Eastway, Fulwood, 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 and E-I.

A site inspection had been carried out in November 2021.

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

It was reported that, on investigation, the application routes all linked to other routes and therefore additional routes had been included in the report for Committee to consider.

Committee were informed that, in this particular case, the land crossed by the application route had not been developed until the 1990s, and that there was 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 had not been included. However, several historical maps submitted by the applicant in support of their application had been included.

Committee noted that for the purpose of the research, the routes shown on the Committee plan were all referred to as 'the application route' rather than part application and part route under investigation.

Committee were informed that the area where the routes ran were on areas transferred as public open space by the Commission for New Towns. The Open



Space areas had not been transferred to the City Council and so were not held under statutory provisions for open space giving the public a statutory permission but, instead, remained held by successors in title to Fairclough Homes bound by the covenants to keep the area unbuilt upon. Committee noted that no landowner had provided any official response to the consultation.

In response to a question, it was reported that Legal Services informed the applicant and other interested parties of decisions taken by Committee. Once an Order had been made, there was a statutory notification period in terms of putting notices on site and in newspapers and recorded delivery letters sent to all interested parties. Once a route had been added to the Definitive Map and Statement, the Ordnance Survey office were notified for it to be included on their maps which were accessible by the public.

A further question was asked in relation to signage and why some routes were not signposted. It was reported that there was a legal provision for a footpath or bridleway to be signposted off a vehicular highway and that signage in fields relied on the waymarking system. The county council had a team of officers to erect signs on routes that were already included on the Definitive Map and Statement; this was a rolling programme due to wear and tear or damage to the signs. For routes not yet recorded, an Order would need to be confirmed before any signage was erected although notices would be displayed on the route to inform members of the public that an Order had either been made or confirmed. Waymarking was used when a route left a public highway and continued into a field and was usually done in consultation with the landowners.

Taking all of the evidence into account, Committee were advised that they may, on balance, 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 were any objections, the need to clarify the user evidence by taking more full statements may be appropriate and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed, and more full statements from users taken.

**Resolved:**

- (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 not being satisfied that the higher test for confirmation can be met with the information available, the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

## 9. Urgent Business

There were no items of Urgent Business.

## 10. Date of Next Meeting

**Resolved:** It was noted that the next meeting would be held at 10.30am on Wednesday 25<sup>th</sup> January 2023 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 25<sup>th</sup> January 2023

**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](mailto: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 1<sup>st</sup> 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 6<sup>th</sup> 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 25<sup>th</sup> January 2023

## **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 25 January 2023

**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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**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 16<sup>th</sup> 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 3<sup>rd</sup> day of January 2023. 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.

<b>Reference</b>	<b>Known As</b>	<b>Status Applied For</b>	<b>Application Date</b>
804-761	Sandy Hall Lane, Barrowford	Bridleway	08/12/2022

## **Definitive Map Modification Order Applications Where a Decision has Been Taken to Make an Order, Notice of the decision has Been Served and the Window for Appeal against that decision is Now Open**

Committee has made a decision to make an Order for this application, the decision notices have been served and the window for the applicant to appeal is now open.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-657	Sands Lane, Over Kellet	Bridleway	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.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-601	FP 11, Hoghton	Footpath	23/07/2018
804-628	Borwick Hall Bridge, Borwick	Restricted Byway	21/05/2020

## **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.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-643	Stoneyroyd, Whitworth	Footpath	30/06/2020
804-689	Limers Lane, Great Harwood	Restricted Byway	11/01/2021

## **Definitive Map Modification Order Applications Awaiting Submission to the Planning Inspectorate**

Committee has decided these applications, the Orders have been made and statutory objections or representations received since the last update report was presented to the Committee. They are now awaiting submission to the Planning Inspectorate for determination.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-727	Sod Hall Lane, New Longton	Restricted Byway	28/09/2021



**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 25 January 2023

**Part I**

Electoral Division affected:  
Oswaldtwistle

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order  
The Lancashire County Council Footpath from Aspen Lane to Mill Lane near  
West End Primary School, Oswaldtwistle, Definitive Map Modification Order  
2021**

(Annex 'A' and Appendix A refer)

Contact for further information:

Reference File No. 804-641

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors  
Group, [Simon.Moore@lancashire.gov.uk](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Order for the addition to the Definitive Map and Statement of a Footpath from Aspen Lane (also recorded as Bridleway Oswaldtwistle 300) to Mill Lane (also recorded both as Footpath Oswaldtwistle 23 and F6365) south west of West End Primary School.

**Recommendation**

That the Order made to record a public footpath from Aspen Lane to Mill Lane be confirmed.

**Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received to record on the Definitive Map and Statement of Public Rights of Way a public footpath from Aspen Lane to Mill Lane.

At the meeting of the Regulatory Committee held on 23 June 2021 a decision was made to make an Order in accordance with the application and subsequent investigation. The Committee decided that the Order should be brought back before

Committee, once the Notice of Making had been served and the notice period elapsed, in order to decide whether the confirmation test was able to be satisfied.

The Order has now been made and notified and no adverse responses have been received to the making of the Order by way of objections or any other representations.

The Committee is therefore advised to consider the evidence again (extract from the June 2021 report at Appendix A refers).

The making of the Order and the statutory objection period has given everyone an opportunity to make further comment. Given the fact that the path is open and available and there has been a lack of objection and no further evidence of any lack of intention to dedicate, it is suggested that it may now be considered that there is sufficient evidence that a footpath exists in law, and that the confirmation test can be satisfied on balance and the Order should be confirmed. As no objections have been received, the county council as Surveying Authority is able to confirm the Order as unopposed.

### **Risk management**

Consideration has been given to the risk management implications associated with the confirmation of the Order. The Committee is advised that in the absence of any objection to the making of the Order, there are no significant risks associated with the decision-making process.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-641		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



**Regulatory Committee**

Meeting to be held on 25 January 2023

Electoral Division affected: Oswaldtwistle
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**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order**

**The Lancashire County Council Footpath from Aspen Lane to Mill Lane near West End Primary School, Oswaldtwistle, Definitive Map Modification Order 2021 – Appendix A; Extract of Evidence Presented to the Regulatory Committee on 23 June 2021**

**Consultations**

Hyndburn Borough Council

Hyndburn Borough Council did not provide a response to the consultation.

Information from Others

Nick Bower, LCC Estates Surveyor was consulted as LCC own land adjacent to the application route forming the grounds of West End Primary School. Nick clarified that LCC has a boundary fence along the line of its boundary, which fences out the application route. He stated that he would contact the school to seek any comment or further information they may be able to provide; no response was provided.

Information from the Landowner

The Churchwarden of All Saints Church was consulted and advised that they had contacted the Diocesan Registry in order to access the relevant deeds, they subsequently provided the 1962 and 1965 conveyances and associated plans referred to below in the map and documentary evidence section.

The congregation were consulted and recollected use of the route since at least 1990, probably longer.

Blackburn Diocese was consulted but provided no additional response.

**Information from the Applicant**

The applicant provided extracts of maps published in 1848, 1863, 1894, 1912, 1931, 1932 and 1947 all of which have been considered earlier in the report.

The applicant also included a copy of a letter regarding the sale of land by Miss D Evans to Blackburn Diocese for the building of All Saints Church in 1960, 4 statements from people claiming to have used the route and two undated photographs.

The letter from the Reverend F. Creears to Miss D Evans postmarked 23 November 1960 discusses the sale of the land in Standhill for the construction of All Saints Church, seeking clarification of whether Miss Evans would be willing to sell the land and if so how much the asking price would be.

The back of the envelope seemingly includes a draft reply from Miss Evans stating that she is willing to sell upon clarification of the land required and provided an agreeable settlement could be reached.

As noted 4 user statements were included with the application, these provided evidence use going back at least 51 years, their evidence is summarised below.

The first user recalled using the route over a period of 51 years for their morning walk. No further details of use were provided.

The second user recalled having used the application route since they could walk, having been born in 1925. No further details of use were provided.

The third user recalled having used the application route over a period of 50+ years having moved to an address close to the route in 1969. They record using the route frequently to access school, church and West End to catch the bus and access the shops there. The user also reported that their mother used the route daily whilst employed at the local school.

The fourth user recalled using the route for 40+ years. They noted that although they only moved to the area 12 years prior to the application they had visited for 40+ years and used the application route on a number of occasions. They also noted that the route is an integral part of Stanhill Village Heritage Trail and is a popular daily walk for many in the locality.

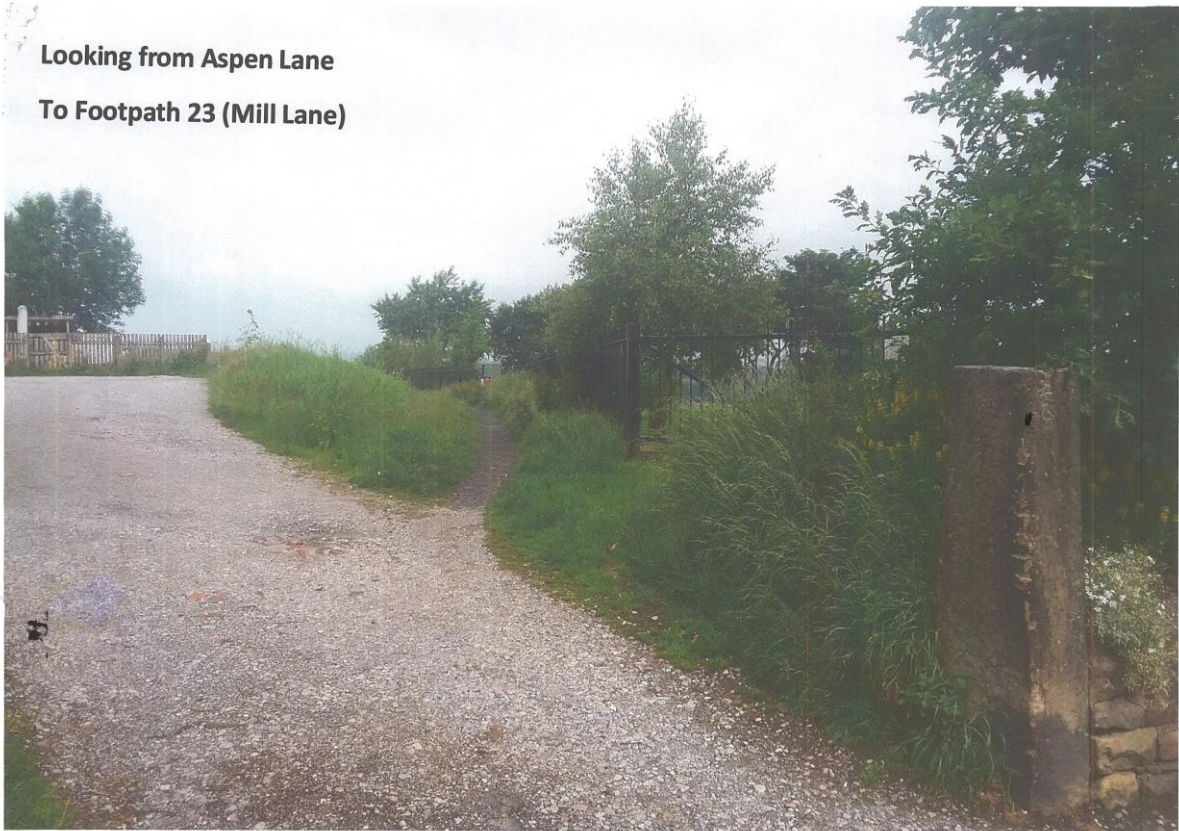
The undated photographs provided by the applicant are included below.



**Looking from Footpath 23 (Mill Lane)  
To Aspen Lane**



**Looking from Aspen Lane  
To Footpath 23 (Mill Lane)**

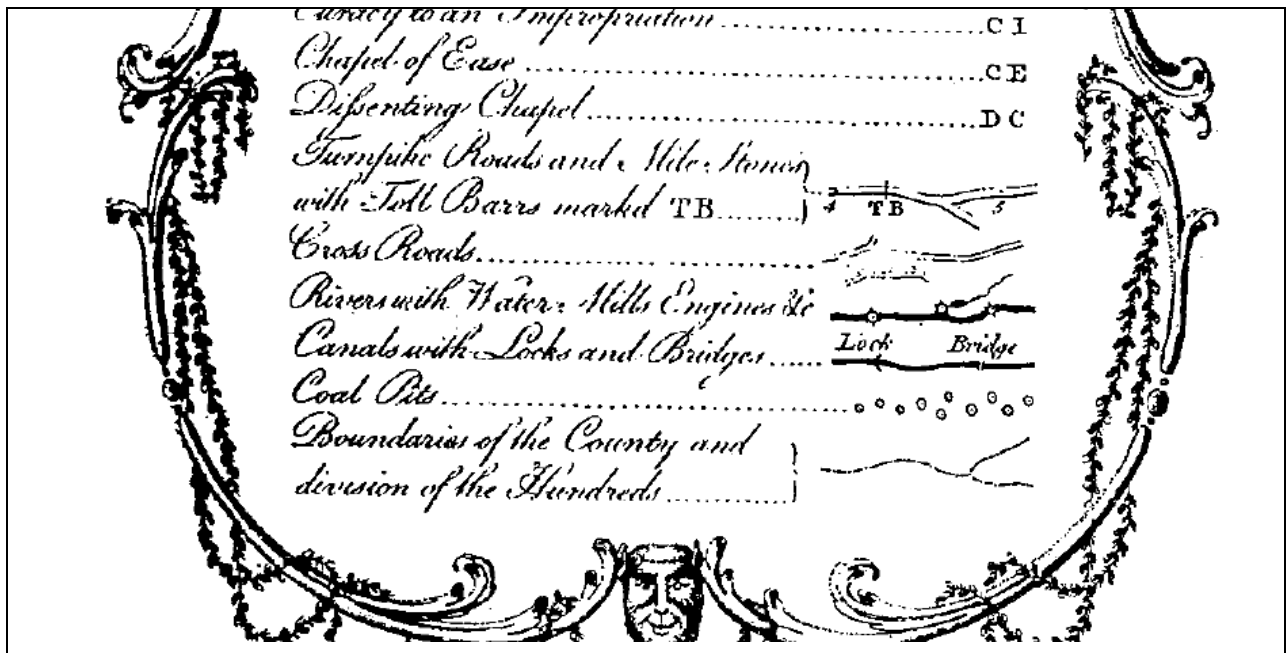


## Map and Documentary Evidence

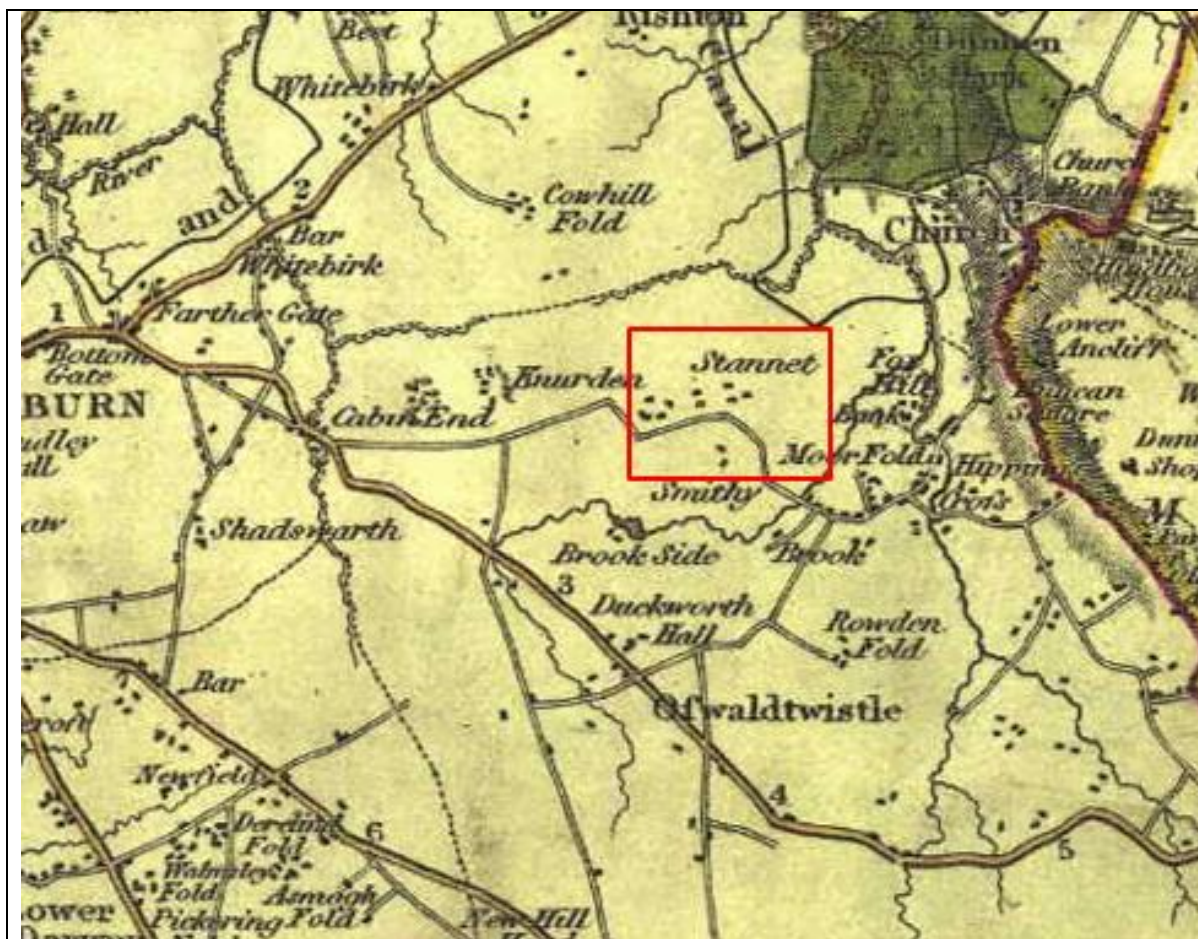
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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





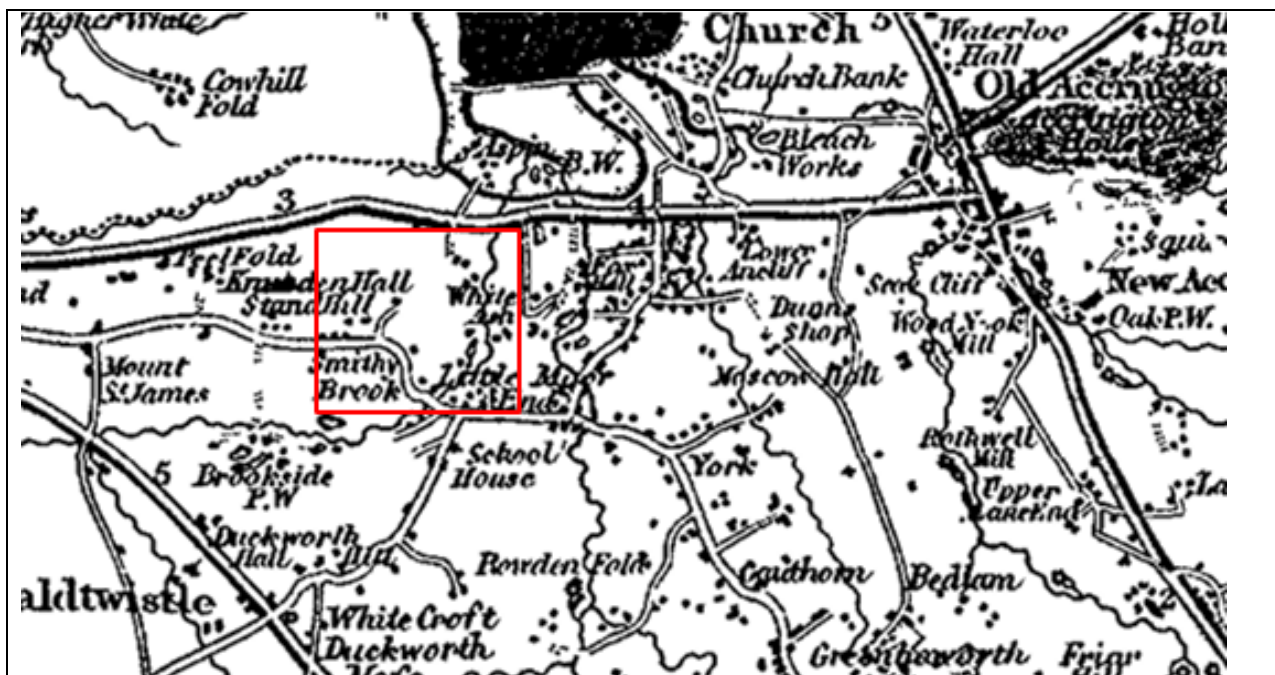
Observations		The application route is not shown.
Investigating Comments	Officer's	It is unusual to find public footpaths recorded on small scale commercial maps of this era as they were generally published for the use of travellers although the application route may have existed as a private access route or as a public footpath. No further inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown.
Investigating Comments	Officer's	The application route may have existed but if it did was not considered by Greenwood to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath but such routes were not normally shown due to the scale and purpose for which they were published. No further inference can be drawn.
<b>Hennet's Lancashire</b>	<b>Map of</b>	1830 Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.







Observations		The application route is not shown.
Investigating Comments	Officer's	The application route may have existed but if it did was not considered by Hennet to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath but such routes were not normally shown due to the scale and purpose for which they were published. No further inference can be drawn.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land over which the application route is located is not crossed by any canals or railways and there are no known proposals to have constructed either across that land in the past.
Investigating Comments	Officer's	No inference can be drawn with regards to the existence of public rights.



<b>Tithe Map and Tithe Award or Apportionment</b>		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		There is no Tithe Map or Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Inclosure Act Award and Maps</b> <b>Enclosure Award 1776</b> <b>CRO Ref: AE/2/7</b>	1776	<b><u>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</u></b>
Observations		The Inclosure Map and Award do not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Map Sheet 63</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1846 and published in 1848. <sup>1</sup>

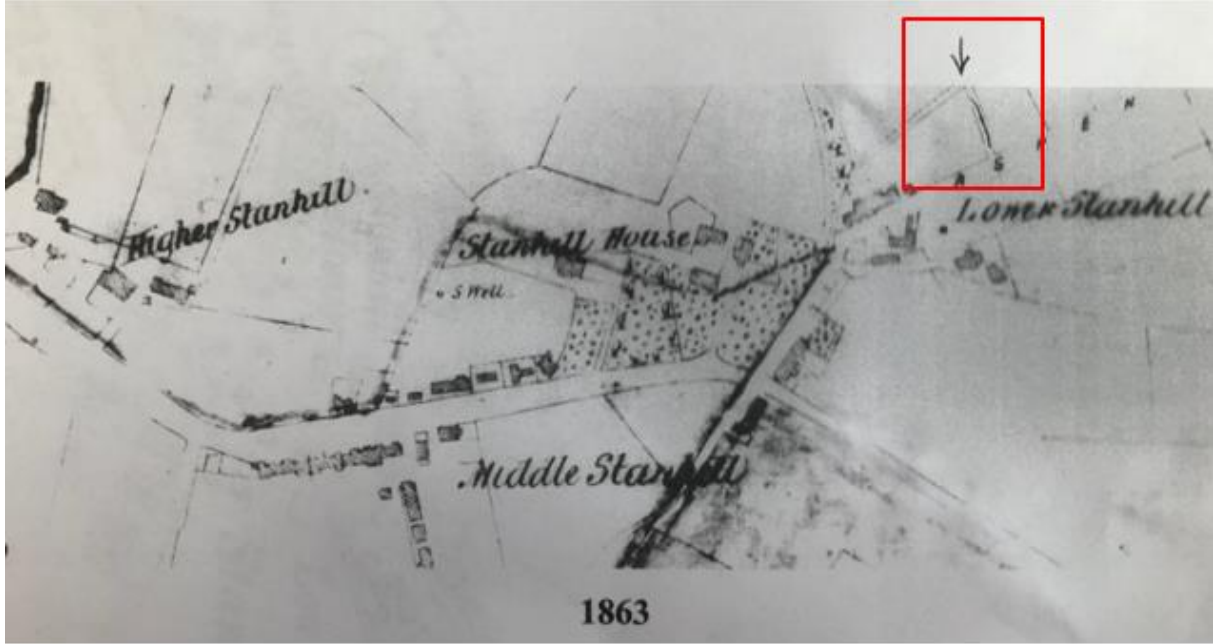
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



Observations		The application route is clearly shown as a bounded route from Aspen Lane (which is named on the map) through to Mill Lane and continuing through to Blackburn Road (a former Turnpike Trust Road) via buildings marked as New Inn and an engraving shop. One line is shown across the application route which suggests that it was not gated at the ends and the dotted line which crosses the route part-way along appears to be a contour line indicating height above sea level rather than a physical feature across the route.
Investigating Officer's Comments		The application route existed in 1844-46 (when the area was surveyed) and appeared to be capable of being used.
<b>Extract of Map supplied by applicant</b>	1863	Extract of map supplied by applicant. No scale is given for the map and the date



of the survey is unknown. Date of publication is stated to be 1863.



Observations

This annotated map provided by the applicant has no details regarding the scale of the map or the date that the land was surveyed. It shows the application route in a similar way as it was shown on the earlier 6 inch OS map detailed above.

Investigating Officer's Comments

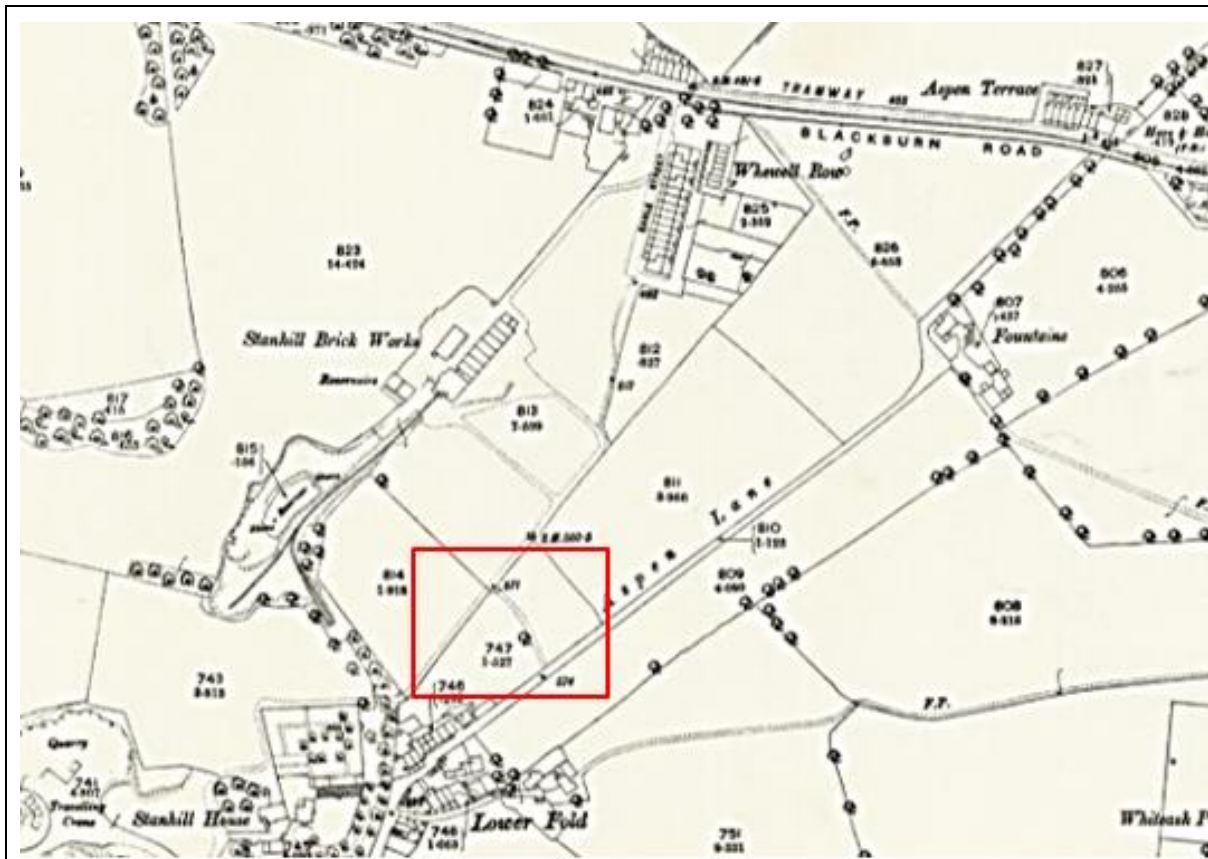
The application route appears to have existed in the 1860s.

**25 Inch OS Map Sheet 63-14**

1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1891 and published in 1893.





Observations		The application route is now shown as an unbounded track through a field with lines across the route at point A and near point B suggesting that it was gated at either end.
Investigating Officer's Comments		The application route still existed in 1890-91 but was no longer shown as a bounded route. It is shown as an unenclosed track across a field – gated at point A and near point B. The fact that the gate was slightly set back from Mill Lane and the angled boundaries beyond that suggest it was used for access not only on foot. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground. And does not necessarily mean that access was not available.
6 inch OS Map	1894	OS 6 inch map surveyed 1890 to 1891



LXIII.SW

and published 1894.



Observations		The application route is shown as an unbounded track.
Investigating Officer's Comments		The application route existed in 1890-91 and appeared capable of being used.
<b>25 inch OS Map Map Sheet 63-14</b>	1911	Further edition of the 25 inch map surveyed in 1890-1891, revised in 1909 and published in 1911.



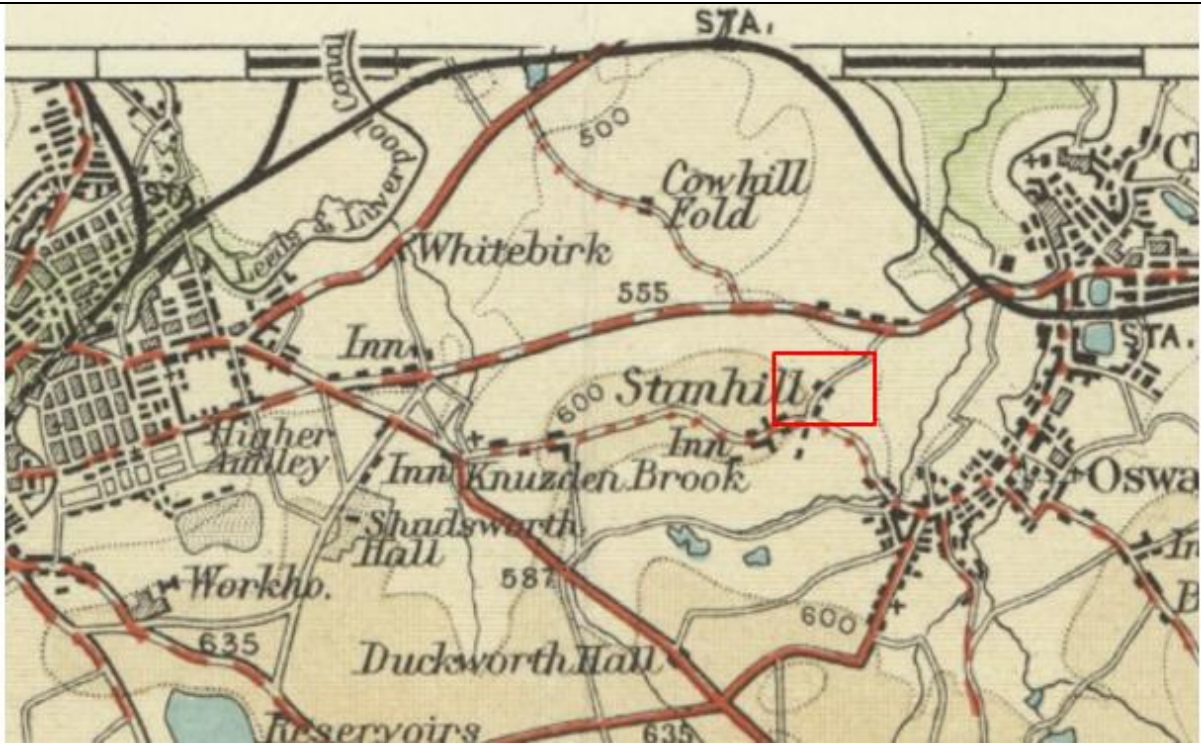


Observations		The application route is shown in the same way as it is shown on the first edition of the 25 inch map crossing the field numbered as 905 on the OS map.
Investigating Comments	Officer's	The application route existed in 1909 and appeared to be capable of being used.
<b>6 inch OS Map LXIII.SW</b>		6 inch OS map submitted by the applicant, revised 1909 and published



		1912.
Observations		The application route is shown.
Investigating Officer's Comments		The application route existed in 1909 and appeared to be capable of being used.
<b>Bartholomew half inch Mapping</b>	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



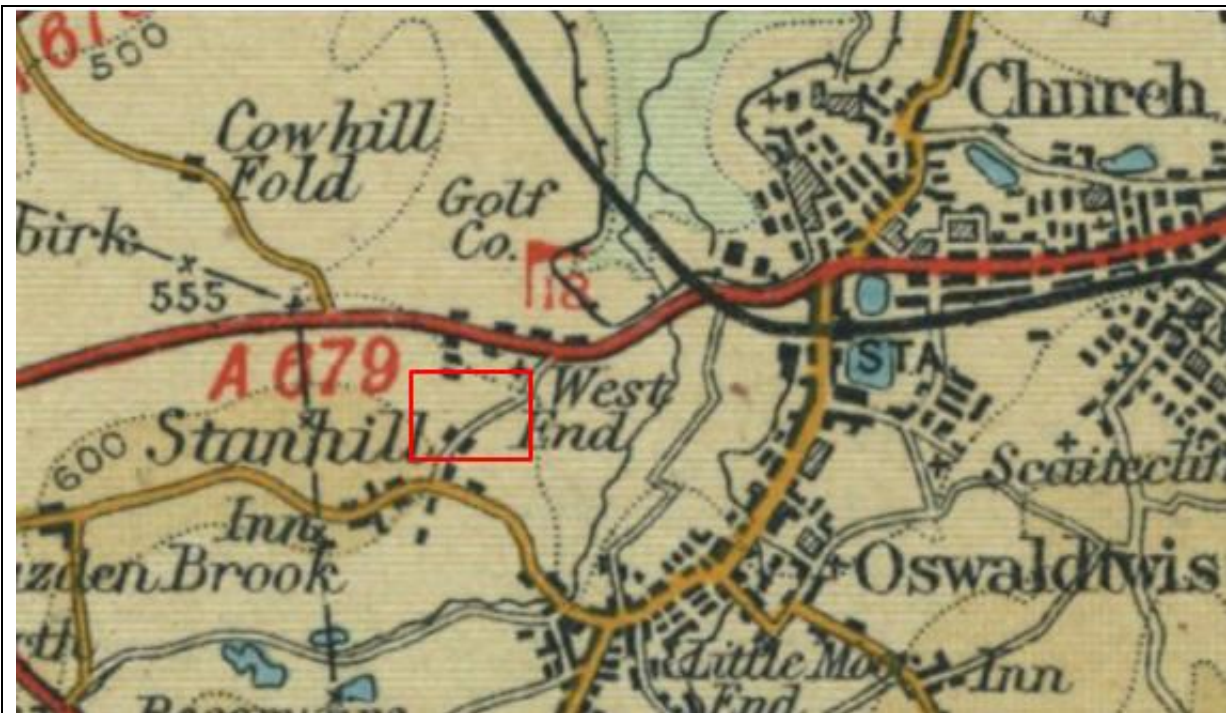


1904



1920





1941

Observations		The application route is not shown on any of the ½ inch maps produced by Bartholomew in the first half of the 1900s.
Investigating Officer's Comments		Bartholomew's small scale ½ inch maps were published with the main market being the travelling public with emphasis on the use of motorised vehicles and cyclists. It is not uncommon for routes regarded as public footpath – particularly those across fields – not to be shown on these maps due to the scale and purpose for which they were produced.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.  Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on



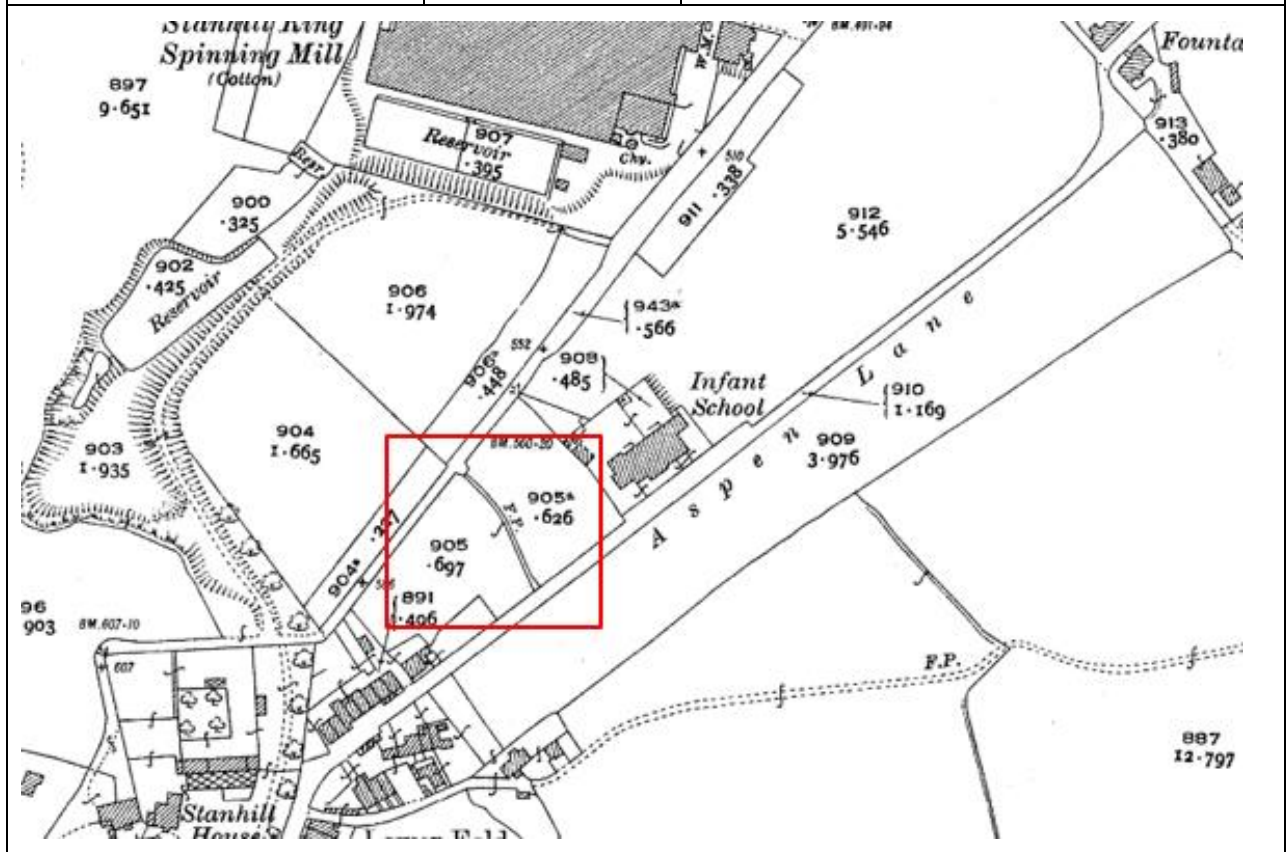
		<p>any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>The 25 inch scale OS map sheet available at the National Archives does not show the area crossed by the application route but refers to the 1:1250</p>
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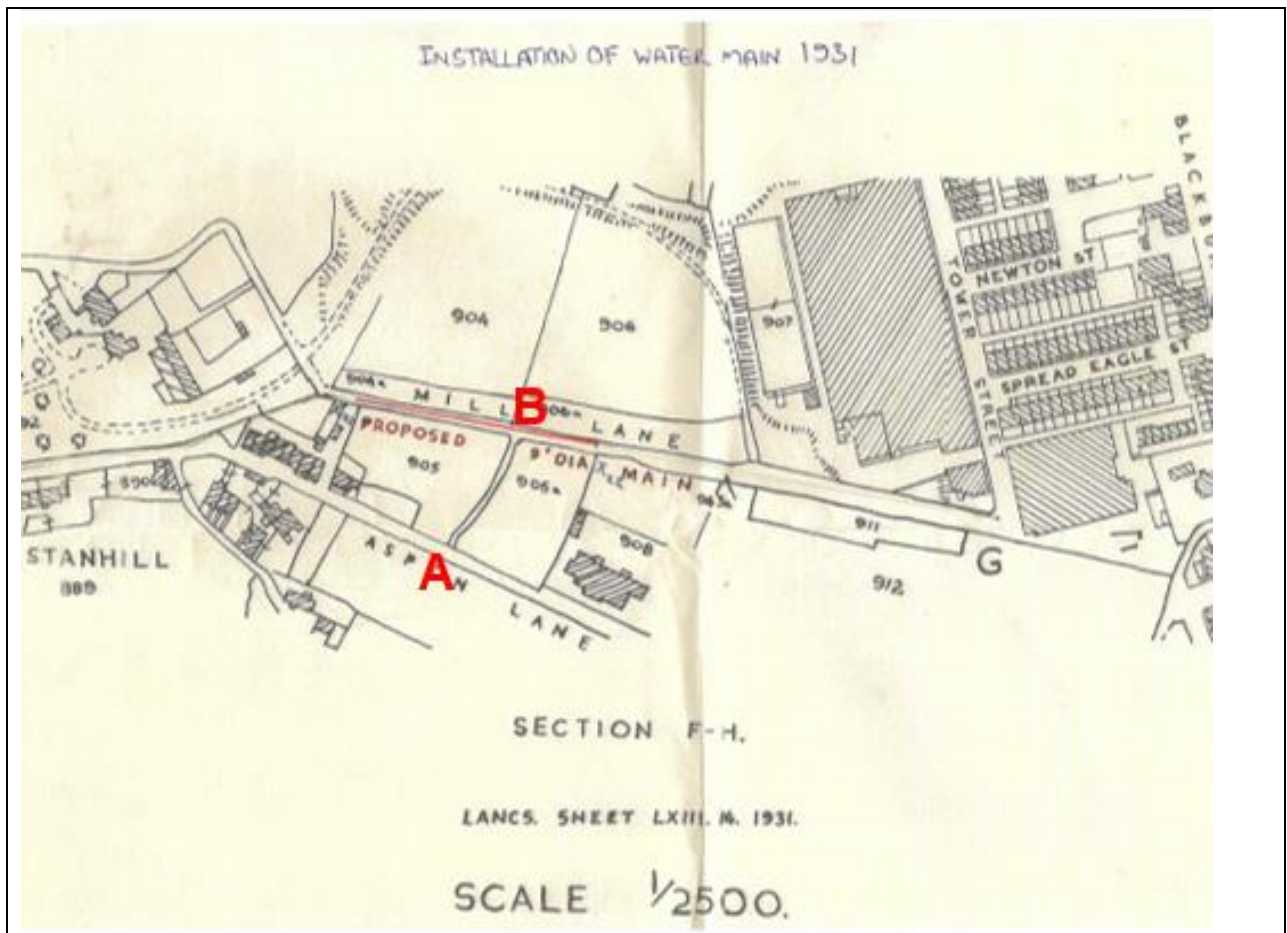
		sheet 63.24.SW and a copy of the relevant 1:1250 map sheet could not be found at the County Records Office or amongst records obtained from the National archives.
Investigating Officer's Comments		No inference can be drawn.
<b>25 Inch OS Map Sheet 63-14</b>	1931	Further edition of 25 inch map (surveyed 1844-1846, revised in 1930 and published 1931.





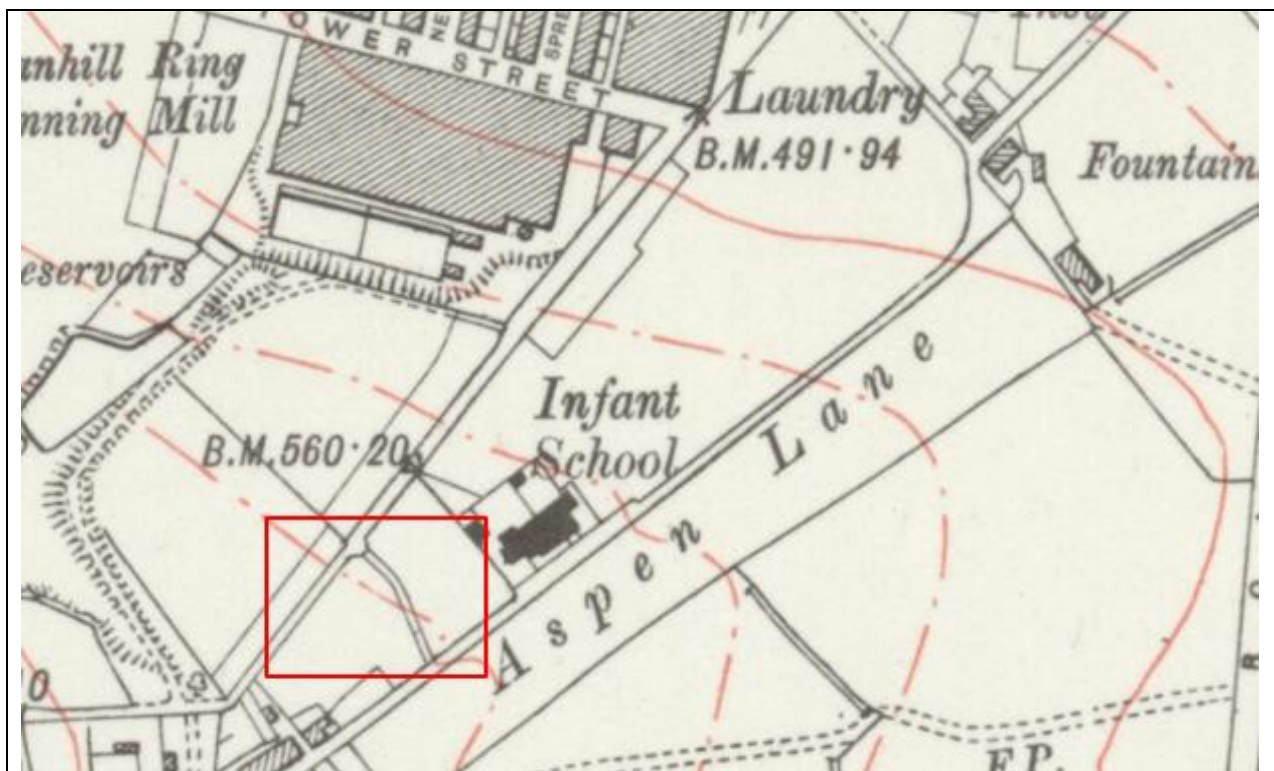
Observations		The application route is shown once more as a bounded route separate from adjacent fields numbered with individual parcel numbers 505 and 605a. Lines are shown across the route at point A and near point B and the route is annotated as a footpath – 'F.P.'. Although the bell-mouth at Mill Lane appears unchanged from the earlier 25" maps the path has been enclosed to a narrower width, consistent with the 'F.P.' annotation.
Investigating Officer's Comments		The application route existed in 1930 as a clearly defined bounded route splitting what was previously shown as one field (numbered 905) into two (numbered 905 and 905a). It was shown marked as a footpath indicating that its appearance and width was that of a route used on foot. Its width had been reduced from that previously depicted.
Copy of OS 25 inch map LXIII.14 published 1931 titled 'Installation of Water Main 1931'	1931	Map extract provided by the applicant.



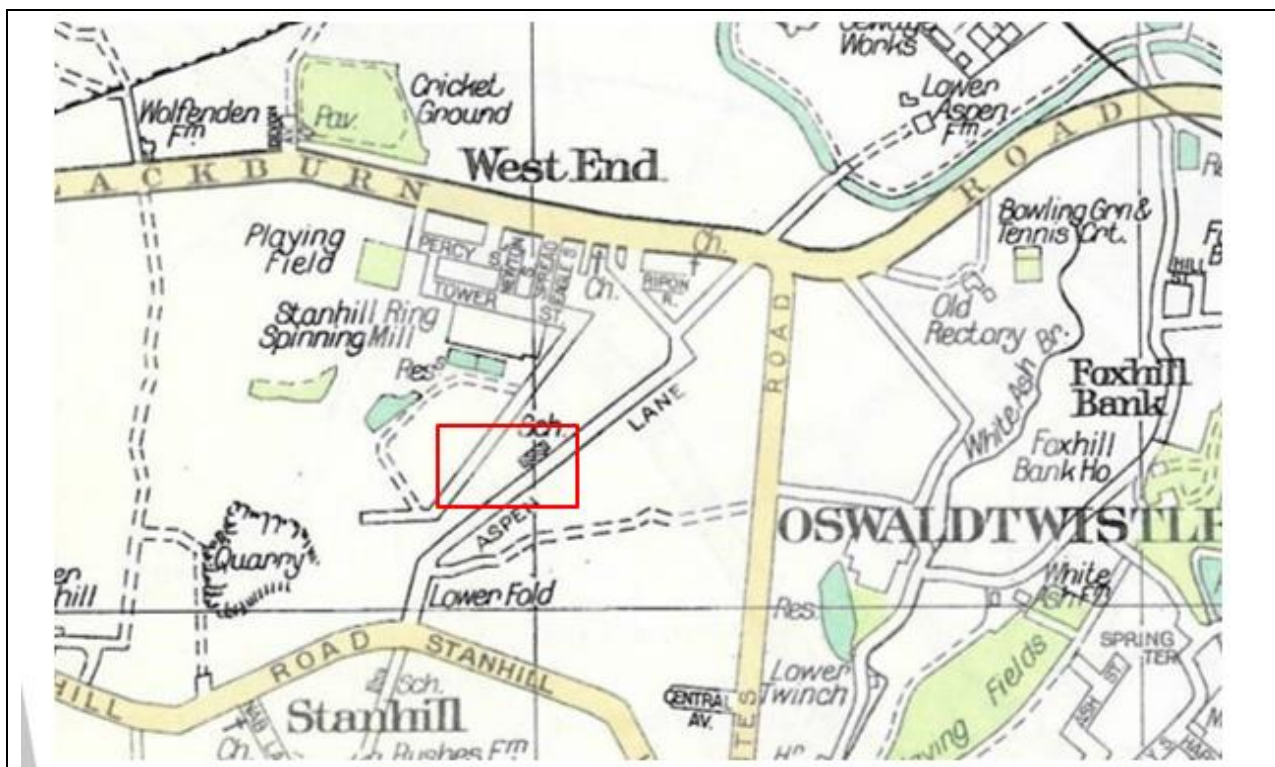


Observations		The plan submitted has been drawn supposedly from copying the OS 25 inch map published in 1931 (detailed above) and shows the location of pipes proposed to be laid along Mill Lane north of the application route. The plan shows the application route but gives no indication as to its status (i.e. whether it was considered to be a public or private path).
Investigating Officer's Comments		The application route was drawn on the plan – which was dated 1931. No inference can be drawn regarding its legal status.
<b>6 inch OS Map Sheet LXIII.SW</b>	1932	Extract of 6 inch OS map submitted by the applicant revised 1928 to 1929 and published 1932.





Observations		The application route is shown as a bounded route gated at point A and near point B and possibly at an intermediate point. It is shown wider than on the 1931 Ordnance Survey sheet.
Investigating Officer's Comments		The application route existed in 1928-1929 as a clearly defined bounded route and appeared capable of being used.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		Aspen Lane and Mill Lane are shown but the application route is not shown.
Investigating Officer's Comments		The Street Atlas was published primarily to show public roads and due to its scale bridleways and footpaths – unless substantial in their nature – were not shown. The application route existed – as evidenced by the fact that it is shown on OS maps pre-dating and post-dating this map directory – and the fact that the route is not shown on this map is consistent with the view of the applicant that the route should be recorded as a public footpath rather than with higher rights.
Aerial Photograph <sup>2</sup>	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.

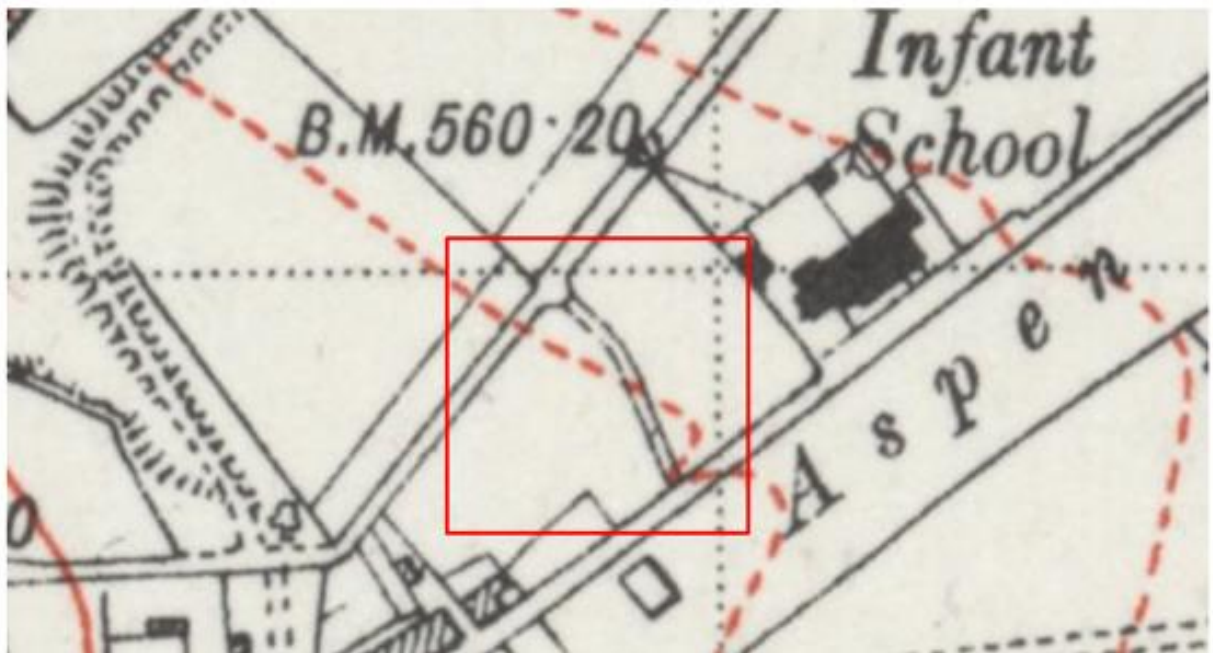
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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



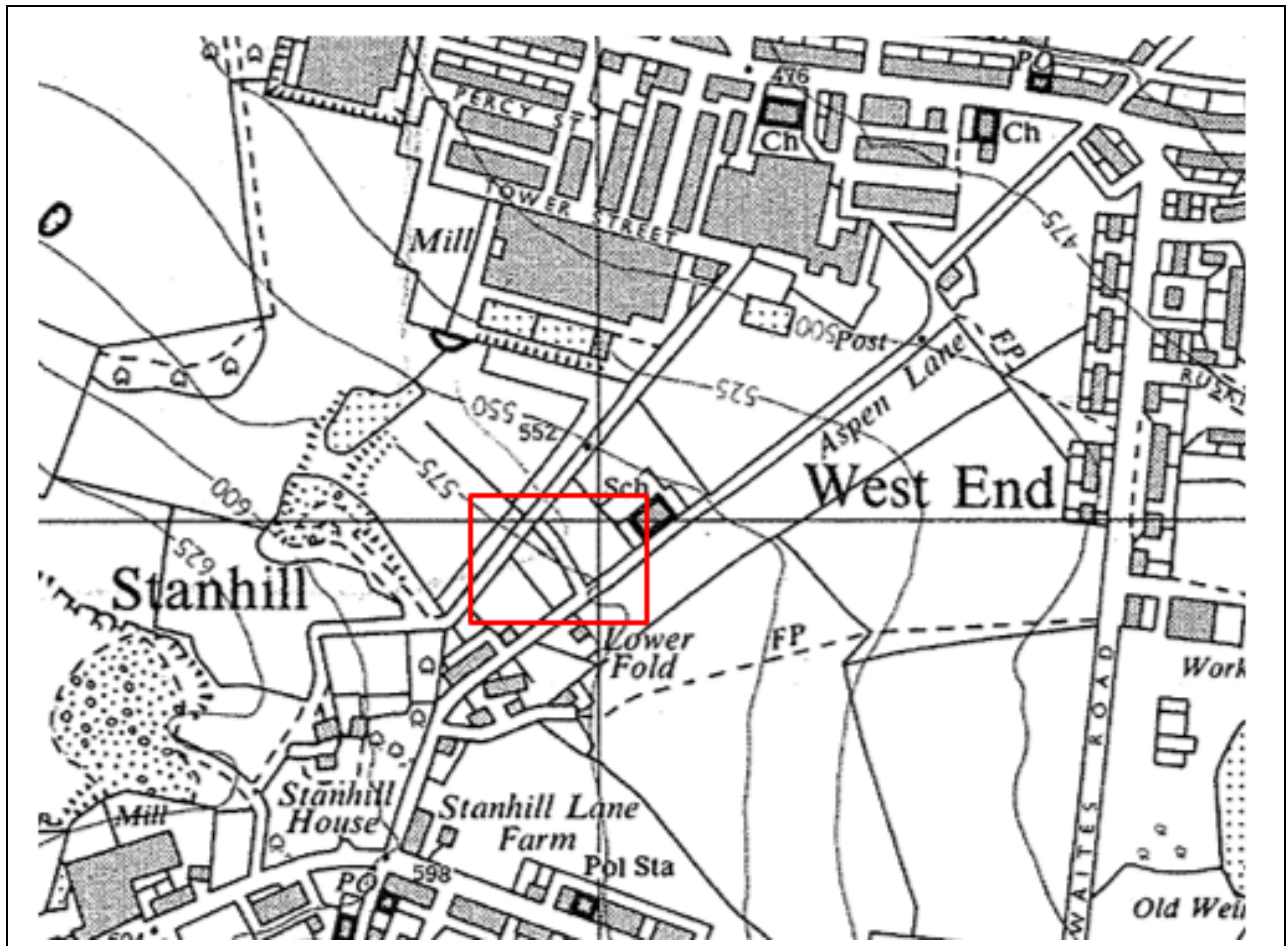




Observations		The application route is clearly shown. It is not possible to see whether the route was fenced or whether gates or stiles existed across it at point A and/or point B and the width of the trodden line (lighter on the photograph) appears more consistent with use as a footpath or possibly use by equestrians and cyclists rather than vehicles.
Investigating Officer's Comments		The route existed in the 1940s and appeared to be well used.
<b>6 inch OS Map LXIII.SW</b>	1947	6 inch map extract provided by the applicant, revised 1938 and published 1947.



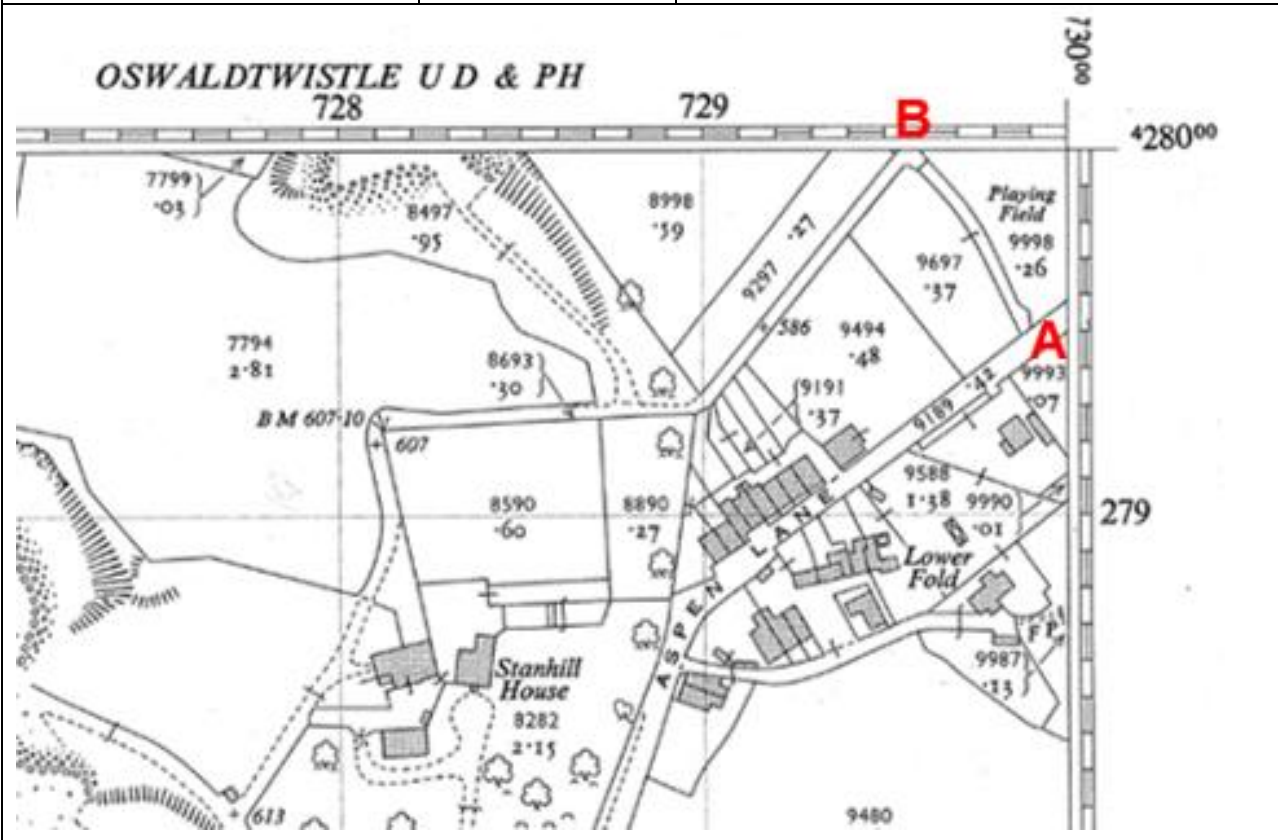
Observations		The application route is again shown. Gates or other barriers are shown at/near each end and at an intermediate point.
Investigating Officer's Comments		The application route existed and appeared capable of being used in 1938.
<b>6 Inch OS Map SD 72NW</b>	1965	6 inch OS map published in 1965 and revised between 1956 and 1963.



Observations		The application route is again shown as a bounded route. It appears to be open and unrestricted at point A but a line is shown across it at point B. The route is shown to be as wide as Aspen Lane and Mill Lane on the map.
Investigating Officer's Comments		The application route existed in the 1950s and appeared to be capable of being used. The width of the route is shown to be the same as many public vehicular roads on the map sheet. This is not considered to be an accurate depiction of the width of the route – which is better shown on the larger scale 25 inch OS maps. This particular map series appears to have been drawn with in a particular style whereby bounded routes – including public roads and the application route are all shown in a very similar way. That style also shows the gate (line) across the end of the path at B rather than set back into the path as most of the other maps show.



<b>1:2500 OS Map</b> <b>Map Sheet SD 72-27</b>	1957	Further edition of 25 inch map reconstituted from former county series and revised and published in 1957 as national grid series.
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Observations		The application route is shown as a bounded route with lines across it at point A and near point B. The width is similar to a vehicle-width track not the narrowed footpath shown on the 1931 sheet. The field immediately east of the route is labelled as a playing field with the application route braced with the field to the east.
Investigating Officer's Comments		The application route existed in 1957 and appeared capable of being used.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

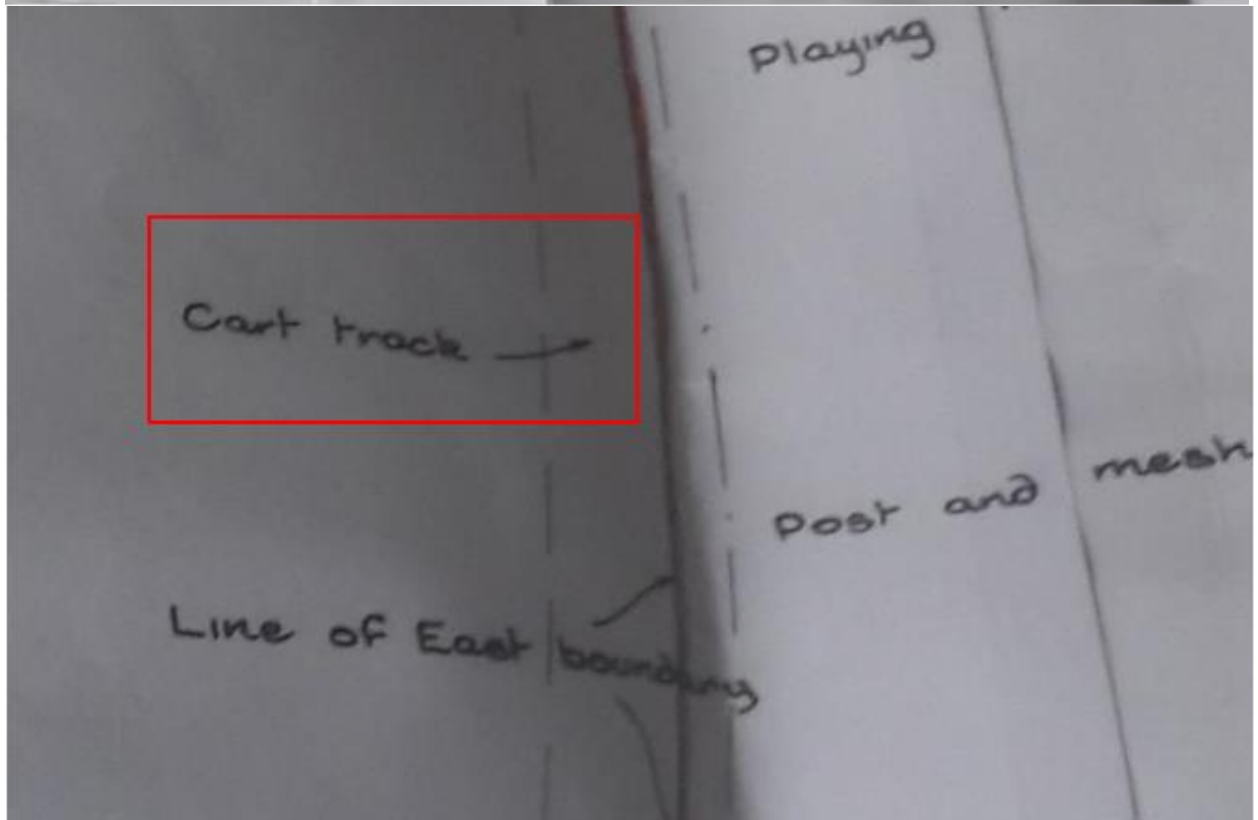
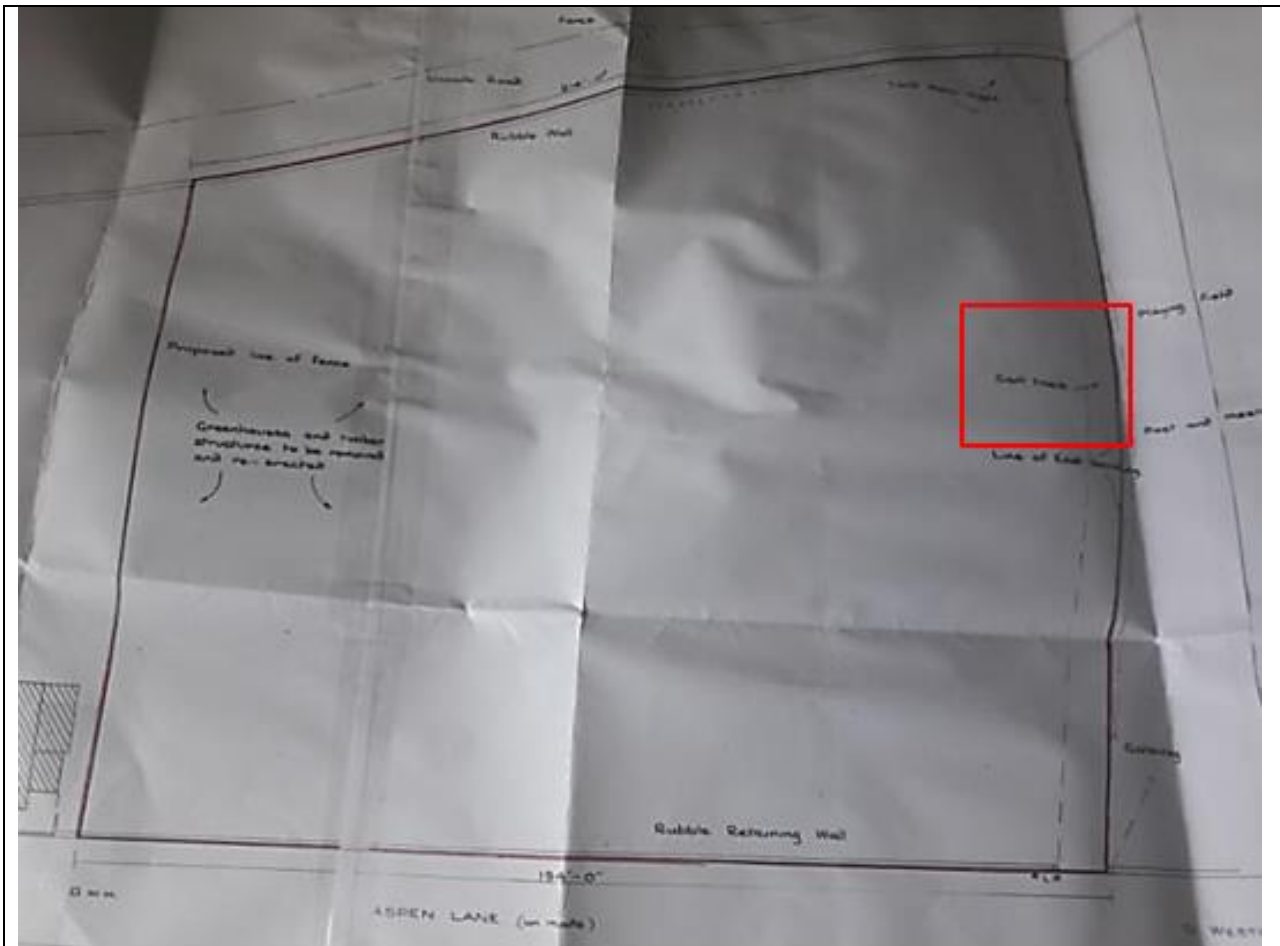




Observations		The application route can be clearly seen as a worn track consistent with at least pedestrian use although it is not possible to see what fencing existed adjacent to the route or whether gates existed at point A and point B. The photograph pre-dated the construction of All Saints Church which was founded in 1961.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used.
<b>Conveyance for the Sale of the Land supplied by All Saints Church Warden</b>	1962	Conveyance dated January 1962 between Mrs Doris Evans of 17 aspen Lane and the Parochial Church council and Blackburn Diocesan Board of Finance for the sale of the plot of land crossed by the application route.

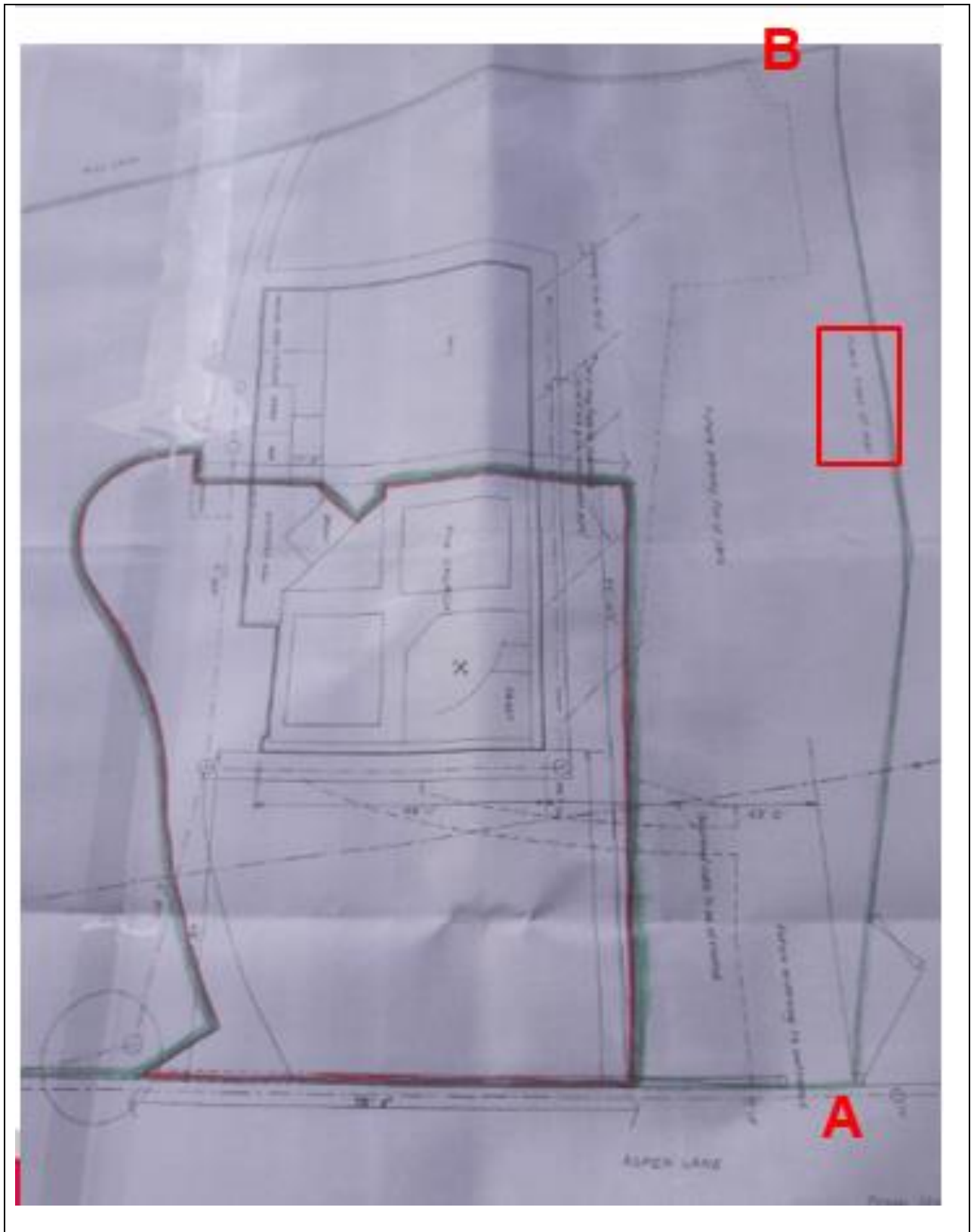
2. THE Grantor as Beneficial Owner by direction of the Council HEREBY CONVEYS unto the Authority A L L THAT the said property T O HOLD the same unto the Authority in fee simple Subject only to the rights of the public over and along the footway or cart track shown on the plan annexed hereto



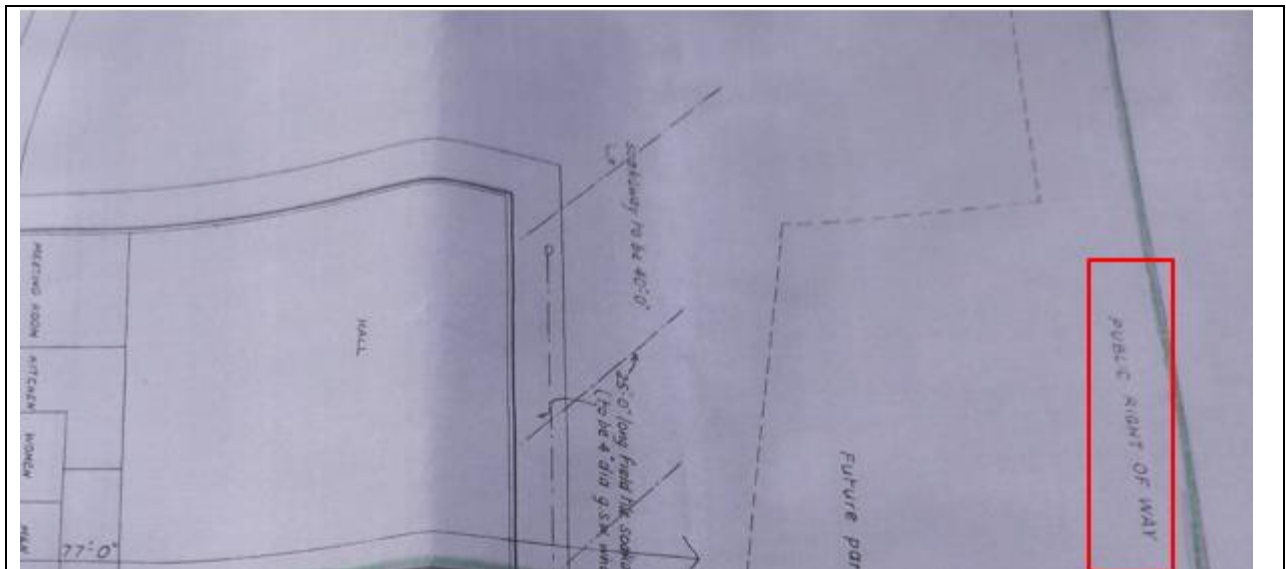


Observations		The conveyance expressly states that the land is to be conveyed subject to the rights of the public over and along the
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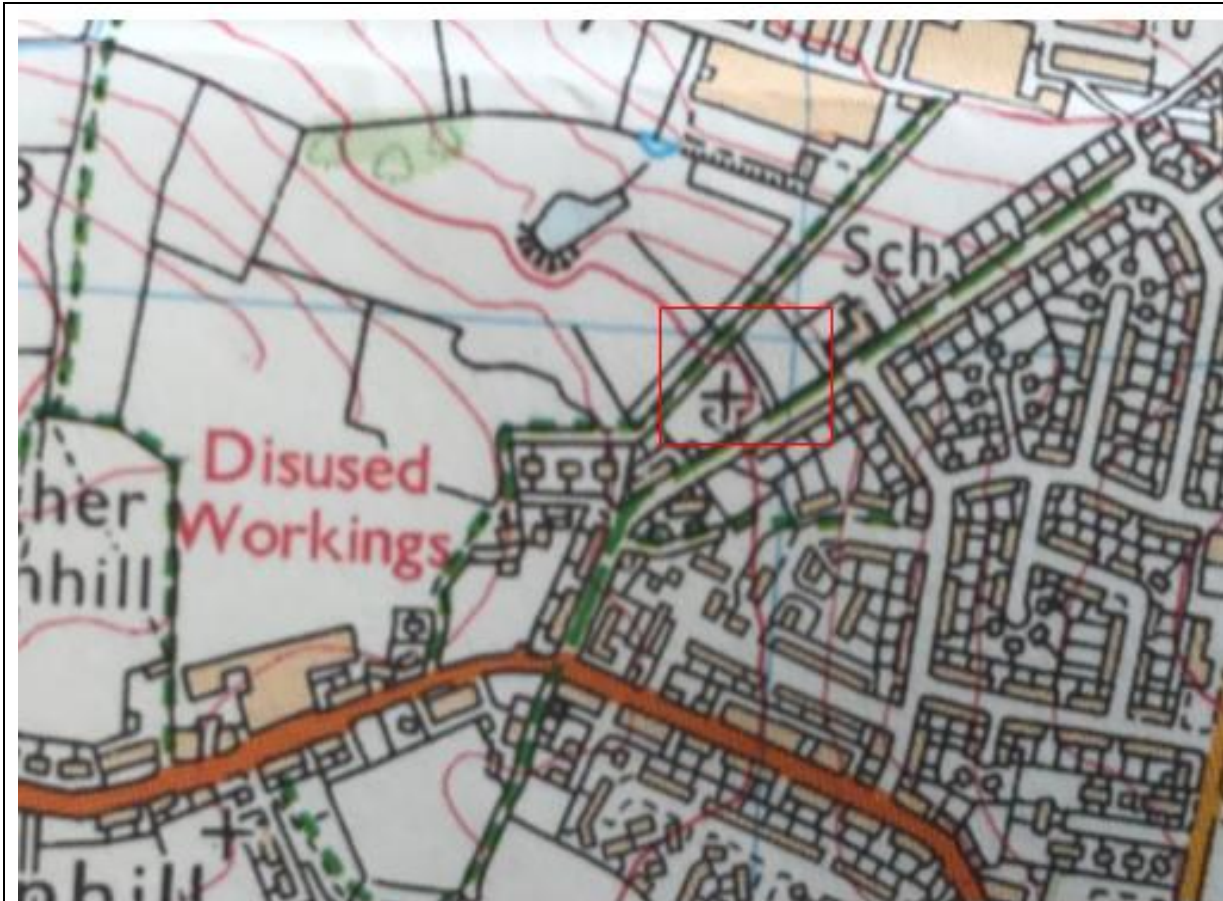
		footway or cart track shown on a plan annexed to the conveyance. The plan attached to the conveyance shows the route referred to as being the application route and labels it as a cart track.
Investigating Officer's Comments		The owner of the land prior to its sale in 1962 acknowledged the existence of the application route as at least a footpath (footway) and sold the land subject to the rights of the public being retained over and along the route.
<b>Conveyance and Plan for transfer of the land supplied by All Saints Church Warden</b>	1965	A copy of a Conveyance and plan transferring the land and church from the Diocese and Parochial Church Council to the Commissioners and the Incumbent on trust for the purposes laid out in the relevant legislation (Parochial Church Councils (Powers) Measure 1956) was supplied by the Church when they were consulted about the application.







Observations		The 1965 conveyance makes no specific reference to the application route but the plan attached to the conveyance shows the land crossed by the application route within an area marked by a green boundary. The words 'public right of way' are written along the eastern side of the land consistent with the alignment of the application route in keeping with the fact that the land had been sold in 1962 subject to the rights of the public. There is no key on the plan extract and it appears to be a plan drawn up with regards to the proposed construction of the church.
Investigating Officer's Comments		The plan contained within the conveyance documentation indicates that when the church was constructed and transferred to the Commissioners and the Incumbent on trust there was an acknowledgement of the existence of a 'public right of way' along the application route.
<b>OS Explorer Map 287 West Pennine Moors Scale 1:25 000</b>	2004	OS Explorer Map revised and published 2004



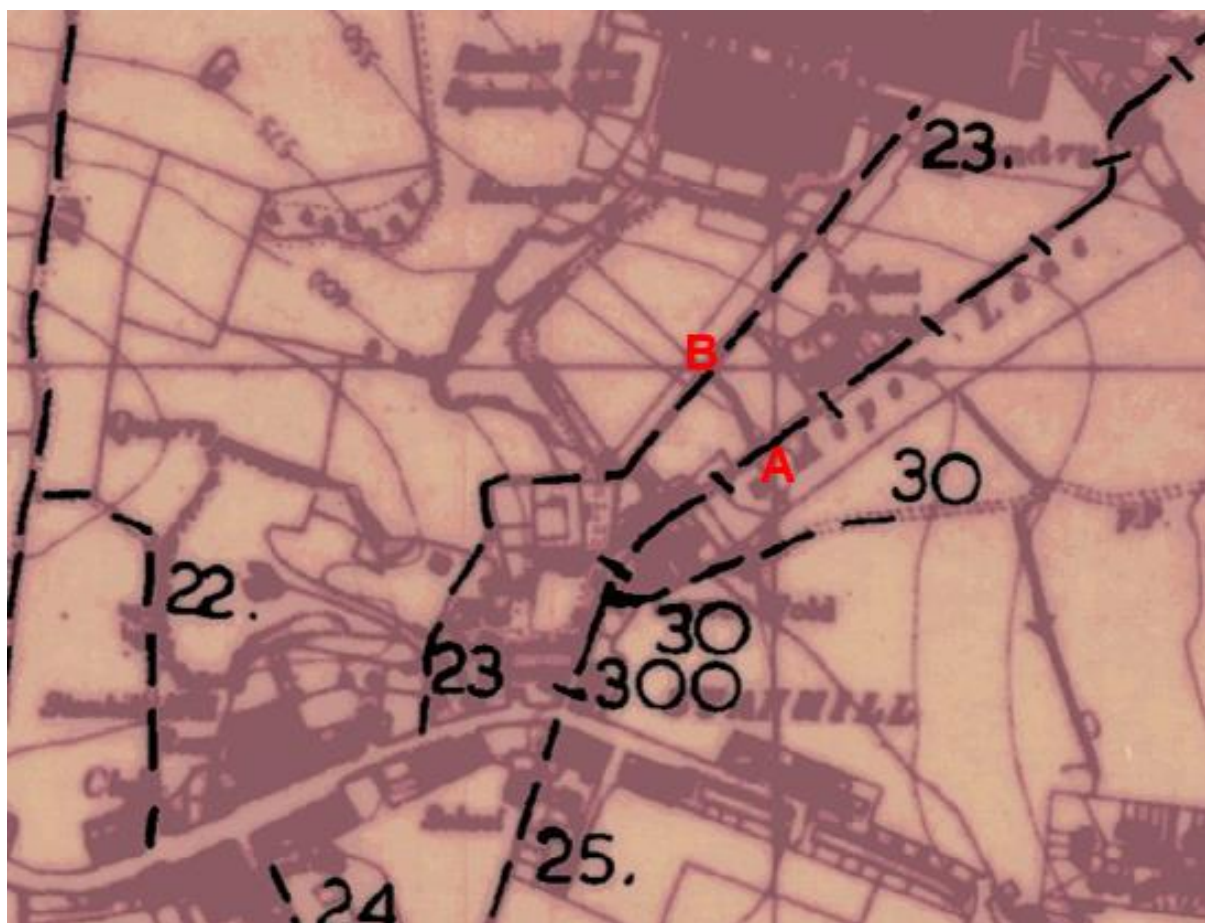
Observations		The application route is shown as a bounded route with gates at each end. A cross is shown to the west of the route indicating the existence of All saints Church.
Investigating Officer's Comments		The application route existed in 2004 and appeared to be capable of being used.
<b>Aerial Photograph</b>	2014	Aerial photograph available to view on GIS.



Observations		The application route can be seen as a less prominent route alongside the boundary of the school. It does not appear to be gated at point A or point B and from point A appears to follow the start of the access road up to the church.
Investigating Officer's Comments		The application route existed in 2014 and appeared to be capable of being used on foot.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	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

		<p>Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Oswaldtwistle was an Urban District Council in the 1950s and no parish survey map was produced.</p>
<b>Draft Map</b>		<p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route was not shown on the Draft Map and there were no representations made regarding the fact that it was not shown.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route was not shown on the Provisional Map and there were no representations made regarding the fact that it was not shown.</p>

<p><b>The First Definitive Map and Statement</b></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 shown on the First Definitive Map and Statement.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></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 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> 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>



<p>Observations</p>		<p>The application route is not shown on the Revised Definitive Map and</p>
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		Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to be public during the preparation of the 1 <sup>st</sup> Definitive Map and Statement through to the 1960s.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations		The application route is not recorded as a publicly maintainable highway on the county council's records.
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. No further inference can be drawn.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the application route were found.
Investigating Officer's Comments		If any unrecorded public right exist along the route they do not appear to have been stopped up or diverted.



<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<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>
<p>Observations</p>		<p>No Highways act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.</p>

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





## **Landownership**

The entire length of the application route crosses land which is unregistered however the conveyance dated January 1962 confirms that the church owns the land even though it is not registered.





## Regulatory Committee

Meeting to be held on 25 January 2023

### Part I

Electoral Division affected:  
South Ribble West

## Wildlife and Countryside Act 1981

### Definitive Map Modification Order Investigation

#### Upgrade to bridleway of footpath from Haunders Lane to Liverpool Road, Much Hoole

(Annex 'A' refers)

Contact for further information quoting reference number 804-626:

Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, [Simon.Moore@lancashire.gov.uk](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

### Brief Summary

Application to upgrade that part of Footpath 7-8-FP2 from Haunders Lane to Liverpool Road, Much Hoole to bridleway on the Definitive Map and Statement of Public Rights of Way.

### Recommendation

- (i) That the application to upgrade part of Much Hoole Footpath 7-8-FP2 to bridleway be accepted in part on section A-B.
- (ii) That an Order(s) be made under the Wildlife and Countryside Act 1981 Section 53 to record bridleway on the Definitive Map and Statement as shown marked green on the Committee Plan A-B-C-D-G.
- (iii) That being satisfied that the test for confirmation can be met the Order(s) be promoted to confirmation.

### Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for Footpath 7-8-FP2 to be upgraded to bridleway from Haunders lane to Liverpool Road on the Definitive Map and Statement of Public Rights of Way.

The route applied for is shown on the Committee plan by a black dashed line between points A-B-C-E-F and is currently recorded on the Definitive Map as a public footpath (7-8-FP2). During the course of the investigation carried out by the County Council it was discovered that the historical route of Watery Lane between Haunders Lane and Liverpool Road only followed the route recorded of Footpath 7-8-FP2 between point A to point B on the Committee plan and that the rest of the historical route ran immediately north of the footpath between point B and point C and immediately south of the footpath between point C and point G.

Within this report the Definitive Map line of the recorded footpath is referred to as 'the application route' and the original line of Watery Lane is referred to as 'the historical route'.

No user evidence was submitted in support of the application, which was based on the submission of historical map and documentary evidence, so the route under consideration is the application route but also the historical route between points B-G.

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

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

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

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

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

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



decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## Consultations

### South Ribble Borough Council

South Ribble Borough Council provided no response to consultation.

### Much Hoole Parish council

Much Hoole 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	4563 2281	Gated junction of Watery Lane / 8-7-FP2 with Haunders Lane
B	4588 2290	End of enclosed surfaced track from where a trodden path continues along field edge
C	4622 2270	Walked footpath crosses culverted watercourse
D	4624 2269	NE corner of field, no way across ditch
E	4634 2269	Trodden line crosses field boundary at junction with route historically known as Green Gate Lane
F	4656 2264	Broken pedestrian kissing gate at junction with Liverpool Road
G	4655 2263	Unbroken hedge alongside Liverpool Road

### Description of Application Route

A site inspection was carried out in June 2020.



n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form 7-8-FP2 or Footpath Much Hoole 2. The form '7-8-FP2' has been used in this report.

The application route commences at a point on 7-8-FP2 at the junction with Haunders Lane (point A on the Committee plan).

The application route passes through field gates to run in a generally easterly direction along an enclosed stone surfaced track. The stone surface is 2.5 - 3 metres wide and the enclosed strip approximately 8 metres wide.

The enclosed track ends (point B) with access to fields on either side and the application route continues to the south of a ditch as a trodden path along the field edge through to where the trodden line crosses the ditch via a substantial culvert (point C) wide enough to accommodate farm machinery passing from one field to another. The application route crosses the watercourse at this point although the earlier mapped line of the footpath continues along the south side of the ditch in a generally easterly direction to the corner of the field (point D) where there is no longer any provision for crossing the ditch and hedge. On the north side of the ditch and hedge (just north of point D) is 7-8-FP2 and use on foot is evident on this section with a trodden line continuing along the northern side of a field boundary to pass through a hedge (point E). The trodden route and 7-8-FP2 follow the southern edge of another field then passes through a gap at the south-east corner of the field from where the route is fenced on its north side from a field grazed by horses.

The route exits onto Liverpool Road where there are the remains of a broken wooden kissing gate at point F.

The total length of the route is 1050 metres.

During the course of the investigation, it became apparent that although the applicant specified that the application route was that recorded as 7-8-FP2 the map and documentary evidence submitted in support of the application referred to a slightly different route. This route, where it varies from 7-8-FP2, is shown by a bold dashed green line on the Committee plan and was historically shown as a bounded route within which the watercourse was located. Having examined the maps in detail, it is the Investigating Officer's view that 7-8-FP2 was recorded running alongside, but not within the old boundaries of the historical route from point B through to point G.

## Map and Documentary Evidence

Several maps, plans and other documents were examined to discover when the application route and historical route came into being, and to try to determine what their status may be.

Note: Maps reproduced in this report are not to the original scale.

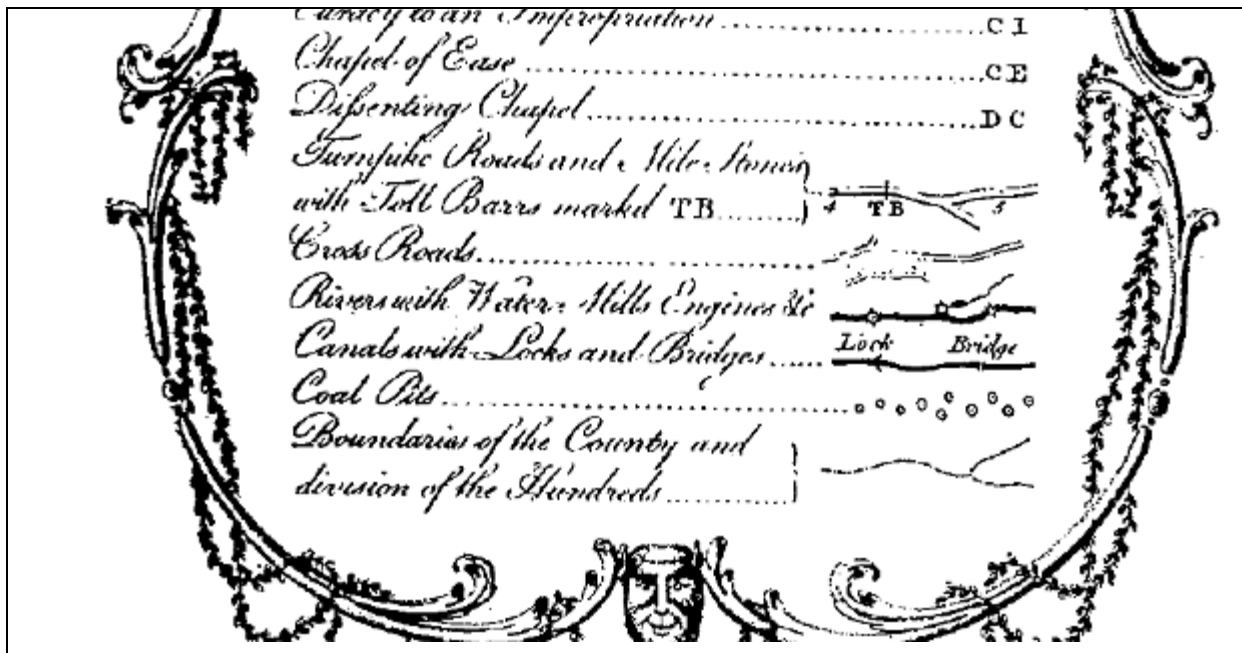
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map	1786	Small-scale commercial map. Such maps were on sale to the public and



of Lancashire

hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



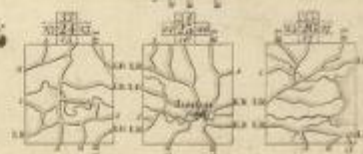


Observations		Neither the application route nor historical route are shown.
Investigating Officer's Comments		The routes probably did not exist at the time or if they did exist, were not considered to be a substantial public vehicular route by Yates. If they did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>





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



Turnpike Roads, thro' enclosed countries

D<sup>o</sup> thro' unenclosed d<sup>o</sup>

Bye Roads are marked by closer lines, as

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

Churches and Chavels

Observations		Neither the application route nor historical route are shown.
Investigating Officer's Comments		The routes probably did not exist at the time or if they did exist, were not considered to be a substantial public vehicular route. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Greenwood's Map of Lancashire	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



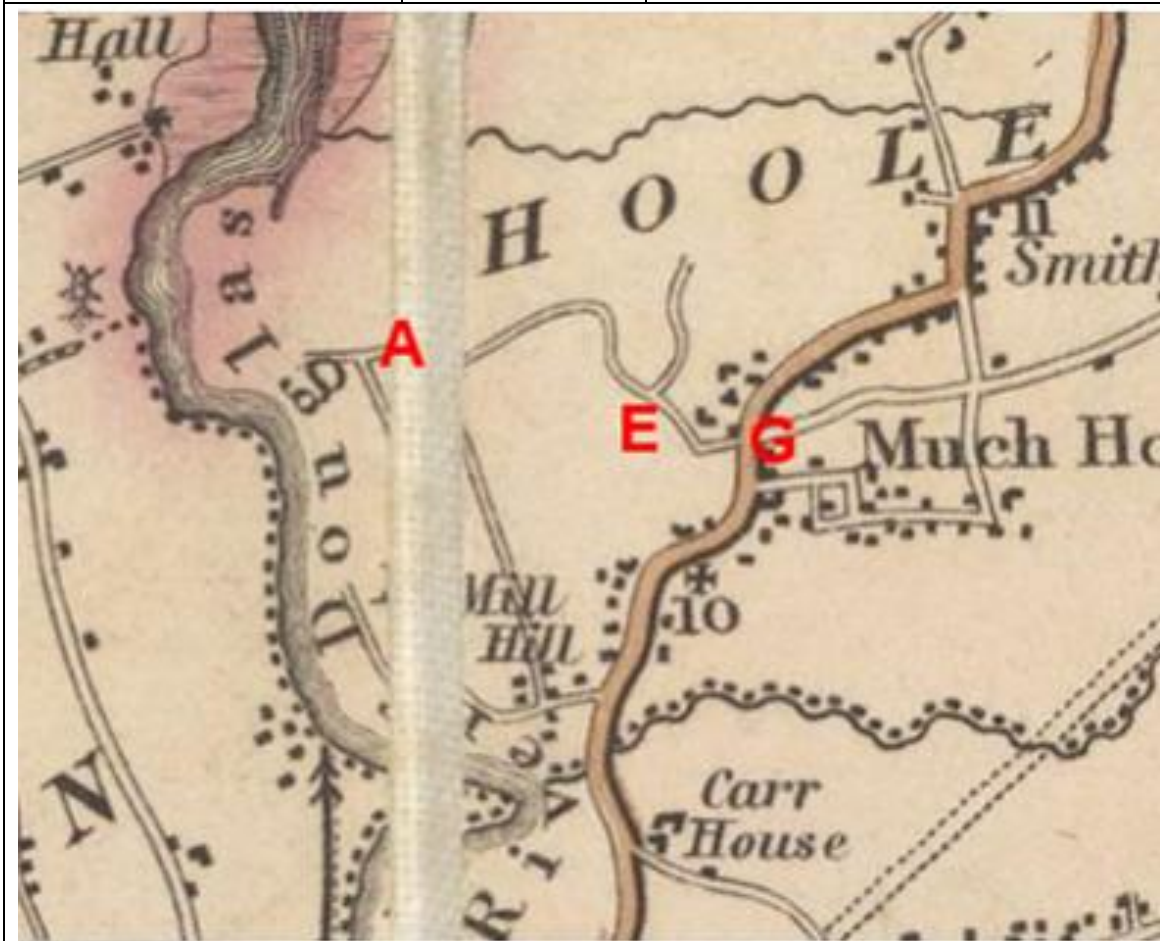


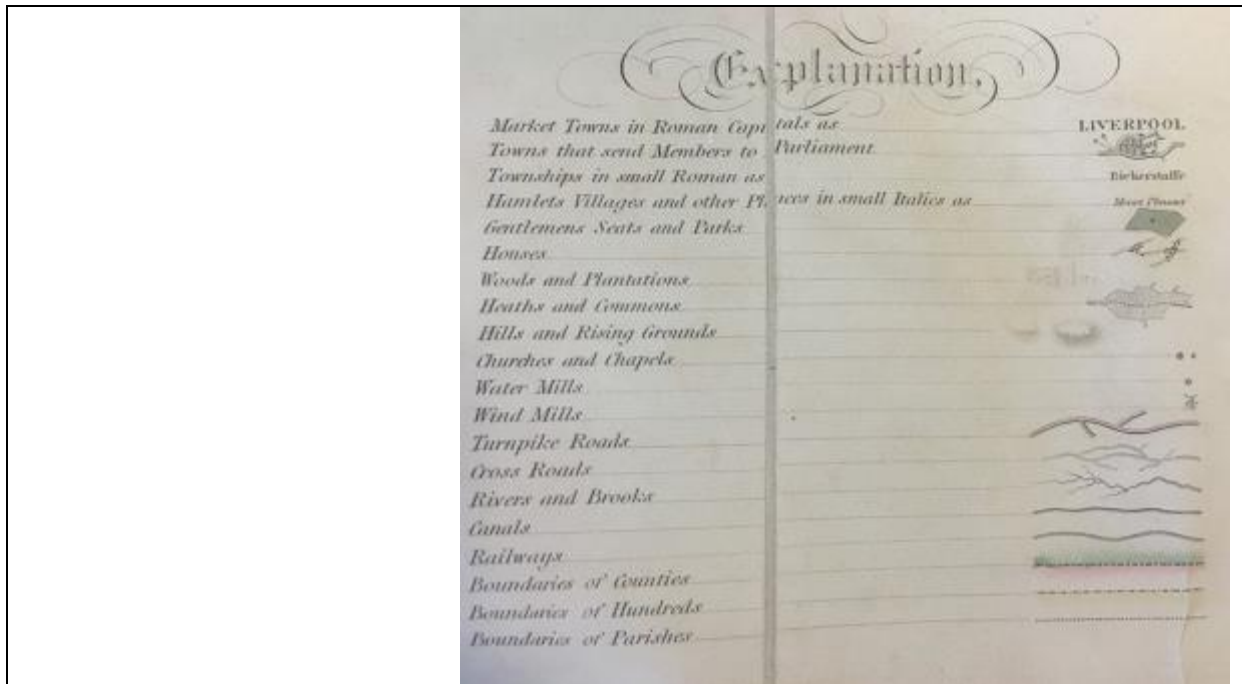
Turnpike Roads \_\_\_\_\_  
 Cross Roads \_\_\_\_\_  
 Towns & other Places \_\_\_\_\_  
 that send Members to Parliaments } \_\_\_\_\_  
 Boundaries of Counties \_\_\_\_\_

Observations		Neither the application route nor the historical route are shown although a short stub possibly indicating the start of a route can be seen extending west from Liverpool Road consistent with the eastern end of the route at point G.
Investigating Comments	Officer's	The routes probably did not exist as a through route at the time or if it did exist, was not considered to be a



		substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
<b>Hennet's Map of Lancashire</b>	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.

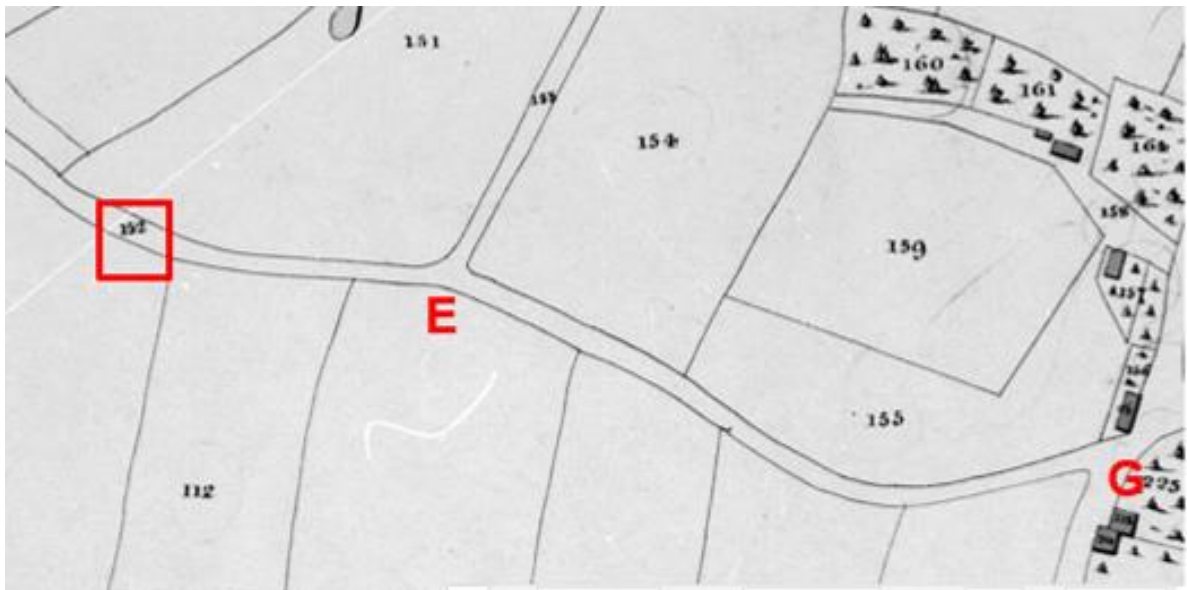




<p>Observations</p>		<p>The full length of a route similar to the application route/historical route is shown as a cross road consistent with how Haunders Lane (a public vehicular routes) is shown. No watercourse is shown affecting it. A route extending north from the application route at point E is also shown as a cross road leading to what appears to be a dead end. The curve of the route is different to the application route or to what was shown as Watery Lane on later maps but not inconsistent in the context of its time and the small scale.</p>
<p>Investigating Officer's Comments</p>		<p>It is not fully known what is meant by this 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> Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including <i>Greenwoods, Bryants and Burdets</i>. 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</p>



		<p><i>not have the right to use it.”</i></p> <p>It is unlikely that a map of this scale would show footpaths suggesting that a route existed as a substantial through route which was considered to be more than a public footpath at that time.</p>
<b>Canal and Railway Acts</b>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large-scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



151	Acad	2	21
59		2	7
64		10	23
152		2	25
153		2	30
222		1	33
351		1	8
376			12
379			17
374		1	13
385		9	21
399		2	27
471		3	28
544		7	36
697		1	27
712		2	31
714		1	4
		117	236

Observations

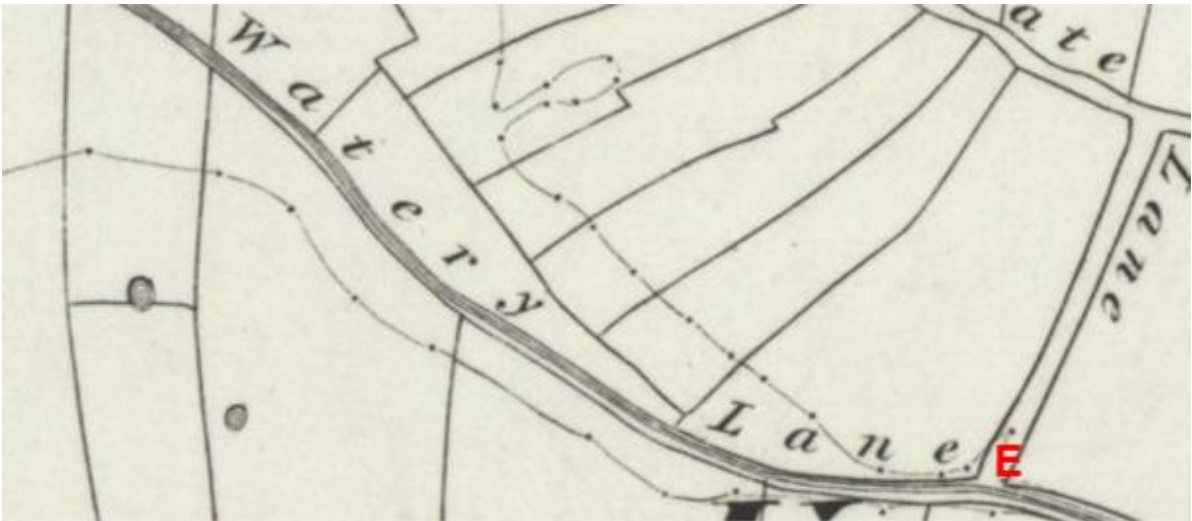
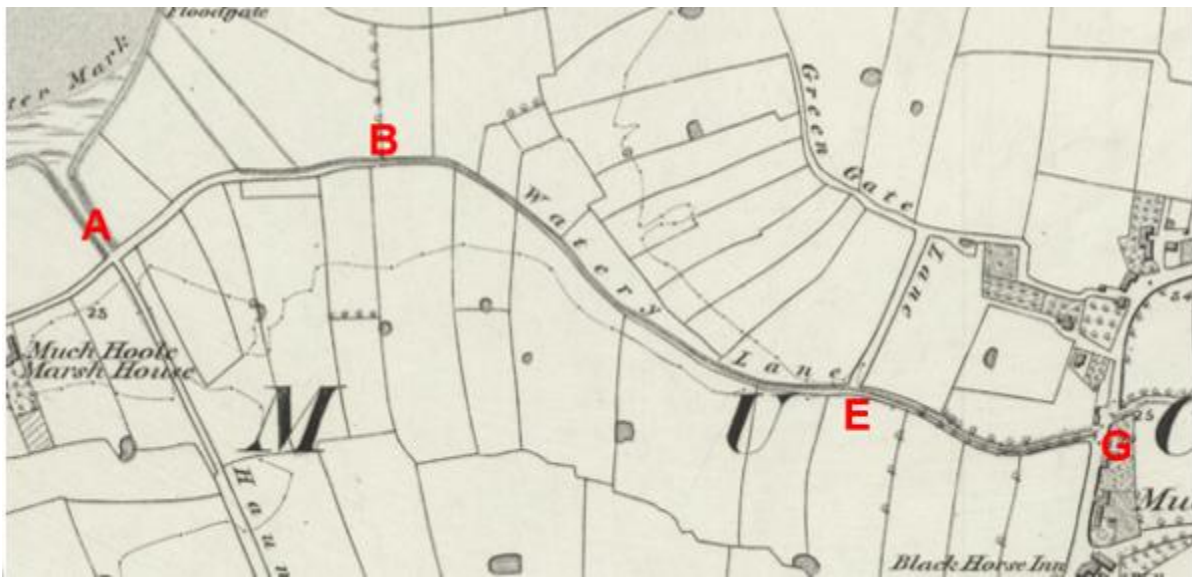
A route consistent with what was later shown as 'Watery Lane' or



		<p>approximating to the full length of the application/historical route appears to be shown as a substantial bounded through route and is numbered as plot 152. A route is shown extending north from point E which is also numbered (153). Both routes are listed at the end of the Tithe Award as roads. No watercourse running along or adjacent to the route is shown.</p> <p>The list comprises of 17 routes which are labelled at the end of the Award as roads. Looking more closely at the 17 routes listed, 11 of those routes are now recorded as vehicular highways for all or most of their length, 3 routes (including the application route) are recorded as public footpaths, but applications have been received for 2 to be upgraded; and 3 have no recorded public status for all or most of their length (including the route extending north from point E).</p>
Investigating Officer's Comments		A route existed in 1841 which was similar to the application/historical route and was considered to be part of the public vehicular highway network at that time.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1845 and published in 1848. <sup>1</sup>

<sup>1</sup> 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





Map Source: National Library of Scotland

Observations

The application route is shown starting at an open junction with Haunders Lane (point A) to run north east along a fenced route (in the same way that Haunders Lane, a public vehicular route, is shown). Midway along this enclosed track (between point A and point B) it is joined by a watercourse which is shown by double lines within the boundaries of the lane. A strip of land continues – fenced on either side from the adjacent fields with 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.

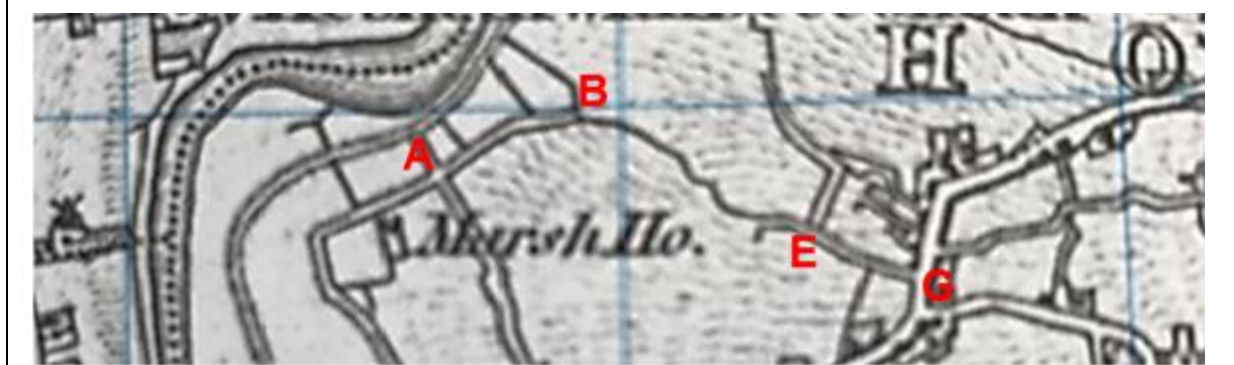




		<p>watercourse running within it to an open junction with Green Gate Lane (point E). On this section the route is named on the map as 'Watery Lane'.</p> <p>The application route appears to be on or just outside the southern boundary of Watery Lane (the limitations of scale prevent greater precision) then, after crossing the brook and lane, outside the northern boundary. A separate footpath is not shown.</p> <p>At point E the road numbered on the Tithe Map as plot 153 is shown on this map extending north and is named as Green Gate Lane providing access to fields to the north west and east onto Liverpool Road (now known as Liverpool Road and a former turnpike road).</p> <p>From just south of point E Watery Lane continues in a generally easterly direction as a fenced route with the watercourse still shown along it through to point G where it ends at the junction with Liverpool Road. At this point the watercourse is shown emerging from under Liverpool Road. n.b. although described west to east the water would flow east to west although the contours indicate that the fall is very slight.</p> <p>The last section is shown as being tree-lined. The application route immediately to the north of Watery Lane is not shown along the field edge on the north of the lane.</p>
Investigating Officer's Comments		<p>The application route/historical route section A-B existed in 1844-1845 consistent with how it is depicted on the Tithe Map prepared several years earlier. The historical route is shown as part of a significant fenced through route which is named on the map, running through to Liverpool Road (point G). Watery Lane is also shown to connect to another fenced through route at point E suggesting that it would have been capable of being used at that time. The fact that a watercourse is</p>



		<p>shown along much of the route and the fall is only 5m over 1km, together with the fact that the route was known as 'Watery Lane' suggests that it may have been quite wet which may explain why the application route alongside Watery Lane later came into existence, something that was quite common at the time. It suggests that it was used by non-pedestrian traffic (horses and carts). The application route from point B through to point F is not shown outside the bounded track suggesting that at that time all traffic using the route – whether on foot or otherwise would travel along the historical route known as Watery Lane.</p>
<b>Cassini Map Old Series</b>	1842-1852	<p>The Cassini publishing company produced maps based on 1" Ordnance Survey maps enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.</p>

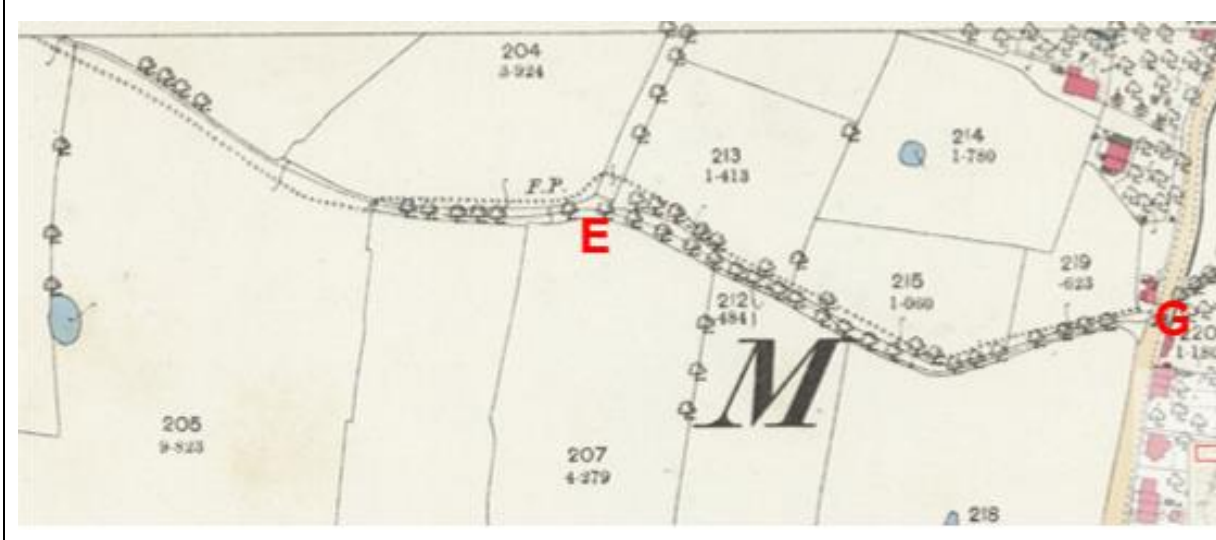
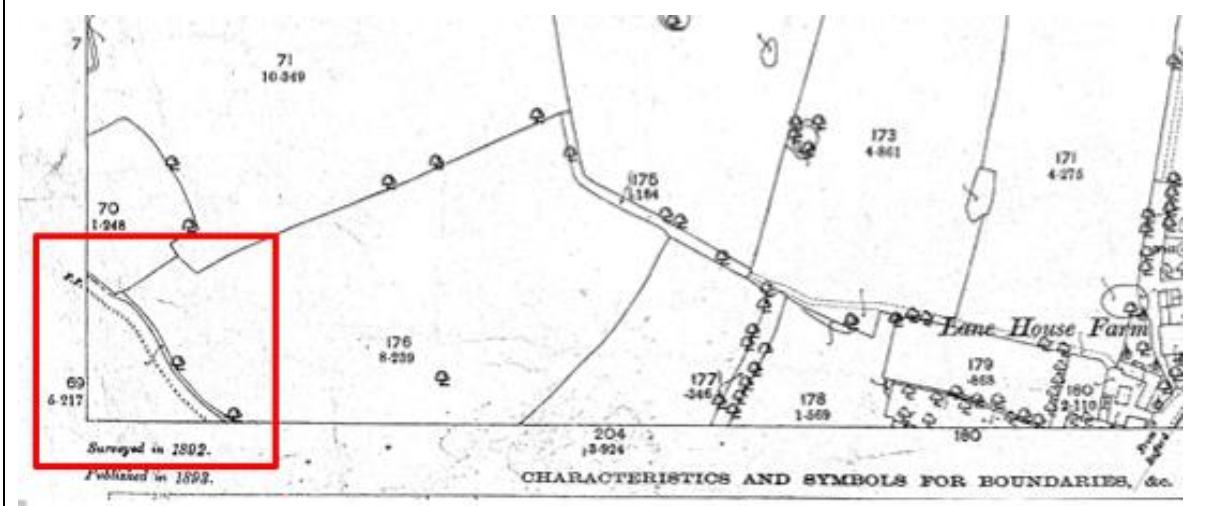


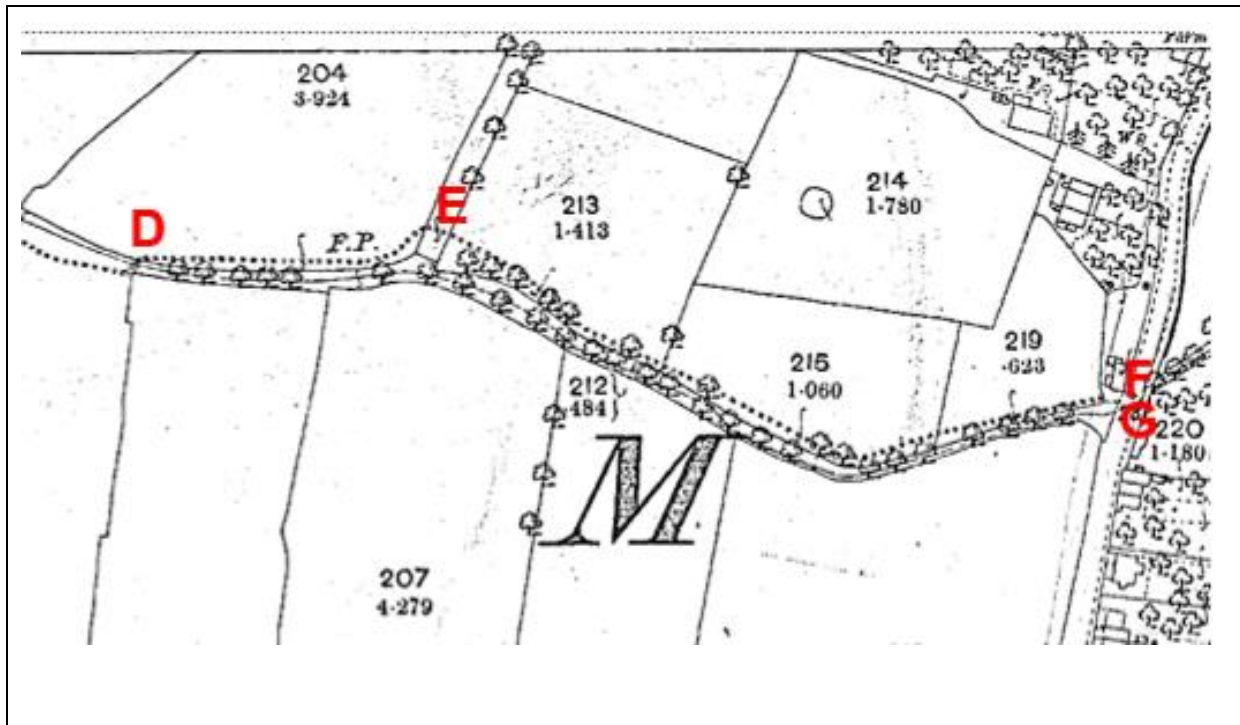
## Old Series sheets used to create this map:

Sheet 89, N.E. Quarter, pub. 20th February 1843  
 Sheet 89, N.W. Quarter, pub. 20th December 1842  
 Sheet 90, N.E. Quarter, pub. 1st October 1842  
 Sheet 91, N.E. Quarter, pub. 31st December 1852  
 Sheet 91, N.W. Quarter, pub. 31st December 1852  
 Sheet 91, S.E. Quarter, pub. 30th June 1852  
 Sheet 91, S.W. Quarter, pub. 31st December 1847.

Observations		The application route and historical route Watery Lane is shown as a fenced route from point A to point B. Watery Lane is shown from near point E through to point G with a single line drawn along the middle section consistent with how field boundaries and minor watercourses (less than 15 ft wide) are shown. The application route east of point B is not shown and neither is the historical route of Watery Lane shown between points B and E.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes. The inclusion of part of the route on those maps suggests that a substantial route existed at each end, but the middle section of the application route and historical route is not shown, only a stream, suggesting that the route was not a significant through route at that time. The application route east of B either did not exist or was not shown due to limitations of scale.
25 Inch OS Map LXVIII.10 LXVIII.11 LXVIII.15	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-1892 and published in 1893.







Observations

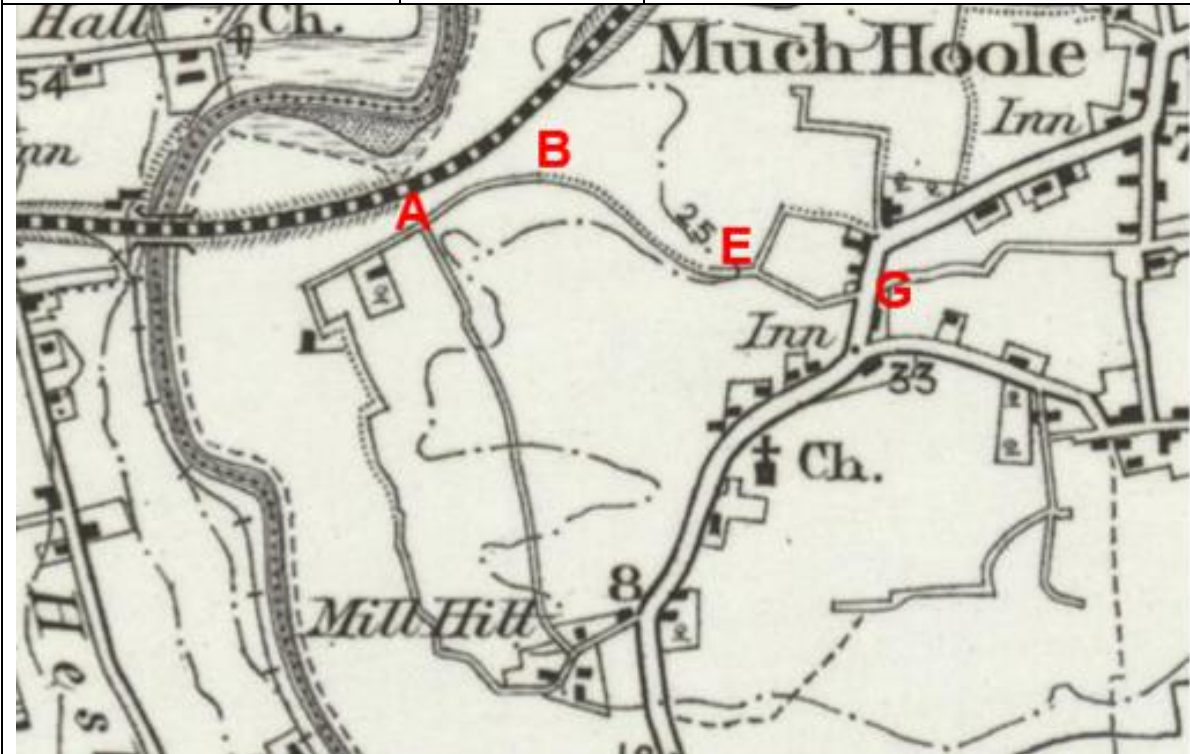
Between point A and point B the application route/historical route are shown as a double fenced route with a dedicated parcel number and acreage. It is not shown with a thickened line along the southern boundary – in contrast to Haunders Lane from which it starts.

At point B a line is shown across the route beyond which the application route, marked by the use of narrow double-dashed lines, is shown labelled as a footpath (F.P.) running to the south of the watercourse within fields numbered as parcels 21, 20, 69 and 205 and crossed by 3 field boundaries. There is no culvert shown at point C and the footpath continues to the corner of the field (point D) where the route crosses the watercourse to continue east, still marked as a footpath ('F.P.'), along the field numbered as parcel 204. The double-dashed line of the footpath bends north and through the fenced route numbered as parcel 177 (point E) and the route shown as F.P. continues generally east along the fields to the north of the double fenced historical route, shown on earlier maps as part of Watery Lane, passing

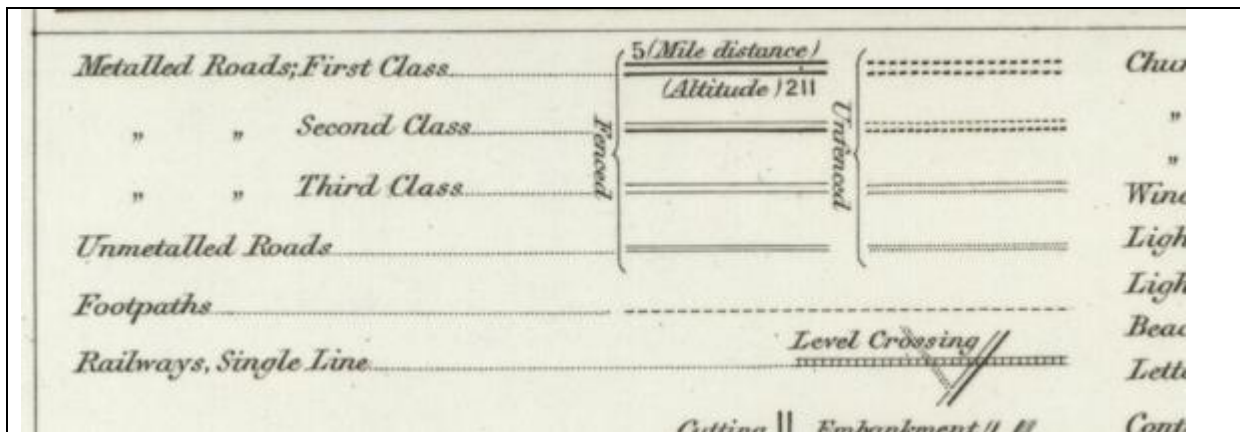


		<p>through the fields numbered as parcels 213, 215 and 219 and passing through 5 field boundaries between point D and point F – where it exits onto Liverpool Road</p> <p>The historical route named as Watery Lane on the First Edition 6 inch map is no longer named on this map and no longer appears to have been double fenced between points B and D.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed as a substantial fenced route in 1891-92.</p> <p>Beyond point B Watery Lane is shown to have altered in the 45 years since the First Edition 6" sheet was prepared in such a way as to suggest that any previous use by horses or horse drawn vehicles had declined, or possibly ceased. The application route between point B and point F is shown denoted as a footpath suggesting that when surveyed by the OS the route apparent on the ground was consistent with pedestrian use. The route shown as a footpath between point B and point D was not separated from the adjacent fields but was shown further south in the field than the original bounded route and from point D to point F was shown to the north. The fact that the route of the footpath is shown passing through each of the field boundaries suggests access was via gates, stiles or gaps so it might not have been accessible on horseback.</p> <p>From the point at which the footpath crosses the watercourse at point D the route marked as a footpath is outside the northern boundary of the 1848-mapped route (the historical route) and runs along a line largely consistent with the currently recorded route of 7-8-FP2 through to Liverpool Road at point F. This route is crossed by a number of further field boundaries and would have been inconvenient, if it was passable, on horseback.</p> <p>Between point D and point G Watery Lane (the historical route) is still shown</p>

		<p>although lines are shown across it at point D and point G and the route is not named on the map.</p> <p>The footpath from point B through to Liverpool Road running adjacent to Watery Lane suggests that the historical route between these two points had become difficult due to the watercourse and that pedestrian use followed a route which was firmer and drier underfoot mostly consistent with the route of 7-8-FP2.</p> <p>With reference in particular to the route between point A and point B 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><b>1 inch OS Map Preston Sheet 75</b></p>	<p>1896</p>	<p>1 inch OS map published 1896.</p>









<p>Observations</p>		<p>The scale of this map means that it is not possible to see the same amount of detail as is available on the 25 inch OS map detailed above although both maps were likely to have been published from the same survey.</p> <p>The application route between points A and B is shown as a fenced route consistent with how third class or unmetalled roads are shown. From B to just west of point E the historical route is shown as a third class or unmetalled road, unfenced on the north side but the application route is not shown. From point E a lane extending north and then east to Liverpool Old Road is shown and the historical line (not named) is shown continuing east as a fenced third class or unmetalled road through to Liverpool Road at point G.</p>
<p>Investigating officer's Comments</p>		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown, and in this case Watery Lane (including the application route A-B) rather than the application route B-F, was available for those travellers.</p>
<p><b>Bartholomew half inch Mapping</b></p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use</p>

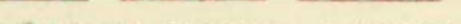
of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



**EXPLANATORY NOTE**

First Class Roads 

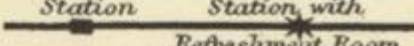
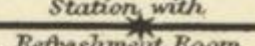
Secondary (Good) 


Indifferent (Passable) 

*The uncoloured roads are inferior and not to be recommended to cyclists.*

Footpaths & Bridlepaths .....

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

Railways  Station      Station with Refreshment Room 

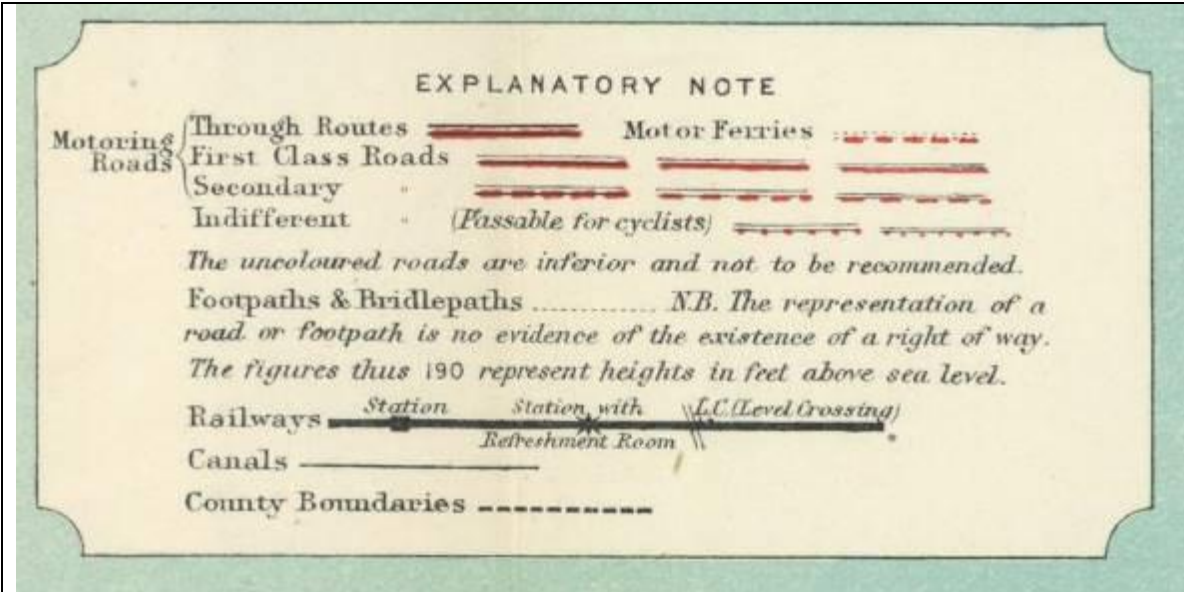
Canals 

County Boundaries -----

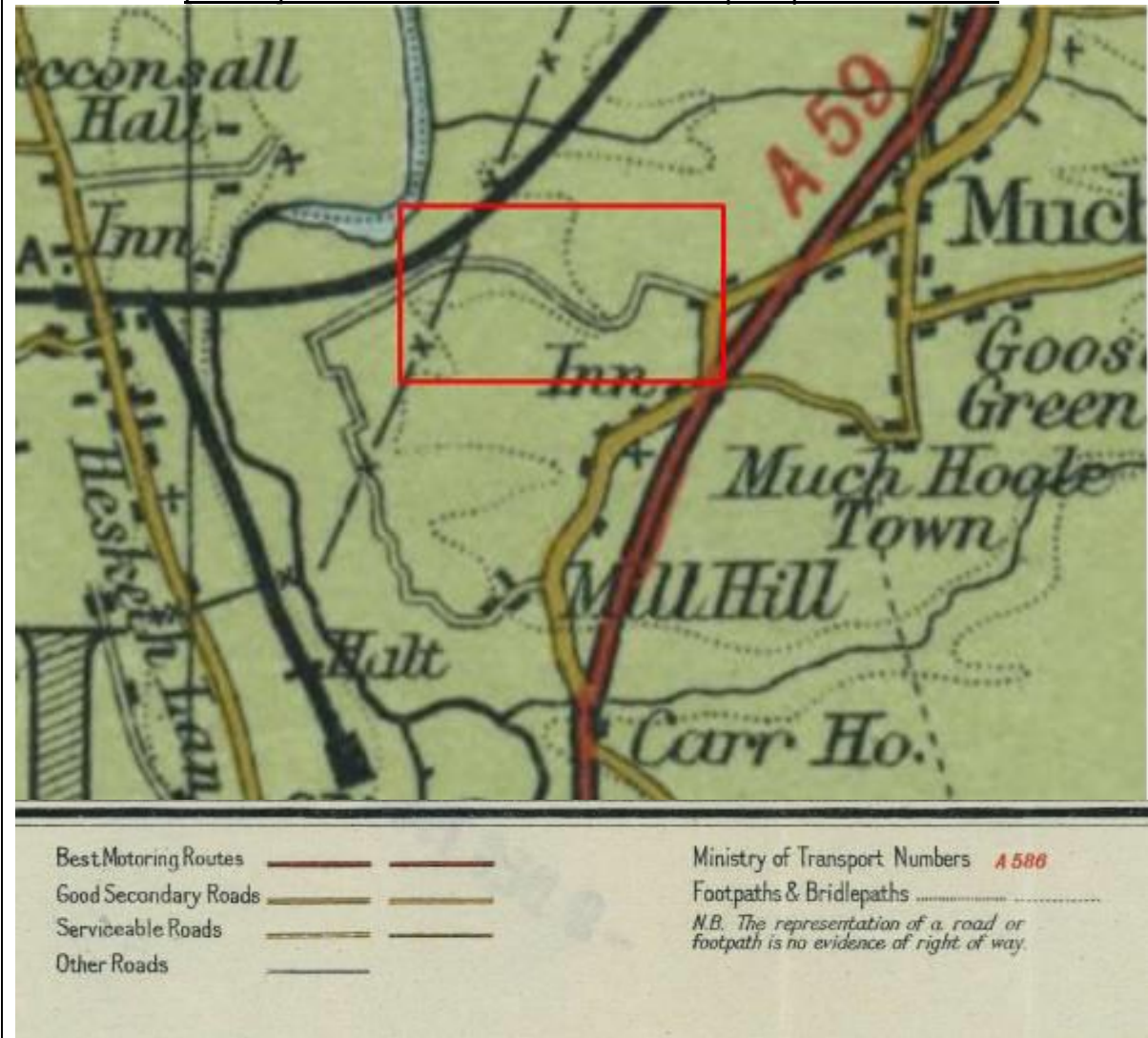
SCALE 1 : 126,720 = 2 MILES TO AN INCH

[above] Sheet 8 - Liverpool and Manchester published 1904





[above] Sheet 8 – Manchester and Liverpool published 1920



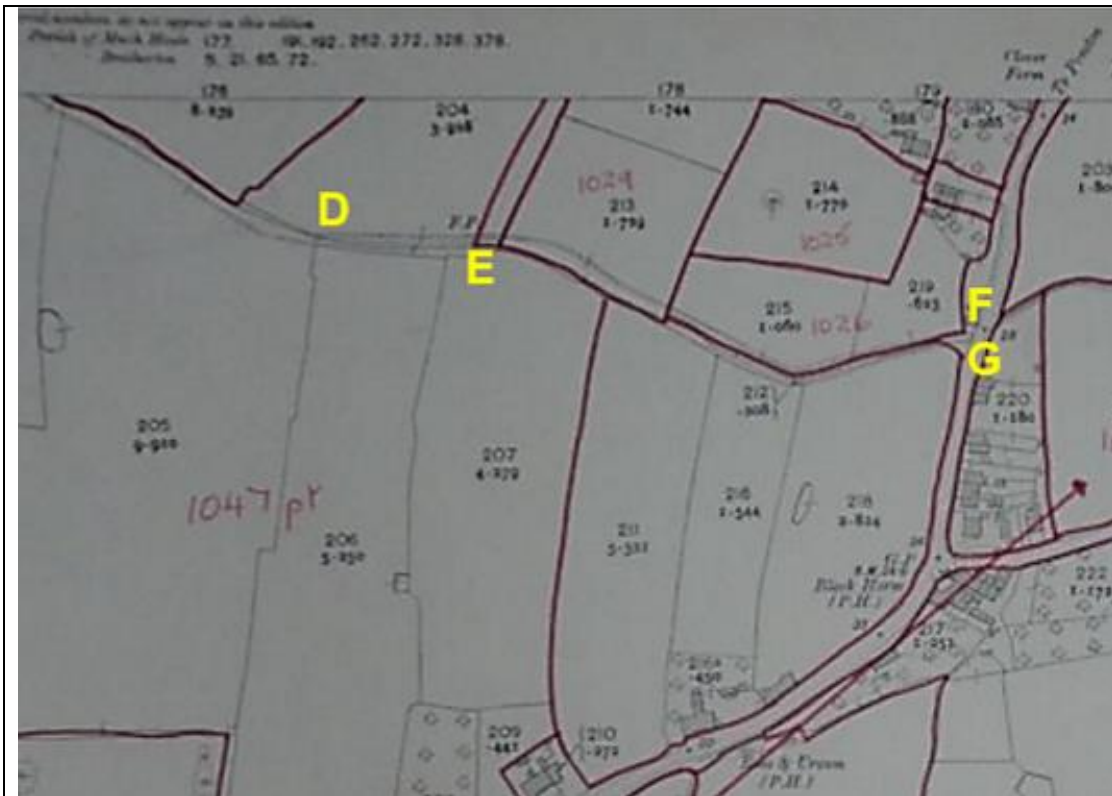
[above] North Lancashire published 1940

Observations		Annotation points are not included on the map extracts above due to the difficulty in inserting them with any
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		<p>accuracy. Watery Lane from point A to point E (on the Committee plan) is shown on all three maps as part of a longer uncoloured (inferior) or 'other road'. From point E the curvature of the route suggests that the route shown through to Liverpool Old Road then went north from point E along the route shown on the Tithe Map and named on the First Edition 6 inch map as Green Gate Lane with no route from point E through to point G shown. Haunders Lane (a public vehicular road) which ran south from point A is not shown on any of the three map editions. The application route section B-F and historical route of Watery Lane E-G are not shown.</p>
<p>Investigating Officer's Comments</p>		<p>OS maps dated before and after the publication of Bartholomew's Maps confirm the physical existence of the application route and Haunders Lane over this period. However the large scale OS maps both before, during and after this time suggest that Watery Lane, at least in part, was no longer bounded along the full length and that an alternative footpath existed running parallel to the route between point D and point F. They also show the route north from point E (Green Gate Lane) being gated in a number of places and partly unenclosed.</p> <p>As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that Haunders Lane and Watery Lane between point E and Liverpool Road had been purposely omitted by Bartholomew suggesting that Watery Lane A-E and then north – east via Green Gate Lane was the more significant route at that time and was capable of being used and considered to be a public vehicular road – albeit of inferior standard to those more widely recommended for use. The omission of the application route east of B is likely to be due to the limitations of scale and that footpath users were not the target customers for these maps.</p>

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



Map obtained from The County Records Office

Observations

The Finance Act Maps at the National Archives and County Records Office are incomplete for the area crossed by the application route. One sheet (LXVIII.15) was largely (but not wholly) complete.

Sheet LXVIII.15 shows the eastern part of the route. None of the application route is excluded from the numbered plots (nor is the historical route except for a few metres at the junction with



		<p>Liverpool Road).</p> <p>The application route from midway between point B and point C through to point E is included in plot 1047. At point E the route of Green Gate Lane is shown marked up as one plot on the map obtained from The National Archives, but it is not numbered suggesting this may have been excluded. However, the map obtained from the County Records Office does not show this unnumbered strip and instead shows the former route as part of a larger unnumbered plot. The map sheet showing the rest of this route is incomplete, so it is not possible to confirm how this land was ultimately recorded. From point E both the application route and historical route are included in plot 1024 to the next field boundary crossing the route from where the line dividing the plots appears to be the watercourse which runs along Watery Lane. The application route is contained within plot 1026 but the plot to the south of the watercourse is not numbered.</p> <p>The District Valuation Book for Much Hoole was inspected in the County Records Office and it was noted that no deductions were listed for any of the numbered plots through which the application route ran.</p>
Investigating Officer's Comments		<p>The maps covering the application route are incomplete so little inference can be drawn. From the information available the route did not appear to be considered to be a public vehicular route in the early 1900s – which would have most probably been excluded from the numbered plots. In addition, it appears that the owners of the land crossed by the route from at least midway between point B and point C through to point J did not acknowledge the existence of any public rights of way across the plots through which the application route ran as part of the taxation process.</p>



25 Inch OS Map

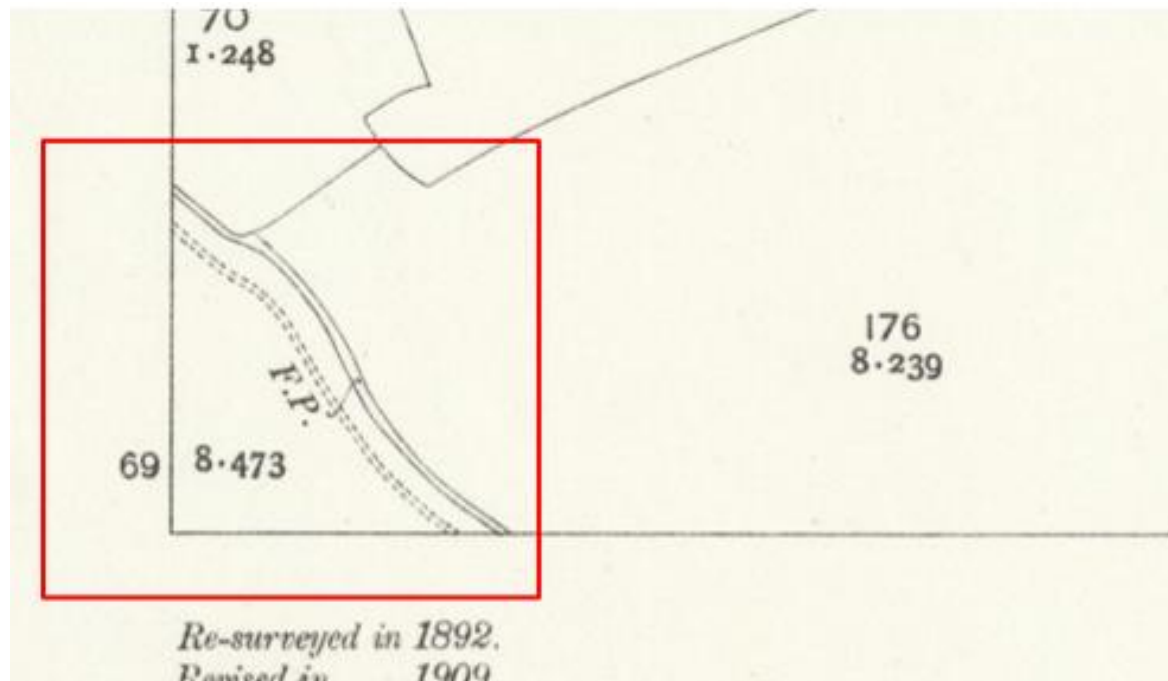
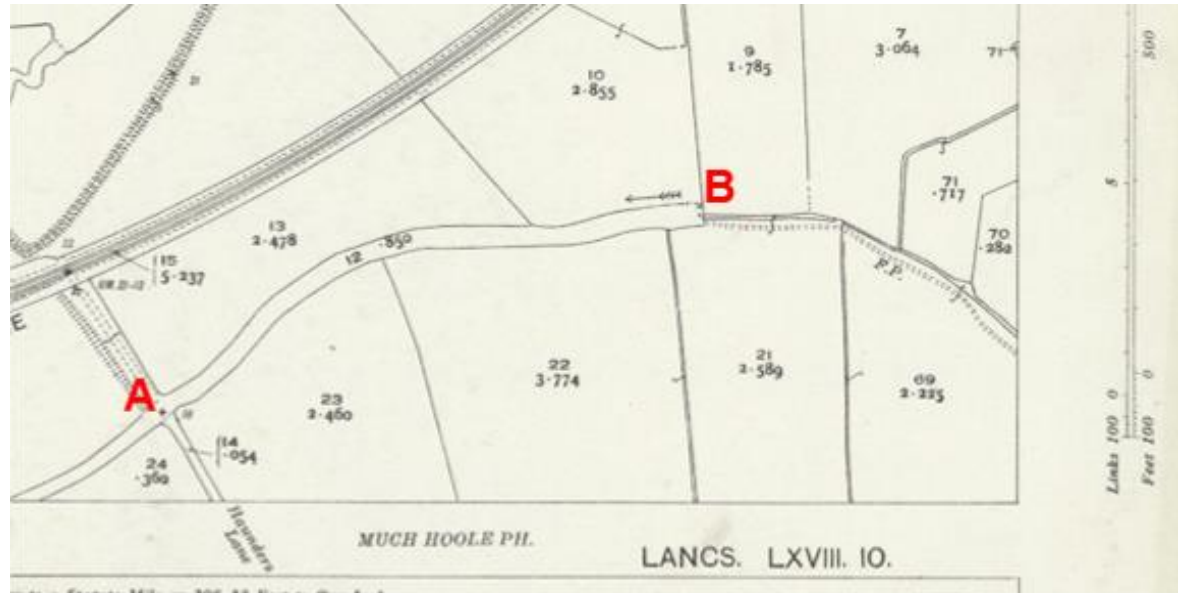
LXVIII.10

LXVIII.11

LXVIII.15

1911

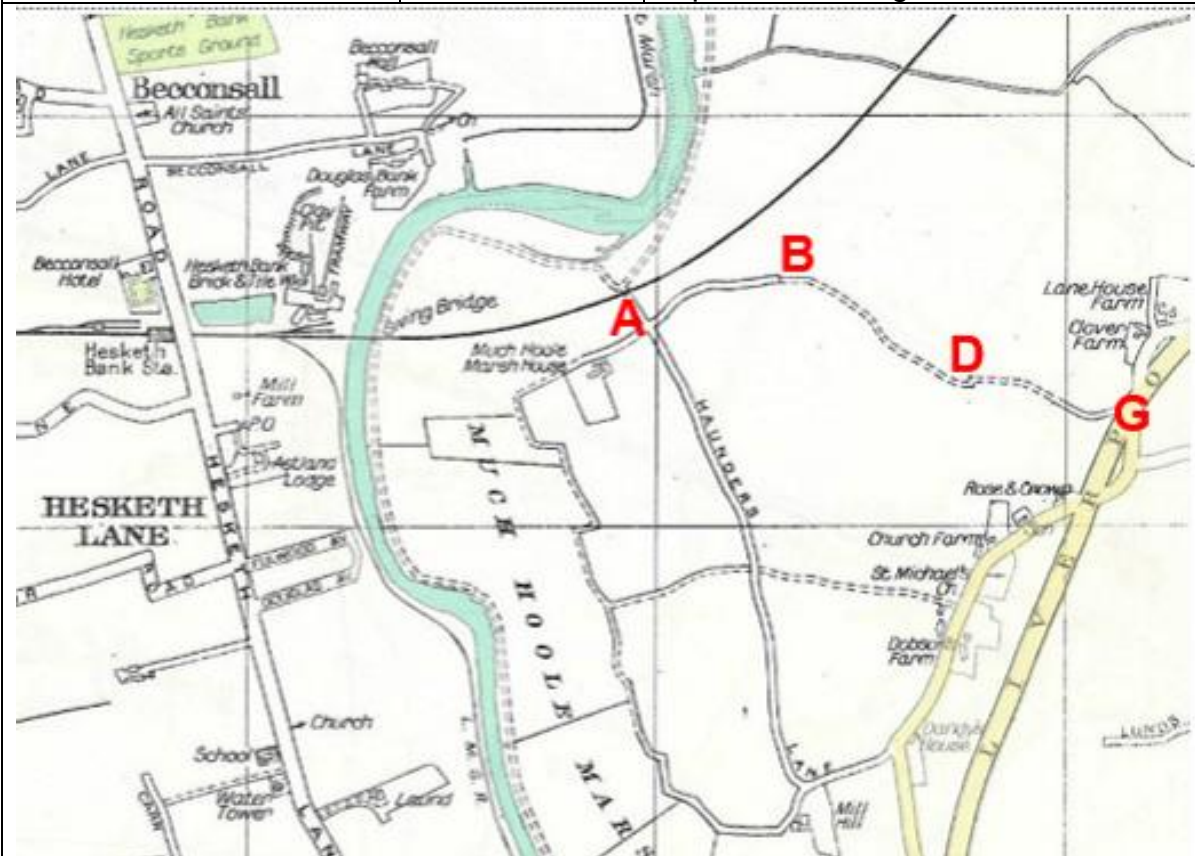
Further edition of 25 inch map (surveyed 1891-1892, revised in 1909 and published in 1911.





<p>Observations</p>		<p>The application route is shown in the same way as it is shown on the earlier edition of the 25 inch OS map. Between point A and point B it is shown as a wide fenced route consistent with how Haunders Lane is shown. From point B it is annotated as a footpath throughout its remaining length crossing 6 field boundaries before reaching point F.</p> <p>From point E Green Gate Lane is no longer shown and between point E and the eastern side of that field the unbroken line representing a boundary feature separating the route marked as the footpath from the historical route of Watery Lane is no longer shown.</p> <p>From that point to Liverpool Road (point G) the historical route is shown between double fences with a stream running within those boundaries.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and appeared to be capable of being used – at least on foot. Use on horseback would be dependent on whether access was available through the various field boundaries via gate, gap or stile and cannot be confirmed by looking at the map although the annotation "F.P." suggests not.</p> <p>The historical route from point E through to the eastern end of that field either no longer physically existed or was confined to the narrow strip south of the stream; it is likely that the</p>

<p><b>Authentic Directory of Lancashire Geographia</b></p> <p><b>Map of South by</b></p>	<p>Circa 1934</p>	<p>historical route was not in use.</p> <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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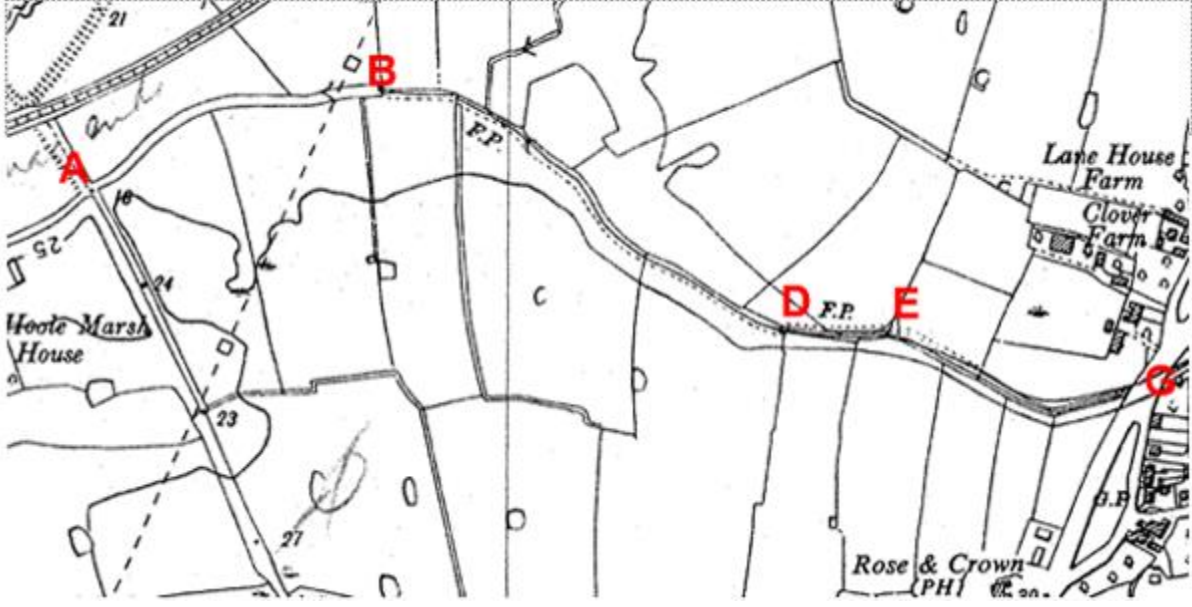
<p>Observations</p>		<p>The full length of the historical route or the application route is unnamed but shown in sufficient detail to show that the first section between point A and point B was a substantial fenced route and the 'kink' at the approximate location of where it crossed the watercourse (point D) suggests that the route shown is the adjacent footpath</p>
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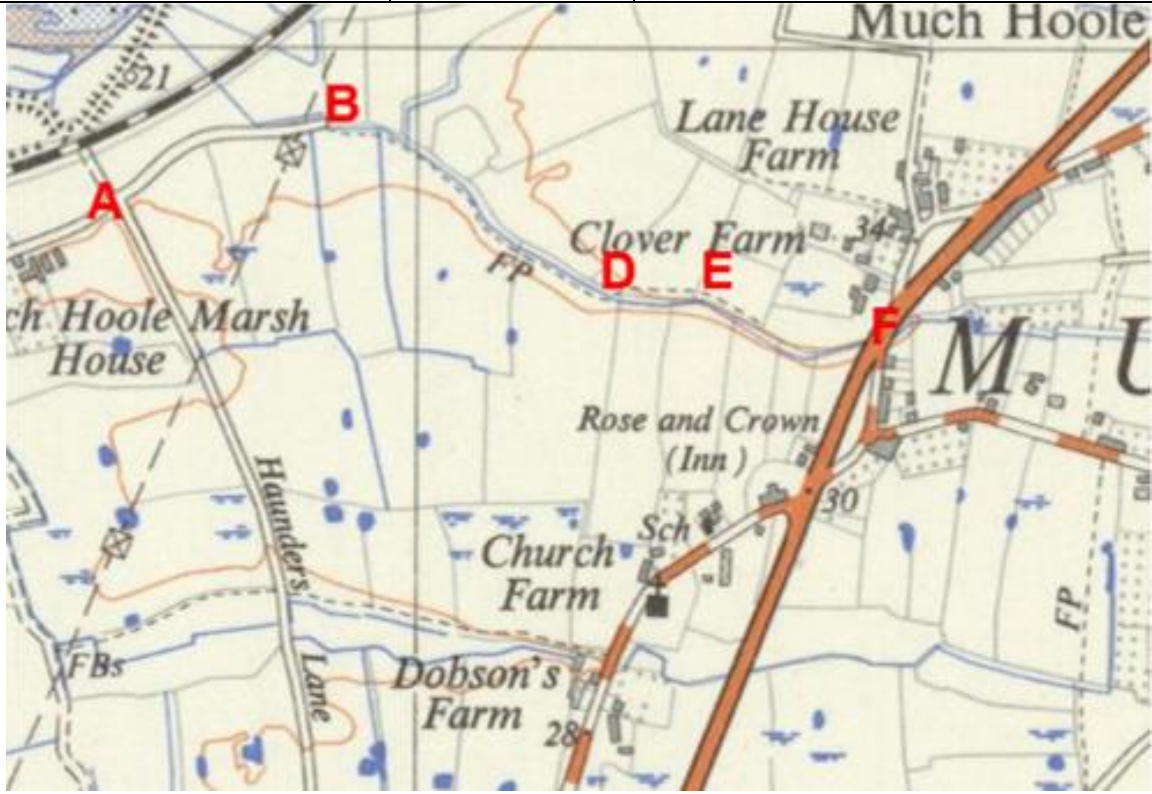
		(not Watery Lane) 7-8-FP2. However the eastern end approaching Liverpool Road (point F or G) was also shown as a double fenced route suggesting that the route shown was Watery Lane.
Investigating Officer's Comments		A route approximating to the application route/historical route existed in the 1930s and is shown in the atlas consistent with how other nearby routes of various statuses are shown. No inference can be made regarding the nature of use (i.e. whether it was on foot, horseback or vehicle) at that time and the scale of the map means that it is not possible to determine whether it was the application route, historical route or a mixture of the two that was actually shown.
<b>Aerial Photograph<sup>2</sup></b>	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 can be viewed on GIS. The clarity is generally very variable.



<sup>2</sup> 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 can be clearly seen on the photograph between point A and point B with a track consistent with vehicular use extending north from point B. Between point B and point F the application route and historical route are not visible but can be located by reference to the fact that they follow the watercourse and field boundaries.
Investigating Officer's Comments		It is not possible to determine from the aerial photograph whether the full length of the application or historical routes were passable in the 1940s.  The surface is not visible along the full length suggesting that use of much of its use by the 1940s may have greatly diminished or ceased except for use by farm vehicles between point A and point B.
6 Inch OS Map Sheet 42SE	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The application route is shown as a substantial fenced route from point A through to point B. From point B through to point D a dashed line is shown along the field edge and annotated as a footpath. At point D a

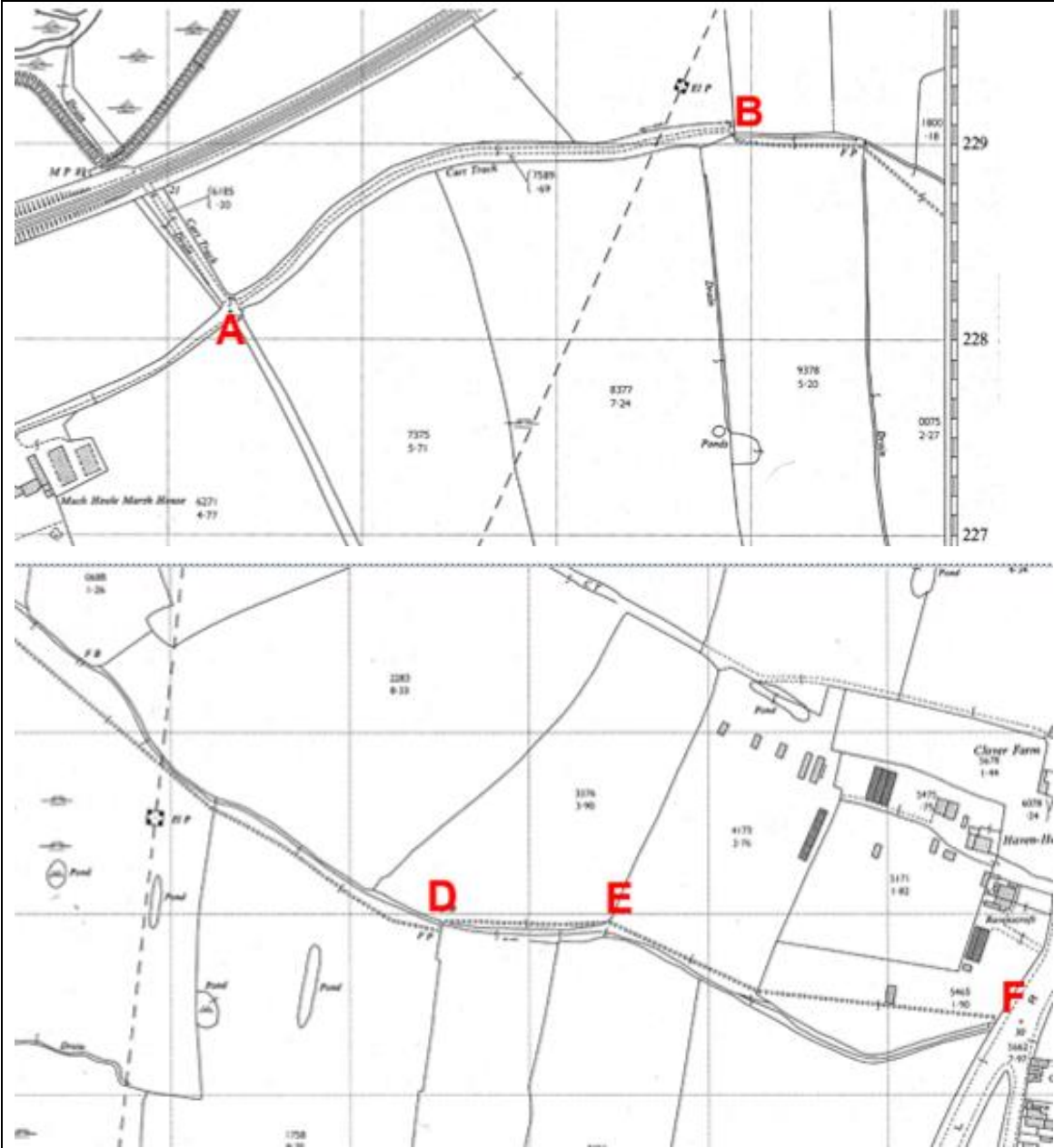


		<p>footpath is shown to cross the watercourse and continue to point E annotated as a footpath. From point E it continues along the field edge to a field boundary from where it appears to follow Watery Lane through to Liverpool Road (point G).</p>
Investigating Officer's Comments		<p>The route is shown consistent with how it was shown on the Street Gazetteer detailed above. The map evidence does not provide strong support of use of the route by horses as a through route at that time.</p>
OS 1:25 000 Map Sheet SD 42	1955	<p>OS 1:25,000 scale map revised between 1908 and 1951 and published 1955.</p>
		
Observations		<p>The application route is shown in the same way as it is shown on the 6 inch OS map detailed above. Both maps show a route from point B to east of point E annotated as a footpath but then do not show the section from there through to Liverpool Road.</p>
Investigating Officer's Comments		<p>The application route existed and appeared to be capable of being used – at least on foot. Use on horseback would be dependent on whether access</p>



		<p>was available through the various field boundaries via gate, gap or stile and cannot be confirmed by looking at the map although the annotation "F.P." suggests not. It appears that Watery Lane from point B through to Liverpool Road may no longer have been in use although the small scale of the map means that this is not entirely clear.</p>
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<p><b>1:2500 OS Map SD 4522 and SD 4622</b></p>	<p>1963-4</p>	<p>Further edition of 25 inch map reconstituted from former County Series and revised in 1962-1964 and published 1963-1964 as National Grid Series.</p>
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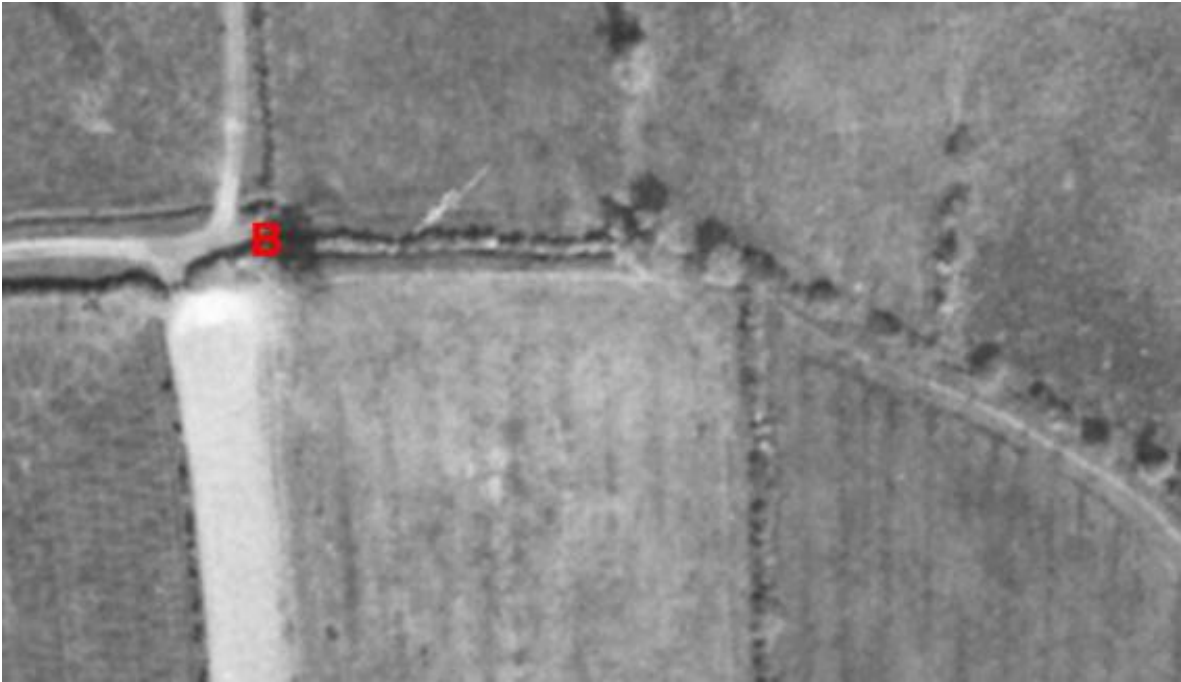
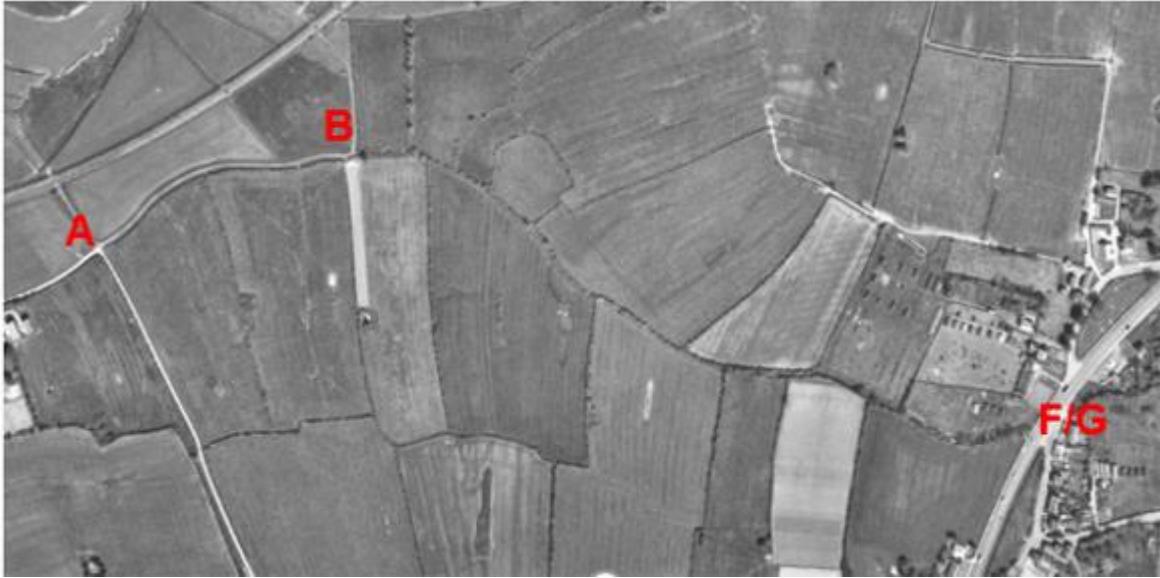
<p>Observations</p>		<p>The application route between point A</p>
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		<p>and point B is again shown as a substantial fenced route labelled as a 'cart track' on the map. Beyond point B a route is marked as a footpath through to point D taking a more direct line than hugging the field edge. There is no crossing point at C. At point D the footpath is shown crossing the watercourse and continuing north of the watercourse to the next field boundary, straight to a further boundary from where a direct route to point F is shown across the field; crossing 5 field boundaries between point A and point F.</p> <p>Unlike on previous maps there are now 3 culverts or bridges shown across the watercourse, which would obstruct passage along the historical route.</p>
Investigating Officer's Comments		<p>The application route appears capable of being used by vehicles between point A and point B. Beyond point B a route is shown through to point F depicted as a footpath and varying from the application route in two places. The straight lines do not indicate the line of the used path but that in the absence of a path on the ground it was OS practice to join access points (gaps, gates or stiles) with a straight line when the surveyor had no other information about the route between points. There is nothing to suggest however that the line of the application route could not be used where the two variations are shown although it does suggest there was little or no evidence of use. The application route appeared to be capable of being used at least on foot. The historical route of Watery Lane – other than the section A-B – no longer appeared to be in use which is confirmed by the 3 culverts or bridges across it.</p>
<b>Aerial photograph</b>	1960s	<p>Aerial photography flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June</p>



	<p>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>
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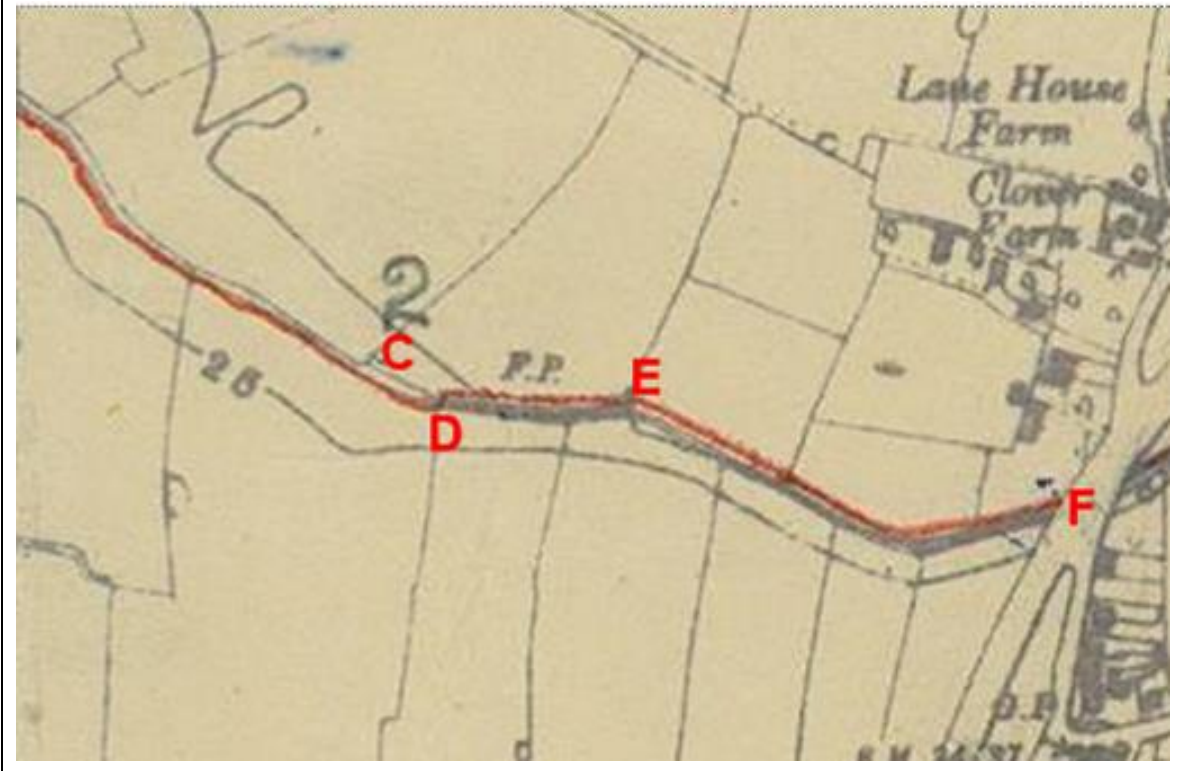


<p>Observations</p>	<p>The application route can be clearly seen on the photograph between point A and point B with a track consistent with vehicular use extending north from point B. Between point B and point F most of the application route is faintly visible as a trodden track consistent with pedestrian use.</p>
<p>Investigating Officer's Comments</p>	<p>No inference can be made with regards to the existence of public rights, but the</p>



		<p>aerial photograph supports the existence of the route in the 1960s. The route appeared to be used by farm vehicles gaining access to adjacent fields between point A and point B. Beyond point B the route showed up on the photograph consistent with the fact that it was recorded as a public footpath at that time.</p>
<p>OS 1:2500 map SD 4622-4722</p>	<p>1978</p>	<p>OS map revised 1977 and published 1978.</p>
<p>The map shows a route starting from the left, crossing a watercourse at point C (a culvert), then crossing at point D (a footbridge), and continuing through points E and F. The route is marked as a 'Path (u m)'. Two fields are labeled with their numbers and areas: 3376 (1.578ha, 3.90) and 4173 (1.522ha, 3.76). A pond is shown on the left side of the map.</p>		
<p>Observations</p>		<p>The route is shown in the same way as it was shown on the 1963-64 edition of the maps with one exception. A culverted crossing of the watercourse is shown at point C – which is now used by the public walking the length of the footpath because the footbridge at point D is no longer in existence. However, in 1973 the route of the footpath is still shown to cross a footbridge at point D.</p>
<p>Investigating Officer's Comments</p>		<p>The application route still appeared capable of being used by vehicles between point A and point B. Beyond point B a route is shown through to point F depicted as a footpath and appeared to be capable of being used at least on foot crossing the watercourse via a footbridge at point D but with access also possibly being available via a culverted crossing which may have been suitable for horses at point C. The historical route of Watery Lane – other than the section A-B – no</p>

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



DISTRICT	<i>Preston Rural District</i>	PARISH	<i>Much Hoole</i>	No.	<i>2</i>
MAP SHEET No.	<i>2, 4 B</i>	LENGTH	miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>Field Foot Path</i>				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>Entrance from Liverpool Rd. West Side</i> <i>Through swing gate into field, crosses brook wooden plank</i> <i>continues on to old road, over L.M.R. no stile here and joins</i> <i>to 1 foot path.</i> <i>Stiles in fair condition and foot path used fairly often.</i>					
SURVEYED BY :-		Name	<i>Fred Barker</i>		
		Address	<i>Charon Villa</i>		
Date		<i>Byang 3<sup>rd</sup> 1951</i>			
		<i>Hoole 2, Preston</i>			

Observations

The parish survey map shows the route that the parish council considered to be a public footpath running along the enclosed section of track between point A and point B. It then shows the route following along the south side of the field boundary and crosses the watercourse at point D. The route to be recorded as a public footpath then continues along the north side of the field boundary south of which is the bounded watercourse, through to point F. The Parish Survey card describes the route as starting on Liverpool Road and passing through a swing gate (point F) into a field and refers to it crossing the brook by way of a wooden plank. The locations of stiles are not marked but there is a comment that they were in good condition and that the path was well used. Footpath Much Hoole 2 was recorded as continuing to the 'old road' and then over the railway to connect to Footpath 1. It is not clear whether the reference to 'old road' referred to the application route between point A and point B or whether it referred to Haunders Lane or the continuation of the route of Footpath Much Hoole 2 north of point A.

Draft Map

The Parish Survey map and cards for



		<p>Much Hoole were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route was shown as part of the footpath and there were no representations or objections made to the County Council about what was shown or omitted. The historical route of Watery Lane from point B through to point G was not shown.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route was shown as part of Footpath Much Hoole 2 and there were no representations or objections made to the County Council about what was shown or omitted. The historical route of Watery Lane from point B through to point G was not shown.</p>
<b>The First Definitive Map and Statement</b>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



<p>Observations</p>		<p>The application route was recorded as part of Footpath Much Hoole 2. The thick pen used to draw the routes on the First Definitive Map means that it is not possible to determine the exact position of the route i.e. whether it was intended to run on the north or south of the watercourse, whether it crossed the watercourse or was consistent with the historical route of Watery Lane is unclear but it is arguable that it followed the lines marked FP on the base OS.</p>
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<p><b>Definitive Map of Public Rights of Way (First Review)</b></p>	<p>1966</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 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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<p>Observations</p>		<p>During the course of this investigation it was discovered that the historical route between Haunders Lane and Liverpool Road only followed the route recorded as 7-8-FP2 between point A to point B on the Committee plan and that the rest of the route ran immediately north of the footpath between point B and point C and immediately south of the footpath between point C and point G. It has been noted that the thick dashed line used to denote the route of the footpath on a relatively small scale (6 inch to the mile) OS map means that it is difficult to conclude that the route drawn on the current Definitive Map crosses the watercourse at point D (as shown on earlier maps) as the dash used to show the route crossing the watercourse is more towards point C, where a culvert now exists, but reference to Ordnance Survey maps and the Parish Survey, Draft and Provisional Maps suggest that the correct crossing point was at point D.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that the application route was considered to be anything other than a public footpath to be recorded on the Definitive Map by the Surveying Authority. There were no objections to the fact that it was recorded as a public</p>



		<p>footpath when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. The stiles referred to in the Parish Survey Card suggests that it was only usable on foot at that time.</p> <p>The historical route known as Watery Lane, with the exception of the length A-B, was not recorded on the Definitive Map and at no stage during the process did it appear to have been considered to be a public route. This concurs with the historical map and documentary evidence examined whereby it appears that the historical route of Watery Lane fell out of use, probably in the late 1800s use of a route on foot continued or began, running along the historical route A-B and then adjacent to the 'old' route through to Liverpool Road.</p> <p>The fact that the historical route was not recorded on the Definitive Map does not necessarily mean that it does not still exist.</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the</p>

		<p>Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>Neither the application route nor historical route, where it varies from the application route, were recorded as a publicly maintainable highways in the County Council's records.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that neither route is recorded as a publicly maintainable highway (other than that part recorded as a public footpath on the Definitive Map and Statement) does not mean that it does not carry any other public rights of access so no inference can be drawn.</p>
<p><b>Highway Stopping Up Orders</b></p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>



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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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 or historical 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.
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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

This investigation has been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

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

In this particular case the application was for the route recorded as part of 7-8-FP2 to be upgraded to bridleway but as detailed earlier in this report the evidence suggests that the original historical route varied from the application route east of point B.

Looking initially at the historical route:

There appear to be three key documents suggesting that in the mid-1800s a route ran from Haunders Lane through to Liverpool Road alongside and partially consistent with the application route and was named 'Watery Lane'. This was considered to be a vehicular route which could have been used by the public. Hennessey's Map of 1829-1830 shows Watery Lane as a cross road consistent with how other routes with public vehicular access are shown. Just over 10 years later the route is shown on the Tithe Map as a bounded through route which appears to be capable of being used and which was described in the Tithe Award as a road listed at the end of the Award with other routes known to have public vehicular rights.

The First Edition OS 6 inch map shows Watery Lane which is again shown as a fenced through route and the significance of the name is clear as within the boundaries of the lane is a watercourse which flows from Liverpool Road through to part way between point A and point B. Neither Hennessey's Map, the Tithe Map nor the 1<sup>st</sup> Edition 6 inch OS map showed any lines across the route which could have limited access.

Later maps examined show subtle but significant alterations. From the late 1800s it appears that use of the route described in the Tithe Map as a road declined, most probably because of the presence of the watercourse. Throughout its history (from the mid-1800s onward) the route between point A and point B is consistently shown as a wide bounded route which would be open to all forms of traffic.

From the late 1800s however, travelling from point B eastwards Watery Lane was no longer separated from the adjacent farmland for the entire length. There were at least 3 gates across the lane. The original Watery Lane route from point D through to Liverpool Road was still shown but with lines across it at points D and G, although there was nothing shown to prevent exit from G via point F, and over the following years appears to have completely fallen out of use. This is consistent with the name, Watery Lane; the consistent depiction of a watercourse along the route; the shallow



fall of the lane; the 'winter footpath' alongside and the sunken nature of the lane now. It is the sort of road which was presumably viable in the 18<sup>th</sup> Century but as traffic increased became unsustainable and unusable.

The application route:

From point B Footpath 7-8-FP2 was crossed by a number of field boundaries which would require the presence of gates, stiles or gaps to continue along the route. A route must have been evident on the ground on the south side of Watery Lane as it was recorded by the OS as a footpath parallel to Watery Lane through to point D where a route, denoted as a footpath, crossed the watercourse to continue along the northern side of Watery Lane through a number of fields to point F (or on a few maps prepared in the 1900s shown linking back into Watery Lane to exit onto Liverpool Road at point G). This suggested that beyond point B the historical route of Watery Lane was unsuitable for use on foot hence a footpath running parallel to it became established. The route recorded in the 1950s as a public footpath appears to follow the historical line from point A through to point B and then takes the route denoted as a footpath on many of the Ordnance Survey maps examined, running parallel to the historical route of Watery Lane, initially on the south side then to the north, to exit onto Liverpool Road at point F.

Map and documentary evidence from the late 1800s onwards is not strong in support of the assertion that the route applied for (i.e. 7-8-FP2) was or could be used by the public as a bridleway from Haunders Lane at point A through to Liverpool Road at point F and there is no modern user evidence in support of the application supporting the dedication of bridleway rights.

However, the investigation detailed above has also looked at the route shown on Hennet's Map of 1830 and depicted on the Tithe Map and mapped on First Edition 6 inch OS map as Watery Lane, which included the application route A-B. In that instance there appears to be some evidence of a route which may have been capable of being used on horseback in the mid-1800s between points A-B and then continuing along the historical route marked on the Committee plan through to point G and although finely balanced it is the Investigating Officer's view that there is sufficient evidence available from which to infer dedication of bridleway, or possibly carriageway, rights at that time which have not been stopped up in law and therefore still remain .

## **Head of Service – Legal and Democratic Services Observations**

### **Landownership**

From point A to point B the application route crosses land which is unregistered, then from point B to point F the application route crosses several parcels of land in private ownership.

Information from the Applicant

The application is based entirely on historical map and documentary evidence.



The applicants supplied extracts of the following maps/documents in support of the application and all are considered above:

1<sup>st</sup> Edition 6 inch OS map published 1848  
Hennet's Map published 1929  
2<sup>nd</sup> edition 1 inch OS map published 1896  
1<sup>st</sup> edition 25 inch OS map published 1893  
Bartholomew's half inch map published 1920  
OS 1:25,000 scale map published 1955  
Tithe Map and Award for Much Hoole 1841

#### Information from Others

An owner of land adjoining the application route responded to consultation to object to the application and to confirm the land in their ownership. They stated that they have lived in the area for more than 20 years and opined that the application route had not been used as a bridleway in more than 20 years and would add no convenience for the public or the residents of the area.

Acland Bracewell responded to consultation on behalf of Lilford 2005 Limited, an adjoining landowner. They confirmed the land in their ownership and objected to the application on three points, 'existing agricultural use', the 'character of the footpath' and its 'designation and historic use'.

They noted that part of the affected land in their ownership, has been subject to an Agricultural Holdings Act (1986) tenancy agreement (AHA) since 2nd October 1978, between Lilford 2005 Limited and Bracewell Farms Limited. The tenancy originally covered 61.959 acres (25.07ha) before 8.706 acres (3.52ha) were sold on 29th May 2015, subject to tenancy. Thus, both the sold and the retained parcels continue to be subject to the AHA (1986) tenancy agreement.

They further noted that the application route continues to the east, running through a separate parcel of land, also owned by Lilford 2005 Limited and let to Bracewell Farms Limited on an AHA (1986) tenancy, dated 29th January 1976.

The respondent highlighted that both of these AHA (1986) tenancy agreements contain a restrictive covenant which limits the use of the property to agriculture, only. They went on to note that s96(1) of the Agricultural Holdings Act 1986 states that *'agriculture' includes: 'horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly'*.

They noted that this demonstrates that both parcels of land have been used solely for the purposes of agriculture for over 40 years and whilst the grazing of livestock is permitted, the exercising and 'hacking out' of horses is not. They opined that this provides further supporting evidence to suggest the footpath has never been used by horse riders or cyclists.



Safety concerns were raised with the respondent opining that upgrading the footpath to a bridleway would be dangerous due to the farm machinery moving along the application route.

The character of the footpath was raised with 5 points being noted which the respondent considered would make the route unsuitable for equine use. These generally raised more detailed concerns over safety.

The first point again noted the use of agricultural machinery along the route, drawing particular attention to a sharp bend and raising concerns over visibility.

The second point noted the narrowness of the route on the ground, being less than 3 metres and highlighting the risk of crop damage if riders were to veer off the route, ride two abreast or be spooked by farm machinery.

Steep ditches on each side of the application route were noted as a third issue, the respondent opining that they posed a significant risk of serious injury.

The condition of the surface was also highlighted with the respondent noting that part of the route is loose hardcore, they raised concerns of horses tripping, stating that the surface is not properly bedded in.

The final point of concern raised related to route joining the A59, the respondent noted this is a busy road and opined that this would pose huge risks for horse riders and motorists.

Finally, the respondent considered the designation and historic use of the route. They noted the existing footpath status of the application route and opined that it has therefore never been used for the purposes of horse riding or cycling and has never previously being designated for these uses. They opined that the fact that the application route has been used to provide access for agricultural machinery for over 40 years reinforces the fact that the footpath has never been used by cyclists or horse riders.

Cape Limited, a nearby landowner, contacted the council to object to the application and to note the land in their ownership. They stated that they have owned the nearby land for more than 20 years and opined that the application route had not been used as a bridleway in more than 20 years.

A local resident also contacted the council to object to the application. They stated that they have lived in the area for more than 60 years and opined that recording the application route as a bridleway would add no convenience for the public or the other residents of the area.

#### Information from the Landowner

Bracewell Farms Limited responded to consultation to object to the application and to confirm the land in their ownership, they also noted that, to their knowledge, the route had never been used as bridleway and they could therefore see no reason why bridleway would add to the enjoyment of the public or residents of the area.



Another landowner responded to consultation to confirm the land in their ownership.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### **Conclusion**

In this matter there is no express dedication and no user evidence and so Committee is asked to consider whether there is on balance evidence from which to infer dedication of bridleway rights at common law.

Looking firstly at the application route:

There is no user evidence and so the evidence is historical documentation and whether there is sufficient evidence to infer on balance that the owner(s) intended it to be more than a footpath. The documentary evidence is summarised and evaluated earlier in the report.

It is suggested that the evidence indicates that section A-B was part of a historical route close by and the evidence is sufficient to infer that this section carries higher bridleway rights as part of the historical route (see below) . The remaining part of the application route B-C-E-F follows the black dashed line on the committee plan and from points B to F is not within the old boundaries of the historical route. The evidence above shows that the application route B to F as a pedestrian route is documented as such from the 1890s and recorded as footpath on the Definitive Map and Statement and it is suggested to Committee that there is insufficient documentary evidence to support a finding of dedication of bridleway rights on B-F and insufficient evidence for an order to be made for this part of the application route.

Secondly looking at the historical route. The documentary evidence is summarised and evaluated earlier in the report. Having found evidence of a historical route A-G shown marked green on the Committee plan it is suggested that how it is documented historically on balance is sufficient evidence from which to infer that it carried at least bridleway rights from many decades ago and Committee may be satisfied that and Order be made that this historical route be added to the Definitive Map and Statement as a bridleway which would involve an upgrading to bridleway of section A-B of the application route.

#### **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**

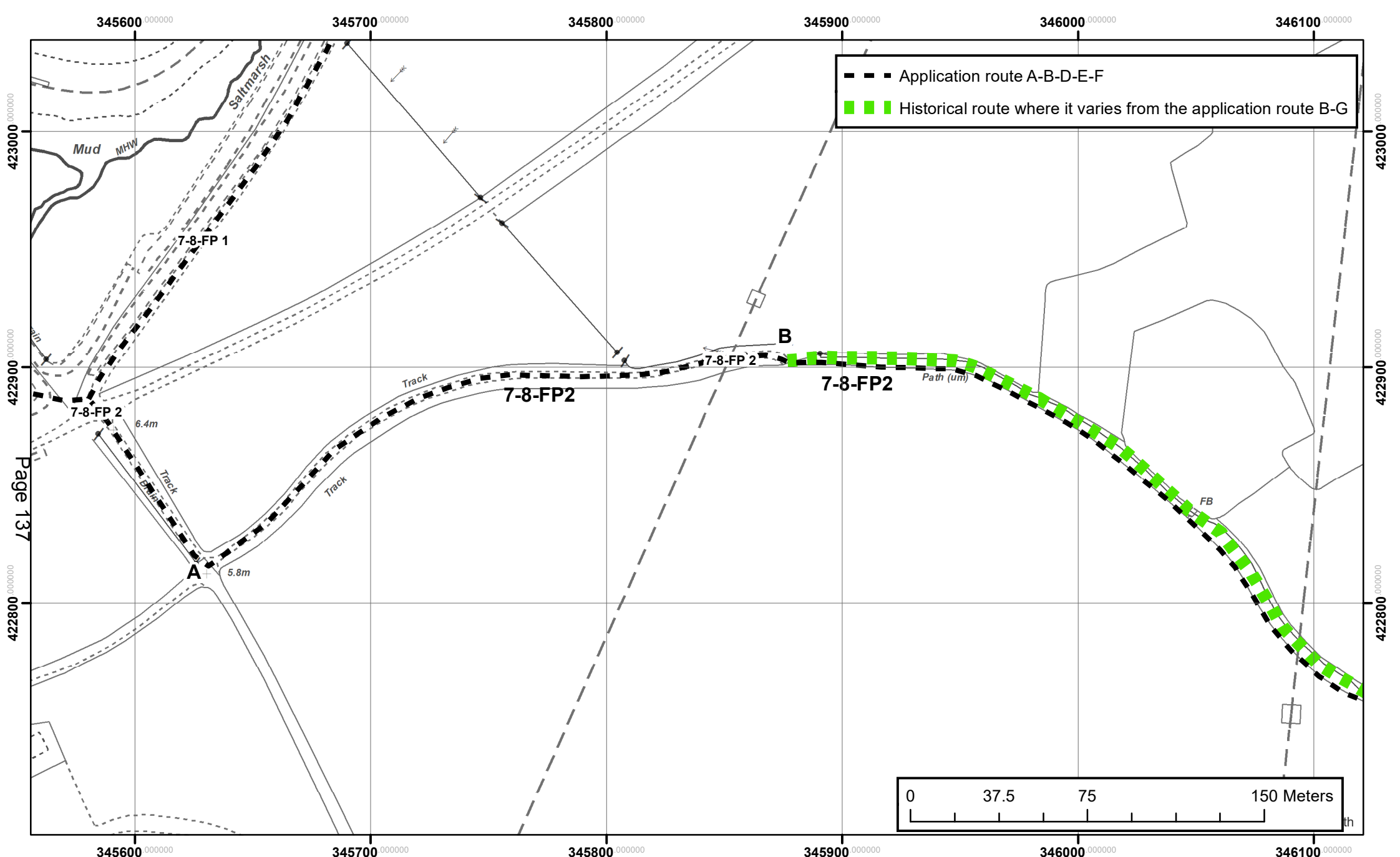
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-626		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

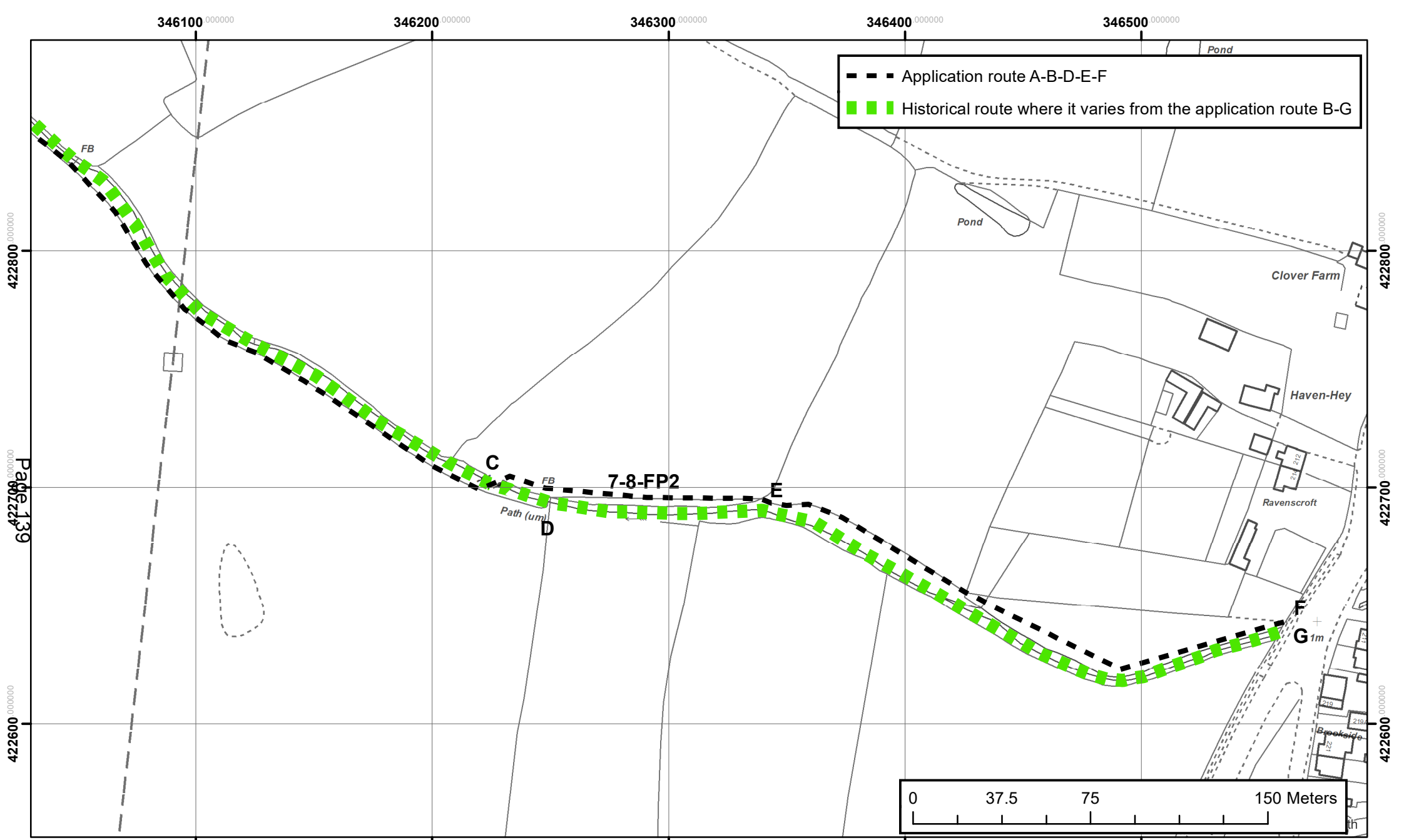






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**Public Rights of Way**  
 PROW@lancashire.gov.uk  
 01772 530317

Wildlife and Countryside Act 1981  
 Upgrading of Footpath to Bridleway from Haunders Lane to Liverpool Road, Much Hoole

1:2,000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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**Plan 2/2**



**Regulatory Committee**

Meeting to be held on 25 January 2022

**Part I**

Electoral Division affected:  
Morecambe North

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Investigation**

**Addition of Bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest**

(Annex A and Appendix A refer)

Contact for further information quoting file reference 804-701:

Ansar Sadiq, 01772 532435, Paralegal Officer, County Secretary and Solicitors Group, [Ansar.Sadiq@lancashire.gov.uk](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

**Recommendation**

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, be not accepted.

**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 bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

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

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

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

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

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

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

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

## **Consultations**

Lancaster City Council

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

### Slyne with Hest Parish Council

Slyne with Hest Parish Council fully supports the application. Slyne with Hest Parish Council stated local knowledge suggests that the track has been blocked by a gate under Morecambe South junction for some time. If the bridleway is fully opened up it will make a safer route for horse riders and pedestrians between the village and Hasty Brow Road into Torrisholme. The only observation the Parish Council raised is the safe access onto Hasty Brow Road from the application route and would suggest the appropriate warning signs be placed on the road.

### 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	4632 6534	Junction of application route with western end of Bridleway 1-31-BW5 (Rakes Head Lane) and eastern end of Footpath 1-31-FP5a
B	4628 6516	Gate across application route
C	4625 6502	Gate across application route
D	4623 6489	Application route passes through tunnel under railway
E	4622 6483	Gate across application route
F	4628 6462	Gate across application route
G	4639 6443	Gate across application route
H	4641 6442	Gate across application route at junction with Hasty Brow Road

### Description of Route

A site inspection was carried out in October 2022.

The application route is approximately 1km long and is not recorded as a public right of way on the Definitive Map and Statement.

Access to the start of the application route is along Bridleway 1-31-BW5 known as Rakes Head Lane. The bridleway extends in a generally west south westerly direction from Hest Bank Lane crossing the Leeds Liverpool Canal via a hump bridge and then continuing to a point where it meets the West Coast Main Line railway between Preston and Carlisle. At reaching the boundary of the railway the bridleway turns to run south parallel to the railway for approximately 230 metres before turning west to pass under the railway and continues for a further 30 metres before the bridleway terminates at the junction with Footpath 1-31-FP5a and the application route (point A).

Before reaching point A it was noted that there was a fallen stone gatepost adjacent to the route consistent with the location of a line shown across the bridleway on Ordnance Survey maps dating back to the 1890s as detailed later in the report.

Immediately to the east of the fallen stone post a trodden route passes through the northern boundary of the lane (bridleway) to continue as a narrow enclosed path (Footpath 1-31-FP5a) to cross the Morecambe Branch Line at grade. The alignment of the footpath on the ground from the fallen gate post east of point A through to the railway crossing differs slightly to that recorded on the Definitive Map and Statement which records the bridleway terminating at the point marked A on the Committee plan and the footpath continuing west to the railway crossing from point A.



The application route runs south from the recorded junction of from Bridleway 5 and Footpath 5a (marked at point A on the Committee plan) through dense undergrowth on a narrow trodden path, although the full width of the route – which runs between silted up and overgrown drainage ditches bounded by fences is approximately 4 metres. To the west of the bounded route are some paddocks and stables which are primarily accessed from Rakes Head Lane immediately west of point A.

From point A the narrow-trodden path extends south along the application route to midway between point A and point B on the Committee plan where a trodden track departs from the application route providing pedestrian access into the horse field. A less trodden route continues through the overgrowth along the application route towards point B where the ground becomes very wet and it is necessary to stoop under a tree which has fallen across the route.

At the point marked B on the Committee plan the application route is crossed by a locked wooden gate with an adjacent 'V' shaped wooden stile. The ground around the gate and stile is very wet and waterlogged. There are no markings on the stile indicating whether it is for public or private use.

Beyond the gate and stile the route continues along the eastern edge of a pasture field. There is no trodden track and no indication where people walked after crossing the stile at point B. The ground crossed by the application route was very wet. There was evidence of the remains of ditches running along either side of a central strip of grass down which the application route runs. The ditches appeared to have been filled in and grassed over and land on either side of the route all formed part of one larger field. It was not possible to walk the line of the application route on the day it was inspected without getting very wet feet (even in walking boots) due to how waterlogged the land had become. The ground to the west was drier and it was possible to walk parallel to the route down to the field boundary at point C.

The application route then passed through a field gate on the boundary of two different landowners' fields. The metal gate was partly overgrown and wired up so that it was not possible to open it. South of the gate the route continued along the edge of a field adjacent to the hedge line towards the railway loop line (linking the main line to the branch line). There was no evidence of a track although at one-point bricks were visible in the surface where it looked like they had been deposited in a particularly wet spot – possibly so that a farm vehicle could travel along the edge of the field without getting bogged down.

On approaching the tunnel under the railway (loop line) conditions under foot were again very wet and muddy. The route passes under the railway (point D) and then through a gateway (no gate) to continue along the eastern side of a field running alongside a hedge to a gateway (point E) in that hedge where two metal field gates have been put across the gap and tied in position. It would have been possible to move them to allow for cattle which graze the fields or farm machinery to pass through.

The application route turns south south east through the gateway at point E and continues across a rough pasture field following what appears to be the grassed-over remains of a track. The field on either side of the route was wet and soft



suggesting that farm vehicles wishing to access the land would generally need to travel along the track unless there had been a dry period of weather.

The route passes through a muddy gateway (open on the day of inspection) located in the fence at point F on the Committee plan and then continued as a grass track crossing a further rough pasture field – with both undulating and boggy land on either side – through to a further metal gateway at point G and then an enclosed track for approximately 20 metres to a further metal gateway (locked) to exit onto Hasty Brow Road.

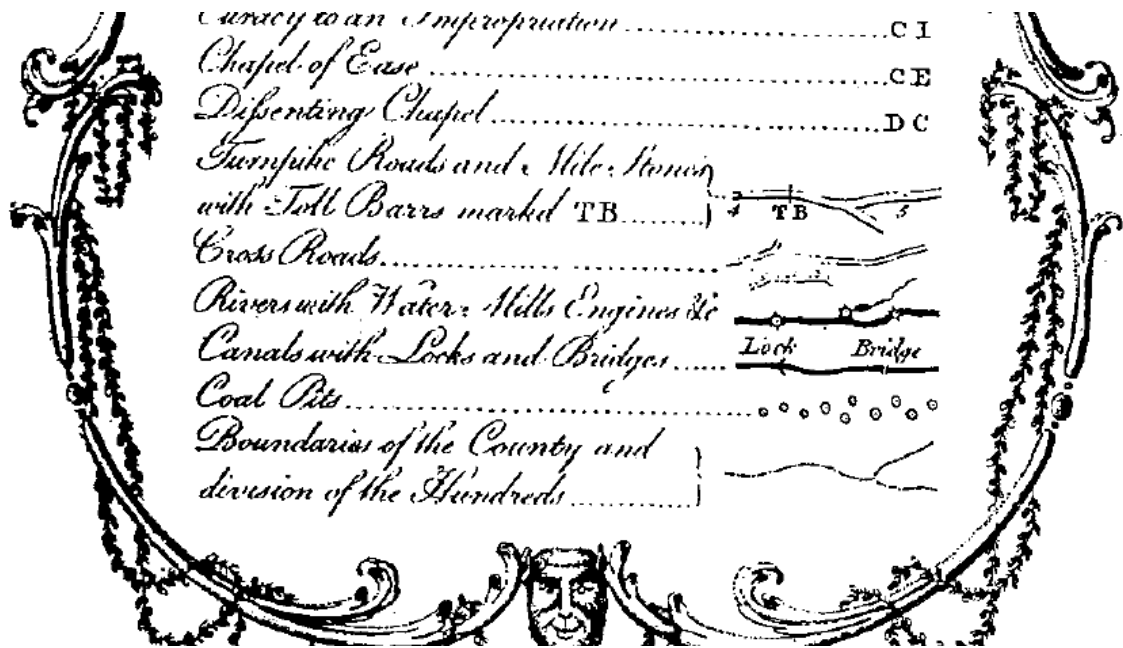
In conclusion there was evidence of pedestrian use of the route from point A to point B but it was not apparent whether this use was public or private or where those people using this part of the route were going or why. Some use may have been made of this section to access the horse fields but there was no evidence that horses or vehicles were using it and it was not the only – or main access to the fields.

There was no evidence to suggest that the application route from point B through to point H was being used on horseback or on foot. There was evidence – which was confirmed by the owner of the fields crossed by the route from point C through to point H that the track across the field between points E-H had been surfaced in the past to provide access to the fields and also for use by the Railway Company to maintain the rail infrastructure.

### Map and Documentary Evidence

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

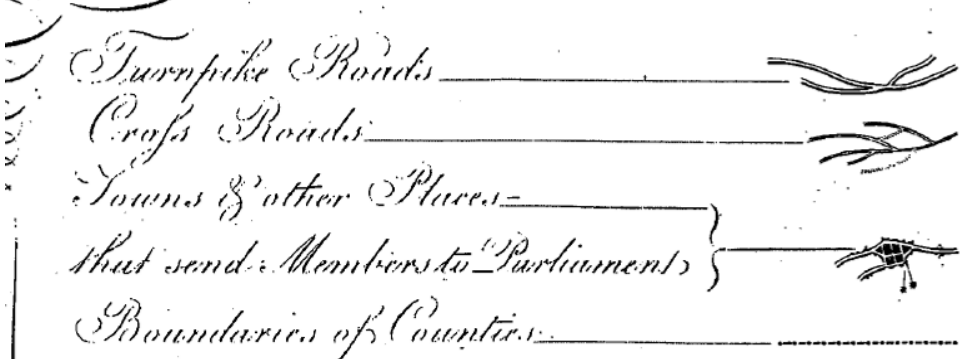
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



Observations		The application route is not shown. Rakes Head Lane – from which the application route starts - is not shown but Hasty Brow Road – to which the application route connects - is shown as a cross road.
Investigating Officer's Comments		The application route probably did not exist in 1786.
<b>Greenwood's Map of Lancashire</b>	<b>Map of 1818</b>	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public



roads and the two were not differentiated between within the key panel.

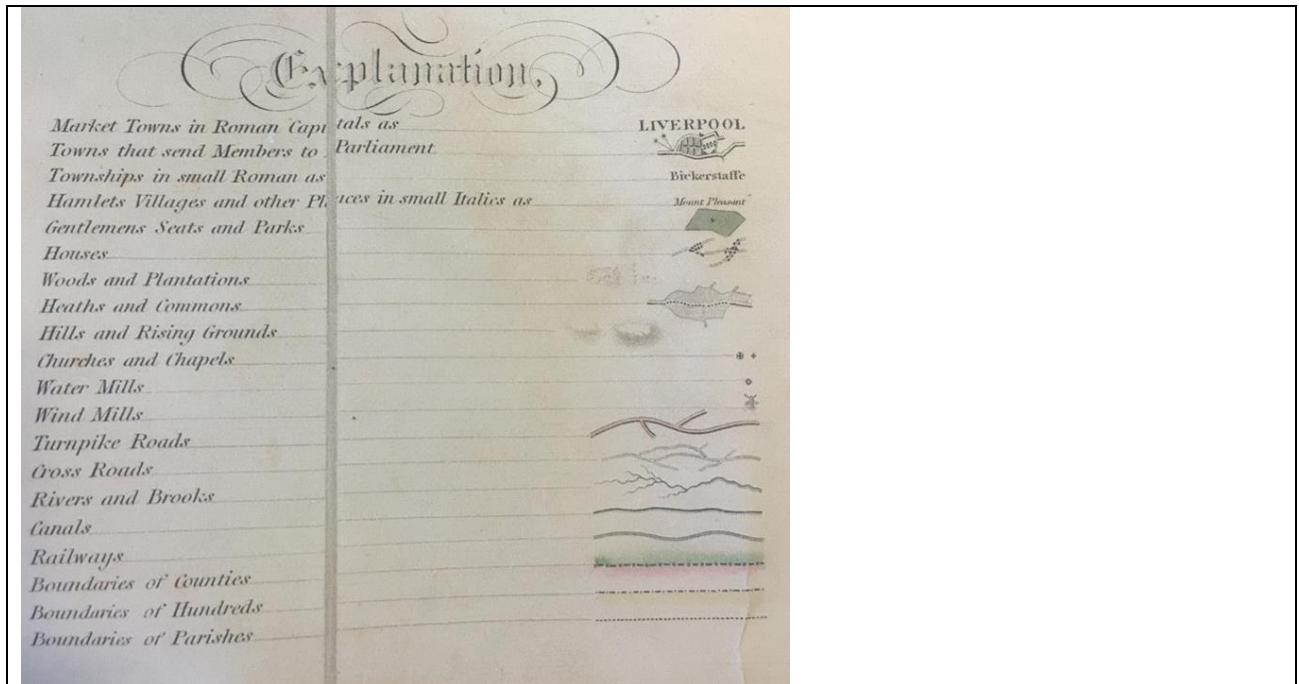


Observations		The application route is not shown. Rakes Head Lane is shown extending west as far as the Lancaster Canal and Townfield Lane is shown going west from Hasty Brow Road across the canal towards the land crossed by the application route but the route itself is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830.
<b>Hennet's Map of Lancashire</b>	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 71/2



inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



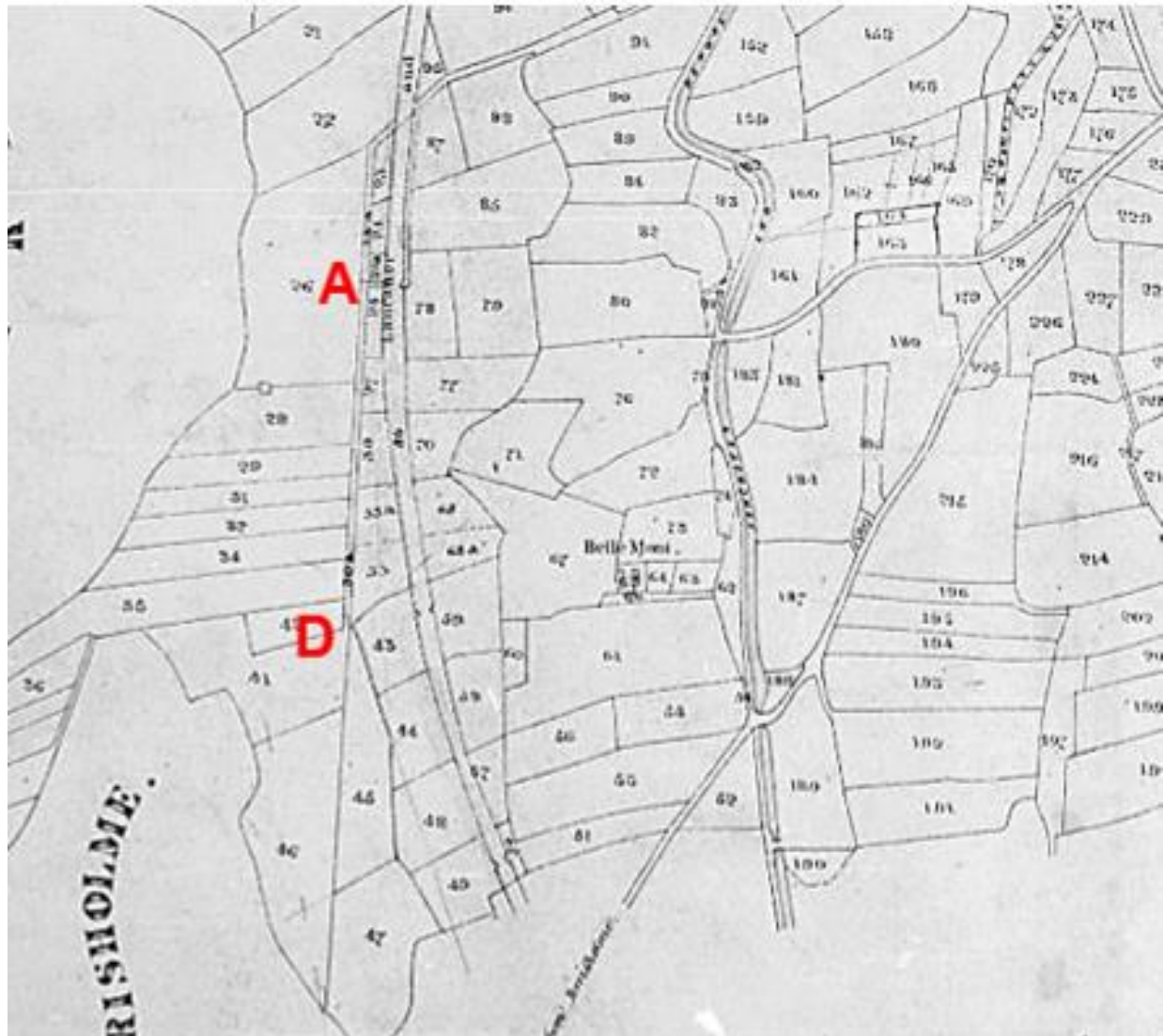


Observations		Rakes Head Lane is shown extending much further west from crossing the Lancaster Canal – possibly as far as the start of the application route at point A but the application route is not shown.
Investigating Officer's Comments		The application route probably didn't exist in 1830.
<b>Tithe Map and Tithe Award Apportionment for Skerton</b>	1841	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		The Tithe Map of Skerton includes the land crossed by the most southerly part of the route through to Hasty Brow Road. The application route is not shown on the map and the field through which it runs is numbered as plot 88 which was owned by Thomas Greene Esq. and occupied by Richard Gilcow. There is no reference to the existence of the application route.
Investigating Officer's comments		The southern end of the application route exiting onto Hasty Brow Road did not exist in 1840.
<b>Tithe Map and Tithe Award or Apportionment for Slyne with Hest</b>	1846	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





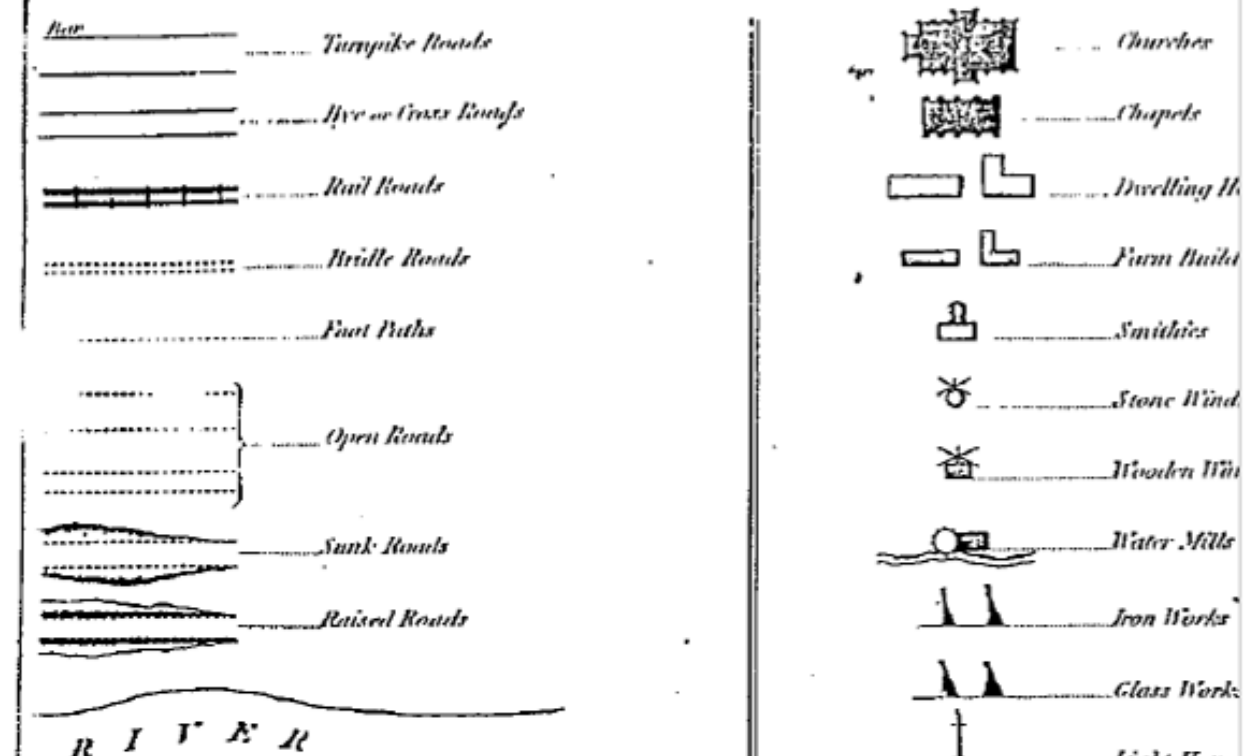
		143	Ditto	arable	6 1 21	0 4 2	2 6 9
		160	Mowbrick	pasture	4 3 12	0 2 9	1 11 1
					74 3 0	2 2 2	19 3 10
Tatham, William	Himself	232	Goodlands Parrock	pasture	1 2 30	0 1 1	0 12 7
Township of Slyne-with-Hest	Themselves	30a	Lane		0 3 14		
		240	Tithe Barn		0 0 10		
		243a	Pen Field		0 0 7		
					0 3 31		
	John Shaw	289	House and Garden		0 1 24	0 0 2	
	Henry Cumpety	291	House and garden		0 1 10	0 0 1	
Thomas, James	Stephen Onthwaite	56	Ost Field Close	arable	1 3 25	0 1 3	20 14 0

		132	Hest Bank Inn and Garden		0 1 17	0 0 0	0 0 13
		133	Garden		0 3 30	0 0 2	
Greene, Thomas, Esq.	James Gardner	208	Standerlands	meadow	1 2 38	0 0 6	0 0 11
		229	Gallows Close	arable	1 3 30	0 1 2	20 0 10
	Himself				1 2 32	0 1 1	40 12 2
		3	Plantation		3 2 22	0 2 3	0 13 0
		7	Waste adjoining Sea Shore		0 2 37		
		9	Ditto		4 0 24		
		24a	Old Road		3 2 0		
		114	Plantation		0 0 32		
		171	Bedlam Lane Wood		0 2 7		
		188	Plantation		1 1 21		
		271	Ditto		0 1 15		
		276	Ditto		0 2 34		
		292	Ditto		0 1 7		
		296	Ditto		0 0 24		
		354	Ditto		0 1 26		
		297	Ditto		0 0 10		
					0 0 27		



# PAPER 1837 XLI 405.

ADDED IN THE PLANS made under the ACTS  
RELATIVE TO TITHE MAPS in ENGLAND & WALES.



Extract from the British Parliamentary Paper 1837 Key of Symbols

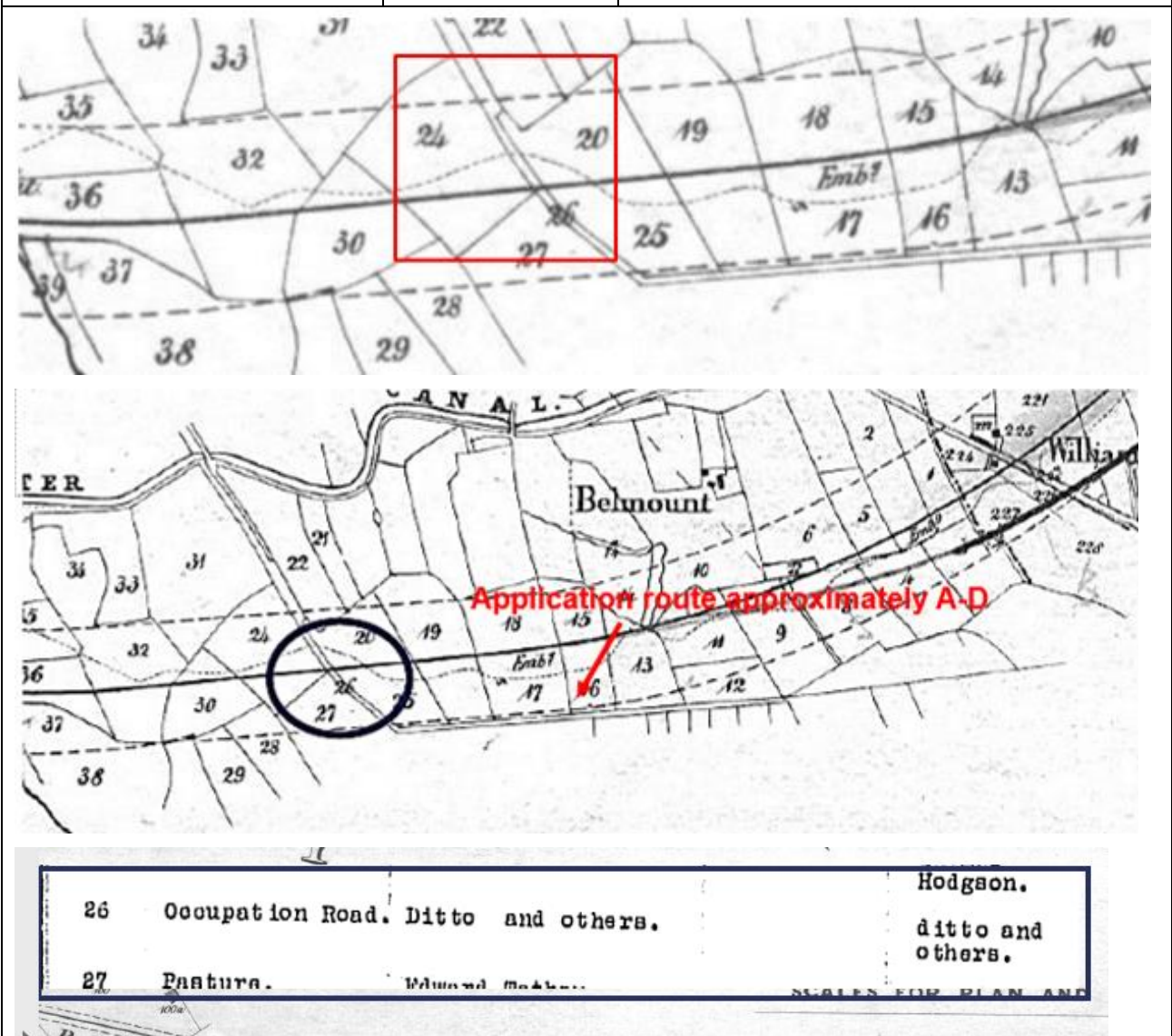
Observations

The Tithe Map for Slyne with Hest was prepared five years later than the Map for Skerton and covers most of the land crossed by the application route. The Lancaster to Carlisle railway is clearly shown passing through the parish to the east of the application route. Rakes Head Lane (1-31-BW5) is shown extending west from Hest Bank Lane crossing the canal and continuing as far as the railway. It is then shown running south along the eastern side of the railway to cross under the railway and join another bounded (fenced) route



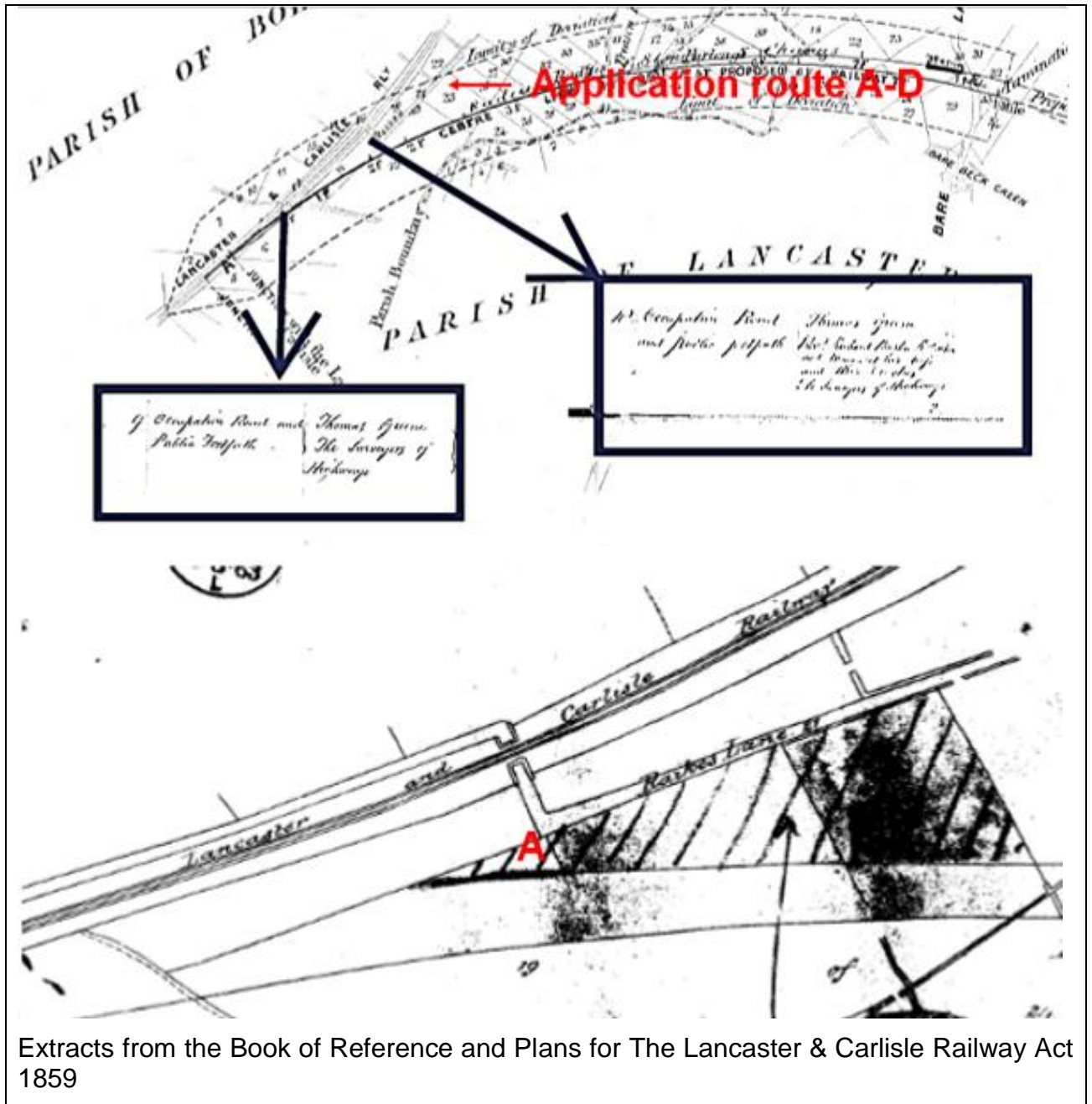
		<p>running along the side of the railway at point A. Neither Hest Bank Lane nor Rakes Head Lane are numbered on the map and it was noted roads now known to be public roads were not numbered on the map or recorded in the Tithe Award.</p> <p>The fenced route running north along the western side of the railway from point A was numbered as plot 24a. A line was shown across the southern end of the route close to point A and the fenced strip extended north for approximately 220 metres before turning to continue a short distance in a north easterly distance to the boundary of the railway immediately across from the point where Rakes Head Lane turned south. No railway crossing is shown suggesting that the original route of Rakes Head Lane may have been altered by the railway. Plot 24A was described in the Award as being an 'Old Road' owned and occupied by Thomas Green Esq. for which no Tithes were payable.</p> <p>The footpath (1-31-FP5a) is not shown on the Tithe Map but the application route is shown as a continuation of Rakes Head Lane extending in a south south westerly direction as a bounded route through to the approximate position of point D where it provided unrestricted access into a field numbered 41. The application route itself – unlike Rakes Head Lane – was numbered (30A). Plot 30A is described in the Tithe Award as a 'lane' owned and occupied by the Township of Slyne with Hest for which no Tithes were payable. Plot 41 was listed as pasture land owned by Richard Greene and occupied by Richard Gilloe with tithes payable.</p>
Investigating Officer's Comments		<p>The application route between point A and point D existed in 1845 providing direct access to a pasture field. The continuation of the route through to Hasty Brow Road was not shown. The route between point A and point D was described as a lane owned by the township although it is noted that routes now known to be public roads were not</p>

<p><b>Canal and Railway Acts</b></p>	<p>1844-1887</p>	<p>numbered or listed in the Tithe Award. 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>
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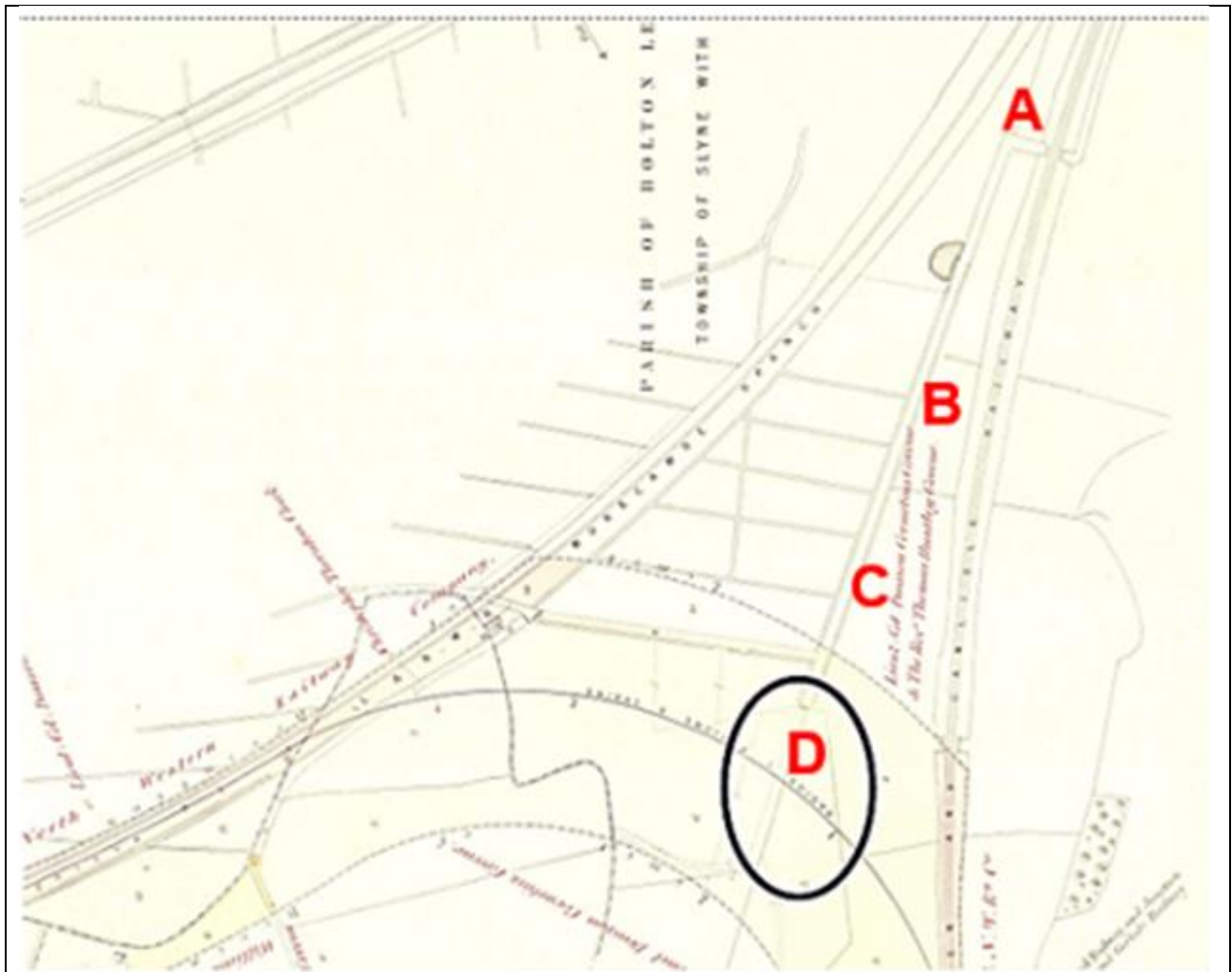


Extracts from Plan and Book of Reference – Lancaster & Carlisle Railway Act 1844





Extracts from the Book of Reference and Plans for The Lancaster & Carlisle Railway Act 1859



Note: Oval shape surrounding point D overlaid on plan by Network Rail to show location of the crossing point.



		Huntley Greene			
5	Field and occupation road	Lieutenant-Colonel Dawson Cornelius Greene	--	--	Edmund Ashes
6	Field and ditches	Lieutenant-Colonel Dawson Cornelius Greene	--	--	Edmund Ashes
7	Occupation road	Lieutenant-Colonel Dawson Cornelius Greene and The Reverend Thomas Huntley Greene			
8	Occupation road crossing railway on the level	The London and North Western Railway Company			

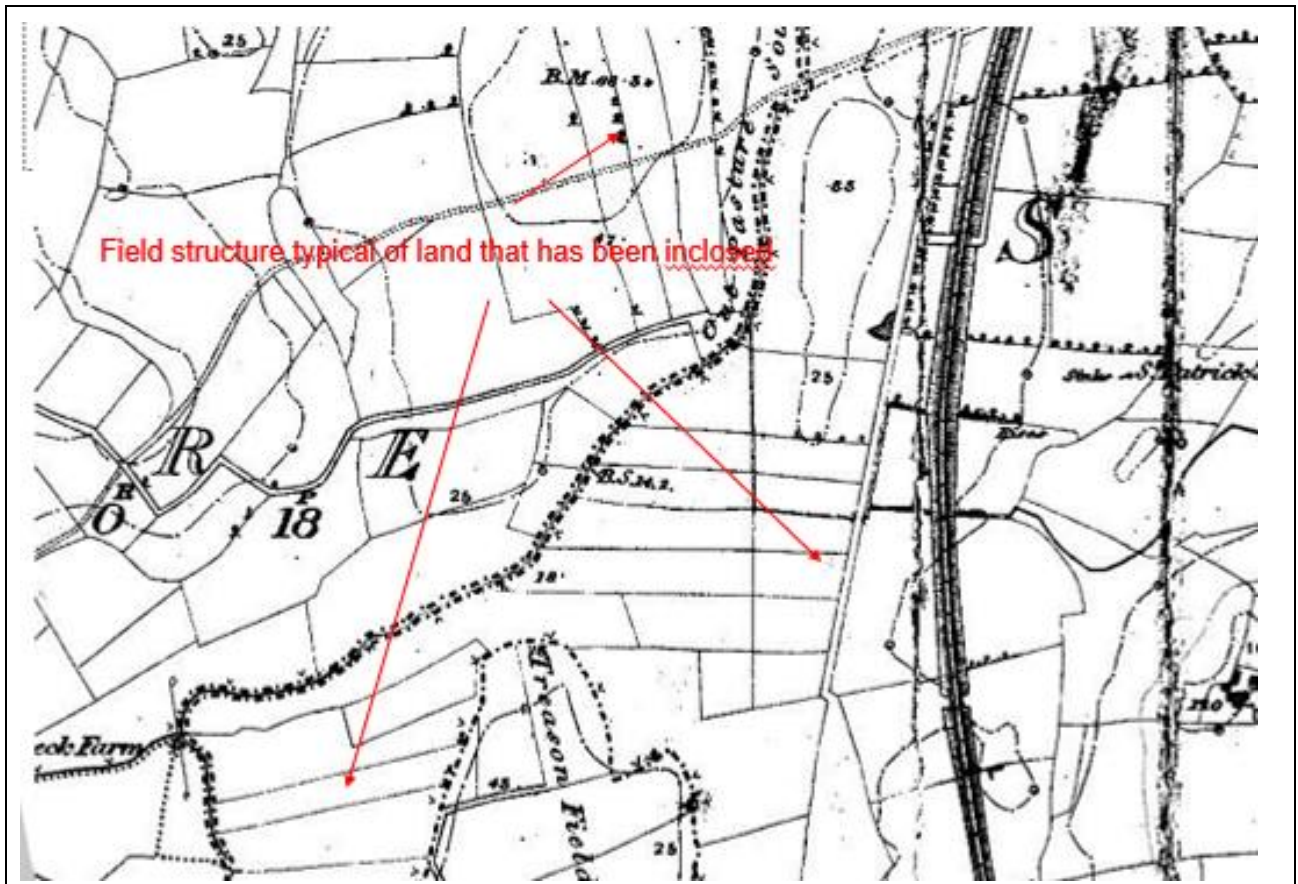
Extracts from the Deposited Plan and Book of Reference for The London and North Western Railway Act 1887

<p>Observations</p>		<p>A significant amount of useful historical information has been obtained from Network Rail.</p> <p>The application route crosses the railway at point D but between point A and point D it can be seen from looking at the Committee plan that it is surrounded by three lines of railway that were constructed between 1844 and 1887.</p> <p>The line constructed under the Lancaster and Carlisle Railway Act 1844, is now referred to by Network Rail with an Engineers Line Reference (ELR) of CGJ7, and bridge 11 is on this line. It is more commonly known as the West Coast Main Line and the route recorded as 1-31-BW5 passes under bridge 11. The line constructed under the later Lancaster and Carlisle Railway Act 1859, is now referred to with an ELR of HBL, and Morecambe Golf Club Course level crossing – over which 1-31-FP5a crosses is on this line.</p> <p>The last section of railway to be built was constructed under the London and North-Western Railway Act 1887 and now has an ELR of MSM. Bridge 1 – under which the application route runs (point D on the Committee plan) is located on this line.</p> <p><b>The Lancaster &amp; Carlisle Railway Act</b></p>
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		<p><b>1844</b></p> <p>The Deposited Plan and Book of Reference for the implementation of the 1844 Act show Rakes Head Lane crossing land where the railway was proposed to be constructed and describes it as a 'private occupation road' numbered 26 in the ownership of Thomas Greene. The alignment of the route is consistent with that shown on the Tithe Map prepared in 1845 and described in part as 'old road' (Tithe Award plot 24a). The route numbered 26 on the Railway plan – and described as an occupation road – included the application route between point A and point D. The application route beyond point D is not shown.</p> <p><b>The Lancaster &amp; Carlisle Railway Act 1859</b></p> <p>Fifteen years later it was legislated to build a second railway which would link to the Lancaster &amp; Carlisle Railway north of the application route.</p> <p>The Deposited Plan and Book of Reference for the 1859 Act shows the '1844' Lancaster &amp; Carlisle Railway and the bridge under which 1-31-BW5 runs (bridge 11). The route is numbered 18 on the plan and is described as 'occupation road and public footpath' and is labelled as Rakes Head Lane south of point A – extending towards point B. The original route of Rakes Head Lane as affected by the construction of the '1844' railway is no longer shown from where it crossed the railway down to point A although Rakes Head Lane leading to the railway from Hest Bank Lane is (numbered 9) is also described as 'occupation road and public footpath' and appears to show the original line of the occupation road (number 26 in the 1844 Act), as crossing the railway by a footpath only at this point.</p> <p><b>The London and North-Western</b></p>
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		<p><b>Railway Act 1887</b></p> <p>The final section of branch line to be constructed was the length that bisects the application route at point D.</p> <p>The Deposited Plan and Book of Reference again show bridge 11 through which 1-31-BW5 passes although the route itself is not referred to.</p> <p>There are no public rights recorded as affecting this intended line of railway. The application route is shown from point A through to just short of point D and is numbered as plot and described as 'occupation road'.</p>
Investigating Comments	Officer's	<p>When plans were drawn up to show the proposed route of the Lancaster &amp; Carlisle railway in 1844 part of the application route (A-D) existed and was considered to be an occupation road providing access to fields south F point. There was no through route connecting to Hasty Brow Road (point H) shown.</p> <p>The 1859 plans show that Rakes Head Lane appeared to have been diverted when the '1844' railway was constructed so that it ran along the track and under the railway on the route now recorded as 1-31-BW5 and continued through point A and along the application route to point D. There is no depiction of a through route to point H at Hasty Brow and the route was described as an occupation road providing access to fields. There is however reference to public footpath rights which appeared to be acknowledged along at least part of Rakes Head Lane and that must have led to somewhere.</p>
<b>Inclosure Act Award and Maps</b>		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>



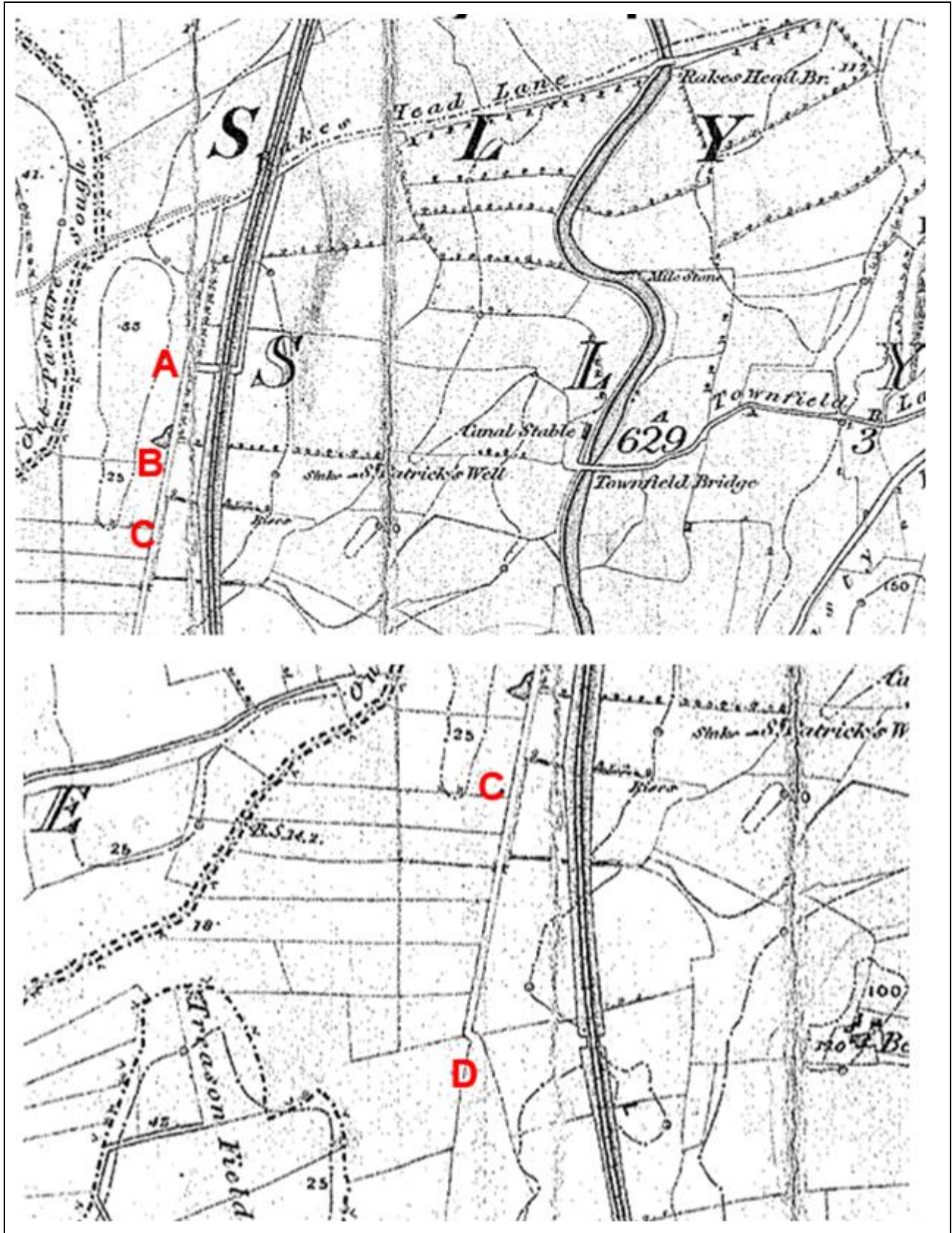
<p>Observations</p>		<p>There are no listed Inclosure Awards or agreements in the County Records Office. However, references were found to the ownership of some inclosure award allotments of land within the parish of Slyne with Hest (Ref. DDQ/2/5) dated 6 April 1843 but there was no plan and nothing to indicate that the land referred to was crossed by the application route.</p> <p>The topography of the landscape in the 1840s – as shown on the Ordnance Survey 6 inch map extract above – does however suggest the probable inclosure of an area of land abutting the application route – most probably predating the construction of the railway. A series of long thin fields can be seen in three areas – one of which abuts the application route between points A-D with the only access to those fields possibly being via the long straight section of application route (A-D).</p>
<p>Investigating Officer's Comments</p>		<p>Although no actual inclosure award, agreement or map could be found it does look possible that the application</p>

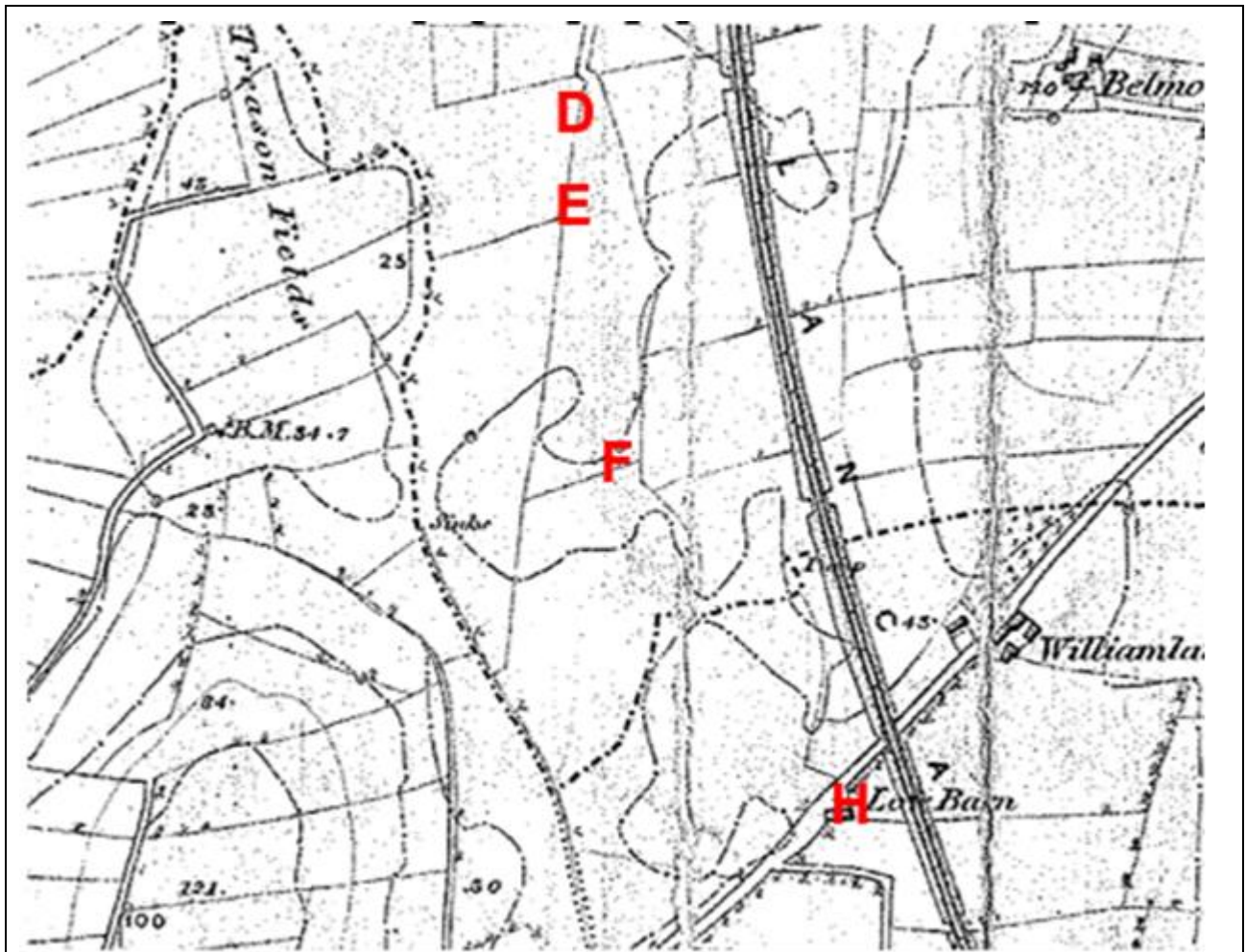


		<p>route A-D may have originally been set out to provide access to land that had been enclosed. Whether it was set out for that purpose, and whether it carried public rights at that time is not known but it is noted that it was not shown as part of a through route at that time connecting at either end to routes known to be public so it is possible that it was originally set out as a private route – sometimes referred to as an occupation road.</p>
<p><b>6 Inch Ordnance Survey (OS) Map</b></p> <p><b>Sheet 30</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.<sup>1</sup></p> <p>However it has recently become apparent that in many instances there was more than one print run for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - <a href="https://maps.nls.uk/os/">https://maps.nls.uk/os/</a></p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

<sup>1</sup> 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.







Map extracts from Lancashire County Council records

<p>Observations</p>		<p>The map postdates the construction of the '1844' railway. The application route is shown from point A extending in a south south westerly direction towards point D. The rest of the application route is not shown.</p> <p>The route now recorded as 1-31-BW 5 is shown to run along the section of enclosed track constructed as part of the railway works and passes under the railway to point A. What appears to have been the historical route of Rakes Head Lane running north from point A is still shown. An unenclosed track is shown continuing west from the old line of Rakes Head Lane (where it crossed the railway on its original alignment).</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed between point A and point D in 1884-5 as part of a longer route providing access to fields. No through route connecting to Hasty</p>

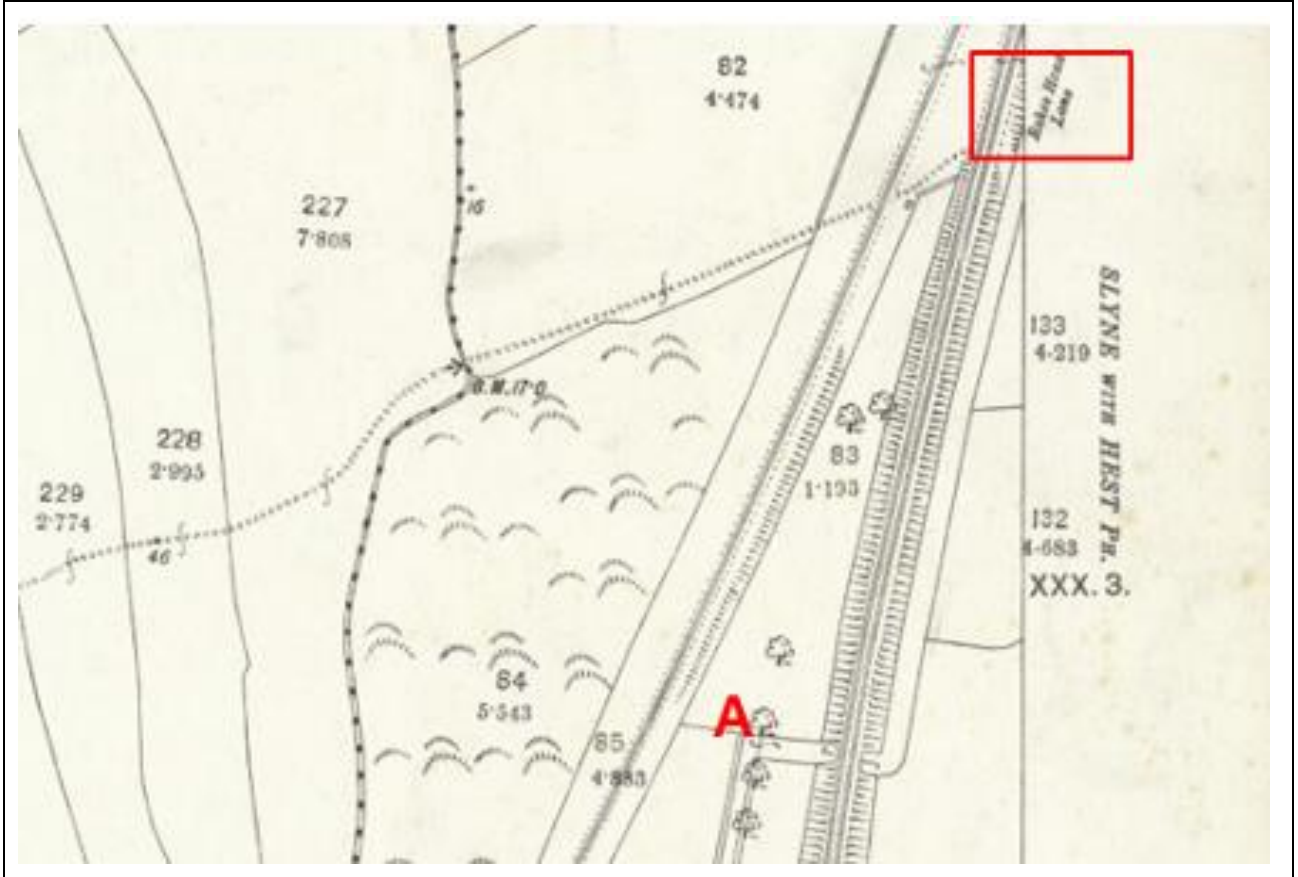


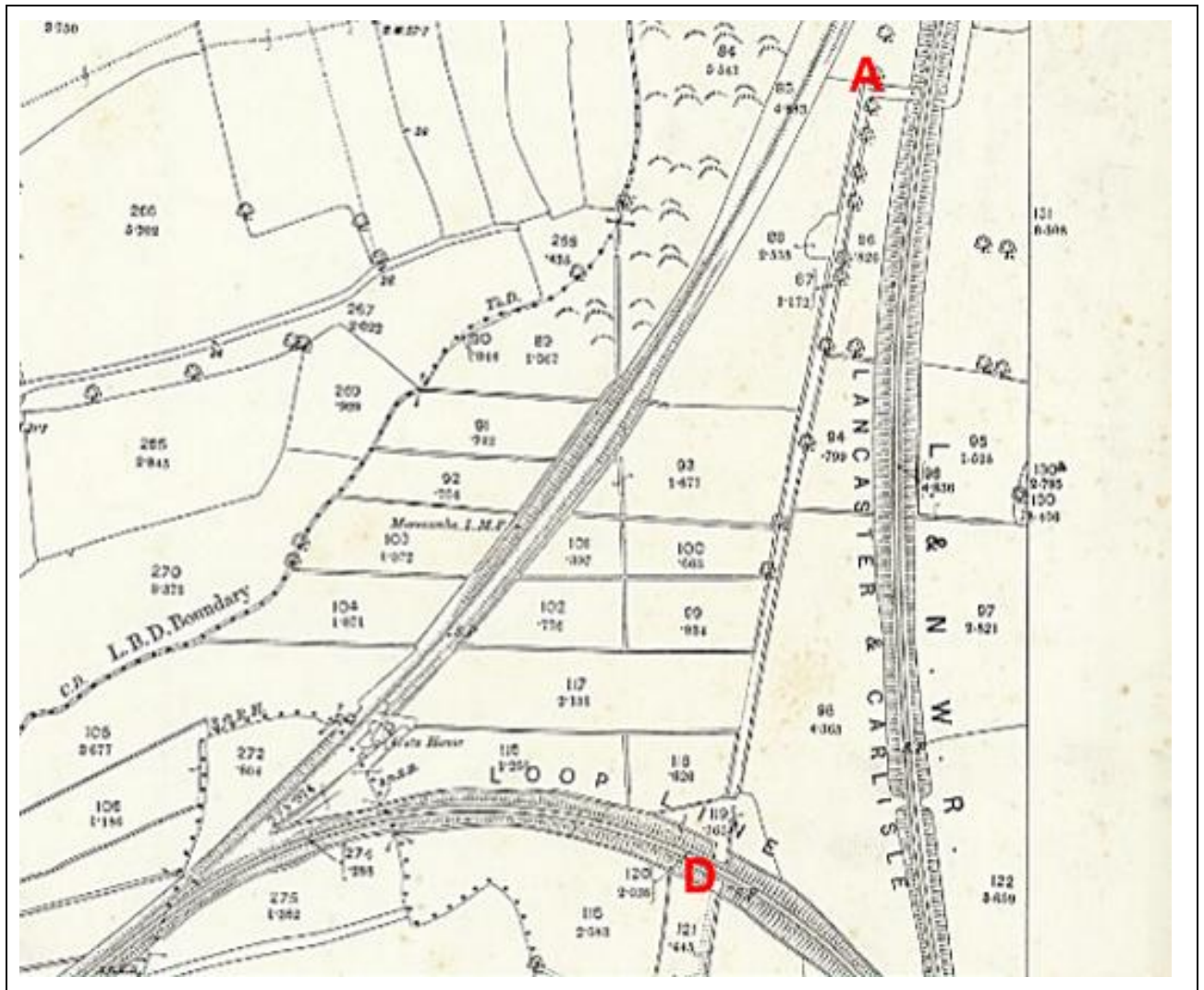
		Brow Lane is shown and it unlikely that a bridleway existed along the full length of the application route at that time.
<b>One inch OS Map</b>	1846-51	David & Charles reprint of the first edition 1 inch OS map sheet 91, surveyed 1842-47 and published between 1846-1851



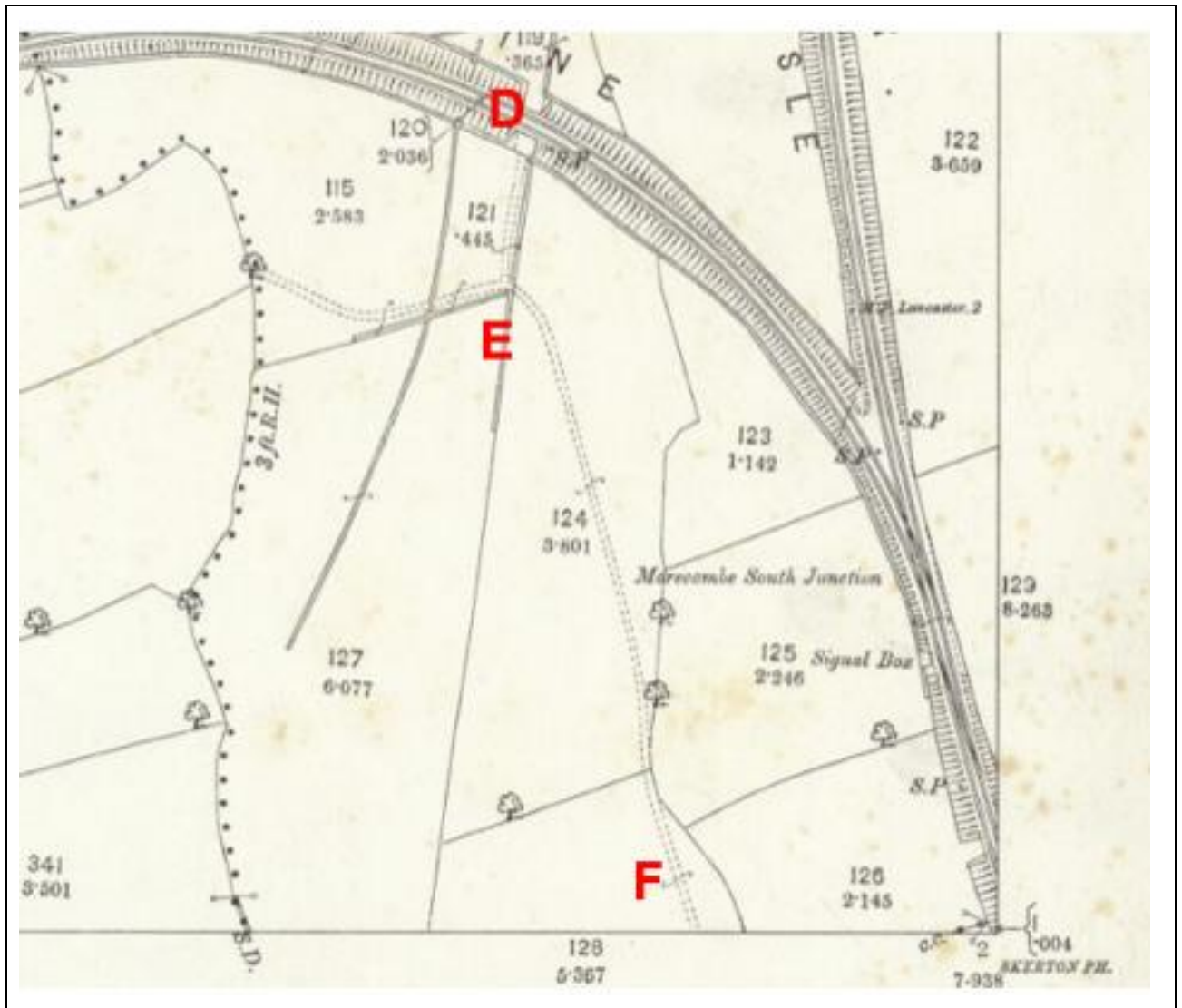
Observations		The application route between point A and point D is shown as part of a longer bounded route but the route from point D to exit onto Hasty Brow Lane is not shown.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle as a through route shown on this map was likely to have been accessible at that time. In this case only part of the application route is shown (A-D) and larger scale maps produced around the same time

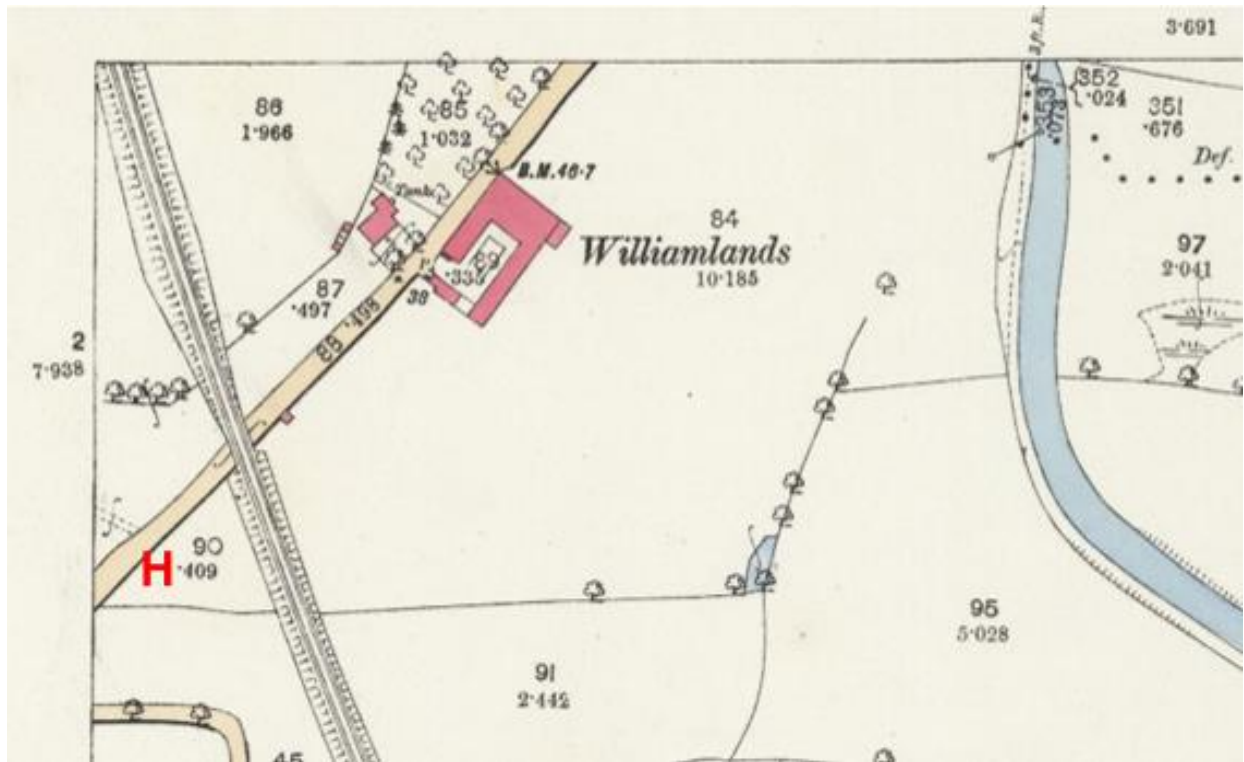
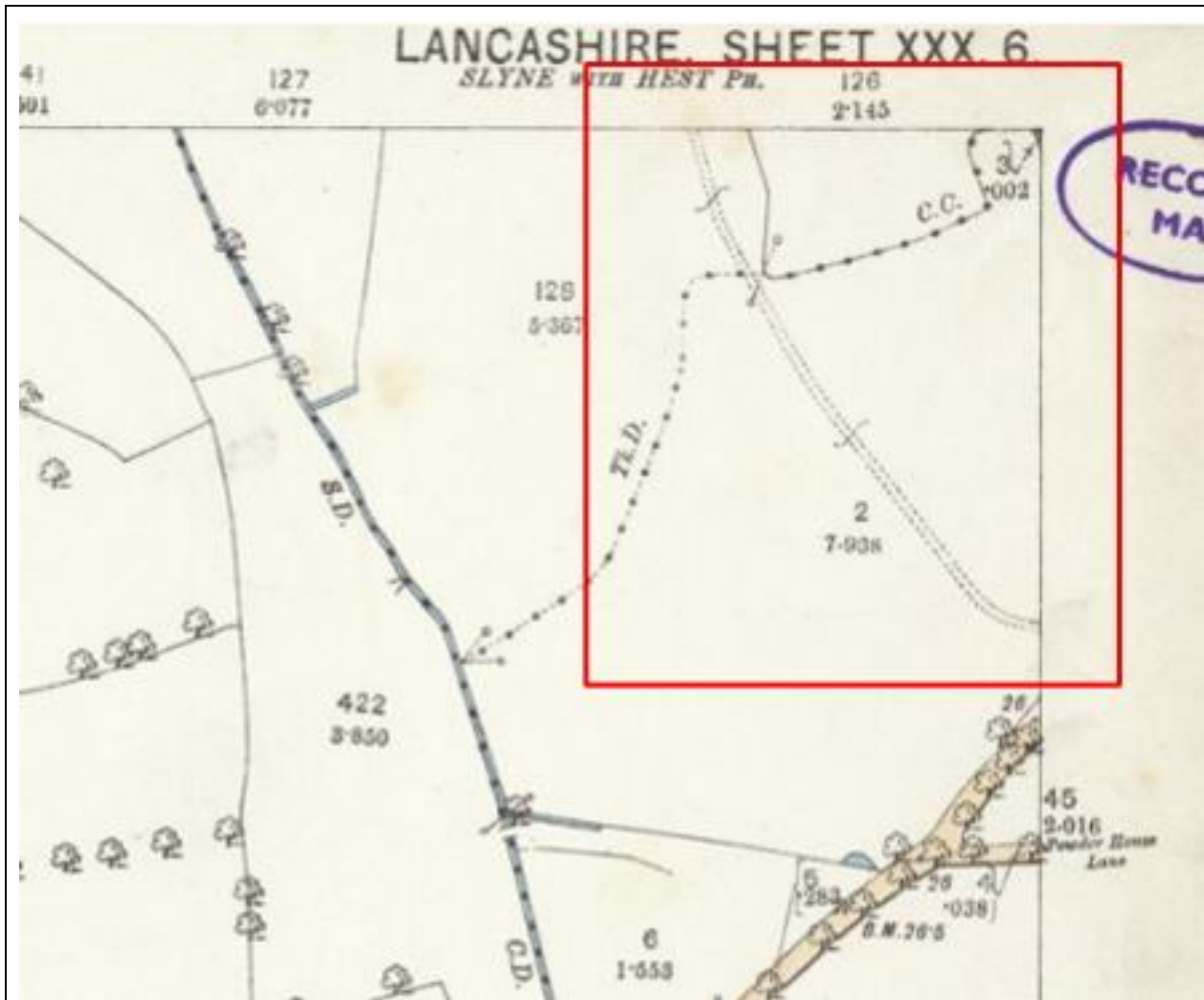
		do not suggest that access was available along the application route through to point H. It is considered unlikely that the application route was used as a through route by the public at that time.
<b>25 Inch OS Map</b> <b>XXX.2</b> <b>XXX.6</b> <b>XXX.7</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.











Observations

The full length of the application route is



		<p>shown.</p> <p>The altered length of Rakes Head Lane is shown with what appears to be a pedestrian level crossing across the Lancaster – Carlisle main line railway on the original alignment of the lane. Rakes Head Lane however crosses underneath the railway further south (Bridge 11) and continues a short distance to point A where a line is drawn across the route – most likely indicating the existence of a gate. The application route then continues south south west with drainage ditches along either side towards point D. Just before reaching point D – where it passes under the railway – a further line is shown across the route indicating the likely existence of a further gate.</p> <p>The application route passes under the railway at point D and then through a further gate to continue as an unfenced route along the edge of field 121 to cross a further field boundary at point E and continue as an unbounded track across two fields (crossing one further field boundary) through to Hasty Brow Road at point H where a further gate may have existed.</p> <p>The route recorded as 1-31-FP5a extending west from point A is not shown.</p> <p>No part of the route was shown coloured or shaded with a thickened line down one side.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1881 and may have been capable of being used – at least on horseback.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>

		<p>Benchmarks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private fields and consequently it cannot be assumed that a benchmark is indicative of a public right of way</p> <p>Shading, colouring and the use of thickened lines 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 so the fact that the application route is not shown in this way suggests that it was not considered to be a public vehicular route at that time or not well-maintained by the council.</p> <p>The application route was the only route continuing onwards from point A at that time suggesting that other than providing access to adjacent fields it could have been used as a through route.</p> <p>Of significance perhaps is the construction of the railway and the fact that access would have been required to and from the railway during its construction. Whilst materials could have been transported along the existing lines it is also possible that the track from point H through to point D may have been used for this purpose.</p>
<p><b>1 inch OS Map Sheet 59 - Lancaster</b></p>	<p>1898</p>	<p>Further edition of the OS 1 inch map surveyed 1842-1848, revised 1896 and published 1898.</p>

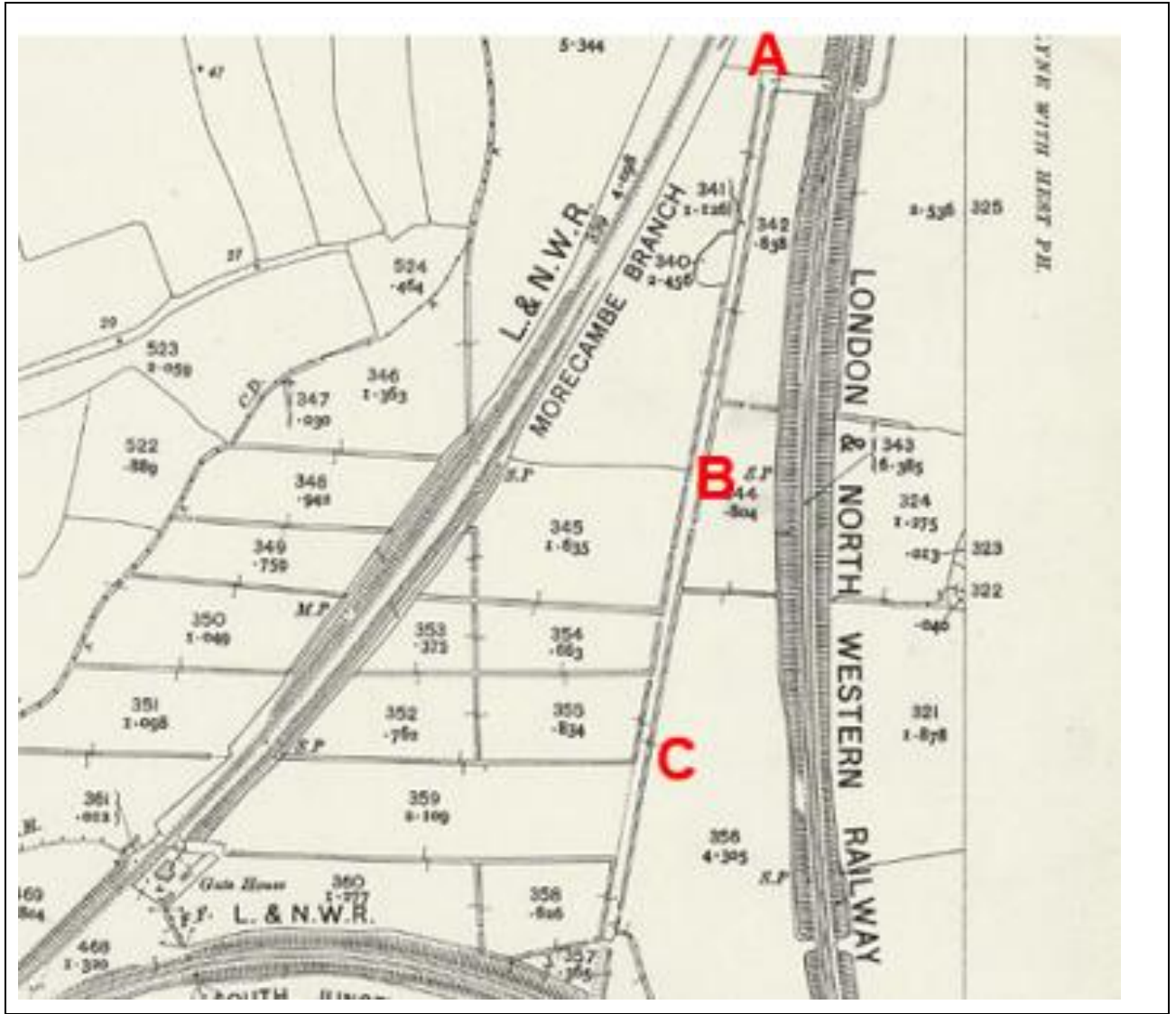


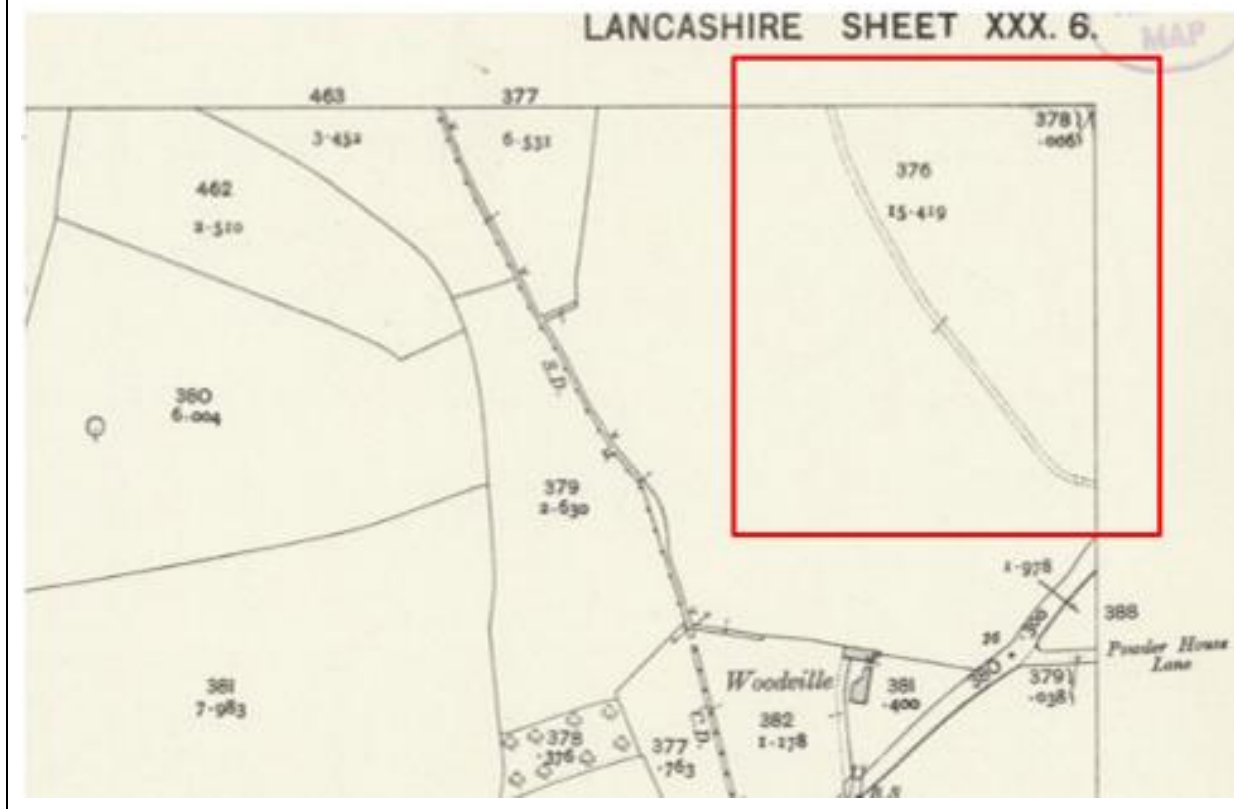
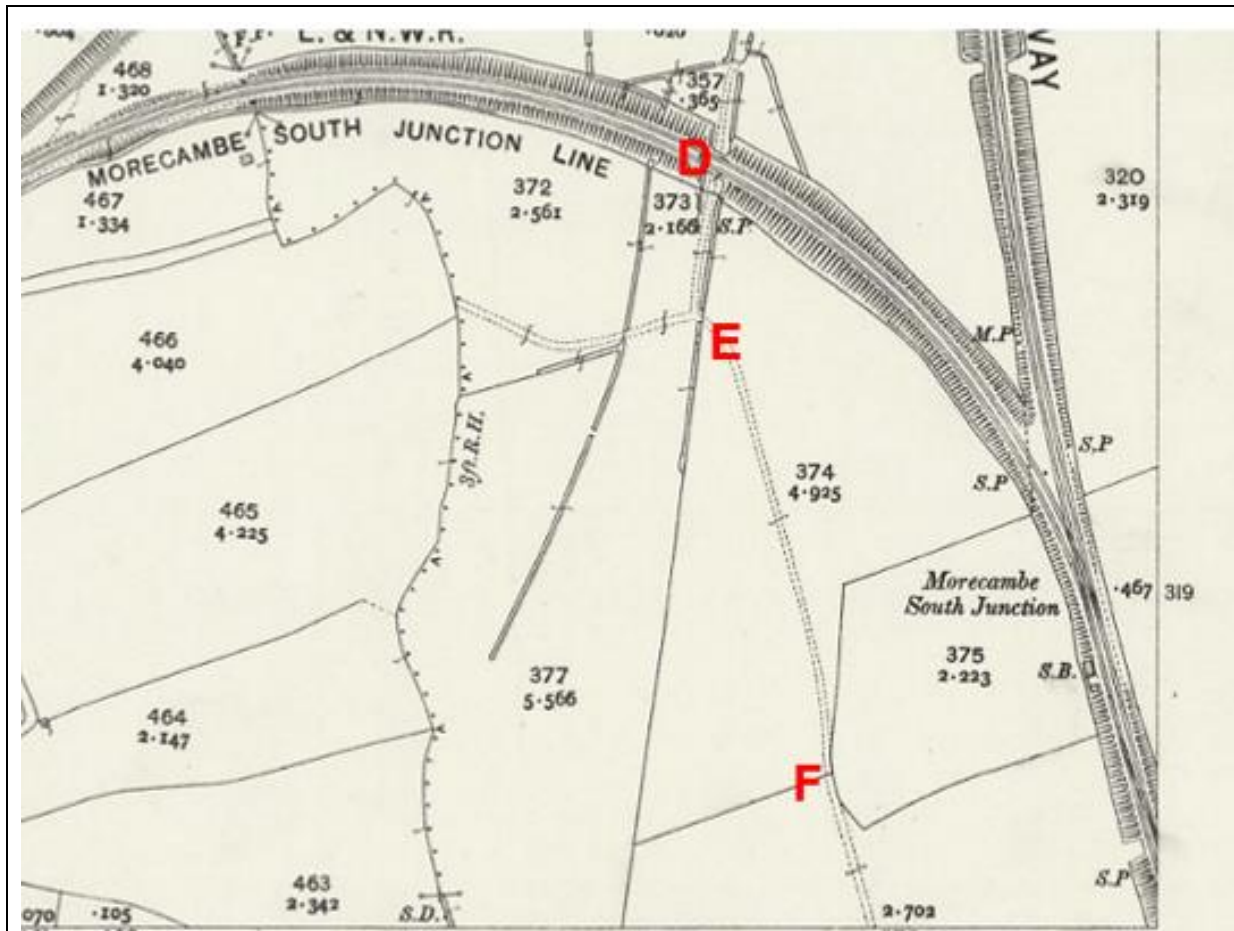


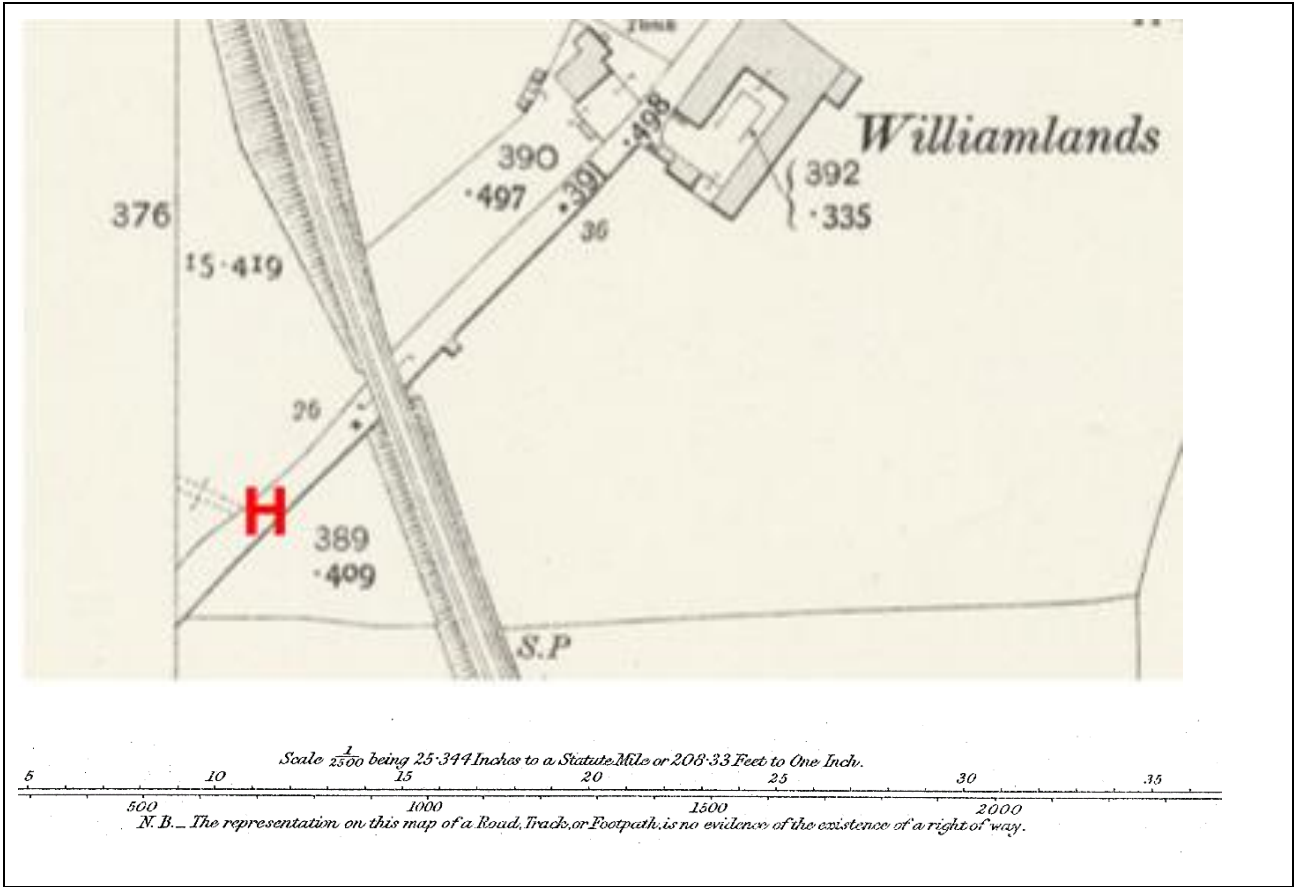
<i>Metalled Roads; First Class</i>	5/Mile distance/ (Altitude) 211	Fenced	Unfenced	Chuo
" " <i>Second Class</i>				"
" " <i>Third Class</i>				"
<i>Unmetalled Roads</i>				Wine
<i>Footpaths</i>				Ligh
<i>Railways, Single Line</i>				Ligh
			Level Crossing	Bea
			Cutting    Embankment	Letta
				Cont

Observations		The full length of the application route is shown as part of a substantial longer through route - possibly as an unmetalled road - partly unfenced.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown - and in this case the application route - had public rights for those travellers. Such evidence must however be looked at in the context of all other available evidence.
<b>25 inch OS Map</b> XXX.2 XXX.6 XXX.7	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1911 and published in 1913.











94. Grass and mud roads have the words written to them. Grass roads  
 These terms include public roads wide enough for wheeled traffic, but unmade. They are generally, but not always, fenced. The dots for cart-tracks, bridle roads, or foot-paths, are not to be shown inside a grass road, whether fenced or unfenced.

95. Bridle roads are shown to scale, and the words (or contraction B.R.) are written to them. Bridle roads.  
 They are sometimes the width of the cart-tracks, sometimes only of foot-paths.

96. Except as specified below, all clearly marked and permanent footpaths (*i.e.*, gravelled, paved, or with gates or stiles), whether public or private, should be shown. Foot-paths.

The Ordnance Survey does not concern itself with rights of way, and Survey employes are not to enquire into them.

All gravelled and paved paths in public parks, gardens, and recreation grounds should be shown.

The principal paths in market and allotment gardens, and those only, should be shown.

No footpaths should be shown in private gardens or yards, except the principal ones in very large gardens.

Mere convenience footpaths for the use of a household, cottage, or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown.

N.B.—A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.

Extensive shooting rides in woods should be shown, but not mere private paths.

Temporary cart tracks should not be shown.

Except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to foot-paths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic.

97. When occupation roads or cart-tracks are fenced on one side only, or are within 10 links of a fence, their outer line of dots only is shown; but when foot-paths run close to and parallel to a fence, both lines of dots are shown to distinguish them from roads. Roads or tracks fenced on one side only.

98. When a bridge with a proper name is kept in repair by the county, it is so stated in the name sheet, and (County) is written below the name on the trace. County bridges.

Observations

The full length of the application route is



		<p>shown in the same way that it was shown on the earlier 25 inch OS map.</p> <p>Although all Ordnance Survey Maps carry the disclaimer “The representation on this map of a road, track or path is no evidence of the existence of a right of way”, the applicant drew attention to the fact that in the Ordnance Survey Instructions to Field Examiners of 1905, Colonel Johnston, Director-General of the Ordnance Survey, wrote on page 19: “NB. A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.” However, this should be considered in the context of the whole 'instruction' as detailed above and further commented on below.</p>
Investigating Officer's Comments		<p>From looking at the map it appears that the application route existed as part of a longer through route in 1911 and appeared to be capable of being used. However, the fact that the route was shown on the OS map as a through route does not necessarily mean that it was a public through route and it is necessary to look at all the available evidence from that time.</p> <p>The applicant puts forward the argument that a clearly marked path on the ground is not sufficient reason to be included on an OS map unless it is clearly being used by the public.</p> <p>However, in that same guidance surveyors were instructed that the ‘OS does not concern itself with rights of way, and survey employees are not to inquire into them.’ The 1905 instructions appear therefore to be somewhat ambiguous; and subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.</p> <p>In this particular instance, it is considered that the inclusion of the route across unfenced land (point D through to point H) and denoted by a double</p>

		<p>pecked line, suggests that a substantial unbounded track existed at the time of the survey that – depending on the nature of any gates or barriers across it – may have been capable of being used on horseback or by vehicles but that it is not possible to conclude that the inclusion of the route on this map – without other additional evidence – implied the existence of public rights.</p>
<p><b>Bartholomew half inch Mapping</b></p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>



1905





1920





1941

Observations		Neither the application route nor Rakes Head Lane were shown on any of the Bartholomew maps published in the first half of the 20 <sup>th</sup> century.
Investigating Officer's Comments		The application route was not considered to be a public vehicular route in the first half of the 20 <sup>th</sup> century. Large scale OS maps confirm that it did however exist during this time but use may possibly have been private or by the public on foot or horseback.
Finance Act 1910 Map  IR133/3/71 IR133/3/75 IR133/3/76	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.

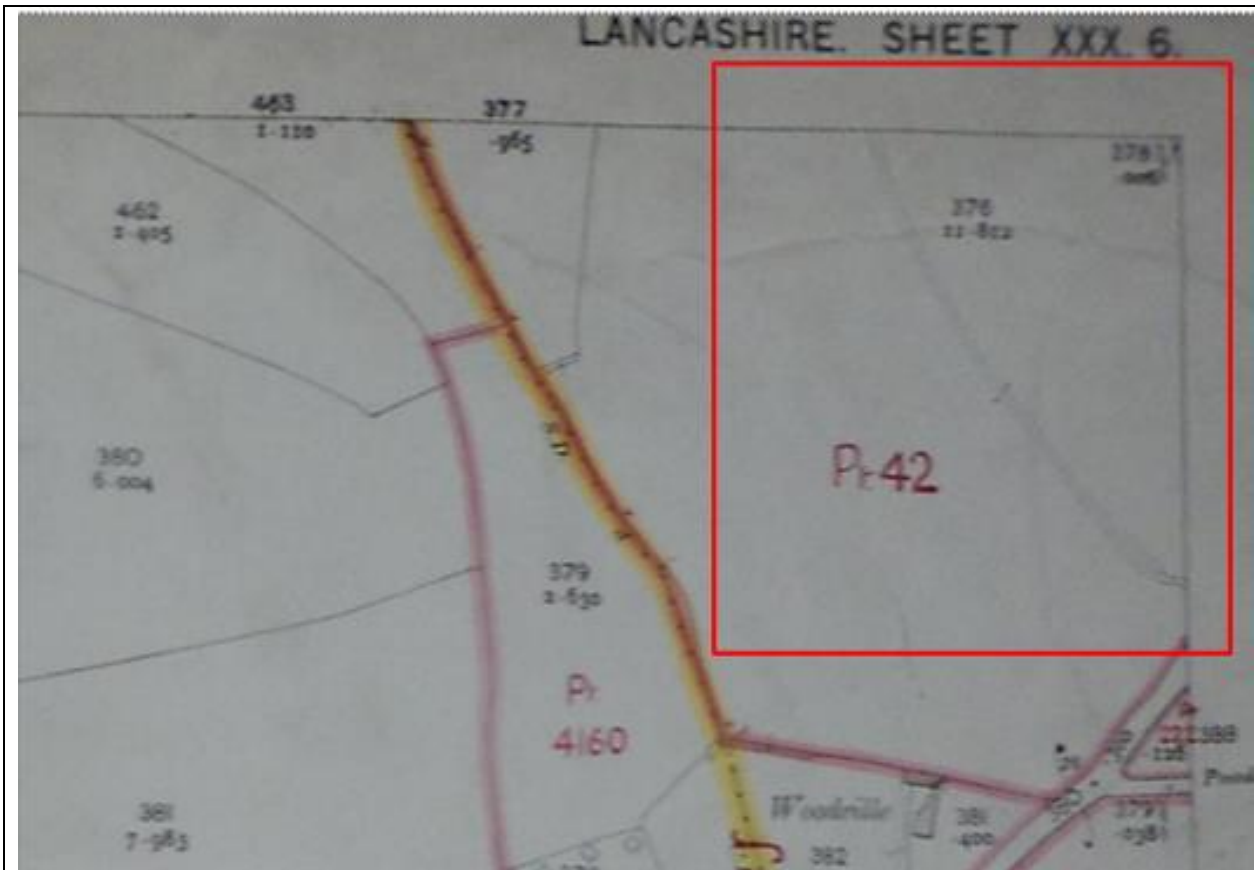


		<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land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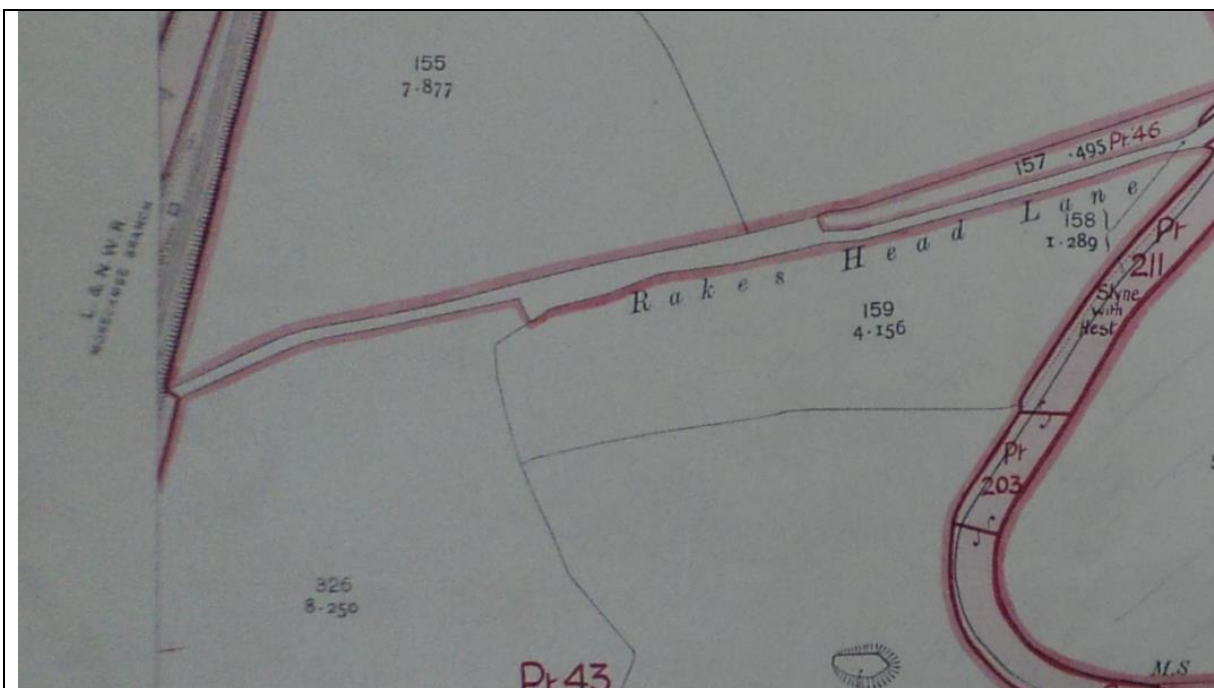






Rakes Head Lane (1-31-BW5) east of Lancaster to Carlisle West Coast railway)

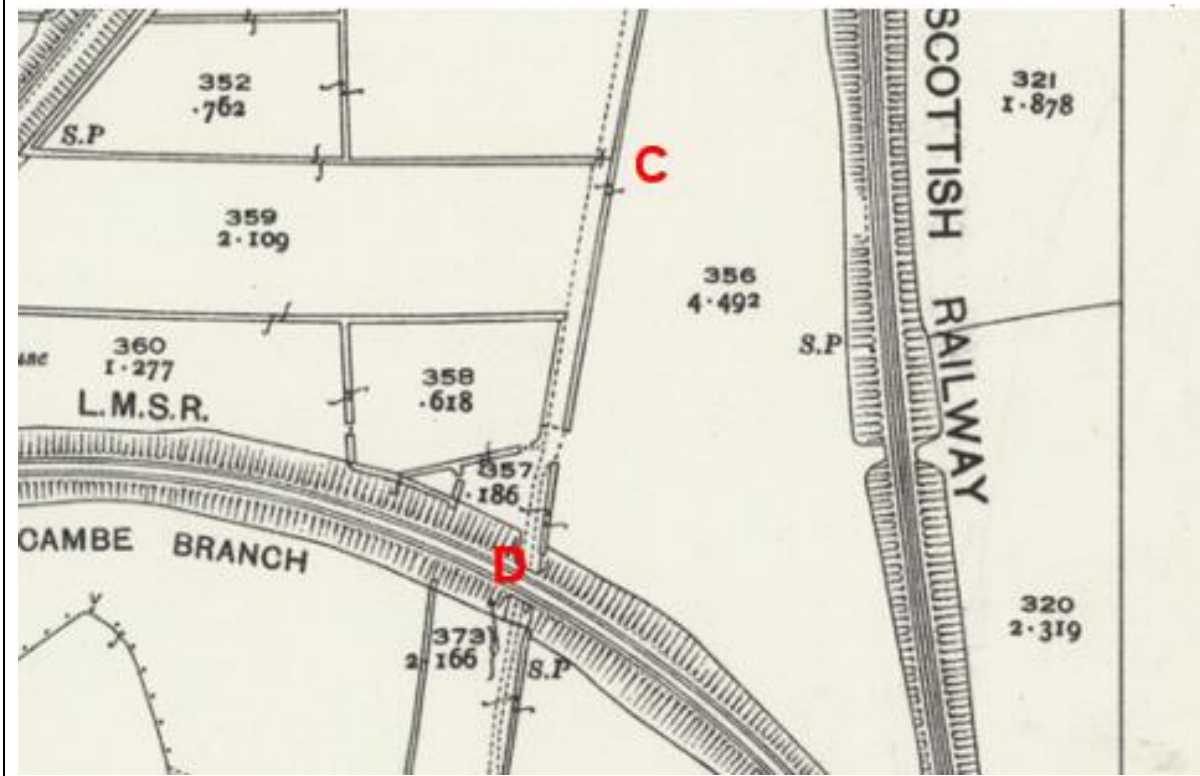


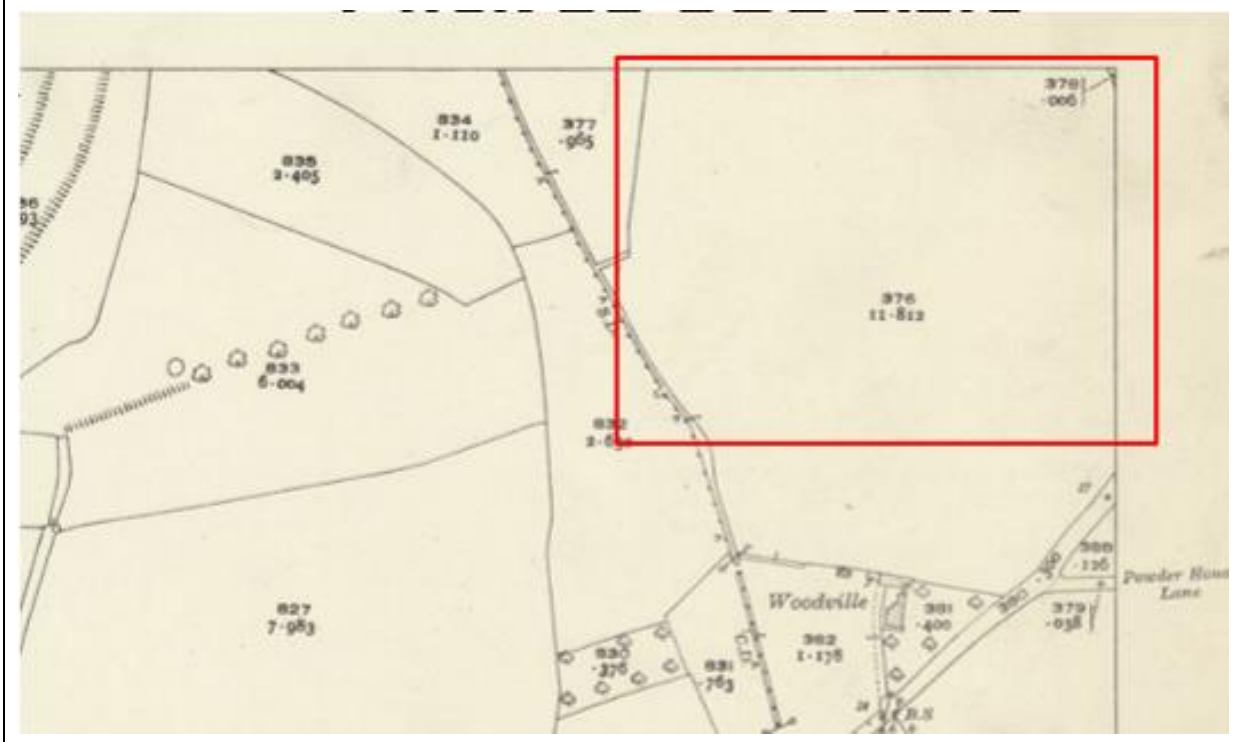
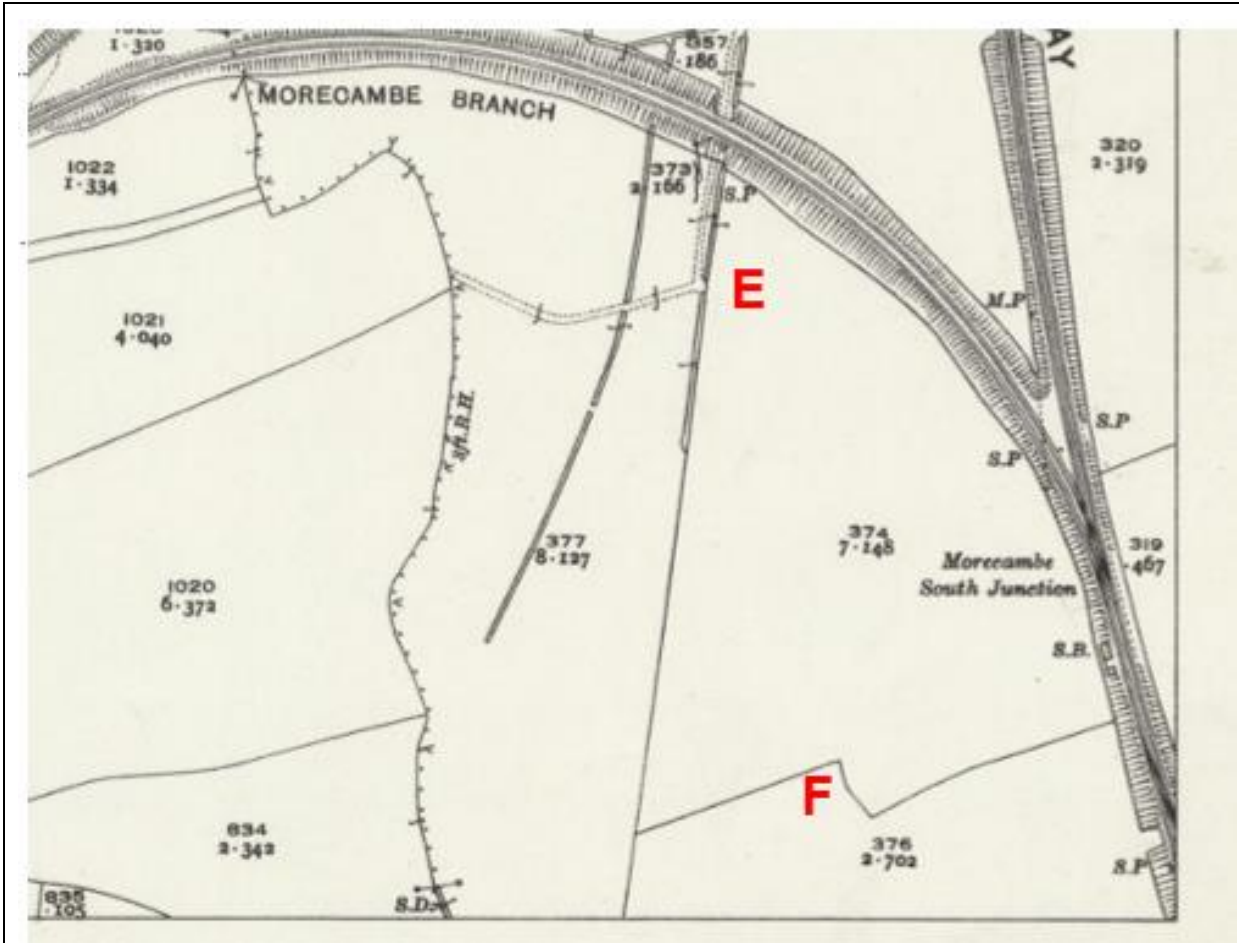


<p>Observations</p>		<p>From point A the application route is shown excluded from the adjacent numbered plots extending the full length of the fenced section of the route to a point just north of the railway (point D). Some land on either side of the route is shown braced as being in the same ownership.</p> <p>The rest of the land crossed by the application route – with the exception of the railway line – is all included in a large plot numbered 42 which is listed as being in private ownership with no deductions listed for public rights of way or user.</p> <p>The railway – which the application route passes under at point D is listed as plot 198 and was owned by the railway company.</p>
<p>Investigating Officer's Comments</p>		<p>The first part of the application route was excluded. This section corresponds to the length of route that is consistently shown on all maps as being fenced with drainage ditches running along either side and it is considered that this section may have been originally created as part of an inclosure process. Although the exclusion of a route from the numbered hereditaments (plots) is often considered to be good evidence of the fact that the</p>

		<p>route was believed to carry public vehicular rights it is noted that the rest of the route is not excluded in this way and that the route leading to point A adjacent to the railway is not excluded from the numbered plots and was not recorded as having any deductions made for public right of way or user.</p> <p>There may be other reasons to explain the exclusion of this section of the route. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments. Whilst the exclusion of the route may not be evidence of public vehicular rights this does not necessarily mean that a bridleway may not have existed along the route and this needs to be looked at carefully in context with all other available evidence.</p> <p>With that in mind the rest of the application route (with the exception of the railway crossing) was all included in a large plot numbered for which no deductions were listed for public rights of way or user. If the route had been used by the public on horseback in the early 1900s the Investigating Officer would normally expect some sort of deduction to be listed – particularly considering the length of the route and the fact that it was shown on the OS base map as a substantial track. In the alternative, it is suggested that if public rights did exist the landowner did not wish to acknowledge this suggesting that the owner of the land at that time considered any routes that existed through it were private at that time or did not wish to admit public rights.</p>
<p><b>25 Inch OS Map</b> <b>XXX.2</b> <b>XXX.6</b> <b>XXX.7</b></p>	<p>1932</p>	<p>Further edition of 25 inch map surveyed 1889, revised in 1931 and published in 1932.</p>



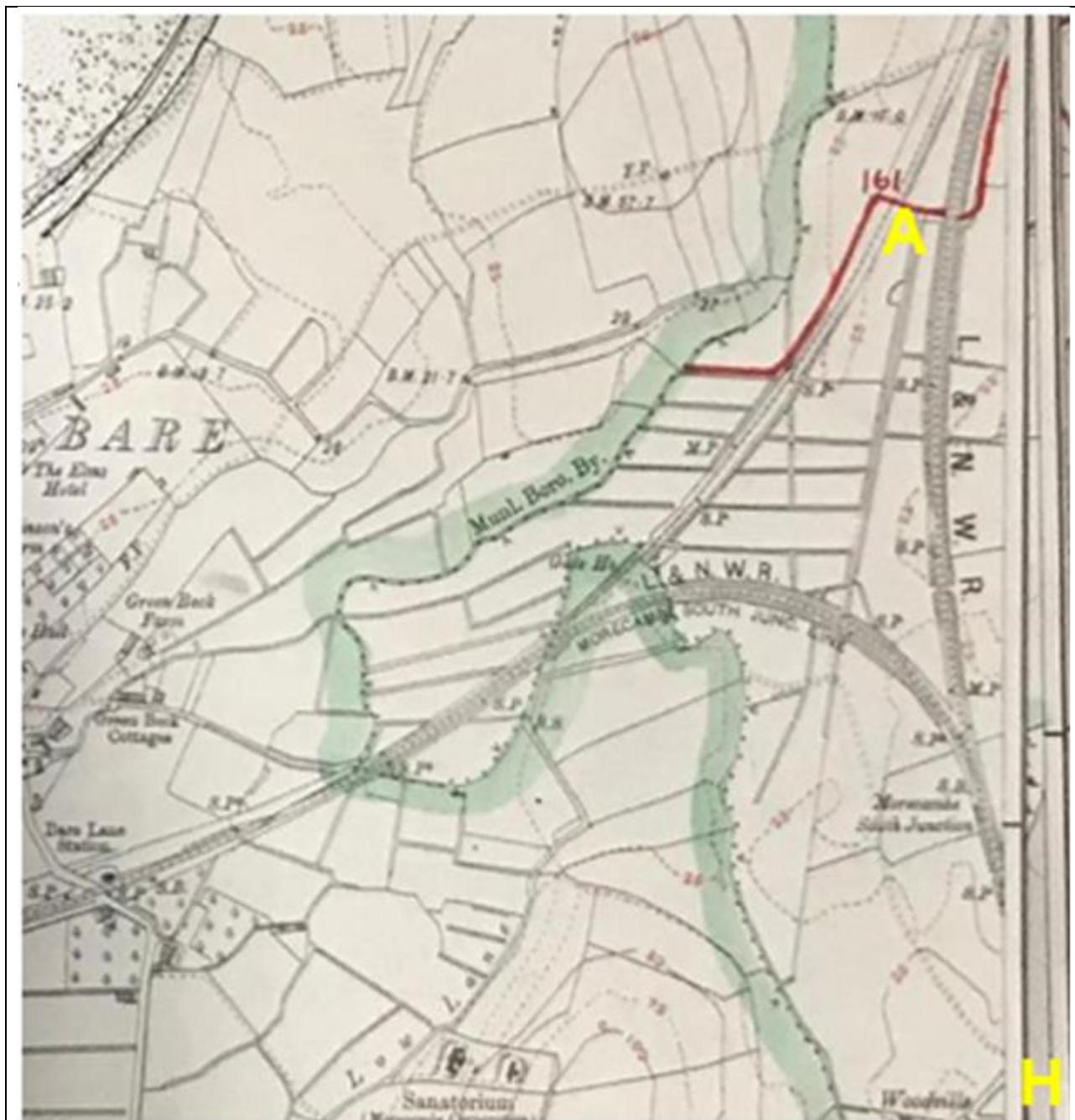






<p>Observations</p>		<p>Access onto the application route at point A is again shown as being restricted by a gate. Just before the gate a series of pecked lines can be seen which extend west to cross the railway and then continue denoted as a footpath (FP) consistent with the route recorded as 1-31-FP31a.</p> <p>The application route is shown from point A through to point C where a line is shown across the route (probable gate). From point C the route continues to pass under the railway (point D) where a further gate restricts access to the field.</p> <p>From point D the track shown on earlier editions of the 25 inch OS map is shown leading to a field boundary at point E suggesting the existence of a further gate at this point.</p> <p>Beyond point E the application route – which is shown on earlier editions of the</p>
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		OS large scale maps - is not shown.
Investigating Officer's Comments		The application route existed as a substantial track between point A and point E in 1931. Beyond point E there was no physical route recorded on the map suggesting that if access was still available – use had declined sufficiently so that no worn track was visible on the ground.
<b>1932 Rights of Way Map</b>		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and Meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



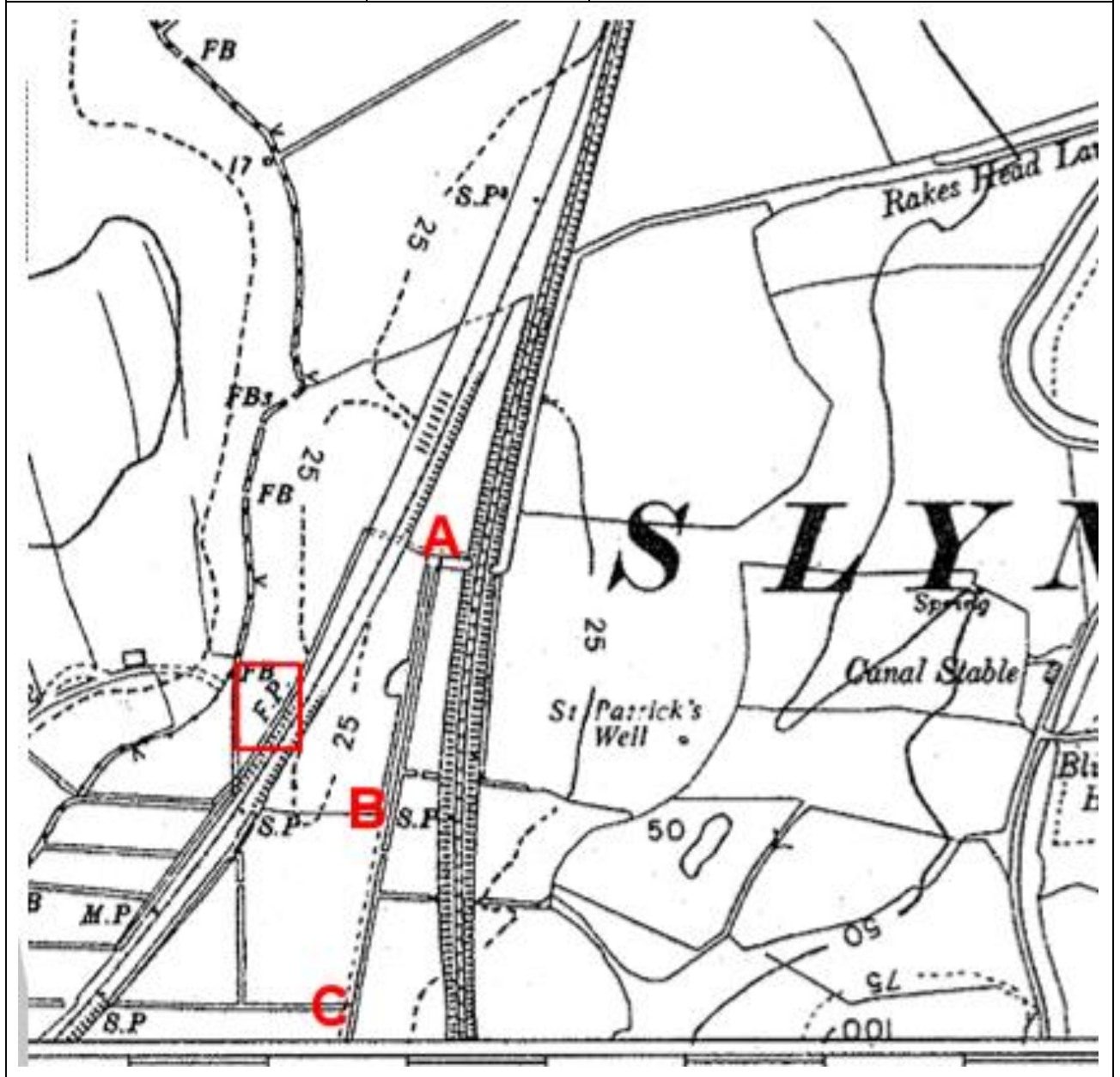
Observations

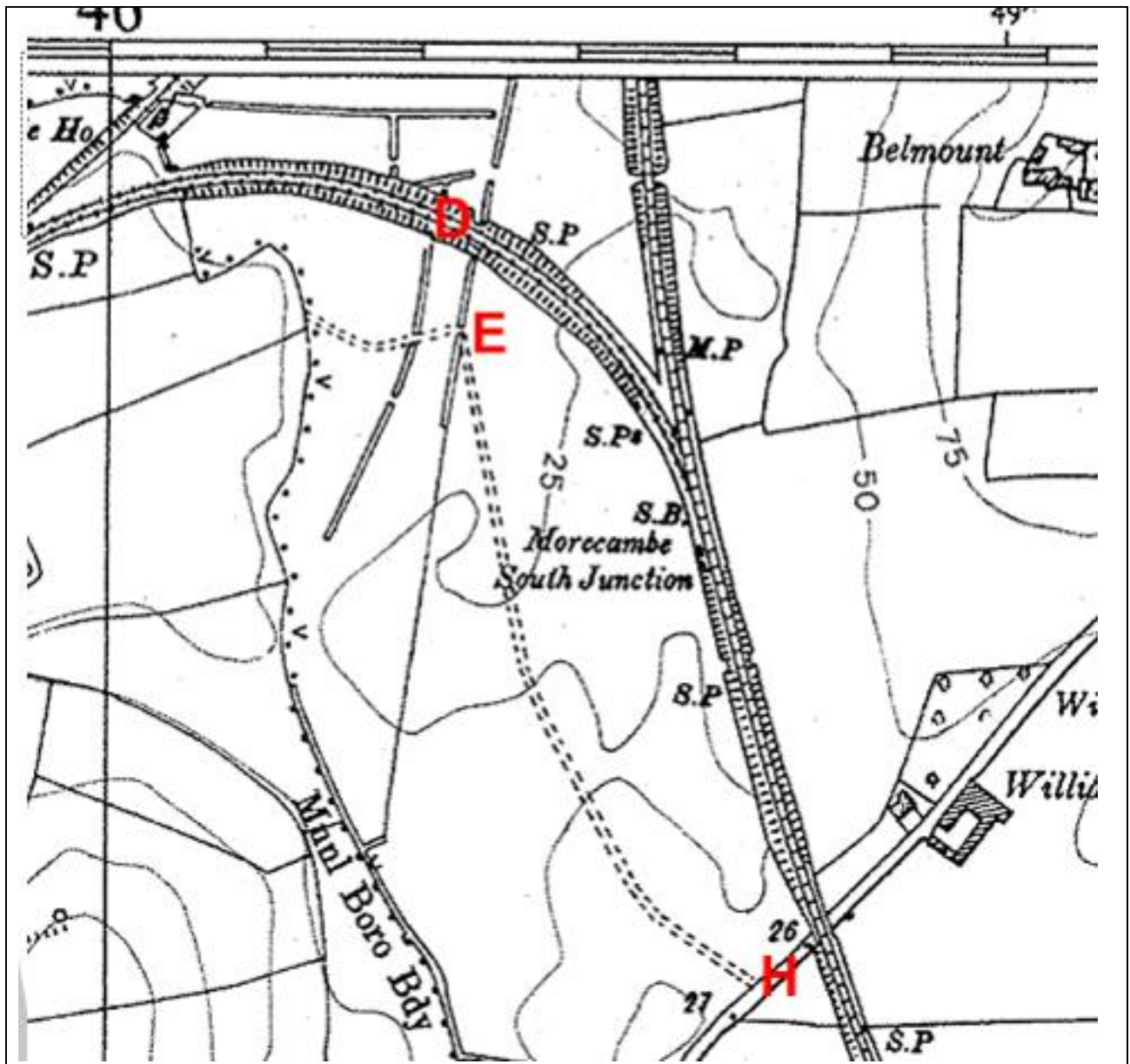
The maps for Lancaster Rural District are contained within a large folder titled 'Footpath Maps'. No written schedules are included within the file and all routes shown are coloured red and numbered with no indication as to whether they were considered to be anything more than public footpaths. The application route is not shown but a 'footpath' is shown (and numbered 161) along the route now recorded as 1-31-BW5 passing through point A and continuing along the route of 1-31-FP5a to the parish boundary.





Investigating Officer's Comments		The application route was not considered to be any class of public right of way when the map was prepared.
6 Inch OS Map SD46NE and 46SE	1956-57	OS 6 inch map revised before 1930 and partially revised 1938-51 and published 1956-57.





Observations

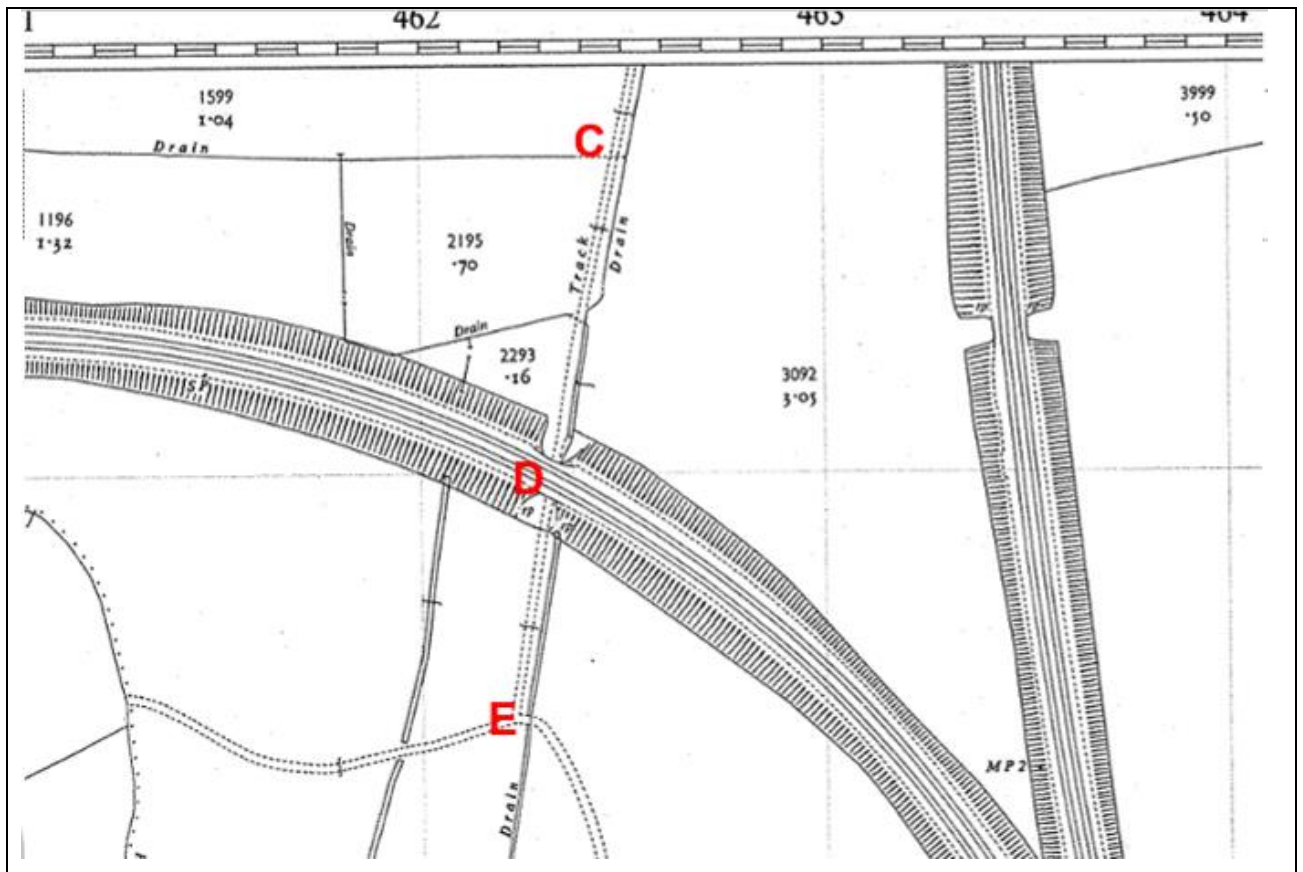
A gate is shown across the western end of 1-31-BW5 just to the east of point A and west of point A – continuing beyond the railway level crossing the route recorded as 1-31-FP5a is shown as a footpath (F.P.). From point A the application route is shown bounded on either side by drainage ditches as far as point B and then continues along the field edge passing through a (probable) gate at point C. A dashed line is then shown continuing along the application route to the edge of the map sheet.

The continuation of the application route on the map sheet covering the area south of the section of route described above does not show the application



		route through to point E (although access may have been available, and the railway is shown in such a way as to suggest the existence of a route underneath it (tunnel). From point E through to point H a substantial track is shown and additionally from point E a double peaked line is shown continuing west to the parish boundary.
Investigating Comments	Officer's	The application route appears to have existed and may have been capable of being used in the 1930s – 1950s.  Whilst it may have been possible to travel along the full length of the route A-H it appears that access from point H to point E was shown primarily to access land west of point E.
<b>1:2500 OS Map SD 4665 and SD 4664</b>	1959 - 1968	Further edition of 25 inch map reconstituted from former county series and revised in 1958-1968 and published 1959 and 1968 as national grid series.







Observations		The full length of the application route is shown as a substantial gated 'track'.
Investigating Officer's Comments		The application route appeared to be capable of being used at least on horseback in the 1950s-1960s depending on whether the gates were accessible to use.
Additional OS Maps submitted by the applicant		The applicant supplied a series of OS maps as part of their application seeking to illustrate the fact that the application route was consistently shown on the maps – at various scales and at various different times – suggesting that it was a public route available to use by the public. Whilst a range of these maps are detailed individually in this report the remainder are not considered separately

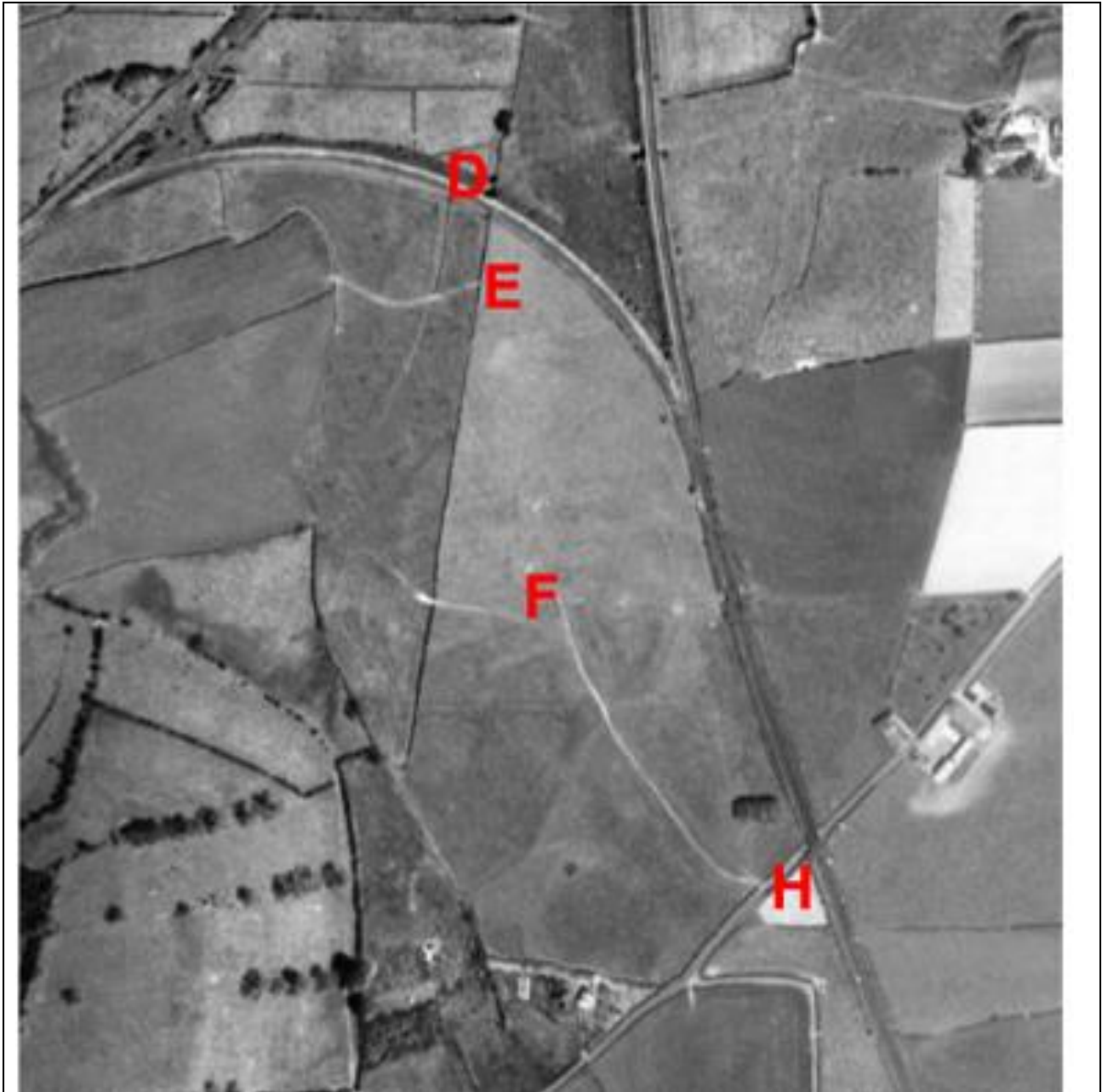
		<p>because it is felt that they do not add anything further to the evidence already considered.</p> <p>The OS maps included in the application but not commented on individually are as follows:</p> <p>6 inch OS map sheet 30 published 1895</p> <p>6 inch OS map sheet 30NW published 1919, 1931, 1947.</p> <p>6 inch OS SD46NE published 1963</p> <p>6 inch OS SD46SE published 1961, 1968</p> <p>1 inch OS maps published 1918, 1947, 1955</p> <p>1:25,000 OS maps published 1947, 1952, 1963.</p>
Observations		<p>OS maps published from the 1890s onwards all generally show that a substantial gated route existed providing access to fields and providing access under the railway at point D. The route does not appear to have altered during this time.</p>
Investigating Officer's Comments		<p>It is not disputed that from at least 1890s through to the current day a physical route appears to have existed from point A through to point H and was mapped by the OS. Parts of the route were not shown on several maps at certain times but were then shown again later suggesting possibly that because parts of the route crossed open fields or ran along the field edge it was not always visible on the ground.</p> <p>The argument often put forward that a route consistently shown on OS maps of different scales must have carried public rights of some kind should be treated with caution and considered in the context of all other available evidence.</p> <p>In this particular case the application is for a public bridleway. There maps clearly suggest that gates existed across the route at several locations. This in itself is not evidence that the route could not have been used by the public but the maps do not tell us whether those gates were locked or accessible.</p> <p>The fact that the route was shown is good evidence that it existed and was capable of being used but whether that</p>

		use was public or private – or both – needs to be considered in the context of all the available evidence when considering whether there are sufficient grounds to make a legal order.
<b>Aerial photograph</b>	1960s	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. 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.



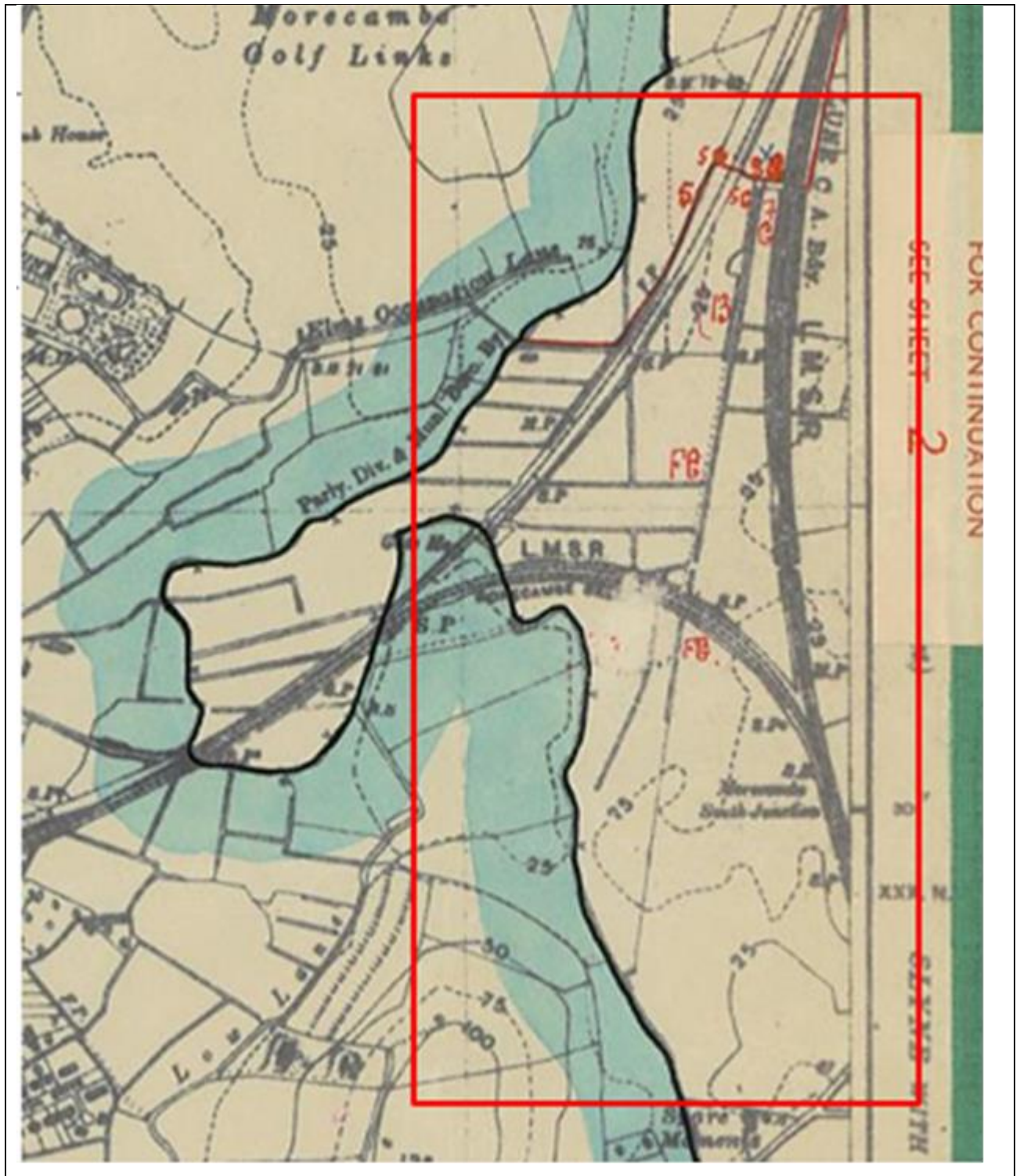


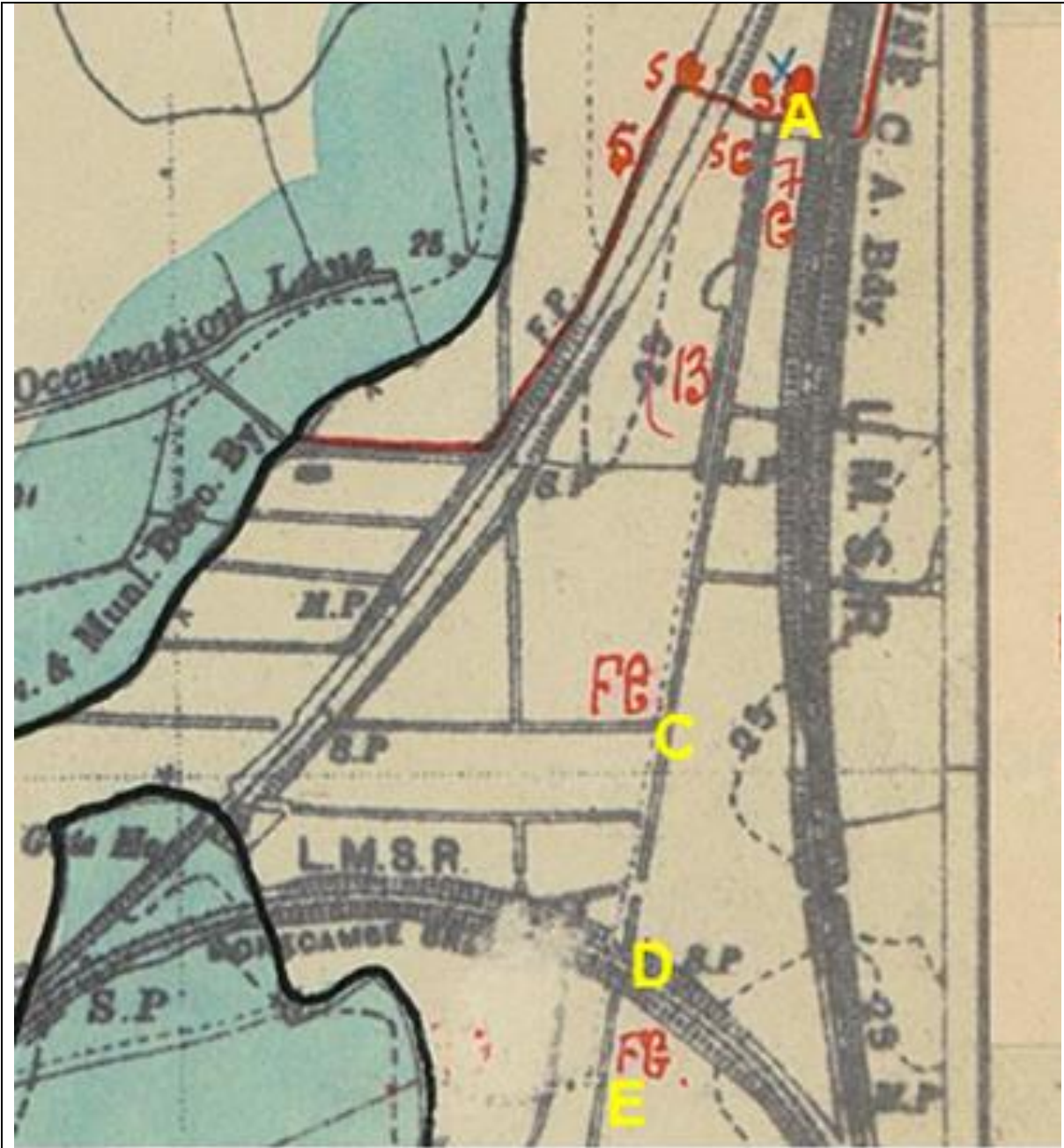




<p>Observations</p>		<p>Between point A and point B it is not possible to clearly see the application route due to the fact there are trees and hedges along it. From point B through to point D the route is not visible on the ground apart from on the immediate approach to point D where it appears that there is a more worn area suggestive of farm machinery or animals passing through the tunnel to access land south of the railway. Beyond the railway the application route is not visible as a track through to point E – where a gap in the fence line can be seen with a track leading to it from the west.</p>
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		Between point E and point F the application route is not visible across the field. From point F through to point H a clearly defined track consistent with use by farm vehicles can be seen - as can a route extending west into an adjacent field.
Investigating Officer's Comments		The aerial photograph taken in the 1960s suggests that there was no significant use of the application route as a through route at that time. The tracks visible on the ground coinciding with parts of the application route are consistent with farm access tracks linking a number of fields south of the railway.
<b>Definitive Map Records</b>		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.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.





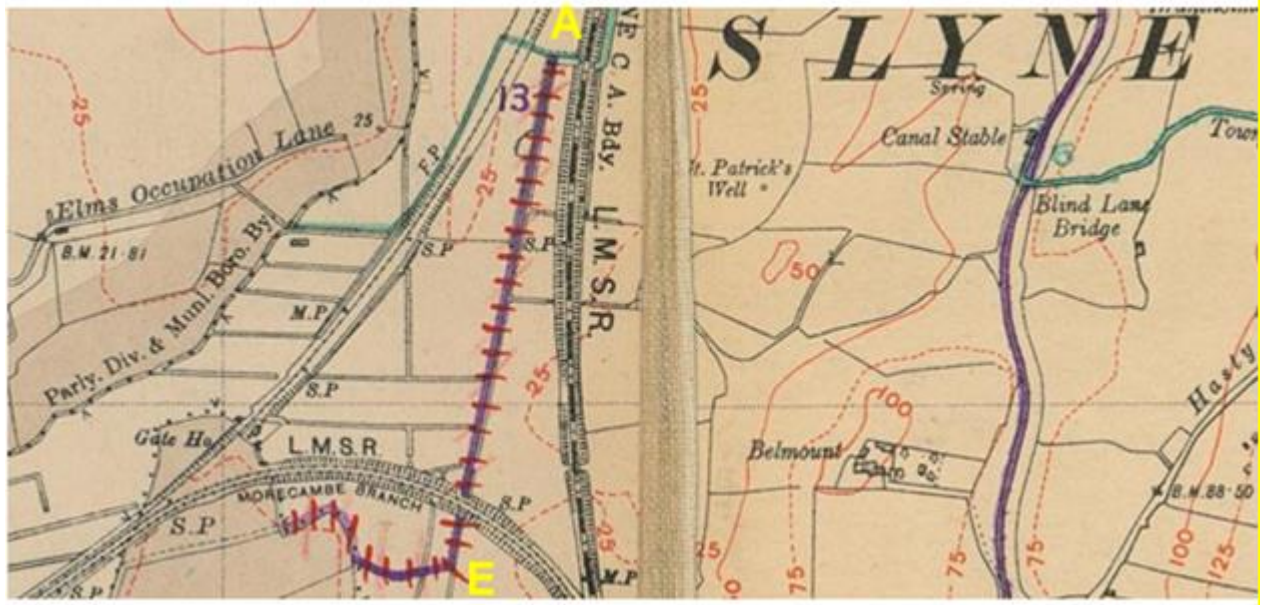
DISTRICT Lancaster Rural PARISH Slyne with Hest No. 13  
 MAP SHEET No. 3 LENGTH 0.40 miles  
 (to two decimal places)  
 BRIEF DESCRIPTION (Field F.P. or otherwise)  
Field footpath  
 DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
Commences at field gate near the first swing gate on Map 3. footpath 5, down narrow strip of land, hedge on right hand side & ditch on left side, keep near to the ditch through field gate, then under Railway bridge (Lancaster to Morecambe Branch line) through field under bridge up to Morecambe boundary, ~~out to road~~  
 SURVEYED BY:— Name H.S. Dixon  
 Address 4 Coastal Rise, Hest Bank  
 Date June 5/.

DISTRICT Lancaster Rural PARISH Slyne with Hest No. 5  
 MAP SHEET No. 2 T3 LENGTH 0.95 miles  
 (to two decimal places)  
 BRIEF DESCRIPTION (Field F.P. or otherwise)  
Bridle path & footpath (~~bridle path~~)  
 DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
Starts at Raikes Head on Hest Bank to Lancaster <sup>road</sup> opposite Shady Lane. Through stone stile, farm yard gate, over Canal bridge along Railway side then under Railway bridge through 2 swing wood gates over railway line (Hest Bank to Bard) through swing wood gate down center path between Morecambe Golf Links & Railway to Morecambe Boundary.  
Surface Metalled from Raikes Head to Railway Bridge then grass to side of Golf Links afterwards.  
 SURVEYED BY:— Name Golf Links afterwards  
 Address End of path Good  
 Date Stiles  
Stiles - Good

Observations	The Parish Survey Map produced by Slyne with Hest Parish Council shows the full length of the routes now recorded as 1-31-BW5 and 1-31-FP5a as one continuous route numbered 5. The Parish Survey Card described it as a Bridleway and Footpath but then the word Footpath had been crossed out. It describes the route as passing through two swing wood gates over the railway which corresponds to the level crossing
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		<p>west of point A.</p> <p>Whilst not drawn on the Parish Survey Map the application route is numbered as path 13 between point A and point C and the location of gates are marked at point C and point E. A Parish Survey card was completed for path 13 which describes the route as a field footpath described as starting at a field gate and running down a narrow strip of land to go through a field gate and under the railway (point D) to go through a field and under a further bridge to the Morecambe boundary. Traces of a route or annotation appear to have been scraped off the Parish Survey Map near point E.</p>
<p><b>Draft Map</b></p>		<p>The parish survey map and cards for Slyne with Hest were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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>



National Parks and Access to the Countryside Act, 1949  
Statement annexed to the Draft Rights of Way Map. Section 27 (4)

Rural District of LANCASTER Relevant Date 1 JAN 1955 Parish of SLYNE-WITH-BEEST.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	Footpath	A. 6 near Cross Keys Hotel to Bottendale	0.23	
2	Footpath	Bolton Bank Lane to Halton-road near Cemetry	0.27	
3	Footpath	Farm near Heat Bank Hotel to Marine Drive	0.28	
4	Footpath	Marine Drive to Parish Boundary at Morecasbe <del>Morecasbe</del>	0.42	
5	Bridleway	Bakes Head to Morecasbe Golf Links	0.95	
6	Bridleway	<del>Blind Lane bridge to Hasty Brow</del>	0.14	
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A6 RL.	1.00	
8	Footpath	Heat Bank Lane to Slyne - Morecasbe Road.	0.24	
9	Footpath	Hasty Brow to junction with path No. 5 at Bakes Head.	0.33	
10	Footpath	Canal Towpath from Bolton le Sands Parish Boundary to Lancaster Boundary.	2.12	
11	Footpath	Junction of Kellat Lane & Strellas Lane to Beck Lane.	0.46	
12	Footpath	<del>Hasty Lane to Masses Lane</del>	0.17	Now built up with Council Houses.
<del>13</del>	Footpath	Junction with path No. 5 to Morecasbe Boundary	0.40	

*Blind Lane via Strellas Lane to Beaumont Hotel*

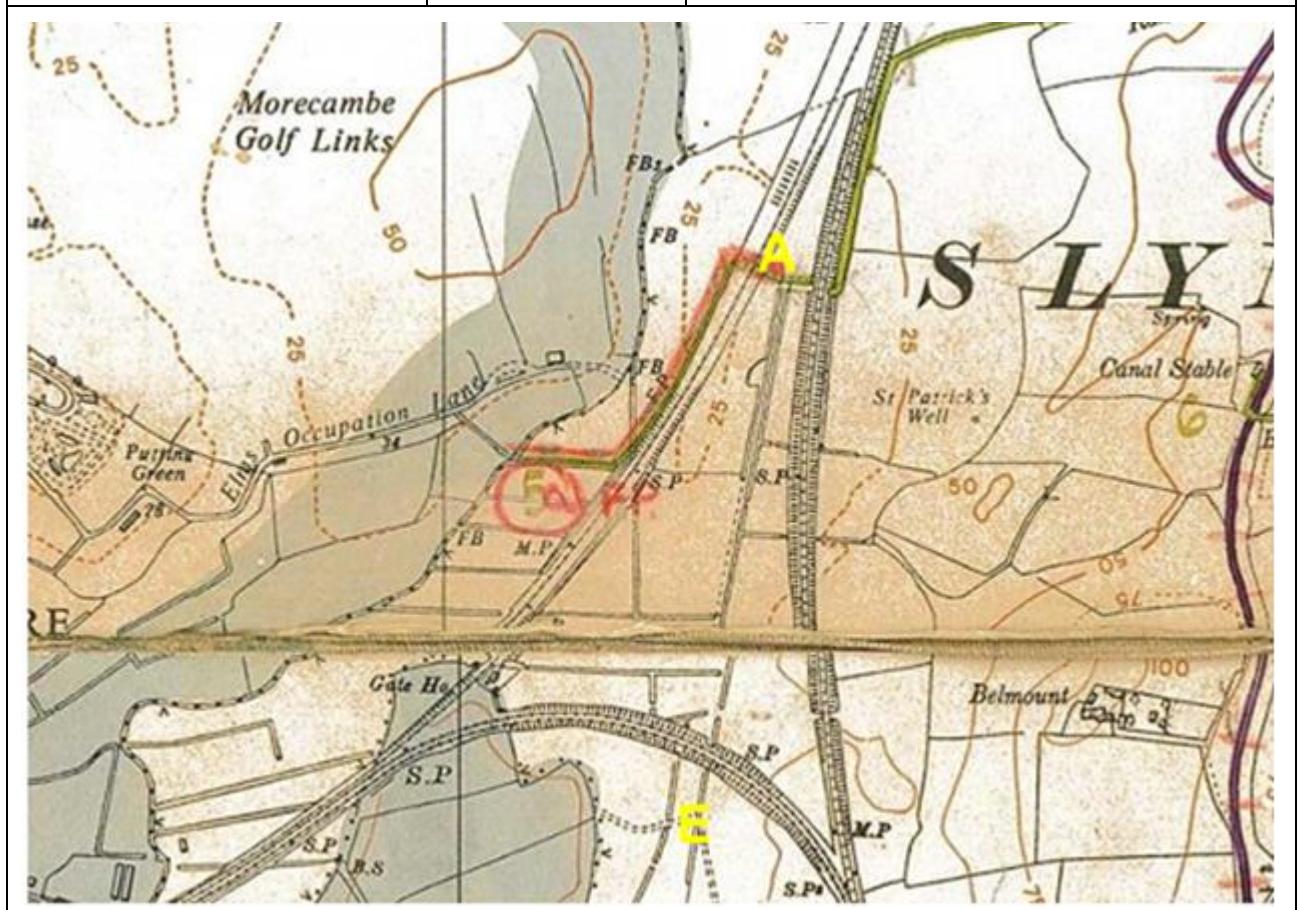
Observations

The Draft Map shows the full length of the route now recorded as 1-31-BW5 and 1-31-FP5a coloured green and recorded as a bridleway. The application route from point A through to point E was shown as part of Footpath 13 but was then crossed out. The rest of the application route (E-H) was not shown.

Objections listed to the Draft Map included an objection to the inclusion of



		<p>Footpath 13. The objection was submitted by The British Transport Commission and a hearing was held on 22<sup>nd</sup> September 1955 where it was resolved that in the light of all available evidence the route was to be deleted from the Draft Map. A note on the file held by the County Council refers to the fact that the route was not recorded on the 1932 Rights of Way Map and was described as a 'field and occupation road' in the Book of Reference accompanying the Deposited Railway Map dated 1887.</p>
<p><b>Provisional Map</b></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>



Statement annexed to the Provisional Rights of Way Map. Section 30 (1)

Rural District of LANCASTER Relevant Date, January 1st, 1953 Parish of ELDKWORTH

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars
1	F.P.	A.6 near Cross Keys Hotel to Bottondale	0.23	
2	"	Bolton Back Lane to Halton road near Cemetery	0.27	
3	"	Farm near Heat Bank Hotel to Marine Drive	0.26	
4	"	Marine Drive to Parish boundary at Morecambe Promenade	0.42	
5	Bridleway	Rakes Head to Morecambe Golf Links	0.95	
6	"	Blind Lane Bridge to Hasty Brow	0.36	
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A6 Road.	1.00	
8	"	Heat Bank Lane to Slyne - Morecambe Road.	0.24	
9	"	Hasty Brow to junction with path No. 5 at Rakes Head.	0.33	
<del>10</del>	<del>"</del>	<del>Canal-Towpath from Bolton to Burns Parish boundary to Lancaster boundary.</del>	<del>2.12</del>	
11	"	Junction of Kellat Lane and Strellas Lane to Back Lane.	0.46	
12	"	Shady Lane to Manor Lane.	0.17	
14	"	Kellat Lane via Strellas Lane to Beaumont Gate thence to parish boundary	0.85	

<p>Observations</p>	<p>The Provisional Map did not show any part of the application route recorded as a public right of way.</p> <p>The route recorded as Bridleway 5 is shown coloured green and described in the Provisional Statement as a bridleway from Rakes Head to Morecambe Golf Links.</p> <p>Drawn over the green line is a red pencil line to the route of Bridleway 5 west of point A with 'FP ' written beside it.</p> <p>No records suggesting that this change to the recorded status of the route was made in 1960 when the Provisional Map was published was found and the First Definitive Map detailed below still records the full length of the route as a bridleway suggesting that the notation was added later.</p>
<p><b>The First Definitive Map and Statement</b></p>	<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Administrative County of the County Palatine of Lancaster  
 National Parks and Access to the Countryside Act, 1949  
 Statement annexed to the Definitive Rights of Way Map. Section 32 (1)

Rural District of **LANCASTER** Relevant Date, 1st. January 1953. Parish of **SLONG-WITH-HEST**

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	F.P.	A.6 near Cross Keys Hotel to Bottomdale	0.25	
2	"	Bolton Back Lane to Halton road near Cemetery	0.27	
* 3 ✓	"	Farms near Heat Bank Hotel to Marine Drive	0.28	Not deleted and absorbed into Estate development and recorded as new road. It is originally part of C.P. No. 3
* 4 ✓	"	Marine Drive to Parish Boundary at Morecambe Promenade	0.13	
5 ✓	Bridleway	Sakes Head to Morecambe Golf Links	0.95	Footpath route to footpath after representation to Council.
6 ✓	Footpath	Blind Lane Bridge to Hasty Brow	0.38	Footpath route to footpath after representation to Council.
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A.6 Road	1.00	Not deleted in Order and absorbed into estate development and part part omitted
* 8 ✓	"	Heat Bank Lane to Slyne - Morecambe Road	0.24	
9	"	Hasty Brow to junction with path No. 5 at Halses Head	0.33	
11	"	Junction of Kellet Lane and Strellas Lane to Back Lane	0.46	
12	"	Shady Lane to Manor Lane	0.17	
14	"	Kellet Lane via Strellas Lane to Beaumont Cote thence to parish boundary	0.85	
* 15 ✓	"	From eastern end of Station Road to Cemetery Road	0.13	New path included on a proviso of a representation to the Parish Council.

Observations

The application route is not recorded on the First Definitive Map and Statement. Bridleway 5 is still recorded as passing through point A and continuing through to Morecambe golf course. The First Definitive Map was then used as part of the review process for the preparation of the Revised Definitive Map detailed below. As part of that process all the changes to be made to the Definitive Map as part of the process were marked on the map – including in this case the change in status to the bridleway west of point A. County Council records relating to the review process record that the change was made as a result of representations made by British Rail relating to the fact that the route west of point A had been recorded as a bridleway by mistake; that the existence of 'clap gates' on the route meant it was – and had previously been – incapable of use by horses and that footpath rights had been diverted onto that route in 1922 (although no copy of the diversion order was found).

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

Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment



orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> 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.



No. of path	Kind of path	Position	Length in miles to 2 places decimals	Other particulars (if any)
1	Footpath	A.6 near Cross Keys Hotel to Bottasdale	0.25	
2	"	Bolton Beck Lane to Halton Road near Cemetery	0.27	
3	"	Farm near Hest Bank Hotel to Highfield Drive	0.02	
3a	"	From Marine Drive to link up with Estate Development.	0.16	
4	"	Marine Drive to Parish Boundary at Morecambe	0.42	
5	Bridleway	Rakes Head to Junction with Footpath 5a	0.70	
5a	Footpath	From Municipal Borough Boundary to Junction with Bridleway 5.	0.25	
6	Bridleway	Blind Lane Bridge to Hasty Brow	0.38	
7	Footpath	Beumont Hall - Halton Road Bridge Road to A.6 Road.	1.00	
8	"	Hasty Brow to link up with Estate Development	0.06	

Observations		<p>The application route is not recorded as a public right of way on the Revised Definitive Map (First Review). The route previously recorded as bridleway 5 is shown altered to terminate at its junction with the newly recorded footpath 5a (at point A on the application route).</p>
Investigating Officer's Comments		<p>The application route between point A and point E was shown as a public footpath on the parish survey and draft map but was removed after a public hearing whereby it was determined that it had been included in error. The rest of the route was not considered to be a public right of way during the preparation of the First Definitive Map in the 1950s through to the 1960s.</p> <p>Rakes Head Lane from Hest Bank Lane through to point A is recorded as a public bridleway which appears not to have been challenged. It was originally recorded as continuing west from point A through to the parish boundary from where the continuation of the route was recorded as a public footpath by Morecambe Municipal Borough. The recorded public status of the section of the bridleway from point A through to the parish boundary was challenged when the First Definitive Map was reviewed and the county council records detail that it was subsequently downgraded to a footpath after representations made by British Rail. This effectively left 1-31-BW5 as a 'dead end' bridleway with no recorded public access for horses</p>

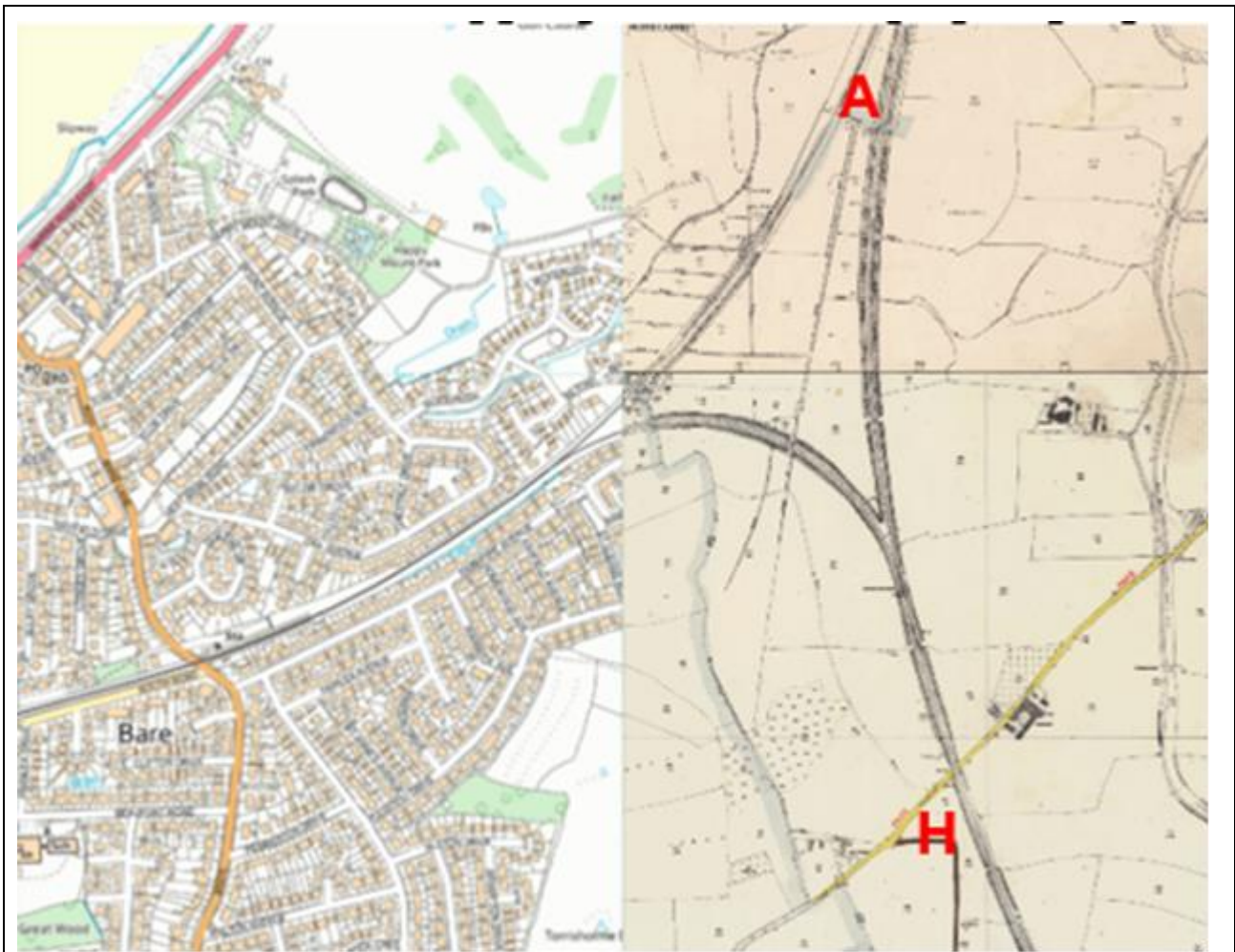
		<p>beyond point A. It is not known from the records whether consideration of this point was made – as point A does not appear to constitute a place of public resort which historically would have explained why a public bridleway existed to this point only.</p> <p>It may be that it was possible to continue from point A along the application route to exit onto Hasty Brow but no reference was found to this in the county council files and there is no reference to the fact that if access was available along the application route then it should have been recorded as a public bridleway as part of the review process.</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. 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>



Handover Map







LCC highway records

<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.</p> <p>The applicant drew attention to the fact that the application route from point A to just south of point C is listed on the County Council's digitised road classification layer on MARIO as unadopted road X1310.</p>
<p>Investigating Officer's Comments</p>		<p>This provides no evidence for or against the existence of public rights.</p> <p>The inclusion of part of the route as an unadopted road with the reference X1310 is not indicative of more than a physical existence on the ground.</p>
<p><b>Highway Stopping Up Orders</b></p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the</p>



		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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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.

A planning application has been submitted to Lancaster City Council for residential housing over land crossed by the application route north of the railway at point D through to the field boundary and gate at point F (Reference 21/01341/OUT).

### Summary

No user evidence was submitted as part of this application and the evidence presented to Regulatory Committee on this occasion is entirely map and documentary evidence – which is considered in detail above.

The applicant has submitted that public bridleway rights exist along the route and that those rights should be recorded on the Definitive Map. Because the County Council has not been presented with any evidence of use it is necessary to determine whether there is sufficient map and documentary evidence from which bridleway rights can be inferred.

The applicant submitted many OS maps of various scales to illustrate that the application route existed as a substantial route which was capable of being used on horseback. They argue that the fact that the route was shown on these maps – from at least the 1890s – was good evidence that the public must have had a right of access along them.

If the gates across the route did not prevent access then it is agreed that the route may have been accessible on horseback and could have been used by the public. However, no user evidence was submitted and there are no historical documents, photographs or statements referring to actual historical use of the route by the public.

Other map and documentary evidence examined suggest that the route may not have come into existence or been used by the public. The northern end – from point A through to the approximate location of point D existed in the 1840s and appeared to provide access to several individual fields – possibly enclosed as part of a private inclosure award or agreement although no copy has been found. At that time the rest of the route – through to point H did not exist.

The Tithe Map for Skerton does not record a route through to point H in 1841 and although the Slyne with Hest Tithe Map and Award shows that part of the application route from point A through to just north of point D it was not part of a longer through route and was not considered to be part of the public vehicular network.



The railway plans and books of reference provide useful information about what the status of the route crossed by the railway at point D was considered to be at that time. A substantial bridge allowing access under the railway was provided but the route under it was described as an occupation road with no reference to public rights and again there is no evidence that at the time that the railway was built there was a route existing all the way from point A through to point H.

The Finance Act records show the application route excluded from the numbered plots from point A to just north of point D which is often considered to be good evidence of a route considered to be at least a public bridleway. However, it is not shown excluded for its full length and the excluded length corresponds to the length with no registered landowner and which may possibly have been created in the first instance as part of the inclosure of adjacent land. The rest of the route is listed as part of plot 42 which covers a vast expanse of land for which no deductions were made for the existence of public rights.

The route was not recorded as a public right of way in 1932 and when part (A-E) was included on the Parish Survey Map and Draft Map as a public footpath it was appealed at the earliest stage by the British Transport Commission and removed from the map.

In conclusion, it is the Investigating Officer's opinion that the Ordnance Survey maps alone are insufficient evidence from which to infer public bridleway or footpath rights exist and the lack of other supporting evidence means that even if the route could – or had been used by the public at some point in the past there is not sufficient evidence from which to make an order.

## **Advice**

### **Head of Service – Legal and Democratic Services Observations**

#### Landownership

Ownership of the application route between point A and point B is unregistered and not known.

From point B to point C it is owned by Manor House Farm (Title LAN 54392)

From point C through to point H the land crossed by the application route is in the registered ownership of Williamlands Farm (Title LA818683) with the exception of the railway tunnel at point D.

The land was registered in the name of the current landowner in 1998. The Title refers to a right of way of British Rail over a field marked 'C' on the conveyance plan. The County Council have not had sight of the conveyance plan but the description appears to relate to land south of the railway through which the application route runs.

A private right of access through an underpass leading from land registered under this title east under the Lancaster – Carlisle West Coast railway is also referred to



but there is no mention of a public or private right of access through the underpass at point D.

The underpass at point D – together with the railway line – is not registered but Network Rail have confirmed ownership of the railway line and bridge which is referred to as bridge 1 on the Morecambe South Junction Railway – Engineers Line Reference MSM 0m 12c.

#### Information from the Applicant

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

Tithe Map and Award for Slyne with Hest 1846

Finance Act (District Valuation Award) Map 1910

An extract from the County Councils digitised highway records

Land registry plans

Search result for stopping up orders for Rakes Head in The Gazette

Undated photographs of the route and undated aerial photographs obtained from Google Maps

Ordnance Survey Instructions to Field Examiners 1905

OS 6 inch maps published in 1848, 1895, 1913, 1931, 1947, 1956-7, 1961-3, 1968

OS 25 inch maps published in 1891, 1913, 1931

OS 1 inch maps 1898, 1918, 1947, 1955

OS 1:25,000 maps published 1947, 1952, 1963

#### Information from Others

One adjoining landowner responded to the consultation by simply highlighting the area on the map concerning them and stated the land belongs to a family trust. No further comments were provided with regards to the consultation.

Network Rail object to the application and state there have never been any public rights recorded for this location. Network Rail further state they object to the application, and if an order was made in favour of the application, they would potentially have to maintain a bridge in the future purely to accommodate a public right of way, where private rights have either fallen away or have been relinquished.

#### Information from the Landowner

The owner of the land crossed by the application route from point C through to point H (with the exception of the railway tunnel at point D) has objected to the application on the following grounds:

He states that the application route is not, and has not during his ownership, been used by the general public or any party who have not been authorised to do so.

He points out that the route is impossible to use due to the fact that there are locked gates across it at points E,F and G (on the Committee plan) which are locked in order to prevent any stock escaping.



The landowner also draws attention to the fact that access from the northern end of the route is not possible due to the existence of a fence across the route on the northern boundary which when the route was inspected on the ground appears to be a reference to the wired-up gateway at point C.

He concludes by stating that he does not believe that the application has any validity.

In relation to this land, Oakmere Homes (Northwest) Limited have obtained an Opinion from Counsel Ruth A. Stockley of Kings Chambers, Manchester dated the 14<sup>th</sup> December 2022. Oakmere Homes have an option to purchase the land in question. The Opinion is attached at Appendix A. Ms Stockley concludes as follows – "In conclusion, in relation to the claimed route between points B & D, the sole piece of evidence submitted with the Application having any applicability to that section of the route are some OS Maps. As such maps are not evidence of the highway status of any routes shown, there is no evidence whatsoever produced to support the claimed route between points B & D being a bridleway.

In relation to the claimed route to the north of point B, the evidence relied upon is limited to documentary evidence on which the route has been marked as physically existing. However, as such maps are not evidence as to the bridleway status of any routes shown, no evidence has been produced to support its bridleway status.

It follows that the evidence submitted with the Application does not, in my opinion, amount to credible evidence sufficient to demonstrate a reasonable allegation that a bridleway exists along the claimed route. Consequently, it is my view that the Modification Order sought should not be made by the Council."

Network Rail own the railway line and bridge under which the application route runs and have objected to the application. They state that Bridge 1 was constructed to accommodate a private road that pre-existed the authorisation and construction of the railway and that there have never been any public rights recorded for this location.

## **Conclusion**

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

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. Whilst the route is shown on several maps where the public might gain access to the route, there are some inconsistencies between maps with the whole route not shown on subsequent versions and ultimately there is an absence of 'sufficient evidence' as to public rights. This view had been reached on the evidence before the Opinion of Counsel was received. Committee is referred to the Opinion provided by Counsel Ruth A. Stockley dated 14<sup>th</sup> December 2022 to the prospective landowner which makes entirely plausible conclusions in the circumstances and finds insufficient evidence of bridleway dedication. She refers to case law relevant to the matter.

On balance and given the nature of the evidence it is advised that the evidence of the application route having become a public bridleway is insufficient. Respectfully it cannot be asserted that a bridleway “subsists” or is “reasonably alleged to subsist”.

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

## **Implications**

This item has the following implications, as indicated:

Lancashire County Council as Surveying Authority under the Wildlife and Countryside Act 1981 is required to keep the Definitive Map and Statement of Public Rights of Way up to date by making definitive map modification orders to correct errors and omissions shown, or required to be shown on it. It is required to process duly made applications for definitive map modification orders and also to consider whether to make orders when it discovers relevant evidence.

This decision is part of this process and Committee has a quasi-judicial role in this decision which must be taken considering all available relevant evidence.

## **Risk management**

Consideration has been given to the risk management implications associated with this application. 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**

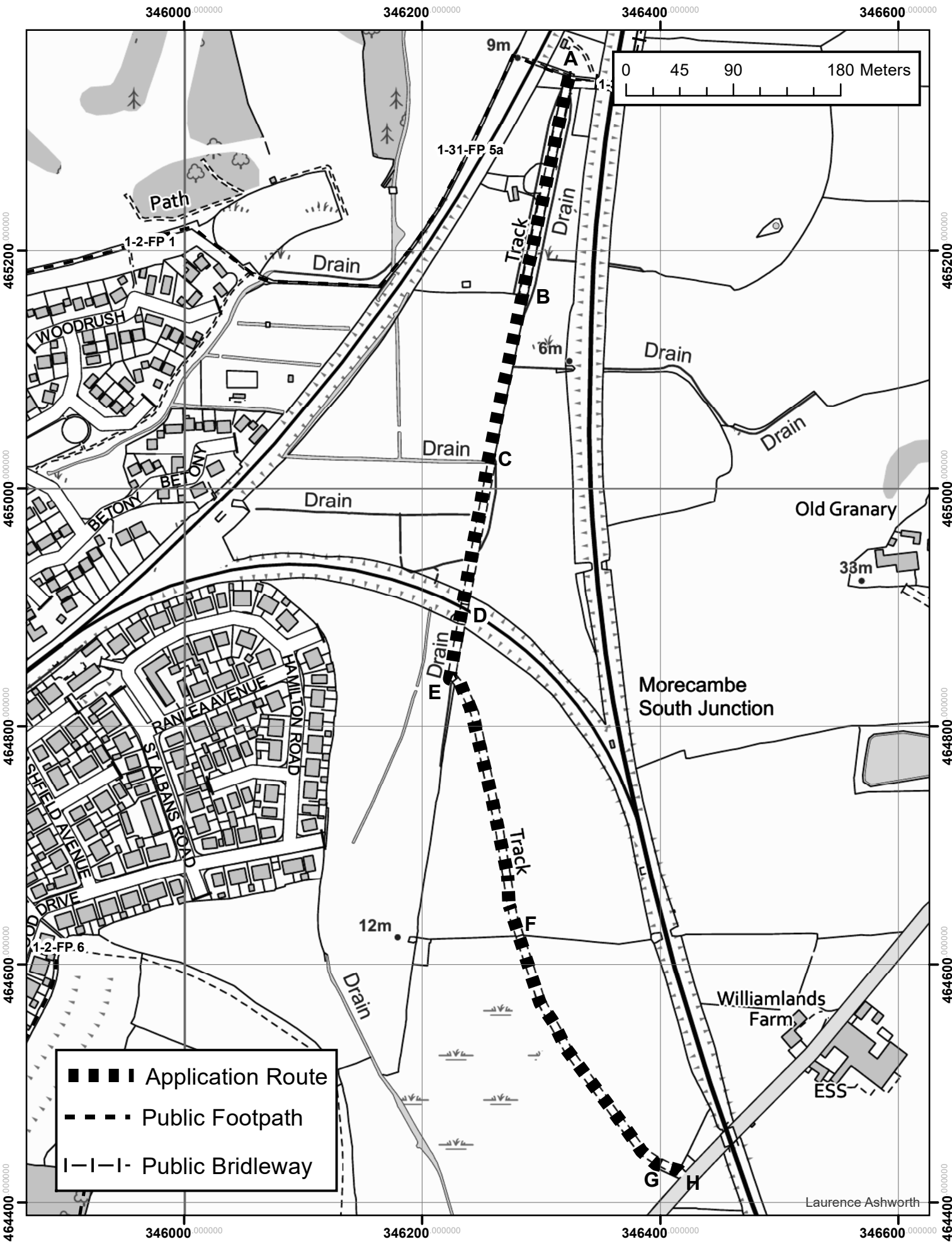
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-701		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A









**RE: RAKES HEAD LANE APPLICATION FOR DMMO**

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**OPINION**

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1. I am asked to provide an Opinion for Oakmere Homes (Northwest) Limited (“Oakmere”) upon an application made on behalf of the British Horse Society (“the Applicant”) to Lancashire County Council in its capacity as surveying authority (“the Council”) for a Definitive Map Modification Order to add a bridleway from the junction with Bridleway 1-31-BW 5 on Rakes Head Lane to the junction with Hasty Brow Road (“the Application”) as shown marked A-B-C-D (“the claimed route”) on the plan attached to the Application (“the Application Plan”) to the Definitive Map and Statement. References to such lettering in this Opinion are to the Application Plan.
2. Oakmere has an option to purchase land subject to the Application comprising registered title number LA818683 owned by Gordon Owen and Lynette Owen (“the Owens’ land”). The claimed route runs over that land from a point to the north of B to D.

**LEGAL FRAMEWORK**

3. The Application is made under s.53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). Section 53(2)(a) requires the Council to keep its Definitive Map and Statement under continuous review and to make modifications as soon as reasonably practicable after the occurrence of any of the events specified in s.53(3). The Application fails to identify the event which is contended to have occurred. It is assumed that the event contained in s.53(3)(c)(i) is relied upon, namely:

*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*

*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 or restricted byway or, subject to section 54A, a byway open to all traffic”.*

4. The relevant legal test for the Council to apply in determining whether to make an Order under that provision is whether the claimed bridleway “*subsists or is reasonably alleged*”. The former test is whether, on the balance of probabilities, the bridleway subsists. The latter test is a lesser one of whether a reasonable person, having considered all the relevant evidence available, could reasonably allege the claimed bridleway exists: see *R. v Secretary of State ex parte Bagshaw and Norton*.<sup>1</sup> Nonetheless, credible evidence must be produced that the claimed bridleway is reasonably alleged to exist in order to satisfy that lower threshold.

## USER EVIDENCE

5. There is no evidence whatsoever of any use of the claimed route by the public and none is relied upon in the Application. No user evidence forms have been submitted. That is entirely consistent with the signed Statement of Mr Owen as well as signed Statements from other relevant landowners that the public have never used the route. Indeed, as Mr Owen points out in his Statement:

*“It would be impossible for the route to be used as there are locked gates along the Application Route in the approximate position marked with an “X” on Plan 1. The gates are locked in order to prevent any stock (particularly bulls) from escaping”.*

In addition, he notes that:

*“access cannot be gained from the northerly end of the Application Route as there is currently a fence along the northerly boundary on the Application Route shown on Plan 2”.*

6. The Applicant’s own photographs support Mr Owen’s evidence. The **only** photograph provided by the Applicant along the claimed route insofar as it passes over the Owens’ land is photograph D10 taken from point D looking north-west. That shows the padlocked gate preventing access onto or egress off the claimed route.
7. Instead, the **only** evidence of use of the claimed route submitted with the Application is use by farmers of the agricultural land over which it passes. As stated in the notes to photograph D6 in the Application, “*The route line is still used by the farmer*”. That

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<sup>1</sup> (1994) 68 P. & C.R. 402.

reference is repeated on page 2 of the Application under the heading “Description of Application Route”.

8. In the absence of any evidence whatsoever of any use of the claimed route by the public, s.31 of the Highways Act 1980 by virtue of which dedication of a public right of way may be presumed if the relevant statutory criteria are established is not engaged. Similarly, there is no evidence whatsoever to support a finding, or even a suggestion, that the claimed route has been impliedly dedicated at common law by virtue of long use.

### **CUL-DE-SAC**

9. A passing reference is made in the Application<sup>2</sup> to Bridleway 1-31-BW 5 terminating at point A which is described as “*a dead-end*”. That is factually incorrect. The Bridleway leads to the stables and horse paddocks at point A which are evidently a destination for bridleway users. As pointed out by Atkin LJ in *Moser v Ambleside UDC*:<sup>3</sup>

*“I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway.”*

In this instance, there is an obvious reason for bridleway users to use the cul-de-sac Bridleway given that it leads to a particular destination which bridleway users would be expected to visit.

10. It follows that the end point of Bridleway 5 provides no support for a bridleway continuing along the claimed route as appears to be hinted at in the Application.

### **DOCUMENTARY EVIDENCE**

11. Instead, the Application relies **solely** upon documentary evidence. Notably, such evidence has been in existence for many years, going back to the 19<sup>th</sup> century, and it is somewhat surprising that the claimed route was not recorded on the Definitive Map from the outset or at any time subsequently if there was credible evidence supporting

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<sup>2</sup> On page 2 under the heading “Summary and Statement of Reasons”.

<sup>3</sup> (1925) 89 J.P. 118.

its existence. The timing of the Application based solely on evidence that has been available for decades appears to be an attempt to frustrate development proposals rather than to record a bridleway in circumstances where there is credible evidence of its existence.

12. The Application relies heavily on Ordnance Survey Maps. It is well established that OS Maps are not evidence of the highway status of any routes shown. Instead, they merely show what the surveyor physically found on the ground at the time of the relevant survey. They contain an express disclaimer to that effect.

13. The legal position is clearly set out in caselaw. Farwell J. stated in *Attorney-General v Antrobus*<sup>4</sup> in relation to Ordnance Survey Maps:

*“Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey.”*

Similarly, in *Moser v Ambleside Urban District Council*<sup>5</sup>, Pollock MR stated:

*“If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....”*

More recently, Cooke J. observed in *Norfolk CC v Mason*:<sup>6</sup>

*“Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights”.*

14. It follows that the OS Maps are **not** evidence that the claimed route is a bridleway. They merely demonstrate that the route existed on the ground insofar as shown.

15. Moreover, it is apparent that the claimed route is not even shown as physically existing on some of the OS Maps for its full length. In particular, the claimed route between

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<sup>4</sup> [1905] 2 Ch 188 at 203.

<sup>5</sup> (1925) 89 JP 118 at 119.

<sup>6</sup> [2004] NR205111.

points C and D passing over the Owens' land is not shown as physically being apparent on the ground on the 1848 OS Map or on a number of OS Maps between 1931 and 1947.

16. Further, insofar as the claimed route is shown on the OS Maps, there is a good reason for it being evident as a physical feature on the ground. It serves, and has always served, agricultural land and has been regularly used by farmers of the land for such purposes. Its use by the farmer is expressly acknowledged by the Applicant as noted above. It is further of note that it follows the very route on which locked agricultural gates are placed as referred to by Mr Owen in his Statement.

17. The Applicant also relies upon the 1846 Tithe Map. Two crucial points arise from that Map:

- a. Tithe maps are again not evidence as to the status of any road shown or the extent of any public rights of way which may exist over any road.<sup>7</sup>
- b. In any event, the claimed route is not even shown on that Tithe Map from points B to D over the Owens' land.

It follows that the tithe map provides no evidence whatsoever in relation to the claimed route from points B to D, and no evidence as to the status of the claimed route between points A to B.

18. Similarly, the claimed route between points B to D is not shown on the 1910 Finance Act Map. Insofar as the claimed route between points A to B is shown, that Map does not provide evidence as to its bridleway status.

19. Again, the claimed route between points B to D is not shown on the Council's Road Status Map. Insofar as the claimed route between points A to B is shown, that Map does not provide evidence as to its bridleway status.

20. The photographs provided in support of the Application are notable by the absence of any photographs of the claimed route insofar as it passes over the Owens' land save one, namely D10. The others all relate to the section to the north of the Owens' land.

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<sup>7</sup> See *Copstake v West Sussex CC* [1911] 2 Ch. 331.

That one photograph produced at D10 shows the padlocked agricultural gate precluding access to the claimed route. There is no evidence of any bridleway gates along any section of the entire route.

## **CONCLUSION**

21. In conclusion, in relation to the claimed route between points B & D, the **sole** piece of evidence submitted with the Application having any applicability to that section of the route are some OS Maps. As such maps are not evidence of the highway status of any routes shown, there is no evidence whatsoever produced to support the claimed route between points B & D being a bridleway.
  
22. In relation to the claimed route to the north of point B, the evidence relied upon is limited to documentary evidence on which the route has been marked as physically existing. However, as such maps are not evidence as to the bridleway status of any routes shown, no evidence has been produced to support its bridleway status.
  
23. It follows that the evidence submitted with the Application does not, in my opinion, amount to credible evidence sufficient to demonstrate a reasonable allegation that a bridleway exists along the claimed route. Consequently, it is my view that the Modification Order sought should not be made by the Council.
  
24. I advise accordingly, and if I can be of any further assistance, please do not hesitate to contact me.

**RUTH A. STOCKLEY**

14 December 2022

Kings Chambers  
36 Young Street Manchester M3 3FT  
5 Park Square East Leeds LS1 2NE and  
Embassy House, 60 Church Street, Birmingham B3 2DJ



**RE: RAKES HEAD LANE  
APPLICATION FOR DMMO**

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**OPINION**

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Peter Bates  
Bannister Bates  
12-22 Northumberland Street  
Morecombe  
Lancashire  
LA4 4AX

Your Ref: PJB  
Our Ref: RS 500079



**Regulatory Committee**

Meeting to be held on 25 January 2023

**Part I**

Electoral Division affected:  
West Lancashire East

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Bridleway from Waness 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](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

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

**Recommendation**

That the application for the addition of a Bridleway from Waness Blades Road to Deans Lane be not accepted.

**Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way a Bridleway from Waness 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.

Note: Members will be aware that this application was intended to be determined at the Regulatory Committee Meeting held on 16 November 2022 but was deferred by Committee to allow for a revised report to be presented following the discovery of additional evidence.

## **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.



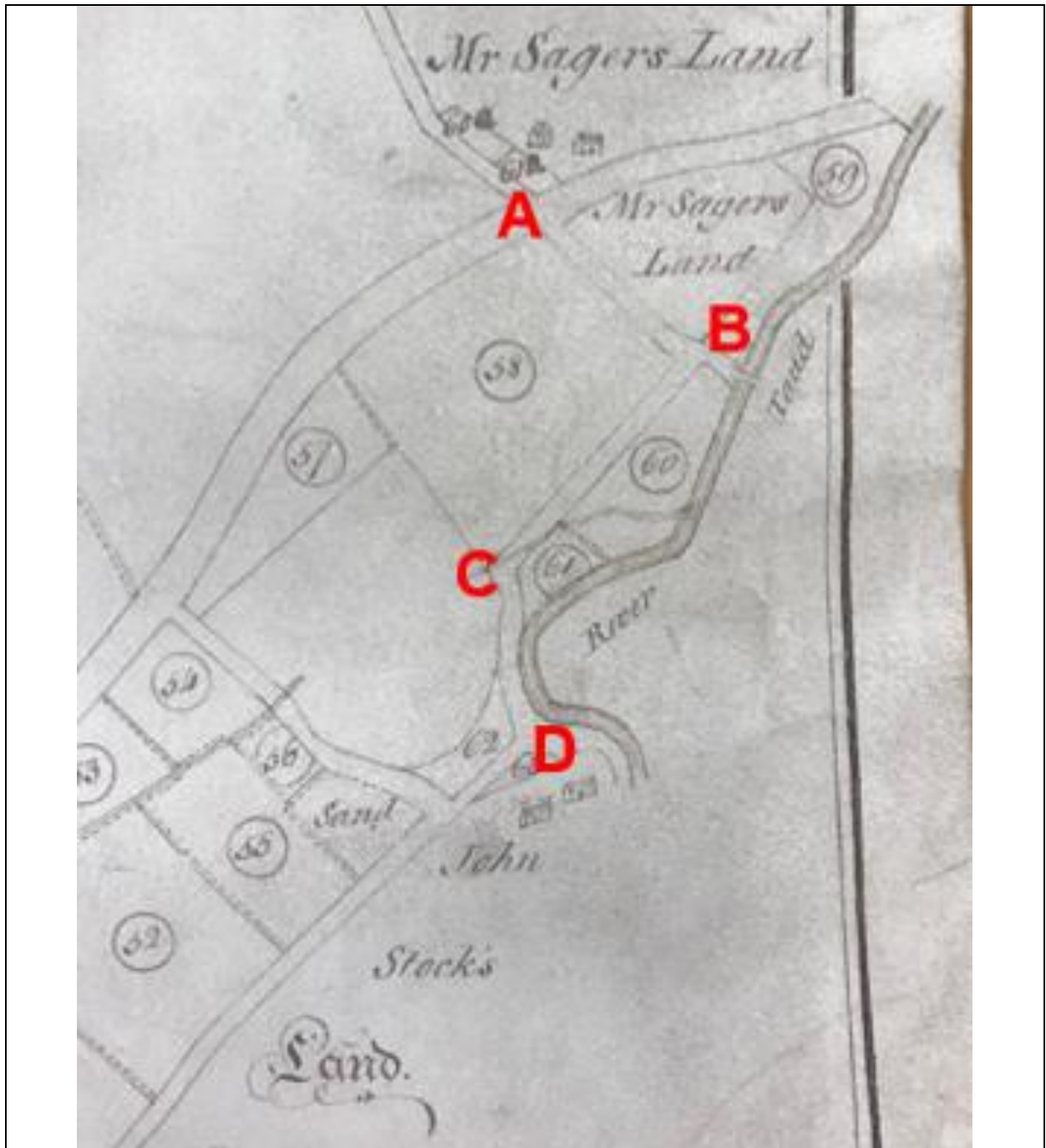
The total length of the route is 340 metres.

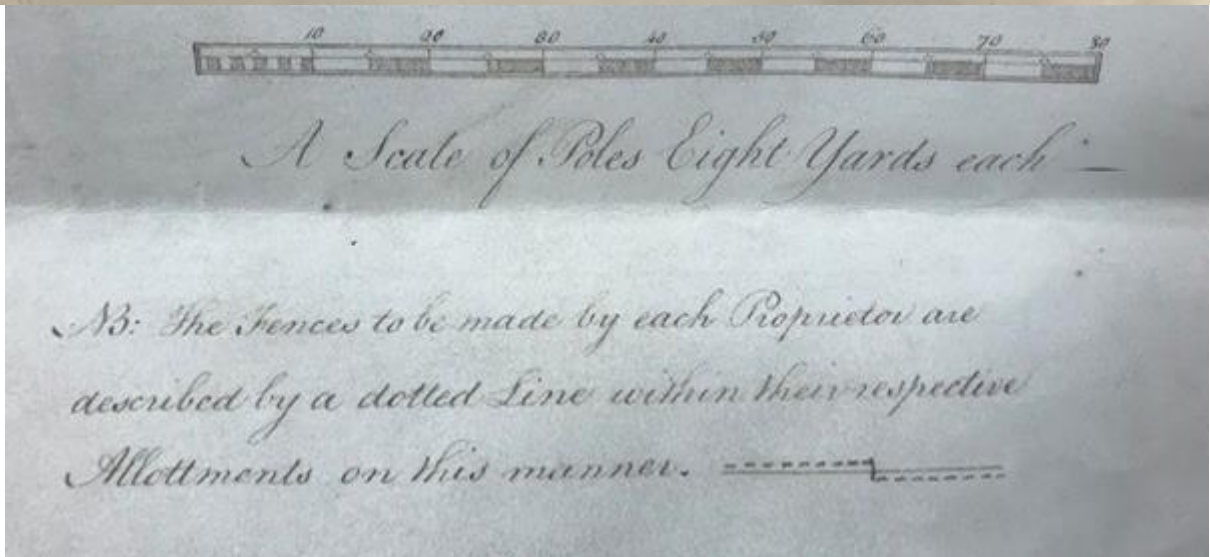
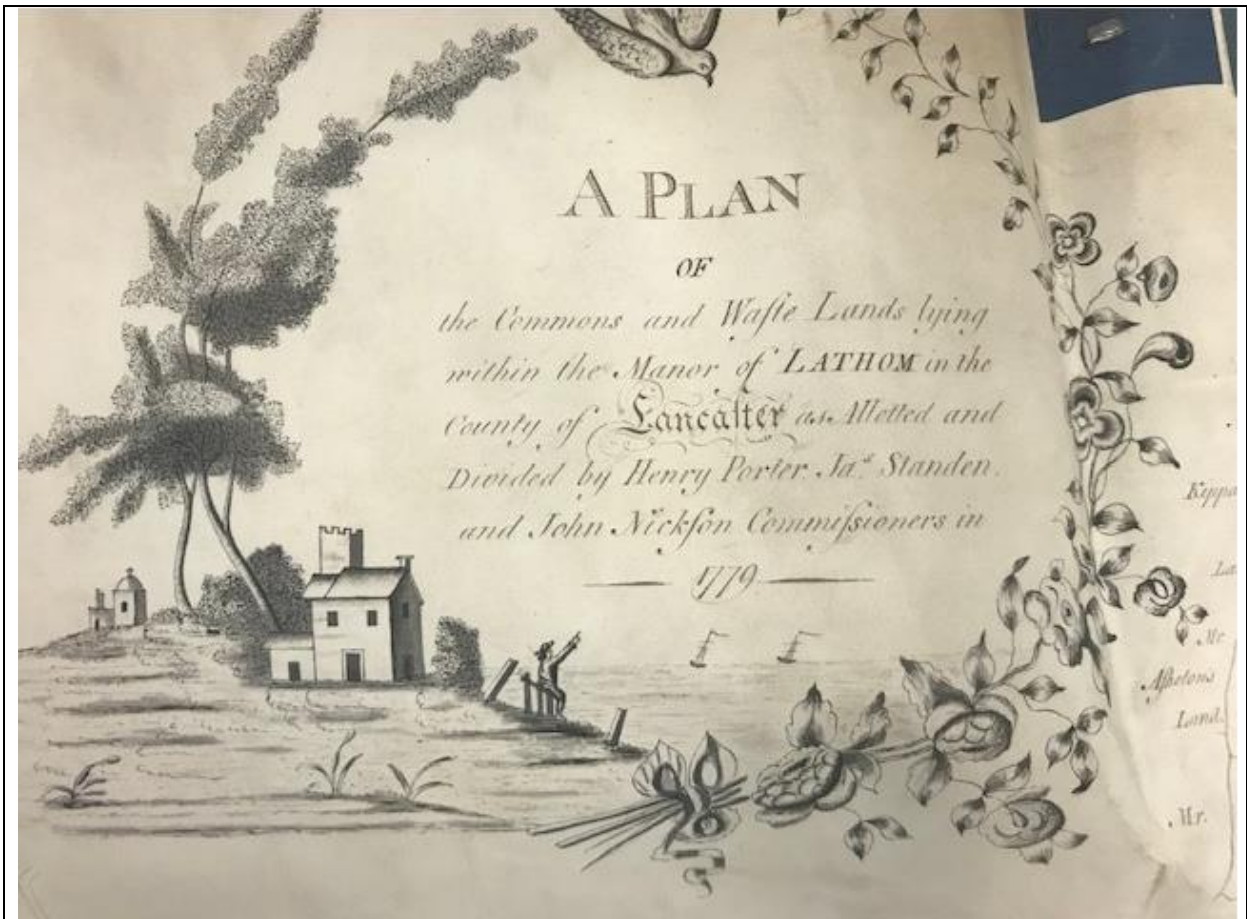
When the route was inspected the Investigating Officer spoke to the farmer who owned land adjacent to the route between points A-B-C. He explained on site that his father had farmed the land prior to him and that the route between A-B was cobbled and had been bounded by trees and hedges until more recent 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.

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Inclosure Act, Award and Maps</b>	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. The Act names the three Commissioners to be appointed to</p>
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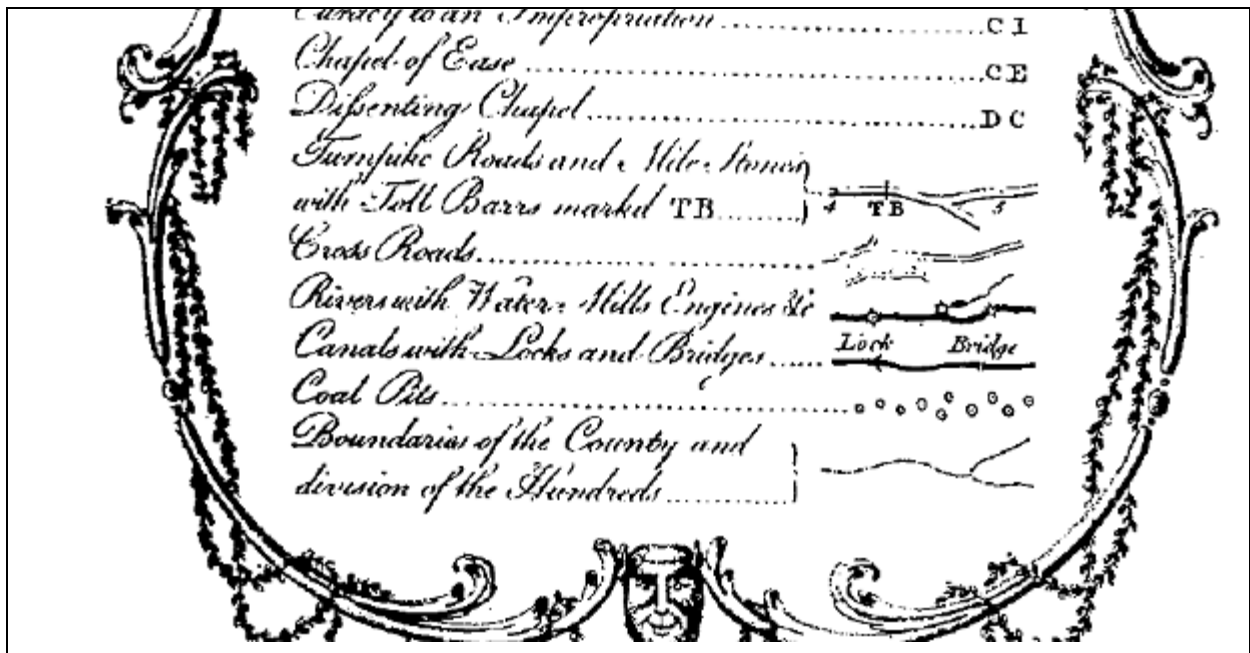
		<p>undertake the inclosure of the land and sets out the procedure to be followed.</p> <p>The Act specifies that the commissioners had the power and authority to set out both public and private roads, highways and footways, in, over and through the common and waste grounds to be inclosed as they thought 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>Although most of the Award is legible there are some sections damaged, particularly on the folds, but a transcript was made from the original document.</p> <p>The Award provides details of the land to be enclosed and then goes on to describe the public and private roads to be set out across it. The first route described, with reference to the Inclosure plan, was to be set out and 'forever hereafter used' as a public road or highway. This route is now known as Wanes Blades Road and Hoscar Moss Road and still exists today. Damage to the Inclosure Award meant that the specified width of this route could not be read.</p> <p>There then followed a list of further routes, all to be staked out to a width of thirty-six feet, which included a clear description of the application route.</p> <p>At the end of the detailed list the Award refers to the fact that the intended public road or highway and the several intended private ways should be ditched as considered necessary and that the private ways should be maintained by the adjoining landowners.</p> <p>Of the nine intended private ways listed it appears that six subsequently became named public vehicular routes recorded on the County Council's List of Streets (Moss Bridge Lane, Hollowford Lane, Frog Lane, Deans Lane, Meadow Lane and Daisy Lane). Three routes, including the application route, were not</p>
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		<p>recorded as carrying any public rights. One of the routes, which was shown on the Inclosure Map and described as running along the east side of plot 39, does not appear to have been constructed (or if it was, had fallen out of use by the time the First Edition 6 inch Ordnance Survey map was published in the 1840s) and the other was similarly either not constructed or fell quickly out of use except a section which forms part of the unrecorded section of Sutch Lane.</p> <p>After detailing any public or private routes to be set out 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 Wanes Blades Road/Hoscar Moss Road as an intended public road reiterating what was documented earlier in the Award.</p>
Investigating Officer's Comments		<p>It appears that the application route was set out in relation to the inclosure of land in Lathom as 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. In addition, the route is described in the Inclosure Award as being staked out and as an 'intended private way or road' suggesting that it did not exist before this time. The route is consistently described in the Inclosure Award as an intended private way or road and it is considered therefore that it came into being as a private route and does not appear to have been originally intended as a public right of way. It is noted that other routes originally created as private rights of way do appear to have become public at some point following their</p>

		creation and are now recorded as publicly maintainable highways. It was also noted that all of the routes so recorded are now named and tarmacadamed routes used by vehicles.
<b>Yates' Map of Lancashire</b>	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.

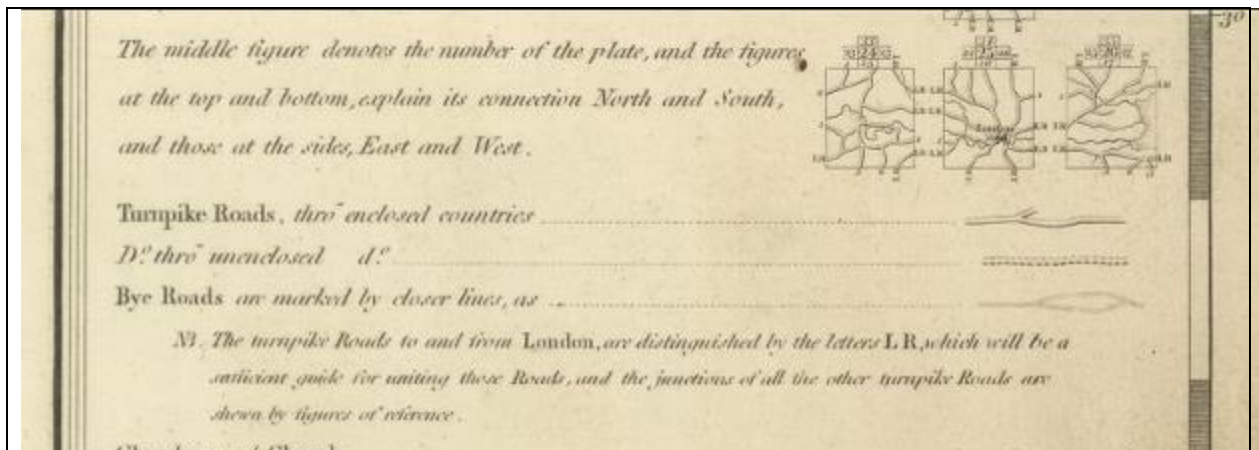




<p>Observations</p>		<p>Less than 10 years after the land was enclosed a route consistent with the location of Wanes Blades Road is shown passing through an area labelled as Hoscar Moss (Horsecar Moss). Unnamed buildings are shown on Wanes Blades Road approximating to the location of Tyrer's Farm which is near to point A on the Committee plan. From the buildings/Wanes Blades Road a route denoted in the key panel as a cross road is shown extending south through to Newburgh crossing an unnamed watercourse which looks to be the 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>
<p>Investigating Officer's Comments</p>		<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</p>

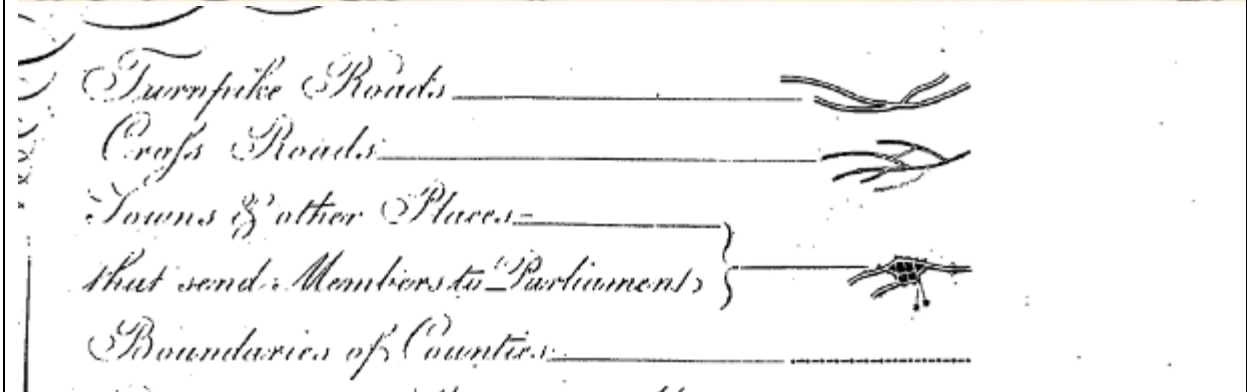
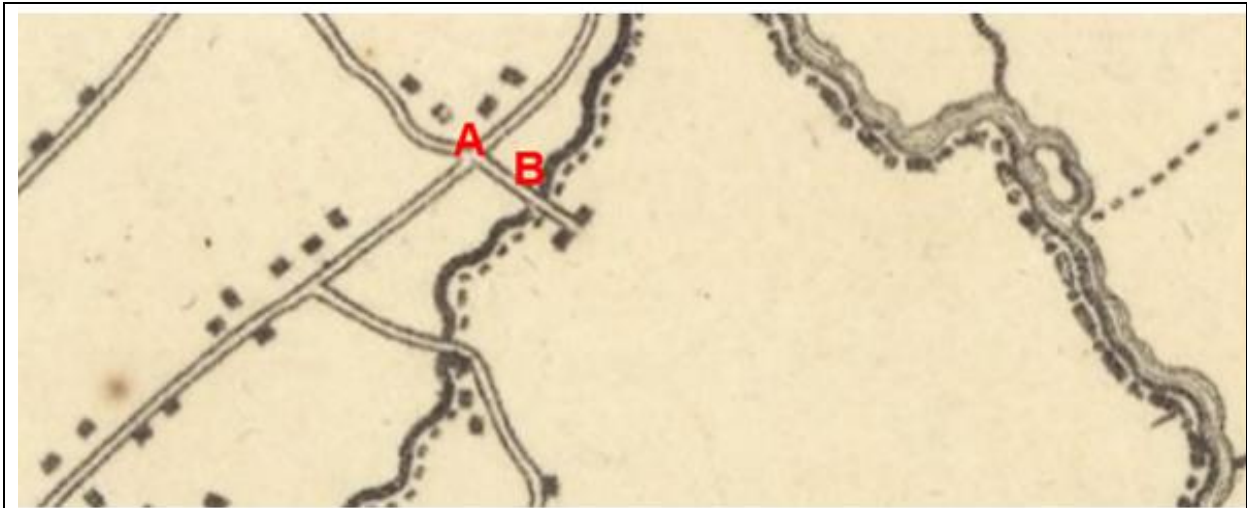
		turnpike roads so the inclusion of the route on such a small-scale map suggests that it existed as part of a substantial through route forming part of the general road network at that time.
<b>Cary's Map of Lancashire</b>	1787	John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.





Observations		The application route is not shown.
Investigating Officer's Comments		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.
<b>Greenwood's Map of Lancashire</b>	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.





<p>Observations</p>		<p>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.</p>
<p>Investigating Officer's Comments</p>		<p>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 due to the fact that it is shown as a dead end route providing the only access to a property.</p>
<p><b>Hennet's</b></p>	<p><b>Map</b></p>	<p><b>of 1830</b></p>
		<p>Small-scale commercial map. In</p>





<p><b>Lancashire</b></p>		<p>1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>
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*Explanation*

<i>Market Towns in Roman Capitals as</i>	<i>LIVERPOOL</i>
<i>Towns that send Members to Parliament</i>	
<i>Townships in small Roman as</i>	<i>Bickerstaffe</i>
<i>Hamlets Villages and other Places in small Italics as</i>	<i>Moss</i>
<i>Gentlemen's Seats and Parks</i>	
<i>Houses</i>	
<i>Woods and Plantations</i>	
<i>Heaths and Commons</i>	
<i>Hills and Rising grounds</i>	
<i>Churches and Chapels</i>	
<i>Water Mills</i>	
<i>Wind Mills</i>	
<i>Turnpike Roads</i>	
<i>Cross Roads</i>	
<i>Rivers and Brooks</i>	
<i>Canals</i>	
<i>Railways</i>	
<i>Boundaries of Counties</i>	
<i>Boundaries of Hundreds</i>	
<i>Boundaries of Parishes</i>	

Observations		The application route between
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		<p>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.</p>
<p>Investigating Officer's Comments</p>		<p>The application route between point A and point B existed as part of a substantial access route in 1818 and was probably capable of 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>
<p><b>Canal and Railway Acts</b></p>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid</p>

		objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing, dismantled or known proposals for canals or railways across the land over which the application route runs.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	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

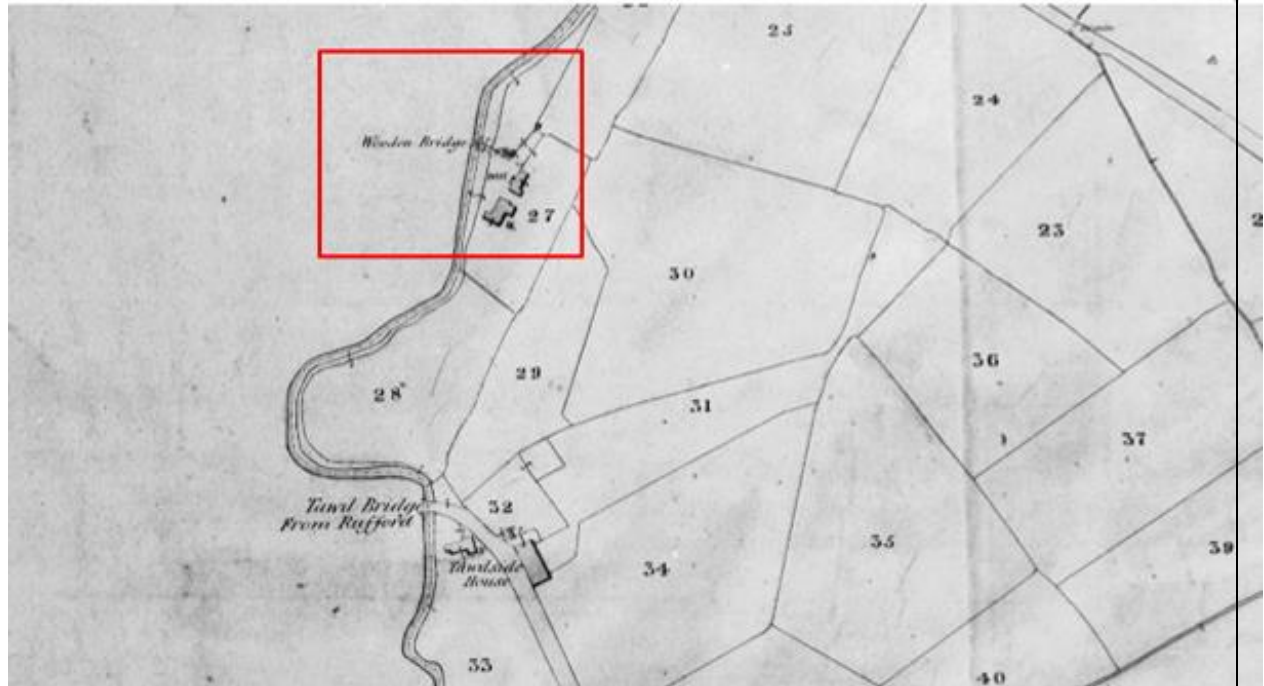
The Tithe Map for Lathom is dated 1839 and covers a large area. It shows the full length of the application route. The route is shown unrestricted at the junction with Wanes Blades Road and Wood Lane at point A and at the junction with Deans Lane at point D. At point B the route which was shown on the early commercial maps is shown continuing south-east across the watercourse to the 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.

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



		<p>the Tithe Award.</p> <p>It was also noted that a small number of roads, whilst not numbered, were actually referenced by name on the map although the application route itself was not named and with the exception of Frog Lane none of the other routes which were set out in the Inclosure Award detailed above were named or numbered.</p> <p>Across the map a small number of routes were noted which were all numbered and specified as being private occupation roads although there was no consistency with some no longer existing, some recorded as public footpaths or parts of public carriageways and others unrecorded.</p>
Investigating Officer's Comments		<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 it is accepted that this does not necessarily mean that it was because the road was public and there are other routes shown on the map shown 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> <p>The Tithe Maps and Awards were not produced with the intention of recording what public or private rights may have existed at that time so the fact that the route is not specifically referenced as either a</p>

		public route or a private route provides no real assistance in determining whether since its creation approximately 50 years earlier the route had now acquired public rights.
<b>Tithe Map and Award for Newburgh</b>	1845	Tithe Map for the adjacent parish.



		No.	LANDS AND PREMISES.	CULTIVATION
<i>(Deby the Earl of Continued)</i>	<i>Baxendale John</i>	<i>4</i>	<i>Wighill Meadow</i>	<i>Cats and Orns</i>
		<i>5</i>	<i>Part of Wighill Meadow</i>	
		<i>29</i>	<i>Pekels</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>38</i>	<i>Middle hay</i>	<i>Potatoes</i>
		<i>33</i>	<i>House Cox</i>	<i>Meadow</i>
		<i>22</i>	<i>Marked hay</i>	<i>Wheat</i>
	<i>Baxendale John and Stappforth Edward</i>	<i>22</i>	<i>Occupation road.</i>	
	<i>Bollen John</i>	<i>102</i>	<i>Collage 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. It does not show the application route but marks the location of a wooden bridge across the watercourse from which the
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		<p>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.</p>
Investigating Officer's Comments		<p>The Tithe Map and Award for Newburgh confirm that access to the property east of the watercourse was via the application route and wooden bridge – with no other access shown. It also provides information about the ownership of land accessed by the application route as being part of a large estate owned at that time by the Earl of Derby. Lord Derby is not however listed as owning land adjacent to the application route in Lathom suggesting that access was as a result of access rights granted along the private road from the Inclosure Award or granted otherwise.</p>
<b>Cassini Old Series Sheet 108, Liverpool</b>	c. 1840	<p>The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.</p>



**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.
<b>6 Inch Ordnance Survey (OS) Map Sheet 84</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 – 1846 and published in 1848. <sup>1</sup>

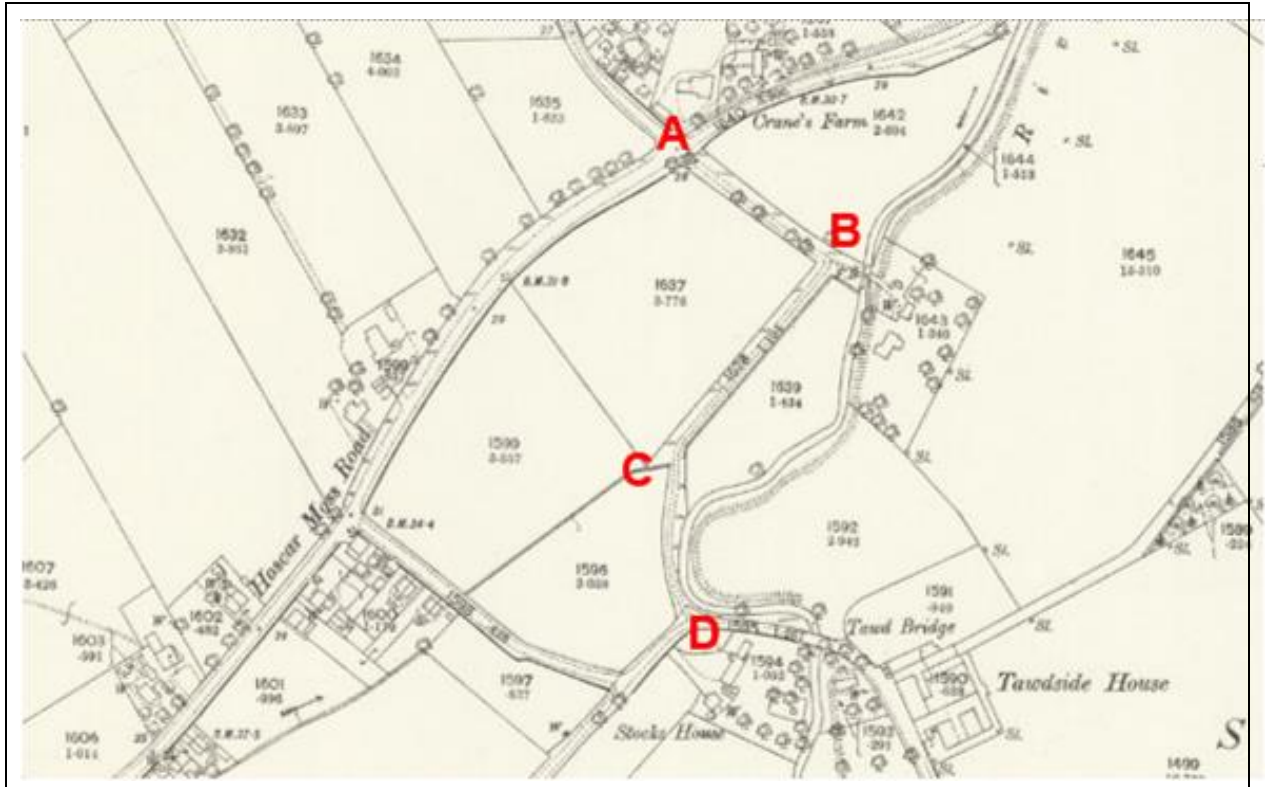


Observations		The full length of the application route is shown from point A through to point D. From point B a route extends south-east to a wooden bridge across the River Tawd providing access to some unnamed buildings. Of note was the fact that thickened lines appear to have been drawn along both sides of the route and along both sides of the majority of other
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<sup>1</sup> 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>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>
Investigating Comments	Officer's	<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 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>
<b>25 Inch OS Map Sheet LXXXIV.7</b>	1893	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.</p>



Observations

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 bounded/fenced on either side and runs along a strip of land approximately 12 metres wide between fences. At point B the 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.

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 –



		<p>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 wide 1.5 metres on the map. As the only access to the property it may be that access was also available through the river at this point (on horseback) although no ford is noted. The 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</p>

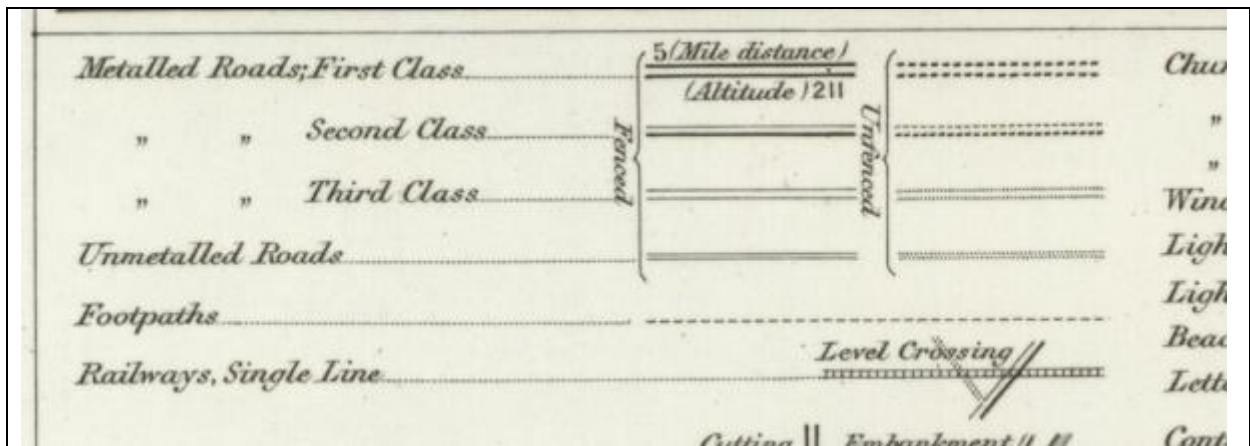
		<p>evidence of highway status. The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that Waness Blades Road and Deans Lane are shown suggests that the application route was not considered to be a well maintained publicly maintained 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>
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**1 inch OS Map  
Sheet 84 - Wigan**

1896

Small-scale OS map published in 1896.



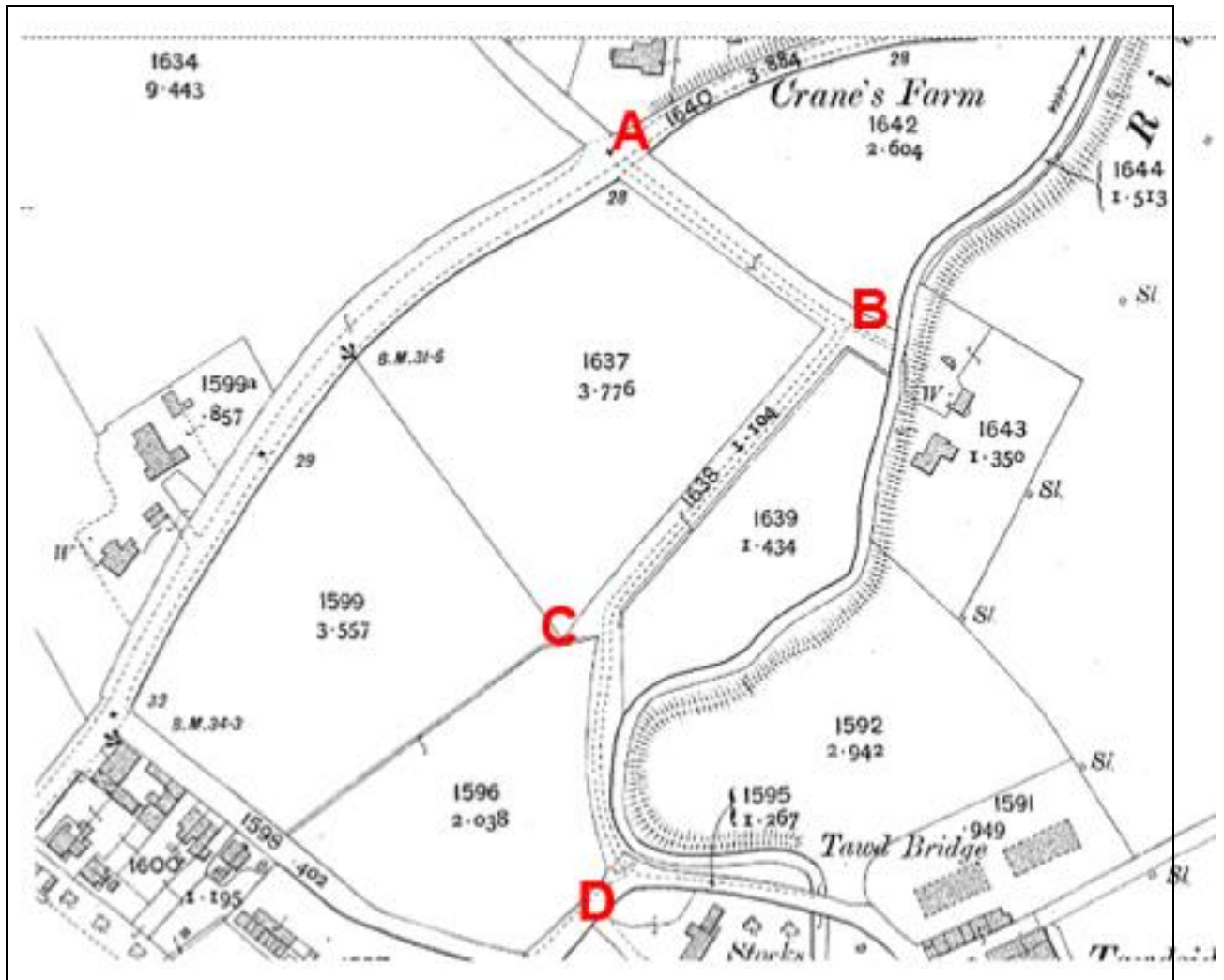


Observations		The full length of the application route is shown as an enclosed through route providing access to the property east of the river from point B. it appears to be depicted on the map as a third-class road or unmetalled road. There are no lines across the route at either end or at any point 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. The fact that the route was not shown is not surprising and no inference can be drawn with regards to public rights.
<b>25 inch OS Map Map Sheet LXXXIV.7</b>	1908	Further edition of the 25-inch map surveyed in 1892, revised in 1907 and published in 1908.





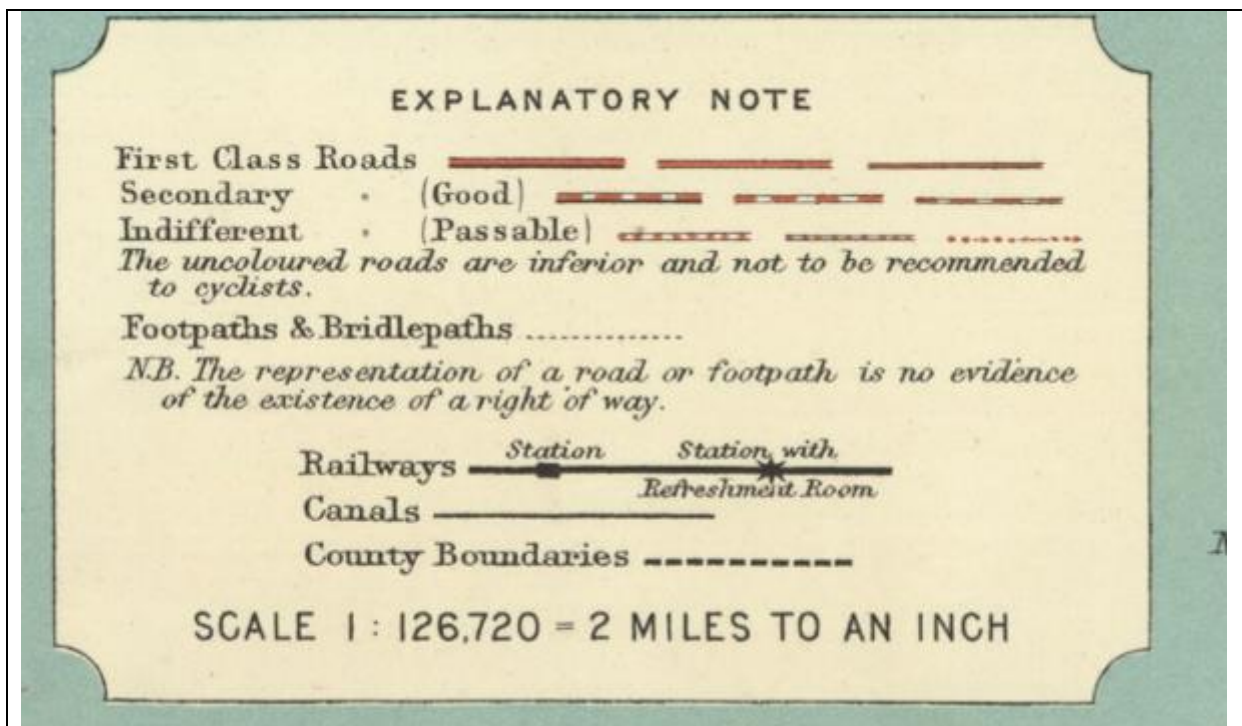
<p>Observations</p>		<p>The full length of the application route is shown in the same way that it is shown on the earlier edition of the OS 25 inch map. The only notable difference is that a footbridge is no longer shown crossing the River Tawd east of point B to provide access to the unnamed property/properties 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.
<b>Bartholomew half inch Mapping</b>	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 as footpath – and to some extent bridleway - users were not the target customers for these maps.
<b>Finance Act 1910 Map</b>	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

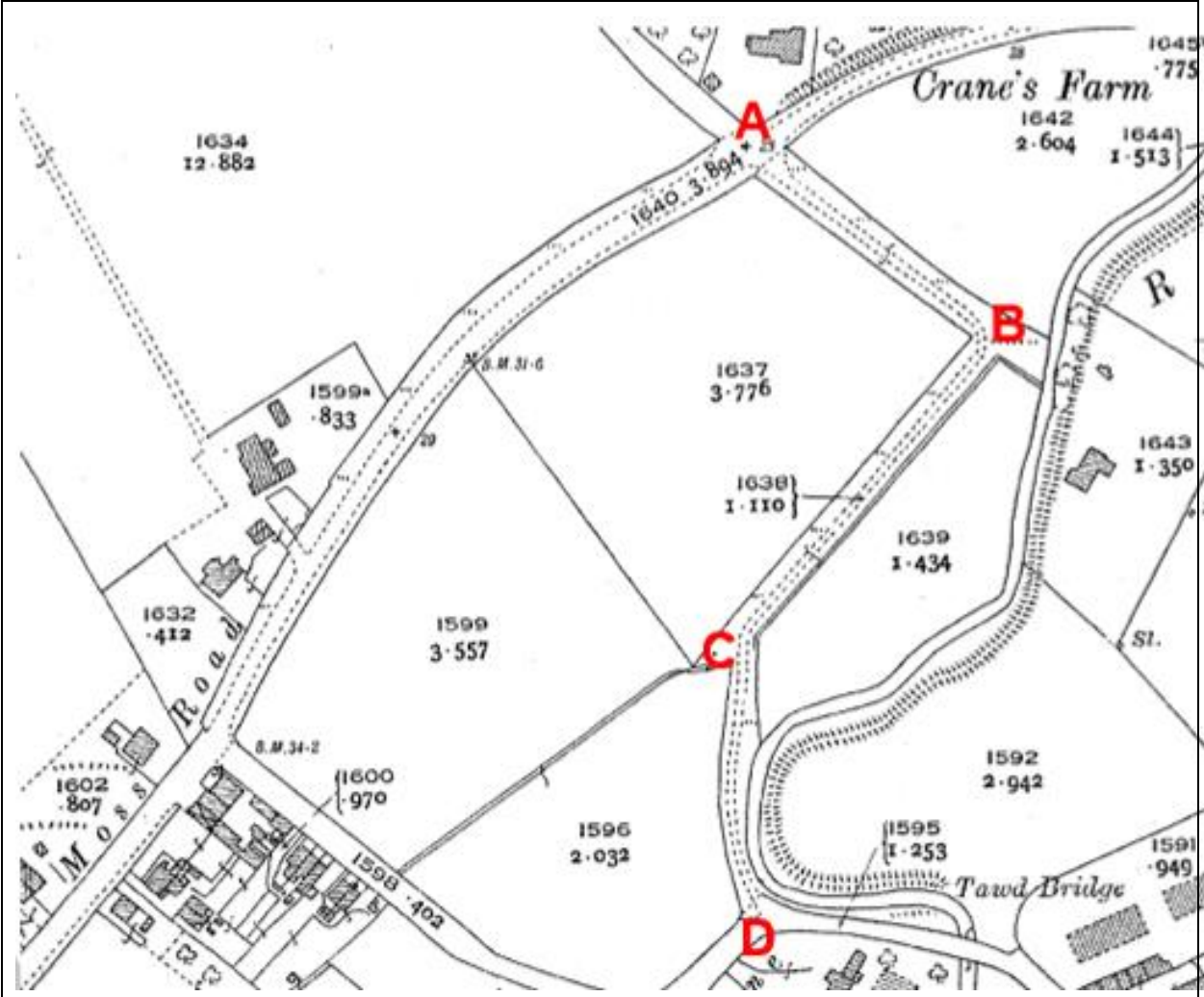
Observations

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.
<b>25 Inch OS Map</b> <b>Map Sheet LXXXIV.7</b>	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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		<p>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. The property previously accessed from the application route is still shown although some of the fencing around it is no longer evident and one of the three buildings previously shown is no longer on the map.</p>
Investigating Officer's Comments		<p>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.</p>
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



Observations		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).
<b>Aerial Photograph<sup>2</sup></b>	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.

<sup>2</sup> 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.





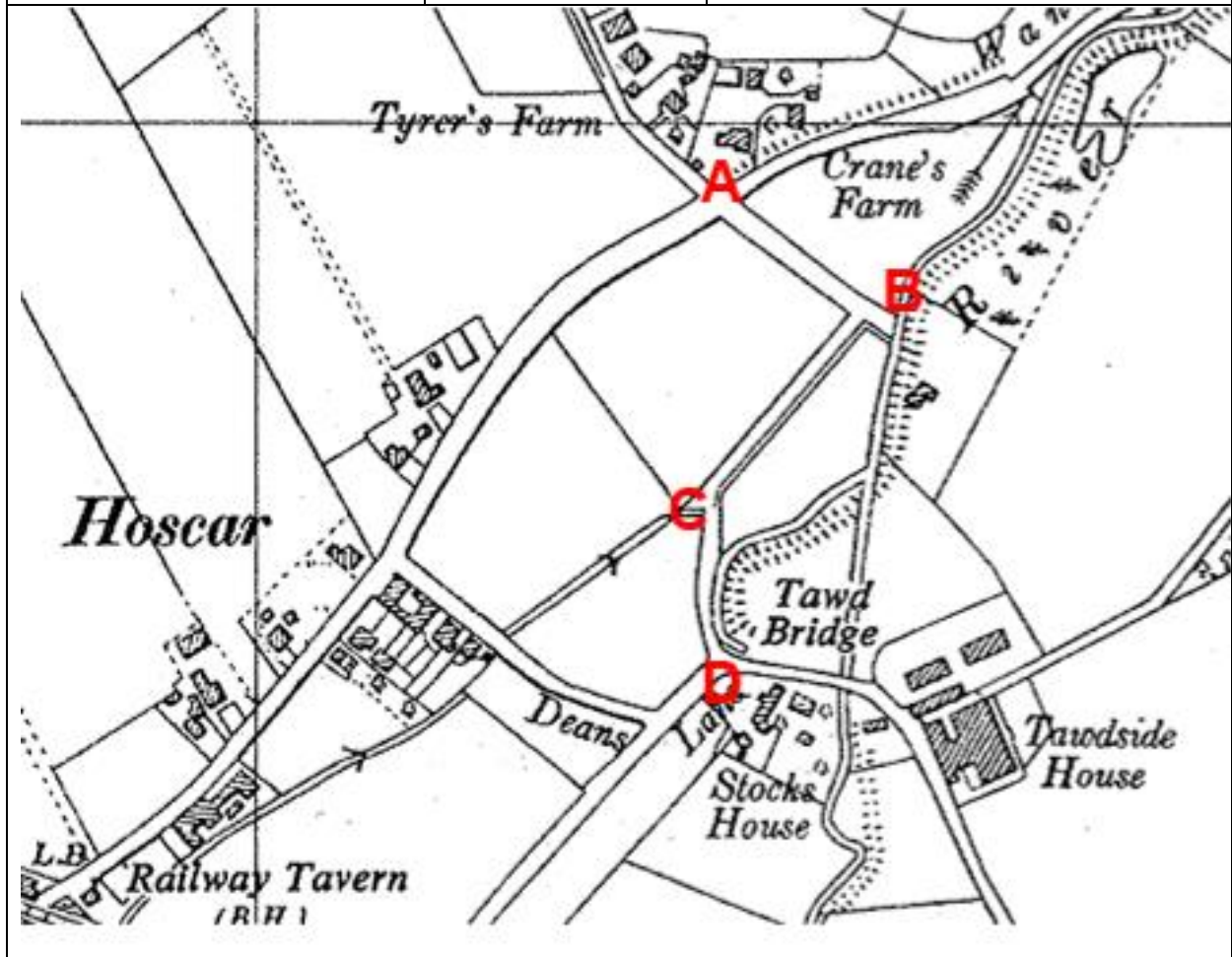


<p>Observations</p>		<p>The application route is visible on the aerial photograph. From point A to point B it is possible to see the boundaries separating it from the adjacent fields but there is little evidence of a worn track. Between point B-C-D the route can be faintly seen but the route does not 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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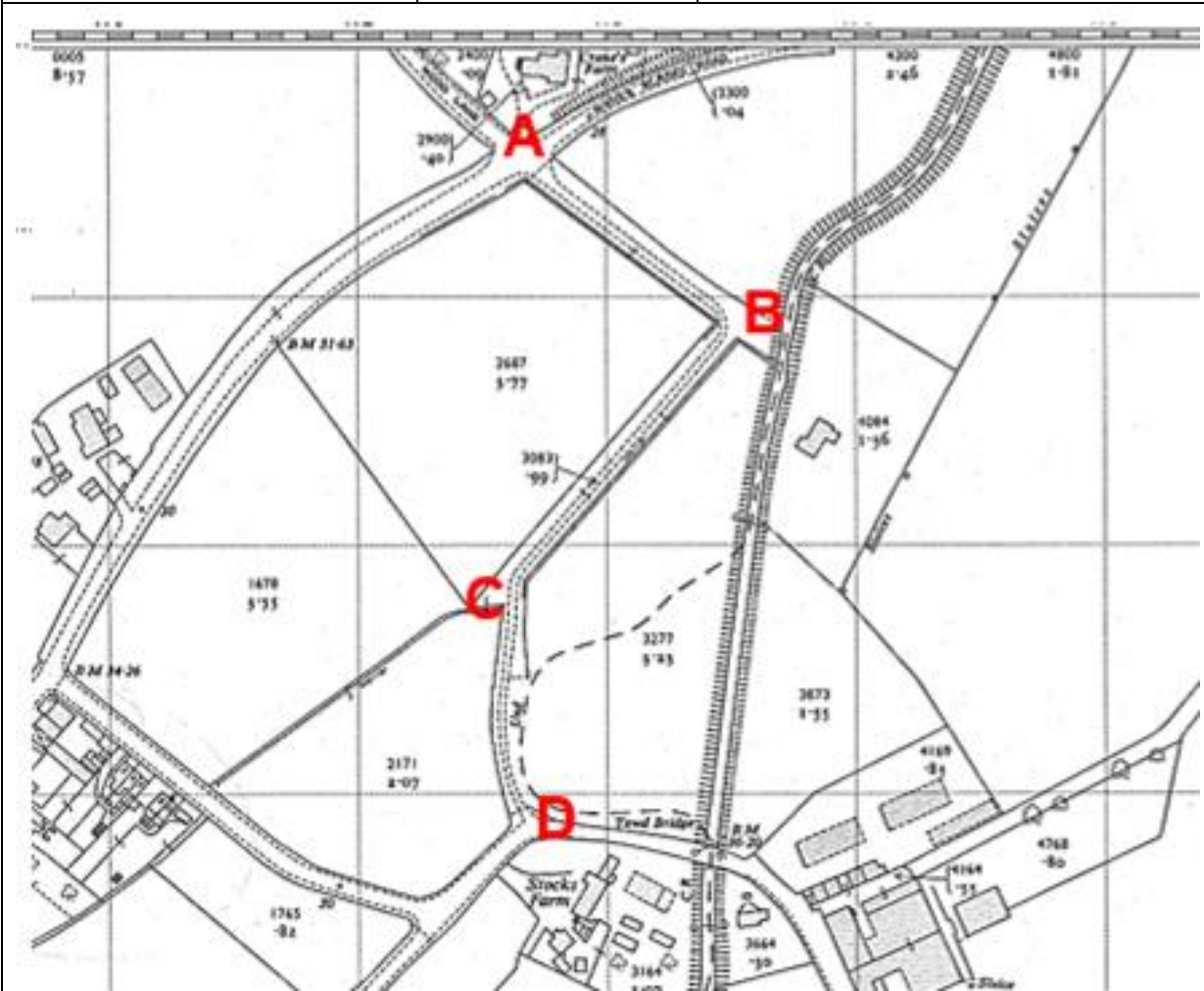
<p><b>6 Inch OS Map 41SE</b></p>	<p>1955</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 with major changes revised in 1948 and is probably based on the same survey as the 1930s 25-inch map.</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.
<b>1:2500 OS Map SD 47 11</b>	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.
<b>Aerial photograph</b>	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 with the water /riverbed not visible.
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
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		there is no trodden track visible 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.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	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 carried out.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> 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.



<b>Observations</b>		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.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft



		<p>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>
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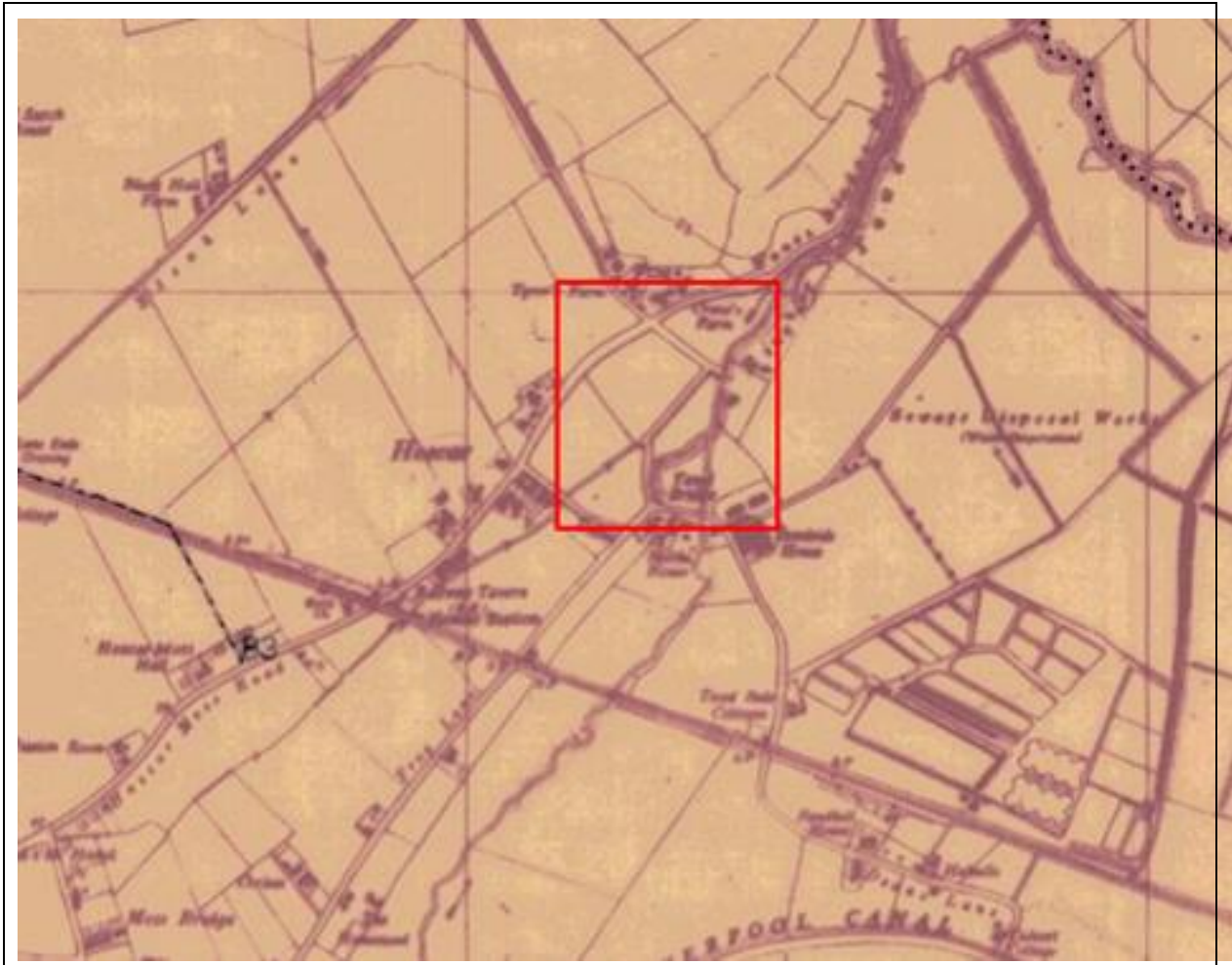
<p>Observations</p>		<p>The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.</p>
<p><b>The First Definitive Map and Statement</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Observations		The route was not shown on the First Definitive Map of Public Rights of Way.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> 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
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	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



		<p>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

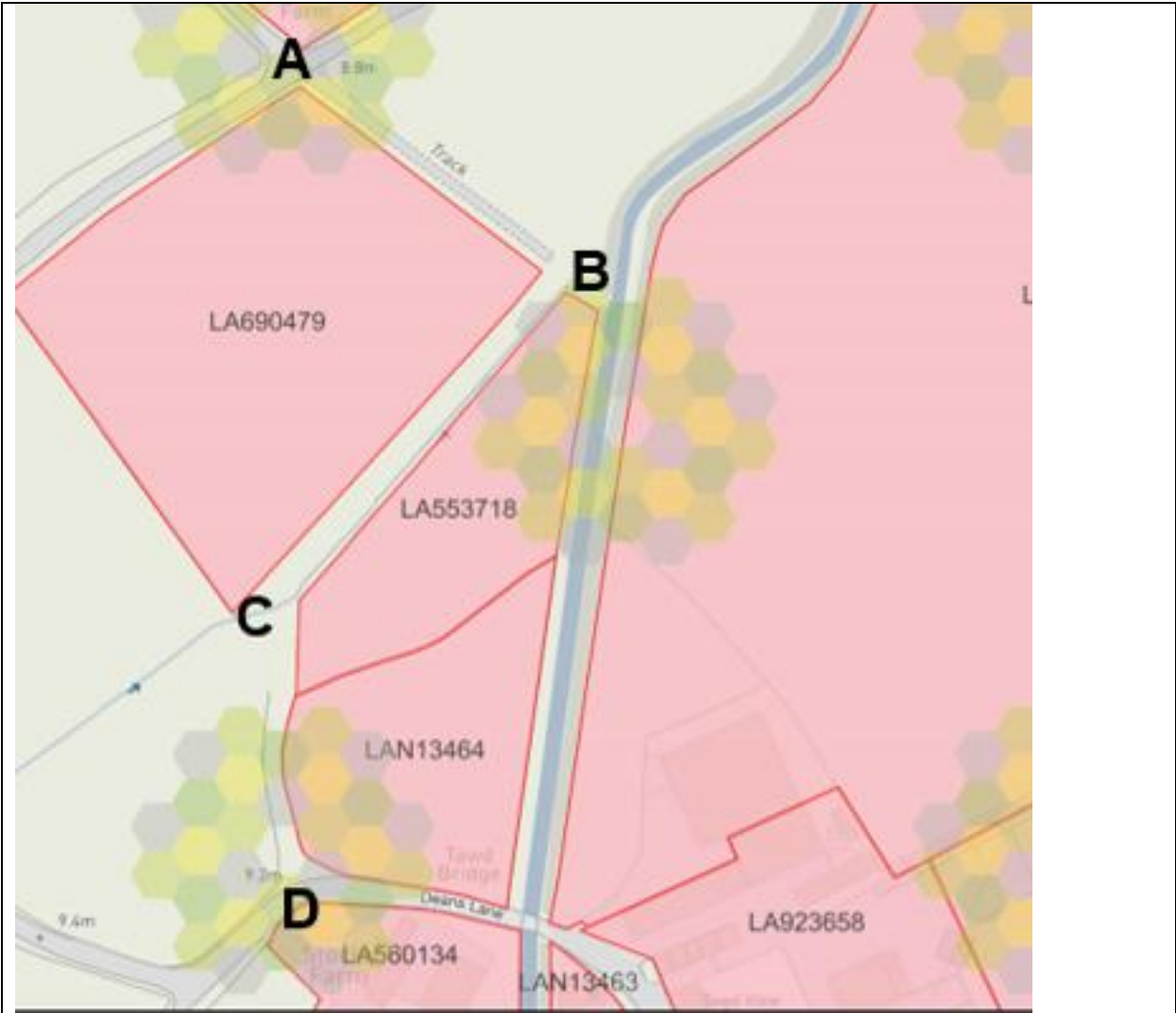
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The application route was within the former Ormskirk Urban District



		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.
<b>Highway Stopping Up Orders</b>	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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		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 information		<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

<p>Observations</p>		<p>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 that 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>
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		<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 (an ancestor 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 Officer's Comments		<p>In relation to the fact that no part of the application route is 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. In addition, there is clear evidence in this case that the application route was a private occupation route at the time that the surrounding land was enclosed. This again, can account for the fact that ownership is not known or not registered if private access rights</p>

		<p>were assigned to a number of different parties.</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 occupy any of the land adjacent to the application route at that time.</p> <p>Further confirmation is being sought from the current owners of Sandyways Farm in relation to whether their title deeds include ownership of any part of the application route itself.</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 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 road or created as a private road 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 specifically referred to in the Inclosure Award as an intended private way or road.

The route between point A and point B is shown on a number of small-scale early commercial maps predating the OS mapping consistent with access to an unnamed property east of the River Tawd – 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 it is accepted that 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 and in particular the Inclosure Award indicating the intention to create a private road.

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 as a private access route but which may have been capable of being used by the public, at least on foot or horseback.

On balance however, with no evidence of modern or historical public use, the Investigating Officer considered that there was insufficient evidence that public 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 although one of the landowners has subsequently explained that it is not registered because it has been in their families ownership for a long time. They confirmed that the route between points A-B was owned by them and was in the process of being registered. They were also of the opinion that other sections of the route were owned by neighbouring farmers.

#### 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 maps 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



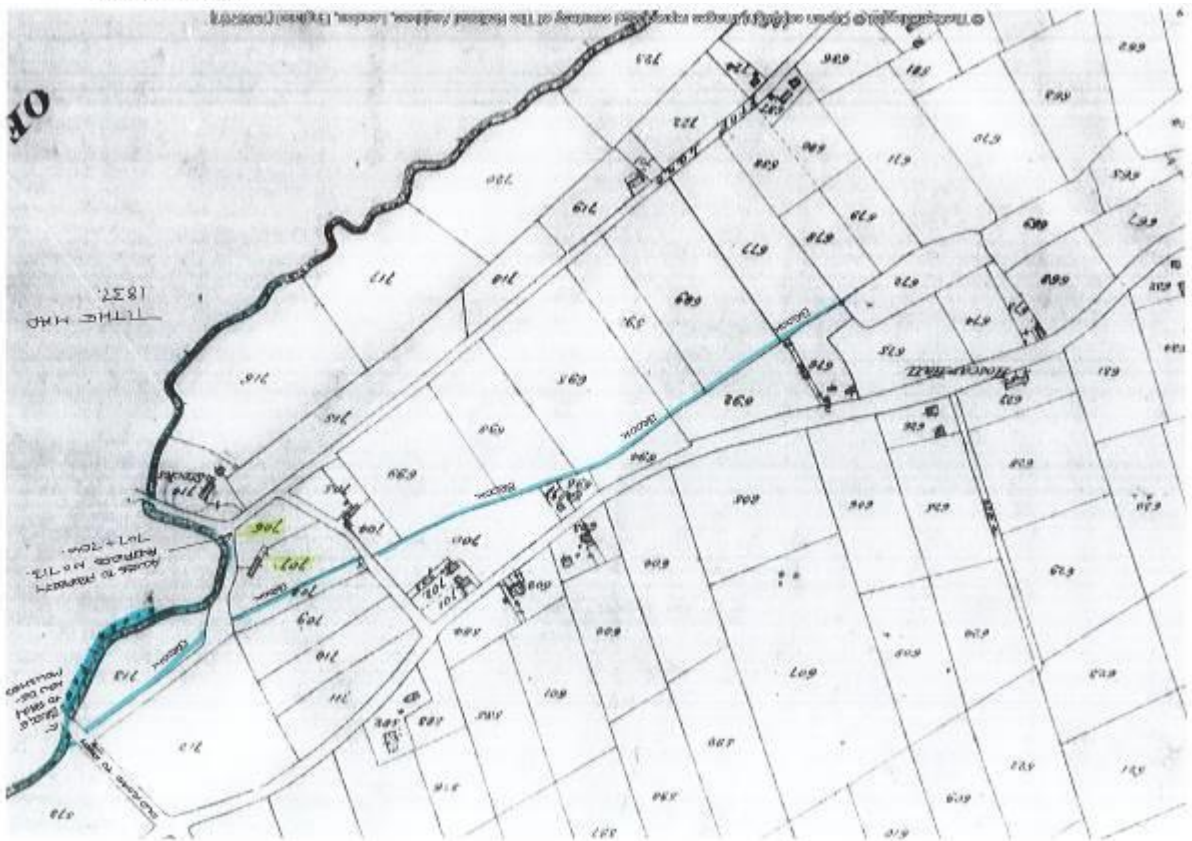
not. They note this ditch as being very deep and quite wide that directly joins the River Tawd and they asserted that this has been there for many centuries. They opine that the track along the ditch would no doubt have been used for access to field, domestic dwellings and to maintain the waterway.

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.





PHOTO FROM 2015



Lancaster: Printed and Published by John Williams & Co. Ltd., Bathurst.

LANDS	SECTION	Number shown on the Plan	NAME AND DESCRIPTION OF LANDS AND PREMISES	TYPE OF CULTIVATION	QUANTITIES			Amount of Road Area (square feet) shown on the plan and in the Schedule to the Act			REMARKS
					ACRES	SQUARE YARDS	SQUARE FEET	ACRES	SQUARE YARDS	SQUARE FEET	
Incorporated Area (D. 10000)	Waness Blades	28	Waness	Waness	1	1	1				Waness - W. side of road
		29	Waness	Waness	1	1	1				
		30	Waness	Waness	1	1	1				
		31	Waness	Waness	1	1	1				
		32	Waness	Waness	1	1	1				
		33	Waness	Waness	1	1	1				
		34	Waness	Waness	1	1	1				
		35	Waness	Waness	1	1	1				
		36	Waness	Waness	1	1	1				
		37	Waness	Waness	1	1	1				
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		39	Waness	Waness	1	1	1				
		40	Waness	Waness	1	1	1				
		41	Waness	Waness	1	1	1				
		42	Waness	Waness	1	1	1				
Waness Blades	Waness Blades	43	Waness Blades	Waness Blades	1	1	1				
		44	Waness Blades	Waness Blades	1	1	1				
		45	Waness Blades	Waness Blades	1	1	1				
		46	Waness Blades	Waness Blades	1	1	1				
		47	Waness Blades	Waness Blades	1	1	1				
		48	Waness Blades	Waness Blades	1	1	1				
		49	Waness Blades	Waness Blades	1	1	1				
		50	Waness Blades	Waness Blades	1	1	1				
		51	Waness Blades	Waness Blades	1	1	1				
		52	Waness Blades	Waness Blades	1	1	1				
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		Waness Blades	Waness Blades	57	Waness Blades	Waness Blades	1	1	1		
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68	Waness Blades			Waness Blades	1	1	1				
69	Waness Blades			Waness Blades	1	1	1				
70	Waness Blades			Waness Blades	1	1	1				

**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 specifically referred to in the Inclosure Award as an intended private way or road and thereafter whilst the route is shown on numerous maps where the public might gain access to the route, there is an absence of 'sufficient evidence' as to public rights.

On balance and given the nature of the evidence it is advised that the evidence of the application route having become a public bridleway is insufficient.

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

### **Risk management**

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

### **Local Government (Access to Information) Act 1985**

#### **List of Background Papers**

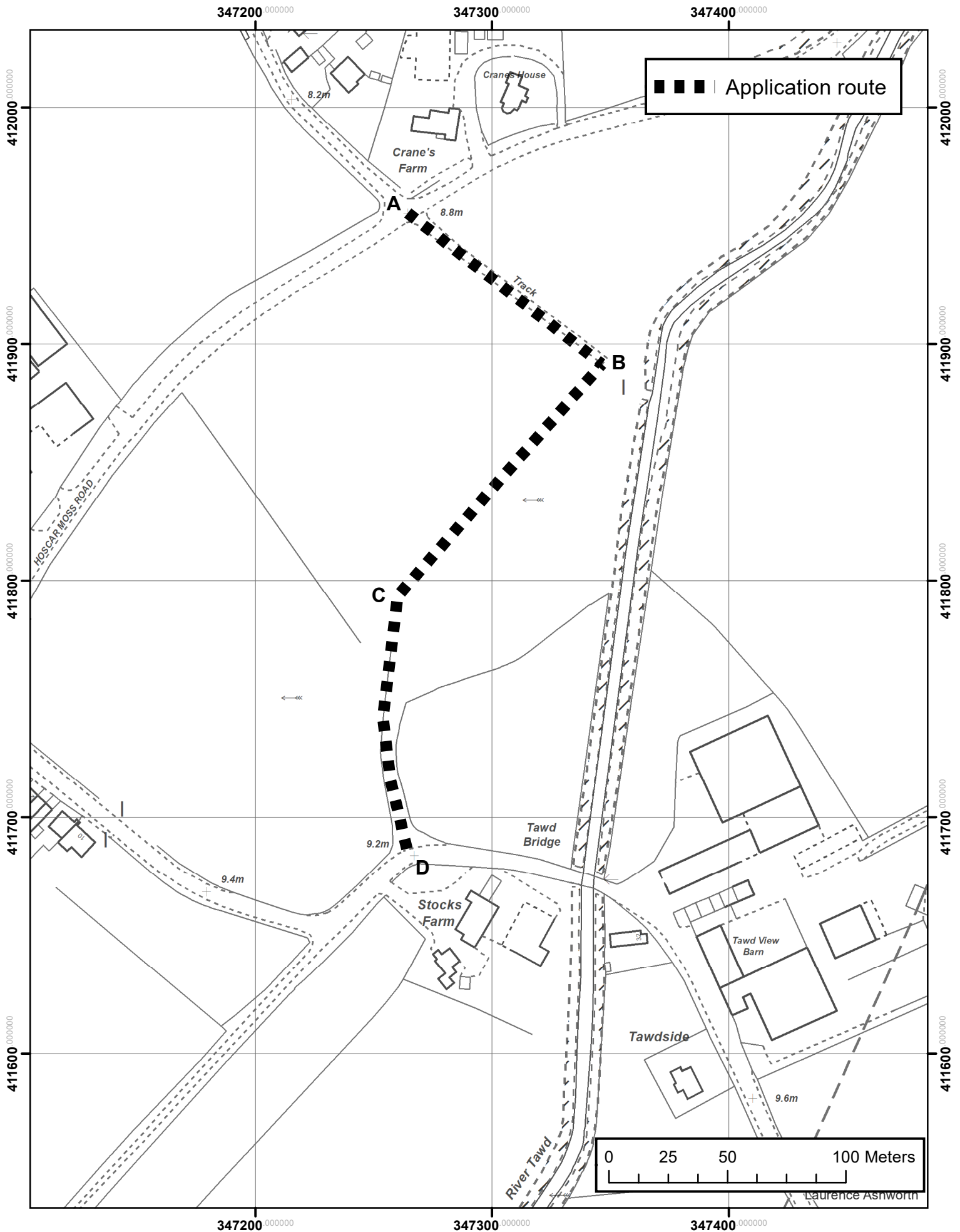
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-712		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

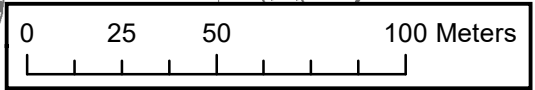
N/A







■■■■ Application route



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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**Regulatory Committee**

Meeting to be held on 25 January 2023

**Part I**

Electoral Division affected:  
Heysham

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Recording Bridleway on First Terrace, Sunderland, Overton**  
(Annex 'A' refers)

Contact for further information quoting file reference number 804-655:  
Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,  
[Simon.Moore@lancashire.gov.uk](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Addition of bridleway and upgrading of footpath to bridleway on the Definitive Map and Statement of Public Rights of Way along First Terrace, Sunderland, Overton.

**Recommendation**

- (i) That the application for the addition of a bridleway and upgrade of footpath to bridleway at First Terrace, Sunderland, in the Parish of Overton be accepted in part.
- (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 on the Definitive Map and Statement of Public Rights of Way along First Terrace, Overton as shown on Committee Plan between points A1-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway and upgrade of an existing footpath to



bridleway on the Definitive Map and Statement of Public Rights of Way along First Terrace, Sunderland.

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

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

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

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

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

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

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

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

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

## **Consultations**

### Lancaster City Council

Lancaster City Council provided no response to consultation.

### Overton Parish Council



Overton Parish Council responded to consultation to state that they had no observations to make.

#### 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	4267 5622	Southern end of Main Street (C463) on Mean High Water line as recorded on current LCC highway plans
A1	4266 5619	Southern end of Main Street on historical High Water Mark of Ordinary Tides as recorded on the 1929 Handover Map
B	4266 5618	Junction with Footpath 1-23-FP10
C	4268 5611	Start of cobbled ramp extending up from the shingle
D	4267 5598	Junction with 'The Lane' (Bridleway 1-23-BW13)

#### **Description of Route**

A site inspection was carried out in June 2022.

The application route is situated on a piece of land known as Sunderland in the parish of Overton, Lancaster. Twice daily the tides cut off the public vehicular route (Main Street) from Sunderland to Overton – with the only other (non-tidal) route to and from the houses located along First and Second Terrace via 'The Lane' which is a route recorded as a public bridleway (1-23-BW11).

The application route extends from the southern end of Main Street and passes in front of properties known collectively as First Terrace to a junction with the start of a route known as The Lane – which is recorded as 1-23-BW11. The bridleway is recorded along The Lane which runs east-west across the promontory and then continues in a north north westerly direction along the salt marsh through to Carr Lane (recorded as an unclassified county road) at Middleton.

The application route between point A and point B is not recorded on the Definitive Map and Statement. From point B through to point D the route is recorded as a public footpath (1-23-FP10) and is known as 'First Terrace'.

The total length of the route is 250 metres.



Main Street crosses the salt marsh forming part of the Lune Estuary. It is a tarmac road with warning signs located at either end and part way along it providing users with information relating to the fact that it is a tidal road and advising those traveling along it to consult the relevant tide table.

The tarmac roadway ends just short of reaching the hamlet known as Sunderland (point A on the Committee plan) on the mean high water line as marked on the Committee plan. It is then possible to continue across the compacted sand/mud towards the shoreline where several cars were parked on an area which appeared to be used as an informal car parking area for visitors to the hamlet.

The line of the application route on the ground is unmarked but accessible and after approximately 40 metres the route meets the public footpath recorded as 1-23-FP10 (point B) at an unmarked point on the open salt marsh.



From its junction with 1-23-FP10 the application route continues in a southerly direction along the unmarked route of 1-23-FP10. It crosses an area of shingle and compacted sand – with evidence of use by vehicles - passing in front of the property known as 2 First Terrace and a small-holding; these are set back at a higher level than the application route on the foreshore on top of a substantial stone retaining wall. A sign located on the sand/shingle adjacent to the route states that it is a 'Private Road' with access for residents only.

Adjacent to the substantial stone wall the application route starts to gradually ascend a cobbled ramp (marked from point C on the Committee plan) which continues as a roadway past the entrance to 3a First Terrace.



The route continues along a raised roadway fronting a row of properties collectively known as 'First Terrace' through to the junction with 1-23-BW13 (point D).

The raised section between point C and point D is known as the wharf and is a Grade 2 listed 'building' described as comprising of a sandstone rubble wall with one flight of stone steps, surmounted by 15 octagonal stone posts. At the southern end (at point D) is a gate pier of rusticated sandstone, of square plan with moulded cornice and ball finial.



'Gate Pier' at point D:





The bridleway – known as 'The Lane' - runs in a west north westerly direction inland providing access to several cottages and continues across the headland.

Footpath 1-23-FP14 continues south south west from point D descending a ramp back down onto the saltmarsh to continue to Second Terrace and Old Hall.

### **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.

On visiting Sunderland Point it was immediately apparent to the Investigating Officer that there was significant historical background to the development of the area.

Sunderland Point Sunderland is a small settlement; comprising of about 30 houses in two groups – First Terrace and Second Terrace – strung along the shoreline on the east side of the Heysham Peninsula. The River Lune is to the east and Morecambe Bay and the Irish Sea to the west.

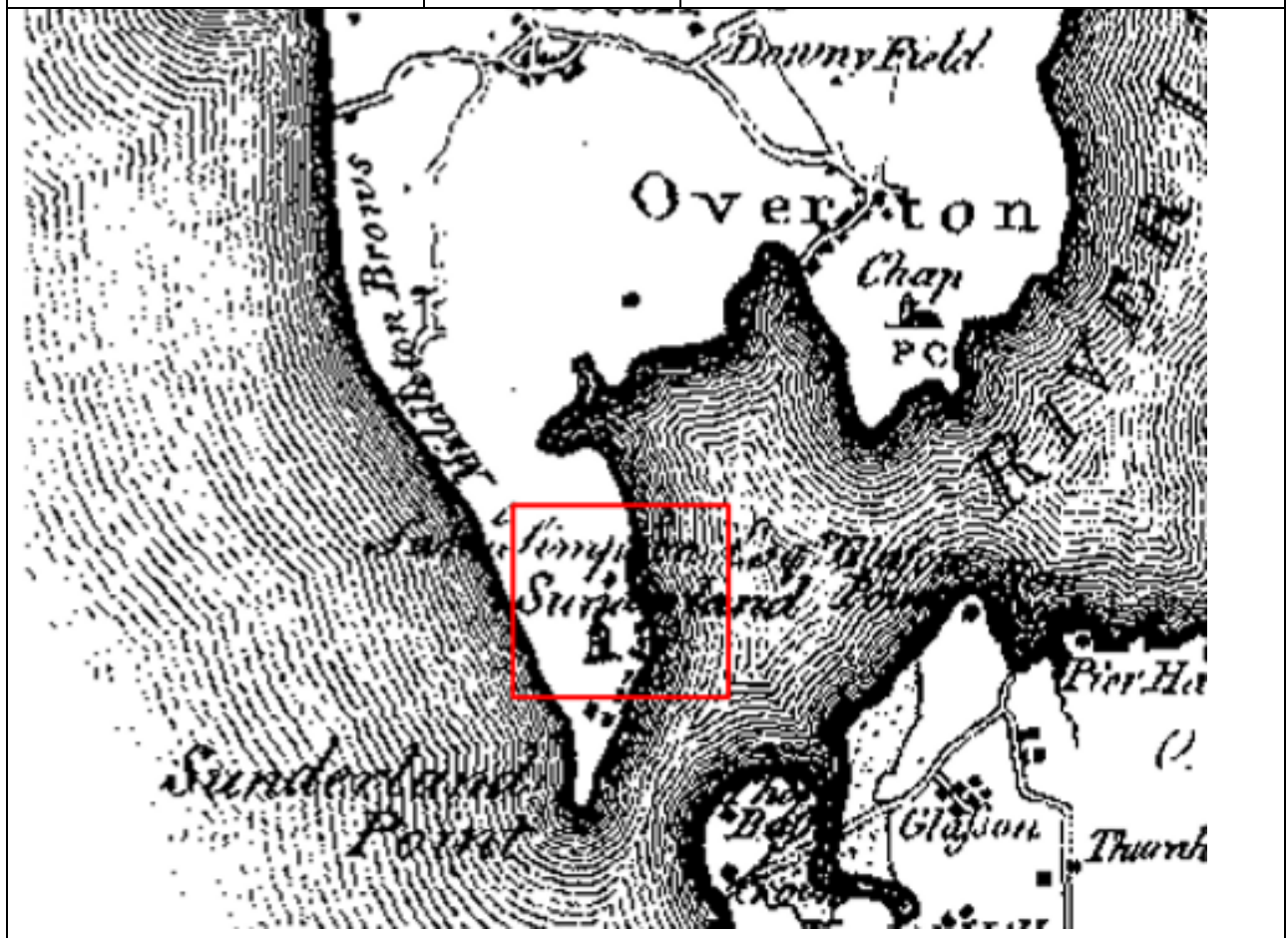
Information sourced from the Lancaster Civic Society Leaflet 9 - Glasson to Lune Estuary, Sunderland Point and Irish Sea - explains that the hamlet of Sunderland probably started around 1680 with Sunderland Hall – which is located further south than the application route - dated from 1683. Records show that a quay was licensed at Sunderland in 1680.

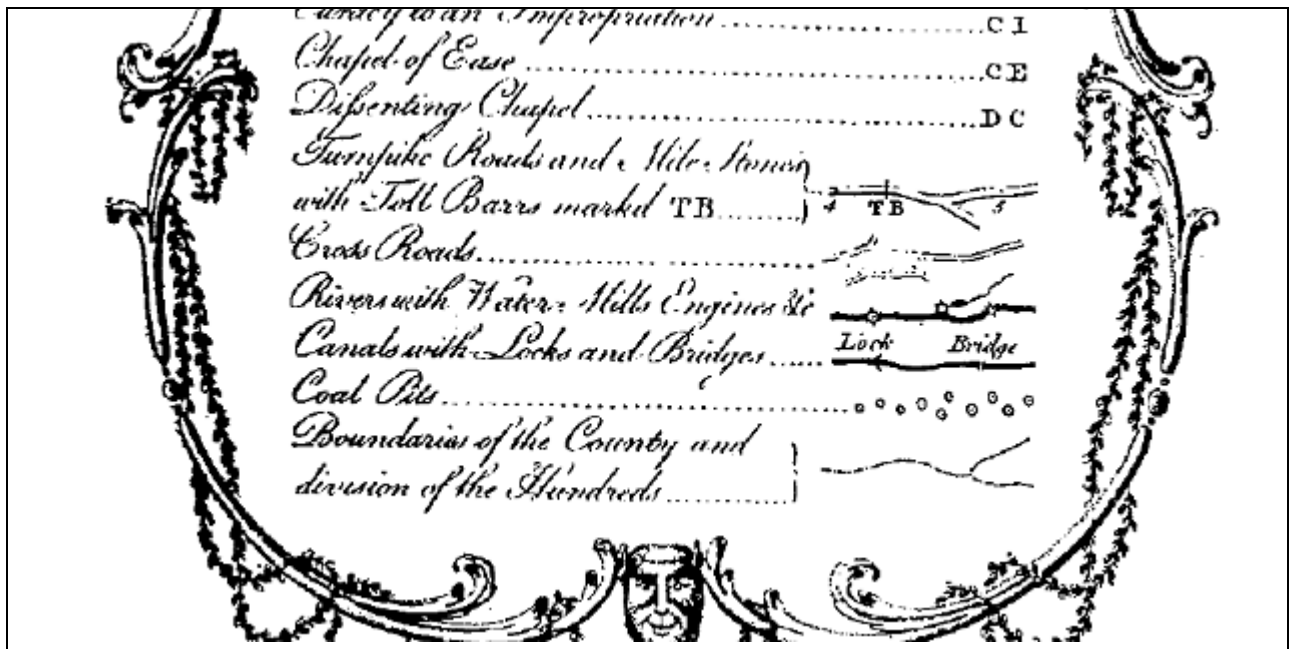
In the 18th century Sunderland was documented as being a busy port and ship building yard, with ships sailing to Africa and the West Indies trading Cotton, sugar, rum, timber and slaves.

It was developed as an [outport](#) for [Lancaster](#) by Robert Lawson, a [Quaker](#), at the beginning of the 18th century and many of the houses found there were originally warehouses associated with the port and the wharf was extended in 1723 as trade expanded. Second Terrace was originally mostly warehouses while First Terrace – along the front of which the application route runs – was reported as having had a smithy, perhaps a Customs House and a public house (The Ship Inn).

When Lawson went bankrupt in 1728, it was documented that there began a steady decline in use of the quay until it was totally surpassed by [Glasson Dock](#), which opened in 1787. No early maps were located showing Sunderland prior to this time with the earliest map examined being Yates' Map of Lancashire dated 1786.

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





Observations		Main Street crossing the salt marsh is not shown although a route shown as a cross road is shown leading from Overton to the edge of the estuary. 'Sunderland' is marked on the map and a number of buildings can be seen consistent with the location of First Terrace and Second Terrace.
Investigating Officer's Comments		The application route – or part of it - may have existed in 1786 but was not considered a significant public vehicular route by Yates. A route may have existed to the buildings at Sunderland across the estuary, but this is not shown.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



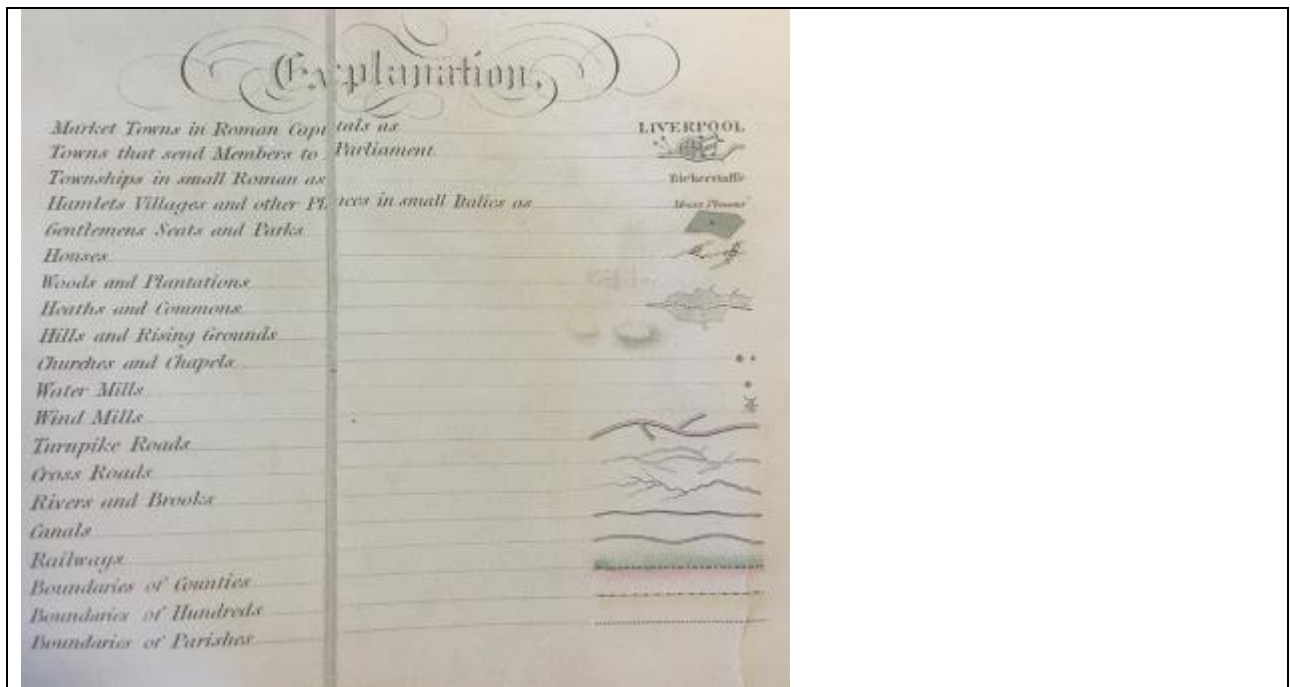
Turnpike Roads —————  
 Cross Roads —————  
 Towns & other Places —————  
 that send Members to Parliaments } —————  
 Boundaries of Counties —————

Observations		The application route is not shown. A substantial number of buildings are shown at Sunderland but the access to them is not shown.
Investigating Comments	Officer's	The application route, or part of it, may have existed in 1818 providing access to a number of buildings but was not considered a significant public vehicular



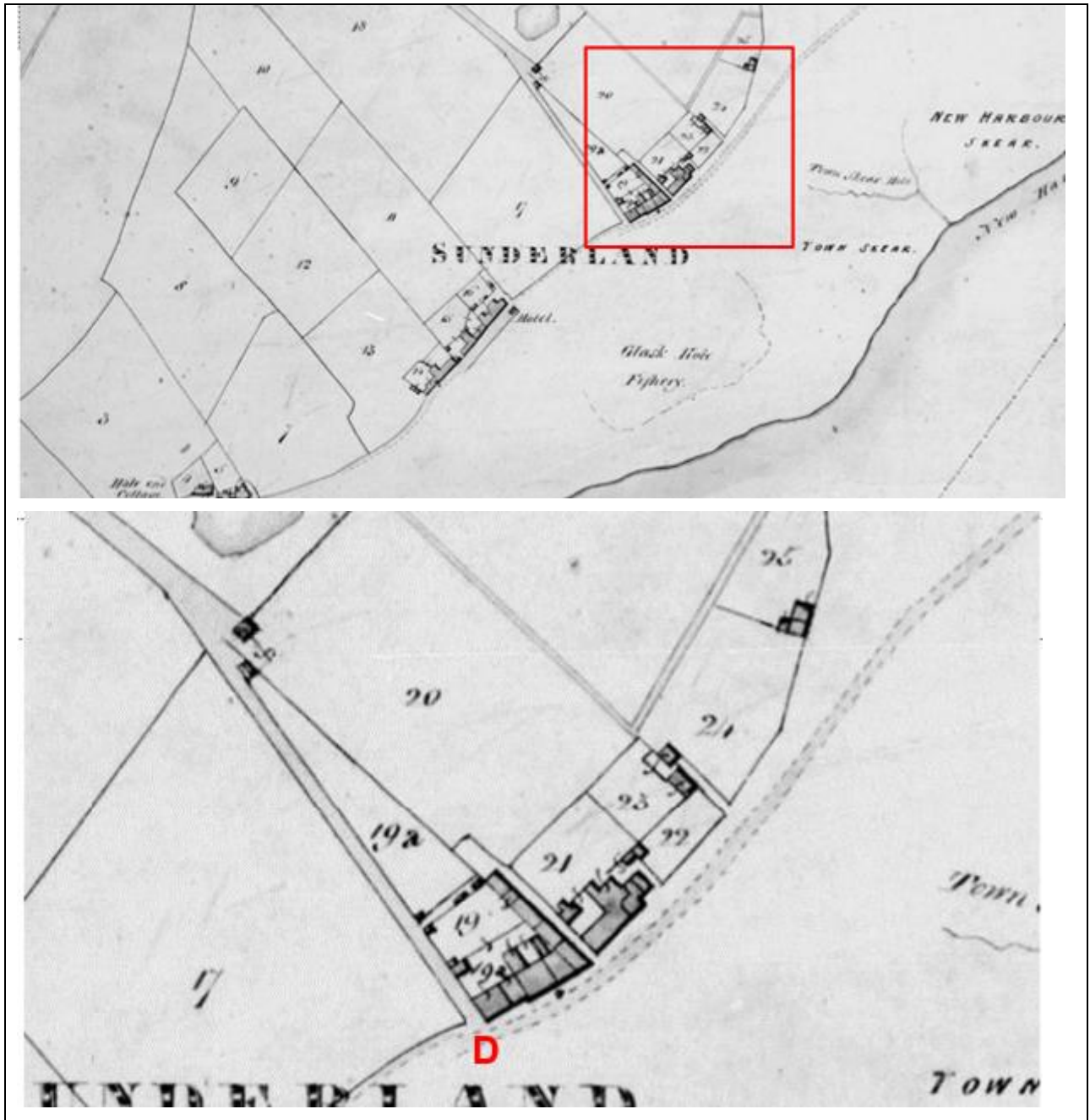
<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<p>route by Greenwood.          Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>
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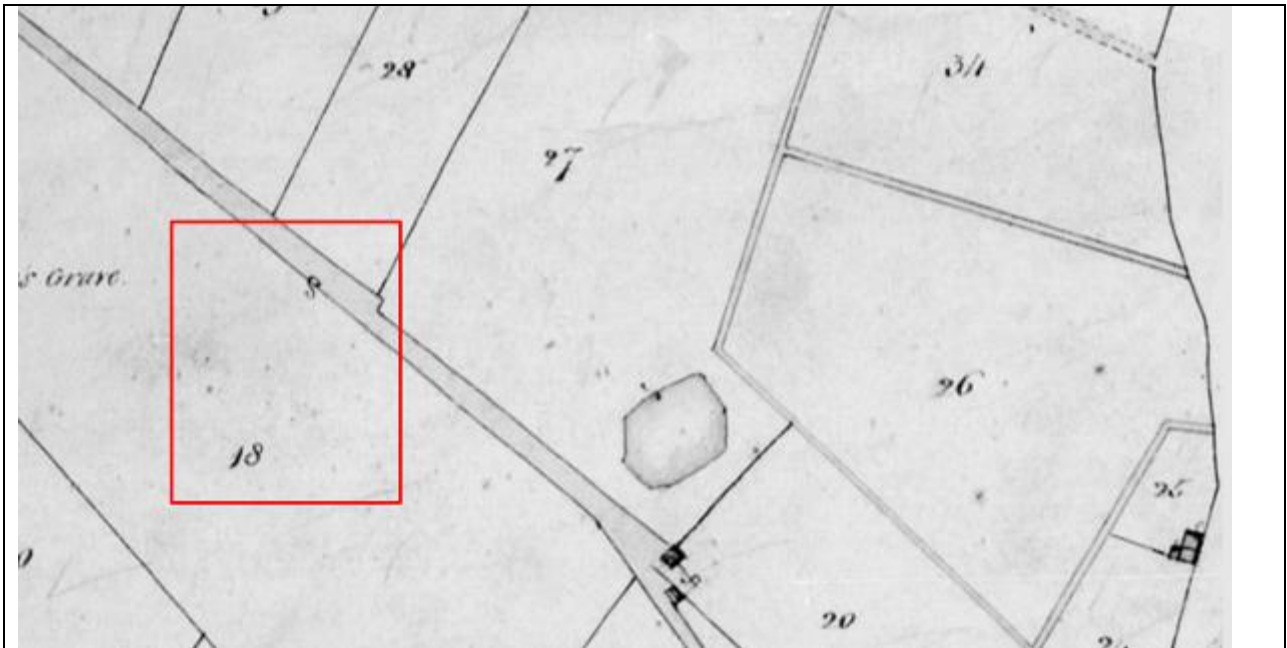


<p>Observations</p>		<p>The application route is not shown. The road across the estuary is shown extending towards the start of the application route and bridleway 1-23-BW13 is shown as a substantial route shown in the map legend as a cross road. Buildings are shown corresponding to the location of the buildings along First and Second Terrace.</p> <p>Access to Sunderland appeared to be either across the estuary from Overton or from Middleton Brows and along the saltmarsh west of Sunderland and then along 1-23-BW13 across the headland.</p>
<p>Investigating Officer's Comments</p>		<p>The application route may have existed in 1830 linking the road across the estuary to the cross road recorded as 1-23-BW13.</p> <p>It is not fully known what is meant by the term 'cross road' but 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</i></p>

		<p><i>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>
<b>Canal and Railway Acts</b>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals or railways.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>	1845	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>







William Jackson	300	House, stables & 1/2 acre				
Manorstead	321	House and garden				5 2 31
Surveyors of the Highways	142 and 146	Public Roads				43 2 -
Disputed Areas						
Overseer of the Poor or Lords of the Manor or Tit. Brackholts	174 and 177	Waste Highgate Lane				53 - 30 1 1 5
						34 4 35

	Robert Rogson	320	Garden					
		317	d.					18
		313	Cottage					3
	William Taylor	323	Garden					14
								2 10
John Birkett Mansingh	Ralph Gward	17	Meadow part malle and part old meadow					4 1 26
		18	Yeoman's house field and Lane part malle, part O. Meadow					10 3 11
	John Birkett Mansingh	19	House and garden					12
								15 1 9

Observations

The Tithe Map for Overton is dated as having been prepared in the same year (1845) as the first edition 6 inch OS map detailed below.

The Tithe Map shows a route across the salt marsh consistent with the route now recorded as a public vehicular route (Main Street) and continues across the saltmarsh along the front of a number of



		<p>properties to point D where the route now recorded as 1-23-BW13 (The Lane) is shown which ran generally west across the headland and then north north west towards Heysham. The route is not shown close to the boundaries of the properties along First Terrace and appears to be unfenced (as indicated by the dashed lines) but is broadly consistent with the application route forming part of a longer route to and through Sunderland.</p> <p>The route is coloured on the map but is not numbered.</p> <p>Looking at the Overton Tithe Map as a whole, routes considered to be part of the public road network all appear to have been coloured. Only two routes were found to be numbered with the number 142 written on the route currently recorded as 1-23-FP1 (Moss Lane) which is the subject of a Definitive Map Modification Order to record it as a Restricted Byway and Tunstall Lane, now known as Lancaster Road, which is numbered as plot 186. Both are described as public roads owned by the Surveyor of Highways but no other roads within the parish are numbered or listed separately.</p> <p>The Lane (1-23-BW13) is shown as a bounded route. It is shaded in the same way as all the roads within the parish but is braced as being part of the plot numbered 18 which is privately owned and occupied and described as a field and lane.</p>
Investigating Officer's Comments		<p>The purpose of the Tithe Map (and Award) was not specifically to show roads or public rights of way although it is generally acknowledged that they do provide additional information from which the status of ways may be inferred.</p> <p>The Surveyor showed that a substantial route consistent with the application route existed in 1845 providing access to and past several properties.</p>

		<p>A comparison with the OS First edition 6 inch OS map detailed below highlights a difference in the cartographical detail provided on the two maps. The Tithe Map shows a route running past the front of First Terrace but does not show the more finite detail shown on the OS map of the route ascending the ramp at point C and running directly along the front of Second Terrace to point D. Given the purpose for which the Tithe Map was produced this lack of detail is not unsurprising. The OS map detailed below shows one route in existence along the front of First Terrace from which the properties on First Terrace would have been accessed. It seems reasonable therefore to conclude that the route shown coloured on the Tithe Map was the application route – as was shown in more detail on the First edition 6 inch map surveyed in the same year.</p> <p>Only two routes were numbered and specifically listed as being public roads in the Tithe Award with the others shown on the Tithe Map coloured but unnumbered.</p> <p>The fact that the application route was shown coloured but not numbered suggests the existence of a substantial route which would probably be capable of being used at least on horseback - although the alignment of the route looks to have differed slightly from the one applied for (as discussed later in the report). The route now recorded as 1-23-BW13 was shown as part of the longer through route but is specifically listed as being part of plot 18 which was privately owned and occupied and did not appear to be considered to be a public road.</p> <p>The Tithe Award provides very limited information regarding routes considered to be public roads and it cannot be said with any certainty that any route shown coloured and not numbered on the map was a public vehicular highway at that time. It does however appear that a route existed which was not just part of</p>
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		the access to private properties but one that may have been used by the public as part of a longer through route.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No inclosure award or map has been found for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map Sheet 34</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>

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<sup>1</sup> 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.

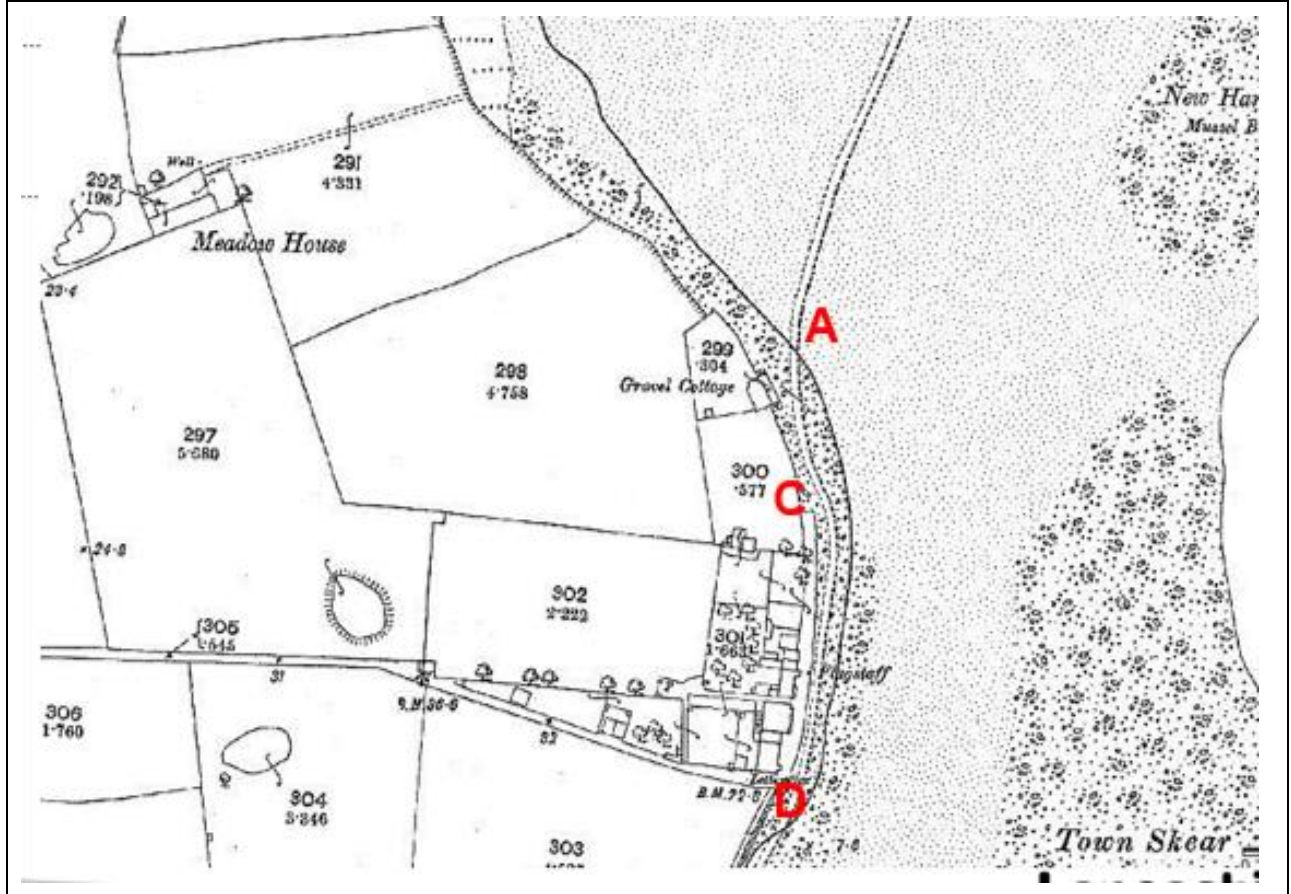


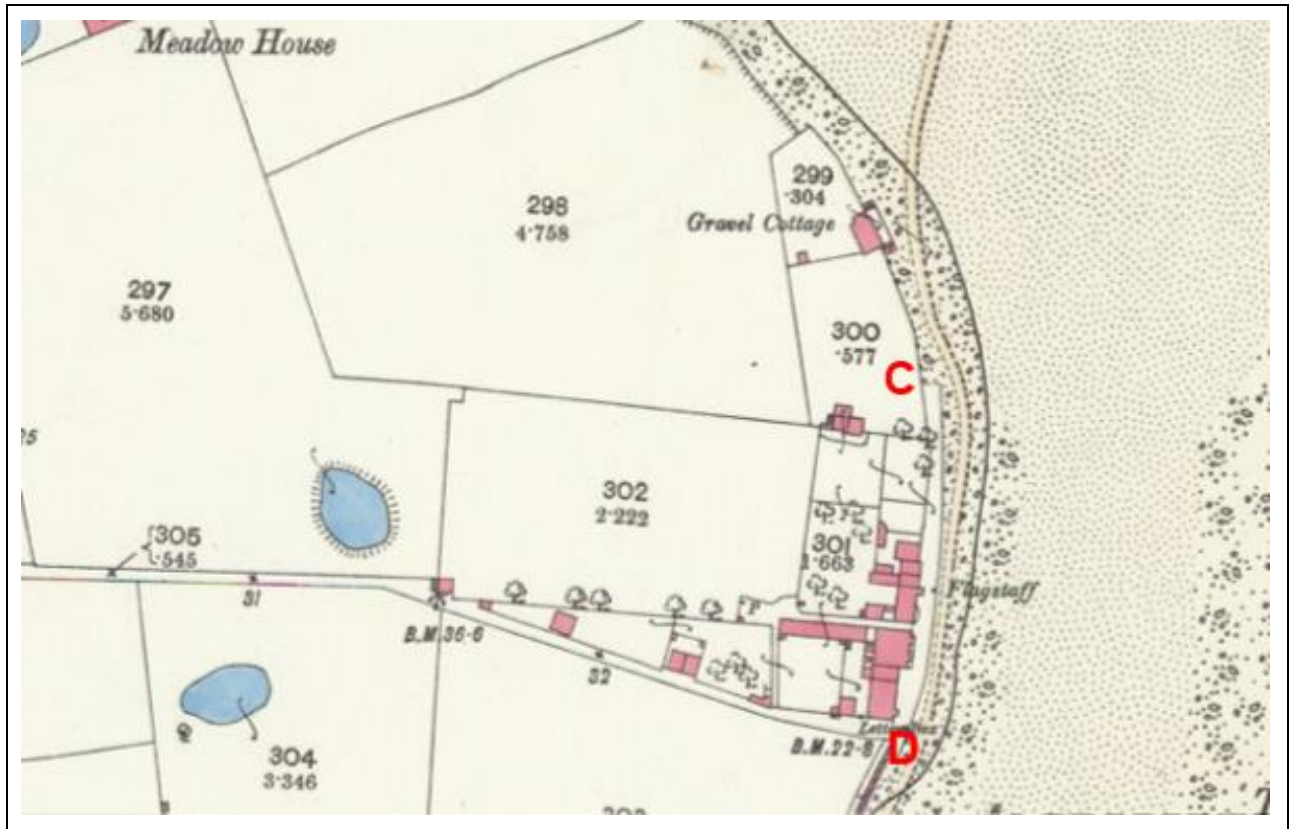
<p>Observations</p>	<p>The survey to produce the first edition 6 inch OS map was carried out around the same time that the Tithe Map was prepared.</p>
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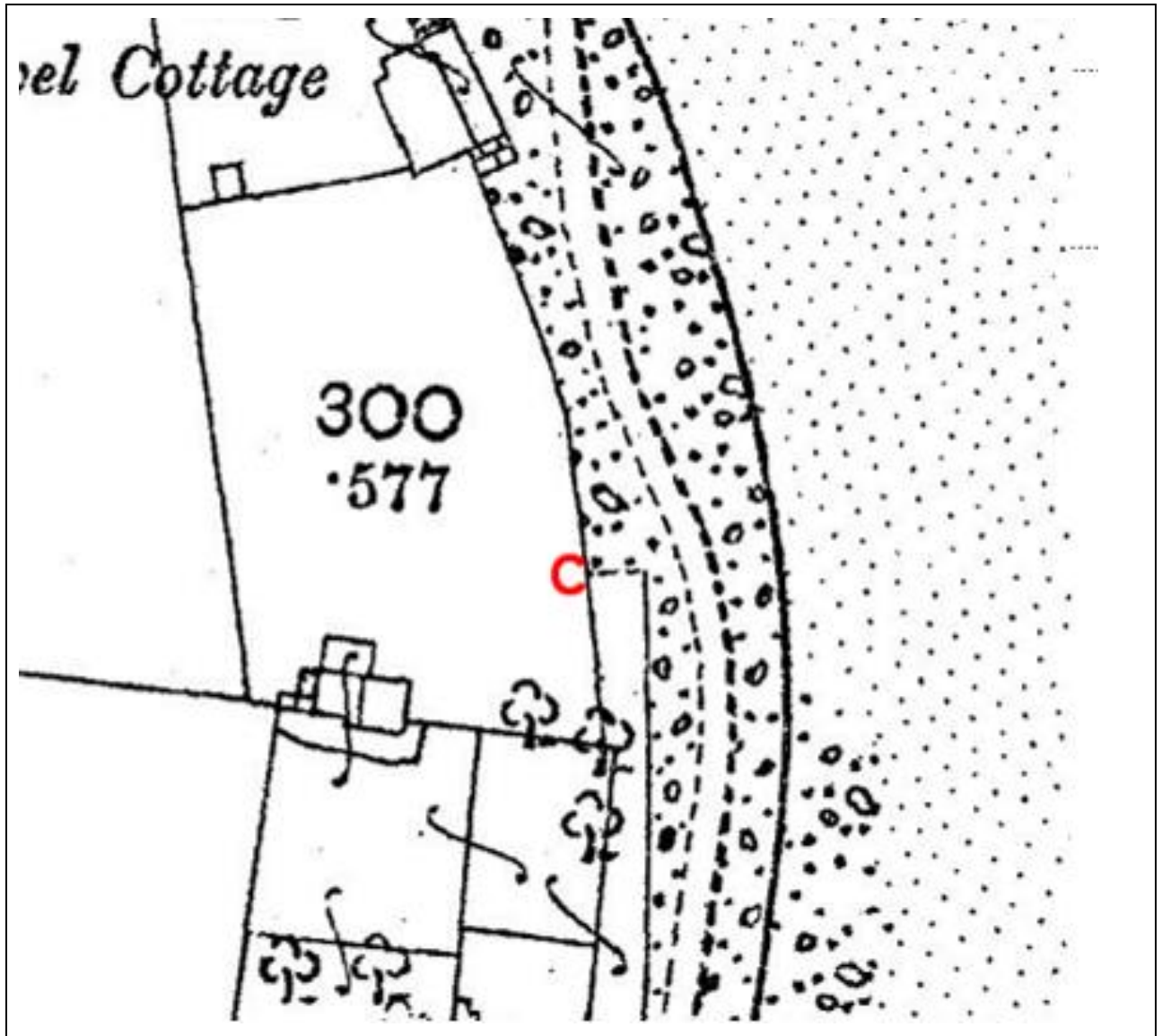
		<p>A route is shown across the saltmarsh from Overton leading directly towards an unnamed building (named as Gravel Cottage on later editions of OS maps and now known as 2 First Terrace).</p> <p>The unfenced route then continues in a south south easterly direction along the edge of the saltmarsh to a boundary line (point C). Beyond this point a bounded strip is shown running along the front (east) a number of buildings - one of which is labelled as 'Ship Inn' with a flagstaff and signal staff marked on the map.</p> <p>South of the Ship Inn the bounded route turns west at the junction with 'The Lane' (point D) from where the route now recorded as a bridleway is clearly shown continuing west to the other side of the headland and out onto the shoreline. From this junction a further narrower bounded route is shown continuing south to a row of properties and hotel collectively named as 'Sunderland' (now known collectively as Second Terrace).</p> <p>No other route is shown along the salt marsh running parallel to the application route between point C and point D.</p> <p>Marked on the map on the west side of the headland is 'Sambos Grave'.</p> <p>The high water mark shown on the map is closer to the shore than the mean high water mark shown on modern OS mapping.</p>
Investigating Officer's Comments		<p>The application route, or a route from which it derived, existed in 1844-45 as part of a longer route providing access to several properties, a public house and hotel and continuing across the headland to the west. It appeared to be capable of being used at least on horseback although access may have been restricted, presumably by a gate, at point C.</p> <p>The detail provided by the OS 6 inch mapping by 1845 was considered to be of a very high standard and accurately</p>

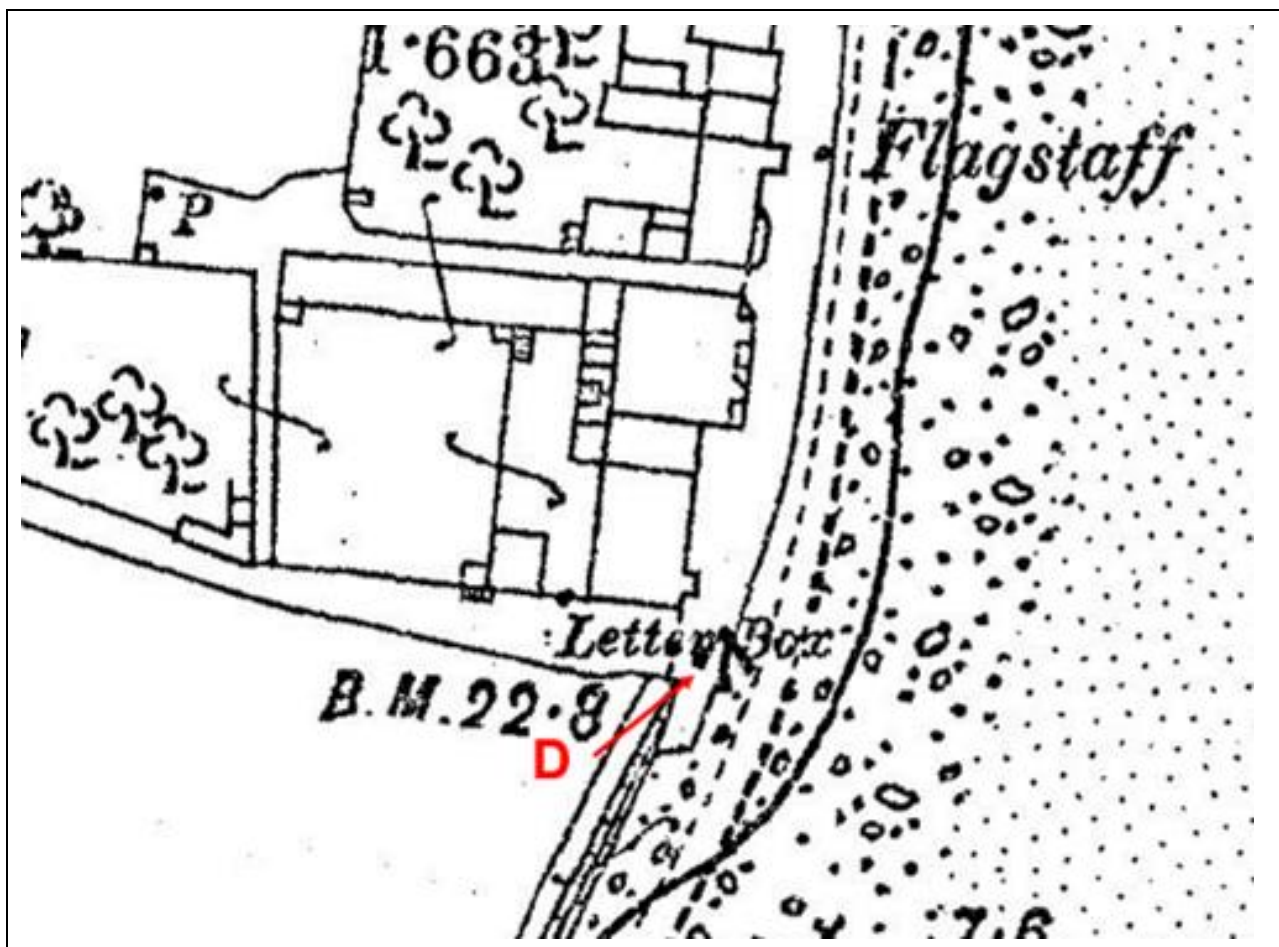
		reflected what was on the ground. The fact that only one route – the application route C-D is shown running along the front of First Terrace suggests that the route coloured on the Tithe Map was the same route.
<b>25 Inch OS Map Sheet XXXIV.9</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.











Observations

The First Edition 25 inch OS map was published in colour and also in black and white. Extracts of both maps are included above.

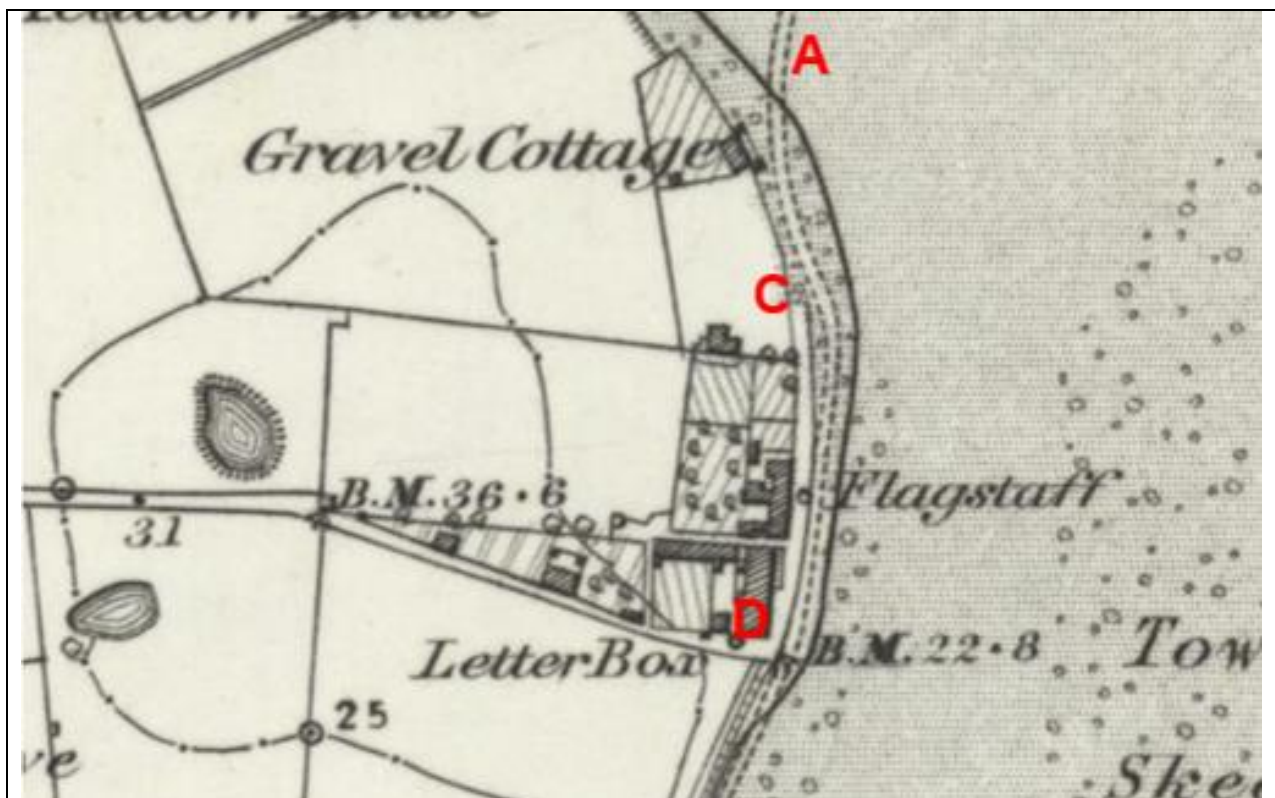
An unbounded route (Main Street) is shown crossing the salt marsh; note that point A is approximately 30 metres north of the high-water mark (of ordinary tides) marked on this map. The route shown on the map continues south across the shingle but then departs from the application route before reaching the ramped access (point C). A dashed line is shown across the north end of the ramp suggesting a change in surface - rather than a solid line as shown on the 6 inch map detailed above).

The route shown continues south across the shingle running parallel to the application route leading to the unnamed properties now referred to as 'Second Terrace'. On the coloured copy of the OS map this route is shown



		<p>coloured with a thickened dashed line along the east side. On the black and white edition of the map it is also shown with a thickened dashed line along the east side.</p> <p>The application route is shown between point C and point D as a bounded strip fronting several properties. Access appears to be available from the road along the foreshore to the ramp at point C but no track or road is shown leading directly onto it.</p> <p>From the junction with The Lane (point D) access westwards may have been gated or restricted although it is difficult to tell because the word 'Letter Box' is written across the junction. The route is gated at the western end where it exits onto the foreshore.</p> <p>The route now recorded as 1-23-FP10 which meets the application route from the north at point B is not shown.</p>
Investigating Comments	Officer's	<p>A route across the saltmarsh from Overton existed and passed through point A leading towards point C. The route however appeared to go directly to the buildings south of First Terrace and in doing so did not pass along the application route between points C-D.</p> <p>That route was coloured on the OS map and shown with a thickened (dashed) line down the east side. It by passed the application route which runs along First Terrace suggesting that by 1890-91 an alternative route had come into being running along the salt marsh providing more direct access to Second Terrace and Sunderland Hall which were located further south than the application route.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the</p>

		<p>road. 'Good repair' meant that it should be possible to drive carriages and light carts over then at a trot so the fact that the route through point A leading along the edge of the salt marsh to the properties on Second Terrace is shown in such a way suggests that it was considered to be a public vehicular route at that time.</p> <p>The application route from point C to point D existed but is not shown as connecting to the road from Overton (Main Street) or as part of the longer route through to the properties south of the application route (Second Terrace) suggesting that while it may have been available use may have been primarily for access for the frontagers rather than as part of a through route used by the public.</p> <p>A letter box is located on the route close to point D suggesting that public access must have been available for mail to be posted and access to 'The Lane' at point D – if travelling from Overton across the tidal road would have been more direct via the application route A-D than via the alternative route along the saltmarsh suggesting both routes may have been in use at that time</p>
<p><b>6 inch OS Sheet 34</b></p>	<p>1895</p>	<p>6 inch OS map surveyed 1890 and published 1895.</p>



<p>Observations</p>		<p>Larger scale map produced from the same survey as the 25 inch OS map detailed above. This map shows the road from Overton passing through point A but running parallel to the application route between points C-D. The application route between point C and point D is shown and appears accessible and the letter box shown on the 25 inch map is also shown (on the application route). No route connecting the application route passing through point A to the ramp at point C is shown although access appears to have been unrestricted between the two.</p>
<p>Investigating Officer's Comments</p>		<p>Access along the application route may have been possible in 1890.</p>
<p><b>1 inch OS Sheet 59 - Lancaster</b></p>	<p>1898</p>	<p>1 inch OS map surveyed 1842-48, revised 1896 and published 1898.</p>



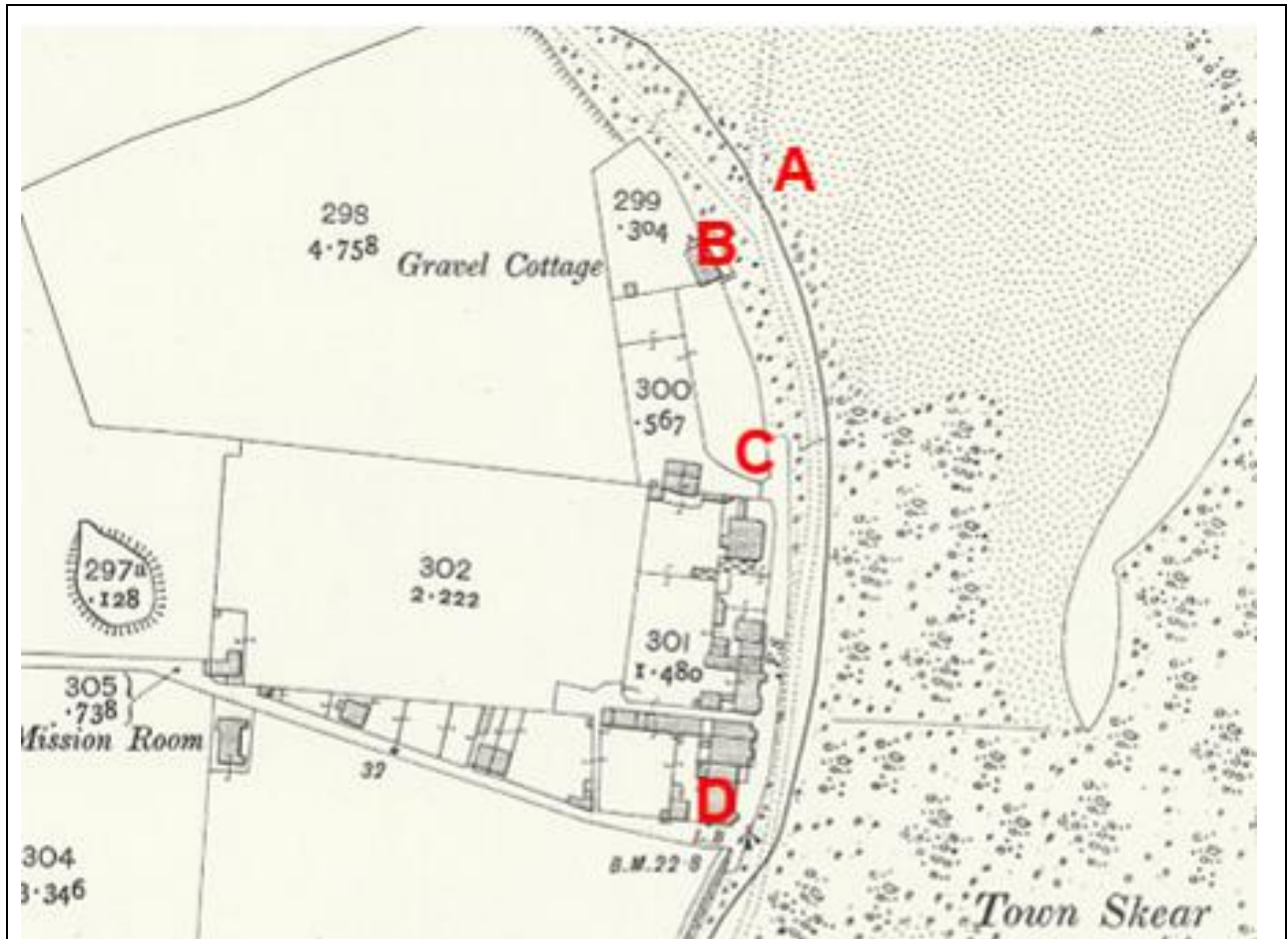
<i>Metalled Roads; First Class</i>	<i>Fenced</i> { { { { {	$\frac{5 \text{ (Mile distance)}}{\text{(Altitude) } 211}$	<i>Unfenced</i> { { { { {
" " <i>Second Class</i>		-----	
" " <i>Third Class</i>		-----	
<i>Unmetalled Roads</i>	-----		-----
<i>Footpaths</i>	-----		-----
<i>Railways, Single Line</i>	-----		<i>Level Crossing</i> //
" <i>Two or more Lines</i>	-----		<i>Cutting</i>    <i>Embankment</i> // <i>Bridge Over</i> // <i>Bridge Under</i>
<i>Mineral Lines and Tramways</i>	-----		-----

Observations

The scale of the map means that fine detail cannot be seen. An unenclosed route depicted as a third class road is shown crossing the salt marsh and continuing down along the front of 'The Moorings' through the junction (point D)



		where a letter box ('L.B.') is shown and continuing to Sunderland and Old Hall. An enclosed way is shown continuing from the application route (point D) west across the headland. The scale of the map means that it is not possible to see whether the route indicated is part of the application route or the route along the foreshore.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers. The fact that a route – which may include the application route - is shown suggests that it was a substantial route suitable for use on horseback or possibly vehicular use at that time.
<b>25 inch OS Map Sheet XXXIV.9</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



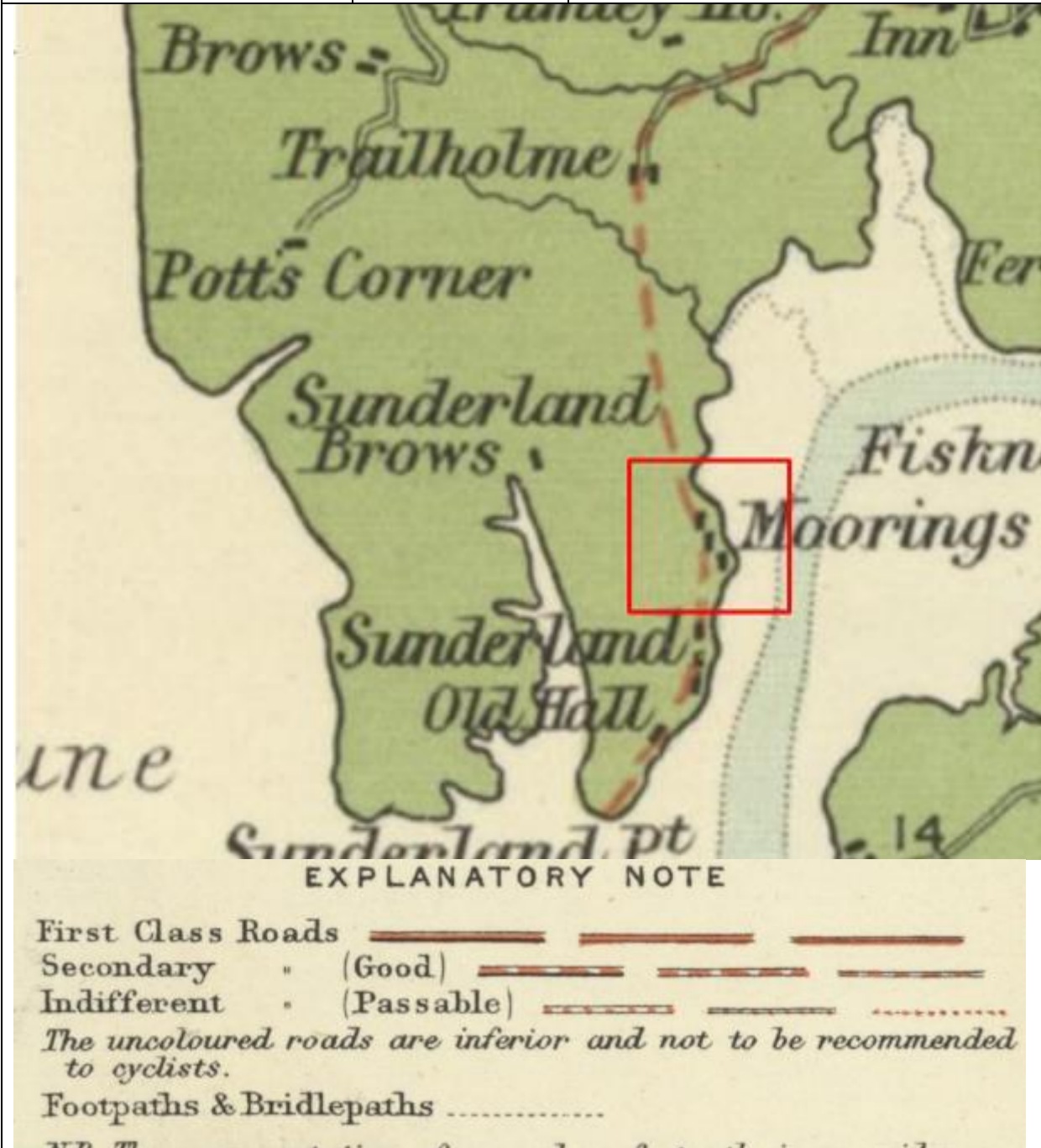
<p>Observations</p>		<p>The route along the salt marsh is shown in the same way that it is shown on the earlier addition of the 25 inch mapping. The route now recorded as 1-23-FP10 north of the application route is shown converging with the route (point B). Access along the application route is not shown but appears to be available to First Terrace (point C) and the route is shown through to the junction (point D) where it meets the lane now recorded as 1-23-BW13 along which the 'Mission Room' is located. A letter box ('L.B.') is again shown located at the junction (point D).</p>
<p>Investigating Officer's Comments</p>		<p>The application route appeared to be capable of being used – at least on horseback in 1910 linking to the route now recorded as 1-23-BW13. It was not shown as part of the principal route south to Sunderland (Second Terrace) and Old Hall suggesting that not all public or private use to and from the properties at Sunderland went via the</p>





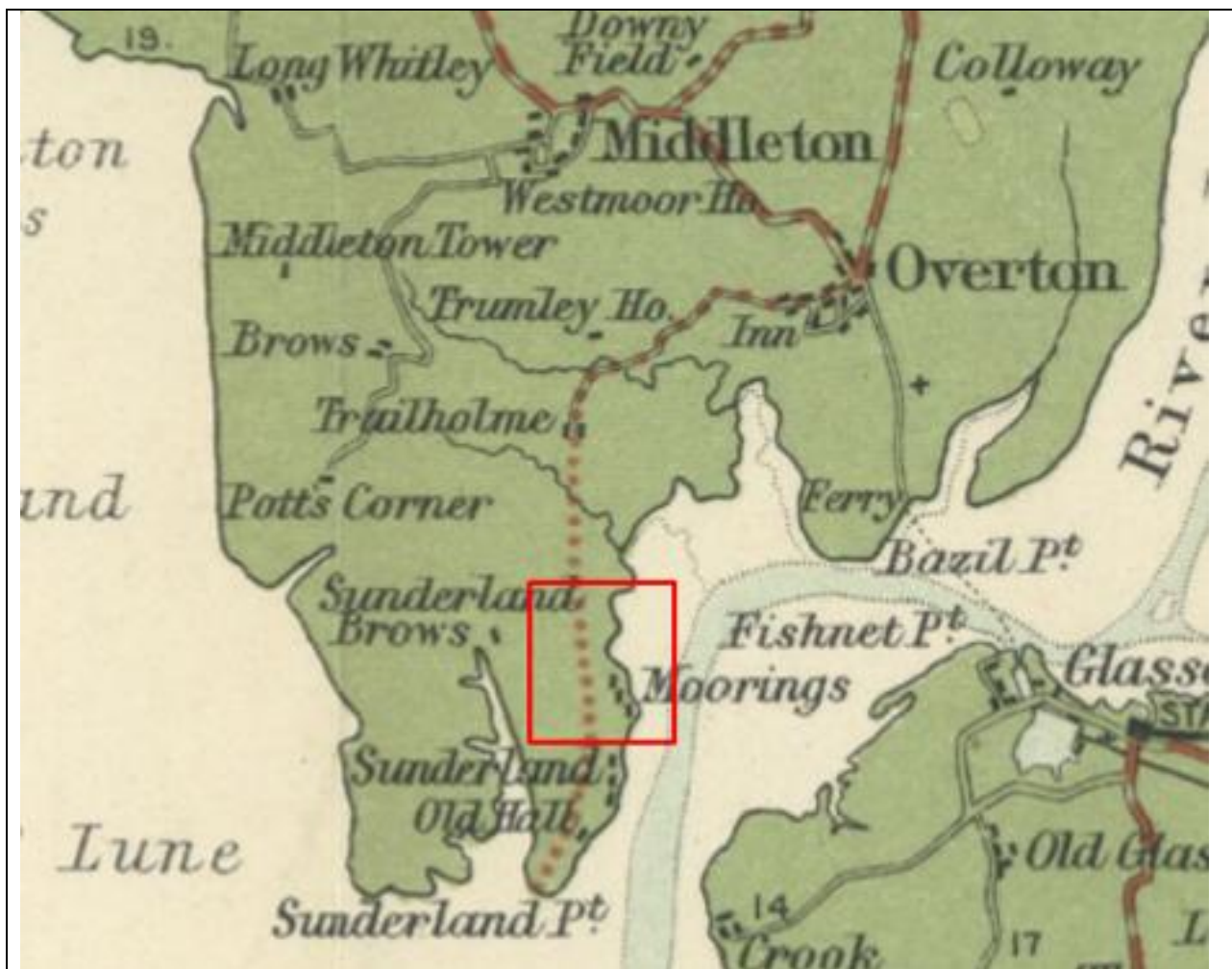
		application route at that time.
<b>6 inch OS Sheet XXXIV.SW</b>	1919	6 inch OS map revised 1910 and published 1919.
Observations		6 inch OS map produced from the same survey as the second edition 25 inch map. Two parallel routes are shown with the application route providing access onto the lane to the west, now recorded as 1-23-BW13 (The Lane).
Investigating Officer's Comments		The application route appeared to be capable of being used at that time.
<b>Bartholomew half inch Mapping</b>	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road

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


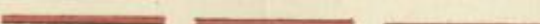




Sheet 5 – North Lancashire and Isle of Man published 1905





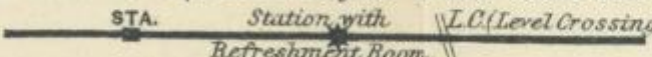
EXPLANATORY NOTE


Motoring Roads { Through Routes   
 First Class Roads   
 Secondary   
 Indifferent (Passable for cyclists) 

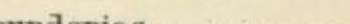
*The uncoloured roads are inferior and not to be recommended.*

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

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

Railways 

Canals 

County Boundaries 

Sheet 5 – North Lancashire and Isle of Man published 1920



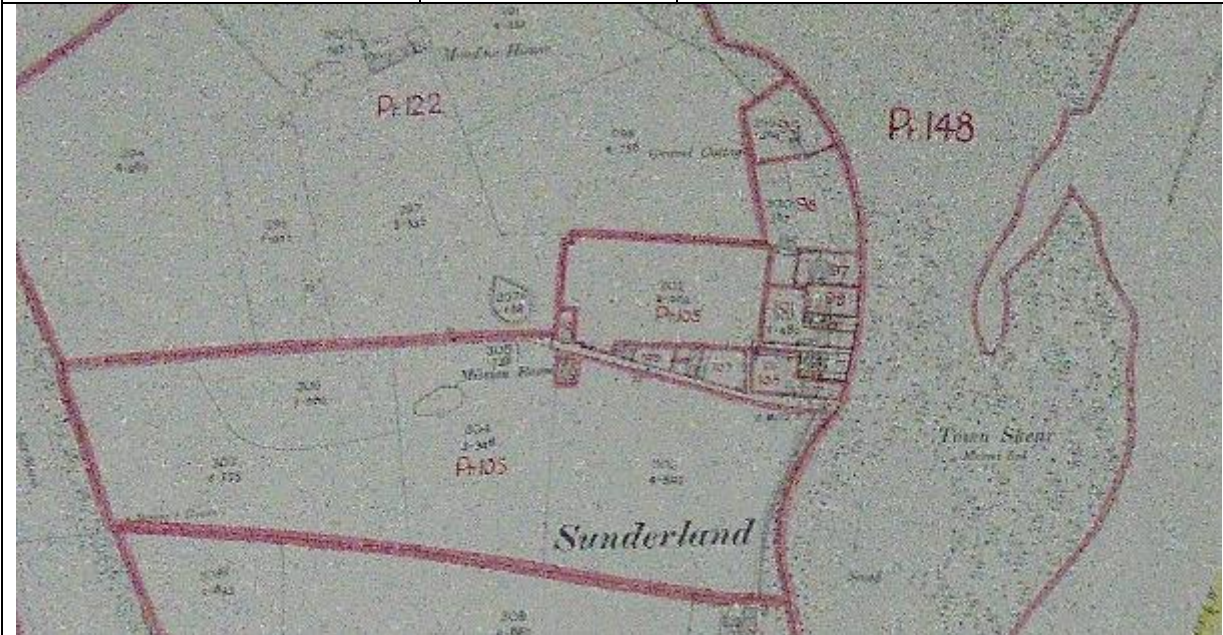


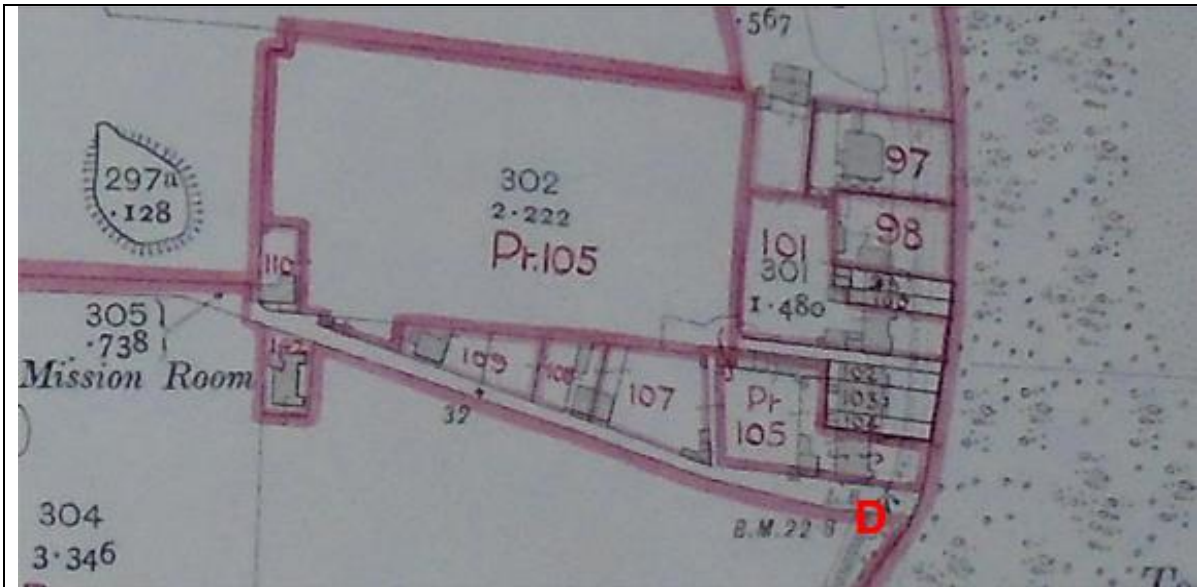
Sheet 31 – North Lancashire published 1941

<p>Observations</p>		<p>Buildings are shown on all three map editions, but the application route is not shown. The tidal road from Overton and bridleway across the headland are not shown.</p> <p>The maps published in 1905 and 1920 both show a route down to Sunderland Point from Trailholme in the north extending south as far as Sunderland Point. It is shown as an unbounded good secondary road in 1905 and as an</p>
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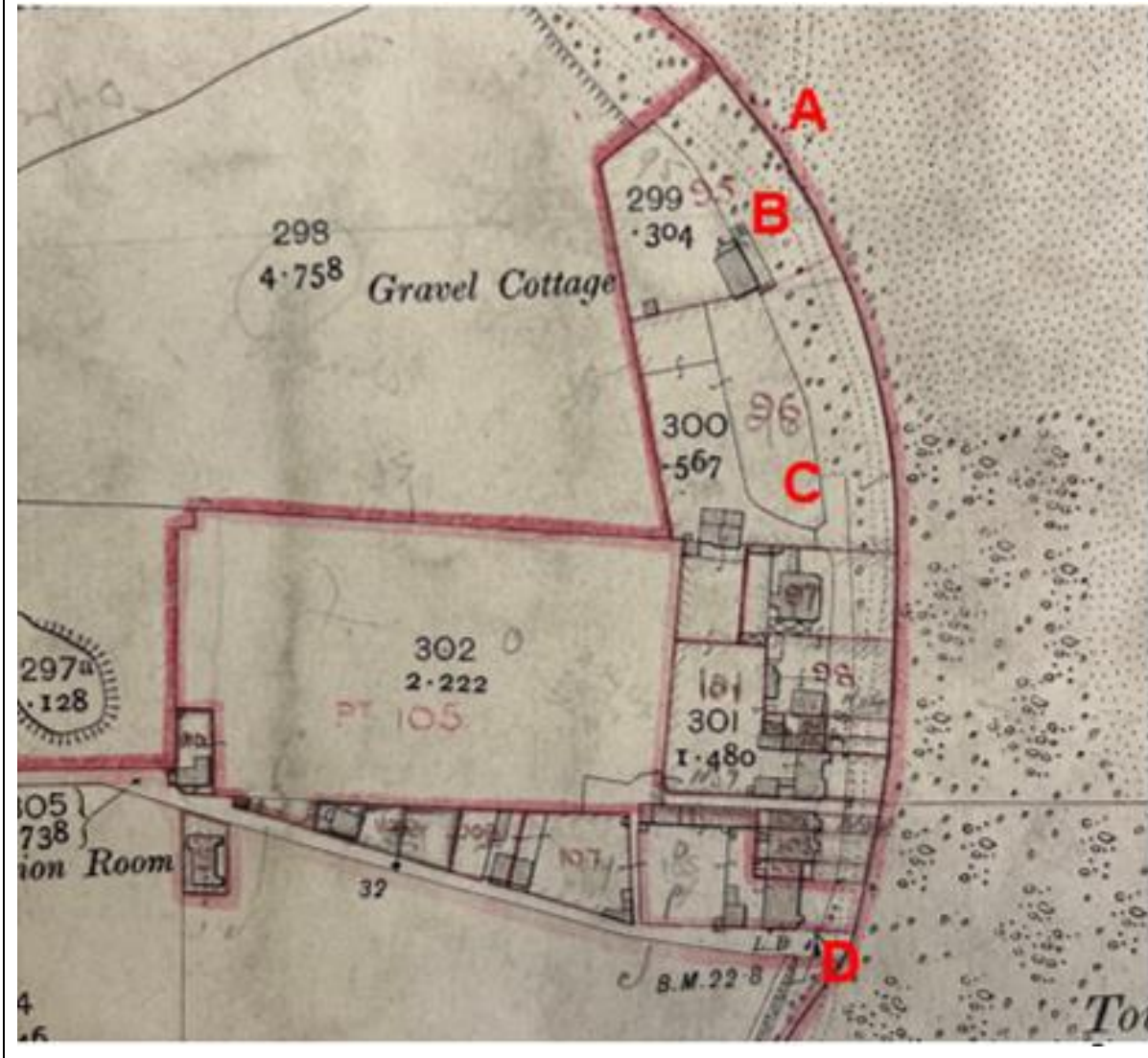
		indifferent road in 1920. This route is not shown in 1941 when buildings are shown but no roads are shown indicating how to access them.
Investigating Officer's Comments		<p>The application route is not shown and neither is the tidal road across the saltmarsh. The route shown on the 1905 and 1920 maps is loosely consistent with a route now recorded as a public footpath but not accurately so which may be why it was removed from the 1940 edition.</p> <p>The fact that the application route is not shown on the maps suggests that it was not usable as a public vehicular highway in the early 1900s. The route does not generally show routes used as footpaths or bridleways at that time. Given the apparent error in showing vehicular access to Sunderland Point along a route from Trailholme however, it could be that the area was not surveyed by Bartholomew for inclusion on these maps.</p>
<b>Finance Act 1910 Map</b> <b>TNA's Reference:</b> <b>IR133/3/116</b> <b>CRO's Reference:</b> <b>DVLA 2/1 OS Sheet</b> <b>XXXIV.9 and DVLA1/6/7</b> <b>Lancaster Rural District</b> <b>Valuation Book</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a</p>

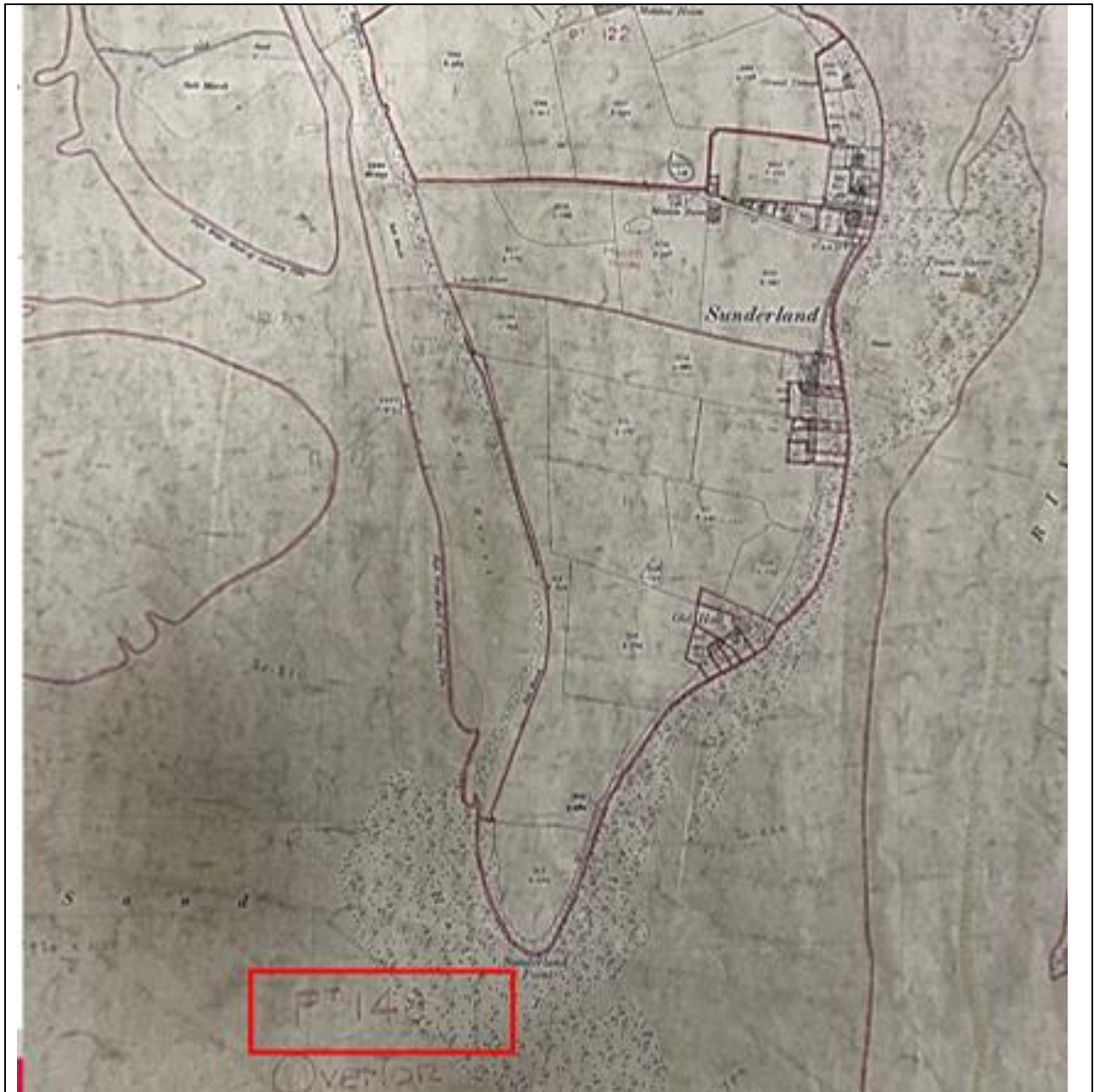
reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it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





Maps obtained from The National Archives





Maps obtained from the County Records Office

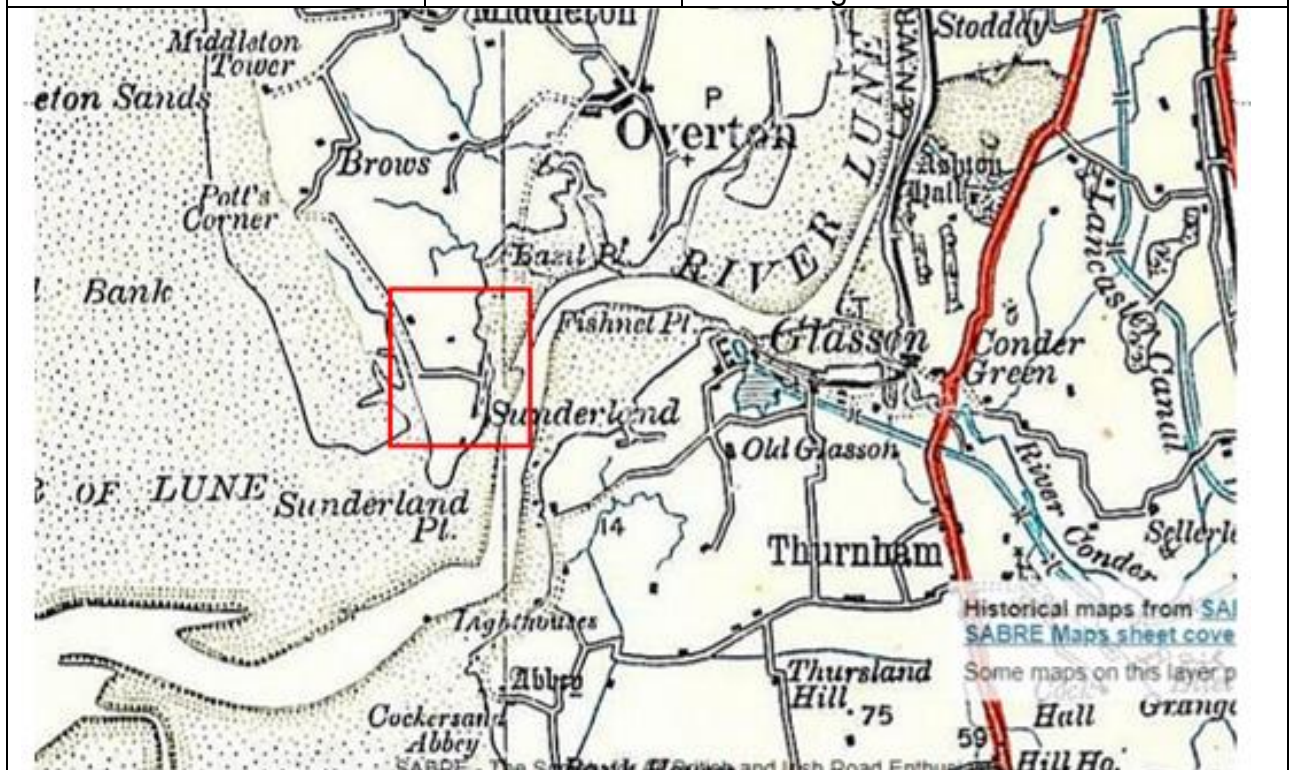
<p>Observations</p>		<p>No part of the application route is excluded from the numbered plots.</p> <p>The first 40 metres of the application route (from point A) is included in a large plot numbered as part of 148 Overton. The Valuation Book details this plot as being owned by the Dutchy of Lancaster and describes it as 'foreshore' with no deductions made for public rights of way or user.</p> <p>The rest of the application route is all included in numbered plots which</p>
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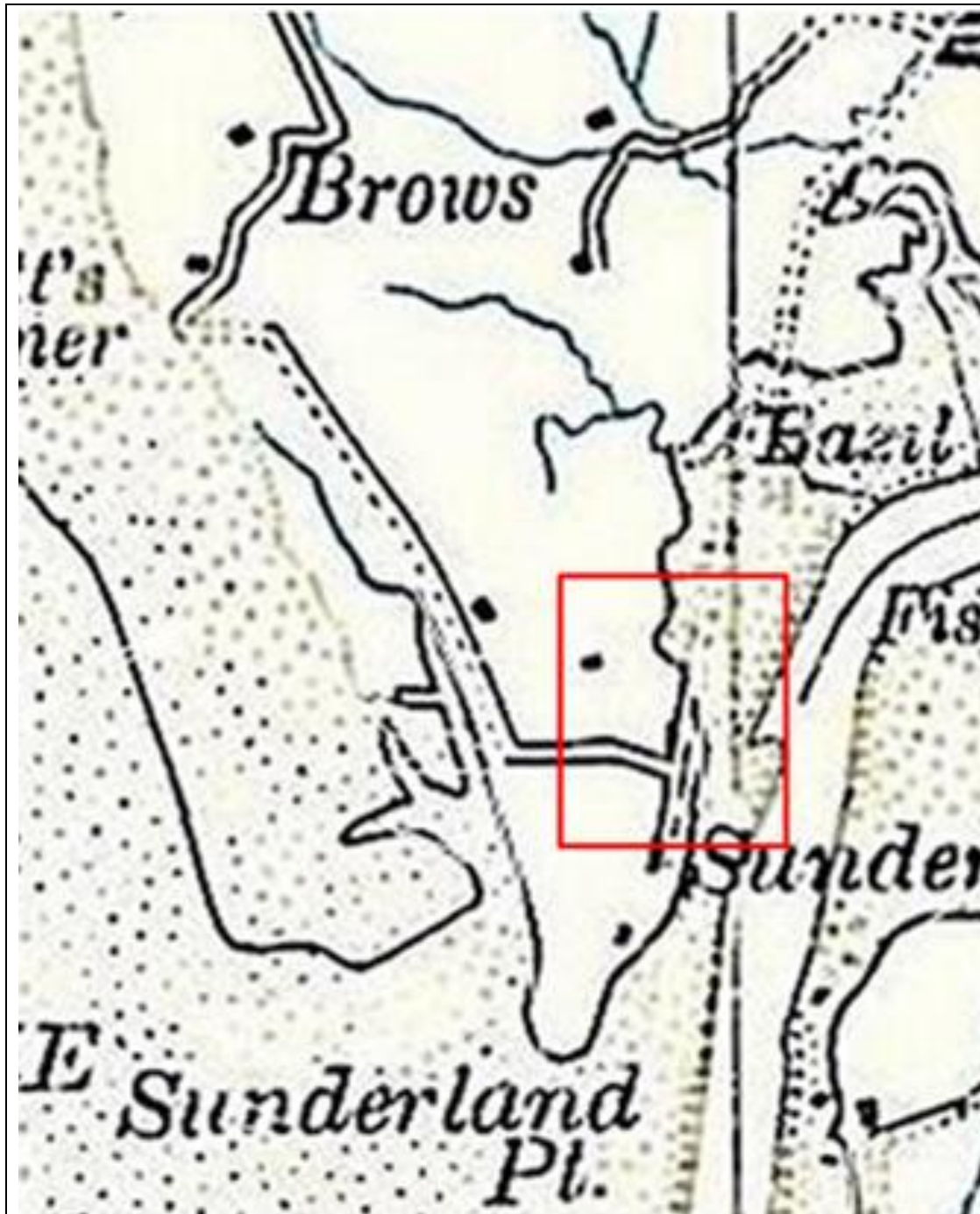


		<p>extend out to the high tide line. The route crosses the following plots which are all documented in the Valuation Book:</p> <p>95 – Owned and occupied by Margaret Jackson. Described as house and garden' with no deductions for public rights of way or user.</p> <p>96- Owned by Robert Mansergh and occupied by James Gardner. Described as land, cottages and building with no deductions for public rights of way or user.</p> <p>97 – Owned and occupied by Arthur Mansergh. Described as house and gardens with no deductions for public rights of way or user.</p> <p>98 – Owned and occupied by Richard Bagot. Described as house and garden with no deductions for public rights of way or user.</p> <p>99 – Owned by Sarah Townley and occupied by Mr Harrison. Described as cottage with no deductions for public rights of way or user.</p> <p>100 – Owned and occupied by William Townley. Described as cottage with no deduction for public rights of way or user.</p> <p>101 – Owned and occupied by John Walker. Described as house and garden with no deductions for public rights of way or user.</p> <p>102 – Owned by the Estate of E Langstretch with no occupier listed. Described as house with no deductions for public rights of way or user.</p> <p>103 – Owned and occupied by Mr Gardner – described as house with no deductions for public rights of way or user.</p> <p>104 – Owned and occupied by Fred Wilson. Described as house with no deductions for public rights of way or user.</p>
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		<p>105 – Owned by Mr Gilchrist and occupied by Mr Mason. Described as House Building and lane with no deductions for public rights of way or user.</p> <p>Plot 105 also included part of what is now 1-23-BW13 (The Lane) although it the first part – from the junction of the application route (point D) extending west as far as the Mission Room – was excluded from the numbered plots.</p>
Investigating Officer's Comments		<p>The application route was included by the surveyor in 13 separate numbered plots none of which referred to the existence of a public right of way.</p> <p>In 1910 the application route was not acknowledged to be a public right of way by the various landowners.</p>
Ministry of Transport ½ inch Road Map of Great Britain	1922-23	<p>Small-scale map submitted by the applicant. The Ministry of Transport Road Map (known as 'MoT' Maps) series were the official maps to show classified roads, following their publication by the Ministry of Transport on 1st April, 1923. As such, they are possibly the most important resource documenting the early days of road numbering in Great Britain.</p>

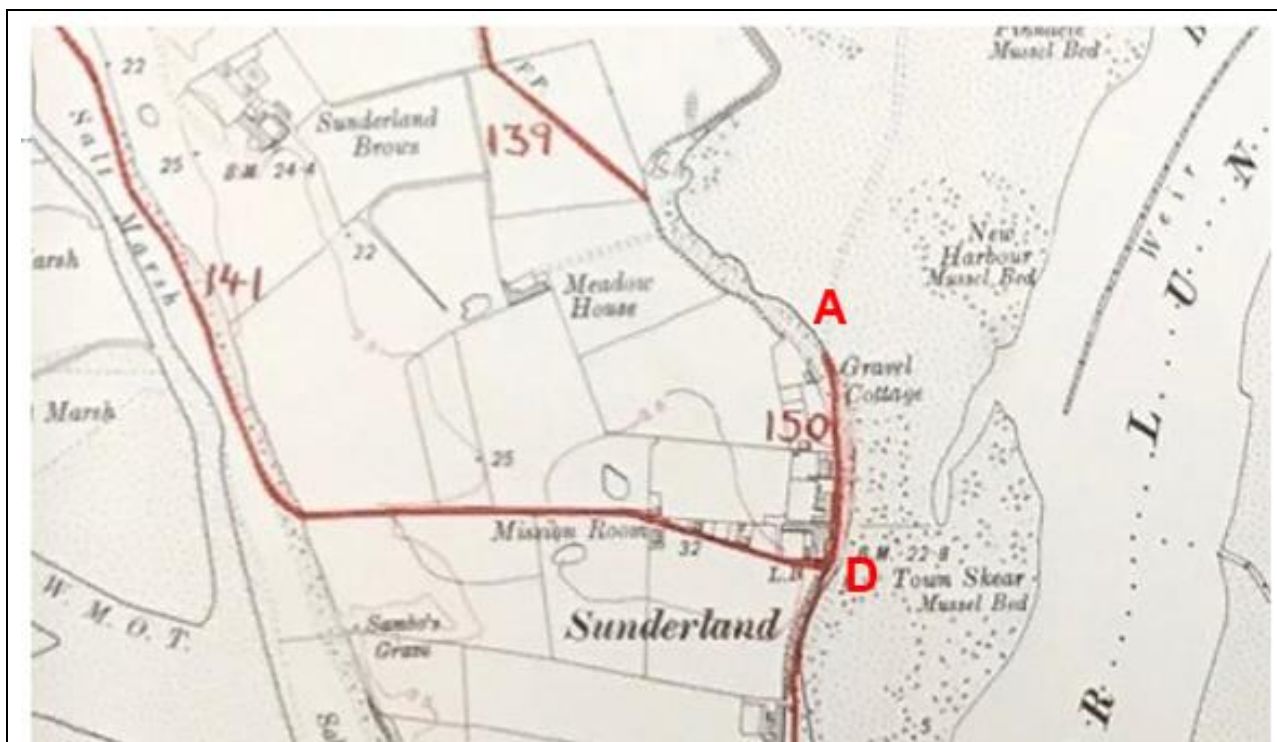




Roads; Class I.....	<b>527</b>	(Altitude) 211	
„ Class II.....	5100		
Other Roads.....			
Railways.....			
Bridges.....			
County Boundaries.....			



Observations		The route across the salt marsh (passing through point A) is shown and the junction of the application route with the lane to the west (1-23-BW13) can be clearly seen. The route appears to be shown as 'other roads' although the map key does not specify a pecked line for an unfenced route.
Investigating Officer's Comments		Although published by the Ministry of Transport the main significance of these maps was that they showed the early classification of public vehicular routes. The base map used by the Ministry of Transport was surveyed by the Ordnance Survey and shows that the route was not shown as a classified road (A or B road). The fact that a route is shown on the map consistent with the application route suggests the existence of a route capable of being used at least on horseback and one which provided access to and from several properties.
<b>1932 Rights of Way Map</b>		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and Meaning' by Sir Lawrence Chubb. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



Observations		The application route from a point on the high water line south of point A is shown on the map prepared by Lancaster Rural District. The route across the headland (now recorded as 1-23-BW13 The Lane) is also shown. There is no key to the map and all the routes shown are coloured red and numbered. No list could be found detailing the individual routes shown and the maps prepared for Lancaster RDC do not distinguish between routes recorded as public footpaths or bridleways reflecting perhaps the fact that the 1932 legislation referred to 'public highways' and did not differentiate between different modes of public use.
Investigating Officer's Comments		The application route was considered to be a public footpath in the 1930s.
<b>Aerial Photograph<sup>2</sup></b>	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

<sup>2</sup> 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.



generally very variable.



Observations


The application route from point A can be seen leading towards the shoreline and along the shore is a very thick white



		line which obliterates any detail. The line looks to have been created by some sort of earth works and/or use by vehicles along a stretch of coastline – possibly suggestive of work being carried out along the coast consistent with comments made regarding the construction of a new sea embankment when the First Definitive Map was revised (see below).
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>1 inch OS Sheet 94 - Preston</b>	1947	1 inch OS map revised 1920 with later corrections and published 1947.



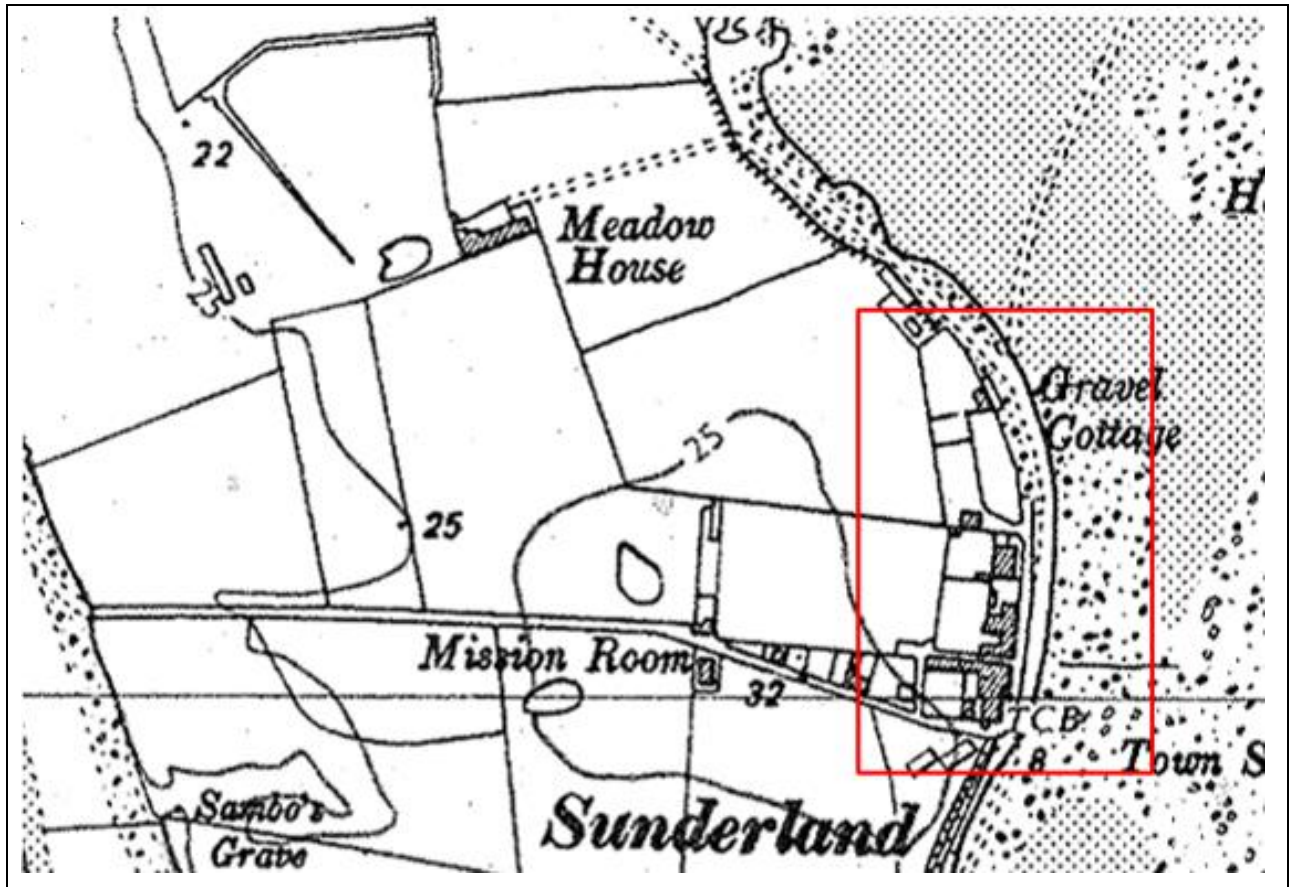
Observations		Another small-scale OS map showing a route running along the front of the properties and connecting to 'The Lane' (now 1-23-BW13) at point D.
Investigating Officer's Comments		A substantial route existed in the 1920s from the end of Main Street but the small scale makes it impossible to know

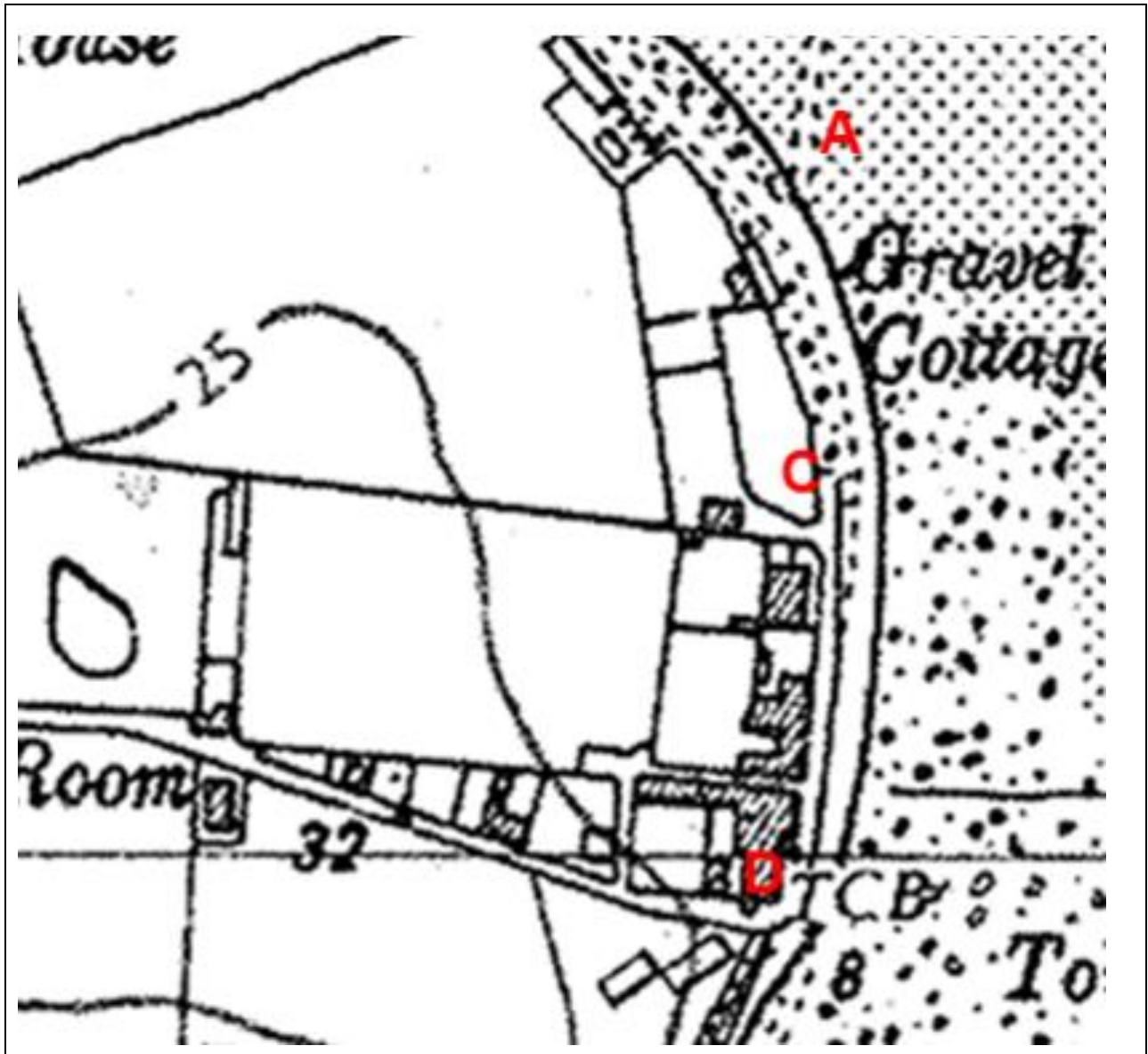
		whether or not it is the application route.
<b>1:25,000 OS map</b>	1947	OS map published 1947 but date of survey and revision not known.
		
Observations		Another small-scale OS map showing a route running from Overton to Sunderland, from the junction with the way west ('The Lane') and south from that junction. However, the dominant feature is the mean high water line so no feature is shown in front of the buildings of First Terrace.
Investigating Officer's Comments		The small scale makes it impossible to know whether or not it is the application route.
<b>1:25,000 OS map SD 45</b>	1954	OS map revised between 1910 and 1951 and published 1954.





Observations		Further OS map showing the existence of a route along the front of the houses linking to the way now recorded as 1-23-BW13 where a post office (P) is shown.
Investigating Officer's Comments		A route consistent with the application route existed and appeared to be capable of being used as part of a longer route.
<b>6 Inch OS Map</b> SD 45NW	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		Part of the application route is shown together with part of the route running parallel to it along the foreshore. A telephone call box (TCB) is marked as being located at the junction (point D). Access to the west (along what is now 1-23-BW13) is unrestricted.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used. The existence of a telephone call box on the route suggests that public access – at least on foot would have been possible.
1 inch OS Sheet 94 - Preston	1961	1 inch OS map revised 1958 and published 1961.



Roads	Ministry of Transport, Motorway	<u>M 1 or A 6 (M)</u>	
	" " " Trunk	<u>A 6 (T)</u>	R
	" " " Class 1	<u>A 584</u>	
	" " " " 2	<u>B 5269</u>	
	14 ft of Metalling & over (not included above)	<u>—————</u>	W
	Under 14ft of Metalling, Tarred	<u>—————</u>	Gate
	" " " " Untarred	<u>—————</u>	Or
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)	<u>—————</u>	El
	Under construction	<u>—————</u>	(w Pi)
	Steep Gradient 1 in 5 or steeper	<u>—————</u>	1 in 7 to under 1 in 5
Footpaths and Tracks	<u>—————</u>		

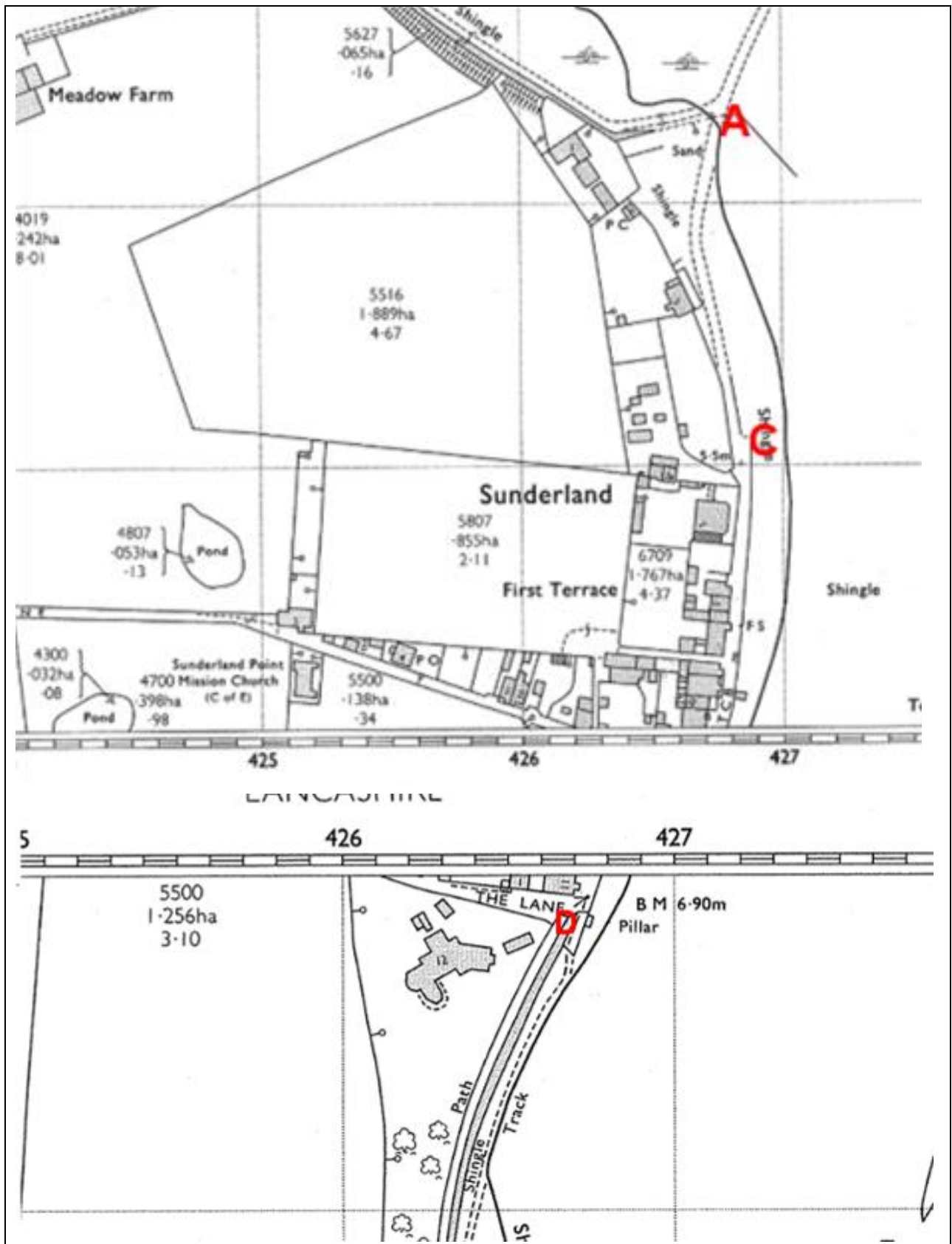
Observations		The application route is shown as part of a substantial unmetalled or minor road and as part of a longer through route.
Investigating Comments	Office's	The application route existed in the 1950s and appeared capable of being used – at least on horseback. However, the detail is unreliable at this scale.
Aerial photograph	1960s	The black and white aerial photograph



		taken in the 1960s and available to view on GIS.
Observations		No aerial photograph was available to view in the County Council's records.
Investigating Officer's Comments		No inference can be drawn.
<b>1:25, 000 OS map Sheet SD 45</b>	1966	Revised between 1910 and 1951, published 1954 and reprinted 1962.



Observations		The application route is shown as part of a longer route. The high tide line is shown crossing the route at point D.
Investigating Officer's Comments		The application route existed in the 1950s and appeared to be capable of being used – at least on horseback.
<b>1:2500 OS Map SD 42 56 and SD 42 55</b>	1971	Further edition of the 25 inch map reconstituted from former County Series and revised in 1970 and published in 1971 as National Grid Series.



Observations	The high tide line has altered from that shown on earlier maps and crosses the tidal road (Main Street) further north (point A). The application route can be
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		<p>seen continuing as an unfenced roadway over the shingle towards 2 First Terrace (formerly known as Gravel Cottage) and continues directly to the ramp (point C) then along the front of the properties on First Terrace to the junction with 'The Lane' (point D).</p> <p>'The Lane' (now recorded as 1-23-BW13) is named on the map with a post office (PO) and church located part way along it.</p> <p>No alternative route is shown along the foreshore from which it would be possible to gain access to Second Terrace and Old Hall.</p>
Investigating Officer's Comments		The application route existed in 1970 as a substantial route and appeared to be capable of being used by general traffic.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for

unparished areas.



DISTRICT *Lancaster Rural District* PARISH *Overton*

No. *14*

MAP SHEET No. *2*.

LENGTH *0.47* miles  
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)

*F.P. on shore.*

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

*Path from Gravel Cottage to Old Hall round shore at Sunderland. The path does not really exist now owing to the encroachment of the sea. The original path is now well down the shore.*

SURVEYED BY:—

Name *Henry Birkett*

Address *Ball Farm*

Date *Feb. 27<sup>th</sup> 1951*

*Sunderland Pt.*

99000/731/1/01





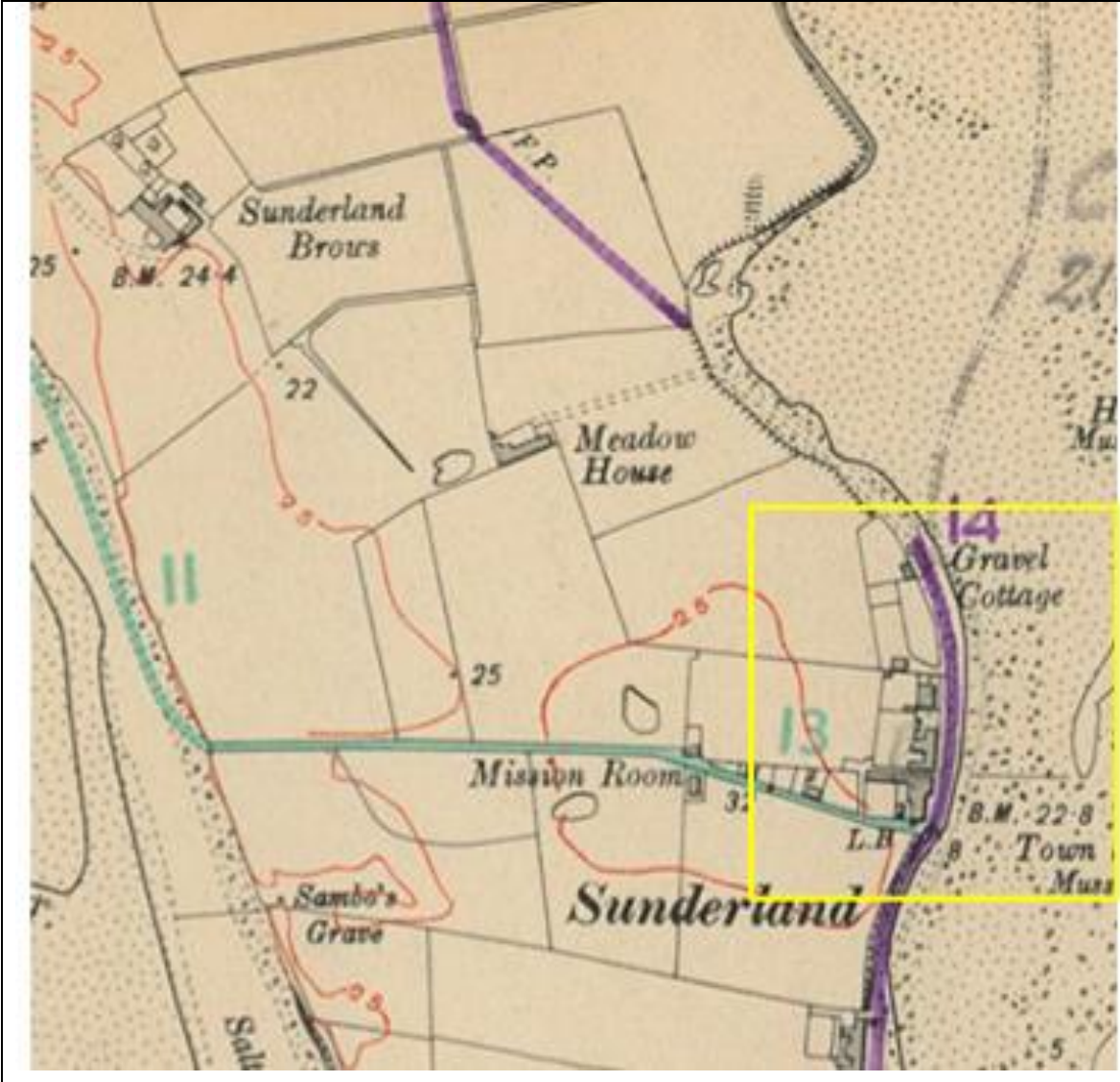
DISTRICT <i>Lancaster Rural District</i>	PARISH <i>Overton</i>	No. <i>13</i>
MAP SHEET No. <i>2</i>	LENGTH <i>0.31</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise) <i>Unmetalled Lane.</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>From Temperance Hotel, Sunderland, past Mission Room to Shore - over stile and joins Sunderland to Carr Lane F.P. (No 11 on map).</i>		
SURVEYED BY: —	Name <i>Henry Birkett,</i>	
	Address <i>Hall Farm,</i>	
Date <i>Feb. 27<sup>th</sup></i>	<i>Sunderland Pt.,</i>	

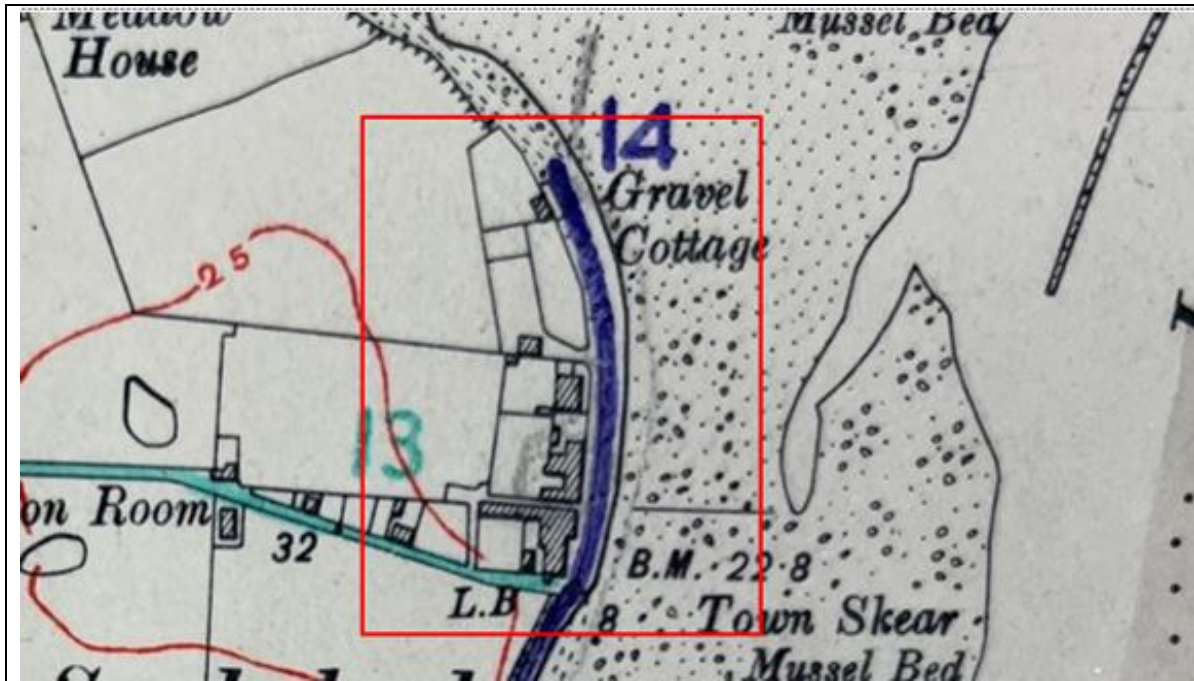
Observations		<p>The application route is shown as a footpath and numbered 14. The footpath is shown starting at the high water mark (which is slightly different from where it is located today) but appears to start at the southern end of the tidal road (Main Street).</p> <p>The description of the route in the parish survey card suggests that the route followed the shoreline and does not describe it as running along the raised roadway along the front of First Terrace. It is described as a footpath on the shore and as a path from Gravel Cottage to Old Hall round shore at Sunderland. It refers to the fact that the original path was well down the shore due to encroachment by the sea.</p> <p>The route now recorded as 1-23-BW13 is described as an unmetalled lane. There is no reference to it connecting to the footpath numbered 14 (although the two are shown meeting at point D on the map). It is described as starting at the Temperance Hotel (adjacent to point D) and passing the Mission Room to the shore where it met a footpath from Sunderland to Carr Lane.</p>
Draft Map		<p>The parish survey map and cards for Overton were handed to Lancashire County Council who then considered the</p>



information and prepared the Draft Map and Statement.

The Draft Map was given a 'relevant date' (1<sup>st</sup> January 1953) and notice was published that the Draft Map for Lancashire had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.





1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
12.	Bridleway	Yenharn Lane to Golloway Marsh	0.35	
13.	Bridleway	Temperance Hotel to junction with path No.11	0.31	
14.	Footpath	Gravel Cottage to Old Hall	0.47	

**Observations**

The Draft Map shows a route recorded as Footpath 14 and described as running from Gravel Cottage to Old Hall. The route is shown by a thick purple line on the map, and it is difficult to determine whether it was intended that the route followed the shoreline or the application route.

1-23-BW13 is shown coloured green and described in the Draft Statement as a bridleway starting at the Temperance Hotel – as opposed to starting on Footpath 14.

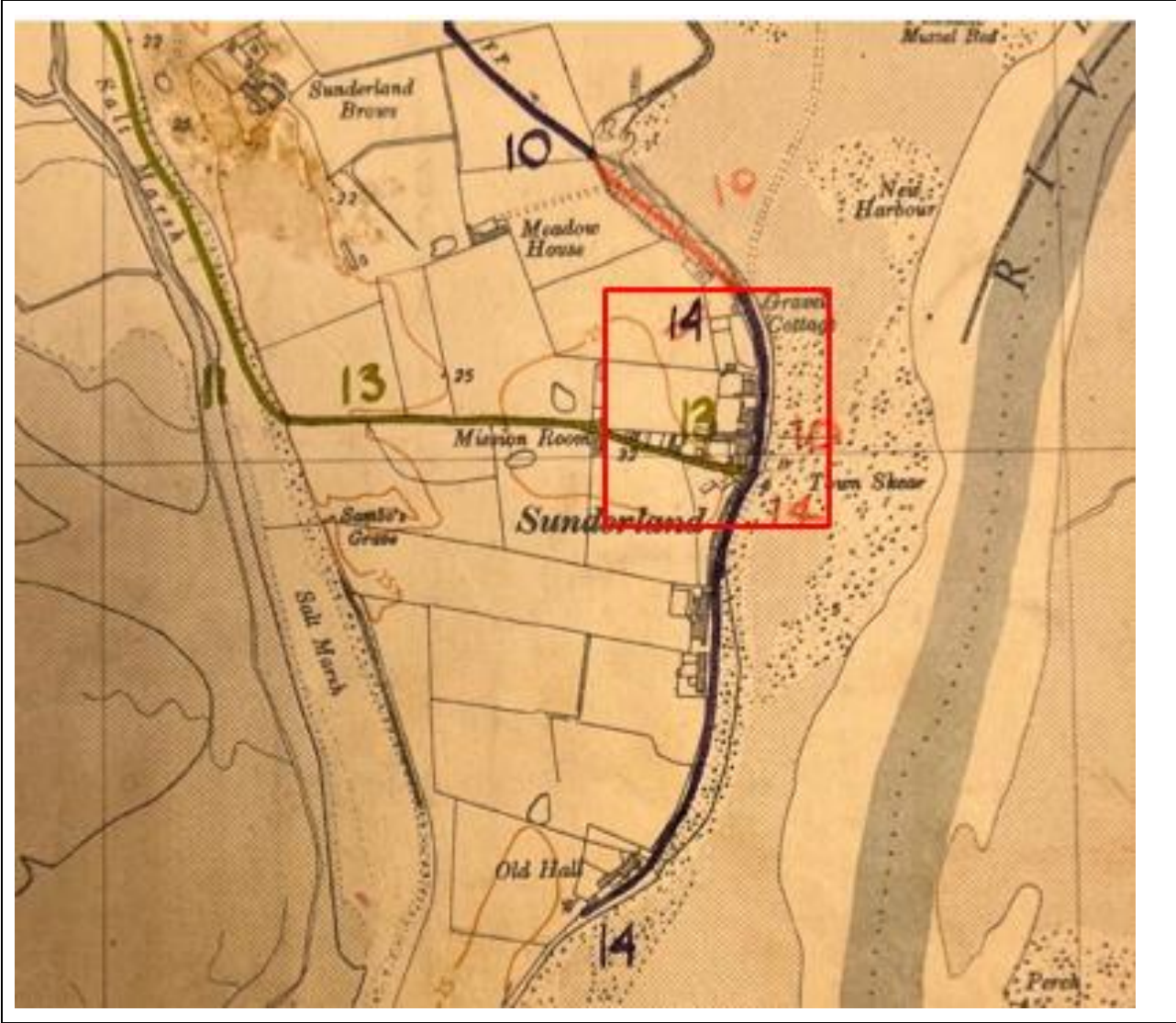
Main Street is marked on the map as a county road extending as far as the high water mark. The application route between point A and point B is not recorded on the Draft Map.

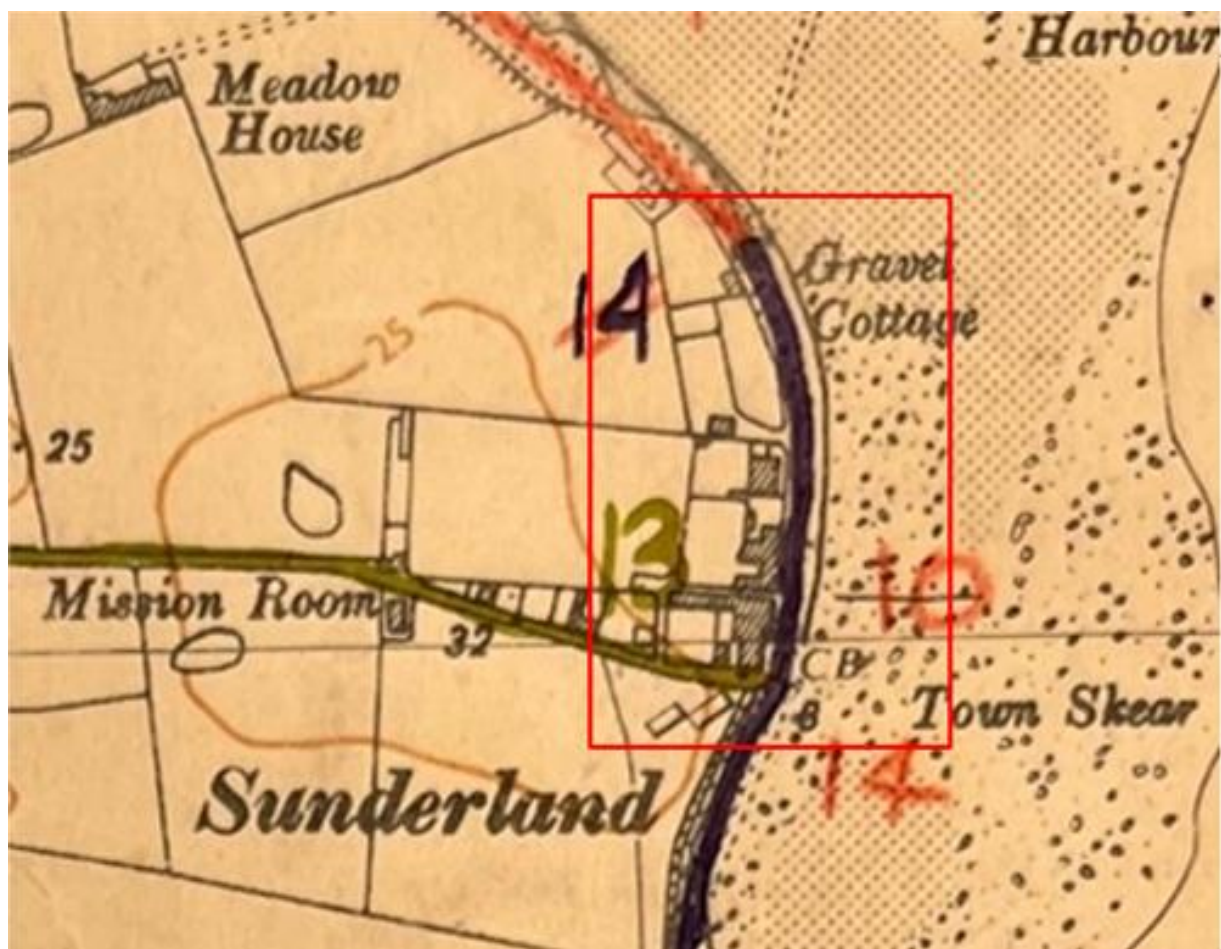
**Provisional Map**

Once all representations relating to the



publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections at this stage had to be made to the Crown Court.





Statement annexed to the Provisional Rights of Way Map. Section 30 (1)

Rural District of LANCASTER Relevant Date, January 1st, 1953 Parish of OVERTON

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	Footpath	Downy Field Bridge to Middlepool Bridge.	0.56	
2	"	Globe Hotel to Stoop Lane.	0.24	
3	"	Trailholme-Overton Road to Parish Boundary.	0.22	
4	"	Trailholme-Overton Road to Parish Boundary near Trumley House.	0.17	
5	"	Sunderland-Overton Road to junction with path No. 7.	0.59	
6	"	Junction with path No.5 to junction with path No.7 at Hall Greave.	0.16	
7	"	Overton Village to junction with path No.8 via Bazil Point.	1.12	
8	"	Bazil Shore to Chapel Lane near Overton Church.	0.31	
9	"	Churchyard to Salt Marsh on Shore.	0.12	
10	"	Parish Boundary near Trailholme to Sunderland Point.	0.66	
11	<del>Bridleway</del>	Junction with path No.13 to Parish Boundary at Potts Corner.	0.55	
12	"	Yeshan Lane to Colloway Marsh.	0.35	
13	"	Temperance Hotel to junction with path No.11.	0.31	
14	<del>Footpath</del>	Gravel Cottage to Old Hall.	0.47	

Observations	The numbering of the footpaths has been altered (red pencil) although this is not reflected in the Provisional
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		<p>Statement.</p> <p>The application route is shown as part of Footpath 10 between point B and point D although it is still unclear whether the thick purple line was intended to show a route along the shoreline or along the raised terrace (application route).</p> <p>The application route between point A and point B is not recorded on the Provisional Map.</p>
<p><b>The First Definitive Map and Statement</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



Administrative County of the County Palatine of Lancaster  
 National Parks and Access to the Countryside Act, 1949  
 Statement annexed to the Definitive Rights of Way Map Section 32 (1)  
 Relevant Date, 1st January 1953.

Rural District of **LANCASTER**

Parish of **Overton**

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	Footpath	Dowry Field Bridge to Middlepool Bridge	0.56	
2	"	Globe Hotel to Stoop Lane	0.24	
3	"	Trailholme-Overton Road to Parish Boundary	0.22	
4	"	Trailholme-Overton Road to Parish Boundary near Trasley House	0.47	
5	"	Sunderland-Overton Road to junction with path No. 7	0.59	
6	"	Junction with path No. 9 to junction with path No. 7 at Hall Greave	0.16	
7	"	Overton Village to junction with path No. 8 via Basil Point	1.13	
8	"	Basil Shore to Chapel Lane near Overton Church	0.31	
9	"	Churchyard to Salt Marsh on Shore	0.12	
10 ✓	"	Parish Boundary near Trailholme to Sunderland Point <i>at B.P. 13 at Temperance Hotel</i>	0.66 <i>0.90</i>	<i>Amended description - includes part of original path 14 and new length along new sea embankment included as a result of a representation by Lancaster RDC.</i>
11	Bridleway	Junction with path No. 13 to Parish Boundary at Potts Corner	0.95	
12	"	Yenham Lane to Colloway Marsh	0.35	
13	"	Temperance Hotel to junction with path No. 11	0.31	
14 ✓	Footpath	<i>at B.P. 13 at Temperance Hotel</i> Gravel Cottage to Old Hall	0.47 <i>0.32</i>	<i>Amended description - part of original path now included in path No 10.</i>

11	Bridleway	Boundary at Potts Corner
12	"	Yenham Lane to Colloway Marsh
13	"	Temperance Hotel to junction with path No. 11
14 ✓	Footpath	<i>at B.P. 13 at Temperance Hotel</i> Gravel Cottage to Old Hall

0.31		
0.12		
<i>Hotel</i> 0.66	0.90	<i>Amended description - includes part of original path 14 and new length along new sea embankment included as a result of a representation by Lancaster RDC.</i>
0.95		
0.35		
0.31		
0.47	0.32	<i>Amended description - part of original path now included in path No 10.</i>
	472	

Observations
The application route between point A and point B is not shown on the First Definitive Map. Footpath 10 appears to have been extended and the description of the route altered with a pencil written note explaining that the amended description is to include part of the original path 14 and a new length along the new



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





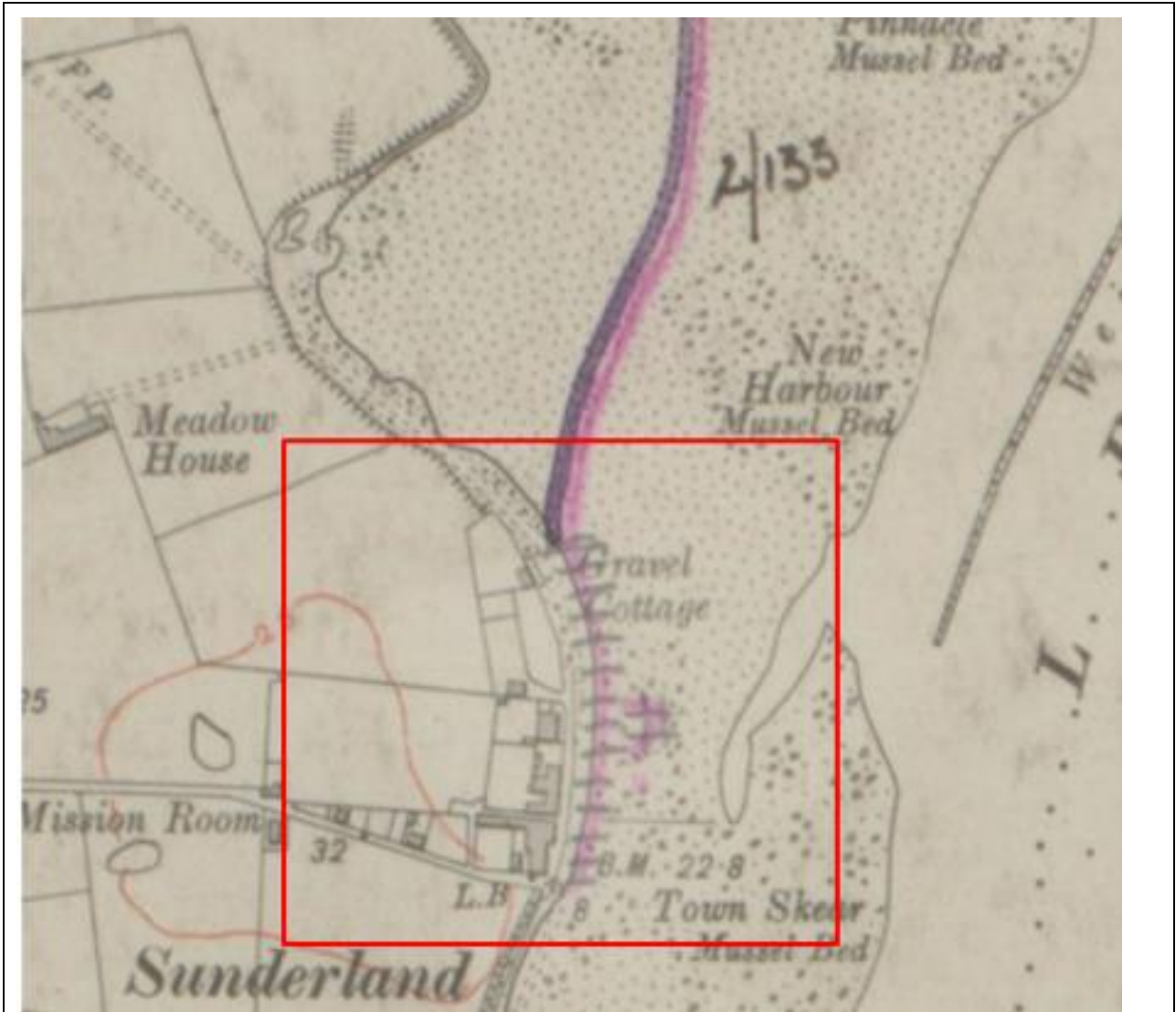


6	"	Junction with path No. 5 to junction with path No. 7 at Hall Greave.	0.16
7	"	Overton Village to junction with path No. 8 via Bazil Point.	1.12
8	"	Bazil Shore to Chapel Lane near Overton Church.	0.31
9	"	Churchyard to Salt Marsh on Shore.	0.12
10	"	Parish Boundary near Trailholme to junction Bridlepath No. 13 at Temperance Hotel.	0.90
11	Bridleway	Junction with Path No. 13 to Parish Boundary at Potts Corner.	0.95
12	"	Tenham Lane to Colloway Marsh.	0.35
13	"	Temperance Hotel to junction with path No. 11.	0.31
14	Footpath	Junction Bridlepath 13 at Temperance Hotel, to Old Hall.	0.32

Observations		The application route between point A and point B is not recorded on the Definitive Map (First Review). The rest of the route (B-D) is recorded as a public footpath and described in the Definitive Statement as starting from the junction with Bridlepath No. 13 at the Temperance Hotel (point D).
Investigating Officer's Comments		There is no reference to the application route having been considered anything other than a public footpath when the Definitive Map was prepared in the 1950s. However, it does appear that the original footpath referred to by the parish council ran along the shoreline. The fact that the route recorded as 1-23-BW13 was recorded as a bridleway starting at the Temperance Hotel does suggest that public access – at least on horseback must already have been considered to exist up to this point – most probably along the application route – and the original footpath may have been a separate route along the shoreline. However, the Revised Definitive Map shows the footpath recorded along the application route B-D and meeting 1-23-BW23 at point D and there is no record of this having been challenged.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within



		<p>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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Handover Map OS Sheet 34SW



LCC highway records

<p>Observations</p>		<p>The publicly maintainable road (Main Street) referenced as route 2/133 is shown ending at the mean high water mark. However, the mark is much closer to Gravel Cottage than on current mapping and the modern OS mapping used to show the extent of the adopted public highway records it as only going as far as the modern day mean high water mark – which is approximately 40 metres shorter than the route recorded in 1929.</p>
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		<p>The 1929 map also showed the adopted highway continuing towards point B along the foreshore but this is then shown as being crossed out.</p> <p>Between the points marked on the Committee plan as point A and point A1 the application route was recorded as a publicly maintained highway on the 1929 Handover Map. For this reason colleagues in the LCC Highways team have been requested to update their records to include this section as part of Main Street.</p> <p>From point A1 to point B the application route is not recorded as a publicly maintainable route and from point B to point D it is not recorded as a publicly maintainable highway in the County Council highway records other than as a public footpath.</p>
Investigating Officer's Comments		The fact that the route A1-D is not recorded as a publicly maintainable highway in the County Council highway records does not mean that it does not carry public rights of access.
<b>Highway Stopping Up Orders</b>	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 of way 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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		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

		<p>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 landowner 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

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

The application route continues from the 'end' of the publicly maintained tidal road from Overton (Main Street) to cross the foreshore and follow the original route along



the wharf at Sunderland to connect to a route first shown on commercial maps in the early 1800s and recorded today as a public bridleway.

The Wharf – which is a listed Grade II structure - originated in the 18th Century and was used to transfer goods from sea-going ships to lighter boats and horse carts for transport to Lancaster, until Lancaster built its own quay in 1750. As ships grew larger, Sunderland Wharf was again used to transfer goods to lighters for onward shipment to Lancaster until a new port was built at Glasson in 1787 which took all the trade away from Sunderland.

Although use of the Wharf as a port had declined – or possibly come largely to an end by the 19<sup>th</sup> Century the Tithe Map shows a route consistent with the application route coloured as part of a longer through route and the 1<sup>st</sup> edition 6 inch OS map shows the application route in detail as it passes along the front of First Terrace on the Wharf.

Maps from 1891 to the 1930s show a separate track below the Wharf towards Second Terrace and Old Hall but these maps don't show an obvious route through to The Lane (1-23-BW13) via the application route although the application route may still have been accessible at this time via the Wharf B-D and used as part of a longer through route – particularly as a Mission Room was located on The Lane and a post box located at the junction (point D).

All the smaller scale OS maps examined from the late 1800s through to the mid-1950s show a route from Main Street connecting to The Lane (1-23-BW13) but provide insufficient detail from which it can be inferred that public use was along the application route – or along a parallel route on the foreshore – or both.

The Finance Act Map and associated Valuation Books provide no evidence of a route that was considered to be a public route in the early 1900s and show the application route crossing through many separate plots of land for which no deductions were claimed for public rights of way or user.

More recent OS maps, most notably the large scale 1:2500 map published in 1971, show just one route (via the application route) linking Main Street to The Lane (1-23-BW13).

No modern user evidence was submitted with the application from which dedication can be inferred.

The Parish Survey records referred to the original footpath running along the foreshore but also record a right of way – initially described as an unmetalled lane – terminating at The Temperance Hotel – rather than connecting to the public footpath at point D.

The description of 1-23-BW13 terminating at the hotel remained unaltered until the First Definitive Map was revised in 1966 – at which point the public footpath 1-23-FP10 appeared to have shifted to run along the wharf between points B-D and the Revised Definitive Statement for the footpath revised to refer to the junction with 1-23-BW13.





Taking the available map and documentary evidence as a whole, given the history of the location as a significant shipping port in the 1700s, there is a suggestion that public access at least on horseback would have been available along the application route at that time. Public access along the application route may then have declined – but appears to have been possible as part of a longer through route – until more recent times – when Sunderland became more of a tourist destination.

There appears to be insufficient evidence of public vehicular rights but from the series of maps and documents examined it appears to the Investigating Officer that on balance, there is sufficient evidence from which it can be inferred that public bridleway rights exist.

## **Head of Service – Legal and Democratic Services Observations**

### **Landownership**

Some sections of the application route cross land which is unregistered. From point B to a point roughly half way between points B and D the application route crosses land in private ownership. The application route crosses two more sections of land in private ownership for 30 metres north of point D.

### **Information from the Applicant**

The applicant submitted the following maps and documents in support of the application, all of which were considered by the Investigation Officer earlier in this report:

Hennet's Map of Lancashire 1830  
6 inch OS maps published 1848, 1895 and 1919  
25 inch OS maps published in 1891 and 1913  
1 inch OS maps published in 1898, 1947 and 1961  
1:25,000 OS maps published in 1947, 1954 and 1966  
Ministry of Transport ½ inch OS map of Great Britain 1922-23  
Tithe Map and Award 1845  
Lancashire County Council List of Streets  
Photographs of a sign adjacent to the route 2009  
Handover Map  
Overton Parish Survey Cards  
The Gazette – Search for stopping up order

### **Information from Others**

The Right to Ride representative for Cycling UK responded to consultation to state that they had no objection to the application.

Cadent Gas and Atkins Telecom responded to consultation to state that they had no objection to the application.



## **Information from the Landowner**

Several landowners responded to consultation clarifying the land in their ownership, one noted that they had no objection to the application. Another stated that all owners of properties along First Terrace own the land in front of their properties, including the land crossed by the currently recorded footpath and the foreshore.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

## **Conclusion**

The application is for the addition of bridleway and upgrade of footpath to bridleway on the Definitive Map and Statement of Public Rights of Way along First Terrace, Sunderland, Overton.

Point A-B is not currently recorded on the Definitive Map and Statement.

Point B-D is currently recorded as footpath on the Definitive Map and Statement.

The application route links to a highway at point A1 (Main Street) and a recorded bridleway at point D (The Lane 1-23-BW23).

Committee is advised that between point A and point A1 the application route was recorded as a publicly maintainable highway on the 'Handover' Map. In 1929 the responsibility for district highways passed from rural district councils to the County Council and 'Handover' maps were drawn up to identify those highways within the county which were, immediately before the handover, maintainable by rural district councils as highway authorities.

The County Council is required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintainable at the public's expense. The publicly maintained highway (Main Street) referenced as route 2/133 is currently shown ending at the mean high water mark. However, the mark is much closer to Gravel Cottage than on current mapping and the modern OS mapping used to show the extent of the adopted public highway records it as only going as far as the modern day mean high water mark – which is approximately 40 metres shorter than the route recorded in 1929.

For this reason, LCC Highways team have been requested to update their records to include this section of the application route A to A1 as part of the publicly maintained highway (Main Street).

There is no express dedication or modern public user evidence. Committee is asked to consider whether there is sufficient evidence, on balance, that a dedication and acceptance can be inferred at Common Law to have happened many many decades ago and led to how the route was recorded on the various documents.



The evidence to be deliberated 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.

Part of the application route is already recorded, and Committee must consider whether this part of the route carries higher rights than the footpath it is presently recorded as.

The evidence has been summarised and evaluated fully earlier within the report and Committee is referred to this.

Committee must consider whether, on the balance of probability, the evidence shows the application route at point A1-B has public bridleway rights and Committee must consider whether, on the balance of probability, the evidence shows that the existing public footpath point B-D ought to be shown as a public bridleway and that the Definitive Map and Statement requires modification to reflect this.

Records are being updated to show A-A1 is highway maintainable at public expense and no order is recommended in respect of this part of the application route. Committee is advised that the evidence is sufficient on balance to show that the application route from point A1-D has public bridleway rights. It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted to confirmation.

### **Risk management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-655		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





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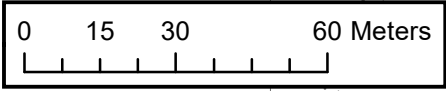
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Path (um)

A  
Sand  
A1  
Shingle  
B

Mean High Water

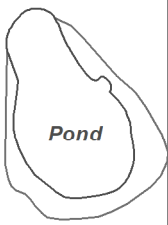
First Terrace

Pond C  
5.5m

Shingle

1-23-FP 10

Shingle



Pond

FS

Sunderland Point Mission Church

1-23-BW 13

Sand

■ ■ ■ Application Route

- - - Public Footpath

| - | - | Public Bridleway

Pillar

1-23-FP 14

Laurence Ashworth



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

Wildlife and Countryside Act 1981  
Upgrade of footpath and addition of bridleway along First Terrace, Sunderland, Overton

1:1,500



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