

**Lancashire County Council**

**Regulatory Committee**

**Wednesday, 21st June, 2023 at 10.30 am in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Agenda**

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

**No. Item**

**1. Apologies**

**2. Appointment of Chair and Deputy Chair**

To note the appointment by Full Council on 25<sup>th</sup> May 2023 of County Councillor Sue Hind and County Councillor Matthew Salter as Chair and Deputy Chair of the Committee respectively, for 2023/24.

**3. 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.

**4. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee** (Pages 1 - 6)

**5. Minutes of the last Meeting held on 8th March 2023** (Pages 7 - 16)

**6. Guidance** (Pages 17 - 44)

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.

**7. Progress Report on Previous Committee Items** (Pages 45 - 48)



8. **Wildlife and Countryside Act 1981  
Definitive Map Modification Order  
The Lancashire County Council Bridleway along  
part of Holme Lane Rawtenstall Definitive Map  
Modification Order 2022** (Pages 49 - 108)
9. **Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Blackburn Road to  
Norman Road, Oswaldtwistle** (Pages 109 - 162)
10. **Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath at Starrick's Woods, Priest  
Hutton** (Pages 163 - 216)
11. **Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Alignment of the Public Footpath along the Western  
Bank of the River Douglas and through/past  
Douglas Boatyard, Hesketh with Beconsall** (Pages 217 - 332)
12. **Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath FP0219002  
at Broad Fall, Scorton** (Pages 333 - 340)
13. **Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath FP0124015  
at Castle View Caravan Park, Capernwray** (Pages 341 - 352)

14. **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.

15. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on 27<sup>th</sup> September 2023 in Committee Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

H MacAndrew



County Hall  
Preston

Director of Law and Governance







**Regulatory Committee**

Meeting to be held on Wednesday, 21 June 2023

**Part I**

Electoral Division affected:  
N/A;

**The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee**  
(Appendix 'A' refers)

Contact for further information:

Joanne Mansfield, Tel: (01772) 534284, Democratic Services Officer,  
[Joanne.mansfield@lancashire.gov.uk](mailto:Joanne.mansfield@lancashire.gov.uk)

**Brief Summary**

This report sets out the constitution/membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2023/24.

**Recommendation**

The Committee is asked to take account of:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 25 May 2023.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

**Detail**

The county council at its annual meeting on 25 May 2023 agreed that the Regulatory Committee shall comprise 12 county councillors on the basis of 7 Conservative, 4 Labour and 1 Liberal Democrat/Green Member.

The following county councillors have subsequently been nominated to serve on the Committee for the 2023/24 municipal year.

**County Councillors**

T Aldridge

S Hind

J Burrows	A Hosker
A Cheetham	D Howarth
A Clempson	J Oakes
M Clifford	J Parr
L Cox	M Salter

A copy of the Committee's Terms of Reference is set out at Appendix 'A'.

In October 2022, Full Council agreed the following programme of meetings for the Committee, with all meetings to be held at County Hall, Preston, commencing at 10.30am.

- 21 June 2023
- 27 September 2023
- 15 November 2023
- 24 January 2024
- 27 March 2024

## Appendices

Appendix 'A' is attached to this report. For clarification, it is summarised below and referenced at relevant points within this report.

Appendix	Title
Appendix 'A'	Regulatory Committee Terms of Reference

## Consultations

N/A

## Implications:

This item has the following implications, as indicated:

## Risk management

There are no risk management implications arising from this report.

## 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



## **The Regulatory Committee**

The Committee comprises twelve County Councillors and deals principally with claims relating to public rights of way and various licensing and registration functions (except registration functions relating to Social Services).

Meetings are open to the public but they may be excluded where information of an exempt or confidential nature is being discussed – see Access to Information Procedure Rules set out at Appendix 'H' to this Constitution.

### **Terms of Reference**

The Committee shall carry out the following functions:

#### **Public Rights of Way**

1. To determine applications under S53 of the Wildlife and Countryside Act 1981 and to decide whether to make and promote to confirmation Orders thereunder.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
  - (a) to authorise creation of footpaths, bridleways or restricted byways by agreement under Section 25;
  - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths, bridleways and restricted byways under Section 26;
  - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118; with the exception of those which are delegated to the Head of Service for Planning and Environment;
  - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
  - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
  - (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
  - (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119; with the exception of those which are delegated to the Head of Service for Planning and Environment;
  - (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
  - (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
  - (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;

- (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4)).
3. To decide whether to make orders and promote to confirmation to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
4. To decide whether to make orders and promote to confirmation orders to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.

### **Other Licensing Registration and Regulatory Functions**

1. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
2. To establish Sub-Committees to undertake any part of the Committee's functions.

### **Common Land and Town and Village Greens**

1. To decide whether to exercise the Council's powers under the Commons Registration Act 1965 to alter the Register in respect of applications.
2. To make recommendations to the Cabinet on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
3. To make decisions on applications and proposals as determining authority under Part 1 Commons Act 2006 save for those under Regulation 43 of the Regulations thereunder.
4. To decide whether to apply to the Secretary of State as owner for de-registration of Common Land or Town or Village Green under S 16 Commons Act 2006.
5. To decide whether to take steps and what steps to take to protect unclaimed common land or town or village greens against unlawful interference and whether to institute proceedings under Section 45 of the Commons Act 2006.
6. To decide whether to apply to the Court for orders against unlawful works on common land under Section 41 of the Commons Act 2006.

All members of the Committee must:

- (i) Have undertaken mandatory training on the relevant law and procedures which relate to the committee's work.
- (ii) Undertake further mandatory training on an ongoing basis whilst they continue to

**(Approved and last updated by Full Council, 23 February 2023  
Owner - Democratic Services)**

be members of the Committee.

The decision on whether training is mandatory will lie with the Monitoring Officer. All Members will be informed in advance if training is mandatory.



**Lancashire County Council**

**Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 8th March, 2023 at 10.30 am in  
Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Sue Hind (Chair)

**County Councillors**

M Salter	A Clempson
T Aldridge	M Clifford
J Burrows	L Cox
A Cheetham	S Rigby
J Oakes	

**1. Apologies**

Apologies were received from County Councillor Howarth.

**Temporary replacements**

County Councillor Steve Rigby replaced County Councillor Alan Hosker.

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

No pecuniary or non-pecuniary interests were disclosed.

**3. Minutes of the last Meeting held on 25th January 2023**

**Resolved:** That the minutes of the meeting held on 25<sup>th</sup> January 2023 be confirmed and signed by the Chair.

**Matters Arising**

The Chair reported that, on 23<sup>rd</sup> February 2023, Full Council had approved the Political Governance Working Group's recommendation that training of Regulatory Committee Members and any substitutes become mandatory and that Regulatory Committee's Terms of Reference be amended to reflect this. Copies of the revised Terms of Reference were circulated to Committee. It was noted that the training session would be held on Friday 24<sup>th</sup> March at Brockholes Nature Reserve.



County Councillor Clempson reported that he had prepared a letter to Calderstones Cemetery and was awaiting advice prior to sending the letter. A copy of the letter would be sent to the Chair.

#### **4. Guidance**

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

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

#### **5. Progress Report on Previous Committee Items**

A report was presented providing an update on the progress made in relation to matters previously considered by Committee. This report detailed the progress on all applications – including public path diversions, creations and extinguishments – which had originally been scheduled for January Committee.

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

Committee were informed that application 804-621 'Park Street, Brierfield' should have read 'Peter Street, Barrowford'. Several user evidence forms had been received in 2020 but no formal application form. This had been raised with the Parish Council who had not been able to trace who had sent in the evidence and so unfortunately, the application could not be progressed.

It was agreed that an update on application 804-603 Weir Lodges, Bacup be sent to County Councillor Oakes.

In relation to Broughton 6 footpath, this application had been received in 1998 and a decision taken to make an Order but the Order had not yet been made. Committee noted that Definitive Map Modification Orders did not prevent the public from using a route, it was about recording a route on the Definitive Map. If the public could use a route and were doing, as was the case with this footpath, then making the Order would not be a priority, whereas it was the case with those routes which could not be used.

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

#### **6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Nixon Lane to Willow Road along Pump House**





## Lane, Ulnes Walton

A report was presented on an application for the addition of a Bridleway from Nixon Lane to Willow Road along Pump House Lane, Ulnes Walton to the Definitive Map and Statement of Public Rights of Way for Lancashire, as shown on the Committee plan attached to the agenda papers between points A-G.

A site inspection had been carried out in February 2022.

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

Committee noted that no user evidence had been received for this application and that this was a connecting route to that in Item 7 on the Agenda.

In relation to the route A-F, it was reported that public rights had been extinguished along the route in 1944 under special emergency powers related to the defence of the country, and that a further order made in 1947 permanently extinguished those rights. Between 2004 and 2012, discussions had been held between Ulnes Walton Parish Council, the county council and relevant landowners regarding the creation of concessionary rights to use the route on foot, horseback and bicycle. Recent site evidence showed that the route was open and available to use although no concessionary agreements had ever been finalised.

In relation to the route F-G, this did not exist until the prison sites were constructed, together with the adjacent housing estate, which originally housed prison workers. The first maps located showing the route were dated 1988 and no map or documentary evidence had been found indicating the route had come into being or that it had been dedicated as a public right of way.

Committee were advised that, since the stopping up of 1947, in considering the evidence presented, they may consider there is insufficient evidence for dedication to be inferred. The recommendation to Committee was to reject the application and that no Order be made.

County Councillor Clifford stated that, as a Chorley Borough Councillor, he was aware of a planning application that Chorley Council had refused, to build on land at the side of the prison to extend it. The applicant had appealed against the refusal and a decision was currently awaited. County Councillor Clifford asked whether the route applied for in this application and the one in Item 7 were on the same land as that detailed in the prison extension planning application. Committee were informed that the route in Item 7 was on the same land and that Chorley Borough Council and the applicants were aware of the two Definitive Map Modification Orders being considered today, so they were aware of the routes applied for.

Clarification was sought on how an approval of a right of way may affect the progress of a planning application. It was reported that the planning system allowed for diversion/stopping up of rights of way under the Town and Country Planning Act rather than the Highways Act and that this was a much quicker procedure. A diversion that was needed for a development with planning permission would be



considered by the relevant planning authority who could make an Order for diverting/stopping up a route and the reason would be that this was necessary in order for the development to go ahead. It was noted that any possible diversions/stopping ups should always be considered at the planning stage of any development.

After a discussion, it was:

**Resolved:** That the application for a bridleway along Pump House Lane to the Definitive Map and Statement of Public Rights of Way be not accepted.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Bridleway from Ridley Lane to Pump House Lane, Ulnes Walton**

A report was presented on an application for the addition of and upgrade from footpath to bridleway from Ridley Lane to Pump House Lane, Ulnes Walton, as shown on the Committee plans attached to the Agenda papers between points A-M.

A site inspection had been carried out in February 2022.

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

No user evidence had been submitted for this application.

It was noted that, between 2002 and 2012, discussions had taken place between Ulnes Walton Parish Council, various landowners and user groups in relation to the provision of concessionary rights although no concessionary agreement had ever been drawn up.

Part of the application route from A-F was in private ownership on the Tithe Map 1837 and was not considered to be a public highway. Part of the application route F-G-H-I was not shown on Tithe Map 1837, or any maps and documents for next 100 years, indicating it did not physically exist at this time.

Highway records from 1929 showed that the application route from point J to point M was publicly maintained highway. During World War 2 an area of land had been requisitioned by the Government under special defence powers for an ammunition storage facility. Committee were referred to the temporary stopping up order in 1939 and a permanent stopping up order 1947 that extinguished in law the public rights along the application route between point J and point M.

Committee were advised that the evidence pointed to F-G-H-I-J being constructed as a private access road to buildings in the 1940s.

Taking all the evidence into account, Committee were advised, on balance, that the evidence of the application route having become a public bridleway was insufficient.



The recommendation was therefore that the application be not accepted and that no Order be made.

After a discussion, it was:

**Resolved:** That the application for the addition of bridleway and upgrade of a footpath to bridleway from Ridley Lane to Pump House Lane, Ulnes Walton as shown between points A-I on the Committee plan to the Definitive Map and Statement of Public Rights of Way be not accepted.

County Councillor Clifford abstained from the vote and asked for this to be recorded, stating that he would have liked to consider this application in the future, due to the outstanding decisions to be made regarding the site.

**8. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Upgrading to Bridleway part of Altcar Lane, Leyland and Tithe Barn Lane,  
Euxton**

A report was presented on an application for 7-1-FP45 and part of 9-14-FP3 (Altcar Lane) and 9-14-FP4 (Tithe Barn Lane) to be upgraded to Bridleway, as shown on the Committee plan attached to the agenda papers between points A-I.

Site inspections had taken place in June 2019 and February 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 user evidence had not been submitted as part of the application, but there was a lone public right of way user statement documenting one person's use of the route on foot, horseback and pedal cycle. The applicant had stated that user evidence could be provided if necessary and had been asked by officers if this was available but no response had been received.

Committee were informed that the landowner had fenced off a strip of grass verge between point F and point G for pedestrian use with stiles at either end. This was currently being looked into by the Rights of Way Team who were considering taking action with regard to the reduced width and stiles.

It was reported that since the Committee report had been prepared, a letter had been received from P Wilson Chartered Surveyors representing John Coulthard Ltd of Altcar Farm. The letter concurred with the county council's interpretation of the evidence and provided further information regarding the resurfacing of the route on the northern section towards Altcar Farm. The tenant had resurfaced the track towards Altcar Farm for motor vehicles to pass, mainly for agricultural purposes. Committee were informed that this information did not change the Recommendation put forward in the Committee report but provided clarification on the resurfacing of that part of the route.



Taking all the evidence into account, on balance, and given the nature of the evidence, Committee were advised that the evidence of the route having become a public bridleway was insufficient. The recommendation was therefore that the application be not accepted and no Order be made, based on the evidence available.

After a discussion, it was:

**Resolved:** That the application for 7-1-FP45 & part of 9-14-FP3 (Altcar Lane) and 9-14-FP4 (Tithe Barn Lane) to be upgraded to Bridleway be not accepted.

**9. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath 2-21-29 at Croftlands, Pilling**

A report was presented on the proposed diversion of part of Footpath 2-21-29 at Croftlands, Pilling.

Committee were informed of an amendment to the Committee plan, which should have been marked as point D at the gate at the north western corner of the pasture, and point E where point D was incorrectly shown. A copy of the revised Committee plan is attached.

The recorded alignment of the footpath was through the residential and private garden areas of the property, then through the private gardens of a neighbouring residential property, then into an adjacent field. It was proposed that the footpath be diverted to run on the private driveway to Croftlands, then a short distance into the adjacent field to where the footpath currently entered the field.

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

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

Committee were informed that the proposed diversion was considered expedient in the interests of the owners of the land for reasons of privacy and security. 'Croftlands', and the adjacent house 'Well Gardens', were private, residential properties. Currently the public footpath ran through the garden of Croftlands, adjacent to the dwelling, then through the grounds of Well Gardens.

County Councillor Salter reported that he had been present at the Pilling Parish Council meeting where this application had been discussed but that he had not participated in the discussion.

**Resolved:**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert



part of Footpath 2-21-29 from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E 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.

**10. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath 3-2-29 at Clifton Lodge, Longridge**

A report was presented on the proposed diversion of part of Footpath 3-2-29 at Clifton Lodge, Longridge.

The recorded alignment of the footpath is through the private grounds of a neighbouring caravan park and then through the private grounds and garden areas of Clifton Lodge.

The proposed diversion would move the footpath out of the caravan park and onto pasture, running in a broadly south westerly direction to meet Footpath 3-12-33 at the eastern proximity of the applicant's property. The diversion would continue across further pasture to the south-east of the neighbouring private, residential property to join Bridleway 3-2-35.

The diversion would increase the privacy and security of the applicant's residential property whilst providing a route that is safe and convenient for public use.

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

Consultation with the statutory undertakers had been carried out and there was no adverse response. An adverse response had been received from residents of the neighbouring property stating the proposal would have a detrimental effect on their privacy, and a potential visual impact on their views of the surrounding countryside, if a hedge were to be planted to provide screening. After careful consideration, officers had observed that the dwelling was further from the route of the proposed diversion and at a higher altitude, therefore the dwelling would overlook the proposed route and not vice versa. It was considered that the potential impact on the view from the property of a hedge or passing walkers well below the level of the house, and on land where people could be by permission anyway, did not outweigh the benefits to the applicant. Furthermore the route provided better views for the public.



It was reported that, should the diversion be approved and an Order made and confirmed, the Order would only be certified when the necessary work had been carried out to the alternative route.

County Councillor Clifford expressed concern that the route between points A-B was impassable, but otherwise the current route was very accessible to those with disabilities; the proposed route was not as it was being diverted through green fields. County Clifford stated that the whole of the route should not be diverted and that E-C-D-H could continue to be used.

County Councillor Hind made the observation that the diverted route would be better for residents in the caravans which currently had the footpath past their windows. In addition, the view over the reservoir from the proposed route was superior to the route through the caravans or behind Hollin Hall Lodge.

County Councillor Salter pointed out that the currently used route connecting point C to the field (via the ladder stile) was not accessible for people with mobility issues. He added that the route via D was attractive, but it was understandable why the applicant wanted to divert it, although there were considerations either way.

Committee were advised that the two main tests for diversions were that they could be in the interest of the landowner or in the interest of the public. If they were in the interest of the landowner, they also had to be not substantially less convenient to the public. The officers advice was that this application met the test and solved the problem of the cliff at point B.

**Resolved:**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath 3-2-29, from the route shown by a bold continuous line and marked A-B-C-F and C-D to the route shown by a bold broken line and marked A-E-F and F-G-H 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 and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**11. Urgent Business**

There were no items of Urgent Business.



## 12. Date of Next Meeting

**Resolved:** It was noted that the next meeting would be held at 10.30am on Wednesday 21<sup>st</sup> June 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew  
Director of Law and Governance

County Hall  
Preston







**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
(All Divisions);

**Guidance for the members of the Regulatory Committee**

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

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

**Brief Summary**

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

**Recommendation**

The Committee is asked to 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'.

Annex A has been updated to reflect a recent court decision regarding the effect of foot and mouth closures in 2001.

## Consultations

N/A

## Implications:

This item has the following implications, as indicated:

## Risk management

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

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

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

Reason for inclusion in Part II, if appropriate

N/A



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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

Sub Section (3)

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

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

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

*Orders following “legal events”*

Other events include

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

### **Test to be applied when making an Order**

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

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

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

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

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

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

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

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

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

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

### **Recording a "new" route**

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

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

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

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

### **Dedication able to be inferred at Common law**

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

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

There is no need to know who a landowner was.

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

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

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway. **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 6<sup>th</sup> April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

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

### **Downgrading a route or taking a route off the Definitive Map**

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

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

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative Map and Statement of highest attainable accuracy. "The evidence needed to remove a public right from such an authoritative record will need to be cogent. The procedures for defining and recording public rights of way have, in successive legislation,

been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years without being questioned earlier.”

### **Taking one route off and replacing it with an alternative**

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

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

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

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

### **Confirming an Order**

An Order is not effective until confirmed.

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

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

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities, that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.



## **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 21 June 2023

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

### **Procedural step**

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

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

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

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

### **Amount of charge**

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

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

### **Refund of charges**

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

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

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

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

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

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

### **Careful consideration of stance**

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

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

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

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



**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
All

**Progress Report on Previous Committee Items**

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,

[simon.moore@lancashire.gov.uk](mailto:simon.moore@lancashire.gov.uk)

David Goode, 01772 537663, Public Rights of Way Manager,

[david.goode@lancashire.gov.uk](mailto: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 consider the progress report and comment as appropriate.

**Detail**

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

A summary of the current progress on Definitive Map Modification Order applications is provided below, focusing on those matters which have progressed since the last update report. This data was extracted from the statutory register on the 2<sup>nd</sup> day of June 2023. The register can be viewed at <https://dmmo.lancashire.gov.uk/>

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

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

These applications have been added to the statutory register since the last update report was presented to the Committee.

Reference	Known As	Status Applied For	Application Date
804-764	Newchurch Old Road, Bacup	Restricted Byway	15/03/2023
804-765	Gin Clough, Rossendale	Footpath	18/03/2023
804-766	North Skye Avenue, Preston	Footpath	01/04/2023

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

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

Reference	Known As	Status to be Recorded	Application Date
804-633	Snape Lane, Yealand Conyers	Restricted Byway	27/05/2020
804-663	Hall Lane and Mill Lane, Leyland	Bridleway	09/11/2020
804-699	Glencourse Drive	Footpath	02/11/2020
804-731	Ridley Lane, Ulnes Walton	Bridleway	02/11/2021
804-732	Pump House Lane, Ulnes Walton	Bridleway	02/11/2021

## Definitive Map Modification Order Applications awaiting Confirmation

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

Reference	Known As	Status to be Recorded	Application Date
804-655	First Terrace, Sunderland Point	Bridleway	07/09/2020

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

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

Reference	Known As	Status to be Recorded	Application Date
804-710	Chatburn Old Road, Chatburn	Footpath	04/05/2021
804-626	Watery Lane, Hoole	Bridleway	20/05/2020







**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
Rossendale South

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order  
The Lancashire County Council Bridleway along part of Holme Lane  
Rawtenstall Definitive Map Modification Order 2022**  
(Annex 'A', Appendix 'A' and Appendix 'B' refer)

Contact for further information:

Reference File No. 804-744

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,  
[Simon.Moore@lancashire.gov.uk](mailto:Simon.Moore@lancashire.gov.uk)

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning  
and Environment Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Order for the addition to the Definitive Map and Statement of a Bridleway along part of Holme Lane, Rawtenstall.

**Recommendation**

That the Order made on the 19<sup>th</sup> Day of October 2023 and attached as Appendix 'B' to record a public bridleway along part of Holme Lane, Rawtenstall be confirmed.

**Detail**

At the request of the County Council Asset Management Service an investigation was carried out.

At the meeting of the Regulatory Committee held on 14 September 2022, a decision was made to make an Order in accordance with the original request and subsequent investigation. The Committee decided that the Order should be brought back before Committee once the Notice of Making had been served and the notice period elapsed in order to decide whether the confirmation test was able to be satisfied.

## Conclusion

The Order (Appendix 'B') has now been made and published and notified according to statutory provisions and no adverse responses have been received to the making of the Order by way of objections or any other representations.

The Committee is therefore advised to consider the evidence again (extract from the September 2022 report at Appendix 'A' refers).

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

## Annexes/Appendices

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

Appendix	Title
Appendix 'A'	Extract from September 2022 Regulatory Committee report
Appendix 'B'	Order for the addition to the Definitive Map and Statement of a Bridleway along part of Holme Lane, Rawtenstall

## Implications:

This item has the following implications, as indicated:

## Risk management

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

## Alternative Options to be Considered

Decide that the confirmation test is not met and submit the Order to the Planning Inspectorate with the request that it be not confirmed.

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



Paper

Date

Contact/Directorate/Tel

All documents on File Ref:  
804-744

Simon Moore, 01772  
531280, Legal and  
Democratic Services

Reason for inclusion in Part II, if appropriate

N/A





**Regulatory Committee**  
 Meeting to be held on 21 June 2023

Electoral Division affected:  
 Rossendale South

**Wildlife and Countryside Act 1981  
 Definitive Map Modification Order  
 The Lancashire County Council Bridleway along part of Holme Lane  
 Rawtenstall Definitive Map Modification Order 2022 – Appendix A; Extract of  
 Evidence Presented to the Regulatory Committee on 14 September 2022**

**Consultations**

Rossendale Borough Council

Rossendale Borough Council provided no response to consultation.

Information from Others

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

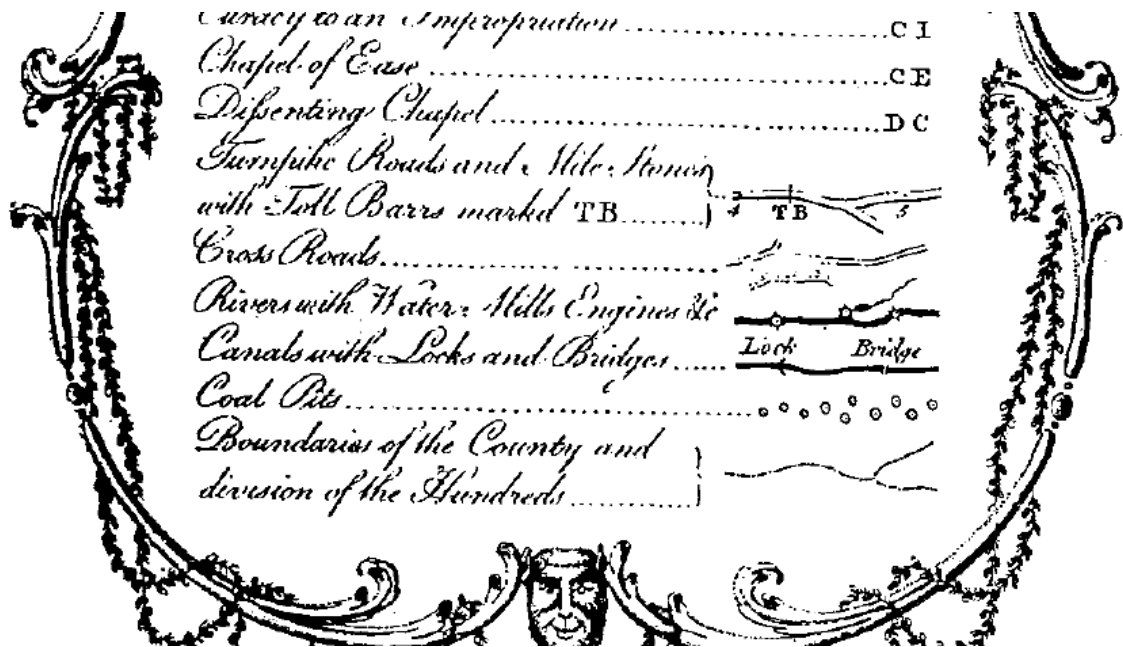
Information from the Landowner

No further information was provided by the landowners

**Information from the Investigation**

Various maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The route is not recorded on any county council highway records and investigating it required investigation into the full route.

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



Observations		The route under investigation is not shown although a number of large (unnamed) buildings are shown on either side of the River Irwell and close to the watercourse known as Langwood Brook which runs parallel to the route under investigation between point A and point B. No access to the buildings or across the river is shown.
Investigating Officer's Comments		The route was not considered by Yates to form part of a substantial public vehicular route at that time. It may have existed – at least in part – to provide access to the large buildings shown on the map.
<b>Honour of Clitheroe Map</b>	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke



of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



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





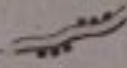
## EXPLANATION


*Market Towns with the Distance from London*

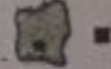
*in Measured Miles as* ..... **BLACKBURN**

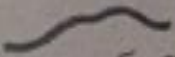
209 <sup>1</sup>/<sub>2</sub>

*Churches and Chapels* ..... +

*Turnpike Roads* ..... 

*Cross Roads* ..... 

*Parks & Gentlemens Houses* ..... 

*Navigable Canals* ..... 

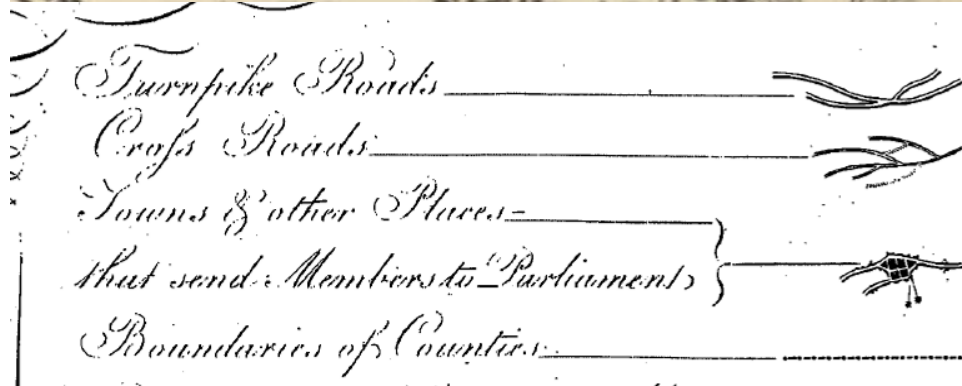
*Rivers* ..... 

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

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



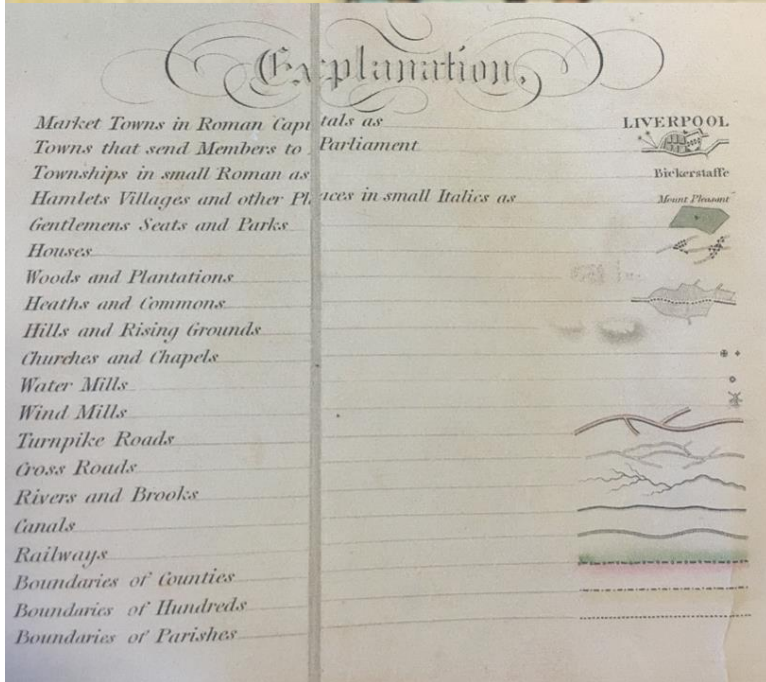




Observations		Townsend Fold exists just off the main road (Bury Road) which was shown as a Turnpike Road. The watercourse (Langwood Brook) and a number of buildings are shown between Bury Road and the River Irwell but the bridge is not shown and the route under investigation on the west side of the bridge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



and most helpful that had yet been achieved.



Observations

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

Investigating Officer's

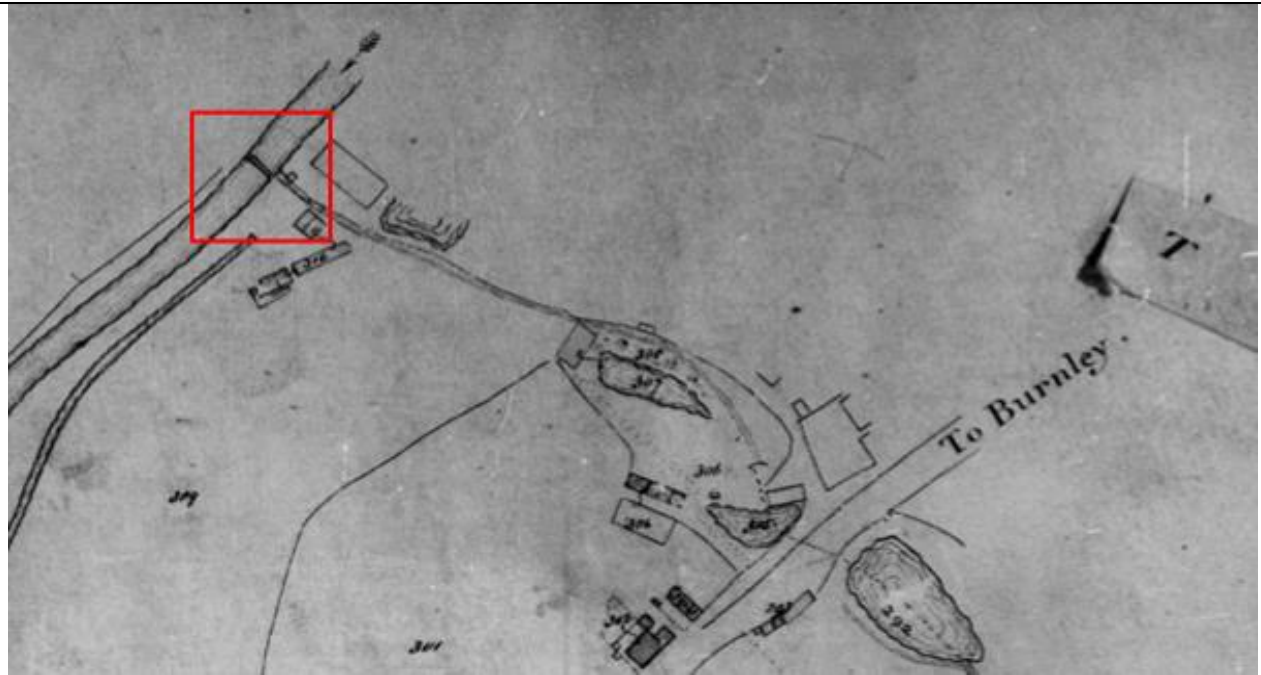
The route under investigation probably did



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

		<i>(died 1828), of the Holme and for Joshua Townsend (his son and heir) in 1805 there is mention of cottages, 2 barns, a fulling mill, carding engine and outhouses.</i>
Investigating Officer's Comments		<p>The information detailed on the website refers to land and property on both sides of the River Irwell being owned by the Townsend Family with Holme Mill and Townsend Fold Mill on the eastern side and The Holme – described as the family home being located west of the river. Holme Bridge is dated 1830 and is marked with the initials of the owners of The Holme strongly suggesting that the bridge was a private bridge for access to The Holme.</p> <p>No further information has been found with regards to the reference to a toll gate from where the Townsends collected tolls for use of Holme Lane although it was not uncommon in the late 1700s and early 1800s for landowners to set up private toll roads for which they allowed access for payment of a toll. However it does suggest that the lane did not have public rights.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large-scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>





Observations		<p>There is no Tithe Map for the area crossed by the route under investigation (A-B). However, the Tithe Map for Tottington Higher End is the earliest map examined that shows a bridge across the River Irwell consistent with the one under investigation (Holme Bridge).</p> <p>No route is shown continuing west from the bridge and no route is shown from Bury Road through Townsend Fold to the bridge – with just the watercourse known as Langwood Brook shown. The numbered plots between Bury Road and the River Irwell – including the land over which Holme Lane is now located – is all listed as being in the ownership of John and Richard Townsend.</p>
Investigating Officer's Comments		A bridge existed across the river in 1838 but there is no indication from the Tithe Map and Award that it carried a public right of way.
<b>Inclosure Act Award and Maps</b>		<p><b><u>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</u></b></p>
Observations		No inclosure map or award was found for

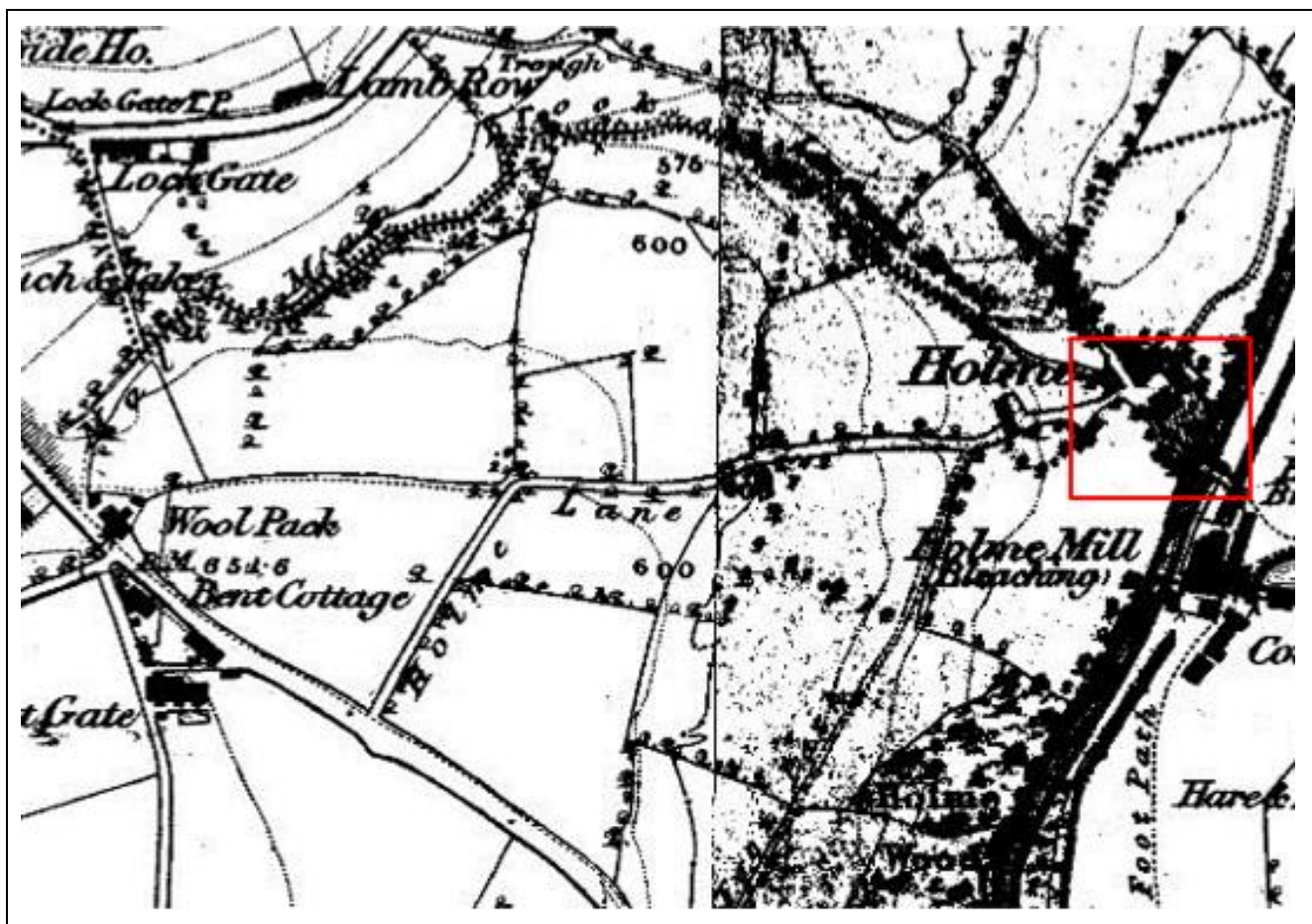


		the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Canal and Railway Acts</b>	1844	Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to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

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






















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





		appeared to be capable of being used on horseback and vehicles at that time.
<b>Cassini Map Old Series Blackburn &amp; Burnley Sheet 103</b>	1842-1859	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger maps and are readily available to purchase.



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

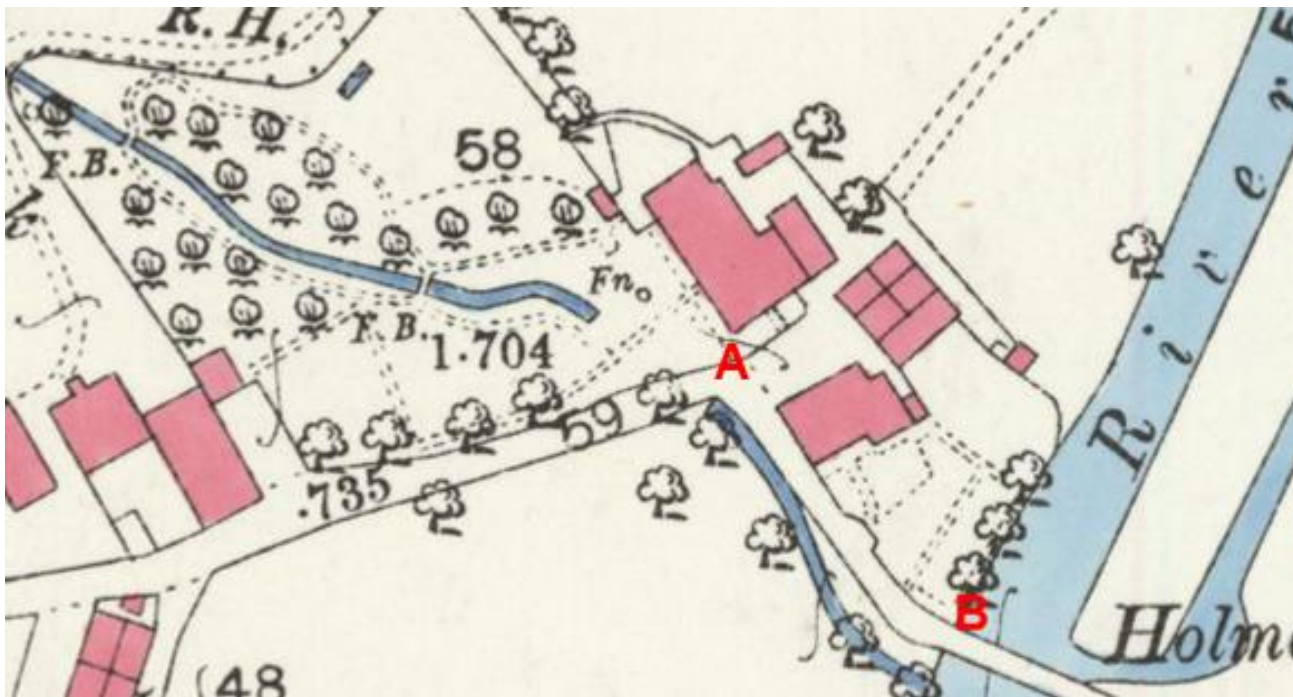
Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

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





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



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

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



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

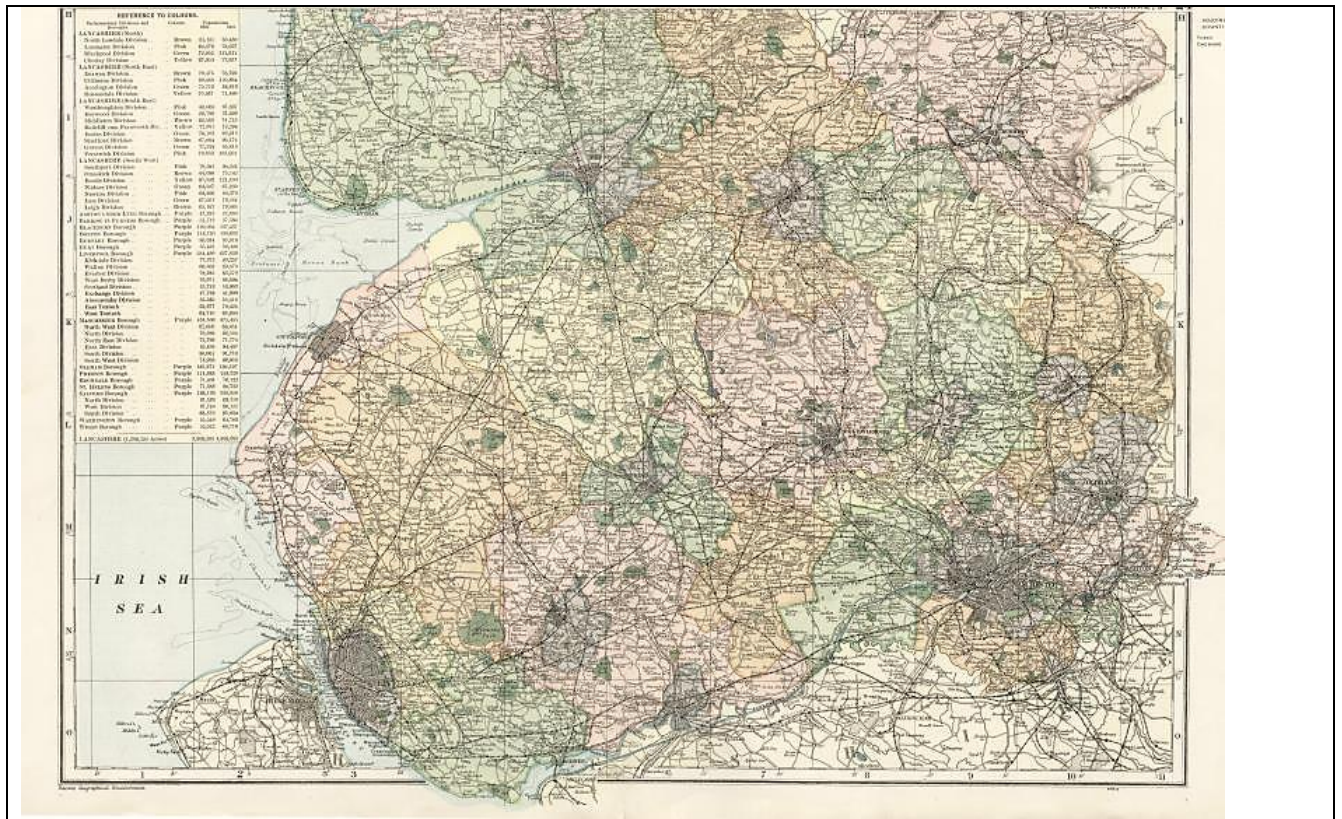
Observations		The route under investigation is shown as part of a longer route depicted as a third class road and providing a link from Bury Road to Manchester Road across the railway and River Irwell (via Holme Bridge).
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile)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





		<p>would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the route under investigation - had public rights for those travellers.</p>
<p><b>Bacon's Map of Lancashire</b></p>		<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p>

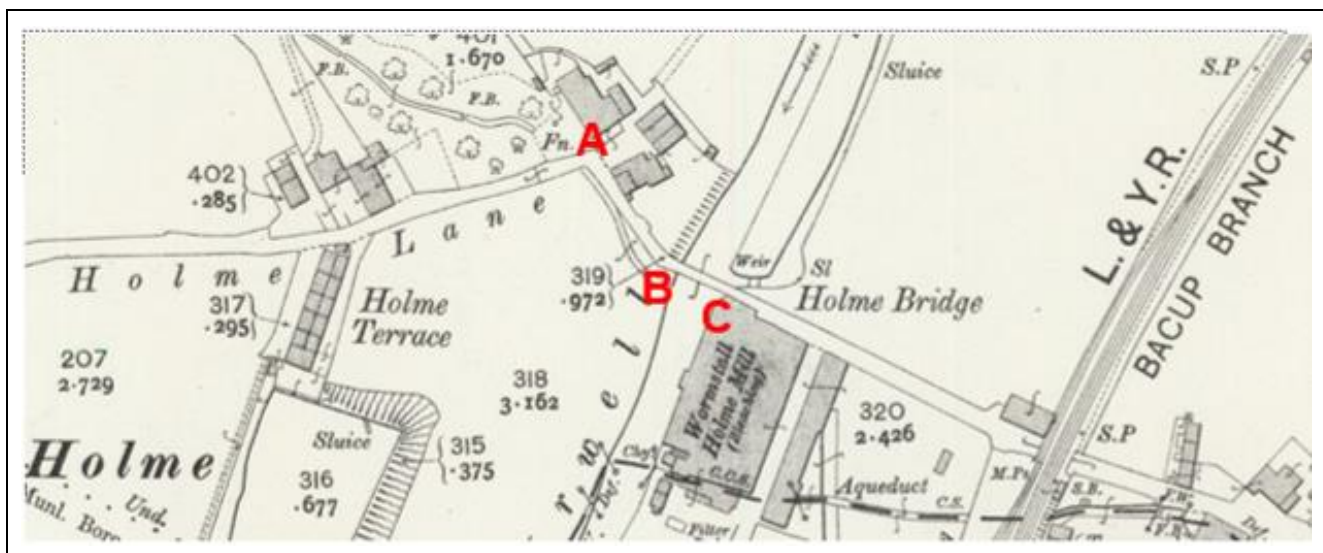




<p>Observations</p>		<p>The route under investigation is not shown and neither is the rest of the route from Bury Road through to Manchester Road. The mill buildings and houses are not shown either.</p> <p>The second map extract inserted above is an extract of the map published illustrating how only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










<p>Observations</p>		<p>The route under investigation is again shown as part of a longer through route known as Holme Lane. No restriction on access is shown along the section under investigation but it is noted that a gate is now shown across Holme Lane west of point A (on the section now recorded as 14-4-BW311).</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1908 and appeared to be capable of being used.</p> <p>The existence of gates along a public route would not have been considered unusual in the early 1900s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>
<p><b>Bartholomew half inch Mapping</b></p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS</p>




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

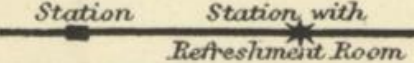


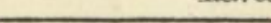
EXPLANATORY NOTE


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

Footpaths & Bridlepaths 

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

Railways 

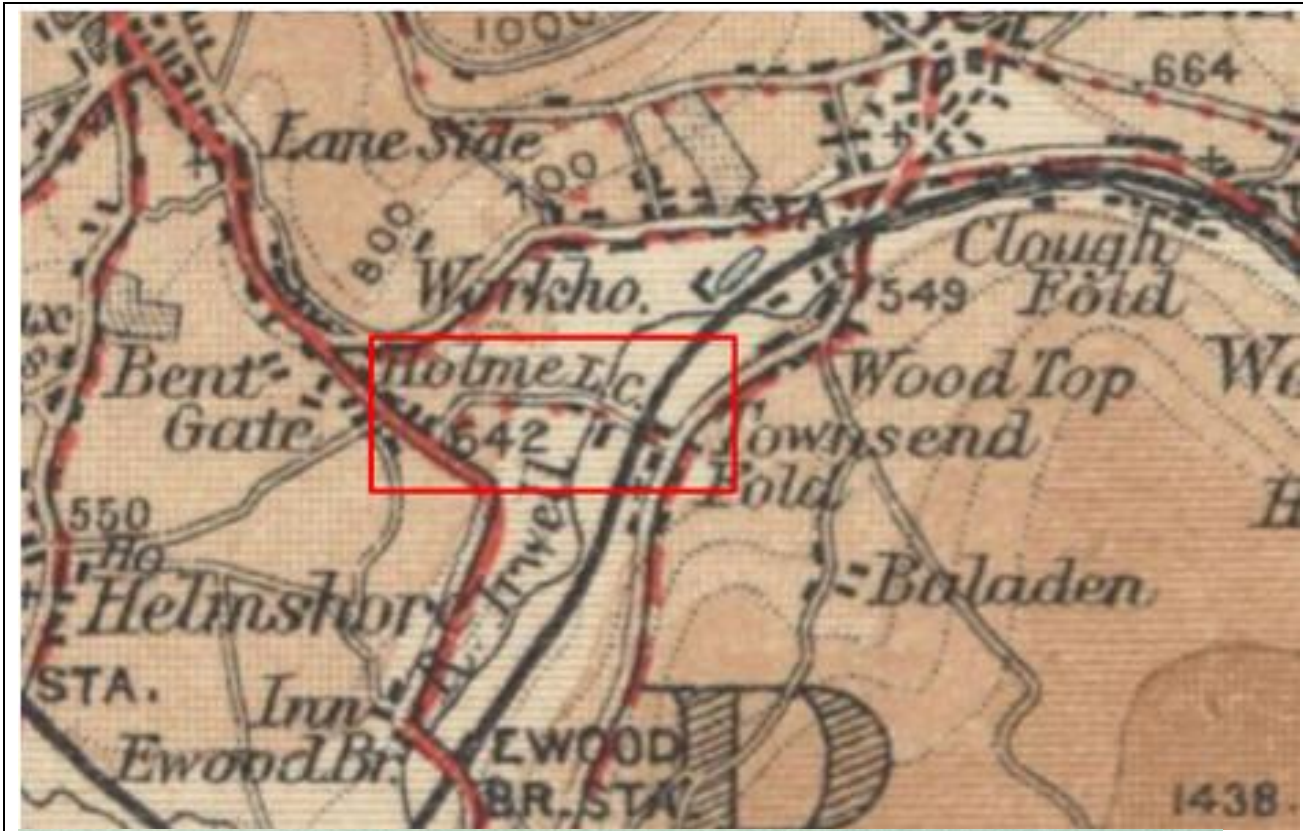
Canals 

County Boundaries 

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

1904





EXPLANATORY NOTE

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

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

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

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

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

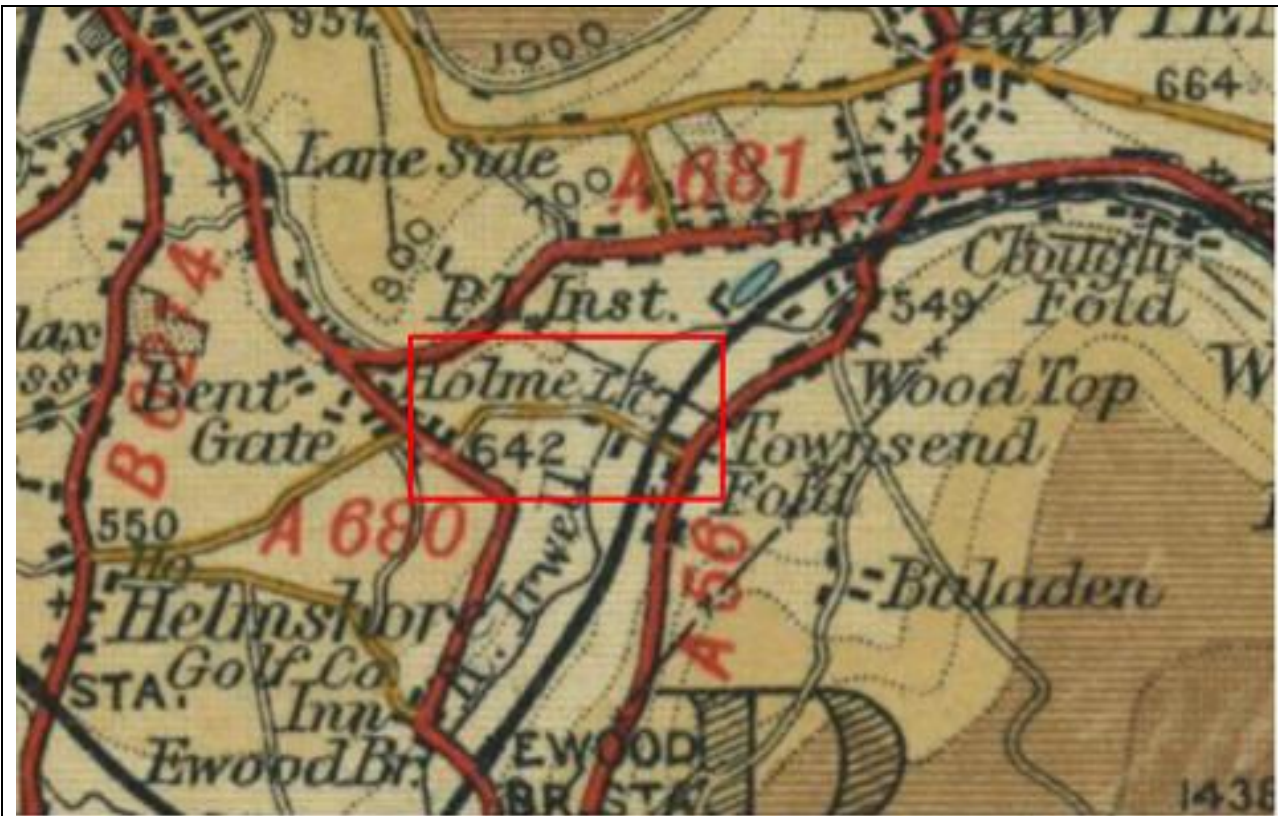
Canals

County Boundaries

1920





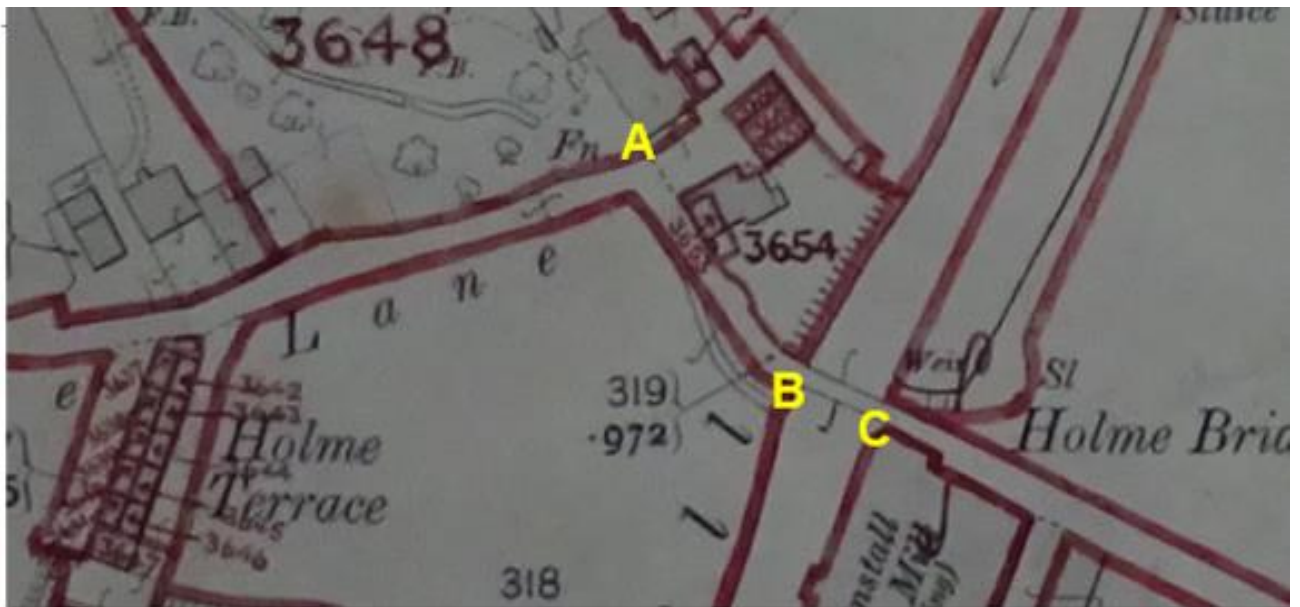
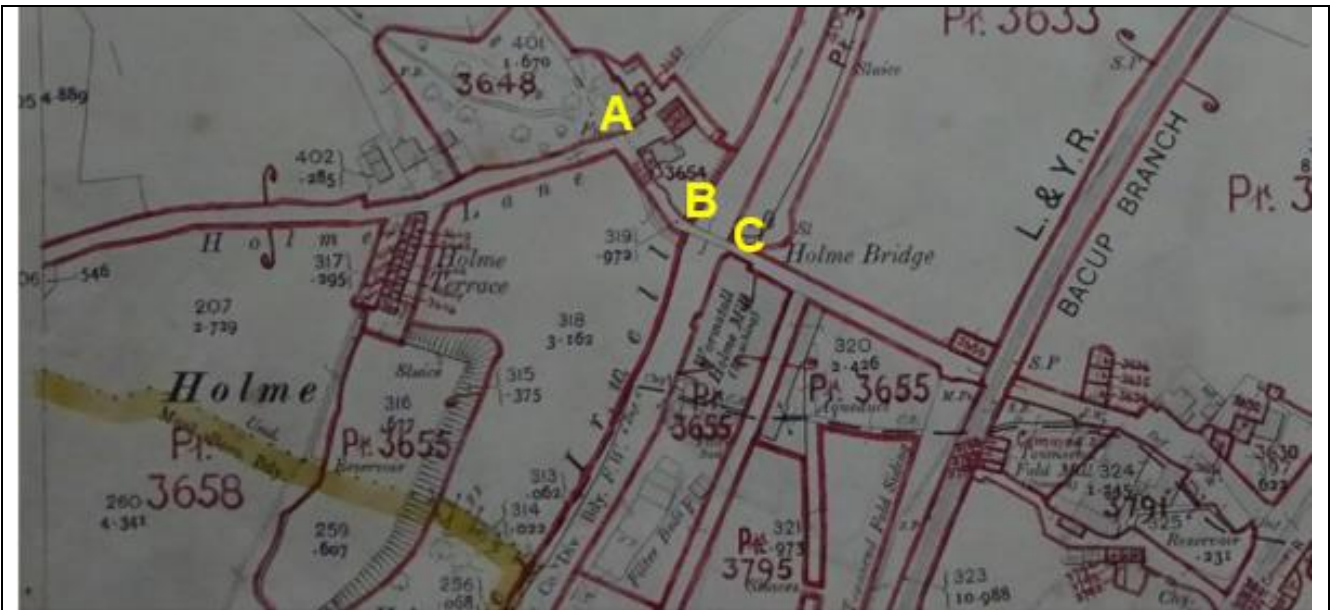


1941

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



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



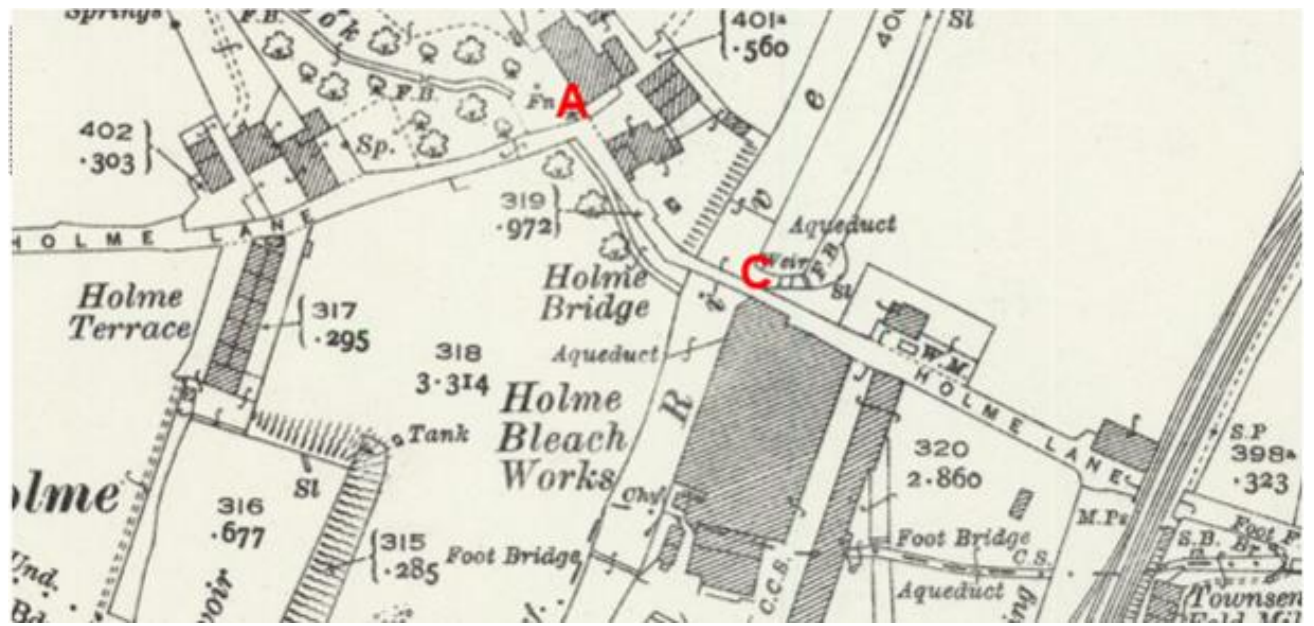
<p>Observations</p>		<p>The route under investigation is not included in a taxable hereditament plot and is shown consistent with how the rest of Holme Lane from Bury Road through to Manchester Road is shown but also how back alleys, occupation roads and the river are all one excluded area on this sheet.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





		of the site of external roadways.' In this instance although all the route known as Holme Lane – from Bury Road through to Manchester Road including the bridge B-C) is shown excluded it has to be considered in the context of other excluded areas on this sheet many of which could not be highway. Numbered plots split by the route west of point A would ordinarily suggest that the route was considered to have public vehicular rights as public footpaths and bridleways were normally included in numbered plots but this has to be taken with some caution given how many non-highways were also excluded on this sheet.
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<b>25 Inch OS Map Sheet LXXII.13</b>	1930	Further edition of 25 inch map (surveyed in 1891, revised in 1928 and published in 1930.
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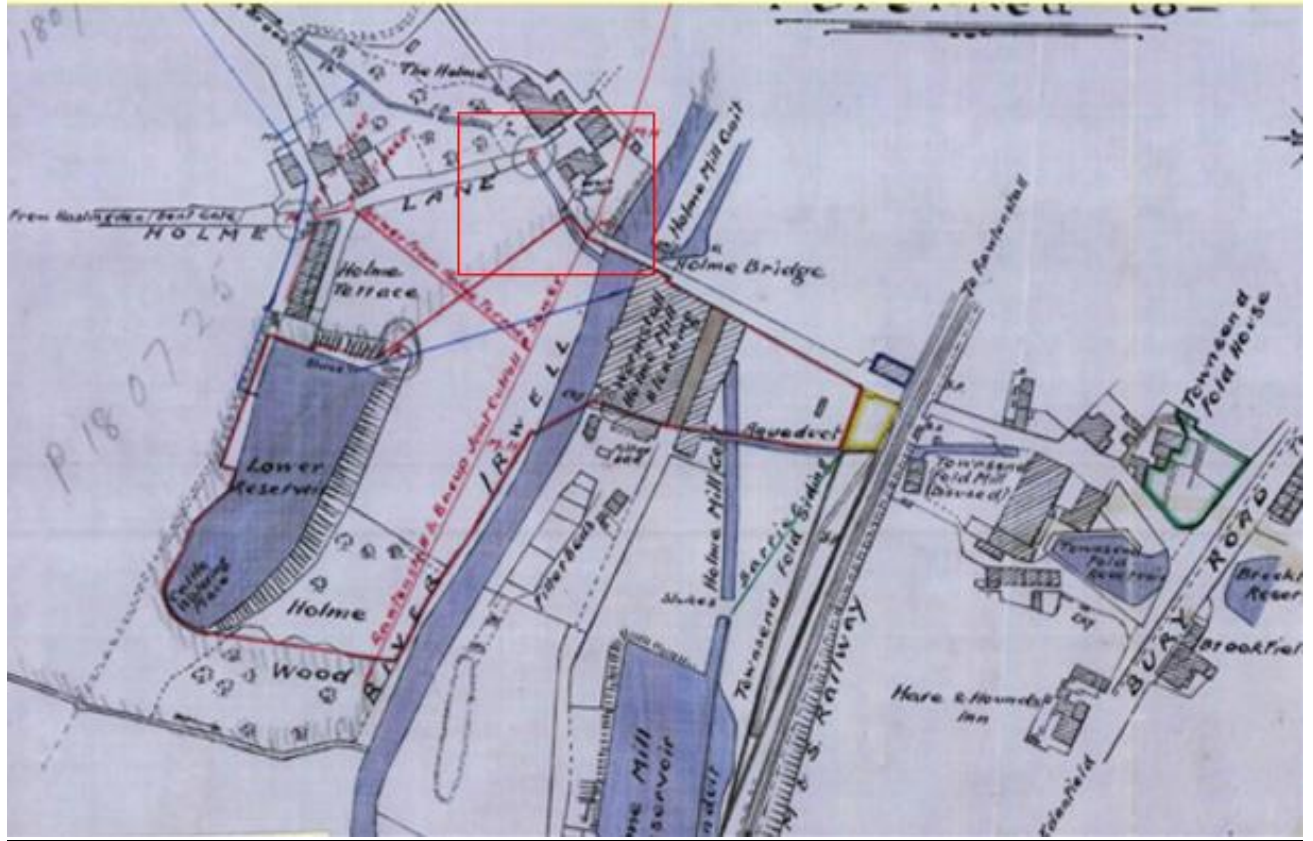
Observations		The route under investigation is again shown as part of a longer through route which is named as Holme Lane west of point A and also east south east of point C. A gate is still shown across the route west of point A.
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Investigating Comments	Officer's	The route under investigation existed as part of a longer substantial through route in 1928 and appeared to be capable of being used at least on horseback and probably by vehicles at that time.
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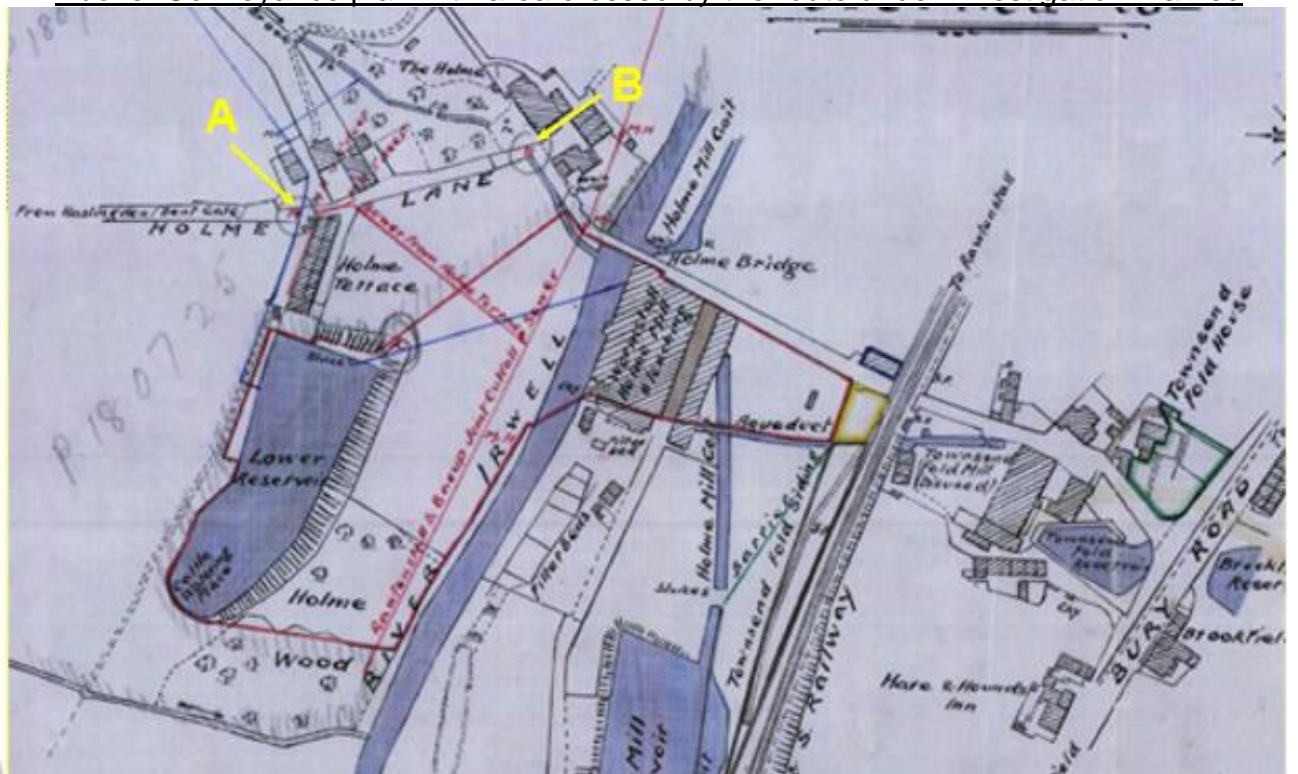
<b>Conveyance</b>	1931	Conveyance of land on both sides of the river sold by the owners of The Holme to
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the Bleachers Association.



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



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

Observations

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



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



		district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.
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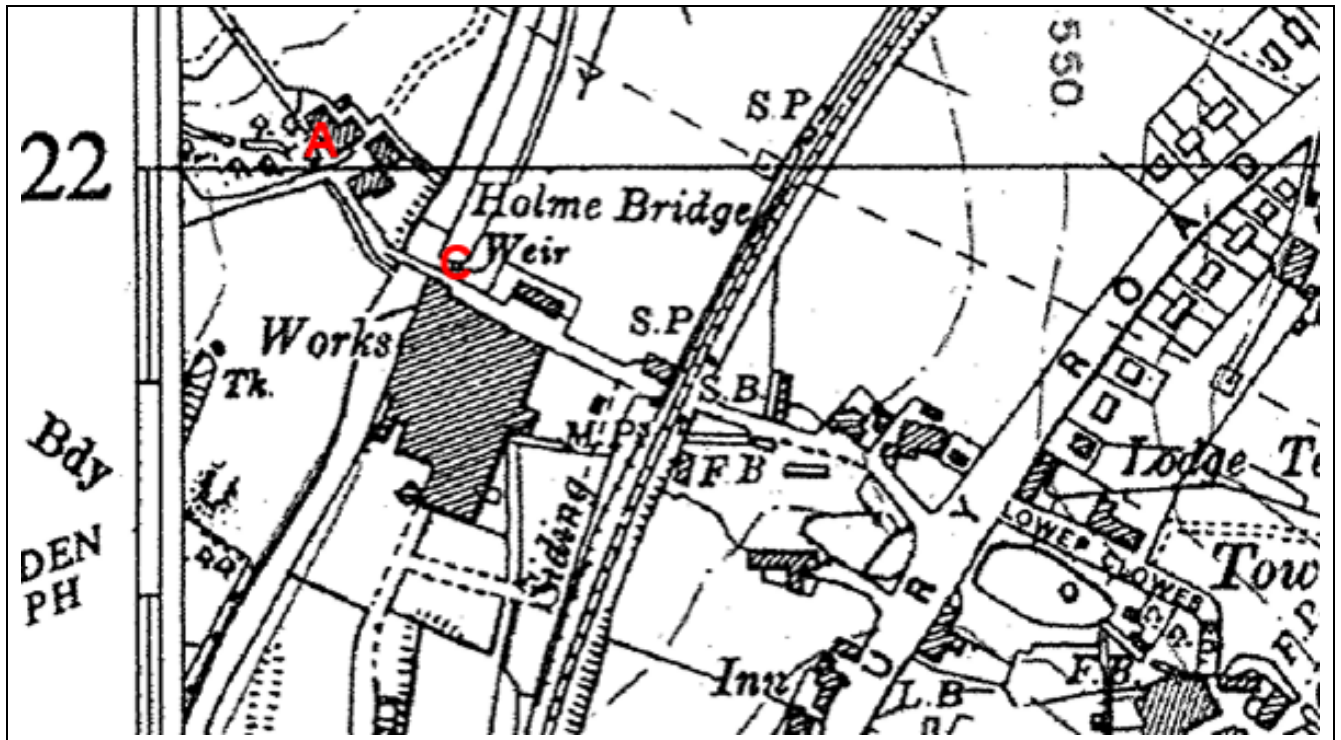


Observations		<p>The route under investigation is shown as part of a longer route with Holme Bridge named on the map and the route from The Holme to Manchester Road named as Holme Lane.</p> <p>A line is shown across the route at point A but this is not consistent with how this junction is shown on any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

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



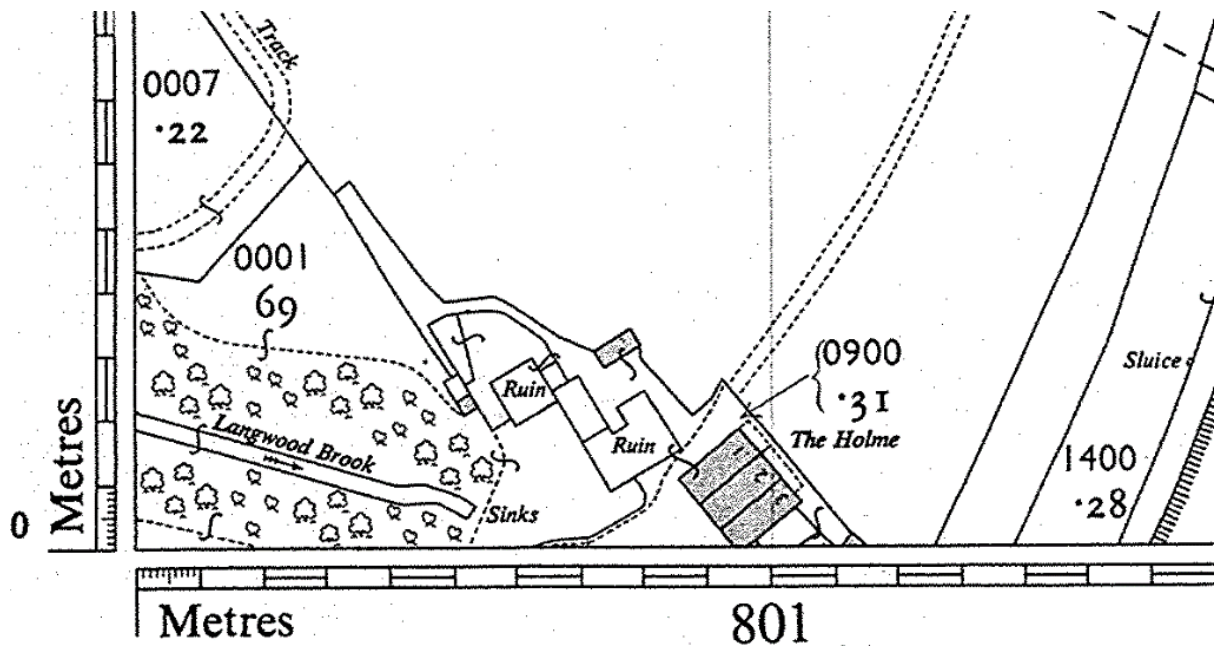
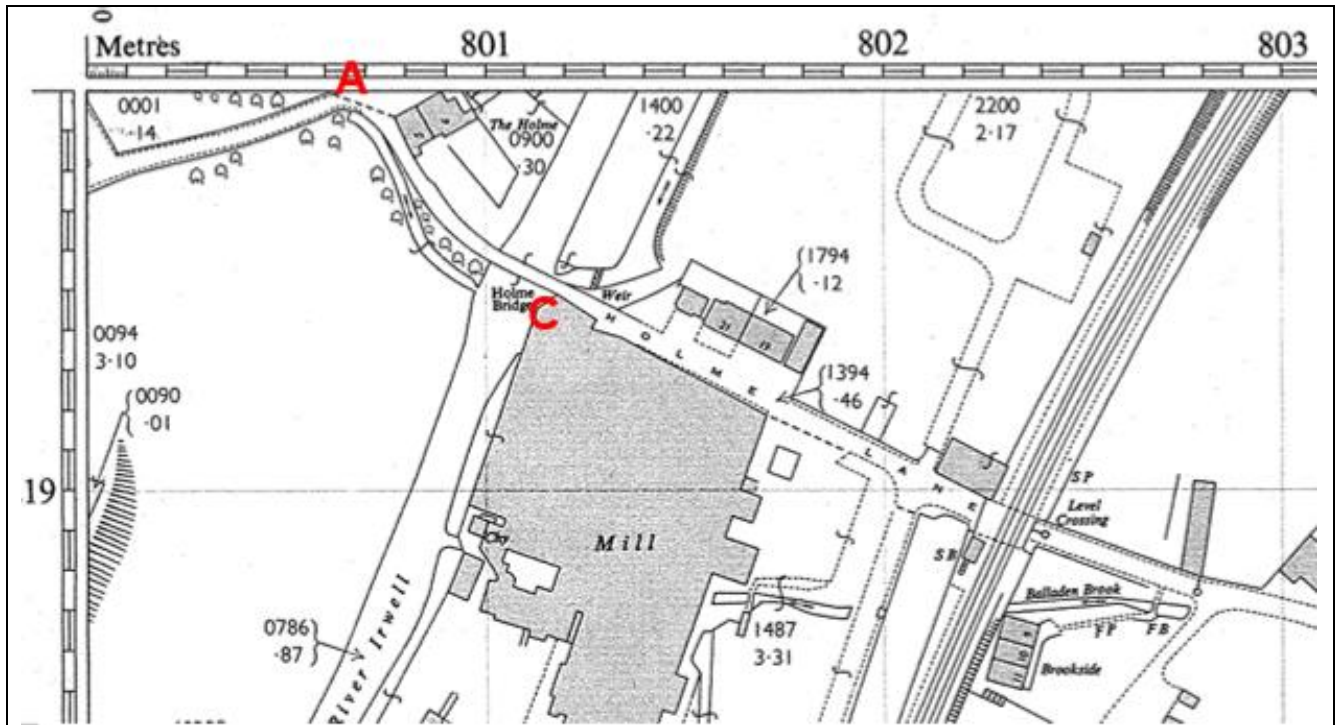
		<p>available was taken just after the Second World War and photographs taken between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.</p>
		
<p>Observations</p>		<p>The quality of the aerial photograph is very poor. A route leading from Bury Road across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



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

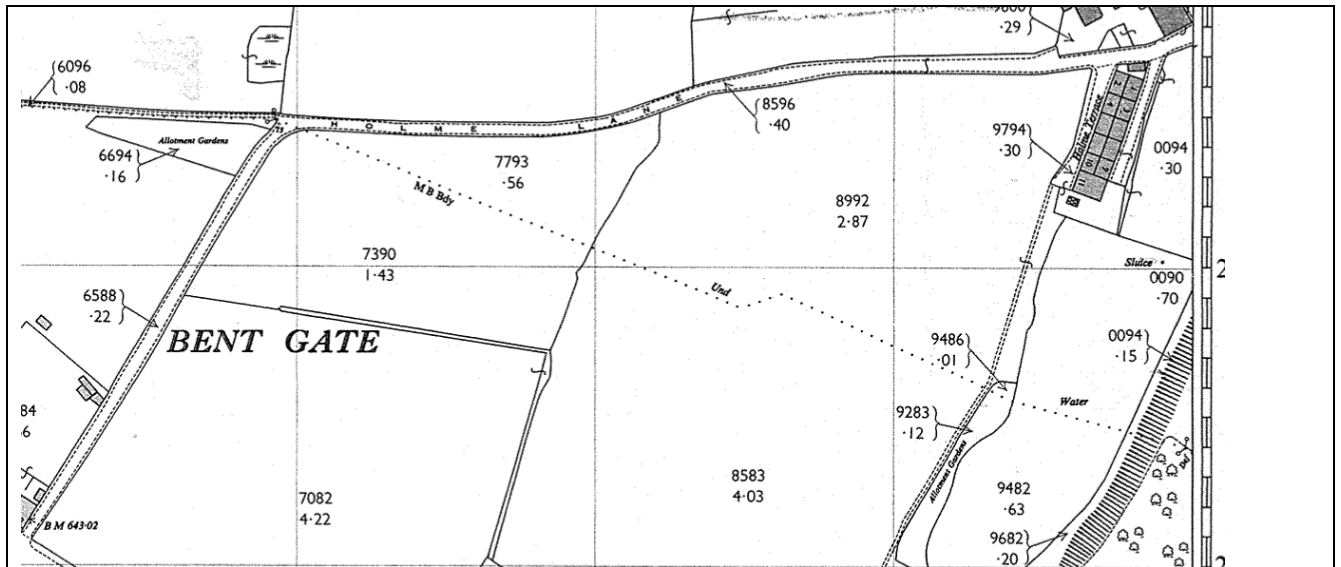






Extract from SD 8022 published 1962 showing 'Ruin'





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

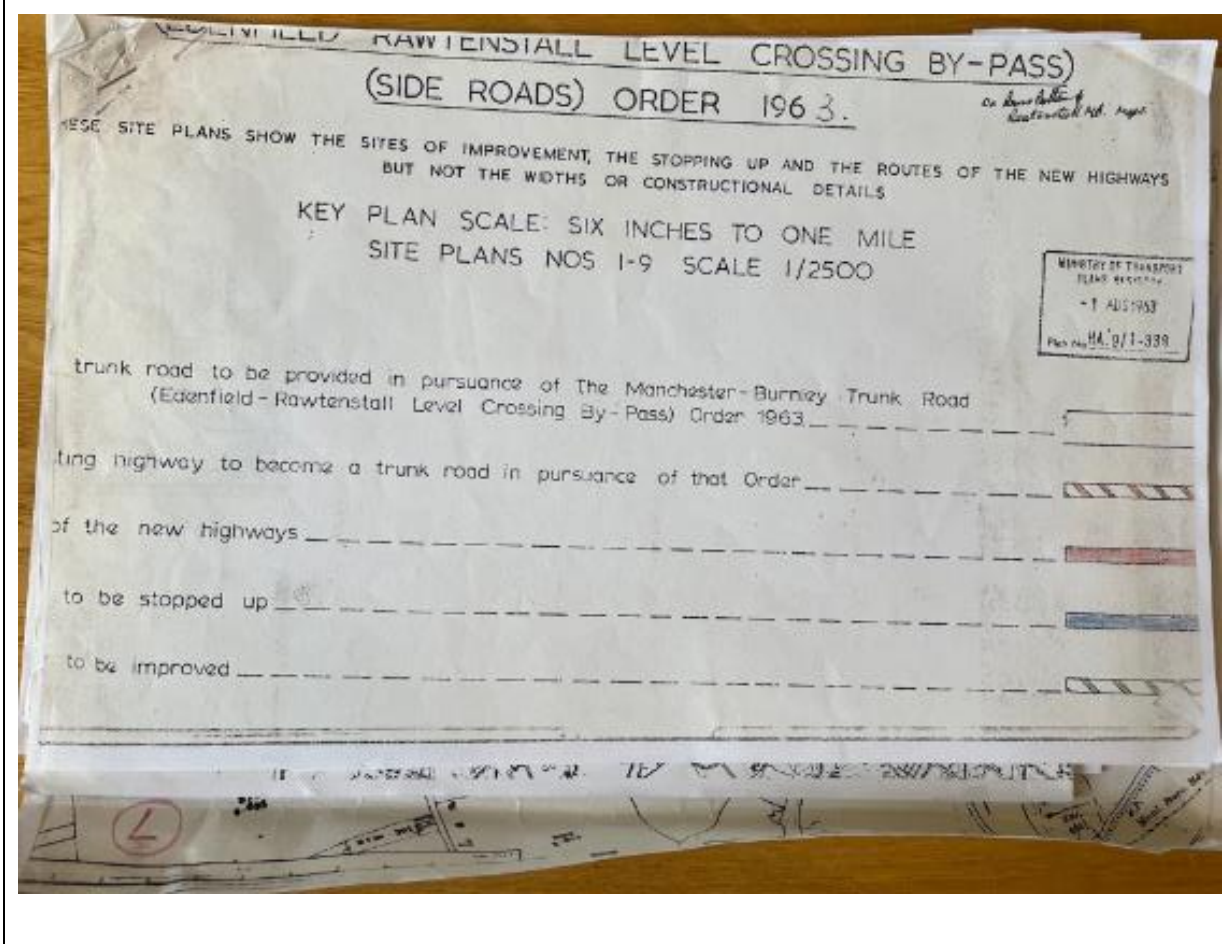
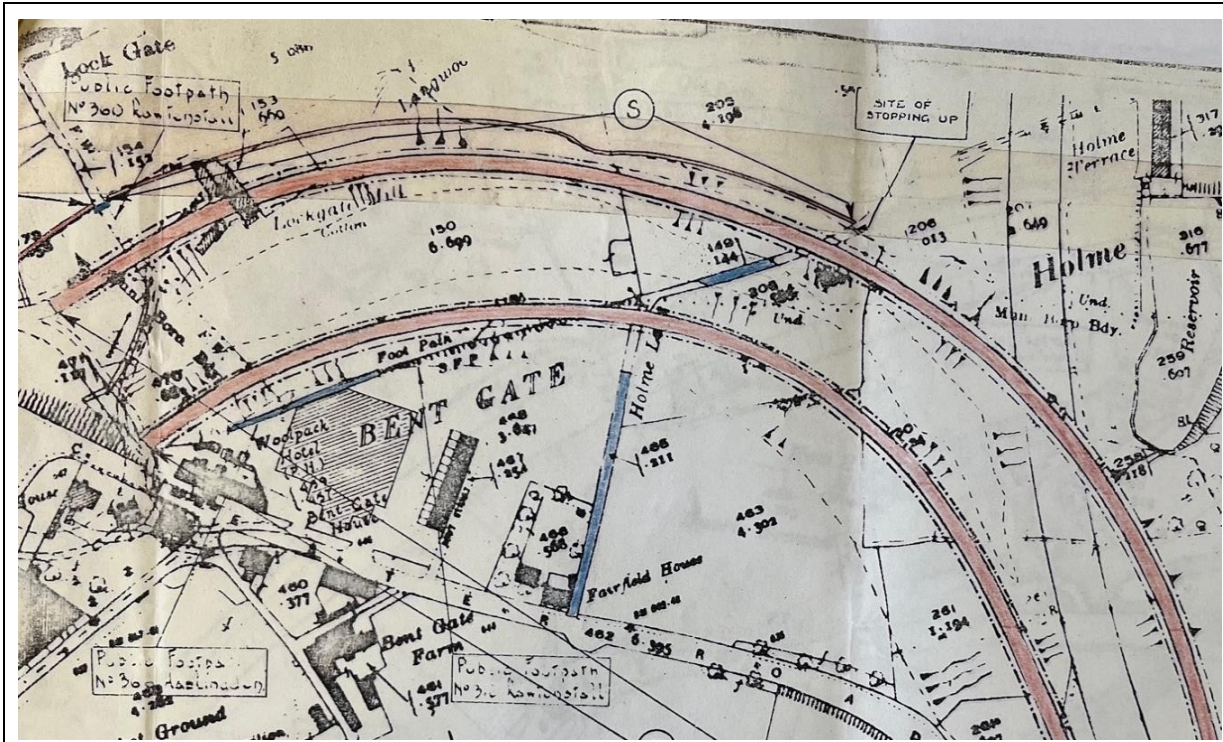
<p>Observations</p>		<p>The route under investigation is still shown as part of a substantial through route and is named as Holme Lane west of point A and again east of Point C. No lines (gates) are shown across the route.</p> <p>North of point A the buildings believed to be the former home of the mill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





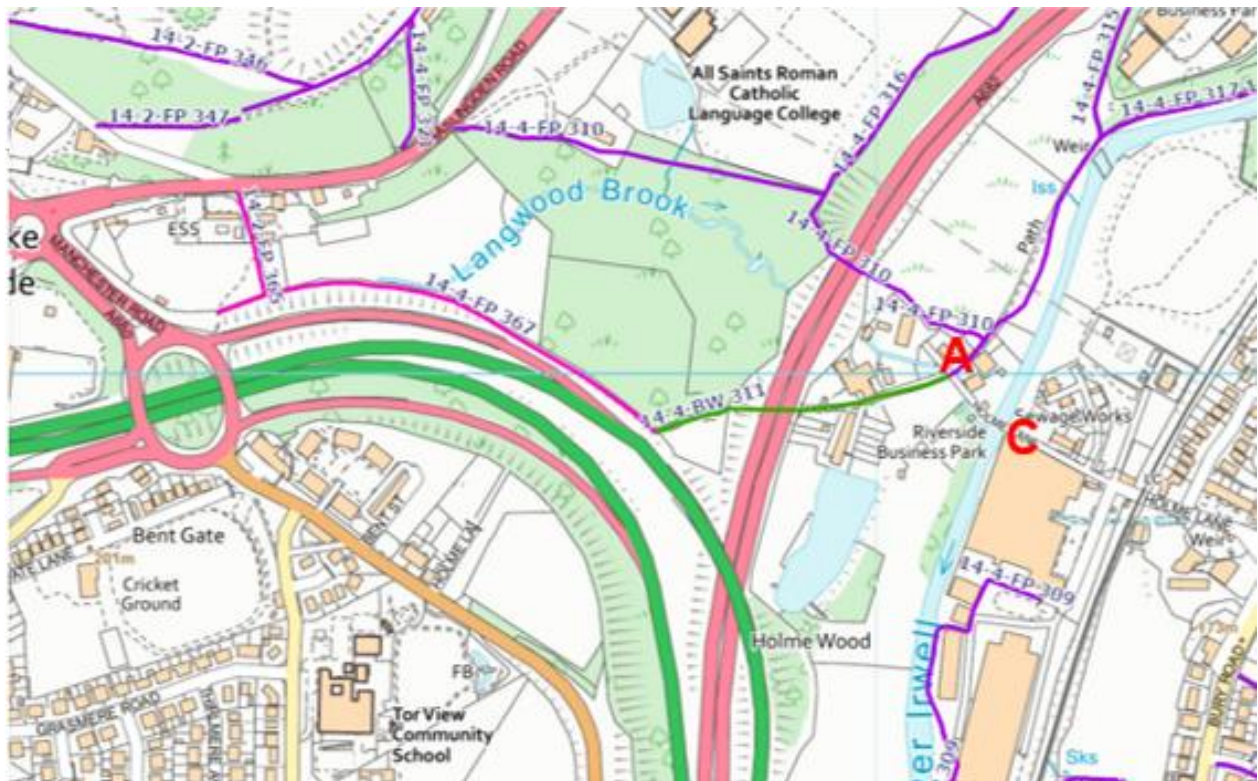
Observations		<p>The photograph clearly shows the bridge across the river (B-C) but the route through to point A is obscured by trees. The house shown in ruins north of point A on the OS map detailed above appears to have been demolished and the site cleared. The route of Holme Lane continuing either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







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



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

**Observations**

**Improvement of Holme Lane (827).**

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

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

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

**Investigating Officer's Comments**

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

**Decision to Adopt Part of Holme Lane**

November 1972

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

STREET NAME	DISTRICT	O.S. NO: SD	MAP REF.	LENGTH (Metres)	WIDTH (average metres)	SITUATION AND REMARKS	DATE OF ADOPTION
Holme Lane	H	SD7921 NE	79612182	148	5	From Manchester Road to by-pass slip road.	-
Holme Lane	R	SD8021 NW	80352183	340	5	From Bury Road to Bridge over River Irwell.	Nov. 1972 Min. 70A
Holme Street	B	SD8521 NE	85802178	120	9	Stacksteads - From Farholme Lane to	14th Jan 1966

**Observations**

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

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



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

		Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
<b>Observations</b>		Rawtenstall is a former municipal borough for which no parish survey map was prepared.
<b>Draft Map</b>		A Draft Map was prepared by Rawtenstall Municipal Borough Council and passed to Lancashire County Council. The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.

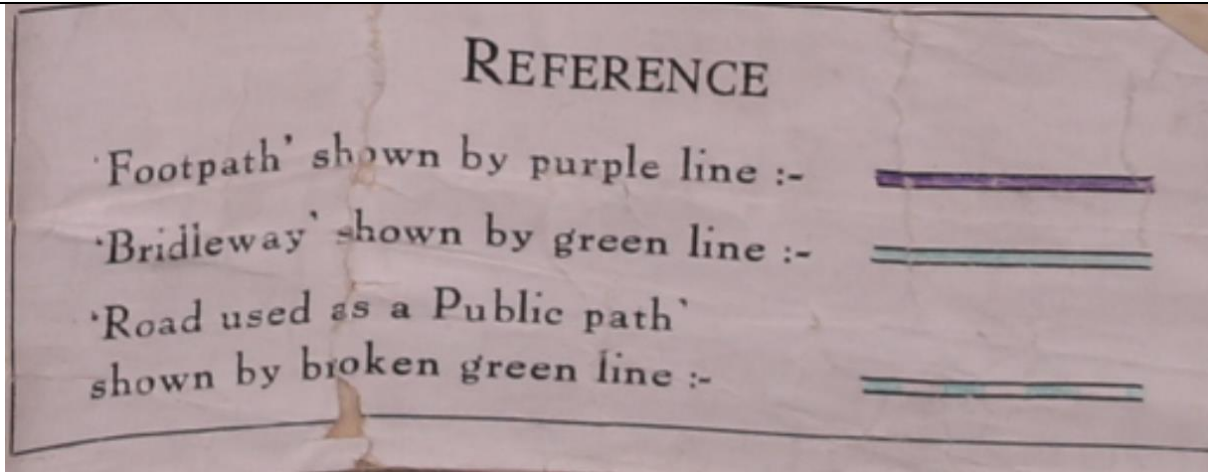




1. No. of path.	2. Kind of path.	3. Position.	4. Length in miles to 2 place decimals.	5. Other particulars (if any) (Limitations or conditions affect- ing the public right-of-way).
309. ✓	Footpath	From Holme Lane along river bank via. Warth to Swood Bridge.	0.56	none known
310. ✓	Footpath	From Holme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

Draft Map and Statement for Rawtenstall





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

"A"

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

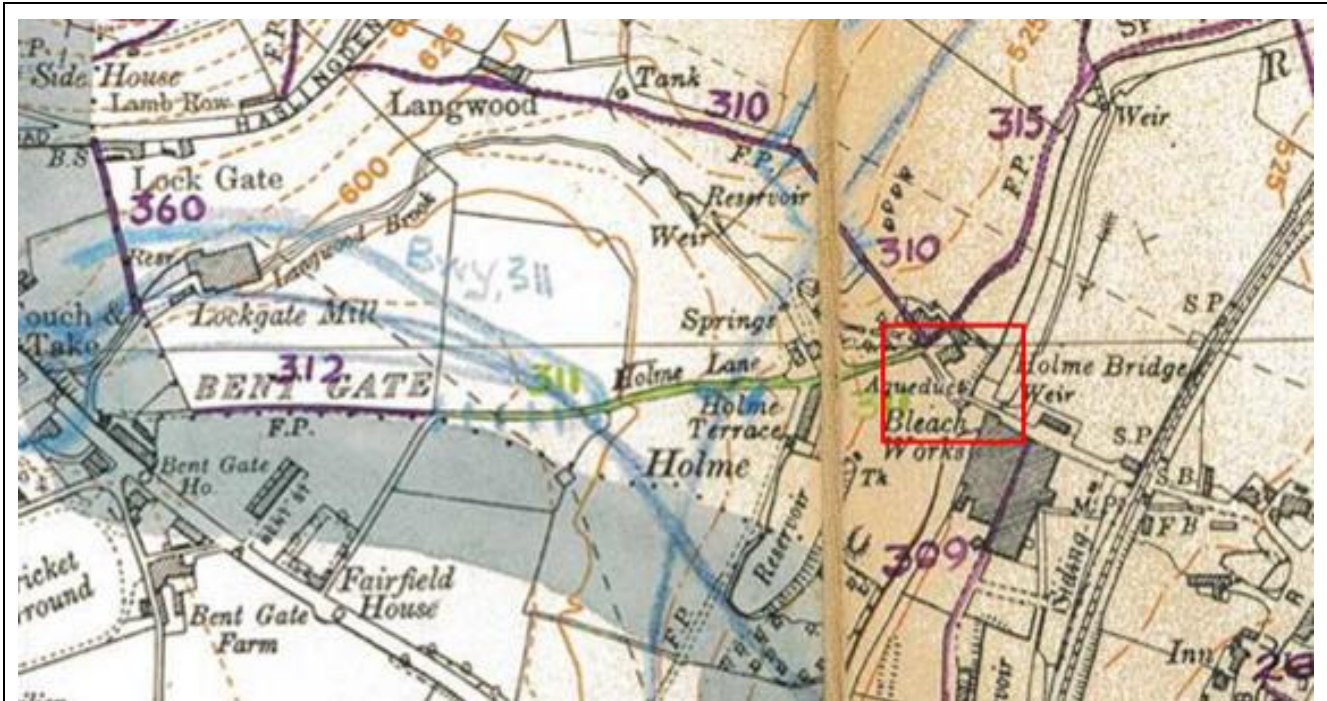
Draft Map and Statement for Haslingden

<p>Observations</p>	<p>The Draft Map for Rawtenstall showed a bridleway recorded along part of Holme Lane. The bridleway was drawn on the map starting at point A on the Committee plan and extending in a westerly direction past Holme Terrace through to the Borough boundary. The Draft Statement however described the route as being "From Bury Road along Holme Lane from W. of river in westerly direction to F.P. No. 312". The bridleway was said to be 0.46 miles long but the green line drawn on the map is only 0.23 miles long.</p> <p>If measured from Bury Road crossing the</p>
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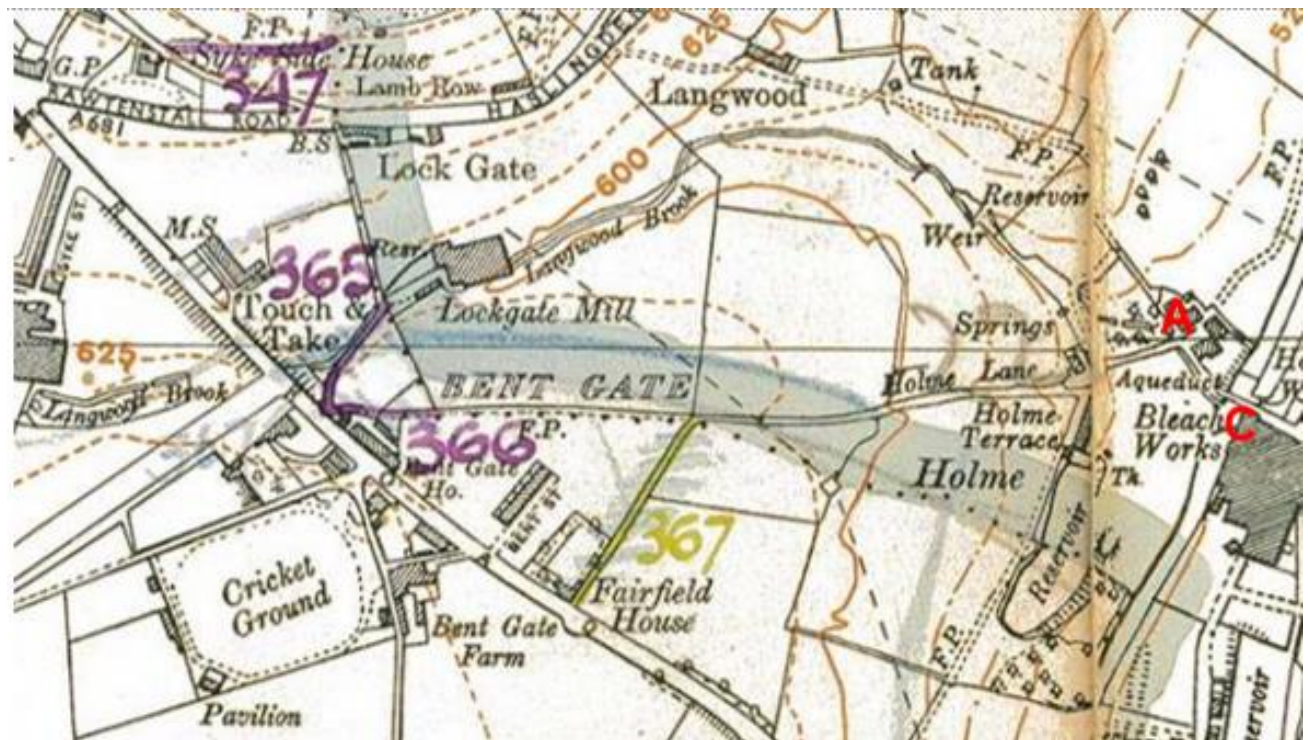




		<p>railway and continuing over the river to point A on the Committee plan and then west to the junction with Footpath 14-4-312 it is a distance of approximately 0.43 miles which still differs from the measurement on the Draft Statement (0.46 miles) but is closer to the route being from Bury Road along Holme Lane and it is possible that the full length of the route from Bury Road to the borough boundary was considered to be a bridleway at that time.</p> <p>The Draft Map for Haslingden recorded the length of Holme Lane from Manchester Road to the Borough boundary as public bridleway, connecting to the bridleway along the Rawtenstall section of Holme Lane, suggesting that at the time the Draft Maps were prepared either the through route or from Manchester Road to The Holme was considered to be a public bridleway and not a public vehicular route.</p>
<p><b>Provisional Map</b></p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Provisional Map – Rawtenstall



Provisional Map - Haslingden

Observations

The Provisional Map sheets show the same as the Draft, i.e. bridleway in Haslingden from Manchester Road to the boundary and in Rawtenstall from the boundary to the Holme. The Statement accompanying the Map remained





		unaltered.  Blue pencil lines can be seen on the map suggesting some possible changes to be made where the bypass cut across the network west of point A but these annotations were presumably added much later (the bypass was opened in 1978, nearly 20 years later).
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.



<b>Observations</b>		The First Definitive Map does not record the route under investigation (A-B-C) as a public right of way. The bridleway along Holme Lane as far as point A is shown in the same way as it is shown on the Draft and Provisional Maps but is still recorded in the Definitive Statement as starting on Bury Road and being 0.46 miles long.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First

		<p>Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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<p>Observations</p>		<p>The route under investigation is not shown on the Revised Definitive Map (First Review). The Definitive Statement remained unaltered and still described the bridleway starting on Bury Road and running along Holme Lane.</p>
<p>Investigating Officer's Comments</p>		<p>Inconsistencies between what was shown on the maps and what was recorded in the accompanying statements make it difficult to infer any particular status for the route under investigation.</p>
<p><b>Highway Records</b></p>	<p><b>Adoption</b> 1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district</p>

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

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

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







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



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



Investigating Comments	Officer's	There is no indication by the landowners under this provision of non- intention to dedicate public rights of way over this land.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

### **Landownership**

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

# Appendix 'B'

## WILDLIFE AND COUNTRYSIDE ACT 1981

### THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF LANCASHIRE

#### THE LANCASHIRE COUNTY COUNCIL BRIDLEWAY ALONG PART OF HOLME LANE RAWTENSTALL DEFINITIVE MAP MODIFICATION ORDER 2022

This Order is made by Lancashire County Council (the "Authority") under Section 53(2)(b) and 53(3)(c)(i) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that Authority that The Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) of the Act namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, namely a public bridleway.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. Lancashire County Council hereby order that:

1. For the purposes of this Order, the relevant date is 19 October 2022.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Lancashire County Council Bridleway along part of Holme Lane Rawtenstall Definitive Map Modification Order 2022.

Dated this 19<sup>th</sup> day of October 2022.

THE COMMON SEAL of the )  
Lancashire County Council )  
was hereunto affixed in the presence of )



  
Authorised Signatory



## SCHEDULE

### PART I

#### MODIFICATION OF THE DEFINITIVE MAP

##### DESCRIPTION OF PATH OR WAY TO BE ADDED

Bridleway along part of Holme Lane from junction of Bridleway 311 and Footpath 315 immediately south of the entrance to Langbrook View, extending in a south easterly direction past The Holme and along Holme Lane to cross the River Irwell via Holme Bridge to meet Holme Lane U7465 immediately east of the bridge.

The entire route is shown between points A and B of the Order Map with a bold green line.

The length of the route is 0.07km.

### PART II

#### MODIFICATION OF DEFINITIVE STATEMENT

##### VARIATION OF PARTICULARS OF PATH OR WAY

The Statement to be amended for Bridleway Rawtenstall 311 to read as follows:

##### **"Bridleway 311:**

No. of Path: 395

Kind of Path: Bridleway

Position: Bridleway along part of Holme Lane as a continuation of the adopted vehicular road U7465 at the south-east end of Holme Bridge at SD 8011 2195 crossing the River Irwell via Holme Bridge and continuing to a right angle bend at a junction with Footpath 315 at SD 8006 2199 by the entrance to Langbrook View then running generally west across the A682 to a junction with Footpath 367 at SD 7980 8942 on east side of A56. No recorded continuation of bridleway.

Width: Between SD 8011 2195 and SD 8006 2199 4-6 metres, remainder unrecorded.

Limitations: Privately owned bridge carrying public bridleway rights

Length: 0.34 km"

**The Statement to be amended for Footpath Rawtenstall 315 to read as follows:**

##### **Footpath 315:**

No. of Path: "315"

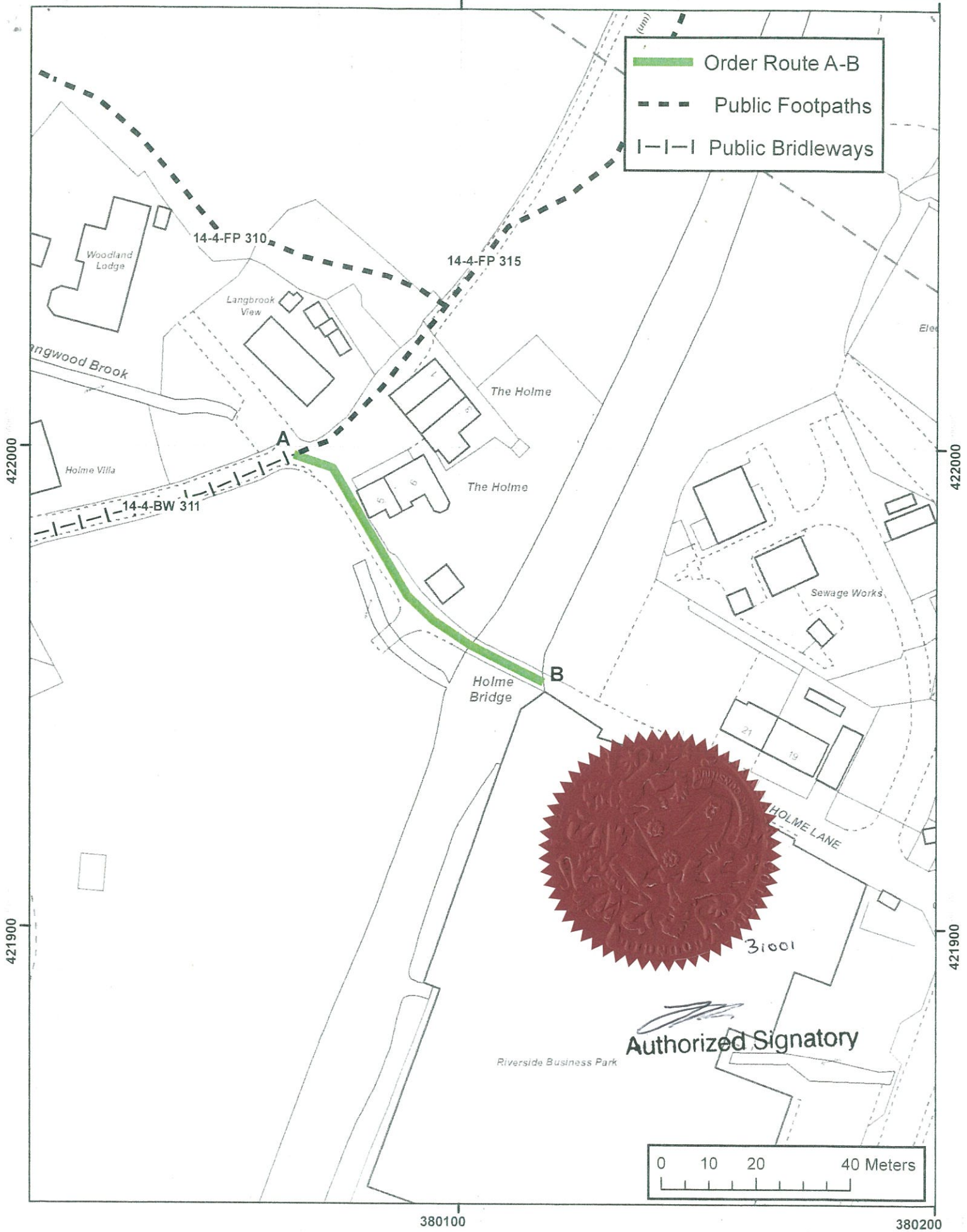
Kind of Path: "Footpath"

Position: "From E. end of Cow Lane via Jingle Holme along N.W. side of River to Holme Lane at junction with Bridleway 311 at SD 8006 2199"

Limitations: "None known"

Length: "0.44 miles"





## Regulatory Committee

Meeting to be held on 21 June 2023

### Part I

Electoral Division affected:  
Oswaldtwistle

## Wildlife and Countryside Act 1981

### Definitive Map Modification Order Investigation

#### Addition of Footpath from Blackburn Road to Norman Road, Oswaldtwistle

(Annex 'A' refers)

Contact for further information quoting file reference 804-762:

Annabel Mayson, 01772 533244, Paralegal Officer, Legal and Democratic Services,  
[annabel.mayson@lancashire.gov.uk](mailto: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](mailto:jayne.elliott@lancashire.gov.uk)

### Brief Summary

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle.

### Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle, be accepted.
- (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 from Blackburn Road to Norman Road on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-C and points X-Y.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### Detail





An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

## **Consultations**

### Hyndburn Borough Council

No response has been received from the Borough Council.

## **Advice**

### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	7314 2828	Open junction of grass-surfaced back alley with Blackburn Road immediately east of West End Methodist Church.
B	7314 2825	Application route blocked by fencing at the rear of 10 Norman Road both in line with their north and south boundaries.
C	7316 2824	Open junction of unkempt back alley with Norman Road immediately south of 12 Norman Road
X	7318 2819	Open junction of stone and grass path with back street laid with setts.
Y	7321 2816	Open junction of stone and grass path with tarmac apron in front of 77B and 77C Aspen Lane

### Description of Route

A site inspection was carried out in January 2023.

The application route starts at a point on south side of Blackburn Road immediately to the east of West End Methodist Church, Oswaldtwistle (point A on the Committee plan).

From Blackburn Road the route runs in a generally southerly direction bounded on the west by a hedge and fencing separating it from West End Methodist Church and to the east by a stone wall within which gated rear entrances to 7 properties on the corner of Blackburn Road with Norman Road and Norman Road – which runs parallel to the application route.

The strip of land along which the application route runs is approximately 3 metres wide with a grass surface. The first 10 metres of the route looks to have been mown but beyond there the surface becomes more overgrown and appears less well maintained. Each of the properties; 372 Blackburn Road and 2,4,6,8 and 12 Norman Road have gates which lead directly onto the application route – their other access being directly off Blackburn Road or Norman Road.

It was not possible to see whether 10 Norman Road had a gate between the application route and the property as the application route behind the property had been blocked off by fencing in line with its boundaries with 8 and 12 Norman Road and the land forming part of the application route subsumed into their garden:



Image above: Google Earth Pro April 2020

At point B (the rear of 10 Norman Road) it was not possible to continue along the application route due to fencing that had been erected. Gates had been built into the fencing to allow access to and from the rear of 10 Norman Road (but these were bolted or fixed so it was not possible to pass along this section of the application route):



[above] looking south



[above] looking north-west

From the church grounds it was possible to view two stone gateposts which would have provided access to and from the church grounds from the application route.



The gateway had been blocked off by a panel of wooden fencing consistent with the style and age of the fencing blocking the application route.



South of the area marked 'B' (obstructed section) the application route continues around the west and south of 12 Norman Road to exit onto Norman Road (point C) between a wooden garage forming part of 12 Norman Road and a brick wall. This section of the route is quite overgrown.

The total length of the route is 60 metres.

Although the application route is specifically the section marked A-C on the Committee plan it was apparent while investigating the history of the route that it originated as part of a longer (unrecorded) footpath which started on Blackburn Road and led directly across fields to Aspen Lane (11-5-BW300). Due to its relevance in how the application route evolved into what it is today this route has also been considered as part of this report.

From the junction with Norman Road (point C) it is possible to cross the road and continue along a publicly maintainable back street to the start of an unrecorded section of footpath (point X) which continues directly to a junction with Aspen Lane (11-5-BW 300). The back street running from Norman Road along the back of the terraced houses on Ripon Road is surfaced with setts. From point X the unrecorded footpath extends in a south easterly direction bounded on either side by garden fences. It appears to have been surfaced with compacted stone but is now partially overgrown. The width between the fencing is approximately 3-3.5 metres and the trodden track appears to be well used. The route is approximately 50 metres long exiting onto part of Aspen Lane recorded as 11-5-BW300 (point Y):





### Map and Documentary Evidence

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

The application route was not shown on any of the early small-scale commercial maps and there is no Tithe Map for the land crossed by the route. For this reason, some of the earliest maps and documents normally included in this section of the report have not been included below as no inference can be drawn except that it was not considered to be a vehicular highway or significant route in the 18<sup>th</sup> or early 19<sup>th</sup> Century. In addition, the land crossed by the application route was not affected by the construction, or proposed construction, of any railways or canals, so references to these types of documents have not been included.

Note: Map inserts provided below are not to scale.





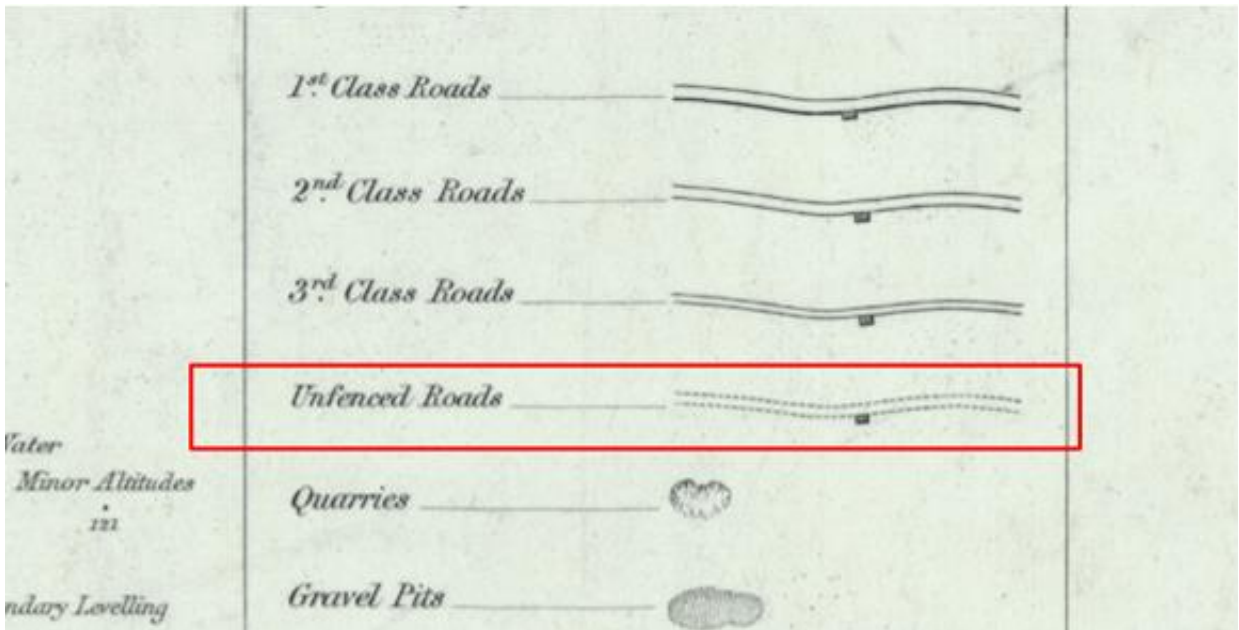
Document Title	Date	Brief Description of Document & Nature of Evidence
<p><b>6 Inch Ordnance Survey (OS) Map</b></p> <p><b>Sheet LXIII</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848.<sup>1</sup></p> <p>However it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - <a href="https://maps.nls.uk/os/">https://maps.nls.uk/os/</a></p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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



6 inch OS Map sourced from National Library of Scotland



Extract from Ordnance Survey Characteristic Sheet for 6 inch OS mapping  
<https://maps.nls.uk/view/128076783>





Overlay of 6 inch OS Map sourced from LCC own records on modern base map

<p>Observations</p>		<p>The application route is not shown between point A and point C and the housing developments and roads (including Norman Road) which now exist are not shown.</p> <p>However, a route is shown from Blackburn Road – starting just west of point A and running in a south easterly direction along the edge of a field to pass through point C and then continuing directly across an open field as an 'Unfenced Road' towards Fountains where it meets a road named on the map as Aspen Lane which is now recorded as Bridleway 11-5-BW300 at the point labelled 'Y' on the Committee plan. No lines (probable gates) are shown across this route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist in 1844-46 although a substantial route did exist across the fields between</p>

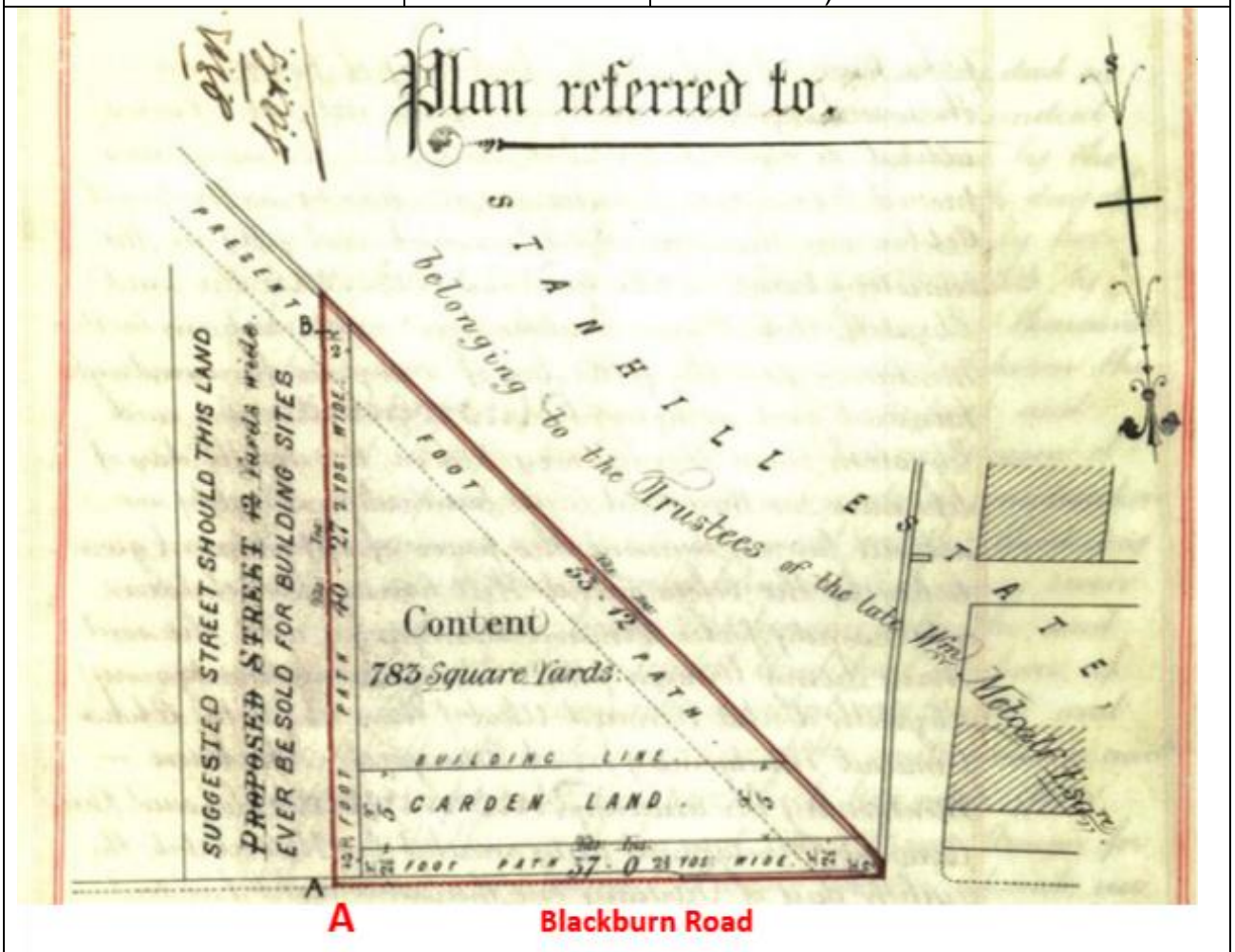


		Blackburn Road and part of Aspen Lane (11-5-BW300). Whilst the OS show this route as an 'unfenced Road' this is not necessarily indicative of any public status. The route was contiguous with the highway network and probably accessible to the public at that time although it is not possible to deduce actual use.
<b>25 Inch OS Map Sheet LXIII.14</b>	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1891 and published in 1893.



Observations		<p>The application route is not shown and the land that it crosses is again shown as a single enclosure, presumably farmland.</p> <p>The route shown on the 6 inch OS map detailed above as an Unfenced Road is again shown but is now shown with the notation 'F.P.' (footpath) passing through point C and continuing to point Y.</p> <p>It should also be noted that the 25 inch OS Sheet covering this area which is available to view on the Lancashire County Council MARIO map as the '1890s OS First Edition 2500' map is</p>
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		actually the 1911 edition of the map for this area. The applicant submitted the 1911 OS map as part of their evidence believing it to have been published in the 1890s as a result of this error. The 1911 edition of the OS map is detailed later in this report.
Investigating Comments	Officer's	The application route did not exist in 1890-91 but a route depicted on the map as a footpath did exist between Blackburn Road and 11-5-BW300 (Aspen Lane) passing through point C and continuing south east to point Y which appeared to be capable of being used on foot.
<b>West End Wesleyan Methodist Church</b>	1904	Conveyance included in the Land Registry documentation relating to the land now registered as West End Methodist Church (Registered title LAN109297)



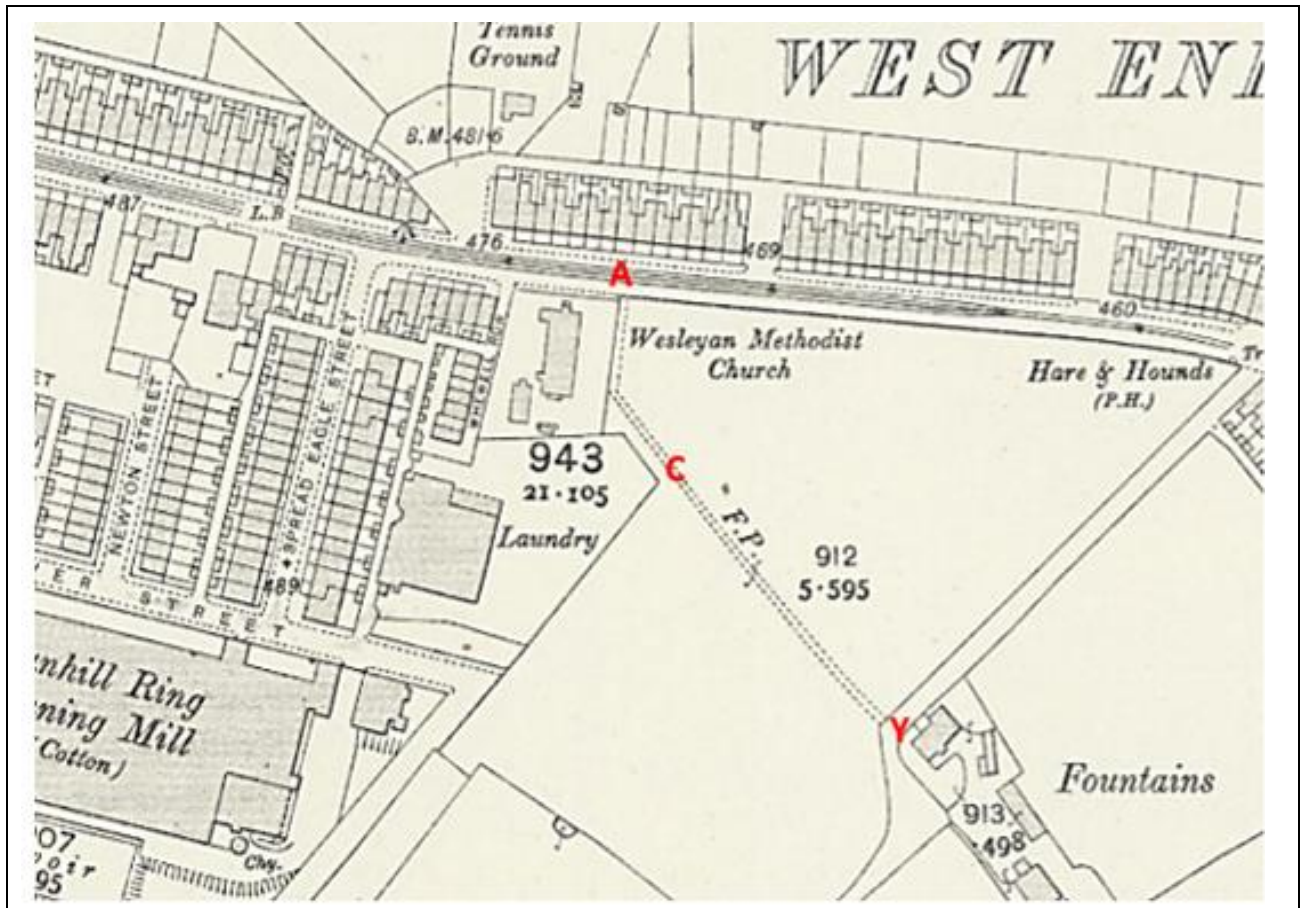
Observations		The OS mapping examined as part of this investigation indicated that between 1890-91 and 1909 West End Wesleyan
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		<p>Church was built. The Church was constructed on the land across which the footpath marked on the First Edition 25 inch OS map was shown.</p> <p>A conveyance dated 10<sup>th</sup> May 1904 has been deposited at the Land Registry. It relates to the sale of a parcel of land described as being part of the Lower Aspen Estate. The agreement to sell was detailed in the conveyance as being between Mary Irving Ainson and others and Mr John Haworth and Others.</p> <p>The plot of land is described on page 8 of the conveyance with reference to the plan detailed above. The land to be sold was described as being that edged red on the plan and it was to be sold subjected to the retention of rights relating to the mining of stone and minerals within and under the said plot of land.</p> <p>On page 10 of the conveyance there are further details of conditions relating to the sale. It was specified that the purchaser must, within one month of taking possession of the plot of land, erect and maintain a fence no less than 5 feet 6 inches in height between the points marked A and B on the conveyance plan and, in the event of the adjacent land being laid out as a public front street (but not as a back road) for, or in connection with building, will, at the request of the sellers properly construct and maintain a footpath two yards wide on the eastern boundary of the said plot as shown on the conveyance plan.</p> <p>It was also specified that if the purchasers submitted plans for buildings to be erected on the said plot of land for the approval of the local Sanitary Authority and such Authority made it a condition of approving such plans require a back road four yards wider to be laid out on the eastern side of the said plot of land then the sellers would at the cost of the purchasers convey to them an additional plot of land two yards wide on the eastern boundary to allow for a back road measuring 4 yards in width to be provided in lieu of the</p>
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		<p>footpath shown on the conveyance plan. The conveyance plan clearly showed the route of the footpath that was marked on the 1<sup>st</sup> edition 25 inch OS map crossing the site and labels it as 'Present Foot Path'. It then shows a strip along the inside of the eastern boundary of the plot to be sold marked 'Foot Path 2 yards wide' between the points marked on the conveyance plan as A and B and on the outside of the boundary shows a 'route' marked as 'suggested street should this land ever be sold for building sites'.</p> <p>Within the plot to be sold there is also a strip of land marked as being 2 ½ yards wide immediately abutting Blackburn Road which is marked as 'Foot Path'.</p> <p>There is no indication within the Conveyance as to what the land was to be used for (i.e. the building of a church) following its sale.</p>
Investigating Officer's Comments		<p>The fact that the conveyance plan clearly showed and identified the footpath across the site which had previously been shown as part of a longer footpath on OS maps suggests that it was considered to be a public footpath at that time. Whilst the conveyance doesn't refer specifically to a 'public' footpath the fact that a footpath was to be provided along the eastern boundary of the site should the land be built upon, and which connected to the existing footpath strongly suggests an intention by the vendors to ensure that the footpath was retained, albeit on a diverted line and an agreement by the purchasers to comply with this requirement should the land purchased be developed.</p> <p>The footway now forming part of Blackburn Road is shown as part of the land being sold.</p>
<b>25 inch OS Map LXIII.14</b>	1911	Further edition of the 25 inch map surveyed in 1890-91, revised in 1909 and published in 1911.



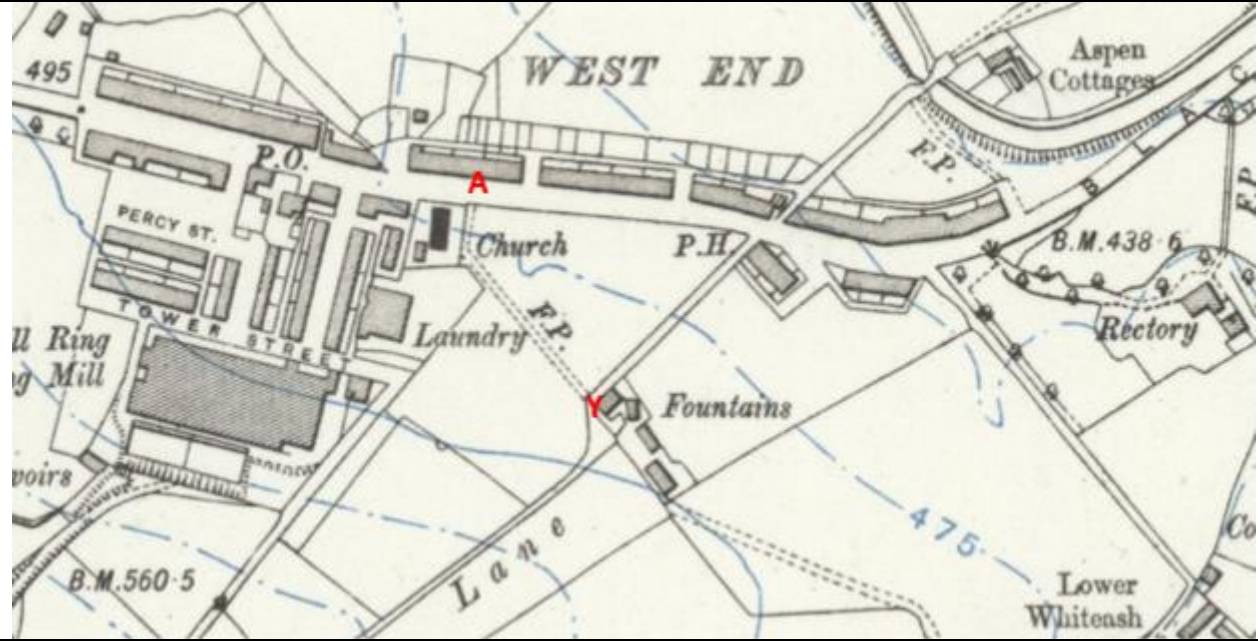
Observations

Five years after the sale of a plot of land as detailed in the 1904 conveyance above, it can be seen that buildings labelled as the Wesleyan Methodist Church had been built and the footpath which ran from Blackburn Road through to 11-5-BW300 diverted to run along the outside of the eastern boundary fence of the church.

The 1904 conveyance plan showed that the plot that was sold measured 37 yards along its northern boundary abutting Blackburn Road although the OS plan shows that the plot fenced off on which the church was constructed measured 33 yards long. The 'Foot Path' (footway) running along the front of the church adjacent to Blackburn Road is shown as part of the width of the road rather than as part of the fenced church grounds.

The footpath (F.P.) which ran from Blackburn Road to 11-5-BW300 is shown as having been diverted so that it now ran along the outside of the

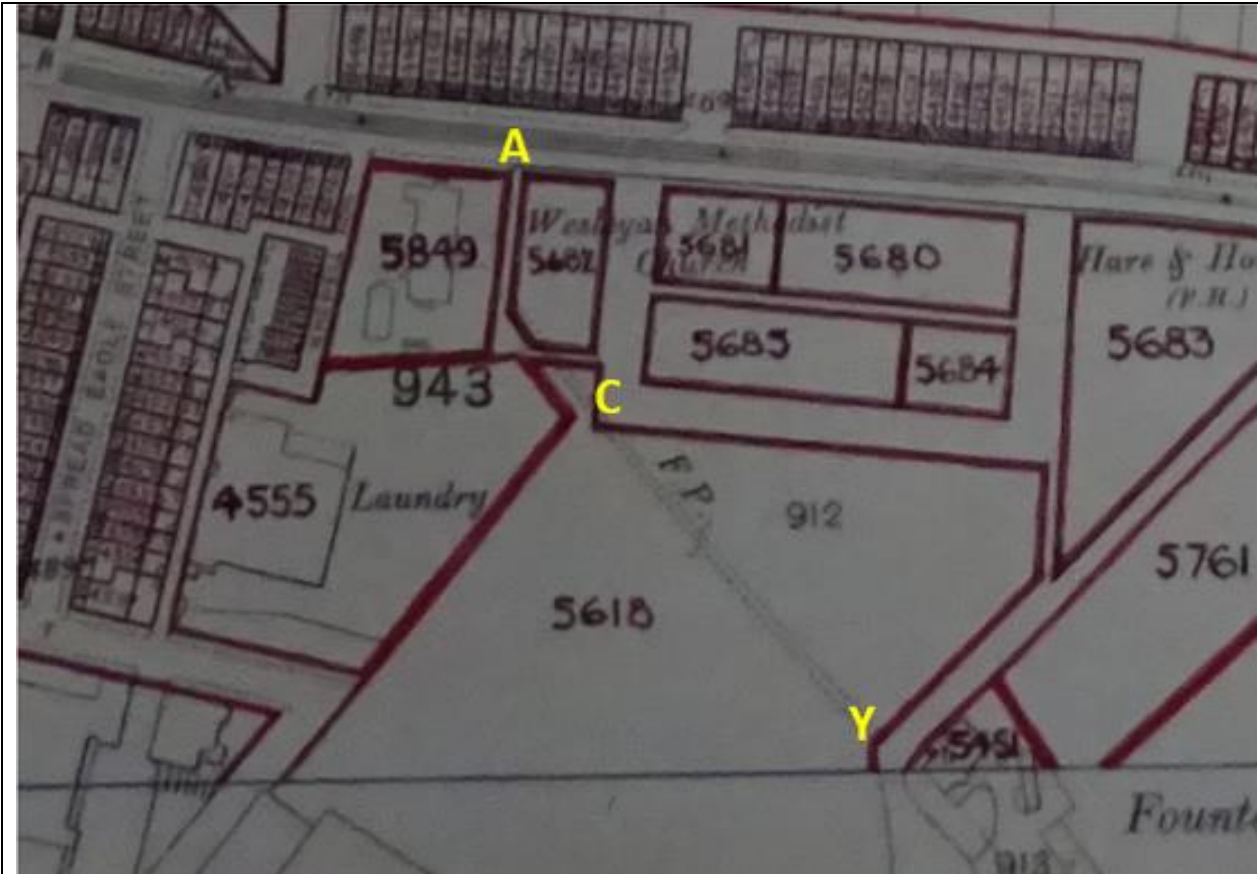


		boundary of the church from point A on the Committee plan for approximately 26 metres consistent with the route of the application route before then turning to continue in a south easterly direction along the line of the original footpath and passing through point C on the committee plan and continuing to point Y (11-5-BW300).
Investigating Comments	Officer's	A footpath existed and appeared to be capable of being used from point A on the Committee plan through to point Y. The route was consistent with the alignment of the application route from point A for approximately 26 metres before taking a slightly different – and direct – route across open fields to point Y.  The requirement specified in the 1904 conveyance detailed above in relation to the sale of a plot of land on which the church was built appears to have been complied with in that an alternative footpath has been provided.
<b>6 inch OS Map Sheet LXIII.SW</b>	1912	6 inch OS map revised 1909 and published 1912.
		
Observations		The 6 inch OS map prepared following completion of the same survey that was undertaken prior to the publication of the larger scale 25 inch OS map detailed above shows the church and footpath running from A through to point Y in the same way as the 25 inch map shows it.



Investigating Officer's Comments		A footpath existed between point A and point Y partly consistent with the application route.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the 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>





Map deposited at The National Archives

<p>Observations</p>	<p>The Archivist at the County Records Office was unable to find the Finance Act Map listed as having been deposited there.</p> <p>The Finance Act Map deposited at the National Archives was drawn on the 25 inch OS base map published in 1911 but shows plots marked out suggesting that land had been sold for development and that the terraced houses on Norman Road and Ripon Road and those fronting onto Blackburn Road may have been built or under construction. The number plots (5849 and 5682) exclude a strip of land running between them which is consistent with the application route from point A but then turns towards Norman Road more sharply than the application route with the rest of the route marked on the OS base map as a footpath (including the route X-Y) included as plot 5618. The Field Books deposited at the National Archives have</p>
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		<p>not been examined.</p> <p>The District Valuation Book for Oswaldtwistle is available to view at the County records Office. The numbering in the book accords with the numbering on the National Archives plan. Plot 5682 is listed as being owned by George Walsh and Sons and described as land 'fronting Blackburn Road and Between Wesleyan Chapel and Norman Road' with no deductions listed for public rights of way or user. Plot 5618 is also listed as being owned by 'G Walsh' and described as 'Aspen estate' with no deductions listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>A route broadly consistent with the majority of the application route is excluded from the numbered plots. Whilst the boundaries of the plots are hand-drawn it appears that the excluded strip behind the row of terraced houses now in existence is intended to follow the boundary of the plot of land on which they were constructed.</p> <p>The dashes of the base map footpath 'FP' can be seen within plot 5682 and along the edge of plot 5687 but there is no deduction made for the existence of a footpath in either plot.</p> <p>In relation to plot 5687 it could be that no deduction was made because a route had been provided (and excluded) along the boundary of the plot. With regards to plot 5682 no deduction is listed in the Valuation Book suggesting that at that point in the process the existence of a footpath across the plot had not been acknowledged and no deduction claimed.</p>
<b>Land Registry documentation relating to 8 Norman Terrace</b>	1909-1919	Information relating to land held on leasehold agreement.



Observations

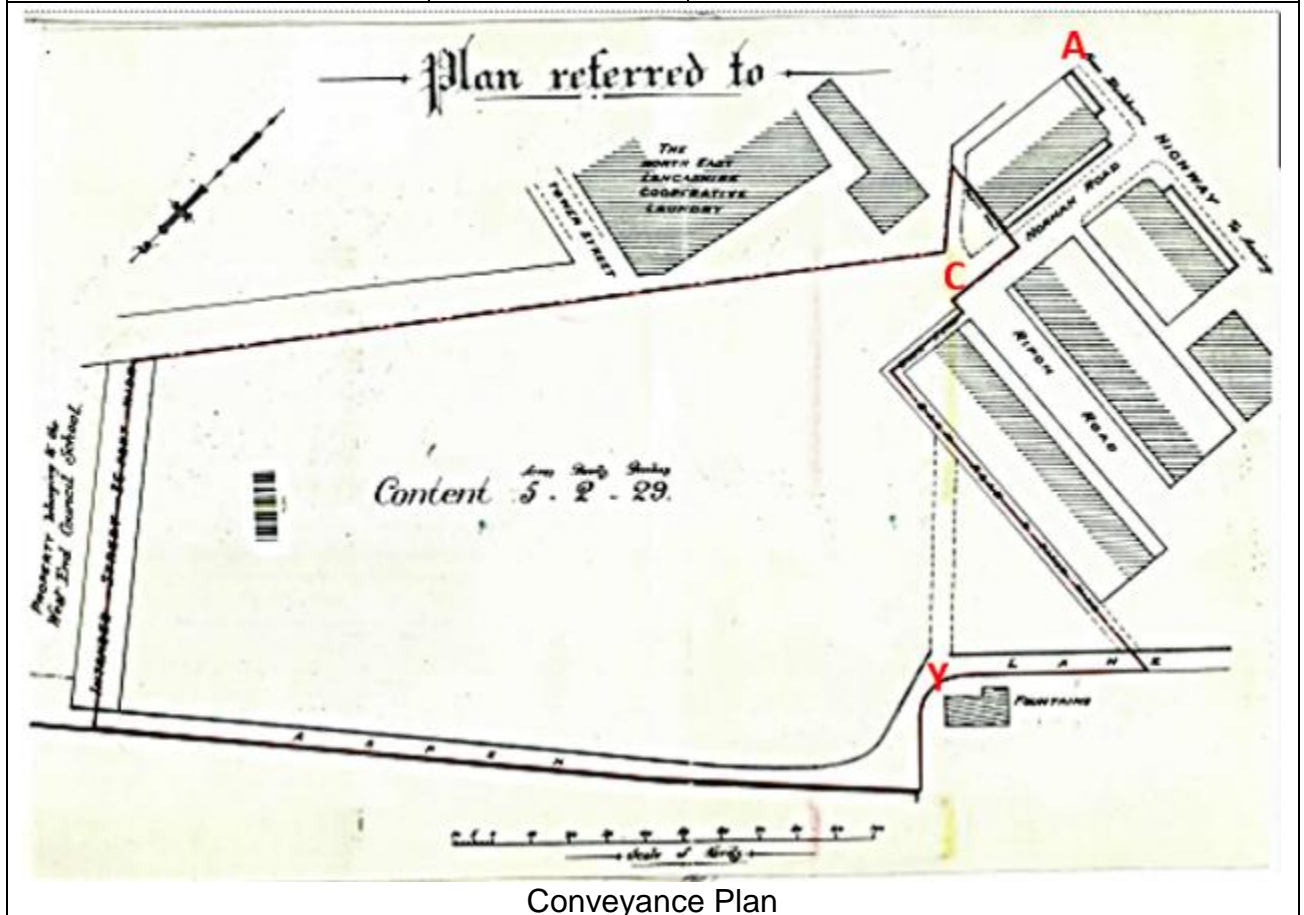
The Investigating Officer checked the documentation held at the Land Registry for all 7 properties along the back of which the application route runs. All the properties are held under a leasehold rather than a freehold ownership. Electronic copies of those leasehold agreements available were inspected and all consistently document that the properties are held on a leasehold basis with the original owners of the land documented as being George, Robert and Albert Walsh who appear to have been the builders. The earliest agreement inspected was dated 1909 with the agreements for 8 Norman Road dated 1913 and the one for 12 Norman Road dated 1919. All of the leases inspected included a clause stating that the Lessees if required to do so by either the Lessor or the Local Authority were required *'at the Lessees expense to make lay pave flag and form (so far as not already done) and afterwards at all times keep in repair until the same shall become repairable*



		<p><i>by the Local Authority the footway and one half the roadway of Norman Road afsd and also one half the back street at the rear of the demised prems in such manner and form and of such materials as the said Local Authority may require so far as the said roadways are coextensive with the demised premises and also at the like request and expense to make such sewers and drains in or under the said roadways and footways as the same Authority may require and to keep the same in repair until the same become repairable by the Local Authority.'</i></p> <p>The land crossed by the application route is not included in any of the land registry titles and ownership is unknown. The applicant owns one of the properties and confirmed that since taking ownership of the property in 2011 they had not been asked to make an annual payment. The property is registered as a 'Good Leasehold'. A good leasehold title usually occurs when the lease appears valid on the face of it but the documents proving the landlord's title, or any superior lessor's title, have not been registered at the Land Registry and in this particular case there is no known owner of the land crossed by the application from point A through to the route at the rear boundary of 12 Norman Road – or land on which the properties were built - hence the fact that the leasehold rents appear to be no longer paid.</p> <p>This excluded strip only partially coincides with the application route (A-B and X-Y).</p>
Investigating Officer's Comments		<p>The leasehold agreements all refer to the application route as a 'back street' with a requirement for it to be made up to an agreed standard to become publicly maintainable at some point in the future.</p> <p>There is clear inference that it was considered to be a public route at that time and appears to have been capable of being used at least on foot. It could be argued that 'back street' implies</p>



		vehicular rights not only pedestrian (otherwise the term 'footpath', 'footway' or 'walkway' could have been used) but it is unclear whether any higher rights would be public or private.
<b>Land Registry documentation relating to land crossed by the application route to the rear and south side of 12 Norman Road</b>	1935	Further information obtained from land ownership records.







Land Registry Plan for Title LAN49643

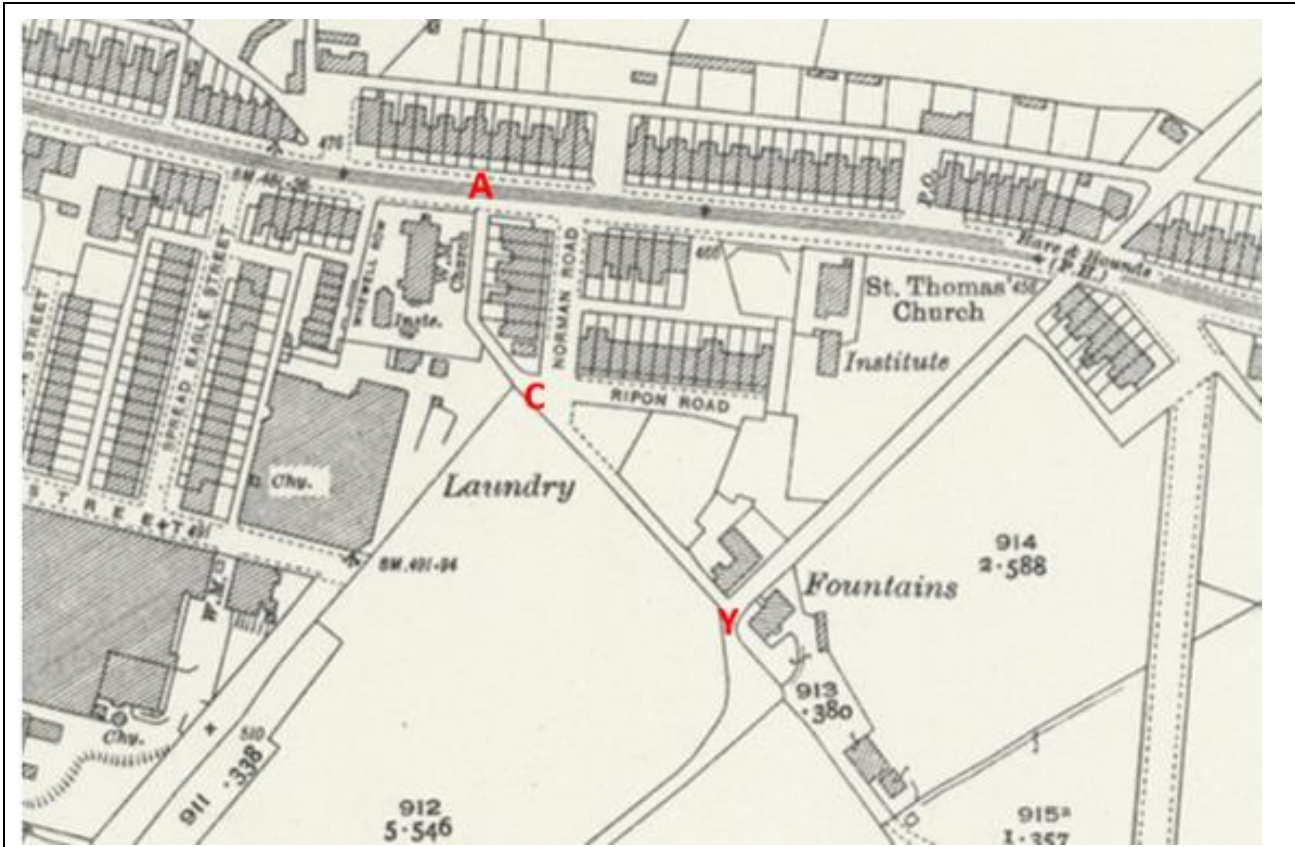
Observations

Part of the route applied for crosses land in registered ownership (LAN49643). The title is freehold not leasehold. Included in the Land Registry bundle is a conveyance dated 18<sup>th</sup> February 1935. The Conveyance details the sale of a plot of land shown edged red on the conveyance plan. The Vendors are listed as being Robert Walsh, described in the document as being a retired builder and joiner, and Albert Walsh. The Conveyance also provides details relating to the fact that George Walsh had died and that his share in the land had been transferred to Robert and



		<p>Albert. The purchasers of the land were detailed as being the North East Lancashire Co-operative Laundries Association Limited.</p> <p>A number of conditions are set out in the conveyance relating to the sale of the land with reference to an earlier conveyance dated 12<sup>th</sup> November 2008. The second condition states:</p> <p><i>'The Association hereby covenant with the vendors that the Association and its successors in title will at all times hereafter leave open and unbuilt upon such portions of the said plot of land hereby conveyed as form portions of any street or road or intended back street or back road and will when called upon by the Local Authority so to do at its own cost form make pave flag channel sewer and complete such portion thereof as are appropriated for or towards the formation of such street or road or back street or back roads or intended streets or roads or intended back streets or back roads to the satisfaction of the Local Authority for the time being.'</i></p> <p>The conveyance plan shows the boundary of the plot of land to be sold as including part of the application route from a point at the rear corner of 12 Norman Road to point C. The full length of the application route is shown on the plan although it is not named or labelled. The plan also shows the row of terraced houses on Ripon Road and a route extending around the back of the properties to link up to the route of the footpath continuing through to Aspen Lane (11-5-BW300) at point Y. By enlarging the conveyance plan it can be seen that this route around the rear of the terraced houses is labelled as 'Back Road 4 yards wide'.</p>
Investigating Officer's Comments		<p>The Land Registry documentation provides further information as to the history and development of the site consistent with other information considered.</p> <p>It provides further evidence in support of the fact that the land, including the application route, appears to have been</p>

		<p>purchased by George, Robert and Albert Walsh in the early 1900s who then built the houses selling them off as leasehold properties once they were completed.</p> <p>With particular regards to the 1935 Conveyance there are specific conditions relating to the sale of the land which reflect the same conditions that were written into the 1904 conveyance for the land on which the church was built. Both documents appear to concur that the intention was that the footpath originally in existence between Blackburn Road and Aspen Lane was to be retained and that if development took place a route should be provided which would form part of a back road or back street which must be retained. This conveyance also makes it clear that when requested to do so by the relevant Local Authority the landowner should bring the route up to an agreed standard to the satisfaction of the Local Authority and that the application route appeared to be considered to be part of a longer a public through route at that time. It also implies that although it was already open to the public it was not publicly maintainable until adopted.</p>
<p><b>25 Inch OS Map LXIII.14</b></p>	<p>1931</p>	<p>Further edition of 25 inch map (surveyed 1890-1891, revised in 1928 and published in 1931.</p>

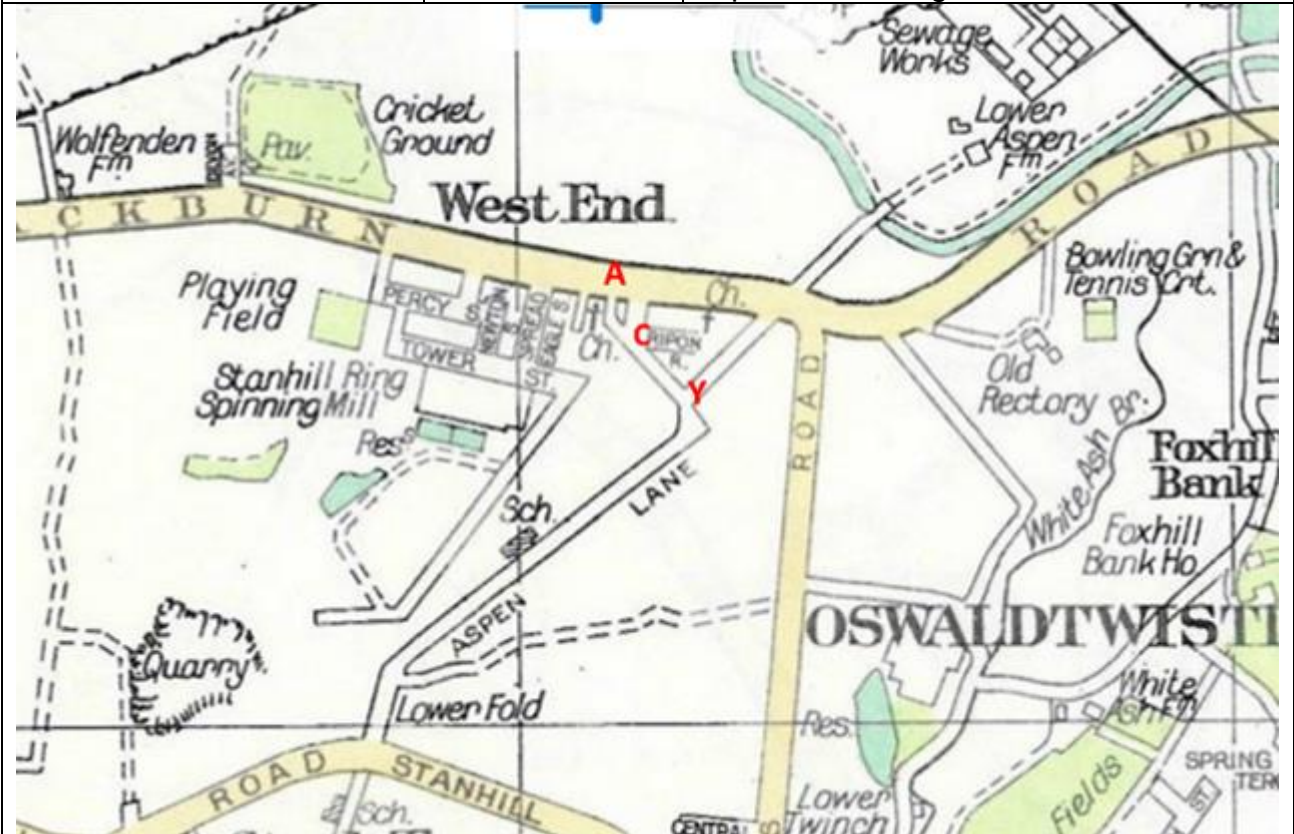


<p>Observations</p>		<p>The third edition 25 inch OS map was revised in 1928 and confirms that by that time the row of houses backing onto the application route, as shown on the 1935 conveyance plan detailed above, had been built. The row of terraced houses on the south side of Ripon Road (and back street linking through to point Y) are not however shown suggesting that they were built between 1928 and 1935.</p> <p>The application route between point A and point C is clearly shown as a bounded route running along the back of the houses at a width of approximately 3 metres and a route continues through point C directly through to Aspen Lane (11-5-BW300) at point Y.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1928 and appeared capable of being used, at least on foot, at that time.</p>
<p><b>Authentic Map Directory of South Lancashire by Geographia</b></p>	<p>Circa 1934</p>	<p>An independently produced A-Z Atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire</p>





	<p>and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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Observations	<p>The application route is shown as part of a longer through route between Blackburn Road and Aspen Lane.</p> <p>The application route A-C is shown narrower than the route C-Y.</p>
Investigating Officer's Comments	<p>The application route existed in the 1930s as a substantial route and is shown on a small-scale map prepared to show routes considered as 'thoroughfares' to which it would be reasonable to consider there was public access. The fact that the application route is shown to be narrower than other routes shown which are known to carry vehicular rights may reflect the fact that it was used primarily on foot or as a 'Back Street' or it might have been in the</p>



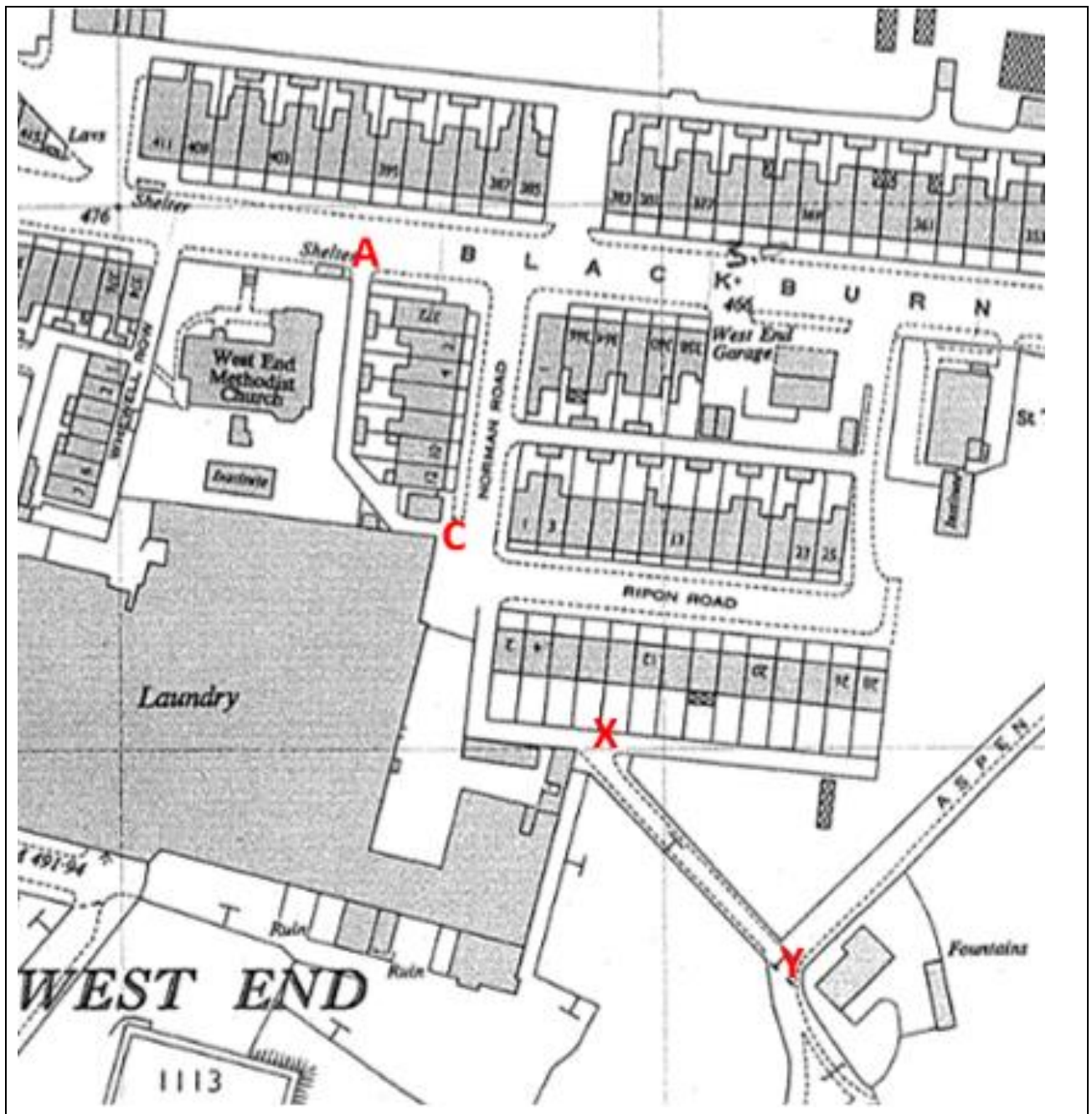
		stylistic representation of roads on the map that the width was reduced to fit in the available space between the church and block of houses.
<b>Aerial Photograph<sup>2</sup></b>	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.



<b>Observations</b>		The application route is visible between the church grounds and along the rear of the terraced houses and a building looks to have been constructed on the land immediately adjacent to 12 Norman Road consistent with the location of the garage that exists today. Norman Road is shown continuing further south than point C providing access to buildings
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<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		and the back street leading from Norman Road around the back of the terrace properties on the south side of Ripon Road can be seen with a route continuing from point X to point Y to link to 11-5-BW300. The Methodist Church on Blackburn Road can be seen to the west of the application route but appears to have been rebuilt or significantly altered in shape.
Investigating Comments	Officer's	The application route existed at the time that the photograph was taken. It is not possible to see from the photograph whether the route was accessible at that time. Further development had taken place in the area, but it is noted that the connection from Blackburn Road through to 11-5-BW300 (Aspen Lane) whilst no longer as direct as the original route had been retained.
<b>1:2500 OS Map SD 7323</b>	1958	OS Map revised 1956-1957 and published 1958.

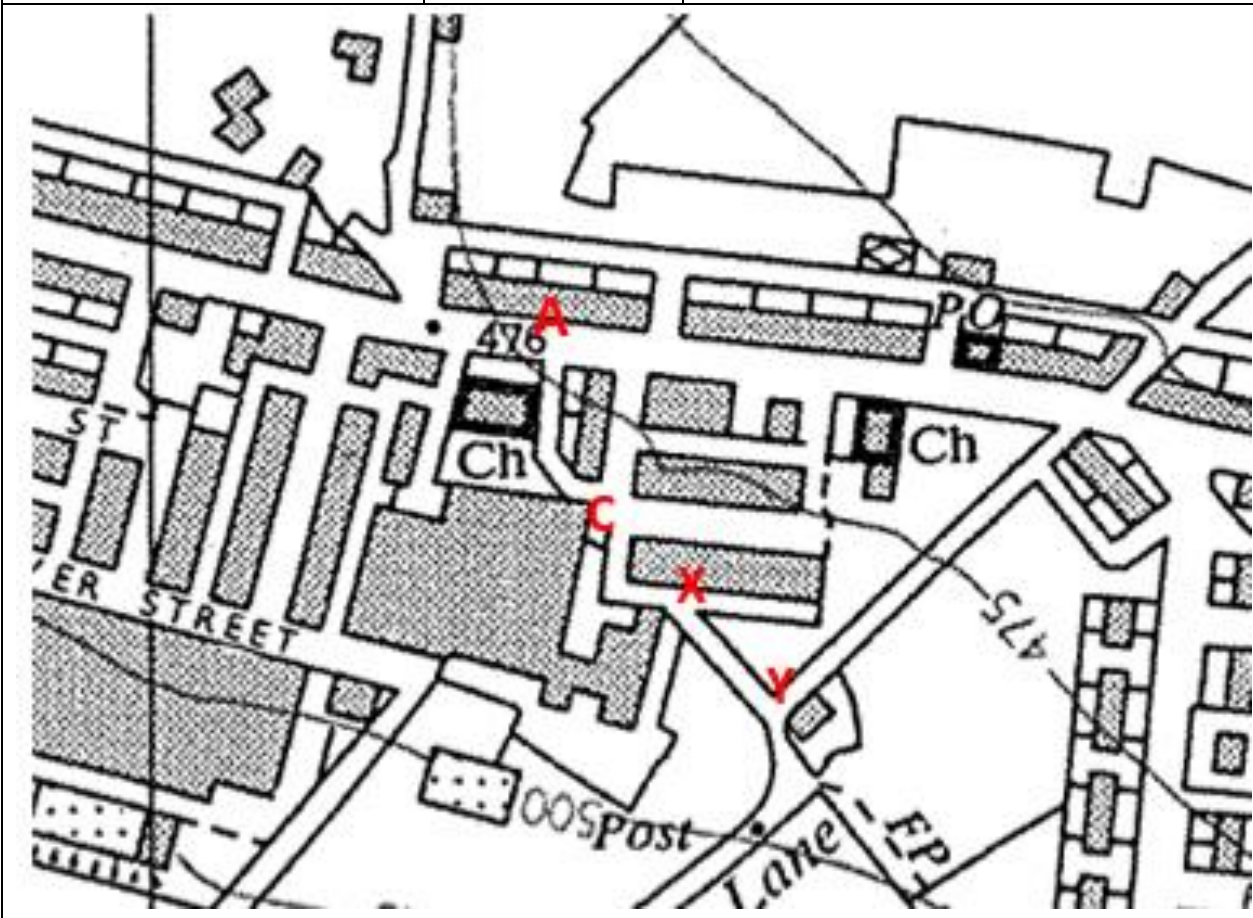


Observations

The application route is shown unaltered from the earlier edition of the 25 inch mapping. The laundry is shown to have expanded significantly across the site purchased by the North East Lancashire Co-Operative Laundries Association Ltd. back in 1935 with an extension of the south end of Norman Road continuing south beyond point C. From point C it appears that it was possible to cross Norman Road and pass along the Back Street running behind the properties on the south side of Ripon Road to continue between point X and point Y to Aspen



		Lane. West End Methodist Church is shown confirming what was noted on the 1940s aerial photograph, that it had been rebuilt or substantially altered since its original construction in the early 1900s.
Investigating Comments	Officer's	The application route existed in 1956-57 and appeared to be capable of being used as part of a longer route from Blackburn Road to Aspen Lane.
<b>6 inch OS Map Sheet 72NW</b>	1965	OS 6 inch map revised between 1955 and 1963 and published 1965.

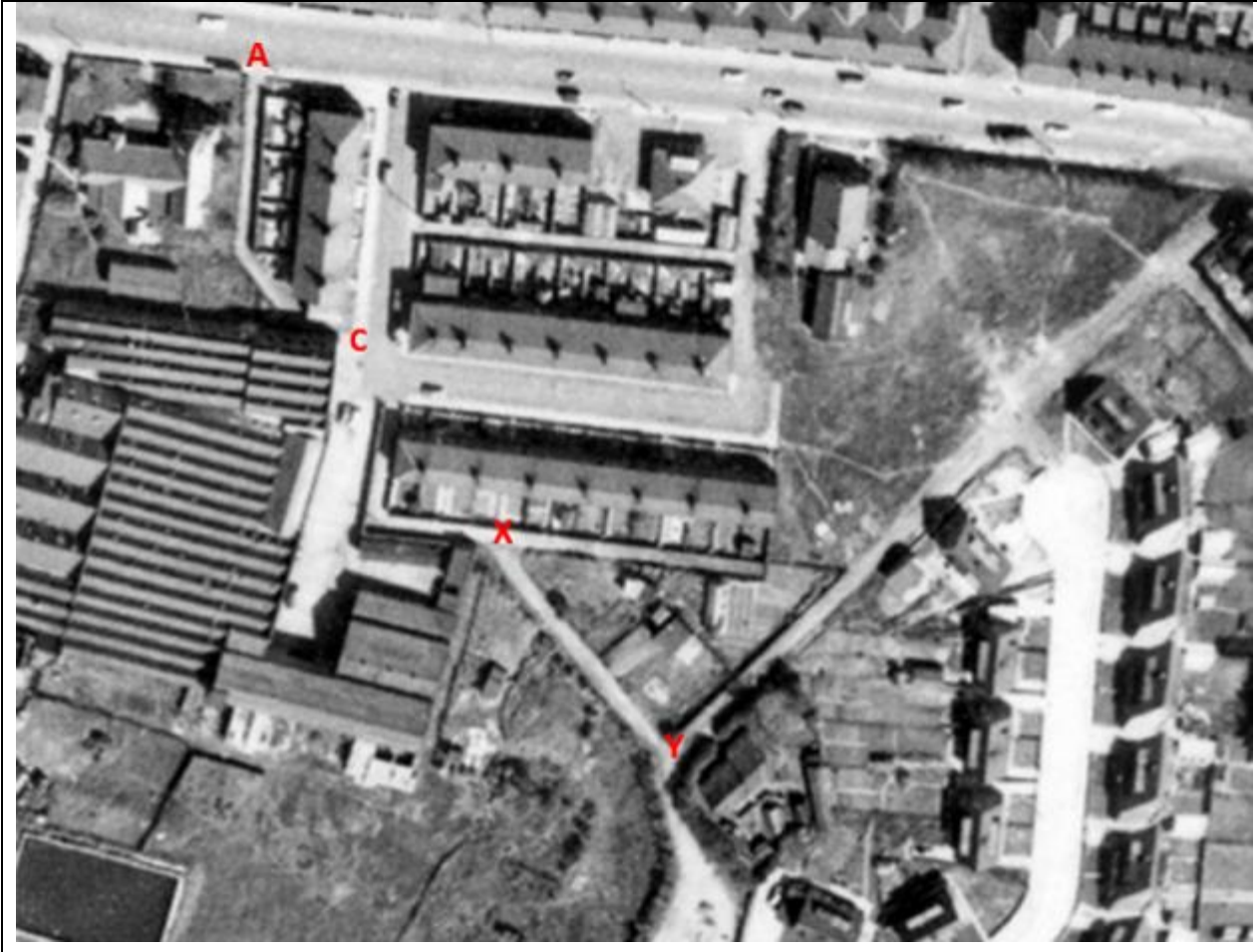


Observations		The application route is shown as a substantial route with a route clearly visible continuing through to Aspen Lane via points X-Y.
Investigating Comments	Officer's	The application route existed and appeared to be capable of being used as part of a longer route from Blackburn Road to Aspen Lane.
<b>Aerial photograph</b>	1960s	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the





following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.







<p>Observations</p>		<p>The application route from point A through to point C can be clearly seen. A darkened area close to point C is visible over the route and a faint route can be seen leading from the church grounds onto the application route as indicated by the red arrow on the extract above. The route marked between point X and Y can be clearly seen providing a link through to 11-5-BW300.</p>
<p>Investigating Officer's Comments</p>		<p>The application route A-C and route X-Y both existed in the 1960s as substantial routes that appeared to be capable of being used at least on foot. The darkened area close to point C is most likely to be shadow of the laundry building and there is no indication from any mapping produced before or after this date that access to the application route was restricted at this point.</p>

		<p>It appears likely that in the 1960s it would have been possible to walk from point A through to point Y via the sections A-C and X-Y. There is also a suggestion that a route existed from/to the church grounds via the application route although there did not appear to be significant levels of use at that time.</p>
<p><b>Aerial Photographs available to view on Google Earth Pro</b></p>	<p>2000-2021</p>	<p>Aerial photograph available to view on Google Earth Pro.</p>



2000



2005







2015



2015








2020



2021





Observations		The photographs taken over a 20 year period illustrate that the application route A-C and route X-Y still existed and that further development had taken by 2015 whereby properties 77B and 77C had been built off Aspen Lane adjacent to the route X-Y and that the application route A-C was blocked a point B by April 2020. In 2020 the application route from A-B and B-C can be seen quite clearly whereas in 2021 it can be seen that the route had become less visible and more overgrown.
Investigating Officer's Comments		The application route appeared to be capable of being used up until it being blocked in 2020 and since that time has become more overgrown – most probably due to lack of use as a through route.
<b>Street View Images</b>	2008-2009	
		
2009		



2008

<p>Observations</p>		<p>The photographs show that in 2009 a trodden path existed from point A with no visible restrictions to access. The photograph taken the previous year from point C shows the route passing between the garage at the side of 12 Norman Road and the former factory (now demolished).</p>
<p>Investigating Officer's Comments</p>		<p>Access appeared to be possible along the application route in 2008-2009 at least on foot.</p>
<p><b>Definitive Map Records</b></p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<p><b>Parish Survey Map</b></p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal</p>

		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 application route was within the Urban District of Oswaldtwistle for which no Parish survey map was compiled.
<b>Draft Map</b>		A Draft Map was prepared by Oswaldtwistle District Council. The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown and there were no representations or objections made relating to them.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage only landowners, lessees and tenants could apply for amendments to the map but the public could not. Objections at this stage had to be made to the Crown Court.
Observations		Neither the application route or the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown

		and there were no representations or objections made relating to them.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.

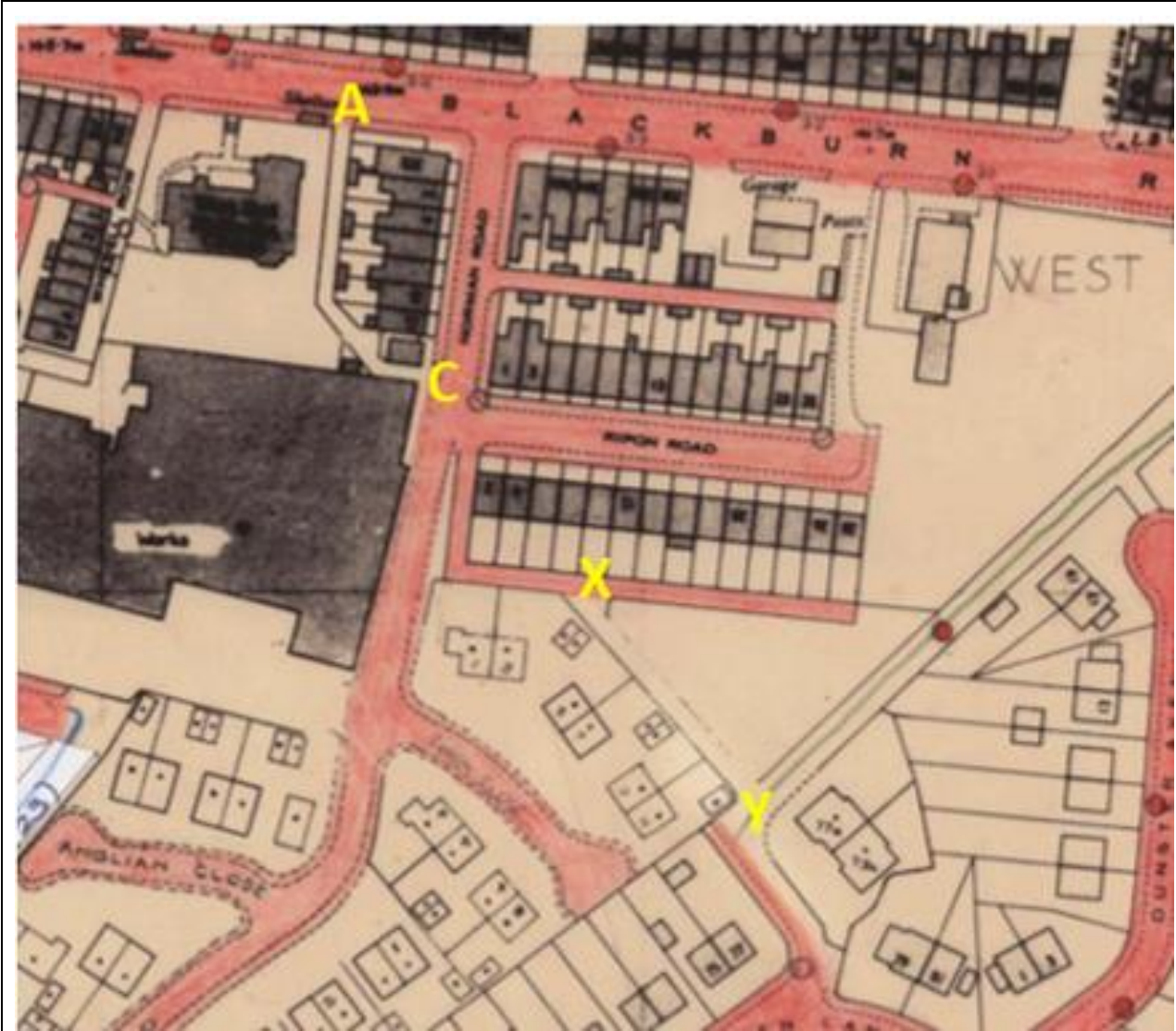


Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) are shown
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		on the Revised Definitive Map (First Review).
Investigating Officer's Comments		Neither the application route nor the continuation of the route through to Aspen Lane (11-5-BW300) were considered to be public rights of way that should be recorded on the Definitive Map and Statement during the preparation of the 1 <sup>st</sup> Definitive Map in the early 1950s through to the 1960s. This could be because they were regarded as streets rather than paths by those involved in the process following the 1949 Act.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils (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 36(6) 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>





LCC adoption plan





LCC adoption layer

<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the county council's records.</p> <p>The route between point X and point Y is not recorded as a publicly maintainable highway on the county council's records.</p> <p>LCC Highways team hold no records regarding when the original length of Norman Road was adopted or when Ripon Road or the back street leading to point Y were adopted.</p> <p>A search was made of the Oswaldtwistle Urban District Council Minutes but no further information was found.</p>
<p>Investigating Officer's</p>		<p>The fact that neither the application</p>



Comments		route nor the route between points X-Y are recorded as publicly maintainable highways does not mean that they do not carry public rights of access. Privately maintainable highways should not be recorded on these records.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the creation, stopping up or diversion of public rights along the application route or the route between points X-Y were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already</p>

		been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
<b>Applicant's Correspondence with Hyndburn Borough Council relating to the obstruction of the application route</b>	2021-2022	Letter from Head of Legal, Democratic Services at Hyndburn Council July 2021 and Letter from Head of Audit and Investigations at Hyndburn Council February 2022 regarding action taken by Hyndburn Borough Council as the relevant planning authority to investigate the erection of fencing and use of part of the application route as a garden.
Observations		When fencing was erected at the rear of 10 Norman Road in line with both their north and boundaries the applicant contacted Hyndburn Borough Council as planning authority to seek the removal of the fencing under planning law. Whilst it is documented that action was taken and notices served requesting the removal of the fencing this was not done and the planning authority concluded that they were ultimately unable to enforce removal of the fencing. The conclusion of the investigation was for applicant was to pursue the removal of the fencing. The applicant was advised that it would be possible to seek a quicker and more effective resolution by pursuing the matter themselves invoking the fact that there was a private right of access along the application route that had been denied. Alternatively they were advised to pursue the matter with Lancashire County Council (as highway authority) who had powers under section 143



		Highways Act 1980 which would enable them to remove structures causing an obstruction to a highway.
Investigating Officer's Comments		<p>When the application route was originally obstructed the applicant was informed that the route was not recorded as a publicly maintained highway in the County Council's Highway records and was not recorded as a public right of way on the Definitive Map and Statement.</p> <p>The County Council had no record of the route being a public highway – whether it was publicly maintainable or not. The applicant was advised that before action to remove any obstructions could be taken it would be necessary to investigate whether public rights existed i.e. whether the route was a public highway.</p> <p>Hyndburn Borough Council have advised the applicant to pursue the matter with the County Council to secure the removal of the fencing on the basis that the route was a public highway – albeit unadopted. The County Council have requested information from Hyndburn Borough Council seeking clarification as to why they have advised the applicant that the route is an unadopted highway and what evidence they have considered when coming to this conclusion. No response has been received.</p>

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

### Summary

The application was to record a public footpath along the route marked A-C on the Committee plan.

Whilst looking at the history of the route and of the land crossed by the route it is apparent that the application route evolved from a footpath shown on the first edition 6 inch and 25 inch mapping. This footpath ran from Blackburn Road to Aspen Lane.

In 1904, when land was sold on which West End Methodist Church was later constructed the conveyance plan clearly showed the footpath across the site and





clearly specified that if the land was to be built on a footpath was to be provided along the eastern boundary of the site.

The second edition 25 inch OS map revised in 1909 and published 1911 shows that this requirement was complied with and the footpath was shown to have been moved to start at point A on Blackburn Road – just east of the Wesleyan Church and continued through to 11-5-BW300.

Shortly after the construction of the church further development took place and Norman Road and the row of terraced houses, along the back of which the application route runs, were built.

The leasehold agreements for these properties clearly refer to the application route as a route which was required to be provided which would form part of a street or back street and which must be retained. The conveyances and leases examined also makes it clear that when requested to do so by the relevant Local authority these leaseholders should bring the route up to an agreed standard to the satisfaction of the Local Authority.

Nothing has been found to suggest that the application route was ever brought up to the required standard to be adopted but this does not mean that it was not a public highway. It was consistently shown on maps, photographs and other documentation since its construction in the early 1900s and there is no evidence that access was restricted or prevented until it was blocked in 2020.

Between point C and point X a route remained available, even after development, to link to the original route of the footpath running through points X and Y on the Committee plan to Aspen Lane (11-5-BW 300). The fact that this route, including the length X-Y, has been retained and is still accessible today, links back to the fact that in the late 1800s/early 1900s there appeared to be an acceptance of the existence of a public footpath of which A-C became part when the original route was altered, and of which X-Y still exists today albeit as an unrecorded public route.

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

### **Landownership**

The majority of the land crossed by the application route is unregistered land.

From point A to around halfway between point B and point C, the land is unregistered. From this point to point C the land is registered to LPS Development Group Limited. The land from point X to point Y is unregistered land.

### Information from the Applicant

The applicant explained that they had witnessed use of the application route over the last 37 years and had been a regular visitor to the street since 1984 when their friend moved into 12 Norman Road. They explain that they would walk along the application route from Blackburn Road through to Norman Road to go round to the front door of the property.



Since 2010 the applicant has owned 8 Norman Road and renovated it before renting it out to a tenant. During the time taken to renovate the property they regularly saw members of the public who did not live there walk the route or ride bicycles along it. They explain that the route has been in constant use for refuse collection and is vital should emergency services be required.

The applicant explains that until March 2020 when access along the route was blocked by the owners of 10 Norman Road, the back street was available to any member of the public at any time.

The applicant does not recall any signage suggesting it was private, nor any sort of obstruction preventing or restricting access.

The applicant points out that the deeds to the houses along the terrace refer to the 'back street' behind them, but do not grant residents permission to access it and that the wording of the deeds to the properties suggests that the builders expected the back street to be adopted by the local authority.

In addition, the applicant provided:

Letter from Head of Legal, Democratic Services at Hyndburn Council July 2021 and Letter from Head of Audit and Investigations at Hyndburn Council February 2022 regarding action taken by Hyndburn Borough Council as the relevant planning authority to investigate the erection of fencing and use of part of the application route as a garden.

The documents listed above have already been considered in detail earlier in the report.

In addition the applicant submitted two witness statements:

#### Statement 1

The author explains that they have lived at one of the properties backing onto the application route since 1984 and that ever since moving there they have had full access to Blackburn Road along the application route via a gate from their property which leads straight out onto the application route. They explain that their children used to play out on the 'back street' with their friends because it was considered to be a safe place to play. They recount that many people used to use the 'back street' as a short cut between Blackburn Road and Norman Road as it was more direct than going along Norman Road. They also refer to being able to drive up and down the route and if needed her former husband would use the route with a vehicle to drive to their rear gate to load and unload the car.

They state that there had been full access along the route until it was blocked off by the neighbour.

#### Statement 2

The author explains that she is 35 (in 2022) and lived at a property backing onto the application route until she was 18. She explains that as she grew up her dad



maintained the alley (application route) for her and her sister to ride their bikes along and that throughout the years the route was used by the public to walk to and from Blackburn Road. When she was 25 she moved into another property adjacent to the application route and the route was still being used by the public on foot although was no longer being maintained by her parents. She explained that West End Methodist Church used the route as access to the church and refers to a gateway from the application route that was historically used for delivering coal to the kitchen.

They explain that in March 2020 the owners of 10 Norman Road erected fencing and locked gates creating a larger garden at the rear of their property by including part of the application route.

#### Information from Others

It is worth noting that the first two consultation responses detailed below are from the same two people who provided the above witness statements.

An owner of land adjacent to the application route responded to consultation by stating they had lived in their property for the last 38 years and have always had access to the 'alley way'. She stated that her children played in it when they were younger, that people use it as a shortcut and that people walk their dogs there. She explained that there had never been any locked gates to stop access, until recently. She also stated there has never been any signs explaining people cannot use the 'alley'. Likewise, she has never been told she cannot use the route.

An occupier of land adjacent to the application route responded to consultation by explaining that she lived in a property adjacent to the route from 1986 to 2005. She moved to another property which is also adjacent to the application route, in 2011 and has lived there since. She explained that she remembered using the path to ride her bike on when she was younger and used it as a shortcut with friends, as a teenager. She also stated that anybody could walk the whole length of the path, there has never been any gates or signs that it is private, and nobody has ever needed permission to use it.

A landowner of land adjacent to the application route responded by simply highlighting the land in their ownership.

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

Openreach responded to consultation by stating they are affected by the application. Openreach has underground cabling and a distribution pole located within the proposed area at the rear of 2-12 Norman Road Oswaldtwistle Accrington.

#### Information from the Landowner

LPS Development Group Limited, the only registered landowner of the application route, provided no response to consultation.



## Assessment of the Evidence

### The Law - See Annex 'A'

#### Conclusion

The application made is that the route marked A-B-C has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. It is considered that the section X-Y – although not part of the application - should also be recorded.

It is advised that as there is no express dedication in this matter, Committee should consider, on balance, whether there is sufficient evidence from which to infer dedication at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use.

Considering initially whether there are circumstances from which dedication could be inferred at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site and user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence provides evaluation of the documentary evidence. The route is not shown to exist on any of the early small-scale commercial maps and there is no Tithe Map for the land crossed by the route. It would appear from the evidence that the application route evolved from a footpath running from Blackburn Road to Aspen Lane as shown on the first edition 6 inch and 25 inch mapping. The 1904 conveyance relating to the sale of the land on which the Methodist Church was subsequently built acknowledges a footpath across the site and provides that, should the land be built on, a footpath should be provided along the eastern boundary of the land. Committee will note that it is evidenced on the 25 inch OS Map published in 1911 that this requirement was complied with, the footpath having been diverted to run along the outside boundary of the church from point A to point C and onwards to point Y. The leasehold agreements dating from 1909 to 1919 in connection with the row of terraced properties constructed on Norman Road also make reference to the application route being required to form a back street which must be retained. Reference is also made to the requirement for leaseholders to bring the route up to an agreed standard when required to do so by the local authority.

Whilst no evidence has been located to suggest that the route was ever brought up to the necessary standard for adoption, it was clearly and consistently shown on maps, photographs and other documents since having been constructed in the early 1900s and there is no evidence of access of the route having been blocked or prevented until the erection of the fencing in 2020.

Committee will note that post 2020 a route remained and still remains available between points C and X and through to point Y to Aspen Lane.



On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public footpath and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. However, should Committee have any reservations as to the strength of the evidence it may also wish to consider whether deemed dedication under s31 Highways Act 1980 or inference at common law can be satisfied from the user of the route.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to its status being called into question. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a right of way.

In this matter, the evidence indicates that access to the route A-C was obstructed at point B in 2020 by fencing having been constructed at 10 Norman Road in line with the boundaries of 8 and 12 Norman Road (the land forming part of the application route then being subsumed into the garden of 10 Norman Road). Accordingly, it is suggested that the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 2000 to 2020.

In addition to evidence relating to their own use of the route, the applicant has provided two witness statements in support of the application. Two letters from Hyndburn Council were also provided by the applicant.

The users claim to have used the route on foot, by bicycle and one user, by car (if needed to load or unload the car). Reference is also made to children using the route to play and of the Methodist Church using the route as access to the church. All users provide evidence of use during the period under consideration and all users refer to having regularly witnessed others using the route.

None of the users make reference to having ever been told that the route was not a public right of way, nor does any user refer to having been turned back or having asked for permission to use the route. None of the users refer to having seen signs or notices along the route advising that the route was not public and, until the erection of the fencing and locked gates in 2020, no reference is made to obstructions preventing or restricting access along the route.

Consultation responses have also been received, including those from the same persons providing the witness statements in support of the application

Committee's attention is drawn to the fact that the number of users who have provided support for the application can be viewed as a relatively low number. Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that three users of the route A-C are not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a footpath and fails to satisfy the statutory test over the application route A-C and also the route X-Y.





In conclusion, taking all of the evidence into account, Committee may consider that it can reasonably be alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order for the route shown on the Committee plan A-C (the application route) and also the route under investigation X-Y and promote the Order to confirmation.

#### Applicant/Landowners/Supporters/Objectors

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

#### **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**

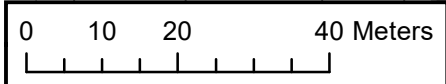
##### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-762		Annabel Mayson, 01772 533244, Legal and Democratic Services
Reason for inclusion in Part II, if appropriate		



373100 000000

373200 000000



428300 000000

428300 000000

428200 000000

428200 000000



■ ■ ■ ■	Application Route
- - - -	Public Footpath
-   -   -   -	Public Bridleway

373100 000000

373200 000000



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

Wildlife and Countryside Act 1981  
 Addition of Footpath from Blackburn Road to Norman Road, Oswaldtwistle

1:1000



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 21 June 2023

**Part I**

Electoral Division affected:  
Lancaster Rural North

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath at Starrick's Woods, Priest Hutton**  
(Annex 'A' refers)

Contact for further information quoting file reference 804-759:  
Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,  
[simon.moore@lancashire.gov.uk](mailto:simon.moore@lancashire.gov.uk)  
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning  
and Environment Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Back Lane, Priest Hutton to Footpath 1-26-FP12 through Starrick's Woods.

**Recommendation**

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met with the information available, the Order be confirmed if no objections are received and not withdrawn, otherwise the matter be referred back to Committee for a decision on the stance to be taken when referring the Order to the Planning Inspectorate, in the light of the further information received.

**Detail**



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

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

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

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

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

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

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

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

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

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

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

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

## **Consultations**





## Lancaster City Council

Lancaster City Council provided no response to consultation.

## Priest Hutton Parish Council

Priest Hutton 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	5390 7375	Open junction with Back Lane
B	5391 7376	Junction of tracks
X	5435 7383	Pecked line across route on Tithe Map (nothing visible on the ground now)
C	5456 7398	Line across route on Tithe Map (nothing visible on the ground now)
D	5475 7410	Junction with 1-26-FP12

### **Description of Route**

A site inspection was carried out in November 2022.

The application route leaves Back Lane, which runs between Priest Hutton and the east end of the village of Borwick, just west of the sharp bend (point A on the Committee plan).

From the open junction with Back Lane the application route runs along a wide compacted stone surfaced track for approximately 10 metres to where the track splits (point B). One route continues in a generally north easterly direction through a field gate to continue as a bounded track providing access to fields to the north of the application route. The other route, the application route, runs in an easterly direction crossing Hall Beck via a concrete slab and then more north easterly direction ascending the hillside as a substantial bounded route all the way through to the junction with 1-26-FP12 (point D).

The full length of the route B-D is 3-4 metres wide and bounded on either side by a mixture of mature hedges and dry-stone walls. Gateways provide access through the hedges/walls into adjacent fields. The surface of the route was firm underfoot with compacted stone and a central grass strip. On the day that the route was inspected there was recent evidence of use by farm vehicles (tractor tyres) along the route and through several gateways into adjacent fields.



At the north eastern end of the application route the bounded track ends at a gateway leading into a field. Just before reaching the gateway there is a wooden stile crossing a stone wall to provide access into a different field on the south east side of the application route. A public footpath signpost, currently askew and not pointing along the recorded line of the footpath, is located adjacent to the stile. From the application route at point D access onto and along 1-26-FP12 was available although there was no trodden track visible.

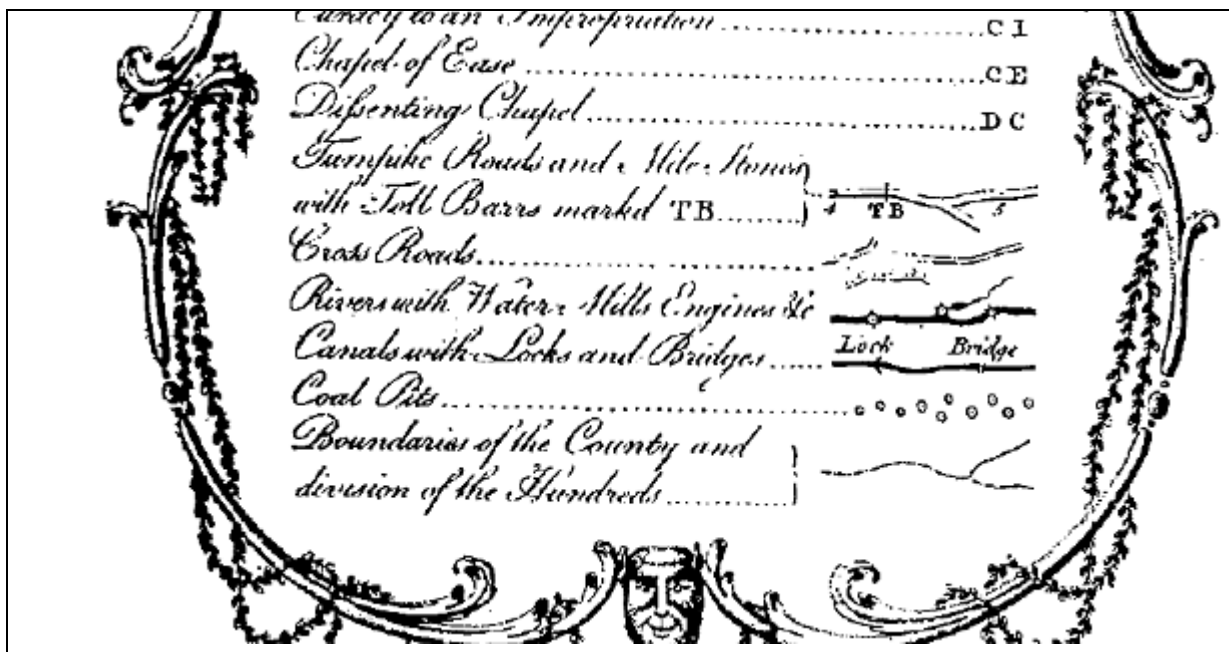
The total length of the application route is 930 metres.

### 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.

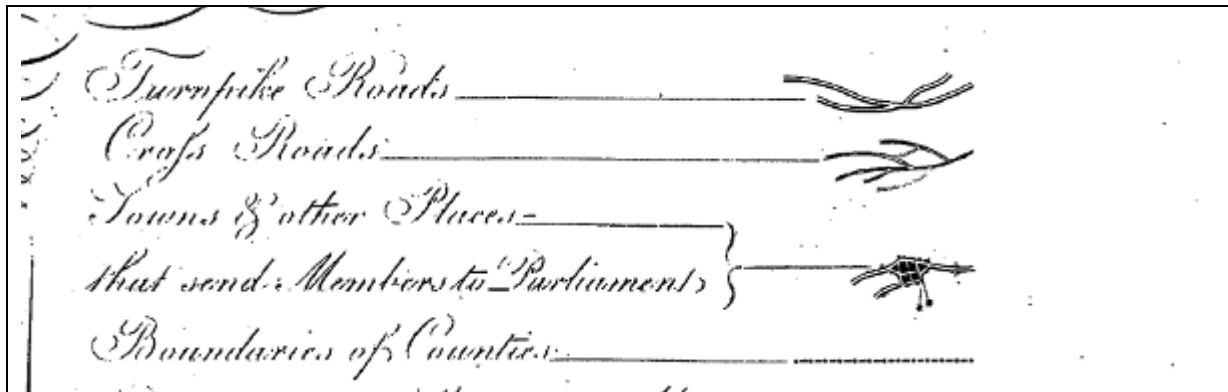
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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





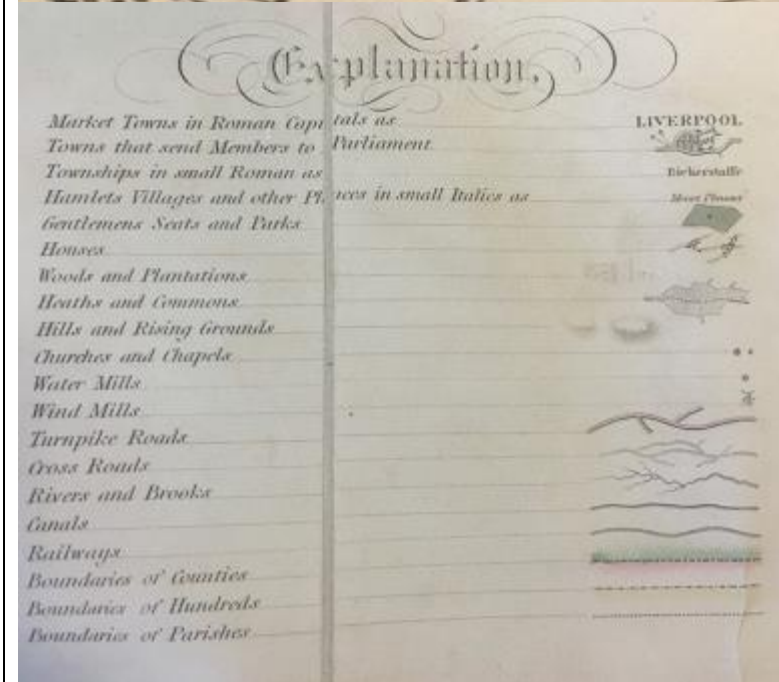
Observations		The application route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1786 or if it did exist was not considered to be a substantial public route.
<b>Greenwood's Map of Lancashire</b>	<b>Map of 1818</b>	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.





<p>Observations</p>		<p>The application route is shown together with the other route which leaves Back Lane at the same point but which then runs roughly parallel further north. Both routes appear to end on open ground with no buildings shown along or at the end of them. The application route is shown as a cross road, in the same way that Back Lane and the route to the north of it are shown.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1818. It is shown as a cross road with the inference that it would have been capable of being used at least on horseback at that time.</p>
<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<p>Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 ½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>

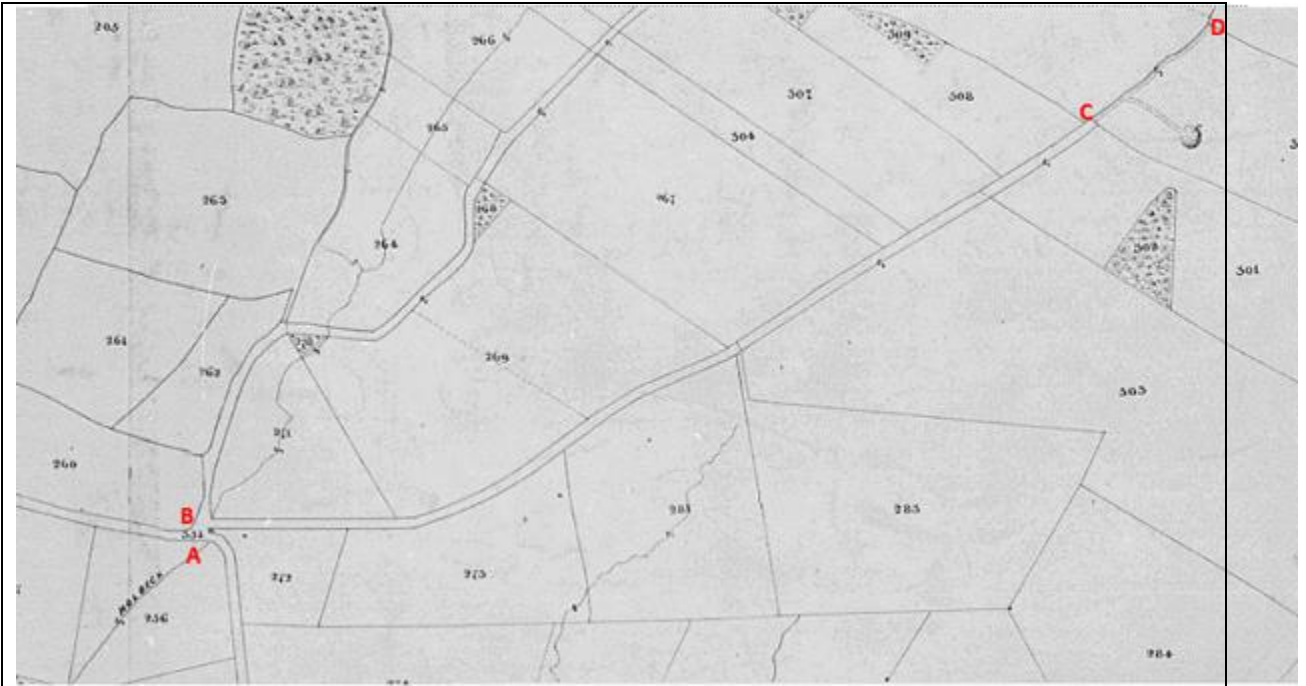


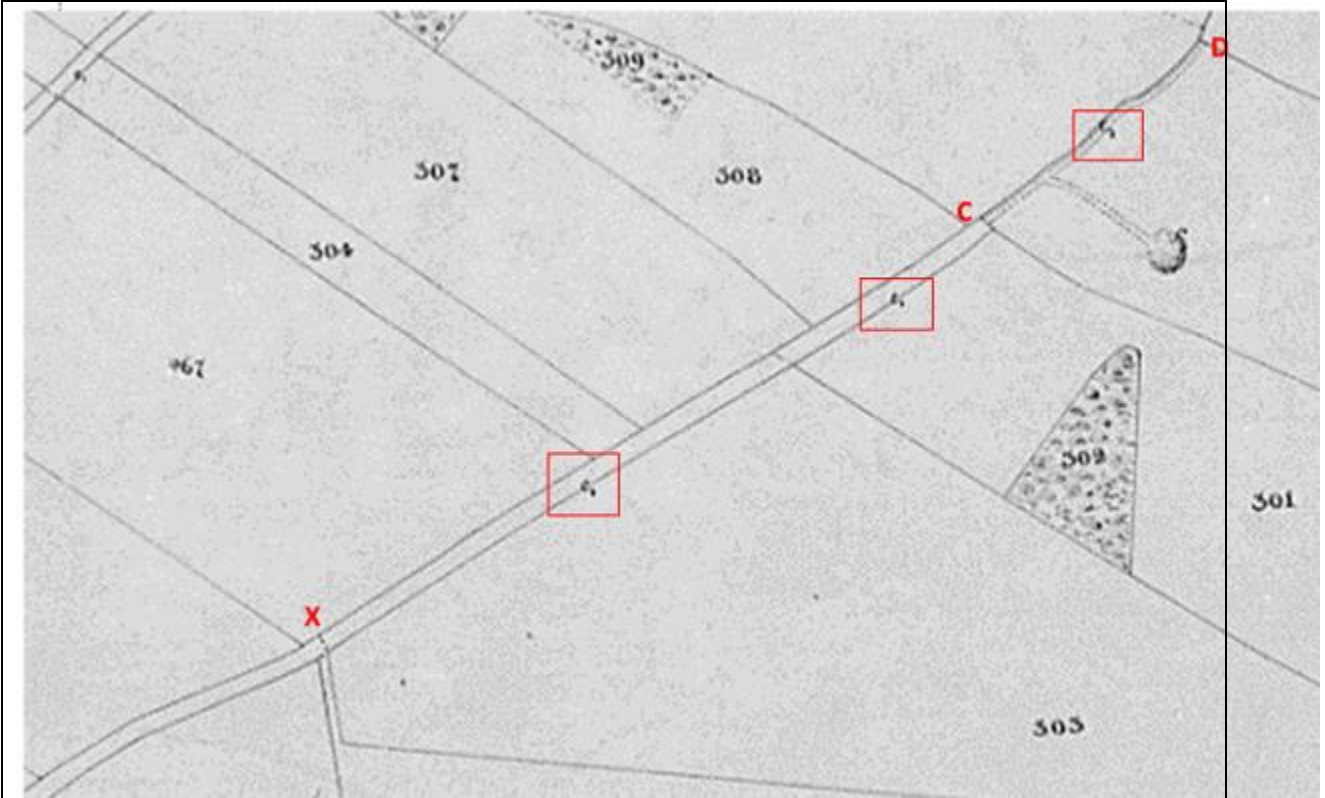


<p>Observations</p>		<p>The application route is not shown – other than the first few metres which form part of the other route shown on Greenwoods Map above which also started at the same point on Back Lane but ran in a more north westerly direction to the north of the application route.</p>
<p>Investigating Officer's Comments</p>		<p>Maps predating and post-dating Hennet's Map show the application route so it is likely that it did exist in 1830 but that</p>



		Hennet did not show it on this small-scale map because he did not consider it to be a significant public vehicular route.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing, dismantled or known proposals for canals or railways across the land over which the application route runs.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights
<b>Tithe Map and Tithe Award or Apportionment</b>	1846	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large-scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





Thomas Anman	167	Tithe Barn
Public Roads & Waste Ground	1	Road
	69	Whitbents Grass
	121	Gardens, (cellars & etc)
	156	Pierfeld
	351	Public Roads



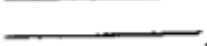


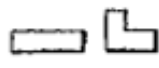

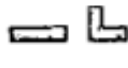


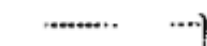

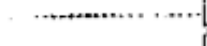





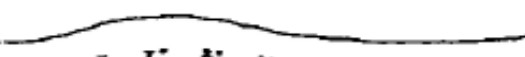

	171	Middle	1	1
	172	Water Bank	3	1
			3	3
James John Trustees of James Norby	361	House and Lane	6	2
	362	Plantation	2	2
			7	1



Hovvissen Tolow Trustees of	William Richardson	293	Briggs Hill
		294	Raven Hill
		295	Raven Gate Wood
		303	Hwaite Lane

# PAPER 1837 XLI 405.

AND IN THE PLANS made under the ACTS  
IN ENGLAND & WALES.

	Turnpike Roads		Churches
	High or Cross Roads		Chapels
	Rail Roads		Dwelling Houses
	Bridle Roads		Farm Buildings
	Foot Paths		Smithies
	Open Roads		Stone Windmills
			Wooden Windmills
	Sunk Roads		Water Mills
	Raised Roads		Iron Works
	RIVER		Glass Works

Extract from the British Parliamentary Paper 1837 Key of Symbols

Observations	The full length of the application route is shown as a bounded route from point A through to point C. There is a pecked line across the track (point X); the
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		<p>key does not include this but conventionally it indicates a change in surface or other permeable (to traffic) feature. At point C a line is shown across the route beyond which a track consistent with the application route is shown running to the south east of a boundary. Partway between point C and point D a track is shown branching off the application route to lead directly to a small quarry.</p> <p>The application route ends at point D and no route is shown continuing beyond that point. The route recorded as 1-26-FP12 is not shown.</p> <p>Back Lane is numbered as plot '351' where the application route starts at point A. Back Lane is also numbered as plot '351' further west towards the village of Priest Hutton and also further south from the junction with the application route. Plot 351 appears to extend up the application route (and the other route) as far as the pecked lines across the tracks.</p> <p>On inspecting the Tithe Map for Priest Hutton it was noted that roads considered at that time to be public roads were numbered '351' and were listed as such in the Tithe Award.</p> <p>The fields adjacent to the route are all numbered and of significance is the fact that beyond the pecked line (X) the three fields to the south east of the application route are all shown as being braced with the route itself. Bracing on the map indicates two parts of the same plot of land which are divided by a line on the base map but are connected and generally in the</p>
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		<p>same ownership.</p> <p>Plot 303 was listed as being owned by the Trustees of John Harrison and occupied by William Richardson. The description of the land in the Tithe Award was 'Thwaite &amp; Lane'.</p> <p>Plot 301 was listed as being owned by the Trustees of John James and occupied by James Hornby. The land was described in the Tithe Award as 'Thwaite and Lane'.</p> <p>Plot 300 was listed as being owned by Jane Watson and occupied by William Richardson and described as 'Thwaite'</p> <p>The land accessed by the application route beyond point D was listed as plot 319 owned by Lazarus Threlfall and occupied by Robert Muckalt and described as 'Intake'.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed in 1846 although access may have been restricted, possibly by a gate, at point C. Beyond point D there was no indication that the route continued, and 1-26-FP12 was not shown.</p> <p>The application route does not appear to have been considered to be a public road at that time and three owners are listed of part of the route.</p> <p>The word 'thwaite' traditionally referred to a piece of land that had been cleared from forest or reclaimed from wasteland and 'intake' was a piece of land 'taken in' from a moor and brought under cultivation.</p> <p>The information provided by the Tithe Map and Award therefore substantiates the Investigating Officer's view that the route was most likely to have originally come into being when a large</p>

		<p>area of moorland was inclosed for farming and that the route was set out as a bounded 'dead end' route specifically to provide access to adjacent fields.</p> <p>Whilst access along the route may have been available to the public in 1846 it is the Investigating Officer's view that unless a through-route was in existence (of which there is no evidence) then the route was a private access track (occupation road) at that time.</p>
<b>Inclosure Act Award and Maps</b>		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No inclosure Map, Award or Agreement could be found relating to the land crossed by the application route although it was noted that both the application route and the route running parallel to it show characteristics associated with routes created for the purpose of accessing land that had been through an enclosure process. Both are substantial bounded routes providing direct access to fields that could not be easily accessed without them (long thin parcels accessed from the ends abutting occupation roads). Both are 'dead end' routes which do not connect to other public or private routes and neither provide access to any buildings or properties.</p>
Investigating Officer's Comments		<p>No record could be found relating to the application route coming into being as a public or private route because of the inclosure of land although there appears to</p>

		<p>be no other reason for the route to have been constructed other than to provide access to adjacent land. Information provided by the Tithe Map and Award as discussed above appear to substantiate this view.</p>
<p><b>6 Inch Ordnance Survey (OS) Map</b></p> <p><b>Lancashire Sheet XIX</b></p>	<p>1847</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1845 and published in 1847.<sup>1</sup></p> <p>However it has recently become apparent that in many instances there was more than one 'print run' for OS First Edition 6 inch maps. Up until c.1867 the 6 inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - <a href="https://maps.nls.uk/os/">https://maps.nls.uk/os/</a> Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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



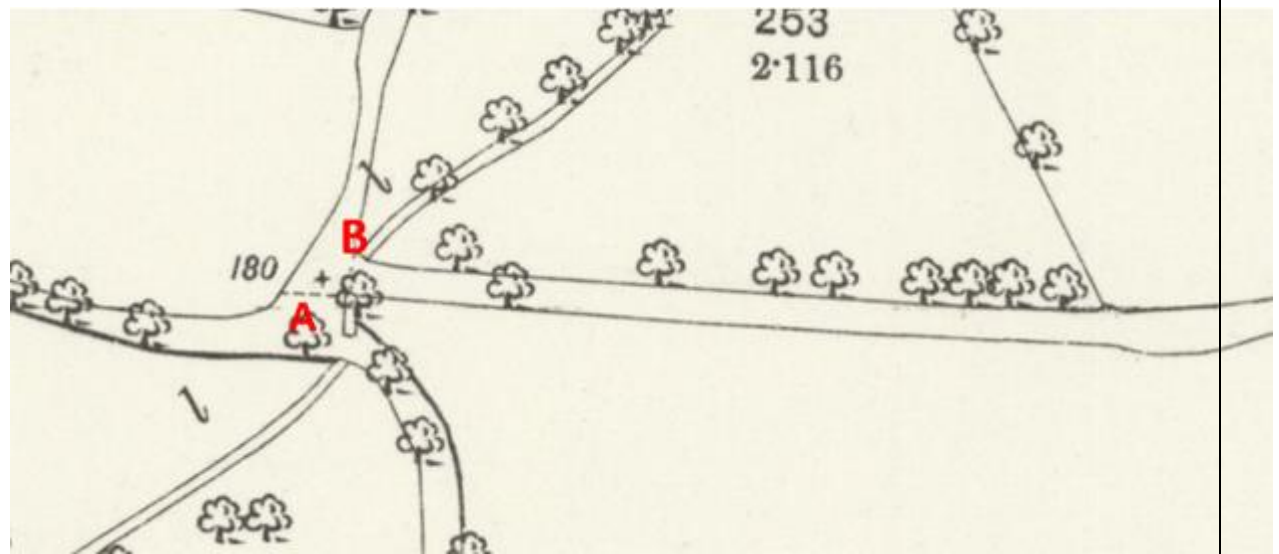
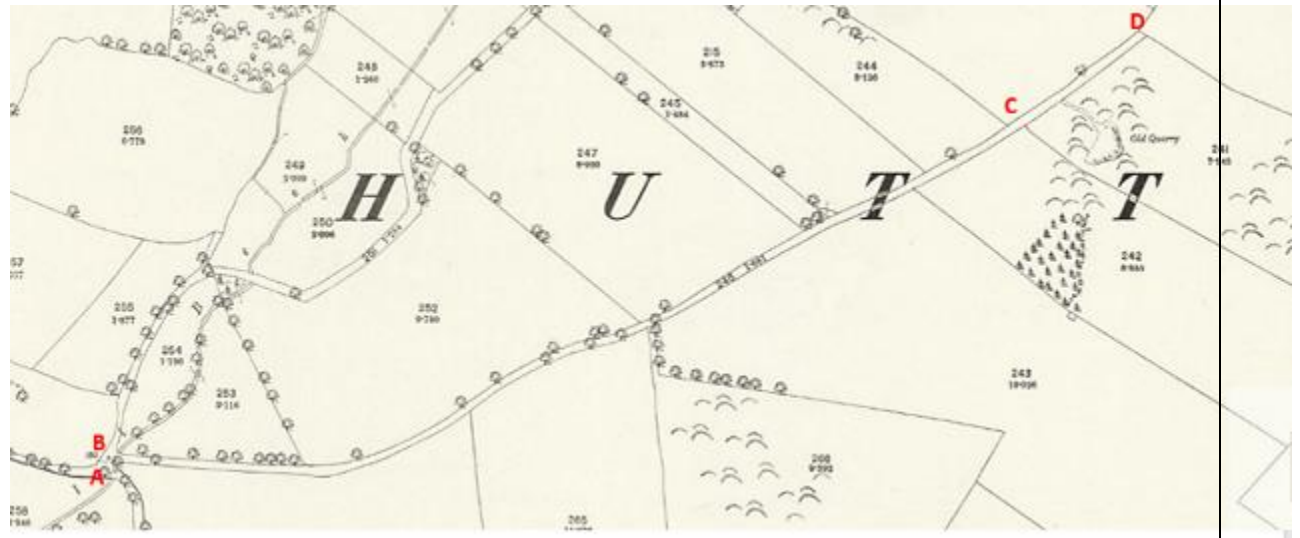


Map extract from National Library of Scotland

<p>Observations</p>		<p>The application route is shown as a substantial bounded route from point A through to point C. Pipes are marked close to point B, across the application route and Back Lane. No lines are shown across the route which may have indicated the existence of gates or other restrictions. No line is shown across the route at points X or C (unlike on the Tithe Map). Between point C and point D the route is shown to run along the northwest edge of the field but is not fenced separately from it. The route 1-26-FP12 is not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed in 1844-45 and appeared to be capable of being used. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it</p>



		is submitted that use would have been primarily to access adjacent land and there is no indication of public use.
<b>25 Inch OS Map Sheet XIX.14</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 to 1890 and published in 1891.



Observations		<p>The full length of the application route is shown as a bounded route through to where it ends at point D.</p> <p>Back Lane is shown on the map bounded on the south and eastern sides by a thickened line in contract to the application route which is shown by the thinner lines on either side.</p>
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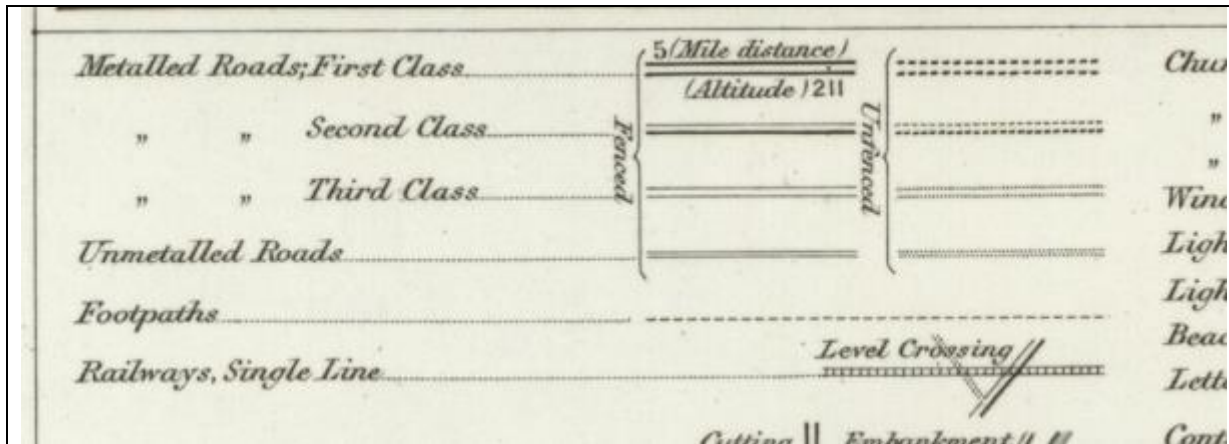


		<p>No solid lines are shown across the application route suggesting that it was not gated and that access was not restricted. Dashed lines are shown across the start of the route at point A and at point B where the application route splits from the route which continues in a more north westerly direction. These dashed lines probably indicate a change in the surface of the route.</p> <p>Between point C and point D a track can be seen leading southeast from the application route to an area marked as 'old quarry'.</p> <p>At the north eastern end of the application route (point D) the bounded route ends and no tracks or paths are marked on the map as continuing from this point. 1-26-FP12 is not shown.</p> <p>The route has a dedicated parcel number and acreage – 246, 1.681.</p>
Investigating Officer's Comments		<p>The application route existed in 1889-1890. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is submitted that use would have been to access adjacent land. An 'old quarry' is marked on the map accessed from the application route again suggesting that the route could have been used to access the quarry but this was unlikely to have been public use. The Planning Inspectorate Consistency Guidelines state "Public roads depicted on 1:2500 maps will invariably have a</p>

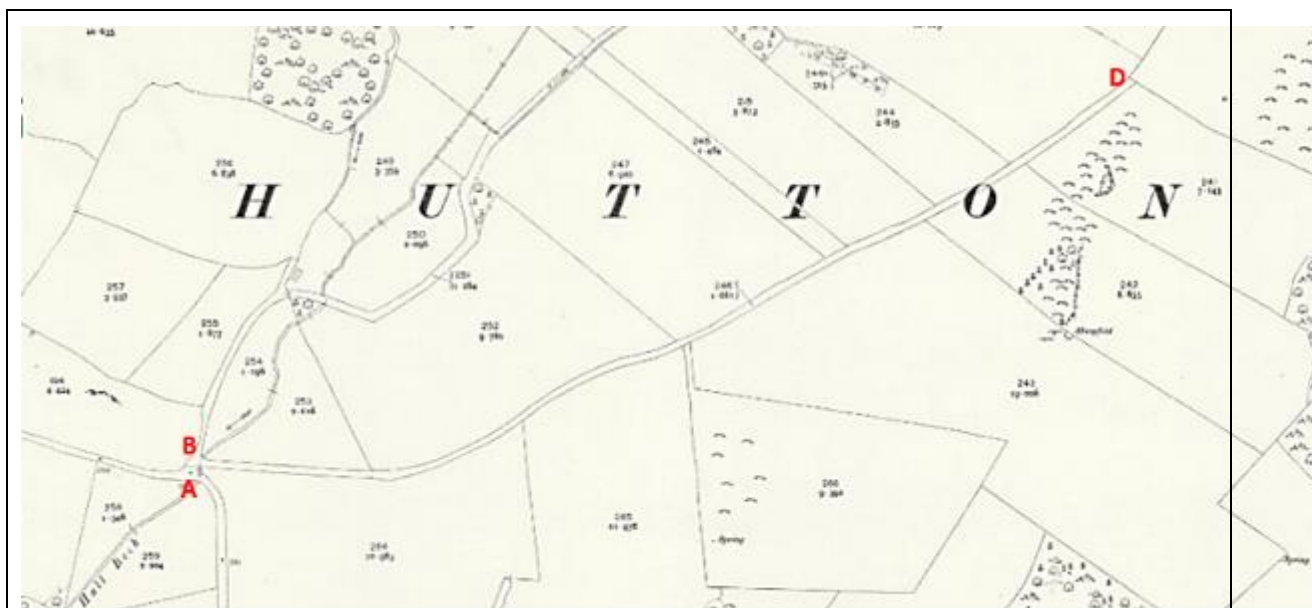


		<p>dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p> <p>Shading, colouring and the use of thickened lines were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the application route is not shown in this way suggests that it was not considered to be a public vehicular route in good repair at that time.</p>
<p><b>1 Inch OS Map Sheet 49 – Kirby Lonsdale (Hills)</b></p>	<p>1898</p>	<p>1 inch OS map, date of survey not known.</p>





Observations		The application route is shown in the same way as Back Lane and both are shown as third class metalled roads. Again, the application route is shown as a dead end.
Investigating Officer's Comments		The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps were originally produced for military purposes in case they were needed for defence and although it is noted that this is a Second Edition 1 inch OS map the significance of the early military surveys was still relevant. However the inclusion of the route on this map suggests, as larger scale maps have confirmed, that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public or private.
<b>25 Inch OS Map Sheet XIX.14</b>	1913	Further edition of the 25 inch map surveyed in 1889-1890, revised in 1910 and published in 1913.



Observations		<p>The application route is shown in the same way that it is shown on earlier OS mapping.</p> <p>No route(s) extending beyond point D are shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1910. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether there was any use except as private access to adjacent land.</p>
<b>Bartholomew half inch Mapping</b>	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were</p>

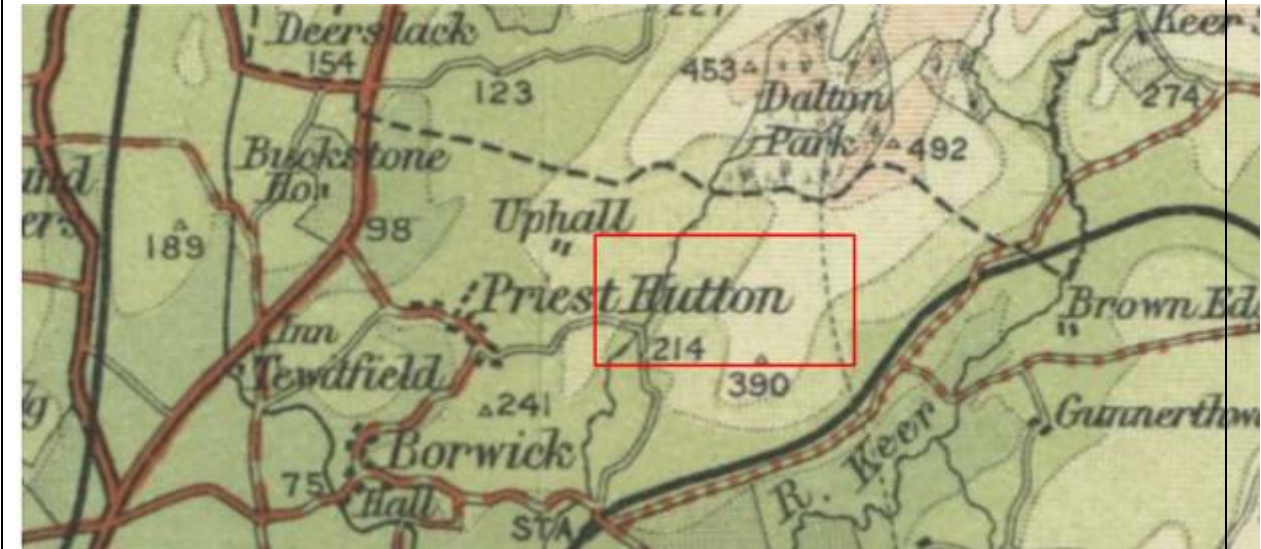




reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



1905



1920







1941

Observations		The application route is not shown on any of the three maps examined.
Investigating Officer's Comments		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 application 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 road at that time. Footpaths and Bridleways were not normally shown, so no inference can be drawn in that respect.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.



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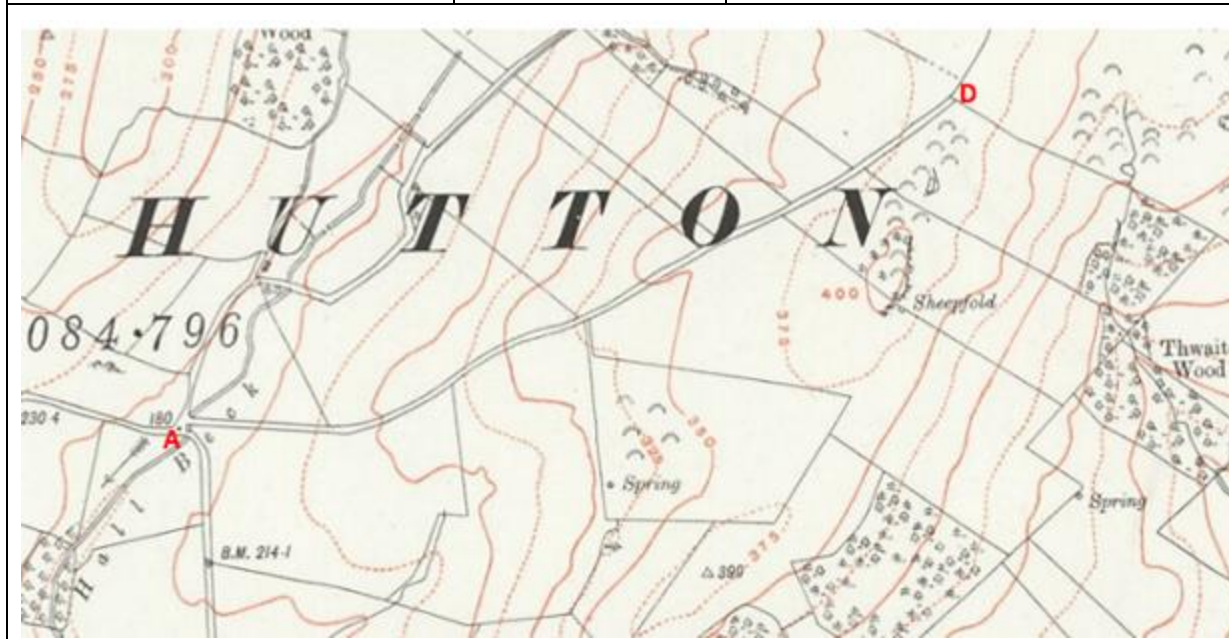


Observations		The full length of the application route was excluded from the numbered plots – as was the route running in a more north easterly direction to the application route from point A.
Investigating Officer's Comments		<p>In this instance the route between point A and point D is shown excluded from the adjacent hereditaments which is often considered to provide good evidence – but not conclusive evidence - of public carriageway rights.</p> <p>The information provided needs to be evaluated in the context of all other available evidence. As detailed later in this report ownership of the land crossed by the application route is not registered and ownership unknown. If ownership of the route had been unknown in the early 1900s then it may have been excluded for that reason.</p> <p>There may be other reasons to explain its exclusion to. It has been noted, for example, that there are some cases of a private</p>



		<p>road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments. Whilst this is not a consistent approach there are examples in other parishes local to this route where this appears to have happened. Whilst no Inclosure Award or agreement has been found in relation to the land crossed by this route there is the suggestion that this may have been why the route came about.</p> <p>Taking into account other available evidence, the exclusion of the route in this instance is more likely not to be evidence of public vehicular rights in this case This does not necessarily mean that a footpath or a bridleway may not have existed along the route and this needs to be looked at carefully in context with all other available evidence.</p>
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<p><b>6 Inch OS Map Sheet XIX.SW</b></p>	<p>1919</p>	<p>Further edition of 6 inch map, revised 1910-1911 and published in 1919.</p>
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<p>Observations</p>		<p>The application route is shown in the same way that it has been</p>
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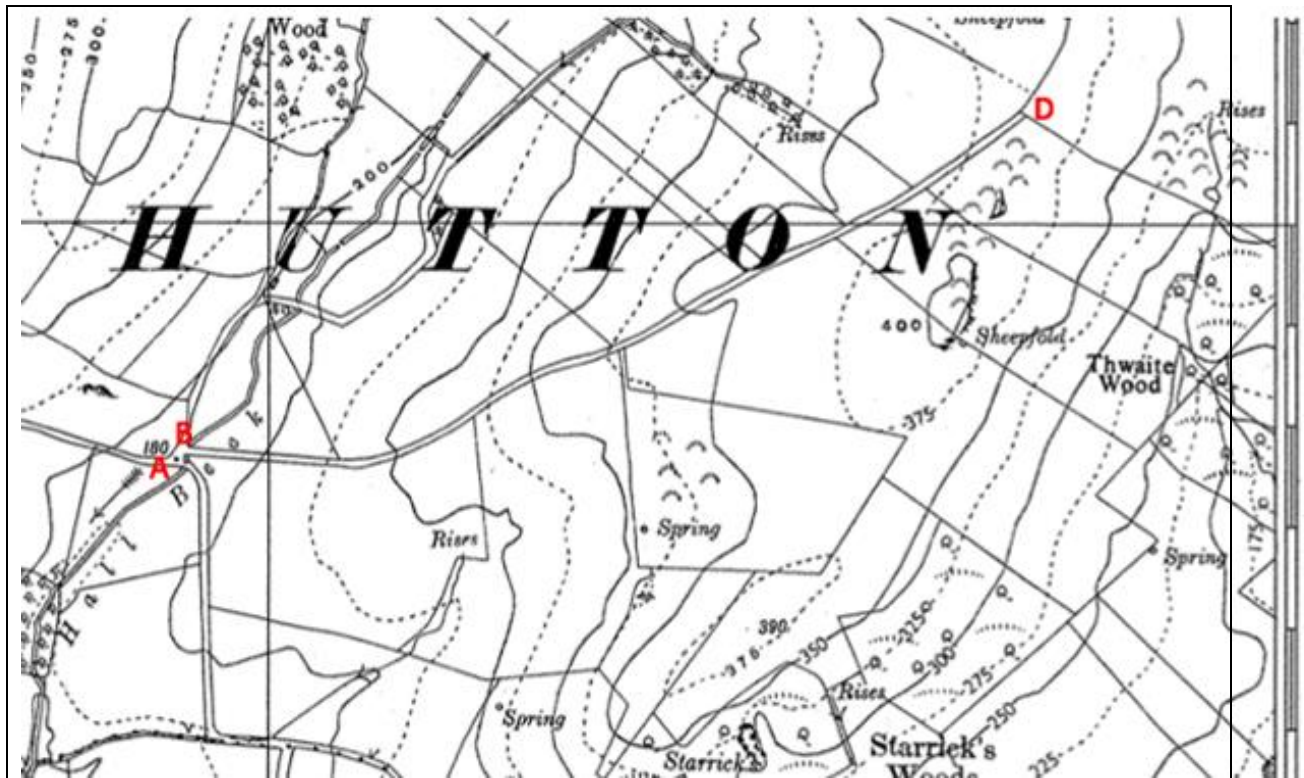
		shown on earlier OS maps. No route is shown continuing from point D.
Investigating Officer's Comments		The application route existed in 1910-1911. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether this use would have been public or private although the route only appears to provide access to adjacent land.
<b>1932 Rights of Way Map</b>		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.





Observations		Neither the application route nor route now recorded as 1-26-FP12 are shown.
Investigating Officer's Comments		Neither the application route nor 1-26-FP12 were considered to be public footpaths in 1932.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph from the 1940s was available to view for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch OS Map SD57SW</b>	1956	OS map revised before 1930, published in 1956 and reprinted in 1964 with new major roads.

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



74

Observations		The application route is shown in the same way that it has been shown on earlier OS maps. No route is shown continuing from point D.
Investigating Officer's Comments		The application route existed before 1930. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether this use would have been public or private although it is suggested that the primary purpose of using the route would have been to access adjacent land.
<b>Additional 1 inch OS maps supplied by the applicant</b>	1945-1965	Several additional small-scale OS maps were submitted by the applicant in support of their application with a selection of map excerpts included below.





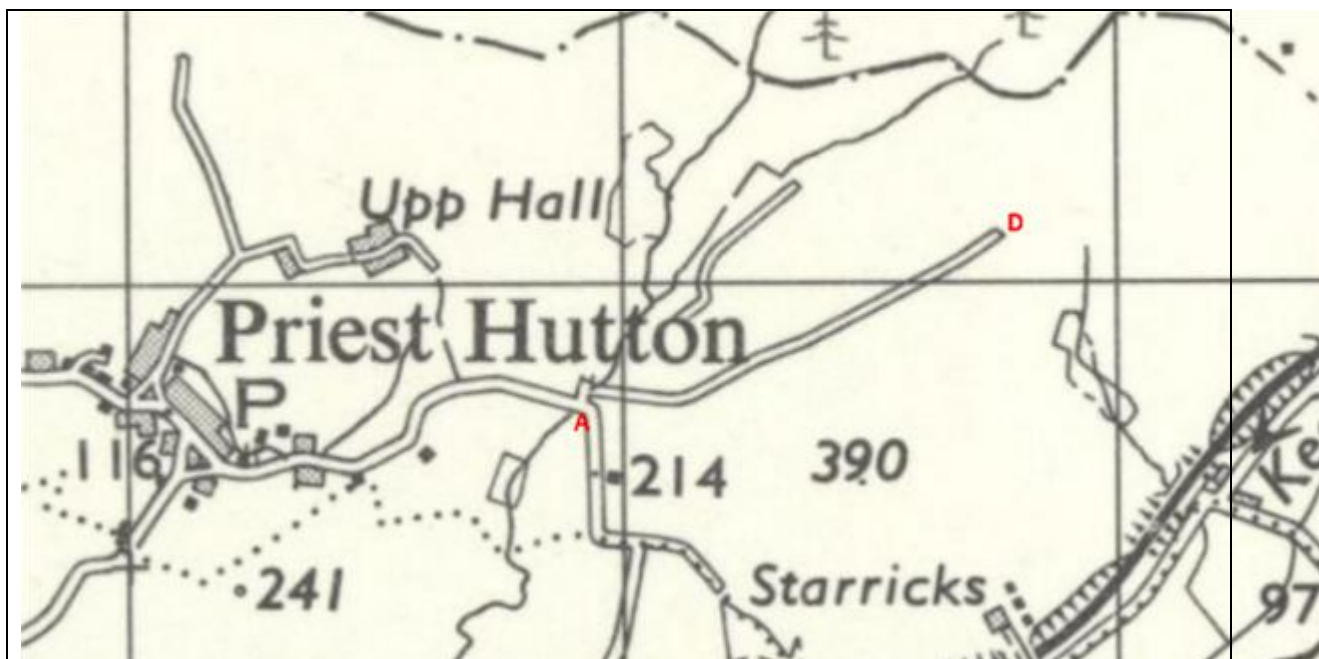
Ministry of Transport Roads.....	<b>A.6</b>	<b>B.6254</b>
Other Motor Roads.....	—————	—————
"    "    " <i>narrow</i> .....	<i>Good</i>	<i>Bad</i>
Minor Roads.....	—————	—————
Bridle & Footpaths.....	-----	-----
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$ .....	—————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

1014.

Sheet 89 – Lancaster & Kendal – Revised 1945-47 Published 1947



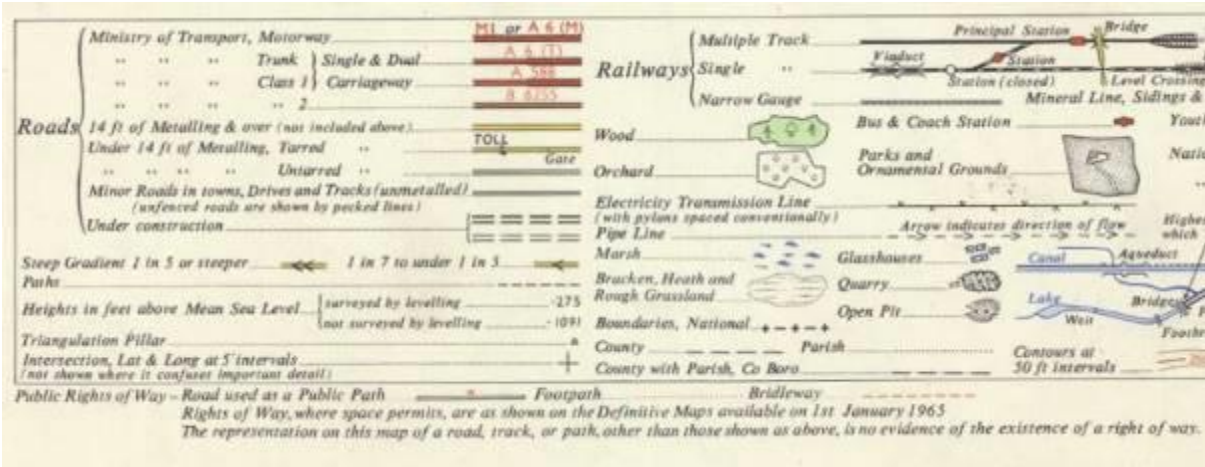
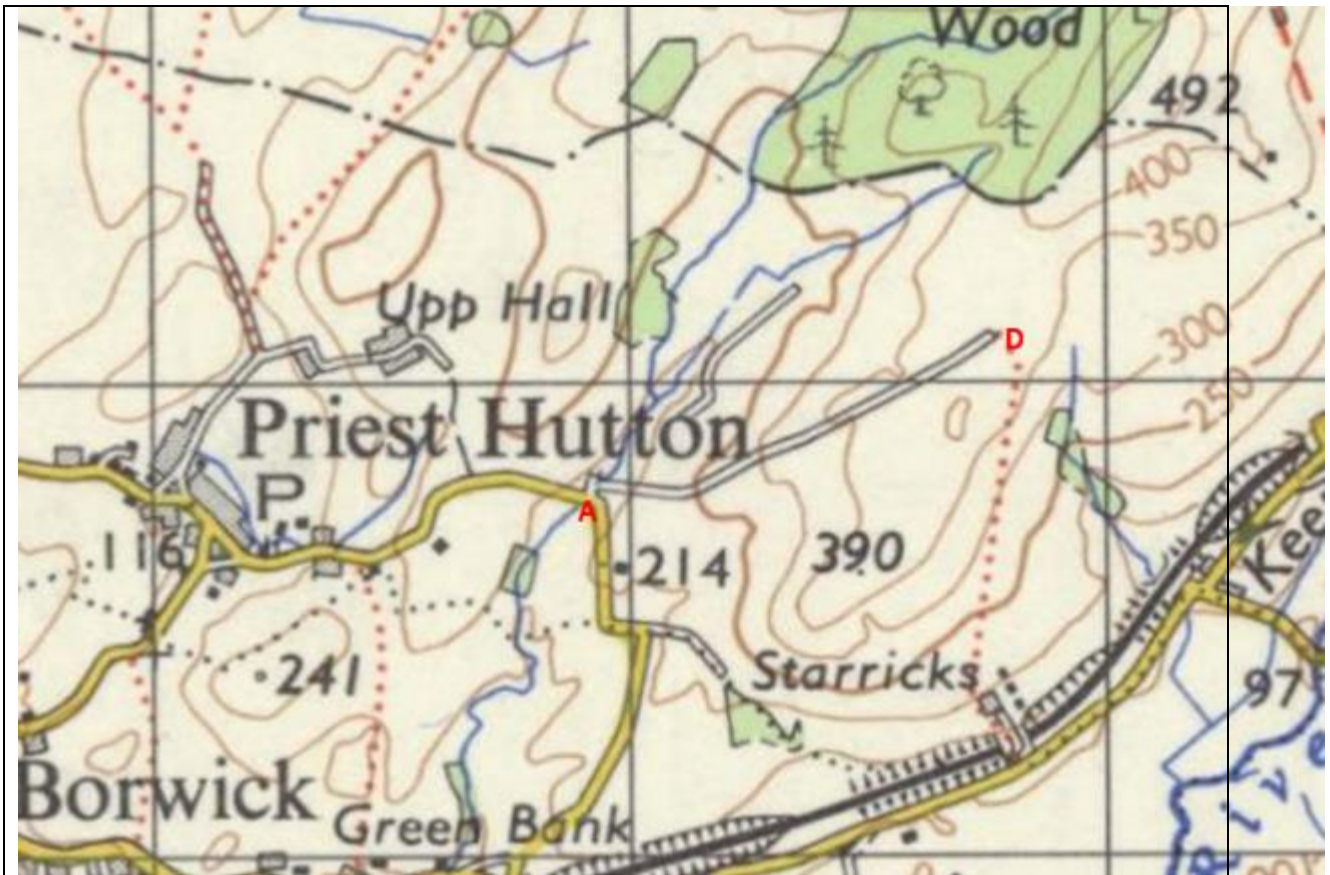




Roads	Ministry of Transport, Motorway	or	=====		
	" " " Trunk	} Single & Dual	=====	Railway	
	" " " Class 1		=====		
	" " " " 2		=====		
	14 ft of Metalling & over (not included above)		=====	Wood	
	Under 14 ft of Metalling, Tarred		===== TOLL	Gate	
	" " " " Untarred		=====	Orchard	
	Minor Roads in towns, Drives and Tracks (unmetalled) (unfenced roads are shown by pecked lines)		=====	Electricity (with pylon)	
	Under construction		(=====)	Pipe Line	
	Steep Gradient 1 in 5 or steeper	↔↔↔	1 in 7 to under 1 in 5	↔↔↔	Marsh
Paths		-----		Bracken, E	
Heights in feet above Mean Sea Level	{	surveyed by levelling	.....	·275	Rough Gra
		not surveyed by levelling	.....	·1091	Boundarie

Sheet 89 – Lancaster & Kendal 7<sup>th</sup> Series 1 inch OS map published 1952-1961





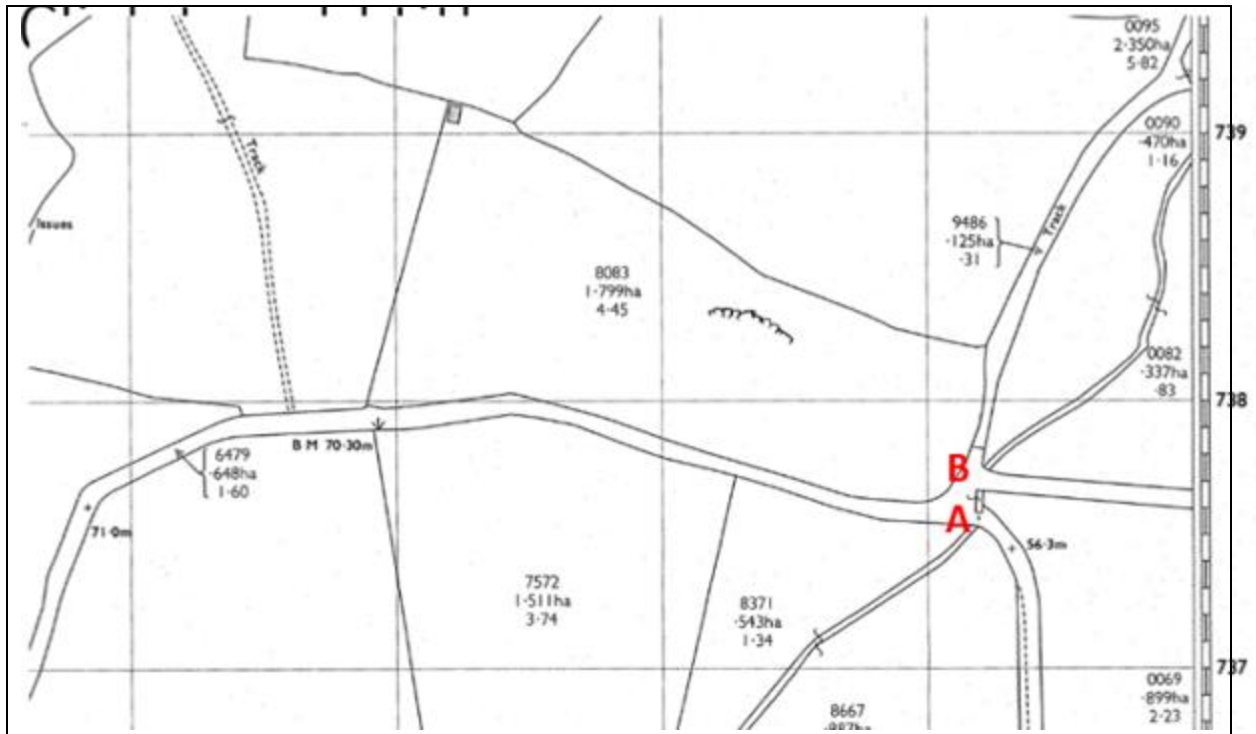
Sheet 89 - 1 inch OS Map surveyed 1950-1964 and published 1965

Observations		All three maps show the application route as a minor, untarred or other road. The map published in 1965 shows 1-26-FP12 meeting the application route at point D.
Investigating Comments	Officer's	The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The inclusion of the route on all three maps

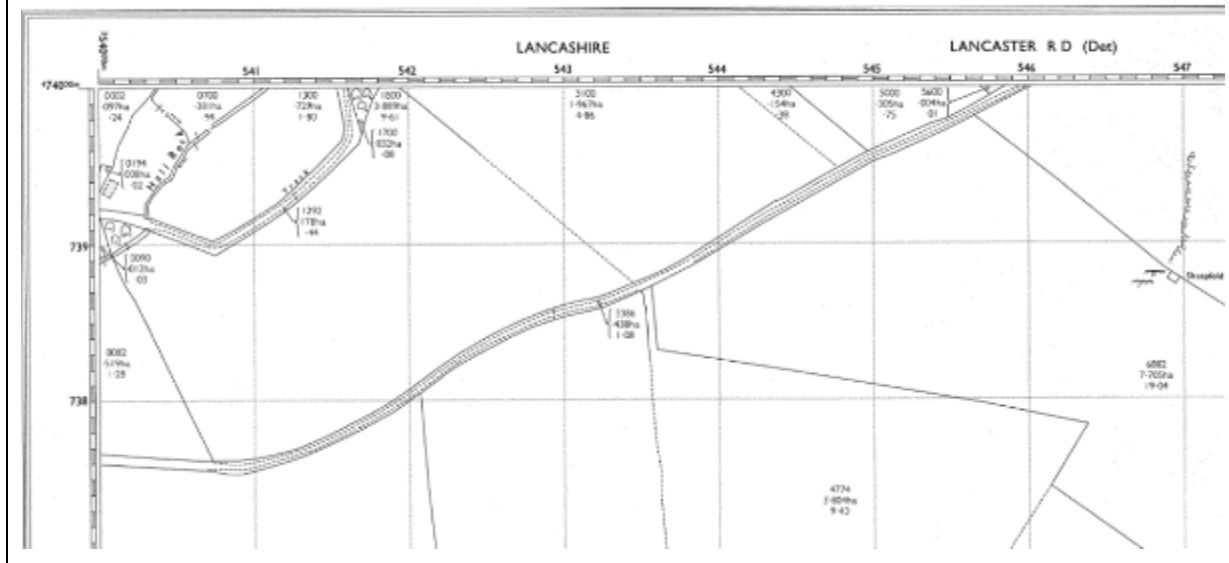


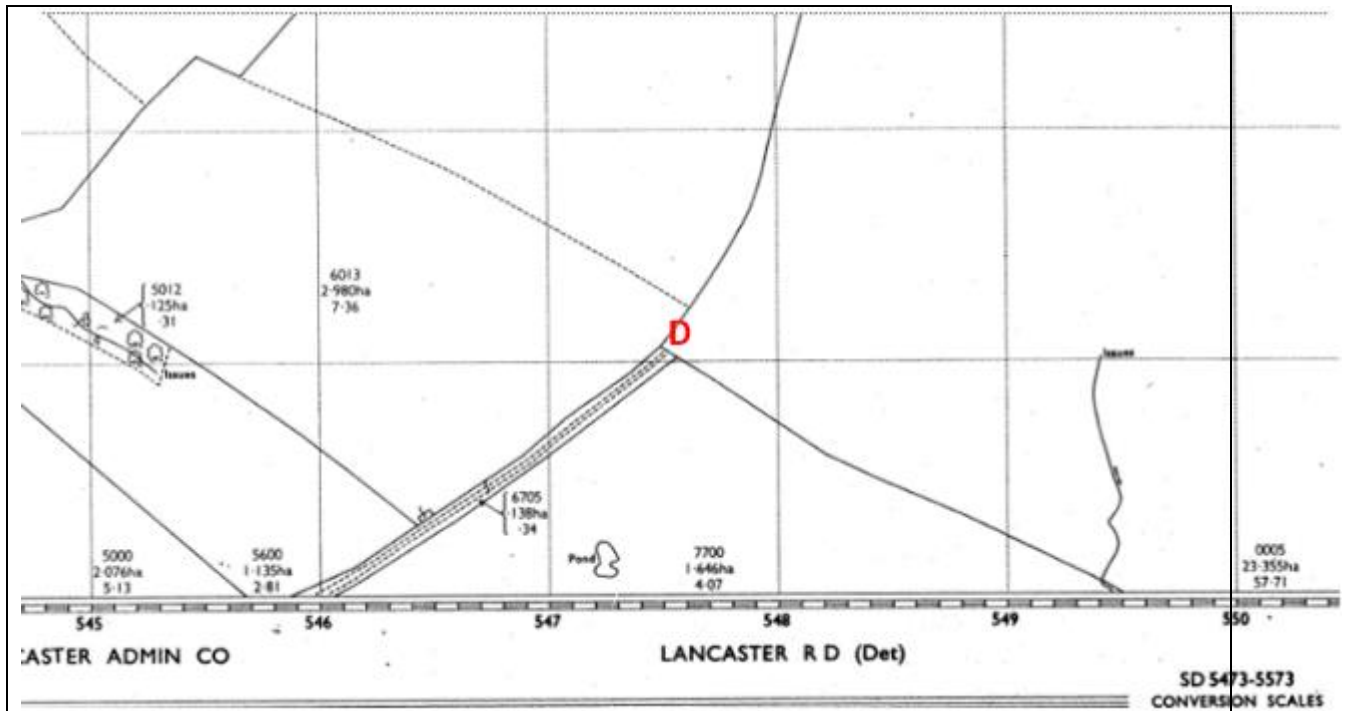


		<p>suggests, as larger scale maps have confirmed, that a substantial route existed which probably could have been used at least on horseback but we do not know if that use was public or private.</p> <p>The fact that the route of 1-26-FP12 was shown connecting to the route at point D in 1965 is a consequence of the fact that the Definitive Map had been published by that date and information regarding the public rights recorded on that map provided to the Ordnance Survey to be included on those maps. By inference, from that time onwards it could be suggested that anyone using this map may have then used the public footpath through to point D may then have walked the application route to exit onto Back Lane at point A. However, such use cannot be inferred from the map itself.</p>
<p><b>1:2500 OS Map</b>  <b>Map Sheets:</b>  <b>SD 5473-5573</b>  <b>SD 5273-5373</b>  <b>SD 5474-5574</b></p>	1970	<p>Further edition of 25 inch maps reconstituted from former County Series and revised in 1969 and published in 1970 as National Grid Series.</p>



NATIONAL GRID PLANS Scale 1:2500





Observations		The application route is shown in the same way that it is shown on earlier OS maps examined. 1-26-FP12 is not shown as a route that existed as a physical track/path on the ground.
Investigating Officer's Comments		The application route existed and appeared capable of being used in 1969/1970. As detailed below 1-26-FP12 was recorded on the Definitive map by this time although as a cross field footpath it does not appear to have physically existed as a discernible trodden path on the ground and as such was not mapped by the OS.
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.



Observations

The application route can be



		<p>seen as a substantial track and looks to have been receiving a significant level of use by farm vehicles accessing fields from the route at that time.</p> <p>That part of the route between point C and point D beyond the track leading to the old quarry site no longer appeared to be separated from the field by a fence or wall and no trodden track comparable with the route recorded as 1-26-FP12 can be seen.</p>
Investigating Officer's Comments		<p>The application route existed in the 1960s and appeared to be well used by farm vehicles accessing the adjacent fields. It appears that it would have been capable of being used on foot at that time.</p>
<b>Aerial Photograph</b>	2017-19	<p>Aerial photograph available to view on Lancashire County Council website.</p>







Observations		The application route can be clearly seen as a substantial track that was being used by vehicles to access adjacent fields. The route is again clearly shown as being bounded on both sides through to point D. 1-26-FP12 is not visible across the fields.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural

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



DISTRICT	<i>Lancaster Rural</i>	PARISH	<i>Priest Hutton</i>	No.	<b>12</b>
MAP SHEET No.	<b>1</b>	LENGTH	miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)					
<i>F.P.</i>					
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Starts at a point north of Thwaite Wood and proceeds in a southerly direction to Eastern extremity of Staruicks Woods over pasture fields to Staruicks. Crosses over the railway bridge to Parish Boundary near road from Bowwick Station</i>					
SURVEYED BY :-		Name			
		Address			
		Date			
9000(7/3) (1/5)					

<p>Observations</p>		<p>The application route is not shown as a public right of way on the Parish Survey Map. A route numbered '12' is shown connecting to the north eastern end of the application route at point D. It is described in the Parish Survey card as a footpath starting at a point north of Thwaite Wood but there is no specific reference to the application route. In contrast to other routes shown on the Parish Survey Map the route numbered '12' is coloured blue and the Parish Survey card is written with a different pen to the cards for the routes numbered 1 to 11. One further Parish Survey card was prepared for a route numbered as footpath 13 although this route was not shown on the parish survey map (and did not describe the application route) suggesting that details of routes 12 and 13 were added after initial survey map was marked up.</p>
<p><b>Draft Map</b></p>		<p>The parish survey map and cards for Priest Hutton were handed to</p>



		<p>Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
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<p>Observations</p>		<p>The application route was not shown on the Draft Map of Public Rights of Way and there were no representations or objections made to the fact that it was not</p>
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		included. 1-26-FP12 was shown and the Draft Statement records its position as 'North of Thwaite Wood to Starricks Railway Bridge'
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The application route was not shown on the Provisional Map of Public Rights of Way and there were no representations or objections made to the fact that it was not included.
<b>The First Definitive Map</b>		The Provisional Map, as

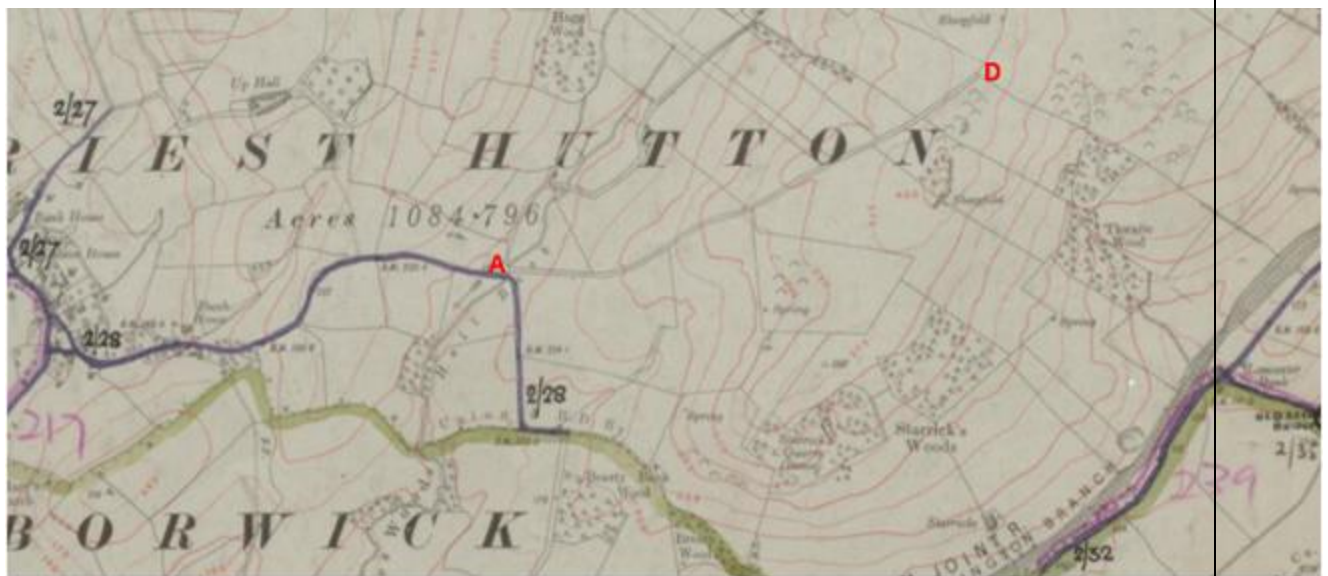


<b>and Statement</b>		amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not recorded on the Revised Definitive Map of Public Rights of Way.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the application route 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.</p> <p>1-26-FP12 was recorded as starting/ending at a junction with the application route at point D. It appears strange that the route was described as starting 'North of Thwaite Wood' rather than by some more specific reference to the application route. Either the route was recorded as a dead end footpath, which would appear unlikely as there is nothing remarkable about the end of it (point D) or it appears that access to and from it was most probably from the application route.</p>
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the 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

		<p>particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		<p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.</p>
Investigating Officer's Comments		<p>The fact that the route is not recorded as a publicly</p>



		maintainable highway does not mean that it does not carry public rights of access.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		A search of the records held by the County Council and the London Gazette has been made and no reference to the application route has been 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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).  Depositing a map, statement and 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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

### Summary

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.

The map and documentary evidence available to view all confirms that the application route existed as a substantial route since at least 1818.

The route did, and still does, provide access (and in some cases the only access) to a number of fields that are situated along either side of it. Whilst no enclosure agreement or award has been found it does appear that given the topography of the area and characteristics of the route it probably came into being as a private access road. This fact appears to be supported by the information provided in the Tithe Award that details at least part of the lane as being privately owned and shows it providing access to land referenced as thwaite land or intake.



As a substantial bounded route it is not surprising that its physical existence was mapped by the OS at a range of different scales – including small-scale 1 inch maps. Of significance however is the fact that it is consistently shown as a dead end route – providing access to farm land but not linking to any other surveyed paths or tracks.

It is not until the 1950s that we have evidence of a footpath that linked to the application route. Although not recorded as a visible route on any OS maps or aerial photographs examined, 1-26-FP12 was recorded as a public footpath in the 1950s and its existence never challenged. The route was described as starting 'North of Thwaite Wood' with no clear explanation of how a person walking the route had got to that point. Map evidence suggests that to get to or from point D (the northern end of 1-26-FP12 would either mean using the footpath to make a journey there and back by retracing your steps along the route or by walking along the application route to or from Back Lane. The map and documentary evidence suggests that this was possible, as does the site evidence, but no evidence has been found to confirm that there was actual public use.

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

### **Landownership**

The land crossed by the application route is unregistered for the full length of the route. Adjacent land is all in registered landownership.

#### Information from the Applicant

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

- Greenwoods Map of Lancashire 1818
- 6 inch OS maps published 1847 through to 1945
- 25 inch OS maps surveyed 1889 and 1910
- 1 inch OS maps 1896, 1947 and 1965
- 1:25,000 OS maps dated 1961 and described as 2022 online map
- 1:50,000 'current 2022 online map'
- Tithe records 1840
- Inland Revenue Valuation Records 1910
- Lancashire County Council Highway maintenance records
- Search results from London Gazette for Stopping up Orders
- Parish Survey card for FP 12
- 1960 and 2000 aerial photographs
- Land registry information
- Recent (undated) photographs of the application route

No user evidence was submitted.

#### Information from Others

The local footpath secretary for the Ramblers Association responded to consultation stating support, being the applicant for this application. They noted a response to the notice of application served;



"...We received a Notice in the post yesterday regarding a modification order...you have sent to Lancashire County Council.

We have lived here for over 70 years and this is all a mystery to us.... We own the sporting rights on land at the top of the lane marked A and B and have never had an objection to walkers using the lane.

I am a Nordic walk Leader (not with the Ramblers) and have used this lane for over 25 years; who is saying it is not a footpath or public right of way? You can only access the footpath at the top of the lane at point mark B by going up this lane unless you have a broomstick! JUNCTION WITH BACK LANE, U49108, SD5391 7376."

The footpath secretary advised this correspondence could be forwarded to the council if required.

This adjoining landowner having written to the Ramblers Association also wrote to the council on consultation to state they had no objection and to clarify the land in their ownership.

Several further landowners of land adjacent to the application route responded by simply highlighting the land in their ownership.

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

BT Open Reach responded to consultation to state that they had no objection to the application.

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

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

Information from the Landowner

The entire length of the application route crosses land which is unregistered.

## **Assessment of the Evidence**

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

#### Conclusion

The application is that the route A-B-C-D has already become a footpath in law and should be recorded as such on the Definitive Map and Statement of Public Rights of Way.

The application is based on historic map and documentary evidence. No user evidence has been submitted.



As there is no express dedication in this matter Committee should consider on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law, Committee is advised to consider whether evidence from the historical maps and other documents and the physical features of the site does on balance indicate that footpath rights should be recorded.

Map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report and confirms that the application route existed as a substantial route for over 200 years.

The Finance Act 1910 excluded the application route A-D which is considered to be good but not conclusive evidence of public carriageway rights.

The application route links with recorded Footpath 1-26-FP12. The application route is the only access to this recorded Footpath at point D.

Committee may consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law. As there is no user evidence in support of this application, Committee is advised that the criteria in section 31 Highways Act are not met.

The recommendation is that an Order be made and if no objections are received, confirmed. In the event that objections are received and not withdrawn officers recommend that the matter is referred back to Committee for a decision on the stance when submitting the Order to the Planning Inspectorate.

#### Applicant/Landowners/Supporters/Objectors

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

#### **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**

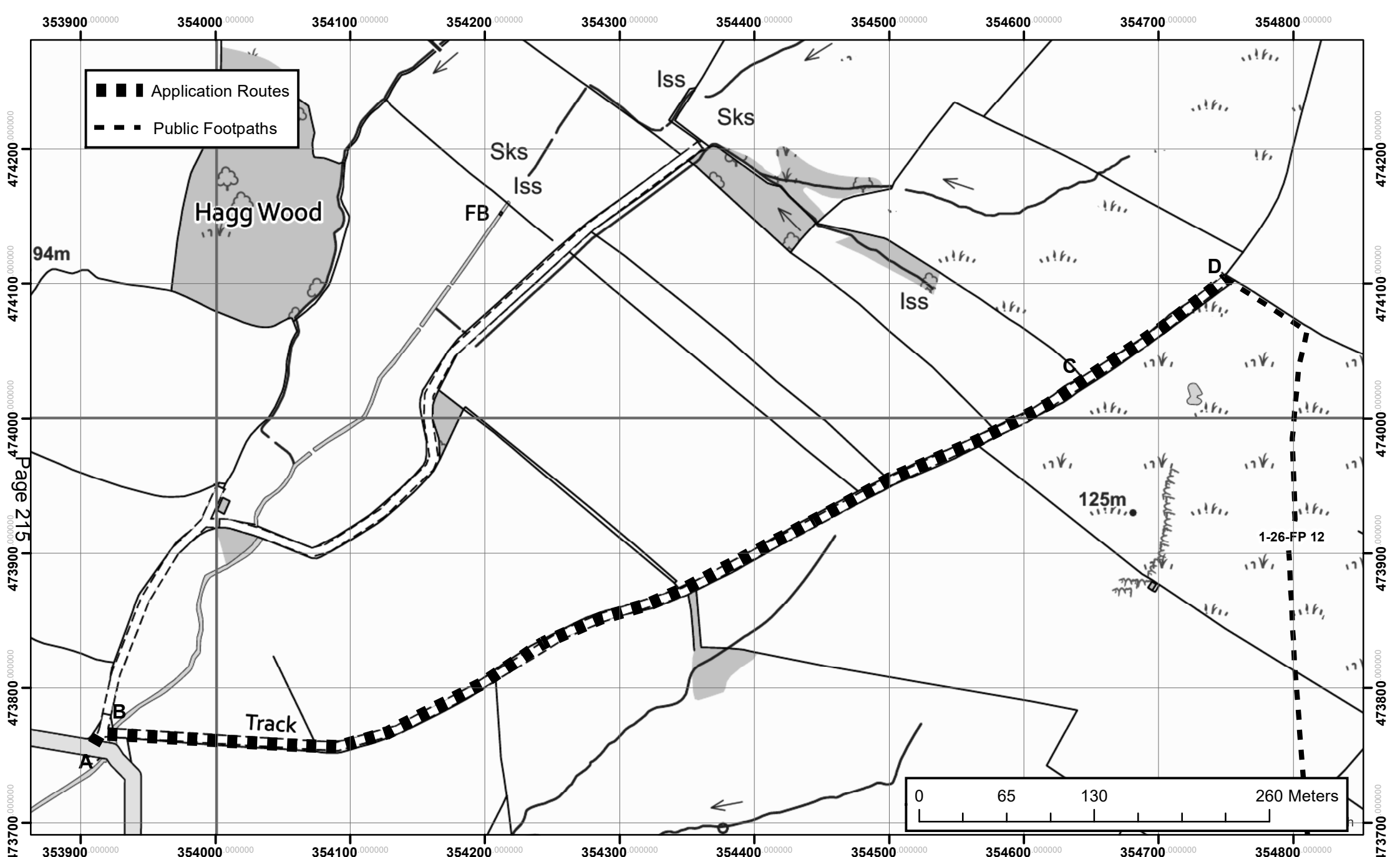
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-759		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate









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

Wildlife and Countryside Act 1981  
 Addition of Footpath from Back Lane, Priest Hutton

1:3,500



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 21 June 2023

**Part I**

Electoral Division affected:  
West Lancashire North

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Investigation**

**Alignment of the Public Footpath along the Western Bank of the River Douglas and through/past Douglas Boatyard, Hesketh with Becconsall**

(Annex 'A' refers)

Contact for further information quoting file reference 804-760:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,  
[simon.moore@lancashire.gov.uk](mailto:simon.moore@lancashire.gov.uk)

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

**Brief Summary**

Investigation into the correct alignment of footpaths FP0810046 and FP0816005 along the western bank of the River Douglas and the route through Douglas Boatyard, Hesketh with Becconsall.

**Recommendation**

- (i) 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 Footpath FP0816005 as shown on the Committee Plan 2 by a thick solid black line between points A-B and part of FP0810046 shown by a thick solid black line between points B-C-D-E.
- (ii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.
- (iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan 2 by a thick dashed line between points A-X-E.
- (iv) That being satisfied that the higher test for confirmation can be met the Order

be promoted to confirmation.

## Detail

Over a number of years, the alignment of the footpath recorded on the Definitive Map and Statement through Douglas Boatyard at Hesketh with Beconsall has been queried because it differs significantly from the walked line and is not consistent on successive maps.

The registered ownership of the boatyard changed hands in 2021 coinciding with confirmation of the route designated as part of the King Charles III England Coast Path (ECP) which is recorded as passing through the boatyard on the route currently used by the public, but on a different route to that recorded as the public footpath on the Definitive Map and Statement.

The route designated as the ECP was approved in August 2022 and since 10<sup>th</sup> May 2023 has now provided rights to the public to pass through the boatyard on foot along the route shown with a solid red line on the Committee plan.

These rights differ from those that exist along a route recorded as a public right of way (part of FP0816005 and FP0810046) which is shown as a black dashed line between points A-F on the Committee plan.

The route of the ECP through the boatyard was not opposed by the previous landowner of the boatyard and reflects the route currently, and for some years, used by the public. It appears that it was agreed with the previous landowner to record this route as the ECP because the route recorded as FP0810046 through the boatyard was obstructed and had been for a considerable amount of time.

It is understood that the previous owner of the boatyard originally made a start in removing some of the obstructions on the line of the route recorded as FP0810046 with a view to the ECP being approved as running along that route but it soon became apparent that significant lengths of the route between points A-B-C-D-E on the Committee plan were obstructed or unwalkable.

During that time investigations were carried out by the county council's Public Rights of Way Team which led them to conclude that the public footpath between points A-B-C-D-E had been incorrectly recorded on the Revised Definitive Map. No further action to open the route of FP0810046 was taken at that time.

The current landowner is now concerned about the public passing right through the boatyard along the ECP route and about the public attempting to use the public footpath. Although the public are currently using the ECP route he has stated that he is opposed to the ECP running through a working yard. Whilst a significant amount of work has now been carried out leading to and beyond the section of the ECP route passing through the boatyard the relatively minor work on the route crossing that land has not yet (at the date of writing) been carried out.

Alerted to the fact that there appeared to be an error in how FP0810046 was recorded on the Revised Definitive Map and the fact that the ECP route through the

boatyard was already very well used, it was agreed that a proper investigation needed to be carried out.

The existing situation is now causing a significant amount of concern and uncertainty for all parties involved. There appears to be no argument that a public footpath does exist, but the issue is where exactly it runs. It was agreed that it was now necessary to look in detail at the situation and to consider whether the route recorded on the current (1966) Definitive Map and Statement as a public footpath between points A-B-C-D-E should be deleted on the basis that it was incorrectly recorded and to look at where the public actually walked and where the footpath ran prior to any more recent alterations to the site.

As it has come to the attention of the county council that there appears to be an error on the Definitive Map the county council are required by law to investigate the evidence and make a decision based on that evidence as to whether the public footpath has been correctly recorded and whether, if an error has occurred, the route recorded as a public footpath should be deleted from the Definitive Map or shown differently. 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 on the Definitive Map and Statement will be made if the evidence shows that:

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

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

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

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

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

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



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

## Consultations

### West Lancashire District Council

West Lancashire District Council did not respond to consultation.

### Hesketh with Becconsall Parish Council

Hesketh with Becconsall Parish Council responded to consultation to state that no member of the Council is aware of the designated path to the rear of the Douglas Marine Boatyard ever being used and indeed on inspection they believe it to be impassable. The Clerk to the Council confirmed from personal knowledge that the path always went under the former West Lancashire Railway bridge which was closed in 1964.

The Parish Council did not have any knowledge to offer regarding Douglas bank Farm.

The Parish Council included a plan showing the line of the path they considered to have been used by the public, but which actually related to a section of the route further south than the footpath currently under investigation.

### Tarleton Parish Council

Tarleton Parish Council did not respond to consultation.

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4502 2264	Unmarked point on FP0816005 immediately west of the recently surfaced path.
B	4501 2269	Unmarked point at which the footpath under investigation crosses the parish boundary between Tarleton and Hesketh with Becconsall, adjacent to pond.



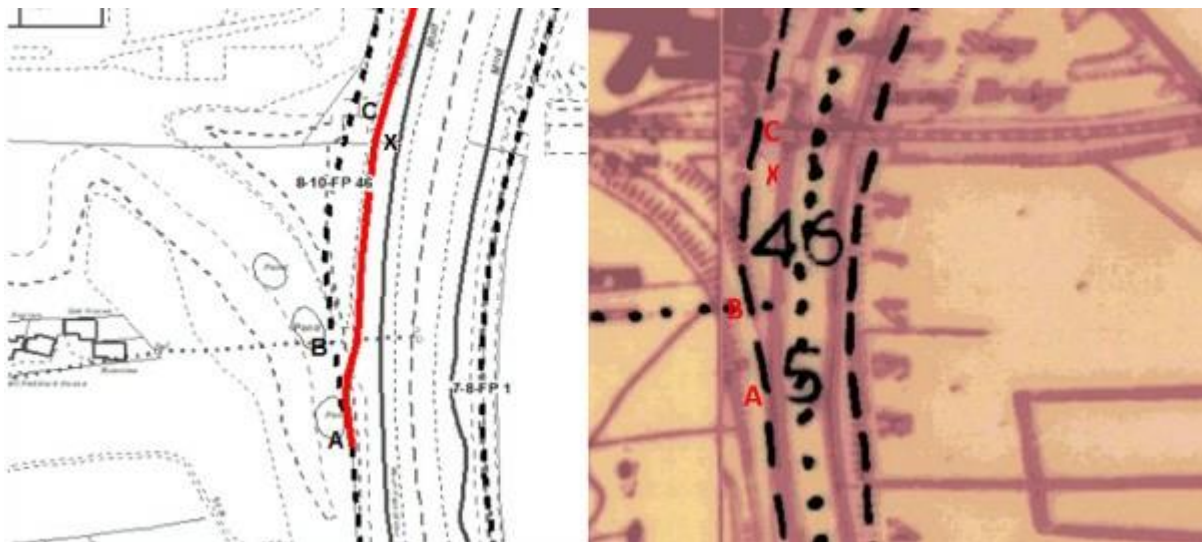
C	4502 2280	Point at which the route recorded as FP0810046 crosses over the top of the remains of the railway swing bridge support.
D	4514 2305	Point at which FP0810046 is recorded as crossing a field boundary fence.
E	4520 2313	Point at which FP0810046 crosses the access road leading directly to Douglas Boatyard.
F	4524 2317	Unmarked junction of FP0810046 and FP0810047.
X	4503 2278	Remains of fence and stile

Note: Throughout this report unless otherwise stated references to the route recorded on the 'Definitive Map' refer to the route shown on the Revised Definitive Map (First Review) with 'Relevant Date' 1966.

### Description of Routes

A site inspection was carried out in September 2022.

#### The route between Point A and Point C



Extracts not to scale

#### The Definitive Map Route A-C

The route recorded as FP0816005 runs along the line of a dismantled railway which has recently been surfaced with compacted stone. At the point marked point A on the Committee plan the Definitive Map route leaves the surfaced path to continue through a wet area comprised of long grass and vegetation immediately adjacent to a pond. The unmarked route continues through the vegetation crossing the unmarked parish boundary between Tarleton and Hesketh with Beconsall to continue as FP0810046 to pass to the east of a second pond. It then crosses an unrecorded trodden path which leads towards Station Road and a new housing development. It then ascends an overgrown grassy embankment to continue through trees and bushes growing on the embankment to cross the remains of the brickwork that supported the railway swing bridge that previously crossed the river at this point



(point C). The line on the Definitive Map is shown in such a way that it is difficult to locate the line precisely but at some point it does reach the top of the embankment.

### The ECP (walked route) A-X

From point A the walked route (more recently designated as the ECP route) follows a stone surfaced path past the first of three small ponds and then drops down onto the marsh through a gap in the embankment. In the past few months this route has been surfaced as part of the ECP implementation works but photographs taken prior to that work being carried out show an unsurfaced but well trodden path along the same route.

The trodden line continues along the marsh to point X where the remains of fencing and a wooden stile existed. When the route was inspected in September it was confirmed that the fencing no longer reached across the marsh at this point and the stile had fallen out of use with the trodden line of the path passing between the stile and river bank.

Just beyond point X the ECP (walked route) passed along the bottom of the remains of the swing bridge, effectively underneath where the bridge would have crossed the river.

### **The route between point C and point F**



Extracts not to the same scale

### The Definitive Map Route C-E

It is difficult to get to or from point C, particularly during the summer months, and there is no evidence of a walked line. There is however evidence of 'dens' in and around the remains of the railway bridge consistent with what appear to be areas

used by children/teenagers. Access to the top of the embankment appears to be from the marsh and the ECP (used route) rather than along the Definitive Map route.

From the top of the brickwork comprising the remains of part of the railway bridge the Definitive Map route is recorded as continuing along the top of the embankment tight up against a metal railing fence separating the embankment from the site of the former brick and tile works which has now been cleared and is being redeveloped as housing. Whilst it was possible to push through the trees and walk bits of this route there is no evidence to suggest that it is being used as a footpath or that it could have been used as one in recent years. As the Definitive Map route continues along the boundary of Douglas Boatyard it is increasingly difficult to walk along the line recorded as the footpath. The embankment to the rear of some caravans appears to have been cut away in places so that it barely exists and is steep with no evidence of a path that may have previously existed.

Between point D and point E the boundaries/fencelines that historically existed have altered but the Definitive Map line runs just within the northern boundary of the boatyard (partly obstructed by boats and vehicles) before veering north across a fenceline into a thin strip of trees between the private driveway into the housing estate known as Bullens Wood and the boundary of the boatyard.

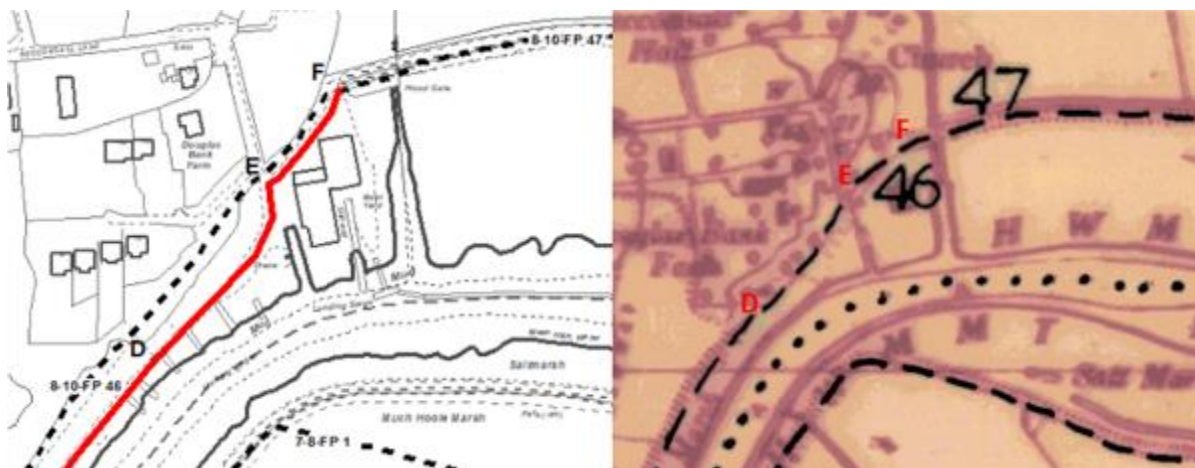
At point E the Definitive Map route crosses the entrance into the boatyard situated at the far end of Becconsall Lane.

The Definitive Map route between point C and point E is not walkable.

#### The ECP (walked route) X-E

A trodden route along the marsh exists, continuing from point X and passing into and through the boatyard along a way that provides access to a number of residential caravans and boats and to other boats being stored on the land, through to the entrance to the boatyard at point E. The route designated as the ECP is not shown to link to Becconsall Lane (which is only recorded as a publicly maintained road as far as the entrance to Becconsall Church but may have unrecorded public rights linking to the Definitive Map line).

#### **The route between point E-F**



Extracts not to the same scale

### The Definitive Map Route E-F

The Definitive Map route is shown to run along the inside of the boundary of Douglas Boatyard but has been obstructed by boats stored along the boundary. There is nothing to suggest on site that this part of the route has been incorrectly recorded on the Definitive Map – only that it has been obstructed.

### The ECP (walked route) E-F

The ECP (walked route) passes through the boatyard running parallel to the Definitive Map route but avoiding the obstructed section to re-join the Definitive Map route at point F.

### Comments on Site Evidence

Looking at the site evidence alone it is apparent that the route recorded on the Definitive Map is not useable today but we need to consider whether it might have been feasible in the past. The steepness of the terrain, the fact that it crosses over the top of the remains of a railway swing bridge and runs along the top of an embankment and crosses old fence lines with no apparent reason to do so suggests that this would never have been an obvious line to have been walked. Notwithstanding that there is evidence of earthworks altering the embankment separating the marshland from the higher ground and recent (1960s onwards) development of the site crossed by the route it does suggest that the line shown on the Definitive Map does not accurately reflect what could or would more reasonably have been used.

The ECP (walked route) appears to be well established and heavily used – it follows a logical and useable route from point A and continues through the boatyard on an obvious route but is not in accord with the historically recorded line. Whilst the route may not be what was originally used or intended to have been recorded, having altered and evolved as the boatyard expanded, it does suggest that people would naturally have been more likely to follow the lower ground than climb to the level of the swing bridge and go along or across a live railway.

### **Map and Documentary Evidence**

It is not disputed that a public footpath exists along the river bank and so the purpose of this investigation is not to determine whether public rights exist but to try to establish exactly where those rights exist and whether the route shown on the Revised Definitive Map is correct.

Various maps, plans and other documents have been examined to discover when the route came into being, whether it was mapped as a physical feature that was visible on the ground and to see whether there were any factors that resulted in the alignment of the route altering over time.

Maps and plans reproduced below are not to scale (unless specified as being so).



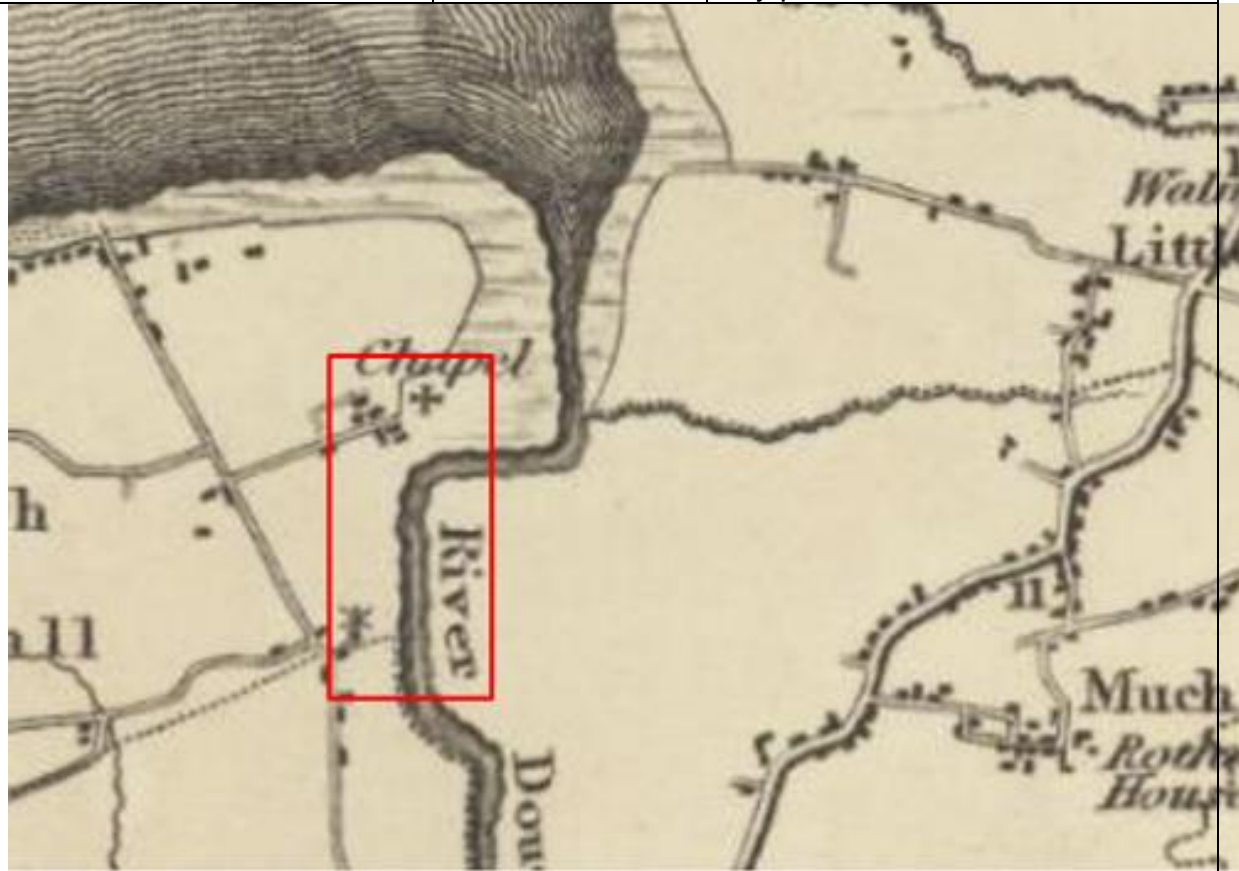


Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately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



Observations		Becconsall Lane leading to Becconsall Church is shown but the route under investigation is not shown.
Investigating Officer's Comments		Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the

		legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
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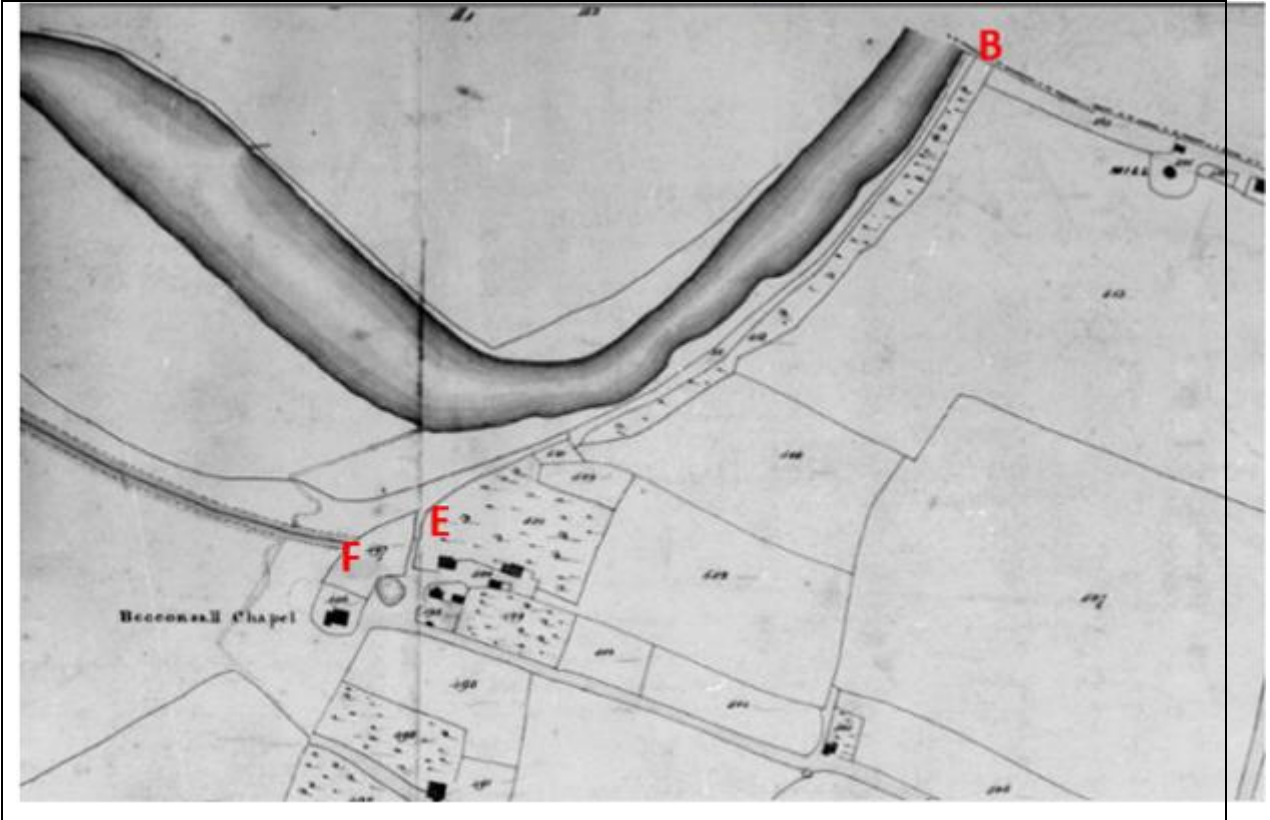


Observations		The route under investigation is not shown.
Investigating Officer's Comments		Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

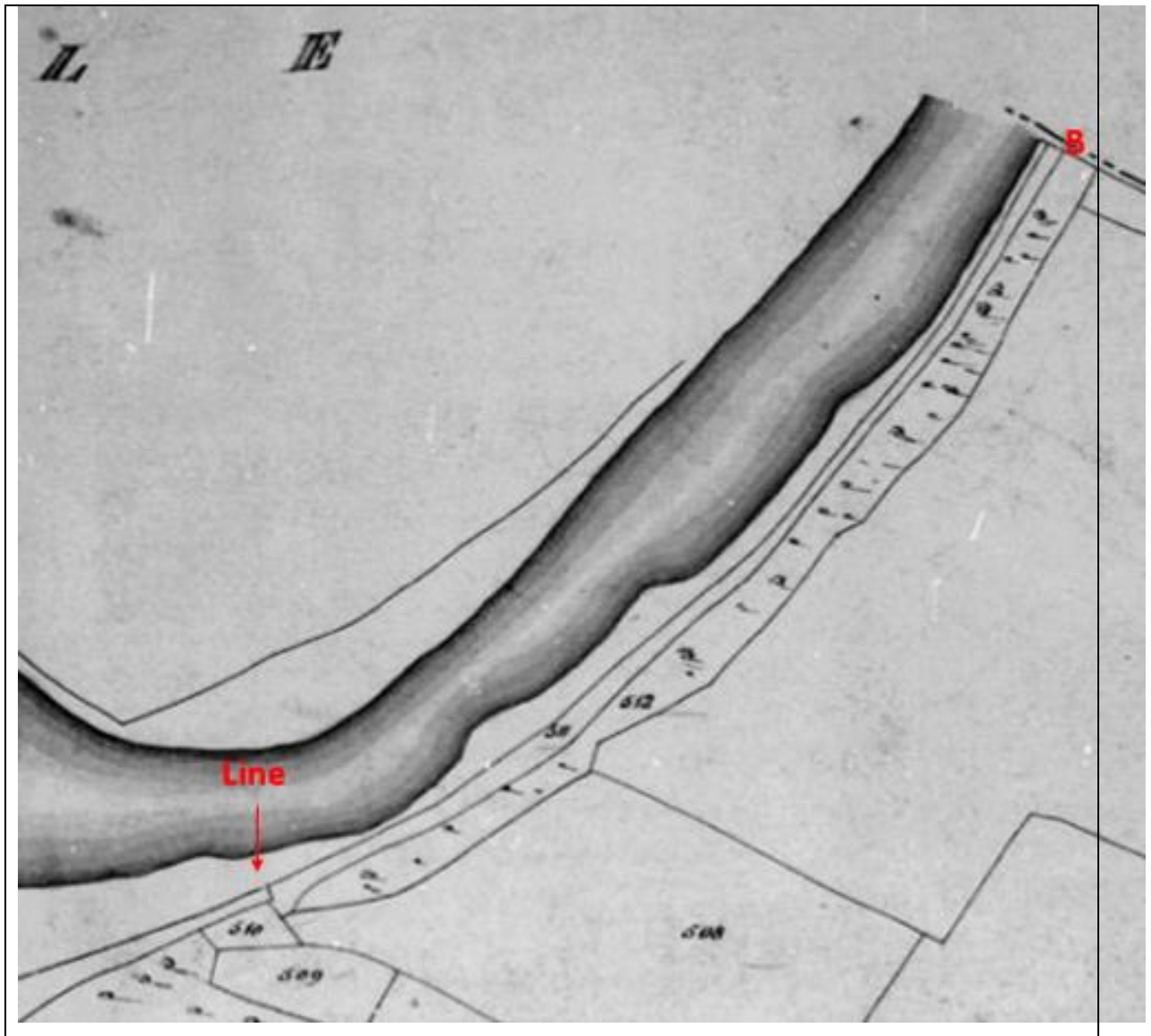


Observations		The route under investigation is not shown.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights although it should be noted that it would be unusual for a route considered to be a public footpath to be shown on such a small-scale map even if it did exist at that time.
<b>Tithe Map and Tithe Award or Apportionment Hesketh with Beconsall</b>	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways

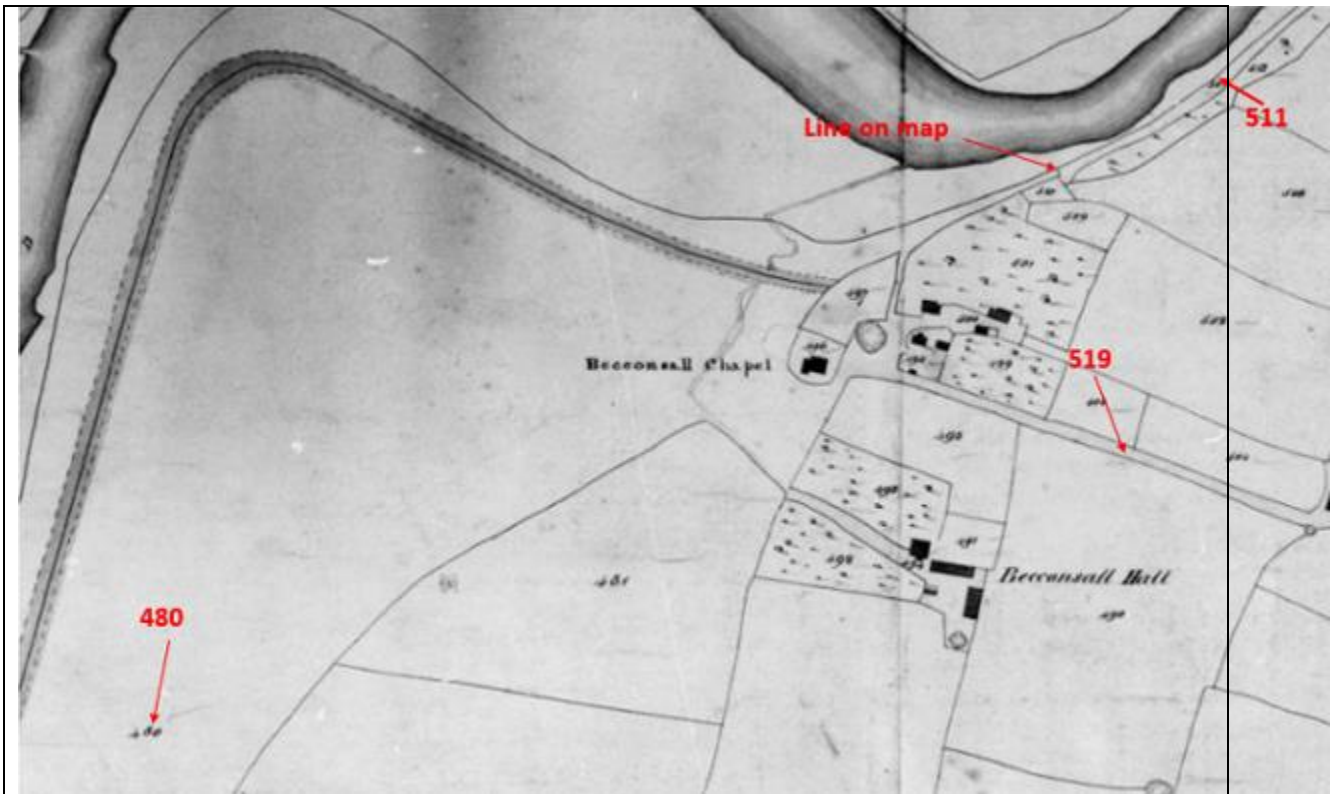
may be inferred.











[above] Extracts from the Tithe Map

No. 4.—Lancashire, sold by Auction by Becconsall, at, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

LADOWNERS.	OCCUPIERS.	Ranks referring to the Plan.	NAME AND DESCRIPTION of LANDS AND PREMISES.	STATE of CULTIVATION.	QUANTITIES in STATUTE MEASURES.				REMARKS.	
					A.	R.	P.	PERCH.		
Sir Thomas Dalrymple Hesketh, Baronet. (continued)	Joseph Fowler (continued)	480	Brought Forward	Pasture	92	2	22	11	19	
		481	Wickels Hey	Pasture	3	1	5	-	5	10
		482	Lappie	Wood	1	1	1	-	-	-
		483	Under Marsh	Pasture	-	2	7	-	7	-
		484	Green Hey	Pasture	1	2	30	1	11	-
		485	Yards	Meadow	1	1	35	-	7	-
		486	Stack Yard	Pasture	-	1	9	-	2	-
		487	Orchard &c.	Orchard	-	2	35	-	5	-
		488	Buildings, Fold &c.		-	2	16	-	16	-
		489	Orchard and Garden	Orchard	-	3	16	-	3	-
		490	Three Wharves	Meadow	9	-	26	1	14	7
		491	Marsh	Stable	6	3	27	1	4	-
		492	Marsh	Stable	10	2	17	1	16	5
493	Cliff	Meadow	1	2	12	-	14	4		

[above] Extract from the Tithe Award – Plot 511

Township Roads	519				11	2	
1	Hesketh Mags including half of the Boundary Lines.				296	3	
520	Hesketh Marsh including Road from Hesketh Brow to the Hundred End.				490	3	
480	Inclosed Marsh.				51	-	
					938	3	



[above] Extract from the Tithe Award – Plot 480 and Plot 519

<p>Observations</p>		<p>Beconsall Lane is shown providing access through to point E. Beconsall Lane is numbered on the map as a township Road (519) although it is not possible to deduce from the map whether the lane was thought to extend as far as point E, or further.</p> <p>Beyond point E a narrow strip of land is shown which may have been fenced either side, as indicated by solid lines, and which was either numbered as part of Beconsall Lane or as part of the inclosed marsh (480) through to where a line is shown across the approximate location of the route under investigation (as marked on the map extract above).</p> <p>Beyond the line, through to point B, a thin strip of land is shown numbered as plot 511 which is described as under marsh owned by Sir Thomas Dalrymple Hesketh Baronet and occupied by Joseph Fowler. It is detailed as pasture for which a small payment is listed. A strip of woodland owned and occupied by the same people is shown running parallel and is numbered as plot 512.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is not shown and probably did not exist. Access may have been available from Beconsall Lane onto the marsh and along the thin strip of pasture land through to point B but it is not known whether such access was public or private and the map provides no real assistance in determining the correct alignment of the footpath.</p>
<p><b>Tarleton Tithe Map and Award</b></p>	<p>1845</p>	





Extract from Tithe Map

C.C.—London: Printed and Published (By Authority,) by Shaw and Sons

LANDOWNERS.	OCCUPIERS.	Numbers referred to in the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.				REMARK	
					A.	R.	P.	Acres.		
Hesketh Sir Thomas Dalrymple Hesketh, bart.	James Blundell, cart.	1769	Little meadow	Meadow	2	3	5 1/2	7	11	R. 37995. R. 37999 ACR ACR ACR
		1774	Mill hey	Arable	1	2	13 1/2	5	9	
		1775	Mill hey	do	1	2	13 1/2	5	9	
		1820	Bank-ack	Pasture	2	3	2 1/2	3	11	
		1852	Milshaw	Arable	3	1	1 1/2	9	9	
		1855	Marsh	Pasture	3	1	1 1/2	7	7	
		1855	Marsh	do	1	1	1 1/2	1	1	
					1 1/2	2 1/2	1 1/2	1 1/2		
	Robert Buck	1778	Meads Gate	Pasture	1	2	11	11	11	M. 26099.
	Henry Counce	254	Barister Ground	Pasture	1	2	0	1	4	
		259	Mill hey	Arable	3	2	1 1/2	11	11	

Extract from Tithe Award plot 1775

<b>Observations</b>		Between point A and point B the route under investigation is not shown and the land crossed by the route is numbered as plot 1775 which was owned by Sir Thomas Dalrymple Hesketh and occupied by James Blundell. It was described as Mill Hey and as arable land for which Tithes were payable.
<b>Investigating Officer's Comments</b>		The route under investigation between A and B did not exist in 1845.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming



		medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award or Agreement for the land crossed by the route under investigation has been found.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet LXVIII (68)</b>	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.<sup>1</sup></p> <p>However it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6 inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - <a href="https://maps.nls.uk/os/">https://maps.nls.uk/os/</a> Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in some instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of</p>

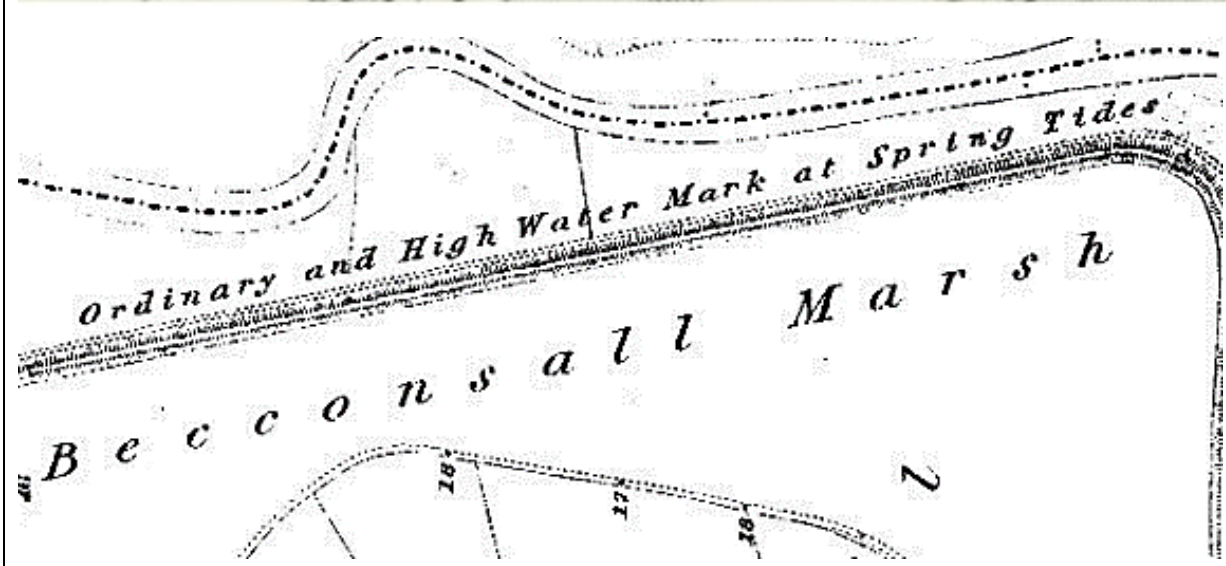
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



both copies of the map (if found) will be inserted into the report and clearly labelled.



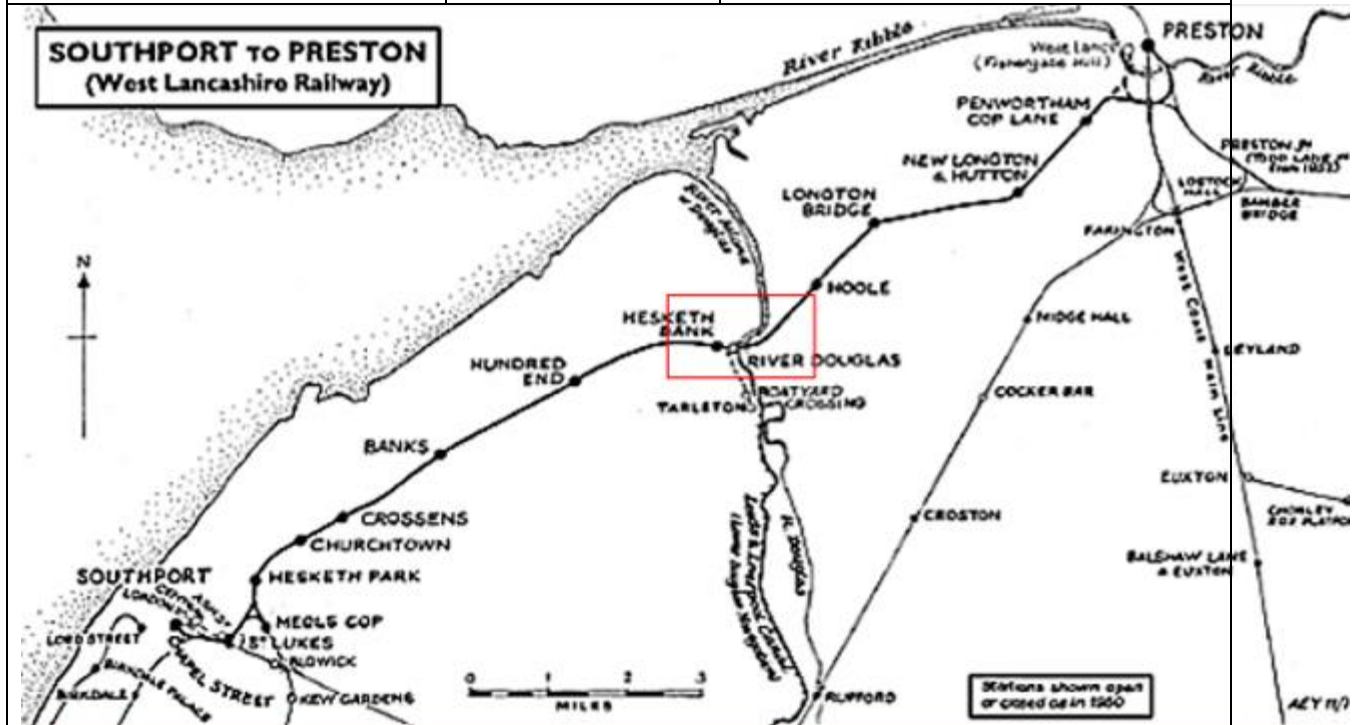




<p>Observations</p>	<p>With the benefit of being able to enlarge the original map to see minute detail more clearly there is a double pecked line, indicating the ordinary and high water mark at spring tides, which is shown in places as a single pecked line where they coincide, extending all the way from Lock House in Tarleton north past Becconsall Lane and continuing out to Becconsall Marsh.</p> <p>Access is shown from Becconsall Lane onto the land now crossed by the route under investigation</p>
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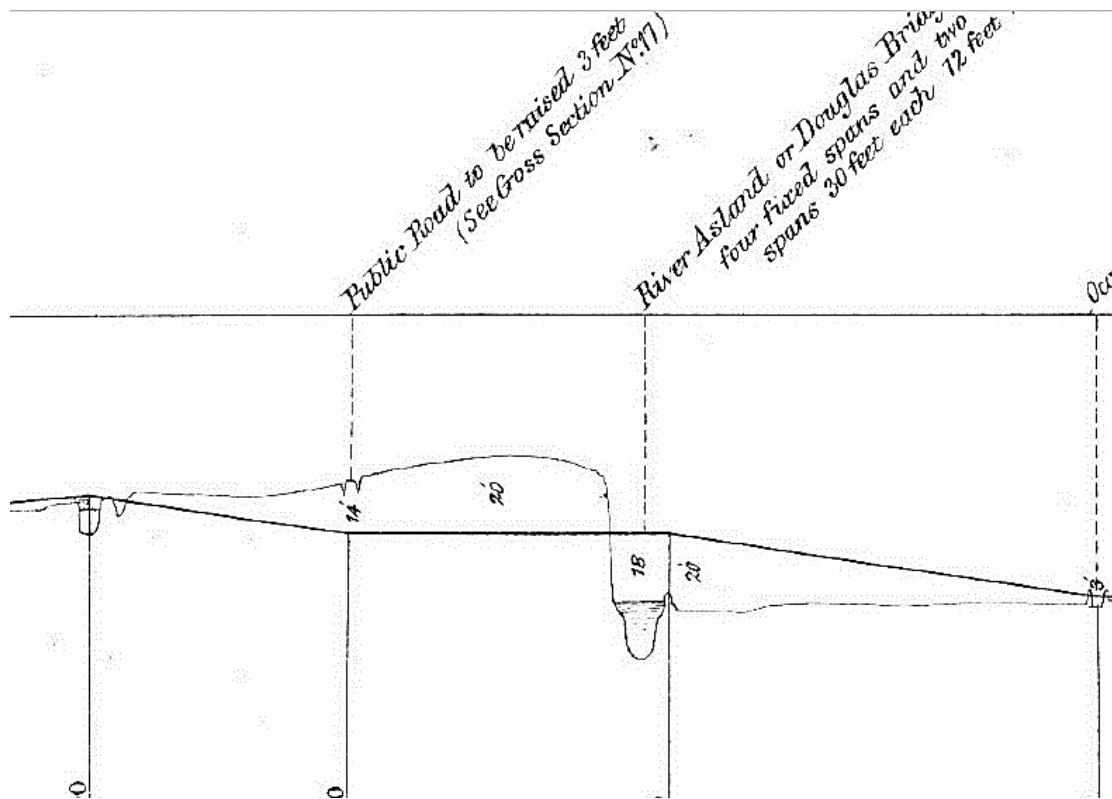
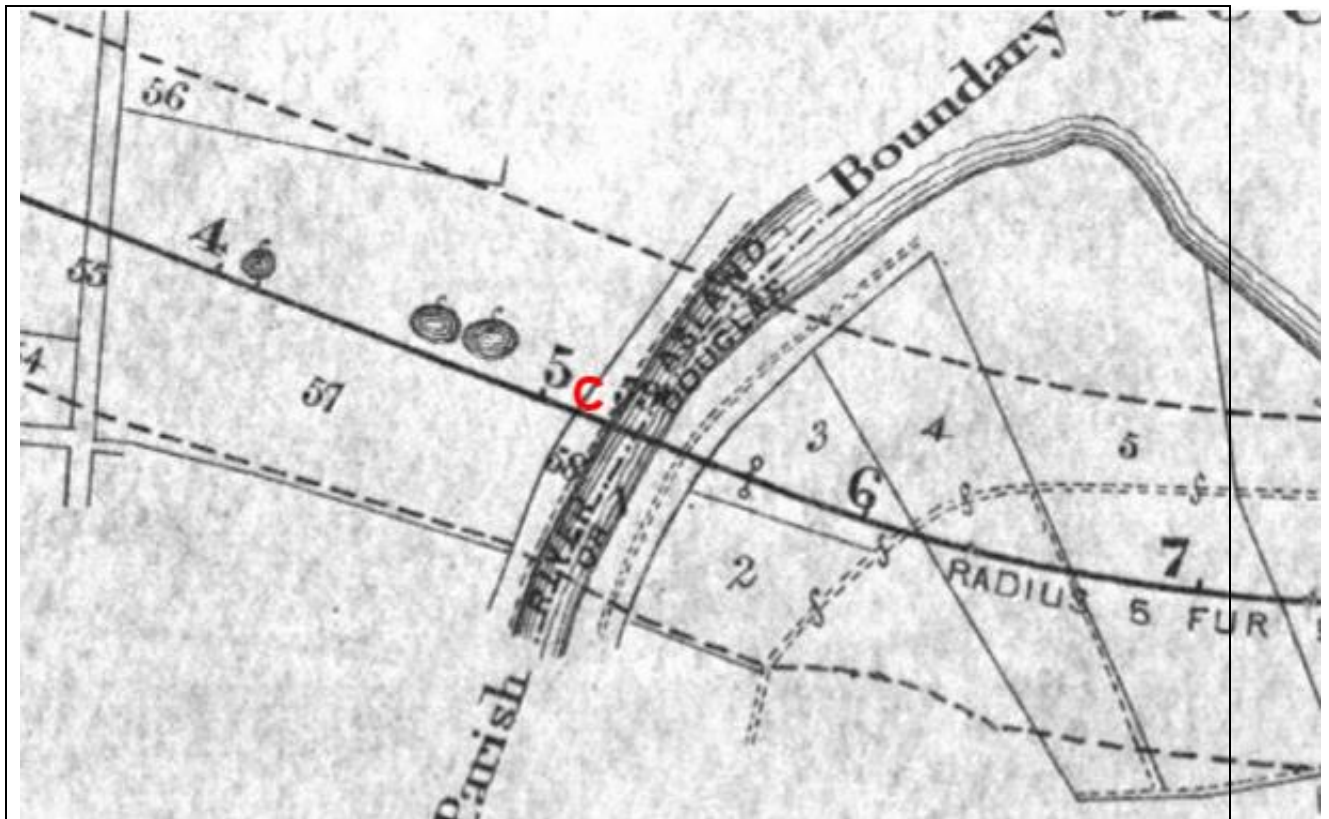


		<p>providing access to Beconsall Ferry.</p> <p>The route under investigation is not shown.</p>
Investigating Officer's Comments		The route under investigation did not appear to have existed in 1844-45.
<b>Canal and Railway Acts</b>	1878-1882	Canals and railways were the vital infrastructure for a modernising 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 in order 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.



[Above] Undated plan of West Lancashire Railway





[Above] Extracts from the West Lancashire Railway Session 1870-71 Plans and Sections







*A picture from the early 20th Century shows the River Douglas Bridge in the open position.*



*The River Douglas bridge looking north in August 1964 as a Preston-bound train crosses over. In the middle of the river the section on which the bridge had swung can be seen. It had however been fixed into position since 1913.*

[http://www.disused-stations.org.uk/features/river\\_douglas\\_bridge/index.shtml](http://www.disused-stations.org.uk/features/river_douglas_bridge/index.shtml)

Observations		The land over which the route under investigation runs was crossed by the West Lancashire Railway's (WLR) Southport &
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		<p>Preston Railway which opened in stages between 1878 and 1882. The route under investigation crosses the line of the railway (which no longer exists) at the point where the railway crossed the River Douglas via a swing bridge which had been constructed as such to continue to allow for boats to travel up and down the river.</p> <p>The swing bridge was fixed into position in September 1913 and continued to carry rail traffic until 6 September 1964 by which time it was part of British Railways London Midland Region.</p> <p>The railway ceased to operate on 7th September 1964 and the bridge was demolished with the only evidence of its existence now being its stone abutments on each bank of the river and the bases of the cylindrical piles on the river bank, near point C on the Committee plan.</p> <p>There are no railway plans deposited in the County Records Office relating to the land crossed by the route under investigation. However, Network Rail provided copies of the plans drawn up to show the proposed route of the railway.</p> <p>The plan shows the point at which the railway was to cross the river (point C). The parish boundary between Hesketh with Beconsall and Much Hoole is shown down the centre of the river. A single dashed line is shown along the banking on the west side of the river but there is no key to the plan to confirm whether or not this indicated the existence on the ground of a path. If the pecked line did indicate the existence of a path it was close to the river bank and</p>
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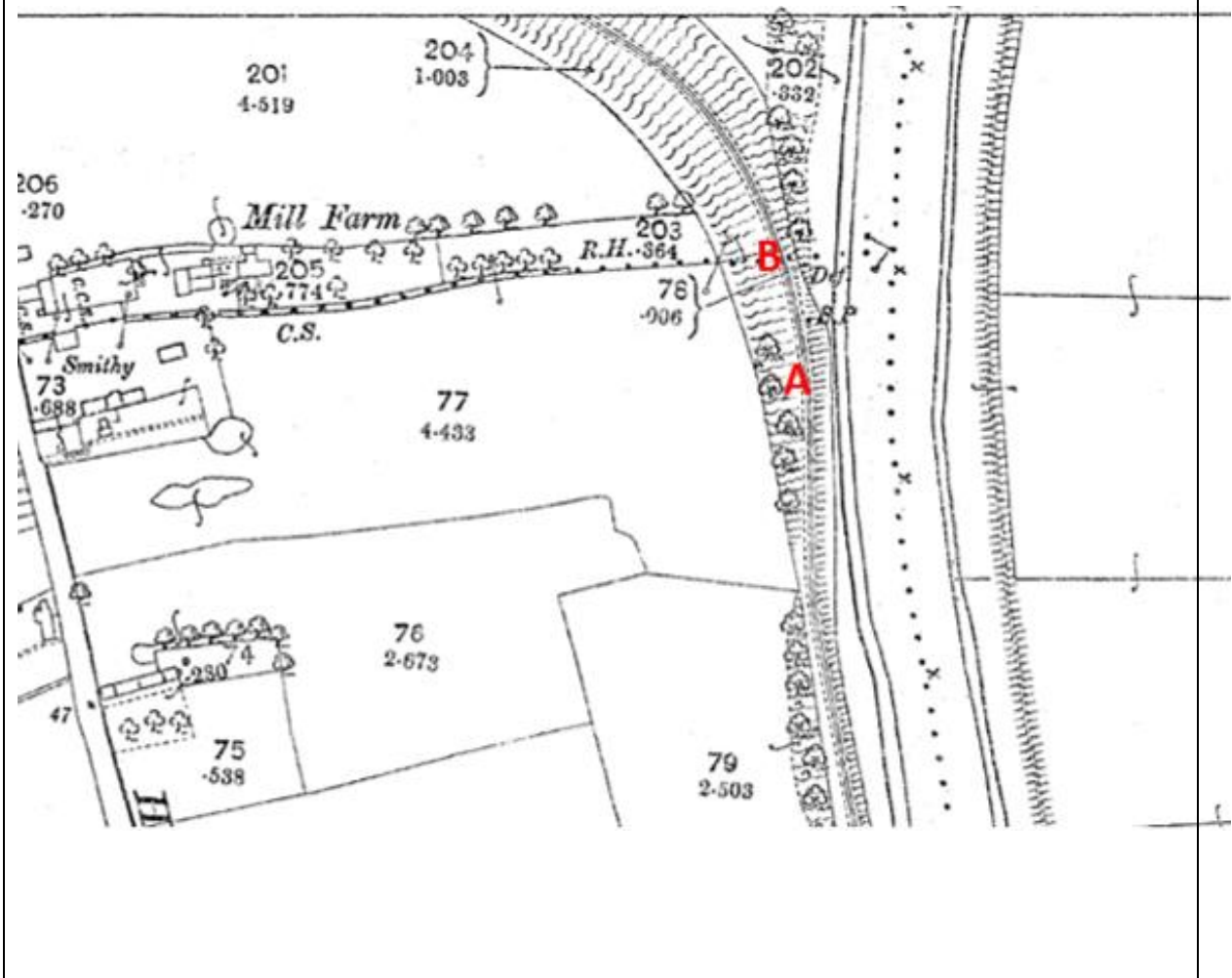


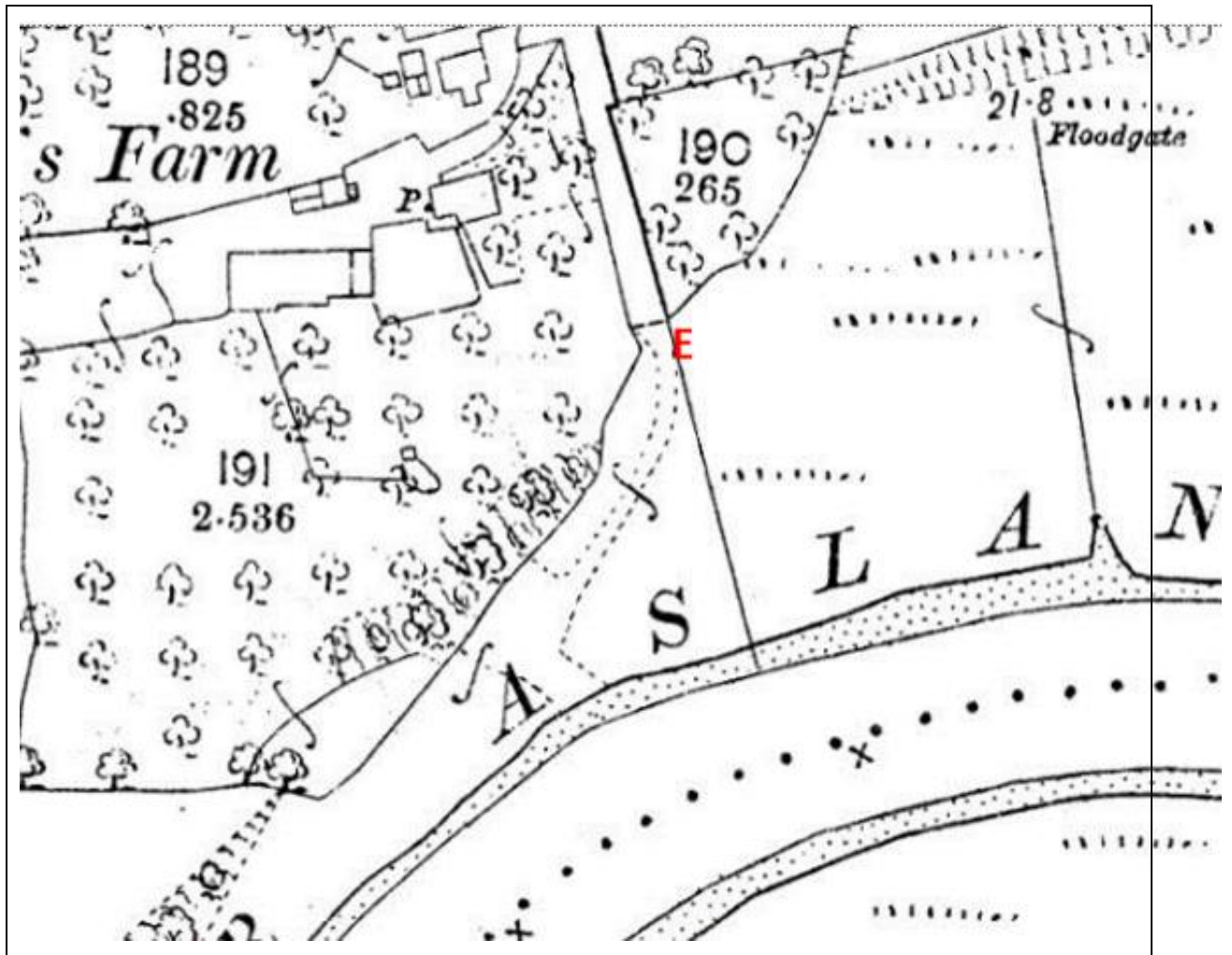
		<p>not on the Definitive Map route. The Book of Reference – which provided further details regarding landownership and details specific to any public highways or private ways crossed by the proposed railway – could not be found.</p>
Investigating Officer's Comments		<p>The West Lancashire Railway (WLR) was built in 1870s-1880s across the land over which the route under investigation runs. There is no indication from maps published before this time that the route under investigation existed and of particular significance is the fact that the continuation of the footpath south to Tarleton Lock runs along the former track of the Tarleton Branch suggesting that the route south of point B only came into existence on that line following closure of the branch line in 1930 and removal of the track in 1932.</p> <p>The Revised Definitive Map shows the route of the footpath running along the top of an embankment effectively crossing the top of the remains of the former railway swing bridge, as opposed to a route running underneath the railway at this point. The railway plans prepared prior to the construction of the railway do not show the Definitive Map route although there is some suggestion that a path may have existed along the river bank.</p> <p>The two photographs detailed above show the swing bridge: the first of the two photographs, presumably pre-1913 as the bridge is open for boats, appears to show a trod consistent with use on foot running along the river bank. The significance of this will be discussed in detail later in this report.</p>
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of

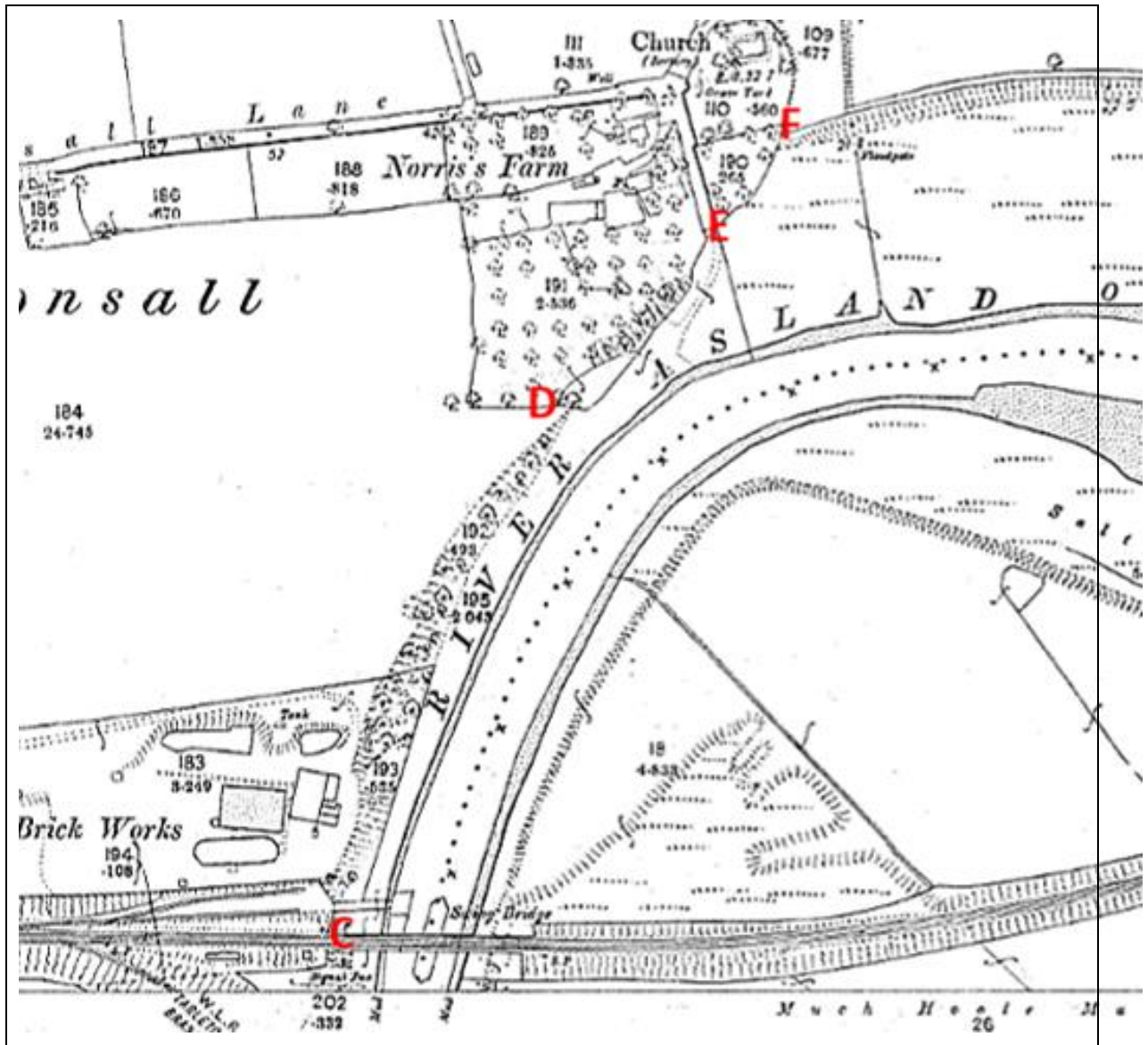


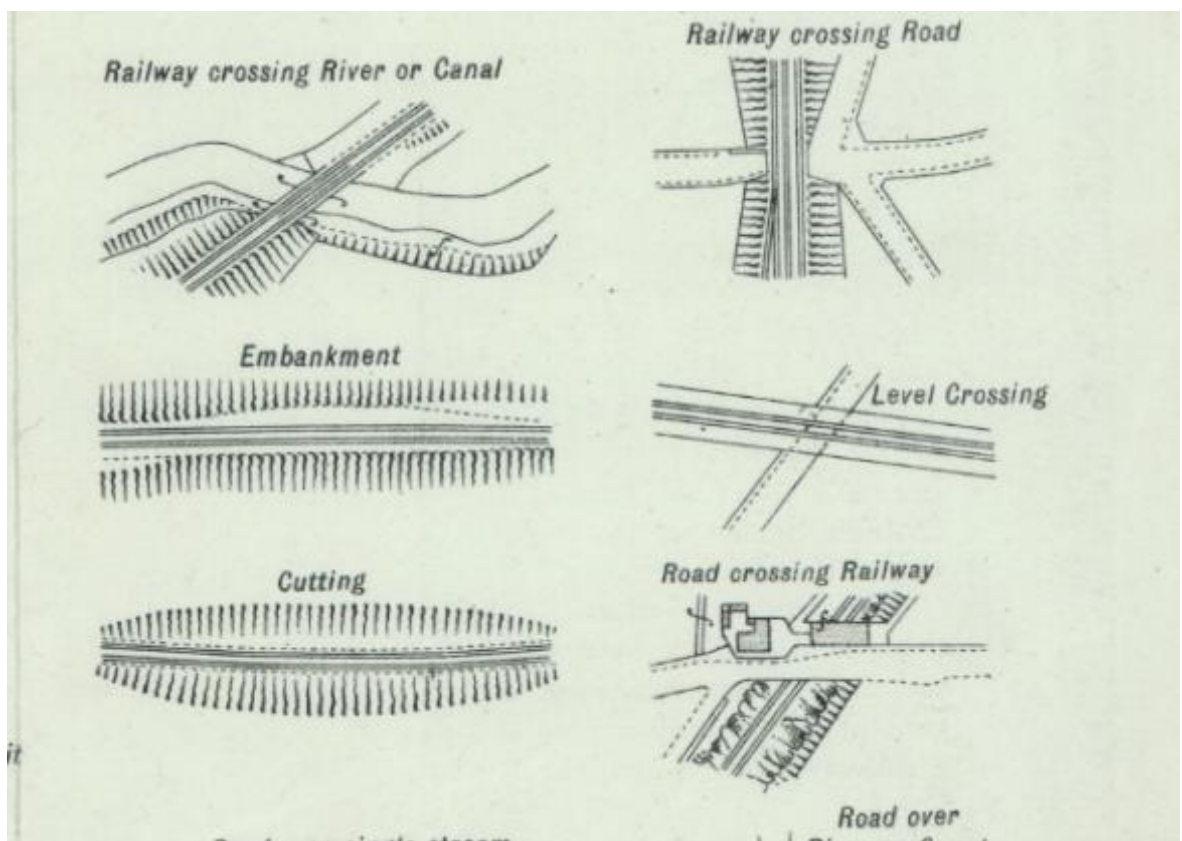
LXVIII.10 & LXVIII.14

25 inch to the mile. Surveyed in 1891-1892 and published in 1893.









<https://maps.nls.uk/view/128076891>

Observations

The first edition 25 inch OS map shows the railway detailed above.

Between point A and point B the railway line is shown where the footpath is now recorded. No footpath is shown adjacent to the railway – or along the river bank.

At point C the bridge across the river is shown with no footpath shown crossing the railway line or going underneath the railway bridge.

The brick works are shown adjacent to the railway with a steep slope indicated between the brickworks down to the river.

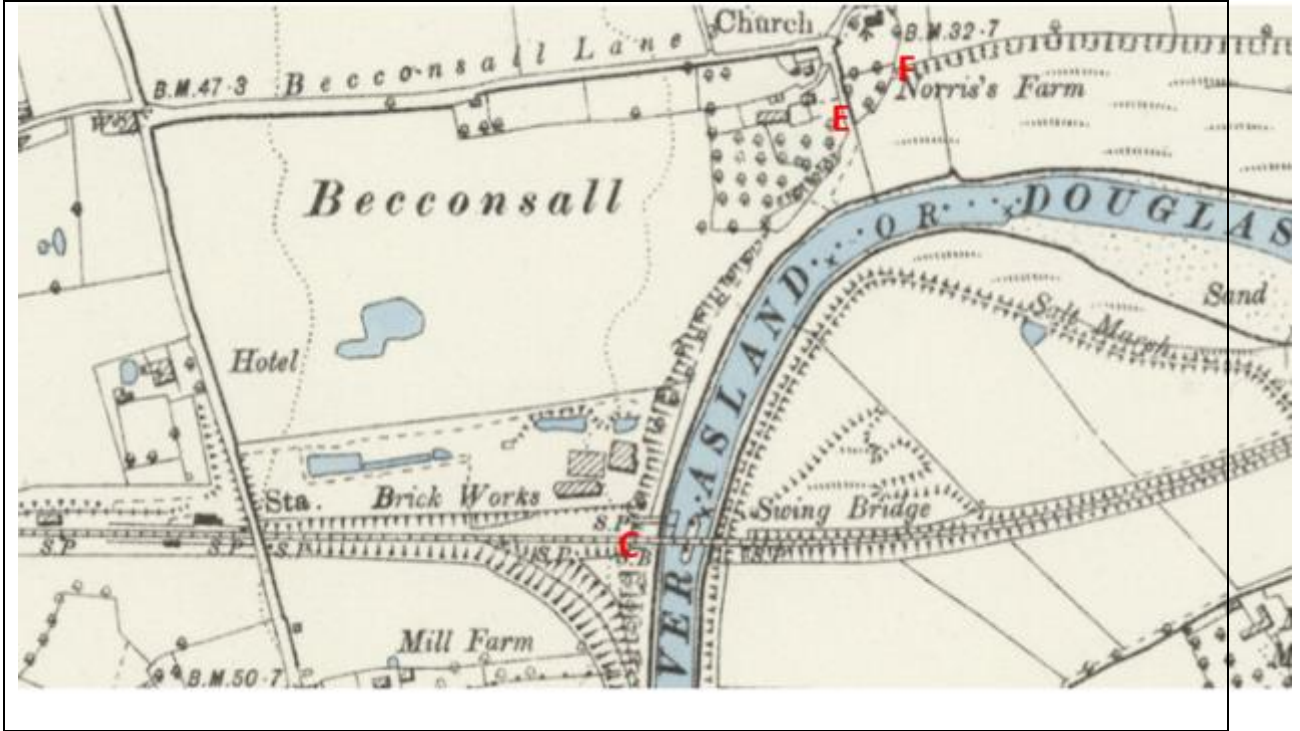
North of the bridge between point C and point E the route under investigation is not shown.

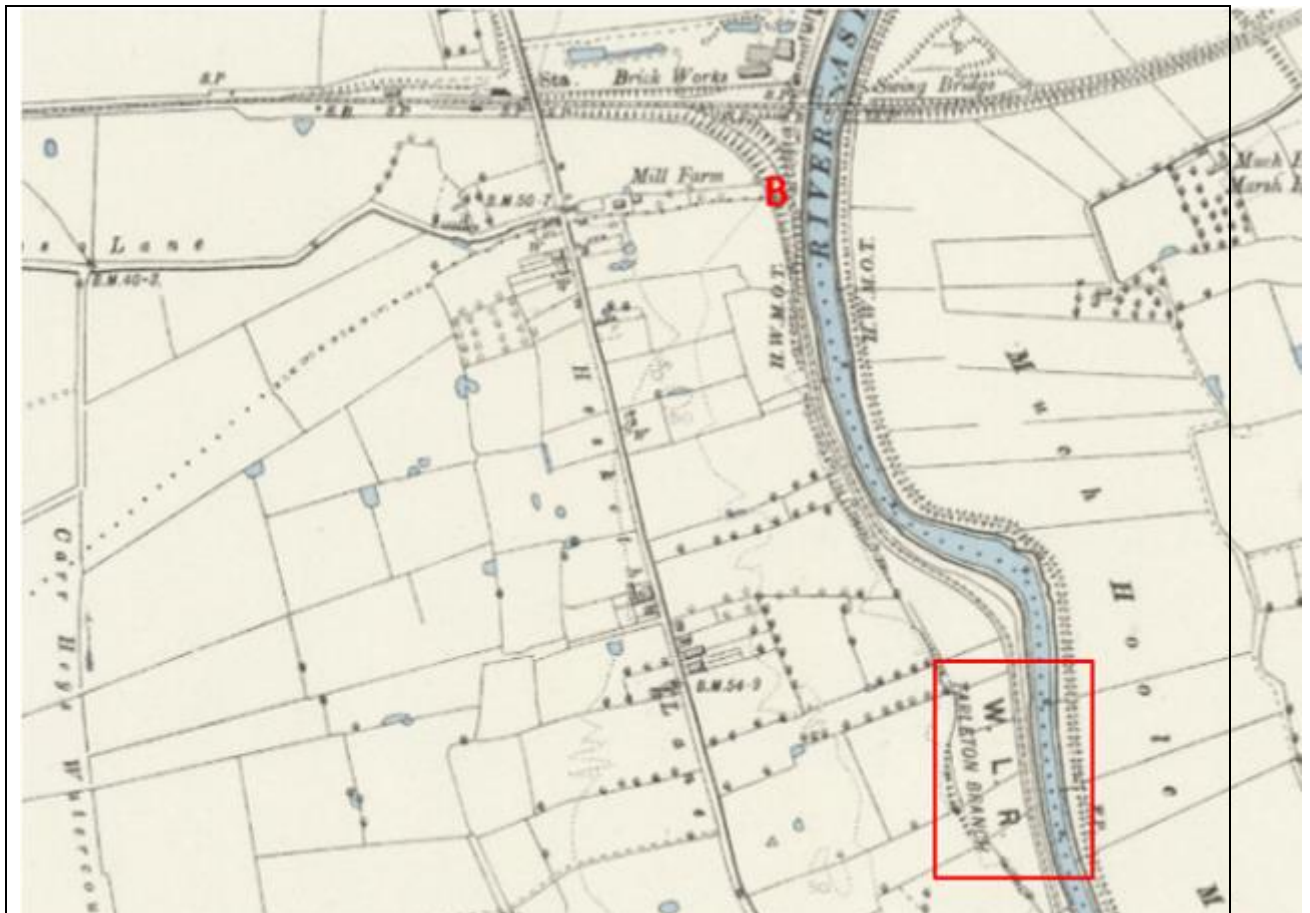
The boatyard is not shown although an area with a different surface, consistent with a boat park, is shown and access to the





		land crossed by the route under investigation is shown via Becconsall Lane.
Investigating Officer's Comments		The route under investigation did not exist in 1891-92.
<b>6 inch OS Map LXVIII.SW</b>	1894	6 inch OS map revised 1891 to 1892 and published 1894.

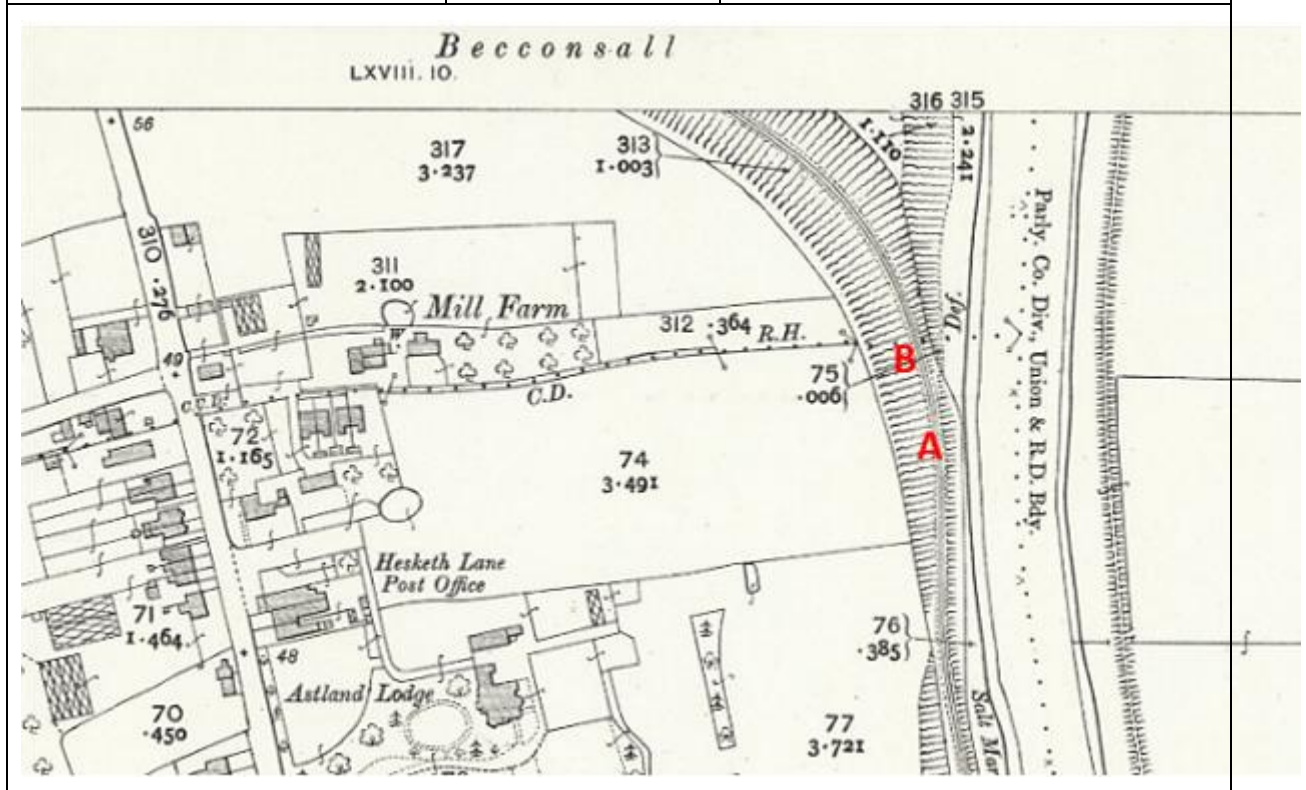




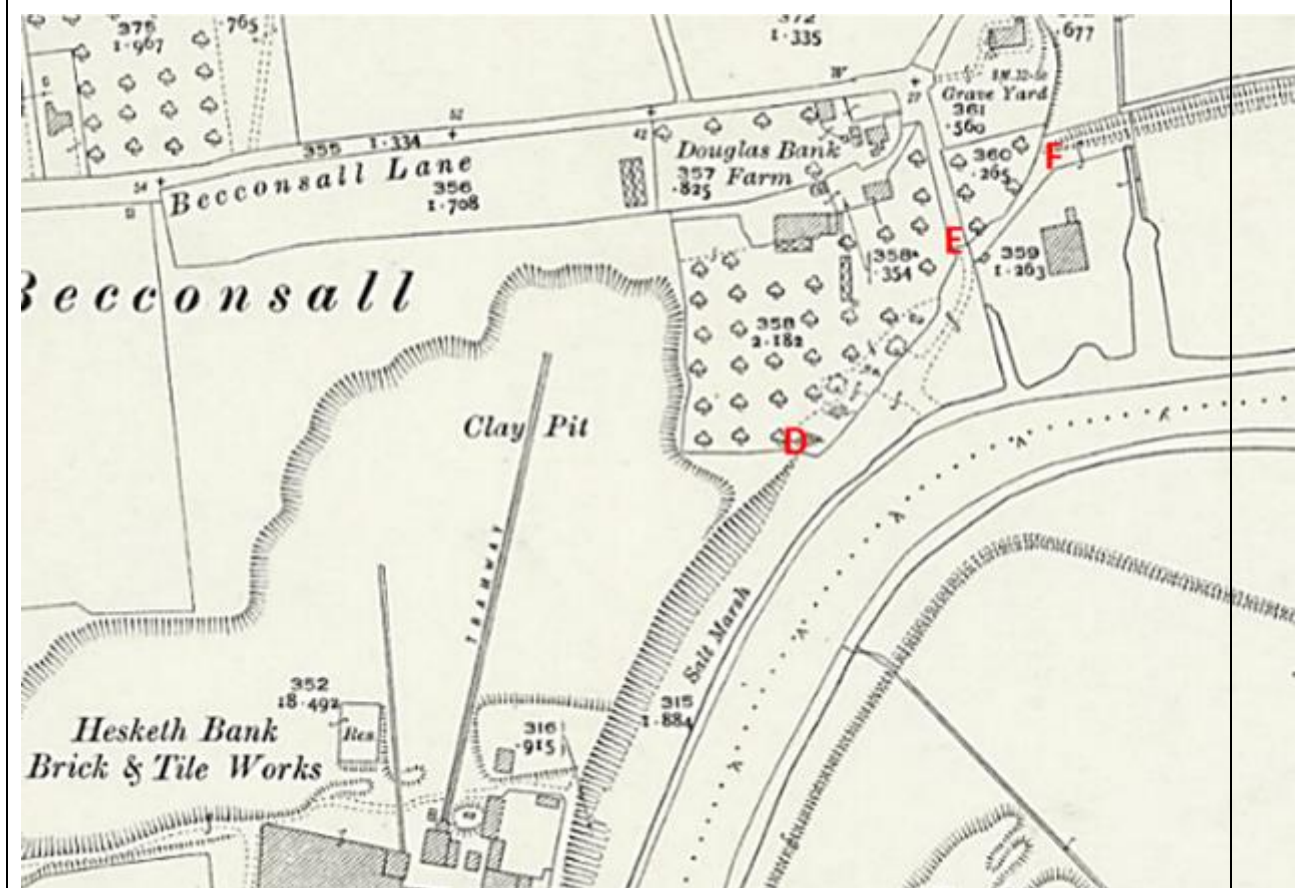
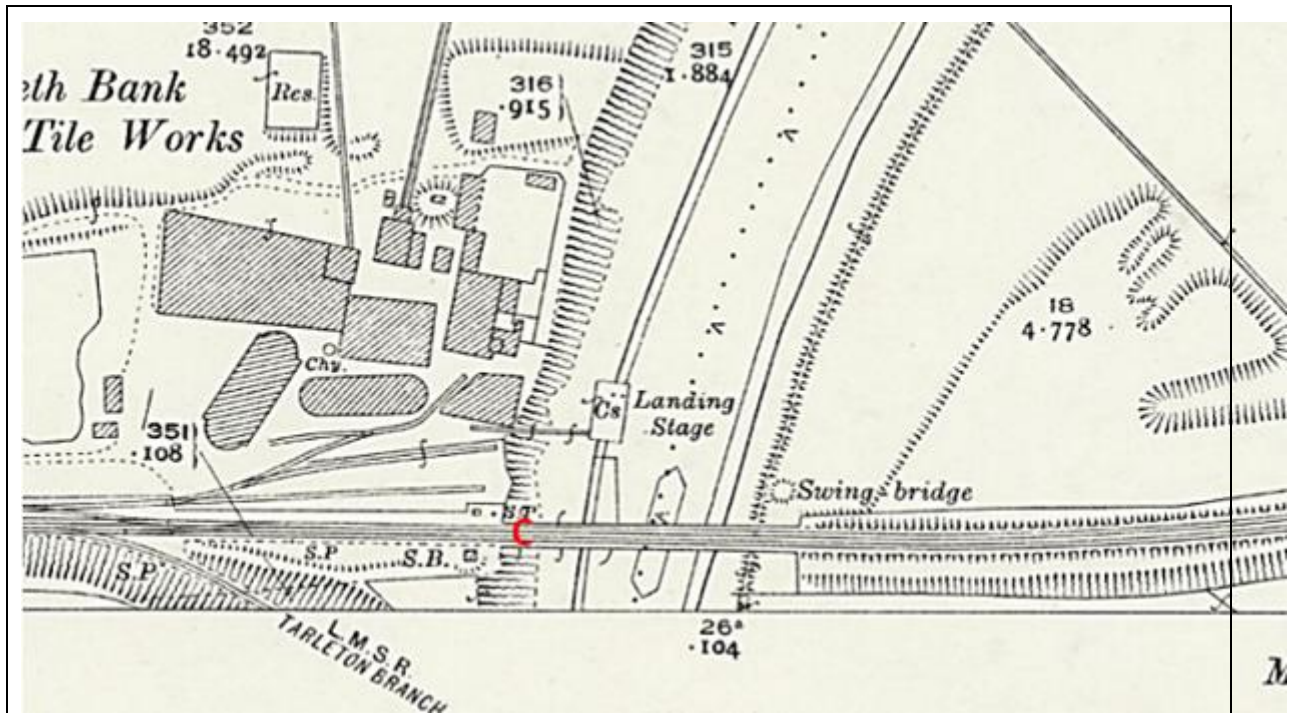
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist in 1891-92.
<b>1 inch OS Map Sheet 75 - Preston</b>	1896	1 inch OS map surveyed 1891-1892 and published 1896.



Observations		Beconsall Lane is shown providing access to the land crossed by the route under investigation at point E. The route under investigation is not shown.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown and a map of this scale would not generally assist in an investigation into the existence of footpath rights or the detailed alignment of a route.
25 inch OS Map LXVIII.10 & LXVIII.14	1911	Further edition of the 25 inch map surveyed in 1891-2, revised in 1909 and published in 1911.







Observations

The route under investigation is not shown. Between point A and point B the branch line is shown.

At point C the WLR crosses the river and no route is shown



		<p>across or under the bridge.</p> <p>North of the bridge there is a landing stage with rails shown extending across the land crossed by the route under investigation leading to the Brick and Tile works. The works have grown and extended since the earlier 25 inch OS map was surveyed (i.e. in the 20 years since 1891) with a large clay pit shown separated from the salt marsh and river by banking. Trees were originally shown on the banking in 1891 but are not shown in 1909.</p> <p>Between the banking and the river is a thin strip of land labelled as salt marsh.</p> <p>Access onto the salt marsh was shown from Beconsall Lane passing through point E.</p> <p>An unnamed building is shown on the land east of point E where the current boatyard is situated.</p>
Investigating Officer's Comments		The route under investigation did not exist in 1909.
<b>Bartholomew half inch Mapping</b>	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the</p>







1920



1941

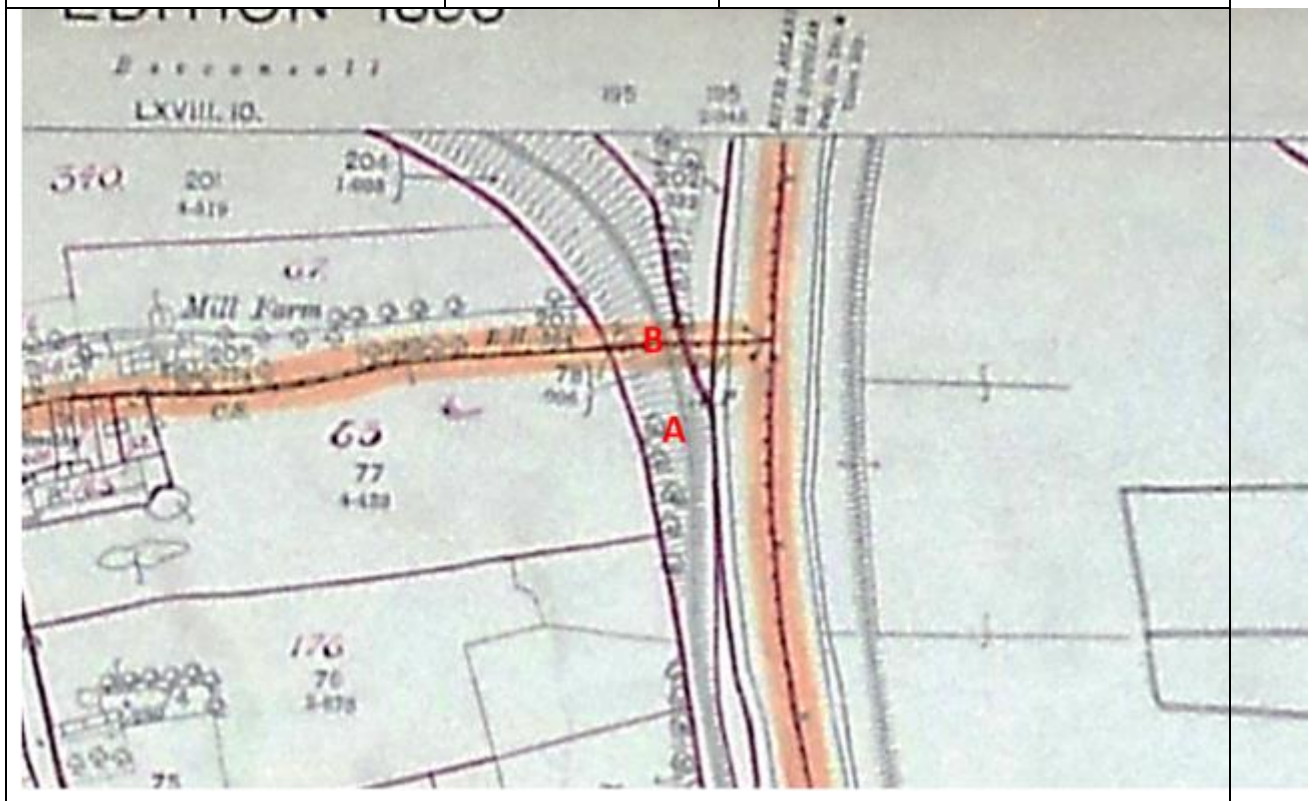
Observations		The route under investigation is
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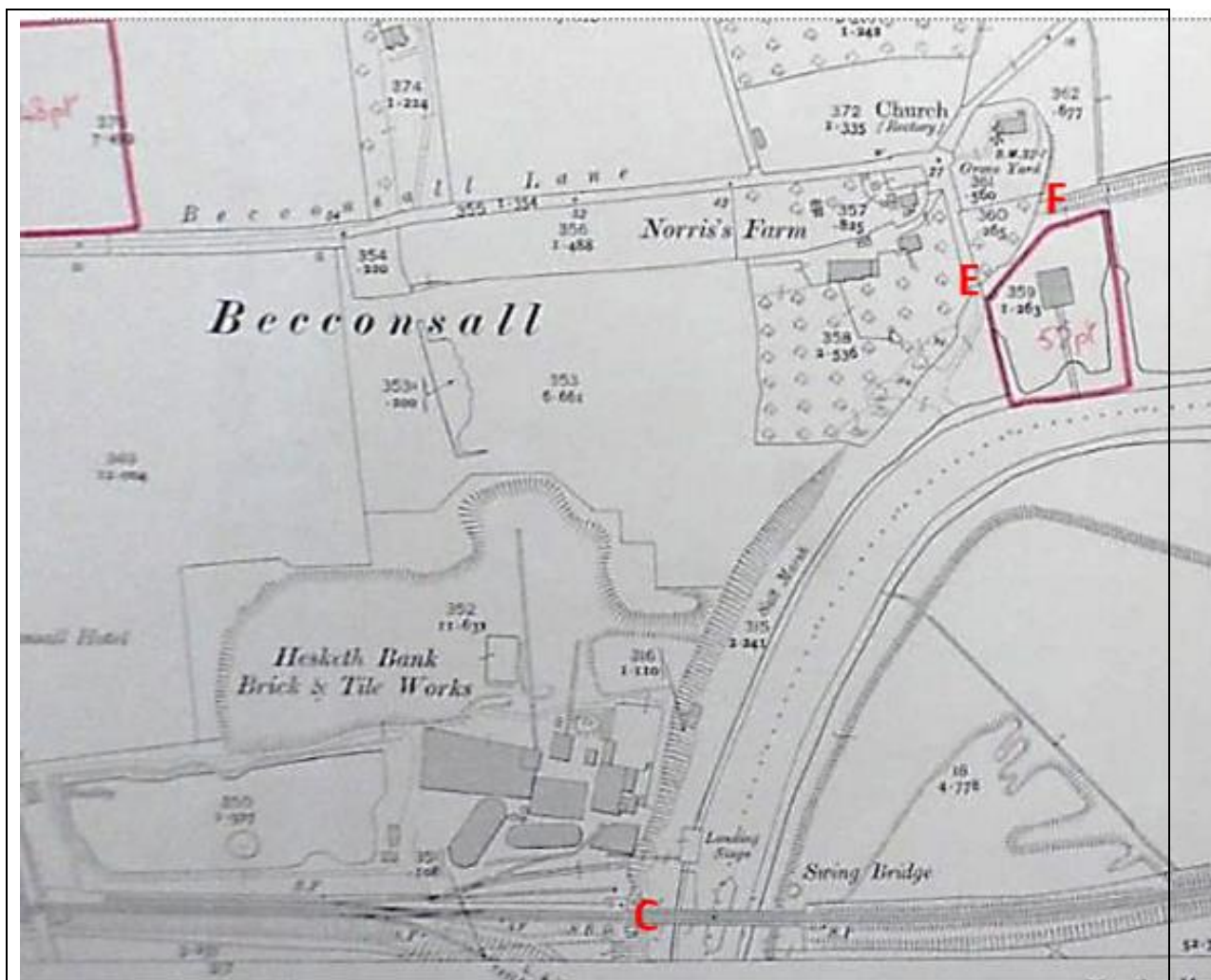


		not shown. The faint dashed lines that can be seen in proximity to the route are believed to be contour lines.
Investigating Comments	Officer's	The original scale and purpose of the map (half inch to the mile) means that only the more significant routes are generally shown and a map of this scale would not generally assist in an investigation into the existence of footpath rights or the detailed alignment of a route.
<b>Finance Act 1910 Map Map Sheet LXVIII.10 – TNA Ref 133/5/75</b>  <b>Map Sheet LXVIII.14 – TNA Ref 133/3/79</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying</p>



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.





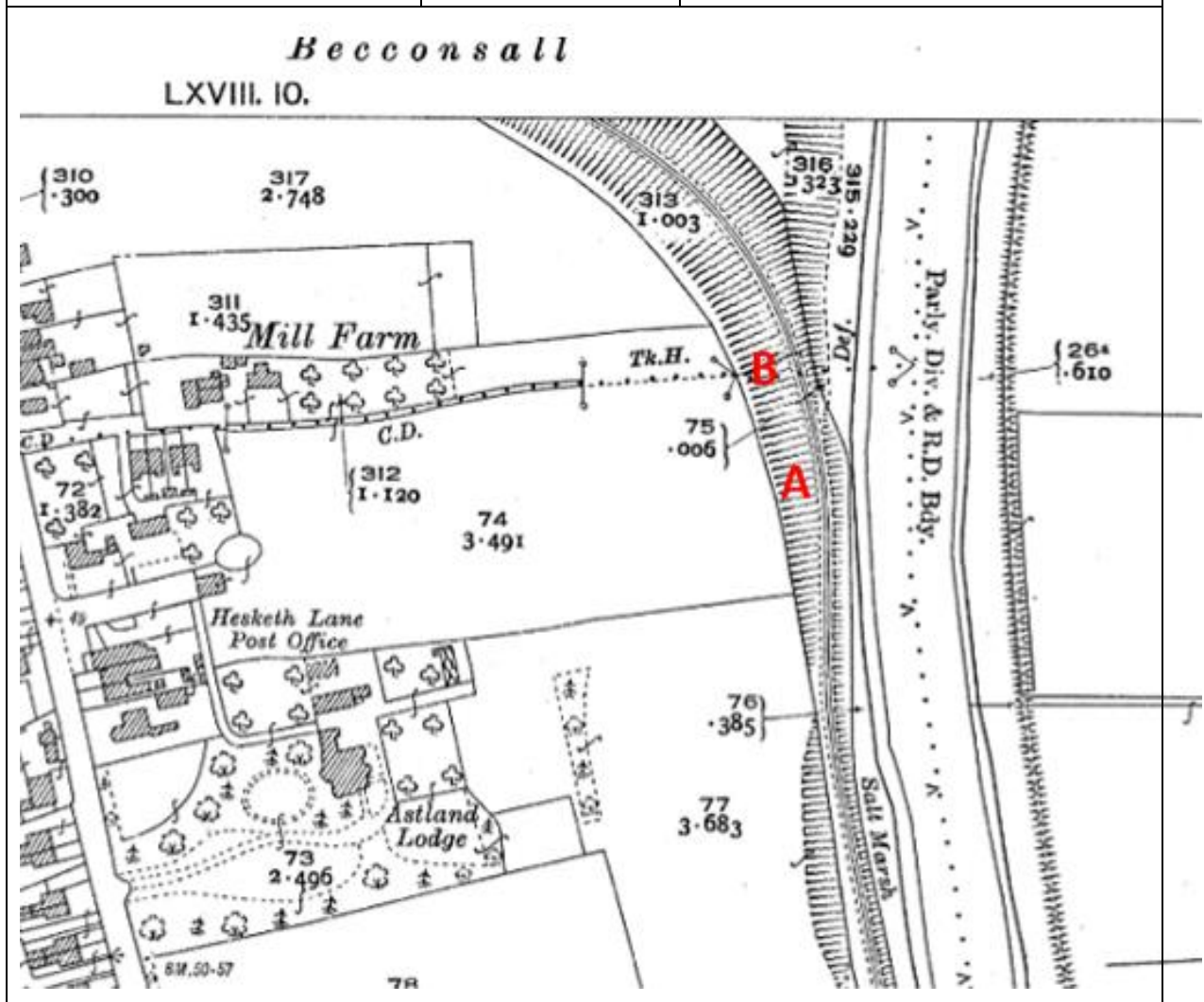
Observations		<p>The Finance Act Maps for the area crossed by the route under investigation are incomplete.</p> <p>Between point A and point B the land crossed by the route under investigation fell within a plot listed as being owned and occupied by the railway company. No deductions were made for public rights of way or user.</p> <p>The rest of the route crosses land which is not numbered.</p>
Investigating Officer's Comments		<p>The route under investigation did not exist along the railway line between point A and point B. No inference can be drawn with regards to the existence or correct alignment of the rest of the public footpath.</p>
25 Inch OS Map	1931	Further edition of 25 inch map

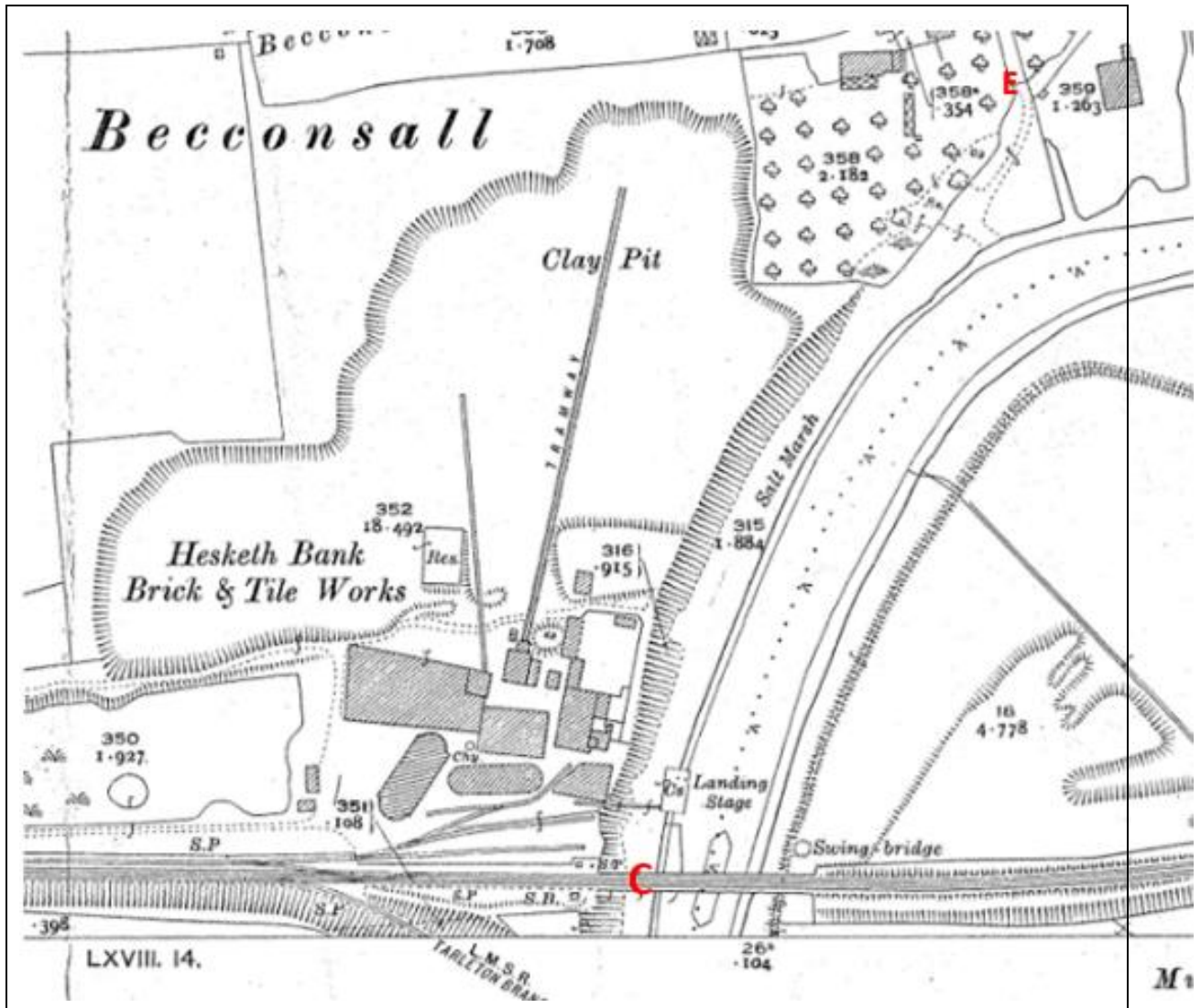




LXVIII.10 & LXVIII.14

(surveyed 1891-2, revised in 1929 and published in 1931.

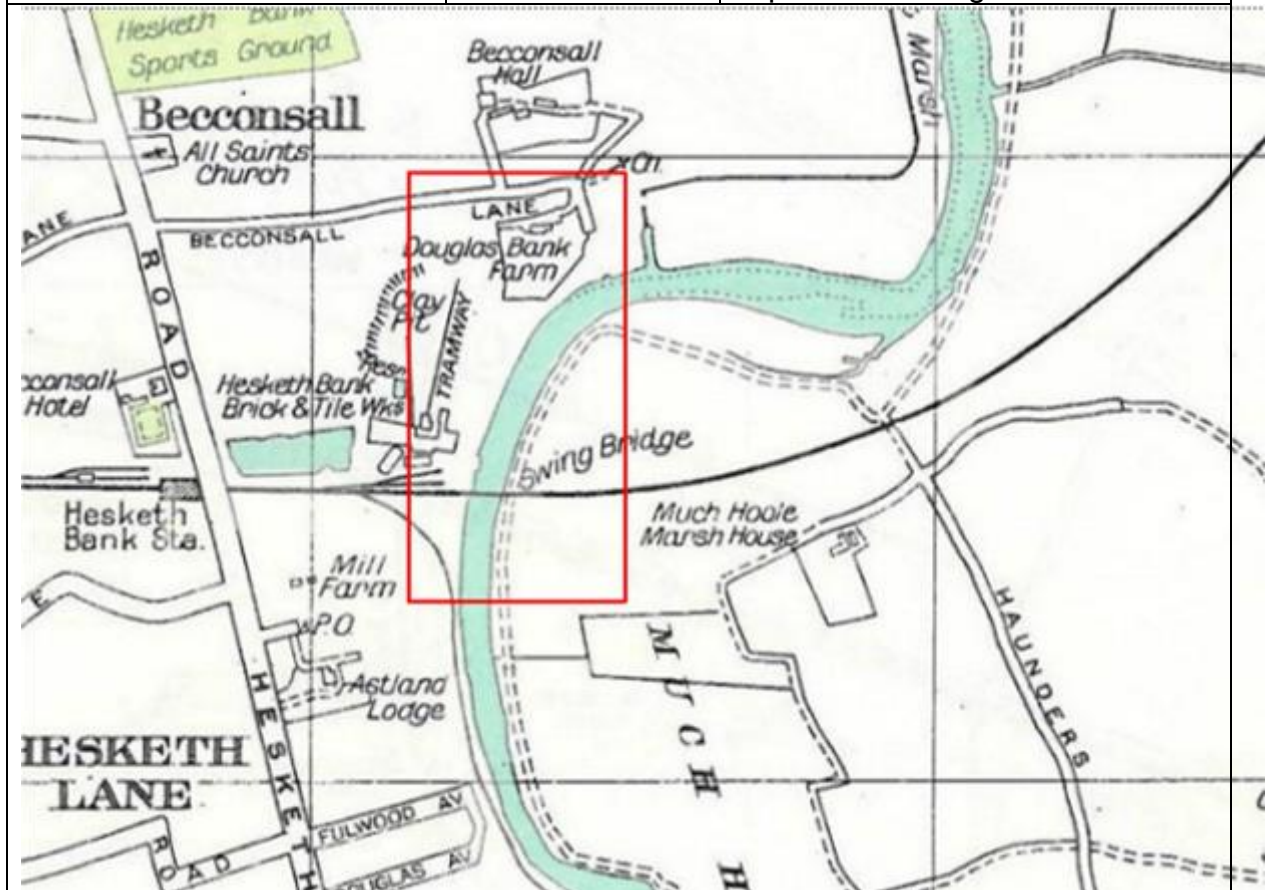




Observations		The route under investigation is not shown and the land looks to be unaltered from when the earlier 25 inch OS map was published.
Investigating Officer's Comments		The route under investigation did not exist in 1929 since the branch line of the railway was over part of it.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.



		<p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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Observations		The route under investigation is not shown.
Investigating Officer's Comments		Only the more substantial routes were shown. No further inference about a minor footpath can be drawn.
Aerial Photograph <sup>2</sup>	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be

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



viewed on GIS. The clarity is generally very variable.

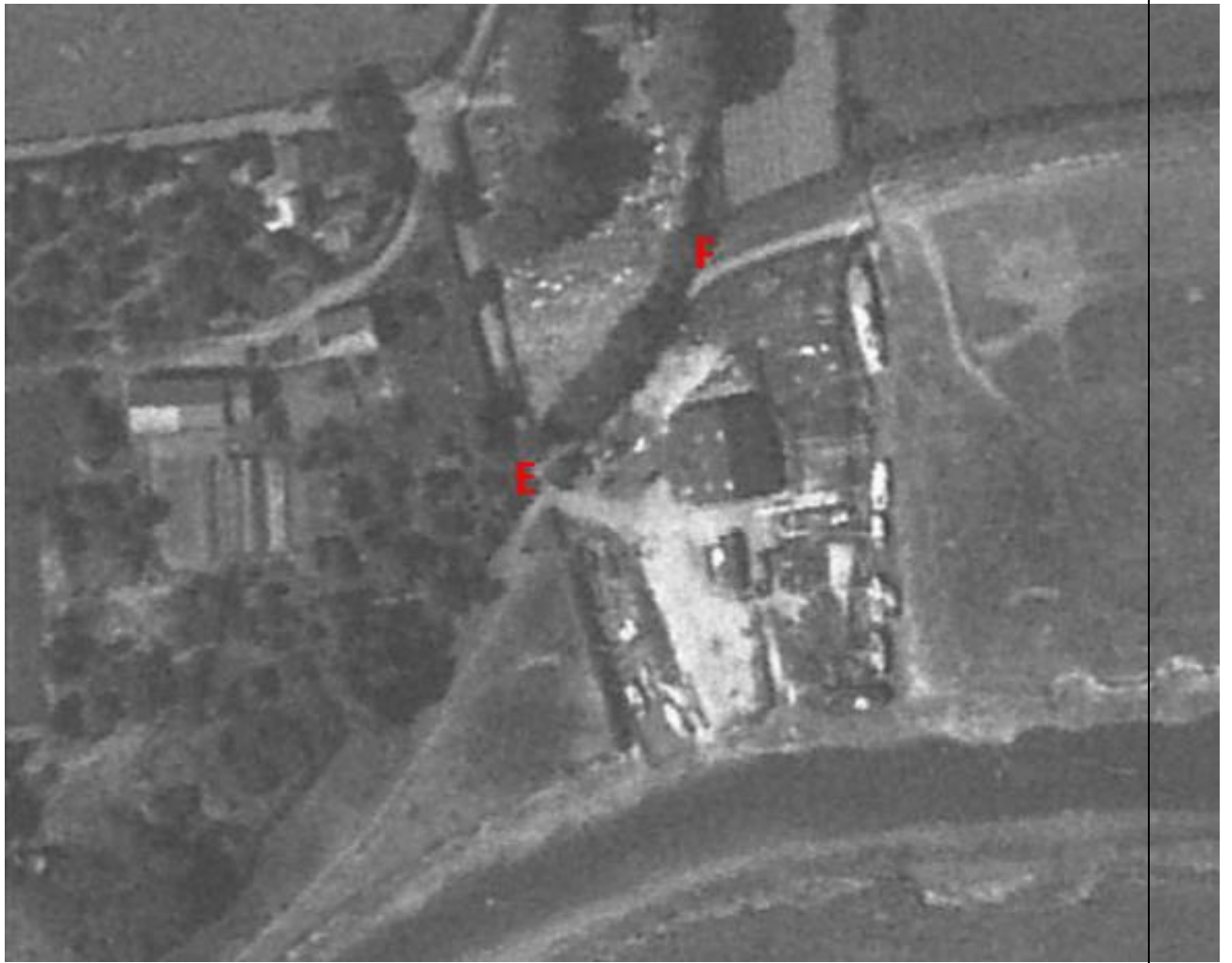












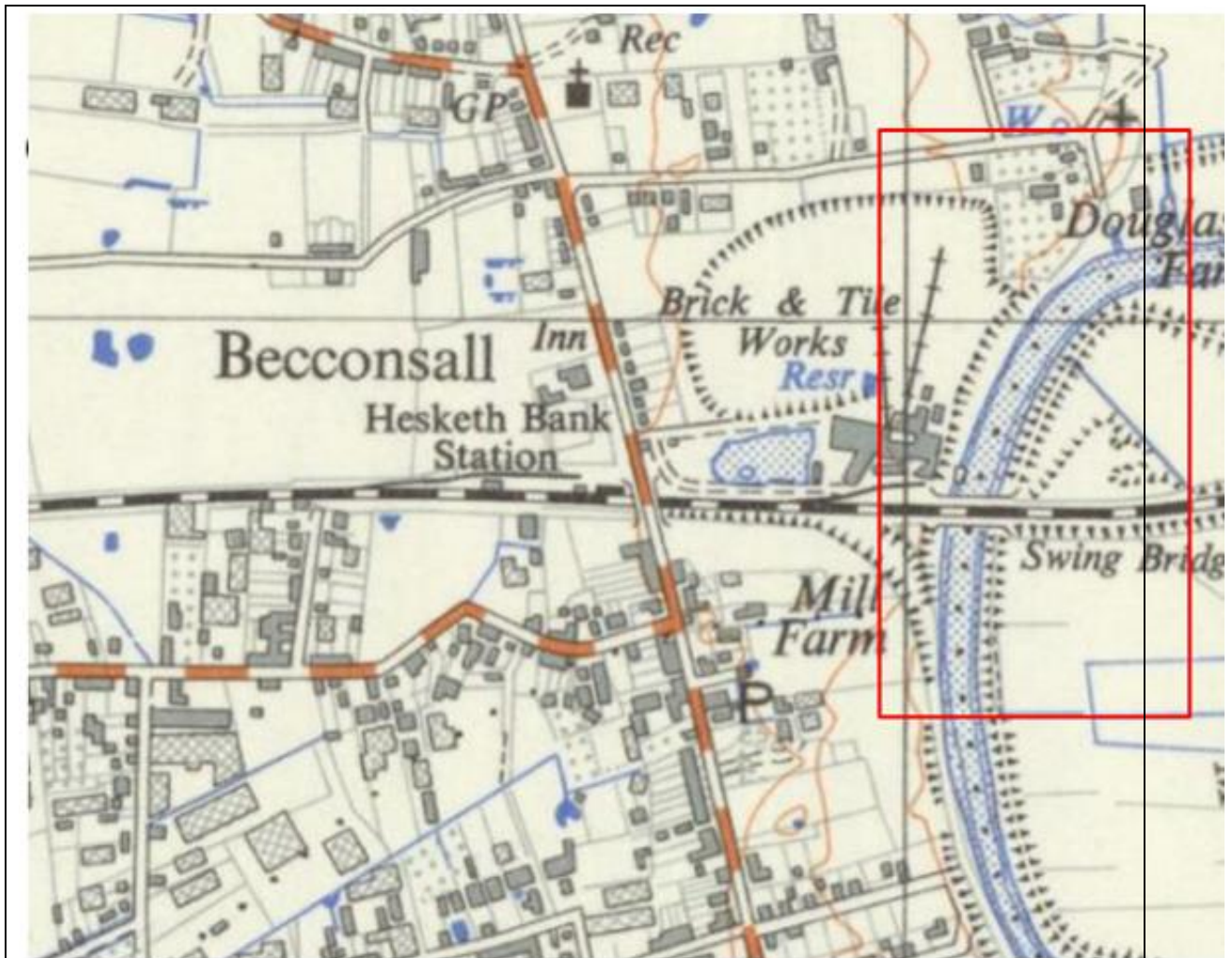
Observations

By the 1940s the Tarleton Branch of the railway had ceased to operate, and the aerial photograph taken between 1945 and 1952 shows that the railway lines had been removed.

Between point A and point B a lighter area is visible leading towards point B which is consistent with a trodden route. The route under investigation is not visible as a trod between point B and point C. A trodden lines can also be seen curving west to cross the WLR 150 yds from the bridge.

150yds north of point C however a lighter line can be seen along the saltmarsh which extends to point E and runs along a line closer to the river bank than

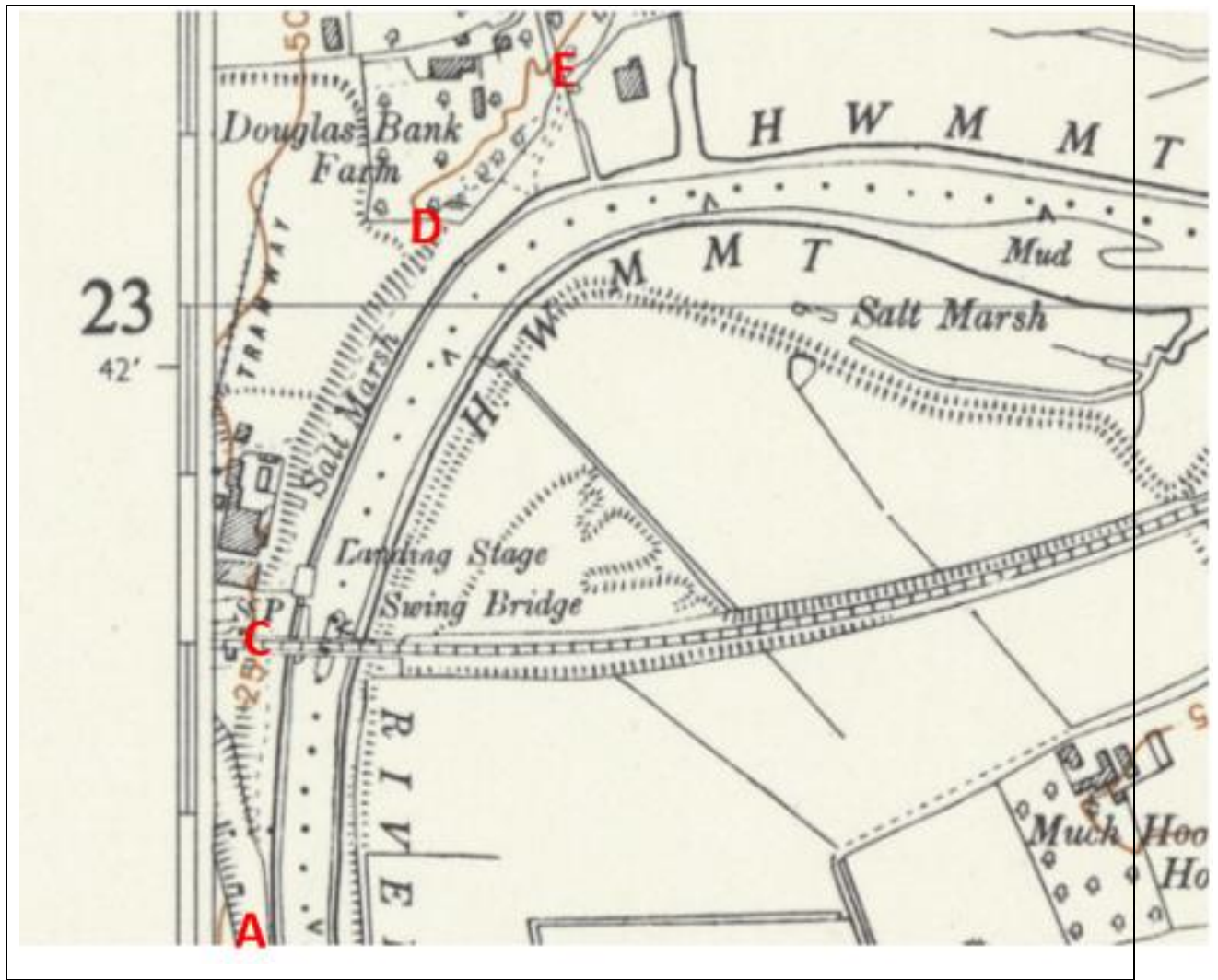
		either the Definitive Map route or the route of the ECP as far as the approximate location of the pontoon marked on the Committee plan.
Investigating Officer's Comments		<p>By the mid-1940s the Tarleton Branch line that had previously existed running parallel to the river between Tarleton and the main Southport-Preston line had been removed and it may have been possible to walk along the former railway track from Tarleton Locks. There is no visible trod passing through point A continuing across or under the railway bridge near point C although a lighter area consistent with the existence of a trodden route is visible part way between point A and point B leading through to point B.</p> <p>A trodden route is visible from midway between point C and point D through to point E which may have been accessible to the public on foot. The route differed however from the Definitive Map route or the route now recorded as the ECP.</p> <p>The Definitive Map route is not visible.</p>
<b>6 Inch OS Map SD42</b>	1955	6 inch OS map partially revised 1938-51 and published 1955.



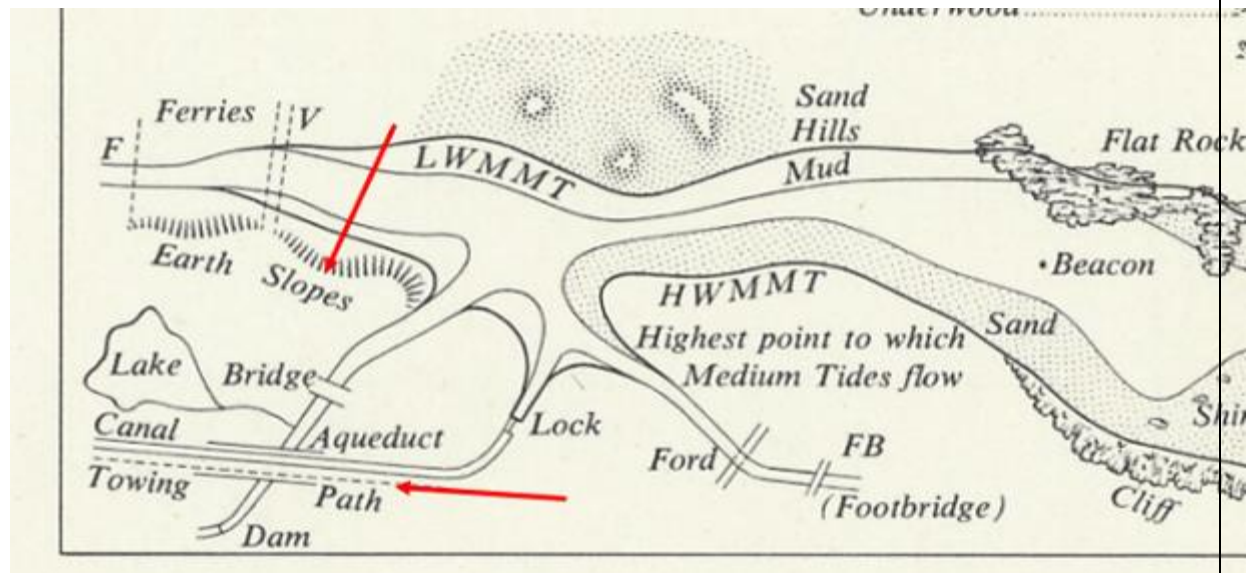
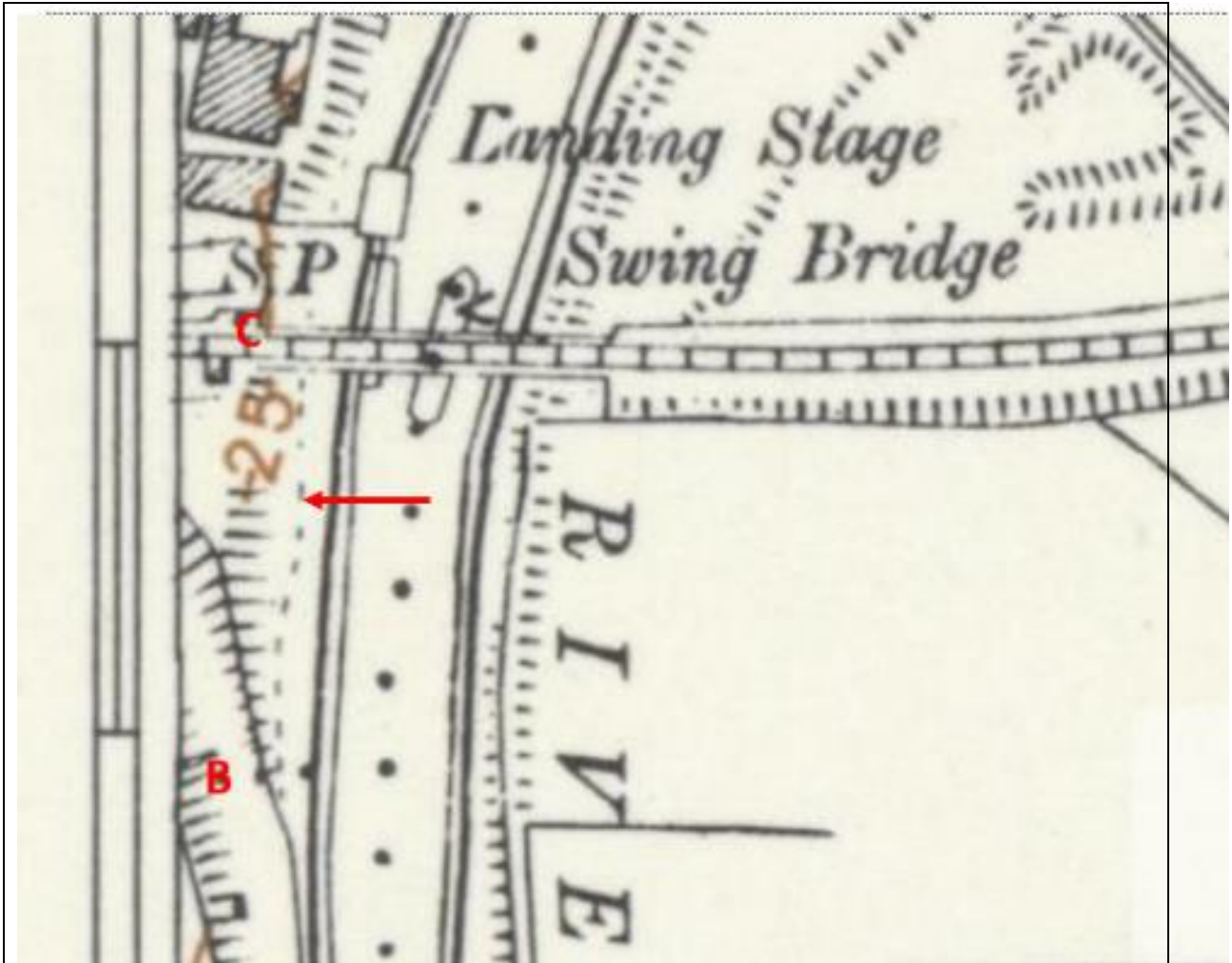
Observations		<p>The map confirms that the railway track had been removed from the Tarleton Branch between Tarleton Lock and the main Southport – Preston line.</p> <p>The route under investigation and the ECP route are not shown.</p>
Investigating Officer's Comments		<p>The scale of the map means that routes across open land and used on foot may not have been shown. By the late 1930s it may have been possible to walk along the river bank but no inference can be made.</p>
6 inch OS Map SD 42 SE	1961	6 inch OS map revised 1930-1958 and published 1961.









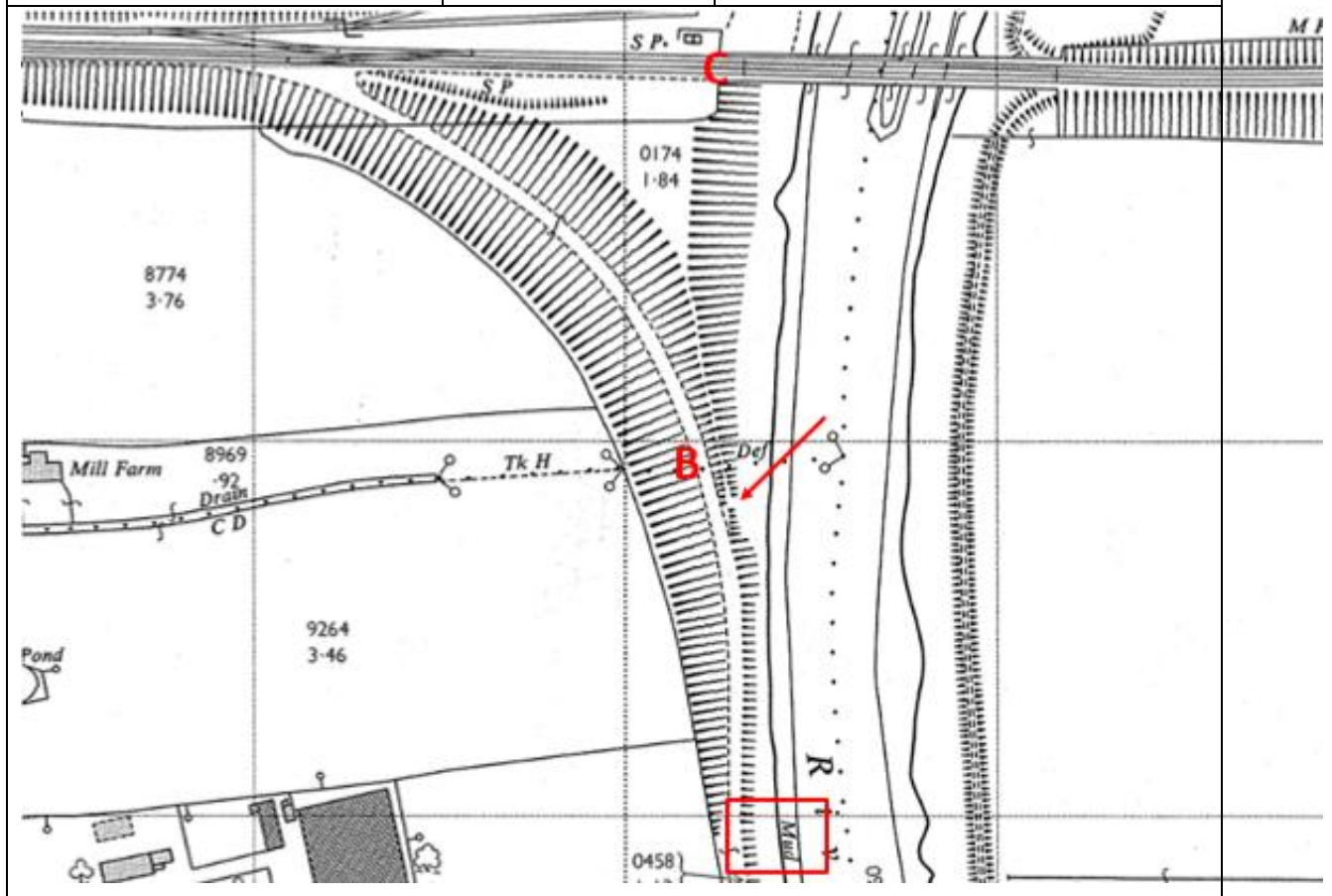


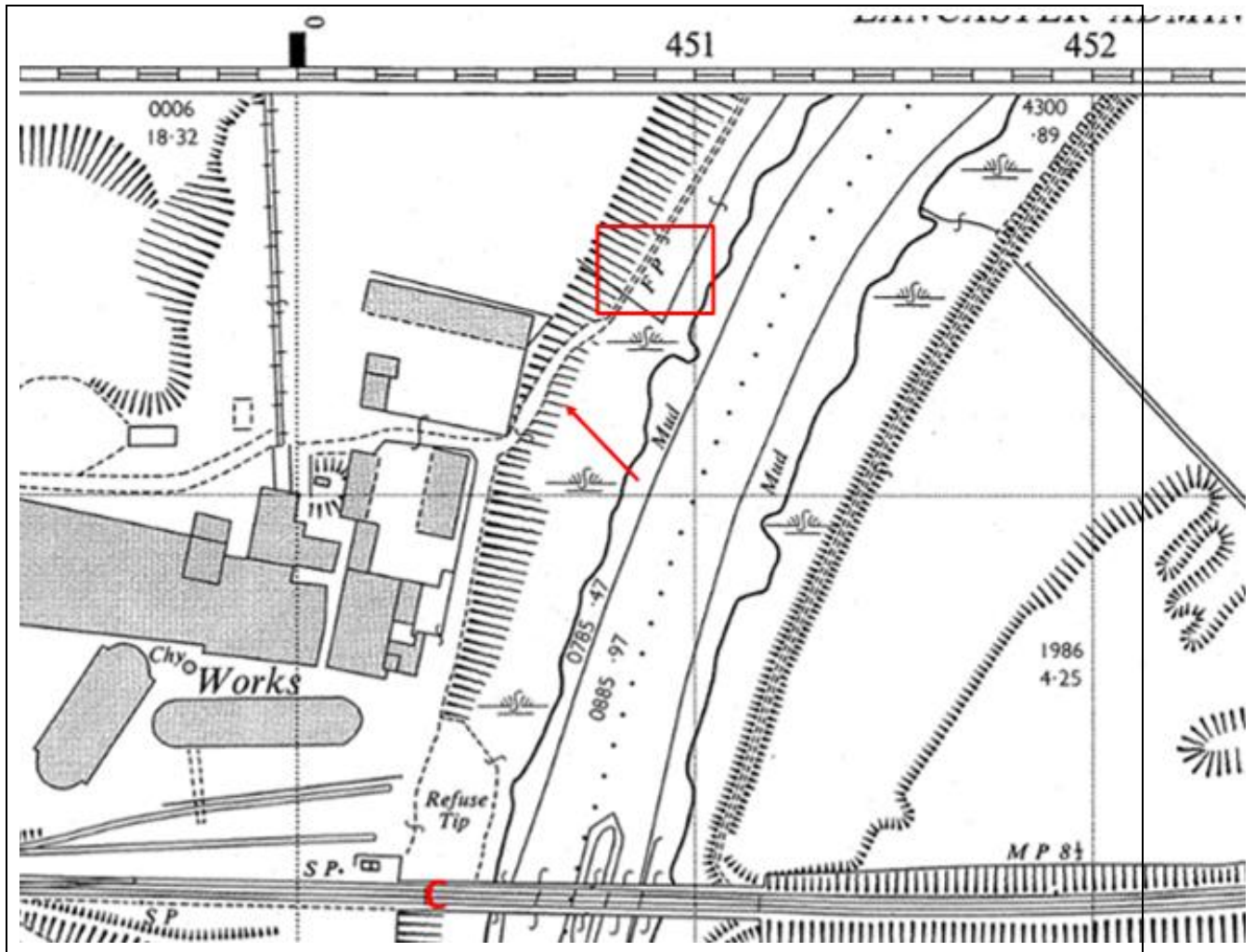
Note: Map and key extracts have not been enlarged to the same scale

<p>Observations</p>		<p>The route under investigation is not shown.</p> <p>There appears to be a broken line shown in the same manner as a Path, or of a change of surface,</p>
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		on the key existed leading from the dismantled branch line to pass under the railway bridge at point C and to continue along the bottom of the banking towards point D.
Investigating Comments	Officer's	A route along the river bank may have been in use in the early 1960s but it differed from the Definitive Map route and to that recorded as the ECP route.
<b>1:2500 OS Map SD 4422-5522</b>	1963	Further edition of 25 inch map reconstituted from former County Series and revised in 1962 and published in 1963 as National Grid Series.





Observations

The 1:2500 OS map sheet above was revised in 1962 prior to the closure of the Southport-Preston railway line and shows the bridge across the river and railway lines still in existence.

A route is not shown along the dismantled branch line which ran to/from Tarleton locks although the tracks had been removed. Just south of point B as indicated by the insertion of a red arrow on the first of the map extracts above a gap is shown in the embankment in the approximate position that the ECP route runs. No route is shown along the river bank, and it was noted that between the river bank and the mean high water mark the land was labelled as 'mud'.

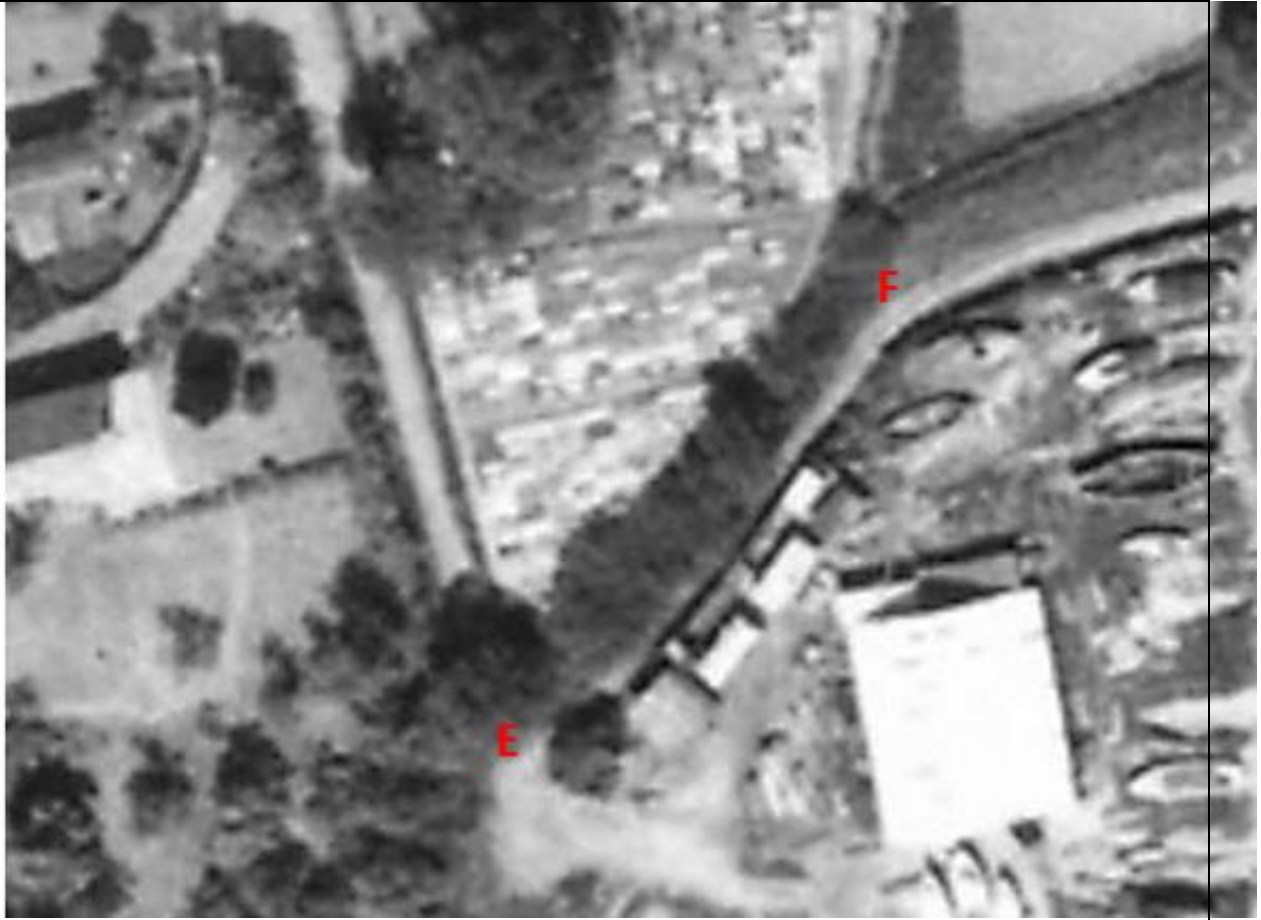
The second map extract shows



		<p>the land north of the swing bridge. A refuse tip is shown and labelled immediately north of the swing bridge and although it may have been possible to walk under the bridge past the refuse tip and above the mean high water mark the land was marked on the map as marsh.</p> <p>A track is shown cutting through the embankment on an angle between the Brick and Tile Works and a footpath shown at the bottom of the embankment. The Landing Stage that had previously existed is not shown but the footpath is shown continuing through a fence line and along the bottom of the embankment labelled as a footpath (F.P.) north in the direction of Beconsall Lane.</p> <p>The OS sheet showing the rest of the land crossed by the route under investigation was not available.</p>
Investigating Officer's Comments		<p>It may have been possible to walk from the dismantled railway down onto the marsh land and under the swing bridge but there is no path shown suggesting that any such use was not being made by a significant number of people so as to be sufficiently evident for the surveyor to note.</p> <p>A route marked as a footpath is shown descending from the Brick and Tile works to run north along the bottom of the embankment but it is not possible to know whether this was in existence just for use to and from the works or was used by the public as part of a longer journey.</p>
<b>Aerial photograph</b>	1961-1963	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.











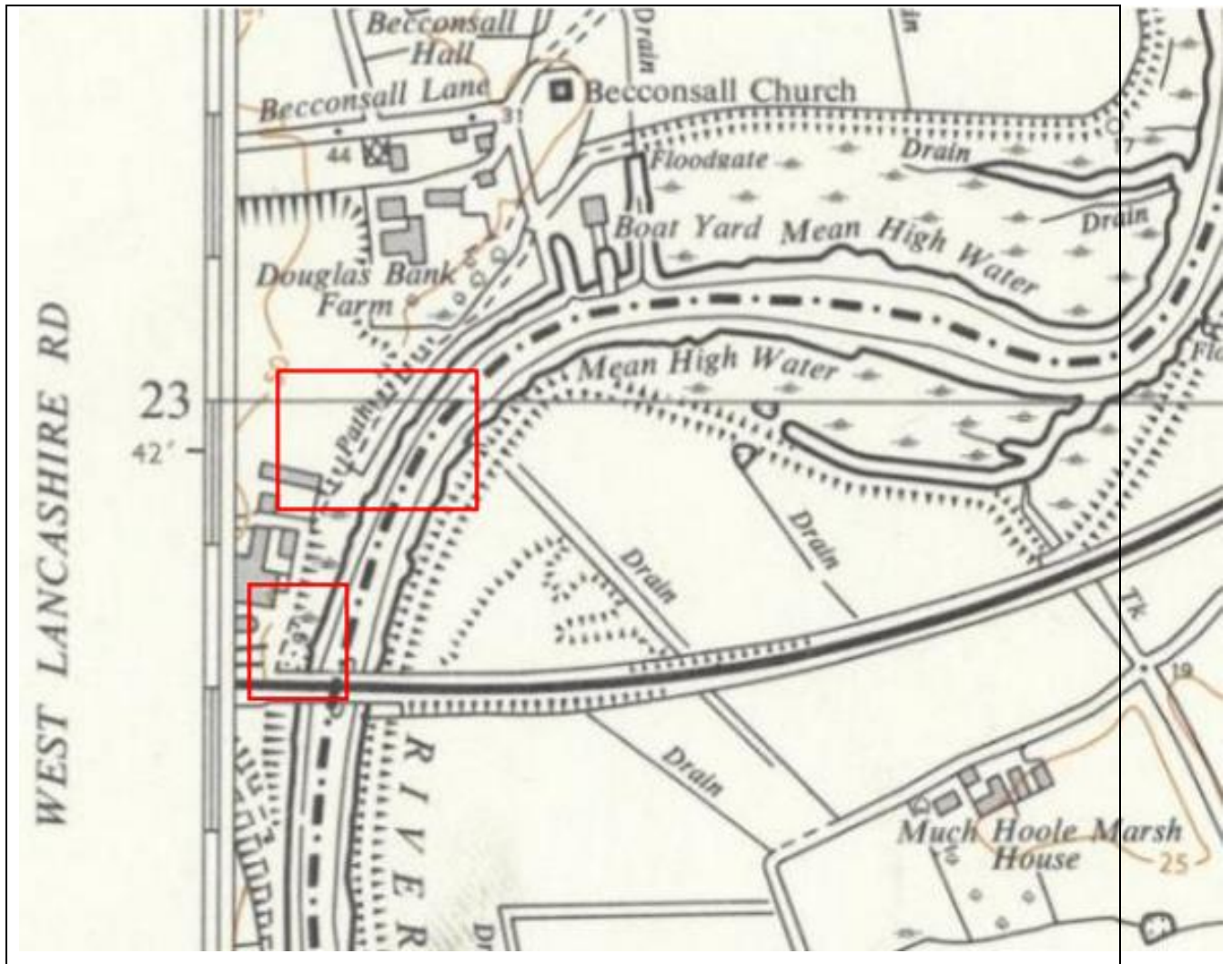
Observations

A trod consistent with use on foot can be seen between point A and point B with a route continuing along the original branch line track bed in a north westerly direction towards the Southport – Preston railway line and then west to Station Road. A further trod roughly consistent with the Definitive Map route can be seen continuing north through a band of trees but no further.

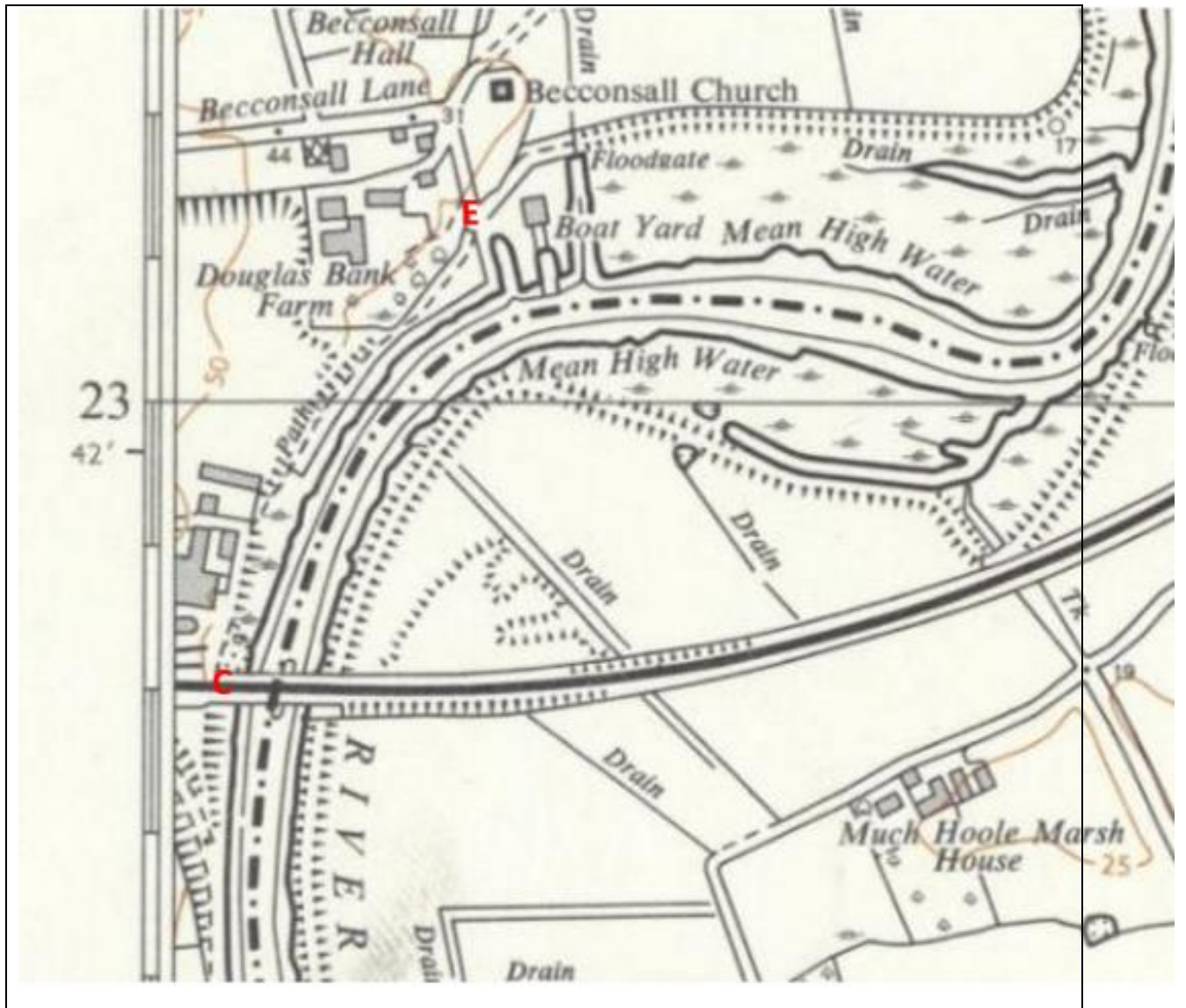
A route consistent with the ECP route can be seen leaving the Definitive Map route between point A and point B to continue along the salt marsh and under the railway swing bridge. North of the swing bridge a route can be seen continuing through to Beconsall Lane (point E) – which splits in places so that two parallel routes are visible – one close to the shoreline (and boats moored along it) and the other roughly consistent with parts of the ECP route. The photograph predates the boatyard, so neither



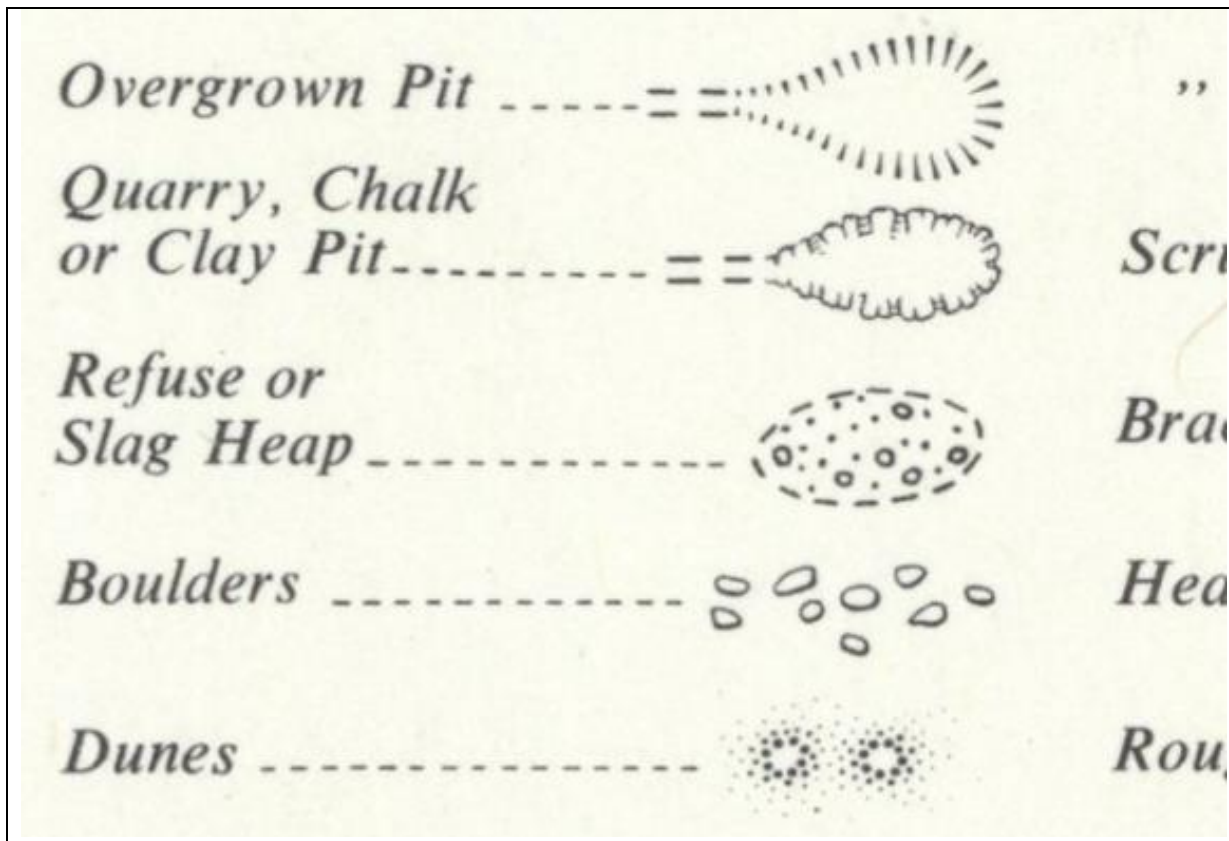
		<p>the caravans and boats stored on the saltmarsh today nor the walked track between them can be seen.</p> <p>The brickworks can be clearly seen but there is no visible crossing of the railway line on the Definitive Map route (point C) and the Definitive Map route is not visible along the top of the embankment from point C through to point E. There does however appear to be a link from the brickyard onto the saltmarsh at the back of the brickworks which would have involved descending the embankment.</p> <p>Between point E and F the Definitive Map route can be clearly seen running between the boundary hedge and some rectangular buildings.</p>
Investigating Officer's Comments		<p>The aerial photograph understood to have been taken between 1960 and 1963 provides a very good indication that a trodden path existed along the saltmarsh passing under the swing bridge and continuing through to the boatyard at point E.</p> <p>The Definitive Map route is not shown as a trod from point A through to point E and at that time it appeared that the route in use ran along the saltmarsh and under the railway.</p>
6 inch OS Map SD 42 SE	1967	6 inch OS Map revised 1961-1965 and published 1967.











Observations

The Preston-Southport railway line across the River Douglas closed in 1964 but at the time the map was surveyed (1961-1965) it was still in existence.

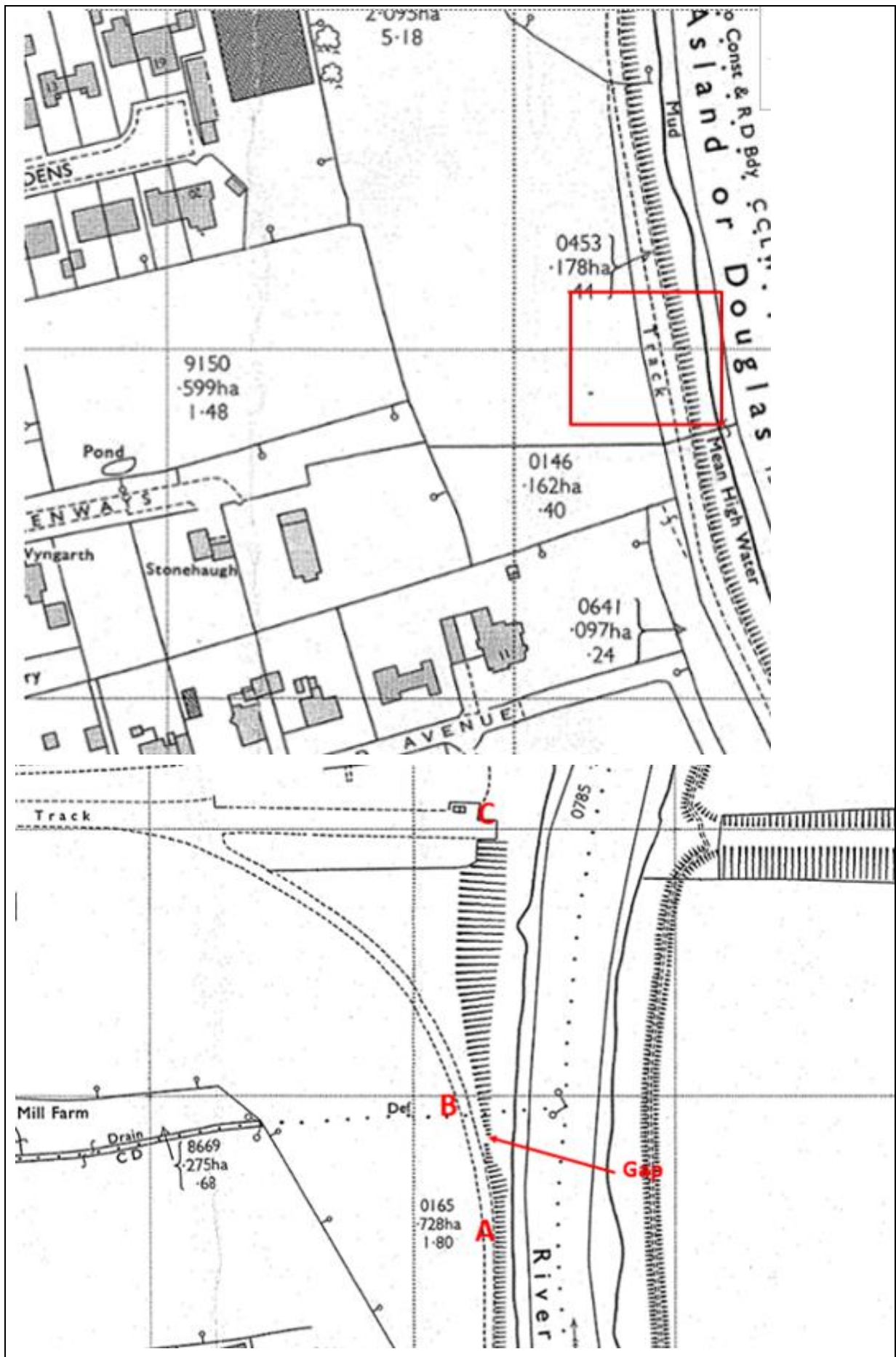
Neither the Definitive Map route nor ECP route is shown south of point C.

Immediately above (north) of point C a series of three dashes is shown followed by the notation for an embankment and then a dashed line labelled as 'path' continues through to point E.

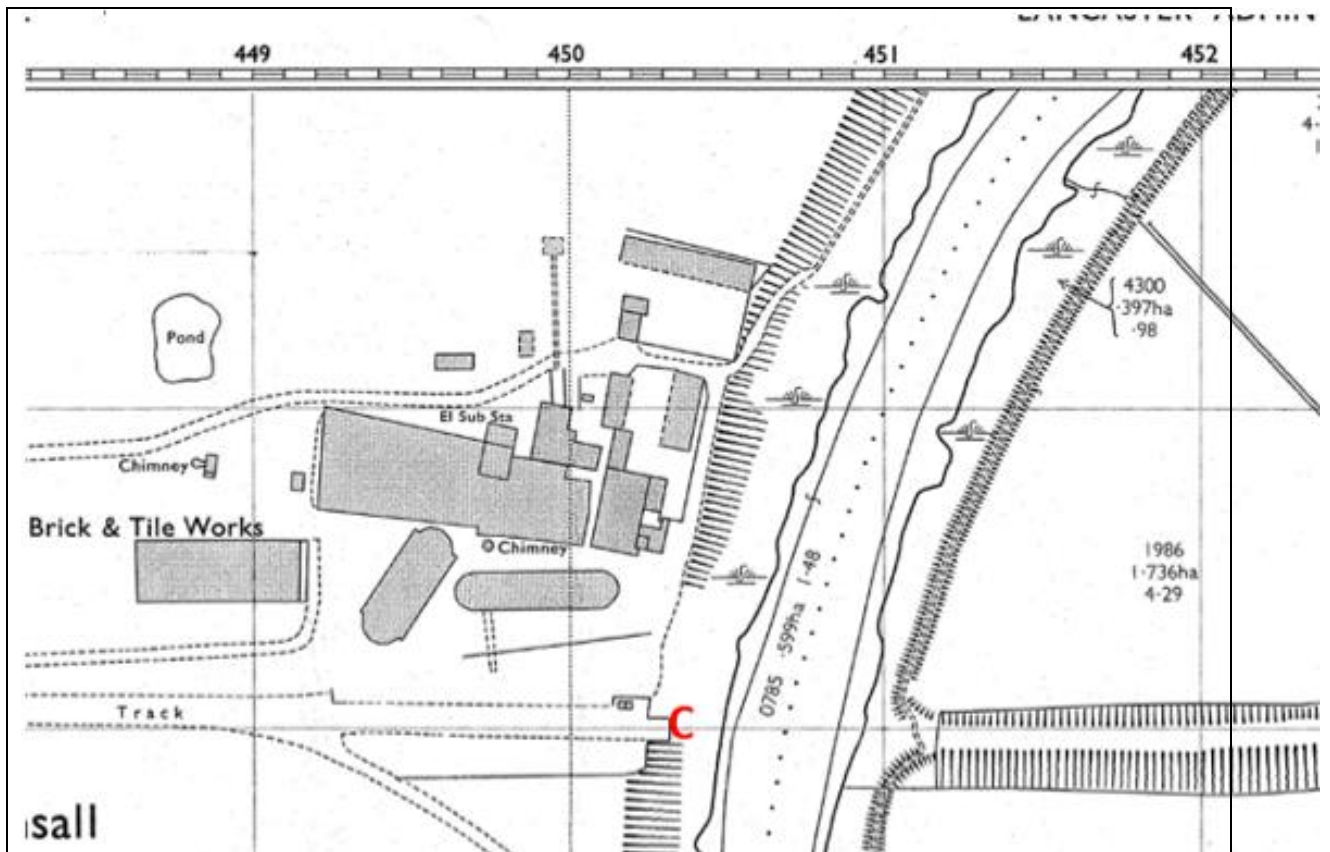
The dashed line from point C to the top of the embankment delineates an area shown as a refuse or slag heap which meets the top of the embankment at the same level as the Brick and Tile Works. To the west, within the brickworks, there appears to be a clear strip adjacent to the buildings. From the top of the embankment a path is shown sloping down the embankment

		(following the track shown on the 1963 map) then continuing along the bottom of the embankment and east of the boundary of Douglas Bank Farm and west of another boundary enclosing land between the brickworks and the boatyard, to point E.
Investigating Comments	Officer's	No route is shown from point A to point C. The dashes above the refuse tip are consistent with denoting the extent of the tip (not necessarily a physical structure) but west of that, along the top of the embankment, is a clear strip which may have been passable. From the track by the brickworks through to point E a 'Path' is shown running from the top of the embankment and then dropping down to run along the bottom on the salt marsh. The route differs from both the Definitive Map route and the ECP route.
<b>1:2500 OS Map SD 4422-5522 SD 4423-4523</b>	1971-1973	Further edition of 25 inch map reconstituted from former County Series and revised in 1970-1973 and published in 1971-1973 as National Grid Series.

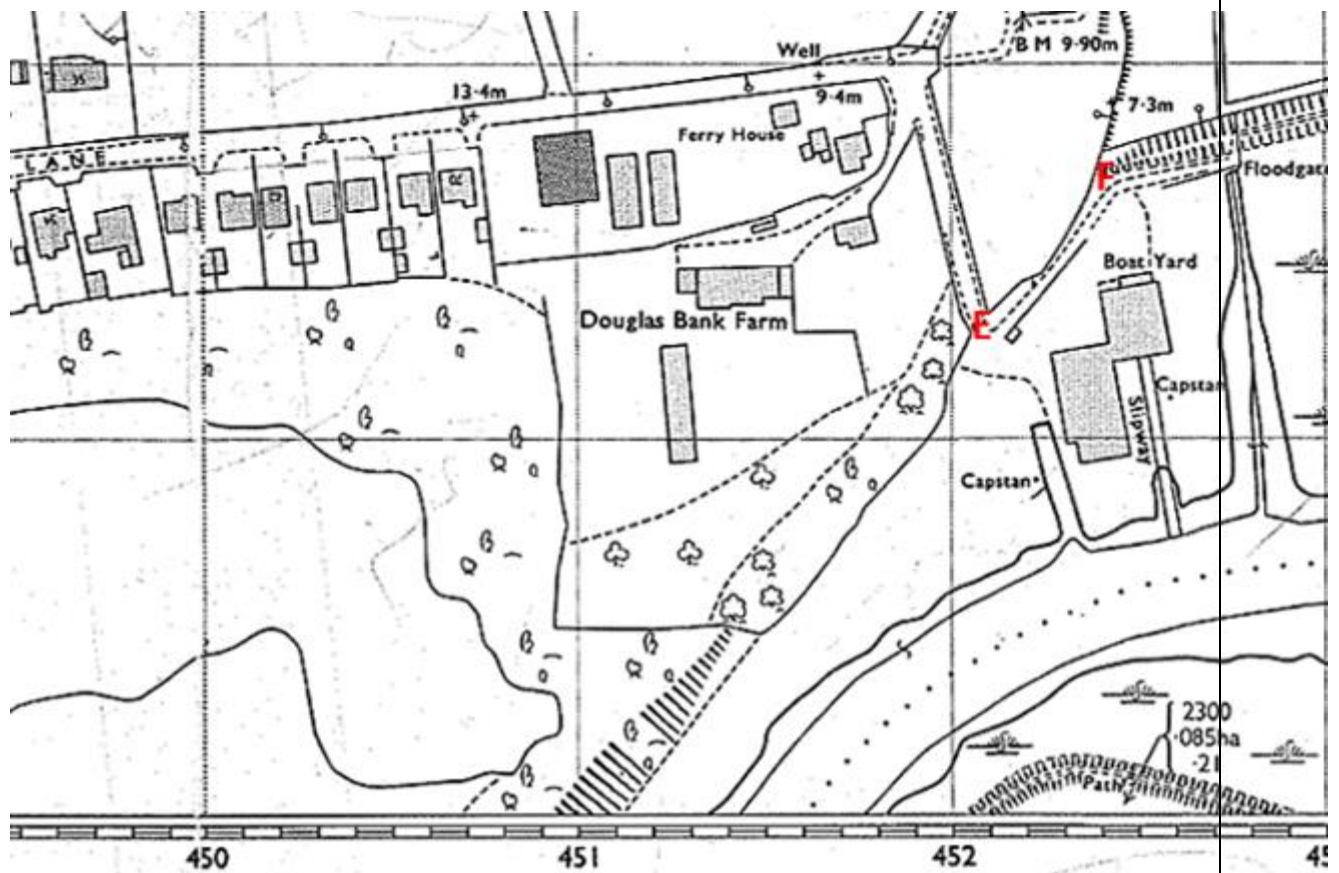








isall



Observations

The 1:2500 OS map revised in 1970-73 shows that by that time the swing bridge and railway lines



		<p>had been removed and this sheet also post-dates the relevant date, but not publication, of the Revised Definitive Map.</p> <p>The dismantled railway leading north from Tarleton Lock is shown labelled as a track which continues past the junction with the ECP route between points A-B through to Station Road.</p> <p>A gap is shown in the embankment allowing access down to the shoreline along the ECP route although the route itself is not shown.</p> <p>The swing bridge is no longer shown although the support structures still evident today are shown. The Definitive Map route from point A through to point C is not shown.</p> <p>A track is shown leading into the Brick and Tile Works from Station Road continuing through to the embankment where it then descends the embankment and continues north.</p> <p>The OS map sheet covering the land north of the Brick and Tile Works does not show the continuation of the footpath along the bottom of the embankment.</p>
Investigating Officer's Comments		Neither the Definitive Map route nor the ECP route are shown although access may have been available between point A and point E along the river bank.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view in the County Records Office.







<p>Observations</p>	<p>The photograph taken in 1988 shows significant changes. A trod consistent with use on foot can be seen extending north through point A with one route continuing through point B and then north west along the line of the dismantled branch line into the brick works. Another route can be seen passing through the embankment onto the strip of land adjacent to the river and is consistent with the modern day ECP route. This trod continues along the marsh through to the southerly end of the boatyard where it can be seen linking to the access road through the boatyard (that still exists today). What appear to be boats can be seen along either side of the roadway. A little north of point C it looks like there may have been a path leading from the top of the</p>
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		<p>embankment to the bottom and it looks like a further path may have led down the embankment from the brick works directly into the boatyard, but the footpath shown on the Definitive Map is not visible along the line recorded.</p> <p>It is not possible to zoom in with sufficient clarity to see whether the Definitive Map route E-F was available to use at that time.</p>
Investigating Officer's Comments		<p>The photograph provides evidence that by 1988 the route now published as the ECP route could have been in use and that the Definitive Map route was either little used or did not exist on the ground at that time.</p>
<b>Aerial Photograph</b>	2000	Aerial photographs available to view on Google Earth Pro.









Observations		Aerial photographs taken 23 years ago show that at that time the route now recorded as the ECP route was clearly visible but the Definitive Map route could not be seen.
Investigating Officer's Comments		The photograph suggests that the ECP route has been in existence and capable of being used for at least 23 years – and more likely since the mid to late 1980s but that the Definitive Map route was not being used or was hidden by the tree canopy. Whilst lack of use of the Definitive Map route does not mean that it no longer exists in law it may support other evidence that the line was impractical and that would support the proposition that the route was incorrectly recorded and more correctly ran on a different line.
<b>Lancashire County Council Public Rights of Way files</b>	1959 – 2011	Search made of Hesketh with Beconsall Public Rights of Way files for references to the footpath 8-10-FP46.

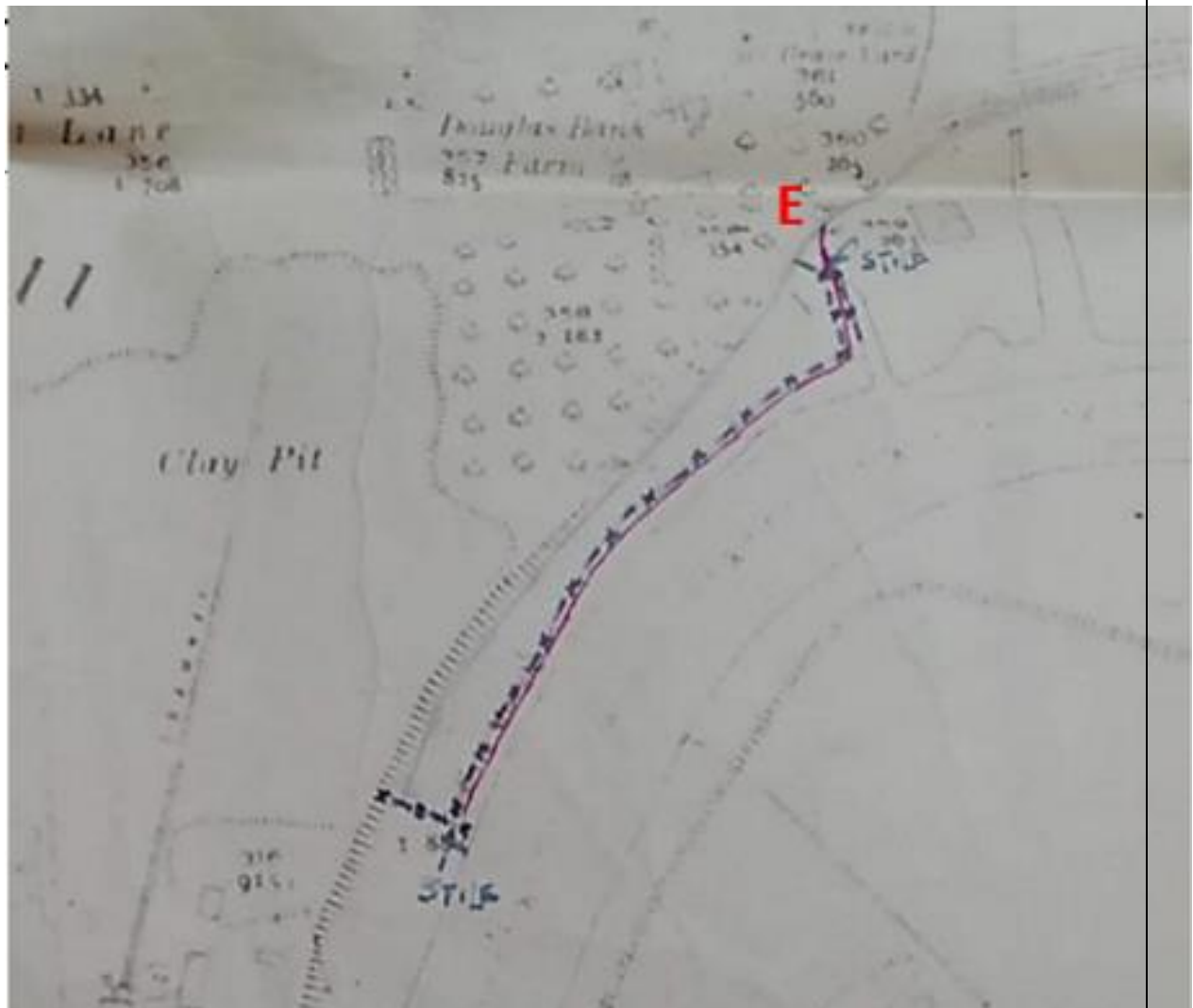


Path No. 46, Parish of Hesketh with Becconsall.

With reference to your memorandum of the 7th February, a meeting was held on the site with Mr. Kelly, Mr. Taylor, the Chairman of the Hesketh with Becconsall Parish Council, and my Assistant.

The following points emerged:

1. Mr. Kelly does not dispute the existence of a right of way across his land, but the exact location of the path seems to be a matter of some doubt as it appears that persons using the way have walked both along the edge of the river bank and along any line in the right general direction, there being no clear definition of any path other than the stiles.



Observations

A search of the public rights of way files was made. The first reference to the route under investigation was in 1959. Correspondence on file related to the line of the footpath as marked on the Draft Map of Public Rights of Way having been blocked by



		<p>the landowner – Mr G Kelly, Douglas Bank Farm, Beconsall Lane. Mr Kelly had prevented use of the line through the enclosed strip of land (shown on the 1967 map, above) between the base of the embankment and the river bank which blocked access to part of the footpath. He had put an alternative route in which took walkers around the edge of the fenced-off plot close to the river bank.</p> <p>Mr Kelly subsequently requested to divert the footpath as shown on the Draft Map to the route shown on the map extract above so that he could develop his poultry business. A faint pencil line was shown along the base of the embankment marking the line of the footpath recorded on the Draft Map. His proposed diversion was rejected by the Parish Council and Lancashire County Council subsequently told Mr Kelly that he must open the route shown on the Draft Map and provide stiles on that line.</p> <p>Within the correspondence relating to the obstruction of the footpath there were several references in the file to the route having already been used by the public for many years and a reference to an objection being made to it being shown on the Draft Map.</p> <p>The next references to the path were 7 years later in 1966 when it was reported that river bank erosion was affecting the footpath in proximity of the railway bridge which was in the process of being dismantled.</p> <p>A letter from the Lancashire River Authority to the County Council referred to the condition of the footpath in the vicinity of the railway bridge and they clearly stated that they had no</p>
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		<p>responsibility to repair the river bank at that point.</p> <p>The following year (1967) the County Council received a letter from Hesketh with Beconsall Parish Council stating that the path was now impassable due to river bank erosion. There followed a written exchange between the County Surveyor and Legal department debating whether the best solution would be to ask the owners of the Hesketh Brick and Tile Company about a possible diversion of the footpath onto their land.</p> <p>In July 1967 the County Council wrote to the Brick and Tile Works to ask if they would be willing to dedicate a footpath along a line shown on a plan. No plan could be found on the file and the proposed route was not described in the letter. The letter did however refer to fact that the original footpath had been eroded by the river and no longer existed.</p> <p>No further correspondence was found until several letters and memorandums dated between 2005-2011 casting doubt as to whether the route recorded on the Definitive Map was correct.</p>
Investigating Officer's Comments		<p>The information from the parish files is very useful in clarifying that a route considered to be a footpath existed prior to the removal of the swing bridge and that it passed under the bridge – not over it as currently shown on the Definitive Map. The fact that the inclusion of the route on the Draft Map was contested will be dealt with later in the report.</p> <p>The obstruction of the route shown on the Draft Map as running along the base of the embankment and the fact that the landowner was required to provide stiles and reopen that</p>

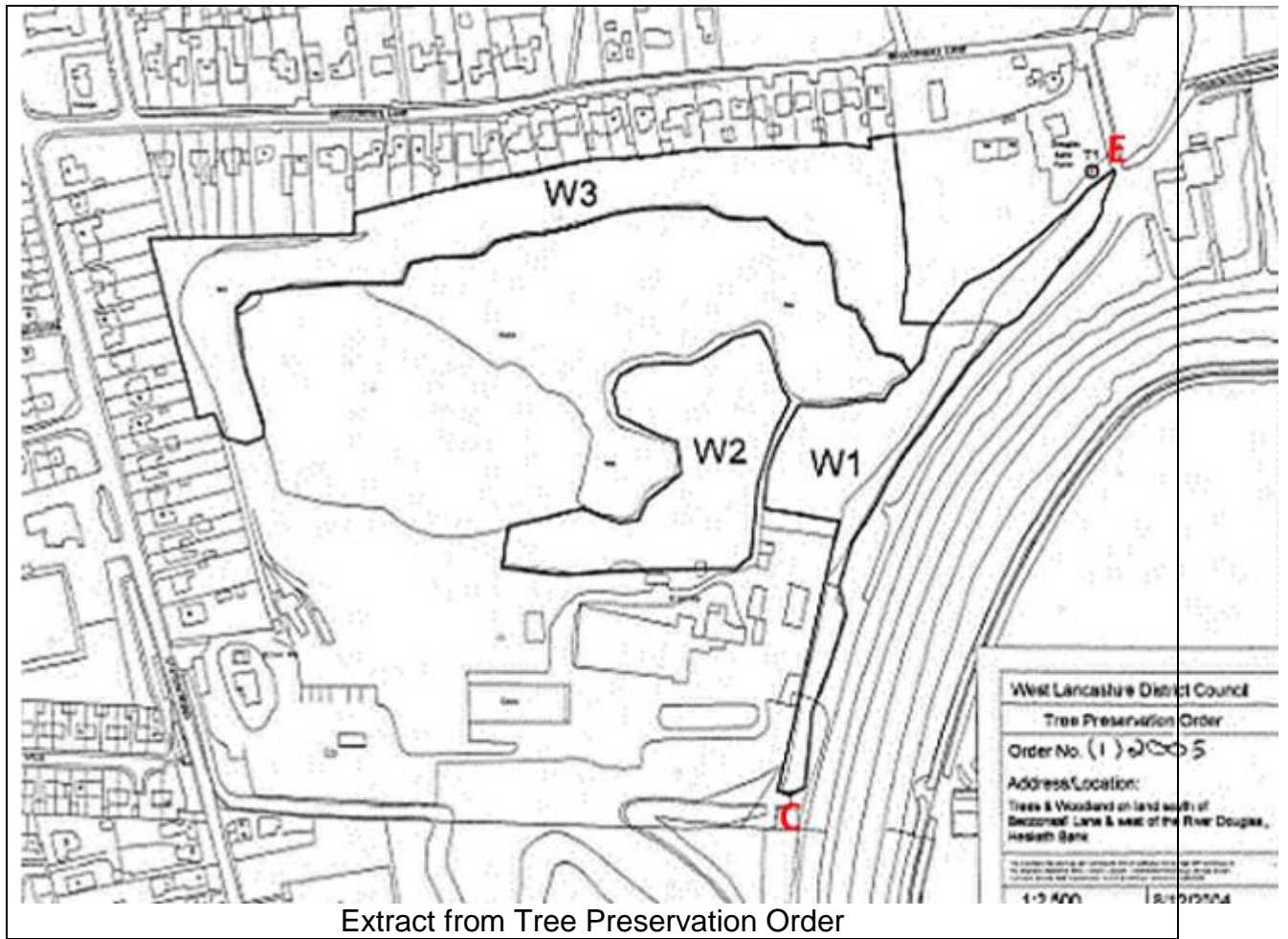


		<p>route suggests that it was accepted at that time that the route ran along the bottom of the embankment.</p> <p>Concern about the condition of the footpath as it passed under the swing bridge was at a time when OS maps showed a refuse tip which would have pushed the route out close to the river bank. Since that time and following removal of the swing bridge it does not appear that any work was done to protect or replace the river bank at that point but there was, and still is, ample width for people to have walked a line consistent with the ECP route.</p> <p>There is no record of the footpath ever having been diverted onto land owned by the Brick and Tile Works and although no plan on the proposed route was provided it appears sensible to deduce that the proposal was to shift the path to the top of the embankment through the grounds of the Brick and Tile works to avoid the river bank in proximity of the old swing bridge.</p>
<p><b>Hesketh with Beconsall Parish Council Minutes</b></p>	<p>1959-1960 and 1981-1992</p>	<p>Parish Council Minutes available to view online <a href="http://heskethbankcouncil.uk/achives/">http://heskethbankcouncil.uk/achives/</a></p>
<p>8. <u>Footpath 46</u> The Clerk was requested to report to the County Council that the first two stiles on this footpath, when walking towards Tarleton from the Boatyard, have disappeared, and to ask the County Council for the names and addresses of the owners of the stiles.</p> <p>9. <u>Bus shelter, Station Road</u></p> <p>[above] Extract from Minutes of Meeting held 14<sup>th</sup> May 1984</p>		
<p>Observations</p>		<p>No reference was found to the route under investigation in the Parish Council Minutes dated 1959-1960. Several references were found to the route referred to as Footpath 46 in the 1980s. No reference to the alignment of the footpath was found although it</p>

		was reported that two stiles had been removed from the footpath leading from the boatyard.
Investigating Officer's Comments		The Parish Council minutes did not assist with regards to providing details relating to the alignment of the path walked although references to two stiles being removed in the 1980s suggests a possible challenge to the public rights.
<b>Planning Permission for siting of residential caravans at Douglas Boat Yard</b>	1990-1993	Planning Application 1990/0624 rejected on 24 May 1991 and Application 1993/0642 – application for a Certificate of Lawfulness – Use of Land for the siting of 4 residential caravans.
Observations		<p>In 1990 a previous owner of Douglas Boatyard sought planning permission for the siting of six residential caravans 'for temporary periods'.</p> <p>West Lancashire District Council provided copies of relevant correspondence including an extract from the Planning Committee Agenda dated 23 May 1991 detailing consideration of the application. It was noted in the report that if planning permission was to be granted a site licence for a permanent residential site would need to be applied for which would require additional works being carried out to provide adequate roads and paths, electricity, water, fire fighting equipment and adequate street lighting.</p> <p>The objection of an adjacent occupier was noted in the report as follows:- <i>'The site is untidy with rubbish lying around the footpaths and the static caravans are spoiling the beauty spot. Also of concern, is the state of the roads and footpaths in the area.'</i></p> <p>Observations of the Director of Development and Amenities suggested that some of the</p>

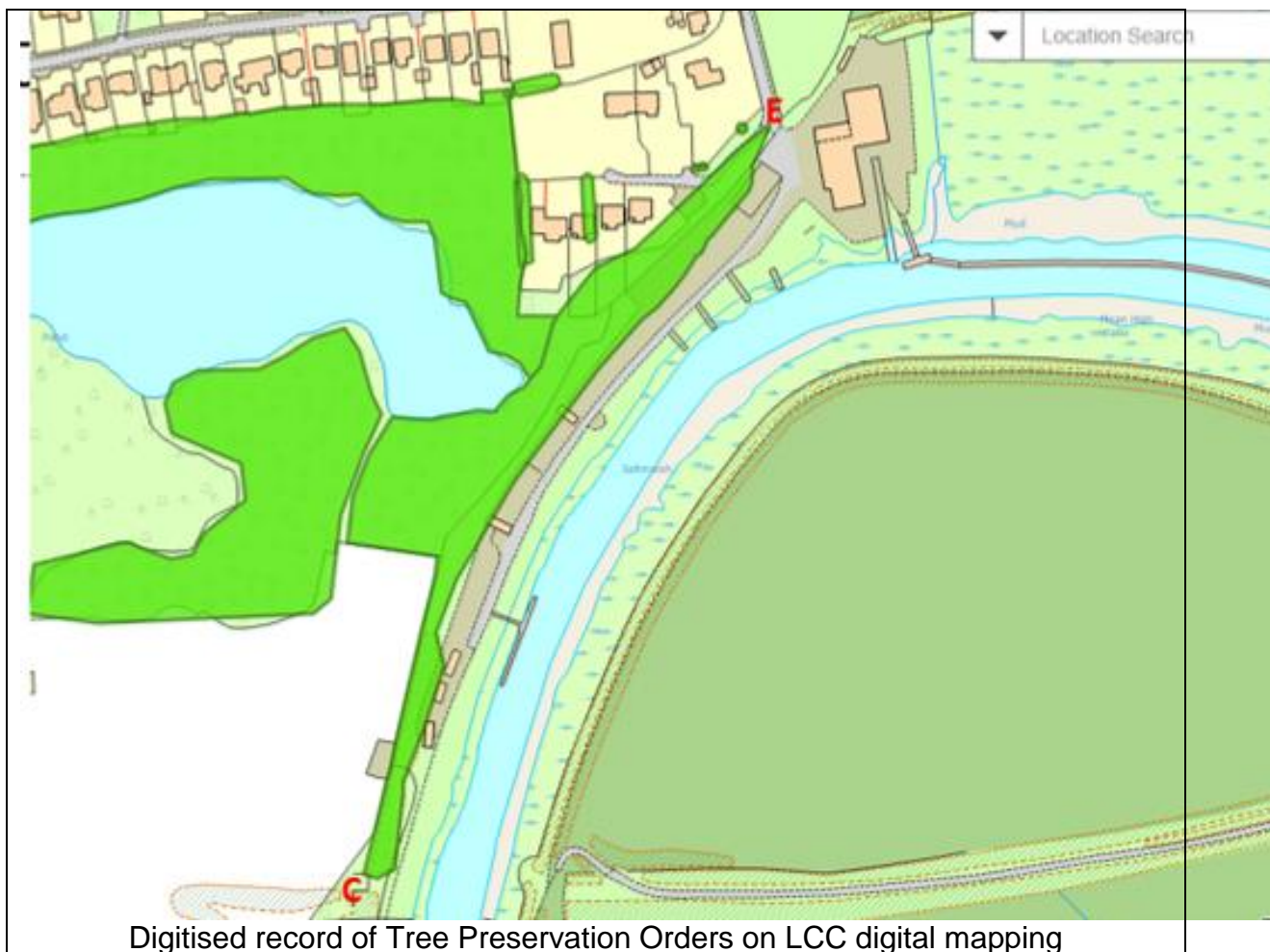
		<p>caravans had already been on site for several years and the applicant had put forward the case that they were therefore exempt from requiring planning permission. The landowner had been asked to supply evidence on three occasions to support this case but had not done so.</p> <p>No specific reference was made to the alignment of the Definitive Map route through the boatyard or how it might have been affected by the caravans. However, there was reference in the report to the Draft Northern Parishes Local Plan within which there was a proposal to establish and maintain a comprehensive network of rural footpaths and bridleways and the fact that one such proposal ran along the River Douglas adjacent to the siting of the mobile homes.</p> <p>A plan showing the siting of the mobile homes (caravans) has not been seen.</p> <p>It was recommended that the application for planning permission be refused as the siting of the mobile homes in this location was considered to be incompatible with the existing use (of the commercial boatyard outside the residential area of the village) and would result in a poor environmental standard for residents and would be detrimental to the appearance and amenities of the area. In addition, it was considered that access to the site was along a road of poor width and alignment which was considered unsuitable to cater for the residential development proposed. The application was rejected.</p> <p>West Lancashire District Council Planning Department have tried to locate a copy of the Certificate of Lawfulness – Use of Land for</p>
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		the siting of 4 residential caravans – which is listed on their planning portal but to date have been unable to locate a copy.
Investigating Officer's Comments		The existence of the Definitive Map route – or how it had been/would be affected by the siting of the caravans did not appear to be considered as part of the reasons to reject the application. The report does however suggest that the caravans – or at least some of them - had been in situ for at least several years suggesting that the ECP route through the boatyard has been in existence for over 30 years. The objection from an adjoining occupier suggests that the boatyard had expanded and that there had been issues with 'rubbish' spoiling the footpaths.
<b>Tree Preservation Order</b>	2005-2014	A tree preservation order (TPO) is an order made by the council for trees and woodlands to stop the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of protected trees or woodlands. It is possible to apply to the relevant Planning Authority, in this case West Lancashire District Council, for permission to carry out work on protected trees (including pruning, thinning or felling). The authority's consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament.

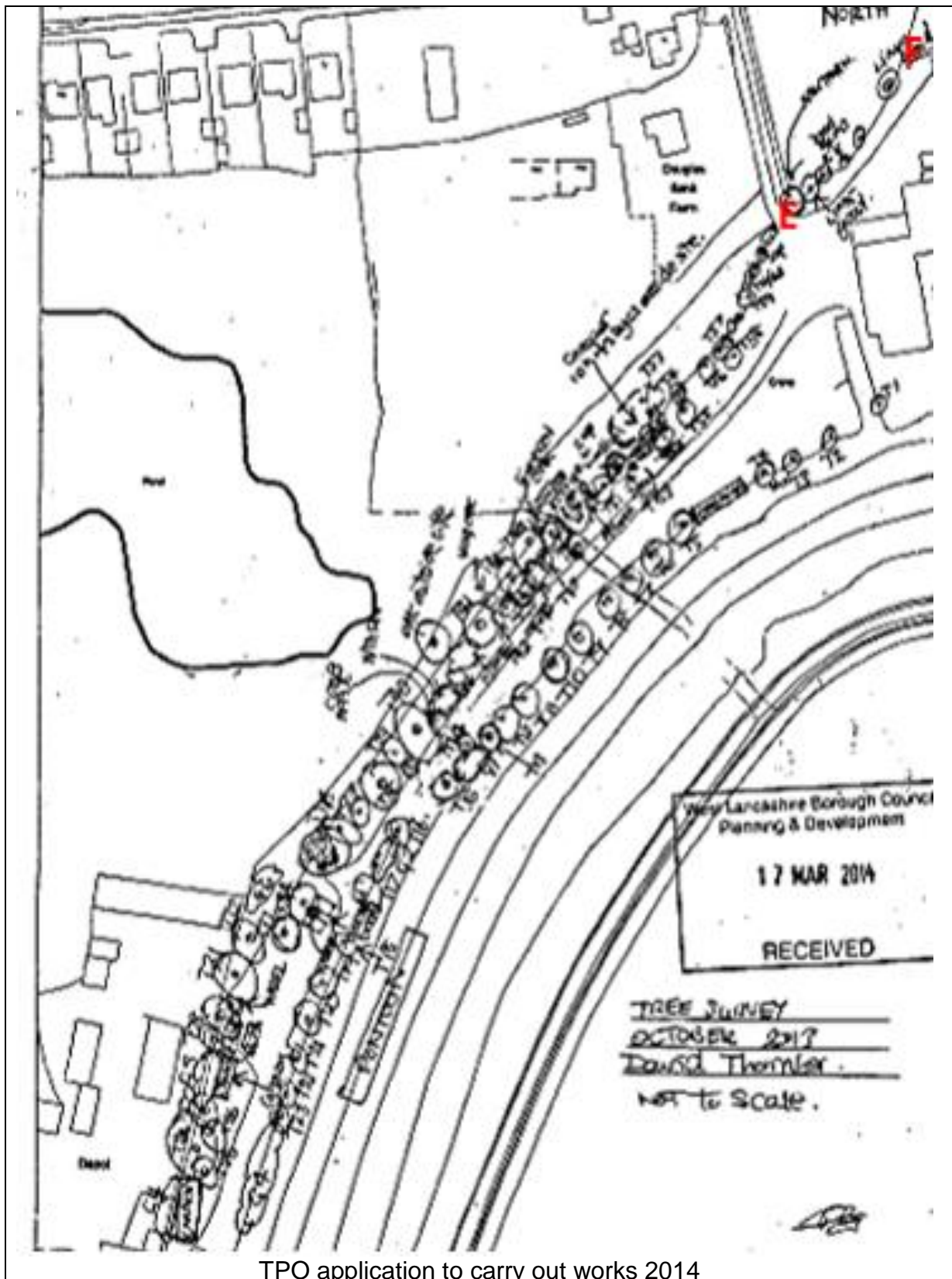


Extract from Tree Preservation Order





Digitised record of Tree Preservation Orders on LCC digital mapping



TPO application to carry out works 2014

<p>Observations</p>		<p>An Order protecting the trees located along the embankment and part of the boatyard was made in 2005 (The West Lancashire District Council Tree Preservation Order No. (1) 2005</p>
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		<p>– Trees and Woodland on land south of Becconsall Lane and west of the River Douglas, Hesketh Bank).</p> <p>A copy of the Order was obtained from West Lancashire District Council but neither the Order nor the Order plan refers to the existence of a public footpath, or the route being used at that time.</p> <p>An application was made on behalf of the previous owner of the boatyard in 2014 to prune and fell a number of trees across the site in the interest of safety or good woodland management. No reference was made to public access.</p>
Investigating Officer's Comments		<p>The TPO affects a significant length of the Definitive Map route (C-E) and has potential implications on managing or opening the route but not directly on determining the rights which exist. If, when the Order was made, the Definitive Map route had been in use, or the fact that it was overgrown and obstructed had been considered, it seems likely that the alignment of the route would have been marked or referred to in the Order.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas.</p>

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.



Parish Survey Map – Tarleton





DISTRICT *WEST LANCASHIRE Rural* PARISH *Tarleton* No. *5*

MAP SHEET No. *12.6.4-7* LENGTH *2.36* miles  
(to two decimal places)

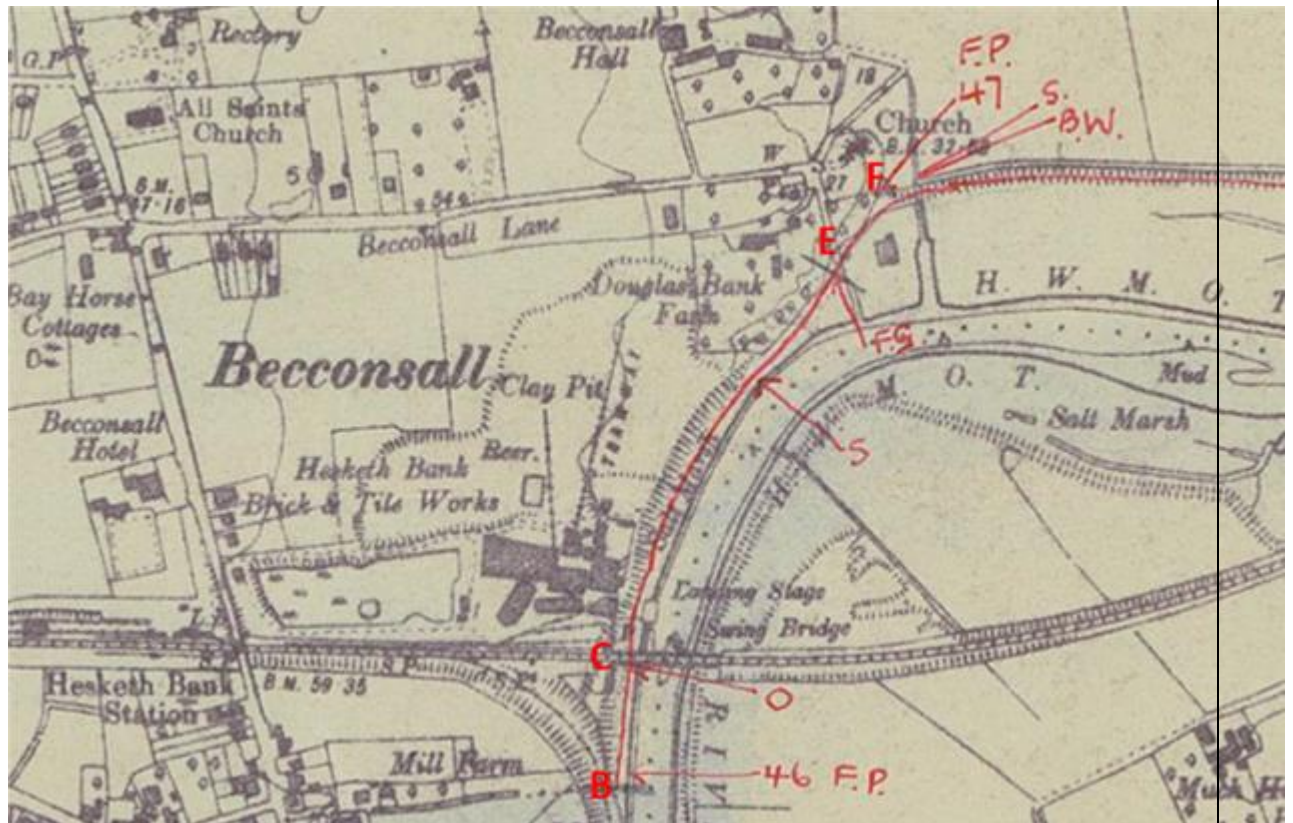
BRIEF DESCRIPTION (Field F.P. or otherwise)  
*Towing Path, along Leeds & Liverpool Canal.*

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
*Starting end of Rufford Boundary to Tarleton Lock beyond Boat Yard, continues on west side of River Douglas to Hesketh Bank Boundary.*

SURVEYED BY:— Name *J Hunter*  
Address *Post Office Tarleton*  
Date *2nd Sept 1950*

5000 T 39 (1/50)

Parish Survey Card



Parish Survey Map – Hesketh Bank





DISTRICT West Lincs. Rural. PARISH Hesketh-with-Becconsall. No. 46.  
MAP SHEET No. 3 LENGTH .289 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).  
Grass track from Parish Boundary south of Railway Bridge along River Douglas to Boat Yard (Becconsall Lane end).  
Sleeper fence obstruction under Railway bridge. stile appx. half-way between Railway and Boat Yard.  
Field Gate at Boat Yard end.  
Used by public more than 20 years.  
SURVEYED BY:— Name C.W. GODDARD. E. TAYLOR.  
Address Moss Lane, Chapel Road,  
Date 20th June, 1950. Hesketh Bank.  
9000/F38/4/50

Parish Survey Card – Hesketh with Becconsall

DISTRICT West Lincs. Rural. PARISH Hesketh-with-Becconsall. No. 47  
MAP SHEET No. 3. LENGTH .86 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).  
Grass track along Douglas bank from Boat Yard (Becconsall Lane end) to junction with 16 (Marsh Lane to Douglas).  
Stile at Boat Yard in bad condition (barbed wire).  
Used by public more than 20 years.  
SURVEYED BY:— Name C.W. GODDARD. E. TAYLOR,  
Address Moss Lane Chapel Road  
Date 20th June, 1950. Hesketh Bank.  
9000/F38/4/50

Parish Survey Card - Hesketh with Becconsall

Observations		The Parish Survey Map for Tarleton shows a route recorded as Footpath 5 which runs all the way from Windgate Lane (A565) to the parish boundary at the approximate location of point B. The route was described as a footpath along the tow path of the
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		<p>Leeds Liverpool Canal with the section south of Tarleton Lock subsequently removed from the map because it was deemed to be a canal towpath but the rest of the route, which ran mainly along the dismantled railway, being retained.</p> <p>From the parish boundary the route recorded as Footpath 46 was shown broadly consistent with what is now the ECP route running adjacent to the river bank to the swing bridge where it was noted that the route was obstructed by a sleeper fence under the railway bridge. The route then continued along the saltmarsh through to point E. No width was recorded and the path was described as a field footpath running along a grass track. The route was shown running between the bottom of the embankment and the mean high water mark. A stile is marked as existing close to point D and field gate at the boat yard (point E). A pencil line across the route at point E appears to represent the point at which the numbering of the route altered from 46 to 47.</p> <p>The parish survey cards for both footpaths 46 and 47 were dated 1950 and both referred to the fact that the paths had been used by the public for more than 20 years.</p>
<p><b>Draft Map</b></p>		<p>The Parish Survey Map and cards for Hesketh with Beconsall and Tarleton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a 'relevant date' (1<sup>st</sup> January 1953) and notice was published that the Draft Map for Lancashire had been prepared. The Draft Map was placed on deposit for a</p>

minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



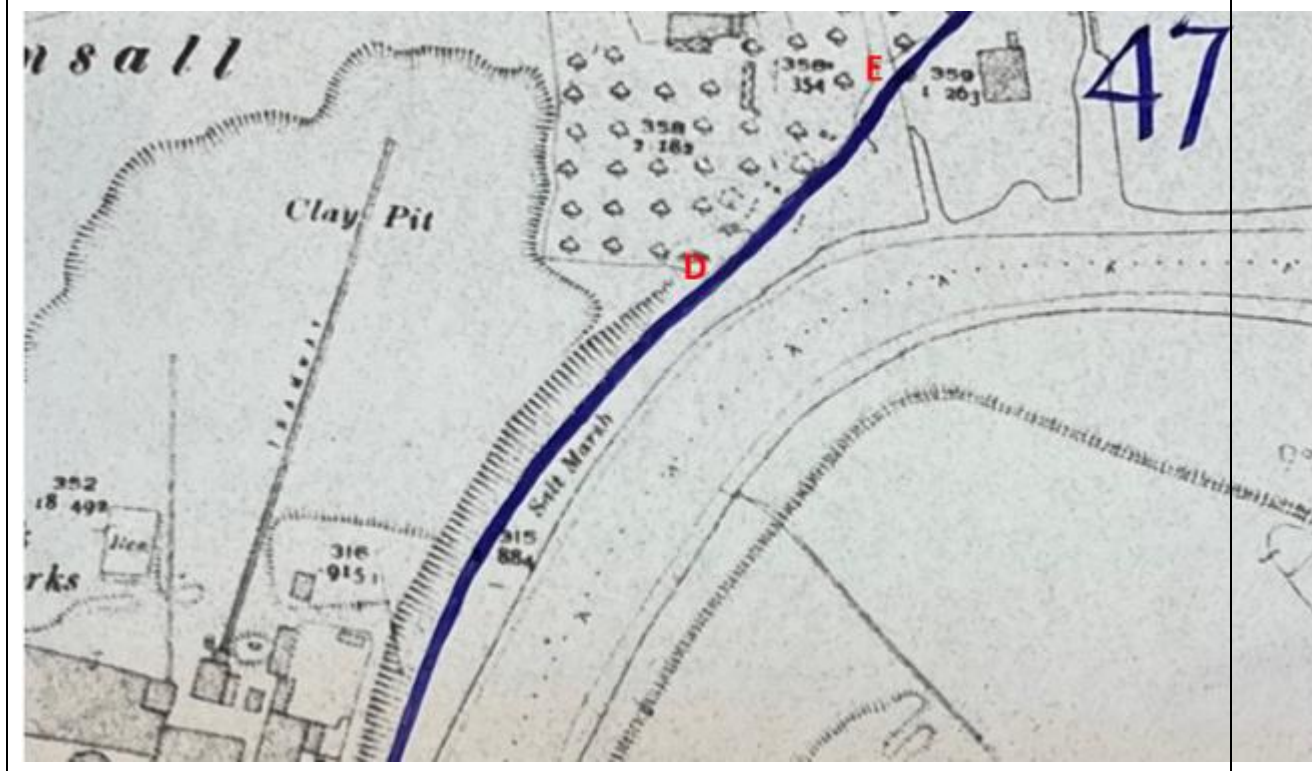
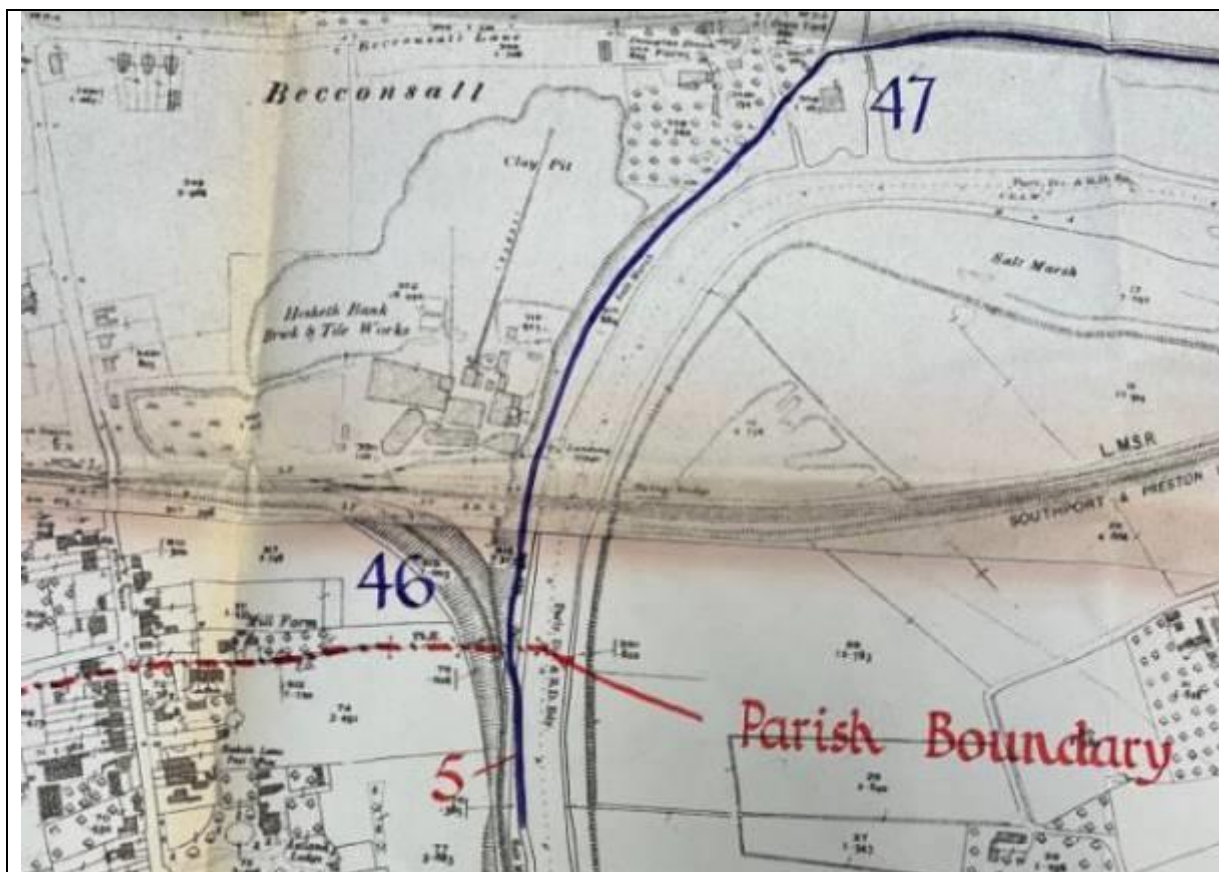
[above] Extract from the Draft Map

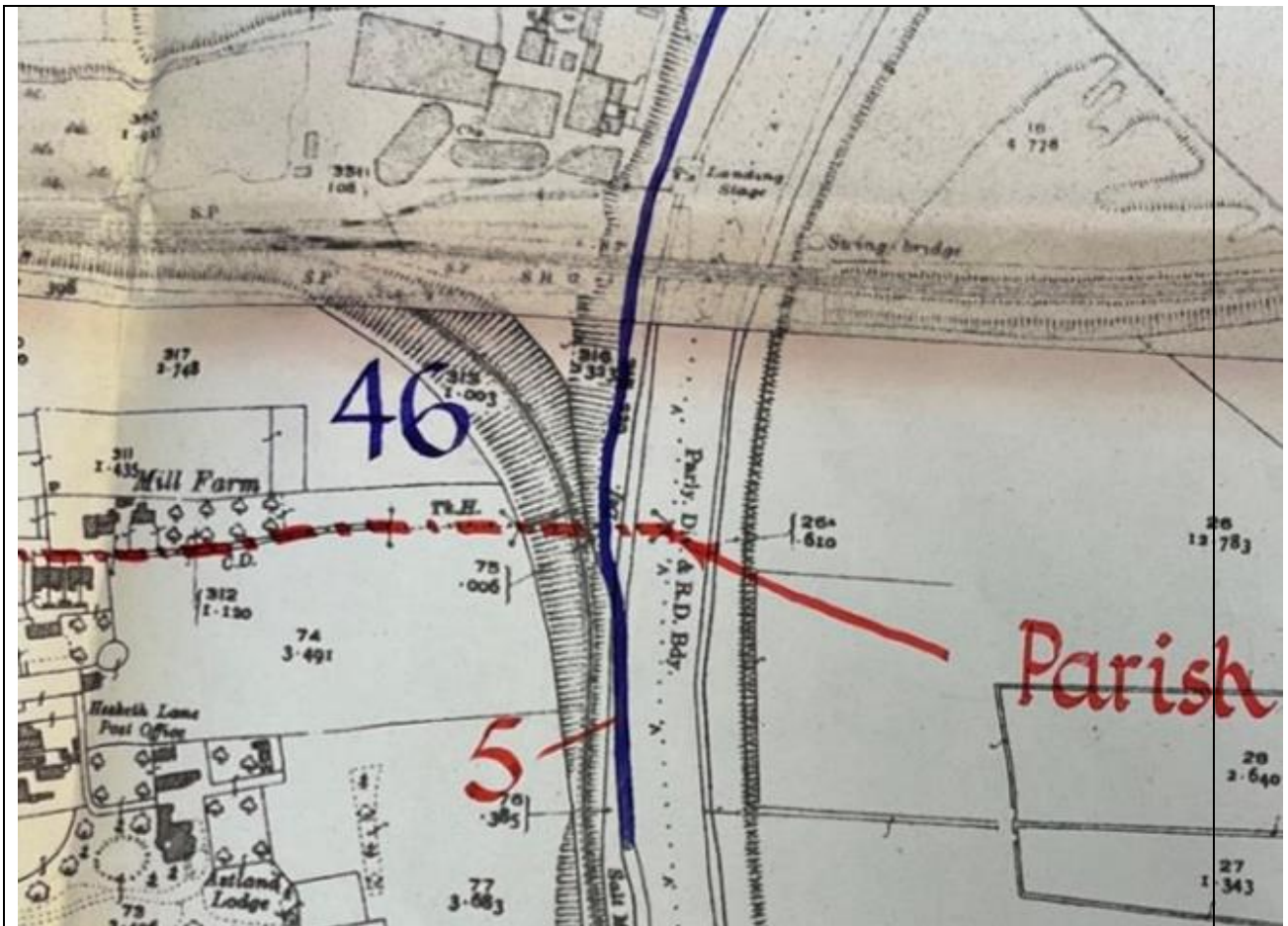
46	"	Along River Douglas from Parish Boundary - Boatyard.	0.289
47	"	Along River Douglas from Boatyard to junction with No. 16.	0.86

[above] Extract from Draft statement









[above] Three extracts from the plan prepared for the Hearing held into the objection into the inclusion of Footpath 46 on the Draft Map

Observations

The route under investigation was drawn on the Draft Map using a thick purple pen. The line is shown running north from point A as part of Footpath 5 (Tarleton) through the parish boundary where it changes number to 46 (Hesketh with Beconsall).

The thick pen line showing Footpath 5 has been drawn very close to the river bank only moving away from it slightly between point B and point C. The pen line is shown going straight through the swing bridge and continues along the bottom of the embankment to point E.

The Draft Statement described the path as running along River Douglas from the parish boundary to the boat yard and

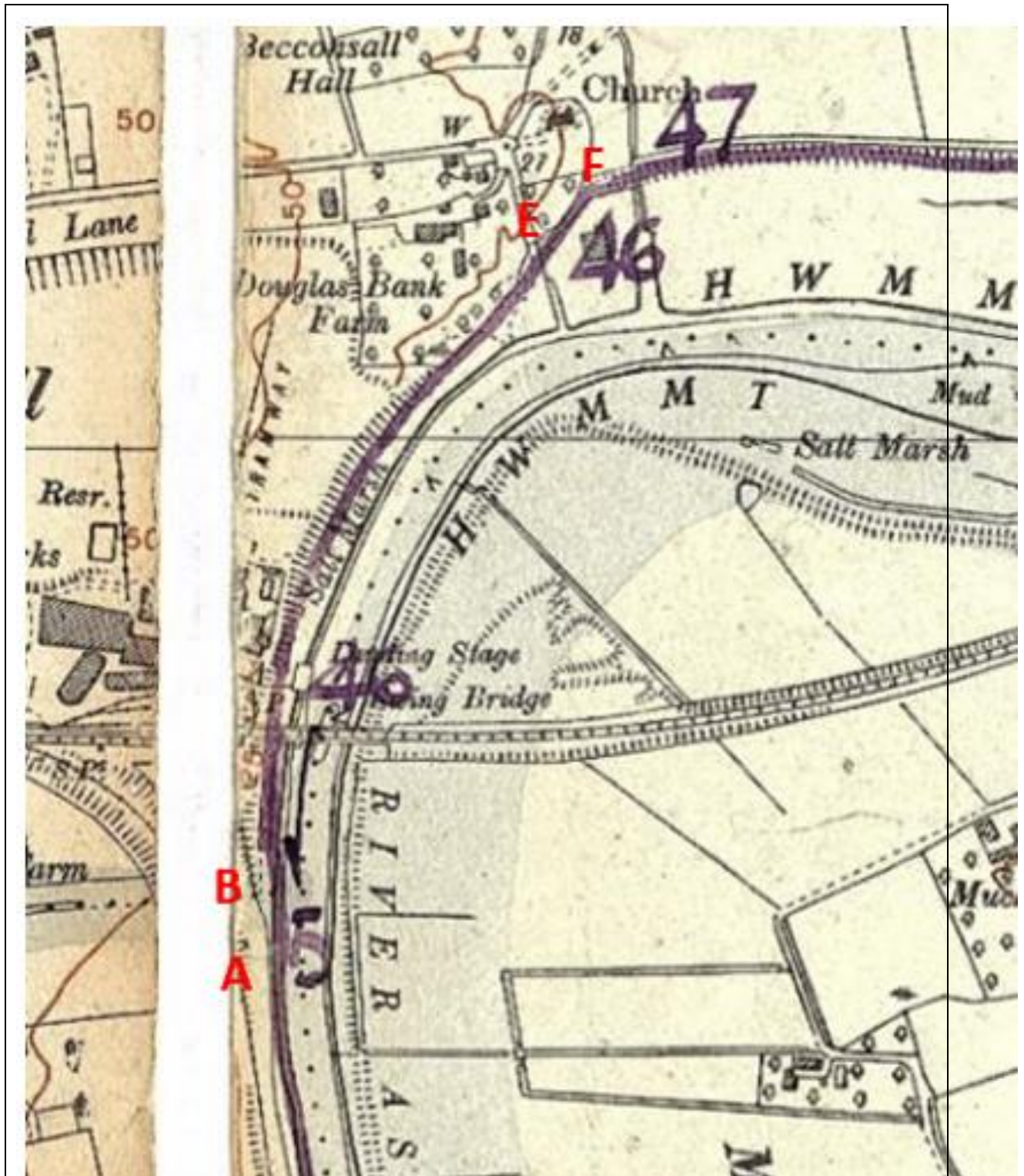




		<p>Footpath 47 is described as running along the river from the boatyard road suggesting that the change in numbering occurred at point E.</p> <p>An objection was made to the inclusion of Footpaths 46 and 47 on the Draft Map by the British Transport Commission who stated that their reason for objecting was that they were not public rights of way.</p> <p>The objections were logged as objection numbers 826 and 827 and a hearing was held in Ormskirk on 25<sup>th</sup> February 1955.</p> <p>Documentation on file details that the Hearing was attended by representatives from the County Council, British Transport Commission, Deputy Clerk, Chair and Vice Chair from West Lancashire District Council and representatives of the Parish Council. Little further detail could be found other than references to the fact that the route was claimed to have been in use for 40 years. A note on the file refers to the objection being withdrawn.</p> <p>A 1:2500 OS map sheet was found in the file showing the disputed route. Details in the file refer to the fact that the plan was prepared so that it could be used at the Hearing to show the route recorded on the Draft Map.</p> <p>The plan showed the very northern end of Footpath 5 (Tarleton) leading to the parish boundary as being between the river bank and mean high water line then kinking away from the river at the parish boundary to continue (as Footpath 46) clearly shown along the bottom of the embankment from point B to point D and then immediately east of</p>
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		<p>the field boundary on the salt marsh between point D and point E.</p> <p>The route recorded on the Draft Map differed from the ECP route.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



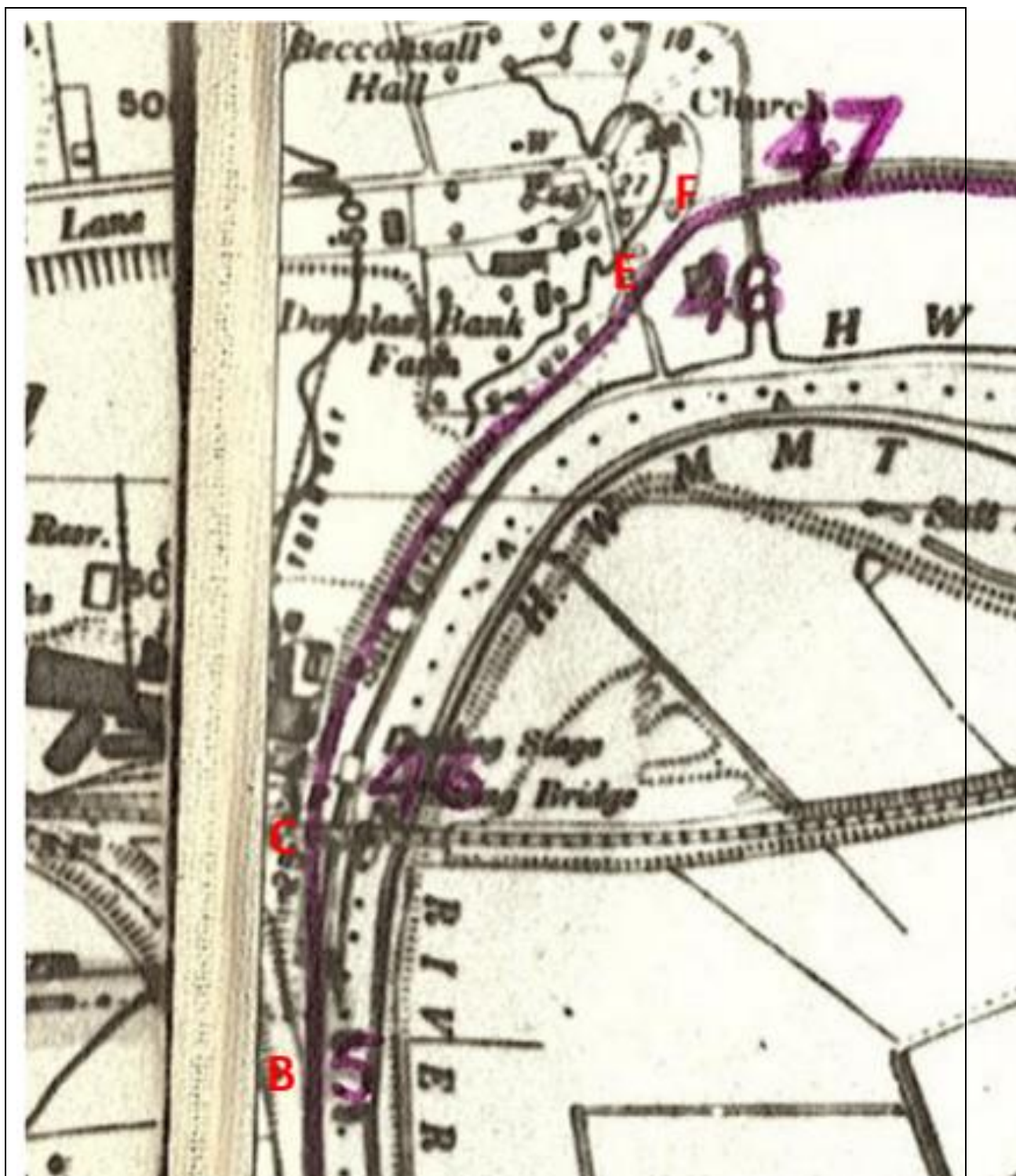


<p>Observations</p>		<p>The Provisional Map was prepared on a small scale 6 inch OS base map (as was the Parish Survey and Draft Map) with the routes drawn on by hand.</p> <p>Footpath 5 Tarleton is again shown drawn between the line</p>
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		<p>marking the edge of the river and the mean high water line but kinks away from the river adjacent to point B. Footpath 46 is then shown along the salt marsh but running along the bottom of the embankment to point D and then adjacent to the fence line to point E. The numbering of Footpath 46 is ambiguous, possibly suggesting it finishes further north than point E although the Provisional Statement remained unaltered – describing Footpath 47 as starting at the boatyard road. The numbers were not always at the ends of the path they applied to; for example the 5 near point B is not at the parish boundary where that footpath ends.</p> <p>The route recorded on the Provisional Map differed from the ECP route but was essentially the same (given the difficulties in copying the route from one map to another at a small scale) as the Draft Map.</p>
<p><b>The First Definitive Map and Statement</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Observations

For the fourth time in the process the maps recording public rights of access were redrawn by hand – again on OS base maps at a scale of 6 inches to the mile. A relatively thick purple pen was used to show the routes recorded as public footpaths, which it is acknowledged on a number of occasions across the county as





		<p>having caused issues in interpreting the intended route to be shown.</p> <p>The route shown on the map from point B through to point E does appear consistent with what was shown on the earlier Draft and Provisional Maps in that it appears to show a route running along the bottom of an embankment and to the east of the fence line along the saltmarsh through to point E. No break is shown in the route where it crosses the junction with the roadway leading into the boatyard at point E and the numbering is again suggesting that Footpath 46 continued north of point E although the position of the numbers is vague.</p> <p>The route recorded on the First Definitive Map differed from the ECP route.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>





Revised Definitive Map at 1:10,560 scale





Enlarged extract of Revised Definitive Map

<p>Observations</p>		<p>The Revised Definitive Map is the latest legal record of public rights of way. When disputes arise regarding the status or alignment of public rights of way then it is this map, and accompanying</p>
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		<p>statement, that are used as a basis of settling those disputes.</p> <p>The map has been scanned and can be reproduced with a degree of accuracy to scale. For illustrative purposes the first map extract above is the Revised Definitive Map reproduced as close as possible to its actual scale (1:10,560 or 6 inches to 1 mile) when these pages are printed at A4.</p> <p>The Map was prepared at this scale with the routes of the public rights of way drawn onto the OS base maps by hand. This work was done without the benefit of computers or the ability to enlarge the maps to check the alignment of the routes were correct. The task of preparing the maps was essentially an office-based job – with most of the routes recorded being copied from earlier maps.</p> <p>The second map extract is an enlarged (not to scale) extract of the Revised Definitive Map made possible by enlarging the original map on a printer or on a screen. Interpreting what is shown on these maps can be incredibly difficult and often needs to be done with reference to earlier maps prepared as part of the Definitive Map procedure and to other OS maps, aerial photographs, and site evidence.</p> <p>Over the past few years, as a result of significant changes occurring in how the salt marsh was being used, there have been a number of attempts made to determine where the Definitive Map route is recorded.</p> <p>Looking first at the map itself, it is difficult to see whether the dashed line was drawn along the base of the embankment and along the east side of the fence line as it is on earlier maps.</p>
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		<p>Without the benefit of enlarging maps and overlaying them with other maps it could be argued, particularly as the Definitive Statement refers to the route running along the river, that the Revised Definitive Map shows, within the tolerance of allowing for a hand drawn line, the thickness of lines and scale of map, the same route as it was intended to show on the Draft, Provisional and First Definitive Map.</p> <p>Over the past 20 years the County Council have developed a digital map on which all public rights of way recorded on the Revised Definitive Map are shown. This digital map is often referred to as the working copy of the Definitive Map as it shows legal changes made to the public rights of way network since 1966. It also uses a modern OS base map which shows all the changes to the landscape and substantial development that has taken place in the past 50 or more years since the Revised Definitive Maps were published.</p> <p>Routes recorded on the Definitive Map have been digitised by overlaying the Definitive Map with a modern OS base map.</p> <p>In doing so the centre line digitised by this process, which was not necessarily the line the thick pen-stroke was intended to represent, put the line of the footpath along a significantly different route which effectively climbed up the old railway embankment from point B and then ran along the top of the embankment and across the top of the remains of the swing bridge footings at point C continuing tight along the fence at the top of the embankment to point D and then through a previously wooded</p>
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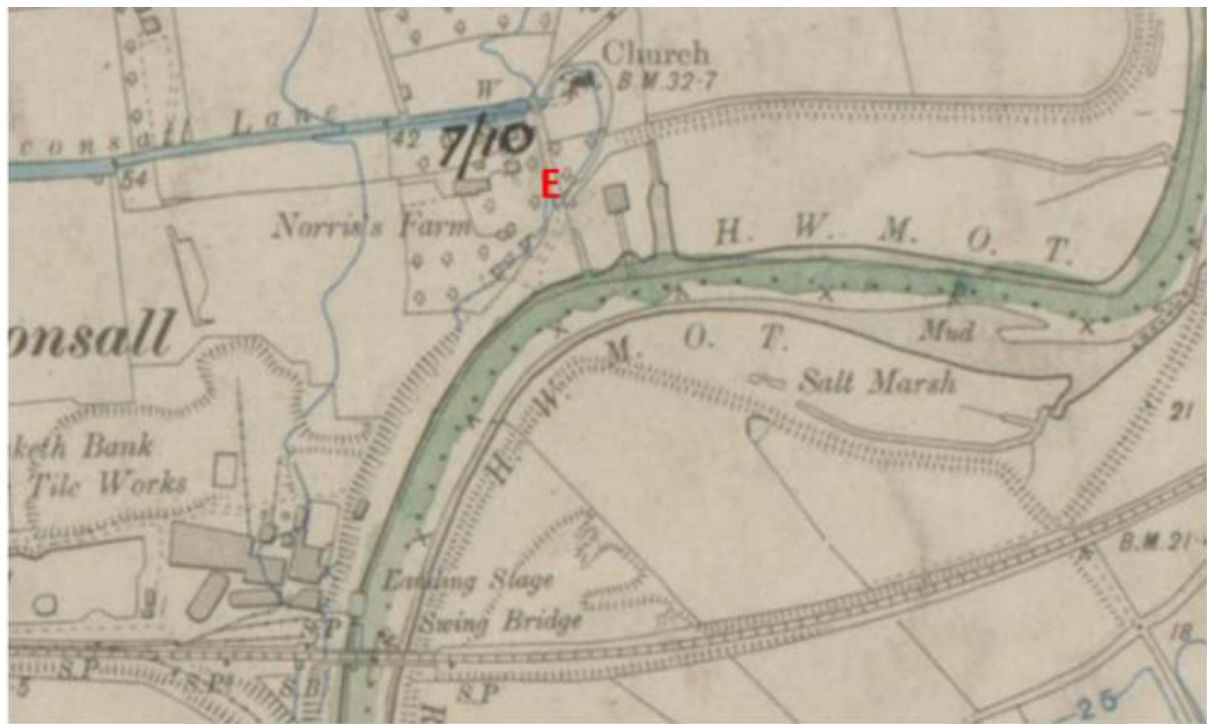


		<p>area to point E.</p> <p>A great deal of time and effort has been spent in recent years in trying to mark out the route of the Definitive Map footpath on the ground which led officers to agree that the map appeared to be incorrect and that whilst in places it may have been possible to implement a route along that line in other places it was clearly not.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The recording of the Definitive Map route predated the development of the boatyard southwest of point E. The embankment clearly shown on OS maps up until the 1970s has been altered and the railway swing bridge removed.</p> <p>Whilst the route shown on the Revised Definitive Map loosely reflects the route that existed on the ground when the map is enlarged and each dash drawn is studied in minute detail it puts the route west of where it should have been recorded and along or on an embankment that has now been partially removed.</p> <p>The Draft Map received objections and the existence of the route as a public right of way was challenged under a legal process. Of significance is the fact that a larger scale plan was drawn to be used at the proceedings – which showed the route in more detail along the base of the embankment and on the salt marsh side of the fence line and this line is consistent with other records examined.</p> <p>There appears to be no evidence that between point A and point C the Definitive Map line is correct and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately and precisely reflects</p>

		<p>the route of the public footpath along the river bank and passing through the boatyard, particularly as it has the benefit of having being scrutinised formally in 1955.</p> <p>Committee plan 2 shows the proposed deletion of part of Footpath 8-16-Ordnance Survey5 and part of Footpath 8-10-Ordnance Survey46 and addition of a public footpath.</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 36 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</p>



		not does not determine whether it is a highway or not.
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Observations		The route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that neither route is recorded as a publicly maintainable route in the County Council's Highway records does not mean that public rights do not exist. No inference can be made.
<b>Highway Stopping Up Orders</b>	1835 – 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights



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



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 any other 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 appears that a footpath along the river bank and passing through the boatyard came into being possibly in excess of 20 years prior to the parish survey map being compiled in the 1950s and possibly before the removal of the railway track from Tarleton to Hesketh Bank. Railway plans prepared before the construction of the railway suggest that there may have been a trodden path along the river bank in the 1800s leading to and from the Becconsall Ferry which was shown on the First Edition 6 inch Ordnance Survey map.

Map and documentary evidence examined from the late 1800s through to the 1940s did not show the route under investigation, or any trodden route, and does not assist in determining what route – if any – was being used by the public at that time.

Once the Tarleton Branch had been removed in the early 1930s use of the 'river bank' path from Tarleton locks through to Hesketh Bank increased as evidenced by the aerial photographs, OS maps and references to a footpath along the marsh when the Definitive Map was being prepared.

Aerial photographs taken in the 1940s show traces of a trod along the river bank although this is neither along the Definitive Map Route or ECP route.

Maps and aerial photographs between the 1940s and the 1960s – when the swing bridge was removed – provide evidence that a route did exist – but that it was along the edge of the salt marsh and 'under' where the former railway swing bridge was located and not the Definitive Map route.

Whilst the route shown on the Revised Definitive Map loosely reflects the route what existed on the ground the Investigating Officer considers that when the map was drawn it put the route further west of where it should have been recorded and along or on an embankment that has now been partially removed.

When looking at the legal process that was followed to prepare the Definitive Map it is the Investigating Officer's opinion that the Draft Map is of enormous relevance. The Draft Map received objections and the existence of the route as a public right of way was challenged under a legal process. Of significance is the fact that a larger





scale plan was drawn to be used at the proceedings – which showed the route in more detail along the base of the embankment and on the salt marsh side of the fence line and most importantly this line is consistent with other records examined.

There appears to be no evidence that the current Definitive Map line A-B-C-D-E is correct and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately reflects the route of the public footpath along the river bank and passing through the boatyard.

### **Deletion of Footpath A-B-C-D-E as recorded on the Definitive Map and Addition of Footpath A-X-E as recorded on the Draft Map (as shown on Committee Plan 2)**

The Investigating Officer considered that there was no map or documentary evidence supporting the fact that the Definitive Route correctly recorded the route of the public footpath acknowledged to exist between these two points and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately reflects the route of the public footpath along the river bank and passing through the boatyard.

For a way to be deleted from the Definitive Map and Statement there has to be sufficient evidence that the Definitive Map and Statement is incorrect, not merely lack of evidence that it is correct. In this case once it is established that evidence supports the addition of the path described above this sheds doubt that there would be 2 footpaths so close together serving the same purpose and A-B-C-D-E would be far less likely to be used, given the need to climb up to the level of the swing bridge and descend again, to cross a live railway which would be fenced against such use, and walk part way up a steep side-slope for significant parts of its length.

The decision to make a legal order(s) to rectify this error must be guided by the evidence even if in practical terms the route recommended to be added is no longer useable. In this case the route in existence prior to the extension of the boatyard, removal of the railway bridge and more recent redevelopment of the brick works is, in part, no longer accessible, due to the development of the boatyard. From a practical point of view, there is nothing that would stop this route being opened, albeit it is noted that there are trees which would need to be felled or trimmed and several boats and caravans currently obstruct the route.

However, acceptance of this error and an agreement to divert any part of the 'Draft Map' route necessary may be the most viable option. Alternatively, further investigations may be merited to establish whether the ECP route through the boatyard is already a public footpath in law (in addition to the Access Land rights conferred by ECP status), in which case it should be added to the Definitive Map and if the order was confirmed would potentially result in there being (at least) two public footpaths through the site unless or until such a time that an order was made and confirmed to extinguish one.

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

### **Landownership**





South of the dismantled railway bridge the routes under investigation cross land which has been in the registered landownership of Persimmon Homes Ltd. since 2018.

Persimmon Homes Ltd are the registered owners of the land abutting two sides of the land over which the former railway swing bridge was constructed at point C but the land crossed by both the Definitive Map route and the ECP route at this point is not registered.

North of the unregistered plot of land at point C the land crossed by the ECP, Draft Map and Definitive Map routes has been in the registered ownership of Coxon Property Limited since April 2021.

Of great concern to the current owner of the boatyard is his liability to the public passing through the boatyard on the ECP route – or in attempting to use the Definitive Map route. Whilst this is not normally addressed in a definitive map modification order report a landowner's liabilities to the public are summarised below.

If a route has been designated as part of the ECP but there are no existing public rights already along it, then landowners benefit from a low level of occupier liability. Essentially, landowners/occupiers are not responsible for any damage or injury caused by any physical features of the land, whether natural or man-made. However, liability is not excluded if a landowner does something reckless or deliberate that would endanger someone.

With regards to an existing public right of way the responsibilities of the County Council and landowners are no different from any other public right of way. A landowner is not legally required to have public liability insurance but many would choose to do so to protect themselves against claims. If a landowner employs anyone, in this case at the boat yard, they will need employers' liability insurance



covering them or their clients or a member of the public who claims they have been injured, or their property damaged, because of business activities.

We have seen no evidence that having a public right of way or route designated as part of the ECP will prevent a landowner getting public or occupier liability insurance.

### **Information from the Landowners**

Persimmon Homes responded to consultation to clarify the land in their ownership and to further clarify the boundaries being laid out on the ground as part of recent development.

The owner of Douglas Bank Boatyard provided a detailed response to our consultation, noting that complexities of this case have made it difficult to provide detailed information.

The owner asserted that irrespective of the line that may have been walked in the 1950s the Definitive Map line recorded in the 1960s accurately reflects the route that was walked by the public at that time.

The owner recalled their father having a boat at Douglas Boatyard in the late 1960s and early 1970s and at that time he wrote that the walked line of the footpath ran along the back of the boatyard, up the embankment and along the boundary of the adjoining brick works. It then passed over what used to be the railway bridge. The owner further recalled that historically there was a well-worn but private footpath along the river bank which passed under the railway bridge and that this was used by Alty's Brick Works for loading cargo onto boats.

The owner further recorded that in the 1950s Alty's leased the land to a local farmer. The farmer kept cattle on the land so a fence and stile was put in place along the river bank where the private footpath ran however there was no public access to the private footpath along the river bank and under the bridge in the 1950s or indeed the 1960s.

The owner says that there are a substantial number of local residents that can testify to the fact that in the 1960s when the Definitive Map was recorded, the walked line was the Definitive Map line and that there was no public access to the footpath running under the railway bridge at that time.

The owner objects to any change to the recorded line of FP0810046. He is unhappy about the current ECP following the walked line through the centre of the boatyard and along the river bank citing concerns regarding users being trapped by the tides, noting previous issues of this nature. He also raised further issues and concerns regarding safety of walkers passing through the boat yard, insurance provisions for the boat yard and potential costs arising from the investigation. The owner stated that Natural England were amenable to varying the line of the ECP to address these concerns.

## **Information from Others**

The local Ramblers Association footpath secretary responded to consultation to state that their records do not go back to the 1960s but noted that in recent years the only line they had walked is through the boatyard. They noted comments made to the association to the effect that previously the parish council instigated signage which was confusing, but could not comment further on this.

Atkins Global responded to consultation to state they had no objection to the application.

A local resident recalled that when the railway was in operation, where the railway bridge spanned the river, there were paling fences maintained to prevent people from going under the bridge, which had limited success in doing so. As a result, he recalled a well-trodden path that people used. [This is in accord with the British Railways Board objection being withdrawn on the basis that the path under the bridge had been used by the public]

To clarify the route referred to in the letter the Investigating Officer met the resident on site. The resident explained that as well as the path under the railway bridge, following the closure of the railway in the 1960s, an alternative route partially created by cattle started to be used to access the higher triangular shaped area of land between the two former railway lines and then across the dismantled railway along the edge of Alty's yard before descending back down the embankment. He further explained that the dismantled railway was subsequently fenced off preventing access along this route but could not recall when this was done.

The resident explained that it was always understood that the whole question of public rights of way around this area was one of some local controversy but it was his understanding that the footpath shown on the LCC Definitive Map was along the top of the crest of the prominence which separates the Heritage Park and the Persimmon development from the Douglas Boatyard and river bank leading to it.

The Investigating Officer sought further clarification on this last point and the local resident explained that he understood that the route was recorded on the Revised Definitive Map (First Review) along the top of the embankment but that he never recalled the walked route being on or along the top of the embankment through Douglas boatyard – only that the former ramp up to Alty's brick works was used to avoid the boggy ground along the marsh until the dismantled railway was fenced off.

## **Officer's Comments on Information from Landowner and Others**

The legal line which we seek to clarify is that recorded following the 1949 Act and preparation of the First Definitive Map. Our consultation requested information about the 1950s but it is acknowledged that anyone who would have been old enough to be aware of the position of public rights and to distinguish private from public or trespass, say 10 years old, at the time of the parish survey would be at least 80 years old now which limits the scope for potential witnesses. Those who are in their 70s now would only have known the path in the 1960s or later rather than at the time of the parish survey and original definitive map process. It is possible that other walked lines from the 1960s or 1970s have acquired public rights on additional lines

but that is not the focus of this report and we do not have clear enough first-hand user evidence to pursue those possibilities. It is not unusual that the lines walked, surface, structures and other elements have changed over the decade and we try to understand the story rather than a static picture in order to establish the situation at the time the footpath was originally recorded. No amount of use of a line over the railway bridge in the 1960s or 70s would remove any earlier public rights from under the bridge nor effect a diversion. A diversion from under to over the bridge was proposed but no Order has been discovered.

The reference to a fence erected by the tenant farmer is in accord with the documentary evidence although the assertion that the stile was only for a private footpath to load cargo is at odds with the evidence of the parish survey references to stiles and the complaint about obstruction of the public path.

The reference to many other people who could be witnesses to support the view that the footpath ran over the bridge is of no assistance unless such people do present evidence themselves.

Whilst we note that matters of safety, costs or effects on the owners are important they are strictly matters for the management of any public paths not whether or not such public rights do or don't exist. Similarly important matters relating to the ECP are for discussion with Natural England and have no relevance to the consideration of where the public footpath runs.

## **Assessment of the Evidence**

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

## **Conclusion**

A very detailed investigation has been carried out to determine whether these parts of footpaths FP0816005 and FP0810046 have been correctly recorded on the Revised Definitive Map (First Review) or if it has been incorrectly recorded and should have been recorded along a different route.

The map and documentary evidence in relation to this matter is documented above together with the conclusions drawn by the Head of Service – Planning and Environment.

The Investigating Officer considered that there was no map or documentary evidence supporting the Definitive Map route A-B-C-D-E as being the route of the public footpath acknowledged to exist between these two points and all the evidence examined indicates that it is the route shown on the Draft Map shown as a thick dashed line A-X-E on Committee Plan 2 that most accurately reflects the historical route of the public footpath along the river bank and passing through the boatyard.

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





In this matter the route to be deleted (A-B-C-D-E) was first shown on the Definitive Map (First Revision) dated 1975 but with a relevant date of 1<sup>st</sup> September 1966 and so the error needs to be shown to have been made in 1966.

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”*.

It is therefore suggested that the Committee first consider whether the route originally recorded on the Parish Survey and Draft Map in the 1950s (A-X-E on Committee plan 2) is already a footpath at law and should be added to the Definitive Map and then whether this means that it was still the correct route of the footpath network in 1966 and that the route A-B-C-D-E was recorded on the Definitive Map in error in 1966.



This is an investigation carried out into the historical alignment of the public footpath and no user evidence forms were submitted for the route A-X-E.

Consultations were carried out with the current landowners and relevant parish councils specifically seeking information about the route in the 1950s or earlier but limited information going back this far was received. The current owner of the boatyard referred to knowledge of the route in the 1960s and 1970s and described it as running along the back of the boatyard and up the embankment along the boundary of the brickworks to cross the former railway. However, Ordnance Survey mapping shows the boatyard as it exists today did not exist until at least 1973 – when the land crossed by the 'Draft Map route' was still shown as open land and it is not until sometime after that (but before 1988) that the boatyard was extended.

The information provided by the current owner of the boatyard is not inconsistent with the investigations carried out by the County Council but does not provide evidence that the route recorded on the 1966 Definitive Map was the correct legal line. There is evidence that in the 1960s the public were using a route up the ramped access to Alty's boatyard and across the former railway line but when the possibility of legally diverting the footpath onto this line was investigated no agreement was reached and the information on the County Council files confirms that the original legal route of the footpath was under the railway and along the bottom of the embankment.

The current landowner also refers to a private footpath that existed in the 1950s along the river bank and the erection of private stiles. Again, it is clear from the County Council records that Hesketh Bank Parish Council recorded the public footpath running under the railway and along the river bank in the early 1950s and despite this being challenged under a formal process the route was subsequently recorded as a public footpath with any reports of obstructing fences being dealt with and stiles being made available along the route.

The route A-X-E is shown on the Parish Survey Map, Draft Map and essentially is the same on the Provisional and First Definitive Map. The route recorded on the Draft Map importantly was subject to an objection with a hearing set in Ormskirk for the 25<sup>th</sup> February 1955. Thereafter the objection was withdrawn but the detailed plans prepared for the legal process aligned with the Draft Map.

The route to be added was shown as a footpath on the various stages of the Definitive Map produced between 1953 and 1962 and following the withdrawal of the objection at the Draft Map stage it received no further objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line.

In contrast the route recommended to be deleted A-B-C-D-E is not shown on any map until being hand-drawn onto the Definitive Map during the First Revision, with relevant date in 1966. No legal orders or other documents have been found to explain the change from the route shown on the First Definitive Map onto the line A-B-C-D-E and the change appears to have had no legal basis. Error is the most likely reason.

No map or documentary evidence has been found supporting the existence of this route A-B-C-D-E and it would entail climbing up to the level of a swing bridge to cross a railway that only ceased to operate in 1964 and to traverse a steep side-slope for significant parts of its length. It is difficult to envisage that a public right of way would exist as such in preference to the relatively level lower route unless that was impassable or unavailable. Although there is evidence within files held by the county council, and from the recollections of a local resident, of later use of a route crossing over the dismantled railway and along the boundary of Alty's brick yard to descend back down the ramped access shown on the 1970s OS map this is neither the original route nor the same route recorded on the Revised Definitive Map (First Review) and there is evidence that when a diversion of the original route of the footpath was discussed this was rejected by the owners of the brickyard.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route for deletion A-B-C-D-E on balance was recorded in error and should have continued to be recorded on the line A-X-E. The fact that part of the route A-X-E is today obstructed is of no relevance to this process and the issue in hand is ensuring the accuracy of the current Definitive Map and Statement.

If the line A-X-E can be considered to subsist as a footpath this does not necessarily or automatically prove that the nearby line A-B-C-D-E was recorded in error. The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one route through along the western bank of the River Douglas and through or past Douglas Boatyard which should have continued to have been recorded as A-X-E but instead route A-B-C-D-E was recorded in error.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest that the route A-B-C-D-E was recorded in error and should be removed from the Definitive Map and the footpath on line A-X-E 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.

#### Applicant/Landowners/Supporters/Objectors

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

#### **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.

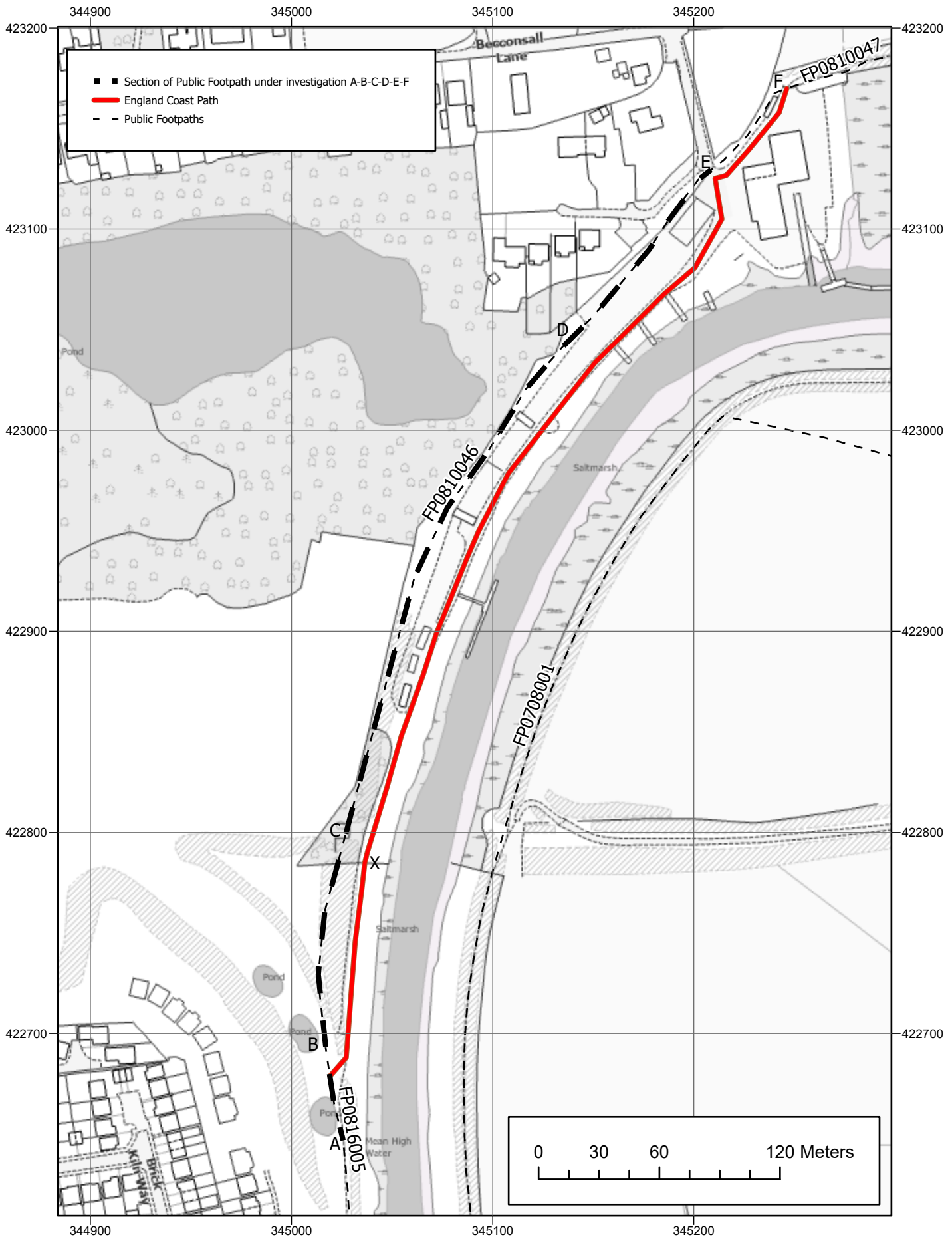
### **Local Government (Access to Information) Act 1985**

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-760		Simon Moore, 01772 531280, Legal and Democratic Services

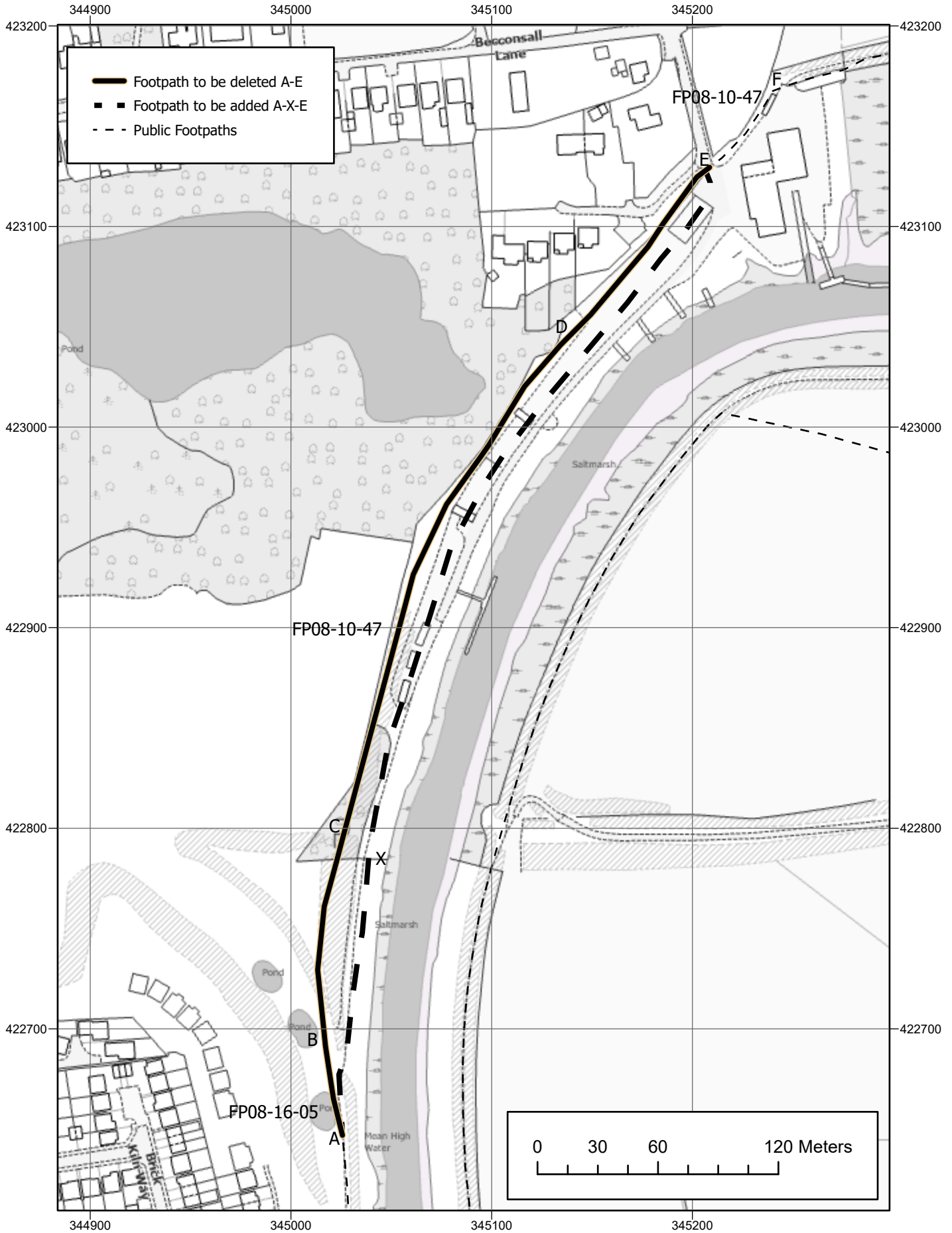
Reason for inclusion in Part II, if appropriate













**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
Wyre Rural Central

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath FP0219002 at Broad Fall, Scorton**  
(Annexes 'B' and 'C' refer)

Contact for further information:

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07773 135050, [adrian.ibison@lancashire.gov.uk](mailto:adrian.ibison@lancashire.gov.uk)

**Brief Summary**

Application for the diversion of part of Footpath FP0219002 at Broad Fall, Scorton.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0219002 from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-D-E 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 Broad Fall, Gubberford Lane, Scorton, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0219002.

The recorded alignment of this section the footpath is across pasture to the private drive of, and adjacent to, the residential building of Broad Fall, and a number of outbuildings, then into an adjacent field to the junction with FP0219001 and FP0219003. It is proposed that the footpath is diverted to run through two pastures adjacent to the driveway to join FP0219003 a short distance to the east of its junction with FP0219002.

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

### Consultations

The Local Member, Wyre Borough Council and Nether Wyresdale Parish Council have been consulted and at the time of writing, there was no adverse response.

The Peak and Northern Footpaths Society and the Wyre 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 5008 4763	At the south-eastern corner of the pasture to the south of the access track to Broad Fall.
B	SD 5012 4781	on the south side of the field gate at the field boundaries to the north of the outbuildings of Broad Fall.
C	SD 5011 4766	At a field boundary in the east south-eastern corner of the pasture to the south of the access track to Broad Fall.
D	SD 5015 4781	At the northern field boundary in the pasture to the east of Broad Fall.
E	SD 5014 4782	To the north of the field boundary in the pasture to the north-east of Broad Fall.

#### Description of existing footpath to be diverted

That part of FP0219002 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	NNW then NNE	210	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	NNE	40	2	Grass
C	D	NNE	160	2	Grass
D	E	N	5	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 (Grid Reference)</u>
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	SD 5011 4766 (point C)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	SD 5015 4781 (point D)

### 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 Nether Wyresdale 2 be amended to read as follows:

"No. of Path:  
2

Kind of Path:  
Footpath

Position:  
Woodacre Great Wood to SD 5008 4763 then NNE 40m along the west side of a hedge to a gate into another pasture to the east of Broad Fall, generally N across this field for 160m another to gate then a further 5m to join footpath 3 at SD 5014 4782.



(All compass points given are approximate).

Length:

0.21 km

Other Particulars:

The only limitations on the section between SD 5008 4763 and SD 5014 4782 is the right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018 at SD 5011 4766 and SD 5015 4781.

The width between SD 5008 4763 and SD 5014 4782 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. Broad Fall is a private, residential property. Currently the public footpath runs along the access drive of Broad Fall and immediately, adjacent to the dwelling.

The diversion will instead continue in a north north-easterly direction in the pasture, alongside a field boundary, continuing through a second pasture to meet a second field boundary, then a few metres further to meet FP0219003, removing it entirely from the curtilage of the property. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and slightly 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 path or a path connected to it and is substantially as convenient to the public. The proposed diversion will alter the northern point of termination of FP0219002 to divert it from its current termination point to another point on FP0219003 25 meters to the east. 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 part of FP0219002 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 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 FP0219001 and FP0219003 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 access track to Broad Fall, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Broad Fall 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 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 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

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 Annexes 'B' and 'C' 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.

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.

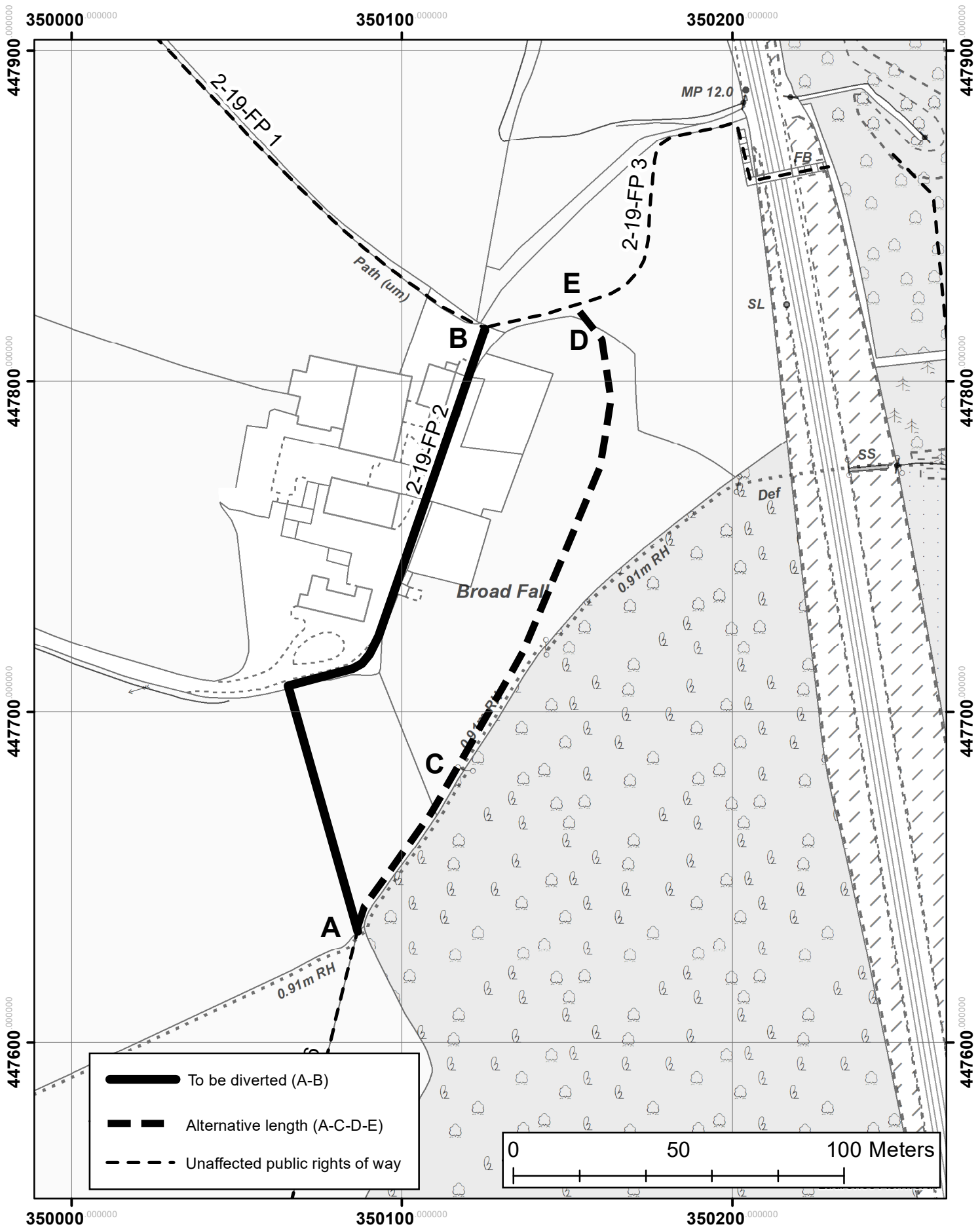
## Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 211-747		Mr A Ibison, Planning and Environment Group 07773 135050 <a href="mailto:adrian.ibison@lancashire.gov.uk">adrian.ibison@lancashire.gov.uk</a>

Reason for inclusion in Part II, if appropriate

'N/A'






Lancashire  
County Council  
Contact:  
Public Rights of Way  
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@lancashire.gov.uk  
07773 135050

Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Diversion of part of Footpath 2, Nether Wyresdale  
at Broad Fall, Scorton, Nether Wyresdale.

Plan no.  
211-747v1



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**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
Wyre Rural Central

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath FP0124015 at Castle View Caravan**  
**Park, Capernwray**  
(Annexes 'B' and 'C' refer)

Contact for further information:

Mr A Ibison, Planning and Environment Group  
07773 135050, [adrian.ibison@lancashire.gov.uk](mailto:adrian.ibison@lancashire.gov.uk)

**Brief Summary**

Application for the diversion of Footpath FP0124015 at Castle View Caravan Park, Capernwray.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of FP0124015 from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked D-E-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 the holiday park of Castle View Caravan Park, Borwick Road, Capernwray, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of FP0124015.

The recorded alignment of the footpath is on the outfields of the caravan park, a surfaced access track for holiday homes, and across five pastures to Gamekeeper's Tower. It is proposed that the footpath is diverted to run through four pastures and a wooded area to meet the Gamekeeper's Tower.

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 the proposed new route is shown by a bold broken line and marked D-E-F-C.

## Consultations

The Local Member, Lancaster Borough Council and Over Kellet 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 5433 7177	Western boundary of Borwick Road, 50m north of the entrance to Castle View Caravan Park.
B	SD 5391 7163	South of the field boundaries in pasture to the west of Hobsons House.
C	SD 5410 7135	Point at end of FP0124015 as shown on Definitive Map
D	SD 5446 7159	Northern corner of the pasture to the south of Park Lot Wood.
E	SD 5437 7151	Field boundary in the pasture to the south of Park Lot Wood.
F	SD 5420 7131	Culvert in pasture



### Description of existing footpath to be diverted

That part of FP0124015 as described below and shown by a bold continuous line marked A-B-C on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	NW then WSW	495	The entire width
B	C	S then SE	370	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
D	E	SW	120	2	Compacted stone
E	F	SW	290	2	Compacted stone
F	C	NW	120	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 Kissing gate that conforms to BS 5709:2018	Grid Reference SD 5446 7159 (point D)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	Grid Reference SD 5437 7151 (point E)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	Grid Reference SD 5420 7131 (point F)



### **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 Over Kellet 15 be amended to read as follows:

"No. of Path:

15

Kind of Path:

Footpath

Position:

Borwick Road at SD 5446 7159 generally southwest across the northern edge of the pasture to the south of Park Lot Wood passing through gates at SD 5437 7151 and SD 5420 7131 then northwest to Gamekeeper's Tower

Length:

0.53 km

Other Particulars:

The only limitations are the right of the owner of the soil to erect and maintain the following that conform to BS 5709:2018:

- a kissing gate at SD 5446 7159
- a two-way gate at SD 5437 7151
- A two-way gate at SD 5420 7131

Width 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. Castle View Caravan Park is a holiday park. Currently the public footpath runs on the outfields of the caravan park, on a surfaced access track for some holiday homes, and across five pastures to Gamekeeper's Tower.

The diversion will instead start further south on Borwick Road and continue in a broadly south-westerly direction in the pastures to the south of Park Lot Wood, and into a further pasture to Gamekeeper's Tower, a listed building, removing it entirely from the curtilage of the holiday park. This will significantly increase the privacy and security of the holiday park, 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 path or a path connected to it and is substantially as convenient to the public. The proposed diversion will alter the northern point of termination of FP0124015 to divert it from its current termination point to another point on Borwick Road, the same highway, 280 meters to the south. It is suggested that the proposed





termination point is substantially as convenient to the public. Point C remains the termination point at the Tower.

Committee is advised that so much of the Order as diverts part of FP0124015 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 Borwick Road 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 outfields and access track to Castle View Caravan Park, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Castle View Caravan Park than when walking through the holiday park. Views of the Tower are available as the route goes round the tower on the north side and the path ends at the same place as originally.

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**

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

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### **Implications:**

This item has the following implications, as indicated:

### **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 Annexes 'B' and 'C' 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.



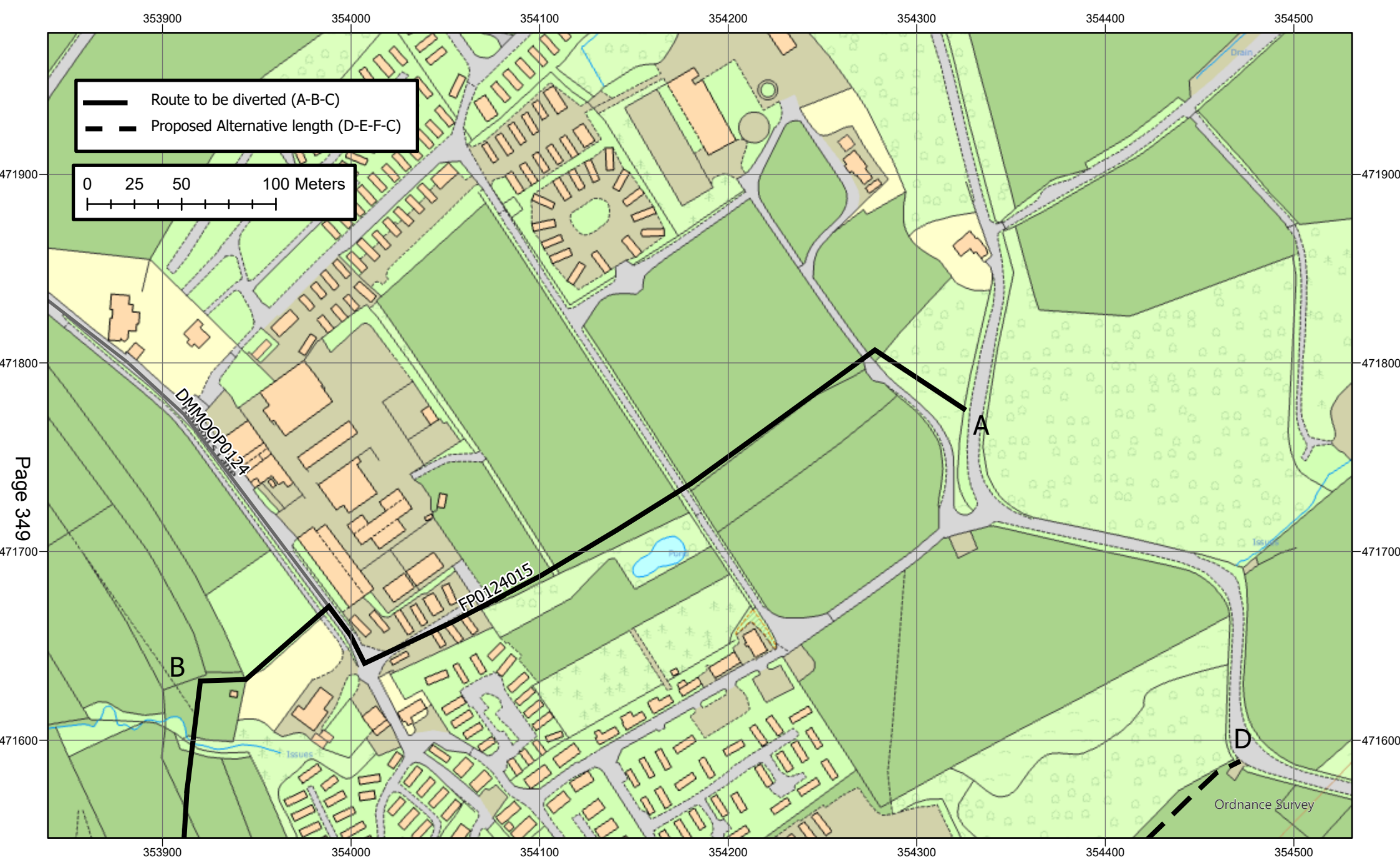
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### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 211-742		Mr A Ibison, Planning and Environment Group 07773 135050 <a href="mailto:adrian.ibison@lancashire.gov.uk">adrian.ibison@lancashire.gov.uk</a>
Reason for inclusion in Part II, if appropriate		
N/A		

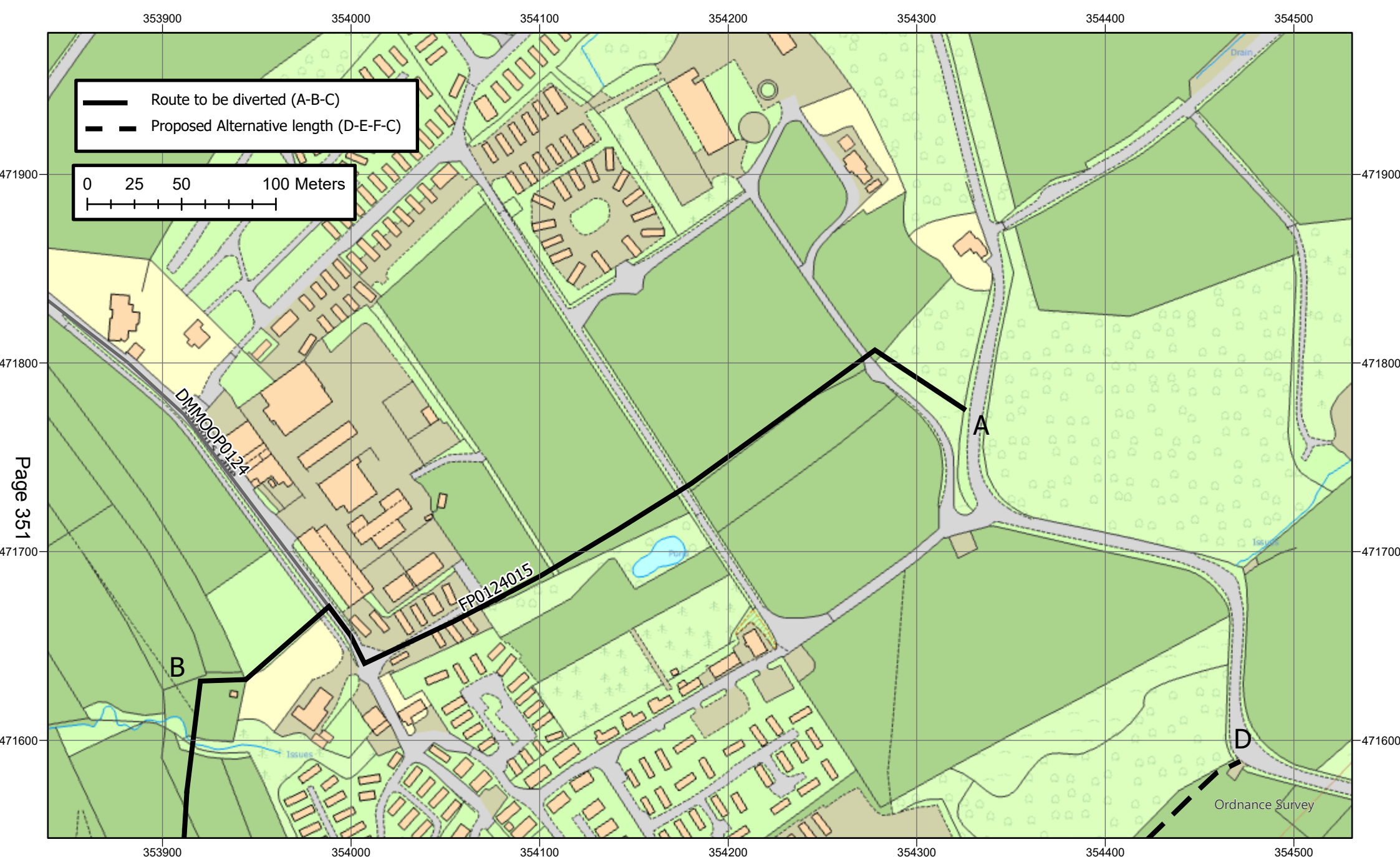












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