

Lancashire County Council

Regulatory Committee

**Wednesday, 27th March, 2024 at 10.30 am in Committee Room 'B' - The
Diamond Jubilee Room, County Hall, Preston**

Agenda

Part I (Open to Press and Public)

No. Item

- 1. Apologies**
- 2. Disclosure of Pecuniary and Non-Pecuniary Interests**
Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.
- 3. Minutes of the meetings held on 24 January 2024 and 21 February 2024** (Pages 1 - 14)
- 4. Guidance** (Pages 15 - 42)
Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.
- 5. Progress Report on Previous Committee Items** (Pages 43 - 44)
- 6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition and Deletion of Bridleway at Junction with Procter Moss Road, Over Wyresdale** (Pages 45 - 86)
- 7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrade of Footpath to Bridleway, Threagill Lane, Warton** (Pages 87 - 144)
- 8. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into the existence of public rights along Chapel Street** (Pages 145 - 190)



Court, Poulton-le-Fylde

9. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Diversion of Footpath at Little Bluestone Cottage, Mawdesley (Pages 191 - 198)

10. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Diversion of Footpaths FP0113036 and FP0113037 at Ellel Quarry (Pages 199 - 208)

11. Highways Act 1980 - Sections 119, 118 and 25 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion, Extinguishment and Dedication of Public Paths at Height Barn Farm, Bacup (Pages 209 - 222)

12. 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.

13. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 19th June 2024 in Committee Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

H MacAndrew
Director of Law and Governance

County Hall
Preston



Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 24th January, 2024 at 10.30 am in
Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Matthew Salter (Chair)

County Councillors

T Aldridge	A Clempson
J Burrows	M Clifford
A Cheetham	L Cox
D Howarth	J Couperthwaite
J Oakes	M Goulthorp

1. Apologies

Apologies for absence were received from County Councillor Parr.

Temporary replacements

County Councillor Couperthwaite replaced County Councillor Kay.

County Councillor Goulthorp replaced County Councillor Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 15th November 2023

Resolved: That the minutes of the meeting held on 15th November 2023 be confirmed and signed by the Chair.



4. Guidance

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

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented be taken account of and that the relevant sections be referred to during consideration of the reports.

5. Progress Report on Previous Committee Items

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

A summary of the current progress on **all** Definitive Map Modification Order and Public Path Order applications was provided, **including an update** on those matters which had progressed since last year's report. This data had been extracted from the statutory register on 4th January 2024.

It was noted that although the term 'applications' had been used for convenience, these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 for definitive map modification orders, but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate. For public path orders, there was currently no statutory application process but the list included requests using Lancashire County Council's application form or otherwise, and also cases where it appeared to officers that a Public Path Order was appropriate.

In response to a question, Committee were informed that no decision was required as yet for the Old Tram Bridge application and that Committee would be provided with further information later in the meeting.

The Chair reported that although there was a long list of outstanding applications, he was pleased to see more coming through to Committee for consideration.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application to record Bridleway along Green Lane between A65 and Todgill Farm, Ireby

A report was presented on an application for the upgrade of part of Footpath FP0119005 and addition of a Bridleway to the Definitive Map and Statement along Green Lane between A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby. The application route was shown on the Committee plan attached to the agenda papers between points A-B-C-D.



A site inspection had been carried out in September 2021.

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

It was reported that point A-B formed part of the publicly maintained highway, the A65. Point B-C was currently recorded as footpath FP0119005 on the Definitive Map and Statement and point C-D was not currently recorded.

Committee were advised that the fact that part of the application route was not presently recorded did not mean that it did not carry public rights of way as disuse of a route did not take away the public rights. As there had been no legal stopping up of those rights, it was advised that the legal maxim "once a highway always a highway" applied.

Committee were informed that, if they were content that there was sufficient evidence of an old vehicular highway between point B-D, the Natural Environment and Rural Communities Act 2006 would have extinguished mechanically propelled vehicular rights, leaving the route to be appropriately recorded as a restricted byway.

Resolved:

- (i) That the application for the upgrade of part of Footpath FP0119005 and addition of a Bridleway along Green Lane between A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby be accepted in part and subject to a status of restricted byway not bridleway.
- (ii) That an Order(s) be made pursuant to Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to upgrade part of Footpath FP00119005 and add a restricted byway along Green Lane between the A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrade and addition of Bridleway from Back Lane, Wrayton to Melling Moor

A report was presented on an application for the upgrade of a footpath to, and addition of, a bridleway to the Definitive Map and Statement of Public Rights of Way from Back Lane (C514) to Melling Moor (U3638), Melling with Wrayton. The application route was shown on the Committee plans attached to the agenda papers between points A-B-C-D-E-F-G-I.



A revised Committee Plan 2 (copy attached) was circulated to Committee Members at the meeting showing the location of a gateway at point X.

A site inspection had been carried out in September 2021.

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

It was reported that A-F was currently recorded as footpath on the Definitive Map and Statement and that the rest of the application route was not currently recorded.

Committee were advised that the claimed route had been shown since circa 1845 on numerous maps, and that it connected to a network of other public highways. The evidence presented in the maps was consistent with a way that carried at least a public bridleway. However, there was less convincing evidence, on balance, as to whether public vehicular rights existed.

Given the nature and amount of the evidence, it was advised that the evidence of the application route having become a public bridleway was sufficient and that Committee may conclude, applying the relevant tests, that it could be concluded that a bridleway "subsists".

The Officer answered questions from Committee.

Resolved:

- (i) That the application for a bridleway to be recorded from Back Lane to Melling Moor, Melling with Wrayton, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3) (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record a bridleway on the Definitive Map and Statement of Public Rights of Way from Back Lane to Melling Moor as shown on the Committee Plans between points A-B-C-D-E-F-G-I.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981 Definitive Map Modification Order
Investigation Addition of Footpath at Cotton Tree, Colne**

A report was presented on an application for the addition of a Footpath from Cotton Tree Lane, Colne to 13-04-FP202 to the Definitive Map and Statement of Public Rights of Way. The application route was shown on the Committee plan attached to the agenda papers between A-B-C-D.

A site inspection had taken place in April 2022.



This application had been submitted based on 'modern' user evidence and the route did not appear to have come into existence until a bridge had been erected across Colne Water, as shown between point A and point B on the Committee plan. Land Registry information suggested that the bridge had been erected sometime after 1971 and no maps or photographs inspected prior to that time showed the bridge.

For this reason, maps and documents predating the 1970s – whilst having been checked by the Investigating Officer – had not been included in the report, as the route could not have existed until access was available across Colne Water and there was no evidence to suggest that, before that time, a different route to/from Cotton Tree Lane had been used.

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

Committee were asked to consider whether they were satisfied that there was sufficient evidence from which to infer dedication and, if so, to make the Order as set out within the Recommendation in the Committee report.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Cotton Tree Lane, Colne to 13-04-FP202 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 record a Footpath from Cotton Tree Lane, Colne to 13-04-FP202 on the Definitive Map and Statement of Public Rights of Way.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

9. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Blackpool Road to the Preston Guild Wheel Cycle Route with a link to/from North Syke Avenue

A report was presented on an application for the addition of a Footpath from Blackpool Road to the Preston Guild Wheel Cycle Route with a link to/from North Syke Avenue to the Definitive Map and Statement of Public Rights of Way. The application route was shown on the Committee plan attached to the agenda papers between A-X-B-C-D and B-E.

A site inspection had been carried out in April 2023.



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

The legal officer read out a summary of a written objection which had been received late afternoon on 23rd January from solicitors representing Bloor Homes.

The officer answered questions from Committee.

Committee were informed that the historical evidence showed that A-X-B-C-D was a significant bounded route, marked on old maps as a crossroad which indicated it would have been capable of being used by horses. Even though the route seemed to have fallen into disuse, Committee needed to take the evidence into account and consider whether the route was historically a bridleway.

In conclusion, taking all the evidence into account, Committee were advised that, on balance, inferred dedication of public bridleway rights under common law could be satisfied for section A-D and public footpath rights under common law could be satisfied for section B-E. Committee were therefore recommended to accept the application.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackpool Road to the Preston Guild Wheel Cycle Route with a link to/from North Syke Avenue be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add:
 - a) a Bridleway from Blackpool Road to the Preston Guild Wheel Cycle Route on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-X-B-C-D and;
 - b) a Footpath for the link to/from North Syke Avenue to the Definitive Map and Statement of Public Right of Way, as shown on the Committee Plan between points B-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

10. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Footpaths at and near Brabin's Endowed School, Chipping



A report was presented on an application for the diversion of parts of Footpaths 3-12-FP1, 3-12-FP2 and 3-12-FP3 at and near Brabin's Endowed School, Chipping.

Brabin's Endowed School is a small, rural primary school, with a relatively small school field backing onto open agricultural land. The footpath currently runs between the walled perimeter of the school and the neighbouring residential property, then out across the centre of the school field to the far boundary, then out through a gate and across a pasture then along a residential access road. There was also another branch along most of the length of the pasture.

The lengths of path to be diverted were shown on the Committee plan attached to the agenda papers as a bold continuous line marked A-F-G-H-D and F-E, and the proposed new footpath was shown by a bold broken line marked as A-B-C-D and C-G-E.

Committee noted that, if successful, the diversion would move the footpath away from the centre of the school field, and onto the edge of adjacent land that was part of St. Mary's Roman Catholic Primary School, with their consent. This would increase the security and safeguarding for pupils and staff, whilst providing a route that was safe and convenient for public use. The diversion would also cross the pasture around the edges of the field which was more efficient for agriculture.

The consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That an Order(s) be made under Section 119 of the Highways Act 1980 to divert:
 - Parts of Footpaths 3-12-FP1 & 3-12-FP3 from the route shown by a bold continuous line and marked A-F-G-H-D to the route shown by a bold broken line and marked A-B-C-D on the attached plan.
 - Also, part of Footpath 3-12-FP2 from the route shown by a bold continuous line and marked F-E to the route shown by a bold broken line and marked C-G-E on the attached plan.
- (ii) That in the event of no objections being received, the Order(s) be confirmed and in the event of objections being received and not withdrawn, the Order(s) be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order(s) such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.



11. Urgent Business

There was one item of Urgent Business to be considered in relation to Longacres Drive, Whitworth.

11(a) Highways Act 1980 - Section 118 Wildlife and Countryside Act 1981 - Section 53A Proposed Extinguishment of Footpath at Longacres Drive, Whitworth

A report was presented on an application for the extinguishment of part of Footpath FP1405129 at Longacres Drive, Whitworth, Rossendale Borough.

The report had been circulated as a supplementary agenda as it had been received after the main agenda had been published. The reason for urgency was that it could not await the next scheduled meeting of the Committee on 27 March 2024 as any delay would potentially affect a house sale.

The recorded alignment of this section of Footpath FP1405129 was through an established residential development of circa 50 years standing. The current public right of way, running through the properties from no. 17 through to no. 33, was neither diverted nor extinguished at the time of the development. However, there was a footway built to the front of the properties and was part of the adopted highway Longacres Drive, so the right of way was not needed for public use.

The length of existing path to be extinguished was shown on the Committee plan attached to the agenda papers by a bold continuous line marked as A-B.

Consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received. Consultation with the neighbouring properties also affected by this right of way had also been carried out and no objections or adverse comments on the proposal had been received.

The officer answered questions from Committee.

Resolved:

- (i) That an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Footpath FP1405129 shown by a bold continuous line and marked A-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the



Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the FP1405129.

12. Date of Next Meeting

The Chair proposed that an additional meeting of Regulatory Committee be held at the end of February in relation to Old Tram Bridge, Preston, as this matter could not await the next scheduled Committee meeting on 27 March 2024.

One of Regulatory Committee's functions, in its Terms of Reference, was to approve if dedication arrangements were to be entered into. Preston City Council's Cabinet were meeting on 24 January 2024 and considering offering a dedication of a bridleway which would be a bridleway maintainable at public expense by the county council on the Old Tram Bridge and any subsequent replacement. The Cabinet report was available on the city council's website.

Dedication of the bridleway would give the Highways Authority sufficient interest in the bridge to exercise various Highways Act powers, and enable the project to replace the bridge to be delivered. Consideration of the offer of bridleway was required before March so that, if approved and agreed, works could commence urgently on the banks of the river, as environmental constraints for the river Ribble meant that work in the water could only take place between June and September. Any delay could mean the programme would be outside the agreed funding deadline and delivery of the project would be at risk.

It was therefore proposed that officers be asked to arrange an additional meeting of Regulatory Committee at the end of February to consider this matter.

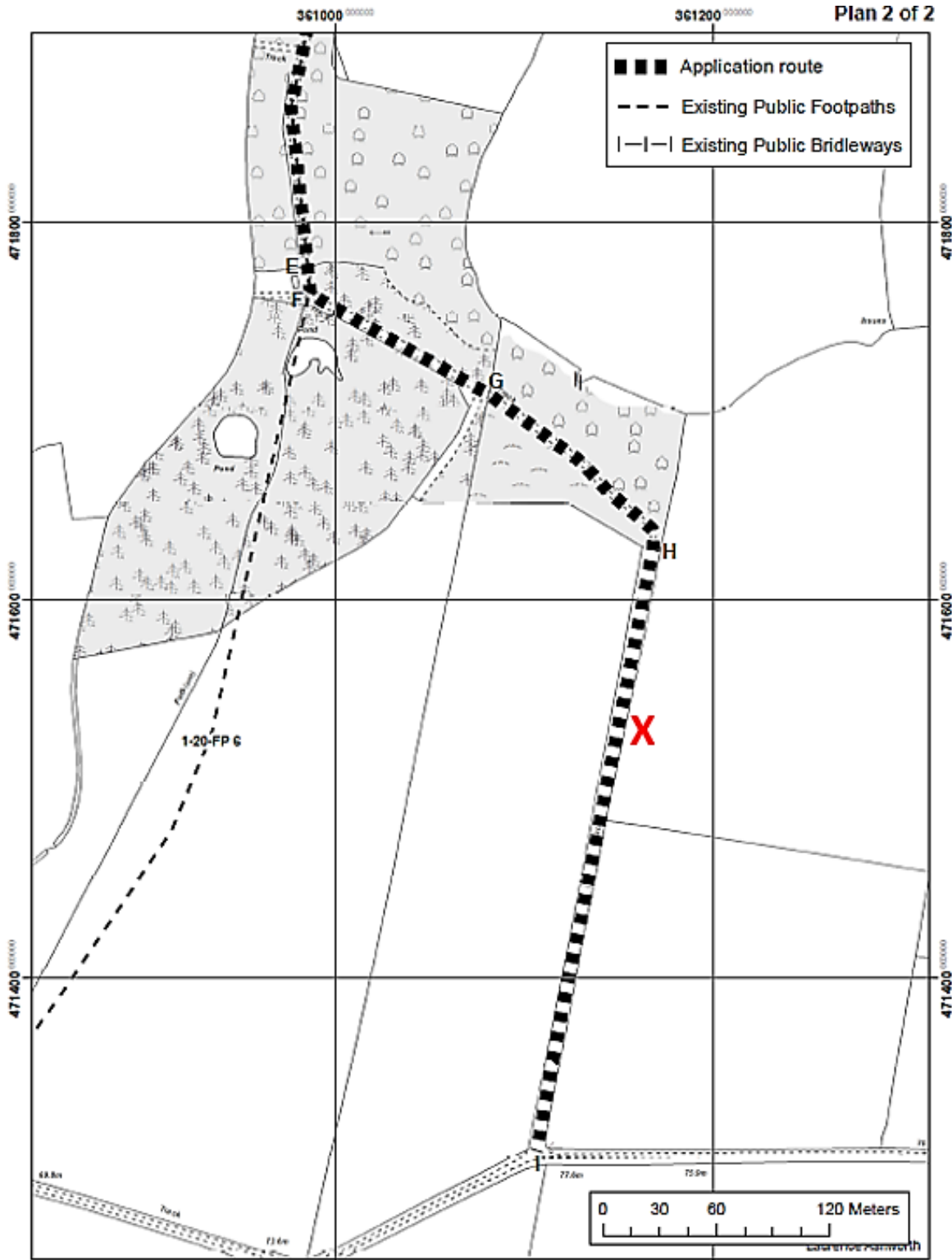
Resolved:

- (i) That an additional meeting of Regulatory Committee be arranged for the end of February to consider the Old Tram Bridge report.
- (ii) That the next scheduled meeting be held at 10.30am on Wednesday 27th March 2024 in Committee Room B - The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew
Director of Law and Governance

County Hall
Preston





	<p>Public Rights of Way PROW@lancashire.gov.uk 01772 530317</p>	<p>Wildlife and Countryside Act 1981 Upgrade and addition of bridleway from Back Lane to Mellington Moor (U3638) Mellington with Wrayton</p>	<p>1:2500</p>
<p>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 applied or used for any purpose. This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (© Crown Copyright). Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 10022320</p>			



Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 21st February, 2024 at 10.30 am in
Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Matthew Salter (Chair)

County Councillors

T Aldridge	J Oakes
A Cheetham	J Parr
A Clempson	S Hind
M Clifford	S Clarke
L Cox	R Woollam
D Howarth	

1. Apologies

There were no apologies for absence.

Temporary replacements

County Councillor Woollam replaced County Councillor Burrows.

County Councillor Clarke replaced County Councillor Kay.

County Councillor Hind replaced County Councillor Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 24 January 2024

It was noted that the minutes of the last meeting held on 24 January 2024 would be included in the agenda for the next scheduled meeting to be held on 27 March 2024.

4. Guidance



It was reported that, although the usual Guidance had been included in the Agenda papers, Annexes 'A', 'B' and 'C' did not need to be referred to at this meeting.

Instead, Sections 25 and 29 of the Highways Act 1980 had been circulated to Committee Members (copy attached) to assist in their consideration of the Old Tram Bridge report.

5. Highways Act 1980 – Section 25 Proposed Public Path Dedication Agreement to create a Bridleway over The Old Tram Bridge, Avenham Park, Preston

A report was presented on the proposed creation by agreement of a publicly maintainable bridleway across the Old Tram Bridge and any replacement bridge on the same line providing access to and from Avenham Park, Preston. The length to be dedicated as bridleway was shown on the Committee plan attached to the agenda papers between points U-V-W-X-Y.

It was reported that Old Tram Bridge (the Bridge) was owned by Preston City Council, having been acquired by its predecessor, Preston Corporation on 17 July 1872, when Avenham Park and Miller Park were being completed. The Bridge was currently unsafe and required demolition and replacement. It was temporarily closed by virtue of a temporary traffic regulation order.

Preston City Council had obtained funding for a scheme to deliver the demolition of the Bridge and the construction of its replacement on the same line, although at a higher level. Both Lancashire County Council and Preston City Council were keen to secure that outcome. The funding provided was allocated on the basis that the scheme did not require a Compulsory Purchase Order and access to carry out the work also relied on the county council having a power to maintain the bridleway. It was therefore proposed to enter into a public path creation agreement under Section 25 Highways Act 1980 for a new bridleway maintainable at public expense, which would formalise the public rights and maintainability of the surface.

By entering into an agreement, this would impose a statutory duty of maintenance on Lancashire County Council in relation to the surface of the bridleway carried by the present Bridge and its replacement. The main terms of this agreement were set out in the Committee report and Committee noted the right for the owner to raise the level of the highway, albeit the structure itself would remain in the ownership and responsibility of Preston City Council.

A draft agreement was being considered by Lancashire County Council and Preston City Council which dealt with all the main terms, and was only intended to be completed once funding was confirmed, and other agreements were also able to be completed. Preston City Council had confirmed that they were content with the main terms of the agreement and would work to finalise the wording.

The officer answered questions from Committee.

Resolved:



- (i) That the proposal to dedicate a bridleway over the Old Tram Bridge and any replacement bridge on the same line crossing the River Ribble along the approach ramp at the north end of the bridge to bottom of the ramp on the south end and down the slope towards the river, as shown on the plan attached as U-Y, be accepted on the main terms as set out in the report.
- (ii) That the Director of Environment and Planning be authorised to finalise and enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 between Preston City Council, as the owner of the Old Tram Bridge and its replacement, and Lancashire County Council, with completion at a time and to include wording in accordance with the main terms as set out in the report to dedicate a length of bridleway marked by a bold dashed line on the attached map and annotated U-Y.
- (iii) That Committee note the recording of bridleway (BW0602072) on the Definitive Map and the making of an Order in 2003 to record bridleway rights over part of the route, but both are believed to have been in error. Officers will take any appropriate action to resolve these issues in due course.

6. Urgent Business

There were no items of Urgent Business.

7. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 27th March 2024 in Committee Room B - The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew
Director of Law and Governance

County Hall
Preston



Highways Act 1980

Section 25 - Creation of footpath or bridleway by agreement

(1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area.

An agreement under this section is referred to in this Act as a " public path creation agreement".

(2) For the purposes of this section " local authority "—

(a) in relation to land outside Greater London means a county council, a district council or a joint planning board within the meaning of the [1971 c. 78.] Town and Country Planning Act 1971, being a board for an area which comprises any part of a National Park; and

(b) in relation to land in Greater London means the Greater London Council, a London borough council or the Common Council.

(3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.

(4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath or bridleway subject to limitations or conditions affecting the public right of way over it.

(5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance with it.

Section 29 - Protection for agriculture and forestry

In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils and joint planning boards to have due regard to the needs of agriculture and forestry.



Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
(All Divisions);

Guidance for the members of the Regulatory Committee

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

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

Brief Summary

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

Recommendation

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

Detail

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

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

Annexes

Annexes 'A', 'B' and 'C' are attached to this report. For clarification, they are summarised below and referenced at relevant points within this report.

Annex	Title
Annex 'A'	Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way
Annex 'B'	Guidance on the law relating to certain Orders to be made under the Highways Act 1980
Annex 'C'	Guidance on the actions to be taken following submission of a Public Path Order to the Secretary of State

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
Current legislation		Jane Turner, Office of the Chief Executive 01772 32813

Reason for inclusion in Part II, if appropriate

N/A



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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

This Circular sets out DEFRA's policy on public rights of way and its view of the law. It can be viewed on the DEFRA web site. There are sections in the circular on informing and liaising, managing and maintaining the rights of way network, the Orders under the Highways Act 1980 and also sections on the Definitive Map and Modification Orders. Many aspects are considered such as -

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

The Surveying Authority published a draft map and statement and there was a period for the making of representations and objections to the draft map. The Authority could determine to modify the map, but if there was an objection to that modification the Authority was obliged to hold a hearing to determine whether or not to uphold that modification with a subsequent appeal to the Secretary of State against the decision.

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a "new" route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

The use also needs to be “as of right” which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent with use as of right. Case law would indicate that the use has to be considered from the landowner’s perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway. Use must not be interrupted.

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. The period of time footpaths and bridleways were closed for Foot and Mouth in 2001 is an interruption.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a “calling into question” (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

Documentary evidence

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the

document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

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

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

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

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

Recording vehicular rights

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities,

that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.

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 27 March 2024

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 27 March 2024

Part I

Electoral Division affected:
All

Progress Report on Previous Committee Items

Contact for further information:

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

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

Brief Summary

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

Recommendation

The Committee is asked to note the progress report.

Detail

A summary of the current progress on Definitive Map Modification Order applications and Public Path Order requests is provided below, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on the 13th of March 2024. The register can be viewed at <https://dmmo.lancashire.gov.uk/>

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

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

No applications have been added to the statutory register since the last update report was presented to the Committee.

Definitive Map Modification Order Applications Where a Decision has Been Taken to Make an Order, the Order has been made and advertised and the Window for Objection is now Open

Reference	Known As	Application Date
804-763	Wray – Footpath from Main Street to Home Farm Close	19/12/2022

Definitive Map Modification Orders Awaiting Return to Committee

Committee has decided this application, the Order has been made and statutory objections or representations received since the last update report was presented to the Committee. It is now awaiting submission to the Planning Inspectorate for determination but will first be returned to Committee to decide the stance regarding confirmation.

Reference	Known As	Application Date
804-707	Dark Lane, Bispham	16/04/2021

Definitive Map Modification Orders Confirmed

Committee has decided this application, the Order has been made and no statutory objections or representations received so the Order has been confirmed by LCC.

Reference	Known As	Application Date
804-691	Farington Hall Wood, Farington	08/01/2021

Definitive Map Modification Order Confirmation Notices Issued

Committee has decided this application, the Order has been made and no statutory objections or representations received so the Order has been confirmed by Lancashire County Council and statutory Notice issued.

Reference	Known As	Application Date
804-657	Sands Lane, Over Kellet	23/09/2020

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

Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A



Part I

Electoral Division affected:
Lancaster Rural East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition and Deletion of Bridleway at Junction with Procter Moss Road, Over Wyresdale
(Annex 'A' refers)

Contact for further information quoting file reference 804-629:
Annabel Mayson, 01772 533244, Paralegal Officer, Legal and Democratic Services
annabel.mayson@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a bridleway from Procter Moss Road, Over Wyresdale to a point on Bridleway BW0125011 and investigation into the deletion of part of Bridleway BW0125011.

Recommendation

- (i) That the application for the addition of a bridleway from Procter Moss Road to Bridleway BW0125011 be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Sections 53 (3)(c)(i) and of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway as shown on Committee Plan between points A-X-B.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
- (iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Bridleway BW0125011, shown between points B-C on the Committee plan.
- (v) That being satisfied that the test for confirmation can be met the Order(s) be promoted to confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Procter Moss Road, Over Wyresdale to a point on Bridleway BW0125011.

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

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

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

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

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

An order for 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

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.

Advice

Consultations



Lancaster City Council

Lancaster City Council provided no response to consultation.

Over Wyresdale Parish Council

Over Wyresdale Parish Council provided no response to consultation.

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5243 5625	Open junction with Procter Moss Road
X	5246 5625	Cattle grid and adjacent field gate
B	5247 5626	Sharp bend in access track
C	5246 5625	Unmarked point on edge of field

Description of Route

A site inspection was carried out in October 2020.

Bridleway to be added (shown between A-X-B on the Committee plan)

The total length of the route to be added is 50 metres.

It commences at the junction with Procter Moss Road on the outside of a 90-degree bend in the road (Point A on the Committee plan). From the road the route extends in an east north easterly direction along a roughly tarmacked and compacted stone surfaced access track approximately 5 metres wide. It is bounded by a stone wall to the north and a wooden post and rail fence to the south and is signed as being access to several properties and as a public bridleway from the road (point A).

The application route continues along the track for approximately 45 metres to cross a cattle grid with a bypass wooden gateway located directly south of the track (point X).

The route then continues for a further 5 metres to a bend in the track where it joins the route recorded on the Definitive Map as Bridleway BW0125011 (point B).

Note: On approaching the cattle grid (point X) a wooden stile is present in the post and rail fencing to the south of the route and signed as a public footpath. This stile provides access to and from the application route to Footpath FP0125019 but the exit point of the footpath onto Procter Moss Road close to point A is not available and is overgrown by hedging and impassable due to fencing.



Bridleway to be deleted (shown between points B-C on the Committee plan)

The short section of bridleway to be deleted runs from the bend on the existing access track where the recorded length of bridleway is shown to diverge from the track (point B). It then runs in a south westerly direction across the east side of the wooden field gate to pass through wooden post and rail fencing into the adjacent field to meet the recorded route of Footpath FP0125019 at an unmarked point on the edge of the field (point C).

The total length of the route to be deleted is 10 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.

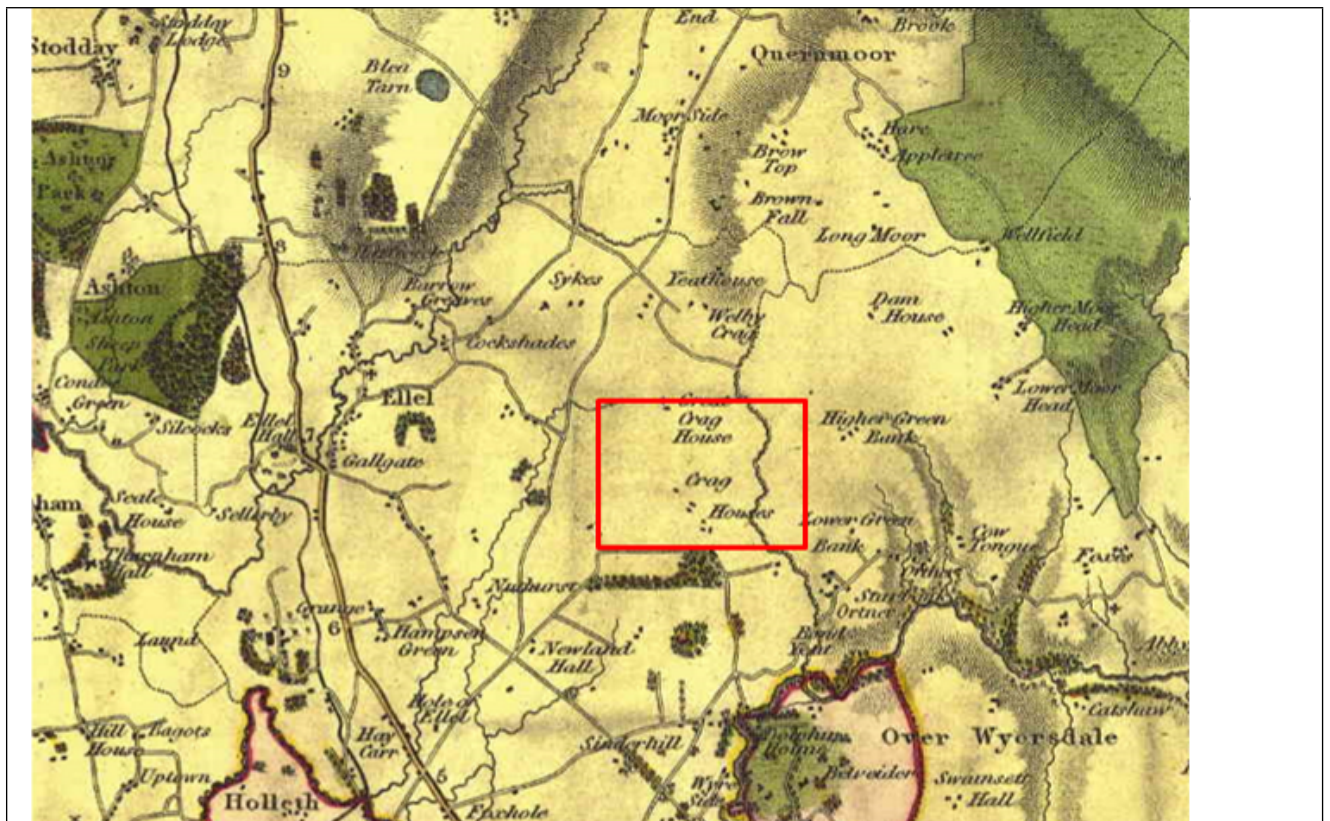
Note: map inserts included in this report are not to scale

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.



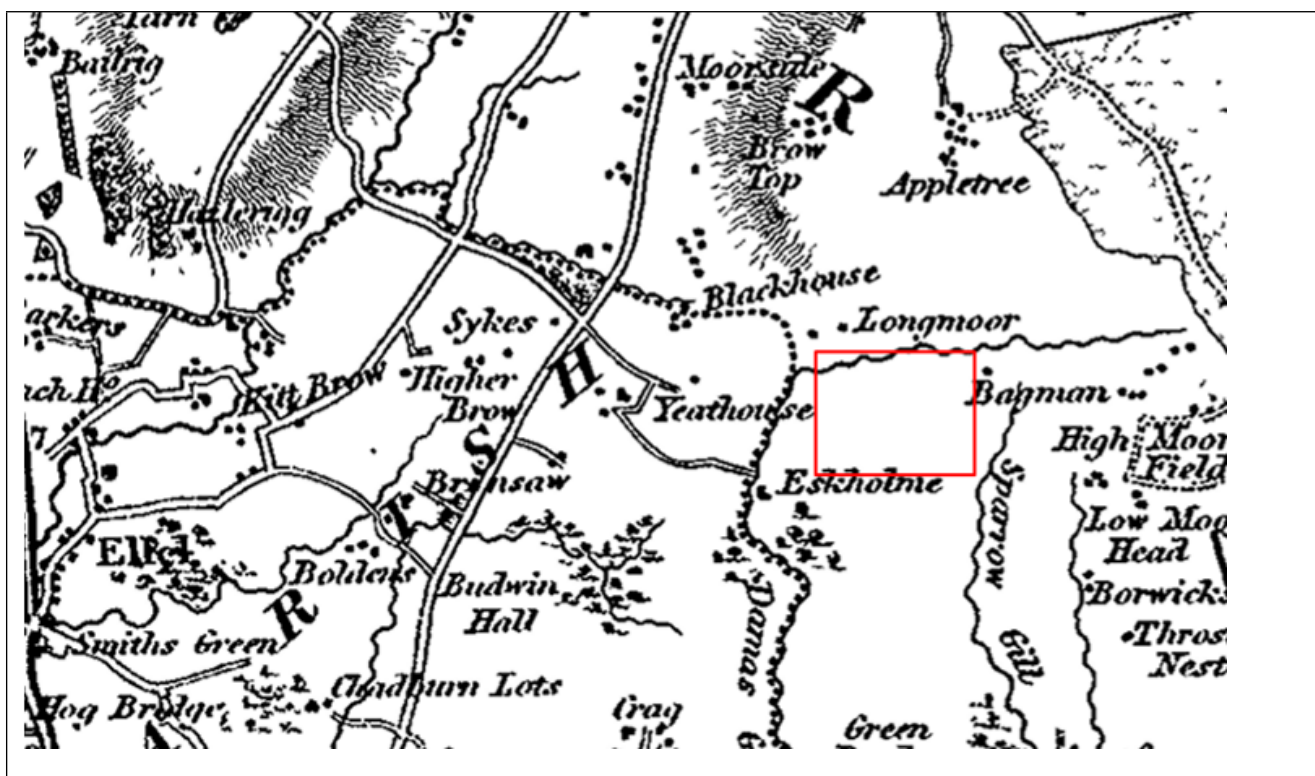
Observations		The application route is not shown and neither is Procter Moss Road (from which the route commences at point A). A number of properties are shown north east of the application route with no access to them.
Investigating Officer's Comments		The route may not have existed in 1786 or it may have been that Yates did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.





Observations		The application route (and Procter Moss Road) are not shown. Several properties are shown (and named) in the vicinity of the application route but access to those properties is not shown.
Investigating Officer's Comments		The application route may have existed but was not considered by Greenwood to be a significant public route which would be shown on a small-scale commercial map at that time.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





Observations		The application route – and Procter Moss Road – are not shown.
Investigating Officer's Comments		The application route – if it did exist – was not considered to be a significant public vehicular highway or a route of sufficient significance to be included on the map.
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		There are no known proposed, existing or dismantled railways or canals in the proximity of the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1846	Maps and other documents were produced under the Tithe Commutation



		<p>Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>
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Extract of the Tithe Map rotated so that the north point is at the top of the map

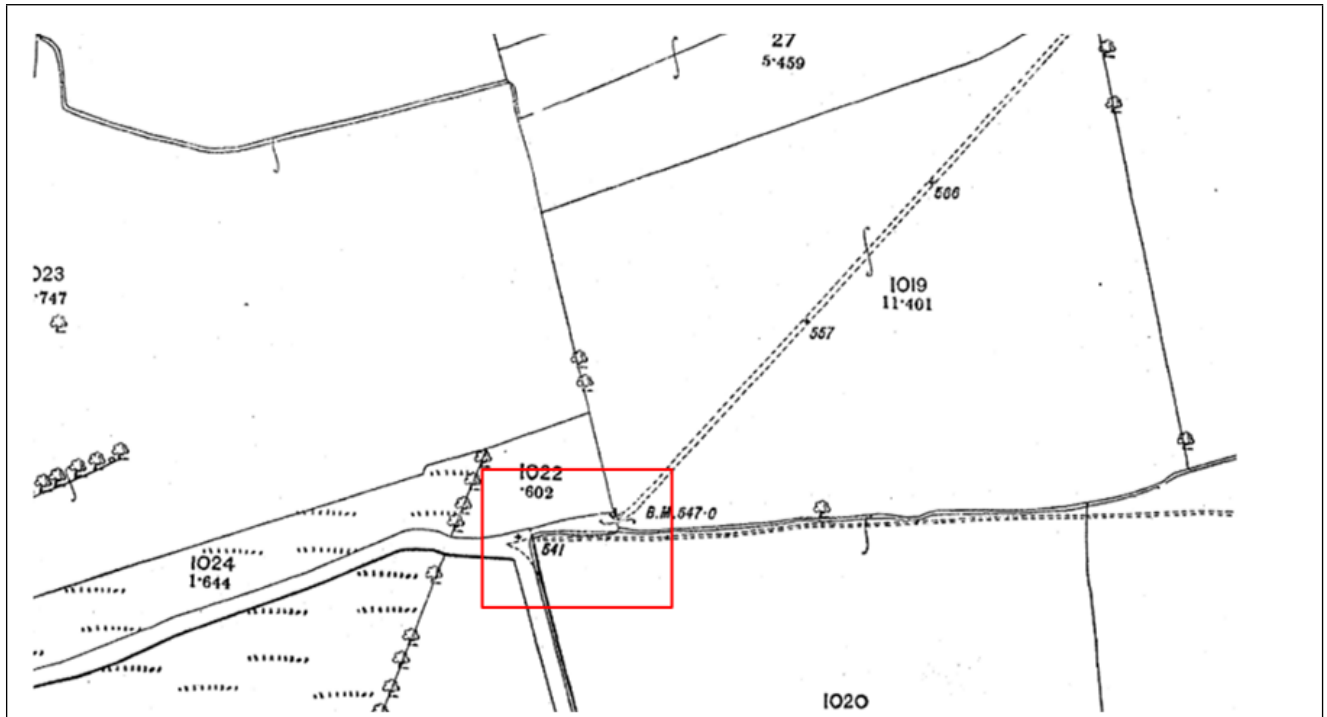
<p>Observations</p>		<p>The Tithe Map was drawn orientated with north at the bottom of the map – effectively upside down from how the parish would by convention be shown on a map today.</p> <p>The Map shows the 90-degree corner on Procter Moss Road at point A. From point A west the road is shown bounded by continuous lines, probably meaning enclosed both sides, and southwards</p>
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		<p>between one continuous and one broken line, enclosed on one side only – which continues for some distance as an unbounded track through a number of different numbered plots but is not shown as a through route.</p> <p>The application route to be added is shown as a bounded route passing through point A and leading directly into a field numbered 85. The route of Bridleway BW0125011 (beyond point B) is not shown.</p> <p>The road from the west – including the application route – is not numbered although it was noted that no other roads shown on the Tithe Map appear to have been numbered.</p> <p>The route proposed to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1846 but did not appear to form part of a longer route. It appeared to provide direct access to a field.</p> <p>The route to be deleted did not exist at that time.</p>
Inclosure Act Award and Maps		<p>Inclosure awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No inclosure award was found for the area crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
6 Inch Ordnance Survey (OS) Map Sheet 35	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847.¹</p>

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



Observations		<p>The application route is clearly shown leaving Procter Moss Road at an open junction (point A) and continuing through to point B from where it then turns to follow the perimeter of a field as a bounded route to provide access to the property named as Greenfield.</p> <p>The route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1844 providing direct access to a property and appeared to be available to use. There was no indication that the route provided access to anywhere else other than Greenfield.</p> <p>The route proposed to be deleted did not exist.</p>
25 Inch OS Map Sheet XXXV.9	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.</p>



Observations

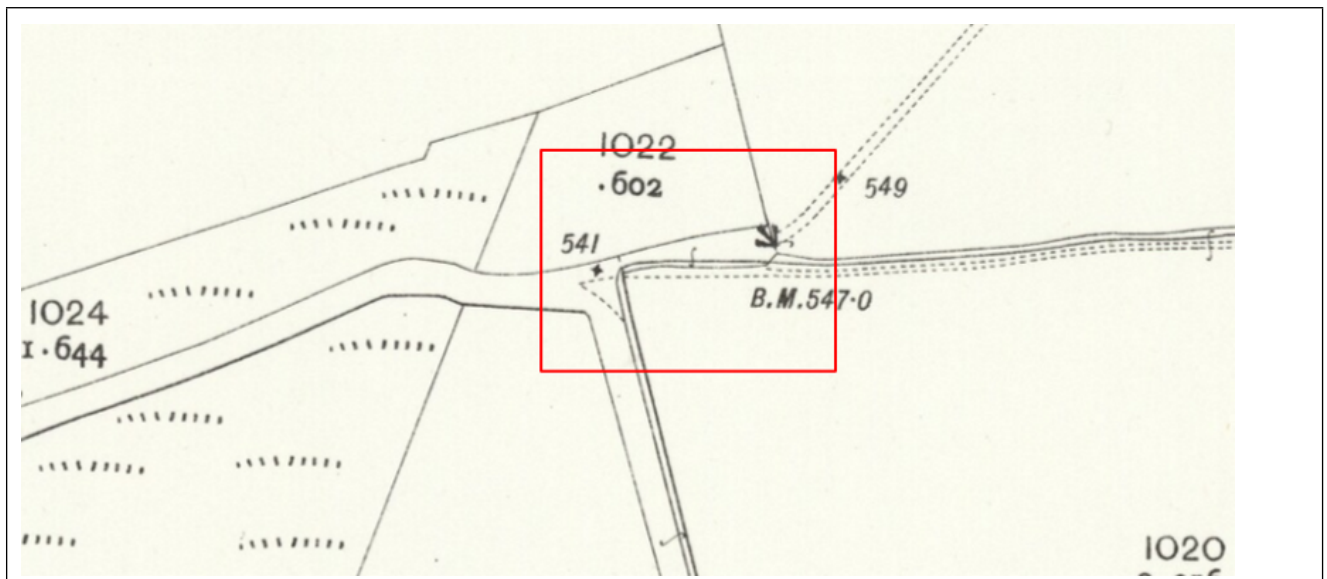
The application route between point A and point B is shown as part of the access road leading to the property labelled as Greenfield on the First Edition 6 inch map and as Longmoor on the First Edition 25 inch OS map although the track is now shown to take a more direct route across the field numbered 1019 as an unfenced track consistent with the route now recorded as BW0125011. The route is shown to continue – along the track now recorded as bridleway beyond Longmoor and other routes labelled as footpaths (F.P.s) are shown to connect to it.

A benchmark is shown at point X and it also appears that there may have been a line across the route at this point. Every other benchmark and spot height on this sheet is shown on a public road. The width at point X is shown sufficiently wide to include the current cattle grid and bypass gate.

A dashed line is shown running adjacent to the application route in the field to the south (numbered 1020 on the map) indicating the edge of a track or path alongside the boundary and running parallel to the application route to Procter

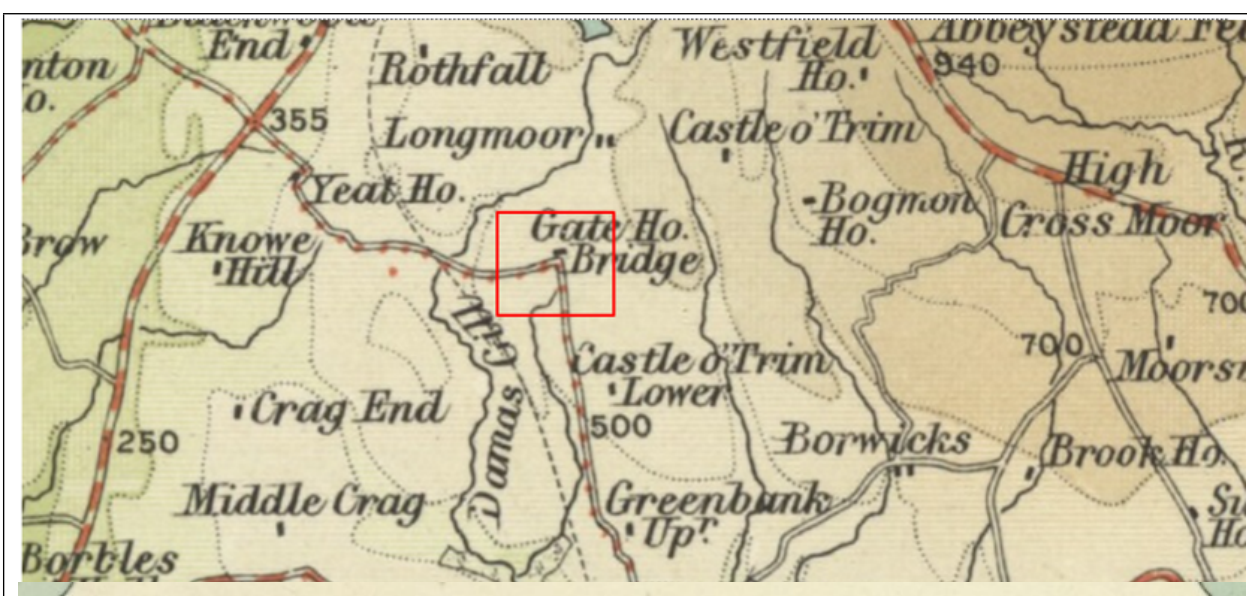


		<p>Moss Road immediately south of point A. This route is consistent with the route now recorded as Footpath FP0125019.</p> <p>The route to be deleted is not shown.</p>
Investigating Comments	Officer's	<p>The application route existed in 1890 and appeared to be capable of being used to provide access to properties but also linking to a network of routes now recorded as footpaths and bridleways.</p> <p>A gate is shown at point X although the existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The fact that a benchmark is located on a route (at point X) is not generally significant. Benchmarks were located along a line of levelling, and often followed lines of communication. In some cases they can also be found on rocks in the middle of private fields or on a structure without public access and consequently it cannot be assumed that a bench mark is indicative of a public right of way. However, as all the benchmarks and spot heights on this particular sheet were on public road the observation that this benchmark is on the application route is consistent with public status.</p> <p>The route to be deleted was not shown and did not appear to have existed in 1890.</p>
25 inch OS Map Sheet XXXV.9	1912	<p>Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1912.</p>


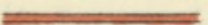







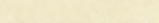


Observations		The application route is shown in the same way as it was shown on the earlier edition of the 25 inch OS map. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1910. The route to be deleted did not exist.
Bartholomew half inch Mapping Sheet 5 – North Lancashire and Ise of Man	1905	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. During this period prior to 1968 cyclists were only permitted on carriageways.





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.

Observations		The application route and the route to be deleted are not shown. Bridleway BW0125011 and Footpath FP0125019 are also not shown.
Investigating Officer's Comments		These small-scale half inch maps were predominantly published with the main market being cyclists and motorists so it was not normal for routes considered to be footpaths and bridleways – or many private vehicular access tracks – to be shown.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field books

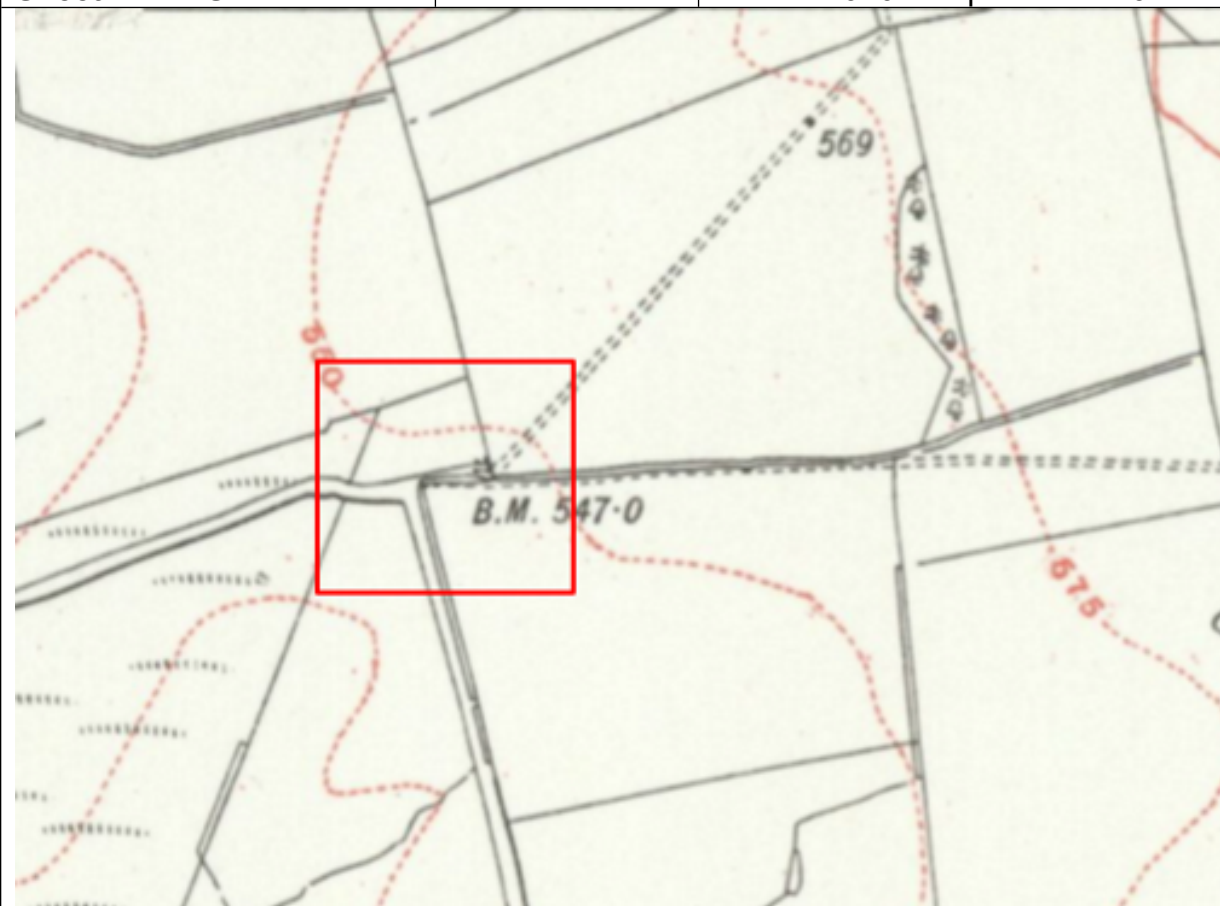
		<p>produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax 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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Observations		The application route between point A and point X is excluded from the taxable plots and looks to have been considered to form part of Procter Moss Road. The route to be deleted is not shown and no details are provided in relation to it in the District Valuation Book.
Investigating Officer's Comments		The exclusion of the route from the taxable hereditaments between point A and point X is good evidence, but not conclusive of public carriageway rights. In this particular case the junction of the application route with the public carriageway (Procter Moss Road) at point A is open and not gated. From point A the application route is bounded on either side for the short distance to point X where a gate is shown across it. The way is fairly wide at point X. When the Valuation Map was prepared it appears that the application route may have been considered to be part of Procter Moss Road because of how it was shown on



		the OS map base rather than providing good evidence of public rights. The map provides no information regarding the route to be deleted and the District Valuation book has not been checked because it would not specify the exact position of any route for which a deduction might have been claimed
6 inch OS Map Sheet XXXV SW	1914	OS 6 inch map surveyed 1843-44, revised 1910 and published 1914.



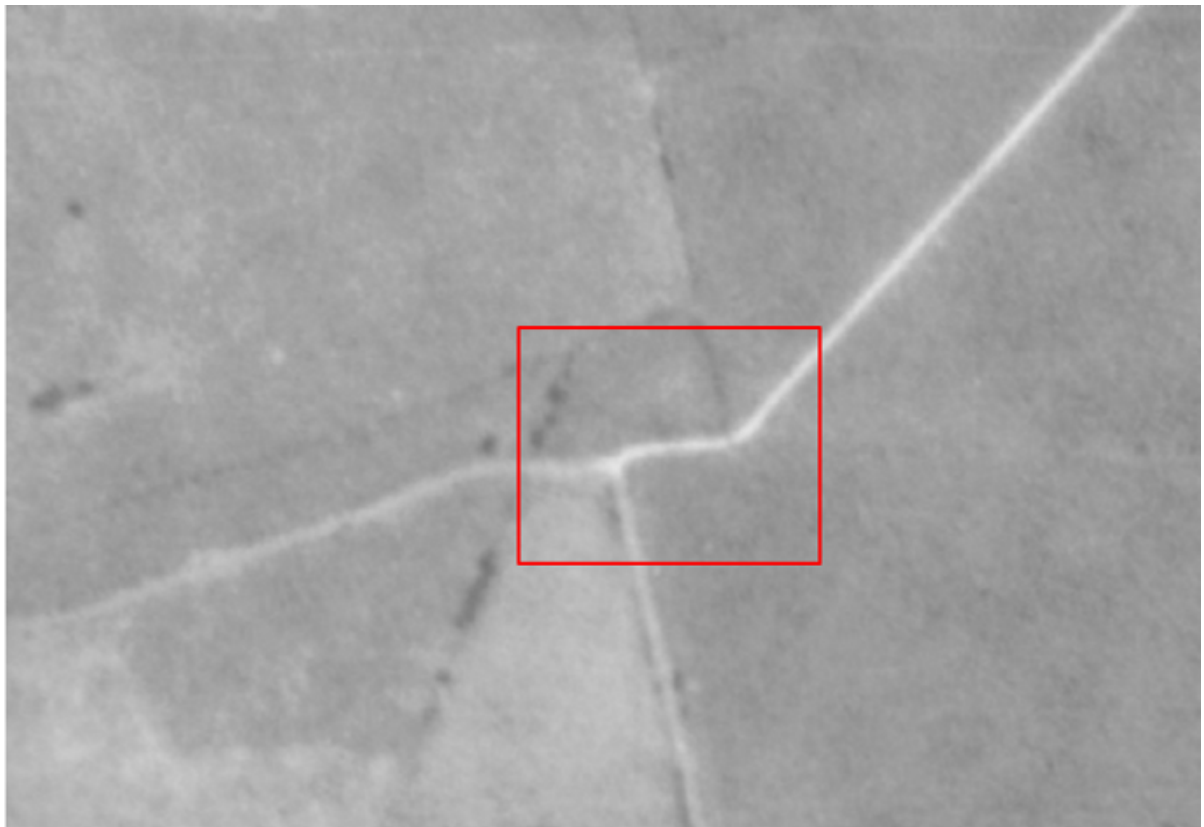
Observations		The application route is shown in the same way as it is shown on all other OS maps examined. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1910. The route to be deleted did not exist.
1932 Rights of Way Act Map	1932	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

		<p>dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi-precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and Meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following rural districts (RD) are available for inspection at County Hall: Lunesdale RD, Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>
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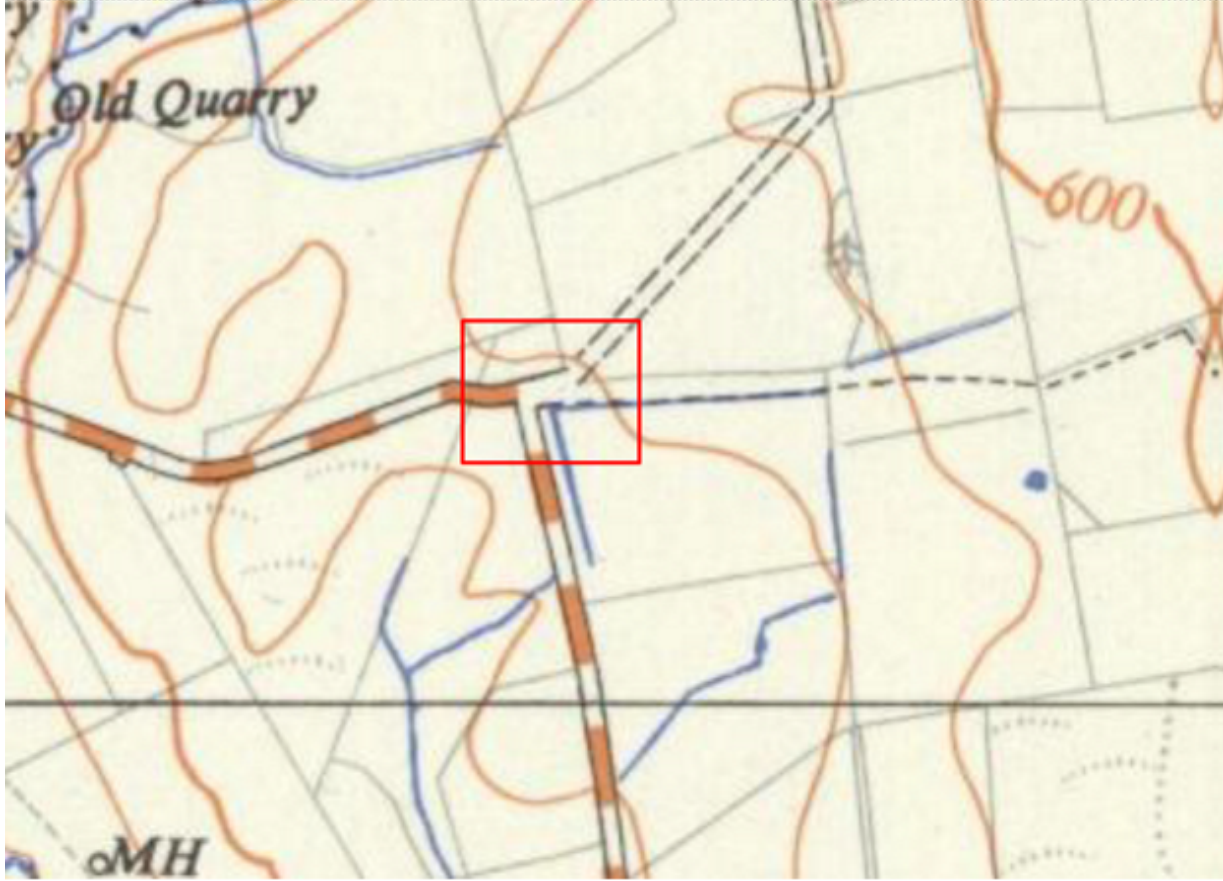
<p>Observations</p>		<p>The Map prepared for Lancaster Rural District does not show the application route. All routes shown are coloured red with no indication whether they were all considered to be footpaths, bridleways or highways of a higher public status. The route now recorded as Bridleway BW0125011 is shown coloured red and numbered 4. It is drawn to include the application route between point B and point X and appears to terminate at the gateway at point X. The route proposed to be deleted between point B and point C is not shown. Footpath 19 is shown on the map as the route numbered 5 and is shown consistent with how the footpath is currently recorded.</p>
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Investigating Comments	Officer's	The routes numbered as 4 and 5 are shown consistently with how they are recorded on the Parish Survey map prepared in the 1950s and detailed later in this report. The way that the route numbered 4 (Bridleway BW0125011) is shown is consistent with the view that the route continued through to Proctor Moss Road via the application route A-X and the view that the route between point B and point C did not exist.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War Aerial with photos flown between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.



Observations		The application route can be clearly seen on the aerial photograph although it is not possible to see whether a gate existed in
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² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		<p>the proximity of point X.</p> <p>The route to be deleted cannot be seen.</p>
Investigating Officer's Comments		<p>The application route existed in the 1940s and appeared to be capable of being used. There appeared to be no reason in 1940s from looking at this photograph why the Bridleway would not have followed the application route between point A and point B.</p> <p>The route proposed to be deleted did not exist.</p>
1:25,000 OS map Sheet SD55	1955	OS map fully revised 1889-1931, partial revision 1938-51 and published 1955.
		
Observations		<p>The application route can be seen providing direct access from Procter Moss Road to Bridleway BW0125011 at point B. No line is shown across the application route at point X. The route to be deleted between point B and point C is not shown.</p>
Investigating officer's Comments		<p>This small-scale OS map provides very little detailed information so it is not surprising that the gate at point X, shown</p>

		to exist on other OS maps, was not shown.
1:2500 OS Map SD 5256-5356	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1973 as national grid series.
Observations		The application route is shown in a similar way to how it is shown on all other OS maps examined. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1972. The route to be deleted did not exist.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



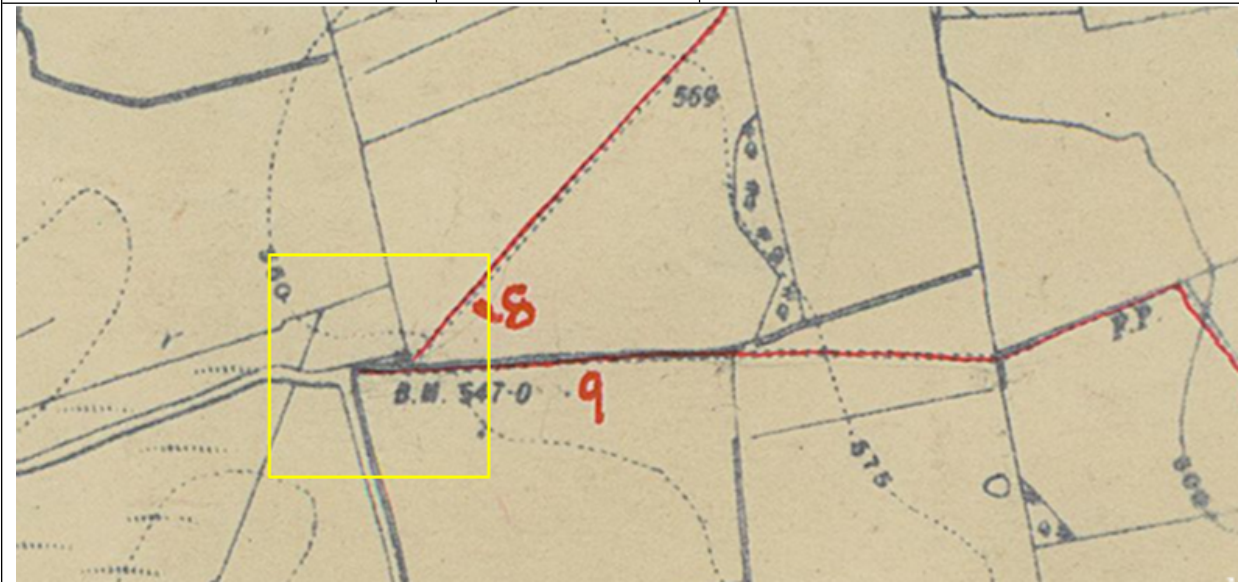


Observations		<p>The application route is again shown as part of a substantial access road between point A and point B – continuing north east from point B.</p> <p>The route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed and appeared capable of being used.</p> <p>The route to be deleted did not exist.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.



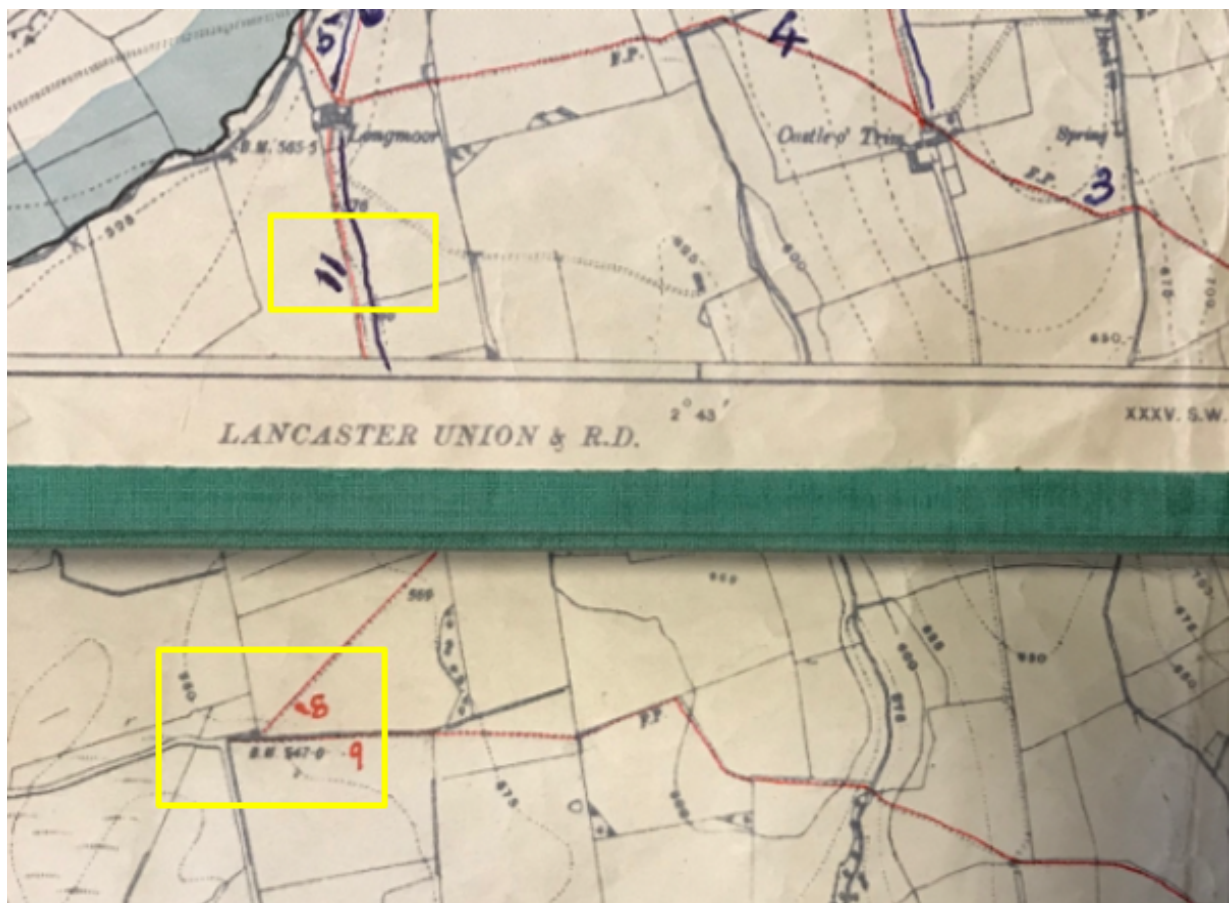
Observations		The application route can be clearly seen as a substantial route. The cattle grid at point X can also be seen with what looks to be a gate or gap directly south of it. The route to be deleted cannot be seen.
Investigating Officer's Comments		The application route existed and appeared capable of being used although the insertion of a cattle grid across the route at point X means that horse riders would be required to use the bypass immediately south of the cattle grid. There is no evidence that the route to be deleted existed.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban

district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes.





Map sheet 1



Extracts of Parish Survey Map sheets 1 and 4



11

DISTRICT Lancaster Rural PARISH Over Wyresdale No. 9 F.P.

MAP SHEET No. 4 LENGTH 0.42 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Metalled Farm Road

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Turn east off Procter Moss Road and follow metalled farm road to far corner of field.

SURVEYED BY :- Name A. V. Harvey
Address Greenbank, Over Wyresdale, Lancaster.

Date 30th May 1951

50000/F39/4/50

Parish Survey Card for Path 11

19

DISTRICT Lancaster Rural. PARISH Over Wyresdale. No. 9 F.P.

MAP SHEET No. 4. LENGTH 1.02 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Field F P.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Starts at gate on No 8 FP. Goes E along S side of field and through gate. Path very indistinct. Crosses field diagonally to a dirty crossing over stream. Gateway being blocked by rails. No stile. Follows N side of pasture in E direction to ditch and bank. Follows ditch in SE direction, gradually becoming more Easterly. Follows fence side to Sparrow Gill. Blocked by single-strand barbed-wire. Stile also barbed. No bridge over brook. Crosses pasture to open gateway, which is very dirty and wet. Path now becomes more distinct. Follows N side of two fields and drops down to Smithy Beck. No bridge. Stone stile over wall to pasture. Follows side of stream and through small gate to meadow. Along N side of meadow to No. 10 FP.

SURVEYED BY :- Name A. V. Harvey.
Address Greenbank, Over Wyresdale, Lancaster.

Date 3rd. October, 1951.

50000/F39/4/50

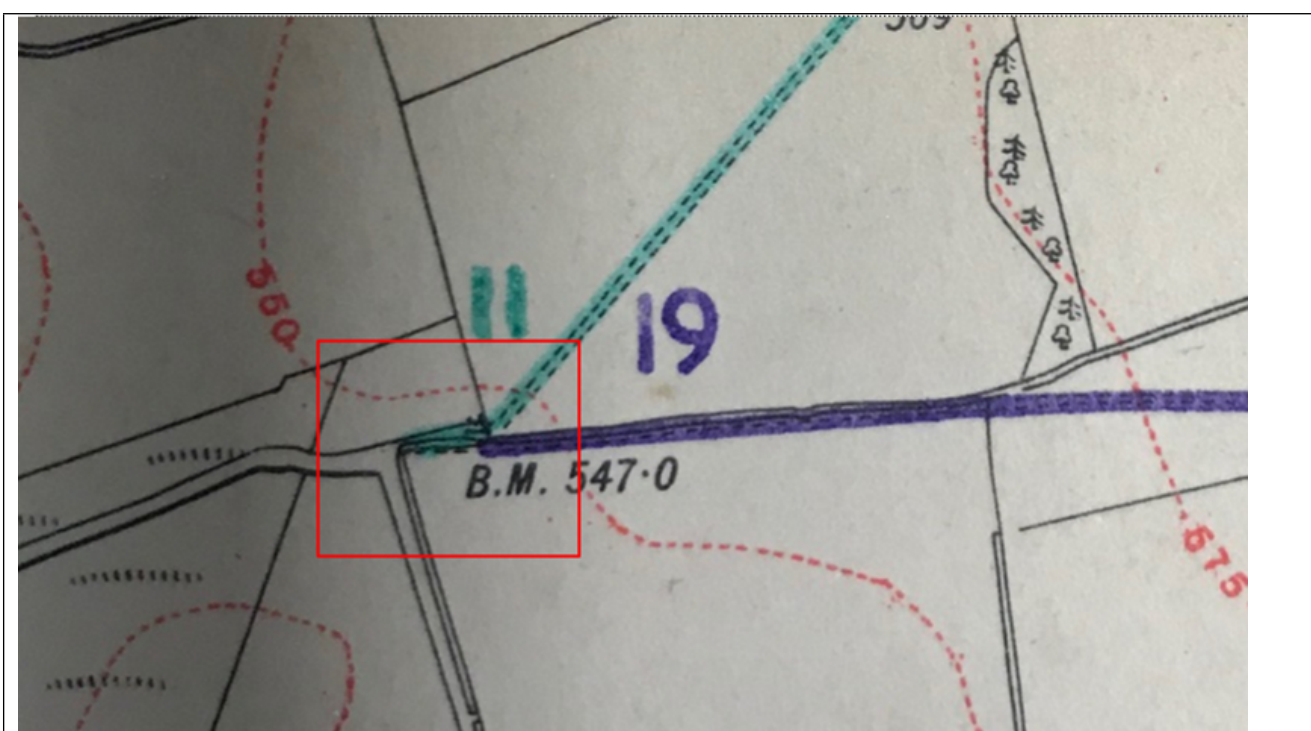
Parish Survey card for FP 19

Observations

The Parish Survey maps and cards are initially confusing.
Map Sheet 1 shows Procter Moss Road and a route numbered 8 coloured red and commencing at point X to continue north east to the edge of the sheet along



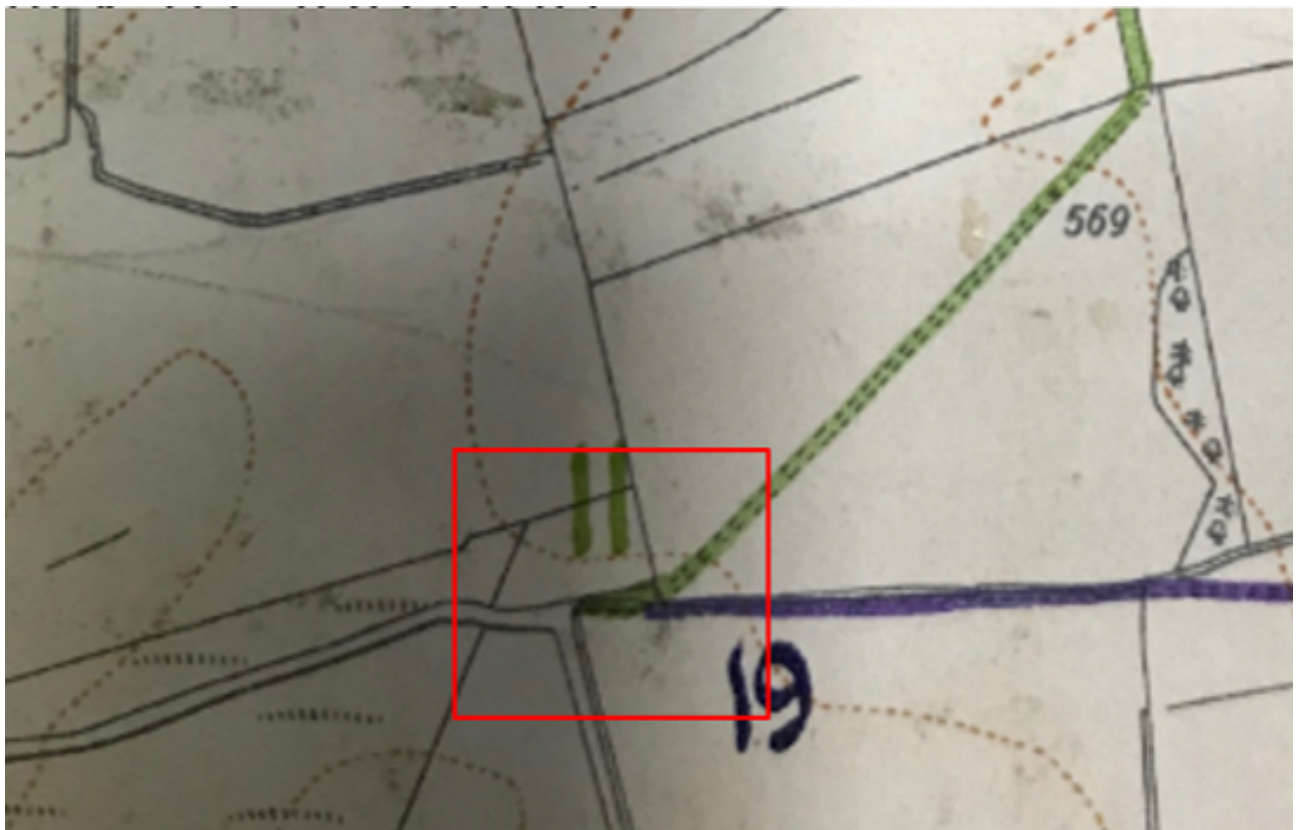
		<p>the route now recorded as BW0125011. Map Sheet 4 shows this continuing as a route coloured red and numbered 11. The Parish Survey card for the route numbered 8 does not describe the route shown on Map 1. The Parish Survey card for route 11 (Map Sheet 4) does however describe the route now recorded as BW0125011. The map shows the route from point X passing through point B continuing north east. It does not show the application route between point A and point X and does not show the route to be deleted between point B and point C. It describes the route as a metalled farm road which turned east off Procter Moss Road.</p> <p>The description for the route now recorded as FP0125019 is described as starting at gate on Footpath 8 and going east along south side of field.</p>
<p>Draft Map and Statement</p>		<p>The Parish Survey map and cards for Over Wyresdale were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



		Nos. 22 & 25.	
11	Bridleway	Longmoor to junction with path No.19 at Proctor Moss Road.	
18	Footpath	Upper Greenbank to junction with path Nos. 16 & 17 at Heversham Syke.	0.47
19	Footpath	Junction with path No.11 at Proctor Moss Road to junction with path Nos. 23 & 20.	1.02
20	Bridleway	Junction with path Nos. 21, 22 & 24 at Low Moor	

Observations		<p>When the Draft Map was drawn the route previously shown on the Parish Survey card and described as a metalled farm road on the parish survey card is now listed as a bridleway and is clearly shown on the map to include the application route between point A-X-B.</p> <p>The route between point B-C is not shown. The Bridleway is described very briefly in the Draft Statement as starting at Longmoor and terminating at the 'junction with path No.19 at Proctor Moss Road'.</p> <p>Footpath 19 is described as starting at the 'junction with path No.11 at Proctor Moss Road' but is shown on the map as starting/ending at a junction with the application route immediately west of</p>
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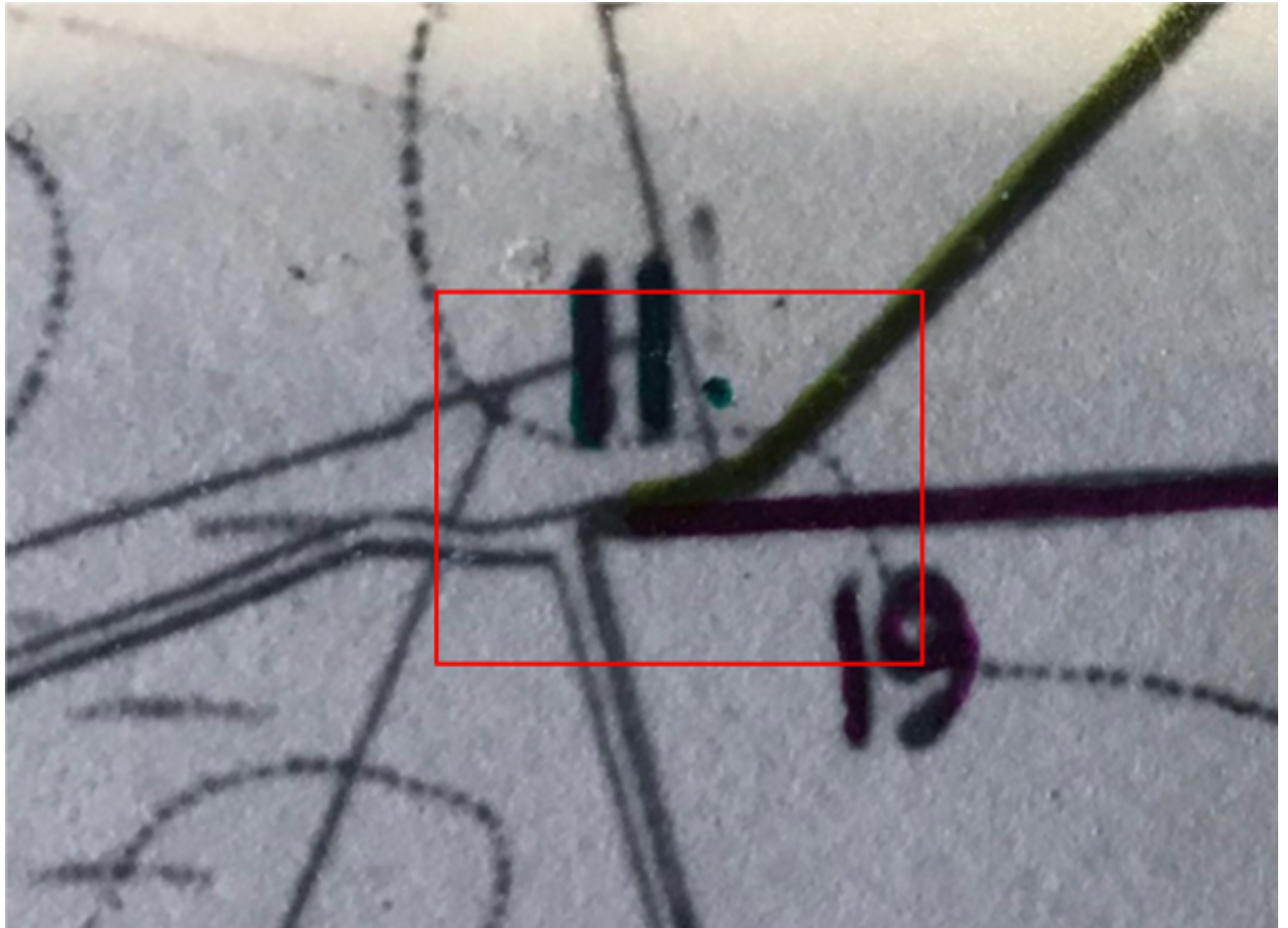
		<p>point X – possibly suggesting some confusion as to whether the application route between point A and point X was a public bridleway or part of Procter Moss Road.</p> <p>No objections or representations were found relating to how either routes were shown or described.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		<p>The Provisional Map shows the routes in the same way as they were shown on the Draft Map. The application route between point A-X-B is shown as part of BW0125011. The route to be deleted is</p>
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		not shown and here were no representations or objections relating to it.
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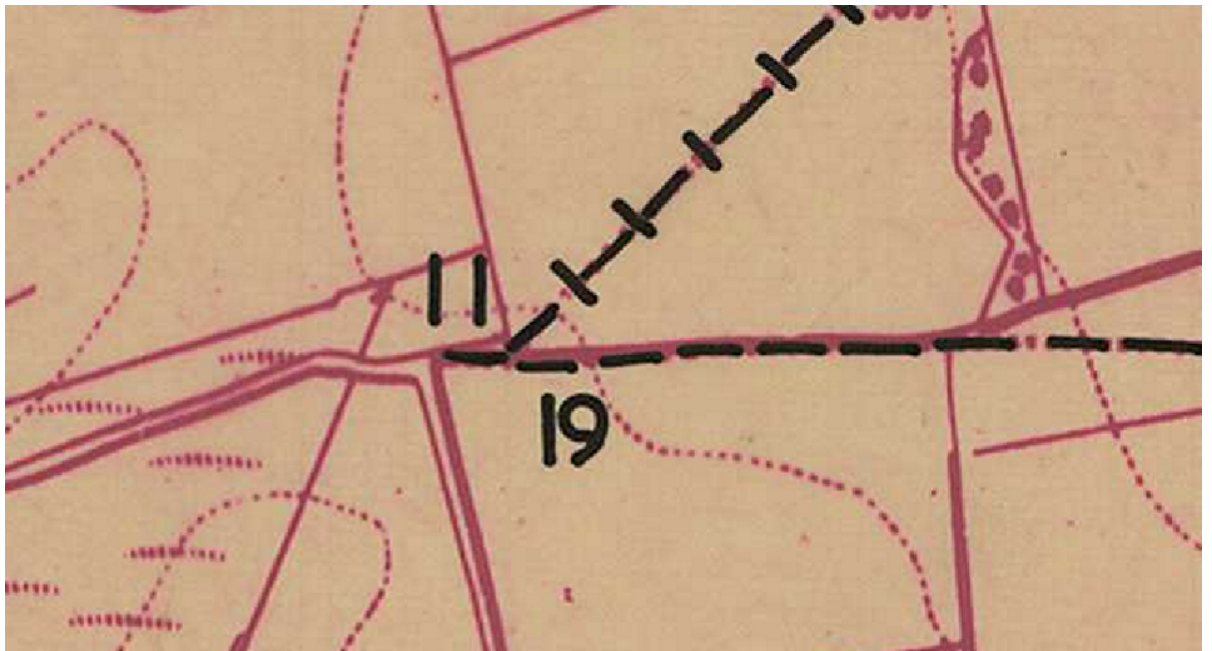
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
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Observations		<p>In this instance it appears that BW0125011 is shown to extend along the application route at least part-way between point A and point X east through point X to point B (and beyond) with FP0125019 shown to meet BW0125011 just east of the junction with Procter Moss Road. Due to the limitations of scale, thick felt pen and purple line drawn over the green line it is not possible to be clear whether the bridleway is shown starting at A or somewhere between A and X.</p> <p>The Definitive Statement remained unchanged from what was written in the Draft Statement.</p>
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Revised Definitive Map of Public Rights of Way (First Review)

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



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	DEFI Other ps
1	Footpath	High Cross Moor Road to Higher Moor Head	0.31	
2	"	Higher Moor Head to Bogman House	0.34	
3	"	Bogman House to Castle O'Trim	0.33	
4	"	Castle O'Trim to Longmoor	0.39	
5	"	Longmoor to Parish Boundary	0.08	
6	Bridleway	Longmoor to Parish Boundary	0.13	
7	Footpath	Castle O'Trim to Parish Boundary	0.23	
8	"	Junction with Path No. 2 to Lee Tenement	0.34	
9	"	Lee Tenement, North to Parish Boundary	0.13	
10	Bridleway	Junction with Path No. 1 to junction with Path No. 22 and 25	0.37	
11	"	Longmoor to Junction with Path No. 19 at Proctor Moss Road	0.42	

LANCASTER RURAL DISTRICT

LANCASTER RURAL DISTRICT

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	Otl
16	Footpath	Lower Green Bank near top of hill to junction with path Nos.17 and 18 near Heversham Syke.	0.61	
17	"	Junction with Path Nos.16 and 18 at Heversham Syke to Parish Boundary at bridge over Damas Gill.	0.07	
18	"	Upper Greenbank to junction with Path Nos.16 and 17 at Heversham Syke.	0.47	
19	"	Junction with Path No.11 at Proctor Moss Road to junction with Path Nos.23 and 20.	1.02	
20	Bridleway	Junction with Path Nos.21,22 and 24 at Low		

Observations

Again, the scale of the First Review Map makes it difficult to interpret exactly what was shown but a search of county council records confirmed that there had been no legal diversion, extinguishment or creation orders altering the extent of public rights across the land affected by the application.

Close examination of the Revised Definitive Map appears to show that a dash was drawn between points A and C over the lines on the base map. This dash meets one on the east representing Bridleway BW0125011 and is close to the one representing Footpath FP0125019.

Investigating
Comments

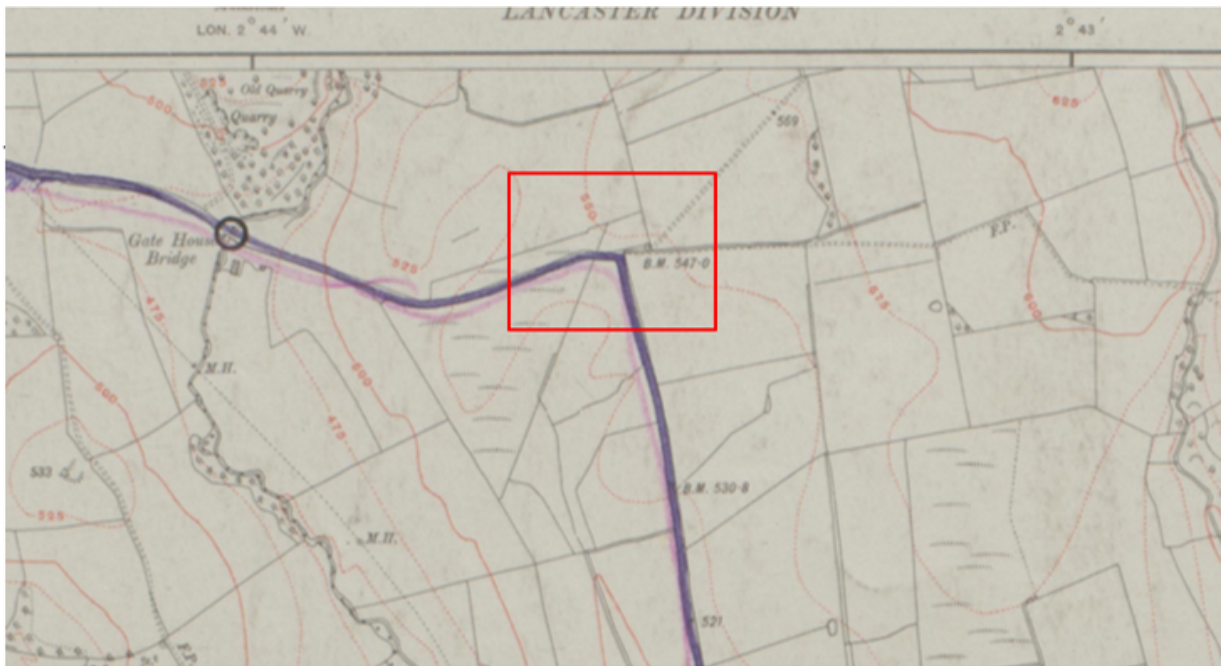
Officer's

All OS mapping pre-dating and post-dating the preparation of the Definitive Map suggest that the application route A-X-B existed and was capable of being



		<p>used.</p> <p>There is nothing to suggest that the alignment of the Bridleway as shown on the Draft or Provisional Map as being along the route A-X-B was ever challenged but rather it appears that due to the small scale of the map and extremely close proximity of both paths – particularly as the maps were redrawn on at least 5 occasions during the Definitive Map process presumably without any checking on site. The route of the bridleway was not fully recorded as extending through to point A as Procter Moss Road may have been regarded as extending to X (it appears from many of the parish surveys that no reference was made to the highways records). The bridleway was incorrectly shown between points B-C perhaps as part of that uncertainty.</p>
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural districts 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.



Handover Map OS Sheet 35SW

Observations		The application route is not recorded as a publicly maintainable road and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable road does not mean that it does not carry public rights of access.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights exist along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist they do not appear to have been stopped up or diverted.
Statutory deposit and		The owner of land may at any time



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

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

Summary

The Investigating Officer was of the view that all the map and documentary evidence submitted as part of the application, or examined as part of the detailed research carried out by the county council, shows that the route to be deleted had, on a balance of probabilities, never existed and appears to have been included in error. It



also showed that there had consistently been a way available on the route to be added and that its omission was also erroneous.

Taking all available map and documentary evidence into consideration it is considered that the route to be deleted was wrongly recorded and that the route of the bridleway is that shown available on the various Ordnance Survey maps and not the route to be deleted.

No map or documentary evidence examined supported the view that the bridleway connected to the route recorded as Footpath 19 or that it did not connect to Procter Moss Road along the route to be added (A-X-B).

Head of Service – Legal and Democratic Services

Landownership

The section of the route from A to X crosses land which is unregistered. The land crossed by the route from X to B is in private ownership. The land from point B to part way between B and C is in private ownership and the land from part way between point B and C to point C is unregistered land.

Information from the Applicant

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

- 6 inch OS maps published in 1848 and 1914
- 25 inch OS maps published in 1891 and 1912
- 1:25,000 OS map published in 1955
- Extracts from the Revised Definitive Map and Statement (First Review)
- Tithe Map 1848
- Finance Act map
- Landownership plans
- Photographs showing the route in 2020

Information from the Landowner

A consultation plan was returned, with the owner simply highlighting the land in their ownership.

Information from Others

Cadent Gas and Atkins Global both responded to the consultation to state that they have no objection to the application.

The Ramblers' Association Footpath Secretary for the Lancaster District responded to the consultation to state they support the application and state 'it would appear to correct an anomaly since the bridleway, BW0125011, presently is shown to terminate on a public footpath, FP0125019, and not meet with a permissible onward

route, Proctor Moss Road. The obvious route to allow connection to the road is along the short spur from Proctor Moss Road to the bridleway'.

A Right to Ride representative from Cycling UK responded to the consultation by stating they had no objection to the proposal.

County Councillor Susie Charles, the local county councillor at that time had responded to the consultation by stating she had no objection.

Assessment of the Evidence

The Law - See Annex 'A'

To remove a route from the Definitive Map it is necessary to show on balance that it was on the Definitive Map in error.

The case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips M.R. of the Court of Appeal stated at paragraph 30 of his judgement that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route.

In *R (on application of Leicestershire CC) v Secretary of State for the Environment Food and Rural Affairs* [2003] Collins J held that in these circumstances:

“it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed.” He went on, *“if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive ... where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be*

likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

Committee is therefore advised to firstly consider whether route A-X-B is already a Bridleway in law and should be added to the Definitive Map. Secondly, whether this means that it was the correct route of the network in 1966 and that the route B-C was recorded on the Definitive Map in error, meaning that B-C should now be deleted from the record.

Committee is advised the evidence points strongly towards the conclusion that the Bridleway follows the route A-X-B, noting the Parish Survey Map, Draft Map, Provisional Map and First Definitive Map all consistently showing the route A-X-B with no route shown between B-C. As part of this process there were no objections made which is indicative of acceptance by the landowner and the public of the existence of the right of way shown along the route to be added A-X-B.

Furthermore, on the historical maps, from the OS Maps 1892 onward and the aerial photographs from the 1960s the application route A-X-B is clearly shown and there appears to be no route between B-C.

In contrast, the route proposed for deletion B-C is not shown on any map until the Definitive Map First Review. It is also worth noting the route B-C would have crossed a watercourse and field boundary and it is therefore considered more plausible that the route would have followed A-X-B as the route shown on all Ordnance Survey maps examined.

The investigating officer has found no documentation to explain the change from the route shown on the First Definitive Map to the route B-C. Therefore, the reasonable conclusion from the evidence is that no public right of way existed between B-C and that a simple drafting error due to the small scale of the maps and close proximity of the routes has resulted in the Bridleway being drawn along B-C instead of the correct route A-X-B.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest the route B-C was recorded in error and should be removed from the Definitive Map and the Bridleway between A-X-B be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

Implications:

This item has the following implications, as indicated:

Lancashire County Council as Surveying Authority under the Wildlife and Countryside Act 1981 is required to keep the Definitive Map and Statement of Public Rights of Way up to date by making definitive map modification orders to correct errors and omissions shown, or required to be shown, on it. It is required to process

duly made applications for definitive map modification orders and also to consider whether to make orders when it discovers relevant evidence.

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

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-629		Annabel Mayson, 01772 533244, County Secretary and Solicitors Group





Reason for inclusion in Part II, if appropriate

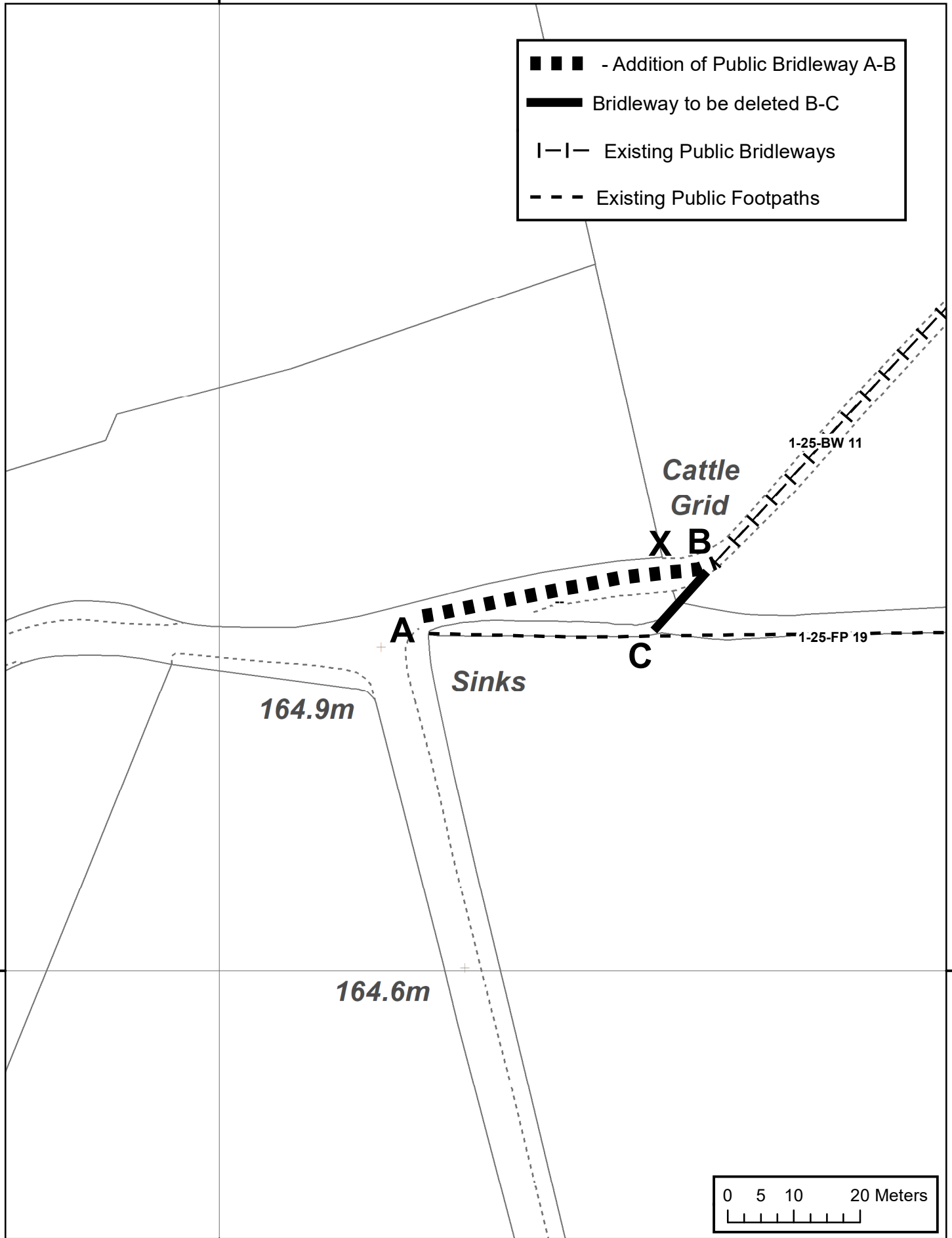
N/A



Committee Plan

352400 000000

	- Addition of Public Bridleway A-B
	Bridleway to be deleted B-C
	Existing Public Bridleways
	Existing Public Footpaths



352400 000000



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

Wildlife and Countryside Act 1981
 Addition of Bridleway from Procter Moss Road to Bridleway Over Wyresdale 11
 and deletion of part of Bridleway Over Wyresdale 11, Lancaster File 804-629

1:750



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 27 March 2024

Part I

Electoral Division affected:
Lancaster Rural North

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrade of Footpath to Bridleway, Threagill Lane, Warton**
(Annex 'A' refers)

Contact for further information quoting file reference 804-651:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors
Group, simon.moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Upgrade of a footpath to bridleway on the Definitive Map and Statement of Public Rights of Way the way known as Threagill Lane, Warton.

Recommendation

- (i) That the application to upgrade part of footpath 1-35-FP8 to a bridleway on the Definitive Map and Statement of Public Rights of Way of Way be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c) of the Wildlife and Countryside Act 1981 to upgrade part of footpath 1-35-FP8 to a Bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) That being satisfied that the 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 upgrade to bridleway of part of 1-35-FP8 on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Lancaster City Council

Lancaster City Council provided no response to consultation.

Warton Parish Council

Warton Parish Council provided no response to consultation.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	5055 7252	Open junction with Borwick Lane between Boon Town Farm and 42 and 42a Borwick Lane
B	5094 7240	West Coast mainline railway passes over the application route via a railway bridge
C	5103 7231	Open junction with A6 Scotland Road directly opposite continuation of 1-35-FP8 which circumnavigates Pine Lake Resort

Description of Route

A site inspection was carried out in September 2020.

The application route leaves Borwick Lane - which runs from the village of Warton to the A6 (Scotland Road) – to pass between Boon Town Farm and two residential properties (42 and 42a Borwick Lane) (point A on the Committee plan).

The application route provides vehicular access to both the farm and residential properties from point A.

The route descends gradually along a tarmac roadway varying between 4-5 metres wide in an easterly direction past the front of the house numbered 42a – opposite which a large open stone surfaced area provides access to the farm buildings and an area on which farm vehicles were parked.

The application route continues past the house on a compacted earth/grass surfaced track bounded on both sides by mature hawthorn hedges with a number of gateways on both sides of the route providing access into the adjacent fields.

The application route continues past the house on a compacted earth/grass surfaced track bounded on both sides by mature hawthorn hedges with several gateways on both sides of the route providing access into the adjacent fields.

The route passes under the railway via a tunnel (point B) and continues along a bounded route – with well maintained hawthorn hedges along both sides - through to an open junction with the A6 (Scotland Road) at point C.

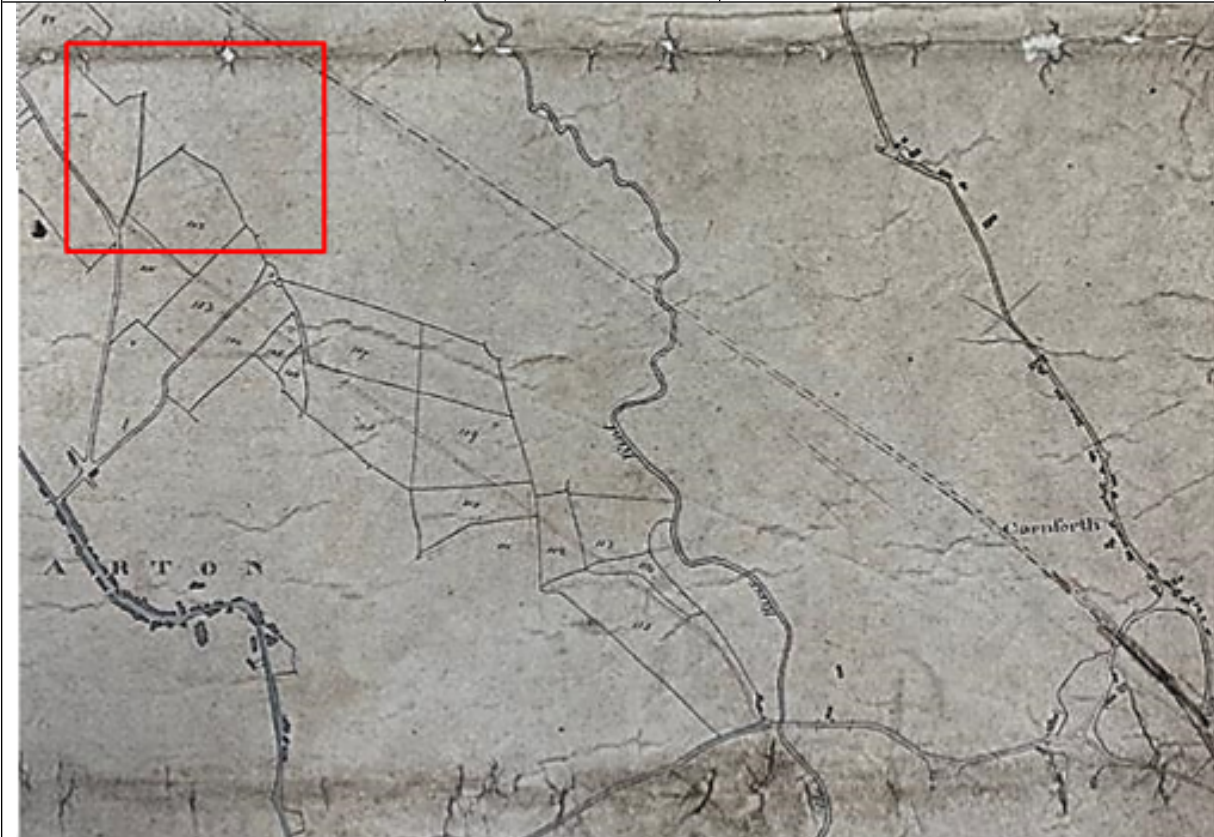
The route was signed as a public footpath at both ends. There was evidence of a low level of use by farm vehicles (tractor tyre marks).

The total length of the route is 550 metres.

Map and Documentary Evidence

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

Document Title	Date	Brief Description of Document & Nature of Evidence
Map of Proposed Turnpike Road from Milnthorpe to Carnforth including alternative through Yealand and Warton CRO Ref: TTK/1	Circa 1817	Found map in Lancashire Records Office of the proposed route of the Turnpike Road from Milnthorpe to Carnforth which was part of the Ulverston and Carnforth Turnpike Trust.





Explanation

*The proposed Turnpike Road from Milnthorpe to
Carnforth Coloured Red*

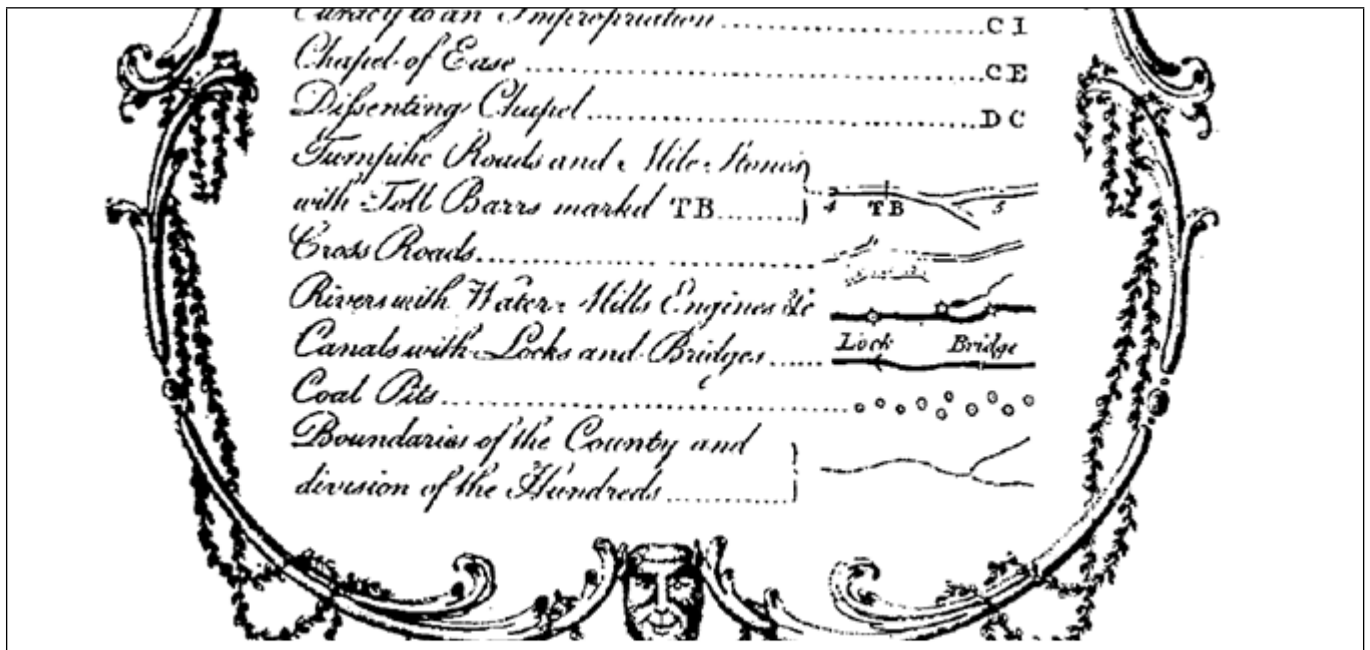
*A Part of the said Road proposed through
Yealand and Warton Coloured Blue*

<p>Observations</p>		<p>The Map was undated but is understood to have been produced in 1817 consistent with the dates of plans and books of reference deposited at Cumbria Records Office (Ref WQ/RDP/109). The plan is quite damaged, and the colouring referred to in the key is difficult to see. The start of the application route is shown on the plan extending from Borwick Lane from point A extending onwards a 'blank' area on the plan.</p>
<p>Investigating Officer's Comments</p>		<p>The Plan provides the earliest evidence found of the existence of the route – at least in part in 1817. The fact that it was</p>

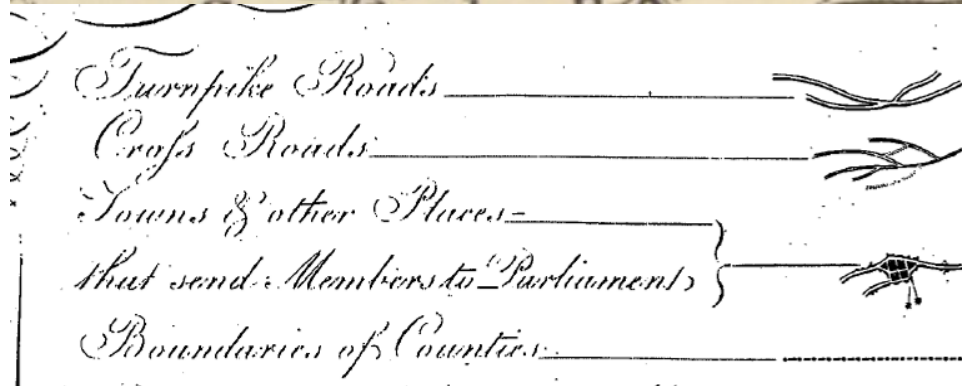


		shown on a map prepared at that time for the purpose of the proposed construction of a vehicular route suggests the existence of a substantial route – possibly used by horse drawn vehicles or on horseback at that time.
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to 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.





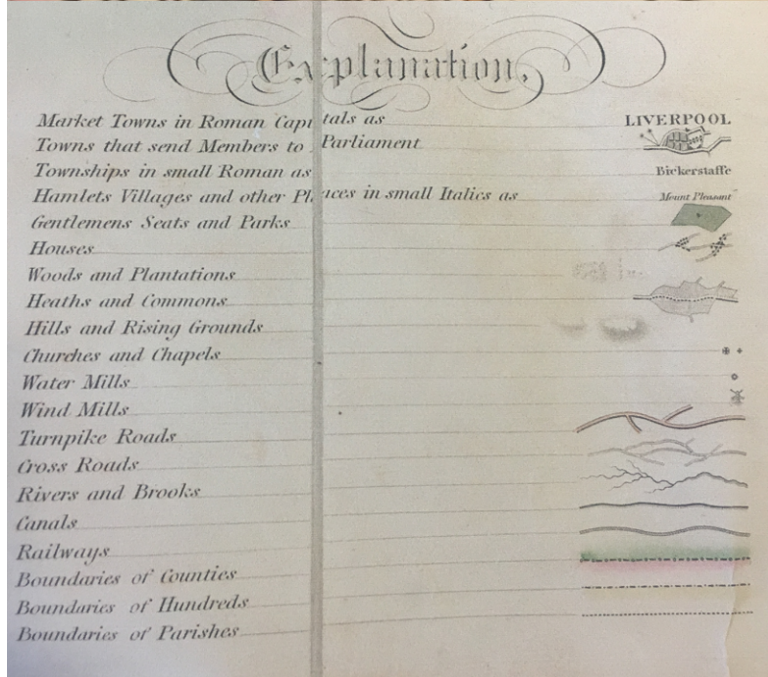
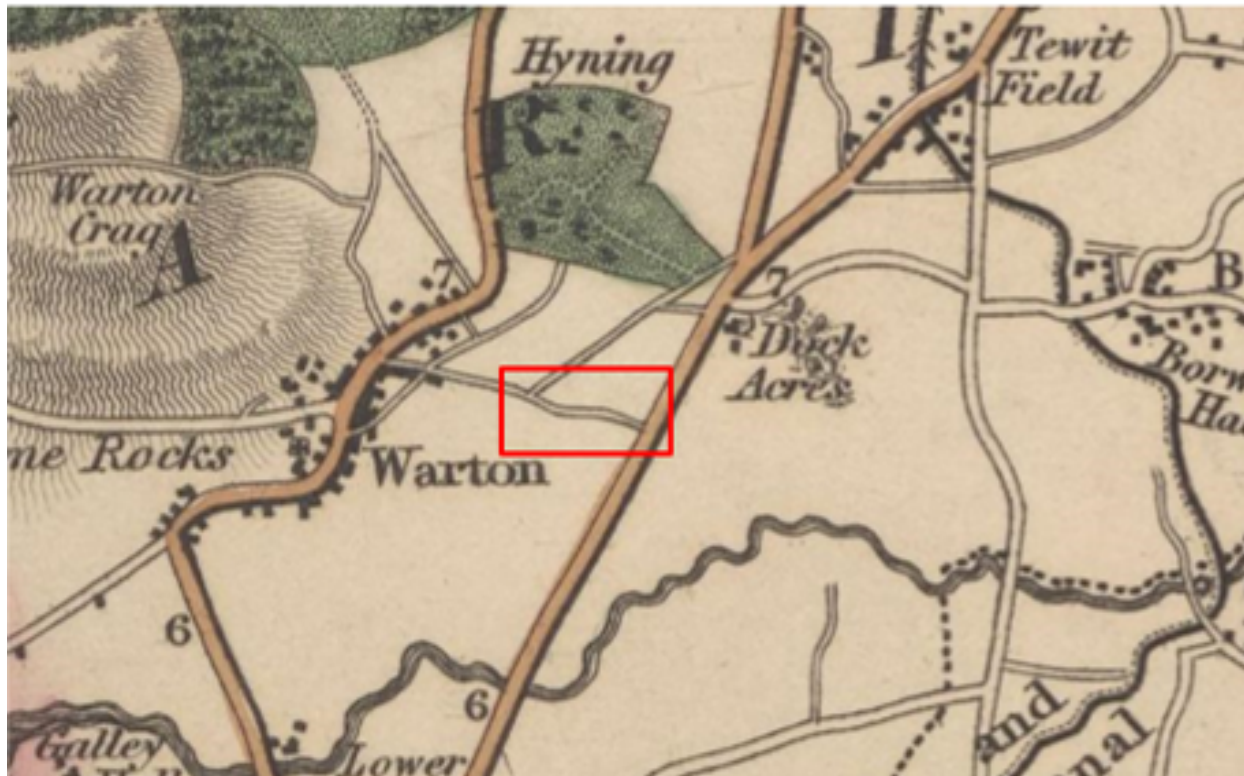
Observations		The application route is not shown. Turnpike Roads are shown running parallel to one another – one extending north from Carnforth through Warton – the other – running north east from Carnforth and then north along what is now recorded as Kellet Lane with Borwick Lane shown connecting the two. The modern day route of the A6 (Scotland Road) is not shown.
Investigating Officer's Comments		The application route (if it existed at that time) was not considered to be a significant vehicular route by Yates.
Greenwood's Map of Lancashire	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The start of the application route is shown extending south east from point A but the rest of the route is not shown. The A6 (Scotland Road) is not shown.
Investigating Officer's Comments		The application route – or part of it - may have existed in 1818 – as indicated by the fact that the start of the route from point A is shown.
Hennet's Map of Lancashire	of 1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was



generally considered to be the clearest and most helpful that had yet been achieved.

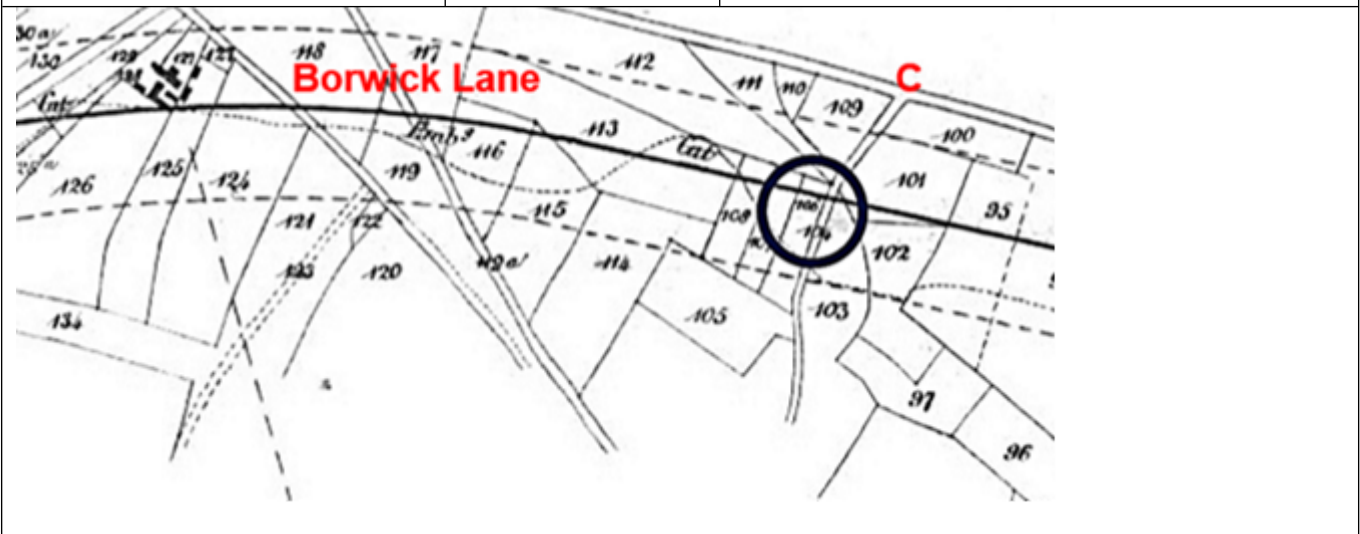


Observations

By 1830 a new section of turnpike road had been built between Carnforth and Tewitfield which was part of the Garstang and Heron Syke Trust Turnpike. The full length of the application route is shown on Hennet's Map between Borwick Lane and the new Turnpike Trust Road. It is shown on the map as a cross road.



<p>Investigating Comments</p>	<p>Officer's</p>	<p>The full length of the application route existed in 1830 providing a link between Borwick Lane and Scotland Road. The route was shown on the map as a cross road and although it is not fully known what is meant by this term the only other category of 'road' shown on the map are turnpike roads. It is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths.</p>
<p>Canal and Railway Acts</p>	<p>1844</p>	<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>



94	ditto.	ditto.	ditto.
94a	Plantation.	ditto.	Edmund Clowes.
95	Arable.	Reverend Robert Gibson as Vicar of Bolton.	Richard Whoraby.
96	Meadow.	ditto.	ditto.
97	ditto.	William Mason.	William Whoraby.
100	Arable.	Reverend Robert Gibson as Vicar of Bolton.	Richard Whoraby.
101	ditto.	William Whoraby.	William Whoraby.
102	Meadow.	ditto.	ditto.
103	Arable.	Edmund Clowes.	William Barrett.
104	Occupation Road.	John Bolden and others.	John Bolden and others.
105	Arable.	James Addison or his Trustees.	William Whoraby.
106	ditto.	Edmund Clowes.	William Barrett.

116	ditto.	Agnes Towson.	John Thompson Thew.
117	ditto.	Reverend William Mason.	ditto.
118	ditto.	ditto.	ditto.
119	ditto.	John Bolden and William Bolden Bolden.	Thomas Askew.
119a	Public Road.	Surveyors of Highway.	
120	Arable.	John Bolden and William Bolden Bolden.	Thomas Askew.
121	ditto.	ditto.	ditto.
122	Plantation.	ditto.	John Bolden.
123	Private road.	ditto.	ditto.
124	Arable.	ditto.	Thomas Askew.
125	ditto.	ditto.	ditto.
126	ditto.	ditto.	ditto.



As to crossing of Turnpike Roads adjoining Stations.

CCLXXIV. And be it enacted, That where the said Railway crosses any Turnpike Road on the Level adjoining to a Station, all Trains on the said Railway shall be made to stop before arriving at such Turnpike Road, and shall not cross the same at any greater Rate of Speed than Four Miles an Hour; and the said Company shall be subject to and conform to and abide by all such Rules and Regulations with regard to such Crossings as may from Time to Time be made by the said Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations.

Bridges over Roads.

CCLXXV. And be it enacted, That, except as herein provided, every Bridge to be erected for the Purpose of carrying the Railway over any Road shall be built in conformity with the following Regulations; (that is to say,)

The Width of the Arch shall be such as to Leave thereunder a clear Space of not less than Twenty-five Feet if the Arch be over a Turnpike Road, and of Twenty Feet if over a public Carriage Road, and of Twelve Feet if over a private Road :

The clear Height of the Centre of the Arch from the Surface of the Road shall be not less than Sixteen Feet in the Case of Turnpike Roads, and Fourteen Feet in the Case of other public Carriage Roads :

The



Photographs illustrating the difference in width between the bridge constructed at the intersection with Borwick Lane (on the left) and the application route (on the right)

Observations

There were no canals constructed – or proposed to be constructed across land affected by the application route.

Extracts of the deposited plan, book of reference and relevant section of the authorising act which is the Lancaster & Carlisle Railway Act 1844.

The Lancaster and Carlisle Railways Act 1844 provided for the construction of a railway which crossed the application route. This railway is now part of the West Coast Mainline running between Preston and Carlisle. Extracts of the Railway Act, Deposited Plans and Book of Reference were provided to the County Council by Network Rail.

The railway plan shows the application



		<p>route numbered 104. The Book of Reference provides details of who owned and occupied each of the numbered plots of land affected by the proposed railway and a description of the property.</p> <p>Plot 104 was listed as being owned and occupied by John Boldon (and others) and records it as 'occupation road'.</p> <p>The strip plan produced to show the proposed alignment of the railway also shows the proposed railway crossing two further roads to the north (just to the left on the plan). The first of these routes was Borwick Road which was numbered as plot 119a which is detailed in the Book of Reference as a Public Highway.</p> <p>Just to the north of Borwick Lane a further route was shown on the Railway Plan which appeared to be unnumbered. Network Rail assisted the Investigating Officer and provided additional information whereby it was concluded that this route was the one detailed in the Book of Reference as plot 123 which was listed as a Private Road. Further plans provided by Network Rail detail how this route was diverted as part of the construction of the railway so as to avoid the need for a further bridge.</p> <p>The 1844 Railway Act stated that bridges carrying the railway over a turnpike or other public carriage roads should be built to a width of not less than 25 feet and 20 feet respectively, and that occupation routes should be built to a width of not less than 12. Site evidence confirms that in this case the bridge constructed to allow access along the application route was approximately 12 feet wide – as required for an occupation road whereas the bridge built to allow access along Borwick Lane – detailed as being a public road in the Book of Reference – was approximately 20 feet wide as required by the legislation.</p>
Investigating Officer's Comments		<p>The application route existed in 1844 and was identified as being an occupation road in private ownership. This appears to have gone unchallenged at the time and when the railway was constructed the bridge that was constructed provided a passage</p>

		<p>approximately 12 feet wide suggesting that it was built on the basis that it was considered to be an occupation road and not a public road at that time. The railway records provide no information with regards to whether the route was used by the public on foot or horseback at that time. The term 'accommodation road' – is not defined within any relevant legislation but is normally taken to refer to a route constructed to allow an owner or occupier access along it. In this case as public carriage roads were specifically mentioned and accommodate it appears likely that occupation roads were considered to be private vehicular routes although they may or may not have carried lesser public rights (footpaths and bridleway).</p>
<p>Tithe Map and Tithe Award or Apportionment for Warton with Lindeth</p>	<p>1845</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 supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



<i>Roads Rivers and Waste Ground</i>	127	<i>Wood Mill Watering Place</i>
	164a	<i>Watering Place</i>
	204	<i>Watering Place</i>
	248	<i>Shere</i>
	282a	<i>Quarry Ground</i>
	338	<i>Quarry</i>
	449	<i>Public Watering Place</i>
	458	<i>Public Watering Place</i>
	477	<i>Part of River Shere and</i>
		<i>Waste adjoining</i>
	795	<i>Roads Rivers and Waste</i>
		<i>Ground</i>

<i>Trustees of New Road</i>	<i>William Wilson</i>	257	<i>New Road Toll Bar</i>
			<i>House and Garden</i>
<i>Ulverstone & Carnforth</i>	<i>Themselves</i>	520	<i>Gravel Pit</i>
<i>Turnpike Road (Trustees)</i>		794	<i>Turnpike Road</i>
<i>Madison Richard</i>	<i>Hinsell</i>	454	<i>Burn</i>

Observations

Shortly after the railway plans were drawn up and the enabling Act was passed a Tithe Map and Award was prepared for the parish of Warton in Lindeth.

The railway is shown on the map with no reference to it being the intended line and as such it is presumed that it had been built.

The application route is shown on the Tithe Map as a bounded through route passing under the railway. Between both point A and point B and point B and point C it is numbered 795. Borwick Lane is also numbered as 795 and the A6 (Scotland Road) is numbered 794. On examining the rest of the Tithe Map it was noted that all roads – with the exception of the Turnpike Road - through the parish were numbered 795.

The Tithe Award lists all plots with the number 795 as 'Roads, Rivers and Waste Grounds' with no landowner or occupier listed. The plots numbered 794 were listed as 'Turnpike Road' owned and occupied by the Trustees of Ulverstone and Carnforth

<p>Investigating Officer's Comments</p>		<p>Turnpike Road.</p> <p>The application route existed in 1845 and appeared to be considered to be part of the public road network. It should be noted however that the Tithe Map and Award were produced only one year after the railway records examined above where the route was documented as being an occupation road in private ownership.</p> <p>It is possible that a private ('occupation') route could become a public vehicular route in such a short period of time but it is necessary to consider the evidence available at that time.</p> <p>The purpose of the Tithe Map and Award was to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church and they were not produced specifically to show roads or public rights of way. The application route was a bounded route separate from adjacent fields which would have been capable of being grazed or producing crops. As such, the Surveyors preparing the map and the Commissioners assigned to calculate the tithes to be paid were not necessarily looking in detail at what public rights may have existed. In contrast and bearing in mind it was only a year earlier that the Book of Reference was prepared, the procedures carried out in relation to the purchase of land, construction of a railway across private land and its effect on public and private access routes that crossed it were stringent. The implications of having to build a bridge to accommodate a public or private route affected by the proposed railway were significant and what was recorded in the Book of Reference and Tithe Award at this point in time clearly conflict. In this case it appears necessary to look at how the route evolved from this point onwards and how it was recorded on various other maps and documents as time progresses.</p>
<p>Inclosure Act Award and Maps</p>		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide</p>

		conclusive evidence of status.
Observations		No Inclosure Map or Award was found for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet XXIV	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1848.¹</p> <p>However, it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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



Map extract from National Library of Scotland

<p>Observations</p>		<p>The full length of the application route is shown and is named on the map as Threagill Lane. The route is shown passing under the railway at point B and a line is shown across the route where it meets the Turnpike Trust road at point C. The route is shown fenced throughout the full length and is shown as being much narrower than Borwick Road from point A to point B. From point B to point C the route is shown to be wider – more consistent with the width of other routes shown which are acknowledge public vehicular roads.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1845 and appeared to be capable of being used. A gate may have existed across the route at point C.</p>
<p>Cassini Map Old Series Sheet 97 – Kendal & Morecambe</p>	<p>1852-1864</p>	<p>The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase. One inch Sheets used to create the map were originally published between 1852-1864.</p>



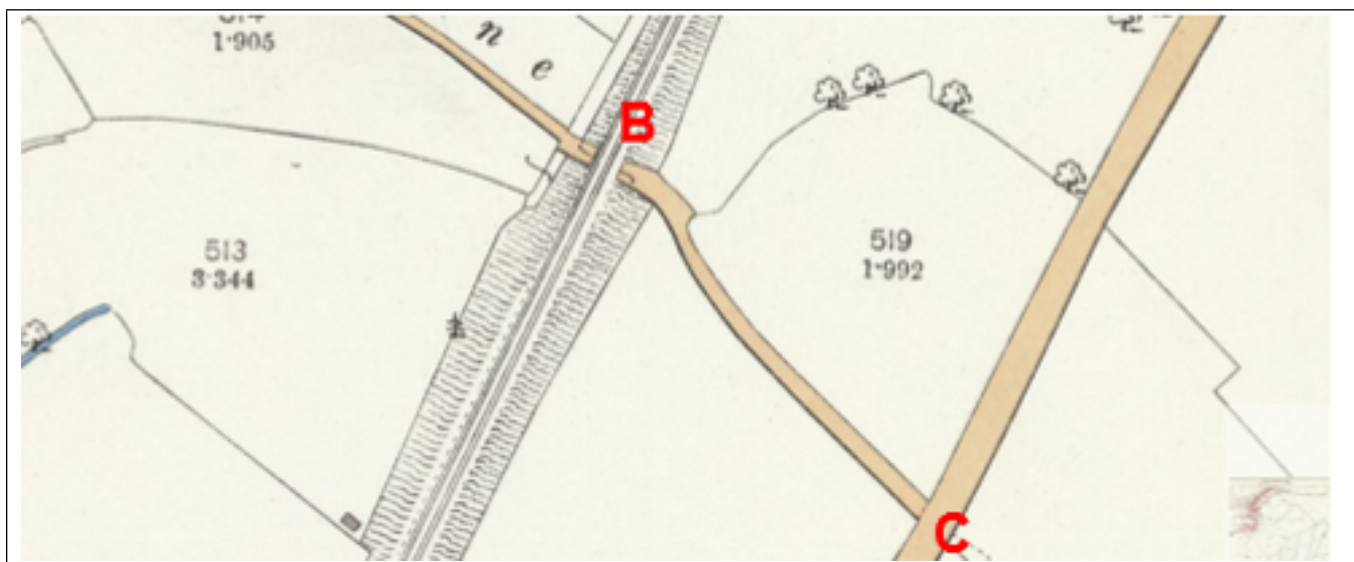
Turnpike or main roads 	Railways 	
Other roads 	Cuttings 	
Unfenced roads 	Embankments 	
Mileages; turnpike gates; toll gates <i>S T.P. T.G.</i>	Tramways and freight-only railways 	
County boundaries 	Woodland 	
Parish or township boundaries (on some sheets only) 	Parkland 	
Church 	Foreshore: sand;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

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

Observations		The full length of the application route is shown as a substantial bounded route identified on the map as 'Other roads'.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant

		<p>routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p>
<p>25 Inch OS Map Sheet XXIV.4</p>	<p>1891</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.</p>





<p>Observations</p>		<p>The full length of the application route is shown as a fenced through route. The route is coloured brown in the same way that the public vehicular roads to which it connects at point A and point C are shown. It is also shown bounded by a thickened line along the south side. It is shown as being narrower in width than either of the public roads to which it connects but there is no significant difference in width between the section A-B and B-C (as was shown on the smaller scale First Edition 6 inch OS map detailed above).</p> <p>The route is named as Threagill Lane and no solid line (probable gates) are shown across it.</p> <p>The route has one parcel number (515).</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial through route in 1890 connecting to public vehicular highways at either end.</p> <p>Of particular significance is the fact that the route is shown coloured with a thickened line along one side.</p> <p>Colouring and the use of thickened lines were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road.</p>

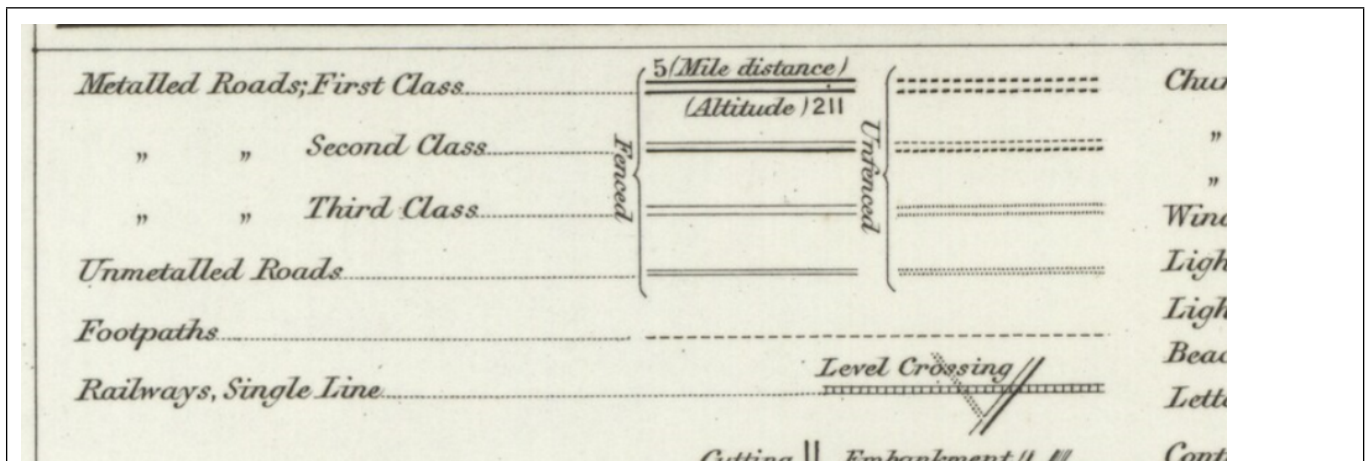
'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the application route is shown in this way suggests that it was considered to be a well maintained public vehicular route in 1890.

The fact that it was named as Threagill Lane 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 that time.

The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status so no inference can be made in this respect.

<p>1 inch OS Map Sheet 49 – Kirby Lonsdale</p>	<p>1898</p>	<p><u>1 inch OS map published in 1898.</u></p>
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Observations		The full length of the application route is shown consistent with how a third class road (fenced) was shown on this map.
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 application route is shown as a third class road suggesting that it was capable of being used by vehicles at that time.
25 inch OS Map Sheet XXIV.4	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



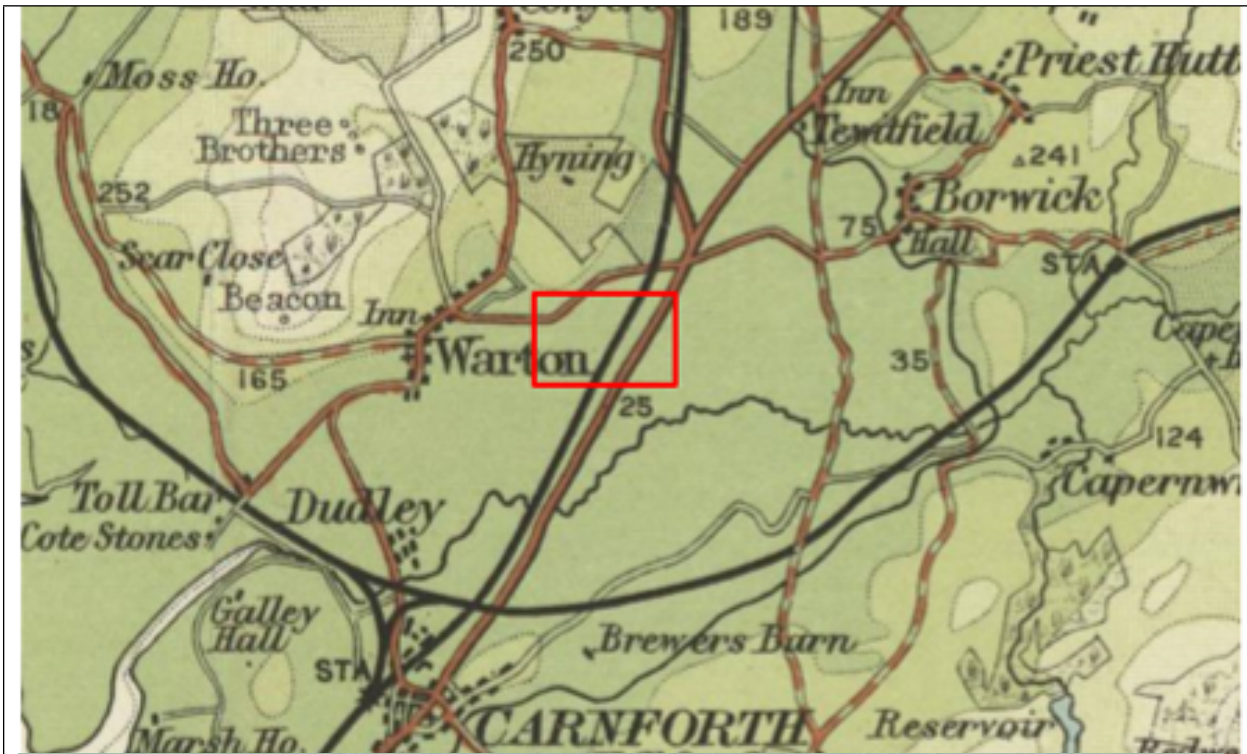
Observations		The full length of the application route is shown as a bounded route and named as Threagill Lane. The map was revised in 1912 and it can be seen that a thickened line has again been applied along the south and east side of Borwick Lane and Scotland Road but the application route is
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		no longer shown with a thickened line along the south side. A well (W) is shown in the field immediately north of the application route part way between point A and point B.
Investigating Comments	Officer's	The application route existed in 1912 and appeared to be capable of being used. The fact that it is no longer shown with a thickened line along one side may suggest that it was no longer considered to be in good repair – or suitable for the everyday vehicular traffic of that time – compared to other available options. It is not known whether the well shown adjacent to the route was accessible to the public.
6 Inch OS Map Sheet XXIV.NE	1919	6 inch OS map revised 1910 and published 1919.

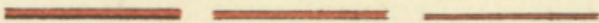





Observations		The full length of the application route is shown as a bounded through route without any gates or barriers across and with no thickened line on the south side.
Investigating Comments	Officer's	The application route existed in 1912 and appeared to be capable of being used. It was not shown as a well-maintained road.
Ordnance Survey Object Names Book		When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to

		the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.
Observations		The Ordnance Survey Object Names Books are deposited in the National Archives at Kew. These records are not available online. Whilst they can provide supporting evidence as to the believed status of a route the records have not been requested in this case.
Investigating Officer's Comments		No inference can be drawn.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

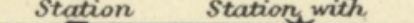
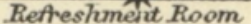



EXPLANATORY NOTE


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

Footpaths & Bridlepaths 

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

Railways  Station  Station with Refreshment Room

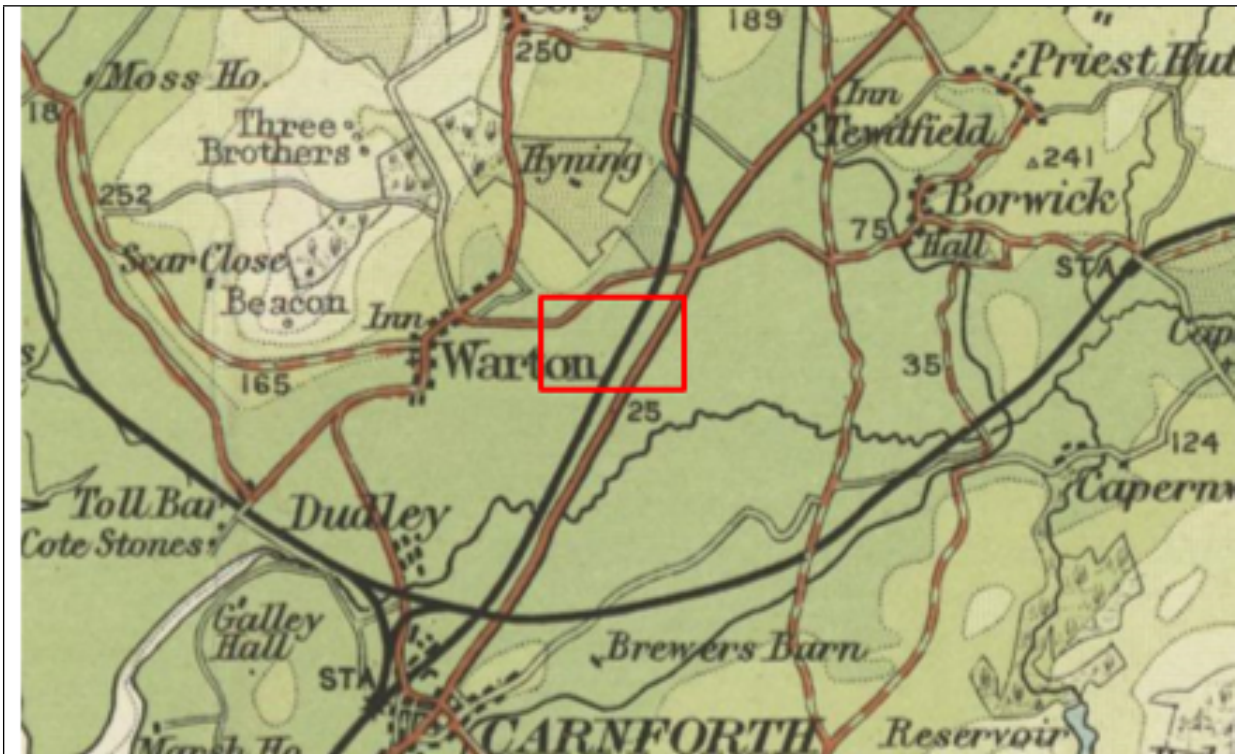
Canals 

County Boundaries 

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

1905





EXPLANATORY NOTE

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

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.

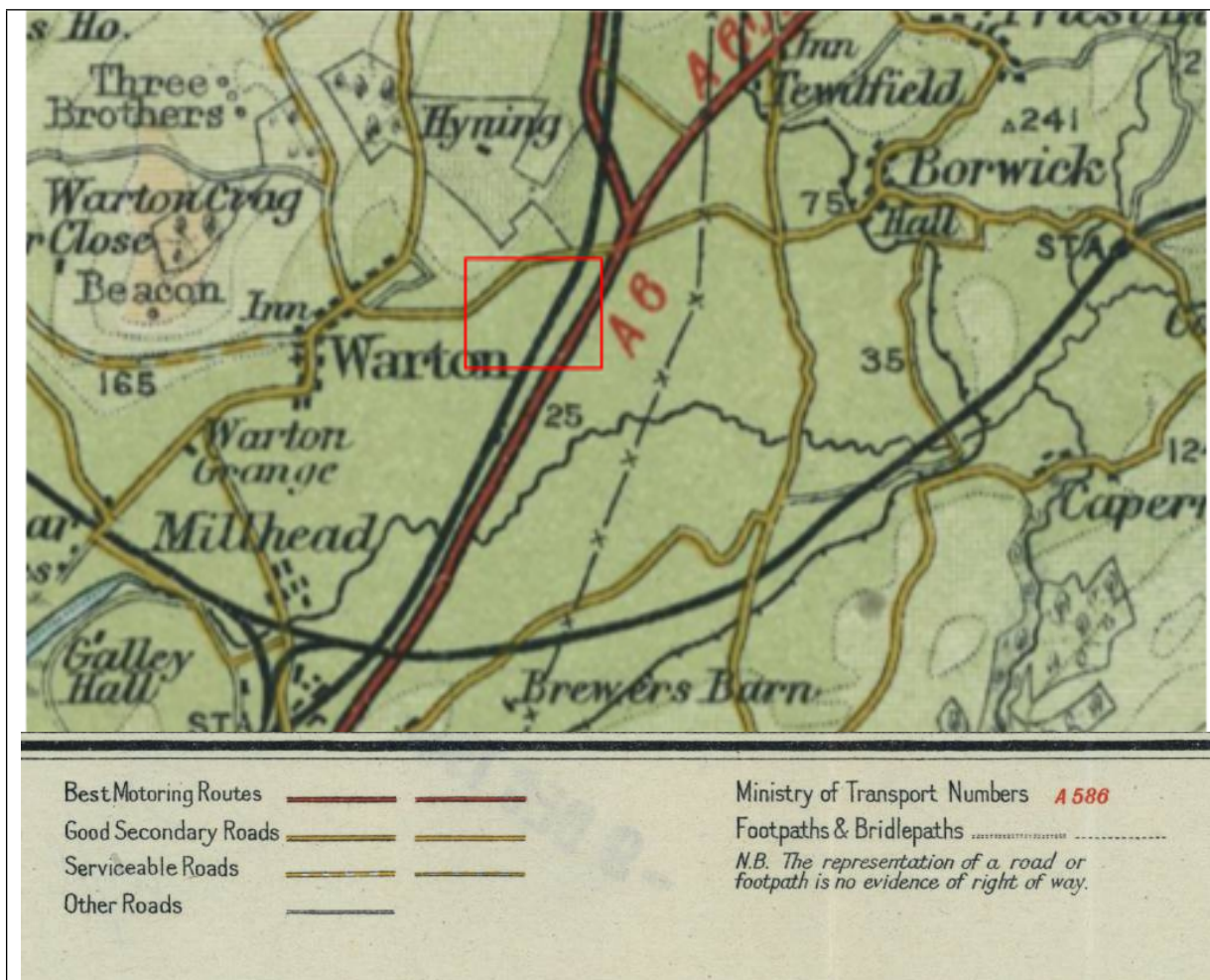
Railways			
	Station	Station with Refreshment Room	L.C. (Level Crossing)

Canals —————

County Boundaries - - - - -

1920s





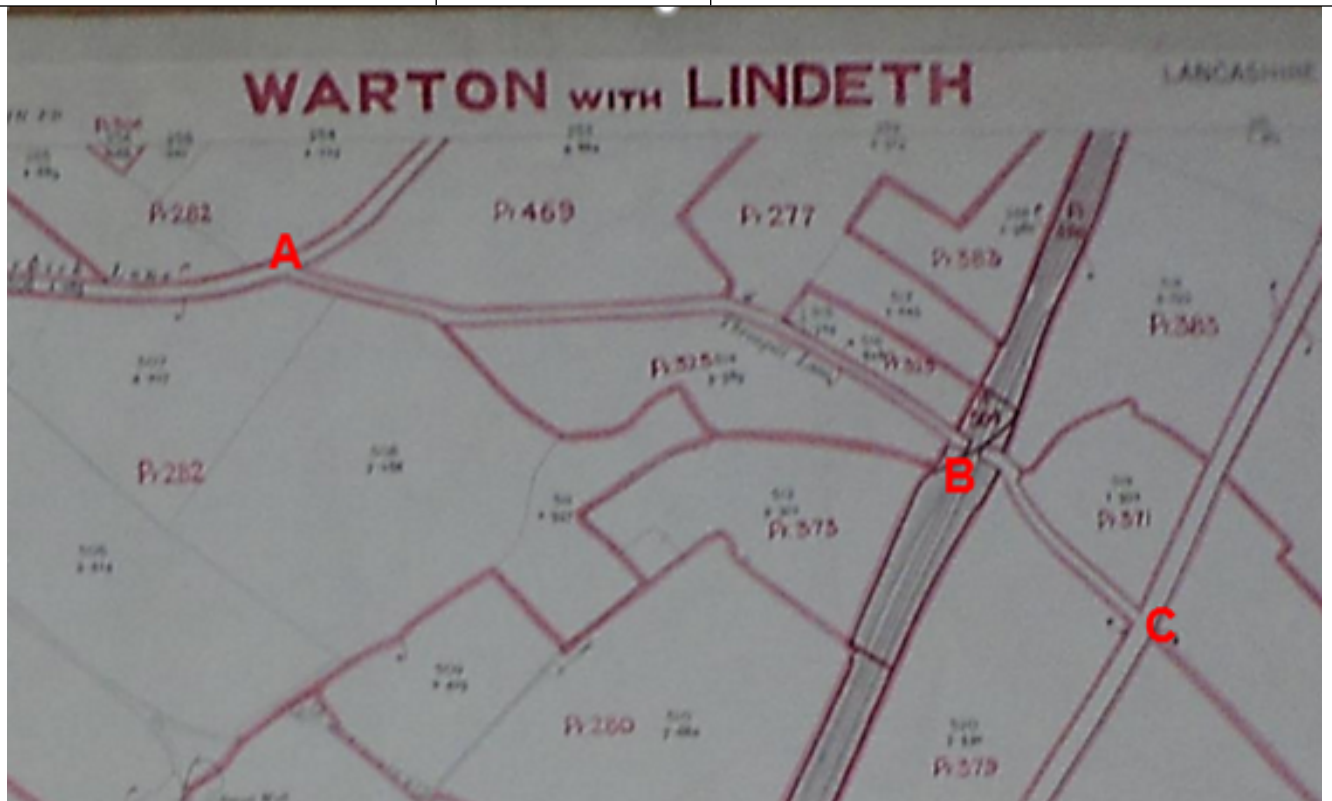
1940s

Observations		The application route was not shown on any of the three small scale maps produced between 1905 and the 1940s.
Investigating Officer's Comments		The fact that the application route is not shown on the maps suggests that it was not useable as a public vehicular highway in the early 1900s. the map does not generally show routes used as footpaths or bridleways at that time.
Finance Act 1910 Map TNAs Ref: 133/3/36	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.</p>



The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).

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.



Observations

The full length of the application route is



		excluded from the numbered hereditaments.
Investigating Officer's Comments		The exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.
25 Inch OS Map XXIV.4	1940	Further edition of 25 inch map (surveyed 1890, revised in 1938 and published in 1940.

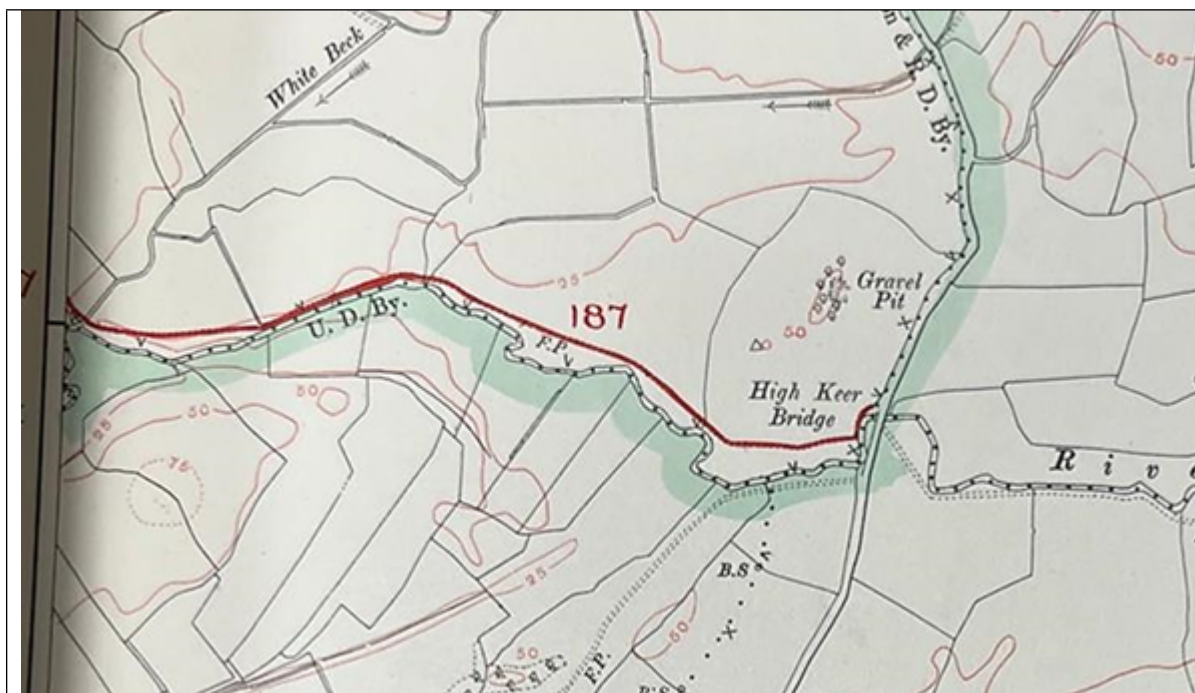


Observations		The application route is shown as a bounded and named through route consistent with how it is shown on all the earlier OS maps examined. A broken/dashed line is shown across the route at point A and point C.
Investigating Officer's Comments		The application route existed and appeared capable of being used. It was not recorded as being gated at either end – or along the route – and the dashed lines at point A and point C indicated a change in surface as you entered Threagill Lane from Borwick Lane and the A6 Scotland Road. This is consistent with it having an inferior surface.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society



(which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [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>Observations</p>		<p>The maps for Lancaster Rural District are contained within a large folder titled 'Footpath Maps'. No written schedules are included within the file and all routes shown are coloured red and numbered with no indication as to whether they were considered to be anything more than public footpaths.</p> <p>The application route is shown on the map as part of a longer route numbered 187. The route continued from point C crossing the A6 and continuing in a south easterly and then general easterly direction to High Keer Bridge on Kellet Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The application route appeared to be considered to be a public footpath in the 1930s.</p>
<p>1:25,000 OS Map Sheet 34/57</p>	<p>1947</p>	<p>OS map revised and published 1947.</p>



Observations		The application route is shown as a bounded through route but is not named on the map. The route is depicted as being of an equal width throughout – and as being wider than it had been shown on earlier maps examined.
Investigating Officer's Comments		The application route existed in 1947 and appeared to be capable of being used – at least on horseback. The depiction of the route as being wider and of an equal width throughout is more indistinctive of the style of mapping used at that time rather than being a true reflection of the width of the route.
1 Inch OS Map Sheet 89 – Lancaster and Kendal	1947	1 inch OS map published 1947.



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

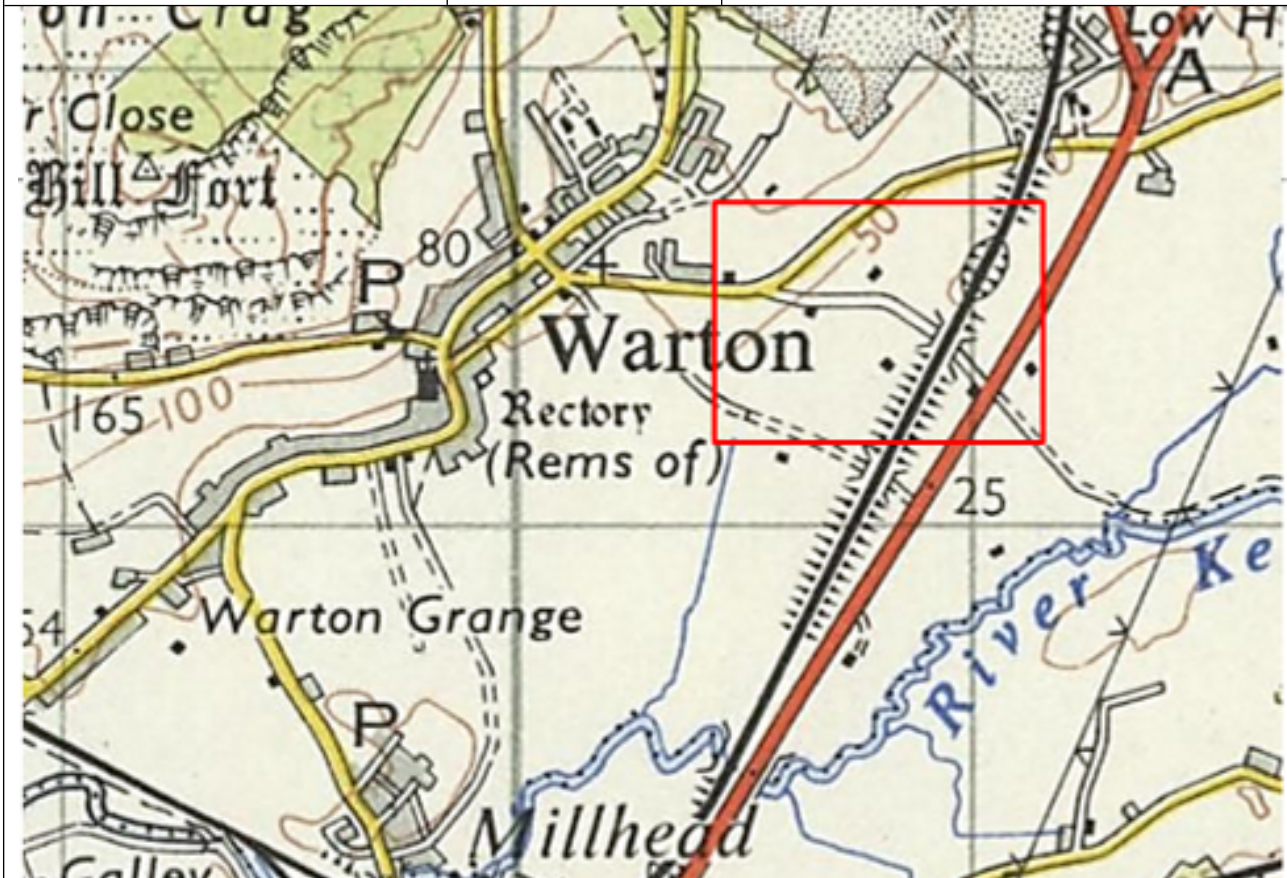
1014.

Observations

Further OS map showing the application route as a through route passing underneath the railway at point B. The route is shown as a Minor Road on the



		map.
Investigating Comments	Officer's	The application route existed in 1947 and was shown on a small-scale OS map as a Minor Road as opposed to a bridleway or footpath. It was not shown as a Ministry of Transport Road (marked red) or Other Motor Roads (marked orange) suggesting use may have been primarily by farm vehicles at that time.
1 Inch OS Map Sheet 89 – Lancaster & Kendal	1957	1 inch OS map revised 1950-57 and published 1957.



Roads	Ministry of Transport, Trunk	A 6 (T)	
	" " " Class 1	A 590	
	" " " " 2	B 6254	
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred	TOLL	
	" " " " Untarred	Gate	
Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)			
Steep Gradients 1 in 5 or steeper		←←	1 in 7 to under 1 in 5
Footpaths and Tracks		---	
Heights in feet above Mean Sea Level (surveyed by levelling)			275

Observations		Further OS map showing the application as a Minor Road.
Investigating Officer's Comments		The application route existed in the 1950s and appeared to be capable of being used – at least on horseback.
6 Inch OS Map Map Sheet 57SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25 inch map.



Observations		Further map showing the application route unchanged from how it is shown on earlier OS mapping and still bearing the name Threagill Lane.
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Investigating Comments	Officer's		The application route existed and appeared to be capable of being used.
1:25,000 OS Mapping		1947-1961	OS Mapping published in 1947 and 1961.



OS map published 1947 – Sheet 34/57 A



OS map published 1961 – Sheet 57/B*

Observations			Further OS maps showing the application route as a significant bounded through route.
Investigating Comments	Officer's		The application route existed between 1947 and 1961 and appeared to be capable of being used at least on

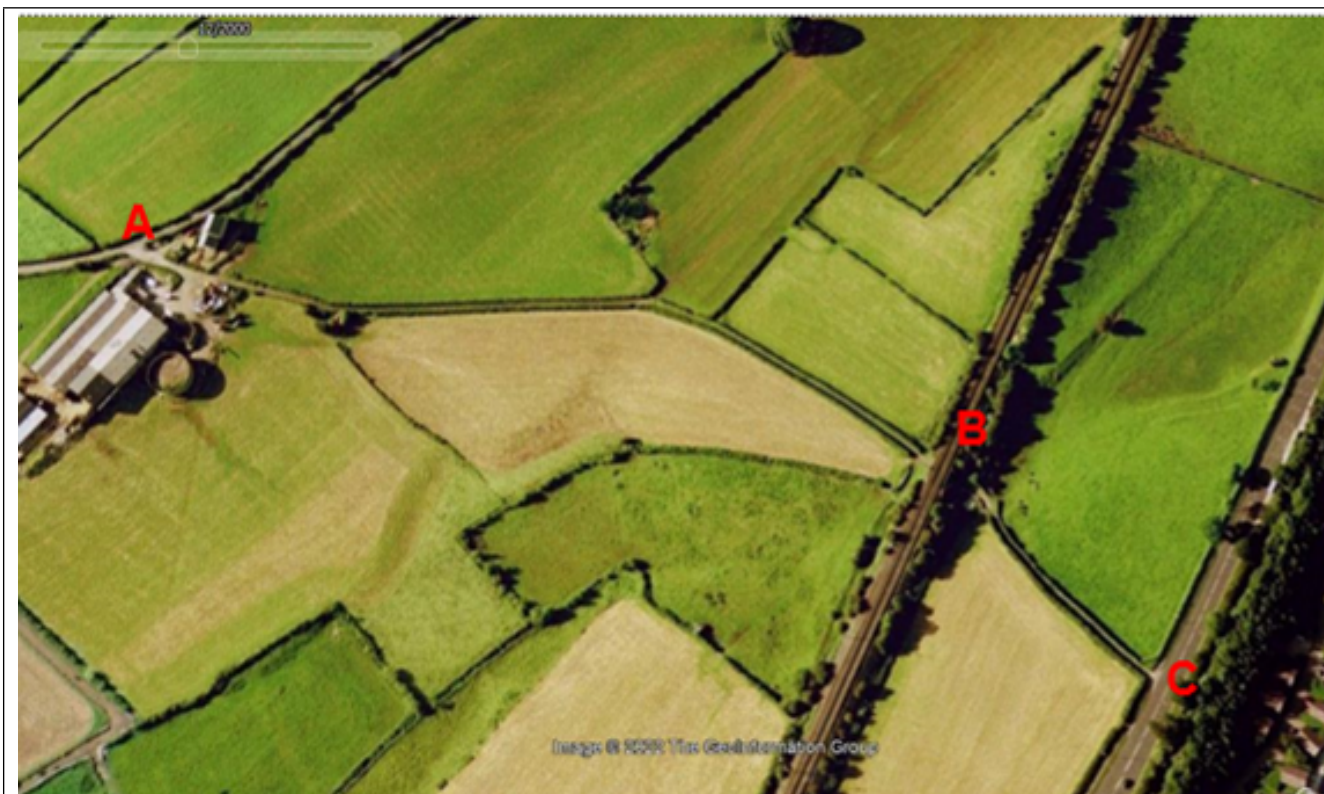


		horseback.
1:2500 OS Map SD 5072-5172	1972	Further edition of 25 inch map reconstituted from former County Series and revised in 1971 and published in 1972 as National Grid Series.
Observations		Further OS large scale map showing the application route as a named through route.
Investigating Officer's Comments		The application route existed in 1972 and appeared to be capable of being used.
Aerial photograph	1960s	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.



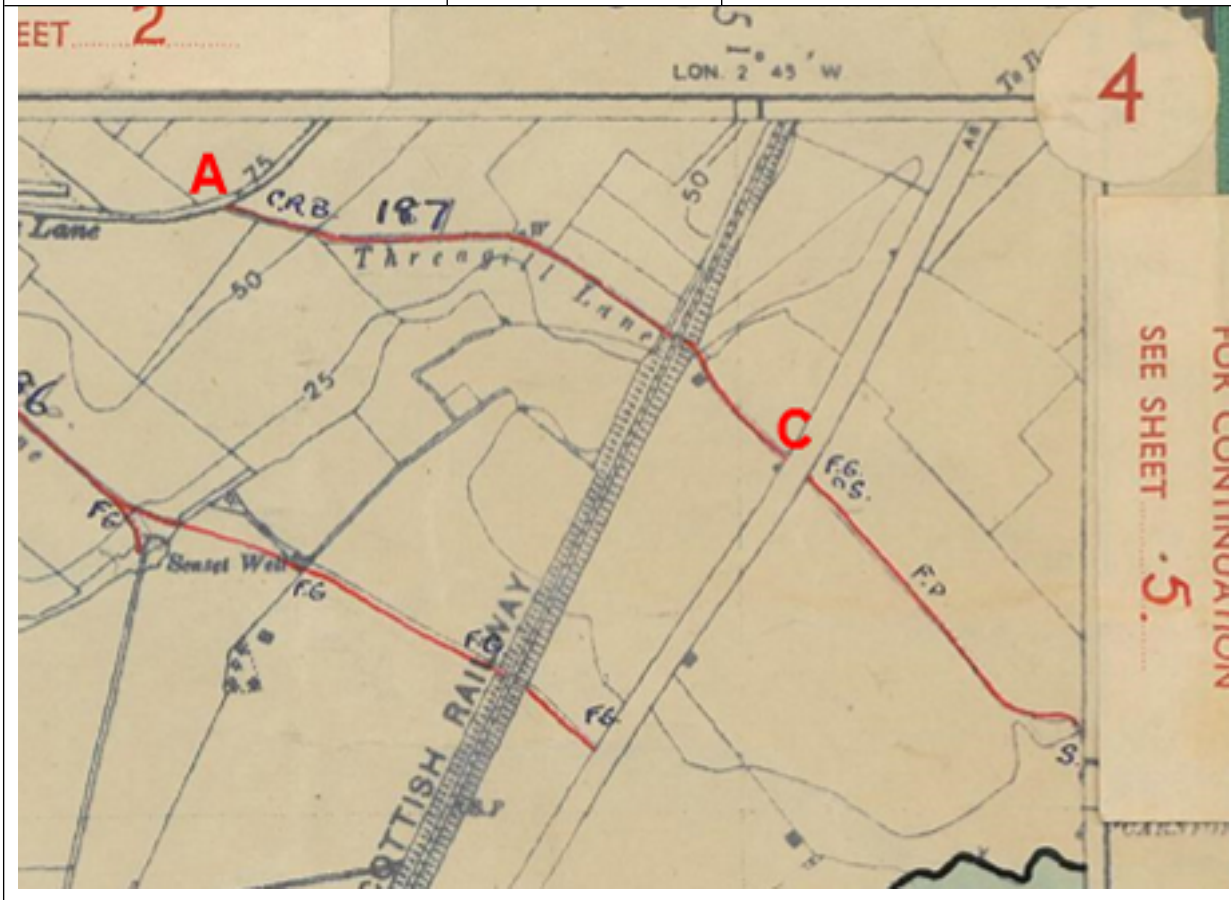


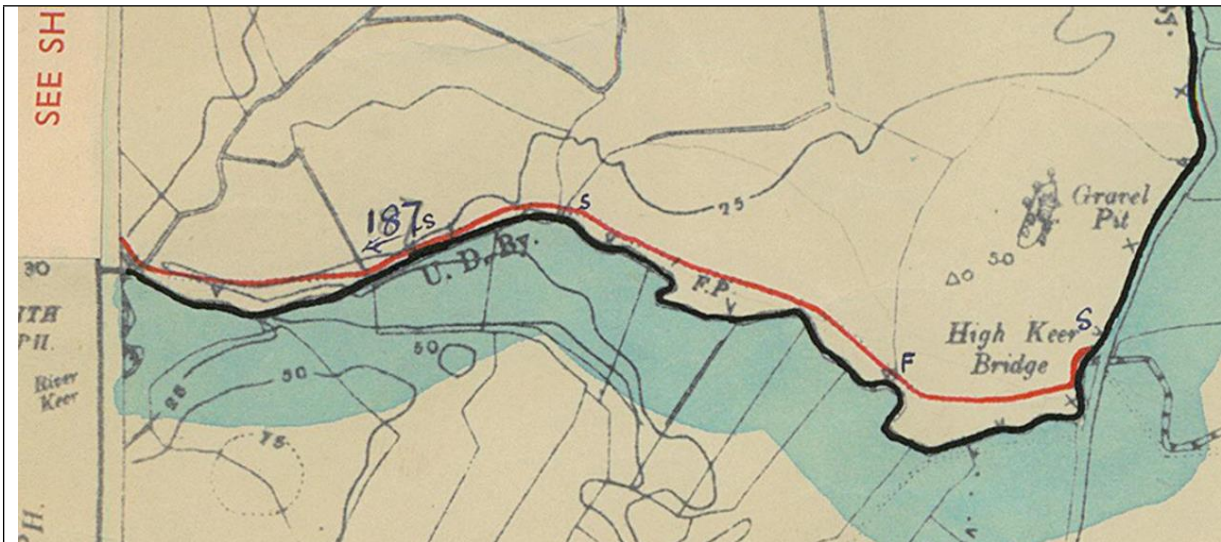
<p>Observations</p>		<p>The application route can be clearly seen with hedges bounding the route on either side between point A and point B. A significant light-coloured area can be seen leading from the application on the north side part way between point A and point B. The full length of the route A-B-C shows up on the photograph consistent with how a track used by farm vehicles would show up although such use appears to be predominantly between A-B and less obvious B-C.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and appeared to be in use by vehicles in the 1960s. This use appeared consistent with use by vehicles to access adjacent land rather than as a through route.</p>
<p>Aerial Photograph</p>	<p>2000</p>	<p>Image available to view on Google Earth Pro.</p>



Observations		The full length of the application route can be seen as a bounded route still. At the western end of the route houses and farm buildings can now be seen accessed from the application route at point A. The application route is visible and doesn't appear to have been altered or access restricted buy the development which has taken place on either side of it.
Investigating officer's Comments		The application route existed and the alignment remained unaltered from all earlier maps and documents examined.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and

schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.





8

DISTRICT R.D. OF LANCASTER. PARISH WARTON. No. ~~1~~

MAP SHEETS Nos LANCASHIRE. XXIV. N.E. & XXV. N.W. LENGTH 1.18 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Cart track & field footpaths. Sign posted.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Starting point middle of Baldick lane goat cart track known as Threagill lane running due east under Railway Bridge to A.6. road. Continuation on opposite side of road by means of first field gate & wooden stile with steps, clearly defined path following hedge to fence & 2nd wooden stile with step into pasture & field gate leading over stream when clearly defined path follows along bank of river back to wooden stile with step & gate posts (no gate) continuing into field under slope along river bank to fourth wooden stile with step into pasture to *

SURVEYED BY:— Name M. Lindsay,
Address Woodlyn, Anas Bank Balfeltk

Date * wooden fence (no stile) & clearly marked path along bankside to wooden stile leading to High Keel Bridge, (Hedge very overgrown by this stile) & Parish Boundary

<p>Observations</p>	<p>The application route is shown as part of a longer route numbered 187. From the start of the route at point A the letters 'C.R.B.' have been written alongside the route and there are no annotations suggesting the existence of any gates or stiles. In contrast, the continuation of the route east of the A6 Scotland Road is marked as a footpath (F.P) and a number of stiles (S) and a field gate (F.G.) are marked. The parish survey card describes the route as 'Cart track and field footpaths'. It describes the section of footpath under</p>
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		investigation (the application route) as being a 'good cart track known as Threagill Lane'.
Investigating Comments	Officer's	<p>Approved guidance prepared to assist in the compilation of parish survey maps was issued in 1950 by the Commons, Open Spaces and Footpaths Preservation Society in conjunction with the Ramblers Association.</p> <p>The original guidance recommended that public paths should be distinguished on the maps with the symbols F.P., B.W., C.R.F, and C.R.B irrespective of what was shown by the Ordnance Survey. A 'CRF' or 'CRB' was defined as a highway which the public were entitled to use with vehicles but which, in practice, were mainly used by them as footpaths or bridleways respectively. These 2 categories had been originally proposed but were removed from the 1949 Act shortly before the final draft. Subsequent guidance removed reference to CRF and CRB and introduced RUPPs but many surveys were well underway or substantially complete by then.</p> <p>The application route was annotated on the Parish Survey Map as being a 'CRB' and described in the Parish Survey Card as a cart road. Given the guidance provided to them, this may suggest that the surveyor considered that although the public were entitled to use it with vehicles, they were in practice using it on horseback.</p>
Draft Map		<p>The parish survey map and cards for Warton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence</p>

presented.



<p>Observations</p>		<p>Despite the suggestion on the Parish Survey Map of a cart road used as a bridleway the application route is shown on the Draft Map as a public footpath running from Borwick Lane across the A6 and continuing through to High Keer Bridge. It was recorded on the Map as Footpath 8 and no representations or objections were made with regards to what was shown.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>





<p>Observations</p>	<p>The application route was recorded as part of Footpath 8 on the Provisional Map and Statement. No representations or objections were made with regards to the section of path running from Borwick Lane to the A6 (the application route). It was noted that the footpath from the A6 through to High Keer Bridge would be altered by the construction of the M6 motorway from Lancaster which would cut through it. Work to extend the motorway started in 1967.</p>
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<p>The First Definitive Map and Statement</p>	<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
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<p>Observations</p>	<p>The application route is recorded as part of</p>
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<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Footpath 8 on the First Definitive Map.</p> <p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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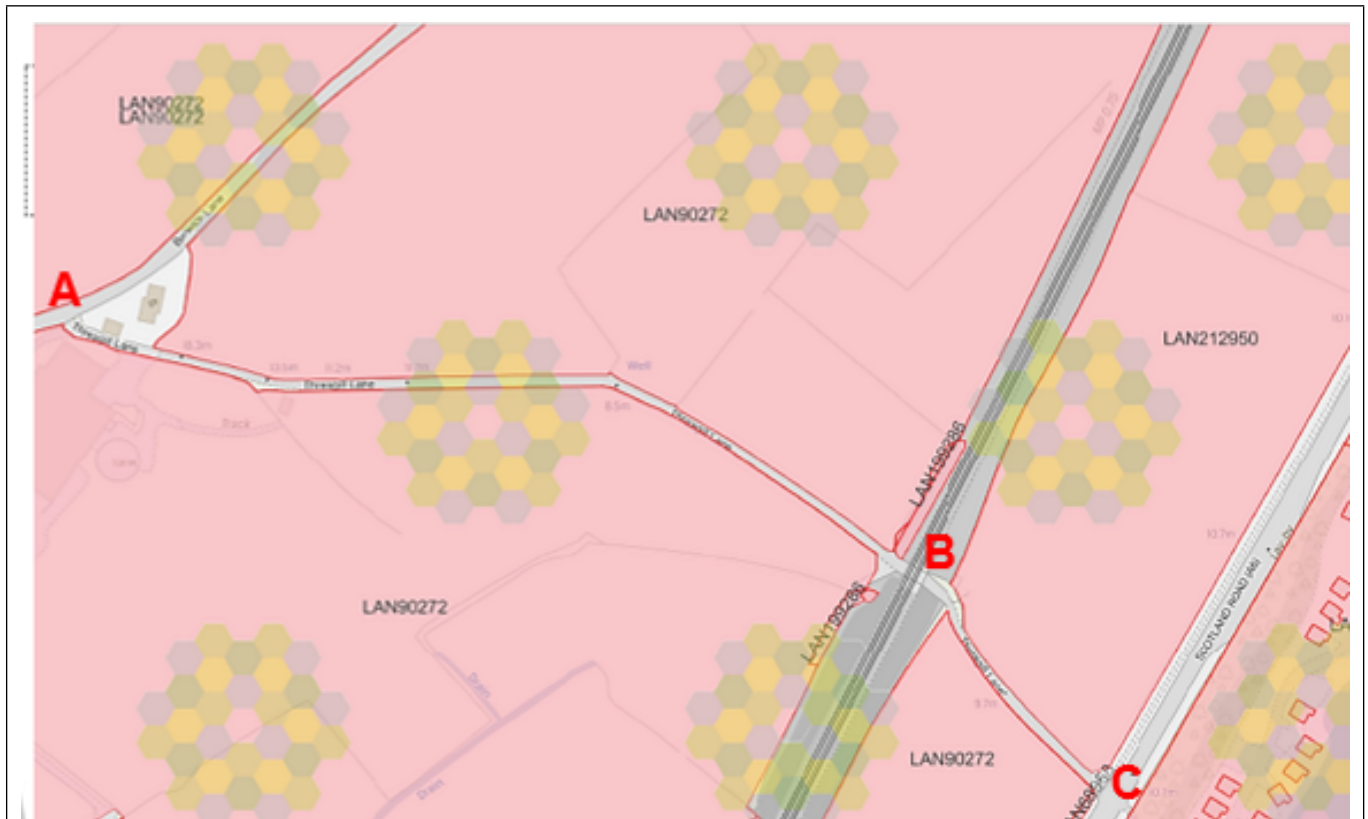
<p>Observations</p>		<p>The application route is recorded as part of 1-35-FP8.</p>
<p>Investigating Officer's Comments</p>		<p>There are references on the Parish Survey Map and Card regarding the route being considered to be a cart road used as a bridleway (C.R.B.) but when the Draft Map was prepared the route was recorded as a public footpath only. During the course of the Draft and Provisional stages of the preparation of the Definitive Map the</p>

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



Observations		<p>There is no Handover Map in the County Councils possession for the Parish of Warton.</p> <p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.</p>
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 regarding public rights.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>No legal orders relating to the creation, diversion or extinguishment of public rights have been found.</p>
Investigating Officer's		<p>If public rights are found to exist along the</p>

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



<p>Observations</p>		<p>Network Rail have confirmed that the railway line and bridge crossed by the application route are in their ownership but ownership of the application route itself is not recorded with the Land Registry.</p> <p>The only landownership details relating specifically to the application route was the Book of Reference accompanying the Railway plans which listed ownership at that time as being owned and occupied by John Boldon (and others). No address was given although the Tithe Records show that Mr Boldon owned a field immediately north of the application route between point B and point C (Tithe Map plot 595, OS 25 inch map published 1891 parcel number 519).</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>When ownership of a route is not known and not registered, in contrast to land either side, it can provide supporting evidence of public status – particularly historical vehicular routes. In this case landowners were listed in Railway Records – which may have indicated actual ownership but may in the alternative have indicated private rights of access from adjacent land along the application route.</p>



		<p>Landowners were not listed in the Tithe Award of 1845 or the Finance Act documentation in 1910.</p> <p>The Investigating Officer is therefore of the opinion that the landownership details support the application for recording the route as a vehicular public right of way although it is noted that public rights of way – particularly footpaths and bridleways - are generally recorded over private land.</p>
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

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 recorded as a public footpath and was not on the List of Streets (maintained at public expense) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the 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

The application has been made based entirely on historical map and documentary evidence.

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

The evidence available suggests that whilst part of the application route may have existed prior to the construction of the former turnpike road (A6 – Scotland Road) but that it existed in its entirety by 1830 when Hennet's Map was published showing the application route as a cross road – often considered as providing good evidence of public vehicular rights - between Borwick Lane and the Turnpike Road.

The inclusion of the route in the Railway plans and Book of Reference confirms its existence but it was specifically referred to as an occupation road. When the railway was built a substantial bridge allowing access under the railway was provided at the

width specified in legislation as being the minimum width for an occupation road – and much narrower than the width required for a public carriageway.

If the route was considered to be a private occupation road in 1844 this appears to conflict with the information provided in the Tithe Award where roads throughout the parish were all given the same number and listed under the category 'Roads Rivers and Waste Grounds'.

Without knowing whether the route originally came into being as a public or private route – and with no modern or historical user evidence to assist – it is necessary to look at all other available evidence.

From the mid-1840s it is consistently shown on Ordnance Survey (OS) maps of various scales as a significant bounded through route with only one map examined (First Edition 6 inch) suggesting the existence of a gate across it. It is a named route (Threagill Lane) and on the First edition 25 inch map published in 1891 is shown coloured with a thickened line down one side indicating that it was a metalled public road for wheeled traffic which was kept in good repair by the highway authority.

From the mid-1800s through to the current day the alignment and width of the route remained unaltered and the route appears to have been capable of being used on foot, horseback and with vehicles throughout that time. The width of the route would suggest that vehicles would be unable to pass one another if travelling in opposite directions suggesting perhaps that as time went on and horse drawn vehicles/carts/carriages were replaced by mechanical vehicles any vehicular use by the public may have declined. In addition, with no evidence that the route had been surfaced, any public vehicular use would have declined in favour of Borwick Lane.

Modern site evidence and aerial photographs from 1960 onwards - suggests use of the route by farm vehicles accessing adjacent fields – or Network Rail in association with the maintenance of the railway line and bridge.

The Parish Survey carried out in the 1950s refers to the route being a cart track and use by horses, but it was ultimately recorded as a public footpath only.

Taking all the available evidence into account, the Investigating Officer considers that over time there was sufficient evidence to support the view that the route was probably used by the public at least on horseback – even if initially considered to be an occupation route in the early 1840s.

Head of Service – Legal and Democratic Services Observations

Landownership

The route crosses land which is unregistered, Network Rail clarified that they own the land directly under the bridge at point B which the application route crosses.

Information from the Applicant

The application was based entirely on map and documentary evidence and no modern or historical user evidence was submitted.



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

Tithe Records 1845
Inland Revenue Valuation Records – Finance (1908-1910) Act 1910
Lancashire County Council Highway Records
Parish Survey Cards
Search details from The Gazette
Undated photographs of the application route
Greenwoods Map of Lancashire 1818
Hennet's Map of Lancashire 1830
OS 6 inch maps published 1848, 1919 and 1947
OS 25 inch maps published 1891, 1913 and 1940
1 inch OS maps published 1898, 1947 and 1955
OS 1:25,000 maps published 1847 and 1961
OS 1:10,000 map published 1964

Information from Others

The Ramblers responded to consultation to state that they had no objection to the application.

Vodafone responded to consultation to state that they had no objection to the application.

Information from the Landowners

Network rail responded to consultation to clarify the land in their ownership and indicated that they would be unlikely to have any objection to an upgrade from Footpath to Bridleway.

Assessment of the Evidence

The Law - See Annex 'A'

The application is for the upgrade of footpath to bridleway on the Definitive Map and Statement of Public Rights of Way along Threagill Lane, Warton.

Point A-B-C is currently recorded as footpath 1-35-FP8 on the Definitive Map and Statement.

There is no express dedication. User evidence was not submitted as part of the application therefore dedication under section 31 Highways Act 1980 is not able to be considered. Committee is advised to instead consider if an inference of dedication is possible at common law.

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

The evidence has been summarised and evaluated fully earlier within the report and Committee is referred to this. The route is shown since 1830 on numerous maps and connects to a network of other public highways. The evidence presented is consistent with a way that carries at least a public bridleway. However, there is less convincing evidence on balance as to whether public vehicular rights exist.

Given the nature and amount of the evidence it is advised that the evidence of the application route having become a public bridleway is sufficient.

It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted to confirmation.

Implications:

This item has the following implications, as indicated:

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

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

Risk management

Consideration has been given to the risk management implications associated with this 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: 804-651		Simon Moore, 01772 531280, County Secretary and Solicitors Group

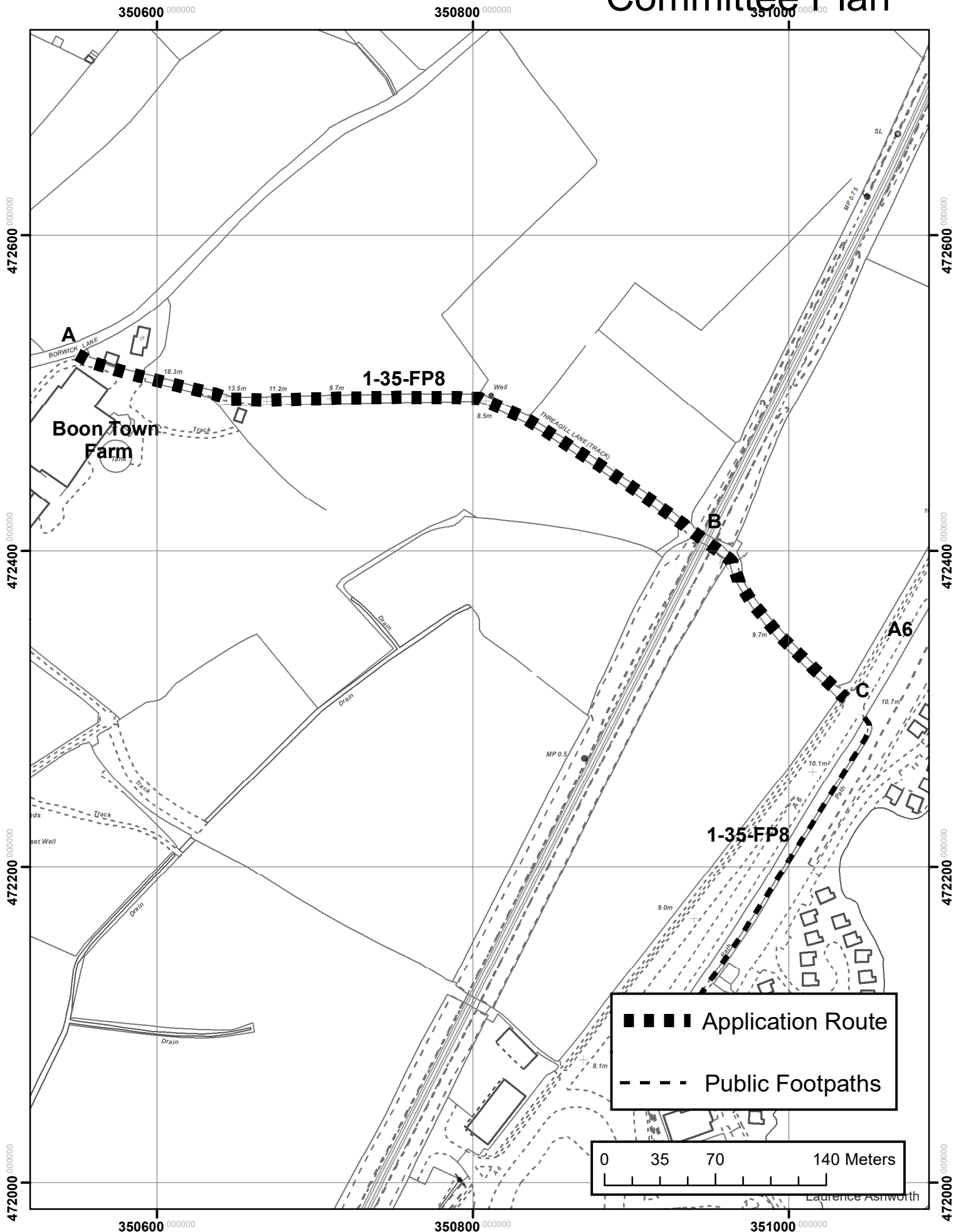
Reason for inclusion in Part II, if appropriate



N/A



Committee Plan



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

Wildlife and Countryside Act 1981
 Application to upgrade part of Footpath 1-35-FP8 - known as Threagill Lane, Warton - to Bridleway

1:3,000



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 27 March 2024

Part I

Electoral Division affected:
Poulton-le-Fylde

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Investigation into the existence of public rights along Chapel Street Court, Poulton-le-Fylde

(Annex A refers)

Contact for further information quoting file reference 804-767:

Annabel Mayson, 01772 533244, Paralegal Officer, County Secretary and Solicitors Group, annabelmayson@lancashire.gov.uk

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

Brief Summary

Investigation into the existence of public rights along Chapel Street Court, Poulton-le-Fylde.

Recommendation

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

Detail

An investigation has been carried out into the existence of public rights along Chapel Street Court, Poulton-le-Fylde following queries received about the legal status of the route and whether it is a publicly maintainable highway.

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 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. 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

Wyre Borough Council

Wyre Borough Council provided no response to consultation.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3481 3941	Open junction to covered passageway between 4 and 8 Market Place (on some maps labelled 'Church Street')
B	3481 3941	Eastern end of covered passageway



C	3488 3942	Open junction with Chapel Street between 6 Chapel Street and St Chad's Church
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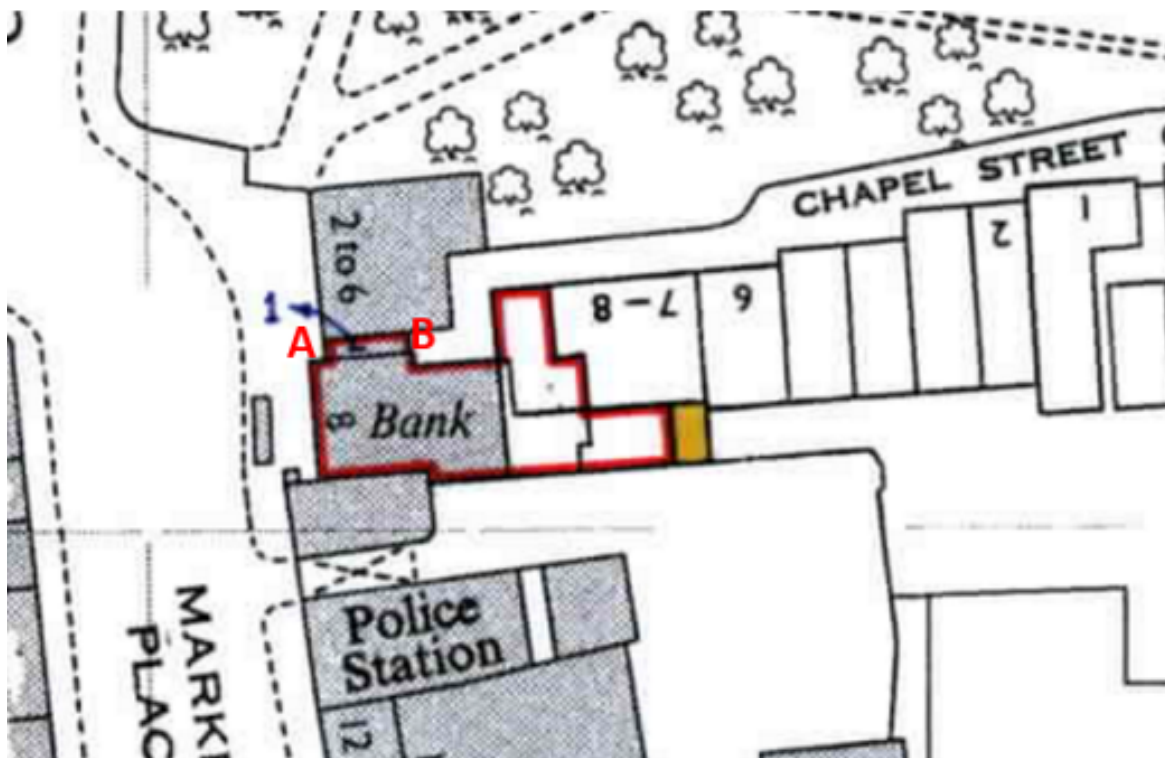
Description of Route

A site inspection was carried out in July 2023.

The route under investigation runs between Market Place, the historical centre of Poulton-le-Fylde, and Chapel Street south of St Chad's Church.

Market Place has been pedestrianised and with various shops, restaurants, a pub police station, banks and other services located in the buildings on either side of the square. Historical features known as the Fish Stone, Whipping Post, Market Cross and a memorial are all located within the pedestrian area and the Market Place, together with the immediate surrounding area (including the land crossed by the route under investigation), has been designated as a conservation area with a number of listed buildings.

The start of the route under investigation is situated on the east side of Market Place (point A on the Committee plan). Entrance onto the route is via a pedestrian passageway which passes at ground level under the building registered as being 8 Market Place (Land Registry reference LA804864) and which is shown on the Land Registry plan below as a 'Bank'.



Extract from Land Registry Plan LA804864 Ordnance Survey Plan dated 1988
[Above]

The passageway is bounded on the north side by the property referred to as 2 to 6 Market Place. 2 Market Place is a listed at Grade II building described as originally consisting of a house and a shop possibly dating from the late 17th or early 18th



Century ([2 Market Place \(IOE01/02702/09\) Archive Item - Images Of England Collection | Historic England](#)). The listing makes no reference to the passageway or adjoining property (4 Market Place) and it is not clear whether it refers to the whole of the property now registered as one (2,4,6 Market Street) but an examination of the 1st edition 25 inch OS map published in the 1892 suggests that these properties were originally split:



25 inch OS Map 1892 [Above]

From an inspection of the front of the properties it is not possible to determine when they were built or whether they were built at the same time although the map and documentary evidence detailed below suggests that they – and the passageway through which the route runs – existed by at least the early 1800s and possibly before that (see Yate's Map of 1786).

The entrance to the passageway is not restricted and there is no evidence that it has ever been gated. The interior walls have been painted white and the passageway has a concrete flagged surface. The passageway is 5.5 metres long and approximately 1 – 1.5 metres wide. Above the entrance to the passageway (point A on the Committee plan) there is a sign stating 'Chapel Street Court Shops' and listing 8 businesses.

Once through the passageway a further sign is visible low down on the wall providing another list of the shops individually accessed from the route and again headed 'Chapel Street Court Shops'. An additional notice board contained some information about the history of the route together with copies of two undated photographs of it:



CHAPEL STREET COURT

THE MEWS

POTT'S ALLEY

THE MEWS WAS ORIGINALLY KNOWN AS POTT'S ALLEY AND WAS RE-NAMED CHAPEL STREET COURT C1900. THIS WAS THE SLUM QUARTER, NOTORIOUS FOR IT'S SQUALOR, CONTAINING SOME OF POULTON'S MOST SQUALID OVERCROWDED PROPERTIES. IN 1848 IT WAS DESCRIBED AS 'NOT A NICE PLACE TO LIVE' AND IN 1852 A PUBLIC HEALTH REPORT CONDEMNED THE WHOLE AREA. THE DOORSTEPS OF THE ORIGINAL HOUSES ON THE CHURCHYARD SIDE CAN STILL BE SEEN BUILT INTO THE WALL.

Information displayed on Notice Board close to point B [above]





Footings of original houses (as referred to in the notice above)



Undated photograph of route under investigation on display on notice board looking back up the route from point C [above]





Further undated photograph of the route under investigation on display on the notice board [above] looking along the route

From the eastern end of the passageway (point B) the route under investigation opens out to run along a flagged accessway east then north and then east again bounded by 8 Market Street and 2-6 Market Street approximately 2-2.5 metres wide. As it turns to continue east again it is bounded on the north side by the wall separating it from the grounds of St Chad's Church and is bounded on the south side by properties primarily used as shops and cafes. The width of the route increases to between 3 and 5 metres. The whole of the bounded area is flagged except an area of block paving at the most easterly end adjacent to 6 Chapel Street.

A local authority rubbish bin is located along the route and in front of two cafés located along the route temporary seating and tables had been put outside obstructing part of the width – but which were positioned to ensure that it was still possible to walk past.


At the junction with Chapel Street (point C) a concrete bollard had been positioned in the surface to restrict vehicular access.

Three streetlights were located along the route.

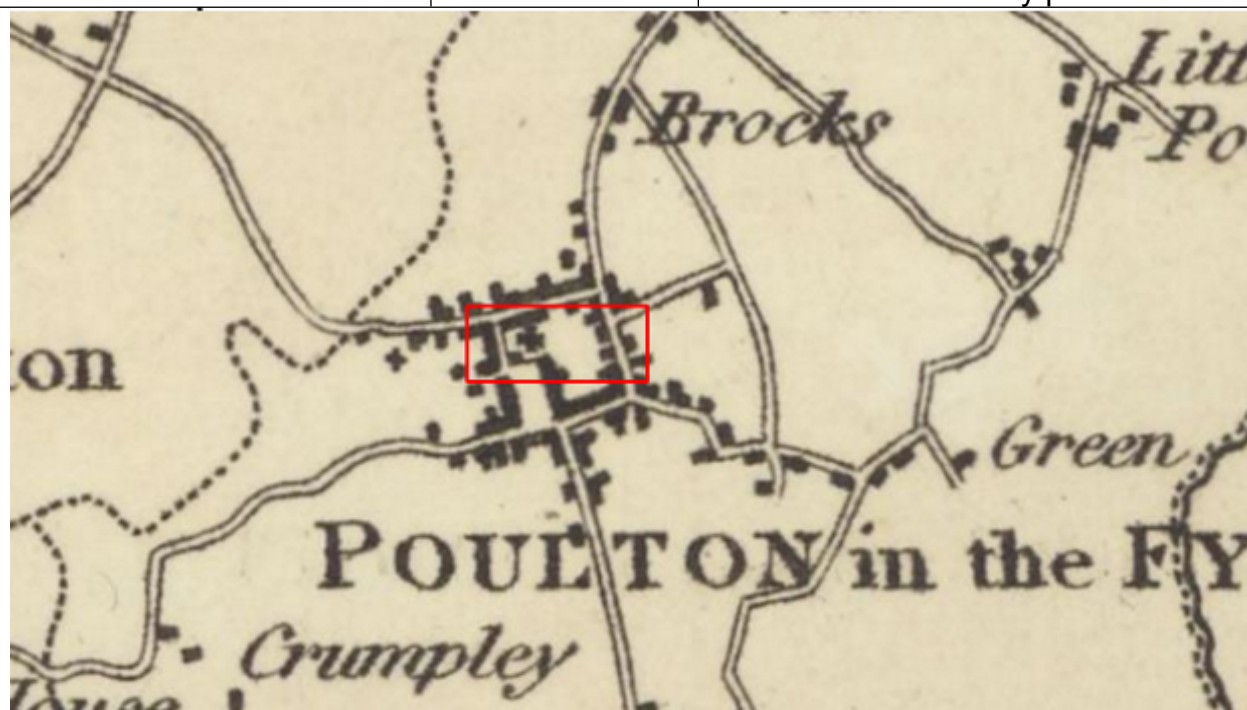
The total length of the route is 75 metres and it was accessible on foot throughout the full length. It provided access to and past a number of shops and cafes and it was being used by pedestrians on the day that it was inspected.

Map and Documentary Evidence

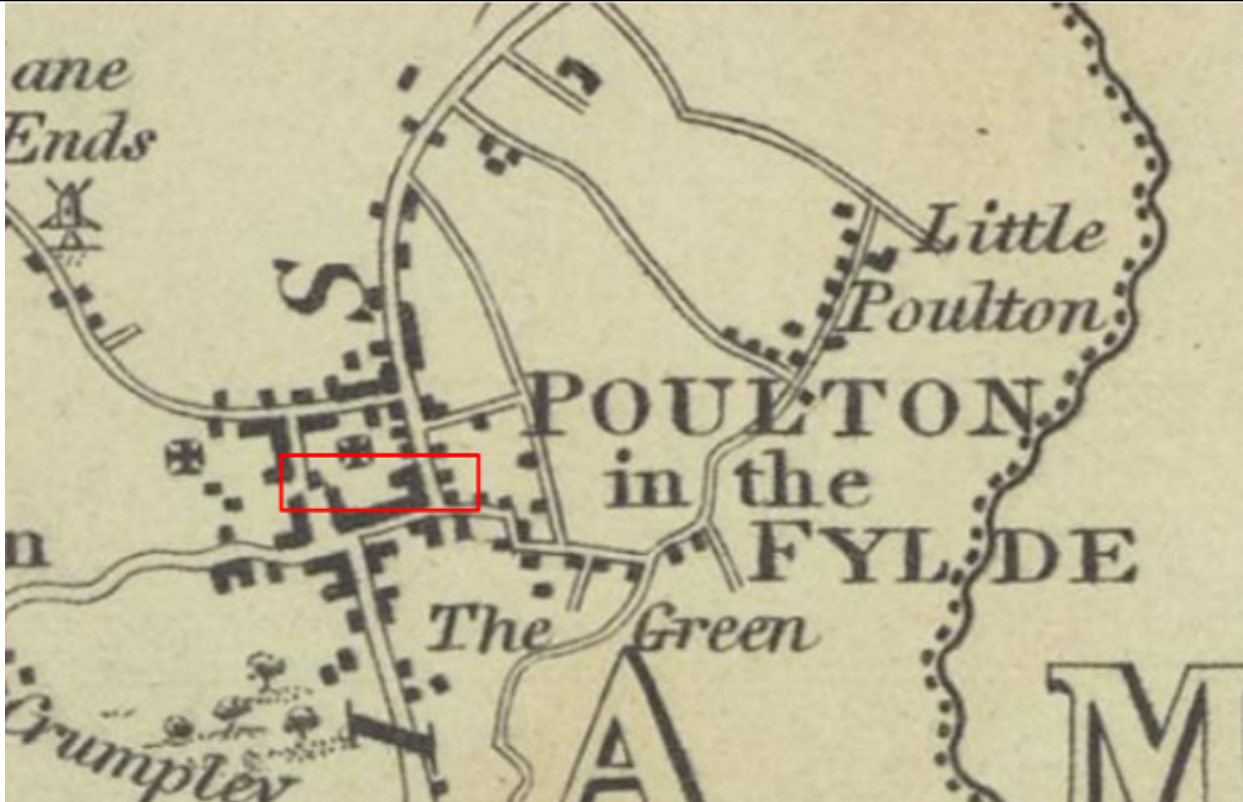
Various maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The route under investigation is not shown. Market Place/Church Street and Chapel Lane are both shown and the area between the two is all coloured indicating the existence of buildings.
Investigating Officer's Comments		No inference can be drawn. The route under investigation may have existed between the buildings shown but the scale of the map and the purpose for which it was drawn means that a passageway

		through and between buildings would be unlikely to be shown. The map showed more significant through routes generally capable of being used by vehicles but would not show footpaths or less significant routes.
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.

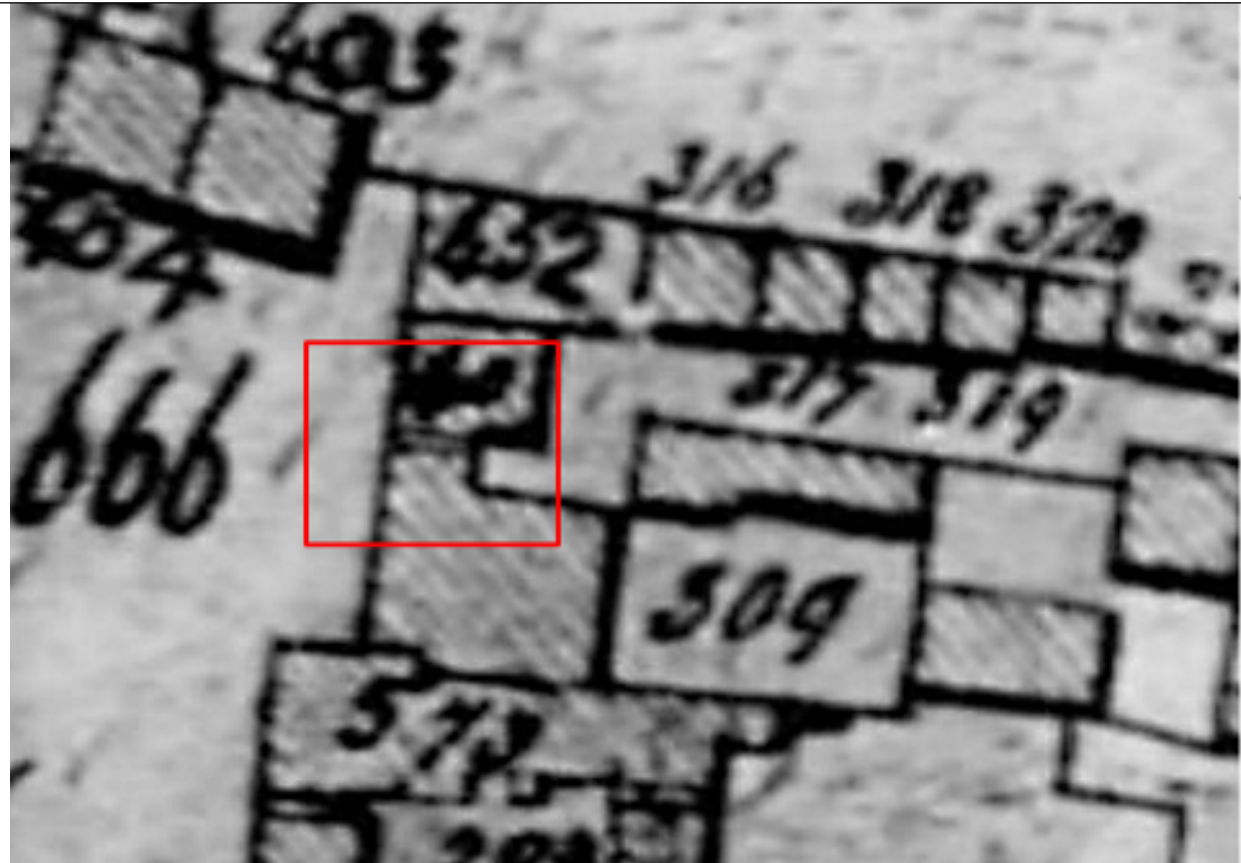


Observations		Market Place/Church Street and Chapel Lane are shown and the church is also marked but the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation may have existed in 1818 but if it did, was not considered to be a substantial vehicular through route. Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
Hennet's Map of Lancashire	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys, but his mapping of the county's communications network was

		generally considered to be the clearest and most helpful that had yet been achieved.
		
Observations		The route under investigation is not shown. Market Place/Church Street and Chapel Lane are both shown, and the church is also marked.
Investigating Officer's Comments		The route under investigation may have existed in 1830 but if it did, was not considered to be a substantial vehicular through route. Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
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		There are no existing, dismantled or known proposals for canals or railways

		across the land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





<i>Cookson George</i>	<i>Cookson George</i>	184	<i>Cottage</i>
		185	<i>Delto</i>
		186	<i>Delto</i>
		316	<i>Delto</i>
		317	<i>Delto</i>
		317	<i>Delto</i>
		320	<i>Delto</i>
		318	<i>Delto</i>
		187	<i>Joiners Shop and Yard</i>
<i>Church and</i>		188	

<i>Roads</i>	
<i>Roads from Horse Bridge to Shippool</i>	<i>665</i>
<i>" to Staining</i>	<i>666</i>
<i>" to Blackpool</i>	<i>667</i>
<i>" to Little Poulton</i>	<i>668</i>
<i>" from Breck to Little Poulton</i>	<i>669</i>
<i>" Little Poulton to Staining</i>	<i>670</i>
<i>Vicarage Lane</i>	<i>671</i>
<i>Occupation Road</i>	<i>673</i>
	<i>674</i>
	<i>675</i>
	<i>676</i>
<i>Road from Breck to Little Poulton</i>	<i>677</i>

Observations

The route under investigation is shown on the Tithe Map between point B and point C. The building through which the passageway A-B passes is shown and it appears that lines were drawn which suggest that the passageway existed. The property through which the passageway was shown is numbered as 403 and simply described as a 'house' owned by Frederick Kemp and occupied by William Whiteside.

The route provided access to a number of other properties all individually numbered on the map and many were in the ownership and occupied by the same person (George Cookson) (plots 316, 317, 318, 319, 320, 186, 187) although other properties and gardens in different ownership were also accessed from the route.

The route under investigation is not numbered (the numbering 317 and 319 relating to the adjacent cottages and not the route itself).

A separate list is provided of roads and the route under investigation is not



		included in that.
Investigating Comments	Officer's	The route existed in 1839 and provided access to a number of cottages, a joinery store and yard and gardens. It was not separately numbered and there is no indication it was included in any of the other numbered plots suggesting possibly that ownership was unknown, tithes were not payable and/or that it was part of the general 'road' network to which it was open at the eastern end. However, it was not listed separately as a numbered road – and the fact that it included a narrow passageway A-B, which might or might not have been usable by the public suggests that any use of the route as a thoroughfare would have been most likely to have been on foot.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Map, Award or Agreement has been found relating to the land crossed by the route under investigation.
Investigating Comments	Officer's	No record could be found relating to the route under investigation coming into being as a public or private route because of the inclosure of land so no inference can be drawn in this respect.
6 Inch Ordnance Survey (OS) Map Sheet LI	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847 ¹ However it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were

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

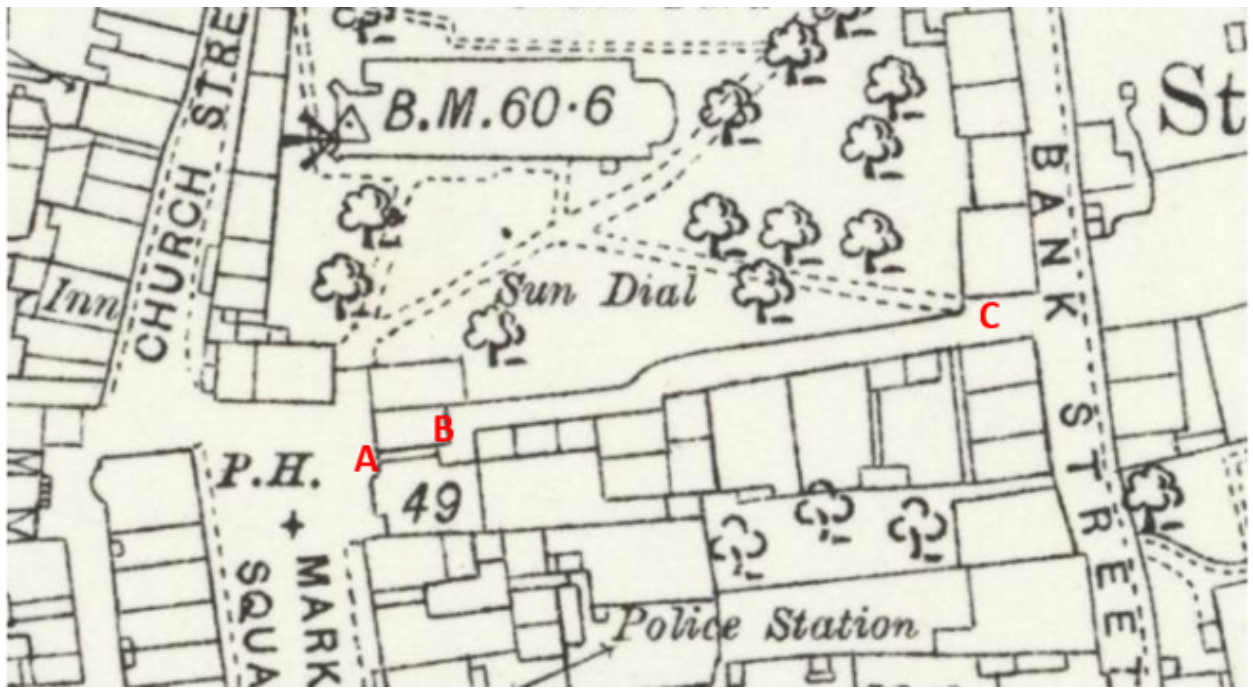


		<p>many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>
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<p>Observations</p>		<p>The small scale of the map and density of buildings and gardens means that even when the map is enlarged (as above) it is difficult to see whether the full length of the route under investigation was shown. The buildings running the length of Market Square are shown as a shaded block with no lines separating each individual property and no indication that the</p>
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		passageway existed between point A and point B. From point B the route is shown through to point C with a row of buildings along the north side of the route. The buildings south of point C along the west side of Chapel Street are different to the ones that exist today and Chapel Street is named as Back street on the map.
Investigating Comments	Officer's	Section B-C of the route appears to be available but it is not possible to know from this map whether the route existed as a through route capable of being used on foot in 1844.
25 Inch OS Map Sheet LI.2	1892	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.



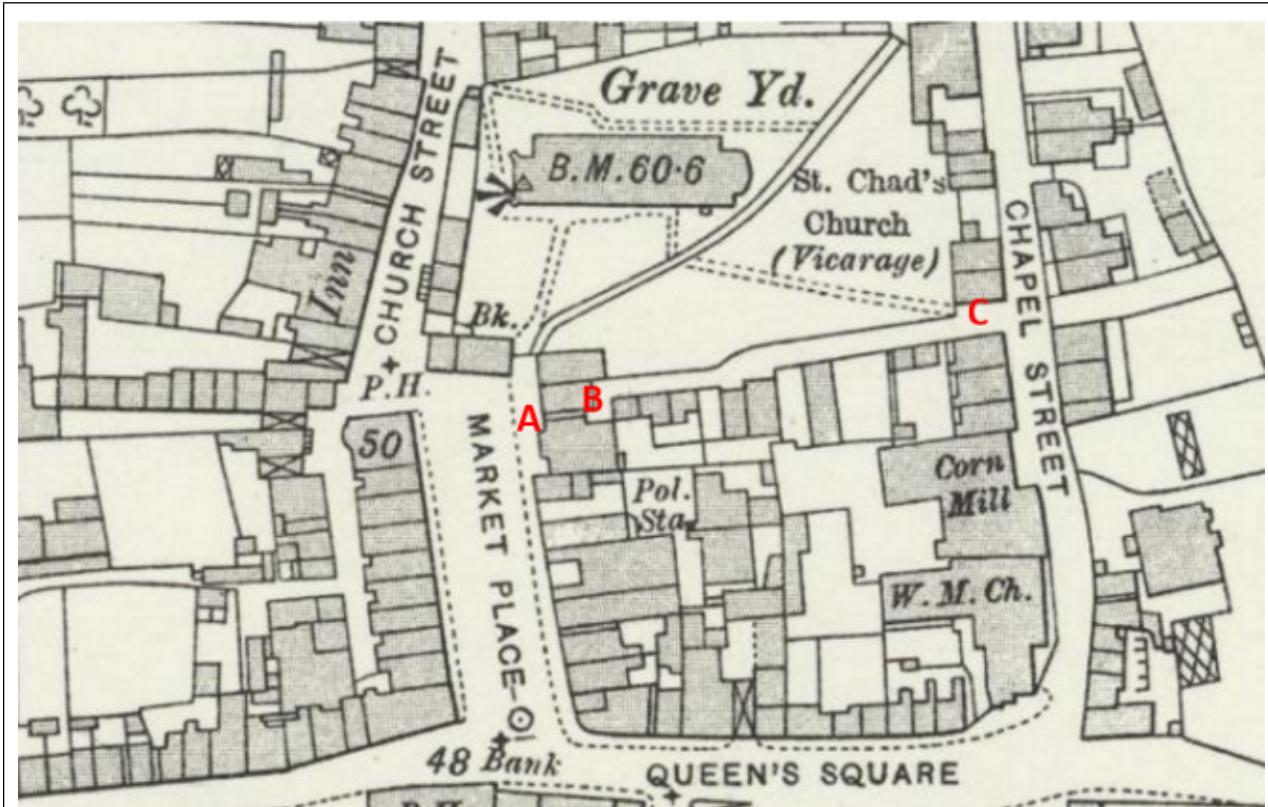
Observations		<p>The earliest large scale OS map examined.</p> <p>The map shows the passageway A-B and the full length of the route under investigation through to point C. The route is not named. Buildings that previously existed along the north side of the route between point B and point C are no longer shown and the route is shown bounded by a wall separating it from the church grounds.</p> <p>Chapel Street was named on the map as Bank Street. A-B is shown in a similar</p>
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		manner to the passageway 15m further south (by the 'A' of 'MARKET'). It is not possible to tell whether the lines across the route at A and B are at ground floor level or only at first floor level.
Investigating Comments	Officer's	The route under investigation existed which appeared capable of being used at least on foot in 1890. As well as providing access to several properties and plots of land use of the passageway A-B, if unrestricted, would provide a through route from Market Square to Bank Street (Chapel Street).
Bartholomew Mapping	half inch	1905
		The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



Observations		The route under investigation is not shown on any of the three Bartholomew Maps examined (1905, 1920 or 1941 editions).
Investigating Comments	Officer's	OS maps dated before and after the publication of Bartholomew's maps confirm the physical existence of the route over this period. As they were derived from the Ordnance Survey maps which probably showed it, the route may have been purposely omitted by Bartholomew so the fact that the route is not shown on any of the three maps inspected suggests that it was not considered to be a public vehicular route at that time. Footpaths and Bridleways were not normally shown, so no inference can be drawn in that respect.
25 inch OS Map Sheet LI.2	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.

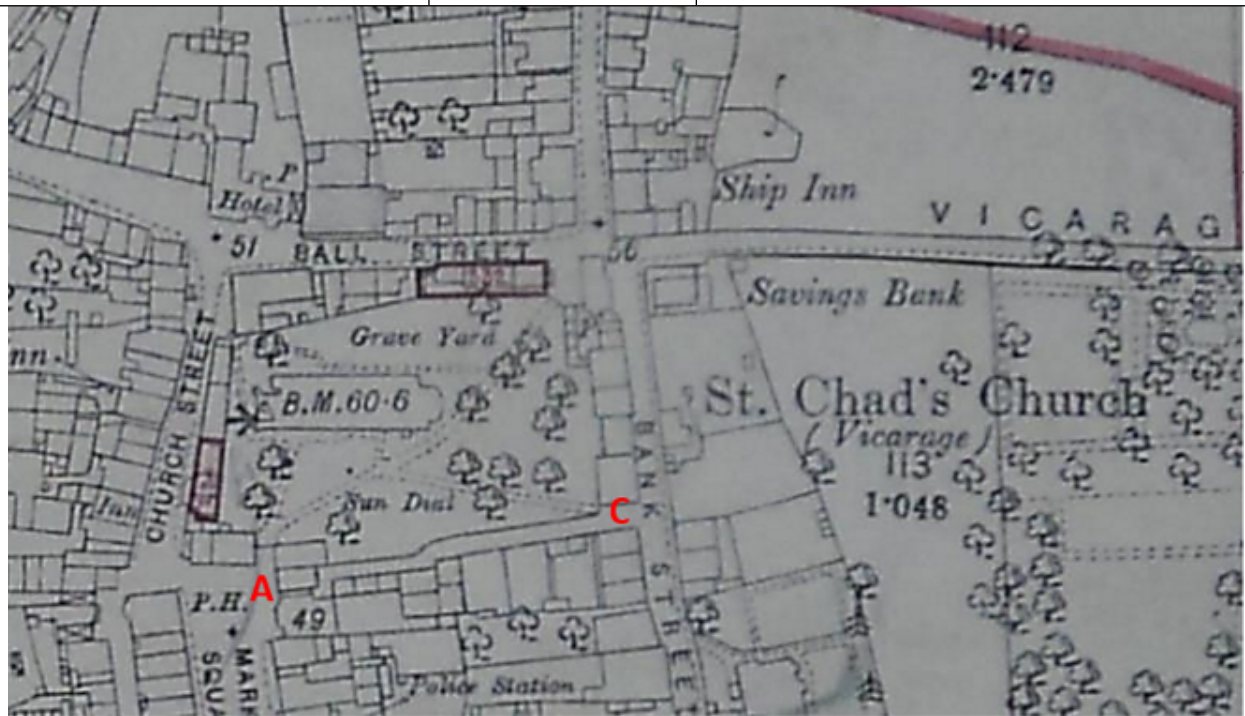


Observations		The route under investigation is shown in the same way that it is shown on the earlier 25 inch OS map examined. Back/Bank Street is now named on the map as Chapel Street.
Investigating Officer's Comments		The route under investigation existed in 1910 and may have been capable of being used as a through route on foot provided that access along the passageway A-B was available.
Finance Act 1910 Map TNAs Ref:IR133/3/216	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</p>



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).

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.



Map deposited in the National Archives [Above]

Observations

The County Records Office does not hold any Finance Act maps for the land crossed by the route under investigation (although it does hold the Valuation Books). The Finance Act map held by the National Archives Office is not complete



		and does not provide any details with regards to the route under investigation.
Investigating Comments	Officer's	No inference can be drawn with regards to the route under investigation.
25 Inch OS Map Sheet LI.2	1932	Further edition of 25 inch map (surveyed 1890, revised in 1930 and published in 1932.



Observations		The passageway is shown between point A and point B and beyond point B the route under investigation is shown and named as Chapel Street Court providing access to a number of buildings located along it. n.b. the passageway just to the south is shown unshaded on this and the 1912 sheets.
Investigating Comments	Officer's	The route under investigation existed as a named route in 1930 and if the passageway A-B was accessible appeared to be capable of being used by pedestrians as a through route.
25 Inch OS Map Sheet LI.2	1945	Further edition of 25 inch map (surveyed 1890, revised in 1942 and published in 1945.





Observations		The passageway is shown between point A and point B and beyond point B the route under investigation is again shown and named as Chapel Street Court.
Investigating Officer's Comments		The route under investigation existed as a named route in 1942 and if the passageway A-B was accessible appeared to be capable of being used as a through route.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.

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



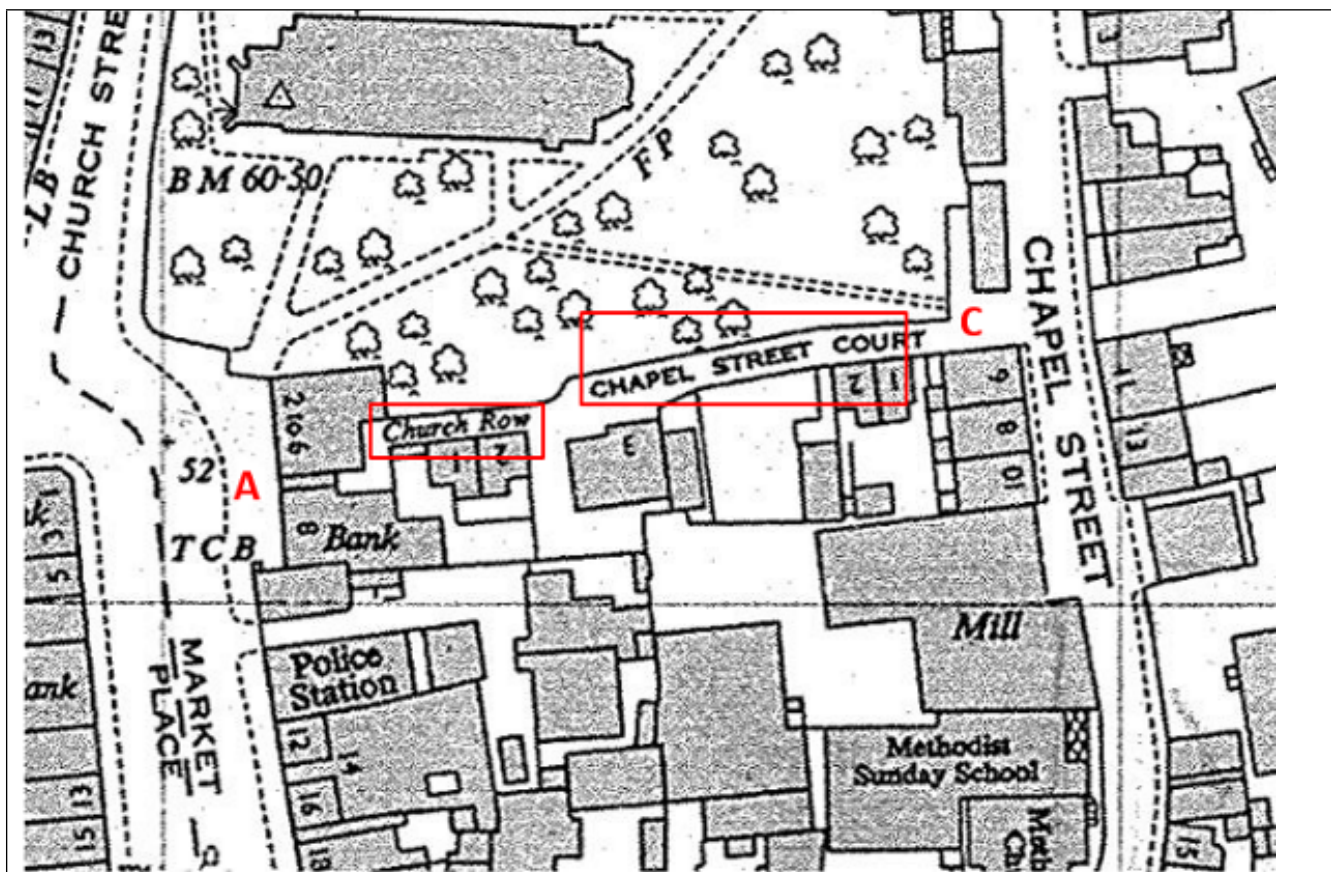


Observations		The photograph is of poor quality and it is not possible to see the route partly because of the lack of clarity/focus and partly due to tree cover and shadows.
Investigating Officer's Comments		No inference can be drawn with regards to the existence or use of the route.
6 Inch OS Map Sheet 33NW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930-1945.



Observations		Between points A-B a building is shown and due to the map scale the passageway is not marked. The route under investigation is shown between points B-C.
Investigating Officer's Comments		The route under investigation existed in the 1930s and if access was available through the passageway provided direct access from Market Place to Chapel Street.
1:2500 OS Map SD3439 & SD3539	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1961 as national grid series.





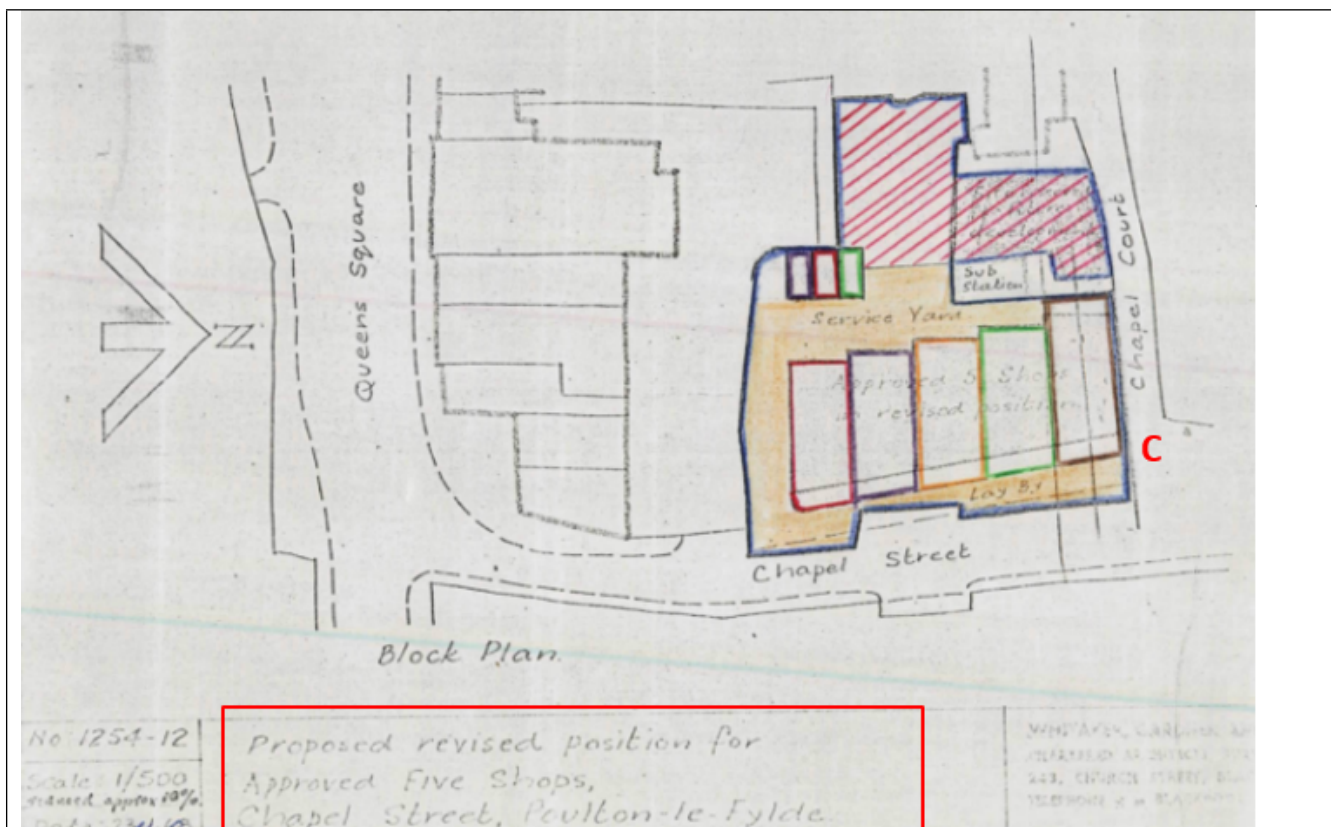
Observations		The route under investigation is shown in the same way as it has been shown on earlier editions of the OS 25 inch maps. The passageway is marked and beyond it two properties are numbered 1 and 2 'Church Row'. Beyond that the other properties accessed via the route under investigation appear to be numbered as being on Chapel Street Court.
Investigating Officer's Comments		The route under investigation existed and if the passageway A-B was accessible appeared to be capable of being used. It provided access to properties and was known as both Church Row and Chapel Street Court.
Aerial photograph	1963	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley



district.



Observations		Parts of the route under investigation can be seen but much of the route is obscured by trees and shadows from the adjacent buildings.
Investigating Officer's Comments		No inference can be drawn with regards to the existence or use of the route.
Plan attached to 1969 conveyance	1969	Plan attached to conveyance deposited at Land Registry with title documents for LA789723 (6 Chapel Street).



Observations

The Conveyance relates to the sale of land situated south of point C which, since the time of the sale has been redeveloped. It relates to the sale of land abutting the route under investigation but not land crossed by the route. The description of the land and properties to be in the sale includes two cottages which are described as being situated in Chapel Court, which it is stated was formerly called Potts Lane.

The conveyance plan shows that part of the route under investigation from point C and the proposed location of the properties to be constructed on Chapel Street. It also refers to work to be carried out at the front of the proposed properties on land shaded orange and annotated as 'Lay By' on the plan and refers to an intention for this to be a private lay by unless it was to be adopted by the Urban District Council.

Investigating
Comments

Officer's

The conveyance refers to Chapel Court having been formerly known as Potts Lane although no other map or documentary evidence had been found with reference to that name. The route is shown on the plan labelled as Chapel



		<p>Court and there is no reference to the need to retain or provide any private access rights along it suggesting that it was considered to be a public route along which it was not considered necessary to record any private right to access the rear or side of the properties and land to be sold .</p> <p>A google search of 'Potts Lane' revealed a further reference to Potts Lane in Poulton le Fylde which appears to confirm that the reference to Potts Lane is a reference to the route under investigation. A local historian researching their family history documents their research online Family History Fun: People & Places (scotsue-familyhistoryfun.blogspot.com). Their research members of the Danson family and document that in 1881 James Danson, his wife Maria and two young sons were living in Potts Alley, Poulton. Potts Lane was described as running alongside the church and just off the Market Square and an inspection of the 1892 25 inch OS map suggests that the route referred to must be the route under investigation and that although it is described as an Alley not Lane it is suggested that they were references to the same route. A further reference to Potts Alley was documented by the same historian who said that thirty years earlier, Potts Alley came in for some condemnation, having been described as "<i>the town's slum quarter</i>" which contained some of Poulton le Fylde's "<i>most squalid overcrowded properties</i>" which had been the subject of severe criticism in a public health report of 1852.</p>
<p>Conveyance deposited with Land Registry deposit LAN8655</p>	<p>1972</p>	<p>Conveyance deposited with the Land Registry for 5 Chapel Street Court.</p>

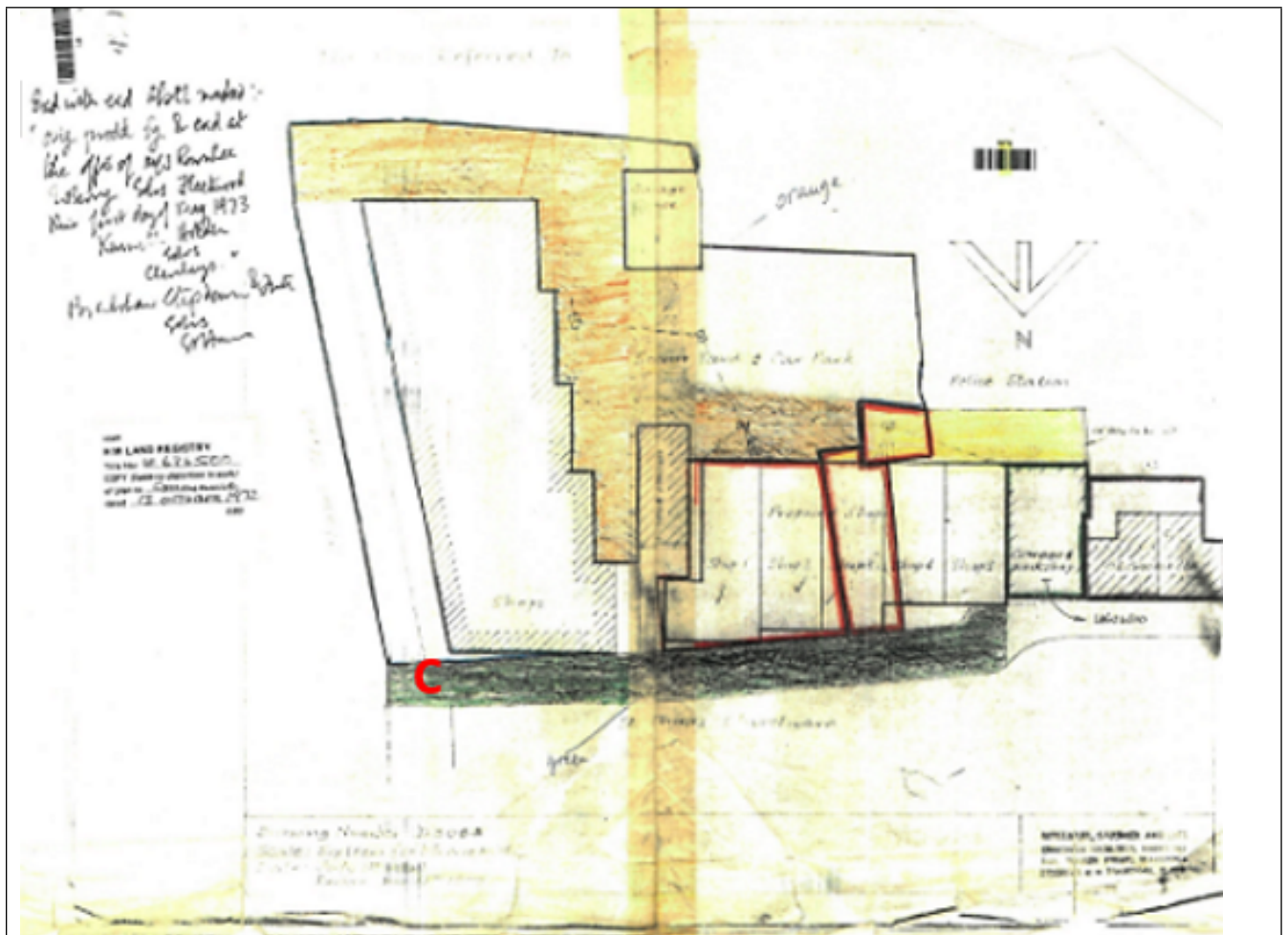
hereinafter appearing _____

(7) Chapel Street Court is believed to be an old public right of way on foot only but the Vendors the Company and the Grantee or their respective predecessors in title have for some considerable time past used the same for the purpose of gaining vehicular access to their respective properties abutting the same although no other persons or companies are thought to have any right of way other than on foot _____

(8) The Vendors the Company and the Grantee are desirous of closing such portion of Chapel Street Court as is shewn coloured green on the said plan so far as is in their power to all vehicular traffic to the intent that henceforth it shall be used as a pedestrianised court or walk into which vehicular traffic is not allowed _____

NOW THIS DEED WITNESSETH as follows:-

1. The Vendors as Trustees convey unto the Company ALL THE First



<p>Observations</p>		<p>The land registry documentation for 5 Chapel Street Court – which is situated on and accessed from Chapel Street Court – contains a conveyance made in 1972. The conveyance specifically refers to Chapel Street Court explaining that it was believed to be an old public right of way on foot but that for some considerable time persons living or owning property accessed via the route had used it with vehicles for the express purpose of accessing property. It was written that the vendors and other interested parties wished to close that part of Chapel Street Court to all vehicles so far as they were able to and that it should be used only by pedestrians.</p>
<p>Investigating Officer's Comments</p>		<p>Reference to vehicular use of the route must almost exclusively have been from point C due to the restricted width of the passageway from point A and as such would be consistent with use by owners/occupiers or possibly visitors to properties situated along the route.</p>

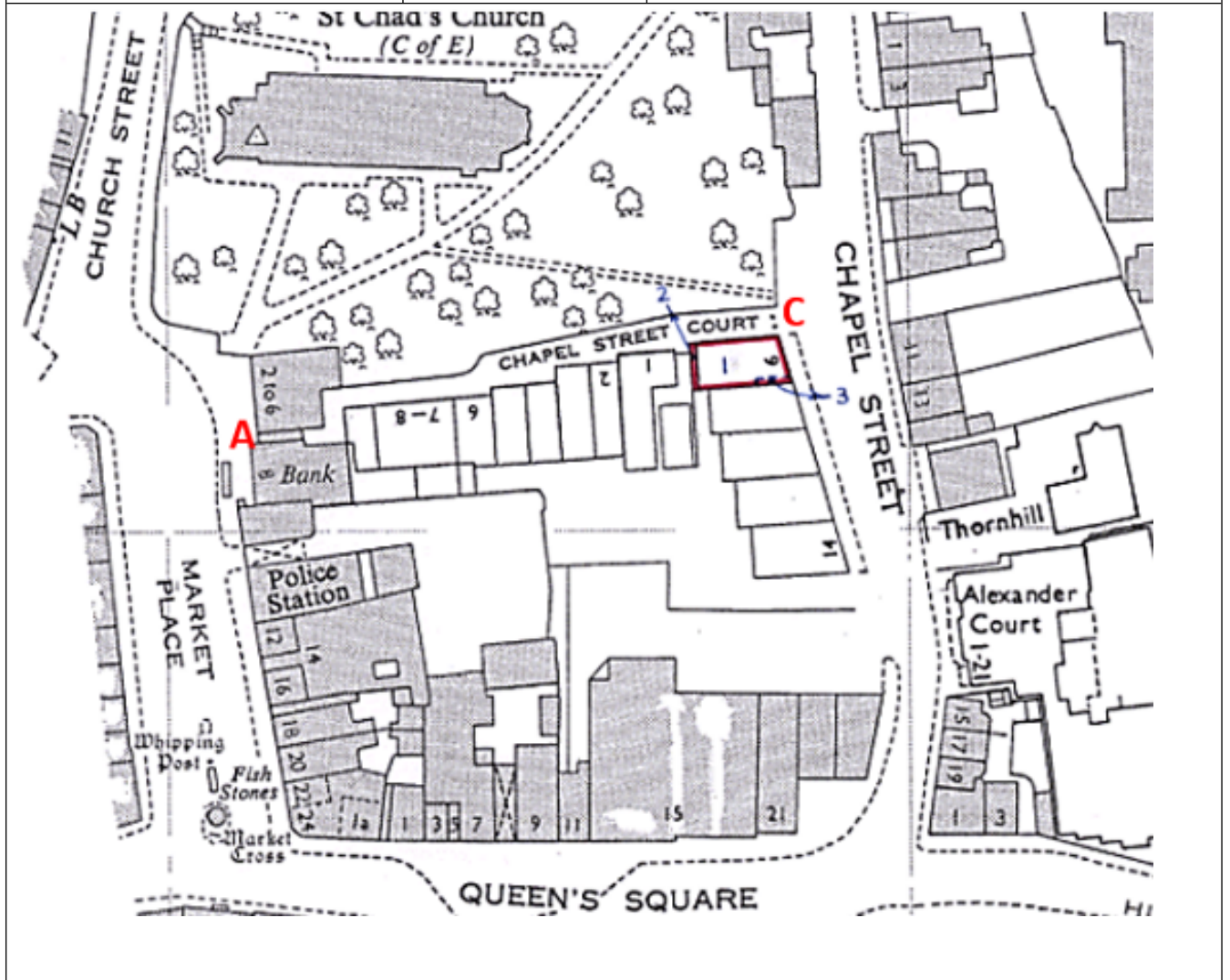
The Conveyance makes specific reference to a belief that the route was an old public right of way on foot suggesting historical use which is supported by the map evidence.

The Conveyance may provide documentary evidence of a 1972 acceptance of previous dedication of the route although there is no reference to who actually owned it and reference to closing the route to vehicles is qualified by stating a desire to close it so far as they were able to.

OS 1:1250 Map
SD 3439

1988

Further OS large scale map.

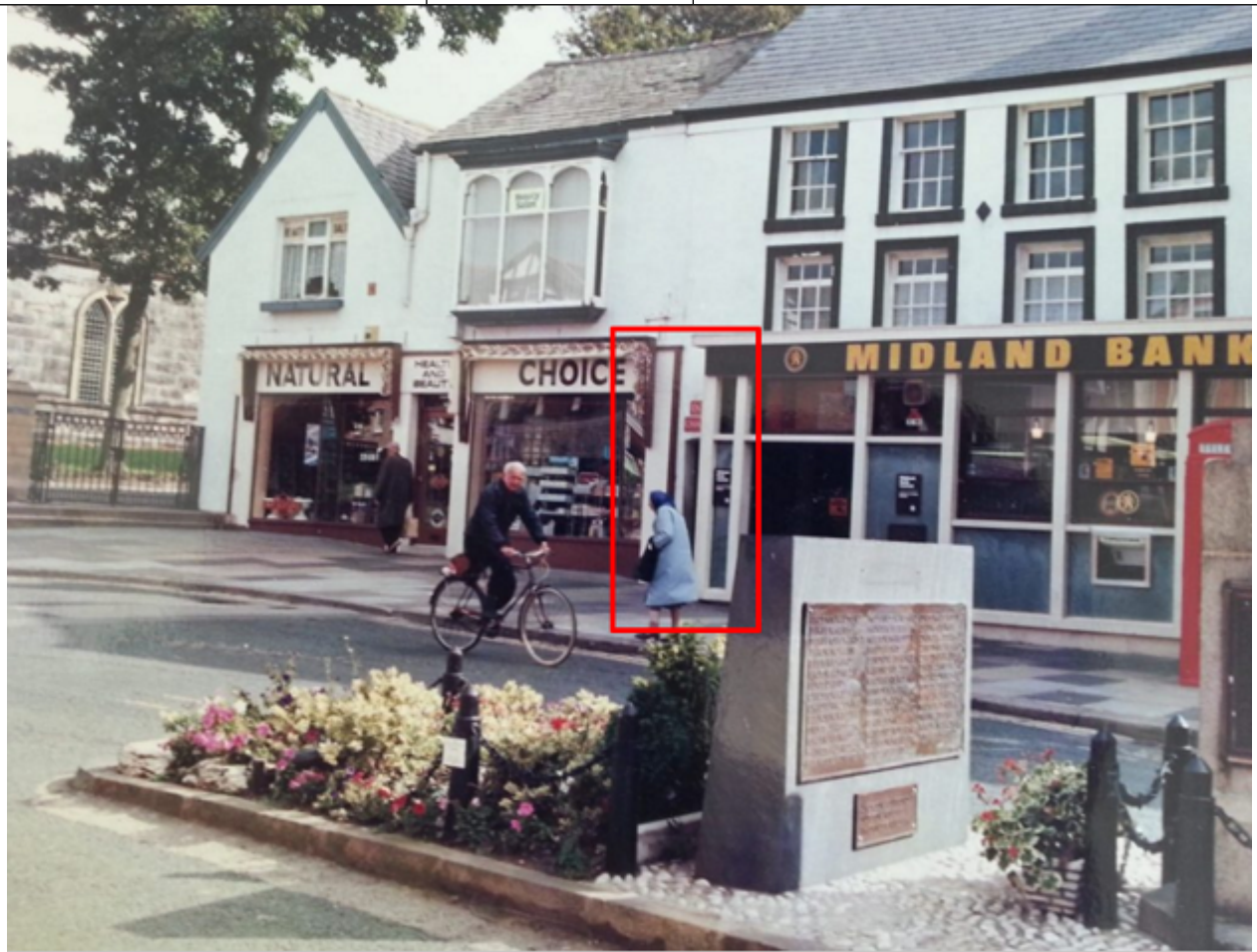


Observations

The route under investigation can be clearly seen and is named as Chapel Street Court. Bollards have been located at point C and it is noted that there is access to the rear of the properties situated along the route via Chapel Street.



		The property numbered 4 Market Street is shown as a Bank and is shown on a photograph taken at a similar time to when the map was prepared detailed below.
Investigating Comments	Officer's	The route under investigation is shown and appeared to be capable of being used on foot. The fact that bollards have been placed across the route at point C is consistent with the information in the 1972 conveyance pertaining to the dedication of footpath rights and preventing use of the route by vehicles.
Photograph of Market Square	1980s	Photograph found online of Market Street and labelled as having been taken in the 1980s.



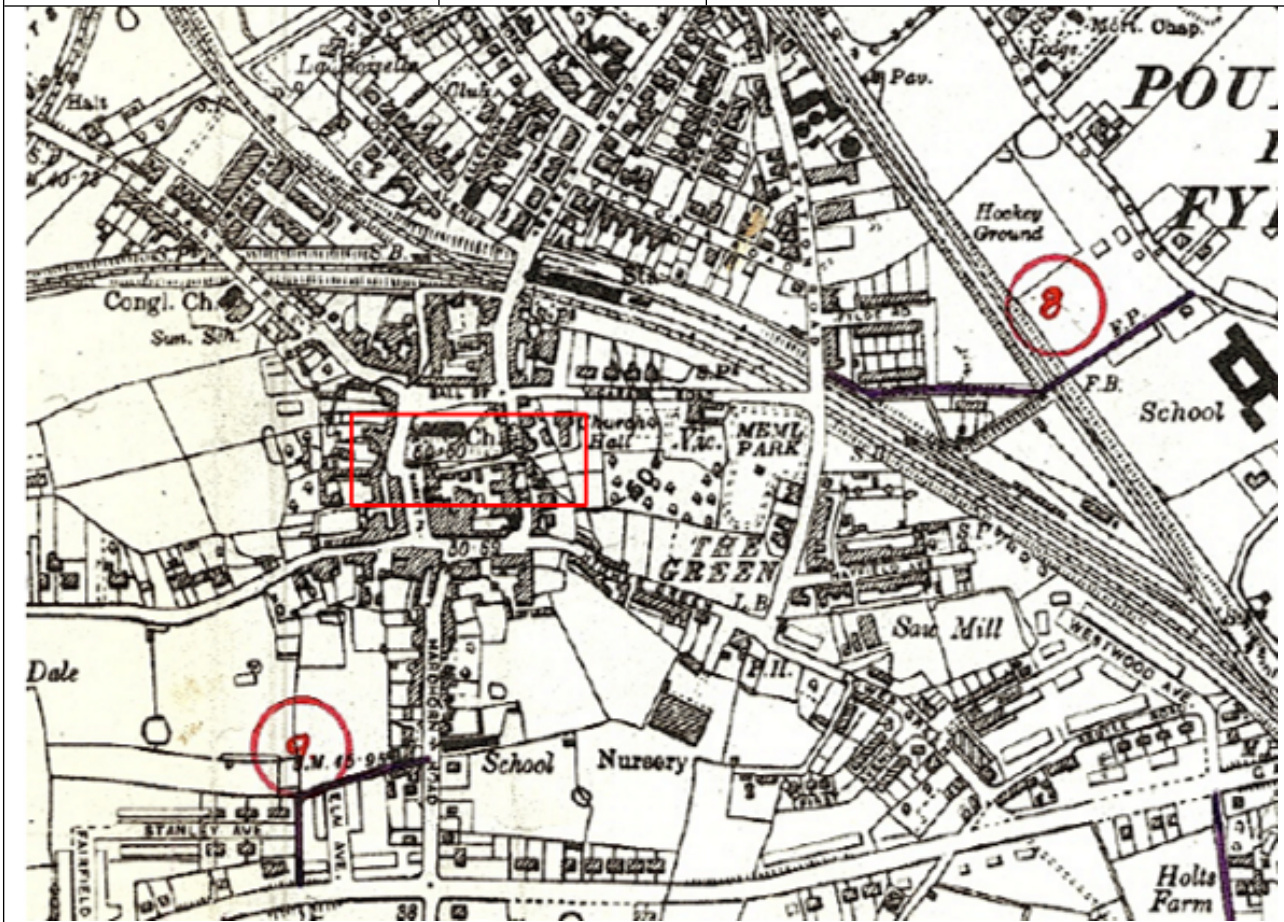
[Old Photos of Poulton-le-Fylde - Mid 1900's - Visit Poulton \(visitpoulton-le-fylde.co.uk\)](http://visitpoulton-le-fylde.co.uk)

Observations		A photograph found online said to have been taken in the 1980s shows the bank labelled on the OS map detailed above and partially shows the entrance to the passageway – which appears to have a notice coloured red with white lettering above it.
Investigating	Officer's	The photograph provides some further



Comments		context to how Market Place looked in the mid-1980s and the existence of the passageway between the shop and bank.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The land crossed by the route under investigation was within Poulton-le-Fylde Urban District in the early 1950s and therefore no parish survey map was prepared.
Draft Map		A Draft Map was prepared for Poulton-le-Fylde Urban District. The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or

reject them on the evidence presented.



Observations		The route under investigation is not shown on the Draft Map and there were no representations or objections made to the fact that it was not included.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map and no objections or representations were made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not



<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>recorded on the First Definitive Map.</p> <p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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<p>Observations</p>		<p>The route under investigation is not</p>
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		recorded on the Revised Definitive Map of Public Rights of Way.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regard to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>





Observations		There is no Handover Map for the land crossed by the route under investigation. The route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		A search of the records held by the County Council and the London Gazette has been made and no reference to the route under investigation was found.
Investigating Officer's Comments		No records relating to the stopping up, diverting or creating of public rights along the route were found. If any unrecorded public rights exist along



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

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.

It would appear that the route was situated in the historical epicentre of Poulton le Fylde running to a large extent adjacent to the church.

Early commercial maps from 1786 to 1830 show buildings consistent with the location of those on Market Square through which the passageway exists and Tithe Map of 1839 and the 25 inch OS map published in 1893 confirm its existence.

All OS maps examined show the route and the fact that it provided access to properties located along it and offered a through route leading to the Market Square. Some early references to it being named as Potts Alley or Potts Lane were found and it is clear from looking at the OS maps that as buildings were altered or demolished and rebuilt adjacent to the route the route itself remained unaltered.

Later maps named it as Chapel Street Court and it is street lit with a largely flagged surface.

Nothing was found suggesting that it was not, or could not be, used by the public and the fact that it was located centrally off a thriving Market Square suggested that it might have been used by the public since the late 1700s or early 1800s.

The 1972 conveyance refers to it already being a public footpath and reference to the public accepting that dedication by using it although with no evidence suggesting anything to the contrary it could be that the route was already a public footpath by that time.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the investigation route is unregistered. Only the rooms above the passageway from point A-B are included in the title.



Information from Others

None of those utility companies which replied had any comments about the status.

The owner of a property adjacent to the investigation route responded to consultation explaining that the property was built around 1971 and had been in continuous use as a cafe since first opening in 1972. The response also stated that the front of the cafe had been a public right of way before the cafe and adjacent shops were built and it was known as Potts Alley. The owner stated there are photos of it displayed at the entrance of Chapel St Court. The owner also clarified the extent of ownership and confirmed they did not own any land on the investigation route, just land adjacent to it.

The Ramblers' Association assisted with some user evidence from locals who use the route. Eight user evidence forms were received, and an overview of the information is provided below:

Duration of Use

The user evidence forms collectively provide evidence of use going back to 1945. All eight users used the route for a minimum of 34 years.

Frequency of Use

All eight users stated they used the route on foot. The specific use of each user is shown in the table below:

Every Few Months	Varies Between Every Few Months/Monthly	Monthly	Weekly	More than weekly	Total
2	1	1	1	3	8

Reasons for Use

The reasons for use included, to access shops, cafes, restaurants, hairdressers, and other businesses on the route, to get from one part of town to another and for pleasure.

Other Users of the Route

All users recorded having seen others using the route, users stated the route is often quite busy and it is regularly used as it is a major thoroughfare in the centre of town.

Consistency of the Route

Seven of the eight users said the route had always followed the same route and one user said they did not know.



Unobstructed Use of the Route

None of the eight users recalled having been prevented from using the route and none of the users recalled any stiles, gates or barriers on the route and no users recalled seeing any signs or notices restricting or prohibiting access on the route.

Assessment of the Evidence

The Law - See Annex 'A'

The investigation was carried out in order to determine whether public rights already exist in law and whether accordingly the route A-B-C should be recorded as such on the Definitive Map and Statement.

As there is no express dedication in this matter, Committee is invited to consider whether there is sufficient evidence from which dedication of the route can be inferred at common law. Deemed dedication under s31 Highways Act 1980 cannot be considered because there is no evidence of public use of the route having been called into question prior to this investigation.

Committee is advised to consider whether evidence from the maps and other documentary evidence, coupled with the evidence on site and all circumstances together with user evidence, indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Committee is referred to the assessment of the documentary evidence concerning this route and the summary prepared by officers in the Public Rights of Way Team.

Committee will note the existence of buildings shown on the early commercial maps, consistent with those located on Market Square through which the passageway A-B runs. In addition, the Tithe Map of 1839 along with the 25 inch OS Map published in 1892 confirm the existence of the route A-B.

The route under investigation can be seen on all 25 inch and 1:2500 OS maps examined and these maps further show that the route offered access to the various properties located along the route and provided a through route leading to the Market Square. It is also clear from the OS maps that, whilst there are early references to the route being known under a different name (Potts Alley and Potts Lane) and despite the alteration and demolition of buildings adjacent to the route, the route itself remained unchanged.

Committee will note that the entrance to the passageway is not restricted and that there is no evidence of it ever having been gated. Also worth noting is the presence of signage along the route, in particular the notice board located close to point B which contains information and photographs regarding the history of the route and reference to its former names. Three streetlights are located along the route and the route has a largely concrete flagged surface.



Specific reference is made in the 1972 conveyance to a belief that the route already existed as an old public right of way on foot. This suggests historical use and is supported by the map evidence. Reference is also made in this conveyance to the public accepting dedication of the route through their use of it. It is suggested that the existence of bollards across the route at point C is consistent with the information provided in the 1972 conveyance with regards to the dedication of footpath rights and prevention of vehicular use.

Sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. 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 and use by the public has continued for many years.

There has been no evidence found to suggest that the route under investigation was not or could not be used by the public at any point and the evidence suggests that public use may have been possible since the late 1700s or early 1800s.

As part of the investigations carried out into the status of the route, Committee will note that eight user evidence forms have been provided detailing use of the route on foot from as early as 1945.

All users refer to having witnessed other users on foot whilst using the route and reference is made to it often being quite busy and regularly used by many users as a thoroughfare into the town centre. One user mentions having witnessed bicycle use. Seven of the eight users state that the route has always followed the same course.

None of the users recall having been prevented from using the route or having seen stiles, gates or other barriers along the route. No users state that they have ever asked permission to use the route or refer to having been turned away and there is no reference to the users having seen signs or notices along the route to suggest that the route was not a public right of way.

Committee will also note the comments from the tenant of a cafe adjacent to the route. These provide that the property was built in 1971 and that it has been used as a café since first opening in 1972 with the front of the café having been a public right of way before the café and adjacent shops were built.

On balance, it is suggested that the map and other documentary evidence is considered to be sufficient from which public rights could be inferred for the route A-B-C and that the evidence suggests the existence of a historical route used at least on foot. Further, user evidence provided collectively confirms use of the route A-B-C by the public as a public footpath going back to 1945.

In conclusion, Committee is therefore advised to accept the recommendation and make an Order for the route marked A-B-C to be added to the Definitive Map and Statement as a public footpath and promote the Order to confirmation.

Implications:

This item has the following implications, as indicated:



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

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

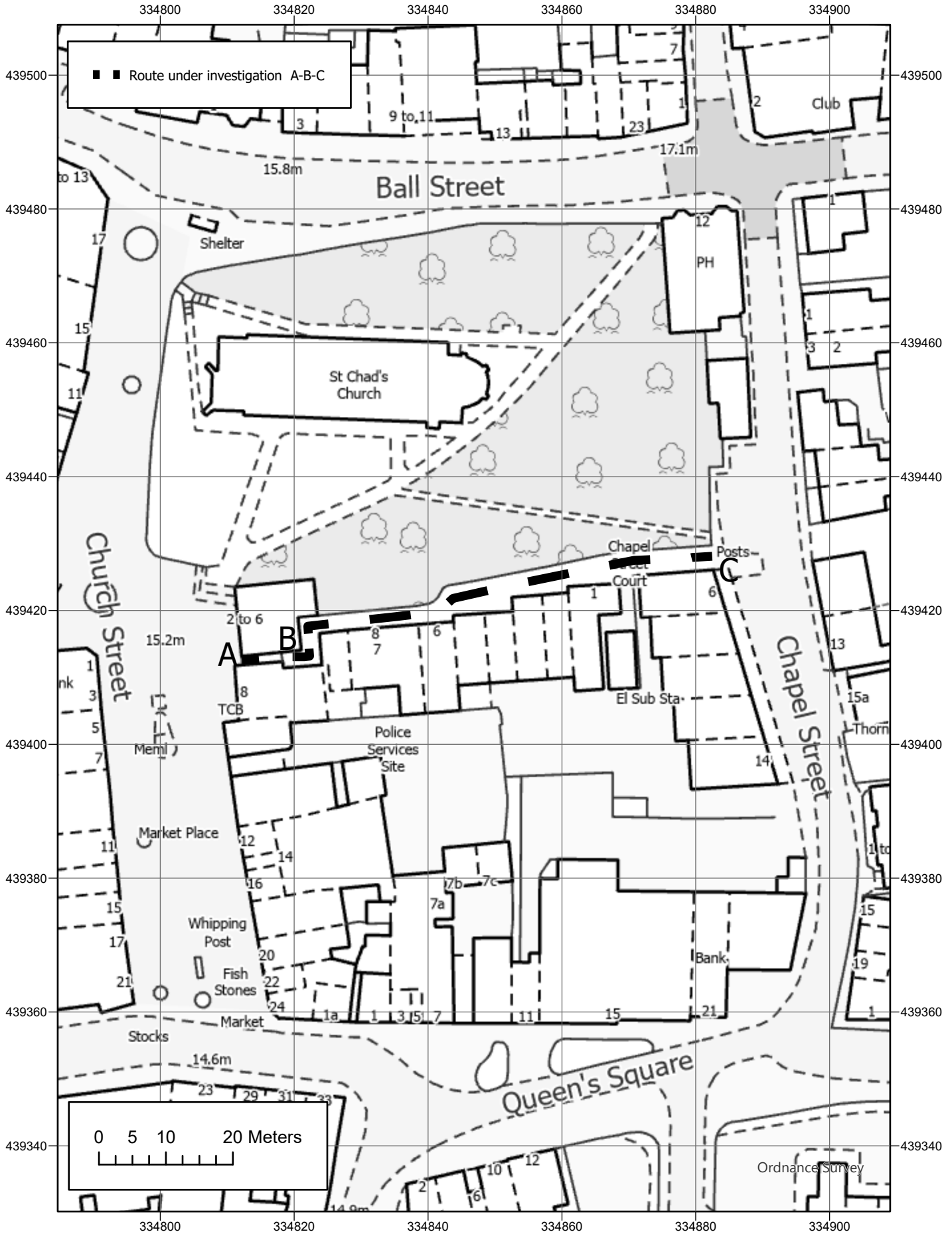
Risk management

Consideration has been given to the risk management implications associated with this investigation. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annex 'A' included in the Agenda Papers, officers' presentation and discussion. 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: 804-767		Annabel Mayson, 01772 533244, Legal and Democratic Services
Reason for inclusion in Part II, if appropriate		
N/A		

Committee Plan



Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
Chorley Rural West

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Diversion of Footpath at Little Bluestone Cottage, Mawdesley
(Annexes 'B' and 'C' refer)

Contact for further information:

Mr A Ibison, Planning and Environment Group
07773 135050, adrian.ibison@lancashire.gov.uk

Brief Summary

Application for the diversion of part of Footpath FP0919055 at Little Bluestone Cottage, Mawdesley.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0919055 from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked C-D-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Detail

A request has been received from the owners of the residential property of Little Bluestone Cottage, Bluestone Lane, Mawdesley, for an Order to be made under

Section 119 of the Highways Act 1980, to divert part of Footpath FP0919055. The recorded alignment of this section of the footpath is from Bluestone Lane in an easterly direction, south of the boundary fence along the access drive of the residential property of Little Bluestone Cottage. It is proposed that the footpath is diverted to the northern side of the boundary fence of Little Bluestone Cottage, then re-joining the existing route near the rear of the property.

The length of existing path to be diverted is shown by a bold continuous line and marked A-B and the proposed alternative route shown by a bold broken line and marked C-D-B on the attached map.

Consultations

The Local Member, Chorley Borough Council and Mawdesley Parish Council have been consulted and there are no adverse responses.

The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers have been consulted and there are no adverse responses.

The consultation with the statutory undertakers has been carried out and no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 5044 1537	At the western edge of the access drive of Little Bluestone Cottage.
B	SD 5048 1538	East of point A, at the south-eastern corner of the pasture to the north of Little Bluestone Cottage.
C	SD 5044 1538	On the northern side of the access drive of Little Bluestone Cottage, by the south-western corner of the adjacent pasture.
D	SD 5048 1539	At the south-eastern corner of the pasture to the north of the access drive to Little Bluestone Cottage.

Description of existing footpath to be diverted

That part of FP0919055 as described below and shown by a bold continuous line marked A-B on the attached map. (All lengths and compass points given are approximate).



FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	E	45	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line C-D-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
C	D	E	45	2	Compacted stone
D	B	S	10	2	Compacted stone

The public footpath to be created by the proposed Order will not be subject to any limitations or conditions.

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Mawdesley 55 be amended to read as follows:

"No. of Path:
55

Kind of Path:
Footpath

Position:
From Blue Stone lane in pasture to the north of Little Bluestone Cottage at SD 5044 1538, east to south east corner of pasture, to turn south for 10m to SD 50480 1538, then turn east to continue through pasture to Salt Pit Lane opposite Barretts Farm.
(All compass points given are approximate).

Length:
0.07 km

Other Particulars:
There are no limitations on the section between SD 5044 1538 and SD 5048 1538.

The width between SD 5044 1538 and SD 5048 1538 is 2 metres."



Criteria satisfied to make and confirm the Order

The proposed diversion is considered expedient in the interests of the owners of the land for reasons of privacy and security. Little Bluestone Cottage is a private, residential property. Currently the public footpath runs along the access drive of, and immediately adjacent to, the dwelling of Little Bluestone Cottage.

The diversion will instead move to the north of the boundary fence of Little Bluestone Cottage, going through the pasture on a line parallel to the current route, then turn slightly to the south before turning east to continue on footpath FP0919055. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and as direct for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same path, or a path connected to it, and is substantially as convenient to the public. The proposed diversion will alter the western point of termination of FP0919055 to divert it from its current termination point to another point on Bluestone Lane 10 meters to the north. It is suggested that the proposed termination point is substantially as convenient to the public.

Committee is advised that so much of the Order as stops up parts of FP0919055, is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus of which we are aware at the time of writing belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present route.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicants own the land crossed by all of the existing route.

The applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is similar in length, runs over firm ground and has a similar gradient to the existing footpath.



It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. As the existing footpath connects to other parts of the public rights of way network via the remainder of FP0919055. Also, because the new footpath will be diverted out of the private grounds of Little Bluestone Cottage, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of the property than when walking through the private grounds of the residential property.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However, such loss is not expected, affected landowners have indicated agreement and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The alternative route will be of adequate width, firm and well drained underfoot.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Other options to be considered

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the county council.

To agree that the Order be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

Implications:

This item has the following implications, as indicated:

Legal

There are no risks associated with following or not following the recommended course of action as long as the decision is made according to the criteria laid out above.

Risk management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annexes B & C included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

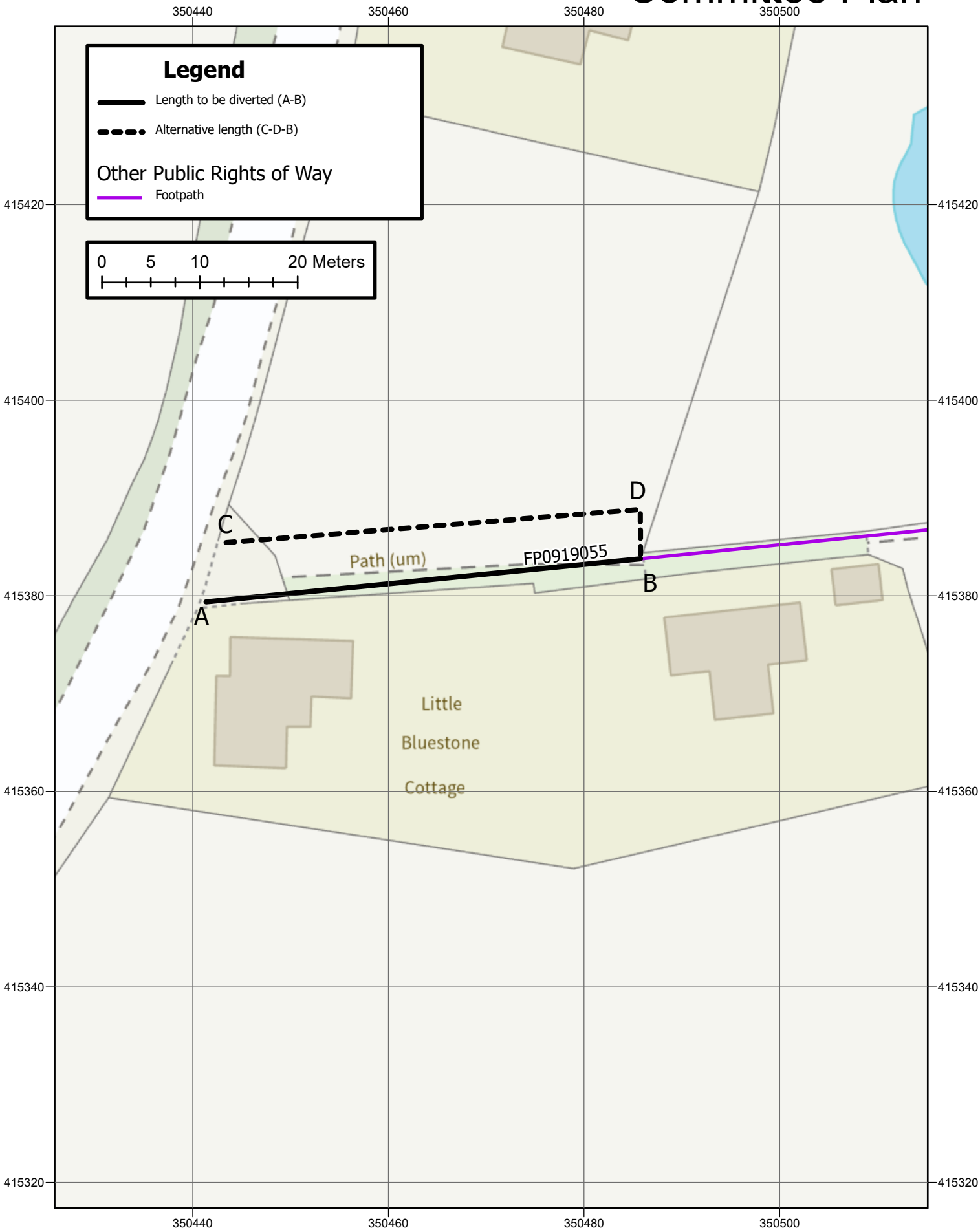
There is a risk of cost to the Authority if the decision is made to pursue an opposed Order to confirmation on behalf of the applicant or owners but it is not a substantial amount. However, unless there are exceptional circumstances it would be unequitable to fund confirmation of this Order at public expense and not others which are not made for public benefit.

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

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



Committee Plan



Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
Lancaster Rural East

Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Diversion of Footpaths FP0113036 and FP0113037 at Ellel Quarry
(Annexes 'B' and 'C' refer)

Contact for further information:
Mr A Ibison, Planning and Environment Group
07773 135050, adrian.ibison@lancashire.gov.uk

Brief Summary

Application for the diversion of Footpaths FP0113036 and FP0113037 at Ellel Quarry.

Recommendation

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert parts of FP0113036 and FP0113037 from the route shown by a bold continuous line and marked A-B-C and D-E and F-B to the route shown by a bold broken line and marked A-F and D-G and F-C on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Detail

A request has been received from the owners of Ellel Quarry, Bay Horse Road, Ellel, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of FP0113036 and FP0113037.

The recorded alignment of the footpath FP0113036 is on the concrete surfaced access road of the quarry, before turning south east into a wooded area close to the perimeter of the quarried site, continuing broadly south to join an existing track, to continue in a broadly south south easterly, then easterly direction through the unnamed woods. At the eastern edge of the woods the path turns to continue in a broadly north north easterly direction (across part of the quarried site) before turning east to continue past the derelict property named Ellel Crag and onto the corner of unclassified road Starbank (U49103). This footpath is joined by another, FP0113037, in the woods at point B. It is proposed that parts of the footpaths (A-B-C and F-B) are diverted to run through the wooded area to the south of the access road and to the north of the boundary of the adjacent pasture to meet an existing track which it follows in a broadly south south easterly direction to meet the existing route to the west of the quarried site (now being infilled) (A-F-C). Continuing on the existing route to the eastern edge of the unnamed woods, the section (D-E) is proposed to be diverted to continue in an easterly direction through the pasture (D-G) to meet Starbank at a point 130 meters south of the corner.

The length of existing path to be diverted is shown by a bold continuous line and marked on the attached map as A-B-C and D-E and F-B, and the proposed new route is shown by a bold broken line and marked A-F and D-G and F-C.

Consultations

The Local Member, Lancaster City Council and Ellel Parish Council have been consulted and at the time of writing, there was no adverse response.

The Peak and Northern Footpaths Society and the Lancaster branch of the Ramblers have been consulted and there was no adverse response.

The consultation with the statutory undertakers has been carried out and no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 5018 5498	At the southern corner of the junction of the access road with Bay Horse Road
B	SD 5035 5480	In the unnamed woods immediately to the south of the eastern edge of Ellel Crag Cottage
C	SD 5036 5473	On the track to the south south east of Ellel Crag Cottage
D	SD 5056 5461	Inside the eastern edge of the unnamed woods to the south of the quarried site



E	SD 5068 5472	To the south of the property 'Ellel Crag' on the western side of Starbank
F	SD 5033 5480	On the track immediately to the south west of Ellel Crag Cottage
G	SD 5069 5459	Field-gate at junction with Starbank at the eastern edge of the pasture

Description of existing footpath to be diverted

That part of FP0113036 AND FP0113037 as described below and shown by a bold continuous line marked A-B-C, D-E and F-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	ESE then SSE	280	The entire width
B	C	SSE	60	The entire width
F	B	E	20	The entire width
D	E	Generally NNE, then E	180	The entire width

Description of new footpath

Footpath as described below and shown by a bold broken line A-F, D-G and F-C on the attached map.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	F	ESE then SSE	270	2	Compacted stone
D	G	E	130	2	Compacted stone
F	C	SSE	70	2	Grass

The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:



<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 5057 5461 (just east of point D)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	Grid Reference SD 5069 5459 (point G)

Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpaths Ellel 36 and 37 be amended to read as follows:

"No. of Path:
36

Kind of Path:
Footpath

Position:
Bay Horse Road at SD 5018 5498 generally east south east through woodland curving south south east on track, past Ellel Crag Cottage and junction with Footpath 37, continuing south south east then east through unnamed woods to eastern edge of woods at boundary with pasture, then east across pasture to Starbank (U49103) at SD 5069 5459.

Length:
0.75 km

Other Particulars:
Between SD 5018 5498 and SD 5036 5473 and between SD 5056 5461 and SD 5069 5459:
Width: 2 metres.
Limitations: Gate at SD 5056 5461, Kissing gate at SD 5069 5459"

"No. of Path:
37

Kind of Path:
Footpath

Position:
Bay Horse Road opposite Barbles Farm to junction with Footpath 36 on a track near the south west corner of Ellel Crag Cottage at SD 5033 5480.

Length:
0.26 km"



Criteria satisfied to make and confirm the Order

The proposed diversion is considered expedient in the interests of the owners of the land for reasons of privacy, security and safety. Ellel Quarry is an active quarry site. Currently the public footpath runs on the only access road to the quarry, then along the perimeter of the quarried site (now being infilled), through woods and then across part of the quarried site, before going through the grounds of Ellel Crag.

The diverted footpath will start at the same point but enter woods adjacent to the access track, then will divert onto an existing track away from the perimeter edge of the quarried site, before returning to the existing route, to then divert across pasture, removing it from the vicinity of the quarried site and property. This will significantly increase the privacy, security and safety of the quarry, whilst providing a route that is safe, convenient and more direct for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same highway or a highway connected to it and is substantially as convenient to the public. The proposed diversion will alter the north-eastern point of termination of FP0113036 to divert it from its current termination point to another point on Starbank, the same highway, 130 meters to the south. It is suggested that the proposed termination point is substantially as convenient to the public.

Committee is advised that so much of the Order as diverts part of FP0113036 and FP0113037 is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus of which we are aware at the time of writing belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present route.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The applicants own the land crossed by all of the existing route.

The applicants have agreed to bear all advertising and administrative charges incurred by the county council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is slightly more direct, runs over firm ground and has a similar gradient to the existing footpath.



It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. As the existing footpath connects to other parts of the public rights of way network via Bay Horse Road and Starbank it is suggested that many users might find a walk on the new route to be more convenient. Also, because the new footpath will be away from the vicinity of working areas of the quarry, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Ellel Quarry.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However, such loss is not expected, affected landowners have indicated agreement and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The alternative route will be of adequate width, firm and well drained underfoot, with improved gradients and the gates proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Other options to be considered

To not agree that the Order be made.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the county council.



To agree that the Order be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

Implications:

This item has the following implications, as indicated:

Risk management

There is a risk of cost to the Authority if the decision is made to pursue an opposed Order to confirmation on behalf of the applicant or owners but it is not a substantial amount. However, unless there are exceptional circumstances it would be unequitable to fund confirmation of this Order at public expense and not others which are not made for public benefit.

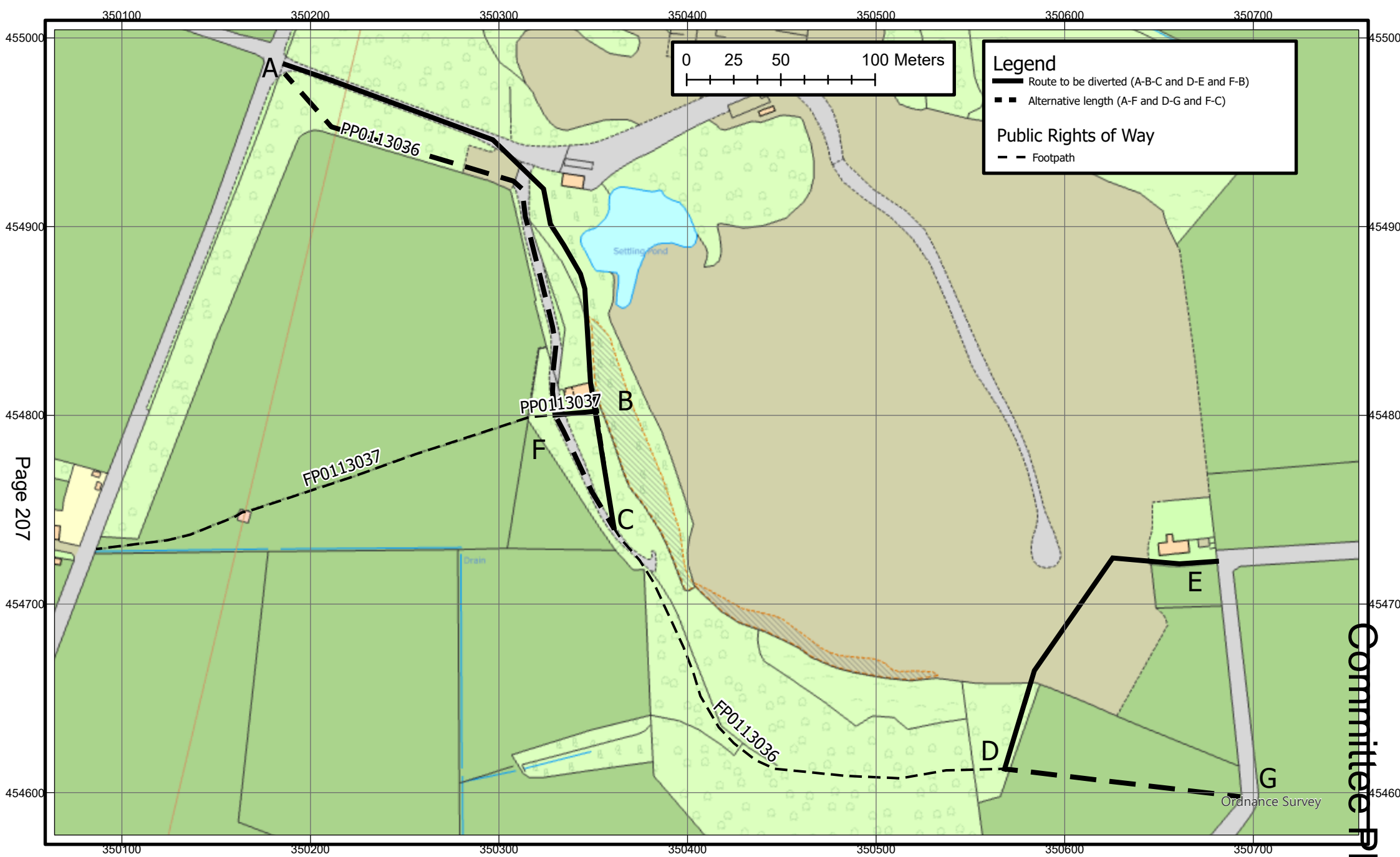
Legal

There are no risks associated with following or not following the recommended course of action as long as the decision is made according to the criteria laid out above.

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

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





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Committee Plan


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

Highways Act 1980 - Section 119 / Wildlife and Countryside Act 1981 - Section 53A
 Diversion of part of Footpaths FP0113036 & FP0113037 at Ellel Quarry.

Plan no.
 211-743v1

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 27 March 2024

Part I

Electoral Division affected:
Rossendale East and
Whitworth & Bacup

**Highways Act 1980 – Sections 119, 118 and 25
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion, Extinguishment and Dedication of Public Paths
at Height Barn Farm, Bacup
(Annexes 'B' and 'C' refer)**

Contact for further information:
Mr A Ibison, Planning and Environment Group
07773 135050, adrian.ibison@lancashire.gov.uk

Brief Summary

Proposed diversion, extinguishment and creation by agreement of bridleways and footpaths at and around Height Barn Farm, Bacup as shown on the attached plans 211-764 v1 and 211-769 v2.

Recommendation

- (i) That Order(s) are made under the Highways Act 1980 to alter some public paths at Height Barn Farm as follows:
 - a. Under section 119: To divert bridleway BW1401503, BW1401493, BW1401678, BW1401492 (part) from the route shown by a bold continuous line and marked A-D-B-E-F-C to the route shown by a bold broken line and marked A-G on the attached map.
 - b. Under section 118. To extinguish footpath FP1401493 shown as a bold continuous line and marked D-E on the attached map.

- (ii) That s.25 Highways Act 1980 Public Path creation agreements are entered into with the landowners to create:
 - a. the section marked F-C shown as a bold continuous line on the attached map 211-764 v1, as footpath.
 - b. the section A-X-Y-Z-P shown as a bold red line on the attached map 211-769 v2, as bridleway.

- (iii) That in the event of no objections being received, the Order(s) be confirmed and in the event of objections being received and not withdrawn, the Order(s) be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iv) That the Director of Environment and Planning be authorised to finalise and enter into a Public Path Creation Agreement under Section 25 of the Highways Act 1980 between the owners of the land east of Height Barn Lane and Lancashire County Council with completion at a time and to include wording in accordance with the main terms as set out in the report to dedicate a length of bridleway marked by a bold continuous red line on the attached map 211-769 v2 and annotated A-X-Y-Z-P.
- (v) That provision be included in the Order(s) such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the Order(s).

Detail

An agreement has been reached with the landowners for Order(s) to be made under S.119 and S.118 Highways Act 1980 and to enter into a Public Path Creation Agreement under Section 25 Highways Act 1980. The effect of which is to divert, extinguish and dedicate parts of the network of Public Rights of Way at Height Barn Farm and Venomous Clough.

It is proposed that the bridleway, consisting of BW1401492 (part), BW1401678, BW1401493 and BW1401503, from New Line along Height Barn Lane in a broadly west-south-westerly direction through Height Barn Farm to the junction with Stubblelee Lane (A-D-B-E-F-C on map 211-764 v1) is diverted out of Height Barn Farm. The proposed diverted line would run through the pasture to the north of Height Barn Farm and on a surfaced path through Moorlands Park to Stubblelee Lane (A-G).

There is the section of footpath FP1401492 and FP1401493 that runs between 2 points on the bridleway in a broadly west-south-westerly direction through the gardens of Height Barn Farm which will become redundant and hence it is proposed to extinguish (D-E).

In order to ensure that the northern end of Footpath FP1401496 is still accessible it is proposed that the section of bridleway to be diverted (F-C) is then rededicated as footpath.

It is proposed to enter into an Agreement to dedicate a bridleway from Height Barn Lane running south-east to Venomous Clough then northwards to the Britannia Greenway and New Line (A6066).



- (i) The length of existing bridleway to be diverted is shown by a bold continuous line and marked on the attached map as A-D-B-E-F-C.
- (ii) The length of existing footpath to be extinguished is shown by a bold continuous line and marked on the attached map as D-E.
- (iii) The length of bridleway to be rededicated as footpath following its diversion is shown by a bold continuous line and marked on the attached map as F-C.
- (iv) The proposed diverted route of the bridleway is shown by a bold broken line and marked A-G.
- (v) The proposed creation agreement is shown by a bold red line and marked A-X-Y-Z-P.

These can be seen on the maps 211-764 v1 and 211-769 v2.

It is important to the owners of Height Barn Farm that the Agreement to dedicate the bridleway south-east of Height Barn Lane only takes effect if the diversion of the bridleway through the Farm takes effect.

It is important for the public that the diversion of the bridleway only takes effect if an Agreement is in place to dedicate the bridleway A-X-Y-Z-P and to rededicate footpath rights over F-C.

Consultations

The Local Members, Rossendale Borough Council and the local representatives for Irwell Ward and GreencloUGH Ward have been consulted and at the time of writing, there was no adverse response.

The Peak and Northern Footpaths Society, the Rossendale branch of the Ramblers and the British Horse Society have been consulted and there was no adverse response.

The consultation with the statutory undertakers has been carried out and no objections or adverse comments on the proposal have been received.

Advice

Points annotating the routes on the attached plan 211-764 v1

Point	Grid Reference	Description
A	SD 8711 2170	Height Barn Lane east of Height Barn Farm and at the easternmost point of the adjacent pasture
B	SD 8704 2168	Farmyard entrance north-west of the farmhouse
C	SD 8692 2162	Junction of Height Barn Lane and Stubbylee Lane



D	SD 8707 2169	Height Barn Lane north-east of the farmhouse
E	SD 8704 2167	Height Barn Lane by the NW corner of farmhouse
F	SD 8699 2163	Junction of Height Barn Lane with access track
G	SD 8691 2163	Stubbylee Lane 20 meters north-west of the junction with Height Barn Lane.

Points annotating the routes on the attached plan 211-769 v2

Point	Grid Reference	Description
A	SD 8711 2170	Height Barn Lane east of Height Barn Farm and at the easternmost point of the adjacent pasture
X	SD 8729 2163	Fence between rough pasture
Y	SD 8735 2160	Natural dip in rough pasture
Z	SD 8745 2156	Fence between rough pastures west of Venomous Clough
P	SD 8743 2167	Gap in wall onto New Line (A6066)

Description of existing bridleway to be diverted

That part of Height Barn Lane as described below and shown by a bold continuous line marked A-D-B-E-F-C, on the attached map 211-764 v1. (All lengths and compass points given are approximate).



PATH REFERENCE	FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
BW1401492	A	D	WSW	35	The entire width
BW1401678	D	B	WSW	35	The entire width
BW1401678	B	E	S	15	The entire width
BW1401493	E	F	SW	60	The entire width
BW1401503	F	C	WSW	70	The entire width

Description of existing footpath to be extinguished

Footpath at Height Barn Farm as described below and shown by a bold continuous line marked D-E on the attached map 211-764 v1. (Length and compass point given is approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
D	E	WSW	40	The entire width

Description of new bridleways and footpath

Bridleway as described below and shown by a bold broken line A-G on the attached map 211-764 v1.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	G	WNW then S	300	3	Rubber crumb/ tarmac

Footpath as described below and shown by a bold continuous line F-C on the attached map 211-764 v1.

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
F	C	WSW	70	2	Compacted stone

Bridleway as described below and shown by a bold continuous line A-X-Y-Z-P on the attached map 211-769 v2.



FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	X	ESE	190	3	Rubber crumb
X	Y	ESE	80	3	Rubber crumb
Y	Z	ESE	120	3	Rubber crumb
Z	P	N	140	3	Rubber crumb

Variation to the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Bridleways Bacup 493, 503, 678 and Footpaths 492, 493 be deleted; Bridleway Bacup 693 be created and Bridleways Bacup 492, 504, 681 and Footpaths Bacup 491, 494, 495, 496, 501 be amended accordingly.

Criteria satisfied to make and confirm the Order

The proposed diversion is considered expedient in the interests of the owners of the land for reasons of privacy, security and safety. Height Barn Farm is a working farm. Currently the public bridleway and footpath runs on the access road to the farm and through the centre of the farm.

The diverted route will start at the same point but pass through the pasture to the north of Height Barn Lane then through Moorlands Park to join Stubbylee Lane, removing it from the vicinity of the farm and residential property. This will significantly increase the privacy, security and safety of the farm, whilst providing a route that is safe, convenient and as direct for public use.

The legislation requires that if the termination point of a public path is proposed to be altered then the authority may only make an Order if the new termination point is on the same highway or a highway connected to it and is substantially as convenient to the public. The proposed diversion will alter the western point of termination of the bridleway to divert it from its current termination point at the south end of Stubbylee Lane (Bridleway BW1401681) to a point 20m further north on Stubbylee Lane. It is suggested that the proposed termination point is substantially as convenient to the public.

Committee is advised that so much of the Order as diverts part of Height Barn Farm is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out and that Agreements are in place to dedicate footpath rights between the south end of Stubbylee Lane and the north-west end of Footpath FP1401496 and bridleway rights between Height Barn Lane and New Line via Venomous Clough.



The proposed extinguishment of Footpath FP1401492 and FP1401493 is required because these are no longer needed as they will be rendered as 2 short culs-de-sac by the diversion of the bridleway to which they currently connect. Their termination points are at no particular points of interest to the public and it is expedient to remove FP1401493 from the garden of the farmhouse at Height Barn Farm and FP1401492 from the grazing land.

There is no apparatus of which we are aware at the time of writing belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present routes.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The agreement of the owners of the land crossed by all of the existing route has been achieved.

The county council has agreed to bear all advertising and administrative charges incurred in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the footpath into a fit condition for use for the public.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is slightly more direct, runs over firm ground and has a similar gradient to the existing footpath.

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. As the proposed public paths will connect to other parts of the public rights of way network as the existing ones and it is suggested that many users might find the new route to be as convenient. Also, because the new bridleway will be away from the working and residential areas of the farm, some users of the bridleway may feel more comfortable and at ease when passing Height Barn Farm.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it. Compensation for any material loss could be claimed by a landowner or someone with rights to the land under the provisions of the Highways Act 1980 Section 28. However, such loss is not expected, affected landowners have indicated agreement and if a claim were to arise, the compensation is underwritten by the applicants.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway



Authority, under The Equality Act 2010. The alternative route will be of adequate width, firm and well drained underfoot and the gate proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles BS5709:2018.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order for Confirmation (Annex C refers)

It is recommended that the county council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of an Order is not rechargeable to the applicant, is not undertaken by the county council. In the event of an Order being submitted to the Secretary of State the applicant can support or promote it to confirmation, including participation at public inquiry or hearing. It is suggested that the authority takes a neutral stance.

Other options to be considered

To not agree that the Order and Agreement be made.

To agree the Order and Agreement be made but not yet be satisfied regarding the criteria for confirmation of the Order and request a further report at a later date.

To agree that the Order and Agreement be made and the Order promoted to confirmation by the county council.

To agree that the Order and Agreement be made and if objections prevent confirmation of the Order by the county council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

Implications:

This item has the following implications, as indicated:

Risk management

There is a risk of cost to the Authority if the decision is made to pursue an opposed Order to confirmation on behalf of the applicant or owners but it is not a substantial amount. However, unless there are exceptional circumstances it would be unequitable to fund confirmation of this Order at public expense and not others which are not made for public benefit.



Legal

There are no risks associated with following or not following the recommended course of action as long as the decision is made according to the criteria laid out above.

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

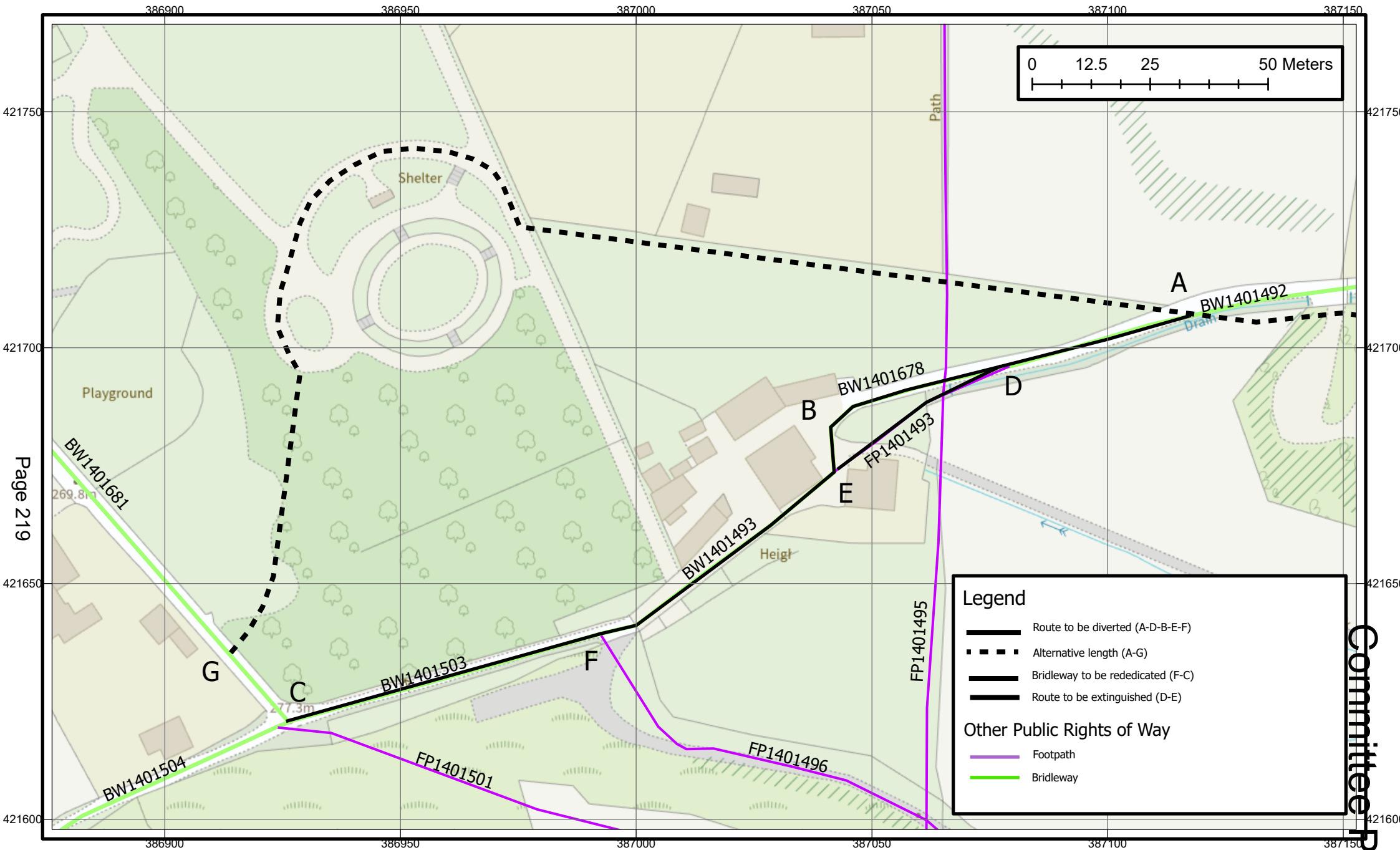
Paper	Date	Contact/Directorate/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A





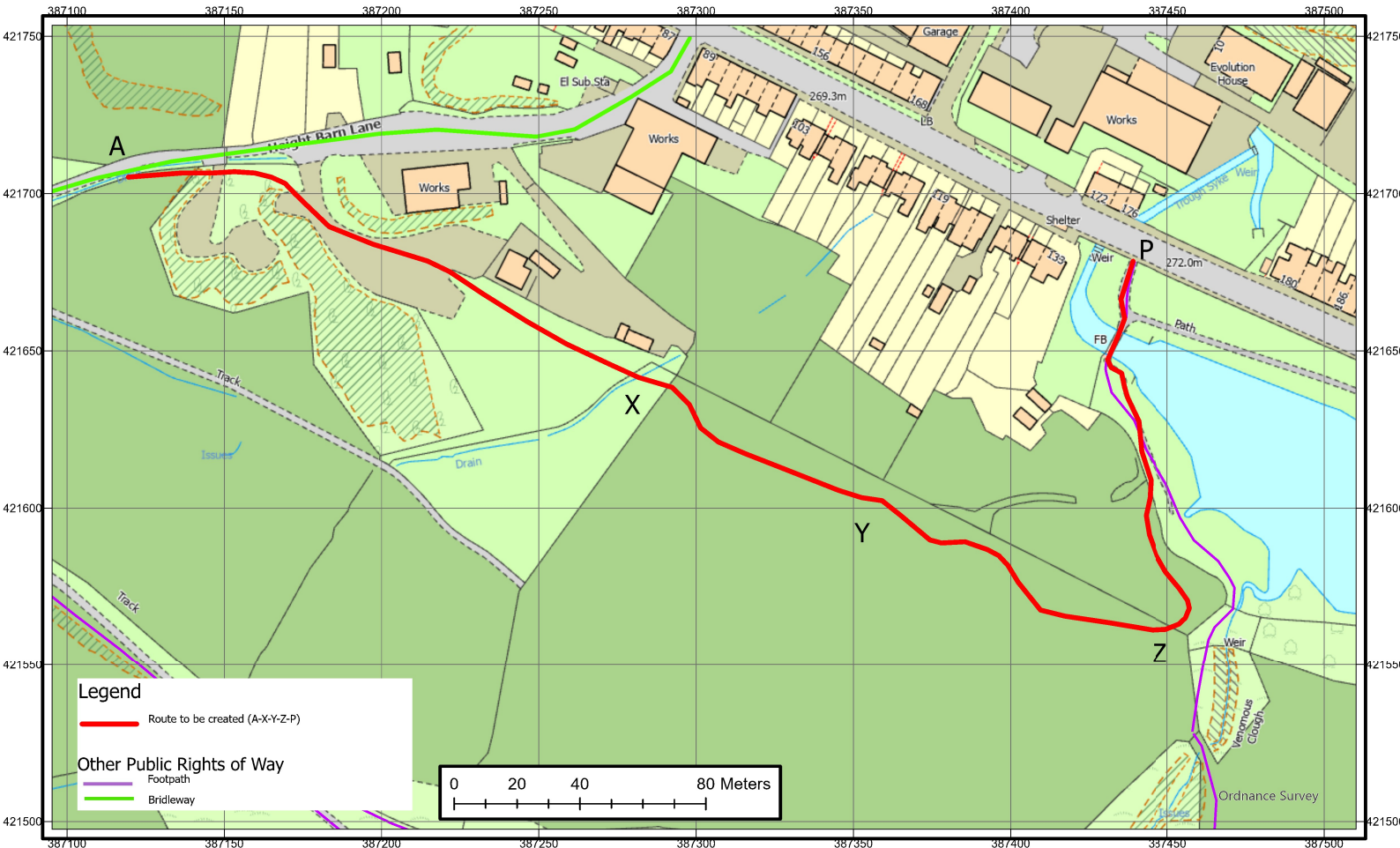
Lancashire
County Council

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

Proposed at Heights Barn Lane. Bridleway to be diverted A-B-E-F-C onto A-G; footpath to be rededicated (to preserve the link) C-F; footpath to be extinguished DE.

Plan no.
211-764 v1

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