

**Lancashire County Council**

**Regulatory Committee**

**Wednesday, 15th November, 2023 at 10.30 am in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Agenda**

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

**No. Item**

**1. Apologies**

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

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

**3. Minutes of the last Meeting held on 27th September 2023** (Pages 1 - 8)

**4. Guidance** (Pages 9 - 36)

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

**5. Progress Report on Previous Committee Items** (Pages 37 - 40)

**6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Cragg Road to Helks Brow, Wray-with-Botton** (Pages 41 - 98)

**7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Main Street to Holme Farm Close, Wray with Botton** (Pages 99 - 158)



8. **Highways Act 1980 - Section 119** (Pages 159 - 166)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Footpath FP0312014**  
**at Isaac's House, Chipping**
9. **Highways Act 1980 - Section 119** (Pages 167 - 174)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Footpath FP0132027**  
**at Lower Stockbridge, Tatham**
10. **Highways Act 1980 - Section 119** (Pages 175 - 184)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Footpath FP0706024**  
**off Station Road, Little Hoole**
11. **Highways Act 1980 - Section 119** (Pages 185 - 192)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Footpath FP0921004**  
**at Brinscall Hall Barns, Wheelton**

**12. Urgent Business**

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

**13. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on 24<sup>th</sup> January 2024 in Committee Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

H MacAndrew  
Director of Law and Governance

County Hall  
Preston





**Lancashire County Council**

**Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 27th September, 2023 at 10.30 am  
in Committee Room 'D' - The Henry Bolingbroke Room, County Hall, Preston**

**Present:**

County Councillor Matthew Salter (Chair)

**County Councillors**

T Aldridge	J Oakes
J Burrows	A Clempson
A Cheetham	M Clifford
D Howarth	S Clarke
J Parr	J Couperthwaite

It was reported that County Councillor Kay had replaced County Councillor Sue Hind as Chair of the Committee.

**1. Apologies**

Apologies were received from County Councillor Kay.

**Temporary replacements**

County Councillor Couperthwaite replaced County Councillor Hosker.

County Councillor Clarke replaced County Councillor Cox.

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

No pecuniary or non-pecuniary interests were disclosed.

**3. Minutes of the last Meeting held on 21st June 2023**

**Resolved:** That the minutes of the meeting held on 21<sup>st</sup> June 2023 be confirmed and signed by the Chair.



#### **4. Guidance**

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

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

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

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

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

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

#### **6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Bridleway along Long Lane, Hoghton, Chorley**

A report was presented on an application for the addition of a bridleway and the upgrade to bridleway of Footpath 9-18-FP13, known as Long Lane, Hoghton, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C and points C-F respectively. Upon investigation, it had become apparent to the case officer that the route over the footbridge shown as A-Z should also be investigated.

A supplementary agenda including Committee Plans 2 and 3 had been circulated electronically and paper copies were provided to Committee Members at the meeting.

It was reported that Blackburn with Darwen Council had also received an application at the same time and from the same applicant to upgrade to bridleway that part of Long Lane, currently recorded as a footpath on the Definitive Map, as shown between points F and X on the map extract provided within the report. The county council had been in contact with Public Rights of Way Officers at Blackburn with Darwen Council who had supplied a copy of the application that they had received and it was noted that the map and documentary evidence and user evidence submitted for both applications was the same.



Blackburn with Darwen Council had not yet considered the application that they had received and because the route was essentially one, arbitrarily split only because of the county boundary, the investigation carried out by the county council considered the route as a whole – although the decision to be made by the Regulatory Committee related only to that part of the route within Lancashire. Following consideration of the county council's application by the Regulatory Committee, a copy of the Committee report and decision would be forwarded to Blackburn with Darwen Council.

A site inspection had been carried out in September 2022.

Various 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 and a detailed analysis of these was included in the Committee report and summarised at the meeting.

The Officer answered questions from Committee.

After a discussion, it was:

**Resolved:**

- (i) That the application for the addition of a bridleway and upgrading of 9-18-FP13 to bridleway on the Definitive Map and Statement of Public Rights of Way be not accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-Z.
- (iii) That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

**7. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath FP0205038 at Clarkson's Farm,  
Barnacre-with-Bonds**

A report was presented on an application for the diversion of part of Footpath FP0205038 at Clarkson's Farm, Barnacre-with-Bonds.

The recorded alignment of this section of the footpath was across pasture onto the farm access track to Clarkson's Farm, adjacent to a number of outbuildings, and then into the gardens of Clarkson's Farm/Brookhouse Barn before joining Parkhead Lane. It was proposed that the footpath be diverted from the access track into a second pasture, running parallel to but slightly to the east of the access track, to Parkhead Lane.



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

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

**Resolved:**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0205038 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.

**8. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Public Footpath 2-9-FP13 at land to the north  
of Tan Yard Road, Catterall**

A report was presented on an application for the diversion of part of Public Footpath Catterall 13 (2-9-FP13) at land to the north of Tan Yard Road Catterall Gates Lane, Catterall.

Committee were informed that old footpath references had been used in the report and Committee plan, due to these being prepared between updates to the system and mapping software.

The lengths of path to be diverted were shown on the Committee plan attached to the agenda papers as A-B-C, C-E and E-F, and the proposed new route was marked D-C, C-G-F and E-G-H-J.

If successful, the diversion would move the footpath both from the curtilage of the industrial premises and that of the residential properties. This would increase the privacy and security for both the business and the residents, whilst providing a route that was safe and convenient for public use.



The proposed diversion would alter the southern point of termination of 2-9-FP13 from its junction with 2-9-BW12 (Tan Yard Road) at point A, and place it at point D on 2-9-BW12 (Catterall Gates Lane). This was another point on the same highway or a highway connected to it, and it was suggested that the new termination points would be substantially as convenient to the public.

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

The Officer answered questions from Committee.

After a discussion, it was Proposed and Seconded:

"That the Recommendation be approved and that officers be instructed to engage in investigation to establish vegetation to beautify the route from C-D"

It was therefore:

**Resolved:**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert parts of 2-9-FP13 from the routes shown by a bold continuous line and marked A-B-C, C-E and E-F, to the route shown by bold broken lines and marked D-C, C-G-F and E-G-H-J 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.
- (iv) That officers be instructed to engage in investigation to establish vegetation to beautify the route from C-D.

**9. 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**

A report was presented on an application for the diversion of Footpath FP0124015 at Castle View Caravan Park, Capernwray.

The recorded alignment of the footpath was on the outfields of the caravan park, along an access track past the caravans, and across pastures to Gamekeeper's Tower. It was proposed that part of the footpath (A-B-C) was diverted to run through



pastures above the caravan park to meet the existing footpath 25m north-west of Gamekeeper's Tower.

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

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

The Officer answered questions from Committee.

**Resolved:**

- (i) That an Order be made under Section 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.

**10. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpaths FP1101345, FP11013790,  
FP1101371 at Mount Carmel Roman Catholic High School, Accrington**

It was proposed that consideration of this application be deferred to the next meeting for the following reasons:

- (i) Extra information to be sought on which land was held as playing field;
- (ii) Further consideration of the new proposed route to ensure that value to the public was not unreasonably lost;
- (iii) Further information required on the new tree planting scheme in the area.

**Resolved:** That consideration of the application be deferred to the next Committee meeting for the reasons set out above.



**11. Highways Act 1980 - Section 118  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Extinguishment of Part of Footpath FP0902041 at Duxbury Manor  
Way, Chorley**

A report was presented on an application for the extinguishment of part of Footpath FP0902041 at Duxbury Manor Way, Chorley.

The recorded alignment of this section of the footpath was on part of a new residential development. The footway was not built on the same line as the diverted footpath, with the result that a short section of the public right of way falls within the property boundary of no. 1D Duxbury Manor Way.

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

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

**Resolved:**

- (i) That an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Footpath FP0902041 shown by a bold continuous line and marked A-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the extinguishment.

**12. Urgent Business**

There were no items of Urgent Business.

**13. Date of Next Meeting**

**Resolved:** It was noted that the next meeting would be held at 10.30am on Wednesday 15<sup>th</sup> November 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew



County Hall  
Preston





**Regulatory Committee**

Meeting to be held on 15 November 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'.

**Annexes**

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

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

## **Consultations**

N/A

## **Implications:**

This item has the following implications, as indicated:

## **Risk management**

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

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

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

Reason for inclusion in Part II, if appropriate

N/A



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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

Sub Section (3)

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

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

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

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

Other events include

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

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

## Government Policy - DEFRA Circular 1/09

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 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 15 November 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 15 November 2023

**Part I**

Electoral Division affected:  
All

**Progress Report on Previous Committee Items**

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**Brief Summary**

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

**Recommendation**

The Committee is asked to note the progress report.

**Background**

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 31<sup>st</sup> day of October 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 required.

### **Definitive Map Modification Order Applications Where a Decision has Been Taken to Make an Order, Notice of the decision has Been Served and the Order will be Made in Due Course**

Committee has made a decision to make an Order for this application, the decision notices have been served and the Order will be made in due course.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-707	Dark Lane (Sils Farm), Bispham	Restricted Byway	16/04/2021

### **Definitive Map Modification Order Applications Where a Decision has Been Taken not to Make an Order, Notice of the Decision Needs to be Served**

Committee has made a decision not to make an Order for this application, the decision is to be served.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-730	Long Lane, Hoghton	Bridleway	22/10/2021

### **Definitive Map Modification Order Applications Where a Decision has Been Taken not to Make an Order, Notice of the Decision has Been Served**

Committee has made a decision not to make an Order for this applications, the decision notices have been served and the window for the applicant to appeal is now open.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-635	Buckstone Old Turnpike	Bridleway	06/06/2020

### **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 to be confirmed.

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-699	Glencourse Drive, Preston	Footpath	02/11/2020
804-759	Starricks Track, Priest Hutton	Footpath	21/06/2023

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

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

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-633	Snape Lane, Yealand Conyers	Restricted Byway	27/05/2020
804-744	Holme Lane, Rawtenstall	Bridleway	22/04/2022

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

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

<b>Reference</b>	<b>Known As</b>	<b>Status to be Recorded</b>	<b>Application Date</b>
804-663	Hall and Mill Lane, Leyland	Bridleway	09/11/2020
804-657	Sands Lane, Over Kellet	Bridleway	23/09/2020
804-762	Norman Road, Oswaldtwistle	Footpath	12/12/2022
804-760	Douglas Boatyard, Hesketh Bank	Footpath	03/10/2022

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

<b>Paper</b>	<b>Date</b>	<b>Contact/Directorate/Tel</b>
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None

Reason for inclusion in Part II, if appropriate

N/A







**Regulatory Committee**

Meeting to be held on 15 November 2023

**Part I**

Electoral Division affected:  
Lancaster Rural East

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Bridleway from Cragg Road to Helks Brow, Wray-with-Botton**  
(Annex 'A' refers)

Contact for further information quoting ref.804-647:

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

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

**Brief Summary**

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

**Recommendation**

That the application for the addition of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton, be not accepted.

**Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

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.

## Advice

### Consultations

#### Lancaster City Council

Lancaster City Council provided no response to consultation.

#### Wray-with-Botton Parish Council

Wray-with-Botton Parish Council provided no response to consultation.

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	6239 6679	Metal field gate at junction with Cragg Lane
B	6243 6661	Metal field gate
C	6241 6644	Metal field gate
D	6236 6627	Metal field gate at junction with Helks Brow
E	6229 6627	Sheep netting and wire fence at junction with Helks Brow



## **Description of Route**

A site inspection was carried out in September 2021.

The Application route is approximately 550 metres long.

The application route leaves Cragg Road on a sharp bend from where Cragg Road continues north to Cragg Hall (and beyond) or north west to Higher Broadwood (and beyond). The application route leaves the metalled road to pass through a metal gate providing access through a stone wall and along the route which runs in a south south easterly direction bounded to the west by a substantial stone wall and separated from the field to the east by a wooden post and rail/sheep netting fence through which access was available via a further metal field gate.

From point A the application route passes along a strip of land between the wall and fence approximately 7-8 metres wide. The surface, whilst grass underfoot, is firm with evidence of stone in places indicating that some surfacing may have been carried out previously.

The route follows the edge of the field and midway between point A and point B the fencing on the east side of the route turns through 90 degrees to continue away from the from the application route whilst the route continues along the edge of an open pasture field. There is no evidence of a walked or ridden route with some minimal evidence of use of the route by vehicles – most likely farm machinery.

Approximately 190 metres from point A the route passes through a metal field gate in a stone wall at point B and continues southwards for a further 175 metres through pasture with a stone wall on the east side to another gate at point C.

From point C the application route continues south south west across a pasture field directly to a metal gate leading onto Helks Brow at point D. Between point C and point D the surface of the route is grass but in places it can be seen that a track had previously existed which has now grassed over.

Identified on the Committee plan is a further route marked by a thick dashed line between point C and point E and labelled as the 'Historical route'. There was no evidence of this route across the pasture field and access from Helks Brow at point E was prevented by a wooden post and sheep netting fence.

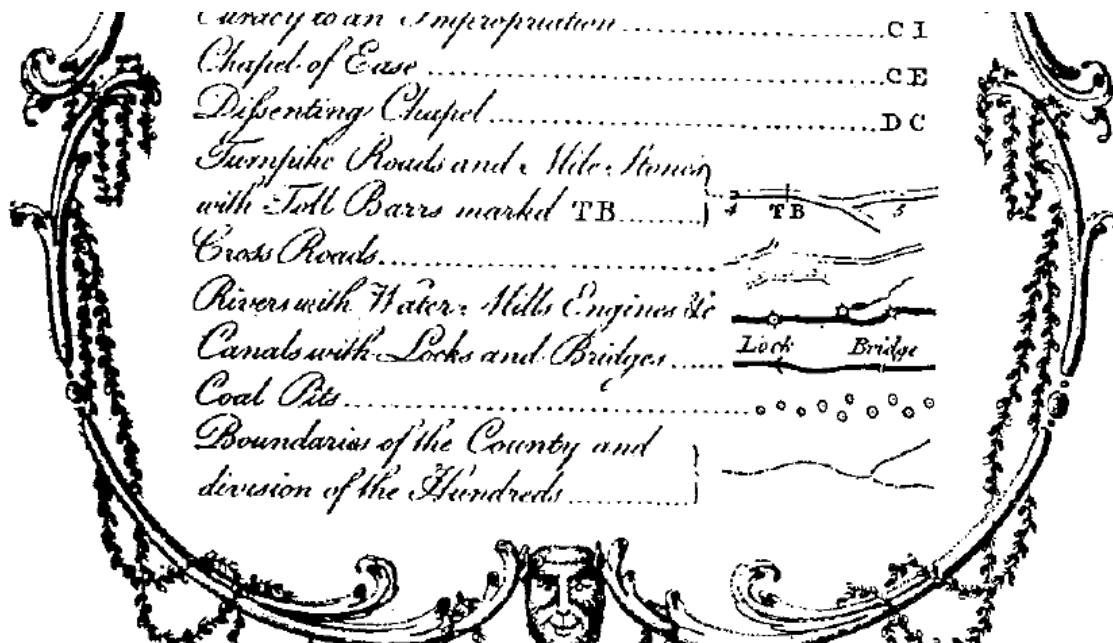
Whilst all the gates along the route were in good repair and could be opened there was no physical evidence suggesting that the route was being used by the public. No signage was located on the route indicating whether it was considered to be public or private.

## **Map and Documentary Evidence**

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



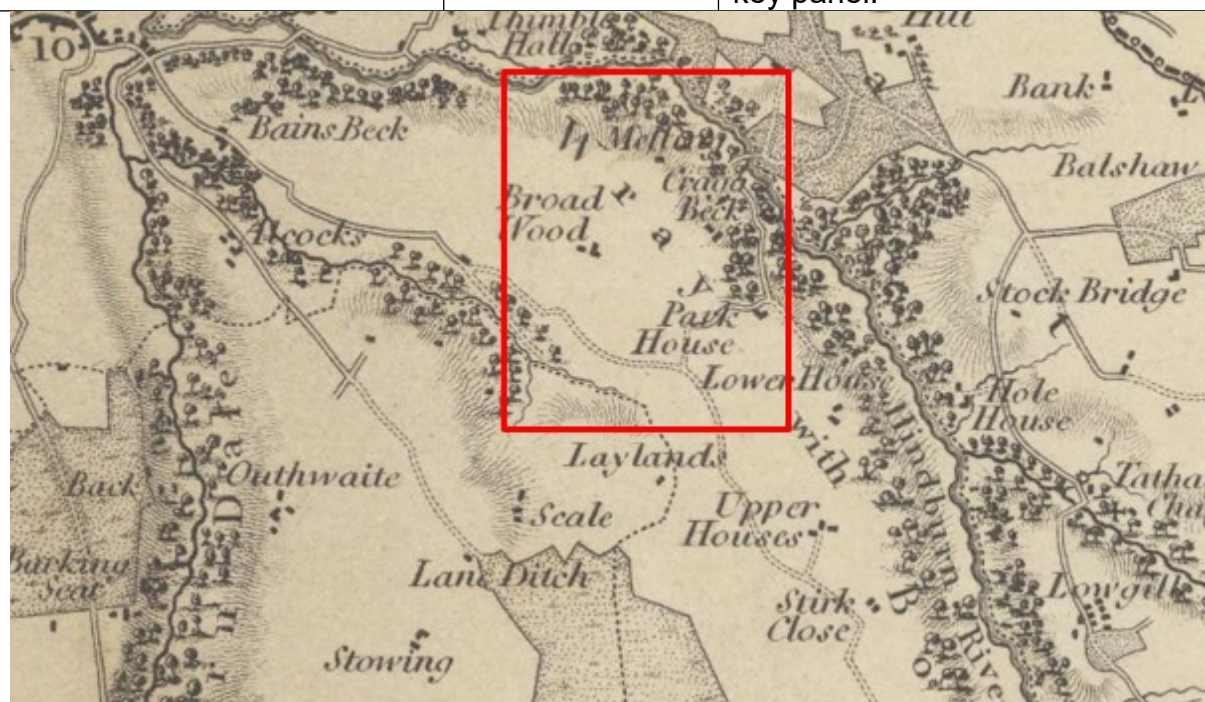
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



Observations		A route is shown broadly consistent with the application route as a continuation of the road from Wray (Cragg Road) through to
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		Helks Brow as a cross road. The present road heading east from point A on the committee plan via Cragg Hall is not shown.
Investigating Comments	Officer's	The application route – or a route from which it derived - appeared to have existed in 1786 as part of the general road network. It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads so the inclusion of a route on this map suggests that a significant route existed that would probably have been capable of being used on horseback and by horse drawn vehicles at that time.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown. Helks Brow is shown looping round past Park House but the road shown in the proximity of the application route in 1786 is not shown on Greenwood's Map.
Investigating Comments	Officer's	The application route may have existed in 1818 but the route did not appear to have been considered to be a substantial public – or private - vehicular route by Greenwood.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George





		<p>Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>
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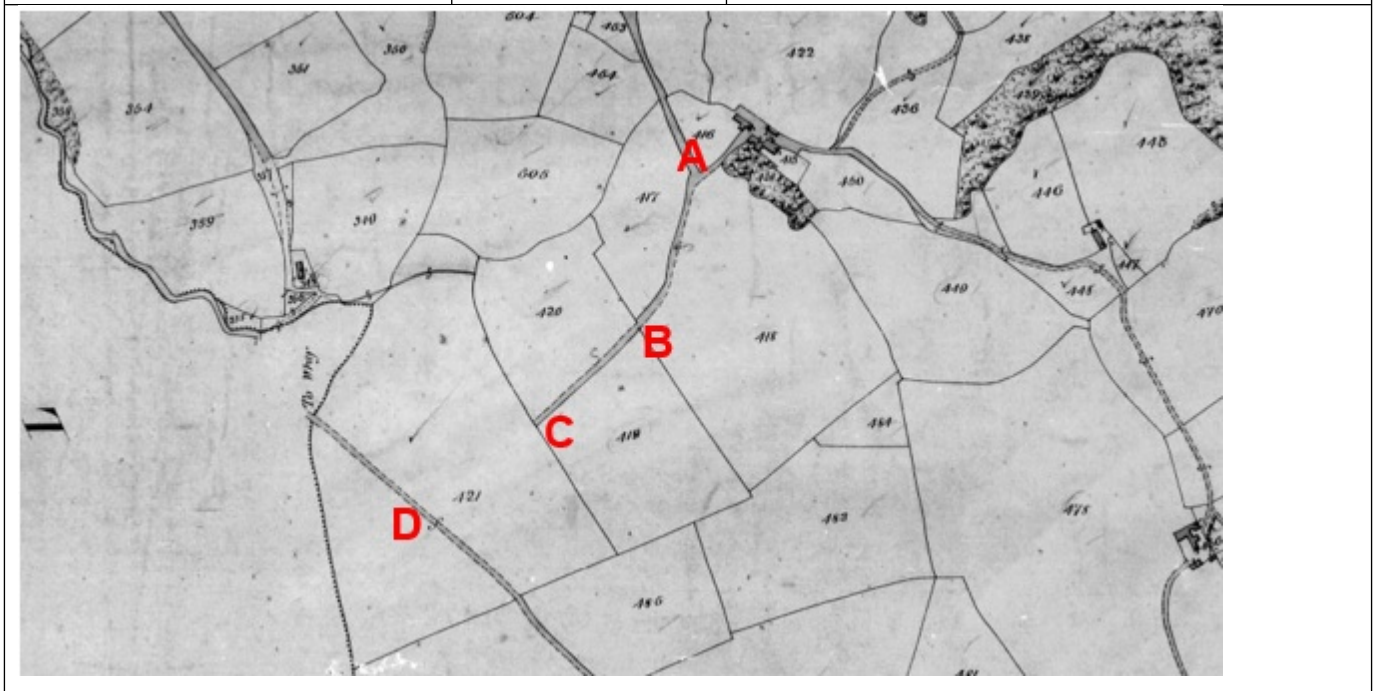
<p>Observations</p>		<p>Cragg Hall is shown with access from the north. Cragg Lane is not shown on the map and neither is the application route. Helks Brow is shown with the start of a route leading off it north – possibly towards Cragg Hall – which may have been the same route that was shown on Yates' Map over 40 years earlier.</p>
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<p>Investigating Officer's Comments</p>		<p>The application route – or a route on a similar alignment - may have existed at that time but was not considered to be a substantial public vehicular route by Hennet.</p>
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<p><b>Canal and Railway Acts</b></p>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but</p>
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		not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	1848	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>	<p>The application route is shown extending from point A bounded along the western side and open to the field numbered as plot 418 to the east. At point B the route passes through a field boundary but is shown without a line across it to continue along the edge of plot 420 to point C where a line is shown across the end of the route. The application route from point C to point D is not shown.</p> <p>Only an uncoloured copy of the map deposited at The National Archives was inspected but it could be seen that the application route from point A to point C had been coloured in the same way as all other roads that were shown on the map. Helks Brow – to which the application route connects to at point D – was shown coloured in the same way and shown bounded by pecked lines indicating that the route was probably unfenced.</p> <p>None of the routes shown coloured on the map were numbered and not all of those</p>
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		<p>shown as coloured are now recorded as public vehicular routes or as public rights of way on the Definitive Map.</p> <p>Between point A and B the application route is braced as being part of hereditament 418 and between point B and point C the route is also braced as being part of hereditament 420. Both hereditaments were listed as being owned by John Saunderson and occupied by Thomas Croft and described as arable pasture for which Tithes were payable. Hereditament 421 through which the application route between point C and point D runs was also listed the same.</p> <p>No separate list of routes considered to be public roads was included in the Tithe Award.</p>
Investigating Comments	Officer's	<p>The application route between point A and point C existed as a substantial route in 1848. The Tithe Map and Award gives no indication as to whether it was considered to be a route used by the public and the fact that it was contained within two numbered hereditaments which were owned and occupied and for which tithes were payable suggests that it was not considered to be a public vehicular highway at that time although this would not necessarily preclude the fact that it may have been used on foot or horseback.</p> <p>There is no indication as to whether access was available along the application route from point C to point D which crossed an open field described as arable pasture.</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>There is no Inclosure Award available to view at the County Records Office for the area crossed by the application route.</p>
Investigating Comments	Officer's	<p>No inference can be drawn with regards to the existence of public rights.</p>



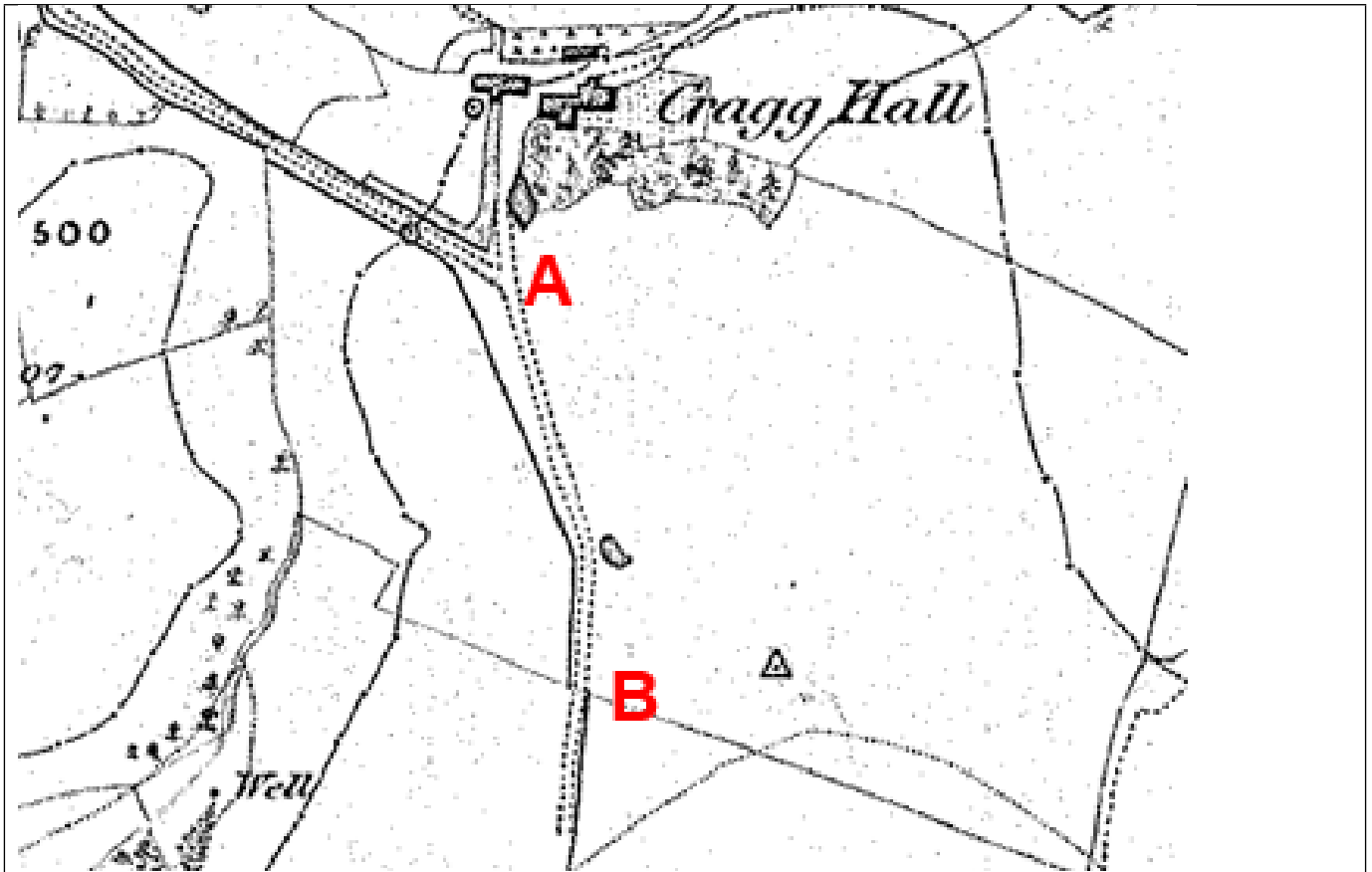
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet 26</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed 1844-1845 and published in 1847. <sup>1</sup>
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Map extract obtained from The National Library of Scotland (as submitted by the applicant) - <https://maps.nls.uk/view/102343793>

<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 obtained from the County Records Office

<p>Observations</p>		<p>The application route is shown between point A and point B consistent with how it was shown on the Tithe Map prepared around the same time. A line is shown across the route at point B on the 6 inch map although other copies of the same map – also published on the same date, including the copy held by the County Records Office – do not appear to show the line across the route at point B.</p> <p>A route is shown to extend from point B along the application route towards point C but to stop partway between the two. A line is shown across the route at point C and the application route is not shown between point C and point D.</p> <p>Two small quarries/gravel pits are shown to the east of the route between points A-B and points B-C with the most direct access to both being via the application route A-B.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>Part of the application route existed in 1844-45 but a through route connecting to Helks Brow is not shown.</p>



<b>Sale Documents</b> <b>CRO Reference: DDHH</b> <b>1/592</b>	1856	Documents relating to the sale of Cragg and Broadwood farms and associated land in 1856.
Observations		Papers detailing Notice given of the sale by public auction of land described as Cragg and Broadwood Farms was inspected at the County Records Office. There was no plan or map accompanying the notice and no clear description of the land to be auctioned. The conditions of sale specified that the purchaser was to take the lands specified subject to all rights of way and easements but did not specify what they were. The land was said to be tenanted by James Carr.
Investigating Comments	Officer's	Land crossed by the application route may have been sold in 1856 but the documentation available did not include a map and did not assist in determining what public rights may have existed along the application route at that time. The occupier of the land (James Carr) was not the person listed as tenanting the fields crossed by the application route in the Tithe Award prepared several years earlier although tenancies can change and so this cannot be taken as confirmation that the land to be sold did not include the application route.
<b>Cassini Map Old Series</b>	1852-1865	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.

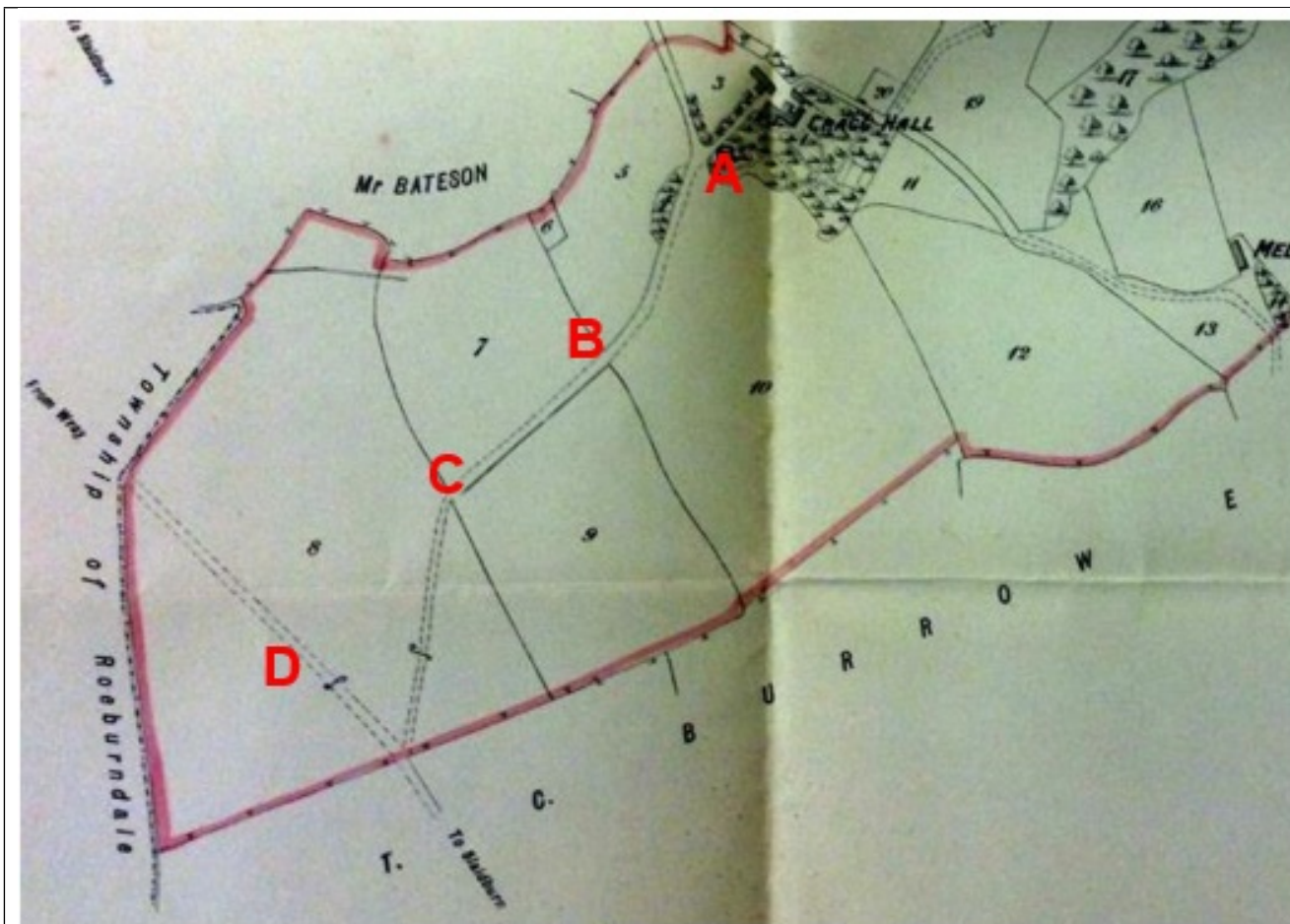




Observations		The northern part of the application route from point A and continuing towards point B can be seen but the rest of the route is not shown.
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p> <p>In this instance it appears that at least part of the application route existed in the mid-1800s but the map provides no evidence of the existence of a through route.</p>
<b>Sales documents</b> <b>CRO Ref: DDHH 1/593</b>	1887	Further sales documents relating to land crossed by the application route.







## PARTICULARS.

Nos. on Plan.	NAMES OF FIELDS.	Quantity in Stat. Meas.		
		A.	R.	P.
1	Cragg Hall House, Outbuildings, Fold, Gardens, Shrubberies, Plantation, &c.	3	0	28
2	Orchard, formerly part of Meadow below House	0	0	20
3	Copy	1	1	8
4	Plantation, formerly part of Kiln Moor	0	0	34
5	Kiln Moor	4	1	6
6	Garden, formerly part of Stubble Moor	0	0	32
7	Stubble Moor	6	3	38
8	Far Park	26	3	13
9	Green Moor	9	1	4
10	Near Park	16	3	31
11	Part of Parrock	1	1	22
12	Moss Close	9	3	34

Observations

Documents relating to the further sale of Cragg Hall, Broad Wood and Melling House were also inspected. The properties were to



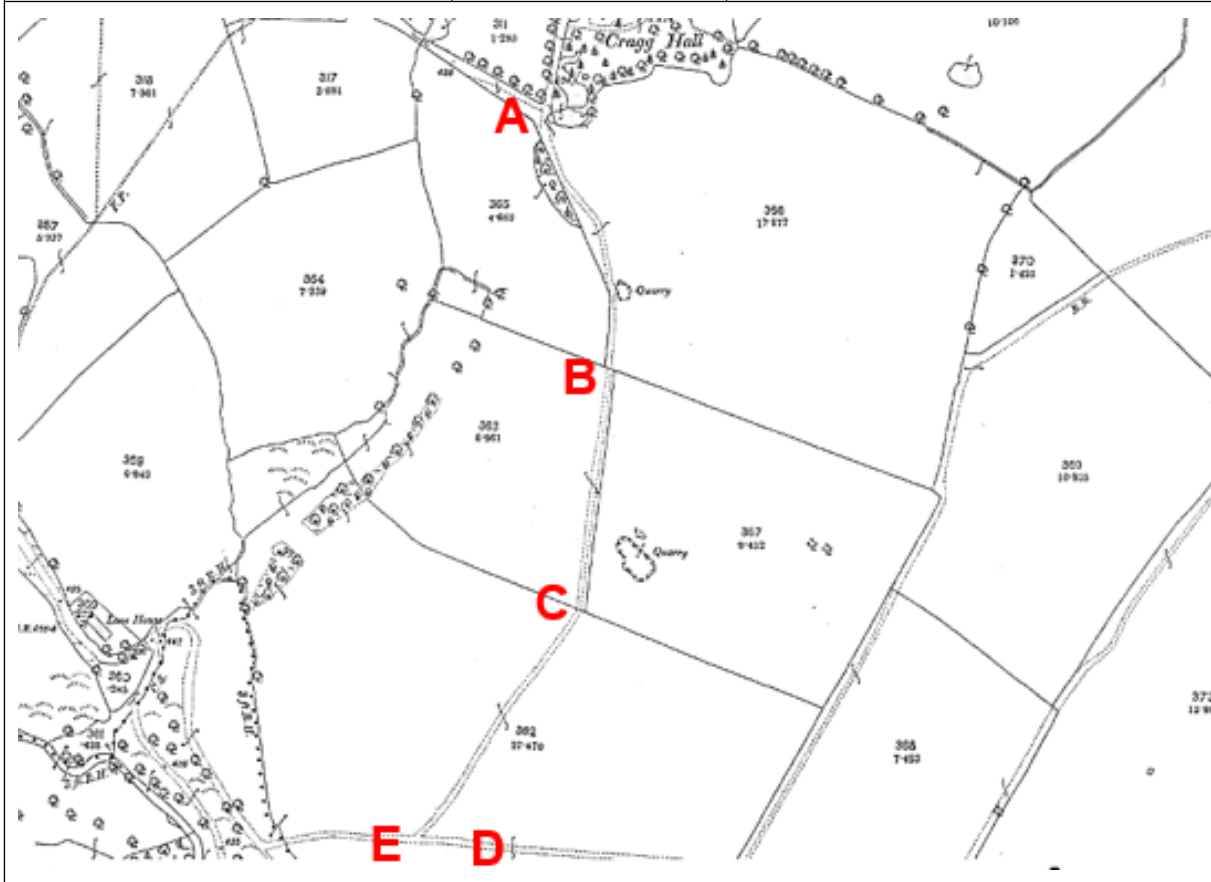
		<p>be sold at public auction in August 1887 and within the deposit was a plan of the estate to be sold. The plan showed that the land crossed by the application route was to be included in the sale. The plan, dated 1887, shows application route between point A and point C as it was shown on the earlier OS maps and Tithe Map. Between point A and point B the route is shown as part of the field numbered as plot 10 and is named as 'Near Park' in the Particulars and between point B and point C the route is within plot 7 named as Stubble Moor.</p> <p>Beyond point C an unfenced route is shown crossing the field numbered as plot 8 and named Far Park. The route – depicted by double pecked lines is shown crossing the field in a south easterly direction to the eastern boundary of the land to be sold where it joins Helks Brow (which is labelled with the ongoing destinations of To Slaidburn and From Wray). The route from point C to Helks Brow is along a different alignment to the route applied for.</p> <p>No details are provided on the Map or within the particulars regarding the public or private status of any of routes shown.</p>
Investigating Comments	Officer's	<p>The application route from point A to point C existed in 1887 and formed part of a longer route connecting to Helks Brow. It is not known whether this route would have been accessible to the public in 1887 and it is included within the boundaries of land to be sold with the inference that the routes shown would have at least provided access to and from the properties included in the sale to access public roads. Helks Brow (now recorded as a public route) is shown with the ongoing destinations of Wray and Slaidburn suggesting that this was a route of some public significance but this does not necessarily mean that the application route – leading directly to Cragg Hall – would also be used by the public at that time and it is to be expected that a plan prepared for the specific purpose of identifying land to be sold would include any routes providing access to the property including those with public and private rights.</p>



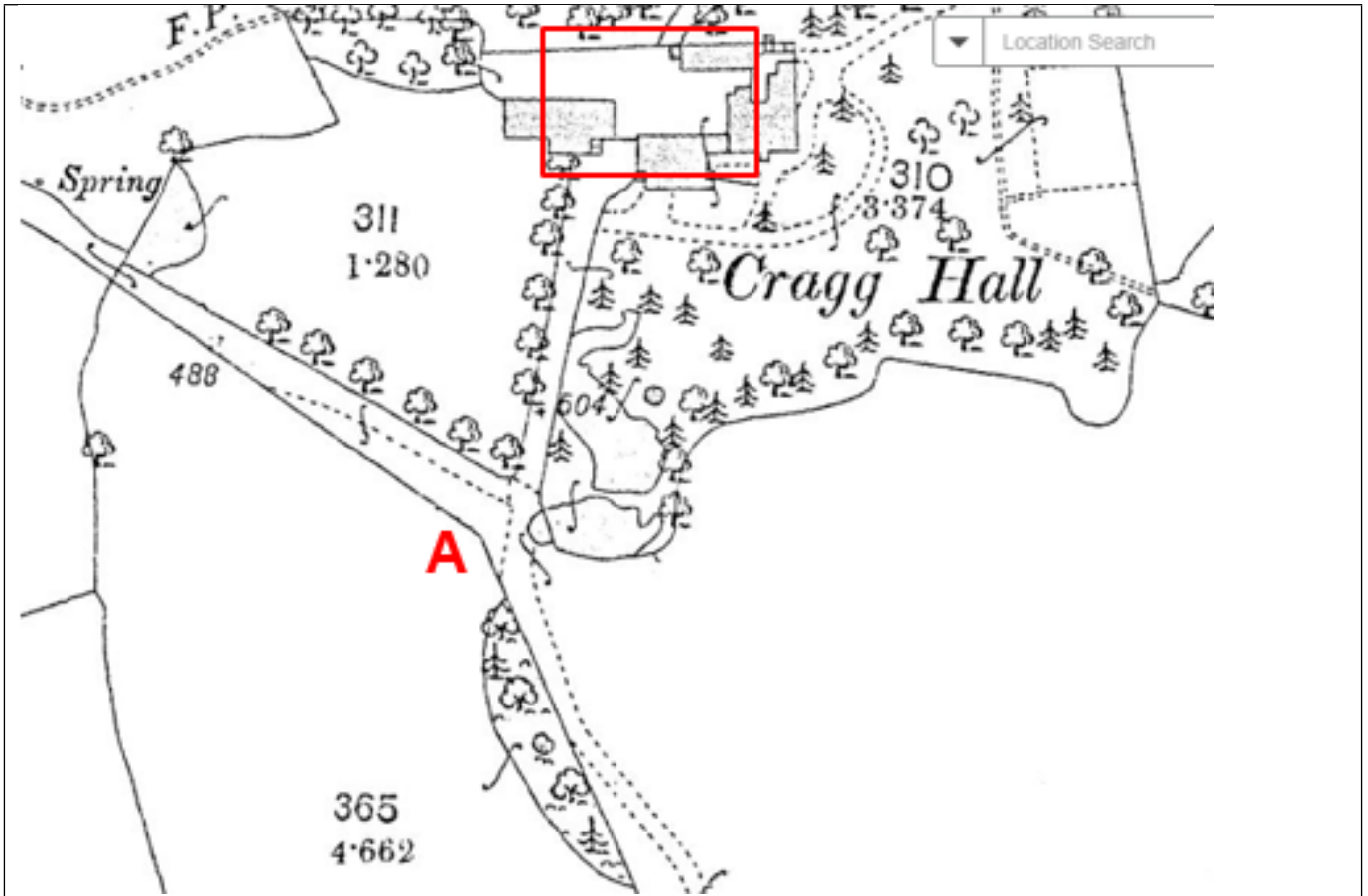
25 Inch OS Map  
Sheet XXVI.13

1891

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







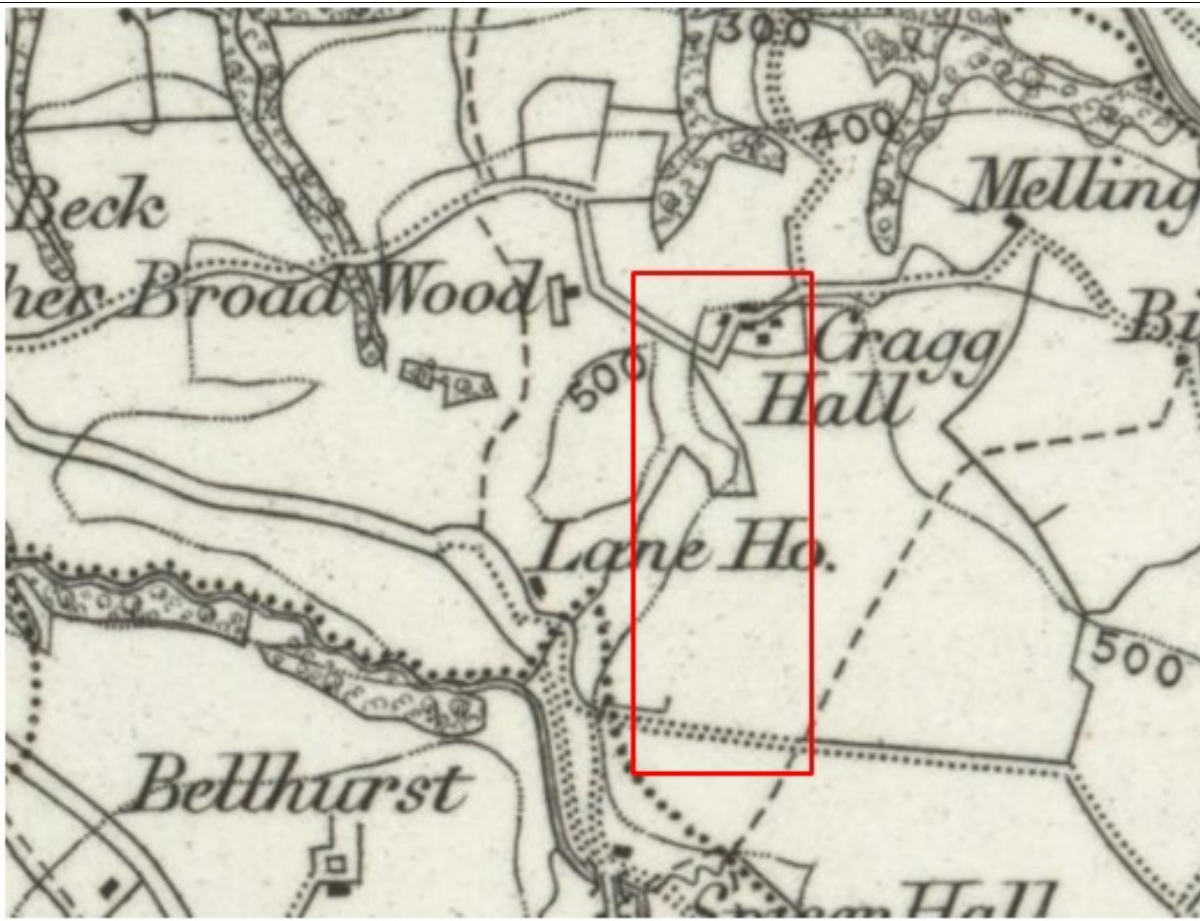


		<p>boundary through field parcel number 363 to point C. At point C the route is crossed by a further solid line – most likely indicating the existence of a further gate.</p> <p>From point C an unfenced track is shown continuing through to Helks Brow. The route is not the same as the one shown on the sales plan three years earlier and is not on the same alignment as the route applied for between point C and point D but is shown on the committee plan as being the route C-E. It passes through field parcel number 362 and is shown consistent with how Helks Brow is shown passing through the same plot.</p> <p>The route is not annotated but appears to have been shown as an unfenced minor road with 1-38-FP 18 to the east annotated partly as footpath (FP) and partly as bridleway (BW).</p> <p>Cragg Lane – which passes through Cragg Hall is also shown gated – as it is still shown today.</p> <p>Neither the application route A-C, Historical Route C-E or Cragg Lane and Helks Lane are shown with a thickened line along the south or eastern boundaries although other routes now recorded as public vehicular highways on the map are generally shown in such a way at least in part.</p>
Investigating Comments	Officer's	<p>The application route existed in 1890 between point A and point C and a route from point C to point E also existed forming a link between Cragg Lane and Helks Brow. The application route between point C and point D did not exist as a visible track on the ground.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status and in this particular case the application route and Historical route C-E are not allocated separate numbers but are included within three separate numbered fields.</p>



		<p>Two gates appeared to have existed across the route at that time. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The route was not annotated as a footpath or bridleway suggesting that at that time it was more substantial with evidence that it could have been used – or was being used by horse drawn vehicles which would be consistent with use of a route providing access to and from Cragg Hall and other nearby properties.</p> <p>The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that some other routes are shown suggests that the route was not considered to be a publicly maintained vehicular road at that time. Shading and colouring were often used to show the administrative status of roads on the 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route was not shown in this way does not necessarily mean that it was not passable – particularly as it provided access to properties – but it may not have been considered to be a public road (via C-E) at that time. The way that it is shown on the map – again via C-E – is not, however, inconsistent with use of the route by the public at least on horseback but it is not known whether this use would have been public or private.</p>
<b>1 inch OS Map Sheet 59 - Lancaster</b>	1898	1 inch OS map surveyed 1893 and published 1898.





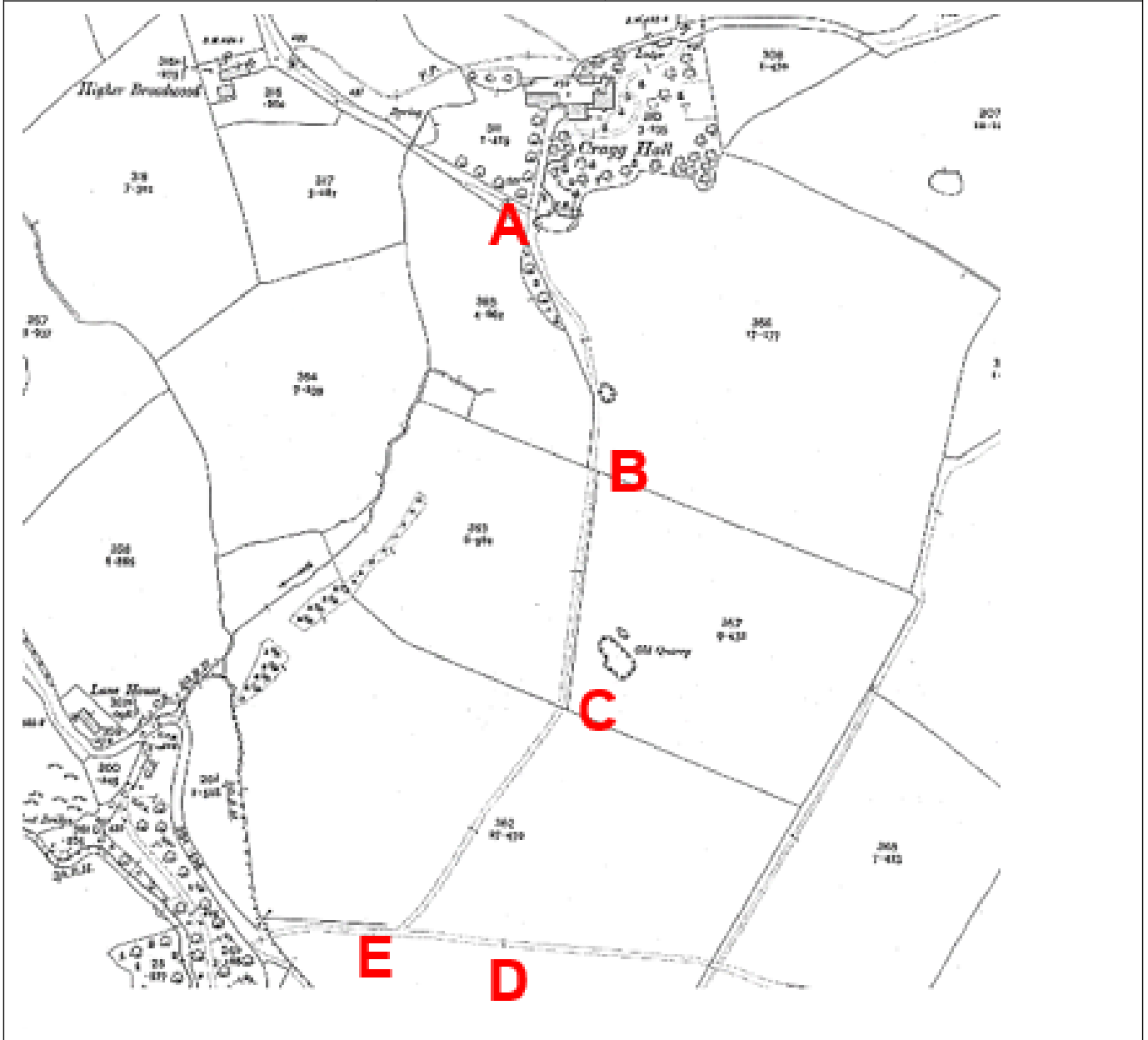
<i>Metalled Roads; First Class</i>	<i>5 (Mile distance)</i> <i>(Altitude) 211</i>	<i>Unfenced</i>	<i>Chuo</i>
<i>" " Second Class</i>			<i>"</i>
<i>" " Third Class</i>			<i>"</i>
<i>Unmetalled Roads</i>	<i>Fenced</i>	<i>Unfenced</i>	<i>Wind</i>
<i>Footpaths</i>			<i>Ligh</i>
<i>Railways, Single Line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

Observations		The application route and Historical route C-E are not shown
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the roads shown had public rights for those travellers.</p> <p>The application route (and Historical route) are not shown suggesting that they were not considered to be part of a significant public</p>





		vehicular route but the fact that they are not shown does not preclude them from existing as footpaths or bridleways – or a private vehicular access routes – at that time.
<b>25 inch OS Map Sheet XXVI.13</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The application route between point A and point C is shown in the same way as it is shown on the earlier edition of the 25 inch OS map. The application route between point C and point D is not shown but a route is shown to exist from point C to point E (the Historical route).
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Investigating Comments	Officer's	The application route existed from point A to point C in 1910 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private. The application route between point C and point D did not exist in 1910.
<b>Bartholomew half inch Mapping</b>	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

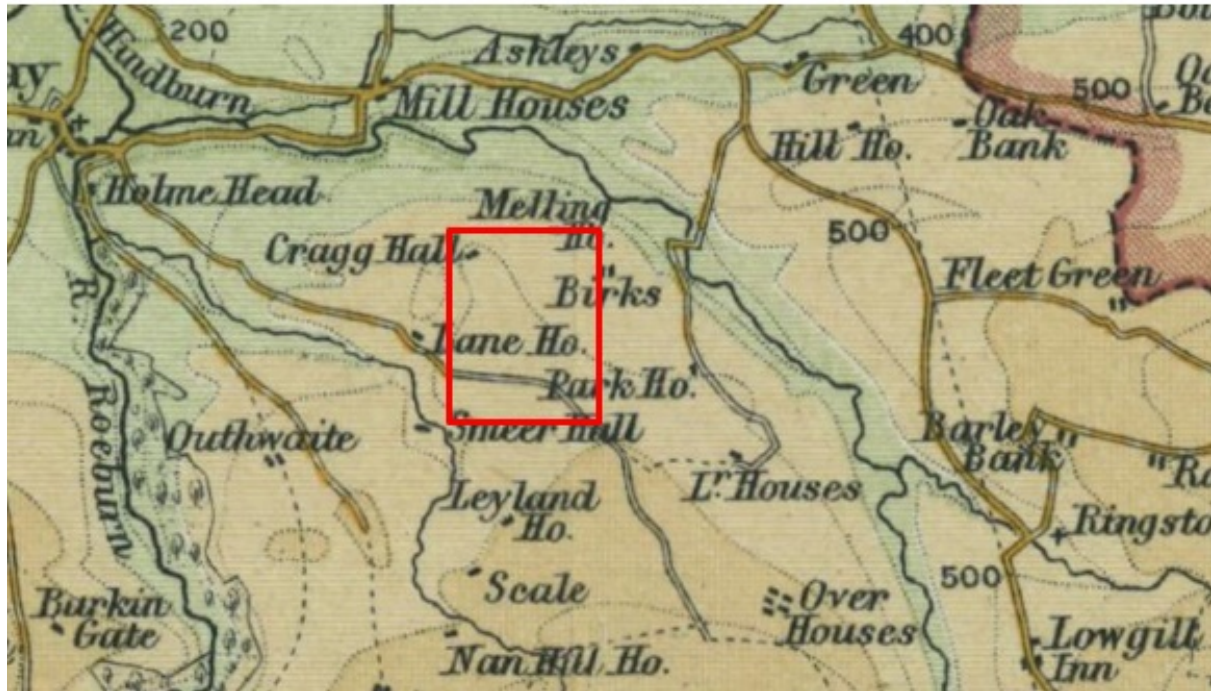


1905





1920



1941

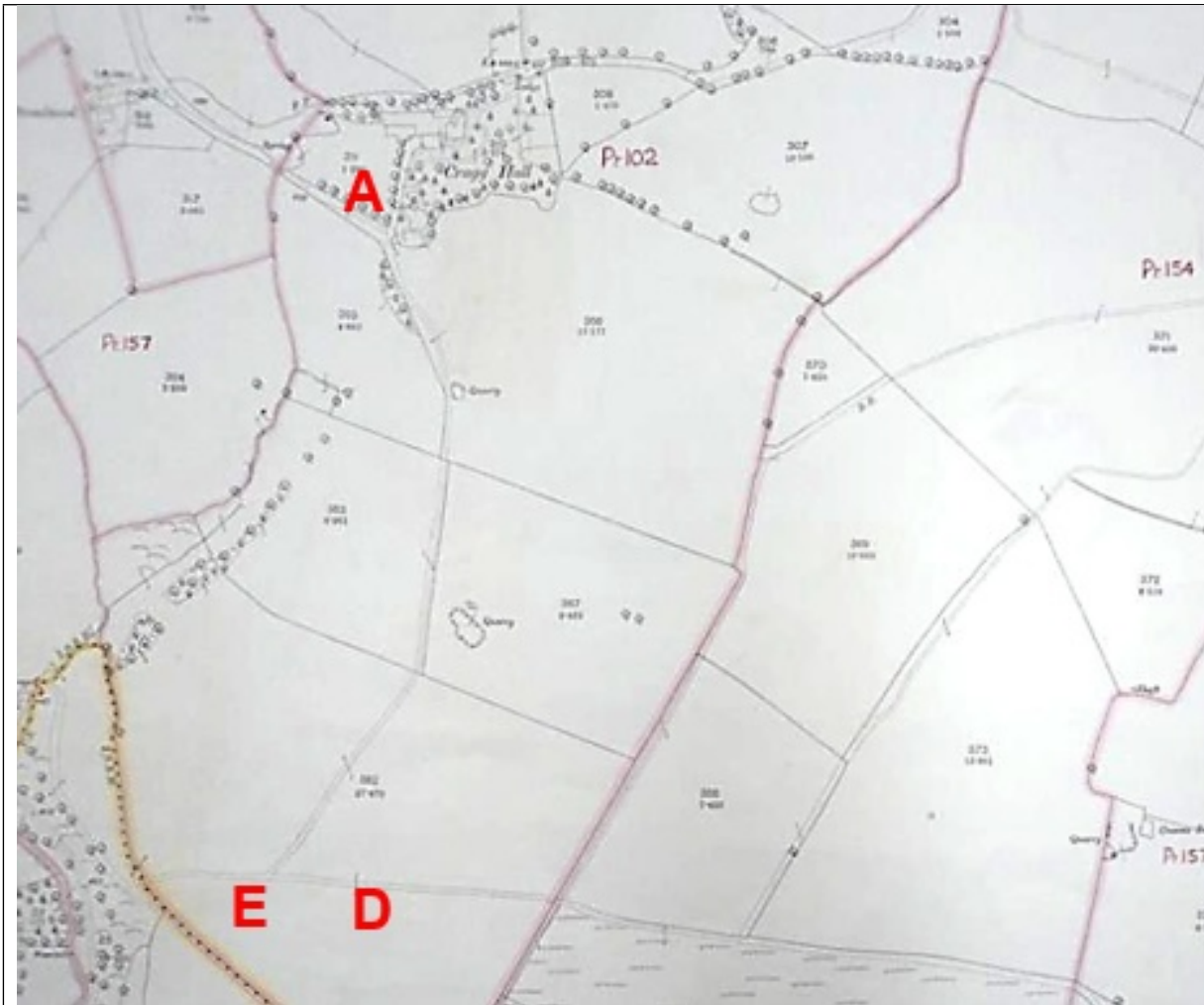
Observations		Cragg Hall, located just north of the application route is shown on all three maps but Cragg Lane which provided access to and beyond the Hall is not shown. Helks Brow is shown – although that too is not shown in its entirety on the 1905 edition of the map and the application route is not shown on any of the three maps published.
Investigating Comments	Officer's	The application route was not considered to be a public through route by Bartholomew.





<p><b>Finance Act 1910 Map TNA Map Reference IR133/3/65</b></p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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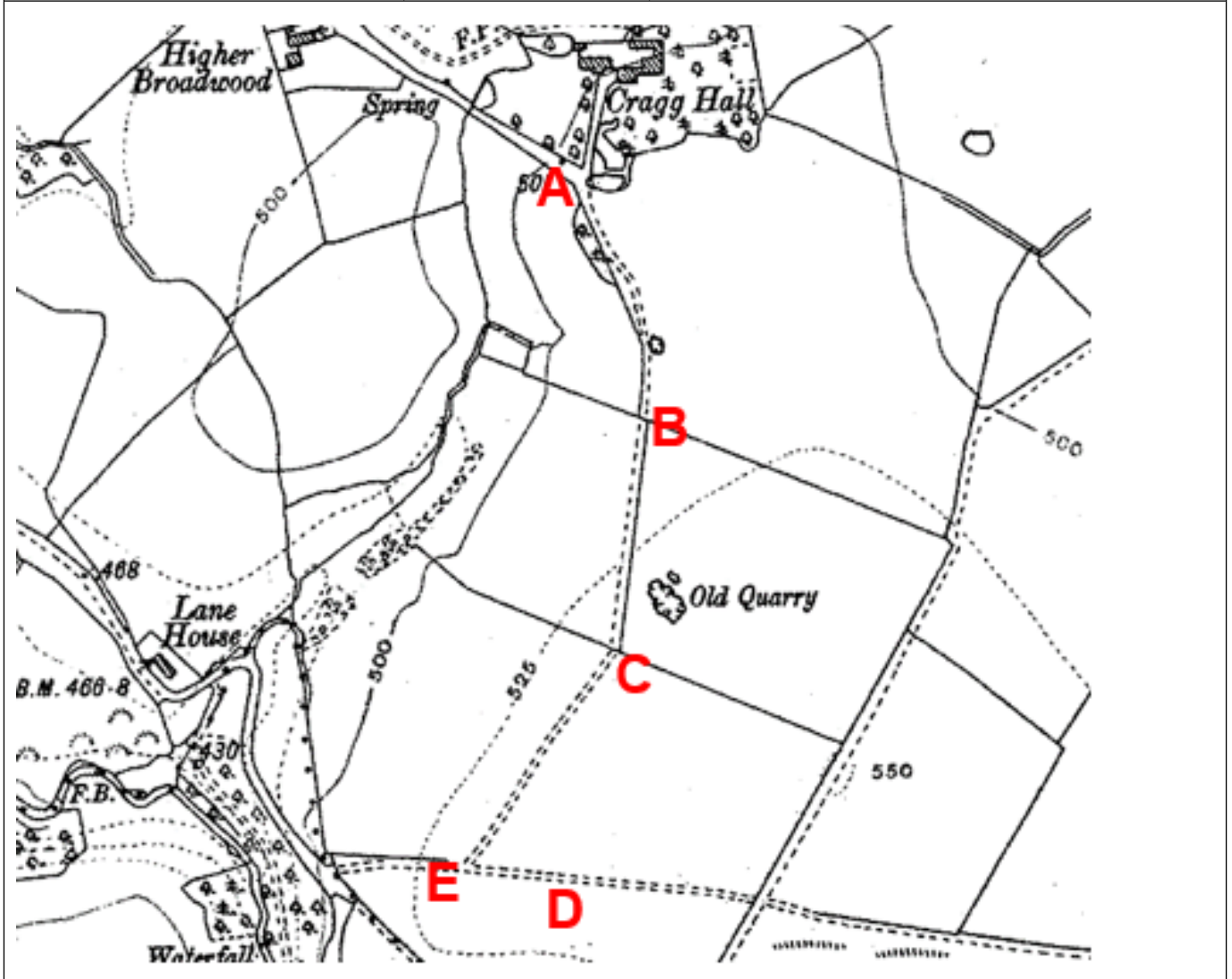


<p>Observations</p>		<p>The application route is included as part of a substantial plot labelled as hereditament 102 listed in the District Valuation book as being over 16 acres in size. The route is not excluded from the hereditament but it was noted that neither Cragg Lane nor Helks Brow are excluded either.</p> <p>The District Valuation book lists hereditament 102 as being owned by the Executors of Rich. Walcock from Bentham and occupied by T Hartley. A £50 deduction was listed for public rights of way or user but there is no indication as to which route or routes the deduction relates to.</p>
<p>Investigating Officer's Comments</p>		<p>It would not normally be expected that a route used by the public on foot or horseback would be excluded from the numbered hereditaments. In this case it is also noted that Cragg Lane is not excluded which ties in with information obtained from the Land Registry showing that the section</p>



		<p>of Cragg Lane included within this plot is still in private ownership.</p> <p>It is not specified in the District Valuation Book what routes the deductions made for public rights of way or user refer to so although a substantial deduction of £50 was made there is no way of knowing whether the application route was one of the routes acknowledged as being a right of way for which a deduction was claimed.</p>
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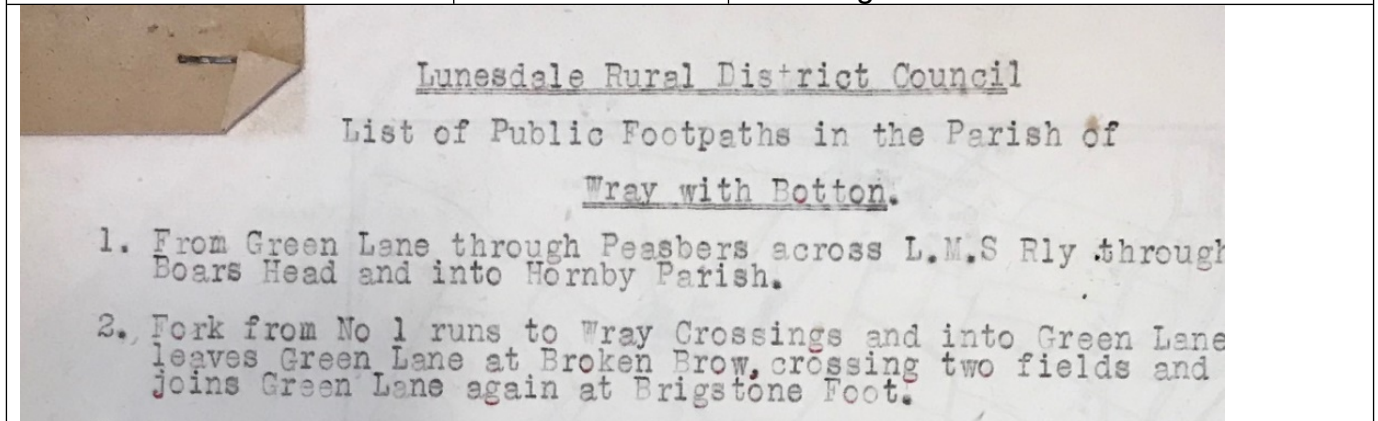
<p><b>6 Inch OS Map</b> <b>Sheet 26SW</b></p>	<p>1919</p>	<p>Further edition of 25 inch map (surveyed 1845, revised in 1910 and published 1919.</p>
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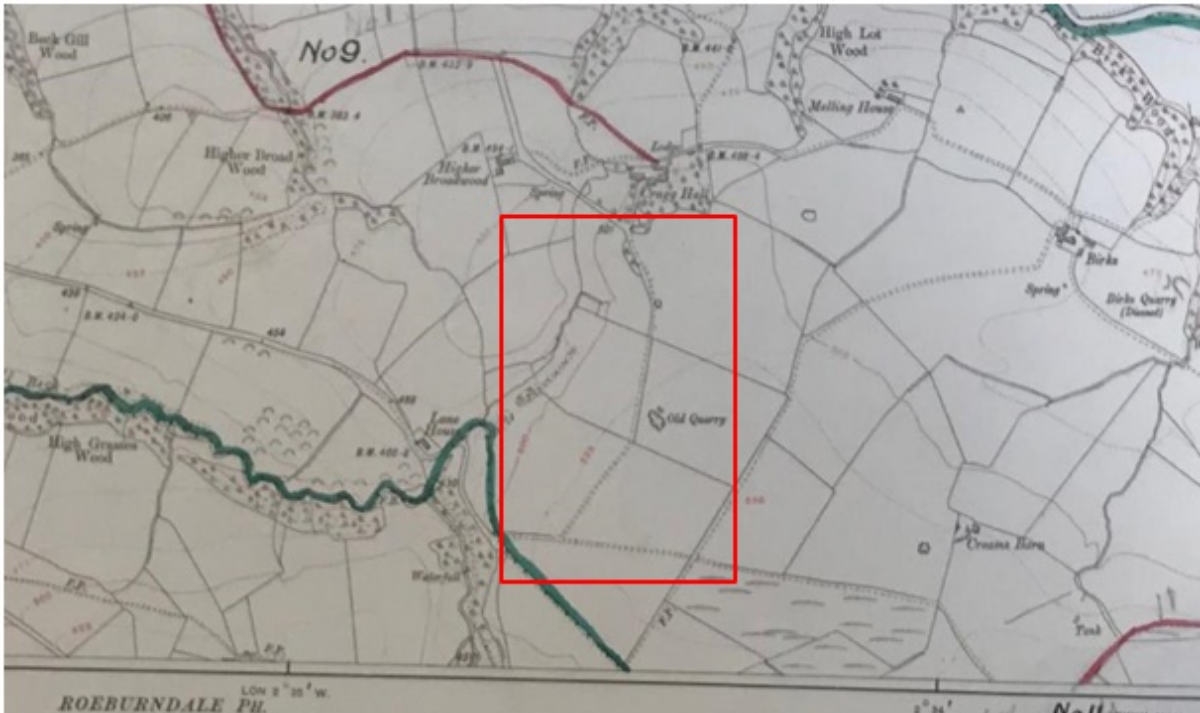


<p>Observations</p>		<p>The application route between point A and point C is shown in the same way as it is shown on the earlier OS maps. The application route between point C and point D is not shown but a route is shown to exist from point C to point E (the Historical route)</p>
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		connecting to Helks Brow which is shown as an unfenced road.
Investigating Comments	Officer's	The application route existed from point A to point C in 1910 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private. The application route between point C and point D did not exist in 1910.
<b>1932 Rights of Way Map</b>		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.





<p>Observations</p>		<p>The application route is not included on a map and list prepared by the Lunesdale Rural District Council which purported to show the public footpaths within the parish. The list did not refer to routes considered to be public bridleways and it was noted that 19 routes were recorded none of which were referred to as being bridleways. When the Definitive Map was prepared in the 1950s 44 routes were recorded as public rights of way within the parish including two recorded as public bridleways (1-38-BW 37 and 1-38- BW 38). Neither of the routes recorded as public bridleways were recorded on the 1932 map although it was noted that three footpaths connected to one of the bridleways which was referred to by name (Green Lane) at that time.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route does not appear to have been considered to be a public footpath in the 1920s but it should be noted that the number of footpaths recorded in the parish more than doubled when the Definitive Map was prepared in the 1950s so although 'new' public rights of way could come into being at any time it is possible that the list was incomplete – as it could still be argued today. The fact that the list did not appear to include routes considered to carry higher public rights – including bridleways –</p>





		also suggests that the fact that the route is not shown does not mean that it was not a public bridleway in the 1920s.
1 inch OS Sheet 89 Lancaster and Kendal	C 1957	Revised 1950 to 1957 and published circa 1957.

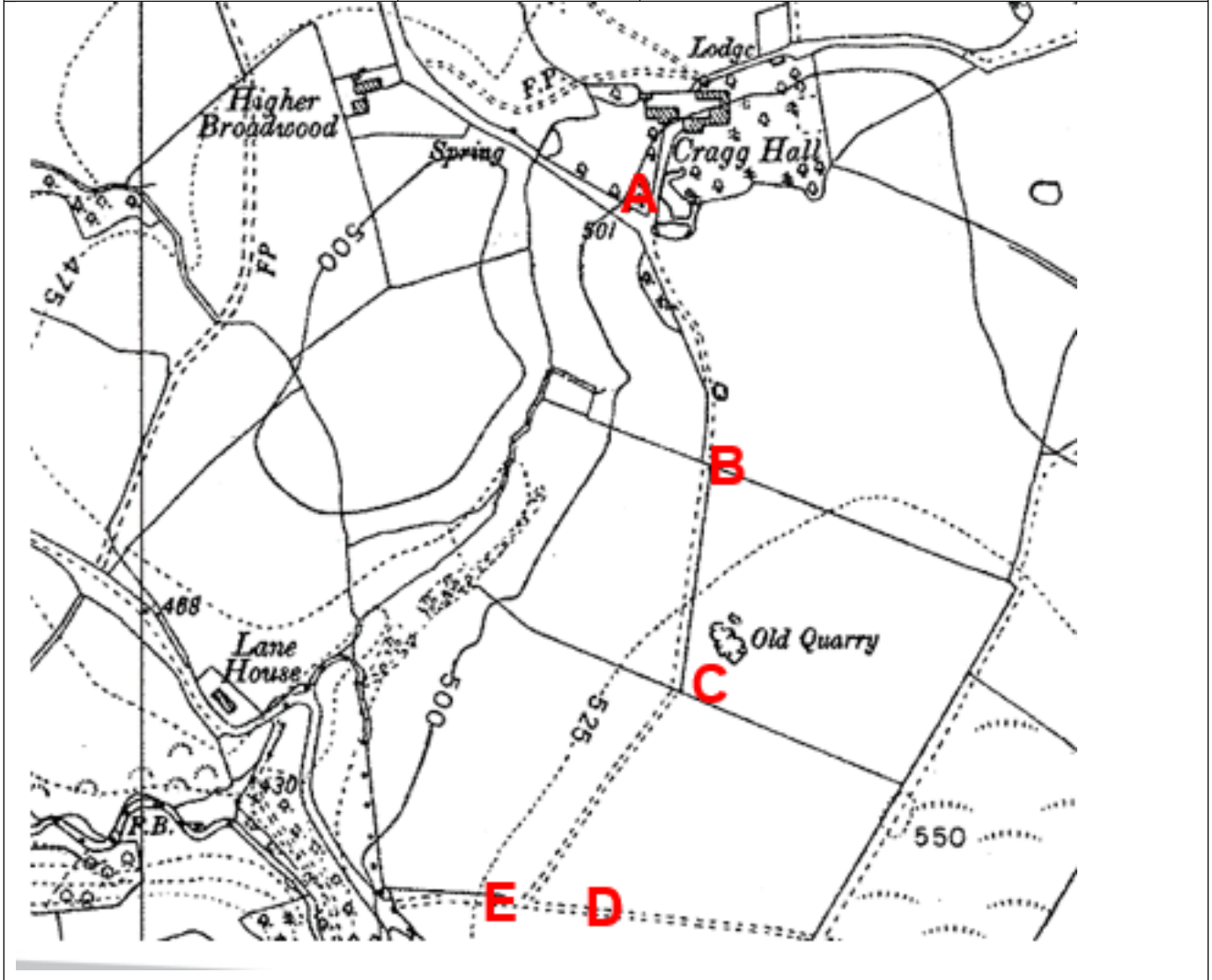


Roads	Ministry of Transport, Trunk		
	" " " Class 1		
	" " " " 2		
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "		
	" " " " Untarred " "		Wood
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Orcha
Steep Gradients 1 in 5 or steeper		Electr (with Pipe 1	
Footpaths and Tracks			

Observations		The application route is shown as a substantial unfenced and unmetalled road following the route between points C-E rather than between points C-D.
Investigating Comments	Officer's	The application route existed from point A to point C in the 1950s and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but



		it is not known whether this use was public or private. The application route between point C and point D probably did not exist in the 1950s.
<b>6 Inch OS Map Sheet 66NW</b>	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route via the Historical route C-E is shown in the same way as it is shown on earlier OS maps.
Investigating Comments	Officer's	The application route existed from point A to point C before 1930 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private.





		The application route between point C and point D did not exist.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



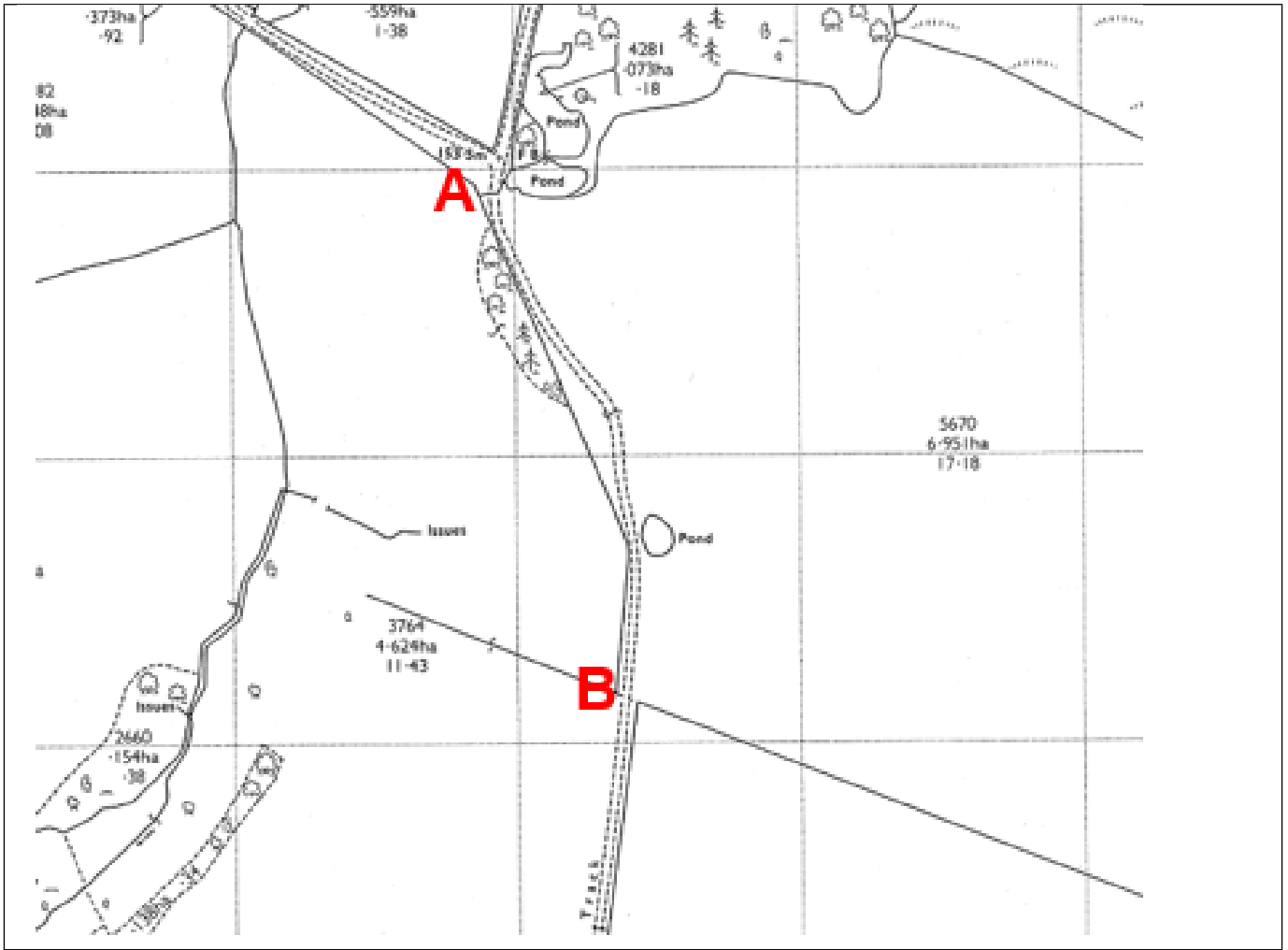
Observations		The earliest aerial photograph found to show the land crossed by the application route is also the first document to show the full length of the application route between points A-B-C-D in existence.
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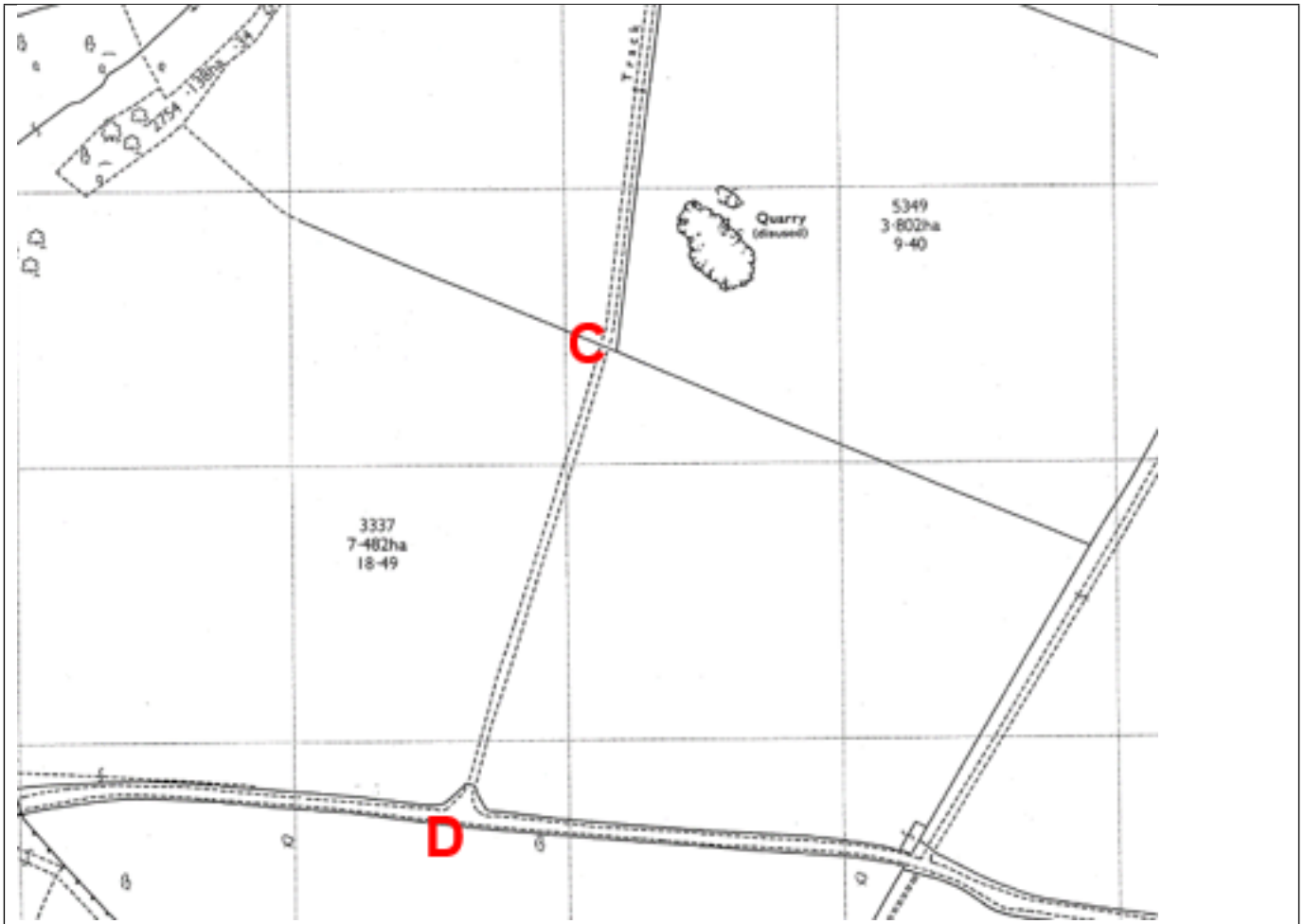




		The full length of the application route can be clearly seen on the photograph as a substantial track consistent with a route which was being used by vehicles through to Helks Brow at point D. Helks Brow can be seen on the photograph but is much less prominent. The Historical route from point C to point E is not visible on the photograph.
Investigating Comments	Officer's	The application route between points A-B-C-D existed as a substantial through route in 1960 consistent with a route used by vehicles. It is not known whether this use was public and the fact that the route itself appeared to be heavily used but Helks Brow looked far less used suggests that use by vehicles was possibly predominantly farm machinery or for access to and from Cragg Hall and Higher Broadwood rather than as part of a longer public through route. The Historical route from point C to point E no longer appears to have existed.
<b>1:2500 OS Map SD 6266-6366</b>	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1973 as National Grid Series.







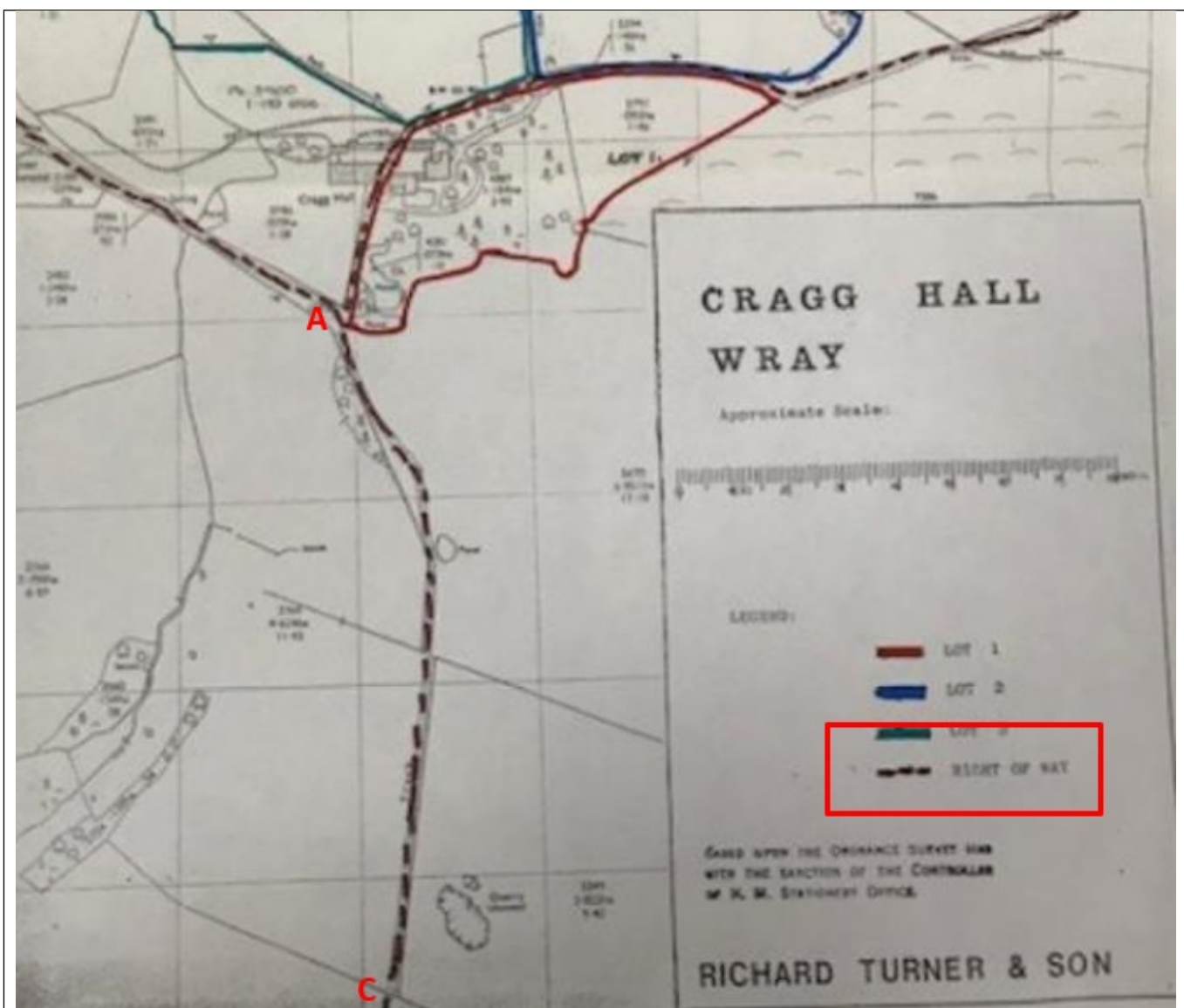
Observations		The application route (A-B-C-D) is shown as a substantial gated track. The Historical route between point C and point E is not shown.
Investigating Comments	Officer's	The application route existed from point A to point D existed in 1972 and appeared capable of being used but it is not known whether this use was public or private. The application route between point C and point E did not exist.
Aerial Photograph	2000	Image captured by Google Earth Pro.





Observations		The application route A-B-C-D is no longer visible as a track although access may have been available along it.
Investigating Officer's Comments		The application route does not appear to be receiving any significant levels of use – even on foot – in 2000 and the substantial track which was evident in the 1960s can no longer be seen.
<b>Sale Documents relating to Cragg Hall</b>	1979	Sale document deposited in the County Records Office.





**10. RIGHTS OF WAY:**

The Purchasers of Lots 1, 2 & 3 shall have the benefit of and shall take subject to all rights of way as at present exist over the roads shown coloured brown on the sale plan.

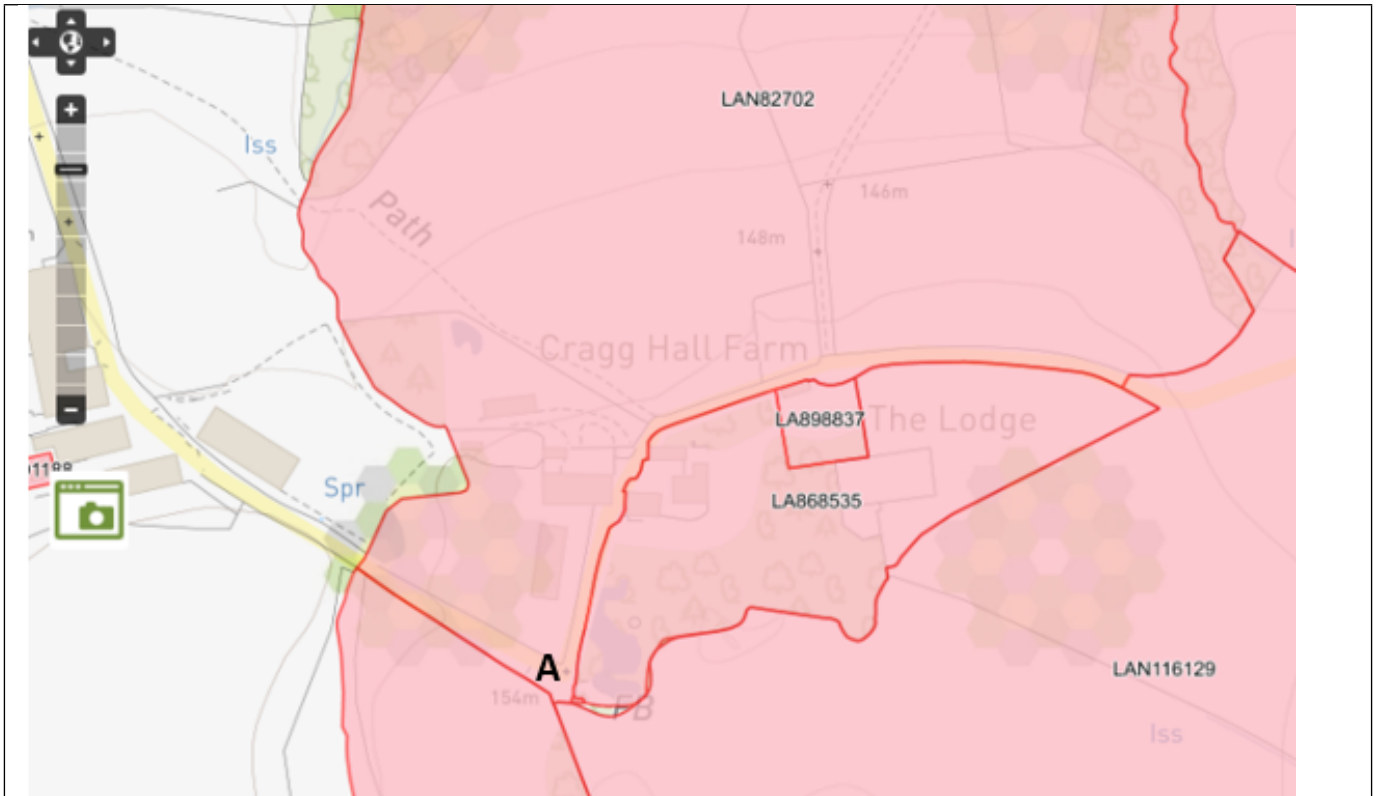
The Purchaser of Lot 2 shall have the right for agricultural purposes only over the bridge crossing the River Hindburn and the roadway thereto between the points 'B' and 'C' shown on the sale plan.

The Purchaser of Lot 2 shall take subject to the rights of way in favour of neighbouring Farmers and adjoining owners (in so far as such rights now exist) over the track between points 'A' and 'B' shown on the sale plan.

Extracts from Auction Booklet







Land Registry Map search showing land in registered ownership

<p>Observations</p>	<p>The auction papers detail the proposed sale at a public auction of Cragg Hall and 44 acres of land which was to be split into three separate lots. The auction was to take place in May 1979 and within the details provided is a map showing the extent of the land to be sold.</p> <p>The land crossed by the application route was not included in the sale and only the route between point A and point C is shown on the map extract. The application route has been coloured brown on the plan – together with Cragg Road which is shown in the same way and is marked up on the plan as denoting 'Right of Way'. There is no specific reference to the application route in the document but it is said that the purchasers of all three plots shall 'have the benefit of and shall take subject to all rights of way as at present exist over the roads coloured brown on the sales plan'.</p> <p>Although recorded as a public vehicular highway Cragg Lane is marked on the sale map as right of way and specifically referred to in the documentation as having a right of access over it in the same way as the application route is shown and referred to. A</p>
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		search on the Land Registry website suggests that a substantial length of the land through which Cragg Lane passes is in private ownership or is unregistered corresponding to the sections marked up as having a right of way along it on the sales plan.
Investigating Comments	Officer's	The auction plan and guide were prepared specifically in relation to the sale of land in a remote area. The fact that the application route is marked on the plan as a 'right of way' appears to relate to the existence and retention of private rights of access to be granted to the purchasers of adjacent land and does not indicate the existence of any public rights which may have existed along the way.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.





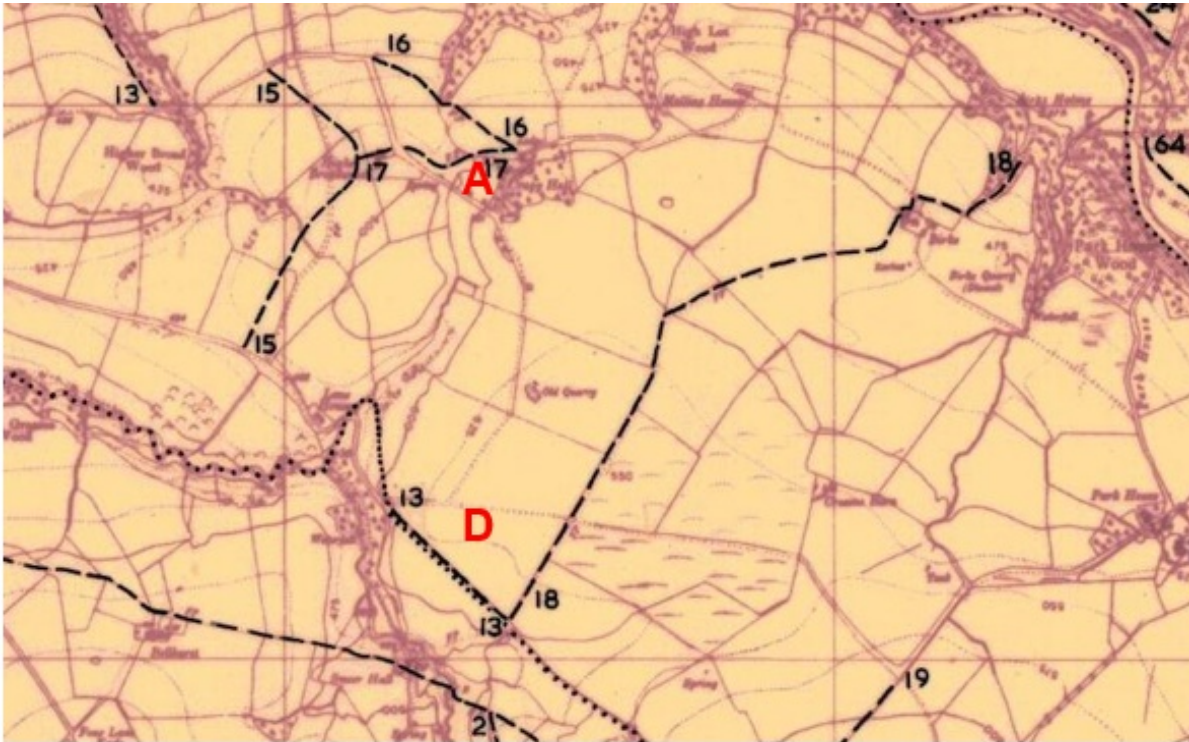
Observations		The application route was not shown on the Parish Survey Map for Wray-with-Botton.
<b>Draft Map</b>		<p>The parish survey map and cards for Wray-with-Botton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was not shown on the Draft Map and no representations were made to the County Council.
<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 and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
<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.

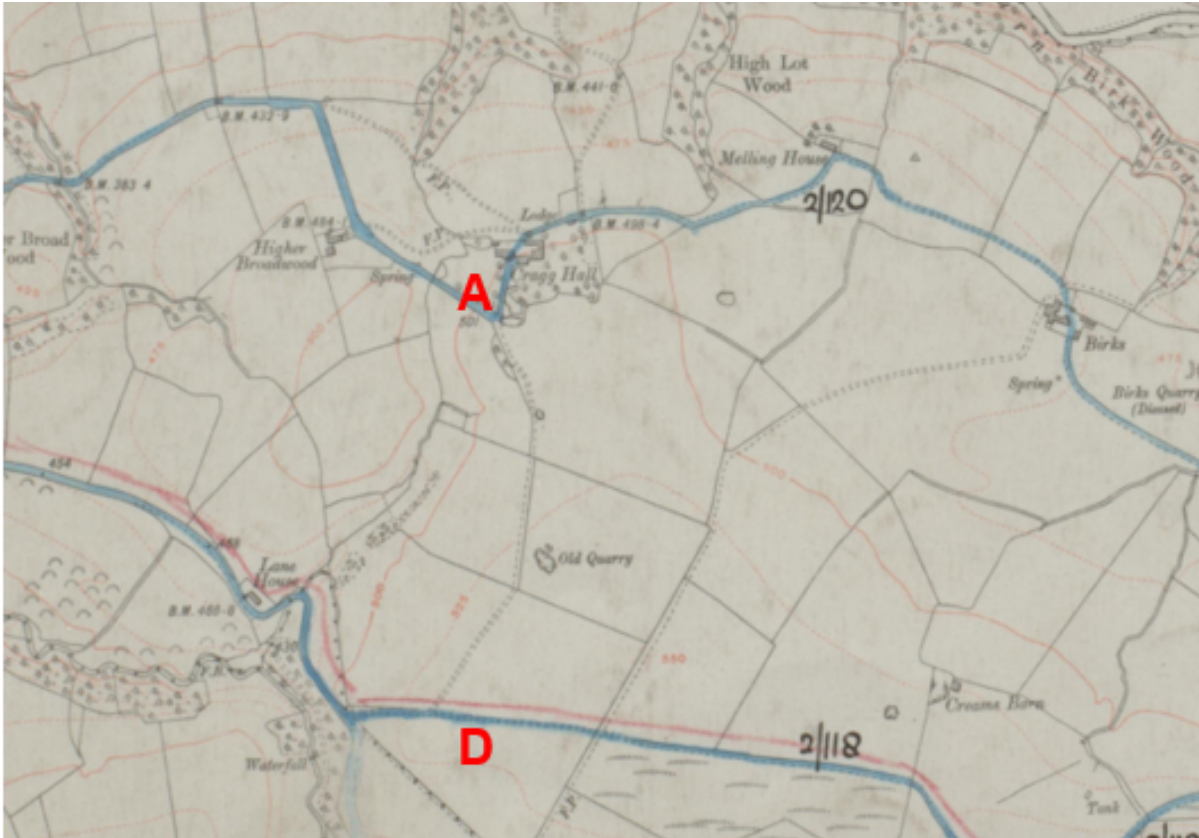




Observations		The application route is not shown on the Revised Definitive Map First Review.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way that should be recorded on the Definitive Map by the Surveying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



		<p>maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Handover Map			
Observations		The application route and historical route C-E are not recorded in the county council's highway records.	
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not necessarily carry public rights of access so no inference can be drawn.	
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway	



		orders made by Districts and the County Council since that date.
Observations		The application route is not recorded as a publicly maintainable highway on the County Council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
<b>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		Prior to the application being made no Highways Act 1980 Section 31(6) deposits had been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		Prior to the application being made there was no indication by the landowners under



		this provision of non-intention to dedicate public rights of way over this land.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

## Summary

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 application is for public bridleway and as such it would not be necessarily expected that it would be shown on any of the small scale early commercial maps.

However, in this particular case a route is shown on Yates' Map of 1786 which may have been the application route - or a route from which it derived – and is shown as part of the general road network.

The route is not shown on later small scale commercial maps casting some doubt on the significance of what exactly was shown on Yates' Map and whether a through route did exist along the application route at that time.

The earliest map examined to show the route was the 6 inch OS map surveyed in 1844-45 and published in 1848. It showed the route between point A and point B and partway towards point C but did not show a through route connecting to Helks Brow.

Similarly the Tithe Map of 1848 showed the route from point A to point C but no further and although it may have been possible to cross the pasture field to link to Helks Brow the existence of a trodden track was not identified and the Tithe Map and Schedule provided no useful information regarding which routes shown on the map were considered to be public roads or whether they carried any other type of public rights.

The 1887 sales plan was the earliest plan to show a through route although beyond point C the route shown did not correspond to what was shown on any subsequent map. Whilst a through route may have existed at that time its existence was included on a sales plan which related to the sale of Cragg Hall and the land crossed by the route with the inference being that the route at least provided private access to and from the property.

From 1891 onwards the larger scale (6 and 25 inch maps) recorded the existence of a track from point A-B-C which then continued through to Helks Brow via points C-E although the route was not shown on the smaller 1 inch maps or on Bartholomew's half inch maps.

With regards to its inclusion on the Ordnance Survey maps, it has generally been considered that OS maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888. Despite this there is now a growing awareness by academics that by the end of



the 19<sup>th</sup> Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, it remains the case that the main inference from these maps is the existence of the route providing access to and from Cragg Hall and possibly Higher Broadwood but it does appear that a through route existed over a considerable period of time of substantial character which could have been accessible to the public – at least on horseback – since the late 1800s.

This route appears to have altered by the 1960s when an aerial photograph taken at that time clearly showed a substantial route along the line applied for (between points A-B-C-D) and this same route was subsequently mapped by the OS in the 1970s. Use of the route in the 1960s appears to have been significant and possibly predominantly with vehicles accessing the fields and Helks Brow from Cragg Hall and Higher Broadwood.

Since that time use of the route by vehicles greatly declined and the track had grassed over and was no longer visible by 2000.

User evidence was not submitted as part of the application and no evidence of historical use by the public was found as part of this investigation. The route was not recorded as a public right of way as part of the Definitive Map process and whilst linking two public vehicular roads it does not link directly into any other recorded public rights of way or provide an obvious link between two places. Historically the land crossed by the application route was part of a large area of land owned and farmed as one big estate and whilst some of this has now been split and is farmed between several properties it appears to have altered little over the years.

Whilst the site evidence concurs with the fact that the route could have been used by horses there is no modern day evidence suggesting such use in recent times.

In conclusion, a range of OS, commercial maps and other documents were examined which seem to suggest that the route probably came into existence to provide access to and from Cragg Hall and that although it altered from following a route between points A-B-C-E to A-B-C-D in the 1960s it was consistently shown as a gated through route from the late 1800s. It is not shown to exist on small scale OS maps and the Bartholomew maps examined since the mid-1800s which suggest that it was not a significant route and was not excluded as part of the Finance Act valuation in the early 1900s.

Taking all the evidence into consideration it appears that a route probably existed since the late 1800s and that it may have been capable of being used by the public but that there is insufficient evidence available from which to deduce that public bridleway or footpath rights existed.

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

### **Landownership**



The vast majority of the length of the application route crosses land in private ownership with two landowners, except for a very short section at point D.

### **Information from the Applicant**

The application was submitted based on the map and documentary evidence listed below:

Yates' Map of Lancashire

OS 6 inch maps published 1847, 1895 and 1919

25 inch OS maps published 1895 and 1913

1 inch OS published 1957

1:25, 000 OS maps published 1948 and 1961

1:10, 000 OS map published 1956

Tithe Map and Award 1848

Finance Act records

Sales documents obtained from the County Records Office dated 1887 and 1979

1960s aerial photographs

Current photographs of the route

### **Information from the Landowner**

The landowners provided detailed responses to this application prior to consultation.

The first landowner noted issues they had with the application which are listed below.

1. They noted that the applicant had accessed the land without the permission of any of the landowners or rights-holders – which they object to. They suggest that evidence gathered (photographs etc.) from the land should be disregarded on the basis that it was not obtained lawfully.
2. The landowner noted that the applicant recorded that there are bridleway latches fitted on the gates on the route. The landowner noted that they fitted these latches, sometime between 2019 and 2020 for use by them and their family as private rights holders, to access their fields and have since been removed.
3. The landowner noted that the Applicant referred to Yates 1788 map and raised issues with this stating that they disagree with the applicant's interpretation as the maps themselves make no reference to horses, coaches or rights of way and have no key/legend.

They believe that there were two routes to Cragg Hall, for the benefit of Cragg Hall and associated land, one from the north/west from Wray and one from the south/east from the direction of Low Gill. They believe that this route would have been used by the owner of the property and their staff to access the property, but not by the public.

4. The landowners also noted that the applicant has referred to various Ordnance Survey maps from 1895 to date. They acknowledge that in all these maps, a farm track/route is shown, which was and continues to be used by the owners and





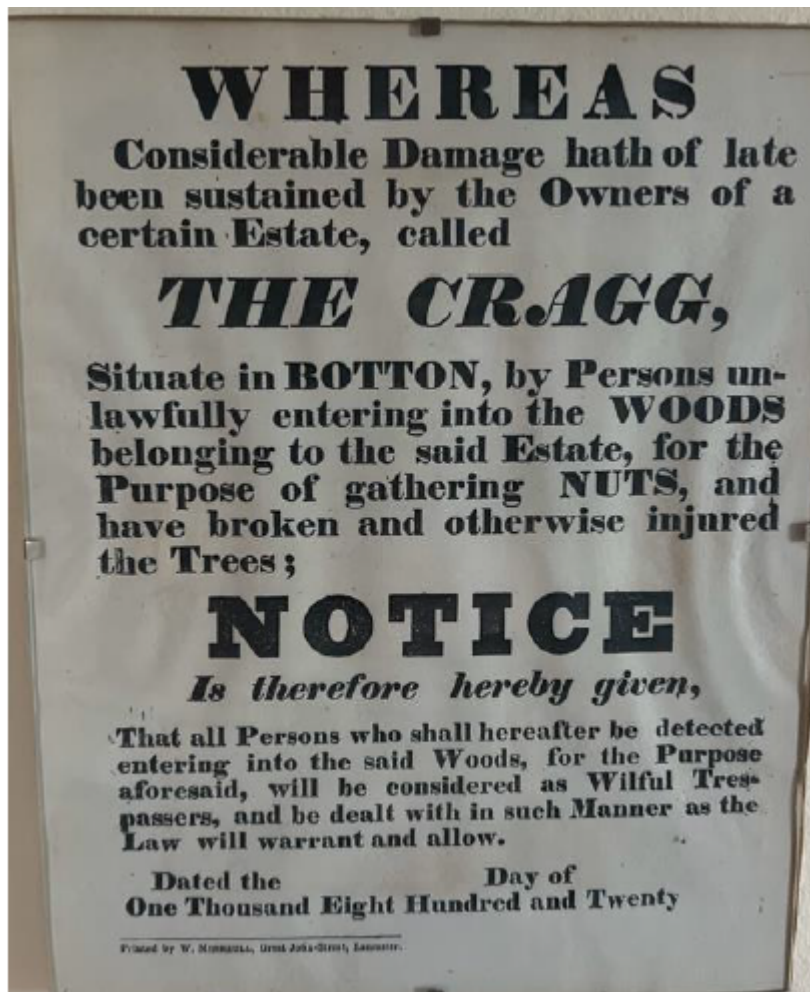
farmers of Cragg Hall, Higher Broadwood Farm and Birks Farm. They assert that the presence of these routes on the map does not convey a right to the public and if it did, every farm track in the country would be registered as a bridleway. They believe the presence of fences or otherwise enclosing the track are irrelevant.

5. Noting that the applicant refers to rights of way included in the sale of Cragg Hall, Broad Wood and Melling House estates, 15 august 1887 and the sale of Cragg Hall in 1979. The landowner asserts that in both cases a private right of way is conveyed to the buyer over route A-B-C with the property that was for sale. They believe that if a public right of access had existed, there would have been no need to convey a private right of access. It is this same private right that they benefit from, across the land they do not own, as owners of Cragg Hall.
6. The landowner notes that the Applicant refers to the 'significance' of the route, being the extent to which it was widened and surfaced. The landowner believes the extent to which a road was 'significant' is irrelevant, as a landowner has always had the right to extend, surface and manage routes across their land as they see fit – within the confines of planning law etc. They assert that the width and surface of a route has no connection with the extent to which the public have a right to use a route.

The landowner also provided evidence to support their position that the route was not public.

1. The owners of the Estate (variously referred to as 'The Cragg', Cragg Hall Farm Estate and Higher Broadwood Farm) sought to restrict public access throughout history. The notice shown below is an example of how trespass was being managed by the owners in 1820 – it seems unlikely therefore that public access would have been welcomed by the owners during this period or since. That the rights of ways to the highway was conveyed in the later sales, suggest that public access was limited to those routes which are the modern-day highways along Cragg Road.





2. The route in question does not go anywhere – The only place that can be accessed by the proposed route ABC, Cragg Road, or a combination of the two is Cragg Hall and associated property. Logic suggests therefore that any routes to it were developed for those who had reason to be there (owners, staff and so on), and thus were doing so over private land at the invitation of the landowner.
3. The landowner believes that they can source statements from former owners, occupiers and neighbours – some of whom are old enough to remember the period before 1 January 1949 – who will confirm that the public have never used the route A-B-C. No such statements have been provided prior to this report being submitted to committee.
4. The landowner noted that the route is largely grassed over now and assert that this supports the argument that the route was little more than an informal track, even if it was surfaced at some point. It is unlikely that the farmers and land managers of the past would plough/seed over a track that was being used by the public, because it would have caused hassle and inconvenience. A more likely explanation is that this route was used by the owners of Cragg Hall and associated property, as a private access route and that once a newer, better route was built (i.e. the road through Birks Farm), they stopped using it.

The landowner also raised practical considerations.



1. The applicant refers the fields as 'pasture' – all the fields are extremely productive meadows producing silage for dairy cows, as well as grazing for sheep and dairy cattle. The granting of this DMMO will result in a reduction of grazable area, an increase in costs associated with stock management (for example, as we would no longer be able to keep dairy bulls in that field, horses, or cows with calves), as well as inevitable management issues relating to dogs, sheep and unwanted trespass when the public stray off the route.
2. We have suffered considerably in recent years with rural crime. We have had lots of items stolen from Higher Broadwood Farm. An increased public presence creates more opportunities for thieves and makes tracking thieves down harder. Hare coursing has also been a recent issue which would not be helped by the presence of more public access.
3. At present, the land in our ownership is enrolled in a countryside stewardship scheme, which requires de-stocking of the land for a period during the winter. This is partly to increase soil health (the land would become very boggy and wet during the winter if stock were to be kept on), and to create a wilder habitat for flora and fauna, specifically bird life. The introduction of bicycles, horses, and pedestrians (with dogs) during this period would completely undermine the work we have done (and which has been funded by HM Government).
4. It is unlikely that cyclists will ride through long grass, which limits the users, if approved, to horse riders and pedestrians (with dogs). There are 4,535 people in the Lower Lune Valley Ward, very few of them own a horse.

The land agents of the second landowner also provided comment on the application prior to consultation which is considered below.

They noted that their clients Grandfather moved to Birks Farm, Wray in 1934 with the Harrison family continuing to farm there to this day. They note that until 1966, the land affected by this application was owned and farmed as part of Cragg Hall and between 1966 and 1981 the land was owned and occupied by Mr R. Dodgson from Ingleton. They noted that from 1981 to the present, the field closest to Cragg Hall (with the exception of 1.7 acres) and the field adjacent to Helks Brow have been owned and occupied by Messrs Harrison. As neighbouring farmers and now owners of the majority of land subject to this application they noted their clients have never known the public use of the route A-B-C on the application. They noted that the only people with a right of access over this land are private individuals residing at Cragg Hall, Cragg Hall Farm, The Lodge and Higher Broadwood Farm.

The landowner's agents went on to provide the following comments on the application and the evidence submitted in support of it.

1. Yates Map 1788 – the lack of scale on the map (extract) and the low level of detail to the same does not allow one to identify the exact location of the route shown. The route marked A-C could show any route in that area and there is no certainty the route shown relates to the route included in the application.



2. Tithe Records 1848 – the route shown between point A and B would appear to lead to parcel 421 on the plan and is marked with dashed lines therefore indicating a more informal route of say a farm track. The agents note there are no markings of any track/route/access between point B and C on this plan and therefore it seems unjust to assume this was the case as the route included in the application is incomplete. The fact the land adjacent to Helks Brow (between point B and C) was numbered “421” suggests it was liable for tithes (The National Archives, 2020) and therefore it seems sensible that the track shown was simply the route used by the respective landowner to access parcel 421. With regards to the Tithe Plans The National Archives Research Guides state “*there is no overall standard or key to conventions which applies to all the maps, and no inference can be made about the inclusion or omission or features or colouring*”. The agents would therefore suggest the details shown on the plan cannot be relied on as fact and that to suggest the track marked ABC is a public right of way making a large assumption.
3. OS Map 1847 – again the route marked is incomplete and stops short (before point B) the agents therefore feel this supports our case that the track shown was simply an agricultural access to the land or possibly the Gravel Pit marked on the plan. The agents cannot understand how the continuation of the access to point C can be justified when no track is marked to complete the route. The way in which the track is marked on the plan, using dashed lines, perhaps indicates a less formal access and the agent cannot understand how this plan demonstrates any public use of the same without making a huge assumption based on the information from later OS maps.
4. Other OS maps – all show a complete track between ABC, however they all mark the track as being open to the land. The agents would like to draw attention to the track north of Cragg Hall which leads to Mill House Farm and note that this track is marked in exactly the same manner as the track in question and yet this is not deemed a public right of way, nor is it subject to any application of the same. The presence of the Gravel Pit (Quarry) on land adjacent to point B would perhaps explain why the route was used regularly and possibly why on later editions of the maps the route heads towards Helks Brow as well as Cragg Hall. However, the regular use of an access by a landowner to land or quarry does not mean the purpose of the track is public in any way. Where the routes in the locality have been formalised into roads and public rights of way the evidence shown throughout history is consistent whereas the markings on the various plans included as evidence are inconsistent in respect of the route included in this application. The agents also note that all OS maps note “*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way*”. The agents note the OS plans today are inaccurate with regards to the presence of a track in this location. The latest OS plans show a track, using the same dashed line, from point C to point B whereas there is no physical track on the land thus demonstrating this point.
5. Richard Turner & Son sale particulars for Cragg Hall 1979 – without the respective blurb contained in the sale particulars the plan alone cannot be relied on as evidence to prove public use of the route in question. It is noted the plan



marks all access routes shown (including the adopted highway, Cragg Road) as rights of way and thus without the descriptive text one cannot draw conclusions as to what the plan is meant to depict. As noted above, the land subject to this application was owned by Mr Dodgson in 1979, coupled with the fact the agents acknowledge Cragg Hall et al. has the benefit of a right of access over the land, the agents feel it is fair to assume the sale particulars would be referencing private rights of way as opposed to public rights of way over the land in question to the land/property included in the sale.

6. Photographs – the agents question how these photos can be included in the application when no permission has been granted for them to be taken in the first instance. The agents do not consent to these photos being used as evidence to support this application.
7. Aerial Photos 1960 – If an aerial photo was taken after a period of prolonged use (at harvest time for example) then most farm tracks would appear to be well-worn. Before 1976, the track would be used daily by Messrs Conder of Higher Broadwood as they used it to take milk churns to a milk stand on Helks Brow (at point C) where remnants of the milk stand can still be seen today. The agents disagree that the track is more significant than the route through Cragg Hall. The route at point A leading through Cragg Hall is obscured from view by trees and associated shadows with this giving the illusion of one route being more significant than the other.
8. Bridleway latches - these were installed recently (March 2020) by Mr Robert Bowyer and only by agreement with our clients. The latches were installed for private use only and have since been removed (September 2020) to avoid confusion. At no point were these latches to signify public access.

The agents are of the opinion the route marked A-B-C on the consultation plan and subject to this application has only ever been a private farm track leading to/from Cragg Hall and used only by those benefitting from a private right to do so. They believe that historically, these rights holders may have used this route more than they do today as there is little visual evidence of significant use recently (if at all). The road from Helks Brow to Park House Lane (Cragg Road) is deemed a minor (unclassified) link road and therefore intended for local traffic only i.e., to access those properties along the route. The agents find it difficult to accept that by simply marking a track over private land on a plan is sufficient evidence of a public right of way. The agents note that sheet 59 of Lancaster (Hills) 1898 and sheet 89 of Lancaster and Kendal 1947 OS One inch plans make no reference to the route marked A-B-C on the consultation plan.

The agents believe there is insufficient evidence of public use of this track and therefore suggest the application should be rejected.

#### Information from Others

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



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

## **Assessment of the Evidence**

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

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

The application is made under section 53(2) of the Wildlife and Countryside Act 1981. In accordance with the law, the County Council shall make such modifications to the definitive map and statement if any of the events specified in subsection (3) occur as soon as reasonably practicable and keep the map and statement under continuous review.

Subsection (3) notes various events however seemingly relevant in this case are: -

(a)(iii) a new right of way has been created 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;

(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;

(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...

The test whether the right of way subsists is on the balance of probabilities.

The test whether the right of way is reasonably alleged to subsist is whether a reasonable person, having considered all the relevant evidence available, could reasonably allege the right of way, subject to the application, exists.

Therefore firstly, there is no express dedication in this case.

Committee must then examine whether there is an inferred dedication under common law or a deemed dedication by statute under section 31(1) Highways Act 1980.

Committee is advised to consider whether there is sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating or whether there is evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate from which dedication could be deemed under section 31 Highways Act 1980.



Committee will appreciate the importance of the words 'sufficient evidence' with regard to their findings.

'User evidence' was not submitted as part of the application therefore dedication by long use at common law is not relevant nor is section 31 Highways Act 1980. Committee is advised to instead consider if an inference of dedication is possible on balance of the all the evidence at common law.

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

The evidence has been summarised and evaluated earlier within the report. To arrive at a conclusion Committee must consider the position balancing what the documentary evidence shows. The claimed route is not shown at all on some of the maps. Whilst a route is shown on other maps where the public might gain access, it is not the claimed route but a different route. There are some inconsistencies between maps with the whole of the claimed route not shown on subsequent versions or a different route shown. Also, there is an absence of 'sufficient evidence' as to public rights.

On balance and given the nature of the evidence it is advised that the evidence of the application route having become a public bridleway is insufficient. Committee may conclude applying the relevant tests that it cannot be asserted that a bridleway "subsists" or is "reasonably alleged to subsist".

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

## **Implications**

This item has the following implications, as indicated:

Lancashire County Council as Surveying Authority under the Wildlife and Countryside Act 1981 is required to keep the Definitive Map and Statement or 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: 804-647		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 15 November 2023

**Part I**

Electoral Division affected:  
Lancaster Rural East

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Investigation**

**Addition of Footpath from Main Street to Holme Farm Close, Wray with Botton**

(Annex A refers)

Contact for further information quoting file reference 804-763:

Annabel Mayson, 01772 533244, Paralegal Officer, County Secretary and Solicitors Group, [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**

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Main Street to Holme Farm Close, Wray with Botton.

**Recommendation**

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Main Street to Holme Farm Close, Wray with Botton be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Footpath from Main Street to Holme Farm Close as shown on the Committee Plan between points A-B-C-D-E.
- (iii) That not being satisfied that the higher test for confirmation can be met following the order making and notice period and further consideration by officers the matter be returned to Committee to decide what stance to take regarding confirmation.

## Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Main Street to Holme Farm Close 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

### Lancaster City Council

Lancaster City Council provided no response to consultation.

### Wray with Botton Parish Council

The Parish Council are the applicants for this matter. They expressed the view that the application route has been a well-used route of presumed dedication for decades



and expressed their view of how the law applied to long user They also stated that it is their understanding that a Public Right of Way of presumed dedication therefore already exists, and that it is illegal to block it or put up misleading signage.

They stated that the new owners of part of the application route have blocked the route in various ways: both verbally and physically in person by obstructing the path with various objects, erecting a sign denying access and placing a bicycle lock on Lancashire County Council's gate to the School Field. They also noted that obstruction to the route causes immense disruption to the everyday use of the village and future community events and it could also harm the economic viability of business along Main Street.

#### Applicant/Landowners/Supporters/Objectors

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

### **Advice**

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	6030 6756	Concrete drainage blocks along Main Street.
B	6031 6756	Western end of passageway under Horreum House
X	6032 6757	Rear boundary of land owned by Horreum House and 71 Main Street across which a wooden fence and gate has been erected (March 2023)
Y	6032 6757	Rear boundary of land forming part of 71 Main Street where a wood shed partially obstructs access
C	6035 6758	Gateway at north eastern end of enclosed strip providing access onto the school field. Gate post exists but gate is propped up at the side of the application route.
D	6039 6769	Field Gate providing access onto school field
E	6040 6769	Open junction of application route with verge area and then Home Farm Close (n.b. concrete edging stones, not the walls, mark the highway boundary)

### **Description of Route**

A site inspection was carried out in March 2023.

The application route commences on Main Street in the village of Wray. It crosses the tarmac area fronting Horreum House to pass through an ungated passageway over which part of the property is built and abutting the gable end of 71 Main Street.





The archway appears part of the original property and further arches indicating original carriage/cart storage or access are along Main Street.

The application route runs through the passageway providing direct access to the rear of Horreum House. On what was previously the unmarked boundary of land owned by Horreum House – at the northern corner of the gable end of 71 Main Street a substantial pair of wooden gates has been erected across the application route preventing access (point X). Between point A and point X the surface of the route is tarmac and the available width – from entering the passageway through to the gate at point X is between 1.4 and 2 metres.

Beyond the locked gates at point X the application route continues across a wider more open area to the rear of 71 Main Street bounded on the north side by the rear of an outbuilding on land forming part of Horreum House. The width of the route increases to 3.5 metres at the point marked Y on the Committee plan but access is partly restricted by a small woodshed which has been erected over part of the route.

Beyond the woodshed the application route continues bounded on either side by substantial stone walls at a width of 3.5 – 3 metres. The surface of the route is compacted stone along a central strip with grass verges. A pedestrian gate is located in the stone wall providing access to the garden at the rear of 72 Main Street.

Approximately 45 metres from the start of the route on Main Street the application route reaches a gateway that provides access onto a playing field. The wooden gate was off its hinges and propped up at the side of the application route in March 2023 but a stone hanging post was positioned at the south side of the gap at point C. A sign was attached to the gate reading 'No Dogs'.

The ground over which the application route runs is worn through the gateway and onto the field suggesting regular and substantial use on foot. A waste bin is also located close to point C.


Beyond point C the application route continues in a generally north easterly direction across the playing field and around the north side of the fenced-off children's play park to the field gate (point D) providing access to the playing field from Home Farm Close. A football pitch was marked out on the playing field which was not in use when the route was inspected but which could necessitate a diversion from the most direct route (the application route) if a match was being played.

The application route passes through the field gate at point D and then crosses the tarmac access road to end at the junction with Home Farm Close (point E) where the highway boundary coincides with the concrete low kerb stones.

The total length of the route is 175 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
<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		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Officer's Comments		The application route did not exist as a through route from Main Street to the location today of Home Farm Close in 1786. It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
<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.



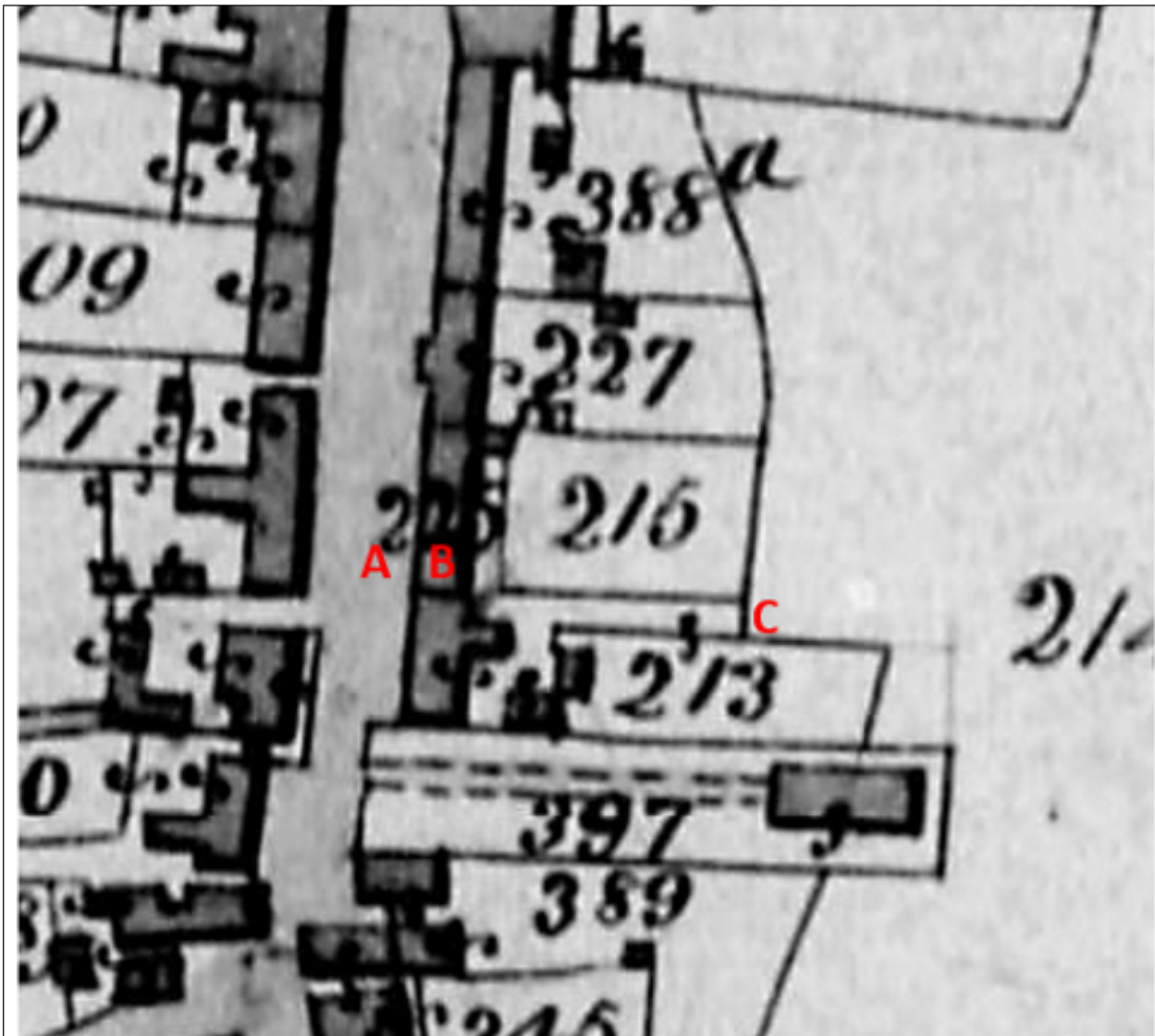
Observations		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Comments	Officer's	It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
<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 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Comments	Officer's	It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Comments	Officer's	No inference can be drawn regarding the existence of public rights.
<b>Tithe Map and Tithe Award</b>	1848	Maps and other documents were produced







Observations

Main Street is shown Home Farm Close isn't shown and the land crossed by the application route between point C and point E is shown as fields.

Main Street is shown shaded to include the application route between point A and point B although Public Roads are not numbered or listed in the Award.

The walkway through the buildings from point B is not shown but Horreum House is numbered as plot 225 which is listed in the Tithe Award as 'Cottages' owned by John Skirrow and occupied by Robert Furness and others.

Between point B and point C a strip of land is shown consistent with the application route. It is braced as being part of plot 213 which is listed in the Tithe Award as being owned and occupied by John Skirrow and



		<p>described as house, garden and yard.</p> <p>Beyond point C is a field numbered as plot 214 which is also owned and occupied by John Skirrow and described as pasture land known as 'Hen Croft'.</p> <p>East of the field is a strip of land listed as plot 275 which is listed as a meadow known as 'Croft' owned by John Marshall and tenanted by Samuel Brown.</p>
Investigating Comments	Officer's	<p>Access from the property now known as Horreum House on Main Street to the field at the rear of the houses may have been available to point C through the archway but as ownership of the strip of land B-C and the field to the east was the same this appeared to be a private access route at that time.</p> <p>The application route A-B was shown crossing what appeared to be part of the public highway (Main Street).</p> <p>The grave yard extension is not yet in existence and is part of Mr Skirrow's garden and the field.</p> <p>The field has access to Wennington Road.</p> <p>The mapping is good and correlates well with the OS survey a few years later.</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 Award for the land crossed by the application route was found.</p>
Investigating Comments	Officer's	<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet XXV</b>	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.<sup>1</sup></p> <p>However it has recently become apparent</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.





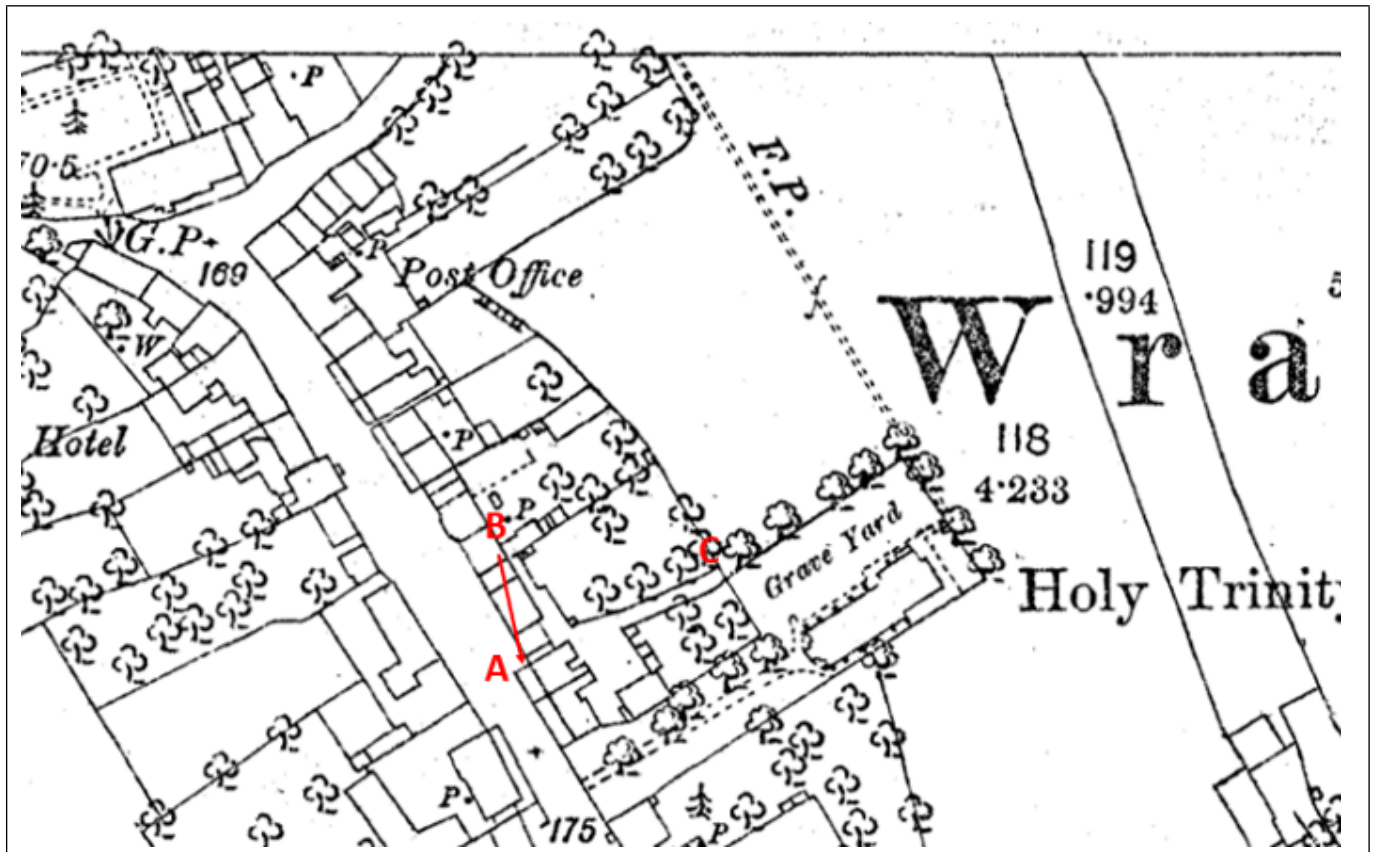
		<p>that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with 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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Map extract taken form National Library of Scotland online collection

<p>Observations</p>		<p>The application route is not shown. A thin strip of land consistent with the application route from the rear of the houses on Main Street through to point C is shown providing access to a field but there is no</p>
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		indication of a trodden path along any part of the application route.
Investigating Comments	Officer's	It is likely that there was access from Main Street under the archway. It is not known from this map whether this accessed the strip of land to the field. A further narrow field is beyond that. No public destination is evident.
<b>Abstract of Title</b>	1888	Purchase of Hen Croft by the church
Observations		In 1868 Hen Croft was owned by James Thomson who died in 1885. However, at this time the graveyard area had already been taken out of Hen Croft.  The remainder of Hen Croft was auctioned in 1888 and bought by the church
Investigating Comments	Officer's	Between 1848 (when it was in the ownership of Mr Skirrow) and 1868 Hen Croft, excluding the grave yard area, was passed to John Thomson.  In 1888 Hen Croft was bought by the church.  No public access was recorded in this transfer.
<b>25 Inch OS Map Sheet XXV.16</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.



Observations

From point A to the front of the building now known as Horreum House (B) the application route appears to be part of highway extent on Main Street. The houses now numbered as 71 and 72 Main Street are shown fronted by an enclosed area which extends out into what was previously shown on the Tithe Map and 1<sup>st</sup> edition 6 inch OS map as being part of Main Street. A narrow strip consistent with the walkway through which the application route passes (from B) is shown and the property now known as Horreum House appears to be split into two.

An enclosed strip of land corresponding to the application route is shown from the rear of the houses to point C. At point C a line is drawn across the route and beyond point C the application route is not shown crossing the field with the parcel number 118. Holme Farm Close is not shown (as it did not exist until much later). Point E is in field 119.

A footpath (F.P.) is marked as running from Wennington Road in a south south easterly direction across field 118 to provide access



		<p>to the church and graveyard but is not consistent with any part of the application route.</p> <p>The Church boundary has extended into the field and is marked "grave yard"</p>
Investigating Officer's Comments		<p>The application route across the field is not shown as a trodden path and did not exist in 1889 although a route may have existed from Main Street to the field numbered as plot 118.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the 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</p>



existed.



[above] Map deposited at County Records Office



[above] Map deposited at The National Archives

Observations

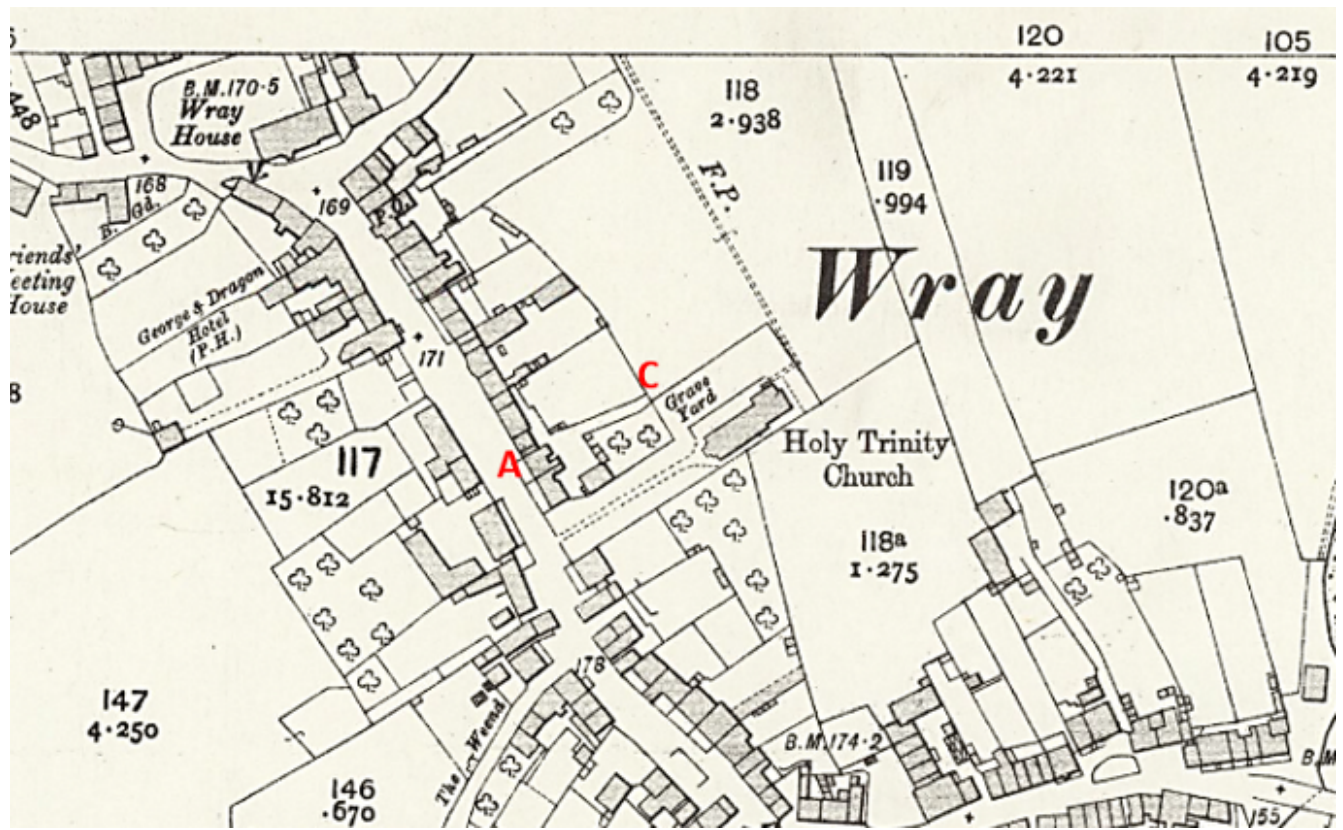
The District Valuation Books excluded that part of the application route from point A to the building (B) and showed it as being



		<p>part of highway extent on Main Street.</p> <p>The walkway through the building appears to have been included as part of the property labelled as part of plot 31. The District Valuation Book deposited at the County Records Office records plot 31 as being owned by WH Foster and occupied by Mr Yates. It was described as land for which no deductions were listed.</p> <p>The application route from the eastern end of the walkway through to point C is not numbered on the maps but is abutted on either side by plot 16 which is owned by WH Foster and the property (described as a cottage) occupied by Samuel Roberts. No deduction was listed for public rights of way or user.</p> <p>The field accessed by the application route B-C is shown numbered as part of plot 126. Plot 126 was described as 'buildings and land' owned by Rev. Reynolds and occupied by Robert Townson with no deductions listed.</p> <p>East of plot 126 the strip of land on which point E (the north east end of the application route) is now located is listed as part of plot 29 which was owned by WH Foster and occupied by Thomas Woodhouse and described as 'House and Buildings' with no deductions listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>The District Valuation Records suggest that the full extent of the public highway known as Main Road extended to the actual building front now known as Horreum House.</p> <p>The application route from the rear of the houses to point C appeared to be unnumbered and excluded from the valuation process. This may suggest that it was considered to carry public rights, however however there was no obvious reason for the public to go to Hen Croft nor was any path across Hen Croft shown from that point.</p> <p>No public rights of way were acknowledged to exist at that time across the fields east of point C nor had the application route</p>



		across Hen Croft been shown on any maps.
<b>25 Inch OS Map Sheet XXV.16</b>	1913	Further edition of 25 inch map (surveyed 1889, revised in 1910 and published in 1913.



Observations		<p>The application route is not shown as a through route from Main Road to Home Farm Close (which was not shown to exist at that time).</p> <p>The application route from point A through the building and continuing to point C is shown. A line is shown across the route at point C and there is no route shown beyond point C.</p>
Investigating Comments	Officer's	<p>The application route did not exist as a through route in 1910. It may have been possible to walk the application route from point A through to point C but there is no suggestion that in doing so the route provided access to a place of public resort or to another public highway.</p>
<b>1932 Rights of Way Map</b>		<p>The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to</p>





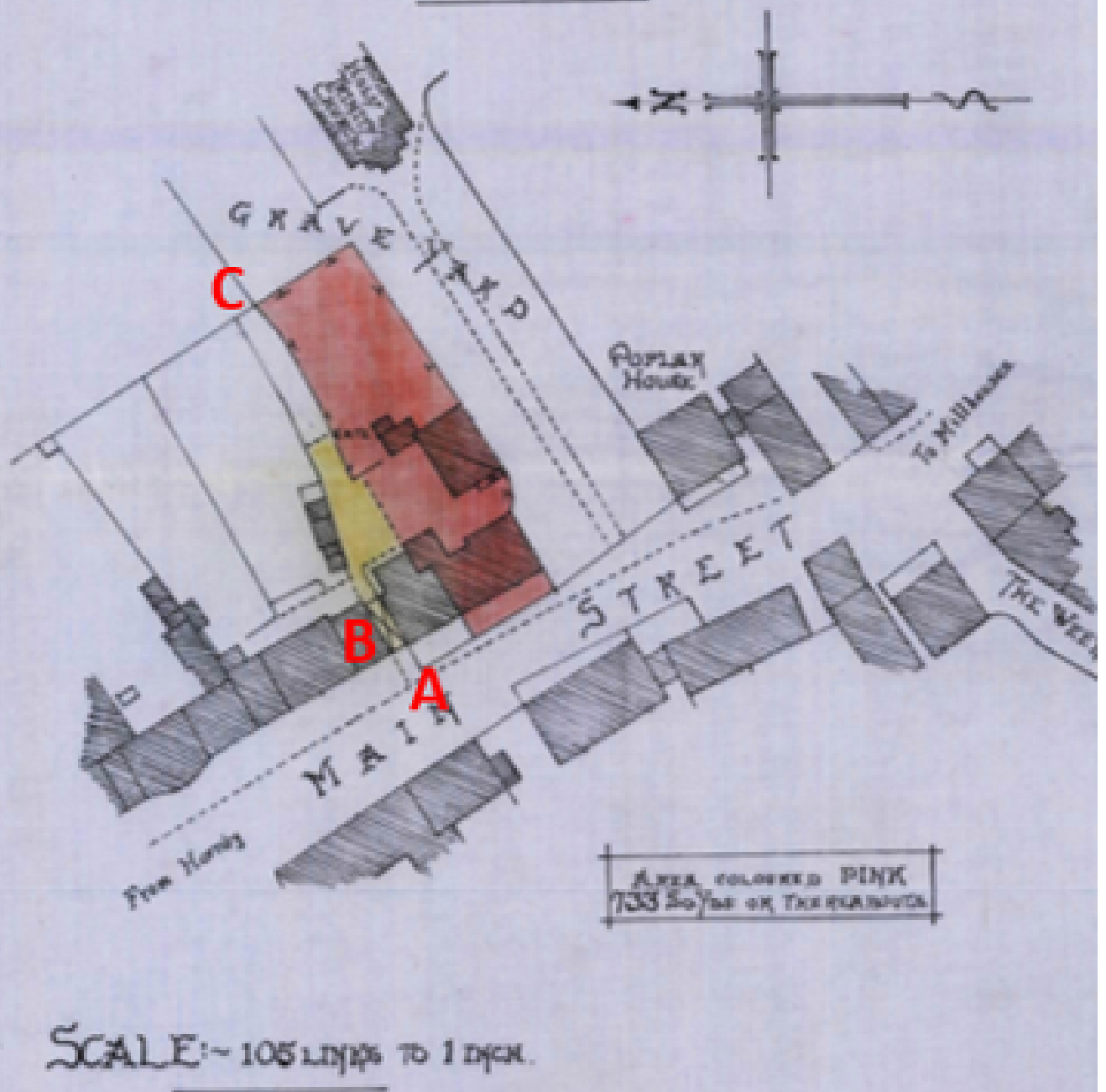
		<p>indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and Meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>
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Observations		The application route is not shown.
Investigating Officer's Comments		The application route was not considered to be any class of public right of way when the map was prepared.
<b>Conveyance deposited with the Land Registry in respect of 72 Main Street (LA927438)</b>	1932	Land Registry documentation available to view online.



# PLAN REFERRED TO:-

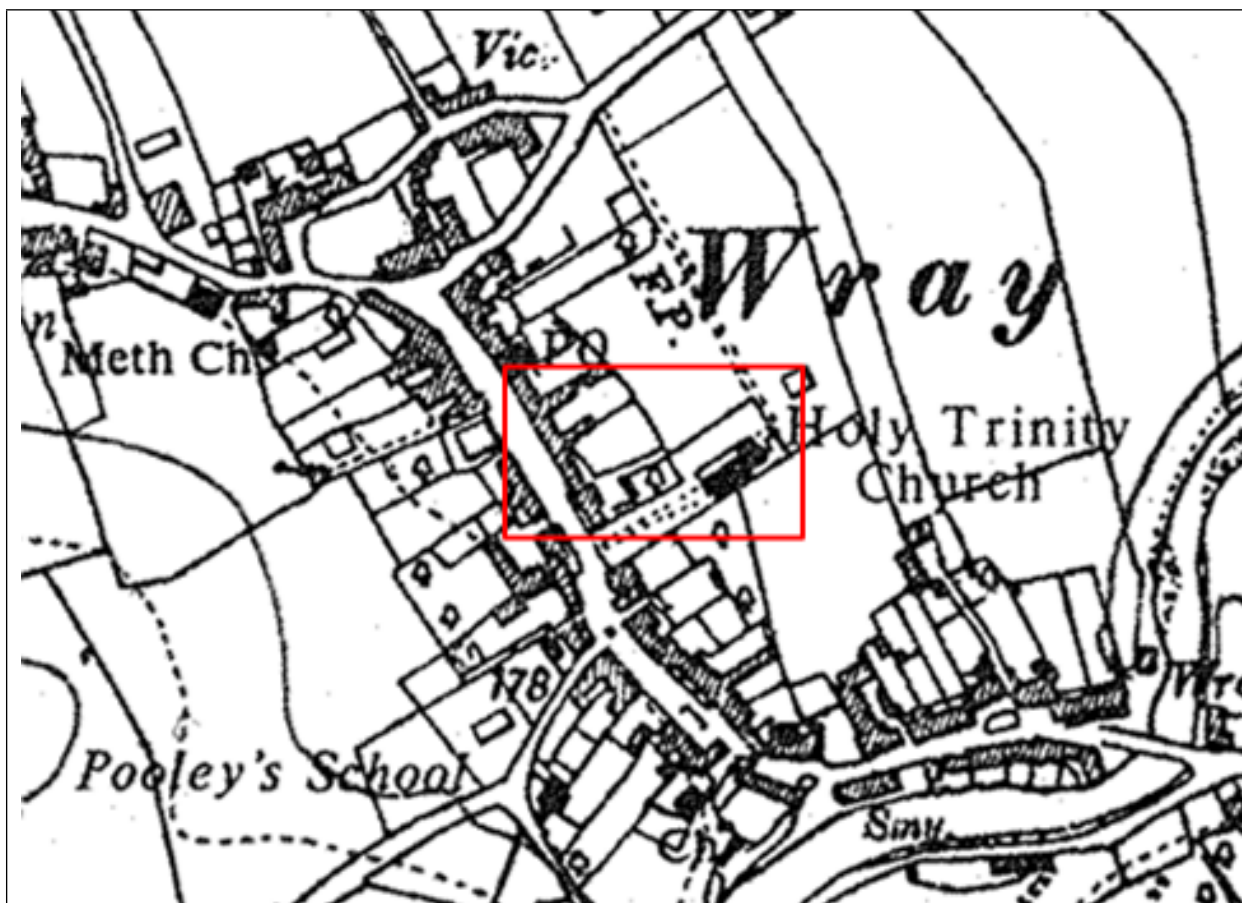


Observations

Land Registry documentation for 72 Main Street (a property next door but one to the application route) included a conveyance made in 1932 for the sale of that property by Henry Foster of Hornby Castle (the Vendor) to Charles Pavelyn (the purchaser). Mr Foster owned the house



		<p>adjoining and the sale specifically includes the rights of way heretofore enjoyed over and along the passage and yard coloured yellow. The area coloured yellow includes the passageway and approximately half of the application route between the rear of the houses and point C and a route is marked across the tarmac footway/area at the front of the property which is bounded by a dashed line as specifically leading to the passageway.</p> <p>The private right gives access along a short stretch of the application route.</p>
Investigating Comments	Officer's	<p>The inclusion of a private right of access does not necessarily mean that a public right of way did not exist – or may not come into existence – along the route. The private rights already existed it seems and were being passed on.</p> <p>It is however relevant with regards to any future use of the route and consideration as to whether the route was being used under an existing private right. The private right is specified as being for the purchaser of the property or the owner or occupier thereafter but also refers to the fact that the right was enjoyed in common with the vendor and others the vendor had granted a similar right to. It seems that the yard and passageway was in the ownership of No 71.</p>
<b>6 Inch OS Map Sheet 66NW</b>	1956	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



<p>Observations</p>		<p>The application route is not shown as a through route from Main Road to Home Farm Close (which was not shown to exist at that time).</p> <p>The application route from the rear of the building (Horreum House) and continuing to point C is shown. A line is shown across the route at point C and there is no route shown beyond point C.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist as a through route before 1930. It may have been possible to walk the application route from point A through to point C but there is no suggestion that in doing so the route provided access to a place of public resort or to another public highway. The footpath (F.P.) shown leading from Wennington Road through to the church is marked on the map suggesting that it was visible as a trod on the ground. The application route is not shown crossing or connecting to it.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of</p>



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 route leading from the rear of the houses to point C can be clearly seen with a lighter area at point C suggesting that a gateway may have existed at that point. There is no trod visible across the field C-D but a gateway is visible at point D which provided access onto the access road leading from Wennington Road to Home Farm.
Investigating Officer's Comments		The photograph predates the construction of Home Farm Close or the purchase of the playing field by Lancashire County Council. It does however support the user evidence submitted by several members of the public who refer in their evidence to using the route in the mid to late 1960s. The photograph shows that it may have been possible to walk the route and to exit the field at point D and continue to Wennington Road – or Home Farm.
<b>Letter relating to a Service of Thanksgiving</b>	1968	In August 1967 a flash flood caused tremendous devastation to the village of Wray resulting in the destruction of houses, bridges and roads in the area. As part of the consultations carried out by

the County Council a copy of a letter dated 16<sup>th</sup> September 1968 was submitted by the Bursar at Wray with Botton Endowed Primary School.

The letter was titled 'Wray and District Flood Disaster. Service of Thanksgiving and Blessing of the New Homes.'

The letter was passed to the Bursar from a local historian (Mr Kenyon) who explained to her that the letter was part of his file documenting the Wray Flood in 1967.

As you are already aware the Service is to be held in a Marquee to be erected on the Church Field, and will commence at 3.00 p.m. You are asked to take your seats not later than 2.50 p.m. Refreshments will be served in an adjoining marquee at the close of the Service and of course there will be no charge.

Unfortunately we cannot guarantee a fine day, nor even a preceding fine week. You are asked, therefore, to bear in mind that it may be colder than is hoped and possibly the grass may not have dried out.

Unless there is considerable rain during the week there should be no difficulty in keeping to our proposals to park cars on the Church Field and an adjoining field, but if this is not practicable the Police will supervise street parking, and you are asked to follow their instructions. If you travel by bus you may find it more convenient to reach the Field by means of the footpath off Main Street through the Archway which will be signposted.

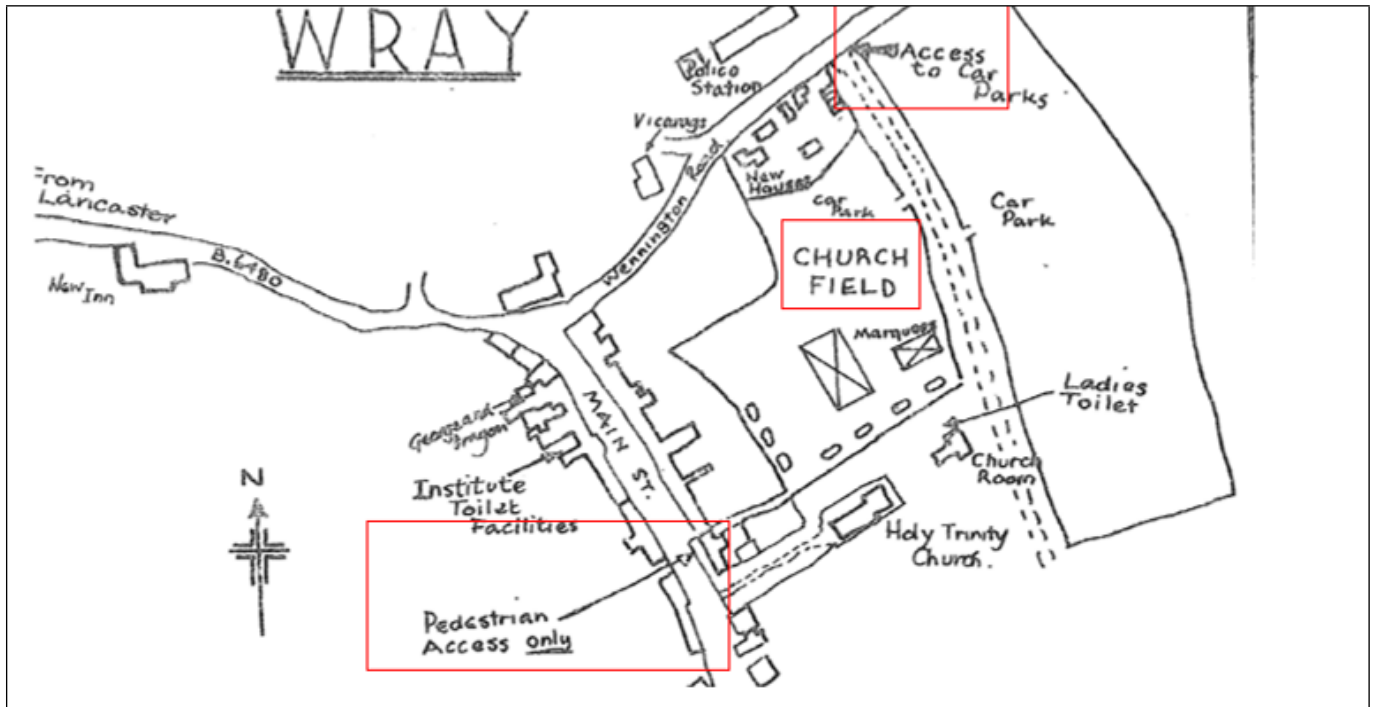
The colour of your ticket will denote the section of the Marquee to which you have been allocated, and may take any seats within that section. Stewards will be available to assist you.

Approximately 400 people will be attending in addition to local residents, and we look forward to your joining us on what should be a memorable occasion.

Yours faithfully,



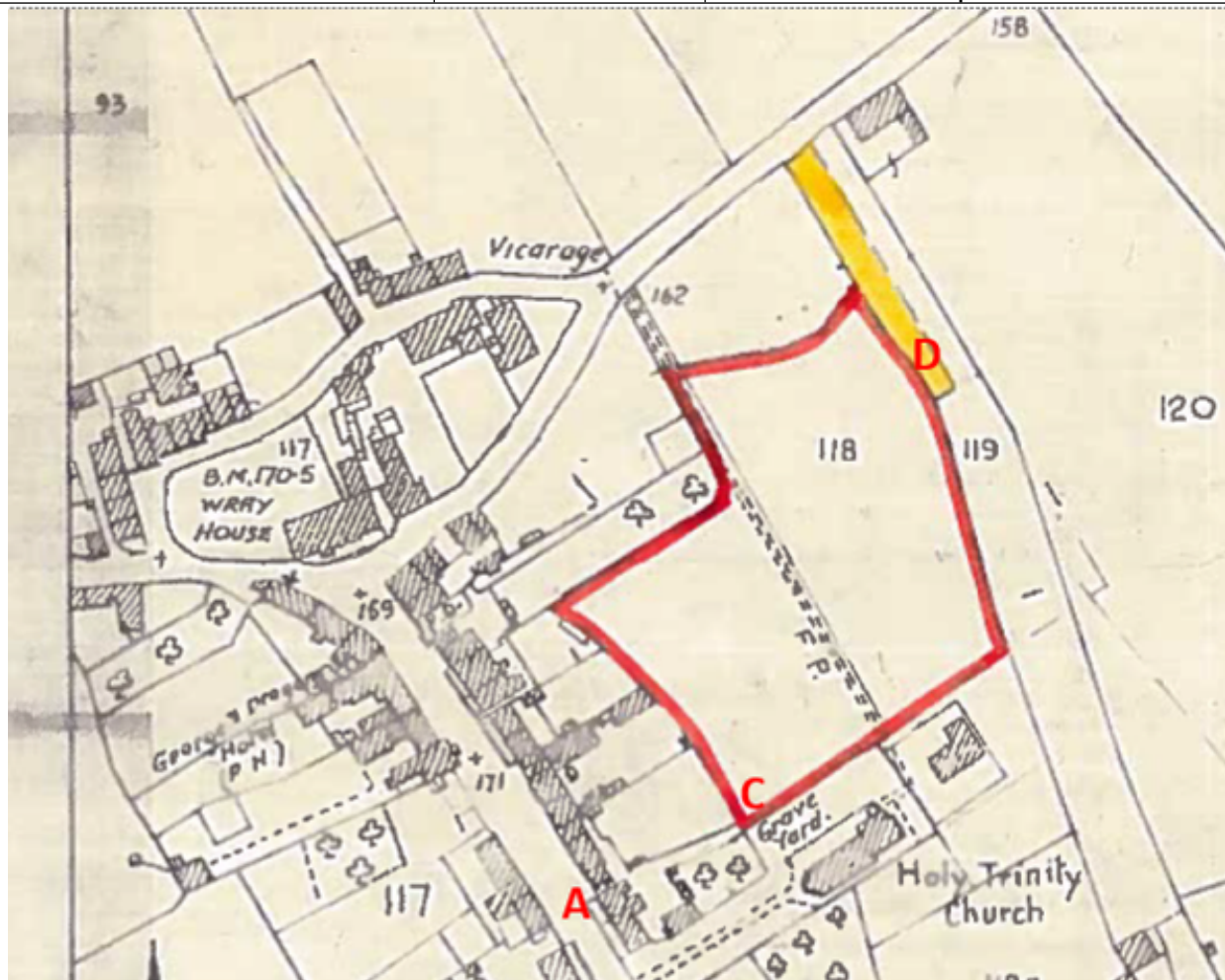




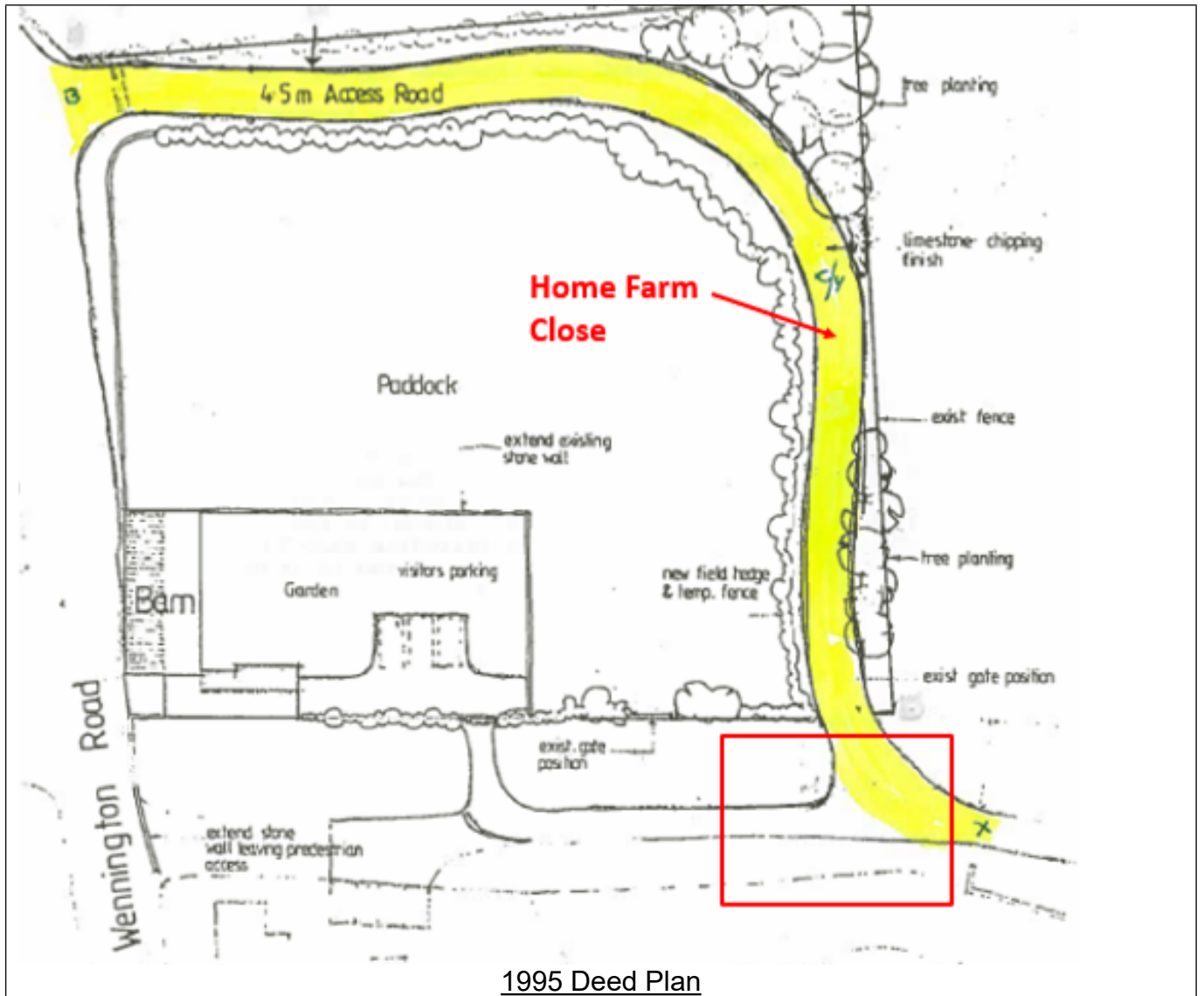
<p>Observations</p>		<p>The letter was addressed to 'Dear Sir/Madam' and Signed by a Mr John Hailsworth 'For the Trustees'.</p> <p>The address on the top of the letter is Council Offices, Hornby and the letter provides detail to the recipient (unnamed but described as an organisation) for the Church Service to be held on Saturday 5<sup>th</sup> October 1968. The letter explains that the service was to be held on the Church Field and an adjoining field and that with over 400 people in attendance there was to be a marquee on the field. Details relating to car parking on the field were given and it was stated that if travelling by bus it might be more convenient to reach the field by means of the footpath off Main Street through the Archway which would be signposted.</p> <p>A hand drawn map attached to the letter shows that the pedestrian access referred to was the application route from Main Street. It also labels the field now owned by Lancashire County Council as the 'Church Field' on which the marquees were to be situated and shows a gate consistent with the location of the gate at point D which then provided access to a track to/from Wennington Road.</p>
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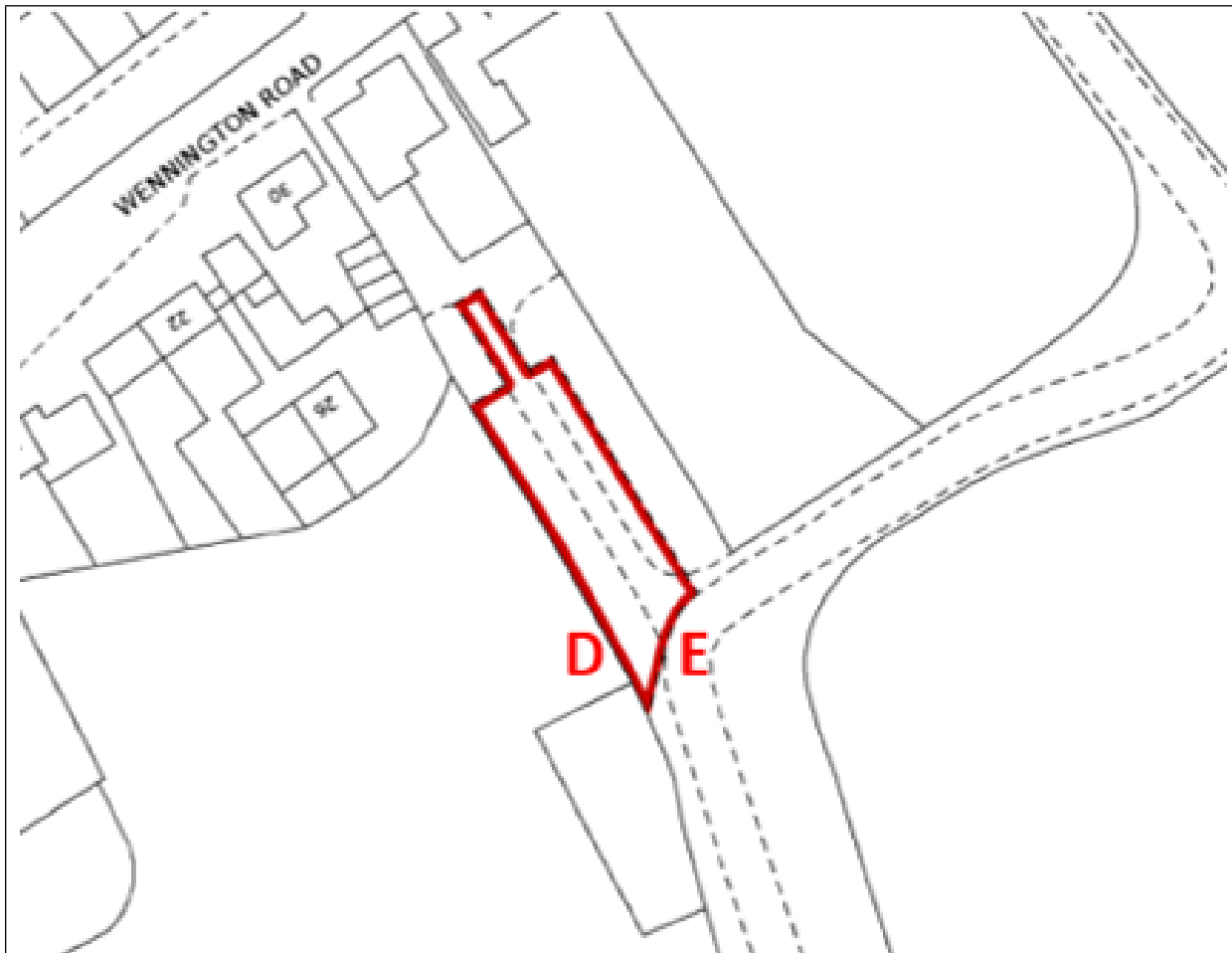
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The reference to the application route as being a footpath through to the church field</p>
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		<p>in 1968 predates the purchase of the field by the County Council and suggests that it was already being used by members of the public to access the field at that time. Alternatively it may have been an access negotiated for the event. The description of the field as the 'Church Field' suggests that it was in use for church events and already that by the 1960s was a place where local people in the village were accessing from the application route and also from the track leading south from Wennington Road.</p>
<p><b>Land ownership documentation held by Lancashire County Council</b></p>	<p>1970</p>	<p>Land Registry documentation and Deed of Grant of a right of way deposited in the county council Deed room and dated 2<sup>nd</sup> April 1970 together with a supplemental Deed dated 6 September 1995</p>



1970 Deed Plan





Extract from Land Registry plan showing land owned by Wray with Botton Parish Council

### C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (07.05.2009) A Conveyance of the land in this title dated 24 March 1970 made between (1) Reverend Reginald George Bainton Bailey (2) Church Commissioners For England (3) The Right Reverend Father In God Charles

1 of 2

Title number LAN87540

### C: Charges Register continued

Robes, Lord Bishop Of Blackburn Ephraim Atkinson and Thomas Hall and (4) The County Council Of The Administrative County Of The County Palatine Of Lancaster contains restrictive covenants.

*NOTE: Copy filed.*

Extract from Land Registry title deeds for playing field

Observations		Lancashire County Council purchased the field crossed by the application route (bounded by a thick red line on the 1970 Deed Plan inserted above) on 24 <sup>th</sup> March 1970. Land Registry documentation
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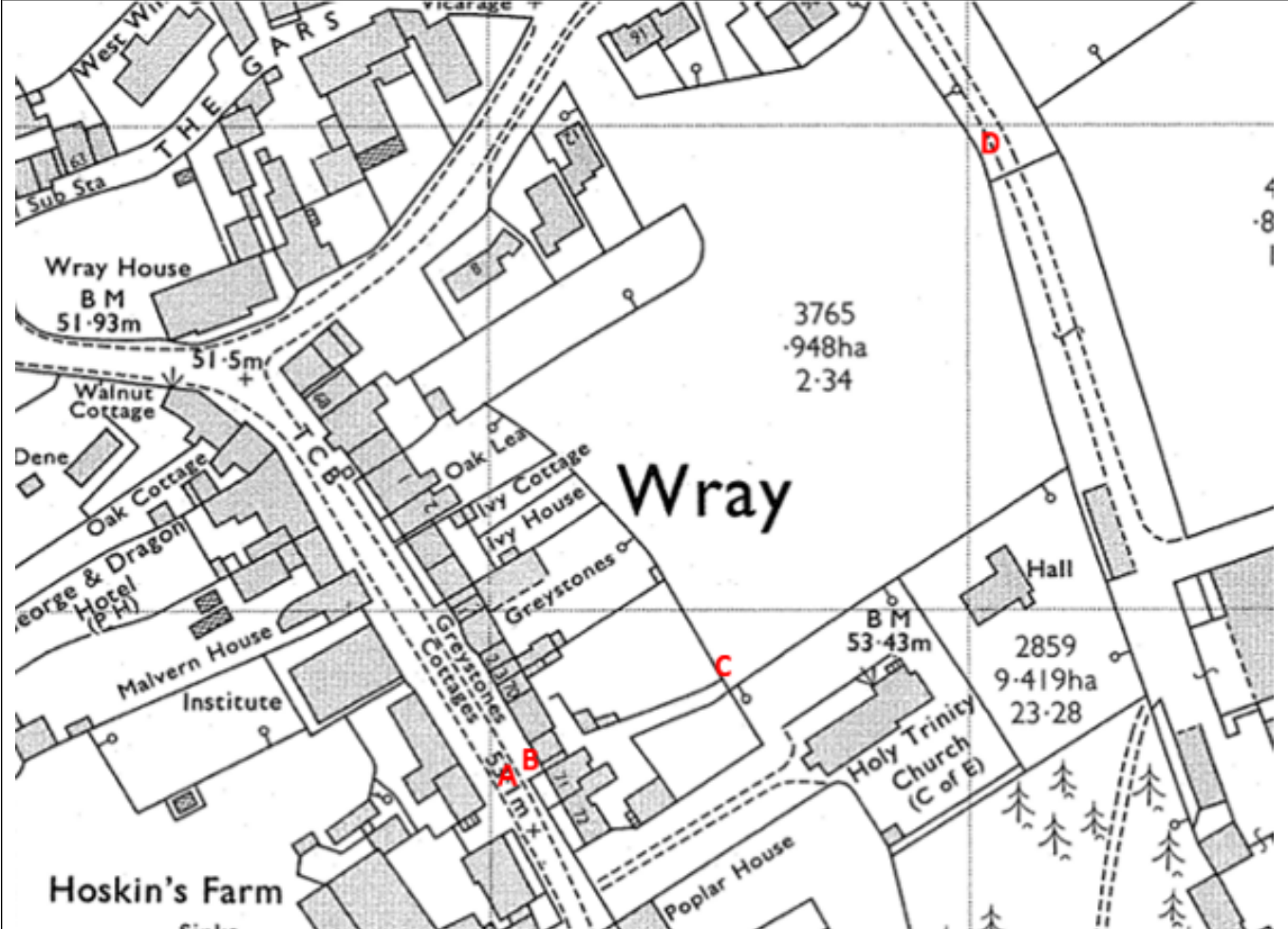


		<p>confirms that it was purchased from 'the church'. There is no reference made to any access to Main Street.</p> <p>The Conveyance had the Council seal affixed pursuant to a decision by the Education Committee on 20<sup>th</sup> May 1968.</p> <p>Access to the field was provided to LCC and documented in an agreement which related specifically to the granting of a right of way over land coloured yellow on a plan forming part of the agreement. The agreement was made on 2 April 1970 between Mrs P D Holt and Lancashire County Council and contained in it is a provision that Lancashire County Council would construct a road on the land coloured yellow and would thereafter maintain and keep it in good repair. The Deed grants a right to the County Council or other owners or occupiers of the field and others to whom Mrs Holt grants a right to pass with or without horses, carts and vehicles from the land coloured red on the plan along the land coloured yellow (the road to be constructed by the county council). There is no reference to the dedication of public rights but the road to be constructed included the land over which runs the application route between point D and E.</p> <p>The 1995 Deed relates to the original access agreement and explains that the grantor (Mrs Holt) had requested that the county council agree to vary the route of the said right of way to that shown coloured yellow on the 1995 plan) and that the county council had agreed. The right of way remained limited to the County Council as owner and to occupiers of the field and the old line was surrendered. It is unfortunate that it is now realised that the yellow colouring did not touch the County Council owned land. Nevertheless the access into the field has continued to be used by the County Council crossing land owned by Mrs Holt and now owned by the parish council</p> <p>The agreement plan marked on it work to be carried out to build a wall but "leaving</p>
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		<p>pedestrian access" to Wennington Road along the former vehicular access road used by the County Council (for which an order has subsequently been made to record public footpath rights). This is not necessarily a reference to public pedestrian access.</p> <p>The route coloured yellow was subsequently constructed and adopted as a vehicular highway by the County Council under a Section 38 Highways Act agreement in 2004 as Home Farm Close. The land crossed by the application route D-E was sold by Mr and Mrs Holt to Wray Parish Council in 2009.</p>
<p>Investigating Officer's Comments</p>		<p>Lancashire County Council purchased the field now used as a playing field in 1970 and inquiries made to the school (detailed later in the report) suggest that use of the field by the school and as a playing field started very soon after. When the County Council bought the land it appeared to be 'land locked' which necessitated a separate agreement to provide private access rights so that the county council could access the field. The access agreement was for Lancashire County Council as owners of that land not as Highway Authority and to occupiers of the field. That right included vehicular access but did not imply there were no public pedestrian rights either along the route granted or by any other route (e.g., the application route A-C).The County Council constructed a track on their private access route.</p> <p>The 1995 variation of the vehicular access route provided for the construction of a new, initially private access route which subsequently became part of Home Farm Close which was adopted in 2004. The 1995 plan indicates that pedestrian access was to be retained in the wall across the route formerly used by the county council indicating that if access had been possible along the application route A-D then it would have been possible to continue north north west along the access track to Wennington Road since at least 1970.</p> <p>The fact that the County Council bought the land from 'the church' in 1970 explains why it was described as the 'Church Field'</p>



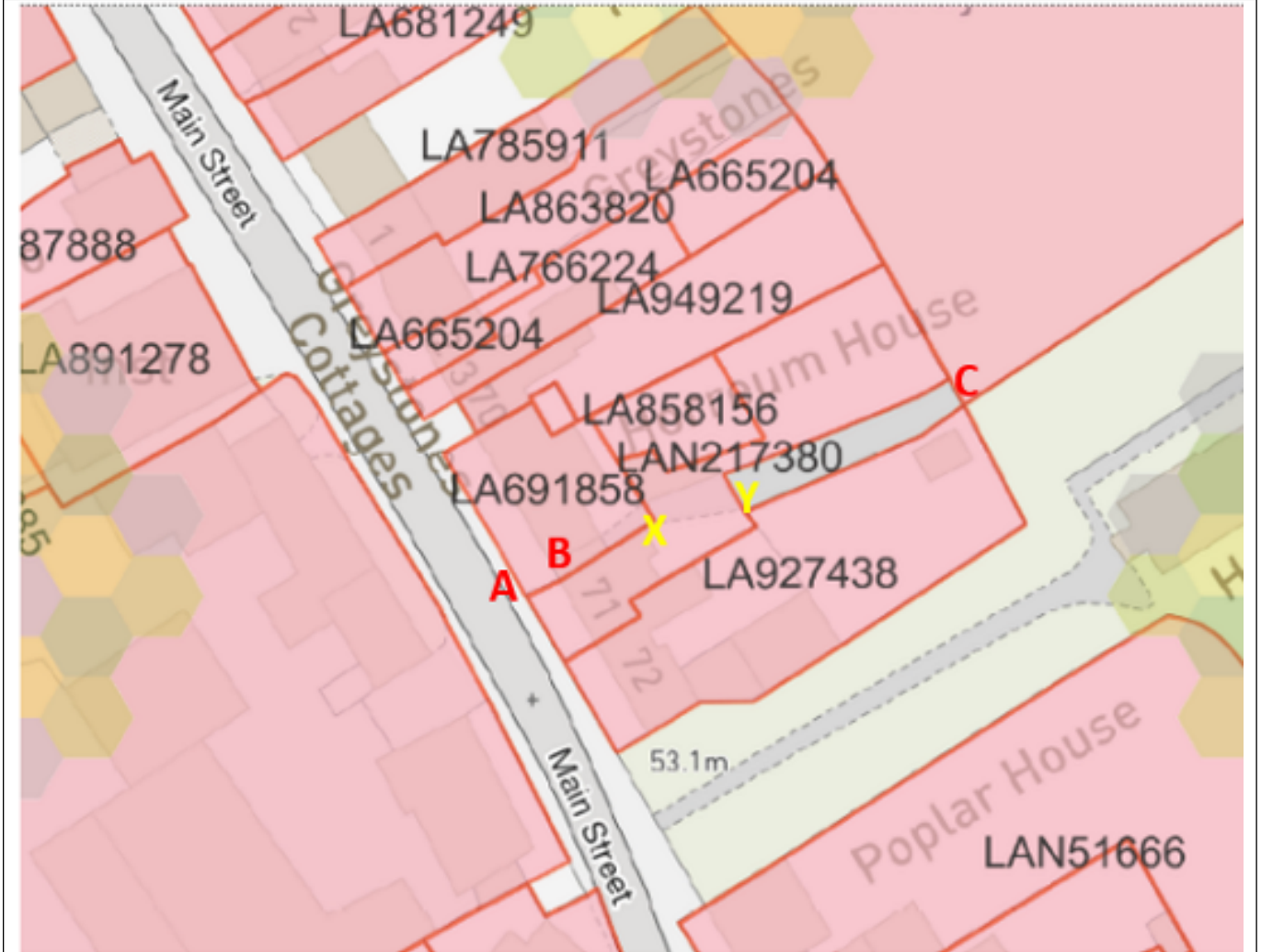
		in a letter dated 1968 and why it was used prior to 1970 for church activities. . The Abstract of title shows the church purchased this field which was then much larger in 1888
<b>1:2500 OS Map Sheet SD6067-6167</b>	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published 1973 as national grid series.



Observations		The walkway from Main Road is marked in the same way as it is shown on earlier OS mapping. From the walkway a bounded strip is shown along which the application route runs to point C where a line is shown across the route. The application route is not shown between point C and point D. East of point D an access road is shown leading from Wennington Road to Home Farm and a number of other buildings.
Investigating Comments	Officer's	It may have been possible to travel along the application route in 1972 – as suggested by a number of users submitting evidence to be considered later in this report but the map does not provide

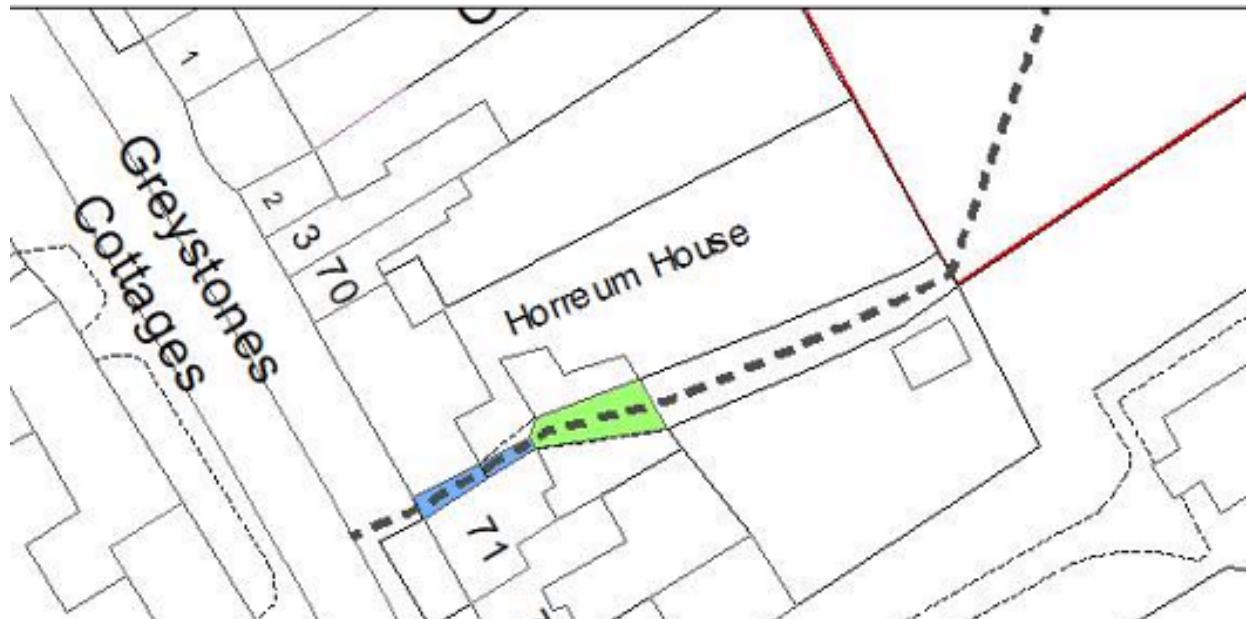


		evidence of a substantial well used route across an open field.
<b>Licences relating to pedestrian access along part of passageway between points A-C</b>	1984-1985	Information provided by LCC Land and Property Services.



Land registry map search showing registered land shaded red

- area shaded blue Annual licence from WH & AS Williams – 1/7/1984
- area shaded green Annual licence from HL Birkett & JM Walker – 29/1/1985



Observations

Details of two licences granting pedestrian access along those parts of the application route marked between B-X and X-Y on the land registry plan above have been examined.

The licence granted to Lancashire County Council relating to the land – including the passageway B-X was documented in a letter dated 18<sup>th</sup> July 1984. The letter explained that it had been agreed to dispense with a formal agreement and relied on the exchange of correspondence between J W Stavely of 'The Barn', Main Street, Wray (the licensor) and Lancashire County Council. The agreement granted a pedestrian access for Lancashire County Council its servants workmen and persons authorised by it over that part of the application route shaded blue on the plan inserted above and shown B-X on the Land Registry Plan. Access was granted on the basis of a yearly payment of £5 and the agreement could be terminated by either party with 6 months written notice. The Property and Estates Team explained that 'The Barn' is the property now known as Horreum House and that the licence subsequently passed to WH & AS Williams and was then passed to the new owners of



		<p>Horreum House in 2021.</p> <p>The licence relating to the land X-Y was originally granted by H L Birkett and J M Walker of 71 Main Street to Lancashire County Council in consideration of a yearly sum of £5 a year and was dated 29<sup>th</sup> January 1985. It granted Lancashire County Council, its servants, workmen and persons authorised by it including school pupils, pedestrian use of that part of the passageway owned by HL Birkett and JM Walker. The licence specified that it could be terminated by either party by giving 6 months' notice in writing. Notice to end the licence has been given to Lancashire County Council and agreement to use that part of the route withdrawn in March 2023. The rest of the strip of land Y-C is unregistered and ownership unknown. No licenses exist in relation to that section.</p>
Investigating Comments	Officer's	<p>The licences grant private rights of access along part – but not all the application route A-C that provides access to the playing field. The licences specifically refer to those persons being given permission to use the route under the licence meaning that use from 1984/1985 to 2023 by those persons was under an express agreement and not as of right.</p> <p>The fact that licences were granted to secure access to the playing field for use by the school does not necessarily mean that public rights did not already exist along the route – or that public rights have not subsequently come into being although any use by the public since 1985 will need to be carefully considered to differentiate it from use under licence.</p>
<b>1998 Lease</b>	1998	A lease was granted by LCC to the Parish Council for an area near point D for a playpark . It has its own access
<b>Aerial Photograph</b>	2003-2018	Aerial photographs available to view on Google Earth Pro.





[above] 2003



[above] 2018







[above] 2018

<p>Observations</p>		<p>Two aerial photographs taken in the past 20 years.</p> <p>The photograph taken in 2003 shows that the application route across the playing field was accessible. There is no trod visible across the field but the gateway at point D can be seen with a lighter area suggesting use of the gateway to access the field. The play park is also shown. It is not possible to see the access to the field at point C because of trees.</p> <p>The photograph taken in 2018 clearly shows a well-trodden access onto the field at point C. It also shows that the playing field had been marked out with running tracks and rounders pitches but that it would still have been possible to walk between point C and point D.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs support the user evidence submitted and indicate significant levels of use of the route to access the playing field particularly in 2018. The running and rounders pitches marked out on the field may have necessitated those</p>





		people using the route when games or running 'events' were taking place to deviate from the direct route C-D.
<b>Google Street View photographs</b>	2009-2021	Google Street View images showing the application route.



[above] Main Street 2009



[above] Main Street 2016



[above] Main Street 2021



[above] Home Farm Close 2009

Observations		The photographs show that access was available at Main Street end of the application route in 2009, 2016 and 2021 and show that access was available to the route from Home Farm Close in 2009.
Investigating Officer's Comments		The photographs all support the user evidence submitted in support of this application.
<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</p>



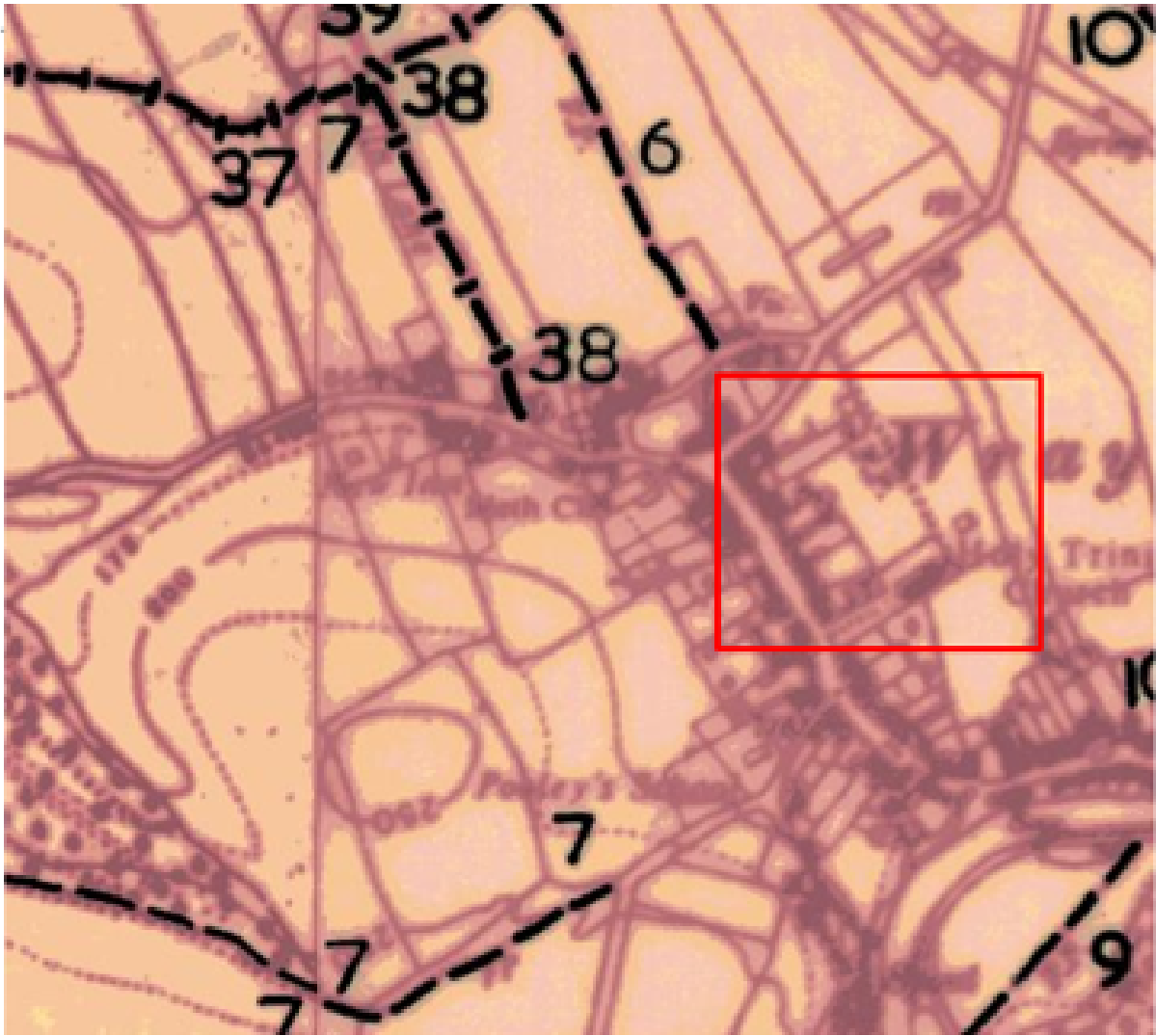


		Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion 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>		The application route was not shown.
<b>Draft Map</b>		<p>The parish survey map and cards for Wray with Botton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of</p>

		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		The application route was not shown on the Draft Map and there were no representations made regarding the fact that it was not shown.
<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 and there were no representations made regarding the fact that it was not shown.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map and Statement.
<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 shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to be a public right of way during the preparation of the First Definitive Map and Statement through to the 1960s.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	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.

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

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



[above] Extract from Handover Map OS Sheet 25SE





[above] LCC digitised highway adoption layer



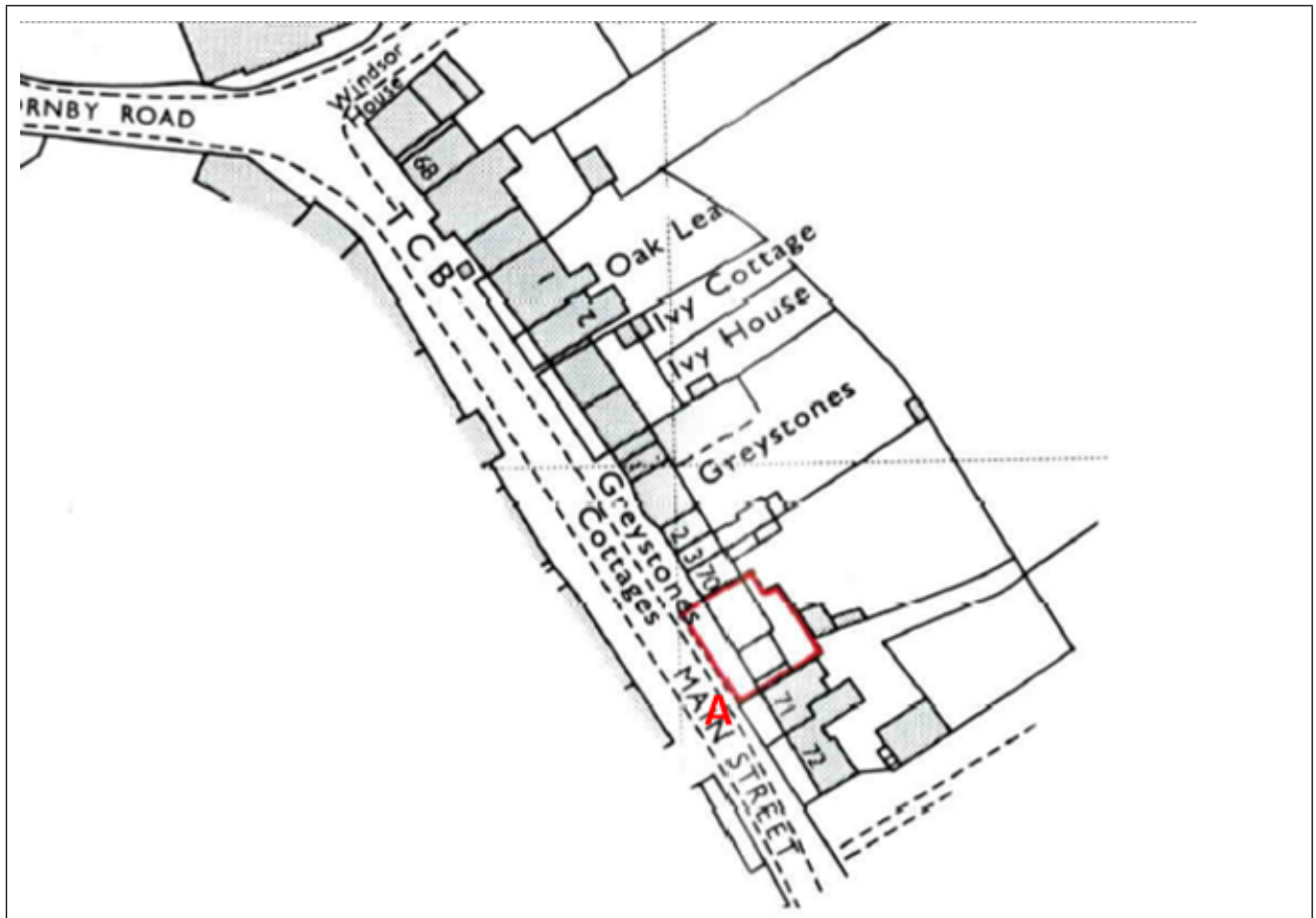


[above] Section of application route from kerb of Main Street to walkway through building indicated by red arrows



[above] Google Street View September 2022 showing section of application route from kerb of Main Street walkway through building





[above] Land Registry Plan for Horreum House showing boundary of land registered

Observations

The Handover Map understood to have been prepared in 1929 shows Main Street as a publicly maintainable highway up to and including the application route crossing the tarmac area at the front of Horreum House (A-B). It does not show any other part of the application route as a publicly maintainable highway and pre-dated the construction of Home Farm Close.

There is no adoption sheet for the area crossed by the application route and the digitised highway records only show the extent of Home Farm Close that is adopted highway.

The tarmac area at the front of Horreum House appears to be used for parking vehicles and whilst there is no permanent restriction to use of this area by the public as part of the width of Main Street (as recorded on the Tithe Map, Finance Act records and 1929 Handover Map). According to Land Registry most of this



		<p>area is recorded as being in private ownership which is not incompatible with his being highway.</p> <p>Officers in the Highways Team were unable to provide further detail with regards to the extent of publicly maintainable highway.</p>
Investigating Officer's Comments		<p>Only A-B is currently recorded as highway (on the Handover Map) so it is suggested. No other part of the application route is recorded.</p>
<b>Highway Stopping Up Orders</b>	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>No records relating to the stopping up, diverting or creation of public rights along the application route were found.</p>
Investigating Officer's Comments		<p>If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>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</p>



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).



[above] Extract from LCC Register showing S31(6) deposits received by Lancashire County Council referring to deposit made in 2004 and renewed in 2010.

Observations

The County Council is in receipt of a Highways Act 1980 Section 31(6) deposit which was lodged with the county council for the area over which the application route runs (A-X).

The deposit relates to the land in the registered ownership LA691858 (Horreum



		House). The deposit was made on 22 <sup>nd</sup> January 2004 and was subsequently renewed on 21 <sup>st</sup> May 2010.  In the 2004 Statutory Declaration it is stated that since taking ownership on 3 <sup>rd</sup> February 1990 the landowners did not intend to dedicate a public right of way across their land.
Investigating Comments	Officer's	Between point A and point X there is a clear indication that the owners of the land from 1990 onwards did not acknowledge the existence of a public right of way and did not intend to dedicate a route to the public.  From point X to point E there is no indication by the current or previous landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Map evidence suggests that the houses on Main Street pre-dated the Ordnance Survey First Edition 6 inch map and that the passageway leading through the buildings and the enclosed strip through to the gateway onto the field at point C has existed since at least the 1840s. It was all in the same ownership at that time.

Map and documentary evidence inspected suggest that the route from point A to the walkway through the building (B) was part of the public vehicular highway (in particular the Tithe Map, Finance Act and Handover Maps) from the mid-1800s.

Until the field to the rear of the houses on Main Street was sold to Lancashire County Council in 1970 it appeared from the OS maps to have been farmland but was sold to the Church in 1888. A hand drawn map and letter from 1968 refer to the field as being 'The Church Field' and mark pedestrian access to the field via the application route A-C. From at least the 1960s onwards it may have been possible to walk from Main Street along the application route A-C to access the field and to then continue to join the unrecorded footpath marked on the OS maps which ran from Wennington Road to the church prior to that time or to have used a route clearly shown on the 1960s aerial photograph as a substantial access road leading from Wennington Road providing access to Home Farm from which it appeared to have been possible to access the application route at point D.





On purchasing the field in 1970, the County Council entered into an agreement to secure vehicular access to it via Wennington Road but did not enter any agreements relating to pedestrian access from Main Street for another 14 years.

In 1984-85 specific licences were put in place the County Council and for the primary school pupils to use the application route A-C although the licences only related to part of the passageway as the other part was unregistered and landownership is not known.

This application is based on the submission of a substantial amount of user evidence and the map, photographic and documentary evidence from at least the 1960s onwards supports the application so far as confirming that a route appeared to be capable of being used on foot throughout that time. However, the submission of a Statutory dedication under Section 31(6) Highways Act by the owners of Horreum House (A-X) indicates that the owners of the land had no intention to dedicate a public right of way across this land since 2004 and there is also the impact of the Foot and Mouth Orders.

## Head of Service – Legal and Democratic Services Observations

### Landownership

The section of the application route from A to X crosses land which is in private ownership. Land crossed by the application route from X to Y is also in private ownership. The section of the application route from X to C crosses land, which is unregistered, so the ownership is not known. Land crossed from C to D is registered to Lancashire County Council. The section of the application route from D to E crosses land which is owned by Wray with Botton Parish Council.

### Information from the Applicant

The Applicant provided the following supporting information:

1. One hundred and twenty-one user evidence forms (forms provided by Lancashire County Council)
2. Ordnance Survey Maps, showing the application route

### Duration of use

The 121 user evidence forms collectively provide evidence of use going back as far as 1951 and up to 2022, when the application to record the right of way was made.

The first table shows the use of all users, regardless of the specific years they used the route.

20+ Years: any years	1-19 Years: any years	Total
86	35	121



To assist committee the user evidence has been evaluated looking at when use was possibly as of right without interruption at different periods (legal advice considered later in the report),

The second table only shows the users who used the application route between 1984-2004 being twenty years before the Statutory Declaration, made in 2004 which acknowledged that no public rights of way crossed part of the application route in 2004, under Section 31 (6) of the Highways Act 1980.

29 of the total 121 users did not use the application route between 1984–2004. Therefore, the use of the remaining 92 users who used the route anytime between 1984-2004 need to be considered.

On reading the information available, five of these users stated they had permission to use the route. Additionally, one other user out of the 92, appeared to satisfy the requirements to be classed as a user with permission. Therefore, the total number of users within the years 1984-2004, who appeared to use the route without permission, was 86.

20+ Years: 1984-2004	1-19 Years: 1984-2004	Total
48	44	92
Of the above, those without permission	Of the above, those without permission	Total
45	41	86

It appears that in law use of the route was affected in 2001 by the Notices issued due to the outbreak of Foot and Mouth Disease, causing public rights of way to close. This is discussed later in the report. If it is an interruption and also a calling into question, the 20 year period to be considered to establish 20 years of uninterrupted use of the route would be between 1981-2001.

The issue of considering common law inference from all the circumstances including use will also be considered later in the report

36 of the total 121 users did not use the route at all between 1981-2001 (85 did). Five of these users stated they had permission to use the route and one other user out of the 85 appeared to satisfy the requirements to be classed as a user with permission. The table below shows the use of the users between these years.

20+ Years: 1981-2001	1-19 Years: 1981-2001	Total
42	43	85
Of the above, those without permission	Of the above, those without permission	Total
39	40	79

#### Frequency of use

78 of the total 121 users stated that they used the route daily or weekly. 18 users' use of the route varied over time, so they did not provide one specific answer to frequency of use. All users stated they used the route on foot.



Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
30	48	8	16	1	18	121

The use of the 86 users (without permission) who used the route at any time between 1984-2004 is shown on the table below.

Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
18	33	7	15	1	12	86

The use of the 79 users (without permission) who used the route at any time between 1981-2001 is shown on the table below.

Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
14	32	6	15	1	11	79

#### Reasons for Use

The reasons for use varied between the different users. The most common answers included: pleasure; taking children/grandchildren to school or to play on the field or playground; to access village facilities; to exercise; to visit friends and families in the village and to help out with or attend village events. The village events mentioned by the users included Wray Scarecrow Festival, Village Sports Day, Car Boot Sales and Wray Fair.

#### Other Users of the Route

All users that answered the question about the use of others, recorded that they had seen other users. Many users gave details about the use of others by saying it was used regularly and frequently by villagers, visitors, parents and children and walkers. Many noted people use the route as an access route to the local Primary School, village events and village facilities. Many also stated this route was a much safer one in comparison to alternative routes available.

#### Consistency of the Route

The majority of the 121 users stated that the route had always followed the same route. A few users were unsure, and a few users recorded that the route was altered when events were taking place or when the field was in use by the Primary School.

#### Unobstructed Use of the Route

Of the 121 users, the majority said they were not prevented from using the route. One user said they were prevented from using the route whilst the school used it. Another user recalled they were prevented from using the route as the obstructions on the ginnel 'made down the ginnel like an obstacle course'. A further user stated they were not prevented from using the route, but the obstructions made it 'awkward'.



Many other users, who were not prevented from using the route, recorded that there has been barriers and obstacles on the route for the last twelve months. The items used as barriers included: wheelie/household bins, parked cars, building materials, compost, toys, stones and logs.

The majority of the users stated that there were gates on the route at either end of the school field. Many recalled that these were not locked but could sometimes be closed.

None of the users recalled seeing any signs or notices which suggested the application route was not a public right of way. One user recalled only seeing a sign saying, 'no dogs allowed on the school field'.

#### Information from Others

Cadent Gas 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 proposal.

The local footpath secretary responded to consultation for the Ramblers Association to state they have no objections to the DMMO and support it. In addition to this, an alternative route was suggested.

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

BT Openreach responded to consultation to state they are not affected by the application.

#### Information from the Landowners Lancashire County Council (education)

Lancashire County Council acquired the land crossed by the application route C-D on 24<sup>th</sup> March 1970.

The Head Teacher at Wray with Botton Endowed Primary School is aware that the field crossed by the application route had been used by residents and visitors to the village for many years.

The School pupils' use of the footpath between points A-C was under a licence which was agreed many years ago with the former resident who owns part of the footpath between the field and Main Street. The new owner of part of the land crossed by the application route served notice terminating the licence and the right to use the footpath as at the end of March 2023.

The Officer dealing with the matter explained that no such agreement was in place for residents and visitors in the village who used the pathway 'as of a right' and that they are not aware that this access has ever been blocked off or use prevented.



The Head Teacher has confirmed that the school supports the application to ensure a long-term solution to provide safe access to the school children to the field.

The Head Teacher advised that she was aware from conversations she has had with villagers in Wray that when the County Council acquired the field in 1970 it was used straight away after that by the School as previously the School had no access to a playing field. She added that it has been reported to her that it was a big event in the village when the School started using the field in 1970 and from speaking to local people who have lived in the village since 1970, they have advised that they have also used the field since 1970 when the field was purchased by the County Council and have used the footpath from the village/Main Street for access to the field.

Further to this, the School provided information, documentary evidence and a map, relating to the matter.

An additional response was received from the Education Authority, as owner of the School Playing field. The officer advised that the Head at Wray Primary School has informed her in conversation of the following:

- That she does and always has, in her time at the school (which is around 14 years) locked the gates at both ends of the playing field at all times when the children are on the school field during school use. The officer has been told that the villagers know that it is a school playing field and is locked when the children are using it during term time and has advised that the locking of the gates is due to safeguarding issues and concerns.
- The school has banned dogs on the playing field and the parents of the pupils have been notified that dogs are not permitted on the school playing field.
- Sometimes permission is granted by the school to parents and villagers to use the school playing field for birthday parties and events etc. A lettings form is used by parents/villagers when they hire the school field.

#### Current owner of 71 Main Street

The current owners of owners of part of the land crossed by the application route provided copies of a number of letters and documents referring to them as evidence:

Letter dated 19<sup>th</sup> October 2022 to the owners from Lancashire County Council asking whether they would consider granting a new licence to enable the school to use the application route to access the playing field. The landowner annotated the letter stating that it was proof of licenced access only – which was terminated as per deed agreement.

Further copy letters were submitted dating back to 25<sup>th</sup> June 1984 providing historical evidence of the licence agreement and the fact that it continued – as a licenced agreement - when landownership changed.

The landowner also provided partial copies of the Section 31(6) Highways Act statutory deposits made by the owners of Horreum House – which have already been considered earlier in this report.

In addition to the above, the owners provided information regarding the termination of the licence. They stated that the licence had been terminated on 13 March 2023, following six months of written notice. It was stated that the owners thought it would be beneficial to set out their reasoning for terminating the licence over their property. They stated that the route of passageway operated via the licence was through a ginnel directly into their back garden. Due to having young children, the owners want a safe and secure space for their family to quietly enjoy. They stated the licence did not allow for this, so the owners terminated the licence.

Other owner

Another landowner of part of the application route, provided no response to consultations.

Wray with Botton PC

Wray with Botton Parish Council are not only the applicants and the Parish Council in this matter, they also own land crossed by the application route. Their response to consultation and comments have already been noted earlier in the report under 'Consultations'.

## **Assessment of the Evidence**

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

The applicant is of the view that there is already a public footpath along the application route which should be recorded on the Definitive Map and Statement. There is no express dedication and so Committee are asked to consider whether the test for making an order can be satisfied looking at S31 Highways Act dedication able to be deemed or looking at the inference of dedication under common law.

This matter raises many different issues and the balancing of evidence may prove difficult. Committee is reminded that the test to make an Order is a "low bar" and committee would need to be satisfied that on balance it is reasonable that a footpath can be alleged. It is noted that there is much user evidence submitted and they refer to using the application route line.

Destination –

to be a highway a route starts on a highway (of sufficient status) and is either used specifically as a cul de sac or ought to connect to another highway (of sufficient status) or a place of public resort . Here the route starts on Main Street and goes to or across a field owned by LCC for its education function and today reaches a vehicular highway. Looking at the user evidence it would appear that some accessed the field and some used it as a through route.





In the period 1980s and 90s –users would not have had an adopted vehicular highway just ahead of them. They would have a track to Wennington Road constructed by LCC for its private access. A route approximating to this track has previously been the subject of an application to add it to the Definitive Map as a footpath. An Order has been made but not yet confirmed. Both that route and this application route are shown to reach the public vehicular highway which is there now but may have joined each other. This track potentially carrying a footpath could be a point of destination on a footpath network before the vehicular highway arrived

The field appears from the evidence to be a possible place of public resort for the section of the claimed route A-C but not when the school is using it. It was however purchased as a school playing field and events licensed. The play park for toddlers dates from 1998. Use of the field as a whole would not be use of line C-D as claimed and for which user evidence is submitted.

The issue of there being a true destination for the route being a public highway at D for the relevant period prior to 2004 needs careful consideration but the reasonably alleged footpath at D could be sufficient destination to consider the making of an order in this matter.

Use of a line –

to evidence that a route can be reasonably alleged to have become a highway it must follow a line. The use would need to be of this line and not general use of the field or use of another line deferring to use by the school. At present the user evidence is use of the line apart from a few where their line altered if school was using the field. It is suggested that committee is considering the years pre 2004. The 2003 aerial photograph shows no trodden line yet the user evidence even for many years ago is still strong and all confirm use of the application line.

In this matter there may be sufficient evidence to make the Order but users then be interviewed and their evidence able to be considered in more detail and that is why the recommendation is to have the matter return to committee before a decision is made about stance on confirmation.

S31 and its requirement for a "calling into question" preceded by 20 years uninterrupted use -

The application is in law a "calling into question" but its twenty years period is , it is advised, "spoilt" by the statutory declaration in 2004.

The statutory declaration is itself a calling into question but its 20 year period 84-2004 is affected by the interruption of the Foot and Mouth closure Orders and the Licences granted re the section A-C in 1985 this will need careful consideration. Committee are advised to consider use 1984-2004 when looking at S31 Highways Act

Use has to be as of right –

The use has not to be by force –and there is some reference by some users to their route altering when the field was in use by the school. Local people would know this



was the school playing field . In the main their evidence of use 1984-2004 at present is of the line and apparent as of right use despite school use.

As of right use is also required under common law but there is a difficulty in applying common law inference in this matter. (see below)

Permission –

Use out of which may come highway rights has to be "as of right" – without permission. It is suggested that the Licences given in 1985 may have made some use permissive but on the evidence this would affect only a few users. The other users would not be aware of nor captured by the permissions granted and so the permissions arguably had little effect on the user evidence.

The Committee will note reference in the user evidence to lettings of the field and so use to attend a permitted event would not be as of right.

Foot and Mouth outbreak 2001

In 2001 Lancashire closed its footpaths under powers contained in the Foot and Mouth Disease Order 1983 (as amended). This had the consequence that it prevented access to swathes of the countryside that prevented footpath users from using the routes that are now the subject matter of claims of prescription rights under the 1980 Act and applications under the Wildlife and Countryside Act 1981 for the way to be recorded on the Definitive Map by an DMMO.

The Planning Inspectorate Advice Note on these types of closures was changed this year and would suggest that this closure is not an interruption under S31. Advice sought on this point from Counsel advises that the Advice Note does not reflect the correct interpretation of the legislation.

Counsel is of the view that interruptions of use attributable to restrictions imposed by Foot and Mouth Disease legislation are capable of being a relevant "interruption" under the 1980 Act.

It is essentially a question of fact whether there has been an interruption which is more than de minimis. He feels that the Planning Inspectorate have imported the idea of needing landowner intention behind an interruption but advises that this is not the case. No evidence of intention is required. The fact that access and use has been prevented by a legal mechanism can be an interruption.

Where use of a way was affected by Foot and Mouth restrictions it may well be such as to be incapable of establishing the presumption of dedication under Section 31 of the 1980 Act because any such use was not "without interruption" over the relevant 20 year period.

In this matter use does not appear to have been affected. There were no notices on the field or cattle or other livestock and the users do not appear affected by the restrictions. It is therefore advised that the Orders for closure was not an effective interruption at this location.

Inference at common law – looking at actual intention to dedicate

Dedication by the owner can be inferred from all the circumstances. Here it is the case that there is still use pre 2004 and no evidence of overt actions taken by the County Council as owner able to be noted by the users and that would arguably suggest that actual intention to dedicate can be inferred. Some users did seem to have their use changed by use by the owner as a school playing field. Whilst not conclusive this would amount to some evidence capable of challenging the “as of right” component of the claim.

The use in this matter as presented 1984-2004 seems not to conflict with school use. There is no evidence of the locking of the gates when school was using the field in those years as is the case in the most recent 14 years.

But the landowner here is the education authority who had acquired the field specifically for the purposes of a school playing field only a few years earlier and that is also a circumstance which needs considering. School use of the fields in question would at the time and subsequently be regarded as inconsistent with an enforceable right of way for the public. Use in the 1980s and 1990s “as of right” would need to be such as to displace or interrupt the activities of the school using the pitches or the field crossed by the route for games. It is suggested that Committee would be entitled even in the absence of evidence of use conflicting with the school use to draw an inference that the presumption of dedication was not established.

The advice is that it is difficult on balance to infer that the education authority intended dedication of a public route across the field open to all at all times. Intending access to school premises by anyone at anytime would arguably be contrary to statutory provisions such as the Health and Safety at Work Act imposing the duty on LCC to take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety. Safeguarding was perhaps not a term as well used in the 1980s but the concept was embedded in the education authority.

Irrelevant matters -

Committee is to note comments from supporters and objectors may refer to concerns about danger or suitability. The Applicants reference to disruption to the everyday use of the village and future community events and possible economic implications of the route being closed today are not relevant to the decision before the committee and whether it is on balance reasonable to allege that a footpath exists on the application route.

Recommendation

Taking all the information and evidence into account it is suggested that given the use of the route 1984- 2004 without effective interruption and without sufficient evidence of actions taken by the owner there is sufficient evidence from which to reasonably allege that a footpath has come into being and that an Order be made. It is advised that this matter then be returned to Committee to decide on the stance for confirmation.



## Implications:

This item has the following implications, as indicated:

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

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

## Risk management

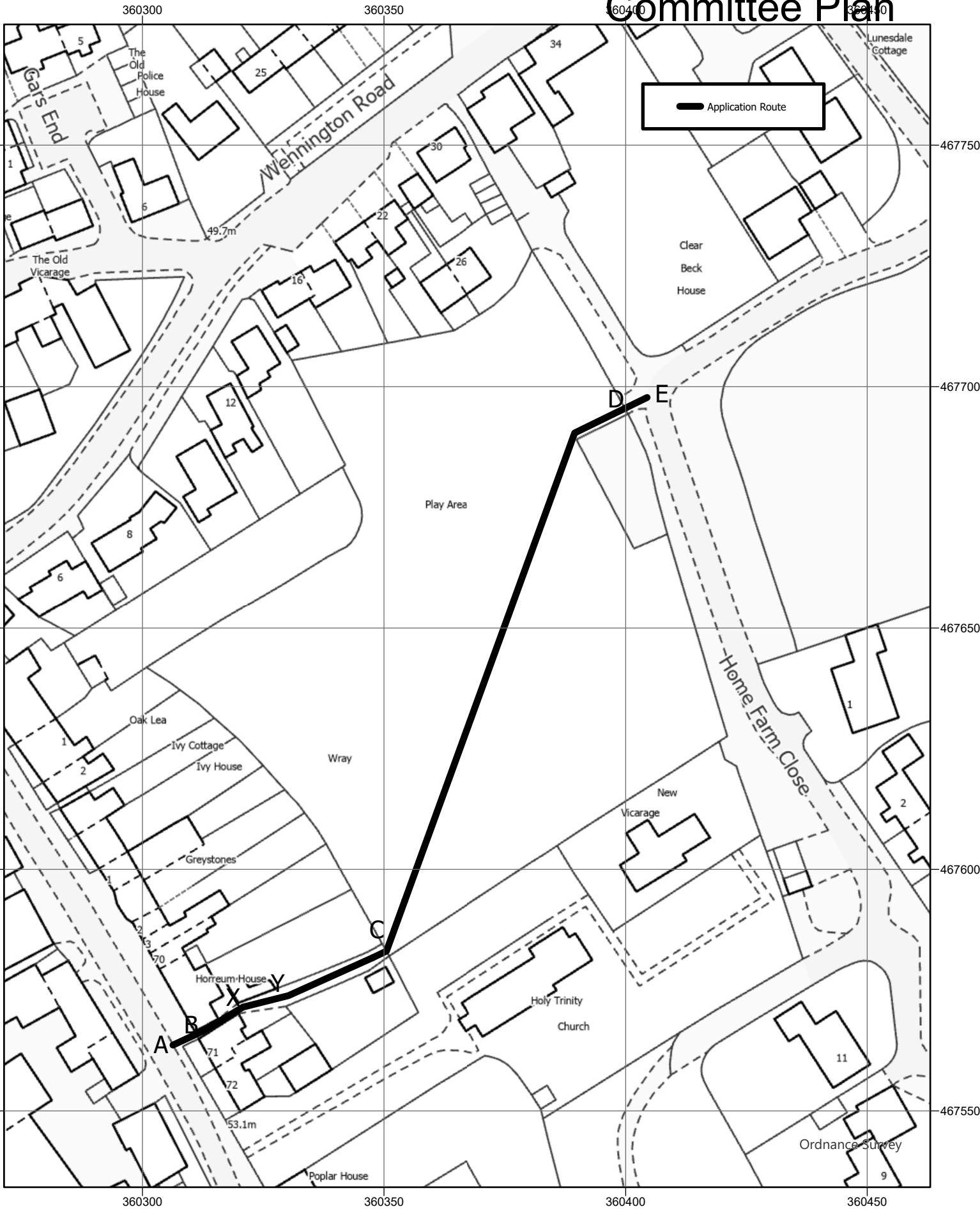
Consideration has been given to the risk management implications associated with this application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annex 'A' included in the Agenda Papers, officers' presentation and discussion. Provided any decision is taken strictly in accordance with the above then there is no significant 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: 804-763		Annabel Mayson, 01772 533244, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate









**Regulatory Committee**

Meeting to be held on 15 November 2023

**Part I**

Electoral Division affected:  
Longridge with Bowland

**Highways Act 1980 – Section 119**

**Wildlife and Countryside Act 1981 – Section 53A**

**Proposed Diversion of Part of Footpath FP0312014 at Isaac's House, Chipping**  
(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 part of Footpath FP0312014 at Isaac's House, Chipping.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0312014 from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked C-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**Detail**

A request has been received from the owners of the residential property of Isaac's House, Parsonage Lane, Chipping, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0312014.

The recorded alignment of this section of the footpath is from Parsonage Lane, through the private grounds of Isaac's House into pasture to the north of Isaac's House. It is proposed that the footpath is diverted from a point on Parsonage Lane slightly to the east north-east of the current starting point, enter the same pasture and continue parallel to and around the boundary of Isaac's House, to then continue on the existing line.

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

## Consultations

The Local Member, Ribble Valley Borough Council and Chipping Parish Council have been consulted and there are no adverse responses.

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

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

## Advice

### Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6151 4273	At a point on Parsonage Lane to the south of Isaac's House.
B	SD 6149 4276	At a point in pasture to the north of Isaac's House and to the east of an unnamed stream.
C	SD 6155 4275	At a point on Parsonage Lane to the east of Isaac's House and to the west of Isaac's Farm.

### Description of existing footpath to be diverted

That part of FP0312014 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	NW	40	The entire width



## Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
C	B	NNW then WSW	80	2	Grass

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

Limitations and Conditions	Position (Grid Reference)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	SD 6155 4275 (point C)

## 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 Chipping 14 (FP0312014) be amended to read as follows:

"No. of Path:  
14

Kind of Path:  
Footpath

Position:  
From Parsonage lane west of Isaac's Farm, north north-west for 40m to continue west south-west to south west corner of pasture to continue north west to junction with footpath 15.  
(All compass points given are approximate).

Length:  
0.04 km

Other Particulars:  
The only limitations on the section between SD 6155 4275 and SD 6149 4276 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 6155 4275.

The width between SD 6155 4275 and SD 6149 4276 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. Isaac's House is a private, residential property. Currently the public footpath runs along the access drive and through the private gardens of Isaac's House immediately adjacent to the dwelling.

The diversion will instead continue from Parsonage Lane west of Isaac's Farm, north north-west for 40m, to continue west south-west to the south west corner of the pasture to continue north-west back on the original line of FP0312014 to the junction with FP0312015. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and generally as direct for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public. The proposed diversion will alter the southern point of termination of FP0312014 to divert it from its current termination point on Parsonage Lane to a different point on Parsonage Lane 30 meters to the east north-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 parts of FP0312014, 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 the majority of the existing route. The owners of the section B-C, the pasture on part of the proposed route, have confirmed that they are in agreement with the proposal and that they would not raise any objection if a Diversion Order is made.

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 although longer is only short in length, runs over firm ground and has a similar gradient to the existing footpath.

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. As the existing footpath connects to other parts of the public rights of way network via Parsonage Lane and FP0312014. Also, because the new footpath will be diverted out of the private grounds of Isaac's House, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of Isaac's House than when walking through the private grounds of the residential property.

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

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

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

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

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

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

### **Other options to be considered**

To not agree that the Order be made.

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

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



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

### **Implications:**

This item has the following implications, as indicated:

### **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.

### **Legal**

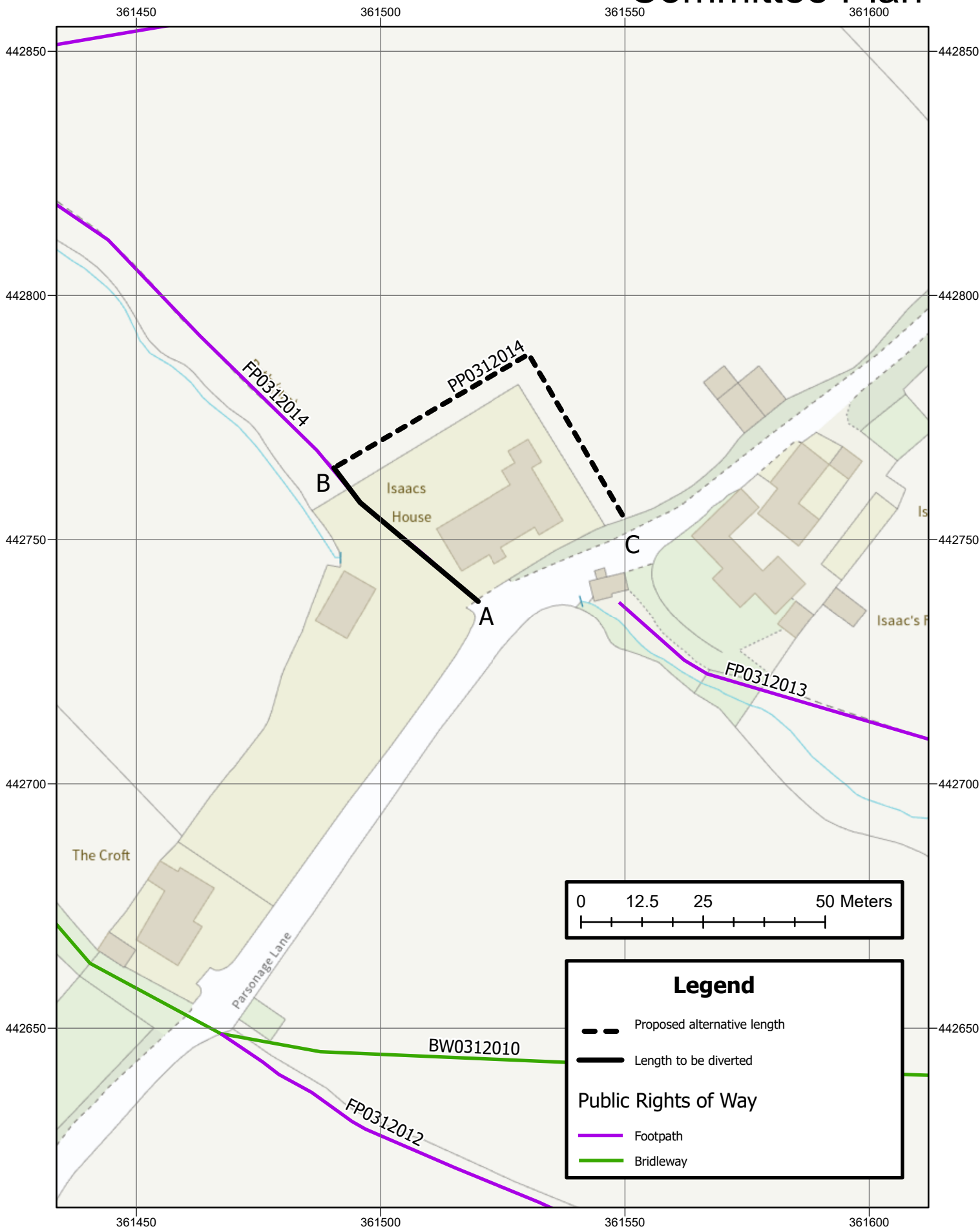
There are no risks associated with following or not following the recommended course of action as long as the decision is made according to the criteria laid out above.

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

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



# Committee Plan



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

Highways Act 1980 - Section 119 / Wildlife and Countryside Act 1981 - Section 53A  
 Diversion of part of Footpaths FP0312014 at Isaacs House, Chipping.

Plan no.  
 211-705 v1



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**Regulatory Committee**

Meeting to be held on 15 November 2023

**Part I**

Electoral Division affected:  
Lancaster Rural East

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath FP0132027 at Lower Stockbridge,**  
**Tatham**  
(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 part of Footpaths FP0132027 at Lower Stockbridge, Tatham.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths FP0132027 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-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

## Detail

A request has been received from the owners of the residential property of Lower Stockbridge, Fairheath Road, Tatham, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0132027. The recorded alignment of this section of the footpath is from the boundary between two pastures to the east of Lower Stockbridge, in a westerly direction, to the southern boundary of the private grounds of Lower Stockbridge, then in a broadly north-westerly, then northerly direction through the private grounds of the residential property of Lower Stockbridge, onto the access track to Lower Stockbridge. It is proposed that the footpath is diverted from the boundary wall of the two pastures, to continue in a broadly west north-westerly direction to a point in the pasture 20 meters to the east of the access track to Lower Stockbridge, to continue in a west south-westerly direction, through a field gate to meet the access track and then continue on the existing line.

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

## Consultations

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

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

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

## Advice

### Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6492 6631	On the boundary between two pastures to the east of Lower Stockbridge.
B	SD 6480 6635	On the access track to Lower Stockbridge.
C	SD 6478 6634	At a point in the pasture 20 meters to the east of the access track to Lower Stockbridge and to the north of the property of Lower Stockbridge.



### Description of existing footpath to be diverted

That part of FP0132027 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	W, then broadly NW	160	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	WNW	130	2	Grass
C	B	WSW	20	2	Grass then stone

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

Limitations and Conditions	Position (Grid Reference)
The right of the owner of the soil to erect and maintain a two-way gate that conforms to BS 5709:2018	SD 6478 6635 (point B)

### 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 Tatham 27 be amended to read as follows:

"No. of Path:  
27

Kind of Path:  
Footpath

Position:  
Continuation from footpath 26 from Oak Head Bank, south, crossing Thwaite Lane and High Road, through pasture, then from the pasture boundary at SD 6492 6631 in a broadly west-north-westerly direction to a point in the pasture 20 meters to the east of the access track to Lower Stockbridge, to continue in a west south-westerly, through



a field gate to meet the access track at SD 6480 6635 and then to Proctor's Brow near Lower Stockbridge.

(All compass points given are approximate).

Length:

0.14 km

Other Particulars:

The only limitations on the section between SD 6492 6631 and SD 6480 6635 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 6478 6635?

The width between SD 6492 6631 and SD 6480 6635 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. Lower Stockbridge is a private, residential property. Currently the public footpath runs through pasture and then through the grounds, and immediately adjacent to the dwelling of Lower Stockbridge, to meet Fairheath Road.

The diversion will instead continue from the pasture boundary, in a broadly west north-westerly direction to a point in the pasture 20 meters to the east of the access track to Lower Stockbridge, to continue in a west south-westerly, through a field gate to meet the access track and then continue on the existing line. This will significantly increase the privacy and security of the dwelling, whilst providing a route that is safe, convenient and as direct for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same highway or a highway connected to it and is substantially as convenient to the public. The proposed diversion will not alter the points of termination of FP0132027.

Committee is advised that so much of the Order as stops up parts of FP0132027, 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 owners of the section A-C and part of C-B, the pasture on part of the proposed route, have confirmed that they are in agreement with the proposal and that they would not raise any objection if a Diversion Order is made.





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

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

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

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. Also, because the new footpath will be diverted out of the grounds of Lower Stockbridge, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of the property than when walking through the grounds of the residential property.

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

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

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

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

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

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

## Other options to be considered

To not agree that the Order be made.

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

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

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

## Implications:

This item has the following implications, as indicated:

## Risk management

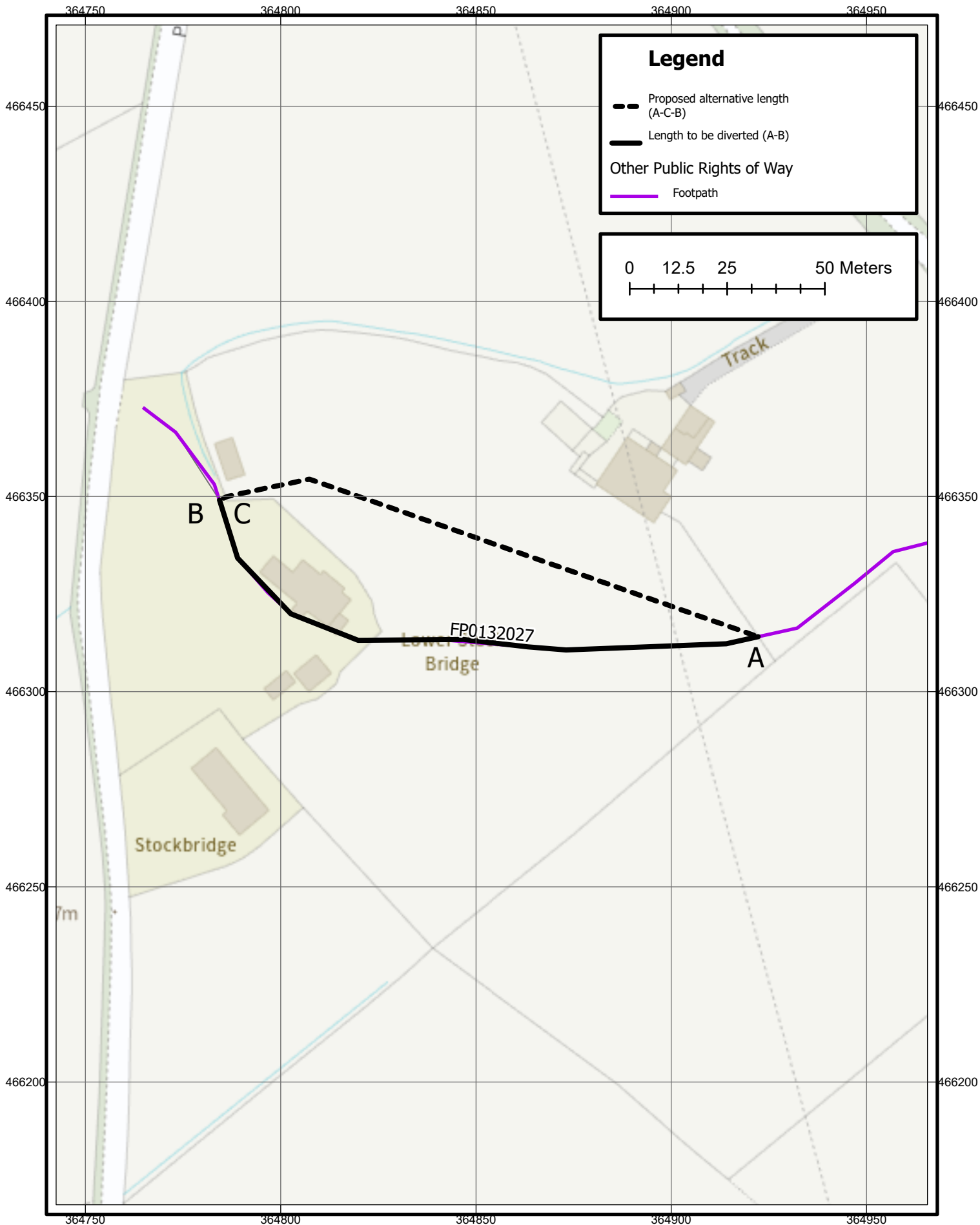
Consideration has been given to the risk management implications associated with this application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annexes 'B' and 'C' included in the Agenda 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.

## Local Government (Access to Information) Act 1985

### List of Background Papers

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

# Committee Plan



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

Highways Act 1980 - Section 119 / Wildlife and Countryside Act 1981 - Section 53A  
 Diversion of part of Footpath FP0132027 at Lower Stock Bridge, Tathom.

211-753



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**Regulatory Committee**

Meeting to be held on 15 November 2023

**Part I**

Electoral Division affected:  
South Ribble West

**Highways Act 1980 – Section 119**

**Wildlife and Countryside Act 1981 – Section 53A**

**Proposed Diversion of Part of Footpath FP0706024 off Station Road, Little Hoole**

(Annexes 'B' and 'C' refer)

Contact for further information quoting 211-760:  
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 part of Footpath FP0706024 at Station Road, Little Hoole.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0706024 from the route shown by a bold continuous line and marked A-B (except X-Y across Station Road) to the route shown by a bold broken line and marked A-E-Z-C-D-B on the attached map.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.



## Detail

A request has been received from the owners of Lower Marsh Farm, Station Road, Little Hoole, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0706024.

The recorded alignment of the section of the footpath from just south of the end of Station Road to approximately 500m north of the road is along the track. It is proposed that the footpath is diverted from the track and onto a path to be created by Natural England along the western verge where they intend to realign the England Coast Path. To the south of Station Road the current alignment passes through a hedge and it is proposed to divert the last 40m along the field edge and install a kissing gate leading across the tarmac turning head to a further kissing gate into the field to the north.

The length of existing path to be diverted is shown by a bold continuous line and marked A-B, excluding section X-Y across Station Road, and the proposed alternative route shown by a bold broken line and marked A-E-Z-C-D-B on the attached map.

## Consultations

The Local Member and South Ribble Borough Council have been consulted and there are no adverse responses.

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

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

## Advice

### Points annotating the routes on the attached map

Point	Grid Reference	Description (Current)
A	SD 4603 2411	Unmarked point in pasture south-west of the western end of Station Road.
B	SD 4600 2461	Gate on the existing track.
C	SD 4606 2415	Field-gate on north side of turning head outside the adopted length of Station Road.
D	SD 4601 2460	Stile on the existing track.
E	SD 4605 2413	Field-gate on south side of turning head outside adopted length of Station Road





X	SD 4606 2413	Hedge on south side of Station Road
Y	SD 4607 2414	Security gates on north side of Station Road
Z	SD 4606 2414	Unmarked point on the tarmac turning head outside the adopted length of Station Road

### Description of existing footpath to be diverted

That part of FP0706024 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	X	NNE	40	The entire width
Y	B	Generally N	500	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	E	NE	25	2	Compacted stone
E	C	NE	25	2	Tarmac
C	D	Generally N	480	2	Compacted stone
D	B	NNW	15	2	Compacted stone

<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 4606 2415 (point C)



The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	Grid Reference SD 4601 2460 (point D)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	Grid Reference SD 4605 2413 (point E)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	Grid Reference SD 4600 2461 (point B)

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

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Footpath Little Hoole 24 (FP0706024) be amended to read as follows:

"No. of Path:  
24

Kind of Path:  
Footpath

Position:  
Much Hoole Parish N. Boundary at Raikes Brook, north to SD 4603 2411 SW of the end of Station Road, through a kissing gate, meeting the end of the adopted length of Station Road then through a kissing gate and north along a stone path on the verge to the west of the track, through a kissing gate then a further 15m to a kissing gate at SD 4600 2461 then to Longton Parish S. Boundary.

(All compass points given are approximate).

Length:  
1.42 km

Other Particulars:  
The only limitations on the section between SD 4603 2411 and SD 4600 2461 are the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2018 at SD 4600 2461, at SD 4606 2415, at SD 4605 2413 and at SD 4601 2460.

The width between SD 4603 2411 and SD 4600 2461 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 agricultural efficiency and security. Currently the public footpath



north of Station Road runs along the access track with the consequent inconvenient interaction between agricultural machinery and pedestrians.

The diversion will instead continue on the verge to the west of the access track. This will significantly increase the usability and security of the access track, allowing the free movement of agricultural machinery, whilst providing a route that is safe, convenient for public use.

The proposal also includes moving a short section south of Station Road to the field edge and across the turning head. This will keep walkers at the edge of the pasture and remove the need to make a new access through the hedge across the existing line.

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 not alter the points of termination of FP0706024.

Committee is advised that so much of the Order as stops up parts of FP0706024, 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 adopted vehicular highway section is X-Y.

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 Natural England has agreed that as part of the King Charles III England Coast Path it will pay the costs which are incurred in bringing the new footpath into a fit condition for use by the public.

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

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

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. FP existing



footpath connects to other parts of the public rights of way network via Station Road and FP0708001.

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 where necessary field boundaries will be crossed by high standard kissing gates.

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

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

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

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

### **Other options to be considered**

To not agree that the Order be made.

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

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

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

### **Implications:**

This item has the following implications, as indicated:



## Risk management

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

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
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None

Reason for inclusion in Part II, if appropriate

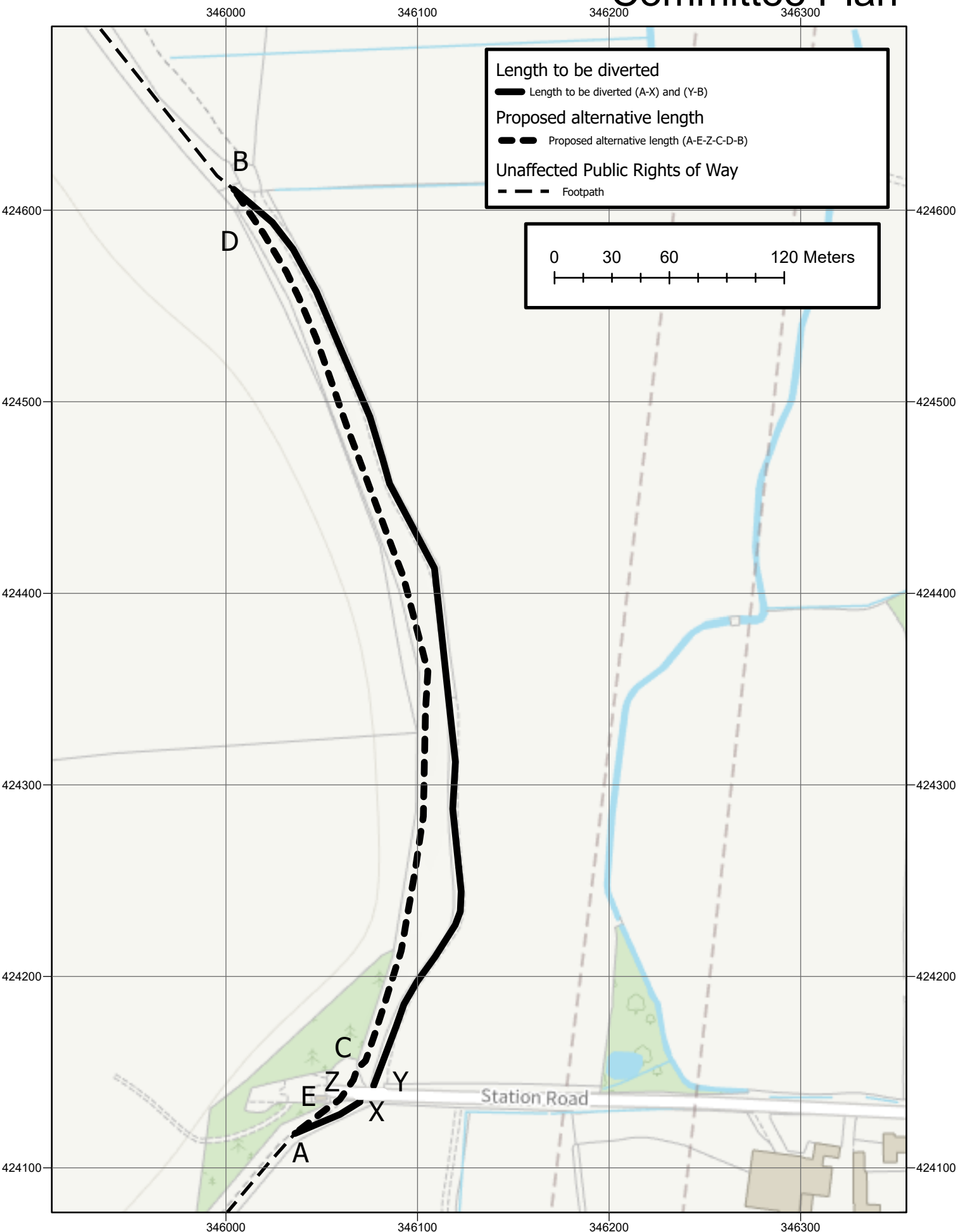
N/A







# Committee Plan



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

Highways Act 1980 - Section 119 / Wildlife and Countryside Act 1981 - Section 53A  
 Diversion of part of Footpath FP0706024 off Station Road, Little Hoole.

Plan no.  
 211-760 v3



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**Regulatory Committee**

Meeting to be held on 15 November 2023

**Part I**

Electoral Division affected:  
Hoghton with Wheelton

**Highways Act 1980 – Section 119**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Footpath FP0921004 at Brinscall Hall Barns,**  
**Wheelton**  
(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 part of Footpaths FP0921004 at Brinscall Hall Barns, Wheelton.

**Recommendation**

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpaths FP0921004 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 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 4 The Shippon, Dick Lane, Brinscall, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath FP0921004. The recorded alignment of this section of the footpath is from the pasture to the south of Brinscall Hall Barns in a north-north-easterly direction, through the grounds of the residential property of 4 The Shippon, to the access track to the north of 4 The Shippon. It is proposed that the footpath is diverted slightly away from the boundary wall of Brinscall Hall Barns, to continue in a broadly northerly direction to a point in the pasture to the west of the grounds of 4 The Shippon, to continue parallel to the boundary of the property to cross the access track and then continue on the existing line to Harbour Lane near Harbour Farm.

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

## Consultations

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

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

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

## Advice

### Points annotating the routes on the attached map

Point	Grid Reference	Description
A	SD 6215 2100	At a point in pasture 5m to the north of the western corner of the boundary wall of the grounds of Brinscall Hall Barns.
B	SD 6220 2110	On the access track to the north of the residential property of 4 The Shippon.
C	SD 6216 2107	At the boundary between two pastures, to the south-west corner of 4 The Shippon.
D	SD 6218 2111	On the access track to the north-west of the residential property of 4 The Shippon.



### Description of existing footpath to be diverted

That part of FP0921004 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	NW	110	The entire width

### Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	SURFACE
A	C	Broadly N	80	2	Grass
C	D	Broadly NNE	40	2	Grass

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

Limitations and Conditions	Position (Grid Reference)
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018	SD 6216 2107 (point C)

### 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 Wheelton 4 be amended to read as follows:

"No. of Path:  
4

Kind of Path:  
Footpath

Position:  
From the Parish Boundary near Blue Dye House to the western corner of the Parish Boundary by Brinscall Hall at SD 6215 2100, then north, around 4 The Shippon to cross the track at SD 6218 2111 and on to Harbour Lane near Harbour Farm.  
(All compass points given are approximate).



Length:

0.12 km

Other Particulars:

The only limitations on the section between SD 6215 2100 and SD 6218 2111 is the right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2018 at SD 6216 2107.

The width between SD 6215 2100 and SD 6218 2111 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. 4 The Shippon is a private, residential property. Currently the public footpath runs through pasture and then through the gardens and immediately adjacent to the dwelling of 4 The Shippon, to meet FP0921022.

The diversion will instead continue through the pasture on a line parallel to the current route but stepped away from the boundary wall of Brinscall Hall Barns, then turn to continue in a broadly northerly direction to the south-western corner of the grounds of 4 The Shippon, where it will pass through a gate to enter a second pasture and continue on a broadly north-north-easterly direction to meet FP0921022. This will significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and as direct for public use.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public. The proposed diversion will alter the point of its junction with FP0921022 to divert it from its current point to a different point on FP0921022 20 meters to the north-west. It is suggested that the proposed point is substantially as convenient to the public. This is not the termination point of the whole of FP0921004, which continues north of the track but the termination of the southern portion; the 2 sections being separated by 20m of FP0921022 following the track.

Committee is advised that so much of the Order as stops up part of FP0921004, is not to come into force until the county council has certified that the necessary work to the alternative route has been carried out.

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

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

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





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

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

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

It is suggested that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the footpath or way as a whole. As the existing footpath connects to other parts of the public rights of way network via the FP0921022. Also, because the new footpath will be diverted out of the curtilage of 4 The Shippon, some users of the footpath may feel more comfortable and at ease when passing through the vicinity of the property than when walking through the garden of the residential property.

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

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

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

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

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

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

## Other options to be considered

To not agree that the Order be made.

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

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

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

## Implications:

This item has the following implications, as indicated:

## Risk management

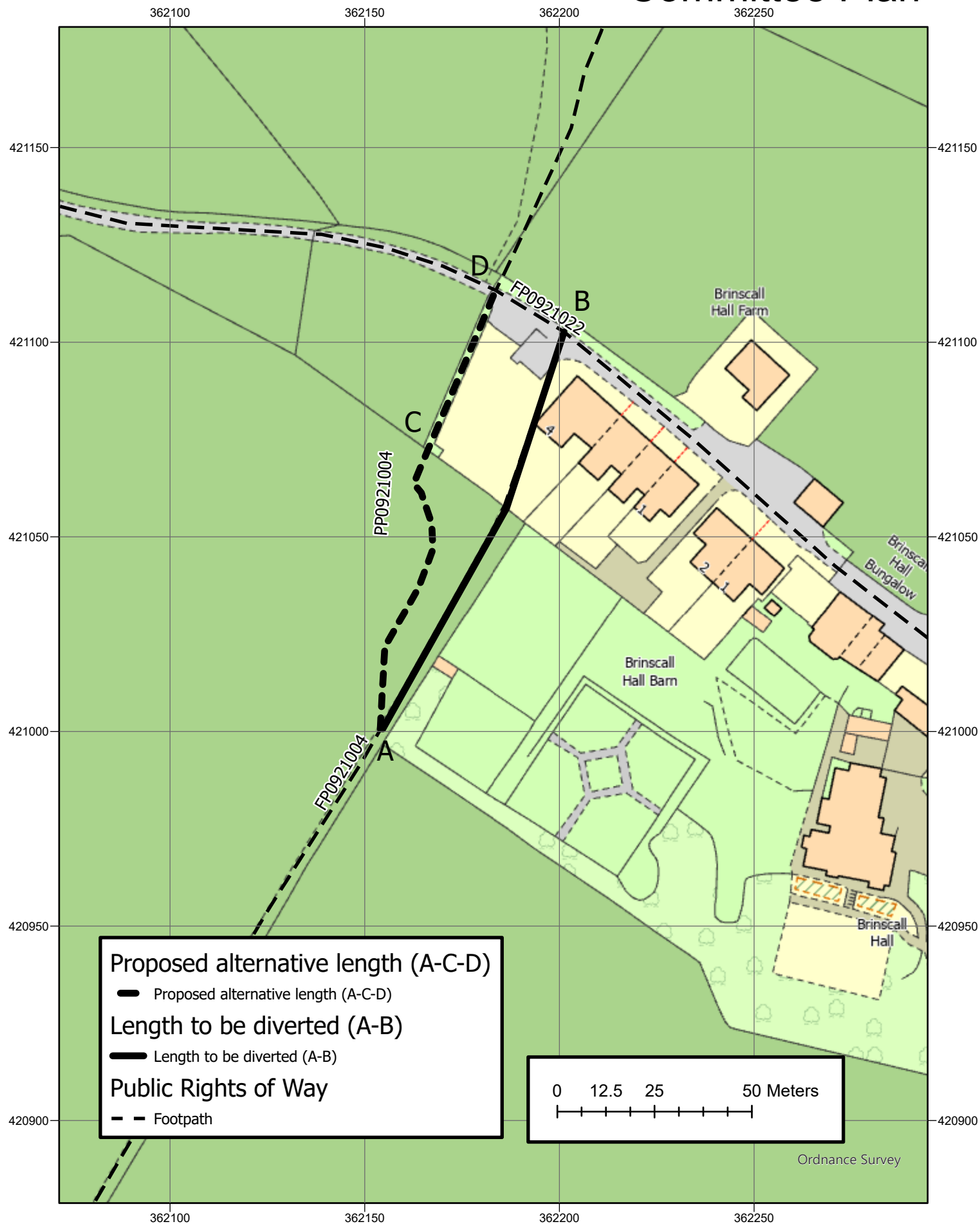
Consideration has been given to the risk management implications associated with this application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annexes 'B' and 'C' included in the Agenda 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.

## Local Government (Access to Information) Act 1985

### List of Background Papers

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

# Committee Plan



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

Highways Act 1980 - Section 119 / Wildlife and Countryside Act 1981 - Section 53A  
 Diversion of part of Footpaths FP0921004 at Brinscall Hall Barns, Withnell, Chorley.

**Plan no.**  
**211-724 v1**



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