

Lancashire County Council

Regulatory Committee

Wednesday, 17th December, 2014 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

| No. | Item | |
|-----|------|--|
|-----|------|--|

| | | |
|----|-------------------|--|
| 1. | Apologies. | |
|----|-------------------|--|

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

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

| | | |
|----|-------------------------------------|---------------|
| 3. | Minutes of the last meeting. | (Pages 1 - 8) |
|----|-------------------------------------|---------------|

| | | |
|----|------------------|----------------|
| 4. | Guidance. | (Pages 9 - 32) |
|----|------------------|----------------|

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. | Wildlife and Countryside Act 1981 | (Pages 33 - 74) |
|----|--|-----------------|

**Definitive Map Modification
Upgrading to Bridleway of Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane) from Booth Road to Fearn Moss, Rossendale Borough
File No. 804-514**

6. **Wildlife and Countryside Act 1981** (Pages 75 - 112)
Definitive Map Modification Order Applications
1. **Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough - File No. 804-551**
2. **Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough - File No. 804-552**
7. **Wildlife and Countryside Act 1981** (Pages 113 - 166)
Definitive Map Modification Order Investigation Applications for the Addition to the Definitive Map and Statement of Three Public Footpaths across Coronation Field, Lancaster City
Application Nos. 804-541, 804-542, 804-543
8. **Wildlife and Countryside Act 1981** (Pages 167 - 192)
Application for Addition of Bridleway from Old Lane, Mawdesley, Chorley Borough to Old Lane, Bispham, West Lancashire District
File No. 804-445
9. **Wildlife and Countryside Act 1981** (Pages 193 - 222)
1. **Claimed deletion of Part of Public Footpath No. 129 Chipping, Ribble Valley Borough**
2. **Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane**
File Nos. 804-472 and 804-476
10. **Wildlife and Countryside Act 1981** (Pages 223 - 258)
Addition of Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough
File No. 804-440
11. **Wildlife and Countryside Act 1981** (Pages 259 - 284)
Claimed Public Footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough
File No. 804-427

12. Wildlife and Countryside Act 1981 (Pages 285 - 326)
Application for deletion of part of Public Footpath no. 3 Broughton, Preston City from the Definitive Map and Statement
Addition of Public Footpath from stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood, Preston City
File Nos. 804-498 & 804-511

13. Highways Act 1980 - Section 119 (Pages 327 - 338)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Billington and Langho Footpath 7, Ribble Valley Borough

14. Order Making Authorities stance on confirmation of the Order (Pages 339 - 350)
Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Part of Public Footpath No. 9 Wroughtington, West Lancashire Borough

15. 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.

16. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 4 February 2015 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, 22nd October, 2014 at 10.30 am in Cabinet Room 'B' - County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

| | |
|------------|--------------|
| K Snape | A Schofield |
| I Brown | S Serridge |
| A Clempson | D Stansfield |
| D Clifford | D Whipp |
| C Crompton | P White |
| B Dawson | B Yates |
| J Gibson | |

The committee was informed that County Councillor B Yates had replaced County Councillor P Britcliffe on the committee for the remainder of the municipal year 2014/15.

The committee was also informed that County Councillors C Crompton and S Serridge had replaced County Councillors C Henig and G Mollineaux on the committee for this meeting only.

1. Apologies.

Apologies were received from County Councillor P Hayhurst.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None declared.

3. Minutes of the last meeting held on 2 July 2014.

Resolved: That the Minutes of the meeting held on 2 July 2014 be confirmed and signed by the Chair.

4. 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.

**5. 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**

A report was presented on an application duly made under Schedule 14 of the Wildlife and Countryside Act 1981 to upgrade Public Footpath no's 638 (part), 636, 627 and 636 Bacup, Rossendale Borough to a bridleway.

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 there was little documentary evidence showing that public rights existed on the application route but enough to show that it was a reasonably substantial physical track since at least 1830, and was consistently shown on the Ordnance Survey maps from 1849 to present day. The user evidence provided in respect of the route indicated that access to the route had never been verbally questioned or denied and there was no evidence of any signs or notices having been erected along the route informing users that it was not a public right of way.

Officers confirmed that cyclists would be entitled to use the route should it be confirmed as having bridleway status.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance, dedication as a bridleway under S.31 of the Highways Act could be deemed and the route, recorded as a footpath at present, be recorded as having bridleway status.

Resolved:

1. That the application for an upgrade to Bridleway of Public Footpath no's 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 no's 638(part), 636, 627 and 626 Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way as shown between points A-B-C-D-E-F-G-H on the plan referred to in the report to the committee.

3. That, being satisfied that the test for confirmation can be met, the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

**6. 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**

A report was presented on an application for a footpath from Hagg Street to Short Street, Colne, Pendle Borough a distance of approximately 135 metres, to be added to the Definitive Map and Statement of Public Rights of Way.

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 both the documentary evidence and user evidence in support of the claim was considered to be sufficient to prove that a right of way existed and use had been exercised as of right and without interruption for the whole route during 1987 to 2007. It was noted that although there was no parish council in 2007, Colne Town Council was now the local parish council for the area.

Having examined all of the information presented, the committee agreed that, taking all the relevant evidence into account, on balance there was sufficient evidence from which a deemed dedication could be satisfied under S.31 of the Highways Act and it was appropriate that an order be made and promoted to confirmation.

Resolved:

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 and shown between points A-C on the plan referred to in the report to the committee.
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.

**7. 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**

A report was presented on an 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.

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

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

On balance the map evidence was considered to be insufficient to conclude the whole of the route was a historical public bridleway and it was therefore suggested that inferred dedication could not on balance be satisfied. The Committee was therefore advised to consider whether deemed dedication under S.31 of the Highways Act 1980 or common law inference from use could be satisfied.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 of the Highways Act could be deemed or inferred at common law 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. The Committee also agreed that section A-B should not be accepted as the use was not, on balance, as of right being use of urban common under Law of Property Act 1925.

Resolved:

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 plan referred to in the report

to committee 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 between B-I on the plan referred to in the report to the committee.
3. That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

**8. 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**

A report was presented on an application under Schedule 14 of the Wildlife and Countryside Act 1981 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 plan referred to in the report to the committee.

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

It was also noted that although the route under investigation had evidence for public carriageway rights, it was 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 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 had been extinguished. This meant that the highest status that could be achieved by this route was that of a restricted byway.

Having examined all of the information presented, and noting how the route was recorded on the old County maps, the Committee agreed that, taking all the relevant evidence into account, 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 suggested on balance the route had a higher public status.

Resolved:

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 between points A1-F2 on the plan referred to in the report to the committee.
3. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

**9. 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**

A report was presented on an application under Schedule 14 of the Wildlife and Countryside Act 1981, for a Public Bridleway between Back Drinkhouse Lane and Drinkhouse Road, Croston, for a distance of approximately 55 metres be recorded on the Definitive Map and Statement of Public Rights of Way.

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.

The committee was advised that the analysis of the map and documentary evidence suggested there was sufficient evidence to indicate that this route was on balance, dedicated as a public carriageway and was recorded by the early maps and documents as such. It was therefore suggested that there were 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 affected this by extinguishing the public rights for mechanically propelled vehicles and it was suggested that the exceptions to extinguish were not engaged and the appropriate status of the route would be as restricted byway.

The Committee was advised that if it was not content that the evidence of restricted byway was 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.

It was suggested that the user evidence in this matter was sufficient and use had been exercised as of right (not including those with possible private rights) and without interruption for the whole route during 1993-2013. There did not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2013. It was therefore suggested to Committee that dedication as restricted byway could be deemed under S31. The use would also be circumstances from which to infer dedication at common law.

Having examined all of the information presented, and noting how the route was recorded on the old County maps, the Committee agreed that taking all the relevant evidence into account, on the balance of probabilities, 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.

In response to concerns raised by the committee with regard to the reported encroachment along the route, the officer advised that any necessary action to address the issue would be taken following consultation with both the district and parish councils.

Resolved:

1. That the application in accordance with File No 804-545 for the route from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley between points A-B-C-D on the plan referred to in the report to be recorded as a Bridleway be accepted as a Public Restricted Byway.
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 between points A-B-C-D on the plan referred to in the report to the Committee.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

10. Date of Next Meeting

It was noted that the next scheduled meeting of the Committee would be held at 10.30am on the Wednesday 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 4

Regulatory Committee

Meeting to be held on 17 December 2014

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 17 December 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 17 December 2014

| |
|---|
| Electoral Division affected: Rossendale East |
|---|

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading to Bridleway of Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane)
from Booth Road to Fearn Moss, Rossendale Borough
File No. 804-514 (Annex 'A' refers)**

Contact for further information:

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

megan.brindle@lancashire.gov.uk;

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the route currently recorded as Bacup Footpaths 12, 13, 14 and 17 and known as Tunstead Lane to be upgraded to public bridleway, in accordance with File no. 804-514.

Recommendation

1. That the application for Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane) to be upgraded in accordance with File No. 804-514, be accepted.
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 Bacup Footpaths 12, 13, 14 and 17 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-H.
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 Bowland Bridleways Association to upgrade on the Definitive Map and Statement of Public Rights of Way Bacup Footpaths 12, 13, 14 and 17 (known as Tunstead Lane) from the junction with Booth Road to the junction with Fearn Moss and shown between points A to H 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 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"

And/or 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 (Grid Square SD) | Description |
|-------|------------------------------------|--|
| A | 8476 2194 | Junction with Booth Road (C705) |
| B | 8471 2207 | Junction with Bacup Footpath 19 |
| C | 8469 2210 | Junction with Bacup Footpaths 9 and 18. Field gate and adjacent pedestrian gate across route |
| D | 8458 2218 | Junction with Bacup Footpath 15 |
| E | 8456 2219 | Route passes between gateposts |
| F | 8443 2222 | Field gate and stile across route |
| G | 8432 2225 | Remains of broken stile across route |
| H | 8429 2226 | Junction with Fearn Moss (C707) |

Description of Route

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-12' or 'Bacup Footpath 12' but are referenced below in the abbreviated form 'Footpath 12' for brevity since all those referred to are in Bacup in Rossendale Borough with the exception of Rawtenstall Footpath 219 which meets the application route at point H on the Committee plan.

A site inspection was carried out on 11th September 2014.

The route commences at an open junction with Booth Road (C705) opposite Four Lane Ends Road (point A on the Committee plan) between property nos. 99 and 97 Booth Road. The opening between the two properties is approximately 8 metres at the junction with Booth Road tapering to a width of 4 metres at the rear of the properties. A wooden extension has been constructed on the side of 97 Booth Road that extends from the side of the property into the route by approximately 2 metres over a distance of approximately 4 metres.

From point A the route under investigation extends in a north north westerly direction along a compacted stone and tarmac surface road extending the full width between the properties. It provides access to the rear of both properties in addition to 9 other properties to the west of the route that all front onto Booth Street (Ivy Terrace).

Beyond the properties the route rises quite steeply uphill in a north north westerly direction along a compacted stone and tarmac surfaced track, approximately 3 metres wide and bounded on both sides by a combination of fencing, hedging and sections of stone wall. It passes the entrance to Valley View which is situated to the west of the route and continues in a north north westerly direction along a roughly surfaced tarmac road to point B where Footpath 19 joins it from the west.

From point B the route under investigation continues along the tarmac track, bounded on both sides by stone walls and rising uphill to pass between a number of individual properties and farm buildings that are collectively referred to as Higher Tunstead. The surface of the track deteriorates to a mixture of rough tarmac and concrete as the route passes between the buildings to a junction with Footpaths 9 and 18 at point C, immediately north of the buildings.

A metal field gate and adjacent pedestrian gate are located across the route under investigation at point C. Both the field gate and pedestrian gate were open on the day that the route was inspected.

Beyond point C the route continues in a north westerly direction, still gradually rising uphill. The route is approximately 2.5 metres wide and surfaced with rough concrete which appears to have been patched where it has begun to break up. In places the concrete is primarily down the two sides of the track with grass down the centre. The route is bounded by grassy banks on top of which there are wooden post and wire fences that separate the route under investigation from the adjacent land.

The route under investigation is joined at point D by Footpath 15 (known as Pilling Barn Lane) and then continues in a west north westerly direction – still rising gradually uphill - towards point E.

At point E the route under investigation passes between metal gate posts (no gate) and continues along a level section of unsurfaced track consisting of compacted earth with a grass strip down the centre. It continues in a west north westerly direction and just before reaching point F the route flattens out and a track that appears to be used by vehicles branches off to the north. At point F the route is crossed by a 1.8 metre wide metal field gate (padlocked when the route was inspected) and adjacent stile.

Between point A and point F there is evidence of significant use of the route by vehicles but from point F there is no evidence of recent vehicular use of the route and horse riders would be prevented from continuing along the route by a padlocked gate and a stile. Beyond the gate and stile the route under investigation continues in a west north westerly direction sloping gradually downhill along the base of an overgrown track (sunken track) with a rocky outcrop exposed partway along the route on the northern side.

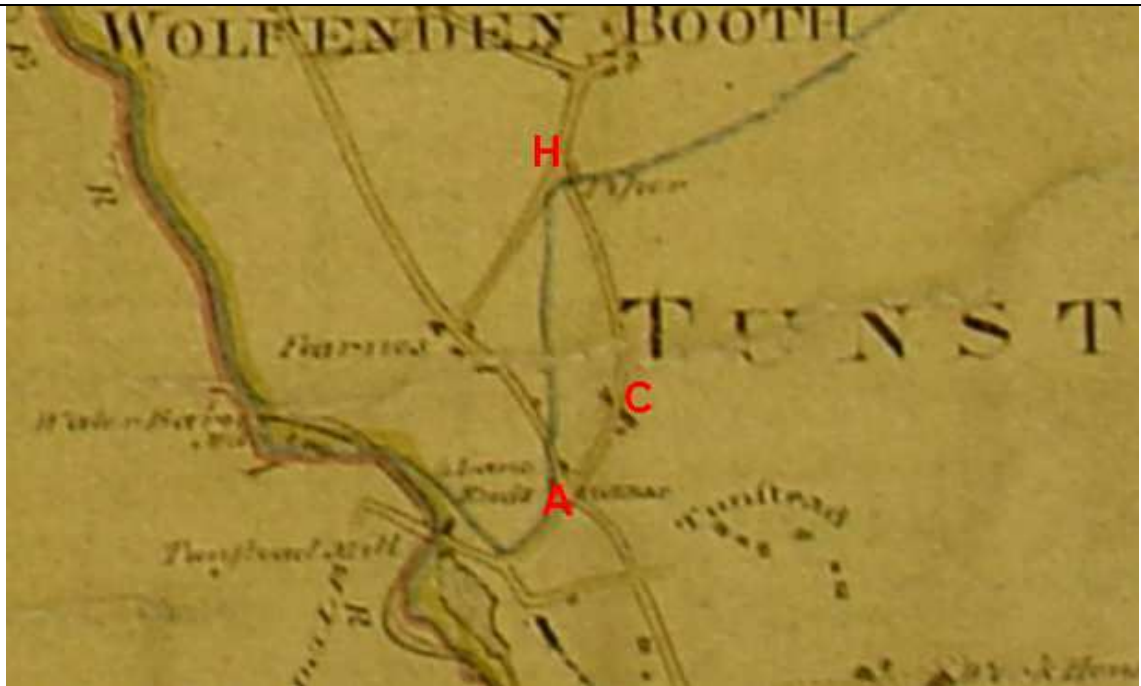
At point G there is evidence of the remains of a wooden stile which has fallen into disrepair and can be easily bypassed. From point G the route continues in a west north westerly direction bounded on either side by a wall on one side and wooden fencing at a width varying between 2-3 metres to a point just east of point H where a substantial wooden fence has been erected across the route. From here an alternative enclosed route has been provided passing in a south westerly direction along a narrow strip (approximately 1 metre) fenced on either side to give access via a series of steps to Fearn's Moss.

Point H is undefined on the ground but is just to the west of the fence erected across the route at the point at which the route under investigation meets the publicly maintainable highway - Fearn's Moss (C707) at the front of 12 Pipers Bank.


In summary, the total length of the route is approximately 615 metres and it is currently recorded as a public footpath. It is accessible on foot throughout its full length (with the short unofficial diversion just before point H) but when inspected was only accessible on horseback (or with vehicles) between point A and point F with significant evidence of current vehicular use between point A and point F.

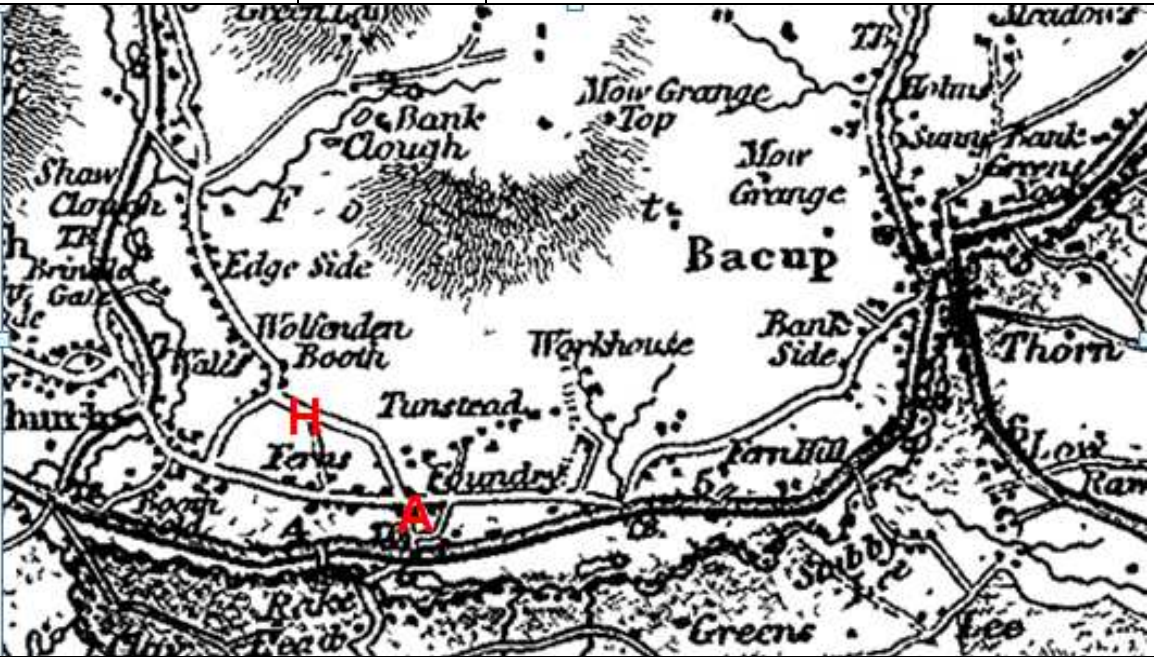
Map and Documentary Evidence

| 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 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. |
| Investigating Officer's Comments | | The route under investigation may have existed in 1786 but was not considered to be of sufficient significance to be included on the map. |
| Smith's Map | 1801 | Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the 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. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | The route under investigation either did not exist in 1801 or was not considered to be of sufficient significance to be included on the map. |
| Honour of Clitheroe Map | 1804 | A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows 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. |

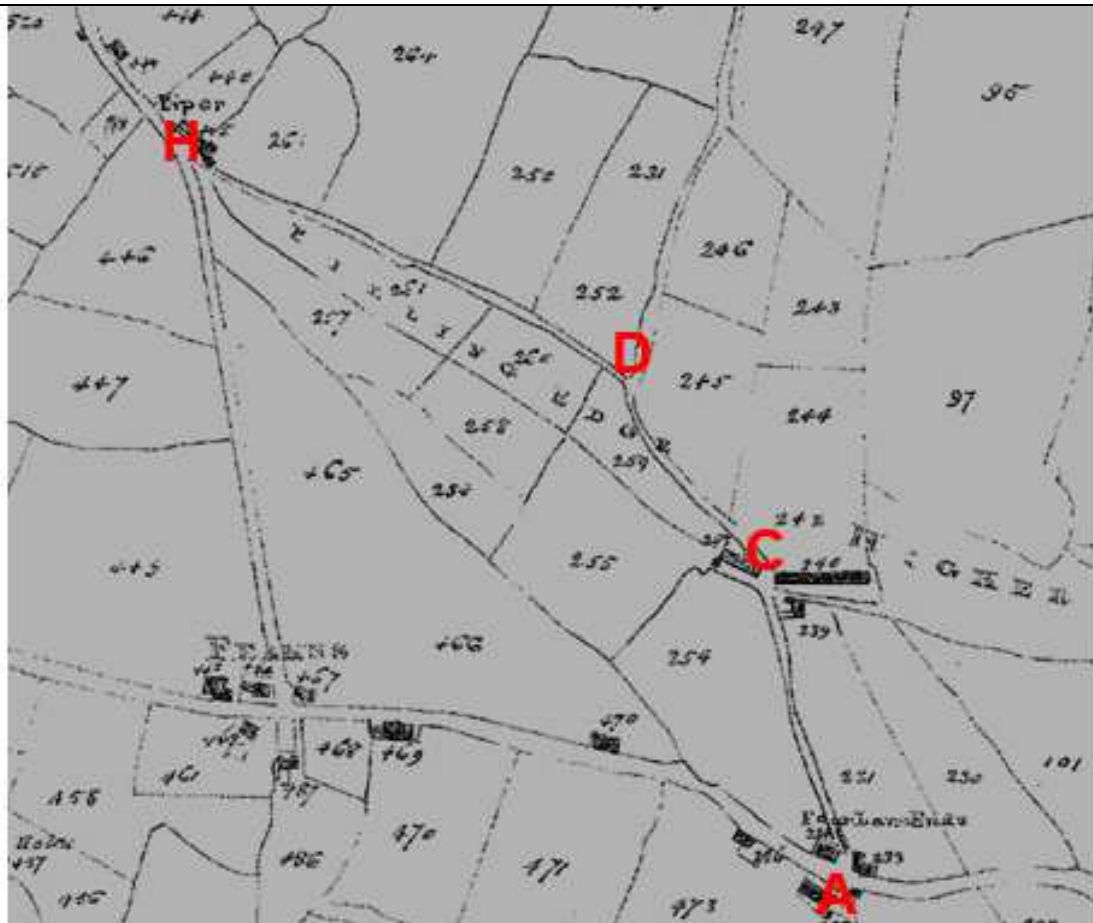


| | | |
|---|-------------|---|
| <p>Observations</p> | | <p>The whole length of the route under investigation is shown with the word 'Piper' written by the buildings adjacent to point H (the property later known as Piper Bank). Farm buildings on either side of the route at point C are also shown (Higher Tunstead). None of the routes currently recorded as public footpaths that cross or join the route under investigation are shown.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route under investigation existed in 1804 across land forming part of the Estate owned by the Honour of Clitheroe. The route appeared to provide a through route between point A and point H and passed between properties in the proximity of point C which are not named (now Higher Tunstead). This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that joint the route under investigation. This suggests that the route under investigation was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles at that time.</p> |
| <p>Greenwood's Map of Lancashire</p> | <p>1818</p> | <p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads. The two were not differentiated between within the key</p> |

| | | |
|--|------|---|
| | | panel. |
|  | | |
| Observations | | <p>The full length of the route under investigation is shown. Booth Road appears to form part of the main route along the valley between Bacup and Rawtenstall in 1818. The former Haslingden and Todmorden Trust Turnpike Road (now recorded as the A681 and A6066) is not shown on this map. The route under investigation is shown passing between the properties adjacent to point C (labelled Tunstead on the map) and is shown connecting to routes that are now recorded as public vehicular highways at either end (Booth Road and Fearn's Moss).</p> |
| Investigating Officer's Comments | | <p>The route existed in 1818 providing access to (and through) a number of properties close to point C. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths.</p> |
| Hennet's Map of Lancashire | 1830 | <p>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 hatching was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the County's communications</p> |

| | | |
|--|--|--|
| | | network was generally considered to be the clearest and most helpful that had yet been achieved. |
|  | | |
| Observations | | The full length of the route under investigation is clearly shown as a 'cross road'. The Haslingden and Todmorden Turnpike road along the valley (now recorded as the A681 and A6066) is also shown. |
| Investigating Officer's Comments | | The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are 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 but the route under investigation is shown passing between properties and connecting to routes that are now recorded as public vehicular highways. It is considered 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 by inclusion on the map the route under investigation was considered to be a public bridleway or carriageway. |
| Canal and Railway Acts | | 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. |
| Tithe Map and Tithe Award or Apportionment | 1831 | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. |



| | | |
|---------------------|--|---|
| <p>Observations</p> | | <p>The Applicant listed the Township Map of Tunstead 1831 as one of the documents supporting the claim for the route to be upgraded.</p> <p>However no map was actually submitted with the application. Subsequently a local historian has provided us with a photograph of the map that the Applicant referred to.</p> <p>The map is in Rawtenstall library and is referenced as 'Plan 166 Miscellaneous Plans' 'Plan of Tunstead and Wolfenden in Township of Newchurch and Forest of Rossendale'. It appears to be a copy produced on tracing paper glued onto green card and there is minor coloring on the tracing for woodland and water. It is not dated but the neighboring map of Deadwinclough, in identical format, is dated 1831.</p> <p>The map shows plots numbered as you would expect them to be shown on a Tithe Map. Tunstead was within the historical Township of Newchurch in Rossendale. There is no Tithe Map for Newchurch in</p> |
|---------------------|--|---|

| | | |
|---|--------|--|
| | | Rossendale in the County Records Office or at Lancaster University but the National Archives catalogue indicates that they have the record copy there - IR 106/307 dated 1849 and a researcher has been asked to get a copy of the relevant section and to check to see whether there is also a Tithe Award that may provide any further information. |
| Investigating Officer's Comments | | The undated plan held in Rawtenstall library is of little value without knowing its origin. It shows the route under investigation as a through route passing between properties at Higher Tunstead and exiting onto Fearn Moss at 'Piper'. The route is not numbered as are the adjacent plots of land. The plan confirms the existence of the route as a through route which appeared capable of being used but without further information little inference can be drawn. |
| Inclosure Act Award and Maps | | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | There is no Inclosure Award for the area over which the route under investigation is found. |
| Investigating Officer's Comments | | No inference can be drawn. |
| Cassini Map, Series 109 - Manchester | 1842-4 | Reproduction extract of Map sheet 109 originally published 1842-44. 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 full length of the route under investigation is shown as a through route from Booth Road to Fearn Moss. |
| 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 fact that the route is shown on the map is suggestive of at least public bridleway rights |

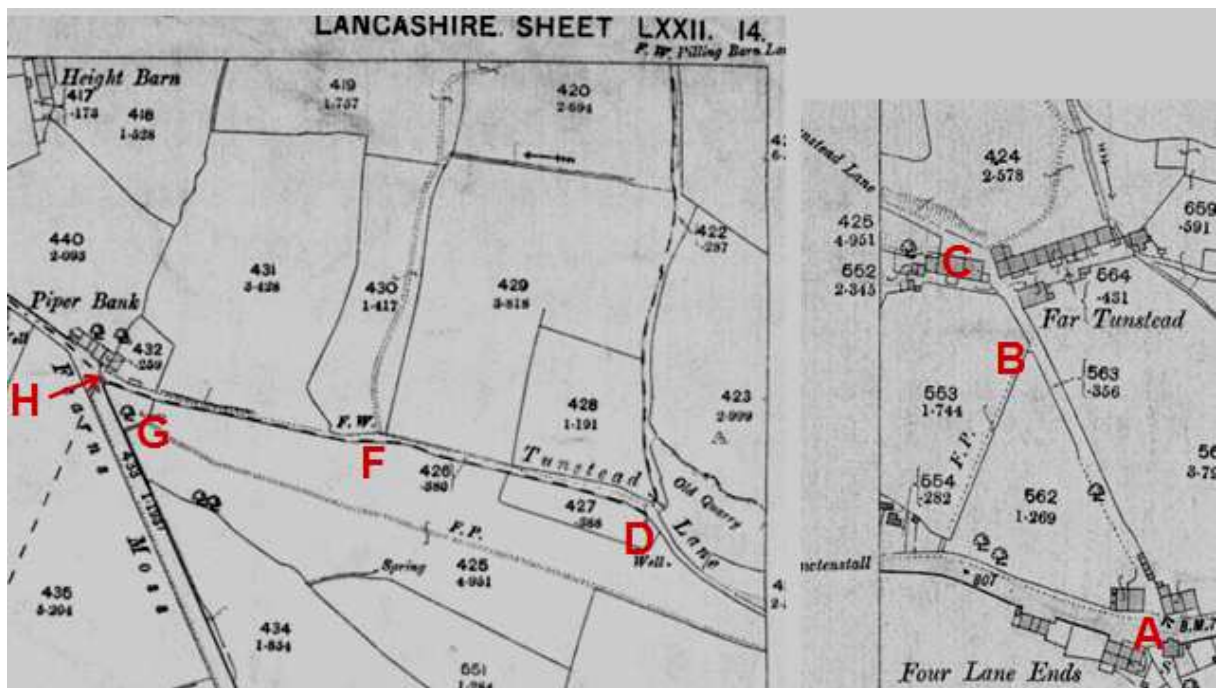
| | | |
|---|------|---|
| | | and possibly vehicular rights. |
| 6 Inch Ordnance Survey (OS) Map Sheet No. 72 | 1849 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹ |



| | |
|--------------|--|
| Observations | <p>The full length of the route under investigation is shown with the route recorded as Footpath 19 shown joining the route at point B. The route under investigation is shown passing between properties labelled as Far Tunstead at point C. Footpath 15 (Pilling Barn Lane) is shown leaving the route under investigation at point D with a solid line across it indicating that access onto it may have been gated. Pilling Barn Lane is not named on the map but between points D and H the route under investigation is clearly named as Tunstead Lane.</p> <p>The route is shown to extend as far as point H – just east of some buildings named Piper Cote Stile on the map and access from point</p> |
|--------------|--|

¹ 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.

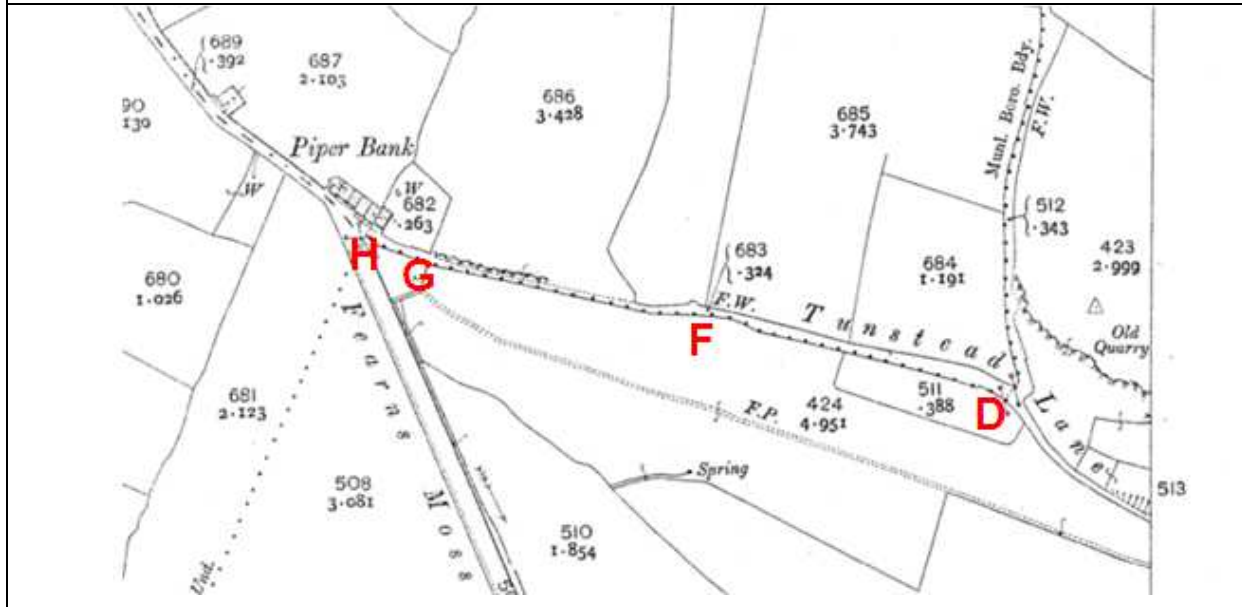
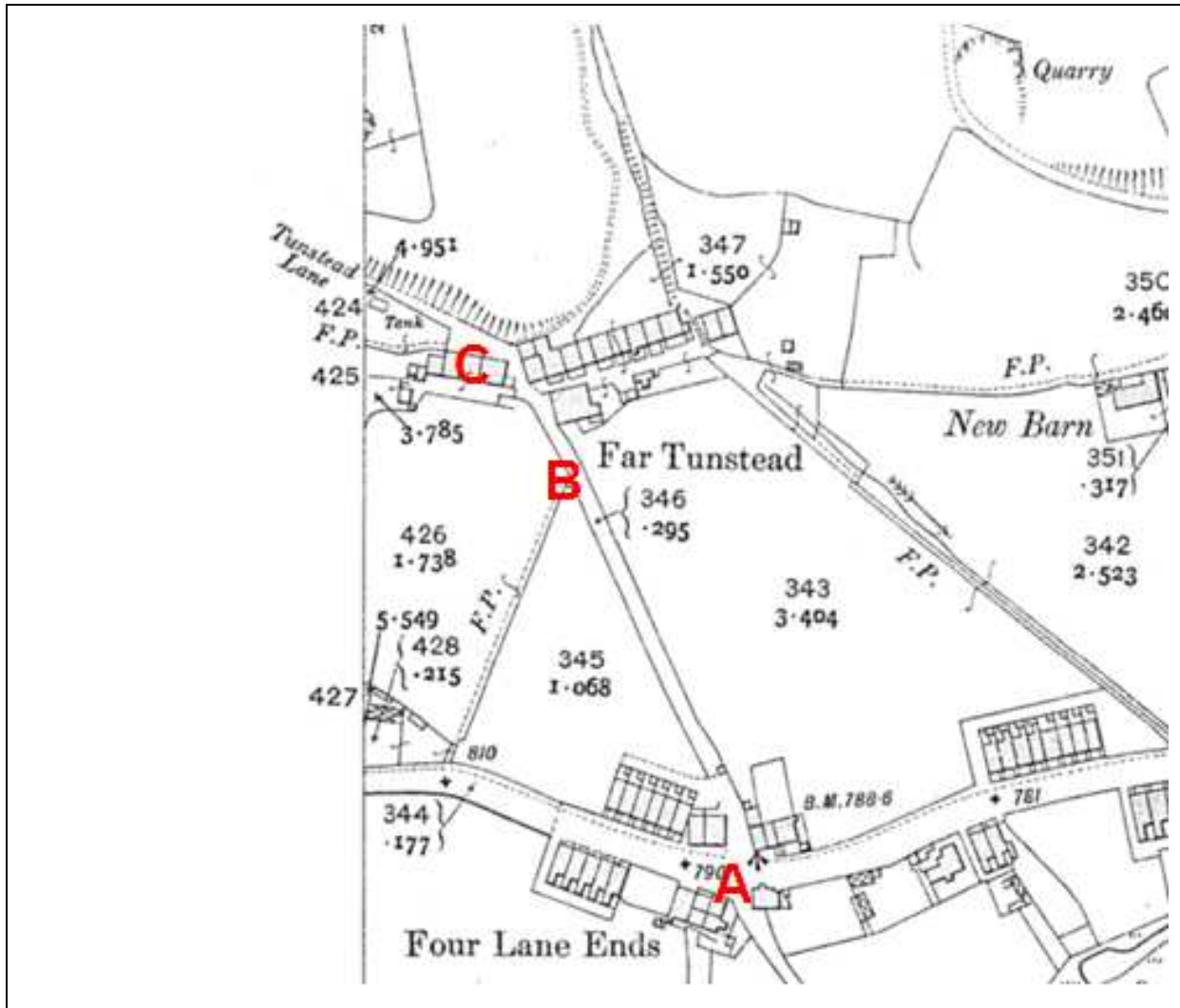
| | | |
|---------------------------------------|------|--|
| | | <p>H onto Fearn Moss appears to be available and unrestricted.</p> <p>The full length of the route under investigation is bounded on either side by solid lines indicating that it was physically separated from the adjacent farm land.</p> |
| Investigating Officer's Comments | | <p>The full length of the route under investigation existed and appeared to be capable of being used in 1849.</p> <p>The route provided access to and through a number of properties (Far Tunstead) and connected Booth Road to Fearn Moss.</p> <p>It is considered that a named route passing through a hamlet and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> |
| 25 Inch OS Map Sheets 72/14 and 72/15 | 1893 | The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893. |



| | | |
|--------------|--|---|
| Observations | | <p>The full length of the route under investigation is shown. At point A it is shown to pass between 9 and 13 Booth Road and access onto the route does not appear to be restricted although a change in the surfacing from Booth Road appears is indicated by a dashed line. North of point A, but within the boundaries of the route, there is a small rectangular building split into 5 squares on</p> |
|--------------|--|---|

| | |
|---|--|
| | <p>the north east side of the route. The building does not prevent access along the route but appears to restrict the width at this point. Beyond the buildings the route under investigation is shown separated from the adjacent fields by a solid boundary on the east as far up to the properties at Far Tunstead. On the western side the route is open to the field for approximately 60 metres before a boundary is shown. The route recorded as Footpath 19 is shown and marked on the map as a footpath (F.P.) joining the route under investigation at point B.</p> <p>At point C the route passes between buildings named as Far Tunstead consisting of a number of individual and terraced properties.</p> <p>Beyond point C the route continues bounded on either side to point D along which section it is named as Tunstead Lane. Footpath 15 leaves the route under investigation at point D and is named as Pilling Barn Lane.</p> <p>A track (double pecked line) is shown to join the route under investigation at point F. As the application route approaches point G it is shown unbounded on the northern side and is shown running along the bottom of a cutting.</p> <p>At point H the route is shown to exit onto Fearn Moss adjacent to properties named Piper Bank (Piper Cote Stile on the earlier 1849 6 inch OS map).</p> <p>No gates are shown to exist across the route.</p> <p>The route under investigation is not coloured or shaded on the map.</p> |
| <p>Investigating Officer's Comments</p> | <p>The route under investigation existed in 1893 and provided access to a number of properties and a through route connecting Booth Road and Fern Moss.</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</p> |

| | | |
|--|---------------------------|--|
| | | <p>route under investigation is not shown in such a way but neither are Booth Road and Fearn Moss which are now recorded as public vehicular highways.</p> <p>The fact that the route was named 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>The fact that no gates are shown to exist across the route suggests that access was unrestricted.</p> |
| Cassini reprint of the 1 inch Map of Lancashire | Originally published 1903 | 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 as a through route from Booth Road to Ferns Moss. |
| Investigating Officer's Comments | | The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The fact that the route continued to be shown by Cassini is suggestive of the fact that it was a substantial route carrying at least bridleway rights and possibly vehicular rights. |
| Bacon's Map | 1904 | G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1904 – as evidenced by the OS maps dated before and after the publication of this map - but does not appear to have been considered to be of sufficient significance to be included on this small scale map.</p> <p>The fact that the route is not included is an indication that at this time the importance and use of the route to those travelling by vehicle may have started to decline by that time.</p> |
| 25 inch OS Maps | 1910-1911 | Further editions of the 25 inch map surveyed in 1891/2, revised in 1909 and published in 1911 (Sheet 72/14) and 1910 (Sheet 72/15). |

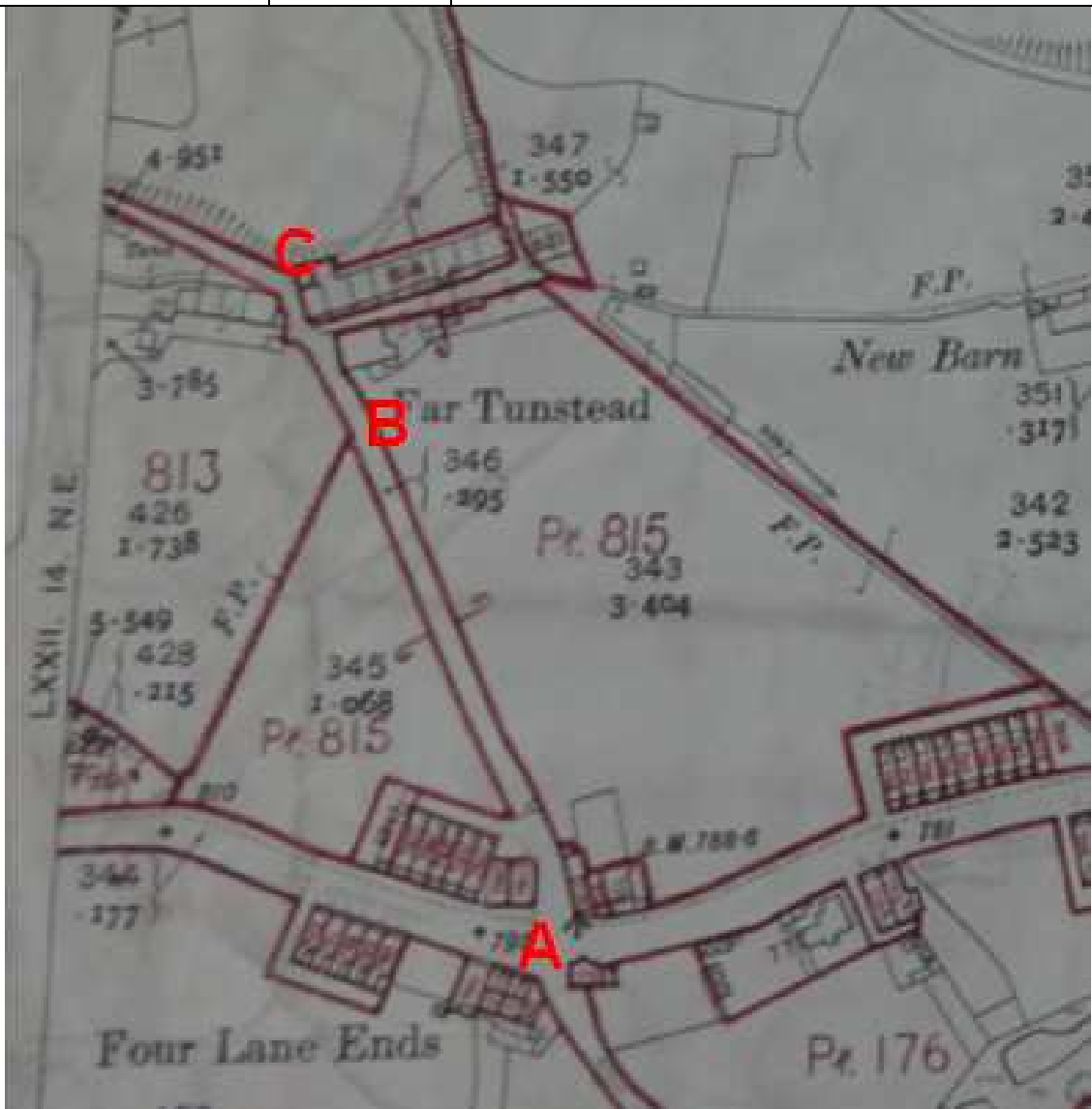


Observations

The full length of the route under investigation is shown and the route is named 'Tunstead Lane'. No gates are shown across the route along the full length.

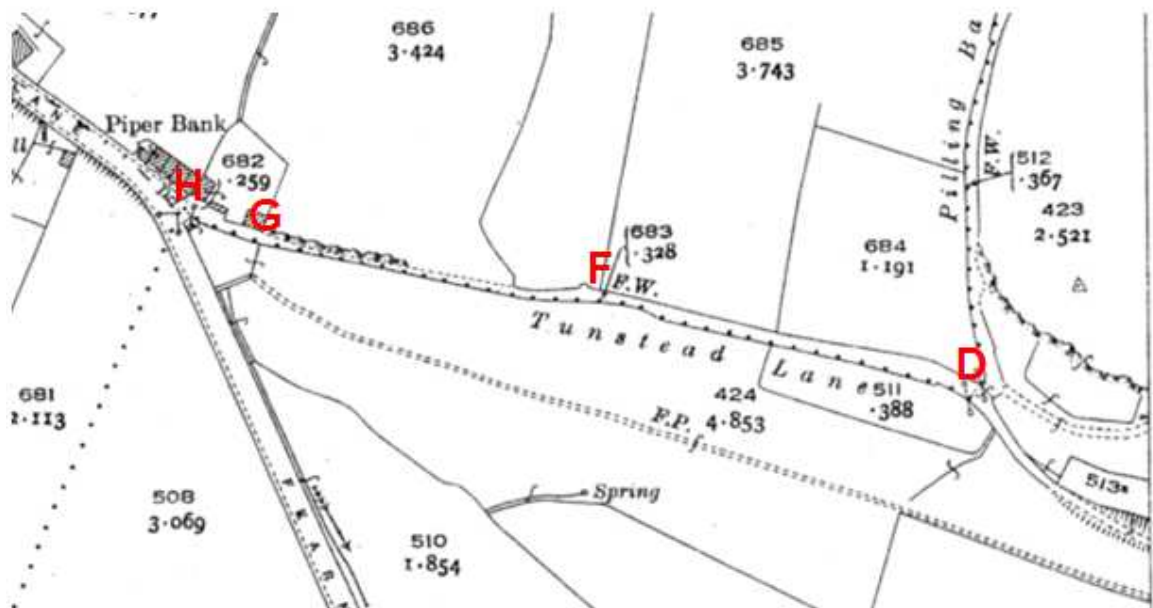
| | | |
|----------------------------------|------|---|
| | | <p>Almost the full length of the route appears to be bounded from adjacent land – with the exception of a short section between point F and point G which was physically confined to the bottom of a cutting and which appears narrower and less significant than the rest of the route.</p> <p>The building within the boundaries of the route just north of point A is still shown but has decreased significantly in size since it was shown on the 1893 edition of the 25 inch map.</p> |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1910 -1911 and provided the main access to a number of properties at Higher Tunstead and a through route connecting Booth Road and Fearn Moss.</p> <p>As the main access to properties it is likely that the route would have been of substantial construction and would have been used by people on horseback, with horse and cart and by mechanical vehicles.</p> |
| Finance Act 1910 Map | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. 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</p> |

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.





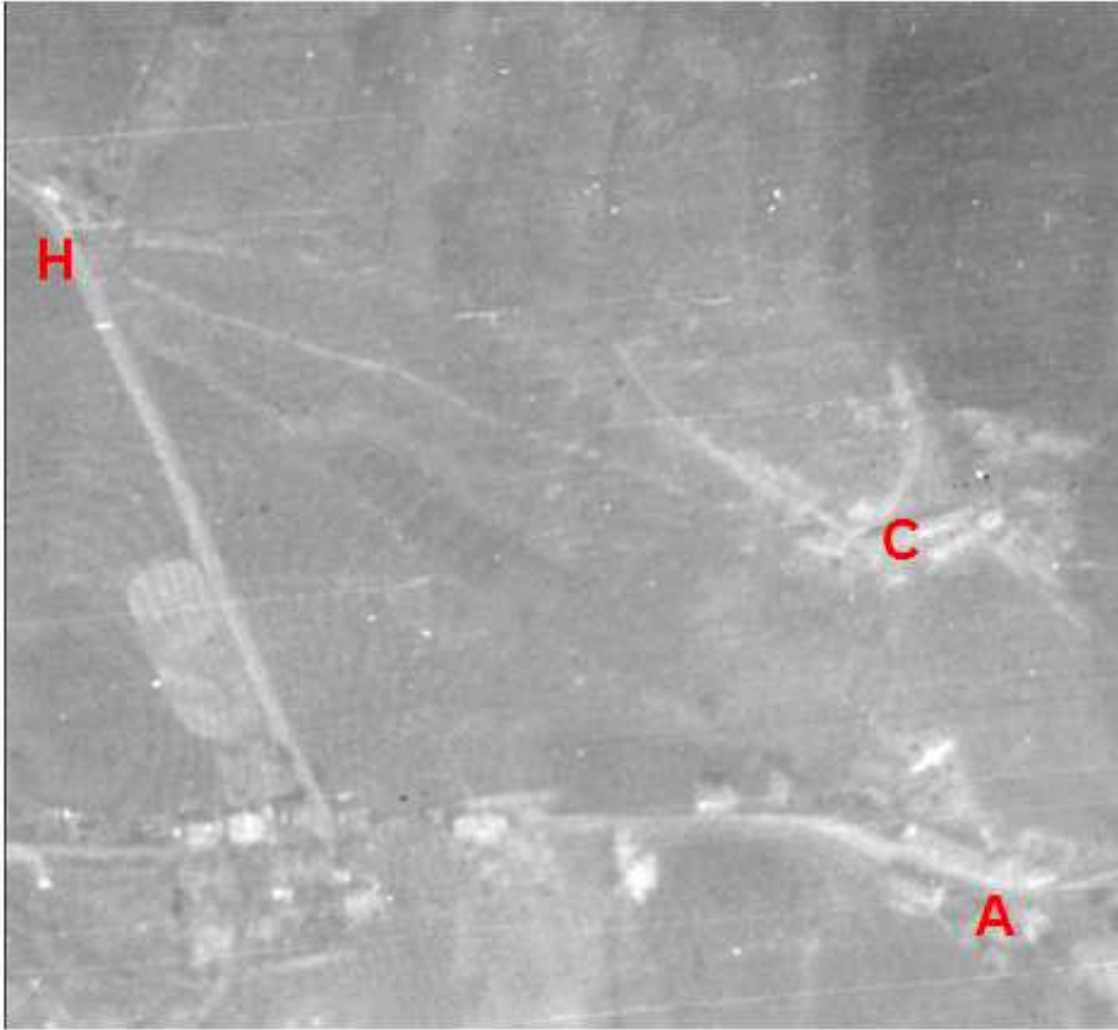
| | | |
|---|------|--|
| Observations | | The route under investigation is clearly shown excluded from the numbered hereditaments some of which are split by the route. |
| Investigating Officer's Comments | | The route is shown excluded from the adjacent numbered hereditaments which is good evidence of, but not conclusive of, public carriageway rights. |
| Abel Heywood & Sons Cycling & Touring Map 60 miles about Manchester ½ inch to the mile | 1920 | Extract of map provided by Applicant in relation to another route but covering the area under investigation. Undated but thought to be dated circa 1920 by a local historian. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | The scale of the map suggests that only the most significant public routes were shown. The fact that the map was produced as a cycling and touring map suggests that those routes shown would carry public vehicular rights and therefore suggests that it may not have been considered to be a public road in the 1920s (cyclists were not allowed to use bridleways prior to 1968) or possibly that due to the scale of the map only the more significant routes were shown. |
| 25 Inch OS Map | 1930 | Further edition of 25 inch map (surveyed 1891, revised in 1928 and 1930. Map sheets 72/14 and 72/15 |



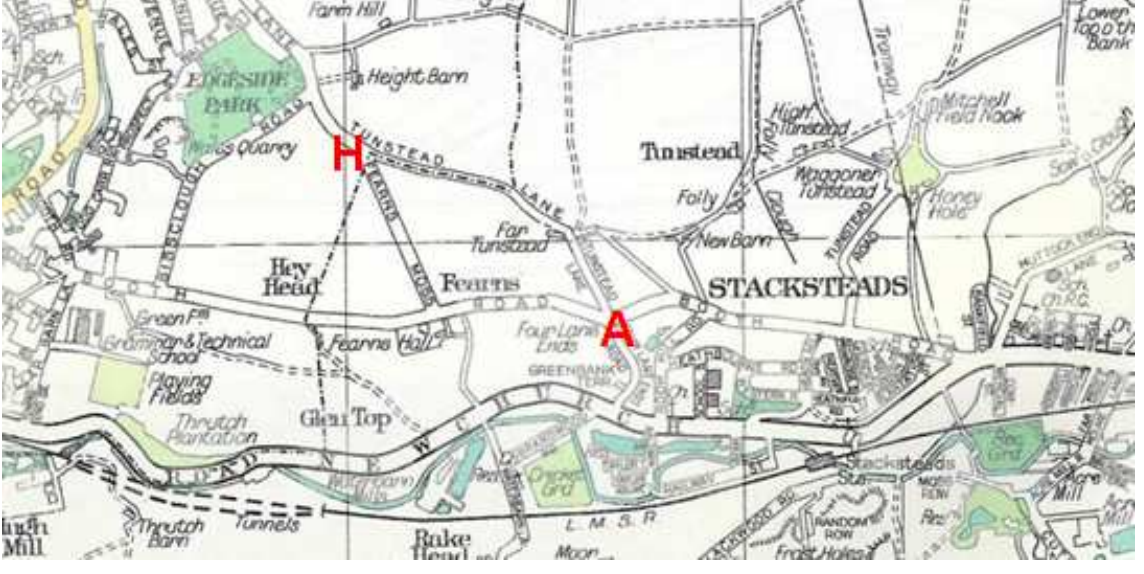
| | |
|---------------------|---|
| <p>Observations</p> | <p>The full length of the route under investigation is shown and the route is named as Tunstead Lane on both map sheets.</p> <p>The small building that had existed within the boundary of the route just north of point A is no longer shown.</p> <p>A dashed line is shown across the route north of point A at the point immediately after</p> |
|---------------------|---|

| | | |
|--------------------------------------|-------|--|
| | | <p>which access to the rear of the properties on Booth Street curves round to the west. This dashed line is likely to indicate a change in surface condition.</p> <p>Between point F and point G the route appears narrower and less significant than the rest of the route.</p> <p>Access onto Fearn's Moss from point H is open and available.</p> <p>No gates are shown across the route.</p> |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1930 and provided the main access to a number of properties. It is shown as an un-gated through route connecting Booth Road and Fearn's Moss. The full length of the route appeared to be capable of being used by horses and possibly vehicles at that time.</p> |
| Aerial Photograph² | 1940s | <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 generally very variable.</p> |

² 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.



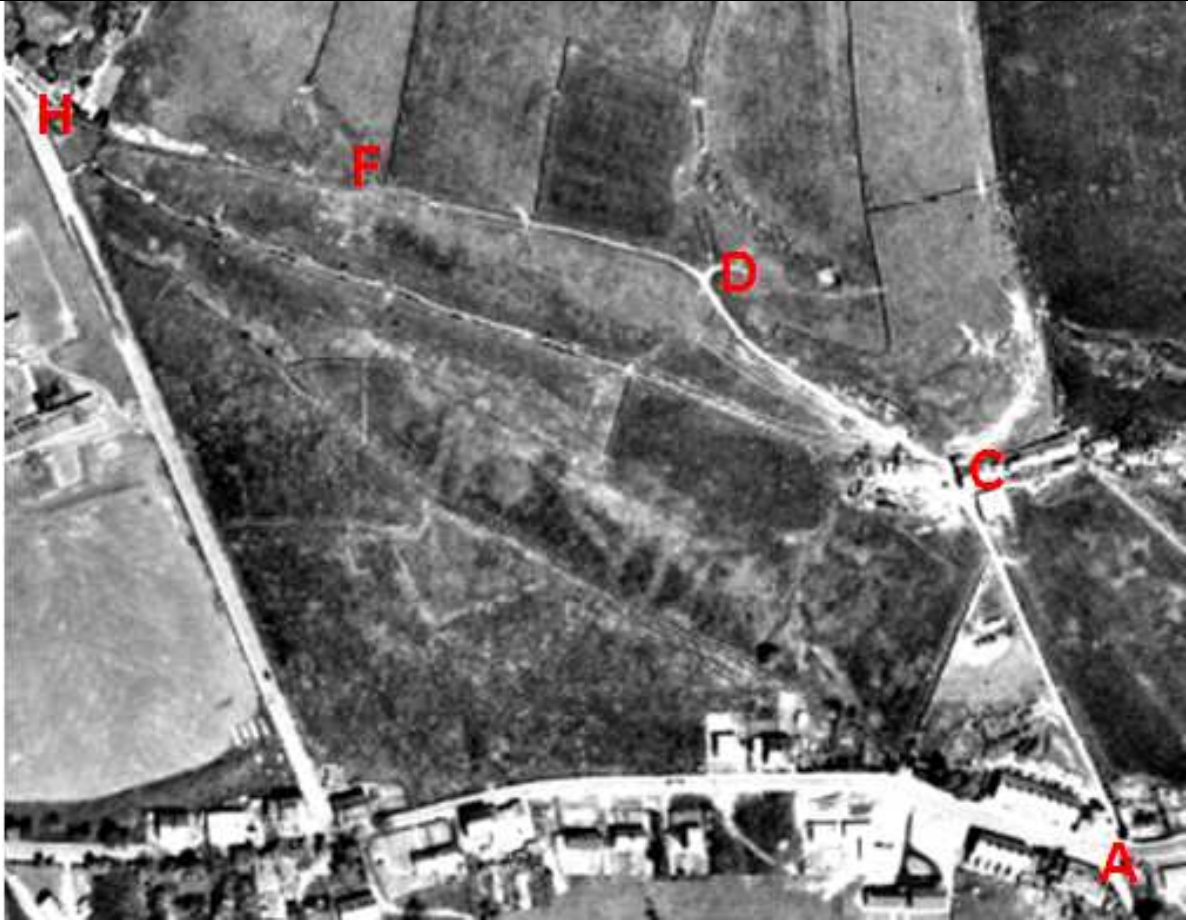
| | | |
|---|------------|---|
| Observations | | The quality of the photograph is very poor and it is difficult to see the route under investigation or other more prominent routes in the area. Footpath 18 which runs south of, and roughly parallel to the route under investigation between points C and H is more visible than the route under investigation. |
| Investigating Officer's Comments | | The route under investigation existed in the 1940s – as evidenced by OS maps dated before and after that time but does not show up as a significant route at that time. The fact that the route of Footpath 18 shows up as much, if not more than the route under investigation between point C and point H suggests similar use of the route under investigation to that of the footpath at that time. |
| The Authentic Map Directory of South Lancashire by | Circa 1934 | An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, |

| | | |
|---|-------------|--|
| <p>Geographia</p> | | <p>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.</p> |
|  | | |
| <p>Observations</p> | | <p>The application route is clearly shown and is named as Tunstead Lane.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route under investigation is shown in an atlas consistent with the way that other routes carrying public vehicular rights are shown and is at least suggestive of public bridleway rights.</p> |
| <p>6 Inch OS Map Sheet SD 82SW</p> | <p>1956</p> | <p>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.</p> |



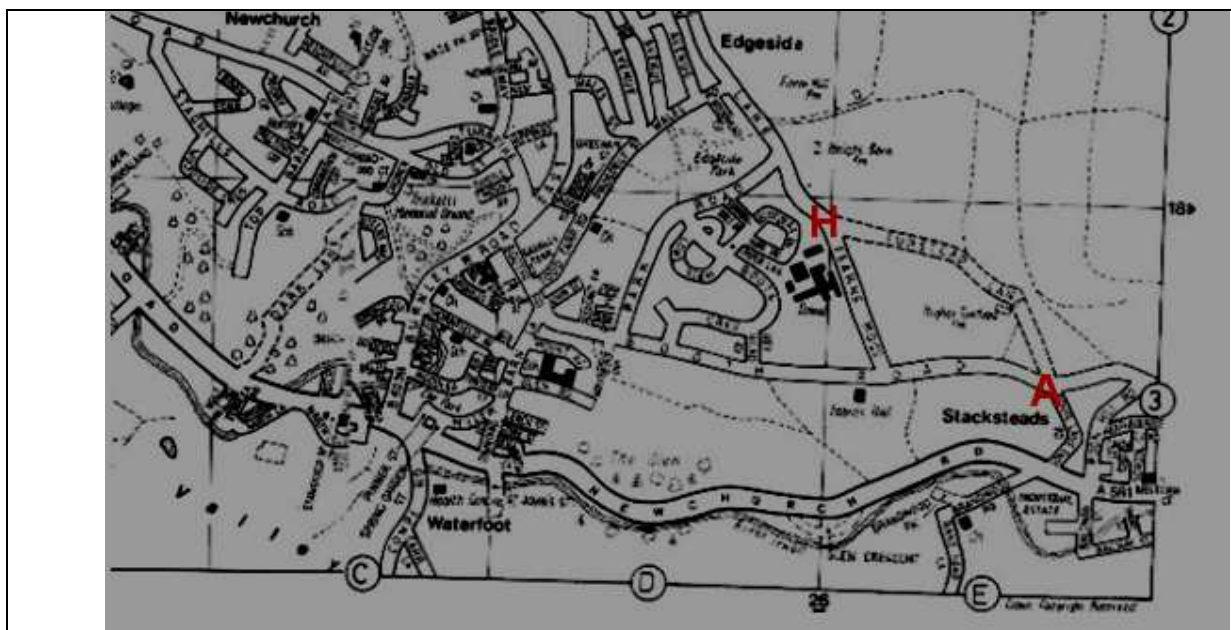
| | | |
|----------------------------------|------|---|
| Observations | | The route under investigation is shown and is named on the map as Tunstead Lane between point A and point D and between point C and point G. The section between point D and point G is also marked as a footpath (FP). A line is shown across the route at point D which may indicate the existence of a gate. |
| Investigating Officer's Comments | | The route under investigation existed in the 1950s and still provided the main access to a number of properties. The full length of the route appeared to be capable of being used by horses and possibly vehicles at that time although the annotation FP between point D and point G may suggest that use of this section of the route other than on foot may have declined. The existence of a gate at point D is consistent with a route in a rural location where gates would be required for stock control. |
| 1:2500 OS Map | 1963 | Further edition of 25 inch map reconstituted from former county series and revised in 1960/61 and published 1963 as national grid series. |
| Observations | | The route under investigation is shown in the same way as on the earlier edition of the 25 inch map. |

| | | |
|----------------------------------|-------|---|
| Investigating Officer's Comments | | The route under investigation still existed in 1963 and appeared to be capable of being used. |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |





| | | |
|---|------|---|
| Observations | | The full length of the route under investigation can be seen but is much clearer between point A and point D than the rest of the route. Beyond point F to point G the route is only faintly visible. |
| Investigating Officer's Comments | | The route under investigation existed and appeared to be capable of being used. The clarity of the route between point A and point D is indicative of vehicular use which may extend as far as point F but beyond that point the track was much less visible suggesting only pedestrian and possibly equestrian use at that time. |
| Rossendale Official Street Atlas | 1995 | Extract provided by the Applicant and published by Rossendale Borough Council. |



| | | |
|----------------------------------|------|--|
| Observations | | An extract from a street atlas published by Rossendale Borough Council in 1995 shows the full length of the route under investigation named as Tunstead Lane. The route is shown bounded on either side by dashed lines. Some, but not all public footpaths that connect to the route are shown – mainly by the use of a single dashed line. |
| Investigating Officer's Comments | | No key was submitted with the extract and the origin of the base map is not known. The main purpose of the atlas appears to be to show the vehicular routes ('Streets') in Rossendale. Tunstead Lane is named and shown as a substantial route providing access to and beyond a named property (Higher Tunstead Farm). It appears to have been considered by the map makers as being more than a footpath. |
| Aerial Photograph | 2000 | Aerial photograph available to view on GIS. |

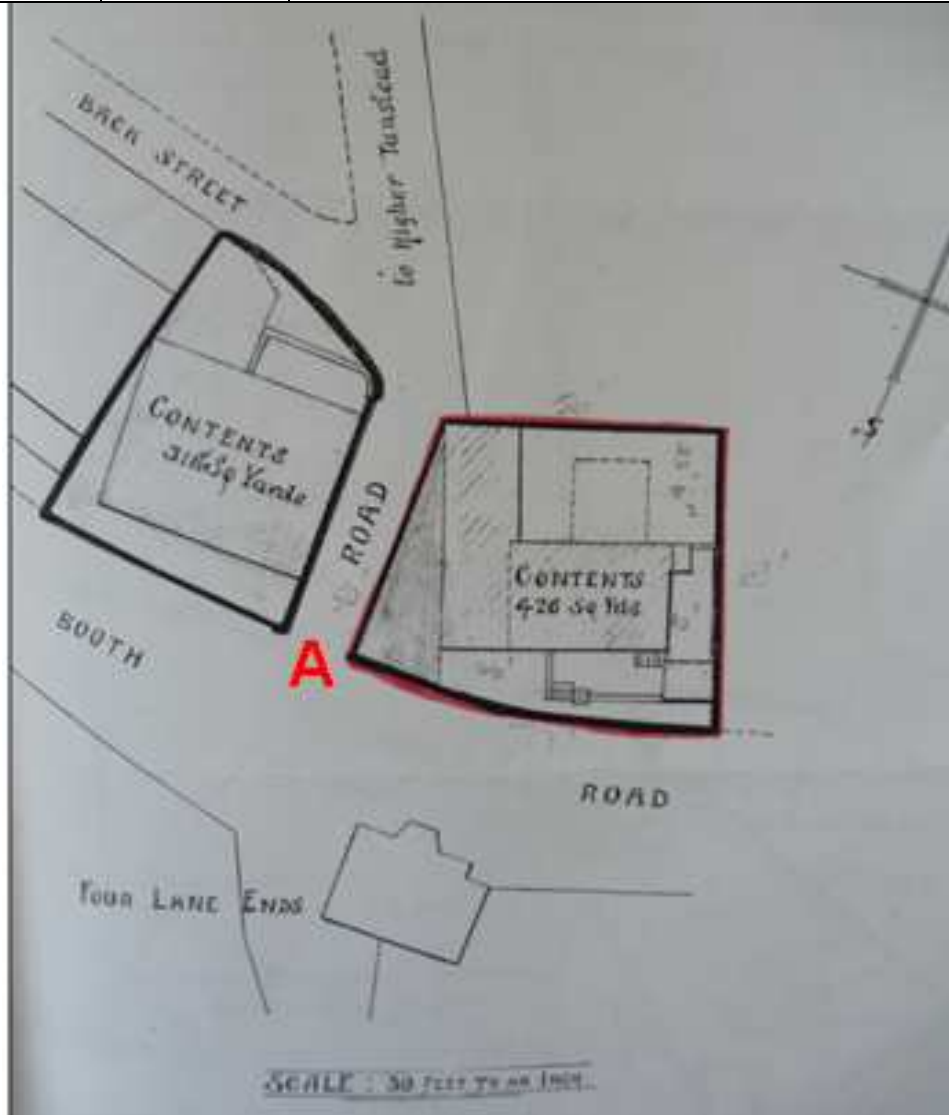


| | | |
|----------------------------------|-----------|---|
| Observations | | The route under investigation can be clearly seen between point A and point F consisting of a substantial track. Between point F and point H the route is barely visible. |
| Investigating Officer's Comments | | The aerial photograph supports the view that substantial vehicular use was being made of the route in 2000 between point A and point F. From point F to point G the route was barely visible suggesting use on foot in line with its current designation as a public footpath. |
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in 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 | | Bacup was a municipal borough in the early |

| | | |
|--|--|---|
| | | 1950s and so a parish survey map was not compiled. |
| Draft Map | | The Draft Maps were given a “relevant date” (1 st 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 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations | | The route under investigation was shown on the Draft Map as a public footpath. |
| 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. |
| The First Definitive Map and Statement | | 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. |
| Revised Definitive Map of Public Rights of Way (First Review) | | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside |

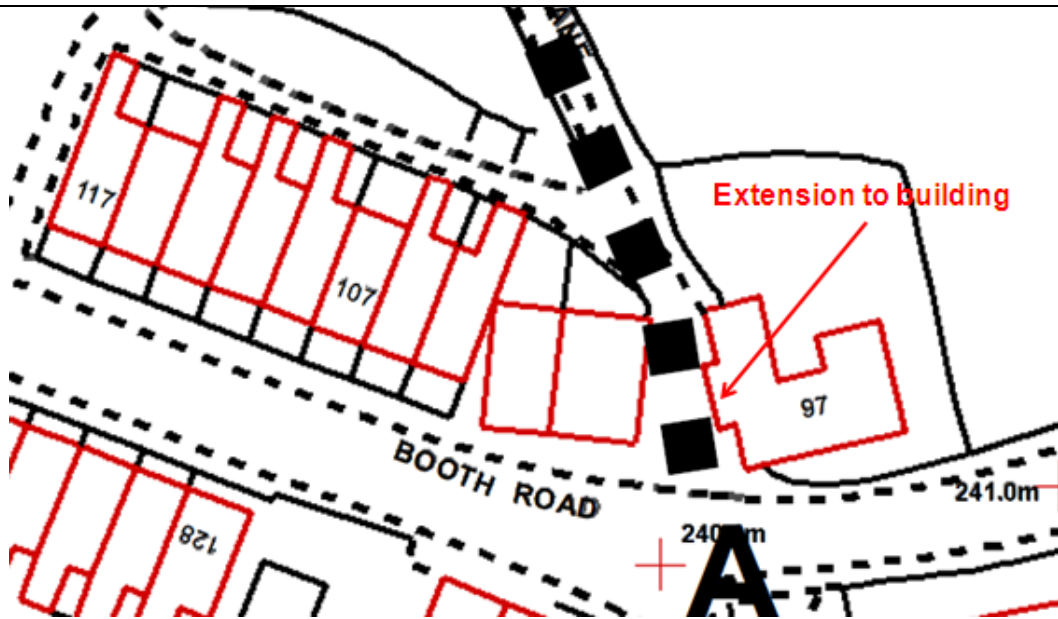
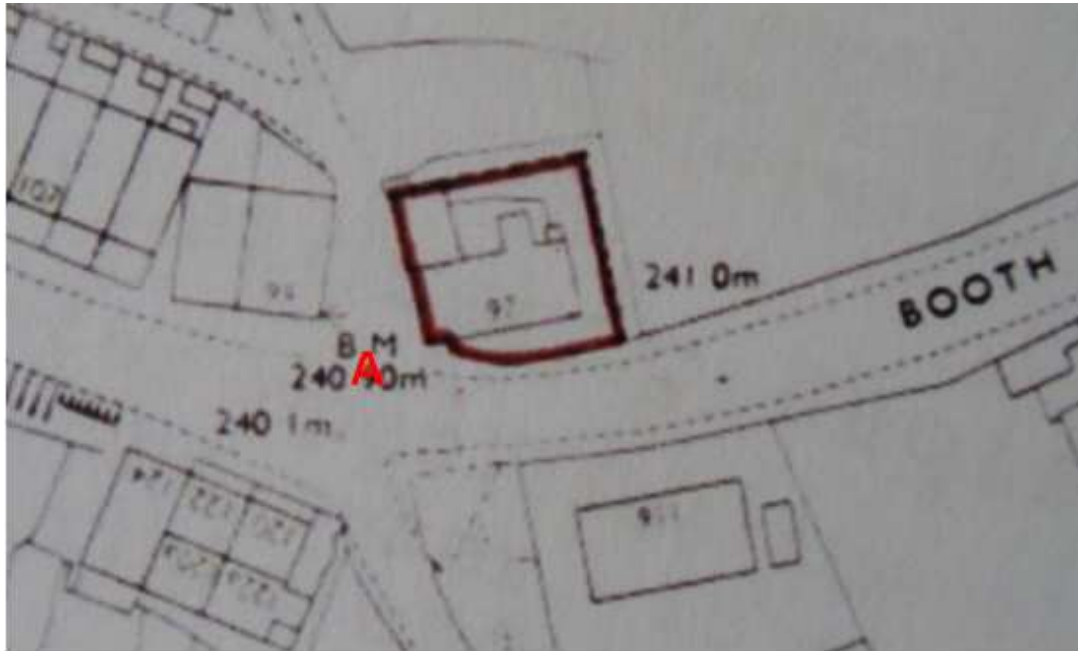
| | | |
|---|--|--|
| | | Act 1981, the Definitive Map has been subject to a continuous review process. |
| Investigating Officer's Comments | | From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying 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. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations | | 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 the landowners under this provision of non-intention to dedicate public rights of way over this land. |

| | | |
|---|---------|---|
| Extract from the deeds to 97 Booth Road | Undated | Extract of Deeds provided by the owner of the property to indicate the extent of their landownership. |
|---|---------|---|




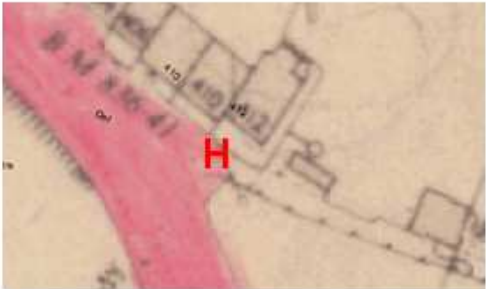
| | |
|--------------|---|
| Observations | <p>The plan is undated but was submitted by the landowner who explained that it formed part of their deeds. It shows the start of the route under investigation from point A labelled as 'Road' and the destination of the road is labelled as 'to Higher Tunstead'. The boundary of the property (97 Booth Road) is shown extending over part of the width currently available to use on the ground and differs from the land ownership boundary indicated on the land registry plan (LA441304) as shown below. In addition, the Committee plan and site photographs show an extension to the side of 97 Booth Street which appears to have been constructed</p> |
|--------------|---|

within the historical width of the route.



Investigating Officer's
Comments

The undated plan attached to deeds of the property suggests that at the time that the plan was drawn the route under investigation was considered by the surveyor to be a 'road' – although there is no indication as to whether this was considered to be public or private and it is simply described as being 'to Higher Tunstead'. The boundary of the property appears to include part of what may have been physically available on the ground (the area shaded on the deeded plan) and the extension of the building is within that

| | | |
|---|----------------------------|---|
| | | shaded area. The Land Registry plan shows the boundary along the building edge and not including any part of the route under investigation. |
| <p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p> | <p>1929 to present day</p> | <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 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> |
| <div style="display: flex; justify-content: space-around;">   </div> | | |
| <p>Observations</p> | | <p>The route under investigation is not recorded on the List of Streets as a publically maintainable highway.</p> <p>The point at which the north western end of</p> |

| | | |
|----------------------------------|--|---|
| | | the route under investigation meets the public highway (Fearn Moss) at point H can be clearly seen on the County Councils 'adoption' plan. The aerial photograph extract shows the modern day situation on site with fencing blocking access to point H and an unofficial access to and from the route under investigation provided south of point H. |
| Investigating Officer's Comments | | The route under investigation was not considered to be a surfaced way maintained at public expense. |

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.

Landownership

The ownership of Tunstead Lane (the route under investigation) is not registered with the Land Registry and ownership of the route is not known. The land on either side of the route is registered (to a number of different owners) and in one case land is owned by the same landowner on either side of the route and is registered under the same title number but the title plan shows that Tunstead Lane does not form part of the landowner's property.

The Land Registry documentation inspected for land on either side of the route under investigation all makes reference to that land being formerly the copyhold of the Manor of Accrington New Hold.

Summary

The full length of the route connecting to Booth Road and Fearn Moss was shown consistently on various small scale commercial maps (and also the Honour of Clitheroe Map) from 1804 as a significant route depicted in the same way that carriageways were shown.

It is also shown consistently on Ordnance Survey maps, including 1 inch scale, from 1849 onwards, named as Tunstead Lane and mostly enclosed on both sides.

The Finance Act 1910 information suggests – although not conclusively – that it had public carriageway rights.

As the 20th Century progressed the western section of the route became less significant as evidenced by maps and aerial photographs and this is still the situation on the ground today.

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 applicant states that the following maps show the application route and she believes support the application to upgrade the route to a public bridleway:

- 1831 Township Map of Tunstead
- Extract from the LCC Mario map layer showing adopted highways
- Ordnance Survey 25 inch map published 1893
- Ordnance Survey 25 inch map published 1910
- Ordnance Survey 25 inch map published 1930
- Extract of a map published by Cassini
- Extract from the Authentic Map Directory of South Lancashire
- Rossendale Official Street Atlas 1995
- Ordnance Survey 6 inch map published 1849

Information from Others

A letter has been received from Mrs Cooper, owner of 97 Booth Road, she has concerns that the increased use of the lane will cause more deterioration especially during heavy rainfall when drains get blocked and cause flooding.

A letter was also received from Janet Disley and Stephen Hoyle, the owners of Piper Bank, 412 Edgeside Lane, they provided confirmation of their ownership in relation to the route but did not provide any comments on the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Historical map evidence

Against Making an Order(s)

Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the sections of footpath from points A-B-C-D-E-F-G-H to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a Public 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.

Committee is advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.

The route is depicted as a significant route in the same way that carriageways were shown on various small scale commercial maps which include Greenwood's Map of Lancashire 1818 and Hennets Map of Lancashire 1830, this is evidence of the route had a higher status than a footpath. The route appears as a cross road in 1830 on the Hennets Map and appeared to provide a through route between points A and H and passed between properties in the proximity of point C which are not named (now Higher Tunstead), as this small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that joined the route under investigation. This suggests the route was of a substantial nature and on balance would have been capable of being used on horseback and possibly horse drawn vehicles at that time.

The Finance Act Map 1910 adds further weight, although not conclusive that the route under consideration had public carriageway rights.

The full length of the route also appeared to be capable of being used and is consistently shown on the ordnance survey maps from 1849 onwards, as a route providing access to and through a number of properties and connected Booth Road to Fearn Moss. It is considered that a named route passing through a hamlet and connecting to a network of other public highways would on balance have been at the very least a public bridleway and may have carried public vehicular rights.

The evidence suggest the section F-H had declined more recently and the track was much less visible and it likely that more recently this section had predominantly been used 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 Natural Environment Rural communities Act 2006 (NERC Act). The implication of this section has meant that as this route was originally recorded on the Definitive Map and Statement as a public footpath, any existing public rights of was for mechanically propelled vehicles have been extinguished. This therefore means that the highest status that can be achieved by this section of route is that of a restricted byway.

Taking all the evidence into account and noting how the route was recorded on the old County maps, it is suggested to Committee that on a balance of probabilities there is sufficient evidence 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 higher public status.

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: 804-514 | | <i>Megan Brindle</i> , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

384000 000000

385000 000000

423000 000000

423000 000000

422000 000000

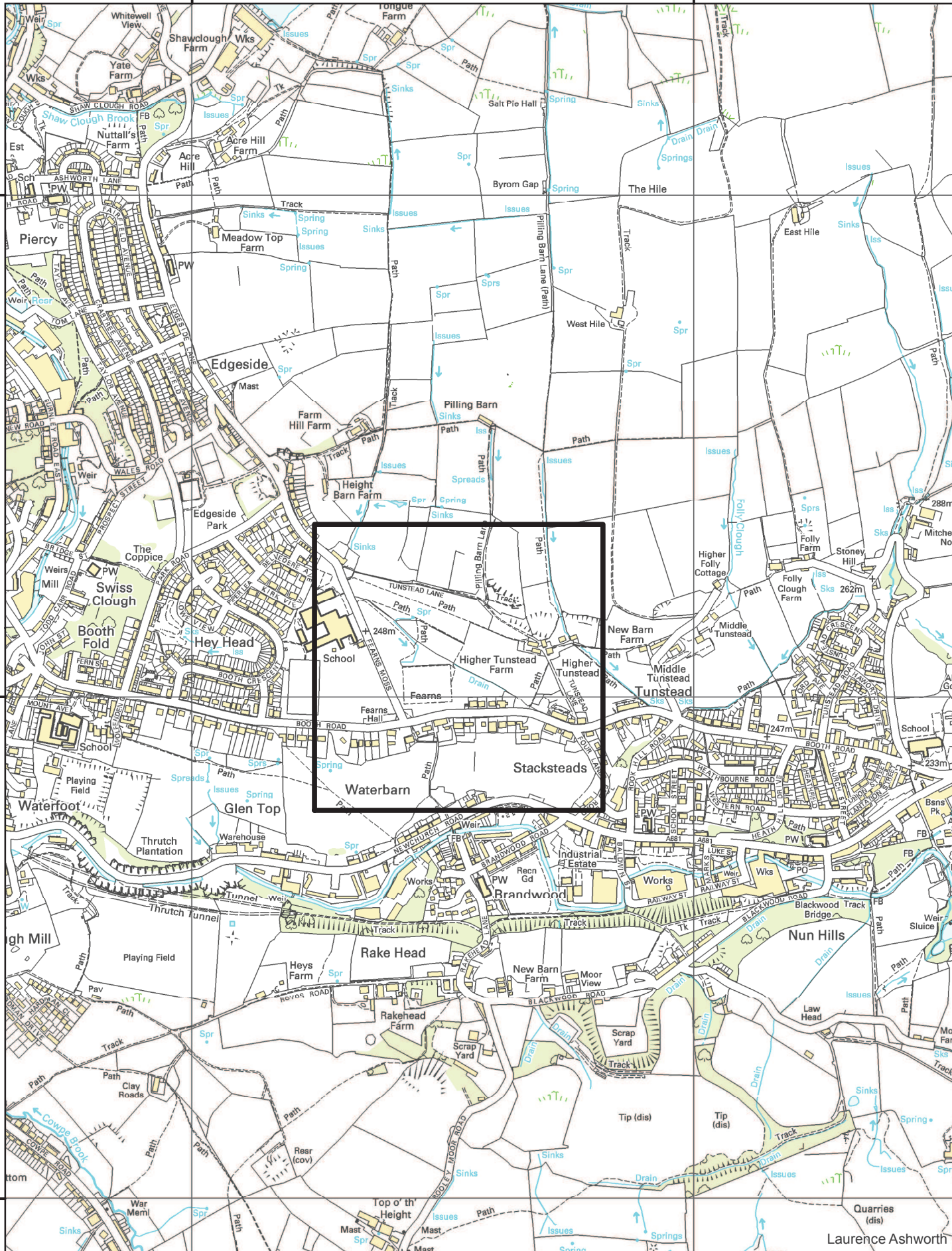
422000 000000

421000 000000

421000 000000

384000 000000

385000 000000



Steve Browne
Interim Executive Director
for the Environment

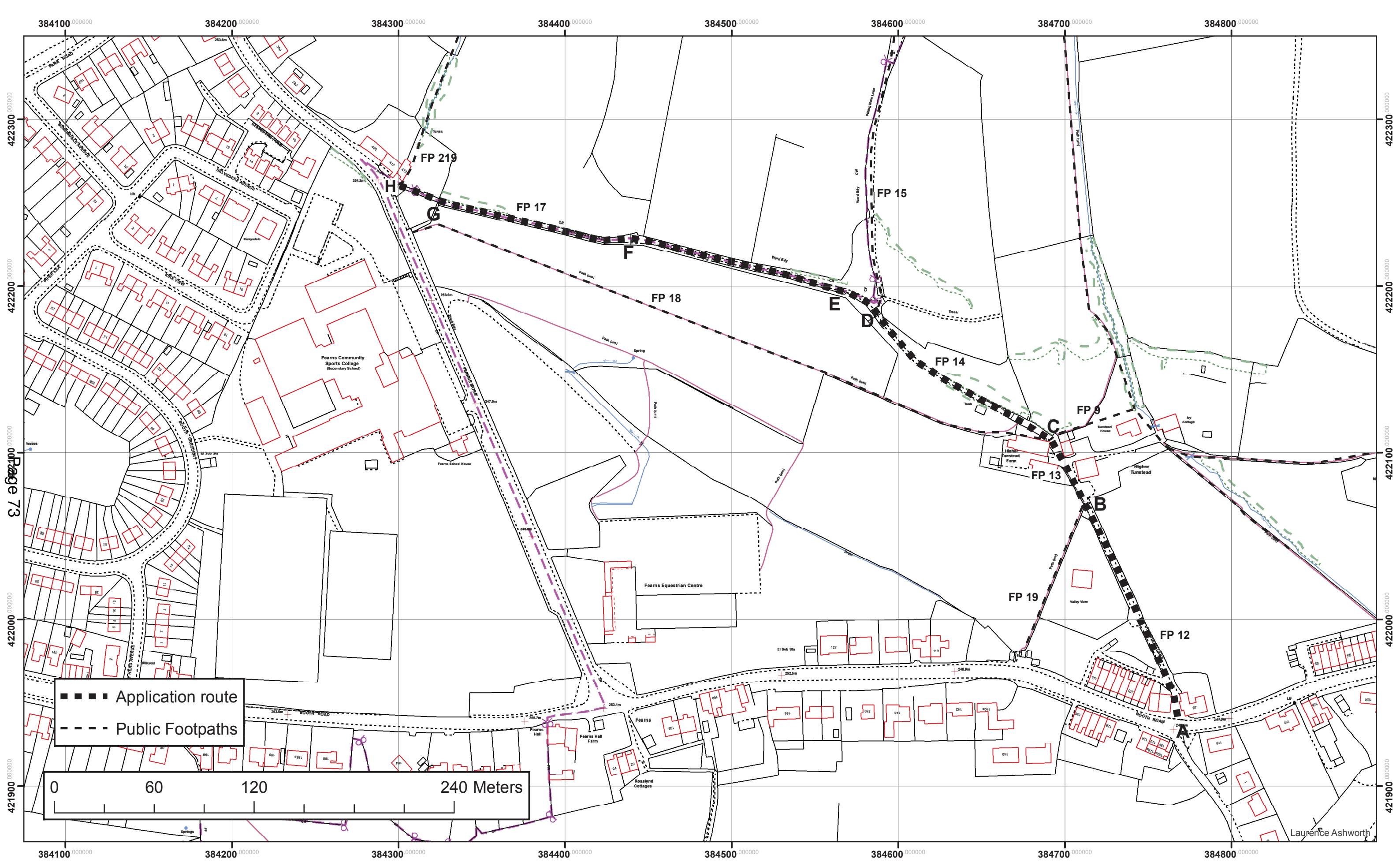
Wildlife and Countryside Act 1981
Application to upgrade Public Footpath Nos. 12, 13, 14 and 17 Bacup (Tunstead Lane)
to Public Bridleway LOCATION PLAN File No. 804-514

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.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



Page 73

Lancashire
County Council

Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981
Application to upgrade Public Footpath nos. 12, 13, 14 and 17 Bacup (Tunstead Lane) to Public Bridleways File No. 804-514

1:2000



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

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Regulatory Committee

Meeting to be held on 17th December 2014

| |
|---|
| Electoral Division affected: Rossendale West |
|---|

Wildlife and Countryside Act 1981 Definitive Map Modification Order Applications

- 1. Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough**
File No. 804-551
- 2. Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough**
File No. 804-552
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 (5)35604, County Secretary and Solicitors Group,

Megan.Brindle@lancashire.gov.uk

Hannah Baron, 01772 (5)33478, Environment Directorate,

Hannah.Baron@lancashire.gov.uk

Executive Summary

1. An application for a public footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-551.
2. An application for a public footpath as a circuitous route starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-552.

Recommendation

1. That the above application reference 804-551 be rejected
2. That the above application reference 804-552 be rejected

Background

Two separate applications duly made under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from; (1) Mr John Barnes on behalf of the Rossendale Peak and Northern Footpaths Society and (2) Mr Frederick Hope, for an investigation into two footpaths crossing over the same area of land at Laund Hey, Haslingden, Rossendale Borough. These applications involved alleged footpaths which overlap and need to be taken together, the combined effect of which, if successful, is to add two footpaths to the Definitive Map and Statement:

- (1) 804-551 - a footpath (referred to as 'the direct route') extending from a point on Laund Lane (Haslingden BOAT 134) in a direct route to a junction with Haslingden Footpath 109, a distance of approximately 560 metres and shown between points A-H-B-C-G on the attached plan and
- (2) 804-552 - a footpath following a circuitous route from the same point on Laund Lane, generally following around the northern side of the same field to meet the above route at a point close to its junction with Haslingden Footpath 109. A distance of approximately 740 metres and shown between points C-D-E-F-H-A on the attached plan.

The land in connection with these applications is owned by Rossendale Borough Council.

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

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

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

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

The County Council's decision will be based on the interpretation of evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested 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

Rossendale Borough Council

Rossendale Borough Council (RBC) has been consulted and is also the landowner in connection with both applications. RBC objects to both of the applications for the following reasons:

1. The land is owned by the Council registered at the Land Registry under Title Number LAN79804 and other than footpath 109, the public are not permitted to enter the land unless with consent.
2. The land is subject to use agreements with a local farmer and a model aeroplane flying club. Both parties do not allow entry onto the land without permission.
3. The nature of its permitted use is not conducive to public access. There has been an incident reported to the Council in 2012 whereby a member of the public on the field was narrowly missed by a low flying model plane. The public should not have unconditional access to land where dangerous activities are taking place.
4. Ground conditions are not suitable for public access.
5. The proposed route does not lead anywhere other than around a self-contained field.
6. Other public rights of way are available in the locality.

The Council mentions that it has owned the land since 30th March 1921 by virtue of a Conveyance dated 30th March 1921 made between (1) Thomas Heys & J T Munn and (2) the Mayor Aldermen & Burgesses of the Borough of Haslingden.

The Council has granted permission to third parties to use its land:
1) Rossendale & Hyndburn Model Aircraft Flying Club have had a licence to use the land since 1988.

2) A Farm Business Tenancy has also been granted to a local farmer in August 2013 in respect of the Council's land. This tenancy is subject to the Licence granted to the model aircraft flying club.

Parish Council

There is no Parish Council for the area affected.

Applicants/Landowners/Supporters/Objectors

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

Advice

Environment Director for the Environment's Observations

Points annotated on the attached Committee plan.

| Point | Grid Reference (Grid Square SD) | Description |
|-------|------------------------------------|---|
| A | 7927 2365 | Squeeze stile exiting from Laund Lane (Haslingden BOAT134) onto field |
| B | 7953 2375 | Gap in vertical flagstone boundary. |
| C | 7979 2385 | Junction of the circuitous application route with the direct one |
| D | 7971 2396 | Point just south-south-west of where Haslingden Footpath 109 crosses the field boundary |
| E | 7949 2388 | Gap in vertical flagstone boundary |
| F | 7930 2382 | Point just south-west of where the power lines pass over the northern field boundary wall |
| G | 7980 2385 | Junction with Haslingden Footpath 109 |
| H | 7928 2365 | Junction of circuitous route with the direct route |

Description of Route

A site inspection was carried out on 22nd February 2014 and 27th November 2014

- (1) The direct application (804-551) route commences at a point on Laund Lane, an entrance to a field by a squeeze stile approximately 0.4m wide in the stone wall (Point A). The stile incorporates a stone step and metal post in the middle of the gap in the stone wall, which has the effect of permitting walkers but preventing use by horses, bicycles, wheelchairs, buggies and preventing cattle passing through. There is trodden evidence on the ground around this gap which shows that the route at this point is heavily used. The route meets the junction of the direct route and the circuitous route at Point H, approximately 2m from the squeeze stile. The direct route then extends in a general east-north-easterly direction following a trodden route approximately 1m wide on the ground towards a line of old vertical flag stones, with a new fence alongside. The route then crosses the field boundary via a gap in the vertical flagstones (Point B). A 3m wide padlocked gate within a newly erected fence is now located about 1m in front of the original boundary. The route

then continues across a second field to meet the junction with the circuitous application route (Point C) and meets Haslingden Footpath 109 at a 3m wide gate at Point G. The total length of the application route is approximately 560 metres.

- (2) The second application route (804-552), the circuitous route, follows the same points as above as far as point C. Once at point C, before meeting the junction with Haslingden Footpath 109, this application route heads in a north-westerly direction running in parallel with and adjacent to Haslingden Footpath 109 to point D. There is no trodden evidence of a route on the ground at this point. The old field boundary has since gone, but there is a very distinct trodden line for Haslingden Footpath 109. At point D, the route then heads south-west along a well-trodden route approximately 1m wide on the ground and continues towards the old vertically flagged field boundary which currently has new fencing on the west side (Point E). The route passes through a gap in the flags and continues in the same direction to Point F, following the trodden line. The route then heads south to meet point H, the junction of the circuitous route with the direct route. Exit of the field is then via the squeeze stile at Point A. The total length of the application route is approximately 1310 metres.

There is an overall width of 2m, as indicated by a 1m trodden route on the ground giving half a metre either side, except for where the route is restricted for example at the stile at point A.

There are no deterrent signs located along the application routes to suggest that the land is private property or that anybody found crossing the land would be trespassing. There is a squeeze stile located at point A on entrance to the field and gaps in the vertical flags at points B and E, but there were previously no other gates, stiles, fences or walls across the route until September 2013 when users state that a padlocked gate and fencing was erected preventing access close to points B and E. The landowner has allowed access through the fence close to the wall, but this takes walkers off the application route.

The land which these applications cross, Laund Hey, has a very diverse history. Research indicates that the land has been in use for hundreds of years as a recreational site, dating as far back as the 1860s when the land was used for bowling practise and cricket for the local people of Haslingden. Information from the applicant suggests that 'Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, this land was left in a will'.

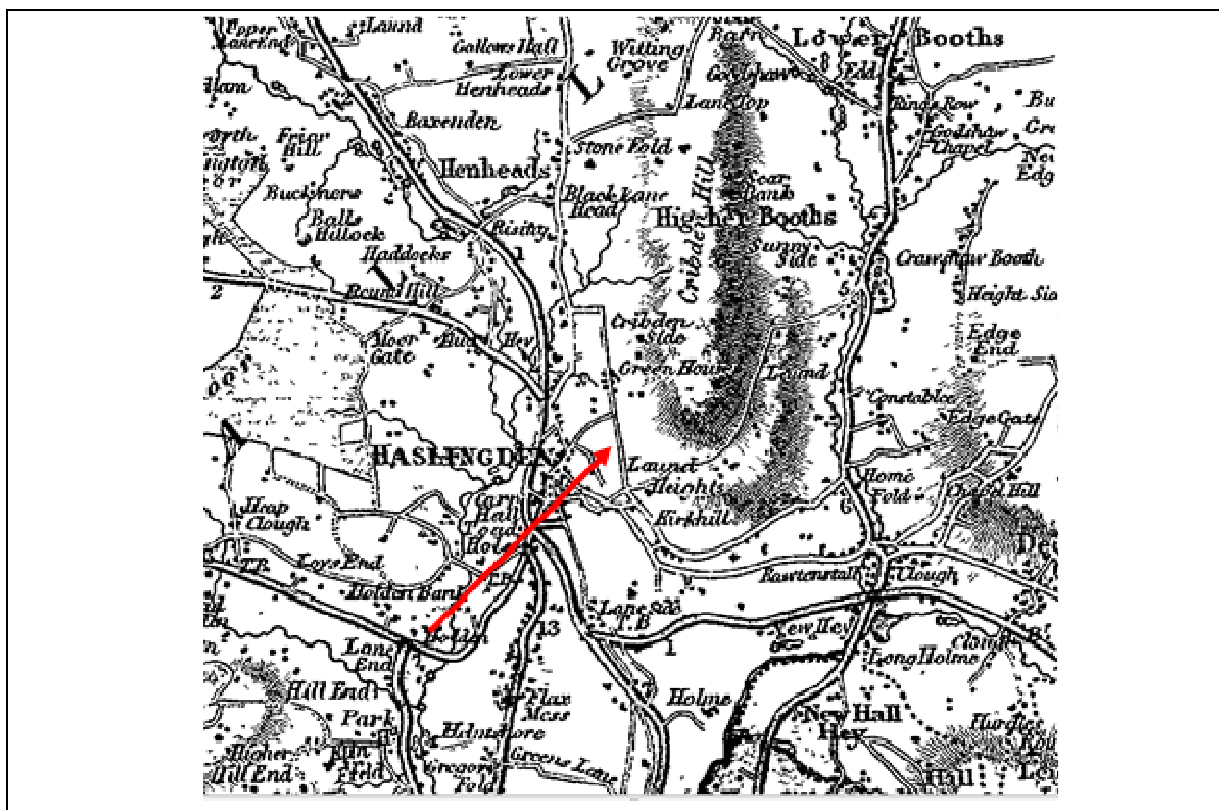
Further research found that the land was used to hold horse racing until it was enclosed for cultivation. This is a clear indication that the general public (or at least the local people of Haslingden) would have gained access to this piece of land for various different reasons, and could have used either of the application routes.

It is also noted that the field which the application routes cross closest to Laund Lane is currently rented out and has been in use by the Model Aeroplane Flying Group since 1988.

If an Order is made and confirmed, this particular activity on the land could pose a health and safety risk to pedestrians, as low flying aircraft could pose a potential hazard to walkers. The tenant farmer has also erected new fencing along the application routes at the boundary of points B and E. Although he has blocked the application routes off, he has left space at the boundary wall to allow walkers to pass through; this could indicate his knowledge of a public footpath passing through the land.

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 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 routes are not shown. |
| Investigating Officer's Comments | | The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitation of the scale of the map, public footpaths were unlikely to have been shown. Therefore no inference can be drawn. |
| Greenwood's Map of Lancashire | 1818 | Small scale commercial map. |
| Observations | | The routes are not shown. |
| Investigating Officer's Comments | | The routes did not exist as major routes at that time. They may have existed as minor routes but due to the limitations of scale, a footpath may not have been drawn. |
| Hennet's Map of Lancashire | 1830 | Small scale commercial map. |

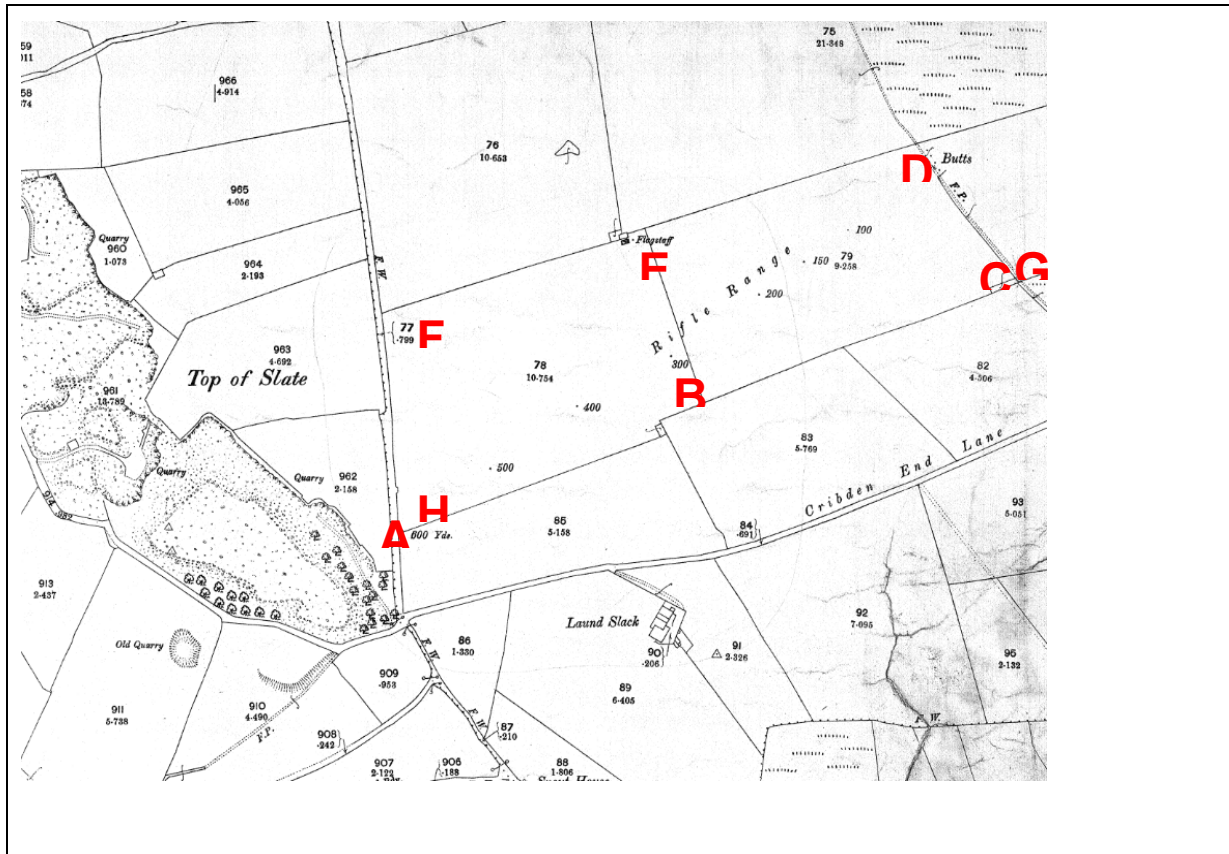


| | | |
|----------------------------------|--|---|
| Observations | | Laund Lane has been recorded on Hennet's map, which is currently recorded as a Byway Open to all Traffic. Neither of the application routes are recorded on this map, but due to the nature and scale of this map, this is not uncommon. |
| Investigating Officer's Comments | | The map is of such a scale that public footpaths have not been recorded. No inference can be drawn as to whether they existed at this time. |
| Canal and Railway Acts | | 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 in close proximity to the application routes. |
| Investigating Officer's Comments | | Therefore no inference can be made. |

| | | |
|---|------|--|
| Tithe Map and Tithe Award or Apportionment | | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. |
| Observations | | No Tithe Map or Apportionment available. |
| Investigating Officer's Comments | | No inference can be made as to whether either of the application footpaths existed at this time. |
| Inclosure Act Award and Maps | 1835 | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | There is no Inclosure Act Award or Map available for the area of Haslingden. |
| Investigating Officer's Comments | | No inference can be made. |
| 6 Inch Ordnance Survey (OS) Map | 1849 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849. ¹ (Sheet no.71) |

¹ 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.

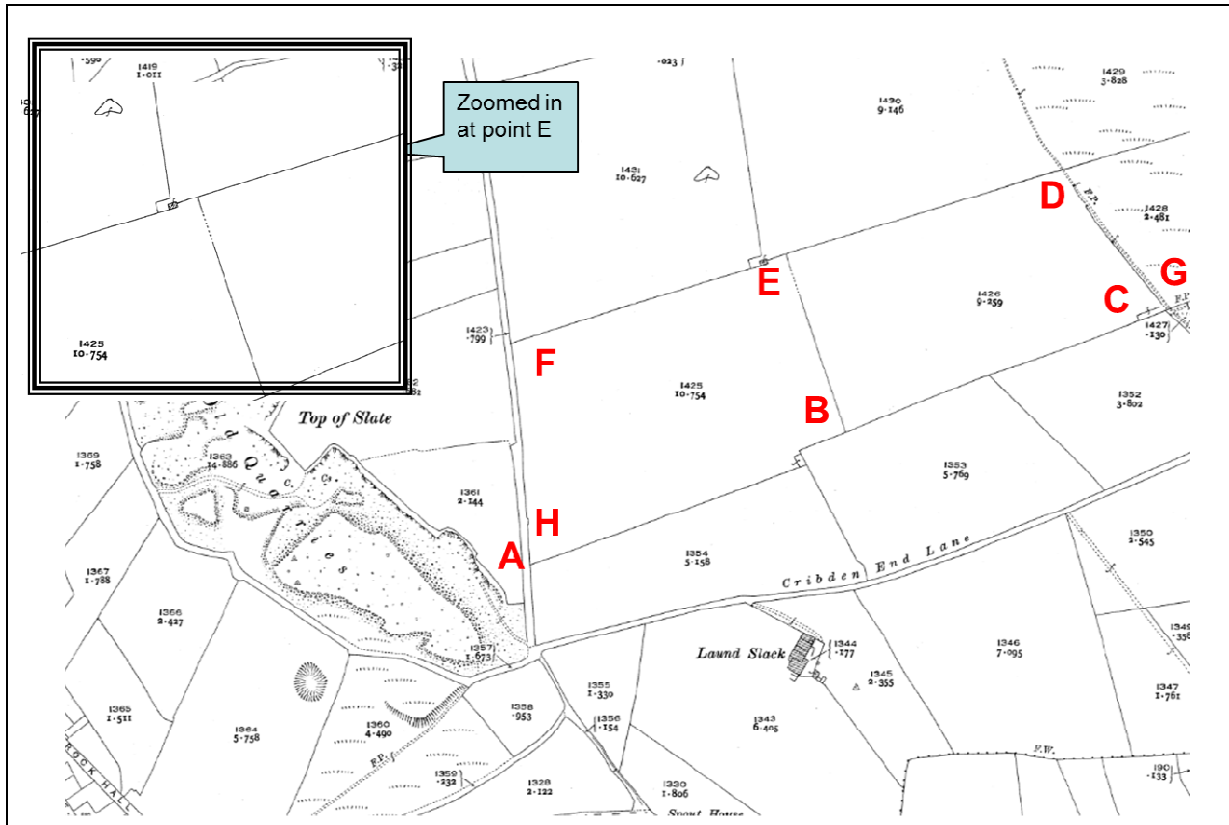
| | | |
|----------------------------------|------|--|
| | | |
| Observations | | <p>A circular dotted line is shown circulating Laund Hey, similar to but not the same as where the application routes run.</p> <p>The area of land is labelled "Old Race Course" and "Sharples Hey or Laund Hey".</p> |
| Investigating Officer's Comments | | <p>The area of land has been recorded as being an 'Old Race Course' this indicates that the land is no longer in use as this, but does still show the area of where the racecourse was in relation to the land. The line of the racecourse, although similar to the line of the application routes, does not give any evidence for the application routes.</p> |
| 25 Inch OS Map | 1893 | <p>The earliest OS map at a scale of 25 inch to the mile was published in 1893. (sheet no. 71/12)</p> |



| | |
|---|--|
| <p>Observations</p> | <p>By 1893 the land has changed use and is now labelled as "Rifle Range". This indicates that the area of land is still in use, even though neither of the application routes are shown on the map. Other public footpaths in the area have been recorded, particularly Haslingden Footpath 109 (running parallel to C-D) and BOAT 134 (running parallel to A-F, recorded as a footpath at this time).</p> |
| <p>Investigating Officer's Comments</p> | <p>The application route is not shown on the map, therefore it is presumed that the application routes did not exist at the time. Public footpaths on that land may have been incompatible with use as a rifle range.</p> |

| | | |
|---|-------------|---|
| <p>Finance Act 1910 Map</p> | <p>1910</p> | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. 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> |
| <p>Observations</p> | | <p>The Finance Act Map has been inspected and does not record the application footpaths.</p> <p>The Finance Act Valuation Book records the plot of land 'Laund Hey', but does not note any public rights of way crossing the land for purposes of reducing tax. However this does not give conclusive evidence that a route does not exist.</p> |
| <p>Investigating Officer's Comments</p> | | <p>No inference can be made from the Finance Act 1910 Valuation book or map.</p> |

| | | |
|----------------------------------|------|--|
| 25 Inch OS Map | 1911 | Further edition of 25 inch map, re-surveyed 1890-2, revised in 1909 and published 1911 |
| | | |
| Observations | | There is no evidence shown on the map for either of the application routes. The land remains labelled as a Rifle Range. |
| Investigating Officer's Comments | | The map does not show either of the application routes. The land is recorded as being used as a rifle range which suggests that use of the routes would at times not have been possible. |
| 1:2500 OS Map | 1930 | Further edition of 25 inch map resurveyed 1890-2, revised in 1928 and re-leveled and published in 1930. |



| | | |
|--|-------------|--|
| <p>Observations</p> | | <p>Neither of the application routes is shown on the 1930 map. However at point E there is a change in the boundary. The zoomed image shows how the boundary changes from a solid line (indicating a field boundary) to a faint dotted line. Dotted lines indicate a change of surface, and the lack of solid line could indicate that there was a way through for walkers at this point. The land is no longer labelled as "Rifle Range", giving no indication to the use of the land at this time.</p> |
| <p>Investigating Officer's Comments</p> | | <p>A single dotted line indicates a change of the surface; therefore it is presumed that there was not a solid field boundary located at this point. This gap in the boundary could have provided access through Point E but provides no positive evidence of a footpath.</p> |
| <p>Map Directory of South Lancashire</p> | <p>1934</p> | <p>Map Directory of South Lancashire</p> |

(Merged image)



| | | |
|---|--|---|
| <p>Observations</p> | | <p>The area over which the two application routes run is recorded on the Map Directory of South Lancashire as "Laund Hey Playing Fields". There is a path or track shown crossing the land but the application routes are not shown.</p> |
| <p>Investigating Officers' Comments</p> | | <p>The naming of the land is important as it gives a clear indication that local people would have been using the land for recreational purposes. Use of the application routes as footpaths would potentially not be apparent to the landowner who may have presumed it to be use of the playing fields in the permitted manner. The fact that another route is shown crossing the land but the application routes were not shown implies that the latter did not exist at the time.</p> |

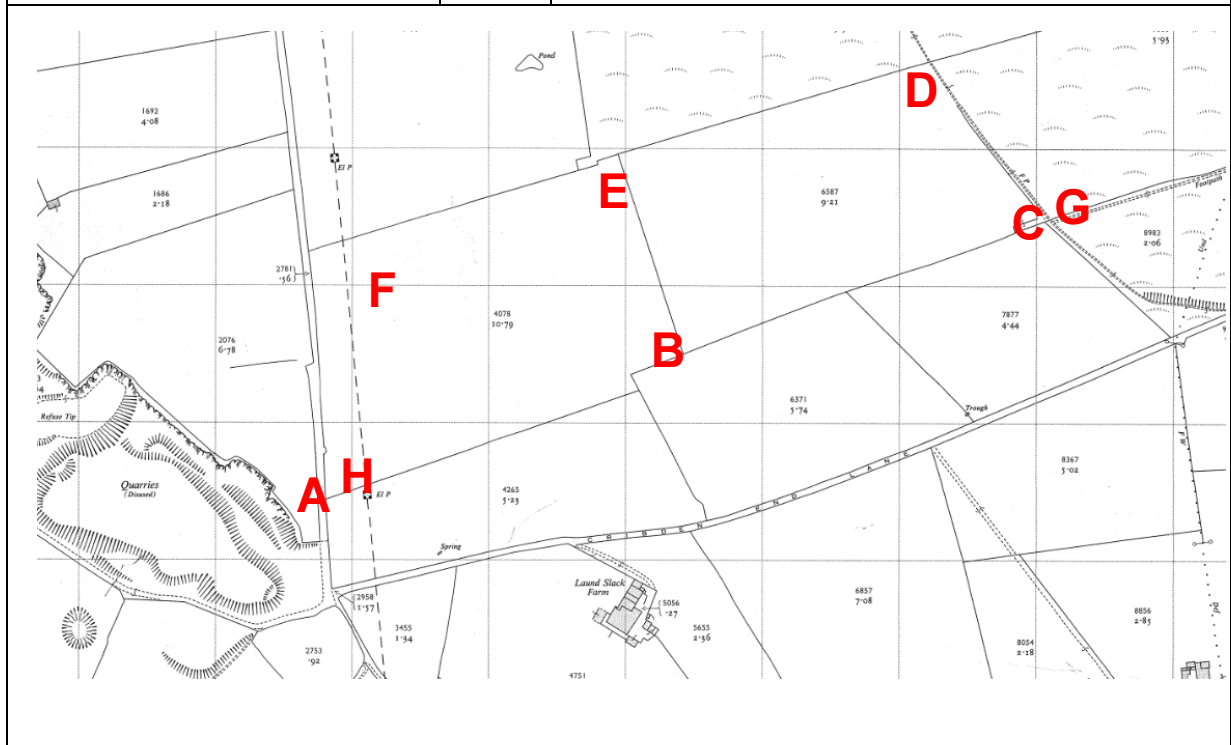
| | | |
|--------------------------------------|-------|---|
| Aerial Photograph² | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable. |
|--------------------------------------|-------|---|



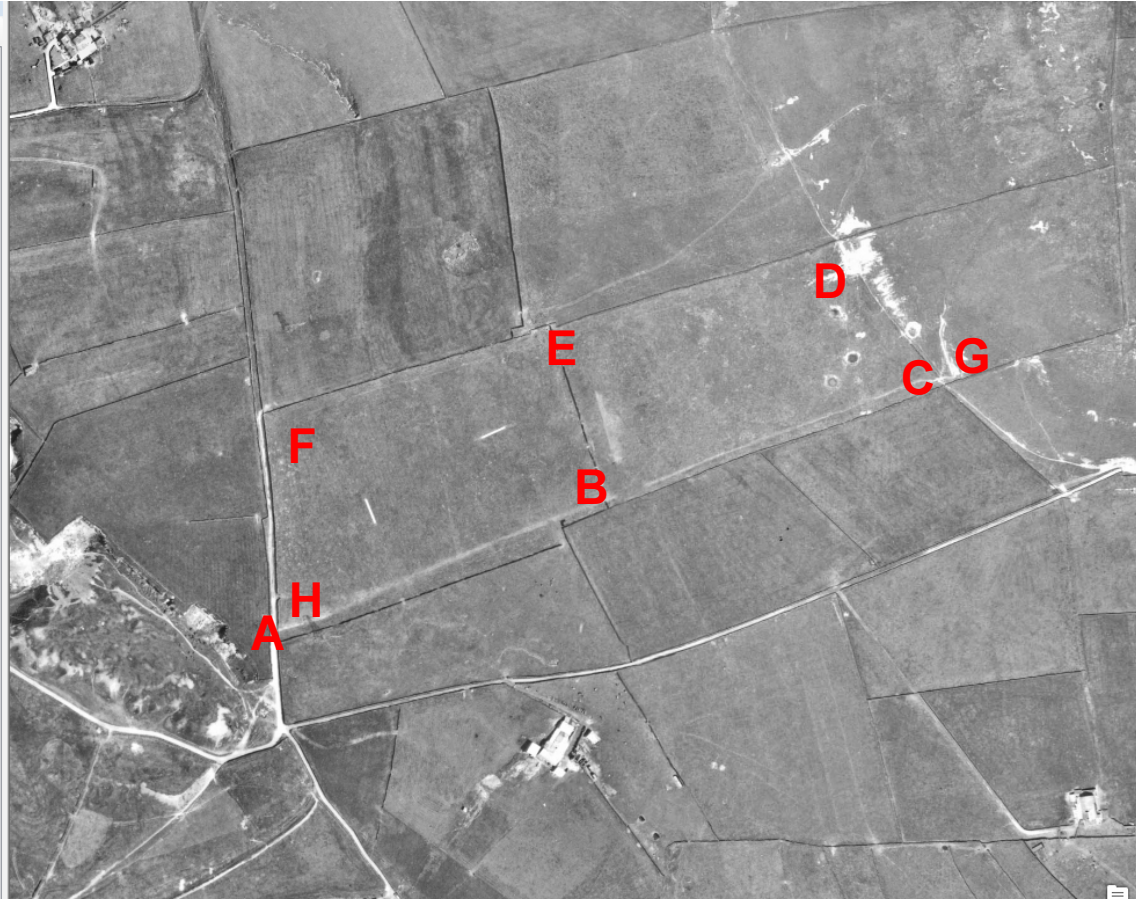
| | | |
|---|--|---|
| Observations | | <p>The aerial photograph is of generally good quality for the time. There is a clear distinction of the used road network and also of that used as a way on foot over land.</p> <p>There is a clearly defined trodden route between points A-H-B-C-G, the direct application route.</p> <p>The circuitous application route between points C-D-E-F-H is not visible at this time.</p> |
| Investigating Officer's Comments | | <p>The application route along points A-H-B-C-G appears to have existed on the ground in 1940.</p> <p>The circuitous application route probably did not exist in 1940 along points C-D-E-F-H.</p> |

² 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.

| | | |
|----------------------------------|------|--|
| 6 Inch OS Map | 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 application routes are not shown on the map. |
| Investigating Officer's Comments | | The routes did not exist at the time of when the map was surveyed. |
| 1:2500 OS Map | 1963 | Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series. |



| | | |
|----------------------------------|-------|--|
| Observations | | The application routes are not shown on the 1963 map. Similarly to previous maps, the use of the land has no longer been recorded. Haslingden Footpath 109 is recorded in close proximity to the application routes. |
| Investigating Officer's Comments | | It can be inferred that the application routes did not exist on the ground at this time. |
| Aerial photograph | 1960s | The black and white aerial photograph was taken in the 1960s and is available to view on GIS. |

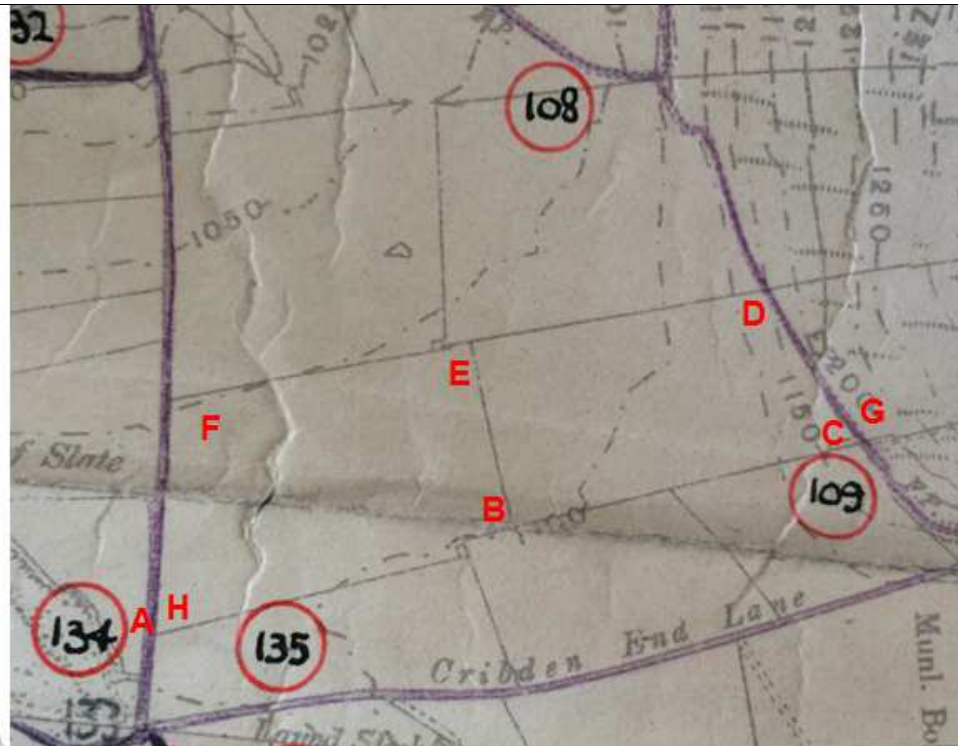


| | | |
|---|-------------|--|
| <p>Observations</p> | | <p>The direct application route is visible on the 1960 aerial photograph between points A-H-B-C-G.</p> <p>The application route is faintly shown in some parts on the 1960 aerial photograph between points C-D-E-F-H.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The application route appears to have existed on the ground in the 1960s along points A-H-B-C-G.</p> <p>The application route does not appear to have existed significantly in the 1960s along points C-D-E-F-H.</p> |
| <p>Aerial Photograph</p> | <p>1989</p> | <p>Aerial photograph available to view at the County Records Office.</p> |



| | |
|---|---|
| <p>Observations</p> | <p>The direct application route is visible around point B.</p> <p>The application route is visible between points E-F towards H</p> <p>Apparent use of part of the land for motorbike scrambles makes it difficult to determine if there are any trodden lines from walkers between points B-C-G and C-D-E.</p> |
| <p>Investigating Officer's Comments</p> | <p>Some use is evident on the ground for part of the route near point B and E-F towards A. However, use of part of the land for motorbike scrambles would be inconsistent with dedication of public footpaths and is likely to have been an actual interruption to use and challenge to any use of the application routes as of right. A scramble of the size evidenced by the tracks on the ground is most unlikely to have taken place without the acquiescence of the landowner.</p> |

| | | |
|-------------------------------|-----------|--|
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | <p>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.</p> |
| Observations | | <p>Haslingden was a municipal borough and therefore does not have a parish survey map.</p> |
| Draft Map | | <p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>As Haslingden was a municipal borough they prepared the Draft Map directly.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p> |



| | | |
|---|--|---|
| Observations | | The application routes are not recorded on the Draft Map. |
| 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 Provisional Map does not record either of the application footpaths. |
| The First Definitive Map and Statement | | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations | | Neither of the application routes are recorded on the Definitive Map and Statement. |

| | | |
|---|-------------|--|
| <p>Revised Definitive Map of Public Rights of Way (First Review)</p> | | <p>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 25th 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 1st 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.</p> |
| <p>Observations</p> | | <p>Neither of the application routes are recorded on the Definitive Map First Review.</p> |
| <p>Investigating Officer's Comments</p> | | <p>Neither of the application routes are recorded during the process to prepare and review the Definitive Map and Statement and there were no objections to the route not being recorded.</p> |
| <p>Aerial Photograph</p> | <p>2000</p> | <p>Colour aerial photograph taken in 2000.</p> |



| | | |
|----------------------------------|------|--|
| Observations | | At first glance, there does not appear to be anything shown on the 2000 aerial photograph. However, on close inspection a faint trodden line is shown, between points B-C-G and D-E-F-H. |
| Investigating Officer's Comments | | A trodden line is shown in 2000, supporting evidence of use of parts of both application routes. |
| Aerial Photograph | 2010 | Colour aerial photograph taken in 2010. |



| | | |
|----------------------------------|--|---|
| Observations | | Parts of the direct and of the circuitous route are visible on the 2010 aerial photograph. There is a clear visible line on the ground showing between points A-H, B-C-G and D-E-F-H and part of the application route between H-B. |
| Investigating Officer's Comments | | The majority of both of the application routes existed in 2010 as shown by the clear trodden line on the ground. |

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

The application routes do not cross a Site of Special 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

Rossendale Borough Council is the landowner for both of the applications.

Summary

There is no documentary evidence showing that public rights might exist along the application routes. Neither of the application routes is recorded on any of the early commercial maps, Ordnance Survey Maps or the Definitive Map records.

Some of the aerial photographs from 1940 through to present day support the existence of parts of the routes on the ground. From the restrictive squeeze stile at Point A it can be inferred that use was most probably only on foot.

There are solid field boundary lines which cross the application routes at points A, B and E, and on older maps at point G. If gates/stiles were situated along these boundaries they would not have necessarily prevented access along the route and the existence of such structures on a route crossing farmland is not uncommon.

The Model Aeroplane Flying Group has rented part of the land out since 1988 and motorcycle scrambling is evident from the aerial photograph in 1989. This could be considered to bring into question the claimed public rights, it could be seen as a non intention to dedicate by the landowner (RBC) and is likely to have actually interrupted use when those activities were happening on the land.

County Secretary and Solicitor's Observations

(1) Comments to 804-551

The applicant has provided the following details in relation to the application:

1. Long established path running west to east across Laund Hey approx. 1 metre wide and running 10 metres north of the field boundary wall, which is parallel to Cribden End Lane.
2. The claimed path begins at a well-constructed squeeze-stile, wide enough to admit a pedestrian.
3. The claimed path is clearly visible on an aerial photograph, taken in the 1960s and displayed on LCC's "Mario" site.
4. The claimed path did pass through a 5-metre wide gap in the original vertical flagstone field boundary. There was no fence and gate across the route before Sept 2013.
5. The claimed path proceeds eastwards to intersect with an undisputed path running SE to NW around the western flanks of Cribden Hill. It also gives access to the top of Cribden Hill along the north side of a wall climbing the hillside. I believe this to be open access land and badge signs on walls and fences at 798238, 799239 and 799240 seem to confirm this.
6. Laund Hey is an area of flat land, albeit at a high elevation, which has been recognised as an area for popular recreation, both organised and informal, over centuries.
7. A noticeboard, erected by the borough council and its partners nearby, informs visitors of its use as a racecourse in the 18th century. There is a documented history of cricket, football, rugby, rifle-shooting, motorcycle-scrambling and model aircraft-flying at the site. A booklet produced by

Rossendale Groundwork in the late 1980s called "Making Tracks" in the "Changing Faces of Rossendale" series (ISBN 0947738169) lists some of these and, ironically, is co-produced by the Borough Council.

8. In recent times it has been especially popular with dog walkers as improved road access and parking at the adjoining Halo site have made arriving by car, to walk in open countryside with fine views, easier.

- A photograph has been provided which shows a squeeze stile at Laund Lane
- Another photograph shows the path along Laund Hey beyond the squeeze stile
- A screenshot of LCC Mario site shows the claimed path across Laund Hey, it is not shown on the Definitive Map but is clearly visible on the 1960s aerial photograph
- A further photograph show the gateway across the application route with the gate that was placed in September 2013
- 2 photographs of Halo Slate – Lancashire and Rossendale Councils boast of Laund Heys historical recreational use

Guided Walks, organised by Groundwork and Rossendale Borough Council, have used Laund Hey Haslingden (on behalf of public access as of right). These walks are after 2000. They have used it more since 'Watery Lane' was much improved in 2003. Prior to, the conditions underfoot has been very bad.

| | | |
|--------------------------------|-------------------------|-------------|
| 4 th September 2011 | 'Halo Again' | 22 attended |
| 1 st November 2009 | 'Steps of Cribden' | 19 |
| 7 th April 2008 | 'Halo and Cribden Side' | 10 |
| 7 th August 2005 | 'Halo, Halo, Halo' | 29 |
| 14 th November 2004 | 'Tracks of Time' | 27 |
| 6 th July 2003 | 'Watery Lane' | 29 |
| 7 th July 2002 | 'Little Ireland' | 32 |

The applicant has provided 10 user evidence forms to support the application. 1 form has been excluded as they haven't used the route. The evidence is as follows:

All 9 users have known the route for over 20 years, 7 users have known the route long than this: 1 user claims they have known the route for 30 years, another user states 33-34 years, 1 user states 38 years, 1 has known the route for 45 years, 2 have known the route for 50 years and 1 has known it for 60.

8 users have used the way on foot and the years in which the route was used varies from:

1997-2013, the last 20 years, 1980 – present day, past 30 years, the last 38 years, 1968-2009, late 1960s – present (2), 1950s-2010

Only 5 user stated where they were going from and to:

1. To link to the footpath around Cribdens flanks from Cribden End Lane to Duckworth Clough and to go to the crest of Cribden Hill
2. generally walking the area
3. was going to the model flying club
4. from Oswaldtwistle to Rossendale
5. Rawtenstall, Stonefold or access to Cribden Hill

The users use the route for walking, pleasure, leisure, dog walking, motor cycle sport and fitness.

How often the route is used varies:

100 times since 2010, 200 times per year, 3 times per week, most weekends, most days, 700-800 times per year, 2 or 3 times a year.

1 user has used the route on motor cycle and for model flying, no other user has used the route by ways of other means.

5 users agree the way has always run over the same route, 1 user states it has until the route was blocked by a barbed wire fence in September 2013, another user states that it has always been the same path with no variations until recently when the field has been fenced and they have to go through the muddy stile, 1 user states it is exactly the same route several metres from and running along the boundary wall and 1 user is not sure.

1 user states there were no stiles / gates or fences before sept 2013, the vertical flagstone boundary did not obstruct the claimed path and a 5 metres wide 'gateway' with prominent pillars gave the pathway alignment, another user claims that there were never any stiles / gates or fences until the past few months when the farmer had fenced off parts of the field. 2 users agree there is a stile on the west side, 1 user is not sure, 1 user states 'no' and another states 'yes' but did not provide any details.

1 user claims the gate that was erected in September 2013 is padlocked, another user states that the gate on the line of the original path is locked so they took a 'short diversion' through the stile, 1 user claims the gate was locked in later years, another user states the main gate (not stile) was locked by the model aeroplane club for their vehicular access are 2 users are not sure if any gates are locked.

None of the users have ever worked for a landowner or have been a tenant of any land over which the route passes.

1 user turned back when using the way only due to the state of cattle trod mud at the stile - not by any person.

None of the users have ever heard of anyone else having been stopped or turned back when using the way.

None of the user have not been told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not a public right of way on foot.

The users have also never seen any signs such as 'Private' on or near the way. All 9 users agree they have never asked permission to use the way.

(2) Comments to 804-552

Evidence provided by the applicant.

The applicant has provided a statement as part of his application. He explains that the path he has requested to be added to the Definitive Map has been used for decades mainly by dog walkers, but the whole of Laund Hey was always completely open to the public. People have used the route for picnics, kite flying, football, cricket, rugby and rambling for over 60 years that he can remember. He also states that Laund Hey was left to Haslingden Borough Council for the use and recreation of the people of Haslingden, the land was left in a will. This entire land has been used weekly for decades unopposed and unrestricted.

At a later date the applicant provided a further statement stating that Public Footpath 135 Cribden End Lane is very rarely used by members of the public, access to Public Footpath 109 has always been from Laund Hey, Footpath 135 is a narrow lane used by farm vehicles which is why the public refrain from using it.

The applicant has provided 19 user evidence forms in support of his application.

17 users have known the route for 20 or more years, some have known the route for 30, 40, 50, 60 and 70 years. 1 user has known the route for 12 years and another user did not provide any times scales.

All 19 users have used the route on foot.

All 19 users have used the route up until 2013 (when it was blocked), 1 user has been using the route since 1948, 4 users have used it since the 1950s, 1 user has used the route since 1963, 4 users have used the route since the 1970s, 7 since the 1980s, 1 since 1990 and 1 since 2001.

Most users used this route to get to and from Laund Hey, 1 user mentions using this route to get from Kings Highway to Cribden and another from home to Crawshawbooth. The main purposes for using this route are for dog walking, leisure walking, exercise and for watching the model aeroplane club.

The number of times the users use the route varies from every day, 200 times per year, 1-2 per week to just 5 times a year.

None of the users have used the route by any other means, however 17 users have seen people using the route on horseback. 3 users state they have seen others using the way either by walking, having a picnic or dog walking. 12 users state that they have seen others along the way by use of other means but did not provide any further details and 1 user has also seen mountain bikes being used, 3 users have never seen other users using the way other than walking.

The years in which users saw others using the route either on horseback, walking, dog walking, mountain biking or picnicking varied from the 1940s, 1950s, 1970s, 1980s, 1990s and 2000s, users saw others during this time 'regularly' or 'frequently'.

18 users all agree that the route has run over the same line, 1 user did not provide a response to this question.

15 users have never seen any stiles, gates or fences along the claimed route, 2 users state there is a stile but no further details have been provided, a further 2 users stated 'as attached', however nothing further was attached. 16 users state that no gates were locked, 1 user did not provide a response to this question and the same 2 users stated 'as attached'. 18 users have never been prevented access along the way, 1 user states not until august / September 2013.

18 users have never worked for a landowner over which the route crosses, 1 user did not provide a response to this question. All 19 users have never been a tenant of any land over which the route passes.

None of the 19 users have ever been stopped or have turned back when using the way, nor have they heard of anyone being stopped or having turned back until August / September 2013.

All users agree that they have never been told by any owner / tenant of the land or anyone in their employment that the route they are crossing is not a Public Right of Way on foot. None of the users have ever seen any signs along the way nor have they ever asked permission to use the way.

A letter has been received from Ingham & Yorke who hold the mineral rights for this location, they state it is not pertinent for them to make comment on the proposed footpath as this has no direct impact on their interest.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence forms

Against accepting the Claim

Map Evidence

Conclusion

Committee will be aware that in order for the way to become a public footpath there would need to have been a dedication by the owner at some point in the past and acceptance by the public. There is therefore a need to consider whether there is

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

As there is no express dedication, it is suggested Committee considers firstly whether, in all the circumstances there is evidence from which dedication can be inferred at Common Law and to then secondly consider whether there is sufficient evidence from which to deem dedication from use under S31 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 claimed by the two applications cannot be seen on any of the early commercial maps or Ordnance Survey Maps and is suggestive the route was not likely to have been in existence. The only early aerial photographs showing the full length of the direct route (A-H-B-C-G) are the aerial photographs taken in 1940 and 1960, the circuitous route (C-D-E-F-H) is only faintly showing on the 1960 aerial photograph. Thereafter, the 1989 aerial photograph only shows use near point B and E-F as part of the land had been used for motorbike scrambling; motorcycle scrambling is inconsistent with dedication as a footpath. The aerial photograph of 2000 only shows use of parts of the routes, a fine trodden line is shown between points B-C-G and D-E-F-H. The 2010 aerial photograph then shows the majority of the route as a clear trodden line on the ground between points A-H-B-C-G and D-E-F-H. On balance, the map evidence is considered to be insufficient to reasonably allege the route was a historical public footpath.

The Model Aeroplane Flying Group had been granted a license to use the land by the landowner since 1988 and it is therefore reasonable to conclude on balance, the landowner did not intend to dedicate the routes as public footpaths, bearing in mind it would be dangerous for members of the public to have used the claimed routes at the same time as the flying activity was taking place. 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 Highways Act 1980, 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 was called into question in September 2013, as this is when users suggest they were prevented from using the line of the claimed route due to locked gates and barbed fencing being erected across the route therefore, on balance it is reasonable to conclude the 20 year period under consideration would be from 1993-2013.

The Direct Route

Evidence of use has been provided in 9 user evidence forms in relation the direct route. All users claim to have used the route for 20 years or more, the longest period of knowledge and use of the route being 60 years (1 user). Claimed use is consistent with use as a public footpath. Frequency of use differs with some users claiming the route has been used between 700-800 times per year, 2-3 times per week or to 2 or 3 times a year.

On balance, it appears, the use has been sufficiently frequent. It is suggested that for use to be sufficient it would need to be more than of the appearance of being sporadic and sufficient to show use by the public as a whole. Use must also be as of right, it must be without force, without stealth and without permission. On balance there does not appear to have been use with force or stealth during the 20 year period under consideration. One user may have used the route with permission, as he suggests in the user form he used the route to go the model flying club. The applicant also states guided walks had been organised since 2000 by Rossendale Borough Council however such use would equate to use with permission, as Rossendale Borough Council owns the land.

The Circuitous Route

Evidence of use has been provided in 19 user evidence forms in relation the circuitous route. The user forms specify the route is 'from: Laund Hey' but do not specify where this route should end, it is appreciated that this is a circuitous route so users would end up back at the same point however; there does not appear to be any plan annexed to each claim form to delineate the circuitous route they are referring to in their claim form which begs the questions whether all users have used the same line of the route being claimed. Users claim to have used the claimed route between 20 to 70 years. The use seems to be sufficiently frequent ranging from daily use to 5 times a year, use is suggestive as not having been used without force, stealth and without permission.

Both Routes

The landowner's action, granting a licence to the Model Flying Club suggests the landowner did not intend to dedicate the route as a public footpath, as this a dangerous activity, is incompatible with use of the land for flying model aircrafts especially as the claimed route runs close by the club's storage containers and they would not have intended members of the public to use the route at the same time as this activity was taking place. It is suggested the land over which the claimed routes run had been open to public for recreation and therefore; it would not be reasonable for the landowner to have been expected to notice users were following a consistent route.

The aerial photographic evidence for the 20 year period under consideration is not supportive of the entire route having been used in 1989 which predates the 20 year period, the aerial photograph of 2000 only shows part of the route, as detailed above. The 2010 aerial photograph also fails to show the length C-D, it seems on

balance that the users may have in fact been using footpath number 109 as opposed to the separate line C-D, as claimed as there is no evidence to support its existence.

With regards to the route having been used without interruption, on balance it seems that use may have been interrupted whilst the model aeroplane flying club was using the land, as this activity would deter users, due to the danger of being hit by the model aeroplane and prevent them from using the route whilst this activity took place.

On balance, it is difficult to satisfy deemed dedication under S.31 and inferred dedication under common law and Committee are advised to reject the claim.

Risk Management

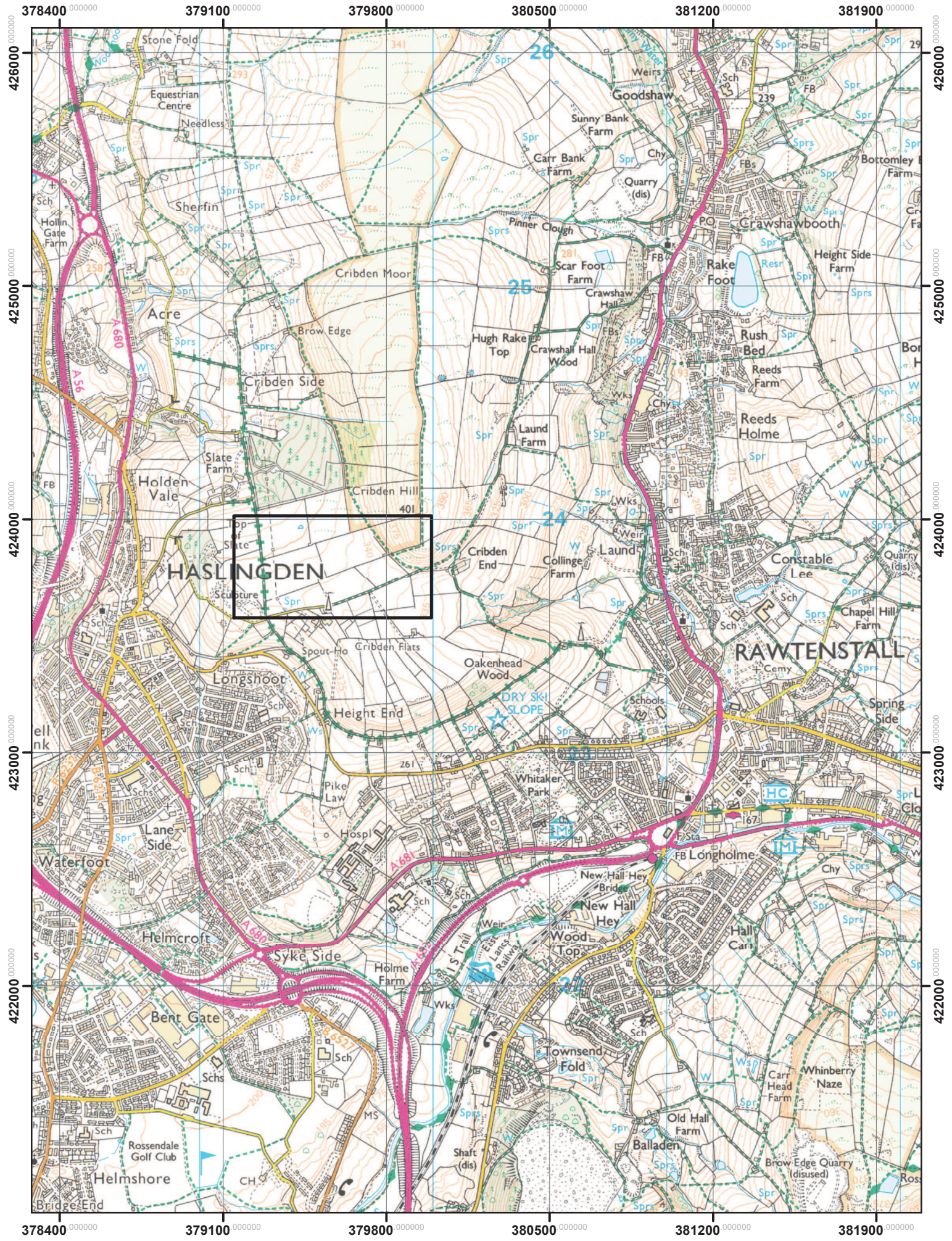
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

| Paper | Date | Contact/Directorate/Tel |
|---|---------|---|
| All documents on Claim File Ref: 804-551 & 804-552 | Various | Megan Brindle, County Secretary and Solicitor's Group, 01772 535604 |

Reason for inclusion in Part II, if appropriate

N/A



Steve Browne
Executive Director
for Environment

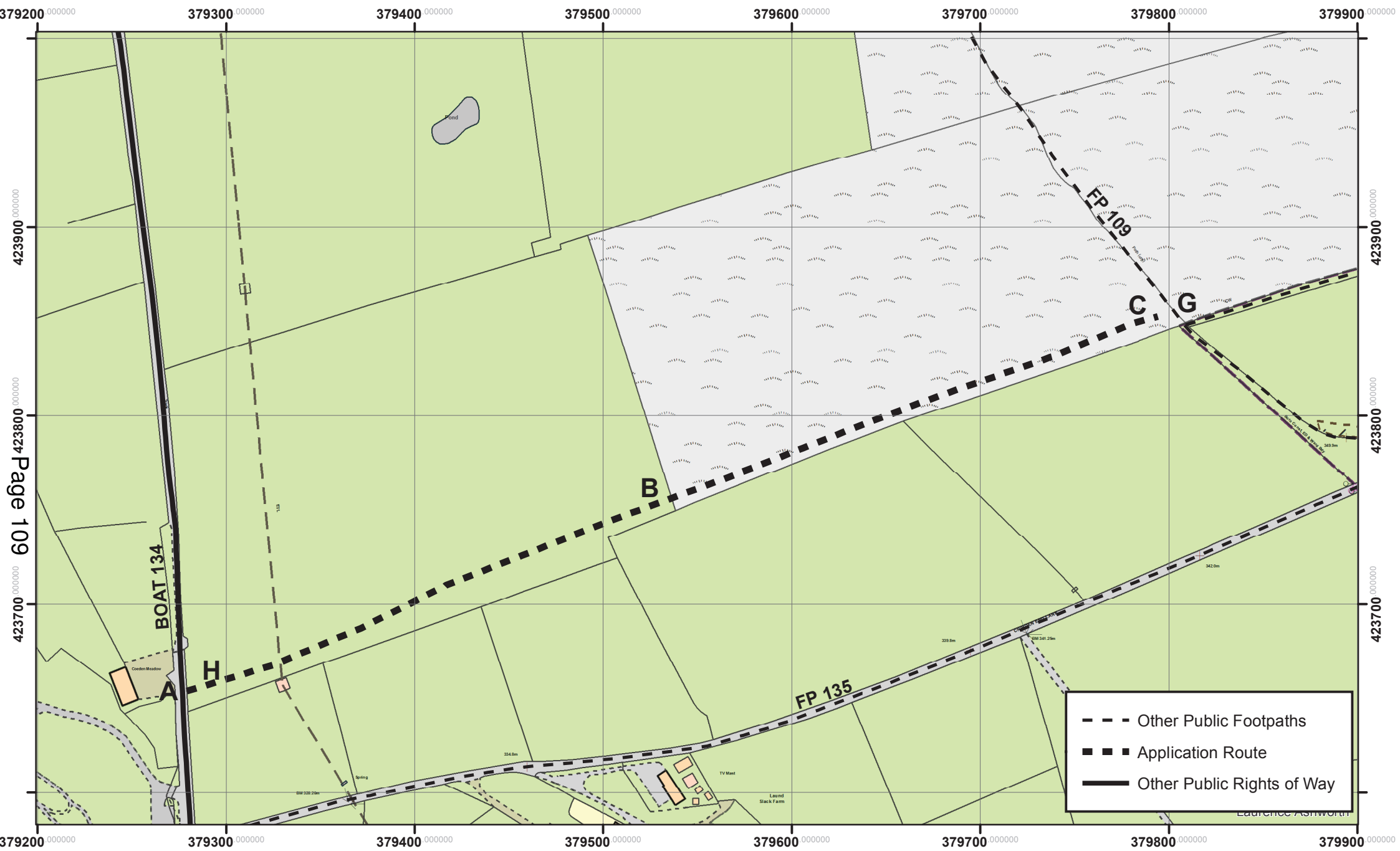
Location Plan

1:20,000



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.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



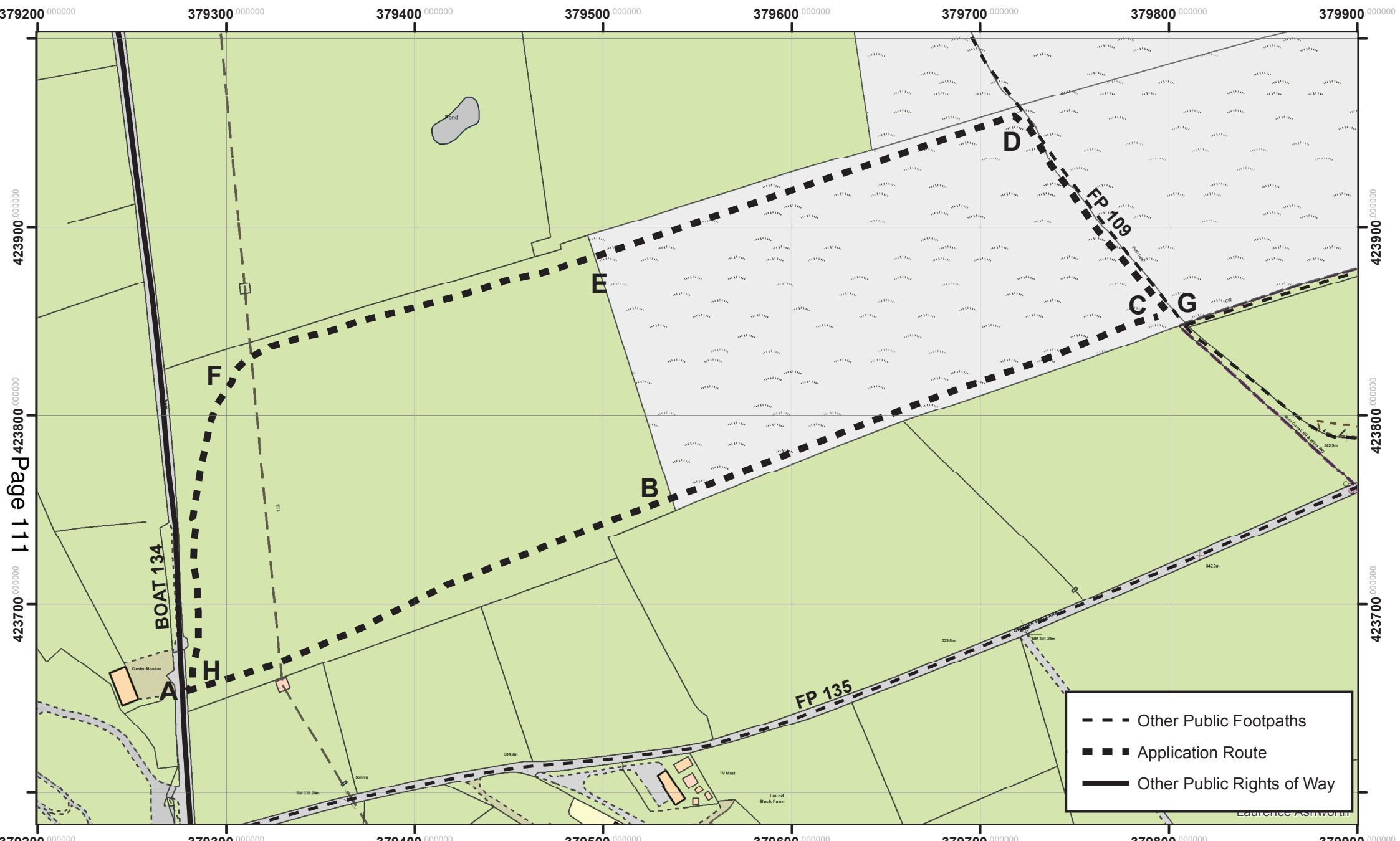
Steve Browne
Executive Director
for Environment

Claimed public footpath from Laund Lane to public footpath 109 Haslingden, Rossendale Borough
Application No. 804-551

1:2,500



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.
This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



Lancashire
County Council

Steve Browne
Executive Director
for Environment

Circuitous claimed public footpath starting and ending at a point on BOAT 134 Haslingden (Laund Lane)
Haslingden, Rossendale Borough - Application No. 804-552

1:2,500



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.
This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|---|
| Electoral Division affected: Lancaster Central |
|---|

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Applications for the Addition to the Definitive Map and Statement of Three
Public Footpaths across Coronation Field, Lancaster City
Application Nos. 804-541, 804-542, 804-543
(Annex 'A' refers)**

Contact for further information:

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

Megan.brindle@lancashire.gov.uk

Mrs J Elliott, 07917 836626, Environment Directorate

Jayne.elliott@lancashire.gov.uk

Executive Summary

Applications for the following three public footpaths in Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way:

- i. 'Route 1' – Public Footpath from New Quay Road across land known locally as Coronation Field to a point on the boundary with Willow Lane Recreation Ground; Application No. 804-541.
- ii. 'Route 2' – Public Footpath from New Quay Road following the same route as Application 804-541 across land known locally as Coronation Field to the point at which it is intersected by a disused railway line and then continuing in a south westerly direction along the disused railway line to a point on Public Footpath 33 Lancaster in Freemans Wood; Application No. 804-542.
- iii. 'Route 3' – Public Footpath from junction of Public Bridleways 32 and 33 Lancaster and Public Footpaths 30 and 33 Lancaster across land known locally as Coronation Field to cross the disused railway and continue along the same route as Application 804-541 to a point on the boundary with Willow Lane Recreation Ground, Application No. 804-543.

Recommendation

1. That application 804-541 for a footpath from New Quay Road to Willow Lane Recreation Ground, Lancaster City, to be added to the Definitive Map and Statement of Public Rights of Way, be accepted

2. That application 804-542 for a footpath from New Quay Road to Public Footpath 33 Lancaster City, be added to the Definitive Map and Statement of Public Rights of Way, be accepted
3. That application 804-453 for a footpath from the junction of Public Bridleways 32 and 33 Lancaster and Public Footpaths 30 and 33 Lancaster to Willow Lane Recreation Ground, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, be accepted
4. That an Order or Orders be made pursuant to Section 53 (3)(b) and Section 53 (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 of 2 metre width:
 - a. 'Route 1' from New Quay Road to Willow Lane Recreation Ground for a distance of approximately 550 metres and shown between points A-B-C-D on the Committee Plan.
 - b. 'Route 2' from 'Route 1' to Public Footpath 33 Lancaster City for a distance of approximately 200 metres and shown between points C-E on the Committee Plan.
 - c. 'Route 3' from the junction of Public Bridleways 32 and 33 Lancaster and Public Footpaths 30 and 33 Lancaster to the junction of 'Route 1' and 'Route 2', for a distance of approximately 390 metres and shown between points F-C on the Committee Plan.
5. That not being satisfied that the higher test for confirming the said Order(s) can be satisfied, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the Order

Background

Three separate applications under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from the Friends of Freeman's Wood and Coronation Field for three public footpaths across land known locally as Coronation Field, Lancaster City, and shown between points A-B-C-D, A-B-C-E and F-C-D on the attached plan, to be added to the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 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”

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

Lancaster City Council has been consulted and no response has been received, it is assumed they have no comments to make.

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 (Square SD) | Description |
|-------|----------------------------|--|
| A | 4593 4174 | Junction with New Quay Road |
| B | 4593 6154 | Bend in application route |
| C | 4611 6139 | Intersection of application routes with dismantled railway |
| D | 4619 6134 | Boundary fence on edge of Willow Lane recreation field |
| E | 4599 6123 | Junction with Public Footpath 33 Lancaster in Freemans Wood |
| F | 4573 6134 | Junction with Bridleways 32 and 34 Lancaster and Footpaths 30 and 33 Lancaster |

The site across which the application routes run was fenced off and access restricted in 2012. Since that time some of the fencing has been removed and it is possible to access the site.

Description of Routes:

A site inspection was carried out for all three routes in January 2014 with further visits in August and November 2014.

Route 1 - Application 804-541

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

The route commences at the south west end of New Quay Road (point A on the Committee Plan) where access is prevented by a padlocked metal security gate. Beyond the gate the route crosses an area of concrete alongside buildings that form part of the Lune Industrial Estate. After approximately 30 metres, at the end of the buildings the concrete ends and a narrow (approximately 1 metre wide) trodden track continues through an area of scrub land in a generally southerly direction to point B. From the end of the concrete to point B the narrow track shows traces of stone and brick suggesting that it had previously been surfaced.

From point B a worn track leaves the route to continue in a south westerly direction and the Application route continues passing to the north east of the concrete base of the former cricket pavilion in a south easterly and then east south easterly direction across an open grassed area. The route is open and available but there is no worn track across the grass. The grassed area appears to have been cut – possibly several months ago - but is rough and crossed by numerous tracks which appear to have been formed by walkers and cyclists crossing it.

On approaching point C a worn track corresponding to the Application route can be seen entering an area of overgrown bushes and brambles. It is possible with difficulty to continue to point C through the overgrowth.

Point C is located on the intersection of Application route 1 with the dismantled railway – the remains of which cannot be seen at this point.

Beyond point C the route continues for a further 95 metres with traces of a worn track approximately 50cm wide roughly parallel to security fencing. The route is difficult to follow due to overgrowth. At point D the Application route ends where it meets a metal security fence which prevents access through onto the Willow Lane Recreation field. Close to point D, attached to the security fence and visible from the recreation field, is a red sign with white wording that reads 'Warning, Keep Out, Private Property, No Trespassing'. The sign has been defaced with the words 'Our land' written across it.

The total length of the route is approximately 550 metres.

Route 2 – Application 804-542

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

The route claimed is the same as the one applied for in Application 804-541 between point A-B-C and is described above.

From point C – situated on the remains of the dismantled railway – the Application route turns to continue in a south west direction along the former track bed of the dismantled railway for a distance of approximately 200 metres to the junction with Public Footpath 33 Lancaster at point E. The route is very overgrown and difficult to access. The remains of some concrete fence posts exist along either side of the route which appear to have marked the former boundaries of the railway line.

When the route was inspected in 2014 it was not possible to walk it due to the overgrowth although a worn path did exist parallel to it along the north-west side.

Approximately 10 metres before reaching point E the Application route is blocked by metal security fencing which prevents access along it. Beyond the fence the Application route crosses rough land through trees along the line of the dismantled railway to the junction with Lancaster Public Footpath 33 at point E.

The total length of the route is approximately 660 metres.

Route 3 – Application 804-543

The Application route is shown between points F-C-D on the Committee plan.

It commences at the junction of Lancaster Public Bridleways 32 and 34 and the junction with Lancaster Public Footpath 33.

From point F access onto the Application route is prevented by mounded earth behind which there is metal security fencing.

Beyond the security fencing the Application route passes through an area of woodland for approximately 95 metres before coming out into an open area. No worn track was visible on the ground along the Application route from point F leading into the clearing.

Once in the clearing the remains of some football goal posts can be seen to the south of the Application route. The route crosses the clearing in a north easterly and then east south easterly direction to point C across a rough grassy area over which there are many tracks which appear to have been made by walkers and cyclists.


The Application route across the clearing is walkable but is not defined on the ground.

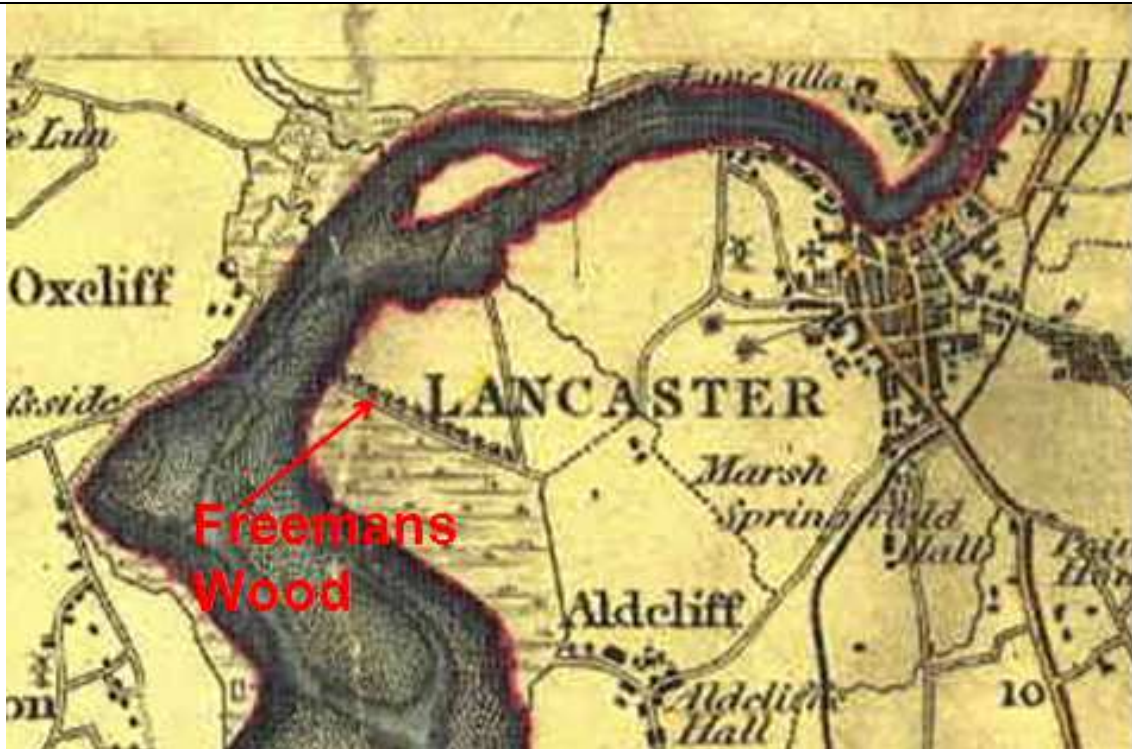
At point C the Application route crosses the dismantled railway and continues to point D. The section C-D is the same as that applied for as part of Application route 1

and is described above.

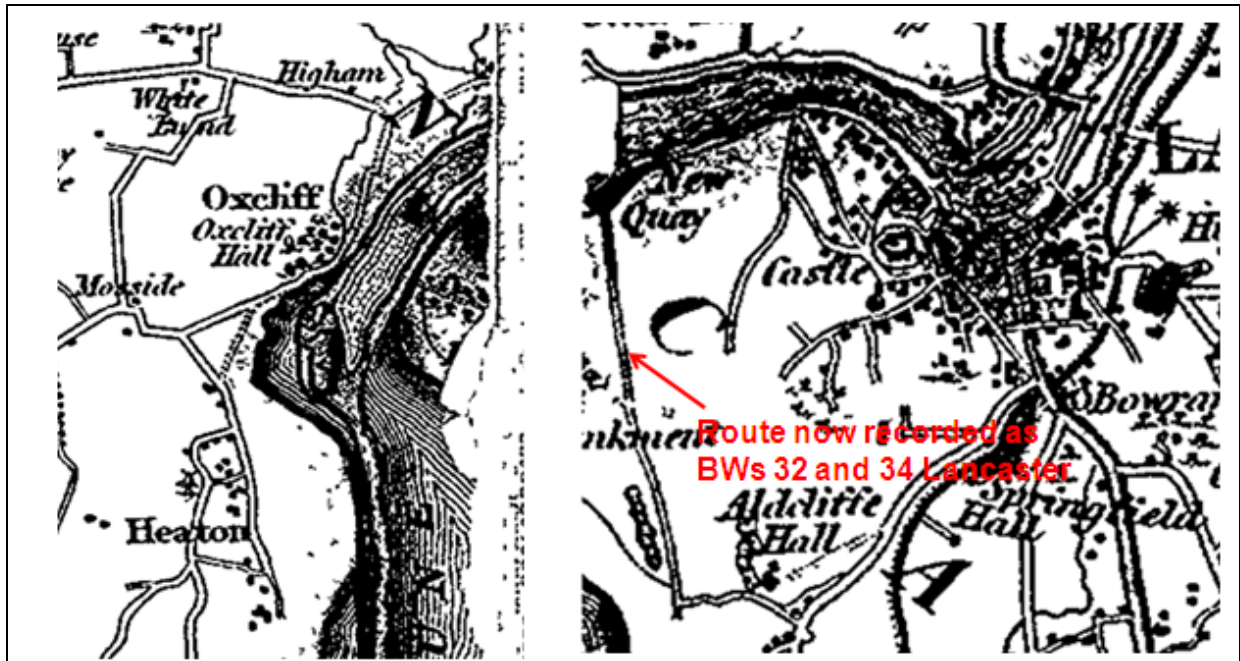
The total length of the route F-C-D is approximately 500 metres.

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 were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. |
|  <p>The image is a black and white historical map of Lancashire, specifically focusing on the area around Lancaster. The River Lune is the central feature, flowing from the top left towards the bottom right. The city of Lancaster is prominently labeled in the center. Other labeled locations include Oxcliff to the west, Scale Hall and Ovensale to the north, Highfield to the east, and Aldcliff to the south. The map shows a network of roads and a bridge crossing the river. The style is characteristic of 18th-century cartography, with detailed hatching and fine lines representing terrain and infrastructure.</p> | | |
| Observations | | None of the three routes under investigation are shown. The Lune Mills do not appear to have been built and although a road is shown along the south side of the River Lune it goes to a race course. |
| Investigating Officer's Comments | | The routes under investigation did not exist in 1786. |
| Greenwood's Map of Lancashire | 1818 | Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads. |



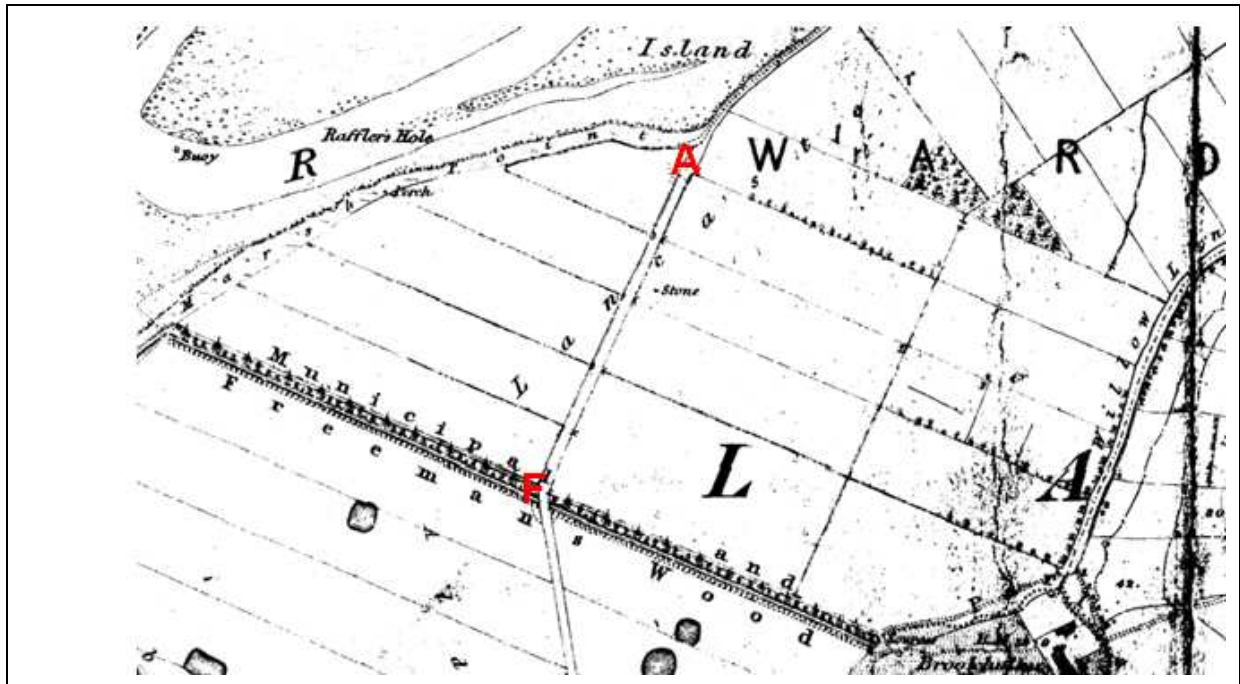
| | | |
|-----------------------------------|------|---|
| Observations | | The three routes under investigation are not shown. Freemans Wood - through which Footpath 30 and 32 Lancaster are recorded are clearly shown but the Lune Mills are not. |
| Investigating Officer's Comments | | The routes under investigation probably did not exist in 1818. |
| Hennet's Map of Lancashire | 1830 | 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 three routes under investigation are not shown. New Quay is named on the map and the route now recorded as Bridleway 32 and 34 Lancaster is shown. |
| Investigating Officer's Comments | | The routes under investigation probably did not exist in 1830. |
| Canal and Railway Acts | 1877 | 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 could not 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 | | <p>Part of Route 2 (between points C-E) runs along the former track bed of the London and North Western Railway – Glasson Dock Branch. Railway Acts and Plans are held at the House of Lords library in London and although a search of the House of Lords records has not been made the County Records Office hold a number of records relating to this particular railway including maps and a book of reference from 1887.</p> <p>The railway opened in 1883 to transport goods and people from Glasson Dock to Lancaster. The railway closed to passengers in 1930 but</p> |

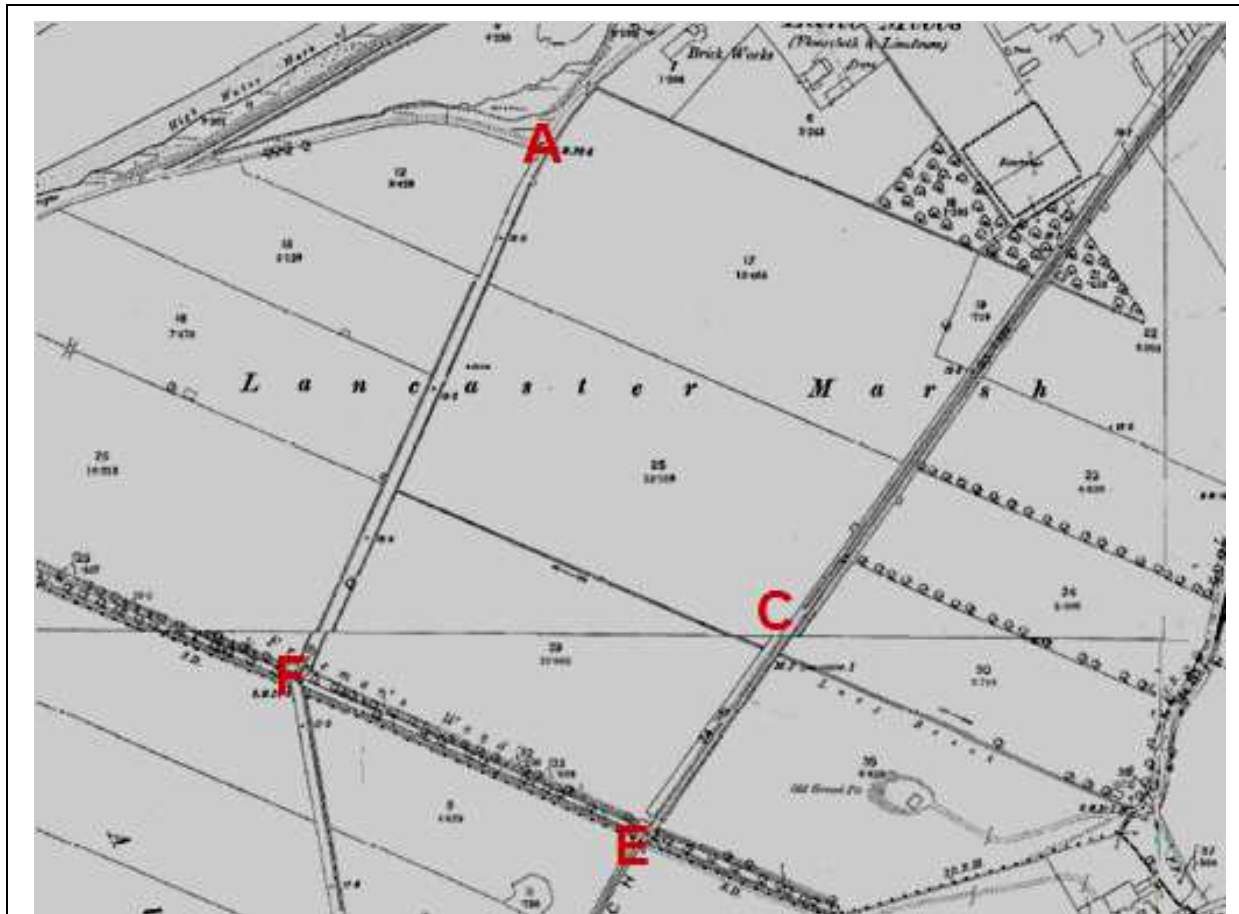
| | | |
|---|------|--|
| | | remained in operation carrying goods until 1964. No reference was made to the existence of any of the 3 Application routes in the documents inspected in the County Records Office. |
| Investigating Officer's Comments | | The three application routes did not appear to exist when the railway was constructed in the 1880s. That part of Application Route 2 shown between points C-E on the Committee plan cannot have existed until the railway closed in 1964. |
| Tithe Map and Tithe Award or Apportionment | 1847 | 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 Maps for Lancaster, Aldcliffe and Ashton with Stoddy were inspected in the County Records Office but did not cover the relevant area. |
| Investigating Officer's Comments | | No inference could be drawn. |
| Inclosure Act Award and Maps | | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | There is no Inclosure Award for the area concerned. |
| Investigating Officer's Comments | | No inference can be drawn. |
| 6 Inch Ordnance Survey (OS) Map | 1848 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-5 and published in 1848. ¹ |

¹ 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

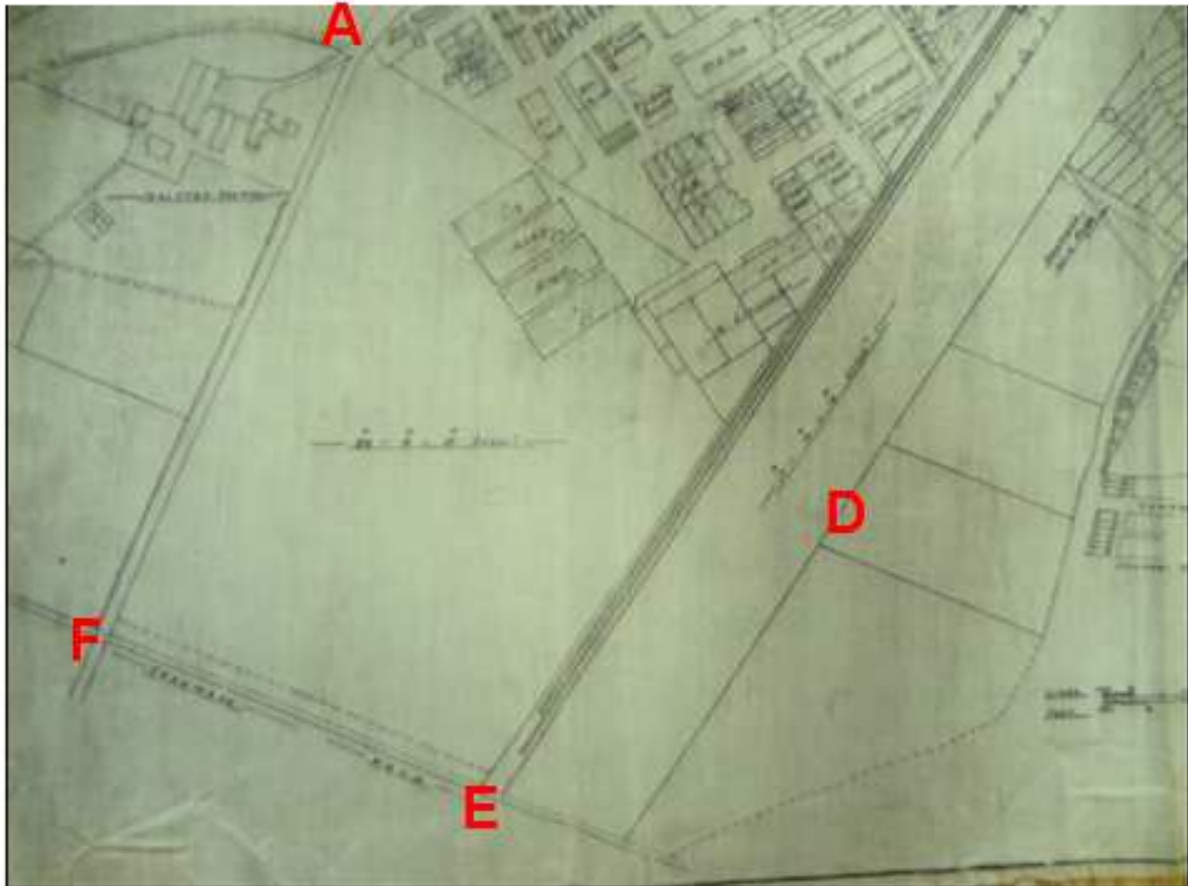


| | | |
|----------------------------------|------|---|
| Observations | | <p>The application routes are not shown.</p> <p>The land over which the application routes run is shown as farm land which appears to have been systematically drained. The route of Public Bridleways 32 and 34 Lancaster can be clearly seen and the wood through which Public Footpath 33 is recorded is shown and named as 'Municipal and Freemans Wood'.</p> |
| Investigating Officer's Comments | | The application routes probably did not exist in 1848. |
| 25 Inch OS Map | 1890 | The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891. |

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 application routes are not shown.</p> <p>The land over which the application routes are located is named on the map as being part of Lancaster Marsh. The London and North Western Railway – Glasson Dock Branch railway is shown and that part of application route 2 between point C and point E is shown to be part of the operational railway. The Lune Mills site is shown to the north/north east of the land over which the application routes are claimed to run.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The application routes probably did not exist when the Ordnance Survey carried out their survey in 1890. The section of application route 2 between point C and point E could not have existed as it was an operational railway line.</p> |
| <p>Plan of Lune Mills and St Georges Works</p> | <p>Circa 1900</p> | <p>Plan deposited in the CRO as part of the extensive James Williamson and Son of Lancaster deposit, dated circa 1900.</p> |



| | | |
|----------------------------------|------|---|
| Observations | | <p>The plan was hand drawn at a scale of 1:2500 and shows a number of buildings to the north of the application routes that had been constructed in the 10 years following the survey carried out by the Ordnance Survey in 1890.</p> <p>The application routes are not shown on the plan. Measurements are given for the land on which the application routes are located.</p> |
| Investigating Officer's Comments | | <p>The purpose of the plan is unknown but it appears to have been produced in relation to the land owned by the Williamson family.</p> <p>The application routes are not shown and it appears unlikely that they existed circa 1900.</p> |
| Finance Act 1910 Map | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. 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</p> |

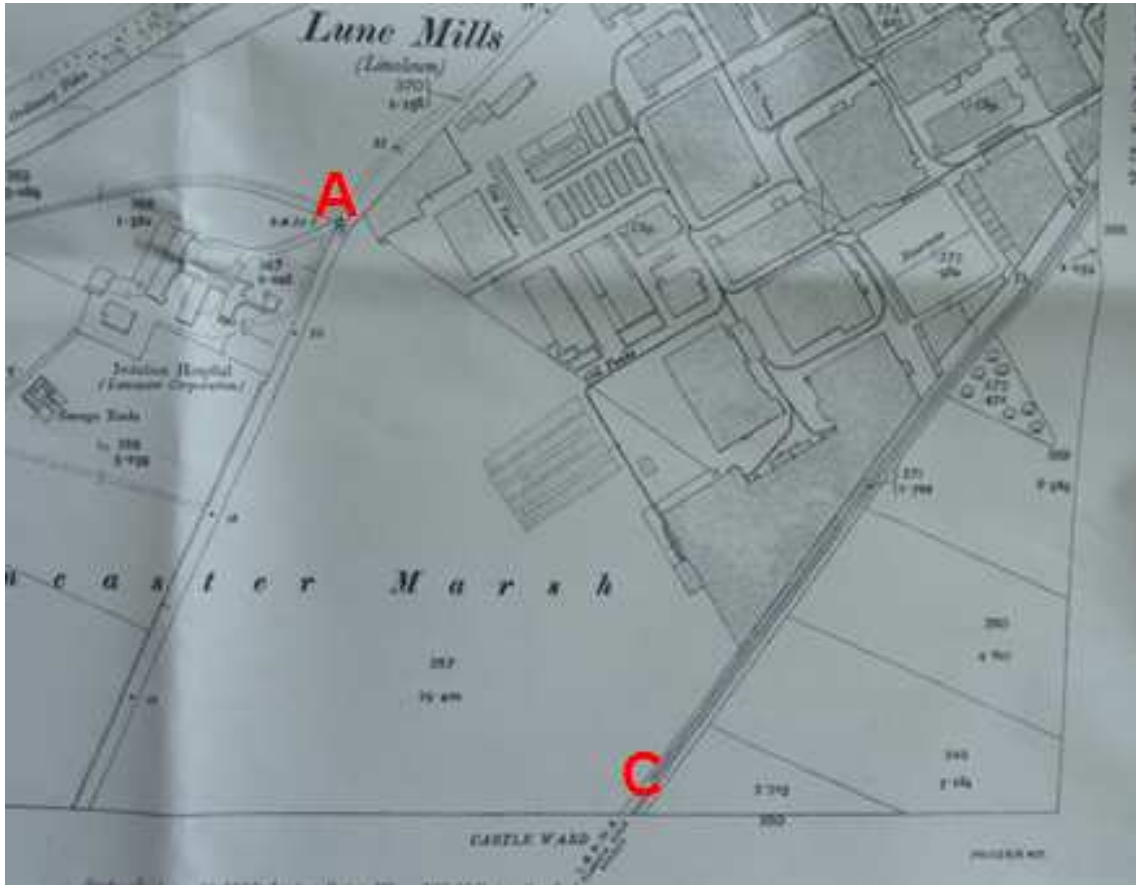
produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was 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>The Finance Act 1910 records were obtained from the County Records Office.</p> <p>The application routes were not excluded from the numbered hereditaments and no deductions were claimed for public rights of way or user. Land crossed by the application routes (plot 2860) was recorded as being in the ownership of Jas Williamson & Son.</p> <p>The railway is recorded as a separate hereditament (plot 3025) and was in separate landownership (London North Western Railway Company). No deductions were claimed for rights of way or user.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The application routes probably did not exist or were not considered to be public rights of way circa 1910 or a deduction was not considered to be worth claiming.</p> |
| <p>25 inch OS Map</p> | <p>1913</p> | <p>Further edition of the 25 inch map re-surveyed in 1890, revised in 1910-11 and published in 1913.</p> |

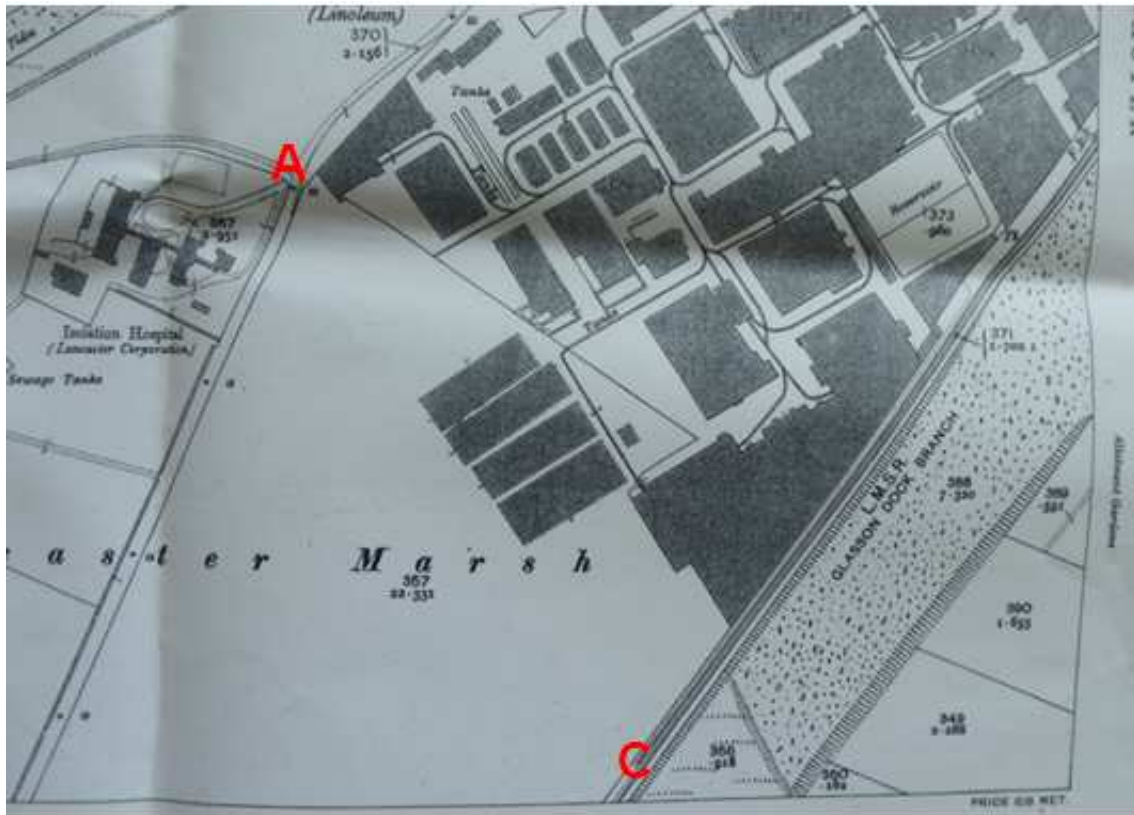


| | | |
|---|--|--|
| <p>Observations</p> | | <p>The application routes are not shown on the map and the railway is shown to exist between point C and point E.</p> <p>The Lune Mills site has expanded considerably and a large building can be seen abutting point A. Lucy Brook is shown to continue from just south of point D to the railway.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The application routes probably did not exist in 1913.</p> |

25 Inch OS Map

1933

Further edition of 25 inch map (surveyed 1890, revised in 1931 and published 1933.



Observations

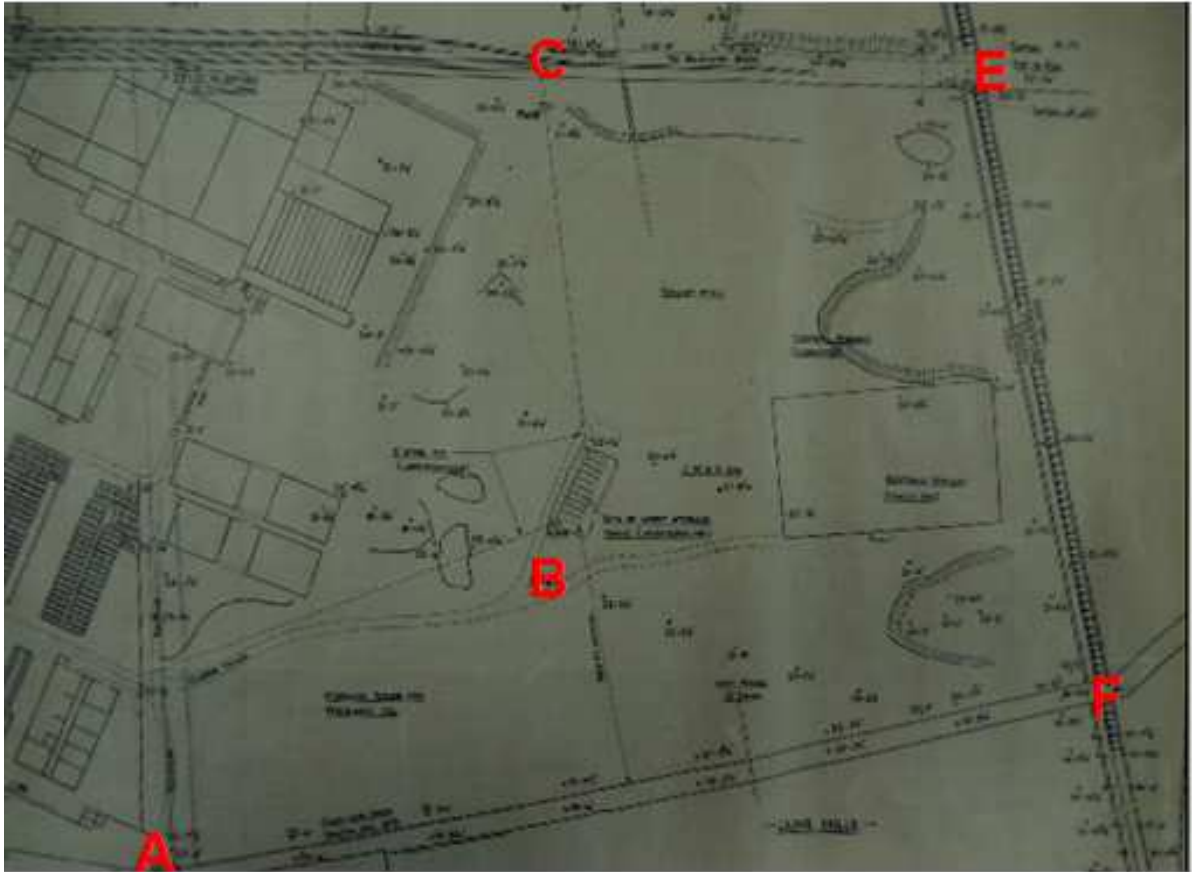
The application routes are not shown.

The Lune Mills site has continued to expand to the north of the land crossed by the application routes. Lucy Brook had been culverted from just south of point D to the railway since the earlier edition of the map

| | | |
|---|-----------|--|
| | | was published. An embankment is shown across application route 3 north east of point F. |
| Investigating Officer's Comments | | The application routes probably did not exist in 1933. |
| Aerial Photograph² | 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 | | No aerial photograph was available to view at the County Records Office or on GIS. |
| Investigating Officer's Comments | | No inference can be drawn. |
| http://www.virtual-lancaster.blogspot.co.uk | 1950's | Online research carried out concerning the history of the site. |
| Observations | | The website details the history of the land crossed by the application routes. It states that the land over which the application routes are located was originally a private landfill site for the Williamson Linoleum factory and that once the site was full it was planted with trees to stabilise the ground and that a huge project took place in the early 1950s when the site was levelled by volunteer labour. The name 'Coronation Field' was apparently given to the site after the 1953 Coronation of the Queen. |
| Investigating Officer's Comments | | The website provided useful information regarding the ownership and use of the site in the 1950s and explained the origin of the name that it is locally known by. No reference was made to the existence of the application routes and no inference can be drawn. |
| James Williamson and Son Minute Books | 1950-1954 | Minute books deposited in the County Records Office. |
| Observations | | Minute books from the Williamson factory were inspected from 1950 – 1954 to see whether any further information could be obtained about the levelling, naming of the site or the intended use of the site. No additional information could be found. |

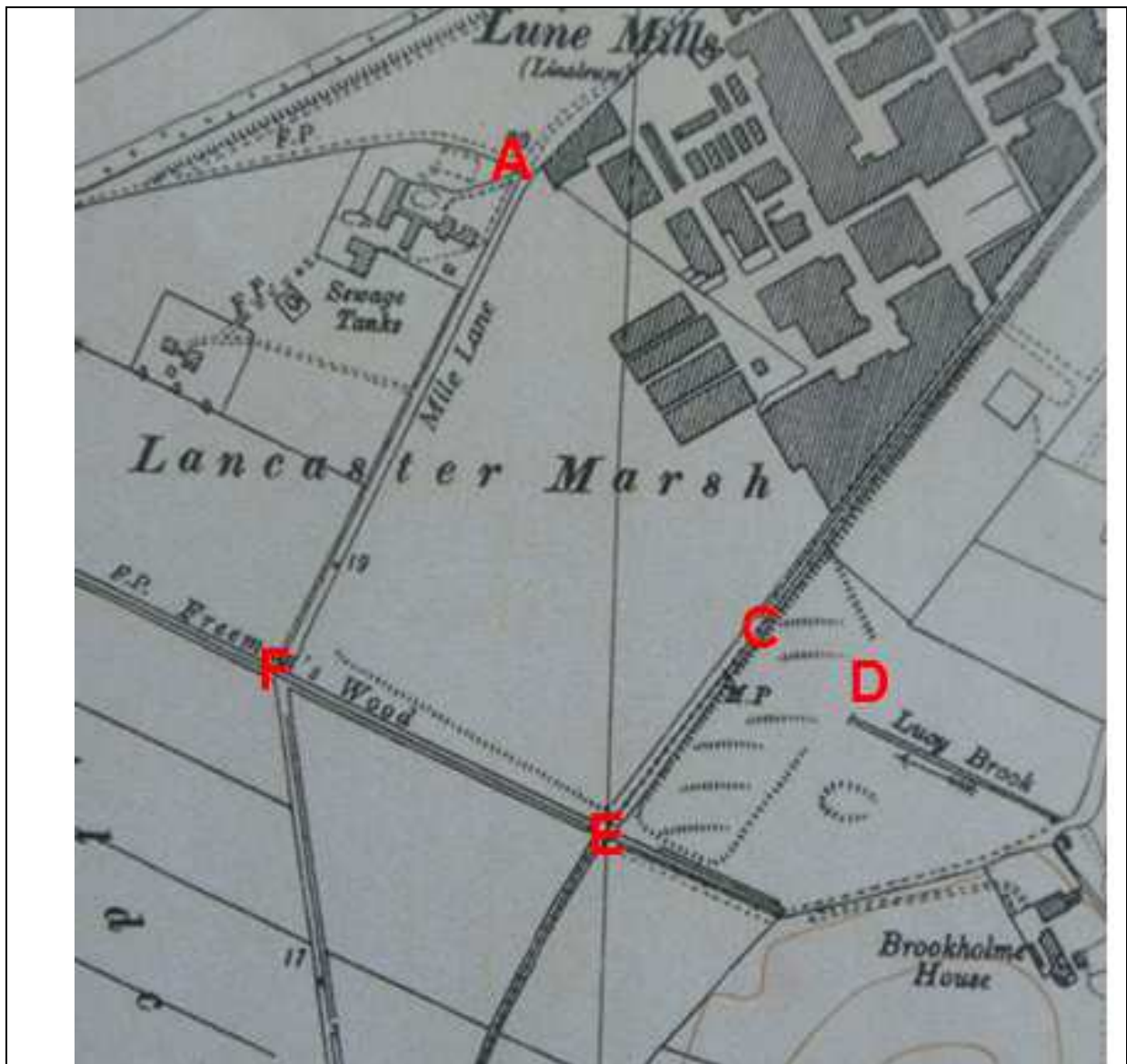
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

| | | |
|---|-----------|---|
| Investigating Officer's Comments | | No inference can be drawn. |
| James Williamson and Sons plan of Lune Mills and Field | 1955-1960 | Plan deposited in the CRO as part of the extensive James Williamson and Son of Lancaster deposit, dated 30 January 1955 and revised 1960. |

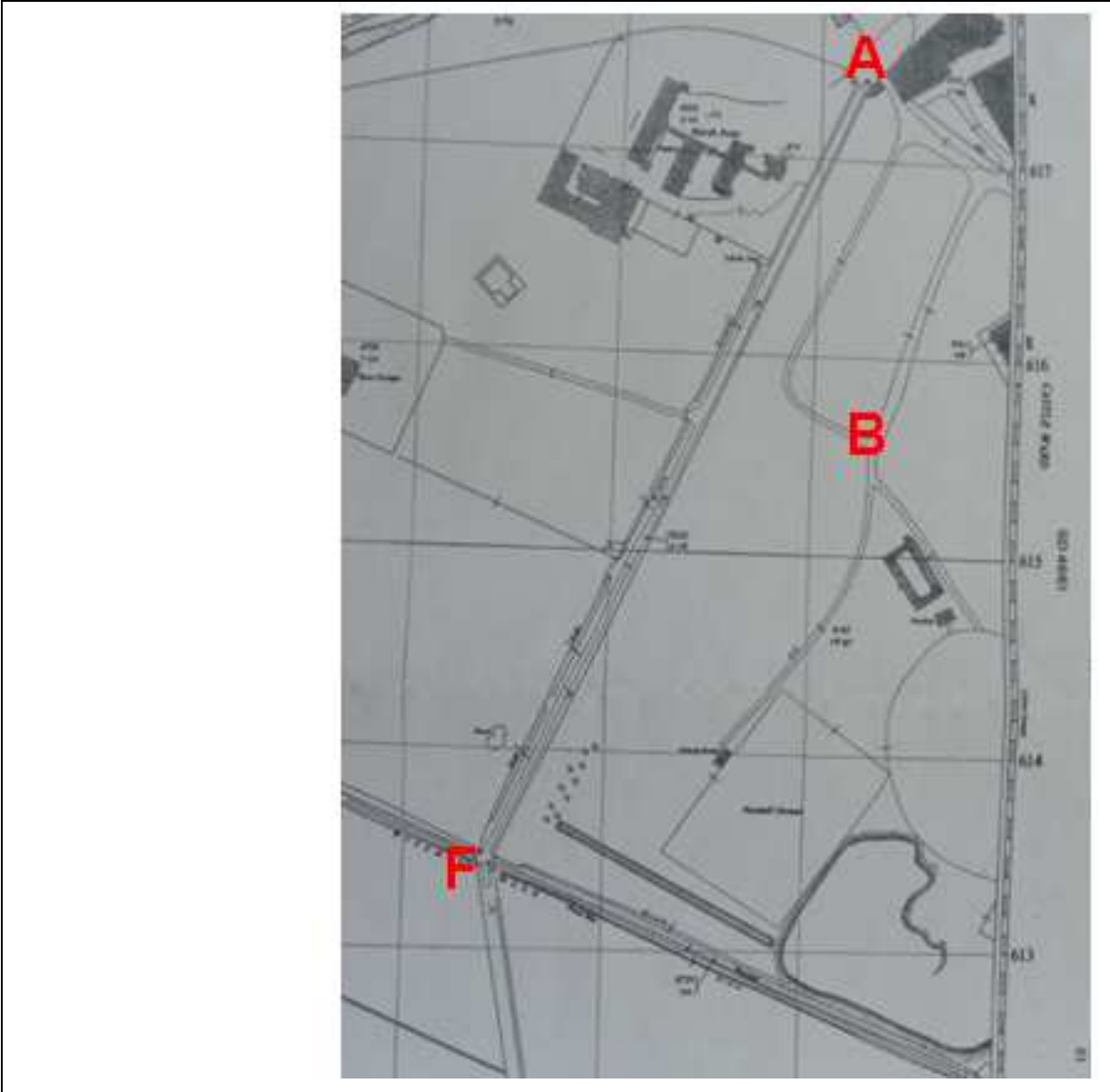


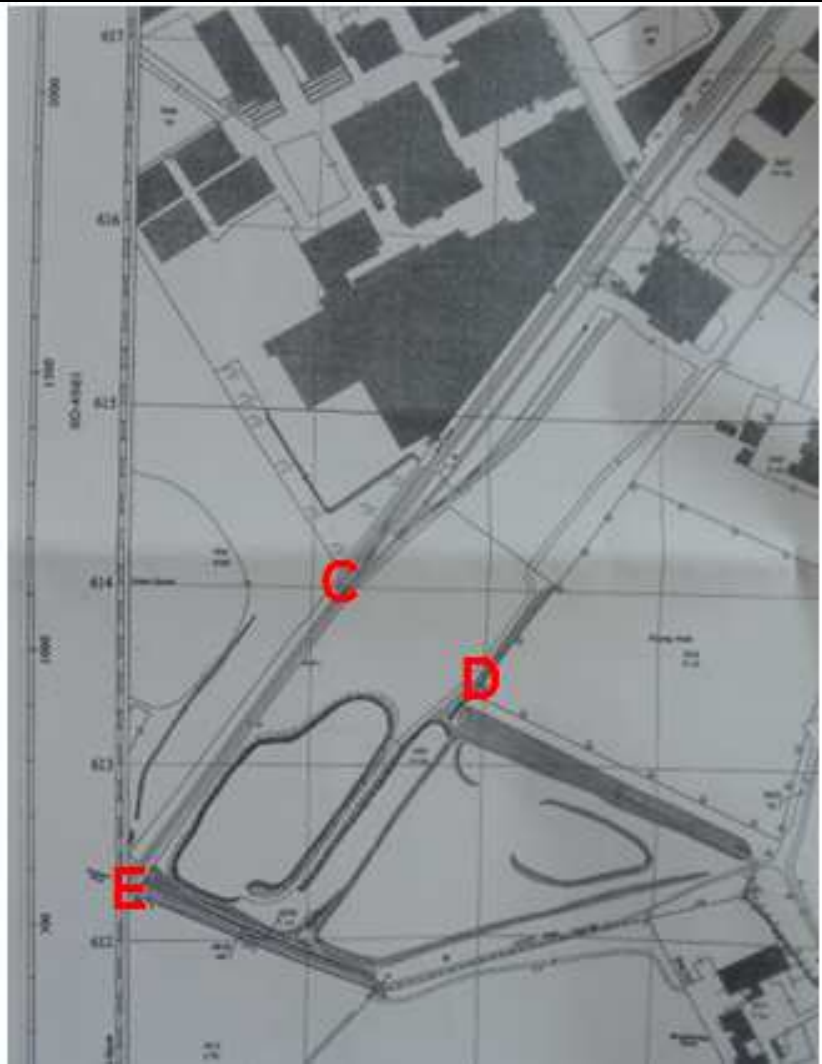
| | | |
|--------------|--|---|
| Observations | | The plan shows the land owned by the Williamson family referred to collectively as 'Lune Mills and Field areas'. It shows the land over which the three application routes are located as being within their ownership and appears to have been drawn from a privately commissioned survey. A track is shown to exist from point A leading to the approximate position of point B but not following the exact alignment of application route 1 and 2. The track continues a short way towards point C along the approximate line of the application routes 1 and 2. The railway is shown and labelled 'To Glasson Dock'. A circular cricket pitch is shown marked on the map which is crossed by application routes 1 and 2 between point B and point C and also application route 3 between point F and point C. A football pitch is also marked out which is crossed by |
|--------------|--|---|

| | | |
|----------------------------------|------|---|
| | | application route 3 between point F and point C. |
| Investigating Officer's Comments | | <p>The application routes probably did not exist when the plan was drawn in 1955 or when it was revised in 1960. Access onto the site appears to be available at point A and tracks visible from A via B towards C provide access to a cricket pitch and football ground suggesting that part of the site was being used for recreational purposes at that time and is consistent with the information detailed on the internet about the site having been levelled and named as 'Coronation Field'.</p> <p>If the application routes had existed between point B and point C or between point F and point C they would have crossed areas marked out for cricket and football.</p> |
| 6 Inch OS Map | 1957 | 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 1930-45 with major changes revised in 1950. |



| | | |
|----------------------------------|------|---|
| Observations | | The application routes are not shown. |
| Investigating Officer's Comments | | The application routes probably did not exist when the map was revised between 1930-1950. |
| 25 inch OS Map | 1957 | 25 inch map revised in 1957 and published in 1957. |





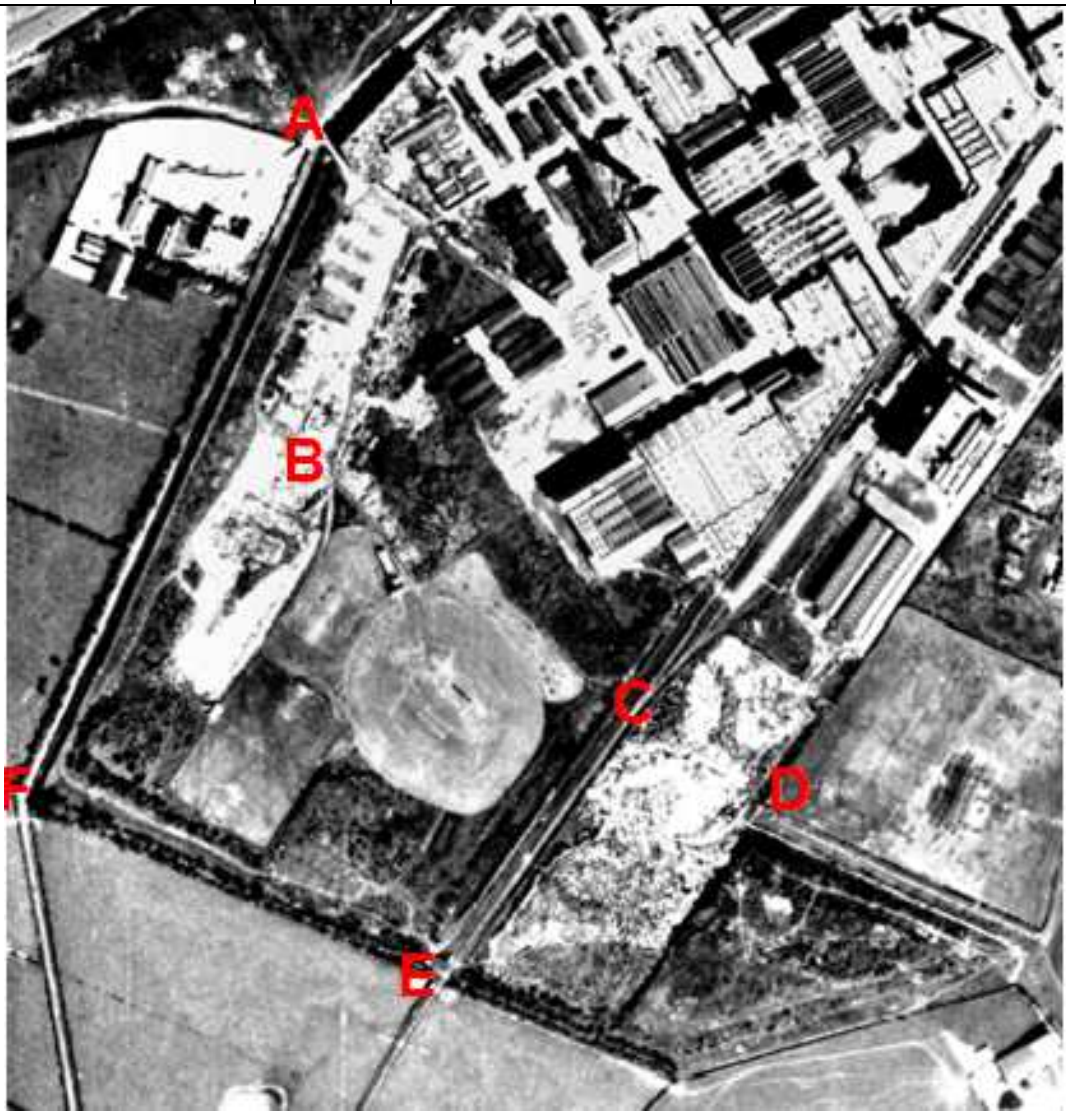
Observations

The application routes are not shown on the map although access may have been available from point A along one of two tracks marked on the map - neither of which correspond with the application routes but which both lead to point B. From point B a track that generally corresponds to application routes 1 and 2 continues in a south easterly direction for approximately 100 metres towards point C providing access to a cricket pitch. The railway is still shown to exist, cutting through the site with no obvious access across it at point C.

The railway also runs between point C and point E (the route claimed as part of application route 2).

Between point F and point C application route 3, if it did exist, crossed the end of a raised mound, the football pitch and cricket pitch.

| | | |
|----------------------------------|-------|---|
| | | <p>A track extending from point B south along the edge of the football pitch to the grandstand is shown but does not correspond to the application route.</p> <p>The land to the east of point D is shown on the map as a playing field.</p> |
| Investigating Officer's Comments | | <p>It appears unlikely that the application routes existed on the ground in 1957. The land which they cross now appears to be used for recreational purposes (cricket and football) west of the railway line with access to the site being available from point A. Tracks are shown in existence leading to the football and cricket pitches from point A but these do not correspond directly to the routes under investigation.</p> |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |

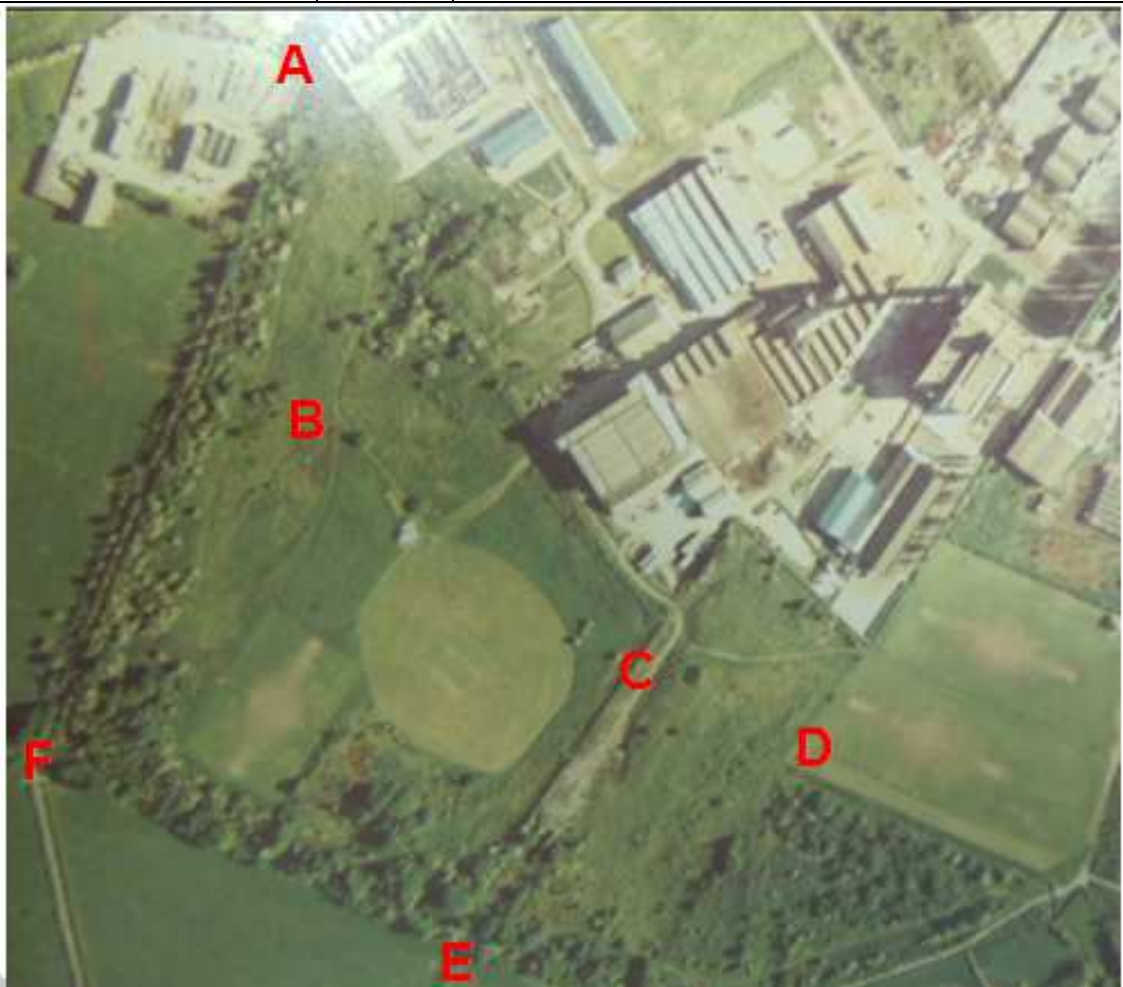


| | | |
|----------------------------------|-------|--|
| Observations | | <p>The earliest aerial photograph available to view. The photograph shows that access existed from point A along application routes 1 and 2 to point B and then from point B for a distance of approximately 100 metres towards point C along a visible track to the edge of the cricket pitch. The application route is not visible across the cricket pitch to point C or across the railway line and on to point D. Application route 3 between point F and point C is not visible and would clip the north west corner of the football pitch and cross the cricket pitch if it existed at that time.</p> <p>Various worn tracks are visible on the aerial photograph around the edge of the site with a clearly worn access point close to point E and a worn track north west of application route 2 (adjacent to the railway) between point E and point C.</p> |
| Investigating Officer's Comments | | <p>Part of application routes 1 and 2 appears to have existed and been capable of being used in the 1960s. The rest of the routes applied for are not shown although other routes are shown to exist close to them (adjacent to point C to point E) and around the edge (but within the boundary) of the site referred to as Coronation Field.</p> |
| 1:2500 OS Map | 1964 | <p>1:2500 OS map revised in 1957 and published in 1964.</p> |
| Observations | | <p>Only one of the relevant map sheets was available for inspection (SD4561) and the land over which the application routes are situated is shown in the same way as it was shown on the 1957 edition of the 25 inch map.</p> |
| Investigating Officer's Comments | | <p>No further information was provided regarding the existence or status of the application routes.</p> |
| Aerial Photograph | 1980s | <p>Aerial photograph submitted by Lune Industrial Estate Limited and said to have been taken in the late 1980s. The Company acknowledge that the photograph shows that there was a path to the cricket pavilion from the industrial estate which they believe was used by the cricketers whilst they had use of the pavilion and cricket pitch.</p> |



| | |
|---------------------|--|
| <p>Observations</p> | <p>The photograph does not show all of the land crossed by the application routes.</p> <p>From point A it is not possible to see from the photograph whether access was available onto application routes 1 and 2 and the exact alignment of the route claimed is not visible between point A and point B. A track can be seen leading from the industrial estate as far as point B and then continues from point B to the cricket pavilion and pitch. The section of the route visible on the photograph between point B and the cricket pavilion is consistent with the route claimed as part of application route 1 and 2. From the cricket pavilion to point C it is not possible to see application route 1 and 2 as a worn track although access appears to have been open and available along this section.</p> <p>Application route 1 between point C and point D is not visible as a worn track although other routes appear to exist to the north and access onto the Willow Lane recreation field appears available.</p> <p>It is not possible to see the full length of application route 2 along the dismantled railway between point C and point E but parts of it can be seen on the photograph suggesting that it existed as a worn track at this time.</p> <p>In respect of application route 3 the photograph does not extend far enough to show whether the route was visible at point F and although the route crossed open land – including the football and cricket pitch - no</p> |
|---------------------|--|

| | | |
|----------------------------------|------|--|
| | | worn track can be seen leading from point F to point C. Various other tracks which do not form part of the application can be seen across and around the site. |
| Investigating Officer's Comments | | The cricket and football pitches still appeared to be maintained in the 1980s with access to them from the Industrial Estate. The site appeared to be open with numerous tracks clearly visible across and around it suggesting regular use was being made of it. Part of the application routes 1 and 2 can be seen following worn tracks but the access points at A, E and F are either not shown or are unclear on the photograph so it is not possible to see whether they could be accessed from these points. Access along the application routes may or may not have been possible in the 1980s but they did not appear to be clearly defined and well used through routes. |
| Aerial Photograph | 1988 | Aerial photograph available at CRO and LCC Cuerden Offices. |



| | | |
|----------------------------------|------|--|
| Observations | | <p>Part of application routes 1 and 2 can be seen on the photograph between point A and point B. Beyond point B the route can be seen extending towards point C on a track leading to the cricket pitch. The route across the cricket pitch and on to point C cannot be seen on the photograph as a worn track. Application route 1 between point C and point D is not shown on the plan but a clearly visible worn track is shown to exist further north.</p> <p>A worn track can be seen passing through point C and continuing towards point E along the line of application route 2 but it is not clear whether the full length between point C and point E existed at that time due to tree cover.</p> <p>Application route 3 between point F and point C is not visible as a worn track on the photograph.</p> <p>It is not obvious from the photograph whether access was available onto the routes at point A, point F or point E.</p> |
| Investigating Officer's Comments | | <p>None of the three application routes are visible as worn tracks in their entirety although it may have been possible to walk them. The cricket field and football pitch are clearly visible and appear to be maintained which may have resulted in people walking round and not across them when matches were taking place.</p> |
| 1:25,000 OS Map | 1990 | <p>1:25,000 OS Pathfinder Map 648 compiled from larger scale surveys dated between 1955 and 1976, Revised for selected changes 1988 and published 1990.</p> |



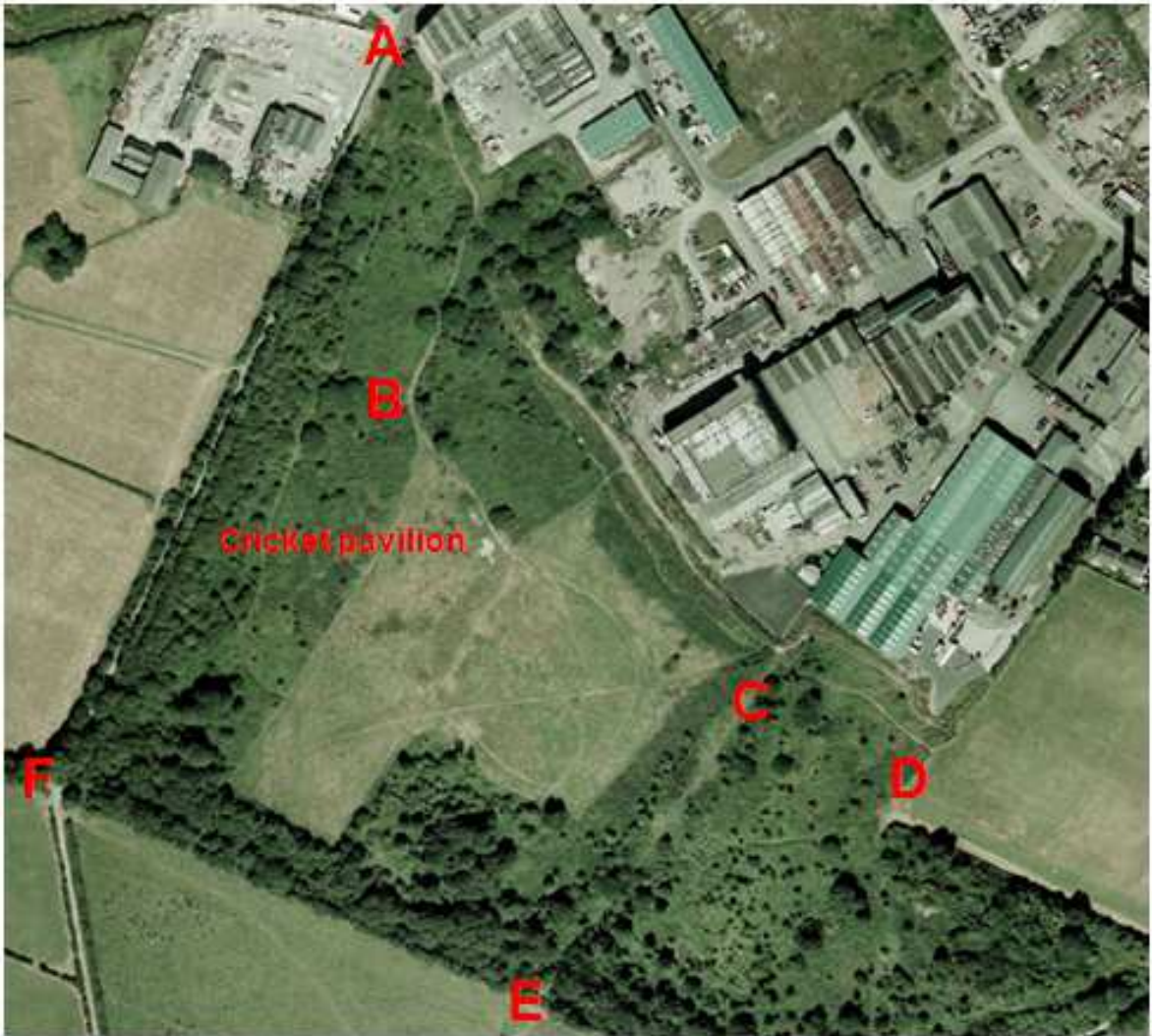
| | | |
|----------------------------------|------|---|
| Observations | | The map shows a route that corresponds to part of Application routes 1 and 2 but does not show access onto the route at point A. A track appears to exist along the dismantled railway between point C and point E. |
| Investigating Officer's Comments | | Parts but not all of the application routes may have existed in 1990. |
| Aerial Photograph | 2000 | Aerial photograph available to view on GIS. |



Observations

The football and cricket pitches are less clearly visible suggesting that they are no longer maintained as such. A visible track exists from point A although it is not possible to see whether it is gated. Application routes 1 and 2 are visible as a worn track on the ground between point A and point B and then continuing towards point C as far as the cricket pavilion. Beyond the pavilion to point C there is no worn track on the ground although the route appears to be accessible. Application route 1 between point C and point D is not visible on the photograph although a worn track is clearly visible further north which appears to provide access to the Willow Lane recreation field. A faint track is visible between point C and point E (part of application route 2). That part of application route 3 from point F to point C is not visible as a worn track on the ground. A number of worn tracks that do not coincide with the application routes appear to exist

| | | |
|----------------------------------|------|---|
| | | across the land. |
| Investigating Officer's Comments | | Parts of the Application routes appear to have existed as worn tracks on the ground which would have been capable of being used by the public. However there is no indication that the other parts – namely the sections between the cricket pavilion and point C, point F and point C and point C and point D existed. |
| Aerial Photograph | 2003 | Aerial photograph available to view on GIS. |



| | | |
|--------------|--|--|
| Observations | | <p>The former cricket pitch and football field are still visible but do not appear to be in use or maintained for their original purpose.</p> <p>Application routes 1 and 2 between point A-B and continuing from point B to the cricket pavilion are clearly visible and a route close to – but not on the exact alignment of the application route continues towards point C and then across to the edge of the Willow Lane recreation field parallel but well to the north east of the application route between point C and point D.</p> |
|--------------|--|--|

| | | |
|----------------------------------|------|---|
| | | <p>A faint line, partially obscured by trees can be seen between point C and point E which appears to show a worn track.</p> <p>A route can be seen across the football and cricket fields south of the application route between point F and point C but this is much straighter and more direct than the route applied for.</p> <p>A number of other tracks – not forming part of the application can also be seen across the site.</p> |
| Investigating Officer's Comments | | <p>Parts of the application routes appear to have existed as worn tracks on the ground which would have been capable of being used by the public. However other parts of the application routes are not visible as worn tracks and although the routes may have been capable of being walked across open ground there are also a significant number of other worn routes across the site that do not form part of the applications and the inference can be made that the application routes were not in use to a significant degree.</p> |
| Aerial Photograph | 2006 | Aerial photograph available to view on GIS. |



Observations

Tree cover across the site appears has increased since in previous years. Access onto application routes 1 and 2 at point A is visible although it is not possible to see whether it is gated. Most of the route between point A and point B is no longer visible. Part of the route between point B and point C is visible and the route between point C and point D is visible for the first time as a worn track and looks to have replaced the worn track that was previously evident to the north east. That part of application route 2 from point C can be seen extending south west towards point E but tree cover means that it is not possible to see whether it extends as far as point E. A worn route can be seen coming out of the trees east of point F and extending as far as point C but this does not correspond to application route 3, which is not visible on the photograph.

Investigating Officer's

Only parts of the application routes appear to

| | | |
|----------|--|---|
| Comments | | <p>have existed as worn tracks on the ground and would have been capable of being used by the public. However other parts of the application routes are not visible as worn tracks and although the routes may have been capable of being walked across open ground there are also a significant number of other worn routes across the site that do not form part of the applications. The use of the site appears to have changed – with the cricket field and football pitch no longer marked out but clearly being used as there are a number of worn tracks on and around them.</p> <p>That part of application route 1 between point C and point D is visible as a worn track on the ground for the first time.</p> |
|----------|--|---|

| | | |
|-------------------|------|---|
| Aerial Photograph | 2010 | Aerial photograph available to view on GIS. |
|-------------------|------|---|



| | | |
|--------------|--|--|
| Observations | | <p>It appears that application route 1 and 2 between points A and point B still existed and can be seen as a faint line on the photograph.</p> |
|--------------|--|--|

| | | |
|----------------------------------|-----------|---|
| | | <p>From point B the route continues along a worn track partway to point C from where it is no longer visible. Application route 1 between point C and point D can be clearly seen on the photograph.</p> <p>Application route 2 between point C and point E is difficult to see due to tree cover but does appear visible as a faint line.</p> <p>Application route 3 between point F and point C is not visible on the photograph although a route along a different alignment appears to exist.</p> |
| Investigating Officer's Comments | | <p>The aerial photographs examined show that the route between point A and point B was in existence and may have been capable of being used by the public. This route continued partway to point C as a worn track visible on the ground.</p> <p>In the four years since the last photograph application route 1 between point C and point D has remained in the same place and is clearly visible through the trees suggesting that it received regular use. The route along the disused railway line (application route 2 between point C and point E) also appeared to be in use.</p> <p>Application route 3 between point F to point C is not visible. Whilst it may have been possible to use it use was not significant enough to create a visible track on the ground.</p> |
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | <p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.</p> |
| Observations | | <p>Lancaster was a Municipal Borough in the early 1950s and so a parish survey map was</p> |

| | | |
|--|--|---|
| | | not compiled. |
| Draft Map | | The Draft Maps were given a “relevant date” (1 st 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 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations | | The application routes were not shown on the Draft Map and no representations were made to the County Council. |
| 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 application routes were not shown on the Provisional Map and no representations were made to the County Council. |
| The First Definitive Map and Statement | | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations | | The application routes were not shown on the First Definitive Map and Statement. |
| Revised Definitive Map of Public Rights of Way (First Review) | | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st 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 any of the routes under investigation were considered to be public rights of way by the Surveying Authority. there were no objections or representations made with regards to the fact that none of the routes were shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations | | No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application routes run. |
| 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. |

None of the land crossed by the three application routes is designated as access land under the Countryside and Rights of Way Act 2000.

That part of the land crossed by the routes A-B-C and F-C are the subject of an application to register the land as a Town Green but the application has yet to be determined. That part of the route between points C-D and C-E does not cross land that it is sought to register as a Town Green.

All of the land affected by the proposal is within an area for which there is a Tree Preservation Order.

Landownership Information and history of the site

Landownership

Most of the land affected by the three applications is presently in land owned by the Lune Industrial Estate Ltd.

Information provided by the Company refers to it acquiring the land in 1997.

From 1986 to 1997 it was owned by Lune Condale Properties Limited and Shiregreen Property Co. Limited

The section including C-D appears from land registry information to be within land owned by Gerber Property UK Ltd

History of the site

Some information was provided by representatives of the current land owning company but has also been obtained from the County Records Office.

The land over which the routes under investigation run appears to have been owned by Lancaster Corporation in the 1800s.

In the 1840s James Williamson opened a small factory behind St Georges Quay. The factory expanded in 1855 and the 1860s and in 1870 he bought land further west – including the land over which the routes under investigation run - and started developing the site. This factory was later known as Lune Mills and was enlarged over the years.

The Railway through the site opened in 1883 and the land over which it ran – and which that part of application route 2 runs between points C-E was recorded to be in the ownership of the London North Western Railway Company in the 1910 Finance Act records.

Details of the ownership of the factory site obtained from the Lancashire Records Office explained that James Williamson died in 1879 and was succeeded by his sons with James Jnr. assuming sole control of the business by 1883.

When James Williamson Jnr. died in 1930 his daughter Ella and her husband Earl Peel formed a private limited company, James Williamson & Son Ltd and in 1947 the company became a public limited company.

In 1963 the company was merged with Michael Nairn & Co of Kirkcaldy to form Nairn Williamson Ltd.

The Nairn-Williamson group was bought by Unilever in 1975 and added to Unilever's subsidiary Commercial Plastics to form Nairn International.

In 1985 it was stated that Unilever sold its interests in Nairn International to Forbo SA, a Swiss company and that Nairn Coated Products Ltd split in 1987 into Nairn Kingfisher Ltd and Nairn Contract Fabrics Ltd. Three years later, these two became Forbo Kingfisher Ltd and Forbo Contract Fabrics Ltd. Respectively and in 1993 the former became Forbo-Lancaster Ltd.

In 2001 the information obtained from the Lancashire Records Office states that H-A Interiors (part of a German company Hindrichs-Auffermann) bought Forbo-Lancaster and at the end of that year the Lancaster factory closed altogether.

Summary

There is no map or documentary evidence to support the existence or use of any of the application routes until at least the 1960s.

It appears that as the linoleum factory expanded the land crossed by the application routes was used as a private tip which was levelled in the early 1950s and a cricket field and football pitch provided. The area became known as the Coronation Field.

The claimed footpaths all cross or use the railway line and this still crossed the site until 1964.

Aerial photographs clearly show the football and cricket pitches were well maintained during the 1960s and 1980s but this had ceased by 2000.

Application Route 1 (shown between A-B-C-D)

From 1957 through to 2010 access was available to Coronation Field at point A and a track or tracks existed to point B and continued towards point C terminating at the cricket pavilion, although the alignment appears to vary slightly in the 1950s and 1960s and is barely visible on the 2006 aerial photograph.

Beyond the location of the cricket pavilion to point C there is no evidence of a worn track existing on the ground and when the cricket pitch was maintained and in use the route would have crossed the north east side of it. However, there is no evidence that there was any physical restriction to access which would have prevented use of the application route to point C.

There is no evidence of a worn track between point C and point D until 2006 but there was a route a little further north east.

Until 1964 the route was crossed by an operational railway at point C with no evidence of a crossing point. It appears very unlikely that this route would therefore existed through point C until at least 1964.

Application Route 2 (points A-B-C-E)

The application and user evidence submitted duplicates part of Application Route 1 between points A-B-C.

With respect to the route between point C and point E this route followed the track of the former railway line which closed in 1964 and use of the route on foot cannot have commenced before then.

The 1960 aerial photograph appears to show a worn track alongside the railway line and that access to the site may have been possible at point E.

The 1988 aerial photograph shows a worn track along the application route and traces of this route are subsequently shown on the aerial photograph submitted by the landowner believed to have been taken in the late 1980s and those taken between 2000 and 2010 suggesting that it was being used during that time.

Application Route 3 (points F-C-D)

There is no map, photographic or documentary evidence supporting the existence of the application route between point F and point C and if it existed and was in use during the time that the football and cricket pitches were in use the route would have clipped the northern corner of the football pitch and would have crossed the cricket field although there is no evidence that there was any physical restriction to access which would have prevented use of the application route to reach point C.

The section of the route C-D is a duplicate of part of route 1.

County Secretary and Solicitors Group Observations

County Secretary and Solicitor's Group Observations

Information from the Applicant

As part of the application the applicant has provided information about the routes that are being applied for.

Historical Background

They explain to the west of the City of Lancaster flows the River Lune, this river is deeply significant to the people living by it, as it has provided occupation, recreation and food to the people who understood the tides and owned the means to fish or work as pilot boats guiding the larger sailing ships safely through the sand flats to deliver their cargo. This provided a sources of income for local people will into the 19th Century when Williamson's Linoleum Company moved into the area beside the Lune.

Williamson's had a dramatic effect on the area. It became a significant employer providing many jobs for local people. Williamson was a philanthropist and tried as

best as he could to create a team spirit within his staff. He donated an open space for cricket, football and picnics. The area was (and still is) known collectively as 'Freeman's Wood'.

The 3 footpaths for which the applicants are applying cross this area and in 1905 Williamson gave permission to his staff to use the area for leisure-time activities – the land itself being a topping area for the lino factory.

The people of the Marsh area created the adjacent Coronation Fields themselves, raising the finances and doing all the necessary work. In the jubilee year of 1953, Coronation Field opened for use in combination with the Freeman's Wood area that was once a lino factory's tip.

The applicant states that the whole of this area is much used and loved and with distinct footpaths created by generations of use. Local people continued to walk across the land from 1905 until it was fenced off in November 2011, the local community was outraged by the fencing off of the land, and they had built hides to watch the rich and varied wildlife and birds. This area provided a route for roe deer to move from the estuary across onto the fields to graze. The land was full of plants and trees that had grown over the tip, creating a quiet oasis and a 'green lung' in an area close to an industrial estate, a Council housing estate and a large area of terraced housing without gardens.

Tree Preservation Orders have subsequently been placed on the trees in Freeman's Wood.

The applicant then goes on to describe the 3 routes that they have applied for.

The applicant has collected a total of 81 user evidence forms which are set out below in support of these applications. The applicant states that more than half of these forms provide evidence of use of the paths dating back to more than 20 years prior to the fence going up in 2011. The applicant mentions that these statements cite a variety of starting and finishing points depending on where they were walking. The majority of the people who have provided evidence statements in support of this applicant state that they had never seen any signage or other indications that crossing the land would be trespassing, until the fence was erected in late 2011. A couple of statements suggest that some signs were displayed about 5-7 years ago, but these apparently disappeared within days of being put up.

The applicant goes on to mention that Lancaster City Council, who own Coronation Field to the east of the land that they are referring to in their applications are currently consulting to the public in their draft Land Allocations DPD for 2003-2023. This includes a proposed policy CWL5: "Land identified as Willow Lane / Coronation Field Opportunity Area on the Local Plan Policies Map is an area for recreation and open space improvement. The Council will support proposals that enhance the regenerate the quality and quantity of recreation and open space provision in this area". The applicants support this policy and believe that their applications the 3 new Public Footpaths will help to deliver the aspirations of the City Council and the local community for recreation and open space improvement in this area.

The applicant has also provided 16 colour photographs showing all 3 claimed footpaths at different points along their routes and user evidence forms as detailed below.

Route 1

The applicant has provided 30 user evidence forms in support of this application.

The users claim to have known the route in years as follows:

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| 0-10(6) | 11-20(4) | 21-30(9) | 31-40(6) | 41-50(2) | 51-60(1) |
| 61-70(2) | | | | | |

All 30 users claimed to have used the way on foot, however the years in which the users used the route varies:

| | | | | |
|---------------------------|-----------------------|-------------------|-----------------------|-----------|
| Since 1960's (3) | all 53 years | 1973-present | 1976-2012 | 1978-2012 |
| 1987 onwards | 1980 until fenced off | last 30 years (2) | for 35 years (2) | |
| 1990 onwards | 1990-2011 | 1993-2011 | 1991-1994 & 2003-2012 | |
| continuous use (25+years) | All 23 years | 2000-2012 | 2000-2011 | |
| 2001/2012 | 2002-2012(4) | 2003 onwards | 2005 onwards | |
| 2011 onwards | | | | |

The users were going to and from:

Willow Lane to Lune, Coronation Field to Riverside, Quay to Coronation Field, to Keyline and back, Keyline to Coronation Field, to Cricket Pitch, From Lune to Marsh, to river circular route, to Aldcliffe, from Marsh to Williamsons Work or Glasson Dock, to Long Mile Lane,. 5 users did not provide details of where they were going from and to.

The main purposes for using the route are as follows:

Recreation, dog walking, running, general walking, leisure, bird watching, camping, picnics, sports, cycling, wildfowling, to collect fruit, flying aeroplanes, enjoying the views.

The use of route per year varies from:

Daily, 300+, 100+, very frequently, 50+, 2-3 times per week, weekly, twice per week, 20+, most weekends, once per month, 8 times, 3 times.

When asked if the users have ever used the way on horseback, 23 users stated 'no', 1 user claims to have used the route on horseback, 3 users didn't provide a response and 3 users stated 'N/A' to this question.

23 users have never used the route by ways of motorcycle / vehicle. 1 user has used the way by means of motorcycle / vehicle, 3 users never provided a response to this question and 3 users stated N/A

When asked if they had used the route by way of other means, 9 users claim to have used the way by bicycle, 15 users have not used the way by any other means, 1 user has used the way by other means but didn't specify any details, 2 users responded 'N/A' to this question and 3 users didn't provide a response.

When asked during which years they used the route by those means, only 11 users responded, their answers vary from:

1980 once per week, 1978-2012 monthly, weekly, everyday as a child, 1990 onwards countless times, 1980-1995, all 60 years, 1970s, a lot more when younger but dependant on work hours now, regularly all years.

15 users claim to have seen other people using the route on horseback, 12 users have never seen anyone using the route on horseback and 3 users didn't provide a response. 12 users claimed to have seen others using the way on motorcycle / vehicle, 14 users haven't seen anyone using the way by motorcycle / vehicle, 3 users didn't provide a response and 1 user stated N/A.

7 users have never seen anyone else using the route by way of other means, other users have seen people walking, running, cycling, skateboarding, or bird watching, 3 users stated 'yes' to seeing others using the way but did not specify how they were using the way and 1 user did not provide a response. The years in which the users saw other people using the way by different means varies from, 2001-2011, every year, 2000, 2003 onwards, 1990-2011 very occasionally, for most of 25 years, 1993-2011, 2002-2012, to present day, since 1980, 1978-2012, continuous, frequently and regularly.

21 users agree the path has always run over the same route, 1 user states it change when the path gets over grown other paths are used, 1 user claims the route varies as they used to roam through the woods, another user states 'more or less', 2 users claim the route has changed and they have marked the changes on the plan they have provided, 1 user agrees this path has run over this route but also states There are lots of other paths, 2 users didn't provide a response and 1 user stated 'N/A'.

21 users agree there have never been any stiles / gates / fences along the claimed route, 1 user states there is a gate which they have marked on the plan, another user claims there is a stile and gate by the keyline (thought to be point A), 1 user states there is a stile at the end of the path by the river and there are old gate remnants where people crossed the old railway track, 1 user states a gate was put up about 20 years ago to keep travellers out, 1 user claims there were none until recently. 3 users didn't provide a response and one user stated 'N/A'. When asked if any of the gates were locked 1 user states 'no occasionally the gate marked on the map would be locked but usually the lock was off, there is reference to Williamsons being aware that people used the land and a decision was taken to allow people to wander', 1 user claims a gate was locked at Mile Lane for vehicles, another user states 'the gate for travellers was locked but there was a big gap at the side, prior to that there was vehicle access', all other users did not respond or stated there are not gates. None of the users were prevented access by the stiles / gates / fences but one user claimed that the tip and railway track prevented them access.

None of the users have ever worked for a landowner over the land which the route runs and none of them have ever been a tenant for any of land over which the route runs.

29 users have never been stopped or turned back when using the route, however 1 user states 'not until it was fenced off'. 29 users have never heard of anyone else being stopped or having to turn back when using the route, however 1 user states 'not until the fence went up recently'.

29 users have never been told it was not a public right of way but 1 user claims that people have been told not to trespass by the community police.

21 users have never seen any signs / notices along the claimed route, 5 users have seen notices since the new fence was put up, 1 user states "approx 5 years ago signs went up with a person holding a hand up with red circle and line across. They did not last long, they were at main entrances marked on the map", another user has seen a sign "private no public access (about 7 years ago)", another user claims there was some signs / notices but local people took exception and they disappeared and 1 user didn't provide a response.

29 users have never asked permission to use the land and 1 user didn't provide a response.

Route 2

The applicant has provided 21 user evidence forms in support of this application.

The users acknowledge the route in years as follows:

0-10(4) 11-20(4) 21-30(8) 31-40(4) 61-70(1)

20 users agree the line has always run over the same route, 1 user did not provide a response to this question.

The years which the users have used the route varies:

1949-2012 1970s-2012(2) 1981-1986 1982-2012 1987-2012 1989-
2012 1980-until fenced off 1990-2011 1990-2012 1991-1994 1992-
2012 1993-2011 2000-2012(2) 2001-2012 2002-2012(3) 2003-
2012(2) 2011-2012

The users were going to and from:

Marsh Point to Coronation Field, to Freemans Wood and back, Westbourne Road to Riverside, from Quay towards Willow Lane, circular route, Lancaster to Glasson Aldcliffe, home to Aldcliffe, R Lune to Marsh, Willow Lane to Glasson.

The main purposes for using the route are as follows:

Dog walking, blackberry picking, recreation, bird watching, cycling, leisure, walking with children, exercise, camping, picnics, sports, running and cycling

The use of the route per year varies:

Daily, 300 days, 200 days, 100+ days, weekly, every 2 weeks, 8 times, 5 times and 1-2 times.

2 of the users have used the route on horseback and motorcycle / vehicle, 1 user has used the route on horseback continuously over the years of 1987-2012, the other user did not specify which years they used the route on horseback but stated it was every weekend.

5 users (of their children) have used the route by bicycle, the users that specified used the route by a bicycle during the years of, 2000-2011, continuously since 1987, since 1980 (once per week), 1989-2012.

1 user has also used the route for running during 1980-2012, once per week, another user has used the way by way of other means but did not specify how they used the route.

5 users claim to have seen others using the route on horseback and by motorcycle / vehicle, the years in which the users saw this varies, over the last 23 years (weekly), over the last 25 years (weekends seen regularly), over the last 35 years (weekends), from 1980 (once per month), and daily.

3 users have seen others on horseback only, the years in which the users saw this varies, 2003 onwards (occasionally), 2002-2012, over the last 25 years.

4 users have seen others using the route on motorcycle/vehicle only, the years in which the users saw this varies, 1990-2011 (very occasionally), occasionally and over the last 18 years.

Users have seen other people using the route by way other means including, cycling, flying model aeroplanes and running.

11 users agree the line has always run over the same line, 1 user states 'as far as I can remember, another user states 'more or less', 1 user isn't aware of any changes, another user states 'as far as I'm aware', 1 user states the route didn't change until the fence was put up, another user states 'route on map marked now overgrown', 1 user states the route is on the same line but there are other paths, 1 user states 'no' but doesn't provide any further details, and 2 users didn't respond.

1 user claims there is a gate along the route and they have provided details on the plan, 1 user 'is not aware of any', all the other users stated 'no' or didn't respond to there being any stiles / gates/ fences along the claimed route.

The same user that claims there is a gate along the claimed route states it was originally locked but not for a long time, another user claims there is a gate marked on the map to keep travellers out, everyone else stated 'no' or didn't provide a response to any gates being locked.

None of the users have ever been prevented from using the way.

All 21 users have never worked for a landowner over which the route crosses, 18 users have also never been a tenant for any of the land over which the route crosses, the other 3 users didn't provide a response to this question.

20 users have never been stopped or turned back when using the route, 1 user didn't provide a response, all 21 users have never heard of anyone being stopped or having turned back when using the route.

All 21 users have never been told the route they were using is not a public right of way.

16 users have never seen any notices / signs along the claimed route, 2 users state they hadn't seen any until the fence appeared, 1 user has marked the notices on the map, another user thinks there was a sign / notice from 5 years ago and they have marked this on the map, another user states there are occasional signs.

All 21 users have never asked permission to use the claimed route.

Route 3

The applicant has provided 29 user forms in support of the application.

The users acknowledge the route in years as follows:

0-10(8) 11-20(6) 21-30(8) 31-40(5) 41-50(1) 61-70(1)

All 29 users have used the claimed route on foot.

The years in which they used the route varies:

1962-present 1972-2012 1975-2012 1977-2012 1978-2012 1980-
2012 1987-2012(2) 1988-2012 1989-2012 1990-2011 1991-2011
1991-1994 1997-2011 1999-2012 2000-2011 2000-2012 2001-2012
2002-2012(2) 2003-2012(2) 2005-2012 2006-2012(2) 2008-
2011(2) 2011-2012

The users where going to and from:

Willow Lane to the Lune, to the Quay and back, to the shore, to Aldcliffe, circular route, to Mile Lane, Marsh to Coronation Field, Coronation Field to Riverside Walk, Lune Estuary to Willow Lane, to Freemans Wood, to Glasson Dock.

The main purposes for using this route are as follows:

Recreation, walking, dog walking, cycling, running, pleasure, fitness, walking with children, bird watching, picnics, sport, camping and picking blackberries.

The use of the route per year varies:

Daily, 300+ times, 200 times, 100 times, once per week, mainly weekends, 300+ times, once per month, 20 times, 15 times, 12 times, 8 times, 5 times, twice per year.

2 users have used the route on horseback and by motorcycle / vehicle, 1 user used the route on those means between the years of 1987-2012 during most weekends, the other user used it between 1977-2012. Both users have also used the way by other means, one user specified a bicycle the other did not specify by what other means.

6 other users have also used the route on a bicycle between the years of 1997-2011, 2005-2012, weekly from 1989-2012, 1987-2012 most weekends / monthly, 1988-2000 annually, since 1980 once per week.

6 users agree that they have seen other users using the route on horseback and on motorcycle / vehicle during the years of 1980-2012 (once per week), 2003-2012 (monthly), 1987-2012 (continuously), 1977-2012, 1999-2012 (mainly in summer time), 1997-2011 .

5 other users have seen others using the route on horseback but did not specify during which years.

4 other users have seen others using the way on motorcycle / vehicle, during the years of 1989-2012 (most weekends), 1990-2011 (very occasionally), 2005-2011(in the summer), and since 2000.

The users have also seen other people using the route walking, running, cycling and on mobility scooters.

20 users agree that the claimed footpath line has always run across the same route. 1 user states 'more or less', another user states 'since the cricket and football pitches went the path has remained more or less the same with variations' marked on the map provided, another user has marked variations on the plan, 1 user says the route has run over the same line but claims there are loads of other routes, 1 user states they 'don't know' and another user states 'no' to this question.

None of the users have ever seen any gates / stiles/ fences across the way, however 1 user stated 'not until now'.

None of the users have been prevented from using the way.

No user has ever worked for a landowner over which the route runs, and they have never been a tenant for any of the land over which the route runs.

No one has ever been stopped or turned back when using the route, and 2 users have heard of someone else being stopped or turned back since the fence went up.

None of the users have ever been told that the route they were crossing is not a public right of way.

22 users have never seen any signs or notices along the claimed route, 5 users have seen signs since the fence appeared in 2012, 1 user has seen a sign / notice from 5 years ago and has marked this on the map and another user has seen signs marked on the map from 7 years ago.

None of the users have ever asked permission to walk across the claimed route.

1 user has provided a user form for all 3 of the claimed routes, their evidence is as follows:

They have known the routes for 48 years and have used the routes on foot, they have used the routes for all the 48 known years, and the main purpose for using the routes is for recreation, the user uses these routes several times per year.

The user claims to have used the routes on horseback and bicycle between all 48 years, they have also seen others on horseback, walking and cycling between those same years.

No response was provided for the routes running over the same lines, and for the questions about stiles / gates / fences, but does claim they were never prevented access.

They have never worked for a landowner over the land which the routes run, and they confirm they have never been a tenant for any of the land over which the routes run.

The user has never stopped or turned back when using any of the routes, and has never heard of anyone else having stopped or being turned back.

They have never been told that any of the routes are not public rights of way, and have never seen any signs / notices along any of the claimed routes, they have also never asked permission to access these routes.

Objections

Lune Industrial Estate Limited – Landowner

Lune Industrial Estate Limited do not believe that there is any footpath across their land and therefore object to the making of any order relating to footpaths along any of the routes shown on the plans. They understand that the area was previously zoned for industrial development but that ultimately only part of the zoned area was developed. Part of the undeveloped area was used by one of the industrial estate occupiers as a sports ground and when they ceased to have use for it the local football and cricket clubs were allowed to use the sports fields.

They have maintained signage insofar as possible indicating that the area is private property but the signs have always been ripped up or defaced along with the fencing that has been erected at various times to prevent unauthorised access.

As part of their objection they provide a copy of an affidavit sworn by Mr David Cadman who has been familiar with the site over many years. The main points he raises are as follows:

- When manufacturing ceased the area was principally used for tipping and other waste disposal and it was only when that ceased that parts became overgrown.
- He has been involved with and for the most part directly responsible for day to day management of the land since 1980, he mentions that measures have been put in place at various times over the years to stop travellers moving onto the site.
- He also mentions that part of the site was once the Sports Ground of Nairn Williamson Limited and Lancaster Cricket Club and the pavilion remained until it was demolished in November 1997 for health and safety reasons after not having been sued for many years.
- On a number of occasions fencing has been erected with signs stating that it is private property land and that public access is not permitted, on each occasion the fencing has been vandalised and signs have been destroyed. In particular he remembers arranging for damage to the fencing around the site to be repaired in April 1998 and again in January 2004.
- Signs warning that the site was private land and access only permitted with permission were erected at the same time as the fencing was repaired. Photos of the remains of some of the fencing and of the signs have been provided as part of the Affidavit.
- The site was previously zoned for industrial use and regarded as brownfield land, there has been various attempts to have the site rezoned going back to 1999 and have been refused and there were concerns that some or all of the site might be contaminated.

Lune Industrial Estate have spoken further with Mr Cadman and he confirms that there is no public footpath nor habitually used footpath across this land and that whilst it has been used by dog walked efforts have continuously been made to prevent such unauthorised use but as already mentioned fences have been erected regularly but, equally regularly vandalised and damaged as so to allow the continued

unauthorised access onto their property.

They have also provided a copy of an aerial photograph which was taken in the late 1980's which shows there was a path to the Pavilion from the industrial estate which they believe was used by the cricketers whilst they had use of the Pavilion and cricket pitch.

Satnam Investments Limited

An objection has been received from Colin Griffiths the Managing Director for Satnam Investments Limited. They hold a charge on most of the land affected by the 3 footpath claims and intend to object to the Order (if one is made) on the basis that the claimed footpaths are not valid or established.

. They understand that the area was previously zoned for industrial development but that ultimately only part of the zoned area was developed. Part of the undeveloped area was used by one of the industrial estate occupiers as a sports ground and when they ceased to have use for it the local football and cricket clubs were allowed to use the sports fields.

They understand that the owners for the land have ensured signage has been maintained indicating that the area is private property but signs have always been ripped up or defaced along with fencing which has been erected various times to prevent unauthorised access.

Satnam Investments have seen the affidavit sworn by Mr David Cadman who has been familiar with the site over many years, they state that when manufacturing ceased the area was principally used for tipping and other waste disposal and it was only when the ceased that parts became overgrown.

They also state that Mr Cadman confirms that there is no public footpath nor habitually used footpath across this land and that whilst it has been used by dog walkers efforts have been continuously made to prevent such authorised use but as mentioned, fences have been erected regularly but equally, vandalism and damage has occurred to allow the continued unauthorised access to the property.

Satnam Investments have read copies of the application forms for the claimed footpaths and note the user forms are of a standard nature with bland and repetitive claims of an unsubstantial nature. They state they have clearly been collected with a strategy in mind and many of the comments are repeated and similar. As such they do not constitute proper, independent or verifiable evidence of footpath use / creation.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence

Aerial photography

Site evidence
Photographs of site
Reference by the owners to use by dog walkers

Against Making an Order(s)
No corroboration by earlier map evidence
Sworn affidavit by someone with direct knowledge of landowner actions
Landowner actions
Earliest use of through routes is 1964 when railway closed
Aerial photographs

Conclusion

The claim is that the lines of the claimed routes are already footpaths in law.

It is suggested that this is a case based largely on the user evidence presented and without any express dedication to consider, the Committee is invited to consider the evidence to see if the provisions of S31 Highways Act are satisfied on balance or whether the use of the paths is a circumstance from which dedication by an owner could be inferred at common law.

Section 31 requires the route to have been called into question so that a twenty year period can be considered. The Application itself is a calling into question but there has been the fencing and locking of gate and signs erected which prompted the application in 2012. The owner's information swears to other actions being taken earlier than that and if any action was sufficiently brought to the attention of a reasonable number of the users that their use was being challenged, then that earlier action would call the route into question. The difficulty faced in this matter is reference to actions being taken yet the users were not prevented. Many do not recall signs or fencing and even if they did they did not seem to consider that it challenged their use. The actions on balance seem not to have been an effective calling into question until 2012 and the twenty year period to consider would be 1992-2012.

There would appear to be sufficient use as of right of all the sections of the route during this period although Committee may have concerns about whether the same line was used over that time. Wandering at will cannot establish a public right. There is reference to possible changes to the line of the route. Whether these changes could in law amount to interruption of the line or changes to the line such that the provisions of S31 could not be satisfied is difficult to decide. It should be noted that under S31 a landowner may erect notices inconsistent with dedicating the route and these can be sufficient evidence of lack of intention to dedicate but the detail of the notices, where they were put, for how long and what they said is also not clear. In this matter an evaluation of the strength of the user evidence and the effect of actions of the owner in detail is difficult. Information from both users and landowner demonstrate lack of clarity.

Case law decided however that where an applicant produces credible evidence of enjoyment as a public right of way for 20 years but there is conflicting evidence about the landowners' actions being sufficient evidence of a lack of intention to

dedicate, the Order should be made unless there is incontrovertible documentary evidence to defeat the claim.

Common law inference of dedication involves considering, in this matter, whether a period of user, not necessarily brought into question and not necessarily 20 years long, was not challenged such that the owner could be said to have intended to dedicate. There is evidence of the owners in the 1980s onwards taking action periodically but no clear detail. That at some action was taken does make it more difficult to infer at common law that that owner must have intended there being a public footpath but there is no evidence of actions taken earlier and there is some early user evidence. There is possibly evidence from which an inference can be drawn of footpaths able to be reasonably alleged to have been dedicated since 1964 even by the 1980s. There is still the need for the line of the path used to be sufficiently evidenced over a long enough period.

Taking the evidence in this matter it is suggested that the user evidence of the claimed line(s) is sufficient from which footpath rights could be reasonably alleged to have been dedicated on the claimed lines. It is therefore advised that there is sufficient evidence in this matter for an Order to be made.

Whether there is sufficient evidence to find on balance the deemed dedication or dedication by inference at common law such that the lines can be said to subsist is more difficult at the present time. It is suggested that once the Order has run its course there will be an opportunity for further information to have been submitted and for user evidence to be considered in more detail and a further report presented as to whether this higher test for confirmation could on balance be satisfied and what stance the authority should take in respect of the Order.

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: 804-541,542,543] | various | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

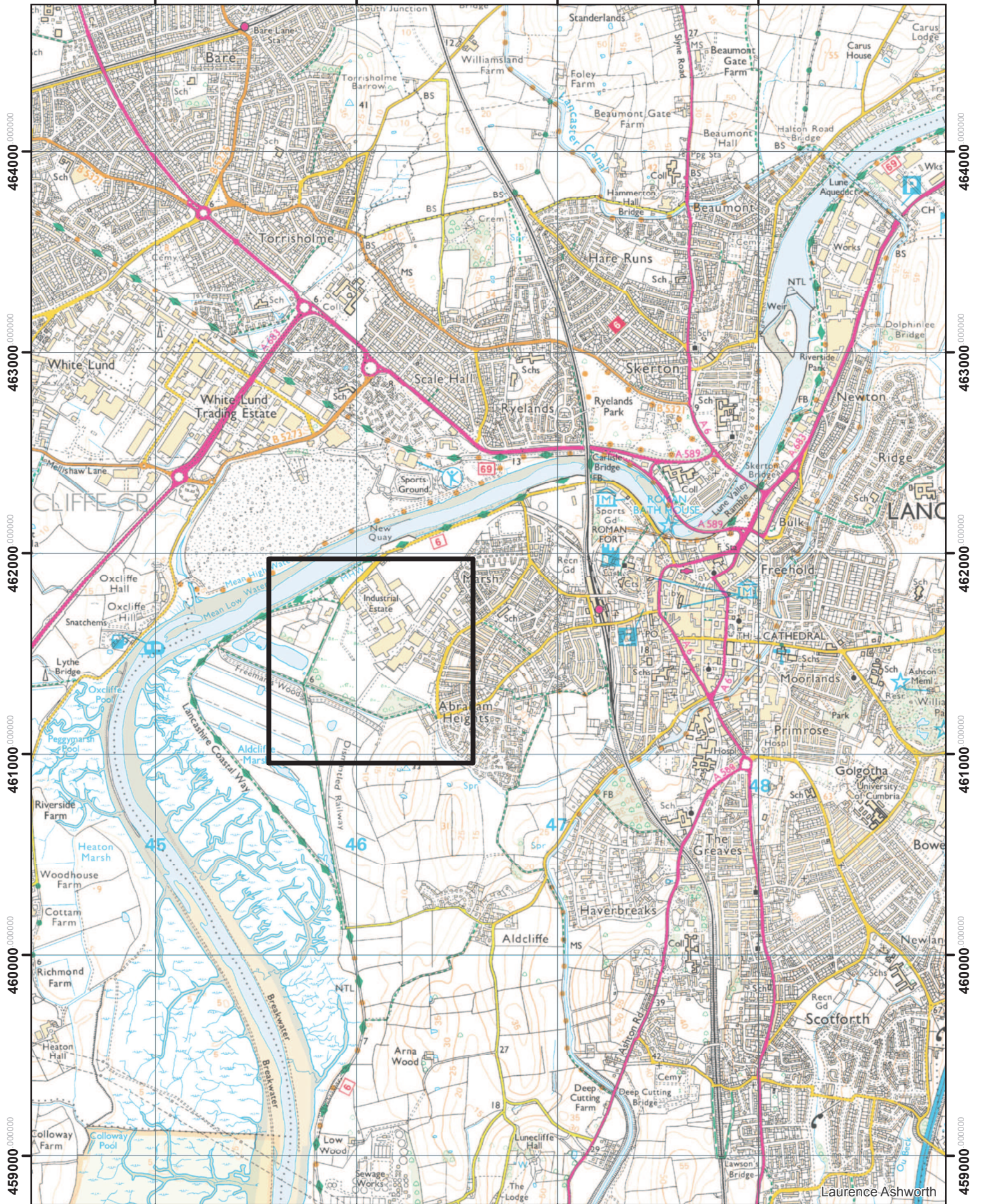
N/A

345000 000000

346000 000000

347000 000000

348000 000000



345000 000000

346000 000000

347000 000000

348000 000000



Steve Browne
Interim Executive Director
for the Environment

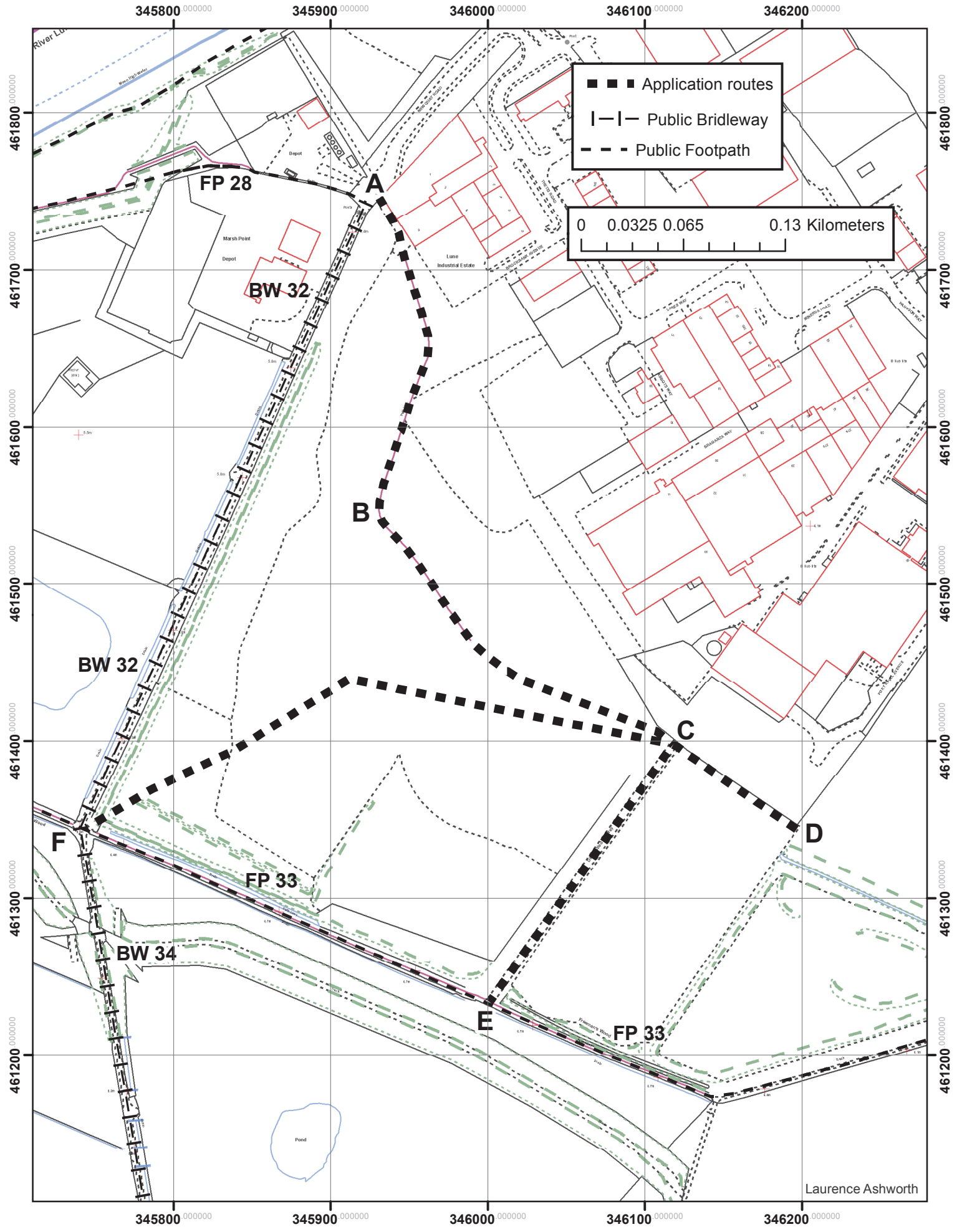
Wildlife and Countryside Act 1981
Application of three Public Footpaths across Coronation Field, Lancaster City
Application Nos. 804-541, 804-542, 804-543 **LOCATION PLAN**

1:24,000



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.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981
Addition of three Public Footpaths across Coronation Field,
Lancaster City Application Nos. 804-541, 804-542, 804-543

1:3,000



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

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|--|
| Electoral Division affected: West Lancashire East |
|--|

Wildlife and Countryside Act 1981

Application for Addition of Bridleway from Old Lane, Mawdesley, Chorley Borough to Old Lane, Bispham, West Lancashire District

File No. 804-445

(Annex 'A' refers) (Appendices A, B, C and D refer)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

The consideration of a new Order to add to the Definitive Map and Statement a public bridleway from Old Lane, Mawdesley, Chorley Borough to Old Lane, Bispham, West Lancashire District, in accordance with file no. 804-445.

Recommendation

1. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from Old Lane, Mawdesley to Old Lane, Bispham on the Definitive Map and Statement of Public Rights of Way using the correct notation and specifying the width of the Order route as varying between 3-8 metres as shown on the Ordnance Survey 25 inch Map surveyed 1892 and published 1894.
2. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation, if necessary at public inquiry.

Background

Committee at its meeting on 27 June 2007 considered the report attached as Appendix A and accepted the application to add to the Definitive Map and Statement of Public Rights of Way a public bridleway extending from the point where the recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District and running in a general southerly direction for a distance of 195 metres to

meet the recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District.

An Order was made on 22 August 2007 (Appendix B) and objections received from 5 local residents and from the Byways and Bridleways Trust.

The Byways and Bridleways Trust objected to the 2007 Order because there was no legal width specified in the 2007 Order for the bridleway. The County Council accept that this is a valid objection (as the Order specified that the route was 'approximately 3 metres wide') and therefore propose that if the Committee agree to remake the Order the width of the Order route is specified as varying between 3 and 8 metres as shown on the 25 inch Ordnance Survey Map surveyed in 1892 and published in 1894 and that these details be added at the end of the entry in Part II of the Schedule of the Order.

The main points for the other objections include landowners not wanting vehicles such as trail bikes, off-road 4 wheel drives and others vehicles coming past as they will also be noisy. Objectors mention there will be a severe loss of privacy, the route is in a poor state and horses will make it worse, youths would create noise and disturbance, horses leave mess which end up in residents gardens and that there are health and safety issues, 1 objector states that after 41 years it has never been used as a bridleway and another objector mentions some of the maps show a narrow bridge which would suggest it is only a footpath.

As none of the objections have been withdrawn Lancashire County Council cannot confirm the Order and submitted it to the Planning Inspectorate for determination.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

The Order Map for this Order contains the incorrect notation to depict the route to be added. The notation which should have been used on the Order Map to show a public bridleway is shown either by a continuous green line, a continuous line with cross bars at intervals or by a broken black line with cross bars in the intervals. The Order Map however, shows the public bridleway as a solid black line instead, and such this does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised that '*...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.*' The Authority had therefore reasonably assumed that when this Order was referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would

be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011, the modification was requested.

However, without notice, the Planning Inspectorate Advice Note 22 has been revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, *'all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.'*

The Planning Inspectorate returned the Order referred to them as it contains the incorrect notation.

It is suggested a second Order be made which deals with both the legal width error and the incorrect notation to the Definitive Map and Statement. It is therefore suggested to Committee that a new Order be made. This course of action would resolve :the issue of the incorrect notation; the concerns raised in the objection from the Byways and Bridleways trust and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the Order be confirmed.

Committee it is advised that no further evidence has come to light or information from any objector to the earlier Order which would alter the evaluation of evidence and recommendations made in the Committee Report of 27 June 2007, as attached as Appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however, the entire report considered by Committee on 27 June 2007 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Taking all the evidence into account it is suggested to Committee to accept the claim to make a new Order and if made promote to confirmation, if necessary at public inquiry.

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: 804-445 | Various | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 27 June 2007

Part I - Item No. 7Electoral Division affected:
West Lancashire East**Wildlife and Countryside Act 1981****Claimed Public Bridleway from Old Lane, Mawdesley, Chorley Borough, to Old Lane, Bispham, West Lancashire District****Claim No. 804/445**

(Annex 'A' refers)

Contact for further information:

Ms J Blackledge, 01772 533427, County Secretary & Solicitor's Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for a Public Bridleway from the point where recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District, to recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/445.

Recommendation

- i. That the Claim for a Public Bridleway from Old Lane, Mawdesley, Chorley Borough, to Old Lane, Bispham, West Lancashire District, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/445, be accepted; and
- ii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway from Old Lane Mawdesley Chorley Borough, (GR.4954 1374) for a distance of approximately 195 metres to meet Old Lane, Bispham, West Lancashire District, (GR 4950 1355) and shown between points A-B on the attached plan.

Background

A claim has been received for a Public Bridleway extending from the point where recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District, Grid Ref 4954 1374, and running in a general southerly direction for a

distance of 195 metres to meet the recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District, at Grid Ref 4950 1355 and shown between points A - B on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

The claim has been made to record the status of this section of route as it is not recorded on any records held by the County Council. The section to the north is recorded as unclassified road U1318 and is considered to be at least bridleway. The section to the south is recorded as unclassified road U458 and this too is considered to be at least bridleway.

Consultations

District Council

As the whole of the claimed route falls within West Lancashire District Council, they have been consulted but no reply has been received to date

Parish Council

Bispham Parish Meeting has been consulted and they have written expressing their support for the application. They quote from the Bispham Parish Millennium Book 2000 A.D., which describes "Nelsons Walk" along Old Lane, which until World War II was tree-lined. The Chairman of the Parish Council has lived locally for 33 years and although specific names and addresses are not given, the Parish Council has spoken to many local people who recall walking, cycling, and in one case riding in a motor vehicle along the claimed route. Since the Baillie family moved into the area in mid 1960s Old Lane has deteriorated due to heavy use by tractors and trailers to the point where it proved impassable in winter. Several years ago the pipes culverting Bentley Brook under Old Lane became blocked and Mr Baillie dug them up, leaving the brook to wash over Old Lane, effectively closing it.

Claimant/Landowners/Supporters/Objectors

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

Advice

Executive Director of Environment's Observations

Site Inspection

The claimed route forms part of a longer route known to both the north and south as Old Lane linking Back Lane, Mawdesley to the north, with Lee Lane, Bispham to the south.

To the north of the claimed route Old Lane (Mawdesley) is approximately 3 metres wide with a compacted earth surface. The lane is open and accessible to the public.

The claimed route commences on the District and Parish boundary between Mawdesley (Chorley Borough) and Bispham (West Lancashire District) at point A on the plan (GR 4954 1374).

The District and Parish boundary follows Bentley Brook and has been culverted where it is crossed by the claimed route. The culvert is not immediately apparent due to overgrowth but the surface of the route incorporates three large slabs of stone which have been set in the compact earth surface. The surface of the claimed route does not differ from Old Lane (Mawdesley) and other than the culvert there are no physical features marking the end of the lane and the start of the claimed route.

From point A the claimed route extends in a south south-westerly direction bounded to the west by a mature hawthorn hedge with gated access into the adjoining field. Along the eastern side of the claimed route the track is fenced from the adjacent field by a simple wooden post and wire fence with a field gate providing access into the field close to point B.

Between point A and point B the claimed route is a total of approximately 195 metres long and 3 metres wide. It has a hard compacted earth surface. There are no gates or obstructions preventing access and no signs indicating whether or not the route is public.

The claimed route ends at point B (GR 4950 1355) where it meets Old Lane (Bispham). To the east of point B a pond is marked on the Ordnance Survey Map which has been largely filled in but is still evident on the ground.

Point B is not marked by any physical features and the continuation of the route southwards to Sill's Farm is identical in both width and surface type.

The section of claimed route appears no different in character to the two sections of Old Lane that it connects to.

Maps and Documents

A variety of maps, plans and other documents were examined to find out when the claimed route came into being, and to try to determine what its status might be.

The first map examined was Yates' map of 1786. This does not show Old Lane or Lee Lane.

Greenwood's map of 1818 shows the claimed route, and Old Lane (Bispham). The claimed route crosses the brook at point A but does not extend northwards.

Stockdale's map of 1818 is roughly drawn, but it does not appear to show the claimed route nor either part of Old Lane.

Hennet's map of 1830 shows the area in much the same way as Greenwood - the claimed route is shown, but it does not extend northwards beyond the brook into Mawdesley.

The tithe map of Bispham, produced in 1845, shows the claimed route as the northern end of a wide lane between fields, named as Lee Lane. The lane including the claimed route is coloured but there is no key to the map to explain what the colouring means. At the northern end of the claimed route Bentley Brook is shown flowing across the lane with a narrow bridge or crossing provided in the centre (presumably to allow pedestrians to cross the stream without getting their feet wet). The lane is numbered, and in the written schedule that accompanies the map this number is described as a “public road”. The public roads listed in the tithe schedule do not have details of either an owner or occupier.

In the first part of the schedule are all the parcels of land in private ownership. Several ‘roads’ are listed here too, but are recorded with both an owner and occupier. These roads are shown ending at farms or fields, and are described as ‘accommodation road’, or ‘road and waste’. There is a clear distinction between the first part of the schedule (land in private ownership) and the second part. As the claimed route is in the second, it would reinforce the view that the claimed route was recorded as a highway for public use whilst those in the first section were private accommodation roads to land or property.

The tithe map for Mawdesley produced eight years earlier in 1837 shows the continuation of the claimed route northwards as an open, unobstructed lane. The brook is shown on this map too, and shows the water flowing across the lane with a central narrow bridge or crossing. The lane is shown coloured and numbered, but there is no key on the map to show what the colouring means. The number on the lane is shown at the end of the written schedule, after land listed earlier in private ownership. It is simply shown under ‘Roads’ and there is only one number used in this category which is used for all the coloured lanes and roads on the parish map. Other features listed without an owner or occupier are commons and a pincfold (a pound for stray animals). As in the Bispham schedule, there are a number of roads listed in the first part of the Mawdesley schedule with a named owner and occupier, called ‘occupation roads’. Nine are listed, with a number, but not coloured on the tithe map. As in the Bispham tithe schedule, there seems to be a clear distinction between public and private property, including what were regarded as public roads, as opposed to private occupation ones.

The claimed route therefore links to a “road” to the north which appears to be in the category of highways for the public.

The claimed route, and its extension to the north and south, is shown on all Ordnance Survey maps examined. The first edition of the 6-inch map published in 1848 shows the claimed route as part of a longer lane, open and unobstructed, and shown in the same way as other lanes and roads in the area. The claimed route is named as part of Old Lane. Bentley Brook is shown flowing across the lane at the parish boundary (as on the tithe maps) and the little central bridge or crossing is shown too.

The first edition of the 25-inch map published in 1894 shows the claimed route as part of a longer lane, as on the earlier 6-inch map. The lane is not coloured, or shaded to one side (which would have indicated that it was thought by the surveyor to be a metalled public road for wheeled traffic kept in good repair by the highway

authority). Other lanes in the area are shown coloured and shaded. There are no gates or other barriers across the lane. It narrows as it crosses the brook.

The lane continued to be shown in the same way on the 25-inch maps of 1908 and 1928.

The Ordnance Survey kept detailed records of changes they made to various editions of their maps, including the names of buildings and roads. An extract from the Ordnance Survey 'Names Book' dated 1907 has been obtained from The National Archives. Old Lane and Lee Lane are listed on the relevant sheet with no change required. In a column headed 'Descriptive Remarks, or other General Observations which may be considered of Interest' an entry is made relating to Old Lane thus 'Applies to a District Road extending from a point 5 chains S of Sill's Farm to Back Lane at Beech House'. The point 5 chains (about 100 metres) south of Sill's Farm would correspond with the property Blackleage Cottage, and Beech House is located at the northern end of Old Lane in Mawdesley where it joins Back Lane. This "District Road" therefore includes the claimed route.

The comment about Lee Lane states that it too is a "District Road which extends from Maltkiln Lane to a point 5 chains south of Sill's Farm at the south end of Old Lane". Evidence from the Ordnance Survey Names Book therefore points to the view that the claimed route, and the lengths of lane on either side, were all considered to be sections of District Road and this indicates that their status was considered to be public.

Maps produced under the requirements of the 1910 Finance Act were examined. The act required all land in private ownership to be recorded so that it may be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels "should continue to be exclusive of the site of the external roadways". It is advised that roadways were said to be routes "subject to the rights of the public" and therefore exclusion of a route indicates that public use was known but not necessarily vehicular status.

In this instance the claimed route is shown outside privately owned land, as is the whole of Old Lane, Lee Lane, and other roads in the highway network of the parish including Back Lane and Maltkiln Lane. This excluding of these routes indicates that the claimed route's status and that of Lee Lane, Back Lane and Maltkiln Lane were recorded as public

A street atlas published by Geographia around 1934 shows the claimed route as part of a longer lane called Lee Lane in the south, and this route was called Old Lane from just south of Sill's Farm. There are no obstructions on the route (such as gates or other barriers). Bentley Brook is shown flowing under the lane at point A. The lane is shown at the same width as other lanes in the area (such as Maltkiln Lane and Back Lane). Other tracks and paths, some of which are now shown as public footpaths on the Definitive Map, are shown as narrower lanes or tracks, or two rows of pecked lines. 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 streets and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

On the 1953 1:25 000 map the route is shown coloured in a way to denote a 'good metalled road', in a category of road below 'trunk and main road' and 'secondary road'. The colouring encompasses the whole of Old Lane (in both parishes) and Lee Lane.

The 1955 6-inch map shows and names the claimed route as Old Lane. The whole route is shown open and unobstructed, other than the brook flowing across the lane on the parish boundary.

The 25-inch map published in 1960 shows the claimed route in the same way as earlier maps. The whole route from Back Lane to Maltkiln Lane is open and unobstructed, and named as Old Lane. At point A on the parish boundary the brook flows across the lane with a central bridging point or culvert.

The 1:25 000 OS Pathfinder map published in 1989 shows the claimed bridleway as part of an uncoloured through-route called Old Lane.

The claimed route is not shown on the Definitive Map, and has never been shown on any map produced in preparation of the current Definitive Map. Two public footpaths are shown joining Lee Lane (south of Old Lane) in Bispham, and two joining Old Lane in Mawdesley. The statements (and parish descriptions) of these paths refer to them starting or finishing on one or other of the lanes. As the lane was not shown as a public right of way on the parish maps for Bispham and Mawdesley, the parish councils must have believed that the lane was a public highway of a higher status than footpath or bridleway, and as such should not be shown on the survey map. There were no objections to the omission of the lane from the record of public rights of way at any stage of preparation of the current Definitive Map.

A parish history of Mawdesley and Bispham, written in 1981, describes the lane as 'a favourite walk for generations' in the section of the book describing footpaths in the area. The author says that the road across Bentley Brook collapsed during the war (it was not specified whether he was referring to the first or second world war) and that the bridge there was subsequently replaced by a large pipe.

Lancashire County Council highway maintenance records show that Old Lane in Mawdesley is recorded as a highway maintainable at public expense to the parish boundary at point A, whilst Old Lane is similarly recorded from point B southwards. the whole of Lee Lane is also so maintained. The claimed route is not included on these records, and so in effect Old Lane (Mawdesley) and Old Lane (Bispham) are not a through route as far as the public liability for maintenance is concerned. There is no explanation on the record as to why the claimed route is excluded. It is considered that although the maintenance records do not state the type of highway it is advised and Committee may consider that both highways north and south of the claimed route are highways of at least bridleway status.

Records were searched for any recorded extinguishment of highway rights on the claimed route but no such extinguishment has been found.

Summary

The claimed route has been shown on maps since 1818, although not as a through route until the mid 1800s. The tithe map for Bispham refers to the claimed route as a public road, and the tithe map for Mawdesley also gives that indication. Ordnance Survey maps have consistently shown the claimed route as part of a longer lane from 1848 to the present day, with no obstructions other than Bentley Brook flowing over part of the width of the track. In 1907 the Ordnance Survey recorded that the claimed route, and the lanes at either end, were District Roads (although it is not known exactly what is meant by this term, it could be reasonable to infer that they were maintained by the district council). The 1910 Finance Act map shows the route as a public highway, and the parish council in 1951 omitted the lane from its survey map of public rights of way. In conclusion therefore, map and documentary evidence clearly points to the claimed route being of public highway status. No evidence has been found to show what classes of traffic have used the claimed route, and a local historian has recorded that a bridge over Bentley Brook collapsed and was replaced by a pipe.

It is advised that the evidence does indeed support the application that the claimed route has been recorded as a highway being part of the public highway network over many decades. It is suggested that the evidence indicates that the status of the claimed route is likely to be higher than a footpath and therefore at least bridleway.

County Secretary & Solicitor's Observations

Information from the Applicant

The applicant has not submitted any user evidence in support of the claim but did submit some of the documentary evidence considered by the Environment Director.

Information from Others

The claimed route links two lengths of adopted highway and is known as Old Lane. Ownership of the length of Old Lane which is the subject of the claim is not registered. Mr & Mrs Baillie of Sills Farm are the registered owners of land on both sides of Old Lane which passes through their farmyard to the south of the length being claimed.

Mr Baillie does not believe the route to be a bridleway and although the family has always allowed riders to use the route the riders have almost always asked permission. Mr & Mrs Baillie have never had any intention that the route should become a public bridleway. In support of this they submit 7 letters from members of the public who confirm that they have used the claimed route on horseback for periods of between 14 and thirty five years, but only after asking permission from the Baillie family. One of these users is a farrier and another who has run livery stables nearby for the past 24 years states that their customers have used the route, yet they have never considered it to be a public bridleway, but have used it with

permission from the Baillie family. Four of these letters specifically state that they have never considered the claimed route to be a public bridleway.

A letter from The Holcombe Hunt confirms that they have hunted on Old Lane past Sills Farm and through to Mawdesley with permission from the Baillie family. The route was obstructed by shrubbery prior to 1976, when Mr Peter Baillie bought the neighbouring Cedar House Farm and cleared the undergrowth.

This clearance of the briars and gorse obstructing the track when his father (Mr Peter Baillie) bought Cedar House Farm in 1976 is confirmed by Mr George Baillie and also by Mr Geoff Monk, who has lived on and farmed the land adjoining Sills Farm for the past 75 years. Mr Monk's family farmed at Sills farm in the 1800s, being followed as tenants by the Dickinson family in the early 1900s, and then the Baillie family in the mid-1900s. To his knowledge it has only ever been a private road belonging to the farm and has never been a bridleway. He points out that the running of a dairy farm necessitates gates across the track in order to control the daily movement of large numbers of cattle.

Mr Baillie draws attention to a "cul-de-sac" sign erected by the County Council in 2003 at the end of Old Lane, the earlier signs having disappeared during a local beer festival, and has provided a photograph of this sign.

For the past forty years Mr Baillie states that the route through the farmyard has been closed for three hours in the morning and evening while cows are being milked. Sills Farm is a busy farm with five hundred and sixty cattle, of which photographs are provided, and heavy farm machinery moving around. Mr Baillie is concerned about both riders' safety if the route were to be used more often, and the possibility of cattle escaping onto the highway if gates were to be left open. (However this farmyard is not on the claimed route but on a part of Old Lane further to the south.)

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Strong historical documentary evidence

Against Accepting the Claim

If the historical evidence is considered insufficient, lack of user evidence and the more recent history of the route would make accepting the claim more difficult

Conclusion

The claim is that this section of Old Lane is already a bridleway and should be recorded on the Definitive Map as such.

As there is no written dedication and no user evidence it is advised that Committee is unable to find express dedication or deemed dedication under S31 Highways Act 1980. Instead it is for Committee to consider whether the evidence of how the route has historically been recorded is sufficient from which to infer that the route was dedicated to public use many decades ago. It is advised that if dedication can be inferred historically, any evidence that the route became less easy to use or permissions have been given more recently would not affect the dedication. The highway status would remain as the highway has not been extinguished by due legal process.

It is suggested that the Executive Director of Environment's view is that there is strong evidence from which to infer public status. The records appear to present a consistent view of the claimed route being a section of a through highway route. It is therefore advised that the Committee may consider on balance that the claimed route has some sort of highway status.

The claim is that it be recorded as a bridleway. It is advised that it is open to the committee to consider whether there is on balance evidence from which to infer that the type of highway is other than bridleway.

It is advised however that there is no significant evidence in this matter of what types of public traffic have used the route and when. Looking therefore at how the route has been recorded it is the case that the lane is of vehicular width and has been recorded as part of a "public road" in the Tithe records, a "District Road" in the 1907 Names Book, and a "roadway" in the Finance Act records.

This wide route and the way it has been recorded would, it is suggested make it likely that the claimed route is of higher status than a footpath. It is however advised that the term "public road" may not in itself mean that a route was in the mid nineteenth century a route used by the public in carts and carriages nor that excluding a route from hereditaments in the Finance Act records meant that it was vehicular. Likewise the term unclassified county road today does not of itself mean that a route carries public rights for mechanically propelled vehicles.

It is also advised that even if, on balance the Committee consider that the route may have become a public vehicular highway for mechanically propelled vehicles those mechanically propelled rights may have been extinguished under the recent provisions of the Natural Environment and Rural Communities Act 2005. Only if certain exceptions applied would mechanical vehicular rights be saved and it is advised that there is no evidence presented as to whether it was in use by mechanically propelled vehicles before 1930 and other exceptions are unlikely to apply.

It is therefore advised that without sufficient evidence of either early vehicular use by carts or carriages or more modern mechanically propelled vehicular use in the last century the Committee may consider that there is not sufficient evidence to indicate that the claimed route has been dedicated to the public for use by vehicles. It is suggested that on balance the route is a highway of higher than footpath status and if satisfied that this is the case the Committee, taking all the evidence into account,

may consider that the route on balance can be inferred dedicated to the public as a bridleway as claimed, and that the claim be accepted.

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

| Paper | Date | Contact/Directorate/Ext |
|--|------|--|
| All documents on Claim File Ref: 5.27936(804/445) | | J Blackledge, County Secretary & Solicitor's Group, 01772 533427 |

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981
THE LANCASHIRE COUNTY COUNCIL
(DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE
COUNTY OF LANCASHIRE)
(DEFINITIVE MAP MODIFICATION) (NO. 8) ORDER 2007

This Order is made by the Lancashire County Council under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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 to which that Part applies.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. The Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 22nd August 2007.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Lancashire County Council (Definitive Map and Statement of Public Rights of Way) (Definitive Map Modification) (No. 8) Order 2007.

Dated this 22nd day of August 2007.

THE COMMON SEAL of the Lancashire County Council was hereunto affixed in the pursuance of a Resolution passed at a meeting of the Regulatory Committee duly convened and held on the 27th June 2007



Authorised Signatory



17220

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF BRIDLEWAY TO BE ADDED:

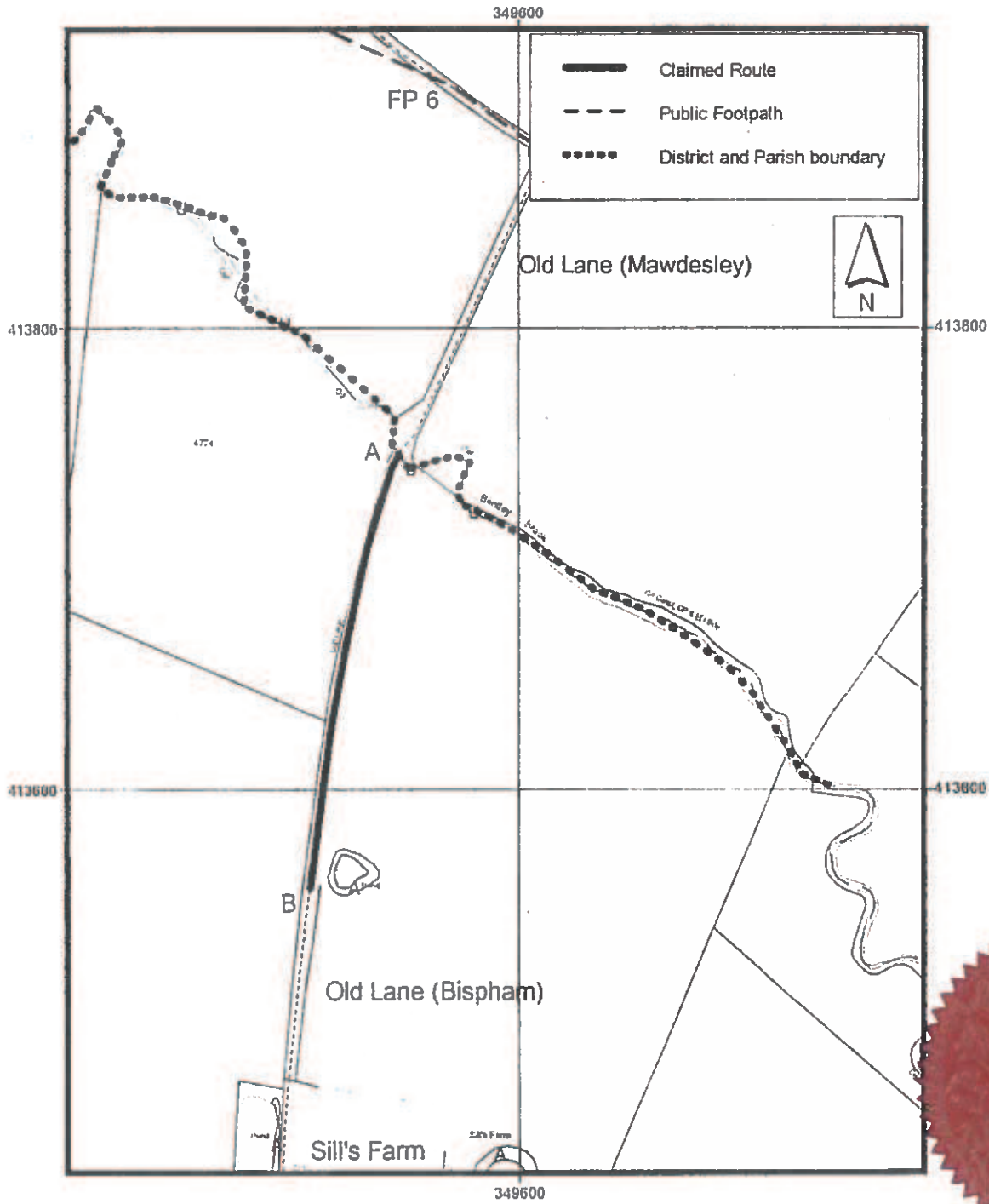
Bridleway from the point where the recorded unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District, running in a general southerly direction for a distance of 195 metres to meet the recorded section of unclassified road U458 known as Old Lane, Bispham, West Lancashire District, shown as a bold black line marked A – B on the attached plan.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

The following entry be added:-

“Bridleway, from the point where the unclassified road U1318 known as Old Lane, Mawdesley, Chorley Borough, reaches the boundary between Chorley Borough and West Lancashire District at GR SD 4954 1374, crossing the culvert containing Bentley Brook, and running along a hard compacted earth surface approximately 3 metres wide in a south south-westerly direction for a distance of approximately 195 metres, to meet U458 Old Lane, Bispham, West Lancashire District, at GR SD 4950 1355.”



1720

Reproduced from the 1:2500 scale Ordnance Survey map with the permission of the
 Controller of her Majesty's Stationery Office. Crown Copyright reserved, Licence No 100023320

Part of sheet
[Signature]
 Authorised Signatory



RIGHTS OF WAY SECTION

ADVICE NOTE No 22

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS


Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure that it is valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various lines styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. For the avoidance of doubt, the notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads. Several options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.

6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011¹. This still applies except in those cases where the error is significant and clearly misleading.

¹ We felt that this was only fair considering that we had identified that we had not been applying our policy of rejecting orders containing incorrect notation consistently.

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a continuous bold black line and ways to be added as a bold broken black line.

15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.



RIGHTS OF WAY SECTION

ADVICE NOTE No 22

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Agenda Item 9

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|--|
| Electoral Division affected: Longridge with Bowland |
|--|

Wildlife and Countryside Act 1981

- 1) Claimed deletion of Part of Public Footpath No.129 Chipping, Ribble Valley Borough
- 2) Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane

File Nos. 804-472 and 804-476

(Annex 'A' refers) (Appendices A ,B,C and D refer)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

1. The consideration of the Order for part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages to be deleted from the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-472; and
2. The Order for a Public Footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-476.

Recommendation

1. That both the 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 4) Order 2011' and 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 5) Order 2011' made pursuant to the Committee decision on 23 September 2009 in relation to:

The claimed deletion of part of Public Footpath No.129 Chipping, Ribble Valley Borough; in accordance with File No. 804-472 and the claimed addition of a public footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane; be submitted to the Planning Inspectorate for rejection or non-confirmation for reasons as detailed in the report

2. That a further single Order be made pursuant to Section 53 (2)(b) and

Section 53(3)(c)(i) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete part of Public Footpath No.129 Chipping and add a public footpath from Public Footpath No. 129 Chipping to Fish House Lane, Chipping, Ribble Valley Borough on the Definitive Map and Statement of Public Rights of Way using the correct notation to depict both the routes on the Order Map and clarifying the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.

3. That being satisfied that the tests for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 23 September 2009 considered the report attached as Appendix 1 and accepted both the applications for the:

- 1) Deletion of part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages, Ribble Valley Borough from the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-472; and
- 2) Addition of a public footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane, Ribble Valley Borough to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-476.

Subsequently, two separate Orders to delete part of the existing public footpath and to add a public footpath were made on 12 January 2011, deletion Order attached as Appendix B.

No objections were received to the Order (the addition Order)'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 5) Order 2011 which related to the addition of a public footpath to the Definitive Map and Statement. The County Council could in the circumstances confirm this Order.

However, a single objection was made to the Order (the deletion Order) , 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 4) Order 2011 relating to the deletion of part of Public Footpath No. 129 Chipping from the Definitive Map and Statement. The objection was on the basis that the matter would have been more properly dealt with by means of a single Order which would have more correctly included the modifications to be made to the existing Definitive Statement. As the objection has not been withdrawn, Lancashire County Council as the Order Making Authority cannot confirm this Order but must submit this Order to the Planning Inspectorate for determination.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be

used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

The Order Map for this deletion Order contains the incorrect notation to depict the route to be deleted. The notation which should have been used on the Order Map to show the public footpaths is either a purple line, a continuous line with short bars at intervals or by a broken black line with short intervals. The Order map however, shows the public footpath which is to be deleted as a solid black line instead, and as such this does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised that *'...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.'* The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, *'all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.'*

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate., It is suggested to the Committee that in the circumstances the current deletion Order (attached as appendix B) will not be capable of being confirmed. It is advised that this deletion Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning footpaths at this location, the making of a new Order should properly be considered

It is suggested to Committee that in order to resolve the procedural objection to the confirmation of the deletion Order, it may be considered preferable to remake a single order which deals with both the deletion of part of Public Footpath 129

Chipping and the addition of a public footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane to the Definitive Map and Statement. It is therefore suggested to Committee that a new Order be made and both the Orders made in 2011 are submitted to the Planning Inspectorate requesting these are not to be confirmed. This course of action would resolve :the evidence the authority has regarding footpath s at this location; the issue of the incorrect notation; the concerns raised in the single objection; and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.

Committee it advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 23 September 2012, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however; the entire report considered by Committee on 23 September 2009 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Taking all the evidence into account it is suggested to Committee to accept both claims and to make a single order dealing with both the deletion of part of public footpath No. 129 Chipping and the addition of a public footpath from public footpath no.129 Chipping to Fish House Lane, Ribble Valley Borough. Committee should note the new Order, if made would be 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 |
|--|------|---|
| All documents on File Ref: 804-472 804-476 | | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 23 September 2009

Part I - Item No. 6Electoral Division affected:
Longridge with Bowland**Wildlife and Countryside Act 1981**

- 1) **Claimed deletion of Part of Public Footpath No.129 Chipping, Ribble Valley Borough**
- 2) **Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane**

Claim No. 804/472 and 804/476

(Annex 'A' refers)

Contact for further information:

Saleha Khalid, 01772 533427, County Secretary & Solicitor's Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

1. The claim for part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages be deleted from the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/472; and
2. The claim for a Public Footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/476.

Recommendation

- i. That the Claim for part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages be deleted from the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/430, be accepted; and
- ii. That the Claim for a Public Footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/476 be accepted.
- iii. That an Order be made pursuant to section 53 (2) (b) and section 53 (3) (c) (iii) to delete from the Definitive Map and Statement of Public rights of Way the footpath from a point at GR 6182 4348 on Fish House Lane, Ribble Valley Borough for a distance of approximately 72 metres to GR 6179 4354, on Public Footpath 129 Chipping, Ribble Valley Borough and shown between points A- H on the attached plan.

Recommendation continued...

- iv. 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 footpath from a point on Public Footpath 129 Chipping, Ribble Valley Borough (GR 6179 4354) for a distance of approximately 20 metres to Fish House lane, Chipping (GR 6177 4353) and shown between points H- I on the attached plan.
- v. That, being satisfied that the tests for confirming said Orders at c) and d) can be satisfied, said Orders be promoted to confirmation if necessary by sending to the Secretary of State.

Background

1. A claim has been received for the deletion of part of Public Footpath No. 129 Chipping from point A to point H on the attached plan, a length of 72 metres from GR 6182 4348 to GR 6179 4354 from the Definitive Map of Public Rights of Way.

2. A claim has been received for a Public Footpath extending from a point on Public Footpath No. 129 Chipping to Fish House Lane, a length of 20 metres, and shown between points H - I on the attached plan, GR 6179 4354 to GR 6177 4353, to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Borough Council

Ribble Valley Borough Council has been consulted and does not have any observations or comments to make regarding the proposals.

Parish Council

Chipping Parish Council has also been consulted. No comments have been received following formal consultation. However, the Applicant who has claimed that a length of path be deleted has forwarded a letter from the Parish Council which supports the Applicant's claim for deletion, details of which are included in the 'Information From Applicant' section below. The Applicant is only claiming the deletion of the footpath and was unwilling to add to the application an alternative length of public footpath to substitute for the length to be deleted, even though evidence submitted supports the existence of an alternative route. The application for the additional length of footpath has been submitted by the Environment Directorate. The letter from Chipping Parish Council supports both the claim for the deletion and the addition of a public footpath.

Claimant/Landowners/Supporters/Objectors

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

Advice

Executive Director for the Environment's Observations

Site Inspection

1. Claimed deletion of part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of 10 Old Hive Cottages.

The claimed route to be deleted commences to the south east of the Old Hive on Fish House Lane, Chipping at point A on the attached plan (GR 6182 4348). It crosses the tarmac surface of Fish House Lane in north east direction to point B. At point B the claimed route is obstructed by a hawthorn hedge. There is no evidence of a gap, stile or gate in the hedge although 4 metres south east the hedge stops and the boundary is fenced with wooden post and rail fencing.

There is no public footpath signpost indicating the start of the claimed route from Fish House Lane. Neither is there any sign or notice indicating that the route claimed for deletion is private.

Beyond the hedge at point B the claimed route extends gradually uphill passing directly through a small area used for growing vegetables and crossing a garden area for a distance of 14 metres to point C.

At point C the claimed route for deletion meets the boundary wall and fence at the rear of the garden just to the south east of some brick/stone-built former coal sheds. It then curves round in a northerly and then north westerly direction passing through the corner of the former coal sheds before crossing a recently constructed gravel garden path, an area of lawn, and then back across the gravel track to point D.

At point D the claimed route is obstructed by a wooden garden fence. The fence is not shown on the attached plan but its appearance suggests that it has been in existence for several years.

From point D the claimed route crosses an enclosed garden in a north westerly direction to the rear of 2 Old Hive. It is obstructed by a further wooden fence at point E on the plan which has been constructed in the same style as the garden fence across the claimed route at point D.

Between point E and point F the claimed route passes across the garden to the rear of 4 Old Hive. At point F the claimed route runs close to the back of No. 4 Old Hive and is obstructed by a stone wall that extends out from the house for a distance of 95cm before continuing as a post and rail fence along the boundary of the garden.

From point F the claimed route continues in a north westerly direction through the garden along the backs of Nos. 6, 8 and 10 Old Hive to point G on the attached plan.

At point G the claimed route is further obstructed by a substantial stone wall that is approximately 1.25 metres high. It then continues for a further 3 metres to point H (GR 6179 4354) which is a point on Public Footpath No. 129 Chipping to the north of 10 Old Hive Cottages.

In summary, the claimed route is 72 metres long and passes through individual gardens belonging to a number of the residents at Old Hive, Chipping. It is obstructed by 5 boundary fences/walls and passes through an old brick building formerly used as a coal shed. There is no evidence that the public are attempting to use the claimed route and there is no evidence that the claimed route exists on the ground.

2. Claimed addition of a public footpath from Public Footpath No. 129 Chipping to Fish House Lane

The claimed route starts at a point on Fish House Lane at the corner of the garden wall belonging to No. 12 Old Hive and shown by point I on the attached plan (GR 6177 4353).

From point I the claimed route extends in a north easterly direction across a tarmaced area passing directly in front of the pedestrian gates providing access to Nos. 12 and 14 Old Hive.

After approximately 12 metres the width of the claimed route is restricted to 2.4 metres where it is bounded on the northern side by the garden walls of Nos. 16 and 18 Old Hive and No. 10 Old Hive. The claimed route continues in a north easterly direction for a further 8 metres bounded by the house and garden wall and increasing to a width of 4 metres just before meeting Public Footpath No. 129 Chipping just to the north of no. 10 Old Hive at point H on the attached plan (GR 6179 4354).

In summary, the claimed route is 20 metres long. There are no signs indicating whether the claimed route is public or private and there are no gates or barriers preventing access along the route.

Public Footpath No. 129 Chipping - which extends in a northerly direction from point H - appears to be well used and can only be accessed from Fish House Lane by using the claimed route for addition to the Definitive Map.

In addition, the claimed route provides vehicular access to Nos. 18 and 20 Old Hive and pedestrian access to Nos. 12, 14 and 16 Old Hive.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to find out when the route claimed for addition to the Definitive Map came into being, and what its status

might be, and to find out if the route claimed for deletion existed in the past, and if so, if it was a public right of way. A number of maps and other documents have been submitted by the Applicant for the deletion claim. This Applicant's interpretation of the maps is detailed in the section County Secretary and Solicitor's Observations with additional comments by the Executive Director for the Environment.

Other maps and documents examined by the Executive Director for the Environment are also described below.

Some maps produced before Ordnance Survey maps were published were examined. These were Yates' map of Lancashire of 1786, Greenwood's map of 1818 and Hennes' map of 1830. These maps showed the village of Chipping but were too small-scale to identify the Old Hive cottages.

The tithe map for Chipping of 1840 shows three rows of buildings at the site, one corresponding to 2 - 10 Old Hive, one to numbers 20 - 24 and one to numbers 12 - 18. The written schedule accompanying the map describes them as cottages and gardens. No part of Public Footpath no. 129 is shown. If attempting to follow the route claimed for deletion (A - H) on the tithe map it would have been necessary to pass through 3 garden boundaries, although the map would be unlikely to show stiles or small gaps in those boundaries if they existed. The route claimed for addition to the Definitive Map (H - I) seems to be shown as a short spur or branch of Fish House Lane and has no barriers across it.

Maps produced under the requirements of the 1910 Finance Act were examined. The act required all land in private ownership to be recorded so that it may be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels "should continue to be exclusive of the site of the external roadways". It is advised that roadways were said to be routes "subject to the rights of the public" and therefore exclusion of a route indicates that public use was known but not necessarily vehicular status. The owner of the land could also claim a reduction in tax if the land was crossed by a public right of way, and this is recorded in the valuation book. In this instance the maps and extracts from the valuer's field books were obtained from The National Archives. The route claimed for deletion passes through 2 parcels of ownership (probably recorded as numbers 159 and 164 but the numbering added to the record maps is faint). Neither owner claims a deduction in tax for the existence of a public right of way. The valuer has noted that the cottages have no back doors. In contrast, the route claimed for addition to the Definitive Map is excluded from land in private ownership.

Maps and documents associated with the building of canals, turnpike roads and railways can be consulted when researching alleged public rights of way, but in this instance they are not relevant. There was an Inclosure Award for part of Chipping in 1812, but it did not affect the Old Hive area.

Other maps and documents are described below as part of the applicant's evidence, and include the Executive Director for the Environment's comments on them.

County Secretary & Solicitor's Observations

Information from the Applicant

A letter from Mr Graham Wilkinson the Chairman of Chipping Parish Council is enclosed by the Applicant for the deletion. He advises that the Parish Council has kept an archive of maps and explains that problems have arisen as a result of a footpath recording exercise that was conducted in the early 1950's. He explains that it seems that the Parish Council may have made an error with regard to the location of the southern end of Footpath 129 Chipping. The route is shown to go through the back of people's gardens rather than directly onto the road. He states he has visited the site and can see no topographical or other evidence that the route ever passed through the residents' gardens. This is supported by custom and practice and by anecdotal evidence from other residents who have lived in the village for many decades. Chipping Parish Council fully supports the position that has been adopted by the affected residents at Old Hive.

A letter from Chipping History Society has been submitted which encloses a number of maps and other documents: a) census returns from 1841 to 1881 show that the residents of Old Hive worked in the iron foundry, mill and chair works and the History Society chairman believes that the footpath from the stile would have been used by them from Old Hive to their place of work across the fields; b) an Ordnance Survey map dated 1847 does not show a footpath at the rear of the houses; c) a map dated 1892 used for the sale of freehold estates in Chipping does not show a footpath at the rear of the houses; d) an Ordnance Survey map dated 1892 does not show the length of public footpath claimed for deletion; e) an Ordnance Survey map dated 1912 does not show a path behind the houses which is claimed for deletion; f) a map of Old Hive produced by Chipping WI in 1976 does not show a footpath behind the Old Hive cottages but, he believes, does show a footpath in front of the houses; g) a Village Trail leaflet of 1986 shows the route to be followed along the line of the path to be added to the Definitive Map (H – I) which continues northwards along the rest of Public Footpath No. 129. The leaflet does not show the length claimed for deletion.

The Executive Director for the Environment comments on the enclosures and their interpretation by the Chipping History Society as follows: b) the 1847 map seems to be an enlargement of a 6-inch Ordnance Survey map. The cottages numbered 2 – 10 are shown with gardens or enclosures behind them with the boundary walls coming right up to the building. No path or track is shown from the road running behind the cottages. The alternative route claimed for addition is shown as an open gap between the rows of cottages. It continues northwards as an enclosed track until it crosses an open field and is no longer enclosed on both sides; c) the 1892 estate map is hand-drawn but is not a direct copy of an Ordnance Survey map. It shows a number of footpaths across the estate, including what is now recorded as Public Footpath No. 129 coming from the north and stopping at the rear of number 20 Old Hive, from which point an open area which could be a short branch from the road follows the line of the claimed route H – I on the plan attached to this report. The length of public footpath claimed for deletion (A – H) is not shown on this map; d) the 1892 Ordnance Survey map seems to be a 25-inch map. The boundaries of land behind numbers 2 – 10 Old Hive have changed since the earlier 1847 map, and

some little structures are now shown there (which could be coal sheds, privies or animal pens) but no path is shown. Public Footpath No. 129 is still shown in the same way passing from the field southwards to join a track which passes along the western side of number 20 at point H before continuing to the road along the route H – I on the attached plan; e) the Ordnance Survey map dated 1912 shows more changes to the boundaries and outbuildings behind the cottages, but no footpath is shown there. The route claimed for addition to the Definitive Map is shown in the same way as on the earlier map as open access to the road.

Copies of the Chipping Parish Survey Map and accompanying survey cards have been submitted by the Applicant for the deletion, as well as the Draft Map for Clitheroe Rural District, the Provisional Map, the original Definitive Map and the Definitive Map, First Review.

The Applicant for the deletion comments on the number of changes in the rights of way network when comparing the Parish Survey Map (compiled by the parish council) with the Draft Map, Provisional Map and Definitive Maps. Changes include the renumbering of Footpath No. 130 to Footpath No. 129 and that the route was also changed to show the footpath going through the houses. The Applicant for the deletion also comments that records for the Draft Map of 1953 recorded Footpath No. 129 as being 0.09 of a mile long and Footpath No. 130 being 0.06 of a mile and on the Definitive Map Footpath No. 130 is no longer recorded but Footpath No. 129 increases in length by 0.15 miles. The Applicant for the deletion has walked up and down the claimed path and states that the length averages to 0.15 miles.

The Executive Director for the Environment comments as follows: there are differences between the parish survey map and subsequent maps. Two of the map sheets used for the parish survey join at Old Hive. The line of Footpath 130, continuing from the southern end of Footpath No. 129 on the survey map is that shown as Public Footpath No. 129 on the Definitive Map ie curving around the rear of numbers 2 – 10 Old Hive. The map indicates the presence of 2 stiles where the path meets the road. The cards on which the two paths are described state that Footpath No. 129 is clearly defined towards Old Hive and then continues 'over stile and then round houses to Highway' which could apply equally to the route claimed for deletion or the alternative route claimed for addition to the Definitive Map. Once all the parish surveys had been completed in rural district council areas, the maps were copied onto large maps covering the whole district, in this instance for Clitheroe Rural District, and called the Draft Map. These draft maps for the whole county (with the exception of the county boroughs) were placed on deposit in council offices in 1955 for 4 months for the public to inspect them and check their accuracy. Whilst over 1000 objections were filed to Lancashire draft maps, none were made to the paths in Chipping. However, many of the survey cards for Chipping have had amendments added to them in red pen. The card for Footpath No. 128 (which was shown as joining Public Footpath No. 129 to the north of point H) has been altered to read that, since the survey, the path had been found not be a footpath (presumably meaning that it was not a public right of way) which had been confirmed by a public meeting. There are similar references to a parish meeting on other cards, also recording that they were found not to be public.

The Draft Map for Clitheroe shows what is now recorded as Public Footpath No. 129 in two parts, numbered 129 in the north and 130 in the south. The path is shown in the same position as on the current Definitive Map following the route claimed for deletion. Following the publication of the Draft Map, all the objections and comments received were processed and those accepted were incorporated into a map that was redrawn and called the Provisional Map. The map shows the path in the same position and re-numbered as Footpath No. 129. The lengths of the two paths have been added together to make a total length of 0.15 miles. (Footpath No. 128 referred to above and found by the parish meeting not to be a public path has been omitted). The Provisional Map was also placed on deposit for inspection, this time for 28 days. No objections were made to the paths in Chipping. The path was shown in the same way on the subsequent Definitive Map and the current Definitive Map, First Review.

The Applicant for the deletion has submitted a number of Ordnance Survey Maps from 1847 until 2002, some of which were also submitted by the Chipping History Society. The findings of the maps of 1847, 1892 and 1912 are described above. A 25-inch Ordnance Survey map of 1932 has been submitted which does not show the route claimed for deletion but does show the gap between the rows of cottages to the road along which the route H – I runs. The 25-inch OS map published in 1967 again does not show the route claimed for deletion but does show the opening between the buildings along which the route claimed for addition runs.

Measurements and descriptions supplied by the Parish Council have been checked by the Applicant for the deletion who states that if the route shown on the Definitive Map is followed it measures 0.238 miles, not the 0.15 miles recorded on the Definitive Statement. The Applicant therefore concludes that Public Footpath No. 129 does not, and never did, extend through the old stone wall and through the private gardens to the rear of numbers 2 – 10 Old Hive.

The Applicant for the deletion has submitted a letter from the secretary of the Longridge group of the Ramblers' Association to the clerk of Chipping Parish Council dated 5 May 1984. The letter refers to a survey of all the footpaths in Chipping and a footpath inspection report in the form of a table is attached. The form includes paths numbered 128 and 130 against which it is stated there is 'no record of this footpath'. The Executive Director for the Environment comments that it is not known what map the Longridge group were using for this survey but there are no paths numbered 128 or 130 in the parish of Chipping on the Definitive Map.

The Applicant for the deletion has submitted a number of aerial photographs of Old Hive, one from Google maps and others from the County Council's on-line Mario mapping web-site. The Applicant believes that the Google photograph dates from 2006. Public Footpath No. 129 is highlighted crossing the field and continuing along the route H – I claimed for addition to the Definitive Map with a note added 'Clearly shows F129 ie obvious way out of Old Hive highlighted'. A colour photograph from Mario has been included with 'The Proper Route' highlighted in yellow which is the route claimed for addition. The Executive Director for the Environment comments that this photograph was taken in April 2003. The aerial photograph from Mario dated '1960s' also shows the same route highlighted as the 'Proper Route' as well as a Mario photograph dated '1940s' and one dated '1945 – 1952' with no additional comment. The Applicant states that these photographs show that the line of the path

claimed for deletion runs through private property and that the alternative route is clearly seen as a route out to the main road. The Old Hive cottages have not changed in their structural layout over the last 60 years, as shown on these photographs, nor have there been any deviations in the boundary walls and fences, which is confirmed by Ordnance Survey maps. The Executive Director for the Environment comments that the aerial photographs are not particularly clear, but they do show that the overlay of public footpaths depicts the route passing through outbuildings between points C and D on the attached plan. The photographs are not clear enough to show if there was a path along the rear of the cottages in the past, or if stiles or gaps existed in the walls that divide the plots of land to the rear of the buildings.

Photographs submitted by the Applicant for the deletion illustrate where the route claimed for deletion runs from Fish House Lane behind numbers 2 – 10 Old Hive, and the alternative route following the lane along the route claimed for addition to the Definitive Map. The Applicant states that to follow the Definitive route it would be necessary to go through a wall and a big wooden cabin on the lawn of number 20 Old Hive, the stepping stones from the gate to the old shed being still visible. The route also goes through old coal sheds which have stood for over 100 years and the old communal toilet built in 1825.

Land Registry documents, which do not show a footpath to the rear of Old Hive, have been provided by the Applicant for the deletion. One of the plans is hand-drawn, dated 1957, and appears to show the extent of ownership of number 16 Old Hive. The area in front of the property, along which the route H – I runs, is named as Old Hive Road.

The Executive Director for the Environment comments that, in summary, all maps and documents examined do not show a path or track along the route claimed for deletion from the Definitive Map, shown as A – H on the attached plan. To follow the route A – H it would have been necessary to pass through a number of walls or other boundaries between enclosures behind the cottages, and at times, through small buildings or structures. Any small gaps, gates or stiles through these boundaries are not shown on the maps examined. With regard to the route claimed for addition to the Definitive Map, H – I on the attached plan, this is shown on all maps examined as an open area between two rows of cottages, and on some appears to be physically an extension of the adjacent lane.

Twenty-two evidence of use forms were submitted by the applicant for the deletion. The number of years the route claimed to be added to the Definitive Map has been known and used was as follows: 80-90 (2), 70-80 (3), 60-70 (3), 50-60 (4), 40-50 (1), 30-40 (2), 20-30 (0), 10-20 (1), 0-10 (6). The number of users reported to have used the length of path claimed for deletion was recorded as zero. Two users attached letters to their user evidence forms. In one of the letters the user states that through family history for over a hundred years, he does not recall there being a footpath running the line of the claimed deleted route. He explains that his grandparents owned the whole row of West View, known as Old Hive at the turn of the last century and the gardens of the properties have always been set up as they are today without deviation to garden walls and fences. He explains that the gentleman who walked the routes for Chipping Parish Council was known personally

to him and was incredibly well acquainted with the footpaths in the area. He explains that an error must have been made when transferring his written information on to the actual map. One explanation for this may be that two map sheets on which the parish information was recorded join at Old Hive with the result that the line of the path has been drawn too far south at the map join into Old Hive.

The second user considers the Ordnance Survey map for 1888 -1893 and highlights a small building on the map and explains this existed at the time when the Ordnance Survey was carried out and the building has since been converted. He therefore states that the footpath claimed for deletion could not have run through this building and the route could not have been walked because of the structure standing 182 years ago.

A user who lived at 16 Old Hive in the 1950s and has known the area for 75 years has marked the route claimed for addition to the Definitive Map as the route he frequently saw being used by hikers.

Another user attaches a letter to state that since 1945 she has no recollection of there being a footpath along the claimed deleted route and that her mother of 86 years has lived in the area for her entire life and also acknowledges that there has never been a footpath to her knowledge behind the said houses where the claimed deleted path runs.

A resident of Old Hive states that she was born in Chipping in 1957 and knows the village very well. She has never known a public footpath to follow the route shown on the map and as a keen walker she has used the footpath from the field which led out onto the road around the front of the houses. This resident says that her mother who was born in one of the cottages in 1929 states that there has never been a public footpath along the route shown on the plan attached to this report during the 78 years that she has lived in Chipping. The footpath follows the route that her daughter described. This view was seconded by the resident's father who worked in Chipping from 1942 to 1993, and lived there from 1951.

Another person states that her family have owned property in Old Hive for over 100 years. At no time was there a footpath as mentioned. The Definitive route passes through a small building that was the original privy to the block.

The route is used by the majority of users for recreational purposes and walking. Frequency of use ranges from once a year to daily. Fourteen users have not specified how often the route has been used per annum. Three users indicate that there is a stile on the route, they have indicated on the plan attached to their user forms where the stile is marked. However this is further along Public Footpath No. 129 and not on the claimed deletion or addition of the footpath. No user has reported any gates along the route being locked.

The Applicant states that no member of the public has ever in 80 years of memory ever had a desire to walk the suggested route of the path through gardens and no signage surveys done in the last 50 years have ever brought any problem to the fore.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim for addition of the footpath H - I

- Use by the public
- Available route
- Documentary evidence

Against Accepting the Claim for addition of footpath H - I

- No particular evidence against

In Support of the Claim for the deletion of path A to point H

- Route passes through pre existing residential gardens
- Alternative route in existence
- Documentary evidence
- Information from Chipping Parish Council

Against accepting the Claim for the deletion of path A to point H

- Initial presumption that it exists
- The evidence needed to remove a public right from such an authoritative record will need to be cogent
- No objections to it being shown neither on the Draft or provisional maps nor at review

Conclusion

In this matter it is claimed that the line shown on the Definitive Map as the southern end of Footpath 129 Chipping from point A to point H is shown in error and instead it is claimed that there is a public footpath on a line between points H - I.

To delete a footpath from the definitive map requires cogent evidence that there was an error made in putting it onto the map in this case in 1953.

It is suggested that there is evidence that the southern line of Footpath 129 being shown through the old stone wall and through the private gardens to the rear of numbers 2 – 10 Old Hive and this is of itself can be an indication that there was an error made in recording a public footpath through garden walls corroborated by the user evidence presented.

It is suggested that it is sometimes the case that the evidence for an alternative line can be sufficiently strong to prove the error of the line drawn on the map.

It is suggested that the evidence for a footpath already existing for the public on the line H - I is considered first.

The tithe map for Chipping of 1840 shows the claimed route as a spur or branch of Fish House Lane and has no barriers across it. The route claimed for addition to the Definitive Map is excluded from land in private ownership indicating public use was known.

Twenty-two evidence of use forms were submitted (in connection with the route claimed for deletion). None of the twenty-two users reported to have used the route claimed for deletion. Twenty two users claimed knowledge and use of the route claimed to be added to the Definitive Map. Local information relating to the route is strong and comes from those living on the claimed route.

It is clear that the users of the land cannot recall crossing the route claimed for deletion and indeed claim use of the route claimed in addition. By the public using the route would, it is suggested be sufficient circumstances from which to infer that there has already been a dedication of a public footpath on the line H-I. Taking all the evidence into account the Committee may consider, on balance that there are footpath rights already along the claimed route and that the route should be added to the Definitive Map. It is suggested that not only the test for making an Order (footpath reasonably alleged to subsist) can be satisfied but also the higher test (footpath on balance does subsist).

That the line H-I can be considered to subsist as a footpath does not necessarily prove that the line nearby was recorded in error. The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one route through to Fish House Lane which should have been recorded but instead A-B-C-D-E-F-G-H was recorded in error.

In this matter there seems to be a possibility on balance that as a result of the map edge position in the footpath recording exercise conducted in the early 1950's that an error may have been made with regard to recording the location of the southern end of the Footpath 129 Chipping going through gardens rather than directly onto the road although it is not known why the draft map shows a stile in position.

It is suggested that the Committee may consider that there is evidence by way of all the maps and documents that the route claimed for deletion A-H on balance was recorded on its line in error and should have been recorded as H-I. To follow the route A-H it would have been necessary to pass through a number of wall or other boundaries and there is information from the time indicating that this was not the line of a footpath.

Given all the evidence of the existence of the route H-I and the evidence surrounding the recording of A-H the Committee may consider that there is sufficient evidence that the route A-H was recorded in error and that A-H should be removed from the Definitive Map and the footpath on line H-I be added to the Definitive Map and both the claims be accepted.

Alternative options to be considered - N/A

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

| Paper | Date | Contact/Directorate/Ext |
|--|---------|--|
| All documents on Claim Files Ref: 5.32267 (804/472) and 5.33257 (804/476) | Various | S Khalid, County Secretary & Solicitor's Group, 01772 533427 |

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981

THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE
COUNTY OF LANCASHIRETHE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (NO.4) ORDER 2011

This Order is made by Lancashire County Council ("the Authority") under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that The Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(iii) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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 Authority have consulted with every local authority whose area includes the land to which the Order relates. Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 12 January 2011.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.4) Order 2011.

Dated this 12 day of January 2011

THE COMMON SEAL of the)
Lancashire County Council)
was hereunto affixed in the presence of)

Authorised Signatory

R Fede



20411

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF PATH TO BE DELETED

A Public Footpath commencing from the south east of the Old Hive on Fish House Lane, Chipping at grid reference 6182 4348, crossing Fish House Lane in a north easterly direction for a distance of approximately 7 metres to grid reference 6182 4349 where the route is obstructed by a hawthorn hedge. The path continues for a distance of approximately 15 metres to grid reference 6183 4350 and then runs in a northerly and north westerly direction for a distance of approximately 18 metres to grid reference 6181 4351, here the path is obstructed by a wooden garden fence. The path continues through an enclosed garden in a north westerly direction for a distance of approximately 9 metres to the rear of 2 Old Hive where the route is obstructed by a wooden fence at grid reference 6181 4352 and continues across the garden to the rear of 4 Old Hive for a distance of approximately 11 metres to grid reference 6180 4352, where the path is obstructed by a stone wall. The path continues in a north westerly direction running through the garden and along the rear of Nos. 6, 8 and 10 Old Hive for a distance of approximately 10 metres to grid reference 6179 4353 where the route is obstructed by a stone wall and continues for a distance of approximately 3 metres to a point on Public Footpath No. 129 Chipping, at grid reference 6179 4354, a total distance of approximately 73 metres. The path to be deleted is shown A-B-C-D-E-F-G-H on the attached plan.

PART II

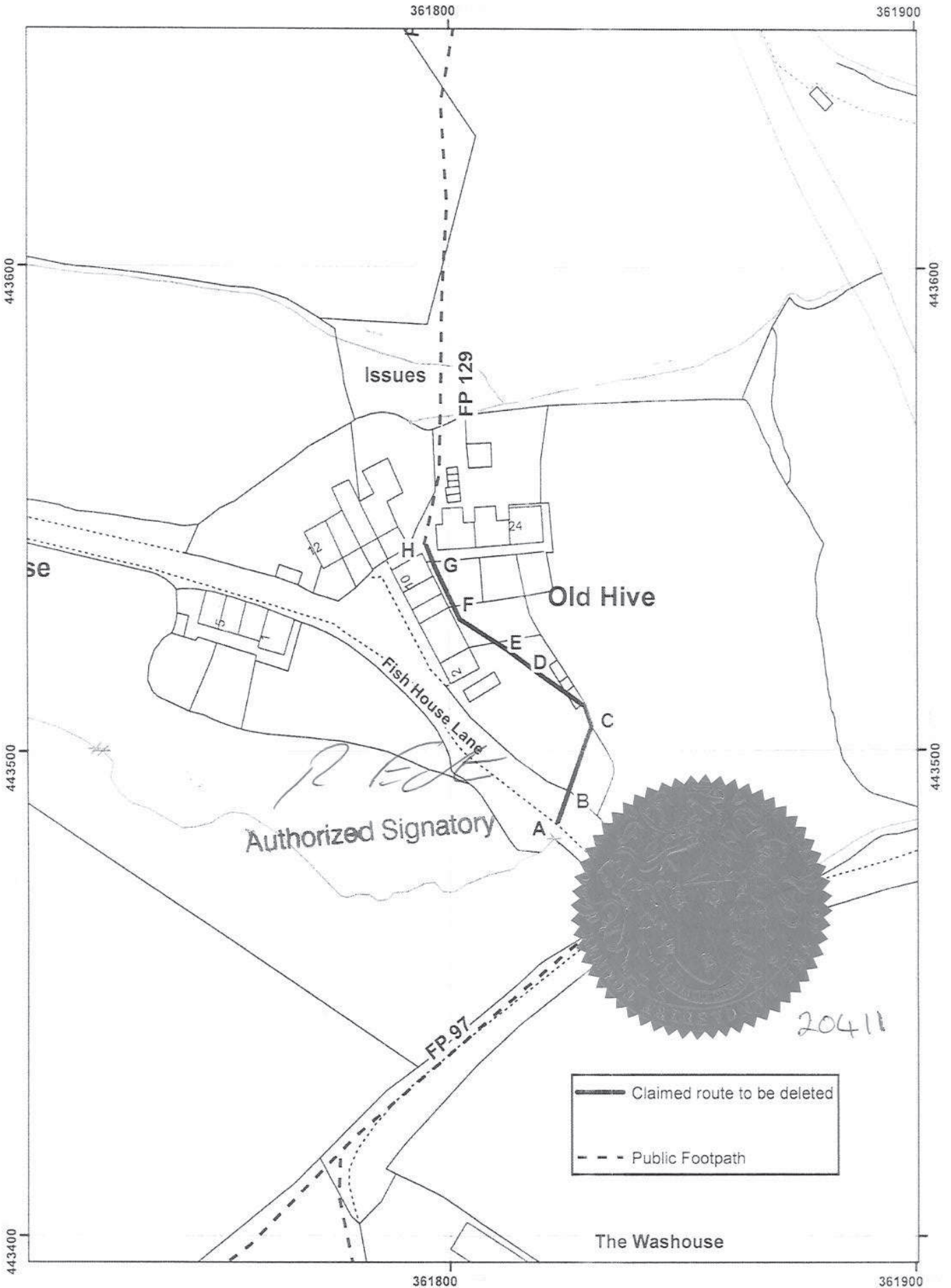
MODIFICATION OF DEFINITIVE STATEMENT

The following part of the entry for footpath Chipping 129 be deleted:

4/1 to Class III 434 at Old Hive

The following to be added instead:

"Malt Kiln Brow (U5307) at grid reference 6182 4374 running generally southwards to a point close to the north corner of 10 Old Hive, Chipping at grid reference 6179 4354."



| | | | | |
|---|---|--|----------------|--|
| | <p>Jo Turton Executive Director for the Environment</p> | <p>Wildlife and Countryside Act 1981 Claimed deletion of part of Public Footpath no. 129 Chipping, Ribble Valley, from Fish House Lane to a point to the north of 10 Old Hive Cottages Claim 804/472</p> | <p>1:1,000</p> | |
| <p>The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose. This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p> | | | | |



RIGHTS OF WAY SECTION

ADVICE NOTE No 22

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS


Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure that it is valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various lines styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. For the avoidance of doubt, the notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads. Several options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011¹. This still applies except in those cases where the error is significant and clearly misleading.

¹ We felt that this was only fair considering that we had identified that we had not been applying our policy of rejecting orders containing incorrect notation consistently.

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a continuous bold black line and ways to be added as a bold broken black line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|---|
| Electoral Division affected: Pendle East |
|---|

Wildlife and Countryside Act 1981

Addition of Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough

File No. 804-440

(Annex 'A' refers) (Appendices A, B, C and D refer)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

The consideration of the Order for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with part of the application reference. 804-440.

Recommendation

1. That 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification (No. 7) Order 2007' made pursuant to the Committee decision on 9 May 2007 in relation to:

The claimed addition for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Caslte Road, Laneshaw Bridge, be submitted to the Planning Inspectorate for non-confirmation / rejection for reasons as detailed in the report.

2. That a further Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge on the Definitive Map and Statement of Public Rights of Way using the correct notation o the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
3. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 9 May 2007 considered the report attached as Appendix A and accepted that part of application 804-440 for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge to be added to the Definitive Map and Statement of Public Rights of Way.

The report also considered evidence for the continuation of a linear route which included part of Footpath 65 Foulridge and Footpaths 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to public bridleway through to Castle Road, Laneshaw Bridge. This part of the application was rejected by Committee but was subsequently appealed by the applicant and an Order made in 2013.

An Order for the route accepted by Committee in 2007 was made on 22 August 2007 (Appendix B) and 35 objections were received. The main points of the objections were that the Order Making Authority had created a 'cul-de-sac' route and that there is enough evidence to suggest it should be a restricted byway. However since the 2013 has been made 19 objections have subsequently been withdrawn as a further Order has been made to extend to route. 1 objection has been received to the 2013 Order due to danger to the horses and the riders from the shooting school, noise pollution, the fact they were not aware even a public footpath exists and that the bridleway would be very narrow with no passing places. As objections have not been withdrawn, Lancashire County Council as the Order Making Authority cannot confirm the Orders but must submit them to the Planning Inspectorate for determination.

The Order Map for the 2007 Order contains the incorrect notation to depict the route to be added as a public bridleway. The notation which should have been used on the Order Map to show the public bridleway is either a continuous green line, a continuous line with cross bars at intervals or by a broken line with cross bars in the intervals. The Order map however, shows the public bridleway which is to be added as a broken black line with short intervals instead, and as such this does not comply with the Regulations.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

It has also been identified that the 2007 Order did not correctly specify the grid reference of the junction of the Order route with Footpath 65 Foulridge, provide details of any limitations that existed on the route or detail the amendments that would be required to be made to the descriptions of other public paths that connected to the Order route in the Definitive Statement should the Order be confirmed. If a second Order is subsequently made it will therefore be redrafted to include all of the above.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised

that '*...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.*' The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, '*all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.*'

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the Order will not be capable of being confirmed. It is advised that the Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning a bridleway at this location the making of a new Order should properly be considered.

It is suggested to Committee that in order to comply with the regulations for the confirmation of the Order, it may be considered preferable to remake a new Order which deals with both the wrong notation and the other modifications required. It is therefore suggested to Committee that a new Order be made and the original Order made in 2007 are submitted to the Planning Inspectorate requesting it is not to be confirmed or rejection expected. This course of action would resolve the issue of the incorrect notation; the concerns raised in the outstanding objections; the issue of modifications that are required and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the Order be confirmed.

Committee it is advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 9 May 2007, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however; the entire report considered by Committee on 9 May 2007 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Objections to the 2007 Order have produced no further evidence since the original Committee decision to alter the view that the route should be recorded as at least a public bridleway and it is therefore still the view that the new Order, if made, can be promoted through 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 |
|---------------------------------------|---------|---|
| All documents on File Ref: 804-440 | various | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 9 May 2007

Part I - Item No. 6

Electoral Division affected:
Pendle East

Wildlife and Countryside Act 1981

**Claimed Bridleway from the junction of Cob Lane and Cockhill Lane,
Foulridge, to Castle Road, Colne, Pendle Borough.**

Claim No. 804/440

(Annex 'A' refers)

Contact for further information:

Ms J Blackledge, 01772 533427, County Secretary & Solicitor's Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for

- a) a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Public Footpath No. 65 Foulridge, Pendle Borough, to be added to the Definitive Map and Statement of Public Rights of Way; and
- b) Public Footpaths Nos. 65(part) Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to the status of Bridleway in the Definitive Map and Statement,

in accordance with Claim No. 804/440.

Recommendation

That the Claim for

- a) a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Public Footpath No. 65 Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, and
- b) Public Footpaths Nos. 65(part) Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to the status of Bridleway in the Definitive Map and Statement

in accordance with Claim No. 804/440; be accepted in part namely that Claim a) section A-U-B be accepted and Claim b) section B-J be not accepted.

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 bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to the western end of Public Footpath No. 65 Foulridge, Pendle Borough, for a distance of approximately 565 metres, (GR 9066 4305 to GR 9118 4308) and shown between points A-U-B on the attached plan.

Background

A claim has been received for a Bridleway extending from a point at the junction of Cob Lane and Cockhill Lane, Foulridge, Pendle Borough (GR 9066 4305), running in a general easterly direction, crossing the line of Public Footpath No. 44 Foulridge at GR 9095 4305, for a distance of 565 metres to join Public Footpath No. 65 Foulridge at GR 9118 4308, then following the line of Public Footpath No. 65 Foulridge in an general easterly direction for a distance of approximately 280 metres to its junction with Public Footpath No. 19 Colne, then following the line of Public Footpath No. 19 Colne in a general easterly, then east north-easterly direction for a distance of approximately 424 metres to GR 9188 4313, the junction with Public Footpath No. 2 Earby, then following the line of Public Footpath No. 18 Colne running to the south of Harwes Farm for a distance of 136 metres in an east south easterly direction to its junction with Public Footpath No. 20 Colne (GR 9202 4311), then following the line of Public Footpath No. 16 Colne in a general south easterly, then easterly direction for a distance of approximately 438 metres to the junction of Public Footpaths Nos. 13, 14 and 15, Colne then following the line of Public Footpath No. 14 Colne in a general north easterly direction for a distance of approximately 473 metres to its junction with Public Footpaths Nos. 6 and 7 Colne (GR 9272 4341), from where it turns to follow the line of Public Footpath No. 12 Colne in a north north easterly direction for a distance of approximately 80 metres to its junction with Public Footpath No. 11 Colne, and then follows the line of Public Footpath No. 8 Colne in a north-easterly direction for a distance of approximately 306 metres to join Castle Road, Colne, Pendle Borough, and shown between points A - J on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

Consultations

Pendle Borough Council

The Borough Council offers no objection to this Claim.

Parish Council

The Parish Councils for the claimed route are Foulridge, Kelbrook & Sough, and Laneshawbridge

Foulridge Parish Council recalls a public inquiry regarding the footpaths in the area of the claim approximately 10 years ago following a review of the Definitive Map. They are insistent that the section of the route between the junction of Cob Lane and

Cockhill Lane, Foulridge, and the point where the claimed route crosses Public Footpath No. 44 is not a right of way and suggest that any upgrade to bridleway should apply to Public Footpath No. 44 Foulridge, which links up with Bridleway No. 44 Foulridge.

There has been no comment from Kelbrook & Sough or Laneshawbridge parish Councils.

Claimant/Landowners/Supporters/Objectors

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

Advice

Environment Director's Observations

Description of Claimed route

a) Claimed Bridleway from the junction between Cob Lane and Cockhill Lane, Foulridge, to the junction with Public Footpath no. 65 Foulridge, shown between points A and B on the attached plan.

The route subject to part a) of this claim is from point A at the junction of Cob Lane and Cockhill Lane, (both classified as U40347). This is directly opposite the end of the private road known as 'Teddy Carr Drive' which has no public rights of way recorded over it. This appears to be an extension of the claimed route but is not part of this claim. However to provide additional information about this area to assist in the consideration of this claim, Teddy Carr Drive is a tree lined, rough stone surfaced access track leading to the west and appearing to provide access to two farms. It is gated with notices stating its private status on the gate and also on a nearby tree. This track extends in almost a straight line, as far as Skipton Old Road, Foulridge (U20921) a total distance of approximately 1,150 metres.

Part a) of this claim, from point A, is over a tarmac surfaced access road approximately 3.5 metres wide, although the entrance from Cockhill Lane/Cob Lane is considerably wider at approximately 16 metres wide. The entrance to the lane is bounded by a dry stone wall on the southern side and a timber post and wire fence to the north. The macadam surface was in very good condition and appeared to have recently been provided. The access road continues, approximately 3.5 metres wide, within an overall width of approximately 6 metres for a distance of approximately 80 metres to the point where the end of Public Footpath No 44b Foulridge joins the claimed route. Public Footpath No 44b follows a stone surfaced access road to the south east.

The claimed route rises up a slope and the overall width between stone walls increases, and after approximately 80 metres Public Footpath No 44a Foulridge joins the claimed route from the south at an old metal gateway. The rusty gate was fixed against a timber post in a position approximately 1metre wide and there were large

loose stones and timber poles for walkers to climb over between the gate and the stone wall.

The claimed route continues to follow the surfaced access road to the top of the slope and after a distance of approximately 140 metres from Public Footpath No 44a Public Footpath No 44 Foulridge crosses the claimed route. The surfaced track is approximately 3 metres wide and the overall width varies from between 5.5 and 7.5 metres between the stone walls. The claimed route follows this access road down the slope for approximately 190 metres to point U at the end of the surfaced road where there was a wooden field gate between two stone gateposts 3 metres apart. The gate was open at the time of inspection and although there was a chain to fasten it, it appeared as if it was normally left open. To the northerly side of the gateway the stone boundary wall turns away from the lane to the north east and there is an area between this corner and the stone gate post where it appears that there had previously been a gap. This has been filled with stone up to the wall height.

The claimed route is then over a stone surfaced track which divides after approximately 15 metres with one track leading up and to the north east towards the buildings and 'Kelbrook Lodge', and the other to the east, following the stone wall for a distance of approximately 45 metres to a point where there is an open metal field gate, with a concrete post, in place, in a length of timber railing fence on both sides of the track. The railing fence on the southern side of the gateway has a notice fixed to the top rail stating 'Dogs to be kept on lead'. The claimed route continues to follow the stone track for a distance of approximately 30 metres to point B where Public Footpath No 65 Foulridge joins the access track and the end of part a) of this claim, and also the start of part b) of this claim.

b) Claimed upgrading to Bridleway of Public Footpath Nos 65 Foulridge (part); 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough.

The route subject to part b) of this claim continues from point B on the plan and is over the stone surfaced access roadway, approximately 3 metres wide, with a narrow grass verge to a ditch and then a grass bank on the northern side, and a grass verge to the stone wall on the south, the overall width being approximately 7 metres, and with a second stone boundary wall approximately 7 metres further to the north.

The stone track continues and curves slightly to the north with the overall width narrowing to approximately 4.5 metres between the stone wall on the north and the timber post and wire fence to the south. The claimed route follows Public Footpath No 65 Foulridge from point B for a distance of approximately 250 metres to the curve in the track where the access track carries Public Footpath No 66. This continues to the south towards Great Edge Farm from point C. However the claimed route continues to follow Public Footpath No 65 where it crosses the grass verge of the access road to a timber stile against the stone wall with a section of railing fence that appears to be removable, to its southerly side. The stile was in a poor condition on the day of inspection but was negotiable. It had a wide piece of timber forming the cross step and was not level, and part of the supporting timbers were in need of replacement. It had way-marker arrows on one of the timber posts.

The claimed route follows Public Footpath No 65 Foulridge over the open field where there was no obvious trodden route visible through the grass. After a distance of approximately 130 metres Public Footpath No 65 ends at the boundary of Foulridge with Colne. This boundary follows the very small stream which is known as Moss Houses Beck. This stream is crossed by a timber ditch crossing. It is approximately 1 metre long and in good condition and easily used despite it not being long enough to warrant a handrail. The bridge crossing is approximately 10 metres to the west of the point where the open field narrows down to approximately 7 metres wide between stone walls. The trodden route of Public Footpath No 19 is to the south of this section and after approximately 50 metres there are trees and shrubs growing on the northerly side with the claimed route following a visible trodden path close to the southern stone wall. This section was wet on the day of inspection and appears to flood easily, with the ground soft under foot. Planks of wood had been laid on the surface to improve ease of access. After a distance of approximately 90 metres from the ditch crossing, there are two sections of railing fence, similar to those at point C, across the track between the corner of the stone wall and an old stone gatepost at point D. The part of the railings reaching the gatepost was lying on the ground at the time of inspection and as well as this allowing access, there was a timber stile to the north of the gatepost. This stile was in a reasonable condition, but slightly over-hung by branches from trees in the adjacent woodland. This stile had a large timber step also similar to the one at point C.

From point D the claimed route continues to follow the route of Public Footpath No 19 Colne which runs along the southern side of a stone wall and over a large open grass field. There appears to be no indication that there was a track formerly over this section, although, after a distance of approximately 85 metres, there is a drain running to the south which begins at a point approximately 7 metres away from the boundary wall. After approximately 190 metres from point D, the path joins an open stone surfaced access track crossing the field from the south west, which carries Public Footpath No 31 Colne. At point E, Public Footpath No 19 and 31 join Public Footpath No 18 Colne, together with Public Footpath No 2 Earby, which joins the route from the north by a ladder stile over the wall to the west of an open gateway in the stone wall along which the stone track continues.

At this point Public Footpath No 18 Colne follows a grass track for approximately 10 metres to an old metal field gate. This gate was held closed by a length of chain over a post against the stone wall on the southern side. To the north of the gate there is a length of approximately 600mm of wall where there appears to have previously been a gap between the stone wall and the gateway, but this has been filled with stone built up to the adjoining wall. Immediately beyond this section is a timber post with way-marker arrows in place. These way-markers had a notice with them indicating that they were part of the Kelbrook Moor Circular Walk.

The claimed route continues to follow Public Footpath No 18 over the grass and stone track following the stone wall on its southern side with a widening area of open land leading to farm buildings and Harwes Farm (formerly Copy House) to the north. After approximately 60 metres there was a metal field gate with a chain and hook fastener. The track continues past the gate and between the stone wall and farm

building to another metal field gate at the far end of the barn. There was a way-marker arrow on the gatepost.

The track, and Public Footpath No 18, then continues for another approximately 7 metres to a timber field gate between stone posts. This gate was held closed by a length of chain, but opened easily onto the surfaced area in front of the farmhouse. Public Footpath No 18 Colne continues for approximately 25 metres over the tarmac surfaced area, passing through two large open timber gates and then onto the macadam surfaced access road as far as point F, where Public Footpath No 18 ends at the junction with Public Footpath Nos 16, 17 and 20 Colne.

The claimed route follows Public Footpath No 16 from point F and leaves the access road at the apex of the corner and crosses a grassed verge, passing along the southern side of a stone wall. After approximately 25 metres there was a timber railing fence with a two-step timber stile in it close to the wall. This stile was in a very good condition and had way-marker arrows and 'Kelbrook Moor Circular Walk' fixed to the hand post. Approximately 7 to 10 metres to the south of the stile was a timber field gate at the end of the timber railing fence.

Beyond the point where the route is crossed by the stile/gate and fence Public Footpath No 16 continues over the large open field running along the southerly side of the stone wall. After approximately 100 metres, it passes to the northern side of a stone-built natural spring in the field, approximately 4 metres from the wall. Along this section there appears to be a level strip, 4 to 5 metres wide, which may have been a track at some time with a possible drain alongside.

After approximately 240 metres, at point V, there is a stone wall across the field boundary. Immediately before the stone wall there is a section of timber railing across the corner with a stile and way-marker arrows, and 'Kelbrook Moor Circular Walk' on it. Immediately beyond the timber stile, the wall itself has a stone step-stile built into it. To the southerly side of this stone stile there is an old stone gatepost and then a section of approximately 2.3 metres of stone wall that appears to have been built up to a second old stone gate post. The two stone gate posts were in a position where any former track would pass through the field boundary.

Public Footpath No 16 and the claimed route continue to pass through a large open grass field, rising for approximately 145 metres towards a stone boundary wall at point W. This section of the claimed route is open to the field on both sides. It passes over a very wet and muddy area on entering the field and then follows a rough grassed area that appears to be a sunken track approximately 7 metres wide. This becomes level with the field surface as it approaches the stone wall at point W. Here there is an opening in the wall with a timber stile and way-marker arrows and 'Kelbrook Moor Circular Walk' between the stone corner of the adjacent field and an old stone gate post, and then a section of wall that appears to have been built up more recently than the rest of the wall. This section is approximately 3 metres wide and has a very clearly visible line at the joint with the rest of the wall to the south. There is no gate post at this junction.

Public Footpath No 16 then continues over the next field for a distance of approximately 35 metres leading away from the stone wall following a sunken area

of the field approximately 6 metres wide, where it ends at the junction with Public Footpath Nos 13, 14, and 15 Colne. At this junction Public Footpath No 15 Colne passes through a field gateway approximately 10 metres to the north, with Public Footpath No 13 continuing in a straight line over the open area towards the east.

The claimed route follows Public Footpath No 14, and is over grassland towards the stone boundary wall which it then follows for approximately 175 metres to point X. There appears not to have been an old track on this section although there is a length close to point X that is lower than the adjoining field level which is somewhat wetter with reeds growing in it.

The section beyond the end of the wall at X follows an old track, approximately 4 metres wide and slightly raised above the field level, as it curves and passes through the rough moorland type of vegetation for approximately 160 metres to point G. At point G there is a substantial stone step-stile in the stone boundary wall, which is to the northern side of the end of a walled track that has been blocked off by the boundary wall. In this wall there are two stone gate posts, approximately 3 metres apart, and on the southern side of the stile. Between these a stone wall has been built up.

Beyond point G the claimed route continues to follow Public Footpath No 14 Colne, which is over a sloping track, overgrown by reeds. This is enclosed between stone walls, which are in a generally poor condition, particularly on the northern side. This track extends for a distance of approximately 100 metres to where the stone wall on the southern side forms a corner and then runs in a southeasterly direction. The northern wall continues over the rough moorland and is in very poor condition and barely visible. It extends for a further 40 metres approximately to the junction of Public Footpath No 14 with 6, 7 (part of the Pendle Way) and 12 Colne, at point Y.

The route then passes over areas that appear to have been portions of an old raised track approximately 2-3 metres wide at its top. It follows Public Footpath No 12 Colne for a distance of approximately 80 metres over an uneven surface across the moorland, to point H where there is a timber stile, with way-marker arrows, in the timber and wire fence at the end of the stone boundary walls.

From point H the claimed route continues over Public Footpath No 12 from the junction with Public Footpath No 11 Colne (with Public Footpath No 11 running along the northerly side of the stone wall). This route passes over moorland and after approximately 70 metres Public Footpath No 12 ends at the junction with Public Footpath No 8 and 9 Colne, with the claimed route being over Public Footpath No 8. This continues over open grassland for approximately 245 metres and meets Public Footpath No 10 Colne at a point where there are two metal field gates in the stone wall that is the boundary of Castle Road, (C681). At the gateway there is a stone surface under the grass and to the south of this is a grey metal post in the grass verge with 'Public Footpath' finger posts indicating the direction of Public Footpaths Nos 8 and 10. These gates were chained and locked together at the date of inspection and there was no stile or other means of access available through them onto the verge and Castle Road at point J at the end of the claim.

Site inspection summary

Part a) Starting from the western end of the claimed bridleway at point A, the first section A – U is an enclosed surfaced access road with a gate at U. There appears to have been a gap by the gate at point U which has been blocked up with stones. The next section, U – B, is a stone access track within a much wider area between walls. Another gate is located approximately 30 metres west of point B. A – B is in good condition and is easily accessible for pedestrians and horse riders, with no restriction for use, as well as being in regular use by vehicles. There was no visible evidence at the time of the site inspection of use of this claimed route by cycles or horses. (While cycle tracks would be difficult to see on the surface, metal hoof marks or horse droppings would have been more noticeable). The gates along this route were open at the time of inspection.

Part b) Section B – C is enclosed between stone walls. C – D has a wall on one side only, and is over rough grass with no visible track, with a width restriction at the timber ditch crossing on the Foulridge-Colne boundary at Moss House Beck. Along the length D – E there is no obvious signs of a second boundary within the field to indicate that it had formerly been enclosed, other than the drainage ditch that starts approximately 7 metres from the stone wall. The length F – V does have features that seem to indicate the former enclosure of the route, such as the position of a stone spring set back from the one remaining wall, and a noticeable, uniformly wide, strip of land along the route with a possible drain at its side. The length V - W is a clearly visible sunken strip, approximately 7 metres wide, with a rough grass surface crossing a large field. The length between W and X initially follows a sunken track into the field for a short distance and then turns to the north-east to follow the stone wall. Whilst no track could be seen in the section in the area of the shallow brow, the part closer to point X does give the appearance of a former track as the route approaches the moorland. The length X - G is also visible as a raised grassed strip, approximately 1.5 to 3 metres wide, running through the rough moorland, with no sign of boundary walls to either side. Approximately 40 metres south west of point Y are the remains of a stone wall extending from the enclosed track at point G onto the open moorland. Length Y - H is an extension of the track from point G with only a single boundary. It crosses moorland and is very uneven and generally above the surrounding level of the moor. From point H the claimed route runs across rough pasture with no apparent indication of an enclosed route.

The whole of the route claimed for upgrading from public footpath to bridleway is available for use by pedestrians, with easy access over the whole route, with the exception of the closed gate at point J on Castle Road. There was evidence of a considerable amount of use by pedestrians over the whole length despite no trodden path being visible on the ground, probably because of the width of land available. With respect to the possible use by horses or cycles, there was no visible evidence of use by these classes of user and there are several locations where access for them would be difficult or impossible at present.

There are a number of restrictions to free access as a bridleway. There is the water course across the route between points C and D with only a narrow plank at an angle across.

There are gates at U, B, E to F (5 gates) and J. All of the gates, except the locked ones at point J, were easy to open by a pedestrian, but any horse rider would need to dismount and remount to open them. There are also only stiles at points C, D, F, V, W, G and H. These at present prevent use on horseback or bicycle. The stiles at points V, W and G are at positions where the stone wall has been built up in a former gateway which, if unblocked, would have allowed access for higher rights in addition to any occupation uses at that time. C, D and F all have fences constructed across the width.

Where the claimed route is only partly enclosed, or not enclosed at all, there seems to be a general indication that it may well have formerly been a track. Some parts clearly indicate the former existence of an old track, i.e. V - W (including a length beyond W), and X - G. There is lesser indication of an old track along sections D - E, F - V, and Y - H. There is no obvious sign of an old track along section H - J.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to find out when the claimed route came into being and to try to determine what its status might be. The maps and documents supplied with the application were also examined. The descriptions of documents supplied with the application, and examined by the Environment Directorate, are detailed below in approximately chronological order.

The applicant submitted two documents from the Lancashire Court Rolls about the blocking of a highway in 1655. Further investigation at the County Record Office has revealed other documents relating to this highway. It appears that there was a 'high way' from the Foulridge area over Kelbrook Moor and on the north side of Piked Edge to a 'causey' (defined by the Oxford English Dictionary as a raised way especially across wet ground, sometimes paved) called Jepp Causey. This causeway joined the road from Colne to Skipton, now called Castle Road. This causeway was for 'all travellers and passengers horses and other cattle with carts or carriages'. In September 1655 a local farmer was brought before the Lancaster Assizes for blocking the causeway by building two walls across it. He was ordered to take them down. At the November assizes the highway overseers of the parish confirmed that the walls had been taken down. It was agreed that he could erect gates in place of the walls large enough to accommodate 'horsepacks', carts and carriages. The track was used again for a time, but then the farmer chained the gates, and walled up the gaps. Local people brought the matter before the courts again, claiming that they had to make a detour of one or two miles before they could join the Colne to Skipton road, or go further north to join the Gisburn to Skipton road. There are no records to show if the farmer was successfully prosecuted again. No reference has been found in any other documents or maps to Jepp/s Causey.

There is not sufficient information to give the location of this matter or the outcome of the court action.

As the claimed route passes near to the former county boundary with Yorkshire (before local government re-organisation in 1974), early maps and other documents of that county were also examined along with those of Lancashire. Early maps included Jeffries' map of Yorkshire of 1772, Cary's map of the West Riding 1787,

Smith's map of 1801 and Teesdale and Stocking's map of 1828. None of these maps show any part of the claimed route, although 3 of them do show and name the location of one of the two Tom's Crosses (old county boundary stones) in the area which is to the north-east of point J on Castle Road.

Of the 18th and 19th century maps of Lancashire, Moll's map of 1724 and Bowen's map of 1765 are probably of too small a scale to show the route if it existed at the time. Yates' map of 1786, a much larger map, does not show any part of the claimed route. A map produced for the Honor of Clitheroe between 1804 and 1810 shows the western end of the claimed route between points A and B approximately as a 'road', but none of the rest of the route is shown. Coloured lines shown on the map along the line of part of the claimed route are referred to in the key to the map as boundaries of divisions of land, such as each separate manor, and the 'townships of Rossendale', and do not relate to the claimed route itself.

Greenwood's map of 1818 only shows the length A to B, referred to in the key as a 'cross road'. None of the rest of the route is shown. It is not known exactly what was meant by the term 'cross road' but it does show that a track of some sort existed at the time. Hennet's map of 1830 shows the claimed route in the same way as Greenwood.

It is considered that these were maps for travellers and routes shown were likely to have some public status.

There are no inclosure maps and awards for this part of Lancashire covering the claimed route, but a short section is shown on the inclosure map for Thornton in Craven in Yorkshire, prepared in 1825. Although the inclosure map relates to land in Yorkshire, a short length of the claimed route around point B is shown and named as Moor Lane. The land to the south of Kelbrook Moor to be enclosed in Yorkshire, across which the claimed route lies, is referred to in the Inclosure Award as 'open common in the county of Lancaster'.

Two tithe maps cover the claimed bridleway – Foulridge and Colne – both compiled in 1842. The Foulridge tithe map covers the western end of the claimed route from point A to point D. From Cob Lane/Cockhill Lane to the point to the west of where Public Footpath No. 65 Foulridge joins the route (A - U) the claimed route is shown as an enclosed track with no colouring or numbering, and therefore no owner or occupier recorded in the written schedule that accompanies the map. From point U eastwards to the parish boundary at point D the claimed route enters a wider area described in the written schedule as 'lane and waste' with no owner or occupier. The claimed route then enters Colne into a triangular area of land which has no obvious number. When the claimed route enters the narrow enclosed part of Public Footpath No. 19 to the west of point D the tithe schedule refers to this length as a 'road' with no owner or occupier. The claimed route continues eastwards across 'pasture' until part-way along Public Footpath No. 16 (point E) it becomes an enclosed track again. The claimed route continues across pasture and then enters land of a different ownership at point V. The route is enclosed on both sides, and is listed as a 'road' in the schedule, with both an owner and occupier named (V – W). This enclosed track continues into land of a different ownership where it is called 'Cow Lane' between points W and G, but is used as pasture. The land across which the claimed route

runs then changes ownership again and is called a 'road', and is recorded as being uncultivated. The claimed route then continues across two open fields of pasture before ending at Castle Road at point J.

In summary, evidence from the tithe maps shows the route as an enclosed track along about half its length. The part of the claimed route in Foulridge is not shown in private ownership, and could therefore have been regarded as part of the public highway network of the parish but only part is denoted Road. In contrast, 80% of the claimed route in Colne is in private ownership. Only 33% of the route in private ownership is described as a road or lane. These sections of road or lane do not join with each other to form a through route.

The applicant has submitted a map of the township of Colne, surveyed in 1843. A copy of this map has also been examined at the County Records Office. It is very similar to the Colne tithe map of 1842, drawn with the same style, layout and lettering. The claimed route is shown in the same way as on the tithe map, with the same numbers in the fields and other plots. There is no accompanying field book to explain what the numbers refer to. This town map, unlike the tithe map, has a key. The key refers to 'turnpike roads', 'bye or cross roads', 'footpaths', and 'open roads'. 'Turnpike' and 'bye or cross roads' are shown edged with solid lines (though it is hard to see what the difference is between the lines that represent the two types of road). Footpaths are shown by a single dotted line, and open roads by parallel dotted lines. This map does not show any part of the claimed route by dotted lines, either with one row or two. As on the tithe map, some stretches of the claimed route are bounded on both sides by solid lines, and may therefore be included in the map category as a 'bye or cross road' (there are no turnpike roads in the immediate area). It is not known what is meant by this term, but it was presumably more than a footpath (as these had their own notation) and would therefore have been usable on horseback at least.

Ordnance Survey maps were examined from the first edition of the 1" map. The applicant has submitted a 1" map, dated 1840, reprinted by the publishers David and Charles. This shows the western end of the claimed route in Foulridge between points A and B, and a further length between V and G. The rest of the claimed route is not shown.

The first edition of the 6" OS map published in 1848 shows the claimed route as a partly enclosed track from Cob Lane/Cockhill Lane (point A) to point U. From point U to just east of B the route is shown by a dotted line to the north of the field boundary. A path or track is not shown again until Harwes Farm (point F). From here until point V the claimed route is shown as a double row of pecked lines alongside the field boundary. From V - Y approximately, the claimed route is shown as an enclosed track; between W and Y as a double row of pecked lines within a greater enclosed width. The final part of the route between points Y and J is shown as a single dotted line which denotes a footpath. The applicant has pointed out that there are a number of bench marks along the route (points where the Ordnance Survey calculated the height above sea level and marked a symbol on a gate-post or building). However, such marks are not found exclusively on buildings or stones along paths, tracks or roads – they can be found on isolated barns or on features in fields well away from any highway.

The applicant has submitted a photocopy of a 1" OS dated 1870/80. The copy is of poor quality, but seems to show the claimed route in the same way as the 1840 1" map.

The applicant has submitted a plan from a sales document for the Copy House (now Harwes Farm) and Shaw Head estates in 1873. The estate was offered for sale in 28 lots. Part of the claimed route is shown in Lot 14 from point E to point V. Public Footpath No. 18 Colne is shown on the sale map as an enclosed track, and is referred to in the catalogue as a 'Road'. What is now Public Footpath No.16 is shown on the map as a 'cart road' and shown across pasture. A gate is shown at points E and V. The sale document also states that there is a right of road over Lot 13 'for all purposes whatsoever' to the highway leading from Colne to Skipton. It also adds as follows 'Lots 13 and 14 are about 3 miles from the market town of Colne, the latter Lot lying contiguous to the old highway leading from that place to Skipton'. It is submitted by the applicant that this reference to an 'old highway' from Colne to Skipton refers to the claimed route.

The word "contiguous" means "very close or connected to" and would seem to indicate that the highway was near rather than across the Lot.

The applicant has also submitted a map described as the Chapelry Map of Colne. She says that is based on Greenwood's map of 1818, amended in 1875. This map only shows the western end of the claimed route from points A - U as an enclosed track but any status is not shown on any key.

The first edition of the 25" map published in 1894 shows the whole of the claimed route. Field boundaries extend across the route in ten locations, which would indicate that there was a gate or other barrier at each point. As the Ordnance Survey surveyor recorded a continuous track across the fields and between boundary walls it is likely that there was a gate or other removable closure at each location to allow passage along the continuous track. The first part of the claimed route between points A and U is shown enclosed between solid lines, which would indicate walls, fences or hedges. From point U a track delineated by parallel pecked lines is shown across rough pasture as far as the boundary between Foulridge and Colne. The next short length of route to D is shown between solid lines again, before opening out as a track across rough pasture to the approach to Copy House (now Harwes) farm at point E. The route then becomes enclosed again (between E and F) before opening out from point F with a field boundary on one side, and open to fields on the other. The claimed route crosses six fields between Copy House/Harwes farm and Castle Road, in some cases across open fields, whilst across others there is a field boundary to one side, or enclosed on both sides between boundaries. The most easterly end of the claimed route between points H and J is shown with the notation 'FP' denoting a footpath. There is no notation on any other part of the claimed route. Elsewhere on this edition of the 25" map the notation for bridleway is used ('BR'), but not on any part of the claimed route.

The 1912 edition of the 25" map shows the claimed route in much the same way as on the earlier maps. The maps have obviously been re-surveyed since the earlier edition as there are many minor changes to a variety of features across the map.

Where the claimed route crosses open pasture or fields, there are some slight changes in alignment of the track to that shown on the earlier edition. All the field boundaries shown on the earlier edition remain.

The 1914 edition of the 1" map supplied by the applicant shows the route in the same way as the 1912 25" map. The 1924 edition, also supplied, is of too poor a quality to clearly identify the route.

Most of the c1932 edition of the 25" map is not available at the County Records Office.

Aerial photographs taken around 1945 show most of the claimed route. Lengths A - C and E - F show up clearly and are probably surfaced farm tracks. The stone walls can be seen between points W and H. The eastern end of the claimed route between points H and J can be seen crossing the open field to Castle Road.

The 1958 reprint of the 2½" map shows the entire claimed route apart from a short length between point C and the Foulridge/Colne boundary. The notation 'FP' for footpath is shown in two places on this map, at points D and G.

A plan obtained from the Land Registry by the applicant, being a plan attached to a Conveyance dated 1956, shows the holding for Harwes Farm and rights of way are coloured some of which are along the claimed route. However, the written extract from the said Conveyance refers to these as private rights of way but the plan does show D - E as part of a bridlepath but this does not continue to F - V. It is suggested that a private Conveyance is not showing public rights.

The 1972 edition of the 25" map shows all of the claimed route with the exception of the length from point C - E. The rest of the route is shown, with some parts open to adjacent fields, and other sections enclosed between walls. There are nine locations along the route where there may be a gate across it, as a solid line is shown on the map across the track. At point D where no track is shown, the field boundary is continuous across the claimed route, and any former gateway may now be blocked off.

The maps prepared under the provisions of the 1910 Finance Act were examined. The Act required all land to be valued, and maps were produced showing land in private ownership. All the claimed route is shown in private ownership, apart from the western end of the claimed route in Foulridge between points A and U which is outside private ownership plots, and the length U to the Foulridge/Colne boundary which is recorded as being in the ownership of Foulridge Parish Council.

Aerial photographs of 2002 show the claimed route in much the same way as the earlier 1945 edition.

The claimed route is not shown as a bridleway on the current Definitive Map, nor on any map produced in preparation of the Definitive Map. There were no objections to the depiction of the route at any stage of preparation of the Map. Public Footpaths Nos. 44A and 44B Foulridge join the claimed route to the east of point A. As this part of the claimed route has no recorded public status, these footpaths are in effect

dead-ends. The survey map and accompanying cards that describe each path shown on it were produced by Foulridge parish council in around 1950. The descriptions of paths 44A and 44B both state that they end on a 'road'. It is not known why the parish council showed the footpaths ending in this way, but it is possible that the council believed that as the claimed route had the character of a road, it should not be included in the survey of public rights of way. No objection was made to the way these paths were shown on the subsequent Draft Map for Burnley Rural District, which was placed on deposit for 4 months in 1955. The reference to the footpaths in Foulridge joining a road has been carried through to the present Definitive Statement.

Extracts from parish histories were included with the application. Reference is made in them to 'Joseph's Place' which is described as adjoining Kelbrook Moor, near the Shooting Box at point U, and that this land, 4 acres in size, was formerly the 'town's piece of land on the moors', land which was leased to the owner of the Shooting Box. It is not known where this land is, or if the claimed route crosses it.

Reference is also made to the 'dissenters well' beside the Tom Cross. It is not known where this well is located. There was considerable animosity towards non-conformists in the 18th century, and legislation was passed which made their religious gatherings illegal within a 5 mile radius of a parish church. Meetings were therefore held in remote locations, such as on moors. This well is said to be connected with these meetings. No evidence has been produced to show that worshipers visited the well on horseback, or in carts.

An extract has been submitted from the Colne and Nelson Times dated June 1911 describing action taken by people in the Foulridge area to pull down fences and walls erected across public rights of way. A sentence in the newspaper article refers to the protest continuing onto the bridleway to Hallam Moor and Lothersdale. Lothersdale is in Yorkshire, to the north-east of the eastern end of the claimed route, and Hallam Moor is to the north-east of Foulridge village. The exact location of the bridleway referred to not exactly described.

Part of evidence submitted at a public inquiry in 2002 into a successful claim record bridleway rights along what are now Bridleways Nos. 43 and 44 Foulridge has also been included with the application. The Inquiry evidence quotes a former resident of Great Edge farm (now deceased) who referred to 'an old bridlepath running up beside Kelbrook Wood (which) used to be the old lime route to Lothersdale'. Kelbrook Wood is to the north of Public Footpath No. 65 between points B and C. The evidence statement refers to tracing this route on the Colne tithe map as 5 parcels of land referred to in the written schedule as 'roads'. This not the case with this claimed route as only 3 parcels are described as roads, and 1 as a lane. The 'old bridle path' referred to in the 2002 statement is also described as passing Earl Hall and Laycock. Earl Hall lies to the south of the claimed route on Public Footpath No. 44 Foulridge, and Laycock on the same footpath to the north of the route.

The extract of evidence presented at the Public Inquiry also refers to a route mentioned in 'A History of Barnoldswick' by J L Savage from Barnoldswick to Lothersdale. This old route was claimed to run along Bridleways nos. 43 and 44

Foulridge, then via Earl Hall to Laycocks. The route currently claimed as a bridleway does not pass through either of these properties.

Summary

Site evidence indicates that most of the claimed bridleway has the appearance of a walled track. Some walls still exist on both sides of the route, while only one remains along other lengths, and none at all in others. Where the route is not walled on both or either side there are indications on the ground that there used to be a track there, with evidence of a ditch along where a boundary may have been, or that a spring was set to one side. Old gateways on the route have been walled up in places, and stiles inserted instead to allow use by pedestrians.

Documentary and map evidence starts with the cases heard at the Lancaster Assizes in the mid 1600s. The case related to a highway for all types of traveller on the north side of Piked Edge. A farmer who had erected walls across the highway was ordered to take them down, and was taken to court again after he re-erected them after initially opening up the route as instructed.

Maps produced before the first Ordnance Survey maps were published in the mid 1800s only show the route at its western end between points A and B.

The claimed route is shown on two adjoining tithe maps both drawn in 1842. Evidence from the tithe maps show the route as an enclosed track along about half its length. Part of the claimed route in Foulridge is shown as not being in private ownership, and could therefore have been regarded as part of the public highway network of the parish especially section A - B. In contrast, 80% of the claimed route in Colne is in private ownership. Only 33% of the route in private ownership is described as a road or lane. The 1843 map of the Township of Colne shows some of the route with the status of 'bye or cross road'.

A sale document for the Copy House/Harwes Farm and Shaw Head estates dated 1873 shows length E – V as a cart road. The document also refers to the sale Lot as lying contiguous with the old highway from Skipton to Colne, but the specific route of this is not shown.

Ordnance Survey information from the 1894 25" map continues to reflect the appearance of the route evident from the 1842 tithe maps, and modern site evidence, namely that the route has existed from that time, mostly edged with one wall or with two. The 1894 map show that there were gates across the track in 10 locations.

The map prepared under the provisions of the 1910 Finance Act show that the part of the route in Foulridge was either excluded from land in private ownership, or owned by the parish council, whilst all the route in Colne was privately owned.

The length A – B has never been shown on the Definitive Map or on any maps produced in preparation of the Map. The parish council described the footpaths joining this section of the claimed route as joining a road, and it is presumed that this is why A – B was not shown on the parish survey map. There were no objections to the depiction of the claimed route at any stage of preparation of the Definitive Map.

It is not understood why the Parish Council today take the view that it is not public when their predecessors seem to have considered otherwise.

In conclusion, there appears to be evidence that the claimed route may have been the old road from Skipton to Colne in the 1600s, with remnants of this old road appearing in tithe maps and other maps produced around 1840. This was still in local memory in 1873 when one of the estates of the area was sold, and confirmed by the recollection of a local farmer at a public inquiry in 2002. No evidence has been found to show that this old route has ever been legally closed.

County Secretary & Solicitor's Observations

In support of the claim the Applicant has submitted considerable map and other documentary evidence, details of much of which appears under the heading "Environment Director's Observations".

Also submitted are the following:-

1. photographs of the claimed route, including aerial photographs, one dated 1940 and one undated.
2. extracts from Fay Oldland's book "The Story of Foulridge" giving information about a plot of land known as "Joseph's Place" and also about Dissenter's Well,
3. copy document dated 1655 ref DBB/62/15 (Lancashire Records Office), with transcription, referring to the making by James Hartley of two gates large enough to take carriages, packhorses etc at
4. copy document dated 1665 ref DDB/62/14 (Lancashire Records Office) with transcription, referring to James Hartley being fined for the blocking of a highway running from Foulridge over Kelbrook Moor and Pike Edge, via a "causey" known as Jepps Causey to meet the highway which runs between Colne and Skipton. Users of the highway so described are referred to as including "horses, and other cattle with carts or carriages".
5. extract from Colne & Nelson Times dated 9th June 1911 which refers to a right of way dispute of the time and the opening of some of the local routes by protestors.
6. extract from Statement of Carole England in which she refers to a verbal statement by Mr Robinson to part of the claimed route being "an old bridlepath" and "the old lime route to Lothersdale". She stated that Mr Robinson has since died. This Statement was made in support of a separate bridleway claim brought in 1992 but it is not clarified who Carole England is.
7. Copy letter dated July 1991 by Susan Rogers of the Countryside Commission in which she refers to an identical statement by Mr Robinson.

Information from Others

Nine owner/occupiers were consulted, of which three have replied. None of these have offered any objection to the claim.

One owner, Mr Robinson, has seen walkers on the claimed route but has not seen it used as a bridleway for many years. He requests that if the claim is accepted signs be erected where the route crosses open fields and makes the point that where the route crosses a wet and boggy area he would not expect to have to undertake works at his own expense.

Letters have been received from two local residents who live within a few hundred yards of the start of the claimed route. Both raise objections to the claim on the grounds that the claimed route passes land run by the owners of "The Shooting Lodge" as a shooting business. This business is open all day six days a week and noise from the clay pigeon shoot is loud, being audibly a mile away, and is likely to "spook" horses passing on the claimed route, with potentially fatal consequences. The Committee will, of course, be aware that while this may be of concern to potential users, and is of importance to the objectors, it can have no bearing on whether or not the path exists in law. The two objectors also make the point that the lane leading from Cob Lane as far as the Shooting Lodge is for access only.

A further local resident telephoned to express concern at any increase the number of horses using Cob Lane, which is single track only, but has not put her concerns in writing

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

There is strong documentary evidence for section A - B

Against Accepting the Claim

The documentary evidence is less strong for section B - J

Conclusion

The Claim in this matter is that the long route across rural terrain is already a bridleway in status. No user evidence has been submitted and so it is a case where consideration of the historical documents and the way the route has been recorded and referred to therein can lead to a decision that on balance, it can be inferred that the owner(s) must have given the route over to public use. The Applicant has sent various documents and the Environment Director has further investigated and found others.

It appears that there is older and different historical evidence for Section A - B and it is suggested that Section A - B and B - J be considered separately.

Section A - U - B

This section is shown on the honour of Clitheroe map and significantly on both Greenwood and Hennesstys maps of early 19th century. Shown on different

independent maps is an indication of public status of at least bridleway. Information from the tithe maps can also assist and again most of this Section A-U is shown not recorded with an owner or occupier and on balance seemed to have been regarded as part of the highway network. Section A-U is also excluded from hereditaments on the 1910 Finance Act map and again this is very indicative of public status as the surveyors were to exclude "road ways". In 1950 footpaths were recorded to join this section of the route and it indicates that it was considered to carry public rights which the footpaths could lead into which were greater than footpath rights along this section of route.

Taking into account all the evidence in the Report it would indicate that this section in particular is recorded as being highway but least by the way status from many decades ago and it is suggested that Committee may consider that the claim for this section being accepted.

Section B-J

It is noted that east of B there is no evidence of it being a route at all on any of the old commercial maps. There is however physical existence of a route although some of the gateways are now blocked across and only a stile provided. A physical existence of a route however does not mean that it is public, it could equally have carried private access traffic.

The historical evidence of this long section of track carrying public rights is significantly less than Section A - B. Sections B - D appear on the tithe as a "lane or waste" with an owner occupier and other sections further east appear fragmented as sections of "road" again with owners and occupiers. Section B - J is within hereditaments in the Finance Act Map and there are other pieces of evidence which again do not amount to the standard of evidence for Section A - B.

It is suggested taking all the evidence into account there may not be sufficient evidence from which to infer that there are already public bridleway rights on this section on the line as claimed.

Whole Route

It is the case that there are references to an old highway in this area. However, it is the case that the location of the blocking of the "high way" in 1655 is not known and equally the outcome of the Court Case is not known. Similarly regarding the "old highway" contiguous to lot 14 in 1873, it is not clear where that highway lies. Bridleway 44 to the east of Point A was found to be a significant route carrying bridleways rights with an appearance of some antiquity by the Inspector following a Public Enquiry in 2002 but this route linked highways running north to south and may not have continued further east as a longer route all the way to Point J.

It may be that in the future the precise route of a dedicated public bridleway route can be shown east of Part B but until then it is suggested that there is sufficient evidence of the western end of this route to already carry a bridleway right but less evidence for the rest of the route.

The Committee, in considering all the evidence may take the view that any part of the Claim be accepted has already carrying public bridleway rights on balance, and the Claim for only Section A - B be accepted in this matter and Section B - J be not accepted.

Alternative options to be considered –

N/A

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

| Paper | Date | Contact/Directorate/Ext |
|--|------|--|
| All documents on Claim File Ref: 5.27606(804/440) | | J Blackledge, County Secretary & Solicitor's Group, 01772 533427 |

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981
THE LANCASHIRE COUNTY COUNCIL
(DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY)
(DEFINITIVE MAP MODIFICATION) (NO.7) ORDER 2007

This Order is made by the Lancashire County Council under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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 to which Part III of the Act applies.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. The Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 5th December 2007.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Lancashire County Council (Definitive Map and Statement of Public Rights of Way) (Definitive Map Modification) (No. 7) Order, 2007.

Dated this 5th day of December 2007.

THE COMMON SEAL of the Lancashire County Council was hereunto affixed in the pursuance of a Resolution passed at a meeting of the Regulatory Committee duly convened and held on the 9th May 2007



Authorised Signatory



17673

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP DESCRIPTION OF WAY TO BE ADDED

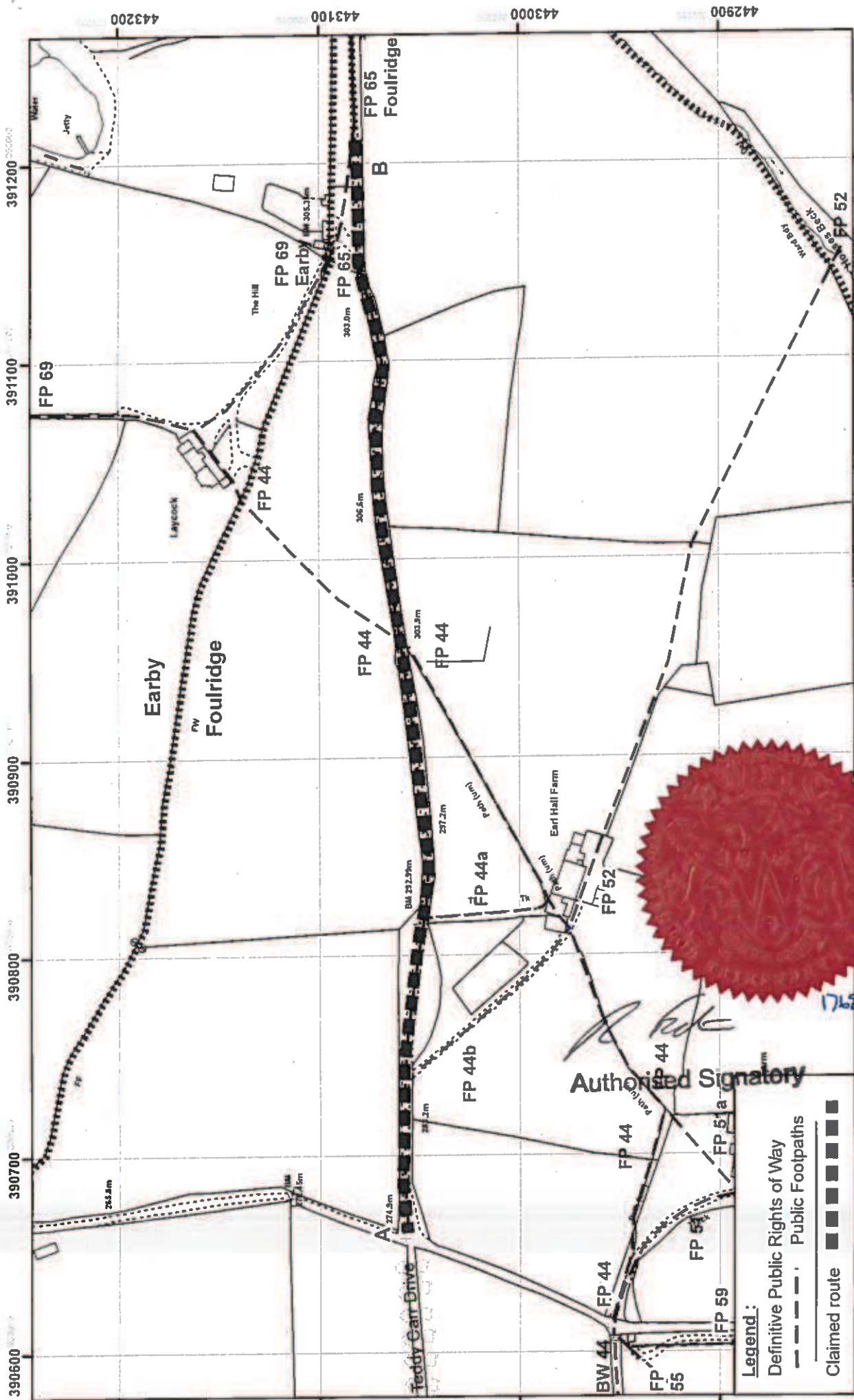
Public bridleway, being 6 metres wide for 160 metres, then ranging between 5.5 metres and 7.5 metres according to the width between walls for 330 metres, and then 3 metres wide for 75 metres, from the junction of Cob Lane and Cockhill Lane, Foulridge, Pendle Borough, running in a general easterly direction to Public Footpath No. 65, Foulridge, Pendle Borough, a distance of approximately 565 metres, shown A – B on the attached plan

PART II

MODIFICATION OF DEFINITIVE STATEMENT

The following entry be added:-

“Bridleway, from a point at GR 9066 4305 at the junction of Cob Lane and Cockhill Lane (U40347), Foulridge, Pendle Borough, running in a general easterly direction along a track 6 metres wide, for a distance of approximately 80 metres to a point where it is joined by Public Footpath No. 44b. Foulridge, then running uphill for a further 80 metres to the point where Public Footpath 44a Foulridge joins the route from the south. The track continues between stone walls varying in width between 5.5 and 7.5 metres, continues in an easterly direction, being crossed after approximately 140 metres by Public Footpath No. 44 Foulridge, then runs downhill for approximately 190 metres to pass through a field gate between stone gateposts 3 metres apart. The track, 3 metres wide and now stone surfaced, passes the entrance drive to Kelbrook Lodge on the northern side, continues in an easterly direction for a further 45 metres to pass through a field gate, and then continues for a further 30 metres to its junction with Public Footpath No. 65, Foulridge at GR 9121 4380.”



| | |
|---|--|
| | Scale 1:2,500 |
| 804/440 | Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. Shown A - B. |
| | G. Harding B.Eng., C. Eng., FICE, FIMT, MCIM, Environment Director |
| Wildlife & Countryside Act 1981. | |
| The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose. | |
| This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320 | |



RIGHTS OF WAY SECTION

ADVICE NOTE No 22

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS


Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure that it is valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various lines styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. For the avoidance of doubt, the notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads. Several options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.

6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011¹. This still applies except in those cases where the error is significant and clearly misleading.

¹ We felt that this was only fair considering that we had identified that we had not been applying our policy of rejecting orders containing incorrect notation consistently.

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a continuous bold black line and ways to be added as a bold broken black line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|--|
| Electoral Division affected: Ribble Valley South West |
|--|

Wildlife and Countryside Act 1981

**Claimed Public Footpath from Public Footpath No. 40 to Longworth Road,
Billington, Ribble Valley Borough**

File No. 804-427

(Annex 'A' refers) (Appendices A, B, C and D refer)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

The consideration of the Order for a public footpath from Public Footpath 40 to Longworth Road, Billington, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File no. 804-427.

Recommendation

1. That 'The Lancashire County Council Definitive Map And Statement of Public Rights of Way (Definitive Map Modification (No. 5) Order 2006' made pursuant to the Committee decision on 27 September 2006 in relation to:

The claimed Public Footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough; in accordance with file 804/427 be submitted to the Planning Inspectorate for non-confirmation / rejection.

2. That a further Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Public Footpath 40 to Longworth Road, Billington on the Definitive Map and Statement of Public Rights of Way using the correct notation to depict the route on the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
3. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 27 September 2006 considered the report attached as Appendix A and accepted the application to add to the Definitive Map and Statement

of Public Rights of Way a public footpath extending from a point on Public Footpath 40, at the north eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, Ribble Valley Borough, a distance of approximately 65 metres.

An Order was made on 25 October 2006 and objections received from the residents of nos. 1, 1a and 1b Sunnyside Avenue, Billington. The main points of the objections included that a footpath was already in situ but Rossendale borough Council removed the kissing gate and it just needed maintaining, the new path crosses some of the residents gardens (private property) and the new Public Footpath creates danger and will attract vandalism. It is also mention that in the Order the width stated is 15f but on the ground it is only 12f.

As none of the objections have been withdrawn Lancashire County Council cannot confirm the Order but must submit it to the Planning Inspectorate for determination.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

The Order Map for this Order contains the incorrect notation to depict the route to be added. The notation which should have been used on the Order Map to show the public footpaths is either a purple line, a continuous line with short bars at intervals or by a broken black line with short intervals. The Order map however, shows the public footpath which is to be added as a solid black line instead, and as such this does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised that *'...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.'* The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, *'all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used*

to depict the routes affected by the order. We will therefore reject any order containing incorrect notation."

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the current Order (attached as appendix B) will not be capable of being confirmed. It is advised that this Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning a footpath at this location, the making of a new Order should properly be considered.

It is suggested to Committee that in order to resolve the procedural error on the Order Map and promote the order to confirmation, it may be considered preferable to remake the order which deals with wrong notation error to the Definitive Map and Statement. It is therefore suggested to Committee that a new Order be made and the Order made in 2006 is submitted to the Planning Inspectorate requesting it is not to be confirmed or expecting it to be rejected. This course of action would resolve the issue of the incorrect notation and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the Order be confirmed.

Committee it advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 27 September 2006, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report.

Taking all the evidence into account it is suggested to Committee to accept the claim and to make a new Order dealing with wrong notation error from Public Footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough. Committee should note the new Order, if made would be 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 |
|------------------------------------|---------|---|
| All documents on File Ref: 804-427 | Various | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 27 September 2006

Part I - Item No. 4

Electoral Division affected:
Ribble Valley South West

Wildlife and Countryside Act 1981

**Claimed Public Footpath from Public Footpath No. 40 to Longworth Road,
Billington, Ribble Valley Borough**

Claim No. 804/427

(Annex 'A' refers)

Contact for further information:

Jean Blackledge, 01772 533427, County Secretary & Solicitor's Group
S D Williams, 01772 533886, Environment Directorate

Executive Summary

The claim for a public footpath from Public Footpath No. 40 Billington to Longworth Road, Billington, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/427.

Recommendation

- i) That the Claim for a public footpath from Public Footpath No. 40 to Longworth Road, Billington, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/427, be accepted; and
- ii) That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Public Footpath No. 40, at the north-eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, Ribble Valley Borough, a distance of approximately 65 metres, and shown between points A to C on the attached plan, (GR SD 7264 3594 to GR SD 7269 3598).

Background

A claim has been received for a footpath extending from a point on Public Footpath No. 40, at the north-eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, Ribble Valley Borough, a distance of approximately 65 metres, and shown between points A to C

on the attached plan, (GR SD 7264 3594 to GR SD 7269 3598), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Ribble Valley Borough Council

The Borough Council confirm that they removed the kissing gate at point B on the attached plan and erected fencing across the claimed route last year. They have commented that the initial blocking up of the claimed route was carried out by the Borough Council due to the occupier of no. 1b Sunnyside Avenue claiming that it was on their land and that they (Borough Council) had no right to remove the original kissing gate. Subsequent research showed that the occupiers of no. 1b Sunnyside Avenue do not own the land or boundary where the kissing gate stood.

The Borough Council has, therefore, decided to re-open the gap where the kissing gate previously stood and make the claimed route available to the public. This has been done with verbal consent from Redrow Homes who own the land on the Dale View side of the fence.

It, therefore, appears to the Borough Council that the challenge to the public's right to use the path was not a legal one and, therefore, there is no cut-off date from which to count back the required 20 years use.

Billington Parish Council

The Parish Council would like to strongly support this application – as far as the Council are aware, this has been the actual route of the footpath for as long as anyone can remember and is the only accessible route for pushchairs, wheelchairs and the infirm, all of whom are regular users of the path.

Claimant/Landowners/Supporters/Objectors

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

Advice

Environment Director's Observations

Description of the route

The claimed route starts at point A at approximately the point at which Public Footpath No. 40 Billington leaves the turning circle at the north eastern end of Dale View (Dale View is at present a private road not yet dedicated as a highway and adopted by the County Council and recorded as X 5117). Public Footpath No. 40 Billington continues in an east north east direction to come out onto Sunnyside Avenue further south than the claimed route and is blocked by metal fencing, a large conifer tree and a number of shrubs as it passes down the south side of Sunnyside

Avenue. On leaving Public Footpath No. 40 Billington the claimed footpath passes over a short section of the tarmaced turning circle at the north eastern end of Dale View and after leaving the turning circle, the claimed route continues along a recently tarmaced path of 1 metre width for a distance of approximately 4 metres to pass between a metal fence and a substantial metal gatepost, the gap being 1 metre wide at point B. Immediately after passing between the post and fence, a further section of fence narrows the route presumably to restrict the use of the route by motorcyclists and bicycles. A Public Footpath finger post has been recently erected next to the metal gatepost. Where access is currently available, between the fence and the gatepost, is where there used to be a metal kissing gate.

The route then immediately joins Sunnyside Avenue, an un-adopted private road that leads to a known highway, Longworth Road. The claimed route passes along Sunnyside Avenue in a generally east north east direction for a distance of approximately 55 metres to the junction of Sunnyside Avenue and Longworth Road. Sunnyside Avenue has a metalled track that has in the past been tarmaced but the surface is in places breaking up and small potholes developing. The section of Sunnyside Avenue along which the claimed route runs is 5 metres wide although cars have always been parked along the route during site visits. The claimed footpath is on the metalled track and, for a distance of approximately 30 metres, runs parallel with Definitive Public Footpath No. 40 Billington which passes in a north east direction along the verge of Sunnyside Avenue. During the site inspection the claimed route was in regular use by local residents.

Documentary Evidence

A number of documents and maps have been checked for the purposes of this application.

A number of commercially produced maps that were produced prior to the first Ordnance Survey sheet of 1845, have also been checked none of which showed the claimed route.

The 6-inch to 1 mile Ordnance Survey sheet of 1845 shows the area of the claimed public footpath as being open fields. The housing around Sunnyside Avenue and Longworth Road have not been built, nor has the Judge Walmsley Mill or railway line. The line of the claimed route is crossed by two field boundaries, however no track or feature of any kind is depicted along the route of the claimed route or the route of Definitive Footpath No. 40 Billington.

The copy of the 25-inch to 1 mile Ordnance Survey sheet of 1893 held at the Lancashire Records Office has been damaged and the section of the map that shows the claimed route is missing. From the remaining portion of the map it can be seen that the houses on Sunnyside Avenue have not been built. The railway is shown by this map sheet. The route of Definitive Public Footpath No. 40 Billington is shown passing along a boundary past some small buildings which were presumably the chicken sheds as described in user statements.

The 25-inch to 1 mile Ordnance Survey sheet of 1912 shows the Definitive route of Public Footpath No. 40 Billington passing along the aforementioned boundary, past

what is presumed to be the chicken sheds and leading towards a street called Factory Row, now named Longworth Road. The houses along Sunnyside Avenue are not shown by this map sheet and what is now called Sunnyside Avenue only extends as far as the back alley to the houses on Factory Row. The claimed route is not depicted on this map until it runs co-incident with what is now a part of Sunnyside Avenue. The section from where the claimed route leaves Public Footpath No. 40 Billington to the alley that reaches the backs of Factory Row is not depicted on this map sheet.

The 25-inch to 1 mile Ordnance Survey sheet of 1932 shows the houses on Sunnyside Avenue. The route of Public Footpath No. 40 is visible on this map passing along a boundary fence as previously described. The claimed route is not shown as a track leading off the Definitive route of Public Footpath No.40 Billington as the route reaches Sunnyside Avenue. If the claimed route existed on the ground, this would need to cross the boundary fence on Sunnyside Avenue that is shown by this map, whether this boundary was a wall, fence or hedge and whether there was a gate is not apparent from the map. After crossing the boundary and passing onto Sunnyside Avenue the claimed route passes down what is shown as Sunnyside Avenue towards Longworth Road. Sunnyside Avenue is shown as being open to Longworth Road.

The 6-inch to 1 mile Ordnance Survey sheet of 1955 does not show the first section of the claimed route leading off the marked route of Definitive Public Footpath No. 40 Billington before it reaches Sunnyside Avenue. The section of the route can be seen as it passes down Sunnyside Avenue to Longworth Road and this is shown as being open with no gates or restrictions. The small scale of this map means that such a minor variation is unlikely to be shown.

The 1:2500 Ordnance Survey sheet of 1967 is similar to the 25-inch to the mile Ordnance Survey sheet of 1932. Sunnyside Avenue is shown as having a verge area on the south side where Public Footpath No. 40 Billington runs. The claimed route which is not depicted as leaving the Definitive route crosses a solid line indicating a wall or other boundary as it joins Sunnyside Avenue. The claimed route then passes down Sunnyside Avenue as depicted by this map sheet.

The aerial photograph of the area taken around 1940 shows the claimed route reaching Sunnyside Avenue. The Definitive route of Public Footpath No. 40 Billington can be seen on this photograph as approaching Sunnyside Avenue but the trodden path does not continue along the recorded Definitive path but turns towards Sunnyside Avenue along the line of the claimed route. Sunnyside Avenue can be clearly seen on this photograph.

The aerial photograph of 1989 shows the line of Public Footpath No. 40 Billington. The houses at Dale View have not yet been built. The aerial photograph does appear to show a route that sways away from the field boundary in front of 1b Sunnyside Avenue. The verge on Sunnyside Avenue along which Public Footpath No. 40 Billington runs appears as a grassed area. Sunnyside Avenue appears open to Longworth Road.

The aerial photograph of 2000 shows the area of Dale View as a building site and the houses have not been constructed. The photograph appears to show a route along the claimed route but this is not clear. Sunnyside Avenue appears open to Longworth Road.

The aerial photograph of 2003 shows the turning area of Dale View and a route can be seen leading from the turning area to Sunnyside Avenue.

Definitive Map history

The Billington Parish Survey map shows Public Footpath No. 40 Billington leading as far as Sunnyside Avenue along the route that is recorded on the Definitive Map of Public Rights of Way First Review. The section of Public Footpath No. 40 Billington that continues along the grass verge of Sunnyside Avenue is not represented by the Parish Survey Map. The claimed route leading down Sunnyside Avenue to Longworth Road is not shown by the Billington Parish Survey Map. The Parish Survey Card describes the route as reaching Sunnyside Avenue. The Survey Card describes the route passing through two gate stiles and the last description is the route passing over a stile adjoining a cart gate. It is not clear if this description applies to the exit onto Sunnyside Avenue.

The Draft, Provisional and Definitive Rights of Way maps show the same as the Parish Survey Map. The Definitive Statement describes Public Footpath No. 40 Billington as passing from Elker Lane near Chew Mill to Sunnyside Avenue. None of these maps show the claimed route marked independently of the Definitive footpath.

The Definitive Map First Review does show the Definitive route as a longer footpath extending partway down the verge of Sunnyside Avenue. There are no records on file that would suggest any objection had been received to explain this change in the northern extent of the Definitive route.

In summary the claimed route is open and available for use and passes from Public Footpath No. 40 Billington across a part of the turning circle of Dale View and passes down a tarmaced path of 1 metre width a short distance to a metal fence. The claimed route passes through a 1-metre gap in the fence to reach Sunnyside Avenue. The claimed route passes down Sunnyside Avenue to reach an adopted road called Longworth Road.

The claimed route leading from Public Footpath No.40 Billington to Longworth Road is not depicted on any of the maps that have been examined for the purpose of researching this claim.

The claimed route can be seen on the aerial photograph dated 1940 and was therefore clearly in existence at that time but is not depicted on the Ordnance Survey map sheets of 1932 and 1955 as a change in surface.

It is difficult to explain why the claimed route does not show on the parish survey. The claimed route is however such a minor deviation from the recorded route of Public Footpath No. 40 Billington (the distance between the route of Public Footpath No. 40 Billington and the claimed route is approximately 5 metres on the Order plan)

and it may have been difficult and impractical to have recorded both routes on the survey map had the Parish Surveyors found both the definitive route and the claimed route to exist at the time of the Parish Survey.

It is suggested that the claimed route has clearly been in existence since at least 1940 and it would appear that the claimed route may have been assumed by users in the area to be the route of the Definitive footpath. The route of the Definitive footpath along the boundary verge of Sunnyside Avenue is consistent with the Ordnance Survey map of 1912. By 1932 the houses at Sunnyside Avenue had been built and it would appear that a more convenient access next to the Definitive route was provided. It would appear from the site visit that the path shown by the Definitive Map of Public Rights of Way First Review has not been used for a considerable period of time and that the claimed route has for some time been available to the public and this is reinforced by the user evidence that accompanies the application.

Director of Legal Services Observations

Information from Applicant

In support of the Claim 33 evidence of use forms have been submitted indicating knowledge of the route for 88 years (1); 70-79 years (6); 60-69 years (4); 50-59 years (8); 40-49 years (3); 30-39 years (3); and 20-29 years (8).

The forms indicate use of the route for 70-79 years (6); 60-69 years (3); 50-59 years (9); 40-49 years (3); 30-39 years (4); 20-29 years (7); and less than 20 years (1).

The usage has been mainly for pleasure purposes, country walks, jogging and exercise, visiting friends, and access to shops, school, work, church, library, bus-stop, properties and the main road, and ranges from 4 times daily, to daily, to 2/3 times per week, to weekly, to monthly, to less frequently.

The witnesses were not working for any owner or occupier of land crossed by the claimed route at the time when they were using it; they have not been stopped or turned back when using the route, and have not heard of anyone else having been challenged; they have not been told by any owner or tenant that the way was not public; they have never known of any locked gates or other obstructions on the route, (other than a stile and a kissing gate); they have never seen any prohibitory notices on or near the route, (other than a 'Private Road' sign on Sunnyside Avenue, but not on the claimed route); and they have never asked or been given permission to use the route.

A number of the witnesses refer to a variation in the route when the houses on Dale View were built.

One witness, with 65 years knowledge and use of the route, states that the route has never followed the route along which it has now been diverted. It is submitted that the 'present diversion' takes you through what was always known as 'Wallbank's Hen Pens' and you would never have been allowed in there let alone through there. It is submitted that this land was separated from the path by a hedge and a ditch and

it would not have been possible to follow the course along which the path has been diverted.

One witness, who has lived in the village for almost 80 years, and was brought up on Sunnyside Avenue, states that the path has been there all of her life. She, and other children in the area, used the path to go for the bus to school in Langho. Her sister, sister-in-law, and others used it to go to work at Green Brothers Mill on the main road in the village. Other workers used it from the village to go to Longworths Mill by the river. It is submitted that the path is now used by lots of people for pleasure, lots of ramblers heading for Dinckley, and also children to Whalley School, access to the shops and post office. She submits that the gate referred to has never been closed.

Information from others

Land crossed by both ends of the claimed route is in the ownership of Redrow Homes (Lancashire) Limited, who have no objection to the proposal.

An objection to the proposed changes to the kissing gate/public footpath on Sunnyside Avenue has been received from a resident of Sunnyside Avenue. She states that the gate on the claimed route had been locked for at least one day every year for the previous three years to her personal knowledge, and she is contacting the previous owner of the property to see whether they know of the gate being locked previously. She considers that, if a gate has been locked for at least one day every year, a public right of way does not exist and the 'so called 20 year rule' would not apply.

She objects to the re-opening of the gateway as the quality of life for her and her neighbours is better now the gate has been closed – pedestrians are using the public footpath, as they always have done, and litter, dog-fouling, and anti-social behaviour in front of the house has reduced substantially.

She also objects to the proposal to move the public footpath from behind the hedge to run in front of the houses on Sunnyside Avenue. It is submitted that the gate opens straight onto a busy private road and, if the footpath is moved, the Council will have a responsibility to maintain the footpath.

It is further submitted that the public footpath, as it stands, has always been used by people on bikes and with push chairs without complaint. Opening the kissing gate meant that it was being used illegally by motor bikes.

Others have written in support in response to the application. One resident (who has already completed a user form) says that she has lived on Sunnyside Avenue for 43 years and in all that time the kissing gate onto Sunnyside Avenue was the right of way. An elderly neighbour who has also lived on Sunnyside Avenue for over 70 years has never known anything different. It is also stated that the owners on Sunnyside Avenue own the piece of the private road in front of their house.

Another resident who has lived in Billington all her life and is now living back on Sunnyside Avenue, states that the path (claimed) has been there all her life. She

used it to go to school and to work and knows of its use by many others. She says that the gate (at point B) was never locked as has been said.

The Committee will, of course, be aware that objections received on the grounds of safety, security, privacy and vandalism, etc, whilst of importance to those persons making them, have no bearing on whether or not the path exists in law.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User evidence

Aerial photographs

Attitude by present owner of land at both ends of the claimed route

Against Accepting the Claim

No real evidence against acceptance but note reference to locked gate 2002 2003 and 2004 and to possible recent change of line of route A-B

Conclusion

The claim is that this short route has already become a footpath and should be recorded on the Definitive Map and Statement.

There is no express dedication and the Committee is therefore advised to consider whether there are circumstances from which a dedication can be inferred at Common Law or whether the criteria in Section 31 of the Highways Act 1980 are satisfied on balance by which a dedication can be deemed.

It would appear that the kissing gate at the boundary onto Sunnyside Avenue (point B) was removed and fencing erected not by the owner but by the Borough Council in 2005. This has caused concern and it is suggested that this did mean that users realised that their right of way was challenged. It is advised that actions calling routes into question do not necessarily have to be by an owner and that the action taken last year by the Borough Council can be considered as a calling into question under Section 31 of the Highways Act 1980.

Under Section 31 use of the claimed route has to be for twenty years preceding the calling into question, that is 1985-2005. Everyone who has given evidence of use state that they have used the route through the gate at Point B throughout this period and by many of them for many decades before. They do not recall any adverse actions taken against their use and do not refer to the gate being locked on any day. It is advised that if actions were taken to lock the gate, this may have called the route into question in 2002 but it is advised that there is clearly use of the route for the required period 1982-2002 if that is considered to be the case. It is suggested that user evidence is able to satisfy the criteria in S31 Highways Act 1980.

However, it may be that the construction of Dale View did alter the line of the route used by members of the public as they passed into land owned by Redrow at point B but it is clear that Redrow as owners are content that a public right of way on the claimed line be recorded and it is therefore advised that there would appear to be circumstances such as the statement made by Redrow from which a dedication of section A-B can be inferred on the claimed route.

Taking all the evidence into account the Committee may consider on balance that dedication of the claimed route can be deemed under Section 31 of the Highways Act or inferred under Common Law and that the claim be accepted.

Alternative options to be considered - N/A

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

| Paper | Date | Contact/Directorate/Ext |
|---|------|--|
| All documents on Claim File Ref: 5.26127 (804/427) | | J Blackledge, County Secretary & Solicitor's Group, Ext: 33427 |

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981
THE LANCASHIRE COUNTY COUNCIL
(DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY)
(DEFINITIVE MAP MODIFICATION) (NO. 5) ORDER 2006

This Order is made by the Lancashire County Council under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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 to which Part III of the Act applies.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. The Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 25th October 2006
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Lancashire County Council (Definitive Map and Statement of Public Rights of Way) (Definitive Map Modification) (No. 5) Order, 2006.

Dated this 25th day of October 2006

THE COMMON SEAL of the Lancashire County Council was hereunto affixed in the pursuance of a Resolution passed at a meeting of the Regulatory Committee duly convened and held on the 27th day of September 2006

Authorised Signatory



16593

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP DESCRIPTION OF PATH TO BE ADDED

Footpath from a point on Public Footpath No. 40 Billington, Ribble Valley Borough, at the north-eastern termination of Dale View, Billington, to a point on Longworth Road, at its junction with Sunnyside Avenue, Billington, a distance of approximately 65 metres, as shown A – B – C on the plan annexed hereto.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

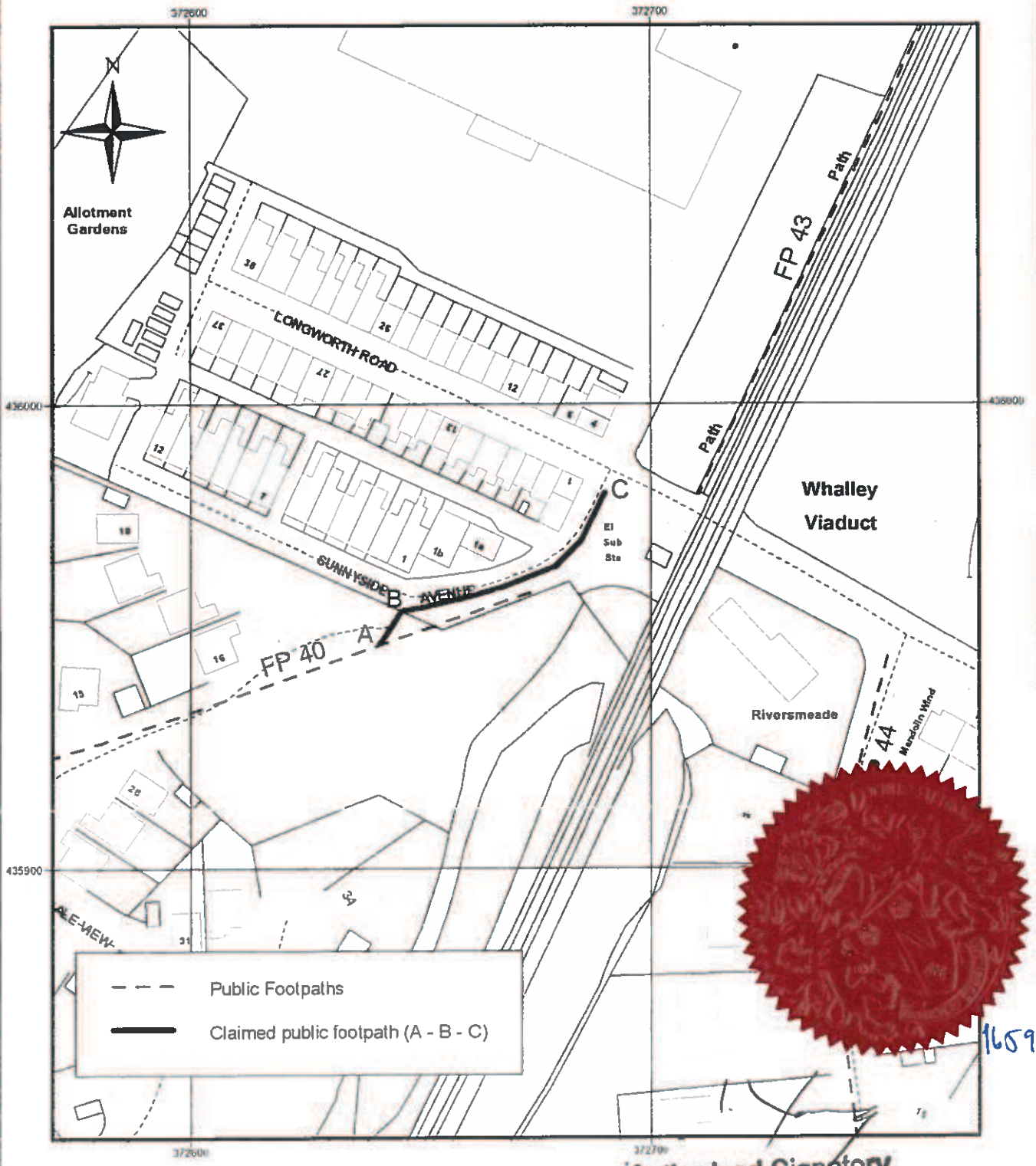
The following entry be added:-

"Footpath, from a point on Public Footpath No. 40, Billington, Ribble Valley Borough, at the north-eastern termination of Dale View, Billington, (GR SD 7264 3594), running in a general north easterly direction for a distance of approximately 4 metres along a 1 metre wide surfaced path, then passing between a metal fence and gatepost to join Sunnyside Avenue, then following the 5 metre wide metalled track of Sunnyside Avenue in a generally east north easterly direction for a distance of approximately 55 metres to its junction with Longworth Road, Billington, Ribble Valley Borough at GR SD 7269 3598".



Wildlife and Countryside Act 1981
Claimed Public Footpath From Public Footpath 40
Billington, to Longworth Road, Ribble Valley
Claim No. 804/427

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



Authorised Signatory

Reproduced from the 1:1250 scale Ordnance Survey map with the permission of the
Controller of Her Majesty's Stationary Office.
Crown Copyright Reserved, licence No. LA 100023320

Part of Sheet No.
SD 73NW



RIGHTS OF WAY SECTION

ADVICE NOTE No 22

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS


Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure that it is valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various lines styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. For the avoidance of doubt, the notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads. Several options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011¹. This still applies except in those cases where the error is significant and clearly misleading.

¹ We felt that this was only fair considering that we had identified that we had not been applying our policy of rejecting orders containing incorrect notation consistently.

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

7. Where an order relates to the deletion of a way, we would still expect the appropriate notation to be used. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa. The use of a bold black continuous line to show a way to be deleted should be avoided. However, if an OMA felt that this was the only clear way to show it (because of the number of routes shown on the map), we would not consider this sufficient to invalidate the order.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. However, there will be instances where there are many different unaffected routes, of different types, which need to be shown on the order map. Where this would be difficult to achieve and/or confusing to the public, then we would not be adverse to the use of non-regulation notation being used. We often see dotted lines used to represent unaffected footpaths. In all cases, the map key should clearly identify the different notation types used and what they mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.
9. We are aware that the Regulations do not stipulate a colour for some of the line styles. Where this is the case it is down to the OMA to decide what colour to use. In most cases we would recommend that black ink be used - red should be avoided.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations when preparing public path orders. Generally speaking routes to be stopped up or diverted should be shown by a bold black continuous line and routes to be added shown by a bold black broken line.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity. However, the guidance set out in paragraph 8 above applies in those instances where the number of alternative routes shown on the order map could lead to confusion.

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a continuous bold black line and ways to be added as a bold broken black line.

15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|--|
| Electoral Division affected: Preston North and Preston Rural |
|--|

Wildlife and Countryside Act 1981

Application for deletion of part of Public Footpath no. 3 Broughton, Preston City from the Definitive Map and Statement.

Addition of Public Footpath from stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood, Preston City

File Nos. 804-498 & 804-511

(Annex 'A' refers) (Appendices A and B refer)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate,

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary & Solicitors Group,

megan.brindle@lancashire.gov.uk

Executive Summary

The deletion of part of Public Footpath No. 3 Broughton, from the Definitive Map and Statement of Public Rights of Way and the addition of a public footpath from the stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804/489 & 804-511.

Recommendation

1. That 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way Deletion of Part of Footpath No. 3 Broughton and Addition of a Footpath from Sandyforth Lane to Lightfoot Lane (Definitive Map Modification) Order 2014' made pursuant to the Committee decision on 30 October 2013 in relation to:

The deletion of part of Public Footpath No. 3 Broughton, from the Definitive Map and Statement of Public Rights of Way and the addition of a public footpath from the stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood to be submitted to the Planning Inspectorate for non-confirmation or rejection due to the Order Map containing the incorrect notation to depict the Order route.

2. That a further Order be made pursuant to Section 53 (2)(b) Section 53 (c)(i) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete part of Public Footpath No. 3 Broughton and to add a public footpath from the

stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood on the Definitive Map and Statement of Public Rights of Way using the correct notation on the Order plan.

3. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation, if necessary at a public inquiry.

Background

Committee at its meeting on 30 October 2013 considered the report attached as Appendix A and accepted the claim for the deletion of part of Public Footpath No. 3 Broughton and the recommendation that an order should be made to delete part of Public Footpath No. 3 Broughton and to add a public footpath from the stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood to the Definitive Map and Statement of Public Rights of Way.

An Order was made on 26 February 2014 and an objection received from a local resident, the main points of his objection include that point G on the plan is incorrect so the line of the route is shown incorrectly on the Order Map and where the path used to run the sign post is still there. The path goes through a golf driving range, cricket pitch, rugby pitch and his garden and drive.

As the objection has not been withdrawn Lancashire Council Council cannot confirm the Order and must submit it to the Planning Inspectorate for determination.

However, it is now realised that the Order Map contains the incorrect notation depicting the Order route to be deleted and the Planning Inspectorate will probably not accept the 2014 Order as made.

The Order Map for the deletion part of the Order contains the incorrect notation to depict the route to be deleted. The notation which should have been used on the Order Map to show both the public footpath to be added and deleted as either a purple line, a continuous line with short bars at intervals or by a broken black line with short intervals. The Order map however, shows the public footpath which is to be deleted as a solid black line instead, and as such this does not comply with the Regulations. Officers had been keen to show the route to be deleted as different from the one being added but had not used a correct notation for the path to be deleted.

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the current Order (attached as appendix B) will not be capable of being confirmed. It is advised that this Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning a footpath at this location, the making of a new Order should properly be considered.

It is therefore suggested to Committee that a new Order be made and the 2014 Order be submitted to the Planning Inspectorate requesting it is not to be confirmed. This course of action would resolve the issue of the incorrect notation and would clarify the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.

Committee it is advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 30 October 2013, as attached as Appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however, the entire report considered by Committee on 30 October 2013 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Taking all the evidence into account it is suggested to Committee to accept the claim to make a new Order and if made promote to confirmation, if necessary at public inquiry.

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: 804-511 | Various | Megan Brindle , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee
Meeting to be held on 30th October 2013

| |
|--|
| Electoral Division affected: Preston North and Preston Rural |
|--|

Wildlife and Countryside Act 1981

Claimed deletion of part of Public Footpath no. 3 Broughton, Preston City Addition of Public Footpath from stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood, Preston City

Claim No. 804-511
(Annex 'A' refers)

Contact for further information: Mrs J Elliott, Environment Directorate, 07917 836626
jayne.elliott@lancashire.gov.uk
Megan Brindle, 01772 533427 County Secretary and Solicitor's Group
megan.brindle@lancashire.gov.uk

Executive Summary

The deletion of part of Public Footpath No.3 Broughton, Preston from the Definitive Map and Statement of Public Rights of Way and the addition of a public footpath from a stile at Sandyforth Lane, Broughton to Lightfoot Lane, Fulwood to the Definitive Map and Statement of Public Rights of Way.

Recommendation

1. That the Claim for part of Public Footpath No. 3 Broughton to be deleted from the Definitive Map and Statement of Public Rights of Way be accepted
2. That an Order be made pursuant to Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Public Footpath No. 3 Broughton from the stile adjacent to Sandyforth Lane to the Parish boundary shown between Points A-B-C-D on the Committee plan.
3. That an Order be made pursuant to 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 the stile adjacent to Sandyforth Lane to Lightfoot Lane shown between points A-E-F-G on the Committee plan.
4. That being satisfied that the higher test for confirming the said Orders can be satisfied, the said Orders be promoted to confirmation if necessary by submitting them to the Secretary of State.

Background

Research has indicated that consideration should be given under Section 53 of the Wildlife and Countryside Act 1981 to the making of an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by deleting Public Footpath no. 3 Broughton, from the stile adjacent to Sandyforth Lane to the parish boundary and shown by a solid black line between points A-B-C-D and to make a further Order adding a public footpath from the stile adjacent to Sandyforth Lane to Lightfoot Lane as shown on the Committee Plan by a thick dashed line between points A-E-F-G.

In 2009 a claim (Claim 1) was received for a footpath extending from a point on Public Footpath No. 3 Broughton to a point on Lightfoot Lane, through the grounds of two properties, to be added to the Definitive Map and Statement of Public Rights of Way.

A year later, in 2010, a further claim (Claim 2) was received for part of Public Footpath No. 3 Broughton, as shown on plan appended to this report, to be deleted from the Definitive Map and Statement of Public Rights of Way.

The applications were submitted by different claimants but both related to parts of 'a route' between Lightfoot Lane and Sandyforth Lane.

Research was carried out and evidence discovered of what is thought to be the correct line of footpath Broughton 3 and the Ramblers Association subsequently communicated their support for a proposal to delete the route shown on the Definitive Map as Public Footpath no. 3 Broughton and for the route shown on the Committee Plan between points A-E-F-G to be added to the Definitive Map and Statement. They confirmed that their evidence related to route A-E-F-G

The claim to delete part of Public Footpath no. 3 Broughton (Claim 2) was submitted by the owner of the land over which it was believed that a section of Public Footpath no. 3 Broughton ran.

Public Footpath No. 3 Broughton is actually shown on the Definitive Map as crossing the playing field from Sandyforth Lane, and then clipping the corner of the Claim 2 applicants' field and following the original boundary line to the parish boundary. The Definitive Map shows the route of the public footpath along the boundary hedge and it is impossible to say from the map – without the aid of additional information – on which side of the boundary the public footpath actually ran.

Research carried out by the County Council supports the view that the Definitive Map is incorrect and that historically the correct route of the public footpath was on a route to the east of the original boundary hedge on land currently used as a golf driving range and football pitch, and not on land owned by the applicant. This route is shown on the Committee plan by a thick dashed line between points A-E-F-G.

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(3c) 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 delete a public right of way if the evidence shows that:

- There is no public right of way over land shown in the map and statement as a highway of any description

An order under S53(3)(c)(i) will only be made to add a public right of way if the evidence shows that:

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

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

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

Consultations

City Council

Preston City Council was originally consulted about both claims and stated that they were in full support of both. They have subsequently been re consulted on the revised proposal and have replied stating that they have no objection to the revised proposal.

In addition City Councillor Lona Smith, has confirmed that she is in agreement with the proposal.

City Councillor David Hammond recalls that this was one of the first Ward issues he had when he first came onto the Council nearly 8 years ago and is pleased to see that the matter is progressing. He refers to having spoken on 19 September 2013 with Mrs. Swift of Lightfoot Lane who owns the land at the rear of houses on Lightfoot Lane and she has confirmed to him that the proposed route of the footpath marked on the map is the correct one. The old path (solid line) was never the original path and he says that he has supplied Lancashire County Council with evidence of this over the years. He can confirm that the new footpath as shown as a dotted line is the correct path and should never have been deleted, moved or tampered with.

Parish Council

Woodplumpton Parish Council

Woodplumpton Parish Council were consulted with regards to the original proposed addition and did not respond. They have subsequently been re consulted and have replied to say they have no objection to the proposed changes.

Broughton in Amounderness Parish Council

Broughton in Amounderness Parish Council have been consulted and no response has been received.

Executive Director for the Environments Observations

Description of the routes

Points annotated on the attached Committee plan.

| Point | Grid Reference | Description |
|---------|----------------|---|
| Point A | SD 5144 3368 | Stile in field boundary at junction with Sandyforth Lane |
| Point B | SD 5153 3360 | Field boundary |
| Point C | SD 5154 3360 | Field boundary (hedge) |
| Point D | SD 5161 3348 | Point in field boundary hedge on parish boundary north of Lightfoot House Cottage |
| Point E | SD 5154 3361 | Field boundary |
| Point F | SD 5162 3348 | Unmarked parish boundary |
| Point G | SD 5164 3344 | Junction with Lightfoot Lane |

Description of Route:

Claimed route to be deleted:

The claimed route to be deleted commences on the south side of a wooden stile that provides access from Sandyforth Lane onto the claimed route (point A). It extends in a south easterly direction across a field marked out and maintained as rugby pitches to meet a field boundary (broken hedge and fence) at point B. There is no access (gap, gate or stile) through the field boundary (although the remains of a stile erected by the County Council several years ago exists a few metres west of point B).

From point B the claimed route continues across the north east corner of a field grazed by sheep to the eastern boundary hedge of that field (point C). It then continues along the boundary hedge (unwalkable) in a south easterly direction to the unmarked parish boundary at point D (north of the rear boundary fence of Lightfoot House Cottage); a total distance of 265 metres.

Public footpath to be added:

The route to be added commences on the south side of the stile providing access from Sandyforth Lane (point A). It then crosses the field marked out and maintained as rugby pitches in a south easterly direction to point E where it is crossed by fencing and trees along

the boundary of land in different ownership. Beyond point E it continues in a south easterly direction along the eastern side of a boundary hedge and is partially obstructed by a row of coniferous trees that run parallel to the original boundary hedge to the unmarked parish boundary at point F. It then continues in a south easterly direction passing to the east of 'Lightfoot House Cottage' and 'The Cottage' where the route is partly obstructed by trees and fencing. The route exits onto Lightfoot Lane in the south west corner of land owned by Fulwood Amateur Football club via a small wooden gate inserted into the hedge line as though part of the garden to 'The Cottage' adjacent to its woodshed; a total distance of 325 metres.

There is a public footpath signpost near point A but beyond that point there are no other signs indicating the existence or otherwise of the claimed route.

All compass directions and distances given are approximate.

Map and Documentary evidence relating to the claimed deletion and addition

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

References to the claimed route are specific to the actual routes that it is recommended are to be added and deleted and not to the routes originally claimed by the applicants as neither of those routes are shown on any of the documents examined.


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

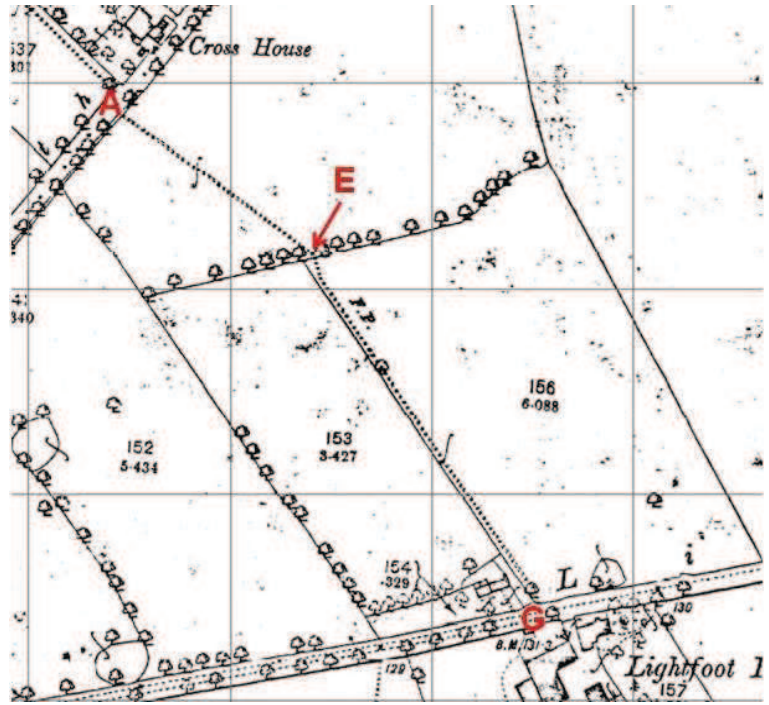
| | | |
|----------------------------------|------|---|
| Investigating Officer's Comments | | The claimed routes did not exist as major routes at the time – they may have existed as a minor routes but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect. |
| Hennet's Map of Lancashire | 1830 | Small scale commercial map. |

| | | |
|--|------|--|
| Observations | | The claimed routes are not shown on Hennet's Map. |
| Investigating Officer's Comments | | The claimed routes did not exist as major routes at the time – they may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect. |
| Tithe Map and Tithe Award or Apportionment | 1840 | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. The Tithe Map for Broughton was produced in 1840. |



| | | |
|----------------------------------|------|--|
| Observations | | <p>The full length of the claimed route to be added is shown on the tithe map between points A-E-F-G as a single pecked line. Between points A to E the claimed route enters the field (plot 610) described as 'hay meadow and pasture' in the corner and then diverges from the field edge to take a straight line to near the corner of the next field. Between points E-F-G the line is shown passing through the corner west of point E and then diverges from the field edge (field labelled as plot 749 'Buiris field meadow' in the Tithe Award) to take a straight line before bending back into the south west corner of the field at point G.</p> <p>The claimed route to be deleted (FP 3) is not shown on the map.</p> |
| Investigating Officer's Comments | | The claimed route to be added existed in 1840. The claimed route to be deleted did not exist in 1840. |
| Finance Act 1910 Map | 1910 | The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. |
| Observations | | The Finance Act maps and valuation records for the area containing the claimed routes are not held by the County Records Office. |
| Investigating Officer's Comments | | No inference can be drawn. |
| Inclosure Act Award and Maps | | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | There are no Inclosure Award records for the area containing the claimed routes deposited at the County Records Office. |
| Investigating Officer's comments | | No inference can be drawn. |
| Ordnance Survey Maps | | The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25- |

| | | |
|---|------|---|
| | | inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way. |
| 6 Inch OS Map | 1848 | The earliest Ordnance Survey 6 inch map for this area. |
|  | | |
| Observations | | Neither of the claimed routes are shown. Sandyforth Lane and Lightfoot Lane are shown and so are the cottages adjacent to the north end of the route. A field boundary is shown splitting the field roughly on the line between point A and point E. A further field boundary is shown crossing the claimed route to be added at point E. Field paths do not appear to be shown anywhere on this map sheet. |
| Investigating Officer's Comments | | The claimed routes to be added and deleted did not exist as major routes in 1848. |
| 25 Inch OS Map | 1893 | The First Edition 25 inch map is at the larger scale showing the area in more detail, including footpaths. |




| | | |
|----------------------------------|------|--|
| Observations | | <p>The full length of the claimed route for addition is shown as a double pecked line annotated with the letters 'FP' from point A by Sandyforth Lane through to point G at Lightfoot Lane. The field boundary shown roughly along the route A-E on the 1848 6 inch sheet is no longer shown. The claimed route to be added crosses a field boundary at point E and is shown to exit the field onto Lightfoot Lane in the corner of the field at point G.</p> <p>The claimed route to be deleted is not shown.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed in 1893. The claimed route to be deleted did not exist at that time.</p> |
| 25 inch OS Map | 1912 | Further edition of the 25 inch map. |



| | | |
|----------------------------------|------|--|
| Observations | | <p>The whole length of the claimed route to be added is shown on the map and crosses a field boundary at point E. It is marked as a footpath (F.P) between point E and point G. It is shown exiting the field onto Lightfoot Lane in the corner of the field at point G.</p> <p>The claimed route to be deleted is not shown on the map.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed on the ground at the time of the survey prior to 1912. The claimed route to be deleted did not exist.</p> |
| 25 Inch OS Map | 1932 | <p>Further edition of 25 inch map (surveyed 1891 and revised 1929).</p> |



| | | |
|--------------|--|---|
| Observations | | <p>The whole length of the claimed route to be added is shown on the map crossing a field boundary at point E. It is marked as a footpath (F.P) between</p> |
|--------------|--|---|

| | | |
|--|------|--|
| | | <p>point E and point G.</p> <p>The claimed route to be deleted is not shown on the map.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed on the ground at the time of the survey prior to 1932. The claimed route to be deleted did not exist.</p> |
| 25 Inch OS Map | 1939 | <p>Further edition of the 25 inch map, re-surveyed 1892, revised 1938.</p> |
|  | | |
| Observations | | <p>The whole length of the claimed route to be added is shown on the map and crosses a field boundary at point E. It is marked as a footpath (F.P) between point E and point G and exits the corner of the field to meet Lightfoot Lane.</p> <p>The claimed route to be deleted is not shown on the map.</p> <p>Since the date of the survey for the 1932 25 inch map the garden of the property on the west side of the field boundary close to point G ('The cottage') has been extended to include the strip of land immediately to the east of the building.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed on the ground at the time of the survey prior to 1939. The claimed route to be deleted did not exist.</p> |
| 2½ inch OS Map | 1955 | <p>Compiled from 6 inch sheets last fully revised 191030, partial revision 1937-51</p> |



| | | |
|----------------------------------|------|--|
| Observations | | <p>The whole length of the claimed route to be added is shown on the map crossing a field boundary at point E and continuing along the east side of the field boundary to exit onto Lightfoot Lane. The curve in the claimed route to the corner of the field at point G is not shown nor the offset position of the crossing point at E.</p> <p>The claimed route to be deleted is not shown on the map and neither is 'The Cottage'.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed on the ground at the time of the survey. The scale of the map means that the curves into the corner at point G and at E were unlikely to have been shown. The small scale of the map may also account for the fact that 'The Cottage' is not shown.</p> <p>The claimed route to be deleted did not exist.</p> |
| 6 Inch OS Map | 1956 | <p>The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1931 25-inch map.</p> |



| | | |
|----------------------------------|------|--|
| Observations | | <p>The Ordnance Survey 1:10560 (6 inches to 1 mile) sheet SD 53 was published in 1955 with the area of the claimed route having been revised before 1930.</p> <p>The full length of the claimed route to be added is shown on the map. The claimed route to be deleted is not shown.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added existed on the ground at the time of the survey. The claimed route to be deleted did not exist.</p> |
| 25 Inch OS Map | 1961 | Further edition of 25 inch map revised in 1961. |



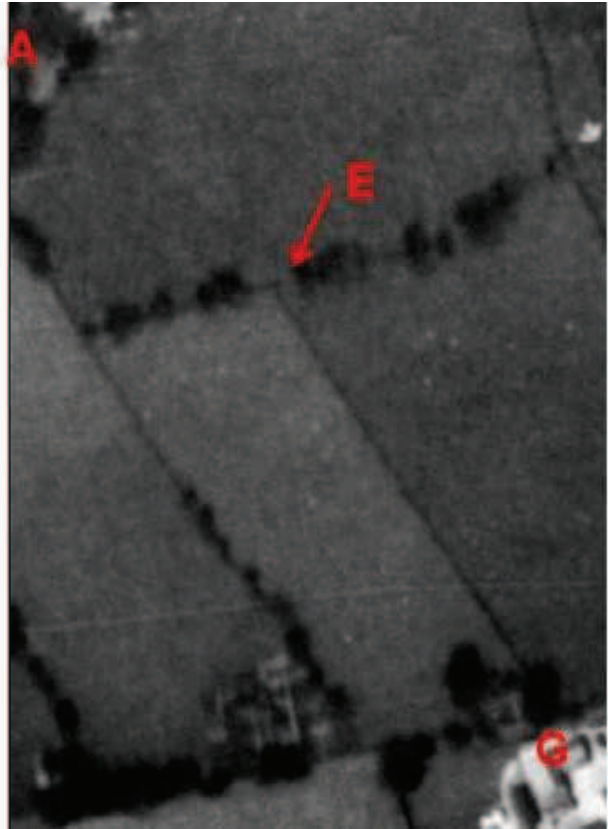
| | | |
|--------------|--|---|
| Observations | | <p>Neither the claimed route to be added or the claimed route to be deleted are shown on the map.</p> |
|--------------|--|---|

| | | |
|----------------------------------|------|---|
| Investigating Officer's Comments | | Neither route existed as a physical feature on the ground at the time that the map was revised. |
| 2½ inch OS Map | 1966 | Further edition of the 2½ inch map published in 1955 and reprinted with the addition of new roads in 1966 |
| Observations | | No changes from the 1955 2½ inch – only revised to show addition of new major roads. The claimed route to be added to the map is shown as a single dashed line. The claimed route to be deleted is not shown. |
| Investigating Officer's Comments | | The claimed route to be added existed on the ground at the time of the survey. The claimed route to be deleted did not exist. |
| 25 inch OS Map | 1978 | Further edition of the 25 inch map revised in 1976. |

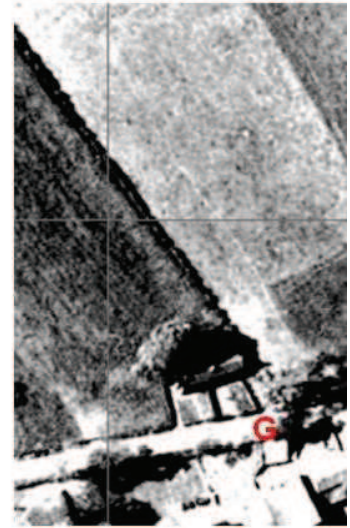
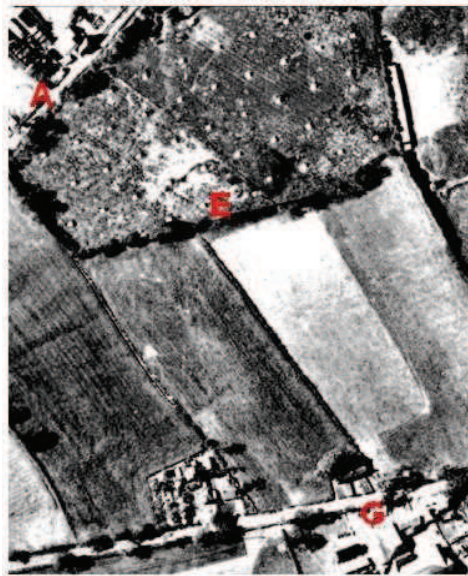


| | | |
|--------------|--|--|
| Observations | | <p>The claimed route to be added is shown by a double pecked line between point A and point E. At point E it crosses a field boundary slightly to the west of the claimed route and continues down the field edge to point F. Instead of being shown running parallel to the field boundary to exit on to Lightfoot Lane at point G the route marked by the Ordnance Survey takes a direct route from point E to exit onto the Lane immediately opposite the entrance to Lightfoot House Farm approximately 10 metres east of point G. The route is marked as an unmarked path ('Path(um)') and was probably drawn like this to meet a gate which was said by local residents to exist at this point on Lightfoot Lane.</p> <p>The claimed route to be deleted is not shown. An additional building has been built alongside 'The Cottage' between the house and field boundary.</p> |
|--------------|--|--|

| | | |
|----------------------------------|------|--|
| Investigating Officer's Comments | | <p>The claimed route to be added existed between point A and point E. A route shown continuing from point E close to the alignment of the claimed route to exit onto Lightfoot Lane approximately 10 metres east of point G, directly opposite the farm.</p> <p>It is not possible to determine whether access would have been available at point G. The map supports evidence from local residents to their having been a gate in the field boundary opposite the farm entrance.</p> <p>This map appears to have used straight lines between crossing points for the lines of paths, hence the connection to the gate opposite the farm. It is not possible to determine from this whether or not the exit at point G existed at this time. It is possible that the field boundary at point E was in disrepair at the time and walkers could take the shortest line through a gap in the hedge.</p> <p>The claimed route to be deleted did not exist.</p> |
| Aerial Photographs | 1945 | <p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set of aerial photographs available was taken just after the Second World War in about 1945 and can be viewed on GIS. The clarity is generally very variable.</p> |

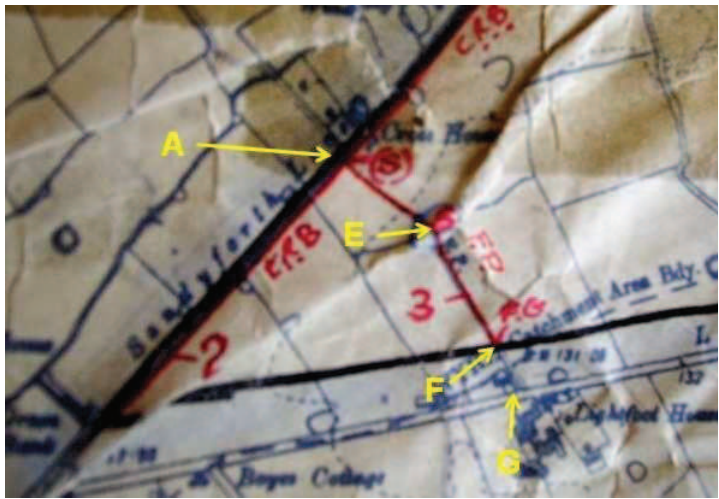


| | | |
|----------------------------------|-------|---|
| Observations | | <p>A faint line can be seen on the ground between point A and point E and access along the claimed route to be added existed through a gap at point E.</p> <p>The claimed route to be deleted cannot be seen on the photograph.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be added appeared to exist between point A and point E.</p> <p>The claimed route to be deleted did not exist.</p> |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |



| | | |
|----------------------------------|------|--|
| Observations | | <p>Both claimed routes crossed agricultural land. The claimed route to be deleted cannot be seen on the photograph.</p> <p>A faint track can be seen corresponding to the claimed route to be added between point A and point E. A gap appears to exist in the field boundary at point E.</p> <p>The claimed route is not visible between point E and point G but it appears that the field extended into the south west corner at point G - land that was subsequently fenced off to form part of the curtilage of the cottage.</p> |
| Investigating Officer's Comments | | <p>The claimed route to be deleted was not visible on the ground in the 1960s. The claimed route to be added looks to have existed as a worn track on the ground between point A and point E. Access onto Lightfoot Lane appears to exist at point G (as suggested by the lighter colouring on the photograph indicating that the vegetation was worn in the corner of the field at point G - indicative of some sort of field access point).</p> |
| Aerial Photograph | 2000 | Colour aerial photographs viewed on GIS |
| Observations | | <p>Neither the claimed route to be added or the claimed route to be deleted can be seen as worn paths on the photographs.</p> |
| Investigating Officer's Comments | | <p>Neither the claimed route to be added or the claimed route to be deleted existed as worn tracks in 2000.</p> |
| Aerial Photograph | 2010 | Colour aerial photograph taken in 2010 and viewed on GIS. |

| | | |
|--------------------------------------|-----------|--|
| Observations | | Neither the claimed route to be added or the claimed route to be deleted can be seen as worn tracks on the photographs. |
| Investigating Officer's Comments | | Neither the claimed route to be added or the claimed route to be deleted existed as worn tracks in 2010. |
| Definitive Map Records | | The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s. |
| Parish Survey Map | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. The claimed route to be deleted is entirely within Broughton Parish and as such Broughton Parish Council was required to prepare a Survey Map. The majority of the length of the claimed route to be added to the Definitive Map is also within Broughton (Between points A-E-F) but the remaining section (between point F-G) is within Fulwood - a former Urban District Council - for which there was no parish survey. |
| Broughton Parish Survey Map and Card | 1950 | |



| | |
|---|--|
| <p>Observations</p> | <p>The Parish Survey map for Broughton shows a route labelled with a number 3 that corresponds to part of the claimed route to be added as a public footpath. It shows the route starting on Sandyforth Lane at point A - at which point it notes the existence of a stile (S). It then continues (along the claimed route to be added) to point E where a further stile (S) is marked. From point E it continues in a south easterly direction along the eastern side of a field boundary on the same alignment as the claimed route to be added as far as the parish boundary at point F where the existence of a field gate (FG) is marked.</p> <p>The claimed route to be added between point F and point G is not shown.</p> <p>The claimed route to be deleted is not shown on the parish survey map.</p> <p>The parish survey card describes the route drawn on the parish survey map. It is dated July 1950 and describes the route (corresponding to the claimed route to be added on the survey map) as starting at field gate opposite Lightfoot house on Lightfoot Lane. It then describes it along east side of hedge to wooden stile (at point E on the Committee plan) and then across next field to a double wooden stile (point A on the Committee plan) onto Sandyforth Lane. A note has been made that the path is little used and closure recommended.</p> |
| <p>Investigating Officer's Comments</p> | <p>The Parish Council has marked the claimed route to be added as a public footpath between point AE-F. They were not required to show the continuation of this route to Lightfoot Lane beyond the parish boundary as this part of the route would have been expected to have been recorded on the map of the Fulwood Urban District. Although</p> |

| | | |
|----------------------|--|---|
| | | <p>reported to be 'little used' the claimed route to be added was acknowledged as a public right of way - even though recommended closure. The field gate (FG) marked on the map at point F was unlikely to be correct as there is no evidence of there ever being a physical boundary at this point on any of the maps examined and it is suggested that it refers instead to the description of the path starting at field gate opposite Lightfoot house i.e. either at point G or the point 10 metres east shown on the 1978 map.</p> <p>The claimed route to be deleted between points AB-C-D is not shown and does not fit the description of the path described on the parish survey card.</p> |
| Draft Map | | <p>The parish survey map and cards for Broughton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement for Preston Rural District.</p> <p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.</p> |
| Preston RD Draft Map | | |



Observations

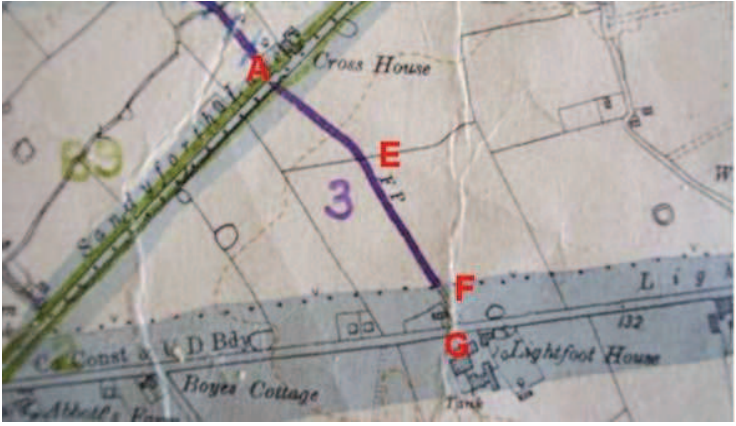

The claimed route to be added is shown on the draft map and labelled as footpath 3 between point A-E. Between point E-F it is shown along the east side of the field boundary but appears to stop short of point F (the parish boundary). An inspection of the original document suggests that the line was intended to extend as far as point F but shading added to the draft map affected how its southern end was shown.


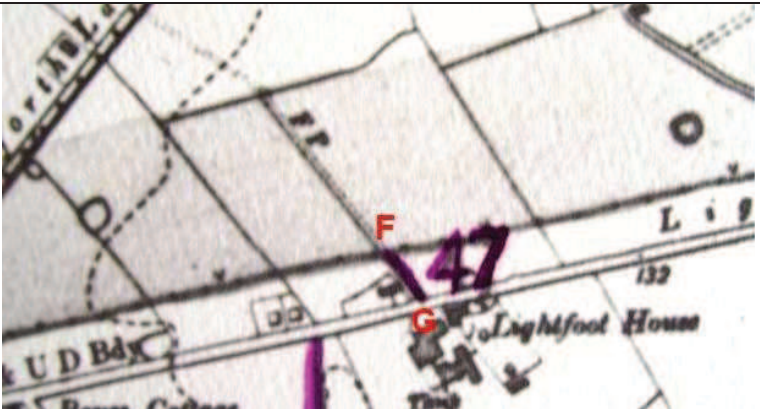
The claimed route to be deleted was not shown on the Preston Rural District Draft map and there were no formal objections or other comments about its omission.

Fulwood Urban District Council Draft Map



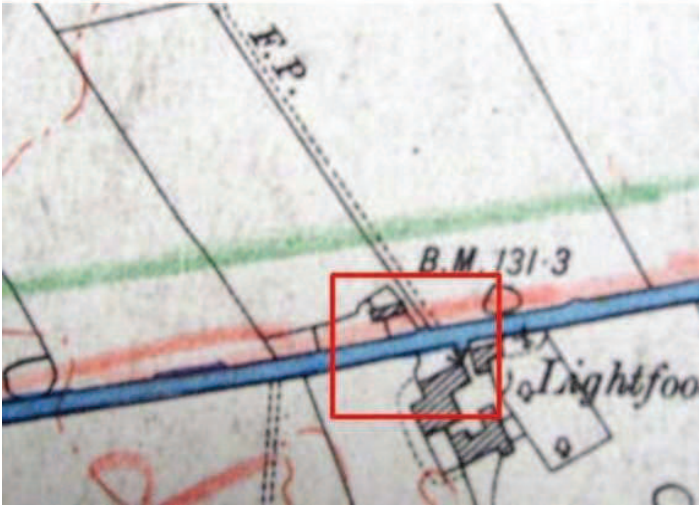
| | | |
|--|--|--|
| Observations | | <p>The map did not cover the area affected by the claimed route to be deleted or that part of the route to be added shown between points A-E-F as these were outside the Urban District.</p> <p>A route, numbered '47' on the map was shown along the route of the claimed footpath to be added. The Statement accompanying this map described the route as a footpath 'to Sandyforth Lane. Starts from a five barred gate opposite Lightfoot Lane (Lightfoot House), leading into the garden of Lightfoot House Cottages, and proceeds over a stile into a field running alongside the hedge side to the U.D. boundary.'</p> <p>The way that this statement is written could be slightly ambiguous as it is not immediately clear whether the route is being described as passing through the five barred gate and into the garden of Lightfoot House Cottage. The Investigating Officer considers that the statement actually describes a route from Lightfoot Lane that starts at a five barred gate but proceeds - not through the gate – but over a stile directly into a field (and not into the garden) and then continues along the hedge side to the parish (UD boundary).</p> <p>If this interpretation is correct it corresponds with the claimed route to be added and that shown and labelled as '47' on the Draft map.</p> |
| Provisional Map | | <p>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.</p> |
| Preston Rural District Provisional Map | | |

| | | |
|---|--|---|
| | |  |
| Observations | | <p>The use of a thick purple pen to draw the line of the path means that it is not easy to see the field boundary between point E and F. However, close examination of the original document confirms that the line drawn corresponds with the claimed route to be added (between points A-E-F).</p> <p>The claimed route to be deleted is not shown and no objections to the omission of the path were made.</p> |
| Fulwood Urban District Council Provisional Map | | |
| | |  |
| Observations | | <p>That part of the claimed route to be added between point F and G on the Committee plan is shown on the Provisional Map of Public Rights of Way as footpath 47.</p> |
| The First Definitive Map and Statement | | <p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p> |
| Preston Rural District Council First Definitive Map | | |

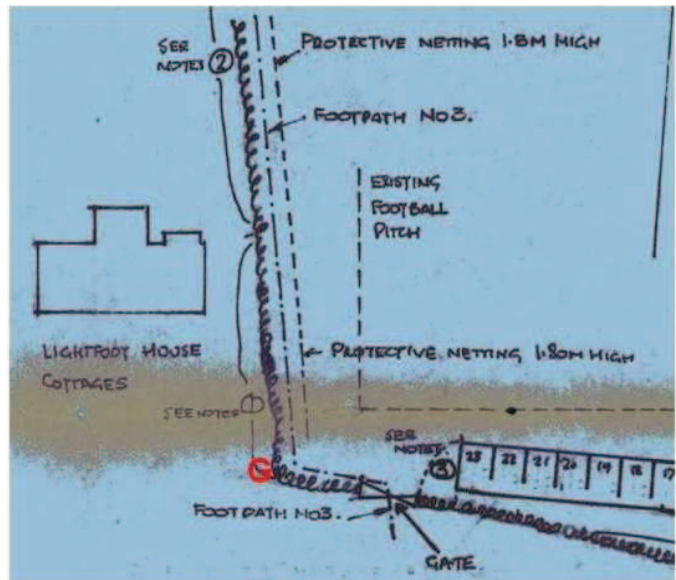
| | |
|---|--|
| |  |
| Observations | The claimed route to be added (between points AE-F) is shown but the claimed route to be deleted is not. |
| Fulwood Urban District Council First Definitive Map | |
| |  |
| Observations | That part of the claimed route to be added between point F and G on the Committee plan is shown as footpath 47. |
| Revised Definitive Map of Public Rights of Way (First Review) | <p>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 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published (its relevant date is 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.</p> |



| | |
|----------------------------------|---|
| Observations | <p>The map shows the claimed route proposed to be deleted between points A-B-C-D labelled as footpath 3. No part of the claimed route to be added is shown.</p> |
| Investigating Officer's Comments | <p>No diversion orders, creation or extinguishment orders have been found to exist which would explain why the route consistently shown on the parish survey, draft, provisional and First Definitive map for Preston Rural District as footpath 3 (the claimed route to be added) was not shown on the Definitive Map (First Review). Similarly no legal order or representations could be found to explain why footpath 47 Fulwood was not shown on the revised map.</p> <p>The claimed route proposed to be deleted is shown for the first time on this map but no legal order or representations could be found to support its existence and the fact that it is shown to follow a well established field boundary between point C and point D suggests that a drafting error has occurred in reproducing what was shown on earlier additions. The fact that footpath 47 is not shown also appears to be a drafting error – the route has not been shown on the map but is described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original statements.</p> |
| 1929 Road Transfer/Handover Map | <p>Drawn on what appears to be a copy of the 1912 6 inch Ordnance Survey map. The maps were drawn up by Highway Authorities to record adopted highway information. These maps were used to record the adopted highways and the number of each 'road' is shown in black ink. There would have been a corresponding register listing each road by number and detailing when the road became</p> |

| | | |
|--|--|--|
| | | publicly maintainable, if known and the length of the highway. |
|  | | |
| Observations | | The map shows the full extent of adopted highway (Lightfoot Lane) to include the indentation by the gateway– now part of the access into The Cottage. |
| Investigating Officer's Comments | | This indentation would have allowed access from the road into the corner of the field at point G consistent with the description of there being a gate (to the cottage) but the path passing over a stile into the field. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the</p> |

| | | |
|--------------------------------------|------|---|
| | | status of the route into question). |
| Observations | | There are no statutory deposits for the land over which the claimed route to be added to the definitive map is situated or for the land over which the claimed route to be added is situated. |
| Investigating Officer's Comments | | There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over his land. |
| Planning Application 06/1989/0457 | 1989 | |



| | | |
|--------------|--|---|
| Observations | | The land over which part of the claimed route to be added (between points E-F-G) is owned by Fulwood Amateur Football Club. In 1989 an application was submitted by the football club to the planning authority for the development of the site as a golf driving range (with retention of the football pitches to be used at weekends). Attached to the request for planning permission was a drawing of the site which included details of planting along the western boundary and which acknowledge the existence of a footpath – labelled on the plan as FP No. 3. The plan shows the proposed provision of protective netting 1.8 metres high which would separate the public footpath from the golf driving range. The footpath is shown along the edge of the field in accordance with the claimed route to be added. The footpath is shown to exit onto Lightfoot Lane through a gate approximately 10 metres east of point G. Notes on plan refer to the species of plants to be planted along the boundary. |
|--------------|--|---|

| | |
|----------------------------------|---|
| Investigating Officer's Comments | The existence of the claimed route to be added was acknowledged between point E-F-G by the landowners as part of the planning application. By that time, however it appears that access onto Lightfoot Lane was by a field gate approximately 10 metres east of point G and it is not clear whether a gap or stile still existed at point G. Planting was proposed alongside the existing field boundary and it appears that the line of tall (relatively quick growing) coniferous trees that now partially obstruct the claimed route to be added was planted as a consequence of the granting of planning permission. Sections of the netting shown on the plan still exists on site (although this has not been maintained) and it appears that before the row of trees grew tall and wide it may have been possible to walk between the trees and the fencing. |
|----------------------------------|---|

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

To summarise, there appears to be no physical or documentary evidence that the claimed route to be deleted (recorded at present as Public Footpath no. 3 Broughton) ever existed as a public footpath and the definitive map material points towards a drafting error having occurred when the Definitive Map (First Review) was drawn.

The route proposed to be added is first shown on the Tithe Map of 1840 and then consistently shown to exist on Ordnance Survey maps from 1893 onwards (with the exception of the 1961 1:2500 map). The route to be added is also consistently shown in the definitive map material up until the publication of the Definitive Map (First Review) which shows none of the route to be added but instead shows the claimed route to be deleted strongly supporting the view that a drafting error occurred at this stage of the legal process.

Claimant/Landowners/Supporters/Objectors

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

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

The following revision should be made to the Definitive Map and Statement for Broughton and Fulwood, Preston City;

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public footpath no. 3 Broughton from a junction with Sandyforth Lane at SD 5144 3368 running in a generally south easterly direction across rugby pitches to a boundary hedge at SD 5154 3361 and continuing in a generally south south easterly direction along the east side of a boundary hedge through the parish boundary at SD 5162 3348 to continue as no.47 Fulwood in a south south easterly direction east of the boundary with Lightfoot House Cottage and The Cottage to the south west corner of the field turning west to terminate at SD 5164 3344 where it meets Lightfoot Lane.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Modify the Statement for Public Footpath no. 3 Broughton to read as follows:

"Public footpath from a junction with Sandyforth Lane at SD 5144 3368, over stile and continuing in a south easterly direction to SD 5154 3361 through field boundary to continue in a south south easterly direction on the east side of a boundary hedge to parish boundary at SD 5162 3348 from where it continues to Lightfoot Lane as Public Footpath no. 47 Fulwood.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile at SD 5144 3368, Stile at SD 5154 3361

Length: 265 metres"

Modify the Statement for Public Footpath No. 47 Fulwood to read as follows:

"A continuation of Public Footpath no. 3 Broughton from the parish boundary at SD 5162 3348 in a south south easterly direction on the east side of a field boundary to the south west corner of the field turning west over a stile to terminate at SD 5164 3344 where it meets Lightfoot Lane.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile at SD 5164 3344

Length: 55 metres"

Information from the applicants

A user evidence form was provided from the applicant for the deletion. The authors have known the claimed route to be added for 72 years between years 1938 and 2000. They were going from Lightfoot Lane to Sandyforth Lane and used the route for pleasure several times a week and their father worked at the Duck Farm. They have always used the route on foot and always used the same route and state there is a gate opposite Lightfoot House on Lightfoot Lane into the field, also to the east of the hedge there is a stile in the hedge between the 2 fields and a gate and stile on Sandy Forth Lane. None of the gates were locked and none of them prevented them from using the way on foot. They have never worked for any landowner but their father worked there approximately 50 years ago and they have not been a tenant for any of the land, they received instructions from a landowner stating 'just keep to the path'. They have never been stopped using the path and have never heard of anyone being stopped, they have never seen any notices on the land or asked permission to use the land.

Information from others

Consultations have been carried out on both proposals with the landowners.

In response to the consultations one of the landowners, Fulwood Amateur Football Club has explained that the club does not have any objections to the footpath being reinstated, however it does feel utmost consideration should be given to the safety aspect of this footpath where it joins Lightfoot Lane. He explains Lightfoot Lane is a very busy road and there is no footpath on that side of the road where the claimed public footpath would join. It is therefore the club's view that the path would be in an extremely dangerous spot for pedestrians, as it leads onto a busy highway. He explains the club was developed during 1979-1980 and he does not believe the footpath has been used since.

Another landowner has stated he is opposed to the proposed route which has not been walked for the last 5 – 7 years. He explains that for the last forty years of his residence at the property, he has not seen more than 40 people using the route. He describes it as the original track of footpathNo3. He is concerned that the path is near the golf driving range and exits onto a major highway and would thus be extremely dangerous for children using the field. He explains, where the claimed route exits there is a wire caged gate and there is no proper exit. He explains previously there was a path which ran in a diagonal direction across the field; this is illustrated as exiting more towards the east but was also not a suitable entry or exit for a public footpath. He explains because the field has been used as a golf course it would make it a dangerous walk.

In support of the claimed deletion County Councillor Thompson has included maps dated from 1893 up to 1980 together with a document signed by the then Broughton Parish Councillors, solicitors and the headmaster at Broughton School. He states the maps and signed documents show the route of the footpath which existed on the land which belongs to the Preston Grasshoppers Rugby Club and from these maps there is no doubt the footpath ran along the land belonging to the club and not that owned by the applicants (for the deletion). He explains the Definitive Map illustrates the route incorrectly and that this is demonstrated by the maps showing the dotted lines not on the applicants' land.

An objection has been received from two residents of Lightfoot Lane. Their objection states that they don't need to set out their thoughts on the path again as we are well aware of them through previous correspondence and meetings. The thought of putting a footpath through a cricket pitch, a rugby pitch and a golf driving range and onto one of Preston's busiest roads is unthinkable.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Proposal to add A-E-F-G

Historical and Documentary evidence

Available route

Recollections by long term residents at the location

Against Accepting the Proposal to add A-E-F-G

No particular relevant information received

The concern about the golf and present use of the land and the potential danger from traffic on the main road is not relevant to whether a footpath exists in law historically

In Support of the Claim to delete A-B-C-D

Lack of Historical and Documentary evidence of any footpath on this line

Alternative route in existence in 1966

Described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original Statements when it was shown on a different line.

Against Accepting the Claim to delete A-B-C-D

Initial presumption that it exists

The evidence needed to remove a public right from such an authoritative record will need to be cogent

No objections to it being shown on the Definitive Map (First Review)

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted and another section be added.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the route to be deleted (A-B-C-D) was first shown on the Definitive Map (First Revision) dated 1975 but with a relevant date of 1966 and so the error needs to be shown to have been made in 1966.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

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

One such evidence of error could be sufficient evidence of a correct route. In caselaw (Leicestershire case) Collins J held that in these circumstances, “it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive M where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

It is therefore suggested that the Committee first consider whether the claimed section A-E-F-G is already a footpath at law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 and therefore the route A-B-C-D was recorded as on the Definitive Map in error in 1966.

No user evidence forms were submitted for the claimed route to be added A-E-F-G instead the Claimant asserts that this route is the correct original route to be used by the public.

The claimed route A-E-F-G is shown on the Tithe Map of 1840, the Ordnance Survey maps dated 1893 onwards. This would seem to suggest a past existence of there being a public right of way. This was the route then recorded in the Definitive Map process.

The route to be added was shown as a right of way on the various forms of the Definitive Map produced between 1953 and 1962 and received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line.

In contrast the route claimed for deletion A-B-C-D is not shown on any map until the Definitive Map (First Revision) of 1966. In this particular matter there is evidence on balance that errors were made in 1966 with regards to recording the line of Footpath 3 Broughton and not

recording part of Footpath 47 Fulwood (F-G) on the Definitive Map (First Revision). The route A-B-C-D was shown as a cul de sac this would not have brought you out at a public highway as point D ends within a field to the rear of private dwellings, yet the Definitive Statement makes it clear that this was not a cul de sac footpath.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route claimed for deletion A-B-C-D on balance was recorded in error from 1966 onwards and should have continued to be recorded on the line A-E-F-G.

If the line A-E-F-G can be considered to subsist as a footpath this does not necessarily prove that the line nearby A-B-C-D was recorded in error. The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one route through from Sandyforth Lane to Lightfoot Lane which should have continued to have been recorded as A-E-F-G but instead a partial route A-B-C-D was recorded in error.

Taking all the evidence into account it maybe considered that there is sufficient cogent evidence to suggest that the route A-B-C-D was recorded in error and that AB-C-D should be removed from the Definitive Map and the footpath on line A-E-F-G be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

Risk Management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included 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 Files Ref: 804498 and 804-511 | | Megan Brindle Office of the Chief Executive 01772 533437 |

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981

THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE
COUNTY OF LANCASHIRETHE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY
DELETION OF PART OF FOOTPATH NO. 3 BROUGHTON AND
ADDITION OF A FOOTPATH FROM SANDYFORTH LANE TO LIGHTFOOT LANE
(DEFINITIVE MAP MODIFICATION) ORDER 2014

This Order is made by Lancashire County Council ("the Authority") under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that The Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Sections 53(3)(c)(iii) and 53(3)(c)(i) namely the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a public footpath and 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, namely a public footpath.

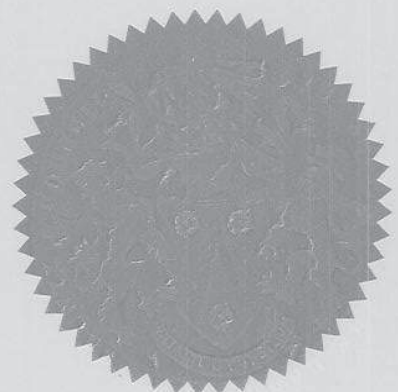
The Authority has consulted with every local authority whose area includes the land to which the Order relates. Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 26th February 2014.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The Lancashire County Council Definitive Map and Statement of Public Rights of Way Deletion of Part of Footpath No. 3 Broughton and Addition of Footpath from Sandyforth Lane to Lightfoot Lane (Definitive Map Modification) Order 2014.

Dated this 26th day of February 2014.

THE COMMON SEAL of the)
Lancashire County Council)
was hereunto affixed in the presence of)

Authorised Signatory



23104

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF PATH OR WAY TO BE DELETED

Part of Public Footpath no. 3 Broughton from south side of stile at SD 5144 3368 running in a south easterly direction across rugby pitches to a boundary hedge at SD 5153 3360 and continuing across the north east corner of a field to eastern boundary hedge of that field at SD 5154 3360 to continue along boundary hedge to the parish boundary at SD 5161 3348; a total distance of 265 metres.

DESCRIPTION OF PATH OR WAY TO BE ADDED

Public Footpath no. 3 Broughton from with the south side of stile by Sandyforth Lane at SD 5144 3368 running in a generally south easterly direction across rugby pitches to a boundary hedge at SD 5154 3361 and continuing in a generally south south easterly direction along the east side of a boundary hedge through the parish boundary at SD 5162 3348 to continue as Public Footpath no.47 Fulwood in a south south easterly direction east of the boundary with Lightfoot House Cottage and The Cottage to the south west corner of the field turning west to terminate at SD 5164 3344 where it meets the footway of Lightfoot Lane; a total distance of 320 metres and a width of 2 metres.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

Modify the Statement for Public Footpath no. 3 Broughton to read as follows:

"Public footpath from a junction with Sandyforth Lane at SD 5144 3368, over stile and continuing in a south easterly direction to SD 5154 3361 through gap in field boundary to continue in a south south easterly direction on the east side of a boundary hedge to parish boundary at SD 5162 3348 from where it continues to Lightfoot Lane as Public Footpath no. 47 Fulwood.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile at SD 5144 3368,

Length: 265 metres"

Modify the Statement for Public Footpath No. 47 Fulwood to read as follows:

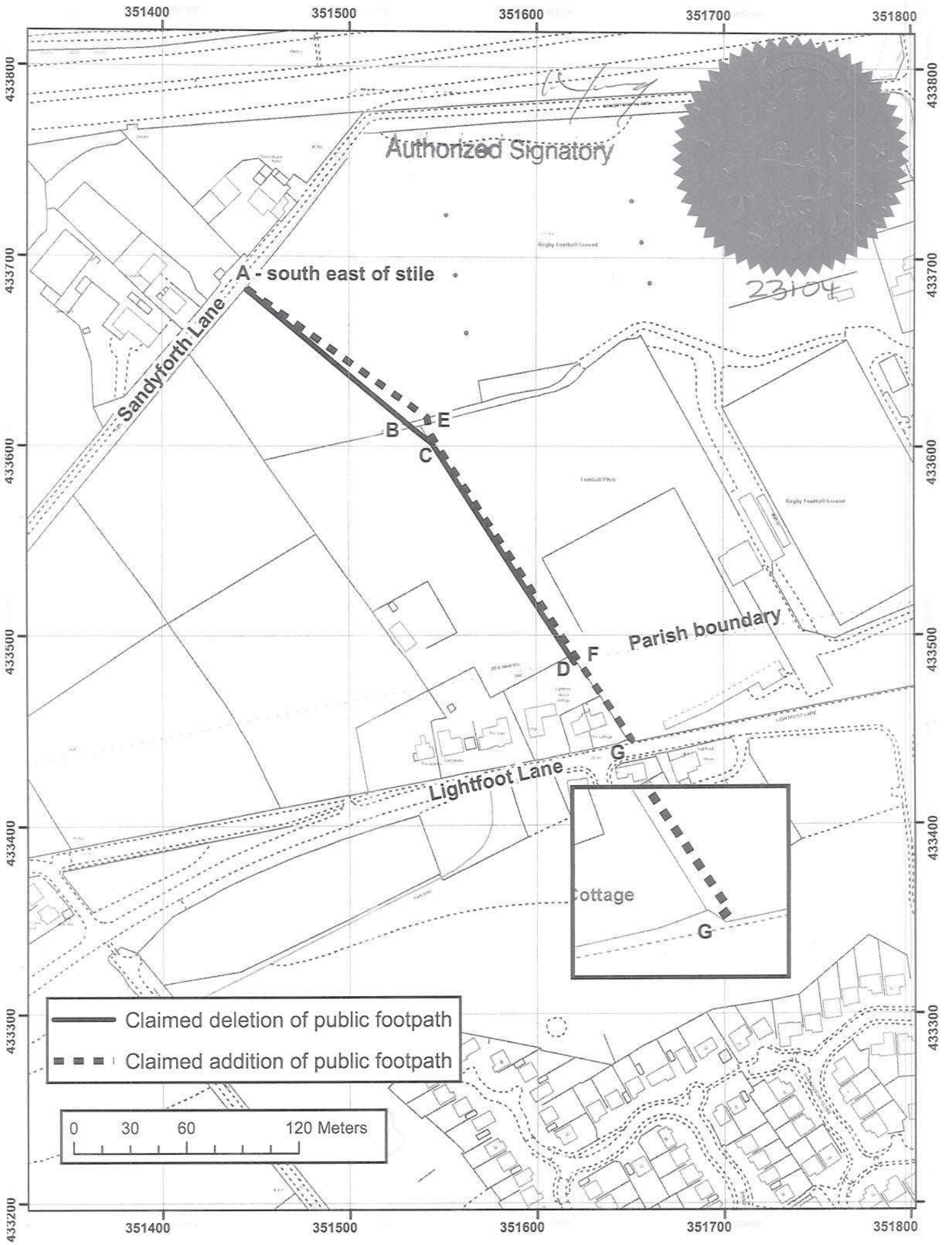
"A continuation of Public Footpath no. 3 Broughton from the parish boundary at SD 5162 3348 in a south south easterly direction on the east side of a field boundary to the south west corner of the field turning west over a stile or gate to terminate at SD 5164 3344 where it meets Lightfoot Lane.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile or pedestrian gate at SD 5164 3344

Length: 55 metres"



Authorized Signatory

A - south east of stile

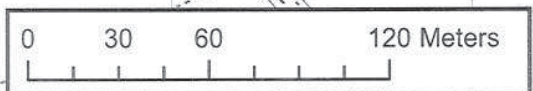
Sandyforth Lane

Parish boundary

Lightfoot Lane

Cottage

- Claimed deletion of public footpath
- Claimed addition of public footpath



Jo Turton
Executive Director
for the Environment

Wildlife and Countryside Act 1981
Claimed deletion of part of Public Footpath no. 3 Broughton, and addition of
public footpath from Sandyforth Lane to Lightfoot Lane, Preston City

1:2,500



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

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Regulatory Committee

Meeting to be held on 17 December 2014

| |
|--|
| Electoral Division affected: Ribble Valley South West |
|--|

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Billington and Langho Footpath 7, Ribble Valley Borough.

(Annexes 'B' and 'C' refer)

Contact for further information: Mrs R Paulson, 01772 532459, Environment Directorate. ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Billington and Langho Footpath 7, Ribble Valley Borough.

Recommendation

1. That subject to there being no adverse responses to the consultations from the Borough Council, Parish Council, the Ramblers or statutory undertakers, received by 16 December 2014 an Order be made under Section 119 of the Highways Act 1980 to divert part of Billington and Langho Footpath 7, from the route shown by a bold continuous line and marked A-B-C-D to the route shown by a bold dashed line and marked A-E-C-F on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

A request has been received from Jonathan Turner, Development Officer, Great Places Housing Group, Southern Gate, 729 Princess Road, M20 2LT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Billington and Langho Footpath 7 in the vicinity of a development of affordable homes on land off Petre Wood Crescent, Langho, Blackburn, BB6 8FD.

In December 2012, before the development commenced the developer applied to Ribble Valley Borough Council for a Diversion Order to be made under the provisions of the Town and Country Planning Act 1990 Section 257. Unfortunately that application didn't progress and the developer states that they were not made aware of the requirement to complete a diversion before the scheme was substantially complete. The development is now nearing completion and the footpath is obstructed by almost half of the properties on the site. Now that the development is substantially complete, it no longer meets the criteria for a diversion under the provisions of the Town and Country Planning Act 1990 legislation and when this was brought to the attention of the developer, they promptly applied to Lancashire County Council for a Diversion Order to be made under the provisions of Section 119 of the Highways Act 1980.

The obstruction of the footpath has only recently been brought to the attention of the County Council and it is acknowledged by both the County Council and the developer that this is not a satisfactory situation. It is the intention for the footways and estate roads to become adopted highways and the highway adoption process is expected to be completed in November 2015. Then it will not be feasible to divert the footpath onto the proposed alignment because it will already carry pedestrian rights. The diversion of the footpath will not affect the highway adoption process but the matter is being brought before Regulatory Committee at the earliest opportunity to ascertain whether it is considered appropriate to make a Diversion Order as a means of resolving the problem of the obstructed footpath.

The length of the existing path proposed to be diverted is shown by a bold continuous line and marked on the plan as A-B-C-D and the proposed alternative route is shown by a bold dashed line and marked A-E-C-F.

The applicant, Great Places Housing Group is a social landlord with a long term stake in delivering an integrated and sustainable community. Therefore, rather than diverting just the section of footpath necessary for the development, they have requested that the diversion also includes the section that crosses the adjacent property 'Petre House Farm' and its neighbour 'Barnacre'.

The proposal, if successful would remove the public footpath from the affected dwellings and gardens enabling the handover of the development of affordable housing to progress and provide an improvement in privacy and security for the residents of Petre House Farm and Barnacre.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and at the time of writing, no objections or adverse comments to the proposal have been received.

Ribble Valley Borough Council and Billington and Langho Parish Council have been consulted. At the time of writing, the responses have not been received but have been requested by 16th December 2014. Any comments received from either Council will be verbally reported to Committee.

The Ramblers and the Peak and Northern Footpath Society have been consulted. The Peak and Northern Footpath Society has confirmed that they have no objection to the proposal but they have requested that warning signs are be erected on either side of where the path crosses the A59 and that the path should be 2 metres wide along its entire length. The request for the signs has been passed to the applicant and the highways section and it is confirmed that the recorded width of the proposed alternative route is 2 metres.

At the time of writing, the consultation sent to the Ramblers has been acknowledged and they are currently considering the proposal.

Advice

Description of existing footpath to be diverted

That part of Billington and Langho Footpath 7 as described below and shown by a bold continuous line A-B-C-D on the attached plan (All lengths and compass points given are approximate).

| FROM | TO | COMPASS DIRECTION | LENGTH (metres) |
|---------------------|---------------------|-------------------|-----------------|
| A (SD 7093 3502) | B (SD 7089 3497) | SW | 60 |
| B (SD 7089 3297) | C (SD 7092 3496) | ESE | 30 |
| C (SD 7092 3496) | D (SD 7104 3489) | ESE | 140 |
| | | Total length | 230 |

Description of new footpath

A footpath as described below and shown by a bold dashed line A-E-C-F on the attached plan (All lengths and compass points given are approximate).

| FROM | TO | COMPASS DIRECTION | LENGTH (metres) | WIDTH (metres) | OTHER INFORMATION |
|---------------------|---------------------|-------------------|-----------------|----------------|----------------------|
| A (SD 7093 3502) | E (SD 7095 3500) | generally SE | 25 | 2 | Tarmac surfaced path |
| E (SD 7095 3500) | C (SD 7092 3496) | generally SW | 55 | 2 | Tarmac surfaced path |
| C (SD 7092 3496) | F (SD 7090 3493) | generally SSW | 35 | 2 | Tarmac surfaced path |
| Total length | | | 115 | | |

A section of the route at point C is not to be extinguished, being a section of approximately 4 square metres where the new route crosses the old route. It is advised that this small sections is needed as part of the new footpath.

The proposed alternative routes will not be subject to any limitations or conditions

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

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that Order should also specify that the Definitive Statement for Billington and Langho Footpath 7 to be amended to read as follows:

The 'Position' column to read:-

| FROM | TO | COMPASS DIRECTION | LENGTH (metres) | WIDTH (metres) | OTHER INFORMATION |
|----------------|----------------|-------------------|-----------------|----------------|----------------------|
| (SD 7090 3493) | (SD 7092 3496) | generally NNE | 35 | 2 | Tarmac surfaced path |
| (SD 7092 3496) | (SD 7095 3500) | generally NE | 55 | 2 | Tarmac surfaced path |
| (SD 7095 3500) | (SD 7093 3502) | generally NW | 25 | 2 | Tarmac surfaced path |

then:- "to Northcote Road (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.77 km"

The 'Other Particulars' column be amended to read "No limitations between (SD 7090 3493) and (SD 7093 3502)"

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be expedient in the interests of the owners of the land as would remove the public footpath from the affected dwellings and gardens enabling the handover of the development of affordable housing to progress and provide an improvement in privacy and security for the residents of Petre House Farm and Barnacre.

In addition, the diversion would be consistent with Secure by Design principles devised by the Association of Chief Police Officers, whereby the existing footpath provides an access that is not overlooked resulting in poor security for both users and residents.

The current entry of the footpath into the new housing development at the end of a cul-de-sac could attract anti-social behaviour or be used as a 'get away path' compromising the security of the site. In addition, it is suggested that the diversion would significantly improve the suitability of the south-east cul-de-sac of the housing development for families with young children as it would enable safe play in the front gardens and on the estate road that would otherwise have an access into Petre House Farm and then an access leading out on to Whalley Road.

There is no apparatus belonging to or used by Statutory Undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they have given their consent.

It should be noted that the proposed diversion will alter one of the points of termination of Billington and Langho Footpath 7 and place it at another point that is on the adopted section of Petre Wood Crescent, being the same highway or a highway connected and it is suggested that the proposed termination point is substantially as convenient to the public.

The Committee are advised that so much of the Order as extinguishes part of Billington and Langho Footpath 7, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

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

A majority of the land crossed by the footpath proposed to be diverted and all of the land crossed by the proposed alternative route is in the ownership of the applicant. A short section of the section proposed to be diverted is in the joint ownership of A, M and A Bickerdike, of Barnacre, Whalley Road, Langho, Lancashire BB6 8AB and they have confirmed their agreement to the proposal.

The applicants have agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

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

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is overall of similar gradient to the existing route. In addition because the new route will be structure free, it will remove the requirement to pass through a gate at the junction of the footpath and Whalley Road.

It is noted that the length C-D is approximately 140 metres in length whereas to walk between the same places on the proposed alternative route and the adopted highways would require an additional 60 metres to be walked.

With regards to this increase in length, it is thought that there would be two distinct types of user of this footpath. One being someone going for a walk in the countryside and the other will be the residents that are yet to move into the northern part of the development of new houses. The former would be unlikely to notice an additional 60 metres required to be walked, because the minimum circular route that is likely to be walked that includes this footpath is 2.8km in length. With regards to the future residents of the properties, some might find the shorter length of the existing route appealing to use as a short cut to the pub, bus stop or garage. However, the improvement in security for the housing estate by having the footpath diverted might well outweigh any wish to retain the footpath as a short cut. It is suggested that this would apply in particular to the south east cul-de-sac section. In any event, it is suggested that it is the current use of the footpath that is required to be considered when assessing the tests and criteria of this proposal rather than the future use and this is thought to be solely recreational use to access the countryside to the north of the A59.

Furthermore the new route will be more accessible, providing a well drained sealed surface to walk on and as such is likely to be the route that would be chosen, rather than the existing route that crosses a lawn, car parking and turning area and driveways and as such, the alternative route is not substantially less convenient than the existing route.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path or ways as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the existing footpath runs through the curtilage of residential properties and as such some users of the path would feel more comfortable and at ease. The proposal will divert the footpath on to the estate roads and footways that are not yet adopted highways but are constructed to a high standard and will provide a surface that is more convenient underfoot in adverse weather conditions.

With regards to the views, it is suggested that rather than the enclosed views from the existing route where the route runs through the new development are similar from both the existing and the alternative routes. For the section that is proposed to be diverted from Petre House Farm and Barnacre the views are more open from the access track and the courtyard than they would be from the alternative route. However, this section of footpath is in an established residential setting and passes very close to the windows of the dwellings and across the lawn area. It is not the type of location where someone walking on the path would notice the views as the focus will in a majority of cases be on passing through the private properties causing as little disturbance to the residents as possible. In addition, it is suggested that the views from that section of path are incidental to the use of the public footpath and a user of the path out for a walk to enjoy the views of the countryside will be able to do so when they cross the main road onto the open countryside north of the A59.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA) in providing route that is structure free and of adequate width with a firm tarmac surface.

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

It is suggested that all the points raised in the consultation to date have been addressed above, therefore having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on submitting the Order (Annex C refers)

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in

the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Order be made.

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

To agree that the Order be made and promoted to confirmation by the County Council.

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

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

| Paper | Date | Contact/Directorate/Tel |
|-------------------------|---------|---|
| File Ref: 211/657 | various | Megan Brindle County Secretary and Solicitors Group 01772 535604 |
| File Ref: PRW-03-06-007 | | Mrs Ros Paulson Environment Directorate, 01772 533438 |

Reason for inclusion in Part II, if appropriate

N/A

370000 000000

372000 000000

436000 000000

436000 000000

434000 000000

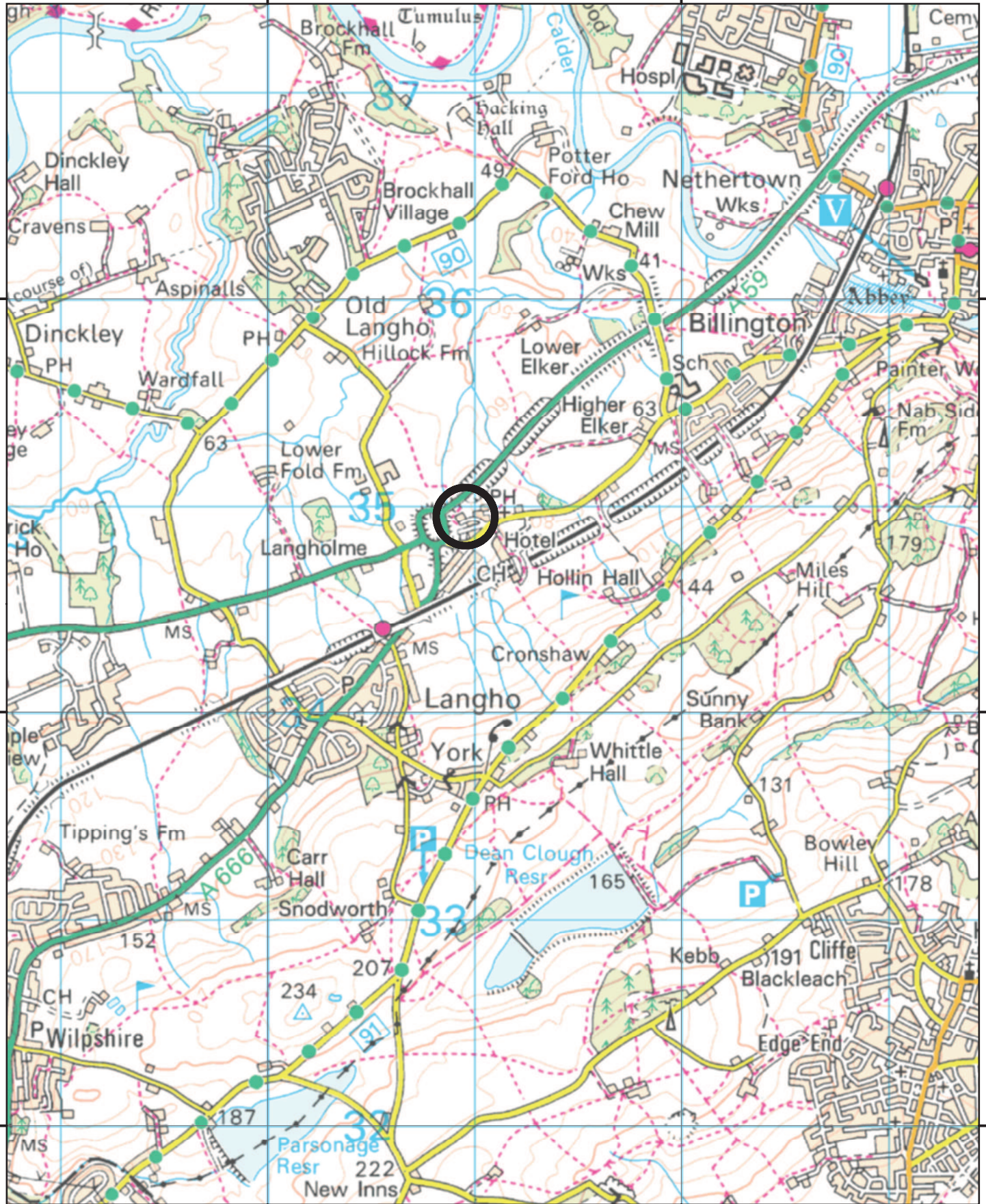
434000 000000

432000 000000

432000 000000

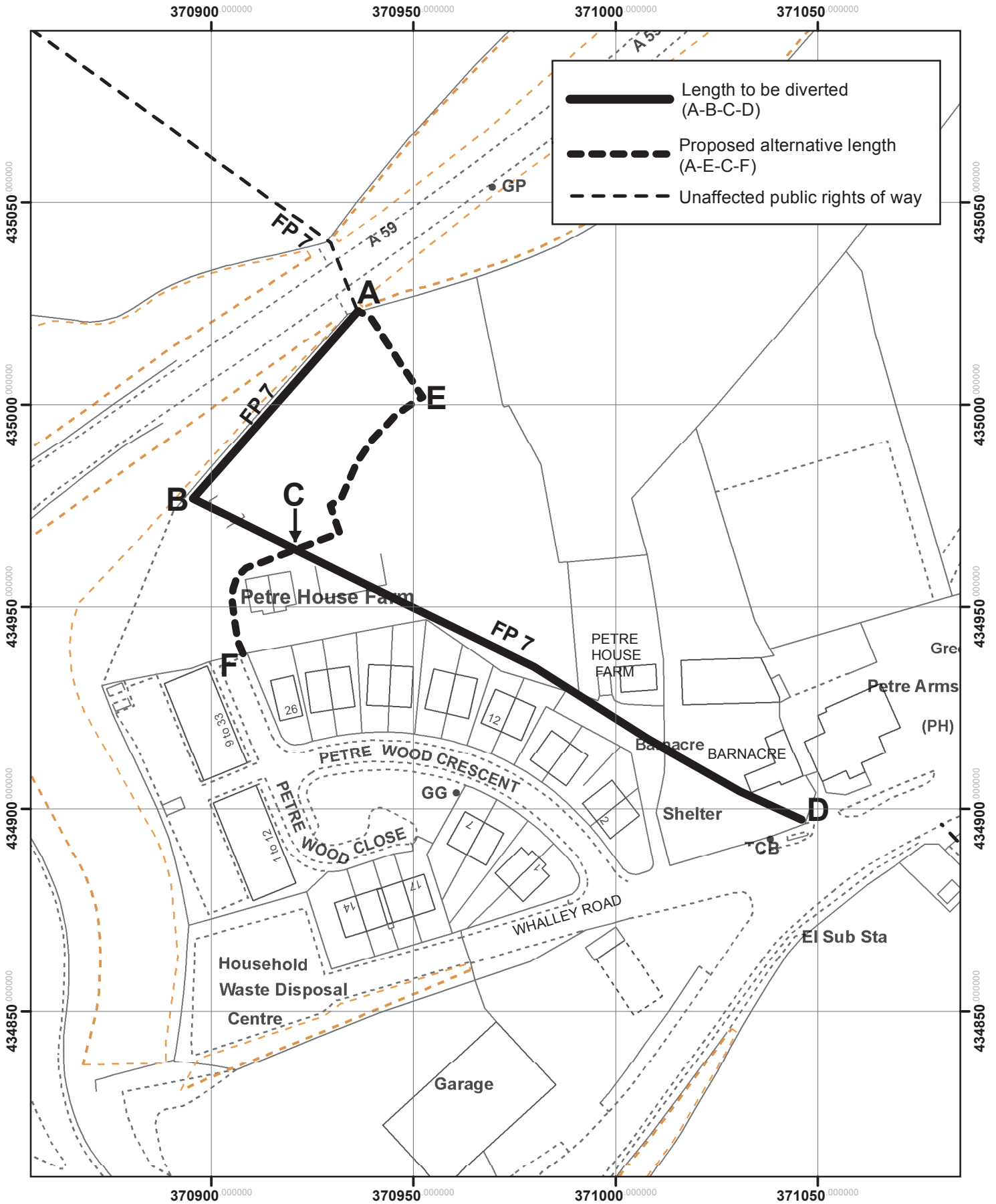
370000 000000

372000 000000



LOCATION PLAN
 Proposed Diversion Of Part Of Billington And Langho Footpath 7, Ribble Valley Borough.

The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.
 Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.
 This Map is reproduced from the 1:25,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320



Highways Act 1980 Section 119
 Proposed diversion of part of
 Billington and Langho Footpath 7, Ribble Valley Borough



Plan No
1383B

The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.
 Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.
 This Map is reproduced from the 1:1250 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

Regulatory Committee

Meeting to be held on 17th December 2014

| |
|---|
| Electoral Division affected: Skelmersdale East |
|---|

**Order Making Authorities stance on confirmation of the Order
Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 – Section 53A
Diversion of Part of Public Footpath No. 9 Wrightington, West Lancashire
Borough**

(Annex 'B' and 'C' refers) (Appendix 1 refers)

Contact for further information:

Mrs R Paulson, 01332 532459, Environment Directorate,

Ros.Paulson@lancashire.gov.uk

Miss M Brindle, 01772 (5)35604, County Secretary and Solicitor's Group

Megan.Brindle@lancashire.gov.uk

Executive Summary

The Order for the Diversion of part of Public Footpath No. 9 Wrightington, West Lancashire having received objections requires the Order Making Authority to consider the stance it is to take with regards to the confirmation of the Order before the matter is referred to the Secretary of State for formal determination.

Recommendation

1. That the report be noted
2. That the Order be referred to the Planning Inspectorate and the County adopts a "neutral stance" as regards confirmation of the Order.

Background & Advice

Committee at its meeting on 27 June 2012 accepted the application to divert part of public footpath number 9 Wrightington, a copy of the report is attached as appendix 1. An Order was subsequently made on 24 October 2012.

Two objections were duly made to the Order during the relevant period and these objections remain outstanding. The matter will therefore require referral to the Secretary of State for formal determination.

The initial committee report considered at the Regulatory Committee on 27 June 2012 stated in the Recommendation at bullet point ii) that in the event of no objections being received, the Order be confirmed and in the event of objections

being received the Order be sent to the Secretary of State and promoted to confirmation, if necessary at a Public Inquiry.

Committee is referred to Annex C and will note the Council may reconsider the stance it is to take to confirmation of the Order in light of the objections. In this matter it is suggested to Committee that the Order be sent to the Secretary of State with the Authority taking a neutral stance as to confirmation. The Director for Environment considers that this diversion order is of no public benefit but that it does still meet the statutory test that it is not substantially less convenient for the public. It is therefore difficult to justify the promotion of the order to confirmation, once the matter is referred to the Planning Inspectorate, due to the limited resources the Council has at present. Committee should note that the Authority can only charge an applicant in accordance with the Local Authorities (Recovery of Costs for Public Path Orders Regulation 1993/407 and this does not allow the Authority to recharge the costs incurred by the Authority promoting the Order at a public inquiry, hearing or by written representations once the Order is with the Secretary of State therefore; as a result it is difficult to justify promoting this order to confirmation in light of the financial constraints the Authority currently faces.

Committee is advised that the Order Making Authority should submit the Order to the Secretary of State but take a neutral stance to the confirmation of the Order and allow the applicants to promote the same.

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: PRW-08-17-09 | Various | Mrs Ros Paulson, Environment Directorate, 01332 532459 |

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee
Meeting to be held on 27 June 2012

| |
|---|
| Electoral Division affected: Skelmersdale East |
|---|

Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Public Footpath No. 9 Wrightington, West Lancashire Borough (Annex 'B' refers)

Contact for further information:

Mrs J Elliott, 07917 836626, Environment Directorate jayne.elliott@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Public Footpath No. 9, Wrightington, West Lancashire Borough.

Recommendation

- i. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 9, in the Parish of Wrightington, from the route shown by a bold black line and marked A-B-C on the attached plan, to the route shown by a bold black dashed line and marked D-E-C on the plan.
- ii. That in the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
- iii. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

A request has been received from Mr Houlgrave, Dwerry House Farm, Coopers Lane, Heskin, Chorley, Lancashire, PR7 5PU for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 9 Wrightington, in the vicinity of Dwerry House Farm, Wrightington.

The length of the existing path proposed to be diverted is shown by a bold continuous line and marked A-B-C on the attached plan. The proposed alternative route is shown by a bold dashed line and marked D-E-C on the plan.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. West Lancashire Borough Council has also been consulted and raised no objection to the proposal.

The Peak and Northern Footpaths Society and Ramblers Association have also been consulted and have no objection to the proposal.

Wrightington Parish Council indicated that they would object to the proposal on two grounds. Firstly, that part of the proposed alternative route crosses a field between points D-E on the plan. They believe that to take a route around the edge of the field is far better than to go across the field as the edge of the field allows footpath users to get away from cattle or other livestock which it is not possible to do when crossing the middle of the field. They also state that if the footpath remains at the edge of the field there is a legal requirement not to plough the right of way whereas, the same guarantee is not always given, or adhered to, when the route goes across the field.

Secondly, the parish council believe that the surface of the proposed alternative route would be inferior to the existing route because it is not surfaced.

The West Lancashire Footpath Group have also objected to the proposal stating that they do not believe that the diversion is required to improve the privacy of the applicant's property, or that of his neighbour. They state that the footpath has previously been diverted further away from the house (onto its existing line) and that it is not necessary to divert it again.

The Footpath Group also object to the proposal because it would increase the distance required to be walked and because they are of the opinion that the proposed alternative is less attractive and that the surface would be more difficult to use.

Advice

Points annotated on the plan

| Point | Grid Reference | Description |
|-------|----------------|--|
| A | SD 5155 1334 | Where Public Footpath no. 9 Wrightington leaves the access track south west of junction with Sanderson Lane, adjacent to the Coach House |
| B | SD 5158 1330 | North west corner of Dwerry House |
| C | SD 5158 1324 | Where Public Footpath no. 9 Wrightington crosses ditch and field boundary |
| D | SD 5148 1333 | Boundary between access track and field approximately midway between Coach House and Halliwell's o' th' Hill |
| E | SD 5152 1324 | Small stream and N-S field boundary just south of E-W field boundary |

Description of existing footpath to be diverted

The footpath proposed to be diverted runs from a point on Public Footpath no. 9 Wrightington (point A) in a generally south easterly direction down the side of the Coach House on a tarmac surfaced driveway and then a narrower stone surfaced passageway to the

north west corner of Dwerry House (point B). It then turns to continue along a stone surfaced path in a south westerly direction ascending a flight of steps bounded by a garden fence and then continues in a south easterly direction on a path surfaced with woodchip and bounded on one side by a hedge to a second set of steps and culvert to exit onto an agricultural field at point C; a total distance of 115 metres.

Description of new footpath

The proposed alternative route starts at point D which is a point on the access track to Halliwell's o' th' Hill along which runs Public Footpath no. 9 Wrightington approximately 67 metres west of point A. It passes through a pedestrian gate and continues in a south south easterly direction across a field to a pedestrian gate and footbridge at point E. It then continues in a generally easterly direction to the south of a field boundary and ditch to rejoin Public Footpath no. 9 Wrightington at point C; a total distance of 150 metres.

It is proposed that the public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

| Limitations and Conditions | Position on path to which limitations and conditions apply |
|---|--|
| The right of the owner of the soil to erect and maintain a pedestrian gate that conforms to BS 5709:2006 with the exception that the gate open one way only. | Grid Reference SD 5148 1333 (Point D) |
| The right of the owner of the soil to erect and maintain a pedestrian gate that conforms to BS 5709:2006 with the exception that the gate will open one way only. | Grid Reference SD 5152 1324 (Point E) |

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

If this application is approved by the Regulatory Committee, the Executive Director for the Environment suggests that the Order should also specify that the Definitive Statement for Public Footpath No. 9 Wrightington be amended as follows:

The entry in the position column to read:

"Horrock Lodge, High Moor lane via Horrock Hill to SD 5148 1333 through a pedestrian gate to continue across a field in a south south easterly direction for a distance of 95 metres to a pedestrian gate and footbridge at SD 5152 1324. It then continues in an easterly direction along the northern edge of a field for a further 55 metres to SD 5158 1324 and continues to Coopers Lane. All lengths and compass directions given are approximate."

The entry in the other particulars column be amended to read: " Limitations and Conditions between SD 5148 1333 and SD 5158 1324: Pedestrian gates that conform to BS 5709:2006 with the exception that they open one way at SD 5148 1333 and SD 5152 1324".

The entry in the length column be amended to read: "2.49km"

The entry in the width column be amended to read: "The section of footpath between SD 5148 1333 and SD 5158 1324 is 2 metres wide".

Criteria satisfied to make and confirm the Order

The proposed diversion is felt to be in the interests of the owner of the land in that, if the proposal is successful, it will remove a length of public footpath away from Dwerry House, which is currently overlooked from the footpath, and from the Coach House to which the footpath is adjacent, providing the owners of both of the properties with an improvement in privacy and security.

The West Lancashire Footpath Group expressed concern that the applicant had previously diverted the footpath from passing directly past Dwerry house in 2005. That application was successful and diverted the path onto its existing route (between points A-B-C).

It is submitted that it is not unreasonable to divert the footpath further from the properties and that the new proposal must be considered with reference to the existing route of the public footpath, not the path that existed prior to the 2005 diversion.

The public footpath proposed to be diverted is fenced off from Dwerry House but still passes close to and overlooking it and through part of the garden. The applicant has stated that he has made the application because the existing line of the public footpath has a significant detrimental effect upon his use and enjoyment of the property. In particular he has explained that because the footpath runs through his garden he feels it necessary to have a fence in place to secure his property which means that his landholding is effectively split in two and has prevented him from making use of his garden to the west of the fence. In addition, he has illustrated that it is possible to look down into his property from the existing public footpath resulting in a loss of privacy and concern regarding the safety of his family and security of his property.

In addition, the existing public footpath proposed to be diverted passes directly down the side of his neighbours' property (the Coach House) with direct views into the property and easy access to the rear.

The proposed diversion will not alter the termination points of Public Footpath No. 9 Wriglington and it should be noted that the section of the existing route of Public Footpath no. 9 Wriglington between points D-A on the plan is to be retained to continue to provide access to Sanderson Lane.

The Committee is advised that so much of the Order as extinguishes part of Public Footpath no. 9 Wriglington, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus belonging to or used by Statutory Undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they have given their consent.

It is advised that the effect of the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features.

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

The applicant owns all of the land crossed by the section of footpath proposed to be diverted, with the exception of the first 35 metres from point A towards point B. This land is owned by

Mr and Mrs Tomlinson, Coach House, Coopers Lane, Heskin, Chorley PR7 7PU who are in agreement with the proposal.

The applicant does not own any of the land crossed by the proposed alternative route. The section between point D and point E is owned jointly by William, Eileen and Richard Ainscough, Harrock Hall, High Moor, Wrightington WN6 9QA and they are in agreement with the proposal. The remainder of the proposed alternative route between points E-C is owned by Mr and Mrs Tomlinson, Coach House, Coopers Lane, Heskin who are also in agreement with the proposal.

The applicant has agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to provide an alternative route to the satisfaction of the County Council.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion.

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

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It is suggested that many users might find a walk on the new route more enjoyable due to the footpaths being diverted away from the house and garden and as a consequence some users may feel more comfortable and at ease.

The West Lancashire Footpath Group expressed concern regarding an increase in distance that it is required to walk should the proposed diversion be implemented.

Public Footpath no. 9 Wrightington is a rural footpath, the primary purpose of which is recreational use rather than an urban 'short cut' or route to local amenities. As such members of the public using the route are likely to be using it as part of a reasonable length walk. They would not be using the path in isolation but would be using it to link to other public footpaths and quiet lanes.

It is acceptable for a diversion to increase the length of the public footpath - provided that the increase is not unreasonable in length. In this particular case the path will be being used as part of a much longer walk and it is submitted that any increase in distance would not substantially inconvenience the public. The increase in length depends on the route being taken, for example if approaching the path from Sanderson Lane (to the north east of the footpath) the proposed diversion would involve walking an increased distance of approximately 100 metres. However, if approaching from the south west the distance required to be walked would be reduced by approximately 100 metres.

Concern has also been expressed regarding the surface of the proposed alternative route. There is no requirement for the path to be surfaced and in a rural location across or along a field edge surfacing would be inappropriate. Whilst the existing route is surfaced the condition of the surface is not ideal and becomes waterlogged in places. In addition it is currently necessary to negotiate a flight of steps between point B and point C. The proposed

alternative route has been inspected on several occasions over the winter months and crosses well drained land which would have no adverse effect on the public's enjoyment of using the path as a whole.

Concern has also been expressed about the fact that the proposed alternative route could be ploughed. There is no history of the land crossed by the proposed alternative route being ploughed and the field crossed by the route D-E is currently grazed by sheep with no known future intention for this to change.

It is correct that the proposed route between point D and Point E could be ploughed in the future but if this was to happen there is a legal requirement for the route to be marked out and reinstated to a width of 2 metres within specific timescales. The section of the proposed alternative route between point E and point C is along the field edge and should not be ploughed.

The Parish Council have objected to the fact that part of the proposed alternative route would cross a field (as opposed to following the edge of the field). However, the route across the field is on well drained land – as opposed to parts of the edge of the field that can become quite boggy. By changing the proposed alternative route to follow around the edge of the field to exit through a field gate close to point A would not achieve the same benefits regarding an improvement in privacy to the owners of the Coach House. In addition, to gain access to the bridge at point E it is unlikely that members of the public would stay close to the field edge but would take the more direct route across the corner of the field which can become quite wet.

It is accepted that livestock could be present along the proposed alternative route, whereas they are very unlikely to be encountered on the existing route. However, livestock should not constitute a risk to the public (and if they did, they should not be present in the field). The section of footpath proposed to be diverted is part of a much longer route that crosses numerous fields which may be grazed by livestock and it is not considered that the inclusion of a further short section of cross field path in one additional field would have an adverse effect on the public's enjoyment of using the path as a whole.

It is felt that there would be no adverse effect on the land served by the existing routes or the land over which the new paths are to be created, together with any land held with it.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and the two gates that are proposed to be installed on the route will conform to the British Standard for gaps gates and stiles BS5709:2006. In addition the diversion of the route will remove the need to negotiate a flight of existing steps.

Further it is also advised that the effect of the Order is compatible with the material provisions of the County Council's Rights of Way Improvement Plan, in particular the theme Reduced Mobility and Visually Impaired (RMVI).

The proposed diversion is consistent with Policy RMV12-2 whereby the Local Authority "Aspire to meeting the British Standard for gaps, gates and stiles BS 5709, subject to consideration of landowners' requirements, the local character and the accepted practice at any location." In this instance BS5709:2006 has been applied and the least restrictive option of a pedestrian gate at points D and E has been selected.

Risk Management

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

Alternative options to be considered

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

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

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

| Paper | Date | Contact/Directorate/Ext |
|------------------------|------|--|
| File Ref: PRW-08-17-09 | | Mrs Jayne Elliott, Environment Directorate, 07917 836626 |

Reason for inclusion in Part II, if appropriate

N/A

