

# Lancashire County Council

## Regulatory Committee

Wednesday, 14th May, 2014 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

### Agenda

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

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

3.	<b>Minutes of the last meeting</b>	(Pages 1 - 10)
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4.	<b>Guidance</b>	(Pages 11 - 34)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way together with certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	<b>Wildlife and Countryside Act 1981 Addition of and Upgrade of Footpath to Bridleway/ Restricted Byway/Byway Open to All Traffic on Cutler Lane and Height Barn Lane between Cutler Greens and New Line, Bacup and of Stubblee Lane between Height Barn Lane and Stubblee Park Claim No. 804-532</b>	(Pages 35 - 86)
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6.	<b>Highways Act 1980 - Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Parts of Public Footpath Nos. 7 Claughton and 3 Bilborrow, Wyre Borough.</b>	(Pages 87 - 96)
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- No. Item**
- 7. Highways Act 1980 - Section 26  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Creation of a Public Bridleway from  
Rakehead Lane to Blackwood Road, Stacksteads,  
Bacup, Rossendale Borough.** (Pages 97 - 106)
- 8. Consideration of fees to be set in respect of  
applications under S31(6) Highways Act and S15A  
Commons Act 2006** (Pages 107 - 110)
- 9. 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.
- 10. Date of Next Meeting**  
The next scheduled meeting will be held at 10.30am on Wednesday 2<sup>nd</sup> July 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, 26th March, 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	N Penney
A Clempson	D T Smith
D Clifford	D Stansfield
B Dawson	D Whipp
P Hayhurst	B Yates
C Henig	

County Councillor J Gibson was replaced by County Councillor N Penney for this meeting only.

**1. Apologies.**

No apologies for absence were presented at the meeting.

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

There were no disclosures of interest in relation to matters appearing on the agenda.

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

**Resolved:** That the Minutes of the meeting held on the 5<sup>th</sup> February, 2014 are confirmed as an accurate record and signed by the Chair.

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

A report was presented regarding the suggested procedure to be adopted in relation to the investigation of unauthorised works, encroachment or obstructions on Registered Common Land which affected public access, prior to any action being considered by the Committee.

Mrs Turner informed the meeting it was often assumed that the County Council was responsible for dealing with any unauthorised works on common land when in reality the Authority was one of a number of parties that could take action under the statutory provisions.

When considering the report the Committee noted decisions taken at meetings in April and November 2009 regarding enforcement action together with a request from the Complaints Committee for the role of the authority and others in protecting access to common land to be reviewed.

Having discussed the suggested procedure there was general agreement amongst the members of the Committee that only those matters that the Executive Director for Environment Directorate, in conjunction with the County Secretary and Solicitor, considered sufficiently in the public interests, and for which there were sufficient resources to pursue enforcement, would be brought to the Committee. It was also suggested that the Chair of the Committee be consulted in those circumstances where it was felt that a report should be brought to the Committee.

**Resolved:** That the Executive Director for Environment be authorised to:

1. Investigate alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green.
2. 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. Present a report to the Committee where, in conjunction with the County Secretary and Solicitor and the Chair, it is felt that action by the County Council under S41 or S45 of the Commons Act 2006 may be appropriate.

## **5. 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 in connection with the above, as set out in Annexes 'A', 'B' and 'C' of the report presented, is noted.

## **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**

A report was presented regarding an application for a public footpath from Wardley's Lane to the salt marsh at Stalmine-with-Staynall in Wyre Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522.

*County Councillor P Hayhurst joined the meeting at 10.50am.*

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

In considering the report the Committee examined the documentary evidence presented, including aerial photographs from 1960, 1988 and 2000. It was suggested that a route may have existed from the landing stage to north of the claimed route in a north easterly direction to Wardleys Lane, though it was acknowledged that the route and associated steps were located north of the termination of the claimed route and did not appear to provide an access point. The Committee also considered the user evidence which had been received, particularly with regard to the period between 1987 and 2007 and in relation to the claimed access points, information from owners and the potential impact of gates, fencing and parked vehicles on the ability of users to have walked the claimed route over the period concerned.

Having considered all of the information presented the Committee felt that there was insufficient evidence from which dedication could be reasonably alleged under the provisions of S31 of the Highways Act or inference at Common Law and so it was agreed that an Order should not be made in respect of the claimed route.

**Resolved:** That the proposal for a public footpath from Wardley's Lane to the salt marsh at Stalmine-with-Staynall in Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522, be not accepted.

**7. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Banks Road to Station Road, North  
Meols, West Lancashire Borough  
Claim No. 804/529**

A report was presented in relation to an application for a public footpath from Banks Road to Station Road in North Meols, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529.

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

In considering the claim the Committee discussed the documentary evidence presented and were advised that the boundary line shown at point B on the plan did not actually exist on the ground and was in reality at point C as shown on the aerial photograph from 2010. The user evidence received in relation to the period between 1978 and 1988, together with evidence from the objector was also considered.

Having examined all of the information presented the Committee felt that there was sufficient evidence from which a dedication could be reasonably alleged under the provisions of S31 of the Highways Act and by inference at Common Law and that it was appropriate that an Order be made and promoted to confirmation.

**Resolved:**

1. That the proposal for a public footpath from Banks Road to Station Road in North Meols, West Lancashire, 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 plan set out in the report.
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.

**8. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Bescar Brow Lane to Public Footpath  
14a Scarisbrick, West Lancashire Borough  
Claim No. 804/544**

A report was presented in connection with an application for a Public Footpath from Bescar Brow Lane, Scarisbrick to Public Footpath 14a Scarisbrick in West Lancashire Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544.

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.

When considering the claim the Committee was advised that access to the claimed route at point A on the plan was currently obstructed by a section of metal fencing. The user evidence received relating up to and during the period between 1992 and 2012 was discussed together with evidence from the objector and from a landowner in support of the claim.

Having examined all of the evidence presented there was agreement amongst the members of the Committee that on balance it could be reasonably alleged that the footpath subsists in law under the provisions of S31 of the Highways Act 1980 and at Common Law and that it was appropriate for an Order to be made. Furthermore it was felt that the higher confirmation test could also be satisfied as there was sufficient evidence on balance that the right of way on foot already subsists in law.

### **Resolved**

1. That the application for a public footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick in 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 1,365 metres and shown between points A-B-C-D on the plans set out in the report presented.
3. That, being satisfied the higher test for confirming the said Order can be satisfied, the Order be promoted to confirmation if necessary at public inquiry.

**9. 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**

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

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.

Mr Goode, the Public Rights of Way Manager, informed the meeting that the plan which had been circulated as part of the agenda was potentially confusing because the annotations indicating the various points on the route differed from those referred to in the report and presentation and that references in the report to the route A-B-C-D-E should have read A-B-C-D-E-F. A copy of the amended plan showing the correct annotations is set out in the Minute Book. The user

evidence received in relation to the period between 1988 and 2008 was noted, together with evidence from the objector in relation to locked gates and signage.

Having considered all the evidence there was agreement amongst the members of the Committee that dedication of the claimed route as a public footpath could not on balance be inferred under common law or deemed to subsist under S31 of the Highways Act 1980.

**Resolved:** 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

**10. Highways Act 1980 - Section 119  
Proposed Diversion Of Part Of Bridleway No. 11, Lytham St Annes,  
Fylde Borough.**

County Councillor P Hayhurst informed the meeting that whilst he was a member of Fylde Borough Council the claimed diversion was not within his Ward or his Electoral Division.

Mr Goode, the Public Rights of Way Manager, informed the meeting that in October 2008 an Order had been made to divert part of Bridleway 11 away from an area of land that was proposed to be developed as a business park and to facilitate the future extension of the airport runway.

However, since making the Order it had become apparent that the land over which the new route was to be constructed was 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. Therefore, it was considered that the diversion was no longer in the interests of the owner of the land and as such, the criteria for confirming the Order would not be satisfied in this instance.

The Committee noted that the applicant had subsequently requested the County Council not to proceed with the Order as the new route would not be constructed. It was further reported that as the development of the business park had not proceeded and the runway had not been extended to date by not confirming the Order the public would not be unduly inconvenienced as they would continue to have access to the bridleway on the exiting alignment which was safe and convenient for public use.

**Resolved:** That the Order made on the 2nd October 2008, 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 plan set out in the report 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.

**11. 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.**

Mr Goode, Public Rights of Way Manager, informed the meeting that Public Footpath No. 4 at Burrow-with-Burrow had been the subject of a temporary closure for a number of years due to the poor condition of a brick arch bridge that carried a disused railway over part of the footpath and which required significant works to bring it up to a standard that would allow the public to safely walk underneath. He added that at the east end of the footpath opposite point A on the plan the public footpath passed along the top of a vertical drop into Leck Beck and the construction of a substantial footbridge would be required in order to reach point A.

He reminded the Committee that these problems had to be disregarded as temporary when considering whether the footpath was necessary or not in connection with a possible extinguishment, although they were relevant considerations as to whether it was expedient. The footpath was considered not to be needed because the only access at the west end was via the heavily trafficked A65 with no verge or footway and that anyone wishing to reach point A would use the nearby length of Public Footpath No 5, Burrow-with- Burrow.

It was further reported that any feasible diversion of Public Footpath No. 4 across Leck Beck would also require the installation of a substantial footbridge and would duplicate part of Public Footpath No. 5, Burrow-with-Burrow. Therefore, it was proposed that an Extinguishment Order be made for Public Footpath No. 4, together with a concurrent proposal to secure a length of footpath running parallel to the A65 that would provide pedestrians with a route out of Cowan Bridge which avoided a narrow section of the A65 where there was no pavement or verge.

The Committee noted that the proposed length of footpath to be created was 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.

**Resolved:**

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 plan referred to in the report .
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 plan referred to in the report.
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.

**12. Highways Act 1980 - Section 25  
Proposed Creation by Agreement of a Public Footpath at Fairview  
Youth and Community Centre, Adlington, Chorley Borough**

A report was presented regarding the proposed Creation by Agreement of a length of Public Footpath in the vicinity of Fairview Youth and Community Centre in Adlington.

It was reported that the Public Path Creation Agreement with Chorley Borough Council (the freehold owners) had been prompted by an application for a Definitive Map Modification Order to record a public footpath over land owned by the Borough Council. However, the claimed route did not reflect the route that was used by the public, nor did it reflect the route suggested by a preliminary search of the aerial photos and Ordnance Survey maps. Therefore, following discussions with the Borough Council, and the applicant for the DMMO, it had been agreed that a public footpath creation agreement be pursued to record the route that was currently being used by the public.

The Committee was informed that the proposal was 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, the Centre and majority of the town to the east of the railway.

It was also noted that as the proposed Creation Route would be by means of an Agreement there would be no compensation payable as a consequence of the coming into operation of the Creation Agreement.

**Resolved:**

1. That the proposal for the creation by agreement of a length of public footpath at Fairview Youth and Community Centre in Adlington 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 as shown by a bold dashed line and marked A – B on the plan set out in the report presented.
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.

**13. Urgent Business**

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

**14. Date of Next Meeting**

It was noted that the next scheduled meeting would be held at 10.30am on the 14<sup>th</sup> 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 4

## Regulatory Committee

Meeting to be held on 14<sup>th</sup> May 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](mailto:jane.turner@lancashire.gov.uk)

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### Definitions

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

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

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

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

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

### Duty of the Surveying Authority

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

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

Other events include

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

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

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

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

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



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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

### **Documentary evidence**

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

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

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

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

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

### **Recording vehicular rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Confirming an Order**

An Order is not effective until confirmed.

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

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

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

July 2009



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

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

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

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

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

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

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

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

## **Diversion Order s119**

### TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

### GUIDANCE

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

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

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

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

It may be that the grounds to make an Order are satisfied but the Committee may be unhappy that the route can satisfy the confirmation test. It is suggested that in such circumstances the Order should be made but the Committee should consider deferring the decision on whether to confirm it (if there are no objections) or (if there are objections) whether to instruct officers not to even send the Order to the Secretary of State for confirmation or to instruct to submit the Order to the Secretary of State and promote the confirmation of same. The Council has a discretion whether to submit this type of Order to the Secretary of State. It is not obliged to just because it has made the Order.

Under amended provisions, the "new" section of route will "appear" on confirmation of the Order (or a set number of days thereafter) but the "old" route will remain until the new route is certified as fit for use. It would appear that the public could quickly have the use of a new section which is fit for use as soon as confirmed but if the new route is unfit for use for a long time, the old line of the Right of Way is still there for the public to use.

It is advised that when considering orders made under Section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

It would appear that a way created by a Diversion Order may follow an existing right of way for some but not most or all of its length.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Reference to having regard to the material provisions of the Rights of Way Improvement Plan refers to the RWIP prepared in June 2005. The full document is on the County Council's web site.

## **Diversion Orders under s119A**

### **TO MAKE AN ORDER**

To be satisfied that it is expedient in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway otherwise than by a tunnel or bridge

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

OR

If the route terminates at a highway to be satisfied that the termination point is being moved to another point on the same highway or to another highway connected to it.

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

Whether the railway operator be required to maintain the diversion route.

Whether the rail operator enter into an agreement to defray or contribute towards compensation, expenses or barriers and signage, bringing the alternative route into fit condition.

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

To be satisfied that it is expedient to do so having regard to all the circumstances and in particular to –

Whether it is reasonably practicable to make the crossing safe for use by them public; and

What arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

A rail crossing diversion order shall not be confirmed unless statutory undertakers whose apparatus is affected have consented to the confirmation (such consent not to be unreasonably withheld).

### **GUIDANCE**

The statutory provisions make it clear that the diversion can be onto land of another owner lessee or occupier

A change to the point of termination has to be onto a highway but the statutory provisions do not insist that the point has to be substantially as convenient (as is the requirement in S119).

The grounds for this type of diversion order refer to balancing the safety of continuing to use the level crossing and whether it could be made safe rather than divert the path. The information from the rail operator is therefore considered to be very important.

## **Diversion Orders under s119ZA**

## **Diversion Orders under s119B**

## **Diversion Orders under s119C**

## **Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

## **Extinguishment Order under s118**

### **TO MAKE AN ORDER**

To be satisfied that it is expedient that the path be stopped up on the ground that the footpath or bridleway is not needed for public use.

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

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

To be satisfied that it is expedient to do so.

To have regard to the extent to which it appears that the path would be likely to be used by the public.

To have regard to the effect which the extinguishment would have as respects land served by the path (compensation can be taken into account).

Where the Order is linked with a Creation Order or a Diversion Order then the Authority or Inspector can have regard to the extent to which the Creation Order or Diversion Order would provide an alternative path.

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

### **GUIDANCE**

Temporary circumstances preventing or diminishing the use of the path shall be disregarded. These include obstructions, which are likely to be removed. Trees and 4 feet wide hedges have been held to be temporary and even an electricity sub station. Many obstructions seem therefore to be able to be disregarded but this does make it difficult to assess what the use of the path would be if the obstruction were not there.

To be satisfied that it is expedient to confirm means that other considerations other than use could be taken into account perhaps safety, perhaps cost.

An Order can be confirmed if it is thought that, despite the fact that it was likely to be used, it is not needed because of a convenient path nearby.

Councils are advised to take care to avoid creating a cul de sac when extinguishing only part of a way.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

### **Extinguishment Orders under s118A**

#### **TO MAKE AN ORDER**

An Order under this section can be made where it appears expedient to stop up a footpath or bridleway in the interests of the safety of members of the public using or likely to use a footpath or bridleway which crosses a railway, other than by tunnel or bridge.

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

The Order can be confirmed if satisfied that it is expedient to do so having regard to all the circumstances and in particular whether it is reasonably practicable to make the crossing safe for use by the public and what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

#### **GUIDANCE**

It is noted that there is not the same requirements as under S118 to consider need for the route. Instead it is safety which is the reason for the Order being made to close the right of way.

### **Extinguishment Orders under s118B**

Section 118B enables footpaths, bridleways, restricted byways or byways open to all traffic to be extinguished permanently by two types of Special Extinguishment Order.

#### **TO MAKE THE FIRST TYPE OF S118B ORDER**

The highway concerned has to be in an area specially designated by the Secretary of State.

To be satisfied that it is expedient that the highway be extinguished for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community.

To be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and

That the existence of the highway is facilitating the persistent commission of criminal offences.

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

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

Also having regard to whether and to what extent the Order is consistent with any strategy for the reduction of crime and disorder prepared under S6 Crime and Disorder Act 1998 and

Having regard to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

TO MAKE THE SECOND TYPE OF S118B ORDER

To be satisfied that the highway crosses land occupied for the purposes of a school.

That the extinguishment is expedient for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health or safety arising from such activity.

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

The Order can be confirmed if all the reasons for making the Order (above) are still satisfied and also

That it is expedient having regard to all circumstances

That regard is had to any other measures that have been or could be taken for improving or maintaining the security of the school

That regard is had as to whether it is likely that the Order will result in a substantial improvement in that security

That regard is had to the availability of a reasonably convenient alternative route or, if no such route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up, and

Having regard to the effect the extinguishment would have as respects land served by the highway account being taken of the provisions available for compensation.

GUIDANCE

Under S118B there are specific criteria to be satisfied before an Order can take effect and to remove a highway from the network of rights of way. It should be noted that an Order extinguishes the footpath (or other type of highway) permanently. Members of the Committee may also be aware of the power, since April 2006, of the Council to make Gating Orders whereby highway rights remain but subject to restrictions which are reviewed annually and will eventually be lifted.

### **Extinguishment Orders under s118ZA**

Guidance under this section will be made available when required

### **Extinguishment Orders under s118C**

Guidance under this section will be made available when required

### **Creation Order under s26**

#### **TO MAKE AN ORDER**

To be satisfied that there is a need for the footpath or bridleway and

To be satisfied that it is expedient that the path be created

To have regard to the extent the path would add to the convenience or enjoyment of a substantial section of the public, or

To have regard to the extent the path would add to the convenience of persons resident in the area

To have regard to the effect on the rights of persons interested in the land, taking compensation provisions into account.

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

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

The same test as above.

#### **GUIDANCE**

Again there is convenience to consider.

There may also need to be some consensus as to what constitutes a substantial section of the public.

Persons interested in the land may include owners and tenants and maybe mortgagees.

The reference to having regard to needs of agriculture includes the breeding or keeping of horses.



**Regulatory Committee  
Meeting to be held on the 14<sup>th</sup> May 2014**

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

**Procedural step**

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

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

**Recovery of Costs from an Applicant**

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

The power to charge is found in the-

**Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

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

(1) Where—

(a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or

(b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

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

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

### **Amount of charge**

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

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

### **Refund of charges**

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

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

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

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

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

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

### **Careful consideration of stance**

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

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

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

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



## Regulatory Committee

Meeting to be held on 14<sup>th</sup> May 2014

Electoral Divisions affected: Rossendale East and Whitworth
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### Wildlife and Countryside Act 1981

**Addition of and Upgrade of Footpath to Bridleway/ Restricted Byway/Byway Open to All Traffic on Cutler Lane and Height Barn Lane between Cutler Greens and New Line, Bacup and of Stubblee Lane between Height Barn Lane and Stubblee Park**

**Claim No. 804-532**

(Annex 'A' refers)

Contact for further information:

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### Executive Summary

An investigation to determine the correct status of parts of Cutler Lane, Height Barn Lane and Stubblee Lane (recorded as Bacup Footpaths 522, 507, 506, 505, 504, 503, 493 (part) and 492 (part) and parts not recorded on the Definitive Map and Statement), in accordance with File Reference No. 804-532.

### Recommendation

1. That an Order or Orders be made pursuant to Section 53(2)(b) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (the Act) to upgrade on the Definitive Map and Statement Bacup Footpaths 522, 507, 506, 505, 504, 503, 493 (part) and 492 (part) to restricted byway, in accordance with the investigation carried out under Reference 804-532 (shown on the attached plans as A-H, J-W and YY-BB).
2. That an Order or Orders be made pursuant to Section 53(3)(b) and Section 53(3)(c)(i) of the Act to add a bridleway/restricted byway/byway open to all traffic to the Definitive Map and Statement as specified below:
  - a) addition of bridleway between 2 points on Bacup Footpath 522 at Lee Clough (shown on the attached plan as between points HH-J);
  - b) addition of restricted byway between two points on Bacup Footpath 522 at Lee Clough (shown on the attached Plan as points H-HH-I-J);
  - c) addition of byway open to all traffic between 2 points on Bacup Footpath 493 at Height Barn (shown on the attached plan as W-X-XX-Y-YY);
  - d) addition of restricted byway along the southern section of Stubblee Lane

from the end of the road recorded as U7913 to its junction with Height Barn Lane (Bacup Footpaths 503 and 504) (shown on the attached plan as UU-U);

3. That an Order be made pursuant to Section 53(3)(b) and Section 53(3)(c)(iii) of the Act to delete from the Definitive Map and Statement that part of Bacup Footpath 522 between 2 points at Lee Clough (shown on the attached plan as points H-II-J) in accordance with the investigation carried out under Reference 804-532.
4. That the Orders be confirmed if no duly made objections are received or that confirmation of the Orders be sought by submitting them to the Secretary of State if necessary.

## **Background**

An investigation has been carried out into the correct status of the routes commonly known as Height Barn Lane, Cutler Lane and Stubblelee Lane, Bacup, Rossendale Borough, from Cutler Greens at point A on the attached plan along Cutler Lane and Height Barn Lane to the junction with New Line at point BB, a distance of approximately 1600 metres; and part of Stubblelee Lane between points UU and point U, a distance of approximately 140 metres.

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 for adding a way to the Definitive Map and Statement will only be made if the evidence shows that a right of way 'subsists' or is 'reasonably alleged to subsist'

An order for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that 'it ought to be there shown as a highway of a different description'.

An order for deleting a way from the Definitive Map and Statement will only be made if the evidence shows that 'There is no public right of way over land shown in the map and statement as a highway of any description'.

When considering evidence, if it is shown that a highway existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (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. A public right of way for mechanically propelled vehicles may have been extinguished by the Natural Environment and Rural Communities Act 2006.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by an 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. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists.

## Consultations

Rossendale Borough Council has been consulted and no response has been received.

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 Group Observations'.

## Executive Director for the Environments Observations

### Site Inspection

Points annotated on the attached plan.

POINT	GRID REF	LOCATION (nos. refer to Bacup Footpaths)
A	SD 8589 2131	Junction of Cutler Lane, 522 & 570
B	SD 8595 2132	Junction of 579 & 522
C	SD 8599 2132	Junction of 522 & 568
D	SD 8607 2131	Change in quality of tarmac surface on 522 east of Prospect Terrace
E	SD 8617 2134	Eastern end of U759 at entrance to 'Fairwall', formerly 'Fair Well'
F	SD 8619 2134	Junction of 522 & 524
G	SD 8622 2134	Two sequential gates across 522
H	SD 8637 2131	Point where definitive and modern user routes diverge
HH	SD 8638 2131	Point where historical and modern user routes diverge
I	SD 8640 2130	Crossing of Lee Clough (historical route)
II	SD 8640 2128	Southern point on loop of 522
J	SD 8640 2132	Point on 522 where historical, definitive and modern use routes converge
K	SD 8640 2134	90 degree bend in track east of Lee Clough
L	SD 8645 2136	1.5 metre wide bridlegate across 522 with motorcycle barrier
M	SD 8646 2136	Point on 522 west south west of junction with access road into Lee Quarry
N	SD 8647 2136	522 passes through gateposts east north east of junction with access road into Lee Quarry
O	SD 8651 2139	Junction of 522, 521, 520 & 507

P	SD 8654 2139	Wooden gate
Q	SD 8658 2140	Junction of 507, 506 & 518
R	SD 8659 2141	Wooden gate
S	SD 8673 2147	Junction of 506, 505 & 512
T	SD 8677 2151	Junction of 505, 504 & 513
U	SD 8692 2162	Junction of 504, 501, 503 & Stubbylee Lane
UU	SD 8682 2173	End of U7913 on Stubbylee Lane
V	SD 8699 2164	Junction of 503, 496 & 493
W	SD 8704 2167	Junction of 493 with F7469 at Height Barn Farm
X	SD 8703 2168	Corner of Height Barn Lane (and F7469) at Height Barn Farm
XX	SD 8705 2169	Point where road numbering of Height Barn Lane changes from F7469 to U7912
Y	SD 8706 2169	Junction of U7912 & 494
YY	SD 8709 2169	Junction of 492 & U7912
Z	SD 8714 2171	Sign stating Footpath not Bridleway
ZZ	SD 8720 2172	Rear of 35/37 New Line
AA	SD 8728 4217	Small industrial unit adjacent to route
BB	SD 8729 2174	Junction of 492 & New Line

### Description of Route:

A site inspection was carried out in June 2013.

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-522' or 'Bacup Footpath 522' but are referenced below in the abbreviated form '#522' for brevity since all those referred to are in Bacup in Rossendale Borough and currently recorded as public footpaths.

The linear route under investigation and shown on the Committee plans between points A-B-C-D-E-F-G-H-HH-(I)-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-XX-Y-YY-Z-ZZ-AA-BB is known historically as Cutler Lane and Height Barn Lane and is currently recorded as #522, #507, #506, #505, #504, #503, #493 (part) and #492 (part), with the exception of the short sections described in the following paragraphs and which are not currently recorded on the Definitive Map and Statement.

Lee Clough – where the definitive line of #522 (H-II-J) differs from the route shown on historical maps and documents (H-HH-I-J) and from the modern day route currently used by the public (H-HH-J).

Height Barn Farm – Where the definitive line of #495 (W-YY) differs from the historical route under consideration and recorded as F7469/U7912 on the List of Maintained Streets (W-X-XX-Y-YY).

The route under investigation commences as Cutler Lane, recorded both as #522 and unclassified road U7859, at its junction with #570 (point A on the Committee plan). It follows a tarmac road with narrow footway in an easterly direction past a number of residential properties known collectively as Cutler Greens. It continues in



an easterly direction past the junctions with #579 at point B and #566 at point C and continues east past the front of Prospect Terrace to point D.

From point D the tarmac surface deteriorates and although the route is still tarmac the surface is more broken and does not appear to be as well maintained.

Partway between point D and point E an old sign is situated in the fence line alongside the route. Part of the sign is missing but it appears to say 'Fairwall Private No entry'.

The route continues along the tarmac track to the entrance to Fairwall at point E. The designation of the road as the U7859 stops at this point.

From point E the route continues as #522 along a stone surfaced track bounded on either side by stone walls varying between 3 to 3.5 metres apart. It is partially overgrown restricting width and joined by #524 at point F.

From point F the route continues in a generally easterly direction to point G where it is crossed by two sequential gates positioned on the boundary of Lee quarry which is owned and maintained by Lancashire County Council as a recreational facility. Both gates are accessible to horses, bicycles and pedestrians and have been fitted with closing mechanisms that can be operated from horseback. Neither gate would be accessible with a vehicle.

The route continues in an east south easterly direction inside the edge of the quarry site and bounded on both sides by a stone wall. The route is surfaced with compacted stone partly covered by grass and there is evidence of recent equestrian and bicycle use (hoof prints, horse droppings and tyre marks).

At point H the definitive route (#522) leaves the surfaced, double bounded track to pass through a stone wall (no access) to cross rough pasture in a south easterly direction to point II then turns back to continue in a northerly direction, crosses the watercourse and continues across rough ground passing back through the wall and fence (no access) to rejoin the existing track at point J. There is no evidence of the route on the ground and it crosses a wall at points H and J and crosses the watercourse between points II and J.

The 'historical' route (shown on maps and documents to be discussed later in the report) leaves the surfaced, double bounded track a little east of point H at point HH to pass through the stone wall (no access), to continue in a south easterly direction across rough pasture, to cross the watercourse at point I and then continue in a north easterly direction to pass through the wall (no access) and rejoin #522 and the surfaced track at point J. There is no evidence of the track on the ground or of a crossing point (bridge) at point I.

Modern day use is available along the stone surfaced, bounded track which provides a direct route between points H and J.

From point J the route continues along the stone surfaced track bounded by stone walls to point K where it turns to continue uphill in an east north easterly direction to pass through a 1.5 metre wide bridleway gate with motorcycle barrier at point L.

The route then continues uphill for a short distance to point M where it is crossed by the main access road (former tramway) into Lee Quarry. The route goes directly across the access road to point N where it passes between two stone gateposts (with adjacent stone stile) and continues in a north easterly direction along a stone surfaced track leading to Lee Farm. At point O, just west of the farm the route is met by #507, #521 and #520 and the route continues as #507 along the stone surfaced track past the farm, through a wooden gate at point P and past the junction with #518 at point Q where it continues as #506.

Once through the farm buildings at point R the route is crossed by a wooden field gate and then continues in an east north easterly and then more north easterly direction along a stone surfaced track bounded by a stone wall to the north but open to the moor on the south side. It continues to point S where it is crossed by a metal field gate close to the entrance to Moss Meadows Cottage, formerly Moss Meadows, and the junction with #512. It then continues as #505 and also recorded as U7912, Height Barn Lane in a north easterly direction along a stone surfaced track, bounded by fencing and is joined by #513 at point T. It then continues as #504 and U7912 along the stone surfaced track to the junction with Stubbylee Lane and #501 at point U.

From point U the route continues as #503 and F7469 in a north easterly direction immediately crossed by a 3.65 metre wide padlocked metal field gate (with adjacent pedestrian stile). A sign attached to the gate post says PUBLIC FOOTPATH NOT A BRIDLEWAY.

Beyond the gate the route continues along a rough track in an east north easterly direction to point V where it is crossed by a 3 metre wide metal field gate and joined by #496. Height Barn Lane continues as #493 and F7469 along the farm access road to Height Barn Farm where it passes between the farm buildings and farm house to point W. Height Barn Lane turns north as F7460, but not #493, to point X then east north east along a tarmac access road to point XX where its road number changes from F7460 to U7912 then continuing to point Y at a junction with #494 and to point YY at a junction with #492.

#493 continues north east from point W to a junction with #495 at point WW then continues as #492 to re-join Height Barn Lane at point YY.

From point YY Height Barn Lane continues as #492 and U7912 in an east north easterly direction to point Z where a second sign stating PUBLIC FOOTPATH NOT BRIDLEWAY is situated. It then continues, crossing a rougher surfaced area past some industrial units to point AA and exits along a tarmac road signed as Height Barn Lane onto New Line at point BB.

Access is available to pedestrians along the full length (with the exception of the definitive route of #522 at Lee Clough (H-II-J) and the 'historical' route at Lee Clough (HH-I-J) but horse riders and cyclists would currently be prevented from passing

through point U due to an unlawfully locked gate, there being no evidence that the limitation to the public right of way includes a locked gate with stile alongside, at point U.

A further section of route investigated which links to Cutler Lane and Height Barn Lane is the unrecorded (either on the Definitive Map and Statement or List of Maintained Streets) section of Stubblelee Lane between point UU and point U.

Point UU marks the southern end of the section of Stubblelee Lane recorded as publicly maintainable, adjacent to the entrance to the public park and children's playground. Highway signs warning of pedestrians and informing motorists that the route is a dead end are located at the start of the unrecorded section of Stubblelee Lane at point UU.

From point UU the route extends in a south easterly direction bounded on either side by substantial stone walls and surfaced with compacted stone. It continues for 143 metres passing the entrance to Moss Meadows Farm, formerly Stubblelee, to the junction with Cutler Lane and Height Barn Lane at point U where a metal gate (open on the day of inspection) has been erected across the route immediately prior to the junction.

### Map and Documentary Evidence


Various maps, plans and other documents were examined with reference to the routes under investigation.

Document Title	Date	Brief description of document & nature of evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.  As well as recording the primary roads in use at that time Yates' Map showed 'Cross Roads'. A cross road is generally accepted as being a secondary road which was neither a principal road nor a turnpike road, often one which ran between two main roads. The term was defined by the influential map-maker Ogilby in the preface to his road itinerary 'Britannia' in 1675. The title of Hennet's map in 1829 included the term 'Cross Roads'.
Observations		No part of the route under investigation is shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was not included on the map.
<b>Cary's Map</b>	1787	Cary was a cartographer, engraver and publisher who published a series of atlases, maps, canal plans etc. His 1789 map of Lancashire is a close copy of Yates' map.
Observations		No part of the route under investigation is shown.

Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was not included on the map.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map. In contrast to other map makers of the era Greenwood stated in his legend that his map showed private as well as public roads.
Observations		No part of the route under investigation is shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1818, was of little significance and was not included on the map.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



Observations		Although it is not easy to determine exact points or features along the route (due partly to the scale of the map) a route is shown as a 'cross road' passing along the side of the valley that corresponds to the route under investigation. Stubblee Lane is easier to identify between point UU and point U meeting Height Barn Lane and Cutler Lane at point U. The Height Barn Lane from Stubblee Lane (point U) to New Line (point BB) is shown but there is a gap between Height Barn Farm (point W) and the vicinity of point Z – a similar gap can be seen on the northern section of Stubblee Lane. It is not known whether this is because it passed through a farm yard, was unenclosed or for some other reason, possibly the watercourse crossing the route, but it is similarly shown on some modern maps such as the Ordnance Survey 1:10k
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<p>Investigating Officer's Comments</p>		<p>The route along the south side of the valley is shown as a 'cross road' on the map. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are the turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins V Oldham</i>). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them. It is more likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that Cutler Lane – Height Barn Lane (with some uncertainty about the gap) and Stubbylee Lane, was public bridleway or carriageway. The turnpike road runs parallel and it is likely that the route would have been used as an alternative to the toll road across the valley and on balance it is considered likely to have carried vehicular public traffic rather than just horses.</p>
<p><b>Inclosure Act Award and Maps</b></p>		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
<p>Observations</p>		<p>There is no inclosure map or award for Bacup.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn.</p>
<p><b>Tithe Map and Tithe Award or Apportionment</b></p>	<p>1845-1853</p>	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>




Observations

The Tithe Map for Spotland is dated 1845-1853. All of the route under investigation with the exception of the length near U- BB is shown on the map.

A number of properties are shown along the route – Cutler Greens, Fairwall and Lee – all of which still exist today. The current route used by the public between points HH-J at Lee Clough is not shown and the route shown on the map differs from the definitive route of #522 between points H-II-J bearing greater resemblance to the route shown between points HH-I-J and referred to in this report as the 'historical' route. Stubbylee Lane is shown including the section of route between point U – UU and the property marked partway along the route has been labelled Height Barn not Stubbylee or Moss Meadows as it later became known. In comparison the six inch Ordnance Survey map published in 1849 shows this property as Stubbylee and Height Barn as being the property now known as Height Barn Farm.

The route at point U is shown extending from U towards point V but stopping short of there suggesting that some or all may have existed as a track at that time – but possibly that it did not provide a through route, was less well-defined or considered private.

There is no key to the tithe map and the route is not numbered and therefore does not appear in the schedule that accompanies the map. The route is shown coloured the same as the rest of the road network but the lack of a key means that it is not possible to know exactly what the colour

		<p>signifies.</p> <p>The lanes are not named on the map but this is consistent with other roads that are shown on the map (which are coloured but not named).</p>
Investigating Officer's Comments		<p>The route under investigation between points A-U and U-UU physically existed (following the line HH-I-J through Lee Clough) and appears to have been regarded as a public carriageway or bridleway by Spotland Parish in the 1840s – 1850s. However it appears that there was no link to New Line along the route U-BB and so the public would have used Stubblelee Lane to access Cutler Lane.</p> <p>The definitive route of #522 through Lee Clough (H-II-J) and the route currently used by the public (HH-J) probably did not exist at that time.</p>
<b>Bacon's Map</b>	1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps were derived from Ordnance Survey maps.</p>
		
Observations		<p>A route which appears to be the route under investigation is shown and forms the only linear route along the south side of the valley running parallel to the former Turnpike road in the valley bottom. Bacon's Map shows the former Turnpike Road (now recorded as the A681 and A6066) and another, more minor route on the south side of the valley partially obscured by the word Tunstead. A route is shown passing through houses labelled as 'Greens' and east of there is shown as a being bounded by dashed lines as it crosses a watercourse that could indicate the crossing of Lee Clough at point I. Stubblelee Lane is not shown.</p>
Investigating Officer's Comments		<p>It is likely that the route shown along the south side of the valley formed part of the route currently under investigation and as it provided access to (and through) a number of properties that it was of such character and construction as</p>

		to be available to the public to use, at least on horseback in 1904. Stubbylee Lane may have been omitted due to a combination of the clutter of the map at that point and limitations of scale rather than it not being evident at the time since both slightly earlier and later maps showed it.
<b>Ordnance Survey Maps</b>		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.

<b>6 Inch OS map</b>	1849	The earliest Ordnance Survey 6 inch map for this area.
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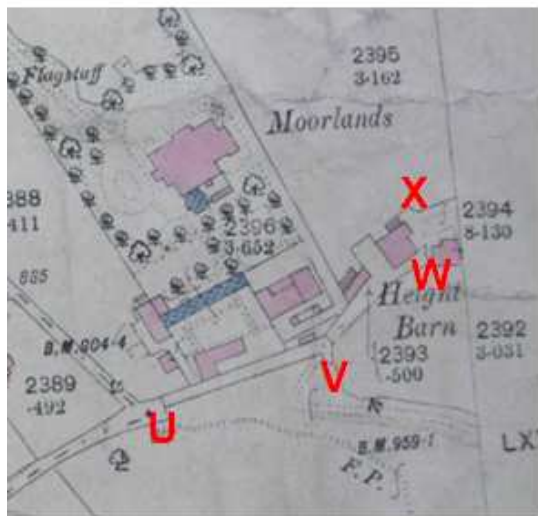
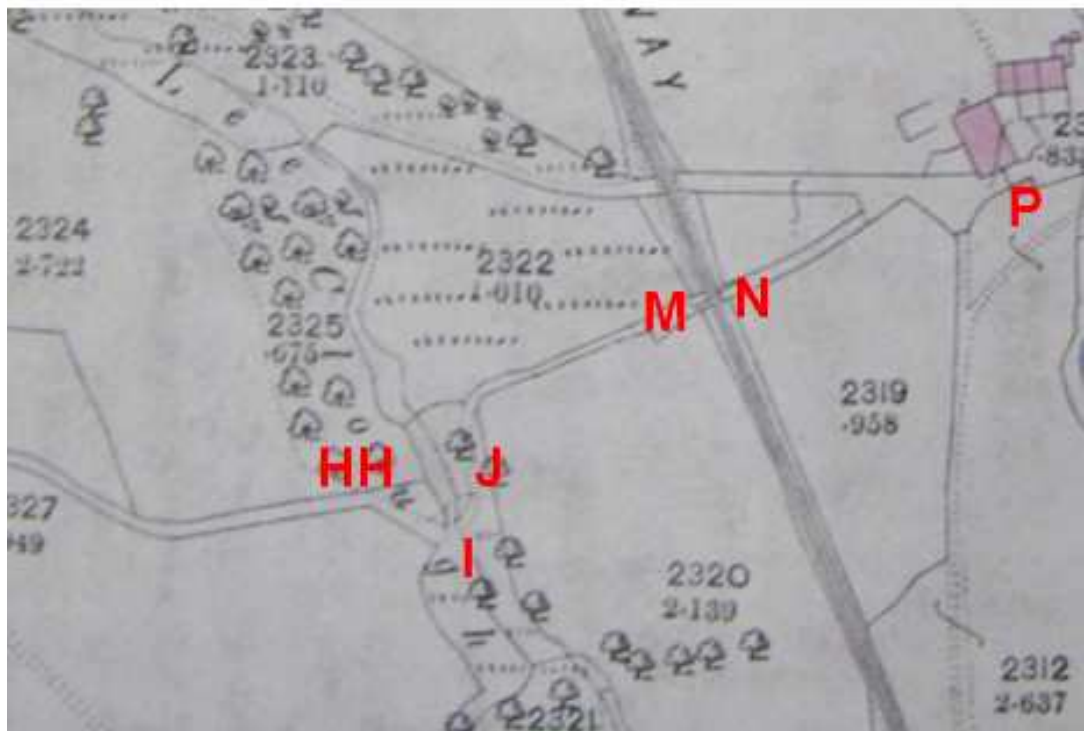


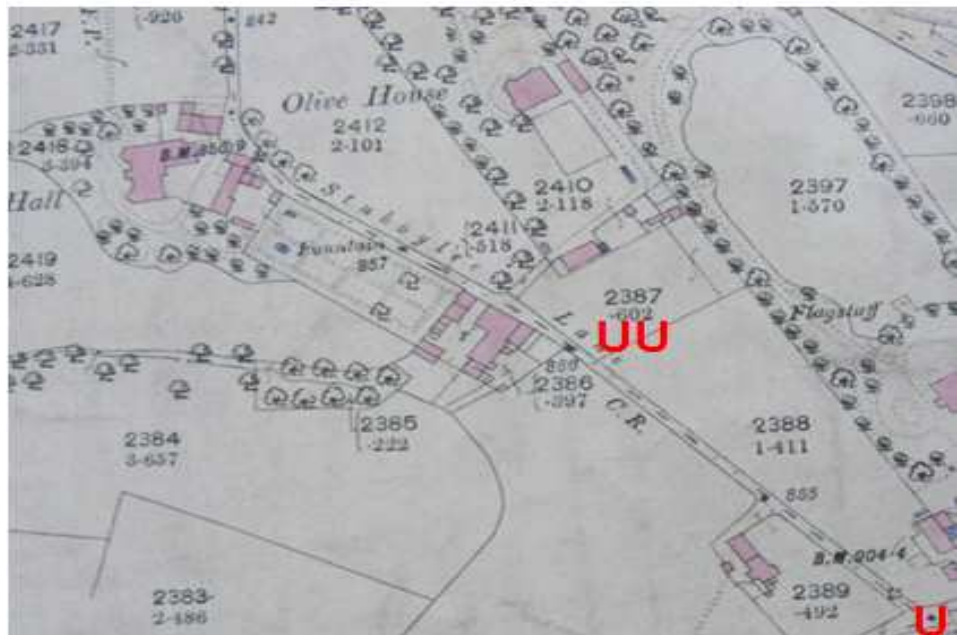
<b>Observations</b>		The whole of the route under investigation is shown
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		<p>(following the line HH-I-J through Lee Clough). From point A the route is shown passing Cutler Greens as a bounded track continuing past Fair Well (point E) to point I where it is shown crossing Lee Clough on the route that corresponds to the 'historical' route shown between HH-I-J on the Committee Plan. At point I a footbridge is marked but it is not possible to tell whether this was adjacent to a crossing for horses or carts atop the weir or whether it was the only crossing. The route currently used by the public between points HH-J and the definitive route of #522 between points H-II-J are not shown.</p> <p>From point K the route continues as a bounded track to Lee (point P). From Lee it is shown continuing bounded to the north by a solid line with a broken line along its southern side. It continues to Moss Meadows (point S). Between point S and point U the route appears to be unfenced until the immediate approach to point U. From point U it continues as a bounded track to Height Barn. The route through the buildings (W-X-Y) is not clear at this scale but from point Y it can be seen continuing as a narrower but still enclosed route to point Z and then as an unenclosed track, fenced on its southern side from point Z through to point BB at New Line (labelled on the map as a turnpike trust road known as the Trough Gate and Lee Mill Branch and owned by the Rochdale and Burnley Trust).</p> <p>Stubbylee Lane is shown (but not named) starting at the turnpike road and extending south to Stubbylee and then continuing as a bounded road to point UU and continuing on to point U. Access to Moss Meadow Farm (labelled as Stubbylee on the map) is via the route under investigation.</p>
Investigating Officer's Comments		<p>The whole length of the route under investigation is shown (following the line HH-I-J through Lee Clough) in the same manner of the general road network.</p> <p>The route would have provided access to a string of properties and farms and as it formed part of a longer route passing other farms and properties it may also have provided access along this part of the valley side avoiding use of the toll roads.</p> <p>The crossing of the watercourse at point I is labelled as being via a footbridge on the south side of the lane and a weir which may have provided a ford crossing. No gates are shown across the route.</p>
<b>25 Inch OS Map</b>	1893	The First Edition 25" is at a larger scale than the 6" map

showing the area in more detail.





Observations

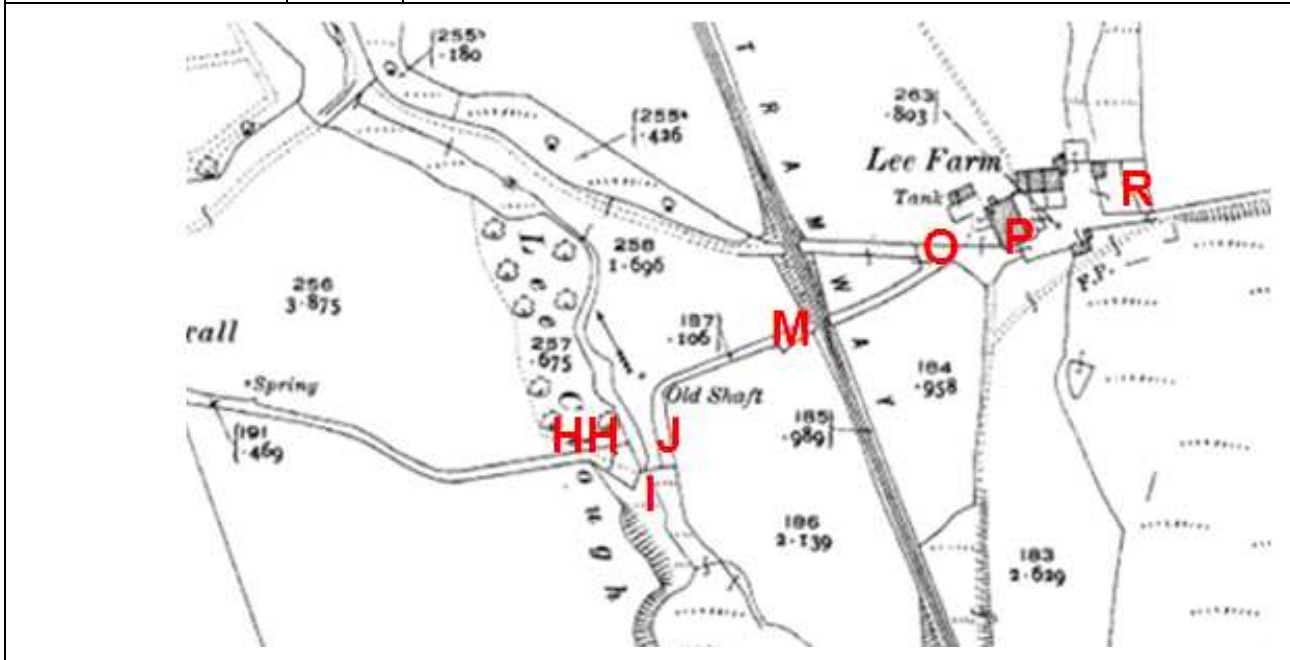
The whole of the route under investigation is shown (following the line HH-I-J through Lee Clough and W-X-XX-Y-YY at Height Barn). From point A it is shown passing Cutler Greens and Prospect Terrace (named as Fair View on the map). It continues past Fairwell to point I where it crosses Lee Clough (following the route HH-I-J) with no indication of the footbridge or weir marked on the earlier 6 inch map despite being at a larger scale. The definitive route of #522 along route H-II-J and the modern day route H-J are not shown on the map. The route then continues to points M-N where it crosses a tramway and on to Lee farm where a gate is shown across the route at point P. The route appears available through the farm and a second gate is shown east of the farm buildings at point R. Beyond the gate the route continues bounded on the northern side but open to the moorland to the south. It continues to Moss Meadows where it is crossed by a further gate at point S. It continues bounded on either side just beyond point T where it is crossed by a further gate and then continues to point U where access onto Stubblelee Lane appears to be open and ungated.

From point U the route continues to Height Barn but is gated just beyond point U and at point V. It continues through Height Barn Farm and then exits the farm at point X to continue as a double pecked line to a gate at AA and then continues between the houses to New Line at point BB. This section of the route is not marked 'F.P.' as is the north-south footpath crossing it near Height Barn, suggesting that it may have existed as a better track.

Neither Cutler Lane or Height Barn Lane are named as such on the map.

		<p>The section of Stubbylee Lane between points U and UU is shown bounded on either side but ungated and forming part of a longer route named on the map as Stubbylee Lane and extending from New Line near Newchurch Road (former toll road) through point UU to point U. Stubbylee Lane is marked with the letters 'C.R.' on the map. This is interpreted as indicating that the boundary was on the centre of road rather than labelling Stubbylee Lane as carriage road.</p>
Investigating Officer's Comments		<p>The route under investigation appears to be the sole access for vehicles to a string of properties and farms. Gates are marked across the route at points P, R, S, T, U, V, AA which may have restricted but not necessarily prevented access. The existence of gates along a public route would not be considered unusual in the 1800's particularly as most are situated in close proximity to farms where gates would be required for the control of livestock. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The public status of the route is not indicated by colouring or shading and it appears that only the toll roads through the valley have been coloured and shaded. Shading was often used to show the administrative status of roads on 1:2500 maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is not shown in such a way but neither are other known public vehicular highways in the area so no inference can be drawn in this respect.</p>
<b>25 inch OS Map</b>	1910	Further edition of the 25" map.
Observations		<p>The whole of the route under investigation is shown (following the line HH-I-J through Lee Clough). There are very few changes from the 1893 25 inch map. Between point C and point D at the eastern end of Prospect Terrace there is a dashed line across the route indicating a possible change in surface and east of there the route appears to split suggesting that the route continued from D towards point E with a separate access direct to Prospect Terrace. Gates are still shown across the route at points P and R (Lee Farm). The gate at point U may have been removed with a dashed line indicating a change in surface. A gate is shown across the route at point V on the approach to Height Barn Farm. The route from the farm to New Line (between points Y-AA is shown as an unenclosed track across a field with the gate shown on the earlier edition of</p>

		<p>the map at point BB possibly having been removed (a pecked line is visible suggesting a change in surface).</p> <p>Neither Cutler Lane or Height Barn Lane are named on the map.</p> <p>Stubbylee Lane is named and shown in the same way as it is on the previous edition of the 25 inch map.</p>
Investigating Officer's Comments		The route under investigation still appears to be the sole access to most properties and farms along the lane although Lee Farm and Fairwall may now have alternative access.
<b>25 Inch OS Map</b>	1930	Further edition of the 25 inch map.

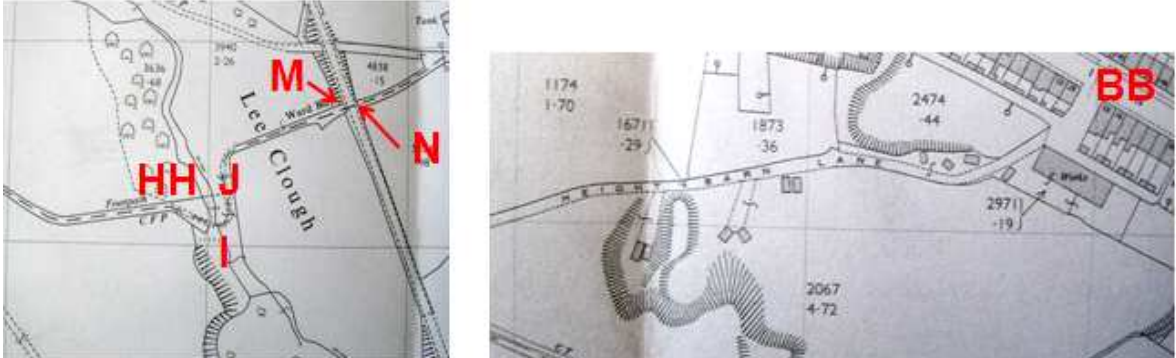




<p>Observations</p>		<p>The whole of the route under investigation is shown. The route is shown unaltered from earlier editions of the map from point A to point HH at Lee Clough. The route through Lee Clough looks like it may have still existed on the line HH-I-J but only if access existed through the boundaries shown on either side of the culverted crossing at point I. Documents examined later in the report (Finance Act and 1927 sale documents) suggest that the land either side of the Clough was in different ownership which may explain the existence of additional fencing at this point. Beyond point J the route under investigation appears to have been gated at points P,R,S, just east of point U (leading to Height Barn Farm) and at point AA. Between point Y and AA a quarried area appears to be accessed from the route under investigation. Stubblelee Lane between points UU and U is shown unaltered from earlier maps.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation may by this date have been less suitable for vehicles to use due to the numerous gates along it. Stubblelee Lane continues to be open and un-gated.</p>
<p><b>6 Inch OS Map</b></p>	<p>1956</p>	<p>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 1930 25-inch map.</p>

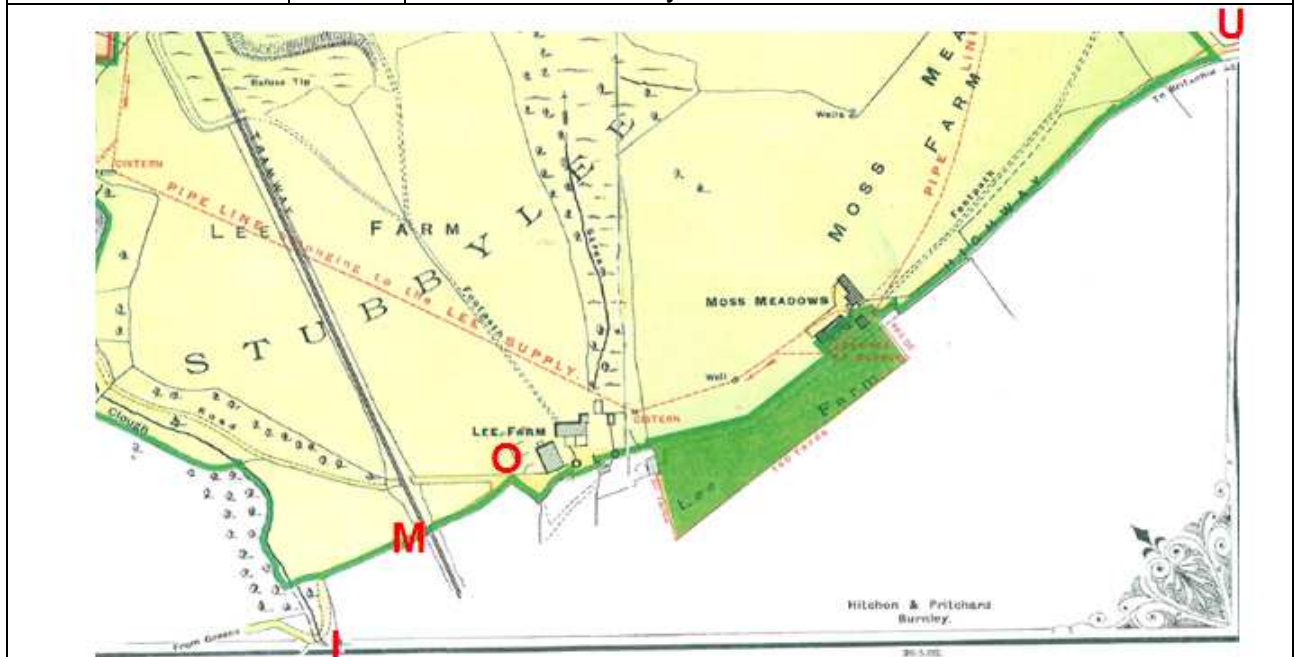


<p>Observations</p>	<p>The whole of the route under investigation is shown (via HH-I-J through Lee Clough). Cutler Lane is named west of point A but the route under investigation is not named.</p> <p>The route is open and unrestricted from point A passing Cutler Greens and Prospect Terrace and continuing past Fairwall to cross Lee Clough at point I where it is not explicit what access was available. From point J the route continues to cross the tramway. Gates are shown across the route at point P (Lee Farm), point S (Moss Meadows), point V (west of Height Barn) and point Y (east of Height Barn). The route between point V and point ZZ is open and unenclosed and appears to pass a quarried area. Access onto New Line at point BB is open.</p> <p>There are no gates across Stubbylee Lane which is shown as a continuation of the named part of Stubbylee Lane which starts at the junction with New Line and continues to point U.</p>
<p>Investigating Officer's Comments</p>	<p>The nature and use of the route is likely to be unchanged since the earlier map was published in the 1930s.</p> <p>Access appears to have been available along the full length of the route although it remained gated at a number of points. Access at Lee Clough is not explicit but it can be deduced from the shape of the boundaries on either side of the clough that there was a gate leading southwards out of the enclosed land either side.</p>

1:2500 OS Map	1962-1964	Further edition of 1:2500 mapping revised and published between 1962 and 1964.
		
Observations		<p>The whole of the route under investigation is shown (following the route HH-I-J through Lee Clough). Cutler Lane is named west of point A. The route is shown ungated from point A passing Cutler Greens, Prospect Terrace and Fairwall. The route is bounded by solid lines on either side from point A through to point HH. Near point H the route is annotated with the word 'footpath' immediately prior to the section HH-I-J which is shown crossing the watercourse as a double pecked line to point J from where it continues as a bounded route on both sides. The route appears to be gated at point M immediately prior to crossing a track that was formerly the tramway up into the quarry (now labelled as a refuse tip). A further gate appears to exist across the route at point N and also at point R east of Lee Farm. Moss Meadows has now been renamed as Moss Meadow Cottage but its sole access remains the route under investigation. A gate is shown across the route close to the cottage at point S. No further gates are shown along the route although a pecked line suggests a possible change in surface close to point O and point AA.</p> <p>The route is now labelled as Height Barn Lane on the map between points YY and AA.</p> <p>From point A through to point Y a long dashed line is shown along the centre of the route under investigation and is annotated with the abbreviation CR and ward boundary.</p> <p>Stubblelee Lane is shown and named as a continuous route from New Line to point U passing through point UU. The route is ungated and no change in surface is recorded between the section recorded as publicly maintainable and the section between point UU – U. A change in surface is marked at point U at the junction with the rest of the route under investigation.</p>
Investigating Officer's Comments		The use of the route may have been easier in the 1960s due to the removal of some of the gates along Height Barn Lane and Cutler Lane although the labelling as footpath west of



		Lee Clough suggests that use on horseback or with vehicles had declined by that time.
Stubbylee Estate Plan	1902	The plan has been dated by the draftsman as 26 May 1902 but there is no key.



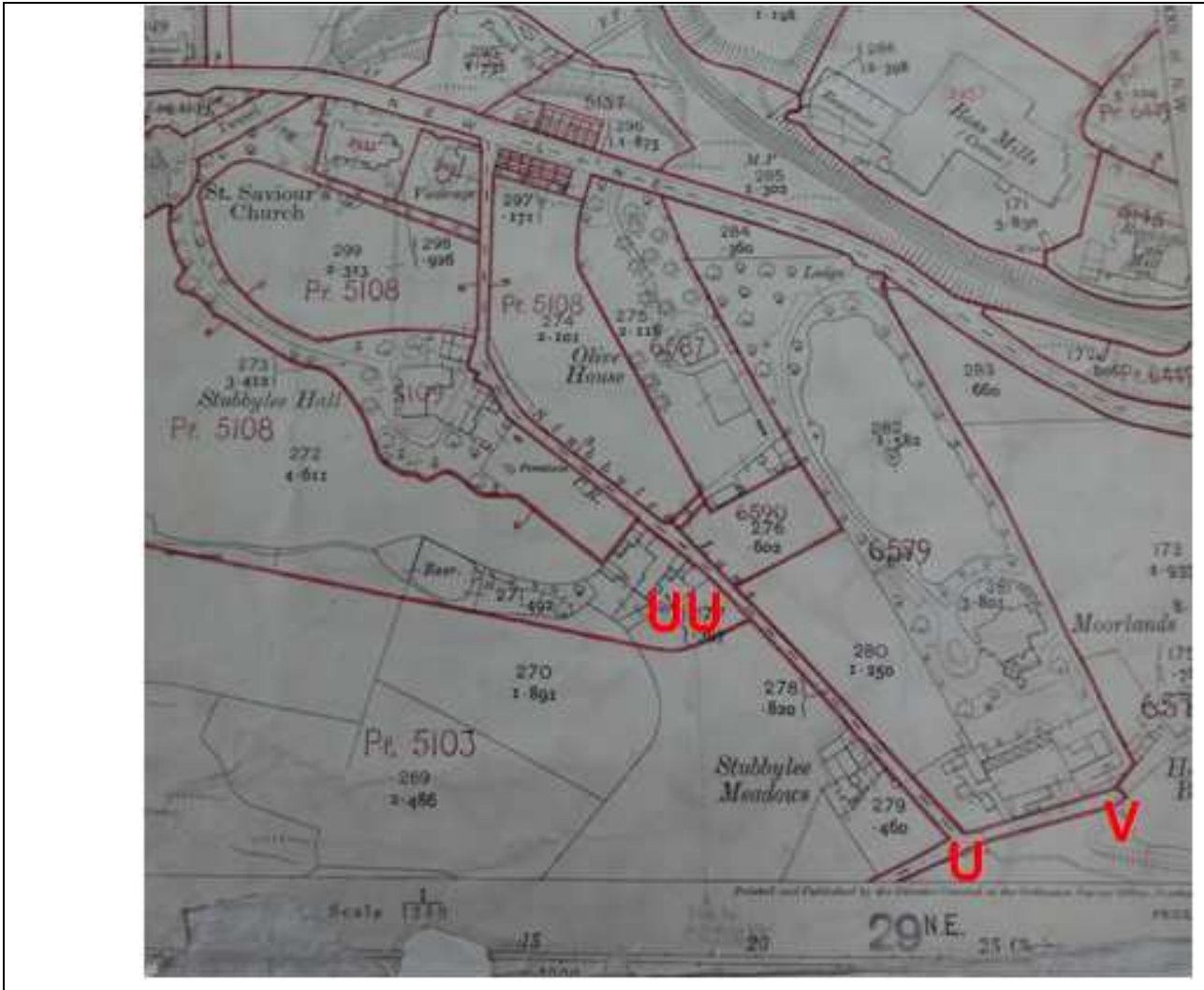
Observations		<p>The Estate plan shows the boundary of the Estate with a thick green line. Stubbylee Lane is named and coloured in the same way as other roads (public and private) shown on the map although none of the section that is being investigated (UU-U) is within the estate boundary.</p> <p>The route being investigated is shown from just west of point H and is annotated 'from Greens' at this point suggesting that it continued west along the route being investigated. The route is shown through Lee Clough on the alignment HH-I-J. From point K the estate boundary is shown to run along the route to point O continuing through to point U. Between point O and point U the route under investigation has been labelled 'Old Highway'. At point U the route can be seen extending towards Height Barn and is labelled 'To Britannia'.</p>
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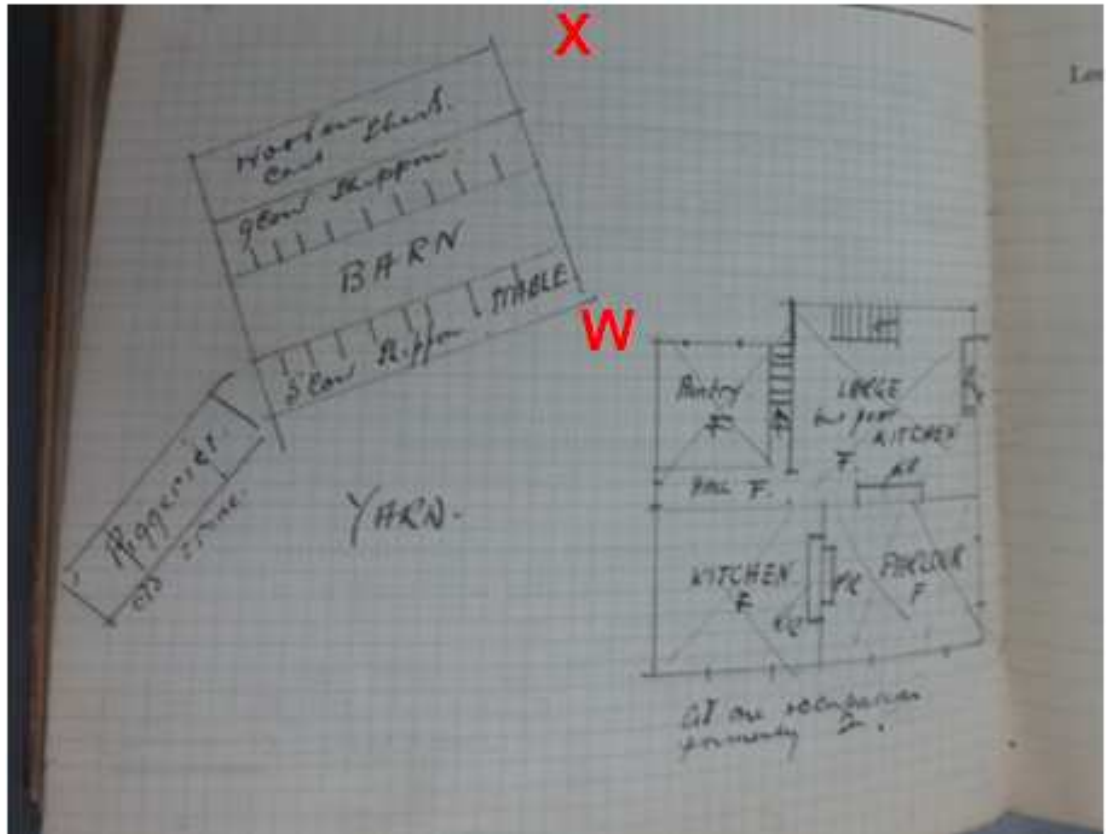
Investigating Officer's Comments		<p>The significance of the shading is unknown but the route appears to have been considered as significant through route with the ongoing destinations labelled at either end (Greens and Britannia) which is suggestive of a public route along the section shown on the map but also on the rest of the route from Cutler Greens and through Height Barn to New Line.</p> <p>The route is referred to on the map as an 'Old Highway' in contrast to others on that plan labelled as footpath, again suggestive of use by the public on horseback and possibly with horse drawn vehicles.</p>
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		The route in use at that time through Lee Clough appears to have been HH-I-J with neither route HH-J or H-II-J existing.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</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

No Finance Act maps or Schedules were available in the Lancashire Records Office. The Finance Act Maps (Ordnance Survey sheets 72/15 and 72/16) were therefore obtained from The National Archives together with the relevant Field Book entries.

Between point A and point I the route under investigation was excluded from the numbered hereditaments as was the section just past point S to point V and the section between points BB to AA but the other sections of the route are included as part of hereditament 5099 (point I – Point M and point N – just beyond point S), hereditament 5020 between point M to point N (the railway), and hereditament 5578 from point V to point BB.

Hereditament 5099 (which includes I-M and N-S) is described in the field book as including the property 'Lee House'. The route under investigation is not specifically mentioned but a deduction of £20 has been claimed for public rights of way or use and also £20 for easements. The list of calculations includes the words 'less footpath - £20'.

Hereditament 5020 (point M-N) refers to a large plot described in the field book as the 'tramway'. There is no mention of the route under investigation and no deductions made for public rights of way or user.

	<p>Hereditament 6578 (point V – AA) is described in the field book as Height Barn Farm, Bacup and is owned by James Holt. A £50 deduction for public rights of way or user has been claimed although the route(s) claimed for are not specified. The listings for 'Restrictions' says 'footpaths £50' with the words 'easements £20' crossed out. Also included in the field book entry is a hand drawn diagram of the layout of Height Barn Farm and outbuildings through which the route under investigation passes. The route is not shown or labelled on that plan.</p> <p>The 1:1250 Finance Act plan shows the whole of Stubbylee Lane excluded from the adjacent numbered hereditaments.</p>
<p>Investigating Officer's Comments</p>	<p>The exclusion from several adjacent hereditaments of the route between points A – I is suggestive of, but not conclusive of, public carriageway rights. Several of the plots of land are split by the route giving weight to the belief that the route was considered public and that it carried public vehicular rights (as public footpaths and bridleways were normally included within numbered plots).</p> <p>That part of the route under investigation that formed part of 'Lee Farm' (between points I – M and N- just beyond S) is shown contained within a hereditament suggesting that it was not considered to reduce the productive value of the land. This could have been because it was not frequently used by private or public vehicular traffic at the time, perhaps because the route was intersected by the tramway at that time which may have affected use.</p> <p>A deduction of £20 was claimed for the existence of public rights of way across the land but the route (or routes) for which the deduction was claimed were not specified. A number of recorded rights of way cross the land (including the route under investigation) so it is not possible to be certain which routes were acknowledged as public by the landowner in making the claim.</p> <p>Between points M-N (the tramway) there is no suggestion that the route under investigation was acknowledged as a public right of way at that time.</p> <p>The route between points S – V also appears to have perhaps been considered a vehicular highway and hence excluded from the adjacent hereditaments. Plots 5103 is split by the route giving weight to the belief that it was considered public and vehicular (as public footpaths and bridleways were normally included within numbered plots). From point V to point AA the route under investigation is included within a numbered plot for which a significant deduction of £50 has been claimed for public rights of way</p>

or user. A number of recorded rights of way cross the land (including the route under investigation) so it is not possible to be certain which routes were acknowledged as public by the landowner in making the claim. In addition, the hand drawn plan of the farmyard included within the field book does not show the route under investigation suggesting that if it was in use by the public at that time use was possibly infrequent enough not to have been noted by the valuer. The section AA-BB was excluded from the numbered hereditaments and is shown in the same way as New Line (public vehicular highway) suggesting that it was considered to be at part of the highway network at that time. The whole of Stubblelee Lane – including the route under investigation between points UU-U is shown excluded which suggests that it may have been considered to be a public vehicular highway.

**Documents relating to the Sale of Land crossed by the Route under Investigation**

1927 Documents relating to the sale of 37 lots that were put up for public auction on the instruction of the Trustees and Executors of the late James Madden Holt, Esq on 15<sup>th</sup> December 1927.





Observations

Lot 40 consisted of the farm known as Height Barn Farm and the boundary of the lot was shown on a plan included in the sale documents. The lot included that part of the route under investigation from just east of point U passing through Height Barn Farm to point AA and was under a yearly tenancy.

Lot 41 consisted of the farm known as Stubblelee and Moss Meadows Farm and included part of the route under investigation from just north east of point S to point U. It too was under a yearly tenancy.

The sale plans are stated to be for the purpose of identification and explanation only, and, although believed to be correct, are not guaranteed.

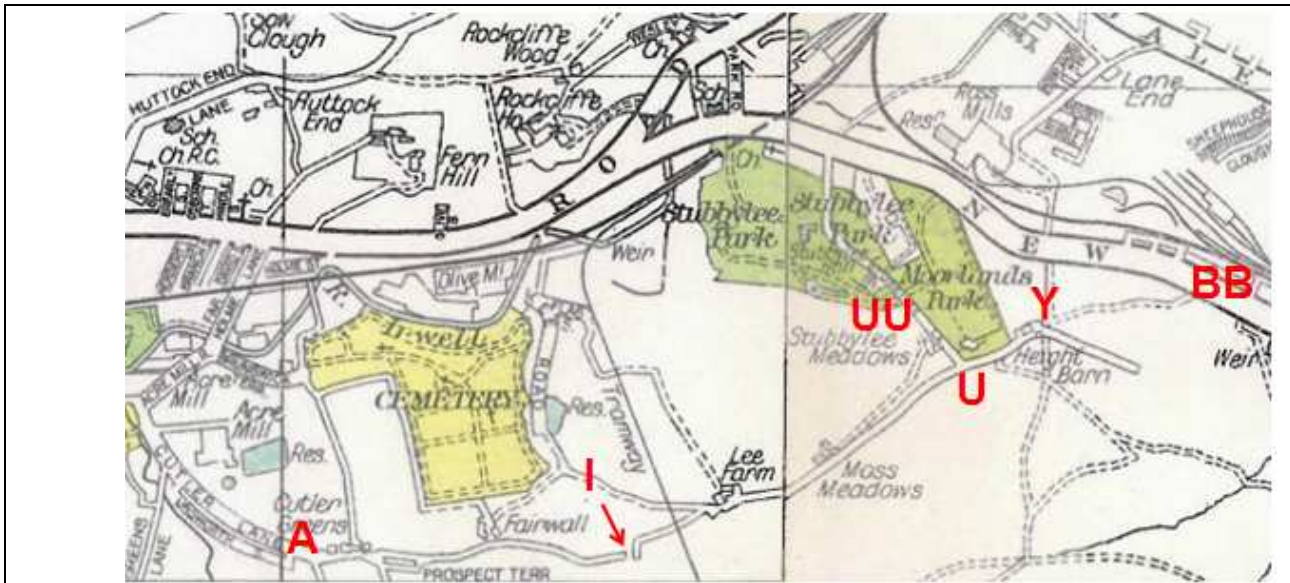
Plot 41 appeared to include most of Stubblelee Lane from point UU to point U and labelled as Stubblelee Lane on the plan. It also included part of the route currently recorded as #505 and #504 between point S and point U which has been labelled as an 'old driving road' on the plan.

Plot 40 included the route under investigation from just east of point U to point AA. Water pipes are marked along the route and a 'road to the Moor' is shown to leave the route under investigation at point V. 'Right of Road' is written on the road from Stubblelee Lane, zigzagging via Height Barn with the word 'Right' written along the route under investigation between points U and V. However the yellow colouring does not follow the zigzag to Height Barn but runs more directly.

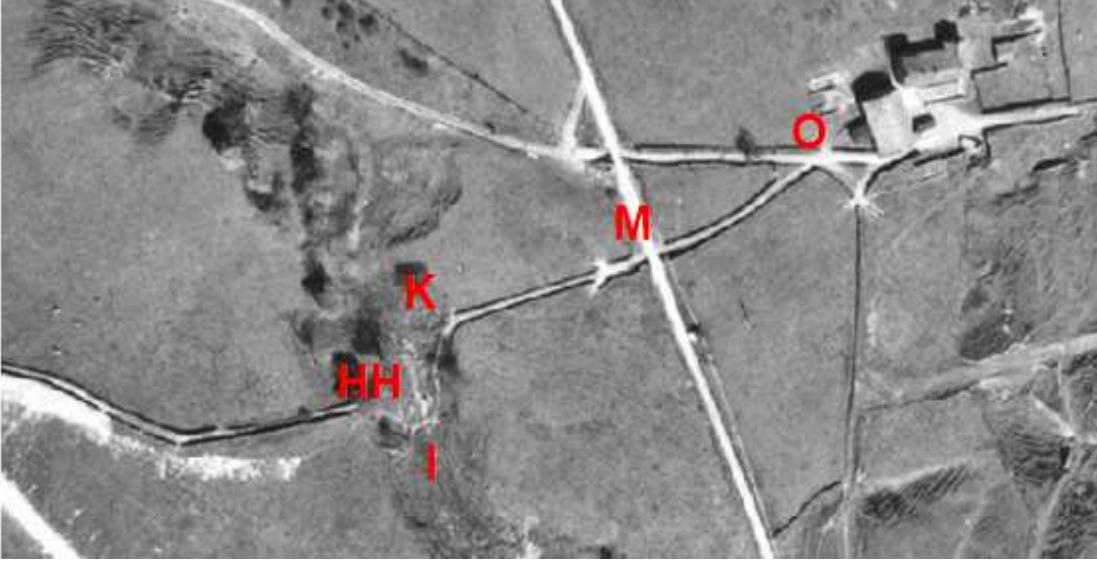
The route coloured yellow, and included in Plot 40 is specifically referred to as an occupation road for the use of persons specified in the sale particulars.



		Lots 40 and 41 are both stated to be sold with and subject to rights of road over so much of the Old Driving Road shown on the Sale plan as crosses each Lot, and the purchaser of each Lot and his successors in title are said to be required to keep in repair so much of the old road as crosses the Lot purchased by him.
Investigating Officer's Comments		The sale documents' description of the route under investigation between point S and U as 'Old Driving Road' contrasts with the yellow coloured route described as an occupation road and spelled out as for the use of these and neighbouring properties, i.e. not the public at large. Both the terminology and the distinction suggest that it was a public road with at least bridleway status ('driving' animals rather than 'driving' a carriage). This would not have simply stopped at the junction with Stubblee Lane and since the latter and the track up to the moor were specified as occupation roads the implication is that the route continued through Height Barn Farm to New Line and similarly westwards to Cutler Greens. Since these properties had particular rights over each other's land but no mention of private rights beyond that those rights would have been of no purpose had there not been public rights to continue from that point. There is no contradiction between the road carrying private rights and also being a public carriageway or bridleway; in the latter case there could be private vehicular rights coexisting with public bridleway rights (although that leaves the problem of what happens at the further boundary) but in the former case it can be prudent for a property holder to retain private rights to his property over his neighbour's land in the event that the public rights be diverted or stopped up from his neighbour's land which would otherwise leave him unable to reach the highway from his property. There is also no contradiction between the road being privately maintainable and carrying public rights – although nowadays most highways are publicly maintainable that has not been the case historically. A highway can be publicly maintainable, privately maintainable by one or more property holders, or both.
<b>Geographia Map Directory</b>	1934	This road atlas was published around 1934. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledge the assistance of municipal and district surveyors when compiling the book.



Observations		Height Barn Lane and Cutler Lane are shown, but not named. One short section of the route is missing at point I at Lee Clough and the lane is shown with a break at this point. Stubblelee Lane is shown and named. The route east of Height Barn at point Y is shown through to point BB unbounded (double pecked line).
Investigating Officer's Comments		Although Stubblelee Lane and most of Height Barn Lane and Cutler Lane appear to be useable, it would appear that use of Cutler Lane at Lee Clough may have declined. It may have been possible to use this section on foot or horseback but this is not recorded in the atlas. The section of the route east of Height Barn (Y-YY-Z-ZZ-AA-BB) was mostly unbounded and may have been the lesser route with the more obvious access to Height Barn being along Stubblelee Lane through UU-U-V.
<b>Aerial Photographs</b>	1945	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.  The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable and in this particular instance the quality of the picture is quite poor.
Observations		Most of the route can be seen on these photographs with the exception of the section either side of Lee Clough which is indistinct. The western end of the route at Cutler Greens and Stubblelee Lane can be more clearly seen.

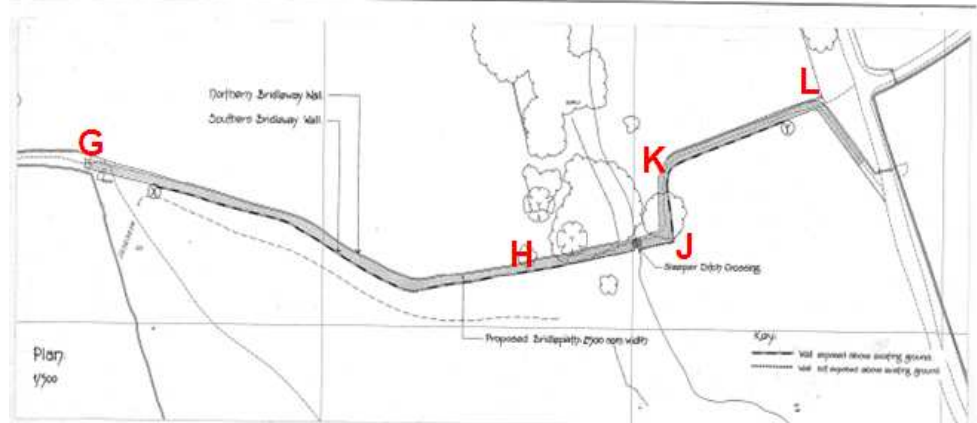
Investigating Officer's Comments		It is likely that the sections of route that are most visible are those that are used for vehicular access to land and buildings.
<b>Aerial Photograph</b>	1960s	The black and white aerial photograph taken in the 1960's and available to view on Map Zone.
		
Observations		Most of the route can be seen on these photographs including the section either side of Lee Clough which is less well defined.
Investigating Officer's Comments		It is likely that the sections of route that are most visible are those that are used for vehicular access to land and buildings. The whole of the route appears to be in use but it is not possible to infer the status.
<b>Aerial Photograph</b>	1990	Coloured aerial photograph available to view at Lancashire County Council Offices (Cuerden)
Observations		The whole of the route under investigation can be clearly seen on the photograph although the exact route between points HH-J is uncertain.
Investigating Officer's Comments		The route under investigation existed in 1990 and was capable of being used. The exact route between point HH and J is uncertain.
<b>Aerial Photograph</b>	2010	Coloured aerial photograph.




Observations		The whole of the route under investigation can be seen on these photographs with the exception of the 'historical' route through Lee Clough (HH-I-J) which can no longer be traced. A new straight section of track has been constructed across Lee Clough (HH-J) replacing the old route.
Investigating Officer's Comments		No additional information, apart from noting the new section of track across Lee Clough, can be gathered from these photographs.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
<b>Parish Survey Map</b>	1950-1952	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.
Investigating Officer's Comments		Bacup was a municipal borough in the early 1950s and so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Map of Public Rights of Way was given a 'relevant date' (1 <sup>st</sup> January 1953) and notice was published that the Draft Map had been prepared. It was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect 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		Cutler Lane (via H-II-J at Lee Clough) and Height Barn Lane (on a route between W-YY through Height Barn Farm) were shown on the Draft Map as public footpaths. Stubblelee Lane was not shown on the Draft Map. No objections or representations were made to the County Council about the inclusion of the route as a public footpath, the alignment of the route through Lee Clough or the fact that Stubblelee Lane was not included on the map.
<b>Provisional Map</b>		Once any representations that had been made had been resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders and creation orders be incorporated into a Definitive Map First Review.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published. 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
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as

<p><b>made under section 31(6) Highways Act 1980</b></p>		<p>highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
<p>Observations</p>		<p>There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the routes under investigation run.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.</p>
<p><b>Documentation relating to the Restoration of Lee Quarry</b></p>	<p>1997-2001</p>	<p>Lee quarry is owned and managed by Lancashire County Council. Between 1997 and 2001 the County Council undertook the restoration of the site which included, along its northern boundary, the route under investigation between points G-N.</p>



	
<p>Observations</p>	<p>Photographs and plans were examined that show that as part of the restoration of the site the route between points G-L was surfaced and the walls repaired and in places rebuilt. The plans also show that a sleeper ditch crossing was installed and the route between H-J surfaced and made available at that time.</p> <p>The County Council plans showing the proposed restoration work refer to the route as 'proposed bridleway'.</p>
<p>Investigating Officer's Comments</p>	<p>The route currently used by the public between points H-J at Lee Clough was constructed between 1997 and 2001 and the work carried out by the County Council was done with reference to the route being a bridleway. After speaking to the Engineer involved with the implementation of the scheme the word 'proposed' is believed to relate to the work to be carried out to physically construct the route rather than a proposal to 'create' a bridleway.</p> <p>The route shown between points HH-I-J on older maps and documents appears to have fallen out of use by this time. The route recorded as part of #522 between points H-II-J did not exist in 2001.</p>
<p><b>Lancashire County Council Highway Records</b></p>	<p>In 1929 the responsibility for non-county highways passed from district and borough councils to the county councils. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps coloured and annotated to mark public highways.</p> <p>A highway marked on the map is good evidence but many highways that existed both before and after the handover are not marked. In addition, the handover maps did not have</p>

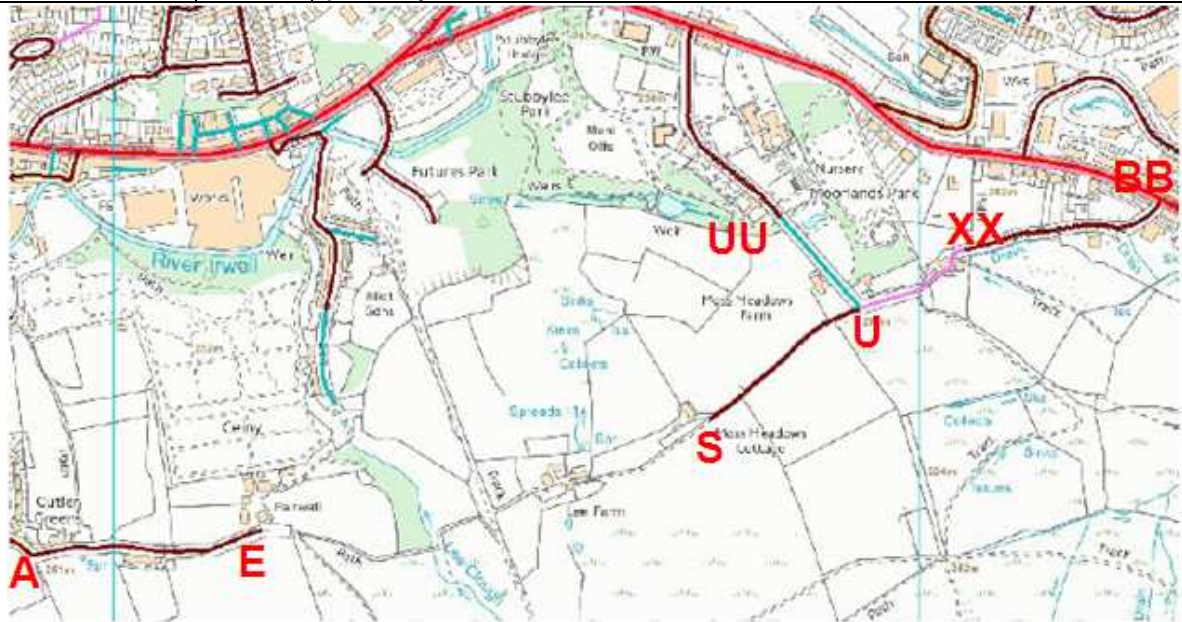
	<p>the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions. The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date list of streets maintained at the public's expense.</p>
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<p>Observations</p>	<p>The scanned maps that form part of the County Council 'highway adoption*' records were viewed on MapZone. It is not known when these maps were compiled. Publicly maintainable roads are shown in red.; all the other red shaded routes on the sheet are accepted as full highways - footpaths and bridleways are not shaded. Just over half of Stubblee Lane is shown coloured red but the length under investigation between point UU to point U is not. However, the whole of Cutler Lane and Height Barn Lane is shown red, from point A through to point BB, including the section at point I into Lee Clough. i.e. the route shown as publicly maintainable road follows the historical line not that of the Definitive Map where these differ.</p> <p>* although referred to by those who use them as adoption records very few of these highways have actually been formally adopted but are publicly maintainable by custom, reputation or age.</p>
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Investigating Officer's Comments	<p>It is not known why only part of Stubblelee Lane is shown as publicly maintainable. The rest of the route under investigation is shown as 'adopted' i.e. maintainable at public expense. Although this map was not made in order to show public rights it was to show maintenance responsibility and in practice that requires knowledge of what traffic it should be maintained for. Whilst these records are not conclusive evidence that the routes shown on them are public vehicular highways the observation that all the other ways shown in the same manner were accepted to be carriageways carries some weight, together with the Planning Inspectorate Consistency Guidelines which state at 2.34 that unclassified county road status carries some inference of public vehicular rights.</p> <p>Highways which are not publicly maintainable are not included hence no inference can be drawn that the section UU-U was not highway, only that it was not considered to be publicly maintainable.</p>
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Observations	<p>The adoption layer that can be viewed on MapZone records the first part of the route under investigation (A-E) as part of a public road known as Cutler Lane (U7859). It is described as running from Unsworth Street to Dead End. The route from E-S is not recorded on the adoption layer as being a publicly maintainable highway. From point S to point U the route under investigation is shown as a publicly maintained road known as Height Barn Lane (U7912) and is described as running from Stubblelee Lane to Dead End.</p> <p>The first part of Stubblelee Lane from New Line is also shown as being a publicly maintained road (U7913) to point UU. Between point UU and point U the route under investigation is recorded as Stubblelee Lane (X863) and privately maintained.</p> <p>The section of Height Barn Lane between point U and point</p>
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		XX is recorded as Height Barn Lane (F7469) and recorded as publicly maintainable. From point XX to point BB on New Line the remainder of the route is recorded as Height Barn Lane (U7912) - a publicly maintainable unclassified road from New Line to F7469.
Investigating Officer's Comments		These records conflict with the adoption plans which show the whole of the route under investigation (with the exception of Stubblelee Lane) as being publicly maintainable road.

Part of the route under investigation crosses the northern side of a Site of Scientific Interest and Biological Heritage Site, namely the section between points G and N through the Lee Quarry restoration site (owned and managed by Lancashire County Council). The route does not cross access land under the provisions of the Countryside and Rights of Way Act 2000.

### **Landownership**

The section of the route A-G is unregistered land, G-N is owned by Lancashire County Council. N-P is owned by Mr Peter Anthony Cain, the section P-S is owned by Mr John Thorpe and Rebecca Jane Thorpe. S-U-UU is owned by John Robert Bull and Hilary Bull, U-V is unregistered. V-X is caution land and both Legal Aid and The Law Society have been consulted in respect of this land, none have confirmed they own the land. The section around point X-YY is unregistered and the small section around Z is owned by Jack Anthony Coates and Christine Coates, the rest of the route from ZZ-BB is unregistered.

### **Summary**

The length of Cutler Lane through to the junction of Stubblelee Lane and Height Barn Lane (A-U) is shown as a cross road on Hennet's map published in 1830. The implication, though not conclusive, is that it was likely to have been a public carriageway or at least bridleway. The consistent depiction of this route, still visible on the ground today, supports this as does consideration of its possible use as a route along the valley without requiring the payment of the toll on the main road. If this was not a through route it is unlikely to have been a public carriageway but Hennet shows it was possible to continue to New Line via Stubblelee Lane (U-UU). This alignment requires further consideration as 19th Century roads rarely took significant, sharp changes in direction as this does and the natural alignment is straight on along Height Barn Lane: however, it is arguable that whilst such alignments are rare in roads derived from the medieval network this may have come into use, or greater use, much later to avoid the tolls on the main road along Rossendale Valley which had been turnpiked only about 50 years before Hennet's map. Traffic heading into Bacup could take Stubblelee Lane (via U-UU) whilst traffic heading east might have taken the less well defined, and partially unenclosed, route through Height Barn (from U to BB) which although not shown on Hennet as a cross road as a through route may still have existed as a connection at the time but was not as significant. It is suggested that on balance the public rights were likely to be vehicular.

The coloured road on the Tithe Award map only about 20 years later is consistent with this route via Stubblelee Lane (A-U via HH-I-J at Lee Clough and U-UU) being public carriageway or bridleway and the 1<sup>st</sup> Edition Ordnance Survey 6 Inch Map which was also produced at about the same time depicts it open to and in the same manner as the general road network. It also shows Height Barn Lane through to New Line (U-BB). On the 1<sup>st</sup> Edition 25 Inch Map the route is shown similarly (A-U via HH-I-J at Lee Clough, U-UU and U-BB).

It has generally been considered that Ordnance Survey maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888, but there is a growing awareness by academics that by the end of the 19<sup>th</sup> Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, the main inference from these is the existence of the enclosed route from Cutler Greens to Height Barn Farm (A-U-W via HH-I-J at Lee Clough) and down Stubblelee Lane (U-UU), the unenclosed route of Height Barn Lane to New Line (X-BB) on the same line as available today and the absence of gates across the whole route although there were 2 pinch points at the yards of Stubblelee Hall (north of the claimed route) and Height Barn Farm (between W-X).

Bacon's map was at a small scale and only reasonably significant ways were shown but it had the pedigree of being based on the Ordnance Survey. This was the earliest map showing the main route being via Height Barn to New Line (U-BB) instead of via Stubblelee Lane (U-UU), which was not shown at all, although it is possible that map clutter influenced this to some extent.

The Estate Plan from 1902 was contemporaneous with Bacon and similarly supports the through route via Height Barn (U-BB) although also shows Stubblelee Lane (U-UU) albeit with no indication of its status. Cutler Lane is labelled as 'old highway' between points O-U.

About a decade later the Finance Act 1910 map is consistent with public carriageway along Cutler Lane (the ends shown excluded (A-I, S-V and AA-BB) and able to be joined via a track not excluded (I-S) and via Stubblelee Lane (U-UU) to New Line but not shown excluded through Height Barn (V-AA). It is not unusual for a highway between settlements to be enclosed at either end but to cross or follow the edge of fields in between but a through route is far more probable than 2 culs de sac. The Planning Inspectorate Consistency Guidelines refer at 2.37 to *Eyre v New Forest Highways Board 1892* where it was held that where a short section of uncertain status exists it can be presumed that its status that of the two highways linked by it.

This apparent preference for the continuation along Stubblelee Lane is reversed in the 1927 sales particulars which show Cutler Lane (A-U) as an old driving road, i.e. at least bridleway, with an implication of it continuing through Height Barn (U-AA) and hence to New Line (AA-BB) but not via Stubblelee Lane (U-UU) which is detailed as an occupation road.

The hand-coloured highway records are of unknown date but should have been derived from the handover maps dating from shortly after the sales particulars and concur that the main route, in terms of their focus on public maintenance, was via Height Barn. The implication of this is that the Cutler Lane (A–U) – Height Barn Lane (U–BB) route was public carriageway but the current electronic highway records, which should not have changed without either a legal change or evidence-based correction, show the ends of Cutler Lane as unclassified 'U' road (A–E and S–U) but not the middle (E–S), in a similar way to the Finance Act map, the ends of Height Barn Lane as unclassified 'U' road (XX–BB) but the middle (U–XX) as an 'F' class, assumed to signify footpath.

With specific reference to the route through Lee Clough it appears that the historical route through Lee Clough followed the line HH-I-J as shown on the maps and aerial photographs examined. No evidence was found to suggest that a route has ever existed along the length H-II-J and it appears that a drafting error occurred during the preparation of the Definitive Map and Statement, perhaps due to the lack of clarity on the base map at that point, which resulted in the route H-II-J being recorded as the line taken by that part of #522.

The route HH-J came into existence as part of the restoration work carried out on the Lee Quarry site by the County Council between 1997 – 2001. Photographs and plans retained by the County Council show the work carried out to construct the route HH-J was done so with the intention of the route being used as a public bridleway. Photographs confirm that the route HH-J existed in 2001 and that the historical route HH-I-J was no longer in existence at that time.

Although much of the route has evidence for public carriageway the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights from most of the route where it is recorded as public footpath (A-H, J-W & YY-BB) or not recorded on either the Definitive Map and Statement or the List of Streets (H-HH-I-J & U-UU). The exception for ways which have mostly been used by the public in mechanically propelled vehicles over the relevant period could not have applied for most of the route as it was not accessible for vehicles and the remainder were short culs de sac for which we are not aware of evidence or allegations of such use. This means that if it is concluded that these are carriageways they should be recorded as restricted byways. The exception is the section through Height Barn Farm (W-X-Y-YY) which is not recorded on the Definitive Map and Statement but is (and was at the relevant time) recorded on the List of Streets. Hence any mechanically propelled vehicular rights over this short section would not have been extinguished and carriageway rights should be recorded as a byway open to all traffic, albeit a 'Pegasus byway, i.e. isolated by routes without public rights for mechanically propelled vehicles.

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

There is no applicant with regards to this investigation although user evidence has been submitted by Mrs Christine Peat on behalf of the Forest of Rossendale Bridleways Association Bridleways Group.

Mrs Peat has submitted 41 user evidence forms in support of part of the route A-U-UU to be a Bridleway.

The users acknowledge the route in years:

0-10(5)      11-20(8)      21-30(14)      31-40(9)      41-50(3)      50+(2)

39 users have used the way on horseback or leading a horse, 2 users have used the way on a bicycle.

The users have used the route between the years of:

1959-2010 & 1988-2010	1962-1966 & 1989-2011	1969-1974	1970-1980 & 1990-1997	1970-2011
1975-2010	1975-2011	1976-2011	1977-2011	1978-2000
1978-1983 & 2001-2011	1978-1996 & 2006-2011	1981-2011	1983-2011	1985-2006
1986-2003	1986-2008	1986-2011 (5 users)	1987-2011	1990-2005
1990-2002	1990-2011 (3 users)	1991-2011	1996-2011	1994-2000
1994-2011	1999-2011 (4 users)	2001-2011 (2 users)	2001-2005 & 2010-2011	2004-2011
2005-2011				

The users were going to and from:

A circular route, home to park and back, Stubblelee to Stacksteads, Bacup to Stacksteads, Cutler Lane to New Line, Stacksteads to Britannia, Stacksteads to Shawforth, Stacksteads to New Line, Waterfront to top of New Line, Rochdale to Stacksteads, Stables at Fairwall, New line to Coupe, to Stubblelee Park, from Cowpe to Lee Quarry.

The main purposes for using the route are as follows:

Pleasure, riding, meeting friends, recreational riding, leisure, cycling, endurance training, mountain biking, hacking and for access.

The use of the route on horseback / leading a horse or on a bicycle per year varies: 2-6 times, 12-20 times, 21-40, 50-60, weekly, 100, twice per week, 150, 300.

28 users have also used the route on foot, none of the users have ever used the way on a motorcycle / vehicle, 3 users have used the way on a bicycle.

34 users agree the route has always run over the same line, 1 user states there has been no change to the route but the surface has changed due to the work on Lee Quarry, 1 user claims they have used 2 routes 'exits by municipal offices and other exits on Height Barn Lane', another user claims the route is only this way since the redevelopment of Lee Quarry, and 2 users accept there is a slight change where the track crosses the access road to Lee Quarry when renovation work was carried out some years ago.

38 users claim there are stiles / gates along route, users mention they are at Lee Farm, Moss Meadow Cottage, Stubblelee Back Lane, Fairwall Farm, Quarry entrance and exit, Moss Meadow Farm, entrance to Farm Yard, some of the users mention just gates, others mention both gates and stile, some users mention 6-7 gates / stiles and others mention 3-4. 3 users claim there are no stiles / gates / fences along the route.

39 users agree that the gates are not locked and do not prevent access, 2 users didn't answer these questions.

None of the users have ever worked for a landowner over which the route runs, 1 user has been a resident at Fairwall Farm from 1996-2005 but did not receive any instructions from the landowner as to the use of the way by the public.

All 41 users have never been stopped or turned back when using the route, 3 users have heard of someone else being stopped or having to turn back when using the route when work was being carried out on the Quarry.

None of the 41 users have ever been told that the route they were using was not a public right of way. None of the users have ever seen any signs / notices across the route such as 'private' or 'no access', and none of the users have ever asked permission to use the way.

Consultations have been undertaken with the landowners and the following responses have been received:

#### A letter from Moss Meadow Cottage

The landowners state there are many services such as the electricity board, postal services and delivery vans who are frequent users in addition to visitors to these properties, as well as the many walkers and horse riders. They also mention that public footpath 506 is far from being a reasonable walking route or even being car friendly, as it is full of holes and after any substantial rain, a portion of it soon resembles a lake of some 18 inches depth at the centre.

#### A letter from Mrs A Swift

Mrs Swift has written in to confirm she has used the route from Cutler Lane through to Height Barn Lane from 1974-2010 both on foot and on horseback and has never been challenged or stopped whilst using the route.

### **Assessment of the Evidence**

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

#### In support of the Claim

Significant early map evidence  
User evidence forms

## Against accepting the Claim

### Conclusion

The majority of the route under consideration is currently recorded as a public footpath. The Environment Director has investigated this route considering whether sections of footpath (detailed below) ought to be highways of a different status, carrying higher public rights namely the status of a restricted byway.

In addition to the above, investigation included the addition of a bridleway between sections HH-J, the addition of a restricted byway between points H-HH-I-J, the addition of a restricted byway between sections UU-U and the addition of a byway open to all traffic between points W-X-Y-YY. It is further suggested that section H-II-J is deleted from the Definitive Map and Statement.

There is no express dedication however; 41 user evidence forms have been provided for the claimed section shown on the plan as A-U-UU claiming the route has been used as a bridleway, therefore S.31 Highways Act 1981 will be considered for this section as well as common law inference of dedication.

There is no express dedication or user evidence in relation to the remainder of the route to be recorded as a restricted byway, byway open to all traffic and so the inference, on balance, of its dedication at Common Law is said to stem from how it was recorded on the early maps.

It is suggested that the Committee firstly consider the west to east route A-I - BB and consider the evidence to decide on balance the public rights dedicated thereon and then apply recent changes in the law under the Natural Environment and Rural Communities act 2006

It is advised the Committee has to consider whether evidence from the old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.. The analysis of the map and documentary evidence by the Executive Director for Environment suggests there is sufficient evidence on balance to indicate that this route was on balance dedicated as a public carriageway and is recorded by the early mapmakers as such. It is therefore suggested that there are circumstances from which to infer an early dedication of Cutler Lane and Height Barn Lane for use by the public. Being a through route, the evidence points in the direction of this route being a carriageway.

The east-west route should have historically been recorded as a byway open to all traffic however; it is no longer possible to record the majority of this old route as a byway open to all traffic due to the introduction of section 67 Natural Environment Rural Communities Act 2006 (NERC Act). The implication of this section has meant that as this route was originally recorded on the definitive map and statement as a public footpath, any existing public rights of way for mechanically propelled vehicles have been extinguished. This therefore means that the highest status that can be achieved by this section of route except for the short section W-YY is that of a restricted byway.

It is noted that there has been modern use on horseback of the section A-U but should committee be satisfied with the documentary evidence the more modern use would not bring about a dedication , instead it would be modern use of an old route dedicated many decades earlier. If Committee does not consider there to be sufficient documentary evidence from which to infer early dedication, Committee will need to consider the user evidence and it is suggested that this may be sufficient from which to infer dedication of a bridleway in recent times to point U. The second section of this route to point UU is dealt with below.

The Committee will note that the physical evidence of a significant route still exists on site on the same line. The earlier maps show the existence of the enclosed route from Cutler Greens to Height Barn Lane to New Line, on the same line available today.

Taking all the information into account and in particular noting how it was recorded on the old County maps, the Committee may consider that on balance there is sufficient evidence from which to infer that this section has restricted byway status and the claim should be accepted.

In respect of W-X-XX-Y-YY the evidence namely the earlier maps suggests the route was used as a carriageway and as this section of the route was recorded at the relevant time on the List of Streets but not on the Definitive Map and Statement and there is evidence to suggest this route was a public carriageway, in accordance with the Natural Environment Rural Communities Act 2006, the route can be recorded as a byway open to all traffic, unlike the remainder of the route. The route does not connect to any other byway open to all traffic and should the remainder of the claim for the upgrading to a restricted byway be accepted it is unlikely this route will be used by any mechanically propelled vehicles however; the recording of this route as a BOAT is in accordance with the evidence and therefore, it is suggested to Committee that this section of the east west route as a BOAT is accepted.

Turning to the claim for the deletion of section H-II-J, there appears to be no map or documentary evidence to suggest that a route has ever existed along this length; it appears from the map evidence that there is sufficiently cogent evidence to suggest that this length was added to the Definitive Map and Statement in error. The alternative route that has instead been depicted on the earlier maps and documents is the length H-HH-I-J which is the route referred to above. It appears from the Tithe Map that this line was regarded as a public highway by Spotland Parish in 1840s-1850's and used as part of the wider route A-U. The earlier OS maps also corroborate the above route and show this in the same manner as the general road network. On the basis of the evidence, Committee is advised that there is sufficient cogent evidence of an error being made recording the public rights along line H-II-J instead of the correct line of H- HH-I-J.

Considering the evidence for a bridleway along the route HH-J, it is understood this section of the route came into existence between 1997-2001 as part of the restoration work carried out on the Lee Quarry site by Lancashire County Council. The route was constructed by Lancashire County Council with the intention that this was used as a public bridleway. Map evidence illustrates that in 2001 the route HH-I-



J was no longer in existence and instead HH-J came into existence. The 41 user evidence forms suggest use by 39 users on horseback for varying frequencies without interruption and use by the public as of right. An inference of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. The evidence for this section points clearly and unequivocally to an intention on the part of the landowner to dedicate this line as a bridleway only. The route has not been in existence for 20 years and therefore deemed dedication under S.31 Highways Act is not able to be satisfied.

Turning to the spur section U-UU, this route appears on the earlier maps also and; It is suggested that the route may have come into greater use by the travelling public, to avoid the payment of the toll on the main road, along Rosendale Valley. The earlier maps are consistent with this route being public carriageway. The Finance Act 1910 map also depicts this route and therefore it is reasonable to assert a public right of way in vehicles subsists over this section of the claimed route. Again this section is affected by the provisions of the Natural Environment and Rural Communities Act such that recording it as a BOAT cannot be correct and instead restricted byway would be the appropriate status. Committee is therefore advised to agree that this section be recorded as restricted byway. If Committee does not consider there to be sufficient documentary evidence from which to infer early dedication, Committee will need to consider the user evidence and it is suggested that this may be sufficient from which to infer dedication of a bridleway in recent times U to point UU.

Taking all the evidence into account Committee may consider that the investigations of the Executive Director for Environment has shown that this old route should be recorded as carrying higher rights than footpath together with a section of more recent bridleway and evidence of a line recorded in error and that Orders be made to reflect these discoveries.

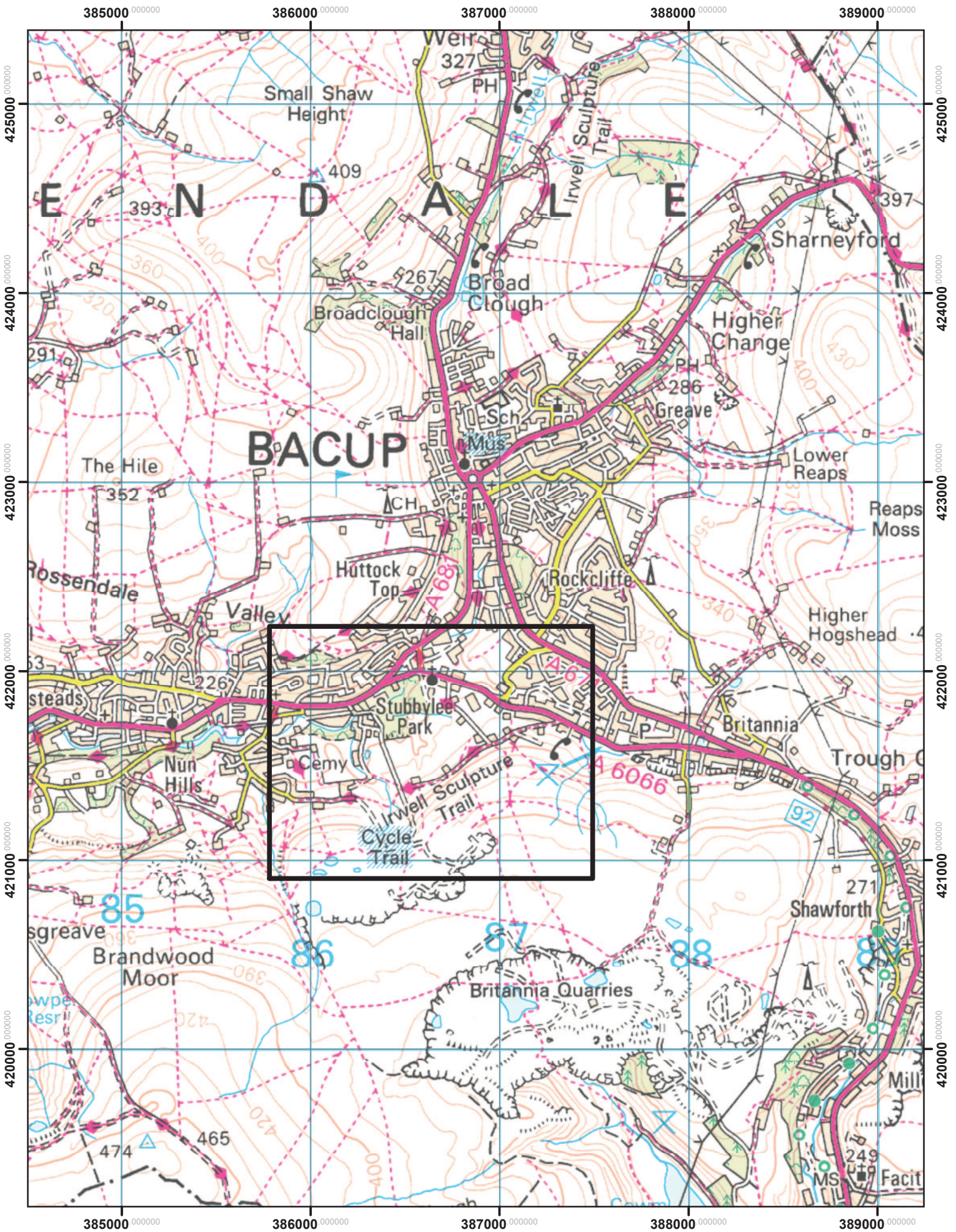
### **Risk Management**

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

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

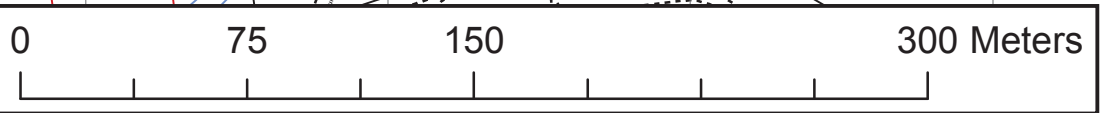
**Local Government (Access to Information) Act 1985**  
**List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/532	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 535604
Reason for inclusion in Part II, if appropriate		
N/A		

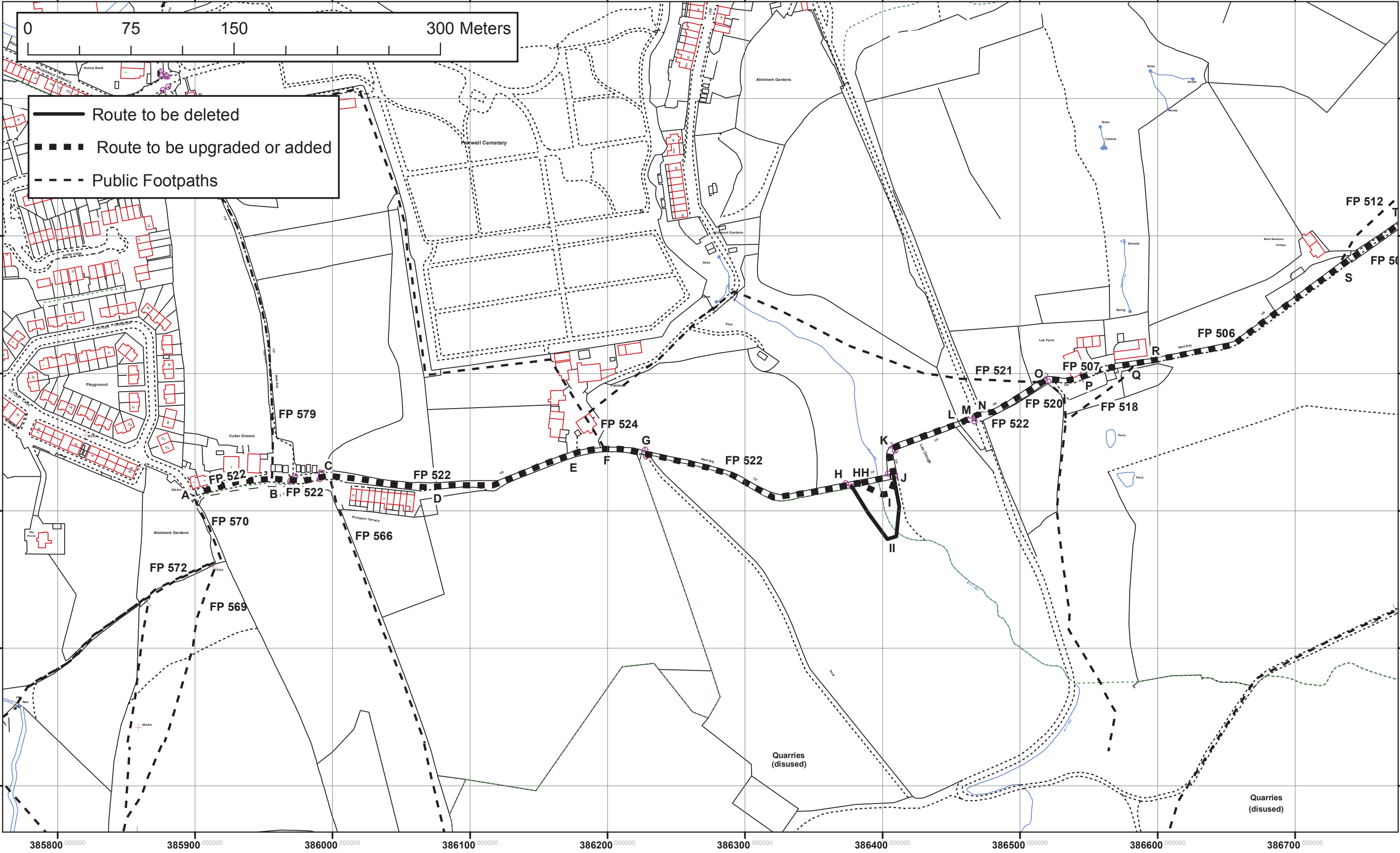




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- Route to be deleted
- Route to be upgraded or added
- Public Footpaths



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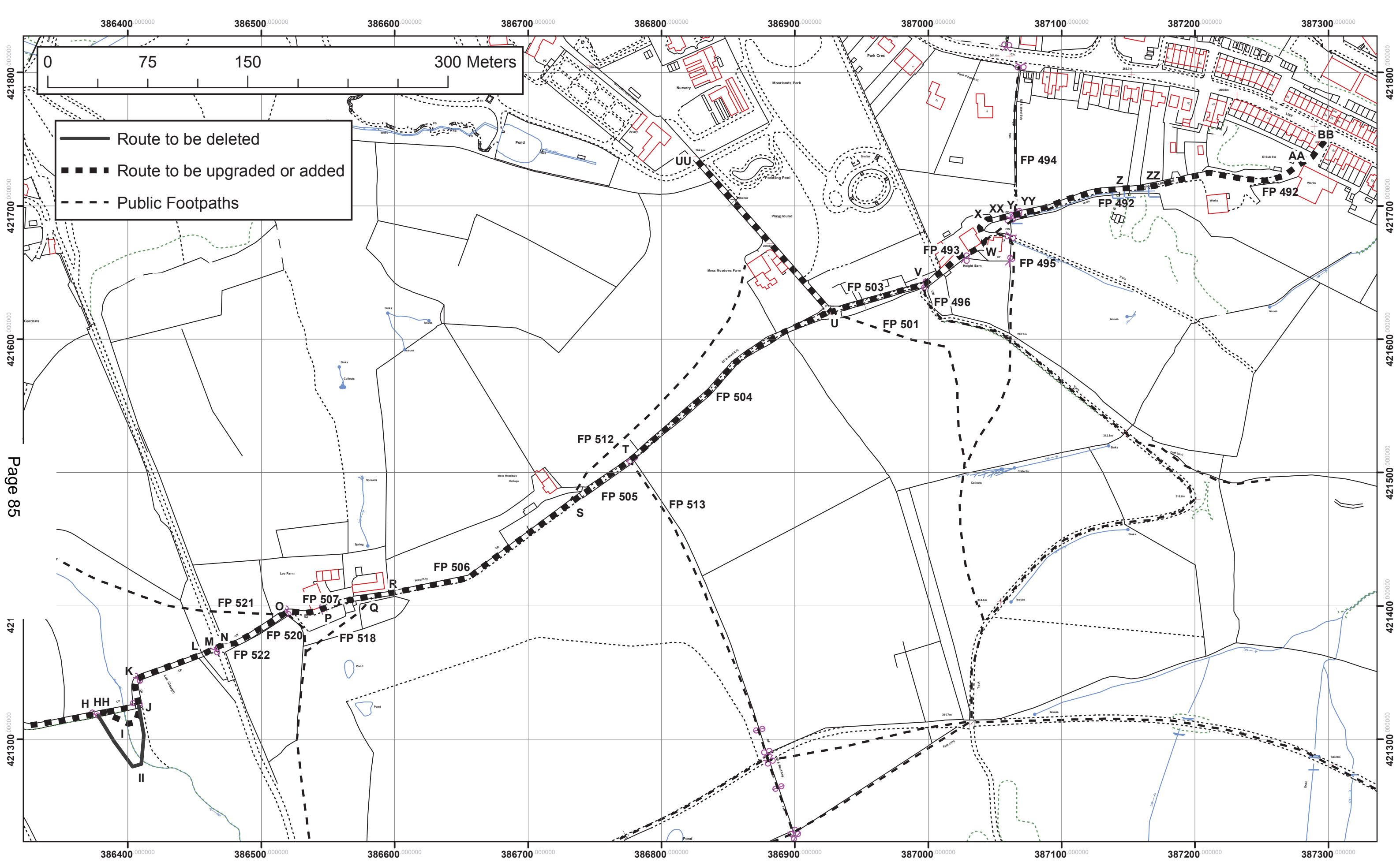
Lancashire County Council  
Jo Turton  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981  
Investigation into the status of Cutler Lane, Height Barn Lane and Stubblelee Lane, Bacup, Rossendale  
File 804/532  
Plan 1/2

1:2500  
North arrow pointing up

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**Lancashire**  
County Council

Jo Turton  
Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
Investigation into the status of Cutler Lane, Height Barn Lane and Stubblelee Lane, Bacup, Rossendale  
File 804-532  
Plan 2/2

1:2500

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## Regulatory Committee

Meeting to be held on 14 May 2014

Electoral Division affected: Garstang
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**Highways Act 1980 – Section 119A Rail Crossing Diversion Order**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Parts of Public Footpath Nos. 7 Claughton and 3**  
**Bilsborrow, Wyre Borough**  
(Annex 'B' refers)

Contact for further information: Stephen Williams, 01772 533886, Environment Directorate [stephen.williams@lancashire.gov.uk](mailto:stephen.williams@lancashire.gov.uk)

### Executive Summary

The proposed diversion of parts of Public Footpath Nos. 7 Claughton and 3 Bilsborrow, Wyre Borough.

### Recommendation

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath Nos. 7 Claughton and 3 Bilsborrow from the route shown by a bold solid line and marked A – B – C and B – H – D on the attached plan to the route shown by a bold broken line and marked A – E – F – G – H – C and H – D on the second plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

### Background

The Brock level crossing is located approximately 75 metres north of the River Brock on the line between Lancaster and Preston. The crossing connects public footpaths and small nature reserve to the A6. The crossing is well used by the local residents and visitors. High speed trains frequently pass along this section of the track and warning signs at either side of the crossing advise that trains pass in excess of 100 miles per hour.

A request has been received from Network Rail, Manchester Square One, 4 Travis Street, M1 2NY for an Order to be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath Nos. 7 Claughton and 3 Bilsborrow from the current alignment of the level crossing onto the alignment of a footbridge.

The length of the existing paths proposed to be diverted are shown by a bold solid lines and marked A – B – C and B – H – D on the first of the attached plans with the proposed alternative routes shown by bold broken lines and marked A – E – F – G – H – C and H – D on the second plan.

## **Consultations**

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

Wyre Borough Council, Myerscough and Bilsborrow Parish Council, Claughton-on-Brock Parish Council and the County Councillor for the area have also been consulted and at the time of writing their response is awaited.

## **Advice**

### **Description of paths to be diverted and the alternative lengths**

#### **Public Footpath No. 7 Claughton**

The length of Public Footpath No. 7 Claughton proposed to be diverted commences at point A (Grid reference SD 5124 4063), approximately 65 metres to the north east of its junction with the A6. It runs approximately 15 metres in an easterly direction to point B (Grid reference SD 5125 4063) and then approximately 5 metres in an easterly direction to point C (Grid reference SD 5126 4063) shown by a bold solid line on the plan attached and marked A-B-C, a total distance of approximately 20 metres.

#### **Alternative length**

The proposed alternative route commences at point A (Grid reference SD 5124 4063) and runs approximately 3 metres in a generally southerly direction to the Claughton/Bilsborrow parish boundary at point E (Grid reference SD 5124 4063). Continuing from point E, the proposed alternative route ascends approximately 36 steps (broken by two landing areas) in a southerly direction to reach point F (Grid reference SD 5124 4060) to turn east, ascend a 5 further steps and continue for a distance of approximately 10 metres before descending 5 steps to reach point G (Grid reference SD 5126 4060). Beyond point G the proposed alternative route continues in a northerly direction down approximately 36 steps (broken by two landing areas) to the Claughton/Bilsborrow boundary at point H (Grid reference SD 5125 4063). From point H the proposed alternative route turns east for a distance of approximately 8 metres to reach point C (Grid reference SD 5126 4063) on Public Footpath No. 7 Claughton shown by a bold broken line on the plan attached and

marked A-E-F-G-H-C. The total distance of the alternative route is approximately 73 metres.

### **Public Footpath No. 3 Bilsborrow**

The length of Public Footpath No. 3 Bilsborrow proposed to be diverted commences at point B (Grid reference SD 5125 4063), at its junction with Public Footpath No. 7 Claughton. It runs a total distance of approximately 66 metres in a southerly direction to point D (Grid reference SD 5126 4056) shown by a bold solid line on the plan attached and marked B-H-D.

### **Alternative Route**

The proposed alternative route commences at point H (Grid reference SD 5125 4063) at the Claughton/Bilsborrow parish boundary and runs generally south, to the east of the railway footbridge, for a total distance of approximately 68 metres to point D (Grid reference SD 5126 4056) shown by a bold broken line on the plan attached and marked H-D.

It is proposed that the width of the new routes will be 2 metres and the footbridge will stand a maximum of approximately 8 metres from the ground.

### **Criteria satisfied to make and confirm the Order**

The proposal is considered acceptable from a highway aspect and meets the criteria for a diversion under Section 119A of the Highways Act 1980, i.e.

- (i) that it appears expedient in the interests of the safety of members of the public using or likely to use it to divert a footpath which crosses a railway, other than by tunnel or bridge;
- (ii) that it is expedient to confirm the Order having regard to all the circumstances and in particular whether it is reasonably practicable to make the existing at-grade crossing safe and whether that crossing will be made secure if the Order comes into effect.

The proposal, if successful will provide a safe means of crossing the operational railway and once the current crossing is closed and removed, will enable Network Rail to secure the railway at this location. This will resolve the current concerns relating to accidental collisions and accessibility to the railway line for misuse.

It is suggested that it is not reasonably practicable to make the crossing safe and that there is a justifiable case for diverting the footpath over a footbridge providing the crossing is closed and removed.

In the event that the order is successful, Network Rail will ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted.

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 routes, or they have given their consent.

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

It is proposed that the right of way to be created by the proposed Order will not be subject to any limitations or conditions.

The applicants, Network Rail, own all the land affected by the proposal and have agreed to defray any applications for compensation. They have also agreed to bear all advertising and administrative charges incurred by the County Council in the order-making procedures, and also to provide and maintain the alternative route to the satisfaction of the County Council.

The Committee is advised that so much of the Order as extinguishes part of Public Footpath Nos. 7 Claughton and 3 Bilsborrow is not to come into force until the County Council has certified the satisfactory physical implementation of the footbridge.

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 criteria for confirming the proposal can be satisfied.

Furthermore, it is felt that, if the Order were to be confirmed, the new way will be reasonably convenient to the public. It is acknowledged that the new route is longer than the existing route and requires 41 steps each side of the bridge to be negotiated, however given the substantial improvement in the safety of the crossing it is suggested that this is reasonable.

It is felt that there will be no adverse effect on the rights of way network as a whole or on the land served by the existing routes or on land over which the new path or way is to be created.

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. Although it is the intention that only steps will be provided over the footbridge which may therefore be inaccessible or difficult for some users it is considered that the increased protection to those and other users from the danger of crossing at grade a high speed railway track makes this a reasonable solution; a solution which did not require steps was not practical at this location.

It is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In particular

policy RMVI2-2 whereby the Local Authority will aspire to meeting the British Standard for gaps, gates and stiles. In this instance BS5709:2006 has been applied and accordingly, as it is proposed that there will not be any gates or barriers on the stepped access the proposed alternative route is fully compliant with the British Standard.

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

### **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 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.

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

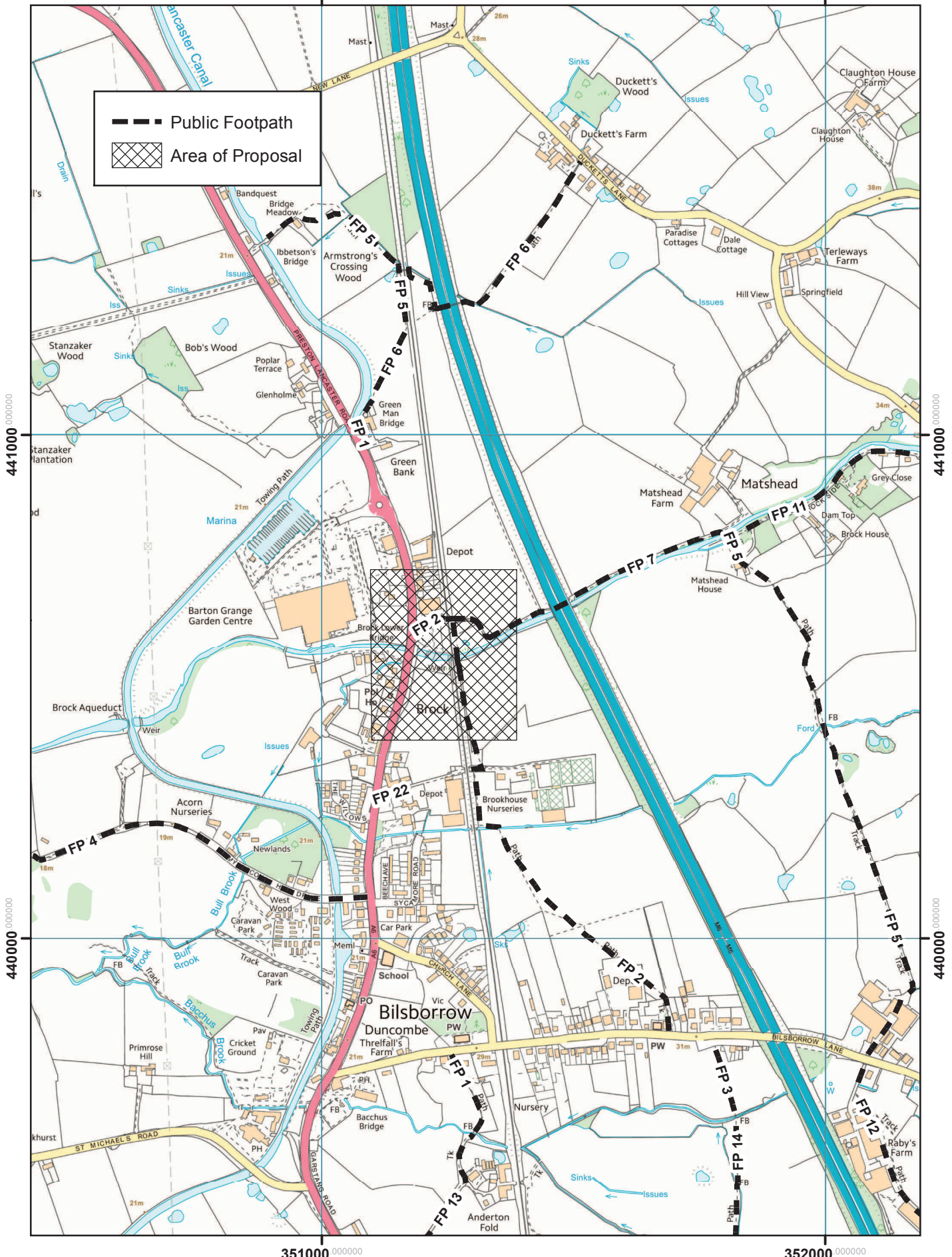
### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Ext
File Ref: 211/638	Various	Megan Brindle County Secretary and Solicitors Group
File Ref: 211 File Ref: PRW 02/10/07 and 02/06/03	Various	Mr S Williams, Environment Directorate, 01772 533886

Reason for inclusion in Part II, if appropriate

N/A





Jo Turton.  
Executive Director  
for Environment.

Location Plan - Highways Act 1980 - Section 119A  
Proposed Diversion of part of Public Footpath No. 7 Claughton and Public Footpath No. 3 Bilborrow, Wyre

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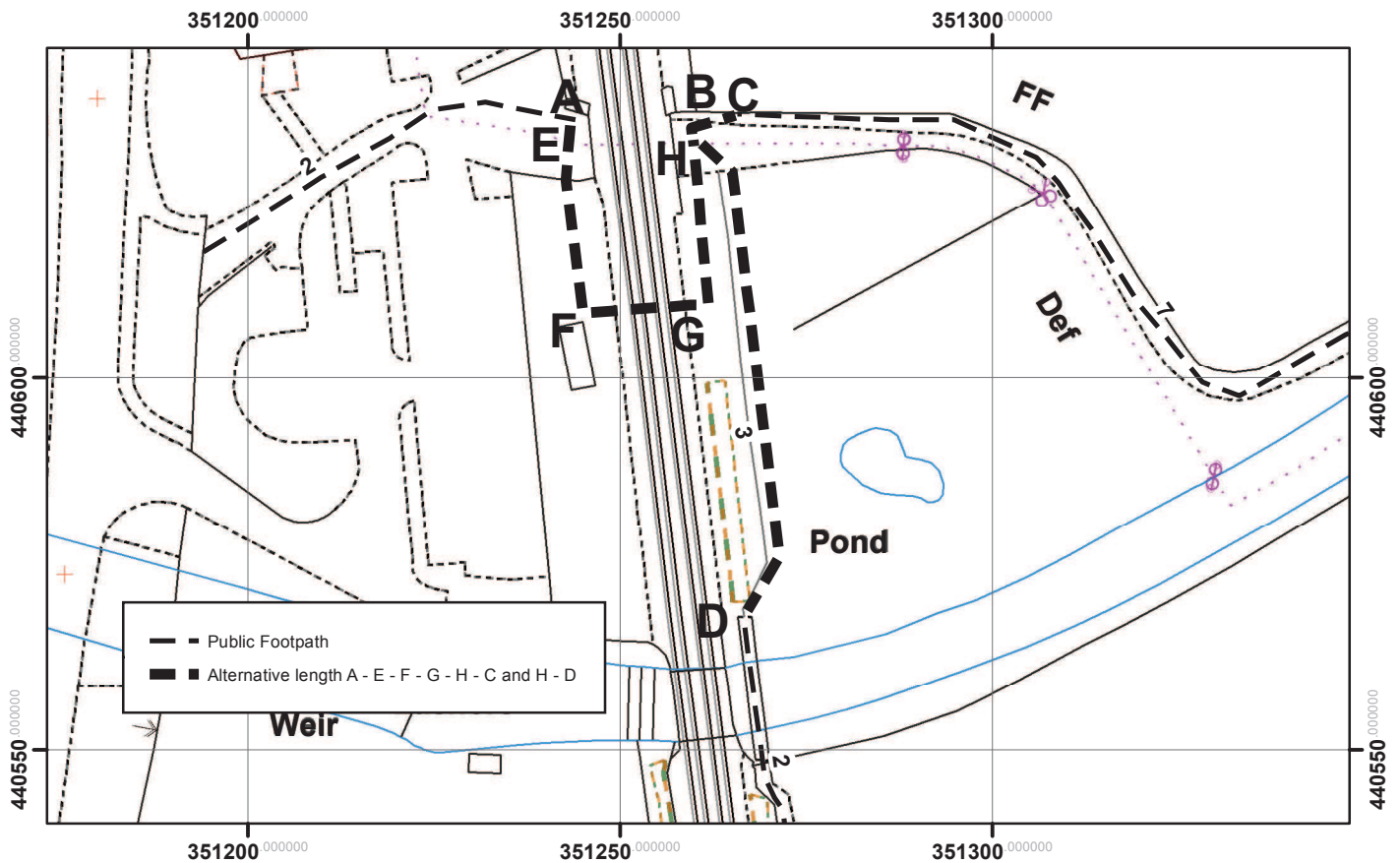
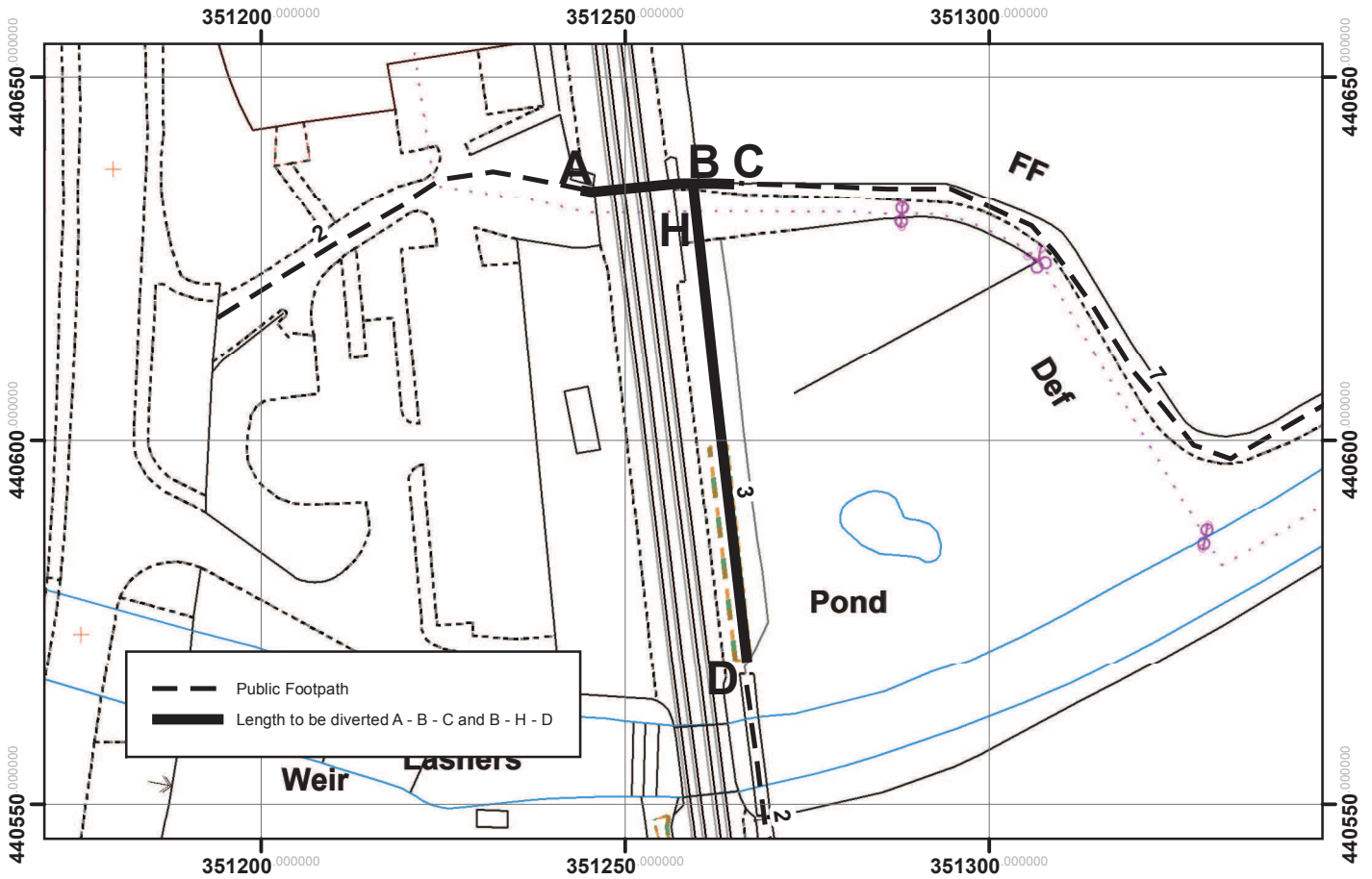


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**Highways Act 1980 - Section 119A**  
**Proposed diversion of parts of Public Footpath No. 7 Claughton and Public Footpath no. 3 Bilsborrow, Wyre**





## Regulatory Committee

Meeting to be held on 14 May 2014

Electoral Division affected: Rossendale East
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### Highways Act 1980 – Section 26

### Wildlife and Countryside Act 1981 - Section 53A

### Proposed Creation of a Public Bridleway from Rakehead Lane to Blackwood Road, Stacksteads, Bacup, Rossendale Borough.

(Annex 'B' refers)

Contact for further information: Ros Paulson, 01772 532459, Environment Directorate. [ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

#### Executive Summary

The proposed creation of a Public Bridleway over land at Stacksteads, Bacup, Rossendale Borough.

#### Recommendation

1. That subject to the written confirmation from Rossendale Borough Council of their agreement as landowners, an Order be made under Section 26 of the Highways Act 1980 to create a Public Bridleway from Rakehead Lane to Blackwood Road, Stacksteads, Bacup shown by a bold broken and dashed line and marked A-B-C-D-E-F on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
3. 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 Order to create a Public Bridleway over land at Stacksteads, Bacup, Rossendale Borough.

#### Background.

The proposed Creation Order is part of the 'Routes around Rossendale' project that is coordinated by Proffitts - Investing in Communities, 53 Deardengate, Haslingden, Rossendale and is funded by Natural England's Paths For Communities Programme and the Lancashire Environmental Fund. It aims to encourage people to explore the countryside on their doorstep in Rossendale by foot, bicycle and on horseback by providing a multi user path along a section of disused railway in Stacksteads and signposting 8 circular paths on existing rights of way around Rossendale. The

proposed Public Bridleway will also form a link in the 'Rossendale and Rochdale Greenway and Cycling Route' proposal that aims to create a 20km off road link between Rawtenstall and Rochdale for use as a commuter and recreational multi user route.

The works to construct the multi user route are now substantially complete but a requirement of the grant funding was that the route be dedicated as a public right of way.

Wherever possible, when dedicating routes as public rights of way, agreements are entered into with the owners of the land crossed by the route. In this instance the majority of the route is owned by Rossendale Borough Council and Lancashire County Council. However, it has not been possible to identify the owner/s of the land, crossed by part of the proposed route between points X and F, a length of approximately 100 metres to the west of Blackwood Road. The land is not registered with the Land Registry and during the construction of the route no one has come forward to register an interest in the land to date.

### Consultations

The necessary consultations have been carried out and no adverse comments on the proposal have been received to date. Rossendale Borough Council supports the scheme to construct the multi user route and has provided written agreement to this effect however; at the time of writing their agreement is awaited with regards to the creation of the route as a Public Bridleway. Similarly, Lancashire County Council has been consulted and has no objections to the proposal.

The British Horse Society, the Ramblers' Association, Access Rossendale and the Peak and Northern Footpaths Society have raised no objection to the proposal.

County Councillor Jackie Oakes, who represents the area has also been consulted and is in support of the proposal.

### Advice

#### Points annotated on plan

Point	Grid reference	Description
A	SD 8458 2155	Junction of newly constructed route and Rakehead Lane
B	SD 8458 2155	Change of surface 1.5 metres east of Rakehead Lane
C	SD 8460 2154	Apex of bend on new path, approximately 20 metres east of Rakehead Lane
E	SD 8512 2157	Apex of bulge in track
F	SD 8513 2158	Junction of new path and Blackwood Road

## **Description of route to be created**

A Public Bridleway shown by a bold broken and dashed line and marked A-B-C-D-E-F on the attached plan, a total distance of 565 metres. From Rakehead Lane (A) the route runs south-east for 20m, the first 1.5m being on a tarmac surface to B then on a stone surface to C, then generally east for 545m on a stone surface to Blackwood Road (F). The width is 3m except for 5m either side of E where the south side of the way tapers to/from a maximum width of 4.5m at E.(All lengths, in metres, and compass points given are approximate).

The proposed Public Bridleway will not be subject to any limitations or conditions. However, consideration will be given to using Section 66 of the Highways Act 1980 to enable the erection of structures at B, D and E to prevent or deter unlawful use of motor vehicles, for the protection of users of the Bridleway.

## **Modification of the Definitive Statement**

If the Regulatory Committee decides to make an Order, the Environment Director suggests that Order should also specify that the Definitive Statement for Bacup be amended to add a public right of way:-

Position column:

"From Rakehead Lane (SD 8458 2155) south-east for 20m, the first 1.5m being on a tarmac surface then on a stone surface to SD 8460 2154, then generally east for 545m on a stone surface to Blackwood Road (SD 8513 2158). (Lengths, in metres, and compass points given are approximate)"

Kind of path column: "Bridleway";

Length column: "0.56 km"

Other particulars column: "There are no limitations or conditions on the Public Bridleway."

Width column: "3m except for 5m either side of SD 8512 2157 where the south side of the way tapers to/from a maximum width of 4.5m at SD 8512 2157"

## **Criteria satisfied to make and confirm the Order**

It is advised that the proposal meets the criteria for the creation of a Public Bridleway under section 26 Highways Act 1980, i.e. that it appears to Lancashire County Council that there is a need for a Public Bridleway 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 the provisions as to compensation contained in section 28.

It is considered that it is expedient that the path or way should be created because this will provide a safe and convenient route for the local community and visitors to Rossendale to use on foot, bicycle and on horseback and is necessary to secure the funding to implement it.

The Creation Order is part of a scheme to create a multi user route along a section of disused railway line in Stacksteads. This section of path is part of a much larger project being worked on by Rossendale Cycleway Forum to create an off road cycleway between Rawtenstall and Rochdale, utilising where possible the disused railway line.

The route consists of a 3 metre wide tree lined path that is close to a residential area. It is suggested that the provision of the new route will help to improve health of local people and encourage them to explore the countryside on their doorstep. It will also encourage tourism and provide links to existing facilities such as the Mary Towneley Bridleway Loop and the Adrenalin Gateway mountain bike facility. As such the route to be created would add to the enjoyment of a substantial section of the public and add to the convenience of persons resident in the area

With regards to the effect which the creation of the path or way on the rights of persons interested in the land and the associated provisions relating to compensation, it is advised that a majority of the land is owned by either Rossendale Borough Council or Lancashire County Council. At the time of writing Rossendale Borough Council have yet to confirm their agreement to the Public Bridleway Creation Order but are fully supportive of the scheme to construct the route and have provided a signed consent for the works to take place. As the project is consistent with the aims and objectives of the Borough Council it is expected that their agreement will be forthcoming, along with confirmation that no claim for compensation will be submitted. To be certain however, it is proposed that the Creation Order will not be made until such time as Rossendale Borough Council have confirmed this in writing.

The Corporate Property Group of Lancashire County Council has been consulted on the proposal and has raised no objection to the Creation of the Public Bridleway. Lancashire County Council have been fully supportive of the scheme to date, including part funding the works in a grant from the Lancashire Environmental Fund and it is not expected that any issues will arise from the County Council as landowner of part of the route.

With regards to the unregistered land, the works to construct the route have had a high profile in the area with several articles in the local newspapers making reference to the disused railway and Blackwood Road. The construction of the route, in particular the works on the section that is unregistered has been visible from the public highway for some months with explanation signs containing contact details of the coordinator of the scheme. It is suggested that in the event that someone believed they were the owner of the unregistered land and were aggrieved by the

scheme to the extent that they would submit a claim for compensation then they would have already made themselves known to the County Council.

Overall therefore, no claim for compensation is anticipated.

It is not considered that the creation of a Public Bridleway over this route will have any adverse effect upon the needs of agriculture, forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

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 and surveying authority, under The Equality Act 2010. In particular, the creation of the Public Bridleway will create a route that is suitable for use by persons with mobility scooters. The absence of stiles or gates will enable the route to be accessed by all legitimate users, whilst Section 66 of the Highways Act 1980 can be used if necessary for excluding unauthorised vehicles which may otherwise pose a danger to legitimate bridleway users.

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

The theme CCL relates to improvement and provision of routes to link communities with the countryside and the proposed diversion is considered to be wholly consistent with this theme because the proposed route will provide a surfaced, safe and convenient route for the local community to access the wider countryside, on foot, bicycle and on horseback.

With respect to the theme RMVI, the proposed diversion is consistent with the Policy RMV12-2 whereby the Local Authority 'Aspire to meeting the British Standard for gaps, gates and stiles BS 5709:2006, 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 accordingly the route is fully compliant with the British Standard.

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

### **Financial Implications**

The full costs of the construction of the route are grant aided by Natural England and the Lancashire Environmental Fund. Therefore there are no additional financial implications for the County Council in the works to construct the Public Bridleway.

If the Creation Order is made and confirmed the route will become maintainable at the public expense. The route has however, been constructed to a high standard including improvements to the drainage in the area. It is envisaged that the route will

require minimal maintenance for several years to come and working parties from the local community such as the Stacksteads Countryside Park Group will carry out minor works such as keeping the ditches clear of leaves and other debris. It is suggested that although there are financial implications for the County Council and the likelihood is that future maintenance will need to be funded from the Public Rights of Way maintenance budget it is expected that this route will provide an important addition to the network of public rights of way and by dedicating the route as a Public Bridleway the future maintenance will be assured, thereby avoiding the risk of the route falling into disrepair.

### **Risk management**

If the Order is not made then the completion of the grant for this section of the 'Routes around Rossendale' project might be compromised and lead to problems in funding future projects with the potential to provide an improvement to public access in the area.

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

To not agree that the Order be made.

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

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

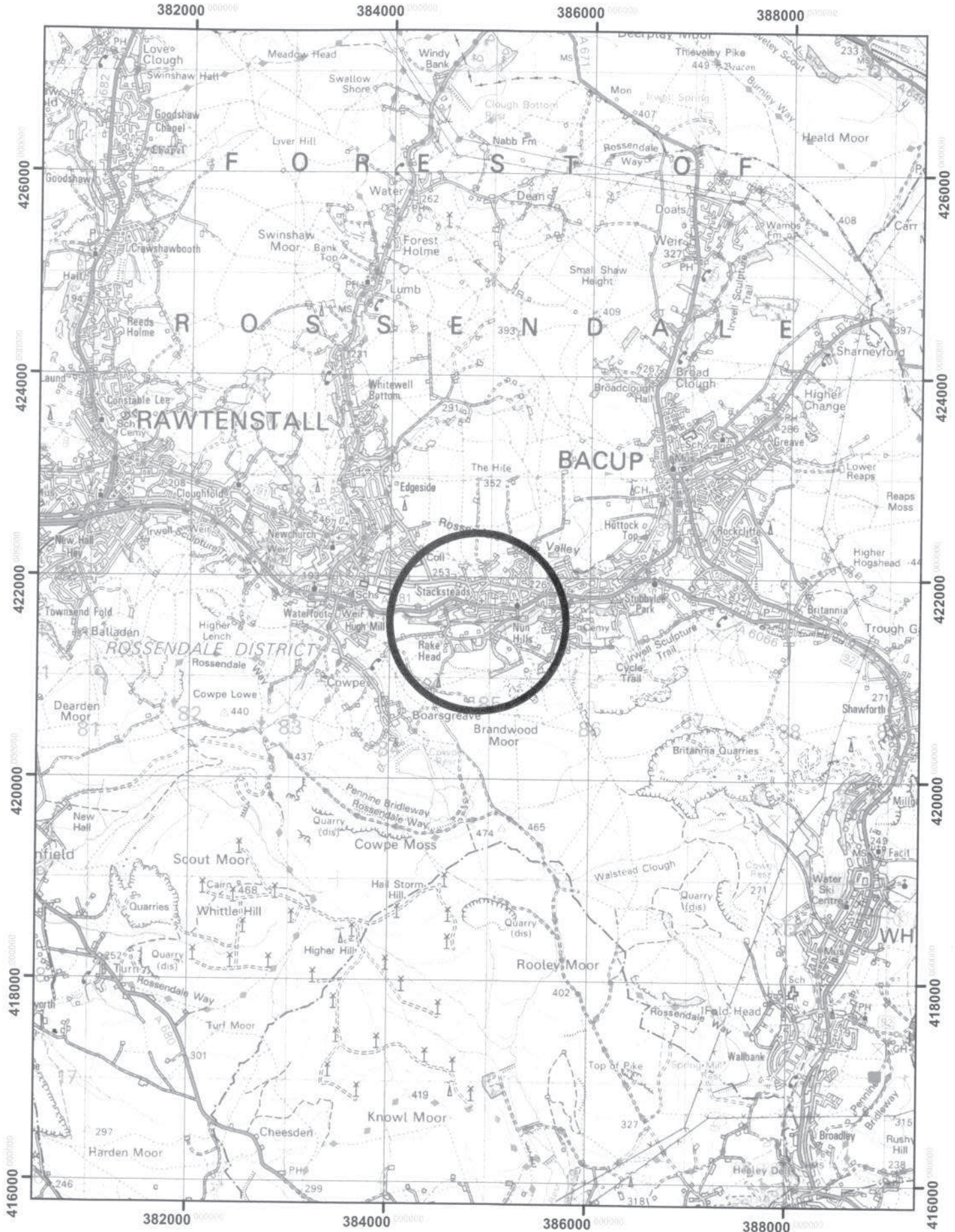
### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
PRW-14-01-000		Ros Paulson, 01772 532459 Environment Directorate,

Reason for inclusion in Part II, if appropriate

N/A





Lancashire  
County  
Council

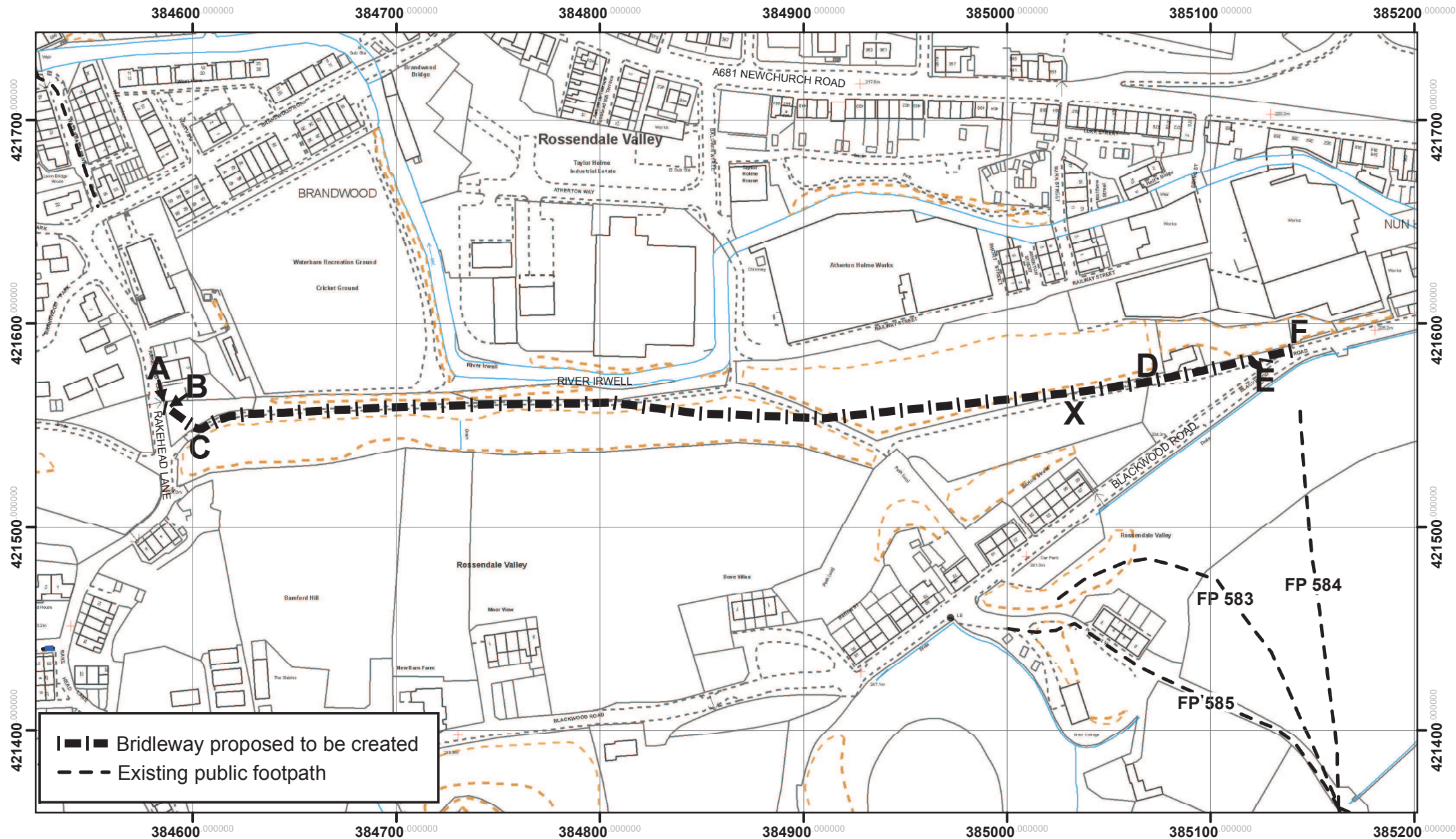
Jo Turton  
Director of  
the Environment

**Location Plan.**  
**Proposed creation of a length of bridleway from**  
**Rakehead Lane to Blackwood Road, Rossendale Borough.**



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Lancashire County Council	Jo Turton Director of the Environment	<b>Highways Act 1980 Section 26</b> <b>Proposed Creation of a Public Bridleway from Rakehead Lane to Blackwood Road, Stacksteads, Bacup, Rossendale Borough.</b>		Plan No. 1329D
<p style="text-align: center;">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. This Map is reproduced from the 1:2500 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p>				



## Regulatory Committee

Meeting to be held on 14 May 2014

Electoral Division affected: All
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### **Consideration of fees to be set in respect of applications under S31(6) Highways Act and S15A Commons Act 2006**

Contact for further information:

David Goode, 01772 533723, Environment Directorate,

david.goode@lancashire.gov.uk

#### **Executive Summary**

Consideration of fees to be set in respect of applications under S31(6) Highways Act and S15A Commons Act 2006

#### **Recommendation**

That a fee of £300 be set in respect of a highways statement or highways declaration deposited under S31(6) Highways Act 1980 for a single parcel of land – additional parcels within the same application charged at £34.78 per hour.

That a fee of £300 be set in respect of a statement deposited by a landowner under S15A Commons Act 2006, as amended, for a single parcel of land – additional parcels within the same application charged at £34.78 per hour.

That a fee of £370 be set in respect of a landowner depositing at the same time both a highways statement or highways declaration under S31(6) Highways Act 1980 and a landowner statement under S15A Commons Act 2006, as amended, for a single parcel of land – additional parcels within the same application charged at £34.78 per hour.

That the fees be published on the authority's website and the Executive Director for Environment requested to keep the levels of fees under review and bring a further report to the Committee should the fees be considered to no longer be commensurate with the authority's costs.

#### **Background and Advice**

Applications by landowners have been able to be made under S31(6) Highways Act for many years but with no power for an authority to charge any fee in connection with dealing with same. By such an application a landowner acknowledges which ways across their land (if any) they admit to having been dedicated as highways. In

the absence of proof of a contrary intention, such a declaration will be sufficient evidence to negative the intention to dedicate.

Under recent legislative provisions landowners may now also make applications under S15A Commons Act 2006. By such an application a landowner brings to an end any period of recreational use "as of right" over the land to which the application relates.

Under the new provisions a form is now prescribed to make both types of application and a procedure set out as to the giving of Notices and recording the applications, and the authority is given power to charge a reasonable fee.

An authority's costs incurred on such activities are normally staff related. Accordingly it is suggested that a fee be set to reflect the work to be undertaken by the authority.

The work involved in processing an application consists of the following steps:

- Check that the form CA16 has been sent with the correct fee;
- Acknowledge receipt of the form;
- Allocate a reference number;
- Check information on form, in particular:
  - Capacity of applicant
  - At least one of Parts B (Statement under S31(6)), C (Declaration under S31(6)) or D (Statement under S15A) completed
  - Additional information in part E (optional but should be correct)
  - Appropriately signed
  - Map is at correct type and scale and parcel(s) of land are shown appropriately
- Prepare Form CA17 Notice
- Publish Notice on website
- Serve Notice (and plan) on anyone included in landowner's information
- Serve Notice (and plan) on other appropriate recipients
- Print site copy of Notice on waterproof/laminated paper
- Erect Notice(s) on site – at suitable points of access such that public will see them
- Record entry on online Register with outline drawn onto GIS
- File paper copy in paper Register

It is suggested that a fee of £300 be set in respect of a S31(6) application, a fee of £300 set in respect of a S15A application and a fee of £370 be set in respect of a joint S31(6) and 15A application. These being the fees for single parcels of land based on 5 hours administration plus a site visit to erect the Notice(s) (average 25 miles each way, 3 hours). Any additional parcels to be charged at £34.78 per hour if additional time is required.

It is suggested that fees be kept under review to ensure that the amounts are commensurate with the authority's costs

## **Consultations**

N/A

**Implications:**

This item has the following implications, as indicated:

**Risk management**

Financial

The power to set a fee is discretionary but without fees being set the authority will need to deal with such applications, as prescribed by the new Regulations, by covering the costs itself.

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

Paper	Date	Contact/Directorate/Tel
N/A		

Reason for inclusion in Part II, if appropriate

N/A

