

## Lancashire County Council

### Regulatory Committee

Wednesday, 5th February, 2014 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

#### Agenda

##### Part 1 (Open to Press and Public)

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

3.	<b>Minutes of the last meeting.</b>	(Pages 1 - 4)
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4.	<b>Guidance.</b>	(Pages 5 - 28)
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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 together with the actions of the Authority on submission of Public Path Orders to the Secretary of State is presented for the information of the Committee.

5.	<b>Wildlife and Countryside Act 1981</b>	(Pages 29 - 56)
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**Claimed Public Footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townfield Lane) Slyne with Hest, Lancaster City Claim No. 804/534**

6.	<b>Wildlife and Countryside Act 1981</b>	(Pages 57 - 84)
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**Claimed Public Footpath from Chatburn Road in two Branches to Clitheroe Footpath 5, Ribble Valley Borough Claim No. 804-517**

**No. Item**

- 7. Highways Act 1980 - Section 25** (Pages 85 - 102)  
**Proposed Creation by Agreement of a Public Footpath at Twin Lakes Industrial Estate, Croston, Chorley Borough**

**8. Urgent Business**

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

**9. Date of Next Meeting**

The next meeting of the Regulatory Committee will be held at 10.30am on the 26<sup>th</sup> March 2014 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I M Fisher  
County Secretary and Solicitor

County Hall  
Preston

# Agenda Item 3

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 18th December, 2013 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Jackie Oakes (Chair)

#### County Councillors

K Snape	C Henig
I Brown	D T Smith
A Clempson	D Stansfield
B Dawson	B Yates
J Gibson	

**1. Apologies.**

No apologies for absence were presented at the meeting.

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

There were no disclosures of interests in relation to any of the items on the agenda.

**3. Minutes of the last meeting.**

**Resolved:** That the Minutes of the meeting held on the 30<sup>th</sup> October, 2013, are confirmed as an accurate record and signed by the Chair.

**4. Guidance.**

Mrs Turner, Solicitor, presented a report in relation to Guidance for the Committee on the law regarding 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. She also informed the meeting that additional Guidance (in the form of Annex 'C') had been provided in relation to the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

In response to a query Mrs Turner reported that the definition of a bridleway in Annex 'A' was accurate in terms of the Highways Act 1980 and clarified that cyclists were permitted to use bridleways by virtue of the Countryside Act 1968 as amended.

**Resolved:** That the Guidance set out in Annexes 'A';'B' and 'C' of the report presented is noted

**5. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Leyland Lane to Earnshaw Drive,  
Leyland, South Ribble Borough  
Claim No. 804/521**

A report was presented regarding the claim for a Public Footpath from Leyland Lane to Earnshaw Drive in Leyland, South Ribble, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/521.

Details of the claim and the evidence relating to it together with a summary of the law in relation to the continuous review of the Definitive Map and Statement of Public Rights of Way (in the form of Annex 'A') was presented, both as part of the report and at the meeting.

In response to a query Mrs Turner reported that should the Order be made and confirmed that the gates/fencing at certain points along the claimed route would be deemed to be obstructions and appropriate action taken to remove them.

In considering the report the Committee noted the comments from residents in connection with incidents of antisocial behaviour prior to the closure of the route. However, whilst acknowledging that this was relevant to residents the Committee recognised that such concerns were not a material consideration when determining whether or not a right of way existed. It was also noted that in the event that the claim was accepted and there were incidents of anti social behaviour in the future then the County Council as highways authority would be able to consider introducing measures such as Gating Orders.

Therefore, having considered all of the information presented the Committee felt that there was sufficient evidence from which dedication could be deemed under the provisions of S31 of the Highways Act, that it was appropriate that an Order be made and that the higher confirmation test was also able to be satisfied as there was sufficient evidence on balance that the right of way on foot for the public already subsists in law.

**Resolved:**

1. That the claim for a public footpath from Leyland Lane to Earnshaw Drive in Leyland, South Ribble, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with Claim No 804/521 be accepted.
2. That an Order be made pursuant to Section 53 of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Leyland Lane to Earnshaw Drive in Leyland as shown between points A-B-C on the plan set out in the report.

3. That being content the higher test for confirming the said Order can be satisfied, the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

**6. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion Of Part Of Forton Footpath 3, Wyre Borough.**

It was reported that a request had been received from Mr and Mrs P. G. Hemmings, of Duchy House, off Hollins Lane, Forton, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Forton Footpath 3 in the vicinity of their property. Details of the length of the existing path which was proposed to be diverted and the alternative route were presented, together with a summary of the relevant law and guidance in the form of Annexes 'B' and 'C'.

When considering the proposed diversion the Committee noted that it was the applicant's intention to divert the existing footpath away from their property in order to increase the security/privacy of their home by removing the intrusion of members of the public walking immediately past the windows and doors of the buildings and through the internal courtyard of their property. The proposed diversion would also remove any conflict between the users of the footpath and vehicles on the property.

The responses received from Statutory Undertakers were noted and the Committee was informed that Forton Parish Council objected to the diversion on the grounds that the proposed exit, which would be shared with livestock, would become muddy through use and had therefore suggested an alternative exit point for the footpath which was closer to the property. The Parish Council had also suggested that the width of the proposed diversion was generous for a footpath and would have implications in relation to the future maintenance by the County Council.

In considering the report the Committee discussed the security/privacy aspect of the application and acknowledged that a landowner was legally entitled to apply for a diversion which would move a public footpath to a location that was more preferable to them. In this instance the applicants owned the land crossed by the footpath proposed to be diverted, and also in respect to the proposed alternative route and had agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

With regard to the cost of providing and maintenance the diverted path, it was noted that the applicant would bear the cost of providing the new route and the County Council would only become responsible for the future maintenance of the surface once the construction had been certified as being of a sufficiently high standard. In response to some of the concerns expressed during the consultation the proposed diversion would consist of a 1.5m wide stone surfaced path with the remaining 0.5m of the dedicated width consisting of grass verge. It was also noted that as the County Council was responsible for the maintenance of the

existing route in any event, there would not be any increased liability as a consequence of the proposed Order.

Following the discussion earlier in the meeting in connection with the guidance set out at Annex 'C' it was reported that in the event that the Order was made and objections received the Authority would adopt a neutral stance with respect to its confirmation.

**Resolved:**

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Forton Footpath 3, from the route shown by a bold continuous line and marked A-B on the plan set out in the report, to the route shown by a bold dashed line and marked A-C-D-E-F-G-B on the plan.
2. 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 and the Authority take a neutral stance with respect to its confirmation.
3. 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.

**7. Urgent Business**

There were no matters of urgent business for discussion at the meeting.

**8. Date of Next Meeting**

It was noted that the next scheduled meeting would be held at 10.30am on the 5<sup>th</sup> February 2014 in Cabinet Room 'B' – the Diamond Jubilee Room, at County Hall, Preston.

I M Fisher  
County Secretary and Solicitor

County Hall  
Preston

# Agenda Item 4

## Regulatory Committee

Meeting to be held on 5<sup>th</sup> February 2014

Electoral Division affected: <u>All</u>
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## Guidance for the members of the Regulatory Committee

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

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

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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



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

### Definitions

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

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

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

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

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

### Duty of the Surveying Authority

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

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

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

The use also needs to be “as of right” which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent

with use as of right. Case law would indicate that the use has to be considered from the landowner's perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway.

Current use (vehicular or otherwise) is not required for a route to be considered a Byway Open to All Traffic but past use by the public using vehicles will need to be sufficiently evidenced from which to infer the dedication of a vehicular route. Please note that the right to use mechanically propelled vehicles may since have been extinguished.

### **Dedication deemed to have taken place (Statutory test)**

By virtue of Section 31 of the Highways Act 1980 dedication of a path as a highway may be presumed from use of the way by the public as of right – not secretly, not by force nor by permission without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during the twenty year period to dedicate it.

The 20 year period is computed back from the date the existence of the right of way is called into question.

A landowner may prevent a presumption of dedication arising by erecting notices indicating that the path is private. Further under Section 31(6) a landowner may deposit with the Highway Authority a map (of a scale of not less than 1:10560 (6 inches to the mile) and statement showing those ways, if any, which he or she agrees are dedicated as highways. This statement must be followed by statutory declarations. These statutory declarations used to have to be renewed at not more than 6 yearly intervals, but the interval is now 10 years. The declaration would state that no additional rights of way have been dedicated. These provisions do not preclude the other ways open to the landowner to show the way has not been dedicated.

If the criteria in section 31 are satisfied a highway can properly be deemed to have been dedicated. This deemed dedication is despite a landowner now protesting or being the one to now challenge the use as it is considered too late for him to now evidence his lack of intention when he had failed to do something to sufficiently evidence this during the previous twenty years.

The statutory presumption can arise in the absence of a known landowner. Once the correct type of user is proved on balance, the presumption arises, whether or not the landowner is known.

Guidance on the various elements of the Statutory criteria;-

- Use – see above as to sufficiency of use. The cogency, credibility and consistency of user evidence should be considered.
- By the public – see above as to users which may be considered “the public”.

- As of right - see above
- Without interruption - for a deemed dedication the use must have been without interruption. The route should not have been blocked with the intention of excluding the users.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a "calling into question" (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

### **Documentary evidence**

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

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

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

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

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

### **Recording vehicular rights**

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.



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

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

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

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

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

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

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

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

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

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

### **Confirming an Order**

An Order is not effective until confirmed.

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

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

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

July 2009

**Revised basic Guidance on the law relating to certain Orders to be made under the Highways Act 1980**

- **Diversion Orders under s119**
- **Diversion Orders under s119A**
- **Diversion Orders under s119ZA**
- **Diversion Orders under s119B**
- **Diversion Orders under s119C**
- **Diversion Orders under s119D**
- **Extinguishment Orders under s118**
- **Extinguishment Orders under s118A**
- **Extinguishment Orders under s118ZA**
- **Extinguishment Orders under s118B**
- **Extinguishment Orders under s118C**
- **Creation Order under s26**

Committee members have received a copy of the relevant sections from the Highways Act 1980 (as amended). The following is to remind Members of the criteria for the making of the Orders and to offer some guidance.

DEFRA's Rights of Way Circular (1/09 version 2) sets out DEFRA's policy on public rights of way and its view of the law. It can be found on DEFRA's web site. Orders made under the Highways Act 1980 are considered in Section 5 where the Guidance says that "the statutory provisions for creating, diverting and extinguishing public rights of way in the Highways Act 1980 have been framed to protect both the public's rights and the interests of owners and occupiers. They also protect the interests of bodies such as statutory undertakers."

Often the legal test requires the Committee to be satisfied as to the expediency of something. It is suggested that for something to be expedient it is appropriate and suitable to the circumstances and may incline towards being of an advantage even if not particularly fair. Something which is expedient would seem to facilitate your achieving a desired end.

Whether something is as convenient or not substantially less convenient may need to be considered. It is suggested that convenient refers to being suitable and easy to use.

Under S40 of the Natural Environment and Rural Communities Act 2006, every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Under Section 11 of the Countryside Act 1968 in the exercise of their functions relating to land under any enactment every Minister, government department and public body shall have regard to the desirability of conserving the natural beauty and amenity of the countryside.

## **Diversion Order s119**

### TO MAKE AN ORDER

To be satisfied that it is expedient in the interests of the owner, lessee or Occupier.

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the Order will not alter a point of termination at all if it is a cul de sac route (ending at a beauty spot for example).

OR

If the route terminates at a highway to be satisfied that the termination point is only being moved to another point on the same highway or to another highway connected to it and the point is substantially as convenient to the public.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

### TO CONFIRM THE ORDER IF UNOPPOSED OR SEEK CONFIRMATION FROM THE SECRETARY OF STATE (AT A PUBLIC INQUIRY IF NECESSARY) IF THE ORDER IS OPPOSED

To be satisfied that it is expedient in the interests of the owner, lessee or occupier

OR

To be satisfied that it is expedient in the interests of the public

To be satisfied that the route will not be substantially less convenient to the public.

That it is expedient to confirm it having regard to the effect the diversion would have on public enjoyment of the path or way as a whole.

That it is expedient to confirm it having regard to the effect on land served by the existing right of way (compensation can be taken into account)

That it is expedient to confirm it having regard to the effect on the land over which the "new" section runs and any land held with it (compensation can be taken into account).

Also having regard to any material provision of any Rights of Way Improvement Plan.

To have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

That there is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route unless the statutory undertakers have consented to the confirmation of the Order (consent not to be unreasonably withheld).

### GUIDANCE

The point of termination being as substantially convenient is a matter of judgement subject to the test of reasonableness. Convenience would have its natural and ordinary meaning

and refer to such matters as whether the new point of termination facilitated the access of the highway network and accommodated user's normal use of the network.

That the diverted path is not substantially less convenient would mean convenience again being considered. The wording in the Statute allows the diversion to be slightly less convenient but it must not be substantially less so. The length of the diversion, difficulty of walking it, effect on users who may approach the diversion from different directions are factors to be considered.

The effect on public enjoyment of the whole route has to be considered. It would be possible that a proposed diversion may be as convenient but made the route less enjoyable (perhaps it was less scenic). Alternatively the diversion may give the route greater public enjoyment but be substantially less convenient (being less accessible or longer than the existing path).

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 5<sup>th</sup> February 2014**

**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 5<sup>th</sup> February 2014

Electoral Division affected: Morecambe North
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### Wildlife and Countryside Act 1981

**Claimed Public Footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townsville Lane) Slyne with Hest, Lancaster City**

**Claim No. 804/534**

(Annex 'A' refers)

Contact for further information: Megan Brindle, 01772 535604, County Secretary and Solicitor's Group, [Megan.Brindle@lancashire.gov.uk](mailto:Megan.Brindle@lancashire.gov.uk)  
Jayne Elliott, 07917 836626, Environment Directorate, [Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk);

### Executive Summary

The claim for a public footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townsville Lane) Slyne with Hest, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/534.

### Recommendation

1. That the claim for a public footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townsville Lane) Slyne with Hest, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/534 be accepted.
2. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Right of Way a Public Footpath from Public Bridleway 5 (Rakes Head Lane) (Grid reference SD 4687 6567) to Public Bridleway 6 (Townsville Lane) (SD 4678 6522) for a distance of approximately 480 metres and shown between Points A-B-C-D on the Committee plan.
3. That, not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to Regulatory Committee to decide what stance to take regarding confirmation of the Order.

### Background

A claim has been received for a footpath extending from a point on Public Bridleway 5 Slyne with Hest a to point on Public Bridleway 6 Slyne with Hest, a distance of approximately 480 metres, and shown between points A-B-C-D ("Claimed Route")

on the attached plan, to be added to 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 sets 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 if the evidence shows that:

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

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 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the 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 claimed.

## **Consultations**

Lancaster City Council has been consulted and no response has been received.

Slyne with Hest Parish Council has been consulted and although they appreciate the concerns of the landowner and farmer they support the application.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in ‘Advice – County Secretary and Solicitors Observations’.



## Executive Director for the Environments Observations

### Description of the routes

Points annotated on the attached Committee plan.

Point	Grid Ref	Description
A	SD 4687 6567	Junction with Public Bridleway 5 Slyne with Hest
B	SD 4689 6558	Gateway in field boundary
C	SD 4688 6544	Gateway in field boundary
D	SD 4678 6522	Gateway at junction with Public Bridleway 6 Slyne with Hest

### Description of Route:

The Claimed Route was inspected in September and December 2013.

The Claimed Route commences at point A on the Committee plan which is a point on Public Bridleway 5 Slyne with Hest east of Rakes Head Bridge.

From point A the Claimed Route passes through a field boundary hedge. There is no gate or stile at this point and the hedge is quite thick. In September it was not possible to squeeze through the hedge but in December, when some of the growth had died back it was possible to get through. At point A it is just possible to see that some large stone boulders have been placed in the hedge and that a sign has been erected which states 'NO PUBLIC ACCESS Private Land'. Barbed wire was also present across the hedge at point A.

Beyond point A the Claimed Route continues in a south south easterly direction along the eastern side of a field boundary (hedge). In September this part of the Claimed Route was inaccessible due to crops being present but in December the crop had been removed and it was possible to walk between point A and point B.

The Claimed Route continues along the field boundary for approximately 85 metres from point A until it reaches a 3.5 metre wide metal field gate in the boundary hedge at point B. The gate is padlocked shut and it was only possible to continue along the route by climbing over the gate.

From point B the Claimed Route then continues in a generally southerly direction near the edge of a field that was being grazed by sheep for approximately 150 metres to point C where it passes through a further gateway. Gateposts were situated in the gateway but the 3.5 metre wide metal field gate was lying in the hedge adjacent to the gateway. A yellow bucket lid was attached to the gate and although no longer legible it appeared to have had something written on it.

From point C the Claimed Route continues across an undulating field in a generally south westerly direction to a gateway that provides access onto Public Bridleway 6 Slyne with Hest at point D.

The 3.5 metre metal gate was padlocked shut but had come off its bottom hinge. To the east of the gate, adjacent to the hanging post there appeared to be a small gap

in the hedge that been fenced with wooden posts and barbed wire. A broken sign like the one found at point A was attached to the wooden posts and said, 'NO PUBLIC ACCESS, Private Land'.

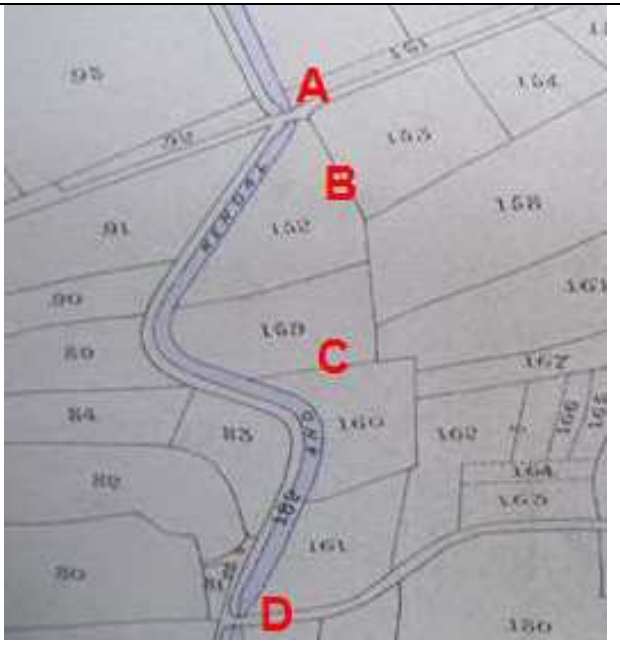
In summary, there was no worn track visible along any part of the Claimed Route that would indicate that it was currently being used. Access along the Claimed Route was prevented by an overgrown and blocked up hedge at point A and by padlocked gates at points B, C and D. Signs indicated that there was no public access at point A and point D.

All compass directions and distances given are approximate.

### **Map and Documentary evidence relating to the claimed addition**

Various maps, plans and other documents were examined with reference to the Claimed Route.

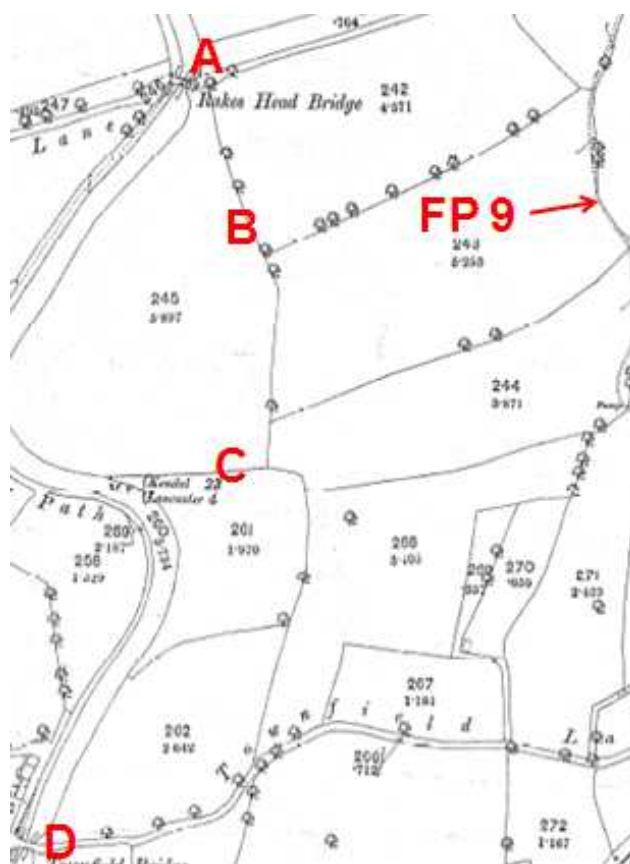
Document Title	Date	Brief description of document & nature of evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The Claimed Route is not shown on Yates' Map.
Investigating Officer's Comments		It is unlikely that a claimed public footpath across open agricultural land would have been shown on the map. The Claimed Route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map.
Observations		The Claimed Route is not shown on Greenwoods' Map.
Investigating Officer's Comments		The Claimed Route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The Claimed Route is not shown on Hennet's Map.
Investigating Officer's Comments		The Claimed Route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.

<b>Tithe Map and Tithe Award or Apportionment</b>	1845	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. The Tithe Map for Slyne with Hest was produced in 1845.
		
Observations		The Claimed Route is not shown on the Tithe Map. It is crossed by field boundaries at points A,B,C and D with two additional field boundaries, the first located partway between point B and point C and the second midway between point C and point D and passes through field numbers 153, 152, 159,160 and 161. There is no reference to the Claimed Route in the Tithe Award.
Investigating Officer's Comments		The Claimed Route probably did not exist in 1845.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		The Claimed Route is not shown on the Ordnance Survey base map used to produce the Finance Act map

		<p>held in the County Records Office and is not shown as being excluded from any of the hereditaments that it crosses.</p> <p>The Claimed Route between point A-B-C crosses part of hereditament 43. A £15 reduction is listed in the schedule for 'Public Rights of Way or user' but the location of the 'public right of way' is not specified and the hereditament includes part of the recorded length of Public Footpath 9 Slyne with Hest.</p> <p>Between point C and midway between point C and point D the Claimed Route crosses hereditament 3 and no reduction is listed in the schedule for a public right of way.</p> <p>The remaining section of the Claimed Route through to point D crosses part of hereditament 47 for which a £20 reduction for 'Public Rights of Way or User' has been listed. The location of the 'right of way' is not specified but the hereditament includes another part of Public Footpath 9 Slyne with Hest.</p>
Investigating Officer's Comments		<p>The Claimed Route was probably not considered to be a public right of way when the valuation was carried out circa 1910.</p> <p>The Claimed Route is not excluded from the hereditaments which would have provided strong evidence that it was being used as a public right of way in 1910. It crosses three hereditaments. No reduction is claimed in respect of the 'middle' hereditament which suggests that that part of the Claimed Route was not considered to be a public right of way.</p> <p>The other two hereditaments crossed by the Claimed Route both cover large areas over which there is an accepted (and legally recorded public right of way). It is more likely that the reduction relates to the existence of Public Footpath 9 not the Claimed Route.</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 for Slyne with Hest.</p>
Investigating Officer's comments		<p>No inference can be drawn.</p>

<p><b>Ordnance Survey Maps</b></p>		<p>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>
<p><b>6 Inch OS Map</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.</p>
<p>Observations</p>		<p>The Claimed Route is not shown.</p> <p>Public Bridleway 5 is clearly shown and named as Rakes Head Lane and Public Bridleway 6 is shown and named as Townfield Lane. The canal is also shown to the west of the Claimed Route.</p> <p>The Claimed Route is crossed by field boundaries at points A,B,C and D with two additional field boundaries, the first located partway between point B and point C and the second midway between point C and point D.</p> <p>The route of Public Footpath 9 to the east of the</p>

		<p>Claimed Route is not shown on the map.</p> <p>The existence of a milestone is marked close to point B which is confirmed as being located on the canal and not the Claimed Route by the First Edition 25 inch map described below.</p>
Investigating Officer's Comments		<p>The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey carried out their survey between 1844 - 1845. If access had been available it would have been necessary to pass through 6 field boundaries.</p>
<b>25 Inch OS Map</b>	1891	<p>The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed 1889.</p>

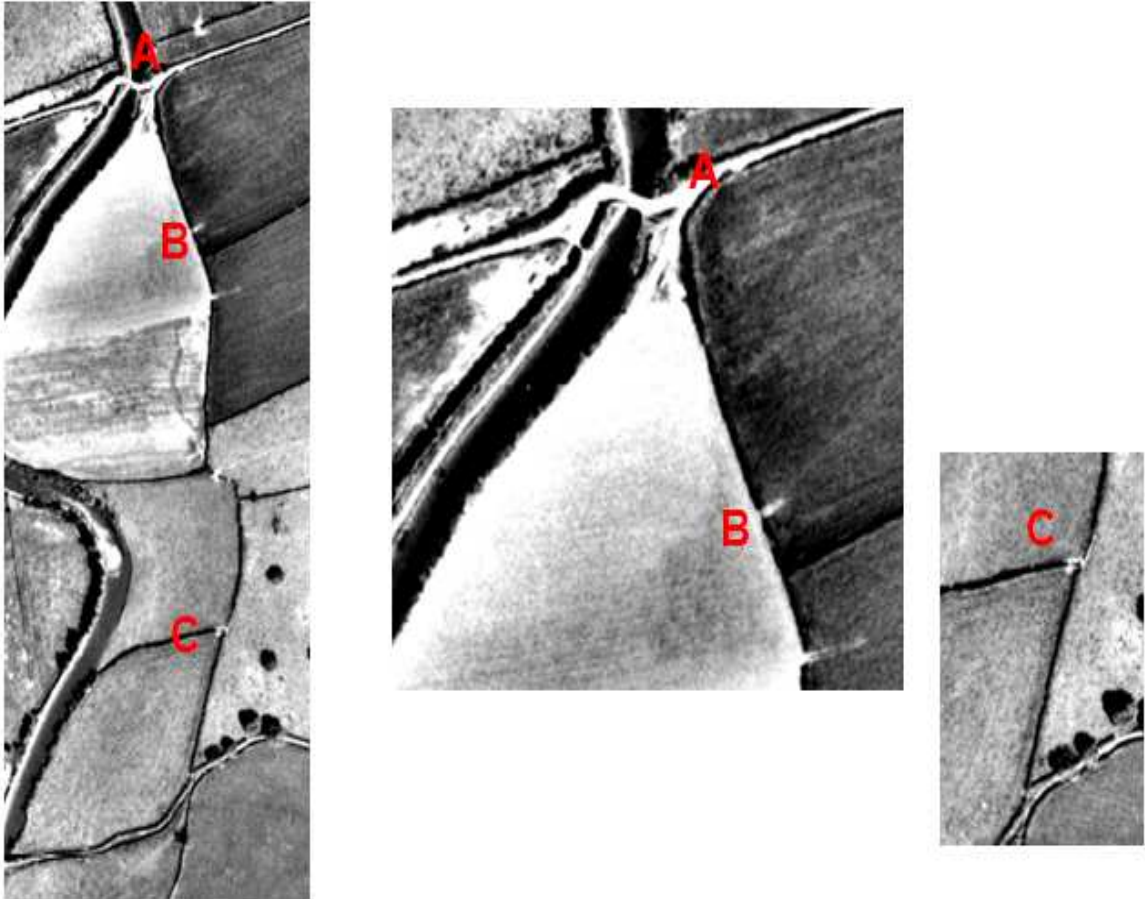



Observations		<p>The Claimed Route is not shown.</p> <p>Public Bridleway 5 is clearly shown and named as Rakes Head Lane and Public Bridleway 6 is shown and named as Townfield Lane. The canal is also shown to the west of the Claimed Route and a more precise location of the milestone marked on the 1848 6 inch map is shown to be on the canal bank.</p> <p>The Claimed Route is crossed by field boundaries at points A,B,C and D with the additional field boundary</p>
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		<p>shown on the 1848 six inch map partway between point B and point C no longer shown. However, the field boundary midway between point C and point D still existed.</p> <p>The route of Public Footpath 9 to the east of the Claimed Route is shown on the map as a double pecked line and marked as a footpath 'F.P.'.</p>
Investigating Officer's Comments		<p>The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey carried out their survey in 1889. If access had been available it would have been necessary to pass through 5 field boundaries and any use of the route on the ground would have been insufficient to have created a worn track on the ground.</p> <p>Public Footpath 9 appears to have existed as a physical track on the ground and was therefore shown by the surveyor. Its appearance led the surveyor to label it as a footpath although such labelling was not conclusive of public rights and referred more to the physical characteristics to the route found to exist on the ground.</p>
<b>25 inch OS Map</b>	1913	Further edition of the 25 inch map, surveyed in 1889 and revised in 1910.
Observations		<p>The Claimed Route is not shown.</p> <p>The land over which the route crosses appears unaltered from the 25 inch map published in 1891.</p>
Investigating Officer's Comments		The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey revised the map in 1910.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1889 and revised 1930-31).
Observations		<p>The Claimed Route is not shown.</p> <p>The land over which the Claimed Route crosses appears unaltered from the 25 inch maps published in 1891 and 1913.</p>
Investigating Officer's Comments		The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey revised the map in 1930-31.
25 Inch OS Map	1938	Further edition of the 25 inch map surveyed in 1889, revised in 1938.

Observations		The Claimed Route is not shown.  The land over which the Claimed Route crosses appears unaltered from the 25 inch maps published in 189, 1913 and 1932.
Investigating Officer's Comments		The Claimed Route did not exist as a worn track on the ground in 1938.
<b>6 Inch OS Map</b>	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile. It is believed to have been based on the same survey as the 1931 25 inch map and the date of revision is given as 1930-45.
Observations		The Claimed Route is not shown.  Although at a smaller scale there are no alterations to the map from earlier editions of the 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track between 1930-45.
<b>6 inch OS map</b>	1963	Ordnance Survey sheet SD 46NE was reprinted with the addition of new major roads in 1963. This map is probably based on the same survey as the 1931 25-inch map and the date of revision is given as 1930-45.
Observations		The Claimed Route is not shown.  Although at a smaller scale there are no alterations to the map from earlier editions of the 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track between 1930-45.
<b>25 Inch OS Map</b>	1968	Further edition of 25 inch map revised 1968.
Observations		The Claimed Route is not shown.  The land over which the Claimed Route crosses appears unaltered from earlier editions of the map. Field boundaries are still present at points A,B,C and D.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track on the ground in 1968.
<b>6 inch OS Map</b>	1972	Further edition of the 6 inch map revised 1967-1970.
Observations		The Claimed Route is not shown.  The land over which the Claimed Route crosses appears unaltered from earlier editions of the 6 inch and 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track in 1967-1970, crossed by field boundaries at points A,B,C and D.

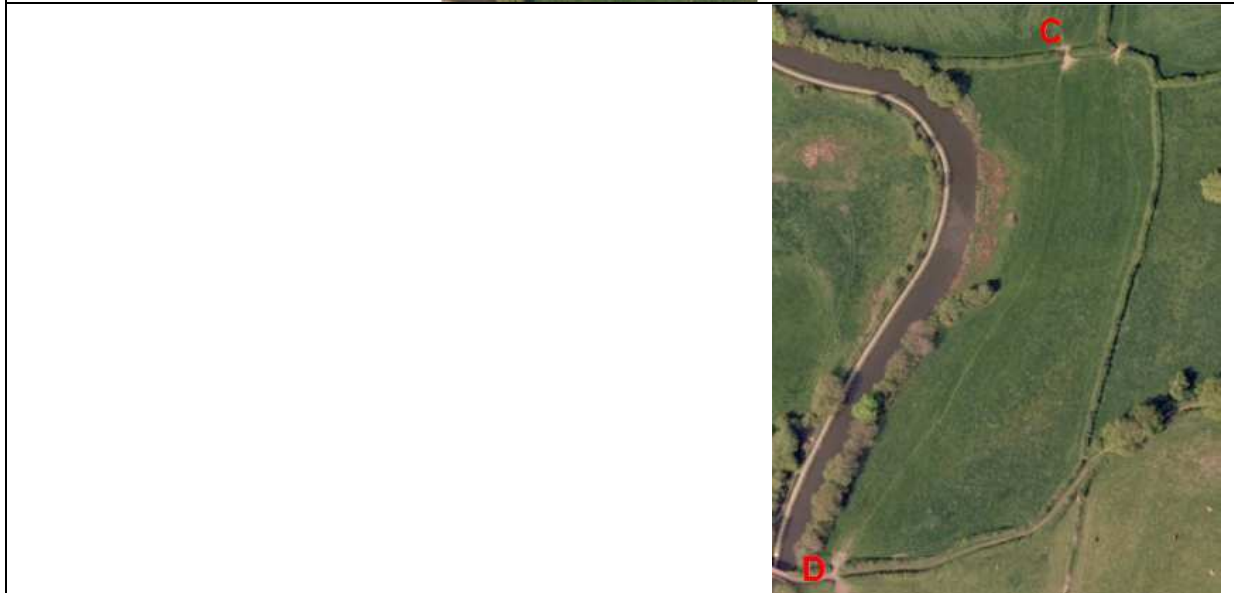


<b>Aerial Photographs</b>		Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
<b>Observations</b>		The Claimed Route is not shown. Access points are clearly visible just east of point A, at point B and point C.
<b>Investigating Officer's Comments</b>		The Claimed Route did not exist as a worn track on the ground in 1960. Access points (probably gated) can be seen to have existed close to point A, point B and point C which may have allowed access along the route.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view in the County Records Office


		
Observations		<p>The Claimed Route is not visible as a worn track on the ground except possibly between B and C although this is consistent with agricultural access between the gates. Access points at point B and point C are visible but it is not possible to see whether access existed at point A or the gateway at point D.</p>
Investigating Officer's Comments		<p>The Claimed Route did not exist as a worn track on the ground in 1988. Access points can be seen to have existed at point B and point C which may have allowed access along the route. The quality and scale of the photograph means that it is not possible to see whether access existed at point A or point D.</p>
<b>Aerial Photograph</b>	2000	Colour aerial photographs viewed on GIS



Observations		The Claimed Route is not visible as a worn track on the ground. It is not possible to see whether access was available through the hedge at point A. Gateways are visible at point B, C and D
Investigating Officer's Comments		The Claimed Route did not exist as a worn track on the ground in 2000. Gateways can be seen at point B,C and D which may have allowed access along the Claimed Route but it is not possible to confirm access at point A.
<b>Aerial Photograph</b>	2006	Colour aerial photograph viewed on GIS



Observations		Access through the hedge at point A is clearly visible. A faint worn track can be seen between point A and point B and the gateway at point B is clearly visible. A worn route can be seen between point B and point C. The gateway at point C is also clearly visible and a worn track can be seen along the Claimed Route to point D.
Investigating Officer's Comments		The Claimed Route existed as a worn track in 2006. Access was available through the boundary hedges at point A, B, C and D.
<b>Aerial Photograph</b>	2010	Colour aerial photograph taken in 2010 and viewed on GIS.

		
Observations		It is not possible to see from the photograph whether access was still available through the hedge at point A. Gateways are visible at points B, C and D and a worn track can be seen across the field between point C and point D.
Investigating Officer's Comments		The worn line on the ground between D and C but not beyond is consistent with agricultural access to the northerly field and therefore provides little or no evidence for the Claimed Route.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein

		was reproduced by the County Council on maps covering the whole of a rural district council area.
Observations		The parish survey map and cards were drawn up by Slyne with Hest parish council. The Claimed Route is not shown on the parish survey map or documented in the parish survey cards.
<b>Draft Map</b>		<p>The parish survey map and cards for Slyne with Hest were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The Claimed Route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
<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 Claimed Route is not shown on the Provisional Map and there were no objections to the omission of the path.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Claimed Route is not shown on the first Definitive Map.
Investigating Officer's comments		The Claimed Route was not considered to be a public right of way in the 1950s.
<b>Revised Definitive Map</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders,

<p><b>of Public Rights of Way (First Review)</b></p>		<p>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. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
<p>Observations</p>		<p>The Claimed Route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).</p>
<p>Investigating Officer's Comments</p>		<p>The Claimed Route was not considered to have changed status by the 1960s.</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
<p>Observations</p>		<p>There is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which that part of the Claimed Route runs between points B-C-D. The deposit was submitted by JR Hoggarth and J Hoggarth of Belmont Farm, Slyne, Lancaster on 26 July 2012. Within the details of the deposit there is no</p>

		<p>acknowledgement or acceptance that the Claimed Route is a public right of way. There have been no earlier deposits relating to this land.</p> <p>There are no statutory deposits covering the land over which the Claimed Route passes between points A-B.</p>
Investigating Officer's Comments		<p>There is a clear indication from the owners of the land over which the Claimed Route runs between points B-C-D that they do not acknowledge the existence or intend to dedicate a public right of way from 22 June 2012 onwards.</p>

The land crossed by the Claimed Route is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000. It is not recorded as a Site of Special Scientific interest or a biological heritage site.

To summarise, there is no evidence of the physical existence of a worn track on any of the Ordnance Survey maps produced from 1848 to the current day. For a rural footpath crossing agricultural land this is not necessarily uncommon and the aerial photographs inspected appear to suggest access would have been available between points A, B, C and D in the 1940's, 1960's, 1988, 2000 and 2010. The 1960's aerial that appears to show access into the field close to point A, but the 1988, 2000 and 2010 aerial photographs do not show what access may have existed through the hedge at point A.

The 2006 aerial photograph gives the strongest indication that the whole of the Claimed Route was being used at that time. The access point at point A is clearly shown and a worn track is visible along the whole length from A-B-C-D.

The 2010 aerial photograph doesn't show access at point A but the gateways are visible at points B, C and D and between points C and D as a worn track is visible on the ground.

No other documentary evidence examined supports the view that the Claimed Route was considered to be a public footpath. The Section 31(6) deposit submitted to the County Council only protects the landowner from the public claiming the footpath based on user evidence from 22 June 2012 onwards.

**Description of the new path for inclusion in the Definitive Statement if Order is to be made (and subsequently confirmed)**

The following should be added to the Definitive Statement for Slyne with Hest, Lancaster District;

**Proposed Schedule to Order**

**SCHEDULE**

**PART 1**



## MODIFICATION OF THE DEFINITIVE MAP

### DESCRIPTION OF WAY TO BE ADDED

Public Footpath from a junction with Public Bridleway 5 (Rakes Head Lane) (point A) running in a generally south south easterly direction along field edge for approximately 85 metres to pass through a gate in field boundary (point B). Continuing in a generally southerly direction near field edge for approximately 150 metres to pass through a second field gate (point C) before continuing in a more south westerly direction across field for approximately 245 metres to pass through a gate to junction with Public Bridleway 6 (Townfield Lane) (point D).

## PART II

### MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Slyne with Hest the following:

" Public Footpath from a junction with Public Bridleway 5 (Rakes Head Lane) at SD 4687 6567 through field boundary and running in a generally south south easterly direction along east side of boundary hedge to pass through a field gate at SD 4689 6558 and continuing in a generally southerly direction on west side of boundary hedge to pass through field gate at SD 4688 6544 then in a more south westerly direction across a field to gate at SD 4678 6522 to meet Public Bridleway 6 (Townfield Lane)."

Width:

SD 4687 6567 to SD 4678 6522 - 1.5 metres

Limitations and Conditions:

1 metre wide gap in hedge at SD4687 6567

3.5 metre wide field gate at SD 4689 6558

3.5 metre wide field gate at SD 4688 6544

3.5 metre wide field at SD 4678 6522

Length: 480 metres

All lengths and compass directions given are approximate.

## **County Secretary and Solicitor's Observations**

### **Information from the Applicant**

In support of the Claimed Route, the Applicant has provided 29 user forms. Three user evidence forms have been discounted (one does not refer to the Claimed Route, one confirms he 'rarely' used the route providing no dates and that his preferred route was not the Claimed Route and another confirms he asked for permission). There was 1 user in 1975, 2 in 1980, 3 in 1981, 4 in 1987, 5 in 1989, 8 in 1991, 9 in 1992, 11 in 1993, 13 in 1994, 15 in 1996, 20 in 2002, 21 in 2006, 23 in 2008, 26 in 2009 and 23 in 2011.

All 26 users have used the way on foot. The main reasons for using the route are for leisure / pleasure, walking, walking with children or walking the dogs and for exercise, one recording use for the purpose of photography. Recorded use varies from occasionally, daily, twice a day, weekly, 2/3 and 4 times per week, monthly, and then with varies yearly from 20 to 500 times.

22 users state the way has always run over the same line, 1 user states it hasn't and 2 do not give an answer.

The Applicant confirms that there was open access between two posts in the hedge at point A, a gate that was usually open at point B, a gate that was usually open at point C and a gate that was usually open at point D also with an opening on the right between two posts for people to access. In the main, the supporting user evidence forms support this position and attach the same plan marked A, B, C and D. There is reference to a gate at point C being closed/wired when sheep/cattle were in the field occasionally and reference being made to it being closed in 2010 that did not prevent users walking the Claimed Route. One user saw a sign so turned back and another user stated they 'chose to go back as the farmer was busy doing stuff in the fields'.

The Applicant refers to notices being erected April 2011, a photo of a notice at point D has been provided reading 'NO PUBLIC ACCESS Private Land' and the same sign is shown in a second photo at point A. 9 further users acknowledge these notices being erected 2011. One user refers to notices alerting to cattle or sheep in the field and another user refers to "during lambing signs would be put on the gates asking people not to enter".

Users claim they have never been stopped or turned back, with 3 users saying yes they have heard others being stopped or turned back, one stating by "several other dog walkers". 25 users confirm that they have never been told by any owner or tenant of the land crossed by the way, or by anyone in their employment that the way was not a public right of way on foot.

### **Information from the Owner**

#### **Owner of section B-C-D – Mr Richard Hoggarth**

An objection with photographs of private / no public access signs and direction signs, photographs of locked field gates, a photo of the Ordnance Survey map dated 1890 and a letter from Farmgate Vets has been received from Richard Hoggarth. Mr Hoggarth confirms that land A to B is owned by the Fish Estate and the Hoggarth family hold the tenancy for this land which has been farmed by the Hoggarth Family for over sixty years. Land B-C-D is owned by the Hoggarth family.

Mr Hoggarth confirms whilst farming the land for more than 60 years he states that there has never been any official public footpaths apart from Public Footpath 9. Mr Hoggarth submits an Ordnance Survey map dated 1890 which does not show the Claimed Route. Mr Hoggarth states his land is private property, there is no public access and he uses his land to graze livestock and also to grow crops and he is concerned that such trespassing will cause damage to his business.

Mr Hoggarth confirms that no permission has been given for any member of the public to use any route across the land other than the official Public Footpath 9.

Mr Hoggarth confirms they are extremely busy farming approx 350 acres of land and therefore they do not have the time to monitor every field for dog walkers however, since receiving the Applicant, Mrs Hargest's letter 23 July 2012, they have been paying greater attention and at times in areas other than the official footpath route have informed them they are on private land and that there is no public access. Mr Hoggarth then confirms over recent years he has seen people walking with dogs and has pointed out to them that the area is not an official footpath and that dogs must be kept on their leads at all times.

Mr Hoggarth explains that if the Applicant's assertion that dog walkers regularly walk the Claimed Route is correct, he has great concern of the potential risk of further dog muck being left on the land. Mr Hoggarth submits a letter from Veterinarian George W. Robin in respect of risks associated with contamination of grazing and forage pastures with dog faeces. Mr Hoggarth is concerned with the serious link between dog muck and abortion rates in cattle and confirms the cost of a single abortion is in the region of £600 and can cause abortion storms that could cause enormous damage to a business.

Mr Hoggarth, acknowledges the official footpaths in the area and struggles to understand the need for further footpaths across private property which is essential and valuable to his family's business.

Mr Hoggarth confirms he has registered the land between Sunningdale Crescent and Raikes Head Lane with the County Council under section 31(6) Highways Act 1980 in respect of non-dedication of footpaths on 22 June 2012.

#### Owner of section A-B (Fish Estate)

An objection has been received from Mr J E Fish on behalf of Mrs C L Fish and her tenant Mr Richard Hoggarth, who is also landowner of B-C-D and together vehemently object to the proposal on seven grounds.

The first is in respect of s31(6) deposit outlined above and it should be noted that it does not relate to the Claimed Route and in any event, if it did it would only have effect from the date it was lodged which was on 22 June 2012 onwards.

The second is that the Claimed Route crosses two of Mr Hoggarth's fields that are utilised for the conservation of grass for Winter forage confirming at his recent inspection 2013 there are no signs of trampling of grass crop.

The third is in respect of dog faeces, outlined above.

The fourth is that at point D (which joins Public Bridleway 6) there is a gateway which is locked with both a bolt provided by the standard gate and a chain and padlock. Photograph 6 taken in September 2013 is referred to as being the sign affixed to the fence stating 'private property and no public access' however, photo 6 does not refer

to this sign and instead reads "Please keep to the Public Footpath Dogs to be kept on a lead at all times".

The fifth is in respect of photographs taken in September 2013 of the northerly end of the Claimed Route at point A leading from Public Bridleway 5 which crosses through a substantial hawthorn and mixed broad leaf hedgerow and confirms that this is impassable by foot and photographs confirm that the access has not been used throughout the summer months.

The sixth ground refers to the cropping of the northerly element of the Claimed Route is that of maize, cropped within 1 metre of the centre of the hedgerow and referring to a photo and submitting it is clearly evidence that this has not been disturbed by walker or dog.

The seventh point advocates that public footpath 9 is clearly used whereas the Claimed Route shows little signs of wear. Mr J E Fish submits that approximately 5-6 years ago there had been some issue with walkers veering from Rakes Head Lane and Mr Hoggarth took the decision to securely lock and padlock all gates and erect signs and he would politely ask walkers to cease this and revert only to the chosen footpath.

## **Assessment of the Evidence**

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

Reference to "Owner" includes Mr J E Fish on behalf of Mrs C L Fish and the Fish Estate and Mr Richard Hoggarth and family in their capacity as landowner and tenant.

#### **In Support of the Claim**

- User Evidence
- Aerial Photograph
- Weak test to be satisfied of "reasonably alleged to subsist"

#### **Against Accepting the Claim**

- Owners actions
- No corroborating map evidence
- Submission that use not "as of right"

#### **Conclusion**

The claim is that the route A – B – C – D is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

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

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. Whilst the Owner refers to securely locking with padlock all gates and erecting signs it is not clear when this action took place, Owners photos dated 2013 and against 23 user evidence forms recording use to at least 2011, on balance it is considered the Claimed Route was called into question in 2011 by the locking of gates etc and erecting of notices and the period of use from which dedication can be deemed would be 1991 to 2011.

Twenty six user evidence forms have been considered. The 8 users in 1991, allege to have used the route for 20 years plus and all 8 users confirm that they saw others using the way including "*I met friends on the route regularly*", "*each time I used it*", "*all the years I have been walking the route*", "*ever since I started using the route*". Users refer to the Claimed Route being a well worn trodden path until maize was planted in the northern section of the field in 2011. The Ordnance Survey maps do not support this, although it has been noted for a rural footpath crossing agricultural land this is not necessarily uncommon. The 2006 aerial photograph clearly shows a worn track along the Claimed Route A to D.

The Owner submits that in his opinion the Claimed Route has rarely been used, if ever referring to photos dated September 2013 and also makes the point that dog faeces, whilst a current problem on Public Footpath 9, would be a future concern if the Claimed Route is confirmed. It is submitted, limited weight can be placed on these photos being two years after the date the route was called into question. Whilst the Owner's submission regarding the risks associated with contamination of grazing and forage pastures with dog faeces is appreciated, it is not part of the criteria for deemed dedication.

Taking all the evidence into account, on balance, use can be said to have been by a sufficient number of people to show that it was use by 'the public'.

The Applicant's evidence submits photographs of signs reading 'NO PUBLIC ACCESS Private Land' at points A and D in April 2011, with 9 further users corroborating this and other users either stating there were no notices or not stating either way. Lambing notices have been reported to have been erected but their intention does not appear to be that of interrupting use and may actually indicate the Owner's knowledge that the Claimed Route was in use by the public.

The Owner's evidence of locking gates with padlocks, erecting notices and politely asking walkers to cease use and revert only to the chosen footpath suggests contentious use and use by force and therefore use not "as of right". However, the Owner's statement appears inconsistent with Mr Hoggarth confirming in 2012 he informed users they were on private land and that there was no public access but in another objection letter confirms this action occurred 2007/2008. Also, reference to photograph 6 is ambiguous as does not refer to the sign the Owner is referring to and the photo being said to have been taken in September 2013 does not provide evidence they were in situ during the relevant 20 year period.

It is suggested, looking at how “as of right” use can be considered, and how actions by landowners have to be effective, that the Committee may on balance find that the elements of Section 31 for use 1991 - 2011 of A-D could on balance be satisfied such as to enable the test for making an Order to be satisfied – that is the Claimed Route can reasonably be alleged to subsist. Without further investigation into matters of the use it is suggested that the higher test of confirming the Order could not yet be satisfied and it is therefore recommended that a further report be presented in this matter at a later date.

The Committee is advised to also consider whether there is sufficient use or other such circumstances from which dedication as a public footpath can be inferred at Common Law. With regards to inference at Common Law it is advised that there is no requirement for a calling into question but there is a need to prove on balance that the owner intended to dedicate. Proving that the Owner actually intended dedicating the Claimed Route is problematic. The Owner clearly advocates that they never had any intention to dedicate, that they had taken some steps and not acquiesced generally in user and clearly in now objecting to the application it would be difficult to infer that the intention of a landowner had so altered.

Taking all the evidence into account it may be considered that there is on balance, sufficient evidence to reasonably allege that a dedication could be deemed under S31 and that an Order be made and a consideration of the higher test as to the stance to take on confirming any such order be deferred and the Committee seek a further report at a later date. The Committee may therefore consider that the claim be accepted in respect A-B-C-D but no decision made yet on whether to promote said order to confirmation.

### **Risk Management**

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

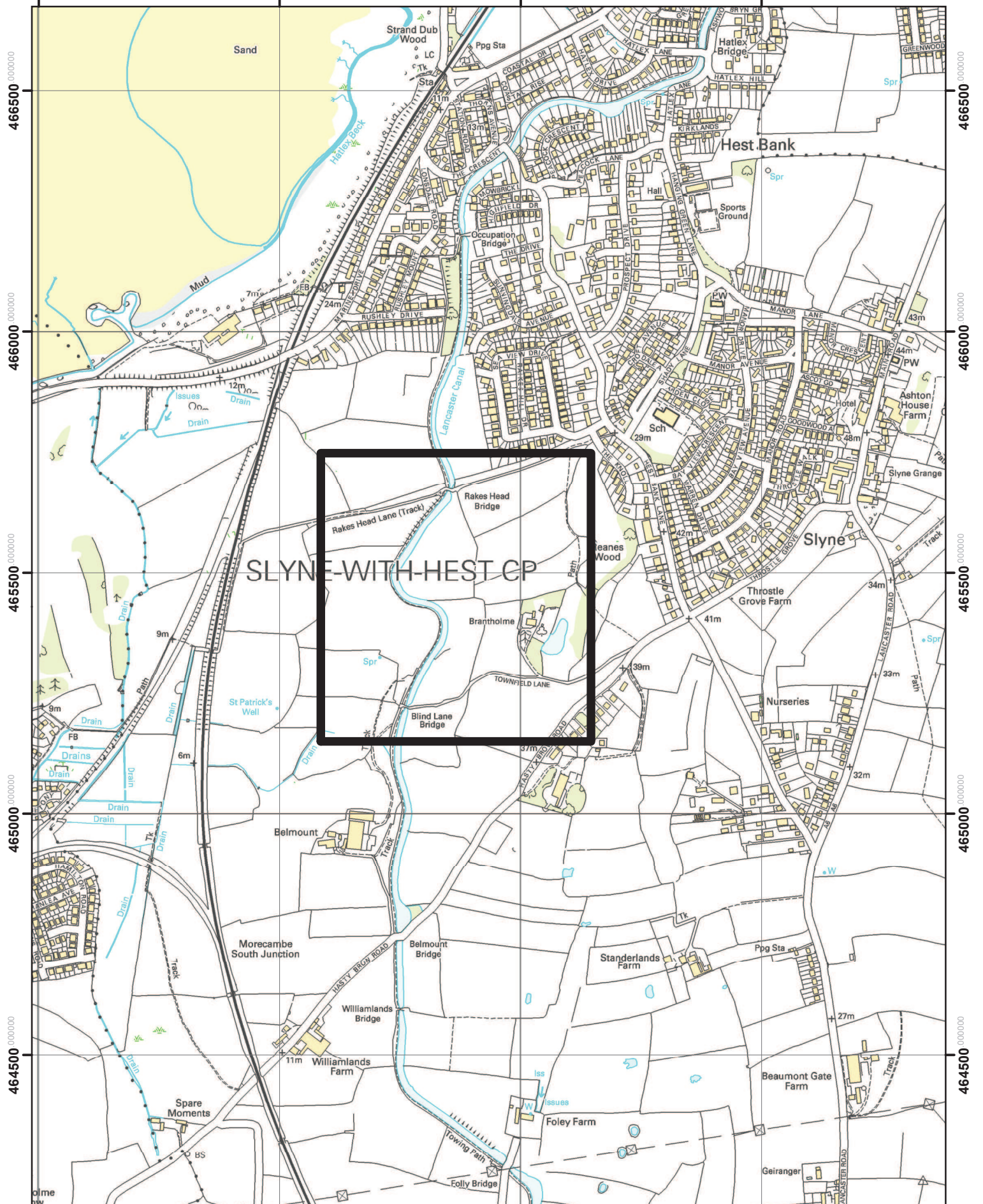
### **Alternative options to be considered - N/A**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/534		Megan Brindle, 07112 535604, County Secretary and Solicitor's Group
Reason for inclusion in Part II, if appropriate N/A		

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**Lancashire**  
County Council

Jo Turton  
Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Claimed Public Footpath from Bridleway 5 (Rakes Head Lane) to Bridleway 6 (Townfield Lane),**  
**Slyne with Hest, Lancaster City - Claim 804/534 LOCATION PLAN**

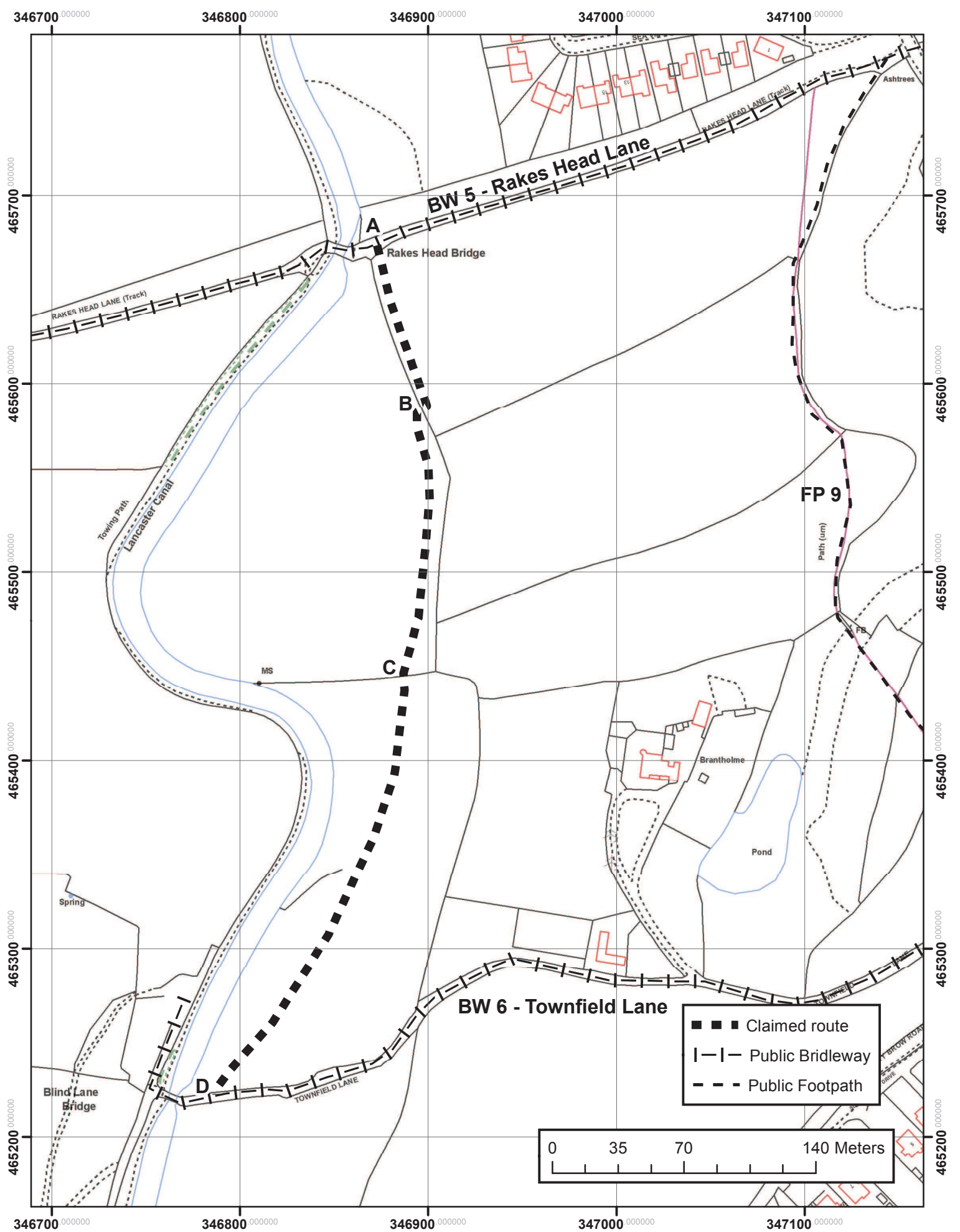
1:10,000

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

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## Regulatory Committee

Meeting to be held on 5<sup>th</sup> February 2014

Electoral Division affected: Clitheroe
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### Wildlife and Countryside Act 1981

#### Claimed Public Footpath from Chatburn Road in two Branches to Clitheroe

#### Footpath 5, Ribble Valley Borough

Claim No. 804-517

(Annex 'A' refers)

Contact for further information: Miss M Brindle, 01772 533322, County Secretary & Solicitors Group [Megan.brindle@lancashire.gov.uk](mailto:Megan.brindle@lancashire.gov.uk)

Miss H Baron, 01772 533478, Environment Directorate

[Hannah.baron@lancashire.gov.uk](mailto:Hannah.baron@lancashire.gov.uk)

### Executive Summary

The application for a public footpath from Chatburn Road in two branches to Clitheroe Footpath 5 to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-517.

### Recommendation

- i. That the proposal for a public footpath from Chatburn Road in two branches to Clitheroe Footpath 5 to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-517, be accepted.
- ii. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Chatburn Road in two branches for a total distance of approximately 1050 metres to the junction with Clitheroe Footpath 5, shown between points A-B-C-D-E-F and G-H-I-C on the Committee plan.
- iii. That, not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to Regulatory Committee to decide what stance to take regarding confirmation of the Order

### Background

Following an application duly made under Schedule 14 to the Wildlife and Countryside Act 1981 (the 1981 Act) research has indicated that consideration should be given under section 53(3) of the Act to the making of an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from two points on Chatburn Road to a junction with

Clitheroe Footpath 5, a distance of approximately 1050 metres, and shown between points A-B-C-D-E-F and G-H-I-C on the attached plan.

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 1981 Act sets 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 if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "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"

When considering evidence, if it is shown that a highway once 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 1981 Act (as explained in Planning Inspectorate's Advice Note No. 7) 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 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 on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the 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.

## **Consultations**

### Ribble Valley Borough Council:

Ribble Valley Borough Council has been consulted as both the Borough Council for the area and a land owner of part of the claimed route. They have provided confirmation of their land ownership in the area but have not made comment in relation to the claimed route.

### Clitheroe Town Council:

Clitheroe Town Council has been consulted and has not responded, it is thus assumed they have no comments to make.

Claimant/Landowners/Supporters/Objectors:

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitor's Observations'.

## Advice

Executive Director for Environment's Observations

## Description of the Route

Points annotated on the attached plan

Point	Grid Ref (SD)	Description
A	7519 4287	Field gate on south east side of Chatburn Road
B	7529 4297	Field boundary between first and second field, gap between a large tree and the fencing of the residential properties to the south
C	7536 4267	South east edge of grass at the western edge of Salthill Quarry Local Nature Reserve
D	7525 4257	Gap in fence where Quarry trail becomes stone path
E	7520 4253	Junction of paths in the Local Nature Reserve
F	7511 4243	Junction of trail with Clitheroe Footpath 5.
G	7529 4297	Field gate on south east side of Chatburn Road
H	7544 4283	Open gap in field boundary
I	7545 4281	Open gap in field boundary

A site inspection was carried out on 9<sup>th</sup> October 2013.

The claimed route commences at two points on Chatburn Road. Both points are on entrances to fields which are currently blocked by padlocked field gates. Walkers have negotiated a way around the gates via a broken down wall and a gap around the gates. There is trodden evidence on the ground around each gate which shows that the route is used at both points. The two branches then extend in a south easterly direction from point A to point B then C and from point G to point H then I and C.

Between points A and B the route runs along a mown grass track parallel on the south side to garden fences approximately 6 metres away from the claimed route, and on the north side bounded by rough grass. The claimed route at this point is 2 metres wide. There is no indication of a trodden route on this section, but the route is indicated by a mown strip. After approximately 210 metres the claimed route heads south east through a gap (point B) between the fence line of one of the residential properties and a large tree and overgrowth. The claimed route then continues across

the field on a grass surface without any worn path until it meets a private property sign and broken down fence (Point C). Between points G and H the route crosses an unmown field with rough grass. There is evidence of a slight trodden route, however the tracks may not necessarily have been made by walkers. The route then crosses the field boundary at point H and continues towards the second field boundary at point I. The route then continues along an open, mown field to where it meets point C at the west of the Local Nature Reserve.

From point C the route then skirts around the outside of the school field following the boundary on a grass surface without any worn path to the end of the field (point D). At this point the surface of the route changes to a stoned path as it meets the Quarry Trail. The route continues through a gap in the fence separating the school field from the quarry site and nature reserve. The route continues along this trail until it meets with another nature reserve trail, and then continues until it meets with Clitheroe Footpath 5.

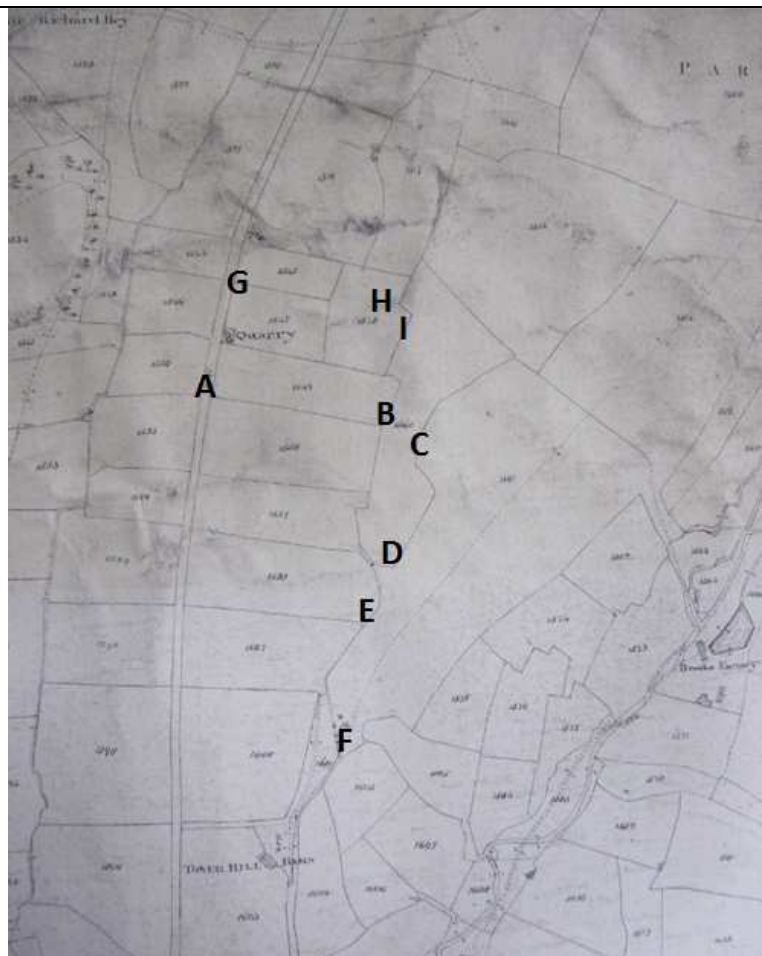
There are various signs located along the claimed routes suggesting that the land is private property and that anyone crossing the land is trespassing. There are newly erected field gates located across the claimed route but there is also evidence on site of old gate posts.

### Map and Documentary Evidence

Various maps, plans and other documents were examined with reference to the claimed route.

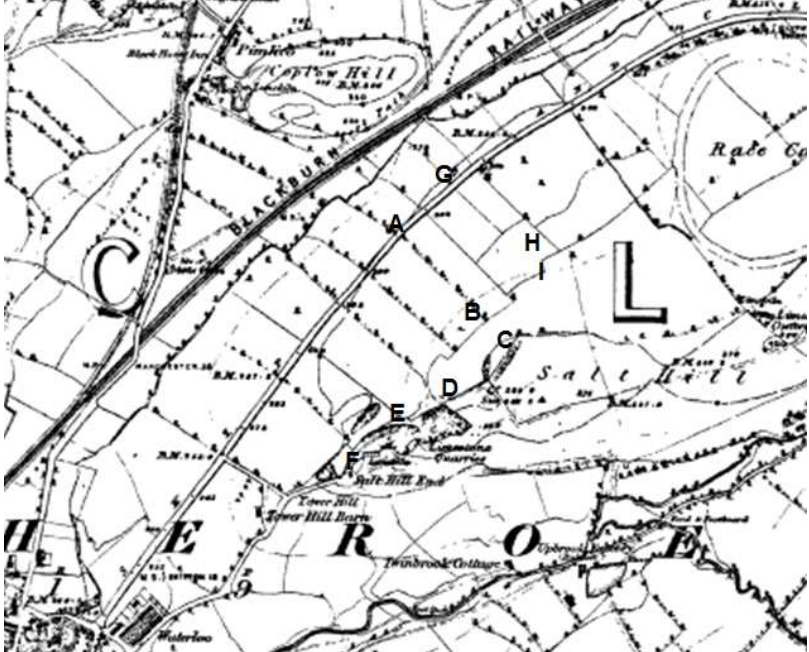
DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.

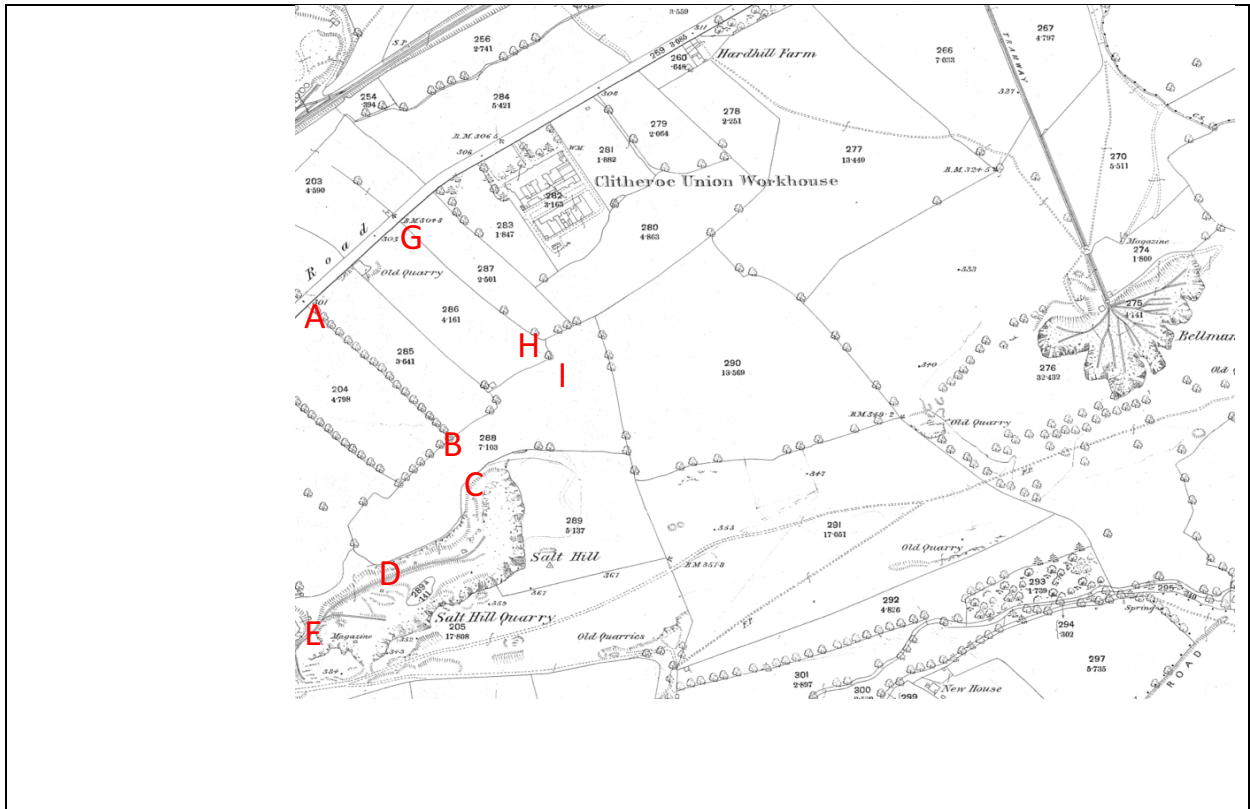
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map surveyed by George Hennet in 1828 – 1829 and published by Henry Teesdale in 1830. The map was on sale to the public and hence to be of use to their customers it is considered that that the routes would be available for the public to use. However, the map was privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The Route is not shown.
Investigating Officer's Comments		The claimed route did not exist as a major route in 1830. It may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Tithe Map and Tithe Award or Apportionment</b>	1843	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		The tithe map for Clitheroe shows a lane or track leading from the southern end of a field from Tower Hill Barn. The track corresponds to the southern section of the claimed public footpath. The track is numbered 1601/1602 on the tithe map but this number is not listed in the written schedule that accompanies the map.
Investigating Officer's Comments		Part of the claimed route appears to be part of a longer route, some of which is now recorded on the Definitive Map as a public footpath. In 1843 the lane appears not to be shown as a through route at its western end so the route may have been only an access track to the adjacent fields.
<b>Finance Act 1910 Map</b>		<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation and not recording public rights of way. However the maps can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The copy of the Finance Act map and books held in the Lancashire Archives only records the ownership of a few plots of land on Chatburn Road.
Investigating Officer's Comments		No public rights of way were recorded in the Finance Act, but no inference can be drawn.



<b>Ordnance Survey Maps</b>		<p>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>
6 inch OS map	1847	The earliest OS map examined was published around 1847.
		
Observations		The claimed route is not shown on the 1847 map.
Investigating Officer's Comments		The claimed footpath did not exist as a major route in 1847. Access to the quarry was via Tower Hill and Salt Hill Road.
25 inch OS map	1886	First Edition of the 25 inch map was revised in 1884 and published in 1886

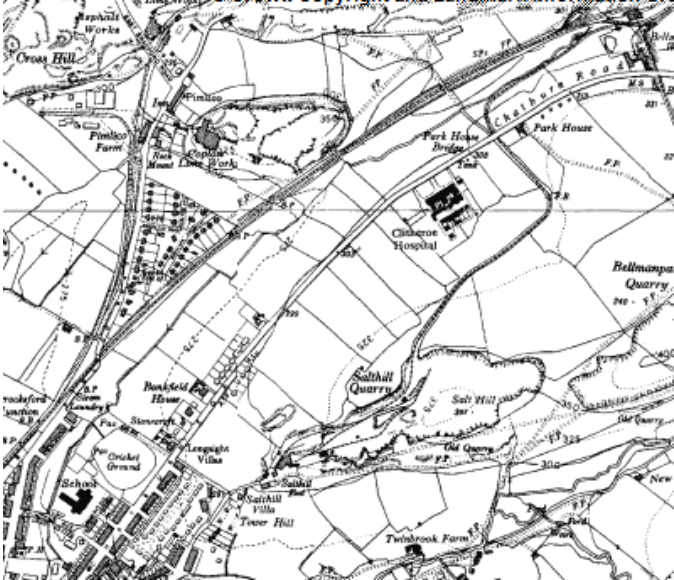


Observations		The physical boundaries of the fields do not allow access along the claimed route unless a structure of some kind was in place. However a route is not shown as in existence on the 1886 map.
Investigating Officer's Comments		The claimed route probably did not exist in 1886.
25 Inch OS map	1912	Further edition of 25 inch map revised in 1910 and published in 1912.



Observations		The claimed route is not shown on this map. The mineral railway has since been built for access to the quarry.
Investigating Officer's Comments		The claimed route did not exist in 1912. As this was a working quarry, workers may have used the fields and the claimed route as access to and from the quarry but the map provides no evidence for this and hence no inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map revised in 1930 and published in 1932.



Observations		The claimed route is not shown on the 1932 map.
Investigating Officer's Comments		The claimed route probably did not exist in the early 1930s.
6 Inch OS map	1955	This map was used as the base map for the Definitive Map, First Review, and was published in 1955 (Revised 1951).
Observations		<p>The claimed route is shown in the same way as the 1931 25 inch map.</p> <p>On the 1955 map the row of houses and Clitheroe Royal Grammar School had not been built.</p> 

Investigating Officer's Comments		The claimed route probably did not exist in 1955.
25 Inch OS Map	1964	Further edition of the 25 inch map published in 1964
Observations		Since 1955 the row of houses next to Clitheroe Royal Grammar School has since been built. The claimed route is still not shown on the Ordnance Survey Maps as existing at this time.
Investigating Officer's Comments		The claimed route probably did not exist in 1955
<b>Aerial Photographs</b>		Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.
Aerial Photograph	C1940	Black and white aerial photograph taken around 1940.



Observations		The claimed route is not visible on the 1940 aerial photograph.
Investigating Officer's Comments		The claimed route does not appear to have existed in the 1940s.
Aerial Photograph	C1960	<p>Black and white aerial photograph taken in the early 1960s.</p>
Observations		The claimed route is not visible on the 1960 aerial photograph.
Investigating Officer's Comments		The claimed route does not appear to have existed in the 1960s.
Aerial Photograph	2009	Aerial photograph taken in March 2009.

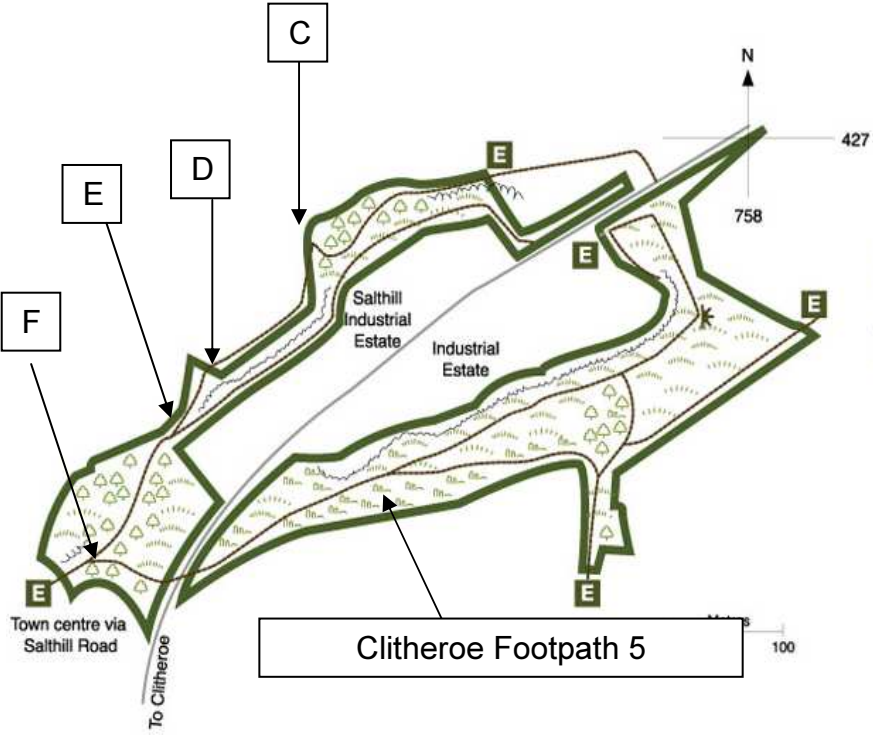


Observations		The claimed route is difficult to see on the aerial photograph from 2009 as the majority of the route is overlooked by large trees. There is no trodden route visible.
Investigating Officer's Comments		No inference can be drawn.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Survey map	1976	The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County Boroughs were not surveyed until later. In this instance the initial survey for this part of Clitheroe County Borough was carried out in 1976 by Lancashire County Council officers with assistance from the Ramblers Association.
Draft Map	1979	The Draft Map was given the 'relevant date' of 1 February 1979 and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 24 <sup>th</sup> April 1979 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.



Observations		The claimed route is not shown on the Draft Map. However, other public footpaths in the vicinity have been recorded, in particular footpath no. 5 which joins onto the claimed route.
Objections to the Draft Map	1979	There were no objections to the omission of the claimed route on the Draft Map.
Modified Draft Map	1982	A modified Draft Map was published and placed on deposit in September 1982. The map still does not show the claimed route and the modified Draft Statement remained unchanged.
Provisional Map		Once all of the representations were resolved, the amended Draft Map became the Provisional Map 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		There is still no evidence of the claimed route existing at this time.
Definitive Map and Statement	1983	The Provisional Map, as amended, was published as the Definitive Map and Statement in 1983 and is the current legal record.
Observations		The Definitive Map does not show the claimed route. The Map and the wording of the Statement do not include the claimed route as part of the footpath.



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

Observations		The stylised map above, which is on the Wildlife Nature Trust website, shows that some of the trail is along the claimed route from near point C to points D-E-F as they follow the well - established footpath trails through the local nature reserve before meeting with Clitheroe Footpath 5.
Investigating Officer's Comments		The nature reserve was established by Ribble Valley Borough Council and leased to the Wildlife Nature Trust. It was designated as a local nature reserve in 1989. This indicates that the paths are well-established and appear to be well-used even though they may not have had a known status as they are not all recorded on the Definitive Map and Statement.

### Ownership information

The claimed route runs on land in two ownerships.

Sections G-C, A-C and C-D run on land in the ownership of Clitheroe Royal Grammar School. The School land used to be held by the County Council but was passed to the school in 1992 and no copies of Deeds retained. The County Council had originally purchased the site for the main school building in 1955 then added the field crossed by the sections of claimed path D-C, C-B and C-I in 1976. It is not known when the fields crossed by sections A-B and G-I were acquired. On purchasing the field in 1976 the County Council agreed that it would erect and maintain a fence along the boundary with the quarry and agreed to use the land for agricultural educational or uses in connection with the school. These covenants would have passed to the school.

The rest of the claimed route F-D is on land owned by Ribble Valley Borough Council and leased in 1990 to The Lancashire Wildlife Trust. It has in the past been a quarry.

### Documents submitted by the Applicant

The Executive Director for Environment has considered these and comments will be following reference to the documents in the Section of the Report headed County Secretary and Solicitor's Observations

### Summary

There is little documentary evidence showing the claimed route on any of the evidence which has been inspected. The claimed route is not shown on any of the early commercial maps, Ordnance Survey maps or any of the definitive map records which have been inspected.

The history of the land over which the claimed route passes consists of a limestone quarry, and in recent years school fields and a local nature reserve.

The quarry was worked for over 200 years up until 1959. Access to the quarry from the old maps appears to have been via Tower Hill near Tower Hill Barn, but alternatively could have been by Chatburn Road which was a well established road on the old maps. Located next to the two padlocked gates on the claimed route are

two old concrete gate posts which the new gates have had been erected behind. This indicates evidence of historical use and access onto the fields at points A and G.

Clitheroe Footpath 5 was recorded on all of the definitive map records however the claimed route was not. There were never any objections to any of the maps with the claimed route not being shown.

## **County Secretary and Solicitor's Observations**

### **Information from the applicant**

In support of the application, the applicant has provided 35 user evidence forms..

The forms indicate use of sections of the route for 50 years, 41-50 years (5), 31-40 years (7), 21-30 years (4) and 11-20 years (9), 1 – 10 (5). Some individuals indicated use over different periods of time over the last 50 years, one stated that they used the path between 1974 and 1984 and then from 2004 to 2011, another from 1949 to 1952 and then 1994 to 2011, a third indicated use of the route between 1985 and 1990 and another from 1970 to 1980. One person simply said they had used the route for many years.

The route has mainly been used for leisure, exercise and dog walking with reference to the route being used as access for town, to school and a third as access to the nature reserve.

The amount of use of the route varied between the users; some indicated that they used the route on a daily basis, others between 2 and 5 times a week or weekly. Two people indicated that they used the route 2 / 3 times each day. Many users provide a number and say 25, 30, 50, 60, 80 and 150 times per year. Others were less specific stating frequently, many times, that their use varied or they did not keep count. Two users specifically refer to not seeing the fields used for school sports for a number of years or never having seen children using the route for school activities. One user used the route from point A and the other from point G.

All the users agree the route has been used on foot with some also using it on a cycle. The users all agree that the route had never been blocked. A couple of users refer to hearing of challenges on the route or signs on the route without giving a date but many indicate that the signs had only been put in place in 2011 and some state they have been challenged by a security guard or know of others, again reference to the challenges show they were in 2011. Some users state that there are stiles along the route and a gate in place but the gate was open. Some believe the stiles were put in to assist use of the route.

The user forms have maps attached or describe the route in all but 2 cases. Not all users use the full route claimed. This indicates that the user evidence needs to be considered separately for different sections of this claimed route as follows -.

Section F-C has been used by 23 users along its whole length and for part of its length by a further 4. At point C the users used C-A or C-I or turned south east down the steps into the Nature Reserve. 8 of these used it as early as 1991

Section A-C has been used by 10 users along its whole length and another user used part of its length. 7 used it as early as 1991.

Section G-C has been used by 9 users along its whole length and for part of its length by a further 3. 7 used it as early as 1991.

The applicant has also submitted photographs of the route and also a copy of a map of Pendle showing part of the route marked as 'other path well used and stiled but not necessarily a right of way'. Two Wildlife Trust documents have also been provided, a map highlighting part of the claimed route and a Salthill Quarry Geology Trail leaflet.

Comments on the above three documents by the Executive Director for Environment are as follows-

The map of Pendle – Due to the scale of the map on this item the claimed route cannot be seen and therefore no inference can be drawn from it.

The map – This is the same map considered above. The section C-D of the claimed route has been highlighted by the applicant. Due to it being circulated on leaflets it suggests local knowledge that these routes were used, or at least known to be used, by the public.

The trail leaflet – This shows a similar map to that above and again shows section D-C as part of footpaths at the Salthill Quarry site. Sections E-D and E-F and Footpath 5 Clitheroe are also shown within the site as footpaths.

### **Objection from the Clitheroe Royal Grammar School**

An objection has been received from Cobbetts Solicitors in Manchester on behalf of Clitheroe Royal Grammar School.

Their clients object to the application for the four footpath routes to be added to the Definitive Map on the basis that there can be no deemed right of way owing to uninterrupted use being afforded to members of the public for a period of 20 years. Their client considers that the requirements under section 31 Highways Act 1980 for dedication by a landowner of a public right of way across his land and acceptance of that public right of way have not been fulfilled. Their client believes that under section 31 (3) of the Highways Act 1980 the landowner can demonstrate that it lacked the intention to dedicate the land as a highway by erecting and maintaining a suitable, visible notice that it is inconsistent with the dedication of a highway. They believe that there is not a dedication of a public right of way because:

- There is no evidence on the ground of footpaths along the claimed routes, routes A-C and G-I traverse the School playing fields.

- Members of the school have challenged people using the proposed routes during school hours on a regular basis for trespassing. There is evidence of members of staff having no recollection of public footpaths and evidence of a member of staff challenging a member of the public for trespassing.
- Signs have been installed at the ends and along the proposed routes advising that access is excluded and clearly stating that the land is strictly private and that trespassers will be prosecuted. The signs have been installed a number of times over the 20 year period. The current signs have been in that position for the last 12 months.
- Evidence there was signage, both on the locked gate of the playing fields and between Green Drive and the hospital and below the school by the post box on Chatburn Road, the signs stated that the land was private property and unauthorised persons were not allowed on School grounds.

Cobbetts then go on to say that Secured by Design (SBD) a police initiative owned by the Association of Chief Police Officers (ACPO) offers a guidance document aiming to reduce crime in their built environment, the guidance states "unless local circumstances dictate otherwise, there should be no public footpaths through the school grounds". This initiative also refers to paragraphs 8 and 12 in schedule 6 of the Countryside and Rights of Way Act 2000 which make provision to extinguish or divert public rights of way through school grounds that create opportunity for crime. This highlights risks in allowing public rights of way across school grounds in particular the safety risks. Under the schools safeguarding agenda the School has a signing in procedure for all visitors to the site. All visitors are required to wear a visitor badge and visitors who have not had a recent CRB check must be supervised by a member of staff. The addition of the proposed footpaths to the Definitive Map on the School playing fields would also have to compromise with this procedure.

Their client objects on the grounds that allowing members of the public to walk across the school land will create a major security risk for the children at the school. Fields are currently marked up and are used for sports and they are used every day. The addition of the footpaths would incur charges of construction for fences off the routes to segregate the proposed paths from the land used by the school in the interests and safety of the children. Furthermore their client considers that this necessary safety measure will result in the client losing a substantial parcel of land.

Letters have been provided by staff and Head and Deputy Head teachers of the school throughout the period of 1964 to the present day that there have never been any public footpaths anywhere on the school grounds. This evidence is provided in the letters.

A teacher at the school 1985-2008 was not aware of any footpaths across any school fields

The headmistress 1964-85 says that to her knowledge there were no public footpaths across the playing fields

Head teacher 1991-2004 says that to his knowledge there were no public footpaths across the Chatburn Road playing fields

The present headteacher since 2004 confirms that to her knowledge there has never been a public footpath across the Chatburn Road playing fields. On several occasions she says she has had to ask members of the public to leave the school site and is aware that other members of staff have had to do the same.

The Deputy Head 1989-2002 says that to his knowledge there were no public footpaths and there was signage, both on the locked gate of the playing fields between Green Drive and the hospital and below the school by the post box on Chatburn Road, the signs stated that the land was private property and unauthorised persons were not allowed on School grounds. These signs were replaced. He recalls occasionally speaking with dog walkers reminding them it was private property and that they were not allowed. Apart from some dog walking there was no physical evidence of footpath usage across the school grounds.

The Head of the school during 1985 when the Boys' and Girls' school amalgamated has stated during this process new facilities were constructed and at no point during this process was he ever made aware by former Head teachers, Governors, LCC or Lancashire Education Authority that a right of way has been claimed across the land.

Cobbetts are instructed that there is no evidence of members of the public using a defined way along the routes claimed.

#### D-C

This is not a permitted routes as it has never been intended for us as a public right of way, the route crosses a playing field used by the school for athletic purposes and to access other playing fields, trespassers have been repeatedly challenged when using the route during school times and signage has been installed on a regular basis at the start and end of the route.

They say that evidence given by the applicant does not support their application and in fact supports their clients position that the right of way should not be added to the Definitive Map. The evidence from one particular user form indicates on least 3 occasions employees from the School have challenged people using the route. Their evidence also supports their clients position that signs have been installed, this is further supported by another user who was also challenged for using the proposed route. Other users also state they have seen signs such as "action will be taken against" and "Trespassers will be Prosecuted".

#### C-I

This route was never intended to be a permitted route and forms part of the private property owned by the School, on numerous occasions members of staff have challenged people walking on this route. Signage was installed along the proposed route for a number of periods of time and in particular a former Deputy Head expresses the view that signage was installed.

Evidence from the applicant is not supportive of the application as a number of witnesses provide evidence that they saw signs on the land indicating it was private

property. A number of witnesses provided evidence that people have been challenged by members of staff when using the land. Furthermore only 8 people have used this footpath for a period of 20 years all other users have only used the proposed path during recent years. This evidence supports their clients position that the footpath should not be added to the Definitive Map. They are also instructed that the claimed route does not lead to anywhere but terminates at the boundary of the privately owned industrial estate.

#### A-C

The route was never intended to be a public right of way and is private property owned by the School. It is currently used as a playing field and as a result members of staff have challenged anyone using the land and have installed signs to warn trespassers that the land is private property. There does not appear to be sufficient evidence from the witnesses to show that members of the public use this route. Only 5 of the witnesses have used this path for a period of 20 years and it is their clients position that this is not a significant number of people using the path for it to be added to the Definitive Map.

#### G-I

Members of staff have repeatedly challenged persons caught using this route during school hours and have installed signs over the years to show that the land is not intended to be used as a public right of way but rather that it is private property to be used by the school as a playing field. Only 5 of the witnesses have used this path for a period of 20 years and it is their clients position that this is not a significant number of people using the path for it to be added to the Definitive Map.

Their client considers that they have a strong case to object to the application to add the four proposed footpaths to the Definitive Map based on the fact that the applicant cannot claim 20 years of uninterrupted use due to the fact that the school has repeatedly challenged trespassers and have installed signs over the years to state that the land is private land and is not intended for public use. The School never had any intention of dedicating the land as a footpath and has made this clear by taking the above mentioned actions.

The point is made that evidence submitted by the Applicant is generalised and does not refer to specific routes and these generalised statements undermine the application

### **Assessment of the Evidence**

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

#### In Support of the Claim

- User evidence
- Promoted route by the Nature Reserve
- Site evidence – access points

### Against Accepting the Claim

- Information from the school
- Signage
- Challenges

### Conclusion

The claim is that this route has become a footpath in law and should be recorded on the Definitive Map.

It is advised that there is no express dedication and so the Committee needs to consider whether a dedication can be inferred at common law or whether the provisions of S31 Highways Act can be satisfied whereby a footpath can be deemed to have been dedicated.

Considering first of all common law dedication it is advised that maps and documents do not provide sufficient evidence from which dedication can be inferred and so the public use would have to be the circumstances from which the owners' intention to dedicate could be inferred. By letting use happen and doing nothing can be evidence that an owner intended there being a public footpath. Committee will be aware that intention to dedicate has *to be able to be found on balance*. The owner since 1992 of the main sections of the route is the school and given the nature of a school and information being provided it may be considered that it would be difficult to infer that a school intended dedicating a public footpath evidenced by the public use. User by the public is no more than evidence and any presumption raised is likely to be able to be rebutted in this particular matter.

S31 Highways Act works differently. The presumption of dedication stems from twenty years use being evidenced up to a point where users should realise that their use was being brought into question. It is then for the school to provide evidence of overt actions taken during twenty years demonstrating sufficient evidence of a lack of intention.

Considering the user evidence it is always difficult to analyse user evidence where a route splits and descriptions and maps of routes sometimes lack clarity. This is the case here. Taking all the usual shortcomings of user forms completed by members of the public and the fact that the users are not cartographers into account it is advised that there seems to have been open use of all the sections of this route up to the signs and challenges in 2011. It is suggested that for the purposes of S31 the route has been called into question in 2011 and the twenty years of open use would have to be 1991-2011.

Considering the elements necessary to satisfy s31 it is necessary to evaluate the user evidence and be satisfied as to its duration and sufficiency. Use of a way by different persons each for periods of less than 20 years will suffice if, taken together, they total a continuous period of 20 years or more. It is not necessary for all users to have used the route since 1991. There is no statutory minimum of users. The issue is how they are using it and how it would appear to a reasonable landowner. The actual landowner does not have to see the use. It is how the use would have appeared to a reasonable landowner who was on site. Use should be sufficient to



alert a reasonable landowner that a right of way is being asserted. Use has to be by the public representative of the community as a whole. Credible evidence of users knowing of others using the route can also be taken into account.

In this matter the owner seeks to demonstrate how unaware the school was of use of its land. Several former and present Heads refer to the Chatburn Road playing fields rather than the area crossed by all the claimed route including in the field area next to the quarry. This raises issues about the credibility of the user evidence and that it was possibly only trivial and sporadic and unable to be sufficient to raise the presumption of use by the public. The evidence of use at the access points and use as a regular dog walking route has to be weighed against this and some of the references made by users as to the lack of use of the land by the school.

The S31 provision still allows a landowner to show that he took action to show that he did not intend to dedicate a footpath. It provides for certain methods to show this to reasonable users. One such method is to erect a notice/notices inconsistent with public use. The landowner of section F-D has not submitted any information. The Owner of section D-A and D-G refers to signage before the signs of 2011 but does not specifically say what the signs said and whether they were on the claimed route. There is reference to the current positioning of signs but not to the older ones. The reference to sign on a gate between green drive and the hospital may or may not have been at points A or G or elsewhere, it is not clear. The owner also refers to challenges but again does not explain exactly where and the circumstances of these. The school refers to not being aware of public use yet refers to challenges. It may be more likely that the challenges were on the site nearer the school building.

To make an Order the Committee would need to be satisfied that it is reasonable, on balance, to allege that the footpath subsists. The meaning of 'reasonably alleged to subsist' in cases based on user evidence was clarified in the case of *R v Secretary of State for Wales, ex parte Emery* [1998].

In his judgment Lord Justice Roch stated: Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under Section 31, then the allegation that the right of way subsists is reasonable, unless there is documentary evidence which must inevitably defeat the claim for example by establishing incontrovertibly that the landowner had no intention to dedicate.

It is suggested that there is a conflict of evidence here, but no incontrovertible evidence of a lack of intention to dedicate, and the Committee may consider that on the basis of the statutory test, it is reasonable to allege the subsistence of a public right of way on foot on the claimed route and resolve that an Order be made.

It is suggested that the Committee also consider whether the higher test to promote the Order to confirmation is satisfied being satisfied that on balance there is evidence that the footpath subsists. It is suggested that Committee may wish to wait to consider this higher test, to give officers the opportunity to interview the users and clarify some of the less clear details on plans and the information given in the user

evidence and for owners to submit further information and for the Order to be published to see if there is a desire to object to same.

Taking all the information into account, Committee on balance may consider making an Order but receiving a further report at a later date in respect of whether the Authority wishes to promote the Order to confirmation or take a different stance.

### **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 the Annexes included elsewhere on the agenda. Provided that any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

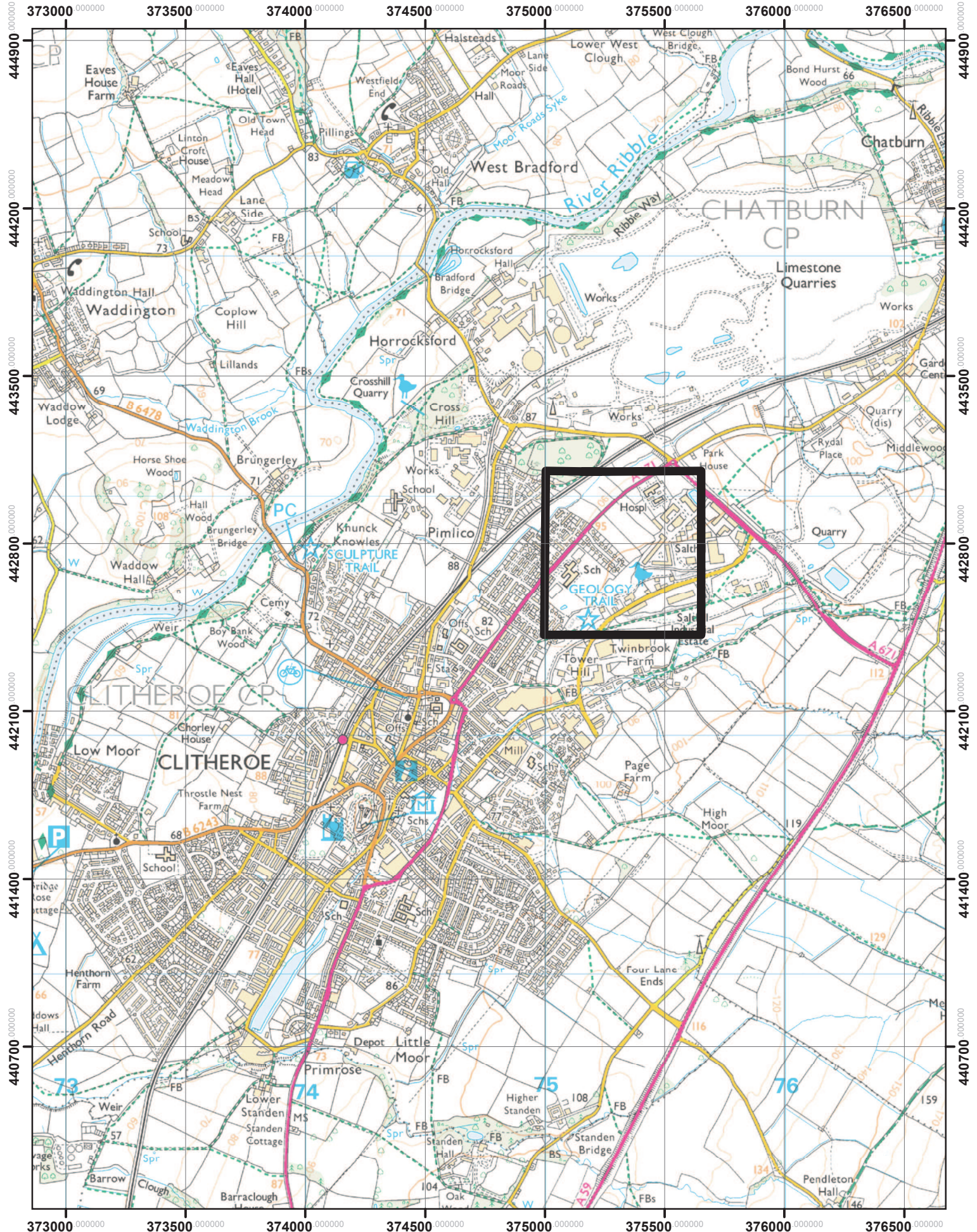
**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.43131 (804/517)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A



**Jo Turton**  
Executive Director  
for Environment

Location Plan for Claim No. 804/517

1:20,000



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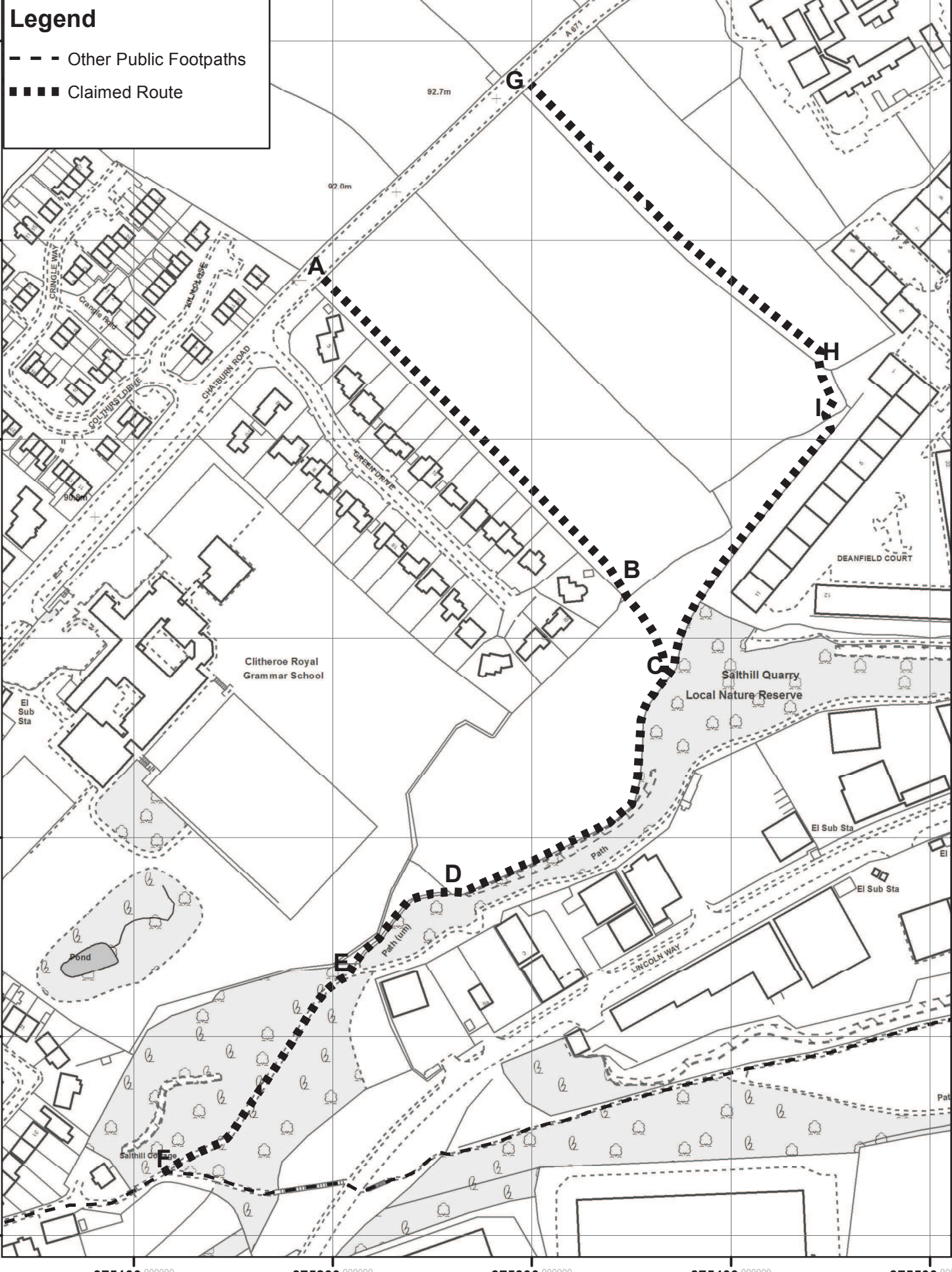
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**Legend**

- - - Other Public Footpaths
- ■ ■ Claimed Route



**Jo Turton**  
Executive Director  
for Environment

Claimed public footpath in two branches from Chatburn Road  
to Clitheroe Footpath 5, Ribble Valley Borough

1:2,500



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## Regulatory Committee

Meeting to be held on 5<sup>th</sup> February 2014

Electoral Division affected: Chorley Rural West
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### Highways Act 1980 – Section 25

#### Proposed Creation by Agreement of a Public Footpath at Twin Lakes Industrial Estate, Croston, Chorley Borough

(Annex 'B' refers)

Contact for further information: Mr S D Williams, 01772 533886, Environment Directorate Stephen.williams@lancashire.gov.uk

#### Executive Summary

Proposed Creation by Agreement of a length of Public Footpath at Twin Lakes Industrial Estate, Croston, Chorley Borough.

#### Recommendation

1. That the proposal for the creation by Agreement of a length of public footpath at Twin Lakes Industrial Estate, be accepted.
2. That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between George Henry Ruttle, Thomas Keith Ruttle, Arthur William Ruttle and Kathryn May Baker and Lancashire County Council, to create a length of public footpath at Twin Lakes Industrial Estate shown by a bold dashed line and marked A – B on the plan.

#### Background

A draft Section 25 Public Path Creation Agreement ("Agreement") has been agreed with the freehold owners George Henry Ruttle, Thomas Keith Ruttle, Arthur William Ruttle and Kathryn May Baker to dedicate a length of public footpath to link two parts of a diverted route of Public Footpath No. 1 Croston, between A – B ("Proposed Creation Route") as shown on the attached Plan ("the Plan") by a bold dashed line.

Public Footpath No. 1 Croston was diverted by an Order made in 1996 (see Appendix 'A' to this report) by Chorley Borough Council under the Town and Country Planning Act 1990 Section 257 to run around the eastside of the Industrial Estate ("the Diverted Route") as can be seen on the Plan.

The 1996 Order has been confirmed but at the present time is incapable of being certified as the Diverted Route has not been provided to an acceptable standard. In particular, to provide an acceptable public footpath on the Diverted Route would require the installation of two bridges or the construction of a long length of large culvert between points A and B shown by a thin dashed line on the attached plan.

The Proposed Creation Route runs approximately parallel to part of the Diverted Route. It is not clear how part of the Diverted Route came to be shown across a drain on the Chorley Borough Council Town and Country Planning Act Order plan. The Proposed Creation Route will provide a footpath that will not require the installation of bridges or the construction of a large culvert. The Proposed Creation Route is currently in use by the public as a footpath and provides a secure, safe and convenient route for the public.

It is the case that adoption of the Proposed Creation Route takes place on completion of the Agreement. The Agreement has been signed by the freehold owners and the County Council is holding the Agreement to its order and will not complete until Chorley Borough Council is able to confirm the extinguishment of part (A – B) of the Diverted Route and the remainder of the Diverted Route is certified as being in an acceptable condition to become maintainable as a public footpath by Lancashire County Council.

The Agreement states that no consideration payment will be made to the Owners for the Proposed Creation Route.

### **Consultations**

Section 25 of the Highways Act 1980 requires that the County Council shall consult any local authority in whose area the proposal is situated. Accordingly, the necessary consultations have been carried out with Chorley Borough Council and Croston Parish Council with no objection regarding the Proposed Creation Route.

### **Advice**

Points annotated on the plan

Point	Grid reference	Description
A	SD 4849 1896	A point on the Diverted Route of Public Footpath No. 1 Croston approximately 350 metres south east of the junction with Brickcroft Lane (X4163)
B	SD 4845 1896	A point approximately 8 metres east of the Twin Lakes perimeter fencing

### **Description of the Proposed Creation Route**

From point A, the Proposed Creation Route runs generally west along the top of the ditch bank for a distance of approximately 50 metres. Presently the Proposed Creation Route is not surfaced and is being used by members of the public.

The width of the proposed path will be 2 metres.

The Proposed Creation Route is not subject to any limitations or conditions.

### **Criteria Satisfied to enter into a Public Path Creation Agreement**



Under Section 25 of the Highways Act 1980, the County Council may enter into an Agreement with a freehold owner for the dedication of a footpath, bridleway or restricted byway. The purpose of this provision is to ensure that only useful suitable routes need be accepted by the Highway Authority, as a route dedicated under Highways Act 1980 Section 25 become maintainable at public expense.

The Proposed Creation Route is considered to be a benefit to the public in securing a safe and convenient alternative route on the edge of Croston village. The proposal negates the need for the installation of either two substantial bridges or a long length of large culvert that neither the County Council, landowner nor Chorley Borough Council are willing to install or take responsibility for future maintenance.

It is advised that the Proposed Dedication Route will have no adverse effect on the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features. It will have no adverse effect on conserving biodiversity or the desirability of conserving the natural beauty and amenity of the area.

As the Proposed Creation Route is by means of an Agreement, there will be no compensation payable as a consequence of the coming into operation of the Agreement.

It is 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. In particular, the proposal will provide a 2 metre wide footpath with no limitations or conditions between points A – B.

It is also advised that the effect of the proposed Agreement is compatible with the material provisions of the County Council 'Rights of Way Improvement Plan', in particular Policy RMV12-2 whereby the Local Authority "Aspire to meeting the British Standard for gaps, gates and stiles BS5709, subject to consideration of landowners requirements, the local character and the accepted practice at any location." In this instance BS5709:2006 has been applied and no limitations are proposed on the length A – B.

## **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance noted in Annex B elsewhere on the Agenda, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making progress.

## **Alternative options to be considered –**

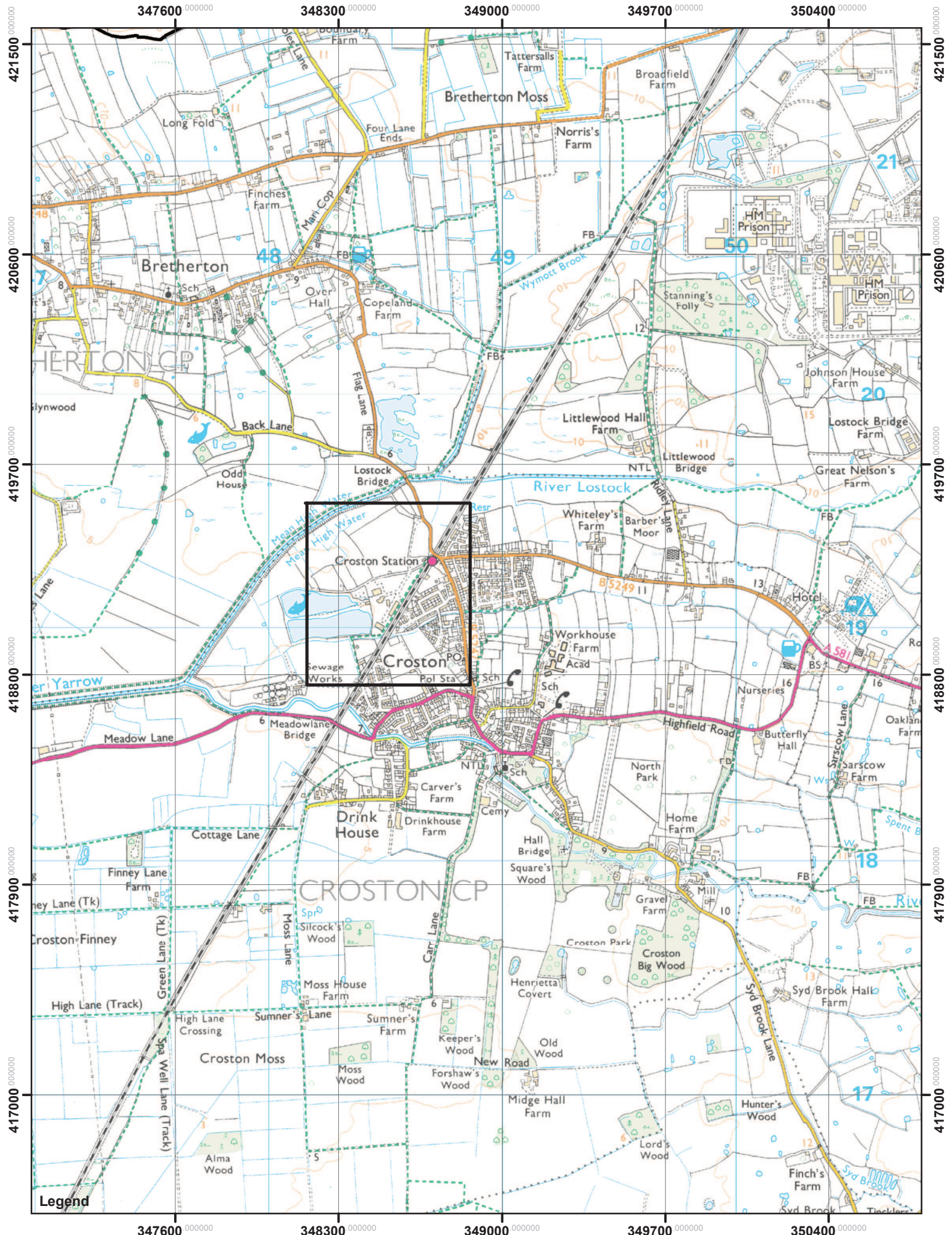
- To not agree that the County Council enters into an agreement with the landowners for a publicly maintainable footpath to be created by Agreement.
- To agree that the County Council enters into an agreement with the landowners for the creation of a publicly maintainable footpath.
- To request that Officers take steps to open the Definitive line of Public Footpath No. 1 Croston through Twin Lakes Industrial Estate.

- To request that a further diversion Order is made although members of the Regulatory Committee should be aware that Network Rail have stated that it would object to a route running parallel to the railway line.

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

Paper	Date	Contact/Directorate/Tel
File ref PRW 09-11-01		Mr S D Williams 01772 533886

Reason for inclusion in Part II, if appropriate  
N/A



**Jo Turton**  
Executive Director  
for Environment

### Location Plan for Public Footpath 1, Croston, Chorley

1:20,000



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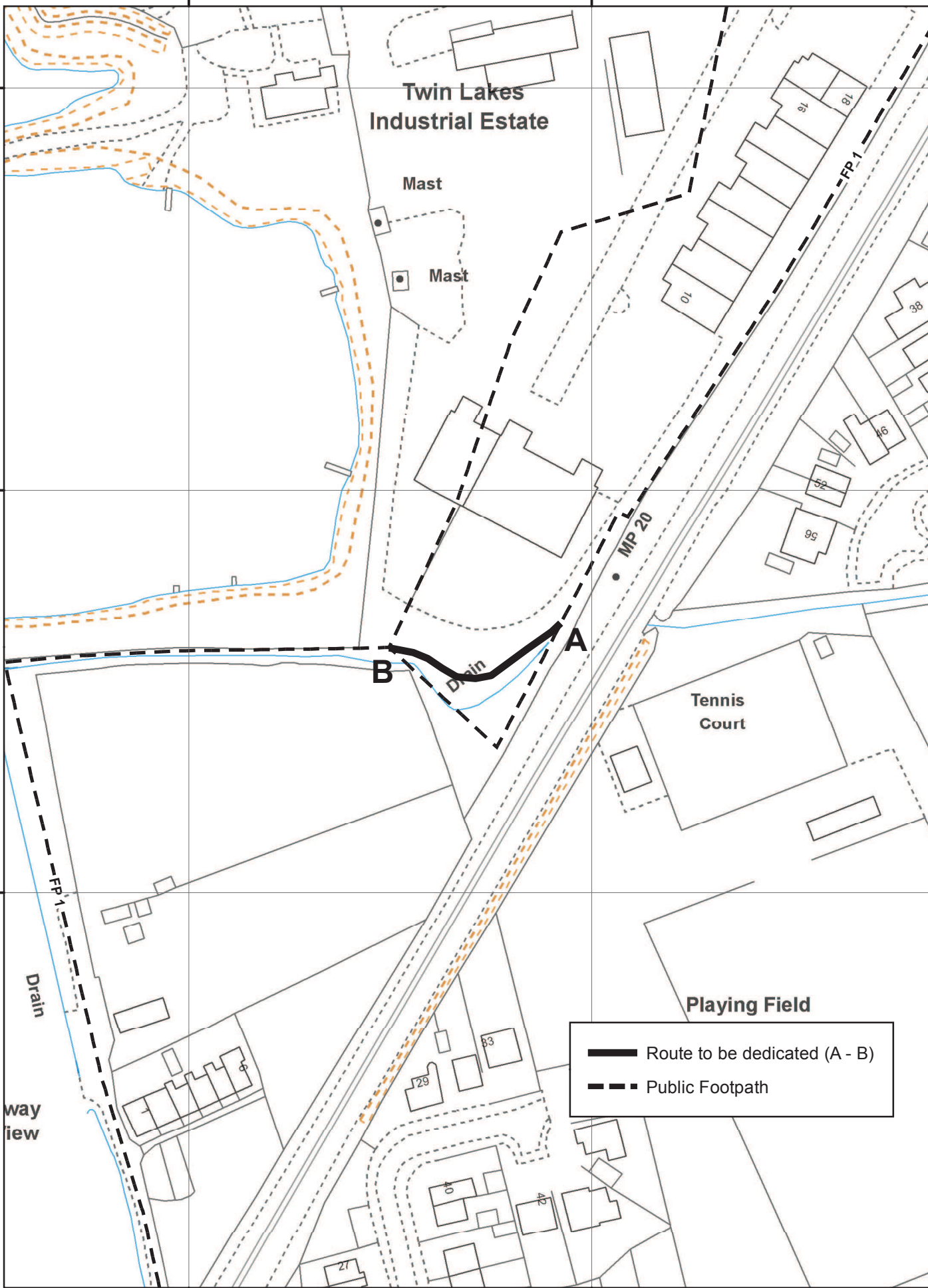
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Jo Turton.  
Executive Director  
for Environment.

Highways Act 1980 - Section 25  
Proposed dedication of Public Footpath at Croston, Chorley Borough

1:1,250



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Report of	Meeting	Date
Chief Executive	Council	6 November 2012

**FOOTPATH NO.1 CROSTON  
PROPOSED PUBLIC PATH CREATION AGREEMENT UNDER  
S.25 HIGHWAYS ACT 1980 AND PUBLIC PATH  
EXTINGUISHMENT ORDER UNDER S.118 HIGHWAYS ACT  
1980**

**PURPOSE OF REPORT**

1. To bring to members' attention a longstanding issue of a public footpath which remains to be legally diverted.

**RECOMMENDATION(S)**

2. That members support a proposed public footpath creation agreement under s.25 Highways Act 1980 between the landowner and Lancashire County Council adjacent to a ditch under the railway line at Croston as shown approximately on the map in Appendix 1.
3. Members approve the certification of the footpath diversion order made under s.257 Town and Country Planning Act 1990 in 1996 and confirmed in 2011 once the works required to bring that footpath into the specified condition, except where it crosses the ditch, and those works requested by Lancashire County Council and notified to the landowner in respect of the public path creation agreement under s.25 Highways Act 1980 have been completed to the satisfaction of Lancashire County Council.
4. Members approve a subsequent public path extinguishment order by Chorley Borough Council under s.118 Highways Act 1980 in respect of a short length of newly diverted Footpath No.1 Croston subject of the 1996 Order once it has been certified.
5. Members approve the placing of any notices required under legislation to effect the above including advertisement in the local press.

Confidential report Please bold as appropriate	Yes	No

**CORPORATE PRIORITIES**

6. This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	X
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	

## BACKGROUND

7. Planning permission was granted in 1988 by the Council for the Twin Lakes Industrial Estate at Croston. The site is affected by Public Footpath No. 1. A diversion was desirable away from the existing route within the Industrial Estate for reasons of public safety and site security. Whilst a public footpath is maintainable at public expense by Lancashire County Council (LCC) power to make footpath diversion orders under s.257 of the Town and Country Planning Act 1990 following the grant of planning permission rests with the Borough Council as local planning authority. Following an application in 1992 the Council's former Technical and General Services Committee authorised the making and advertising of a diversion order under s.257 of the 1990 Act. The order was made on 11 April 1996. The statutory process requires the making of the order followed by a consultation period during which statutory consultees may make representations about the order. If no objections are made the Order may be confirmed i.e. made permanent by Chorley Council. As long as the footpath meets the requirements of the diversion order e.g. it follows the route on the order map and is of the width specified in the order and is of satisfactory condition it is then certified. At this point the former footpath ceases to be a public right of way and the newly diverted route becomes the public footpath. Until this certification occurs the route through the Industrial Estate remains the legal footpath. No objections were received to the order as made. This was reported back to the Council's former Technical and General Services Committee on 5 June 1996 which authorised the confirmation of the order as unopposed.
8. The land within the Industrial Estate affected by the existing legal footpath and the proposed diverted route alongside the railway line is believed to be owned by Mr Keith Ruttie or companies controlled by him.
9. A copy of the order and order map made on 11 April 1996 is attached as Appendix 1. The existing route through the Industrial Estate is shown by an unbroken black line running from Point "A" via Points "B", "C", "D" to Point "E". The proposed diverted route is shown by a broken black line running from point "A" via point "F" to Point "E" and adjacent to the railway line. In practice for many years the diverted route is the route as walked by local users, except that the route as walked does not veer westwards and cross a ditch at a point approximately halfway between the end of the buildings on the Industrial Estate and Point "F" as shown in the plan.
10. In October 2010 officers from LCC's Public Rights of Way Team met with a legal officer at the Council to advise that the 1996 diversion order had never been confirmed i.e. made permanent. Extensive searches in the Borough Council's archives failed to reveal any evidence of confirmation of the order.
11. No objections within the statutory timetable were reported to members in 1996 (including from Railtrack as predecessor to Network Rail Infrastructure Limited). However by 2010 it was known that Network Rail as the owner of land adjacent to the proposed diverted route objected to the order. This was because their own risk management calls for expensive trespass proof fencing to be erected alongside any land to which the public have legal access. It is understood from conversations with Network Rail's engineer that this is Network's Rail's own policy in response to risk of trespass rather than a regulatory requirement. In contrast Network Rail advise that only ordinary fences are required alongside a ploughed field to which the public would not have lawful access. Network Rail indicated to the Council that they would object to the confirmation of the order. However the opportunity to object has passed (28 days from the publication of the Notice of the making of the Order) and once the Order was confirmed objections could no longer be made but



instead only the validity of the Order could be challenged and that must be within six weeks of the date of the Notice of confirmation. A challenge to the validity of the Order may only be made on narrow legal grounds to the High Court that there has been procedural irregularity in the making of the Order or that the Order is outside the Council's powers under the Act. Since no objections had been received within the notice period following the making of the Order, following consultation with the Chair of Development Control Committee the Council confirmed the Order in June 2011. We are not aware of any challenge to the validity of the Order and the statutory period for such a challenge expired in August 2011.

12. A site visit took place on 5 September 2011 to inspect the diverted footpath and check if its condition was such that the 1996 diversion order could be certified as being complied with. In attendance were the effective landowner Mr Keith Ruttle, LCC's Public Rights of Way Officer, an officer from the Environment Agency, a Croston Parish Councillor and a solicitor from Chorley Council's legal department. Remedial works identified during the site visit which are not controversial as far as the landowner is concerned are the widening at certain points of the footpath, cutting back and removal of trees, removal of Japanese Knotweed and removal of hardcore. However it became apparent that the route as walked does not reflect the proposed diverted route on the order map. Members will note that whilst the route as currently used does not go to a corner at point F but cuts across to point E in a westerly direction, keeping to the north side of a deep ditch whereas from the Order map in Appendix 1 it can be seen that the diverted route continues over the ditch south-west to point F then north-west recrossing the ditch to point E. It should be mentioned in passing that the order map reflects the plans submitted by the landowner's agents in 1992. In order to bring the physical route into line with the route on the order map a 15 metre extension to the existing culvert would be required. The Environment Agency would require a substitute waterside habitat to mitigate for the loss of the length of bankside habitat. Manhole covers for future inspections and a headwall detail at the outfall might be required as well. These works would require planning permission. The landowner objected to these proposed works involving a culvert extension as excessive and unnecessary considering that the route as walked is acceptable. The Parish Council share this view.

## OPTIONS

13. The easiest solution would appear to be for Chorley Borough Council to make the order afresh under the Highways Act 1980 S119 with a slightly amended order map which shows the route as walked. The most extensive of the works described above would not then be necessary. However Network Rail would then be able to object to the merits of making of the fresh order which would lead to an inquiry. The costs of an inquiry are potentially considerable and the result uncertain. Network Rail would probably seek the erection of a security fence for the full length of the footpath alongside the railway which would represent a significant cost.
14. The landowner, LCC and the Borough Council have agreed on an alternative proposal which is satisfactory to all three parties. The landowner will agree to a voluntary dedication of a footpath over his land under s.25 of the Highways Act 1980. This agreement will be between the landowner and Lancashire County Council and Chorley Council will not be a party. The route would follow that as currently walked without crossing the ditch before point "F". The legislation requires LCC as order making authority to consult Chorley Borough Council but does not require wider consultation. The creation agreement would then be advertised but there is no opportunity for objection.
15. Once the more limited works identified above are completed (removal of trees, hardcore and Japanese Knotweed and widening to 2 metres) the diversion order made under s.257 of the 1990 Act and confirmed in 2011 would be certified by the Borough Council. This will

leave a small part of the newly diverted legal footpath crossing the ditch. Chorley Council would also promote an order under s.118 of the Highways Act 1980 to extinguish this small and unused length of footpath.

16. Chorley Council has the power under s.118 Highways Act 1980 to extinguish a footpath in its area on the grounds that it is not needed for public use. As the length which it is proposed to extinguish is not currently walked by the public because it would have been bypassed by a more convenient alternative the grounds are met. A notice procedure contained in Schedule 6 to the Highways Act 1980 must be followed. Objections may be made within 28 days from publication. If no objection is made or is withdrawn the extinguishment order may then be confirmed by the Council. Before the order is confirmed as unopposed the council must have regard to whether the path would be used in the absence of the order and also the effect of the extinguishment on land served by the footpath. Temporary circumstances preventing or diminishing the use of the footpath by the public should be disregarded. The length of path to be extinguished is not used at present because the public have no means of safely and easily crossing the ditch. There is in practice no land served by this length of footpath which it is proposed to extinguish.
17. The Public Rights of Way officer at LCC is in agreement with the above approach. However authority will need to be sought from members of the County Council's Regulatory Committee.
18. If the recommendation is approved a longstanding legal process regarding a diverted footpath can be finally resolved. The County Council will then maintain the diverted route as a public footpath and ensure that it remains free and unobstructed. At present the route is not eligible for improvement grants because it does not have the status of a public footpath. Once it becomes part of the public footpath network then bids can be made for such funding.

#### **IMPLICATIONS OF REPORT**

19. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal		Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

#### **COMMENTS OF THE STATUTORY FINANCE OFFICER**

20. There is a statutory requirement to give notice of the public proposed public footpath creation agreement in the local press. This applies to the Lancashire County Council which will enter into the agreement under s.25 Highways Act 1980. The Borough Council is responsible for advertising the proposed extinguishment order under s.118 Highways Act 1980. However this is a one off financial cost. Maintenance responsibility of public footpaths rests with Lancashire County Council.

#### **COMMENTS OF THE MONITORING OFFICER**

21. The legal issues are identified in the body of the report.

<b>Background Papers</b>			
<b>Document</b>	<b>Date</b>	<b>File</b>	<b>Place of Inspection</b>
1. Report to Planning Committee 1/09/92 2. Report to Technical and General Services Committee 05/06/96 3. Planning File Twin Lakes	1. 1/09/92 2. 05/06/96 2. 1988-98	446	1. Town Hall 2. Town Hall 3. Planning Services Union Street

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
Alex Jackson	5166		



CHORLEY BOROUGH COUNCILTOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257Chorley Borough Council (Footpath No. 1, Croston)  
Public Path Diversion Order 1996

This Order is made by the Chorley Borough Council under Section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to divert the footpath to which this Order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990, namely: the construction of 10 industrial units at the Twin Lakes Industrial Estate, off Brick Lane, Croston.

## BY THIS ORDER:-

1. The footpath over the land shown by a bold black line on the attached map and described in Part 1 of the Schedule to this Order ("the Schedule") shall be diverted as provided below.
2. There shall be created to the reasonable satisfaction of Chorley Borough Council an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion of the footpath shall have effect on the date on which Chorley Borough Council certify that the terms of Article 2 above have been complied with.
4. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across that footpath belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULEPart 1Description of Site of Existing Footpath

That length of Footpath No 1 Croston running south-westwards from point A on Brick Croft Lane, Croston and thence southwards in an irregular line over land situate at the Twin Lakes Industrial Estate, by way of points B-C-D to point E for a total distance of approximately 433 metres, as shown by the solid black line running between the aforesaid points marked on the Order map.

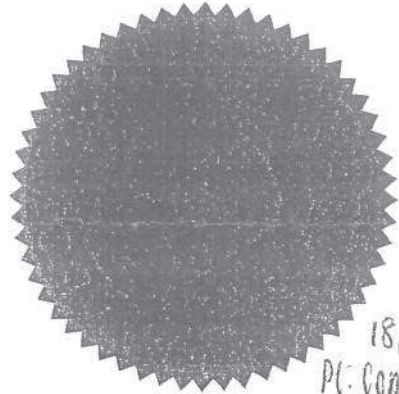
Part 2

Description of Site of New Footpath

Running from a point on Brick Croft Lane, Croston for a total distance of approximately 420 metres, firstly in a south westerly direction from point A to point E, and thence in a north westerly direction to point F, as shown by the bold black dashes between the aforesaid points marked on the Order map.

The width of the new footpath is to be 2 metres.

The Common Seal of the  
Chorley Borough Council  
was hereunto affixed  
this 11th day of April 1996  
in the presence of:-



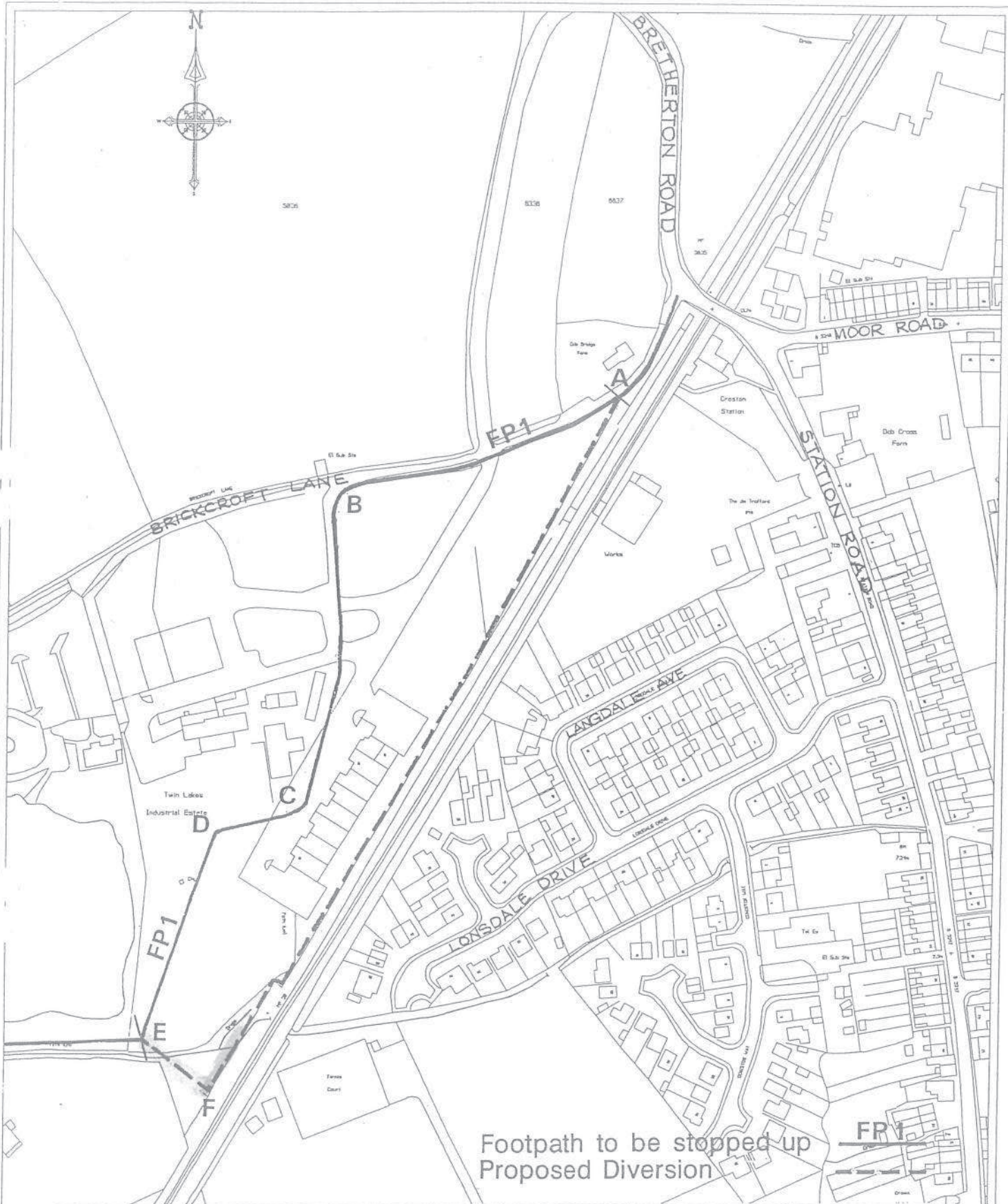
18,654  
Pl: Comm: MM 232 (a)  
1.9.92.

*L. Kibell* .....

Mayor

*A. Lomas* .....

Borough Solicitor



<p>Title</p>	<p>Map Referred to in the Chorley Borough Council Public Footpath No1 Croston Public Path Diversion Order 1996</p>	
<p>Scale 1:2500 Grid Ref. Date November '94</p>	<p>J.R. Taylor, M.A. (Hons), Dip.T.P., M.R.T.P.I. Director of Technical Services Chorley Borough Council</p>	