

Lancashire County Council

Regulatory Committee

Wednesday, 13th January, 2016 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	
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| 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 meeting held on 21 October | (Pages 1 - 8) |
| 4. | Guidance.

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. | (Pages 9 - 32) |
| 5. | Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a public footpath from Maplewood Close to South Park, Lytham St Anne's
File No. 804-568 | (Pages 33 - 66) |
| 6. | Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of public footpath from Clitheroe Road to Chapel Lane, West Bradford, Ribble Valley
File No. 804-500 | (Pages 67 - 106) |

7. **Wildlife and Countryside Act 1981** (Pages 107 - 158)
Definitive Map Modification Order Investigation
Addition of a public footpath from Elmers Green to
Footway F2696, Skelmersdale, West Lancashire
File No. 804-564

8. **Highways Act 1980 - Section 119** (Pages 159 - 170)
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Dalton Footpath 21,
West Lancashire Borough

9. **Urgent Business**

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

10. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 24th February in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I Young
Director of Governance,
Finance and Public Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 21st October, 2015 at 10.30 am
in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

K Snape	P Hayhurst
I Brown	C Henig
A Clempson	R Shewan
D Clifford	D Westley
C Crompton	D Whipp
J Fillis	P White
G Gooch	B Yates

County Councillors C Crompton, J Fillis and D Westley replaced County Councillors B Dawson, J Gibson and D Stansfield respectively.

1. Apologies.

No apologies were presented.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None were disclosed.

3. Minutes of the meeting held on 9 September

Resolved: That the minutes of the meeting held on 9 September 2015 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, as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

- 5. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation**
- 1. Addition of Public Footpath from Coal Pit Lane to Footpath 3 Trawden, Pendle Borough**
 - 2. Addition of Public Footpath from a point on Footpath 202 Colne to a junction with Footpath 1 Trawden, Pendle Borough**
 - 3. Addition of Public Footpath from the a point on Footpath 203 Colne to a further point on Footpath 203 Colne, Pendle Borough**
- File Nos. 804-569, 804-570, 804-571**

A report was presented on an investigation into the addition of three footpaths:

1. The addition of Footpath from Coal Pit Lane, Colne, to Footpath 3 Trawden, Pendle Borough, in accordance with file no. 804-569 and referred to in the report as Route 1.
2. The addition of Footpath from a point on Footpath 202 Colne to the junction with Footpath 1 Trawden, in accordance with file no. 804-570 and referred to in this report as Route 2.
3. The addition of Footpath, Pendle District, from a point on Footpath 203 Colne to a further point on Footpath 3 Colne, in accordance with file no. 804-571 and referred to in this report as Route 3.

It was recently discovered that the three routes detailed above, whilst physically existing on the ground, and included in the description of routes in the Revised Definitive Statement of Public Rights of Way (First Review), were not shown on the accompanying Revised Definitive Map (First Review).

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 statements of public rights of way (in the form of Annex 'A'), were presented both as part of the report and by officers at the meeting.

Having examined all of the information presented, the Committee agreed that taking all the relevant information into account and with the amendments in the recommendation regarding the statutory provisions under which the Order was suggested be made, from Section 53(c)(i) and Section 53(c)(iii), to Section 53(3)(c)(i) and Section 53(3)(c)(iii), there was sufficient evidence that an Order should be made and promoted to confirmation.

Resolved:

1. That an Order be made pursuant to Section 53(2)(b), 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from Coal Pit Lane, Colne to Footpath 3 Trawden on the Definitive Map as

shown on the Committee Plan between points A-B-C and amend the particulars accordingly.

2. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
3. That an Order be made pursuant to Section 53(2)(b), 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 202 Colne to the junction with Footpath 1 Trawden on the Definitive Map as shown on the Committee Plan between points D-E-F-G-H-I-J and amend the particulars accordingly.
4. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
5. That an Order be made pursuant to Section 53(2)(b), 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to add a footpath from a point on Footpath 203 Colne to a further point on Footpath 203 Colne on the Definitive Map as shown on the Committee Plan between points K-L-M and amend the particulars accordingly.
6. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**6. Wildlife and Countryside Act 1981
Application to Record a Bridleway over Moorland Tracks near
Clowbridge Reservoir by Addition of Bridleway and Upgrade from
Footpath: Rawtenstall, Rossendale Borough and Dunnockshaw,
Burnley Borough.
Application No. 804/549**

A report was presented on an application to record a bridleway over moorland tracks near Clowbridge Reservoir by addition of bridleway and upgrade from footpath, Rawtenstall, Rossendale Borough and Dunnockshaw, Burnley Borough, File ref: 804/549.

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') were presented both as part of the report and officers at the meeting.

Having examined all of the information provided, the Committee agreed that taking all the relevant evidence into account, there was sufficient evidence that an Order should be made and promoted to confirmation.

Resolved:

1. That the application to upgrade to bridleway parts of Footpaths 14, 18 and 21 Rawtenstall, Rossendale Borough and of Footpath 10 Dunnockshaw, Burnley Borough and to add bridleways between Footpaths 14 and 21 Rawtenstall and between Footpath 10 Dunnockshaw and Bridleway 18 Rawtenstall on the Definitive Map and Statement of Public Rights of Way be accepted.
2. That an Order be made pursuant to Section 53(2)(b), Section 53(3)(b), Section 53(3)(c)(i) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to add bridleways and upgrade footpaths to bridleways on the Definitive Map and Statement of Public Rights of Way for a distance of approximately 2060 metres shown between points A-B-D-E-F-G-H-I-J-K-L-M on the attached plan.
3. That being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted if necessary by submitting it to the Secretary of State.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Public Footpath from Cop Lane to Alcester Avenue
through Penwortham Girls High School, Penwortham, South Ribble
File No. 804-563**

A report was presented on an application for a Public Footpath from Cop Lane through Penwortham Girls High School to Alcester Avenue, Penwortham, South Ribble to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804-563.

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 statements of public rights of way (in the form of Annex A), were presented both as part of the report and by officers at the meeting.

Having examined all of the information presented, the Committee agreed that taking all the relevant information into account and with the amendment in the recommendation regarding the statutory provision under which the Order was suggested be made, from Section 53(c)(i) to Section 53(3)(c)(i), there was sufficient evidence that an Order should be made and promoted to confirmation.

Resolved:

1. That the application for a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble, to be added to the Definitive Map and

Statement of Public Rights of way in accordance with file no.804-563, be accepted.

2. That an Order be made pursuant to Section 53(2)(b), Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath from Cop Lane to Alcester Avenue, Penwortham, South Ribble to the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D-E-F-G and points A1-B and points F-G1
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by sending it to the Secretary of State.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Public Footpath from Five Ashes Lane to Scotforth Road (A6), Scotforth, Lancaster City
File No. 804-524**

A report was presented on an application for a public footpath from Five Ashes Lane to Scotforth Road (A6), Scotforth, Lancaster City, in accordance with file no. 804-524.

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), were presented both as part of the report and by officers at the meeting.

Having examined all the information presented, the Committee agreed that taking all of the relevant evidence into account, there was insufficient evidence for the application to be accepted.

Resolved: That the application for a public footpath from Five Ashes Lane to Scotforth Road (A6), Scotforth, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-524 be not accepted.

**9. Highways Act 1980 - Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Public Footpath No. 39, Silverdale Parish, Lancaster City**

A report was presented on the proposed diversion of part of Public Footpath No. 39, Silverdale Parish, Lancaster City. The proposed alternative route followed a

track which was previously a well used permissive path as well as Lancaster City Council's vehicular access to Trowbarrow Quarry.

Details of the application and summaries of the relevant law and guidance in the form of Annexe 'B' were presented both as part of the report and by officers at the meeting.

The Committee was informed that currently recorded rights for footpath No. 39 were correct and this was an application from Network Rail to move these rights from one position to another. The Committee had to decide if the proposed diversion met the legislative test which in this case was under Section 119A which is the provision for a Rail Crossing Diversion Order. In considering the making of the Order the Committee had to consider whether it was expedient to divert the footpath in the interests of safety of the people using it or likely to use it. The confirmation test was also considered. Network Rail had undertaken to pay for the administrative costs and the costs of bringing the new route up to standard.

Having considered all of the information set out in the report and presented at the meeting, it was agreed that an Order should be made and promoted to confirmation.

Resolved:

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath No. 39, in the Parish of Silverdale, 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 A-D-E on the plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**10. Commons Act 2006
The Commons Registration (England) Regulations 2014
Regulation 43**

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Todd Hall Farm, Haslingden, being

entry 8 in the Rights Section of Register Unit CL82

A report was presented on an application from Richard Ian Haworth for a Declaration of Entitlement to record the rights to graze 3 head of cattle and 8 sheep on Common Land Register Unit CL82.

Details of the application and supporting evidence received from the Applicant, together with a summary of the law relating to applications in respect of common land were presented both as part of the report and at the meeting.

The Committee was informed that on 15th December 2014 The Commons Registration (England) Regulations 2014 were brought into force to replace The Commons Registration 2008. Although this application was submitted under Regulation 44 of the 2008 Regulations, the updated DEFRA Guidance of December 2014 stated all applications made to, and proposals made by, pioneer authorities under the 2008 Regulations automatically switched to the equivalent stage in the 2014 Regulations. Therefore from 15th December 2014, this application automatically became an application under Regulation 43 of the Commons Registration (England) Regulations 2014.

Regulation 43(1) stated that applications for a declaration of entitlement to exercise a right of common must be made by an owner of a freehold estate in land to which a right of common was attached or leasehold owner of any such land provided that the lease was held of more than six months.

The Committee agreed that the application was well founded and that it be accepted as well as requesting a report on the delegation of authority on applications such as this.

Resolved:

1. That the application be accepted and a Declaration of Entitlement be recorded in the Commons Register in accordance with The Commons Registration (England) Regulations 2014 that Mr Richard Ian Haworth is entitled to exercise part of the right attached to Todd Hall Farm, Haslingden, namely the right to graze 3 head of cattle and 8 sheep over the whole of CL82.
2. That a report on altering the Scheme of Delegation be prepared and presented to the committee to consider future delegation of decisions on Regulation 43 applications

11. Urgent Business

There were no items of urgent business.

12. Date of Next Meeting

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 2nd December 2015 in Cabinet Room 'B' – The Diamond Jubilee Room at County Hall, Preston.

I Young
Director of Governance, Finance
and Public Services

County Hall
Preston

Regulatory Committee

Meeting to be held on XXXXX

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 XXXX

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 13 January 2016

Electoral Division affected: Lytham
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a public footpath from Maplewood Close to South Park, Lytham St Anne's

File No. 804-568

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a public footpath to the Definitive Map and Statement from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough, in accordance with file no. 804-568.

Recommendation

1. That the application for a public footpath from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough:
 - a) A -B to be not accepted; and
 - b) B-C-D-E-F-G-H-I to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-568, be accepted.
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 add a public footpath from Maplewood Close to South Park, Lytham St Anne's to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points B-C-D-E-F-G-H-I.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath extending from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough a distance of 200 metres and shown on the

Committee plan by a thick dashed line between points A-B-C-D-E-F-G-H-I on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

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

There is no Parish Council for this area.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3563 2757	Junction with north eastern end of footway of Maplewood Close adjacent to 6 Maplewood Close immediately south west of metal barrier
B	3563 2757	An unmarked point on the tarmac footway immediately north east of metal barrier
C	3564 2757	Point at which route joins tarmac access road
D	3573 2755	Point at which route leaves tarmac access road
E	3574 2756	Route passes through gap in boundary fence
F	3577 2756	Route exits Millhill Wood and joins tarmac path
G	3578 2756	Junction of tarmac paths
H	3579 2757	Junction of tarmac paths
I	3582 2757	Junction of tarmac path with footway of South Park adjacent to 125 South Park

Description of Route

A site inspection was carried out in July 2015.

The route under investigation ('the route') commences at point A on the Committee plan at the north eastern end of Maplewood Avenue. It passes through a gap between the corner of the garden fence of 6 Maplewood Close and a brick wall across the end of Maplewood Avenue.

The gap is tarmacked with two metal barriers positioned across it which allow pedestrian access but which would prevent or would make access difficult for bicycles, pushchairs or wheel chairs.

Beyond the metal barrier (point B) the route turns in a south easterly direction across a tarmacked area for approximately 8 metres where it joins a tarmac access road bounded by kerb stones (point C). It follows the access road, which varies in width between 4 and 5 metres, in a south easterly and then east north easterly direction to the rear of a number of buildings known collectively as the Hall Park Centre and to the rear of the tarmac car park designated as parking for the Hall Park Centre and Hole in One public house (now closed). The surface of the access road is vegetated with moss in places suggesting recent infrequent use by vehicles. Prominent white arrows painted on the surface of the tarmac suggested that use of the access road was designed to be in one direction only.

After approximately 100 metres the route leaves the tarmac access road (point D) to pass through an area of vegetation along a path surfaced with woodchips. It passes through a gap in a boundary fence (point E) which is partly obscured by ivy that has grown up over it and continues in a generally easterly direction along the compacted earth and wood chip surfaced path through an area of woodland (Millhill Wood).

The route exits the woodland (point F) into South Park play area. It then follows a tarmac path to the junction with another tarmacked path (point G) which provides direct access to a children's play area and then continues in a north easterly direction along a tarmac path to a junction (point H) and then an easterly direction along another tarmac path to exit the play park through a gap in the fence (point I) at a junction with the footway at the end of South Park cul-de-sac, which begins with a concrete step adjacent to 125 South Park.

The total length of the route is 200 metres.

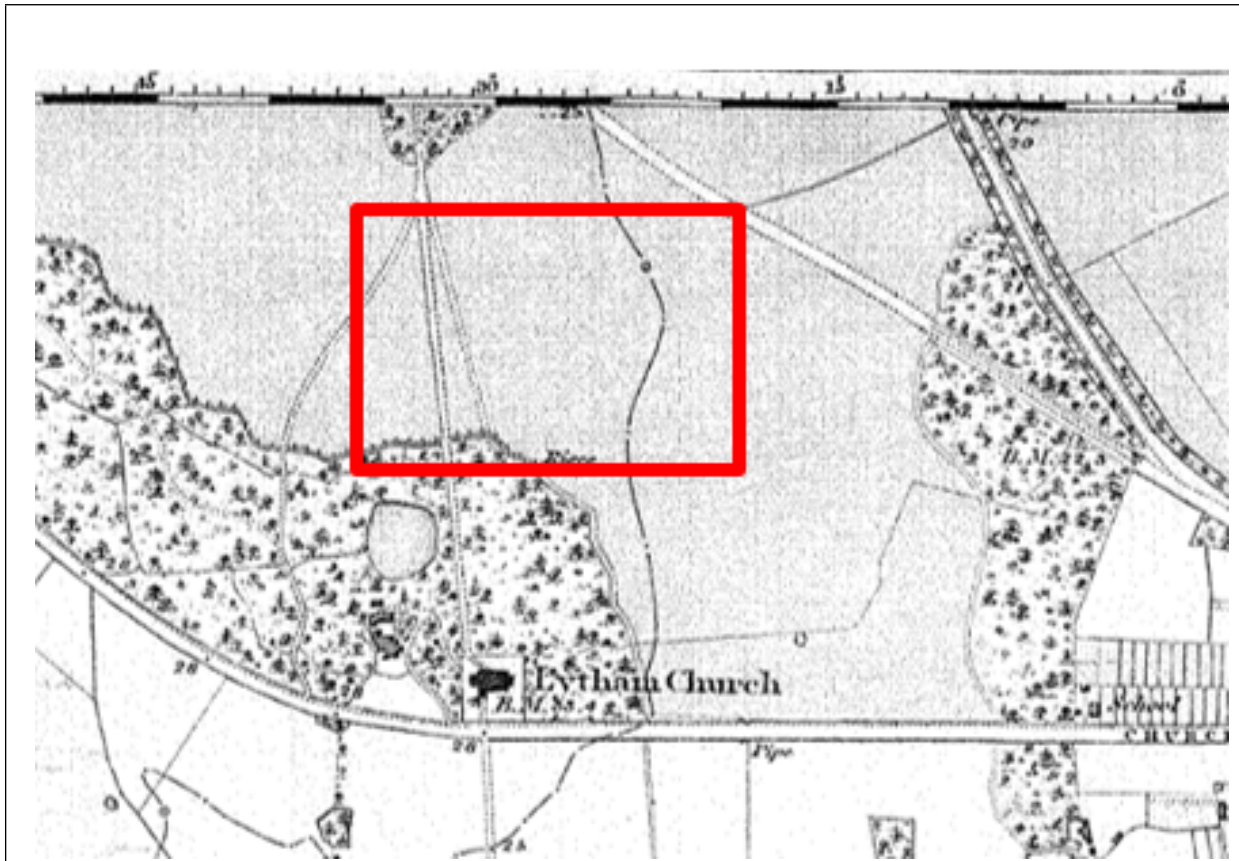
Map and Documentary Evidence

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.
Observations		The route under investigation is not shown. It is not possible to determine the exact location of the route due to the scale of the map and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed 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 route under investigation is not shown.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it

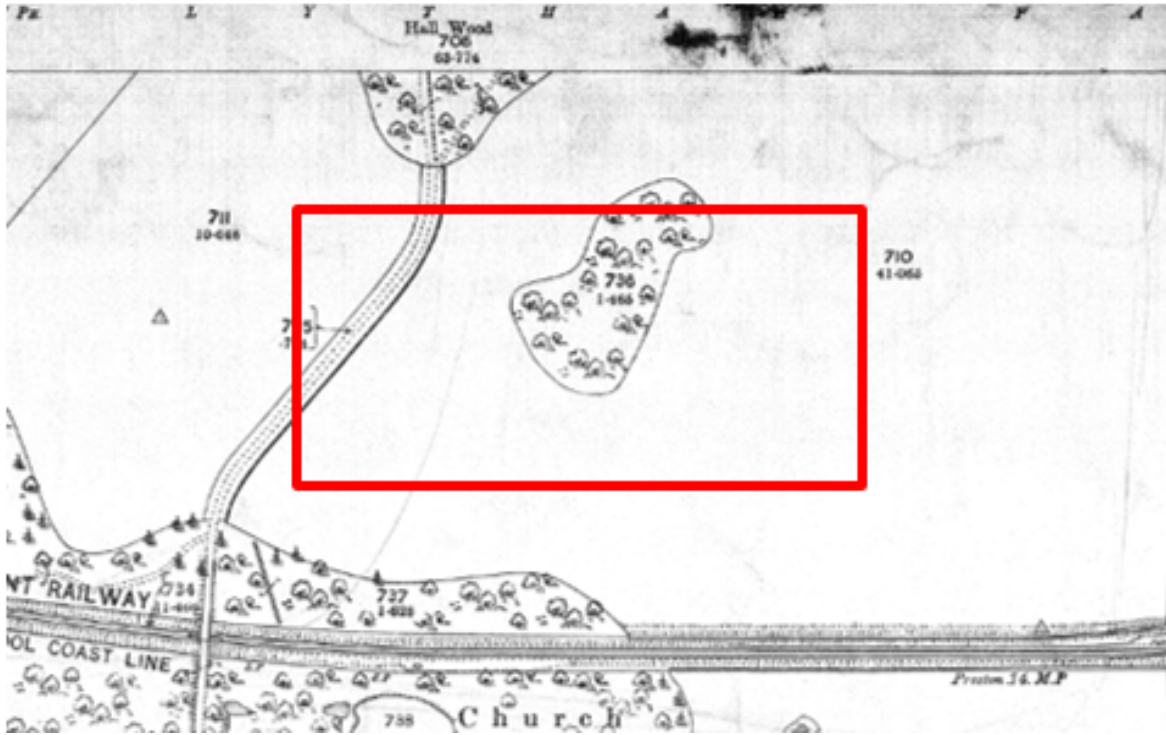
		was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed in 1818.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 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 route under investigation is not shown.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed in 1830.
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 the area of land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1840	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the

		written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Lytham was produced in 1840 around the time of the earliest 6 inch Ordnance Survey map. As the Ordnance Survey map and earlier commercial maps show that the land crossed by the route under investigation was undeveloped agricultural land with no indication that the route existed the Tithe Map was not examined.
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 is no Inclosure Award available for the area crossed by the route under investigation.
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 1846-47 and published in 1848. ¹

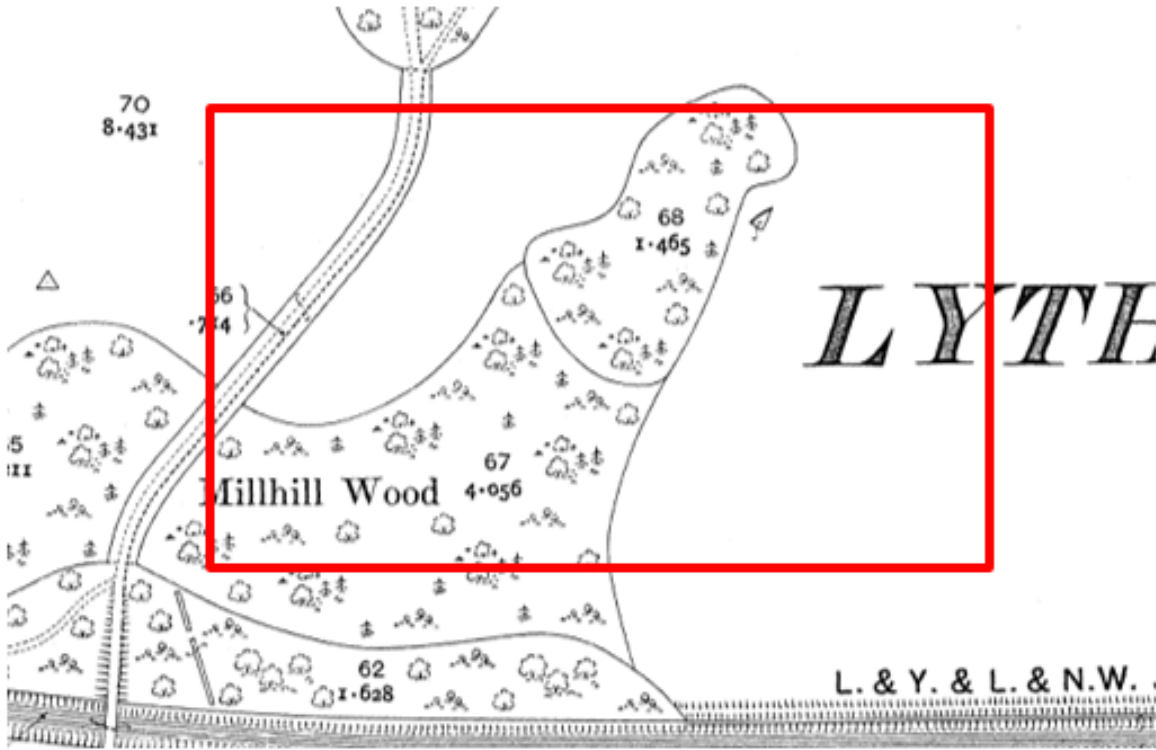
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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



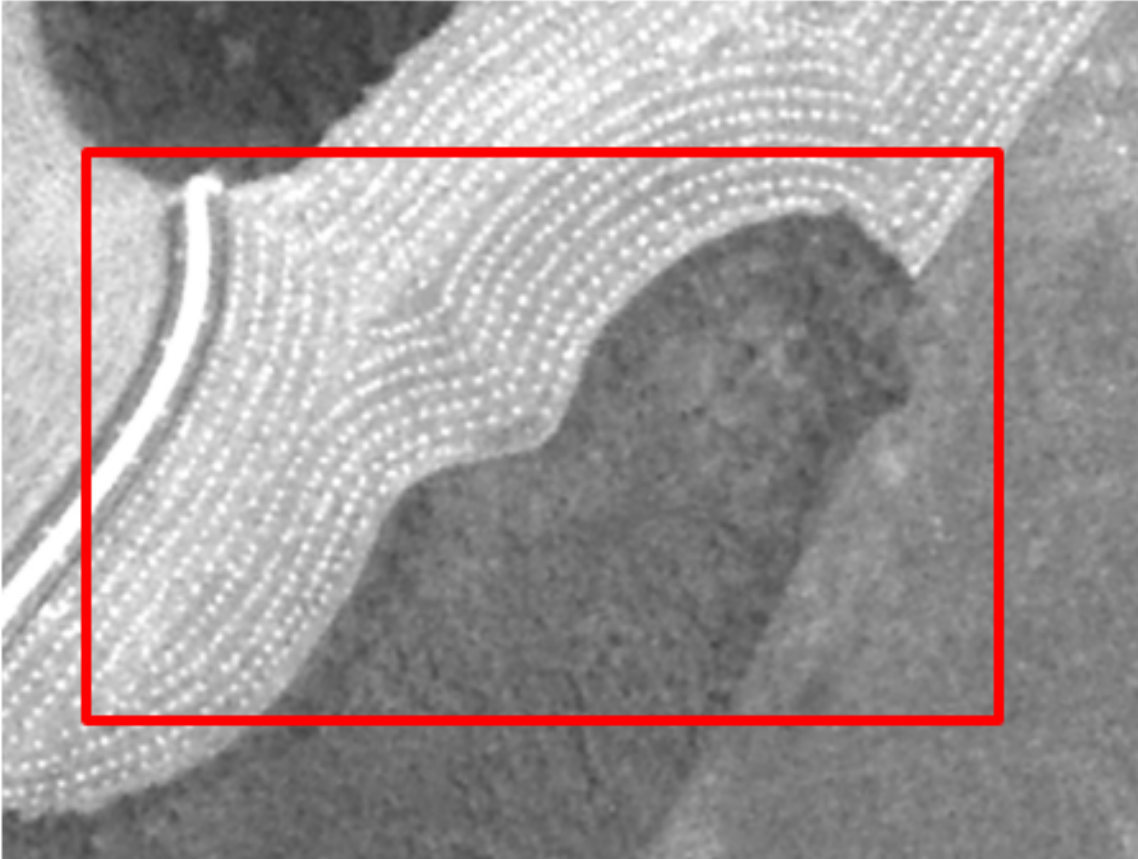
Observations		The land crossed by the route under investigation is shown as agricultural land and the route is not shown.
Investigating Officer's Comments		It is considered that the route under investigation did not exist in 1848.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.




Observations		The route under investigation is not shown. Millhill Wood is shown but the land is still agricultural.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1891.

25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.
		
Observations		Millhill Wood has extended but the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1908.
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</p>

		<p>land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The relevant Finance Act Map sheet is not available to view at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891, revised in 1930 and 1932.
Observations		No changes to the earlier edition of the 25 inch map.
Investigating Officer's Comments		The route under investigation did not exist in 1930.

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		The land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist in the 1940s.

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 land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist before the 1930s when the map was revised.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
Observations		The land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist when the photograph was taken in the 1960s.
1:2500 OS Map	1966	Further edition of 25 inch map reconstituted from former county series and revised in 1964 and published 1966 as national grid series.
Observations		The land crossed by the route under investigation is still shown as being undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist in 1964.

1:10,000 OS Map	1972	OS 1:10,000 scale map revised 1967-1970 and published 1972.
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Observations		The route under investigation is not shown. Development has commenced in the area and part of South Park and Forest Drive are shown marked out by dashed lines indicating that they were under construction at the time that the map was revised.
Investigating Officer's Comments		The route under investigation did not exist when the map was revised between 1967 and 1970.
Aerial Photograph	1988	Aerial photograph available to view at LCC Cuerden Office.



Observations		Maplewood Close and South Park are both shown to exist. When enlarged the clarity of the aerial photograph is poor and part of the route is obscured by tree cover. It is not possible to see whether the full length of the route under investigation existed or whether access along it was available. The play area between point F and point I is visible and a number of paths are visible – the section of the route under investigation between point F and point G may follow part of one of the visible tracks and the land appears open between point F and point I.
Investigating Officer's Comments		The route under investigation may have been accessible.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		Access appears to be available from point A along the tarmac access road towards point C but is partly obscured by tree cover. It is not possible to see whether the route existed through the woodland from point C to point F. Access along the route between points F-G-H-I appears to be available and between point G and point H the route appears to follow a marked out path.
Investigating Officer's Comments		The route under investigation may have existed in 2000.

Aerial Photograph	2010	Aerial photograph available to view on GIS.
		
Observations		Access appears to be available at point A and extending towards point C but the route is then not visible to point F due to tree cover. A marked out route is visible along the route between points F-G-H-I.
Investigating Officer's Comments		The route under investigation probably existed in 2010.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but

		not for unparished areas.
Observations		Lytham St Anne's 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 application route was 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 route was 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 route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 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 application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. 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 is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>

Highway adoption plan from Mapzone



Road classification layer on Mapzone



Notes

Link footpath to Forest Drive shown on original s38 plan(see Fylse s38 folders) [kjm 21/01/2005]

Maplewood Close from Frenchwood Avenue in a north easterly direction adopted 19/04/1982 for 65.1 mtrs. also footway leading from Maplewood Close to Forest Drive.
Excluding fence on south side of footpath

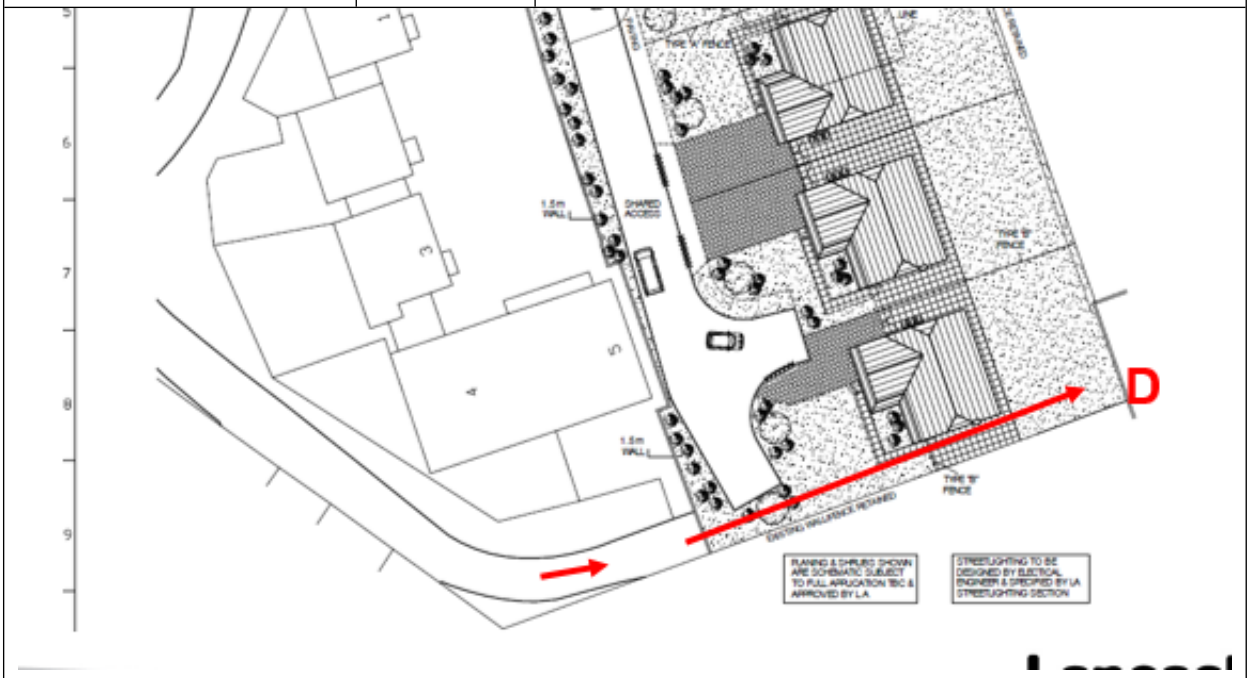
<p>Observations</p>		<p>The highway adoption plan available to view on the LCC internal digital mapping system (MapZone) shows Maplewood Close coloured blue to indicate that it is an adopted highway and also shows a route extending from the end of Maplewood Close (point A on the Committee plan) along the route under investigation to point B and continuing to Forest Drive as a route coloured blue (i.e. an adopted footpath).</p> <p>The Road Classification layer on MapZone does not show the footway from the end of Maplewood Close through to Forest Drive recorded as an adopted highway but an accompanying note refers to the adoption of Maplewood Close in 1982 and also refers to footway from Maplewood Close to Forest Drive.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation between point A and point B appears to form part of a footway adopted in 1982. The rest of the route under investigation (from point B through to point I) is not recorded as a publicly maintained highway although this does not mean that it is not highway.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use.</p>

		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).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area of land over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Google Street View	2009	Photographs captured on Google Street View taken June 2009.





Observations		The photographs show that access onto the route under investigation was open and available at point A and point I.
Investigating Officer's Comments		Access was available at point A and point I in 2009.
Planning Application	2014	Outline application to Fylde Borough Council for the erection of 5 Dwelling houses on the site of the Hole in One, Forest Drive, Lytham



Observations		<p>The application makes no reference to the existence of the route under investigation and the planned development would block off access to the route partway between point B and point C through to point D with no alternative access being provided.</p> <p>Outline planning permission was granted by Fylde Borough Council on 11 September 2015 without reference to the route under investigation.</p>
Investigating Officer's Comments		<p>The existence of the route under investigation was not acknowledged by the developer.</p>

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

Landownership

The following landowners are affected by this application:

1. John George Hardy, Flat 5, Hall Park Centre, Forest Drive, Lytham St. Annes FY8 4QF
2. Hall Park Properties (UK) Limited, 63 Hall Park Drive, Lytham St. Annes FY8 4QZ / Hall Park Properties (UK) Limited, Black Bull House, 353-355 Station Road, Bamber Bridge, Preston, Lancashire, PR5 6EE
3. Fylde Borough Council, Town Hall, St Annes Road West, Lytham St Annes, Lancashire, FY8 1LW

Summary

None of the map or documentary evidence examined was sufficient (even if considered collectively) to conclude that a public right of way existed with the exception of the section between point A and point B which appears to form part of an adopted footway.

The evidence examined appears to show that the route under investigation did not come into existence until the area was developed and Maplewood Close and South Park were constructed. The Ordnance Survey 1:10 000 map surveyed 1967-70 and published 1972 shows that the roads and houses were being constructed at that time suggesting that the route under investigation only came into being at some point after that.

The adoption records for Maplewood Close and footway through to Forest Drive are dated 1982 suggesting that access was available to the route from about that date.

None of the aerial photographs post-dating development clearly show the full length of the route under investigation as being available to use due to the fact that it passes through an area of woodland.

The recent site inspection carried out as part of this investigation confirmed that the full length of the route was available to use in 2015.

Head of Service – Legal and Democratic Services Observations

The applicant has provided the following information about the route:

" In approx 2000 Fylde Borough Council put a tarmac path through the grass part of the south park play area and a bark path through the wooded part, at my request. This was done to facilitate the use of this route through to keep residents and also parents taking their children to and from Lytham Hall Park School. This route has been used for over 30 years by both residents and by parents taking their children to and from Lytham Hall Park School. When Lancashire County Council recently granted planning permission for the school to be extended, one of the conditions was that the School Travel Plan should include targets and measures to reduce car journeys and promote pedestrian road safety and encourage pupils to use sustainable forms of transport. Planning Policy Guidance note 13 recognises that walking is the most important mode of travel at the local level and has the greatest potential to replace car trips for distances up to 2km. As a consequence the school has actively encouraged parents to walk to school as much as possible. This particular route is the safest route possible as it avoids Forest Drive and most of South Park, which are very busy roads at the start and end of the school day. If this route was not available any other route will be longer and less safe than this one and parents will be discouraged from walking with their children to and from school. Lancashire County Council have always encouraged safe route to schools and I have spoken to Glenn Robinson, Senior Engineer, Developer Support to LCC who is happy to support this application."

In support of the application the applicant has submitted 45 user evidence forms, the information provided in these forms is set out below.

The application route has been used on foot by the years for the following years:

1975-2015(1)	1977-2014(1)	1980-2015(1)	1983-2014/15(1)
1985-2015(2)	1984-2015(2)	1986-2015(2)	1990-2014(1)
1996-2014(1)	1999-2007(1)	2001-2015(1)	2002-2015(2)
2003-2015(1)	2004-2015(2)	2005-2015(1)	2007-2014(1)
2007-2015(2)	2008-2015(1)	2009-2015(2)	2010-2015(1)
2011-2015(6)	2012-2015(8)	2013-2015(2)	

1 user used the route between the years of 1982-1989 & 2013-2015 and 1 user did not specify what years they have used the route.

None of the users have ever used the route on horseback or leading a horse, 6 users have used the route on bicycle between the following years:

2002-2015(1)	2007-2014(1)	2008-2015(1)	2011-2015(1)
2012-2015(2)			

None of the users have ever used the route on a motorised vehicle or by other means.

5 of the users who used the route had an interval where they did not use the route:

Years used the route	Interval	Reason for interval
1983-2014/15 (on foot)	1990-2013	Safe access to the primary school was not required
1984-2015 (on foot)	1988-1993	Lived in Freckleton
2002-2015 (on foot & bicycle)	October 2014-May 2015	waste building material had been dumped at the exit point of the children's park which completely blocked access to the pathway behind the hole in one
2004-2015 (on foot)	Not specified	When route was fence off around the hole in one and occasional ill health
2012-2015 (on foot)	2015	When fence blocked it off

All 45 users have seen others using the route on foot, 1 user has seen others using the route on horseback or leading a horse, 25 of the users have seen others using the route on a bicycle or horse-drawn vehicle., 1 user has seen others using the route on a motorised vehicle and all the users have not seen anyone using the route by way of other means.

43 users agree that others were using the same route as them, 1 user did not provide a response to this question and 1 user states "no some people were heading for cars parked in the area".

Below sets out how often the users used the route:

on foot – daily (18) on foot – weekly (14) on foot – weekends (a)
on foot – monthly (3) on foot & bicycle – daily (1)
on foot - daily & bicycle - weekly (1) on foot & bicycle - weekly (2)
on foot - daily & bicycle – monthly (1) on foot & bicycle – monthly (1)
on foot daily now & monthly prior to 2014 (1) on foot 6 times per year (1)
on foot depending on weather (1)

The main purposes for users using the route are for taking children / grand children to and from school / nursery, as a short cut to the church, dog walking, pleasure, access Witch Wood, visit friends / family, access Lytham Hall, visit shops / hair dresser / dentist, taking children to the play area and walking through to Lytham Town Centre.

And the main reasons for using the route are to visit places on the route or to use the route as part of a longer journey.

40 users agree that the route they use has always followed the same line, 1 user did not provide a response to this question and 4 other users provided the following details:

"occasionally I have walked through the hole in one car park to forest drive",

"sometimes we cut across the car park if it was quiet", "we would walk diagonally across the car park sometimes" and "not the same when the hole in one ceased trading".

9 users state they were / an owner of the land affected by the route but no further details are provided and 4 users are family members of an owner who's land is affected by the route.

3 users have met a landowner / tenant / family member of the route and provided the following details:

"pub land lord talking about after school meals at the pub", "yes and said nothing" and " yes you can't come through here it's my granddads land".

When asked if the users have ever been given any permission to use the route, the following responses were received:

"yes part of the route, Fylde Borough Council who own part of the route, the South Park Play area from 2000" and "no but understood that when the houses were built in 1977 rights of way over service road were granted", the other users either stated 'no; to this question or did not provide a response.

The following responses were received when asked if any of the users have ever been turned back from using the route:

"yes said you had no right to be on the route on 24th Feb 2015 when exit was blocked by rubbish and some weeks before that when it was blocked by steel fencing", " yes the right of way has been blocked", "yes recently with the blocking of the route not verbally", "no, the route had been blocked this year (not sure of exact date but for a few weeks)" and "yes approx 8/1/2015 workmen in the car park were putting up metal fencing and advised me that would be unable to access the pathway", 1 user also stated "yes" to this question but provided no further details, the other users either responded with "no" or did not provide an answer to this question.

1 user saw a notice on the steel fencing around hole in one, the sign said car park closed, keep out danger building work (or similar) Feb-April 2015.

When asked if there are any stiles / gates / fences along the route, 33 users responded with "no" or did not provide a response to this question, the other users mention a fence that was erected in 2015 some user's state this was removed soon after and some state it is still there now, there is also mention of a pedestrian gate into Maplewood Close.

Numerous users refer to obstructions along the route in 2014-2015 (various dates provided) including a pile of wood with nails, builders waste, metal fence and other rubbish, some state the obstruction is no longer there but it did prevent access at the time and other users state it is still there now and still prevents access.

At the end of completing a User Evidence Form users are asked to provide any further information they have, this information is set out below:

- It alleviates having to walk young child on a very busy main road
- I understand that the area needed to be fenced off for safety reasons whilst any building / maintenance work was done on the hole in one pub but I do not

understand why a large amount of wood etc was piled up at the entrance to the path after the fencing was removed. I am unsure of the exact dates when this wood blocked the entrance. I do have a photo of the metal fencing on my phone dated 10/1/15 and I am currently using the pathway in June 2015 so it is between that time.

- The route provides a safe means by which parents and children can walk to school away from the main road and heavy traffic.
- This route enables my children and I to cycle to school on quieter and therefore safer roads avoiding busy South Park and Forest Drive. It enables us to park a distance away from school and busy roads and walk to school. It enables access to the playground before and after school during the journey. It is relatively safe, relaxing and healthy route. I have used this route alone, with children and friends.
- The route was a short cut to my destination via an exercise area for the dog.
- Long term well used route by residents and school children to play park and Lytham hall and a vital safe link to other parts of the estate.
- My 3 children used this route to and from church road to catch their school buses every day during school term time. My wife and I use this route 2 or 3 times per week to go shopping in Lytham. The advantage of using this route is that it limits exposure to road traffic.
- The route is heavily used by children and their families attending Lytham hall park primary school. My daughter, son and I always used this route to go to and from school as it was the quickest route and also the safest as it allowed us to walk off-road rather than use south park and forest drive which both are very busy with moving and stationary traffic at school drop off and pick up times.
- This is a route which many families use to their children to school. Bearing in mind the difficulties with parking at the school, I cannot see any reason why this access should be blocked off.
- It has proven to be very useful to my children to encourage a shorter safer route to school so they can walk without obstruction or traffic. It created a good sense of community with passers-by.
- Route has been blocked at the path between the hole in one car park and the south park play area. Walking with children from school to church and return is now much more difficult and dangerous, now walking along and crossing the busy roads instead of along a quiet footpath.
- The path through the wood has been laid with wood chippings (presumably by the council) as an aid to pedestrians.
- The school has always used this route to walk all of the children to and from St Cuthbert's church for all of their services. Also it has been used by many parents walking to and from school.
- As far as I am aware and since I moved into South Park Forest Drive area in 1976, the use of this route has until recently been unobstructed and generally used by all manner of persons for all purposes but mainly for school access and playground access.
- This path is useful for mums picking up children from primary school and maybe collecting a younger child from nursery keeping them away from traffic on South Park / forest drive which is very busy at peak times.
- The route behind the pub from Maplewood Close to children's play area was heavily used at all times of the day by people out and about especially dog walkers and at school times very heavily used by parents and children.

- Due to the increased congestion and parking restrictions round the school, we are being encouraged to walk to school. Closing this footpath is yet another restriction we have to work around.

Responses from others

Mr G Hardy (part landowner) has used the route on foot and by motorised vehicle between the years of 1985-2015 to access his flat and to access his work, he states that a pile of rubbish and wooden fencing blocking the entrance from the wood onto the access road on part of the access road owned by the "hole in one" for a period of 3 months in March 2015.

Mr G Blow (part landowner) has contacted the former owners Thwaites for their records of how often the fence was repaired or replaced when taken down by users. Mr Blow also mentions that Fylde Borough Council have an obligation shown in the deeds to maintain all party fencing between his land and theirs. And states in a recent application for 5 houses on the site to Fylde Borough Council, Lancashire County Council Highways objected to plot 1 (nearest Forest Drive) as it had no turning space therefore having to reverse onto Forest Drive and would not recommend approval therefore this had to be altered. And also states the deeds to this land states that this is a service road for delivery wagons and refuse wagons etc., this also means that there is no need for them to reverse onto a main road, by putting in a public footpath this would have to be the case as commercial vehicles will not be able to pull right round breaking highway rules as previously mentioned and putting Fylde Borough Council in breach of the covenants on the deeds and vulnerable to being sued.

Mr Blow states he has repaired the fence sometimes twice a day since his ownership and has asked Fylde Borough Council to fence this as per their deeds regarding maintaining etc., to no avail.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Aerial Photographs
- Google Street View

Against Making an Order(s)

- Adoption records regarding A to B of the Claimed Route – corroborated by section 40 Highways Act 1959 'adoption agreement dated 1977'.
- User evidence with permission/licence

Conclusion

The claim is that the route A-B-C-D-E-F-G-H-I is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way. Adoption records confirm that part of the route A to B is already adopted highway corroborated by a section 40 Highways Act 1959 agreement, dated 1977. A to B cannot be considered twice a public highway and therefore for this reason is not accepted. Therefore, the claimed route considered is B-C-D-E-F-G-H-I.

In respect of B-C-D-E-F-G-H-I it is advised as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. User evidence indicates that builder waste and material and a fence erected near point E between October 2014 and May 2015 brought the route into question and therefore the period of use from which dedication can be deemed would be August 1994 - October 2014.

45 user forms submitted claim to have used on foot the claimed route "as of right" however, 9 users confirm they were or are an owner of the land affected by the route and that 3 users confirm they are family members of an owner. No further information has been provided from the users in this regard and therefore at this time the 13 user forms are excluded from assessment for reasons that use is with permission and not 'as of right'. The remainder 32 evidence forms will therefore be assessed only. It is also noted that in respect of use of the play park, the issue is whether there has been use of the claimed route B-C-D-E-F-G-H-I, rather than whether there has been use of the play park by the public.

All 32 user evidence forms indicate use of the claimed route B-C-D-E-F-G-H-I for 20 years and more suggesting good user evidence for the sufficient period, although some weight is lost in that some users are from the same address, use by the public at large of the claimed route is still satisfied despite this. Purpose of the route is to access local amenities such as shops, dentist and used as a short cut to and from the Lytham Hall Primary School, Nursery and Lytham town centre. Personal and recreational use are also stated common reasons.

There are three owners of the claimed route.

Part owner of the claimed route Mr G Hardy (from B to a point between C and D) confirms he used part of the route including on foot between the years 1985 – 2015, corroborating user evidence that that part was available during 2014 and 2015.

Part owner of the claimed route Mr G Blow (from a point between C and D to E) whilst there is reference to repairing a fence and blocking access late 2014/early 2015 without further evidence and against the 32 user evidence forms, use on balance is considered without interruption and that there is insufficient evidence that there was no intention during the 20 years period to dedicate.

Fylde Borough Council, owner of land crossed by the claimed route between E-F-G-H-I whilst having not made any comment on consultation, its actions of laying fresh bark in approximately 2012 could be viewed as encouraging to use the woodland part of the claimed route (E to F).

Considering also whether there are circumstances from which dedication could be inferred at common law, the adoption records for Maplewood Close and South Park dated 1982 confirms access was available to the claimed route. Ariel photographs 1988, 2000 and 2010 suggest the route could and indeed may have existed. Google street view 2009 and 2014 confirm the claimed route was accessible at both A and I.

It is suggested that the way this claimed route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owners in 1994 to 2014, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter 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/Tel
All documents on File Ref: 804-568		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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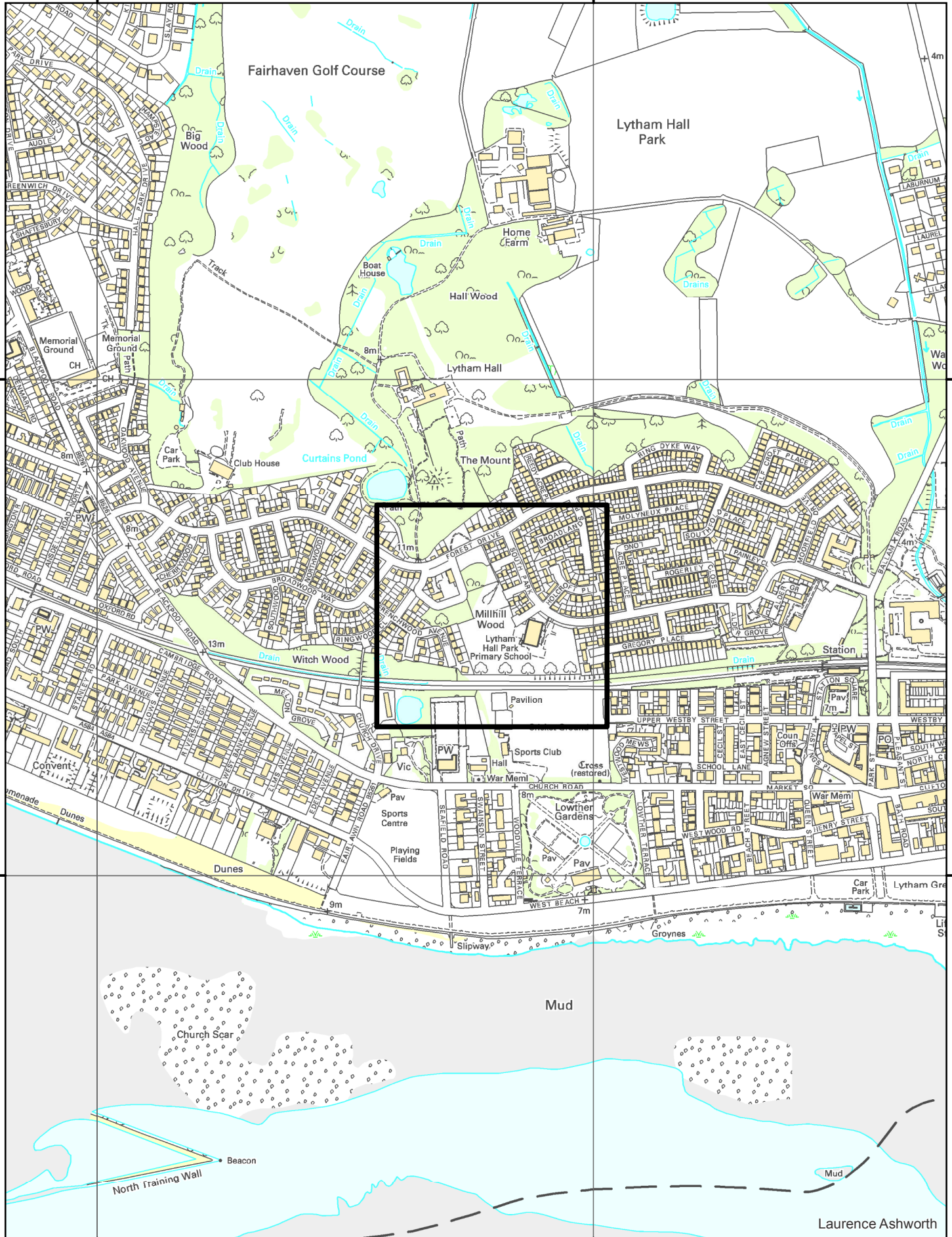
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Andrew Mullaney
Head of Planning and Environment

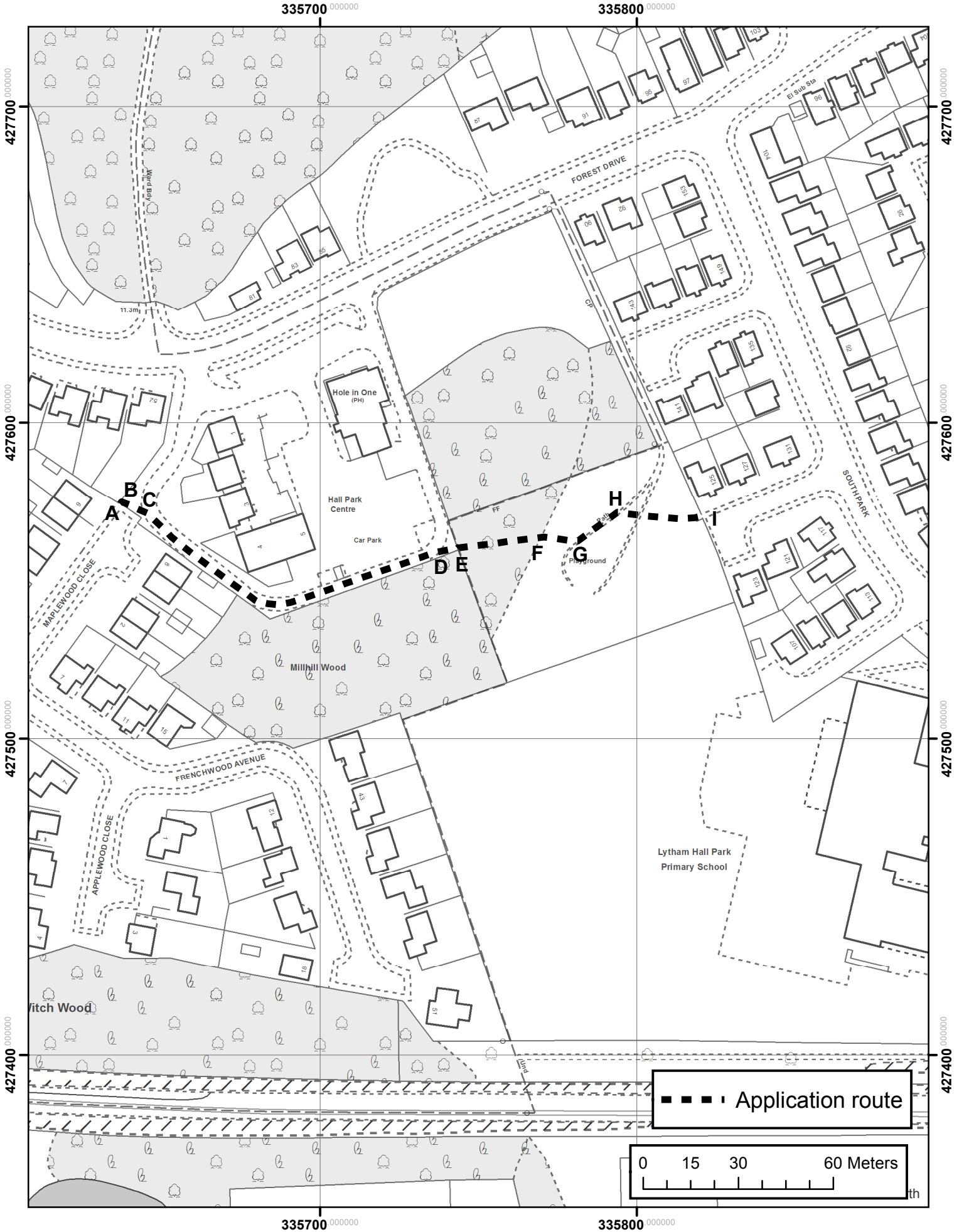
Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of public footpath from Maplewood Close to South Park, Lytham, Fylde Borough

1:10,000



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

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Regulatory Committee

Meeting to be held on 13 January 2016

Electoral Division affected: Ribble Valley North East
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of public footpath from Clitheroe Road to Chapel Lane, West
Bradford, Ribble Valley
File No. 804-500
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services,
megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Planning & Environment Group, Public Rights of Way,
jayne.elliott@lancashire.gov.uk

Executive Summary

Application for a public footpath from Clitheroe Road to Chapel Lane, West Bradford, Ribble Valley in accordance with file no. 804-500.

Recommendation

1. That the application for a public footpath from Clitheroe Road to Chapel Lane, West Bradford, in accordance with file no. 804-500, be accepted.
2. That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add a public footpath from Chapel Lane to Clitheroe Road on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Clitheroe Road to Chapel Lane for a distance of approximately 75 metres and shown on the Committee plan between points A-B-C-D-E-F on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

Consultations

Ribble Valley Borough Council

The Council has been consulted and confirm that they hold no supporting evidence either in support or against the application.

West Bradford Parish Council

West Bradford Parish Council are the applicant for this application and therefore support it.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7436 4435	Open junction with Clitheroe Road
B	7438 4435	Adjacent to south west corner of rear of 25 Millbrook Court
C	7439 4435	Top of flight of steps adjacent to rear of 23 Millbrook Court
D	7440 4435	Rear of 22 Millbrook Court
E	7441 4436	Adjacent to garage building
F	7443 4437	Open junction with Chapel Lane

Description of Route

A site inspection was carried out on 24 November 2015.

The route under investigation ('the route') commences at a junction with Clitheroe Road immediately north of Mill Bridge (point A on the Committee plan). From point A it passes in a south easterly direction over the tarmac surface bounded by 26 Millbrook Court (Overbrook House) and the stone wall adjacent to the watercourse known as West Bradford Brook at a width of 3 metres tapering to 2.2 metres after 3.5 metres. Within this area a car was parked when the route was inspected although it was possible to walk past the car to continue along the route. Beyond the parked car and extending out from 26 Millbrook Court a stone wall has been constructed alongside the route behind which is a small triangular shaped garden between 26 and 25 Millbrook Court. The route is approximately 90cm wide for a distance of 10 metres as it passes between the stone wall adjacent to the watercourse and the wall constructed to provide the triangular gardens forming part of the 2 properties.

The route narrows to approximately 60cm where it passes between the stone wall adjacent to the watercourse and the southern corner of 25 Millbrook Court (point B). It then turns to continue in a more east north easterly direction adjacent to the rear of 25 and 24 Millbrook Court from where pedestrian access into the grounds of Millhouse is available. 25 and 26 Millbrook Court also have rear doors which open directly onto the route. From point B for approximately 6 metres the route fans out to a width of 3.5m at its widest point and then narrows to approximately 1.1m at the foot of a series of concrete steps between Millhouse and the rear of 24 and 23 Millbrook Court.

The route ascends the 12 concrete steps at the top of which (point C) there is a rear door providing access onto the route from 23 Millbrook Court. It then follows an enclosed route around the rear of Millhouse bounded to the south by the building and to the north by garden fencing to the rear of 23 and 22 Millbrook Court at a width varying between approximately 1 and 1.1 metres to point D from where it continues in a generally north easterly direction enclosed by a substantial stone wall and garage building to the south and garden fences to the rear of properties 18, 19 and 20 Millbrook Court to the north. The properties along Millbrook Court all have wooden gates from the gardens that open out onto the route and on the day that the route was inspected three refuse bins were situated along the route which it was possible to walk around. The route between point D and point E varied in width between approximately 1 and 1.5 metres.

The route passes the end of the stone garage (point E) and continues in a generally north easterly direction for a further 20 metres to the rear of 19, 18 and 17 Millbrook Court to point F where it exits onto Chapel Lane.

The total length of the route is 75 metres.

When the route was inspected in 2015 it was accessible on foot along the full length. No signs were evident indicating whether the route was considered to be public or private and it was noted that all of the adjacent properties had direct access onto the route and that a number of them stored their rubbish bins along it.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Jeffreys' Map of Yorkshire	1772	Small scale commercial map. Jeffery's' Map of Yorkshire was published in 1775 at a scale of 1 inch: 1 mile. It was originally surveyed from 1767-1770, 69 and a half miles to 1 degree (approx.). It was published in a book of 42 leaves by act of parliament dated 25 Mar 1772.



Observations		The route is not shown. Clitheroe Road and Chapel Lane are shown and a watercourse can be seen passing through the village. Buildings appear to have existed in the proximity of the route.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. No inference can be drawn.
Teesdale's Map of Yorkshire	1828	Small scale commercial map at a scale of 7½ inches to 1 mile.



Observations		The route is not shown. Clitheroe Road and Chapel Lane are shown and a watercourse can be seen passing through the village. Buildings appear to have existed in the proximity of the route.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. No inference can be drawn.
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		No canals or railways are known to be proposed or constructed over the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or	1848	Maps and other documents were produced under the Tithe Commutation Act of 1836 to

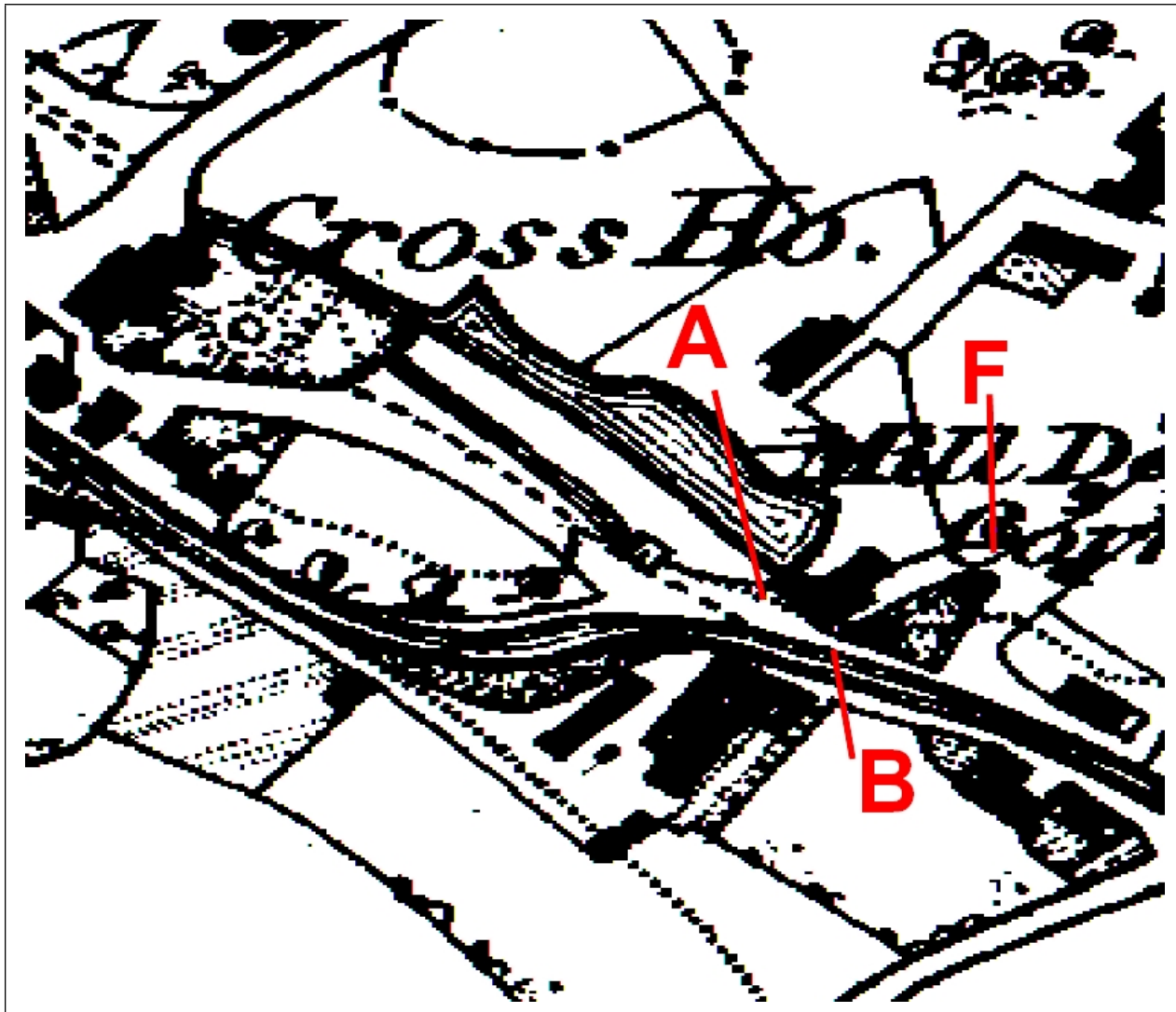
Apportionment		record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately 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.
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Observations		<p>The parish copy of the Tithe Map and Award were inspected at the County Records Office.</p> <p>Clitheroe Road is shown without a bridge or ford crossing adjacent to point A. From point A the route is not shown but would cross open land forming part of plot 14. The Tithe Award lists the owner and occupier of plot 14 as Samuel Ashton Esq. and it is described in the Award as 'mill and land'. From point B through to point F a shaded route appears to be accessible which is wider than the current route but which is consistent with it. The shaded area reaches the brook. It is abutted on the south side by the</p>
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		building that forms part of plot 13 - Millhouse - which still exists today and is listed in the Award as being owned by John Williamson and owned by William Hindle and on the north side by a mill building.
Investigating Officer's Comments		It is not specified on the Tithe Map whether a ford existed across the watercourse to connect the two parts of Clitheroe Road but it is reasonable to assume that it did. Similarly there is no crossing shown at point B despite the shaded road running from Chapel Lane to the edge of the brook. Between point A and B the route is not shown or referred to in the Tithe Award but access may have been available to point B to avoid crossing the watercourse. Between point B and point F an area is shown shaded which is not included in any of the numbered plots and which is coloured in the same way as other roads through the village. The shading would appear to denote a public route. The area shaded is much wider than the claimed route but would incorporate within the width the route now under investigation. The route may have existed between point A and point B and existed as a wider route between point B and point F in 1848.
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 West Bradford deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1850	The earliest Ordnance Survey 6 inch map for this area surveyed in 1847 and published in 1850. 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 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



Observations		The scale of the map makes it difficult to see clearly whether the route under investigation existed. There is no bridge across the stream for Clitheroe Road. The route is not clearly shown but a gap does appear to exist between corn mill and Millhouse suggesting access may have been available. A-B has a broken line separating it from the road.
Investigating Officer's Comments		The route may have existed in 1850 and may have offered a useful alternative to fording the watercourse close to point A or B. A-B appears to be accessible (a broken line denotes a change in surface or similar feature which would not prevent pedestrian access).
25 Inch OS Map	1886	The earliest OS map at a scale of 25 inch to the

legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

mile. Surveyed in 1883-84 and published in 1886.




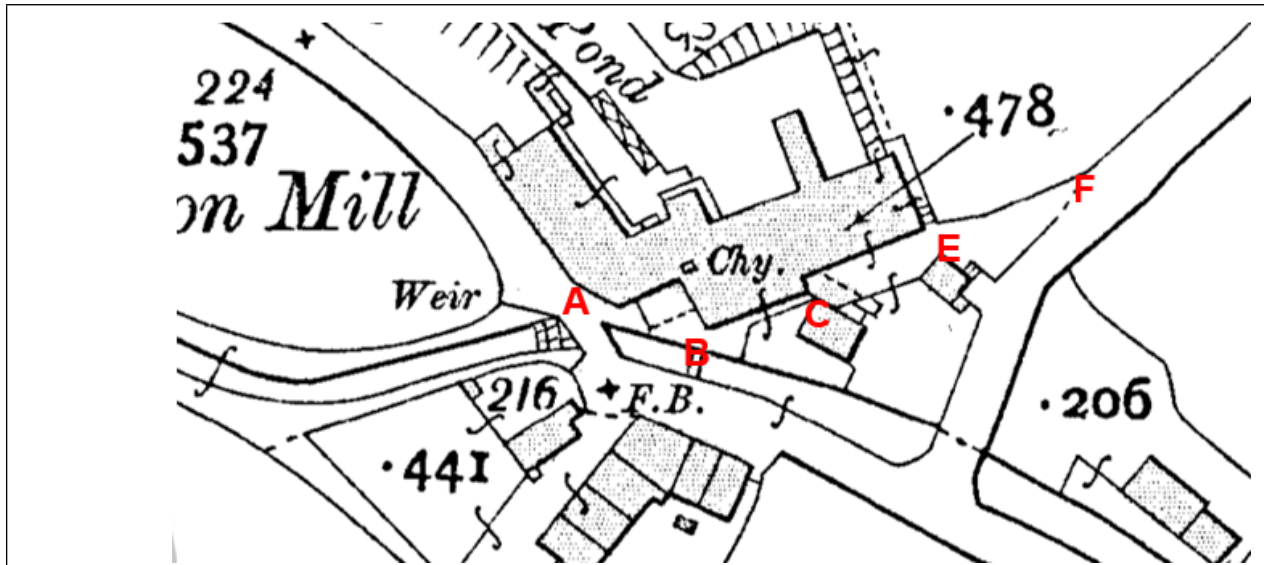
Observations

The way past the mill buildings has changed but the route under investigation can be clearly seen to exist as a wider route than the one that exists today. Clitheroe Road was traversed via a ford crossing a little to the west of point A. The building adjacent to point A which now forms 26 Millbrook Court is shown and across the route at point A a dashed line can be seen which may indicate a change in surface. A wide and open route can be seen alongside the brook from point A to point B and continuing between the buildings to point F. There is a footbridge at B

Investigating Officer's Comments

The route under investigation probably existed in 1886. The footbridge at B suggests that pedestrians could cross the brook via the bridge then either continue ahead to or through the mill towards the chapel or turn left towards the post office. The mill had changed ownership in 1867, according to The Lancashire Village Book, when the Holgate family took it over and converted it from a corn mill to a cotton mill which closed in 1960.

6 inch OS Map	1890	OS 6 inch map surveyed 1847, revised in 1884 and published in 1890.
		
Observations		The route under investigation is shown as a wider route between the buildings. Access at point A appears open and available and access in the proximity of point F also appears to be open. No footbridge is shown.
Investigating Officer's Comments		A wider route than exists today but consistent with the alignment of the route under investigation existed in 1884. The footbridge shown on the 25 inch map did not exist in 1847 when this was surveyed and appears not to have been included in the 1884 revision.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1893-84, revised in 1907 and published in 1912.

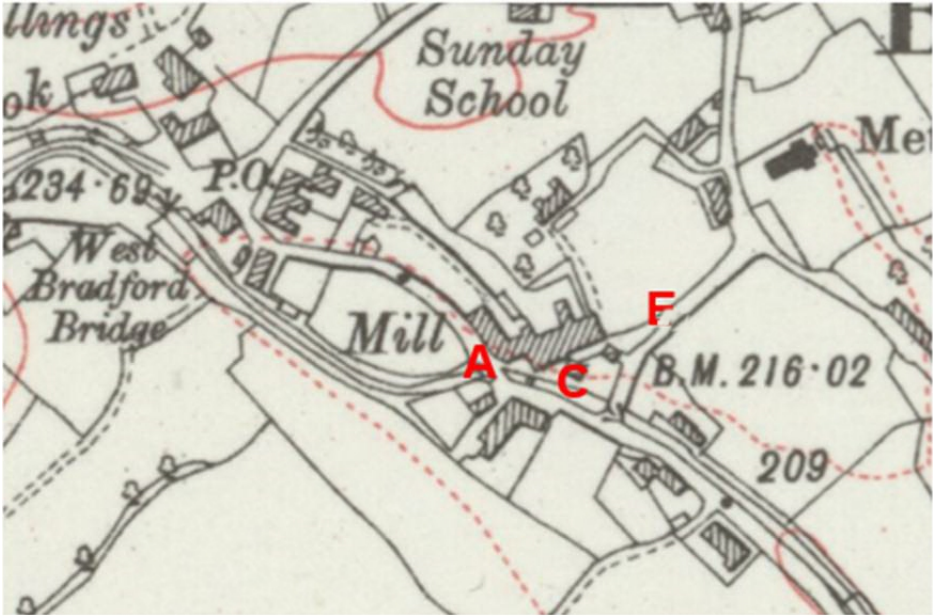


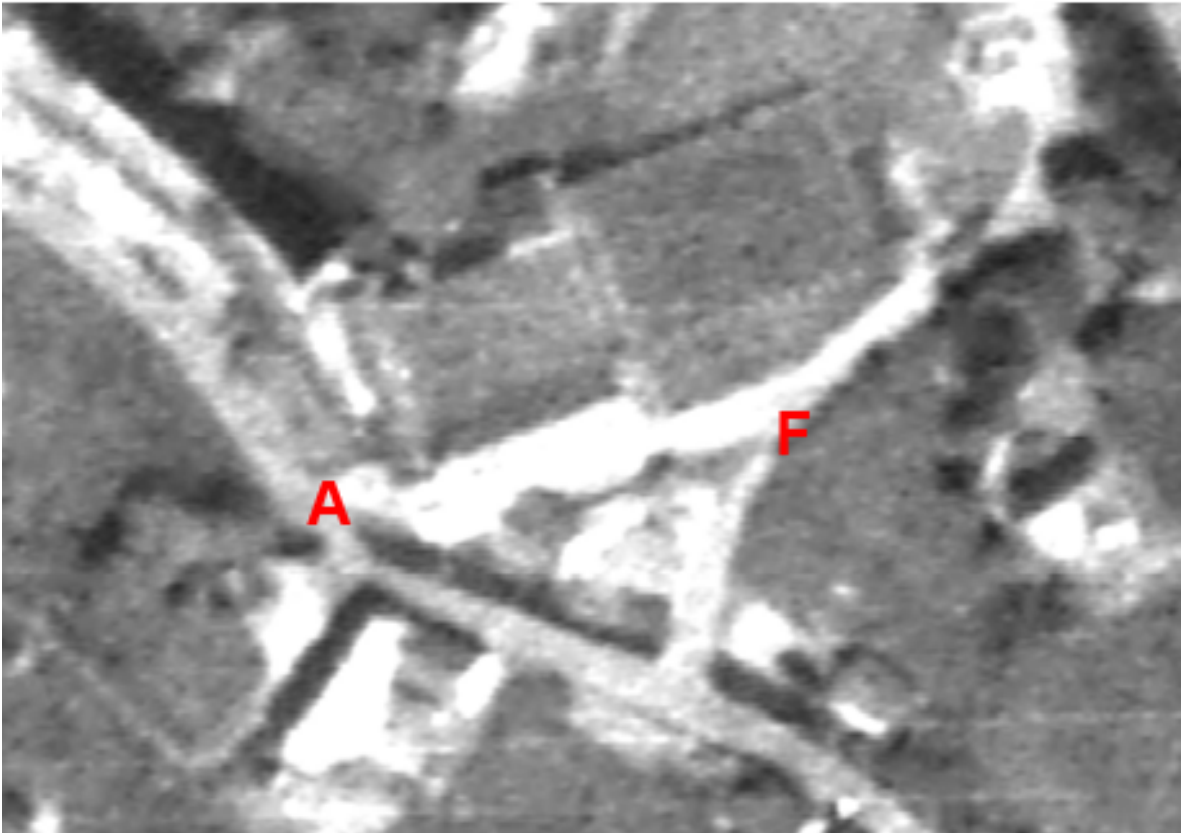
Observations		<p>A bridge is shown across the watercourse forming part of Clitheroe Road. The mill appears to have extended in size. Access onto the route is open at point A but midway between point A and point B the route narrows and a line is shown across the route. A further line is shown across the route at point C and immediately beyond point C is a shaded area which may have restricted or prevented access. Access to the route at point E appears to be available. The footbridge is still shown at B.</p>
Investigating Officer's Comments		<p>The route under investigation may have been accessible in 1907 but appears less clear than on earlier OS maps prior to the erection of the bridge forming part of Clitheroe Road. Point B can still be accessed via the footbridge.</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</p>

		<p>valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>The Finance Act records were examined at the National Archives. The Finance Act plan shows the majority of the route forming part of plot 41. The Valuation Book held in the County Records Office lists the owner and occupier of plot 41 as John Holgate and describes the property as 'mill'. No deductions are listed for public rights of way or user. Part of the route, south east from point A, is excluded from numbered hereditaments as though part of Clitheroe Road.</p>
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		Plot 43 is listed as being owned and occupied by Robert Holgate and the property described as 'Mill House'. No deduction is made for public rights of way or user.
Investigating Officer's Comments		The application route probably did not exist or was not considered to be a public right of way circa 1910 or a deduction was not considered worth claiming. The short section south east from point A was probably considered to be part of the highway.
6 Inch OS Map	1934	Further edition of 6 inch map revised in 1930 and published 1934.
		
Observations		The route appears accessible between point A and point F although it is not possible to determine, due to the scale of the map, whether a gap existed between the buildings at point C.
Investigating Officer's Comments		The route may have existed in 1930.

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		The quality of the aerial photograph is poor and it is not possible to determine whether the route under investigation existed.
Investigating Officer's Comments		No inference can be drawn.

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.

<p>Photos</p>	<p>N/K</p>	
<p>Observations</p>		<p>The bridge, known as Cat Bridge, consisted of a single arch of blocks with some infill at either end and a wooden parapet. The parapet appears to be in disrepair.</p>
<p>Investigating Officer's Comments</p>		<p>Pedestrian access, albeit somewhat precarious by today's standards, was provided from the road on the west of the brook to the vicinity of the mill on the east.</p>

Correspondence between
Boxford Rural District
Council,
West Riding County
Council and
West Bradford
Parish Council

1949-
1955

COPY/

EB/NS.
B.18a.

Council Offices,
Grindleton.
Nr. Clitheroe.

27th April, 1949.

Dear Sir,

West Bradford and Clitheroe
Class III County Road 40(1)
Footbridge near West Bradford Mill.

At the last meeting of my Council the question of liability for repairs required to a footbridge in West Bradford was discussed, and I was instructed to write for your observations re same.

The footbridge is a stone arch spanning West Bradford Brook running through the village and has unrestricted opening for pedestrians through the fence wall, off the main road.

Both hand rails to the bridge have fallen off leaving no protection for pedestrians and is most dangerous for children who can step off the main road into the stream.

The footbridge was in existence before the Ford was done away with and the stream bridges over, a short distance upstream from the present footbridge.

I understand there is a public path from the main road over the footbridge leading to Chapel Road by the Cotton Mill Yard.

I enclose a tracing from Ordnance Sheet No. 182-7 Yorks published in 1886.


Yours faithfully,

(S.gd.) E. BERRY.

Surveyor.

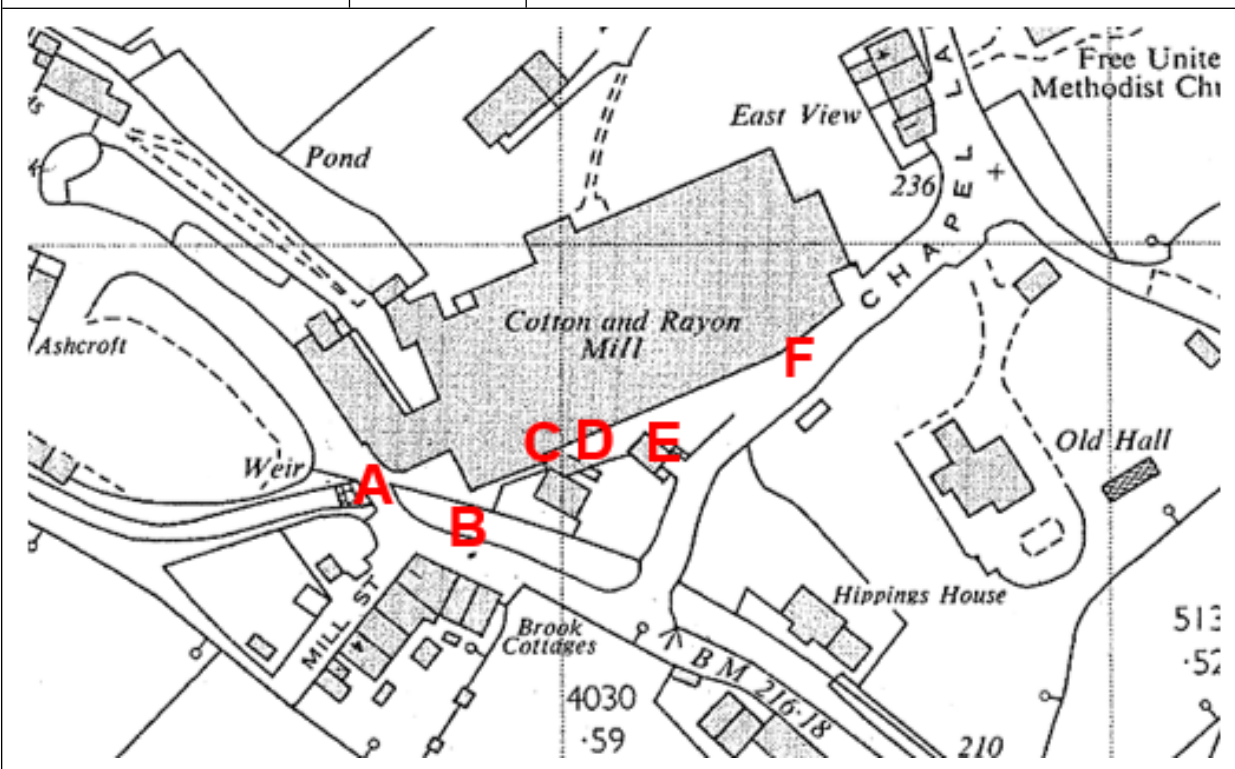
R. H. Couzens Esq.,
Assistant County Surveyor,
West Riding County Council,
Carleton Road,
SKIPTON.

<p>Observations</p>	<p>The District Surveyor says to County Surveyor that he understands the route B-F to be a public path, i.e. from the east end of the footbridge. The traced map has been shaded, it is clear from another letter that this was by the County, to show the path red, as distinct from roads (brown) and brook (blue).</p> <p>Further correspondence shows that the footbridge was out of repair and the parapets fallen off by 1949 but none of the councils would take maintenance responsibility so the ends of the bridge were stopped up in 1955, apparently without protest from users.</p>
<p>Investigating Officer's Comments</p>	<p>The RDC was responsible for public paths until 20 years before this letter so probably would have relevant knowledge of long standing public paths such as this. Both County and District suggested that if the Parish thought it to be a public path they should have included it in the survey for the National Parks and Access to the Countryside Act 1949. The fact that the bridge was not considered to be publicly maintainable does not mean that there was not a public right of way over it.</p>

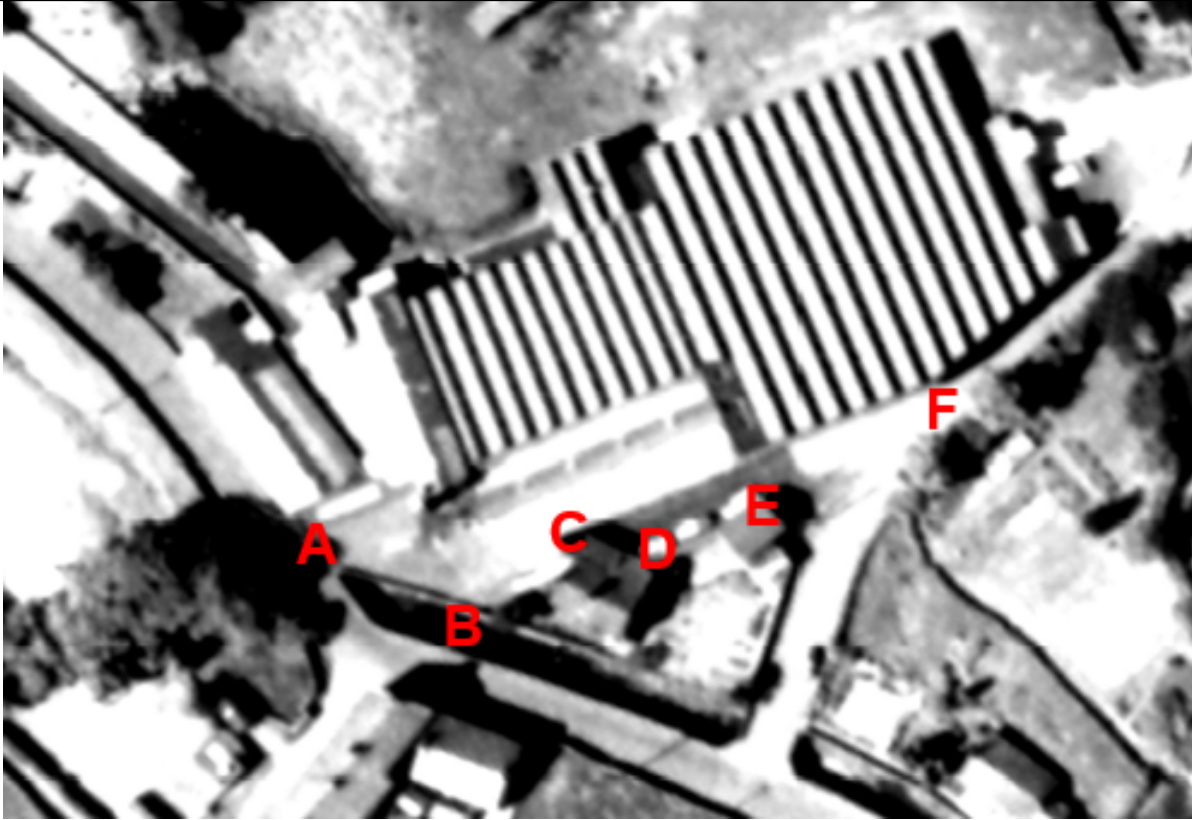
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The route under investigation appears to be accessible as part of a wider route between the mill buildings and Millhouse although it is not possible to see – due to the scale of the map – whether access was available between the buildings at point C. The footbridge is not indicated but there is a 'blob' on the map in the stream at that location
Investigating Officer's Comments		The route under investigation may have existed in the 1930s (date of survey).

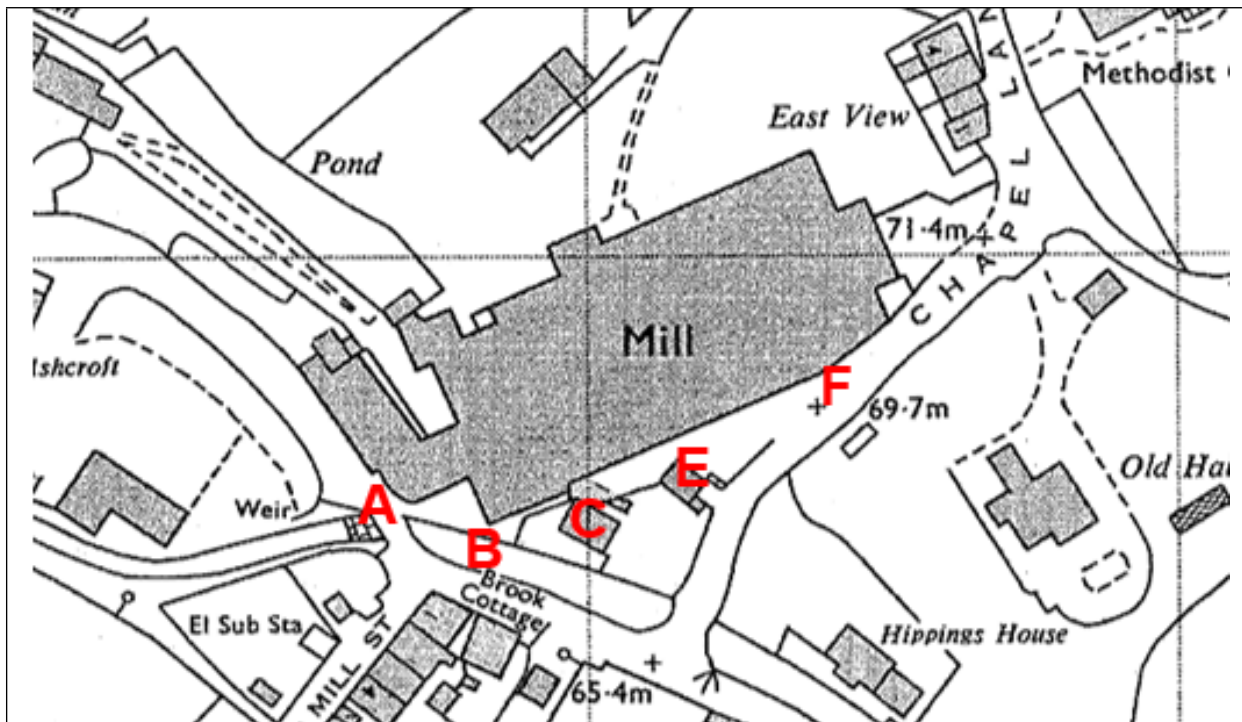
<p>Conveyance Plan</p>	<p>1962</p>	
<p>Observations</p>		<p>The route is shown open with no solid lines across it, a broken line at point F where it meets the Chapel Lane, a double dashed line between the old mill and Millhouse and with a flight of steps at the narrowest point.</p>
<p>Investigating Officer's Comments</p>		<p>This conveyance is dated 1962, i.e. 2 years after the cotton mill closed. A private right of access was reserved from the top left of the above plan south west alongside the brook to the point annotated E (which corresponds to A-B on the route under investigation). Although there could be some implication that this was therefore not considered public at the time it does not preclude it because it provides greater security and certainty for the property owner to have their private rights recorded. It does suggest that the way was physically passable.</p>

1:2500 OS Map	1969	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published in 1969 as national grid series.
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Observations		Access along the route under investigation appears to be available between points A-B-C. A line is shown across the route at point C and immediately beyond point C a shaded area can be seen indicating some sort of physical structure. Access along the route appears available from point D to point E. The footbridge is not shown.
Investigating Officer's Comments		The route under investigation existed between points A-B-C and D-E-F but it is uncertain from the Ordnance Survey map whether access was available between point C and point D. The footbridge no longer existed at point B which is consistent with an online history of the village stating it was destroyed by a flood in 1958.

Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
 <p>The image is a black and white aerial photograph of an industrial site. A large building with a corrugated metal roof is the central feature. A road or path runs through the site, with several points marked in red: A, B, C, D, E, and F. Point A is on the left side of the road, B is at the bottom left, C and D are along the road, E is on the right side, and F is at the top right. The surrounding area includes other buildings and some vegetation.</p>		
Observations		The Mill is shown and Millhouse and the building adjacent to point E can be seen. Vehicles appear to be parked along the line of the route between point D and point E. It is not possible to see from the aerial photograph whether access was available along the full length of the route – particularly between point B-C-D-E.
Investigating Officer's Comments		The route would have passed through the entrance area of the mill, which changed function in the early 1960s. The scale of the photograph means that it is not possible to determine whether access was available along the route.
1:2500 OS Map	1977	Further edition of OS mapping revised 1976 and published 1977.



Observations		Access along the route under investigation appears to be available between points A-B-C. A line appears to exist across the route at point C and immediately beyond point C a shaded area can be seen indicating some sort of physical structure. Access along the route appears available from point D to point E. working mill.
Investigating Officer's Comments		The route under investigation existed between points A-B-C and D-E-F but it is uncertain from the Ordnance Survey map whether access was available between point C and point D in 1976.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		By 2000 the mill buildings to the north of the route had been partly demolished and redeveloped into residential dwellings. The scale of the photograph, tree coverage and shadows mean that when it is enlarged it is not possible to see whether the route under investigation exists.
Investigating Officer's Comments		The area to the north of the route under investigation has been redeveloped but no inference can be drawn from the photograph with regards to whether the route was available to use in 2000.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required all highway authorities to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>At the time that the Definitive Maps were originally prepared the parish of West Bradford was part of Bowland Rural District in the West Riding of Yorkshire.</p> <p>When the area became part of Lancashire as part of the Local Government reorganisation in 1974 records relating to the preparation of the Definitive Map were passed to Lancashire County Council and the current record – the Revised Definitive Map and Statement (First Review) was prepared.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The County Council does not have the parish survey maps that were originally prepared for the parishes of West Bradford.

Draft Map		<p>The parish survey map and cards for West Bradford were handed to West Riding of Yorkshire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (22nd September 1952) and notice was published that the draft map for the West Riding of Yorkshire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 6th June 1953 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 route under investigation was 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 1970, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown 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 1973.
Observations		The route under investigation was not shown on the Draft Map and no representations were made to the County Council.
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 by Lancashire County Council with a

		relevant date of 1 st September 1966. This Map included the parish of West Bradford which now formed part of Lancashire although this would have had a relevant date inherited from West Riding. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map of Public Rights of Way (First Review) and Statement.
Investigating Officer's Comments		From 1952 through to 1973 there is no indication that the route under investigation was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. 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 is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The route under investigation is not recorded as

		being publicly maintainable in the records originally derived from the 1929 Handover Maps and now held by the County Council.
Investigating Officer's Comments		The route under investigation was not recorded as a publicly maintained highway in 1929. However, many public rights of way have been found not to have been recorded on these maps – often if they were unsurfaced at that time so the fact that the route was not recorded as being publicly maintainable does not necessarily mean that it wasn't.
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 a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Landownership

Affected landowners:

Whalley Developments Limited
18 Millbrook Court
20 Millbrook Court
21 Millbrook Court
22 Millbrook Court
23 Millbrook Court
24 Millbrook Court
25 Millbrook Court
26 Millbrook Court

Possible Affected landowners:

17 Millbrook Court
19 Millbrook Court
Millhouse Clitheroe Road

In the title documents there is reference to the sale by the Mill of the house to the south of the claimed route (Millhouse) and the purchaser being granted a private right of way to access Clitheroe Road at point A. the right of way was said to be on foot over the Vendors adjoining land.

Summary

Early maps and records examined show a substantial route passing between the Mill and Millhouse much wider than now available but along a similar alignment. This route appeared to provide a link prior to the construction of the bridge on Clitheroe Road and between point B and point F the route was shown shaded on the Tithe Map of 1848, consistent with the highway network.

Before the road bridge was built there was a narrow footbridge, the 'Cat Bridge', over West Bradford Brook from the road on the west side to the route between the mill buildings and shown as highway on the Tithe Map and also along the east bank to the road avoiding the ford. This footbridge appears to have been built around the time that the old corn mill was converted to a cotton mill by its new owner who bought it in 1867. There were other changes to the brook around that time which may have affected accessibility between the 2 banks.

No Finance Act 1910 documentary evidence supports the existence of a public route except for the short section alongside the brook near point A and no deduction for a public right of way was claimed in relation to the remainder of the route.

The OS map evidence is inconclusive regarding whether the route remained accessible from 1912 onwards and was possibly gated or physically restricted between points C and D prior to 1962 when the conveyance plan shows it clear.

By 1949 the road bridge had been widened making it safer for pedestrians to use and the Cat Bridge had deteriorated and its wooden parapets fallen off making it only suitable for agile pedestrians. It was blocked off, for safety reasons, in 1955 and was destroyed by flood water in 1958.

Following redevelopment of the old mill into residential properties the width of route appears to have been significantly reduced between point C and F to provide back yard/gardens to the properties although a useable through route retained which all the properties abutting it appear to have direct access to.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application, the applicant has provided 5 user evidence forms in support of the application, these forms were filled in in 2009.

The amount of years in which the users have known the route varies from, 35, 42, 50, 60 and 69 years.

All 5 users have used the route on foot. 2 users specified using the route between 1966-2009 and 1940-1959 & 1997-2007, the other 3 users responded with 'until access denied by locked gates', 'I make a point of using it about 4 times a year', and 'up to when gates were put on and locked'.

The main places the users were going to and from include Chapel Lane to Clitheroe Road, Chapel Lane to Mill Street Bridge into the village and to Grindleton Road. The main purpose for the users using the route include delivering papers and visiting friends, visiting the chapel, cutting off the main road route and for social reasons. The use of the route per year varies from 'quite often', 'sometimes daily', a minimum of 4, 'many times', 'numerous' and 20 times.

None of the users have ever used the route on horseback or motorcycle / vehicle or by way of any other means. And all 5 users have seen others using the way on foot.

2 users agree that the route has always run over the same line, 1 user states it has until the mill was converted into houses, and another states yes until the bridge was washed away and another states they walked up cat bridge 1955.

2 users didn't reply when asked if there are any stiles / gates or fences along the route, 1 user states 'one of the residents in the mill put a gate across the top of the shops for child safety' another mentions 'gates with locks now deny access' and the other user states 'gates with padlocks across the right of way'. 2 users agree that gates were locked across the route and the same 2 users agree they have been prevented access from using the route.

All 5 users have either never worked for a landowner or a tenant of the route or did not provide a response to this question.

None of the users have ever been stopped when using the way but 1 user did state they were disappointed when access was denied and no one has ever heard of anyone else having been stopped or turned back when using the route, however the same user did state that they had some conversations with other local people over the same lack of access.

None of the users have ever been told the route they were using was not a public right of way, nor have they ever seen any signs or notices or asked permission to use the route.

At the end of completing the user evidence form users are asked to provide any further information they feel is necessary, this information is set out below:

- Since wheelie bins were introduced the houses leave them on the footpath instead of their gardens making it difficult sometimes to walk along the path. I have lived and worked in the village for over 40 years and in that time I owned the village shop (newsagents) for nearly 18 years and used the path and steps down this side of the mill (now houses) regularly to deliver papers and as a short cut to Clitheroe Road and still use it now.
- I think the loss of this pathway access removes a very well used old route which gave more character to the village and is a historical feature of the old village.
- Mr Holgates now deceased was part of the family that owned the mill always maintained that this was a public right of way and has written many articles on the history of West Bradford which I believe his daughter Mrs A Pike is in possession of. Rubbish and wheelie bins are obstructing the pathway.
- Mr Herbert Holgate a past resident of West Bradford told me that he always walked through that way to keep the right of way open.

As well as the user evidence forms the applicant has also submitted 2 letters in support of the application, the information from these letters is set out below.

Letter from E Gretton

- Confirms that for over 40 years he and his wife understood this was a public footpath and have walked it frequently.
- They were told about the village path by other local inhabitants after moving to the area in 1967.
- They were told the story of the old "Cat Bridge", a footbridge that used to cross West Bradford Brook and joined the footpath just below its Clitheroe Road end.
- This bridge was washed away in the 1958 flood and was never rebuilt but its location can still be seen.
- A former owner of the mill (Mr Herbert Holgate, now deceased) told him on several occasions that this path had always been a public footpath and he felt it was important that this should be officially recorded so that the path could never be closed by the new owners of the mill who were converting it for residential use.

- Another long-deceased resident of West Bradford Mr Wallace Penman, who had been responsible for maintenance at the mill for much of his life, also told him that although the path lay on land owned by the mill it had always been a public footpath.
- He has been involved in the registration of five different West Bradford Footpaths as public rights of way.
- Reference is made to a report following on from a Parish Council meeting in 1996 about when the path was first blocked and discussion about submitting a Definitive Map Modification application, details have been provided below.
- The path between Beckside and the old Trutex Mill now converted into individual houses has been blocked by a new fence.
- On 28/6/96 it was reported to LCC who were already aware of the problem, but no existing public right of way, therefore a claim form is needed.
- 6/96 Herbery Holgate: It was always a public footpath
Albert Titterington: Always a generally used path but he sees little point in upsetting residents by removing their privacy
- The fence blocking the path had been erected by Mrs Hanson, as her kitchen lay immediately underneath the path and she was concerned that numerous residents moving into the converted mill would greatly increase the traffic above her head.
- A meeting was held with Mrs Hanson and the solicitor acting for the owners of the mill, when it was agreed that the footpath had long been used by the public and that the fence erected by Mrs Hanson and blocking it, would be removed.
- He has recollection that some concession was made by Mr Taylor on behalf of the owners with regard to widening the path, but does not remember the precise details of this concession.
- Also on his file he has an extract from a report on local footpath developments that were submitted to West Bradford Parish Council on 3 April 1998 that stated:
"Unlisted Footpath between the Old Trutex Mill and Beckside (formerly the Mill House and now owned by Mrs Hanson):
Although not included in the definitive footpath map, this has long been used as a public footpath. When the mill was converted into private houses in 1996 the path was closed for a period because of a dispute about whether the footpath lay over Mrs Hanson's property or through the gardens of the new houses. However this problem appears to have been resolved and the path is open again. Several of the new houses have boundaries adjoining this path and I think that, to avoid the possibility of any dispute, it is important that the path should be formally declared a public footpath and included in the definitive footpath map. I understand that this would normally be done through submission of a claim to the County Council by the Parish Council or a body such as the Ramblers' Association. Many of the people who are familiar with this path are now elderly and, because evidence forms will need to be completed by several such people, the Parish Council may well agree that it would be sensible to act fairly soon on this point."
- A copy of the full report can be available for inspection if required.

Letter from A Pike

- As a resident of "Mill House" now re-named Beckside from 1937-1959, she can confirm the footpath from Chapel Lane to the rear of Beckside was in full use as during that period there was a footbridge now the brook to Mill Street. This was used by many members of the village.
- Photographs of the footbridge provided.
- Also provided a copy of a typed page entitled "Parish of West Bradford" with events noted from 1913 – 1923. This paper has as an entry "Cat Bridge" and says it was "Bridge over brook leading to Mill steps and Mill House, Cat Bridge was one of two bridges over the brook before the highway bridges were built, the other was just above Hippines House. Cat Bridge ended up with no sides, in 1955 both ends were walled up as a means of protection"

Information from Landowners & Others

A letter from M & I Leybourne

- The proposed footpath if allowed would both run past our kitchen and our garden
- When we purchased the property we understood this was a fire escape and was for the use of local residents only
- We would strongly oppose this proposal on the basis that it would both devalue our property and infringe on our privacy
- At the time of the purchase of their home, their solicitor confirmed the access arrangements which is recorded in the deeds of their property, illustrate their ownership of part of the path and its access arrangements which would be affected by this application

Letter of objection from P Cowell

- The proposed footpath if allowed would run both past a bedroom with an access door and also past their kitchen door.
- When they purchased the property they understood access was only to the rear of their house and a means of escape from fire and was for the sole use of the residents of houses backing onto the path of Millbrook Court and the house known as Beckside.
- They strongly oppose to this proposal on the basis that it would both devalue the property and infringe on their privacy.

Letter of objection from A Gregory

- When purchasing their property it was understood that the pathway was for access only for the residents of the properties which border the pathway. The purpose of the pathway being to allow for direct access to the rear of the properties for safety reasons, deliveries, gardens and bin collections etc.

- For a number of the properties the only outside seating / garden area is at the rear separated from the footpath by fencing which is restricted in height. If the proposed footpath is approved there will be no privacy in the garden areas due to the fencing restrictions. This is extremely detrimental to the residents as there isn't alternative an alternative garden area the result being this significantly reduces the desirability of the properties which impacts market value.
- It is unnecessary to change the current situation as it is an extremely short distance to walk from Chapel Lane to Clitheroe Road past the front of Becks House as an alternative to the proposal.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

Historic and documentary evidence of old public route
User evidence and information about the route

Against Making an Order(s)

No public route acknowledged in Finance Act documents
Width altered without formal process
Private right granted over part
No footpath put on Definitive Map at the time of its preparation or review
Low user numbers

Conclusion

In this matter it is claimed that there is on the claimed line already a footpath in existence in law on the balance of the evidence.

There is no express dedication and so Committee is advised to consider whether dedication can be inferred or deemed on balance.

Looking firstly at whether the way the route is recorded or referred to in documents and on mapping are sufficient circumstances from which it can be inferred that it was dedicated by the owner as a route for the public on foot.

The tithe map in the matter is an important piece of evidence. It looks to be of reasonable standard as a map and its depiction of routes which were public is important. The public route at the mill and into the brook shows that the section B-F was a known public route in the 1840s. This is corroborated by the building of the cat bridge across the brook at that point and cat bridge seems to have been regarded as a public footbridge by members of the public and the highway authority even a hundred years later. The public after crossing it were, it appears, able to use B-A or B-F. If A-F was not a public footpath to link to there would be no justification for the

cat bridge being or becoming public and this bridge was regarded as public as indicated in the documentation about its closure.

The old corn mill was purchased in 1867 by John Holgate. The footbridge remained to point B yet Mr Holgate did not claim any deduction in tax for a public footpath on his land but acknowledged that the section of the claimed route around point A was part of the highway. His mill expansion also affected the width of the route. There may have been some gates or structures across it in later years and it was not put on the Definitive Map. A private right of access was granted in 1962 on a section of it. This may have been vehicular access so even the existence of a public footpath would not have been sufficient. There is some evidence however that the Holgate family considered it a public route and continued to live at this location until 1960.

Further circumstances from which to infer dedication can also be user evidence acquiesced in by the owner. There has clearly been some use over many years and knowledge of use by the adjoining owner at Millhouse until 1959. There is reference to the reputation of the route being public.

The documentary evidence of the status of this route shows evidence of it being public and also evidence of it being treated as if it were private. On balance it is suggested that Committee, that taking all information into account, may consider that the evidence of B-F being dedicated to the public by the owner many decades ago to reach a fording point / public footbridge and circumstances indicating that A-B would have public status too is sufficient on balance to reasonably infer that the route already has footpath status.

With regard to the presumption of dedication under S31 Highways Act. The application would call the route into question but also gates being locked across the route. The blocking of the route may have been as early as 1996. The twenty years use required to be evidence would be 1989-2009 or possibly 1976-96. One user has used the route since 1966 another since 1997, two do not say when they started to use the route. The dates of the route being blocked are not clear. It is suggested that there is insufficient evidence of use for the twenty years required for S31 to be satisfied.

However taking all the relevant information into account Committee may be satisfied that on balance a dedication can be inferred at common law and that an Order be made and promoted to confirmation.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-500	Various	Megan Brindle, 01772 535604, Legal and Democratic Services

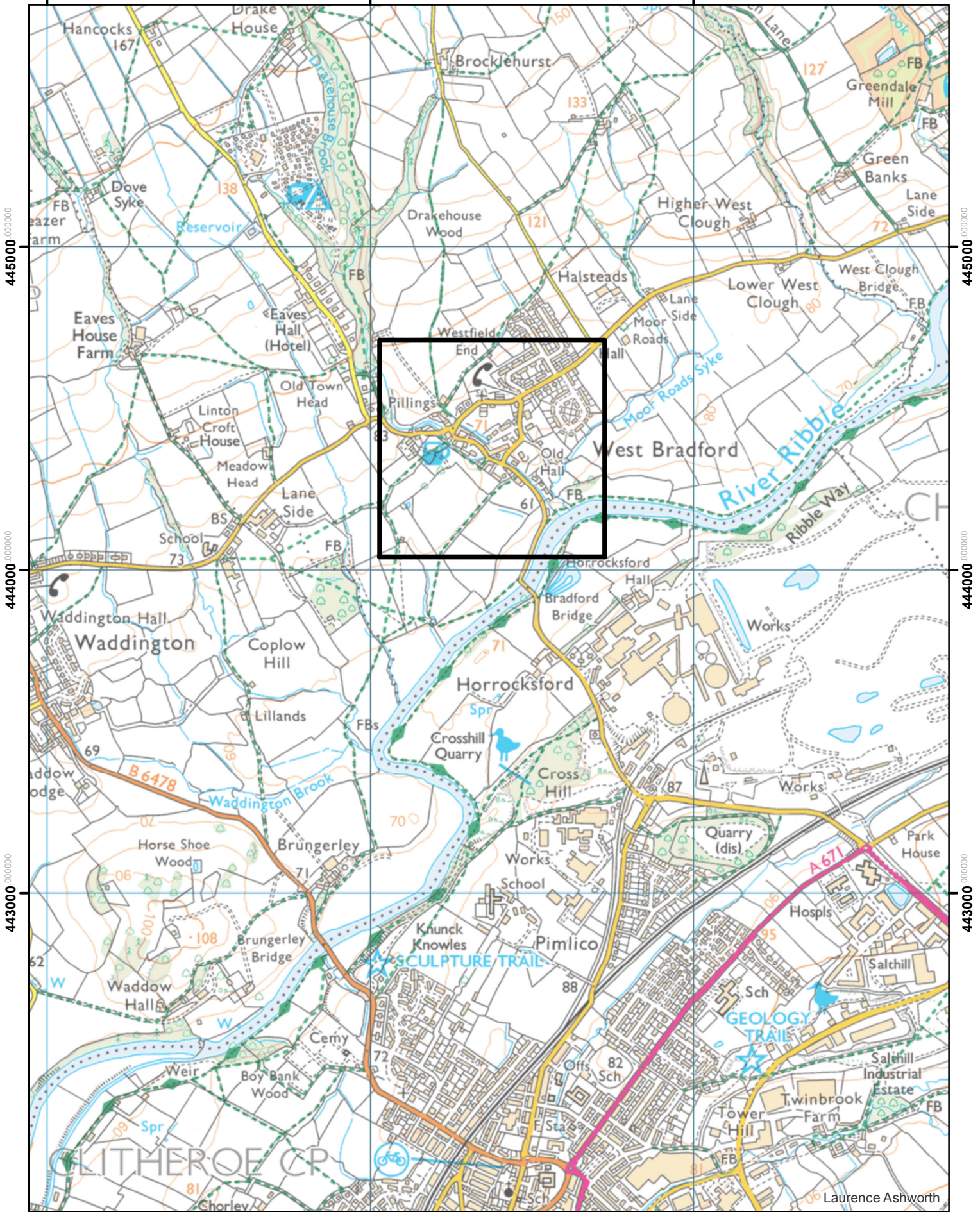
Reason for inclusion in Part II, if appropriate

N/A

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Andrew Mullaney
Head of Planning and Environment

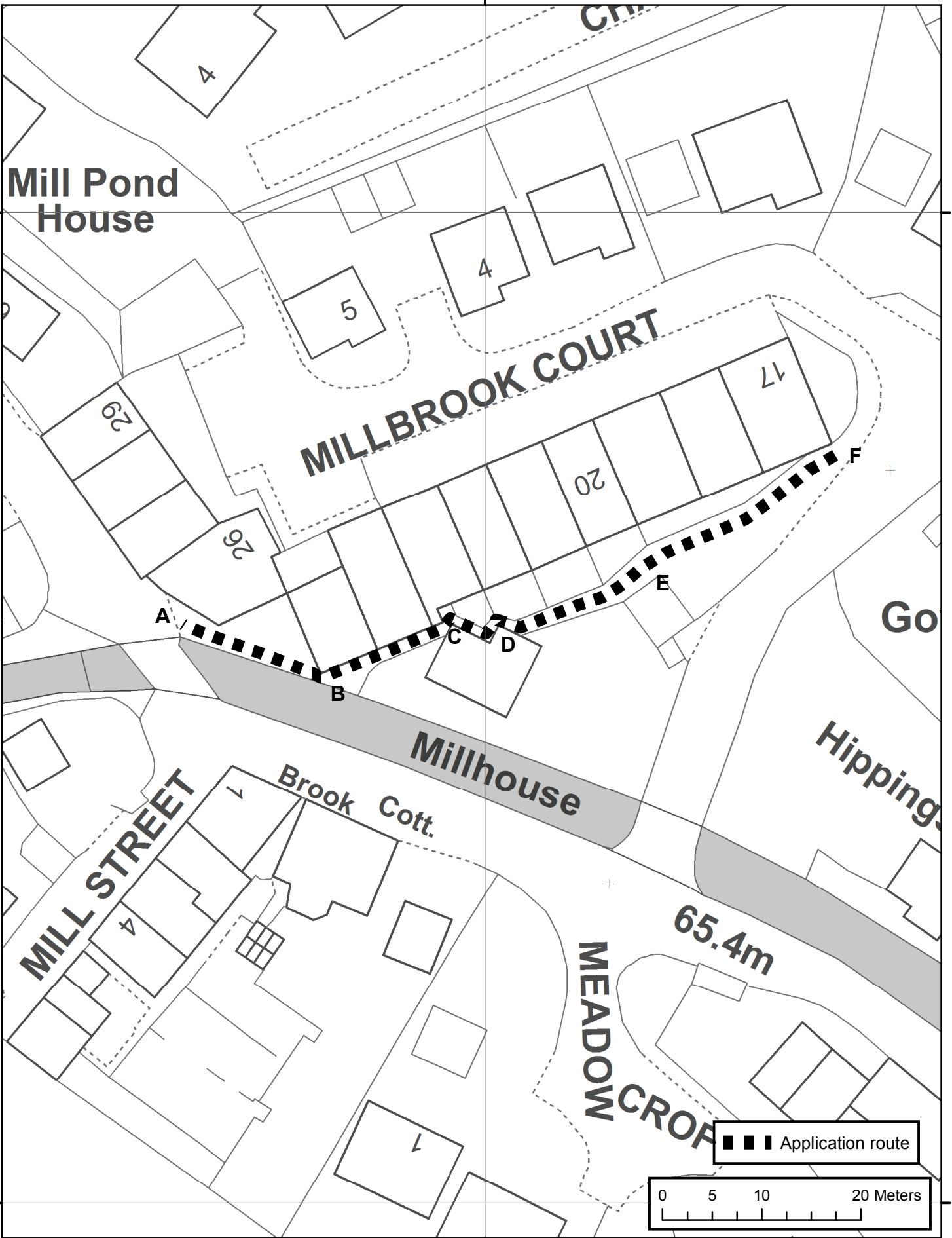
Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of public footpath from Chapel Lane to Clitheroe Road, West Bradford

1:15,000



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

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Regulatory Committee

Meeting to be held on 13 January 2016

Electoral Division affected: Skelmersdale Central
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a public footpath from Elmers Green to Footway F2696,
Skelmersdale, West Lancashire
File No. 804-564
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a public footpath to be recorded on the Definitive Map and Statement from Elmers Green to Footway F2696, in accordance with file no. 804-564.

Recommendation

1. That the application for a public footpath from Elmers Green to Footway F2696, Skelmersdale, West Lancashire, in accordance with file no. 804-564, be accepted.
2. That an Order(s) 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 add a public footpath on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from a point on Elmers Green, Skelmersdale for a distance of approximately 25 metres to a point on Footway F2696 and shown between points A-B-C on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

West Lancashire Borough Council have been consulted and no response has been received, it is assumed they have no comments to make.

There is no Parish Council for the area.

Applicant/Landowners/Supporters/Objectors

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

Advice
Head of Service - Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4991 0651	Open junction with Elmers Green
B	4993 0653	Fence across route
C	4993 0653	Open junction with Footway F2696

Description of Route

A site inspection was carried out on 15 October 2015.

The route under investigation starts at a point on the footway on Elmers Green (point A on the Committee plan). Elmers Green is a quiet cul de sac consisting of 11 residential properties.

From point A the route passes in an east north easterly direction along what appears to be the garden of 14 Elmers Green. It follows the line of the garden fence which separates 14 and 16 Elmers Green along a strip of lawn between the house and garage consisting of 14 Elmers Green and the wooden fence separating the two properties. The grass is mown and well maintained but it can be seen that the grass along the width of the route under investigation (a strip varying in width from approximately 1.5 to 2 metres) is at a slightly different level and appears to be less established than the grass immediately north of the route. This is consistent with photographs submitted of the route showing that the route had previously had a tarmac surface which appears to have been removed or covered with lawn. No evidence of the tarmac surface remains.

At the rear of the property – at point B - the route under investigation is crossed by a wooden fence which appears to be quite new. It prevents access along the route.

Beyond point B the route under investigation exits the garden directly onto a concrete flagged path which then continues in a generally north westerly direction to Elmers Wood Road. Parallel, but not physically separated from the flagged path, is a tarmac track on which point C is located and which is recorded as Footway F2696. This tarmac path also continues, without its flagged companion, in a south south easterly direction from point C.

The total length of the route is approximately 25 metres.

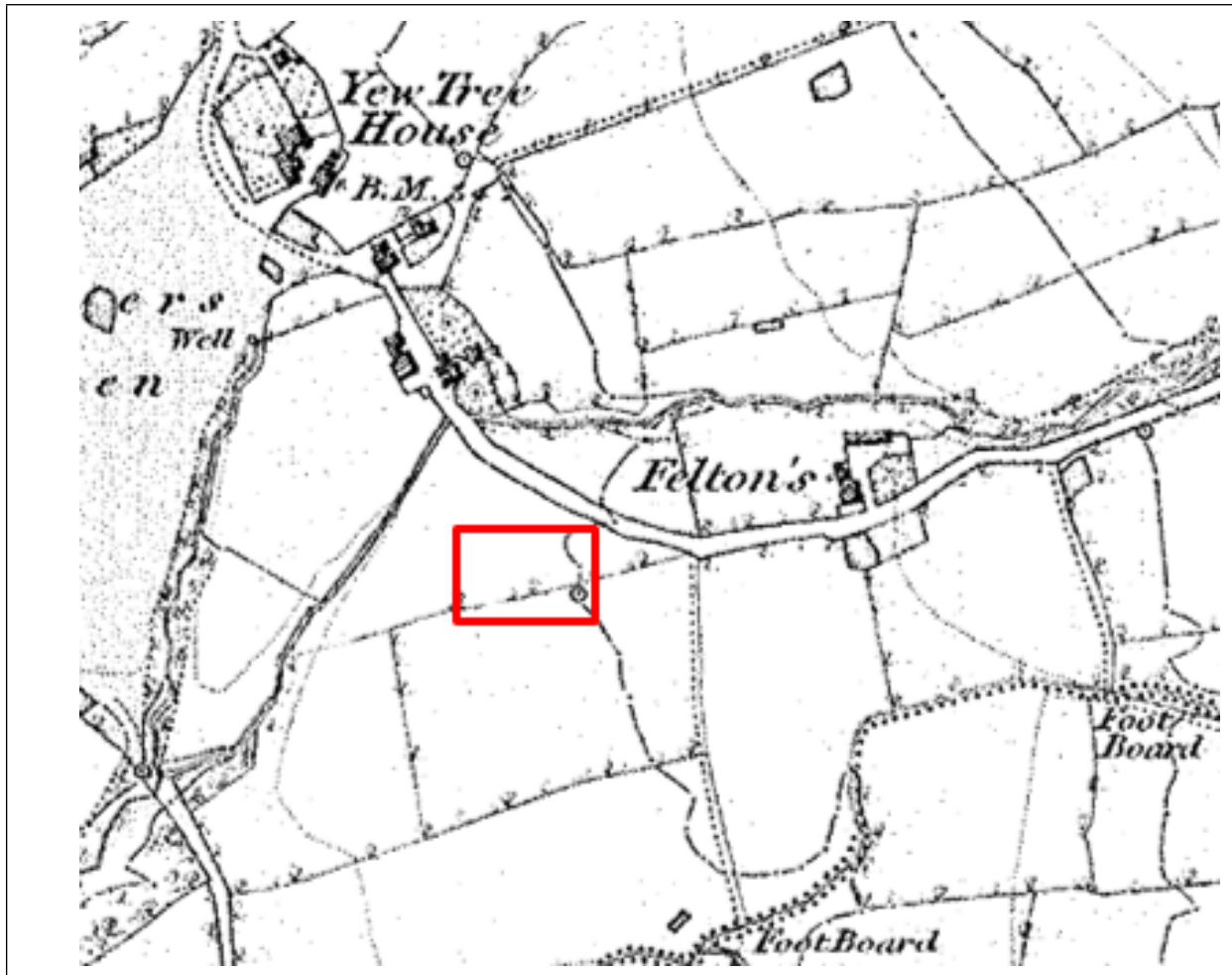
Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map	1786	Small scale commercial map. Such maps were on

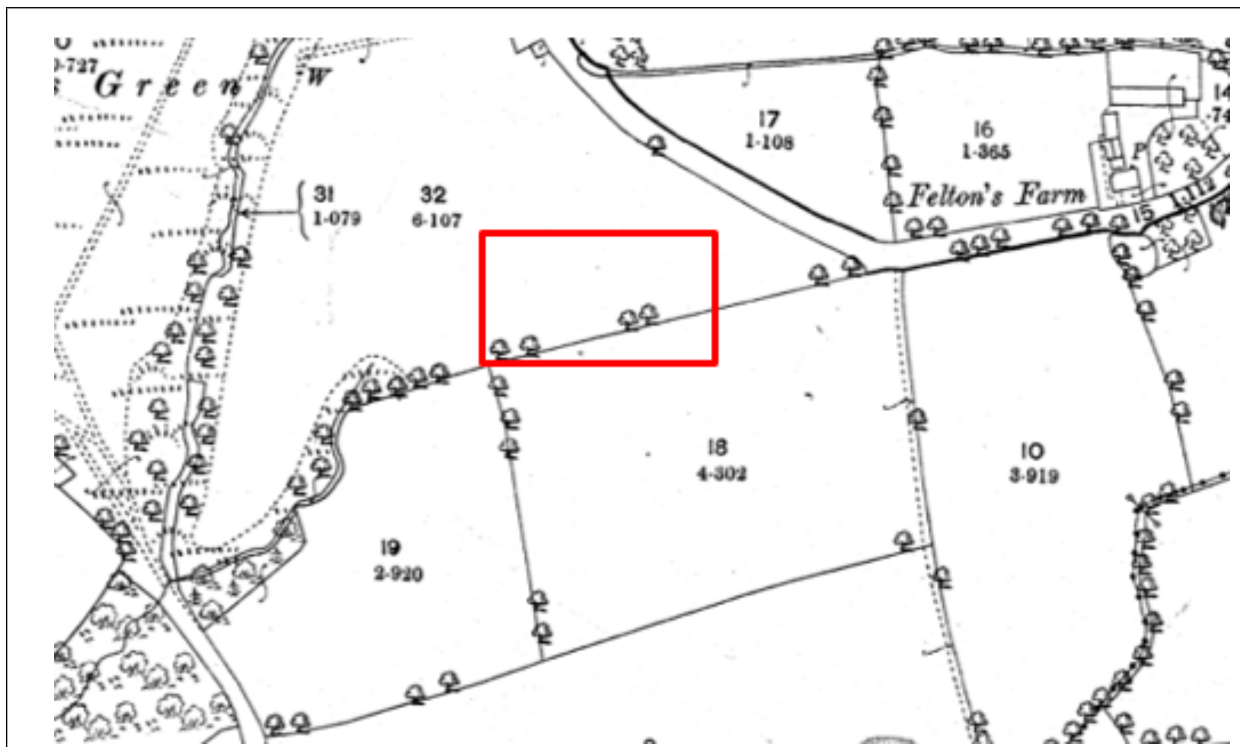
of Lancashire		sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The scale of the map means that the application route, if it did exist at that time, is not shown. No inference can be made.
Greenwood's Map of Lancashire	1818	Small scale commercial map.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The scale of the map means that the application route, if it did exist at that time, is not shown. No inference can be made.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The scale of the map means that the application route, if it did exist at that time, is not shown. No inference can be made.
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		The land crossed by the route under investigation is not affected by any canals or railways and there do not appear to have been any proposals to construct either in the past.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite

		accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The first edition of the Ordnance Survey map (detailed below) shows the area as undeveloped agricultural land so the Tithe Map was not examined in this instance.
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 is no Inclosure Award for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1849. 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 scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations		The route under investigation is not shown and the area shown as undeveloped farmland.
Investigating Officer's Comments		The route under investigation did not exist in 1845.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations		The route under investigation is not shown and the area shown as undeveloped farmland.
Investigating Officer's Comments		The route under investigation did not exist in 1892.
25 inch OS Map	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1907 and published in 1908.
Observations		The route under investigation is not shown and the land is still shown as being agricultural with no changes from the earlier edition of the 25 inch map.
Investigating Officer's Comments		The route under investigation did not exist in 1907.
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</p>

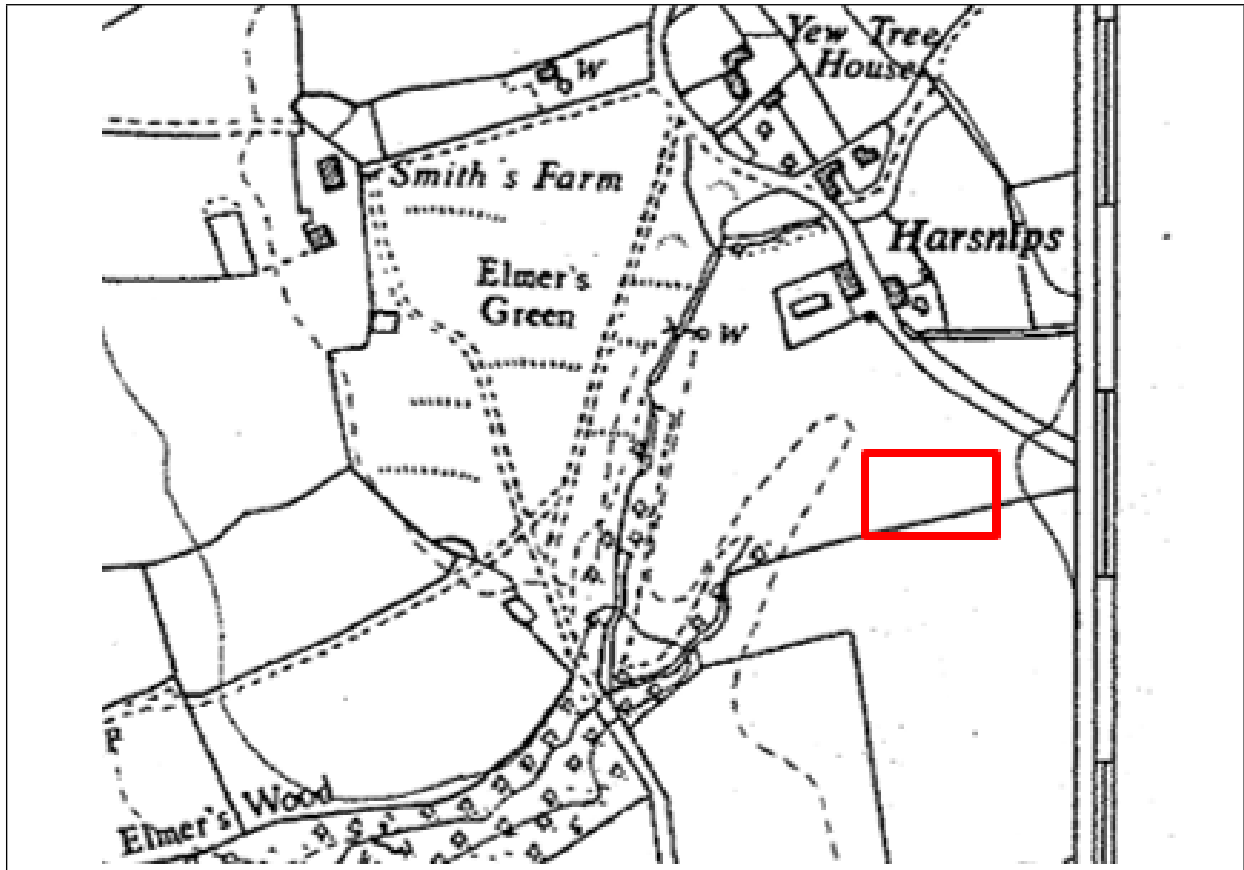
		<p>sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The Finance Act Records for the land crossed by the route under investigation were not searched as the land was undeveloped agricultural land at that time.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1927	Further edition of 25 inch map (resurveyed 1892, revised in 1926 and published 1927).
Observations		The route under investigation is not shown and the land use remains unaltered from earlier editions of the 25 inch mapping.
Investigating Officer's Comments		The route under investigation did not exist in 1926.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

Observations		The route under investigation is not shown and the land still appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation did not exist in the 1930s.
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.

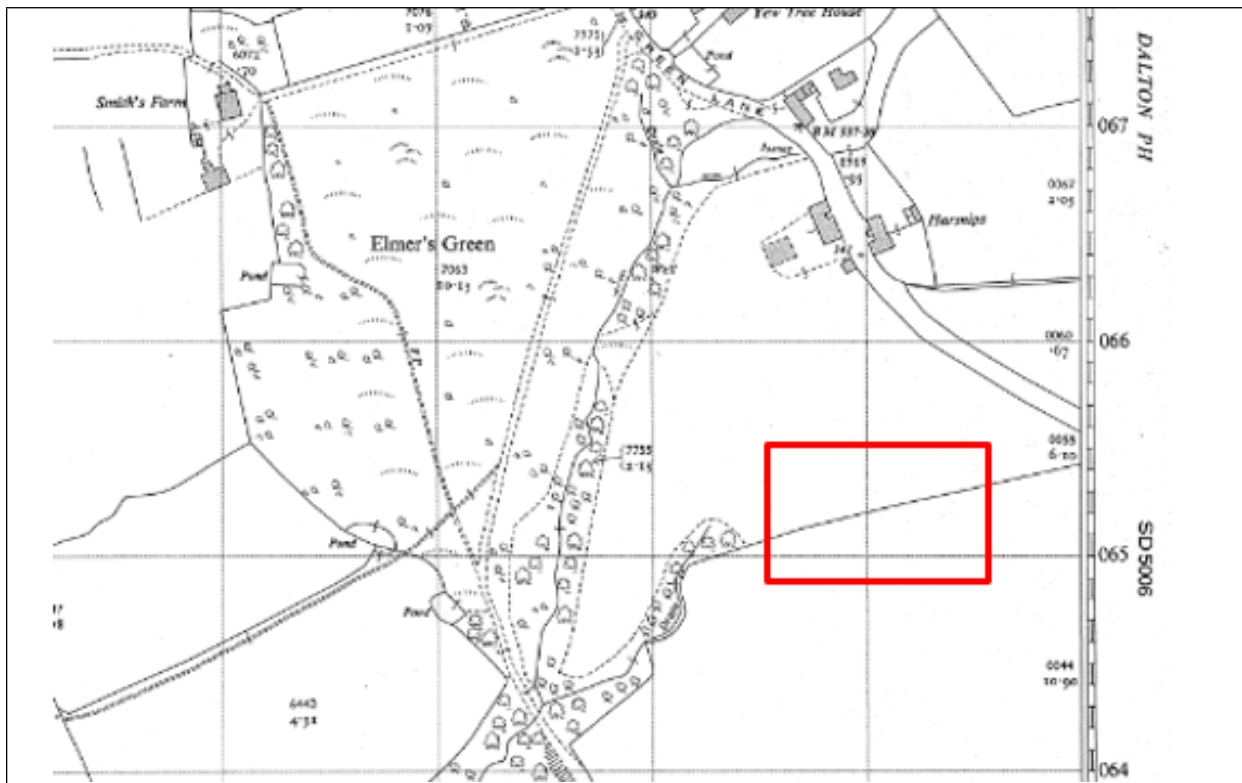
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The route under investigation is not shown and the land is agricultural. The field boundaries show up on the photograph and are consistent with the boundaries shown on OS mapping.
Investigating Officer's Comments		The route under investigation did not exist in the 1940s.
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.



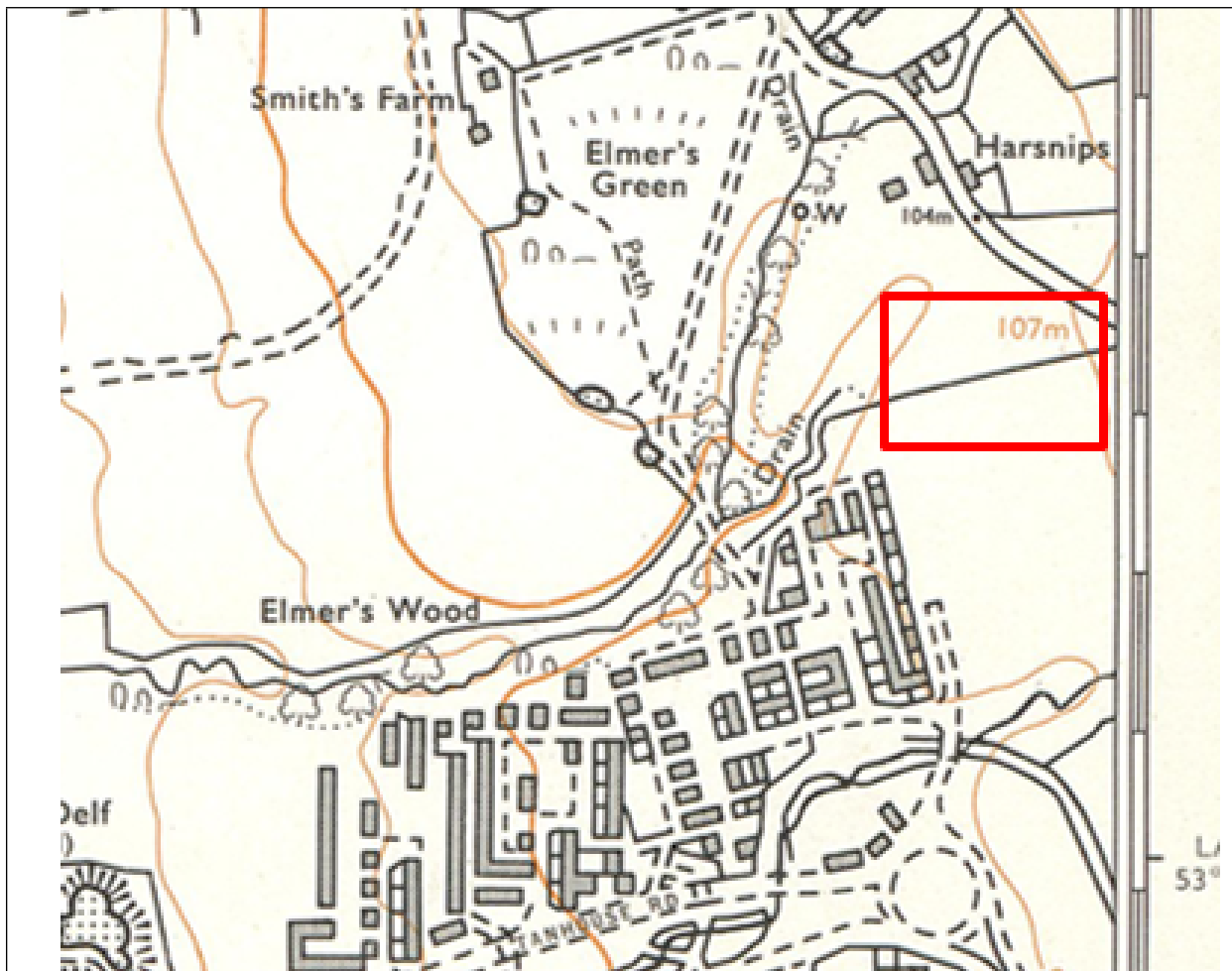
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist in the 1930s when the map was revised.
1:2500 OS Map	1960	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published in 1960 as national grid series.



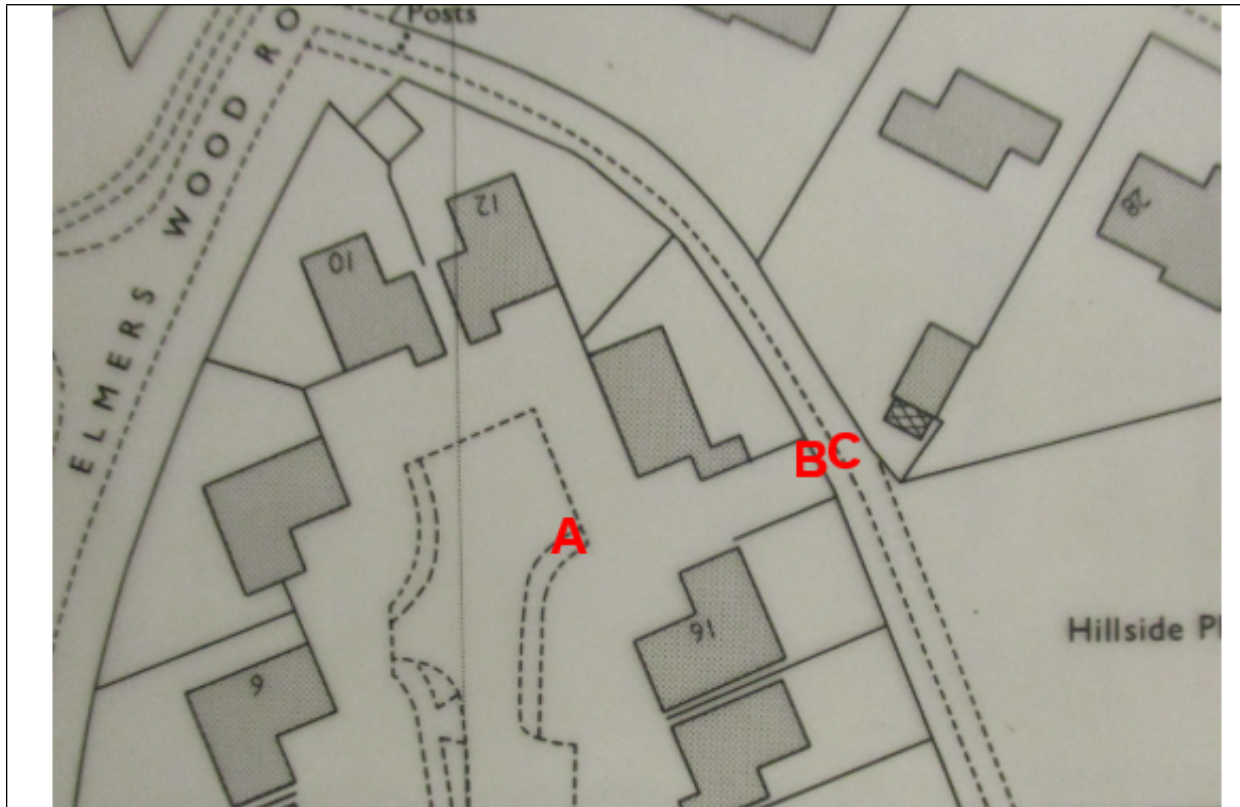
Observations		The route under investigation is not shown and the land crossed by it is undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation did not exist when the map was revised in 1959.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



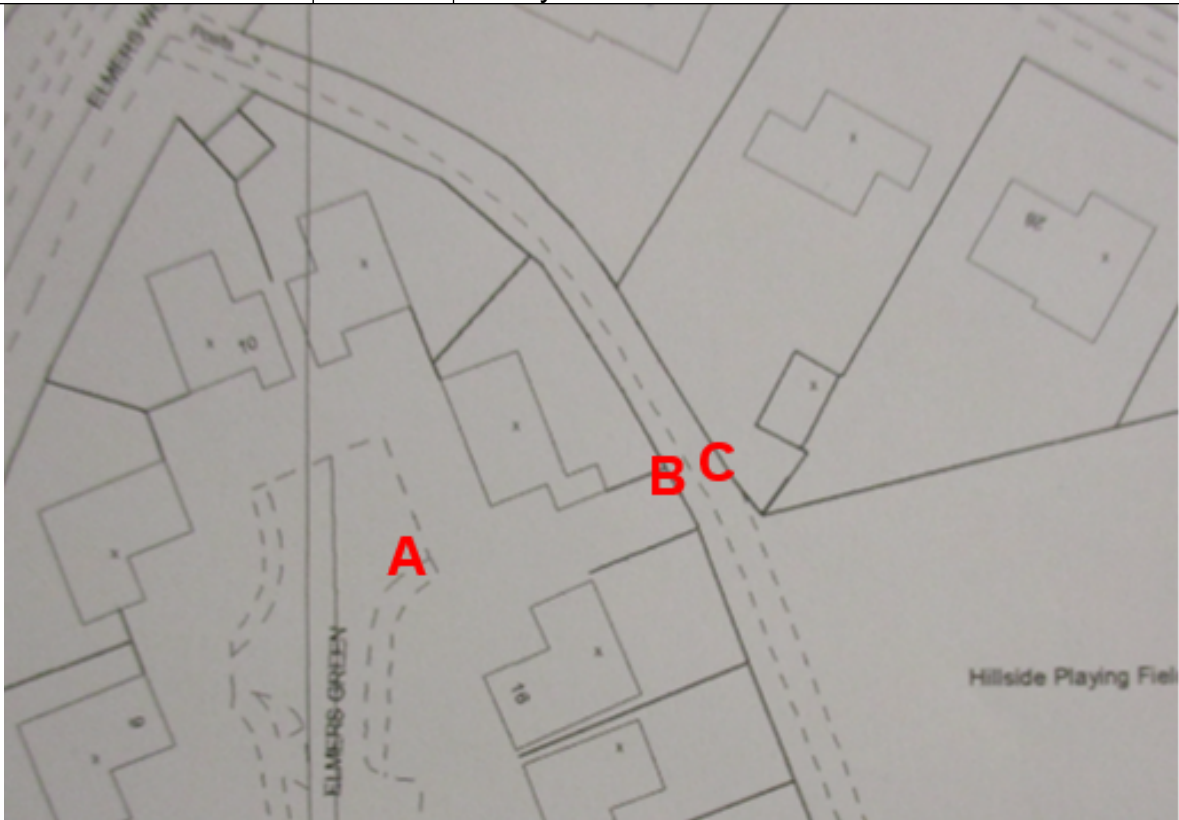
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist in the 1960s.
1:10,000 OS Map	1972	OS Map derived from survey carried out in 1959, revised and published 1972.



Observations		The route under investigation is not shown. The land still appears to be undeveloped agricultural land.
Investigating Officer's Comments		The route under investigation did not exist in 1959 and probably did not exist when the map was revised in 1972.
1:2500 OS Map	1976	Further edition of 1:2500 scale OS mapping surveyed 1976 and published in 1976.



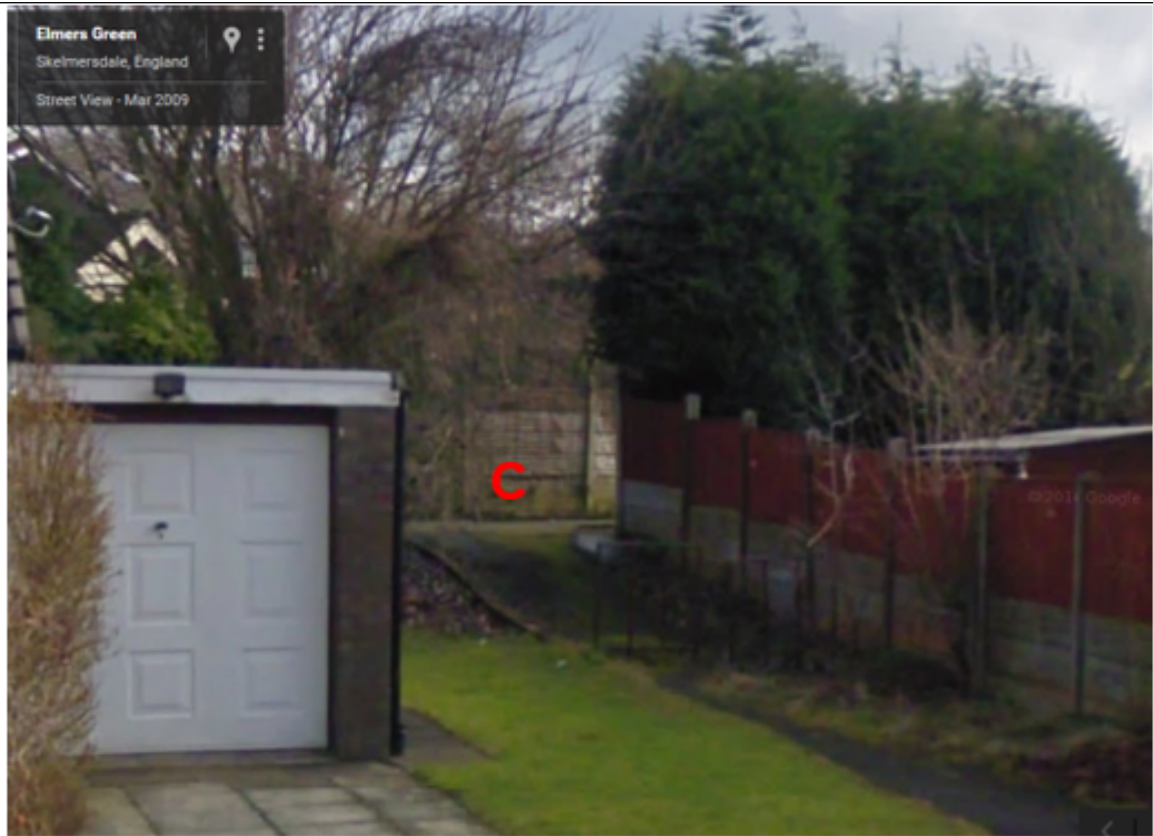
Observations		The houses on Elmers Green have been built and a footway is shown to exist providing access to point A. An open area of land exists between property numbers 14 and 16 Elmers Green which does not appear to form part of either property. Access between point A and point B appears to be available but a line is shown across the route at point B indicating that a fence or boundary may have existed across the route. The footway to the rear of Elmers Green and connecting to the route under investigation at point C is shown.
Investigating Officer's Comments		The housing development has been built in 1976 providing access to point A and point C. The route under investigation appears to be accessible between point A and point B but it is not possible to know from the map whether access via a gate, stile or gap for example, was available at point B.
Aerial Photograph	1988	Aerial photograph available to view at the LCC offices at Cuerden.
Observations		Elmers Green is shown and the footway to the rear is visible. A gap can be seen between 14 and 16 Elmers Green but it is not possible to see whether the route under investigation existed or access would have been available.
Investigating Officer's Comments		No inference can be drawn.
Print of digital OS image	2003	A print of a digital image captured on 1 December 2003 and stated to have been last amended May

		2003. Copy available to view at Skelmersdale library.
		
Observations		The land crossed by the route under investigation remains unchanged from the 1976 OS mapping detailed above. The route under investigation is not shown
Investigating Officer's Comments		The route under investigation appears to be accessible between point A and point B but it is not possible to know from the map whether access was available at point B.
Print of digital OS image	2006	A print of a digital image stated to be current to March 2006. Copy available to view at Skelmersdale library.



Observations		The map shows changes to the boundary fencing between 14 and 16 Elmers Green and shows the route under investigation as a clearly defined route between point A and point C with open access through point B.
Investigating Officer's Comments		The route under investigation existed in 2006.
Google Street View	2009	Image captured March 2009 and available to view on Google Maps.





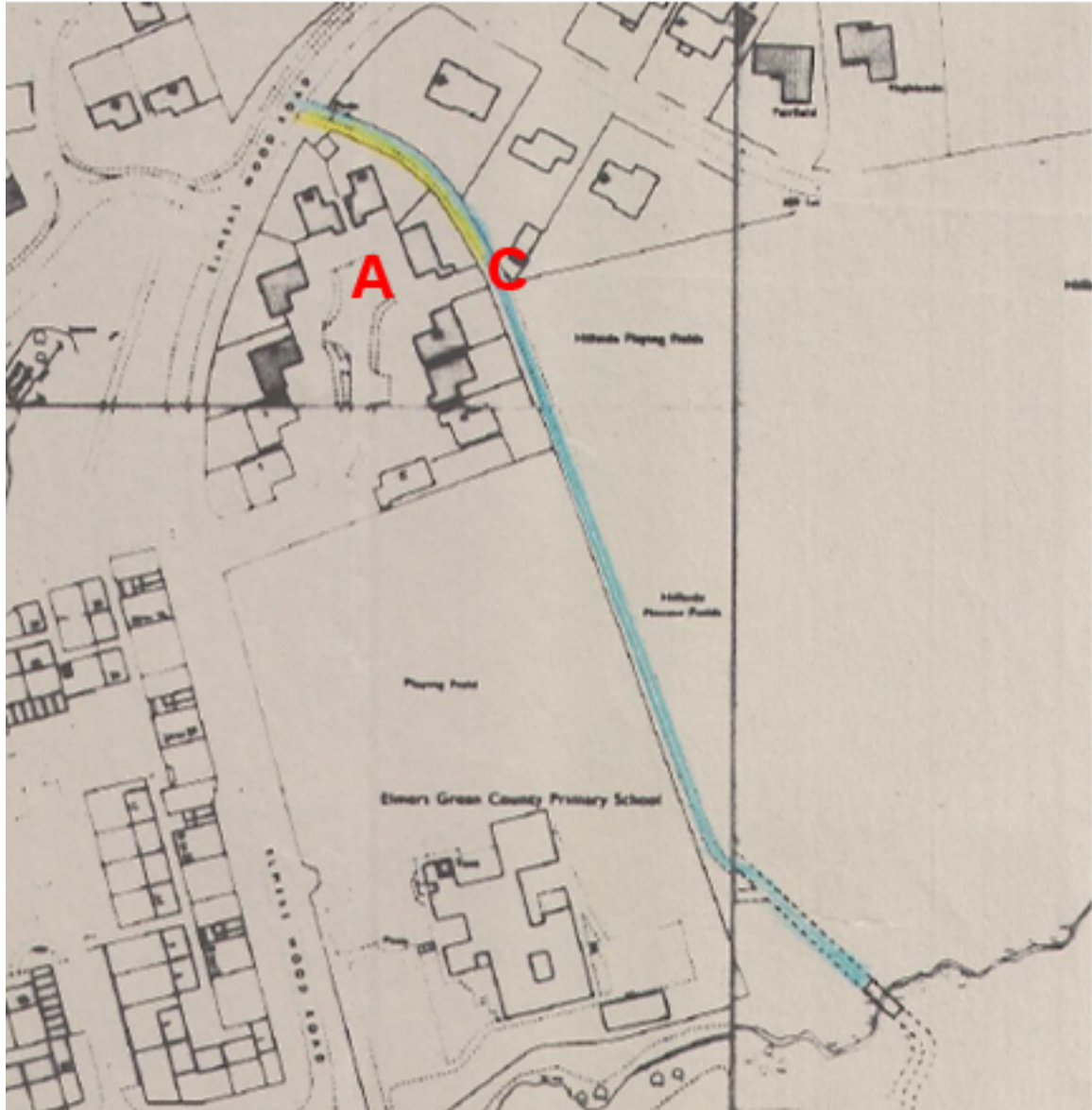
Observations		The full length of the route under investigation can be seen as open and available to use. The route has a sealed tarmac surface throughout the full length. Adjacent to the garage of 13 Elmers Green a metal barrier can be seen on the path and vegetation has grown up on part of the surface of the path where use is infrequent due to the need to weave through the barrier.
Investigating Officer's Comments		The route under investigation existed in 2009. Metal barriers existed on the route which would not prevent pedestrian use but which may assist to slow down any bicycles using the route and/or prevent vehicular use.
Aerial Photograph	2010	Aerial photograph available to view on GIS.



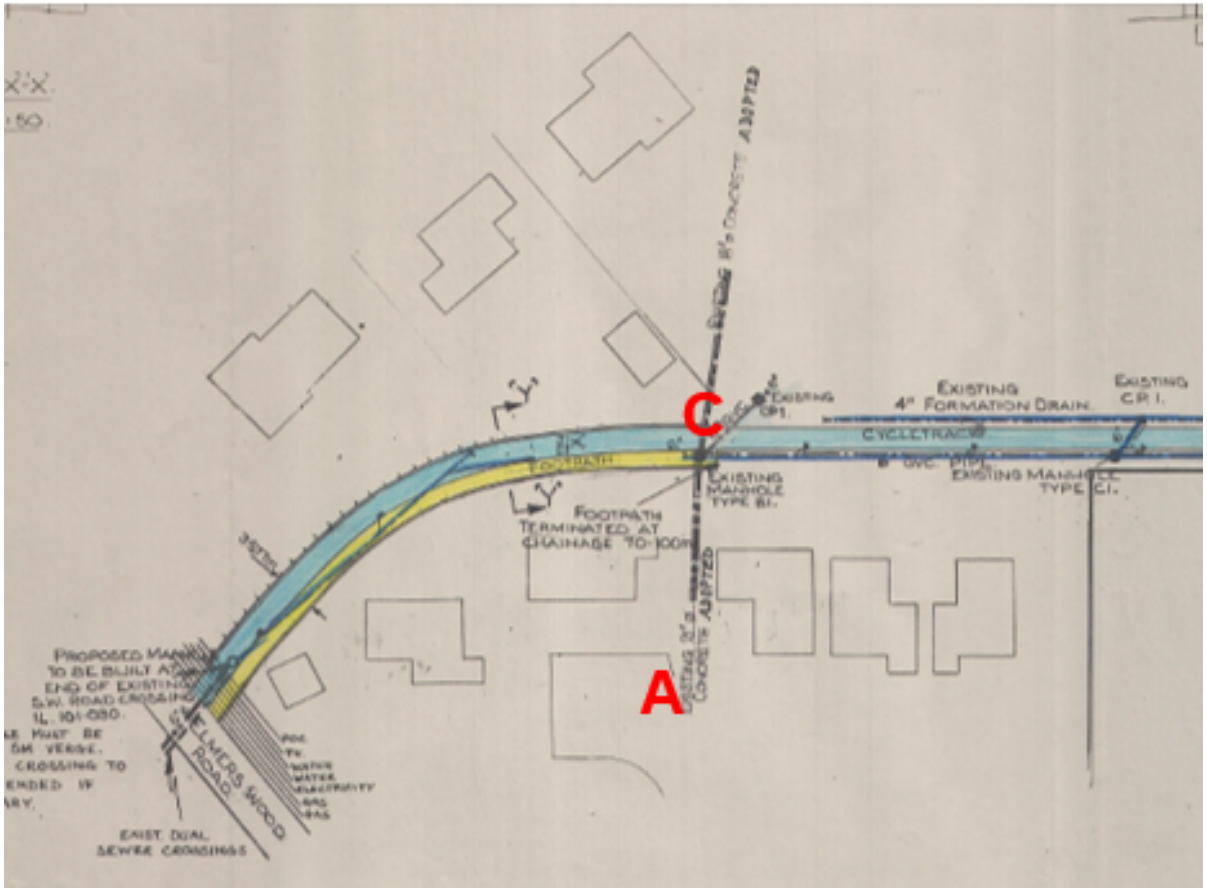
Observations		The land crossed by the route under investigation between point A and point C appears to be open and accessible but it is not possible to see whether a surfaced path existed.
Investigating Officer's Comments		The route under investigation probably was accessible in 2010.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by

		the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The route under investigation is in Skelmersdale which is a former Urban District Council. No parish survey map or cards are therefore available.
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 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 route under investigation was 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 route under investigation was not shown on the First Definitive Map and no representations were made to the County Council.
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. In a

		number of Former County Borough areas – including Skelmersdale - the Revised Definitive Map (First Review) was not published until a later date and the map for Skelmersdale was advertised on 6 th October 1979. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		From the 1950s through to 1979 there is no indication that the route under investigation was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. 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 is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Skelmersdale Corporation Development Plan



Skelmersdale Corporation Development Plan



LCC adoption plan available on GIS



LCC adoption records on GIS

Observations

The route under investigation is not recorded as an adopted highway on the List of Streets maintained by the County Council.

Plans deposited with the County Council's Highway team were inspected and a plan entitled Skelmersdale Corporation Development Plan, Tan House/Elmers Green (Minor Works) Adoption of Footpath and Cycle track was found. The plan is dated February 1982 and a handwritten note has been drawn on to it saying 'Submitted for adoption 5.2.82 adopted 24.6.82'.

The key to the plan states that footpaths on the plan are coloured yellow and cycle tracks coloured blue.

The plan shows the full length of a route to be adopted as a cycle track starting on Elmers Wood Road and continuing in a general south easterly direction through point C to a bridge. Parallel to

	<p>the cycle track a footpath is shown starting on Elmers Wood Road and extending in a general south easterly direction parallel to the cycle track to terminate at point C.</p> <p>The route under investigation is not shown on the plan as being one of the routes submitted for adoption and the route is not shown to physically exist between properties 14 and 16 Elmers Green. However, the land crossed by the route under investigation does not appear to be shown within the boundaries of either of the two properties. An insert on the plan shows the routes to be adopted to the rear of Elmers Green in more detail and includes information about physical works to be carried out and services that are present (gas, electric and water). The 'Footpath' to be adopted is shown terminating just south south east of point C on the plan which corresponds with the junction of the route under investigation on the adopted footway. A line is shown along the route under investigation which appears to indicate the existence of an existing water pipe. The note 'Existing 21" ø concrete ADOPTED' is also written adjacent to the pipe between 14 and 16 Elmers Green.</p> <p>No further plans could be found in the County Council's records referring specifically to the route under investigation.</p> <p>Further County Council records consist of OS plans that have been annotated to show the routes recorded as publicly maintainable and are referred to internally as the adoption plans. The adoption plan available to view on GIS does not show the route under investigation as an adopted highway. It shows the route to the rear of Elmers Green coloured yellow and blue. Yellow was used to indicate adopted footways and blue is thought to indicate adopted cycle tracks. The footway is shown to extend several hundred metres beyond point C.</p> <p>The current record of List of Streets has been digitised and is available to view on GIS. It does not show the route under investigation as a publicly maintainable highway and shows the route to the rear of Elmers Green as F2696. It does not record whether there is a separate footpath and cycleway from Elmers Wood Road to 1.5 metres beyond point C.</p>
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Investigating Officer's Comments		<p>The route under investigation is not recorded as a publicly maintained route on the List of Streets but does not necessarily mean that it isn't one or that it is not a public right of way.</p> <p>The plans submitted by Skelmersdale Corporation in 1982 are interesting in that they seek to adopt a footway from Elmers Wood Road to point C running parallel to the cycle track and connecting directly to the end of the route under investigation. If pedestrian access along the route under investigation existed (or was proposed to be constructed) this would make sense as a link to the footway and on to Elmerswood Road.</p>
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 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 intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Land Registry documents		Plans and title deeds were obtained from the Land

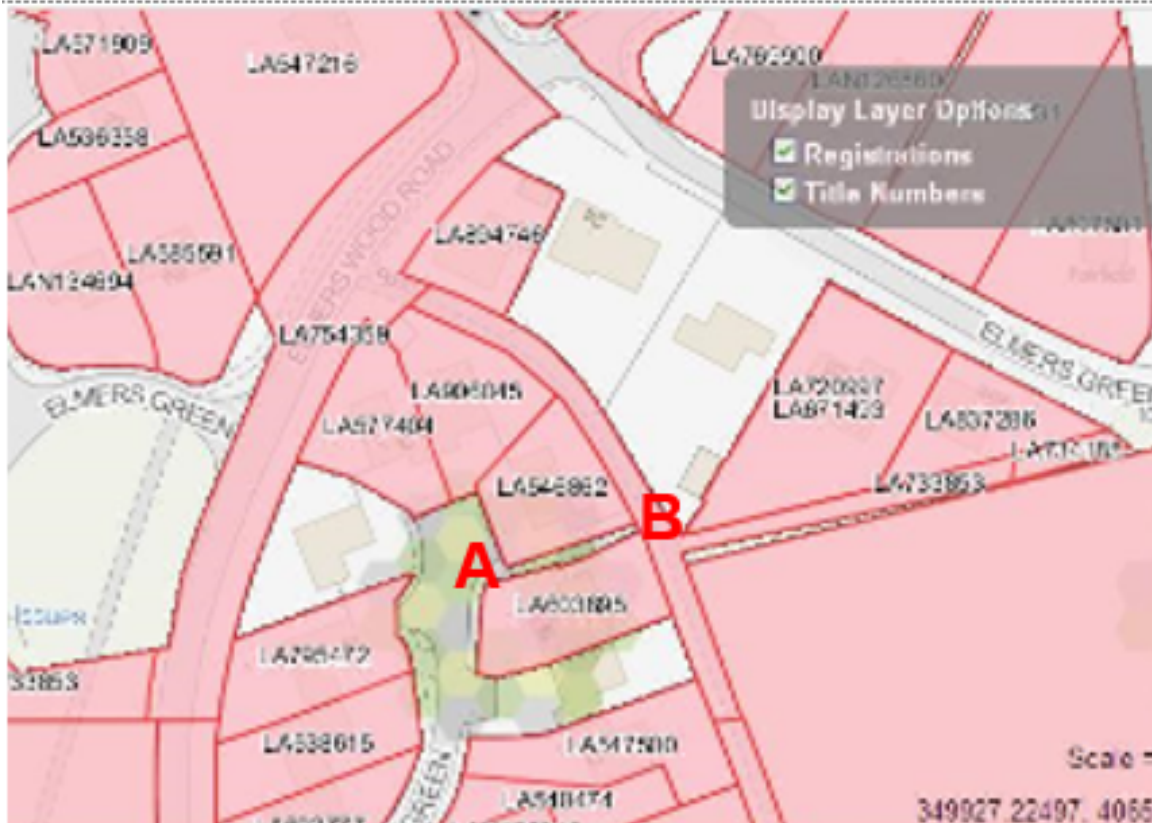
Registry.



Land Registry Plan LA 546862



Land Registry Plan LA 603895



Observations

An inspection of the Property Register for 14 Elmers Green provides information regarding the history of the property. It appears that the land was owned by Skelmersdale Corporation and sold to Ashton and McCaul Limited who then sold the leasehold property to Mr and Mrs Rand in 1972. The current owners are listed as purchasing the freehold property in 2005.

		<p>16 Elmers Green appears to have originally been sold as a leasehold property to Mr and Mrs Partridge in 1972. The current owners are listed as purchasing the freehold property in 2013.</p> <p>The current boundaries of the two properties are shown on the title plans and appear to show that a strip of unregistered land exists between the two properties which is consistent with the route under investigation.</p>
Investigating Officer's Comments		<p>The two properties appear to have been built in the early 1970s and sold to the original occupiers in 1972.</p> <p>The information available relates to the current landownership details. For further details of the exact boundaries of the two properties and whether they have altered since the properties were originally constructed it would be necessary to view the deeds to both. These documents have not been made available for inspection.</p>

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

Landownership

The land crossed by the route under investigation from B-C is owned by West Lancashire Borough Council and the part A-B is unregistered and landownership unknown.

The cul de sac was sold by the Development Corporation to Ashton & McCaul Limited in January 1972 and the sale probably included the land where the claimed route runs. The Limited Company retained ownership and are now dissolved. The land may have passed to the Crown but the owner with the original intention behind constructing the path is now not available.

Summary

There is no map or documentary evidence to suggest that the route under investigation existed before the housing development was built as part of Skelmersdale New Town.

The area concerned appears to have been developed in the early 1970s and access may have been available from 1972 when the houses were built and at least from 1976 (OS 1:2500 map showing a strip of land between the two properties). From 1976 through to the Ordnance Survey map dated 2006 it is not possible to tell from the map evidence whether access was available through the boundary at point B but access does appear to have been available between point A and point B. From 2006

there is clear map and photographic evidence that a clearly defined route existed which passed through the boundary at point B.

There is no record of the route under investigation having been adopted although there is clear evidence (Google Street View) that at some point it was tarmacked and barriers erected to control use by bicycles or motorised vehicles.

The adoption records from Skelmersdale Corporation dated 1982 are interesting in that they relate to the adoption of a footway from Elmers Wood Road to near point C which runs parallel to the cycle track. The site evidence bears out the construction of a flagged 'footway' from Elmers Wood Lane to 1.5m past point C – but not beyond which connected directly to the end of the route under investigation suggesting that pedestrian access along the route under investigation existed (or was proposed to be constructed).

The landownership details available suggest that there is a strip of land between 14 and 16 Elmers Green that was not included as part of either property which would be consistent with the intention to provide a link through from Elmers Green to the adopted footway. Physical changes to the boundary between the two properties have occurred since the properties were originally constructed but the land registry information still appears to show that the strip of land crossed by the route under investigation is not owned by either property.

Head of Service – Legal and Democratic Services Observations

Information from the applicant

The applicant has provided the following information in support of the application.

"Background

Skelmersdale was laid out as a New Town in the early 1960's. Footpaths were part of the design infrastructure feature to separate pedestrians from road traffic, resulting in a network of footpaths linking community assets and communities together. This part of Tanhouse was developed in the early 1970's by Whelmar Homes as a private housing estate of detached houses and bungalows, making up 5 cul-de sacs comprising homes of similar style.

We are told that the path was maintained by West Lancs District Council until transfer in 1984, however for some unknown reason LCC failed to adopt it as part of the highway. In the early 1990s WLDC put stagger gates on the path to deter motor cyclists who used it to cut through from the Tanhouse estate to Beacon Park. This is the only "cut" from the Whelmar estate to have such gates.

Both properties on each side of the path have been in the same ownership for many years. The lady who owned No16 until 2 years ago, is in the 90s and is in a Care Home. She always understood it to be a right of way. The family of the lady at No14 (now diseased) also believe it to be a right of way, and used it extensively.

Map 1

Shows the location of the footpath site on 1:25000 OS map.

It can be found on Explorer 285, Southport & Chorley, grid ref 499065

Map 2

No plans of the original Whelmar development exist. I have checked with WLBC, hoping they were stored on microfiche, but am told they were sent to Homes and Communities Agency in Warrington. They tell me they were sent to Bedford, but am told that all old plans of Skelmersdale were destroyed in 2005. I have visited, and checked at the Lancashire Records Office, but only small samples of street layouts have been kept as an example of the town's layout. There are no records of this development. Map 2 shows the 1993 map of part of the Whelmar development at Eavesdale, Earlswood, and Eastleigh. The final phase of development, which includes the site of concern is just off the map to the north. The map clearly shows the developer's intention to create footpath links between the cul-de-sacs and the main arterial footpath to, and along Hillside Playing fields. This path was designed as the main north-south arterial link between communities and the former St Richards High School (now redeveloped as Holland Park). Existing footpath links are shown circled from Earlswood and Eastleigh, proving the developer's intention to allow residents access to the path, and the Hillside playing fields.

Map 3

This later map, shows the last developed cul-de-sac. Unfortunately the map shows the space, but no path, and a line where the footpath entry exists. I am unable to find a map of this area from the same date and scale as the previous map at Skelmersdale Library or the Lancashire Record Office. I'm assuming this is a cartographical error that has gone un-noticed or challenged over the years.

Picture 4

This shows 2 images of the footpath link between nos 14-16 Elmers Green in March 2009, taken from Google Street view, proving the existence of the footpath link. The Hillside playing field path can be seen in front of the concrete panel fence. The 2 metal gates that stagger access can just be seen. The width of the tarmac becomes narrow at the 1st gate as pedestrian access is limited. No 16 has a wooden fence while No14 has no boundary treatment.

Map 5

This Mario Map is taken from WLBC website, showing that WLBC recognise the existence of the link through the cul-de-sac. Further scrutiny, shows the footpath linking with another footpath at Evington to the south. While the Elmers Green cul-de-sac does have some pavements, there are no pavements on Elmers Wood Road, further reinforcing the idea that pedestrians and vehicles were designed to be separate. The map shows that the only safe access to Hillside playing fields from this part of Tanhouse was designed to use this link.

Map 6

Another, more detailed Mario map, this time LCC website, showing the path access as it was designed and is in reality.

Map 7

A current, up to date map is taken from WLBC website, again showing the link footpath and up to date relevant user information.

Maps 8

Here are 2 Land Registry maps for numbers 14 and 16 Elmers Green, showing curtilage details. When held over each other, it is clear to see that neither have ownership of the land in the middle. This space is shown on the previous Mario maps as the footpath link. Since the land is not in resident ownership, it is clear that when the site was laid out, it was the developer's intention that the path be adopted. The photographs for Google Street view support that idea.

Map 9

A map from the mid 1970s published by Skelmersdale development Corporation, for residents use, shows the arterial footpath links in the neighbourhood.

Photographs 10

these images, taken in Autumn 2014 show the link footpath blocked by a 6 foot wooden fence preventing access from the cul-de-sac to the hillside playing field path. These images are taken from the same position as those taken in 2009 by Google street view, thus showing before and after. They show the metal gates which were installed many years ago.

In recent weeks the gates have been removed and turfs of grass have been placed over the tarmac in an attempt to disguise the appearance of the footpath.

Present

My concern is that the access was blocked unexpectedly, with no consultation in the neighbourhood. No 16 was sold in the summer of 2014, having been in the same ownership for many years with no problems regarding the footpath. It is assumed that the new owner has been implicated in blocking the access, but there is no proof of this.

I believe that if someone should want to block off the access, then they should follow set consultation procedure with the wider community. This has not been done. Should this unauthorised blocking of access be accepted in this unauthorised way remain unchallenged, then it sets a principle that anybody can do the same, in a town that was designed with footpaths at the forefront of the planners mind.

I accept that some similar links can be contentious; however in the whole time I have known this cul-de-sac, there have been no concerns raised until recent months when property has changed hands. Records from Rightmove show that this is a very stable community with very little change on property ownership over the years.

I understand that as a result of the Prescription Act 1832, that after 20 years of use a prescriptive right can arise."

In further support of the application the applicant has provided a written statement from Tanhouse Councillor Bob Pendleton, the information is set out below:

"I write this letter simply to say that I have used this path for many years in my capacity as Ward Councillor delivering leaflets, newsletters and canvassing. Also walked my family to Beacon Park in the 1970/80s.

It's important to remember that Skelmersdale was built for pedestrian's to have the

ability to walk across the town and never having to cross the main roads, that is why there is public footpaths leading into all housing estates and linking the next estate by foot, the other point I would point out is that there is no pavement's on the side of any Main road and estate roads. Estates being built today footpath links are part of the developments."

In support of the application, the applicant has provided 18 user evidence forms, 2 of these forms are of a different type and some questions were not asked along with the other 16, the evidence from these forms is set out below:

The years in which the users have known the route varies:

1975-2015(1)	1980-2015(1)	1984-2000(1)	1985-2015(1)
1987-2015(1)	1989-2015(3)	2000-2015(3)	2007-2015(1)
2010-2015(2)	2012-2015(1)		

2 users were not asked this question and 1 user did not provide a response.

17 users have used the route on foot and 1 user has used it in their wheel chair, the years in which the users have used the route are as follows:

1974-2014(1)	1975-2014(1)	1976-2014(1)	1976-2015(1)
1977-2015(1)	1984-2000(1)	1985-2015(1)	1989-2015(2)
1995-2010(1)	2000-2014(1)	2000-2015(1)	2006-2014(1)
2010-2012(1)	2010-2014(1)	2012-2013(1)	

1 user has used the route in 1989 and another user has used the route in 1999.

The main places the users were going to and from include Ashurst, Edenhurst, Birch Green, to School, the Concourse, to the fields, visiting a family home, Felton Farm, the Beacon, the doctors, visit friends in Digmor and for a circular walk. The main purposes for using the route include, exploring the area, used the route as there are no footpaths along the main road, dog walking, visiting friends / family, for pleasure and recreation, and for delivering leaflets as the role of being a war Councillor.

The user of the route per year varies from 2-5, monthly, weekly, 100 times, 350 times, and some users answered with 'many', 'frequently', 'every now and again', 'uncountable times', 'when children were smaller everyday now less frequent'.

1 user states they have used the route on horseback and on a push bike between the years of 1993-2014. 2 other users have also used the route on push bike, 1 of these users didn't provide any dates and the other user used it between the years of 1994-2014 1-12 times per year.

1 user has seen others using the way on horseback (as well as on foot) between the years of 1989-2014. 11 users have also seen others using the way on foot, the following dates have been provided, 2000-2015, 2010-2014, 1990-2015, 1989-2014, 1985-2014, 1987-2014, 1984-2000. 1 user also saw others using the way on foot and on bicycle between the years of 1984-2014. 2 users stated 'yes' when asked if they have seen others using the way but no further details were provided.

When asked if the route has always run over the same line, all 18 users responded with 'yes'. 10 users mention there are offset barriers along the route and some users state these are to deter motorcycles. 1 user mentions there is a fence along the

route but states it did not prevent any access, 1 user responded 'not until now' in response to there being any stiles / gates / fences and stated it has prevented access since 'Christmas 2014'. 6 users state that there are no stiles / gates / fences along the route.

15 users state they have never worked for a landowner over which the route crosses nor have they ever been a tenant, 3 users did not provide a response to this question.

11 users have never been stopped or turned back when using the route, 1 user mentions they have been stopped by 'the fence erected by the new home owner', and states 'not until the fence was put up', and 1 user states 'yes, when the fence was built to block the path'. 1 user responded with 'yes' but provided no further details, and 3 users did not provide a response to this question.

9 users have not heard of anyone else being stopped or having to turn back when using the route. 4 users mention they heard of others being topped once the fence was erected, 1 user states 'a few months ago when the temporary red fence was erected then the new 10 foot wooden fence was put up', and 4 users did not provide a response.

When asked if they were ever told the route they were using was not public or if they had ever seen any signs or notices, the users responded with 'no' or did not provide a response to this question.

None of the users have ever asked permission to use the route and 1 user states 'the path opened when the bungalows were built – over 40 years ago to use the path to school'.

After completing the form users are asked to provide any further information they feel is necessary, these responses are set out below:

- My husband has lived in Skelmersdale for 40+ years and that way has never been blocked off to his knowledge. We used to use the way daily to walk our children to school
- Many people have used the route over the years including dog walkers and children and local residents
- I've used the route regularly and it is inconvenient now that a home owner has erected a fence and blocked the way
- This path has been used by walkers for as long as we have lived here. i think it is wrong when now someone who knew the path was there when they bought the property should be allowed to deny us right of way
- As long as my family has lived in Elmers Green it has always been a footpath
- All the local residents have used the footpath over the years. Many people use the path for dog walking. School children access to the Beacon
- Most local residents have used the path over the years. The previous owner who lived in the property until 2 years ago believes it is to be a public right of way. People in the community have used the path and have tried to use it
- I have used this footpath a number of times and walked and cycled past it over 100's of times from 1987-2014 and there was never an obstruction until the fence was erected in 2014. I presume the path was laid by the developer

of numbers 2-22 Elmers green, it has a macadam finish and offset barriers to prevent vehicular traffic and has been maintained by the Local Authority. I knew a previous residents of 14 Elmers Green, between approximately 1987-2005 who was a dog owner who used this path daily.

- My partner and I often use this walk while visiting my partner's father who lived in Eastleigh. We moved away in 2000 so our walks there have ceased on that date
- High wooden fence summer 2014.

Information from others

An objection has been received from Mr A Timson along with comments made on the applicant's user evidence forms, comments on the applicant's maps and photographic evidence and letters of objections from residents of the cul-de-sac, this information is set out below:

Cover letter of objection from Mr and Mrs Timson

The following information is provided in the cover letter from Mr and Mrs Timson:

- there 11 bungalows in the cul-de-sac mainly occupied by residents of 65+ year old and at least 6 of the residents have resided there since the properties were built
- Of the 11 properties since the application was made 2 of the residents have since passed away (no 14 & 18) and the properties are now empty, of the remaining 9 properties, 1 resident due to health and memory problems is not capable of objecting, 1 is the applicant and the other 7 property owners are objecting
- despite the applicant's knocking on every door in Elmers Green (100+ houses) the support for this application is limited and those 11 properties were not asked to support the application and only found out about it once it had been submitted
- the land first started off as a track for the builders to access the rear of the properties with machinery and materials, at the time Hillside footpath was itself no more than a wide rough track its full length
- When the builder finished the development they built a fence to block off the land where it meets Hillside footpath and turfed the area and for many years the area was cut and maintained by the residents of numbers 14 & 16 and over a period of time the fence fell into disrepair
- at some stage the Local Authority at that time (New Town Development Corporation) made Hillside path into a cycle / footpath by laying tarmac and at the same time without any authority from the landowner places some tarmac along the land between 14 & 16 and from the day the tarmac was put down between the two bungalows it has never been maintained or adopted by any residents or local authority
- Elmers Green School burnt down in late 1989 and it was rebuilt and reopened as a special school with children being transported to the school from all over Lancashire, the children and staff arrive at the school by vehicle as there is no pedestrian access to this school and there hasn't been for at least 20 years

- At no time can anybody remember people using this land to access the school but many children were taken to school from other estates attached to the Hillside footpath by walking along Hillside footpath to the school gate which was approximately half way down Hillside footpath, the gate was closed off when the school was burnt down
- The person who describes taking her children to this school in her evidence is in her seventies and her children will be in their thirties / forties, from her address the route to the school would take them down Hillside footpath and without massive and improbable detours would not involve them coming into the cul de sac
- Mr and Mrs Timson moved into No.16 and state the land had not been maintained for at least 20 years and two thirds of the way up there are offset barriers that were overgrown and blocked making it impossible to walk from the cul-de-sac to the Hillside footpath without walking around the barriers onto the side lawn of number 14
- There were 2 large trees adjacent to No.14's garden which were over grown and hung over the said land making access impossible, the largest of the trees has since been removed
- There has been a lot of youths congregating near the said land and they have been caught on CCTV and reported to the police
- After discussions with the residents they phoned West Lancs Borough Council and asked for the land to be blocked off and they informed them it was not part of the Council's network. They then contacted LCC and was informed by it was not part of their network, it was not a public footpath and was on private land and it could be blocked off, this information was provided by Ros Paulson
- In August 2014 residents attempted to prevent access on the lawn to the side of No.14, but this was always disturbed by youths (as caught on CCTV) and so the residents joined together to pay for the wooden fence at the boundary of the Hillside footpath and state this is in the same position as the fence shown on the early copies of the original land registry deeds
- They are objecting mainly because of crime
- The said land has not been used for people and families to access any amenities, parks, dog walking, shops etc
- After reading the application evidence believe the maps are dodgy and photographs doctored and the applicant and his witnesses are trying to deceive the Council into believing this cul-de-sac is a semi motorway not a cul-de-sac where visitors particularly pedestrians are a rare sight

Comments on user evidence forms

User evidence form A

- This user states the bungalows were built by Whelmar Development when in fact many of the houses on Elmers Green were built by small private developers, in this case it was Ashton & McCaul Ltd as stated on the deeds and as such not all cul de sacs on Elmers Green are connected in the same way to the footpath network

- The user states to 3 other estates, Eastleigh, Earlswood and Eavesdale these are not part of Elmers Green but of Tanhouse area of Skelmersdale, these three estates were developed by Whelmar
- The user used the route for 38 years on a monthly basis but lacks details of why they were using the route, who they were visiting, and where they were going to and from, especially when they have never lived in Skelmersdale why have they used this tiny stretch of land
- The user used the route to visit friends and for dog walking but has lived on a farm since 1987 in the middle of the countryside in Dalton
- Mr and Mrs Timson state the only friend he has visited is Mr Kelsall (applicant) according to their CCTV he has visited 4 times in 2015 by car and has never been seen before by any resident in any year
- The user states using the route until the wooden fence was put up in November 2014, but this is incorrect as prior to the wooden fence plastic barriers were in place from August 2014
- The user lives on a farm in Dalton past numerous country parks and golf courses and brings their dog to a small residential cul-de-sac, does this seem credible

User evidence form B

- Does not provide full details of the route taken from the Ashurst area to Elmers Green
- There is no direct or indirect footpath route from Kestrel Park to Digmoor passing through the cul-de-sac
- Use of 1012 times per year is vague and an indeterminate amount
- User has claimed to sue the route on bicycle but there are offset barriers along the route
- Years of use contradicts through the form from 1995-2014 to 1995-2010
- Doesn't provide details of the offset barriers or when the wooden fence was erected
- Answers "I have used this footpath a number of times", "and walked and cycled past it over 100's of times" are vague and unspecific
- "There was never an obstruction until the fence was erected in 2014", this is incorrect as there was always undergrowth which restricted the area and plastic barriers were there before the fence
- "I presume the path was laid out by the developer and has been maintained by the Local Authority", this assumption is incorrect as everyone in the area knows the council never maintained the area

User evidence form C

- "generally walking in the area" was the answer to the question "where were you going to and from", this is answered in a general way and does not give the route to include the land in question to see if it is a reasonable explanation, the school is mentioned but there has been no pedestrian access to the school for over 15 years, the user is known to Mr and Mrs Timson and is a lady in her seventies and her children must be now in their forties and

they can see no reason for her to bring her grandchildren into a residential cul de sac to play

- The user states "there are no footpaths alongside the main road", Mr and Mrs Timson state if you look on any map there are a number of paved footpaths leading from Mrs Crompton's to the Beacon Park, the town centre, the cul de sac etc

User evidence form D

- Answer stated "footpath from Elmers Green to Feltons Farm", comments made: this path and any path leading from Elmers Green to Feltons Farm does not go anywhere near the cul de sac of the land in question
- Answer "walking / visiting" is vague
- "could be once a year, could be once every 2 years, could be once every 5 years", no figure given
- Refers to wriggle barriers but not the orange barriers which were there for 3 months

User evidence form E

- The route described does not make sense if you go from number 7 Eastleigh on the Hillside path, you would need to stay to the end of Hillside path to do a circuit of Elmers Green, although how the user does a circuit when Elmers Green is composed of a number of cul de sacs you would end up back at the entrance to Hillside footpath. At no time does the user refer to the council housing estate footpath or crossing the road to or from the entrance to the cul de sac.

User Evidence form F

- Refers to walking to the concourse but from their property there are tree lined well lit paved footpaths leading directly to the Concourse which is in the opposite direction to the cul de sac
- Dog walking and exploring the area, all points to using the Hillside footpath which leads to all the parks and there is no reason to enter the cul de sac

User evidence form G

- The user is an elderly resident, all the information is vague, no route is explained
- Anyone who lives in the area knows the users road or even anybody looking at a map would see a direct route to the concourse and it is not feasible to walk out of the users way and tackle an obstructed and overgrown footpath into the cul de sac and out through the council housing estate
- The user mentions dog walking, however comment is made to the fact that from the users property if you turn left you end up at Beacon golf course and the surrounding countryside and if you turn right you end up to Hillside footpath which leads to Hillside playing fields, and questions why the user would go down a short overgrown blocked path of land

User evidence form H

- Its unrealistic to imagine this user coming off Hillside footpath either on her journeys to Ashurst or walking the dog and has not given any reason to enter the cul de sac
- The user states using the route once a week to one question and daily to another question when referring to taking her children to school. However comment is made that both the users children do not even go to school in Skelmersdale, one is taken every day by car and the other gets a bus
- The user gets the time the footpath was blocked off wrong, the user states Christmas 2014 but it was August
- Comment is made that the user has a road traffic accident some years ago and as a result had mobility issues and uses a stick when walking but allegedly cannot walk any distance

User evidence form I

- This user is the brother of the applicant and lives in Merseyside and visit each Saturday by car and the CCTV has never captured him walking on the said land yet he claims to have observed everything from horses to motorcycles going up this land

User evidence form J

- User has witnesses seeing horses going up the land and claims to use a wheelchair twice a year up a track that even in the pictures submitted is only walkable for about 30cms of its widths and would be impossible to get passed the undergrowth even at its lowest in the middle of winter
- The user has never been seen using a wheelchair at any time by any of the neighbours
- The user rarely leaves the property and on the rare occasion they do they are picked up by car / taxi and walks with a stick

User evidence form K (applicant)

- The applicant claims to have ridden a horse and a pushbike along the route but no reference is made to the offset barriers
- An application was only submitted after a fall out with Mr and Mrs Timson not when the plastic barriers were first erected
- The applicant mentions using the route to visit the doctors and shops, comment is made that these are accessed directly by the path opposite the entrance to the cul de sac and as for walking to Wigan this would take some considerable time

User evidence form L

- This user is elderly who lives miles out of the area and if they did walk to Beacon Country Park it would not entail her going anywhere near the cul de sac at all

- The user mentions walking the route weekly but doesn't mention any barriers, blockages or fences

User evidence form M

- This user is elderly and comment is made that no discredit of the evidence can be made as there does not seem to be any, e.g. walking where? Visiting who? Any barriers?

User evidence form N (local district Councillor)

- The Councillor provides no documents from West Lancs Borough Council to back his evidence as to when the barriers or original plans from the Development Corporation who were the planning authority at the time
- When describing the route from his relatives in Eavesdale to the Beacon Country Park, golf course and play areas etc they are on the right hand side of Hillside footpath as you walk in the direction of the cul de sac from Eavesdale and there would be no need to walk into the cul de sac
- He also states he has delivered leaflets for elections and has used the route but CCTV shows during election periods arriving by car delivering leaflets
- Doesn't mention any barriers
- When Mr and Mrs Timson met the Councillor he admitted he had not been down this particular piece of land for many years and admitted the land now looked tidy and kept well

User evidence form O

- No mention of barriers and no reason given to sue the cul de sac as part of their route
- Understands from neighbours that this user who is elderly in recent years has been ill and does very little walking of any sort

User Evidence form P

- User provides information about using the route from home to school but only provides a work address
- He has not mentioned any barriers
- And the Elm Tree School can only be reached by road

User evidence from Q

- The user states walking a dog from his flat in Evington but does not mention the direct paved footpath from Evington to the council paved footpath leading to Hillside footpath

Connections and observations of the people who have claimed to use the said land

- The route in question is approximately 22 metres long and is covered in undergrowth with 2 offset barriers two thirds of the way along from the cul de sac end, for 3-4 months in the summer the undergrowth and bushes are so dense it is impossible to walk along
- The cul de sacs official connection to the Skelmersdale footpath network is opposite the entrance to the cul de sac and leads into a council housing estate and down to the town centre
- To get to the parks and golf course you would turn immediately right on entering the footpath from the cul de sac and use the council paved path which leads to Hillside footpath approximately 100 yards away
- Everybody on the local area walking their dog or visiting the parks do so by either using Elmers Green Road or Hillside footpath
- The cul de sac entrance has grass verges on both sides of the road leading to its entrance with no paved paths, the official entrance on foot is from the council estate opposite the entrance, none of the people who have supplied evidence lie on this estate or even in this direction
- The residents of the cul de sac believe this application has been hijacked by a number of professional campaigners and the reasons are: many witnesses live outside Elmers Green, some outside of Skelmersdale, CCTV catches in the cul de sac catches every pedestrian and every vehicle and are checked daily and any strangers or suspicious vehicles are noted, most residents have been on the internet and looked at various photographs of the witnesses available through social media and do not recognise anyone
- The connection to a number of witnesses is a man named R D Ellis who is and has been a campaigner on various campaigns for many years and has never lived in Skelmersdale let alone Elmers Green
- Mr Ellis' latest campaign is as founding member of ARROW (action to reduce and recycle our waste) and it seems he has enlisted some of his supports to aid the application with his witnesses,
- During a conversation with Mr Ellis and Mr Kelsall on 11th May 2015 Mr Ellis confirmed that he and Mr Kelsall had canvassed all the residents of Elmers Green, apart from the residents in the cul de sac to try and encourage people to complete a witness statement, they managed to get 5 residents willing to complete a form and 4 of these are in their seventies
- Mr and Mrs Timson went to visit one of the witnesses of the road 41-47 Elmers Green on 22nd August 2015 and the witness advised that Mr Kelsall had told her that a new neighbour had blocked off a public footpath and she was very annoyed that someone new to the area had done this which is why she completed a form. At the time the user was not aware that the land was unadopted and thought it was council owned, the applicant has not been back to the witnesses to inform them their allegations were incorrect
- Another user stated in their statement "stopped by fence erected by new neighbours, it is inconvenient that a homeowner has erected a fence", the applicant has not admitted to the user the information was incorrect
- 3 witnesses do not have any interest in keeping pathways open they are all annoyed at the new owners and they know this from speaking to verbally to one of the witnesses and 2 others have made these comments in their statements

- If they had any interest in keeping pathways open they would have reported that the public right of way that is on the definitive map that runs alongside a further property has been blocked off and incorporated into the garden of number 49 Elmers Green

Comments on the applicant's maps and photographic evidence

Map 2 & 3

- Map 2 shows the 1993 map of Whelmars development of Eavesdale, Earlswood and Eastleigh. The cul de sac that we live in is in a separate part of Skelmersdale known as Elmers Green, apart from our cul de sac which was built by Ashton & Mc Caul Ltd not Whelmar as stated in his evidence most of the rest of the houses on Elmers Green are individually built, some are even listed.
- The applicant is correct there were definitive footpath links to Hillside footpath by the Whelmar developers but the map also shows a solid barrier across the land in the application. He claims this is an error on the map. The same error must have occurred on all our properties title deeds, including Mr Kelsall who we gave a copy to.
- A quote from our deeds "physical features such as hedges, fences or walls will be defined on the title plan. Where the boundary of the land does not have a physical feature they will be shown by a dotted line." There is no dotted line across the connection between 14 and 16 at the Hillside footpath boundary. This shows the original intention of the developer. This would back up resident's memory of a fence being erected at the completion of the development in the 70's.

Picture 4

- This picture in March 2009 at the end of winter when everything has died down showing the trees with no leaves despite this time of year it foes show bushes and growth of up to 8ft high leading to the metal barriers, it also shows how narrow a portion of land is left suitable for walking on at this time of year.
- The picture is 5 years earlier than when the land was fenced off and in that time the undergrowth had taken over a considerable amount of the centre of the land and all around the metal barriers.
- The tree at the end of the land (part of number 14's garden) adjacent to Hillside footpath is shown with no leaves by the time summer has arrived this tree was in full leaf and hanging down across the land stretching as far and into no 16s garden by 2014 creating a further barrier.

Map 8

- Shows clearly a solid boundary fence between numbers 14 and 16

Map 9

- The applicant is mistakenly under the impression the dotted line he points out leads into the cul de sac but on closer inspection the dots are misaligned and are actually the curve of Hillside footpath with no dots leading off at a right angle into the cul de sac. This also confirms that the development corporation at the time did not believe the land in question was a footpath and part of the link system of paths.

Photograph 10

- These images were stated to have been taken in Autumn 2014 and we can categorically state that these photographs were taken on 19th and 20th March 2015. The picture itself shows the land dead after the winter and most of the shrubs, trees etc cut back and dug out after the fence has been in place since November 2014.
- Since this date the large tree near No14 has been cut down and a similar fence put in place, the land has been grassed over and kept neatly trimmed by several of the residents.

Copies of title deeds submitted

- No 4 Elmers Green (Applicant) a solid line boundary is shown in between 14 & 16 Elmers Green
- No 6 Elmers Green a solid line boundary is shown in between 14 & 16 Elmers Green
- No 12 Elmers Green a solid line boundary is shown in between 14 & 16 Elmers Green
- No 14 Elmers Green a solid line boundary is shown in between 14 & 16 Elmers Green
- No 16 Elmers Green (Mr and Mrs Timson) a solid line boundary is shown in between 14 & 16 Elmers Green
- No 20 Elmers Green a solid line boundary is shown in between 14 & 16 Elmers Green

Copies of title registers submitted

- No 4 Elmers Green (Applicant) register refers to Ashton and McCaul Ltd
- No 14 Elmers Green register refers to Ashton and McCaul Ltd
- No 16 Elmers Green register refers to Ashton and McCaul Ltd
- No 17 Eastleigh register refers to Whelmar Limited

Letters of residents objecting to the application

No 2 Elmers Green

- The land between 14 & 16 Elmers Green has never been maintained and was so badly overgrown it was totally impassable during the summer period and it was muddy, slippery and dangerous during winter months
- Family member and friends never cross this land to visit us they always come by car

- If a stranger did wander into the cul de sac they would have seen the land was impassable and anyone who did not turn away could only have got through to the other side by trespassing on the landscaped gardens on number 14
- We have CCTV system fitted when we first moved to the area and can see exactly when strangers come into the cul de sac and know what has been stated in the statements is untrue
- A lot of the statements have been completed by people who live outside the area who would never have come into the cul de sac
- We would recognise Mr Ellis and Councillor Pendleton when they appear on the CCTV, however both gentlemen have visited the cul de sac to visit the applicant approx. 3-4 times each in the last few months always by car and prior to this we have never seen them in the cul de sac and certainly never using the land in question
- We have never seen anybody using this land on a regular basis

No 6 Elmers Green

- My parents bought 6 Elmers Green off-plan and I have lived there since early 1973, firstly with my parents and brother and now with my fiancé. I recall that as a child the land was turfed and was part of both number 14 and 16's gardens. There was also a fence across the top of the land along with some small shrubs. This meant that there was no access via this part of the cul de sac, as no footpath existed originally
- At some point the fence and shrubs were removed and a tarmac footpath was installed, although this has never been maintained. Due to the lack of maintenance by any local authority, the footpath became overgrown and impassable. When any of our friends or family visit they always come by car
- From reading the witness statements I think witnesses are confused and must be talking about Hillside footpath
- No one living in the cul de sac or any surrounding areas would cross this land to walk to the concourse or to any schools in the area, as had been stated in some of the forms
- Witnesses living in Ashurst, Elmers Green Lane, Dalton or Edenhurst would through the cul de sac to get to Beacon Country Park which is in the opposite direction
- It is wrong to state that this land has always been clear and accessible
- The cul de sac is much more secure with the fence and is back to being a true cul de sac as it was originally built

No 8 Elmers Green

- We moved into Elmers Green in August 1975 and at that time there was a grassy area separating the boundaries of properties 14 and 16, this area appeared to be unadopted and was maintained by the owners of 14 and 16 to keep the wends down etc.
- At some point the area was tarmacked and from this point was never maintained. A chicane was erected on this overgrown land sometimes in the last 90's, the land became so overgrown particularly at this point causing

anybody who did try to use it in the summer to trespass on No14s garden, during the winter we did not see anybody at all

- My mother moved into No 14 in August 2005 and passed away at the age of 95 in August this year, she never used the footpath due to age and fear of falling / tripping
- At present the area looks better now and it is maintained by residents and fenced off from F2696
- We see no reason why this should become a public footpath

No 20 Elmers Green

- We have lived in the above address since 1973 when the property was constructed and are aware of this land, but cannot comment regarding the developer's intentions for it as this would be speculation. We believe that this was not adopted, and to the best of our knowledge it has never been maintained by either the highway authority or the local council.
- We have passed over the land on occasion when accessing the adjacent fields, but in many instances have not been able to use the path due to blockage by overgrown trees, shrubs and nettles, and to the poor condition of the surface. It would have only been possible to by-pass these obstructions by trespassing on the adjacent lawn of no 14 Elmers Green.
- It is wrong to state that the land has always been clear and available
- Many of the statements that have been submitted in support of the application appear to have been orchestrated, often refer to movements that do not seem reasonable in the context of this land, and to be submitted by people who addresses are not even in the surrounding area
- We can see no justifiable reason for making this land permanent by adopting it into the publicly maintained network, but would suggest that the present tidy situation, complete with fencing, should remain in place.

No 12 Elmers Green

- I have lived at this address since July 2004, and I can confirm that the land between the 2 bungalows has never been tidied or maintained, since I have been here
- Neither I nor any of my family or friends have walked across it, all my visitors come by car
- I can advise that people have always used the main footpath known as Hillside footpath and has no reason to come into this cul de sac
- After reading through the statements of witnesses in support of this application, I am certain that they are not talking about the land between the 2 bungalows and I am certain that they are talking about Hillside footpath, because the routes they are describing would never involve coming into the cul de sac. People who live further into Elmers Green, why would they walk past an obvious footpath to take a diversion into a cul de sac further down.
- The land in question was so overgrown, no sensible person would have used it

- People who live outside Elmers Green why would they have used the land between the 2 bungalows, I am sure that they again are talk about the Hillside footpath
- I want the land to remain as it is now neat and tidy and I also want the fence to remain mainly for safety reasons

10 Elmers Green

- We have lived at this address for the past 27 years and have always had a dog. In all those years I have never been able to walk up this land with my dog from mid May to September as this land has never been maintained by any local authority, it has been particularly bad during the last 10 years when some brambles and tree like bushes took hold near the metal barriers.
- My neighbour who lived at number 12 for the first 17 years that we lived here had 2 large dogs and he avoided it at all times including winter because of the danger of the ground to his dogs, he actually had a gate installed in his back garden fence so that he could always avoid this area.
- The 2 previous owners of number 14 Elmers Green did not have dogs as stated by one of the users. From reading the statements the users must not know the land in question as they are not being truthful.
- None of our family or friends have ever used this land to visit us nor to the best of my knowledge has anyone visited any of the other residents of the cul de sac by this means.
- They all use the council maintained footpath opposite the entrance to the cul de sac or visited in a car, we did occasionally get people who attempted to use this land but ended up trespassing on number 14s well kept and manicured lawn.
- Despite on occasion being challenged by some residents after years of neglect and worries about security especially at night we are now pleased the area is fenced and kept clean and tidy.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Physical route created
 Not in adjoining property ownership
 Intention indicated by the Development Corporation
 User evidence
 No actions taken by known Landowner

Against Making an Order(s)

Views of present owner not known
 Possible issues about strength of user evidence

Conclusion

In this matter it is claimed that this short route is already a footpath in law and ought to be properly recorded as such.

There is no express dedication and so Committee are asked to consider whether a dedication can be deemed or inferred.

Looking at inference at common law. There is some evidence that this path was left as a route for public use by the owner – being the Development Corporation or the developer company. This provision of a connecting path is evident elsewhere on the large Development Corporation area. They are usually formally adopted. It was formed physically, linked highways, was known to the District Council and had a metal "giggle gaggle". There is also user evidence which can also be the circumstances from which to infer dedication. The Owner of the land itself has not taken any action. The initial 1970s fenceline near point C shown on certain Ordnance Survey base plans disappeared to become a change of surface and an open route.

S31 Highways Act considers whether there has been 20 years of qualifying use back from the route being called into question. In this matter the calling into question would be the blocking of the route in 2014 and the twenty years would be 1994-2014. User evidence on foot is from a good number of people and the scrutiny of the user evidence by the objector does indeed highlight the difficulties of assessing veracity and detail from user evidence. It is suggested that there is sufficient evidence of use of the claimed route since 1994 and no actions taken by the owner to indicate a lack of intention to dedicate such the it is reasonable to allege that dedication can be deemed.

Taking all the relevant information into account the Committee may be satisfied on balance that dedication could be deemed under S31 or inferred at Common Law such that an Order to record the footpath be made and that there is sufficient evidence to promote the Order to confirmation.

Alternative options to be considered - N/A

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

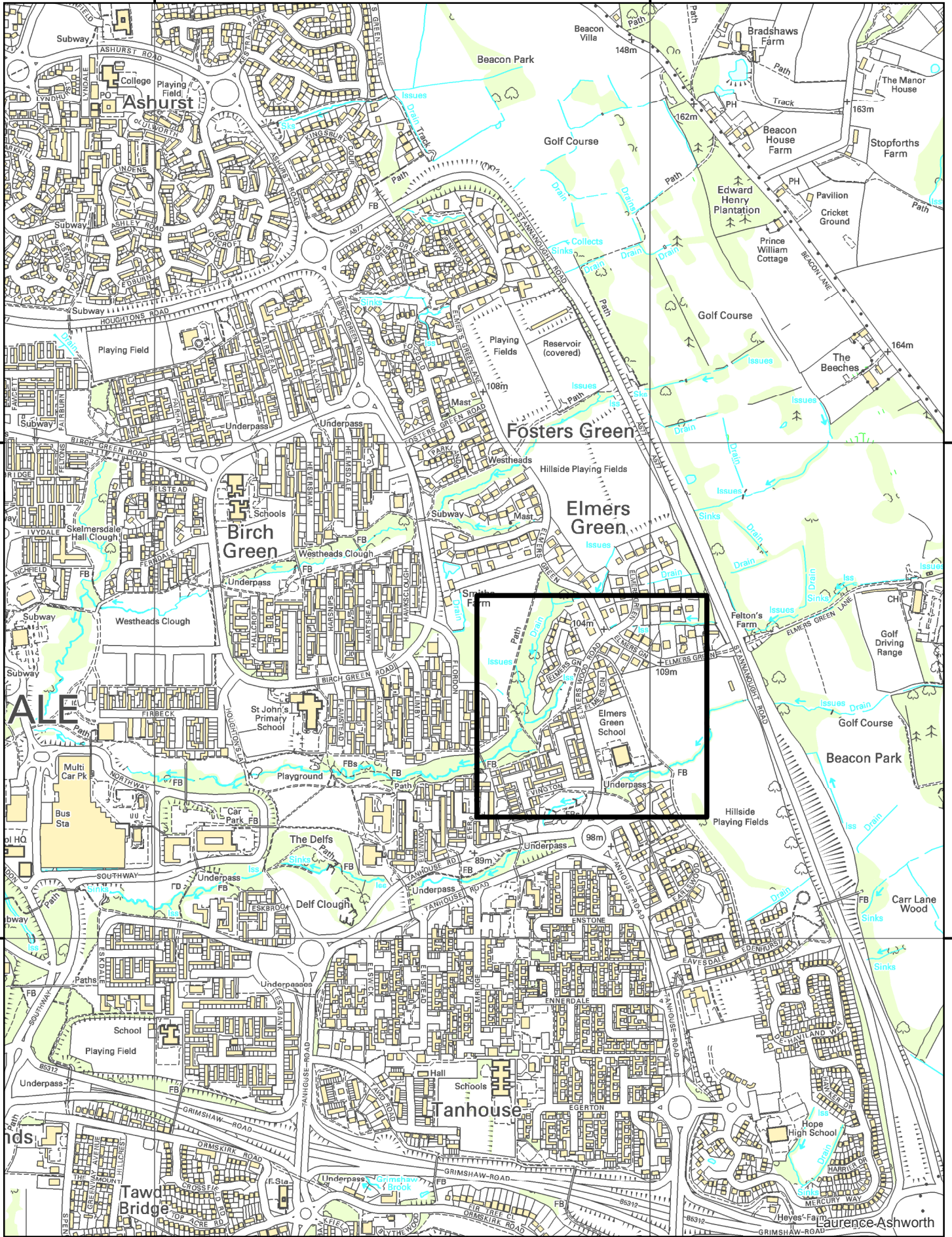
Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-564		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of public footpath from Elmers Green to Footway F2696,
Skelmersdale, West Lancashire

1:10,000



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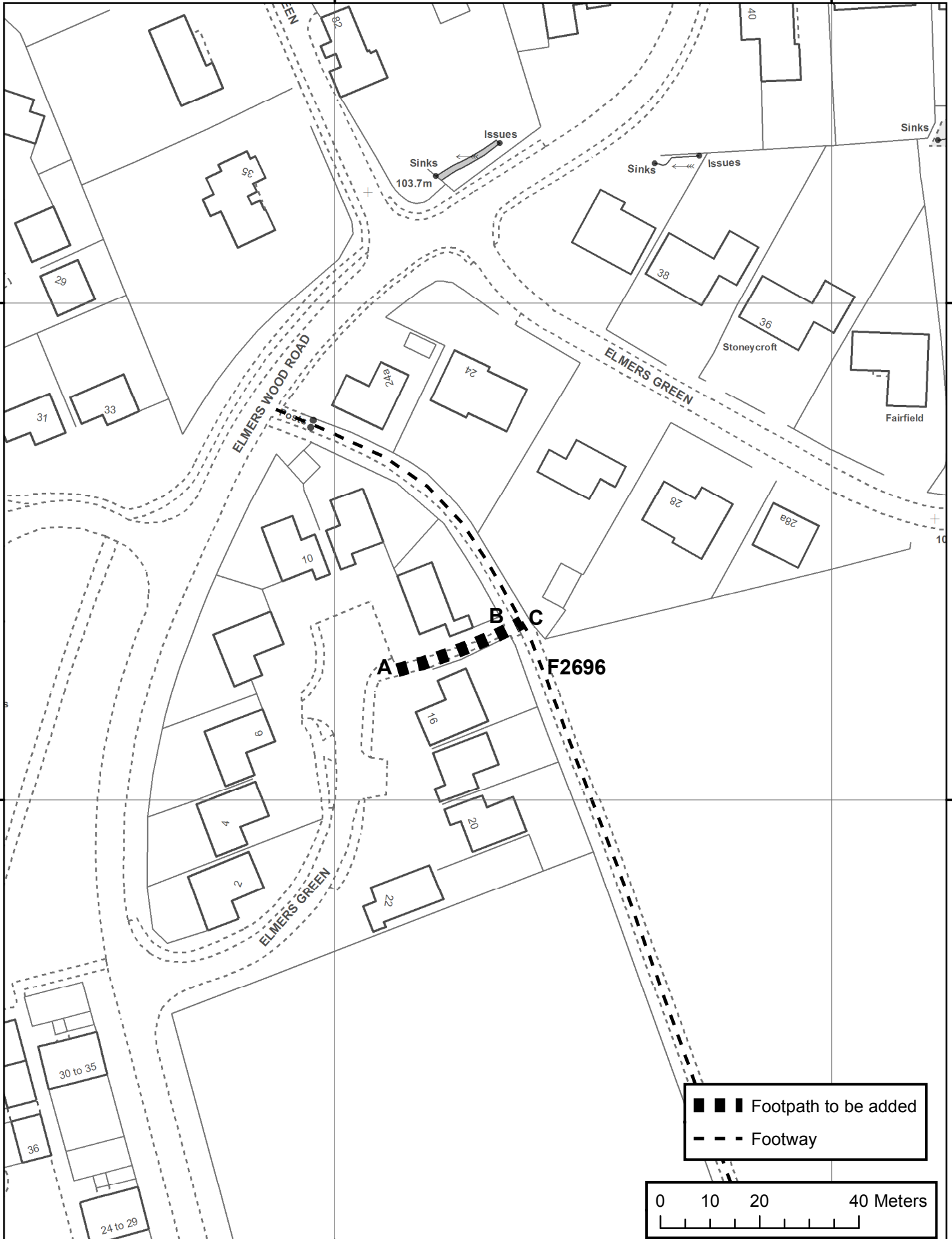
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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of public footpath from Elmers Green to Footway F2696,
Skelmersdale, West Lancashire File no. 804-564

1:1,000



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Regulatory Committee

Meeting to be held on 13 January 2016

Electoral Division affected: West Lancashire East
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Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Dalton Footpath 21, West Lancashire 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 Dalton Footpath 21, West Lancashire Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Dalton Footpath 21, from the route shown by a bold continuous line and marked A – B – C – D to the route shown by a bold broken line and marked A – E – F – G – D 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

Following discussions with the Area Network Officer investigating reported obstructions on this path a request has been received from Mr and Mrs P Worthington of Bangham's Farm, Long Heys Lane, Dalton, Lancashire, WN8 7RT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Dalton Footpath 21 in the vicinity of Bangham's Farm, Dalton.

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 broken line and marked A – E – F – G – D.

The applicants' property, Bangham's Farm, includes a residential farm house and a number of farm buildings used for farming and a small business. The proposed diversion, if successful, would move the footpath to the other side of the boundary fence which surrounds these buildings, removing the potential conflict between the public footpath and the vehicles on site. In addition, the diversion would provide the applicants with an improvement in privacy and security.

Consultations

The statutory undertakers have been consulted and no adverse comments on the proposal have been received.

In addition Dalton Parish Council, West Lancashire Borough Council, West Lancashire Footpath Group, the Peak and Northern Footpath Society and West Lancashire Ramblers have all been consulted.

The Chairman of the West Lancashire Footpath Group commented that the diversion route is currently in use and the group has no objection. They say that the proposed path passes through a pleasant meadow and that it would only be a problem if cropping or cattle were to encroach on this.

Dalton Parish Council responded that it has considered the detail of the application and has no objection to the proposed diversion.

West Lancashire Borough Council, West Lancashire Ramblers and the Peak and Northern Footpath Society did not respond within the given consultation period of six weeks.

Advice

The proposed Diversion Order to include the following details to describe the site of existing footpath, the site of the new right of way, the permitted structures on the new right of way (i.e. limitations to the public right of way) and the amended details to be shown in the Definitive Statement.

Description of the existing footpath to be diverted

Section of footpath as shown on the proposals map	Position (All distances and directions are approximate)	Width
Part of Dalton Footpath 21 marked by a bold continuous line and shown as A – B – C – D	Starting from a point south east of Bangham's Farm at grid reference SD 5096 0824 (Point A), the footpath runs for 60 metres in a generally north westerly direction to a field gate at SD 5092 0828 (Point B), continues for 45 metres in a west south westerly direction passing through the farmyard area to the farm track at SD 5087 0826 (Point C). The footpath then	The entire width

	follows the farm track for 60 metres running in a generally west north westerly direction on a stone track to a point west of Bangham's Farm at SD 5083 0829 (Point D). A total distance of 165 metres.	
--	---	--

Description of the site of the new footpath

Section of footpath as shown on the Order map	Position (All distances and directions are approximate)	Width
A footpath marked by a bold broken line and shown as A – E – F – G - D	Starting from a point south east of Bangham's Farm at grid reference SD 5096 0824 (Point A), the footpath runs for 35 metres in a north westerly direction as a grass surfaced field edge path, to the corner of the field at SD 5093 0826 (Point E) continuing for 45 metres in a west south westerly direction to a point south of Bangham's Farm at SD 5089 0825 (Point F) then for 70 metres in a generally north westerly direction to a kissing gate at SD 5083 0828 (Point G). The footpath passes through the kissing gate and continues for 5 metres in a north north westerly direction to the farm track west of Bangham's Farm at SD 5083 0829 (Point D). A total distance of 155 metres.	2 metres

It is proposed that the public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

Limitation and Condition	Position of path or way to which limitations and conditions apply
The right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006	Grid Reference SD 5083 0828 (Point G)

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Dalton Footpath 21 to be amended as follows:

- The 'Position' column to be amended to read: "Stone Hall Lane west of footpath 20 to a point south east of Bangham's Farm at SD 5096 0824 and continuing to run for 35 metres in a north westerly direction as a grass surfaced field edge path, to the corner of the field at SD 5093 0826 then for 45 metres in a west south westerly direction to SD 5089 0825 then for 70 metres in a generally north westerly direction to a kissing gate at SD 5083 0828. The footpath passes through the kissing gate and continues for 5 metres in a north north westerly direction to the farm track west of Bangham's Farm at SD 5083 0829 and continues to Long Heys Lane at Bangham's Farm. (All lengths and compass directions given are approximate)."
- The 'Length' column to be amended to read "0.41km".
- The 'Other particulars' column to be amended to read "The width of the footpath between SD 5096 0824 and SD 5083 0829 is 2 metres. The only limitation between SD 5096 0824 and SD 5083 0829 is the right of the owner of the soil to erect and maintain a kissing gate that conforms to BS 5709:2006 at SD 5083 0828."

Officers' Assessment of the proposal against the Legislative Criteria for making and confirming the Order

The proposal is that a Diversion Order is made by the County Council under Section 119 of the Highways Act 1980. The Highways Act contains various criteria which must be satisfied for the County Council to make and subsequently confirm an Order. In the event of objections only the Secretary of State can confirm an Order.

The County Council has to be satisfied that it is expedient to divert the public right of way, in other words there has to be good reason for the diversion, either for the benefit of the public and/or the owner of the land. In this case the recorded line of the footpath runs along a farm track and passes adjacent to the farm house and through a farmyard area used for farming and other business interests. It is an area which the owners would quite reasonably wish to be kept private so that they can lock farm gates to keep the area secure.

If the footpath were to be diverted it would remove the potential conflict between the public footpath and the vehicles on site. The owners would also be able to allow their dog to be at large in the area outside unsupervised and enjoy their land without the type of disturbance which can arise from a footpath passing through. In their application to the County Council the applicants have said that the proposed diversion is a more pleasant route for the public. Therefore the County Council could consider making the Order in the interests of the owners and the public. However, it is considered that the main beneficiaries of the proposed Order are the applicants for the reasons of privacy and security. Therefore it is proposed that the Order should be made on the grounds that it is in the interests of the owners of the land.

It is noted that the part of the existing route is currently obstructed between points A-B-C by a fence at point A and various items of equipment between points B and C.

Under normal circumstances, the landowner would be required to ensure that the existing definitive route is available for use before a Diversion Order is considered. This enables the proposed alternative route to be easily evaluated in comparison with the existing route although it is advised that temporary obstructions are ignored.

However, in some instances, the restoration of the route is considered to be impracticable or not in the interests of the user. This is the case with this particular footpath and although the route is obstructed, access is available on a track that is close to the legal alignment at point B, from where the existing route can be viewed. The landowner is aware that if the proposal is not successful the obstructions will need to be removed and existing route be made available for use by the public.

The proposed diversion does not alter the termination points of the footpath and therefore it is not necessary to consider the criteria contained in the legislation for proposals where the termination point of a footpath is proposed to be altered.

The Committee are advised that so much of the Order as extinguishes part of Dalton Footpath 21, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

The proposed Diversion Order can be made subject to limitations and conditions. In this case the proposed footpath passes through a field which is used for keeping livestock. The new footpath crosses an existing field boundary at point G and therefore it is reasonable to include a limitation in the proposed Order so that the landowners may keep their field stock-proof by including the right for them to maintain a kissing-gate at this point.

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.

The applicants own the land crossed by the footpath proposed to be diverted, and also in respect to the proposed alternative route.

The applicant has agreed to bear all advertising and administrative charges incurred by the County Council in the Order making procedures, and also to defray any compensation payable and any costs which are incurred in bringing the new site of the path into a fit condition for use for the public.

Before an Order can be confirmed the County Council must be satisfied that the proposed diversion will not be substantially less convenient to the public. The relative convenience of the new path compared to the old path would include factors such as length, width, surface type, gradient, and the number and type of limitations (stiles or gates) which need to be negotiated. When considering these factors any unauthorised obstructions to the existing footpath should be disregarded. At Bangham's Farm most of the convenience factors for the proposed diversion are neutral (i.e. there is little or no change). The main factor which may make the new footpath less convenient is that it is entirely unsurfaced compared to the existing footpath which follows a surfaced route between points B and D. During two site visits carried out in connection with this application (in mid-March and late September) the line of the proposed diversion was firm under foot and no less convenient than the existing path.

The width of the existing footpath is unrecorded but it is reasonable to assume that the existing right of way occupies the full width of the track which the footpath runs on between points C and D, i.e. approximately 3 metres wide. The application for the diversion is for a 2 metres wide footpath in accordance with the County Council's minimum width requirements for footpath diversions and therefore this width should not be viewed as being unreasonable. However it is arguable that the new footpath will be slightly less convenient than the existing footpath by reason of it being narrower than 3 metres wide. Currently the new footpath is unenclosed on the field side so pedestrians on the new footpath would not feel constrained but there is nothing to prevent the landowner from erecting a fence to create a physical barrier which would demarcate the edge of the path at 2 metres wide.

The County Council is required to consider whether confirming the Order expedient is having regard to the effect which the diversion would have on public enjoyment of the footpath as a whole. In this case there seems to be no loss of public enjoyment, such as by the loss of views. The most commonly expressed view of walkers generally is that they prefer paths which avoid passing through gardens, farmyards and other areas which would ordinarily be private. It is therefore reasonable to take the view that it is expedient to confirm the Order with respect to public enjoyment.

Similarly the County Council must consider whether it is expedient to confirm the Order with respect to other land served by the public right of way and with respect to the effect on the land of the new footpath being created. In this case all the land served by the public right of way and the new footpath to be created is in the same land holding therefore it would be expedient to confirm the Order in this respect.

The County Council has responsibilities under The Equality Act 2010 with respect to people with disabilities and other protected characteristics. The County Council therefore needs to be satisfied that the proposed diversion will allow it to comply with this duty in the event that the Diversion Order is confirmed. The proposed kissing gate at point G may have some impact on accessibility for disabled people although it will be required to comply with the standard for kissing gates in the British Standard BS5709:2006. This would be accessible to the majority of disabled people although it would prevent access in mobility vehicles such as the off-road "Tramper".

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 this instance BS5709:2006 has been applied to the alternative routes and the least restrictive option of a kissing gate has been selected, reducing the limiting effect of structures.

The proposed Order, if confirmed, would 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.

Stance on Submitting the Order for Confirmation (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 County Council 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 Annexes B & C (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

Any one of the three following options represent a valid decision for the committee considering this report. However, in the event that the committee decides on a different course of action to Option 3 (i.e. in accordance to the officer recommendation on Page 1) then it should give sufficient information with the committee resolution to explain its decision.

Option 1 – To decide not to make the Order applied for.

Option 2 – To defer a decision to a future meeting pending further information, or a request that the applicant modifies his application in some particular way.

Option 3 – To decide that the Order should be made in accordance with the information contained in this report.

Local Government (Access to Information) Act 1985

List of Background Papers

None.

Paper

Date

Contact/Directorate/Tel

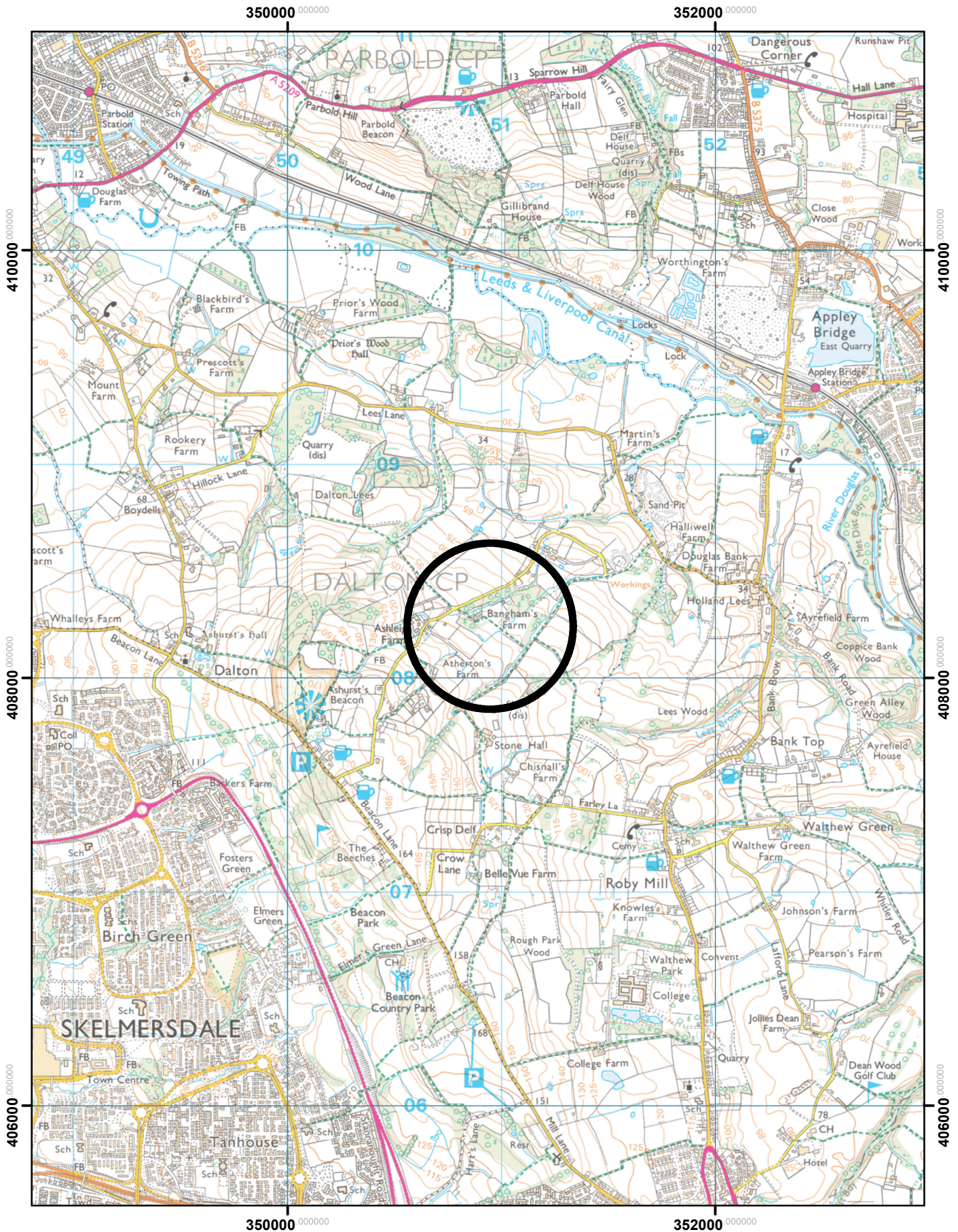
File Ref: R2/14/171

Ros Paulson
Environment, Planning and
Countryside.
(01772) 532459

File Ref: PRW-08-07-21

Reason for inclusion in Part II, if appropriate

N/A



Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

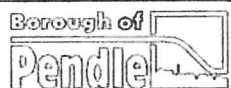
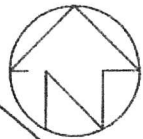
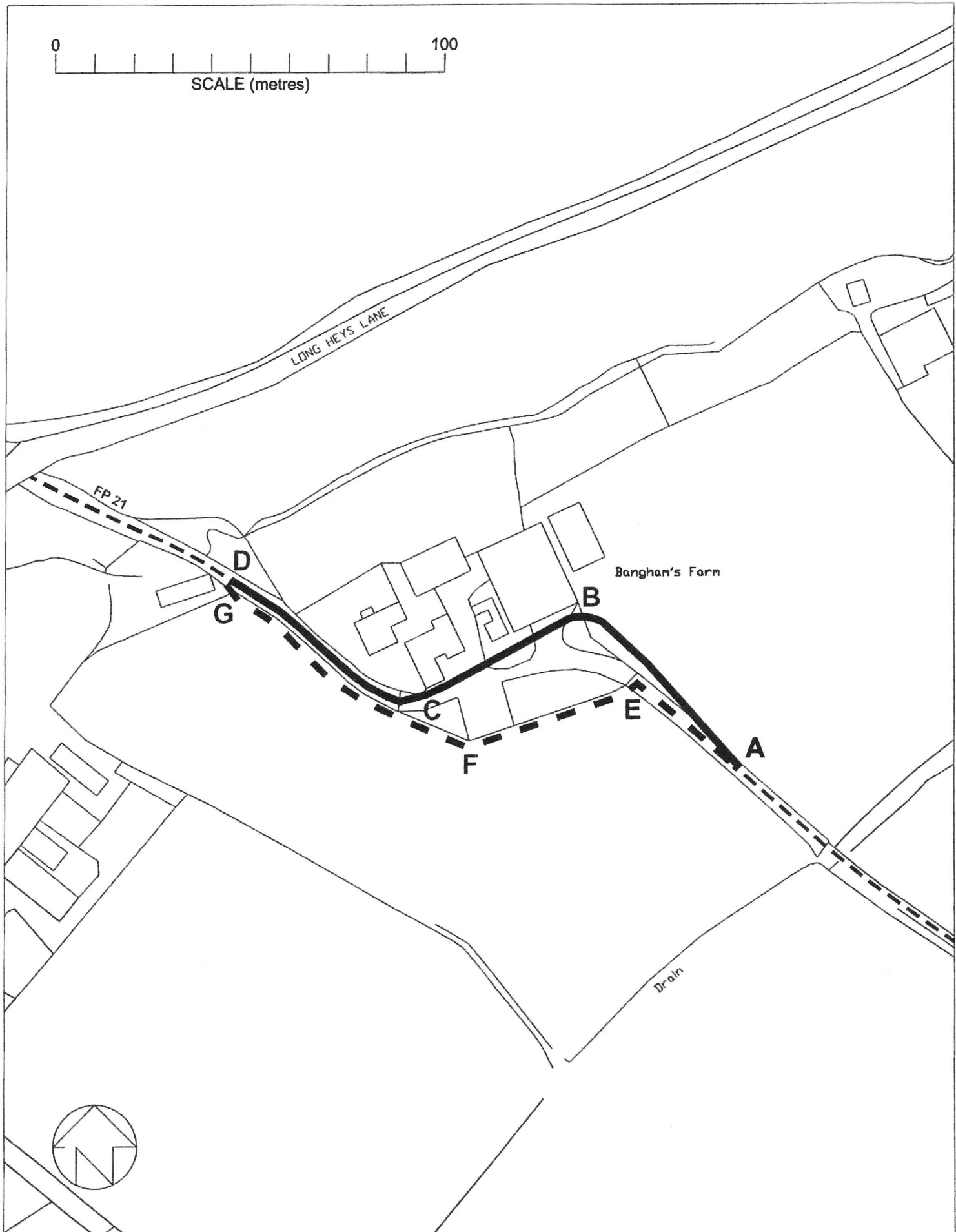
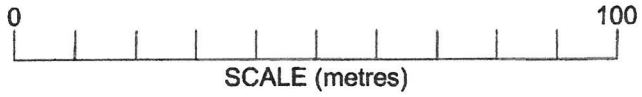
Location Plan.
Highways Act 1980 Section 119.
Proposed diversion of part of Dalton Footpath 21, West Lancashire Borough.



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PROJECT:
 Proposed Diversion of Public Footpath 21 Dalton,
 West Lancashire District

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REVISIONS / NOTES

- Footpath to be diverted
- New footpath to be created
- Other public footpaths

