

Lancashire County Council

Regulatory Committee

Wednesday, 26th March, 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

1. **Apologies.**
2. **Disclosure of Pecuniary and Non-Pecuniary Interests.**
Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.
3. **Minutes of the last meeting.** (Pages 1 - 6)
4. **Consideration of the Authority's role in connection with access to Common Land.** (Pages 7 - 20)
5. **Guidance.** (Pages 21 - 44)
Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.
6. **Wildlife and Countryside Act 1981
Claimed Public Footpath from Wardley's Lane to the Salt Marsh, Stalmine-with-Staynall, Wyre Borough.
Claim No. 804/522** (Pages 45 - 76)
7. **Wildlife and Countryside Act 1981
Claimed Public Footpath from Banks Road to Station Road, North Meols, West Lancashire Borough
Claim No. 804/529** (Pages 77 - 116)

8. **Wildlife and Countryside Act 1981** (Pages 117 - 150)
Claimed Public Footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick, West Lancashire Borough. Claim No. 804/544
9. **Wildlife and Countryside Act 1981** (Pages 151 - 184)
Claimed Public Footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City Claim No. 804-533
10. **Highways Act 1980 - Section 119** (Pages 185 - 196)
Proposed Diversion of Part Of Bridleway No. 11, Lytham St Annes, Fylde Borough.
11. **Highways Act 1980 - Sections 26 and 118** (Pages 197 - 208)
Proposed Creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4, Burrow-with-Burrow Parish, Lancaster City.
12. **Highways Act 1980 - Section 25** (Pages 209 - 216)
Proposed Creation by Agreement of a Public Footpath at Fairview Youth and Community Centre, Adlington, Chorley Borough
13. **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.
14. **Date of Next Meeting**
The next scheduled meeting will be held at 10.30am on 14th May 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, 5th February, 2014 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	G Molineux
I Brown	D T Smith
A Clempson	D Stansfield
B Dawson	P White
K Ellard	D Whipp
P Hayhurst	B Yates
C Henig	

County Councillor K Ellard replaced County Councillor J Gibson as a member of the Committee for this meeting only.

County Councillor T Aldridge attended the meeting under Standing Order 19.

1. Apologies.

No apologies for absence were presented at the meeting.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

County Councillor Brown declared a non pecuniary interest in relation to item 6 on the agenda as he was a trustee of the Friends of Clitheroe Grammar School which was both the owner of part of the land crossed by the claimed route and one of the objectors to the claim.

3. Minutes of the last meeting.

Resolved: That the Minutes of the meeting held on the 18th December, 2013 are confirmed as an accurate record and signed by the Chair.

4. Guidance.

A report was presented regarding Guidance for members of the Committee on the law regarding the continuous review of the Definitive Map and Statement of Public Rights of Way, certain Orders to be made under the Highways Act, 1980 and the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

Resolved: That the Guidance regarding the above, as set out in Annexes 'A','B' and 'C' of the report presented, is noted

**5. 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**

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

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.

The Committee was informed that the date of the Highways Act, 1980 Section 31(6) deposit which the County Council had received in relation to points B-C-D was the 26th July, 2012 and not the 22nd June, 2012 as mentioned in some sections of the report.

County Councillor Hayhurst joined the meeting at 11.05 am

When considering the report the Committee discussed in detail the user evidence received, particularly in relation to the period between 1991 and 2011. The documentary evidence was also discussed with particular attention on access points and a worn line between points D-C on an aerial photograph from, 2010 which was felt to be consistent with agricultural access to the northerly field. Further discussion centred around actions by the landowners and whether the use of the route could not be said to be "as of right" or had been effectively interrupted.

It was suggested that a decision regarding the making of the Order should be deferred in order to allow further information to be gathered both from users and the landowners. However, other members of the Committee felt that the Committee should proceed to a decision on whether an Order be made. There was concern that insufficient evidence had been presented to justify the making of the Order and so after further discussion the recommendation as set out in the report was put to the vote.

Resolved: That claim for a public footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townsville Lane) Slyne with Hest, Lancaster, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/534 be not accepted.

**6. 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**

Having earlier declared an interest in relation to this item County Councillor Brown left the meeting before any discussion took place.

A report was presented regarding an application for a public footpath from Chatburn Road, Clitheroe, 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.

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.

The Committee was informed that the plan presented as part of the report was incorrect in that it did not accurately reflect the line of the claimed route at points B-C and H-I. An amended plan was therefore circulated to the members of the Committee, a copy of which is set out in the Minute Book.

In considering the claim the Committee discussed the documentary evidence presented including aerial photographs from 1960 and 2009 and the Wildlife Nature Trust Map. The user evidence received in relation to the period between 1991 and 2011 together with evidence from the objector, particularly in connection with the erection of signage, awareness of staff at the School of public footpaths across the school/playing fields and challenges made by staff to people using the claimed route were also discussed.

After considering all of the information the Committee felt that there was sufficient evidence from which dedication could be reasonably alleged under the provisions of S31 of the Highways Act and that it was appropriate that an Order be made. However, it was felt that the higher confirmation test was unable to be satisfied at this time and so it was suggested that a further report be presented to a future meeting.

Resolved:

1. That the proposal for a public footpath from Chatburn Road, Clitheroe, 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.
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 Rights of Way a public footpath from Chatburn Road, Clitheroe, 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 amended plan circulated at the meeting and set out in the Minute Book.

3. That, not being satisfied the higher test for confirming the said Order can be satisfied, a further report be presented to the Committee in due course regarding what stance to take in relation to confirmation of the Order.

Following the decision County Councillor Brown returned to the meeting.

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

A report was presented in connection with the Proposed Creation by Agreement of a length of Public Footpath at Twin Lakes Industrial Estate, Croston, Chorley Borough.

It was reported that the Proposed Creation Route would be two metres in width and run approximately parallel to part of the Diverted Route which had previously been shown as crossing a drain on the plan associated with the Chorley Borough Council Town and Country Planning Act Order 1996. Whilst that Order had been confirmed it had not been certified as a Diverted Route as it had not been provided to an acceptable standard, particularly with regard to the requirement to construct two bridges or a length of culvert.

The Committee was informed that the Proposed Creation Route was currently in use by the public as a footpath and provided a secure, safe and convenient route for the public and negated the need to install two bridges or a long length of large culvert.

With regard to the adoption of the Proposed Creation Route it was reported that the Agreement had been signed by the freehold owners and the County Council would not complete until the Borough Council had confirmed the extinguishment of part of the Diverted Route (marked with a thin dashed line between points A – B on the plan set out in the report) and the remainder of the Diverted Route had been certified as being in an acceptable condition to become maintainable as a public footpath by the County Council.

The Committee noted that the Proposed Creation Route would be by Agreement there would be no compensation payable as a consequence of the coming into operation of the Agreement.

Resolved:

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 in Croston shown by a bold line and marked A–B on the plan set out in the report presented.

8. Urgent Business

There were no items of urgent business presented for consideration at the meeting.

9. Date of Next Meeting and 2014/15 programme of meetings

It was reported that the next scheduled meeting would be held at 10.30am on the 26th March 2014 in Cabinet Room 'B' – the Diamond Jubilee Room at County Hall, Preston.

The Chair also reminded the meeting that on the 12th December 2013 the full County Council had agreed a programme of meetings for the Committee in 2014/15 as set out below, with meetings to be held in Cabinet Room 'B' (the Diamond Jubilee Room) at County Hall, Preston, commencing at 10.30am.

2nd July 2014
10th September 2014
22nd October 2014
17th December 2014
4th February 2015
25th March 2015
13th May 2015

Resolved: That the date of the next meeting on the 26th March 2014 and the 2014/15 programme of meetings, as agreed by the full County Council on the 12th December 2013, are noted.

I M Fisher
County Secretary and Solicitor

County Hall
Preston

Agenda Item 4

Regulatory Committee

Meeting to be held on 26 March 2014

Electoral Division affected: 'All'

Consideration of the Authority's role in connection with access to Common Land.

(Appendix 'A' refers)

Contact for further information: Jane Turner, 01172 532813, Office of Chief Executive, Jane.turner@lancashire.gov.uk

Executive Summary

Consideration of the role of the County Council in respect of unauthorised works, encroachment, obstructions, etc. on Registered Common Land affecting public access and approval of the procedure to be adopted prior to any action being considered by Committee

Recommendation

The Committee is asked to agree that the Executive Director for Environment be authorised:

1. To investigate alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green.
2. To consider the effect on rights on Common Land and Town/ Village Green and to collect relevant evidence and information and responses and evaluate resource implications.
3. To present a report to the Committee where, in conjunction with the County Secretary and Solicitor, it is felt that action by the County Council under S41 or S45 of the Commons Act 2006 may be appropriate.

Background and Advice

The public has access rights to much of the registered Common Land in Lancashire. There are also the grazing rights and other rights as registered. Sometimes the public right is limited to rights on foot and on some Common Land the right includes rights on horseback.

Although the County Council is the Commons Registration Authority for Lancashire this does not include an enforcement role under statute.

Under the Constitution the Committee has power to apply for an Order against unlawful works on common land under Section 41 of the Commons Act 2006 and the power to take steps to protect unclaimed common land or town or village greens against unlawful interference and to institute proceedings under Section 45 of the Commons Act 2006.

S41 says that where unauthorised works are carried out on common land any person may apply to the County Court for an order

S45 says that where there is no person registered as owner of any common land or town green and it appears that no owner can be identified a county, district or parish council may take any steps to protect the land against unlawful interference and institute proceedings for any offence committed

It is clear from the statutory provisions that the County Council is only one of the parties who can take action. In particular the applications to court under S41 can be made by individual members of the public as well as companies or councils.

In April 2009 the Committee received a report confirming that so far as action taken by the County Council or District Councils the County Council would be the lead authority. A copy of the report is set out at Appendix 'A'.

Lancashire County Council's Complaints Committee have previously dealt with a complaint regarding the County Council not taking action in connection with proposed works on common land and whilst it was considered that no further action was warranted by the County Council, the Committee felt that it might be helpful to review the role and work of the County Council and other agencies in protecting access to common land.

It is suggested that a clear procedure be established whereby alleged incidents are investigated and seriousness evaluated and, where appropriate, brought to the Committee for a decision.

It is considered that officers in the Environment Directorate are best placed to investigate with appreciation of the reduced resources available. It is suggested that they have significant expertise in map reading and can assess whether the works or obstructions are on registered common land or town/village green even in open rural locations.

It is also suggested that given their role in evaluating the effect of unauthorised works and obstructions on the rights of way network they are able to assess the likely effect on public rights on the Common Land. They will be able to take into account such matters as use by the public, access provisions, extent of common, effect on public use, available alternatives, knowledge of proposed action by others and to balance these against available staff resources and workload in other areas, particularly those which are statutory.

It may be considered appropriate that the County Secretary and Solicitor should consider the reasonable prospect of success and the proportionality and public interest in taking any action and advise accordingly.

The role of other agencies is not directly a matter for the County Council but as the lead authority (see report attached at Appendix 'A') the County Council will be aware of concerns voiced by the District Councils and any wish by them for action to be taken by the County Council.

It is considered that only those matters where the Executive Director for Environment in conjunction with County Secretary and Solicitor consider issues to be sufficiently in the public interest and for which there are sufficient resources to pursue enforcement, will be brought to Committee. This will mean that not every query or complaint will be brought to Committee only those where action may be considered necessary and appropriate to protect public access of significant value and where the necessary staff resources are available. This is indeed similar to other matters such as complaints regarding obstructions on highways where only those which are considered to have sufficient effect on public user are brought to the appropriate decision making officer to consider taking enforcement action.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

No significant risks have been identified in relation to the proposals contained within this report. Authorising the Executive Director and agreeing a consistent procedure will help to ensure that each matter of alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green of which the County Council is made aware is appropriately dealt with.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Agenda and Minutes from Regulatory Committee	21 st April 2009 18 th November 2009	M Neville Office of the Chief Executive 01772 533431

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee
Meeting to be held on 21 April 2009

Part I - Item No. 10

Electoral Division affected:
All

Urgent Business

Commons Act 2006 –
Lead Responsibility for Enforcement Action under S41

Contact for further information:
Gary Halsall, (01772) 533 419, Office of the Chief Executive,
gary.halsall@lancashire.gov.uk

Executive Summary

This report, details the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006. Their responses are also contained within the report.

Due to the Lancashire Chief Executive's Group meeting being held on 17 April, their response to the consultation could only be received after the despatch date for this agenda. It is also the last meeting of the Committee before the Elections in June 2009. Therefore, because of these circumstances the Chair has agreed that the item be considered at the meeting as a matter of urgency.

Recommendation

The Committee is asked to:

- i. Note the responses of the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.
- ii. Note that a further report will be presented to the Committee on the delegation of the duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006.

Background and Advice

The Full Council at its meeting held on 11 December 2008, agreed that the duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006 be delegated to the Regulatory Committee. A copy of the revised Terms of Reference in respect of these additional duties, functions and powers was presented to the Committee on 4 March 2009. The Committee was asked to determine its preference on lead responsibility for enforcement action under S41 Commons Act 2006 and resolved that:

"

- i. The revised Terms of Reference be noted.
- ii. The County Council prefers that it takes lead responsibility for action under S41 and that consultation take place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.
- iii. A further report be presented to the Committee presenting the outcome of the consultation.
- iv. A further report be presented to the Committee seeking a decision to be made in respect of which duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006 should be delegated to the Commons and Town Greens Sub Committee and/or Chief Officer as applicable."

The Committee will note that consultation has now taken place with the two bodies mentioned above and their responses are set out below.

The Committee is also asked to note that a further report on the delegation of duties, functions and powers under S41 and S45 of the Commons Act 2006 to the Commons and Town Greens Sub-Committee and/or the appropriate Chief Officer will be presented to a future meeting of the Committee.

Consultations

The Lancashire Local Access Forum received a report seeking their views on this matter on 7 April 2009. It was their opinion that as Lancashire County Council held the maps for Common Land it would therefore be appropriate for the County Council to take lead responsibility.

On Friday 17 April 2009, the Lancashire Chief Executive's Group also received a report seeking their opinion regarding this matter. They agreed that the County Council should take lead responsibility for action, subject to clarification as to the rationale behind the recommendation as presented to them. Clarification has now been provided.

Implications:

Risk management

No significant risks have been identified in relation to the proposals contained within this report.

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

Paper	Date	Contact/Directorate/Tel
Report to Full Council	11 December 2008	Gary Halsall, County Secretary and Solicitor's Group, (01772) 533 419
Report to Regulatory Committee	4 March 2009	
Report to Lancashire Local Access Forum	7 April 2009	Jane Turner, County Secretary and Solicitor's Group, (01772) 532 813
Report to Lancashire Chief Executive's Group	17 April 2009	

Reason for inclusion in Part II, if appropriate

N/A

Extract from Minutes

Urgent Business

The Chair was of the opinion that the following item be considered at the meeting as a matter of urgency as the information presented in the report could only be received after the agenda despatch date and that this was the last meeting of the Committee before the Elections in June 2009:

Commons Act 2006 – Lead Responsibility for Enforcement Action under S41

The Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

A further report on the delegation of duties, functions and powers under S41 and S45 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

62. Resolved:

That,

- i. The responses of the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 of the Commons Act 2006 be noted.
- ii. A further report be presented to the Committee on the delegation of duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006.*

** A report was subsequently presented to the Committee in November 2009 – see next page for report and extract from Minutes.*

Part I - Item No. 11

Electoral Division affected:
All

Change to Scheme of Delegation re Functions and Powers under the Commons Act 2006: Unauthorised works on Common Land – Enforcement

Contact for further information: Roy Jones, (01772) 533394, Office of the Chief Executive, Roy.jones@lancashire.gov.uk

Executive Summary

A proposal for an addition to the Scheme of Delegation to Chief Officers in relation to the functions and powers of the County Council under S41 of the Commons Act 2006.

Recommendation

The Committee is asked to delegate the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

Background and Advice

The Full Council at its meeting held on 11 December 2008, agreed that the functions and powers of the County Council under S41 of the Commons Act 2006 be delegated to the Regulatory Committee.

S41 states that where works are carried out on registered Common Land without consent from the Secretary of State or not in accordance with such a consent, “any person” may apply to the County Court. The Court may make an Order for removal of the works and restoration of the land or for the works to be carried out in a particular manner and subject to particular conditions. This power to apply for an enforcement order against unlawful works on Common Land is therefore able to be exercised by the County Council.

The powers under S41 are available to all tiers of authorities and guidance from DEFRA advised Registration Authorities that in areas without unitary government, district and county councils should co-operate to ensure lead responsibility for enforcement action is clearly assigned and understood.

The Regulatory Committee in considering this matter in January 2009 resolved that it preferred that it took lead responsibility for action under S41 and that consultation take place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.

In April 2009, the Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

In noting these responses the Committee asked that a further report on the delegation of functions and powers under S41 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

As reported to the Committee in April 2009, it has been agreed that Lancashire County Council should be the lead authority, within the 2 tier system in Lancashire, for enforcement matters relating to common land. It is suggested that to ensure that enforcement action is taken in appropriate cases and without unnecessary delay, the Enforcement Function should be delegated to officers. This could include any decisions following officer investigations to take court action.

If an alleged encroachment or other works is brought to the attention of the County Council there is a need to: consult the Commons Registers and Maps, to assess whether unauthorised works do affect common land; to contact the landowner and others and discuss with a view to resolving the matter; to assess whether action be taken, and if appropriate seek the Order from the court. It may be considered that officers in the Environment Directorate together with Commons Registration officers in Legal Services will be appropriate officers to carry out these functions and powers.

Following discussions with the relevant officers within the Environment Directorate and Property Group it is suggested that the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land be delegated by the Regulatory Committee to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

Consultations

The Lancashire Local Access Forum and the Lancashire Chief Executive's Group have been consulted on this proposal as outlined in the report.

Alternative Options to be Considered

- i. To not delegate power and functions.
- ii. To delegate to the Commons and Town Greens Sub-committee.
- iii. To delegate the functions to Chief Officers save the decision to take court action which could be taken by the Committee.
- iv. To delegate the functions and power to take court action including the decision to take such action to Chief Officers as suggested in the report.

Implications:

This item has the following implications, as indicated:

Nil

Risk management

If the function and power to take court action is not delegated, it will remain with the Regulatory Committee, and investigating and taking action in respect of unauthorised work on common land will be more difficult. It is noted that the Districts are looking to the County Council to take the lead in these matters.

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

Paper	Date	Contact/Directorate/Tel
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Nil

Reason for inclusion in Part II, if appropriate

N/A

Extract from Minutes

Change to Scheme of Delegation re Functions and Powers under the Commons Act 2006: Unauthorised works on Common Land – Enforcement

A report was presented on a proposal for an addition to the Scheme of Delegation to Chief Officers in relation to the functions and powers of the County Council under S41 of the Commons Act 2006.

The Full Council at its meeting held on 11 December 2008, agreed that the functions and powers of the County Council under S41 of the Commons Act 2006 be delegated to the Regulatory Committee.

S41 stated that where works were carried out on registered Common Land without consent from the Secretary of State or not in accordance with such a consent, “any person” could apply to the County Court. The Court could make an Order for removal of the works and restoration of the land or for the works to be carried out in a particular manner and subject to particular conditions. This power to apply for an enforcement order against unlawful works on Common Land was therefore able to be exercised by the County Council.

The powers under S41 were available to all tiers of authorities and guidance from DEFRA advised Registration Authorities that in areas without unitary government, district and county councils should co-operate to ensure lead responsibility for enforcement action was clearly assigned and understood.

The Regulatory Committee in considering this matter in January 2009 resolved that it preferred that it took lead responsibility for action under S41 and that consultation took place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.

In April 2009, the Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

In noting these responses the Committee asked that a further report on the delegation of functions and powers under S41 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

As reported to the Committee in April 2009, it had been agreed that Lancashire County Council should be the lead authority, within the 2 tier system in Lancashire, for enforcement matters relating to common land. It was suggested that to ensure that enforcement action was taken in appropriate cases and without unnecessary delay, the Enforcement Function should be delegated to officers. This could include any decisions following officer investigations to take court action.

If an alleged encroachment or other works was brought to the attention of the County Council there was a need to: consult the Commons Registers and Maps, to assess whether unauthorised works did affect common land; to contact the landowner and others and discuss with a view to resolving the matter; to assess whether action be taken, and if appropriate seek the Order from the court. It would be considered that officers in the Environment Directorate together with Commons Registration officers in Legal Services would be appropriate officers to carryout these functions and powers.

Following discussions with the relevant officers within the Environment Directorate and Property Group it was suggested that the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land would be delegated by the Regulatory Committee to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

The Lancashire Local Access Forum and the Lancashire Chief Executive's Group had been consulted on this proposal as outlined in the report.

Alternative options to be considered were as follows:-

- i. To not delegate power and functions.
- ii. To delegate to the Commons and Town Greens Sub-committee.
- iii. To delegate the functions to Chief Officers save the decision to take court action which could be taken by the Committee.
- iv. To delegate the functions and power to take court action including the decision to take such action to Chief Officers as suggested in the report.

31. Resolved: That the Committee decided to delegate the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

Agenda Item 5

Regulatory Committee

Meeting to be held on 26th March 2014

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

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

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 1st January 1953 and the first review of the Definitive Map was published in 1975 with a relevant date of 1st September 1966.

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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 6th April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

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 26th March 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 been 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 26th March 2014

Electoral Division affected: Wyreside
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Wildlife and Countryside Act 1981

Claimed Public Footpath from Wardley's Lane to the Salt Marsh, Stalmine-with-Staynall, Wyre Borough.

Claim No. 804/522

(Annex 'A' refers)

Contact for further information: Jayne Elliott, Environment Directorate, 07917 836626
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Executive Summary

The claim for a public footpath from Wardley's Lane to the salt marsh, Stalmine-with-Staynall, Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522.

Recommendation

1. That the claim for a public footpath from Wardley's Lane to the salt marsh, Stalmine-with-Staynall, Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522, be accepted.
2. That an Order be made pursuant to Section 53 (3)(b) and/or 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Wardley's Lane (grid reference SD 3655 4290) to the edge of the salt marsh (SD 3649 4294) for a distance of approximately 70 metres and shown between points A-B on the attached plan.
3. That, not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to the Regulatory Committee to decide what stance to take regarding confirmation of the Order

Background

A claim has been received for a public footpath extending from a point on Wardley's Lane, Stalmine-with-Staynall to the salt marsh, a distance of approximately 70 metres, shown between points A-B 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 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 the 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 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. 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

Wyre Borough Council has been consulted and has not responded to the consultation it is thus assumed they have no comments to make.

Stalmine-with-Staynall Parish Council have responded and stated that the application was considered at one of the Council meetings. They do not support the claim and provided a copy of the 1965 1:2500 Ordnance Survey map which they claim shows that the only path to exist was from Wardley's Lane to the disused landing stage to the north of the claimed route running between Wardley's Hotel and the adjacent caravan site.

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

Environment Director's Observations

Points annotated on the attached Committee plan.

Position on the Committee Plan	Grid Reference	Description
Point A	SD 3655 4290	Junction with Wardley's Lane
Point B	SD 3649 4294	Eastern edge of salt marsh

Description of the Route

The claimed route was inspected on 9th January 2014. It commences at a point on Wardley's Lane immediately north of the boundary with The Moorings (point A on the Committee plan).

From point A the claimed route is said to extend in a north westerly direction for a distance of 70 metres through the north western corner of the site to the edge of the salt marsh at point B.

Wardley's Hotel that had previously existed on the land crossed by the claimed route has been demolished and a new building erected that appears to be close to completion. It was not possible to walk the claimed route between point A and point B on the day of inspection because access onto the claimed route at point A was prevented by temporary security fencing and at point B by a recently constructed stone wall along the former boundary between the salt marsh and the Hotel garden.

Between point A and point B a new building appears to partially obstruct the claimed route.

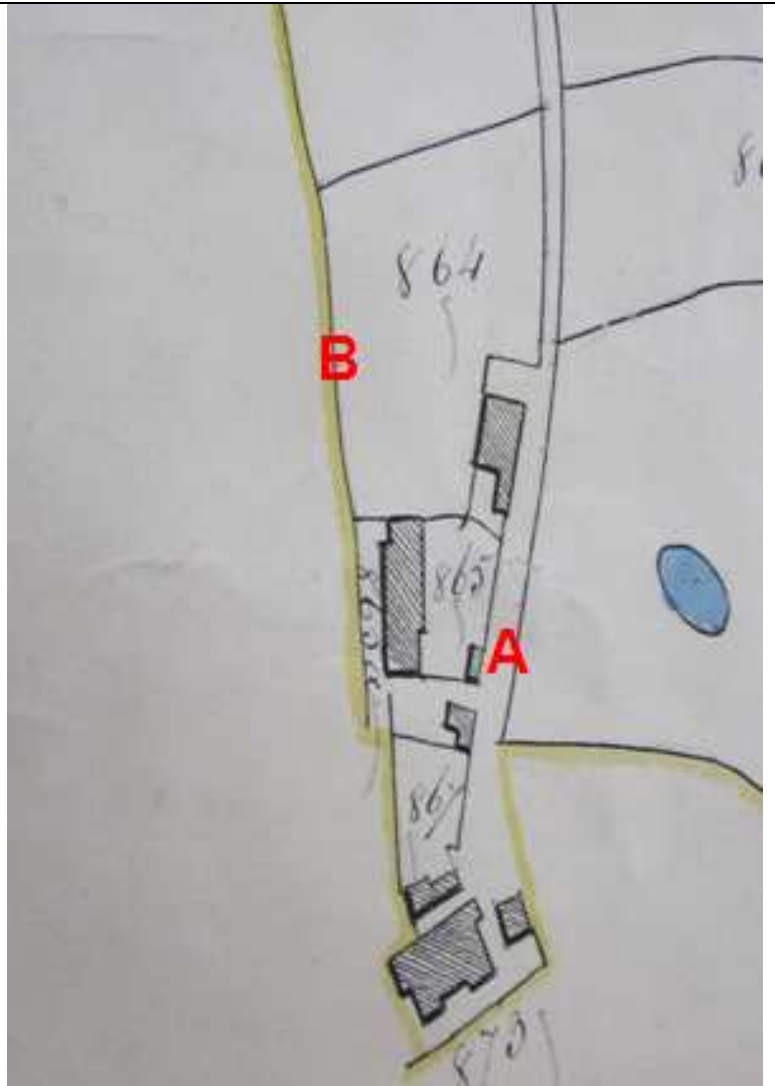
The site is now completely different to what it would have been during the period of claimed use and there is no evidence of the claimed route on the ground.

Map and Documentary Evidence

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


Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The claimed route is not shown on Yates' Map.

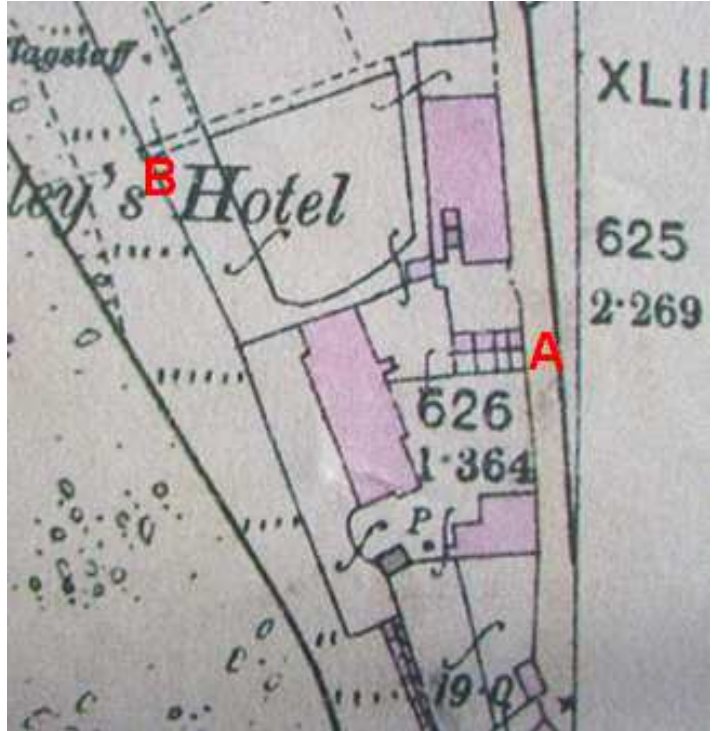
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It is possible that it may have existed as a minor route but would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced. No inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The claimed route is not shown on Greenwood's Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
Stockdale's Map	1818	Stockdale's Map of 1818 is another small scale commercial map.
Observations		The claimed route is not shown on Stockdale's Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It may have existed as a minor route but this would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
Hennet's Map of Lancashire	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 that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment	1849	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 Stalmine-with-Staynall was produced in December 1841.



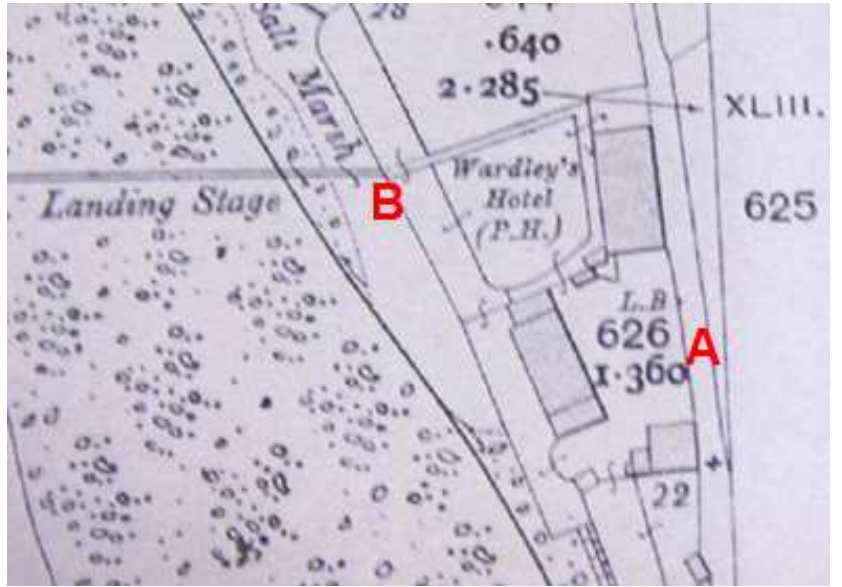
Observations		<p>The claimed route is not shown on the Tithe map and there is no reference to its existence in the written Tithe Award. The Tithe Map shows a small building at point A. The claimed route then crosses plot 865 described in the Schedule as house, building and garden and then passes through the north eastern corner of a large building described in the Tithe Schedule as a warehouse. It then continues across plot 864 which is described as a garden. There is no reference to the claimed route in the Schedule.</p>
Investigating Officer's Comments		<p>The claimed route did not exist in 1849.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</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</p>

		<p>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		No Finance Act Map was available to view at the Lancashire Archives Office.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Awards and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Map or Award was available to view at the Lancashire Archives Office.
Investigating Officer's Comments		No inference can be drawn.
Ordnance Survey Maps		The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

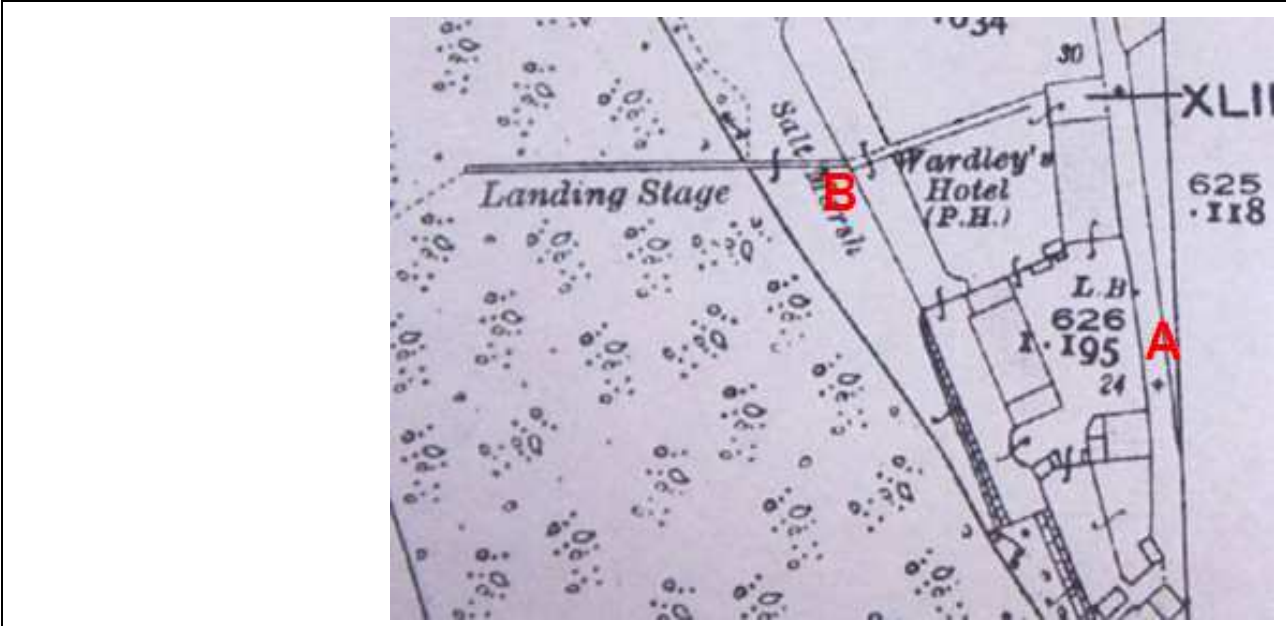
6 Inch OS Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848.
		
Observations		The claimed route is not shown. The building referred to as a warehouse in the Tithe Schedule is shown. A boundary line is shown across the claimed route midway between point A and point B and a building is shown to the north of the claimed route open to Wardley's Lane with an open area of land to the rear. A track indicated by a double pecked line is shown extending from Wardley's Lane to a point just north of point B but is not the claimed route.
Investigating Officer's Comments		The claimed route did not exist in 1844.
25 Inch OS Map	1892	The First Edition 25 inch map revised in 1890 and published in 1892 is at the larger scale showing the area in more detail.



Observations		<p>The claimed route is not shown.</p> <p>Buildings are shown across the line of the claimed route from point A. A boundary line is shown across the claimed route midway between point A and point B and a building labelled as Wardley's Hotel is shown east of the claimed route. To the rear of hotel there appears to be an open area with an area with three further boundaries across the claimed route before it reaches point B.</p>
Investigating Officer's Comments		The claimed route did not exist in 1890 .
25 inch OS Map	1912	Further edition of the 25 inch map revised in 1910 and published in 1912.



<p>Observations</p>		<p>The claimed route is not shown.</p> <p>From Wardley's Lane at point A the claimed route crossed a boundary line and then passed across an open area to a further boundary midway between point A and point B.</p> <p>Wardley's Hotel is shown and a fenced area of land is shown to the rear which intersects the claimed route.</p> <p>The landing stage for the ferry is shown and a route appears to exist from the landing stage north of point B towards Wardley's Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route did not exist in 1910 but access to the landing stage on the salt marsh just north of point B may have existed from Wardley's Lane on a different route.</p>
<p>25 Inch OS Map</p>	<p>1932</p>	<p>Further edition of 25 inch map (Re-surveyed 1891 and revised 1929).</p>




Observations		<p>The claimed route is not shown.</p> <p>Solid boundary lines are indicated across the claimed route at points A and B, midway between A and B and at the rear of Wardley's Hotel near B.</p>
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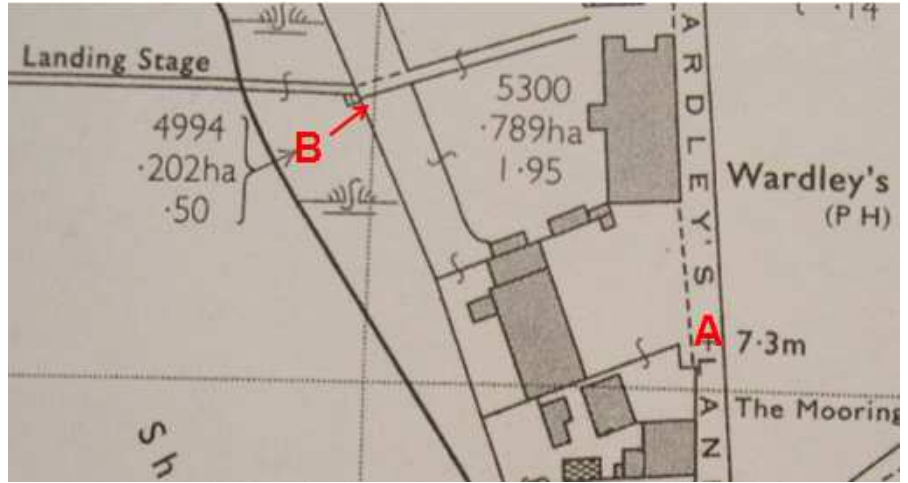
Investigating Officer's Comments		<p>The claimed route did not exist in 1929.</p>
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25 Inch OS Map	1946	<p>Further edition of the 25 inch map revised in 1939 and published in 1946.</p>
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Observations		<p>The claimed route is not shown.</p> <p>A solid boundary line is indicated across the claimed route at point A but just south of point A dashed lines are shown indicating access off Wardley's Lane. A solid boundary line is indicated between the south west corner of Wardley's Hotel and a building to the west of point A (former warehouse) which crosses the claimed route midway between point A and point</p>
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		B. Wardley's Hotel is shown with an open area to the rear but two further boundary lines cross the claimed route before point B.
Investigating Officer's Comments		The claimed route did not exist on the ground in 1939. A route is shown as a footpath ('FP') on the north side of the Hotel's boundary however this is not the route that is being claimed.
6 Inch OS map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 (although the date of revision of the base map was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.
		
Observations		The claimed route is not shown. A solid boundary line is indicated partway along the claimed route and further solid boundary lines are indicated at point A and point B.
Investigating Officer's Comments		The claimed route did not exist when the area was surveyed before 1930.
1:2500 OS map	1971	Further edition of the 1:2500 map revised in 1970 and published in 1971.



<p>Observations</p>		<p>The claimed route is not shown.</p> <p>The Moorings is shown to the south of the claimed route. Access onto the claimed route from Wardley's Lane at point A appears open. The claimed route then crosses an open area to the east of buildings and is crossed by a boundary west of a small building midway between point A and point B. It then continues across an area of land to the rear of Wardley's Hotel crossing a further boundary line before reaching point B.</p> <p>The landing stage to the ferry is shown north west of point B and a route appears to exist from the end of the landing stage north of point B extending in a north north easterly direction towards Wardley's Lane. Steps are shown leading from the salt marsh adjacent to the landing stage onto the route north of point B, with a boundary structure between the top of the steps and point B and no indicated means of access.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route did not exist in 1970.</p>
<p>1:2500 OS Map</p>		<p>Ordnance Survey map extract submitted by Stalmine-with-Staynall Parish Council, revised 1983 and published 1984. Copy also available in LCC PROW records.</p>




<p>Observations</p>		<p>A copy of this map was submitted by Stalmine-with-Staynall Parish Council who do not support the claim but comment that the only route to exist was the one shown through the caravan park connecting to the landing stage (as shown on this map). The claimed route is not shown.</p> <p>Access to the claimed route is available at point A and the route appears to be available (but not marked) across the car park. Two solid boundary lines are shown across the claimed route between point A and point B and a further boundary is shown just before point B.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route probably did not exist in 1983 and the route referred to by the Parish Council is not the claimed route.</p>
<p>Aerial Photographs</p>	<p>1945</p>	<p>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 photographs and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set of aerial photographs available was taken just after the Second World War in about 1945 and can be viewed on GIS. The clarity is generally very variable.</p>
<p>Observations</p>		<p>The image is not very clear and it is not possible to determine whether the claimed route existed at that time.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn.</p>
<p>Aerial Photograph</p>	<p>1960</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>


Observations		The image is not very clear and it is not possible to determine whether the claimed route existed at that time.
Investigating Officer's Comments		No inference can be drawn.
Colour Photograph	1972	Photograph submitted by the landowners as part of their submission against the claim.

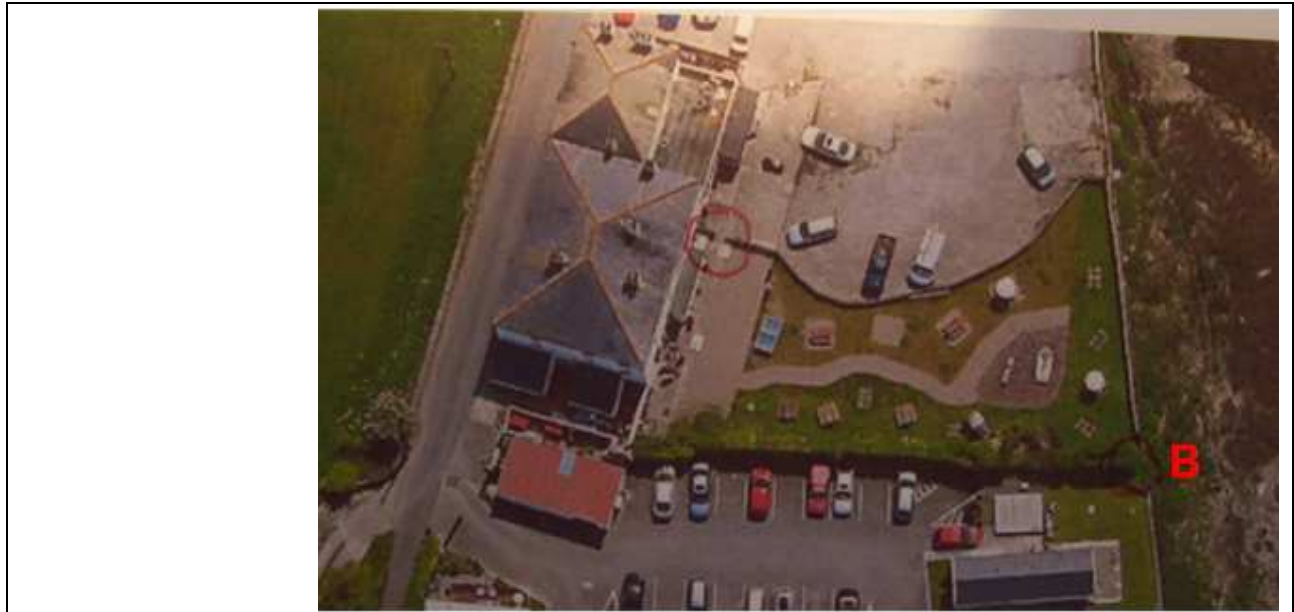


Observations		<p>At point A the claimed route is open and accessible from Wardley's Lane. It then crosses the tarmaced car park belonging to Wardley's Hotel and it can be seen that parking areas have been marked out across the line of the claimed route. Midway between point A and point B the claimed route is crossed by a wall into which there appears to be a gate approximately on the claimed route. The claimed route then crosses a grassed area that has been labelled as 'private rear garden' by the landowners. Beyond the mown area it appears to pass through a hedge and rougher vegetated area to point B.</p> <p>The remains of the old jetty can be seen and the landowners who submitted the photograph have marked (red arrow on bottom right of photo) what they describe as 'footpath access' north of Wardley's Hotel along the boundary of the caravan site.</p>
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Investigating Officer's Comments		The claimed route does not appear to exist circa 1972. If the claimed route had been acknowledged across the car park it would have been likely that provision would have been made to cross between the parking areas. The fact that the claimed route is likely to have been impeded by parked cars implies an intention not to dedicate a right of way.
----------------------------------	--	--

Aerial Photograph	15 th May 1988	Colour aerial photograph taken in the 1980s and available to view at the Lancashire Records Office.
		
Observations		The image has lost much of its clarity when enlarged but shows that access onto the car park was available at point A and that the wall and buildings that had previously existed across the claimed route midway between point A and point B (and shown on the photograph submitted by the landowners dated 1972) had been removed. Access appears to have been available between point A and point B although there is no route marked on the ground. A boundary structure existed at point B and it is not possible to determine whether it was possible to pass through it to gain access to the salt marsh.
Investigating Officer's Comments		The claimed route may have been accessible in 1988 but was not defined on the ground and it is not possible to determine whether access was available through the boundary immediately prior to reaching point B.
Aerial Photograph	2000	Colour aerial photographs viewed on GIS.

	
Observations	<p>Wardley's Hotel and car park are clearly shown. Access from Wardley's Lane to point A is open and unrestricted. The claimed route then crosses the car park and appears accessible although the route is not marked. A hedge line is indicated at the hotel's boundary with the caravan park and along the rear boundary of the hotel with the salt marsh and it is not possible to determine whether there was access onto the salt marsh to point B. There is no worn line on the ground leading to a potential way through the hedge to point B.</p>
Investigating Officer's Comments	<p>The claimed route may have been accessible across the pub car park in 2000 although because it crossed a car park - and was not marked - it is probable that at certain times the claimed route may have been obstructed by parked cars. It is not possible to see whether access was available through the boundary to point B.</p>
Colour Aerial Photograph	<p>2007-2010</p> <p>Colour aerial photograph submitted by the landowner and stated to have been taken during the tenancy 2007 – 2010 showing what they describe as being a children's garden. The two areas circled red by the landowners are said to be the position of access gates installed by the tenant, Ms Hallett.</p>



<p>Observations</p>		<p>The photograph does not show the start of the claimed route at point A but it does show that part of the claimed route at the rear of Wardley's Hotel and shows how it would have crossed the car park to the edge of the grassed play area which appears to have been fenced with access being provided immediately to the rear of the hotel building (circled red) not on the claimed route. From the fence separating the car park and 'children's garden' the claimed route then crossed an area containing play equipment to the corner of the grassed area at point B. Access through the rear boundary to point B on the salt marsh is not visible although its location is circled red by the landowner and is explained as having been created by the tenant of the property.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route would not have been accessible along the full length that has been claimed and may have been obstructed at various times by parked cars</p>
<p>Aerial Photograph</p>	<p>23rd Jul 2010</p>	<p>Colour aerial photograph taken in 2010 and viewed on GIS.</p>



<p>Observations</p>		<p>Wardley's Hotel and the car park are clearly visible. Access onto the claimed route at point A is open and available. The claimed route is then available (but not marked) across the car park (with the exception of when it was necessary to deviate around parked cars) until it meets the boundary of a grassed area described by the landowners as a children's garden. Access to the garden appears to exist immediately to the rear of the hotel building and also at the south westerly end of the garden but not on the line of the claimed route.</p> <p>It is not possible to see from the photograph whether access existed from point B through the rear boundary of the children's garden onto the salt marsh. A small gap is evident in the wall south south east of point B (and marked on the extract of the photograph above) which appears to provide access to the salt marsh but this is not on the line of the claimed route.</p>
<p>Investigating Officer's Comments</p>		<p>Access across the car park appeared to be available but the fact that no provision for the claimed route was made, and the fact that access along the claimed route may therefore have been impeded by parked cars. Access along the claimed route through the enclosed grassed children's area does not appear to have been available.</p>
<p>Other Photographs</p>	<p>8th Mar 2012</p>	<p>Google Maps photograph. The date the image was captured was 8th March 2012.</p>




Observations

The exact date that the images were taken is unknown. The red arrow superimposed on the first image shows the approximate route across the car park between point A and point B. In the distance fencing can be seen and it is not clear whether the fence crosses the claimed route or whether it marks the boundary between the hotel and caravan site. Point A is clearly visible on the second image as being open and accessible.

Investigating Officer's Comments

The date of the photographs is unknown so they are of only limited use. The photographs support the evidence of previous aerial photographs that access onto the car park was available at A and that the claimed route was unmarked from that point.

Other Photographs		Undated photograph posted on the closedpubs.co.uk website.
		
Observations		<p>The photograph is undated but the information given explains that the public house closed in around 2010 and that it was destroyed by fire on 25 April 2011.</p> <p>The photograph shows the back of the hotel. The red line superimposed on the photograph is the approximate line of the claimed route.</p> <p>Although the quality of the photograph is poor it is possible to see that a wooden post and rail fence can be seen that crossed the claimed route.</p>
Investigating Officer's Comments		The claimed route probably did not exist in 2010/2011.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council

		survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area.
Observations		The parish survey map and cards were drawn up by Stalmine-with-Staynall Parish Council. The claimed route is not shown on the parish survey map or documented in the parish survey cards.
Draft Map		<p>The parish survey maps and cards for Stalmine-with-Staynall were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Map was given a “relevant date” (1st January 1953) 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 1st January 1955 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.</p>
Observations		The claimed route was not shown on the Draft Map of Public Rights of Way. In this instance, there were no formal objections or other comments about the omission of the claimed route.
Provisional Map		Once all representations relating to 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 of Public Rights of Way and there were no objections to the omission of the path were made.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
Investigating Officer's Comments		The claimed route was not considered to be a public right of way in the 1950s.
Revised Definitive Map of Public		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First

Rights of Way (First Review)		Review. On 25 th 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.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The claimed route was not considered to have changed status by the 1960s.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.

The land crossed by the route claimed for addition to the Definitive Map 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 although Wyre estuary to which the claimed route is claimed to provide access to from point B is designated as a Site of Special Scientific Interest (SSSI).

Summary

There is no documentary evidence to support the existence of the claimed route. The claimed route is not shown on any of the early commercial maps, Ordnance Survey maps or any of the definitive map records that have been inspected.

Wardley's Hotel appears to have existed since at least 1890 although the car park is not evident on the documents inspected earlier than the 1972 aerial photograph.

There is no clear evidence of a gap in the boundary which would have provided access to the salt marsh at point B – with only the photograph submitted by the landowners and dated between 2007 and 2010 appearing to show access (which was said to have been created by the tenant at that time.) Both the Ordnance Survey maps and aerial photographs suggest that numerous permanent and temporary structures have existed across the length of the claimed route at various times.

PROPOSED SCHEDULE TO THE ORDER

PART I

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

A public footpath from a junction with Wardley's Lane (point A), running in a generally north westerly direction for approximately 70 metres on a 1.5 metre wide undefined route across the former site of Wardley's Hotel (now demolished) to pass through the boundary wall to the edge of the salt marsh (point B).

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Stalmine-with-Staynall the following:

"Public Footpath from a junction with Wardley's Lane at SD 3655 4290 in a generally north westerly direction across the former site of Wardley's Hotel (demolished) on an unmarked route to pass through the boundary wall to the edge of the salt marsh at SD 3649 4294".

Width: 1.5 metres

Limitations and conditions: Boundary wall at SD 3649 4294

Length: 70 metres"

County Secretary and Solicitor's Observations

User Evidence Forms

In support of the claim, the applicant, the Wardleys Marine Yacht Club has submitted twelve user evidence forms.

The forms indicate use of route for:

0-10 years (3)
11-20 years (1)
21-30 years (2)
31-40 years (2)
41-50 years (4)

All users indicate that their usage was for access to the shore the majority to gain access to their boats, with one user using it in their position as coastguard to conduct river searches.

All users indicated that the route has only been used on foot.

None of the users say that the route was ever blocked by gates or fences however one user did say that there was a gate at the access point to the shore which was never locked.

The user evidence forms indicate the route has mainly been used for the purposes of gaining access to the shore line.

The frequency of use ranges from being used occasionally to 4 people stating that they used it 20/25 times a year, 2 users stated 30/40 times a year 1 user states 10/12 and 1 user states as much as a hundred times a year.

None of the users claim to have asked for permission to use the route.

Further Information from the Applicant

The Applicant states that the route has been walked unchallenged for over twenty years. 12 witness statements have been submitted and a map (undated) showing a short road said to be known as Silk Alley which was a road leading down to some warehouses which used to be in the car park land. She states the route runs from the South East corner of the entrance to Wardley's Hotel car park on Wardley's Lane in a straight diagonal line, in a north westerly direction across the car park at the rear of Wardley's Hotel to the far corner of the car park to steps which allow access to the shore. The applicant would say that if users had to walk round parked cars this would be a slight deviation.

A letter from one of the users of the route points out that the old way to a warehouse was known as Silk Alley but this has now become a route across the car park leading to steps down to the river and the old ferry jetty. There has been no signs or notices.

Information from landowners

The landowners of the claimed route have submitted an objection to the claim and submitted several documents. They state that they purchased the public house in 2002.

They provide information about another route north of the claimed route north of the Hotel building to old steps and how this would seem to have been a public footpath. Some user evidence and recollections are provided about this other route. This is presently blocked by buildings on the Caravan park.

In respect of this claimed route the owners confirm that tenants of the public house finished in 2007. For a period of 5 months in 2007, the premises and car park were secured when the property stood empty.

A new tenant opened in 2007 and during their time at the Public House, a children's play area was created and a new gate at the corner of the plot to access the steps to the marsh. They go on to state that in 2010 the site was again secured using HERRIS fencing and has remained secured since that time. The landowners state that during this time there have been signs on site with their contact details, but they have never been contacted about access.

Further the landowners state that the steps to access the salt marsh are not in the corner of their car park and are in fact located within the caravan park. They also state that the users could not have always followed the same path because the area behind their premises had for a time been a fenced off children's garden with access from the car park being directly behind the pub, meaning that the users would have to have deviated from their claimed route.

They have spoken to previous owners of the public house who recall the land behind the building in the early days (they owned 1960s, 1970s and into the 1980s) being a private garden and a path to the steps not running across this garden but being bounded by hedges north of the site. They sold the caravan site off in 1985 and the only path was on the land sold. They say there was no footpath from the public house to the shore.

Various photographs were provided.

Letters sent in following their recent planning application are also submitted including the one from the applicant requesting provision for a way on foot to be made as the yacht club members had used the route across the car park for over thirty years

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Possible access until 2007

No actions taken by owner or tenant before 2007

Against Accepting the Claim

Disputed physical access to steps at point B
Inconsistencies in the early user evidence – gate not referred to yet shown on photograph of 1972

Conclusion

The claim is that this diagonal route to steps to the foreshore is in law a public footpath and should be recorded on the Definitive Map and Statement.

There is no express dedication and so the Committee are advised to consider whether use has been such that the provisions of S31 have been satisfied and a dedication can be deemed to have happened or secondly whether dedication can be inferred on balance at common law from all the circumstances.

The first point to consider is whether those providing the user evidence can be considered as "the public" as they are all accessing their boats and may well be members of the applicant sailing club. Use has to be by the public for both S31 and at common law.

It is advised that use should be by a number of people who taken together may be taken to represent the community in general. Use wholly by local people may still be use by the public as their use can still be taken to represent the local people as a whole. Where the use evidence stems from those going to various boats, it is suggested that they could arguably still be regarded as the public. They are not going to a place of work or are members of the same family, but accessing the foreshore.

The second point needs to be to consider whether the route is capable of being a highway connecting a recorded highway to either another highway or a place of public resort. Point B here accesses the salt marsh which is privately owned and not access land nor a footpath nor common land (although the foreshore is common land further south). The foreshore has historically been a place to which the public would access especially at this location to reach the landing stage and ferry in the past. It is not as clear that the more modern salt marsh is a place of public resort but in the absence of evidence to the contrary it is suggested that it could be so regarded in this matter. It is a finely balance point and further information may be valuable.

A third point to consider would be whether a footpath can develop across an area such as a car park or say a farm yard where the usual line of use could be obstructed by parked vehicles. It is suggested that in law a footpath could grow up across a car park and the parking be temporary obstructions able to be bypassed by a deviation. The setting out of car parking areas by an owner would be an action which could be indicative of having little intention to dedicate a route for the public to use on foot and this may be a difficulty in proving actual intention in common law but whether it would be sufficient to rebut the presumption raised by the use under S31

is debatable. It is suggested that marking out a car park would not be sufficient action to be the sufficient evidence of a lack of intention to dedicate under S31.

Considering the inference of dedication at common law it is suggested that to prove actual intention to dedicate a footpath on the claimed line may be difficult as the car park marked out as discussed above and the information from present owners and previous owners. The owners in the 1960s 170s and 1980s state that there was no footpath from the public house to the shore.

Considering S31 it is suggested that the calling into question of the route whereby the users would have appreciated that their use of the old line was challenged would be 2007 when the car park was closed or possibly a little later when the children's play area and new fence were constructed. This would mean that the user to consider would be that of 1987-2007.

In this matter there are 10 users evidencing use during that period. The aerial photograph of 1988 assists in indicating that access was now more clear across the land although the limitations of this photograph have to be taken into account. There do not appear to have been any actions taken by the owners to challenge this use but there are some inconsistencies and credibility issues in the user evidence such as recollections of earlier use and accessing point B and it may be that further information from the users would be valuable to be sure that the higher test for confirmation could be met in this matter. It is however suggested that the lower test can be satisfied such that a deemed dedication of a footpath on balance is reasonably alleged by the use in this matter. The Committee may consider that an Order should be made in this matter but it is suggested that a further report be presented once the user evidence has been clarified as to the stance to be taken by the authority in connection with 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 within Annex 'A' included in an earlier item on the Agenda. Provided 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: 804/522		Megan Brindle/Office of Chief Executive/ 01772 535604

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

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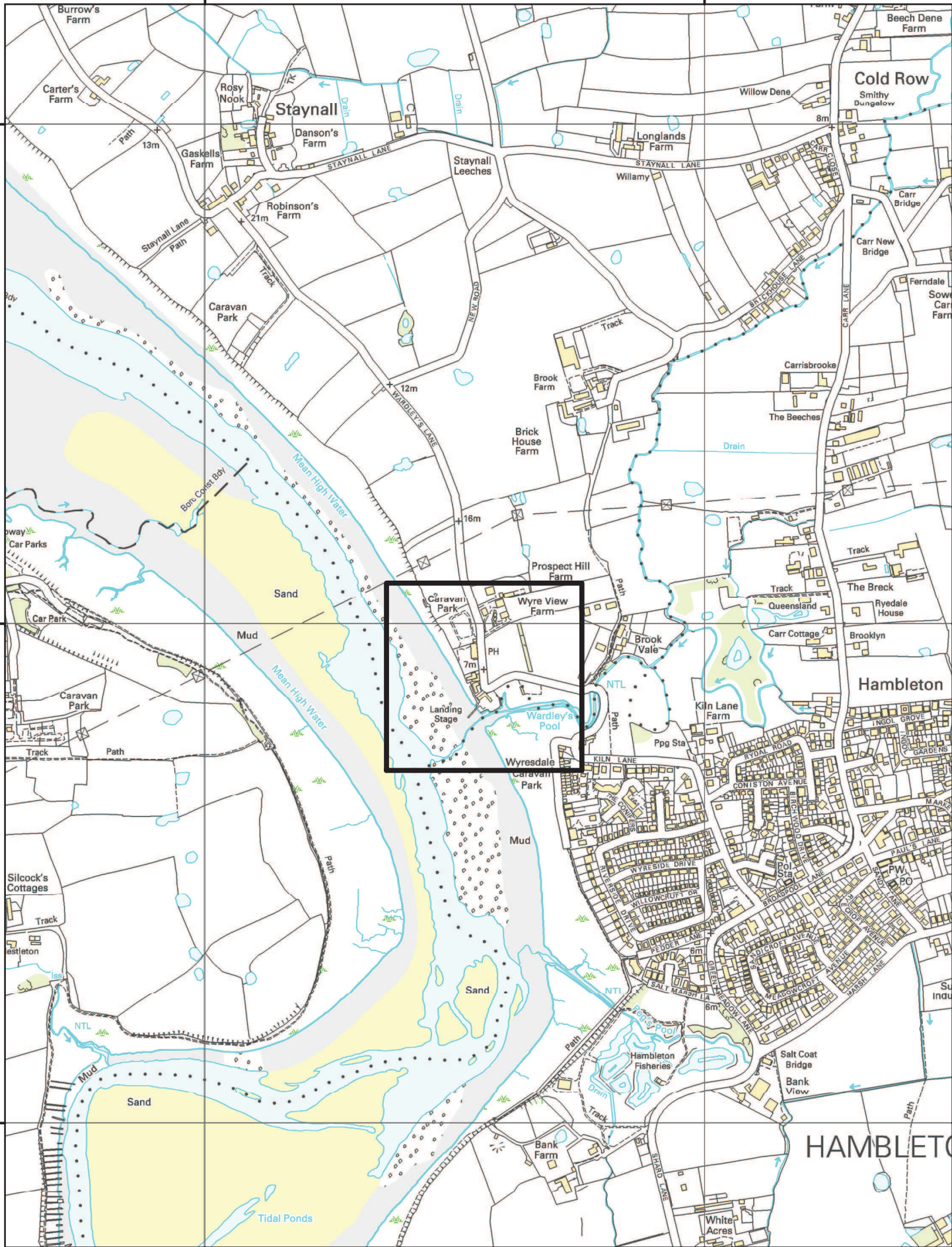
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Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed public footpath from Wardleys Lane to the shore, Stalmine with Staynall, Wyre Borough
Claim 804/522 LOCATION PLAN

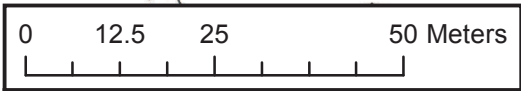
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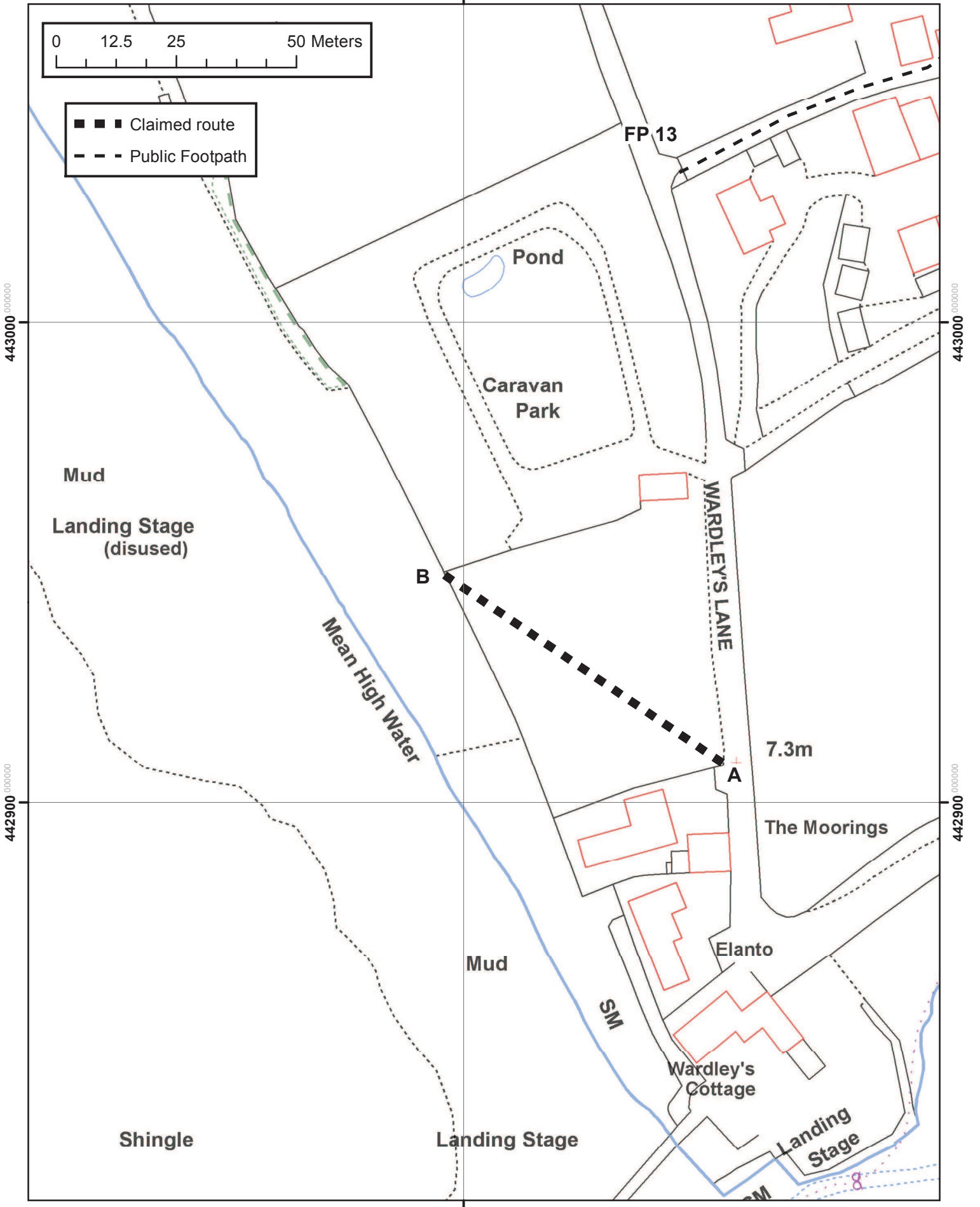
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- ■ ■ Claimed route
- - - Public Footpath



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Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed public footpath from Wardleys Lane to the shore, Stalmine with Staynall, Wyre Borough
Claim 804/522

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Regulatory Committee

Meeting to be held on 26th March 2014

Electoral Division affected: West Lancashire North

Wildlife and Countryside Act 1981

**Claimed Public Footpath from Banks Road to Station Road, North Meols,
West Lancashire Borough.**

Claim No. 804/529

(Annex 'A' refers)

Contact for further information: Miss M Brindle, 01772 535604, County Secretary & Solicitors Group megan.brindle@lancashire.gov.uk Mrs J Elliott, 07917 836626, Environment Directorate jayne.elliott@lancashire.gov.uk

Executive Summary

The claim for a public footpath from Banks Road to Station Road, North Meols, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529.

Recommendation

1. That the claim for a public footpath from Banks Road to Station Road, North Meols, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529, be accepted.
2. That an Order be made pursuant to Section 53 (3)(b) and/or 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 Banks Road (Grid Reference SD 3796 2086) to Station Road (SD 3826 2032), North Meols for a distance of approximately 610 metres and shown between points A-B-C-D-E-F-G-H-I on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

A claim has been received for a public footpath extending from a point on Banks Road to a point on Station Road, North Meols, West Lancashire Borough, a distance of approximately 610 metres, and shown between points A-B-C-D-E-F-G-H-I 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 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 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 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. 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

West Lancashire Borough Council has been consulted and no response has been received.

North Meols Parish Council is the applicant for this claim.

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 the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference	Description
A	SD 3796 2086	Junction with Banks Road
B	SD 3798 2079	Fence line shown on Committee plan that is no longer in existence
C	SD 3800 2078	Boundary fence
D	SD 3813 2055	Change of surface
E	SD 3818 2046	Entrance to pump house (disused)
F	SD 3819 2044	Culvert
G	SD 3824 2035	Claimed route passes through metal gateposts
H	SD 3825 2033	Field gate and kissing gate across claimed route
I	SD 3826 2033	Junction with Station Road

Description of the Route:

A site inspection was carried out in September 2013.

The claimed route is approximately 610 metres long. It commences on Banks Road immediately opposite the start of Public Bridleway 47 North Meols and adjacent to 100 Banks Road (at point A on the Committee plan).

At the start of the claimed route access is blocked by a double wooden post and rail fence which appears to have had barbed wire across it which has subsequently been cut. There is a gap of approximately half a metre between the two fences and it appears that they were constructed in this way so that a new section of hedge could be planted between them (the remainder of the field is bounded by a mature hawthorn hedge which stops short of the boundary with 100 Banks Road at point A).

Immediately beyond the double fence, in the corner of the field, is a small brick substation 136 cm by 79 cm wide, and although partially built across the line of the claimed route it is easy to walk round it. Adjacent to the substation, on the boundary with 100 Banks Road, and clearly visible from the start of the claimed route at Point A, is a sign with the faded word 'private' in red and the more visible wording 'legal action may be taken against unauthorised persons found on this property' in black.

From point A the claim route extends in a south south easterly direction for 70 metres along a field boundary which separates the garden of 100 Banks Road with the field crossed by the claimed route. The claimed route is unenclosed and there is no visible, or worn track on the ground.

At point B on the Committee plan the claimed route is shown to cross a field boundary but on the ground this boundary does not exist. However a boundary fence does cross the claimed route a few metres south east of point B at point C.

At point C the claimed route is crossed by a wooden post and sheep netting fence topped with barbed wire with no access through it. When the claimed route was originally inspected in September 2013 there was no sign at point C. However, on a

further inspection in December 2013 it was noted that a sign had been erected at this point indicating that the land between points C-B-A was private.

Close to point B, to the west of the claimed route and immediately to the rear of the garden fence there is a small wooden gate which was closed but not locked. At the time of inspection it was possible to pass through the gate to access a small stone flagged area adjacent to large metal container. It was then possible to pass round the corner of the fenced off land adjacent to the sluice on a narrow strip of land to rejoin the claimed route south of the fence at point C (although it was difficult to use due to a deposit of garden waste including a number of coniferous branches).

From the fence at point C the claimed route continues in a south easterly direction along a 3 metre grass surfaced track which runs adjacent to The Sluice. The land over which the claimed route passes had been mown and was well maintained. A faint track was visible in the grass that looked to have been formed by people walking along it.

The claimed route continues in a south east direction adjacent to The Sluice passing a series of angling platforms that are accessed from the claimed route and that were constructed in 2000 (information taken from a notice adjacent to claimed route).

At point D the surface of the claimed route changes from being a well maintained grass surface to a 3 metre wide compacted stone track. It continues in a south easterly direction adjacent to The Sluice passing an open area that appears to be used as a parking area to the east.

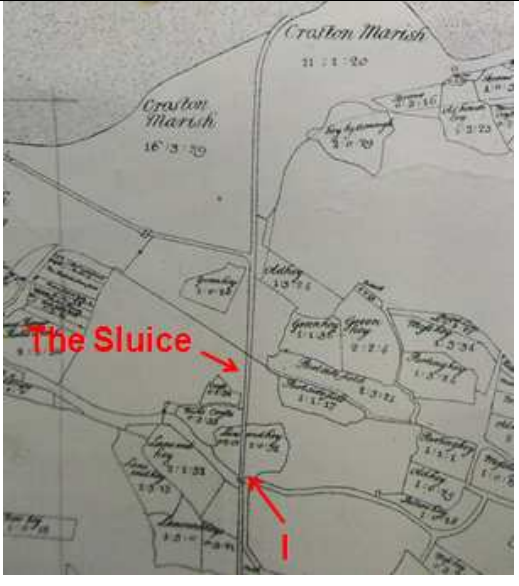
The claimed route continues along the surfaced track to point E where it passes the entrance to a disused pump house and car park.

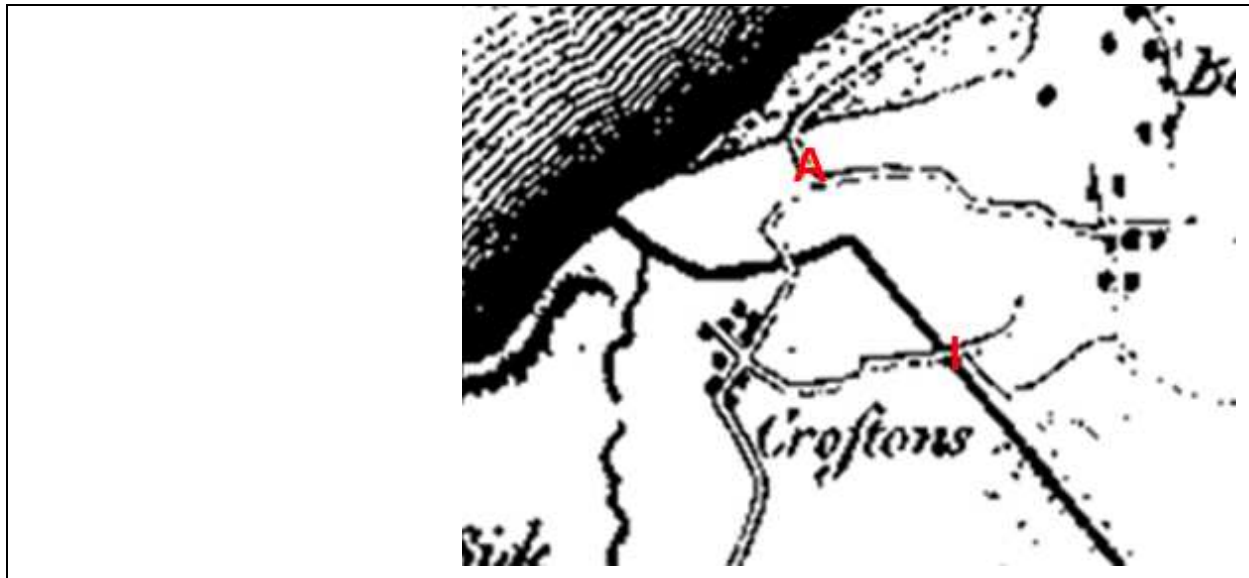
From point E the claimed route continues in a south easterly direction along the stone surfaced track (adjacent to The Sluice) crossing a culvert at point F and continuing in a south easterly direction along the track to point G where there are metal gate posts on either side of the claimed route (but no gate) and signs stating 'Horses prohibited private land' and 'Warning No tipping'.

The claimed route continues a short distance to point H where a substantial 4 metre wide metal gate has been erected across route. The gate was not locked on the day of inspection and alongside it pedestrian access was available via a metal kissing gate (130cm box and 110 cm wide gate). Various signs relating to fishing activities, the provision of fishing permits, and warning against swimming in The Sluice were located at point H but none of the signs suggested that there was no public access for pedestrians along the claimed route. Just beyond point H the claimed route ends at point I where it meets Station Road.

Map and Documentary Evidence

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

Document Title	Date	Brief description of document & nature of evidence
Henry Bankes' Map of Lands in North Meols belonging to Peter Bold 1736 (Crosby Reference Library)	1736	This map was surveyed and mapped by Henry Bankes. The reproduction of this map carries the following statement: 'A copy of the original survey of lands in Southport and Banks in the possession of the Trustees acting in execution of the Trusts of the Will and Codicil of the late Charles Scarisbrick of Southport Hall, Esquire, deceased, and was reproduced by photography (by permission of the Scarisbrick Trustees), by the Southport Corporation in February 1908'.
		
Observations		This map appears to show the lands in the ownership of Peter Bold, with the acreage of each field, plus the field name or tenant/occupier. The map shows that The Sluice existed in 1786. Its alignment (and that of the road network in the area) does not correspond exactly with the later Ordnance Survey maps but it is possible to identify a number of roads and to locate point I on the map. The claimed route is not shown on the 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 so no inference can be drawn in this respect.
Yates' Map of Lancashire	1786	Small scale commercial map.



Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.



Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also 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.

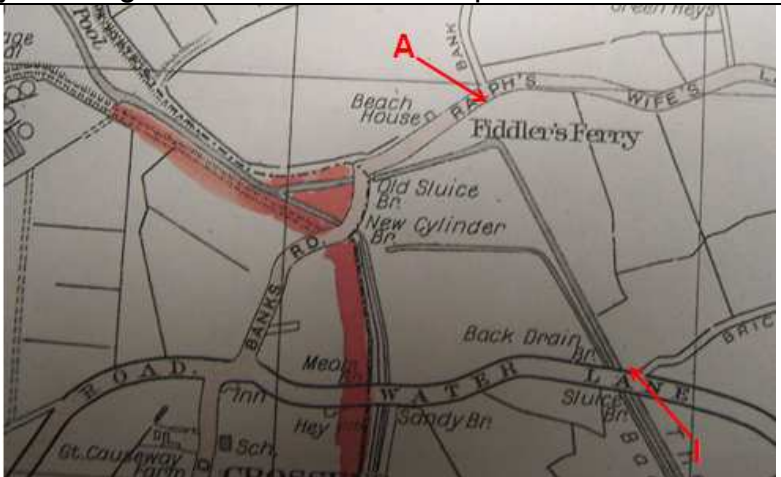
A New Map of the Country round Manchester by John Stockdale 1818	1818	The map covered an area of thirty or forty miles around Manchester, and its value and utility to people travelling across the area is self evident.
Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also 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.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		The claimed route is not shown on the map although The Sluice, Banks Road and Station Road can be clearly identified.
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.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801).
Observations		There is no Inclosure Award for North Meols.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1840	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



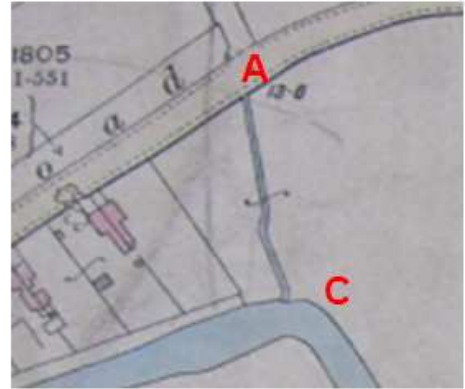
<p>Observations</p>	<p>The claimed route is not shown as a path or track on the Tithe Map although for a short distance from point A towards point B it appears to pass along a fenced off strip which is not numbered. It appears to have been gated at the end of the fenced off strip where it meets field 165. The claimed route crosses fields 1651, 1652, 1696, 1698. Plot 1651 was owned by Sir Henry Bold Baronet Hoghton and tenanted by Hugh Gregson. It was described as arable land with no reference made to any public rights of way. Plot 1652 was owned by Sir Peter Hesketh Baronet Fletchwood and tenanted by William Howard. It was described as arable land with no reference to a public right of way.</p> <p>Plot 1696 was also owned by Sir Peter Hesketh Baronet Fletchwood and tenanted by William Howard. It was described as arable land with no reference to a public right of way.</p> <p>Plot 1698 was owned and tenanted by William Linaker and described as arable with no reference to a public right of way.</p>
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Investigating Officer's Comments		The claimed route probably did not exist in 1840. Access from point A may have been available via a gated access strip but access along the claimed route would have required access through 3 further field boundaries.
Finance Act 1910	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</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>

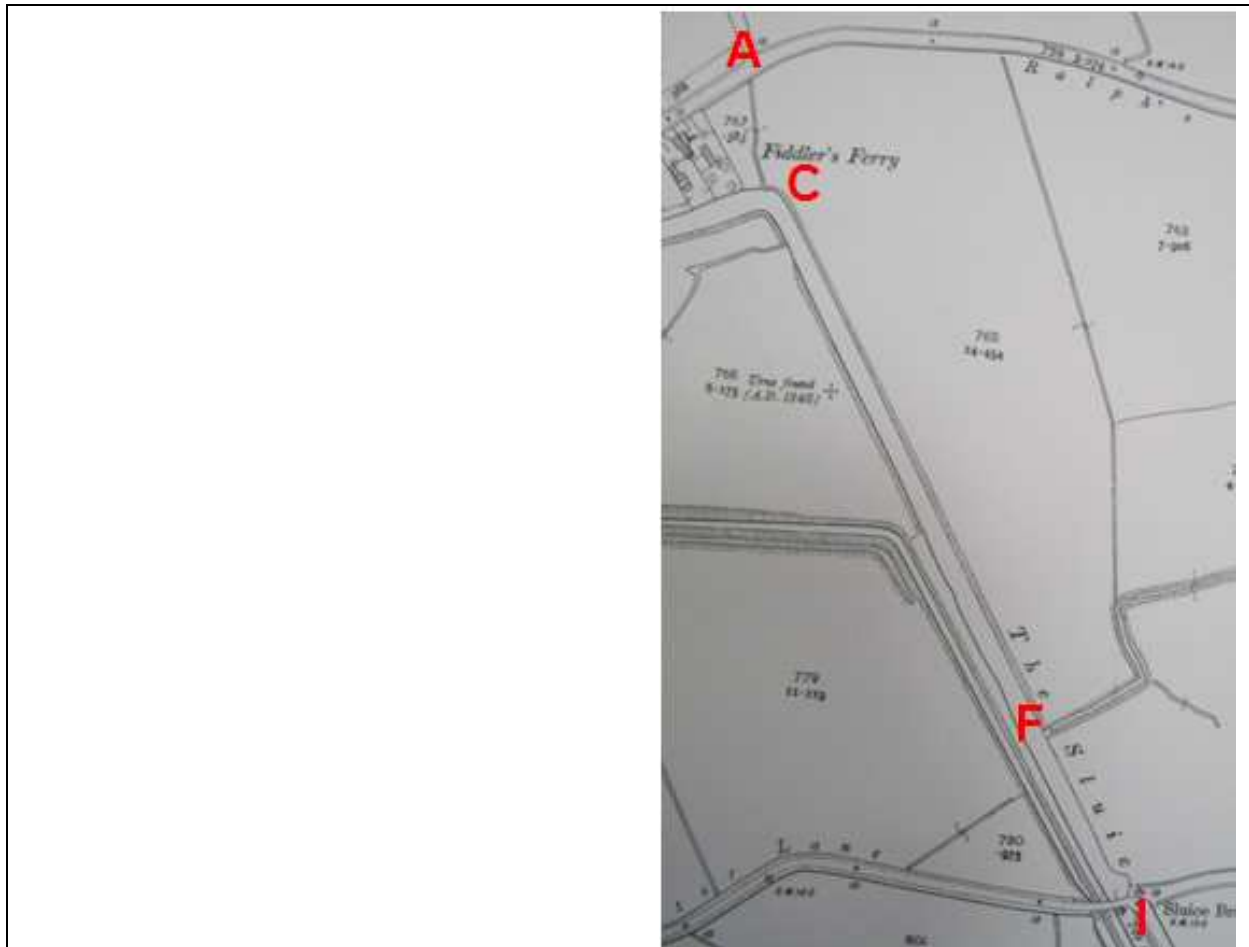


Observations		<p>No Map or Valuation book for this area has been deposited at the County Records Office. A copy of the Finance Act Map and relevant Field book entries were therefore obtained from the National Archives.</p> <p>The claimed route is not shown and is not excluded from the hereditaments (numbered plots).</p> <p>The claimed route crosses hereditaments 747, 749, 804 and 794. No deductions have been claimed for Public Rights of Way or user across any of the hereditaments crossed by the claimed route.</p>
Investigating Officer's Comments		<p>The claimed route was probably not considered to be a public right of way at the time that the valuation was carried out circa 1911 (or was not considered to be worth claiming).</p>
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and south Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p>
		
Observations		<p>The claimed route is not shown on the map although The Sluice, Banks Road and Station Road can be clearly identified.</p>
Investigating Officer's Comments		<p>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.</p>
Ordnance Survey Maps		<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</p>

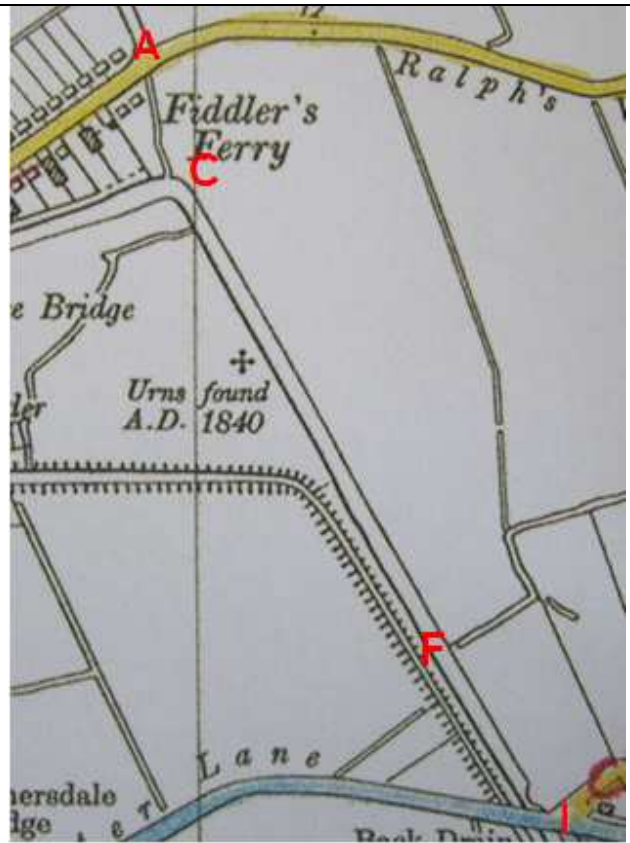
		of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 Inch OS Map	1847	The earliest Ordnance Survey 6 inch map for this area, surveyed 1845-46 and published 1847.
Observations		A route is shown enclosed by fencing from point A for approximately 50 metres towards point B. This route appears to be open (ungated) providing access from the road to a field. The remainder of the claimed route is not shown. The claimed route is crossed by boundaries (most likely fences) at 2 locations between point C and point F. At point F a watercourse appears to feed into The Sluice across the claimed route.
Investigating Officer's Comments		With the exception of the first 50m from point A towards B the claimed route probably did not exist at the time that the Ordnance Survey carried out their survey in 1845-46.
25 Inch OS Map	1894	The earliest Ordnance Survey 25 inch map surveyed in 1892.



Observations		The claimed route is not shown. A ditch is shown adjacent to the claimed route between points A-C feeding into The Sluice. A further watercourse is shown across the claimed route at point F. No field boundaries are shown across the claimed route.
Investigating Officer's Comments		The claimed route is probably did not exist in 1892.
25 inch OS Map	1911	Ordnance Survey map sheet 75.3, Resurveyed 1892-3, Revised 1909, published 1911.



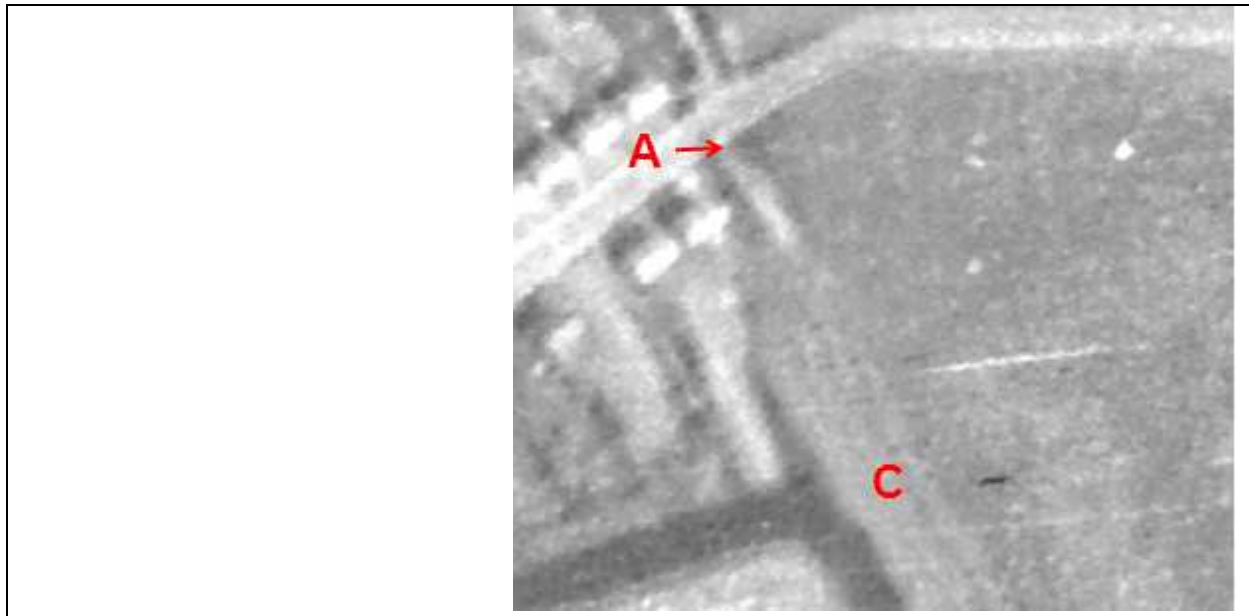
Observations		The claimed route is not shown. A boundary ditch is shown adjacent to the claimed route From point A towards point C feeding into The Sluice. A further watercourse is shown across the claimed route at point F. No field boundaries are shown across the claimed route.
Investigating Officer's Comments		The claimed route probably did not exist in 1909.
25 Inch OS map	1928	Further edition of 25 inch map, resurveyed in 1892-3, revised in 1926 and published 1928.
Observations		The claimed route is not shown and the land across which the claimed route runs remained unaltered from what was shown on the 1911 edition of the 25 inch map.
Investigating Officer's Comments		The claimed route probably did not exist in 1926.
6 Inch OS map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.



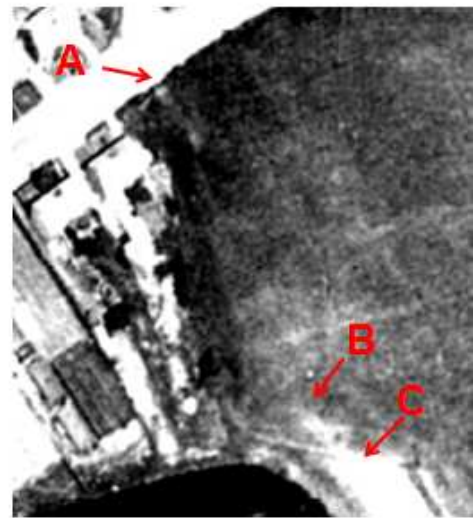
Observations		<p>The claimed route is not shown. A watercourse is shown running parallel to the claimed route from point A in a south south easterly direction to The sluice, on the boundary between the residential properties and the field over which the claimed route runs. At point F it appears that a watercourse that joins The Sluice had been culverted which would mean that access would now be available along the claimed route at this point. However, it appears that point F was fenced - or possibly gated.</p> <p>The yellow and blue colouring on the base map does not form part of the original map. The colouring is not relevant to the claim.</p>
Investigating Officer's Comments		<p>The claimed route probably did not exist when the map was revised in the 1930s.</p>
1:2500 OS Map	1969	Further edition of the 1:2500 map, revised 1968.



Observations		<p>Only one of the 1:2500 sheet was available at the County Records Office (SD 3820 and 3920). This map sheet covers that part of the claimed route just south of point C to point I. The claimed route is not shown as a physical track between point C and point D. Between point D and point F a pump house has been constructed and an access route provided which is consistent with the claimed route between points D-E-F-G-H-I. At point D the claimed route is crossed by a single pecked line suggesting a change of surface. At point F it can be seen that the watercourse feeding into The Sluice has been culverted to flow under the claimed route.</p>
Investigating Officer's Comments		<p>The claimed route existed as a physical track on the ground between points D-E-F-G-H-I in 1968.</p>
Aerial Photographs	1940s	<p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable but in this particular instance the quality of the picture is reasonable.</p>



<p>Observations</p>		<p>It is possible to see Banks Road and house nos. 100 and 98 Banks Road. The boundary of the gardens to the field crossed by the claimed route appears different to the present day and it looks like both properties had smaller gardens at that time.</p> <p>At point A there appears to be a lighter area indicative of a well used field entry point. The Sluice can be clearly seen but there is no visible worn track alongside it. There is no field boundary across the claimed route at point B or point C and the pumping station close to point D does not exist. There is no visible exit from the claimed route at point I.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route was not visible as a walked route in the 1940s. Access onto the claimed route appeared possible at point A although the worn area would be consistent with any used agricultural field access point. No fences or barriers could be seen across any part of the claimed route suggesting that access may have been possible along the full length.</p>
<p>Aerial Photograph</p>	<p>1963</p>	<p>Aerial photograph available on GIS and in County Records Office.</p>



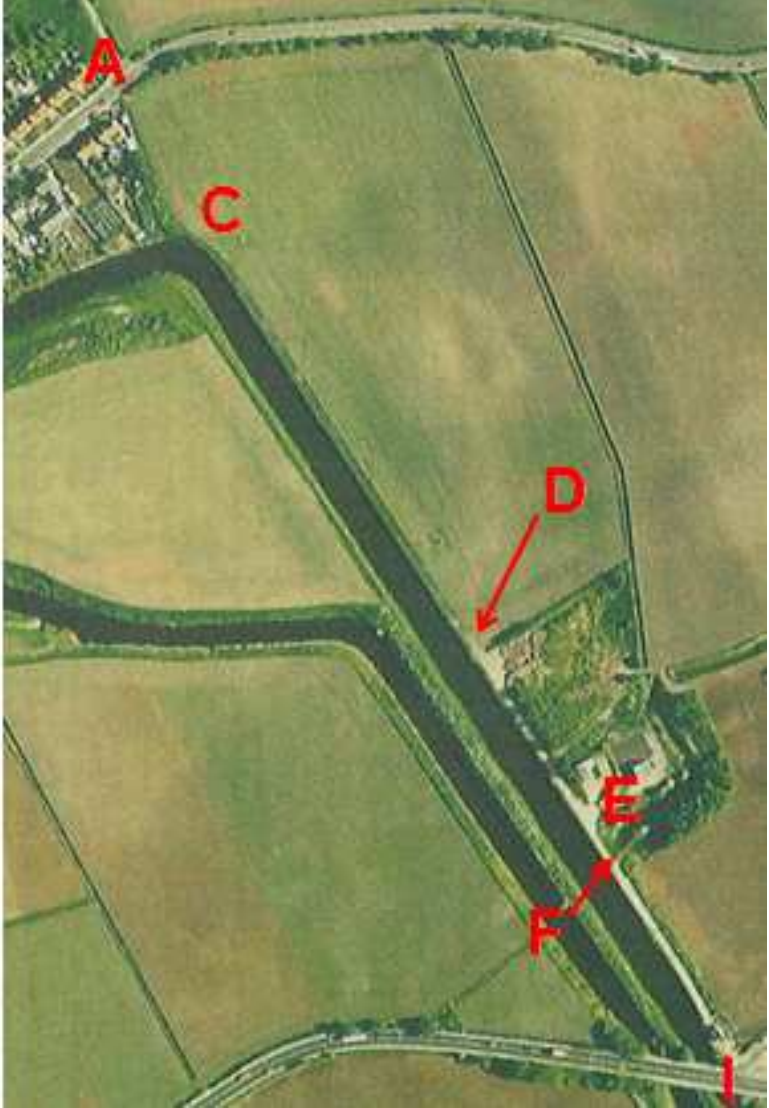
Observations




Access appears to be available through a gap in the hedge at point A and a worn track is visible leading into the field. The claimed route is not visible as a route on the ground between point A and point B although a track can be seen in the proximity of point C leading from the trees along the boundary of the gardens and the field. There is no field boundary across the claimed route at point B or point C. Between point A and point B the boundary between the houses and field through which the claimed route passes appears slightly different to the current day and it appears that the gardens have now been extended into the field towards the claimed route.


A wide track is visible along the claimed route between point C and point D. At point D the track narrows slightly as it passes between The Sluice and the pump house. From point D the claimed route continues as a track through to point I where it exits onto Station Road.

Investigating Officer's Comments

Access to the claimed route existed at point A and the route appears to have been accessible between point A and point C. The claimed route existed as a wide track between point C-D-E-F-G-H-I in 1963.


Aerial Photograph	1988	
		
Observations		<p>A worn track is visible leading into the field at point A. The claimed route is not visible on the ground between point A and point C and the field boundary between the gardens and field over which the claimed route runs is different from the present day. There is no field boundary across the claimed route at point B or point C. From point C a faint track is visible adjacent to the Sluice. A clearly visible gap provides access along the claimed route at point D and from point D the claimed route follows a wide access track past the pump house through to point I.</p>
Investigating Officer's Comments		<p>The claimed route appears to have been accessible in 1988.</p>
Aerial Photographs	1998 onwards	<p>The following sets of photographs were all taken after the submission of a Statutory Deposit and Declaration made under section 31(6) Highways Act 1980 by the current owner of the land crossed by the claimed route A-B-C in</p>

		which they did not acknowledge the existence of the claimed route.
Aerial Photograph	1999	
 		
		
Observations		Access onto the claimed route appears available at point A but the field boundary/garden boundary alongside the claimed route between points A-B-C differs from the current day. No fencing crosses the claimed route at point B or point C. A faint track can be seen running parallel to The Sluice along the claimed route between point C and point D. No gate or fencing appears to be across the route at point D but a clearly visible route can be seen joining the wider surfaced track and continuing past the pumping station through points E-F-G-H-I. It appears that a gate existed across the claimed route at point H.
Investigating Officer's Comments		The claimed route appears to have existed in 1999.

Aerial Photograph	2000	
		
Observations		<p>Access was available into the field at point A. The boundary between the houses and field is difficult to determine but still differs from the present day. A worn track can be seen on the ground along part of the claimed route between points A-B-C and a track also emerges from the trees at the rear of the houses onto the claimed route. There is no boundary fence across the claimed route at point B or point C and the claimed route does not appear to be fenced off from the adjacent field between point C and point D. A faint track can be seen along the claimed route between point C and point D.</p> <p>At point D there appears to be an access way leading to a more clearly defined track which continues from point D-E-F-G-H-I.</p>
Investigating Officer's Comments		The claimed route existed as a worn track in 2000.
Aerial photograph	2010	Aerial photograph available on GIS.

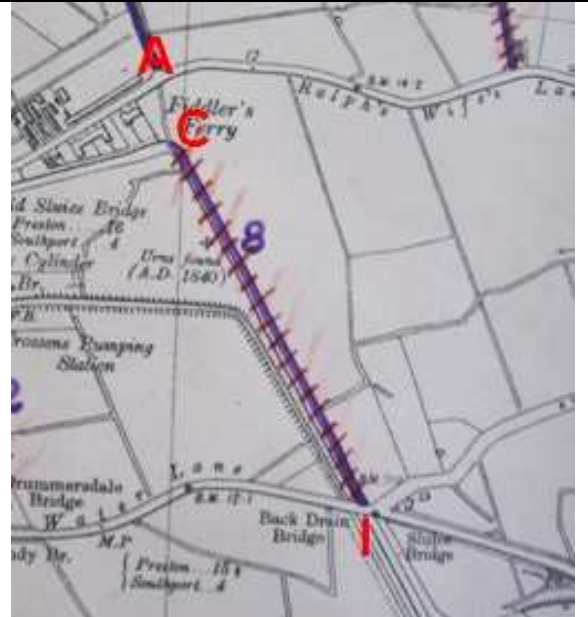


<p>Observations</p>	<p>The most recent photograph pre dating the application. It is not possible to see whether access is available onto the claimed route at point A although it is apparent that the gap in the hedge that had been obvious on the 2000 aerial photograph had been fenced across and the hedge extended from what was shown to exist in earlier photographs. The small brick construction in the corner of the field is visible. The boundary of the gardens of 100 and 98 Banks Road has altered to its current alignment and</p>
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		<p>differs from that shown on the Committee plan. At point B a faint line can be seen across the claimed route that extends in a north easterly direction across the field. The line is not pronounced enough to be an existing field boundary but could mark the line of some sort of temporary boundary that had subsequently been removed.</p> <p>The existing fence across the claimed route at point C is clearly visible and a worn path can be seen extending from the fence line along the claimed route towards point D. This grass covered track continues along the claimed route to point D where cars have been parked adjacent to the route. From point D the claimed route is clearly visible for the rest of its length down to point I. Several other cars can be seen parked along the claimed route and a gate appears to exist across the end of the route at point E.</p>
<p>Investigating Officer's Comments</p>		<p>Access to the claimed route at point A has altered and a fence has been erected across the route at point C. It is not possible to determine from the photograph what access provision there may have been in 2010. The claimed route appears to look similar to what was found on the ground in 2013 with access being prevented by fences at points A and C.</p>
<p>Definitive Map Records</p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p>
<p>Parish Survey Map</p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in rural district council areas 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.</p>
		

<p>Observations</p>	<p>The Parish Survey Map for North Meols was produced by North Meols Parish Council. It shows a route marked by a thin red line that roughly corresponds with the claimed route. Between point A and the boundary of The Sluice close to point B the line drawn is on the west side of the field boundary (now within the gardens of 100 and 98 Banks Road). Close to point B the red line crosses a field boundary and is then drawn along the very edge of The Sluice (not alongside it). The route looks to have been originally labelled with the number '4' but this has been crossed out and it has been re-labelled in a different coloured pen with the number '8'. The letters 'C.R.F.' have also been written on the map, together with the word 'No'. 'C.R.F.' was a recognised abbreviation used for labelling a route considered by the surveyor to be a carriage or cart road used mainly as a public footpath.</p> <p>The parish survey card for Footpath 8 describes the route labelled on the map as a field footpath and the detailed description reads ' Poorly defined, grass walk along sluice bank from Fiddlers Ferry to Back Drain Bridge.' It is dated June 1957.</p>
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<p>Draft Map</p>	<p>Lancashire County Council took all the parish survey maps and cards for the rural district areas and drew the routes the parishes believed to be public onto a 6-inch Ordnance Survey map. The Draft Map was given a “relevant date” (1st January 1953) 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 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into the objections, and recommendations made to accept or reject them on the evidence presented.</p>
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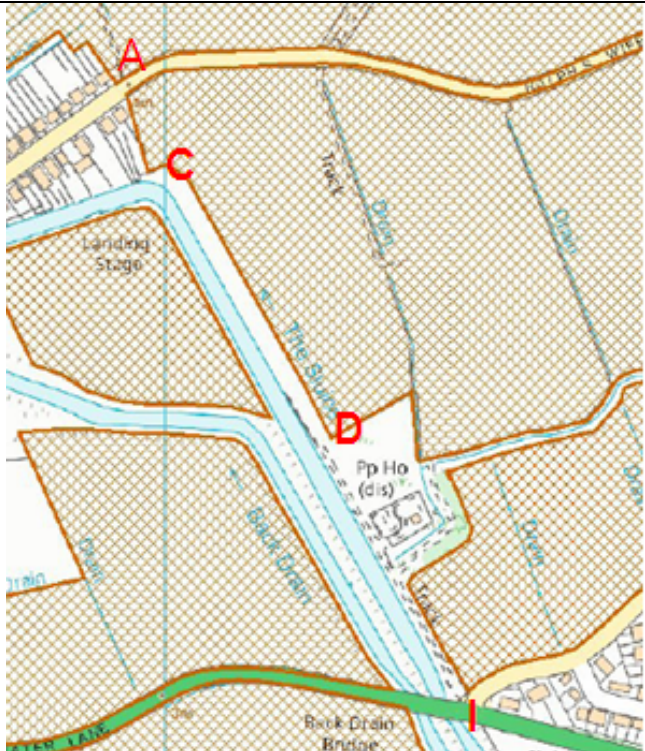


<p>Observations</p>	<p>The claimed route between point A and point C was not shown on the Draft Map or recorded in the Draft Statement. However the claimed route between point C and point I was shown. The thick purple line used to draw the route was drawn within the boundary of The Sluice and not alongside it. The route was described in the Draft Statement as Footpath 8 and described as being from Fiddler's Ferry to Back Lane Bridge. The line was subsequently crossed out with a series of red lines on the Draft Map.</p> <p>The route shown on the Draft Map was subject to a formal objection (Objection No. 619) which was lodged by T Booth, Agent for the Trustees of the Scarisbrick Estate on 19 December 1953 against the inclusion of the path (and its continuation) past fiddlers Ferry to Ralph Wife's Lane. The objection read as follows 'No public right of way is admitted over any portion in the ownership of the Trustees of the Scarisbrick Estate. (The River Bank and land alongside are vested in the Lancashire River Board). The reason for the objection/representation is stated to be "No footpath in existence" and the evidence in support of the objection/representation is also detailed as "No footpath in existence".</p> <p>A handwritten notes appended to the objection file says that FP 8 was not shown on the 1845 or 1894 Ordnance Survey maps. A further sheet records the fact that the District and Parish Council thought that the path should be retained, that the 'CPRE and other voluntary bodies' considered it to be a public path and that a hearing was required.</p> <p>A further objection relating to the same path (No. 694) was lodged by the Lancashire River Board on 31st December 1953 and described the route as being 'from Water Lane along the east bank of the main river sluice in a northerly direction to the fence bounding the land owned by the board.' A note appended to the file again refers to the fact that the path was not shown on the 1845 or 1894 OS maps.</p> <p>A further objection - Objection no. 450 was lodged by Liverpool Ramblers Association on 16th March 1954 against the omission of a number of routes on Draft Map for North Meols and Scarisbrick and against the removal of a number of paths from Draft Map - including the whole of the claimed route – The objection submitted by the Ramblers Association was split into two parts; firstly an objection that part of the (now) claimed route between</p>
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		<p>points A-C had not been shown on the Draft Map and secondly, that that part of the claimed route between points C - I was proposed to be deleted and that the Ramblers considered that it should be retained.</p> <p>Hearings were held on 22 July 1955 and 18 August 1955 and following consideration of the various objections the County Council determined to delete 'Path 8' from the Draft map and that the claimed route between point A and point C should not be included on the map. Attached to the decision is a typed up copy of County Surveyor's comments that the path was not shown on either the 1845 or 1894 Ordnance Survey.</p>
<p>Provisional Map</p>		<p>Once all representations 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 Quarter Sessions.</p>
		
<p>Observations</p>		<p>The claimed route is not shown on the Provisional Map and there were no objections to the omission of the path. The Ramblers Association, who had objected to its removal from the Draft Map would not have been able to object to its omission at this stage in the process.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders and creation orders be incorporated into a</p>

		Definitive Map First Review
Observations		The claimed route is not shown on the first Definitive Map.
Investigating Officer's Comments		<p>The parish council appeared to consider that the claimed route (or something similar) was a public footpath in the 1957. However, for reasons not known, only the section corresponding to the claimed route between points C – I was included on the Draft Map and was shown drawn in and not alongside The Sluice. Its inclusion on the Draft Map was subsequently challenged by the landowners. The section A- C (or similar) was not shown on the Draft Map and this was challenged by the Ramblers Association who stated that a route should have been shown and who also challenged the landowner's objections regarding the section C-I. The record of the appeal process is not detailed but it appears from that, and from other appeals within the parish that it was the normal procedure for the County Council to check the 1st Edition 6 inch and 25 inch Ordnance Survey maps to determine whether or not the route subject to the appeal was shown. It is not known whether any other research was undertaken. Neither is it known the extent of the evidence presented as part of the appeal procedure that led to the conclusion that the route should not be shown as a public path.</p> <p>However, it appears that in 1955, following an appeal under a formal legal procedure the claimed route was determined not to exist as a public footpath.</p>
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date in 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The claimed route was not considered to have changed status by the 1960s.
Statutory Deposit and Declaration made under Section 31(6)		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

<p>Highways Act 1980</p>	<p>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>
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<p>Observations</p>	<p>There is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which the claimed route runs between point A and point C on the Committee plan. The deposit was originally submitted by Mr GB Crooke and Mrs B Crooke on 23 March 1998 and was renewed on 26 May 2004, 9 March 2010 and 2 February 2012. Within the details of the deposit there is no acknowledgement or acceptance that the claimed route A-B is a public right of way. There have been no deposits relating to the remaining length of the claimed route between points C -I.</p>
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Investigating Officer's Comments		<p>There is a clear indication from the owners of the land A-C that they did not acknowledge the existence or intend to dedicate a public right of way between points A-C from 1998 onwards.</p> <p>For the remaining section of the claimed route C - I there is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route.</p>
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The claimed public footpath does not cross a Site of Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

Summary

None of the commercially produced maps support the existence of the claimed route and the maps and documentation produced as part of the Finance Act legislation does not acknowledge the existence of a public right of way.

The claimed route is not shown to physically exist as a worn track on the ground by the Ordnance Survey until the 1969 edition of the 1:2500 Ordnance Survey map from when onwards the section D-E-F-G-H-I is shown to exist as a substantial track.

As part of the legal process leading to the publication of the First Definitive Map North Meols Parish Council included a route – perhaps drawn inaccurately – that they believed to be a public footpath on the Parish Survey Map that they were required to prepare under the National Parks and Access to the Countryside Act 1949 legislation. However, when the County Council took this information and prepared the Draft Map a section of the route roughly corresponding to the claimed route between point A-B-C was not included and the section C-I shown (presumably erroneously) within the Sluice. The landowners objected to the inclusion of the footpath on the map and although this was challenged by the Ramblers Association the County Council, under a formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath. The Ramblers Association had no further opportunity to object to the decision at that time.

Aerial photographs provide the most useful supporting evidence regarding the availability and use of the route post 1940. They are also a useful aid to show the change that has occurred to the boundary that runs adjacent to points A-B-C.

From the evidence provided by the aerial photographs, the claimed route was not visible as a walked route in the 1940s. However, access onto the claimed route appeared possible at point A and no fences or barriers could be seen across any part of the claimed route suggesting that access may have been possible along the full length.

In 1963 access to the claimed route could be seen to exist at point A and the route appears to have been accessible between points A-B-C. The claimed route existed as a wide track between points C-D-E-F-G-H-I suggesting that it could have been used at that time.

The 1988 aerial photograph also showed that access was available at point A and the route appears to have been accessible between points A-B-C. A faint track is visible between point C and point D and the claimed route existed as a wide track between points D-E-F-G-H-I.

In 1999 (one year after a section 31(6) deposit was lodged in respect of that part of the route between points A-B-C) access onto and along the claimed route appeared possible between point A and point C with a faint track visible between point B and point C. A faint track could be seen running parallel to The Sluice along the claimed route between point C and point D. No gate or fencing appeared to cross the route at point D and a clearly visible route could be seen joining the wider surfaced track and continuing past the pumping station through points E-F-G-H-I with a gate across the claimed route at point H.

By 2010 access to the claimed route at point A had altered and the boundary fence between the field crossed by the claimed route and houses 100 and 98 Banks Road realigned. The claimed route was crossed by a fence at point C and a track was visible in the grass from point C along the side of the Sluice to point D then continuing as a surfaced track to point I. The claimed route appeared to look similar to what was found on the ground in 2013.

Ownership

The Owners of section A-C are the Southport Land and Property Co Ltd since 1990 and the owners of the track crossed by C-I is the Environment Agency. The Environment Agency ownership as confirmed is the land previously held by their predecessor under the Scarisbrick Estate Drainage Act of 1924 and as shown on the plan under that 1924 Statute. They have been owners since 1983 and North West Water prior to that.

Description of the New Path for Inclusion in the Definitive Map and Statement if the Order is to be made (and subsequently confirmed)

The following should be added to the Definitive Statement for North Meols, West Lancashire;

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public Footpath from a junction with Banks Road (point A) adjacent to 100 Banks Road running in a south south easterly direction along the east side of a field boundary for approximately 90 metres on a 1.5 metre wide undefined route to cross

field boundary (point C) and then continuing in a generally south easterly direction parallel to The Sluice for approximately 520 metres as a 3 metre wide path to junction with Station Road (point I).

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for North Meols the following:

"Public Footpath from a junction with Banks Road at SD 3796 2086, through field boundary and running in a generally south south easterly direction along the east side of a field boundary to SD 3800 2078 where it continues in a general south easterly direction along a 3 metre wide grass surfaced track parallel to The Sluice to SD 3813 2055 from where it continues along a 3 metre wide stone surfaced track, still in a south easterly direction parallel to the Sluice to terminate at SD 3826 2033 where it meets Station Road."

All lengths and compass directions given are approximate.

Width:

1.5 metres between SD 3796 2086 and SD 3800 2078

3 metres between SD 3800 2078 and SD 3826 2033

Limitations and Conditions:

Field gate at SD 3796 2086

Length: 610 metres

County Secretary and Solicitor's Observations

acknowledge the route (in years) as follows:

0-10(1) 21-30(6) 31-40(9) 41-50(4) 51-60(5) 61-70(1)
71-80(1) one user has known the route since moving to the area from Bucks (no time limit was provided).

27 users have used the way on foot, 1 user did not specify.

The years in which the route was used varies:

1958-2002(Approx)	1958-1972	1960-2012	1969-1988	1968-2012(2)
1970-2000	1970 onwards	1970 until it was blocked		since 1972(2)
1972-1989	1978-2005	1977 until it was closed	1977-2012	1971-1974
1979-1999	1975-1980	1980-closure	1983-present(2)	1984-closure
1984-2009	1988-2002	1980/81-1987	mid1980s-late1990s	
1950s, 1970s and 2000s	2008-2010			

The users were going:

Home to Embankment, circular home route, Station Road to Ralphs Wifes Lane, walking the dog along the track and back home again, Station Road to Banks Road,

Vicarage Lane going fishing, home to sluice, Ralphs Wifes Lane to Lancaster Drive, to work at Greaves Hall or to visit relatives on Station Road, bus stop at Station Road or friends houses on Ralphs Wifes Lane.

The main purposes for using the route are, pleasure, dog walking, is a short cut, country walk for the user and the dog, exercise, fishing or riding to station road, walking with children, recreation, access, visiting friends, child education, more pleasant walk and safer, travel.

How many times per year the user used the route varies:

2-4 times, 6-10 times per year, mainly summertime, approximately monthly, 20-25, 30-35 times, at least 50, weekly, most days, 200, and all year round.

When asked if any of the users have used the route by way of other means, 18 users stated 'no'. One user used the way on horseback and on bicycle during the years of 1969-1975. Another user used the way on bicycle between the years of 1958-1972. One user states that they used the way on bicycle but didn't specify during which years. Another user used the way on bicycle between the mid 1980s to the late 1990s, 2 users used the way on bicycle between 1983-present, one user used the way on bicycle between the years of 1979-1999 at 10 times per year and 2 users did not specify whether they had used the route by way other means.

4 users have never seen anyone else using the way, 1 user did not specify. 9 users have seen other people walking / jogging along the route but they did not specify which years they saw them. 1 user states they have seen others along the way but doesn't provide any details as to how they were using the way. 2 users have seen people using the way on horseback but didn't provide any details to which years they saw them using the route. 1 user has seen farm workers on a motorcycle/vehicle but no years were specified. Another user has seen others using the way on foot between the years of 1995-2002. 1 user has seen other users walking and on horseback between the years of 1969-1975, another user has seen people using the route on horseback between 1960-present. 1 user states there are always people along the route and possibly on horseback between 1958-1972. 1 user has seen people walking along the route between 1973-1989 most times when they have used the route, and during the years of 2004-2012 half as many people have been seen. 1 user has seen people on horseback, bicycle and walking with dogs in mid 1980s to late 1990s. Another user has seen people walking along the route between the years of 1984-2009, 2 users have seen people using the route on horseback and other means from 1983-present and 1 user has seen others on foot during the years of 1979-1999.

18 users claim the route has always run over the same line, 1 user states 'think so', 4 users did not specify an answer to this question. 2 users answer the question by stating 'fence put up 10-12 years ago', another user states 'no' however they do not provide any further details, 1 user also states 'no' but also mentions 'used for sometime due to being overgrown'.

9 users state there have been no stiles/gates/fences across the route, 4 users did not specify an answer to this question. 4 users state there is a stile/gate/fence along the route but do not provide any details. 2 users claim there is a stile along the route

but do not provide any details. Another user stated there were no stiles/gates/fences along the route up until 2010, one user states there is a gate up to the main road, another user claims there was a stile from 1973-1989 and had been removed by 2004, also by 2004 a gate was installed. 1 user claims there was no fence until the late 1990s. Another user states the path has been fenced off for a number of years, but can't remember the actual access but there was a public footpath sign post. 1 user claims there is a fence at Ralphs Wifes Lane (point A).

11 users state the stiles/gates/fences were not locked, 10 users did not provide an answer to this question. 1 user states they can't remember any gates, 4 users state the stiles/gates/fences were locked but don't provide any details. 1 user states a large gate was locked but the smaller gate was open, 1 user answers by stating 'fence appeared in late 1990s'.

12 users were not prevented from access by any stiles/gates/fences when using the way. 8 users did not specify an answer. 2 users state they were prevented access recently, 1 user was prevented in 2002, another in 2010, another user states they were prevented when the new owner took over the land, and 1 user was unable to gain access from 2004.

23 users have never worked for a landowner over which the route crosses, 5 users did not specify whether they had or hadn't worked for a landowner.

23 users have never been a tenant over which the route crosses the land, 5 users did not specify whether they had or hadn't worked for a landowner.

23 users have never been stopped or turned back when using the route on foot. 1 user thinks she has been stopped previously but didn't provide any details, 1 user states the fence stopped them in late 1990s. 3 users did not specify an answer to this question.

23 users have never heard of anyone else being stopped along the route, 4 users did not specify an answer to this question and 1 user states 'the fence in late 1990s'.

26 users have never been told by a tenant or landowner that the land they cross is not a public right of way. 3 users did not specify an answer to this question.

16 users have never seen any signs/notices along the claimed route. 3 users did not specify an answer. 1 user states the public footpath signs have disappeared. Another user states they have seen signs since 2010, 1 user states they have seen 'trespassers will be prosecuted' sign, another user stated there were no signs between 1973-1989, 1 user states they have appeared in the past 10 years on Ralphs Wifes Lane, another user states they have seen notices they say 'private land, horse riding prohibited', 2 users have seen signs that state 'private legal action may be taken against unauthorised persons found on this property' and 1 user stated 'yes' to seeing any signs or notices along the claimed route.

26 users have never asked permission to use the route, 2 users did not specify whether they sought permission or not.

Information from the landowners

Southport Land & Property Co. Ltd.

An objection has been received from Yates Barnes Solicitors who have been instructed by Southport Land & Property Co. Ltd who are the landowners of the land over which that part of the claimed route between points A-B-C runs and they object to this claim.

They have submitted a statement from Mr David Alan Trow who has lived at 100 Banks Road, the property adjacent to the claimed route, since 1969. In his statement Mr Trow explains that during the time he has lived there, there has not been a footpath through the field adjacent to his property.

He explains that originally there was a farm gate at point A which was used by the tenant farmer to move cattle and that there was an open ditch along the boundary of his property and the field over which the claimed route runs, which fed into The Sluice.

Soon after moving to the property Mr Trow claims that the tenancy of the field passed to Mr Shepton who piped the ditch and grew cereal crops in the field. Towards the end of Mr Shepton's tenancy (no date specified) Mr Trow believes that the gate at point A was damaged and was removed to allow large farm machinery to access the field from the road. Mr Trow recalls the tenant being Mr Gregson who continued to grow crops on the field and who did not replace the gate but left a roller blocking the entrance.

Mr Trow states that when the current owners of the land purchased it they took back responsibility for farming the land and a small electric substation was installed where the gate had been. At this time he also recalls a private sign being erected. New fencing was erected around the field and the entrance to the field altered to a safer position further down Ralph Wife's Lane.

He concludes by stating that during the 43 years that he has lived adjacent to the claimed route there has not been a footpath through the field and that when, on occasion, he has been asked by people walking from Station Road whether they could walk through the field he has said no it is private land.

A further statement has been submitted from Mr Keith Aldersley, who does not give his date of birth but explains that he has lived in the village since he was 4 years old. He explains that he remembers the sewage works being built adjacent to the Sluice in approximately 1955 and says that to his knowledge the claimed route has never been a public footpath. He makes reference to 'the fishermen' having a track along the sluice but states that this does not run through to Ralph Wife's Lane.

A further statement from Mr Godfrey Crooke (one of the Director's of the company that now owns the land crossed by the claimed route between A-B-C) who confirms that he has been familiar with the area for many years and that since the 1960's his company was hired as a contractor for the River Crossens Drainage Authority to clear the numerous drains across the land and that, consequently, he knew the

routes and believed them to be private. He confirms that his company bought the land (crossed by the claimed route A-B-C) in 1990 and that whenever he saw anyone on the farm tracks or across the fields he challenged them, explained that they were trespassing and asked them to leave.

The Environment Agency

The Environment Agency owns the land over which part of the claimed route passes between point C and point I and objects to the footpath application. They state that the route has never been used legally as a path. They also state that other than Environment Agency staff and their contractors, the only other people authorised to access this land are the members of the Southport and District Angling Association. They explain that the Association has the fishing along the watercourse at this location on a long lease (25 years) and that any path in this location will significantly disrupt their use of this land.

They state that the creation of a footpath would lead to trespass on to the adjacent water course (e.g. swimming, canoe/boat launching etc), vandalism and illegal fishing. They are also concerned about the Health and Safety liability as a result of legal and illegal use of the access to the public, occupiers and Agency staff. They are concerned that the creation of the footpath would interfere with the Agency's operations on site and with the Angling Associations use of the site.

To prevent unauthorised access, they state that various signs have been in place 'for some time', erected by both the Agency and the Angling Association. Furthermore they refer to access being obstructed by a locked gate and railings at Station Road and make reference to a sign erected by a neighbouring landowner 'some time ago' at Ralph Wife's Lane (point A).

Information from others

Southport and District Angling Association

Southport and District Angling Association have been consulted and confirmed that they did not own any of the land crossed by the claimed route. They explained that they leased the fishing rights from the Environment Agency and have been given access to the Sluice via Station Road. They explain that the Environment Agency have a gate across the entrance at Station Road (point H) for which their members hold a key. They explain that part of the gate has a pedestrian access (the kissing gate) which is never locked and that the public use it to walk their dogs. They state that the public do not have a vehicular right of way or access to this path. They also state that they rent the 'old corporation car park' adjacent to United Utilities pump house (and accessed from the claimed route) from Lancashire County Council and that they have vehicular access to this car park.

Mr Trow

Mr Trow lives at 100 Banks Road and is a landowner affected by the claimed route between point A and point B. As well as providing evidence in opposition to the claim on behalf of the current landowner he was informally consulted by the County

Council. He responded by letter stating that he and his wife have lived at the property for 45 years and that there has never been a public footpath in the field adjacent to the property. He also states that he was aware that the fishing club had access to the Sluice from Station Road but that it had never been classed as a public footpath.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Aerial Photographs

Against Accepting the Claim

Reference to actions by the owners

Conclusion

The claim is that this route is already a footpath in law and should be recorded.

There is no express dedication and so it is advised that Committee consider whether a dedication can be deemed under s31 Highways Act or inferred at common law from all the circumstances.

Considering first of all S31. S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. User evidence would indicate that for the twenty years before the present owner purchased the land crossed by A-C in 1990 no overt actions alerted users to such a challenge. The first actions taken were either challenges, signs, or fencing or the S31(6) deposit by the northern owner after 1990. It would appear that signs erected by the southern owner are not sufficient to indicate use as a footpath was challenged.

User evidence by its nature can be inconsistent and in this matter the information indicates different recollections about when access was prevented. There are no clear references to challenges by people but references to fencing and notices and the deposit under S31(6). Looking at the evidence it would indicate that fencing at point A was erected in the late 1990s or early 2000s with 1998 being a likely year and this was also the date of the S31(6) statement. It is suggested that 1998 may be considered to be the date the route was called into question.

Looking at the twenty years 1978-98 there are 16 users whose use dates back to 1978. It is suggested that even if some action by the present owners may actually be sufficient to be a calling into question earlier than 1998 there are still 7 users of the route as early as 1970 twenty years before the acquisition by the present owner of A-C. It is suggested that committee may consider that the user evidence in this matter is sufficient and exercised as of right and without interruption of the whole route

1978-98 to raise the presumption of deemed dedication. There does not appear to be sufficient evidence of actions by the owners to demonstrate lack of intention to dedicate over the twenty years prior to 1998.

Looking secondly at whether dedication can be inferred on balance at common law it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user can be the circumstance from which to infer a dedication. It may be difficult to now indicate an intention to dedicate by the owner of A-C since their acquisition in 1990 but the user of the route prior to 1990 may be sufficient to indicate that the owners at that time for several years did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred.

Common law does not require there to be twenty years of use. The use would appear to be as of right and exercised by sufficient members of the public.

Taking all the information into account the Committee may consider that a dedication in this matter may be deemed or inferred and that an Order be made and promoted to confirmation.

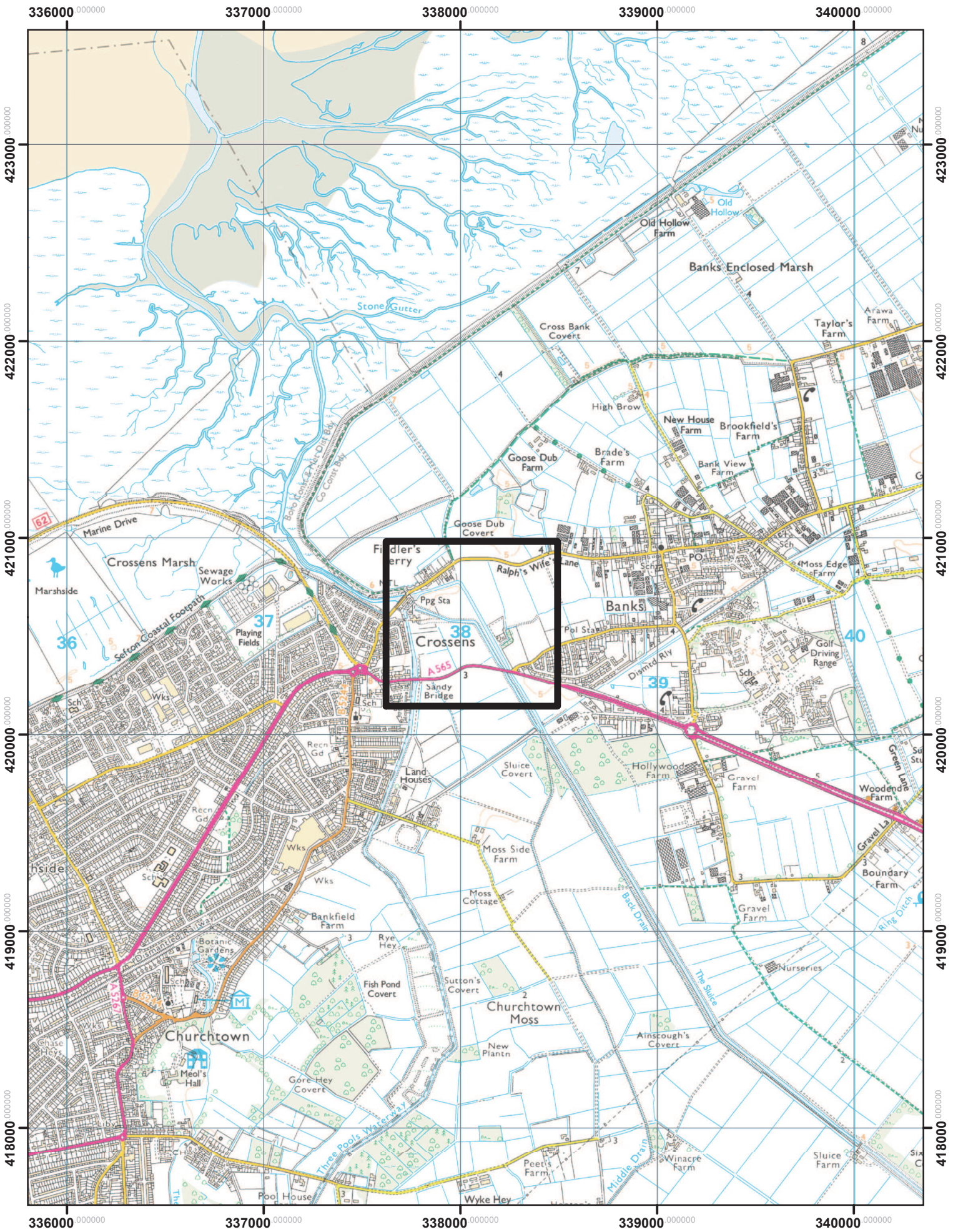
Risk Management

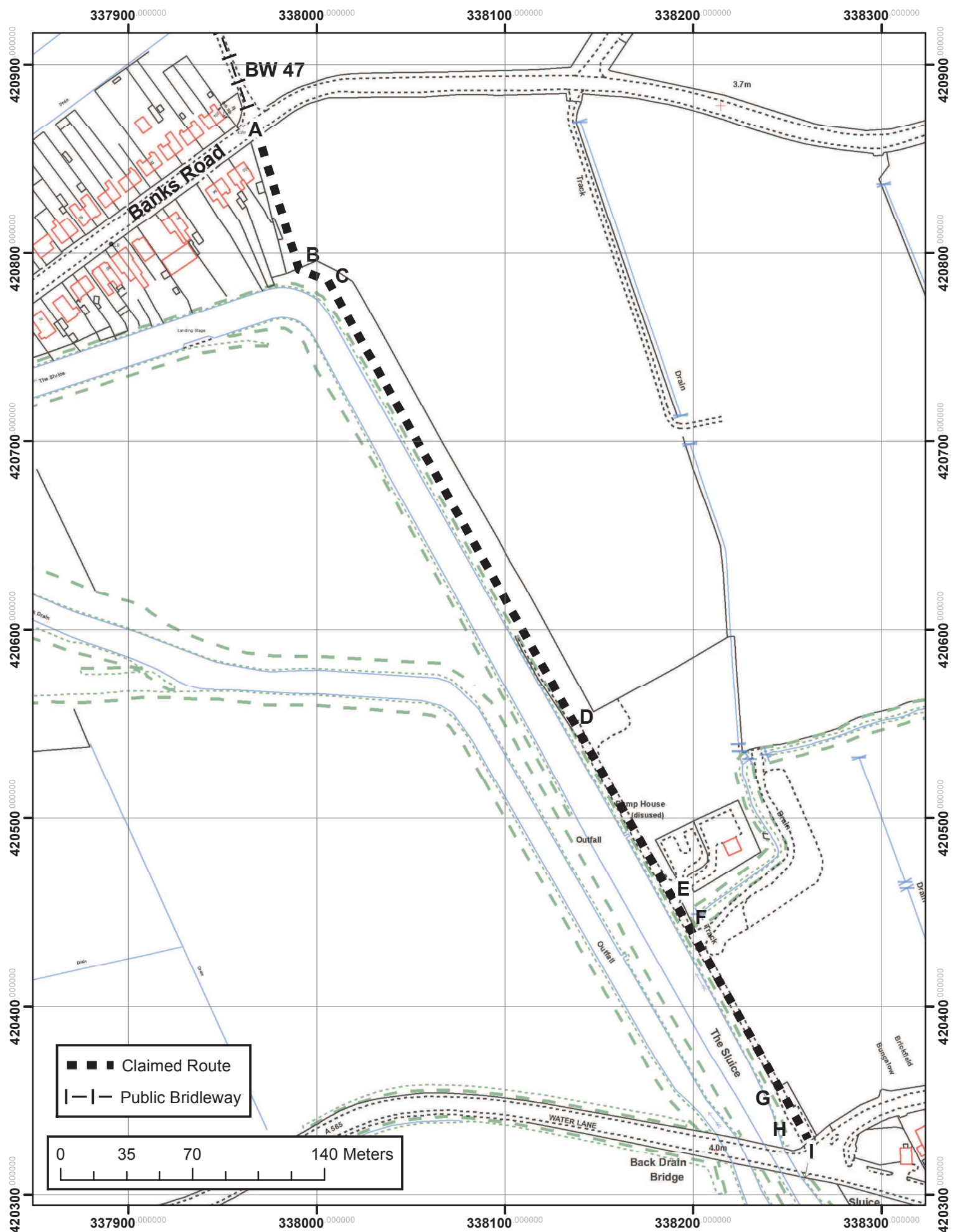
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' to an earlier report on the Agenda. Provided 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: 5.46089 (804/529)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604
Reason for inclusion in Part II, if appropriate N/A		





The digitised Rights of Way information must 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 26th March 2014

Electoral Division affected: West Lancashire West
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Wildlife and Countryside Act 1981

**Claimed Public Footpath from Bescar Brow Lane to Public Footpath 14a
Scarisbrick, West Lancashire Borough.**

Claim No. 804/544

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, County Secretary and Solicitor's Group,

Megan.Brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk;

Executive Summary

The claim for a Public Footpath from Bescar Brow Lane, Scarisbrick to Public Footpath 14a Scarisbrick, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544.

Recommendation

1. That the application for a public footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick, West Lancashire Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544, 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 Bescar Brow Lane to Public Footpath 14a, Scarisbrick, for a distance of approximately 1365 metres and shown between points A-B-C-D on the attached plans.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary at public inquiry.

Background

A claim has been received for a footpath extending from a point on Bescar Brow Lane, Scarisbrick to a point on Public Footpath 14a Scarisbrick, a distance of approximately 1365 metres, and shown between points A-B-C-D on the attached plans, 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 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 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 route has 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 routes to be added or deleted vary in length or location from those that were originally claimed.

Consultations

West Lancashire District Council and Scarisbrick Parish Council have both been consulted and no response has been received from either.

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

Environment Director’s Observations

Description of the routes

Points annotated on the attached Committee plans.

Point	Grid Reference	Description
A	SD 3840 1323	Junction with Bescar Brow Lane
B	SD 3815 1353	Right angle bend in claimed route
C	SD 3853 1381	Field gate
D	SD 3879 1419	Junction with Footpath 14a Scarisbrick

Description of Route:

The claimed route was inspected on 12th October 2013.

It commences at point A on the Committee plan on Bescar Brow Lane immediately to the south of the point at which Sandy Brook passes under the road.

Access onto the claimed route is blocked from the footway by an iron railing fence painted green and immediately behind it a much higher substantial metal fence.

The green metal railing fence is low and on its own would not provide a stock proof barrier. On close inspection the railings looked worn as though people had been climbing over them. The second fence was much higher and provided a stock proof barrier and it was not possible to climb over or through it to gain access along the claimed route.

A few metres north east of point A on Bescar Brow Lane there is a padlocked metal field gate providing access into the field adjacent to the claimed route.

Beyond point A the claimed route extends in a north westerly direction along the north side of Eas Brook. It continues along a strip of land that has been fenced off from the adjacent field but which has recently been grazed by cattle. The strip of land is approximately 4-5 metres wide between the edge of the brook and the fence.

After following the brook for approximately 425 metres the claimed route turns to continue north east at point C - still following the brook (now referred to as Sandy Brook) along a raised section (embankment) and fenced from the adjacent field for approximately 475 metres point C.

At point C it passes through a 12 foot wide metal field gate which was locked on the day of inspection. The claimed route then continues along the top of a raised section of land (an embankment) between the brook and fenced off from the adjacent field to point D where it meets Public Footpath 14a Scarisbrick.

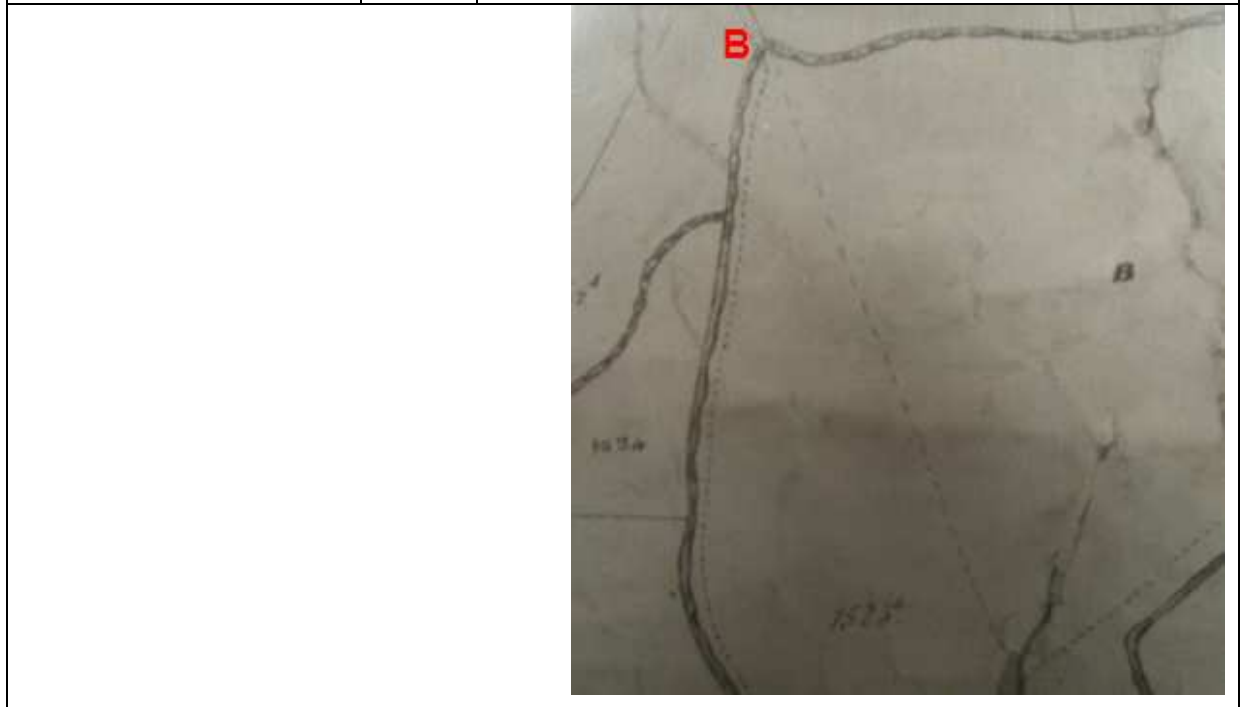
To summarise, the claimed route follows the brook along its full length and is fenced from the adjacent fields. Access onto the claimed route is blocked by fencing at point A and by a padlocked gate at point C. There were no signs indicating whether the route was public or private and although in places a worn track could be seen on the ground it was not possible to determine whether this track had been created by animals, farm machinery, walkers or a combination of all three.

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
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The 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 this map. The claimed route did not exist as major routes 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.
Greenwood's Map of Lancashire	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.
Hennet's Map of Lancashire	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.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction

with the written title award) and additional information from which the status of ways may be inferred. The Tithe Map for Scarisbrick was produced in 1839.




Observations

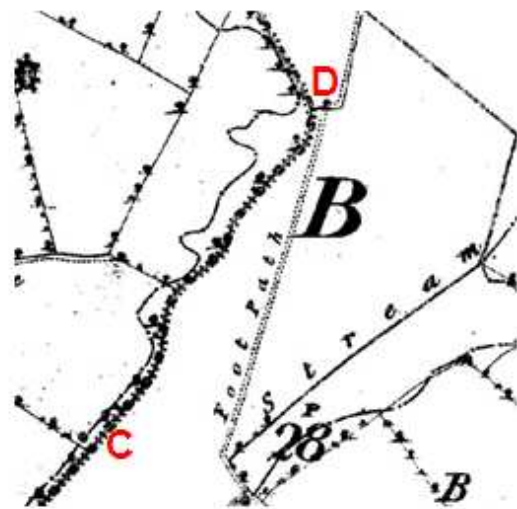
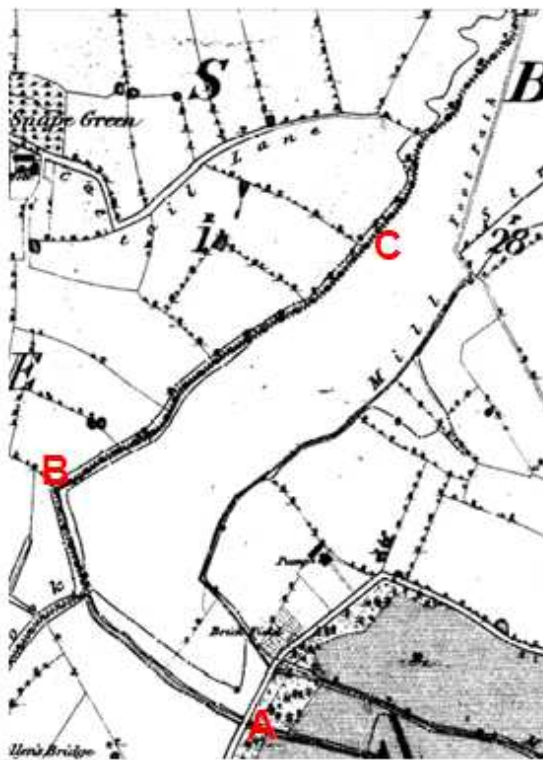
The Tithe Map for Scarisbrick is a large document. The original has been copied in smaller sections and can be viewed protected by a plastic coating in the County Records Office. There was no key to the map.

A single dashed line which appeared to indicate a 'path' was shown on the tithe map along the section of the claimed route from point A to point B. It is then shown crossing the brook at point B and continues in a north westerly direction towards

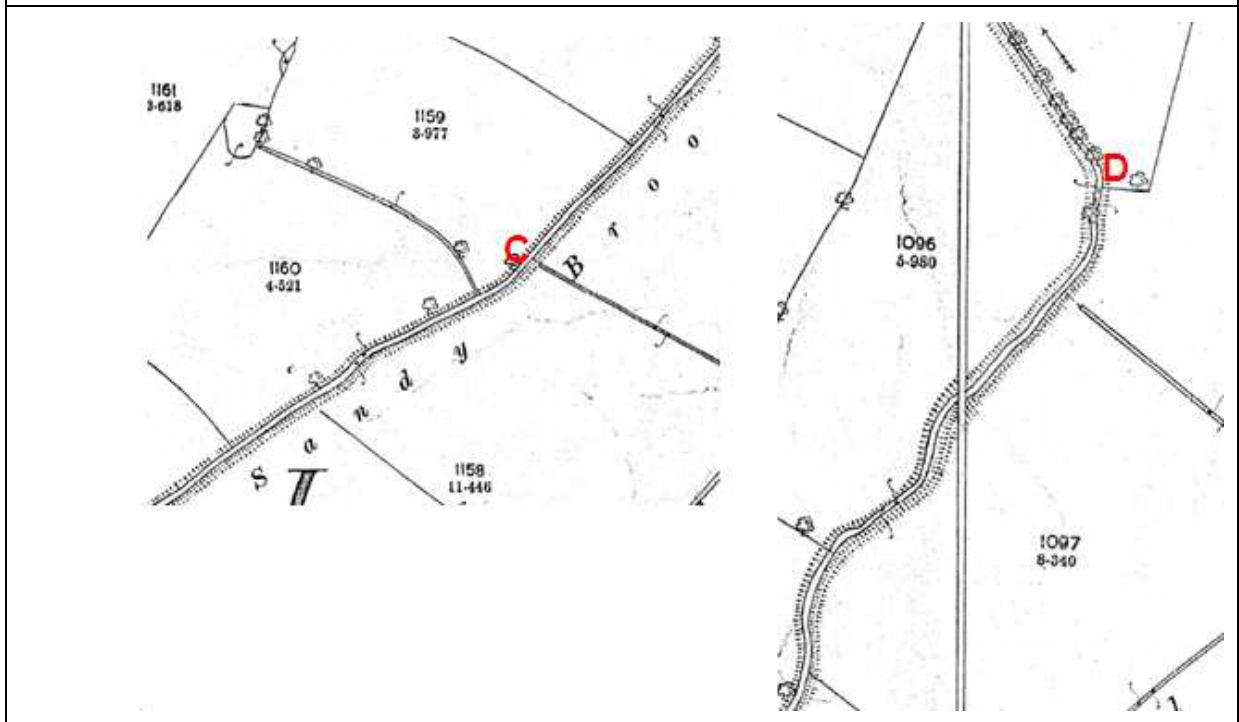
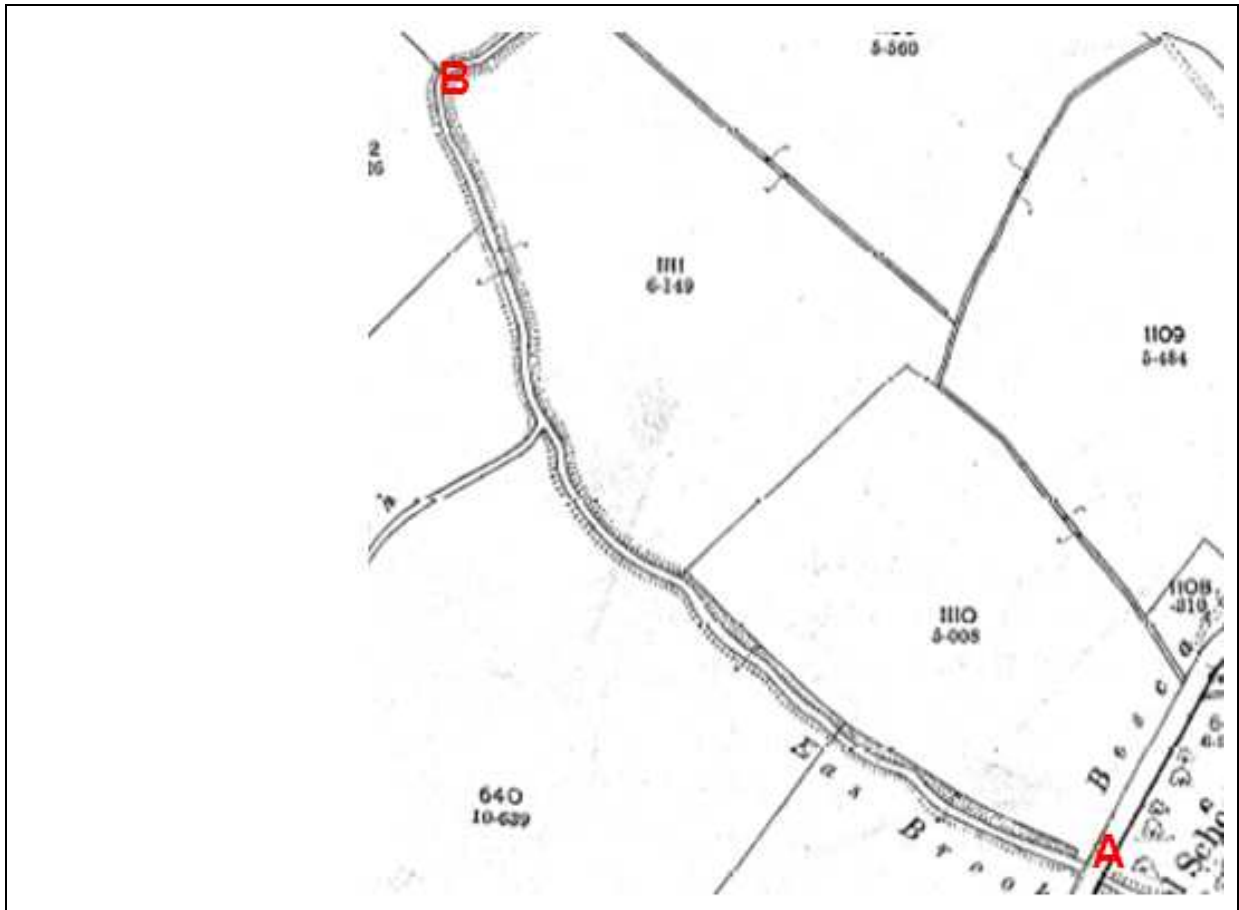
		<p>Snape Green.</p> <p>The claimed route between point B and point C is not shown but a single dashed line is shown coming across the field south of the brook (and claimed route) to join the claimed route approximately 70 metres south west of point D. It then follows the claimed route to point D where it is shown to split – with one route following the recorded route of Public Footpath 14 Scarisbrick and the other following the route of Public Footpath no. 14a Scarisbrick.</p> <p>There is no reference to the claimed route or to any of the paths marked in the Tithe Award. All the land crossed by the claimed route was in the ownership of Charles Scarisbrick and rented out to tenant farmers.</p>
Investigating Officer's Comments		The claimed route existed as a track between point A and point B in 1839 and a further path crossed the field to join the claimed route approximately 70 metres before point D and then continued to point D where both public footpaths connecting to the claimed route are shown to have existed.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Act Award or Map for Scarisbrick in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		<p>The County Records Office only had a copy of the Finance Act Map for part of the claimed route and did not hold and Finance Act schedules for the area concerned.</p> <p>The Finance Act Plan and relevant Field Book entry were therefore inspected at the National Archives at Kew. The claimed route is not excluded from the numbered hereditaments but is all included within the plot numbered 55. There is no reference to the</p>

		claimed route in the Field Book entry and no deduction in tax has been claimed for a public right of way.
Investigating Officer's Comments		The claimed route was either not considered to be a public right of way in 1910 or not declared as such for other reasons. It was probably not a public right of way circa 1910
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large scale, detailed street map in the area. The atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.
		
Observations		The claimed route is not shown on the map although Bescar Brow Lane and Sandy Brook can be clearly identified. Public Footpaths 14 and 14a Sacrisbrick that connect to the claimed route at point D are not shown on the map either.
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 limitations of scale would not have been shown so no inference can be drawn in this respect.
Ordnance Survey Maps		The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in

		Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 Inch OS Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.

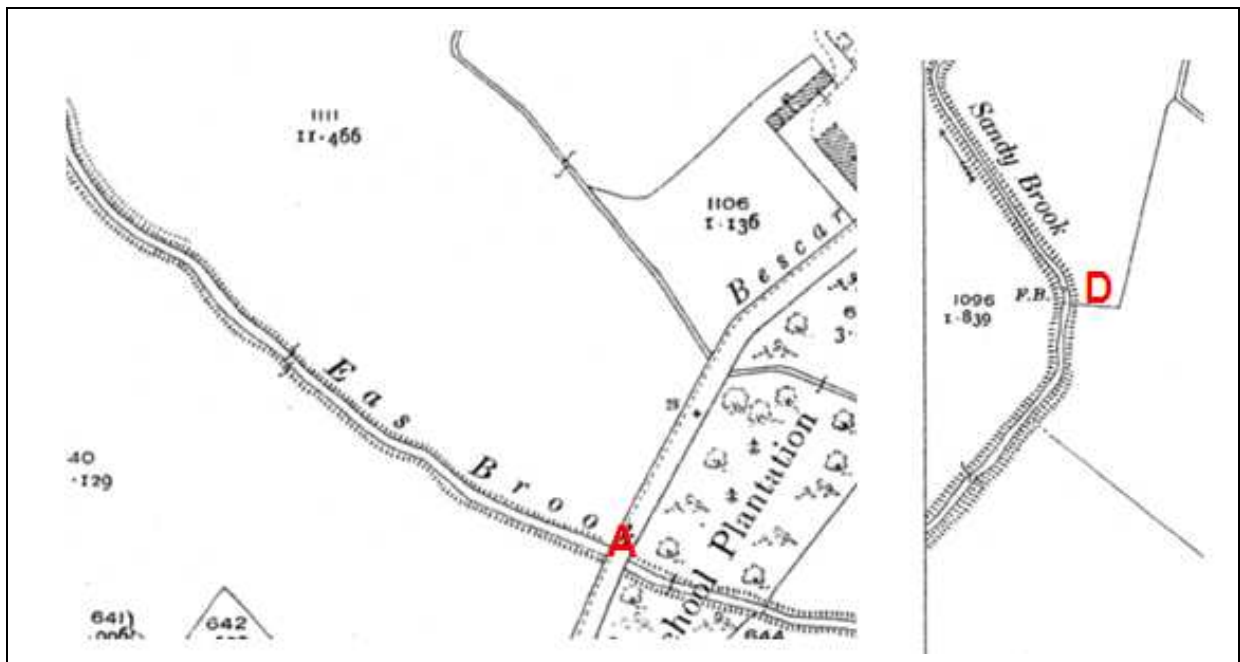


Observations		The claimed route is not shown. Bescar Brow Lane exists and is shown and Sandy Brook is shown but not named. A footpath is shown as a double pecked line crossing the field to the south east of the claimed route and then joining the claimed route just before point D before continuing along the route of Public Footpath 14a Scarisbrick.
Investigating Officer's Comments		The claimed route is not shown other than approximately the last 70 metres to point D. The claimed route probably did not exist as a worn track in 1844-45.
25 Inch OS Map	1893	The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



<p>Observations</p>	<p>The claimed route is not shown.</p> <p>Eas Brook is shown and named on the map. The and embankment is shown along the north eastern side of the brook along the line of the claimed route from just beyond point A to point B. The first stretch</p>
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		of the embankment appears to be bounded from the adjacent field to approximately mid way between point A and point B where the claimed route is crossed by a field boundary. From the field boundary to point B the embankment is unenclosed. From point B continuing along the south side of Sandy Brook the embankment is shown alongside the brook to the end of the claimed route at point D. There is no footpath marked along the top of the embankment. At point C a single line has been drawn across the embankment indicating the existence of a structure at the field boundary, possibly with a gate in it. The claimed route is crossed by a further field boundary at point D and the routes of Public Footpaths 14 and 14a Scarisbrick are unmarked.
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1892.
25 inch OS Map	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1906 and published in 1908.
Observations		The claimed route is not shown. The embankment is no longer shown to be enclosed from just beyond point A to midway towards point B as it was on the 1893 25 inch map but the claimed route is still shown to cross a field boundary midway between point A and point B and at points C and D. Public Footpaths 14 and 14a Scarisbrick are not shown.
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1906.
25 Inch OS Map	1928	Further edition of 25 inch map (surveyed 1892, revised in 1926 and published 1928).



Observations		<p>The claimed route is not shown.</p> <p>Eas Brook is shown but the embankment appears no longer to have existed from point A to midway between point A and point B and the field boundary that crossed the claimed route midway between point A and point B is also no longer shown.</p> <p>A line is shown across the top of the embankment at point C and a line (boundary) is also shown across the claimed route at point D. Public Footpaths 14 and 14a are not shown although a footbridge is shown across Sandy Brook close to the junction of the two footpaths.</p>
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1926.
6 Inch OS Map	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. This map was revised before 1930 and is probably based on the same survey as the 1931 25-inch map.
Observations		The claimed route is not shown. The connecting Public Footpaths 14 and 14a Scarisbrick are not shown.
Investigating Officer's Comments		The claimed route did not exist as a worn route on the ground before 1930.
25 Inch OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970

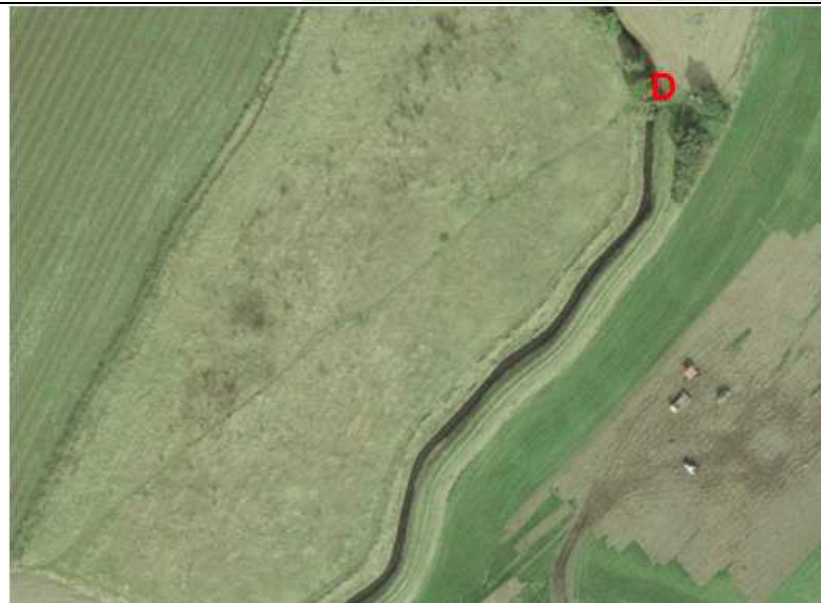
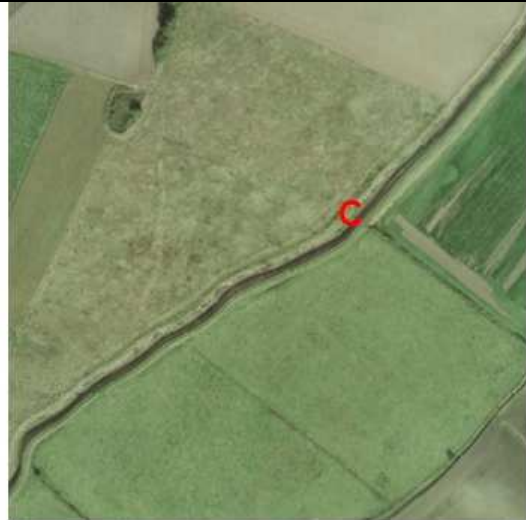
Observations		<p>The claimed route is not shown.</p> <p>The embankment is not shown on the map but this is consistent with other embankments on the map that are not shown either and appears to be a consistent omission on the map as site evidence and aerial photographs show that the embankment is still in existence between point B to point C and most of the way towards point D.</p> <p>A number of drains shown to feed into Sandy Brook across the claimed route between point B and point D (including the one at point C) are shown by dashed lines across the claimed route indicating that they had been culverted.</p> <p>The boundary at point D is no longer shown with a solid line but is shown by a dashed line indicating a change of surface not a physical barrier.</p>
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1969.
Aerial Photographs	1945	<p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set of aerial photographs available was taken just after the Second World War in about 1945 and can be viewed on GIS. The clarity is generally very variable.</p>
Observations		The claimed route is not visible on the aerial photograph.
Investigating Officer's Comments		The claimed route probably did not exist as a worn track in 1945.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





Observations		<p>The claimed route is not visible on the aerial photograph.</p> <p>Between point A and point B it appears that the claimed route was fenced off from the adjacent fields. From point B to point D it is not possible to see clearly whether the claim route existed due to shadow.</p>
Investigating Officer's Comments		It appears unlikely that the claimed route existed as a worn track on the ground in 1960.
Aerial Photograph	1988	Aerial photograph available to view at the County Records Office.



Observations		The photograph is difficult to enlarge without losing clarity. It is not possible to see access onto the claimed route at point A due to tree cover. Beyond point A through to point B and on to point C a faint line can be seen which may indicate a faint track. Between point C and point D the field has been ploughed and the claimed route is not visible.
Investigating Officer's Comments		The claimed route may have been accessible but did not exist as a clearly defined worn track on the ground in 1988.
Aerial Photograph	1999	



Observations		It is not possible to see the precise nature of access at point A. However, there appears to be a faint track extending along the claimed route from point A which becomes more clear and continues the full length of the claimed route to point D.
Investigating Officer's Comments		The claimed route existed as a worn track on the ground in 1999.
Aerial Photograph	2000	Colour aerial photographs viewed on GIS.

	
	
<p>Observations</p>	<p>The full length of the claimed route is visible as a faint track.</p> <p>Access point A is visible although it is not possible to see what fencing may have existed at the time.</p> <p>No gate is visible at across the route at point C and the claimed route can be clearly seen linking to Public Footpaths 14 and 14a at point D.</p>
<p>Investigating Officer's Comments</p>	<p>The claimed route existed as a worn track in 2000.</p>
<p>Aerial Photograph</p>	<p>2007</p> <p>Colour aerial photograph taken in 2007 and viewed on GIS.</p>



Observations		The full length of the claimed route is clearly visible. It is not possible to see the exact nature of the access from Bescar Lane onto the claimed route at point A but a worn track extends to the road at point A suggesting that access was available at this point. No gate can be seen to exist at point C and the whole length of the claimed route appears accessible.
Investigating Officer's Comments		The claimed route existed on the ground as a worn track in 2007.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area.
Observations		The parish survey map and cards were drawn up by Scarisbrick parish council. The claimed route is not shown on the parish survey map or documented in the parish survey cards.

Draft Map		<p>The parish survey map and cards for Scarisbrick were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
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.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		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.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th 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.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The claimed route was not considered to have changed status by the 1960s.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no statutory deposits covering the period of time during which it is claimed that the route was being used as a public right of way.
Investigating Officer's Comments		There was no indication by the landowners under S31 of the Highways Act 1980 that there was no intention that the way be dedicated.

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. Eas Brook and Sandy Brook are both classed as main water ways by the Environment Agency and are regularly cleaned out and maintained by them.

To summarise, the claimed route is not shown on any of the early commercial maps although this is not unexpected when you consider that we are investigating a claim for a rural public footpath across farmland.

The Tithe Map of 1839 shows a path (single dashed line) along the claimed route between point A and point B which then crosses the brook and continues north. However, no reference is made to this path in the Tithe schedule and it does not appear on the first edition Ordnance Survey 6 inch map published 8 years later in 1847.

The 1847 6 inch Ordnance Survey map does, however, show a route that was also shown on the Tithe Map (but not mentioned in the Tithe Schedule) that crosses the fields to the south east of the claimed route and then meets, and follows the claimed route for approximately 70 metres to point D. However, this route is not shown on the first edition 25 inch Ordnance Survey map published in 1893 or on any other map inspected.

None of the Ordnance Survey maps examined show the claimed route suggesting that there was no clearly defined route on the ground at the time of the relevant surveys.

The most recent relevant evidence consists of a series of aerial photographs.

It is not possible to see the claimed route on the aerial photographs taken in the 1940's or 1960's although this may be due partly to shadows.

From the 1988 aerial photograph it appears that the route may have been accessible but it is not visible as a worn track.

The whole of the claimed route can be seen on the 1999 aerial photograph although the precise nature of access at point A is unclear.

A photograph taken in 2000 shows that the whole route was visible as a worn track at that time and no gate or barrier was visible across the route at point C.

A further photograph taken in 2007 clearly shows the whole length of the claimed route and no gate appears visible at point C. The precise nature of access through the field boundary at point A is not visible although the worn track clearly leads to/from that point.

Ownership

The section of the route A-C is on land owned by the estate of Mary Lavelle deceased, gifted to her son and daughter in 1993, presently tenanted since 2006. Solicitors are acting for the family. The section C-D is owned by the Forshaw family.

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 Scarisbrick, West Lancashire 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 Bescar Brow Lane at SD 3840 1323 (point A) running in a generally north westerly and then north north westerly direction to following the north bank of Eas Brook to SD 3815 1353 (point B) and continuing in a generally north easterly direction along the southern bank of Sandy Brook to field gate at SD 3853 1381 (point C) before continuing in a more north north easterly direction along the side of Sandy Brook and crossing a field boundary to terminate at SD 3879 1419 (point D) where it meets Public Footpath 14a Scarisbrick.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Scarisbrick the following:

" Public Footpath from a junction with Bescar Brow Lane at SD 3840 1323 through field boundary and running in a generally north westerly and then north north westerly direction adjacent to the north bank of Eas Brook to SD 3815 1353 and continuing in a generally north easterly direction along raised embankment adjacent to the south bank of Sandy Brook to field gate at SD 3853 1381 before continuing in a more north north easterly direction along embankment adjacent to Sandy Brook and crossing a field boundary to terminate at SD 3879 1419 where it meets Public Footpath 14a Scarisbrick"

Width:

3 metres

Limitations and Conditions:

Gate or Stile at SD 3840 1323

Field gate at SD 3853 1381

Length: 1365 metres

All lengths and compass directions given are approximate.

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the claim, the applicant has provided 25 user evidence forms. 2 of the forms have been omitted as they were incomplete.

The user forms indicate knowledge of the route as follows:

0-10 (5)	11-20(2)	21-30(6)	31-40(1)	41-50(2)	51-60(3)
61-70(1)	not specified (3)				

The route has been mainly used for leisure, dog walking, exercise, running, recreation and looking at the wildlife.

22 users stated they used the route on foot, one user did not specify how they used the route. The frequency of use varies from daily, twice a week, weekly, once or twice a year, 3-5 times a year, 15 times a year, 20-50 times a year.

One user claims they have seen someone using the route on horseback, 19 users claim they have seen other people walking along the route.

21 users agree that the route has always run over the same line, 1 user claims that the route hasn't always run over the same line but didn't provide any details.

When asked if there are any stiles / gates / fences along the claimed route, 3 users agree there is a stile, 3 users claim there is a gate, 2 state there is a fence, 2 users just answer the questions with 'yes' and 10 users claim there are no stiles / gates / fences along the route. 3 users state that a gate has recently been erected.

18 users claim that the stiles / gates / fences along the route were never locked, 1 user states that the gate that prevents cattle from straying is locked but only since recently. 13 users said that the stiles / gates / fences didn't prevent them from using the way. 1 user says the stile on Bescar Brow is difficult to negotiate as it is a metal gate, another states that the gate / stile / fence did prevent access recently but he / she moved it.

15 users have never worked for any landowner in which the route crosses, 3 users have worked for a landowner that being MA Forshaw, the dates in which the users worked for MA Forshaw are, 1977-2007, 1976-2007 and 1990-2007.

The 3 users that worked for the landowner were never given instructions as to the use the way by the public.

18 users have never been a tenant for the land in which the route crosses.

21 users have never been stopped or turned back when using the route, 1 user has but didn't provide any details, another user states they were was an attempt made but he / she ignored it. 12 users have never heard of anyone else being stopped or having turned back when using the route. 8 users have heard of someone being

stopped or having turned back but only recently, and 2 users provide details having heard of an aggressive landowner stopping someone.

21 users all agree that they have never been told that the route was not a public right of way, 1 user states that a landowner adjoining to the land has told them it was not a public right of way, another user states they have been told by a tenant in the last 6 months.

21 users have never seen any signs or notices along the route, 1 user says a sign was erected recently but was only there for a couple of days another user says a sign / notice was erected during last year.

All 23 users have never asked permission to use the claimed route.

A letter of support from Mr Mark Forshaw

Mr Forshaw states he is happy for people to walk along their track responsibly as it is a beautiful walk.

An objection has been received from Paul Crowley and Co on behalf of Mr Thomas Richard Lavelle

He has provided a copy of a Conveyance dated 12th August 1953 by virtue of which Robert Thomas Lavelle deceased purchased the land crossed by the section of route A-C

Mr Lavell's son stayed at the family home at Mount Farm until he married in 1965, and he continued to help on the family farm for some 18 months until October 1966 when he relocated to a different area

Between 1953 and 1966 Mr Lavelle states there was no use of the alleged path by any member of the public or indeed by any one and there was no defined path merely a bank at the field edge next to the stream Sandy Brook.

The stream was cleaned once a year by the River Crossens Drainage Board (now the Environment Agency) and is some 2-3 feet deep normally an insufficient depth to maintain a fish population and so there was no recreational use of the stream and he did not see anybody on the land whilst he was at the property before he left to live in Lydiate and he was not told by his father or by his mother in succession to him nor by anybody of any use of the path or the land until the end of 2012 as appears later. In 1954 the stream burst its banks and flooded the fields, the River Crossens Drainage Board built the bank up and told his father to put a fence along the field to stop the cattle treading the bank away.

He regularly called to see his mother until she sold the farmhouse in 2000 calling at least once a week and often more and after she sold the farmhouse and relocated he periodically called to inspect the land that was retained by his mother until she

gifted the land to himself and his sisters in November 1993 and it has been successively tenanted.

The current tenant who started in 2006 is Henry Ascroft and Mr Lavelle normally meets his son Ian Ascroft on site when he calls to inspect and he has regular contact with Ian. He was first told by Ian in October 2012 that people were using the field edge path and breaking down fence that he had put up so that his cattle were getting out.

He was told by Ian that he had challenged one man using the path and there had almost been a breach of the peace and he was also told that ladies were using the path presumably the applicants to walk north to Wood Moss Lane and to effect a circular walk back to their houses somewhere in Scarisbrick Village. The gate which is an extra gate near to where the people have been getting through the railings was erected in 2007 by the present tenant. Mr Ascroft owns land on opposite side of the road and the gate makes easy access to his land through the gate opposite.

He has spoken to the adjoining owner to the north Mark Forshaw in relation to the proposed footpath and he appears to have no objection to it but his tenant does for the same reasons that his tenant objects i.e. fences broken down and people walking along boundaries of the land.

The signs that he has put up to indicate that the property is private and not a right of way have been taken down.

Between his father's acquisition 1953 and the autumn of 2012 the land in question has been private and has not been used by anyone to his knowledge and he is unable to explain why local people have started to use it and claim that it is a public footpath when it has clearly been private land for most of his lifetime.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User Evidence

Aerial photographs

Support from landowner of part

Against Accepting the Claim

Actions by landowner of part

Conclusion

In order for the right of way to become a footpath there would need to have been a dedication by the owner at some point in the past and acceptance by the public. There is therefore a need to consider whether there is evidence that the footpath as

claimed can be reasonably alleged to have already been dedicated in which case the test for making an order would be satisfied and to then consider whether on balance there is evidence that the claimed route has been dedicated and the higher test for confirmation can be satisfied.

As there is no express dedication it is suggested, the Committee consider firstly whether there is sufficient evidence from which to deem dedication from use under S31 Highways Act 1980 and to then secondly consider whether, in all the circumstances there is evidence from which dedication can be inferred at Common Law.

Considering, firstly the provisions of S31 Highways Act and whether the public has enjoyed use of the claimed route for a full period of twenty years. The evidence indicates that access to the route has never been questioned or denied up until October 2012, at which point the tenant made the landowner aware he had challenged a user about his right to use the route. User evidence forms suggest, two users had been stopped at that time and 8 users claim to have recently heard of others being stopped. One user provides a time period of October 2012-December 2012 for the challenge. It is suggested that without any other evidence available, it is likely the "bringing into question" of the route would be October 2012 and the 20 year period of use to consider would be 1992-2012.

Evidence of use is provided in 25 user evidence forms (only 23 have been considered as 2 are incomplete). Of these, 16 claim to have knowledge and use of the route for 20 years or more prior to 2012. The longest period of knowledge of the route is 60 years (2 users). Claimed use is for leisure, dog walking, exercise, running, recreation and wildlife watching and is consistent with use as a public footpath.

The frequency of use from the evidence forms differs; it appears there are 3 users claiming to have used the route on a daily basis, with 10 users claiming to have used the route on a weekly basis with the other users appearing to have used the route less frequently. On balance, it appears, the use has been sufficiently frequent. It is suggested that for use to be sufficient it would need to be more than of the appearance of being sporadic and sufficient to show use by the public as a whole.

Use also has to be as of right. It must be without force, without stealth and without permission.

3 users worked for one of the landowners and therefore their use of the claimed route would not be as of right however it should be noted that their use of the route has been sporadic and these 3 users confirm they were not given instructions by the landowner as to the use of the way by the public.

Use has not been by stealth but issue of use by force must be considered whether barriers across a route exist. 10 users state there was a stile/gate or fence across the route although 10 users do not recall such barriers. 18 of the users claim the structures across the route were never locked. One user states there had been a locked gate recently to his evidence form in 2012 but no date is stipulated. 21 users have never seen any notices/signs along the route and 2 users state a sign was

erected during 2012. At Point A the ED officer noted there was a green metal railing fence which was low and; looked worn as though people had been climbing over or through it. A recent Planning Inspectorate decision considered a low wall which was being climbed over to access a particular claimed route, the inspector found that use was still as of right due to the nature of the wall as it seemed more likely than not that access would have been attractive to residents whether children or adults and people were getting over the wall with relative ease and frequency. In line with this decision it may be considered that the railing at point a was similarly low enough for users to access and the route was being accessed with relative ease and frequency and use capable of being as of right.

A presumption of dedication may be rebutted if there is sufficient evidence on the part of landowners to demonstrate that they had no intention to dedicate a public footpath during the 20 year period under consideration. One of the landowners states people were getting through the railings and through a further gate which was erected in 2007. No reference is made to locking gates or erecting signs/notices, until 2012 or the landowner having purposely blocked the route occasionally. The statutory declaration dated 24 January 2014 made by landowner John Roberts pursuant to Section 31(6) Highway Act 1980 depositing the map and statement of the way with the Authority is only effective the date this is deposited and is therefore not relevant to the 20 year period being considered.

From the evidence presented no user recalls a gate locked against him in 2007 and it is suggested that no sufficient overt action was taken until 2012.

Taking next the inference of dedication at Common Law. This requires evidence of an actual intention to dedicate by the land owner. The landowner of today has owned the land since 1993 and is objecting to the claim and denying any intention to dedicate. His mother and father were owners before him and are now deceased. Without evidence of overt actions taken by them it is possible that their not taking action means that the user taking place could be circumstances from which to infer dedication at common law. The user would not need to be for twenty years.

The presence of a fenced route could also be circumstances from which to infer an intention but the present owner explains that the fence has nothing to do with dedicating a footpath. He states that in 1954 the stream burst its banks and flooded the fields and The River Crossens Drainage Board built the bank up and advised his father to put a fence along the field to stop the cattle treading the bank away. The aerial photograph of the 1960's shows Point A to Point B of the claimed route being fenced off from the adjacent fields, although the claimed route is not visible on the aerial photograph, this date coincides with the landowners date for the fencing being erected. It is confirmed that Eas Brook and Sandy Brook are both regularly cleaned out and maintained by the Environment Agency. This arguably explains the fencing and makes it difficult to use the fencing as indicating that the landowner had intention to dedicate the route.

Taking all the information into account the Committee may consider that the criteria in S31 can be established and possibly dedication inferred from user prior to 1993. The committee may consider that it can be reasonably alleged, on balance, that the footpath subsists in law and that it is appropriate that an Order be made. Also, it is

suggested that the higher confirmation test is also able to be satisfied, as there is sufficient evidence on balance that the right of way on foot for the public already subsists in law.

Risk Management

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

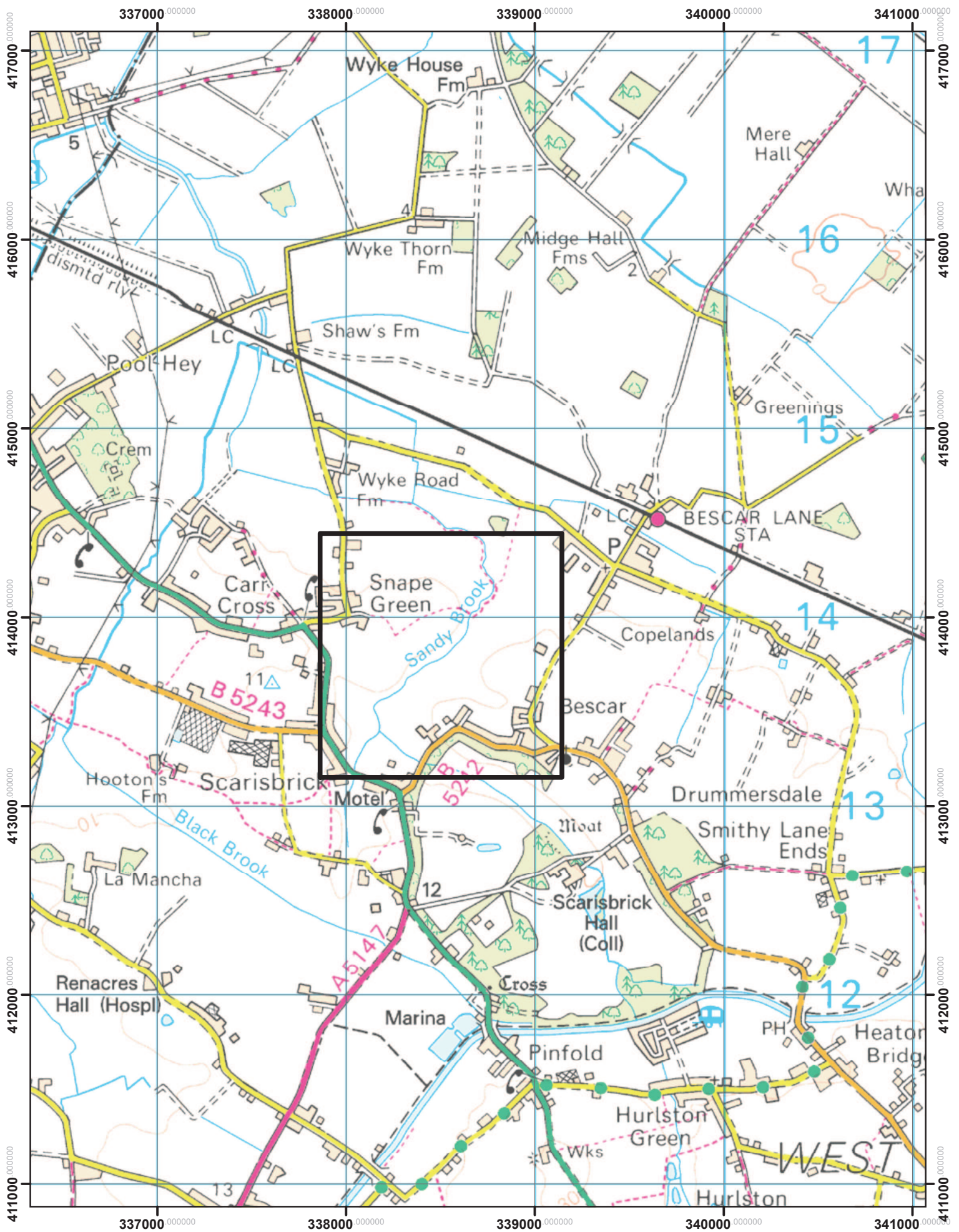
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.47931 (804/544)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 33427

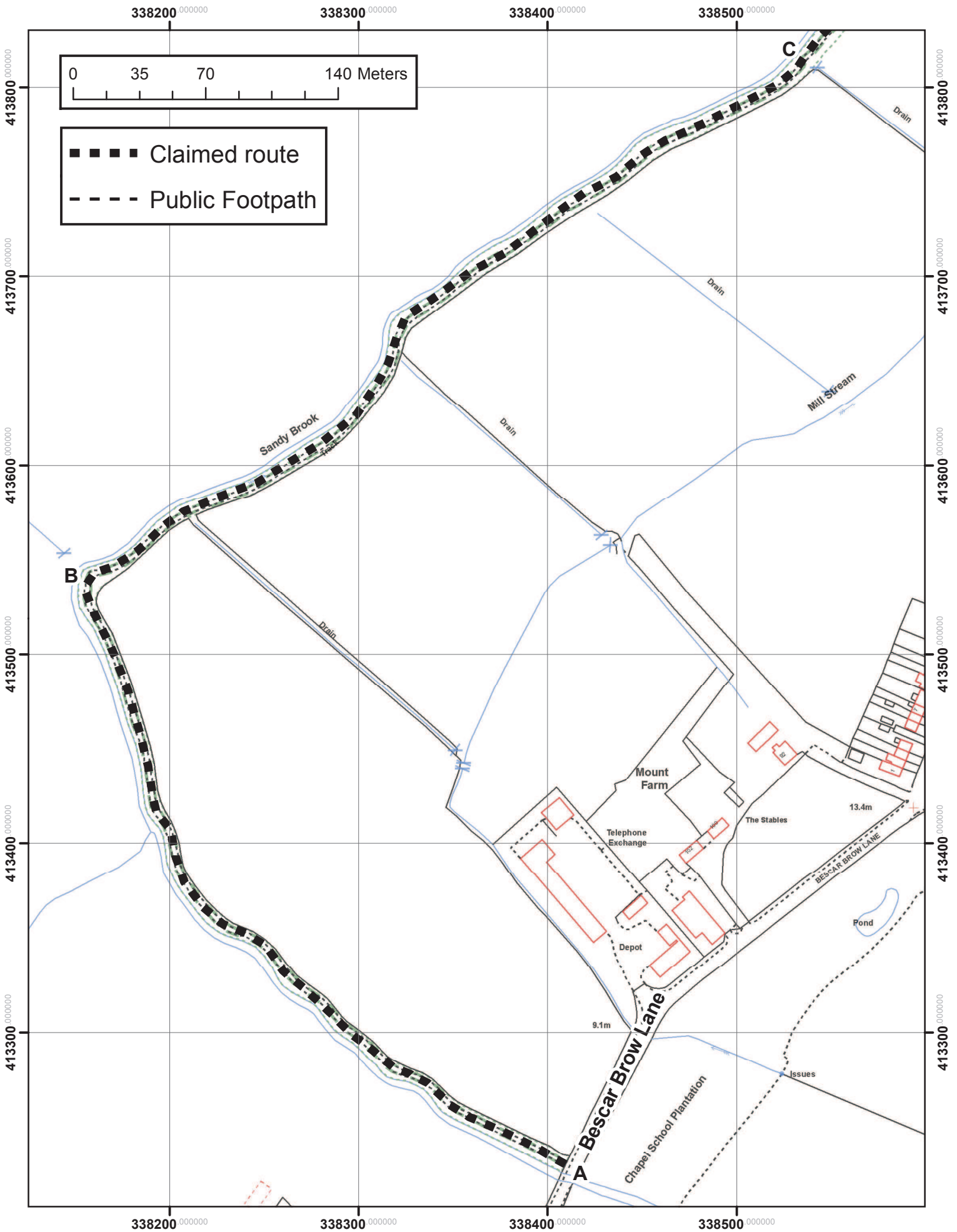
Reason for inclusion in Part II, if appropriate

N/A



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Jo Turton
Executive Director
for the Environment

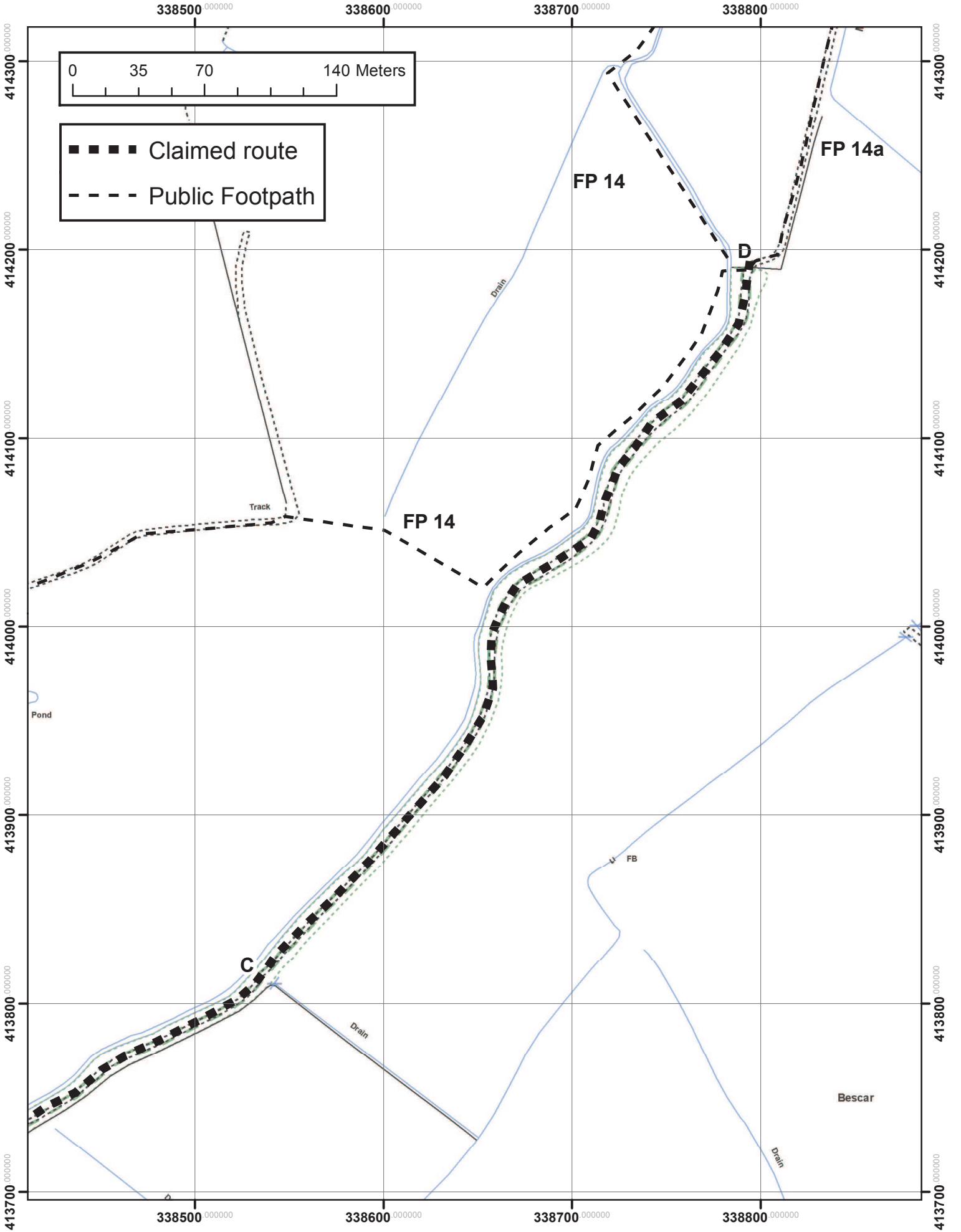
Wildlife and Countryside Act 1981
Claimed public footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick, West Lancashire Distirct
 Claim no. 804/544 Plan1/2

1:2,500



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Regulatory Committee

Meeting to be held on 26th March 2014

Electoral Division affected: Morecambe North

Wildlife and Countryside Act 1981

Claimed Public Footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City

Claim No. 804-533

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, County Secretary and Solicitor's Group,

Megan.Brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.Elliott@lancashire.gov.uk

Executive Summary

The claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City is not to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-533.

Recommendation

That the claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head 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. 804-533 be not accepted

Background

A claim has been received for a footpath extending from a point on Sunningdale Crescent to a point on Public Bridleway 5 Slyne-with-Hest, a distance of approximately 475 metres, and shown between points A-B-C-D-E and B-G-D 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 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. 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

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

Slyne-with-Hest Parish Council

Slyne-with-Hest Parish Council have been consulted and although they appreciate the concerns of the landowner and farmer they do 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 solicitor’s Observations

Advice

Executive Director of Environment’s Observations

Points annotated on the attached Committee plan

Point	Grid Reference	Description
A	SD 4689 6595	Junction with Sunningdale Crescent
B	SD 4692 6576	Undefined point in field adjacent to rear boundary fences

		between 25 and 23 Sea View Drive
C	SD 4693 6571	Gap in boundary hedge
D	SD 4693 6571	Junction of claimed routes on south side of gap in the boundary hedge
E	SD 4704 6573	4.8 metre wide metal field gate across claimed route
F	SD 4704 6573	Junction with Public Bridleway 5 Slyne-with-Hest
G	SD 4689 6570	4 metre wide gap in boundary hedge

Description of the Route

A site inspection was carried out in December 2013.

The total length of the claimed route is 475 metres with the section A-B-C-D-E-F being approximately 360 metres long and the length B-G-D being 115 metres long.

The claimed route commences at the southern end of Sunningdale Crescent (point A on the Committee plan). At point A there is a 2.8 metre wide metal gate which has been padlocked shut. On the gate is a green and white sign stating, 'NO PUBLIC ACCESS Private Land'.

Immediately on the other side of the gate access is further prevented by a large amount of cut wood, tree trunks, fencing and other deposited material. Access onto the claimed route from point A was not possible.

Beyond point A the claimed route follows the edge of a field following the boundary between the field and residential properties along Sea View Close and Sea View Drive. The claimed route continues along the edge of the field in a south south easterly direction for approximately 195 metres to point B which is an unmarked point in the field adjacent to the rear boundary fences between 25 and 23 Sea View Drive.

At point B the claimed route splits with one part of the claimed route continuing for approximately 50 metres in a south south easterly direction along the field boundary to the corner of the field at point C. Part of the claimed route between point B and point C is quite soft and muddy underfoot. At point C the claimed route passes through the boundary hedge. When the route was inspected the gap in the hedge was visible but had been blocked off by a wooden crate. The claimed route continues to point D near the edge of the next field.

From point D the route continues in an east north easterly direction along the field edge for approximately 110 metres before it curves in a south easterly direction at the eastern end of the field and passes through a 4.8 metre wide metal field gate at point E. The field gate at point E is padlocked shut and there is a green and white sign identical to the one found at point A stating 'NO PUBLIC ACCESS Private Land'

The route then continues a short distance to terminate at point F on the Committee plan which is a junction with Public Bridleway 5 Slyne-with-Hest (approximately 120 metres west of the bridleway's junction with The Knoll).

The other section of the claimed route from point B crosses the open field in a south westerly direction for approximately 70 metres to pass through a 4 metre wide gap in the boundary hedge at point G. Wooden pallets formed a temporary but broken down barrier across the gap.

From point G the claimed route enters a long narrow field and continues in an east north easterly direction along the south side of the boundary hedge for approximately 45 metres to point D where it is possible to pass back through a gap in the hedge at point C to go back towards Sunningdale Crescent or to continue along the field-edge and across the narrow field to the bridleway.

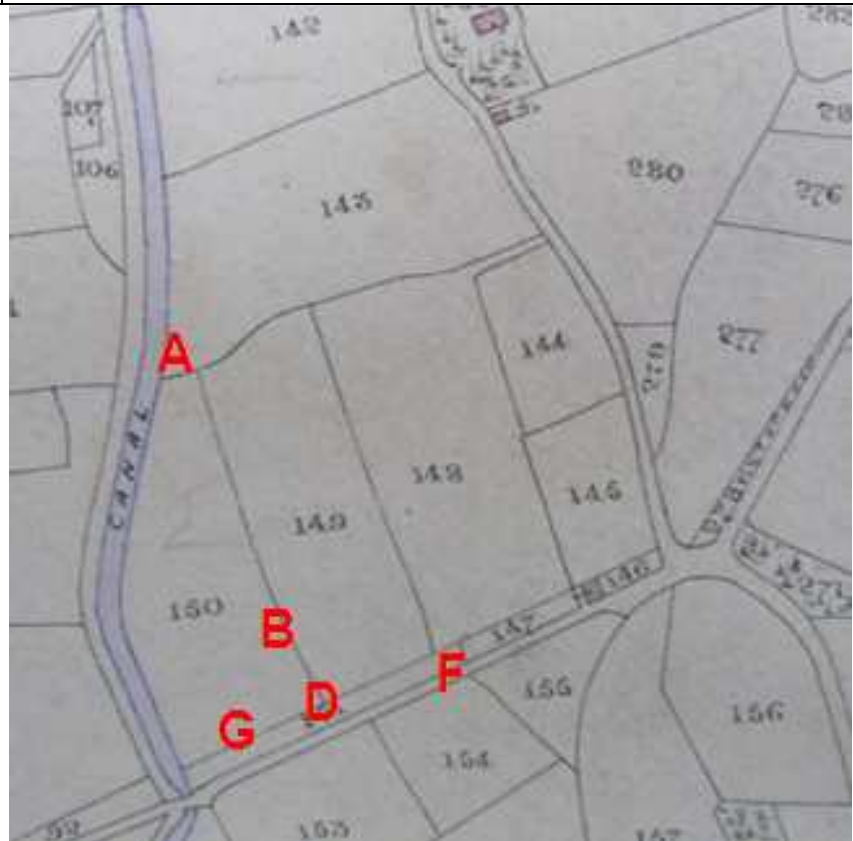
In summary, there was no visible worn track on the ground along any part of the claimed route when it was inspected in December 2013. Access onto the claimed route was physically prevented by locked gates at point A and point E, and signs stating that the land is private with no public access were also located at these points. Wooden pallets had also been placed across the gaps at points C and G although these appeared to be for the purpose of stock control between the two fields.

Map and Documentary Evidence relating to the claimed addition

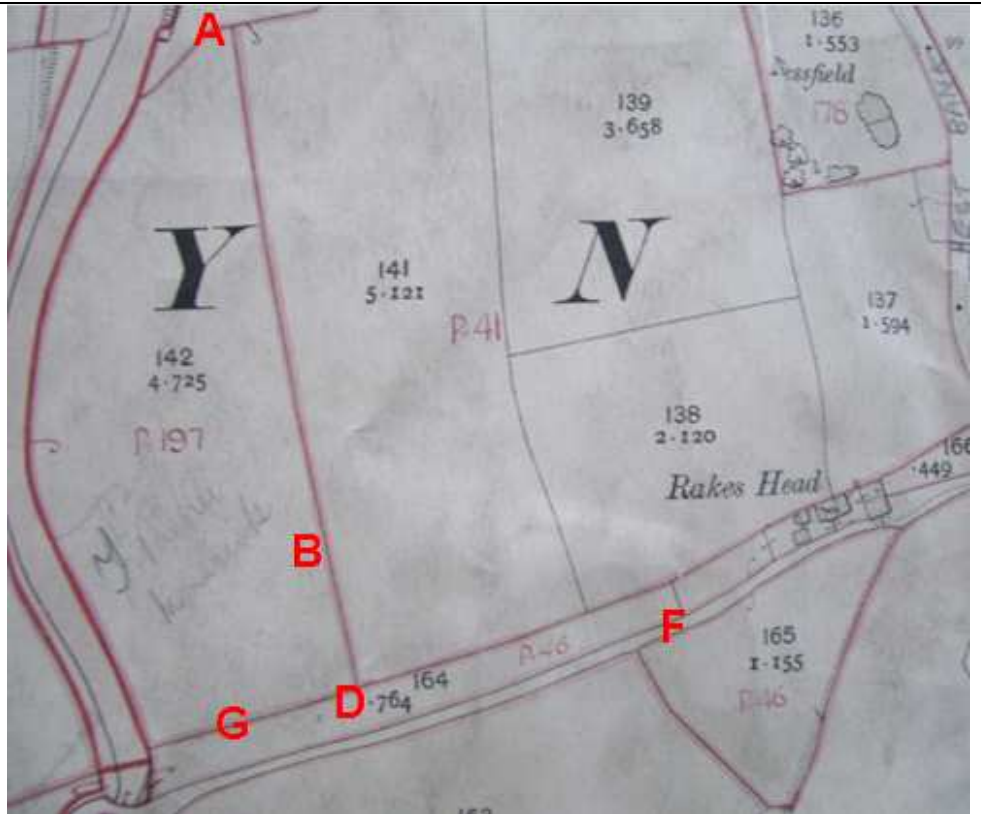
Various maps, plans and other documents were examined with reference to the claimed route.

DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The 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 although 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.
Greenwood's Map of Lancashire	1818	Greenwood's map of 1818 is a small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.
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 that 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.

Hennet's Map of Lancashire	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 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 so no inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment	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.

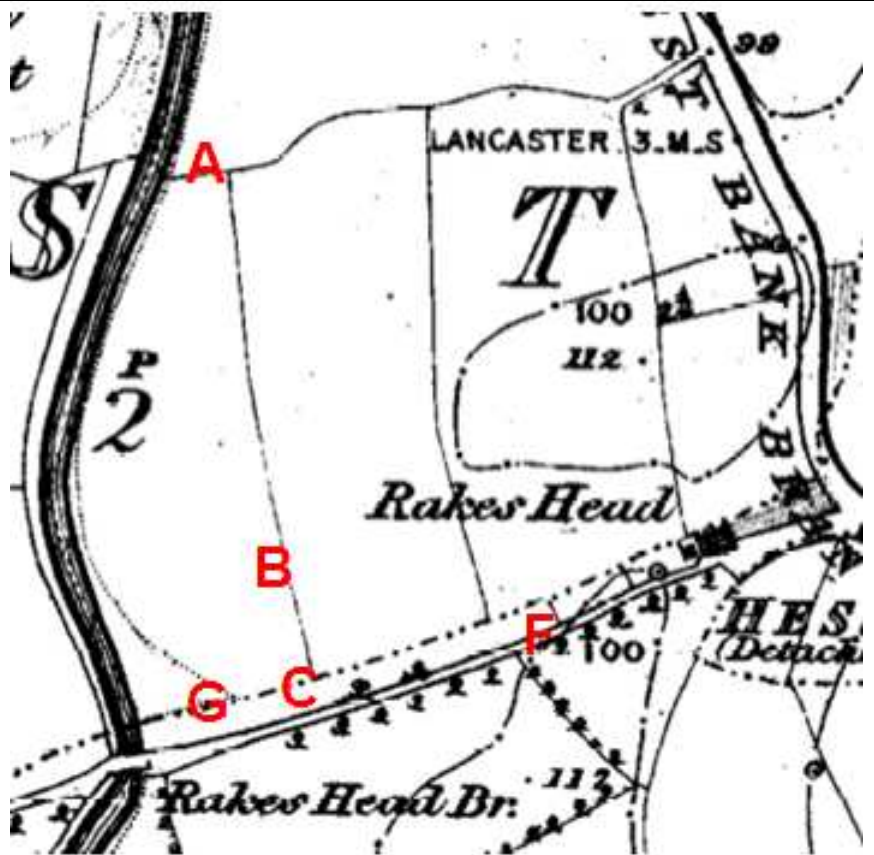


Observations		The claimed route is not shown on the Tithe Map. It crosses the fields numbered 150 and 151. There is no reference to the claimed route in the Tithe Award.
Investigating Officer's Comments		The claimed route probably did not exist in 1845.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Slyne-with-Hest.
Investigating Officer's Comments		No inference can be drawn.
Finance Act 1910 Map		<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>

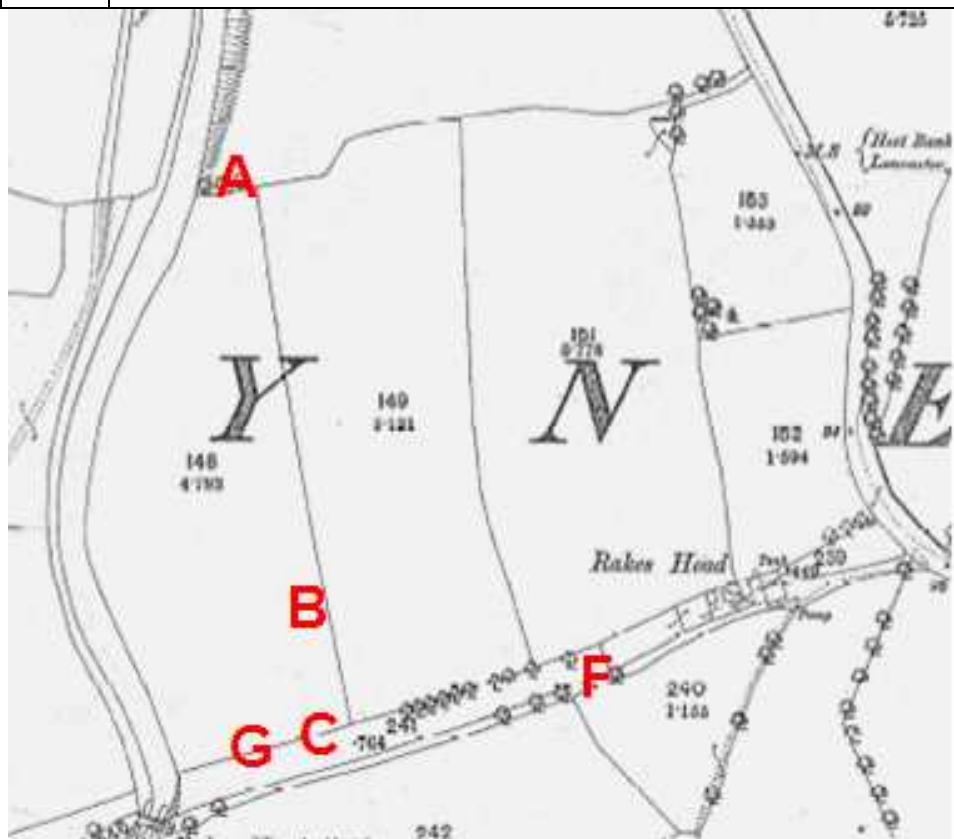


<p>Observations</p>	<p>The claimed route is not shown on the Ordnance Survey 1:2500 base map used to produce the Finance Act map that is held in the County Records Office.</p> <p>The claimed route is not shown as being excluded from any of the hereditaments that it crosses.</p> <p>The claimed route between points A-B-C and B-G crosses hereditament 197 for which there is no deduction for the existence of a public right of way listed in the accompanying schedule.</p> <p>Between points G-D-E-F the claimed route crosses hereditament 46 for which a £5 reduction is listed for Public Rights of Way or User. The location of the 'right of way' for which the deduction has been claimed has not been specified in the schedule. Hereditament 46 is split by Rakes Head Lane (Public Bridleway 5) with the other part of the hereditament being the triangular shaped field to the south of point E which includes part of Public Footpath 9 Slyne-with-Hest.</p>
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Investigating Officer's Comments		<p>The section of the claimed route (A-B-C and B-G) crossing hereditament 197 was probably not considered to be a public right of way circa 1910 (or not considered to be worth claiming).</p> <p>It cannot be assumed that the £5 reduction was due to the section of the claimed route between points G-D-E-F across hereditament 46 because it is more likely that the reduction relates to the footpath recorded as Slyne-with-Hest Footpath 9 and not the claimed route.</p>
Ordnance Survey Maps		<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	1848	The earliest OS map examined was published in 1848 and surveyed 1844-45.

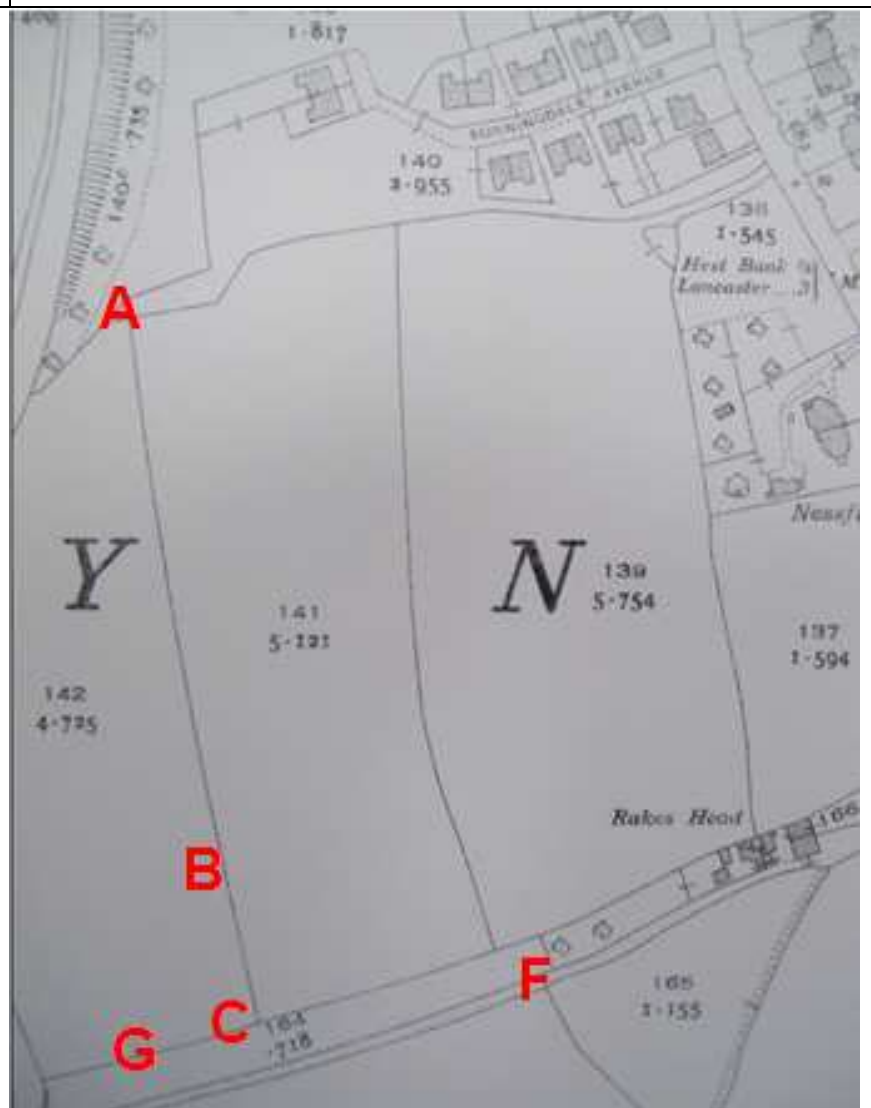


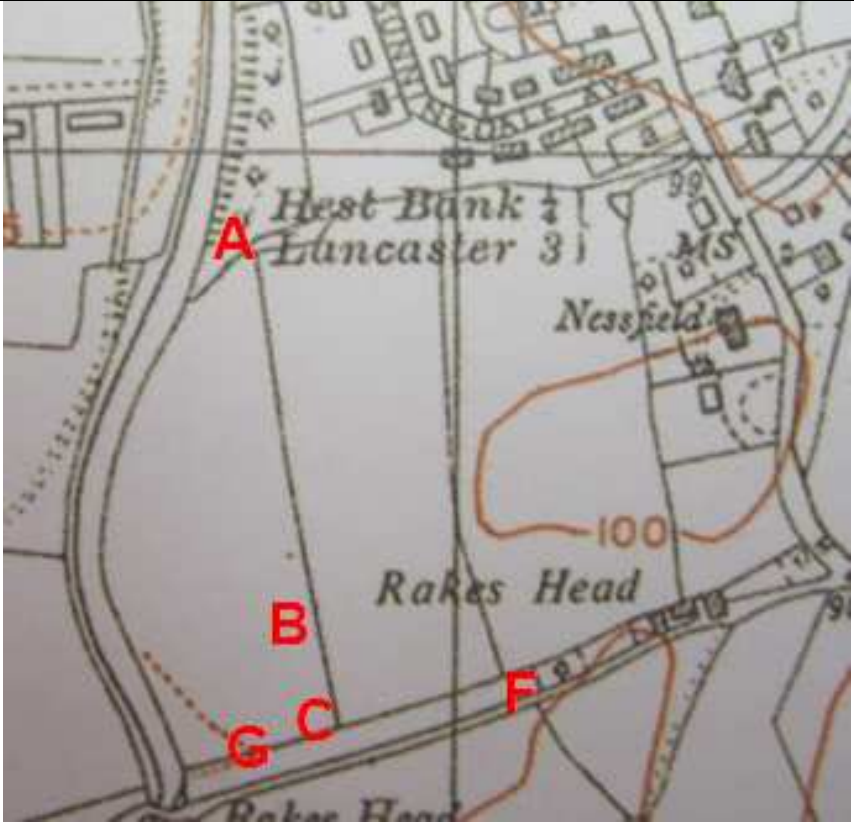
Observations		The claimed route is not shown. Public Bridleway 5 is clearly shown and named as Rakes Head Lane (off the left side of the above extract) but Sunnydale Crescent does not exist. The canal is shown to the west of the claimed route. Point A is shown on the field boundary. Points G and C are shown through a broken dashed line which represents the parish boundary.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey carried out their survey.
25 inch OS map	1891	The earliest edition examined which was published at the larger scale showing the area in more detail was surveyed in 1889 and published in 1891.

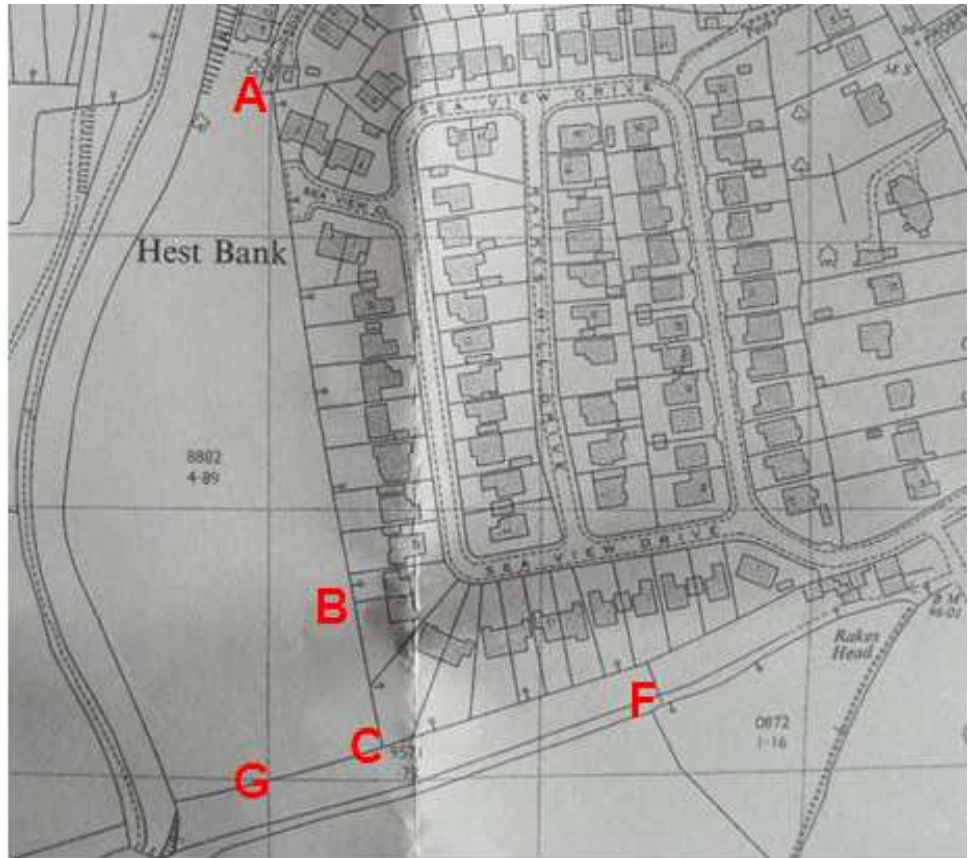


Observations		The claimed route is not shown on the map. Sunningdale Crescent did not exist and point A is shown as being located on a field boundary. The claimed route is crossed by further field boundaries at points C, F and G.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey carried out their survey in 1889.
25 Inch OS map	1913	Further edition of 25 inch map, surveyed 1889, revised in 1910.

Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1910.
25 Inch OS Map	1932	Further edition of 25 inch map surveyed in 1889, revised in 1930-31.
Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1930-31.
25 Inch OS map	1938	Further edition of 25 inch map surveyed in 1889, revised in 1938.



Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map. North east of point A development has taken place and houses built along Sunningdale Avenue. Sunningdale Crescent had not been constructed at that time.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1938.
6 Inch OS Map	1956	Further edition of 6 inch map revised 1930-45 with major changes revised in 1951. This map was used as the base map for the Definitive Map, First Review.
		
Observations		The claimed route is not shown. It crosses field boundaries at point A,C,F and G.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey revised the map in 1930-45.
1:2500 OS Map	1968	Further edition of the 1:2500 map revised 1968.




Observations		The claimed route is not shown. Sunningdale Crescent has been constructed and point A is situated at its most southerly point. Boundaries are shown across the claimed route at points A,C,F and G.
Investigating Officer's Comments		Public access was available to point A and point E. However, the claimed route did not exist at the time that the Ordnance Survey revised the map in 1968.
1:10,000 OS Map	1972	An edition of the 1:10,000 map revised 1968-70



Observations		The claimed route is not shown. Boundaries are shown across the claimed route at points A,C,F and G.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey revised the map in 1968-1970.
Aerial Photographs		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	1963	The earliest set of aerial photographs readily available for this area.




Observations	<p>Access onto and along the claimed route appears to be available at point A, point F and point G. No worn track is visible on the ground along the length of the claimed route and it is not possible to see whether access would have been available through the hedge at point C. The houses on Sea View Drive that back onto the claimed route between points A-B-C-D-E have not been built although Sea View Drive appears to be under construction when the photograph was taken.</p>
Investigating Officer's Comments	<p>The claimed route did not exist as a worn track on the ground in 1963. A well defined access point can be seen to have existed at point A, although this may have been related to the building works taking place. Access also appears to be available at point G and point F although these are likely to be points of agricultural access and therefore it is not unexpected that they would be worn. There is no visible access through the hedge at point C.</p>

Aerial Photograph	1988	Aerial photograph available to view at County Records Office
		
Observations		The claimed route cannot be seen as a worn track on the ground. Access points can be seen at point F and point G but it is not possible to determine whether access was available at point A or point C.
Investigating Officer's Comments		There appears to be no significant amount of use of the claimed route in 1988.
Aerial Photograph	2000	Aerial photograph available on GIS




<p>Observations</p>	<p>It is not possible to determine whether access was available onto the claimed route at point A due to tree cover. No trodden track is visible between point A-B but there appears to be a faint line from midway between point B and point C to point C where access appears to be available through the hedge. There is no worn track visible between points B-G or G-D-F and tree cover and shadows make it difficult to determine whether access was available at point F.</p>
<p>Investigating Officer's Comments</p>	<p>The claimed route did not exist as a worn track on the ground in 2000 suggesting that there was no significant amount of use at that time. It is not possible to see from the photograph whether access was available at point A or point F but it does appear that access was available through the boundary hedge at point G and possibly at point C and a faint route appears to lead to point C from midway between point B-C.</p>

Aerial Photograph	2001	Aerial photograph available on GIS
		
Observations		<p>It is not possible to determine whether access is available at point A due to tree cover. The claimed route is not visible on the ground although it is apparent that both fields had been recently cut.</p> <p>Access is available through the hedge at point G but there is no visible access at point C. Access is available onto the claimed route at point F.</p>
Investigating Officer's Comments		<p>The claimed route did not appear to exist as a worn track on the ground in 2001 although the recent cutting means any worn path would be less likely to be visible. It is not possible to see from the photograph whether access was available at point A or point C but it does appear that access was available through the boundary hedge at point G and at point F.</p>
Aerial Photograph	2006	Aerial photograph available on GIS



Observations		<p>Almost the whole of the claimed route is visible as a worn route on the ground.</p> <p>Point A is obscured by trees but a clearly defined track can be seen leading from near point A to point B. Gaps in the hedges are visible at point F and point G. It is not possible to see what access existed through the hedge at point C but a worn track can be seen from point B to point C suggesting access would have been possible through the hedge to point D.</p>
Investigating Officer's Comments		<p>The claimed route existed and was being used in 2006.</p>

Aerial Photograph	2010	Further aerial photograph available on GIS.
		
Observations		<p>Access at point A cannot be seen due to tree cover but there is a clear worn track leading from near point A along the claimed route to point B. From point B both parts of the claimed route between points B-C and B-G can be seen as worn routes on the ground. Access through the hedge at point G can be clearly seen and the claimed route between points G-D-F can be seen as a worn route on the ground. It is not possible to see whether there was a gap in the hedge at point C but a worn track can be seen leading to and from the hedge at point C suggesting that access was available.</p>
Investigating Officer's Comments		<p>The claimed route existed and was being used in 2010.</p>

Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Survey Map	1950	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 Slyne-with-Hest was carried out by Slyne-with-Hest Parish Council.
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.
Draft Map		Lancashire County Council took all the parish survey maps and cards for the rural district areas and drew the routes the parishes believed to be public onto a 6-inch Ordnance Survey map. It was given a "relevant date" (1 st January 1953) 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 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The 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.
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 Quarter Sessions.
Observations		The claimed route was not shown on the Provisional Map and there were no formal objections or other comments about its omission.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.

Observations		The claimed route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On the 25 th 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.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1966 there is no indication that the claimed route was considered to be public by the Surveying Authority, Parish Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>

Observations		A statutory deposit for the land crossed by the claimed routes between points A-B-C and C-G was deposited with the County Council by JR Hoggarth and J Hoggarth of Belmont Farm, Slyne, Lancaster on 22 June 2012. There are no statutory declarations lodged with the County Council for the land crossed by the claimed route between points G-D-E-F.
Investigating Officer's Comments		There is clear intention not to dedicate the routes as public footpaths between points A-B-C and G-D-E-F from 22 June 2012.

The claimed route is not a biological heritage site or site of special scientific interest. It is not recorded as Access Land under the provisions of the Countryside and Rights of Way Act 2000.

To summarise, there is no evidence of the claimed route 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.

The 1968 Ordnance Survey 1:2500 map is the first of the Ordnance Survey maps to show access being available to the start of the claimed route at point A (i.e. following the construction of Sunningdale Crescent) and it appears likely that use of the claimed route would most likely post date the construction of Sunningdale Crescent.

The aerial photograph taken in 2000 looks to show access was available through the hedge at point C but it is the 2006 aerial photograph that gives the strongest indication that the whole of the claimed route was being used at that time by sufficient numbers of people for a worn track to have been created.

The 2010 aerial photograph also shows the claimed route as a worn track is visible on the ground indicating a significant level of use.

No other documentary evidence examined supports the view that the 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 across the section A-B-C and B-G based on user evidence from 22 June 2012 onwards.

Description of the New Path for Inclusion in the Definitive Map & Statement if the Order is to be made (and subsequently confirmed)

The following should be added to the Definitive Statement for Slyne-with-Hest, Lancaster City:

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public Footpath from a junction with Sunningdale Crescent (point A) running in a generally south south easterly direction along field edge for approximately 195 metres to an unmarked junction of paths (point B) with one part continuing in a south south easterly direction along the field boundary for a further 50 metres to pass through a gap in the boundary hedge (point C) and then continuing into the field (to point D) and then turning to continue along the field edge in an east north easterly direction for a further 100 metres before turning in a south easterly direction to pass through a field gate (point E) and onwards to the junction with Public Bridleway 5 (Rakes Head Lane) (point F).

From the unmarked junction of paths at point B the other section of Public Footpath crosses the field in a south westerly direction for 70 metres to pass through a gap in the field boundary (point G) and then continues in an east north easterly direction along the field edge for 45 metres to join the public footpath at point D.

All length and compass directions given are approximate.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

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

" Public Footpath from a junction with Sunningdale Crescent at SD 4689 6595 running in a generally south south easterly direction along field edge for approximately 195 metres to an unmarked junction of paths at SD 4692 6576 with one part continuing in a south south easterly direction continuing along the field boundary for a further 50 metres to pass through a gap in boundary hedge at SD 4693 and then continuing into the field to SD 46938 65711 and then turning to continue along field edge in an east north easterly direction for a further 110 metres before turning in a south easterly direction to pass through a field gate at SD 47041 65734 and onwards to terminate at the junction with Public Bridleway 5 (Rakes Head Lane) at SD 47044 65731.

From the unmarked junction of paths at SD 4692 6576 the other section of Public Footpath crosses the field in a south westerly direction for 70 metres to pass through a gap in the field boundary at SD 4689 6570 and then continues in an east north easterly direction along the field edge for 45 metres to join the other part of the public footpath at SD 46938 65711.

Length - 475 metres.

Width - 1.5 metres.

Limitations and Conditions:

2.8 metre wide field Gate at SD 4689 6595

1 metre wide gap at SD 4693 6571

All lengths and compass directions given are approximate."

County Secretary and Solicitor's Observations

Information from the Applicant

The Applicant has provided 24 user evidence forms in support of the claim. 2 of these forms have been omitted as they were incomplete and another 2 had a page missing so have also been omitted. Therefore only 20 user forms have been considered.

The users who stated acknowledge the route in years as follows:

(0-10) 9 (11-20) 5 (21-30) 5 (31-40) 1

20 users have used the way on foot stating the main purpose for using the route was for dog walking, walking with children and for recreational use. The frequency of use per year varies from, once a month, once a week, 2-3 times a week, once a day, twice a day, and over 200 times per year.

None of the users claim to have used the way on a horse or by motorcycle / vehicle however 2 users claim they have seen someone using the route on horseback, 1 user has also seen someone using the route on a bicycle, 18 users have seen other people walking this route.

16 users agree that the way has always run over the same route, 1 user isn't sure of this, another says N/A and one user says it has until April 2011.

8 users state there are either stiles / gates / fences along the route, 3 users claim there are none, 9 users state there are gates along the route. 3 agree that the gates were locked, 8 users say they were not locked, 2 users say the gates were locked but were still accessible, 3 users agree the gate / gates only became locked in April 2011, 1 user says the gate / gates became shut 5 years ago, another user says the gate / gates became locked in 2005 and 1 user says the gate / gates were roped.

12 users agree that the gate / gates never prevented them from using the way, 4 users have been prevented since April 2011, 3 users talk about large boulders, barbed wire and an extra gate being put up in April 2011 and one user said the farmer was attending to the fields and he / she vacated 'post haste' on at least one occasion.

19 users state that they have never worked for a landowner over which the route passes and 19 users have never been a tenant on any of the land over which the route passes.

20 users have never been stopped or turned back when using the route, however 1 user has been stopped but continues over the gate, this was when the farmer was sealing the gate and states 'it was a scary experience'. 20 users have never heard of anyone else having been stopped or turned back when using the route on foot.

21 users 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.

13 users have never seen any signs / notices along the route, 7 users have seen signs / notices since April 2011 and one user isn't sure of seeing any signs / notices. All 21 users have never asked permission to use the way.

The applicant has also provided photos from Google Earth showing the claimed route is visible after being cut or harvested and another showing the gate which provides field access. Photos of the route have also been provided.

Information from Landowners

An Objection from Mr Richard Hoggarth - Landowner

Mr Hoggarth received a letter from the applicant in July 2012 notifying him that she was applying to Lancashire County Council as 'a possibility to have the paths that were blocked in April 2011 re-opened to the dog walkers who accessed them on a regular basis and who miss using them'.

Mr Hoggarth was surprised and confused by the letter as her proposed route has never been used as an official footpath and runs across land clearly marked as private property. Therefore any suggestion that the paths have been blocked is completely inaccurate. His family have farmed the land for more than 60 years and certainly during that time there were no official public footpaths on the land other than the official footpath (FP9). Mr Hoggarth has an Ordnance Survey map dated 1980 which shows no such official footpath running along the claimed route.

On receiving the letter from the applicant he was alarmed to read the claim that dog walkers accessed unofficial routes across private fields on a regular basis as this brought to his attention the fact that people may have been continuously trespassing on this private property. Mr Hoggarth states there are very clear signs at the entry points of the fields concerned, stating that this is private land and that there is no public access. The land in question is used to graze livestock and also to grow crops and he is concerned that such trespassing could cause damage to his business.

He is certain that at no time has permission been given for any member of the public to use any route across the land in question other than the official footpath FP9. Mr Hoggarth is a tenant of Mr James Fish and it is his duty to ensure no persons trespass on his private property.

Mr Hoggarth and his son are extremely busy farming approximately 350 acres of land and therefore does not have the time to monitor every field for dog walkers. However since received Mrs Hargrest's letter they have been paying greater attention to this when possible. Whilst working on the land they have seen people walking dogs on the fields in areas other than the official footpath route and they have been informed they are on private land and that there is no public access. However over recent years they have also seen people walking with dogs that are not on leads and they have pointed out that the area is not an official footpath and that dogs are to be kept on leads at all times.

In 2012 his solicitor registered the land between Sunningdale Crescent and Rakes Head Lane with Lancashire County Council under Section 31(6) Highways Act 1980 statutory declarations and statement regarding non-dedication of footpaths, he can supply a copy of this.

He is concerned that if Mrs Hargest's assertions of dog walkers using the private land are correct there is a potential risk of further dog muck being left on the land.

A veterinarian from Lancaster has informed Mr Hoggarth of serious links between dog muck and abortion rates in cattle. Mr Hoggarth has provided a copy of the letter from the veterinarian explaining the seriousness in full as part of his objection.

Mr Hoggarth then goes on to say that if the application for a new public footpath is granted it would take away further land used for grazing livestock and growing crops. This would result in a loss of business along with increasing the risk of health threats to the animals.

He feels strongly that it must also be noted that there are many public footpaths in the area and he struggles to understand the need for further public footpaths across private property which is essential and valuable to his business.

Mr Hoggarth points out that his family have lived and farmed in Slyne for over 130 years and have always retained very good relationships with the village residents, they have continued to respect the public's access to the land on the official footpath FP9 and make sure the area is kept clear for their use at all times.

An objection from Mr James Fish - Landowner

Mr Fish has met with his client Mrs Fish and the other landowner Mr Richard Hoggarth. They wish to vehemently object to the request for a modification of the definitive map; he provides appendices, photographs and a plan to support his objection.

Mr Hoggarth through his solicitor has lodged an order with Lancashire County Council to prohibit the creation of any further footpaths over his land. Mr Fish understands from him and with liaison with his solicitor that this Order was created approximately 12 months ago and will stop in place for a further 9 years.

The access way terminating at Sunningdale Crescent comprises a blocked and locked 5 barred gate and a large amount of firewood and tree trunks and also has a large amount of vegetation around and through it, which is clearly evident from the photographs taken. Another photograph has been taken and shows that on the gate it clearly states that the land private and there is no public access across such. The claimed route of the footpath crossing Mr Hoggarth's land is utilised for silage and making operations and the production of Winter forage for his herd of dairy cows and at the time of inspection was approximately 10 days of harvest, showing little signs of trampling down or use by walkers as a thoroughfare, photos are again provided.

The most easterly access, marked on the plan which Mr Fish has provided comprises a mature hedgerow with a sizeable amount of vegetation growing through it, showing little signs of regular use (another photograph is provided). The secondary access to the west comprises an existing farm gateway, and again, shows little signs of foot traffic running through it (photograph provided). The remainder of the claimed footpath which runs to Rakes Head Farm then forms land owned by Mrs C L Fish, tenanted by Mr Richard Hoggarth, on a secure agricultural tenancy.

Mr Hoggarth has health and safety concerns over allowing this new footpath, currently Rakes Head Lane is used by dog walkers and has a huge amount of abandoned dog faeces on it by irresponsible dog owners. If the footpath was opened, the faeces would be deposited in the grass crop which can have massive health and safety implications for children, but more in terms of the fertility of Mr Hoggarth's cows. Previous correspondence sent to Mrs Hargest and a note from Mr Hoggarth has been provided in support of the objection.

Mr Fish confirms that the access way marked on the plan he has provided to the south comprises a mature hawthorn hedgerow with various other mature species with various annual weeds growing through such, which shows no signs whatsoever of being utilised as an access road. (More photographs provided)

Another access way marked on the plan comprises a metal 5 barred gate which is locked via a padlock, and also to the left of such, there is a plastic sign which clearly states that the land is 'private' and that there is no public access. The sign has been up for in excess of 3 years and again the supposed routed footpath shows minimal signs of usage. (Further photographs provided)

The field within the ownership of Mrs Fish is rented by Mr Hoggarth on a secure agricultural tenancy and used for the conservation of forage for his dairy cows. The field at the date of inspection has a sizeable amount of grass growth on it however shows no signs of public access. (Photos provided).

Mr Hoggarth states that approximately 5 or 6 years ago there had been an issue with walkers veering from the footpaths running from Rakes Head Lane, and due to this, he took the decision to securely lock and padlock all gates and erect signs. If Mr Hoggarth has ever seen any persons utilising the route, he has politely asked them to cease this.

In conclusion Mr Fish sees no reason why the modification order should be granted when Mr Hoggarth has in place upon the land which he owns, an order protecting the creation of footpaths, all gates accessing the land are securely locked with the bolt provided with the existing gate, padlocks and chains, and with signs clearly stating that the land is 'private' with no public access. The access ways supposedly created through the hedgerows are not visible and show a stock proof fence and the grass cover crop shows no trampling or signs of usage.

Assessment of the Evidence

The Law - See Annex 'A'

In support of the Claim

User evidence

Aerial photographs

Against accepting the Claim

Map evidence

Land Owner's action

The claim is that routes A-B-C-D-E-F and B-G-D are existing public footpaths 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 1980, the date the right of the public to use the claimed footpath was brought into question needs to be considered; whether the claimed footpath was used by the public as of right and without interruption for a period of not less 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowner to dedicate the claimed footpath.

The landowner, Mr Hogarth states that about 5 or 6 years ago there had been an issue with the walkers veering onto his land and he had therefore taken a decision to securely lock and padlock all gates and erect signs and in 2012 a statement was deposited with the Authority under Section 31(6) Highways Act 1980 with regards to part of the route.

The user evidence forms are not consistent with regards to what date the gate was locked. A user of 4 years stipulates the gate on Sunningdale Crescent was usually locked, another user states the gate to Sunningdale Crescent was locked for 'some' years, a third user states the gates had been locked 'usually' on Sunningdale Crescent but you could still access the field around the side of the gate, a fourth user states the gates were occasionally locked on Sunningdale Avenue but this didn't block access, a fifth user states there were gates at the entrance of Bob's lane which

were 'usually' open, which brings into question whether he is stating the gates had on occasion been locked, a sixth user states the gate had been shut but not locked around 5 years ago. 3 users agree the gates became locked in April 2011 and prevented them from using the route.

It is suggested that it is reasonable to assume the calling into question of the route was prior to the event in April 2011 when the gates became locked. On a balance of probability, it seems that it is reasonable to suggest the calling into question of the route occurred say 4 years prior to 2012, this date being the date the user forms were dated. Therefore, the 20 year period to consider would be 1988-2008.

Considering next, whether the route was used by the public as of right and without interruption, it seems from the user evidence that there were gates along the route and these were on occasion locked as detailed above. The users are inconsistent, as to whether these gates were locked and when they began to be locked. The land owners also submit there were clearly marked notices stating 'private property' however; we are not told the date these notices were erected and user evidence suggests these were erected in 2011. On a balance of probabilities, it is reasonable to assume that use was not always as of right and without interruption.

Another point to consider is the sufficiency of the user throughout the whole of the twenty year period. Evidence of use is provided in 24 user evidence forms, only 20 user evidence forms have been considered as the others are incomplete and/or have pages missing. Of these 20 user evidence forms, there are only 4 users using the route as early as 1988 from 1988 until 1990, and only 6 users used the route by 1991.

From the user evidence, it can be evidenced that until 2001 there was 9 users using the route, from 2006 onwards the remainder of the users began using the route. Frequency of use differs from daily, weekly to monthly use. It is suggested that for use to be sufficient it would need to be more than the appearance of being sporadic and sufficient to show use by the public as a whole. From the number of users on a balance of probability, it seems that it appears, the route has not been used sufficiently frequently by the public as a whole but rather a small cluster of individuals had been using the route until at least 2006. This correlates with the environment directorate's comments that access was available in 2000 at Point C but it is the 2006 aerial photo that gives the strongest possible indication that the whole route was being used at that time by a sufficient number of people for a worn track to have been created.

Taking all the evidence into account and looking at all the circumstances it is difficult to establish deemed dedication under S.31.

The Committee is also advised to 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 the Owner actually intended to dedicate is problematic. The owner Mr Hoggarth, clearly advocates that he never had any intention to dedicate, he suggests he had taken action in the form of erecting gates

and notices at the point he noticed people using the route which he claims was 5-6 years ago, some user evidence confirms gates were locked which demonstrates the land owner did not intend to dedicate. There is also the further issue with regards to there not being a sufficient amount of the public using the route from 1988 until 2001 to alert the owner the route was being used.

Taking all the evidence into account and looking at all the circumstances the Committee may consider that the dedication of the claimed route as a public footpath cannot on balance be inferred under common Law nor deemed under S.31 Highways Act 1980.

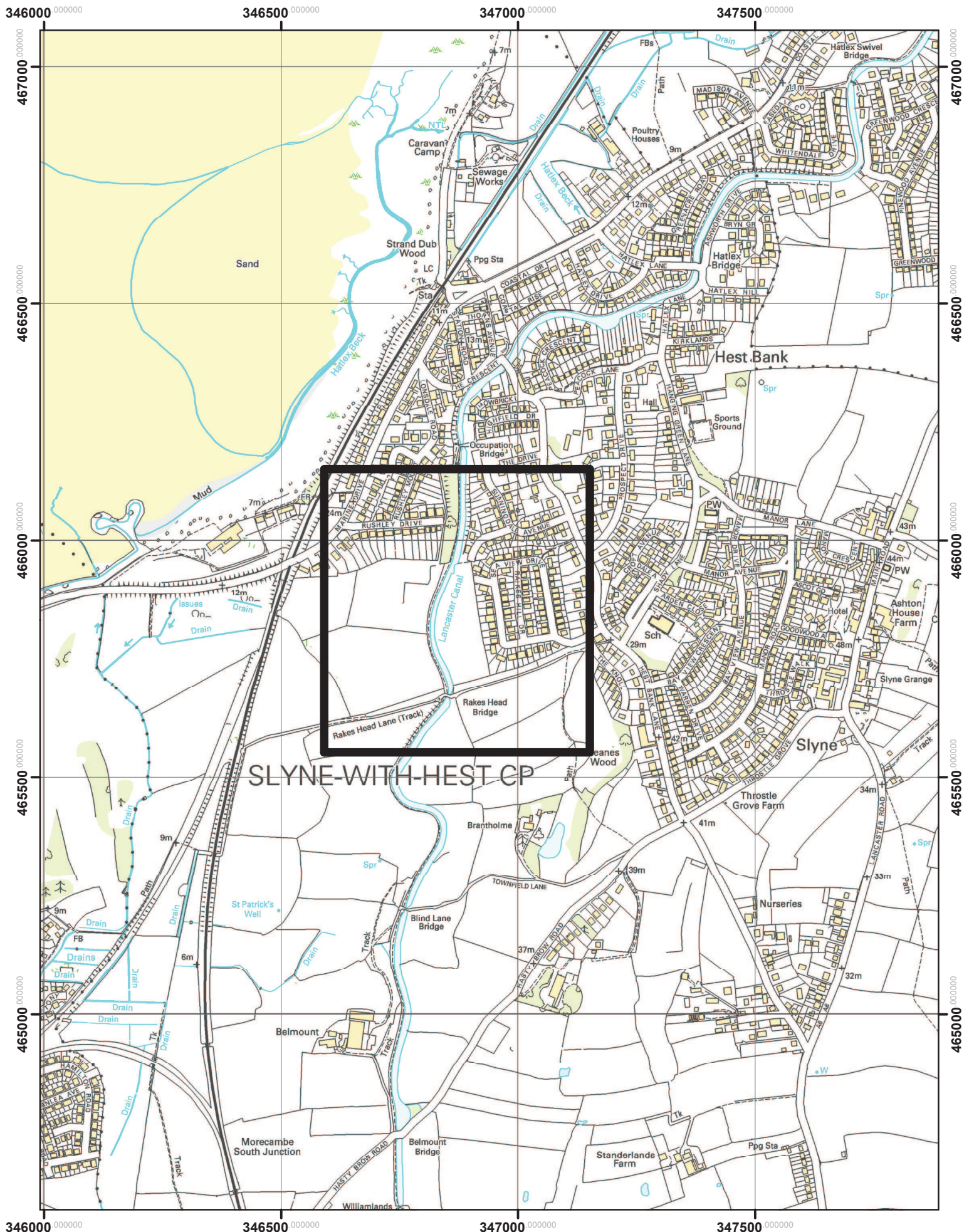
Risk Management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in an earlier report on the Agenda. Provided 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: 804/533		Megan Brindle, County Secretary and Solicitors Group, 01772 535604
Reason for inclusion in Part II, if appropriate N/A		



SLYNE-WITH-HEST CP



Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed Public Footpath from Sunnydale Crescent to Public Bridleway 5 (Rakes Head Lane),
Slyne with Hest, Lancaster City - Claim 804/533 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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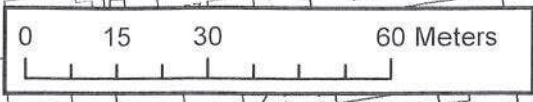
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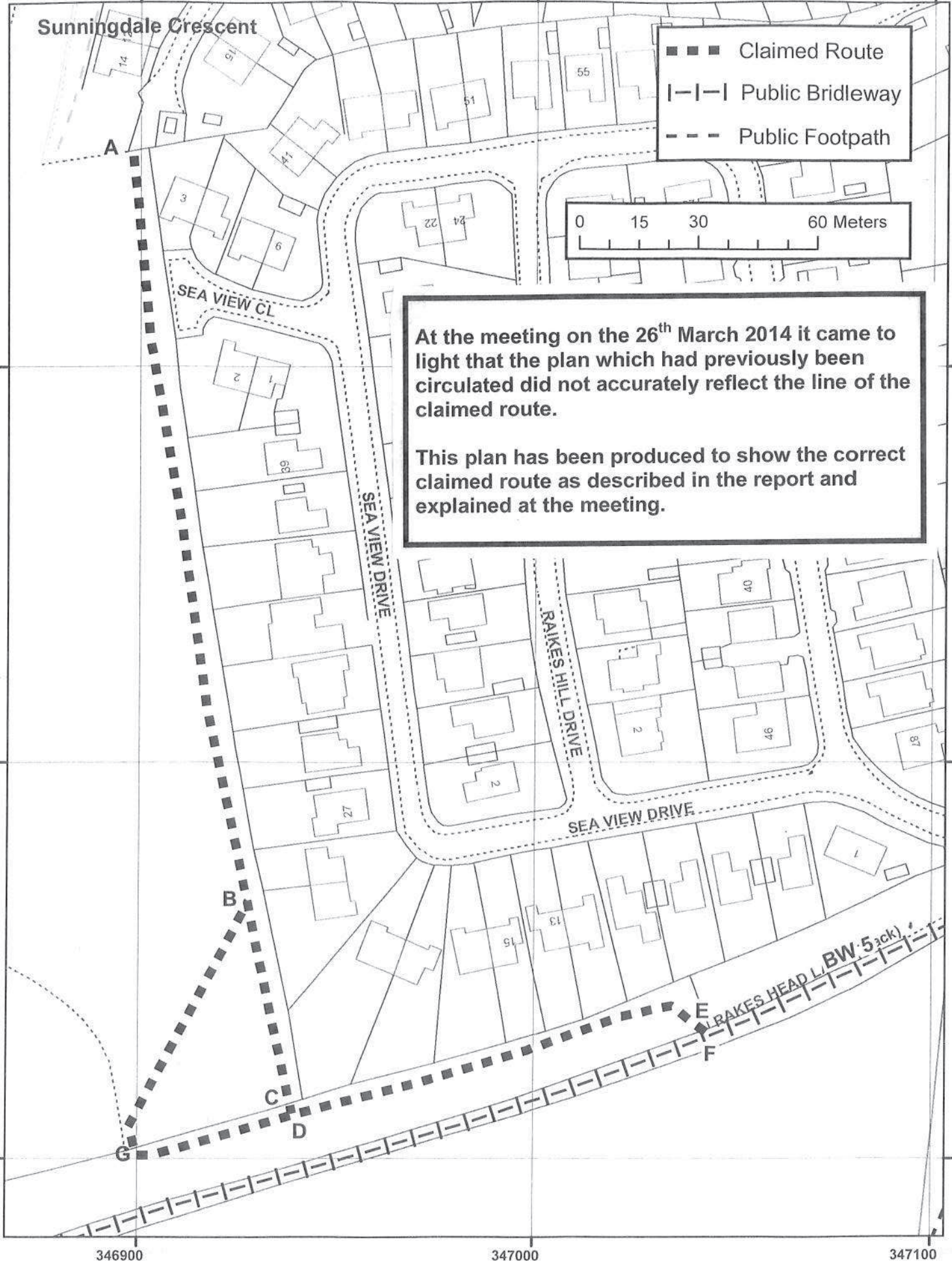
Sunningdale Crescent

■■■ Claimed Route
 -|-|- Public Bridleway
 - - - Public Footpath



At the meeting on the 26th March 2014 it came to light that the plan which had previously been circulated did not accurately reflect the line of the claimed route.

This plan has been produced to show the correct claimed route as described in the report and explained at the meeting.



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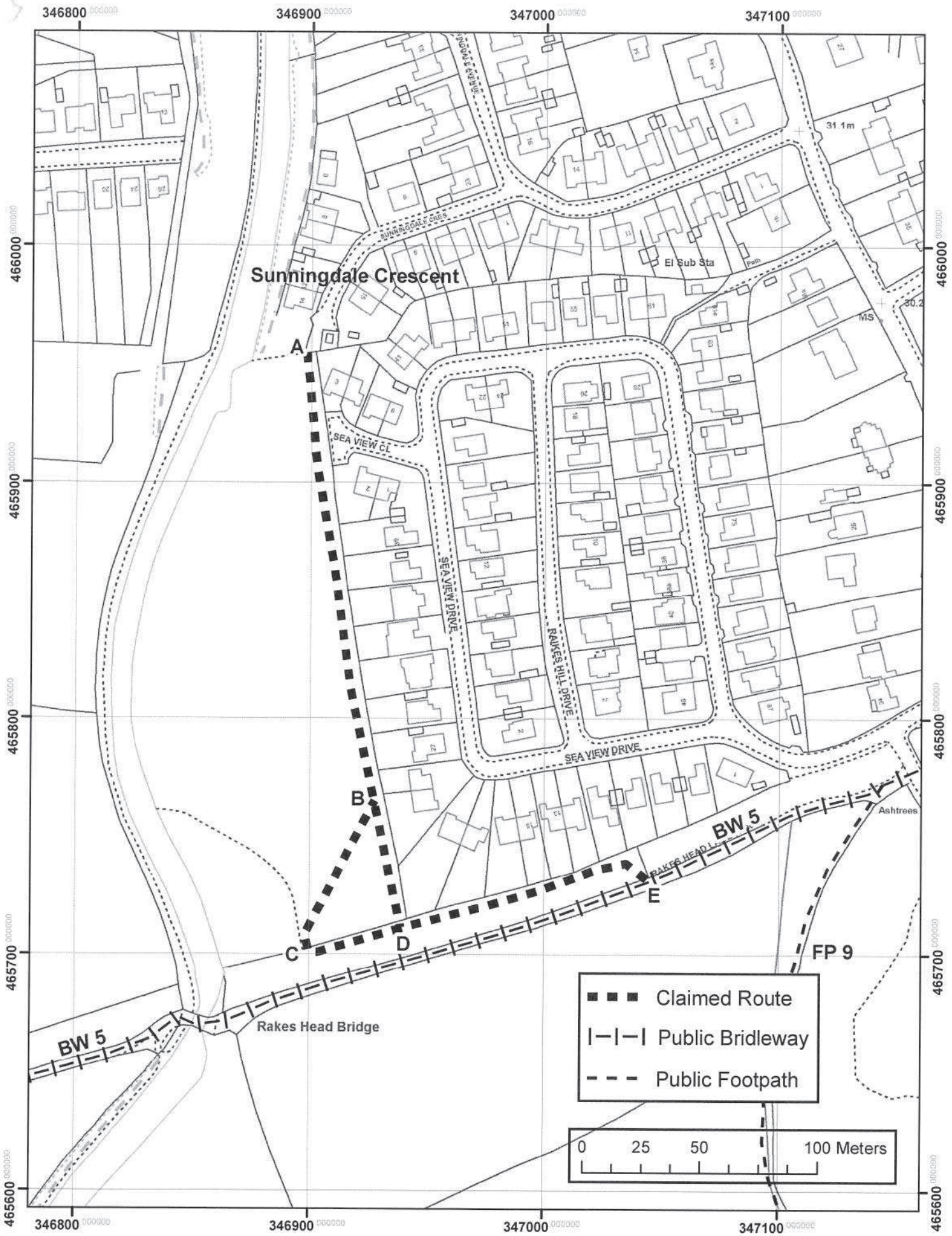
Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed Public Footpath from Sunningdale Crescent to Public Bridleway 5 Slyne with Hest,
Lancaster City Claim 804/533

1:1,250



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.



Regulatory Committee

Meeting to be held on 26 March 2014

Electoral Division affected: St Annes North
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Highways Act 1980 – Section 119

Proposed Diversion Of Part Of Bridleway No. 11, Lytham St Annes, Fylde Borough.

(Annex 'B' refers)

Contacts for further information: Mrs R Paulson, 01772 532459, Environment Directorate, ros.paulson@lancashire.gov.uk and Miss M Brindle, 01772 535604, County Secretary and Solicitors Group Megan.brindle@lancashire.gov.uk

Executive Summary

The proposed course of action in dealing with the Public Path Diversion Order made on 2 October 2008, to divert part of Bridleway No. 11, Lytham St Annes, from the route shown by a bold black line and marked A-B-C-D on the plan set out in Appendix A, to the route shown by a bold black dashed line and marked A-E-F-D on the attached plan.

Recommendation

That the Order made on 2 October 2008, under Section 119 of the Highways Act 1980, to part of Bridleway No. 11, Lytham St Annes, from the route shown by a bold black line and marked A-B-C-D on the attached plan, to a route shown by a bold black dashed line and marked A-E-F-D on the plan, be not proceeded with and not forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Background

A Diversion Order had been requested by Simon Coghlan, Partner, Martineau Johnson, 1 Colmore Square, Birmingham B4 6AA, on behalf of his client, Blackpool Airport Properties Limited, to divert the bridleway away from the airport runway and a proposed business park.

On 23 July 2008 the Regulatory Committee approved the making of an Order to divert part of Bridleway No. 11 Lytham St Annes (see Appendix 'A'). The Order was subsequently made and received one unresolved objection relating to the description of the bollards to be erected on the proposed new route.

The Order has not therefore been confirmed by the County Council to date, nor has it been referred to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Consultations

N/A

Advice

On the 2nd October 2008, an Order was made to divert part of the public path that runs over land that was proposed to be developed as a business park and to facilitate the future extension of the airport runway, allowing the land owner to operate safely and efficiently, whilst providing a route that is safe for public use.

Since making the Order it has become apparent the land over which the new route was to be constructed is subject to flooding and the cost to the applicant of the works that would be needed to provide the new route to the required standard would be considerable. It is therefore considered that the diversion is no longer in the interests of the owner of the land and as such, the criteria for confirming the Order will not be satisfied in this instance.

On the 12th February 2014, Paul Rankin, Airport Director, Blackpool Airport Properties Limited requested that the Order is not proceeded with because the new route will not be constructed.

The development of the business park has not proceeded and the runway has not been extended to date. Therefore, by not confirming the Order the public will not be unduly inconvenienced as they will continue to have access to the bridleway on the exiting alignment which is safe and convenient for public use.

It is therefore recommended that the Order made on 2nd October 2008 be formally not proceeded with and not submitted to the Secretary of State for Environment, Food and Rural affairs for formal determination.

Alternative options to be considered

To instruct Officers to submit the Order to the Secretary of State for Environment, Food and Rural affairs for formal determination.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex B under an earlier item on the agenda and is based upon relevant information contained in the report, there are no significant risks associated with the decision making process.

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

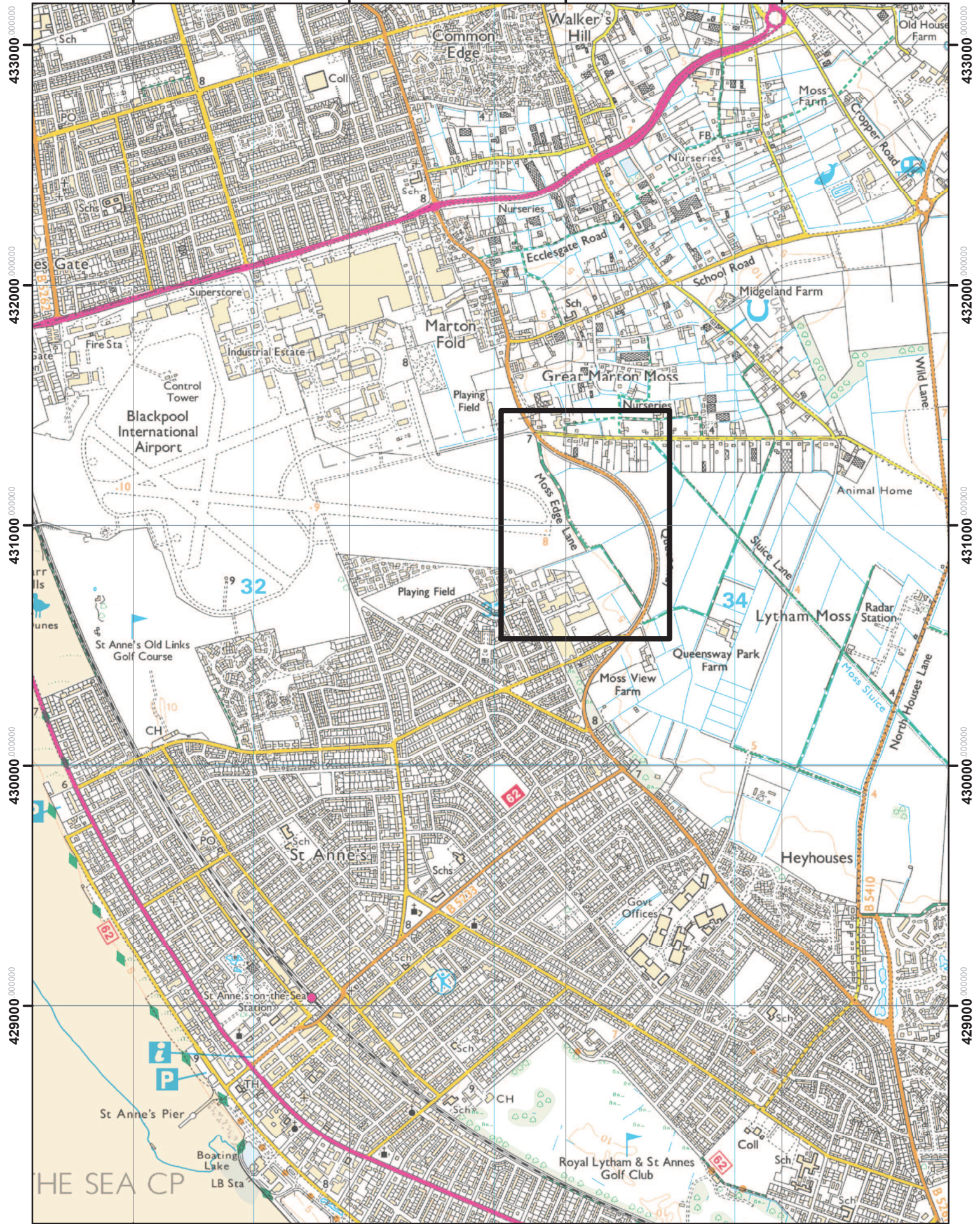
Paper	Date	Contact/Directorate/Tel
File Ref: 211/496	26 th March 2014	Megan Brindle, County Secretary and Solicitors Group, 01772 535604
File Ref: PRW-05-02-011		Ros Paulson Room D42, County Hall, Environment Directorate 01772 532459
Reason for inclusion in Part II, if appropriate		
N/A		

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Steve Browne
Executive Director
for Environment

Location Plan

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Regulatory Committee

Meeting to be held on 23 July 2008

Part I - Item No. 8

Electoral Division affected:
St Anne's North

Highways Act 1980 – Section 119

Proposed Diversion of Part of Bridleway No. 11, Lytham St Annes, Fylde Borough

(Annex 'B' refers)

Contact for further information:

Mrs R Paulson, 01772 532 459, Environment Directorate

Mrs ER Breslin, 01772 531 244, Environment Directorate

Executive Summary

The proposed diversion of part of Bridleway No. 11, Lytham St Annes, Fylde Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Bridleway No. 11, Lytham St Annes, from the route shown by a bold black line and marked A-B-C-D on the attached plan, to the route shown by a bold black dashed line and marked A-E-F-D on the plan and, in the event of no objections being received, the Order be confirmed.
2. That provisions 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 of part of Bridleway No. 11, Lytham St Annes, Fylde Borough.

Background

A request has been received from Simon Coghlan, Partner, Martineau Johnson, 1 Colmore Square, Birmingham B4 6AA, on behalf of his client, Blackpool Airport Properties Limited, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Bridleway No. 11, Lytham St Annes. The length of the existing path proposed to be diverted is shown by a bold black line and marked A-B-C-D on the plan; the proposed alternative route is shown by a bold black dashed line and marked A-E-F-D on the plan.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. The Fylde Borough Council has been consulted and has raised no objection to the proposal. The Peak and Northern Footpaths Society, the Ramblers' Association and the Fylde Coast Bridleways Association have also been consulted and they too have no objection to the proposal.

In their response to the consultation, the Saint Anne's on Sea Town Council have requested an explanation of the reason for the application and have indicated that a Bridleway, adjacent to the vehicular highway, cycletrack and footway would be totally unacceptable. They have commented that there is a need to divert the public right of way, their Council consider that a separate bridleway from the highway is necessary as these routes are used by horses.

An explanation as to the reason for the diversion has been recently been supplied to the Town Council along with an assurance that the route will be separate to the vehicular highway, cycletrack and footway and no response has been received.

Advice

The length of the footpath proposed to be diverted commences at Point A, (NGR SD 3361 3066), approximately 15 metres to the north west of its junction with Queensway. It runs in a north westerly direction for a distance of 324 metres, to Point B. It continues in a general south westerly direction for a distance of 54 metres to Point C and then in a north westerly direction for a distance of 247 metres to Point D. The bridleway runs on a partially surfaced track. The section between C and D runs parallel to the boundary fence of Blackpool airport and the runway is located approximately 75 metres to the west of this section of the bridleway. The total length of the section of Bridleway proposed to be diverted is 625 metres.

The proposed alternative commences at Point A (NGR SD 3361 3066) approximately 15 metres to the north west of its junction with Queensway. It runs in a general northerly direction for a distance of 348 metres, on an alignment that runs parallel to Queensway, approximately 12 metres to the west of the cycletrack and walkway; on the edge of the field, to Point E. It continues in a general north easterly direction for a distance of 240 metres along the edge of the field to Point F. It then runs in a general south westerly direction for a distance of 186 metres on a fenced footpath running between two fields to Point D. The dedicated width of the Bridleway will be 3 metres. It is proposed that a stone surfaced track will be constructed and this will be fenced on both sides. Furthermore, it is proposed that two bollards will be placed at either end of the proposed alternative route to prevent illegal use by vehicles. The total distance of the proposed alternative route is 774 metres.

The proposal, if successful, will provide a diversion away from the airport runway and the proposed business park, ensuring the safe and efficient use of the land at Blackpool Airport for Civil Aviation purposes, whilst providing a route that is safe for public use.

The proposal is considered acceptable from a highway aspect and meets the criteria for a diversion under Section 119 of the Highways Act 1980, i.e. that, in the interests of the owner, lessee or occupier of land crossed by the path, or of the public, it is expedient that the path should be diverted.

In this case the diversion is felt to be expedient in the interests of the landowner in that, if the proposal is successful, it will remove the part of the public path that currently runs over land that is proposed to be developed as a business park and to facilitate the future extension of the airport runway, allowing the land owner to operate safely and efficiently, whilst providing a route that is safe for public use.

The effect of the proposed Order, if confirmed, will not alter a point of termination of the path and will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. Furthermore, it is suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

It is proposed that the right of way to be created by the proposed Order will be subject to the following limitations or conditions:

Limitations and Conditions	Position on path to which limitations and conditions apply
The right of the owner of the soil to erect and maintain two bollards	NGR SD 3361 3066 (Point A)
The right of the owner of the soil to erect and maintain two bollards	NGR SD 3345 3091 (Point D)

The land crossed by the section of bridleway proposed to be diverted, and also that in respect of the proposed alternative route, is in the ownership of Blackpool Airport Properties Limited.

The applicant has agreed 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.

The Committee are advised that so much of the Order as extinguishes part of Bridleway No. 11 is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the proposed alternative route will be constructed to a high standard and will provide a level camber to the route. This will remove the requirement for the user to negotiate the uneven surface that currently exists. The proposed alternative route is approximately 149 metres longer than the existing route. It is however suggested that the main use of this route is used for recreational purposes and the increased distance would not inconvenience the user.

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, or they have given their consent.

Furthermore, it is felt that the effect on public enjoyment of the path or way as a whole would not be adversely affected by the proposal. It is the case that the proposal, if successful would place the Bridleway nearer to Queensway. The routes will however be segregated by a substantial verge and hedge, a minimum of 10 metres in width. It is suggested therefore that the visual and environmental impact of the route running parallel to the vehicular highway is minimal.

It is felt that there would be no adverse effect with respect to the land served by the existing paths and land over which the new paths are to be created, together with any land held with them. Furthermore, it is suggested that the effect of the Order is compatible with the material provisions of the County Council's Rights of Way Improvement Plan.

It is considered that, having regard to the above, it would be expedient to confirm the Order.

Alternative options to be considered - N/A

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

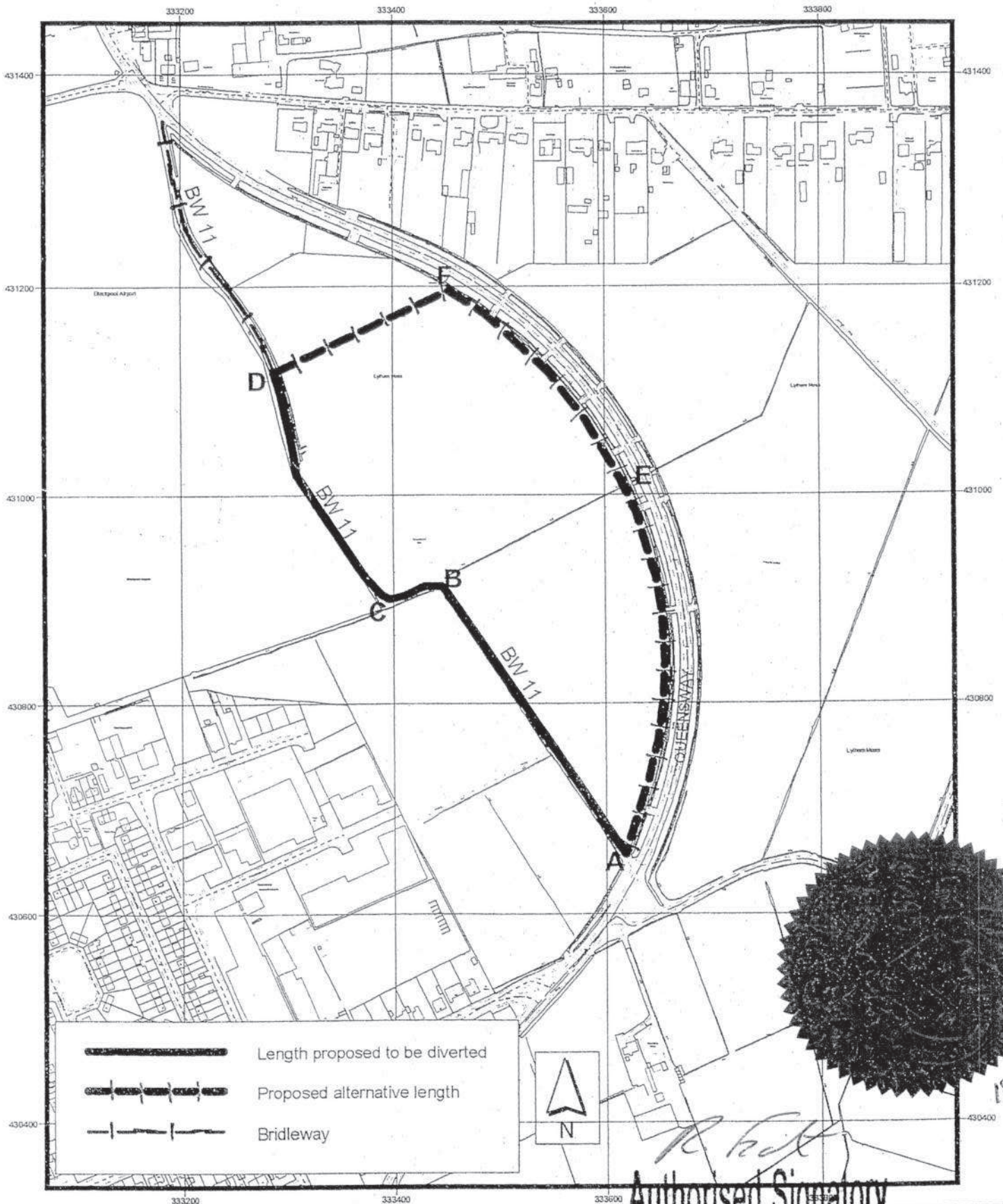
Paper	Date	Contact/Directorate/Ext
File Ref: 211/496		Ros Paulson Room C10, Winckley House, Environment, Ext:
File Ref: PRW-05-02		32459

Reason for inclusion in Part II, if appropriate

N/A

Highways Act 1980 - Section 119.
Proposed diversion of Bridleway No. 11,
Lytham St. Annes, Borough of Fylde.

G. Harding B Eng, FICE, FIHT, MIMgt, Director, Environment Directorate.
P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD



G. Harding
Authorised Signatory

Regulatory Committee

Meeting to be held on 26 March 2014

Electoral Division affected: Lancaster Rural East
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Highways Act 1980 – Sections 26 and 118

Proposed Creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4, Burrow-with-Burrow Parish, Lancaster City.

(Annex 'B' refers)

Contact for further information:

Stephen Williams, 01772 533886, Environment Directorate,

stephen.williams@lancashire.gov.uk

Megan Brindle, 01772 535604, County Secretary and Solicitor's Group

Megan.brindle@lancashire.gov.uk

Executive Summary

The proposed creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4 Burrow-with-Burrow, Lancaster City.

Recommendation

1. That an Order be made under Section 26 of the Highways Act 1980 to create a new length of footpath shown by a bold dashed line and marked D – B – E – F – G on the attached plan.
2. That an Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No. 4 Burrow-with-Burrow shown by a bold continuous line and marked A – B – C on the attached plan.
3. That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
4. That provision be included in each Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement in consequence of the coming into operation of the creation and extinguishment.

Background

Public Footpath No. 4 Burrow-with-Burrow has been the subject of a temporary closure for a number of years because of the condition of a brick arch bridge that carries a disused railway that the footpath passes under. An investigation carried out by the Bridges Section identified that significant works were required to bring the structure up to a standard that would allow the public to safely walk underneath the structure. Furthermore near to point A, the public footpath on the east bank passes along the top of a vertical drop into Leck Beck. A substantial footbridge would be required to reach point A and it is understood that the bridge has been missing since the 1960s. The river crossing is currently impassable. In 2004 Bridges Team advised the cost of a new footbridge to be in the region of £100,000.

Any diversion of Public Footpath No. 4 Burrow-with-Burrow would require the installation of a substantial footbridge and would run parallel or nearly parallel to the length of Public Footpath No. 5 Burrow-with-Burrow. It is proposed that an Extinguishment Order be made for Public Footpath No. 4 Burrow-with-Burrow and a concurrent proposal to secure a length of footpath running parallel to the A65 that will provide pedestrians with a route out of Cowan Bridge that avoids a narrow section of the A65 that has no pavement or verge.

The proposed length of footpath to be created is not currently available for public use and works would be required to make the route available, notably the provision of two kissing gates, a pedestrian gate and a timber kit footbridge.

Consultations

An initial consultation was carried out and objections received from the Ramblers Association and Ireby and Leck Parish Council. The objection from the parish council was supported by County Councillor Charles. Objections were also received from local residents. It was clear that there was a local aspiration for a cycle track from Cowan Bridge to Long Level along the disused railway line. This scheme would require substantial works in addition to the repair of the brick arch railway bridge, a further bridge that takes Eller Beck under the disused railway line and the repair of a substantial structure over Leck Beck. The scheme would also rely on a number of different landowners.

Following further discussions with the Ramblers Association, Ireby and Leck Parish Council, local residents and the landowner a further round of consultations took place for a proposal that included the creation of a length of public footpath to the junction of Long Level and the A65.

The current proposal has received letters of support from the Parish Councils, local residents and the Ramblers Association. The Peak and Northern Footpath Society and statutory undertakers have raised no objection to the proposal.

Advice

Points annotated on the plan

Point	Grid reference	Description
A	SD 6393 7684	Junction of Public Footpath Nos. 4 and 5 Burrow-With-Burrow
B	SD 6325 7682	Junction of Public Footpath No. 4 with proposed creation route
C	SD 6325 7682	Junction of Public Footpath No. 4 with A65
D	SD 6341 7666	Junction of proposed creation path with A65
E	SD 6323 7683	Proposed bridge crossing over Eller Beck
F	SD 6323 7684	Point on field boundary
G	SD 6299 7712	Field boundary adjacent to A65 verge

Description of the existing footpath to be extinguished

The length of the footpath proposed to be extinguished commences at its junction with Burrow-with-Burrow Footpath 5, Point A, running generally north across Leck Beck for a distance of approximately 30 metres, then generally west above a steep drop into Leck Beck to the driveway that leads to Fairthwaite Park and then continuing in a generally westerly direction through a woodland before entering two open fields to pass under a brick arch bridge that supports the disused railway line before continuing across a further open field to point C at the junction of the A65, a total distance of approximately 800 metres. The proposed extinguishment is shown by a bold continuous line on the attached plan and marked A – B – C.

Description of footpath to be created

From point D running generally north west as a field edge path for a distance of approximately 250 metres to Eller Beck at point E. Beyond Eller Beck the proposed public footpath continues approximately 10 metres in a north west direction to a dry stone wall at point F. The proposed creation routes continues in a north west direction as a field edge footpath for a distance of approximately 365 metres through the field boundary to the verge of the A65 at point G. The total length of the proposed public footpath is approximately 625 metres.

The width of the footpath will be 2 metres and will be subject to the following limitations and conditions:

Limitations and Conditions	Position on path to which limitations and conditions apply
The right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006 except 4.1.6 (distance from the carriageway)	Grid reference SD 6341 7666 (point D)
The right of the owner of the soil to maintain a pedestrian gate that conforms to BS 5709:2006	Grid reference SD 6323 7684 (point F)
The right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006	Grid reference SD 6299 7712 (point G)

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

If the application is approved by the Regulatory Committee, The Executive Director for the Environment suggests that the Order should also specify that the Definitive Statement be amended:

Public Footpath No. 4 Burrow-with-Burrow be deleted from the Definitive Statement.

A Public Footpath to be added to the Definitive Statement as follows:

The 'Position' column to read: "From the verge of the A65 at SD 6341 7666 immediately passing through a kissing gate running generally north west as a field edge path for 250 metres to Eller Beck at SD 6323 7683, then in a north west direction for 10 metres to pass through a pedestrian gate at SD 6323 7684 before continuing as a field edge path for a further 365 metres in a north west direction to a kissing gate at SD 6299 7712, finishing at the junction of Long Level and the A65. (All lengths and compass directions given are approximate.)"

The 'length' column be amended to read: "0.63 km"

The 'other particulars' column be amended to read "The width is 2 metres. The only limitations are the right of the owner of the soil to erect and maintain gates that conform to BS5709:2006 at SD 6323 7684 and SD 6299 7712. The right of the owner of the soil to erect and maintain a gate at SD 6341 7666 that conforms with BS5709:2006 except 4.1.6."

Criteria satisfied to make and confirm the Creation Order

It is advised that the proposal meets the criteria for the creation of a public footpath under section 26 Highways Act 1980, i.e. that it appears to Lancashire County Council that there is a need for a footpath over land in their area and they are satisfied that it is expedient that the path should be created, having regard to:

1. The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
2. The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of provisions as to compensation contained in section 28.

Currently the only direct route available for pedestrians wanting to walk between Cowan Bridge and Kirby Lonsdale (High Casterton) is to walk along a narrow section of the A65 for approximately 260 metres where there is no verge or refuge area for pedestrians. The proposed footpath would provide a route adjacent and parallel to the A65 but was segregated from traffic as far as the junction with Long Level and the A65. The proposed creation route provides fine views of the surrounding countryside. Furthermore it would add to the public footpath network whereas the recorded route that is subject to the proposed extinguishment is partly isolated from the surrounding public footpath network by the narrow section of the A65 and currently exits onto the A65 at a narrow section of the road where there is no refuge

for walkers. Access to the road from the footpath is by climbing a steep wall stile (point C).

The land owners are in agreement with the proposed Creation Order and no claim for compensation is anticipated.

Criteria satisfied to make and confirm the Extinguishment Order

It is advised that the proposed Order meets the criteria for an extinguishment Order to be made under section 118 of the Highways Act 1980, i.e. that it is expedient that Public Footpath No. 4 Burrow-with-Burrow should be stopped up on the grounds that it is not needed for public use.

Should Committee agree that the proposed Order be made and, subsequently, should no objections be received, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that it is expedient to extinguish that part of Public Footpath No. 4 Burrow-with-Burrow, marked A – B – C on the plan, having regard to the extent that the path would, apart from the Order, be likely to be used by the public and the extent to which the extinguishment would have as respects the land served by the path.

It is suggested that the footpath to be provided by the Creation Order will be a pleasant rural footpath with fine views and will provide walkers with a route segregated from vehicular traffic on the A65, thus enabling walkers to avoid the section with little or no verge.

In considering that it is expedient to extinguish the route A – B – C, whether it is needed for public use and the extent to which it is likely to be used, it is advised that regard may be taken with respect to the route provided by the Creation Order, as a concurrent proposal. It is noted that the route to be created provides an alternative to walking along a narrow section of the A65. The proposed creation route is therefore more likely to be used by the public as a footpath than Public Footpath No. 4 Burrow-with-Burrow and although that has not been available for use for some time and part of which is along a vertical drop, the lack of a bridge crossing over Leck Beck should be regarded as a temporary problem. Public Footpath No. 4 Burrow-with-Burrow exits onto the A65 at a narrow section and does not connect easily with other footpaths shown on the Definitive Map.

Both Orders

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

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, or they have given their consent.

The effect of the proposed Orders, if confirmed, would not have any adverse effect on biodiversity, the natural beauty of the area, the needs of agriculture and forestry or on the conservation of flora, fauna and geological and physiological features.

The land crossed by the route to be created and the route to be extinguished is in the ownership of Mr and Mrs Robinson, Fairthwaite Park, Cowan Bridge, Carnforth, LA6 2HX and they are in agreement with the proposal. A section of dry stone wall at point D needs to be altered to make room for a kissing gate and the owner of the wall has given their consent to the proposal.

If this proposal is successful it would be an expedient method of recording a public footpath leading generally west out of Cowan Bridge and resolving a number of issues with the current route of Public Footpath No. 4 Burrow-with-Burrow. Therefore, it is suggested that the administrative charges incurred by the County Council in the order-making procedures should be waived and the advertising costs be borne by the County Council. The applicant has agreed to carry out works to dismantle the dry stone wall at point F but it is proposed that the County Council install 2 kissing gates, 1 pedestrian gate and a timber footbridge.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under the Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and two gates that are proposed to be installed on the route will conform to the British Standard for gaps, gates and stiles BS5709:2006. A third gate will meet the required standard apart from its proximity to the A65.

Further, it is also advised that the effect of the Orders is compatible with the material provisions of the County Council's Rights of Way Improvement Plan, in particular the themes Reduced Mobility and Visually Impaired (RMVI), Definitive Map and Statement (DM 4 and 5) and Community to Countryside Links (CCL 2).

It is considered that, having regard to the above, it would be expedient to confirm the Orders.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Orders be made

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

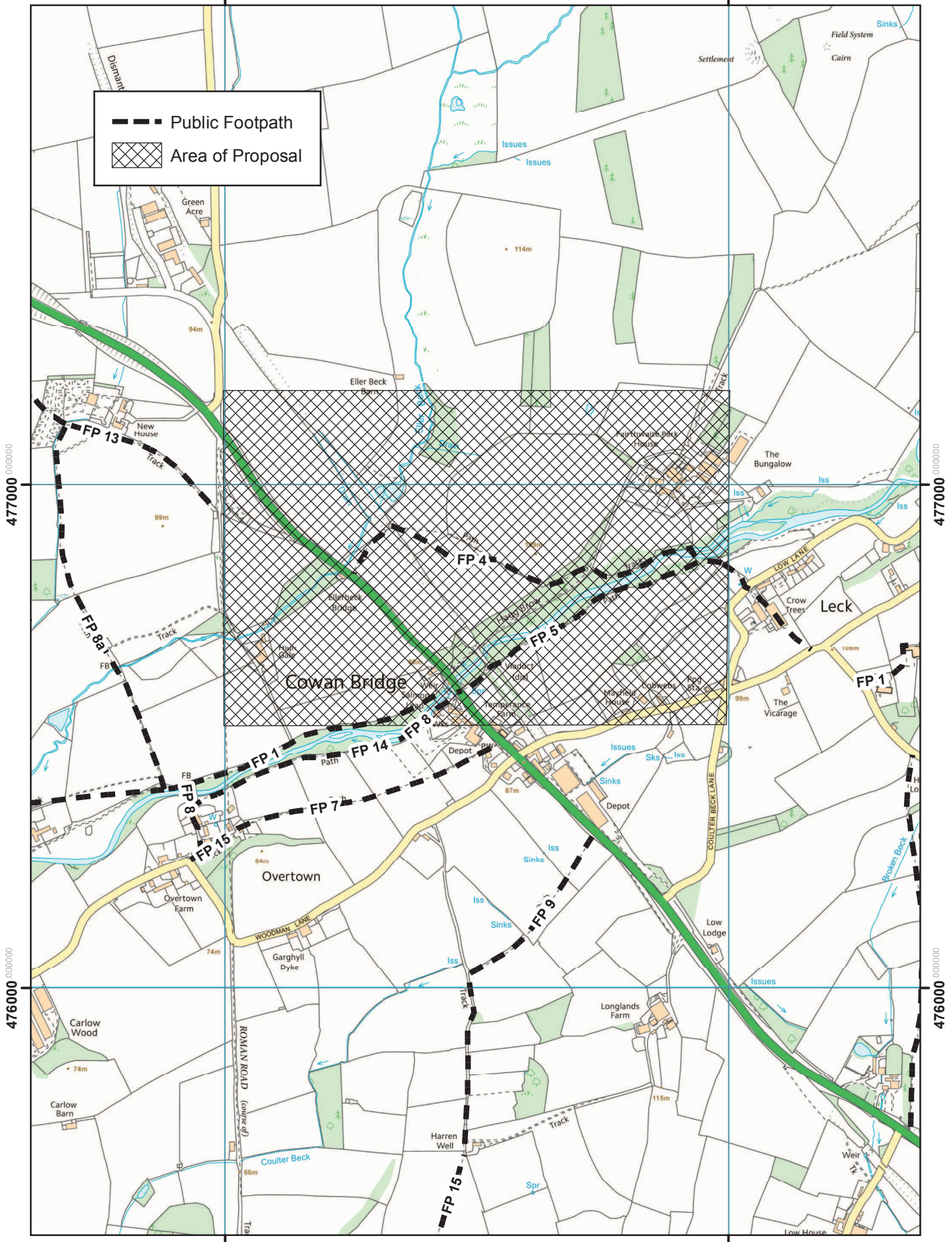
To agree that the Orders be made and promoted to confirmation according to the recommendation.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211/ PRW-01-08-04		Mr S D Williams, Environment Directorate, 01772 533886
File Ref: 211/645		Miss M Brindle, County Secretary and Solicitor's Group, 01772 535604
Reason for inclusion in Part II, if appropriate		
N/A		

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Jo Turton.
Executive Director
for Environment.

Location Plan - Highways Act 1980 - Section 26 and 118
Proposed Extinguishment of Public Footpath No. 4 Burrow-With-Burrow, Lancaster District and Creation
of new length of Public Footpath

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Regulatory Committee

Meeting to be held on 26 March 2014

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

Proposed Creation by Agreement of a Public Footpath at Fairview Youth and Community Centre, Adlington, 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 Fairview Youth and Community Centre, Adlington, Chorley Borough

Recommendation

1. That the proposal for the creation by agreement of a public footpath at Fairview Youth and Community Centre, be accepted.
2. That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between Chorley Borough Council and Lancashire County Council, to create a length of public footpath at Fairview Youth and Community Centre shown by a bold dashed line and marked A – B on the attached plan.
3. That in the event of the Public Creation Agreement being executed, a further Order be made pursuant to Section 52 (2) (b) and Section 53 (3)(a)(iii) of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way to reflect the creation of a new public footpath under Section 25 of the Highways Act 1980, whereby a new right of way has been created over land in an area to which the Map relates, being a right of way such that the land over which the right subsists is a public footpath

Background

A draft Section 25 Public Path Creation Agreement ("Agreement") has been agreed with the freehold owners Chorley Borough Council to dedicate a length of public footpath to link Public Footpath No. 5 Adlington to Highfield Road North (U4831), between A – B ("Proposed Creation Route") as shown on the attached plan ("the Plan") by a bold dashed line. The Agreement was prompted by an application for a Definitive Map Modification Order (DMMO) to record a public footpath over land

owned by Chorley Borough Council. It was clear that the claimed route did not reflect the route that is currently in use by the public, nor did the claimed path reflect the route suggested by a preliminary search of the aerial photos and Ordnance Survey maps. Following discussion with Chorley Borough Council, and the applicant for the DMMO, it was agreed that a public footpath creation agreement be pursued to record the route that was currently being used by the public.

The length of proposed footpath to be created is shown as A – B on the attached plan.

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 Adlington Town Council with no objection regarding the Proposed Creation route.

Advice

Points annotated on the plan

Point	Grid reference	Description
A	SD 6003 1362	End of footway on spur of Highfield Road North
B	SD 5994 1356	Corner of Public Footpath No. 5 Adlington on east side of railway

Description of the Proposed Creation Route

From point A, the Proposed Creation Route runs generally south west across an open grassed area for a distance of approximately 110 metres. Presently the Proposed Creation Route is not surfaced and is being used by members of the public.

It is proposed that the surface will remain as is at present and that this will not present a significant burden on budgets for maintaining highways maintainable at public expense

The width of the Proposed Creation Route is 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 suitable routes

need be accepted by the Highway Authority as any route dedicated under Highways Act 1980 Section 25 becomes maintainable at public expense.

The proposal is considered to be a benefit to the public in securing a safe, convenient and direct route in Adlington between the residential area of Westhoughton Road and the centre and majority of the town to the east of the railway. The Proposed Creation Route is presently well used by the public.

It is advised that the dedication of a public footpath 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 is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The proposed creation is by means of an Agreement, therefore there will be no compensation payable as a consequence of the coming into operation of the Creation 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's '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 the decision making process.

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.

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

Paper	Date	Contact/Directorate/Tel
File Ref: 211/PRW09-01		Mr S D Williams, Environment Directorate, 01772 533886

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

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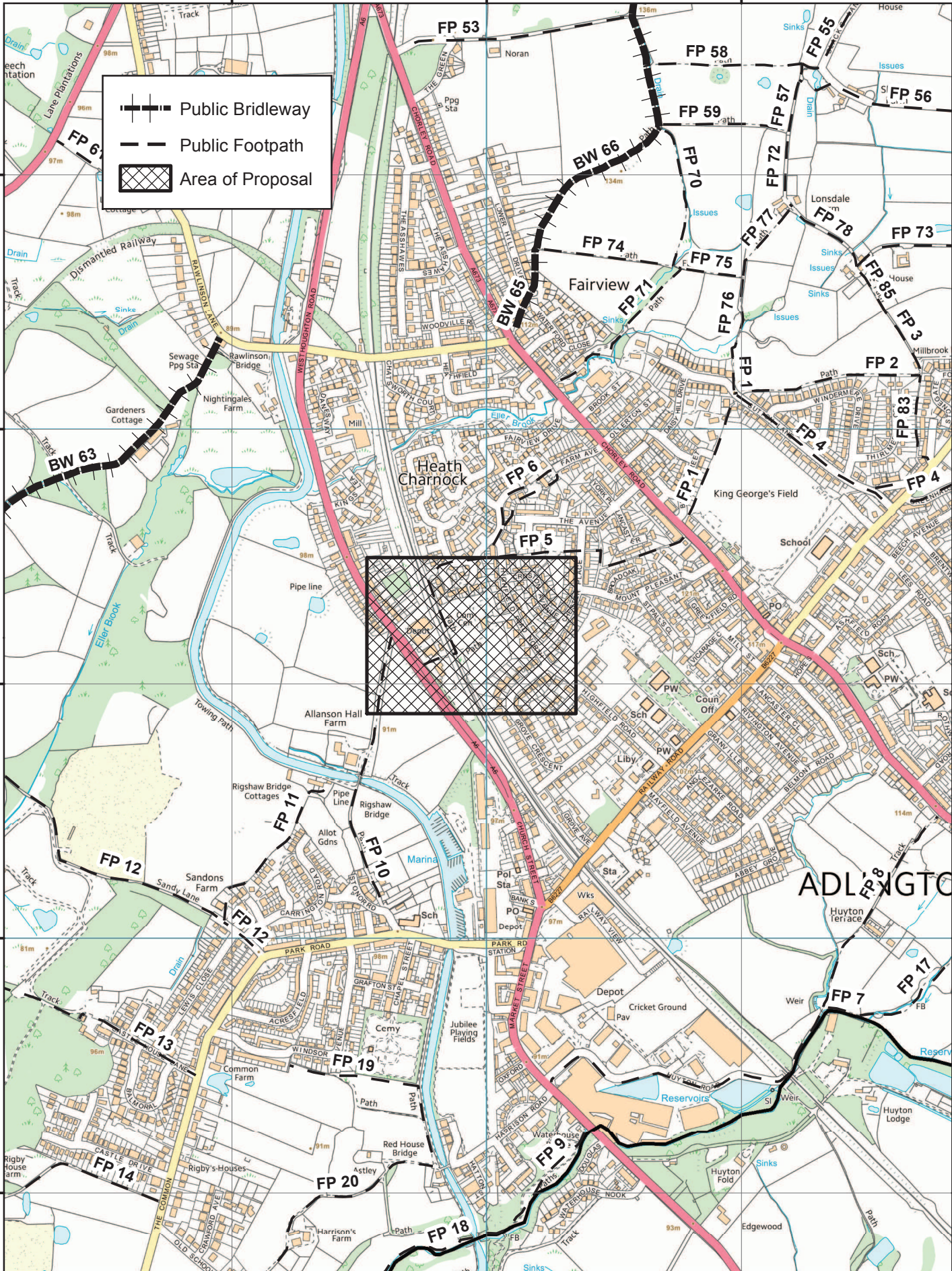
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 Public Bridleway
 Public Footpath
 Area of Proposal



Jo Turton
Executive Director
for Environment

Location Plan - Highways Act 1980 - Section 25
Proposed dedication of Public Footpath from Highfield Road North to Public Footpath No. 5 Adlington, Chorley Borough

1:10,000



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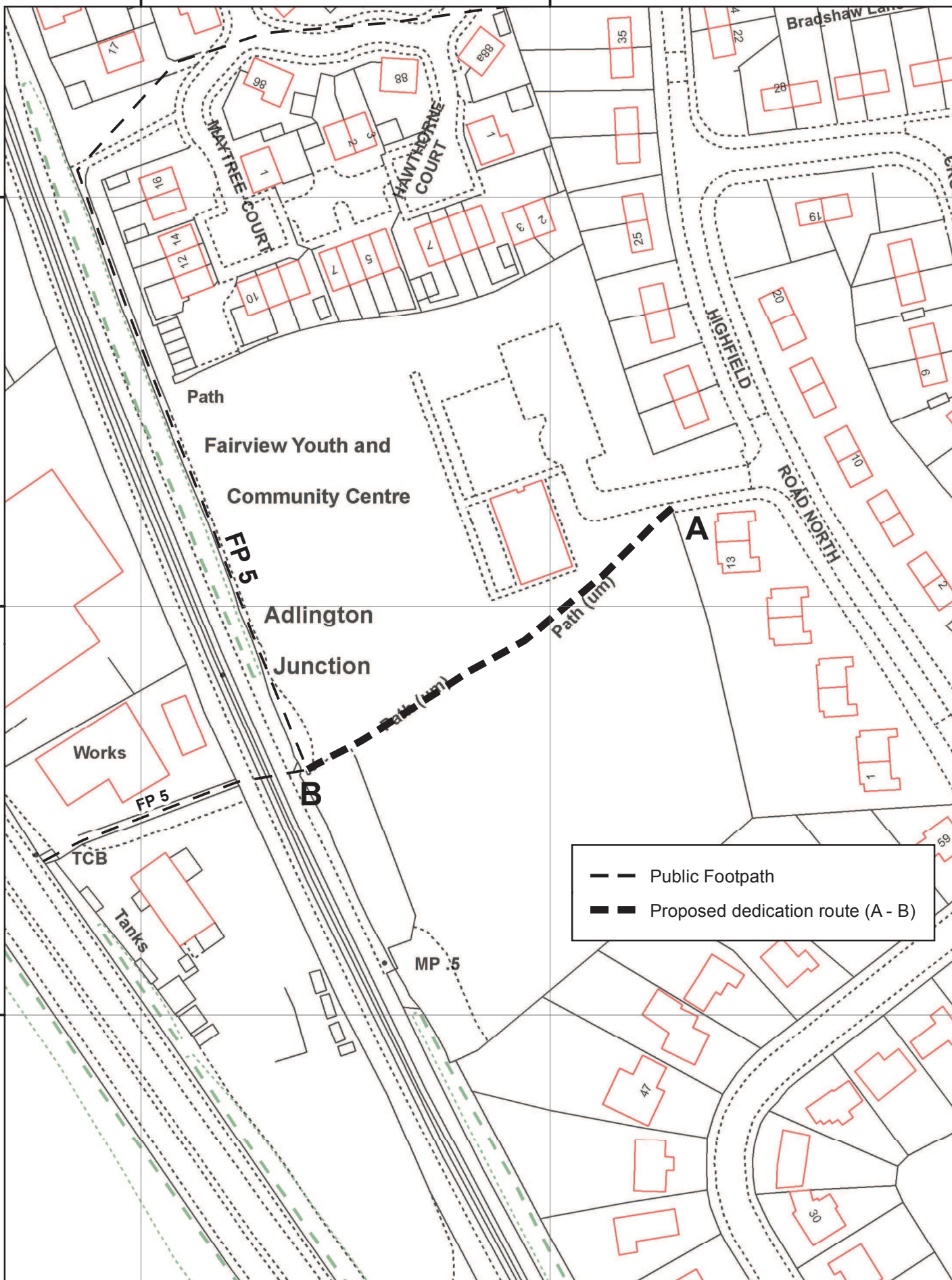
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- - - Public Footpath
 - - - Proposed dedication route (A - B)



Jo Turton
 Executive Director
 for Environment

Highways Act 1980 - Section 25
 Proposed dedication of Public Footpath from Highfield Road North to Public Footpath No. 5 Adlington, Chorley Borough

1:1,250



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