

# Lancashire County Council

## Regulatory Committee

Wednesday, 22nd October, 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.	<b>Apologies.</b>	
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2.	<b>Disclosure of Pecuniary and Non-Pecuniary Interests.</b>	
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	<b>Minutes of the last meeting held on 2 July 2014.</b>	(Pages 1 - 8)
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4.	<b>Guidance.</b>	(Pages 9 - 32)
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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.

5.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Application Upgrading to Bridleway of Public Footpaths from Hardman Drive to Rakehead Lane, Bacup, Rossendale Borough Application No. 804-539</b>	(Pages 33 - 64)
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6.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Claimed Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough File No. 804/468</b>	(Pages 65 - 92)
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7. **Wildlife and Countryside Act 1981** (Pages 93 - 140)  
**Definitive Map Modification Order Investigation**  
**Addition of Bridleway and Upgrade of Footpath to**  
**Bridleway from Rooley Moor Road to Cowpe Road,**  
**Bacup**  
**File No. 804-538**
8. **Wildlife and Countryside Act 1981** (Pages 141 - 188)  
**Definitive Map Modification Order Investigation**  
**Upgrading to Bridleway of Ramsbottom Footpath**  
**207 (Buckhurst Road) from Bury Old Road to**  
**Ramsbottom Bridleway 206 (Croston Close Road)**  
**File No. 804-540**
9. **Wildlife and Countryside Act 1981** (Pages 189 - 228)  
**Definitive Map Modification Order Investigation**  
**Application for the Addition to the Definitive Map**  
**and Statement of a Public Bridleway from Back**  
**Drinkhouse Lane to Drinkhouse Road, Croston,**  
**Chorley**  
**File No. 804-545**

**10. 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.

**11. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on 17 December 2014 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I Young  
County Secretary and Solicitor

County Hall  
Preston

# Agenda Item 3

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 2nd July, 2014 at 10.30 am in Cabinet Room 'B' - County Hall, Preston**

**Present:**

County Councillor Jackie Oakes (Chair)

#### County Councillors

M Barron	C Henig
I Brown	A Schofield
A Clempson	K Snape
D Clifford	D Stansfield
B Dawson	D Whipp
J Gibson	P White
P Hayhurst	

County Councillor M Barron replaced County Councillor P Britcliffe for this meeting only.

County Councillor M Green attended the meeting in accordance with Standing Order 19(1).

#### 1. Appointment of Chair.

**Resolved:** That the appointment by the full County Council on the 15<sup>th</sup> May 2014 of County Councillor J Oakes as the Chair of the Committee for the remainder of the 2014/15 municipal year is noted.

#### 2. Appointment of Deputy Chair

**Resolved:** That the appointment by the full County Council on the 15<sup>th</sup> May 2014 of County Councillor Miss K Snape as the Chair of the Committee for the remainder of the 2014/15 municipal year is noted.

#### 3. Constitution, Membership, Terms of Reference and Programme of Meetings.

The Chair presented a report in connection with the constitution, membership, Terms of Reference and programme of meetings for both the Committee and the Commons and Town Greens Sub Committee. It was noted that clarification was being sought with regard to two appointments made by the Conservative Group.

**Resolved:**

1. That the constitution and membership of the Committee, as set out in the report presented, is noted.
2. That the current Terms of Reference of the Committee, as set out in the report presented, are noted and a copy is set out in the Minute Book.
3. That the 2014/15 programme of meetings for the Committee, as set out in the report presented, is noted.
4. That the constitution, appointment of Chair and Deputy Chair for the Commons and Town Greens Sub Committee, as agreed by full County Council on the 15th May, 2014, together with the current Terms of Reference (a copy of which is set out in the Minute Book) and programme of meetings for 2014/15 as agreed by full County Council in December 2013 is also noted.

**4. Apologies.**

No apologies for absence were presented at the meeting.

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

The Chair informed the meeting that County Councillor M Barron had declared a non pecuniary interest in relation to item 9 on the agenda as he was a member of North Meols Parish Council which had submitted the application under consideration. It was noted that County Councillor Barron intended to leave the meeting during consideration of the report.

**6. Minutes of the last meeting.**

**Resolved:** That the minutes of the meeting held on the 14<sup>th</sup> May 2014 are confirmed as an accurate record and signed by the Chair.

**7. Guidance.**

A report was presented in connection with Guidance for members of the Committee regarding the law on 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.

**8. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Union Road to Rawtenstall Footpath  
321, Dearden Heights, Rossendale Borough  
Claim No. 804-546**

A report was presented in connection with an 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.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of Public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

When considering the report the Committee noted that the evidence in support of the claim was predominantly from users and indicated that prior to 2012 use was sufficient to indicate that the owners at that time had done nothing to prevent public use and so on balance their intention to give the route up to be a public footpath could be inferred. In response to a query it was noted that in the future Rossendale Borough Council would be considering a planning application for residential development in the area and would take into account any decision which was made in relation to the claimed public footpath.

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

**Resolved:**

1. That 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 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 plan referred to in the report.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

**9. 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**

Having previously declared an interest in relation to this item County Councillor M Barron left the meeting.

A detailed report was presented in connection with claims for the following public footpaths in North Meols, West Lancashire, to be added to the Definitive Map and Statement of Public Rights of Way:

- Claim No. 804-526 (route 1) from the junction of Georges Lane and bridleways 48 & 49 to the junction of footpaths 38 & 39.
- Claim No. 804-527 (route 2) from the junction of Charnleys Lane and bridleways 47 & 48 to the junction of footpaths 39 & 40.
- Claim No. 804-528 (route 3) from Bridleway 47 south-west to footpath 40.
- Claim No. 804-530 (route 4) from Bridleway 47 north-west to footpath 40
- Claim No. 804-531 (route 5) from Bridleway 48 following Cross Bank Covert to footpath 39.

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

During consideration of the report the Committee was informed that after the agenda had been circulated some additional information had been received from the applicant in relation to route 1. It was reported that the information related to the presence of a stile adjacent to the locked gate on the route, the qualifying period being 1970 to 1990 and in relation to the evidence concerning the relevance of the Finance Act 1910. A copy of the additional information circulated at the meeting is set out in the Minute Book.

The Committee was informed that having considered the additional information officers had altered their recommendation in relation to route 1 and had now suggested that the route set out in the report should also be accepted and an appropriate Order made. Therefore, having examined all of the information presented the Committee agreed that there was sufficient evidence from which a dedication could be reasonably alleged under the provisions of S31 of the Highways Act and by inference at Common Law and it was appropriate that an Order(s) be made and promoted to confirmation

**Resolved:**

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 accepted.

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 1' from the junction of Georges Lane and Bridleways 48 & 49 to the junction of Footpaths 38 and 39 North Meols, for a distance of approximately 570 metres and shown between points A-B-C-D-E on the plan 1 referred to in the report.
  - b) '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 plan 1 referred to in the report.
  - c) '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 plan 2 referred to in the report.
  - d) '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 plan 2 referred to in the report.
  - e) '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 plan 1 referred to in the report.

7. That, being satisfied that the higher test for confirming the said Order or Orders can be satisfied, the said Order(s) be promoted to confirmation if necessary by sending it to the Secretary of State.

County Councillor Barron returned to the meeting.

**10. Decision on Appeal  
Wildlife and Countryside Act 1981  
Claimed downgrading to public footpath of Public Bridleway No. 52  
Earby, Pendle Borough.**

It was reported that on the 7<sup>th</sup> September 2011, the Committee had resolved not to accept a claim for the downgrading of Public Bridleway No. 52 Earby to a Public Footpath. The applicant had subsequently appealed against the refusal to the Secretary of State for Environment, Food and Rural Affairs who had appointed an Inspector to consider the appeal and prepare a report.

A summary of the Inspectors report was presented and it was noted that having considered the matter the Secretary of State had 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 8<sup>th</sup> April 2008. It was also noted that in view of the previous decision by the Committee to refuse the claim in the event that the Order was made and objections received the County Council would adopt a neutral stance in relation to its confirmation.

**Resolved:**

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.



**11. 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**

It was reported that on the 13<sup>th</sup> February, 2013, the Committee had resolved not to accept a claim for the addition of a Public Footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough. The applicant had subsequently appealed against the decision to the Secretary of State for Environment, Food and Rural Affairs who had appointed an Inspector to consider the appeal and prepare a report.

The Committee was informed that having considered all of the evidence the Inspector had concluded that there was evidence of frequent use of the claimed route for recreation purposes and to access local facilities and was inclined to agree with the Council that such use would have been by implied permission or by invitation, rather than as of right. With regard to the section of the claimed route which crossed St Paul's Church yard the Inspector had concluded there was claimed use sufficient to raise a presumption of dedication, although it was considered that the standard of the user evidence necessary for an order, if made, to be confirmed would need to be more robust than that which had been provided with the application. The Inspector had also stated there was no evidence that a faculty did not exist in respect of the consecrated ground, there was a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist over the Appeal route.

Having considered the Inspectors report the Secretary of State had decided to allow the appeal and had directed the County Council to make the necessary Order. It was noted that in view of the previous decision by the Committee to refuse the application in the event that the Order was made and objections received the County Council would adopt a neutral stance with respect to its confirmation.

**Resolved:**

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 plan referred to in the report.
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.

## **12. Urgent Business**

The Chair informed the meeting that she had received a request from County Councillor Schofield for his concerns regarding the future maintenance of public rights of way in Ribble Valley following the termination of agency arrangements between the County Council and Borough Council in April 2014 to be discussed at the meeting.

Whilst recognising that the issue did not strictly fall within the remit of the Committee and was more likely to be a matter for discussion at the Ribble Valley 3 Tier Forum the Chair had agreed to the request as the next meeting of the Forum would not be held until September 2014.

County Councillor Schofield informed the meeting of his concerns regarding the future maintenance and safeguarding of public rights of way in Ribble Valley and whether under the current arrangements resources would be directed to those areas of greatest need. In considering the matter it was noted that similar concerns had been expressed in relation to Pendle where an agency agreement with the Borough Council would terminate in April 2015.

There was general agreement amongst the members of the Committee that the concerns expressed were not within the remit of the Committee and should be pursued outside of the meeting with the appropriate Cabinet Member.

**Resolved:** That County Councillor Schofield raise his concerns regarding the impact of the termination of agency arrangements between the County Council and the Borough Council on the maintenance of public rights of way with the Public Rights of Way Manager outside of the meeting.

## **13. Date of Next Meeting**

It was noted that the next scheduled meeting of the Committee would be held at 10.30am on the 10<sup>th</sup> September 2014 in Cabinet Room 'B' - The Diamond Jubilee Room at County Hall, Preston.

I Young  
County Secretary and Solicitor

County Hall  
Preston

# Agenda Item 4

## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected:

All

## Guidance for the members of the Regulatory Committee

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

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

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

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

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

### **Documentary evidence**

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

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

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

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

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

### **Recording vehicular rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Confirming an Order**

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

## **Diversion Order s119**

### **TO MAKE AN ORDER**

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

### **GUIDANCE**

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



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

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

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

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

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

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

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

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

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

## **Diversion Orders under s119A**

### **TO MAKE AN ORDER**

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

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

OR

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

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

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

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

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

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

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

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

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

### **GUIDANCE**

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

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

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

## **Diversion Orders under s119ZA**

## **Diversion Orders under s119B**

## **Diversion Orders under s119C**

## **Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

## **Extinguishment Order under s118**

### **TO MAKE AN ORDER**

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

### **GUIDANCE**

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

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

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

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

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

### **Extinguishment Orders under s118A**

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

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

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

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

#### **GUIDANCE**

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

### **Extinguishment Orders under s118B**

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

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

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

### **Extinguishment Orders under s118ZA**

Guidance under this section will be made available when required

### **Extinguishment Orders under s118C**

Guidance under this section will be made available when required

### **Creation Order under s26**

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

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

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

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

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

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

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

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

The same test as above.

#### **GUIDANCE**

Again there is convenience to consider.

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

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

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

Regulatory Committee  
Meeting to be held on the 22 October 2014

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

#### **Procedural step**

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

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

#### **Recovery of Costs from an Applicant**

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

The power to charge is found in the - **Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993/407**

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

(1) Where—

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

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

(2) Those charges are—

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

### **Amount of charge**

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

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

### **Refund of charges**

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

- (a) they fail to confirm an unopposed order; or
- (b) having received representations or objections which have been duly made, and have not been withdrawn, the authority fail to submit the public path order to the Secretary of State for confirmation, without the agreement of the person who requested the order; or
- (c) the order requested was an order made under section 26 of the 1980 Act and proceedings preliminary to the confirmation of that order were not taken concurrently with proceedings preliminary to the confirmation of an order made under section 118 of the 1980 Act; or
- (d) the public path order is not confirmed by the authority or, on submission to the Secretary of State, by him, on the ground that it was invalidly made.

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

### **Careful consideration of stance**

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

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



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

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



## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Rossendale East
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**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Application**  
**Upgrading to Bridleway of Public Footpaths from Hardman Drive to Rakehead Lane, Bacup, Rossendale Borough**  
**Application No. 804-539**  
(Annex 'A' refers)

Contact for further information:

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### **Executive Summary**

Application for an upgrade to Bridleway of Public Footpath nos. 638 (part), 636, 627 and 626 Bacup, Rossendale Borough, on the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-539.

### **Recommendation**

1. That the application for an upgrade to Bridleway of Public Footpath nos 638 (part), 636, 627 and 626 Bacup, Rossendale on the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-549 be accepted
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade to Bridleway Public Footpaths nos 638(part), 636, 627 and 626 Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D-E-F-G-H.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by sending it to the Secretary of State.

### **Background**

An application duly made under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from The Forest of Rossendale Bridleways Association to upgrade Public Footpath nos 638 (part), 636, 627 and 636 Bacup, Rossendale

Borough to bridleway. If confirmed, a footpath of approximately 880 metres, and shown between points A-B-C-D-E-F-G-H on the attached committee plan, is to be upgraded to bridleway on the Definitive Map and Statement of Public Rights of Way.

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

An order for upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

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 for a particular class of users unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate's Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence. A public right of way for mechanically propelled vehicles may have been extinguished by the Natural Environment and Rural Communities Act 2006.

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

## **Consultations**

### Rossendale Borough Council

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

### Parish Council

There is no Parish Council for the area affected.

Applicant/Landowners/Supporters/Objectors

Landowners have supplied plans outlining the land they own, no objections have been received.

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

## Advice

### Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8370 2132	The end of road U7773, Hardman Drive, opposite the sub-station
B	8372 2129	Gate after Tenterheads on entrance to field
C	8377 2126	Junction of Bacup Footpaths 638, 635, 634 and 636
D	8395 2133	Gate immediately before junction of Bacup Footpaths 636,637,628 and 627 (Royds Road)
E	8396 2133	Junction of Bacup Footpaths 636, 637, 628 and 627 (Royds Road)
F	8431 2143	Gate shown on Ordnance Survey maps (no longer in situ)
G	8442 2143	Junction of Bacup Footpaths 627 and 626 (Royds Road) and 625
H	8453 2144	Junction of Bacup Footpath 626 (Royds Road) with Rakehead Lane (C708)

## Description of Route

A site inspection was carried out on 3<sup>rd</sup> April 2014.

### **Bacup Footpath 638 (A-B)**

This route commences at a point on Hardman Drive (point A), opposite the electricity sub-station. The route at this point is situated on a tarmac road leading uphill towards a track in front of the houses at Tenterheads, leading to a gate on entrance to a field (point B). The total length of this section of the route is approximately 30 metres with an approximate width of 3 metres.

### **Bacup Footpath 638 (B-C)**

The route passes through this gate (point B) and continues in a south easterly direction across a field, following the north east side of a vertical flagstone wall towards the opposite field boundary wall at the junction with footpaths 636, 634 and 635 (point C). The surface is a grass/marsh field, which was severely boggy in parts on the day of inspection. The total length of this section of the claimed route is approximately 60 metres with an approximate width of 3 metres.

### **Bacup Footpath 636 (C-D)**

The route from point C then heads east north east along the north side of the wall on a marshy grass surface to a gate (point D). The length of this section is approximately 200 metres with an approximate width of 3 metres.

### **Bacup Footpath 636 (D-E)**

Immediately after the gate is a junction with footpaths 637, 627 and 628 (point E). The length of this section is approximately 4 metres with an approximate width of 3 metres.

### **Bacup Footpath 627 (E-F)**

The route from point E continues along a stone track between boundary walls 4m apart in an east north easterly direction for approximately 370 metres.

### **Bacup Footpath 627 (F-G)**

From the historical location of the gate, no longer in situ, (point F) to the junction with Bacup Footpath 625 (point G), this part of the route is recorded on the County's List of Streets as X789 known as Royds Road which provides access from Rakehead Lane to a number of properties. The approximate length of this route is 110 metres with a width varying between 4 to 6 metres.

### **Bacup Footpath 626 (G-H)**

The route then continues east for approximately 110 metres along this tarmac road to meet Rakehead Lane (point H). The width at this point varies between 4 to 6 metres.

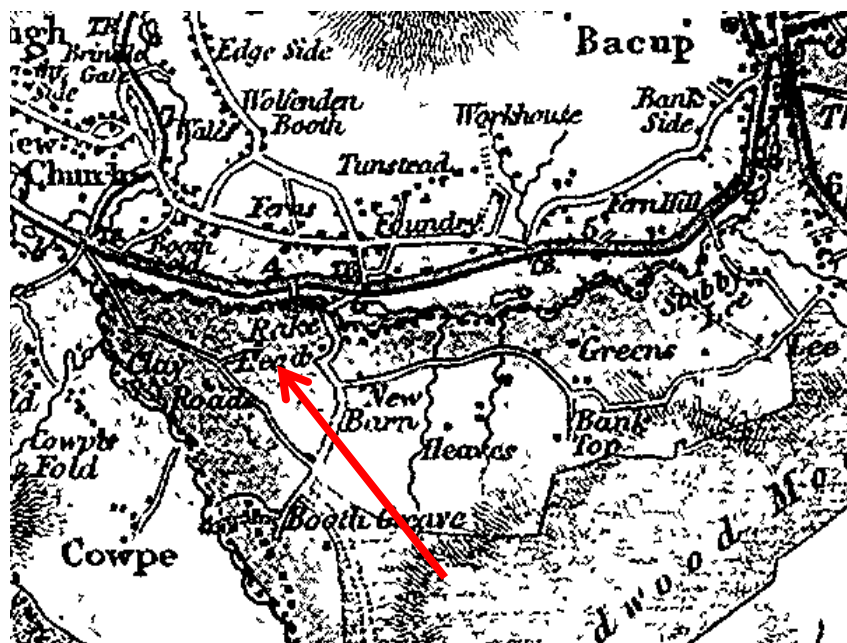
The total length of the application route is approximately 880 metres.

Access is available to pedestrians, horse riders and cyclists from either end of the application route, from Hardman Drive or Rakehead Lane. Use is not prevented at any point. The gates in situ at points B and D are easily negotiable, wide enough to accommodate both horse riders and a group of walkers or cyclists.

The route is partially on a stone road, and partially over fields. It was clear on site that there are a few large pot holes which had collected a large amount of water during the recent bad spell of weather; however the surface was usable on foot, horse or bicycle.

## Map and Documentary Evidence

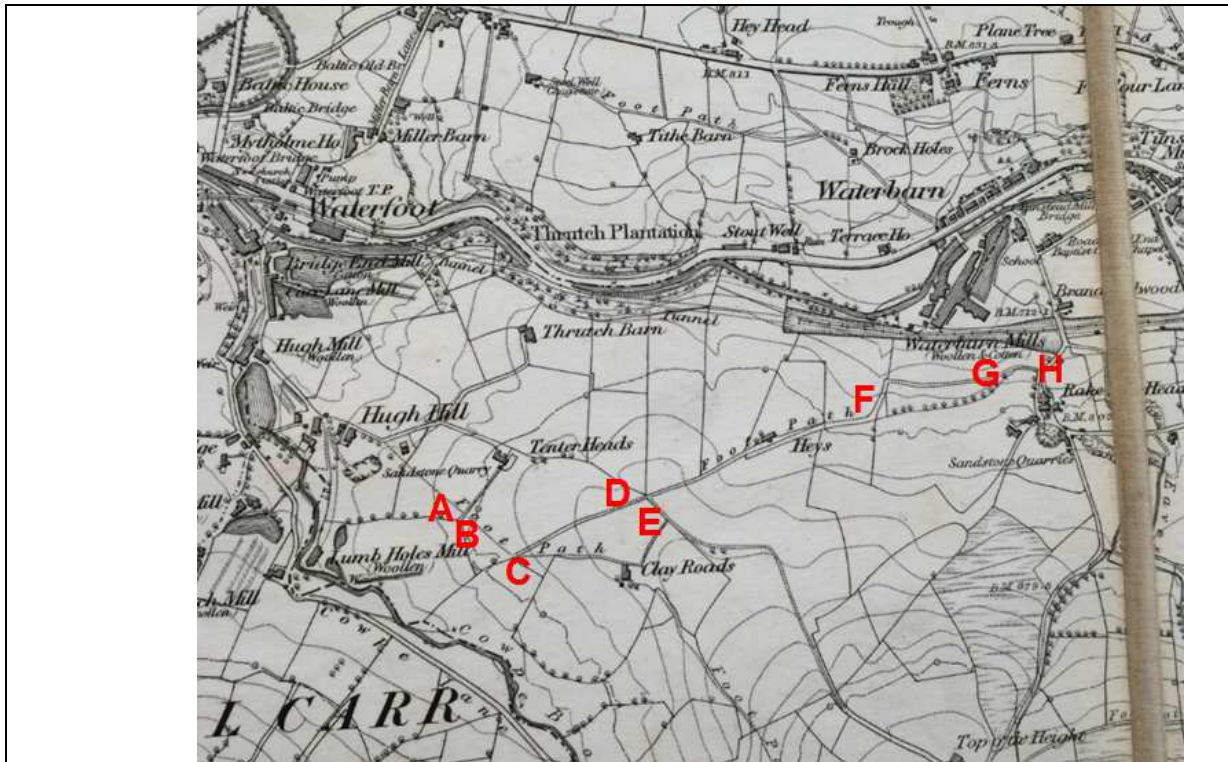
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, a footpath/bridleway may not have been drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.



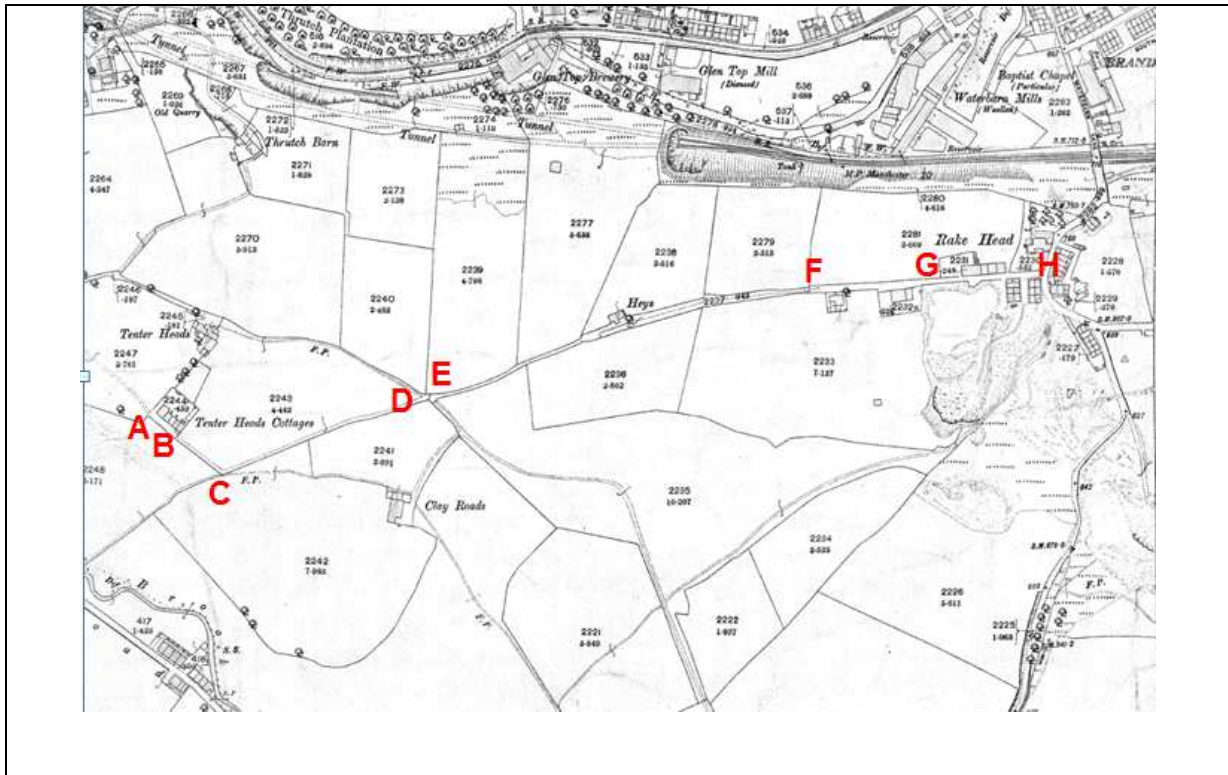
Observations		There is a route shown heading towards Rakehead Lane from Clay Roads which seems to correspond to E-F. The full length of the route is hard to determine if it is in place due to the lettering on the map covering the specific area in which we are interested in.
Investigating Officer's Comments		A road appears to have been recorded leading from Clay Roads to Rake Head and to be shown at this scale suggests a relatively substantial road. However due to the scale and lettering on the map it is hard to be certain, and therefore limited inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1843	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The tithe map for Bacup is not held within Lancashire Archives. Therefore we have not been able to view the tithe map for this particular area.
Investigating Officer's Comments		No inference can be made as to whether a Bridleway existed at this time.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. <sup>1</sup>

<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.





Observations		The application route is shown as a footpath from Hugh Hill to Rake Head. The line of the route differs to the later Ordnance Survey Maps, particularly on exit to Rake Head near points G and H.
Investigating Officer's Comments		There is no indication that Royds Road was in place at this point in time, the routes are shown as footpaths – therefore we can infer that at this time, use must have only or mainly been on foot.
<b>25 Inch Ordnance Survey (OS) Map</b>	1893	This is the earliest Ordnance Survey 25 inch map for this area. Surveyed in 1891 and published in 1893.

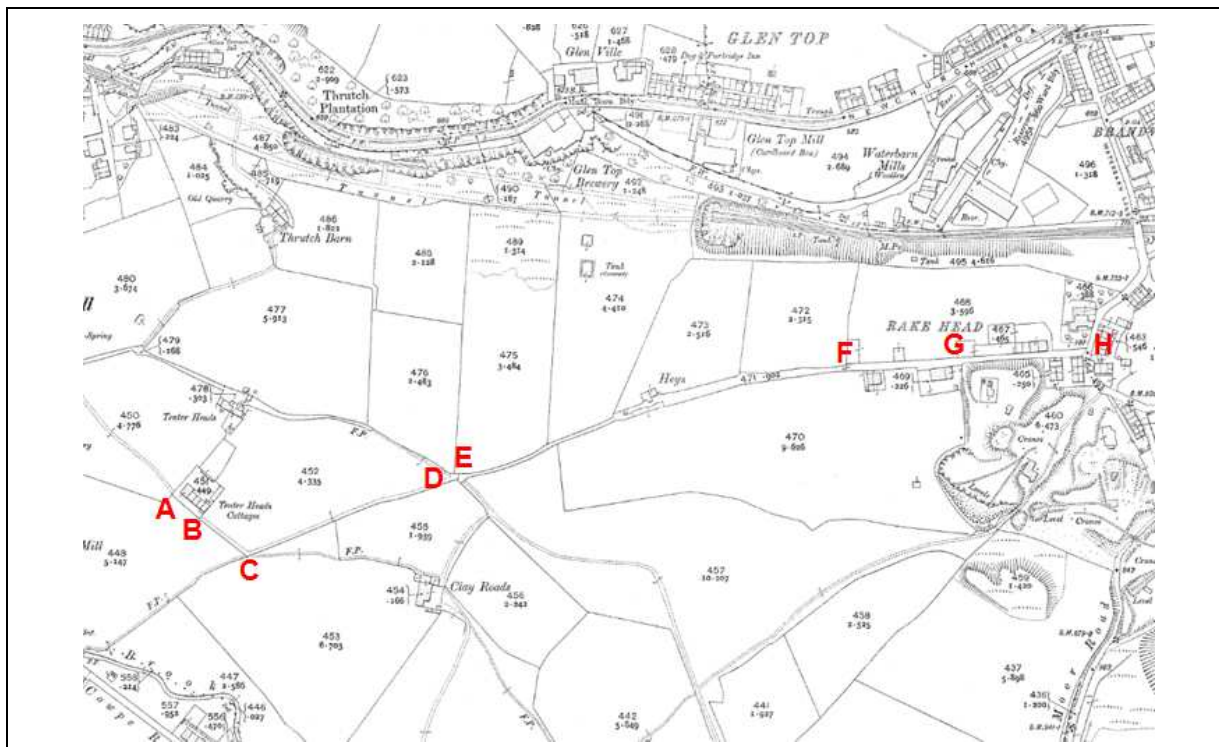


Observations		<p>The full length of the route is shown providing access to the properties located along the lane, but it is no longer labelled as a footpath.</p> <p>There are gates shown at points B, D and F as indicated by solid lines on the OS Maps.</p>
Investigating Officer's Comments		<p>The application route existed as a route in 1891, and is shown contiguous with the general road network at this time from the gate at point F, and potentially from D. This road appears to be the sole access for vehicles to a number of properties and farms along the route. Gates are recorded at points B, D and F.</p>
1 inch Ordnance Survey (OS) Map	1896	This 1 inch to the mile map was published in 1896. (sheet no.76)

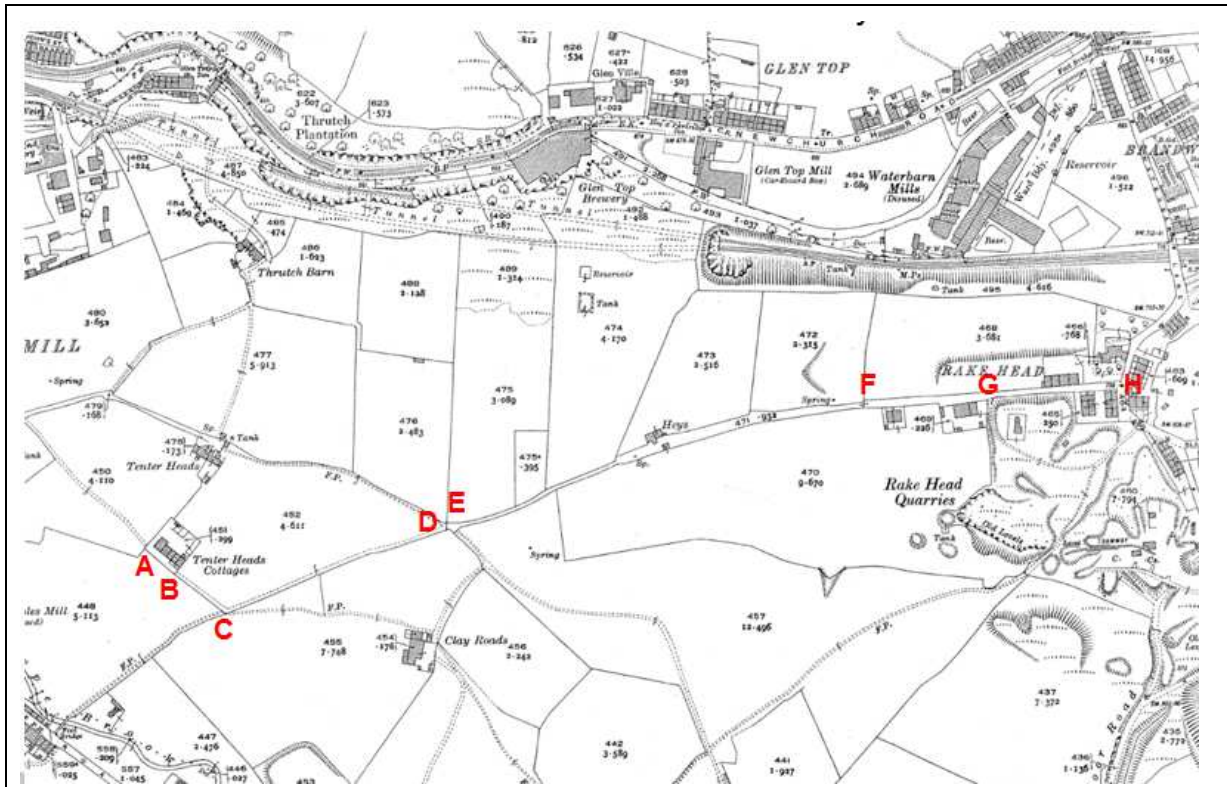


Observations		The route is shown from C to H as a through route from
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		the main roads. There is nothing shown from points A-C. There were also no gates recorded on this map.
Investigating Officer's Comments		The application route existed as a route from points C to H. No inference can be made regarding gates.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation, not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		<p>The Finance Act Map was not available to inspect in the record office.</p> <p>The Finance Act Valuation Book was of little help without the Finance Map.</p>
Investigating Officer's Comments		No inference can be made.
<b>25 Inch OS Map</b>	1911	The second edition of the OS map at a scale of 25 inch to the mile. Resurveyed in 1891 and revised in 1908 and published in 1911.

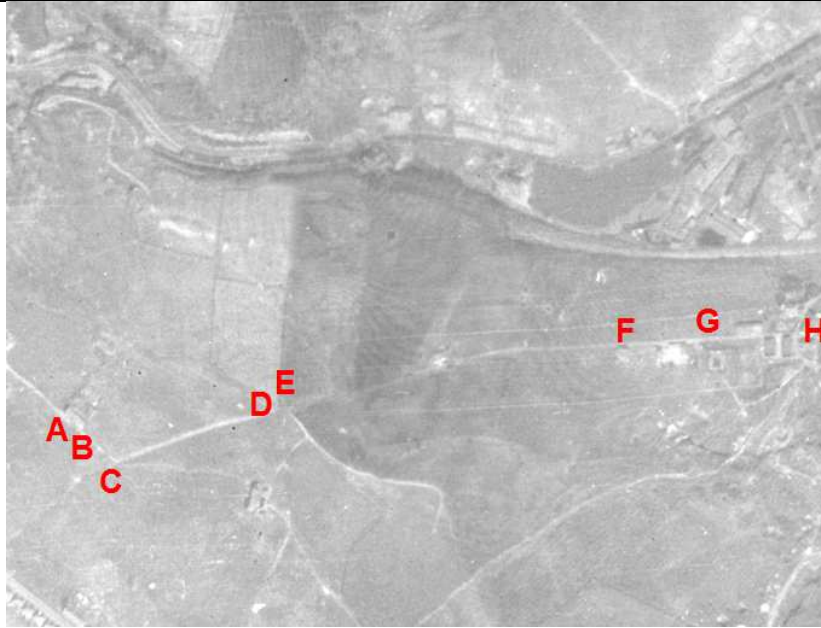


Observations		The full length is shown as a through route from Tenter Heads Cottages to Rake Head. The solid lines across the route at points B, D & F most likely indicate gates. Although shown this does not necessarily mean that the gates were closed and preventing access at the time of the map being surveyed.
Investigating Officer's Comments		The application route existed on the ground in 1911. Gates are located along the route at points B, D and F.
<b>25 inch OS Map</b>	1930	Further edition of the 25 inch map surveyed in 1892, revised in 1928 and published in 1930.

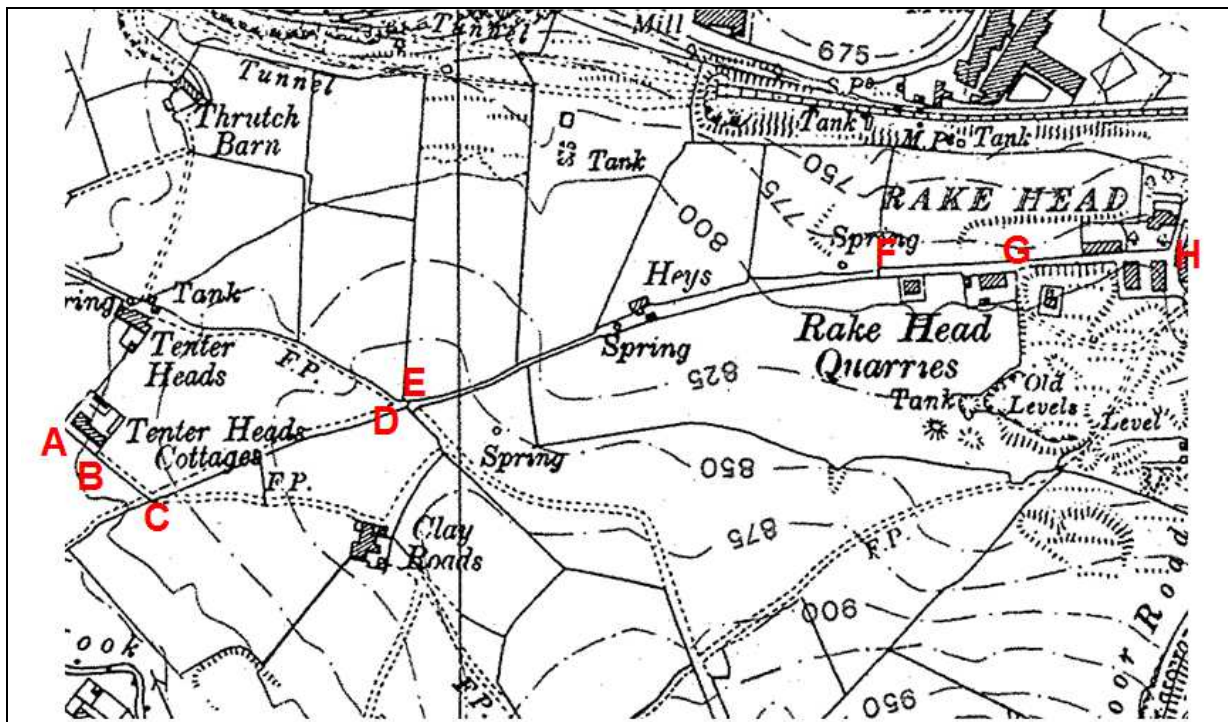


Observations		The application route is shown on the 1930 map as a through route with gates at points B, D and F.
Investigating Officer's Comments		The application route existed in the 1930s as a through route with gates at points B, D and F.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s. The clarity is generally very variable.

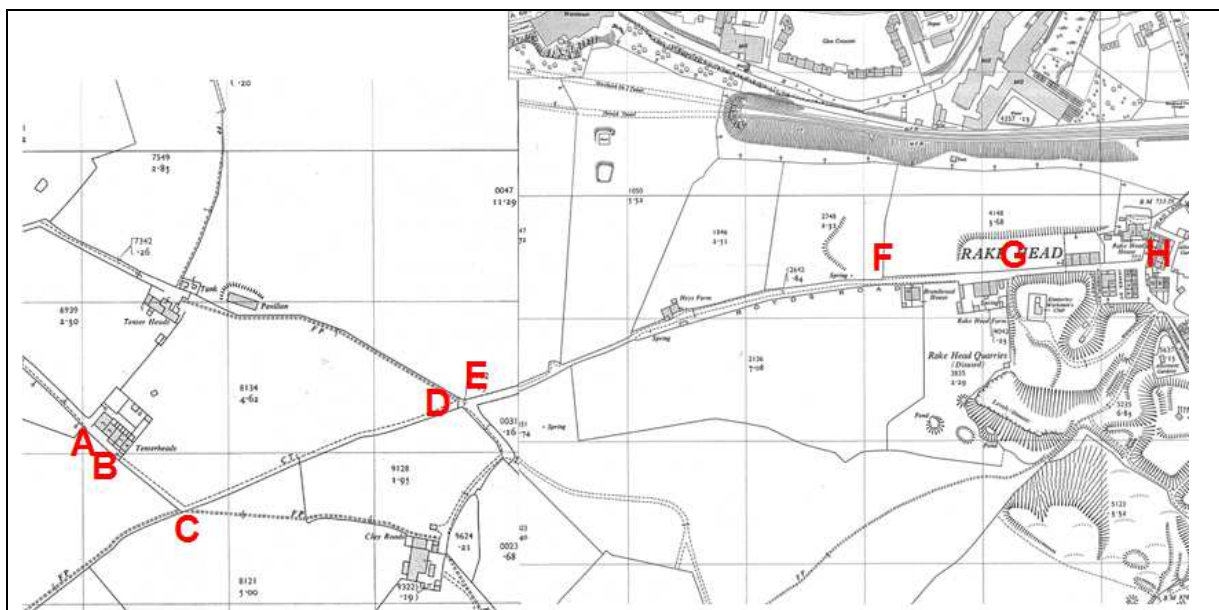
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



Observations		Although the photograph is not of the best quality, the application route is visible on the 1940s aerial.
Investigating Officer's Comments		The application route appears to have existed in the 1940s. It is not very clear but the white lines as shown on the photograph indicate usage, although it is not clear as to whether this usage was on foot, horseback or vehicular.
<b>6 Inch OS Map</b>	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

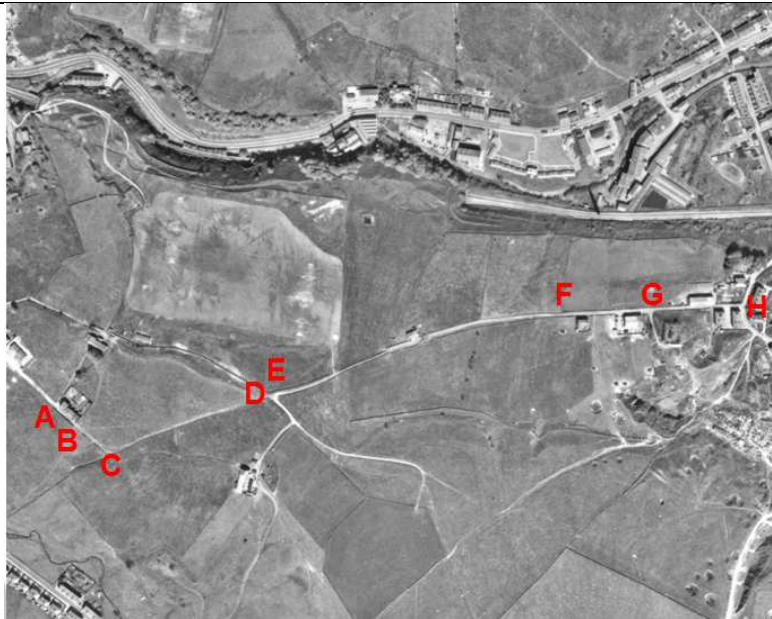


Observations		<p>The route is shown as a through route. However the route under investigation is not labelled as a footpath (F.P.), unlike others in close proximity. There is a spring apparently situated in the route close to the property of Heys.</p> <p>Gates are also shown at points B, D and F.</p>
Investigating Officer's Comments		<p>The route existed and appeared capable of use by the public in 1956.</p> <p>Other connecting routes are labelled as footpaths suggesting that the route under investigation, absent from a label of footpath, could be more than just footpath.</p>
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1960/1961 and published 1963 as national grid series.

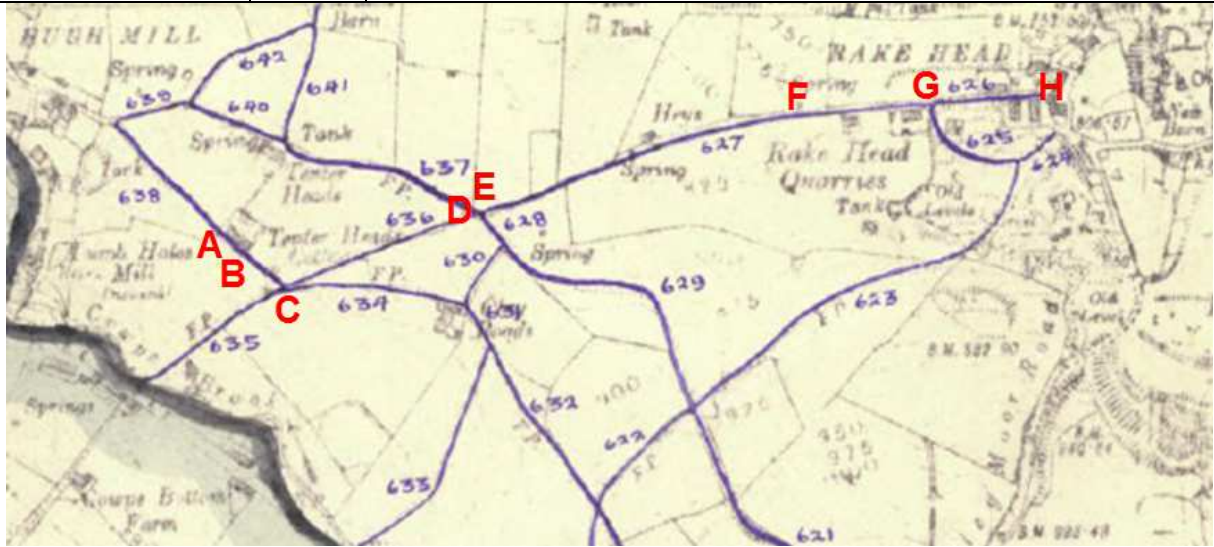



Observations		The application route between points B-D is labelled on the map as a Cart Track (C.T.). The rest of the route between points D-H is recorded as Royds Road. Gates are located at B and D but is no longer recorded at point F.
Investigating Officer's Comments		<p>The significance of the route being shown as a cart track between points B-D indicates that use of the route at the time the map was surveyed could have been by more types of user than just on foot.</p> <p>As the application route is recorded as a cart track rather than footpath, this implies a more substantial feature, possibly an agricultural track with a hard soil or stone surface, which could have been used by walkers, cyclists and horse-riders although not indicative of public rights. Points D-F is recorded as Royds Road. This is significant because it suggests that this part of the route is known locally as a road and could imply higher rights than footpath.</p>
Aerial photograph	1960s	Black and white aerial photograph taken in the early 1960s.





Observations		The application route is clearly visible on the 1960s aerial photograph. The white lines along the application route can be an indication of heavy use, which implies that the route is particularly popular and could be used by more than one type of user.
Investigating Officer's Comments		The application route appears to have existed in the 1960s.  The application route could be capable of being used by the public on horseback, due to the visible lines on the ground indicating heavy use. The route is clearly defined as a through route from point A to H.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as

		the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		There is no map available. Bacup was a Municipal Borough which means that a Survey Map was not produced.
Draft Map	1955	<p>Lancashire County Council prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
		
Observations		The application route is recorded on the Draft Map as Public Footpaths 638, 636, 627 and 626. There were no objections received to the route being recorded as footpath.
Provisional Map	1960	Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown

		Court.
Observations		The application route is still recorded as public footpath on the Provisional Map. There were no objections to the route being recorded as footpath.
<b>The First Definitive Map and Statement</b>	1962	The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Definitive Map and Statement recorded all of the application route as Public Footpaths.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>	1966	Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The application route is recorded as public footpath on the Revised Definitive Map.
<b>Aerial Photograph</b>	2000	Colour aerial photograph taken in 2000.
		
Observations		The application route is visible on the 2000 aerial photograph from point D to H (Royds Road).

		It is visible D-H as a well-used vehicle-width route but it is visible A-D if you zoom in and look carefully, not as a route in use at the time but as a physical land form or vegetation change. It's not easy to see but C-D could be grass without the darker rushes elsewhere in the field because it had a hard base under the grass so was drier and more compact. A-B appears to exist as a road and B-C as a traceable line on the grass again indicating either a different base or some amount of current use.
Investigating Officer's Comments		The application route existed as a minor access road in 2000 between points D-H. No trodden route is visible between points A-D but traces of it can be seen in the vegetation pattern.  Routes A to D do not appear to be used as vehicular routes; however Points D-H do appear to be more well used, and with properties located along this section of route it is most likely to include vehicular use.
<b>Aerial Photograph</b>	2010	Colour aerial photograph taken in 2010.



Observations		The application route can be seen on the 2010 aerial photograph.
Investigating Officer's Comments		The application route existed the same as the 2000 aerial photograph. There is no physical evidence showing use on the ground between points A-D but we can see Royds Road between points D-F.
<b>Statutory deposit and declaration made under section 31(6)</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title

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



<p>Observations</p>		<p>The scanned maps that form the County Council 'highway adoption records' were viewed on mapzone. Publicly</p>
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		maintainable roads were highlighted in red on the adoption plans. Royds Road was not highlighted as publicly maintainable.
Investigating Officer's Comments		Royds Road was not recorded on the Adoption Plan, therefore is not considered to be a publicly maintainable road when it was compiled or subsequently amended.

The route 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.

### **Landownership**

The route from A-D as shown on the Committee plans is owned by:

Richard Ernest Hardman, Tulls, Standford, Headley, Hampshire, GU35 8RD.

Edward John Poole Hardman, 92 Gould Road, Twickenham, Middlesex, TW2 2RW.

Peter Reginald Hardman, 11 Kingston Crescent, Helmshore, Rossendale, Lancashire, BB4 4LH.

Judith Anne Cooke, Old Farm House, Stubbs Walden, Doncaster, North Yorkshire, DN6 9BU.

A small section between E-F is partly owned by David and Karen Ashworth, Heys Farm, Royds Road, Bacup, Lancashire, OL13 0PG.

The rest of the route is unregistered.

### **Summary**

There is little documentary evidence showing that public rights existed on the application route but enough to show that there was a reasonably substantial physical track since at least 1830, and is consistently shown on the Ordnance Survey maps from 1849 to present day.

Royds Road, recorded from points D to H on the committee plan, is shown as a well-used track on all of the Ordnance Survey Maps, and strongly supported by the aerial photographs where evidence of high use is shown on the track. There are several properties located along Royds Road, and therefore this is likely to be a vehicular route too as far as point D, although not necessarily public.

Gates have been recorded consistently at several points along the route on the Ordnance Survey Maps. The gates, located at points B, D and F would not have necessarily prevented access along the route for horse riders, and the existence of gates on a route crossing farmland (particularly at points B and D) is not uncommon.

The route probably has been able to be used as a bridleway to provide access from Rakehead Lane to Hardman Drive since the 19<sup>th</sup> Century.

## **County Secretary and Solicitors Group Observations**

### Information from the Applicant

In support of the claim the applicant has provided 31 user evidence forms.

The users have knowledge of the route as follows:

11-20(6)      21-30(11)      31-40(7)      41-50(4)      51-60(2)      61-70(1)

26 users claim that they have used the route on horseback, 4 users state they have used the route on a bicycle. The main purposes for using the route are for riding, pleasure, training the horse, hacking and for using the route as a circular route. Use of the route per year varies from 3-4, 5-6, 12 times, monthly, 40 times, 50 times, weekly, 70 times more than 80 times, 100 times and between 10 and 200 times.

25 users state that the route has always run over the same line, 1 user states they can't remember and another users states 'unknown' to this question. 1 user mentions that a person tries to move the bridleway by blocking it with a car, this still frequently happens and causes riders to squeeze through past the car and the iron railings. Another user states that a small gate used to take you onto the field and one user states a route behind the houses has not been accessible for a number of years because of a locked gate.

When asked if there are any stiles/gates/fences along the route 25 users state there are gates, most users claim there are 2 gates along this route, 3 users state there are no stiles/gates/fences along the route and 1 user states 'unknown' to this question.

When asked if any of the stiles/gates/fences were locked, 28 users stated no, 2 users stated yes and 1 user stated 'unknown'. 29 users stated that these stiles/gates/fences didn't prevent them from using the way with a horse / bicycle, 1 user stated 'unknown' to this question.

When asked if they have ever been stopped when using the way all 31 users stated no. When asked if they had ever heard of anyone being stopped from using the way all 31 users stated no. 31 users also said they have never been told by anyone that the way was not a Public Right of Way and 31 users all agree that they have never seen any signs/notices across the way.

### Information from Others

A letter has been received from Andrew Hayhurst who lives adjacent to the claimed route and states he is happy to support the upgrading to bridleway.

A letter has been received from Gill Hardman, Tulls Standford, Headley, Hampshire, GU35 8RD who own title No LAN74318. It is their general policy in relation to any matter affecting their land to assist in any improvement to facilities for public use in the area and on that basis would not object to the proposals. However it was stated

that time was needed to bear in mind the interests of the tenant farmer who may not be very enthusiastic about horses crossing land which he using for grazing sheep cattle and, in consequence, we consider his views on the matter of upgrading to bridleway status to take precedence over their own in relation to this particular proposal.

Information from the Landowner  
*none*

## **Assessment of the Evidence**

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

#### In Support of Making an Order(s)

User evidence  
Ordnance Survey Maps  
Ariel Photographs

#### Against Making an Order(s)

Gates along the route

## **Conclusion**

Committee will note that the route under consideration is currently recorded as a public footpath. The Application is to upgrade Public Footpath nos. 638 (part), 636, 627 and 626 Bacup, Rossendale Borough as it is claimed that these public footpaths carry higher public rights, namely the status of a Bridleway.

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

Considering first of all whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The user evidence provided in respect of the route indicates that access to the route has never been verbally questioned or denied and there is no evidence of any signs or notices having been erected along the route informing users that it was not a



public right of way. Whilst there is reference in the user evidence to gates being present along the route, one user mentioning a person trying to move the bridleway by blocking it with a car on frequent occasions which causes riders to squeeze through past the car and the iron railings, another user refers to a small gate which used to take them onto the field and one other claiming that a route behind the houses had not been accessible for a number of years as the result of a locked gate this does not appear to have prevented users accessing the route with relative ease and frequency. The user evidence does not provide specific dates as to when these events took place and therefore it is suggested on balance that the "calling into question" would be application itself in 2012 and the 20 year period under consideration would be 1992-2012.

Looking at the twenty years 1992 – 2012 there are 25 users whose use dates back to 1992 with evidence of use being sufficiently frequent. Claimed use is predominantly for riding, pleasure, training horses, hacking and for using the route as a circular route. Whilst the user evidence is generally indicative of a right of way being available as claimed, it is not considered, in and of itself, to be sufficient to prove that the right of way exists. It is suggested that committee may consider that the user evidence in this matter is sufficient and use has been exercised as of right and without interruption for the whole route during 1992-2012. There does not appear to be any strong evidence to demonstrate lack of intention to dedicate over the period under consideration. It is therefore suggested to Committee that deemed dedication can be satisfied.

Looking secondly as whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. The analysis of the map and documentary evidence by the Executive Director for Environment would appear to suggest that whilst there is little documentary evidence showing that public rights did exist on the claimed route that there is sufficient evidence to show that it was a reasonably substantial track since at least 1830 being consistently shown on the Ordnance Survey maps from 1849 until the present day. The claimed route from points D to H on the committee plan, is identified on all of the Ordnance Survey Maps as a well used track and this is strongly supported by the ariel photographs. It is suggested that as there are several properties located along Royds Road that this is likely to also be a vehicular route as far as point D on the plan, although not necessarily to the public. It is suggested that the route has most likely been capable of being a bridleway to provide access from Rakehead Lane to Hardman Drive since the 19<sup>th</sup> Century. On balance, it is suggested that the historical map evidence is not sufficient to demonstrate inferred dedication, as the only primary map evidence is the OS maps which are good evidence to suggest the route was in existence but cannot determine the status of the route.

It is suggested to Committee that, taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 can be deemed and the route, recorded as a footpath at present, be recorded as having bridleway status. In conclusion Committee may consider that a dedication in this matter may be deemed under s.31.

## **Risk Management**

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

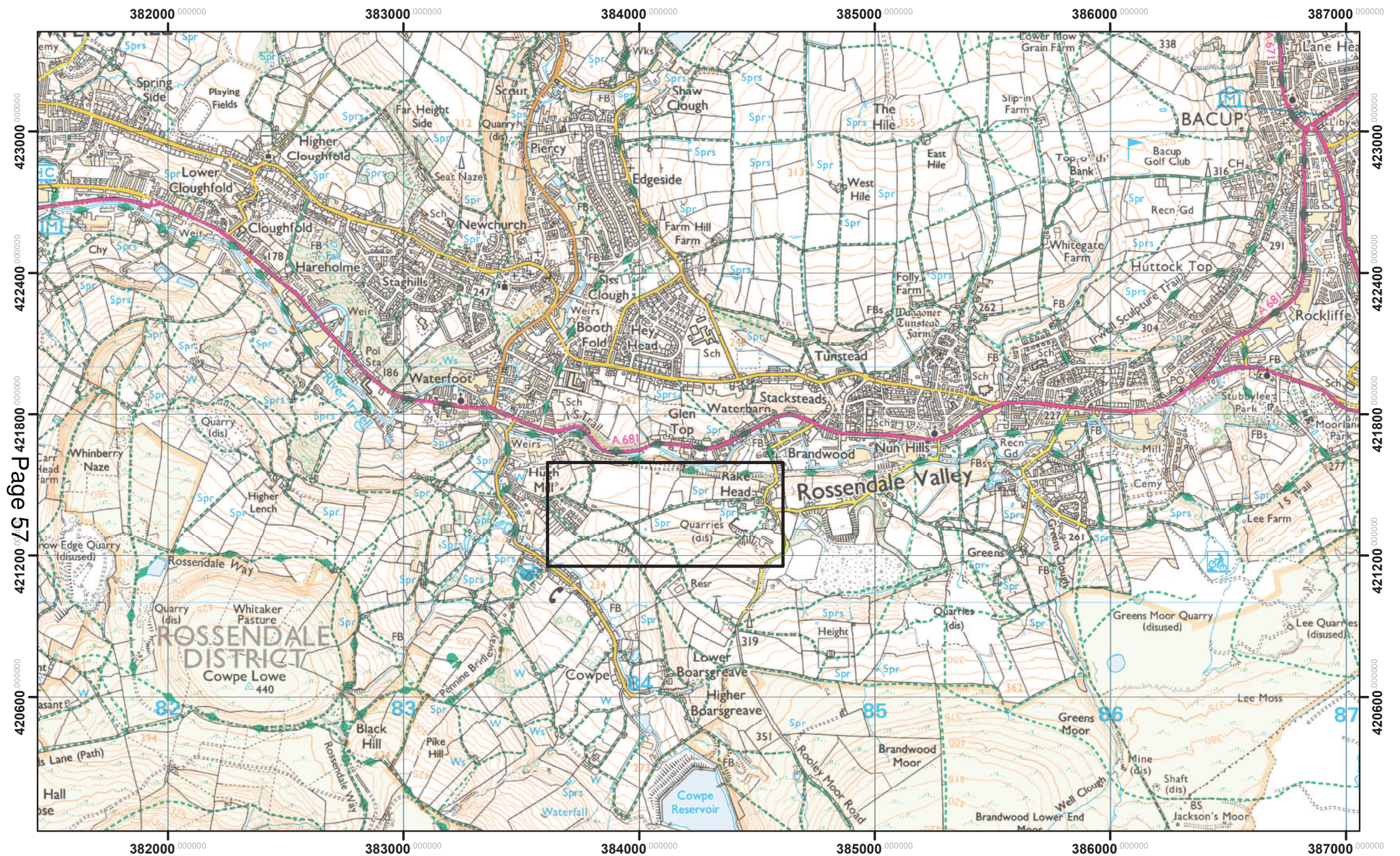
**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-539	Various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



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**Lancashire**  
County Council

**Steve Browne**  
Executive Director  
for Environment

## Location Plan

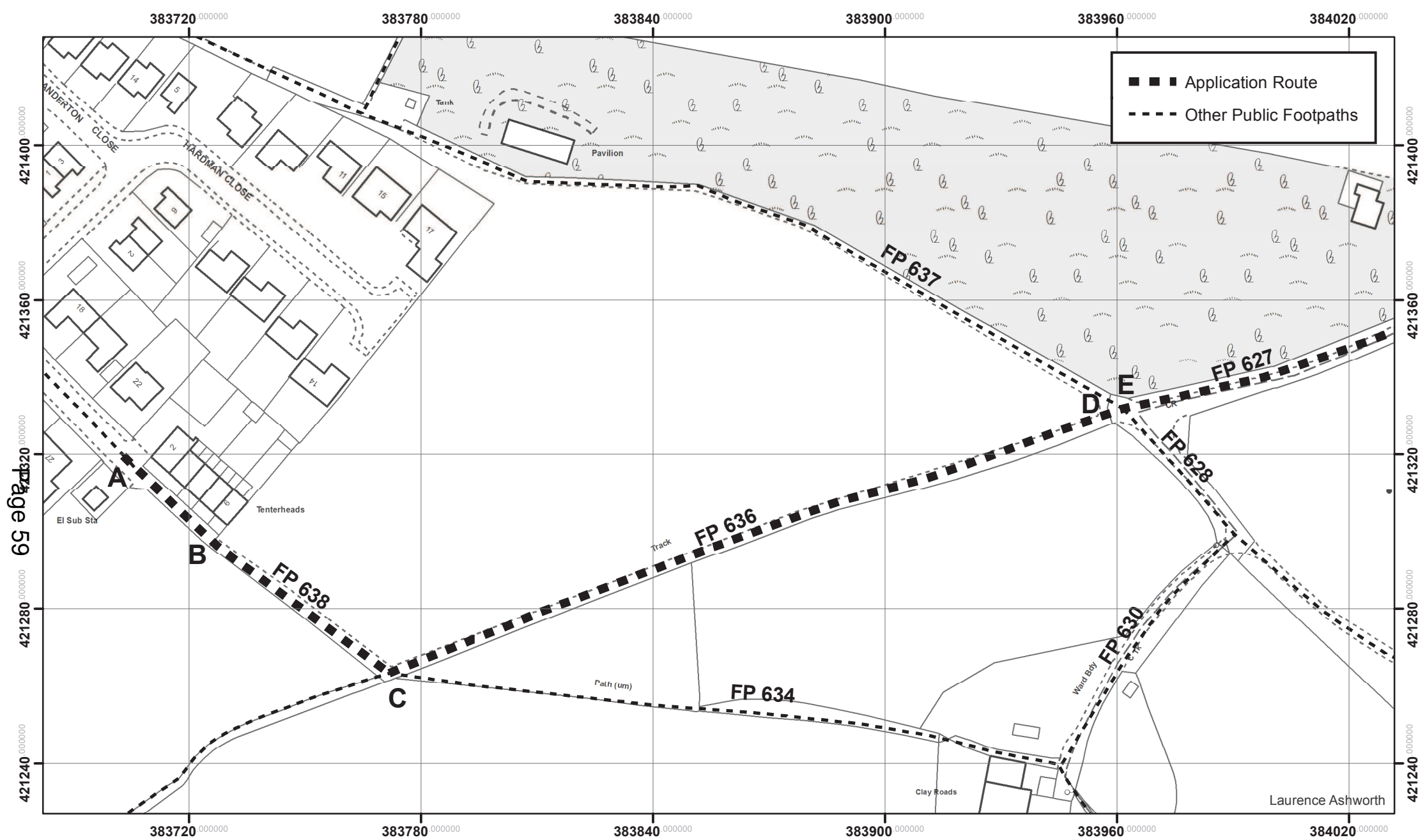
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**Lancashire**  
County Council

**Steve Browne**  
Executive Director  
for Environment

Wildlife and Countryside Act 1891

Application to upgrade to Bridleway of Public Footpaths 638 (part of), 636, 627 and 626 Bacup, Rossendale Borough

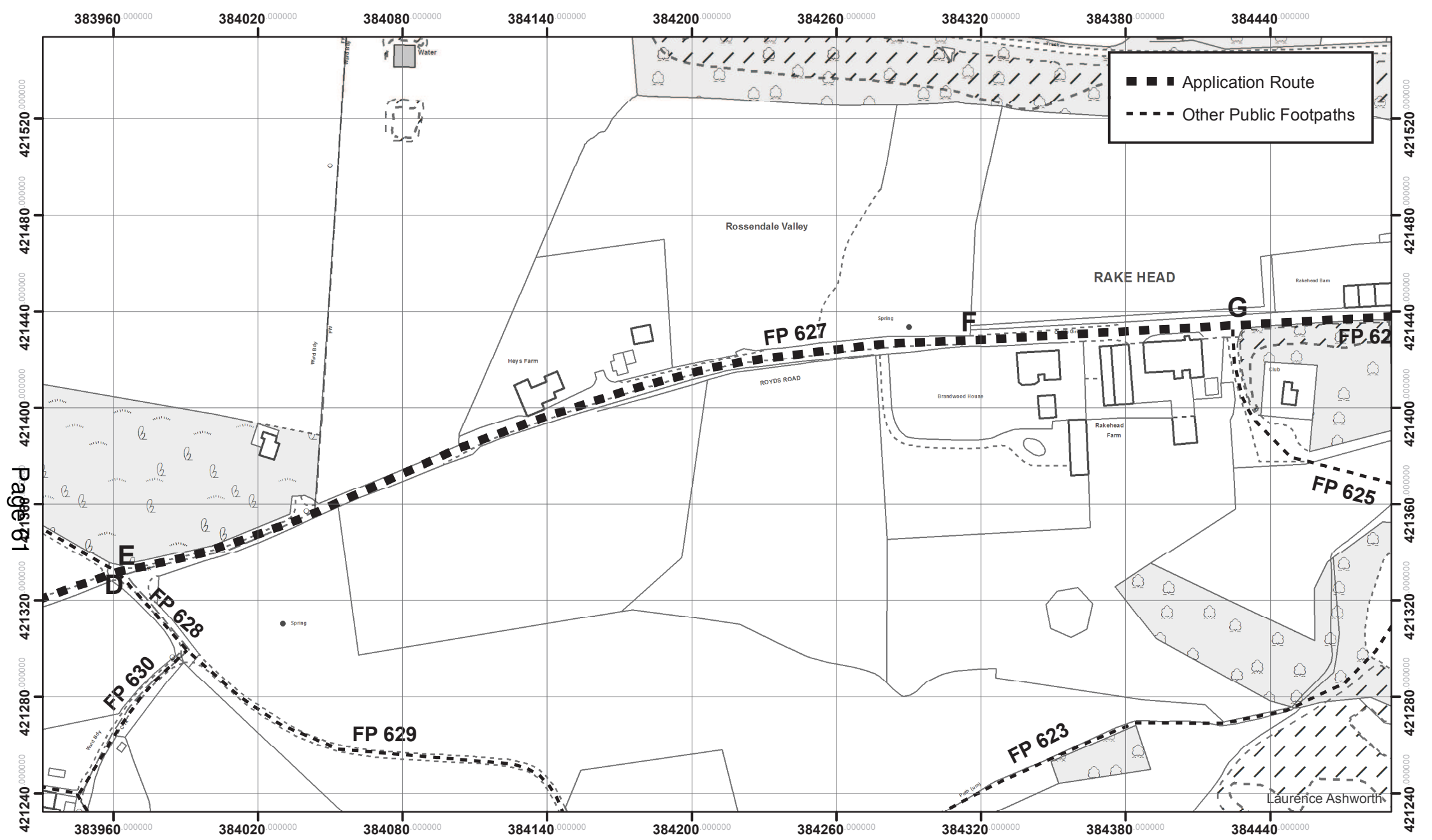
Application No. 804-539 - Plan No.1

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**Lancashire**  
County Council

**Steve Browne**  
Executive Director  
for Environment

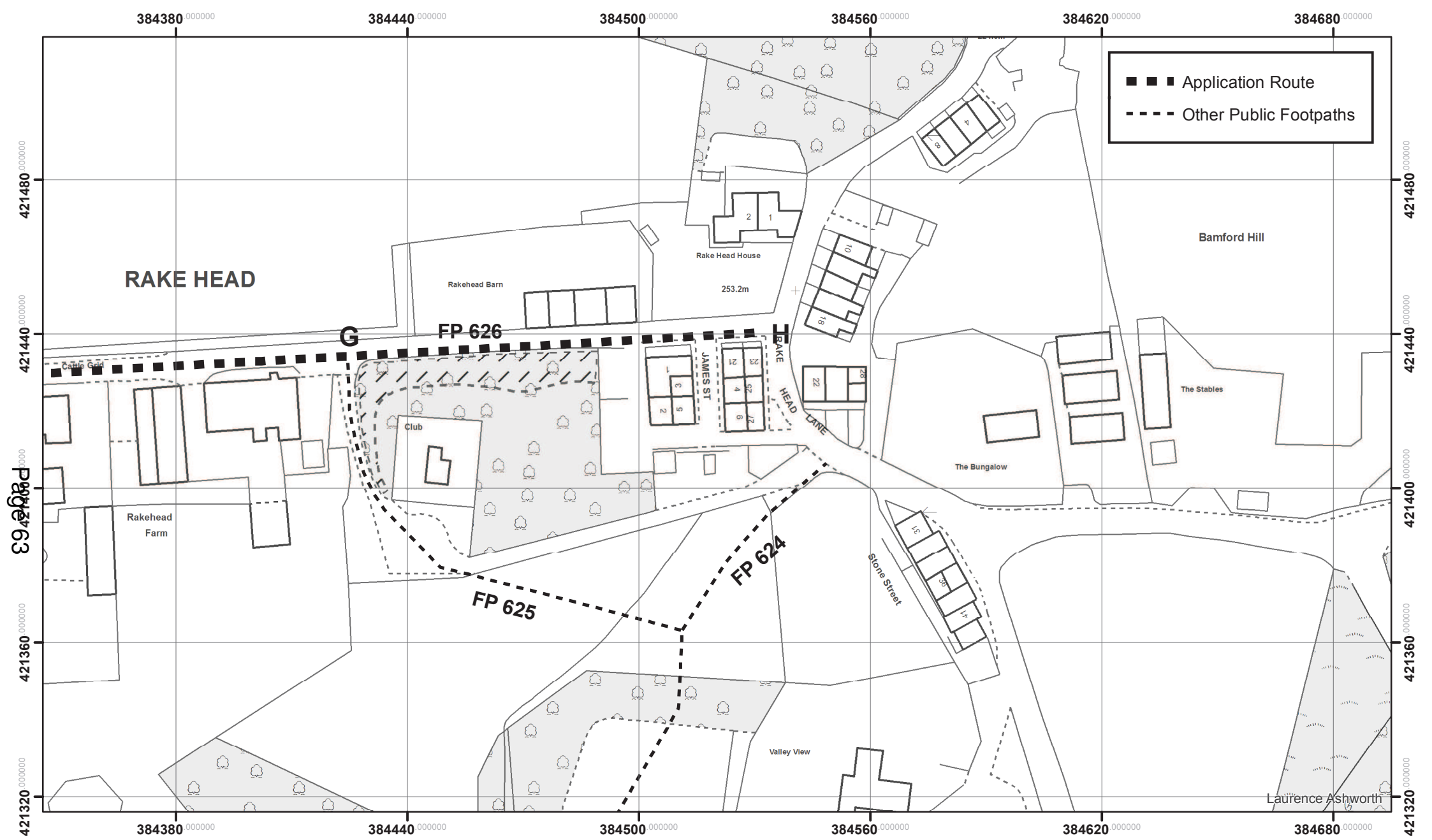
Wildlife and Countryside Act 1891  
Application to upgrade to Bridleway of Public Footpaths 638 (part of), 636, 627 and 626 Bacup, Rossendale Borough  
Application No. 804-539 - Plan No.2

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**Steve Browne**  
 Executive Director  
 for Environment

Wildlife and Countryside Act 1891  
 Application to upgrade to Bridleway of Public Footpaths 638 (part of), 636, 627 and 626 Bacup, Rossendale Borough  
 Application No. 804-539 - Plan No.3

1:1,250



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## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Pendle Central
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**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Claimed Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough**  
**File No. 804/468**  
(Annex 'A' refers)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

Megan Brindle, 01772 533427, County Secretary and Solicitor's Group

[Megan.brindle@lancashire.gov.uk](mailto:Megan.brindle@lancashire.gov.uk)

### **Executive Summary**

Application for a Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804/468.

### **Recommendation**

1. That the application for a Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804/468, be accepted but with the higher status of restricted byway
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-C.
3. That being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State

### **Background**

An application has been received from Mr Tom Partridge on behalf of Pendle Borough Council for a public footpath extending from a point on Hagg Street to a point on Short Street, Colne, Pendle Borough, a distance of approximately 135

metres, and shown between points A-C on the Committee plan, to be recorded on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53 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. A public right of way for mechanically propelled vehicles may have been extinguished by the Natural Environment and Rural Communities Act 2006.

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

## **Consultations**

Pendle Borough Council

The Borough Council is the applicant and therefore is in support of it.

Parish Council

There is no Parish Council for this area.

Applicant/Landowners/Supporters/Objectors

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

## **Advice**

### **Executive Director for the Environment's Observations**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8851 3951	Junction with Hagg Street
B	8855 3953	Point on application route adjacent to the north east end of stone retaining wall
C	8864 3955	Junction with Short Street

### **Description of Route**

A site inspection was carried out on 22 August 2014.

The route commences on Hagg Street (point A on the Committee plan), as a continuation of Atkinson Street.

The application route extends from point A along a 1.2 metre wide tarmac surfaced path with the grass on either side having been recently mown to a width of approximately 1 metre.

South of the application route was a substantial stone retaining wall of the adjacent properties and on the north side the route was unbounded and open to an area of trees. A salt bin and dog waste bin were situated on the land adjacent to (and north of) point A.

The tarmac surface of the route was in good condition and extends from point A descending gently down a slope in an east north easterly direction adjacent to the retaining wall to point B adjacent to the north eastern end of the retaining wall.

From point B the application route continued over the macadam surfaced path in a generally easterly direction bounded to the south by a timber post and sheep netting fence obscured by overgrowth. There was a metal field gate in this fence, approximately 15 metres east of point B, leading into a field. The gate was overgrown with vegetation and did not appear to have been used recently.

On the north side of the tarmac path there was a mown grassed strip between the path and a similar fence, giving an overall width of approximately 4 metres. This fence had a reasonably well-maintained hedge behind it.

The fences enclosing the application route continued on either side to the rear of 14 Short Street at which point the fence on the north side of the route ended. The tarmac path continued with an adjacent stone paved footway immediately adjacent

to the northern end of 14 Short Street to point C where the application route ended at the junction with Short Street.


The whole of the application route was open and available for use and appeared to be in regular use. There were no signs or notices on the route to prohibit access and there was a dog waste bin close to point A. The surface was in a good condition throughout and the grass to the sides was clearly well maintained and mown.

The total length of the route is 135 metres.

### Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Honour of Clitheroe Map</b>	1804	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically showing the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The application route is not shown.
Investigating Officer's		The route did not exist as a major route at the time

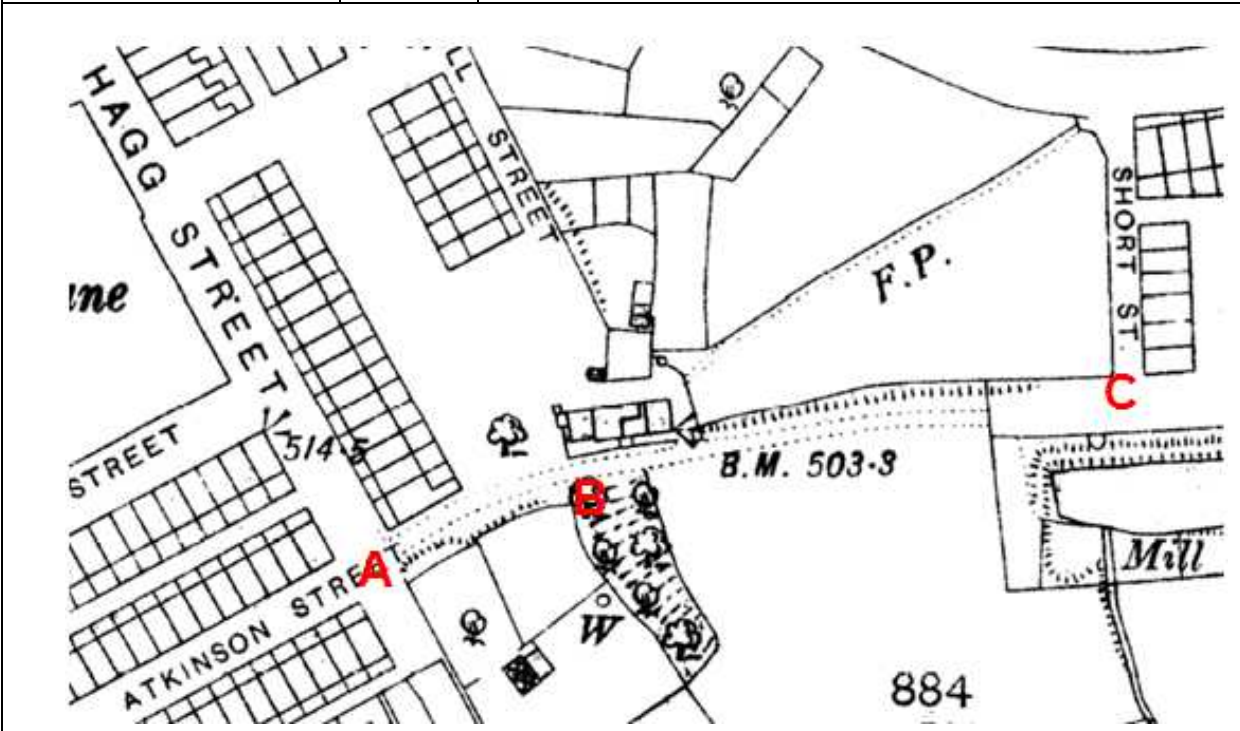
Comments		although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		No canals or railways are located in the immediate proximity of the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1842	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p> <p>The Tithe Map for Colne was published in 1842 (CRO ref DRB1/55)</p>
Observations		The area over which the application route runs is not shown on the map.
Investigating Officer's Comments		No inference can be drawn.

<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award covering the affected area.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. <sup>1</sup>
		
Observations		Hagg Street is shown as an unbounded road (double pecked line) but Short Street is not shown. A building is shown to exist north of the application route but the application route itself is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1844
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of 25 inch to the

<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



mile. Surveyed in 1891 and published in 1893.

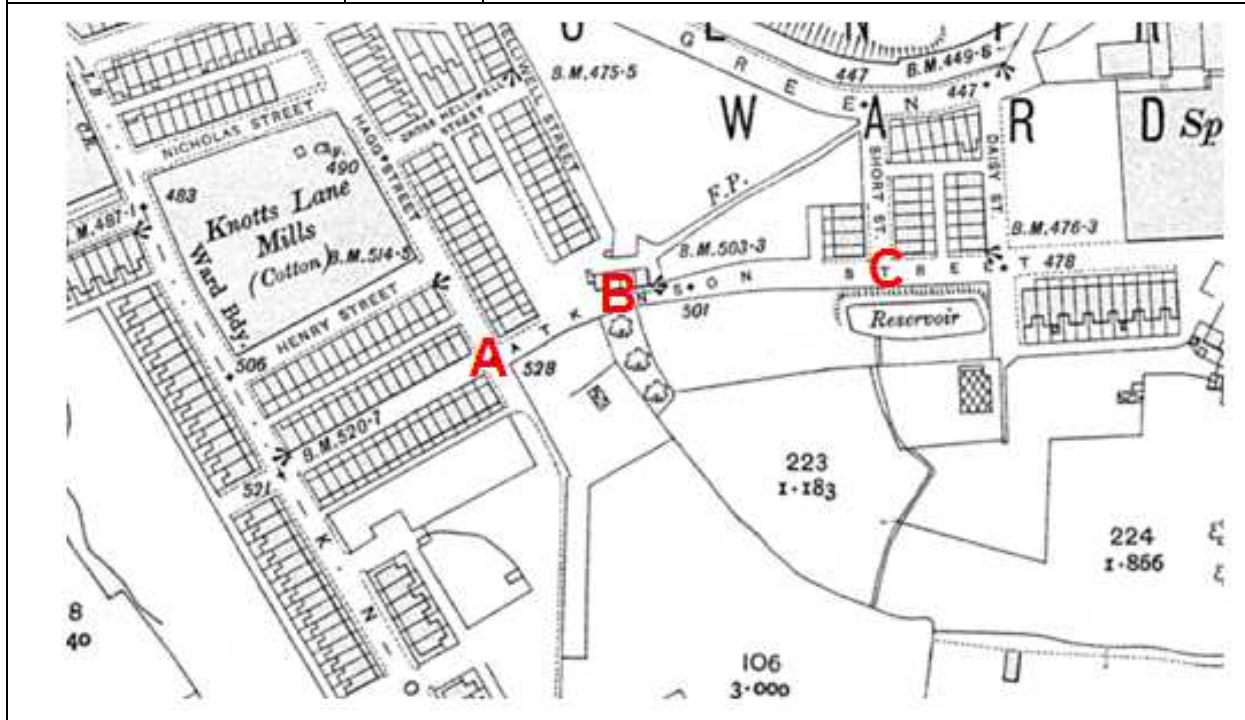


Observations	<p>The application route is shown to exist. Between the date of the first 6 inch map surveyed in 1844 and 1891 significant development has taken place and terraced housing built along Hagg Street up to and adjacent to the application route at point A. Further housing is shown west of point A and Atkinson Street is shown and named on the map extending from the west as far as point A. The application route is shown as a double pecked line through point B where it passes properties located immediately to the north to a point approximately 20 metres west of point C where a solid line is shown across the route which may indicate the existence of a boundary – possibly gated. Beyond this point the application route continues along a bounded section of what appears to be a cul de sac leading to the junction with Short Street. Number 14 Short Street is not shown on the map and the short bounded section is not shown as being coloured or shaded.</p>
Investigating Officer's Comments	<p>The application route existed in 1891 and appeared to be capable of being used by the public on foot. It appears to have provided access to properties to the north of point B (although alternative pedestrian 'footpath' access is also marked). A line is shown across the route approximately 20 metres west of point C. The application route is shown to extend as an unbounded track as far as this line and it is</p>

reasonable to conclude that a gate would have existed at this point which may have restricted but not necessarily prevented access. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.

The public status of the route is not indicated by colouring or shading. Shading was often used to show the administrative status of roads on 25 inch maps produced between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is not shown in such a way suggesting that it was not considered to be a public vehicular route in 1891.

**25 inch OS Map**      1912      Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1912.



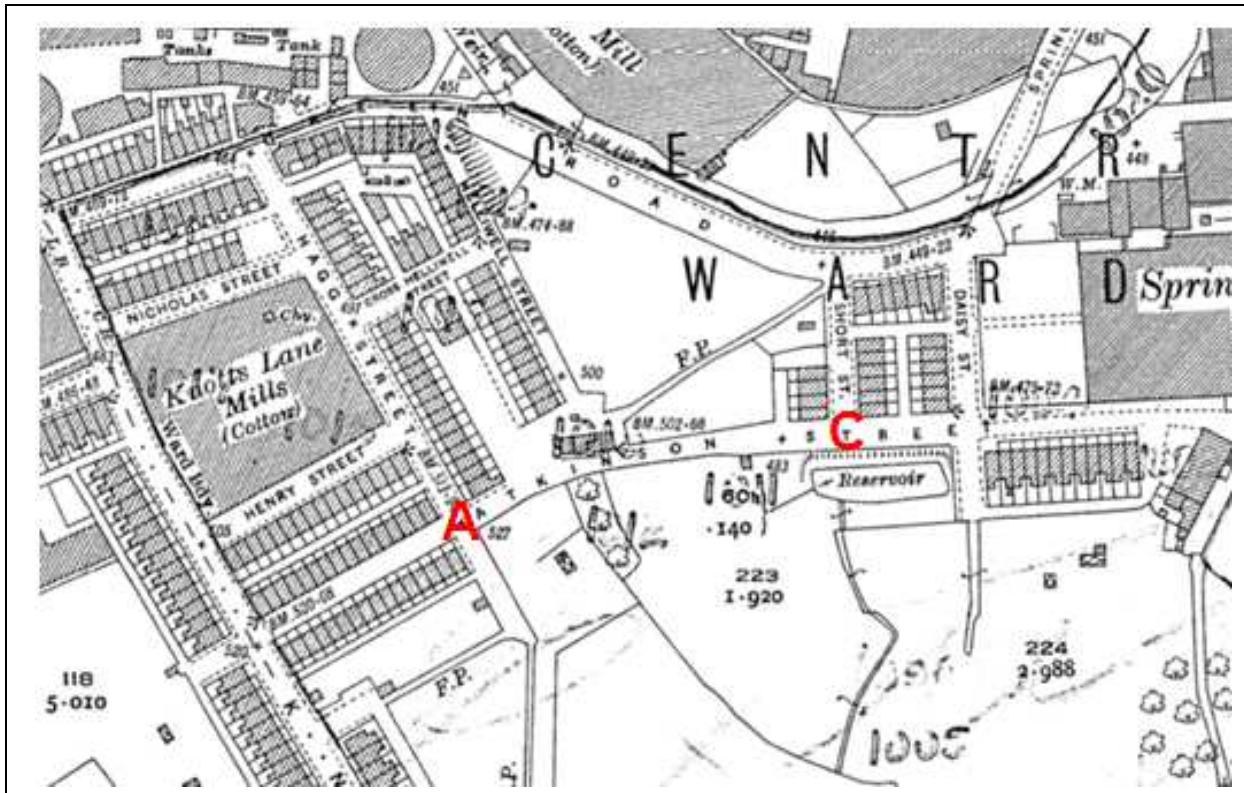
**Observations**

The full length of the route under investigation is shown and is labelled as forming part of Atkinson Street (which also extended west of point A and east of point C). It is bounded along its southern edge but a section is open and unbounded between point A and point B – possibly providing access to the properties on the north side of the route. No gates or barriers are shown to exist across the route.

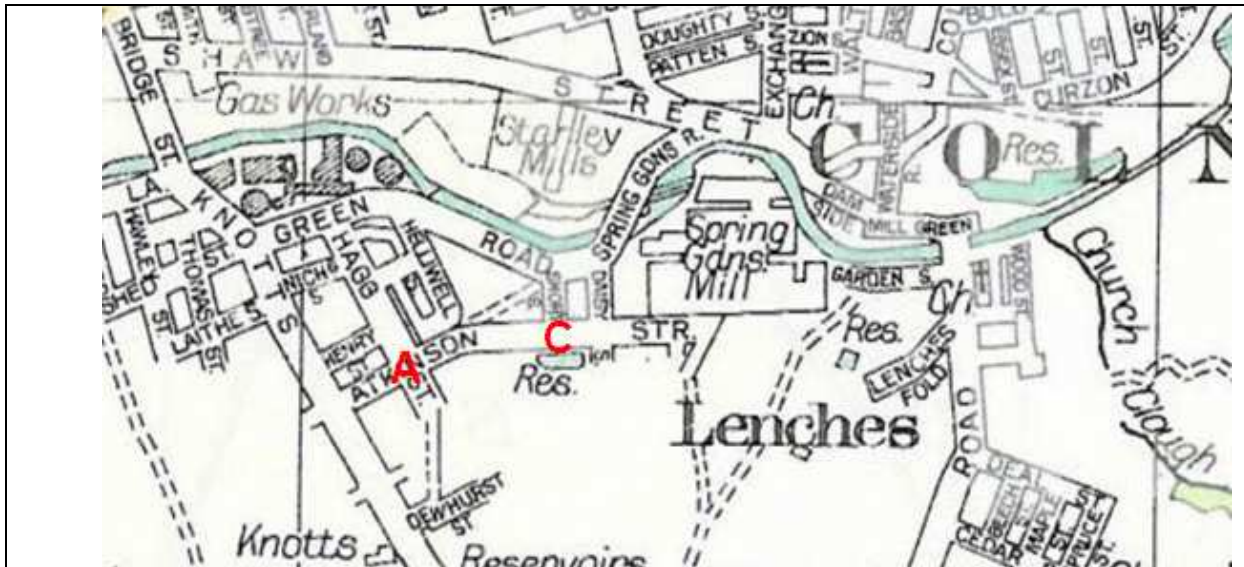
Investigating Officer's Comments		The application route existed in 1910 and appeared to be capable of being used by the public. It is named on the map as forming part of Atkinson Street suggesting that it may have appeared to the surveyor to form part of the vehicular highway network.
<b>Finance Act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



Observations		Finance Act plans from both the County Records Office and National Archives were inspected. Both sets of records show the application route excluded from the numbered hereditaments.
Investigating Officer's Comments		The exclusion of the full length of the application route from the adjacent numbered hereditaments is suggestive of, but not conclusive of, public carriageway rights. The records suggest that the route may have been considered to be a public vehicular highway at that time.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1891, revised in 1929-30 and published 1932.



Observations		The full length of the route under investigation is as it was on the earlier 1912 edition of the map.
Investigating Officer's Comments		The route under investigation existed and appeared capable of being used by the public as part of the vehicular highway network circa 1930.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.

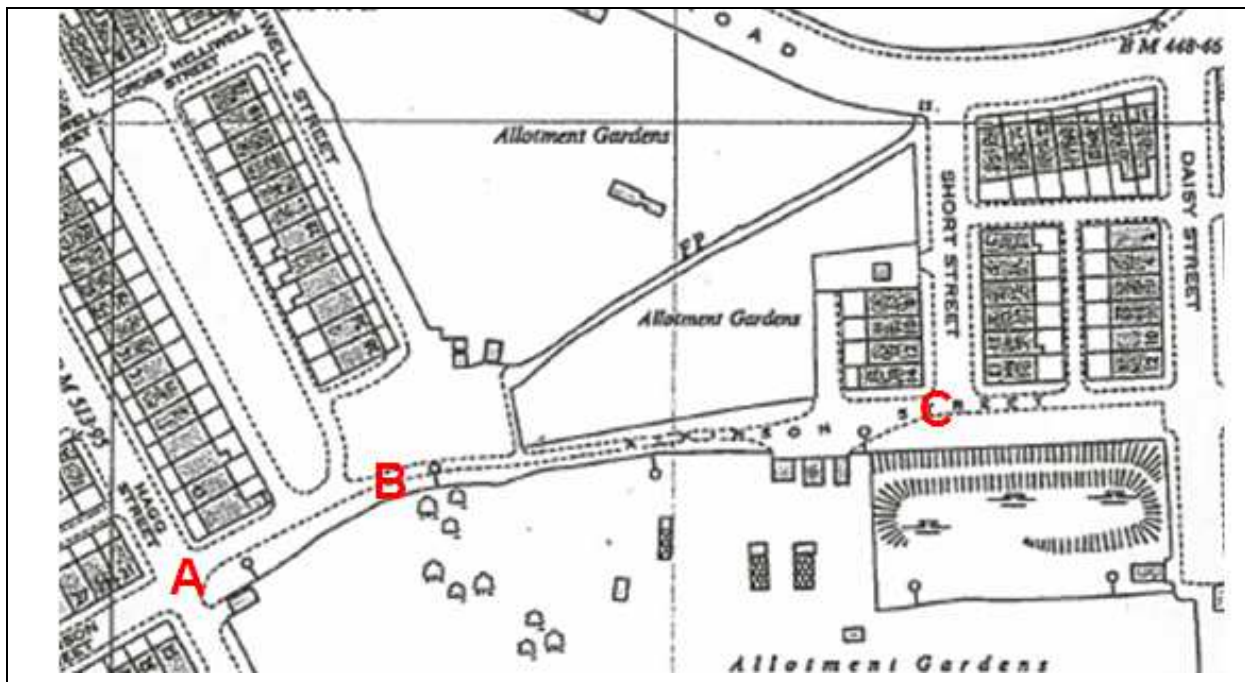


Observations		The full length of the route under investigation is shown as part of Atkinson Street.
Investigating Officer's Comments		The route under investigation existed in the 1930s and formed part of Atkinson Street. The primary purpose of the atlas was to show public vehicular routes suggesting that the route may have been considered to be part of the public vehicular highway network at that time.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

<sup>2</sup> 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.



Observations		The full length of the application route can be clearly seen. The route between point A and point B appears to be of a substantial width. Either side of point B less substantial routes can be seen leading to other areas/properties. From point B to point C the route can be seen but does not appear to be as wide or substantial as the first part of the route.
Investigating Officer's Comments		The route under investigation existed in the 1940s and appeared to be capable of being used by the public. The appearance of the route on the aerial photograph suggests that the route would have been capable of being used by vehicles but it does not appear to be made up to the same standard as the connecting routes.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
Observations		The route under investigation is shown and is labelled as Atkinson Street on the map. It is shown in the same way as it is depicted on the 1932 25 inch map.
Investigating Officer's Comments		The route under investigation existed in 1955 and appeared capable of being used by the public.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1963 as national grid series.

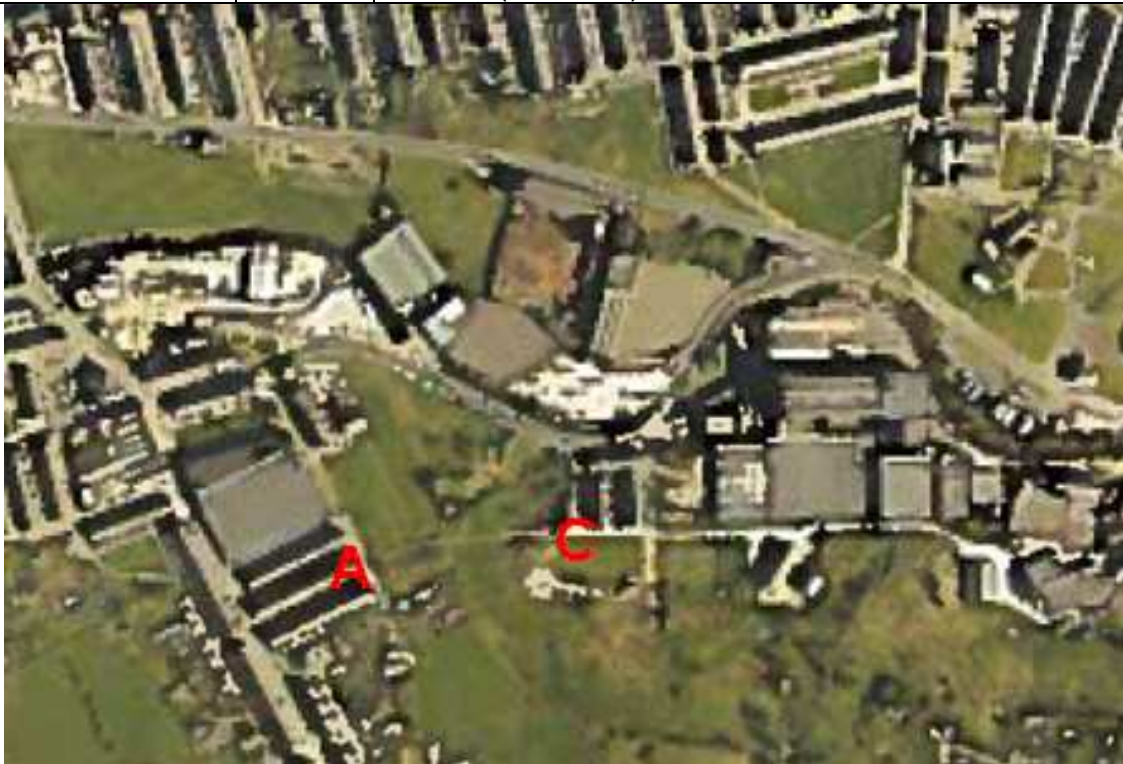


<p>Observations</p>		<p>The full length of the route under investigation is shown. A substantial and most probably surfaced track appears to have existed between point A and point B with access leading off at two points to routes running along the rear of the terrace houses on Hagg Street and Helliwell Street. The properties that existed immediately north of the route close to point B are no longer shown to exist. Allotment gardens are shown on either side – but fenced off from the route. Between point B and C the double pecked lines indicating a narrower track than the section between point A and point B but within the same wider boundaries. The route is still labelled on the map as Atkinson Street although the labelling is positioned towards the eastern end at point C.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1960 and appeared to be capable of being used by the public.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>






Observations		The full length of the route under investigation can be seen (although partially obstructed by trees close to point B). It appeared to be a substantial track although it is not possible to determine from the photograph whether it was surfaced.
Investigating Officer's Comments		The route under investigation existed in the 1960s and appeared to be capable of use by the public.
<b>Aerial Photograph</b>	1990	Colour aerial photograph available to view at LCC Offices (Cuerden).



Observations		The clarity of the aerial photograph when scanned and enlarged is poor. However, it is possible to see that by 1990 the area surrounding the route under
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		investigation appears to have changed considerably since the 1960s. The houses along Hagg Street and Helliwell Street have been demolished and the area has grassed over leaving no visible trace of their existence. A faint track – becoming clearer as you approach point C – can be seen along the line of the route under investigation.
Investigating Officer's Comments		The route under investigation still appears to have existed in 1990 but use appears to be either less frequent or possibly more consistent with a public footpath than the use of the route in the past.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.
		
Observations		The route under investigation can be seen between point A and point B. The worn track appears to continue east from point B but then is less visible as it approaches point C. An area of woodland has become established north of the route between point B and point C. At least one car appears to be parked on the route just west of point C.
Investigating Officer's Comments		The route is clearly visible between point A and point B but it much more faintly visible from that point onwards. The route still appears to have existed and to be capable of being used but that use appears to be either less frequent or possibly more consistent with a public footpath than use in the past.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the

		preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district 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		Colne was an Urban District in the early 1950s and so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. It was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown on the Draft Map as a public right of way. No objections or representations were made to the County Council about the fact that the route was not included on the map.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the provisional Map and no representations about it were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights

		of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections relating to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
<b>Lancashire County Council Highway Records</b>		In 1929 the responsibility for non-county highways passed from district and borough councils to the county councils. For the purposes of the transfer,

public highway 'handover' maps were drawn up to identify all the public highways within the county. These were based on existing Ordnance Survey maps coloured and annotated to mark public highways.

A highway marked on the map is good evidence but many highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions. The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date list of streets maintained at the public's expense. Although referred to by those who use them as adoption records very few of these highways have actually been formally adopted but are publicly maintainable by custom, reputation or age.





<p>Observations</p>		<p>The Applicant submitted a plan obtained from the LCC Highways Office at Linden Road, Colne showing publicly maintained routes coloured red and those that were not maintained coloured green. This plan is consistent with the road classification layer on the LCC Mapzone and MARIO GIS systems which shows the route under investigation as being privately maintained.</p> <p>A search of Lancashire County Council highways records revealed a copy of a document titled 'Borough of Pendle, Borough Engineers Department, Street Register – Including Street Lengths'. The document was not dated. Within the document Atkinson Street is listed under 4 consecutive listings. Only the first of these entries records part of Atkinson Street as being 'adopted' and the measurement given is consistent with the measurement for that section of Atkinson Street which extends in a south westerly direction from point A and which is recorded in the LCC records as being maintainable at public expense. The route under investigation is included within the second listing: 'Atkinson Street – Daisy Street' which is recorded as being unadopted in the register.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is not considered to be publicly maintainable but may still have been considered part of the highway network.</p>
<p><b>Highway Stopping Up Orders</b></p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records</p>

		Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		In considering that Atkinson Street may have historically included the route under investigation a search of the records was made to see whether any orders had been made to stop up or divert it since 1835 to the current day. No reference to the route under investigation being stopped up or diverted could be found.
Investigating Officer's Comments		If the route under investigation is considered to be a public highway no legal order has been made to stop up or divert it in the past.

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.

The affected land is not registered common land.

### **Landownership**

Ownership of the land over which the route crosses is unknown and is not registered with the Land Registry. The applicant has posted notices on the site notifying the Owner/Occupier of the application, but no representations have been received in response.

### **Summary**

The route under investigation is not shown on any maps prior to the 1890s.

The route is first shown on the First Edition 25 inch OS map published in 1893 (survey dated 1891) and between the 1840s and 1890s it is apparent that there was significant development in the area. It appears to have had a gate near point C.

From the second edition 25 inch OS map surveyed 1910 onwards the route is shown ungated and appears to have been part of the general vehicular highway network. On this, and some subsequent maps it is named as Atkinson Street, including the Geographia map directory primarily showing vehicular highways.

The 1910 Finance Act records show the route excluded from the adjacent numbered hereditaments and is suggestive of, but not conclusive of public carriageway rights.

Aerial photographic evidence from 1940s onwards confirms its existence and use, although the nature of use cannot be inferred, and it became increasingly less worn suggesting diminishing use and more likely to be on foot. This is supported by the depiction on the 1963 1:2500 OS map indicating the route appeared to have become narrower and less significant than those to which it connected to at either end.

Highway records recognise this way but not as publicly maintainable.

To conclude, records from the early 1900s are suggestive of the fact that the route formed part of the vehicular highway network but there is no record of it being publicly maintainable. The significance of the route during the second half of the 1900s appears to have reduced – possibly due to the demolition of the terrace housing on Hagg Street and Helliwell Street and the property that had been situated adjacent to the route just north of point B and site, map and photographic evidence from the 1960s onwards is more consistent with footpath use.

If it is accepted that the route has early map and documentary evidence for public carriageway rights it does not appear that those rights have been subsequently legally extinguished by a specific legal order but the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights.

### **County Secretary and Solicitors Group Observations**

#### Information from the Applicant

The Claimant has submitted 24 evidence of use forms in support of this claim, showing knowledge of the route for over 40 years (1); 30-39 years (2); 20-29 years (9); 10-19 years (7); and less than 10 years (5).

The forms give evidence of use of the route for over 40 years (1); 30-39 years (2); 20-29 years (8); 10-19 years (8); and less than 10 years (5).

Frequency of use had varied from daily to monthly, with several forms mentioning witnessing many other users on a daily basis. The path has been used as access to local amenities such as school, shops, and workplaces, as well as visiting friends. However some forms mention leisure use and the proximity of the path to a children's play area. Two forms mention the fact that the path was upgraded and surfaced a few years ago as part of a community scheme carried out by Groundwork and the local community and now forms a pleasant woodland walk. Four users have ridden the route by bicycle.

None of the users have ever asked or been given permission to use the route. Several say that the local community has always viewed the route as a public right of way, with one mentioning the fact that it clearly shown on an A to Z map and another claiming that it is known as Atkinson Street. No user has ever seen any gate or other obstruction along the route, and none has ever been challenged or turned back, nor seen any prohibitive signs.

Also submitted in support of the Claim are an extract from the First Edition 1:2500 map, a 1940s aerial photograph, and photographs of the route. All of these show the route clearly defined, and the photographs show a tarmacadam surface.

An extract from the Highway Adoption map shows the route coloured green for unadopted highway.



## **Assessment of the Evidence**

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

#### In Support of the Claim

User evidence  
OS map evidence  
Ariel photographs  
Highways records and 1910 Finance Act records  
No action taken by owners

#### Against Accepting the Claim

Route not shown on maps prior to the 1890's.  
Some map evidence suggests that whilst the route formed part of the vehicular highway network there is no record of it being publicly maintainable.  
Significance of the route during the second half of the 1900's appears to have reduced.

#### Conclusion

The claim is that this route is in law a public footpath and should be recorded on the Definitive Map and Statement as such.

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

There are two sets of evidence. The early set, being map and documentary evidence, suggests that Committee should first consider whether dedication under common law and the higher status of restricted byway can be inferred.

It is advised that the Committee has to consider whether evidence from the old map and other documentary evidence does on balance indicate how the route should be recorded. The analysis of the map and documentary evidence by the Executive Director for Environment suggests there is sufficient evidence on balance to indicate that this route was on balance dedicated as a public carriageway and is recorded by the early mapmakers as such. It is therefore suggested that there are circumstances from which to infer an early dedication of the route for use by the public. However, during the period of consideration it may be difficult to indicate an intention by the landowner to dedicate as whilst he did not take any overt action to prevent users for using the route, neither did he encourage this.

If Committee however is not content that the evidence of restricted byway is sufficient on balance then the user evidence should be considered and s31 applied together with the common law.

S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that

their use of the route is being challenged. The evidence indicates that access to the route has never been questioned or denied and therefore the "calling into question" would be application itself in 2007 and the period of use required to be evidenced would be 1987-2007.

Looking at the twenty years 1987 – 2007 there are 11 users whose use dates back to 1987. Whilst evidence as to the frequency of use varies from daily to monthly, a number of users also refer to witnessing many other users on a daily basis. Whilst the user evidence is generally indicative of a right of way being available as claimed, it is not considered, in and of itself, to be sufficient to prove that the right of way exists. It is suggested that committee may consider that the user evidence in this matter is sufficient and use has been exercised as of right and without interruption for the whole route during 1987-2007. There does not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2007. It is therefore suggested to Committee that deemed dedication can be satisfied under S31.

Taking all the evidence both modern and old into account the Committee may consider that a dedication in this matter may be deemed under S31 or inferred under common law and that an Order be made and promoted.

### **Risk Management**

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

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-468	Various	M Brindle, 01772 535604, County Secretary and Solicitors Group

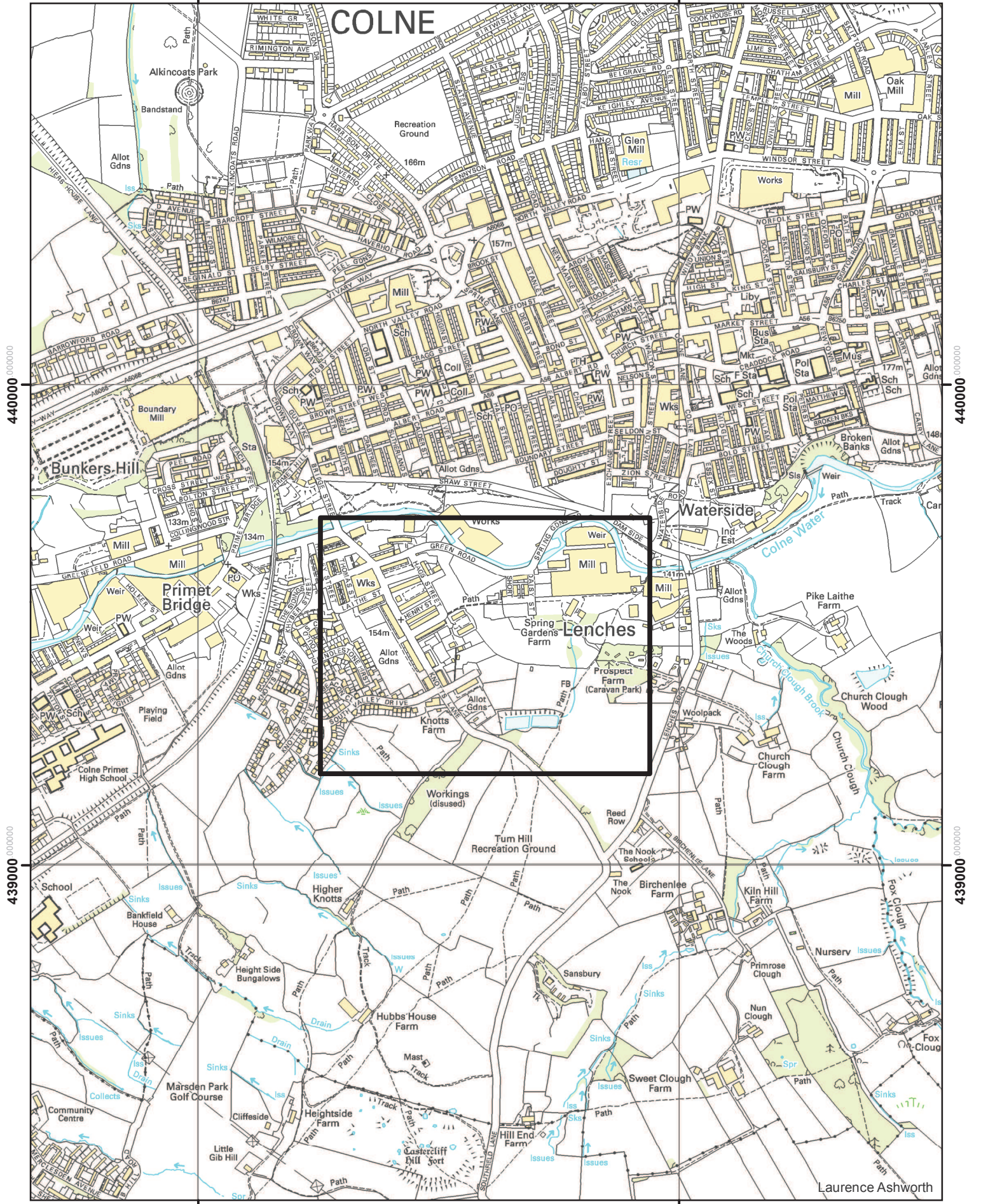
Reason for inclusion in Part II, if appropriate

N/A

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**Steve Browne**  
Interim Executive Director  
for the Environment

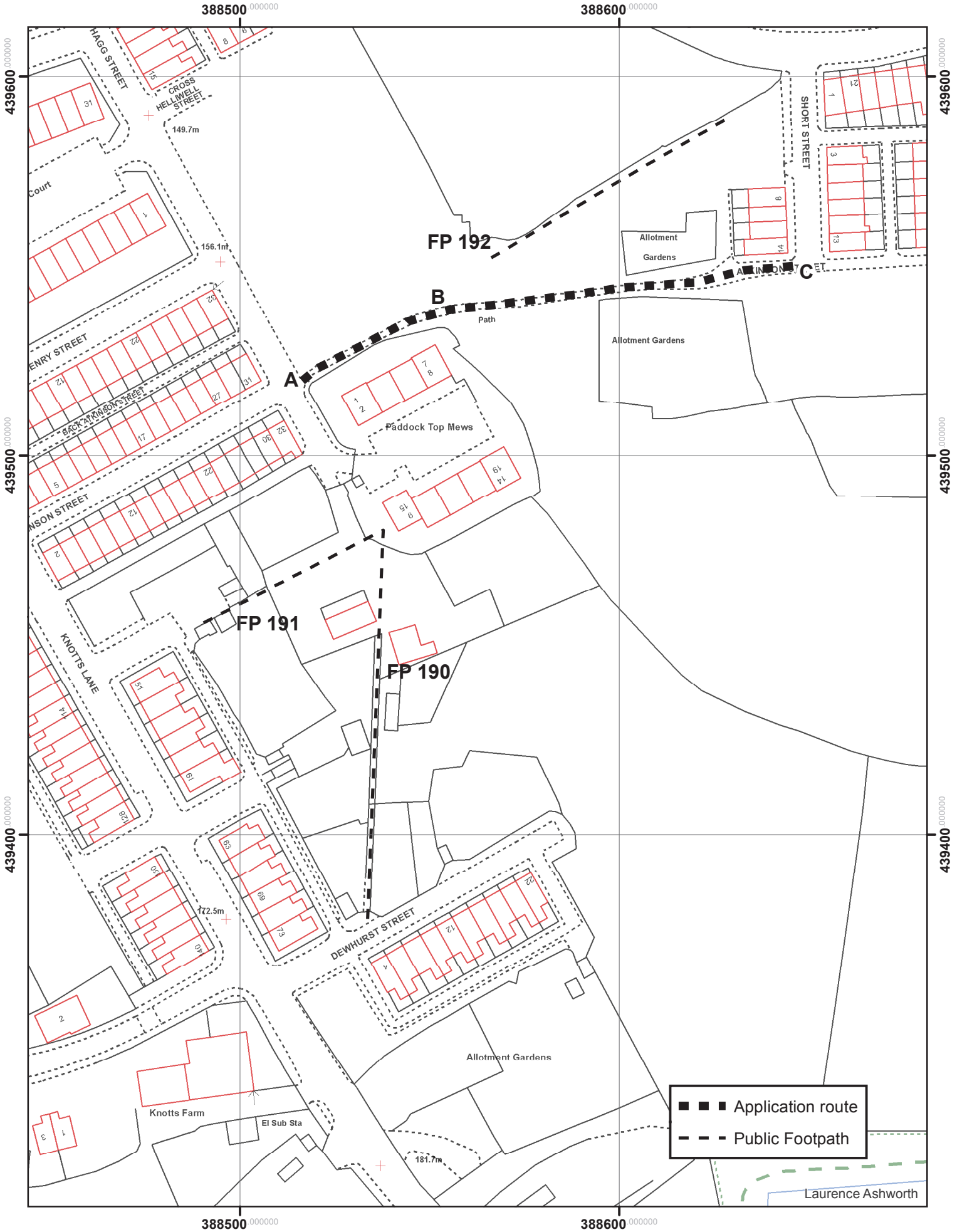
**Wildlife and Countryside Act 1981**  
**Claimed public footpath from Hagg Street to Short Street, Colne, Pendle Borough**  
File No. 804-468 LOCATION PLAN

1:10,000

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

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## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Rossendale East
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### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of Bridleway and Upgrade of Footpath to Bridleway from Rooley Moor Road to Cowpe Road, Bacup

File No. 804-538

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, County Secretary and Solicitors Group,

[megan.brindle@lancashire.gov.uk](mailto:megan.brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Environment Directorate,

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for the addition of a Bridleway and upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to Bridleway from Rooley Moor Road to Cowpe Road, Bacup. File No. 804-538.

### Recommendation

1. That the application for the addition of a bridleway and the upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleway from Rooley Moor Road to Cowpe Road, Bacup, (File No. 804-538), be accepted in part. Section B-C-D-E-F-G-H-I shown on the committee plan is accepted as a bridleway and section A-B shown on the committee plan is rejected.
2. That an Order be made pursuant to Section 53 (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and to upgrade Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleways on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between B-I.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from the Forest of Rossendale Bridleways Association for a public bridleway to be recorded on the Definitive Map and Statement of Public Rights of Way between points A-I on the Committee plan.

The application route extends from point A on Rooley Moor Road to a point I on Cowpe Road following a route currently recorded as Bacup Footpaths 617, 616 (part), 609 and 612 (part). A short section of the route applied for is currently not recorded as a public right of way between point C and point D on the Committee 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 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

An order for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (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 and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**



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

Applicant/Landowners/Supporters/Objectors

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

## Advice

### Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8444 2071	Open junction with Rooley Moor Road
B	8435 2072	Gate across route
C	8435 2072	Junction of Footpaths 617, 618 and 619 west of gate.
D	8432 2071	Unmarked junction of Footpath 616 with route
E	8429 2066	Unmarked junction of Footpaths 616, 609 and 610 with route
F	8425 2048	Gate across route
G	8424 2047	Junction of Footpaths 608, 609 and 612 at Boarsgrave Farm
H	8420 2052	Gate across route
I	8419 2053	Junction of Footpath 612 and southern end of U7774 Cowpe Road.

### Description of Route

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-617' or 'Bacup Footpath 617' but are referenced below in the abbreviated form 'Footpath 617' for brevity since all those referred to are in Bacup in Rossendale Borough.

A site inspection was carried out in March 2014.

The route commences at point A on Rooley Moor Road. It extends in a westerly direction following a compacted earth and stone surfaced access track recorded as Footpath 617. The track is approximately 3 metres wide and unenclosed. After approximately 80 metres the route is crossed by a 3 metre wide metal field gate at point B.

The route under investigation passes through the field gate - which was closed but not padlocked on the day that the route was inspected. To the north of the gate, built into the adjacent stone wall is a pedestrian kissing gate.

Immediately west of the gate at point C is the junction of Footpaths 617, 618 and 619. From point C the route continues along the compacted earth and stone surfaced track in a west south westerly direction departing from the routes of the recorded footpaths for approximately 25 metres to point D where it meets Footpath 616 at an unmarked point on the track.

The route under investigation then continues in a south westerly direction gradually descending downhill and following a clearly defined unenclosed track for approximately 55 metres to point E at the unmarked junction of Footpaths 616, 610 and 609. From point E the route continues for a further approximately 180 metres along the track in a generally south south westerly direction downhill towards point F. The track gets quite steep as it approaches point F following the bottom of a cutting.

At point F the route is crossed by a metal 3 metre wide field gate (which was closed but not padlocked) and an adjacent 1 metre wide pedestrian gate. Beyond the gate the route continues a short distance to meet Footpaths 608 and 612 adjacent to a farm building forming part of Higher Boarsgrave Farm at point G.

The route then continues in a north westerly direction along Footpath 612 passing a number of farm buildings currently used to repair vehicles to a 3 metre metal field gate at point H. It passes through the gate (closed but not padlock on the date that the route was inspected) and then continues in a north north westerly direction for approximately 30 metres along a 2.7 metre wide track to pass through a 3 metre wide metal field gate and adjacent 1m wide pedestrian gate at point I where a public footpath signpost is positioned pointing back along the route towards point H. A Lancashire County Council recently produced plastic notice has been attached to the gatepost saying 'Stop: This is a Public Footpath No Cycling!'

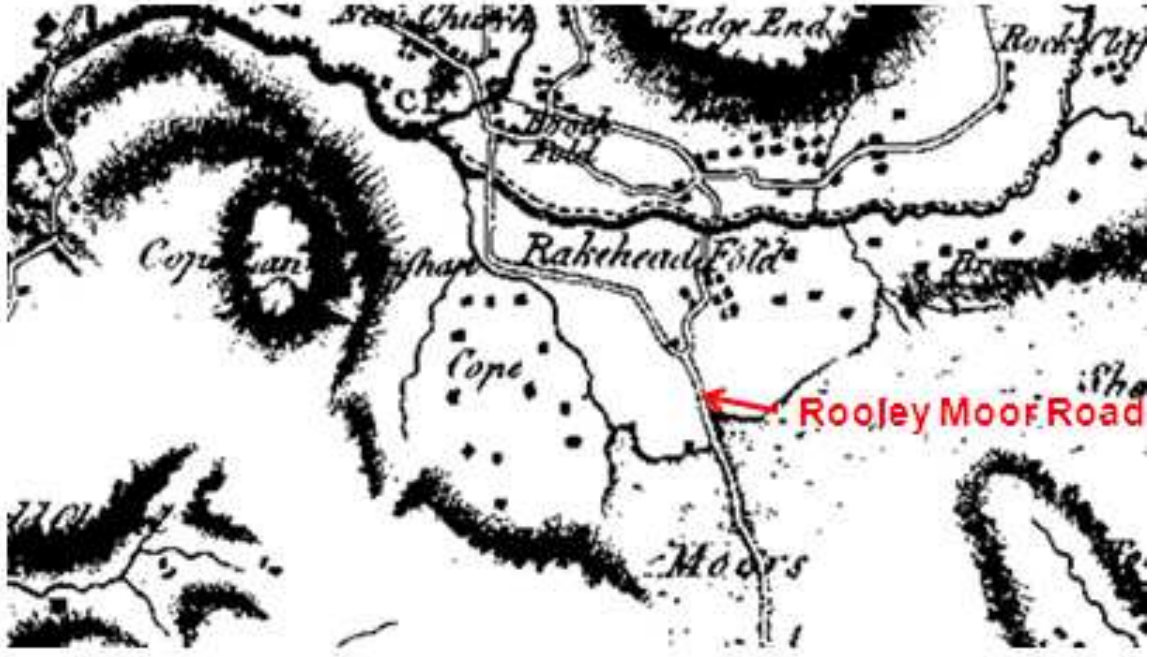
The route ends at point I where it meets the most southerly end of the section of Cowpe Road that is recorded on the County Council's List of Streets as a publicly maintainable highway (although it is also recorded on the Definitive Map as a Footpath for a further 140 metres along Cowpe Road).

The total length of the route under investigation is 460 metres and it is recorded as public footpath with the exception of a short section between point C and point D on the Committee plan.

When inspected there was no evidence that the route was currently being used by horses but unless the field gates at points I, F,H and G were padlocked access along the route would have been physically possible.

### Map and Documentary Evidence

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

		<p>were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.</p>
		
<p>Observations</p>		<p>Rooley Moor Road is shown but the route under investigation is not shown. The settlement of Cowpe is shown and labelled 'Cope' but there is no road shown leading to it and no route shown from Cowpe to Rooley Moor Road.</p>
<p>Investigating Officer's Comments</p>		<p>It is likely that the route, if it existed in 1786, was of little significance and was therefore not included on the map.</p>
<p><b>Greenwood's Map of Lancashire</b></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 and the two were not differentiated between within the key panel.</p>



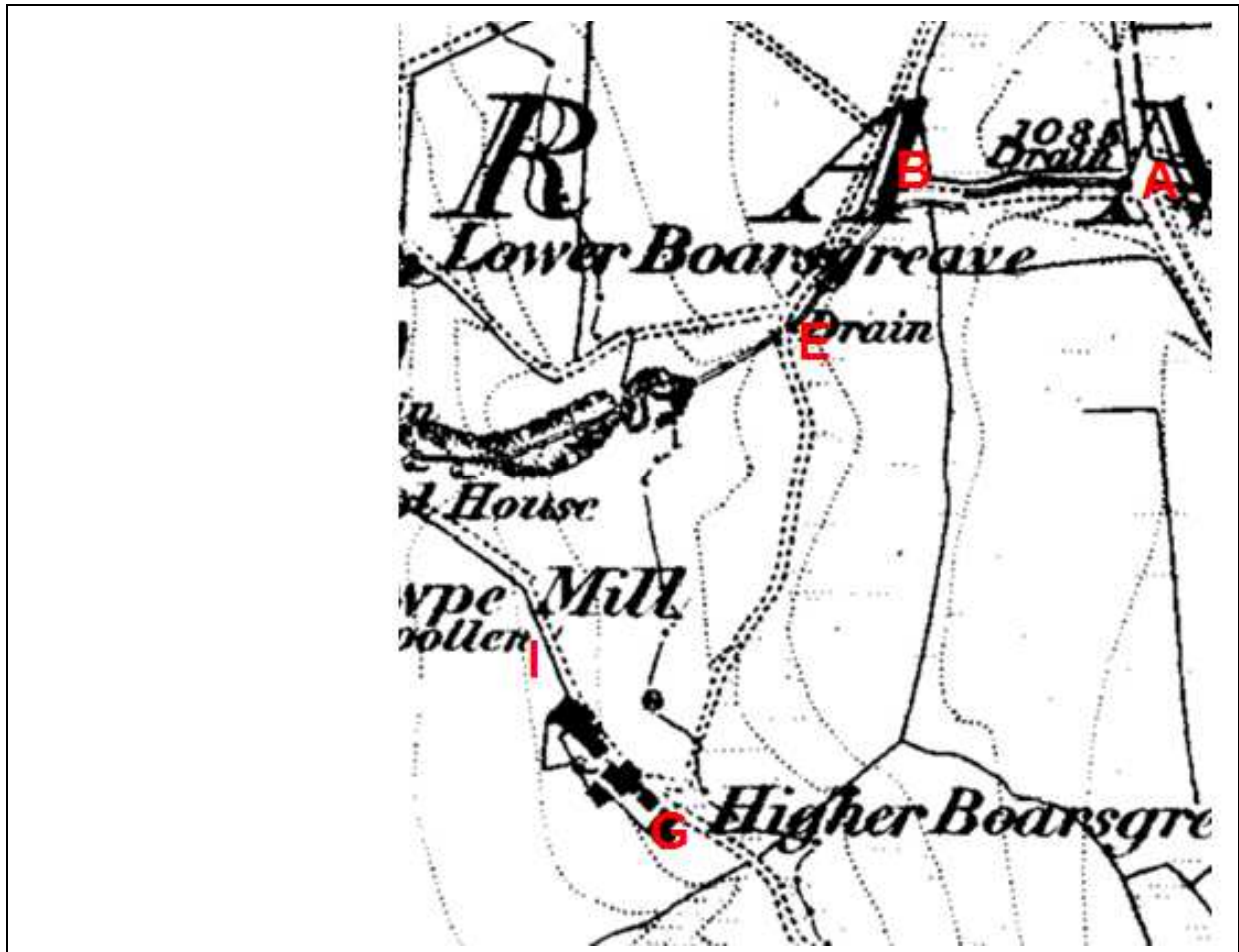
Observations		Rooley Moor Road is shown but the route under investigation is not shown. The settlement of Cowpe is shown and named but there is no road shown leading up to it or connecting to Rooley Moor Road. A track is shown coming off Rooley Moor Road leading to a property south of Boars Crag but this does not extend as far as Cowpe and is shown north of a watercourse and considered unlikely to be the route under investigation.
Investigating Officer's Comments		It appears likely that the route, if it existed in 1818, was of little significance and was therefore not included on the map.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the Country's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



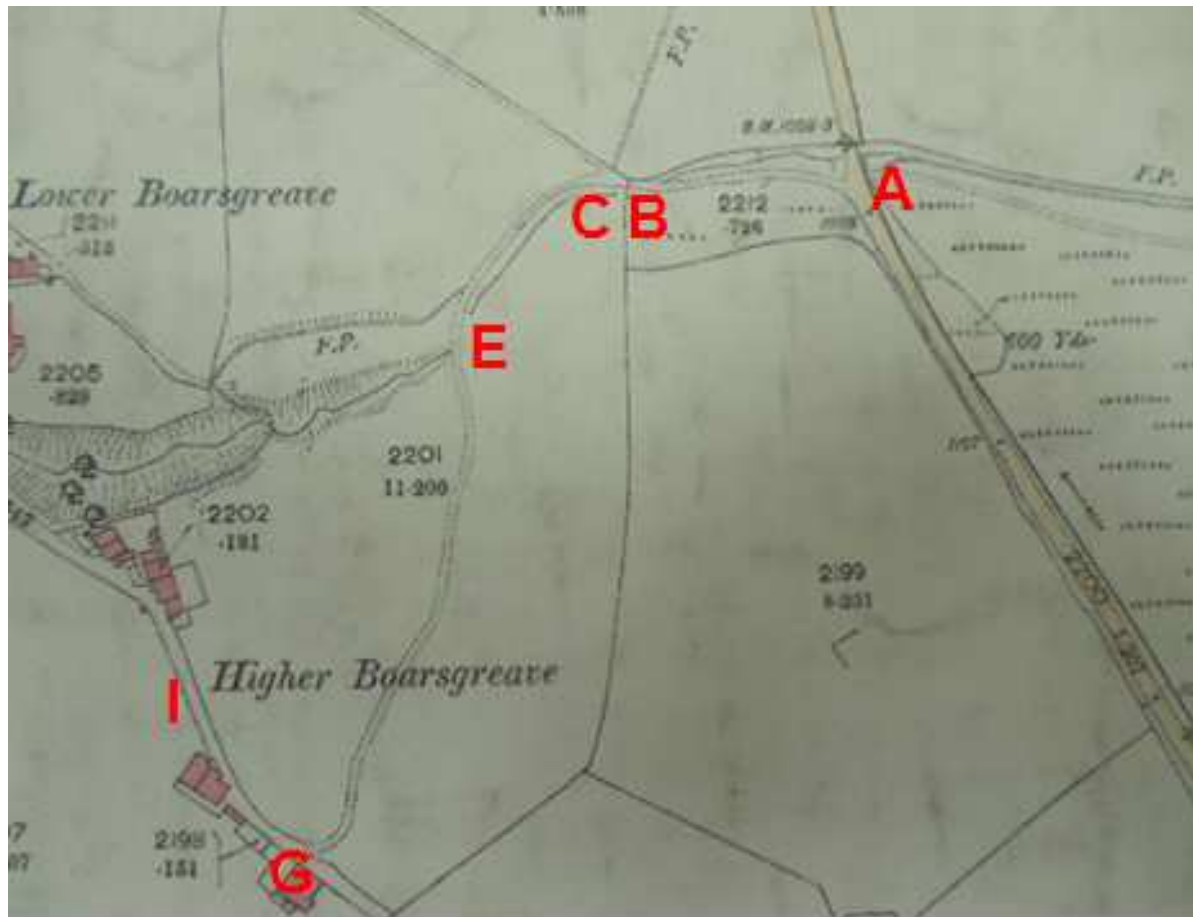
<p>Observations</p>		<p>Rooley Moor Road is shown and the village of Cowpe is shown and named. A property is shown and named Booth Greave which may depict the property on the route under investigation now known as Boarsgreave. A route appears to be shown from Rooley Moor Road to Booth Greave which may depict the route under investigation.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation may have existed in 1830 between Rooley Moor Road and Booth Greave. However this map appears to differ considerably from the 1<sup>st</sup> Edition Ordnance Survey map produced in the following decade and very little inference can be drawn.</p>
<p><b>Canal and Railway Acts</b></p>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available</p>

		for proposed canals and railways which were never built.
Observations		There are no canals or railways in the area of the investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>		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		Several Tithe Maps were inspected at the County Records Office but none covered the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award or Map for the relevant area.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>

<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations		The full length of the route under investigation can be seen existing as an unenclosed track. The buildings at Higher Boarsgreave appear to cross the track north west of point G but the track is then shown to continue beyond the farm in a north west direction towards Cowpe.
Investigating Officer's Comments		The route existed as a track in 1844-45 which may have been capable of being used by the public. It is not clear from the map whether access was available through Higher Boarsgreave farm due to the small scale and subsequent lack of detail but it is considered more than likely that it did form part of a through route.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



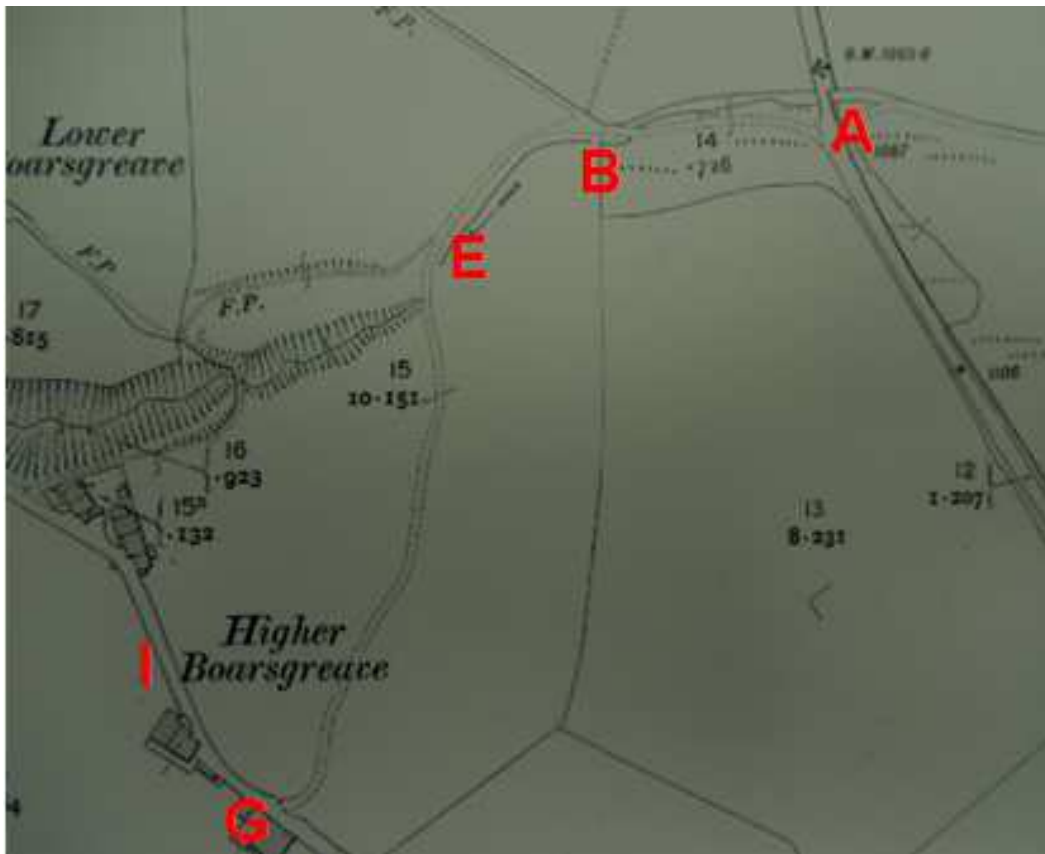
Observations

The whole of the route under investigation is shown as a substantial track on the map. Rooley Moor Road is shown coloured and shaded - a practice used by the Ordnance Survey on 25 inch maps from at least 1884 to 1912 to show the administrative status of roads and generally indicated that the route was a public road for wheeled traffic kept in good repair by the highway authority.

The route under investigation is not coloured. A dashed line is shown across the route at point A indicating a change in surface from that found on Rooley Moor Road. A solid line is shown across the route at point B indicating that a gate probably existed at this point. Two routes connecting to the route under investigation (close to point C and point E) are labelled as footpaths ('F.P') but the route under investigation is not labelled. There appears to be a further change in the surface indicated at point G where the route enters the farmyard and between point G and point I the route is bounded on either side.



Investigating Officer's Comments		The whole of the route under investigation existed in 1892 connecting Rooley Moor Road with Higher Boarsgreave and the hamlet of Cowpe. The routes currently recorded on the Definitive Map as Footpaths 618 and 610 are labelled as footpaths on the map but the route under investigation is not suggesting that it was more substantial in its construction and subsequent use. The fact that the route under investigation connected Rooley Moor Road with Cowpe – passing through, but not terminating at Higher Boarsgreave - suggests that it could have been used by the public on horseback at that time. The fact that a gate is indicated as existing across the route at point B does not mean that it could not have been a route used by the public and gates are not uncommon on rural and moorland routes where the control of livestock would have been (and still is) an issue.
<b>25 inch OS Map</b>	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1908 and published in 1911.



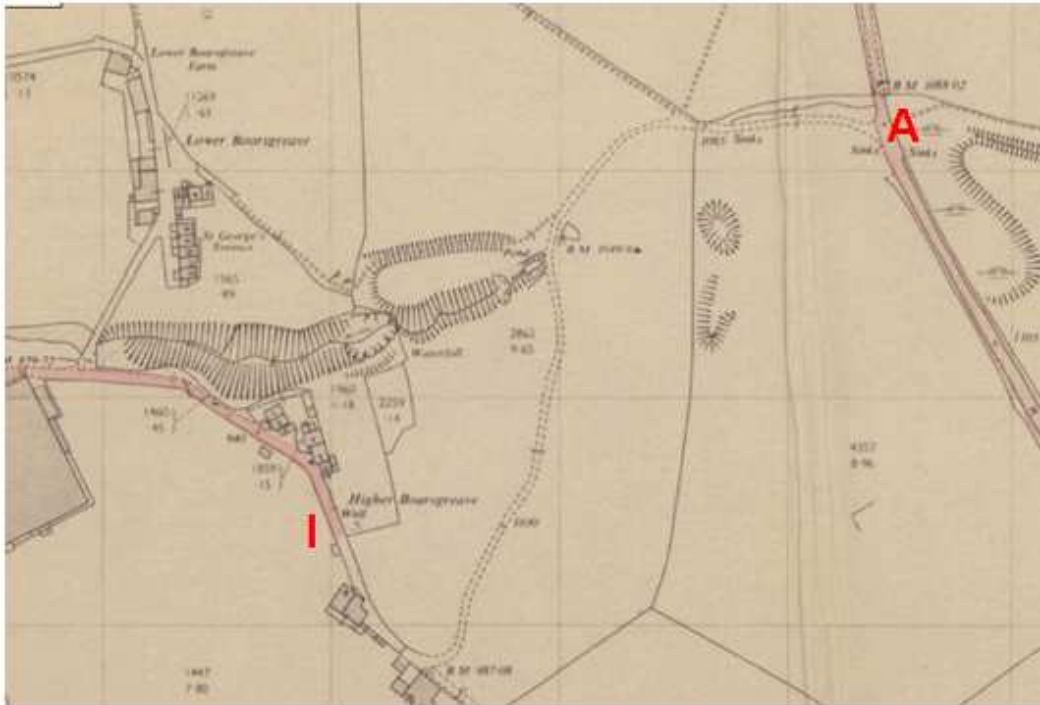
Observations		The full length of the route under investigation is clearly shown. A gate appeared to have existed at point B.
Investigating Officer's		The route under investigation existed in 1911

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

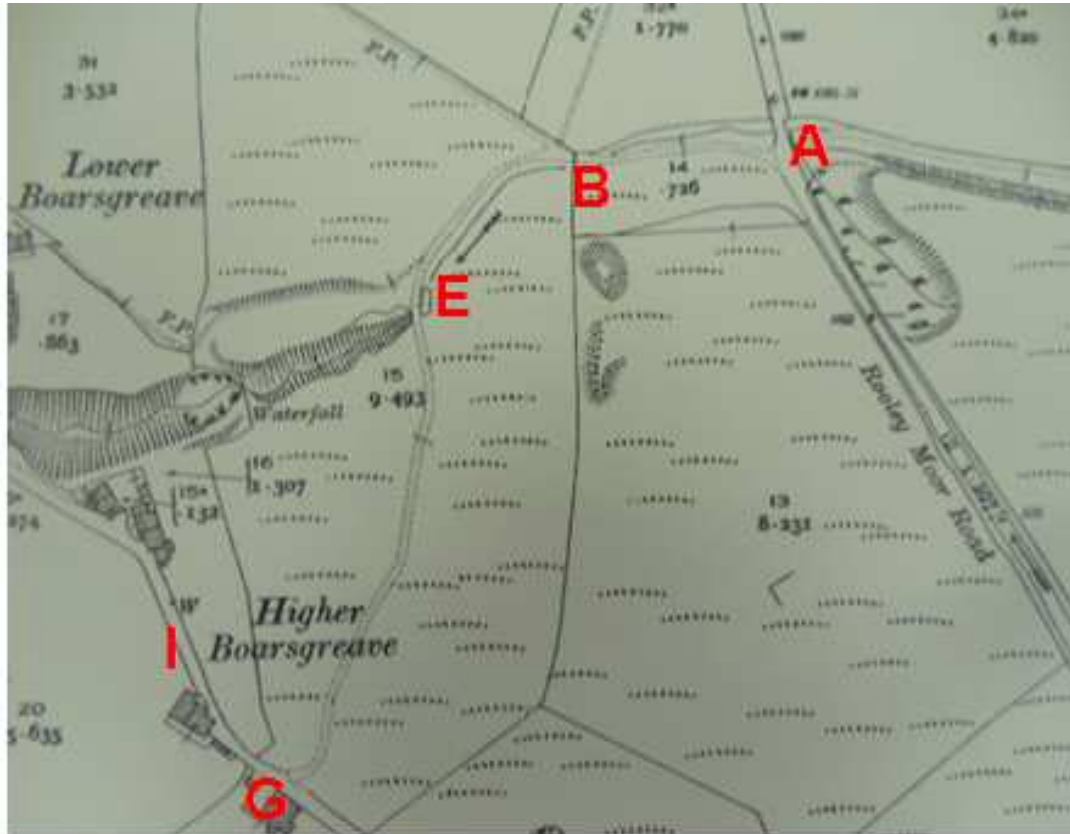


Observations		<p>The Finance Act plan was obtained from the National Archives.</p> <p>The Finance Act map shows the route under investigation included within the numbered hereditament 4302 between point A and point G.</p> <p>Between point G and point I the route under investigation is excluded from the numbered plots.</p>
Investigating Officer's Comments		<p>The fact that the route under investigation was included within a numbered plot between point A and point G suggests that it was not considered to be a public vehicular highway.</p> <p>The exclusion of that part of the application route between points G to I is good evidence of, but not conclusive of, public carriageway rights.</p>
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several</p>

		<p>flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>No part of the route under investigation is recorded on the List of Streets as a publicly maintainable highway.</p> <p>Cowpe Road is recorded on the current list of Streets as being publicly maintainable up to the start of the route under investigation at point I but not beyond.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation was not considered a surfaced way maintained at public expense.</p>
<p><b>25 Inch OS Map</b></p>	<p>1929</p>	<p>Further edition of 25 inch map (surveyed 1891, revised in 1927 and published in 1929).</p>

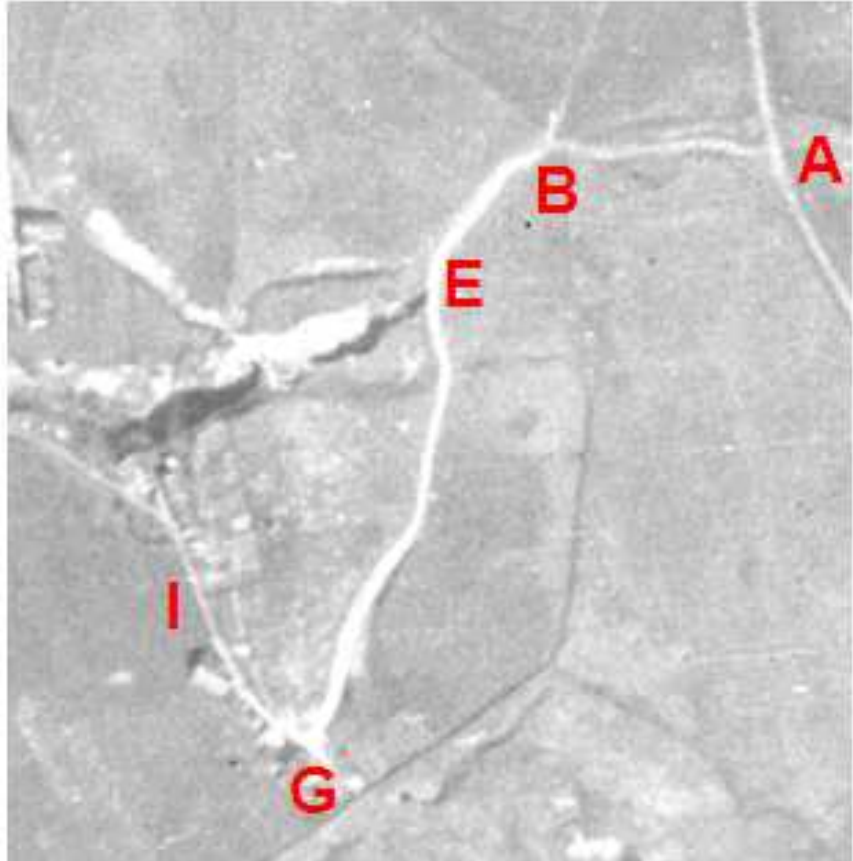


Observations		The route under investigation is clearly shown as it had been on earlier editions of the 25 inch map with a gate across the route at point B. Unlike the paths joining it the route is not marked F.P. suggesting that it was not only usable on foot, and it was open to and contiguous with the general public road network at each end.
Investigating Officer's Comments		The route under investigation existed in 1929 and appeared to be capable of being used by the public not only on foot.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. 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'.



Observations		The full length of the route under investigation is shown but is shown as an unbounded track between points E-G. It is not named.
Investigating Officer's Comments		The route under investigation existed but being unenclosed and gated would be less convenient as a through route for vehicles and perhaps more consistent with a footpath or bridleway.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

<sup>2</sup> 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.

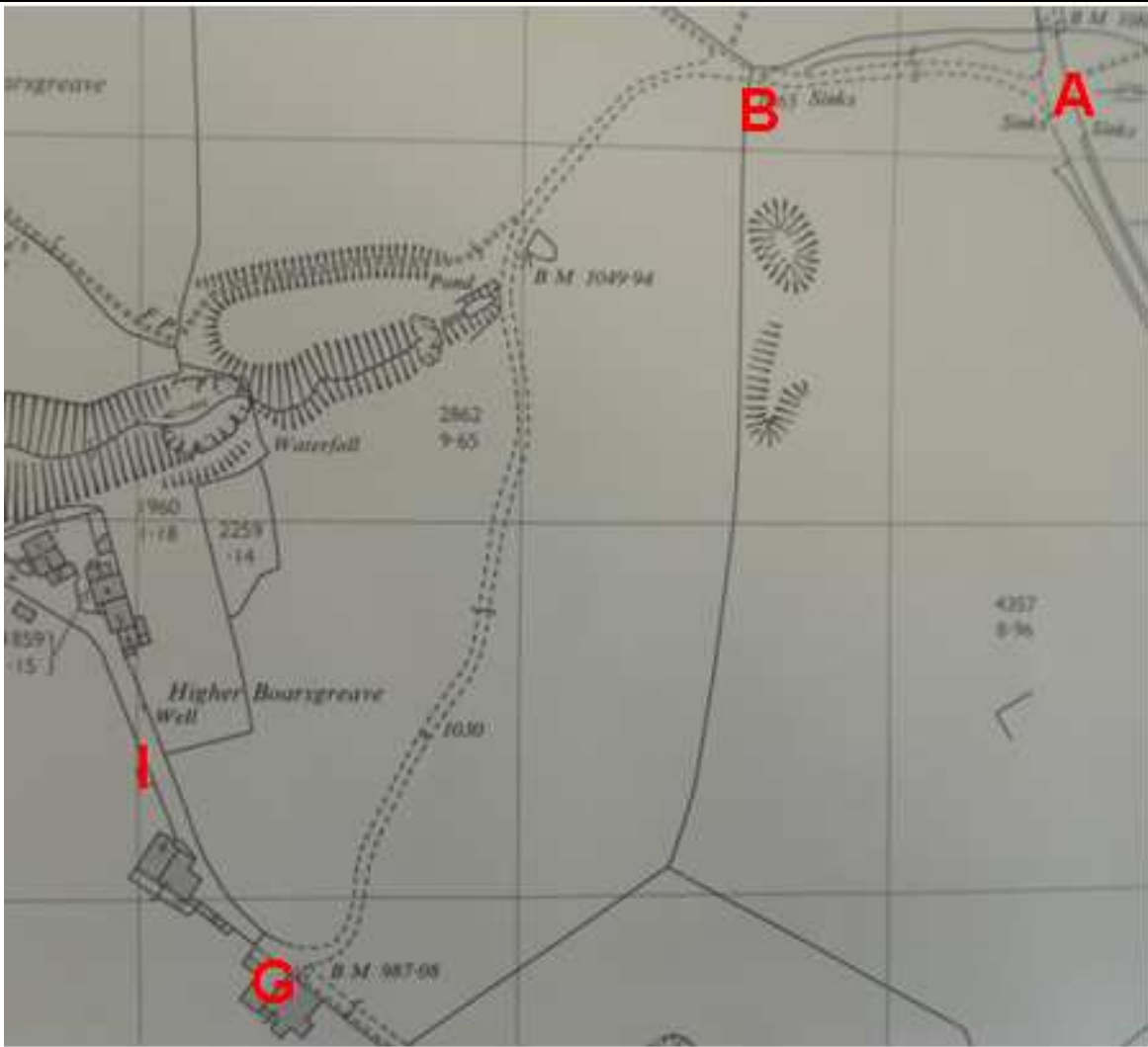


Observations		The whole of the route under investigation can be clearly seen in the photograph but it is not possible to determine whether it was crossed by any gates at that time.
Investigating Officer's Comments		The route shows up so well on the photograph as to suggest that there may have been substantial use, probably including vehicular use, at that time.
<b>6 Inch OS Map</b>	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

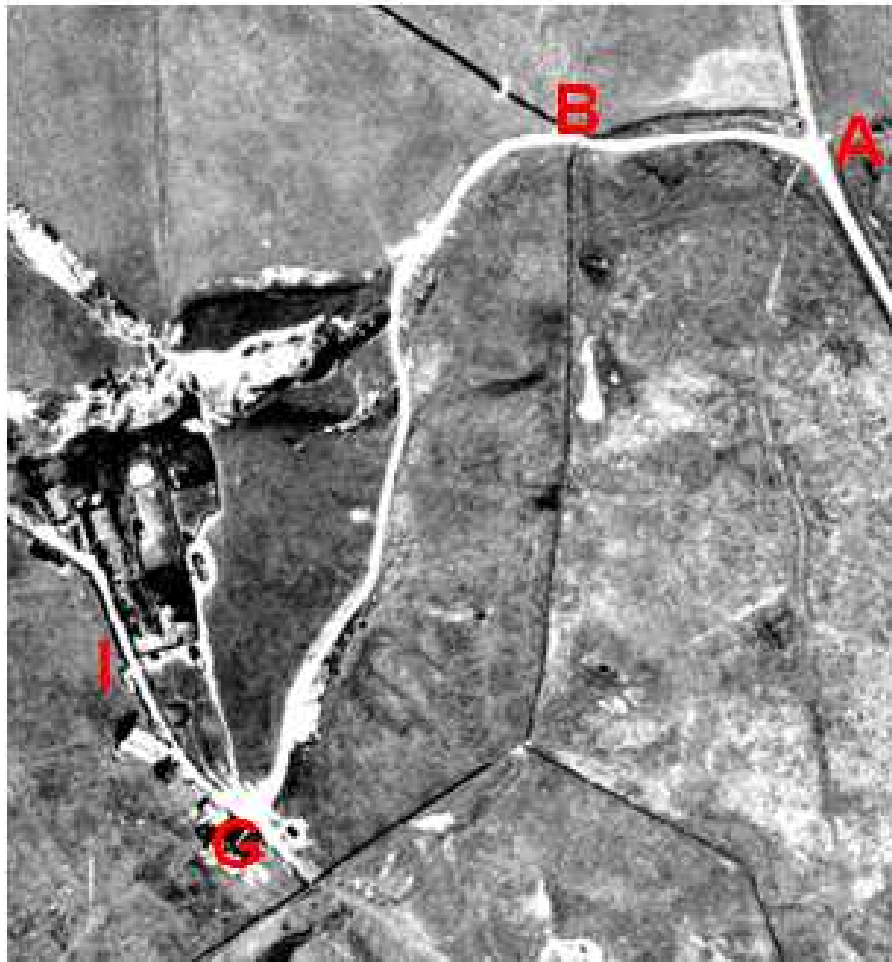


Observations		The full length of the route under investigation is shown and not annotated F.P. A gate appears to exist across the route at point B and also close to point G.
Investigating Officer's Comments		The route under investigation existed in 1956 and appeared to be capable of being used on horseback and/or vehicles.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1963 as national grid series.





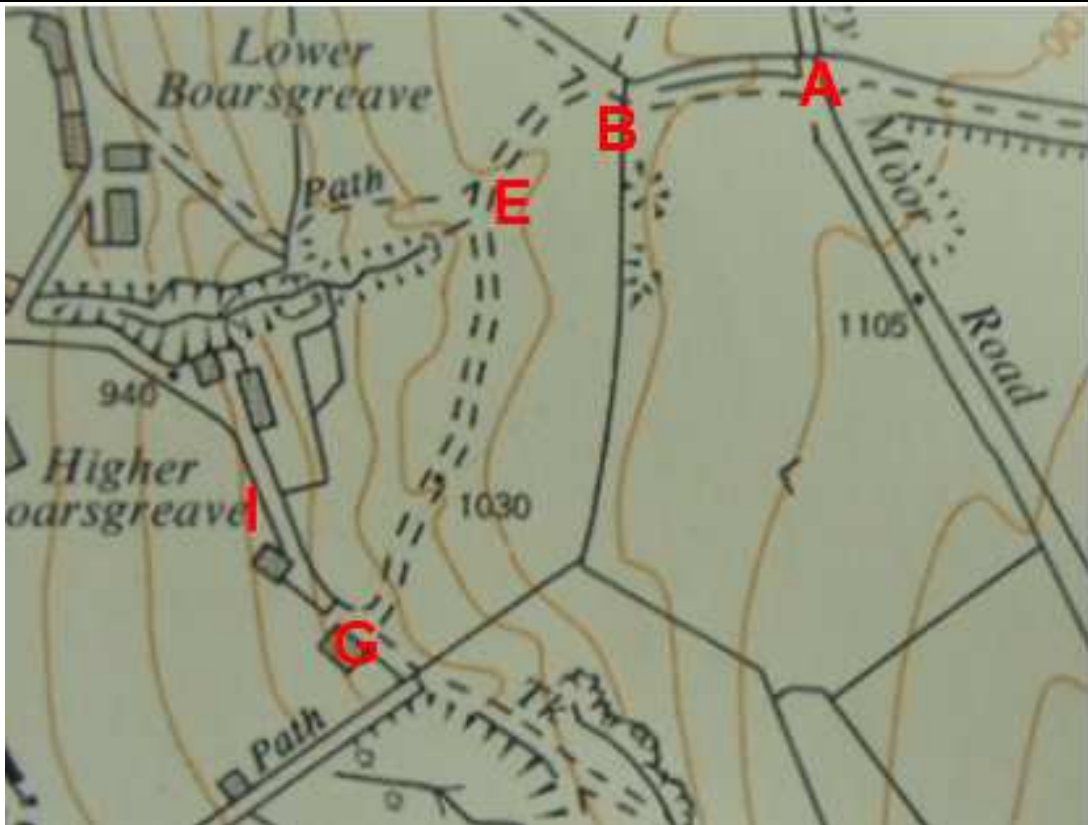
Observations		The full length of the route under investigation is shown with gates shown across the route at point A and north west of point G. It is not annotated "F.P." and shown wider than the footpaths joining it.
Investigating Officer's Comments		The route under investigation existed in 1963 and appeared to be capable of being used on horseback and/or vehicles.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



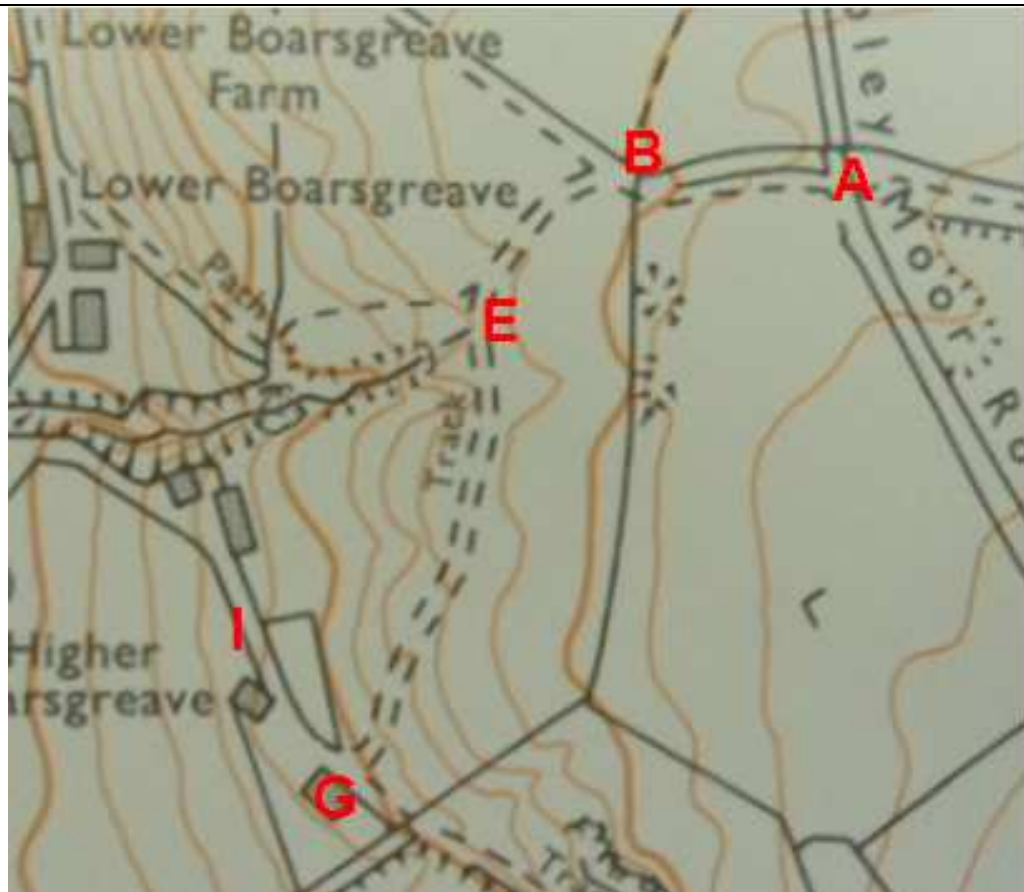
Observations		The whole of the route under investigation can be seen and appears more prominently than it did in the earlier photograph. The gates at point B and just north of point G are visible on the photograph.
Investigating Officer's Comments		The route existed as a well defined route and probably used by vehicles in the 1960s.
<b>1:10,000 OS Map</b>	1968	Further edition of the 1:10,000 map revised 1960-61 and published 1968



Observations		The whole length of the route under investigation is shown with gates indicated as existing at point B and north west of point G. It is not marked as "Path" as some adjacent routes are.
Investigating Officer's Comments		The route existed as a well defined route and appeared to be capable of being used by the public on horseback in the 1968.
<b>1:10,000 OS Map</b>	1981	Revised 1960-75 and published 1981.



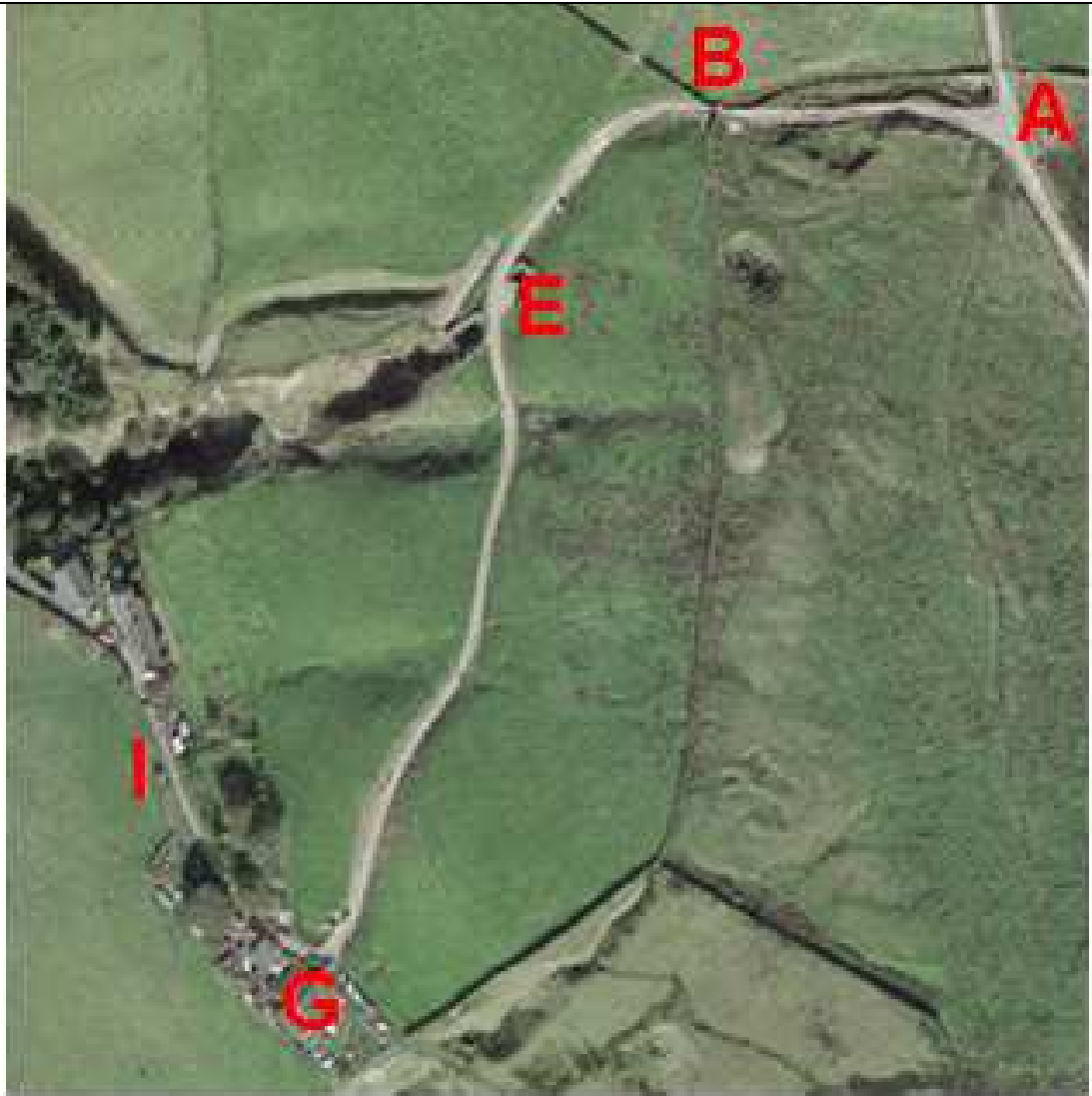
Observations		The whole length of the route under investigation is shown with gates indicated as existing at point B and north west of point G. It is not marked as "Path" as some adjacent routes are.
Investigating Officer's Comments		The route existed as a well defined route and appeared to be capable of being used on horseback or with vehicles in 1981.
<b>1:10 000 OS Map</b>	1992	Compiled from larger scale surveys dated 1988 and published 1992.



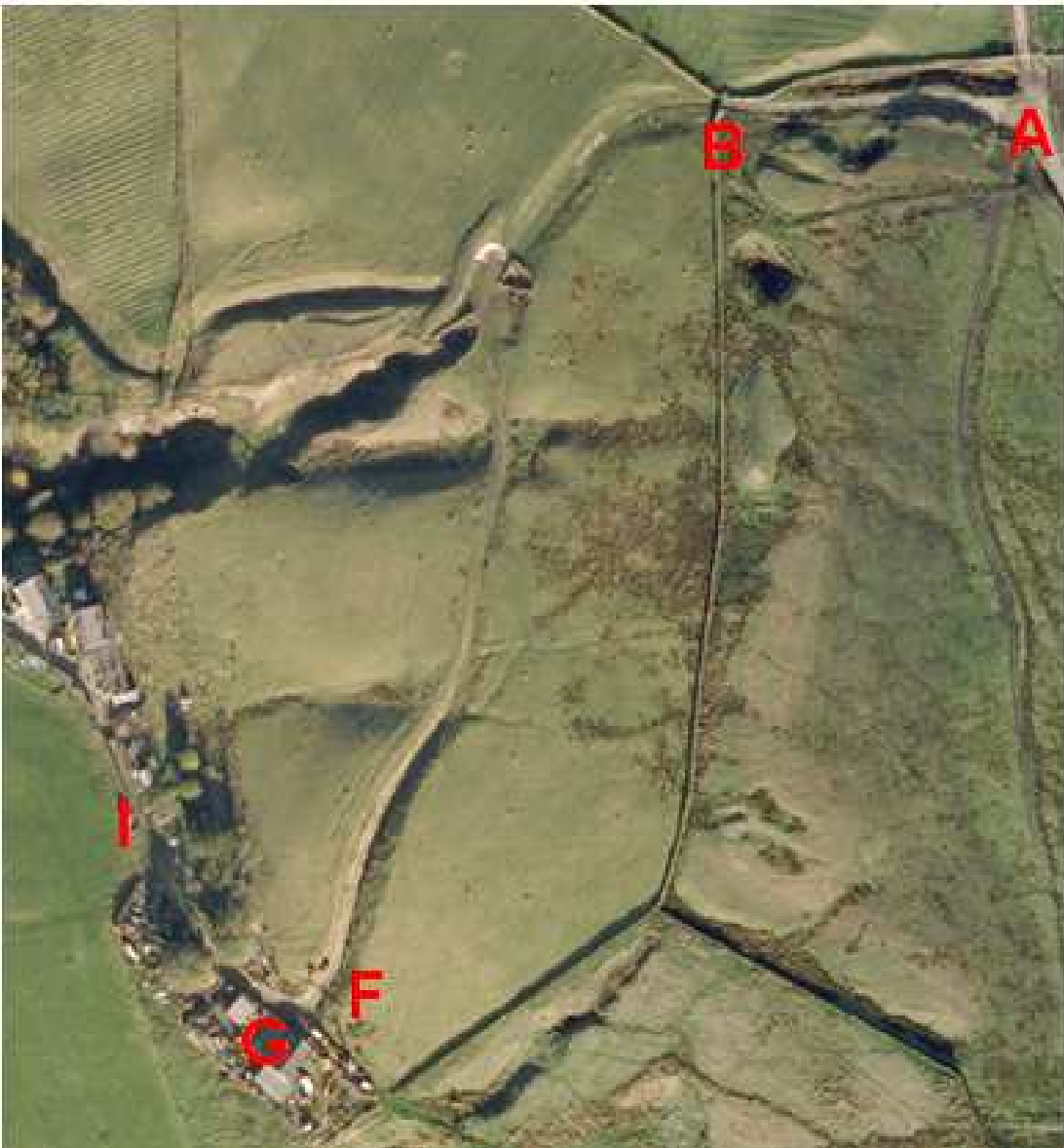
Observations		The whole length of the route under investigation is shown with a gate indicated at point B. The gate shown on the two earlier 1:10,000 OS maps north west of point G is no longer shown. The route is not labelled as "Path" but "Track"
Investigating Officer's comments		The route existed as a well defined route and appeared to be capable of being used on horseback in 1992.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view at the County Records Office.



Observations		The whole of the route under investigation can be clearly seen to exist on the aerial photograph.
Investigating Officer's Comments		The route existed and appeared to be used as more than only a footpath in 2000.
<b>Aerial Photograph</b>	2003	Colour aerial photographs viewed on GIS.

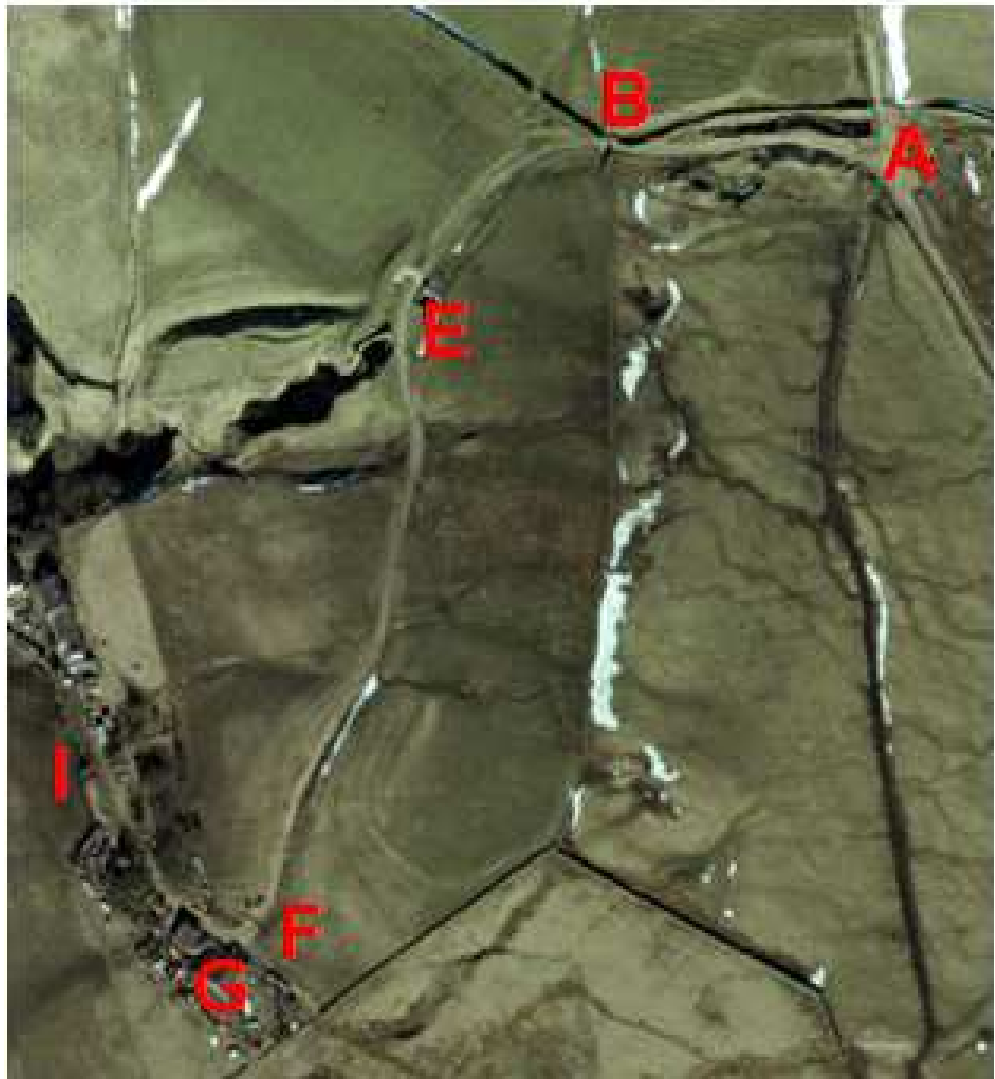


Observations		The whole of the route under investigation can be clearly seen on the aerial photograph. The gate at point B appears to have existed in 2003.
Investigating Officer's Comments		The route existed and appeared to be used as more than a footpath in 2003.
<b>Aerial Photograph</b>	2006	Colour aerial photograph taken in 2006 and viewed on GIS.



Observations		The whole of the route can be seen to exist but appears less visible than on previous photographs. Gates can be seen across the route at point B and point F.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used on horseback in 2007. Use of the route by vehicles appears to have reduced since 2003.
<b>Aerial photograph</b>	2010	Colour aerial photograph taken in 2010 and available to view on GIS.





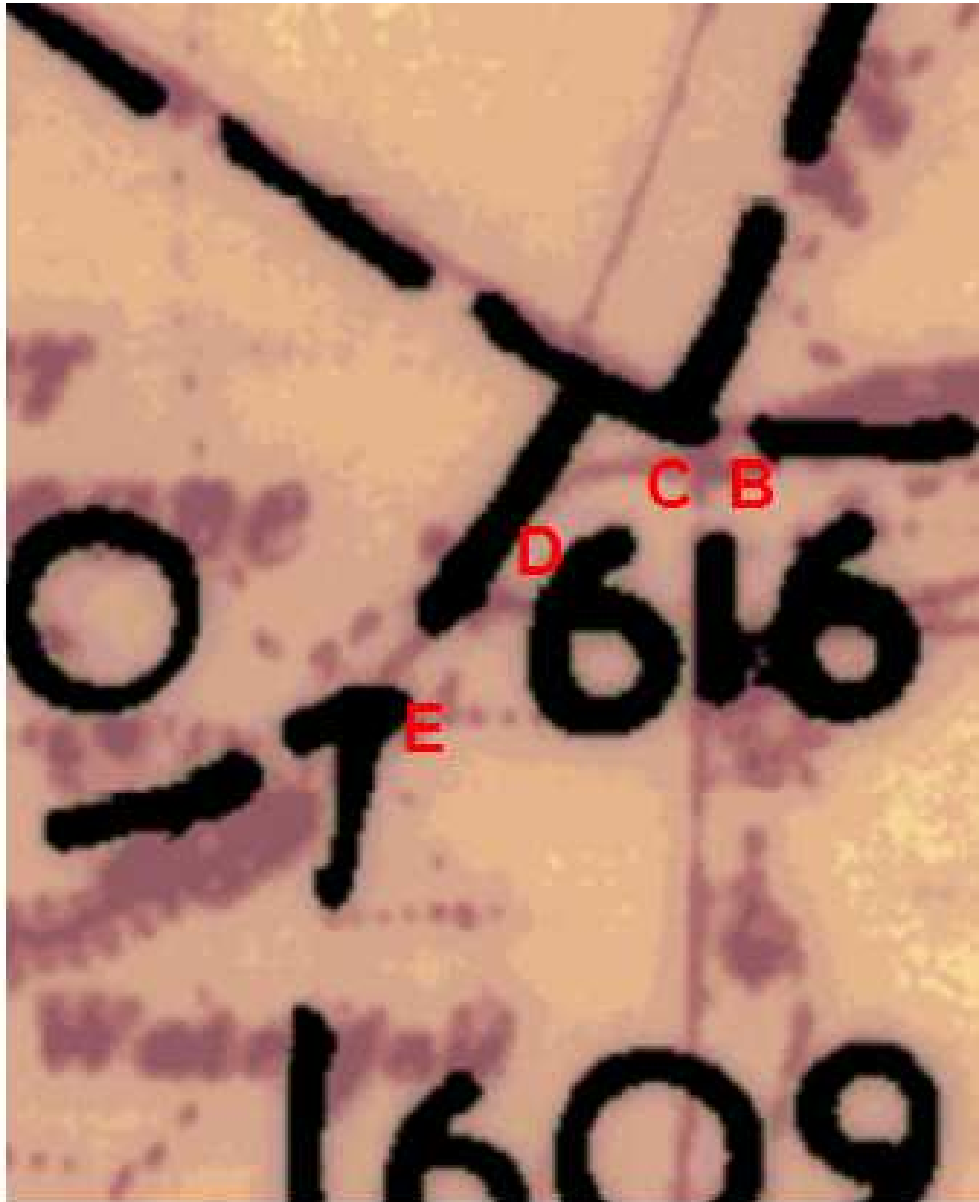
Observations		The whole of the route can be seen to exist. Gates can be seen across the route at point B and point F.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used on horseback in 2010.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in 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		The route under investigation is within Bacup which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



Observations		The full length of the route under investigation was shown as public footpath on the Draft Map and no objections or representations were made to the County Council about the inclusion of the route as a public footpath or the alignment of the route.
Provisional Map		Once all representations relating to the

		publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council about the inclusion of the route as a public footpath or the alignment of the route.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map and Provisional Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The route under investigation was shown on the Definitive Map (First Review) as it had been previously shown with the exception of the section of track between point C and point D. On the Draft, Provisional and First Definitive Map Footpath 616 is shown to follow the track between point C and point D along the route under investigation but this section of track is not shown as part of Footpath 616 on the Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction or

		<p>status of the route from the public when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>No legal order diverting Footpath 616 to the alignment shown on the Definitive Map (First Review) has been found suggesting that the different alignment of the route may have resulted from a drafting error – particularly given the scale of the OS map used (1:10,560).</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
<p>Observations</p>		<p>There are no statutory deposits covering the period of time during which it is claimed that the route was being used as a public bridleway.</p>
<p>Investigating Officer's Comments</p>		<p>There was no indication by the landowners under S31 of the Highways Act 1980 that there was no intention that the way be dedicated as a bridleway.</p>

The land crossed by the route between point A and point B is designated as access land under the Countryside and Rights of Way Act 2000 and is also registered common land.

### **Landownership**

All of the land crossed by the application route is in the freehold ownership of United Utilities Water Plc. although land on either side of the route is in different ownership.

### **Summary**

The route under investigation is not shown, or not with certainty, on the early small-scale commercial maps suggesting that it did not exist at that time, or if it did exist was considered to be of little significance.

The full length of the route is clearly shown on the 6 inch Ordnance Survey Map published in 1847 and on all subsequent editions of the Ordnance Survey mapping examined.

The existence of a gate at point B is consistently shown from 1893 onwards and further gates are shown just north west of point G from 1956 until 1981 and a gate at point F is visible on the 2006 aerial photograph.

The OS maps examined support the claim in showing that the route could have physically been used by horses before and during the claimed period of use and the aerial photographs from the 1940s, 1980, 1990s, 2000, 2006 and 2010 all clearly show the route as a substantial track but also suggest that frequent use, particularly by vehicles, had declined by 2006.

The route shown between points G and I as excluded from the numbered hereditaments on the Finance Act map is good evidence of at least bridleway rights.

To conclude, it is considered that the map or documentary evidence examined would be insufficient to come to the conclusion that the whole of the route under investigation was a historical public bridleway. However, it has clearly existed as a substantial track since the mid 1800s and it appears to support the user evidence in that it would have been capable of being used by horse riders.

### **County Secretary and Solicitors Group Observations**

Information from the Applicant

In support of the application the applicant has provided 40 user evidence forms.

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

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

34 users state they have used the route on horseback, 6 users state they have used the route on a bicycle. When asked when they used the route the years vary from

1975-2008, 1976-2011, 1978-1973, 1984-2006, 1990-2002, one user used the route from 1950-2010 except for 1968-1975, other users used the route from 1969-1974, 1970-1985, and another user used the route in 1970-1980 and then again from 1990-1997.

Most users were use the route as part of a circular route, others use it to get from Cowpe to Bacup, and other destinations include Crag Quarry, Waterfront, Stacksteads and Rochdale.

The main purposes for using the route are for hacking, riding, shepherding sheep, pleasure / leisure, exercise for themselves or for horses, walking and cycling.

The use per year varies from 2, 5, once per month, 60+ times, 70, fortnightly, 3 times per week, 210 time, between 200 and 300 times, one user states they use the route 450 times per year.

28 users also claim they have used the route on foot, 5 users claim they have used the route by bicycle / motorcycle or other vehicle. Other ways of using the route include tractors / trailers and hay making machinery.

38 users all agree that the way has always run over the same route, 2 users stated they were not sure and one user didn't answer this question.

When asked if there are any stiles / gates / fences along the route, 5 users stated 'yes' but did not specify what and where, 1 user stated there is a stile and 34 users stated there are gates along the route. 18 of these users state there are 2 gates 1 at the entrance and exit to the field, 10 users state that there are 4 gates along the route and 2 users claim there are 3 gates.

39 users agree that none of the gates / stiles / fences were locked and 38 users agree that they were not prevented from the stiles / gates/ fences when using the way with either a horse or bicycle.

1 user has worked for a landowner over which the route passes, as a young girl she used to bring cows in for Henry Holt and this was the route used, she never received any instructions from the landowner as to the use of the way by the public. Another user has been a tenant over which the land passes, in 1990-1999 and shows the area which was tenanted on his attached plan, again he did not receive any instructions from the landowner as to the use of the way by the public. 38 users have not worked for any landowner over which the route passes and 38 users have never been a tenant over which the route passes.

2 users have been stopped or turned back when using the route, 1 user said that she and 4 others were stopped in 2011 and were told not to use the route again, 1 user said they were stopped in 2011 but didn't turn back. 37 users have never been stopped or turned back when using the route. When asked if they have ever heard of anyone else being stopped when using the route with a horse / bicycle 3 users said yes. 1 user stated her and 4 others were blocked by a 4x4 but the car moved with asking for permission, another user said they had heard of someone being stopped in 2011.

38 users have never been told by any owner or tenant of the land crossed by the way or by anyone in their employment that the way was not public. 1 user was told in April 2011 that the route wasn't for horses.

39 users have never seen any signs or notices along the route, 1 user has recently seen 'no cycling' signs. All 40 users have never asked permission to use the route.

Information from Others

#### Comments from Sarah and Ash Davies who land adjacent to footpath 612

They state they have concerns regarding the proposed changes to the Definitive Map.

They state that the route currently marked footpath 612 is actually a publically adopted road / carriageway and not a footpath until it reaches the top house of Higher Boarsgreave (no6) at which point it becomes a private road with a footpath.

Their next concern is the road to Higher Boarsgreave, they say this used by trucks, delivery vans and lorries on a regular basis as a result of building projects, the trading on 6 Higher Boarsgreave as a tractor and vehicle repair business etc, this means it is vital that the road is maintained as a public carriageway.

They say that any downgrading of the publicly adopted highway to either footpath or bridleway is untenable.

The proposed route for the bridleway is accessed via a number of very dangerous single carriageway blind bends on steep gradients, directly adjacent to a consented major housing development.

The proposed route for the bridleway passes through the yard and business premises of a tractor and vehicle repair yard. While pedestrians are able to check that the way ahead is clear and be passed by vehicles manoeuvring in and out of the yard, there are no suitable passing places for vehicles to pass horses. The work also results in lots of engine, machinery, banging, hammering and other sudden loud noises which are highly likely to startle horses, causing a danger to existing walkers and other regular users of the footpath. They have directly experienced and witnessed this, where two riders were passing the yard as they were walking on the footpath. Hammering startled the horses and the riders lost control, endangering their 4 year old and themselves as well as the riders and the horses. They were forced to scale a stone wall topped with barbed wire to avoid the dancing hooves of the horse.

They then state that any works to the public footpath to widen, change or increase, access will directly exacerbate the current serious problem of motorcross riders trying to use the footpath to access the moors, and the consequential harm caused to the moors by motorcross riders. It will also provide a route for flytippers.

They also state that adjacent routes currently provide a very important and well used utility for off road pedal cyclists.



Horse riders do not clear their dung from roads. The extremely steep incline in the approach to higher Boarsgreave would be made very hazardous for cyclists, walkers and driver should it become a regular route for horses. The use of central verge strips would be a hazard for three wheeled vehicles and for the numerous parking areas in turning on and off the road.

There are many vulnerable banks on the footpath and the surfaces are unsuited to bridleway use. The conversion of the route to a bridleway would be highly likely to result in subsequent calls for significant civil engineering works to make the route fit for purpose. At a time of significant constraints on the public purse this would seem to be a total waste of money, resulting in additional liabilities for the council during a time of significant financial stress.

They experience regular problems with cars believing that the Rooley Moor Road path can be accessed by car via the footpath, regularly becoming stuck, unable to reverse and blocking the road. This problem would increase exponentially if the route was opened up for the bridleway access, with many vehicles becoming stuck on the moor.

#### Objection from Mr Stephen Thorpe

Mr S Thorpe refers to Mr E Thorpe's witness statement:

Mr Thorpe in his submission statement provides information relating to his use of "Packhorses" which he states are necessary in order to successfully operate his limited farming operation during inclement weather.

He then states, Mr Thorpe has only begun to use a horse to assist in carrying feed along the footpath in question in the last two months clearly in an attempt to justify his written submission.

Mr S Thorpe then goes on to say that many years ago, the Thorpe family did occasionally use a horse to carry fodder, but the route was along a different path which utilised the embankment of Cowpe Reservoir and did not entail the footpath in question.

He then states that modern farming methods cannot depend in any way whatsoever on the use of horses to carry fodder to livestock and in particular this individual who has made clear within his statement that an alternative route offering vehicular access exists.

And it should be taken into consideration however that Mr E Thorpe has an established right of use along the footpath for his farming activities and as such are not relevant to the above application.

Mr S Thorpe claims there has never been an issue regarding Mr E Thorpe and family's right of use of the footpath for his farming activities but he has been well aware for over 50 years that this route was not a bridleway and it is a remarkable

turn of affairs that Mr E Thorpe now feels justified in submitting a patently false signed and written user statement and submission letter in the light of the above.

He would further like to add that contrary to Mr E Thorpes assertions that he is the longest and most frequent user of the footpath using it in excess of 200 times per year which is in fact incorrect and is no more than 150 times per year mainly by way of tractor.

It is a fact that he has been using this footpath for significantly longer and more frequently than Mr E Thorpe and in fact has been using the footpath without interruption for in excess of 55 years and as such has a far more balanced view of the day to day usage of the footpath particularly having operated his business from Higher Boarsgreave farm for the last 36 years.

Mr S Thorpe then goes onto say that several years ago during the planning of the Mary Towneley Loop Christine Peat and a colleague visited his property by motor vehicle on two separate occasions and asked permission to access the moor via the footpath on horseback.

He then goes on to say that clearly, there was an acceptance at this time that there was no right to traverse the footpath on horseback and on that basis Ms Peat was fully aware of the footpaths status.

And that it should also be noted that Ms Peat has failed to provide a user statement herself which would inevitably create doubt upon the validity of all the other user statements submitted should she omit to mention in a user statement that she had requested permission to traverse the footpath in the past.

He has been the owner of Higher Boarsgreave Farm for the past 36 years with a covenant to maintain a percentage of the footpath that accesses and also grants an entitlement to access his property and in fact have been the only contributor to the maintenance of the footpath for the past 36 years.

As the only contributor to the footpath maintenance he has had a personal and financial interest in controlling the un-authorized users that have attempted to traverse the footpath and have been in a unique position to judge the amount of traffic in the form of pedestrians, cyclists, horse riders and indeed the occasional unauthorised vehicular traffic that has utilised the footpath referred to in this matter.

Mr S Thorpe then clarifies a point raised by Mr E Thorpe in his supporting letter, the police have used the footpath in the past but have always asked permission and in fact acknowledged this by way of a Thank You card at Christmas.

Access has been blocked every night for at least the last thirty six years to everything except pedestrians and this can be confirmed by the police.

It has been a fact contrary to the user evidence forms that all horse riders over the course of the last 36 years that have been seen on the footpath have been challenged by either Mr S Thorpe or by a member of his immediate family and they have been made fully aware that the footpath that they are using is not a bridleway

and is classified as a footpath and indeed on several occasions groups of riders have been turned back.

Clearly, judging by the sheer volumes of alleged use by horse riders this would have amounted to a great many incidents of users being informed of the footpaths true status and as a consequence of the close knit equestrian fraternity this would undoubtedly have been common knowledge amongst riders attempting to traverse the footpath in open defiance of the routes status

Mr S Thorpe also states that it is a fact that had the usage been of the volumes alleged, that he would have struggled to operate my business which has several access points onto the footpath.

He has studied the user evidence forms provided and would categorically state that in many of the forms submitted that there has been a systematic inflation of the figures relating to the frequency of individuals usage of this footpath.

There has been a singular lack of acceptance by the vast majority of the alleged users that they have been challenged and this would further lend weight to the argument that the evidence contained within the user forms is not a full and accurate record of the facts.

On the basis that the user evidence forms were signed and dated to confirm a true and accurate record, it is crucial that documentary evidence be provided to substantiate the claims being made.

The following individuals are personally known to Mr S Thorpe and he draws the attention of the Highways Authority to the conflicting claims being made which are factually inaccurate and should be challenged.

Anne Swift

This person post 1977 had never traversed the footpath on horseback until 2006

In 2006, she walked through leading a horse

In 2007 she rode through having been challenged

In 2008 she rode through once in the year

In 2009 she rode through twice

In 2010 she attempted to ride through twice in one week the second time with a group of riders and at this point following a frank and forthright exchange of views she was sent on her way along with the other riders who were all informed not to return until this matter had been resolved

Anne Swift had been made fully conversant with the routes status following a discussion in her home

Mr S Thorpe states that on the basis of the above, her signed user statement is incorrect

Kay Blackledge

This person has not used the route and her signed user statement is incorrect.

Joan St Ledger

This person has used the footpath no more than twice in the last thirty six years  
Her user statement is exaggerated.

Anne White

This person has been along the footpath no more than a handful of times and was informed that it was not a bridleway.

Donna Mather

Donna Mather attempted to traverse the footpath and when she was stopped and informed of the status of the footpath, she threatened violence and verbal abuse of the worst kind and was consequently turned back.

This person has traversed the footpath on three occasions in total and was informed of the footpaths status culminating in the threat of physical violence with a cricket bat as mentioned above.

Donna Mather has not provided a user statement but her husband has and to my knowledge has never ridden or attempted to ride the footpath in question.

Shona Hopkins

This individual has attempted to traverse the footpath with Anne Swift and was made fully aware prior that the route was not a bridleway.

This is a direct contradiction of her signed statement as she was informed of the routes status and indeed was in the presence of another horse rider who was similarly informed.

This person has only traversed the footpath accompanied by Anne Swift on two occasions

On this basis her signed statement is incorrect.

Within the deeds held in respect of his property at Higher Boarsgreave, there is an Entitlement to use the footpath to access my property.

Clearly, on the basis that an entitlement was granted, it would appear that the footpath was not deemed a bridleway by the owners of the land and as such it would be unlikely that the route was incorrectly listed by the authority.

Reclassification of the footpath will inevitably lead to difficulties in operating his business which is already stated has been in existence for the past 36 years.

It is also inevitable that he will incur additional and significant expenditure in order to fulfil his legal responsibility to maintain my proportion of the footpath as the additional horse traffic will inflict damage to the surface and will receive no recompense for said damage caused by horse traffic whatsoever.

## **Assessment of the Evidence**

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

In Support of Making an Order(s)

User evidence

Against Making an Order(s)

Historical map evidence

## **Conclusion**

Committee will note the majority of the route under consideration is currently recorded as a public footpath. The section C-D on the committee plan is the only section which is not currently recorded as a public right of way.

In this matter there is no evidence of an express dedication and so the Committee is invited to consider whether a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. The Executive Director for Environment has considered the historical map evidence, the evidence suggests the route cannot be seen on the early commercial maps and is suggestive the route was not likely to have been in existence, or had it been in existence it was of little significance.

The Finance Act map shows the route from point A-G included within a numbered plot which suggests this section was not considered a public vehicular highway. However, the section G-I had been excluded from the numbered plots which is considered as good evidence, although not conclusive that this section had public carriageway rights. The Ordnance Survey map suggests the route existed in 1929 and appeared capable of being used by the public not only on foot.

On balance, the map evidence is considered to be insufficient to conclude the route was a historical public bridleway and it is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to

satisfy the criteria of S.31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

It appears on balance that the route being used on horseback/bicycle was called into question in 2011, as this is when 2 users suggest they were prevented/ from using the route on horseback and 3 user's state they had heard of other being stopped with one stating this was in 2011. One user provides a date of April 2011 therefore, on balance it is reasonable to conclude the 20 year period under consideration would be from 1991-2001.

The user evidence forms provided by the applicant suggest 29 users have used the route on horseback for 20 years or more and the route had been used sufficiently frequently. 34 users have used the route on horseback and 6 users have used the route on bicycle. Although the users agree that there are gates along the route, 39 users confirm the gates were unlocked and; 38 users agree they were not prevented from using the route on horseback because of the gates which suggests the route was not used by force. 38 users have used the route as of right but for 2 of the users had used the route whilst working/tenanting land from the landowner.

The landowner Mr S Thorpe seems to suggest that access had been blocked for the last 6 years to everyone except for pedestrians and states this can be confirmed by the police but no corroborating evidence to this effect has been provided. Although the landowner, Mr S Thorpe suggests that in the last 36 years he or members of his family have told users the route was not a bridleway, this assertion has not been backed up by any of the users in their user evidence forms.

Committee should also note that the section A-B shown on the committee plan is registered as common land under register unit number CL281 and is known as Goose Green, Bacup, Municipal Borough of Rossendale.

S.193 of the Law of Property Act 1925 (LPA 1925) provided a right of access "for air and exercise" to any metropolitan common or common situated wholly or partly in a borough or urban district. This section makes it clear that such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon.

The High Court decision of 1998, R v Secretary of State for the Environment, Transport and the Regions ex parte Billson resolved that access under s.193 included horse riding, however this did not extend to cycling or vehicles.

All Common Land became Open Access land under the terms of the Countryside and Rights of Way Act 2000 (CROW Act) however; the CROW Act only gave access on foot on Open Access Land. Section 15(1) however states there are certain types of Common Land included under Section 15 CROW Act which is land subject to S.193 Law of Property Act 1925 which include: urban commons,

metropolitan commons and rural commons with a deed of declaration. In conclusion this means that the common land register unit CL281 was a borough which was caught by S.193 LPA 1925 and the right of access for air and exercise included use on horseback in accordance with the Billson case referred to above and these rights have been protected by s.15 CROW Act and therefore use of this section of the route was permissive and cannot satisfy the criteria in S.31 being used as of right and without permission.

It is suggested to Committee that, taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 can be deemed and section C-D be recorded as a bridleway and section B-C and D-E-F-G-H-I , recorded as a footpath at present, should also be recorded as having bridleway status. Committee is advised that section A-B should not be accepted as the use is not, on balance, as of right being use of urban common under Law of Property Act.

**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 File Ref: 804-538		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





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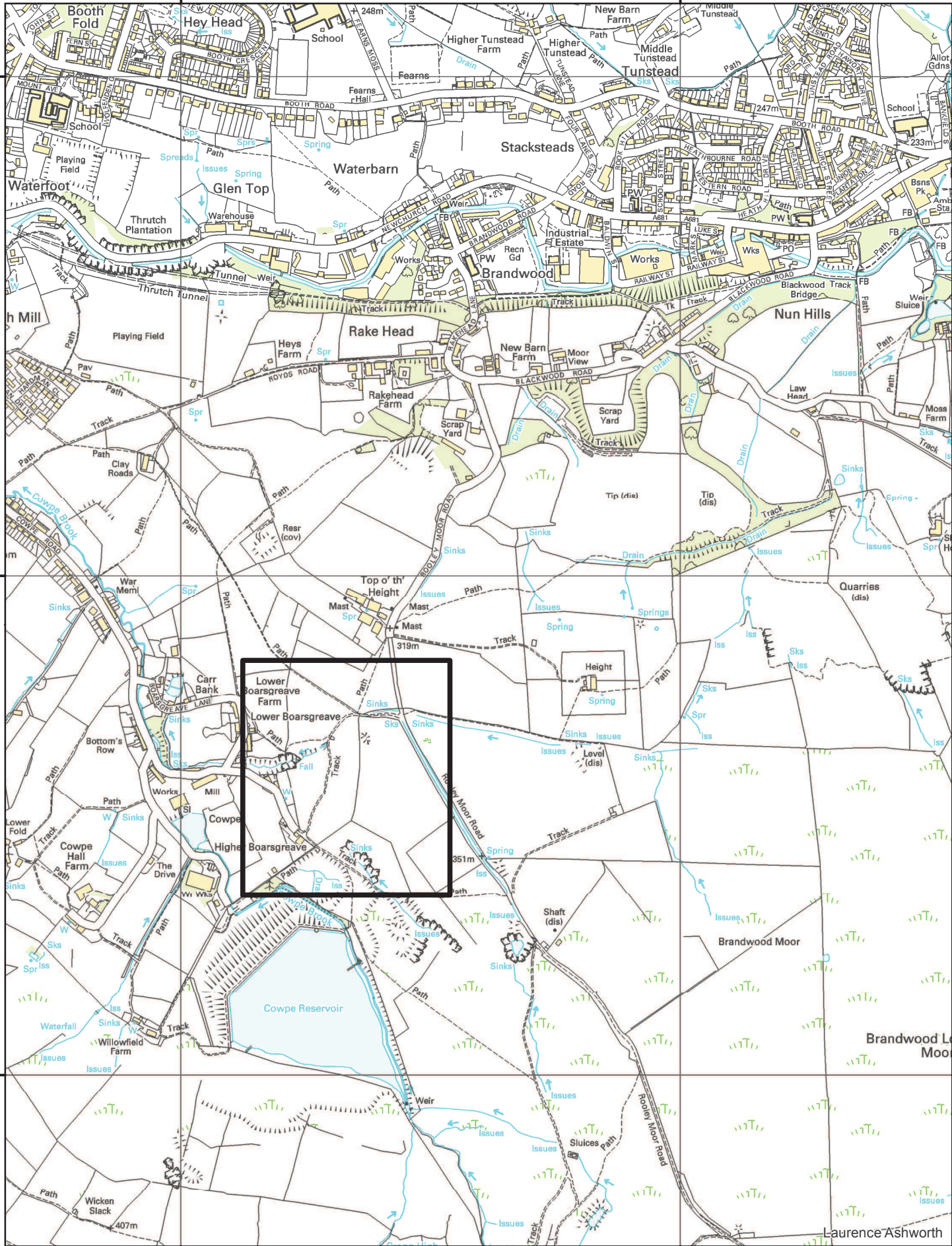
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Steve Browne  
Interim Executive Director  
for the Environment

Wildlife and Countryside Act 1981  
Application to upgrade to Public Bridleway Public Footpaths 617, 616(part),  
609, 612(part) Bacup and addition of short section of Public Bridleway

LOCATION PLAN

File No. 804-538

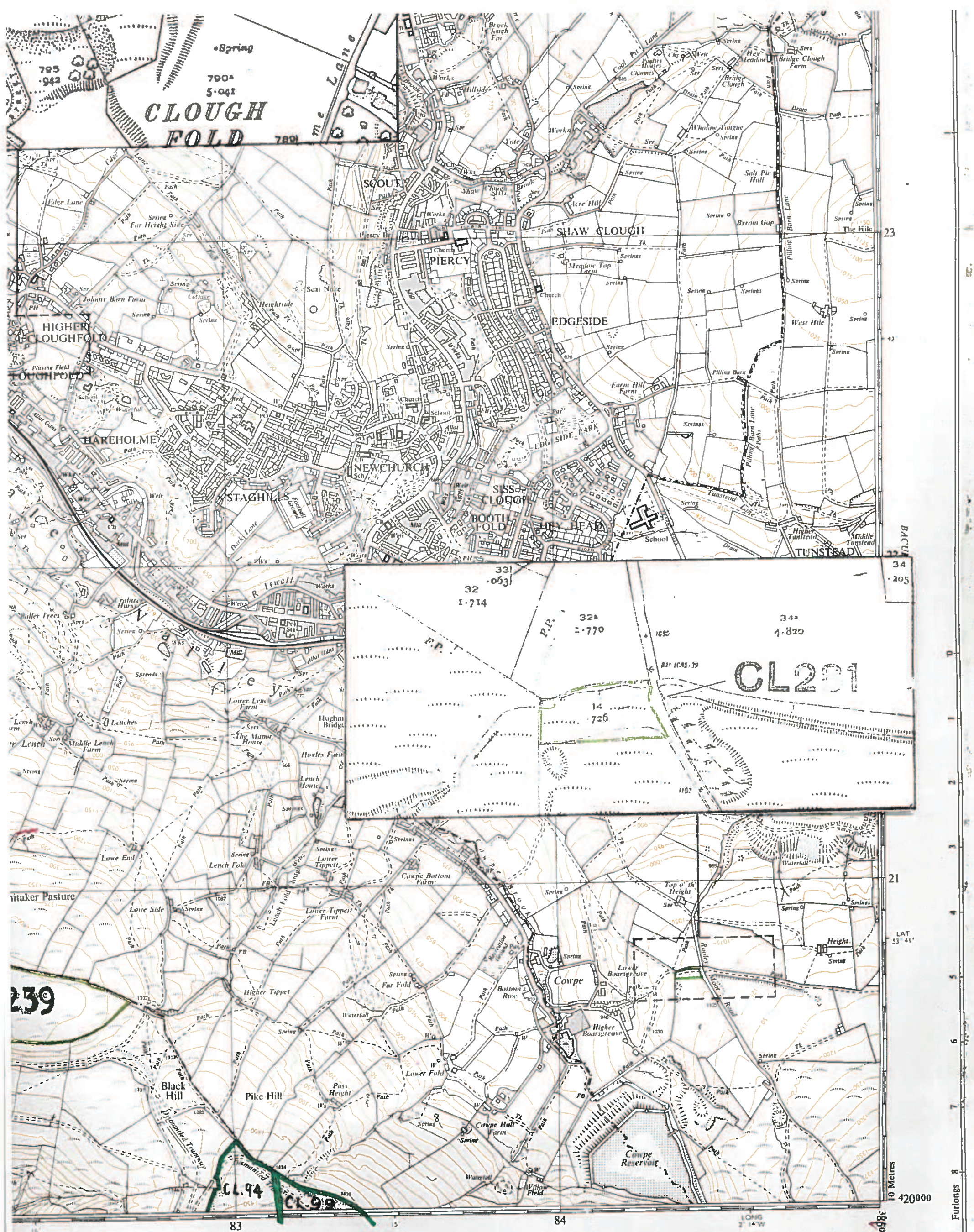
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CONTINUED ON  
SHEET No 67

2000

3000

4000 Yards

COMMONS REGISTRATION ACT, 1965  
Provisional Register Map of Common Land/Town or Village Greens

Made and published by the Director General of the  
ORDNANCE SURVEY, CHESINGTON, SURREY, 1968.

KEY TO COLOURING AND SYMBOLS

Orange and/or yellow inside the boundary  
"Exempted".

Boundary of land to which, by virtue of an order under Section 11 of the Act,  
the provisions of Sections 1 to 10 thereof do not apply.

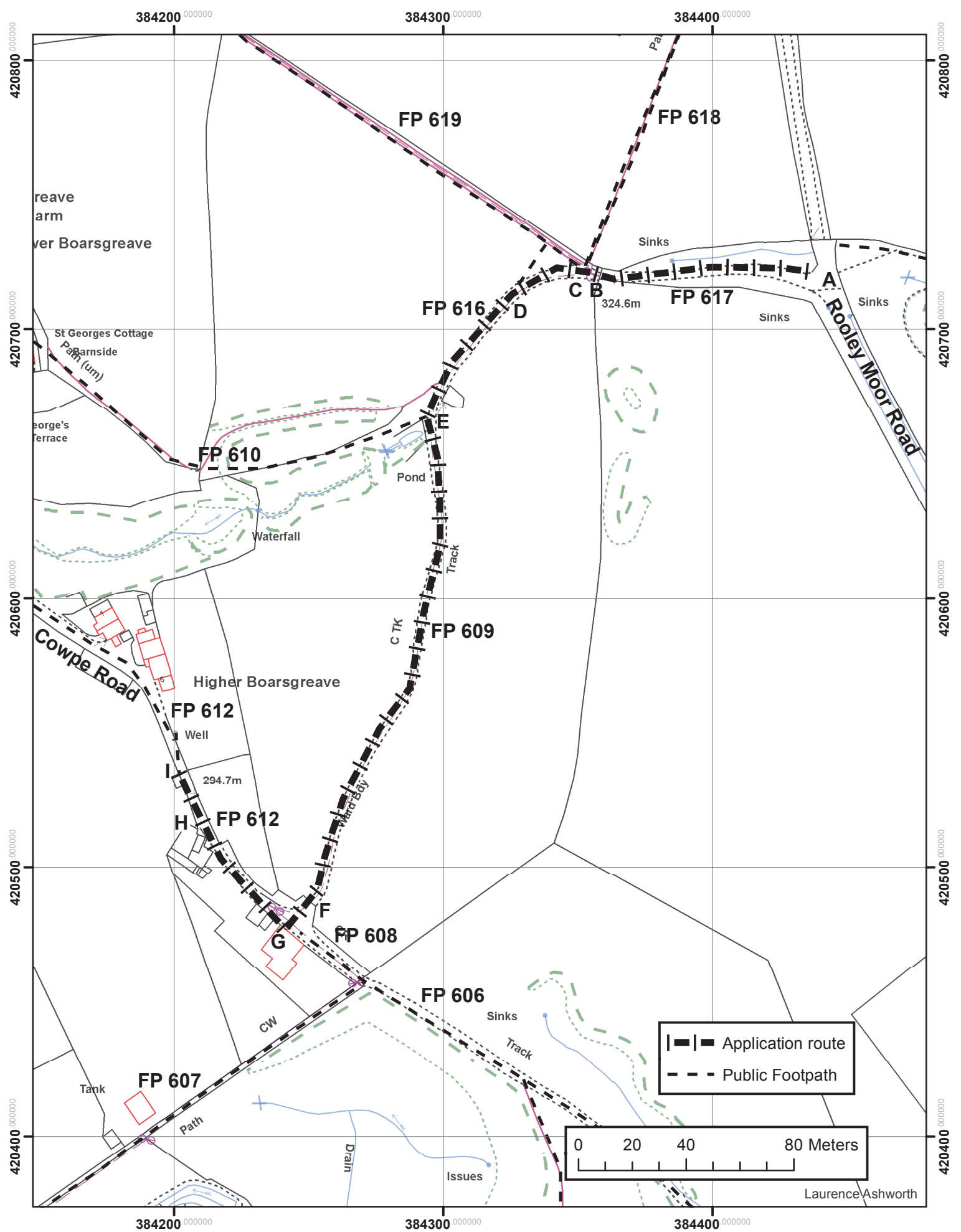
Boundary of land comprised in the register unit shown.

Green inside the boundary  
Private register unit number.

Boundary of land to which a registered right of common is exercisable or to which

PROVISIONAL REGISTER MAP OF COMMON LAND/TOWN OR  
VILLAGE GREEN (SHEET NO. 67)





Steve Brown  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981  
Application to upgrade to Public Bridleway Public Footpaths 617, 616 (part), 609,  
612 (part) Bacup and the addition of a short section of Public Bridleway from junction of  
Public Footpaths 617, 618 & 619 to a point on Public Footpath 616 Application 804-538

1:1,750



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## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Rossendale South
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### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Upgrading to Bridleway of Ramsbottom Footpath 207 (Buckhurst Road) from Bury Old Road to Ramsbottom Bridleway 206 (Croston Close Road)

File No. 804-540 (Annex 'A' refers)

Contact for further information:

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

[Megan.Brindle@lancashire.gov.uk](mailto:Megan.Brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Environment Directorate,

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for Ramsbottom Footpath 207 (Buckhurst Road) to be upgraded to Bridleway from Bury Old Road to Ramsbottom Bridleway 206 (Croston Close Road) Rossendale in accordance with File No. 804-540.

#### Recommendation

1. That the application in accordance with File Ref. 804.540 for Ramsbottom Footpath 207 to be upgraded to Bridleway, be accepted as a Restricted Byway.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (c) (ii) of the Wildlife and Countryside Act 1981 to upgrade Ramsbottom Footpath 207 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points A1-F2.
3. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from the Forest of Rossendale Bridleways Association to upgrade Ramsbottom Footpath 207 (known as Buckhurst Road) from the junction with Bury Old Road to the junction with Ramsbottom Bridleway 206 (known as Croston Close Road) and shown between points A1- F2 on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

An order for upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- "the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway"

When considering evidence, if it is shown that a highway existed then highway rights continue to exist ("once a highway, always a highway") even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (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 and the evidence overall weighed on the balance of probabilities. It is possible that the Council's decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**

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

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments is included in 'Advice – Director of Legal Services' Observations'.

## **Advice**

### **Executive Director for the Environment's Observations**

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A1	8089 1548	Junction with Bury Old Road
B1	8097 1550	Route passes between gateposts
C1	8098 1550	Junction of route with Ramsbottom Footpath 227
D1	8112 1553	Junction of route with Ramsbottom Footpath 222
E1	8116 1556	Cattle grid across the route
F1	8121 1555	Junction of route with Ramsbottom Footpath 223
G1	8124 1551	Bend in route
H1	8139 1556	Blocked drain resulting in boggy surface
I1	8147 1551	Field gate and stile across route
J1	8147 1551	Junction of route with Ramsbottom Footpath 226
A2	8181 1542	Farm track joins route
B2	8188 1539	Gate across route
C2	8191 1538	Junction of route with Ramsbottom Footpath 208
D2	8192 1538	Gap in stone wall
E2	8195 1538	Gate across route
F2	8207 1538	Junction with Ramsbottom Bridleway 206

### Description of Route

A site inspection was carried out on 15<sup>th</sup> April 2014.

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-3-207' or 'Ramsbottom Footpath 207' but are referenced below in the abbreviated form 'Footpath 207' for brevity since all those referred to are in Ramsbottom in Rossendale Borough.

The route commences at a point on Bury Old Road and although currently recorded as a public footpath it was not signposted at this point. The start of the route provides access to Butcher Acre Farm to the north and also provides access to Ridshaw Farm which is situated along the application route.

From point A1 access from Bury Old Road onto the start of the route was open and not gated. The route extends in an east north easterly direction along a roughly tarmaced track approximately 3 metres wide and bounded on either side by stone walls. After approximately 80 metres (at B1 on the Committee plan) the route passes through concrete gateposts (no gate) which are positioned 3.3 metres apart.

The route continues for a further 15 metres along the track to C1 where a public footpath signpost had been erected on the south side of the track pointing to a stile and south along Footpath 227 which joins/leaves the application route at this point.

From point C1 the application route continues along the track in an east north easterly direction bounded on the north side by a hedge and on the south side by a stone wall. The surface consists of tarmac and broken stone and although varying

slightly is approximately 3 metres wide. At point D1 on the Committee plan Footpath 222 joins the application route at Ridshaw Nook.

The application route continues in a more north easterly direction along a stone surfaced track with well maintained grass verges to the south of Ridshaw Farm buildings to cross a cattle grid at point E1.

The side of the cattle grid is fenced providing a 90cm wide grassed strip between the fence and farm building and a 90cm wide metal gate providing access alongside the cattle grid.

Beyond the cattle grid the application route continues along a tarmac/ stone surfaced track in an east south easterly direction to F1 where the application route leaves the surfaced track which continues to Ridshaw Close Farm.

At point F1 the application is signposted as a public footpath and follows a grass surfaced track in a south easterly direction bounded on the south west side by a stone wall. The route follows a depression in the ground which appears to be the remains of an old sunken track. It continues sloping gradually downhill to point G1 where it curves round – still bounded by the wall on the southern side - to then continue in a north easterly direction bounded on the south side by the wall and with higher land rising up to the north. The surface is compact but there is no evidence of vehicular or equestrian use.

The route continues in a more easterly direction to point H1 (Committee plan 2) close to where a spring emerges from the higher land. It appears that blocked drains in the proximity of the route have resulted in the saturation of the surface making it almost impassable at this point.

Beyond the short boggy section the route continues in a south easterly direction still bounded by a low stone wall on the southern side and open to the north. The surface of the track is firm but grassed and appears to have been a more significant track in past.

At point I1 the route is crossed by a 3 metre wide metal field gate which was padlocked shut with an adjacent double stile providing access both along the application route and also onto Footpath 226. Both the application route and Footpath 226 were waymarked as public footpaths at this point.

Beyond the gate the route continues along a grass surfaced track varying between 3.5 metres and 2.9 metres wide bounded on either side by stone walls, the one on the north side being a retaining wall. Near point A2 the surface of the track had been churned up by horses that were grazing the track and field to the north. The condition of the stone wall on the north side of the track gradually deteriorates towards B2.

At point A2 a farm track converges with the application route which then continues along a more defined compacted earth track in an easterly direction to point B2 where it is crossed by a 3.4 metre wide wooden field gate (which was padlocked).

Pedestrian access was provided to the south of the field gate via a pedestrian kissing gate that had been waymarked as a public footpath.

Beyond B2 the application route continues along a 3 metre wide track towards Buckhurst Farm bounded to the north by a substantial stone wall forming the boundary with the garden and on the south side by a wall/revetment below which is a parking area associated with the farm.

At point C2 the application route is met by Footpath 208 (Sales Lane) which provides vehicular access to Buckhurst Farm from the south. The application route continues in a generally easterly direction towards the farm cottages.

At point D2 the route passes through a 1.6 metres gap in a stone wall at the corner of a farm building to then pass directly in front of Buckhurst Farm Cottage following a tarmac surfaced track bounded by walls and buildings.

To the east of the buildings at point E2 the application route is crossed by a 3 metre wide metal field gate (which was locked) with adjacent wooden pedestrian gate. Signs on the metal field gate stated 'Public Footpath Only No Horse riding' and were reinforced by the presence of yellow public footpath waymark arrows.

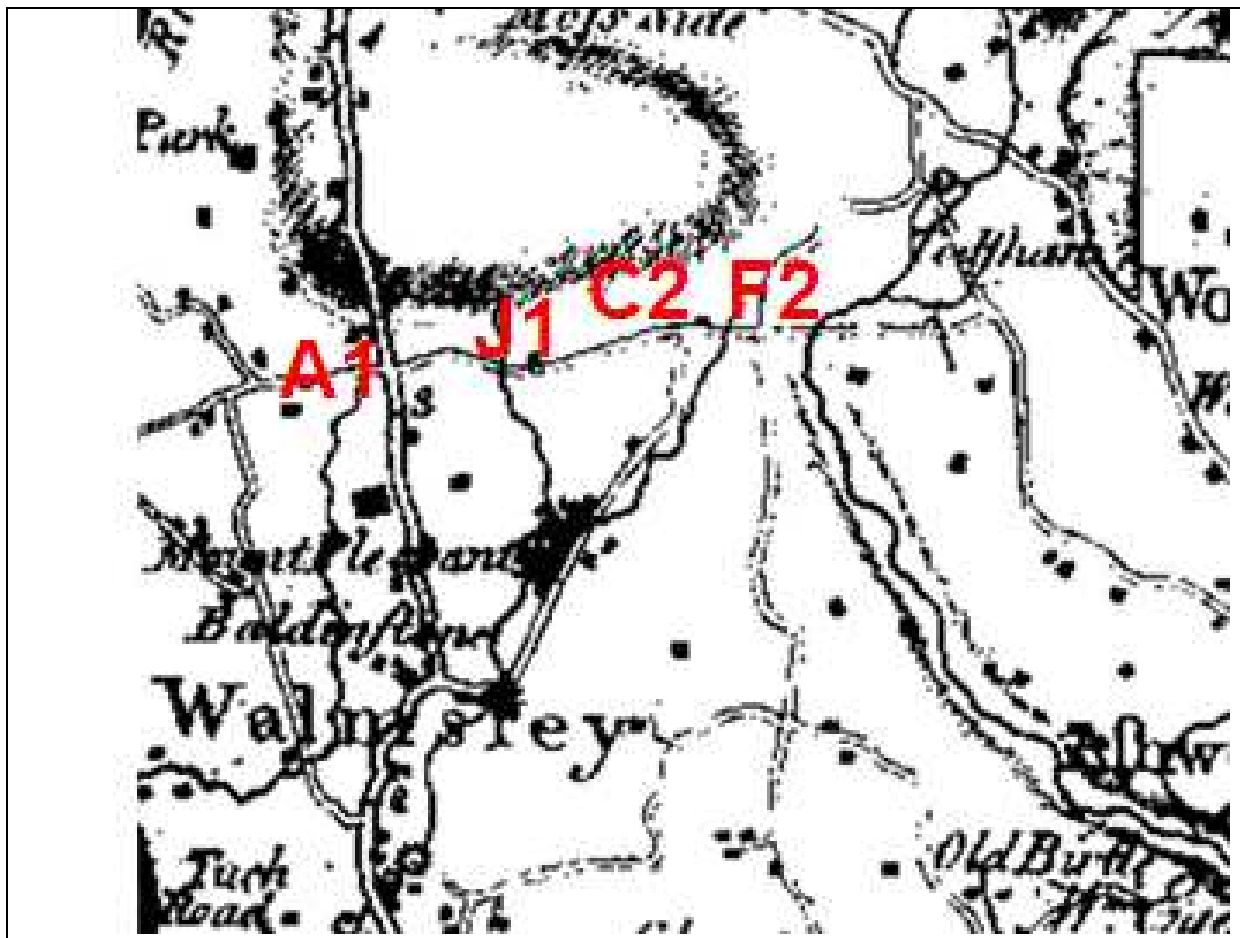
Beyond the gate the application route continues as a stone surfaced track varying between 3 to 5 metres wide and bounded by stone walls on either side. It continues in an easterly direction to pass to the north of Buckhurst Lodge (a former school) to point F2 where it ends at the junction with Bridleway 206 (Croston Close Road). At point F2 access was open and not gated. A public footpath signpost was situated at the junction pointing back up the application route towards Buckhurst Farm.

The total length of the route is 1,280 metres.

When inspected there was no evidence that the route was currently being used by horses and access would be prevented or restricted by the presence of a cattle grid at E1, locked gates and stiles/pedestrian kissing gates at points J1, B2 and E2.

### Map and Documentary Evidence

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



Observations		The whole length of the route is clearly shown. Properties are marked along the route at points J1 and close to point C2. Sales Lane (recorded as Footpath 208) is shown connecting to the route at point C2 and Croston Close Road (recorded as Bridleway 206) is shown meeting the route under investigation at point F2.
Investigating Officer's Comments		The route existed in 1786 and provided access from Bury Old Road (a public vehicular highway) to at least two properties that are shown to exist along it. More significantly the route under investigation is shown as a through route and at its eastern end connects to Croston Close Road (recorded as a public bridleway). It is likely that in 1786 the route under investigation formed part of a through route available to the travelling public on horseback and possibly in carts. The depiction of the route on this commercially produced small scale map suggests that the route was considered to be at least a bridleway – and more probably a public vehicular route in 1786.
Smith's Map	1801	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a

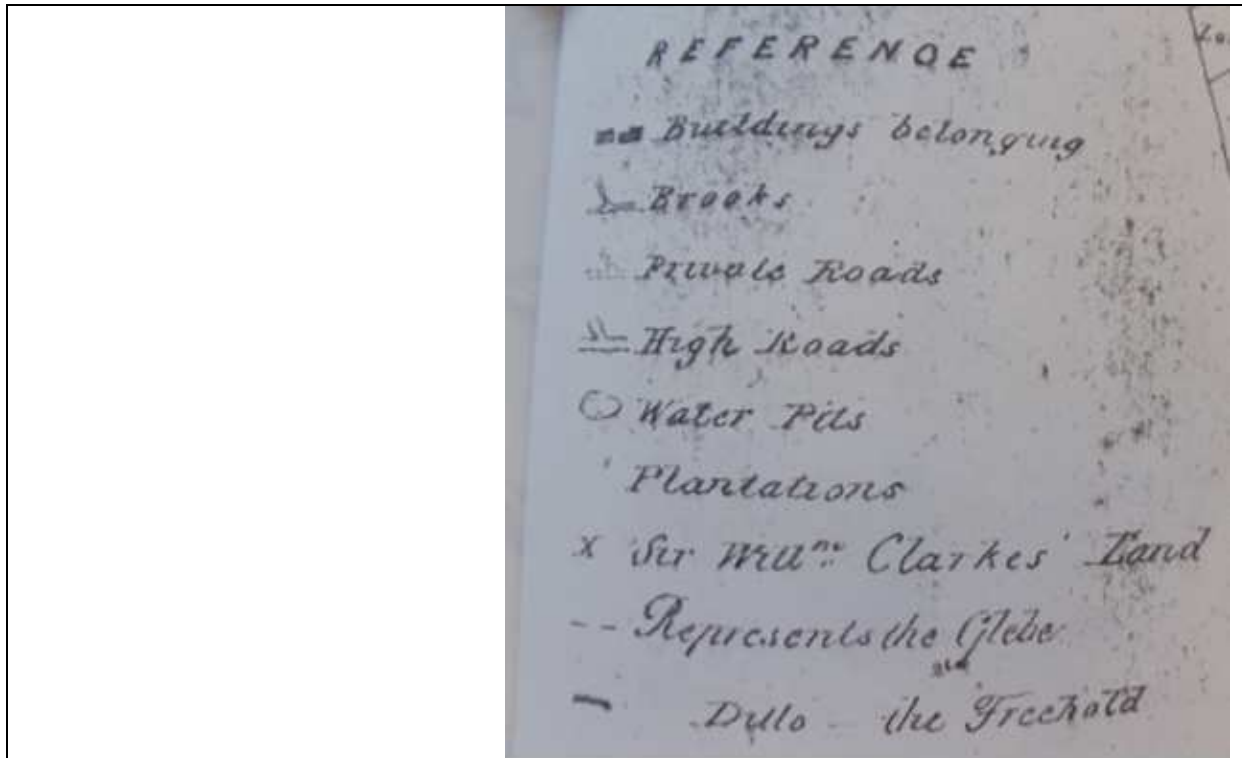
	<p>single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of his new English Atlas. His map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.</p>
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<p>Observations</p>	<p>The whole of the route under investigation is clearly shown with properties marked close to point J1 (Far Buckhurst) and point C2 (Buckhurst Farm) and the watercourse that crosses the route at H1. Bury Old Road is shown as a substantial route and the route under investigation depicted in the same manner as Croston Close Road (Public Bridleway) and Sales Lane (claimed Bridleway) and other public vehicular highways in the area.</p>
<p>Investigating Officer's Comments</p>	<p>The route existed in 1801 and was considered to be of such importance to be shown on a map produced specifically to meet the needs of</p>

		travellers. The inclusion of the route on such a small scale map suggests that it was considered to be more than a public footpath and that it would have been available to the public on horseback and possibly with horse drawn vehicles at that time.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		Unlike other early commercial maps the route under investigation is not shown.
Investigating Officer's Comments		The route is shown on two earlier commercial maps and later editions of the Ordnance Survey Maps. It is therefore likely that the route existed in 1818 but may not have been considered by Greenwood to be of sufficient significance to be included on the map.
<b>Survey of part of the Derby Estate</b>	1824	A plan was submitted by the Applicant titled 'Survey of part of the Derby Estate'. The copy of the plan originated from records held in the County Records Office (Reference DDK). Writing on the plan states that the original survey was carried out 1785-1788 and that the plan was dated 1824.





<p>Observations</p>		<p>The route under investigation is shown as a 'High Road' between point A1 and point E1 as depicted in the key to the plan. The property now known as Ridshaw Farm is shown but not named. The route between point F1 and partway towards point H1 is not shown but from there the route is shown through point H1 to point J1 and is again depicted as a 'High Road'. The route then crosses an area of land described on the map as 'Mr Whitewall Lancashire's Land' within which buildings now forming part of Buckhurst Farm are shown connecting to Sales Lane. From approximately point C2 to point F2 the route under investigation is shown as being within the Derby Estate and is bounded by a solid line to the south and by a dashed line on the north side.</p>
<p>Investigating Officer's Comments</p>		<p>The purpose for which the plan was drawn is not known. The definition of 'High Road' is not given but it is clearly distinguished in the key from 'Private Roads' suggesting that a route shown as a High Road was likely to carry public rights on horseback – and more probably vehicular rights. The fact that the route under investigation is not shown between points J1 and C2 is more likely to be because the land it crossed was not part of the Derby Estate rather than it not existing as it is clearly shown as a through route on other commercial maps produced around that time. The depiction of the route between point C2 and</p>

		point F2 with a solid line to the south and dashed line to the north is not consistent with the map key and is therefore inconclusive regarding whether the route was considered to be a High Road, Private Road or some other category of road/track and in practice it may have indicated that the route was physically bounded on one side but open and unenclosed on the other.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the County's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route is not shown.
Investigating Officer's Comments		The route was not considered sufficiently important – although it is unlikely that it was no longer in existence at the time of the survey (1828-29) since it was shown on earlier map and on later maps and is still visible on the ground today.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways crossing in the area investigated.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite

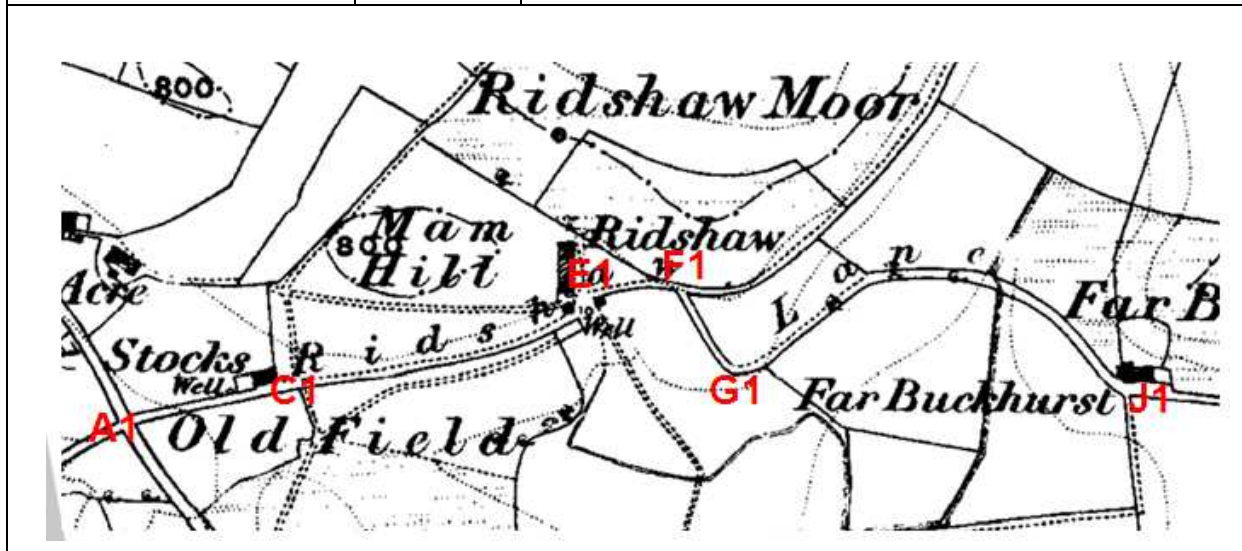


		accurately and can provide useful supporting evidence (in conjunction with the written title award) and additional information from which the status of ways may be inferred.
Observations		The copy of the title map for Walmersley with Shuttleworth and dated 1838 is held in the County Records Office. It is in a fragile condition and is not available for inspection.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area affected by the Application.
Investigating Officer's Comments		No inference can be drawn.
<b>Cassini Map, Series 109 – Manchester</b>	1842-4	Extract of Map Sheet 109 originally published 1842-44 and provided by the Applicant. The Cassini publishing company produce maps based on Ordnance Survey one inch maps. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.

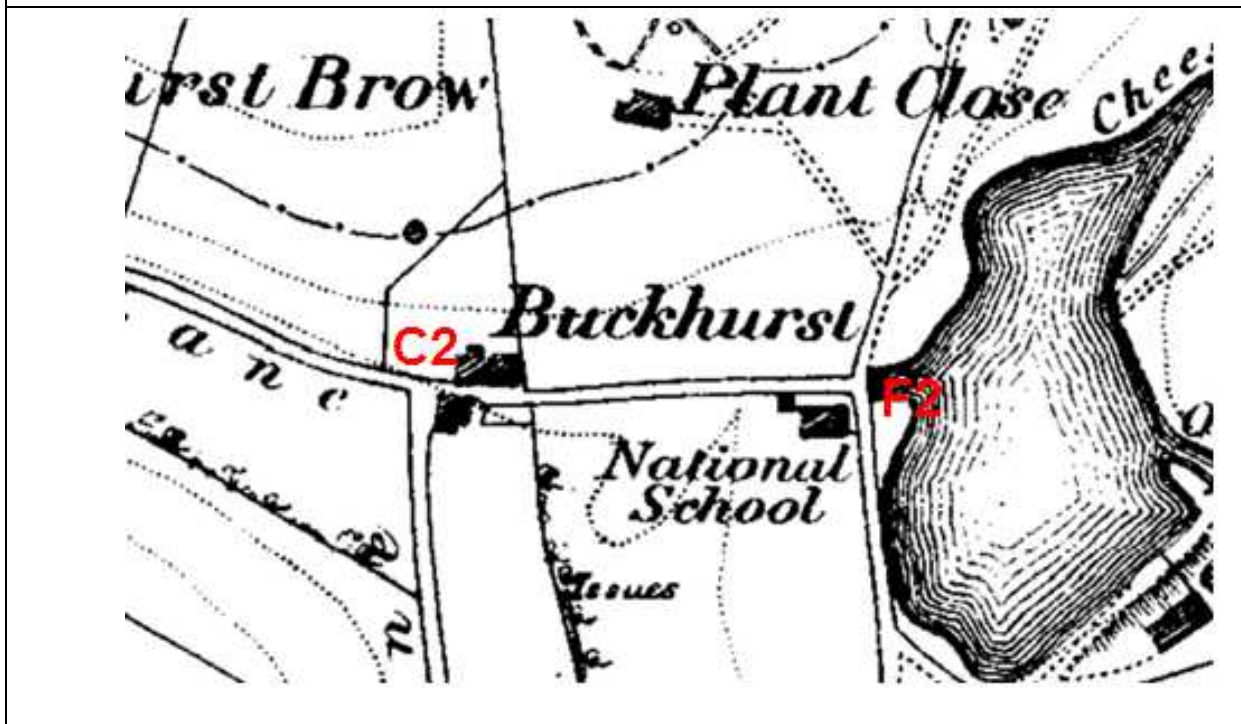
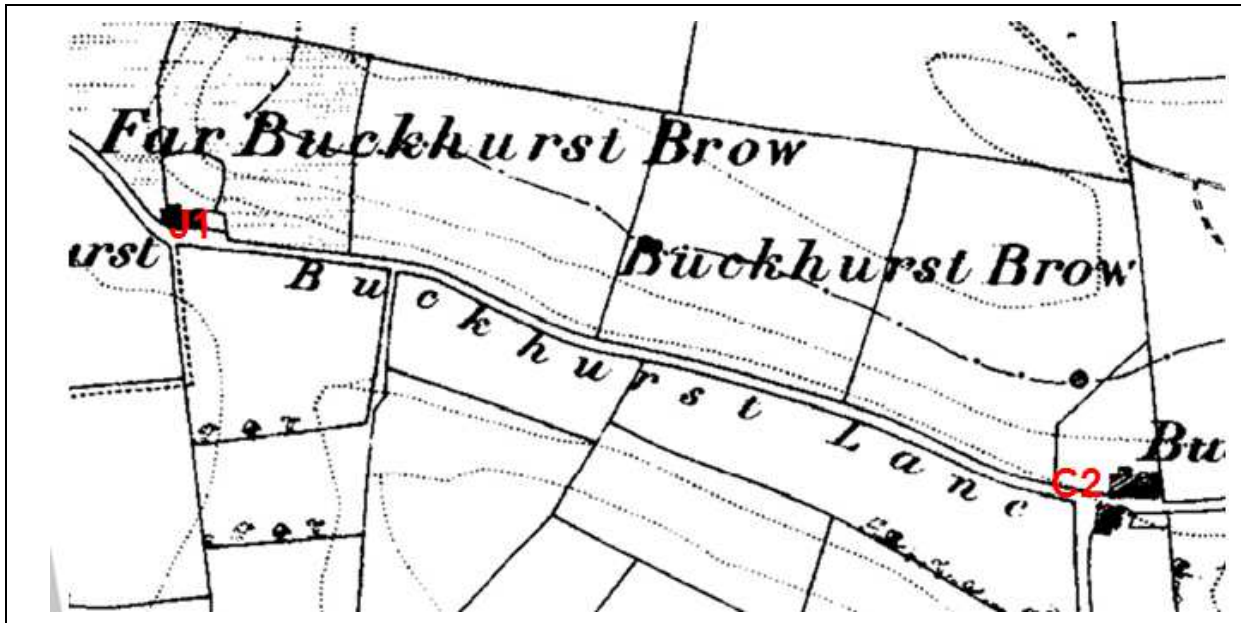


Observations		The route between point A1 and point C2 is
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		clearly shown and the property (Far Buckhurst) adjacent to point J1 shown. The route between point C2 and point F2 appears broken and although a route is shown to extend east from point C2 it does not look to extend as far as point F2. A building adjacent to the route at point F2 is shown but not named.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public and the inclusion of (most of) the route on this map is suggestive of at least public bridleway rights and possibly vehicular rights.
6 Inch Ordnance Survey (OS) Map	1851	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-48 and published in 1851. <sup>1</sup>

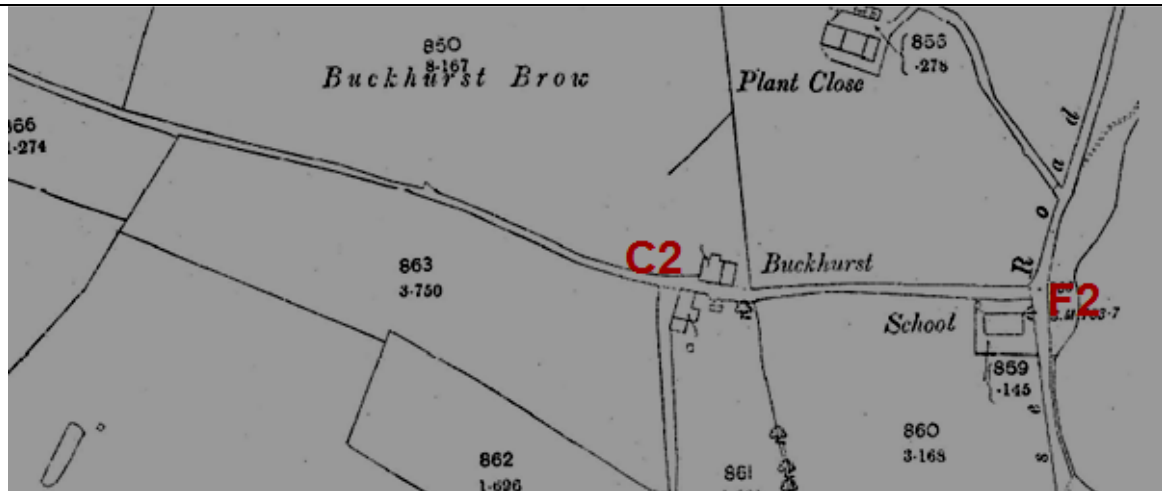
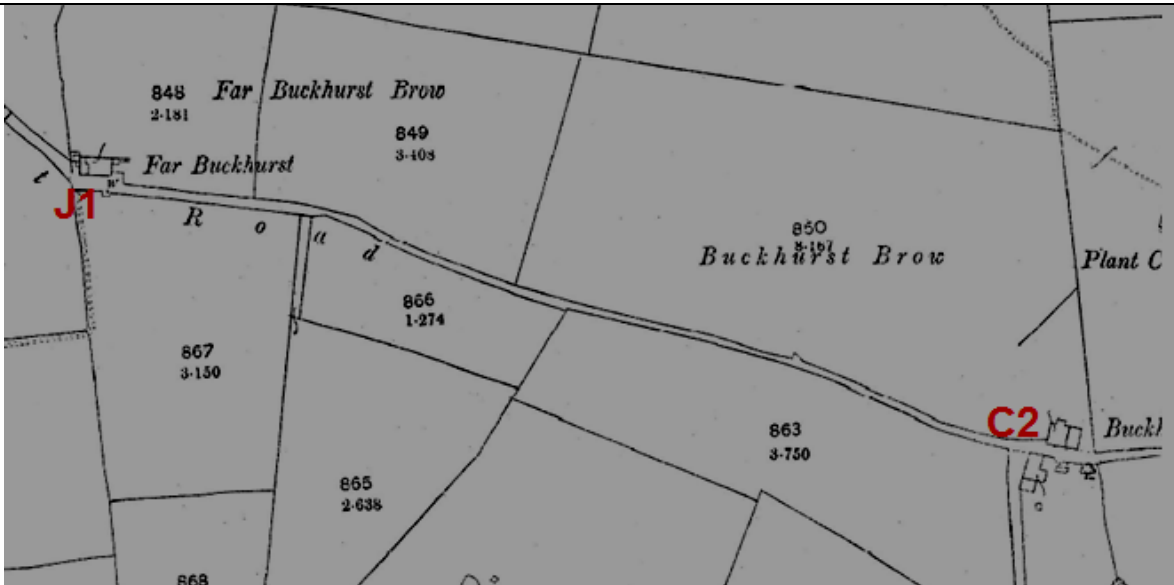
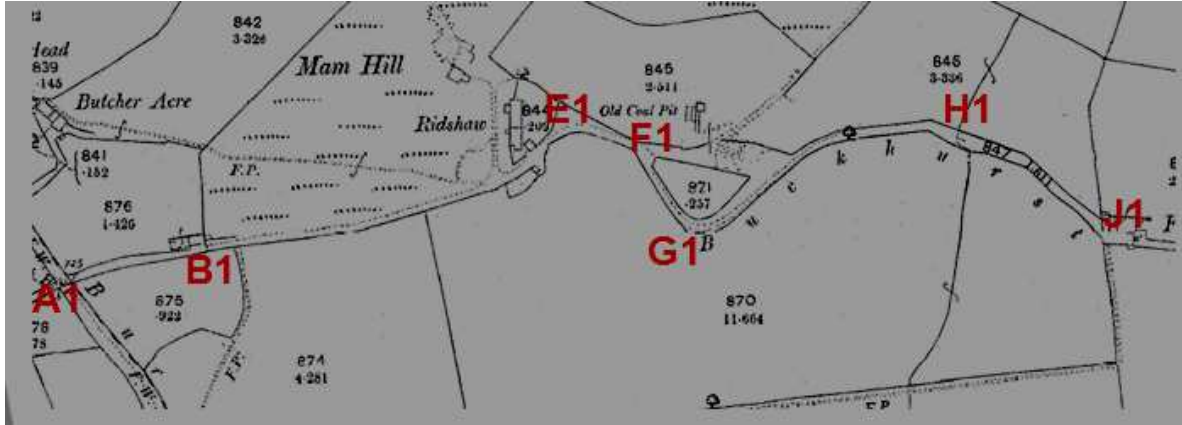


<sup>11</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.




<p>Observations</p>	<p>The full length of the route under investigation is clearly shown.</p> <p>From point A1 the route provides access to and beyond the property titled Ridshaw Farm which is located adjacent to point E1 on the Committee plan. Between point A1 and point J1 the route is named as Ridshaw Lane. A property named as Far Buckhurst is marked on the map adjacent to point J1 and between point J1 and point C2 the route under investigation is named Buckhurst Lane and is shown connecting to Sales Lane at point C2. Buckhurst Farm is shown and named on the map as Buckhurst and a building marked</p>
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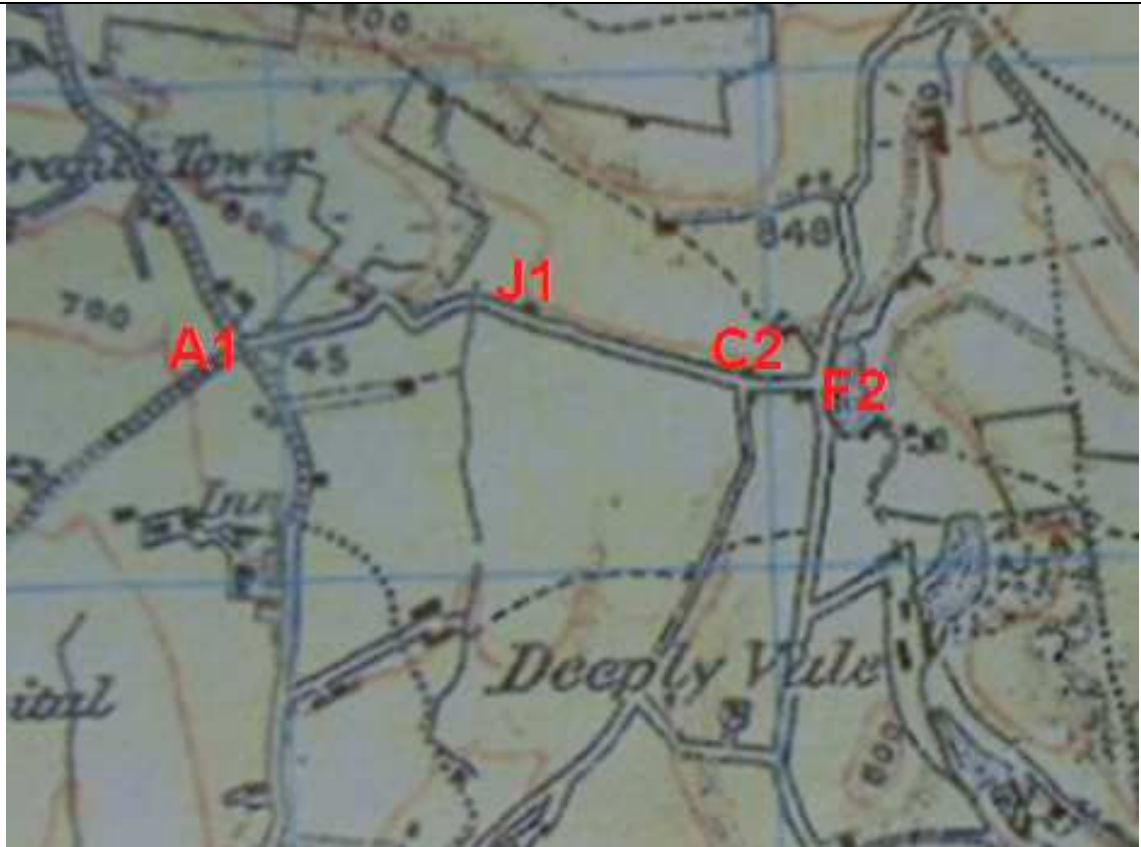
		as a 'National School' is situated adjacent to the route at point F2.
Investigating Officer's Comments		<p>The full length of the route under investigation existed and appeared to be capable of being used by the public in 1851.</p> <p>The route provided access to a string of properties and farms and is shown as a substantial through route connecting Bury Old Road and Croston Close Road and intersected by Sales Lane at point C2. Other less significant routes (marked by single or double pecked lines) are shown to connect to or to cross the route under investigation – many of which are now recorded as public footpaths.</p> <p>The route under investigation is named on the map; the first section as Ridshaw Lane, the second as Buckhurst Lane with properties named as 'Ridshaw' and 'Buckhurst' being situated along it. It is considered likely that a named route connecting a number of properties and providing a through route connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> <p>Of particular note is that the route provided access from Bury Old Road to a building marked as a school. National schools were schools founded in the 19<sup>th</sup> century in England and Wales by the National Society for Promoting Religious Education. These schools provided elementary education, in accordance with the teaching of the Church of England, to children of the poor. It is unlikely that a school would have been located on a route limited to a public right of way on foot although vehicular access might have been possible via Croston Close Road.</p>
<b>25 Inch OS Map</b>	1895	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893 and reprinted in 1895.



<p>Observations</p>	<p>The First Edition 25 " is at a larger scale than the 6" map showing the area in more detail.</p> <p>The full length of the route under investigation is shown. A gate is shown to exist across the route at point B1 and a watercourse is shown to cross it at point H1. The route under investigation is not named on this edition of the map as Ridshaw</p>
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		<p>Lane although the farm adjacent to point E1 is labelled Ridshaw. The property known as Far Buckhurst is shown adjacent to point J1 and the route is labelled as 'Buckhurst Road' between point G1 and point C2 - as opposed to being referred to as 'Buckhurst Lane' on the earlier 6 inch edition. There is a change of surface indicated at point C2 where Sales Lane joins the route under investigation and also at point F2 where the route under investigation meets Croston Close Road.</p> <p>The route under investigation appears to be bounded on either side for most of its length with the exception of the section from point B1 to point E1 which is open to the rough pasture on the north side of the route.</p> <p>The route is not coloured or shaded to indicate public status but neither are other routes now recorded as public bridleways or vehicular highways.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1895 and provided access to a number of properties and a school.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is not shown in such a way but neither are other known public vehicular highways in the area so no inference can be drawn in this respect.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>A gate is marked across the route at point B1 which may have restricted but not necessarily prevented access. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>

<b>6 inch OS Map</b>	1894	Further edition of the 6 inch map surveyed in 1891 and published in 1894.
		
Observations		The full length of the route under investigation is shown and named on the map as Buckhurst Road. A short section near A1 and the majority of the route F1-F2 is shown as an enclosed road. The other (unenclosed) section is shown bounded on the south side only. It is not labelled "FP" in contrast to all the footpaths shown on this extract.
Investigating Officer's Comments		The route under investigation existed in 1894 and appears to be capable of having been used by the public on horseback or possibly with vehicles.
<b>Cassini reprint of the 1 inch Map of Lancashire</b>	Originally published 1903	Map extract submitted by the applicant. An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping.



Observations		The full length of the route under investigation is shown but not named.
Investigating Officer's Comments		The route was considered to be sufficiently important to be included on a commercially produced small scale map sold to the public suggesting not only that it existed and was capable of being used by the public in 1903 but that it was accessible to the public. Public Footpaths were not generally shown on the map suggesting that the inclusion of the route on the map inferred use by the public on horseback and possibly with vehicles.
<b>½ inch OS Map of Preston</b>	1907	Further edition of the OS mapping.





Observations		The route under investigation is clearly shown with a number of properties marked on the map along its length (Ridshaw Farm, Far Buckhurst, Buckhurst Farm and the school). The watercourse crossing the route at point H1 is also shown.
Investigating Officer's Comments		This ½ inch scale map covered a large area and due to its scale could only show main routes. Public footpaths are not generally shown and neither are field boundaries. The inclusion of the route on such a map - which would have been sold primarily to the public travelling on horseback or by vehicle - suggests that it was still in use as a significant route in 1907.
<b>25 inch OS Map</b>	1910	Further edition of the 25 inch map resurveyed in 1891, revised in 1908 and published in 1910.
Observations		The full length of the route under investigation is shown and is labelled as Buckhurst Road. Gates are marked across the route at point B1 and point F1.  The property close to point J1 (Far Buckhurst) is no longer shown on the map suggesting that it no longer existed.
Investigating Officer's Comments		The route under investigation existed in 1910 and appeared to be capable of being used by the public on horseback.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good

evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.

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).

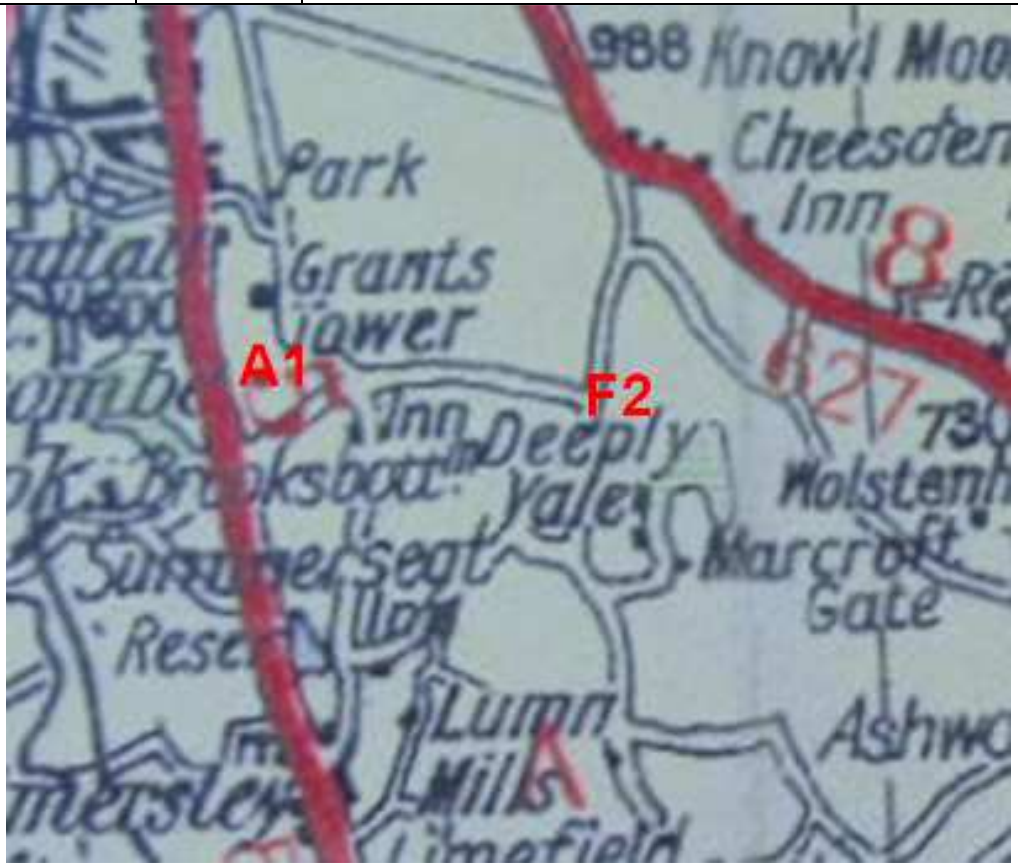
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.

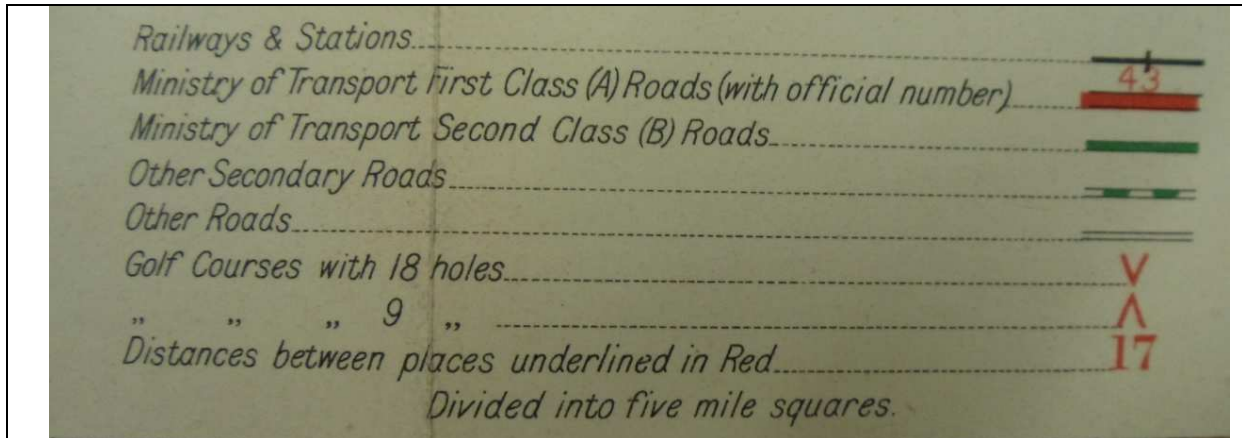




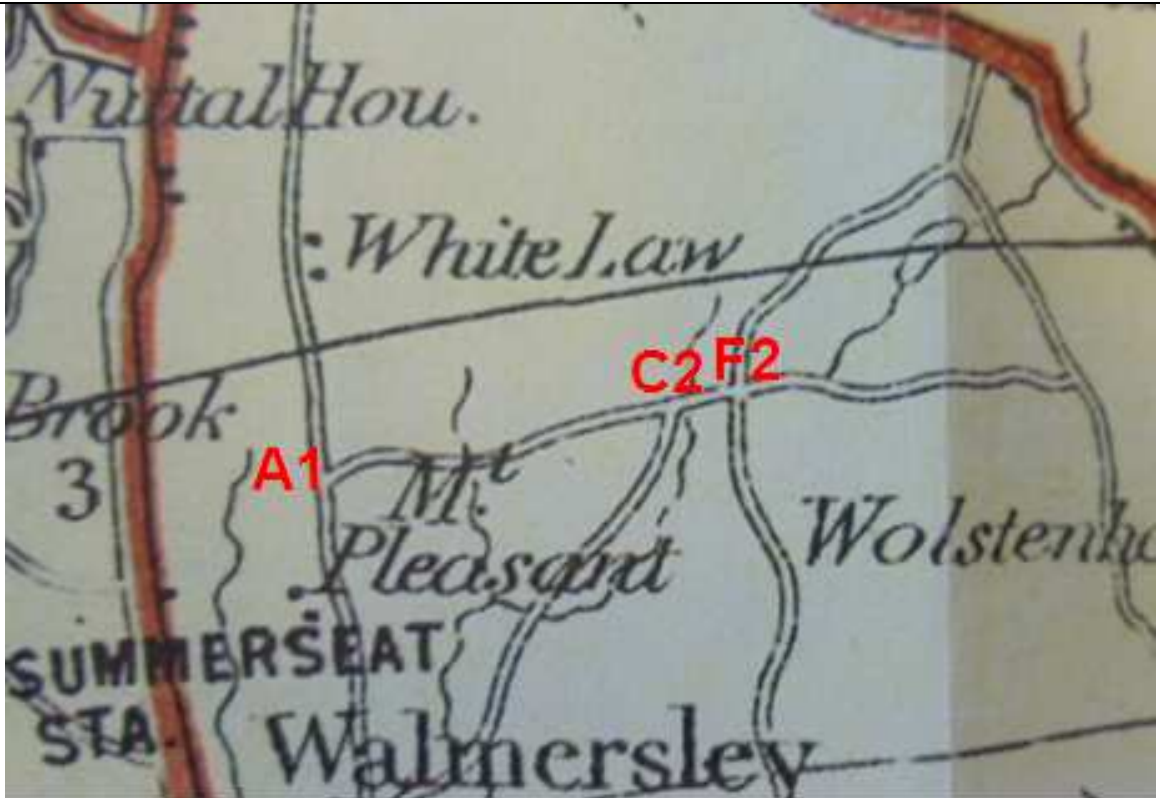
<p>Observations</p>		<p>No Finance Act maps were available in the Lancashire Records Office so the Finance Act Maps were obtained from The National Archives.</p> <p>An examination of the maps shows that the whole of the route under investigation was excluded from the adjacent numbered hereditaments.</p> <p>The Field books for the adjacent hereditaments were obtained. Hereditaments 7, 8 and 19 were all owned by the Earl of Derby and deductions made for unspecified 'public footpaths' contained within them. Plot 58 was also listed as being in the ownership of the Earl of Derby but no deduction was listed for a public right of way within it.</p> <p>Plot 15 was owned and occupied by A Clegg and the property described as being situated on 'Buckhurst Road'. No deductions for public rights of way were recorded.</p>
<p>Investigating Officer's Comments</p>		<p>The exclusion of the whole route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways</p>

		<p>were normally included within the numbered plots). Much of the land either side of the route was still in the ownership of the Earl of Derby and had been clearly excluded from the taxable hereditaments within three of which deductions had been claimed for public footpaths.</p> <p>Between points I1 and E2 the land either side of the route under investigation was in different ownership but has been excluded from the taxable hereditament that has been split by the route which is described in the field book as 'Buckhurst Road'.</p> <p>The maps showed land in private ownership and, by implication, land not recorded as being privately owned would have been regarded as being in public ownership.</p>
<p><b>½ inch to the mile Geographia Road Map 30 miles around Manchester</b></p>	<p>Revised 1921</p>	<p>Extract of map provided by the Applicant.</p>





Observations		The route under investigation is shown and is depicted as 'Other Roads' in the map key. No properties are shown along the route – probably due to the scale of the map.
Investigating Officer's Comments		The scale of the map means that it is likely that only the most significant public routes were shown and were differentiated in the key The fact that the route under investigation is shown as a route considered to be a 'Road' suggests that it was considered at that time to be at least a public bridleway – and more likely a route carrying public vehicular rights.
<b>Abel Heywood &amp; Sons Cycling &amp; Touring Map 60 miles about Manchester ½ inch to the mile</b>		Extract of the map provided by the Applicant. Undated but thought to be dated circa 1920 by a local historian.



Observations		The full length of the route under investigation is shown.
Investigating Officer's Comments		The fact that the route is clearly shown on a cycling and touring map – the purpose of which was to show routes available to the public to use on a bike and with vehicles - suggests that it was considered to be a public road (cyclists were not allowed to use bridleways prior to 1968).
<b>25 Inch OS Map</b>	1929	Further edition of 25 inch map re-surveyed 1891, revised in 1928 and published 1929.
Observations		The full length of the route under investigation is shown and named as Buckhurst Road. There are no changes to the route from the 1910 edition of the 25 inch map.
Investigating Officer's Comments		The route under investigation still provided access to a number of properties along it but was also a through route connecting to other public routes across the valley.
6 inch OS Map 80SW	1930	A copy of the 6 inch OS map published in 1930 submitted by the applicant and which is stamped with the name 'Pennine Paths Preservation Society'.



<p>Observations</p>	<p>The map extract has been annotated with a green pen and the routes shown in green correspond to a number of recorded public rights of way. The route under investigation has not been coloured although a number of routes that have been coloured connect to the route under investigation. Sales Lane and Croston Close Road are both shown coloured.</p>
<p>Investigating Officer's Comments</p>	<p>There is no key to the colouring on the plan and it is not dated. It is understood that the map originated from the Pennine Paths Preservation Society and is now in the possession of the Bacup Natural History Society. However the date when it was annotated and the reason for its production are not known.</p> <p>The route under investigation has not been coloured but a number of other routes that are now recorded as public paths have been marked and are shown to connect to it. This may suggest that if the purpose of the annotations was to mark up public paths then the route under investigation was considered to be of a higher public status and that it was therefore not necessary to mark it on the map.</p> <p>Sales Lane (currently recorded as a Public Footpath but subject to a DMMO application to upgrade it to public bridleway) and Croston Close Road (originally recorded as a public footpath but upgraded to public bridleway by a DMMO) are both shown coloured green suggesting that routes considered to be public paths were marked.</p>

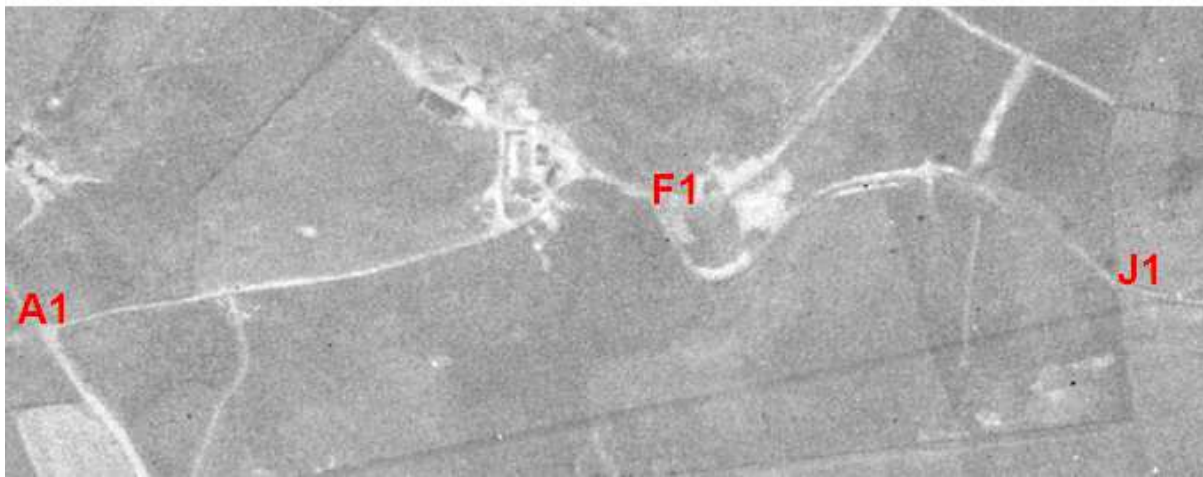

<p><b>The Authentic Map Directory of South Lancashire published by Geographia Ltd</b></p>	<p>1934</p>	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large scale, detailed street map in the area. The atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to the streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of 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'.</p>
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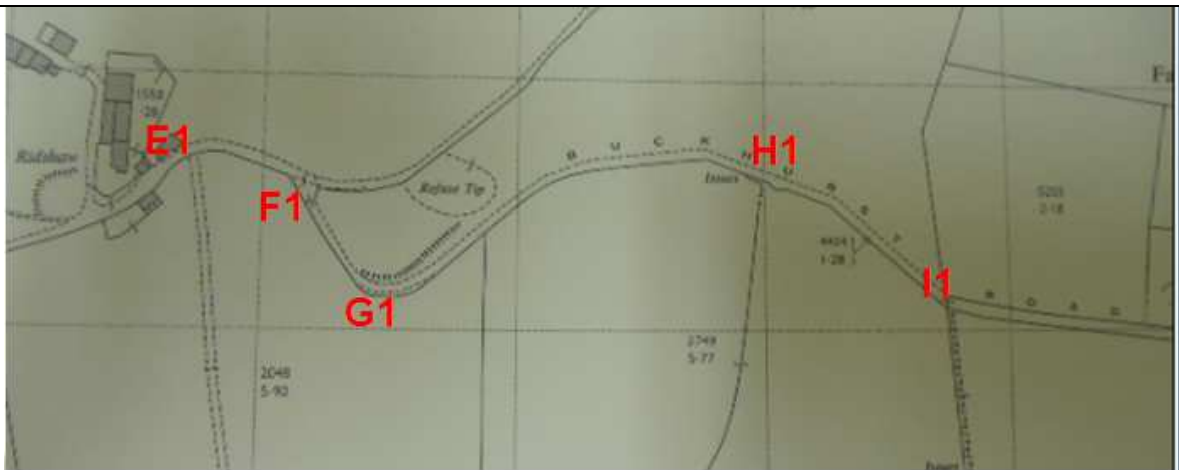
<p>Observations</p>		<p>The full length of the route under investigation is shown and is named as Buckhurst Road.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is shown in the atlas consistent with other routes carrying public vehicular rights.</p>
<p><b>Aerial Photograph<sup>2</sup></b></p>	<p>1940s</p>	<p>The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is</p>

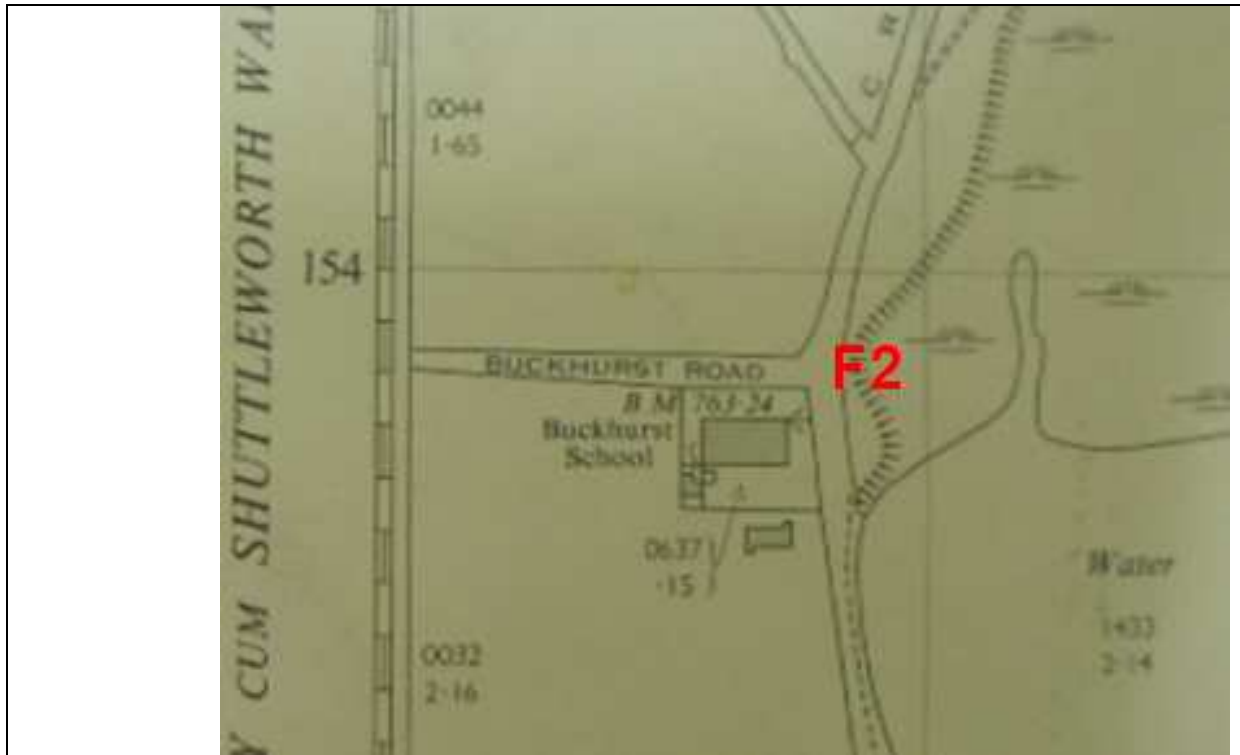
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



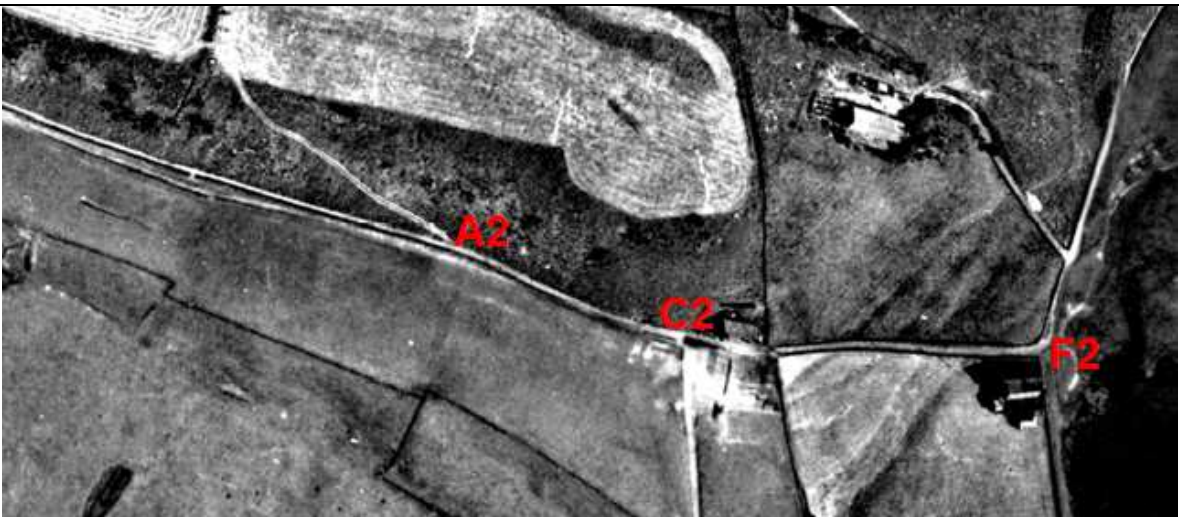
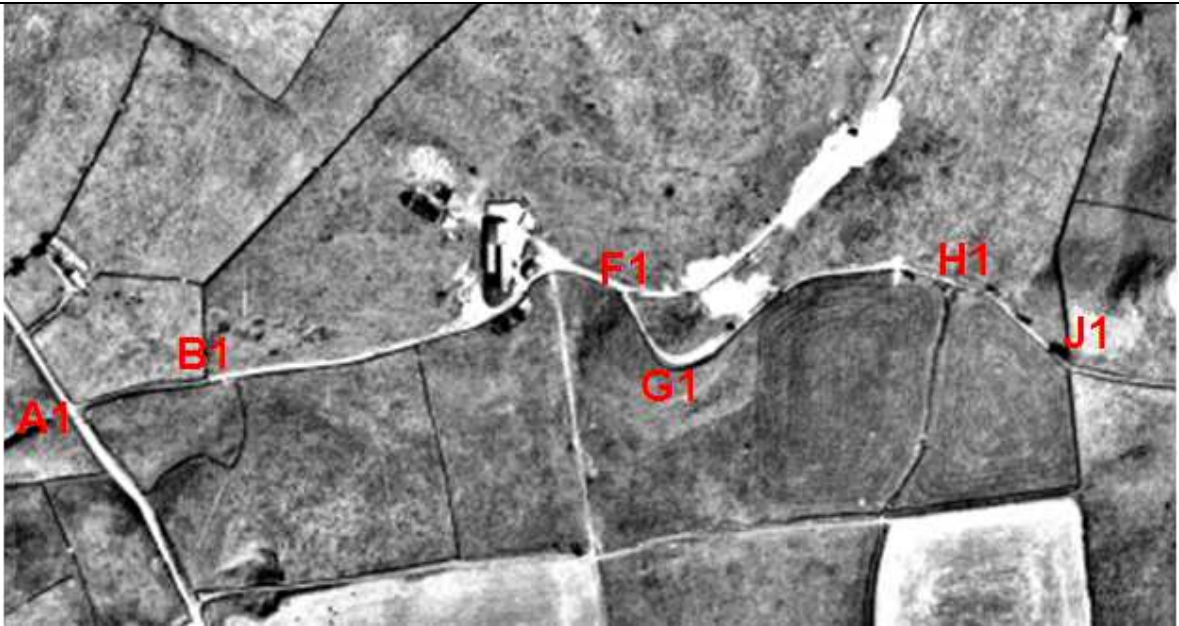
		generally very variable.
		
Observations		The quality of the photographs is poor but the whole length of the route can be seen as a track. Boundary walls, fences, gates etc. cannot be seen on the photographs.
Investigating Officer's Comments		The whole of the route existed as a worn track in the 1940s.
<b>6 Inch OS Map (SD 81NW)</b>	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The whole of the route under investigation is shown and is named on the map as Buckhurst Road. Gates are shown across the route at point B1 and point F1. Farms along the route are named and so is the school.
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used when the map was revised in the 1930s.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from

former county series and revised in 1962 and published 1963 as national grid series.





Observations		<p>The whole of the route under investigation is shown.</p> <p>Butcher Acre Farm has been built to the north of point A1 but access to the farm is off Bury Old Road. A gate is still shown to exist across the route at point B1 and the route is shown to be open and unrestricted as it passes Ridshaw Farm. A gate is shown across the route at point F1 and between point F1 and point I1 the route is now shown to be bounded on the south side but open to the land to the north. A refuse tip is shown north of the route between point G1 and point H1 which may have been accessed from the route under investigation.</p> <p>At point I1 a gate is shown across the route which was not marked on earlier editions of the map. The route crossed map sheets but is named as Buckhurst Road on both map sheets. The school adjacent to point F2 is still labelled as Buckhurst School.</p>
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used when the map was revised in 1962.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.




Observations

The whole of the route under investigation can be seen on the aerial photograph.

Butcher Acre Farm can be seen to the north of point A1. Between point A1 and point A2 the route is visible between walls or hedges. From point B1 and past Ridshaw to point F1 the route can be clearly seen suggesting that it was of a substantial construction or was very well used and not just a grass track.

From point F1 to point G1 and continuing towards point H1 the route is well defined as far as an area that was labelled as a refuse tip on the 1963 OS. Beyond that area the route continues to point H1 as a clearly defined route.

At point A2 a track is visible that converges with the route under investigation which is not

		marked on the 1963 OS map.
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used in the 1960s.
<b>Aerial Photograph</b>	1990	Aerial photograph available to view at the Lancashire County Council Offices at Cuerden.
		
Observations		The whole of the route under investigation can be seen but between point F1 and C2 the route is far less visible than on the earlier set of photographs.
Investigating Officer's Comments		It appears that the route between point F1 and C2 was no longer used on a regular basis by vehicles and as a consequence was much less visible than those sections that provided access to farms and properties.
<b>Aerial Photograph</b>	2000	Colour aerial photograph taken in 2000 and available to view on GIS.



Observations		<p>The whole of the route under investigation can be seen. The gate at point B1 cannot be seen on the photograph but a line can be seen across the route at point E1 which may be the cattle grid that is now situated across the route at this point. From point A1 through to point F1 the route under investigation follows a clearly visible track. From point F1 the route is much less visible on the ground through to point A2 where a track meets it from the north. The rest of the route from point A2 to point C2 and through Buckhurst Farm to F2 is clearly visible.</p>
Investigating Officer's Comments		<p>The route under investigation physically existed and appeared capable of being used in 2000. Use of the middle section (between point F1 to point A2) appears to have declined with the track being much less obvious on the ground which</p>

		would be consistent with use by pedestrians and possibly horses as opposed to use by vehicles. The cattle grid at point E1 may have existed across the route in 2000 which may have restricted use of the route by horse riders.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in 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		The route under investigation is within Ramsbottom which was a municipal borough in the early 1950s so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was shown on the Draft Map as a public footpath and numbered 207. No objections or representations were made to the County Council about the inclusion of the route as a public footpath.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to

		be made to the Crown Court.
Observations		The route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft and Provisional Maps.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation was shown in the same way on the Definitive Map of Public Rights of Way (First Review) as it had been previously shown.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as 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



		<p>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 is no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the route under investigation 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.
<b>Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large</b>		An extract of a handwritten book titled 'The Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large' and obtained by the applicant from Bury Council.
Observations		<p>Contact was made with Bury Council who confirmed that they still had the document that was submitted by the applicant. On the title of the document is a label saying 'Ruled and written up by Councillor John Harrison, April 20<sup>th</sup> 1912' with an additional label stating 'Names of new streets to be notified to the District Fire Officer' and dated February 1957. A further note under the title 'Ramsbottom UDC Public Highways' states that only streets with entries in columns 3-6 are public highways' and appears to be a later addition to the records. The column entries are Street/Ward/Date of Meeting/Minute Book Number and Page/Remarks. The following entries were included for the route under investigation:</p> <p>Street – Buckhurst Road</p> <p>Ward – Walmersley cum Shuttleworth</p>

		<p>Date of Meeting – no entry</p> <p>Minute book (Number) – no entry</p> <p>Minute book (page) – no entry</p> <p>Remarks – Occupation Road 1400 yards. This entry is written in pencil and may possibly be a later addition.</p> <p>Bury Council have also confirmed that the route under investigation is not listed in the List of Publicly Maintainable Streets.</p>
Investigating Officer's Comments		<p>After consideration by the Council it does not appear to have been considered to be publicly maintainable. No inference can be drawn regarding public rights.</p>

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

### **Landownership**

Between point A1 and point I1 the route under investigation is in the freehold ownership of Mr Clifford Stewart Sellers of Ridshaw Nook, Buckhurst Road, Bury BL9 6TA.

The land crossed by the route under investigation between point I1 to point F2 is not registered and none of the landownership details for land either side of the route between points E2 and F2 includes ownership of the route under investigation.

Solicitors acting on behalf of Mr John Walsh and Mrs Marlene Walsh of Buckhurst Farm, Buckhurst Road, Walmersley, BL9 6SZ have provided landownership details in writing to the effect that Mr and Mrs Walsh own the land crossed by the route under investigation between point I1 and point B2. That the land between point B2 and just beyond C2 is owned by Mr John Patrick Walsh and Mrs Andrea Walsh, and from that point to point E2 the land is held in trust for Mr Richard Alan Walsh by Mr John Walsh and Mrs Marlene Walsh.

### **Summary**

The application submitted by the Forest of Rossendale Bridleways Association was for the route under investigation to be recorded as a public bridleway based entirely on map and documentary evidence.

The earliest commercial map examined was Yates' Map of 1786 which clearly shows the full length of the route as a through route and depicted as a 'cross road'. It is subsequently shown on Smiths Map 1801 and the depiction of the route on these small scale commercial maps produced primarily to assist the travelling public on horseback and in carts suggests that the route was considered to be at least a bridleway – and more probably a public vehicular route in the late 1700s and early

1800s. It is not, however shown on Greenwood's Map of 1818 or Hennes's Map of 1830.

It is submitted that its appearance on early maps would lead to the presumption of the route under investigation being of at least bridleway status and on balance a highway open to the public in all vehicles including carts and carriages having already been dedicated to public use.

The Derby Estate plan dated 1824 does not show the full length of the route but does show the sections between point A1 to point E1 and point H1 and point E1 as 'High Roads'. The purpose for which the plan was drawn is not known and the definition of 'High Road' is not given but it is clearly distinguished from 'Private Roads' suggesting that a route shown as a High Road was likely to carry public rights on horseback – and more probably vehicular rights and the fact that part of the route is not shown is more likely to be because the land it crossed was not part of the Derby Estate rather than it not existing as it is clearly shown as a through route on other commercial maps produced around that time.

The Tithe Map published in 1838 is too fragile to inspect. However the full length of the route is clearly shown on the Cassini map originally published 1842-44 at a scale of 1 inch to a mile and the inclusion of the route on such a small scale map adds further weight to the belief that the route was of significant importance to the travelling public in the 1800s.

The route is named on the first edition of the Ordnance Survey 6 inch map published in 1851 as Ridshaw Lane along the western section and Buckhurst Lane on the eastern section with properties shown along it again suggesting that the route formed an important through route at that time.

By the time that the 1895 25 inch Ordnance Survey map was published the whole length of the route was labelled as Buckhurst Road. A gate appeared to have existed across the route at point B1 which would not be inconsistent with a public bridleway or carriageway through farmland and a National School is shown to exist at the eastern end which could have been accessed from travelling along the route under investigation.

The route is consistently shown from 1851 to the current day on all Ordnance Survey maps suggesting that it physically existed and would have been capable of being used by the public since at least that time. It is generally considered that Ordnance Survey maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888, but there is a growing awareness by academics that by the end of the 19<sup>th</sup> Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent.

The 1910 Finance Act Maps and field books provide good evidence of what the landowners at that time believed the status of the route to be. The exclusion of the whole route from the taxable hereditaments is good evidence of, but not conclusive

of, public carriage rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots). Much of the land either side of the route was still in the ownership of the Earl of Derby and had been clearly excluded from the taxable hereditaments within three of which deductions had been claimed for public footpaths. Between points I1 and E2 the land either side of the route under investigation was in different ownership but has been excluded from the taxable hereditament that has been split by the route which is described in the field book as 'Buckhurst Road'.

The Finance Act 1910 map is consistent with public carriageway along the whole length. The maps showed taxable land in private ownership and, by implication, land not recorded as being privately owned would have been regarded as being in public ownership.

A number of other commercial maps published in the early 1900s show the route. The Geographia Road Map published in 1921 shows the route as an 'other road' and it is also clearly shown on a small scale cycle touring map published around the same time and the Authentic Map Directory of 1934 also shows and names the route. The fact that the route is shown as a through route on these maps - which were published primarily for the public wishing to travel by vehicle or bicycle - is again suggestive of the fact that the route was being used by the public in vehicles and by horses and bicycles at that time.

The aerial photographs examined from the 1940s, 1960s, 1990s and 2000 all confirm the existence of the route and show that by the 1990s use of the middle section (between point F1 and point C2) had declined to such an extent that the track was much less visible and the surfaced grassed over. This would suggest that use by that time of the middle section was predominantly pedestrian in accordance with its current designation as a public footpath. A structure is visible on the 2000 aerial photograph at point E1 which may be a gate or the cattle grid that existed when the route was inspected.

The highways records obtained from Bury Council suggest that although the route was listed in a document titled 'Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large' it appears that the Council considered the route to be an occupation road that was not maintainable at public expense.

Taking into account all of the map and documentary evidence examined it appears that there is evidence to suggest that the route under investigation is of at least bridleway status and on balance that a highway open to the public in all vehicles including carts and carriages has already been dedicated to public use.

However, although the route under investigation has evidence for public carriageway rights the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights where the route is currently recorded as a public footpath (i.e. along the full length).

## **County Secretary and Solicitors Group Observations**

### **Information from the applicant**

The applicant has provided various documents in support of their application:

6" to 1 mile Ordnance Survey map published 1849  
6" to 1 mile Ordnance Survey map published 1930  
Extract of Yates 1" map published 1786  
1910 Finance Act Map (listed as being dated 1920 by the applicant)  
Authentic Map Directory of South Lancashire published 1931-1935  
Lord Derby Estate Plan dated 1785 to 1788 redrawn 1824  
Smiths Map published 1802  
Casini Map published 1844 at a scale of 1" to the mile  
½ " to the 1 mile Ordnance Survey map dated 1907  
Geographia Road Map 30 miles around Manchester revised 1921 at a scale of ½" to 1 mile  
Abel Heywood and Sons Cycling & Touring Map 60 miles around Manchester ½" to 1 mile  
Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large

No user evidence has been provided in support of this application.

### **Information from the landowners**

An objection has been received from P Wilson & Company on behalf of John Walsh, Andrea Walsh & Richard Alan Walsh of Buckhurst Farm, Buckhurst Road, Walmersley and Mrs Marlene Walsh of Buckhurst Cottage, Buckhurst Road, Walmersley.

P Wilson & Company had requested copies of the applicant's submissions that show Footpath 207 (Buckhurst Road) but state that all documents and plans submitted fail to prove its status. They comment on the applicant's documents:

1. 6" to 1 mile OS 1849;  
6" to 1 mile OS 1930  
Yates 1" 1786  
Authentic Map Directory S Lancs 1931 to 1935  
Smiths 1802;  
Casini 1844 OS 1"  
1/2 "to 1 mile OS Preston map 1907;  
Geographia Road Map 30 miles around Manchester revised 1921 ½" to 1 mile;  
Abel Heywood & Sons Cycling & Touring Map 60 miles around Manchester ½" to 1 mile

P Wilson & Company states that these maps are not determinative of the status of Buckhurst Road. There are no keys on the maps which determine the nature of the

roads/lanes being depicted and therefore should not be regarded as evidence of the existence of a public bridleway.

2. Estate Plans Lord Derby 1785 to 1788 redrawn 1824

Comments are made on the land north and south of Buckhurst Road as they do not form part of Lord Derby's Estate and a large part of the road is omitted from the Estate plan, because of this they consider that the evidence is inconclusive on the status of any right of way.

3. Finance Act 1920 Map

The map extract cannot be interpreted as neither the valuation book or field book have been provided, P Wilson & Company state that the map extract alone provides insufficient information to determine the status of any right of way.

4. Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large

P Wilson & Company state that 'a' Buckhurst Road is mentioned on the sheet submitted by the applicant. But the format of the document is inconsistent with other Registers of Street Repairable by the Inhabitants at Large as it is normal for Surveyors to only note the road, its distance, and the roads it adjoins in the register. They query whether this is the official register of that period for the area. This document does not prove the status of Buckhurst Road. It is necessary to examine the whole book or collection of documents from which this extract is taken.

5. Definitive Map & Statement

P Wilson & Company provide a copy of the Draft map and Statement and the Definitive Map and Statement for Footpath 207, and state there is nothing in their contents to suggest the public right of way is anything but a footpath.

## **Assessment of the Evidence**

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

#### In Support of Making an Order(s)

Strong Historical map evidence

#### Against Making an Order(s)

Some historical map evidence

#### Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the status of this public footpath from Point A1 to F2 on the

basis that this public footpath carries higher public rights and should thus be recorded as a bridleway.

Committee should note that as the route already appears on the definitive map as a footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

There is no express dedication and it is not possible to satisfy the criteria in s.31 Highways Act 1980, as the applicant has produced no user evidence in support of the claim, hence there is no evidence of how the route was used by the public and whether this use was as of right, without interruption and for a full period of twenty years. Committee will therefore need to consider on balance whether dedication can be inferred at Common Law.

The analysis of the map and documentary evidence by the Executive Director for Environment suggests that the early commercial maps which include the Yates Map of 1786 showed the full route as a through route and was depicted as a 'cross road'. As a through route, it is suggested, the evidence points in the direction of this route being a carriageway. The route can also be seen on the Smiths Map 1801, this suggests the route was at the very least used as a bridleway and on balance was a highway open to the public in vehicles including carts and carriageways.

The later commercial maps evaluated, The Geographia Road Map (published 1921) and Authentic Map Directory 1934 also depict the route as a through route, bearing in mind these maps had been primarily published for the public wishing to travel by vehicle or bicycle, on a balance of probability it is highly likely the route was being used by the public on vehicles, horses and bicycles.

The route was excluded from The Finance Act 1910 map and several of the numbered plots were split by the route giving further weight that the route subject to this application was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).

The OS Maps confirm from 1940, the track was visible and in existence although it is suggested that by mid-1990 the section from F1-C2 had declined to such an extent that the track was much less visible and it is suggested that the route was likely to have at this stage been used predominately as a public footpath.

Although the route has evidence of public carriageway rights, it is no longer possible to record the route as a byway open to all traffic due to the introduction of section 67 National Environment Rural Communities Act 2006 (NERC Act). The implication of this section has meant that as this route was originally recorded on the definitive map and statement as a public footpath, any existing public rights of way for mechanically propelled vehicles have been extinguished. This therefore means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all the information into account and noting how the route was recorded on the old County maps, it is suggested to Committee that the evidence is sufficient to show, on the balance of probabilities that the route ought to be shown as a highway of a different description and the claim should be accepted as a restricted byway, as opposed to only a bridleway, as the evidence suggests on balance the route has a higher public status.

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

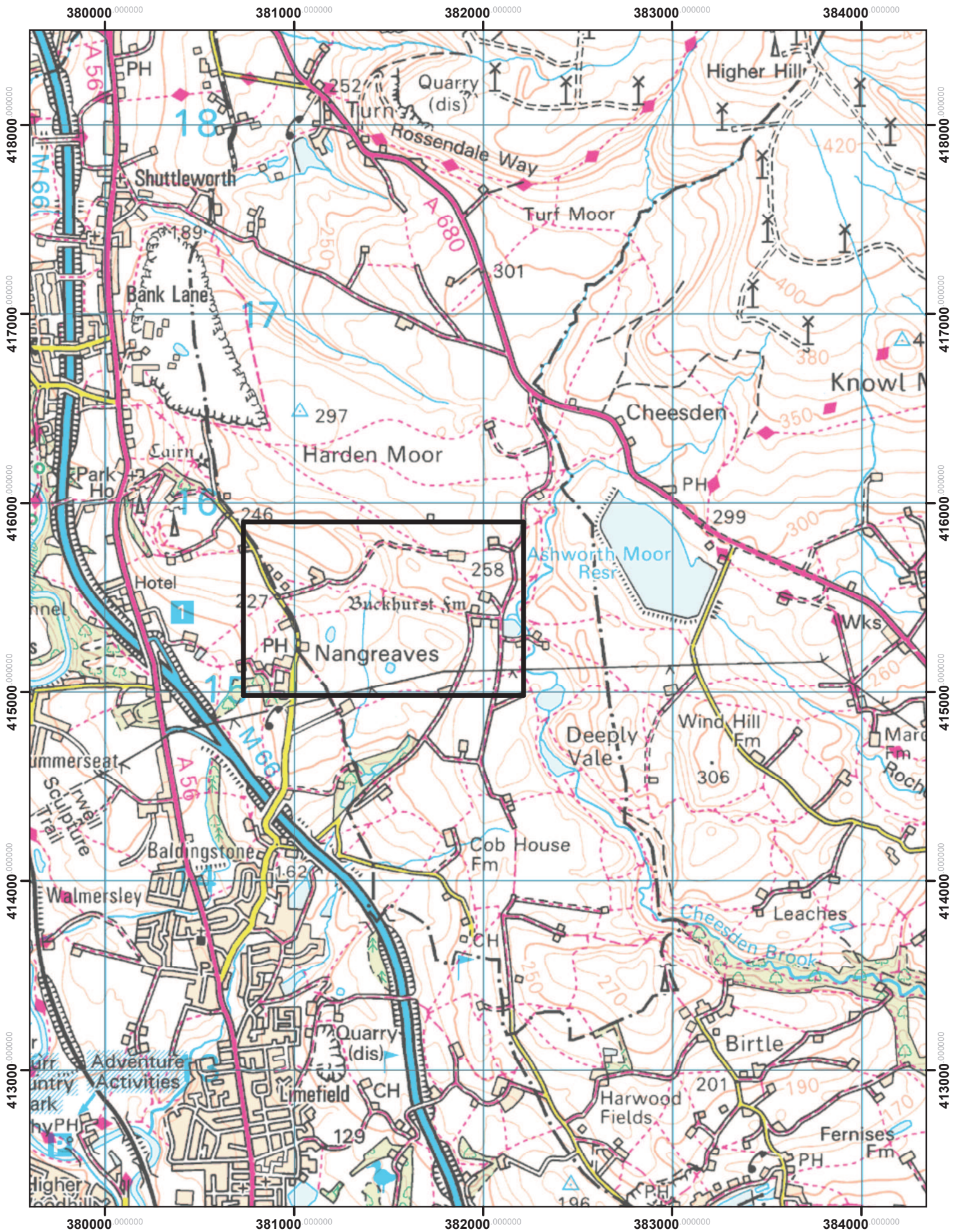
**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-540		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

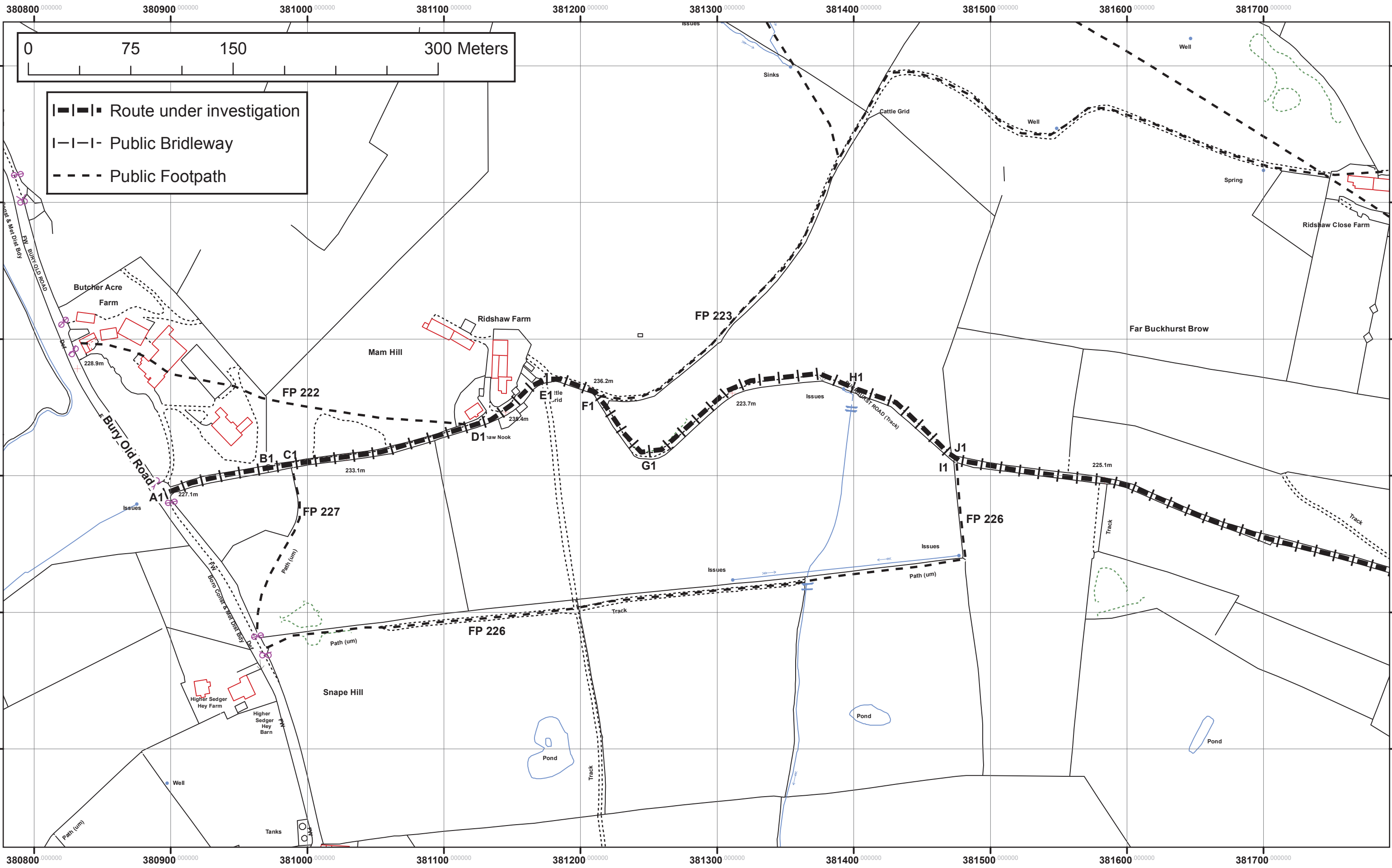
Reason for inclusion in Part II, if appropriate

N/A









**Jo Turton**  
Executive Director  
for the Environment

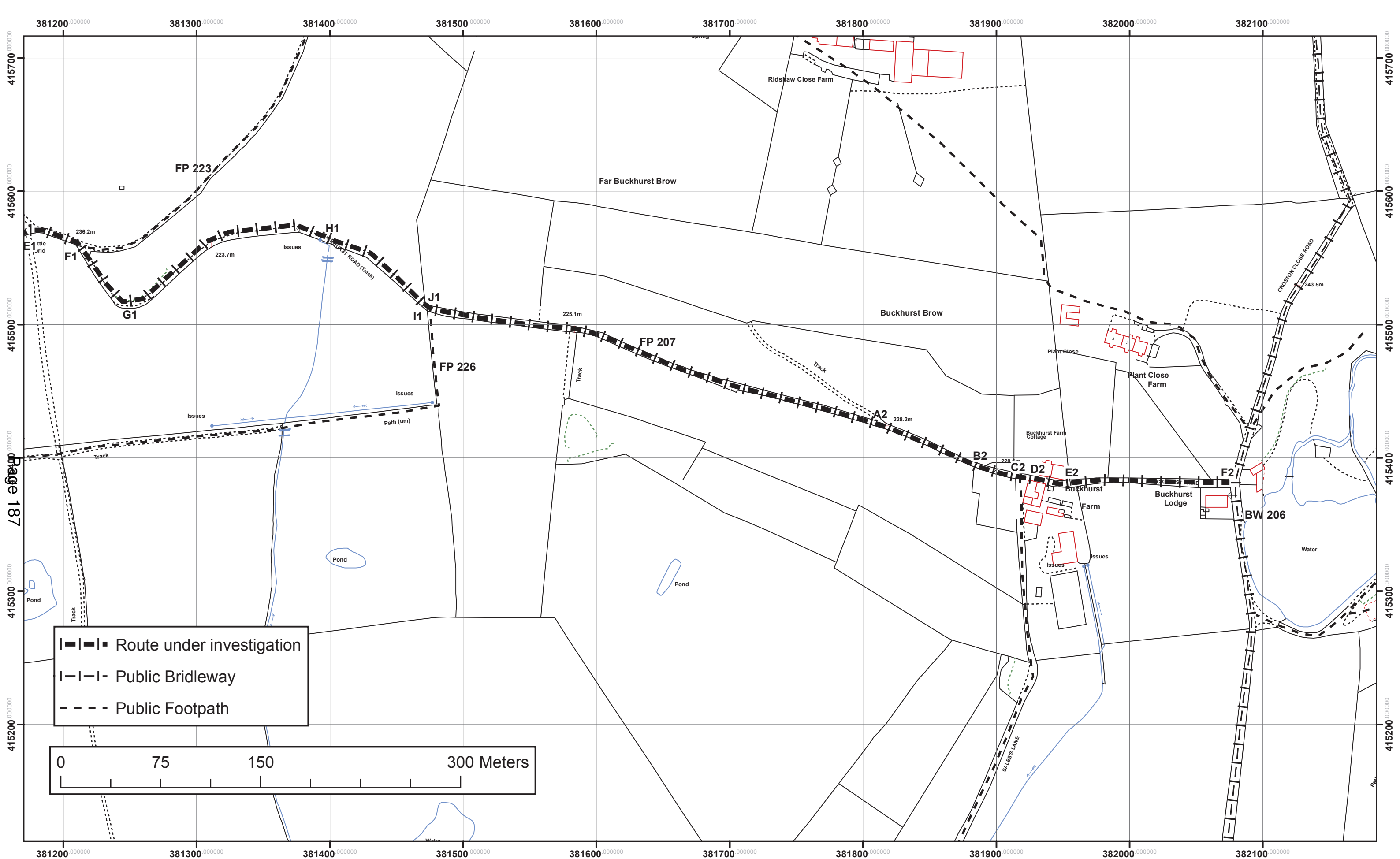
**Wildlife and Countryside Act 1981**  
Application to upgrade Ramsbottom Footpath 207 to Public Bridleway from Bury Old Road to Ramsbottom Bridleway 206, Rossendale  
File 804-540 Plan 1/2

1:2500

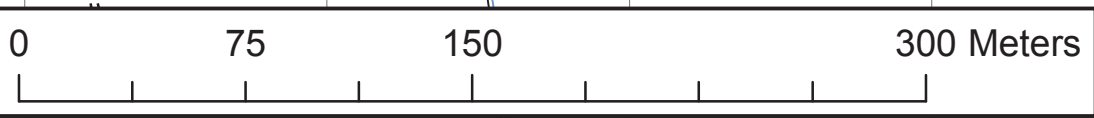


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- |—|— Route under investigation
- |—|— Public Bridleway
- - - - Public Footpath



Jo Turton  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981  
Application to upgrade Ramsbottom Footpath 207 to Public Bridleway from Bury Old Road to Ramsbottom Bridleway 206, Rossendale  
File 804-540 Plan 2/2

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## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Chorley Rural West
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### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Application for the Addition to the Definitive Map and Statement of a Public Bridleway from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley

File No. 804-545

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, County Secretary and Solicitors Group

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Jayne Elliott, Environment Directorate, 07917836626

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for a Public Bridleway to be added to the Definitive Map and Statement of Public Rights of Way from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley Borough, in accordance with File No. 804-545

### Recommendation

1. That the application to record a Bridleway from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley in accordance with File No. 804-545 be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to record a Public Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from Mrs J Almond, 31 Grape Lane, Croston, for a Public Bridleway between Back Drinkhouse Lane and Drinkhouse Road, Croston, for a distance of approximately 55 metres and shown between points A-B-C-D on the Committee plan to be recorded on the Definitive Map and Statement of Public Rights of Way.

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

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

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

An order for adding a way to the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (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 and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**

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

Croston Parish Council has been consulted and a letter of support has been received.

## **Applicant/Landowners/Supporters/Objectors**

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – County Secretary and Solicitor’ Observations.



## Advice

### Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference	Description
A	SD 4853 1838	Junction with Back Drinkhouse Lane
B	SD 4854 1838	Bollards positioned within surface
C	SD 4858 1838	Porch of 17 Drinkhouse Road extending across part of the route
D	SD 4859 1838	Junction with Drinkhouse Road

### Description of Route

A site inspection was carried out on 23<sup>rd</sup> July 2014.

The route under investigation starts at the junction with Back Drinkhouse Lane at point A on the Committee plan.

From point A the route extends in an easterly direction and is approximately 3.5 metres wide bounded on the north side by a well maintained hedge and on the south side by a wooden panelled garden fence. The surface of the route is tarmac.

Beyond point A the available width between the hedge and fence reduces over the first 5 metres towards point B to approximately 2.4 metres. After approximately 10 metres from A there are two posts positioned within the surface of the route (point B). A wooden post is situated in the middle of the tarmac section and an iron post is situated on the southern side adjacent to the wooden garden fence of the property named 'Albany'.

Beyond point B the route continues in an easterly direction. The surface is tarmac throughout with signs of services having been laid the full length and the tarmac replaced to a poorer standard. It is bounded by fences or hedges separating the tarmac path from the adjacent properties. Private gates are located in the boundaries on either side which provide access to and from the gardens.

The bins belonging to 17 Drinkhouse Road may be stored within the route, they protrude only about 0.2m into the currently available route with the hedge cut in the way that it was on the date of inspection.

The available width along the tarmac is constrained to 2 metres by a low brick wall on the north side of the route from about half-way along as far as the gate before the porch.

4.3m before reaching the porch at point C the fence line on the south side kinks 1.2m towards 19 Drinkhouse Road, giving an overall width of 3.4m and then continues in a straight line to point D.

At point C a side porch has been constructed to provide access to 17 Drinkhouse Road. The porch protrudes out into the route under investigation reducing the width to 1.9 metres for the 2.5 metre length of the porch. Beyond the porch the width increases to approximately 3.6 metres between the wall of 17 and boundary of 19 Drinkhouse Road for 5m, to the corner of the house wall, then a width of 3.9m to the junction of Drinkhouse Road.

When the route was inspected a car belonging to the owners of 17 Drinkhouse Road was parked on the route between point C and D although it was possible to walk past it.

The route was open at both ends (point A and point D) and there were no signs indicating whether the route was considered to be public or private.

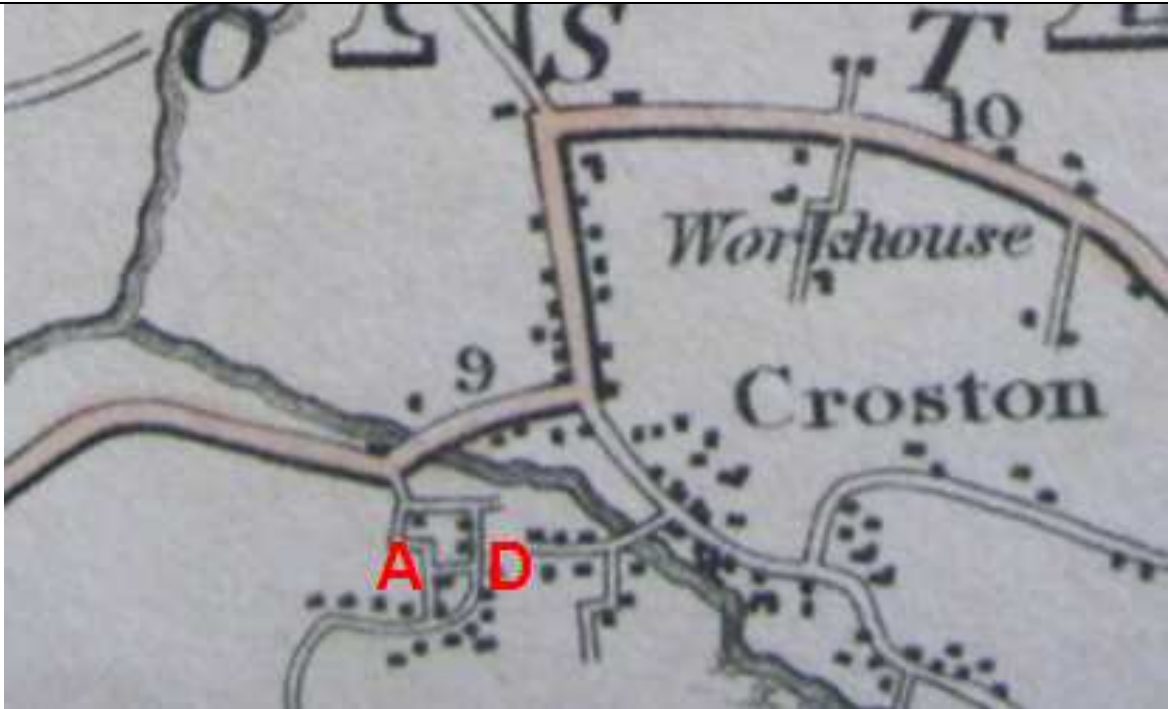
The total length of the route was approximately 55 metres and it was tarmaced along the full length. The width varied and the garden fences on the south side of the route appeared to have been altered to reduce the width of the route between point A and point C. The porch extension at point C protruded out onto the route.

### Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown on Yates' Map. A line of properties are shown to the south of the River Yarrow which may indicate that Drinkhouse Lane existed at that time.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.

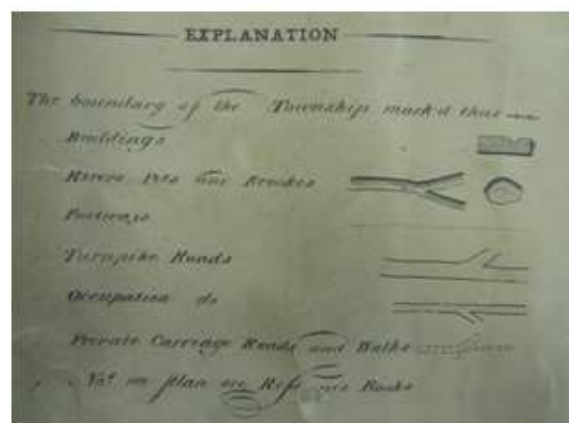


Observations		The route under investigation is not shown on Greenwood's Map although Back Drinkhouse Lane and Drinkhouse Road are both clearly shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The route under investigation is clearly shown connecting Back Drinkhouse Lane and Drinkhouse Road.
Investigating Officer's Comments		The route under investigation existed in 1830 and appeared to be considered to be part of the general highway network and shown as a 'cross road' by Hennet. As the only other category of 'road' shown on the map are the turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in Hollins V Oldham). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them. It is more likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that the route under investigation was a public bridleway or carriageway.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never

		built.
Observations		The route under investigation was not affected by the construction (or proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1837	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. The Tithe map for Croston was produced in 1837.

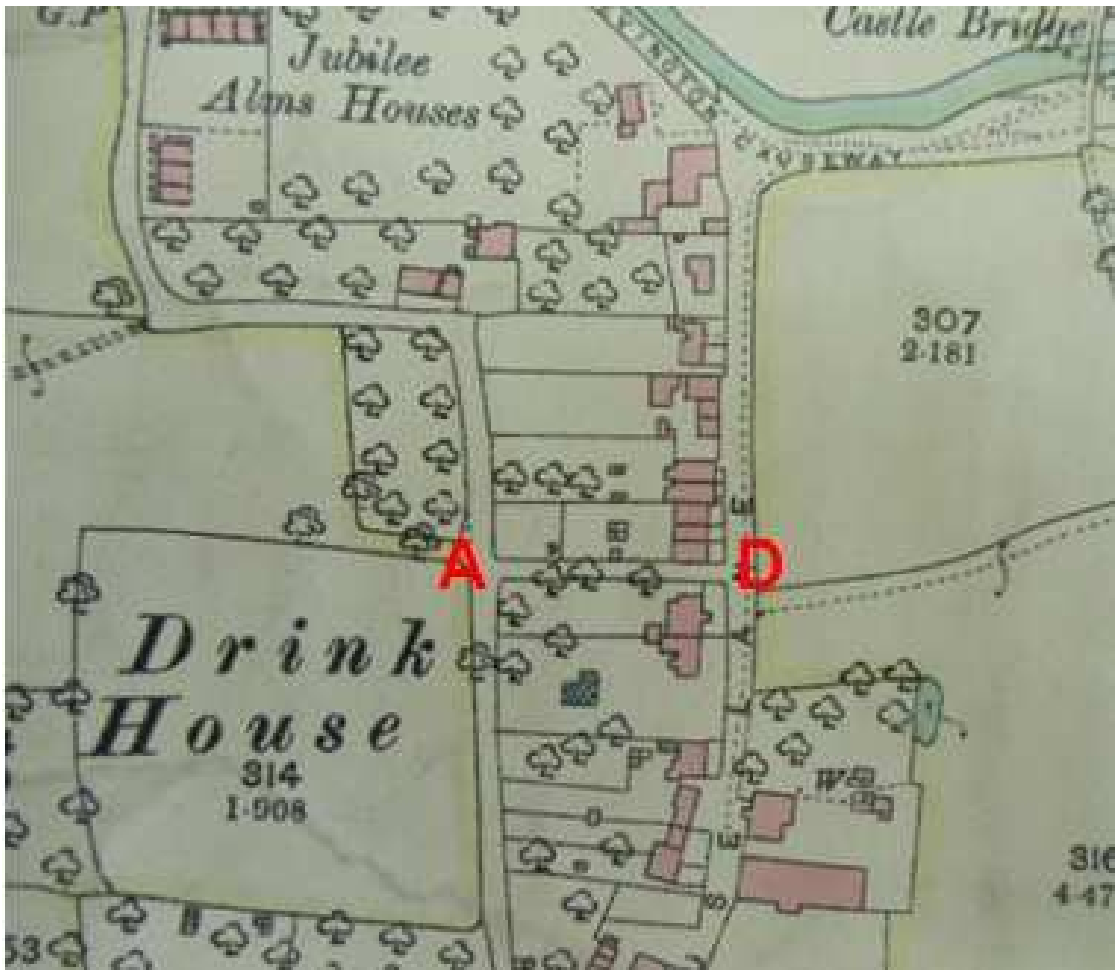


Observations		The full length of the route under investigation is shown as a fairly wide way and appears to be open and accessible at either end. The route is not numbered with a plot numbered and is not mentioned in the Tithe Schedule. The route is not named on the map or in the schedule and has not been coloured. Drinkhouse Road is coloured and is named on the map as Drinkhouse Lane. Back Drinkhouse Lane is not
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		coloured or named.
Investigating Officer's Comments		The route under investigation existed in 1837 and appeared to be capable of being used by the public. The route is shown bounded by solid lines but is not coloured. The key to the map indicates that a coloured route bounded by solid lines was either a Turnpike Road (wide line) or an occupation road (narrower line) with private carriage roads and walks being shown separately by double pecked lines. Occupation roads in this sense appear to be more minor public highways and not private access roads. The route under investigation has not been coloured – but neither has Back Drinkhouse Lane suggesting that not all routes – particularly the less used or more minor routes were coloured. The fact that the route is not numbered and no tithe charge is shown together with the way that it is shown separated from the adjacent properties but connecting to Back Drinkhouse Lane and Drinkhouse Road suggests that the route was considered to be a public road at the time. It is not possible to scale the width of this map but it does look to be narrower than the roads at either end.
<b>Inclosure Act Award and Maps</b>	1725-1726	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Award for Croston was inspected but did not show the area over which the application route runs.
Investigating Officer's Comments		No inference could be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845-46 and published in 1847.

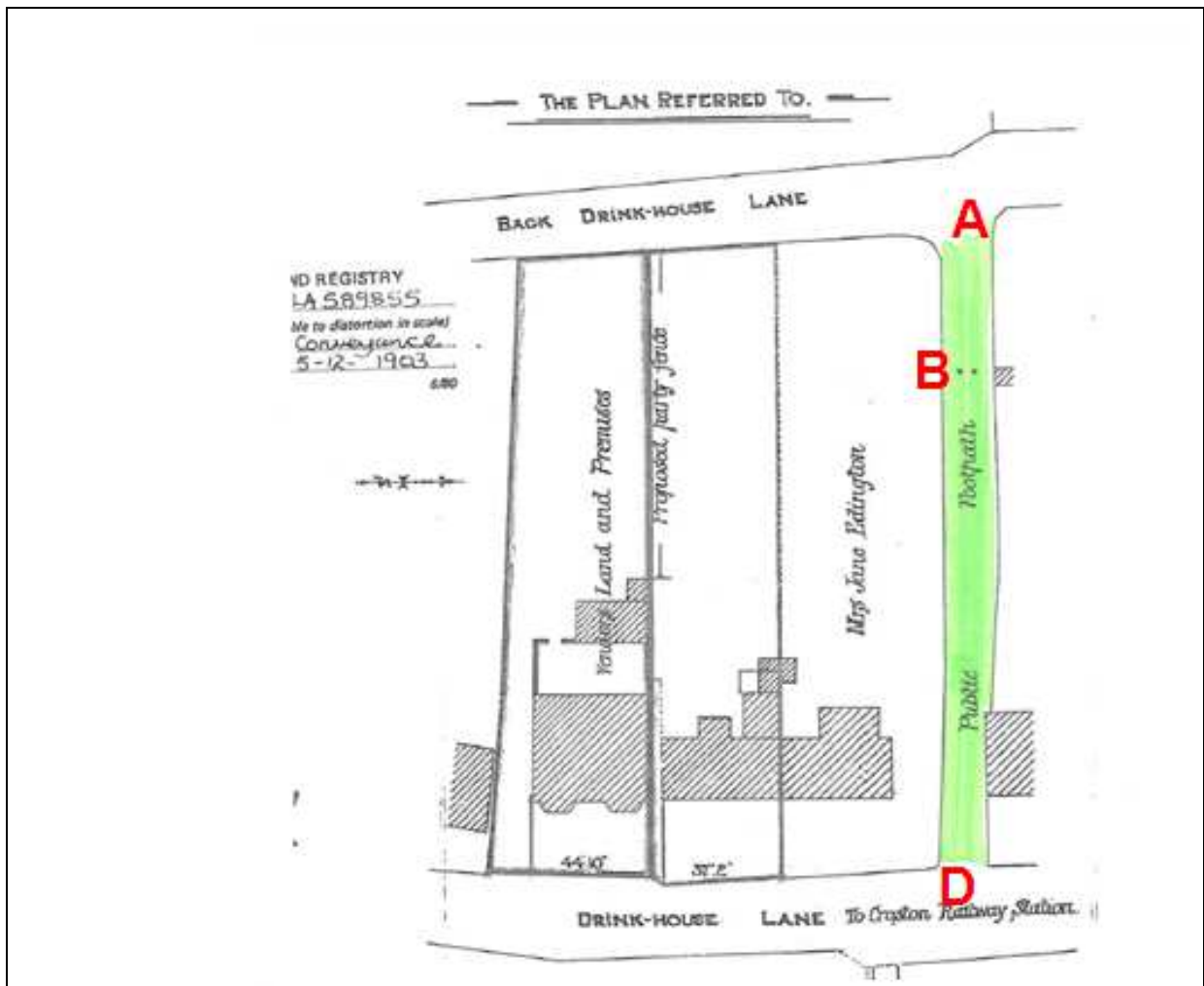


Observations		The route under investigation is shown and access to it appears to be open and unrestricted at either end. The route appeared to be bounded on either side at a similar width to Back Drinkhouse Lane and its appearance on the map is consistent with other connecting public vehicular highways.
Investigating Officer's Comments		The route under investigation existed in 1845-46 and appeared to be capable of being used by the public. It is shown in the same manner as Back Drinkhouse Lane (and similar width) and Drinkhouse Road suggesting that it was considered to be at least bridleway status and possibly a public vehicular highway.
<b>25 Inch OS Map</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892-93 and published in 1894.



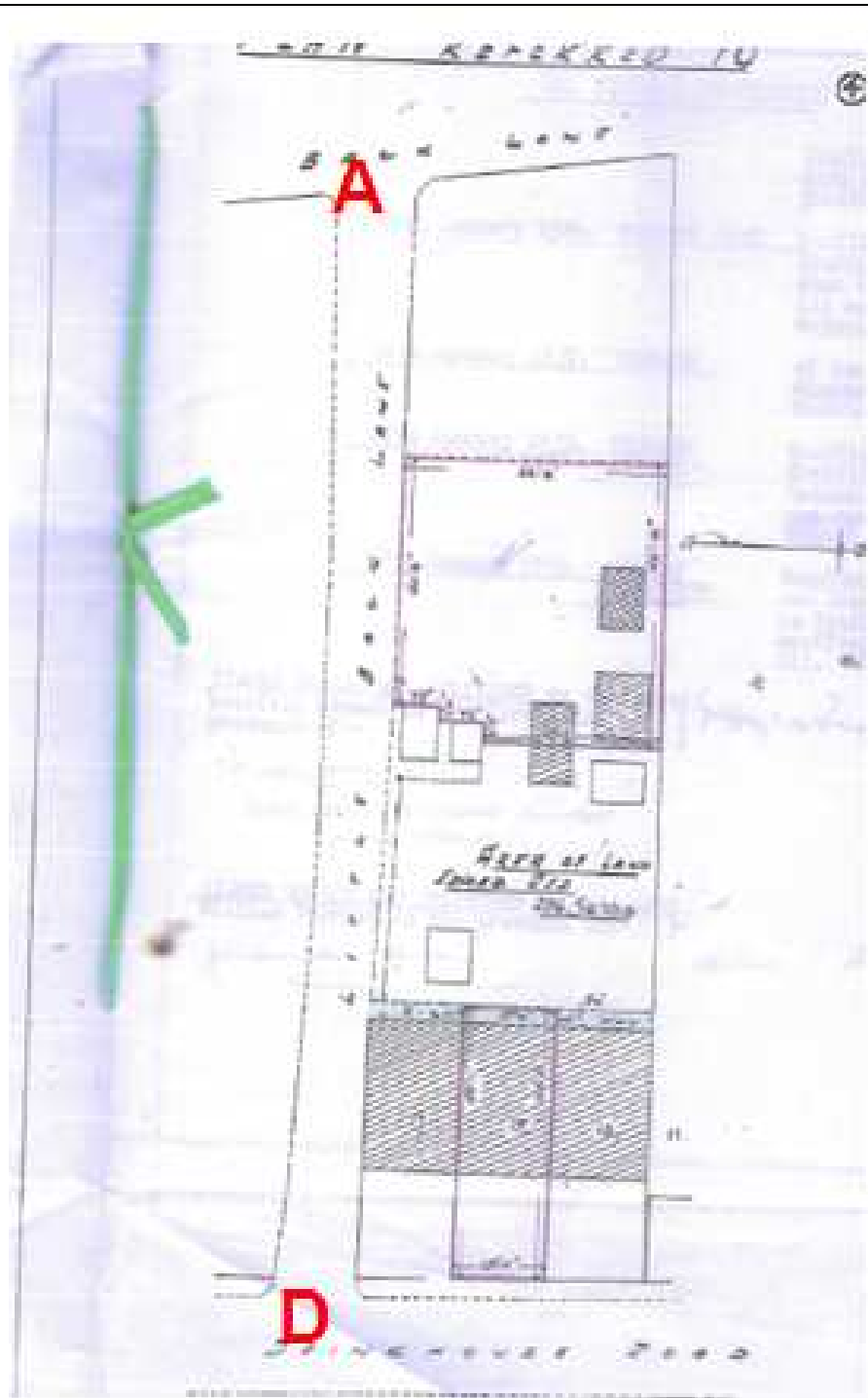
Observations		The full length of the route under investigation is shown as a 4 metre wide bounded route open at either end to the connecting public vehicular highways (Back Drinkhouse Lane and Drinkhouse Road). Only the turnpike roads through Croston appear to have been coloured and shaded.
Investigating Officer's Comments		The route under investigation existed in 1894 and appeared to be capable of being used by the public. The width was about 4 metres.
<b>Plan attached to Land Conveyance</b>	1903	Plan obtained by the Applicant from the Land Registry labelled as a plan from a 1903 conveyance.



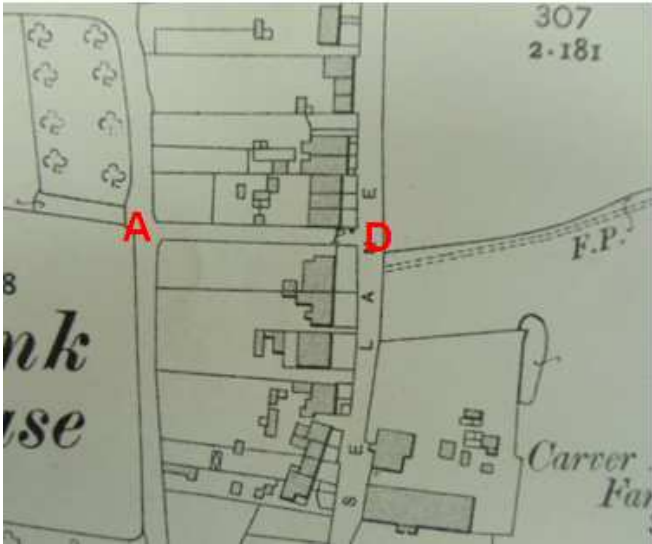


<p>Observations</p>		<p>The plan was submitted by the applicant who obtained it from the Land Registry. There was no scale on the plan so it was not possible to measure the width of the route shown. However, the plan shows the full length of the route under investigation as a bounded route and labelled as a 'Public Footpath'. The existence of two structures within the route – most likely posts or bollards – are marked at point B. The route is shown coloured green although the colouring appears to have been a more recent addition to the map. The property now known as 23 Drinkhouse Road is labelled as 'Vendors Land and Property' suggesting that the plan may have originally been attached to sale documents for that property.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1903 and access may have been limited by the existence of two posts or bollards at point B. The route was considered to be a 'public footpath' by the person drawing the plan. It may have been a surveyor given the style of plan. It is likely that</p>

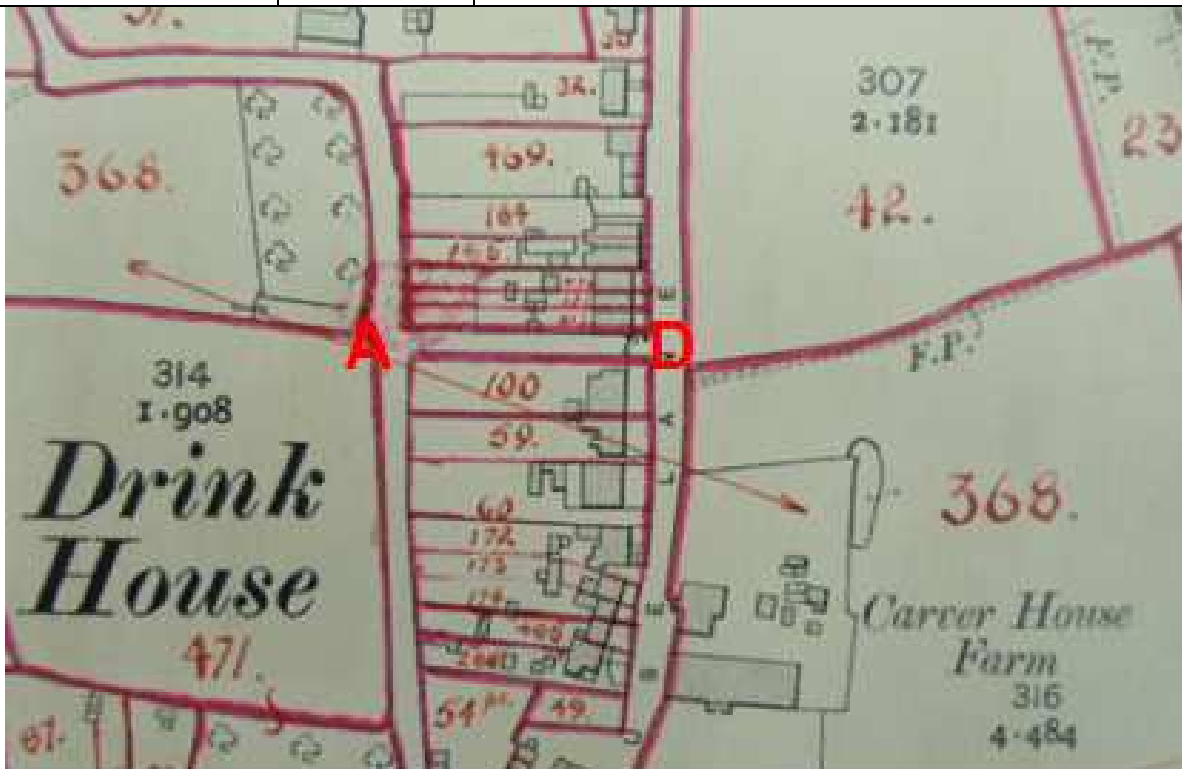
		<p>the information that it was footpath status is likely to have come from the vendor or possibly a surveyor might have concluded it simply from the posts It had no public or official scrutiny and described land that was not the subject of the document.</p> <p>In respect of the posts it is suggested that the preparation of the plan was to record that location and on balance it is evidence that the posts were there. However at this location these could have been traffic management on a vehicular highway rather than prohibiting vehicles or a stopping up – this route would only be used by local traffic such as delivery carts so hand carts, wheel barrows, bicycles, pony and trap would probably all fit through but a cart, carriage or lorry wouldn't. There is no record of any complaint or stopping up and the presumption of regularity would suggest that these were placed there by the relevant authority.</p>
<b>Deed Plan</b>	Undated	A further undated deed plan was submitted by the Applicant and is said to have been copied from the Deeds to 13 and 15 Drinkhouse Road.



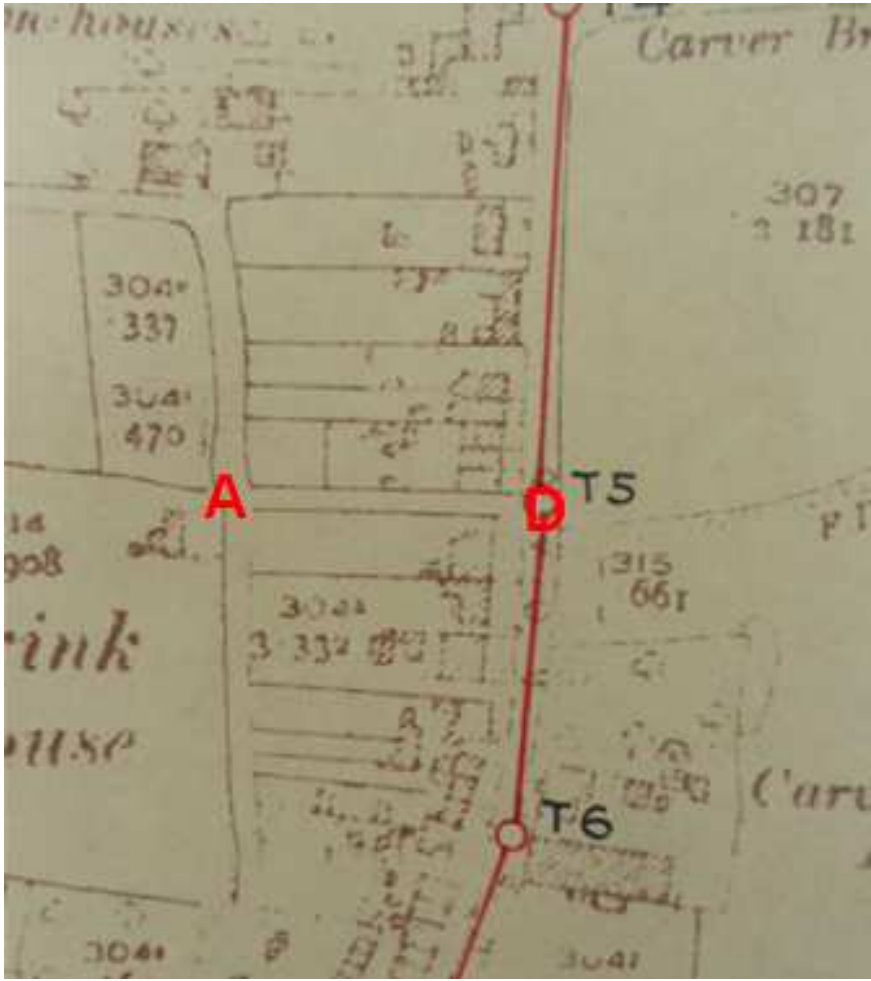
Observations		The plan shows the full length of the route under investigation and shows it as being open at either end. The route is labelled on the plan as 'Little Back Lane' and the property now known as 15 Drinkhouse Road is edged in purple together with a plot of land to the rear which it appears would need to be accessed from the route under investigation.
Investigating Officer's Comments		The date of the plan is unknown but it appears that the route under investigation was known by

		a name – Little Back Lane – which is consistent with the other two named routes that it connected to – as being a named route that the public had access along.
<b>25 inch OS Map</b>	1910	Further edition of the 25 inch map surveyed in 1892, revised in 1908 and published in 1910.
		
Observations		The route under investigation is shown bounded on either side as it had been on earlier editions of the map. The letter 'P' is shown on the route just west of point D indicating that there was a pump within the width of the way, close to the eastern end.
Investigating Officer's Comments		The route under investigation existed in 1910 and appeared to be capable of being used by the public. The pump is tight against the side of a 4m wide way close to the end only shown on this map. It is not considered that the pump restricted use of the route
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it</p>

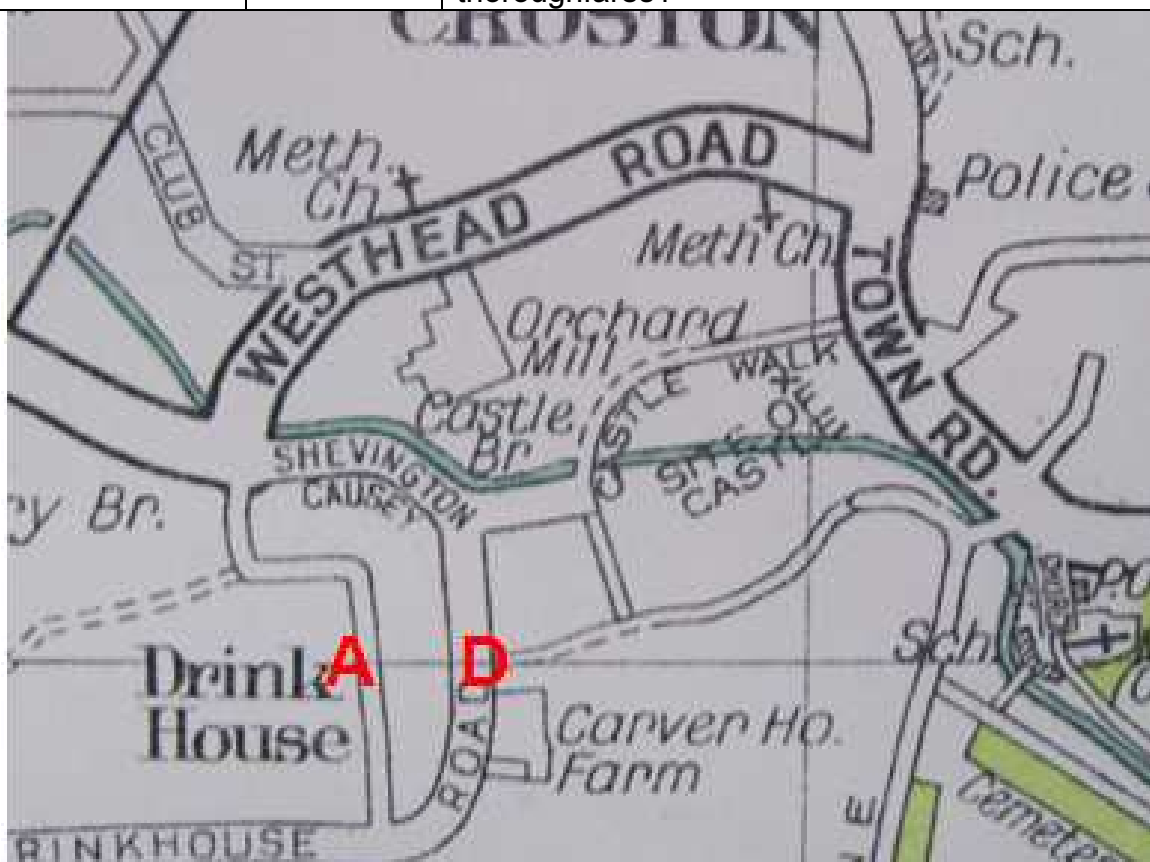
		<p>could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>A copy of the Finance Act plan was inspected in the County Records Office.</p> <p>The plan shows the full length of the route under investigation excluded from the adjacent numbered hereditaments. The width of the</p>
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		excluded route is approximately 4 metres.
Investigating Officer's Comments		The exclusion of the whole route – shown to be approximately 4 meters wide - from the taxable hereditaments is good evidence of, but not conclusive of, public carriage rights but gives further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).
<b>25 Inch OS Map</b>	1928	Further edition of 25 inch map (surveyed 1893 revised in 1927 and 1928).
		
Observations		The map viewed in the County Records Office was a copy that had been annotated. However, it could be seen that the route under investigation was shown on this edition of the map in the same way as on previous editions and appeared to be open from Back Drinkhouse Lane to Drinkhouse Road.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of use in 1928.

<p><b>Authentic Map Directory of South Lancashire by Geographia</b></p>	<p>Circa 1923</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 the streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of 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'.</p>
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<p>Observations</p>		<p>The route under investigation is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route is not shown on the map which may be an indication that it was not considered to be a route that the public had access to with vehicles – and thus not shown within an atlas compiled and published for the purpose of showing all but the 'small, less important thoroughfares.' Public footpaths and bridleways would not normally be shown on the map so the fact that the route under investigation is not shown is likely to be due to the fact that it was not considered to be a public vehicular route at that time rather than the fact that it did not</p>

		physically exist and does not mean that the route could not have existed as a footpath or bridleway at that time.
<b>Aerial Photograph<sup>1</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		The clarity of the photograph is poor. The route under investigation can be seen although it is not possible to determine whether access was available along it or whether any barriers existed across it.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



<sup>1</sup> 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.



Observations		The route under investigation is clearly shown from Back Drinkhouse Lane to Drinkhouse Road. Access appears to be open and unrestricted along the full length.
Investigating Officer's Comments		The route under investigation physically existed when the area was surveyed in the 1930s suggesting that public access may have been available.
<b>1:2500 OS Map</b>	1973	Further edition of 25 inch map reconstituted from former county series and revised in June 1972 and published 1973 as national grid series.
Observations		The full length of the route under investigation is shown. Pecked lines are shown across the start of the route at point A indicating a change in surface from Back Drinkhouse Lane. Posts are shown across the route at point B and a further change in the surface is indicated at the junction with Drinkhouse Road at point D. In respect of the posts they are in the same location as those shown in 1903 and configuration on those 2 maps suggests that they might have been the same or replacements for ones that were missing or broken.
Investigating Officer's Comments		The route under investigation existed in 1972 and appears to have been capable of being used by the public. The existence of posts at point B suggests that access was restricted to prevent vehicles.
<b>Planning Permission for porch extension</b>	1978	Details of application for planning permission (Application 78/00374/FUL) received by Chorley Borough Council on 11 April 1978 and granted on 2 May 1978.

Observations		<p>Reference was made in the consultation following receipt of the application to the porch that has been constructed on the side of 17 Drinkhouse Road and which it is claimed obstructs part of the route under investigation. Files held by Chorley Borough Council were therefore examined.</p> <p>An application was made on 10 April 1978 by Mr W Tuson of 17 Drinkhouse Road for a porch to be constructed on the side of his property. The plans attached to the application showed that the route would be constructed on the south side of the property but there is no mention of the fact that the porch was to be constructed over part of the application route. Planning permission was granted on 2 May 1978.</p> <p>File notes retained on the Borough Council files relate to the inspections carried out by the Borough Council in respect to compliance with the building regulations. When the site was inspected on 29<sup>th</sup> November 1979 the Borough Council Officer wrote that the extension appeared to have been built on a public right of way but that after checking with the County Council he had been told that the route was not adopted and was not on the Definitive Map.</p>
Investigating Officer's Comments		<p>The route under investigation was narrowed at point C due to the construction of the porch in 1979. The public status of the route was questioned once construction on site had commenced but did not appear to have been questioned when planning permission was granted.</p>
<b>Letter from Croston Parish Council to Chorley Borough Council</b>	1980	<p>Information contained within Chorley Borough Council Planning Application file 78/00374/FUL</p>
Observations		<p>Following completion of the porch Chorley Borough Council received a letter from the Clerk of Croston Parish Council on 2 October 1980 complaining that the porch encroached on a public right of way not shown on the Definitive Map. The letter explained that the parish council had received numerous complaints and made reference to the fact that coal delivery wagons were now prevented from using it to deliver coal. The Parish Council asked for the planning permission to be revoked and included 11 user evidence forms detailing knowledge and use of the application route which they refer to as being</p>

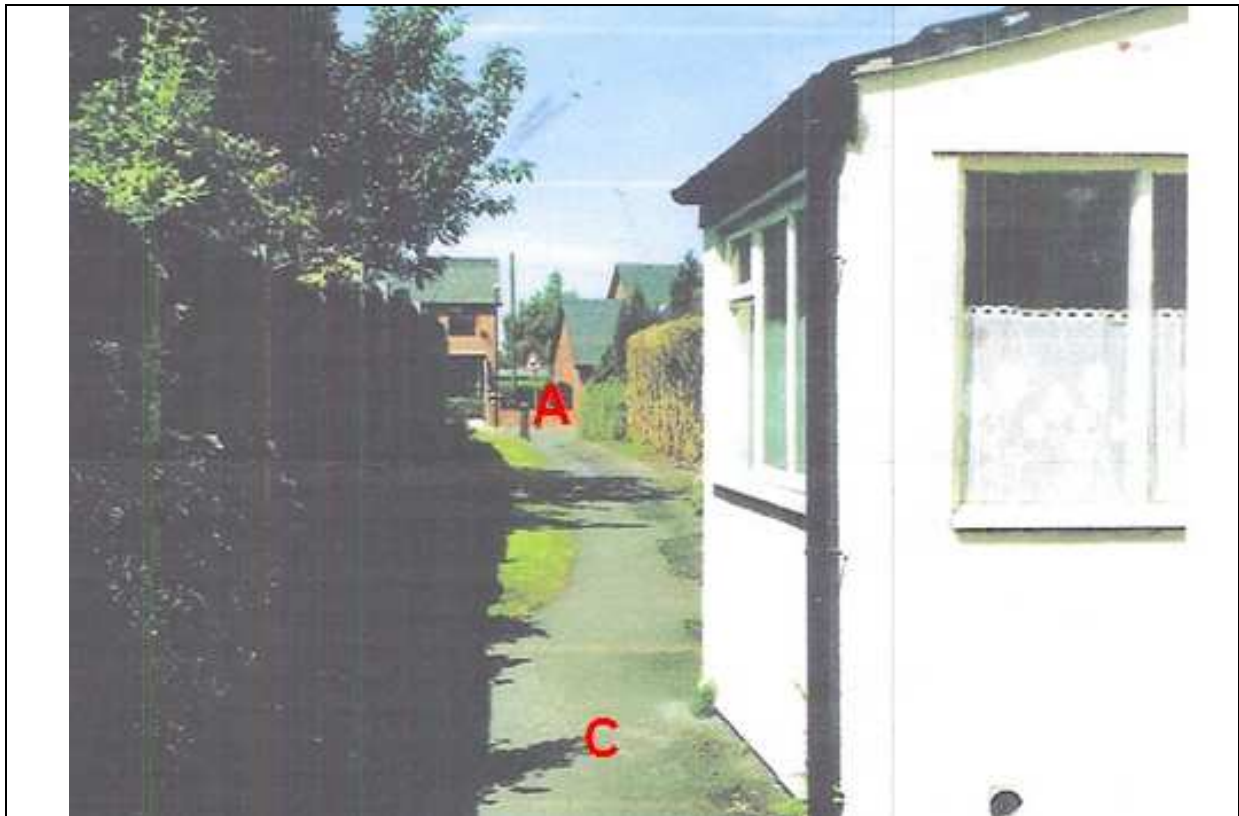
		<p>called 'Little Back Lane'.</p> <p>The user evidence forms were of a standard format issued by the Central Rights of Way Committee and Commons and Open Spaces and Footpaths Preservation Society. They included the names and signatures of the people that completed them and were all dated in September 1980.</p> <p>The form asked whether the route was known to them as a footpath or bridleway. 7 users said that it was both footpath and bridleway, 2 users stated bridleway, 1 stated footpath and 1 left the question unanswered. All 11 stated that they regarded the route as public. The form asked how long they had known and used the route. dates were not given but the answers stated 60 years (2), 58 years (1), 'all her life' (2), 37 years (1), 70 years (1), known all his life and used for generations by his parents and grandparents (1), 53 years (2).</p> <p>The reasons for using the route included going to the shops and school, for pleasure, to get to work and access to the church and church yard. In all 11 cases use was frequent – often daily. 4 users mention the existence of 2 posts and one user refers to stiles.</p> <p>Additional comments include 1 user stating that the path had been tarmaced by 'the council' on at least 2 occasions. A further comment reads 'I think the porch is out of keeping with the district and the planning read as if the porch was going on the front door, as there was no side door at that time and there was no obstruction on the path. The porch is on land belonging to the district and not the cottage'.</p> <p>Further correspondence on the file shows that the user evidence forms were forwarded to the County Council in October 1980 who had retained them with a view to the matter being dealt with under the review procedure of the National Parks and Access to the Countryside Act 1949 but that the County Council were unable to say when the second review of the Definitive Map would commence.</p> <p>The Borough Council had written to the Parish Council to inform them that the matter was to be dealt with by the County Council and that it was not possible to revoke the planning permission.</p>
Investigating Officer's Comments		The construction of the porch across part of the route under investigation appears to have

		<p>prompted the parish council to take action seeking to record the public status of the route and to request the revocation of the planning permission on the basis that the porch obstructed part of a public highway.</p> <p>In 1980 the County Council were still required to periodically carry out reviews of the Definitive Map as whole. In Lancashire one such review was carried out which predated the status of the route under investigation being questioned. No further reviews of the Definitive Map were carried out and since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p> <p>A copy of the correspondence passed to the County Council could not be found on the parish files and it appears that no further action was taken to investigate the 'claim' that the route should be recorded as a public bridleway until the current application was formally submitted in 2013.</p>
<b>Aerial Photograph</b>	21/5/1988	Aerial photograph available to view at the Lancashire Archives Office and on GIS.
Observations		It is difficult to enlarge the photograph without losing much of the clarity. The route under investigation can be seen and the porch that had been constructed on the southern side of 17 Drinkhouse Road at point C is visible. It is not possible to see whether any other gates, posts or barriers existed that may have restricted or prevented access.
Investigating Officer's Comments		The route under investigation existed in 1988 and the width was restricted at point C due to the porch extension.
<b>Aerial photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The full length of the route under investigation is shown. The route appears to be open and available to use at either end. The bollards at point B are not visible on the photograph.
Investigating Officers Comments		The route under investigation existed in 2000 and appeared to be available to use. Use of part of the width was restricted at point C.
<b>Photographs</b>	2003	Photographs taken by the Applicant in 2003





Observations		The route under investigation can be seen as a tarmac path with well maintained and cut back hedges along the northern side and a maintained grass verge down the southern side. The metal post that is still in existence can be seen at point B but the wooden post does not appear to have existed at that time.
Investigating Officer's Comments		Photographs taken by the applicant and said to be dated 2003 show that the route was wider between point A and point C than it was when inspected by the County Council in 2014 and that fencing has subsequently been erected narrowing the route to the width of the tarmac.
<b>Aerial Photograph</b>	2009	Google Map photograph. The date the image was captured was 2009.



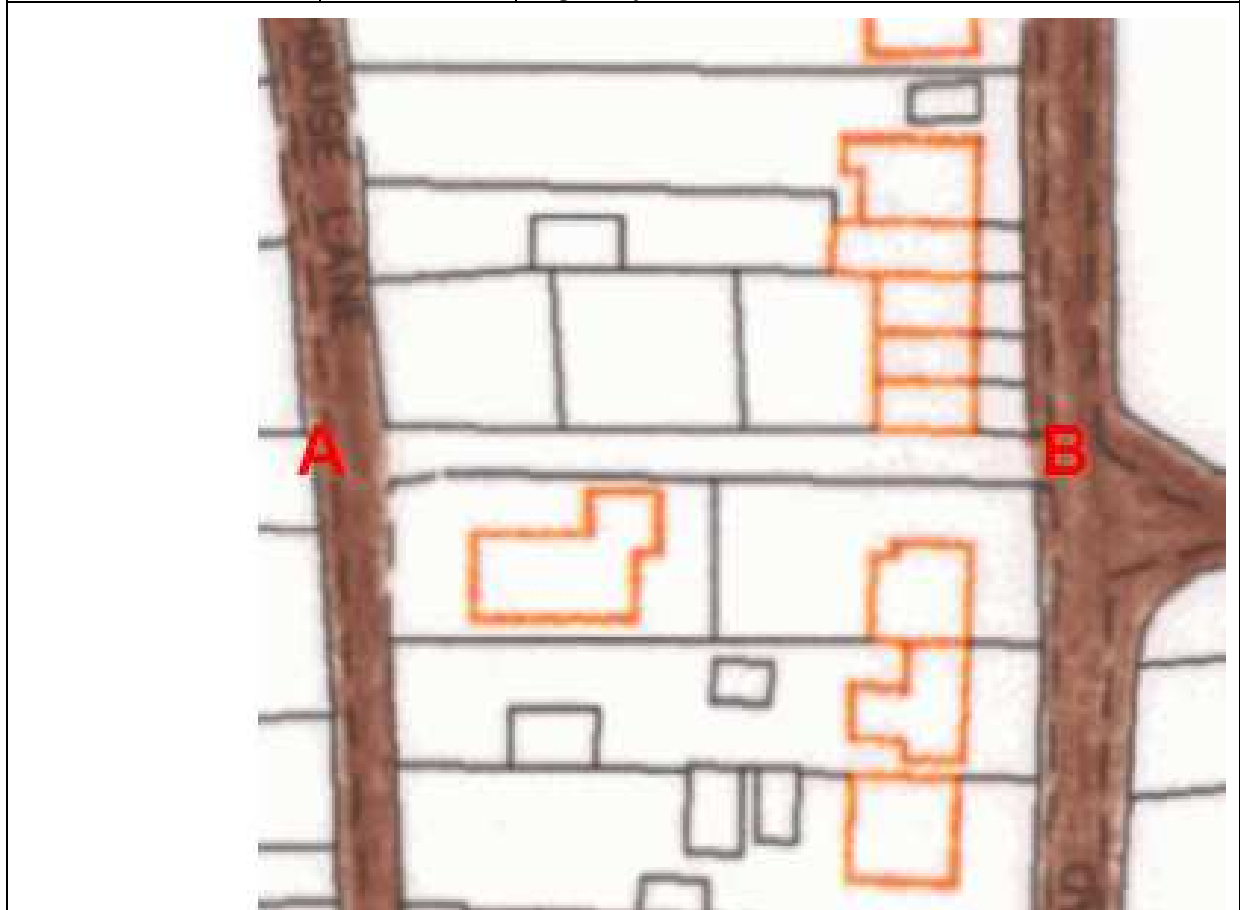
Observations		The undated images show the route under investigation from Back Drinkhouse Lane. The route is in use by a walker and the fence line on the southern boundary that currently exists is shown. The route is also shown from Drinkhouse Road with cars parked and partially blocking the route between point C and point D.
Investigating		The route under investigation existed and was

Officer's Comments		being used when the photographs were taken. Use by horse riders would be particularly difficult if cars were frequently parked between point C and point D.
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.
Observations		The route was not shown on the parish survey map.
<b>Draft Map</b>		The parish survey map and cards for Croston were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.  The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route was not shown on the Draft Map and there were no objections lodged regarding the fact that it had not been shown.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route was not shown on the Provisional Map and there were no objections lodged regarding



		the fact that it had not been shown.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map.
Investigating Officer's Comments		The route under investigation was not considered to be a public right of way that should be recorded on the Definitive Map and Statement in the 1950s.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to have changed status by the 1960s when the First review was carried out.  It appears that the County Council may have received details of the request from Croston Parish Council in 1980 for the route under investigation to be included on the Definitive Map when it was next reviewed. However a copy of the correspondence could not be found and the matter does not appear to have been investigated. The procedure altered in 1981 and the Definitive Map and Statement are now subject to a continuous review process part of which enables applications such as the one that is the subject of this report to be made.
<b>LCC Highway Adoption Records</b>		In 1929 the responsibility for county highways passed from district and borough councils to the County Council. For the purpose of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the

		<p>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.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County council 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>
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Observations		<p>The map believed to have derived from the handover maps does not show the route under investigation as a publicly maintainable highway. The route is tarmaced throughout and there are</p>
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		<p>various comments included in the 1980 user evidence forms suggesting that the 'Council' tarmaced the route. The current owner of 17 Drinkhouse Road verbally reported to the Officer from the Environment Directorate that carried out the site inspection that she understood that the 'Council' had previously surfaced or repaired the route when they had been in the area and had surplus tarmac.</p>
Investigating Officer's Comments		<p>The route was not considered to be a publicly maintainable highway in 1929 and has not been recorded as such in the intervening years. However many public rights of way have been found not to have been recorded on these maps because they were unsurfaced and it is not known whether the route under investigation would have been surfaced in the 1920's.</p> <p>It has not been possible to find any record of the County Council tarmacing the route but it is known that it was not uncommon for the Council to tarmac public rights of way in the past (even where they are not recorded as publicly maintainable).</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are 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</p>

		effectively brought the status of the route into question).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the route under investigation 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 affected land is not designated as access land under the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

The affected land is not recorded as a site of special scientific interest or a biological heritage site.

Landownership

The land over which the route crosses is not registered.

### Summary

The earliest map examined that shows the route was Hennes's Map published in 1830. It is depicted as a cross road suggesting that it existed as a through route at that time and was regarded as being at least a public bridleway and possibly a minor cart road.

7 years later the route is again shown on the Croston Tithe Map (1837) and is shown as being open and accessible and separate from the adjacent properties. The manner in which it is shown again suggests that it was considered to be at least a public bridleway at that time. It appears to have been formed as a route.

The route is shown to exist on all Ordnance Survey maps inspected from the first edition 6 inch map published in 1847 through to the current day. On all maps inspected it is shown to be open and accessible and bounded on either side. The 1894 and 1910 and 1973 25 inch/1:2500 Ordnance Survey maps show the route to be approximately 4 metres wide.

A conveyance plan dated 1903 shows the route, labels it as a 'Public Footpath' and records the existence of bollards at point B. A further undated deed plan submitted by the applicant shows the route and labels it as 'Little Back Lane'.

The 1910 Finance Act records show the whole route excluded from the adjacent numbered hereditaments providing further evidence that the route was considered at that time to be for public use and that it carried public bridleway and possibly public vehicular rights.

However, the route was not shown on the commercially produced Authentic Map Directory of South Lancashire in 1923 which may indicate that it was not considered to be vehicular and does not appear to have been recorded as being publicly maintainable in 1929.

The 1973 edition of the 1:2500 OS Map shows that the bollards at point B existed. These would probably have restricted vehicular access but would not restrict pedestrian or equestrian access.

In 1978 Chorley Borough Council granted planning permission for a porch that was constructed across part of the route under investigation. Planning permission was granted with the status of the route over which it was to be constructed seemingly not questioned.

However, during the construction of the porch in November 1979 the site was inspected by the Building Control Officer from the District Council who queried whether the porch was being built over a public right of way. He noted on the file that the County Council had told him that the route was not adopted and that it was not recorded on the Definitive Map.

The construction of the porch prompted Croston Parish Council to gather user evidence and to submit a request to the Borough Council for the route under investigation – and referred to as Little Back Lane - to be recorded on the Definitive Map. Eleven user evidence forms were submitted claiming that the route was a footpath and bridleway and that it had been used regularly by at least one person in excess of 70 years and by all for a minimum of 37 years.

The Parish Council were informed that the user evidence had been forwarded to the County Council who would consider the matter when the Definitive Map was next reviewed.

Legislation altered so that a second review of the map was never undertaken and the status of the route remained unrecorded and does not appear to have been investigated until the application that is the subject of this report was submitted in 2013.

More recent aerial photographs, photographs submitted by the applicant and captured by google show the route in more recent years (from approximately 2000 onwards) appears to have been encroached along the southern boundary between point A-C and by the porch extension at point C (since 1979). Use of the full width of the route also appears to have been restricted by vehicles parked between point C and point D.

### **County Secretary and Solicitors Group Observations**

Information from the applicant

In support of the application, the applicant has provided 27 user evidence forms. 13 of the users are residents from Drinkhouse Road, 6 users are from Back Drinkhouse Lane, 2 users are from Town Road, 2 users are from Station Road, 2 users live on

Grape Lane, 1 user is a resident at The Hillocks, 1 user is from Mill Row and 1 is from Shevington Causeway. However 3 of these users are from properties which may arguably have a private right over this route and are unlikely to use it "as of right" and it is suggested they should be discounted.

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

0-10(2)	11-20(3)	21-30(1)	31-40(2)	41-50(1)	51-60(5)
61-70(6)	71-80(3)	1 user states "most"			

The route has been used mainly for walking to the village, going from Drinkhouse Lane to Back Drinkhouse Road, visiting friends or relatives, walking to church, going to the shops, using it as a short cut / way of access, going to school and taking the horse to graze in the field.

The number of times the users have used the route per year varies from, daily, 3-4 times per day, 1-2 a week, weekly to 170 times per year.

All the users agree the route has been used on foot, however 14 have also used the route on bicycle. The years in which the route was used by bicycle is as follows:

1948-1998(1)	1945-2013(1)	1948-2013(1)
1962-2013(1)	1987-2013(1)	1990-2013(1)
2003-2013(1)	2010-2013(1)	

1 user states "when younger" and 5 users did not specify any dates.

2 users have also used the route on horseback, 1 during the years of 1970-1978 and 1 during 1990-2013.

1 user has also used the route on motorcycle during the years of 1957-1970.

All the users agree that the route has run over the same line, however 4 of the users mention a porch being built to the side of one of the houses.

The users all agree that there are no stiles / gates / fences along the way, however 2 users mention there are 2 posts.

None of the users have ever worked for a landowner over which the route passes nor have they been a tenant of any of the land.

All the users have never been stopped or turned back when using the way, and none have ever seen notices such as 'private', 'no road' or 'trespassers will be prosecuted'.

All the users have never asked permission to use the way.

The names on the user evidence forms were checked against those on the forms submitted to the District Council in 1980. None of those that have completed the recently submitted forms make reference to completing a form in 1980 and only one name may refer to either the same person – or possibly a close relative – completing a form in 1980 and a second form in 2013. In 1980 Mrs Mary Bailey completed a form to say that she had known and used the route as a footpath and a bridleway to

access the shops and school. No address or date of birth was given. In 2013 Pamela M Bailey of 37 Drinkhouse Road completed a form. She was born in 1958 and described knowing of the route all her life.

A letter has been submitted by the applicant notifying LCC of the porch that has considerably narrowed the footpath.

#### Information from others

A letter received from James Rigby of Albany, Back Drinkhouse Lane, Croston. He states many of the members of the public believed that it already came under the jurisdiction of LCC. Mr Rigby states him and his parents and grandparents who were farmers at Carver's Farm and Drinkhouse Farm, the footpath has been known as 'Little Back Lane'. His family can vouch for one hundred years worth of use, and states the width varies from 6 feet to 12 feet.

As a boy he used to drive cattle down this track from the grazing pasture to Carver's Farm for milking and then return to the meadows. Today this footpath is used by several hundreds of people per week and includes children going to and from school, people shopping, going to church and others going out for a walk around the village. He then states our plan is not accurate as 35 years ago a porch was extended to number 19 Drinkhouse Road and the plan does not show this.

Many years ago the path was re-surfaced with a coating of tarmac by LCC, the pathway has gas, electricity and water pipes buried under its surface. These services were to connect Ashfield House to the Drinkhouse Road services. There being no services down Back Drinkhouse Lane in those days and Ashfield House, then was the only property on the lane, this obviously was the easiest way to provide such. A Victorian gas lamp base remains at the side of the track part way down.

### **Assessment of the Evidence**

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

In Support of Making an Order to record some public status

The way the route is recorded on maps and other documentary evidence  
User evidence

Against Making an Order

There is no particular evidence against the route carrying some public rights unless the posts were sufficient to challenge all use

Conclusion

The claim is that this route is in law a public bridleway and should be recorded on the Definitive Map and Statement as such.

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

It is suggested that in this matter there are three sets of evidence. The early set, being map and documentary evidence pre 1903, suggests that Committee should first consider whether dedication under common law and the higher status of restricted byway can be inferred. The second set of evidence is documentary evidence post 1903 showing posts on the route and a reference to it being a footpath raising questions over whether a restricted byway would be the status this route had achieved on balance.

It is advised that the Committee has to consider whether evidence from the old map and other documentary evidence does on balance indicate how the route should be recorded. The analysis of the map and documentary evidence by the Executive Director for Environment suggests there is sufficient evidence on balance to indicate that this route was on balance dedicated as a public carriageway and is recorded by the early maps and documents as such and later posts on the route can be explained as not affecting this early status. The route is straight and capable of dedication as a vehicular route. It is therefore suggested that there are circumstances from which to infer an early dedication of the route for use by the public in vehicles. The provisions of the Natural Environment and Rural Communities Act affects this by extinguishing the public rights for mechanically propelled vehicles and it is suggested that the exceptions to extinguish are not engaged and the appropriate status of the route would be as restricted byway.

If Committee however is not content that the evidence of restricted byway is sufficient on balance then the more modern user evidence should be considered and the provisions of s31 applied together with the common law to see if there is evidence of a highway being dedicated in more recent times .

The user evidence in this matter would indicate use on foot and on pedal cycle. The application itself will, it is suggested, be the event calling this route into question and so the relevant 20 years will be 1993-2013

It is suggested that committee may consider that the user evidence in this matter is sufficient and use has been exercised as of right (not including those with possible private rights) and without interruption for the whole route during 1993-2013. There does not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2013. It is therefore suggested to Committee that dedication can be deemed under S31. The use would also be circumstances from which to infer dedication at common law.

A highway which is dedicated just for use on foot and on cycle only is arguably a cycletrack. However Section 31, HA80, as amended by section 68 of NERC06, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. The statutory provision states that the deemed dedication following evidence of use "applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles."



Although the application was to record the route as bridleway it is advised that the evidence indicates that the dedication for public use, on balance, is as restricted byway.

Taking all the evidence both modern and old into account the Committee may consider that a dedication in this matter as a restricted byway may be deemed under S31 or inferred under common law and that an Order be made and promoted to confirmation.

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

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

Paper	Date	Contact/Directorate/Tel
File Ref: 804-545	Various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

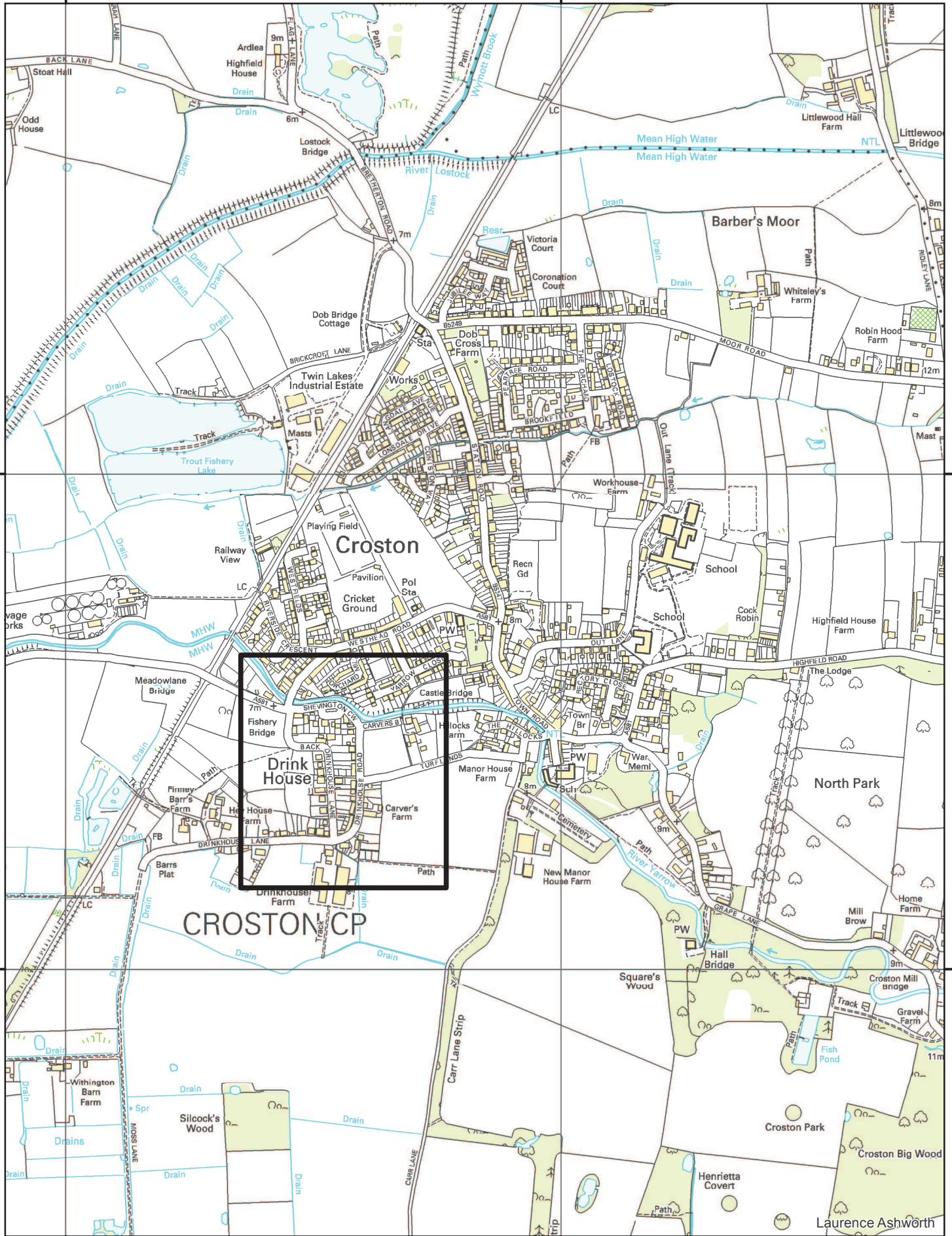
Reason for inclusion in Part II, if appropriate

N/A



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Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**

**Application for a public bridleway from Back Drinkhouse Lane to  
Drinkhouse Road, Croston, Chorley District**

**File No. 804-545 LOCATION PLAN**

1:10,000



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