

# Lancashire County Council

## Regulatory Committee

Wednesday, 10th August, 2022 at 10.30 am in Ribble Suite, The Exchange, 4th Floor, County Hall, Preston

### Agenda

#### Part I (Open to Press and Public)

No.	Item
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1.	<b>Apologies</b>
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2.	<b>Disclosure of Pecuniary and Non-Pecuniary Interests</b>
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	<b>Minutes of the last Meeting</b>
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The minutes of the last meeting held on 22 June 2022 will be included in the agenda for the meeting to be held on 14 September 2022.

4.	<b>Guidance</b>
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(Pages 1 - 26)

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.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale</b>
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(Pages 27 - 100)

6.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath at Cuerden Hall</b>
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(Pages 101 - 160)

7.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Sections of Footpath from Mitton Road to Calderstones Drive, Whalley</b>
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(Pages 161 - 206)

**8. Urgent Business**

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

**9. Date of Next Meeting**

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

County Hall  
Preston

L Sales  
Director of Corporate Services

## Regulatory Committee

Meeting to be held on 10 August 2022

Electoral Division affected:

All

## Guidance for the members of the Regulatory Committee

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

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

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### **Definitions**

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

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

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

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

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

### **Duty of the Surveying Authority**

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

#### *Orders following “evidential events”*

The prescribed events include –

#### Sub Section (3)

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

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

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

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

#### *Orders following "legal events"*

Other events include

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

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

#### **Government Policy - DEFRA Circular 1/09**

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 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 10 August 2022

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

### **Procedural step**

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

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

### **Recovery of Costs from an Applicant**

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

### **Amount of charge**

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

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

### **Refund of charges**

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

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

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

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

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

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

### **Careful consideration of stance**

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

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

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

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



## Regulatory Committee

Meeting to be held on 10<sup>th</sup> August 2022

### Part I

Electoral Division affected:  
West Lancashire East

## Wildlife and Countryside Act 1981

### Definitive Map Modification Order Investigation

### Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale

(Annex 'A' refers)

Contact for further information quoting reference number 804-707:

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

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale.

### Recommendation

- (i) That the application for a Restricted Byway along Dark Lane be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Restricted Byway along Dark Lane as shown on Committee Plan between points A-B-C-D-E-F.
- (iii) That 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 to the Definitive Map and Statement of Public Rights of Way a Restricted Byway from Lee Lane, Bispham to Bentley Lane, Hilldale.

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

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

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

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

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

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

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

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

## **Consultations**

### West Lancashire District Council

West Lancashire District Council did not provide an official response to the consultation.

### Bispham Parish Council

Bispham Parish Council did not provide an official response to the consultation.

### Hilldale Parish Council

Hilldale Parish Council did not provide an official response to the 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	4947 1328	Wall across start of route at junction with Lee Lane (U5295) and Old Lane (U458)
B	4951 1325	Fence across application route
C	4952 1324	Culverted access between the application route and footpath 8-6-FP3
D	4969 1313	Fence across the application route on parish boundary
E	4977 1309	Fence across the application route
F	49791308	Open junction with Bentley Lane (C174)

### **Description of Route**

A site inspection was carried out in July 2021.

The application route commences at the junction of Lee Lane (U5295) and Old Lane (U458) at point A on the Committee plan. Lee Lane and Old Lane provide public vehicular access through to Sill's Farm and Blackleage Cottage, both north of point A and a route through to Back Lane, Mawdesley.

From Lee Lane the application route is blocked by a stone wall built across it (point A). Behind the wall a well-maintained hedge has grown up and there is no access onto the application route. To the north a driveway leads off Old Lane to Blackleage Cottage. The land crossed by the application route between point A and point B appears to have been incorporated into the garden of the property.

Immediately west of point A on Lee Lane there is a wooden stile and gateway providing access into the field immediately south of the application route and from the stile it is possible to walk along the field edge parallel to the application route to join the route recorded as 8-6-FP3 adjacent to point C.

From the field it is possible to view part of the application route between point A and point B. The surface of the route is overgrown and difficult to see. Hedges (overgrown) and trees appear to line part of the route and part appears to be open and incorporated into the garden of Blackleage cottage.

A wooden fence crosses the route on the boundary of the property (point B). Although very overgrown with nettles a watercourse appears to run from the culvert (point C) along the application route for a short distance, approximately 10 metres, to the fence (point B).

The watercourse is culverted (point C) to allow access to and across the application route to the field north of the application route.

Beyond point C the application route is fenced along the north east side but is open to the field on the south west side. Whilst overgrown it is possible to walk parts of the application route as there is evidence that the cows grazing the adjacent fields gain access to it. The remains of what appears to be an old route are evident.

The route is of a significant width, 7-8 metres wide, and is sunken and quite boggy in the base. The watercourse along the base is largely silted up, overgrown and no longer flowing freely.

A further fence exists across the route (point D) preventing access although it can be seen that the route continues as an overgrown sunken track separated by fencing from a school playing field to the south and the grounds of Bentley Lodge to the north.

An old iron railing fence can be seen in the trees growing on the application route (point E) and access between points E and D is not possible.

Between point E and point F the application route is a grass track providing access to a field to the south of the application route. The application route meets Bentley Lane at an open junction (point F).

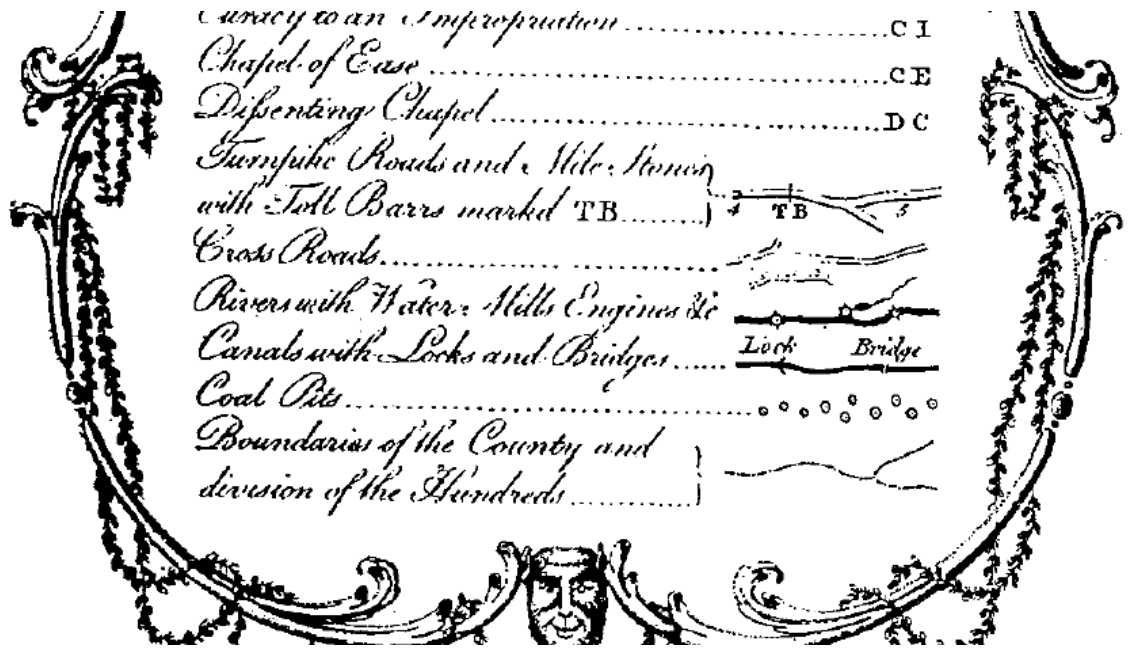
The total length of the route is 375 metres.

### Map and Documentary Evidence

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

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





Observations		The application route is not shown. Lee Lane to which the route connects is not shown although a short stub possibly indicating the start of Lee Lane can be seen extending north from Malkiln Lane indicating that it may have existed at that time. Bentley Lane is shown as a significant through route.
Investigating Comments	Officer's	The application route 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 Yates at that time.
<b>Stockdale's Map</b>	1818	An early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of the map as the book was originally published in 1795. There is no key to the map.



Observations		There is no key to the map and it appears to be roughly drawn. The application route is not shown and nor is Lee Lane to which it connects.
Investigating Officer's Comments		The application route probably did not exist as a through route at the time or if it did exist it may have been that Stockdale did not consider the route to be sufficiently significant and this section was not surveyed, as surveys were expensive.

<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.
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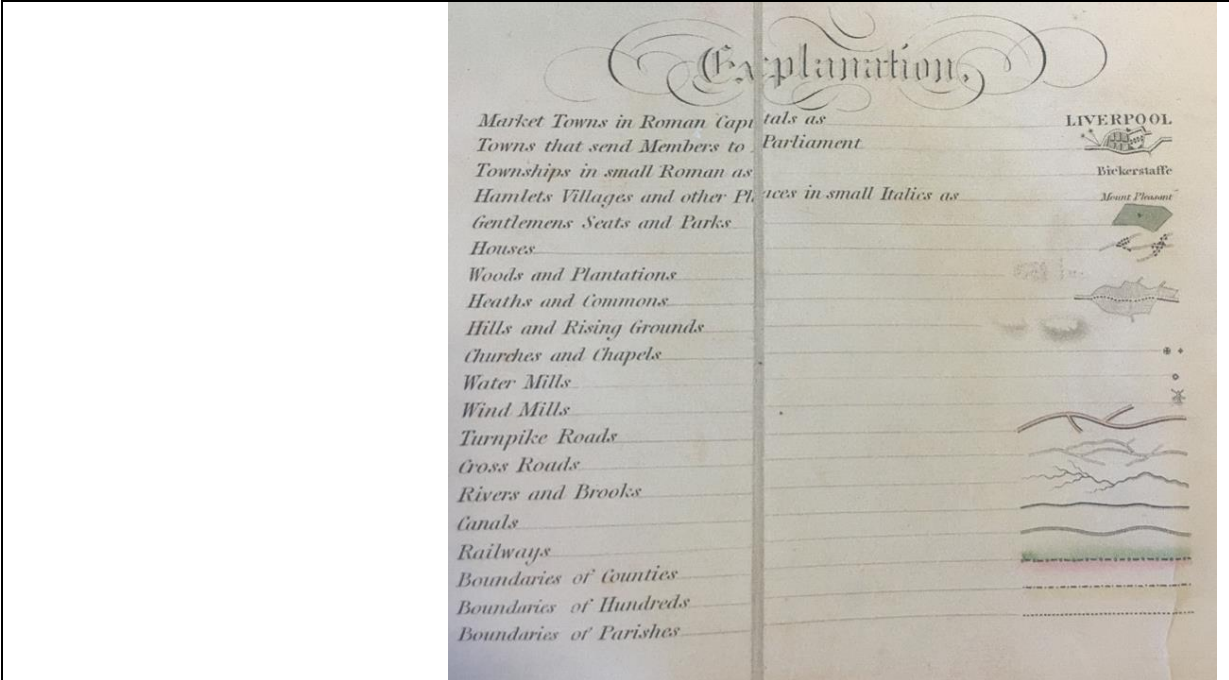
<p><i>Turnpike Roads</i> _____</p> <p><i>Cross Roads</i> _____</p> <p><i>Towns &amp; other Places</i> _____</p> <p><i>that send Members to Parliament</i> } _____</p> <p><i>Boundaries of Counties</i> _____</p>	
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Observations		The full length of the application route is shown as a cross road in the same way that Lee Lane and Bentley Lane are shown.
Investigating Officer's Comments		The application route existed in 1818 and appeared to be capable of being used by vehicles (horse and cart) at that time. It is not known what was meant by the term cross road but the route was shown consistently with how other routes now known to carry public vehicular rights are shown.
<b>Hennet's Map of</b>	1830	Small-scale commercial map. In

Lancashire

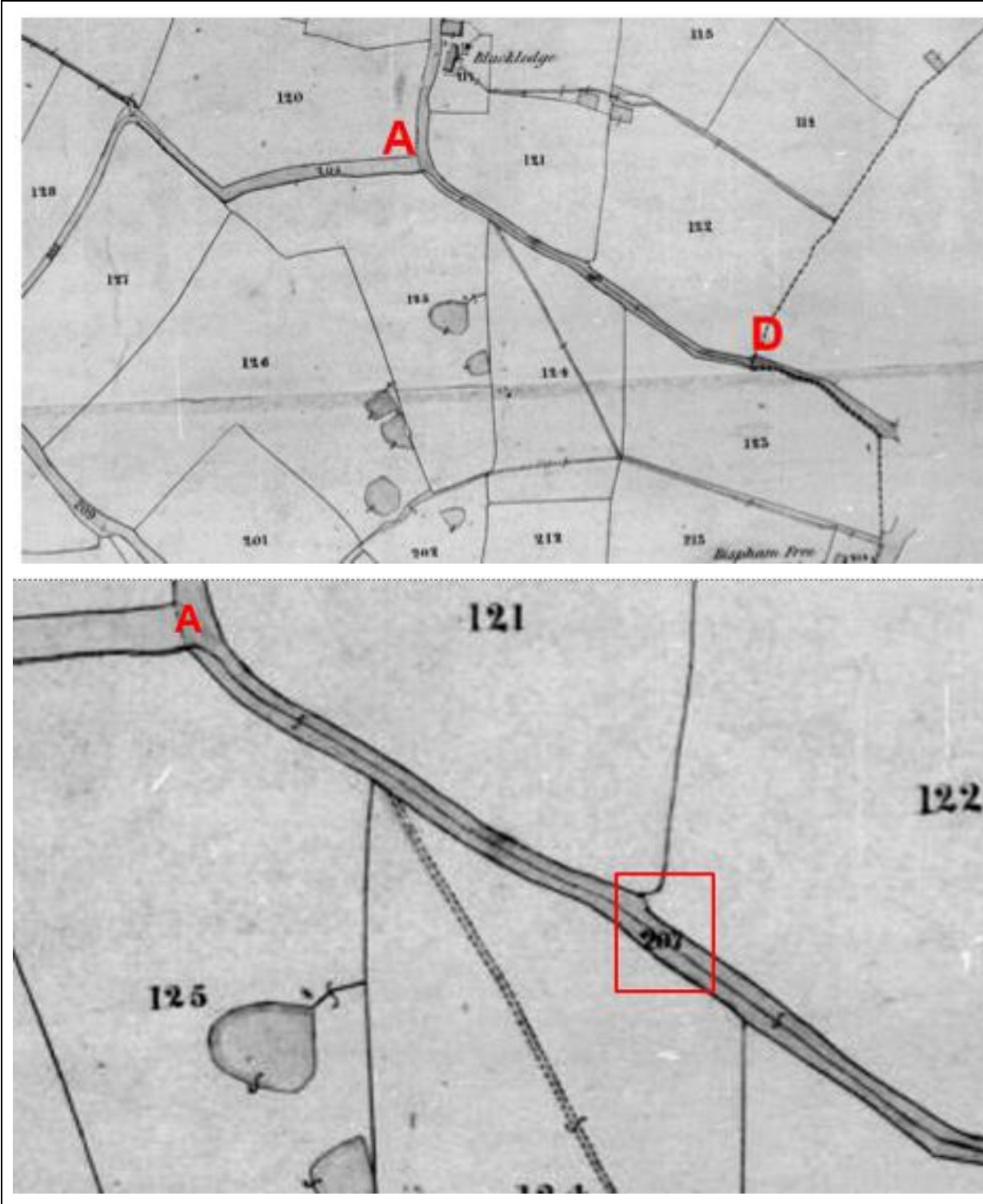
1830 Henry Teesdale of London published George Hennessey's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennessey's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

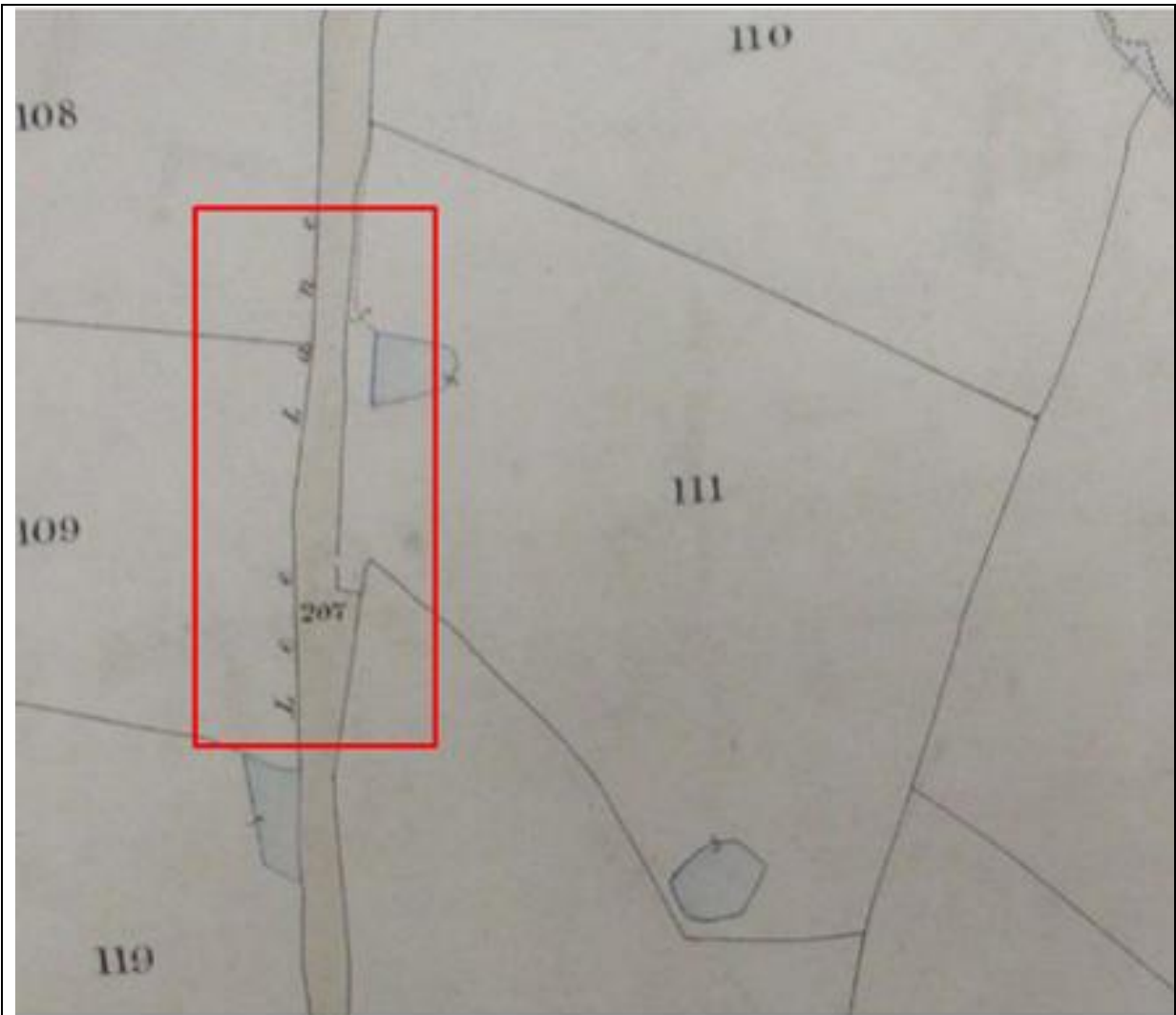




Observations		The application route is shown as a cross road connecting to other routes now recognised as public vehicular routes.
Investigating Officer's Comments		<p>The application route existed in 1830 as a substantial route. It is not fully known what is meant by the term cross road but as the only 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 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> and it is unlikely that a map of this scale would show footpaths.</p>
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising

		economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route is not affected by an existing canal or railway and there are no known proposals to have constructed either in the proximity of the route in the past.
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 for Bispham</b>	1840	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.





yard &c _____		1	2	15
	<i>Public Roads</i>			
19		1	3	12
20		1	3	16
208		"	2	35
206		3	"	24
207		1	2	28
208		1	1	24
209		3	3	4
210		1	1	9
211		1	1	35
221		"	1	5
240		1	3	8
244		2	1	14
		1	21	2 14

Observations

The Tithe Maps and Awards



		<p>deposited at the County Records Office and The National Archives were both inspected and found to contain the same information. The Map deposited in The National Archives was dated 1840 whilst the copy deposited in the County Records Office was dated 1845.</p> <p>The full length of the application route is clearly shown as a substantial bounded route with a watercourse shown down the centre from point D to point A (the 2 sides being braced together across the watercourse to indicate they were the same parcel). At point D the parish boundary is shown across the route and continuing along the southern boundary of the route indicating that from point D through to point F the application route was outside Bispham Parish. Despite not falling within the parish boundary the continuation of the route towards point F is shown indicating that the route continued through to Bentley Lane. No lines are shown across the route which may have indicated that there were no gates across the lane.</p> <p>The application route is numbered as part of plot 207 which also included the route now recorded as Old Lane (an unclassified county highway). Old Lane is named on the Map as Lee Lane and is numbered as plot 207 north of Blackledge.</p> <p>Plot 207 is listed at the end of the Tithe Award under the heading 'Public Roads'.</p> <p>The public roads listed in the Tithe Schedule do not have details of either an owner or occupier. Twelve numbered routes are listed as public roads and the other 11 have all been identified on a map</p>
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		<p>and are all now recorded as part of the public vehicular highway network – including that part of plot 207 north of point A.</p> <p>In the first part of the Schedule are all the parcels of land in private ownership. Several 'roads' are listed here too but are recorded with both an owner and occupier. These roads are shown ending at farms or fields, and are described as 'accommodation' road, or 'road and waste'.</p>
Investigating Officer's Comments		<p>The Tithe Map shows that the full length of the application route existed as part of a bounded through route in 1840 which appeared wide enough for vehicles (carts).</p> <p>There are no lines shown across the route possibly suggesting that it was not gated and that access was freely available along the full length.</p> <p>There is a clear distinction between the first part of the Award Schedule (land in private ownership) and the second part – where the application route is clearly listed as a public road reinforcing the view that the application route formed part of the general purpose highway network whilst those in the first section were private accommodation roads to land or property.</p>
<b>Tithe Map and Tithe Award or Apportionment for Wrightington</b>	1841	Tithe Map and Award showing the eastern end of the application route.



<i>Waste</i>	<i>Himself</i>	<i>Yearly Rent and Corp.</i>	<i>Waste</i>	<i>Waste</i>	<i>Waste</i>	<i>Waste</i>	<i>Waste</i>
<i>Highways within the Township</i>							
				<i>110</i>	<i>20</i>		
















Observations		<p>The Tithe Map for Wrightington shows the south eastern end of the application route from point D through to point F consistent with how public vehicular routes are shown on the map. The route is shown bounded and in such a way as to indicate that it continued into Bispham (towards point C). The route is not numbered which is also consistent with how other routes now recorded as public vehicular routes are shown.</p> <p>The Tithe Award provides a total acreage for routes described as highways within the Township but does not specify individual routes.</p>
Investigating Officer's		The application route between

Comments		point D and point F existed in 1845 and appeared to be considered part of the public vehicular road network.
<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 was found for the area crossed by the application route.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights.
<b>Cassini Historical Map 108, Liverpool</b>	c.1840	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



## Old Series sheets used to create this map:

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

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

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

Observations		The application route can be clearly seen on the map as a through route linking to other routes now recorded as public vehicular highways. It is shown as an 'other road' i.e. not turnpike or main road.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps on which the Cassini Old Series maps were

		<p>based were originally produced for military purposes in case they were needed for defence. The inclusion of the route on the map suggests that a substantial route existed.</p> <p>No legends (map keys) existed on the original Old Series maps. Dr Richard Oliver (B.A., D.Phil., F.B.Cart.S.) notes that abbreviations and symbols were always employed but their usage, depiction and meaning evolved during the 70 plus years that it took to complete the old series mapping. Although a comprehensive legend is therefore impossible, some signs were (with minor variations) consistently used and these are shown on the map legend included above as found on the Cassini maps website and provided by Dr. Richard Oliver.</p> <p>The application route's inclusion on this map as a road suggests that it was available to be used on horseback and probably with vehicles at that time although we do not know, taking the map on its own, whether that use was public or private.</p>
<p><b>6 Inch Ordnance Survey (OS) Map</b></p> <p><b>Sheet 84</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 to 1846 and published in 1848.<sup>1</sup></p>

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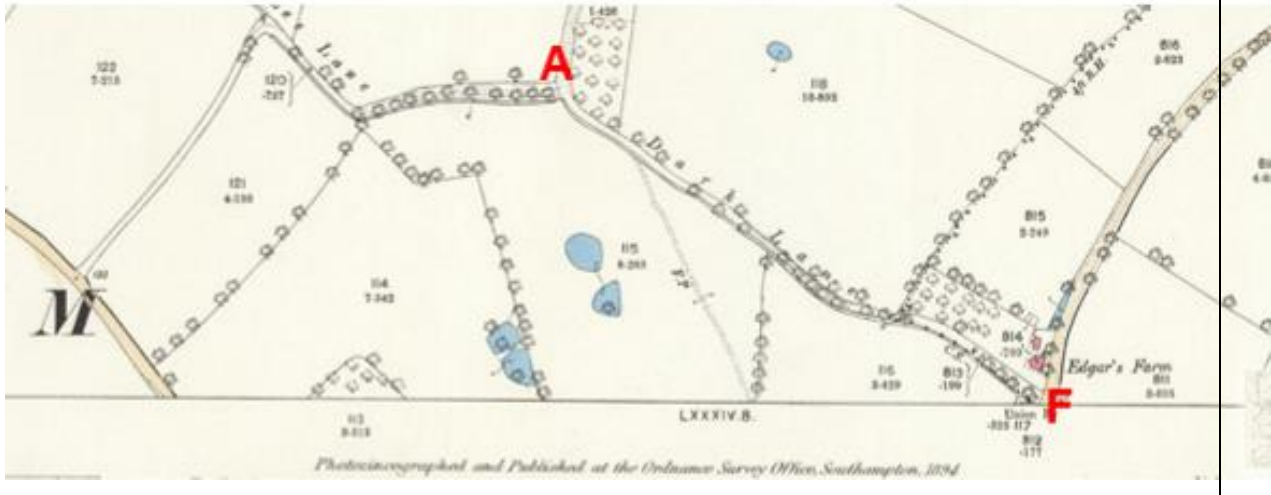
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



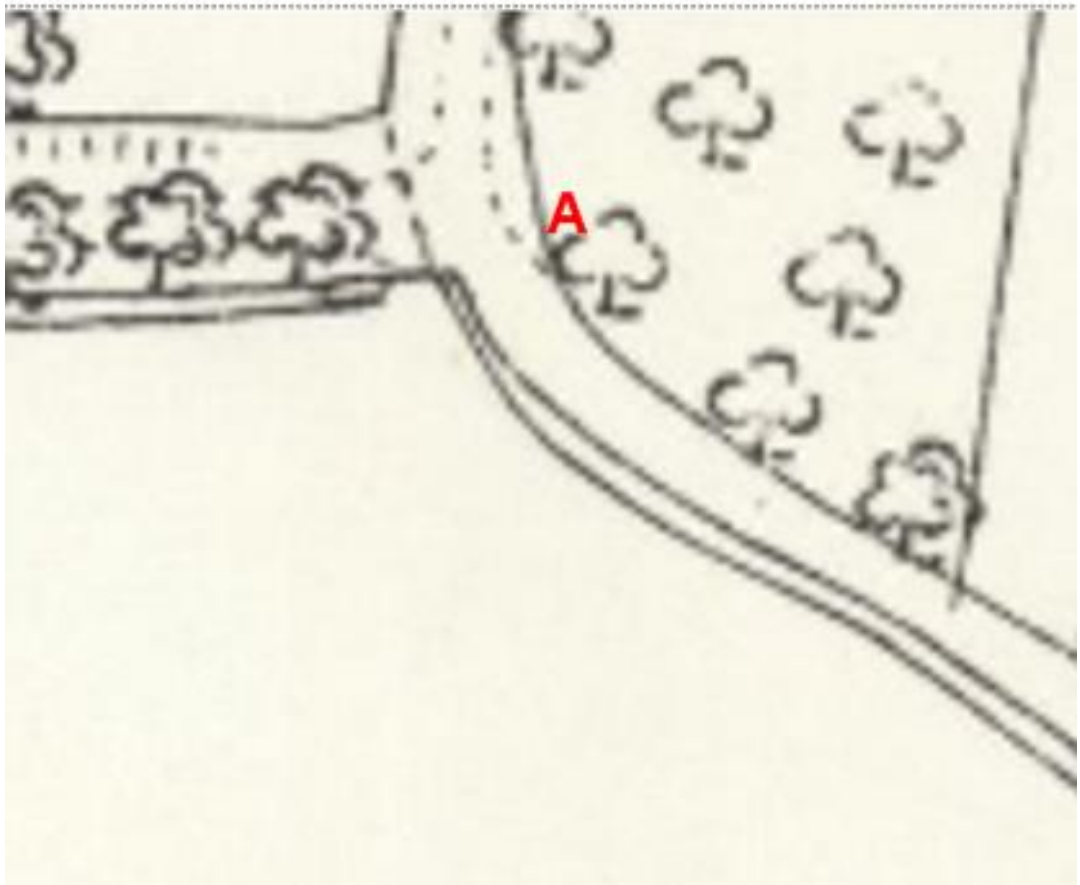
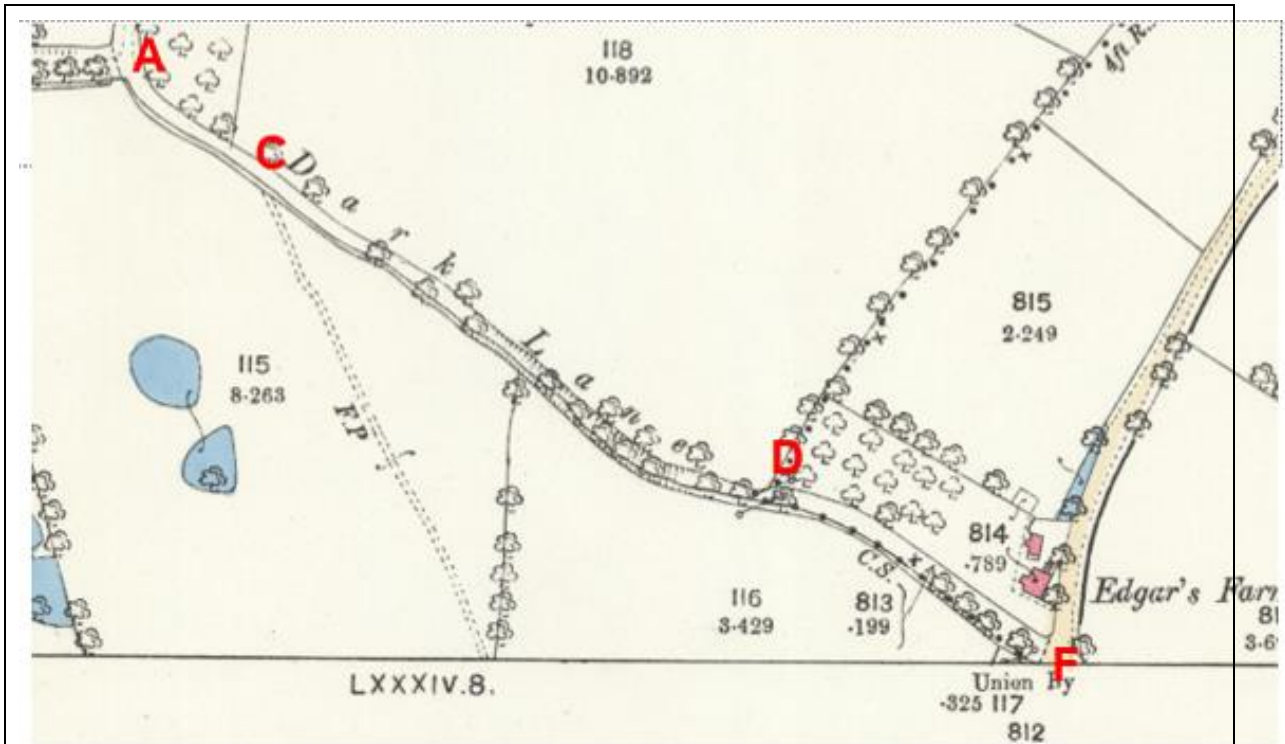
Observations

The full length of the application route is shown as a bounded route connecting at either end to routes recorded as public vehicular highways today. The route is labelled as Dark Lane and no lines are shown across it suggesting

		<p>that it was not gated. The width of the route is shown which is consistent with other routes over which there is a public right of access with vehicles. A line is shown down the centre of the route from point E through to point A indicating the existence of a watercourse.</p> <p>At point C a route denoted by double dashed lines is shown joining the application route leading from the side of Bispham Free Grammar School.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed and appeared to be capable of being used in 1845 to 1846. It is considered that a substantial named and bounded through route connecting to two other public vehicular highways would have been at least a public bridleway and may have carried public vehicular rights. The fact that an unbounded track leading from the side of the school also feeds into the route suggests that use was made of at least part of it (A-C) as a direct route through to the school – presumably on foot.</p>
<p>25 Inch OS Map LXXXIV.4</p>	<p>1894</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.</p>





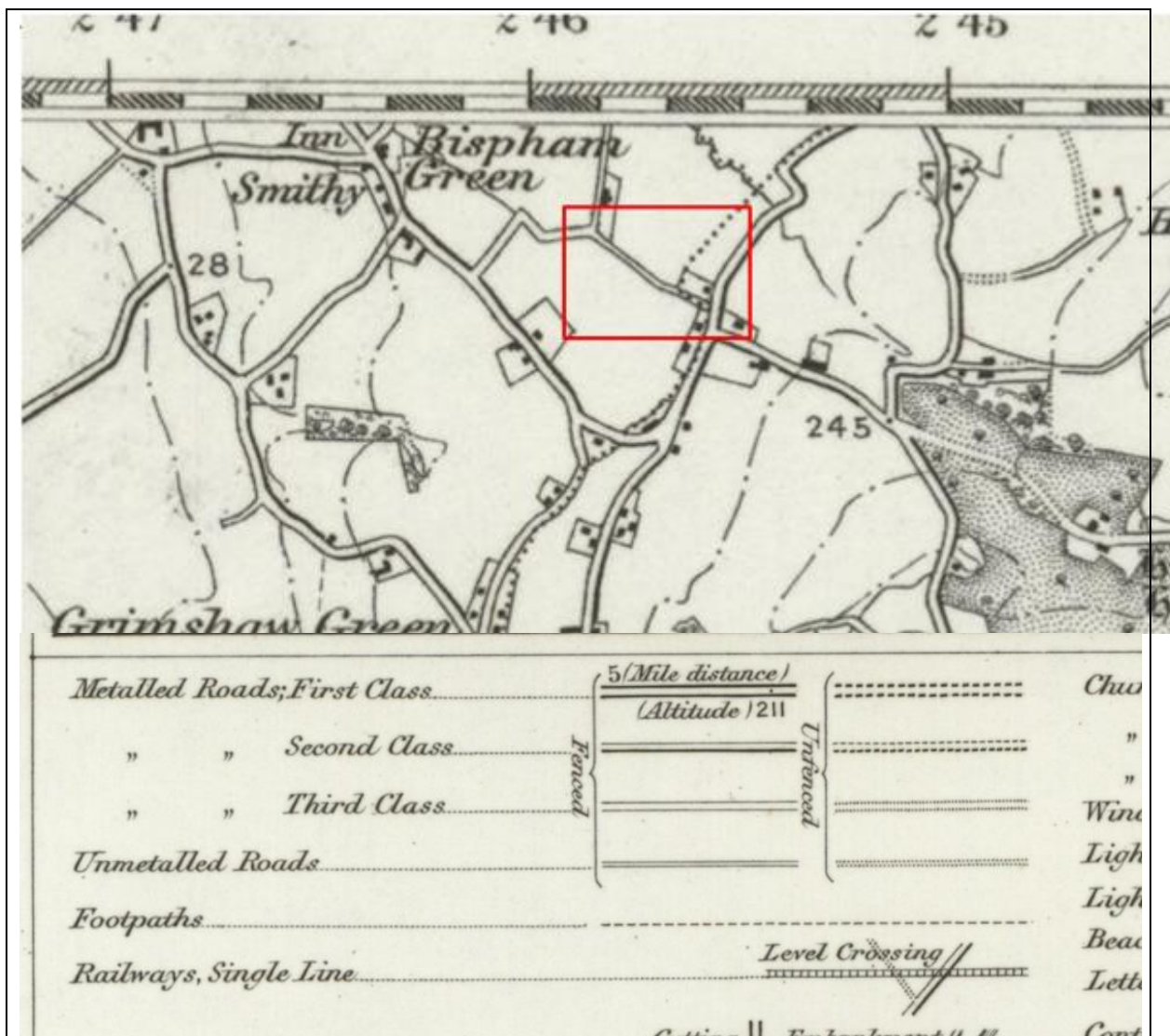


<p>Observations</p>		<p>The full length of the application route is shown and is named on the map as Dark Lane.</p> <p>It is the application route rather</p>
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		<p>than Lee lane which appears to be the continuation of Old Lane; this makes the link between Sills Farm and Bentley Lane rather than via Lee Lane onto Maltkiln Lane.</p> <p>Neither Lee Lane, Old Lane or Dark Lane (the application route) are shown coloured or with a thickened line along the south or eastern side. Bentley Lane however is shown in such a way.</p> <p>A watercourse is shown contained within the application route but this larger scale map places the watercourse towards the south side not the centre of the road; it is again shown as a fenced/bounded route which is consistent with the public vehicular routes to which it connects. No lines are shown across the route suggesting that there were no gates across it. The watercourse is shown as the parish boundary between point D and point E – consistent with how it is shown on the earlier 6 inch OS map and Tithe Map.</p> <p>A route leading to and from the school is shown marked as a footpath (F.P) joining the application route at point C.</p> <p>A parcel number is shown between point D and point F (813) with the acreage listed as .199.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1893 as a significant bounded through route which appeared to be capable of being used on horseback and with horse drawn vehicles at that time.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time. A route labelled as a footpath is shown to join the route at point C but the</p>

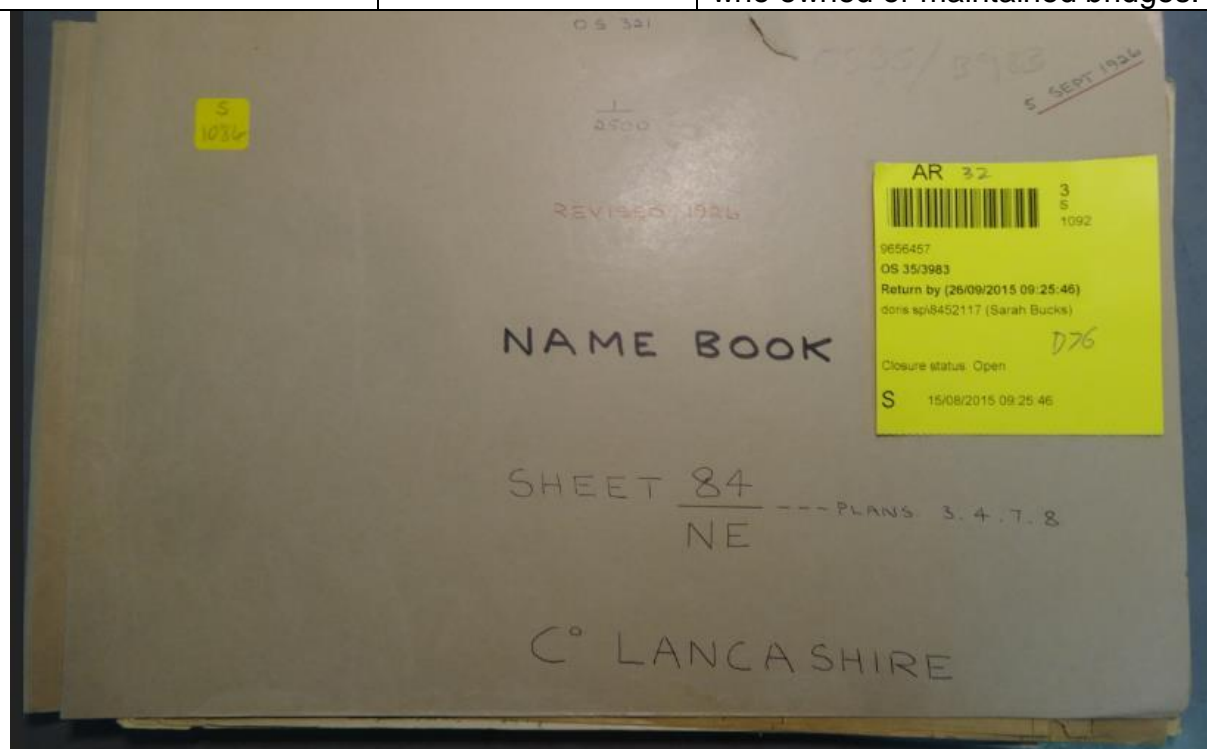
		<p>application route is not labelled as a footpath - again suggesting it appeared to be higher status route when the OS carried out its survey. The fact that the route is not shown with a thickened line to one side on the black and white copy of the map and shaded on the coloured copy in the way that Bentley Lane is shown suggests that the application route – and Lee Lane – were not considered to be publicly maintained vehicular routes deemed to be in 'good repair' 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 is not shown in this way is not inconsistent with how it is shown on the early commercial maps and the Tithe records but may indicate that the surface was not of a high standard and that whilst it may have been passable by horse drawn vehicles – particularly as it provided access to and from Sills Farm – it may not have been considered to be in 'good repair'.</p> <p>The fact that the route is shown with a dedicated parcel number and acreage is not unusual. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway</p>
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		status.
<b>6 inch OS Map Sheet 84NE</b>	1894	6 inch OS map surveyed 1892-93 and published 1894.
Observations		The full length of the application route is shown as a named through route connecting to public vehicular routes at either end. A footpath leading from the Grammar School is shown joining the route at point C.
Investigating Officer's Comments		The application route existed as a substantial bounded named through route which appeared to be capable of being used in 1894. It is considered that a substantial through route connecting to public vehicular highways at either end is consistent with a way which carried at least a public bridleway and may have carried public vehicular rights.
<b>1 inch OS Map Sheet 84 - wigan</b>	1896	Small-scale Ordnance Survey map revised 1895 and published 1896.



Observations		The full length of the application route is shown as an enclosed through route. It appears to be depicted on the map as an unmetalled road with a line across the route at point F. Lees Lane is shown to be wider than the application route – possibly indicating that it was shown as a third class road whilst the application route was shown as being unmetalled.
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 so the inclusion of the

		route on this map is suggestive of a route that was capable of being used at least on horseback and possibly with horse and carts.
<b>Ordnance Survey Object Names Book</b>		<p>When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.</p>



NAME.	Plan and Parcel No.	Parish, Situation, and Owner's Name.	Corr
<del>Lee Lane</del>	<del>Lee Lane</del>	See O.S. 2500 of 1844 Mr E Lawrence (see OS 230 attached)	54 11.1975 Applies to a District Road extending from Lee Cottages, to a point 5 chains S of Sills Farm at end of Old Lane.
<del>Dark Lane</del>	<del>Dark Lane</del> Obsolete	See O.S. 2500 of 1844 (authority: [unclear]) (see OS 230 attached) written to Sills Esq to state a gent only Estate Office Boston	54 11 5 8 2 Applies to a disused road situated from a point S of Edgar's Farm to a point 5 chains S of Sills Farm.

Please sign and return the list to me.

Yours faithfully, *W.K.*

To E. Lawrence Esq  
Surveyor of Highways, Chorley 10 Cap

NAME.	Plan and Parcel No.	Parish, Situation, and Owner's Name.	Corr
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Observations

A copy of the Object Names Book for OS Sheet number 84NE was obtained from the National Archives.

The cover of the book states that it was revised in 1926 but details within the book confirm that it was initially prepared in 1907 prior to the publication of the second edition OS maps and was then used to check and update records in relation to the publication of the third edition maps in 1927.

The initial entry made in 1907 lists Dark Lane as a disused road situated from a point south of Edgar's Farm to a point 5 chains south of Sills Farm. The authority for the information provided was stated to be 'Mr Lawrence' who was listed later in the book as being the Highways Surveyor for Chorley RD Council.

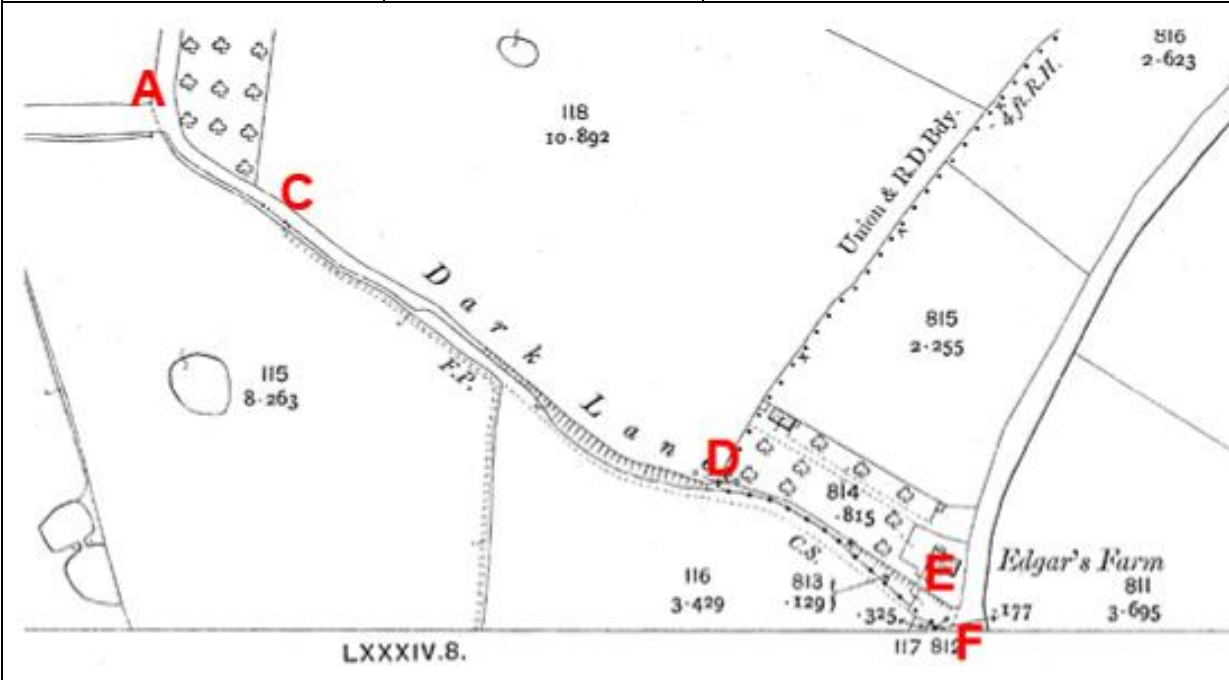
When the book was subsequently used ahead of the publication of a further map revision in 1927 the entry for Dark Lane was crossed out and the word 'Obsolete' written

		<p>next to it. The authority for doing so was 'WE Hale Esq. Estate Agent, Derby Estate Office, Preston.</p> <p>In comparison, Lee Lane and Bentley Lane are both described as District Roads in the book with the authority for the information again being stated as coming from Mr Lawrence.</p>
Investigating Officer's Comments		<p>In 1907 it appears that Dark Lane (the application route) had become disused. It was described as a road but not as a 'District Road', although this may be because it was now 'disused' and in describing it in such a way it does appear that it must have been used in the past. There is no specific reference to whether the route was a public vehicular highway which was just not used anymore or whether, if it had been a public vehicular route in the past, it had legally been extinguished. The authority for the information provided came from the Surveyor of Highways for Chorley Rural District Council. It should be noted however that the application route between point A and point D was in Bispham at that time under the direct control of West Lancashire Rural District Council and between point D and point F the route was in the Parish of Wrightington which was part of Wigan Rural District so neither section was the responsibility of Chorley Rural District Council for whom Mr Lawrence was employed.</p> <p>By 1927 the route was described as obsolete and the name Dark Lane crossed out. Again, there is no information regarding whether any public rights of access that may have historically existed along the route had been legally extinguished but it appears that by the early 1900s use of the route by</p>



		carts or on horseback – and possibly on foot -may have ceased.
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<b>25 inch OS Map LXXXIV.4</b>	1908	Further edition of the 25 inch map surveyed in 1893, revised in 1907 and published in 1908.
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Observations		<p>The application route is shown named as Dark Lane. It is still shown as a fenced/bounded route from point A to midway between point C and point D but beyond there the route is no longer fenced along the south side through to point E. At point E a line is shown across the route.</p> <p>The footpath which originates by the school on Bentley Lane has altered since it was shown on the earlier edition of the 25 inch map to run along the eastern boundary of field number 115 to meet the application route midway between point C and point D and rather than joining it at that point it runs along the edge of the field south of the application route to point C where it joins the application route.</p> <p>Between a point midway along C-D and point E the route is shown with banking on the north</p>
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		indicating the sunken nature of the route – possibly due to a combination of the watercourse and use of the route over a period of time.
Investigating Officer's Comments		<p>The way that the route is shown on the 1908 OS map supports the comments made in the OS Names book the previous year that the road was now disused. A line is shown across the route at point E which may indicate the existence of a gate but may also have indicated fencing existed across the route. The footpath is shown to join the route at point C suggesting that use may still have been made of the application route on foot between point A and point C and if the line across the route at point E was gated or a stile or gap was available then access may still have been available along the full length.</p> <p>The fact that it is still named on the map as Dark Lane may suggest that whilst noted in the OS Names Book as being disused it was still known and recognised by that name and that information may not have been provided about it having legally extinguished – just that it was disused.</p>
<b>6 inch OS 84NE</b>	1909	Further 6 inch OS map revised 1907 and published 1909.



**CHARACTERISTICS**

<p><i>6 Inch Scale</i></p> <p>Double Lines of Railway Single do. &amp; Tramways Main Roads Minor do.</p> <p>Contours (Instrumental) 200 (Sketched) 125 <i>(Before 1885 all Contours were shown by dotted lines)</i></p> <p>Gravel Pit Quarry</p> <p>Level Crossing Bridges</p> <p>Parks Woods Rough Pasture Forest Marsh Railroad Bridge Navigation Canal</p>	<p><i>5000 Scale</i></p> <p>Antiquities, Site of Arroy, showing direction of flow of water Trigonometrical Station Bench Mark (B.M.) Well Leveling Picket</p> <p>Every parcel is numbered, thus 27 Its area is given underneath in Acres, thus 4.370 Braces, indicating that the spaces so connected are included in the same reference number and area.</p> <p><i>Six Inch Scale</i></p> <p>The large figures under the Parish name thus CLUGHTON 3785 2 4 represent its area in Acres, rods, &amp; perches. The Latitudes are given on the margin to every 30 seconds, &amp; the Longitudes to every minute.</p> <p><i>Leveling</i></p> <p>The Altitudes are above the mean level of the Sea, at Liverpool. The Contour altitudes are written thus 200 All other altitudes along roads, and to Trig. Stations, obtained by Spirit Levelling are written thus 200 (Six Inch Scale), 300 (5000 Scale), the dot or cross showing the spot at which the altitude is taken. The altitudes with the letters B.M. marked against them, refer to marks made on Buildings, Walls, Milestones &amp;c. The altitudes at the Trig. Stations are given of the surface of the ground &amp; also of the upper side of the centre stone marking the Station.</p>
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Ordnance Survey Office, Southampton, May, 1897.  
Price Sixpence

Characteristic Sheet source: [View map: Examples of the Characters of Writing and the Characteristics of the Photozincog... - Ordnance Survey Characteristic Sheets \(nls.uk\)](#)




Observations


This 6 inch map was derived from the same survey as the 25 inch map published in 1908. The route is shown and is named on the map as Dark Lane. Whilst still shown it appears less prominent than Lee Lane and Bentley Lane and is indicated as being a sunken lane

		<p>for parts of its length.</p> <p>The footpath leading from the school on Bentley Lane is shown joining the application route at point C.</p>
Investigating Officer's Comments		<p>The application route existed and was still known as Dark Lane but use by vehicles and possibly on horseback may have declined by the early 1900s.</p>
<b>Bartholomew half inch Mapping</b>	1902-1906	<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>

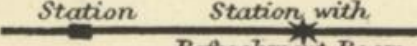
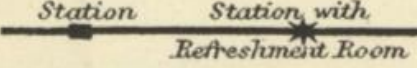
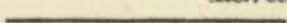



EXPLANATORY NOTE

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

Footpaths & Bridlepaths 

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

Railways  Station       Station with Refreshment Room  
 Canals   
 County Boundaries 

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

1904



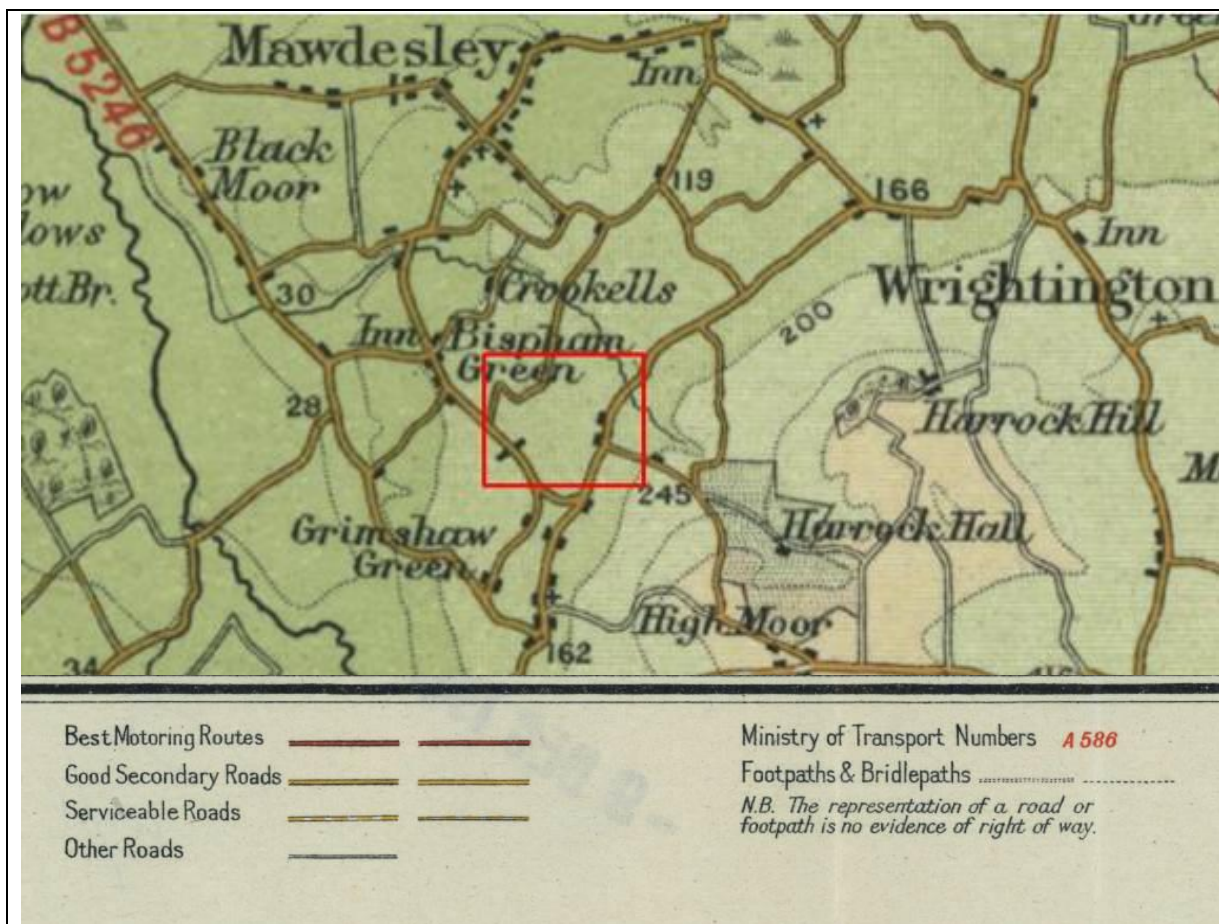
EXPLANATORY NOTE

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

The uncoloured roads are inferior and not to be recommended.  
 Footpaths & Bridlepaths ..... N.B. The representation of a road or footpath is no evidence of the existence of a right of way.  
 The figures thus 190 represent heights in feet above sea level.

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

1920



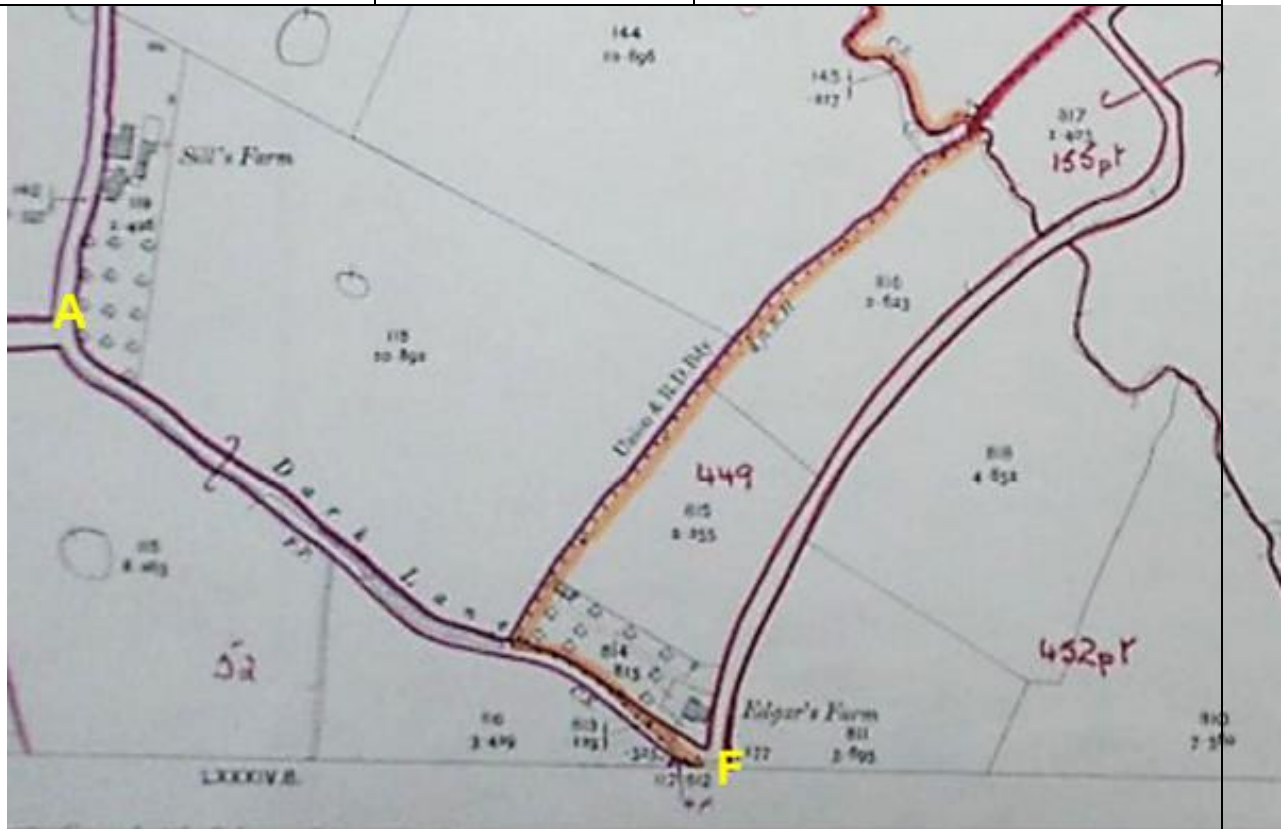
1941

<p>Observations</p>		<p>The application route is shown on Bartholomew's small-scale map published in 1904 as an indifferent (passable) road whereas Lee Lane from the junction with the application route through to Maltkiln Lane is shown uncoloured referred to in the key as being inferior and not to be recommended.</p> <p>By 1920 the application route is no longer shown and Lee Lane is still shown uncoloured (inferior and not to be recommended). By 1941 the application route is still not shown but Lee Lane and Old Lane are shown as good secondary roads.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is shown on the earliest edition of the map published in 1904 as being passable but is not shown on later editions of the map appears to concur with the information provided by the OS Names Book</p>

		<p>in that the route, referred to as a road in the OS Names Book, became disused (at least as a vehicular through route) by the early 1900s.</p> <p>The fact that the route is not shown on the 1920 and 1941 edition of the maps does not mean that it no longer physically existed but does suggest that it was not considered to be a usable public vehicular route at that time.</p>
<b>Finance Act 1910 Map</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 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</p>



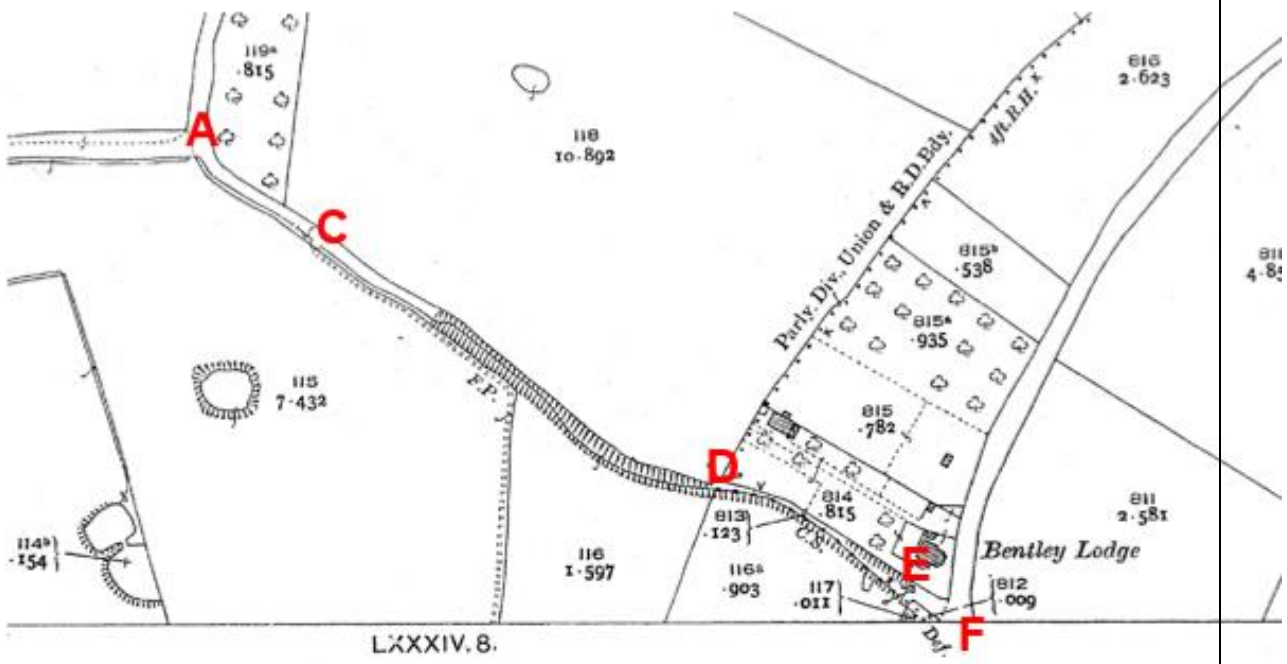
		<p>Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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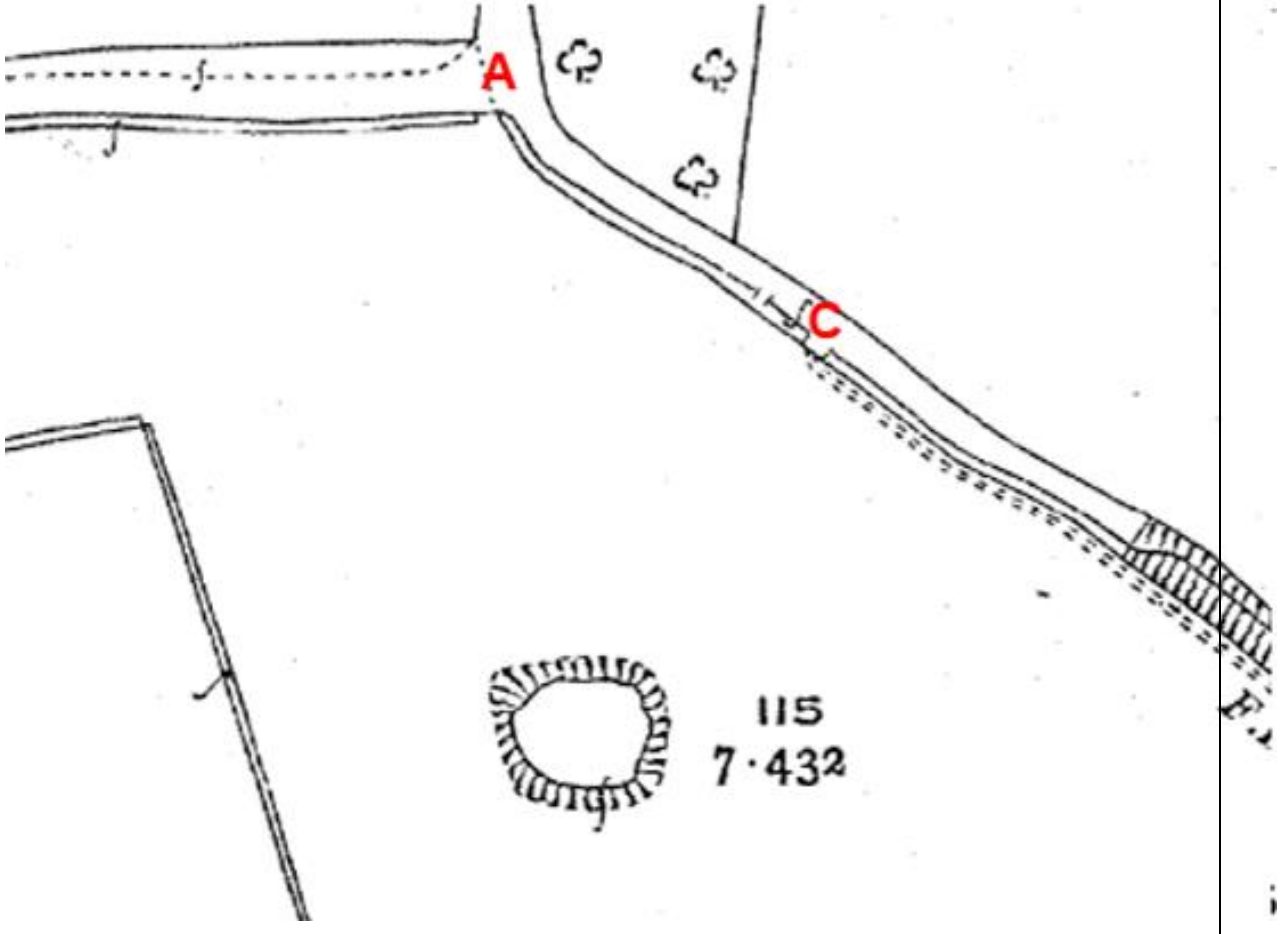
<p>Observations</p>		<p>The full length of the application route is shown excluded from the numbered plots in the same way that Lees Lane, Old Lane and Bentley Lane are shown excluded.</p> <p>Land on either side of the route is shown braced together and included in one plot number (52).</p>
<p>Investigating Officer's Comments</p>		<p>The map prepared under the provisions of 1910 Finance Act shows the whole of the route excluded from adjacent land in private ownership. The Act required all land in private ownership to be recorded so that it</p>

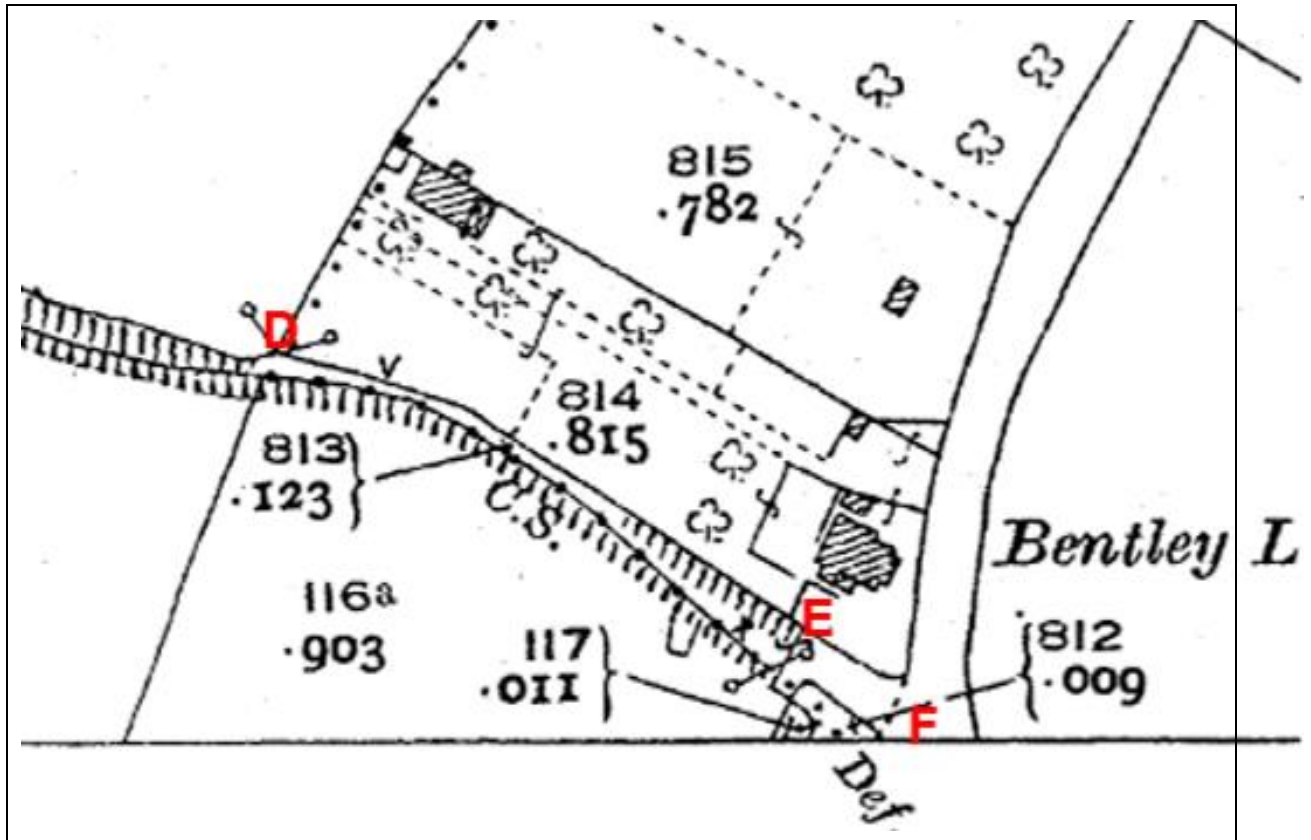
		<p>could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route may indicate that public use was known but not necessarily vehicular status. Whilst there may be other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership - but in this instance there is no evidence to suggest that the route derived from the Inclosure process and current landownership details show landownership is unregistered and unknown, indicating that the route's status was more likely than not excluded because it was considered to be public.</p> <p>In this instance therefore the exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights and the fact that the route passes through land recorded under the same plot number – but which has been deliberately excluded from it – provides further support that in the early 1900s the route was still considered to be a public vehicular highway.</p>
<p><b>25 Inch OS Map LXXXIV.4</b></p>	<p>1928</p>	<p>Further edition of 25 inch map (surveyed 1893, revised in 1926)</p>

and published in 1928.



LXXXIV. 8.





<p>Observations</p>		<p>The full length of the application route is shown but is no longer named on the map. The footpath now recorded as 8-6-FP3 on the Definitive Map and Statement is shown joining the application route at point C with a culvert shown to provide access onto the route. South east of point C a line is shown across the application route beyond which the route is shown as being below the level of the surrounding land with the watercourse along the bottom through to point E where a second line is shown across the route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route no longer appears to be capable of being used along the full length by vehicles or on horseback and may have been fenced off at either end of the gullied sections. Access on foot appears to have been available from point C through to point A as a continuation of the footpath marked on the map.</p>

		<p>The removal of the name of the lane from the map is consistent with the information provided in the Ordnance Survey names book whereby the name 'Dark Lane' was crossed out and referred to as being 'obsolete' in 1927.</p>
<p><b>1932 Rights of Way Map</b></p>		<p>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.</p>



West Lancashire Rural District Map



Wigan Rural District Map

<p>Observations</p>		<p>The map for West Lancashire shows a route marked up with a thick blue line and numbered as part of a network of paths with the number 1. The route marked appears to be along the southern side of the application route as opposed to along it for part of the route although the scale of the map and thickness of the pen make it difficult to determine exactly what was being recorded. Another route is shown on the same map extract but coloured with a purple pen and marked with the number 1. No key to the map was found and the complete map of Bispham shows a mix of purple and blue numbered routes.</p> <p>The Map prepared for Wigan Rural District does not show the application route as a route considered to be a public right of way.</p>
<p>Investigating Officer's Comments</p>		<p>Little is known about the origin of these maps but they are contained in large folders titled as being the 1932 Rights of Way Map for West Lancashire District and Wigan Rural District. No map keys were found and there are no written lists detailing the routes shown.</p>

		<p>The West Lancashire Map shows a route from Lees Lane at point A through to Bentley Lane at point F connecting to other routes now recorded as public footpaths. This suggests that a route was either still in existence and being used – possibly just on foot – or was considered to exist as a route which should be recorded as a public right of way.</p>
<p><b>Authentic Directory of Lancashire Geographia</b></p> <p><b>Map of South by</b></p>	<p>Circa 1934</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>

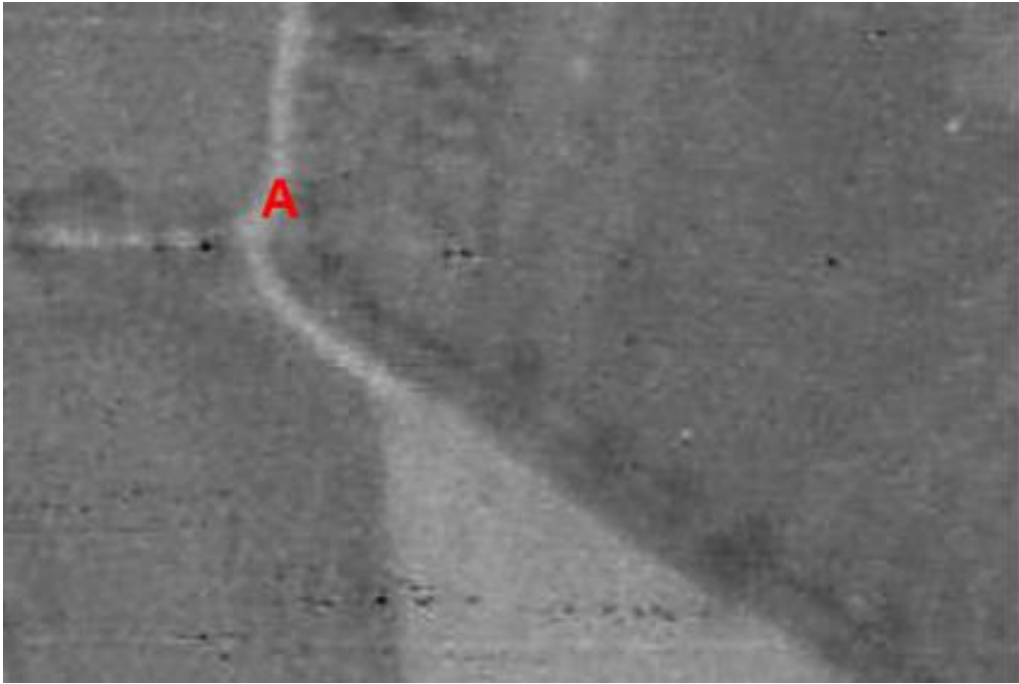




Observations		The full length of the application route is shown but not named. It is shown to be much narrower than Lee Lane/Old Lane and Bentley Lane and is not shown as a bounded route throughout the full length. A route consistent with 8-6-FP2 and 8-6-FP3 is shown connecting to the application route approximately midway along it.
Investigating Officer's Comments		The application route existed in the 1930s and is shown in the atlas consistent with how other nearby routes recorded as footpaths are shown. The way the route is shown is not suggestive of public vehicular use but is more suggestive of a route capable of being used on foot or horseback at that time.
Aerial Photograph <sup>2</sup>	1940s	The earliest set of aerial photographs available was taken

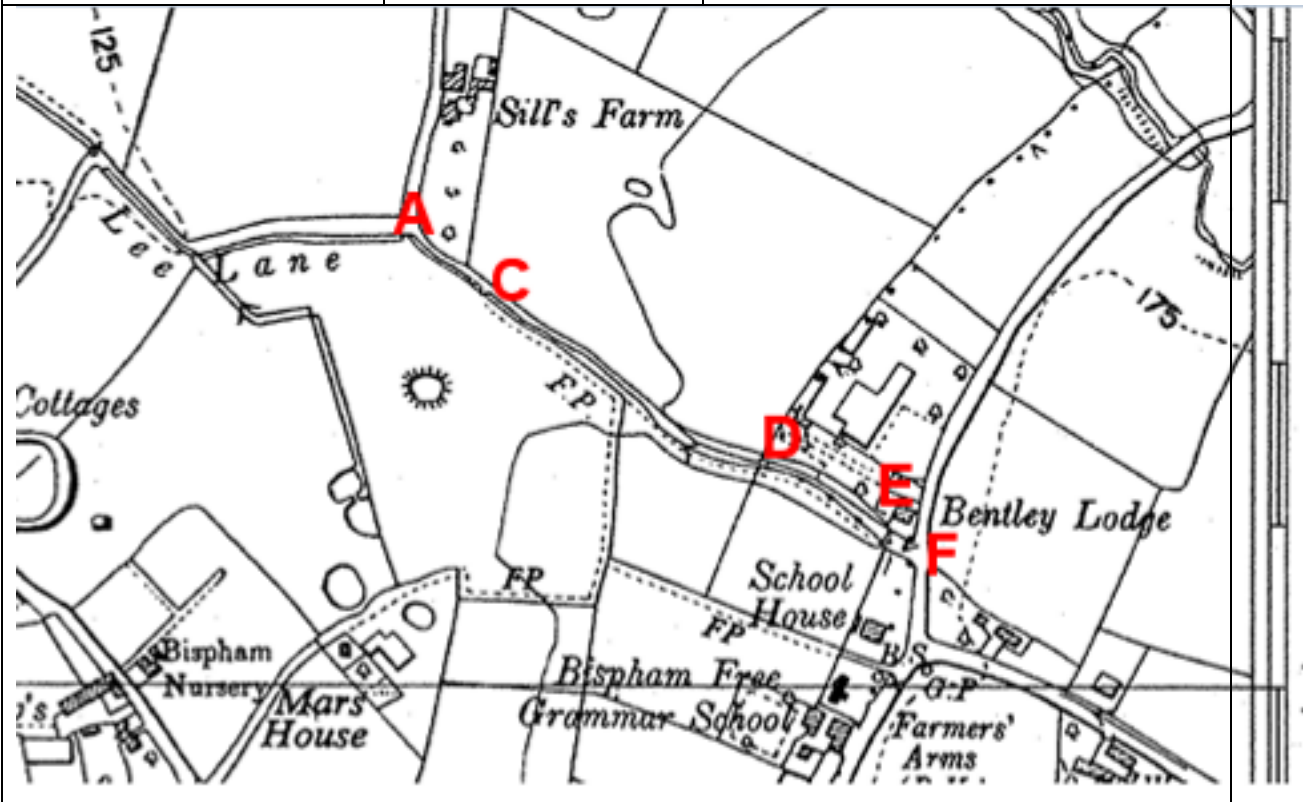
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

		just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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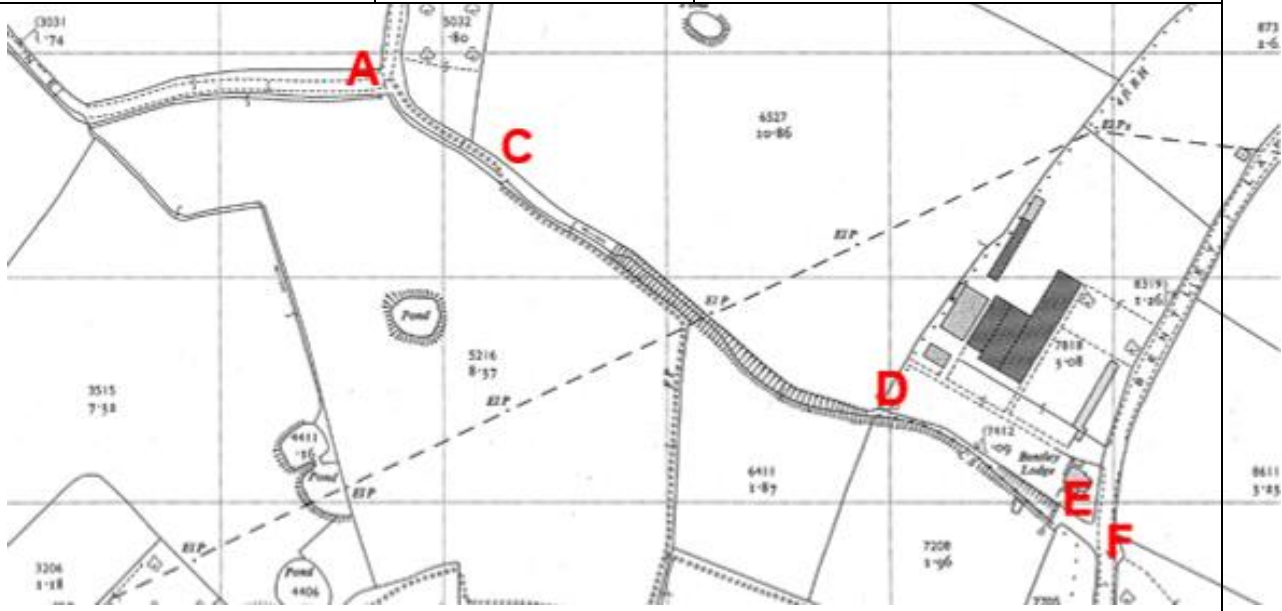
Observations		The quality of the 1940s aerial photograph is poor. The location of the route can be identified by field
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		<p>boundaries (hedges/trees) but a trodden or worn track along it cannot be seen.</p> <p>From point A access into the field to the south of the route is clearly visible consistent with use by farm vehicles.</p>
Investigating Officer's Comments		<p>It is not possible to determine from the aerial photograph whether the full length of the route was passable in the 1940s.</p> <p>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.</p>
6 Inch OS Map	1955	<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 and is probably based on the same survey as the 1930s 25-inch map.</p>



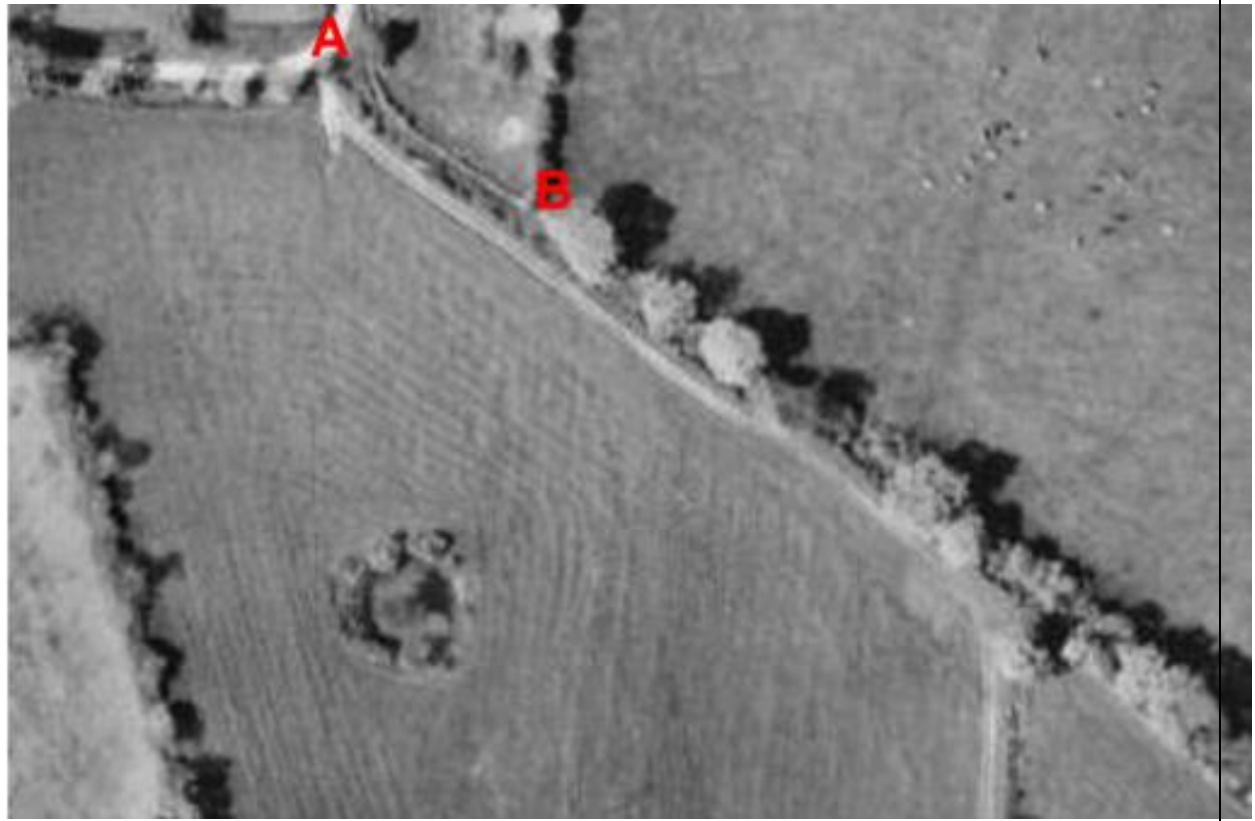
Observations		<p>The application route can be seen and access onto it appears to be unrestricted at point A. At point C the route now recorded as 8-6-FP3</p>
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		is shown joining the application route and from there the footpath turns south away from the application route a single dashed line can be seen continuing east south east marking the unfenced edge of the application route to point E. Lines can be seen across the application route at point D and point E.
Investigating Officer's Comments		The application route between point A and point C appeared to be accessible – at least on foot in the 1930s. Beyond point C it may have been capable of being used at least on foot and the fenced section of the route between point E and point F then provided access through to Bentley Lane.
1:2500 OS Map SD 4913	1960	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1960 as national grid series.



Observations		The map shows that access onto the application route at point A was unrestricted and a track/path is shown through to point C from where it crosses a culvert and the boundary/fence along the south side of the application route and then continues along the field edge
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		as 8-6-FP3. Beyond point C no track/path is shown but a watercourse is shown flowing along the route with markings indicating that the bounded route was now a gully with the water course flowing along the bottom through to point E where a line is shown across the route. Between point E and point F the route is shown with unrestricted access out onto Bentley Lane.
Investigating Officer's Comments		The application route existed between point A and point C in 1959 and appeared to be capable of being used – at least on foot. Between point C and point E the old route was still in existence but did not appear to be capable of being used – it was a sunken lane with a watercourse along it; suggesting that little or no use was being made of a through route from point A to point F by that time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





<p>Observations</p>		<p>Most of the application route is obscured by trees/hedges but there is little evidence of use. From point A to point B a trodden track can be seen but beyond that point the route is not visible. A route into the field immediately south of point A can be clearly seen</p>
<p>Investigating Officer's Comments</p>		<p>The photograph provides no evidence suggesting that the application route was capable of being used or was being used in the 1960s.</p>
<p><b>Topography</b></p>		<p>Topography is the study of the land surface. In particular, it lays the underlying foundation of a landscape. For example, topography refers to mountains, valleys, rivers, or craters on the surface of land crossed by a route under investigation and how that route is affected by it. Map and documentary evidence should be read in conjunction with topographical evidence to help us to understand the original purpose of a route and why use of some routes may have increased whilst use of others declined.</p>

<p>Observations</p>		<p>Historically the application route formed part of a longer route (as shown on the Tithe Map and first edition 6 inch OS map) that exited onto Bentley Lane close to a Grammar School and public house. It was known as 'Dark Lane' suggesting possibly that it felt dark and enclosed as evidenced by the fact that at that time it was bounded on both sides with trees and contained a small watercourse which flowed along or adjacent to the full length – all physical features that are still evident today.</p> <p>The route was consistently shown to be bounded on either side until more recent times with a watercourse running within the boundaries (width) of the route from point E to point A and adjacent to the route from point F to point E.</p> <p>When making an inspection of the route in 2022 it is important to remember that it may have looked very different in the late 1700s and early 1800s and the fact that a watercourse was shown running along a rural route is not necessarily uncommon.</p> <p>The watercourse within Dark Lane appears to have been a highway drain flowing within Bannister Lane from Bannister Brow and under Bentley Lane into Dark Lane. Beyond Dark Lane it flowed along Lee Lane then into Bispham Green. Highway drains were not always ditches at the side of the road and many examples can be found where they follow the centre and meander within the highway width. By 1890s this drain followed the sides of Bannister Lane, Bentley Lane (short section) and Lee lane whereas it was fairly central in Dark Lane. The water and traffic together probably wore</p>
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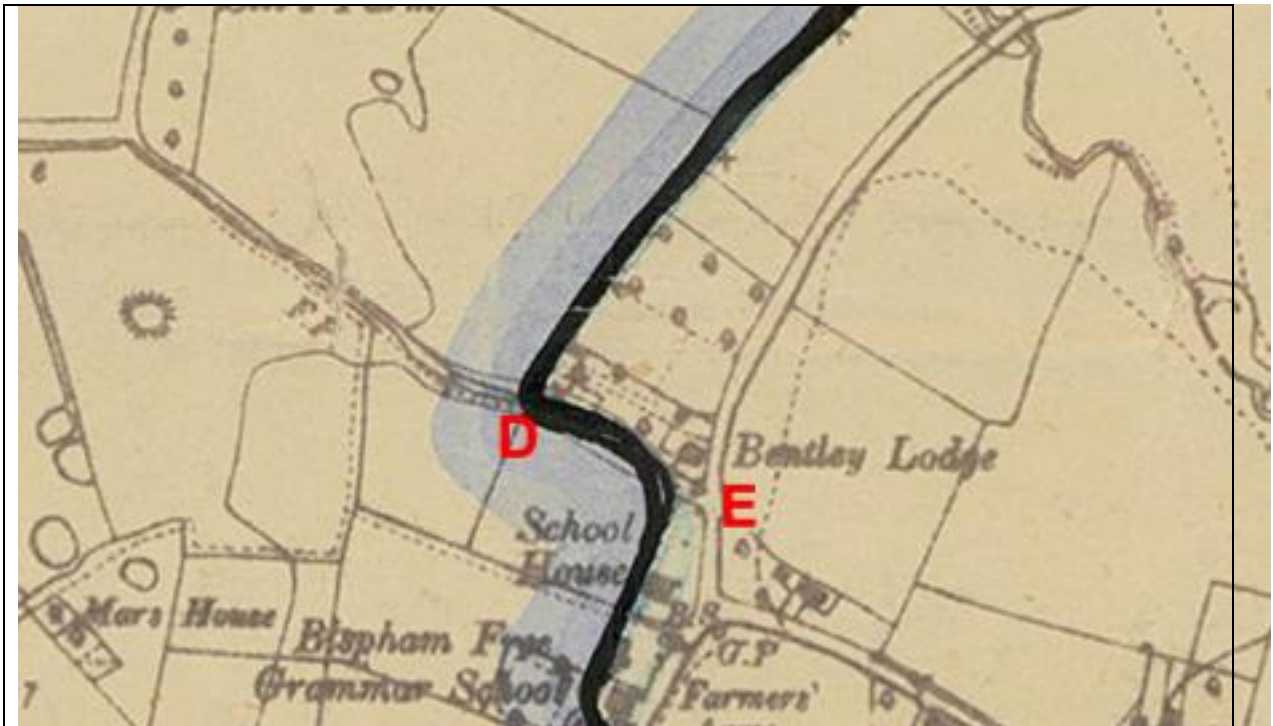
		<p>away at the surface and increased the depth of the holloway, particularly from point E to partway between point D and point C, and whether this reflected the fact that Dark Lane had already started to fall out of use or whether it was the reason it fell out of use is impossible to tell. With an alternative albeit longer route available via Lee Lane use of Dark Lane declined to the point that it was fenced off and no longer used. We do not know what the watercourse was like except that it appears to have been a minor highway drain. It might have been possible for carts to span it and others to walk adjacent to it or perhaps all traffic paddled along it or a combination of the two but the route was of a width that would have accommodated use on horseback or with horse drawn carts and the fact that the route is now more overgrown and more gullied than it would have been originally does not mean that it no longer physically exists.</p>
Investigating Officer's Comments		<p>The application route was the full width of the bounded (fenced) route shown on the Tithe Map and first edition 6 and 25 inch Ordnance Survey Maps. Whilst the watercourse may have gradually deepened or widened over time there is nothing to suggest that historical use of the route did not include traversing along the actual watercourse itself and the use of the land on either side of the watercourse (within the fenced off strip).</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find</p>

		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	<i>West Lancashire R.D.C.</i>	PARISH	<i>Bispham</i>	No.	<i>3</i>
MAP SHEET No.	<i>LXXIV N.E.</i>		LENGTH	<i>.15</i>	miles
BRIEF DESCRIPTION (Field F.P. or otherwise)			(to two decimal places)		
<i>Field F.P.</i>					
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>This F.P. commences approx 66 yds S.E. of the junction of Lee Lane &amp; Old Lane &amp; proceeds in a S.Easterly, &amp; Southerly direction until it joins F.P. No. 2 This F.P. is completely ploughed up.</i>					
SURVEYED BY :—		Name			
		Address			
Date		<i>3. 10. 1951</i>			
<small>50000/F39/4/50</small>					

Parish Survey Map and one of the survey cards for Bispham



Wrightington Parish Survey Map (Wigan Rural District)

<p>Observations</p>		<p>The parish survey map for Bispham does not record the application route as a public right of way. However, of significance is the fact that it does show a footpath starting on the route at point C which is labelled as number 3. The accompanying parish survey card describes the route of Footpath 3 as commencing approximately 66 yards south east of the junction of Lee Lane and Old Lane (point A). By recording the footpath as starting on the application route at point C it implies that the parish council believed, in 1951, that the application route (at least between point A and point C) carried higher public rights of access which it was not appropriate or necessary to record on the Definitive Map (i.e. that the route was a public vehicular highway).</p> <p>Between point D and point F the application route is within the parish of Wrightington. A thick line is shown on the parish survey map</p>
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		<p>along the application route between point D and point E indicating the parish boundary. The application route is not recorded on the parish survey map as a public right of way.</p>
<p><b>Draft Map</b></p>		<p>The parish survey map and cards for Bispham and Wrightington 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>

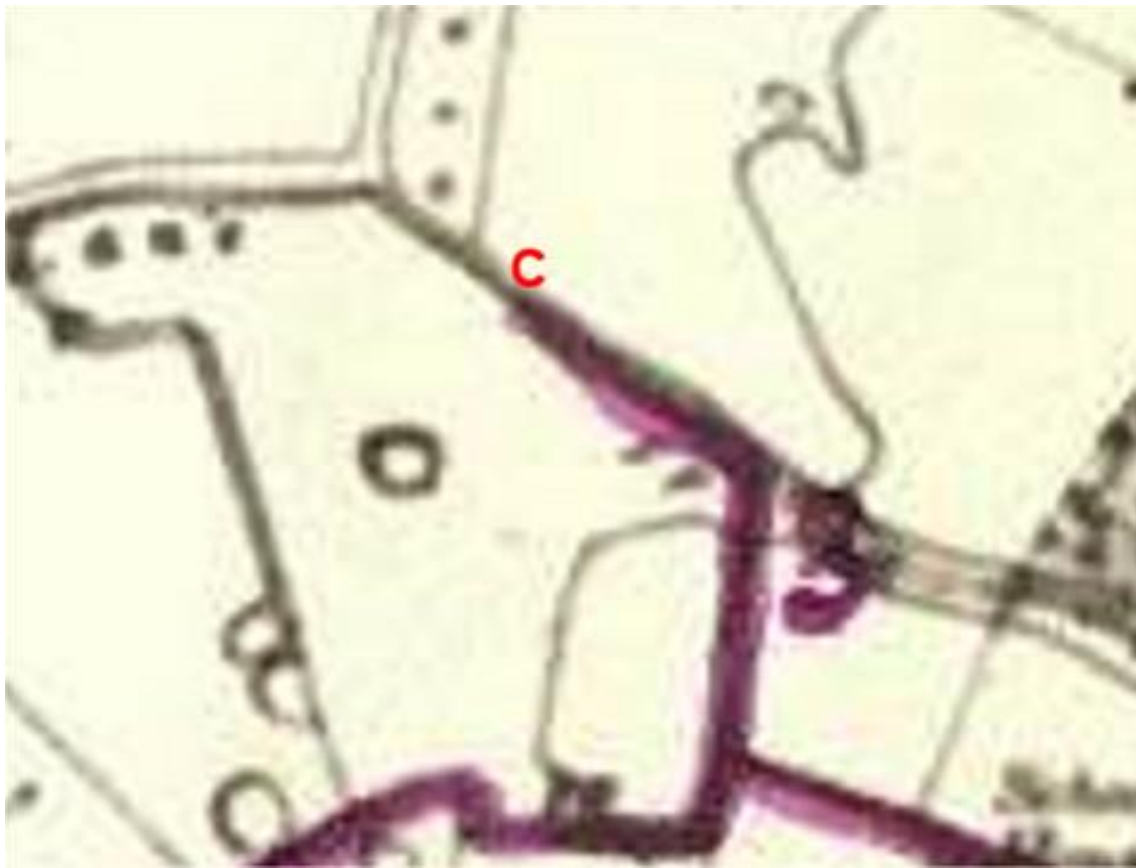


Draft Map for Bispham

Observations		The application route was not shown on the Draft Map of Public Rights of Way 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 Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be

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





<p>Observations</p>		<p>Although difficult to interpret due to the scale of the map and thickness of the purple pen used the First Definitive Map indicates that the route 8-6-FP3 ran along the field edge adjacent to the application route and joined the application route at point C.</p> <p>The application route itself was not recorded on the First Definitive Map.</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</p>



the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Administrative County of the County Palatine of Lancaster: Date of Review 1st. September 1966  
 RURAL DISTRICT OF WEST LANCASHIRE National Parks and Access to the Countryside Act, 1949  
 PARISH OF BISPHAM. Review of Definitive Rights of Way Map

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. <b>DEFINITIVE MAP</b> Other particulars (if any)
1	Footpath	Parish Boundary - Hall Lane.	0.19	
2	"	Chorley Road - Malt Kiln Lane.	0.30	
3	"	Lee Lane - No.2.	0.15	
4	"	Back Lane - Lee Lane.	0.26	
6	"	Malt Kiln Lane - Green Lane.	0.38	
7	"	" " " - Eccle's Lane.	0.38	
8	"	Robin Lane - Parish Boundary.	0.02	

Observations

The application route is not shown on the Definitive Map of Public

		Rights of Way (First Review) but the Statement describes 8-6-FP3 as meeting Lee Lane.
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 of the type to be recorded on the Definitive Map and Statement 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	<p>In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all 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</p>

whether it is a highway or not.



Bispham (West Lancashire Rural District Council)



Wrightington (Wigan Rural District Council)



LCC Highway Records

Observations		Dark Lane is not recorded on any of the Highways lists of publicly maintainable streets. 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>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 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 of non-intention to dedicate public rights of way under this provision.

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

### **The Natural Environment and Rural Communities Act 2006**

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

### **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 of time, from which public rights can be inferred.

From the maps examined, the route is first shown on Greenwoods Map published in 1818 and then again on Hennes's Map published in 1830. On both of these small-scale maps it is shown as a crossroad in the same way as other routes recorded as public vehicular highways are shown.

The Tithe Map and Award for Bispham dated 1840 clearly shows the route consistent with how other public vehicular routes are shown and specifically lists it in as a public road in the Tithe Award. This view is further enforced by the fact that the eastern end of the route is also shown on Tithe Map for Wrightington 1841 in the same way as other public vehicular routes are shown.

Early OS maps examined from the mid to late 1800s confirm that the application route remained a substantial bounded through route until at least the early 1900s. It was named on the OS 6 inch and 25 inch maps as Dark Lane and was also shown on the early 1 inch OS maps – all of which is consistent with the fact that it was considered to be a public road in the 1840s.

The District Valuation (Finance Act) map shows the route excluded from the numbered plots in the same way that Lees Lane, Old Lane and Bentley Lane are shown excluded and significantly shows land on either side of the route braced together and included in one plot number (52) and provides further support that in the early 1900s the route was still considered to be a public vehicular highway.

From the early 1900s however the evidence suggests that the route fell out of use – quite possibly because of the existence of the watercourse along it and the fact that it was noted from at least the late 1800s onwards as being quite gullied at least along the section between points C and E.

The map evidence suggests that from the 1930s onwards the route may not have been as accessible and was possibly fenced off at point E and part way between point C and point D.

Use of part of it at least may however have continued – as suggested by the fact that a footpath – recorded in the 1950s as 8-6-FP3 – was consistently shown as joining the application route at point C.

The Parish Survey carried out by Bispham Parish Council as part of the preparation of the Definitive Map and Statement in the 1950s identified the footpath as one that should be recorded on the Definitive Map and Statement but significantly it did not record the application route from point A to point C as part of the public footpath but stopped at point C suggesting that the parish council considered that the application route already carried public rights of access which did not require recording on the Definitive Map and Statement.

A search of records held at the County Records Office and on the London Gazette website has failed to locate a legal order extinguishing public rights along the application route suggesting that if it was already considered to be dedicated as a public vehicular route in the 1840s and despite the route falling out of use, those public rights have not been legally extinguished.

Since use of the route declined and then ceased altogether the route has become blocked and the holloway gradually deepened by the water but evidence of the route still exists on the ground and although not as easy to use as it would have been in the past it has not been lost due to erosion.

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

### **Landownership**

From point A to a point part way between C and D the application route runs along land which is unregistered. From this point part way between C and D until point D it is in private ownership. From point D to E the southern part of the land is owned by the Trustees of Richard Durning's School Charity, and the northern part is in unknown ownership but a caution has been registered against first registration and

from point E to point F it is not in a registered ownership but is affected by this caution.

#### Information from the Applicant

The applicant has provided with the application extracts from various maps – all considered and referred to above.

#### Information from the Landowner

Of the landowners that responded to the consultation, all objected to the application providing various different reasons as to why.

One Landowner returned the map of the proposed area marking out the area under their ownership whereby part of the application route runs along the border, however no further comments were provided.

One Landowner strongly objects to the application route, and any route that doesn't follow the original footpath line. The original footpath line has always been on the school field side of the dividing fence, allowing fast access at the top of the brook to the road is from the school field itself. The stile in the corner was removed approximately 10 years in order to make it more secure for the primary school. The Landowner further states she recalls from her youth that the footpath on the plan never ran through her land.

Another landowner objects to the application on the basis that the original hawthorn hedge is still there and runs right up the stream, and the boundary of their land is there. The landowner states she has photos of bluebells, snowdrops and wildlife such as owls and bats. The landowner states her brother may have the original deeds to the boundaries of the land which will prove the area is owned by them to the stream, and the only pathway they are aware of is on the school field side, and not on their side.

Another landowner's reasons for objecting to the application is that they feel it will cause an intrusion to the natural habitat of the wildlife there such as the owls nesting in the trees along the brook, the landowner states there is no natural path and there are bluebells along the proposed route.

Another landowner stated he will object to any change to the present footpath and that there has never been a footpath on Bentley Lodge. The landowner recalls in the 1950's school children including himself walking on the school field side of the brook for nature walks with the Headteacher.

#### **Conclusion**

The Application is that this is an old vehicular highway and ought to be recorded on the Definitive Map and Statement as a restricted byway - modern mechanically propelled vehicular rights having been extinguished by the Natural Environment Rural Communities Act 2006.



There is no user evidence and so Committee are advised to consider how the route is shown on the several historic documents to consider evidence of inference of dedication by the owner.

In this matter Committee is referred to the evidence and Summary of this evidence set out above and it is advised that in this matter there is sufficient evidence that this route was already regarded as part of the highway network in the early nineteenth century and continued to be recorded as such on the various documents and that on balance a dedication by an owner many decades ago can be inferred. Disuse of a route does not take away the public rights. There has been no legal stopping up of those rights and so it is advised that the legal maxim "once a highway always a highway " will apply. Owners' comments of today do not affect where this old highway runs.

Committee may consider that an Order should be made to record this old route as restricted byway.

### **Risk management**

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

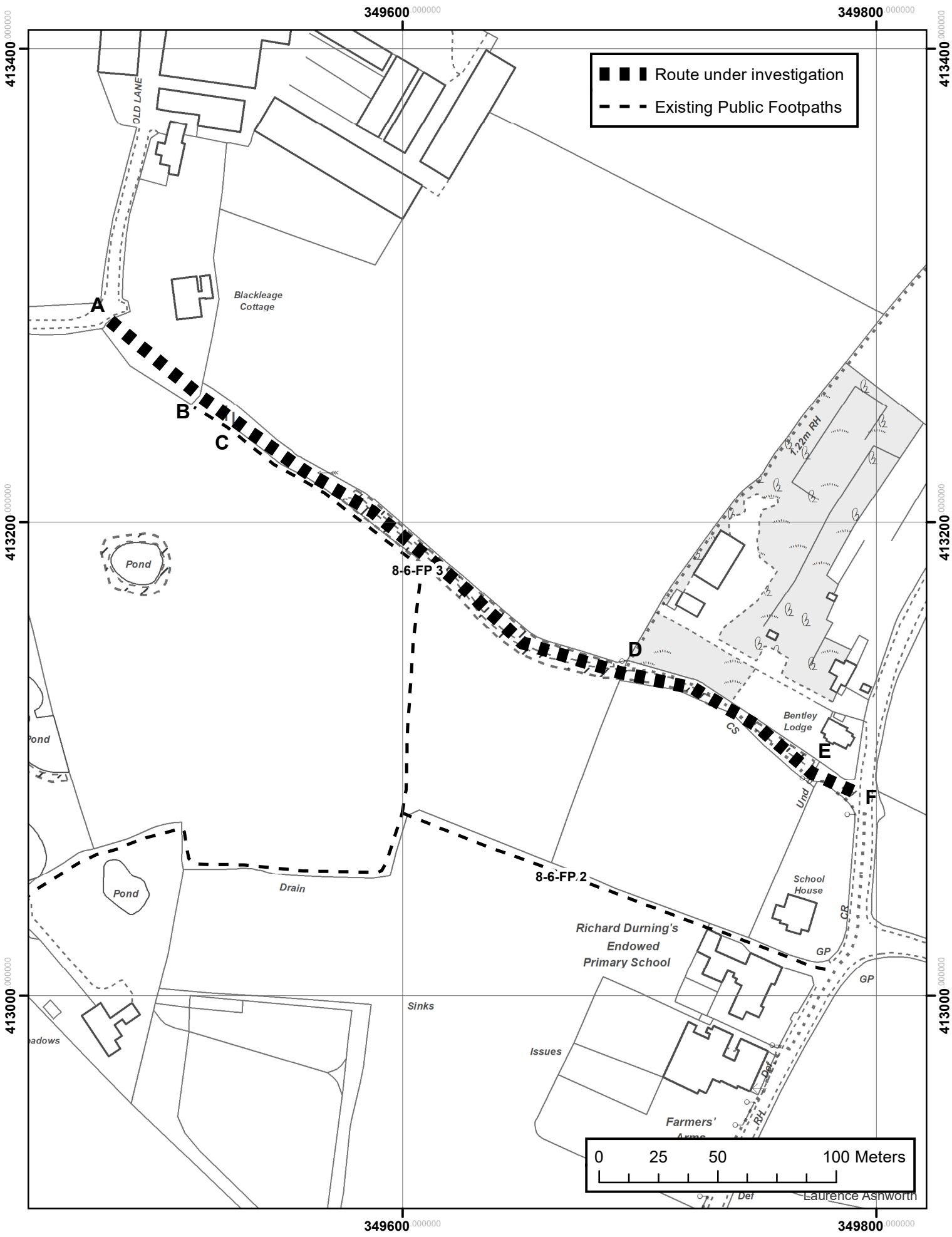
### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-707		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

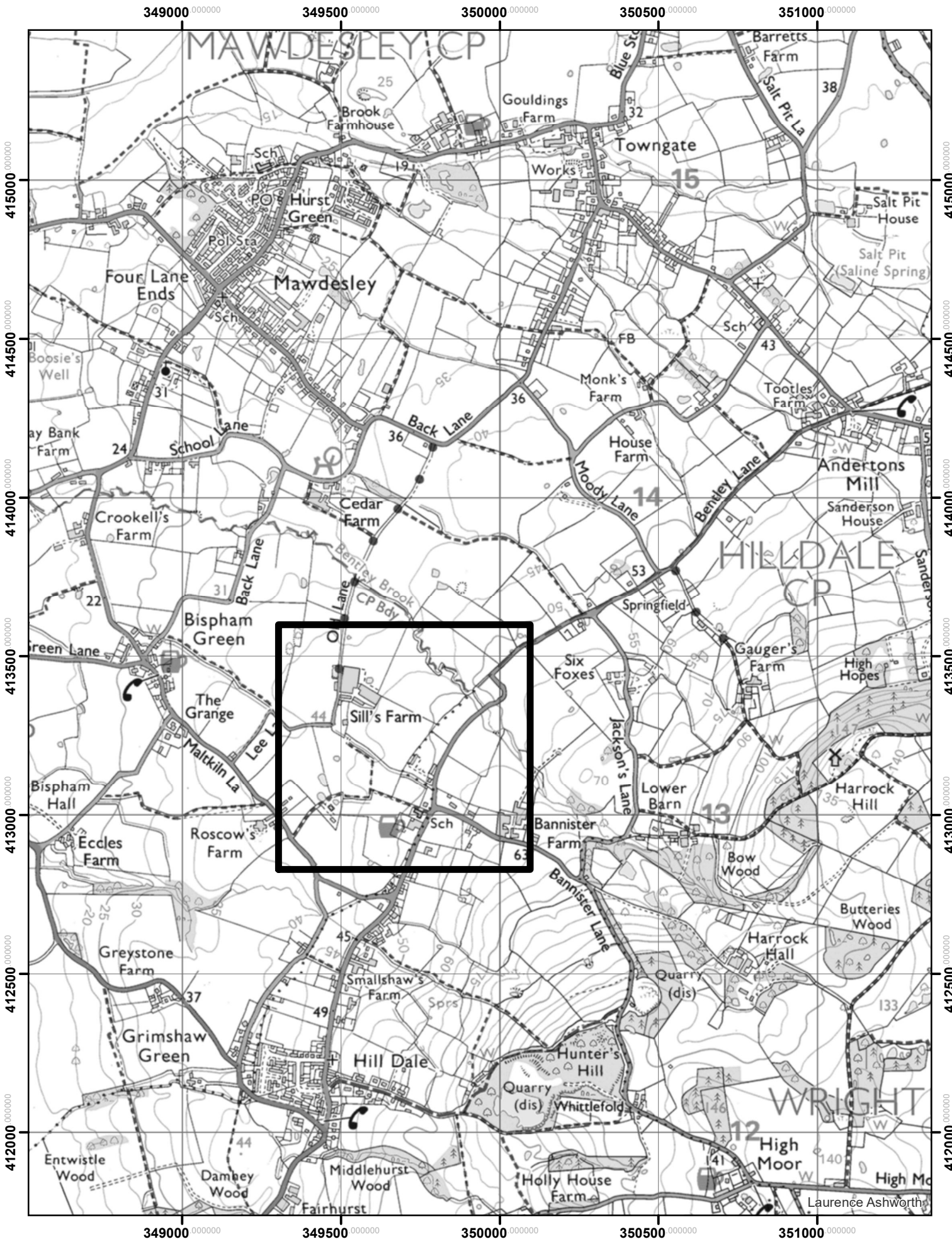
Reason for inclusion in Part II, if appropriate

N/A









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

Wildlife and Countryside Act 1981  
 Addition of Restricted Byway along Dark Lane, Bispham, West Lancashire  
 LOCATION PLAN

1:15,000



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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## Regulatory Committee

Meeting to be held on 10<sup>th</sup> August 2022

### Part I

Electoral Division affected:  
Clayton with Whittle

## Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath at Cuerden Hall (Annex 'A' refers)

Contact for further information quoting File Reference 804-697:

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

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath at Cuerden Hall from Shady Lane to Berkley Drive, Cuerden.

### Recommendation

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

### Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Shady Lane to Berkley Drive, Cuerden passing through the grounds of Cuerden Hall.

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"

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

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

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

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

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

## **Consultations**

### Chorley Borough Council

Chorley Borough Council provided no response to consultation.

### Cuerden Parish Council

Cuerden 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	5601 2402	Open junction with Shady Lane
B	5614 2402	The 'Cinder Path' crosses underneath the application route
C	5622 2400	Junction of the application route with Cuerden Close
D	5634 2398	Route turns south towards Berkeley Drive
E	5632 2388	Approximate position of temporary security fence across the route on the boundary of land owned by Cuerden Valley Trust
F	5630 2379	Open junction with Berkeley Drive

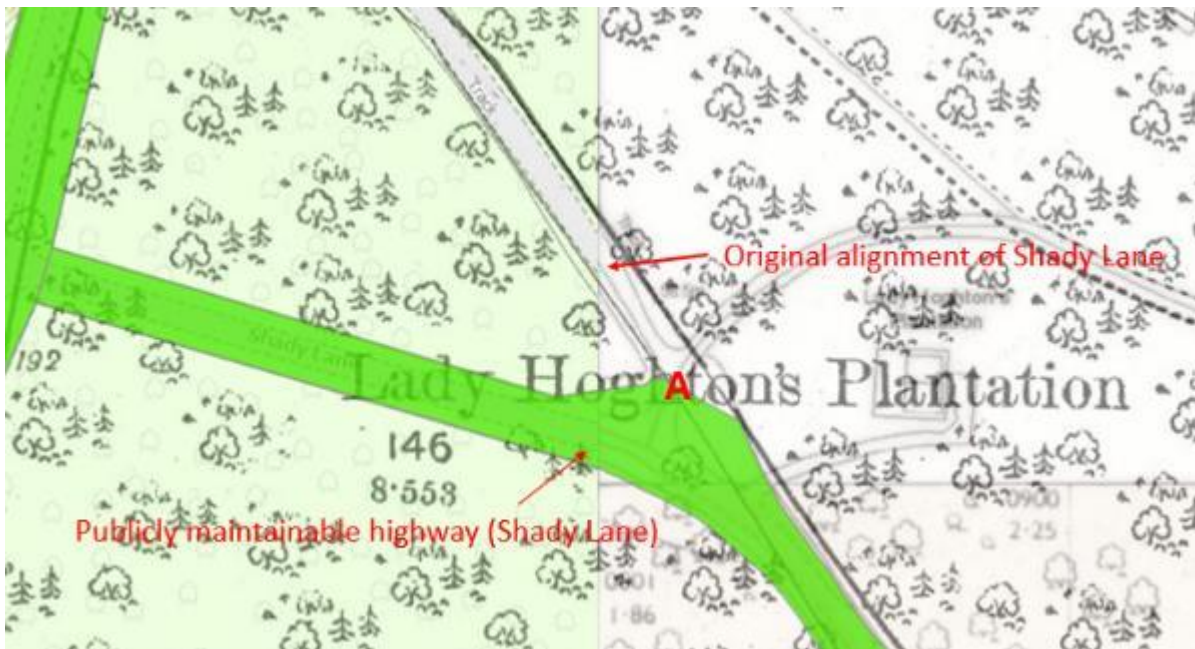
#### **Description of Route**

Site inspections were carried out in March 2020 and again in November 2021.

Access to part of the route is no longer possible due to the erection of security fencing but permission was granted to the Investigating Officer to inspect the full length.

The application route commences at a point on Shady Lane (point A on the Committee plan).

The historical alignment of Shady Lane was legally altered in the 1960s as detailed later in this report and shown below:



As a result of these alterations county council highway records record what appears on the ground to be the first 10 metres of the tarmac access road leading to Cuerden Hall as part of the publicly maintainable highway known as Shady Lane.

Immediately north west of point A the remains of the historical route of Shady Lane can be seen extending towards the A49 with access restricted by fencing and a padlocked gate.

From point A the route applied for follows a tarmac roadway passing between stone gateposts and leading to Cuerden Hall. A notice secured onto one of the stone gateposts states that the grounds of the Hall are private and that whilst Sue Ryder allowed members of the public to enjoy them whilst they were the proprietor certain conditions (for example dogs being kept on leads) should be met.

Once through the gateway the application route continues in a north easterly direction along a 4-metre-wide tarmac roadway. A speed limit sign is located in the grass verge just beyond point A with the number 20 written on it and there is a broken white line faintly visible along the centre of the roadway indicating that the road was wide enough for two vehicles to pass. Streetlights are positioned at intervals along the side of the route and a further advisory sign warned of speed humps.

The route curves to continue in a more east south easterly direction and approximately 150 metres from point A there is a slight 'hump' in the roadway as it passes over the top of a tunnel carrying a historical route known as the cinder path at point B. The tunnel itself is fenced off and access through it is no longer possible.

Immediately prior to point B a surfaced path exists leading from the application route leading directly to the continuation of the cinder path extending north from the tunnel and application route. A dog waste bin is located on the short section of path which links the application route to the cinder path.

From point B the application route continues along the tarmac roadway to point C where it is joined from the south by another tarmac roadway known as Cuerden Close. Access to and from Cuerden Close at this point is unrestricted. Signage warns the drivers of vehicles turning off the application route onto Cuerden Close that children may be playing there and a further sign states 'Private Land Residents Only'.

From point C the application route continues towards Cuerden Hall and security fencing erected across the route prevents access. A sign stating 'Footpath now closed' is attached to the security fencing.

Beyond the security fencing the application route continues along the tarmac roadway towards Cuerden Hall and adjacent (former) stables. The Hall and adjacent buildings are no longer occupied – having previously been owned and occupied by Sue Ryder as a neurological care home - and security staff currently patrol the site 24 hours a day.

As the route reaches the end of the tarmac driveway it is crossed by a further security fence at point D and then turns south south east towards the front of the former stable block (within which the café and book shop run by Sue Ryder had been located) and follows a tarmac roadway curving south west then south passing to the west of the former stables to where the route is crossed by further security fencing (point E) located on the approximate (unmarked) boundary between land owned by Cuerden Valley Trust and land formerly owned by Sue Ryder.

Beyond point E the application route continues in a generally south westerly direction past buildings used by the Cuerden Valley Park Rangers along a tarmac roadway varying in width from 3-5.5 metres wide to an open junction with Berkeley Drive (point F on the Committee plan) west of the Cuerden Valley Trust Visitor Centre and Offices.

The total length of the route is approximately 540 metres.

## **Map and Documentary Evidence**

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

The application route passes through the grounds of a property known as Cuerden Hall. A building is believed to have been first built on the site in 1199 with the present hall built in stages from 1717 through to the early 1900s. From that time the land and hall were owned by the Banastre and Parker families who developed the Cuerden estate with nurseries, orchards, various plantations, meadows, fields and gardens.

When Thomas Townley-Parker (the last descendant of the Banastre-Parker family) died in 1906, the estate was left to his nephew, Reginald Tatton and during World War One the Tatton family set up a hospital at Cuerden Hall.

During the Second World War, the estate was requisitioned by the Army as an education centre and then became headquarters of No. 4 Anti-Aircraft Command. In

1958 the Hall was purchased from the Tatton family and became the Headquarters for the Army's North West District and in the early 1960s the newly built M6 motorway cut across the northern parkland necessitating alterations to the access road leading to the hall and destroying Wigan Lodge in the process.

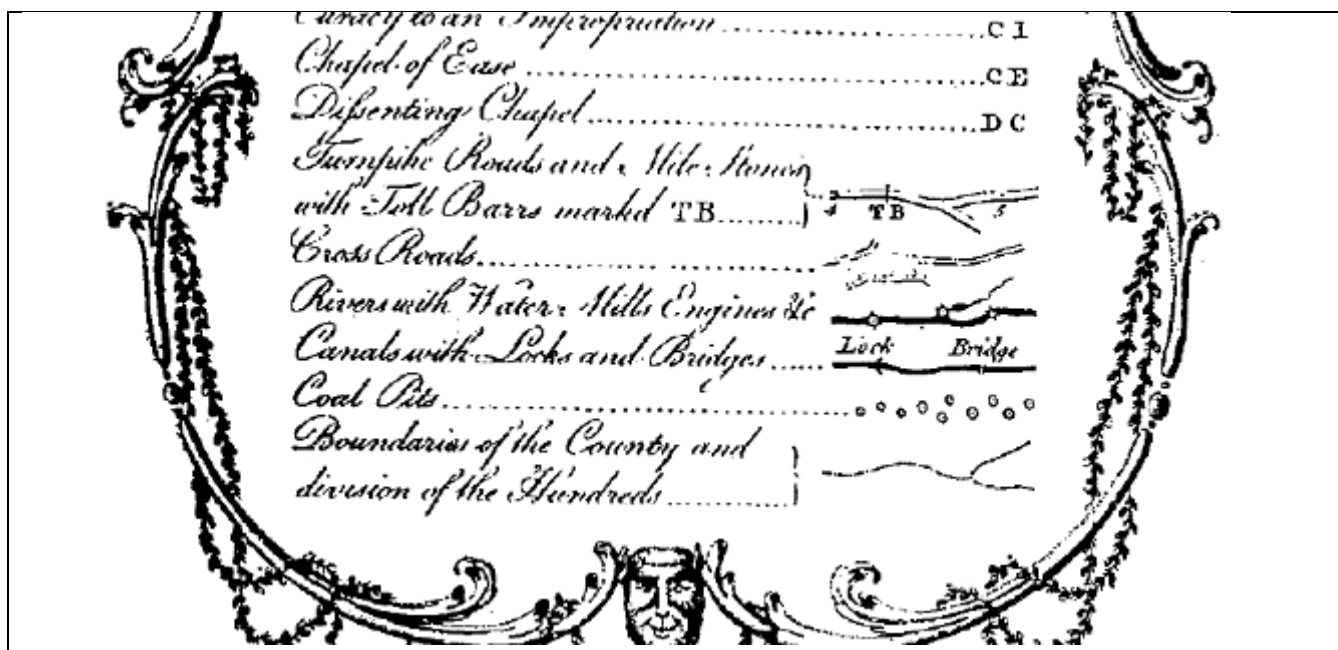
By 1977 the Hall had become the Headquarters of the Central Lancashire Development Corporation, with new offices and car parks being established in the formal garden areas. In 1978 the parkland and wider estate – which did not include land crossed by the application route - was developed by the Central Lancashire Development Corporation into Cuerden Valley Park the management of which was transferred to the Cuerden Valley Trust in 1986. The park was initially managed by Lancashire Wildlife Trust before reverting back to being managed by The Cuerden Valley Trust in the approximately 2003.

In 1986 Cuerden Hall was sold by Commission for New Towns to Sue Ryder who developed the hall itself into a Sue Ryder Home until it was sold by them in 2021.

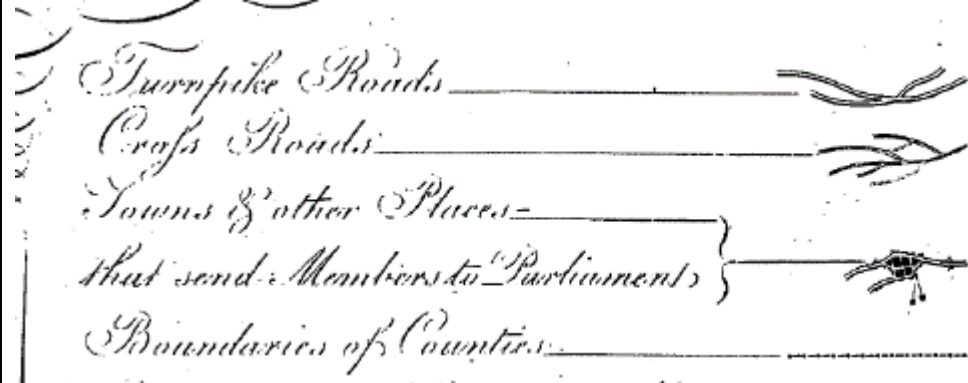
Note: Map extracts provided below are not reproduced to scale.

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		Cuerden Hall is shown on the Map together with details of ownership ('Ban. Parker Esq.'). A road is shown leading directly to the Hall from the turnpike road (now known as the A49 – Wigan Road) consistent with part of the application route from partway between point A and B through to point D. It is described in the map legend as a cross road.
Investigating Officer's Comments		Part of the application route existed in 1786 as access to Cuerden Hall. It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. In this instance the road shown leads directly to Cuerden Hall and was not shown as a through route continuing onwards. It therefore appears that in 1786 the section of the application route forming part of the access to Cuerden Hall, although shown as a cross road, was most likely to be private access to Cuerden Hall itself. It is not known whether the rest of the application route existed at this time but if it did it did not appear to be considered to be a significant public route.
<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		<p>The Map shows Cuerden Hall and part of the access road shown on Yates's Map above leading from the turnpike road (A49 - Wigan Road) towards the application route but does not show the application route between point A and point D.</p> <p>The Map shows Shady Lane and Berkley Drive and shows a route leading off Berkley Drive towards Cuerden Hall broadly consistent with the application route between points D-E-F.</p>
Investigating Officer's Comments		<p>Part of the application route existed providing access to Cuerden Hall but the full length of the application route does not appear to have existed and there is no suggestion, from looking at the map, that a public through route existed.</p>
<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 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.




*Explanation*

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

**LIVERPOOL**  
  
 Birkbeck  
  
 More than

Observations		Cuerden Hall is again shown and named. Three routes are shown providing access to the Hall. The more southerly of the two routes from the turnpike road (Wigan Road) is consistent with part of the application route from partway between point A and point B through to point D and the route from point D through to the junction with Berkley Drive is shown but the whole area crossed by the route is coloured green and described in the map legend as 'Gentlemens Seats and Parks'.
Investigating Officer's Comments		Part of the application route existed in 1840 providing access to Cuerden Hall. The way that it is depicted on the map suggests that it was more likely to have been shown on the map because it provided private access to Cuerden Hall rather than being suggestive of the existence of public rights.
<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 crossed by the application route is not affected by an existing canal or railway and there are no known proposals to have constructed either in the proximity of the route in the past.
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>	1838	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 title award) and additional information from which the status of ways may be inferred.
		
Observations		<p>Access to Cuerden Hall is shown from the A49 – Wigan Road and from Shady Lane onto Berkley Drive passing through point F and continuing to the Hall along a route to the east of the application route.</p> <p>Access to the application route at point A is not shown and only part of the application route from part way between point A and point B to point D is shown. No route is shown between point D and point F. The land crossed by the application route was listed as being owned and occupied by Robert Townley Parker with no separate listing for the access road along which part of the application route ran.</p> <p>Shady Lane and Wigan Road were numbered 281 and both described in the Tithe Award as public roads but Berkley Drive was not coloured on the map (unlike public roads) and was not numbered and was included in the land owned by Robert Townley Parker.</p>
Investigating Officer's Comments		The application route did not exist as a through route from Shady Lane to Berkley Drive in 1838 and there is no indication that

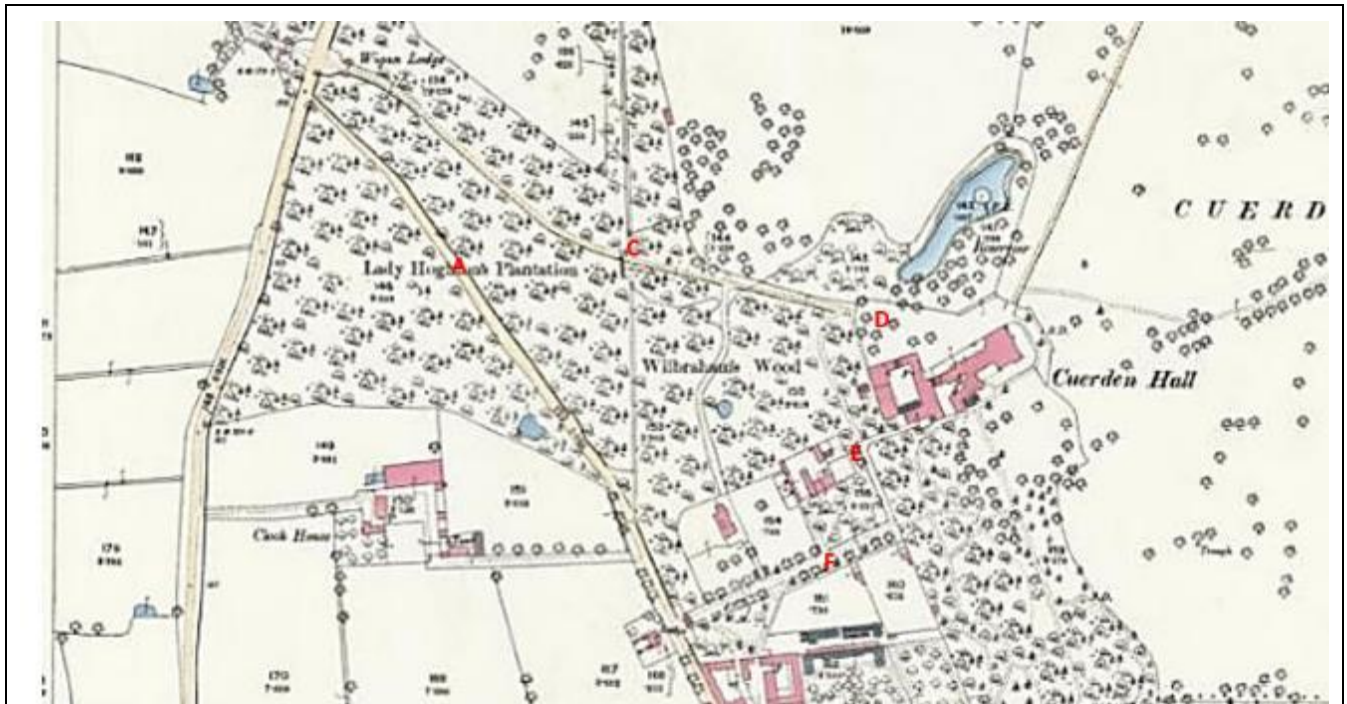
		it was capable of being used on foot. The access roads leading directly to Cuerden Hall from Wigan Road and Shady Lane were not considered to be public roads.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for 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 was found 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 Sheet 69</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		<p>Parts of the application route existed across land forming part of the Cuerden Hall Estate but there was no access to the route at point A and between point D and point F the route claimed to have been walked was not apparent to the surveyor. Those parts of the application route which existed crossed through land which was planted and named as Lady Hoghton's Plantation and Mr Wilbraham's Wood with much of the land surrounding the hall shaded and labelled as being part of Cuerden Hall Demesne.</p> <p>A long straight bounded route passing north to south through the Cuerden Hall Estate from Wigan Road to Shady Lane crosses under the application route at point C (tunnel) is labelled (further north than the extract shown above) as 'Cinder Path' (and passing through 'Cinder Path Wood').</p>
Investigating Officer's Comments		The application route did not exist in 1848 as a through route capable of being used. The land crossed by the route all appeared to be part of the Cuerden Hall Estate.
<b>25 Inch OS Map Map Sheet LXIX.11</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.



Observations

There was no access onto the application route at point A. Access to Cuerden Hall is shown from Wigan Road passing through gates at Wigan Lodge and continuing south east to Cuerden Hall along a driveway which part of the application route runs (from midway between points A-B continuing through to point D). The application route between point D and point E is not shown. Between point E and point F a path is shown passing through an area of woodland. Berkley Drive is shown with a lodge at the western end where it joins Shady Lane. Shady Lane and Wigan Road are shown coloured with a thickened line down the south and eastern sides but the access road to the hall – whilst coloured – is not shown with a thickened line down one side, and Berkley Drive is not shown coloured or with a thickened line.

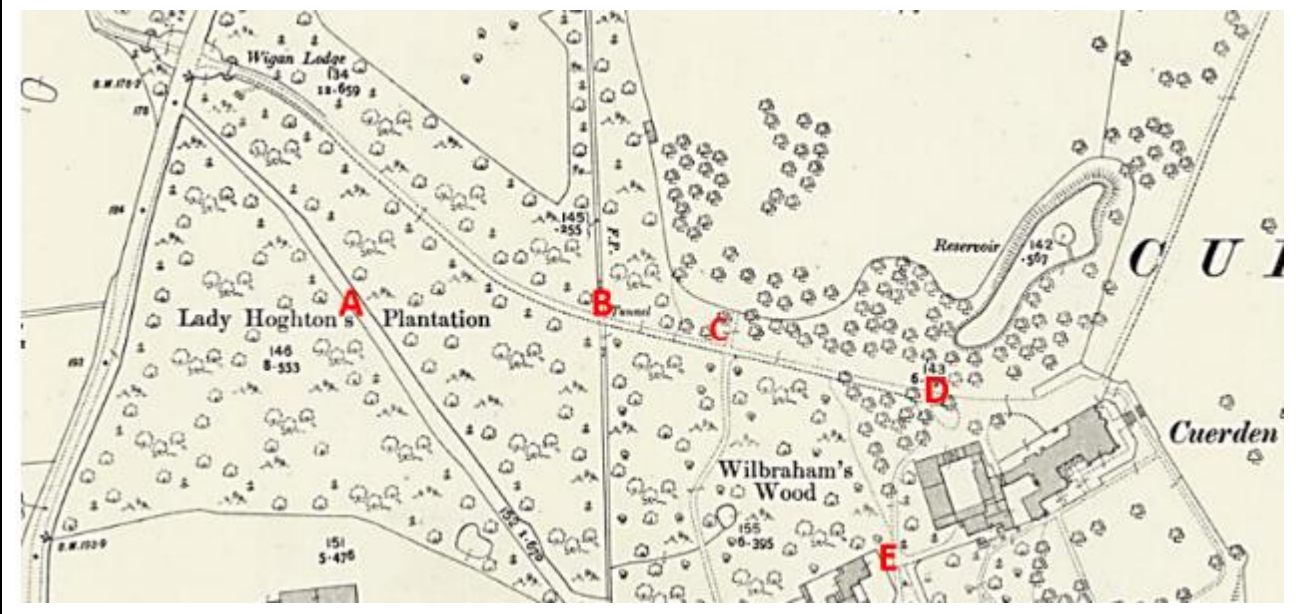
The route known as the Cinder Path is shown crossing under the application route at point C and is annotated as a footpath (F.P.). It is shown bounded on both sides for its full length and there is no suggestion from the map that access to the application route from the Cinder path would have been available.

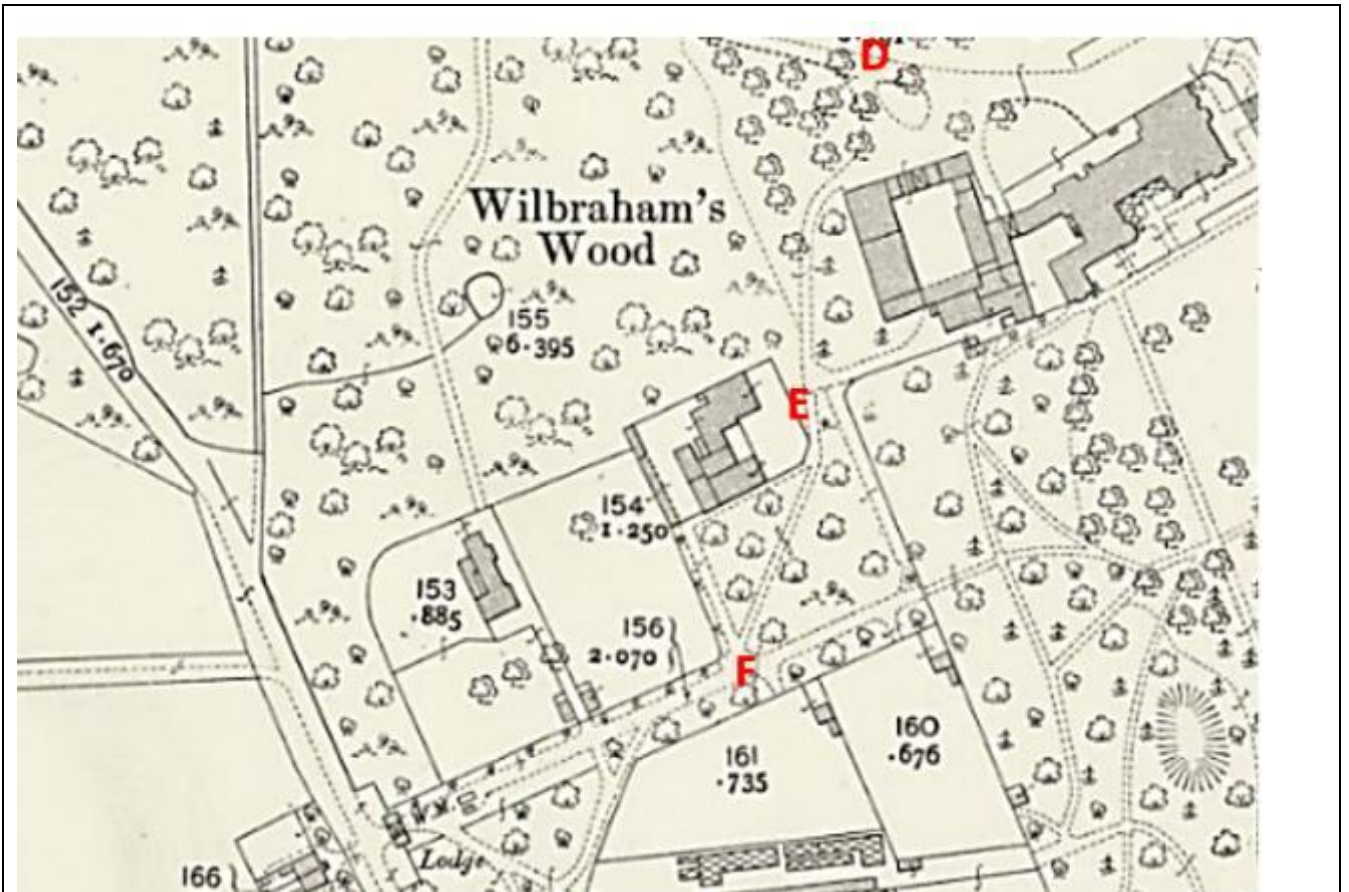
Investigating  
Comments

Officer's

The application route did not exist in 1893 as a through route capable of being used.

		<p>The access road from Wigan Lodge to Cuerden Hall and the road now known as Berkley Drive were not considered to be a public vehicular highway in good repair at that time. The presence of lodges at the junctions with Wigan Road (Wigan Lodge) and Shady Lane suggested that both routes were driveways leading through a private estate.</p>
<p><b>25 inch OS Map</b> <b>Map Sheet LXIX.11</b></p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1893, revised in 1909 and published in 1911.</p>





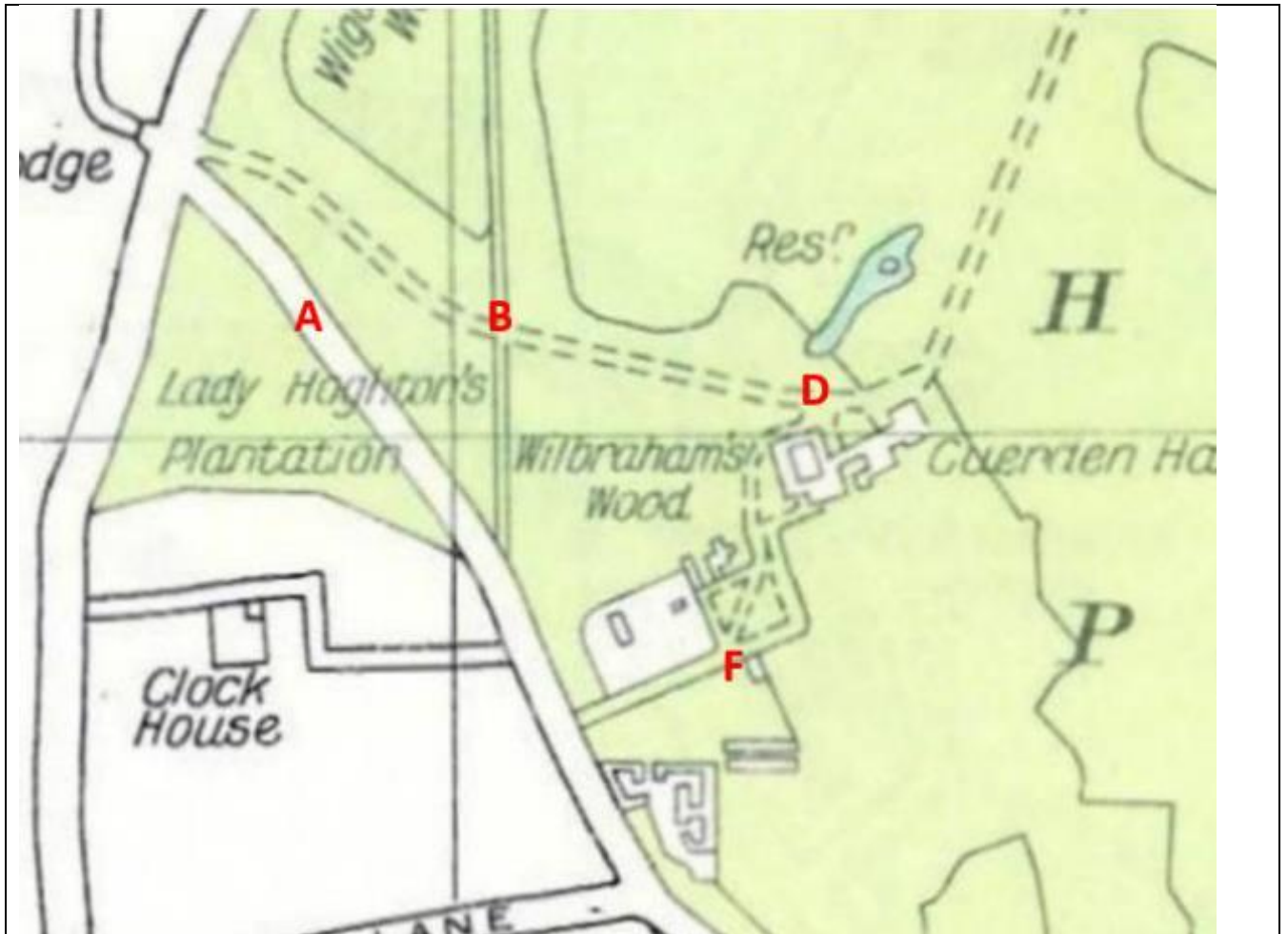
Observations		No access is shown onto the application route at point A. From midway between point A and point B the application route is shown following the access road from Wigan Lodge to Cuerden Hall. From point D to point E and continuing through to point F a route consistent with the application route is shown. The Cinder Path – denoted as a footpath (F.P.) passed under the application route at point C but appeared to be completely enclosed.
Investigating Officer's Comments		The application route did not exist as a through route capable of being used in 1911. Whilst much of the route physically existed it appeared to be within the grounds of a private hall.
<b>Finance Act 1910 Map</b> <b>TNA's Ref: 133/5/92</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

		<p>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>
Observations		The Finance Act Map Sheet covering the area crossed by the application route is incomplete and none of the area crossed by the route has been annotated.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>25 Inch OS Map Sheet LXIX.11</b>	1931	Further edition of 25 inch map (surveyed 1893, revised in 1928 and published in 1931.
Observations		There were no changes to how the application route was shown since the revision and publication of the 1911 edition of the 25 inch map detailed above.
Investigating Officer's Comments		The application route did not exist as a through route capable of being used in 1928. Whilst much of the route physically

		<p>existed it appeared to be within the grounds of a private hall.</p>
<p><b>Authentic Map Directory of South Lancashire by Geographia</b></p>	<p>Circa 1934</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. 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>

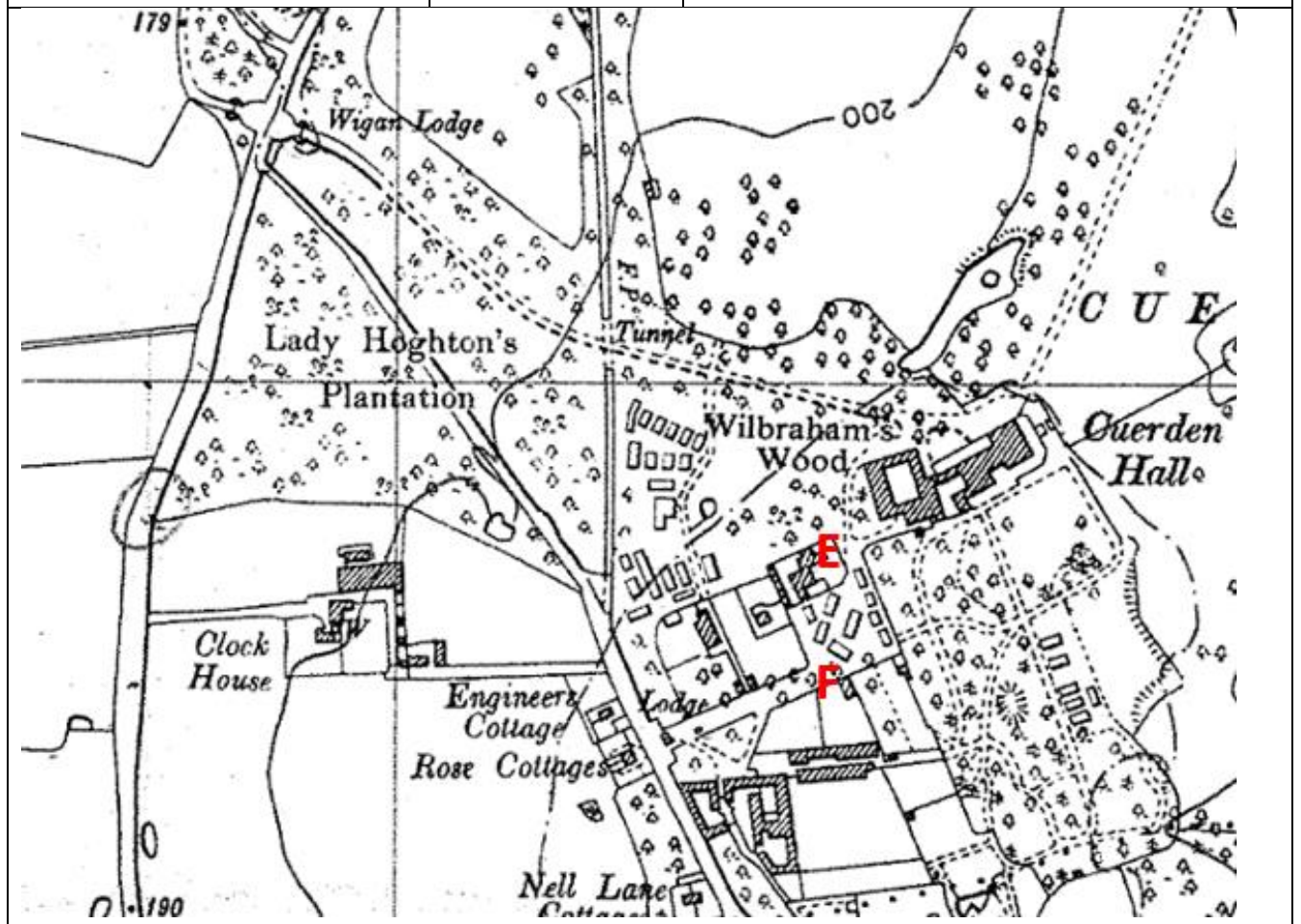






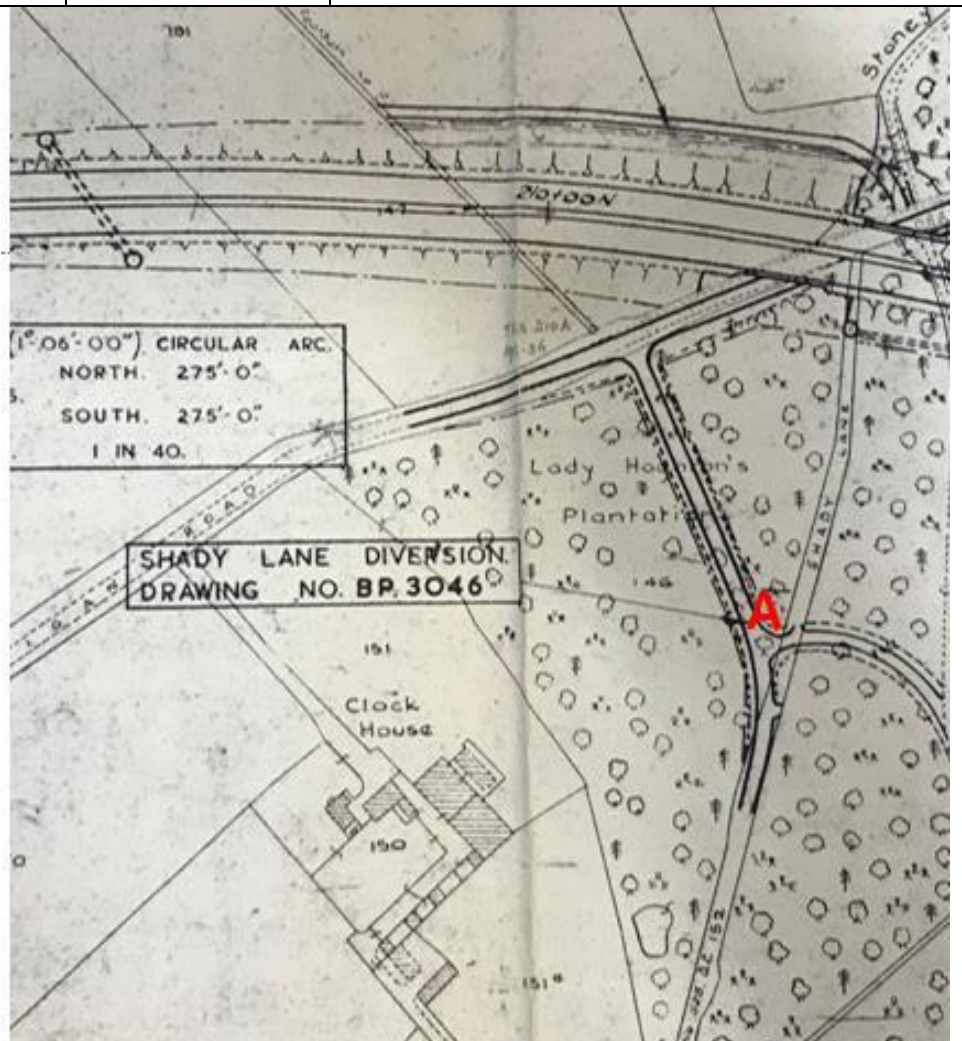
<p>Observations</p>		<p>The application route is shown with the exception of the access point from Shady Lane at point A which connects through to the original access road leading from Wigan Road. The whole of the area crossed by the application route is shaded green and included in a larger area titled as Cuerden Hall Park. The Cinder Path is shown crossing the route at point C.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route did not exist as a through route from point A in the 1930s. Much of the route did exist as a substantial route providing access to and from Cuerden Hall. Its inclusion on this map within an area described as Cuerden Hall Park does not necessarily mean that access was available to the public as there are examples of both public and private 'parks' being coloured green within the atlas.</p>

<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.
Observations		Much of the land crossed by the application route is obscured by tree cover and it is not possible to see the application route in any detail.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch OS Map Map Sheet 52SE</b>	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 between 1930 and 1945 with further major changes revised in 1951.



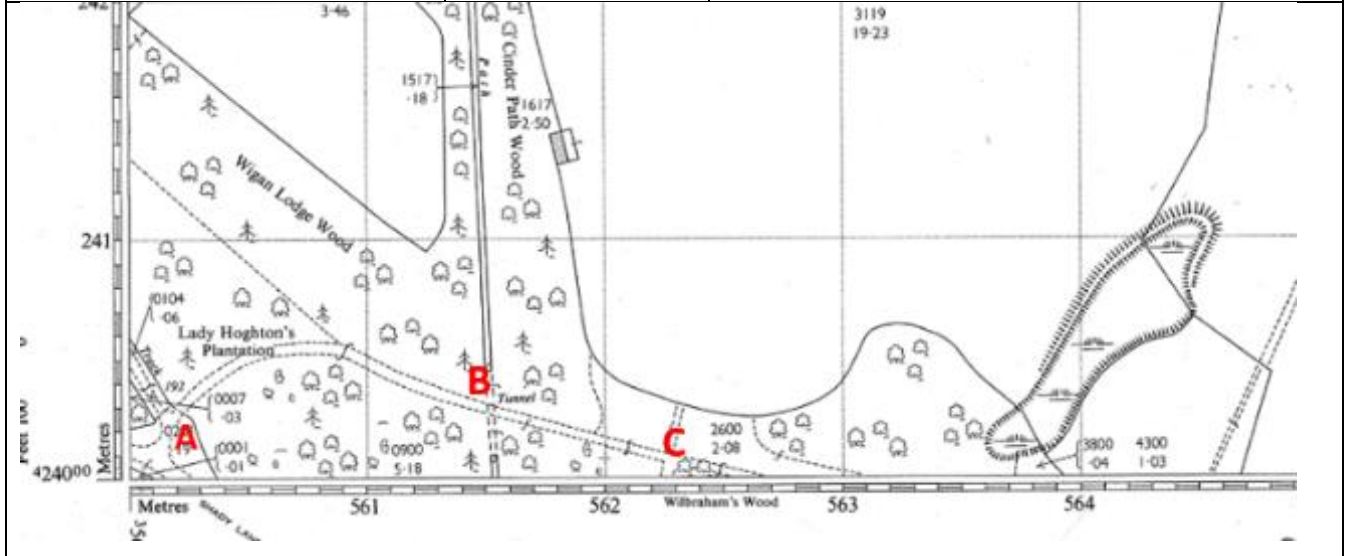
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

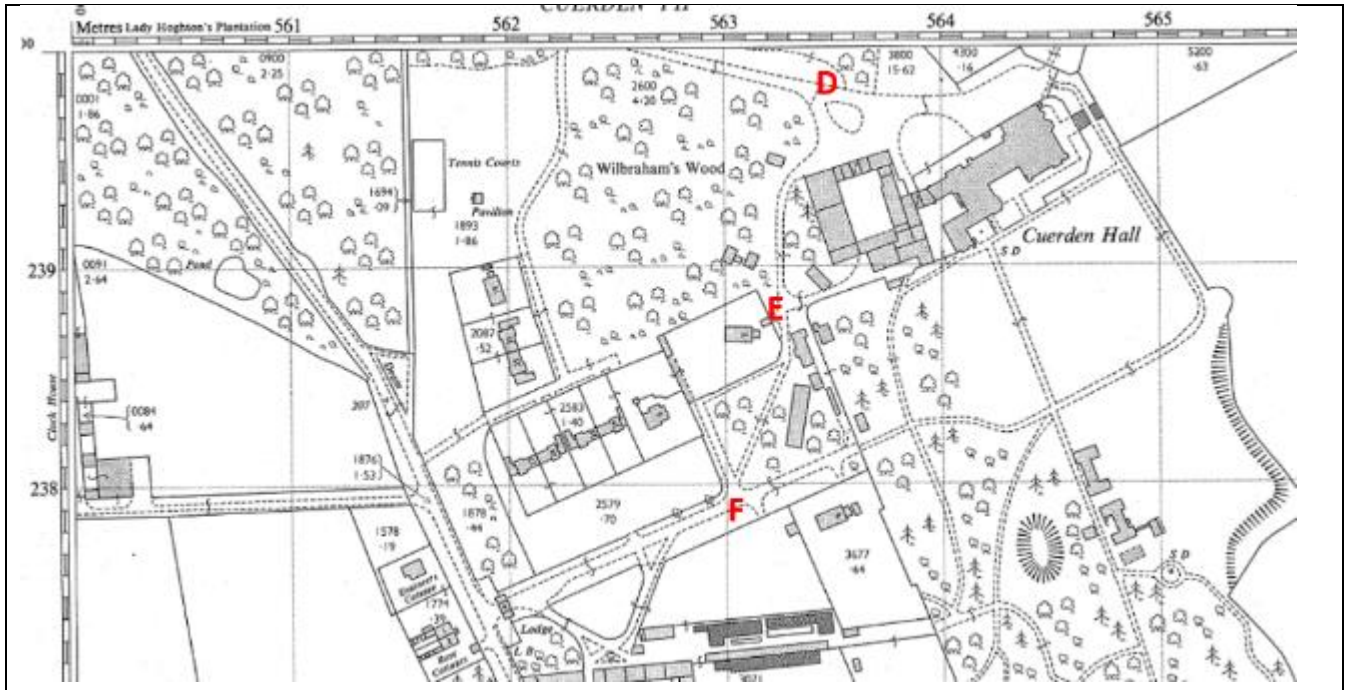
Observations		<p>There is still no access to the application route from point A.</p> <p>Between point E and point F the woodland has been cleared and a number of small buildings erected through which it would have been necessary to pass between. The Cinder Path is shown to pass under the application route at point C.</p>
Investigating Officer's Comments		<p>The application route did not exist as a through route at the time the map was revised (unknown date between 1930 and 1945). Whilst parts of the route existed it would not have been possible to walk the full length of the route applied for.</p>
Construction of M6 Motorway	1960s	<p>Plan of proposed alignment of the M6 motorway contained within LCC Public Rights of Way records.</p>



Observations		<p>The construction of the M6 motorway in the 1960s required the diversion of the junction</p>
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		<p>of Shady Lane with the A49 (Wigan Road) and alterations to the access road leading to Cuerden Hall from Wigan Lodge.</p> <p>A set of plans detailing the alignment of the proposed motorway has been retained by the County Council's Public Rights of Way Team and shows the amendment to the road layout that was subsequently implemented. Reference is made on the plan to the fact that Shady Lane was to be diverted. The new access road leading to Cuerden Hall is shown but there is no labelling to suggest that a legal diversion would be required relating to it.</p>
<p>Investigating Officer's Comments</p>		<p>The application route from point A was constructed in the early 1960s to accommodate the construction of the M6 motorway and may have been available to use on foot following its construction.</p> <p>There is no suggestion from the plan that the access road from Wigan Lodge through to Cuerden Hall required any public rights that were required to be legally diverted as part of the process.</p> <p>No further records relating to the construction of the M6 at this location were found.</p>
<p>1:2500 OS Map</p>	<p>1965</p>	<p>Further edition of 25-inch map reconstituted from former county series and revised in 1963 and published in 1965 as national grid series.</p>





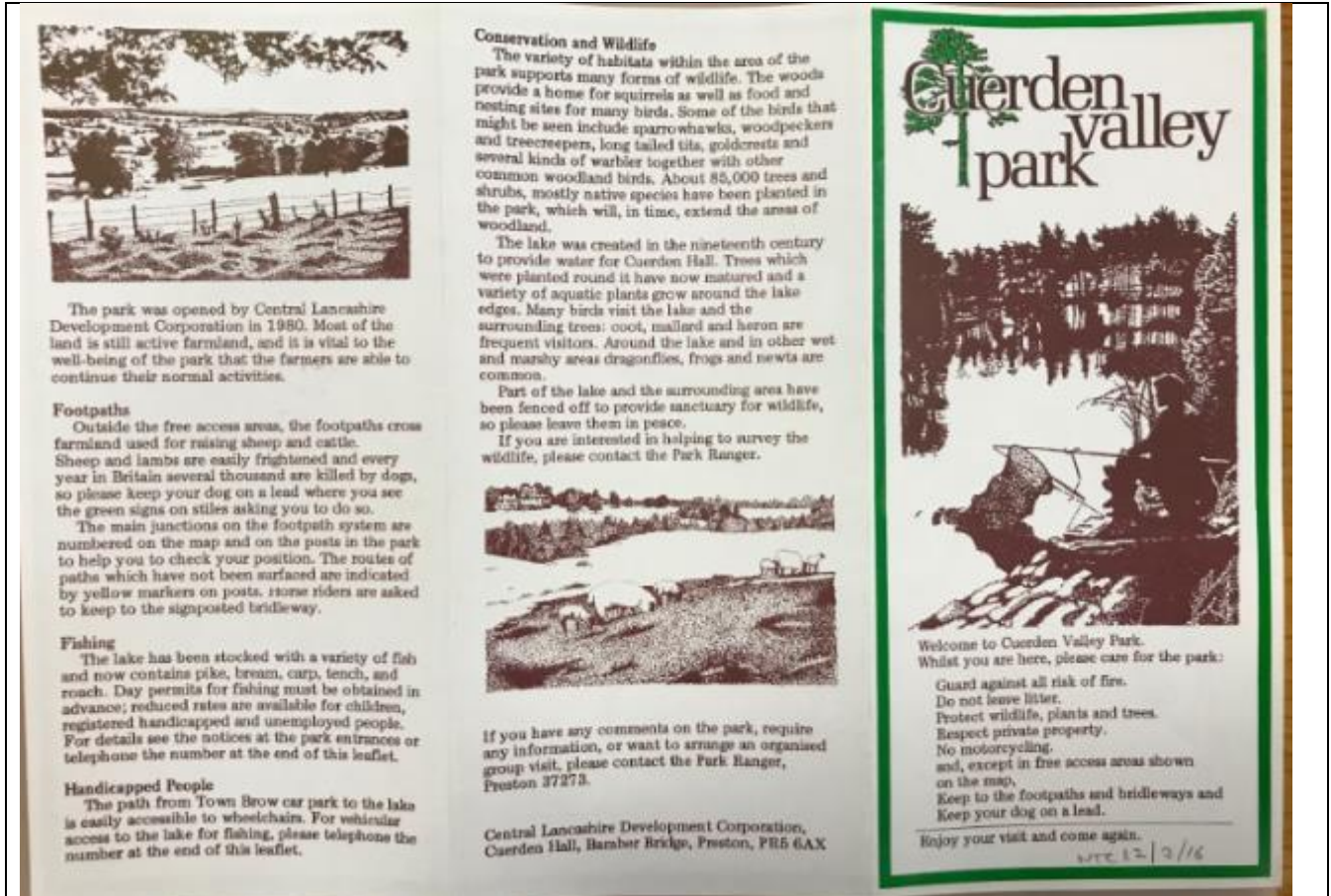
<p>Observations</p>		<p>The application route from point A is shown and the full length of the application route from point A to point F appeared to be accessible. A lodge is shown at the entrance onto Berkeley Lane from Shady Lane with houses built to the north of Berkeley Lane accessed from a different point off Shady Lane from which it was possible to access the application route at point C. The Cinder Path is still shown crossing under the application route at point B.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed by 1963 and appeared to be capable of being used.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The application route can be seen from point A leading to Cuerden Hall through point D. Tree cover means that most of the route from point D through to point F is not clearly visible.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights, but the aerial

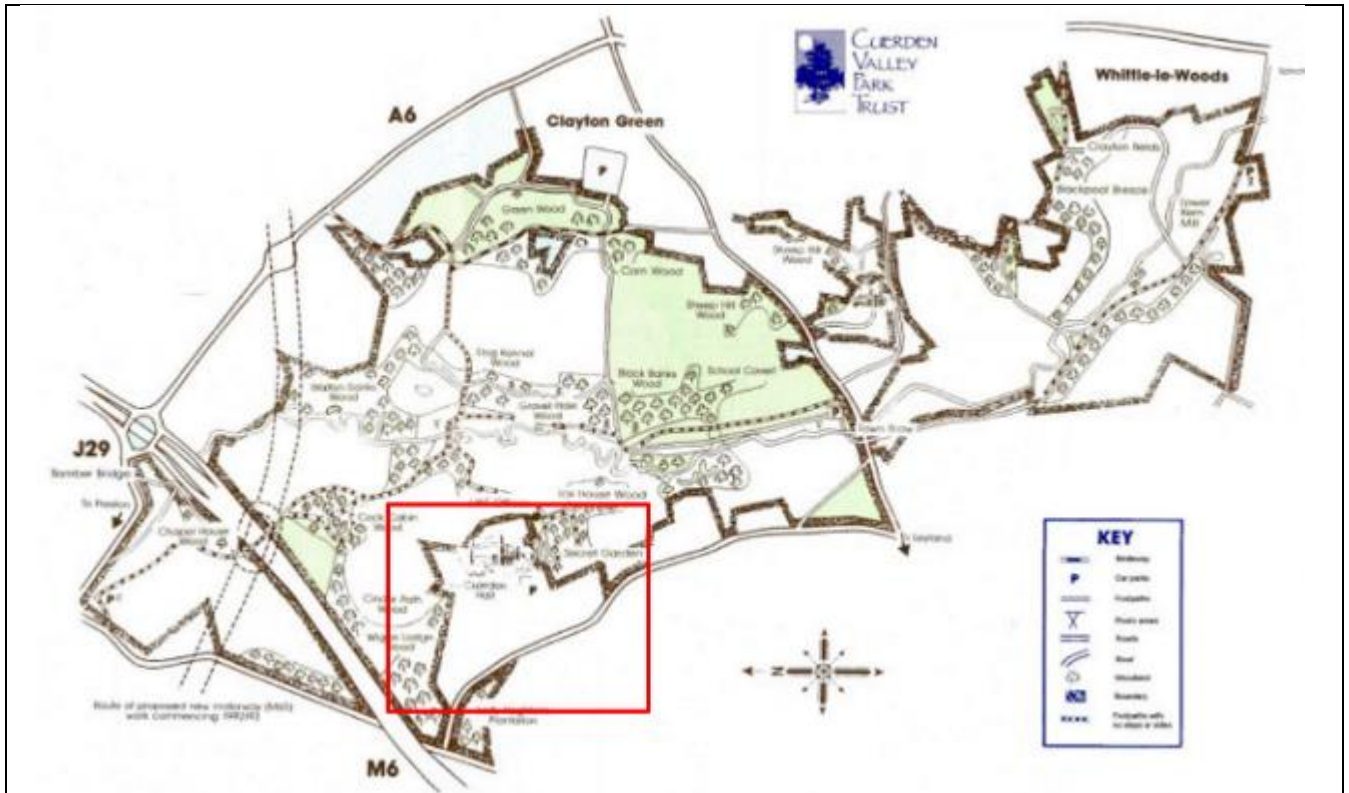
		photograph shows that the work to divert Shady Lane and provide a new access onto the roadway leading to Cuerden Hall had been completed by the 1960s.
<b>Cuerden Valley Park Leaflet</b> CRO Ref: NTC12/3/16	Undated	Cuerden Valley Park leaflet published by the Central Lancashire Development Corporation





Observations		<p>A leaflet published by the Central Lancashire Development Corporation was found in the County Records Office. Whilst undated it explains that Cuerden Valley Park was opened in 1980 and includes a map of the park showing the park boundary and private property.</p> <p>The application route is not shown on the map and Cuerden Hall is shown as being private property. A number of routes described as footpaths and bridleways are shown within the park together with free access areas but no part of the application route is shown.</p>
Investigating Officer's Comments		<p>The creation of Cuerden Valley Park did not include the land crossed by the application route in the late 1970s-early 1980s and access to or past Cuerden Hall and along the application route was not promoted as being available as part of Cuerden Valley Park at that time.</p>
Cuerden Valley Part Trust Site Plans		<p>Two site plans showing the boundary of Cuerden Valley Park were located on the internet.</p>





1992 Site plan

**The Wildlife Trust for Lancashire, Manchester and North Merseyside**  
 Head Office: The Barn, Berkeley Drive, Bamber Bridge, Preston PR5 6BY  
 tel: (01772) 324129 fax: (01772) 628849 email: info@lancswt.org.uk website: www.lancswt.org.uk

**cuerden valley park map**

**Location**  
 South of Preston and north of Chorley. Easy access from junctions 28 and 29 on the M6 and junctions 8 and 9 on M61. Car parking as shown on the map. Regular bus service from Chorley and Preston along the A6. Nearest railway stations at Bamber Bridge and Leyland.

**Access**  
 Open at all times with car parks and network of paths. Access for the disabled: because of the topography, some paths are stepped but all the kissing gates are large enough for wheelchairs. The track from Town Brow to the picnic area for the lake is along level ground. An electric scooter is available for use within the Park Monday to Friday. Information can be obtained from the Barn, Trust headquarters and visitor centre. Vehicle access to the lake for disabled anglers (and others) can be arranged.



**map key**

- Roads
- Track
- Motorway
- Public Path
- Reserve Boundary
- Water
- P Parking
- E Reserve Entrance
- Brackleshed Woodland
- Coniferous Woodland
- Dry Grassland
- Marshy Grassland
- Viewpoint
- Railway
- Struggle
- Salterns
- Salterns with cordgrass
- Scrub
- Bracken

Undated site plan



Enlarged extract of undated site plan

Observations

The site plans both show the land crossed by the application route as being excluded from Cuerden Valley Park although the second (undated) plan appears to show that the land crossed by the application route between point E and point F was part of the park.

The undated plan was published by Lancashire Wildlife Trust and appears to have been published during the time that the Wildlife Trust managed the site (sometime before 2003).

Investigating Comments	Officer's		Both plans indicate that the land crossed by the application route, with the exception of the route between point E and point D, was not part of Cuerden Valley Park and that the provision of access to the country park did not include use of the application route between points A-E.
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<b>Google Street View Images</b>	2009-2018	Google Street View Images of Point A.
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2009



2015



2018



Sign in place 2020 – Investigating Officer's Photograph

Observations

A series of photographs taken in 2009, 2015, 2018 and 2020 are reproduced above to show access from Shady Lane onto the application route at point A. The three photographs taken prior to the application being submitted all show that access onto the route was available but that signage was clearly present on the stone gatepost at point A. The wording on

		<p>the white sign is not visible but the blue sign on the photograph taken in 2018 could be read and states 'Private Road Access to Cuerden Hall and coffee shop only'. The photograph taken in 2020 looked to be a recently erected sign stating that the grounds owned by Sue Ryder was private and that access was permissive only.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs show that access to the application route was available between 2009 and 2018 supporting the user evidence submitted as part of the application. Signage is evident on the gateposts close to point A and although the wording cannot be seen this also supports the evidence submitted by Sue Ryder regarding the nature of access.</p>
<p><b>Cuerden Valley Park walking trail – Secrets in the Landscape</b></p>	<p>Circa 2009</p>	<p>Copy of a leaflet submitted by the applicant and also referred to in a number of the user evidence forms submitted.</p>



**The trail starts at the large flight of steps in front of the Hall looking north east over the park...**

1 Standing on the impressive flight of steps it is still possible to imagine the full extent of Robert Townley Parker's achievements back in the 19th century. The old maps show the original parkland stretching as far as St Saviour's Church on the A6. The motorways have since cut the park in two - although large parkland trees still survive as a reminder of former times.

2 From the front terrace turn left and follow the Hall driveway (old Wigan Drive) down to the Cinder Path. Look for a small path on the right of the driveway about two thirds of the way down.

3 There is a local tradition that Robert Townley Parker lined this ancient right of way with stone walls to prevent the locals peering into his grounds or being seen by his guests. Behind you is the tunnel that took the path under the old Wigan Drive to Shady Lane. It became known as the 'cinder path' probably because cinders from local boilers were used to make the surface.



5 You can still trace the main drive from Stag Lodge as it curves its way up to the Hall through the grass sward. Young oak trees have been planted, identified by the traditional bar-rail tree guards, to continue the tradition of parkland trees.



St Saviour's

Continue along the track past the younger pine and larch plantation, down to the bridge over the River Lostock. Continue to the picnic area and up the steps to the

the picnic area and up the steps to the

4 Built sometime between 1850 and 1860, the reservoir provided water for the park.



<p>Observations</p>		<p>A leaflet produced by Cuerden Valley Trust in approximately 2009 was submitted by the applicant and referred to by a number of people who completed user evidence forms.</p> <p>The leaflet describes a walk around Cuerden Valley Park starting at the Hall itself and going west along the driveway passing through point D to continue to point B where it then leaves the application route to join the Cinder Path.</p> <p>There is no key to the map and no indication in the leaflet regarding whether access along the application route – or any of the other routes included in the walk – was by right or with permission of the relevant landowners.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The leaflet gives no indication regarding the status of the routes included and whether access was considered to be as of</p>

		<p>right or permissive but none of the paths used are recorded as public rights of way. The fact that part of the application route was included in this leaflet – and other similar walking leaflets and guides referred to by the applicant - supports the information provided by the users regarding the fact that access to the hall and along the application route was available and promoted prior to the route being blocked off in 2020. It does not however indicate that the routes were necessarily public rights of way nor that use of them would necessarily imply the dedication of public rights particularly in the context of the Trust land itself which was set up to promote and encourage public use of the Cuerden Valley Park.</p> <p>With regards to access to Cuerden Hall and the application route then the information provided by the landowners at the time that the leaflets were produced (Sue Ryder) must also be considered.</p>
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<p><b>Cuerden Valley Park visitor information</b></p>	<p>2021</p>	<p>Information available on the Cuerden Valley Park website with specific reference to a downloadable map of the park.  <a href="https://cuerdenvalleypark.org/about-the-park/">https://cuerdenvalleypark.org/about-the-park/</a></p>
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**CUERDEN VALLEY PARK KEY:**

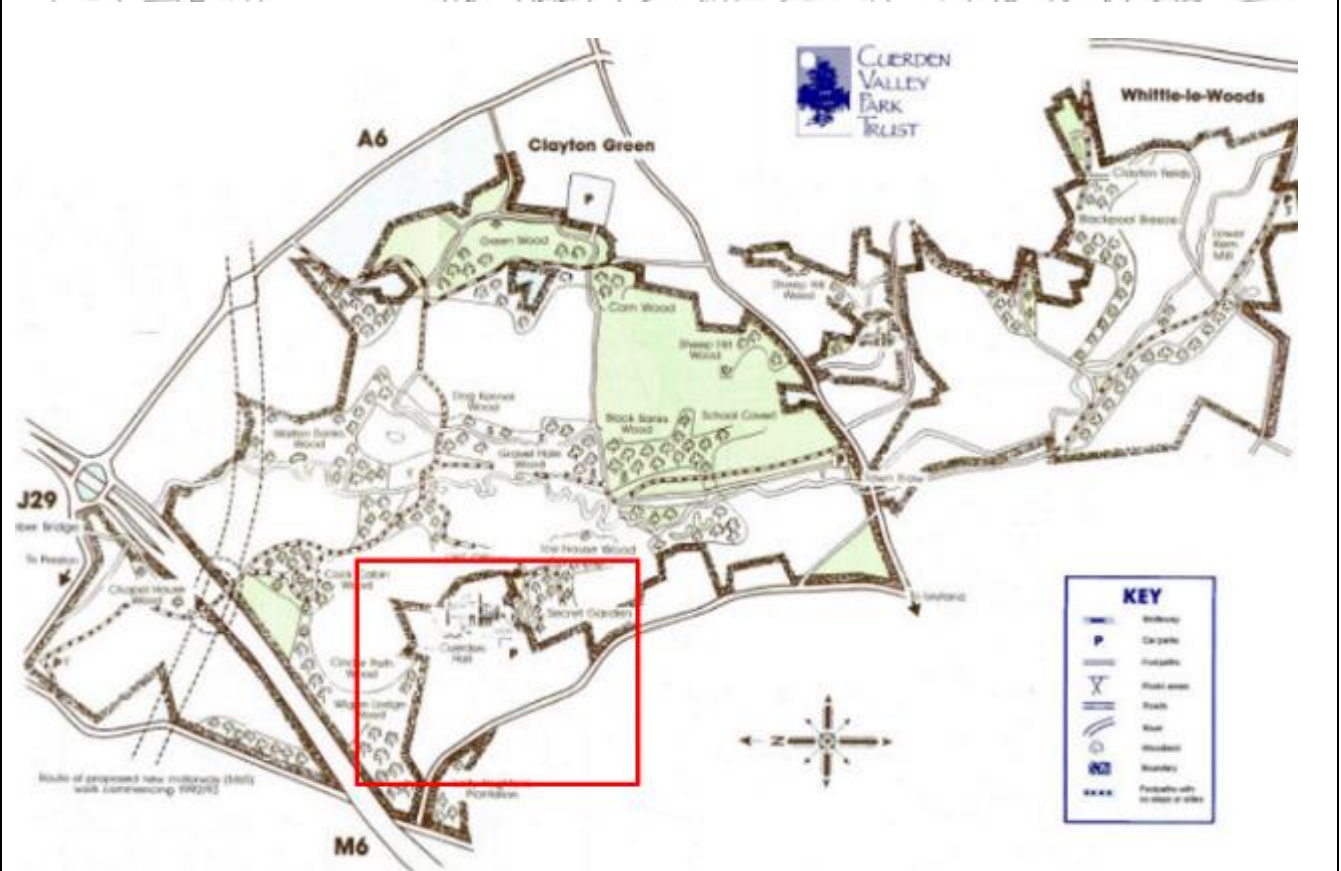
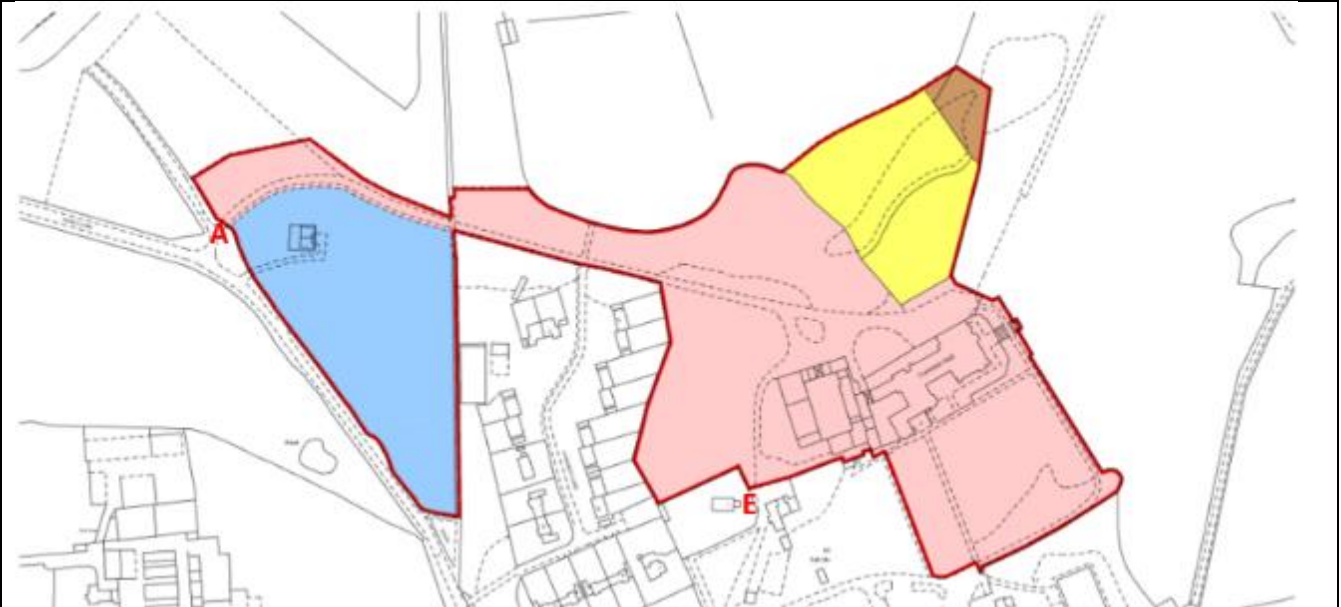
-  Footpath
-  Road
-  Water
-  Grassland
-  Woodland
-  Bridle path
-  National Cycle Way Route 55

Cuerden Valley Park Trust - Registered Charity No. 1002888

Observations

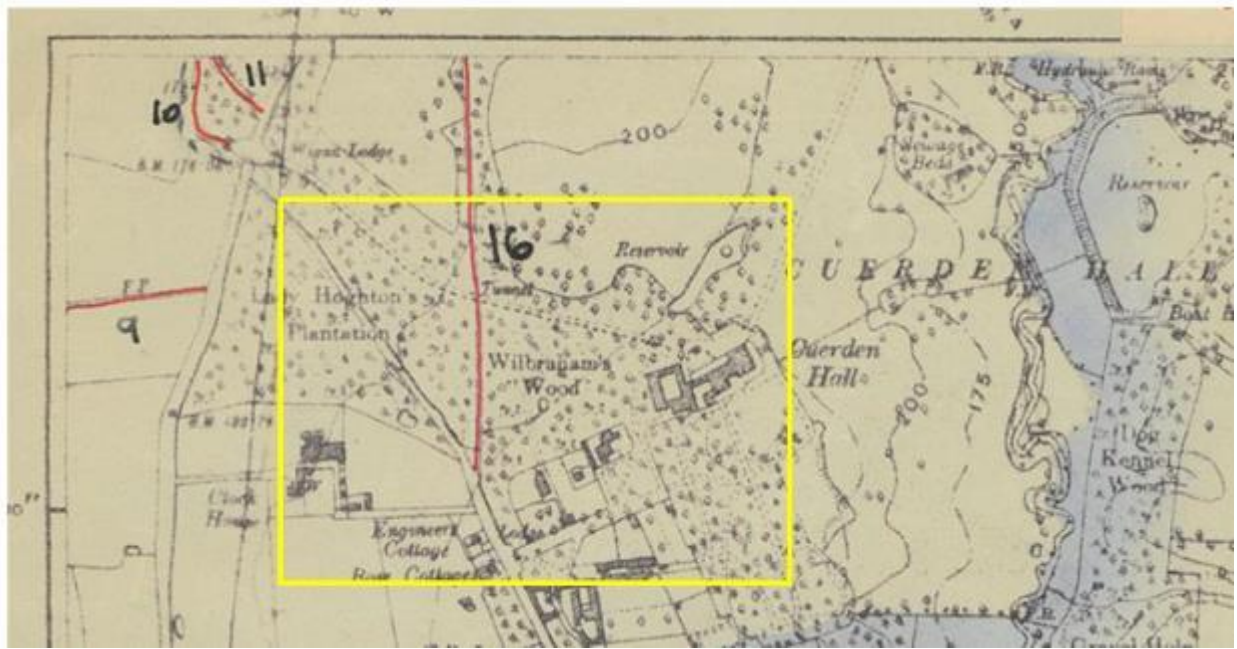
Information taken from the Cuerden Valley Trust website in November 2021 makes it clear that Cuerden Hall is private and not included within Cuerden Valley Park. However, the visitor map available to download shows part of the application route (from point A extending through to just past point C) as a 'footpath' linking to the 'Cinder Path' and also to Cuerden Close which are also shown as footpaths.

Investigating Comments	Officer's	The map does not specify that there are public rights of way along the footpaths marked but it does suggest that access is available to visitors of the park along the routes shown.
Landownership – General Comments		Registered title LA931917 provided by Sue Ryder prior to completion of the sale to the current landowner.



Observations		Ownership of the land crossed by the application route will be covered in more
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		<p>detail by the comments made under Head of Service – Legal and Democratic Services. However, the Land Registry Plan above and the plan showing the boundary of Cuerden Valley park are included as being illustrative of the fact that following the formation of the Cuerden Valley Park in the 1970s there appears to have been a clear split between the use and ownership of Cuerden Hall itself and the grounds that surrounded it.</p>
Investigating Officer's Comments		<p>Limited information has been found about the formation of Cuerden Valley Park Trust but the various maps and plans found, together with the land ownership information are all consistent in showing that the land crossed by the application route – with the exception of the application route E-F – was owned and managed separately to Cuerden Valley Park since the formation of the park in the late 1970s.</p>
<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 *Chorley* PARISH *Cuerden* No. *16*  
 MAP SHEET No. *4* *880 yds* LENGTH *0.53* miles  
 BRIEF DESCRIPTION (Field F.P. or otherwise) *F.P. no 16* (to two decimal places)  
*F.P.*

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
*From Wigan Road Through a Tunnel under The  
 The road from Wigan Lodge to Cuerden Hall and then  
 on to Cuerden Lane  
 The road under the Tunnel is not fit for use  
 It is wet and dirty also stones and rubbish.*

SURVEYED BY:— Name *R.D. Killington*  
 Address *Cuerden Green.*  
 Date

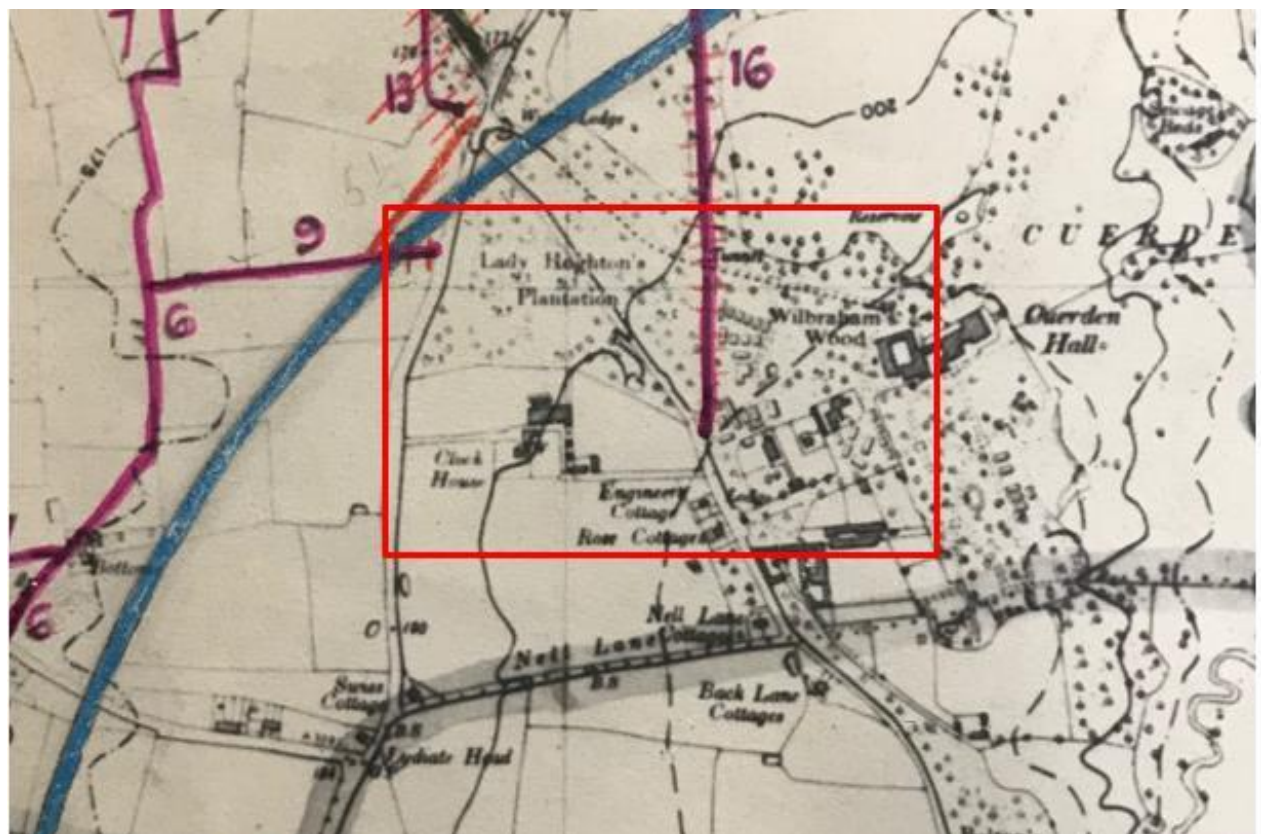
<p>Observations</p>		<p>The application route was not recorded as a public right of way on the parish survey map. The Cinder Path, which passes under the application route at point B, was recorded as a footpath and the parish survey card describes it as passing through a tunnel under 'the road' from Wigan Lodge to Cuerden Hall. There is no reference to this road being public or private.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Cuerden were handed to Lancashire County Council who then considered the</p>

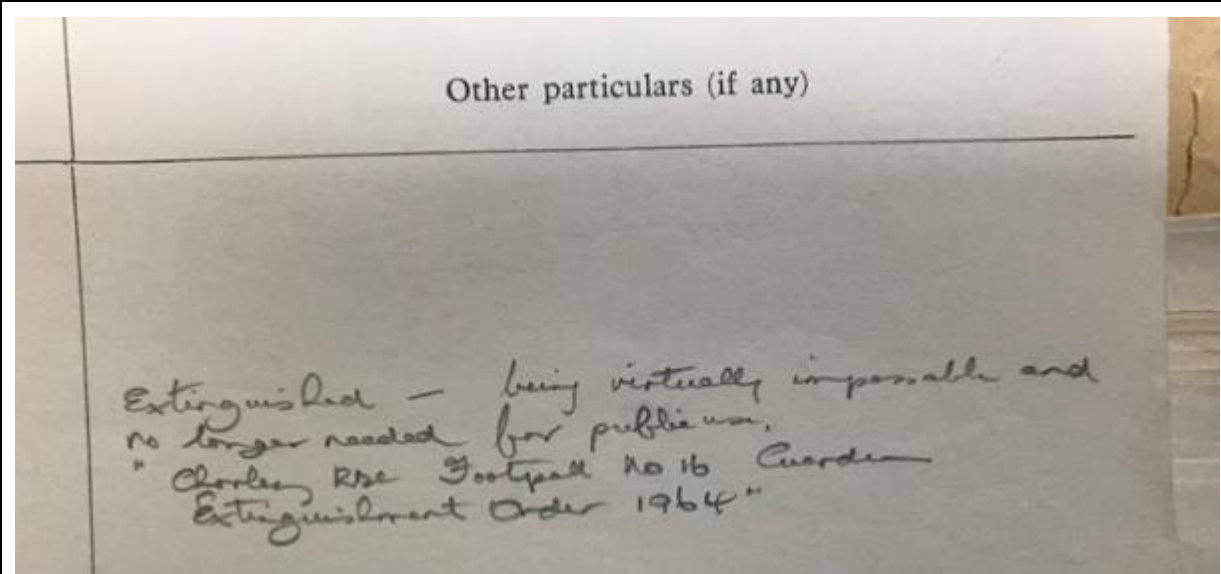
		<p>information and prepared the draft map and statement.</p> <p>The draft maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> 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>
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<p>Observations</p>		<p>The application route is not shown on the Draft Map of Public Rights of Way. The Cinder Path, which passed under the application route at point B, was shown as Footpath 16.</p>
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<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended draft map became the provisional map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The provisional map could not be found in the county councils records.
<b>The First Definitive Map and Statement</b>		The provisional map, as amended, was published as the Definitive Map in 1962.





<p>Observations</p>		<p>The application route is not shown on the First Definitive Map. Footpath 16 – which passed under the application route at point B – was shown on the First Definitive Map but was subsequently legally extinguished as indicated by the fact that it is shown crossed out on the Map and a handwritten note had been added to the Definitive 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>



Administrative County of the County Palatine of Lancaster  
 National Parks and Access to the Countryside Act, 1949  
 Review of Definitive Rights of Way Map  
 Parish of Guddard

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimal	5. Other particulars (if any)
1	Footpath	A.500) near Woodcock Hall to Parish Boundary.	0.12	
2	"	A.500) opposite Stoney Lane to Parish Boundary at Shewley's Cottages.	0.10	
3	"	A.500) past Woodcock and Blackthorn Farm to Stoney Lane.	0.07	
4	"	A.500) at Ighite Lane near Brinkston to Parish Boundary.	0.02	
5	"	A.500) at Ighite Lane near Brinkston to Parish Boundary.	0.10	Not recorded in Parish Council development plan (A.500) Order 1967.
6	"	A.500) at Ighite Lane through Bottoms to join Footpaths Nos. 7 and 7.	0.05	
7	"	From Footpaths Nos. 7 and 6 to Stoney Lane.	0.41	Order submitted by the Parish Council 1967.
8	"	Stoney Lane to Road near Brinkston to East.	0.33	
9	"	Footpaths Nos. 6 and 7 along west side of Motorway to A.47 opposite Sign Lodge.	0.25	
10	Bridleway	From Footpath No. 8 to A.47.	0.27	Order 1967 - Stoney Lane, Order 1967.
11	"	Stoney Lane House along Stoney Lane to join Footpath No. 8.	0.22	
12	Footpath	East Lane past East Farm to road near Guddard Garden.	0.42	
13	"	From Bridleway No. 10-45 A.47.	0.33	Order 1967 - Stoney Lane, Order 1967.
14	"	End of Brinkston Row to Parish Boundary near Woodcock Terrace.	0.33	
15	"	End of Brinkston Row to Parish Boundary	0.31	
16	"	Deleted.		
17	"	From A.47 at Ighite Lane to Footpath No. 6 at Bottoms.	0.05	

Observations

The application route is not recorded as a public right of way on the Revised Definitive Map First Review. The Cinder Path, previously recorded as Footpath 16, which passed under the application route at point B, had been extinguished and is no longer shown on the Map.



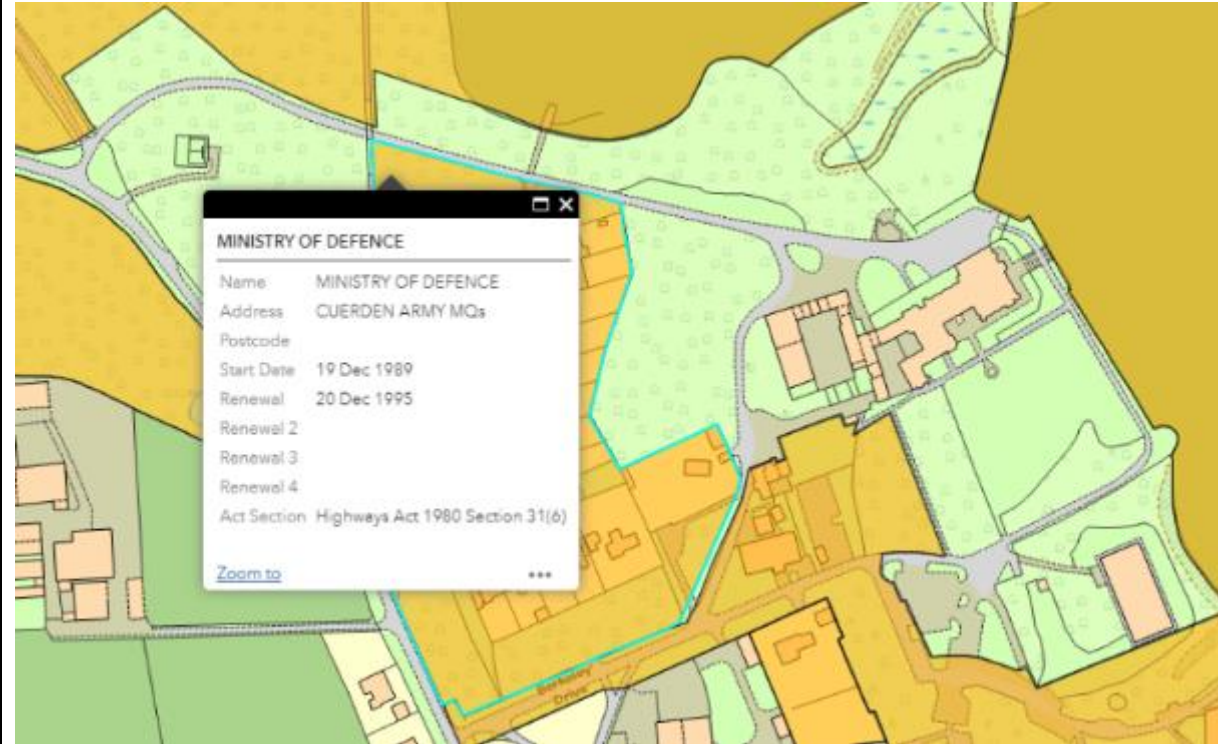
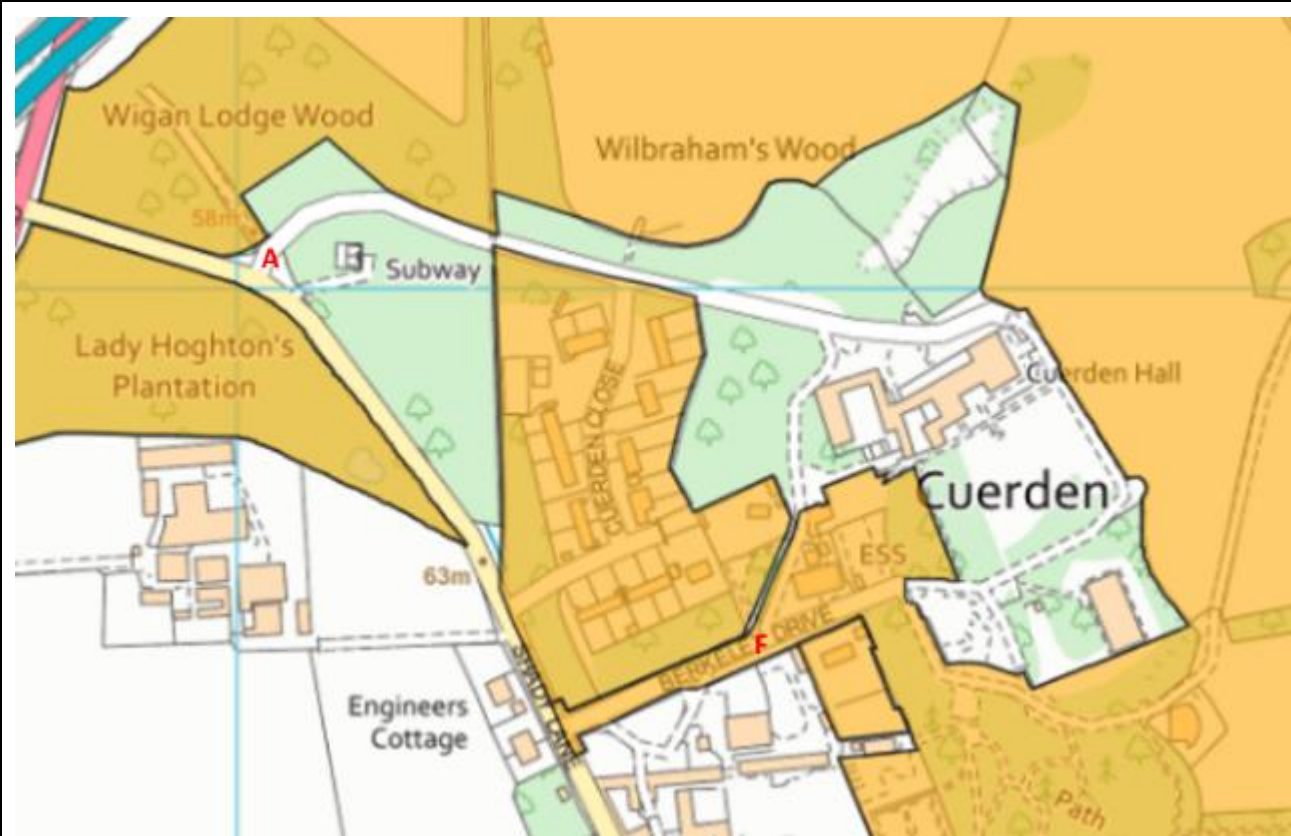
Investigating Comments	Officer's	From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way. There were no objections or representations made with regard to what was shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<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>

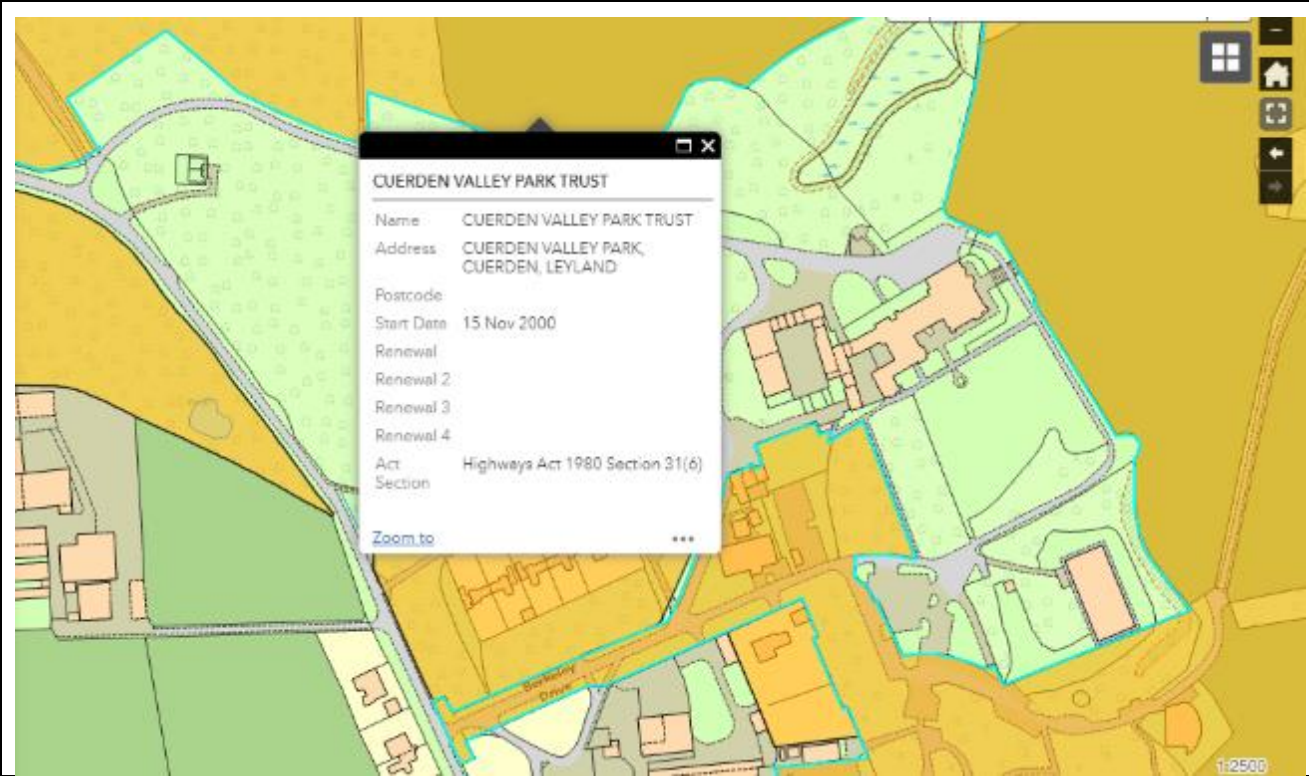




Observations		The application route is not recorded as a publicly maintainable highway on the county council's highway records. It was also noted that Berkeley Drive – on which the application route starts/finishes at point F – is not recorded as a public highway.
Investigating Officer's Comments		<p>The 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.</p> <p>The application route is shown to end on Berkeley Drive (point F) requires further consideration with particular reference to the analysis of the user evidence and ownership of the land held by Cuerden Valley Trust. Should the application be accepted on the face of it the route appears to be a dead end – with no recorded public access to or from point F. However, Berkeley Drive is owned by Cuerden Valley Trust and provides direct access from Shady Lane to Cuerden Valley Park and in particular the visitor centre, car park and café. Consideration as to whether Berkeley Drive can be construed as being 'a place of public resort' can be found in the Legal and Democratic Services section of this report.</p>
<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 legal orders relating to the creation, diversion or extinguishment of public rights along the application route 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>





<p>Observations</p>		<p>Between point A and point E 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>Between point E and point F records indicate that the land crossed by the application route is owned by Cuerden Valley Trust. The Trust submitted a plan and made a statutory declaration dated 15 November 2000 for land comprising of Cuerden Valley Park – including the land crossed by the application route between point E and point F. They did not acknowledge the existence of a public right of way along the application route.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>From point A to point E there is no indication by the current or previous landowners under this provision of non-intention to dedicate public rights of way over this land.</p> <p>Between point E and point F there is a clear indication from the owners of the land that they did not acknowledge the existence or intend to dedicate the application route between point E and point F as public rights of way from 15 November 2000 onwards.</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.

## **Summary**

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

The map and documentary evidence does support the user evidence submitted with regards to the fact that a route physically existed and appeared to be capable of being used possibly from the early 1960s onwards.

Whilst it is understood that the Hall was used by the Central New Town Development Corporation as offices from 1977 through to 1986 before being sold to Sue Ryder it appears clear that the Hall and land crossed by the application route between point A and point E was held separately to the land which was transferred to the Cuerden Valley Trust to become Cuerden Valley Park and that the provisions relating to public access through the park did not extend to the immediate grounds around the hall and land sold to Sue Ryder in 1986.

It appears that the route was probably accessible during the period of time during which the user evidence detailed below relates to and was included in a number of leaflets detailing walks around Cuerden Valley Park but no specific references were found detailing the route to be considered to be a public right of way and the land crossed by the route was in fact marked up as being private and outside the boundary of the park on a number of maps examined.

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

At point E the application route ends on Berkeley Drive which it was noted is not recorded as a public right of way or publicly maintainable highway. Berkeley Drive provides access to Cuerden Valley Park and is owned by Cuerden Valley Trust.

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

### **Landownership**

From point C to point E the application route crosses land which was in the ownership of Sue Ryder, this has now been sold to the Shenton Group. From point E to point F the application route crosses land owned by Cuerden Valley Park Trust.

### **Information from the Applicant**

In addition to the documentary evidence already discussed a total of 19 users submitted user evidence forms in support of the application. Not all followed a consistent route which may account for some of the inconsistencies.

## Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1969 and up to 2019 when the application to record the right of way was made.

The Landowner Statement regarding the section of the application route marked E-F was lodged in 2000 affecting the ability to evidence an intention to dedicate, this is detailed in the Conclusion section of the report.

This pushes the 20 year period during which public rights can be established through use as of right back to 1980 to 2000. Looking at those users who record using the route prior to or beginning in 1980 one user recorded use beginning circa 1980. Two users noted use beginning in the 1970s and another recorded that their use began in 1969. There is therefore evidence of use by only four members of the public in 1980. All four of these users record use of the route through until 2020.

## Method of Use

All users recorded use on foot, two recorded additional use on pedal cycle, two recorded additional use on pedal cycle and by car. One user only recorded additional use by car, one recorded additional use on horseback, one recorded additional use in a horse drawn vehicle.

## Frequency of Use

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

Daily	Weekly	Monthly	Every few months
7	6	3	3

Frequency of use varied for those using the route by other methods in addition to use on foot. Two users recorded use every few months by pedal cycle, another two recorded use by pedal cycle every few months. Of those users recording use by car one recorded daily use, one recorded weekly use, the third recorded use every few months. The user recording use on horseback noted daily use and the user recorded use by horse drawn vehicle recorded weekly use.

## Reasons for Use

Reasons for use were generally leisure and walking for pleasure. Dog walking was mentioned by four users. One user noted leading health walks, another noted access to Cuerden Valley Park. A third user noted nature photography as a reason for use.

## Other Users of the Route

All but one user recorded seeing use by others. This user did not specify.



Method of use by other users:			
Foot	Foot, pedal cycle/horse drawn vehicle & motorised vehicle	Foot, horseback, pedal cycle/horse drawn vehicle & motorised vehicle	Foot, horseback, pedal cycle/horse drawn vehicle, motorised vehicle & prams and/or wheelchairs
6	5	4	3

One of those users recording use by motorised vehicles specified that these were Cuerden Park maintenance vehicles and/or farm machinery. One of those users specifying use by wheelchairs noted that the users were residents of Sue Ryder.

#### Consistency of the Route

The majority of the nineteen users stated that the route had always followed the same route, of those two users stating that the route had not always followed the same course one noted that it was altered at some point to make way for a car park. Another noted that the length of the route has been affected by the M65 extension.

Has the Application Route Always Followed Same Course?		
Yes	No	Don't know
16	2	1

#### Unobstructed Use of the Route

Five of the nineteen users recorded having been prevented from using the route, this related to the fencing recently erected by the new landowner.

Five users noted signs, those who specified details recalled signs erected by Sue Ryder allowing use of the grounds.

Two users recorded gates along the route giving access to the gardens, they also noted gates at the carpark which were never locked. One user noted gates to the courtyard of the hall which were always locked due to vandalism. Another user noted a gate 180 yards from the drive. Another user noted a 'pedestrian gate' which was always unlocked.

Three users noted having permission to use the route though this stemmed from signs erected by Sue Ryder. One user did not note official permission but noted that they were a volunteer for Cuerden Valley Park.

#### Information from Others

County Councillor Mark Clifford responded to consultation to state that he is "in favour of the addition of the footpath from Shady Lane to Berkeley Drive, Cuerden." Councillor Clifford also noted the support of local residents.

#### Information from the Landowner

Cuerden Valley Park Trust (CVPT) responded to consultation to confirm the land in their ownership. And went on to note; "It is clear that the Trust has always been aware

that the access to its land to the north of the driveway to Cuerden Hall has been across the land owned by Sue Ryder, as identified in the application and in more recent years it has been signed as a permissive access. The trust has used the route on that basis and access has never been requested by CVPT or denied by Sue Ryder, nor were there any formal arrangements for access in place with Sue Ryder.

As we discussed, you are aware that the route has been used during major events for the movement of vehicles and pedestrians from the trust land to the north of the driveway to Cuerden Hall, which is used for event parking, to the Park. In order to ensure the privacy of Cuerden Hall and the safety of the public, this has always been marshalled by CVPT."

Sue Ryder responded to consultation to clarify that the land previously in their ownership has now been sold. They clarified that "as well as allowing members of the public to use the aforementioned footpath to gain access to the shop and the café, Sue Ryder also permitted local residents and dog walkers to walk in the grounds of the property for recreational purposes but Sue Ryder put up posters in various locations (an employee at the premises recalls that approximately 15 were erected in total) advising that the grounds were private but that members of the public could enjoy the grounds subject to keeping dogs on a lead etc. Unfortunately, some local residents / dog walkers felt the need to remove these signs thus necessitating Sue Ryder in having to go to the trouble and expense of replacing them periodically."

Sue Ryder clarified that it had come to their attention that some members of the public were abusing the permissive right to use the property, as a result, a further sign was erected stipulating:

'These grounds are private. Sue Ryder allows members of the public to enjoy the grounds whilst we are the proprietor of the building provided that:

- (1) Dogs are kept on a lead;
- (2) Dog mess is cleared up;
- (3) No litter is dropped;
- (4) Consideration is shown to the residents and staff at Cuerden Hall;
- (5) Cars are parked on the pay per go car park owned by Cuerden Valley Park and not on the grounds of Sue Ryder.

The grounds are entered entirely at your own risk and Sue Ryder is not liable for any injury, damage or loss incurred to you or your property whilst accessing the grounds.'

Photographs of these signs were provided.





Shenton Group advised that there "are no existing PROWs, simply a previous permissive path which was closed in 2019." They went on to clarify the current situation on the ground with works progressing on Cuerden Hall and state strong opposition to the application.

## Conclusion

The application is that this route is already a footpath in law and should be recorded as such on the Definitive Map and Statement.

There is no actual dedication document and so Committee 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.

Looking firstly at common law – it is noted that the filing of a Landowner statement by the Cuerden Valley Trust in 2000 would indicate their lack of intention to dedicate (section E-F). This is in effect stated again in their response to this claim detailed above. Without section E-F it is the case that this route would not be a route from highway to point of public resort and it is advised that to be able to infer an intention to dedicate by such a landowner of E-F at common law would be difficult. The Trust has owned E-F since 1997 having been transferred by Commission for New Towns.

Turning to S31 the filing of the landowner statement is indeed sufficient to demonstrate a lack of intention to dedicate on an important section of this route and calls it into question. S31(6) says that such a declarations "*are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his*

*successors in title to dedicate any such additional way as a highway.*" The user to be relied on would therefore have to be sufficient for the full twenty years before the declaration – that is throughout 1980-2000. In 1980 there is evidence from four users and numbers are still not large by 2000. Public use would have to be sufficient to be more than trivial and sporadic. It is suggested that the use here is not sufficient in particular in the early part of that period when the hall was headquarters for the New Town Development Corporation and there is therefore not sufficient use from which to deem a dedication under the strict provisions of S31.

The availability of the route after 2000 is not relevant. The landowner statement had protected the land from public use developing into highway.

The difficulties in finding dedication by the Trust of E-F would affect the whole application route. A-E has had some use and it would appear that signage indicating lack of intention on that section are relatively recent but without E-F the route is not able to be recorded as a highway.

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

### **Risk management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-697		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



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356100.000000

356200.000000

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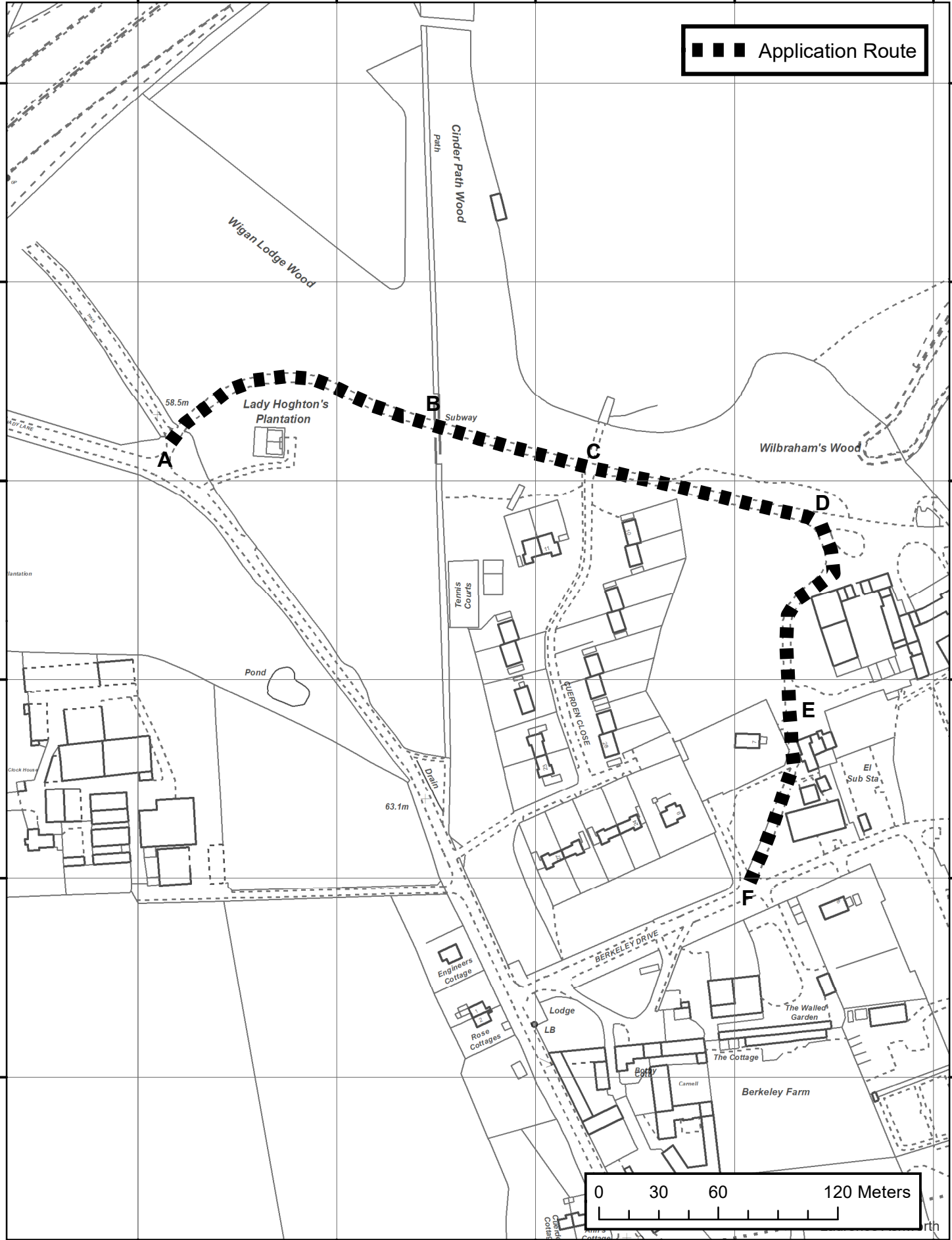
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Application Route



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356400.000000



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

Wildlife and Countryside Act 1981  
Addition of Footpath through the grounds of Cuerden Hall, Cuerden

1:2500

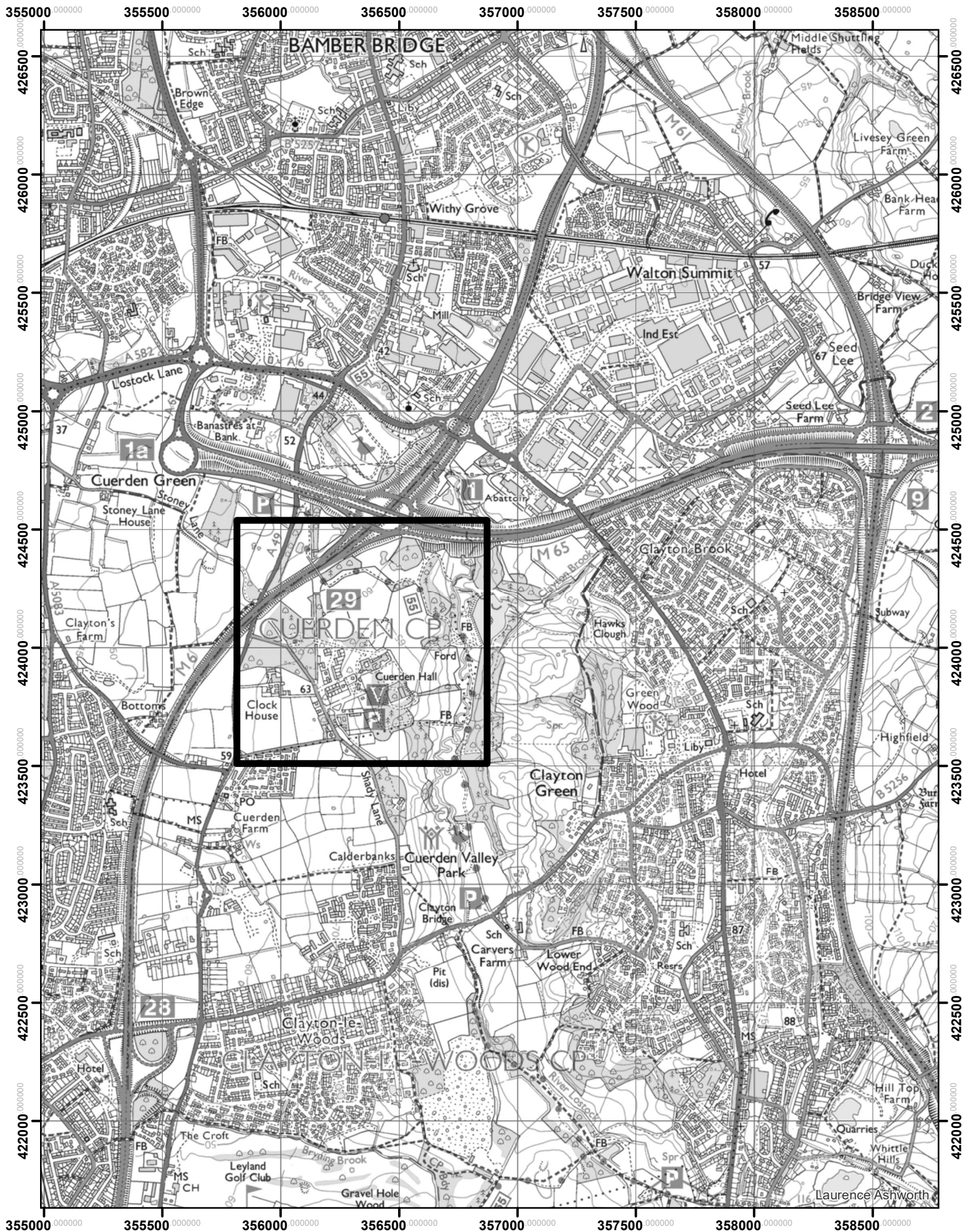


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Public Rights of Way  
 PROW@lancashire.gov.uk  
 01772 530317

Wildlife and Countryside Act 1981  
 Addition of Public Footpath from Shady Lane around Cierden Hall to Cierden Valley Park  
**LOCATION PLAN**

1:20,000



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## Regulatory Committee

Meeting to be held on 10<sup>th</sup> August 2022

### Part I

Electoral Division affected:  
Ribble Valley North East

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

(Annex 'A' refers)

Contact for further information quoting reference 804-700:

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

Application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Mitton Road to Calderstones Drive, Whalley.

### Recommendation

- (i) That the application for the addition of footpaths from Mitton Road to Calderstones Drive, Whalley be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpath sections from Mitton Road to Pendle Drive and from Pendle Drive to Calderstones Drive as shown on Committee Plan between points A-B-C, D-E-F and E-H.
- (iii) That following the order making and notice period the matter be returned to Committee to decide what stance to take regarding confirmation.

### Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record on the Definitive Map and Statement of Public Rights of Way a footpath from Mitton Road to Calderstones Drive, Whalley.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

## **Consultations**

### Ribble Valley Borough Council

Ribble Valley Borough Council did not provide an official response to the consultation.

### Whalley Parish Council

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

### Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7266 3755	Junction with Mitton Road
B	7263 3755	Rear (NW corner) of 32 Bridge Terrace
C	7261 3735	Junction with Pendle Drive (north side)
D	7261 3734	Junction with Pendle Drive (south side)
E	7257 3716	Bollards across the route restricting vehicular access
F	7255 3713	Junction with Calderstones Drive footway
G	7255 3713	Junction with Calderstones Drive carriageway
H	7257 3713	Junction with Calderstones Drive footway

### Description of Route

A site inspection was carried out in April 2020.

The application route commences at a point on the west side of Mitton Road between the 32 Bridge Terrace and a dismantled railway which ran east-west passing under Mitton Road immediately north of the application route.

At point A there is a wooden fence which has been erected across the start of the application route with a notice attached to the fence stating that there is 'No access'. Immediately behind the fence is a wooden stile with a further sign attached to it stating 'No dog walking, Private Property'.

From point A – beyond the fence and stile – it is possible to see – despite recent overgrowth – a fenced off strip bounded on the south side by a concrete post and wooden panel fence separating it from 32 Bridge Terrace and bounded on the north side by an old iron railing fence separating it from the disused railway. The strip is approximately 1.5 metres wide from point B widening slightly to approximately 2 metres after 25 metres where a second wooden fence has been erected across the route with a west-facing sign reading 'No access'.

Beyond this second fence the route widens to approximately 6 metres at the rear of 32 Bridge Terrace (point B on the Committee plan) where a temporary metal security fence had been erected preventing access east along the application route at point B and running the full length along the rear of the terraced properties known as Bridge Terrace.

From point B the application route continues in a generally southerly direction along a tarmac roadway approximately 4 metres wide which provided vehicular access to the rear of Bridge Terrace and to some garages located on the west side of the route midway between point B and point C. The properties on Bridge Terrace were all

empty when the route was inspected and had been fenced off prior to being demolished as part of a redevelopment scheme.

Street lights were positioned along the west side of the route at intervals and there was open access from the route onto an area of maintained grassland between the application route and the Calderstones housing estate.

Beyond the garages the route is fenced on the west side and streetlights were at intervals along the eastern side of the route.

On approaching point C the route becomes fenced on the eastern side and near Pendle Drive a 'STOP' traffic sign indicating use of the route between point B and point C by vehicles and further signs located on the route (and visible if travelling from point C towards point B) warn vehicles of the presence of pedestrians and that the speed of vehicles should not exceed 15 miles an hour.

At point C the application route meets the northern side of Pendle Drive between properties forming part of the Calderstones NHS Trust.

From the opposite (south) side of Pendle Drive the application route continues from point D in a generally south south westerly direction running along a 6 metre wide tarmac roadway between a low rail at the rear of further Calderstones NHS Trust buildings and security fencing behind Queen Mary Terrace. There are further warning notices regarding the junction of the route with Pendle Drive and there is street lighting at intervals along the west side of the route. The properties making up Queen Mary Terrace had all been vacated and fenced off.

At point E five bollards had been erected across the route which restricted vehicular access.

Beyond point E the application route split with one route crossing an open tarmacked area which appeared to be used for parking cars, to continue south west along a tarmac roadway approximately 3.5 metres wide to a tarmac footway at point F. Calderstones Drive carriageway is at point G.

The other spur continues in a more southerly direction from point E along the edge of the tarmacked area with security fencing on the east side to pass through a gap in some hedging to meet the tarmac footway running along the north side of Calderstones Drive at point H

The total length of the route is 500 metres.

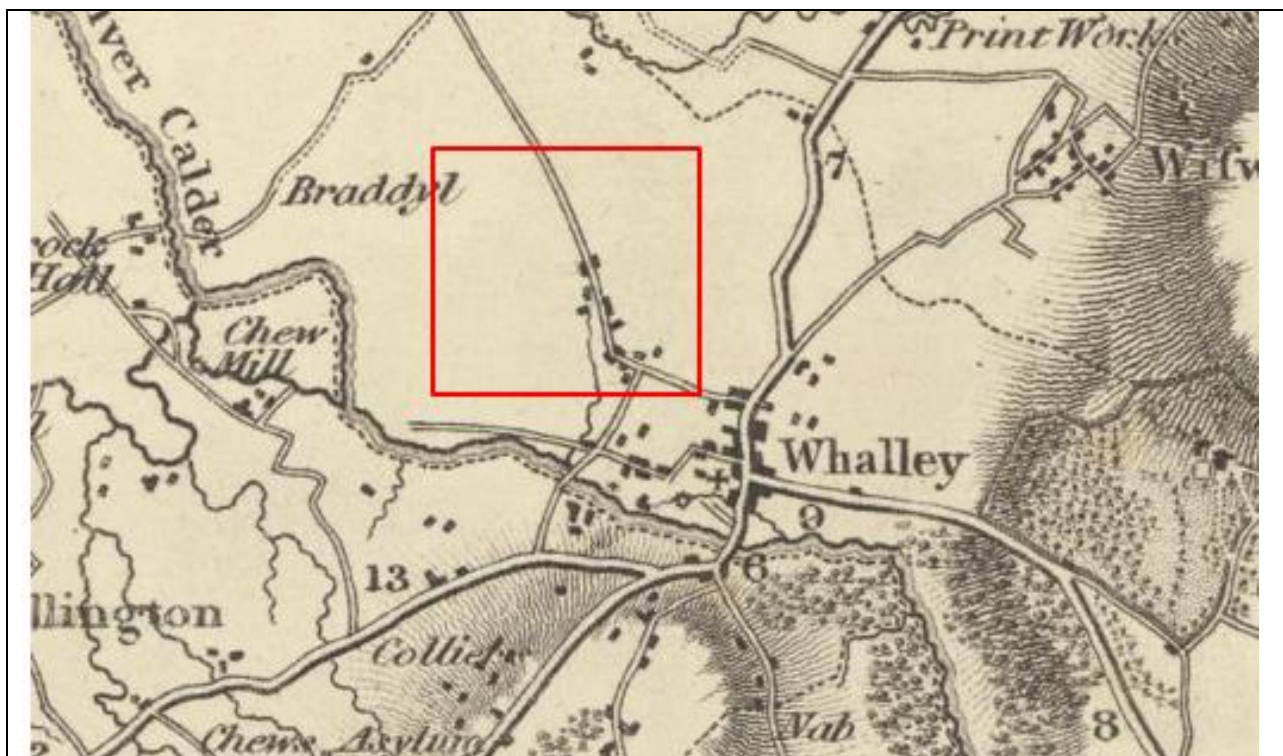
### **Map and Documentary Evidence**

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

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

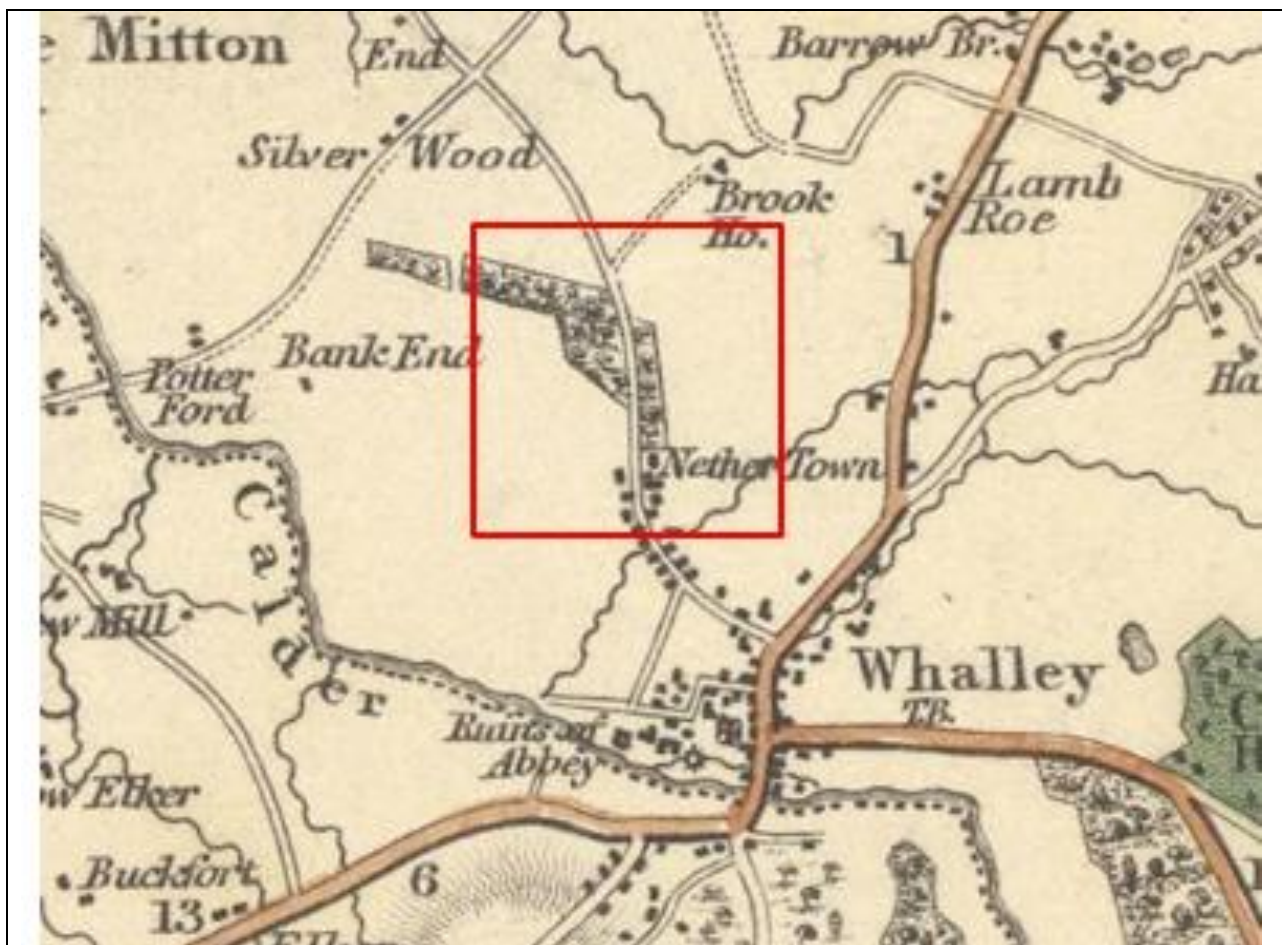


Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely 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.

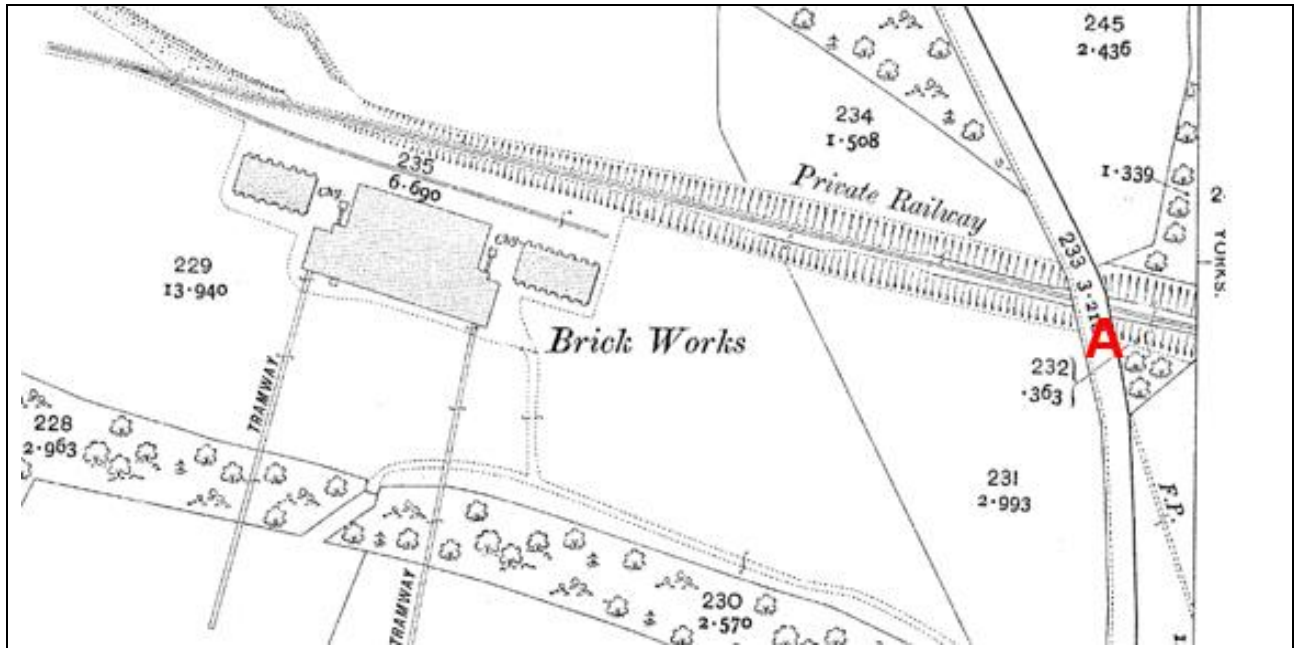


Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1818 or if it did exist, was not considered to be a substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely 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 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.





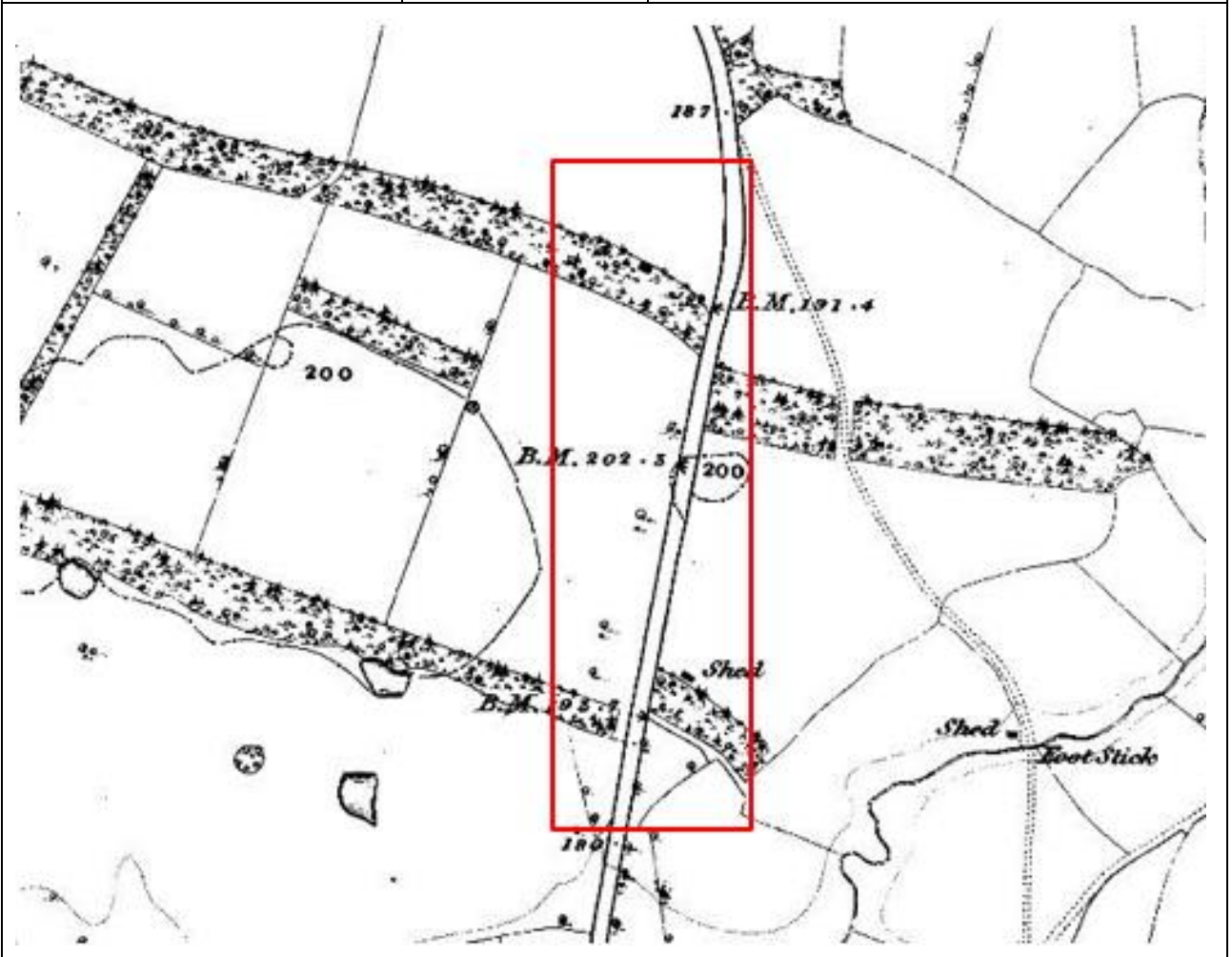
Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830 or if it did exist, was not considered to be a substantial public vehicular route by Hennet. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
<b>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.



Extract from the 25 inch OS Map LV.5 surveyed 1892, revised 1910 and published 1913.

<p>Observations</p>		<p>Between 1892 and 1910 a private railway line was built immediately north of the application route. The railway provided access to a brick works. No records relating to the construction of the railway were found but Ordnance Survey maps detailed later in this report) from before and after the construction of the railway show no part of the application route in existence around the time of its construction.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not appear to have existed prior to the construction of the railway and does not appear to have been constructed at the time the railway was built. It is therefore very unlikely that any records relating to the construction of the railway would assist in this particular investigation.</p>
<p><b>Tithe Map and Tithe Award or Apportionment</b></p>		<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</p>

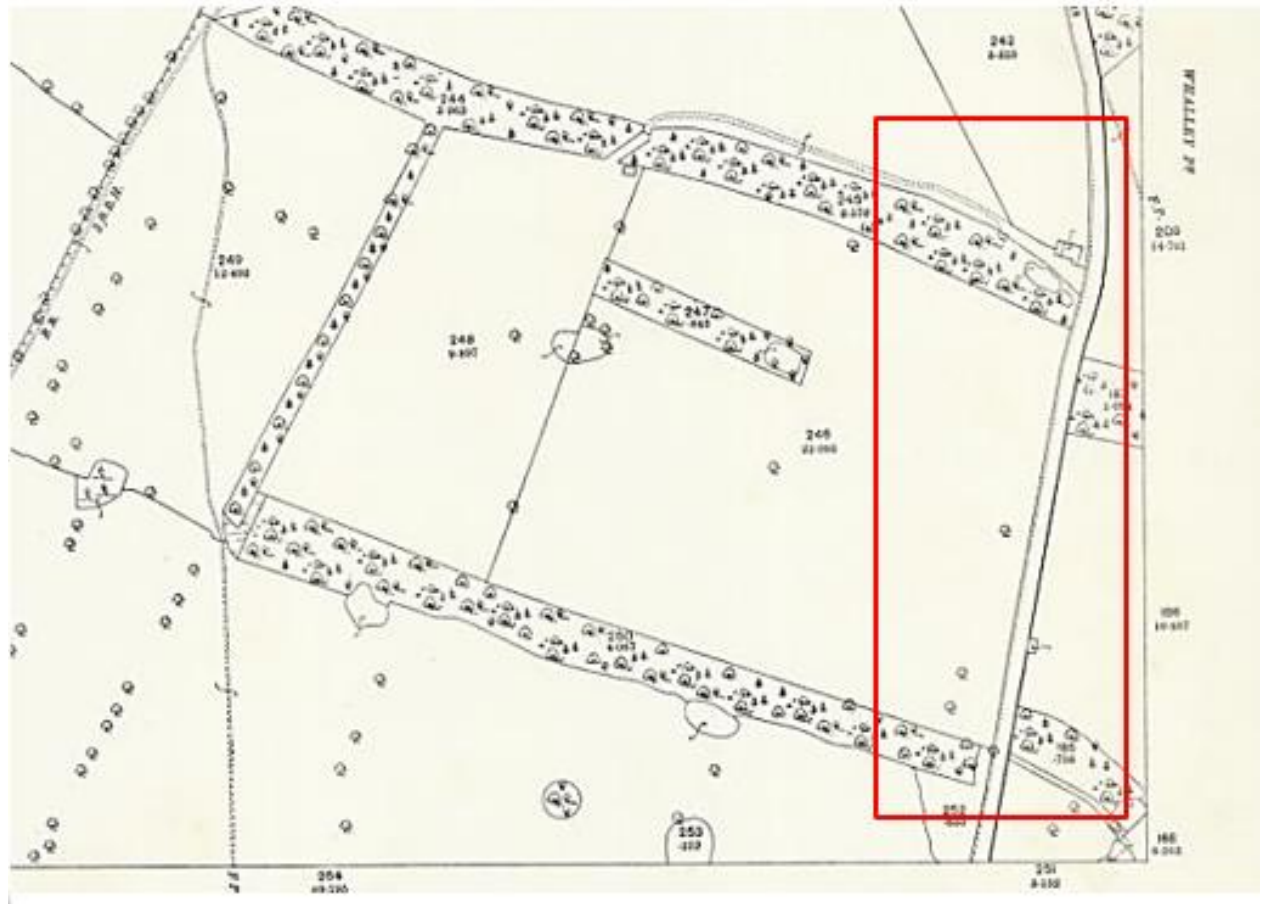
		supporting evidence (in conjunction with the written tithes award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map and Award listed at the County Records Office or The National Archives for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet LV</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>



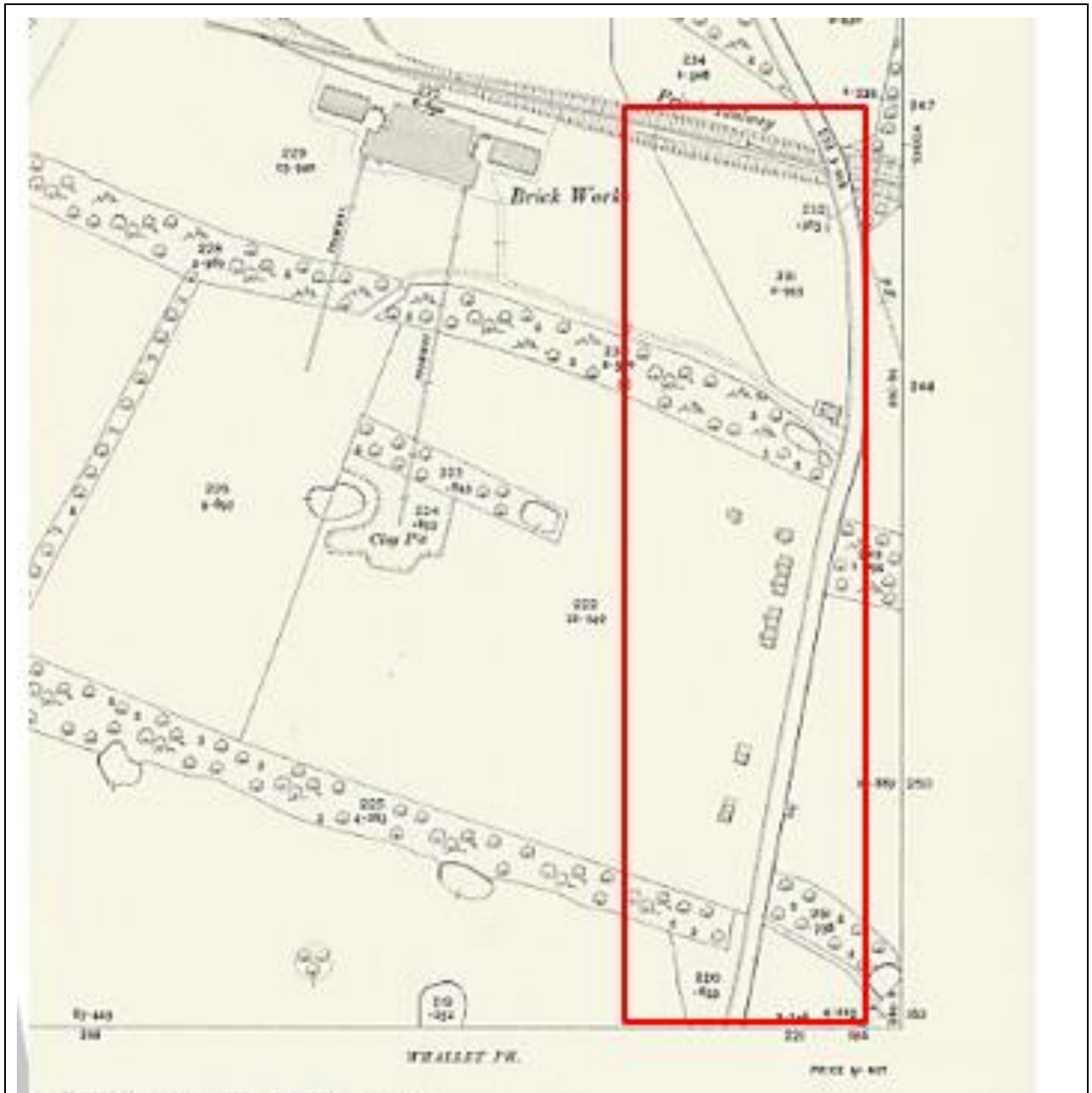
Observations		Mitton Road is shown but the application
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches 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.

		route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1844-46.
<b>25 Inch OS Map Sheet LV.5</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.

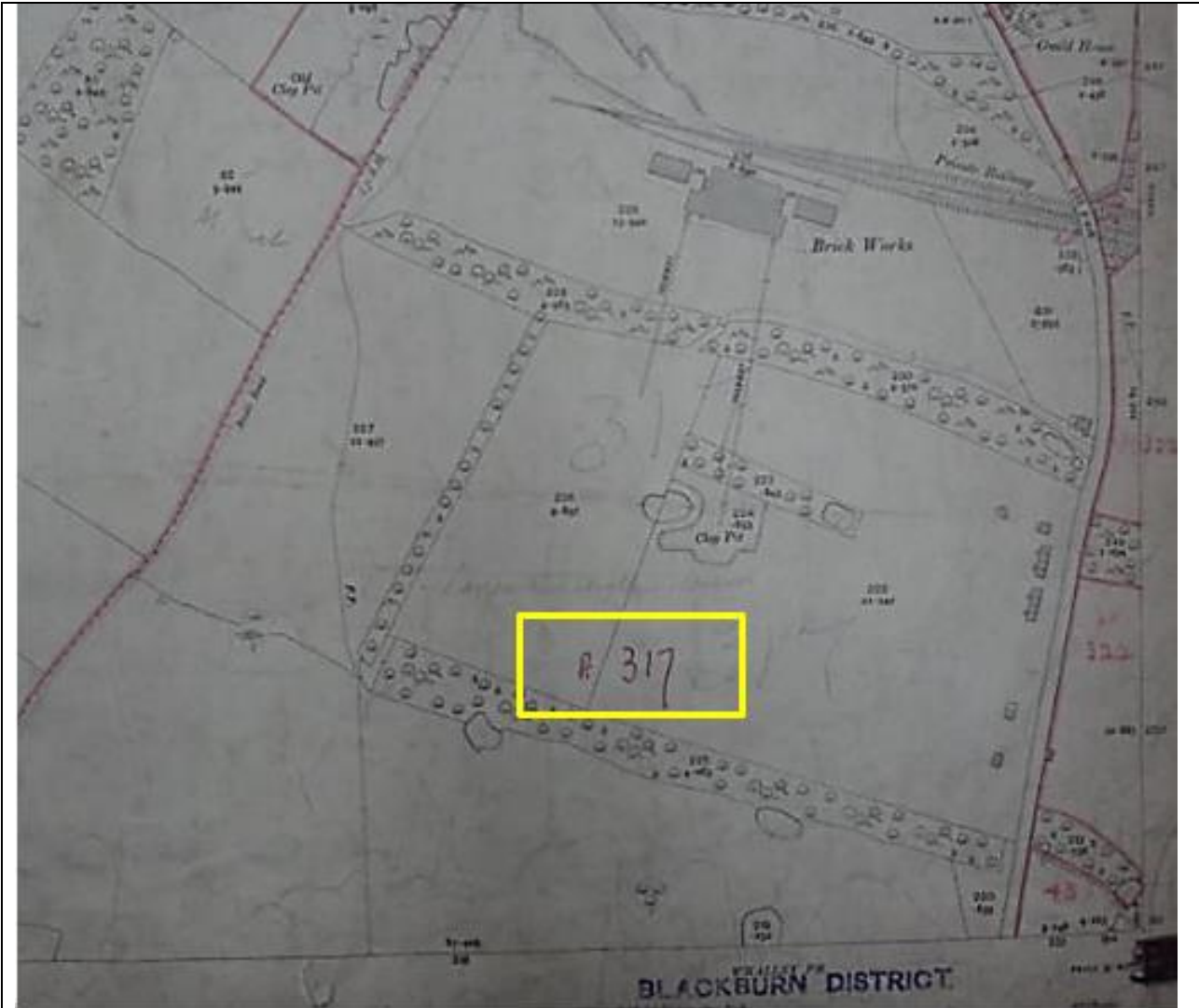


Observations		Mitton Road is shown but the application route is not.
Investigating Comments	Officer's	The application route did not exist in 1892.
<b>25 inch OS Map Sheet LV.5</b>	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.



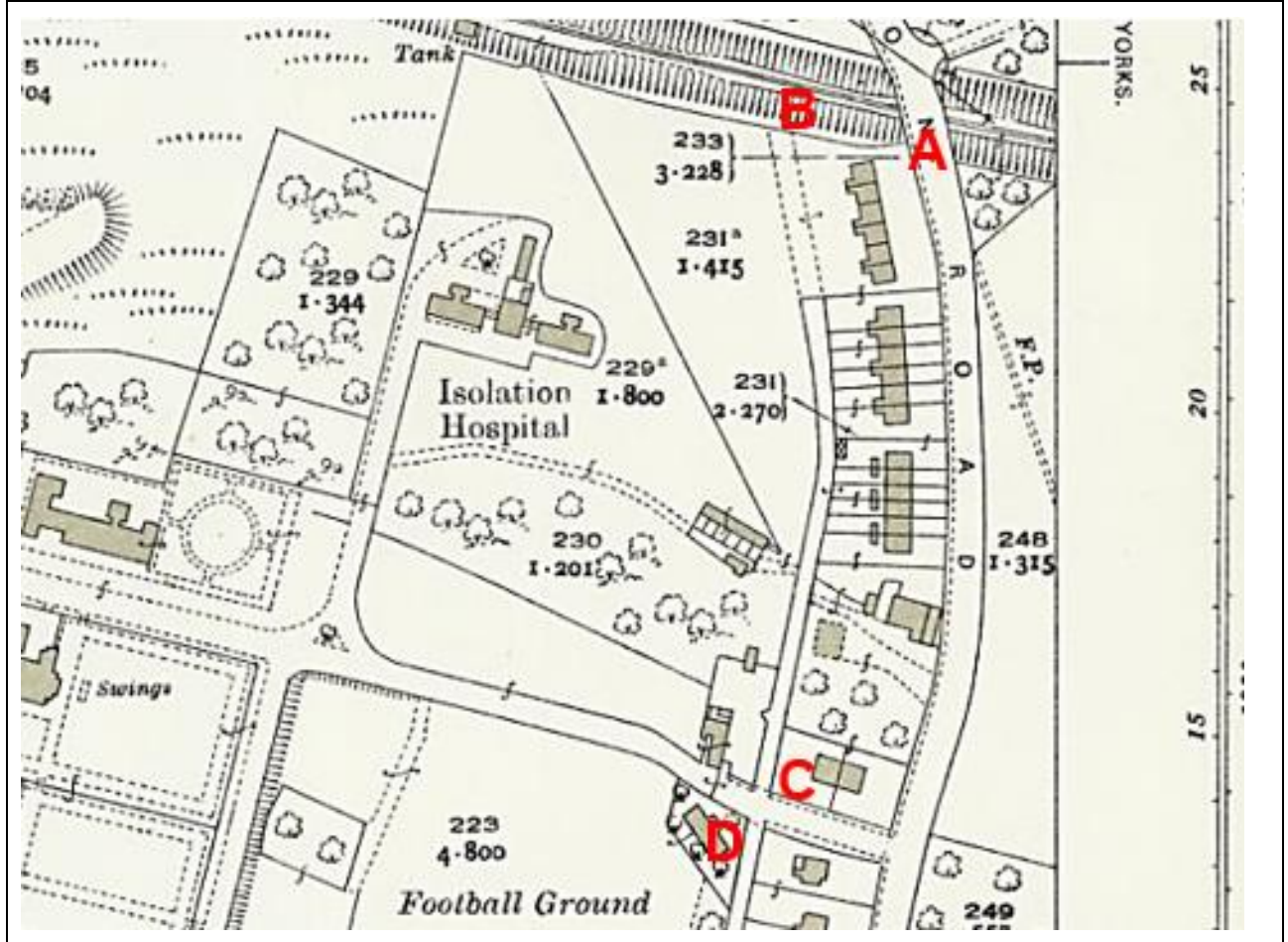
Observations		Milton Road is shown but the application route is not shown. The land crossed by the route has started to see some development. A private railway is shown immediately to the north of the route leading directly to some brick works and some buildings are shown adjacent to Milton Road which appear to have been the first few houses to be built along this stretch of road and which later became known as Bridge Terrace.
Investigating Officer's Comments		The application route did not exist in 1912.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out

		<p>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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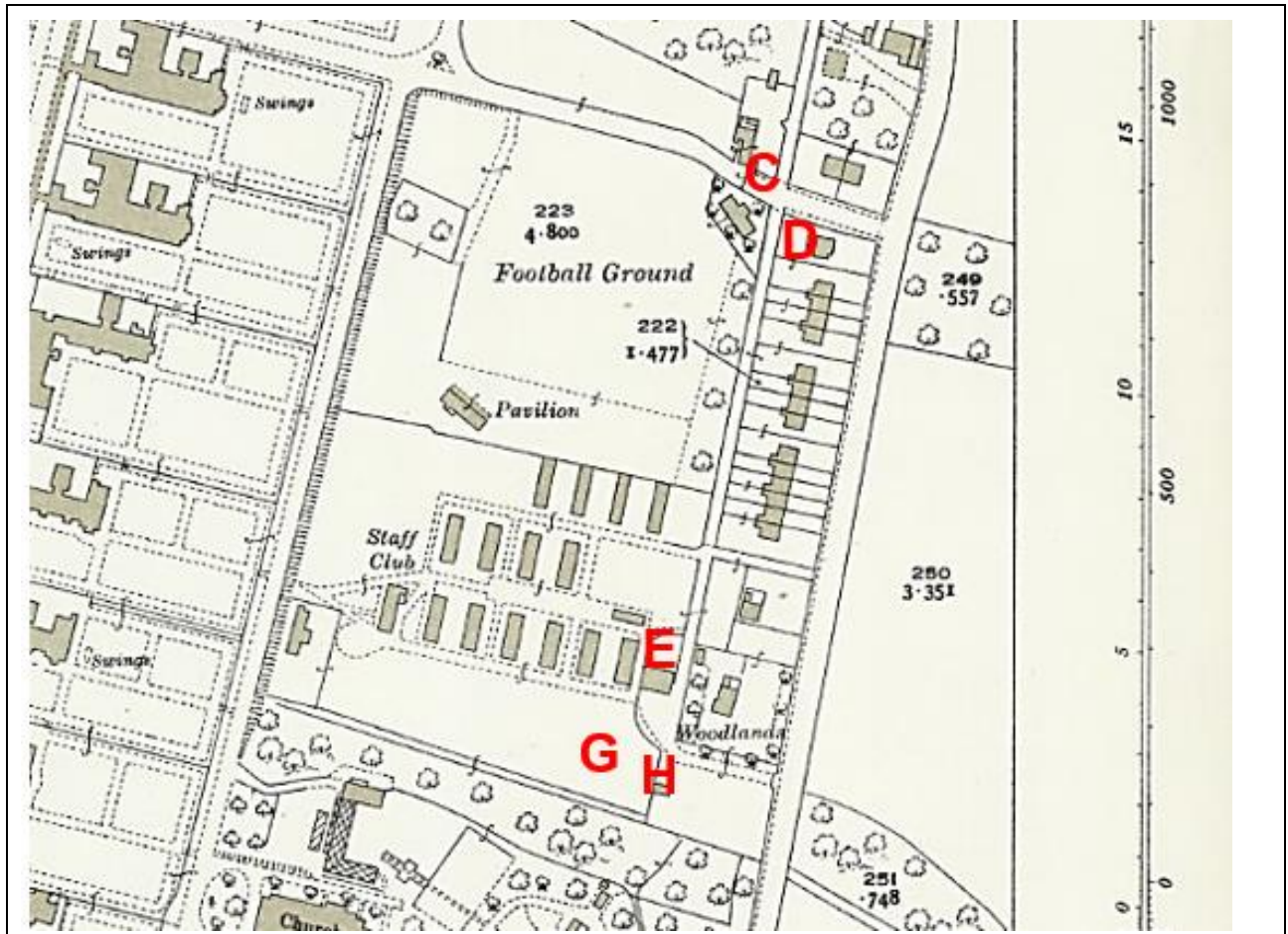


<p>Observations</p>		<p>The application route is not shown to exist on the 25 inch OS base map used for the purpose of completing the valuation.</p> <p>All of the land crossed by the application route is included in a plot numbered 317. The District Valuation Book for Whalley lists the owner and occupier of plot 317 as being Lancashire Asylums Board and describes the land as 'Plantations'. No deductions are listed for public rights of way or user.</p>
<p>Investigating Officer's Comments</p>		<p>In 1910 the land was in the ownership of the Lancashire Asylums Board suggesting that it had been purchased for the construction of the hospital site. No deductions were claimed for public rights of way or user suggesting that no public rights of way existed – or were</p>

		acknowledged to have existed – prior to the construction of the hospital site.
<b>25 Inch OS Map Sheet LV.5</b>	1932	Further edition of 25 inch map (surveyed in 1892, revised in 1929 and published in 1932.







Observations

By 1929 the area crossed by the application route had been developed. A large hospital site is shown which is labelled as being 'Calderstones Institution (Mental Defections)' on the map. The hospital itself appears to be largely to the west of the application route with two access roads leading into the site from Mitton Road – one further south (now known as Chestnut Drive) and the route now known as part of Pendle Drive which crosses the application route between point C and point D.

The terrace houses known as Bridge Terrace is shown. The properties numbered 15-26 Bridge Terrace are all shown fenced off individually indicating the boundaries of each of the properties front and rear gardens. The properties numbered 27-32 are not shown separated by boundary fences and the land immediately north of 32 Bridge Terrace across which the application

		<p>route runs between point A and point C is not shown as being fenced off separately. The application route is shown between point B and point C although the first 50 metres from point B heading south is shown unbounded with a line across the route. (It is possible that the northern section of the terrace was under construction at the time of the survey.) Beyond this line the application route is shown bounded through to point C where it crosses one of the access roads leading into the hospital site.</p> <p>From point D the application route is shown through point E to point H from where it curves to exit onto Mitton Road south of the property known as Woodland. The application route between points E-F-G is not shown and Calderstones Road is not shown.</p>
Investigating Officer's Comments		<p>Substantial parts of the application route existed by 1928 and appear to have been constructed as part of the development of the Calderstones Hospital site.</p> <p>Access may have been available along parts of the route but not all the route applied for.</p>
<b>Aerial Photograph<sup>2</sup></b>	1940s	<p>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.</p>

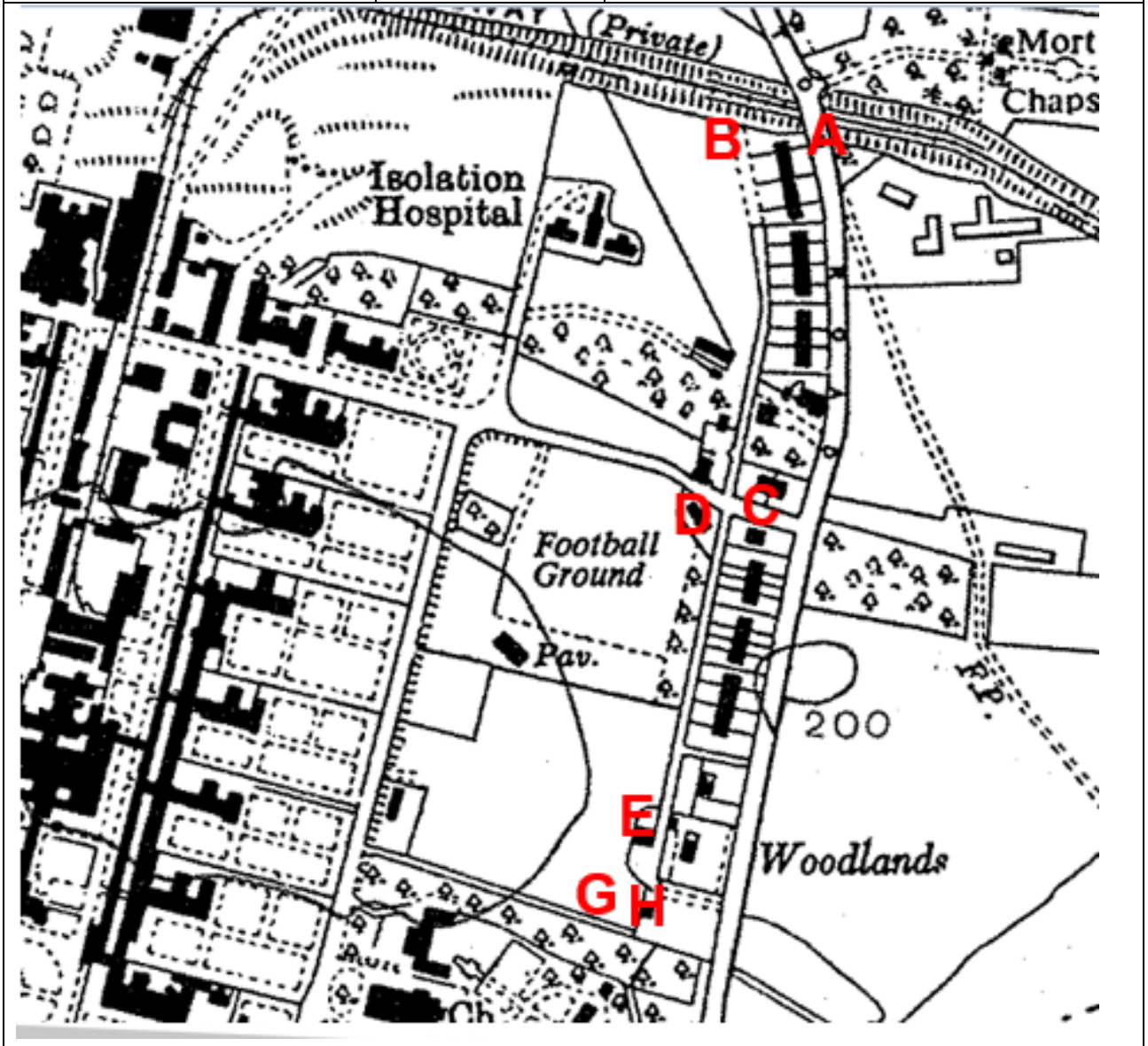
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<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there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



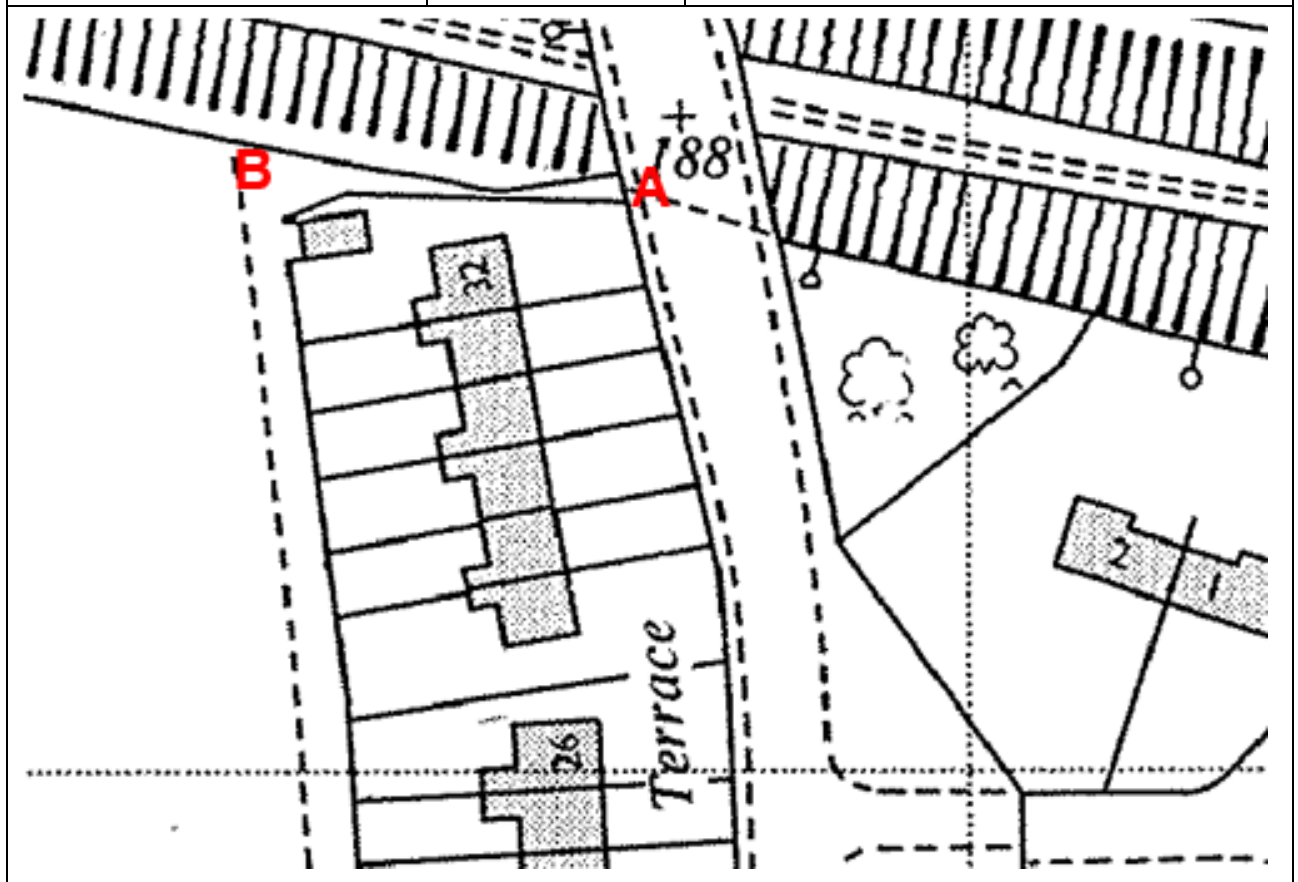
<p>Observations</p>		<p>The aerial photograph taken in the 1940s only shows part of the land crossed by the application route. The application route is not visible between point A and point B but a substantial route can be seen along the back of properties fronting Mitton Road between point B and point C.</p>
<p>Investigating Officer's Comments</p>		<p>Part of the application route existed in the 1940s, but it is not known whether the route was accessible to the public.</p> <p>Much of the land crossed by the application route is not shown on the photograph so no inference can be drawn with regards to the existence of</p>

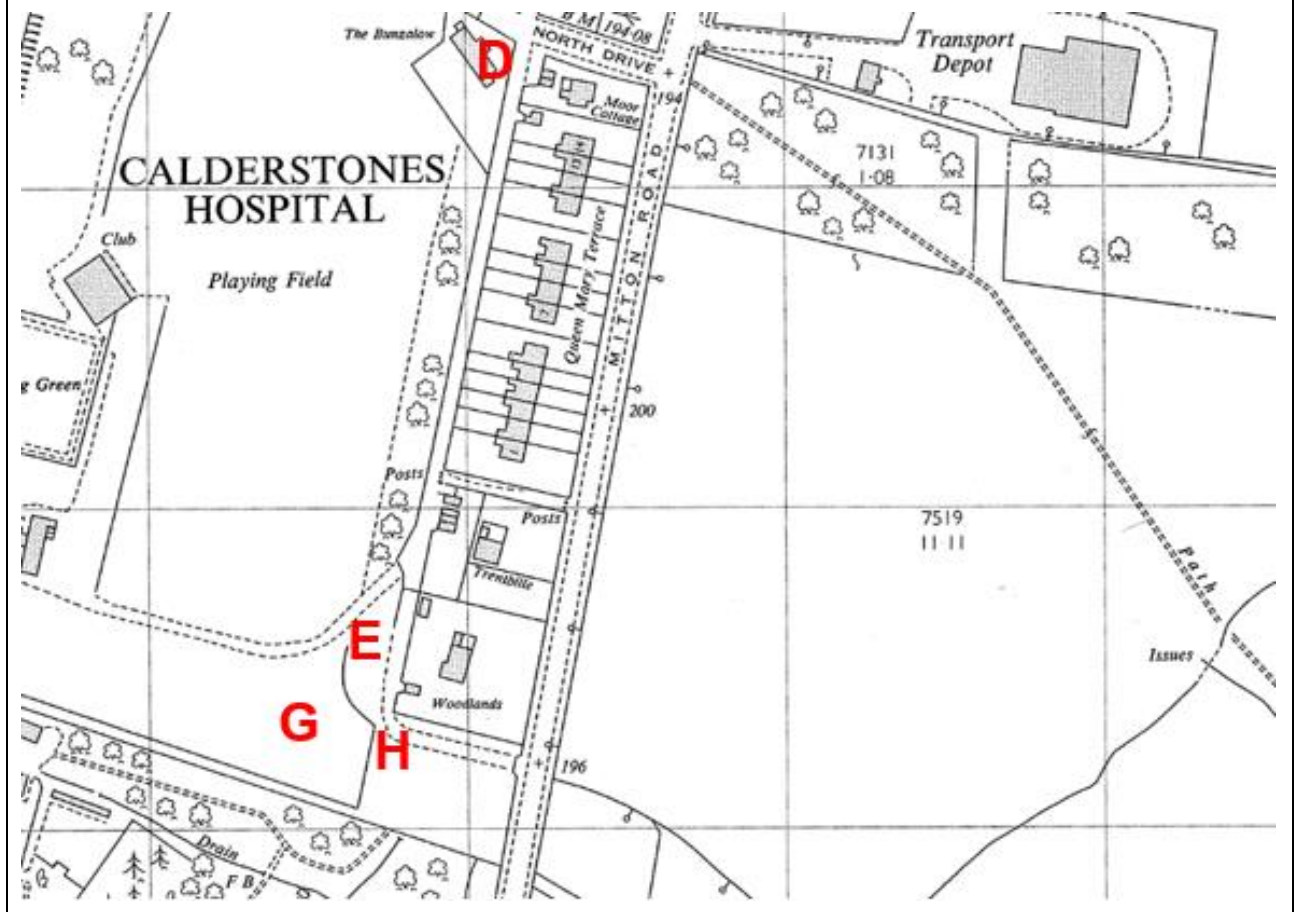
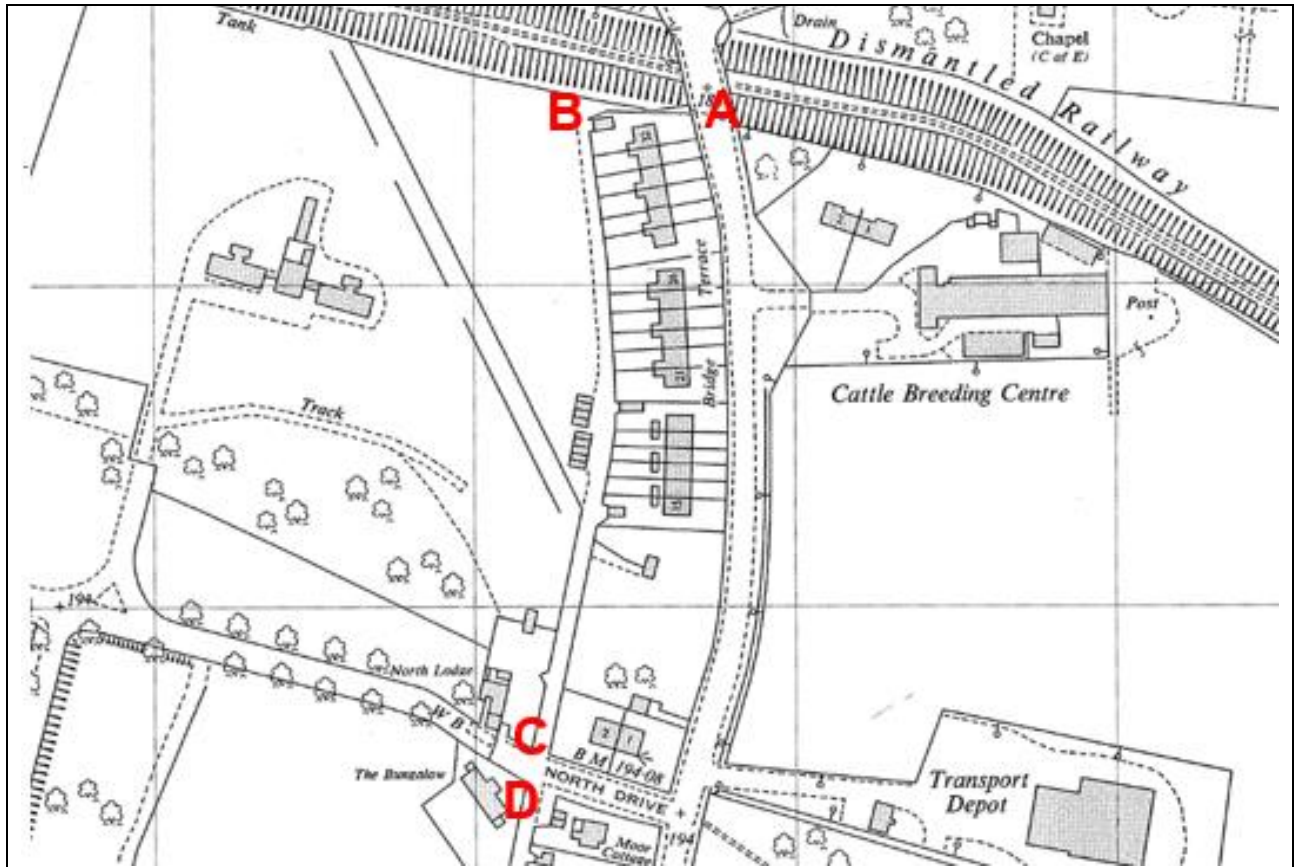
		public rights.
<b>6 Inch OS Map Sheet 73NW</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		Parts of the application route are shown. The route between point A and point B is not shown. Between point B and point C and point D and point H the application route existed along the back of properties fronting Mitton Road. From point H access to and from Mitton Road was south of the Woodlands and the application route between points E-F-G
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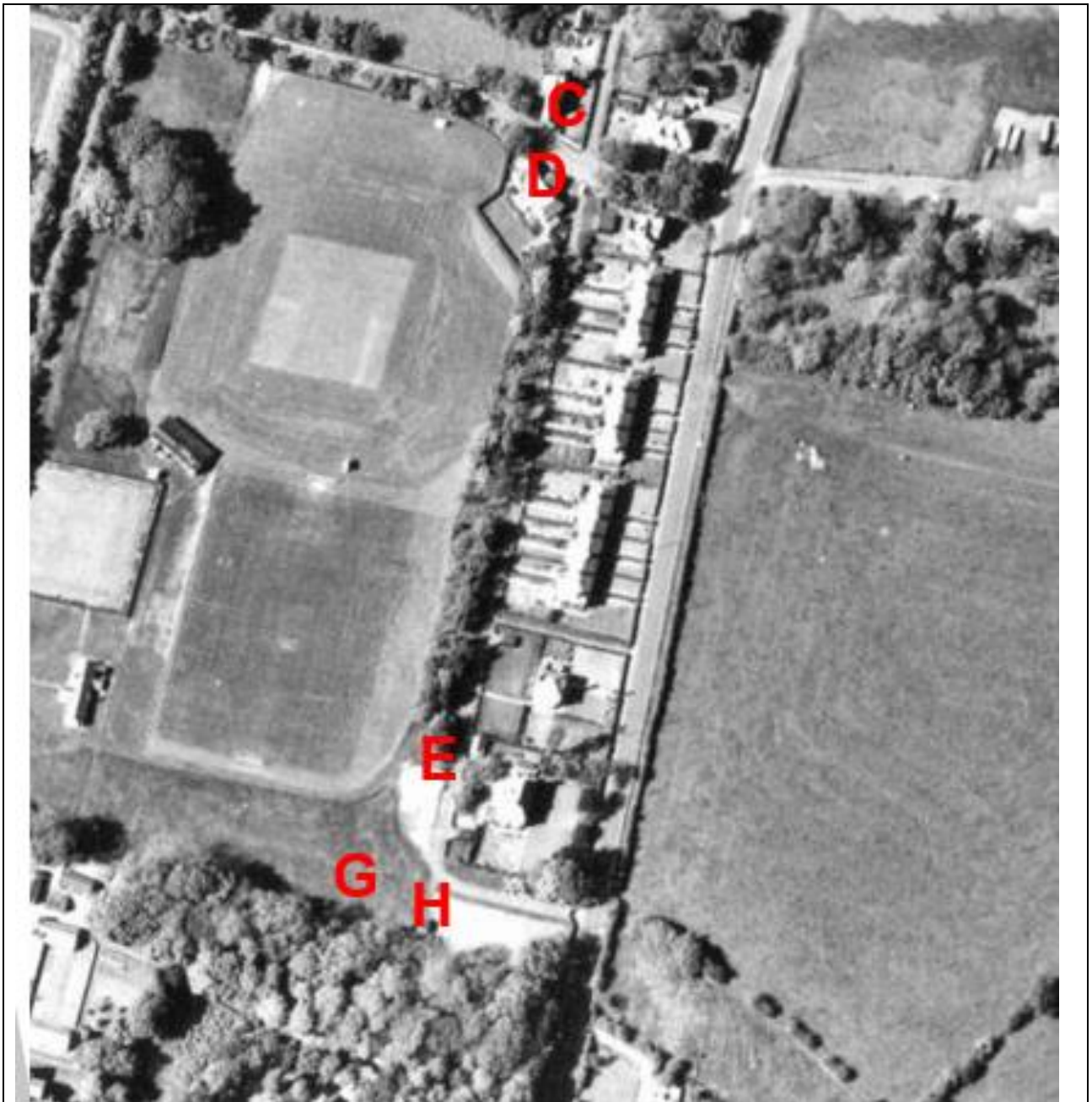
		is not shown.
Investigating Officer's Comments		Parts of the application route existed but appeared to exist to provide access to the rear of properties on Mitton Road.  The full length of the route applied for did not exist at this time.
<b>1:2500 OS Map Sheet SD 7237 7337</b>	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published in 1968 as national grid series.





Observations		A narrow fenced-off gap is shown between point A and point B and beyond point B the application route is shown through to point C and also between point D and point E. The application route between points E-F-G and E-H is not shown.
Investigating Officer's Comments		Parts of the application route existed in 1966 but the full length of the route applied for did not exist at that time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



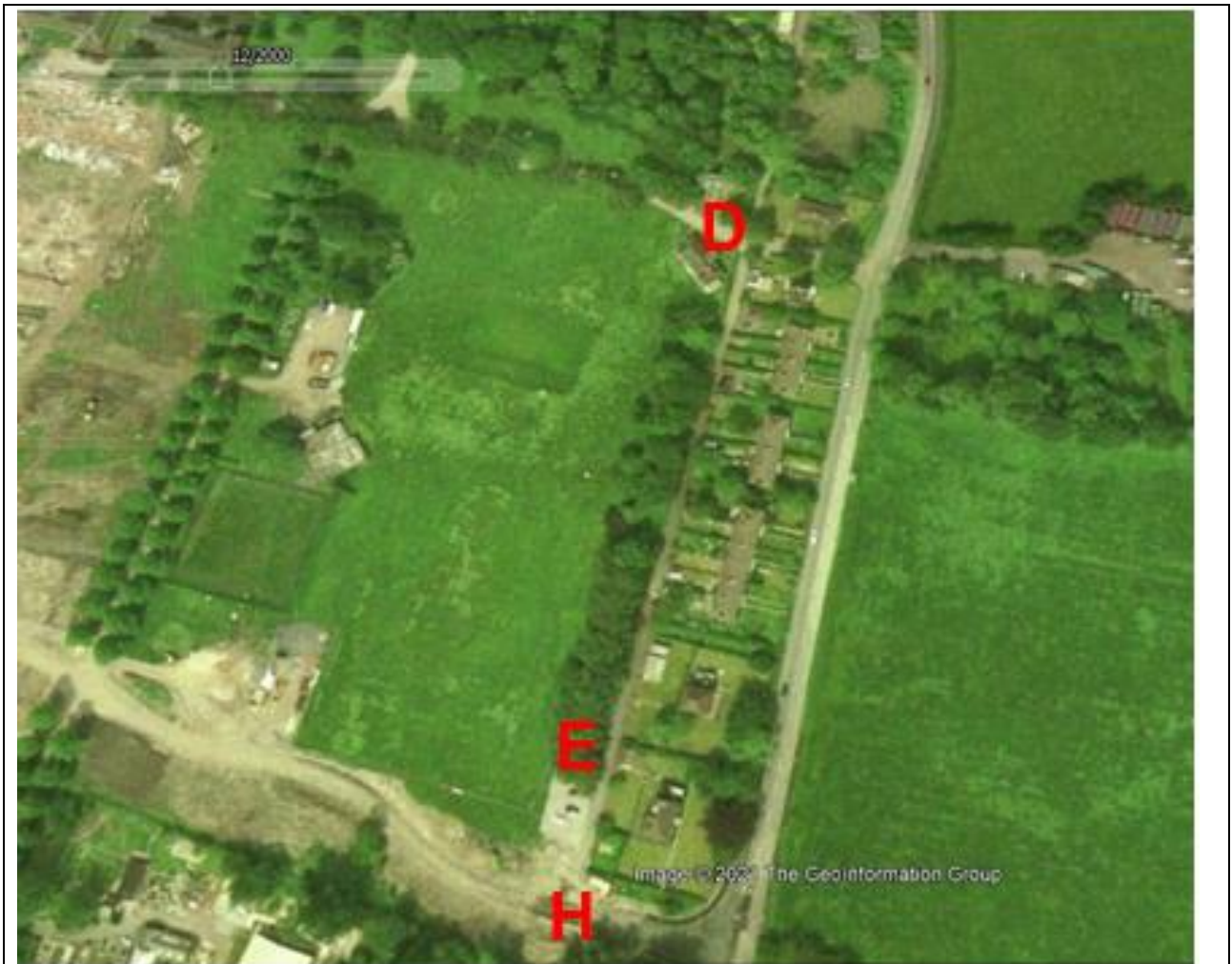


<p>Observations</p>		<p>The application route between point A and point C is shown and appeared to be accessible.</p> <p>The application route between point D and point E is only partly visible due to trees obscuring the view. From point E to point H the application route is clearly visible linking to Mitton Road.</p> <p>The application route from point E through to point G is not shown as a constructed or trodden track although access may have been available long it.</p>
<p>Investigating</p>	<p>Officer's</p>	<p>Access along all of the application route</p>



Comments		may have been available in the 1960s although the route between point E-F-G was probably not used.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on Google Earth Pro.





<p>Observations</p>		<p>The application route between point A and point B is not visible due to tree cover. Most of the route from point B through to point E can be seen as a significant track/roadway. From point E to point H the route can be seen and of significance is the fact that the photograph shows that much of the old hospital site had been cleared and that a new access road (Calderstones Drive) was under construction. The application route between point E and point G is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The hospital site was under redevelopment in 2000 and Calderstones Drive under construction. Most, but not all of the application route could be seen to exist but no inference can be drawn with regards to public rights.</p>
<p><b>Aerial Photograph</b></p>	<p>2003</p>	<p>Aerial photograph available to view on Google Earth Pro.</p>



Observations		<p>Tree coverage and shadows mean that it is not possible to see much of the application route between point A and point C.</p> <p>From point D through to point E the application is clearly visible.</p> <p>Calderstones Drive has been completed and the application route from point E to point H and point E to point G was clearly visible.</p>
Investigating Officer's Comments		The full length of the application route probably existed in 2003.
<b>Google Street View Images</b>	2009-2018	Google Street View Images of point A.



2009



2011



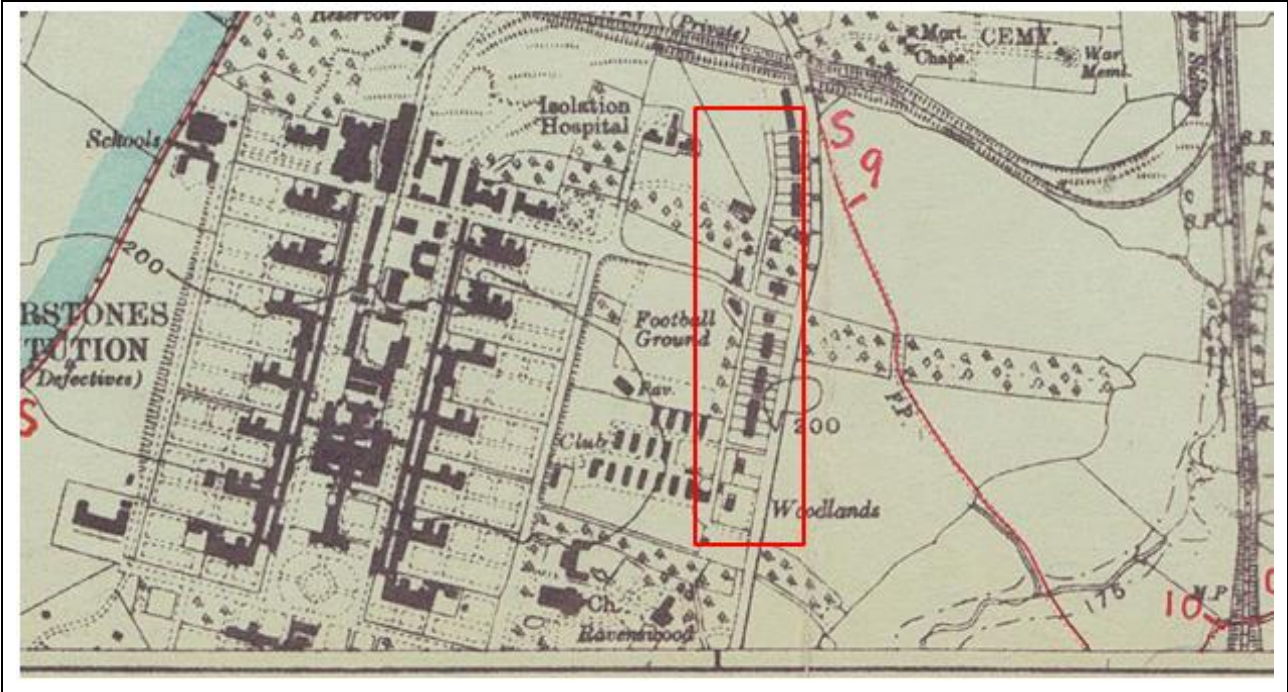
2016



2018

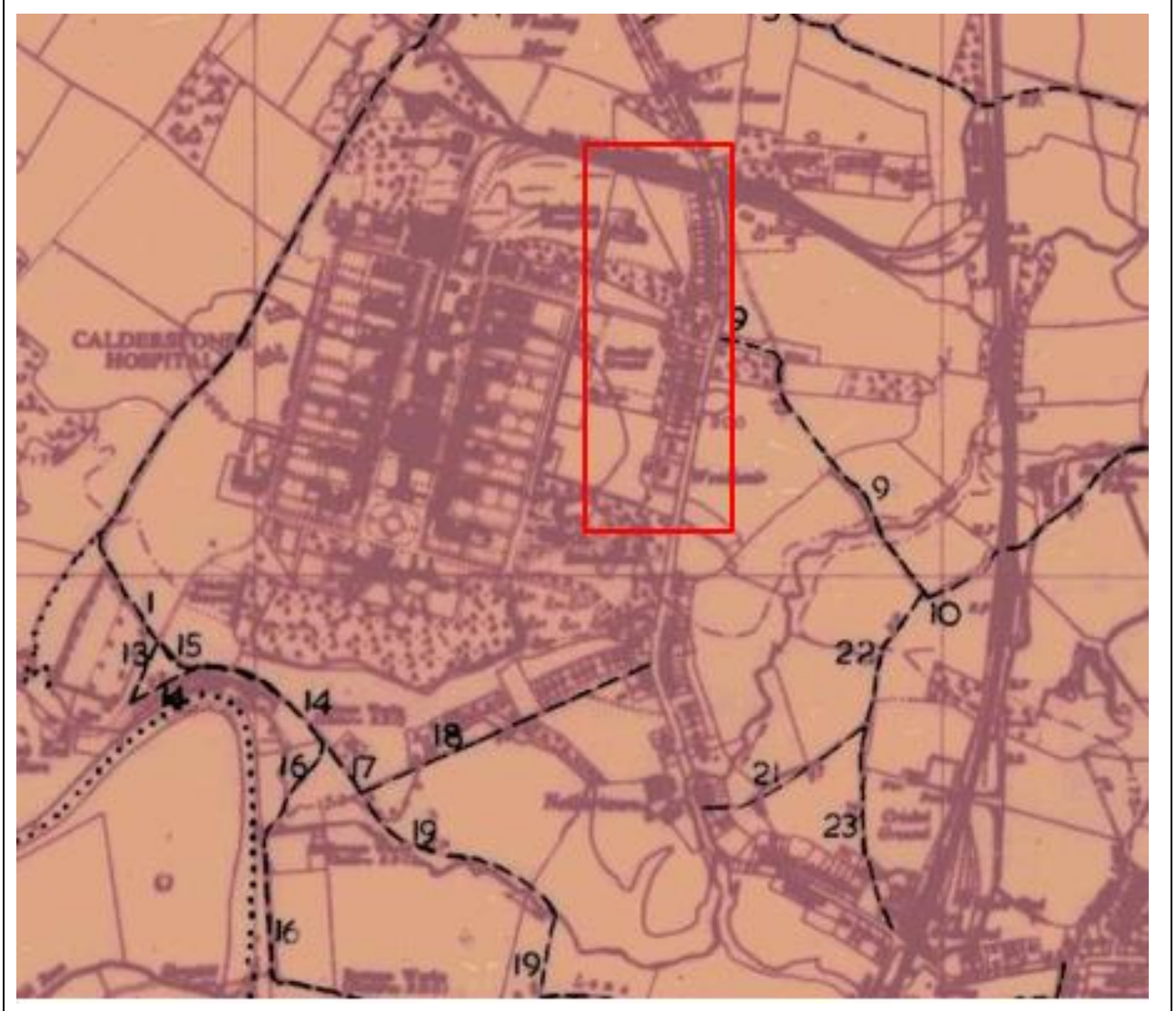
Observations		All four photographs show that access appeared to be available onto the application route at point A via a wooden stile. No signage indicating whether access was considered to be public or private could be seen.
Investigating Officer's Comments		The application route appeared to be accessible at point A between 2009 and 2016 consistent with the evidence of use provided as part of the application.

<p><b>Definitive Map Records</b></p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<p><b>Parish Survey Map</b></p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



Observations		The application route was not recorded on the Parish Survey Map for Whalley.
<b>Draft Map</b>		<p>The parish survey map and cards for Whalley were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (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		The application route was not recorded on the Draft Map of Public Rights of Way and there were no representations made in relation to it.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not recorded on the Provisional Map of Public Rights of Way and no representations were made in relation to it.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
<b>Revised Definitive Map of</b>		Legislation required that the Definitive

<b>Public Rights of Way (First Review)</b>		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.
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Observations		The application route is not recorded as a public right of way on the Revised Definitive Map.
Investigating Officer's		The application route was not recorded



Comments		as a public right of way as part of the process of compiling the Definitive Map and Statement.
<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>



<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway in the county council's highway records although it is intersected by Pendle</p>
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		Drive between point C and point D and crosses an adopted footway at point F.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it does not carry a public right of way.
<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 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>		<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</p>

		been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

### Summary

The application was submitted on the basis of user evidence.

There is no map and documentary evidence from which dedication of the route can clearly be inferred and the route is not shown on any of the early commercial maps or first edition Ordnance Survey Maps.

The Map and Book prepared under the provisions of the 1910 Finance Act lists the land crossed by the application route as being owned by the Lancashire Asylums Board at that time and it is clear that much of the route was subsequently constructed by the late 1920s when Calderstones Hospital was built.

The existence of the route from point B through to point E – crossing one of the access roads into the hospital site between point C and point D - is consistently shown as a substantial roadway from the 1920s onwards and clearly provided access to a number of properties built fronting onto Mitton Road but also provided access to hospital land to the west of the route.

Access to the route between point A and point B may have been available but it is not until the 1960s that it is more clearly seen on both OS maps and aerial photographs prepared at that time that a route through existed – albeit narrower than the access road B-C and D-E and therefore consistent with the application for use on foot but not a route used by vehicles.

From point E it appears that up until approximately 2000 access was available through to Mitton Road along a track/roadway immediately south of woodlands. In approximately 2000 – following the demolition of parts of the former hospital site – a substantial modern housing development was completed, and Calderstones Drive constructed. A footpath was agreed to be dedicated north of the carriageway formally creating a highway at point F and H.

The map and documentary evidence examined therefore supports the user evidence submitted.

## Head of Service – Legal and Democratic Services Observations

### Landownership

From Point A and C and from Point D to near F/H the land was owned at the time of this application by Merseycare NHS Foundation Trust. As of 25/4/22 the sections of the application route owned by Merseycare was sold to Prospect (GB) Limited.

Points C to D and land including F to G are owned by George Wimpey City 2 Limited and this has largely become parts of highways maintainable at the public expense 28/10/2010 having been in a S38 agreement of 2000.

### Information from the Applicant

The applicant states the route has been acknowledged by Calderstones as a public footpath. The applicant further states the route has been well used over a period of 20 years according to his knowledge by locals and visitors alike, the "route was well trodden and they provided stiles access."

The Applicant has provided the following information:

1. An application to modify the Definitive Map and Statement to add a footpath(s) from Mitton Road to Calderstones Drive.
2. Map(s) extract marking existing 'paths'
3. A Map showing the route of the 'proposed' Definitive Map Modification Order.
4. 12 User Evidence Forms

The 12 user forms have been carefully considered and the information set out below.

### Duration of Use

The user evidence forms collectively provided evidence of use going back as far as 1972 and up to 2021 when part of the route was made inaccessible in 2021 by Merseycare as landowners, and the application to record the right of way was subsequently made.

20+ years Including the years (1972 to 2021)	1 – 19 years	Not specified
5	7	0

### Frequency of Use

The majority of the 12 users stated that they used the route daily, with one stating weekly, another one stating monthly, and finally 1 stating occasionally.

Daily	Weekly	Monthly	Occasionally	Not Specified
9	1	1	1	0

### Reasons for Use

Of those who specified their reason for using the route, the most common answer was walking/running for pleasure/exercise. Three users indicated they used the route for cycling on a monthly basis. Many users noted they used the route as it was safer to avoid the narrow footpath and cars on the main road, and one stated dog walking.

Walks (pleasure, exercise, recreational)	Avoiding cars on the main road	Other use (eg dogwalking)
7	2	1

### Other Users of the Route

The majority of the users recorded having seen others on foot whilst using the route, five users recorded having seen others using the route on horseback and five users recorded having seen others using the route on a bicycle. Numerous users refer to it as a well-used route with one indicating it was in constant use.

### Consistency of the Route

The majority of the 12 users stated that the route had always followed the same route, one stated no since the new housing.

Yes	No	Don't Know	Not Specified
11	1	0	0

### Route Used

In the Committee Plan, the proposed footpath was marked out at different points from A to H highlighting the route, however the users provided a map of their own within their user forms, the line they drew on their maps was similar to the points marked out in the Committee Plan.

### Unobstructed use of the Route

9 of the users were prevented from using the route, 2 specified they were stopped from using the route early 2021, whereby one of the two went onto to state they were prevented at Bridge Terrace. The majority of users indicated that the rest of the route remained accessible and they were still using it at the date of application.

8 of the 12 stated they saw no signs nor notices restricting or prohibiting access to the route, whereas 2 stated not until late 2020 when signs were put up by MerseyCare. A further 2 stated they only saw signs stating no dog walking in 2020.

6 were aware of stiles along the route, 2 stated no, 1 stated they didn't know, and 3 did not provide an answer.

4 users stated there are no gates along the route, 1 stated they didn't know, and 7 did not provide a response.

9 users have stated no permission was given/sought to use the route, of which 1 stated not applicable, and 2 did not provide a response.

One user commented the route has been acknowledged by Calderstones as a public footpath, and that the route has been in use for over 20 years by local residents and visitors alike, stiles were provided on the route and it is a well-trodden path.

Another user commented he uses the path frequently as part of his visits to the area when seeing his friends, and also when walking to and from work to avoid the traffic on the Mitton Road. Further stating the route has been in use for over 20 years and is well used by locals and visitors.

Two users commented the route provides a safe running/walking route for local residents, and that it is safe for families to walk along away from the traffic, and further states it is a wildlife haven, they further go on to state there are over 15 species of birds, reliant on the trees and the route is a corridor for food.

Another user stated the area simply needs the houses refurbishing and then selling/renting, and the path is a safe route for walking.

#### Information from Others

A consultation letter was originally sent to Councillor Mirfin on 3rd March 2022, however it was passed on to Councillor David Berryman who is the Borough Councillor for Whalley Netherton, who stated it was passed on to him as he is more familiar with the site.

Councillor Berryman states he is unable to advise as to whether there has been an official right of way path, however acknowledged there has been a path running in the past. Councillor Berryman further states "There was a style/gate at the Mitton Road end but the majority of the route followed the 'backs' of Bridge Terrace and Queen Mary Terrace, which was used for vehicular access to these houses. NHS MerseyCare claim that this was never a public right of way."

#### Information from Landowners

The former Landowner Point A and C and from Point D to near F/H stated the sale of the land was completed on 25 April 2022, and object to the application during the period it was under their ownership and state they have no record of the footpath's existence nor its use, and further state they assume the application was submitted to disrupt the development, and point out the application was made on 3 March 2021, a month after planning permission was granted by Ribble Valley Borough Council, planning reference 3/2021/0076. The landowner states there is no consistency to the

user evidence provided, and further state only 3 users satisfy the test under s31(1) Highways Act 1980 of the route being in use for 20 years or more.

The landowner states in accordance with the Open Space Society advice the evidence provided is not satisfactory as some evidence was provided by members of the same family rather than "6 – 10 unrelated people in a sparsely populated area to 30 people or more in a populous area."

The landowner states until 1990, the property was owned by the Secretary of Health who had Crown immunity. Four private property signs were erected in 2019, and the site has been used for mental health services for the last 30 years therefore no access to the public would be granted.

The current landowner of this land as of 25 April 2022 rejects the application and stated it refers to, repeats and relies upon the context provided by the previous landowner in their response to the application. This landowner further adds the following "In respect of the granted planning permission affecting Property ref 3/2021/0078 the planning officer did make reference to this application and commented in the report that the route could be accommodated via Mitton Road." Further to this the current landowner states they are in the process of agreeing a Section 278 agreement in the upgrade of the existing footway adjacent to Mitton Road, the works include the widening the footway to metres where possible, and done to an adoptable standard with edging kerbs and a new surface of tarmac and states this should be taken into account.

## **Conclusion**

The application made is that these sections of route have already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

The application route starts from a highway, Mitton Road (A), reaches a highway, Pendle Drive between points C and D, and continues as a further section to a highway Calderstones Drive at points F and H.

In respect of Pendle Drive and Calderstones Drive these are now vehicular highways and not able to be recorded on the Definitive Map. There was a S38 Agreement between Alfred McAlpine Homes North West Limited and Ribble Valley Borough Council dated 15/8/2000. 10 (b) of this agreement provided that on Completion of Part 2 works the road or roads shall become a highway or highways and remain forever open for use by the public at large. We are not in possession of the Part 2 certificate (the final certificate was issued to George Wimpey Northwest Limited 28/10/2010.)

Whilst users of the application route were crossing private land between C-D prior to dedication as a highway the intention to dedicate as highway was there from the S38 Agreement dated 15/8/2000.

F-G on the Committee plan is already footpath. This was dedicated in the 2000 S38 Agreement and is more properly added to the Definitive Map by way of a Legal



Event order rather by a DMMO based on user evidence. This short section is therefore not being considered with the rest of the application route.

Committee is therefore considering two separate application routes A-C and D-F/H both of which are connected to recorded highways at each end.

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

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

Substantial parts of the route as applied for and in existence on the ground today were formed as a result of houses being erected in the 1920s.

From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public has continued for many years such that on balance there may be sufficient evidence from which to infer dedication at common law of this route from all the circumstances but it may be appropriate initially to make the Order and see what further information may be clarified before promoting to confirmation

Secondly looking at whether there is deemed dedication under section 31 Highways Act 1980 – in order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without interruption, over the 20 year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter, the evidence indicates that the route A-C was obstructed in 2021 by the erection of fencing at point A which called that route into question and prompted the submission of this application in 2021. The route was still accessible other than at point A and most users indicated they were still using it at the time of the application. The date of application 3/3/21 is taken to be the date of calling into question of the unobstructed route D-F/H.

For D-F/H the 20 year period under consideration for the purposes of establishing deemed dedication would be from 4/3/2001 – 3/3/2021. For A-C we do not know the precise date the application route was blocked at point A, users refer to early 2021 and was prior to application 3/3/2021. For A-C we have used a 20 year period 31/1/2001 to 1/2/2021. A more accurate date from additional user evidence may be available.

Whilst some user evidence relates to period prior to 2001 Committee is advised that the provisions of S31 do not apply to the land whilst it was Crown land. The Land ceased to be Crown land when the land transferred from the Secretary of State in 1999 according to the Land Registry.

The applicant has provided evidence from 12 users in support of the application which refer to regular use of the route with the majority of the 12 users stating that they used the route daily on foot. The majority of users state they had seen others using it and many describe it as a well-used route.

All 12 users recorded that the application route has always followed the same course and none of the users refer to having seen signs or notices along the route advising that the route was not public.

Several users reference use from 2011 which would appear to relate to new housing being built in the area.

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

The former landowner raises the fact that some of the users are related and/or from same household. Committee is advised that so long as the evidence overall represents the public at large this user evidence can be taken into consideration.

Evidence indicates a no dog walking sign or signs were erected in 2019. One no dog walking sign is visible at point A. This is not considered to be a calling into question as it did not prohibit use, indeed it could be taken as a landowner accepting use for purposes other than dog walking.

Mersey Care NHS Foundation Trust were landowner at the time of the application having acquired the land A-C and D- near E 17/5/2017. They have objected to the application but it is suggested they do not refer to any actions taken which would sufficiently call the route into question until they took action at A and there is a footpath which can be reasonably alleged to subsist.

The current landowner Prospect (GB) Limited only purchased that land 25/4/22 and have confirmed they were made aware of this application as part of planning application prior to their purchase. They have objected to the application but only purchased after the application.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence to make an Order but due to a slightly low number of user evidence Committee may however consider that there is not on balance sufficient evidence such that the higher test for confirmation can be met and may feel that it should not proceed to promote to confirmation at this stage.

If Committee is of the view that it is not satisfied that the higher test for confirmation can be met with the information available the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed.

### **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: 804-700		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

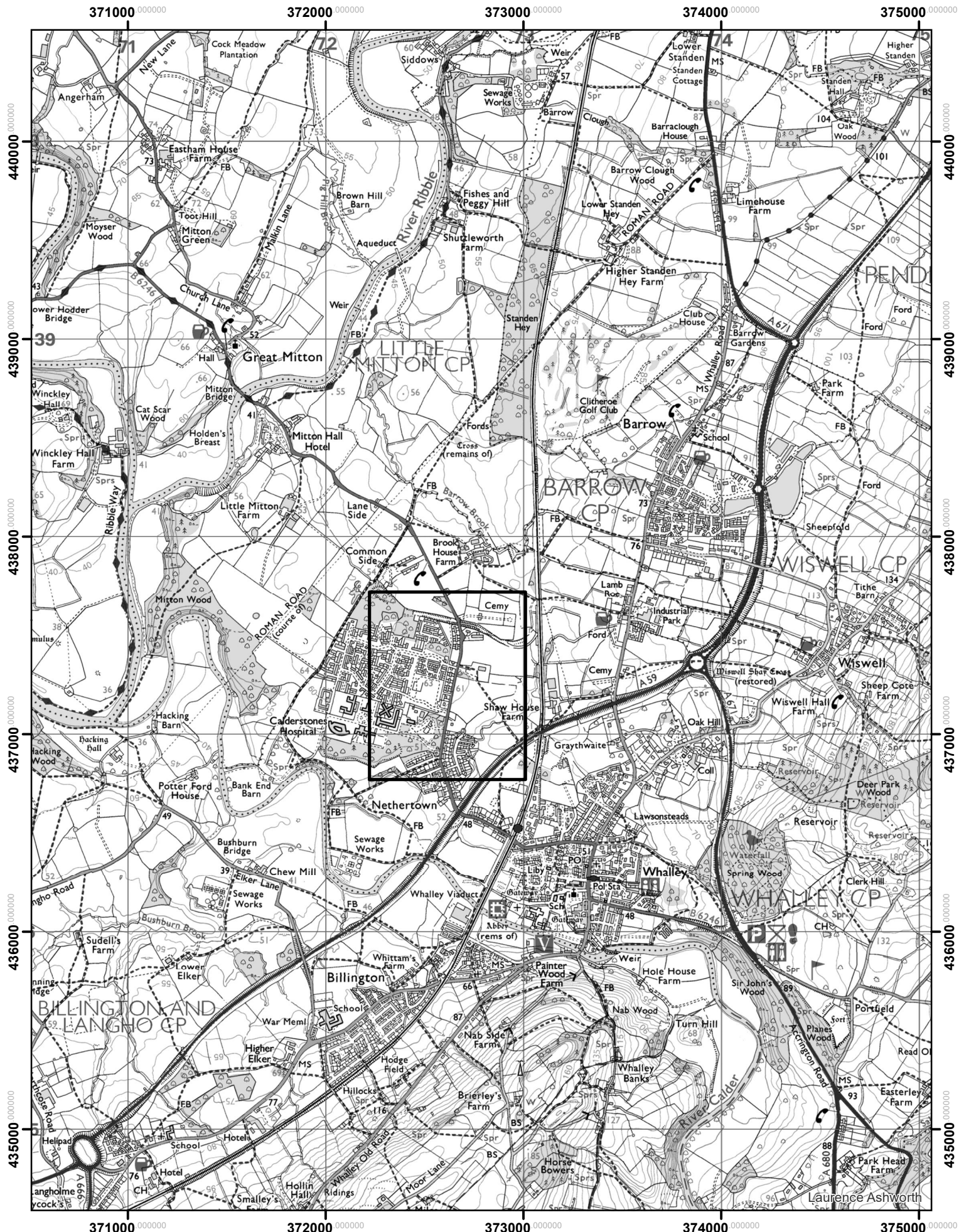
Reason for inclusion in Part II, if appropriate

N/A









**Lancashire**  
County Council

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

Wildlife and Countryside Act 1981  
Addition of Footpath from Mitton Road to Calderstones Drive

**1:24000**

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