

Lancashire County Council

Regulatory Committee

Wednesday, 2nd July, 2014 at 10.30 am in Cabinet Room 'B' - County Hall,
Preston

Agenda

Part 1 (Open to Press and Public)

No.	Item	
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1.	Appointment of Chair.	
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The Committee is asked to note the appointment of County Councillor J Oakes by the full Council on the 15th May 2014 as the Chair for the remainder of the 2014/15 municipal year.

2.	Appointment of Deputy Chair	
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The Committee is asked to note the appointment of County Councillor Miss K Snape by the full Council on the 15th May 2014 as the Deputy Chair for the remainder of the 2014/15 municipal year.

3.	Constitution, Membership, Terms of Reference and Programme of Meetings.	(Pages 1 - 12)
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4.	Apologies.	
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5.	Disclosure of Pecuniary and Non-Pecuniary Interests.	
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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.

6.	Minutes of the last meeting.	(Pages 13 - 18)
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7.	Guidance.	(Pages 19 - 42)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

8. **Wildlife and Countryside Act 1981** (Pages 43 - 66)
Claimed Public Footpath from Union Road to Rawtenstall Footpath 321, Dearden Heights, Rossendale Borough
Claim No. 804-546
9. **Wildlife and Countryside Act 1981** (Pages 67 - 154)
Applications for the Addition to the Definitive Map and Statement of Five Public Footpaths at Banks Enclosed Marsh, North Meols, West Lancashire
Application Nos. 804-526, 804-527, 804-528, 804-530, 804-531
10. **Decision on Appeal** (Pages 155 - 178)
Wildlife and Countryside Act 1981
Claimed downgrading to public footpath of Public Bridleway No. 52 Earby, Pendle Borough
11. **Decision on Appeal** (Pages 179 - 206)
Wildlife and Countryside Act 1981
Claimed Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe, Ribble Valley Borough
Claim No. 804/516
12. **Urgent Business**
An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the 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.
13. **Date of Next Meeting**
The next scheduled meeting will be held at 10.30am on the 10th September 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

Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected:

All

Constitution, Membership, Terms of Reference and Programme of Meetings. (Appendices 'A' and 'B' refer)

Contact for further information: Mike Neville, 01772 533431, Office of the Chief Executive, mike.neville@lancashire.gov.uk

Executive Summary

This report sets out the constitution, membership, and Terms of Reference of the Regulatory Committee and the Commons and Town Greens Sub Committee together with the respective programme of meetings for 2014/15.

Recommendation

The Committee is asked to note:

1. The constitution and membership of the Committee as agreed by the full County Council on the 15th May 2014.
2. The current Terms of Reference of the Committee.
3. The 2014/15 programme of meetings for the Committee.
4. The constitution and appointment of the Chair and Deputy Chair for the Commons and Town Greens Sub Committee as agreed by the full County Council on the 15th May 2014 together with the current membership, Terms of Reference and programme of meetings for 2014/15.

Background and Advice

The County Council at its annual meeting in May agreed the constitution of the Regulatory Committee as 15 members on the basis of 7 Labour, 6 Conservative, 1 Liberal Democrat and 1 Independent member, with nominations to be submitted to the County Secretary and Solicitor by the respective political groups.

The following County Councillors have subsequently been nominated to serve on the Committee for the remainder of the 2014/15 municipal year.

County Councillors (15)

P Britcliffe	C Henig
I Brown	G Molineux
A Clempson	J Oakes
D Clifford	A Schofield
B Dawson	Miss K Snape
J Gibson	D Stansfield
P Hayhurst	D Whipp
P White	

A copy of the Committee's current Terms of Reference is attached at Appendix 'A'.

In December 2013 the full County Council also approved the following programme of meetings for the Committee with all meetings to be held at County Hall, Preston, commencing at 10.30am.

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

Commons and Town Greens Sub Committee

At the annual meeting on the 15th May 2014 the full County Council also agreed the constitution of the Commons and Town Greens Sub Committee as being 11 members on the basis of 5 Labour, 5 Conservative and 1 Liberal Democrat and the County Secretary and Solicitor has subsequently received the following nominations from each of the respective political groups.

County Councillors (11)

M Barron	J Oakes
I Brown	R Shewan
D Clifford	Miss K Snape
N Hennessy	P Rigby
A Kay	C Wakeford
D Whipp	

County Councillor J Oakes and County Councillor Miss K Snape were appointed as Chair and Deputy Chair respectively for the remainder of the 2014/15 municipal year and a copy of the Sub Committee's current Terms of Reference is attached at Appendix 'B' for information.

The following programme of meetings for the Sub Committee was approved by the full Council at the meeting in December, 2013, with all meetings to be held at County Hall, unless otherwise specified, and to commence at 10.00am.

30th July 2014
23rd September 2014
11th November 2014
2nd March 2015
21st April 2015

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no risk management implications arising from this item

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

Paper	Date	Contact/Directorate/Tel
Full Council agenda and Proceedings	December 2013 15 th May 2014	Janet Mulligan, Office of the Chief Executive, 01772 533361
County Council Constitution	May 2014	

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

Terms of Reference of the Regulatory Committee

The Committee shall carry out the following functions:

1. To deal with all matters relating to the Review of Definitive Maps of Public Rights of Way in accordance with Part III of the Wildlife and Countryside Act 1981.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
 - (a) the power to create footpaths or bridleways by agreement under Section 25;
 - (b) the power to make Orders for the creation of footpaths and bridleways under Section 26;
 - (c) to keep a register of information with respect to maps and statements deposited and declarations lodged with the Council under Section 31(6), in accordance with Section 31A;
 - (d) the power to make Orders for the extinguishment of footpaths and bridleways in accordance with Section 118;
 - (e) the power to make a rail crossing extinguishment order under Section 118A;
 - (f) the power to make a special extinguishment order for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
 - (g) the power to determine applications for public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C(2));
 - (h) to keep a register with respect to applications under Sections 118ZA, 118C, 119ZA and 119C in accordance with Section 121B;
 - (i) the power to decline to determine applications under Sections 118ZA, 118C, 119ZA or 119C in accordance with Section 121C;
 - (j) the power to make Orders for the diversion of footpaths and bridleways in accordance with Section 119;
 - (k) the power to make a rail crossing diversion order under Section 119A;

- (l) the power to make a special diversion order for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
- (m) the power to require an applicant for a special diversion order to enter into an agreement in accordance with Section 119C(3);
- (n) the power to make an SSSI diversion order under Section 119D;
- (o) the power to make a public path diversion order (Section 119ZA) and a special diversion order (Section 119C(4));
- (p) the power to assert and protect the rights of the public to the use and enjoyment of highways under Section 130;
- (q) to serve notice of proposed action in relation to an obstruction in respect of which notice has been served on the Highway Authority in accordance with Section 130A;
- (r) the power to apply for a variation of an order made under Section 130B in accordance with Section 130B(7);
- (s) the power to authorise the temporary disturbance of the surface of a footpath or bridleway under Section 135;
- (t) the power temporarily to divert footpaths or bridleways under Section 135A;
- (u) to exercise the functions relating to the making good of damage to and the removal of obstructions from footpaths or bridleways under Section 135B;
- (v) the power to remove things so deposited on highways as to be a nuisance under Section 149;
- (w) to permit deposit of builder's skip on highway under (S139);
- (x) to license planting, retention and maintenance of trees etc. in part of a highway under Section 142;
- (y) to authorise erection of stiles on footpaths or bridleways (S147);
- (z) to license works in relation to buildings etc. which obstruct the highway (S169);
- (aa) to consent to temporary deposits or excavations in streets (S171);
- (bb) to authorise erection of hoardings or fences (S172);

- (cc) to restrict the placing of rails, beams etc. over highways under Section 178;
 - (dd) to determine applications for consent to construct vaults, arches and cellars under streets or carriageways (S179);
 - (ee) to determine applications for consent to the making of openings in footways for access to cellar or vault under street (S180);
3. The power to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
 4. The power to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.
 5.
 - (a) The power to enter into agreements with respect to means of access under Section 35 of the Countryside and Rights of Way Act 2000;
 - (b) The power to provide access in the absence of an agreement under Section 35, in accordance with Section 37 of the Countryside and Rights of Way Act 2000.
 6. To determine, when dealing with claims under Part III of the Wildlife and Countryside Act 1981, that a right of way is an ancient highway, and therefore maintainable at public expense, in those cases where the evidence in support of the claim justifies such a determination.
 7. The power to apply for an Order against unlawful works on common land under Section 41 of the Commons Act 2006
 8. The power to take steps to protect unclaimed common land or town or village greens against unlawful interference and to institute proceedings under Section 45 of the Commons Act 2006.

Other Licensing Registration and Regulatory Functions

1. To issue, amend or replace safety certificates (general or special) under the Safety of Sports Grounds Act 1975, for sports grounds, and under the Fire Safety and Safety at Places of Sport Act 1987, for regulated stands at sports grounds.
2. To maintain Registers of, and/or issue licenses, in connection with the following (including any consequential functions):
 - (a) persons and premises for the sale of specified poisons under Sections 3(1)(b)(ii), 5, 6 and 11 of the Poisons Act 1972;
 - (b) animal movements under Articles 12 to 14 of the Pigs (Records, Identification and Movement) Order 1995, and Article 5(2) of the Cattle

Identification Regulations 1998;

- (c) performing animals under Section 1 of the Performing Animals (Regulation) Act 1925.
3. To licence the employment of children under the Children and Young Persons Acts 1933 and 1963.
 4.
 - (a) To exercise the Council's powers under the Commons Registration (New Land) Regulations 1969 to register common land or town or village greens (except where the power is to be exercised solely for the purpose of giving effect to an exchange of land by an order under Section 19(3) or Schedule 3 of the Acquisition of Land Act 1981, or an order under Section 147 of the Inclosure Act 1845).
 - (b) To make recommendations to the Cabinet Member with responsibility for the Environment on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
 - 5 To register variations of rights of common under Regulation 29 of the Commons Registration (General) Regulations 1966.
 6.
 - (a) To exercise the Council's functions and powers under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work etc 1974 (relating to health, safety and welfare in connection with work, and control of dangerous substances including explosives, petroleum and celluloid) to the extent that those powers are discharged other than in the Council's capacity as an employer save as in 6b below.
 - (b) To assent or dissent to a licence for the site of any new factory for the manufacture of explosives under The Explosives Act 1875 -1923.
 7. To exercise the Council's functions under Sections 1, 2 10 and 19 of the Sea Fisheries Regulation Act 1966.
 8. To issue permits for the operation of minibuses under Section 19 of the Transport Act 1985.
 9. To grant a Street Works Licence under Section 50 of the New Roads and Street Works Act 1991.
 10. To approve premises for the solemnisation of marriages under Section 46A of the Marriage Act 1949 and associated Regulations.
 11. To exercise any powers of the Council contained in Local Acts which involve the granting of a consent, licence, permission, registration or similar function.

12. To determine whether, and in what manner, to enforce any failure to comply with any approval, consent, licence, permission or registration granted by the Committee in the exercise of its responsibilities.
13. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
14. To establish Sub-Committees to undertake any part of the Committee's functions.
15. To exercise the duties powers and functions of the County Council as Registration Authority under Part 1 Commons Act 2006

Terms of Reference of the Commons and Town Greens Sub-Committee

The Committee shall carry out the following functions:

1. To exercise the Council's powers under the Commons Registration (New Land) Regulations 1969 to register common land or town or village greens (except where the power is to be exercised solely for the purpose of giving effect to an exchange of land by an order under Section 19(3) or Schedule 3 of the Acquisition of Land Act 1981, or an order under Section 147 of the Inclosure Act 1845).
2. To make recommendations to the Cabinet Member with responsibility for the Environment on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
3. To amend the register in respect of rights of common under Regulation 29 of the Commons Registration (General) Regulations 1966, namely to apportion, vary, extinguish, release or transfer a right of common.
4. To exercise the duties powers and functions of the County Council as Registration Authority under Part 1 Commons Act 2006.

Agenda Item 6

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 14th May, 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	P Hayhurst
I Brown	C Henig
A Clempson	G Molineux
D Clifford	D T Smith
B Dawson	D Stansfield
J Gibson	B Yates

1. Apologies

Apologies for absence were received from County Councillor D Whipp.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

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

3. Minutes of the last meeting

Resolved: That the Minutes of the meeting held on the 26th March 2014 are confirmed as an accurate record and signed by the Chair.

4. Guidance

A report was presented in connection with Guidance for members of the Committee on the law relating to 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 set out in Annexes 'A', 'B' and 'C' of the report presented is noted.

**5. 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 Stubblelee
Lane between Height Barn Lane and Stubblelee Park.
Claim No. 804-532**

A detailed report was presented regarding an investigation in accordance with Reference No. 804-532 to determine the correct status of various sections of Cutler Lane, Height Barn Lane and Stubblelee Lane that were recorded as Bacup Footpaths 522, 507, 506, 505, 504, 503, 493 (part) and 492 (part), together with some sections that were not recorded on the Definitive Map and Statement of Public Rights of Way.

Details of the investigation and the evidence relating to it, together with a summary of the law regarding 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.

Having considered all of the information presented the Committee agreed that on balance there was sufficient evidence to determine the status of individual sections of the route as being restricted byways, a bridleway, a byway open to all traffic and also to support the deletion of a short section of Bacup Footpath 522 which had previously been recorded on the Definitive Map and Statement in error.

Resolved:

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 Footpath Nos 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 as shown on the plans referred to in the report 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) the addition of a bridleway between two points on Bacup Footpath 522 at Lee Clough as shown on the plan referred to in the report as points HH-J;
 - b) the addition of a restricted byway between points on Bacup Footpath 522 at Lee Clough shown on the plan referred to in the report as points H-HH-I-J;
 - c) the addition of a byway open to all traffic between two points on Bacup Footpath 493 at Height Barn as shown on the plan referred to in the report as W-X-XX-Y-YY and;
 - d) the addition of a restricted byway along the southern section of Stubblelee Lane, from the end of the road recorded as U7913 to its

junction with Height Barn Lane (Bacup Footpaths 503 and 504) as shown on the plan referred to in the report between points 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 two points at Lee Clough (shown on the plan referred to in the report as points H-II-J) in accordance with the investigation carried out under Reference 804-532.
4. That the Orders specified above 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.
6. **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.**

Mr Goode, the Public Rights of Way Manager, informed the meeting that a request had been received from Network Rail 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 a level crossing onto the alignment of a footbridge. It was reported that the diversion would provide a safe means of crossing the operational railway and enable both the current level crossing to be removed and the railway secured at the location which would resolve concerns relating to accidental collisions and accessibility to the railway line for misuse.

When considering the application the Committee noted that the footbridge had already been constructed ahead of the proposed diversion being considered. It was also noted that the new route would not be accessible to some users as it involved using 41 steps each side of the bridge. Whilst acknowledging that the application for a diversion should have been made prior to any works on site Mr Goode reported that the proposed diversion represented a substantial improvement in the safety of the crossing and was something which both the County Council and Parish Council had sought to achieve.

With regard to access it was recognised that as only steps had been provided over the footbridge the diversion may be inaccessible or difficult for some users, however, it was considered that the increased protection to those and other users from the danger of crossing a high speed railway track made this a reasonable solution. It was also noted that a solution which did not require use of steps was not considered practical at the location.

It was reported that the applicant, Network Rail, owned all of the land affected by the diversion and had agreed to defray any applications for compensation and to bear all advertising and administrative charges incurred by the County Council in the order-making procedures, and would provide and maintain the alternative route to the satisfaction of the County Council.

Resolved:

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 plan set out in the report to the route shown by a bold broken line and marked A-E-F-G-H-C and H-D on the plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received 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.

**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.**

A report was presented in connection with the creation of a Public Bridleway over land at Stacksteads, Bacup, as part of a scheme to create a multi user route along a section of disused railway line which was part of a larger project to create an off road cycleway between Rawtenstall and Rochdale.

Mr Goode, the Public Rights of Way Manager, referred the Committee to the information presented in the report regarding the criteria of the statutory tests for making and confirming an Order.

He reported that the majority of the land concerned was owned by either Rossendale Borough Council or the County Council and whilst the Borough Council were fully supportive of the construction of the route written agreement to the creation of a Public Bridleway was still awaited. With regard to a section of unregistered land it was noted that the construction of the route had been publicised in the local newspapers to such an extent that any owner of the unregistered land would be aware of the scheme and have already made themselves known to the County Council in relation to making a claim for compensation.

Resolved:

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, as shown by a bold broken and dashed line and marked A-B-C-D-E-F on the plan referred to in the report.

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.

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

A report was presented in relation to recent legislative provisions which had enabled the County Council to consider introducing a fee for work associated with processing applications made under S31(6) of the Highways Act 1980 or S15A of the Commons Act 2008.

Mr Goode, the Public Rights of Way Manager, informed the meeting that it was proposed to introduce fees of £300 in respect of an individual S31(6) or S15A application and £370 in relation to a joint S31(6) and S15A application. It was noted that the proposed fees would be for single parcels of land, based on 5 hours administration plus a site visit to erect the Notice(s) with any additional parcels to be charged at £34.78 per hour if additional time was required.

Resolved:

1. 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 with additional parcels within the same application to be charged at £34.78 per hour.
2. 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 with additional parcels within the same application to be charged at £34.78 per hour.
3. 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 with additional parcels within the same application to be charged at £34.78 per hour.
4. That the fees specified above 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 in the event that the fees are no longer considered to be commensurate with the authority's costs.

9. Urgent Business

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

10. Date of Next Meeting

It was noted that the next scheduled meeting would be held at 10.30am on Wednesday 2nd 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 7

Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

- There may also need to be some consensus as to what constitutes a substantial section of the public.
- Persons interested in the land may include owners and tenants and maybe mortgagees.
- The reference to having regard to needs of agriculture includes the breeding or keeping of horses.

Regulatory Committee
Meeting to be held on the 2nd July 2014

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

The power to charge is found in the-

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

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

(1) Where—

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

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

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there are 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 2nd July 2014

Electoral Division affected: Rossendale South

Wildlife and Countryside Act 1981

**Claimed Public Footpath from Union Road to Rawtenstall Footpath 321,
Dearden Heights, Rossendale Borough**

Claim No. 804-546

(Annex 'A' refers)

Contact for further information: Megan Brindle, County Secretary and Solicitor's Group, 01772 535604, Megan.Brindle@lancashire.gov.uk Hannah Baron, Public Rights of Way, 01772 533478 Hannah.Baron@lancashire.gov.uk

Executive Summary

The application for a public footpath from Union Road to Dearden Heights to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-546.

Recommendation

1. That the application for a public footpath from Union Road to Rawtenstall Footpath No 321, Dearden Heights, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-546, be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Union Road, Rawtenstall (Grid Reference SD 7984 2271) for a distance of approximately 200 metres to a point on Footpath 321, Dearden Heights, Rossendale Borough (Grid Reference SD 7966 2266), and shown between points A and B on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

Background

Following an application duly made under Schedule 14 to the Wildlife and Countryside Act 1981 (the 1981 Act) research has indicated that consideration should be given under section 53(3) of the Act to the making of an Order to amend

the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from a point on Union Road to a point on Rawtenstall Footpath 321, a distance of approximately 200 metres, and shown between points A-B on the attached plan.

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

An order will only be made if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist" or
- "The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path"

When considering evidence, if it is shown that a highway once existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the 1981 Act (as explained in Planning Inspectorate's Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of evidence discovered by officers together with documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the original application. The decision may be that the route has public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the route to be added or deleted varies in length or location from that which was originally claimed.

Consultations

Rossendale Borough Council:

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 Observations'

Advice

Executive Director for Environment's Observations

Description of the New Route

Points annotated on the attached Committee plan

Point	Grid Reference (SD)	Description
A	7984 2271	Broken down wall off Union Road, south of Lower Cribden Avenue.
B	7966 2266	Broken down wall with junction of Rawtenstall footpath 321.

A site inspection was carried out on 5th September 2013.

It is evident when on site that the neighbouring desolate building and associated land has fallen into disrepair over the years when the building was no longer in use. There are several points along the boundary of the buildings and associated land where the boundary wall has collapsed, allowing pedestrians to access the field from several points. After many years of this wall being in this desolate state, 3 metre high wire fencing has recently been erected, according to the user evidence, on the access points to the field where the wall has broken down, restricting access. There is signage on the wire fencing stating that this is private land and that pedestrians must use the designated footpath (footpath 321) further north of the field boundary. There is a well-defined trodden route from point A to point B which is approximately 1 metre wide, follows the same route of the claim, and is apparent on the most recent aerial photograph.

The claimed route starts at a 3m broken down section of wall on Union Road, Rawtenstall, (point A) and continues onto a large open field heading in a generally west south westerly direction. The route follows a well-trodden windy path on a grass surface and passes a spring which is approximately 10 metres away from the claimed route before climbing gradually uphill where after approximately 200 metres it meets the boundary wall on the north western side of the field (point B), which is also currently in disrepair and has fallen down in parts. The claimed route goes over the remains of this wall, where it then meets existing public footpath Rawtenstall 321.

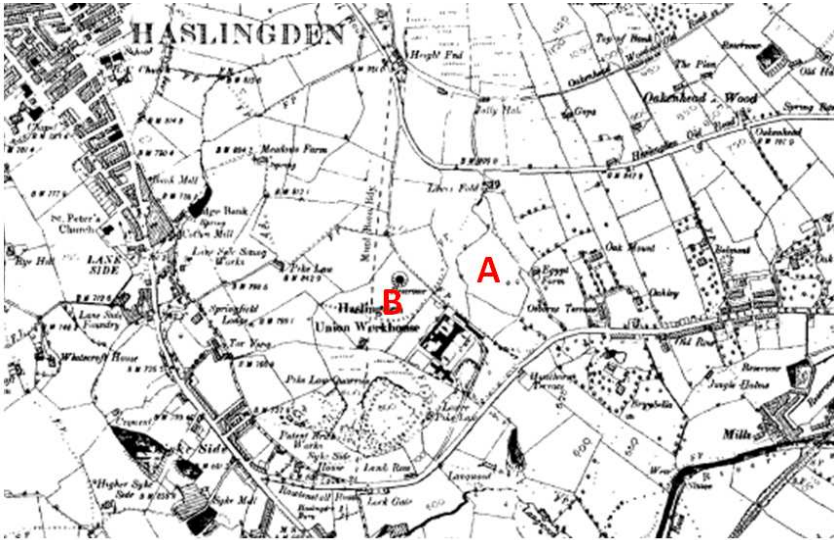
The total length of the route from point A on Union Road to point B where the claimed route meets the existing footpath at the boundary wall at Dearden Heights is approximately 200 metres.

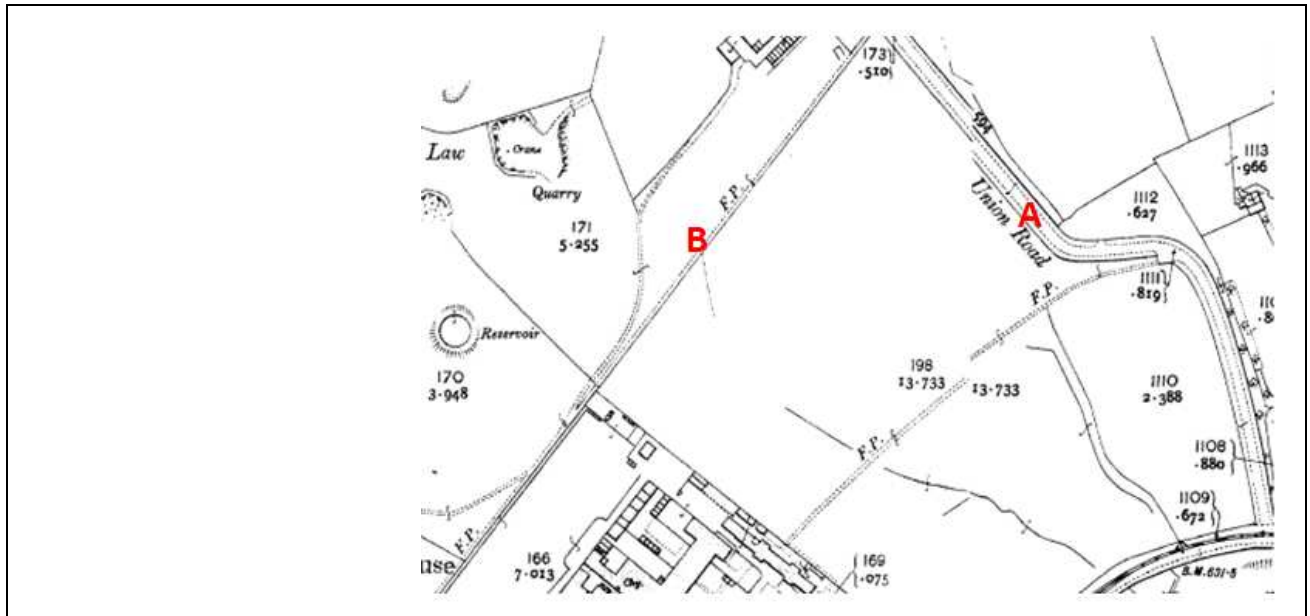
Map and Documentary Evidence

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

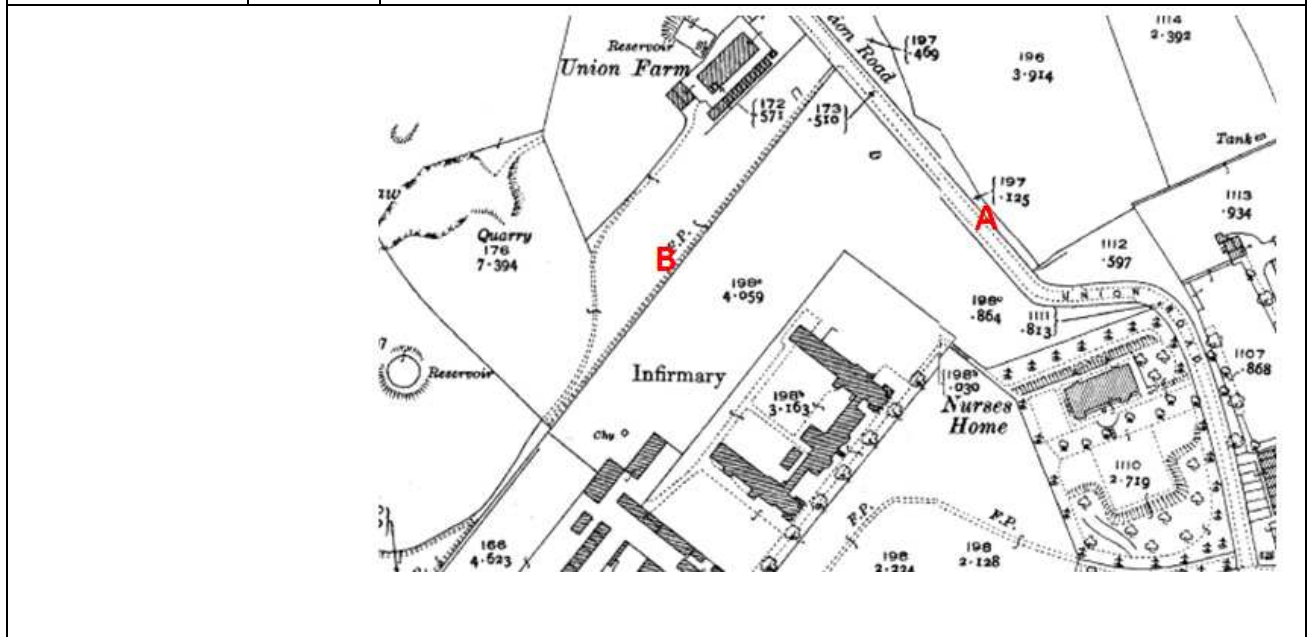
DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale a footpath would not have been shown so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map surveyed by George Hennet in 1828 – 1829 and published by Henry Teesdale in 1830. The map was on sale to the public and hence to be of use to their customers it is considered that that the routes would be available for the public to use. However, the map was privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The claimed route did not exist as a major route in 1830. It may have existed as a minor route but due to the limitations of scale a footpath would not have been shown so no inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment	1843	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		No map available.
Investigating Officer's Comments		The tithe map for Rawtenstall is not held within Lancashire Archives. This means that we have not been able to view the tithe map for this particular area and therefore no inference can be made as to whether a public right of way existed at this time.

<p>Finance Act 1910 Map</p>		<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation and not recording public rights of way. However the maps can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
<p>Observations</p>		<p>The Finance Act Map accompanying the finance valuation and field books was unavailable to view at the Lancashire Archives; this made it difficult to determine under which entry this particular parcel of land was registered, and therefore which entry to look at in the field and valuation books.</p> <p>Some of the surrounding parcels had been recorded, such as Egypt Terrace, Haslingden Road, and Pike Low (which can all be seen on the early Ordnance Survey maps) all of which had no deductions for rights of way, but were not in close enough proximity to the relevant piece of land.</p>
<p>Investigating Officer's Comments</p>		<p>We are unable to determine whether that piece of land had a deduction for a right of way across it.</p> <p>This means that no inference can be made from the Finance Act 1910 Valuation book and map.</p>

<p>Ordnance Survey Maps</p>		<p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>
<p>6 inch OS map</p>	<p>1894</p>	<p>The earliest OS map examined was published around 1894.</p>
		
<p>Observations</p>		<p>The claimed route is not shown on the 1894 map.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route probably did not exist in 1894.</p>
<p>25 inch OS map</p>	<p>1893</p>	<p>The earliest edition examined which was published at the larger scale showing the area in more detail was surveyed in 1891-2 and published in 1893.</p>
<p>Observations</p>		<p>The claimed route is not shown on the 1893 map.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route probably did not exist in 1893.</p>
<p>25 Inch OS map</p>	<p>1911</p>	<p>Further edition of 25 inch map revised in 1909 and published in 1911.</p>

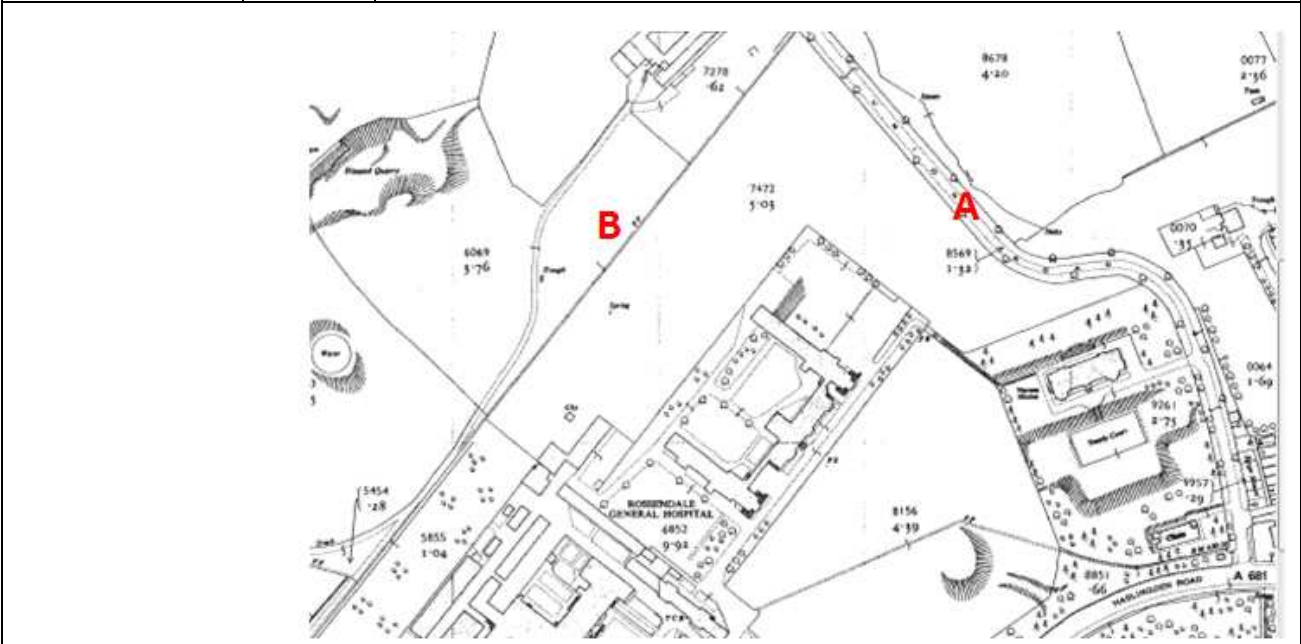


Observations		The claimed route is not shown, however, a different footpath is clearly indicated leading from the hospital to join Union Road, which is further south of the current claimed route.
Investigating Officer's Comments		The claimed route probably did not exist in 1911.
25 Inch OS Map	1930	Further edition of 25 inch map revised in 1928 and published in 1930.


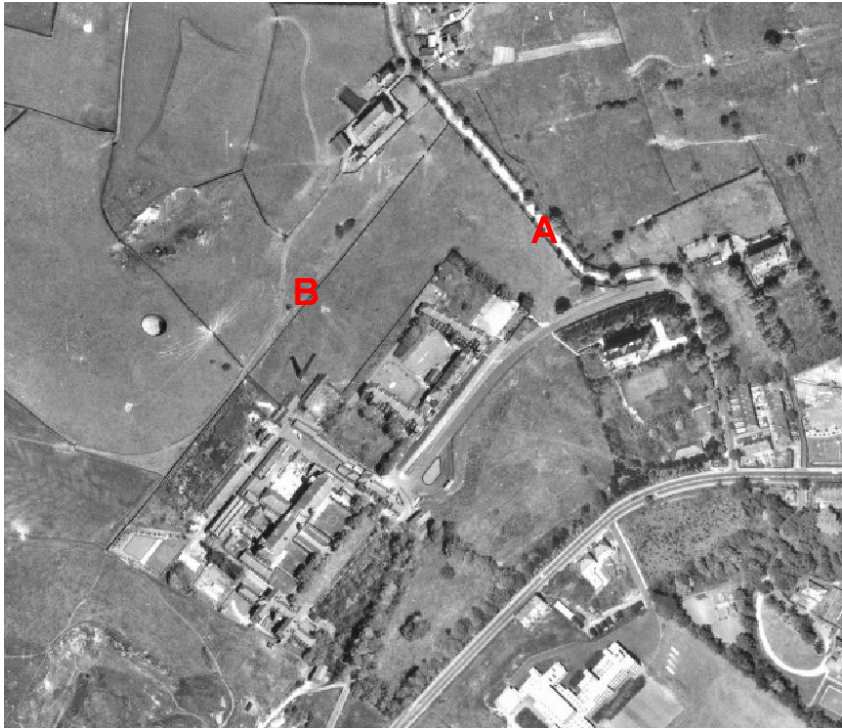



Observations		The claimed route is not shown on the 1930 map. However it is important to note that the infirmary has expanded onto the field and that the footpath shown on the 1912 OS map has changed routes.
Investigating Officer's Comments		The claimed route did not exist in the early 1930s.

6 Inch OS map	1955	This map was used as the base map for the Definitive Map, First Review, and was published in 1951 (Revised 1955).
Observations		The claimed route is not shown, in the same way as the 1931 25 inch map.
Investigating Officer's Comments		The claimed route did not exist in 1951.
25 Inch OS Map	1962	Further edition of the 25 inch map revised in 1960 and published in 1962.



Observations		The claimed route is not shown on the 1962 map.
Investigating Officer's Comments		The claimed route probably did not exist in the early 1960s.
Aerial Photographs		Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.
Aerial Photograph	C 1940	Black and white aerial photograph taken around 1940.

	
Observations	The claimed route is not visible on the 1940 aerial photograph.
Investigating Officer's Comments	The claimed route does not appear to have existed in the 1940s.
Aerial Photograph	<p data-bbox="432 1093 555 1126">C 1960</p> <p data-bbox="564 1093 1342 1126">Black and white aerial photograph taken in the early 1960s.</p> 
Observations	The claimed route is not visible on the 1960 aerial photograph.
Investigating Officer's Comments	The claimed route does not appear to have existed in the 1960s.

Aerial Photograph	1988	Colour aerial photograph taken in 1988.
		
Observations		The claimed route is not visible on the 1988 aerial photograph.
Investigating Officer's Comments		The claimed route does not appear to have existed in 1988.
Aerial Photograph	2000	Colour aerial photograph taken in 2000.

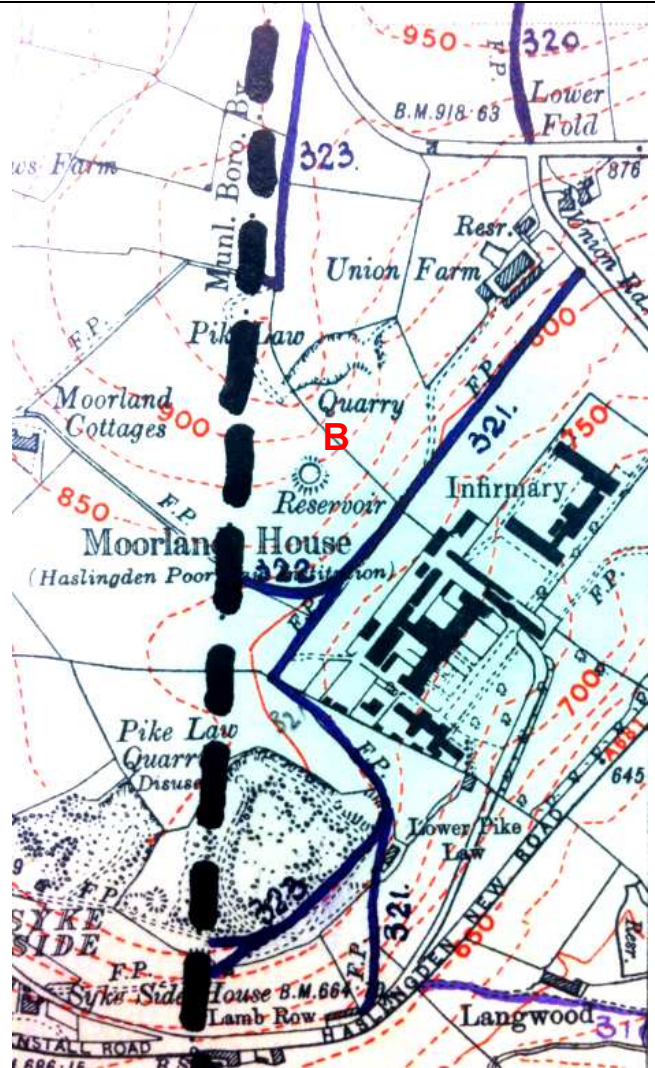


Observations		A faint trodden line can be seen on the claimed route.
Investigating Officer's Comments		The claimed route existed as a trodden route across the field in 2000.
Aerial Photograph	2010	Aerial photograph taken in March 2010.



Observations		The claimed route can be clearly seen as a defined route.
Investigating Officer's Comments		The claimed route existed as a trodden route across the field in 2010. The defined track indicates significant use of the route.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Survey Map	1976	The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County Boroughs were not surveyed until later. In this instance Rawtenstall was not surveyed.
Observations		No map available. Rawtenstall is a Municipal Borough which means that a Survey Map was not produced

Draft Map	1979	The Draft Map was given the 'relevant date' of 1 February 1979 and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 24 th April 1979 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.
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Observations		The claimed route is not shown on the Draft Map. The footpath which was shown on the Ordnance Survey maps as leaving the hospital and heading towards Haslingden Road was not recorded as a definitive right of way on the draft map. However other public footpaths have been recorded, including in close proximity public footpath Rawtenstall 321.
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Objections to the Draft Map	1979	There were no objections to the omission of the claimed route on the Draft Map.
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Modified Draft Map	1982	A Modified Draft Map was published and placed on deposit in September 1982. The map still does not show the claimed route, and the Modified Draft Statement remained unchanged.
Provisional Map		Once all of the representations were resolved, the amended Draft Map became the Provisional Map and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		There is still no evidence of the claimed route existing at this time.
Definitive Map and Statement	1983	The Provisional Map, as amended, was published as the Definitive Map and Statement in 1983 and is the current legal record.
Observations		The Definitive Map does not record the claimed route and it is not mentioned on the Definitive Statement.
Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The claimed public footpath does not cross a Site of Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

Summary

There is no evidence of a route existing on any of the maps which have been inspected. The early commercial maps, the Ordnance Survey maps and the Definitive Map records, do not record a route being in existence over land on which the claim covers.

There was a slight variation of routes over the land in question which were recorded on the Ordnance Survey maps. Rawtenstall Footpath 321 has been in existence since the early Ordnance Survey maps were produced. However, a different footpath, first shown on the 25 inch 1912 map indicates a route which started from the hospital and crossed the field to meet Union Road. The route of this recorded footpath changes over the next 20 years as on the 25 inch 1931 map the route starts from the hospital but turns east and meets Haslingden Road. This footpath was not recorded on the Definitive Map.

None of the Definitive Map records show a route crossing the claimed route.

The site was historically part of a union work house which was used as a mill factory. In later years the building changed operations to become Rossendale General Hospital which fell into disrepair and has since been left derelict for many years. A planning application has been submitted to Rossendale Borough Council to demolish the existing buildings and structures and build 139 dwellings with associated access, car parking and landscaping on the land which the claimed route crosses. This application is currently still under determination from the Borough Council and is awaiting a decision.

The land surrounding the hospital also fell into disrepair, with many of the bordering walls collapsing due to years of lack of maintenance, allowing local people to access the fields from various directions. On site there are various remains of gates and stiles around the perimeter of the land, showing that access was once possible from various directions.

There is an extremely well defined trodden line on the recent aerial photographs which follows the claimed route. The trodden line shown on the aerial photographs indicates that this is very well used route, which is consistent with the user evidence. Photographs taken on site since the fences were erected to prevent access confirm the trodden line on the ground which was still evident.

Since the trodden line is about 1 metre wide it is suggested that the footpath rights may be over a strip 2 metres wide since walkers are narrowest at their feet – this is consistent with the logic used in the 1990 Rights of Way Act when specifying widths of public footpaths to be left clear of crops, i.e. 1m across a field but 1.5m along the field edge. There is no reason to suppose that public rights of way are always wider on field edges so the implication is that a walker uses 0.5m to the side of the area of ground they walk on. Given that people are approximately symmetrical and they can use the footpath in either direction it follows that the public right of way should be 0.5m either side of the trodden strip.

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

The following should be added to the Definitive Statement for Rawtenstall 382, Rossendale Borough:

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Status & Number	From	To	Route	Approximate Length (metres)	Width (metres)
Footpath 382	Union Road, Rawtenstall	Footpath 321, Rawtenstall	A-B	200m	2

PART II

MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

The statement added for Rawtenstall 382 to read as follows:

"Status: Footpath

Position:

From	To	Compass Direction (approx)	Width (metres)	Approximate Length (metres)	Other Information
Union Road at SD 7984 2271	Footpath 321 at SD 7966 2266	Generally WSW	2	200	Grass surface across field, broken down walls at the start and end of the route.

Limitations and Conditions:

Informal gap in broken wall across route approx. 2m wide roughly tapering from 1m at either side to ground level in the centre, at SD 7984 2271

Informal gap in broken wall across route approx. 2m wide roughly tapering from 1.5m at either side to 25cm in the centre, at SD 7966 2266

Length: 200m"

The statement for Rawtenstall 321 amended to read:

"Status: Footpath

Position: From Union Road near Union Farm S.W passing junction with public footpath no. 382, then via Lower Pike Low to Haslingden Road at Lamb Row.

Length: 0.46 miles"

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the claim, the applicant has provided 42 user evidence forms. 26 of the users are residents from Lower Cribden Avenue, 4 users are from Union Road, 3 Users are from Laneside, 2 users are from Egypt Mount, 1 user lives on Sandown Road, another user is a resident at Langdale Avenue, 1 user is from Oakmount, 1 is from Haslingden Road and 1 is from Hillside.

The user forms indicate knowledge of the route as follows (years):

0-10 (9) 11-20 (17) 21-30(14) 31-40(2)

The route has been used mainly for walking the dog, visiting family and friends, general exercise, leisure walking, walking with children and running. However some users state they have used it for shopping, yoga class, picnics and sledging.

40 users agree the route has been used on foot. 1 user states they have never used the route but has witnessed members of the public using the route, 1 user does not state when and how they used the route.

The frequency of use varies from daily, twice daily to as frequently as 550 times per year to less frequently such as once a week, less than 10 times per year.

41 users agree that the claimed route has run over the same line, 1 user states there has been access via the stone wall entrance for as long as they have lived there. 36 users state there have never been any stiles/gates/fences along the claimed route. 6 users talk about a broken down wall along the route and one user states the answer 'yes' to there being any stiles/gates/fences along the claimed route.

13 users state that they had never seen notices until recently (June 2013) where notices such as 'private land' and 'trespassing' were erected, some also state that there has been a recent blockage to the path. All other users state they have never seen any signs.

Further information from the applicant

The applicants have provided 2 extra points at a later date which they wish to be included as part of their application:

1. They state that the leasehold owners of the field, Hurstwoods have put forward the site as a suggested option for future development as part of the Green Belt & Urban Boundary Review (they have provided an email from Rossendale Borough Council Planning Department for information). From the date of the email, this information has only just come to the light and therefore the applicants were not in a position to include it when submitting the application.
2. The applicants state that Hurstwoods have asked pedestrians to use the existing footpath towards the rear of the field.

As outlined in their application, at certain times of the year the footpath is unusable. They state for some time now the condition of the footpath and bridleway bordering the field present a danger to pedestrians.

The applicants have requested that the footpath be inspected by LCC officers and the decision makers of this application in its present position in order for them to fully appreciate that Hurstwood's request to use the existing footpath is not a viable option.

Objection from Hurstwood Holdings – Lease holder

An objection has been received from Hurstwood Holdings as their clients land is affected by this application. Their client bought the leasehold land in August 2012 and they recently erected fences along those sections of the boundaries which had fallen into disrepair. Signs were also erected to deter local people from exercising their dogs and leaving behind their excrement. Photographs of the fencing and the signage have been provided.

Their client strongly objects to the application as there is already a public footpath which links Union Road to Dearden Heights so there is no need for the proposed modification. If the application is approved and the Order for modification is made the effect will be to sterilise the land against future use and prevent the land from being used for much needed local housing.

Letter from the Secretary of State for Department of Health – Landowner

They confirm they are the landowner for the route in question and have no recent knowledge in relation to the land.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- User evidence
- 2000 and 2010 Ariel Photographs
- No action taken by the owners until recently, after many years of the boundary wall having collapsed

Against Accepting the Claim

- Lack of evidence of the route existing on any of the maps which have been inspected
- Reference to recent action by the owners.

Conclusion

In this matter it is claimed that the route A-B is already a public footpath in law such that it should be recorded on the Definitive Map and Statement.

Since there is no express dedication, it is advised that the evidence is considered to determine whether a dedication can, on balance, be deemed under S31 Highways Act 1980 or inferred at Common Law from all the circumstances.

The evidence in this matter is overwhelmingly user evidence, countered by evidence of recent actions taken by the leasehold owners of the land in question.

However, the Committee will note that land along which the claimed route runs is owned by the Secretary of State for Health and that as the land is held by a Government Department the provisions of S31 Highways Act cannot apply. Section 327 Highways Act provides that provisions such as S31 will only apply if the Government Department agrees and in this matter there is no such agreement.

Hurstwood acquired the leasehold land in August 2012 and whilst no specific date is provided, users claim that 3 metre high fencing has recently been erected on the access points to the field where the wall has broken down, thus restricting access. A number of users claim that notices also appeared in June 2013 such as 'private land' and 'trespassing' and advising pedestrians to use the designated Footpath 321 which is located further north of the field boundary. Some users refer to a 'recent' blockage in the path and others claim to have never seen the signs. There appears to be no reference to any earlier actions by any landowner.

Looking at whether dedication can be inferred on balance at common law it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user can be the circumstance from which to infer a dedication. It may be difficult to now indicate an intention to dedicate by Hurstwood's since their acquisition of the leasehold land in 2012 but the user of the route prior to 2012 may be sufficient to indicate that the owners at that time for several years did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred.

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

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

Risk Management

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

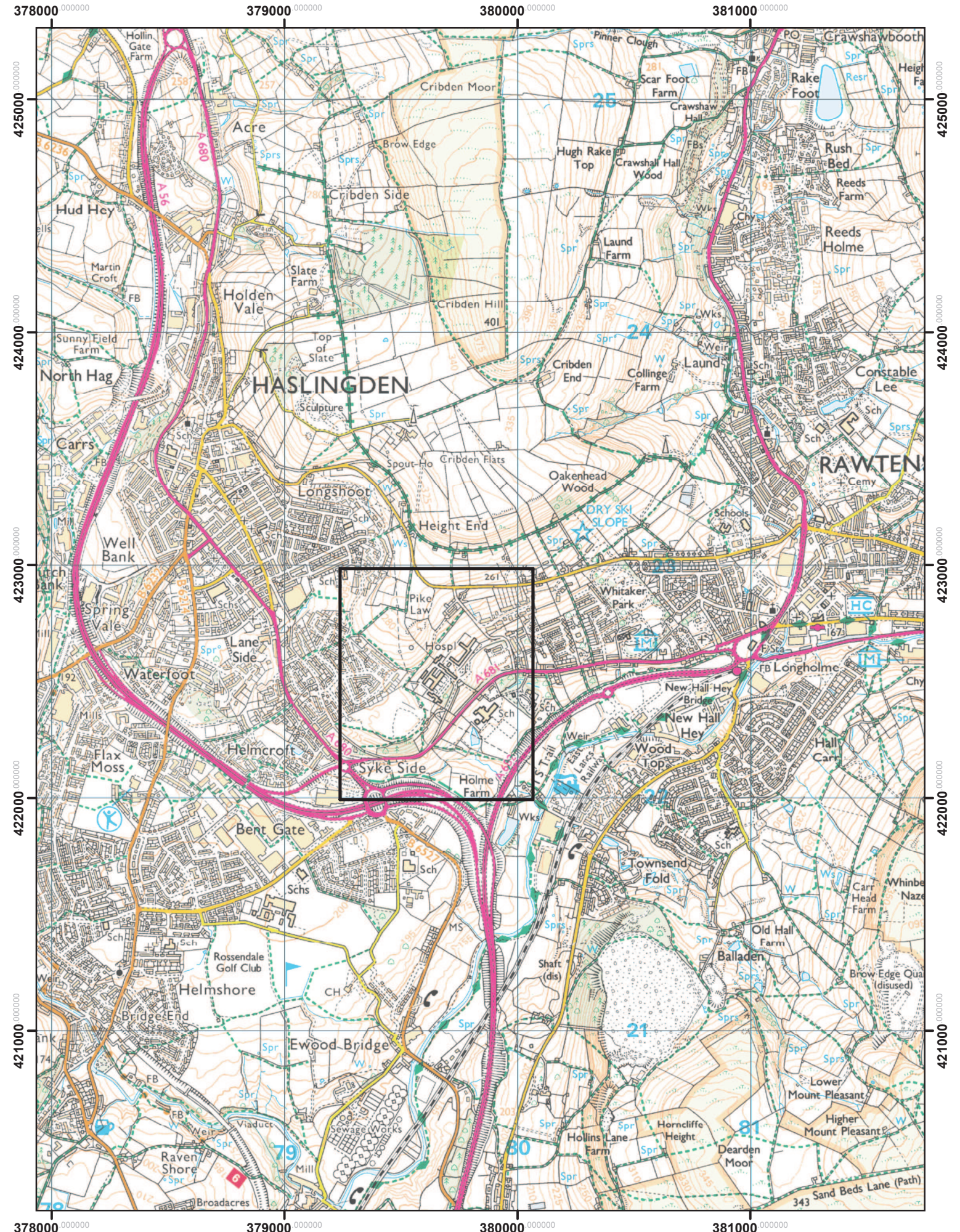
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/546	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604

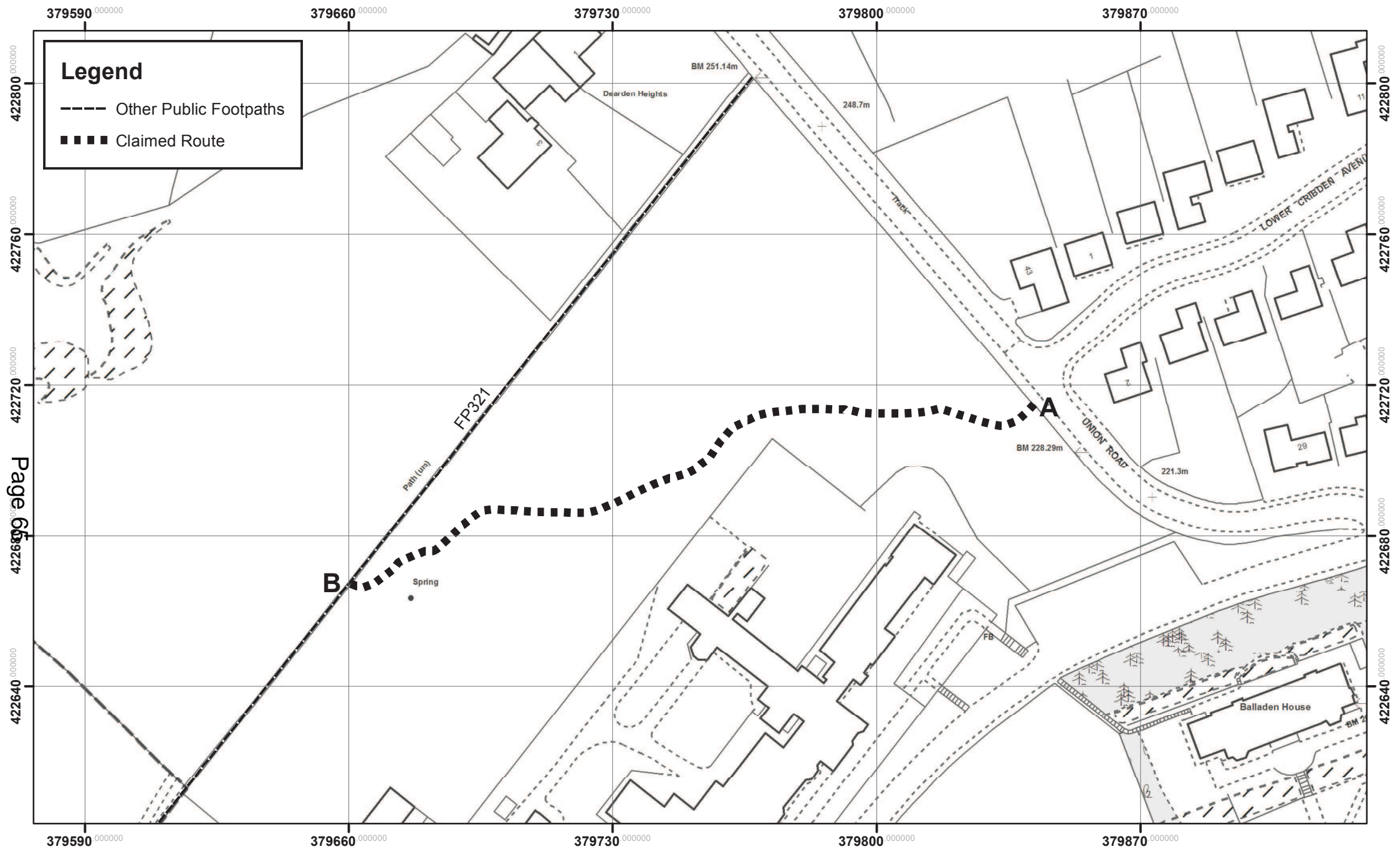
Reason for inclusion in Part II, if appropriate

N/A



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Steve Browne
Executive Director
for Environment

Claimed public footpath from Union Road to Dearden Heights, Rawtenstall, Rossendale Borough - Claim No. 804-546

1:1,250



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Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected: West Lancashire North

Wildlife and Countryside Act 1981

Applications for the Addition to the Definitive Map and Statement of Five Public Footpaths at Banks Enclosed Marsh, North Meols, West Lancashire

Application Nos. 804-526, 804-527, 804-528, 804-530, 804-531

(Annex 'A' refers)

Contact for further information:

Miss M Brindle, 01772 533427, County Secretary & Solicitors Group

megan.brindle@lancashire.gov.uk

Mrs J Elliott, 07917 836626, Environment Directorate

jayne.elliott@lancashire.gov.uk

Executive Summary

Applications for the following five public footpaths in North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way:

804-526 – Junction of Georges Lane and bridleways 48 & 49 to the junction of footpaths 38 & 39.

804-527 – Junction of Charnleys Lane and bridleways 47 & 48 to the junction of footpaths 39 & 40.

804-528 - Bridleway 47 south-west to footpath 40.

804-530 - Bridleway 47 north-west to footpath 40.

804-531 - Bridleway 48 following Cross Bank Covert to footpath 39.

Recommendation

1. That the application for a footpath from the junction of Georges Lane and Bridleways 48 & 49 to the junction of Footpaths 38 & 39 North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-526, be rejected.
2. That the application for a footpath from the junction of Charnleys Lane and Bridleways 47 & 48 to the junction of Footpaths 39 & 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-527, be accepted.
3. That the application for a footpath from Bridleway 47 south-west to Footpath 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-528, be accepted.

4. That the application for a footpath from Bridleway 47 north-west to Footpath 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-530, be accepted.
5. That the application for a footpath from Bridleway 48 to Footpath 39, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-531, be accepted.
6. That an Order or Orders be made pursuant to Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way the following footpaths:
 - a) 'route 2' from the junction of Charnleys Lane and Bridleways 47 & 48 to the junction of Footpaths 39 & 40, North Meols, for a distance of approximately 550 metres and shown between points F-G-H-I on the Committee plan.
 - b) 'route 3' from Bridleway 47 south-west to Footpath 40, North Meols, for a distance of approximately 770 metres and shown between points J-K-L-M-N-O on the Committee plan.
 - c) 'route 4' from Bridleway 47 north-west to Footpath 40, North Meols, for a distance of approximately 635 metres and shown between points J-K-P-Q-R on the Committee plan.
 - d) 'route 5' from Bridleway 48 to Footpath 39, North Meols, for a distance of approximately 520 metres and shown between points S-T-U-V on the Committee plan.
7. That, being satisfied that the higher test for confirming the said Orders can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

Five separate applications under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from North Meols Parish Council for five separate public footpaths across land forming part of Banks Enclosed Marsh, North Meols, West Lancashire and shown between points A-B-C-D-E, F-G-H-I, J-K-L-M-N-O, J-K-P-Q-R and S-T-U-V on the attached plans, to the Definitive Map and Statement of Public Rights of Way.

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

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

- A right of way “subsists” or is “reasonably alleged to subsist” or
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

West Lancashire Borough Council has been consulted on all 5 applications and no response has been received.

North Meols Parish Council is the applicant for the claims.

Claimant/Landowners/Supporters/Objectors

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

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plans:

Point	Grid Reference	Description
A	SD 3885 2189	Junction of Georges Lane and Public Bridleways 48 & 49 North Meols
B	SD 3868 2213	Culvert
C	SD 3861 2223	Change of surface from compacted earth to grass
D	SD 3852 2235	Culvert and metal field gate in boundary fence

E	SD 3852 2236	Junction with Public Footpaths 38 and 39 North Meols on landward side of sea defence embankment as depicted on Definitive Map.
F	SD 3835 2156	Junction of Charnleys Lane and Public Bridleways 47 and 48 North Meols
G	SD 3819 2178	Culvert
H	SD 3803 2200	Culvert and metal field gate in boundary fence
I	SD 3803 2201	Junction of Public Footpaths 39 and 40 North Meols on landward side of sea defence embankment as depicted on the Definitive Map
J	SD 3796 2119	Junction with Public Bridleway 47 North Meols
K	SD 3796 2121	Junction of two claimed routes adjacent to old sea defence embankment
L	SD 3768 2110	Bend in claimed route adjacent to old sea defence embankment
M	SD 3743 2099	Gap in hedge
N	SD 3731 2089	Ditch across claimed route
O	SD 3730 2088	Junction with Public Footpath 40 on new sea defence embankment
P	SD 3768 2161	Culvert
Q	SD 3761 2170	Culvert and metal field gate in boundary fence
R	SD 3760 2171	Junction with Public Footpath 40 on landward side of sea defence embankment
S	SD 3856 2176	Junction with Public Bridleway 48 North Meols
T	SD 3843 2195	Ditch across claimed route
U	SD 3827 2217	Open ditch and fence across claimed route
R	SD 3827 2218	Junction with Public Footpath 39 North Meols on landward side of new sea defence embankment.

Description of Routes:

A site inspection of all 5 routes was carried out on 9 September 2013 with a further inspection carried out on 13 January 2014.

Application for a Public Footpath from junction of Georges Lane and Bridleway 48 and 49 North Meols, to Footpath 38, North Meols, West Lancashire - Application No. 804-526 (Route 1)

Shown between points A-B-C-D-E on the attached plan.

The route starts at the junction of Georges Lane with Public Bridleways 48 and 49 North Meols (point A).

Access onto the route from the junction of the bridleways and from Georges Lane is open and unrestricted.

Adjacent to the route at point A and positioned high up on a metal post is a sign saying, 'Private, Legal action may be taken against unauthorised persons found on this property'.

From point A the route extends in a straight line in a north westerly direction for its entire length. It is bounded by drainage ditches on either side and crosses a culverted drainage ditch at point B. It consists of a 3 metre wide farm track surfaced with crushed tarmac that has become embedded due to use of the route by heavy farm machinery.

At point C the surface of the route changes to grass which appears to be well maintained and regularly mown.

At point D the route is crossed by a further culverted drain and is then crossed by a 13 foot metal field gate (padlocked). Adjacent to the gate is a substantial wooden stile and a sign saying 'This is Environment Agency property, shooting is strictly prohibited.'

Immediately beyond the gate (and stile) the route ends at point E at the junction with Public Footpaths 38 and 39 North Meols - which runs as a continuous route along the landward base of the new sea defence embankment.

n.b. beyond point E, not forming part of the application route, extending onto the top of the embankment is a graded track, wide enough for vehicular use which provides access to a worn track along the top of the embankment.

The total length of the route is approximately 570 metres.

Application for a Public Footpath from junction of Charnleys Lane and Bridleways 47 and 48 North Meols to the junction of Footpaths 39 and 40, North Meols, West Lancashire – Application No. 804-527 (Route 2)

Shown between points F-G-H-I on the attached plan.

The route starts at point F on the Committee plan at the junction of Charnleys Lane with Public Bridleways 47 and 48 North Meols.

At point F the route of the public bridleway is clearly signed in both directions.

Access onto the route from the bridleway is open and unrestricted. A sign adjacent to point F states, 'Private, Legal action may be taken against unauthorised persons found on this property' and a second sign attached to the same post states 'Danger, no trespassing, shooting in process'.

From point F the route follows a well defined track across arable land which appears to receive regular use by farm machinery and is well maintained. The route extends in a straight line in a north westerly direction crossing a culverted drain at point G and continuing in a north westerly direction to cross a second culverted drain at point H where it is crossed by a 10 foot metal field gate (padlocked) immediately before the junction with Public Footpaths 39 and 40 North Meols at point I on the landward base of the new sea defence embankment. Close to the gate at point H is a wooden

stile in the fencing that is clearly signed on both sides as having been erected by and for the use of the Southport and District Wildfowlers.

n.b. A narrow track extends from point I to the top of the new embankment and looks to have been formed by pedestrian use; this is not part of the application.

The total length of the route is approximately 550 metres.

Application for a Public Footpath from Bridleway 47 south-west to Footpath 40, North Meols, West Lancashire - Application No. 804-528 (Route 3)

Shown between points J-K-L-M-N-O on the attached plan.

The route commences at point J which is a point on Public Bridleway 47 North Meols. The route follows a heavily used vehicular farm access track in a northerly direction through a break in the old sea embankment to point K, this section being duplicated with application 804-530 although if Committee decide that both routes should be added to the Definitive Map and Statement this section should only be included once in any Order(s).

Adjacent to point K two signs have been attached to a tall post reading, 'Danger (No Trespassing) Shooting in Progress' and 'No public right of way, Trespassers will be prosecuted'.

From point K the route turns in a westerly and then south westerly direction along a farm access track to the north of, and running parallel to, the old sea embankment. A well maintained hedge separates the route from the old embankment and on the north side of the route it is open to the arable fields.

At point L there is a gap in the hedge separating the route from the farm access route. The route bends north to then continue in a south westerly direction along the farm track north of the hedge separating it from the old sea embankment.

The route continues for a further 275 metres to point M on the Committee plan where it then passes through the hedge to continue in an south easterly direction along the bottom of the old sea embankment to point N. Between point M and point N the claimed route is overgrown with there is no visible sign of a walked route.

Close to point N on a very tall post are two signs stating 'Private, Legal action may be taken against unauthorised persons found on this property' and 'Danger (No trespassing) Shooting in progress'.

The route is crossed by a deep drain at point N with earth that has been dug from the drain deposited in a mound on the route. Beyond the mound is the drain with no access across it.

From point N the route continues a short distance onto the new embankment where access is prevented by a wooden post and rail fence. Beyond the fence the route continues to its junction with Public Footpath 40 North Meols at point O.

The total length of the route is approximately 770 metres.

Application for a Public Footpath from Bridleway 47 to Footpath 40, North Meols, West Lancashire – Application No. 804-530 (Route 4)

The route is shown between points J-K-P-Q-R on the attached plan.

It starts at point J on the Committee plan where it leaves Public Bridleway 47 North Meols to follow a heavily used vehicular farm access track in a northerly direction through a break in the old sea embankment to point K. (This section is a duplicate of application 804-528, see above.)

At point K there is a sign positioned on a tall post which states 'Private, legal action may be taken against unauthorised persons found on this property'.

From point K the route extends in a north westerly direction in a straight line towards the new sea defence embankment. It follows a well used farm access track between well maintained drains.

At point P the route crosses a culverted drain. Beyond the culvert the route continues in a north westerly direction between two drains. The surface of the route is grass which had been recently mown. There is evidence of vehicular use but this appears to be significantly less than along the section J-K-P.

At point Q a drain crosses the route which has been culverted and on the north west side of the culvert in the boundary fence is a padlocked metal field gate.

Adjacent to the gate is a sign that has been damaged but it appears to be an Environment Agency sign stating that shooting is prohibited. On the other side of the gate there appears to be the remains of a broken stile.

At point R the route meets Public Footpath 40 North Meols on the landward side of the new sea defence embankment. Extending from point R is a worn track onto the top of the embankment that appears to have been created by pedestrian use.

The total length of the route is approximately 635 metres.

Application for a Public Footpath from Bridleway 48 to Footpath 39, North Meols, West Lancashire – Application 804-531 (Route 5)

The route is shown between points S-T-U-V on the attached plan.

It starts at point S on the Committee plan at the junction with Public Bridleway 48 North Meols immediately west of Cross Bank Cottage.

From point S the route is immediately crossed by a post and barbed wire fence with no access.

Beyond the fence the route enters Cross Bank Covert (a strip of woodland designated by the County Council as a biological heritage site) with a further row of barbed wire preventing access. There are various signs prohibiting access and stating that the land is private and also evidence that fencing has been recently cut.

Beyond point S the route extends in a north westerly direction in a straight line towards the new sea defence embankment. It follows a worn track through the woodland along the top of a small embankment to point T where a culverted drain crosses the route. Above the culvert earth forming part of the former embankment has been removed and piled on the route creating a deep and difficult to negotiate dry ditch under which the culvert passes.

Beyond the earthworks and culvert at point T the route continues in a north westerly direction on a clearly defined path through the woodland still following the top of the raised embankment to point R where it is crossed by a drain that appears to have been recently dug out and is impossible to cross. Beyond the ditch is a post and wire fence through which there appears to be a small gap between posts that may have provided access to the route. Beyond the fence the route terminates at point V at its junction with Public Footpath 39 North Meols on the landward side of the sea defence embankment.

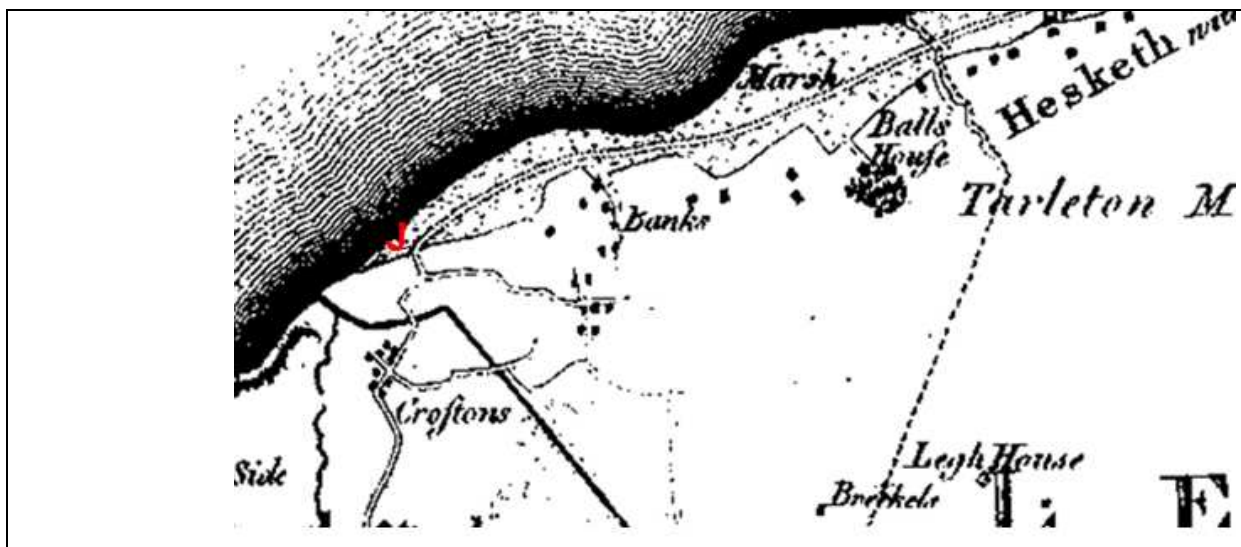
The total length of the route is approximately 520 metres.

Map and Documentary Evidence

Document Title	Date	Brief description of document & nature of evidence
Henry Bankes' Map of Lands in North Meols belonging to Peter Bold 1736 (Crosby Reference library)	1736	This map was surveyed and mapped by Henry Bankes and appears to show the lands in the ownership of Peter Bold, with the acreage of each field, plus the field name or tenant/occupier. The reproduction of this map carries the following statement: 'A copy of the original survey of lands in Southport and Banks in the possession of the Trustees acting in execution of the Trusts of the Will and Codicil of the late Charles Scarisbrick of Southport Hall, Esquire, deceased, and was reproduced by photography (by permission of the Scarisbrick Trustees), by the Southport Corporation in February 1908'.



Observations		
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Routes 3,4,5	None of the routes are shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Investigating Officer's Comments	The application routes probably did not exist in 1736.	
Yates' Map of Lancashire CRO Ref DDX 99/12	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 to the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale would also limit the routes that could be shown.




<p>General Observations</p>	<p>This map clearly shows the distinction between the salt marsh and the cultivated land. The small scale and different surveying techniques mean that it is not possible to overlay maps of this age with more recent maps. However, it was accepted at a public inquiry held in 2001 into the status of Public Bridleway 47 and 48 North Meols that the route shown across the marsh was the Public Bridleway from which the claimed routes start at points J-F-S and A. Note that only point J is marked on the map extract as the exact location of the other points could not be determined.</p>	
<p>Routes 1-5</p>	<p>None of the routes are shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1786.</p>	
<p>Investigating Officer's Comments</p>	<p>The application routes probably did not exist in 1786.</p>	
<p>Greenwood's Map of Lancashire</p>	<p>1818</p>	<p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.</p>






Observations	
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Route 3	The route is not shown. A solid black line is shown extending in a south west direction from point J which may depict the line of the old sea embankment. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Routes 4,5	The routes are not shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Investigating Officer's Comments	The application routes probably did not exist in 1818.
Hennet's Map of Lancashire	1830 Small scale commercial map.


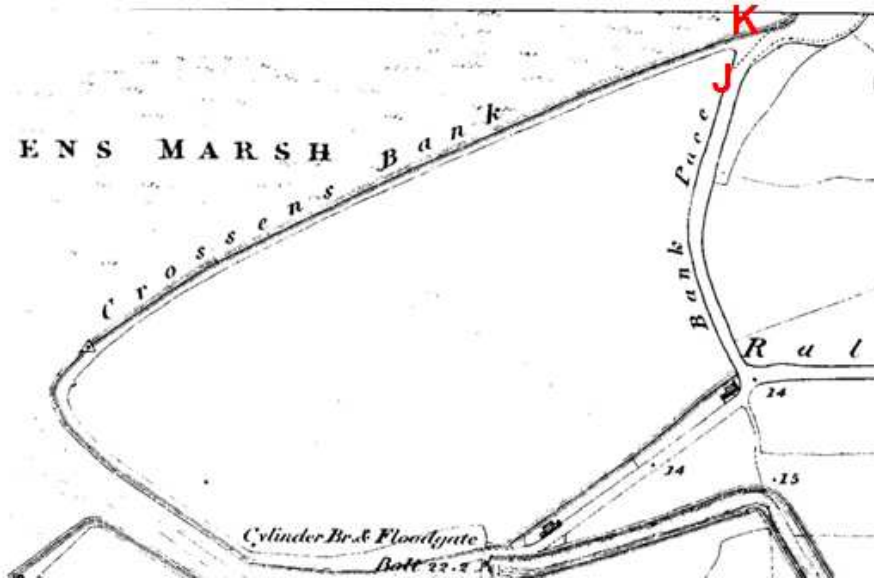


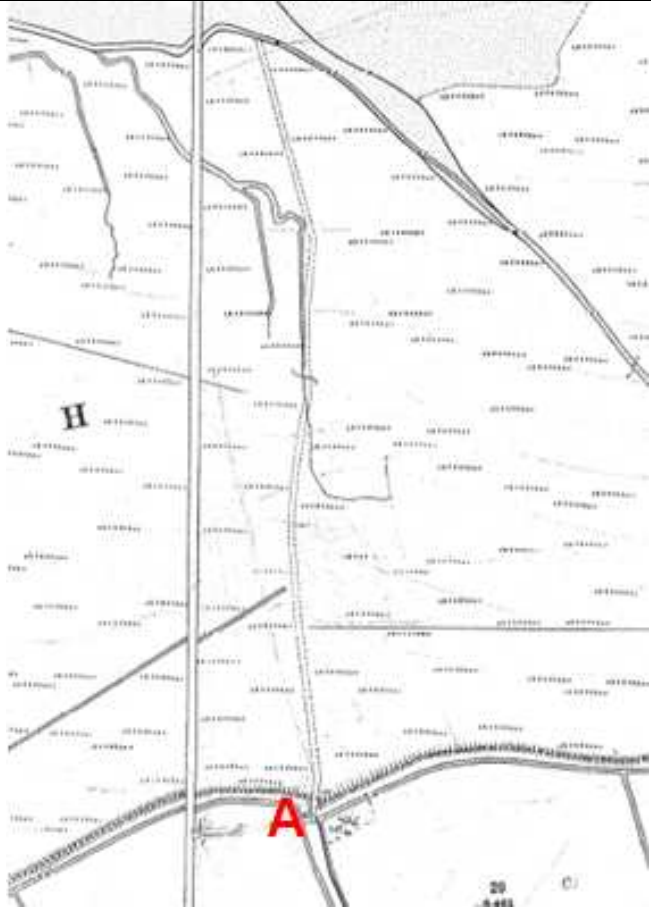
Observations	
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Route 3	The route is not shown. A solid black line is shown extending in a south west direction from point J which may depict the old sea embankment. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Routes 4,5	The routes are not shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Investigating Officer's Comments	The application routes probably did not exist in 1830.
Inclosure Act Award Maps	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in parishes to be made. They can provide conclusive evidence of status.
Observations	There is no Inclosure Award for North Meols.
Investigating Officer's Comments	No inference can be drawn in respect of any of the five routes.

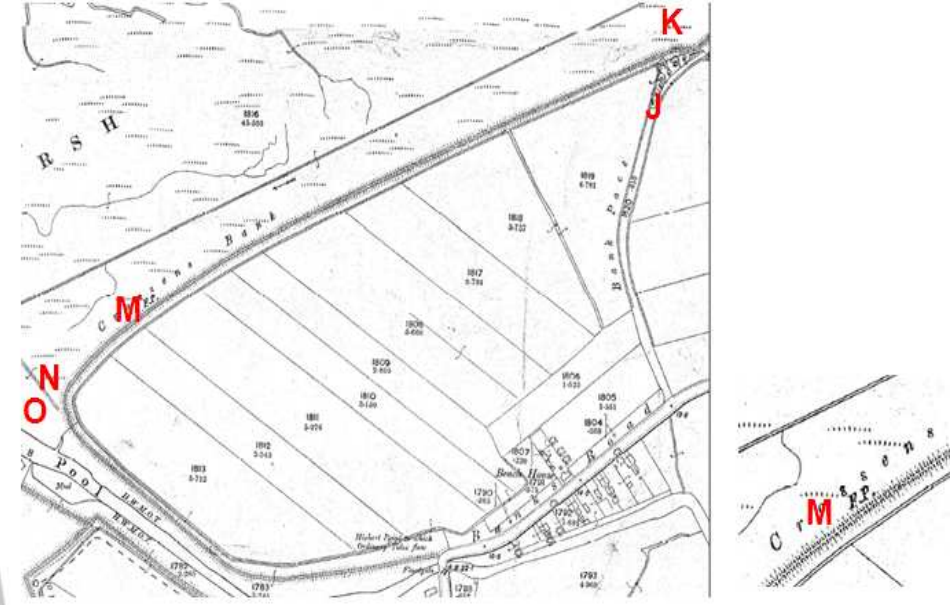
Tithe Map and Tithe Award or Apportionment	1840	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		
Route 1		
Observations	Georges Lane is shown extending as far as the old embankment at point A. Banks Marsh has not been enclosed and the route is not shown.	

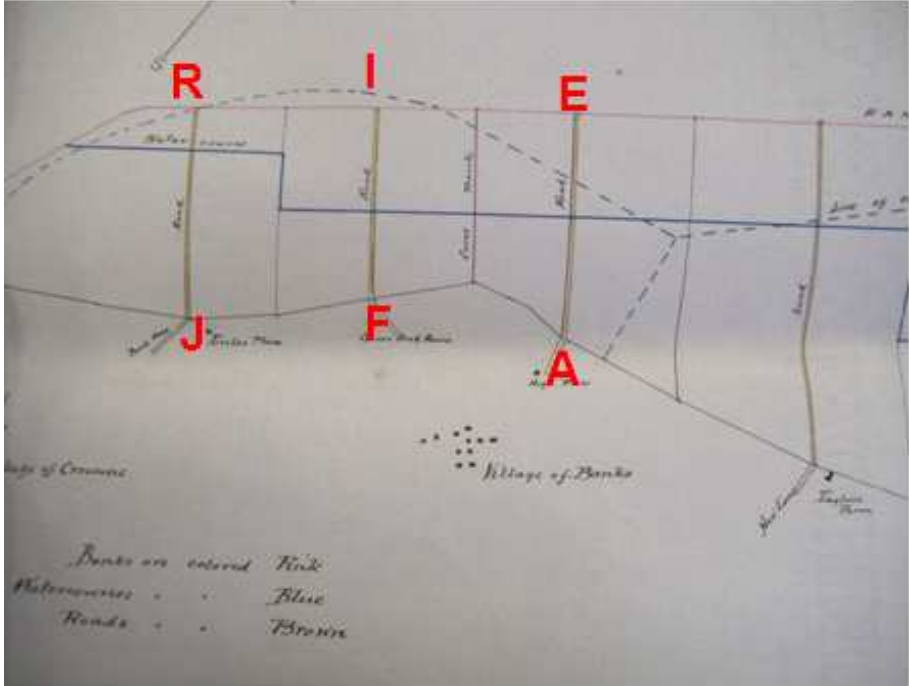
Route 4	
Observations	<p>Bridleway 47 North Meols is shown shaded brown. The old embankment is shown with just a short break through which the public bridleway passes north east of point K. The route is not shown through the embankment between point J and point K. The route is not shown between point K and point R. Banks Marsh has not been enclosed and the new embankment has not been constructed.</p>
Route 5	
Observations	<p>The route is not shown. The old sea embankment in the vicinity of point S is shown but Banks Marsh had not been enclosed and the new embankment had not been constructed. Cross Bank Covert through which the route runs is not shown.</p>
Investigating Officer's Comments	<p>The routes probably did not exist in 1840.</p>

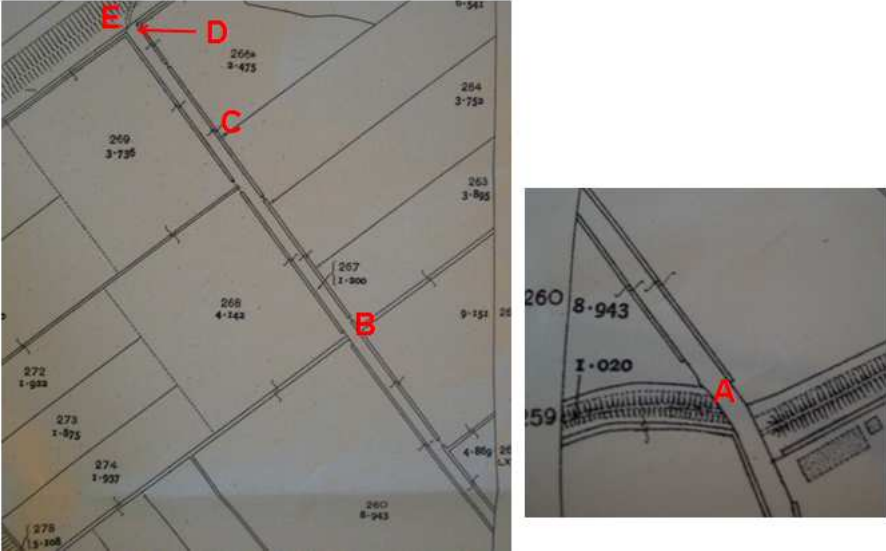
Ordnance Survey Maps	<p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840's. The large scale 25-inch maps which were first published in the 1890's provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>	
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area, surveyed 1845-46 and published 1848.
General Observations	Banks Marsh had not been enclosed in 1845-6.	
Route 1		
Observations	The route is not shown. Georges Lane is shown to extend to point A but is not named on the map. The old sea embankment crosses the route at point A but beyond point A the claimed route is shown to cross Banks Marsh and is not shown on the map.	

Route2	
Observations	<p>The route is not shown. Charnleys Lane is shown on the map extending as far as the start of the route at point F but is not named. At point F the route is crossed by the old sea embankment (named on the map as Goose Dub Bank). Beyond point F the route crosses Banks Marsh and is not shown on the map.</p>
Route3	
Observations	<p>The route is not shown. Public Bridleway 47 North Meols is shown and named as Bank Pace. The route between point J and point K is not marked but appears to have been available. The old embankment is shown and is named as Crosssens Bank. The land to the north of the old embankment has not been enclosed and is named as Crosssens Marsh on the map. There is no evidence of a route along or adjacent to Crosssens Bank.</p>

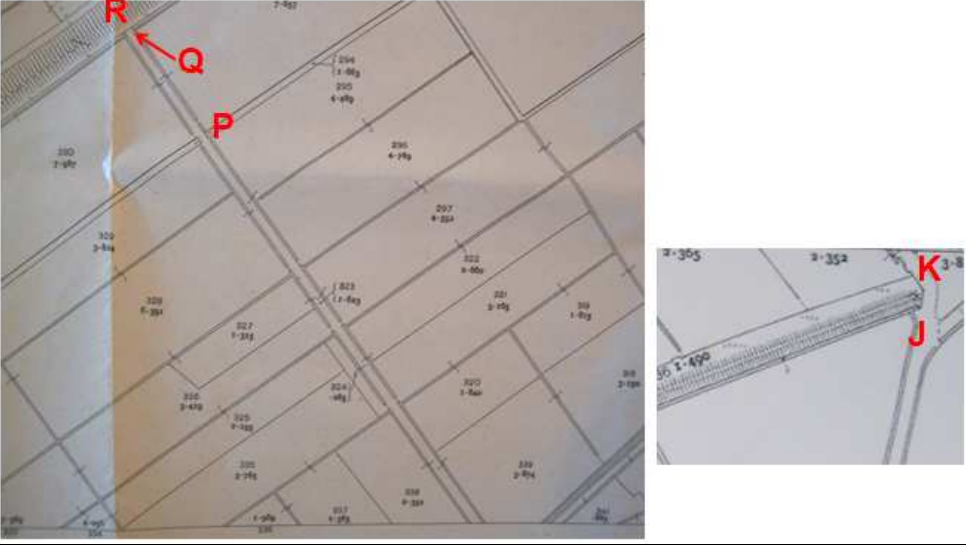
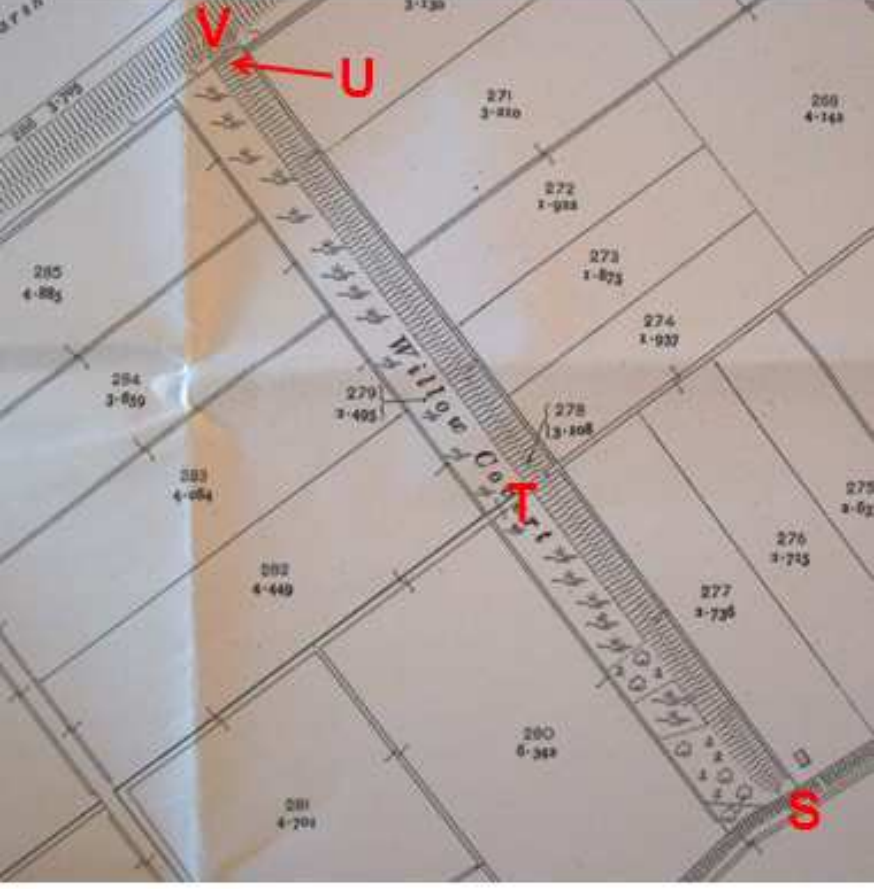
Route 4		
Observations	The route is not shown. Public Bridleway 47 North Meols is shown and named as Bank Pace. The route between point J and point K is not marked but appears to have been available. Beyond point K the route has not been constructed and the land over which it crosses is shown as being part of Crossens Marsh.	
Route 5		
Observations	The route is not shown. The land over which it crosses is shown as being part of the marsh.	
Investigating Officer's Comments	It is very unlikely that any of the 5 routes existed in 1845-46.	
25 Inch OS map	1894	The earliest Ordnance Survey 25 inch map surveyed in 1892 and published 1894.
Route 1		
Observations	The route is not shown. Georges Lane is shown and named on the map and ends at the junction with the old embankment and the start of the route at point A. Beyond point A there is a track shown extending in a northerly direction across the marsh. This track is to the east of the claimed route. The marsh has not been reclaimed and the new embankment does not exist.	

Route 2	
Observations	The route is not shown. Charnleys Lane is shown to extend to point F where it ends at the junction with the old sea embankment and the start of the route.
Route 3	
Observations	The old embankment is shown and is labelled as Crossens Bank. The area between point J and K is shown to be wooded and the route is not shown. The letters 'F.P.' have been drawn adjacent to the bank close to point M. A ditch is shown to exist across point L but the new embankment on which point O is located is not shown.
Route 4	
Observations	The area between point J and K is shown to be wooded and the route is not shown. Beyond point K the route is not shown across the unenclosed marshland.
Route 5	
Observations	The route is not shown across the unenclosed marshland.
Investigating Officer's Comments	
Routes 1,2,4,5	The routes probably did not exist in 1892.
Route 3	The route is not shown on the map but the inclusion by the Ordnance Survey surveyor of the letters 'F.P.' on the map close to point M suggest that a worn 'footpath' may have existed along the embankment in the in 1892.


Scarisbrick Estate Papers	1895	Scarisbrick Estate papers deposited at the County Records Office.
		
Observations	<p>Within the papers are a number of letters and documents relating to the scheme to drain the marsh and to construct the 'new' embankment. It appears from a letter addressed to the Scarisbrick Estate Office from Mr John Bentham dated 8th April 1895 that work to drain the marsh was carried out between 1890-1895 and that by April 1895 work had been completed. The letter also explains that the embankment that carried route 5 (Cross Bank) was constructed to prevent flooding as part of the drainage scheme. There is various correspondence relating to the cost of the work, probable net income to be derived from draining the marsh and the cost of the work carried out. A plan attached to the letter to the Estate Office from Mr Bentham shows three of the routes (1, 2 & 4) coloured brown and labelled as 'roads'. None of the correspondence made reference to any of the routes being constructed as routes to be dedicated for public use.</p>	
Investigating Officer's Comments	<p>Routes 1, 2 & 4 had been constructed by 1895. It is most likely that all three routes were constructed as private access routes across the reclaimed marsh. The embankment that carries route 5 existed in 1895 but there is no evidence to suggest that a path was constructed along it or that it was being used by the public at that time. Route 3 probably did not exist in 1895 (with the exception of the section J-K which also forms part of route 4).</p>	


<p>25 inch OS map</p>	<p>1910/1911</p>	<p>Further edition of the 25" map surveyed 1891, revised 1908-9, published 1910 and 1911 OS Sheets 65-15, 67-16 and 75-3</p>
<p>General Observations</p>	<p>It appears from the map that the marshland over which the routes are situated had been enclosed by 1911.</p>	
<p>Route 1</p>		
<p>Observations</p>	<p>The full length of the route is shown. At point A the route appears to be a natural extension to Georges Lane and is shown cutting through the old embankment. From point A, the route extends in a north westerly direction bounded by ditches on either side and crossing a culverted drain at point B. It then continues to point D where it crosses a further culvert and is crossed by a solid line at point D. A track denoted by a double pecked line extends from point D over the embankment and onto the marsh suggesting that a gate could have provided onto the embankment at point D. A number of accesses come off the route into the adjacent fields between point A-B-C-D. The route of Public Footpaths 38 and 39 on the landward side of the new embankment is not shown.</p>	


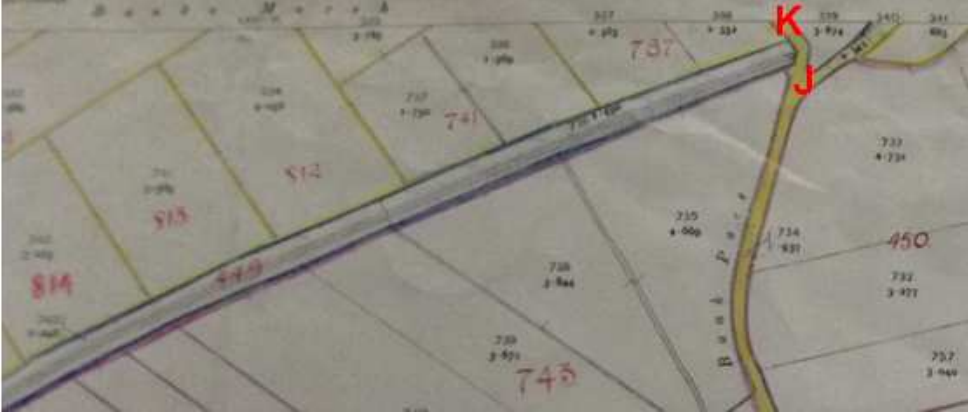
<p>Route 2</p>	
<p>Observations</p>	<p>The full length of the route is shown. At point F the route appears to be a natural extension to Charnleys Lane and is shown cutting through the old embankment. It extends in a north westerly direction bounded by on either side and crossing a culverted drain at point G. At point H the route crosses a culvert and is crossed by a solid line (boundary). A number of accesses come off the route into the adjacent fields between points F-G-H.</p>
<p>Route 3</p>	
<p>Observations</p>	<p>The route between point J-K is shown on the map but the section between points K-L-M-N-O is not shown. The old embankment is fenced off from the fields to the north and the route would have run down this strip of land at the bottom of the north side of the</p>

	<p>embankment. The route is crossed by a boundary just beyond point L. The annotation 'F.P.' that was shown on the earlier edition of the map close to point M is not shown on this edition of the map.</p>
<p>Route 4</p>	
<p>Observations</p>	<p>The whole length of the route is shown. It is bounded by drains between points K and Q and crosses a culvert at point P and another at point Q where it is also crossed by a solid black line on the boundary with the new sea defence embankment.</p>
<p>Route 5</p>	
<p>Observations</p>	<p>The route is not shown. An embankment is shown to have been constructed along the full length of the route from point S to point V. There are solid lines across the route at point S and point U</p>

	<p>suggesting the existence of boundaries. A culvert is shown to run underneath the embankment (and route) at point T. The strip of land immediately east and running parallel to the route is named as Willow Covert on the map.</p>	
<p>Investigating Officer's Comments</p>	<p>By 1910-11 the marsh had been enclosed and three of the routes (1,2 & 4) appear to have been purposely constructed as access routes to adjacent fields and to the new sea defence embankment. All three of the routes are crossed by boundaries at the points at which they meet the new sea defence embankment (points E, I and R on the Committee plans) although gated access may have been available. At point E (on route 1) a double pecked line is shown extending from the boundary line onto the embankment which would strongly suggest the existence of a gate at point E. Routes 3 (with the exception of the section between points J-K) and 5 are not shown on the map and do not appear to have existed as worn tracks noted by the Ordnance Survey surveyor on the ground in 1910.</p>	
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>

<p>General Observations</p>	<p>There are no Finance Act records held in the County Records Office covering the area affected by the claimed routes. Some extracts of the Finance Act Maps obtained from the National Archives in London were submitted with the applications 804-526, 527 and 530 but further maps extracts and relevant field books entries have subsequently been obtained by the County Council. The Ordnance Survey base map used for the process of drawing up the Finance Act maps predated the enclosure of the marsh and did not show the new sea embankment, claimed routes, field boundaries and drains physically constructed as part of the enclosure process. However, we know that at the time of the valuation the marsh had been drained and enclosed and the resulting layout of drains, boundaries, the new embankment and access routes are drawn onto the Ordnance Survey base maps.</p>
<p>Route 1</p>	

	
<p>Observations</p>	<p>The route is shown across two Finance Act maps – Ordnance Survey 25 inch sheets 67/16 and 67/15.</p> <p>On Ordnance Survey map sheet 67/16 Georges Lane is shown to be excluded from the numbered hereditaments and there is no distinction or break shown from the northern end of the publicly recorded section of Georges Lane and the start of the route at point A. From point A the route is not numbered and is excluded from the numbered hereditaments.</p> <p>After approximately 65 metres the route crosses map sheets to continue on sheet 67/15. The survey for the OS base map predates the enclosure of the marsh but the route has been drawn onto the map and excluded from the adjacent numbered hereditaments. At point E the route meets the new sea defence embankment (numbered as part of hereditament 1141).</p>

<p>Route 2</p>	
<p>Observations</p>	<p>The route is not shown on the OS base map but has been hand drawn onto the map as part of the process involved in the valuation. Charnleys Lane is shown to be excluded from the adjacent hereditaments and no visible line can be seen across the end of the publicly recorded length of Charnleys Lane at point F. The full length of the route from point F to point I has been excluded from the numbered hereditaments although at point I it is shown connecting to the sea defence embankment numbered 1141 (pt) and which is described as 'Banks Marsh, Sea embankment and for which there was no deduction claimed for a public right of way or user.</p>
<p>Route 3</p>	

Observations

The first part of the application route between point J-K is coloured yellow and excluded from the numbered hereditaments. The old sea embankment is contained within hereditament 449 which is described in the field book as being used for grazing purposes and as having been inspected by the valuer in 1913. There is no deduction for public rights of way or user and no reference to the existence of a public footpath along the embankment. Field book entries for hereditaments 741, 787, 812, 813 and 814 were also inspected and no deductions were listed in any for the existence of a public right of way.

The Finance Act map covering the route between points M-N-O was not available for inspection.

Route 4



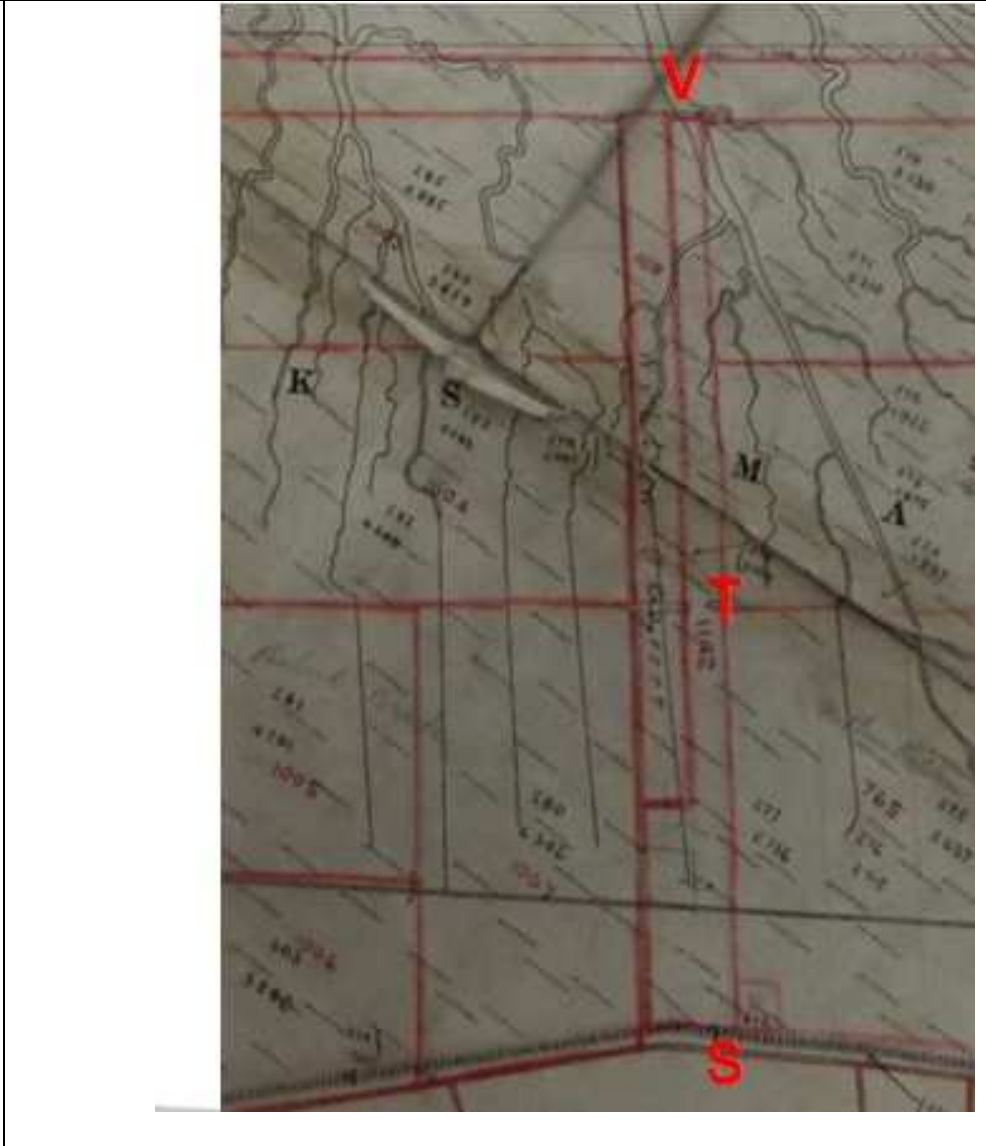
Observations

The route is shown across two OS maps and subsequently two Finance Act maps. The first part of the route from point J is shown on OS map 73/3 dated as being the 1911 edition. Ralph Wife's Lane (now recorded as a public vehicular highway), Bank Pace

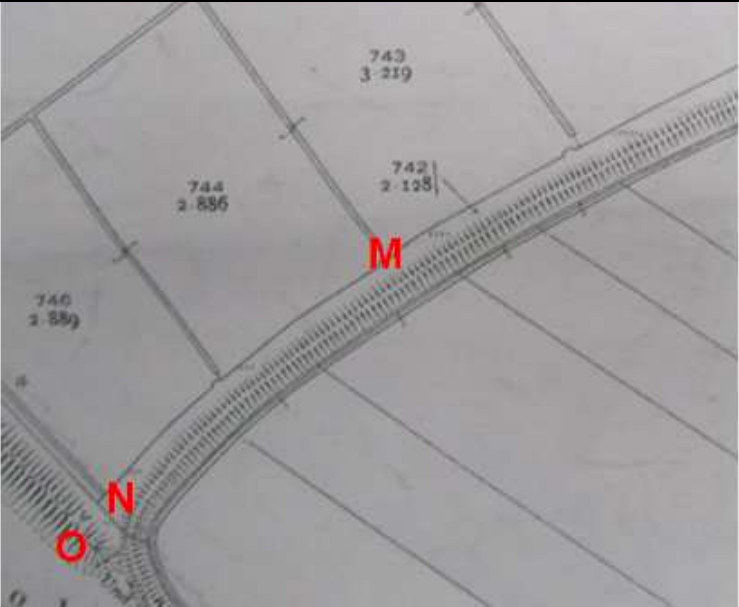
(Public Bridleway 47 North Meols) and route from point J to point K (and continuing north west along the claimed route to the edge of the map sheet) are coloured yellow on the plan and are all excluded from the numbered hereditaments.


The remaining section of the route is shown on the Finance Act Map drawn on the OS 25 inch sheet 67/15. The OS base map does not show the enclosed marsh or new sea embankment. However, the position of the route has been accurately drawn onto the map together with the drains and field boundaries created as part of the enclosure of the marsh and the new sea defence embankment. The route is excluded from the numbered hereditaments. The OS 'field' number and acreage has been written onto the map for the route and also for the surrounding fields. There is no line across the route at point R (where it meets the new sea embankment). The sea embankment has been numbered as being part of plot 1141 which is detailed as consisting of Banks Marsh Sea embankment.


Route 5



Observations	The whole of the route is contained within numbered hereditament 1142. Part of Willow Covert is numbered separately – 1126 and 1128. Hereditament 1142 is listed in the Field Book as 'Cross Bank' and was inspected by the valuer in 1915. It is described as a plantation with no timber value. The valuation includes shooting rights but there is no deduction for a public right of way.
Investigating Officer's Comments	
Route 1	The full length of the route is excluded from the assessable parcels of land shown on the map and appeared to be considered as an extension of Georges Lane suggesting that at the time of the survey it was considered by the landowner to be a public highway.
Route 2	The full length of the route is excluded from the assessable parcels of land shown on the map and appeared to be considered as an extension of Charnleys Lane suggesting that at the time of the survey it was considered by the landowner as being a public highway.
Route 3	<p>The first part of the route between point J and point K is excluded from the assessable parcels of land shown on the map and appeared to have been considered as an extension of Bank Pace (Public Bridleway 47) suggesting that at the time of the survey it was considered by the landowner as being part of the public highway.</p> <p>Between point K and point M the route is not excluded from the hereditaments and no deductions have been claimed for a public right of way or user suggesting that the landowners did not acknowledge the existence of a public footpath or did not consider it worth claiming. The Map and Valuation books were not available for the section M-O so no inference can be drawn in this respect.</p>
Route 4	<p>The first part of the route between point J and point K is excluded from the assessable parcels of land shown on the map and appeared to have been considered as an extension of Bank Pace (Public Bridleway 47) suggesting that at the time of the survey it was considered by the landowner as being part of the public highway.</p> <p>Beyond point K the route is shown on a separate OS map sheet onto which the route has been hand drawn and is again shown excluded from the assessable parcels of land suggesting that at the time of the survey it was considered by the landowner as being a public highway.</p>
Route 5	The whole of the route is contained within hereditament 1142 and no deductions have been claimed for a public right of way or user

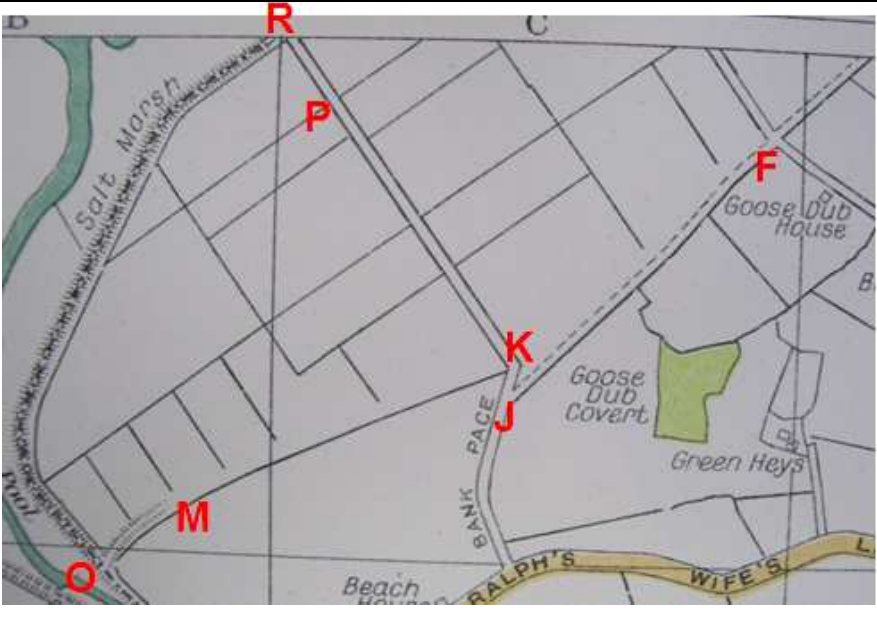
		suggesting that the landowners did not acknowledge the existence of a public footpath or did not consider it worth claiming.
Scarisbrick Estate Drainage Act 1924	1924	The purpose of this private Act was to establish Commissioners to maintain sea embankments and a land drainage system for the Scarisbrick Estate.
Observations		<p>There is no reference to the existence of public rights along any of the five routes.</p> <p>Section 16 of the Act gave Commissioners rights to enter the land to carry out their duties with or without horses or vehicles or on foot and Section 54 of the Act provided that the owners or occupiers of any parts of the lands in question would have the right at all times to pass and re-pass across the embankments and drainage systems for the purpose of obtaining access from any one part to any other part of the land owned or occupied by them.</p>
Investigating Officer's Comments		<p>The Act does not confirm the existence of public rights of access along any of the claimed routes in 1924.</p> <p>The fact that private rights of access were granted to specified persons by the Act does not mean that public rights of access could not have existed along any of the 5 routes at the time that the Act was enacted or at any time since.</p>
25 Inch OS map	1928	Further edition of 25 inch map resurveyed 1892-3, revised in 1926 and published 1928. Only one map sheet published in 1928 could be located – LXXV.3 (75/3) so it has only been possible to comment on two of the routes.
		
Route 3		The route shown between point J and point K in the same way as it was shown on the 1911 edition of the OS map. The remainder of the route is not shown on the map. There

		is one slight alteration to 1911 edition of the OS with the addition of a boundary across the route at point N.
Route 4		The route is shown between point J and Point K in the same way as it is shown on the 1911 edition of the OS 25 inch map.
Investigating Officer's Comments		No inference can be drawn with respect to the routes 1, 2, 4 (between points K-P-Q-R) and 5. With respect to route 3 it is unlikely that it existed in 1928 with the exception of the section J-K which is included on the map and appears capable of being used at that time (and also forms part of route 4)
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for county highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public highways – from A roads to footpaths. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions. The County Council are now required to maintain, under section 31 of the Highways Act 1980, an up to date list of streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not is irrelevant to whether it is a highway or not.
		

	
<p>Observations</p>	<p>The maps believed to have derived from the handover maps do not show any of the 5 routes as publicly maintainable highways. Georges Lane and Charnleys Lane are recorded as being publicly maintainable up to the start of route 1 at point A and the start of route 2 at point F. The adoption records held by the County Council state that both Georges Lane and Charnleys Lane were adopted in 1929.</p> <p>The electronic records now held by the County Council shows Georges Lane and Charnleys Lane as they were recorded in 1929. However, they also show the first 122 metres of route 1 (from point A) as a privately maintained highway and the first 340 metres of route 2 (from point E) as a public footway.</p>
<p>Investigating Officer's Comments</p>	<p>None of the 5 routes were recorded as publicly maintained highways in 1929. However, many public rights of way have been found not to have been recorded on these maps because they were unsurfaced at that time. None of the 5 routes are currently surfaced, or were thought to have been surfaced at that time.</p> <p>Despite making enquiries it has not been possible to find out why the first 122 metres of route 1 is recorded as a privately maintainable highway or why the first 340 metres of route 2 has been recorded as a footway.</p>
<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa 1934</p> <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p>

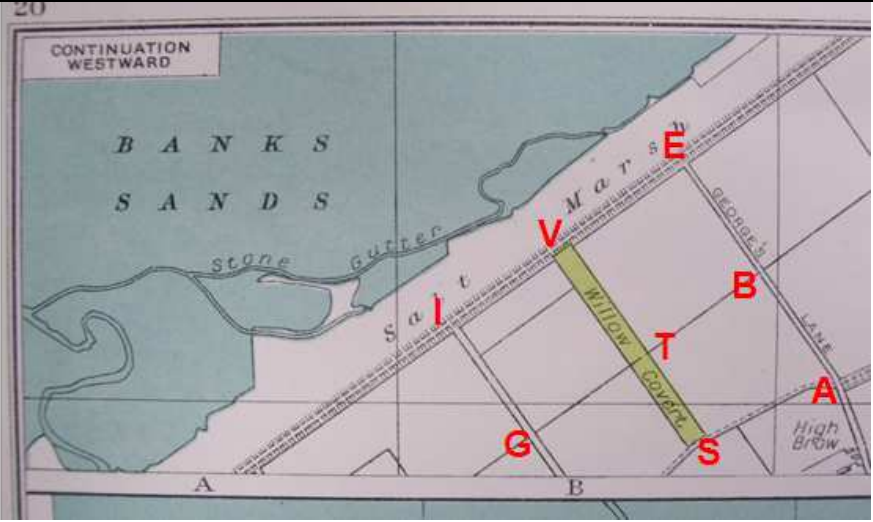
The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

Routes 3,4 & 5 (part)

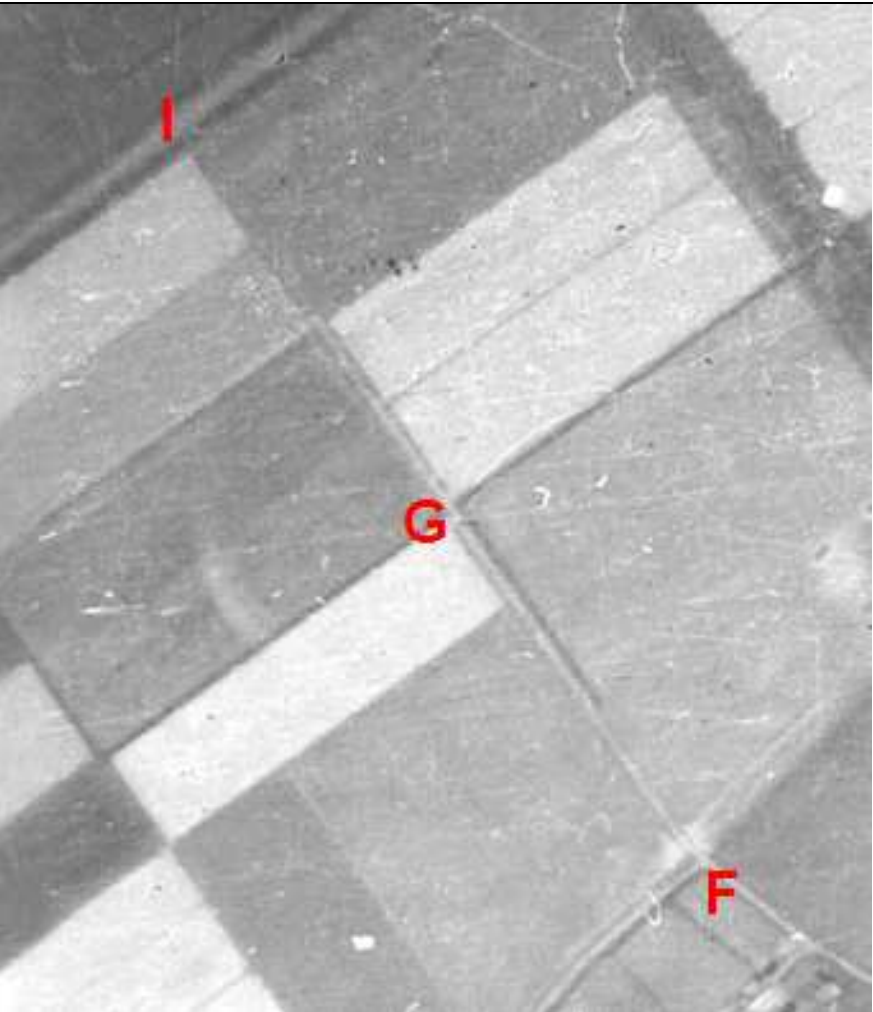



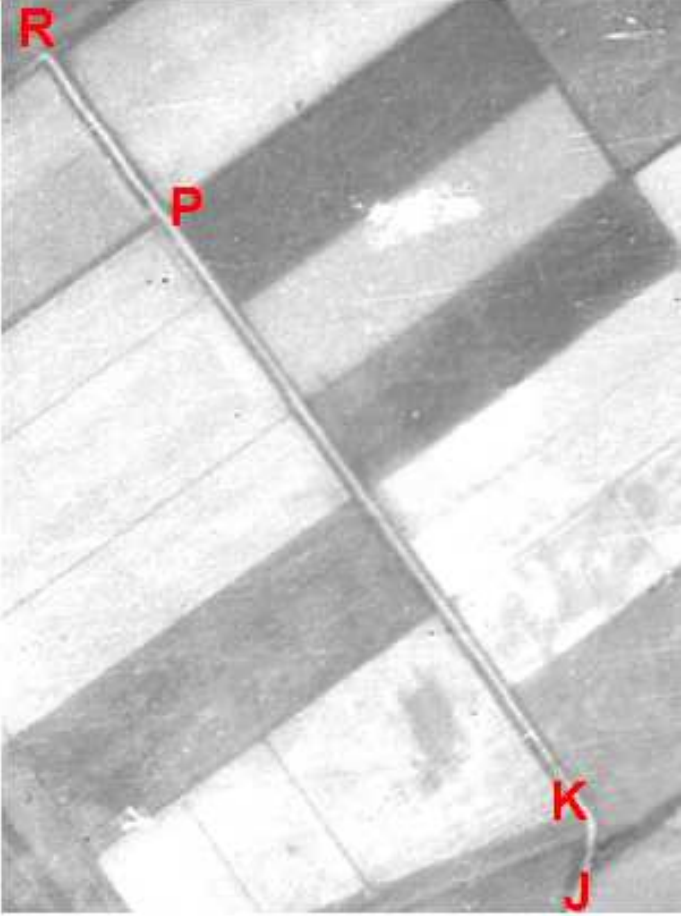
Route 2 (part)




Route 1, 2(part), and 5	
Observations	
Route 1	The route is shown and named as Georges Lane. It is shown as extending out onto the salt marsh at point E. The 'new' sea embankment is shown by a double pecked line and the route is clearly shown joining it.
Route 2	The route is shown as a solid double line in the same way as Charnleys Lane but is not labelled with that name. It is shown extending out onto the salt marsh at point I. The new sea embankment is shown with a double pecked line and the route is clearly shown joining it.
Route 3	The route is shown between points J-K but from K-O is not shown. A solid boundary is shown parallel to the route between point K to point M and the old embankment is marked between point M and point O.
Route 4	The route is shown between solid double lines but not named. It is shown extending out onto the salt marsh at point R. The new sea embankment is shown by a double pecked line and the route is clearly shown joining it.
Route 5	The route is not shown. The woodland is coloured green and named Willow Covert on the map. At point T there is a gap in the line drawn to depict the drainage ditch which would allow access along the route.
Investigating Officer's Comments	
Route 1	The route physically existed in 1934 and appears to have been considered to form part of Georges Lane. The inclusion of the route on the map and the fact that it was named suggests that it may have been available to the public in 1934.

Route 2	The route physically existed in 1934. It was not labelled as part of Charnleys Lane but is clearly shown and its inclusion on the map suggests that public access may have been available.	
Route 3	The route physically existed between points J-K in 1934. Part of the old embankment is shown as a physical feature but there is no suggestion from the map that a worn route existed on the ground as a public footpath along the remaining section of the application route (K-O).	
Route 4	The route physically existed in 1934. It is not named on the map but is clearly shown and its inclusion on the map suggests that it may have been available for public use.	
Route 5	The route is not shown on the map and probably did not exist in 1934.	
Aerial Photographs	1945	<p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set 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.</p>
Observations		
Route 1	The route is not visible as a defined track on the ground. There is only partial coverage and the photograph does not include the section between point C and point E. It is possible to see the culverted drain at point B.	

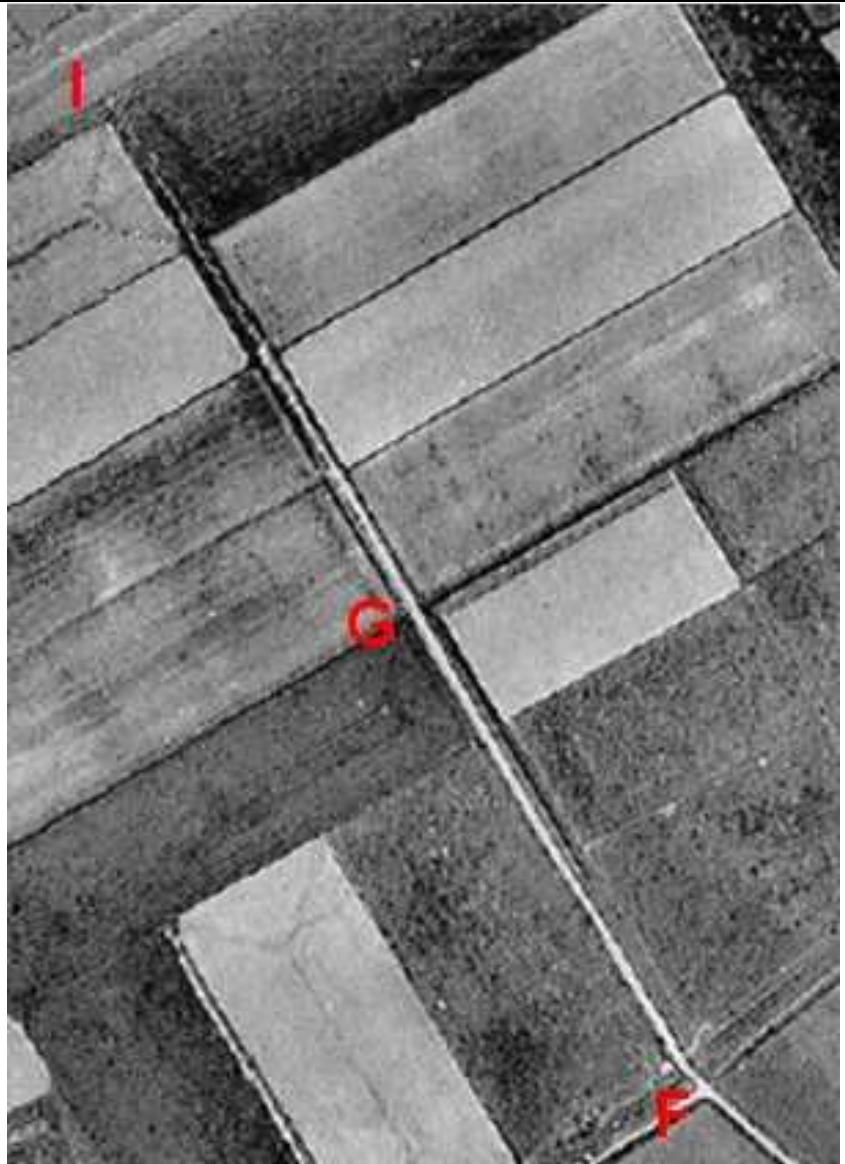
Route 2	
	<p>The route can be seen as a faint track leaving Charnleys Lane at point F, crossing the culvert at point G and continuing midway towards point H and point I from whence it appears to end. The route is not visible meeting the new embankment at point I.</p>
Route 3	
	<p>The route between points J-K can be clearly seen as a substantial track. The route between points K-L-M-N-O is not visible although a faint line may indicate the existence of a faint track between point N and point O.</p>

Route 4	
	The route can be clearly seen along its full length as a substantial track. Access onto the 'new' embankment at point R is clearly visible.
Route 5	The route cannot be seen through the woodland.
Investigating Officer's Comments	
Route 1	The route does not appear to have existed as a substantial route at the time that the photograph was taken. No photograph was available of the section between point C and point E so no inference can be drawn with regards to this section.
Route 2	Part of the route existed in 1945 from point F to point G and continuing midway to point H but it was not a substantial farm track and did not appear to continue to point I.
Route 3	The route between points J-K existed and appeared capable of being used in 1945 but the route between point K and point O probably did not exist at that time.
Route 4	The route existed in 1945 and appeared to be capable of being used by the public.
Route 5	Trees obscure the route so no inference can be drawn.

6 Inch OS map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision of the base map was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map. OS Map Sheet SD 32SE.
Route 1		
Observations		The whole of the route is shown. It is defined by boundary ditches. It is not named on the map but is shown to be open and unrestricted at point A but crossed by a boundary at point D.
Route 2		
Observations		The full length of the route is shown and is defined by the boundary ditches. It is not named on the map but is shown to be open and unrestricted at point F but with a line across the route at point H.
Route 3		
Observations		The route between points J-K is shown. The old embankment is shown but the route between points K-O is not.
Route 4		
Observations		The full length of the route is shown. There appears to be a line across the route at point H suggesting some form of boundary.
Route 5		
Observations		The route is not shown. The woodland is marked and named Willow Covert. The embankment is shown and crosses a drain at point Q.
Investigating Officer's Comments		
Route 1		The route physically existed when the map was revised in the 1930s. Access from/to the route to the new embankment may have been restricted at point D.
Route 2		The route physically existed when the map was revised in the 1930s. Access from/to the route onto the new embankment may have been restricted at point I.
Route 3		The route probably did not exist between points K-L-M-N-O in the 1930s.
Route 4		The route physically existed in the 1930s. Access from/to the route onto the new embankment may have been restricted at point R.
Route 5		The route probably did not exist in the 1930s.

Aerial Photograph	1963	Colour aerial photographs taken in 1963.
Observations		
Route 1		
	<p>The route can be clearly seen throughout the full length from the end of the recorded length of Georges Lane at point A through to point E where it appears to provide access onto the new embankment.</p>	

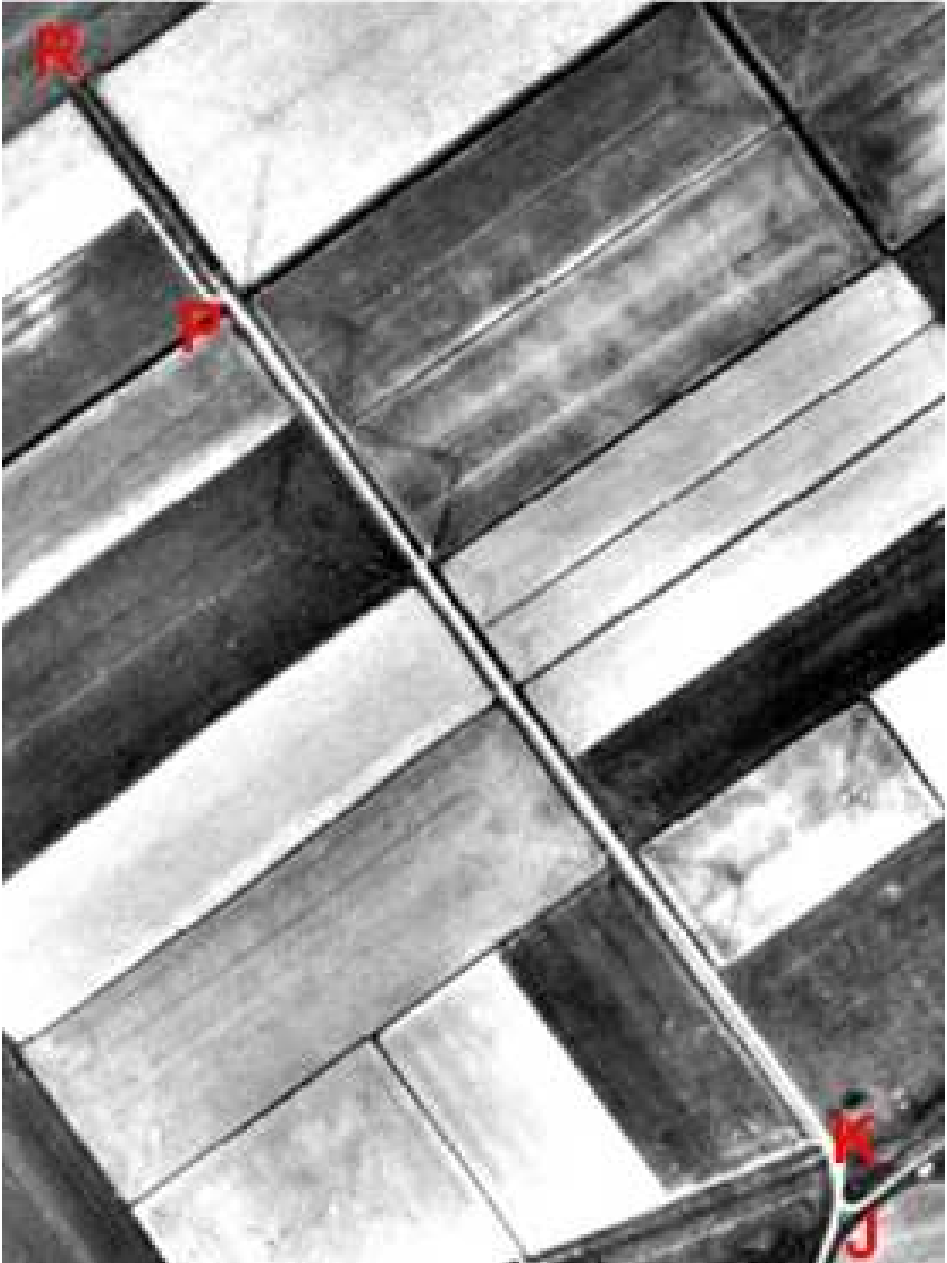
Route 2

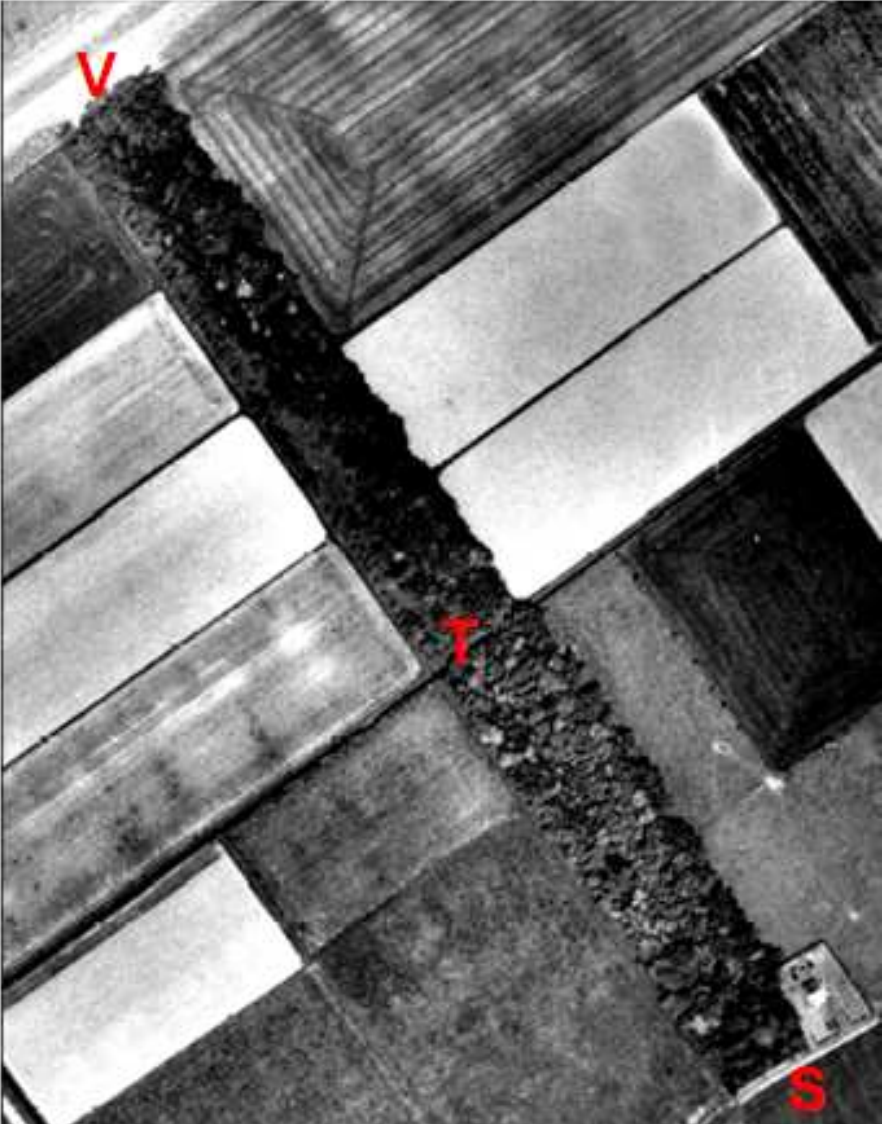


The route can be clearly seen at its junction with Charnleys Lane at point F. It appears to be a well defined track crossing a drain at point F and continuing midway to point G before becoming fainter – but still visible – to end at point I.


Route 3



	<p>The route between points J-K can be clearly seen as a substantial track. From point K extending along the route to point L a track is visible along the route. Beyond point L the field appears to have been cropped removing any trace of the route (if it had existed). Approaching point M the track is again visible along the old embankment to point N where it can be clearly seen crossing the drain and meeting Public Footpath 40 at point O.</p>
<p>Route 4</p>	
	<p>The route is clearly visible as a substantial track for the full length between point J and point I providing access onto the new embankment at point I.</p>

Route 5	
	<p>The route cannot be seen on the photograph. It passes through woodland and no worn track is visible. It is possible to see the drain that cuts through the woodland at point T but it is not possible to see whether there was access across the drain at this point.</p>
Investigating Officer's Comments	
Routes 1,2 4	<p>The route existed as a physical feature that appeared capable of use in 1963.</p>
Route 3	<p>The route between points J-K existed as a physical feature that appeared capable of use in 1963. Between point K and Point M the route was visible in places but it appears that it may have been subject to change due to agricultural operations. It appears that there may have been a route along the old embankment between point M and point N and a route appears to have existed between point N and O in 1963.</p>
Route 5	<p>No inference can be drawn. The route passes through dense woodland and it is not possible to see whether a walked route existed on the ground in 1963.</p>

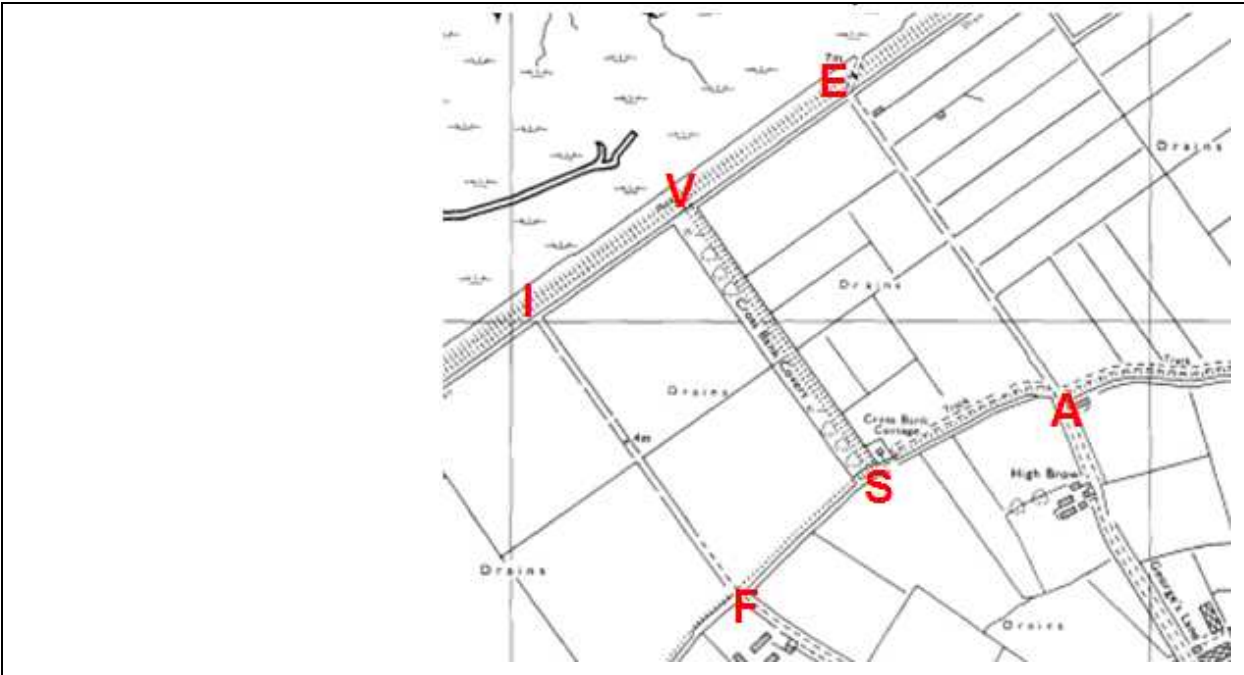
Conveyance relating to plots of land in the parishes of Southport and North Meols	1968	A conveyance entered into between the then vendors of the land and the River Crossens Drainage Board as purchasers was submitted by the Solicitor acting on behalf of the Southport Land & Property Company.
Observations		The conveyance transferred various plots of land to the purchaser including Ordnance Survey field number 742 (as numbered on the 1928 edition of the 25 inch Ordnance Survey map). Plot 742 consisted of the old sea embankment along which part of the route 3 runs between points L-M-N. The conveyance makes no reference to the existence of the route and contains provisions relating to a grant of private access rights to the owners, their tenants and other persons authorised by them to the land (but not by reference to the route).
Investigating Officer's Comments		Land affected by routes 1,2,4,5 was not included within the conveyance so no inference can be drawn in their respect. In relation to route 3 there is no reference in the conveyance to the route being considered to be a public footpath in 1968. However, it is common for conveyances not to include details of public rights of access and common for private rights of access to be included within conveyance agreements - even where public rights exist – especially where the public rights are restricted to foot or horseback and a private right of vehicular access is being granted. For these reasons, it is considered that the fact that the claimed route is not referred to in the conveyance, and the fact that private access rights are contained within the conveyance does not necessarily mean that public rights of access on foot did not exist at the time that the conveyance was entered into, or that a public rights may have subsequently come into being.
1:2500 OS map	1970	Further edition of the 1:2500 scale map revised in 1969 and published in 1970.
Routes 1,2		
Observations		The full length of the route is shown in the same way as it is depicted on the 1911 and 1955 OS maps.

Route 3	
Observations	<p>The route between points J-K is clearly shown as part of a substantial track. From point K to point L the route is shown as a track (double pecked line) adjacent to the old embankment and the OS have labelled it as a 'track' close to point L. The 'kink' in the route at point L is not visible on the map and the 'track' continues along the bottom of the old embankment, bounded from the adjacent fields towards point M. The OS sheet showing the land crossed by the route between point M-N-O was not available to view.</p>
Route 4	
Observations	<p>The route is shown in the same way as it is on the earlier 1911 and 1955 OS maps. It is clearly shown as a track between points J-K and from point K is defined on either side by drains and is labelled as a 'track' with access shown into adjacent fields. The route is crossed by a boundary line at point Q beyond which it continues to end at point O. A route is then shown to continue as a double pecked line labelled as a 'path' onto the top of the embankment.</p>
Route 5	
Observations	<p>The route is not shown. The covert is referred to as 'Bank Covert' as opposed to 'Willow Covert' on this edition of the map. Solid lines are shown across the route at point S and point U. The embankment is shown along the full length of the route and it is culverted at point T but the route is not shown.</p>
Investigating Officer's Comments	
Route 1	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point D.</p>
Route 2	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point H.</p>
Route 3	<p>The route physically existed between points J-K, K-L and partway towards point M in 1969. The map showing the land crossed by part of the route between points N-N-O was not available so no inference could be drawn in this respect.</p>
Route 4	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point Q.</p>
Route 5	<p>The route probably did not exist in 1969.</p>



Land Conveyance	1978	A copy of this conveyance was provided by the Solicitor acting on behalf of the Southport Land & Property Company.
Observations		<p>By this conveyance the Managing Trustees of the Estate agreed with the vendors the purchase of an area of land that included all 5 of the routes under consideration with the exception of that part of route 3 between points N-O. The conveyance reserved to the vendors and their successors in title for the benefit of the owners and occupiers for the time being of Banks Marsh 'foreshaw' "(b) full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Banks Pace leading to Suttons Pace and over Charnley Lane Pace between the points marked C and D and E and F on the said plan."</p> <p>Point C to Point D on the plan is the route 2 – shown on the attached plan between points F-G-H-I.</p> <p>Point E to Point F on the conveyance plan refers to the first part of Public Bridleway 47 (Banks Pace) from Banks Road to the route at point J and then the whole of route 4 between points J-K-P-Q-R.(and part of route 3 between J-K).</p> <p>There is no reference to any part of routes 1,5 or 3 between points K-L-M-N-O.</p>
Investigating Officers Comments		<p>There is no reference to the existence of public rights over any of the 5 routes in the conveyance. However, it is common for conveyances not to mention the existence of public rights even where they have been legally recorded. The conveyance reserves private rights of access across the land but it is normal for these to be included within a conveyance - particularly where it is necessary to reserve a right of private vehicular access. For these reasons, it is considered that the fact that the claimed route is not referred to in the conveyance, and the fact that private access rights are contained within the conveyance does not necessarily mean that public rights of access on foot did not exist at the time that the conveyance was entered into, or that a public rights may have subsequently come into being.</p>
Purchase agreement	1979	A copy of an unsigned agreement made between the vendors (Hindrick Heerema and Emirate Limited) and the purchaser (Nature Conservancy Council) for land at Crossens Bank.
Observations		A copy of the agreement was provided by the Solicitor acting on behalf of the Southport Land & Property Company and was appended to a letter sent to Mr Crooke (Director of the Southport Land & Property Company) from Natural England (formerly known as the Nature



		<p>Conservancy Council) regarding the 'agricultural access rights' afforded to Natural England by the Scarisbrick Estate Drainage Act 1924. The information provided does not include map of area purchased although a plan showing the access provision detailed below was included. The purchase agreement states that the purchasers are entitled to 'full rights of way at all times and for all purposes' over a track referred to as New Lane Pace - which is not a route under investigation and is not recorded as a public right of way - and also 'Full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Bank Pace leading to Suttons Pace and over Charnleys Lane Pace between points C and D and E and F on the said plan'. Points C to D is the route 2 (points F-G-H-I on the attached plan) and points E-F refers to the route of Public Bridleway 48 from Ralph Wife's Lane/Station Road to the Application route at point J on the attached plan and then along the full length of route 4 (between points J-K-P-Q-R). It is stated that these access rights are enshrined in the Scarisbrick Estates Drainage Act of 1924.</p>
Investigating Officer's Comments		<p>The agreement refers to 'full rights of way at all times for agricultural purposes' along routes 2, 4 and part of 3 between points E-F). The use of the term 'Full' rights infers more than a public right of access on foot but suggests a right of access to include vehicular access for agricultural purposes.</p> <p>The fact that public rights are not referred to in the conveyance and the fact that private rights are specified does not mean that public rights of access on foot did not exist or could not have come into being.</p>
Letter from Southport and District Wildfowlers Association addressed to 'Members'	1979	<p>A letter dated 12th August 1979 and sent from the Southport and District Wildfowlers Association to their 'Members' has been submitted by the landowners.</p>
Observations		<p>The letter lists the rules relating to the commencement of shooting on 1st September 1979 and addresses the issue of access points to the marsh. The access is listed as being via the car park on Sea Road, Crossens Pumping Station, Bonny Barn Lane (to the bank), Hundred End and Georges Lane and specifies that no other access points are to be used.</p>
Investigating Officer's		<p>There is no specific reference to access being expressly granted to members of the Association along any of the</p>

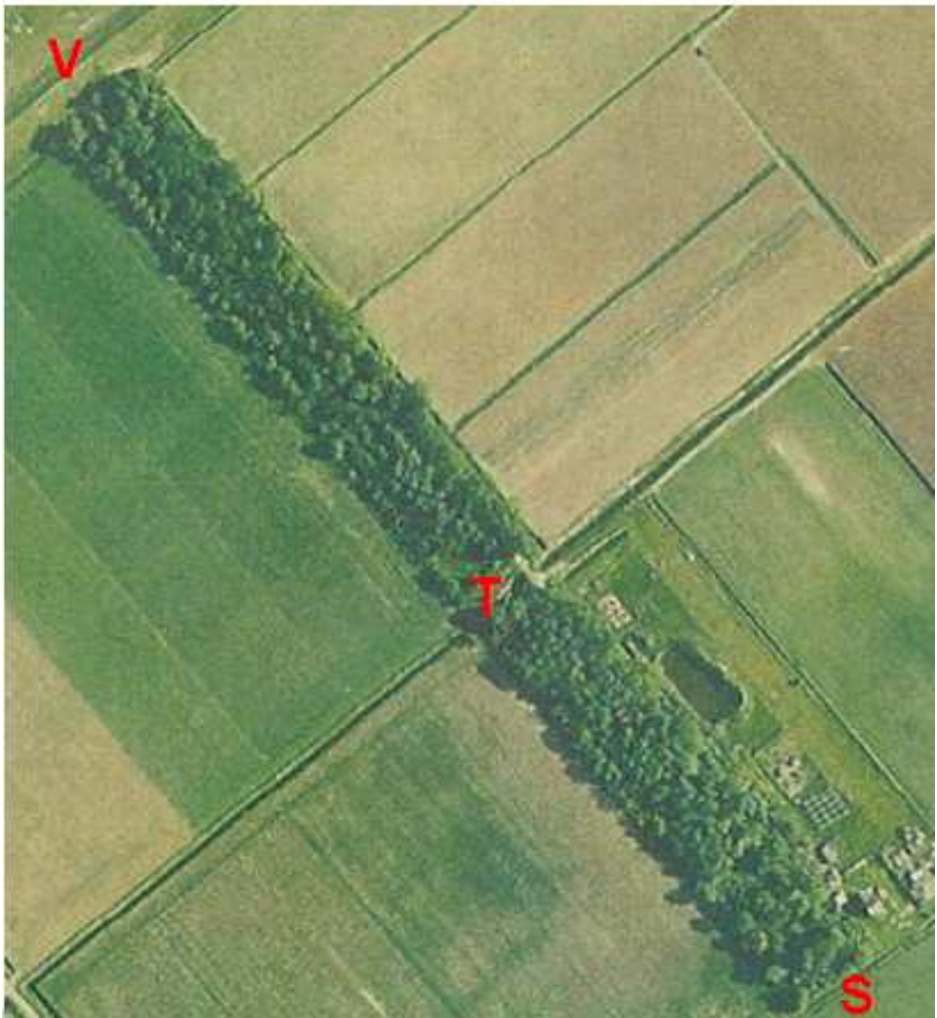
Comments		five application routes. Reference is made to one of the access points being via Georges Lane which could imply use of route 2 (points A-B-C-D) but there is no detail regarding whether use of the route from the end of Georges Lane was as of right (i.e. along a recognised public footpath) or was by permission. There is nothing within the content of the letter that would suggest that any of the five application routes were private routes.
Letter from River Crossens Drainage Board	1979	A copy of a letter from the River Crossens Drainage Board to the Secretary of the Southport and District Wildfowlers Association dated 17 th August 1979 has been submitted by the landowner together with a subsequent agreement providing members of the Association with access over the sea embankment.
Observations		The letter and subsequent agreement grants access on foot to the Association over the (new) sea embankment to gain access to the foreshore.
Investigating Officer's Comments		Neither the letter or the agreement make reference to the Application routes or to any recorded public rights of way. The agreements do not specify that access has been permitted along any of the application routes but refer specifically to access over the sea embankment to get to the foreshore. A legally recorded public footpath exists that provides access onto and along the landward side of the sea embankment which could have been used to gain access to the embankment. Alternatively, use of one or all of the application routes may have been made to access the sea embankment. The documentation does not provide evidence that permission was expressly granted to use any of the five application routes.
1:10 000 OS Map	1983	1:10,000 Ordnance Survey map viewed on Old Maps online website



Observations	Routes 1 (A-E), 2 (F-I), part of route 3 (J-K) and route 4 (J-R) are all clearly shown on the map. Route 3 is not shown along the old embankment between points K-O although the drain at point L is shown as being culverted. Route 5 through Cross Bank Covert is not shown along the embankment.
Investigating Officer's Comments	Routes 1, 2, 3 (between points J-K) and 4 all existed in 1983 and appear to have been capable of being used by the public although access may have been restricted at points D,H and Q. Route 3 is not shown to exist between


		points K-O although access across the drain at point O was possible suggesting that the route may have been available. Route 5 probably did not exist in 1983.
Aerial Photograph	1988	Aerial photographs taken in 1988 and available to view in the County Records Office.
Observations		
Route 1		
	The route is visible throughout its full length and a track can be seen extending from point E beyond the end of the route onto the new sea embankment. On either side of the route are agricultural fields that are accessed from the application route.	
Route 2		

	<p>The route is visible throughout its full length. On either side are agricultural fields that are accessed from the application route.</p>
<p>Route 3</p>	
	<p>The route is clearly visible between points J-K. Between point K and point L the route is visible as a faint track. Between point L and point M it is not possible to see whether the route existed and although the route appears to be available there is no visible worn track on the ground. Between point M and point N there is no obvious worn track on the ground but a worn track can be seen across the drain at point N along the application route to point O.</p>
<p>Route 4</p>	
	<p>The full length of the route is visible providing access to a number of adjacent farm fields. Between point P and point R the surface of the route appeared to be grass as opposed to compacted earth suggesting that it was used much more infrequently than the rest of the route by farm vehicles.</p>

Route 5		
	The route cannot be seen due to dense tree cover. However, access across the drain at point T is visible and appears to be via a bridge or culvert crossing.	
Investigating Officer's Comments		
Route 1, 2, 4	The route existed as a physical feature capable of being walked in 1988.	
Route 3	Whilst not clearly visible throughout its full length it is probable that the full length of the route could have been walked in 1988.	
Route 5	Dense tree cover means that no inference can be made regards whether the route existed or not. However, a means of crossing the drain at point T is visible on this photograph which concurs with the user evidence.	
Letter from Lancashire County Council to Mr Crooke	1993	A letter was sent from Lancashire County Council to Mr G Crooke (Southport Land & Property Co. Ltd) on 9 February 1993 providing Mr Crooke with an extract of the Definitive Map (First Review) for the area that included the land over which the five application routes run.

Observations		The extract of the Map was provided at Mr Crookes request. The landowners have submitted that because the Map does not show the application routes they are not public footpaths.
Investigating Officer's Comments		The Definitive Map (and Statement) is the legal record of Public Rights of Way and is conclusive with regards to the routes shown. However, unrecorded rights of way may also exist – hence the procedure whereby applications can be made to record those rights. The fact that the map does not record the application routes as public footpaths – or that the County Council supplied a copy of the Map with no reference to the application routes - does not mean that the routes could not have already existed as public footpaths in 1993, only that if they did exist those rights were unrecorded.
Public Inquiry decision into Order made under the Wildlife and Countryside Act 1981 to upgrade Footpaths 47, 48 and 49 to Bridleway	2002	In 2002 a public inquiry was held to determine whether an Order should be confirmed to record North Meols Footpaths 47, 48 and 49 as public bridleways. The ways that were the subject of the Order were all on land owned by the Southport Land & Property Co Ltd who objected to the confirmation of the Order. A public inquiry was held and the Order subsequently confirmed.
Observations		The Solicitor acting on behalf of the landowners has submitted that if the application routes were being used by the public at the time of the public inquiry then reference would have been made to them at the inquiry and by the Inspector in her decision letter.
Investigating Officer's Comments		The present Application routes were not the subject of the inquiry and would have been outside the remit of the Inspector and could not have been considered at that time. No inference can be drawn.
North Meols Parish Plan	2004	North Meols Parish Council published a Parish Plan in 2004. A full copy of the plan is available in their records.
Observations		The plan contained a number of proposed actions and timescales for implementation. With regards to public access the only 'action' listed was the proposal to secure a right of access to Ralph Wife's Lane – which referred to a route across land owned by the Environment Agency and Southport Land & Property Co. Ltd. Within the landowner's submissions it is argued that the fact that the Parish Plan did not include access to any of the five application routes adds weight to their argument

		that the routes were not being used and that there was no need identified for the routes to be created as public paths.
Investigating Officer's Comments		<p>The Parish Plan was published six years after use of the application routes was effectively challenged by the submission of a Section 31(6) Statutory declaration (see below).</p> <p>Part of the route along The Sluice providing access to Ralph Wife's Lane was also included within the section 31(6) declaration but is also known to have been physically blocked which may account for why it was included in the Parish Plan.</p> <p>Having spoken to the applicant and members of the Parish Council it appears that the fact that none of the five application routes are included in the plan may be because access along them had not been physically blocked at the time that the Parish Plan was prepared and although the Section 31(6) deposit had been lodged the local community may not have been aware that the routes were not recorded as public rights of way and therefore did not include the need to seek access to them in the plan.</p>
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Parish Survey Map	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.
Extract from the Parish Survey map for North Meols		

Observations	
Route 1	The route has been drawn on the parish survey map and numbered '45'. The parish survey card, completed in 1952, records the route as a 'Roadway' and describes it as a 'well defined roadway, continuation of Georges Lane to the embankment'.
Route 2	The route has been drawn on the parish survey map and numbered '46'. The parish survey card, completed in 1952, records the route as a 'Roadway' and describes it as a 'cindered roadway, continuation of Charnleys Lane to river embankment'.
Route 3, 4, 5	The route was not shown on the parish survey map.
Draft Map	The parish survey maps and cards were passed to the County Council who then prepared the Draft Map of Public Rights of Way. The Draft Maps was given a 'relevant date' (1 st January 1953) and notice was published that it had been prepared. It was placed on deposit for a minimum period of 4 months on 1 st 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.
Extract of the Draft Map for West Lancashire Rural District	
Observations	
Route 1	The route was shown on the Draft Map coloured purple which indicated that it was to be recorded as a public footpath. It was numbered 45. The Draft Statement described the route as a 'Road Used as Public Path' from junction of nos. 48 and 49 to the river embankment. An objection to the inclusion of the route on the Draft Map (numbered 638) was lodged by T Booth, Agent for The Trustees of the Scarisbrick Estate on 29 th December 1953 stating that "No public right of way is admitted". The reason for the objection is stated as being that the route is a "Farmers' accommodation road only" and evidence in support of the objection detailed as "Notice

	<p>board indicating private ownership; etc."</p> <p>An observations sheet included in the file notes that when consulted by the County Council both the District and Parish Council thought that the path should be retained and under the title 'CPRE and other voluntary bodies' is the comment 'Claim as public path'.</p> <p>A handwritten note attached says that the path was not shown on the 1845 Ordnance Survey map which shows the area as 'Banks Sands' and makes the comment that the land has now been reclaimed.</p> <p>The 1894 Ordnance Survey had also been checked and it was noted that the area was shown in the same way as on the 1845 map.</p> <p>The decision of the subsequent hearings held on 22 July 1955 and 18 August 1955 – which dealt with the footpaths numbered 42, 43, 44, 45 (route 1), and 46 (route 2) was to delete all of the paths listed above from the Draft Map.</p> <p>The Draft Map and Statement is therefore shown with the application route crossed out.</p>
Route 2	<p>The route was shown on the Draft Map coloured purple which indicated that it was to be recorded as a public footpath. It was numbered 46. The Draft Statement described the route as a 'Road Used as Public Path' from junction of nos. 47 and 48 to the river embankment.</p> <p>An objection was lodged to the inclusion of the claimed route on the Draft Map by T Booth on behalf of the Trustees of the Scarisbrick Estate on 29 December 1953 stating that 'No public right of way is admitted' and that the route is only a farmers' accommodation road. In support of the objection it is stated that there is a 'notice board indicating private ownership, etc.'</p> <p>The notes included within the file state that when consulted the parish and district council believed that the path should be retained and that the CPRE and other voluntary bodies 'claim path as public'.</p> <p>Notes on the 1845 and 1894 Ordnance Survey state that the path was not shown and that the area was indicated as 'Banks Sands' with a comment that the land had now been reclaimed.</p> <p>The decision of the subsequent hearings held on 22 July 1955 and 18 August 1955 – which dealt with the footpaths numbered 42, 43, 44, 45 (Route 1), and 46 (Route 2) was to delete all of the paths listed above from the Draft map.</p> <p>The Draft Map and Statement is therefore shown with the claimed route crossed out.</p>

Routes 3, 4, 5	The route was not shown on the Draft Map and there were no objections lodged regarding the fact that it had not been shown.	
Provisional Map	Once all these representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Quarter Sessions.	
Observations	None of the five routes were shown on the Provisional Map and there were no objections lodged regarding the fact that they had not been shown.	
The First Definitive Map and Statement	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	None of the five routes are shown on the first Definitive Map.	
Investigating Officer's Comments	<p>The parish council appeared to consider that Application routes 1 & 2 were used by the public in 1952. The objection on behalf of the landowner was considered and the routes found not to exist at the time.</p> <p>Application routes 3, 4 & 5 were not considered to be public rights of way that should be recorded on the Definitive Map and Statement in the 1950s.</p>	
Revised Definitive Map of Public Rights of Way (First Review)	Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date in 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.	
Observations	None of the five routes are shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).	
Investigating Officer's Comments	The Application routes were not considered to have changed status by the 1960s.	
Northern Parishes Local Plan: Proposals Map	1989	The Plan was devised by West Lancashire Borough Council and an extract was submitted by the Solicitor acting on behalf of the Southport Land and Property Co. Ltd.
Observations		The Plan shows route 2 marked up as 'a recreation footpath' labelled as RC 7A. None of the other Application routes are shown. The labelling refers to text within the policy document and the term 'recreational footpath' has no legal status.

Investigating Officer's Comments		It has not been possible to establish the reason for the inclusion of this route in the plan. It may suggest that use of the route by the public had been challenged or that the route had been identified as a good link that the Borough Council wished to promote but without further information from the Borough Council no real inference can be made.
Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980	1998	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within a certain period from the date of the deposit (or 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). The renewal period was originally 6 years, extended to 10 years and recently to 20 years.</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which all five of the Application routes run. The deposit was submitted by Mr GB Crooke and Mrs B Crooke in March 1998 and was renewed on 26 May 2004, 9 March 2010 and 2 February 2012. Within the details of the deposit there is no acknowledgement or acceptance that any of the Application routes are public rights of way.
Investigating Officer's Comments		There is a clear indication from the owners of the land that they did not acknowledge the existence or intend to dedicate any of the Application routes as public rights of way from March 1998 onwards.

None of the land crossed by the five Application routes is designated as access land under the provisions of the Countryside and Rights of Way Act 1990.

The new embankment on which all five of the application routes terminate (at points O, R, I,V and E) is designated by the County Council as Banks Marsh Embankment

biological heritage site together with Cross Bank Covert which includes the whole of Application route 5 shown between points S-T-V-U on the attached plan.

Approximately 100 metres of the Application route 1 from point D extending south east to point C is within the boundary of an area designated as a Site of Special Scientific Interest.

Landownership Information

All of the land affected by the five applications is currently owned by the Southport Land & Property Co Ltd with the exception of the new sea embankment at which the five routes meet Public Footpaths 38, 39 and 40 North Meols from points D-E (route 1), points H-I (route 2), points N-O (route 3), points Q-R (route 4) and points U-V (route 5) which is owned by the Environment Agency.

Southport Land & Co Ltd purchased the land in 1990 and explained in their submissions that the land was formerly part of the Scarisbrick Estate.

Summaries

Route 1

It is considered very unlikely that the route physically existed until the marsh was drained and the new sea defence embankment constructed around 1895. The route was first shown to exist on the hand drawn plan attached to a letter sent by John Bentham to the Scarisbrick Estate Office in that year.

The first Ordnance Survey (OS) map to show the route was the 25 inch OS map published in 1910-11 (and revised 1908-1909). The route is subsequently shown on all OS maps examined and is also clearly shown on aerial photographs taken in the 1940s, 1960s and 1980s. More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the route has physically existed from 1895 until the present day on the same alignment.

It therefore appears that the route has existed since at least 1895 and would probably have been capable of being used by the public on foot since that time. However, the OS maps and aerial photographs examined all show the existence of a boundary across the route at point D and it is reasonable to conclude that a gate (which may, or may not have been padlocked) existed at this location.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed as part of the scheme to reclaim the marsh and the Scarisbrick Estate papers examined suggest that it was originally constructed as a private estate road.

The 1910 Finance Act documentation shows the route excluded from the numbered hereditaments and appears to have been considered as being part of Georges Lane. This may suggest that at the time that the valuation was carried out the landowner considered the route to be part of the public highway.

The maps derived from the 1929 'Handover Maps' do not show the route as part of Georges Lane but it is known that unsurfaced highways were often left off the maps and it is possible that this is why it was not shown. Current highway records record the first 122 metres of the route from point A as an unadopted highway but no further information can be found regarding when or why this part of the route was recorded.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route and labels it 'Georges Lane'. This commercially produced map is said to have been produced with the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected enabled them to name 'all but the small, less-important thoroughfares' so it is possible that its inclusion on the map reflected a belief that the route formed part of a public highway at that time but this map, on its own would not provide strong enough evidence of the public status of the route at that time.

In 1952 North Meols Parish Council included the route on the parish survey map and described it as a well defined roadway and as a continuation of Georges Lane to the embankment. The County Council took this information and prepared the Draft Map but its inclusion was objected to by the landowners (the Scarisbrick Estate) who stated that no right of way was admitted and that the route was a farm accommodation road only. A formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route being a public footpath but it is submitted that this does not mean that the route could not have become a public right of way at some point since its construction. Private rights differ from public rights and are normally included within land conveyances – particularly where it is necessary to reserve a private vehicular right even if a public right (which can be altered or extinguished) already exists.

In conclusion, there is map and documentary evidence to support the physical existence of the route from 1895 to the present day suggesting that it has existed since that time and was capable of use by the public.

However, there is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed or that it has been expressly dedicated as such since that time. The Finance Act records and Authentic Map Directory of South Lancashire suggest that the route may have been considered to be a public highway but do not provide strong enough evidence of dedication on their own, particularly as the status of the route was considered under a legal procedure in 1955.

The Parish Council believed the route to be public in 1952 but this was successfully challenged by the landowners as part of the legal process leading to the publication of the Definitive Map providing strong evidence that the route did not exist as a public footpath in 1955. A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 2

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed around 1895 and it is first shown on a hand drawn plan attached to a letter written by Mr John Bentham and addressed to the Scarisbrick Estate Office in 1895.

The first OS maps to show the route were the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route is subsequently shown on all subsequent OS maps examined and also aerial photographs taken in the 1940s, 1960s and 1980s. More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the route has existed from at least 1895 until the current day.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed and from the Scarisbrick Estate papers examined it appears likely that it was originally constructed as a private estate road.

The 1910 Finance Act documentation shows the route excluded from the numbered hereditaments and appearing to form part of Charnleys Lane. This suggests that at the time of the valuation the landowner may have considered the route to be part of the public highway.

The maps derived from the 1929 'Handover Maps' do not show the route as forming part of Charnleys Lane. However unsurfaced highways were often left off the maps and it is possible that this is why it was not shown. Current highway records record the first 340 metres of the route as a footway but no information can be found regarding when or why this part of the route was recorded in this way.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route but does not name it suggesting that it existed as a physical track possibly capable of being used at that time but it does not provide strong evidence regarding public status.

In 1952 North Meols Parish Council included the route on the parish survey map and described it as a continuation of Charnleys Lane to the embankment. The County Council took this information and prepared the Draft Map. The landowners objected to its inclusion stating that no right of way was admitted and that the route was a farm accommodation road only. A formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route but it is submitted that this does not mean that it could not have become a public right of way at some point since its construction. Private rights granted along the route differ from public rights and are normally included within land conveyances – particularly where it is necessary to reserve private vehicular rights even if a public right (which can be diverted or extinguished) already exists.

In conclusion, there is map and documentary evidence to support the physical existence of the route from 1895 to the present day suggesting that the route was capable of being used by the public. The map evidence from 1911 onwards shows the existence of a boundary across the route at point H and it is reasonable to conclude that a gate (which may, or may not have been padlocked) existed at this location.

However, there is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed. The Finance Act records suggest that the route may have been considered to form part of Charnleys Lane in 1910 but it is submitted that this does not provide strong enough evidence of dedication on its own.

The Parish Council believed the route to be public in 1952 but this belief was successfully challenged by the landowners (the Scarisbrick Estate) as part of the legal process leading to the publication of the Definitive Map providing strong evidence that the route did not exist as a public footpath in 1955. A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 3

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment (to which it connects at point O) was constructed by 1895.

The first edition OS map published in 1848 shows the route between points J-K and the old embankment but not the Application route. The 1892 25 inch OS map also shows the route between points J-K and shows the old embankment with the letters 'F.P' close to point M suggesting that a route may have existed along the embankment at that time. However, the new embankment had not been constructed at that time and access along the full length of the route probably would not have been available.

With the exception of the route between points J-K the Ordnance Survey mapping evidence of the existence of the route is limited.

The 1:25,000 Ordnance Survey map published in 1970 shows the route to exist between points J-K-L and partway to point M suggesting that a route capable of being walked existed to that point in 1970. However the map does not extend as far as points M-N-O so it is not possible to see whether the whole route existed at that time.

The 1:10,000 OS map published in 1983 does not show that the route between points K-O but it can be seen from that map that access across the drain at point N would have been possible suggesting that the route may have been available.

The best supporting evidence to be considered in conjunction with the user evidence are the aerial photographs. All of the aerial photographs inspected showed the section of the route between points J-K.

The 1940 aerial photograph clearly shows a faint line across the culverted drain between points M-N-O. The 1963 aerial photograph provides better evidence that a worn track may have existed with the route between points K-M partially visible but appearing to have been disturbed by agricultural activities. Between point M-N-O it appeared that a worn track existed in 1963.

The 1988 aerial photograph provided evidence that the whole length of the route could have been walked at that time – although only a faint trace of the route can be seen on the ground.

The 1910 Finance Act shows the route between points J-K excluded from the numbered hereditaments with the route appearing to be considered as an extension of Bank Pace (now Public Bridleway 47). The remaining length is included within the numbered hereditaments for which no deductions have been made for a right of way suggesting that it probably did not exist as a public footpath at that time (or possibly that if it did exist, the landowner did not think it worth claiming a deduction).

The Authentic Map Directory of South Lancashire published circa 1934 does not show the route. It shows part of the old embankment between points M-N-O connecting to the new embankment suggesting that access across the drain may have been available at that time but this does not provide evidence of public rights.

The route was not shown on any of the Definitive Map records that were inspected suggesting that it was not considered to be a public right of way in the 1950s.

In conclusion, there is some limited map and aerial photography evidence to support the physical existence of the route from 1910 onwards – the most useful being the aerial photographs - but there is no clear and consistent evidence showing the physical existence of the full length of the route.

A statutory declaration submitted by the current landowners in 1998 under section 31(6) Highways Act 1980 provides a clear indication from the owners of the land that they did not acknowledge the existence of or intend to dedicate the claimed route as a public right of way from March 1998.

Route 4

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed by around 1895 and the route is shown on a hand drawn plan attached to a letter sent by Mr John Bentham to the Scarisbrick Estate Office in 1895.

The first OS maps to show the route were the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route is shown on all subsequent OS maps examined and also on aerial photographs taken in the 1940s, 1960s and 1980s.

More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the claimed route has existed from 1895 to the current day.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed and it is likely that it was originally constructed as a private estate road.

The 1910 Finance Act shows the route excluded from the numbered hereditaments with the route appearing to be considered as an extension of Bank Pace (now Public Bridleway 47). This suggests that at the time of the survey the landowner may have considered the route to be part of the public highway.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route but does not name it suggesting that it existed as a physical track at that time but does not provide strong evidence regarding public status.

The route is not shown on any of the definitive map records that have been inspected suggesting that it was not considered to be a public right of way in the 1950s.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route as a public footpath but it is submitted that it is not uncommon for conveyances not to mention the existence of public rights – even if they are legally recorded.

The 1978 conveyance examined reserved 'full rights of way for agricultural purposes only' to the vendors and their successors in title along the route. This same right is granted to the Nature Conservancy Council in 1979 when they purchased the outer marsh and reference is made to the access agreement dating back to the Scarisbrick Estate Drainage Act 1924 which granted private rights of access to owners and occupiers of the marsh land.

However, it is submitted that it is normal for private rights of access to be included within conveyances – particularly where it is necessary to reserve a private vehicular right - even if a public right (which can be altered or extinguished) already exists. It may also be the case that a public right has come into existence after the date of the conveyance.

In conclusion, there is map and documentary evidence dating back to 1895 to support the physical existence of the route suggesting that it was probably capable of use by the public since that time.

However, there is no documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed or that it has been dedicated since that time. The Finance Act records suggest that the route may have been considered to be a public highway in 1910 but it is submitted that this does not provide strong enough evidence of dedication on its own.

The route was not considered to be a public right of way in the 1950s when the parish council compiled the parish survey map that formed the starting point in the process to record public rights of way

A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 5

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed around 1895 and the woodland and embankment along which the route runs was first shown to exist on a hand drawn plan attached to a letter sent to the Scarisbrick Estate Office by Mr John Bentham in 1895.

The first OS map to show the marsh after it had been drained was the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route was not shown on the map and is not shown on subsequent OS maps examined.

The aerial photographs taken in the 1940s, 1960s and 1980s were examined but are inconclusive as the route, if it did exist, cannot be seen due to the dense tree cover.

No documentary evidence has been found to show that the route was dedicated as a public right of way when the marsh was drained and the embankment constructed.

The 1910 Finance Act shows the route included within hereditament 1142 and no deduction is claimed for a public right of way suggesting that the route did not exist as a public right of way or that the landowner did not acknowledge the existence of it.

The Authentic Map Directory of South Lancashire published circa 1934 does not show the route but shows the culverted drain at point T suggesting that access may have been available along the route at that time but does not provide strong evidence regarding public status.

The route is not shown on any of the definitive map records that have been inspected suggesting that it was not considered to be a public right of way in the 1950s or 1960s.

A statutory declaration submitted by the current landowners in 1998 under section 31(6) Highways Act 1980 provides a clear indication from the owners of the land that they did not acknowledge the existence of or intend to dedicate the route as a public right of way from March 1998.

In conclusion, there is no map or documentary evidence to support the physical existence of the route from 1895 to the present day. However, a worn track was found to exist on the ground when the route was inspected in 2014 and if this had existed prior to 1998 it would not have shown up on the aerial photographs due to tree cover and may not have been included in OS map revisions which were often carried out with the help of aerial photography in rural areas.

There is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it the marsh was drained and the embankment constructed or that it has been dedicated since that time. The Finance Act records do not support the view that the route existed as a public footpath in the early 1900s.

A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

County Secretary & Solicitor's Observations

Information from the applicant

Route 1

In support of the application the applicant has provided 69 user forms, the users acknowledge the route as follows:

0-10(10)	11-20(2)	21-30(14)	31-40(18)	41-50(12)	51-60(6)
61-70(4)	71-80(2)				

56 users specify they have used the way on foot. The main reasons for using the route are walking, leisure, recreation, bird watching, exercise, dog walking, picnics, shooting (but not recently), fishing, visiting friends and family, horse riding, running and cycling.

The use per year varies from 5-6 times, 30+ times, 100-150 times, to weekly, daily, 2-3 times per week and to over 1000 times per year.

All the users that specified stated the way has always run over the same route. 31 users state there is a stile, 11 state there is a gate and 16 other users state 'yes' to there being any stiles, gates, fences. 21 users mention a locked gate / throughway, but only 3 out of all the users mention this has prevented them from using the way, everyone else stated 'no prevention'.

All but 3 users have never been stopped when using the way but many mention of hearing someone being stopped since 2012. 4 users state they have been told by an owner or tenant that the land crossed was not a public right of way. 30 users state they have seen notices / signs recently stating 'private' or 'trespassers will be prosecuted'.

Route 2

In support of the application the applicant has provided 69 user forms, the users acknowledge the route as follows:

0-10(11)	11-20(2)	21-30(10)	31-40(17)	41-50(11)	51-60(8)
61-70(6)	71-80(2)	81-90(1)			

63 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, for picnics, to get onto the marsh, to go fishing and to visit relatives or because the route is part of a circular route.

The use per year varies from once or twice, to more than 10, monthly, over 30, weekly, over 100, over 300 and daily.

All users that specified stated that the route has run over the same line. 27 users stated 'yes' to there being any stiles, gates or fences on the route. 11 users stated there wasn't any. 21 users stated there is a stile and 3 mention a gate. 22 users state the gate/stile/fence was locked and 21 state it was unlocked. However 57 users state that they were not prevented from using the way but 5 users state they had been prevented recently (2012).

5 users have been stopped when using the way and 22 users have heard of someone else being stopped, most users state this has been recently (2012). 5 users have also been told by an owner or tenant that the land crossed was not a public right of way.

31 users state they have seen signs such as 'private', most of them state these signs have only appeared recently. 33 users claim they have never seen any signs or notices.

Route 3

In support of the application the applicant has provided 42 user forms, the users that specified acknowledge the route as follows:

0-10(5)	11-20(2)	21-30(7)	31-40(11)	41-50(8)	51-60(5)
61-70(1)	71-80(1)				

41 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, to gain access, training horses and for jogging.

The use per year varies from between 1-10, over 20, 30-40, over 50, 60-70, 100, 208, monthly, weekly to daily.

All users that specified stated that the route has run over the same line, however 3 users said it hasn't but did not specify any details. 20 users stated 'yes' to there being any stiles, gates or fences on the route. 15 users stated there wasn't any. 5 users state the gate/stile/fence was locked and 16 state it was unlocked. However 32 users state that they were not prevented from using the way but 4 users state they had been prevented recently (2012).

4 users have been stopped when using the way and 10 users have heard of someone else being stopped, most users state this has been recently (2012). 1 user has also been told by an owner or tenant that the land crossed was not a public right of way.

19 users state they have seen signs such as 'private', 18 users claim they have never seen any signs or notices.

Route 4

In support of the application the applicant has provided 51 user forms, the users that specified acknowledge the route as follows:

0-10(7)	11-20(2)	21-30(8)	31-40(13)	41-50(8)	51-60(4)
61-70(2)	71-80(2)				

50 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, visiting friends / family, to get to the marsh and fishing.

The use per year varies from five or six, 10-20, 35-40, to monthly, 80-96, 250, weekly and daily.

All users that specified stated that the route has run over the same line, however one user said it hasn't but did not specify any details. 32 users stated 'yes' to there being any stiles, gates or fences on the route. 12 users stated there wasn't any. 17 users state the gate/stile/fence was locked and 20 state it was unlocked. However 40 users state that they were not prevented from using the way but 3 users state they had been prevented recently (2012).

8 users have been stopped when using the way and 16 users have heard of someone else being stopped, most users state this has been recently (2012). 7 users have also been told by an owner or tenant that the land crossed was not a public right of way.

24 users state they have seen signs such as 'private', most of them state these signs have only appeared recently (2010, 2011 and 2012). 23 users claim they have never seen any signs or notices.

Route 5

In support of the application the applicant has provided 51 user forms, the users that specified acknowledge the route as follows:

0-10(10)	11-20(1)	21-30(5)	31-40(15)	41-50(6)	51-60(5)
61-70(4)	71-80(1)	81-90(0)	91-100(1)		

46 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, picnics, cycling, to play and to gain access.

The use per year varies from once or twice, to more than 10, monthly, over 30, weekly, 60-80, over 100, 250- 300 and daily.

All users that specified stated that the route has run over the same line, however one user said it hasn't but did not specify any details. 23 users stated 'yes' to there being any stiles, gates or fences on the route. 18 users stated there wasn't any. 8 users state the gate/stile/fence was locked and 34 state it was unlocked. However 41 users state that they were not prevented from using the way but 7 users state they had been prevented recently (2012).

6 users have been stopped when using the way and 11 users have heard of someone else being stopped, most users state this has been recently (2012). 7 users have also been told by an owner or tenant that the land crossed was not a public right of way.

20 users state they have seen signs such as 'private', most of them state these signs have only appeared recently (2010, 2011 and 2012). 25 users claim they have never seen any signs or notices.

Southport Land and Property Co. Ltd

An objection has been received from Yates Barnes Solicitors who have been instructed by Southport Land & Property Co. Ltd who are the landowners for most of the land involved, they object to all 5 applications.

Brief

The Scarisbrick Estate has had a shoot on the land for generations and their Client Company have numerous statements from people involved in the shoot confirming there was no footpath through the wood known as 'Cross Bank Covert' and that there were pens in the wood for rearing game birds such as pheasants and partridge. They also have statements from key members of the Southport and District Wildfowlers Association confirming there was no footpath through Cross Bank Covert (Route 5).

Their Client Company have also obtained statements from tenant farmers, from existing and past members of the estate shoot all confirming that all the routes applied for are farm tracks used to access the fields. These statements confirm the existence of signage stating private land that trespassers will be prosecuted but a number of these signs have been vandalised and removed.

Objection

Summary and conclusions of the objection submitted by Yates Barnes Solicitors on behalf of Southport Land & Property Company Ltd

Yates Barnes Solicitors confirm that a deposit under Section 31(6) of the Highways Act 1980 was made in January 1998 and that any evidence and events post 1998 should be ignored. However, the Environment Directorate records show the notice was lodged in March 1998.

The embankment to the north is owned by Natural England which has signage adjoining the embankment erected by Natural England confirming that the land (Embankment) is private land.

The embankment enabled new land to be drained under the Scarisbrick Estate Drainage Act of 1924 which gave to the commissioners statutory rights access to the land for statutory purposes only.

In May 1946 a Tenancy Agreement imposed an obligation upon tenant farmers to prevent to the utmost of his power any new footpaths or encroachments or easements being made over the holding and to do his best to prevent trespass over any part of the holding. This is in other tenancies also that it is fanciful to imagine that the tenants have ignored such obligations.

Tracks have been used for farm access consistently with an intention not to dedicate them for public use.

The lease of Sporting Rights relates to the whole estate and contains a covenant the "he will use his best endeavours to prevent trespassing and poaching and if necessary at his own cost prosecute any offenders". It is considered such lease dates back to 1923.

Substantial evidence has been adduced by the landowner demonstrating that both private associations and public bodies have required permission to access the tracks.

There is reference in documents to the estates roads and they were acknowledged to be private.

On Conveying part of the land in 1968, 1978 and 1979 private rights of way were granted indicating no public rights existed.

Permission has been sought on George's Lane for access by the Nature Conservancy Council all of which demonstrate beyond any doubt that all parties regarded the Land and the farm tracks as private land and that specific permission was required for access thereto.

There is no mention of any paths shown on the local plan proposals map, nor are they mentioned in a 1990 report by professional surveyors or in 2001 in the Planning Inspectorate's Decision following a public inquiry into the bridleway to the south. It is however difficult to avoid the conclusion that the recollections of the Applicant's witnesses may be coloured by their desire to secure what they may perceive to be a "victory" over Mr Godfrey Crook. The evidence of continuing vandalism referred to by the landowner's witnesses with consequential Police enquiries and prosecution in one instance, are matters that cannot be entirely overlooked when assessing the value of witness testimony.

Yates Barnes Solicitors have considered some witnesses and state a number of witnesses would undoubtedly have enjoyed access over the farm tracks to visit relatives no doubt on a regular basis, or as employees or perhaps as members of a

permitted group. Equally, the landowner does not doubt some members of the public, perhaps more in their youth, would have used or played upon the land and farm tracks but it is submitted such user was not "as of right". The landowner would suggest that given the land has for generations been farmed on an intensive scale, was continually occupied by tenant farmers and a game keeper it is extremely unlikely that trespassers would have been ignored or tolerated and that the recollections of the Landowner's witnesses in advising any strangers that they were trespassing and the land was private is more consistent with the reality on the ground.

If provisions of section 31 contended to be able to be satisfied then it is necessary to make the following assumptions:

- i. The tenant farmers have for generations ignored their contractual obligations relating to rights of way and trespass;
- ii. The Sporting Rights tenant and Gamekeeper ignored their contractual obligations to prevent rights of way and trespass;
- iii. At some stage the River Crossens Drainage Board and/or the Nature Conservancy Council and/or Natural England and/or the Southport & District Wildfowlers Association were all mistaken in believing the farm tracks were private roads that required permission from the landowner for their use;
- iv. The Landowner tolerated the breaches of contractual obligations referred to above and took no action on its behalf to prevent trespass;
- v. The absence of any documentary record or reference to the contrary to the Landowner's submissions cannot be explained;
- vi. The statutory declarations commencing in 1998 made by the Landowner were false.

Yates Barnes Solicitors have submitted 15 exhibits to support their objection and are listed below:

1. 1968 Conveyance
2. 1978 Conveyance
3. 1979 purchase agreement
4. 1987 Specific Enquiries
5. Official copy of register of title LA573927
6. Copy of a letter to Mr Crook with LCC response to any rights of way over his land
7. Lease between Sporting rights and landowner
8. Letter to Southport & District Wildfowlers Association asking whether they are prepared to authorise the use of George's Lane
9. Letter from River Crossens Drainage Board to Southport & District Wildfowlers Association, the board indicated their willingness to grant permission to members of the association to pass on foot over the board's sea embankment
10. 1979 Agreement granting permission to pass and re-pass on foot and not otherwise over the embankment owned by the board

11. Letter dated 12 August 1979 setting out the rule for shooting on the marsh identifying various access points to the Marsh including "E. George's Lane.... NO OTHER ACCESS POINTS TO BE USED"
12. Northern Parishes Local Plan
13. Report from Smith Hodgkinson McGinty
14. Letter from LCC confirming the new embankment is now in the ownership of Natural England
15. Copy of leaflet

They have also included 12 witness statements

Witness 1

A director in Southport Land and Property Company Limited states people using the track were only those people who had been granted permission, such as tenant farmers and their employees. He has no recollection of seeing people walking the tracks with dogs whilst he was working in the 1960's on the land. He states since the land was purchased by the company in 1990 he has challenged users and explained they were trespassing and asked them to leave. He explains that in recent years there has been a significant increase in traffic by third parties resulting in them installing gates at the top of Charnleys Lane and Georges Lane, in an attempt to keep unauthorised vehicles off the bridleway and off the estate. He reports vandalism along the land, cut locks, cut fencing recently.

Witness 2

A Farm manager who rents land at Banks Marsh from Southport Land & Property Co Ltd, he quotes the business tenancy which includes prevention of any new footpaths being made, prevent trespass over the land and to give notice to landlords of any continued acts of trespass.

He often highlights to people the signs that state the area is private to prevent people walking in the farm tracks and to prevent trespass. Due to the escalating amount of trespassing and vandalism over the past couple of years he approached Southport Land & Property Co Ltd and had a gate put at the top of Charnleys Lane.

The gate has been vandalised on a number of occasions within a day or 2 of it being erected, numerous locks have been cut and numerous locks have been glued. He states he would not be able to rent this grade 1 arable land in the future if the proposed footpath were approved and it would be seen as high risk.

Witness 3

A resident of Banks Road bought his property in 1969, at that time there was a 5 barred gate adjacent to his property which his neighbour used to take cattle to and from his farm along the road pass the pumping station towards Crossens. The only boundary which was not fenced off was the one between his and his neighbour's field and this was due to the fact that there was a ditch (which ran to the Sluice – a main watercourse which runs to the pumping station).

Soon after he bought his property a new neighbour moved in to the property next door who grew potatoes, sweeds, brassica crops and grain on the field which would make it almost impossible for people to walk.

Towards the end of his neighbours tenancy the 5 barred gate was damaged and then it was removed this was due to the fact that tractors needed to get in and out of the field quickly as it is a 'bad bend'.

A new tenant then moved in and he didn't replace the gate but blocked access with his Cambridge Roller.

Soon after Southport Land & Property Co Ltd took the land back and 'private land' signs were erected adjacent to his property. The new owners then erected a stock proof fence all the way around the boundary of the field including between his property and the field adjacent, this was so the field could be used for sheep winter grazing.

Only recently a number of sheep have escaped due to the fences being cut, he states during his entire residency there has never been a footpath through the field adjacent to his property and has told anyone using the land that it is 'private lane'. He recalls during 1970s a gate was erected part way along Bank Pace this gate has been vandalised and today there are not even gate stubs remaining.

Witness 4

In the late 1970 until 1989/1990 his father had the shoot on the land and Banks and Crossens, these leases were renewed annually. The leases included 'sporting rights' on all the land. During his father's lease of the shoot there was no footpath through Cross Bank Covert. He often attended the shoot with his father and he recalls there were no footpaths on the estate except the part of what is now a bridleway. 5/6 of the proposed footpaths are on Banks Marsh and there were no footpaths on this land, if people had been walking, they or their dogs would have been frightened by gun noise and potentially debris from falling shots.

A condition of the lease to his father was 'to use his best endeavours to prevent trespassing and poaching and if necessary at his own costs prosecute any offenders'.

Witness 5

He was a member of the shooting syndicate in the early 1980s, to the best of his knowledge he does not remember any public footpath through the wood known as Cross Bank Covert, he confirms there were no footpaths anywhere on the estate when he was part of the shooting syndicate.

Witness 6

He was a beater for the shoot at Banks in early 1970s when his friend had the shoot. His friend along with another party had the lease for the sporting rights on the estate for 4/5 years in the mid 1970s. He understands that the land and the tracks across it

are private with the private tracks belonging to the owners of the estate.

Witness 7

He raised game in the field behind the cottage and released the birds into the woods Crossbank Covert, he states there was no public footpath or right of way through the wood and if he saw anyone he would ask them to leave. He then states there were no public rights of way anywhere on the estate and the only people entitled were the landlord, tenants, members of the shoot and the Southport & District Wildfowlers Association who used the track to access the marsh.

Witness 8

He is a member of the shoot on Banks Marsh for 15 years, he states there are no footpaths on any of the farms tracks that are being claimed. As a member of the shoot if he saw someone walking on the tracks or across the field he would approach them & explain they were trespassing & ask them to leave. He state it is only recently over the last two to three years these tracks have been used for walking dogs, riding horses, motorcycles and quad bikes.

In 2011 he took over the shoot and entered into an agreement with Southport Land & Property Co Ltd and he regularly stops people walking with or without dogs, motorcycles and horses on the farm tracks and across the field, some ignore him and others are abusive.

Witness 9

He has been involved in shooting his whole life and he became a member of the Wildfowlers Association of Great Britain in 1937. He found out that Scarisbrick estate were asking for payment to use the farm tracks to the marsh, he didn't agree with this and that is why he wouldn't join the Association. The estate wanted to ensure their private land and private roads remained private. He attaches a document from 1958 showing the payment to use the tracks. He states he has used the tracks with permission since the mid 1940s.

Witness 10

The Chairman of the Southport and District Wildfowlers Association, the Association was established in 1887, he states he has always had a good working relationship with Scarisbrick estate. The Association has had permission from the current owners of the estate (Southport Land & Property Co Ltd) and their predecessors in title for over 100 years to use the farm tracks that continue from the end of Charnleys Land and the end of Georges Lane to access the marsh. He formally requests permission every year from landowner to use the land.

He has over 100 members who all have membership cards, so that if they are stopped by Natural England or Southport Land & Property Co Ltd they can produce evidence of their membership on request. He has on numerous occasions questioned people using the farm tracks, being mindful of people poaching or trespassing, he has contacted the estate owners if he has had concerns. All of his

members are aware of the rules and regulations in terms of ensuring their dogs are on a lead at all times whilst on these farm tracks.

Witness 11

Believes there has never been a public footpath, he has been a member of Southport and District Wildfowlers Association since 1950 and he used to get permits issued to each member of the Southport and District Wildfowlers Association to use the private farm tracks.

He recalls tenant farmers on the estate that had cattle on the land either side of the track that continues from Charnelys Lane towards the outer embankment on the 1950s, the fields at that time were fenced off. They also used to graze the old embankments, there were fenced all the way along the old embankment with gates stiles, as the only footpath was on top of the old embankment, there were no other footpaths on Banks enclosed marsh.

In the early 1940s Georges Lane was used by the fishermen, with horses and carts with permission from Scarisbrick Estate.

Witness 12

A qualified chartered surveyor wrote a report for Clarges Street Investments Ltd in June 1989 and he states if there had been any evidence these farm tracks had been used as footpaths or that there was a footpath through the wood known as Cross Bank Covert during the inspection, he would have highlighted the same in the report. In his view the footpaths would have been a material consideration affecting the viability and management of the estate.

As managing agents, he recalls clearly the track that continues from Georges land, the track that continues from Charnelys Lane and that which runs parallel to the continuation of Charnleys. All these tracks were farm tracks for the benefit of farming tenants working on the estate, to access the fields and were not as far as he was aware footpaths. He does not recall seeing any members of the public walking on these tracks. The tracks were always kept 'in hand' by the owners of the estate so all the owners of the estate could use the tracks to get to the fields.

The Environment Agency

The Environment Agency have confirmed ownership of the new flood embankment at the foot of which four of the routes terminate (at points R, I, V and E) and on top of which one of the routes terminates (at point O). They have stated that in commenting on the applications that they need to assess the impact on the embankment, the management of the embankment, potential health and safety liability as well as the impact on existing users, occupiers and/or tenants.

Within their response they query the route of the existing public footpath along the landward side of the foot of the embankment as they believed the footpath to run

along the top of the embankment, which they have noted is currently used by the public and as such it is on that basis that they have responded.

The Environment Director has responded to confirm that the legally recorded route of the public footpath is on the landward side of the embankment and that the legally recorded public footpaths are correctly shown on the Committee plans. The Environment Agencies concerns relate to the public accessing the path along the top of the embankment which is not part of the application routes.

Routes 1 & 4

The Environment Agency have no objection to these applications because there are ramps up the side of the embankment which could be used to access the crest of the embankment without creating a significant health and safety risk or potential risk to the structure.

Routes 2, 3 & 5

The Environment Agency objects to these proposals because there are no ramps up the side of the embankment to access the crest of the embankment.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Applications

User evidence

Map and documentary evidence

Against Accepting the Claim

Route 1 – use may not have been as of right

Actions of the owner

Conclusion

The claim is that the routes are already footpaths in law and should be recorded as such.

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

Route 1

Shown between points – A-B-C-D-E on the attached Plan

Looking at S.31 Highways Act 1980, the twenty years use by the public is required up to the point the path is brought into question.

This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. User evidence suggests, although no overt action was taken against the users directly, some users had heard of others being prevented from using the route or being told that the land was not a public right of way in around 2012. There are also 30 users claiming that notices/signs had been erected recently stating 'private' or 'trespassers will be prosecuted'. Committee will however note that the current land owner lodged a S31(6) statutory declaration in March 1998 renewing the same on 26 May 2004, 9 March 2010 and 2 February 2012 for the land subject to all five of the claimed routes.

Therefore the "bringing into question" of the route would be March 1998 and the 20 year period of use to consider would be 1998-1978. There are 32 users whose use dates back to 1978 and the majority of these users have used the route prior to 1978, there are some users claiming to have used the route since 1950.

For use to be as of right, it must be without force, secrecy or permission. 11 users acknowledge there was a gate and 21 users mention a locked gate, 3 users mention this prevented them from using the route. The analysis of the OS maps and aerial photographs suggests the existence of a boundary across the route at point D concluding it is reasonable that a gate existed at this location (which may or may not have been padlocked). It is therefore suggested that use on a balance of probability, was not as of right if locked gates were climbed over or accessed, as this would amount to use with force.

A presumption of dedication may be rebutted, if there is sufficient evidence on the part of the landowner to demonstrate that they had no intention to dedicate a public footpath. It is understood the current landowners, Southport Land and Property Company Limited have owned the land since 1990. The 20 year period under consideration means 14 years from 1978-1990 pre-date the landowner's ownership. An earlier landowner had objected to North Meols Parish council including the route on the parish survey in 1952 stating that no right of way was admitted and that the route was a farm. The formal hearing into this matter concluded not to record this route on the map as a public footpath. It is understood the previous owner was the Scarisbrick estate who held the land on trust until 1925 and thereafter distributed the assets amongst the beneficiaries in 1978. As ownership of the land was transferred to the beneficiaries' by 1978 we cannot rely on the objection made by the Scarisbrick Estate in 1952, as landownership changed when the estate was distributed amongst the beneficiaries. There is no evidence to suggest the landowner from 1978 until 1990 took any steps to prevent the public from using the route or any challenges were made to public use.

It is suggested to Committee that it may be difficult to satisfy use was as of right if on a balance of probability it is concluded the gates had been locked and use may have been by force, it is therefore difficult to satisfy deemed dedication under S.31.

Looking instead at common law to see whether dedication can be inferred. There was a gap between 1990 until 1998 (see above) when no action was taken by the current landowner however; the landowner only made his intention clear in 1998 through the lodging of the S.31 statutory declaration. There is evidence to suggest

that use of the route was by force, as there was a gate which on balance was locked and the users do not provide evidence as to how this locked gate was accessed. It is suggested that there may be insufficient evidence from which to infer a dedication of use at common law.

It is suggested to Committee, taking all the information into account, deemed dedication under S.31 and inferred dedication at common law are difficult to satisfy and this claim is refused.

Route 2

Shown between Points F-G-H-I on the attached plan

Looking at S.31 Highways Act. The bringing into question of the route would be the lodging of the S.31 (6) statutory declaration in 1998. The twenty year period under consideration would therefore be as per route 1 from 1978-1998.

Considering next, whether the route was used by the public as of right and without interruption. It appears from the 69 user evidence forms submitted in support of this claim, at least 28 users claim to have used the route during the period under consideration, use of the route dates back to 1934. The users acknowledge there being a stile and gate however; 57 users agree the gate did not prevent them using the way, with 5 users stating that it was only recently in around 2012 that they were prevented from using the route. One user states when the stile was removed this prevented use of the route in 2012.

The users agree that signs have been posted at Point F stating 'Private legal action may be taken against unauthorised persons found on this property ' and a second sign stating 'Danger, no trespassing, shooting in progress' however; 31 users agree these have appeared recently.

The route has existed from at least 1895 and the first OS map to publish the route was 1910-11 and thereafter, the route is displayed on all subsequent OS maps. The route appears on the 1910 Finance Act documentation suggesting the previous landowner considered this route a public highway. However, the landowner objected to this land being added to the parish survey map in 1952 and was successful not to include the route on the parish survey map. The present landowner does not seem to have taken any active steps to prevent use, until 1998 when the statutory declaration was deposited, nor is there any evidence the land owner from 1978-1990 took any action to prevent the public from using the route. The Executive Director of Environment suggests there is evidence to support the physical existence of the route from 1895 and capable of being used by the public.

On balance, Committee is advised that the route was used by a sufficient number of people as of right for a 20 year period and dedication under S.31 can be deemed. Considering the position at common law, whether dedication can be inferred on balance at common law, the previous landowner took overt action and made their intention clear in 1952 (see above). However, when the land was divided in 1978 amongst the beneficiaries of the estate, no overt action seems to have been taken to demonstrate the landowners intention from 1978 until January 1998, it seems that

the route was used as of right by a sufficient number of people during this period and it is suggested that there is sufficient evidence from which to infer dedication from use.

It is suggested to Committee, taking all the information into account deemed dedication under S.31 and inferred dedication at common law can be satisfied and that the claim is accepted and an order is made.

Route 3

Shown between Points J-K-L-M-N-O on the attached plan Committee Plan 1

The twenty year period to consider for the purposes of S.31 would be as above; from 1978 until 1998 as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

Evidence of use is provided in 42 user evidence forms. Of these, at least 15 claim to have known and used the route since 1978. For use to be as of right, it must be without force, secrecy or permission. 20 users acknowledge there being a stile/gate along the route, 15 users state the gate was locked and 16 state this was unlocked however; 32 users state they were not prevented from using the route, some users have stated they were prevented from using the route since 2012.

The user evidence suggests there was a gate and a stile along the route and the users gained access across the gate via the stile. There is nothing to suggest that use was by force, or that they used the route by stealth. The user evidence suggests that in 2009 the stile was taken out and a deep ditch was dug preventing access. The user evidence is also indicative that signs were put across the route in or around 2009. Use of the route is consistent with use as a public footpath. It is suggested to Committee use was open and from the evidence, use was as of right and without interruption and sufficient in quantity and frequency. Committee should also note that there is some limited map and aerial photographs evidence to support the physical existence of the route from 1910 onwards. As the user evidence is sufficient in number and use, on balance it is suggested the route was used and dedication can be deemed under S.31.

Looking at the common law position, although the intention of the landowner was made clear in 1998, there is no evidence to suggest any overt action was taken to demonstrate the landowner did not intend to dedicate the land during 1978 until March 1998 the period under consideration. It seems the route was used as of right, by a sufficient number of people during this period and it is suggested that there is sufficient evidence from which to infer dedication from use.

It is suggested to Committee, taking all the information into account deemed dedication under S.31 and inferred dedication at common law can be satisfied.

Route 4

Shown between Points J-K-P-Q-R on Committee Plan 1

Looking firstly at whether dedication can be deemed under S.31. The twenty year period to consider for the purposes of S.31 would be as above; from 1978 until 1998, as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

51 user evidence forms have been provided in support of the claim, of these at least 16 users have used the route since 1978. 32 users agree that a gate and stile was present and 40 users confirm this did not prevent them from using the route. It seems from the evidence that the stile was accessible to get across the gate which suggests use was not with force and was as of right. The users have not been challenged or stopped from using the route until recently in 2012 and the owner did not take any steps during his ownership from 1990-1998 which is part of the period under consideration. There is no evidence to suggest the previous landowner from 1978-1990 took any steps to prevent use.

On balance it is suggested that use was as of right without force, permission or stealth for a full period of 20 years and therefore, deemed dedication under s.31 can be satisfied.

Looking at the Common Law position, the route has appeared on map and documentary evidence since 1895 to date to support a physical existence of the route capable of being used by the public and is a feature of antiquity. The route is excluded from the 1910 Finance Act which suggests the landowner may have considered the route to be part of the public highway. The landowners' during the 20 year period did not take any active steps to show they had no intention to dedicate, and it is suggested that dedication may be inferred. In conclusion dedication can be deemed under S.31 and inferred under common law.

Route 5

Shown between Points S-T-U-V shown on Committee Plan 2

Considering the position under S.31 Highways Act 1980. 51 user evidence forms have been provided, 17 users claim to have used the route since 1978. User evidence suggests signs and notices along the route have appeared recently since 2012 and users have been challenged from using the route since 2012. No action seems to have been taken by the landowner preventing use during the period under consideration.

The twenty year period to consider for the purposes of S.31 would be from 1978 until 1998, as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

The route appears on the 1910 Finance Act and no dedication is claimed for a public right of way, suggesting the route did not exist as a public right of way. There is no map or documentary evidence to support the physical existence of the route from 1895 to the present day. A worn track is shown on the ground and; it is suggested that as this is a rural area, the dense tree coverage would prevent the route from being shown on aerial photographs.

There is however sufficient user evidence which demonstrates that the route was used by a sufficient number of people during the course of the period under consideration. 23 users acknowledge a stile, gate or fence on the route with 18 users stating there was none present. 8 users state the gate/stile/fence was locked and 34 state it was unlocked. However, 41 users state they were not prevented from using the route which is indicative that the route was available and used by the public as a whole as of right, as the user evidence does not suggest the route was used with force.

Therefore, on balance it is suggested to Committee that there is sufficient evidence for deemed dedication under S.31.

Considering secondly whether dedication can be inferred on balance at common law, it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user evidence can be the circumstance from which to infer a dedication. The owners at the time for several years did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred through use by the public.

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

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

Risk Management

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

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/5.46086 (804/526, 527, 528, 530, 531)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604
Reason for inclusion in Part II, if appropriate		
N/A		

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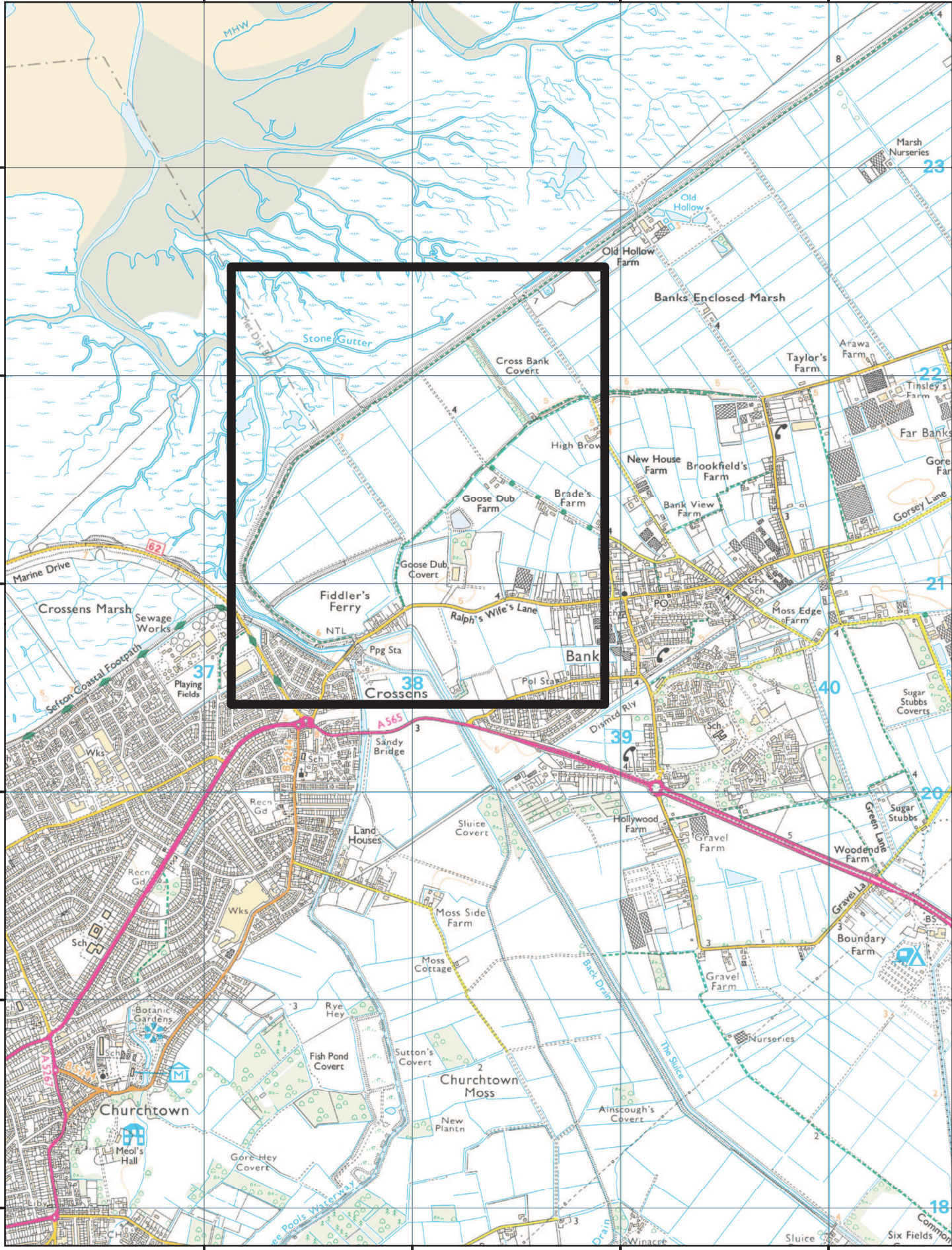
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Jo Turton
Executive Director
for the Environment

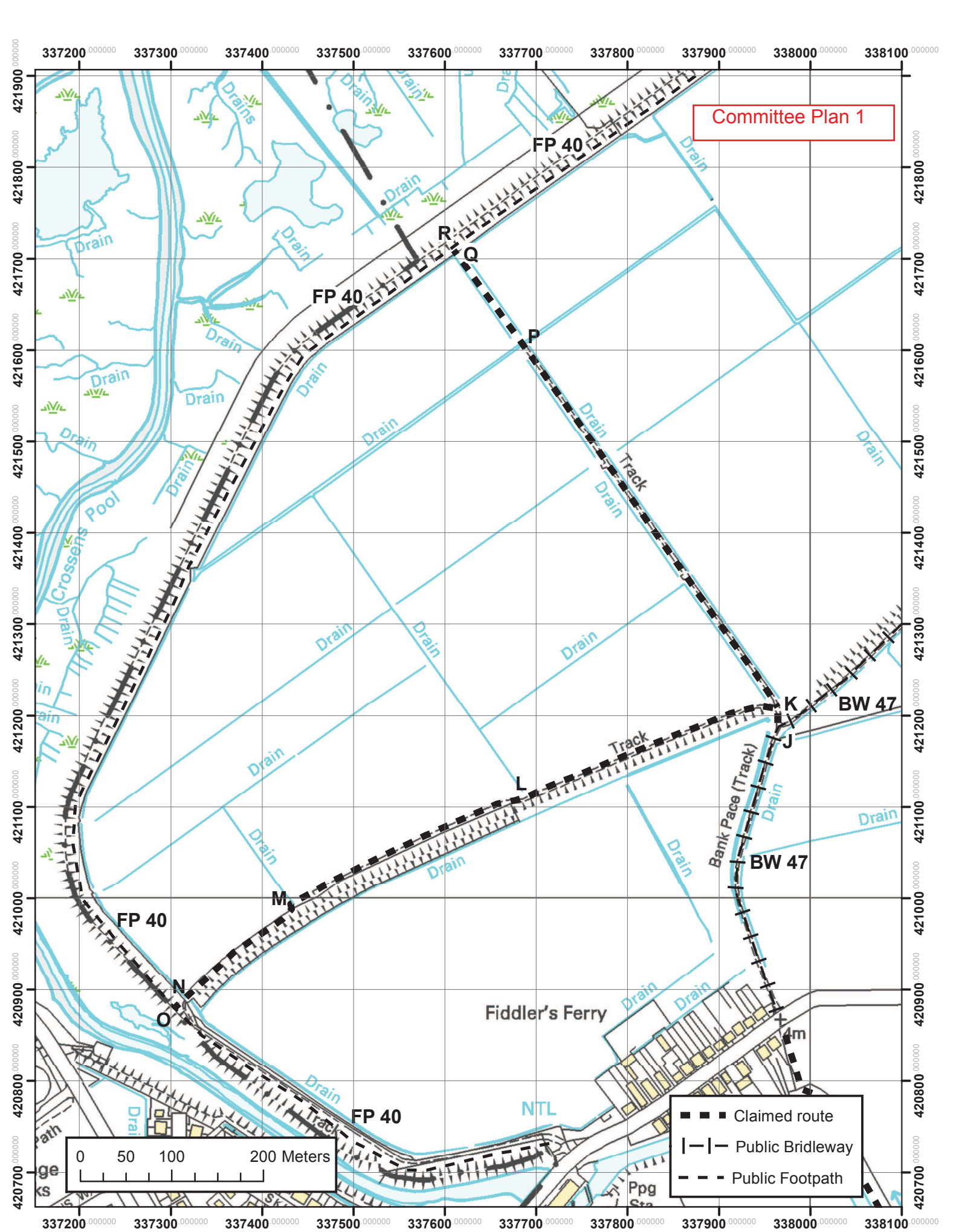
**Wildlife and Countryside Act 1981 Claimed public footpaths across
Banks Enclosed Marsh, North Meols, West Lancashire
Claim Nos. 804-526, 804-527, 804-528, 804-530, 804-531 LOCATION PLAN**

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Committee Plan 1

- ■ ■ Claimed route
- | - | - Public Bridleway
- - - Public Footpath



Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981 Claimed public footpaths across
Banks Enclosed Marsh, North Meols, West Lancashire
Claim Nos. 804-526, 804-527, 804-528, 804-530, 804-531

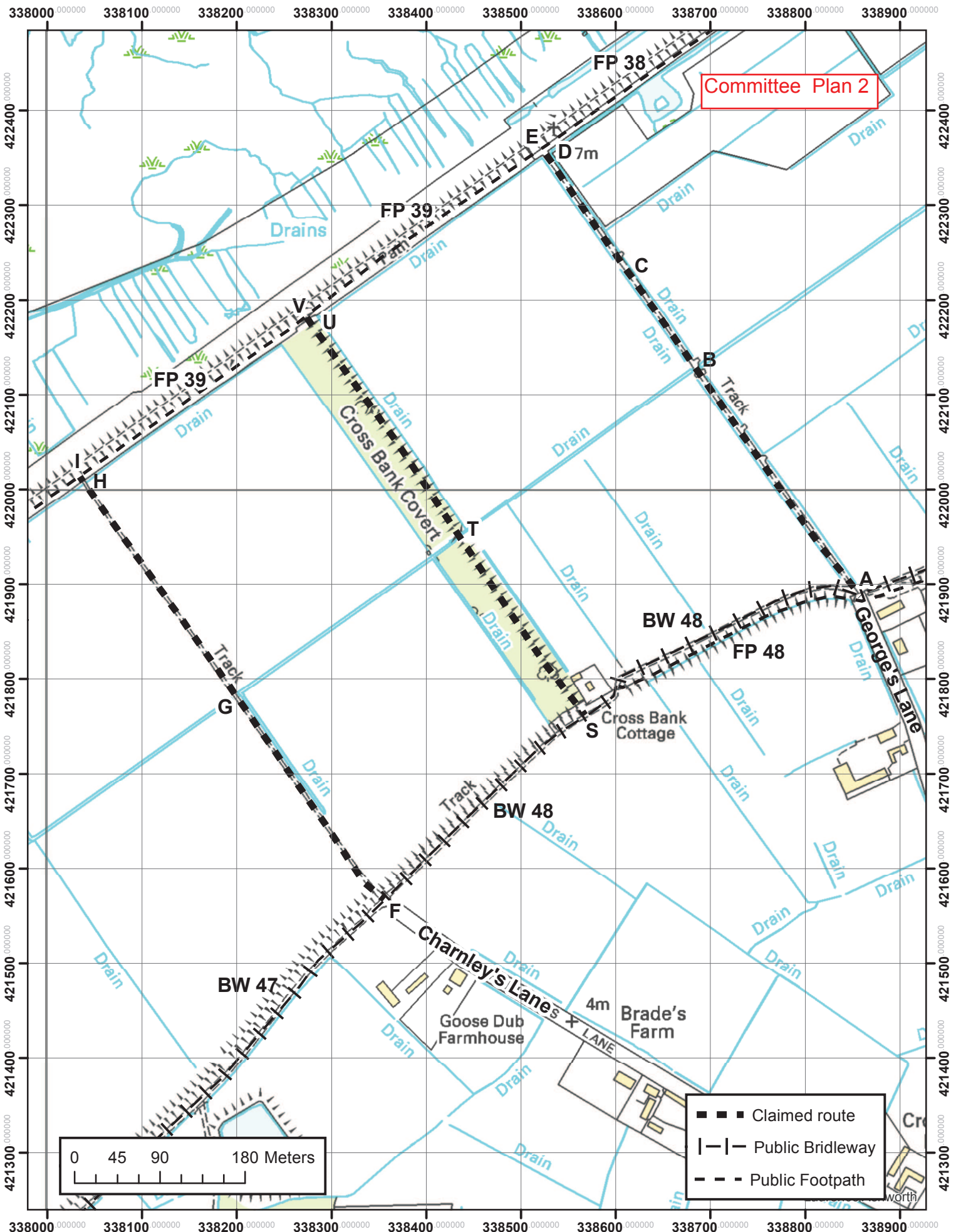
Plan 1/2

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Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected: West Craven

Decision on Appeal

Wildlife and Countryside Act 1981

Claimed downgrading to public footpath of Public Bridleway No. 52 Earby, Pendle Borough

(Appendix 'A' refers)

Contact for further information: Jayne Elliott, 07917 836626, Environment Directorate
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Secretary and Solicitor's Group megan.brindle@lancashire.gov.uk

Executive Summary

A decision on an Appeal made under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981 against the refusal to make a Definitive Map Modification Order has been received from the Secretary of State for Environment, Food and Rural Affairs.

Recommendation

1. That the Report be noted.
2. That, in light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of claim No. 804/483, an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of way by downgrading Public Bridleway No. 52 Earby to a Public Footpath
3. That should no objections be received the Order be confirmed, but if objections are received the County Council as Order Making Authority submit the Order to the Secretary of State for formal determination, but the County Council shall notify the Secretary of State that it does not actively support the Order and to adopt a "neutral stance" as regards confirmation of the Order.

Background and Advice

At their meeting on the 7th September 2011, the Regulatory Committee considered a report (copy attached at Appendix A) and resolved that the claim for downgrading

Public Bridleway No. 52 Earby to a Public Footpath be not accepted. The applicant appealed against this refusal to the Secretary of State.

The Secretary of State for Environment, Food and Rural Affairs directed an Inspector to prepare a report into the matter. The summary of the report is as follows:-

'It would seem from the evidence available that most of the appeal route has been in existence since before 1825 but there is no indication of its continuation across the beck to join Dotcliffe Road before the 1853 OS map which shows stepping stones. By 1906 / 07 a footbridge had been constructed and at some time it would appear that a retaining wall was constructed. None of the early evidence gives any indication of whether there were public rights of any sort over the route. It is plausible from more recent evidence that the retaining wall and footbridge might have made the southern section of the route impassable on horseback and the statement of Mr Tomlinson seems to confirm this. Nevertheless in the 1950s the whole route was recorded as a public bridleway and neither landowners nor anyone else raised any objections to this although they would have had opportunity to.

In these circumstances it is not easy to come to a firm conclusion. In my view there is new evidence now available which is cogent but it is difficult to say whether this is of sufficient substance to displace the assumption that the definitive map is correct in the absence of information regarding the reasons for recording the route as a public bridleway. If the route was being used by the public as a bridleway in the 1950s or, if there was evidence at that time that it had been so used in the past, it might have been correctly recorded but, unfortunately, it is not known whether this was the case. Overall, it is my view that, on the balance of probabilities, the evidence that the route was ever a public bridleway is so limited and the evidence that it could not have been used by the public as such in living memory so cogent, that it seems more likely that the route was incorrectly recorded in the definitive map as a bridleway. However, the evidence does indicate that the route may well have been used by the public as a footpath since the mid 19th century, with access of the beck being by stepping stones and then a footbridge. It would therefore be appropriate for the route to be recorded as a public footpath.'

The Secretary of State allowed the appeal and directed the County Council to make an order under Section 53(2) and Schedule 15 of the Act to modify the Definitive Map and Statement for the area to add a public footpath as proposed in the application submitted on 8th April 2008.

It is advised that an Order is made to record a public footpath as directed by the Secretary of State. However, with regards to any Order made following the direction of the Secretary of State, it is suggested that the Local Authority adopts a neutral stance. This is a usual position to take when the Committee originally decided on the evidence not to make an Order.

Consultations - N/A

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: 5.34497 (804/483)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee
Meeting to be held on 7 September 2011

Electoral Division affected: West Craven

Wildlife and Countryside Act 1981
Claimed downgrading to public footpath of Public Bridleway No. 52 Earby, Pendle Borough
Claim No. 804/483
(Annex 'A' refers)

Contact for further information:
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Executive Summary

The claimed downgrading to public footpath of Public Bridleway No. 52 Earby and the associated variation to be made to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/483.

Recommendation

That the claim for the downgrading to public footpath of Public Bridleway No. 52 Earby and the associated variation to be made to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/483 be not accepted.

Background

Currently the Definitive Map and Statement for Earby in Pendle Borough shows Public Bridleway No. 52 Earby from the western end of Public Bridleway No. 18 Earby (also known as Heads Lane), Kelbrook, running in a south-easterly direction to Dotcliffe Road. The southern end of the bridleway passes Sycamore Cottage to the west and then continues over Kelbrook Beck.

An application has been made under Section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by downgrading Public Bridleway No. 52 Earby to the status of a public footpath.

The attached plan shows the location of the route under investigation between points A and E. The claim is to downgrade Public Bridleway No. 52 Earby to a public footpath from point A on the attached plan at grid reference SD 9049 4463 to point E at SD 9045 4470.

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

An order will only be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

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; this is until a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

Pendle Borough Council is in support of the application. The Countryside Access Officer states that he has seen the evidence sent with the application, including the original photographs, and was present when Mr Tomlinson (the applicant) gave a verbal account of his recollection of the route. He witnessed Mr Tomlinson's signature of the statement sent with the application. He further states that the evidence which he has seen and heard supports the application and he is not aware of any other evidence which would be relevant.

Kelbrook and Sough Parish Council (the current parish council for the area) has been consulted and has no comments to make.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached plan (Plan No. 483B).

	Grid Reference	Description
Point A	SD 9049 4463	Junction of Public Bridleway No. 52 Earby and Dotcliffe Road.
Point B	SD 9049 4463	On claimed route to be downgraded, at a point to the south of the garage building.
Point C	SD 9049 4464	On claimed route to be downgraded, at a point to the north of the garage building.
Point D	SD 9049 4465	On claimed route to be downgraded, adjacent to Sycamore Cottage garden wall.
Point E	SD 9045 4470	Junction of Public Bridleway Nos. 18 and 52 Earby and Heads Lane, approximately 20 metres to the north east of the junction of Harden Road and Heads Lane.

Description of Route

The site inspection was carried out on 2 September 2010.

	Approximate length	Available width on date of site visit (rounded up or down to the nearest 0.1 metre)
Point A – Point B	6 metres	11 metres on Dotcliffe Road narrowing to 6 metres in front of building.
Point B – Point C	8 metres	0.8 metres.
Point C – Point D	10 metres	4.5 metres at Point B reducing to 3.0 metres at point D
Point D – Point E	55 metres	3.0 metres.

The application route commences at point A, at a point to the north of Dotcliffe Road.

From point A, the route runs generally northwards across a wide access platform bridge, crossing Kelbrook Beck to point B. At point B, the route is partially obstructed by a garage building. There is a pedestrian gate located to the west of the garage which provides access to the passageway which is bounded by the garage to the east and a garden wall to the west.

At point C, the path is bounded by a stone wall to the east and on the west the route is bounded by what appears to be a kitchen extension to Sycamore Cottage.

From point C, the route continues in a north westerly direction on a partially bitmac surfaced track, partially bounded on either side by stone walls and fences to a point that is adjacent to the garden fence of Sycamore Cottage at point D. At this point the surface of the route has the appearance of a farm track, consisting of a compacted stone and grass surface. The route continues in a north westerly direction, passing the wide access to the farmyard of Royds Farm, located midway between points D and E. The route continues in a north westerly direction past the farmhouse of Royds Farm and continuing as a farm track to point E.

A signpost is located at the junction of Bridleway Nos. 18 and 52 Earby and Heads Lane, indicating the route claimed to be downgraded is a bridleway.

Map and documentary evidence relating to claimed downgrading

A variety of maps, plans and other documents were examined with reference to the Definitive route claimed for downgrading.

DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Thomas Jefferys' map of Yorkshire	1772	The earliest map examined was Thomas Jefferys' map of Yorkshire. Jefferys was a most prolific engraver and map publisher who was appointed Geographer to the Prince of Wales and George III. Between 1767 and 1770 he surveyed Yorkshire and completed his map only in the year of his death, and so it was published posthumously in 1772. It was published at a scale of 1" to 1 mile on 20 plates and bound in a large atlas. He refused to skimp costs or employ second-rate surveyors to the extent that this commitment to quality contributed to his bankruptcy.
Observations		The map names the village of 'Kellbroak' (sic) although no buildings are shown. A short dead-end road is shown which is probably Harden Road. No other paths or tracks are shown.
Investigating Officer's comments		No inference can be drawn.

Smith's map of Yorkshire Observations	1801	Nothing is known about this map-maker. The map names the village of 'Kellbroak' (sic) but no buildings are shown. Only the main road through the village is shown with no roads or tracks in the vicinity of the route claimed for downgrading.
Investigating Officer's comments		No inference can be drawn.
Teesdale and Stocking's map of Yorkshire Observations	1817	Nothing is known about these map-makers although Teesdale is believed to have been a publisher. Teesdale and Stocking's map of Yorkshire of 1817 is drawn to a larger scale than the earlier maps. The village of Kelbrook is shown with a road corresponding to Harden Road/Dotcliffe Road. The road has a number of buildings along it on both sides. Kelbrook Beck is not shown. The exact location of the route claimed for down-grading cannot be identified.
Investigating Officer's comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment Investigating Officer's comments		No relevant tithe map is held by the Lancashire Record Office or the Yorkshire Archives offices in Wakefield. No inference can be drawn.
Quarter Sessions records Investigating Officer's comments		No record of orders to divert and extinguish public rights of way in Earby was found in the Lancashire Record Office and Yorkshire Archives. No inference can be drawn.
Inclosure Act Award and Maps	1825	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices. They also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. The Inclosure award for Thornton-in-Craven covers the Kelbrook area.

Investigating Officer's comments		No inference can be drawn.
Ordnance Survey maps		The Ordnance Survey 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 the West Riding of Yorkshire in the 1820s 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 early maps carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 inch OS map	1853	This map was viewed on a web site
Observations		The map shows the route claimed for downgrading from point E in the north to the north bank of Kelbrook Beck in the south as a lane or track with some buildings along it. The map is not clear enough to see if any feature such as a bridge is shown across the brook but none is named in the location. The map does however refer to "Stepping Stones" and the position of the word on the map would indicate that these stepping stones were in the approximate area where the track joins the beck
Investigating Officer's comments		The bridleway southwards from Heads Lane existed in 1853 as a track or lane to Kelbrook Beck. It is not clear if there was a bridge or ford across the beck in 1853 but there were stepping stones in the vicinity.
6-inch OS map	1896	This map was surveyed in 1892 and published in 1896.
Observations		The map shows the route claimed for down-grading from point E in the north to the northern bank of Kelbrook Beck in the south as a lane or track enclosed on both sides. Heads Lane is named. There is a line across the route at point E and at D. There is a building at the southern end of the route corresponding to Sycamore Cottage. No bridge or ford is shown across the beck to the south of point B. Bridges are shown across the water at other points, and elsewhere a footbridge is shown by the OS with a 'FB' notation.

Investigating Officer's comments		The bridleway existed in 1892 as a track with 2 gates across it. There was no bridge across the beck to the south of point B.
25-inch OS map	1909	This map was surveyed in 1892, revised between 1906 and 1907 and published in 1909.
Observations		The map shows the route in largely the same way as on the 1896 map (the survey dates are the same). There is a gate across the route at the northern end (point E). Again Heads Lane is named. A footbridge is shown across Kelbrook Beck at the southern end of the bridleway to the south of point B
Investigating Officer's comments		The route claimed for down-grading existed as a track in 1907, with a gate at its northern end. It is likely that it would have been used by vehicles as it provides access to buildings at its northern end and provides sole access to a building at the southern end where Sycamore Cottage is now. Access has been provided across the beck for people on foot. There is no indication that vehicles or animals could cross the water by means of a ford.
6-inch OS map	1947	This map was revised in 1938 and published in 1947.
Observations		The map shows the route in the same way as the 1909 map.
Investigating Officer's comments		No additional information provided.
6-inch OS map	1956	This map was revised before 1930 and published in 1956.
Observations		This map was used as the base map for the Definitive Map of Public Rights of Way. The route is shown in the same way as the 1947 map.
Investigating Officer's comments		No additional information provided.
25-inch OS map	1963	25-inch map published in 1963 (revised in 1961).
Observations		This map shows the route claimed for down-grading as a lane or track providing access to Sycamore Cottage (named for the first time). There is no longer a gate at the northern end. The footbridge is shown across Kelbrook Beck. A small building has been constructed within the width of the route next to Sycamore Cottage. Ordnance Survey symbols on the cottage and immediate area show that this part of the map has been revised.

Investigating Officer's comments		The nature of the claimed route appears to be unchanged, but a shed, garage or similar building has been constructed next to Sycamore Cottage. It is unlikely that this building would have prevented people on foot from using the route to access the footbridge to Dotcliffe Road, although the overall width at this point would have been considerably reduced. Horses may have been impeded by this small building but there is no indication of how any horses crossed the beck to the road.
25-inch OS map	1977	The map was revised in 1961 and 1975 and published in 1977.
Observations		There is a significant change on this map to the earlier edition published 24 years earlier. Sycamore Cottage has been enlarged on its western side. A new access to the building has been built across the beck from Dotcliffe Road. Where the earlier shed or garage had been, a much larger square building has been constructed with its own access from Dotcliffe Road across the stream, in excess of the total width of the new square building. A very small gap has been left between the cottage and new building, and the OS no longer show a footbridge across the beck. This map shows the rest of the application route in the same way as the one used on the plan attached to this report.
Investigating Officer's comments		A new building almost totally obstructs the bridleway between points B and C on the attached plan, which may no longer be accessible even on foot. The map indicates that there is no longer a footbridge across the stream for the public to use. If use of the route was possible, pedestrians would have the newly constructed wide access platform to the new building to cross the brook.
Aerial Photographs	1945 1968 1990 2000 2003	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 very variable and in this case it is hard to make out any significant features of the route.

Observations	1945	The route claimed for downgrading is shown but the photograph is not very clear.
Investigating Officer's comments		No inference can be drawn.
Observations	1968	The route claimed for downgrading is shown. The photograph is not clear enough to show gates or other obstructions across the route, but a footbridge is visible across the stream.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	1990	The route claimed for downgrading is shown, but trees obscure the beck.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	2000	The route claimed for downgrading is shown. The square building with a wide access bridge across the stream, described on the 1977 OS map above and shown between points B and C on the attached plan is also shown. It is not possible to see if a separate footbridge still remains.
Investigating Officer's comments		The photograph does not provide any new information.
Observations	2003	The route claimed for downgrading is shown. The square building next to Sycamore Cottage is shown, but the stream is in shadow and it is not possible to see if a separate footbridge still remains.
Investigating Officer's comments		The photograph does not provide any new information.
Inland Revenue documents	1912	<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act are 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 the 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 recorded in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the</p>

		<p>accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> <p>No Finance Act material is available in the Lancashire Record Office or the Yorkshire Archive Office in Wakefield.</p>
Investigating officer's comments		No inference can be drawn.
Earby Urban District Council documents		A search was made in Earby Urban District Council records to find any planning applications for Sycamore Cottage which might show the route claimed for downgrading and refer to its status, and also to date the changes to the buildings there.
Observations		The buildings plans street index was examined. For the period 1948 to 1974 there were 6 applications for Sycamore Cottage – 3 for a garage, 1 for a porch, 1 for an extension and 1 for the replacement of a conservatory. Unfortunately there is a note in the Lancashire Record Office catalogue stating that buildings plans were 'weeded' before being forwarded to the LRO. None of the plans referred to above now remain. The Register of Town Planning Applications is in date order but with no index. The duty archivist on the day of the visit to the LRO said, when asked for assistance, that he didn't think any plans referred to in this catalogue had survived either.
Investigating officer's comments		No inference can be drawn.
'Kelbrook in Times Past' by Victor Laycock 1987		This local history book about Kelbrook contains several pictures of Dotcliffe Lane.
Observations		The book states that Dotcliffe Road was originally a narrow lane to a mill. Heavy wagons to the mill damaged the road and in 1873 the road had to be widened and strengthened by a wall. There are 3 photos of the area in the book, one dated c1908 and one 1920. The photograph that is undated shows a broad stream with grassy sloping banks on

		<p>both sides. Only a short section has a retaining wall with a central break in it. Half of the wall appears to lead down to the water. On the opposite side is a worn slope up to the lane. A man is also shown in the stream and appears to be standing on stepping stones. The photo taken in 1920 shows a substantial stone wall between the stream and the road and a footbridge.</p> <p>It is possible to identify some of the buildings in the photographs, in particular 13 Dotcliffe Road, 6 Harden Road and St Mary's Church. It is possible therefore to identify the location depicted in these photographs as being approximately 50 metres downstream of the route claimed to be downgraded.</p>
Investigating Officer's comments		<p>It would appear from the photographs that horses have got over the stream in the location of the photographs in c1870. This does not however provide an indication as to the profile and depth of the stream at the position of the route claimed to be downgraded. The stream ran from a mill and may have been different in profile to the sections illustrated on the photographs.</p>
Definitive Map records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map.</p>
Government Guidance in the 1950s		<p>When work began in the early 1950s to collect information about public rights of way, a memorandum was prepared by the Commons, Open Spaces and Footpaths Preservation Society which was issued by the Ministry of Town and Country Planning for the use of local authorities. The County Council were required to consult with the Councils of county districts and parishes. This memorandum stated that all recognised public rights of way should be marked on maps and the County District Councils and the Parish Councils prepared maps of their areas. Those routes about which there was any initial reasonable doubt had to have further investigation, even collecting evidence of use from "old inhabitants", and all the routes added to the maps had to go through various investigations. The sources of information to be used to discover public rights of way were listed in detail.</p>

Investigating Officer's comments		There is no evidence that Earby Urban District Council did not undertake its task seriously and properly, and in the absence of other evidence it is presumed it followed the advice of this memorandum
Draft Map		<p>The preliminary survey work was carried out in the West Riding of Yorkshire from the early 1950s. An accompanying statement was written describing each path. In this area it was undertaken by Earby Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant Date" and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit in September 1952 for 4 months for the public, including landowners, to inspect them and report any omissions or other mistakes. In Lancashire, hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented. It is presumed that the West Riding of Yorkshire County Council followed this model too.</p> <p>In this instance, there were no objections or other comments about a right of way in this area.</p> <p>The route claimed for downgrading is shown on the Draft Map as Bridleway No. 52. The Draft Statement reads: 'Bridleroad commencing at its junction with Dotcliffe Road and proceeding north westwards to Heads Lane. Unmetalled. 10' 0" wide. 1 stile. 1 footbridge. No direction signs'.</p>
Provisional Map		<p>Once all representations to the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1970, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p> <p>In this instance no objections to the depiction of the route were made.</p>
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1973. 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. Whilst most of the Definitive Map for Lancashire was reviewed, the

		area formally in the West Riding of Yorkshire was not.
Observations		Public Bridleway No. 52 Earby is shown on the Definitive Map in the same way as on the Draft and Provisional Maps. The Statements are the same too.
Investigating Officer's comments		There were no changes at any stage of the Definitive Map process, and no objections to the depiction of the route as a bridleway. The Statement says that the route starts on Dotcliffe Road, and that there was a footbridge on the route, map evidence showing that this bridge was over Kelbrook Beck. The Statement is silent however with regard to the crossing of the beck by horses.
Information from Private Deeds		Public rights do not have to be referred to in private Deeds but sometimes descriptions of routes or maps attached to Conveyances indicate the status of a route
Observations		The Royd House Deeds go back as far as a 1906 Deed when the present owner's grandfather acquired it. The purchase was of the house and garden and barn and stable and outbuildings and cottages and 6 closes of land, each named and acreages stated. No map was shown. One plot was the Grass Garth. In 1910 there was a sale off of the Bungalow with the private right of way across the Grass Gath "into and from the high road there". The reference to the high road is in lower case.
Investigating Officer's comments		It is not known which of the closes of land included the track (if any). The grass Garth clearly lay near to the Bungalow but it is not known if "the high road" referred to was the track or Heads Lane, although Heads Lane had been a named highway for many years by then. It is not clear whether the term "high road" indicated a public route.

The land crossed by the route claimed for downgrading from public bridleway to public footpath on the Definitive Map is not a biological heritage site or a site of special scientific interest.

Summary

In summary, map and documentary evidence show that the route claimed for downgrading has existed from at least 1825. It has been the access track to a building now called Sycamore Cottage since then, and presumably was used historically by people, horses and carts, and livestock. Map evidence shows that a footbridge across Kelbrook Beck was erected some time between 1892 and 1907

(the dates of survey of 2 OS maps) there is no map evidence to show that a ford existed alongside the footbridge erected between 1892 and 1907 but photographs in the book “Kelbrook in Times Past” and the 1853 OS indicate that before the retaining wall was built to support and strengthen the road on the south side of the stream, the shallow water could be crossed by pedestrians using stepping stones, some of which were in the vicinity of the claimed route. Crossing the brook on horseback would therefore be possible presuming that there was a way up the bank on both sides of the stream. At some point between 1961 and 1975 a large square building was built across the route with a wide access platform bridging the stream. Unfortunately no planning application has survived to shed light on the construction of this building and whether it was recognised that its construction would obstruct the Definitive bridleway. The route has always been shown on the Definitive Map and Statement as a bridleway with no objections raised by the family who had owned the land for several decades by then, when the Map was placed on deposit for public inspection. The Definitive Statement clearly describes the bridleway starting from Dotcliffe Road, with a footbridge in place. This implies that animals were able to cross the stream whilst people could use the bridge.

Historical width of the route

	Date	Document	Width
Point A – Point B Footbridge		OS maps before 1977	It is not possible to measure the exact width of a footbridge on small-scale maps
Point A – Point B Wide bridge	1977	OS map	11 metres on Dotcliffe Road narrowing to 6 metres in front of building
Point B – Point C	1909 1963 1977	OS map OS map OS map	4 metres 4 metres at Point B narrowing to less than 2 metres at Point C Less than 1 metre between Points B and C. Rest of route as 1963
Point C – Point D	1909 1963 1977	OS map OS map OS map	4 metres at C widening to 5 metres at D 4 metres at C widening to 5 metres at D As 1963
Point D – Point E	1909 1963 1977	OS map OS map OS map	Generally 6 metres narrowing to 4 metres at Point E 5 metres at Point D, after 4 metres narrowing to 4 metres for 7 metres, then widening to 6 metres before narrowing to 4 metres at Point E As 1963

At the relevant date of the Definitive Map (22 September 1952) map evidence indicates that if the route is correctly recorded as a bridleway, the width between points A and B is likely to have been 5 metres as map evidence shows this was the width of the route at point B. If however the route should be correctly recorded as a footpath, there are no records to show the width of the route used by the public. Before Dotcliffe Road was widened and strengthened in 1873 the width and depth of the brook is not known nor is the method used by pedestrians to cross it. At the relevant date a footbridge existed across the brook at this point. Between points B

and C the width of the route was 4 metres; between points C and D from 4 metres at point C widening to 5 metres at point D, and between points D and E 6 metres narrowing to 4 metres at point E.

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the application, the applicant has produced a Statement from Mr Leslie Tomlinson, two black and white photographs which bear relevance to Mr Tomlinson's statement and aerial photographs from the 1960s and a recent photograph of Sycamore Cottage dated 03/03/08.

Mr Leslie Tomlinson explains in his statement that he lived at Sycamore Cottage from approximately 1937 until the early 1950s, and in 2008 he lived at Royds Farm near the northern end of the route. He cannot recollect the route being used as a bridleway. He explains in his statement that he has never witnessed anybody using the public bridleway on horse back and it would be impossible to get across the stream on horse back because the bridge was too narrow. The bridge is at the end of the route near to Sycamore Cottage. The route would thus not be accessible to horses because they would not be able to get from one end of the route to the other. Mr Tomlinson illustrates the narrowness of the bridge by explaining that when travelling to school on his bicycle he only just managed to get his cycle across because he kept the handlebars on the bicycle straight. He explains that there was a gap in the stone wall at the end of the bridge which was narrower than the bridge.

He states that if the route had been accessible for use as a bridleway across the stream, he would have taken his cows straight onto Dotcliffe Road but he has never been able to do this since he has lived there.

Mr Tomlinson explains that the wide bridge across the stream was built at the same time as the garage. It was built to provide access to the garage. He explains that the bridge was not built for use as a public bridleway.

There are two photographs attached to the statement; in one of the pictures Mr Tomlinson's mother is standing on the bridge holding a small child, the other is of a dog sitting next to a footbridge. Mr Tomlinson explains that the child is his daughter now in her 50s. The picture illustrates that the bridge has been present for at least fifty years.

The Executive Director for the Environment comments that the pictures show a wooden footbridge with hand rails on both sides. The bridge is only wide enough to accommodate the lady in the photograph and would not be useable on horseback.

A third photograph has been submitted by the applicant dated 3 April 2008. The Executive Director for the Environment comments that this picture shows that the cottage has been extended to the east. A large garage with wooden double-doors has been constructed next to the cottage with a wide access platform across the stream. A small wooden gate is shown at the side of the garage which allows access

to users of the bridleway on foot only. Also submitted with the application is a print of the 1960s aerial photograph described above.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

- Information from Mr Tomlinson of Royds Farm
- That horses cannot get across the Beck today
- The reference to footbridge and stepping stones

Against Accepting the Claim

- Cogent evidence required to outweigh the presumption not found
- Available wide route since 1820s
- How the Beck looked several decades ago
- No objection to it being recorded as bridleway by the long-term owners
- Reference to track being a road and possibly the high road

Conclusion

A-B-C-D-E has followed an available route since at least the 1820s and was the route recorded as a bridleway by those carrying out the survey and following the Government Guidance on the draft Definitive Map despite the fact that a footbridge existed across the Beck. It was also shown on the provisional and the final definitive map as a bridleway and no objection was made to it being so recorded. The family owning Royd farm at the time had owned it since 1906 and would be aware of what public use had existed on the route.

Case law (Trevelyan) confirms that cogent evidence is needed before the definitive map and statement are modified to delete or downgrade a right of way. Lord Phillips MR Court of Appeal stated that:-

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

Taking all the evidence into account it may be considered that it was marked on the map because there was sufficient evidence that it was indeed a bridleway. Just because today it is not able to be used as a through route on horseback does not mean that an error had been made in the 1950s. Similarly Mr Tomlinson's recollection of it not being used is insufficient cogent evidence to suggest that the route A-B-C-D-E was recorded in error. It is for evidence to be produced to outweigh the presumption that they made an error in the 1950s and it is suggested that such evidence has not been found. What evidence was considered in the 1950s is not known. The route was being recorded by local people and may have been known to have been used on horseback through the shallow Beck and along the track as a public bridleway for sufficient time before the bank of the Beck was altered. The Committee may on balance consider that the claim to downgrade A-B-C-D-E should not be accepted.

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 (item 5). Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

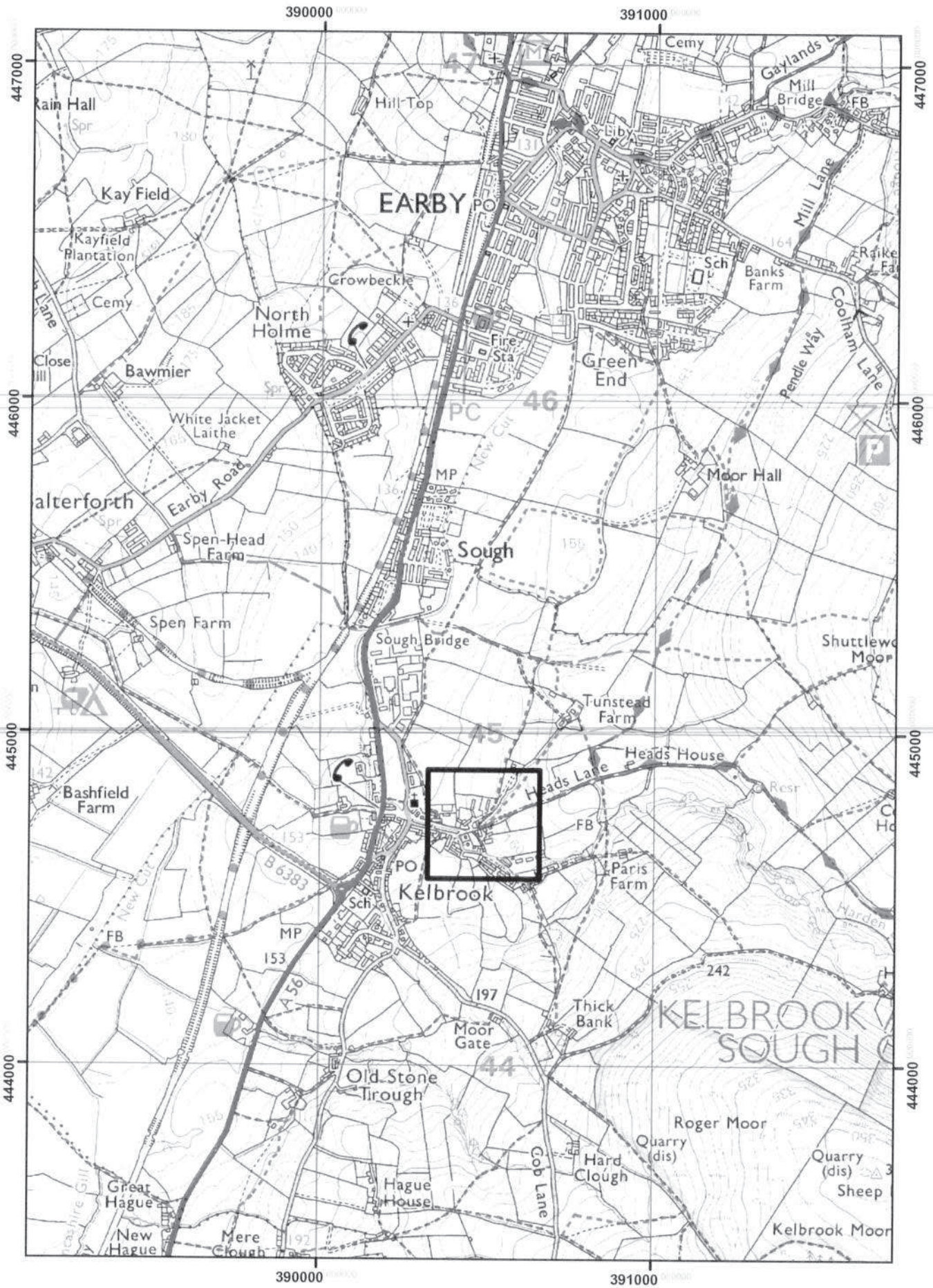
Alternative options to be considered - N/A


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

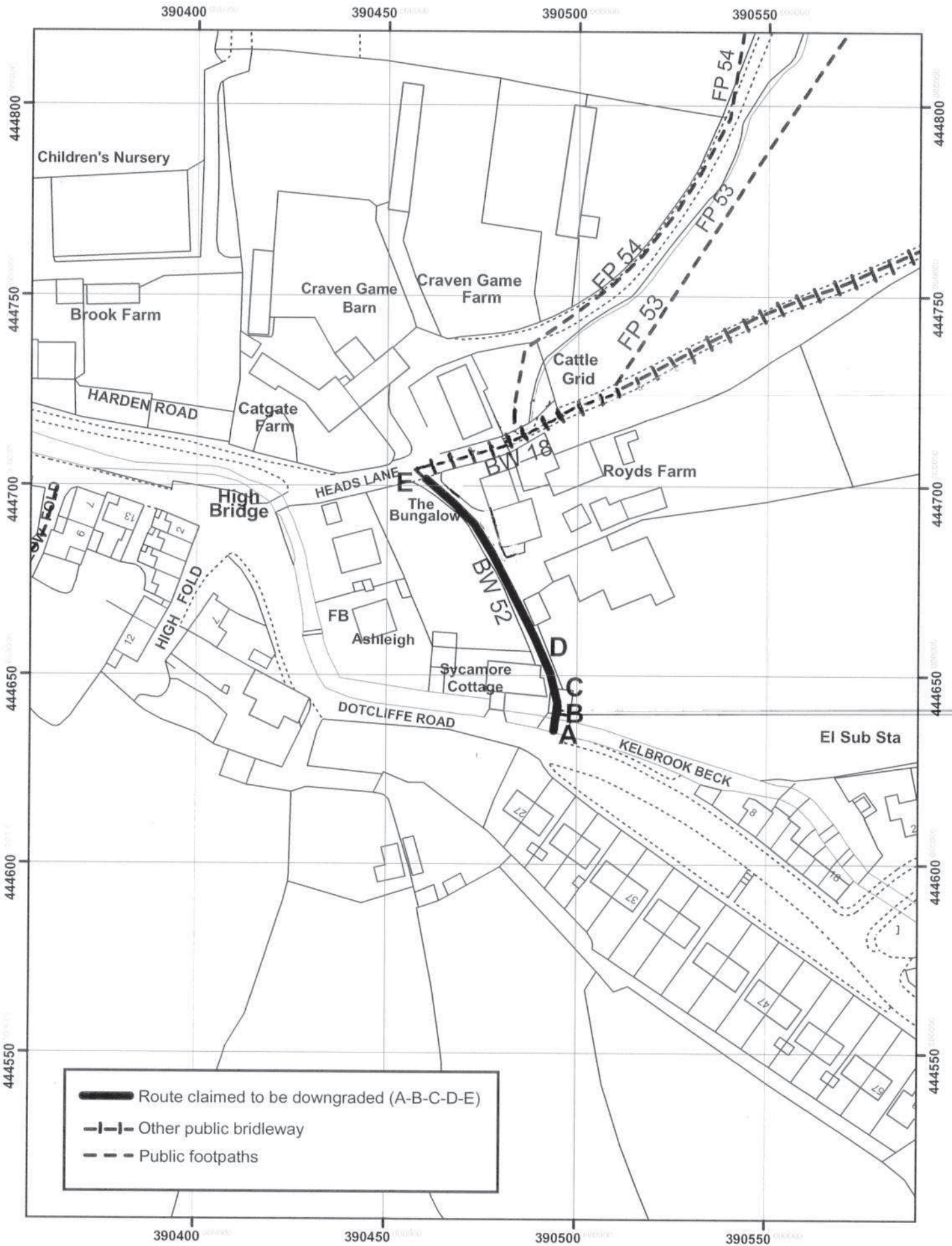
Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.34497 (804/483)	Various	H Orsich, County Secretary and Solicitor's Group, 01772 533427

Reason for inclusion in Part II, if appropriate

N/A



Lancashire County Council	Jo Turton Executive Director for the Environment	Location Plan Claim No. 804/483.	
<p>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.</p> <p>This Map is reproduced from 1:15,000 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>			



Lancashire County Council	Jo Turton Director of the Environment	Wildlife and countryside Act 1981. Claimed downgrading to footpath of Bridleway No. 52 Farby, Pendle Borough. Claim No. 804/483.	Plan No. 483B	
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Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected: Clitheroe – Ribble Valley North East

Decision on Appeal

Wildlife and Countryside Act 1981

Claimed Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe, Ribble Valley Borough

Claim No. 804/516

(Appendix A refers)

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

Executive Summary

A decision on an Appeal made under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981 against the refusal to make a Definitive Map Modification Order has been received from the Secretary of State for Environment, Food and Rural Affairs.

Recommendation

1. That the Report be noted.
2. That, in the light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of Claim No. 804/516, an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of The Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of Way by adding a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough, as shown between points A and F on the attached plan.
3. That should no objections be received the Order be confirmed, but if objections are received the County Council as Order Making Authority submit the Order to the Secretary of State for formal determination, but the County Council shall notify the Secretary of State that it does not actively support the Order and to adopt a "neutral stance" as regards confirmation of the Order.

Background and Advice

At their meeting on the 13th February 2013, the Regulatory Committee considered a report for Claim No. 804/516 (copy attached as Appendix A) for the addition of a

Public Footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough, shown between points A-F on the plan. The Committee resolved that the claim was not accepted. The applicant appealed against this refusal to the Secretary of State for Environment, Food and Rural Affairs. The Secretary of State for Environment, Food and Rural Affairs allowed the appeal and directed Lancashire County Council to make an Order.

The report prepared by the Inspector considered the documentary evidence provided by the County Council. The Inspector noted the 1842 Tithe Map and later documents showed the Church was originally located to the south of Point A on the attached Committee Report plan. The OS 1886 25-inch map was the first to show St Paul's Church at its present location but pathways are shown linking the Sunday school, Church and roads on a similar route to that claimed. Subsequent OS maps to 1977 depict the route on the same alignment. The Inspector concluded a path linking Edisford Road, St Paul's Church, the Parish Hall and St Paul's Terrace passing through a field to the south of the vicarage has existed since 1886, as shown on the OS maps and that sometime in or after 1981 following boundary alterations and construction of a new vicarage, the paths alignment was altered and that it is the alignment post dating 1981 which forms the Appeal route.

The Inspector concluded there was evidence of frequent use of the claimed route for recreation purposes and to access local facilities. The Appellant stated the path was used extensively to visit the Parish Hall until its closure in 2010/11. The Inspector is inclined to agree with the Council that such use would have been by implied permission or by invitation, rather than as of right.

The landowner, the Blackburn Diocesan Board of Finance Ltd claims the route from points B-C on the attached plan was constructed in 1995 for the Vicar to reach the Parish Hall for official duties, they say it was not an official footpath to facilitate access from Edisford Road to St Paul's Terrace, use by the public was not encouraged, and any such use would have been with the specific consent of the Church.

The Inspector considers the Council's argument for part of the route for points C-D-E-F which crosses St Paul's Church yard that for a right of way to be dedicated over a church yard which is consecrated ground, there would have to be authorisation in the form of a grant of an appropriate faculty (or permission) by the Consistory Court. If no faculty had been granted, then there could be no dedication over consecrated ground, whether actual or deemed. The Inspector noted the consultation response received by the Council from the landowner that use of the footpath was only intended to be with the specific consent of the Church, and that the route was never intended for general public use. However, the comments of the landowner are not supported with any evidence that with regard to the existence or otherwise of a faculty. Neither is any evidence available to support the claim that the Appeal route was created for the private needs of the vicar. Nor is there any evidence to suggest that members of the public were made aware that use of any part of the Appeal route was permissive.

The Inspector then states that it remains possible that a faculty has been granted, or may be presumed, in respect of the Appeal route where it passes through the

Church yard (points C-D-E-F on the attached plan), or indeed of the original route through the Church yard, and this must weigh in favour of the Appellant. She then states further, if it is the case that a faculty is required in respect of the consecrated ground and none has been granted, then there is a lack of evidence to substantiate there having been no intention by the landowner to dedicate the remainder of the Appeal route (A-B-C on the attached plan), notwithstanding that it would be a cul-de-sac path on entering the Church yard at point C.

The Inspector concludes there is claimed use sufficient to raise a presumption of dedication, although the Inspector considers the standard of the user evidence necessary for an order, if made, to be confirmed would need to be more robust than that provided with the Application. Stating there is also a conflict in relation to the claimed use of the way by the public and the claim by the landowner that the Appeal route was not intended for use by the public. There is no evidence that a faculty does not exist in respect of the consecrated ground. It follows her view that there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist over the Appeal route.

She finds that **Test A**, Does a right of way subsist on a balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary. But that **Test B**, Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does subsist and an Order should be made and if any objections are raised then the evidence may be more thoroughly tested.

In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Lancashire County Council is directed to make an Order under Section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the County of Lancashire to add a public footpath as proposed in the application dated 9 February 2011. This decision has been made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

Consultations - N/A

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: 804/516	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 (5)35604

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

Regulatory Committee
Meeting to be held on 13 February 2013

Electoral Division affected: Clitheroe – Ribble Valley North East

Wildlife and Countryside Act 1981
Claimed Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe, Ribble Valley Borough
Claim No. 804/516
(Annex 'A' refers)

Contact for further information:
Miss J Mort, 01772 533427, County Secretary & Solicitors Group
Jennifer.mort@lancashire.gov.uk
Mrs J Elliott, 07917 836626 Environment Directorate
Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/516.

Recommendation

- i. That the application for a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/430, be accepted in part. That the section shown between points A-C be accepted and the section between points C-F be not accepted.
- ii. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from St Paul's Terrace, Clitheroe, Ribble Valley Borough, for a distance of approximately 92 metres to the gap in boundary fence providing access into St Paul's Church grounds (currently blocked) Grid Ref. SD 7318 4154 shown between points A and C on the Committee plan.
- iii. 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 submitting it to the Secretary of State.

Background

An application in accordance with the Wildlife and Countryside Act 1981 Schedule 14 has been received to make an Order under section 53(3) of that Act to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from the end of St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough and shown between points A – F on the attached plan.

The claimed public footpath is approximately 120 metres long extending from a point at the south western end of St Paul's Terrace at point A on the plan in a south easterly direction to the rear of Beech Grove Residential Care Home and St Paul's vicarage to exit through the grounds of St Paul's Church onto Edisford Road at point F on the plan.

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

An order will only be made if the evidence shows that:

- A right of way 'subsists' or is 'reasonably alleged to subsist'
- or
- 'The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path'

When considering evidence, if it is shown that a highway once existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate 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 clear guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway or restricted byway or byway open to all traffic, or that no such right of way exists.

Consultations

Ribble Valley Borough Council

Ribble Valley Borough Council has been consulted and no response has been received. It is assumed in the circumstance it has no comments to make.

Clitheroe Town Council

Clitheroe Town Council has been consulted and one of the Ward Councillors, Valerie Cooper, had comments to make in objection to the Order.

She explained that the path had been 'created' in 1995 by St Paul's Church to allow its members to walk from the parish hall to the church. When the parish hall became derelict the path was no longer needed by the church goers and it was closed.

Councillor Cooper stated that she had also spoken to the manager of the residential home which the path ran behind and that they indicated that when the path was open there had been problems with youths.

Claimant/Landowners/Supporters/Objectors

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

Executive Director for the Environment's Observations

Description of Route

Points annotated on the attached plan.

Point	Grid Reference	Description
A	SD 7310 4159	Junction with St Paul's Terrace
B	SD 7312 4158	Pedestrian gate
C	SD 7318 4154	Gap in boundary fence providing access into church grounds (currently blocked)
D	SD 7319 4154	Junction of tarmac paths within church grounds
E	SD 7320 4153	Junction of tarmac paths within church grounds
F	SD 7320 4153	Church gates at junction with Edisford Road

Description of Route:

A site inspection was carried out on 22nd November 2012.

The claimed route commences at point A on the Committee Plan at its junction with the south western end of St Paul's Terrace and passes through a 3 metre wide wooden 5 barred field gate providing access to the (former) parish hall.

The gate was locked on the day of inspection.

Once through the gate the claimed route continues in a south easterly direction along the northern edge of the parish hall car park to a pedestrian gate at point B. Between point A and point B the claimed route crosses a tarmac surfaced car park, the line is not defined and there is no evidence of recent use.

The 1.1 metre wide metal gate at point B is clearly visible from point A. It appears to be an old gate and it is positioned between a mature tree and the stone wall forming the southern boundary of Beech Grove Residential Care Home. The gate is hung on a metal post positioned at the side of the tree and closes onto the corner of the wall. A relatively new attachment has been fixed to the wall securing the pedestrian gate permanently closed.

Beyond point B the claimed route continues along a tarmac surfaced path enclosed by fencing. The fencing along the north side of the route (and separating the claimed route from the nursing home) consists of an old metal railing fence of the same style as the pedestrian gate at point B. This fencing continues for approximately 40 metres from point B to the rear of the vicarage where a more modern concrete and wooden panel fence has been erected along the rear boundary of the vicarage garden. A small gate provides access from the vicarage garden to the claimed route.

The fencing along the southern side of the claimed route consists of a wooden post and rail fence with sheep netting attached suggesting that it was constructed for the purpose of making the adjacent field stock proof. This fence continues adjacent to the claimed route from point B to point C.

Between point B and point C has a tarmac surface and the width is restricted by the fencing to approximately 1.3 metres wide. Moss has grown on the tarmac suggesting that the claimed route has not been recently used.

A barrier has been constructed across the claimed route at point C and access is only available by climbing over it. A sign has been erected on the eastern side of the barrier so that it can be viewed from the church yard saying 'Private Land No Public Right of Way'. An identical sign was viewed on the boundary fence close to the parish hall.

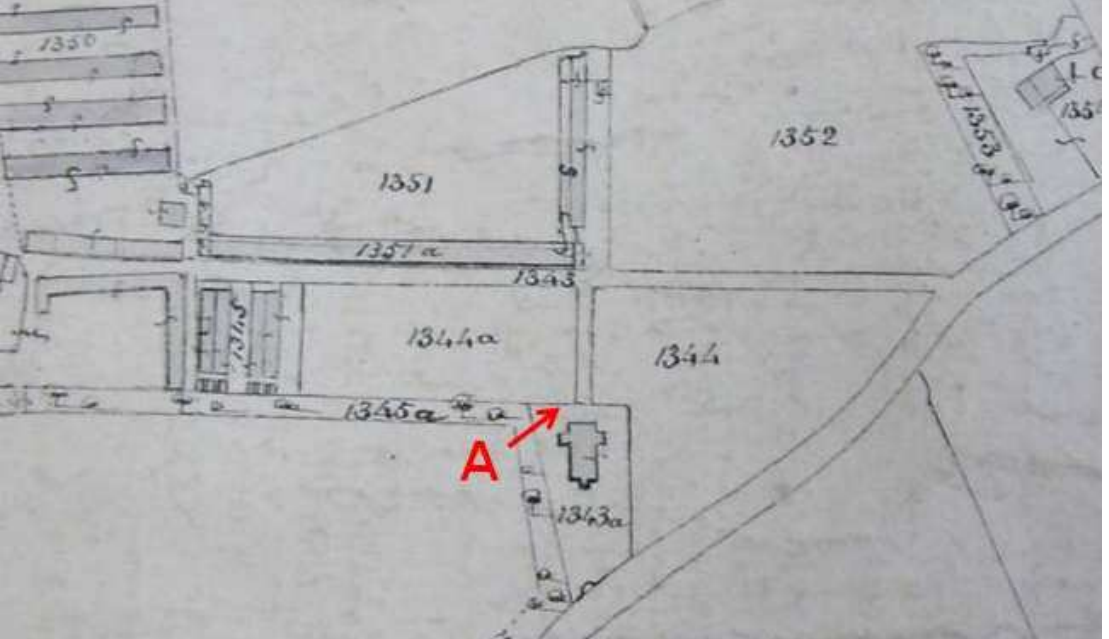
Beyond point C the claimed route continues through the church grounds along a narrow tarmac path just 60cm wide to point D. At point D the tarmac path widens to approximately 80-90cm wide and is clearly used as it forms part of the access route between the two gated access points into the church grounds. The claimed route continues in a south easterly direction to point E where it joins the main access route into the church and then continues the short distance south to point F to pass through the church gates and to exit onto Edisford Road at point F on the plan; a total distance of 120 metres.

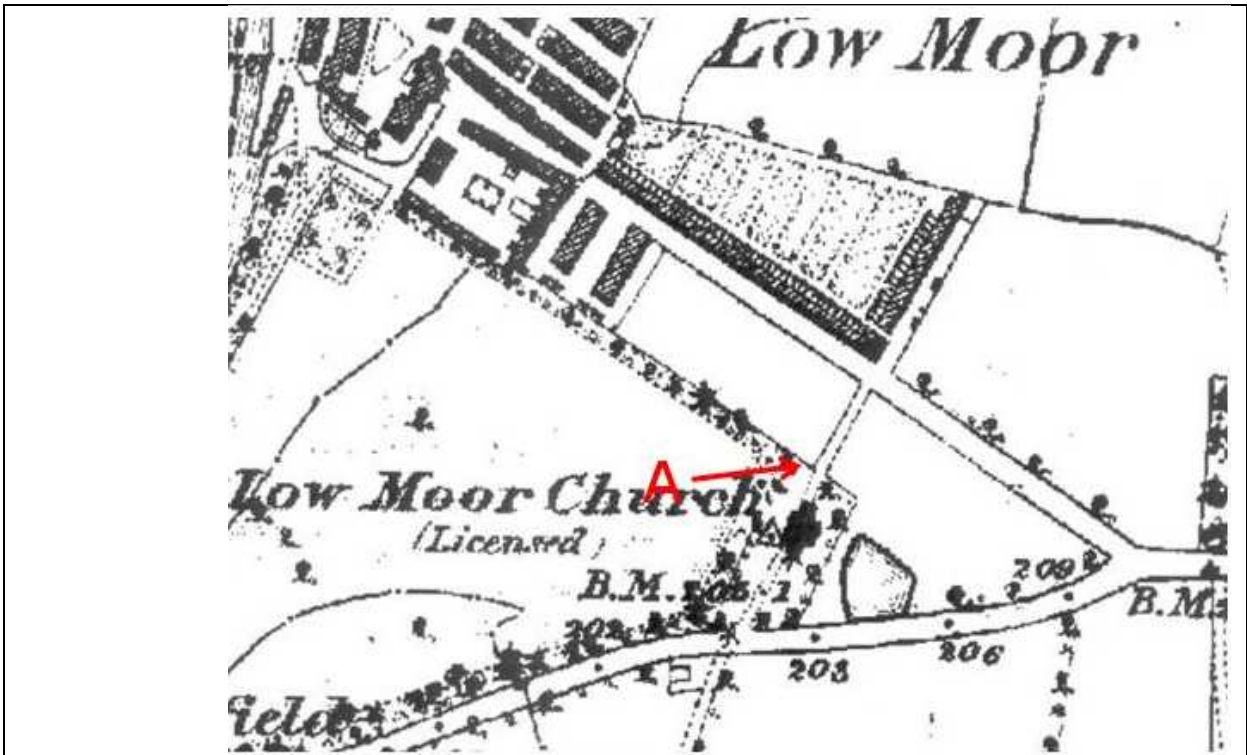
An old sign is attached to the church gate at point F saying 'No cycling, Please close the gate'. An identical sign is located on the other set of identical church gates (not on the claimed route) which provide access to the church from St Paul's Street.

Map and Documentary evidence relating to claimed addition

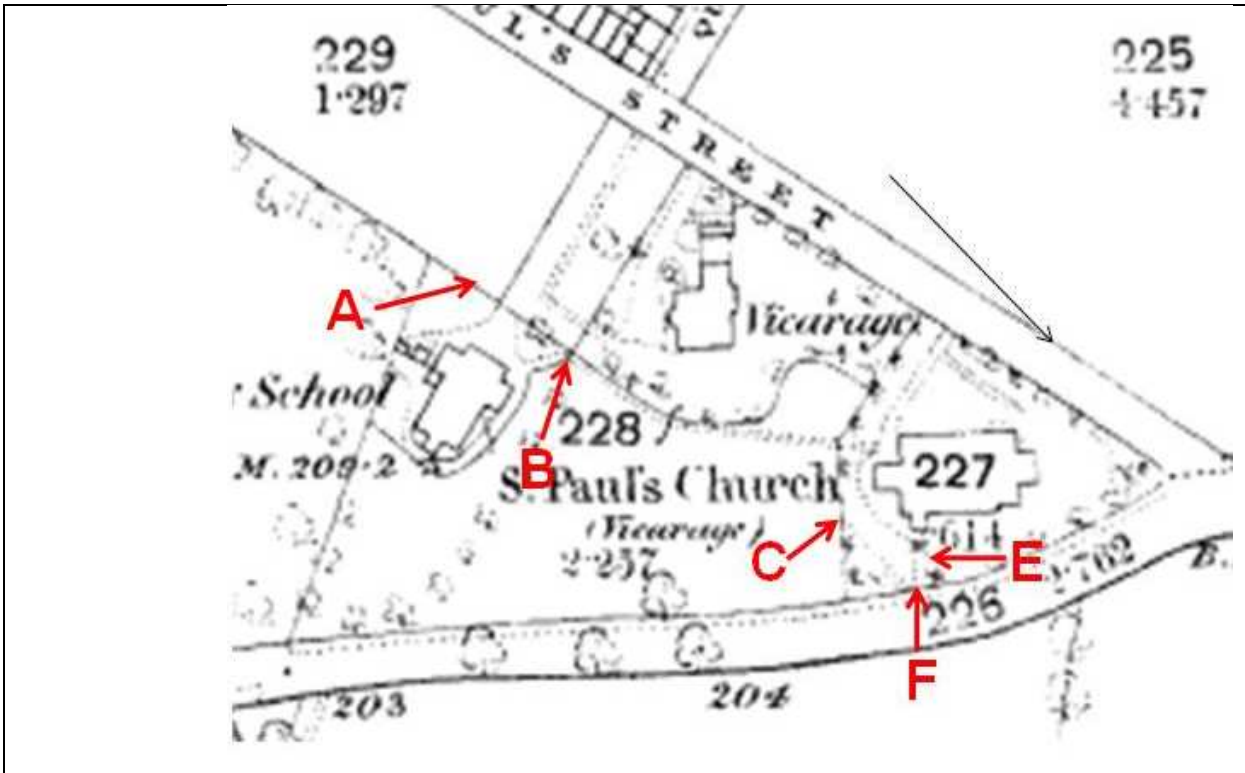
Various maps, plans and other documents were examined with reference to the claimed route.

Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map.
Observations		Edisford Road is shown but St Paul's Road and the claimed route are not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.
Observations		St Pauls Road and Edisford Road are shown but the claimed route is not.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		St Pauls Road and Edisford Road are shown but the claimed route is not.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801).
Observations		The Inclosure Award for Clitheroe does not include the Low Moor area.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1842	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not

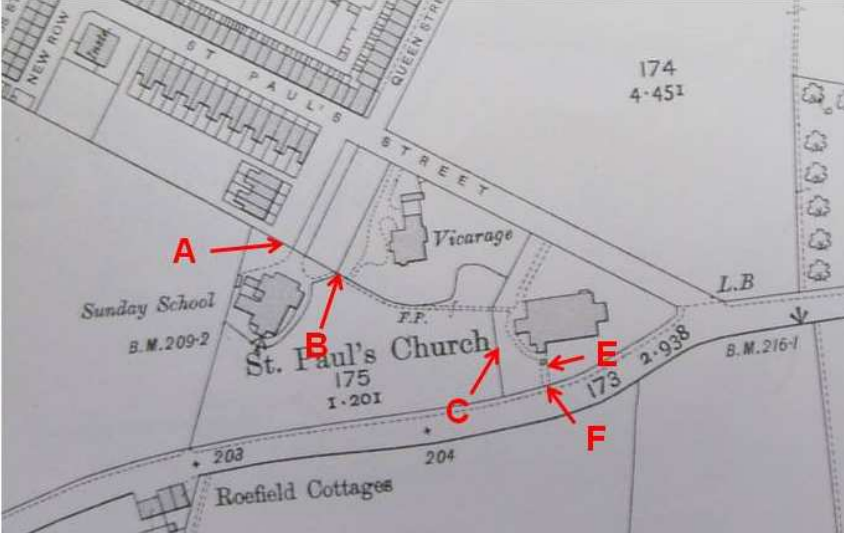
		produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
		
Observations		No footpaths are shown in the area of the claimed route. A church is shown where the hall now stands with an access road that approximately corresponds with St Paul's Terrace. No building is shown where the current church now stands.
Investigating Officer's Comments		The claimed route does not appear to have existed in 1842.
Ordnance Survey maps		The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 Inch OS map	1847	The earliest Ordnance Survey 6 inch map for this area.



Observations		The claimed route is not shown. A building called Low Moor Church is shown where the parish hall is now located with an access road to the church shown parallel, but further east than the alignment of the modern St Pauls' Terrace. There is a further access path to the church from the south side from Edisford Road. No other footpaths or tracks are shown in the area.
Investigating Officer's Comments		The claimed route does not appear to have existed in 1847.
25 Inch OS map	1886	The First Edition 25" is at a larger scale than the 6" map showing the area in more detail.



<p>Observations</p>	<p>There have been substantial changes in the area since the 6-inch map was published. A new church (St Paul's) has been built with an adjacent vicarage and the former church building is labelled as 'Sunday School'. St Paul's Terrace does not exist and there appears to be no access to the claimed route at point A.</p> <p>Access to the Sunday School is from St Paul's Street south east of point A. Access along the claimed route between point A and point B may have been available but there is no marked path between these points.</p> <p>A path is marked in the field north of the vicarage garden connecting the Sunday School and the church. Only part of this path between point B and point C, and the length through the church grounds between point E and point F corresponds with the claimed route.</p> <p>The boundary between the vicarage garden and the adjoining field has changed between 1886 and the present day, but the boundary on the west side of the church is the same.</p>
<p>Investigating Officer's Comments</p>	<p>A route appears to exist between point B and point F, parts of which (between point B and partway towards point C and between point E and point F) correspond closely with the claimed route. It may have been possible to follow much of the claimed route but it may not have been possible to pass from the field to the church yard at point C.</p>


25 inch OS map	1912	Further edition of the 25" map.
		
Observations		<p>The church buildings are shown in the same way as on the earlier 25-inch map. St Paul's Terrace has been constructed with a solid line drawn along the end of the terrace making it unclear whether there was any access via a gate or other moveable barrier onto the claimed route at point A. A path corresponding closely with the claimed route for approximately 25 metres is shown from point B extending south east towards point C but then veers away to the north of the claimed route - it is annotated as a footpath (F.P.) on the map. The claimed route is not shown passing through the boundary fence at point C but a footpath enters the church grounds further north. The claimed route between point E and point F is shown</p>
Investigating Officer's Comments		<p>It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1912. Part of this route, but not all, followed the claimed route.</p>
25 Inch OS map	1932	Further edition of 25 inch map.
Observations		<p>The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.</p>
Investigating Officer's Comments		<p>It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1932 part of which coincided with the claimed route.</p>
6 Inch OS map	1955	<p>The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.</p>
Observations		<p>The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.</p>

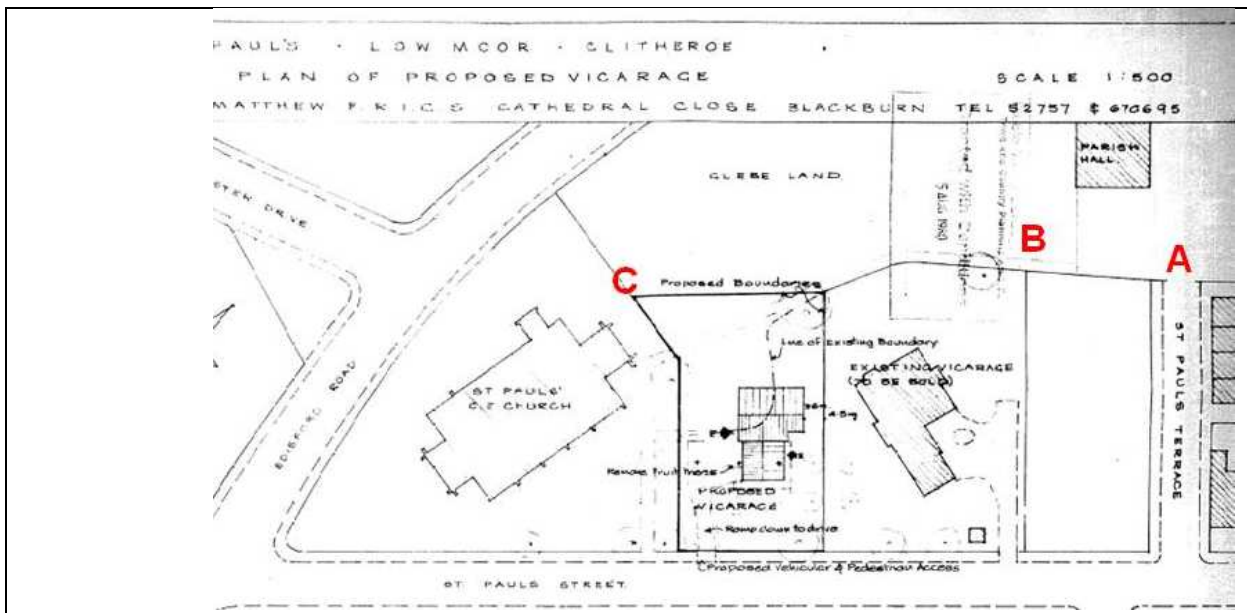
Investigating Officer's Comments		No further information is provided.
25 inch OS map	1964	Further edition of 25 inch map, revised 1964.
Observations		The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.
Investigating Officer's Comments		It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1964 part of which coincided with the claimed route. There did not appear to be a way through from the field to the churchyard at point C.
25 inch OS map	1977	Further edition of 25 inch map, revised in 1976.
Observations		The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.
Investigating Officer's Comments		It is not clear whether there was access to the claimed route at point A but it is apparent that a route did exist between point A and point F in 1976 part of which coincided with the claimed route. There did not appear to be a way through from the field to the church yard at point C.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		The Finance Act maps for this area are not held in the Lancashire Archives.
Investigating Officer's Comments		No inference can be drawn.
Aerial Photographs	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		The aerial photo is poor quality and the line of the claimed route is obscured by trees.
Investigating Officer's Comments		No further information is provided.
Aerial Photograph	1963	The black and white aerial photograph taken on 1 June

		1963.
Observations		Trees obscure most the line of the claimed route.
Investigating Officer's Comments		No information is provided by this photograph.
Aerial photograph	1989	Colour aerial photograph taken on 22 June 1989.
Observations		The photograph is poor quality and partially obscured by trees.
Investigating Officer's Comments		No information is provided by this photograph.
Aerial photograph	2000	Colour aerial photograph taken on 18 June 2000.
Observations		The photograph is of reasonable quality but most of the claimed route is obscured by trees. Only one short section of the claimed route can be seen to the rear of the vicarage garden (near point C).
Investigating Officer's Comments		Part of the claimed route along the field to the rear of the vicarage garden to point C existed as a path in 2000.
Aerial photograph	2009	Colour aerial photograph taken on 31 May 2009.



Observations		The route of claimed footpath is mostly obscured by trees but one section of the claimed route can be clearly seen to the rear of the vicarage garden and passing through a gap in the boundary of the church grounds at point C.
Investigating Officer's Comments		Part of the claimed route existed as a path in 2009.

Photographs taken by Applicant		Six colour photographs taken in February 2004, 2 of which are shown below, and 2 taken on 6 May 2011 were submitted by the applicant.
		
Observations		<p>The 2004 photographs show the claimed route from St Paul's Terrace to the boundary fence of the church. The path is tarmaced and in good condition. The fence between the path and Beech Grove Care Home consists of rusty metal railings, whilst that between the vicarage garden and the path is a wooden larch-lap fence and beech hedge. There is a wooden post and rail fence between the path and adjacent field.</p> <p>The 2011 photographs show the same tarmac path in good condition and boundary fences. A barrier made of horizontal wooden planks has been placed across the path at point C on the attached plan with a notice reading 'Private Land No Public Right of Way'.</p>
Investigating Officer's Comments		The claimed route was in good condition in 2004 and 2011 and until the barrier was erected the path appeared available for the public to use.
Planning Application 3/81/0424/P	1980	Planning application for proposed new vicarage adjacent to St Paul's Church, Low Moor, Clitheroe.



Observations		In 1980 an application was submitted to Ribble Valley Borough Council for the construction of the new vicarage to be situated on land between St Paul's church and the existing vicarage (later to become Beech Grove Residential Care Home). The planning application makes no reference to the claimed route but the plan submitted as part of the application shows the proposed alteration to the boundary fence between the glebe field and proposed vicarage.
Investigating Officer's Comments		It appears that the route on the ground between point B and point C would have been altered following the granting of planning permission in 1981 allowing the new vicarage to be built and boundary fences altered thus allowing for a larger garden to the rear of the vicarage. The effect of these alterations possibly moved the footpath shown on previous maps to the route now claimed between point B and C
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Parish Survey Map	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.
Observations		There is no parish map for the area as Clitheroe was a municipal borough.
Draft Map		The Draft Map of Public Rights of Way was given a 'relevant date' (1 st 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 st January

		1955 for the public, including landowners, to inspect and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route is not shown on the Draft Map and there were no objections to the omission of the path.
Provisional Map		Once all these representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962. 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 claimed route is not shown on the first Definitive Map.
Investigating Officer's Comments		The claimed route was not considered to be a public right of way in the 1950s.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date in 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The claimed route was not considered to have changed status by the 1960s.
Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being

		<p>made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route.

The claimed public footpath does not cross a Site of Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000. Section C-F does cross consecrated ground.

Summary

A church used to stand at the end of St Paul's Terrace but around 1870 a new church was built on vacant land to the east with an adjoining vicarage and the old church used as the Sunday School. Ordnance Survey maps show a path linking the Sunday School, the vicarage and the church from 1886. At some point after 1981 it appears that the old vicarage was converted into Beech Grove Residential Care Home and a new vicarage erected alongside. The property boundary between the new vicarage and the adjacent field changed and the path that had been there for some 90 years was probably moved to its current position. Photographs taken in 2004 show a tarmac path in good condition, fenced on both sides. It is therefore likely that the claimed route has existed on the ground which may have been available for public use from some date after 1981.

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

The following should be added to the Definitive Statement for Clitheroe, Ribble Valley Borough.

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public footpath from a junction with St Paul's Terrace at SD 7310 4159 running in a generally south easterly direction on the south west side of a boundary wall to SD 7312 4158 and continues in a generally south easterly direction enclosed by fencing to the rear of Beech Grove Residential Care Home and St Paul's vicarage to SD 7318 4154 where it enters the grounds of St Paul's Church.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Clitheroe No. 31 as follows:

"Public footpath from a junction with St Paul's Terrace at SD 7310 4159, through field gate and turning to run in a generally south easterly direction on the south west side of a boundary wall to SD 7312 4158 where it passes through a pedestrian gate and continues in a generally south easterly direction along a tarmac path enclosed by fencing to the rear of Beech Grove Residential Care Home and St Paul's vicarage to SD 7318 4154 where it enters the grounds of St Paul's Church."

All lengths and distances are approximate.

Width:

SD 7310 4159 to SD 7312 4158 1.5 metres

SD 7312 4158 to SD 7318 4154 1.3 metres

Limitations and Conditions: Field gate at SD 7310 4159, Pedestrian gate at SD 7312 4158.

Length: 92 metres

County Secretary & Solicitor's Observations

Assessment of the Evidence

The Law - See Annex 'A'

Information from the Applicant:

In support of the application, the applicant has provided 15 user evidence forms.

Of those 15, two users indicate that their use was over 30 years ago and thus not within the period 1988 – 2008 at issue.

One user indicates that he used the route to accompany Scouts from the Church to the Parish Hall, which does not represent use of the entire route and may have been private use.

Of the 12 remaining users, three users indicate that they have used the route for between 10 and 15 years. Two of those users indicated that the path had been closed off during work to the church roof; otherwise none have indicated that they were ever prevented from using the route.

The remaining 9 users state that they have used the route for 20 years or more, between twice a week and daily. The forms indicate use of the route for dog walking, visiting relatives and accessing local shops. All of these users agree that the route was used on foot and has run along the same line for the period in question.

The applicant has also enclosed photographs of parts of the route, taken in February 2004. The photographs show a tarmac path in good condition, fenced on both sides, between points B and C.

Information from Others:

A consultation response from the land owner, the Blackburn Diocesan Board of Finance Limited, states that the route from the Church to the Church Hall (point B to point C) was only "constructed" in 1995 and its purpose was to assist the Vicar in reaching official duties held at the Hall. The Board states that it has never been an official footpath to facilitate access from Edisford Road to St Paul's Terrace.

The Board further states that it purchased the Hall in 2009 and at that point, the gate at that end of the path (point B) was locked as it was no longer required for the activities at the Hall.

The Board also states that, as the footpath was only used for Church activities and as general public use was not encouraged, any use would have been with the specific consent of the Church.

A further consultation response was received from Valerie Cooper, Ward Councillor, Clitheroe Town Council, in objection to the application.

Councillor Cooper explained that the path had been 'created' in 1995 by St Paul's Church to allow its members to walk from the parish hall to the church. When the parish hall became derelict, the path was no longer needed by the church goers and it was closed.

Councillor Cooper stated that she had also spoken to the manager of the residential home, behind which the route of the path ran, who indicated that when the path was open there had been "problems with youths".

Summary:

In Support of the Claim

- User evidence (9 users stating use for 20 years or more, between twice a week and daily)

Against Accepting the Claim

- Consultation response of Clitheroe Town Council
- Consultation response of the land owner (Blackburn Diocesan Board of Finance)
- No documentary or map evidence to support the existence of the entirety of the claimed route
- Actions by landowners (although not earlier than 2009);
(locking gate at point B / barrier at point C)
(construction of path)

Part of route on Consecrated ground

Observations

To modify the Definitive Map by an Order the Committee will be aware that the test set out in the Wildlife and Countryside Act needs to be satisfied, namely that evidence is discovered that a right of way not shown on the map subsists or is reasonably alleged to subsist.

There is, therefore, a need to consider evidence that the footpath as claimed can be said to have already been dedicated. There is no express dedication and so deemed dedication under S31 Highways Act and inferred dedication from all the circumstances under common law, need to be considered.

The evidence in this matter is the user evidence, countered by evidence of actions taken by present owners of the land in question.

There is no documentary or map evidence to support the existence of the entirety of the claimed route.

Inferred dedication under common law.

The present land owner, the Blackburn Diocesan Board of Finance Limited, has confirmed in its consultation response that use of the footpath was only intended to be with the specific consent of the Church and that the route was never intended for general public use. Accordingly, it would be difficult to prove inferred dedication under common law. Consideration must therefore be given to deemed dedication under s31 Highways Act 1980.

Deemed dedication under s31 Highways Act 1980

Pursuant to S31 Highways Act 1980, for a dedication to be deemed it must be determined that the route has been actually enjoyed by the public, as of right and without interruption, for a full period of 20 years without there being sufficient evidence of a lack of intention to dedicate by the owners. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise.

The Diocese land owner purchased part of the land in 2009 and states that the gate at point B was locked at that time. It is therefore advised that the route was called into question in 2009, following the current owner's acquisition of the land and subsequent locking of the gate. It follows that the period of use from which dedication can be deemed is 1989 to 2009.

The Applicant has produced user evidence in support of the claim. This amounts to 15 user evidence forms, evidencing at least 20 years' use of the path during the period 1989 to 2009.

The same line of the claimed route appears to have been open and available for the 20 year period. None of the users seem to have had their use interrupted even when the surface of the path was constructed.

This suggests a reasonable level of user evidence for the required 20 year period 1989 – 2009. Ordinarily, this would be sufficient to deem, on balance, dedication of the entire length of the claimed route as a public footpath in accordance with s31 Highways Act 1980. The Committee's attention is, however, drawn to the issue of consecrated ground as set out below.

Points C to F – Difficulties of showing highway dedication over Consecrated Land

At point C, the claimed route enters the grounds of St Paul's Church and continues through the grounds to the church gate at point F. The part of the claimed route C to F is on consecrated ground.

The most recent authority of the Consistory Court (Diocese of Worcester – Parish of Longdon: Church of St Mary dated 04.11.2010) confirms that a right of way may only be dedicated over consecrated land subject to it being authorised by the grant of an appropriate faculty by the Consistory Court. If no faculty has been granted, no dedication over consecrated ground – whether actual or deemed - can have occurred.

Confirmation as to the granting of such a faculty has been requested from the land owner; however at the time of writing no confirmation has been received. In view of the land owner's consultation response, as referred to under the heading "Inferred dedication under common law" above, it would appear that no such faculty has been granted. The Committee is therefore advised that, on the basis of the information available at the time of writing, a footpath on the claimed route from point C to F on the plan cannot be deemed to have been dedicated.

Points A to C

Accordingly, the Committee is advised that the claimed route as a through route from point A to point F cannot be accepted. However, this does not prevent part of the claimed route, from point A to point C, being accepted. Whilst the claimed route A to C is a cul-de-sac route and therefore more difficult to be found to have been dedicated (cul de sac routes have to be shown to have been used as such), in these circumstances route A to C leads to the church yard, a place able to be considered as a place of public resort and able to explain a cul de sac footpath to reach it..

The Committee will note that a barrier has been installed at point C and this may lead the Committee to conclude that the church yard is no longer a place of public resort. However, at the time the footpath arguably became dedicated as a cul-de-sac route to a place of public resort – that time being at some instant between 1981 and 1989 – the barrier was not in place. It is therefore considered that the route was open and available at that point.

Conclusion

Taking all the evidence into account, it is advised that the dedication of the claimed route as a public footpath from point A to point F should not be accepted. The Committee is advised that part of the claimed route from point A to point C can, on balance, be deemed to have been dedicated as a public footpath in accordance with s31 Highways Act 1980 and that the application be accepted in part.

Risk Management

Consideration has been given to the risk management implications associated with the 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 are no significant risks associated with the decision making process.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.41561 (804/516)	Various	J Mort, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A

