

Lancashire County Council

Regulatory Committee

Wednesday, 27th July, 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.
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2.	Disclosure of Pecuniary and Non-Pecuniary Interests.
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	Minutes of the last meeting.	(Pages 1 - 6)
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4.	Guidance.	(Pages 7 - 30)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Definitive Map Modification Order Investigation Addition of public footpath from Railway Street to Cross Street Car Park, Brierfield, Pendle Borough	(Pages 31 - 66)
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6.	Proposed Diversion of Part of Great Harwood Footpath 1, Hyndburn Borough	(Pages 67 - 78)
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7.	Proposed Diversion of Bacup Footpath 640, Rossendale Borough	(Pages 79 - 88)
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8.	Commons Act 2006, The Commons Registration (England) Regulations 2014, Regulation 43	(Pages 89 - 96)
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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 28th September 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, 6th April, 2016 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
L Beavers	C Henig
I Brown	S Serridge
A Clempson	D Stansfield
B Dawson	P White
G Gooch	B Yates

County Councillor Lorraine Beavers replaced County Councillor Ron Shewan and County Councillor Sean Serridge replaced County Councillor Julie Gibson.

1. Apologies.

Apologies were received from County Councillor David Whipp.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None were disclosed.

3. Minutes of the meeting held on 24 February 2016

Resolved: That having accepted the amendments to the inaccuracies on page 96 of the Item 5 report relating to effect of NERC Act and restricted byway, the minutes of the meeting held on 24 February 2016 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
Addition of and upgrade to Public Bridleway from Edenfield to
Helmshore Road, Haslingden passing through Irwell Vale
File No. 804/548**

An application was presented for the addition and upgrade to public bridleway of a route from Edenfield to Helmshore Road, Haslingden passing through Irwell Vale, in accordance with File No. 804-548. This would be implemented by:

- a. Upgrade to public bridleway part of Ramsbottom Footpath 128 between point 1 and point B.
- b. Upgrade to public bridleway part of Ramsbottom Footpath 130 between points B-C-D.
- c. Upgrade to public bridleway part of Ramsbottom Footpath 131 between points E-D and points D-F.
- d. The addition of a public bridleway from a point on Ramsbottom Footpath 131 from point F to a point on Ramsbottom Footpath 130 at point G.
- e. Upgrade to public bridleway part of Ramsbottom Footpath 130 between point G and point H.
- f. The addition of a public bridleway from a point on Ramsbottom Footpath 130 at point H along Aiken Street and Milne Street to the junction with Haslingden Footpath 387 at point I.
- g. Upgrade to public bridleway the whole of Haslingden Footpath 387 between point I and point J.
- h. Upgrade to public bridleway the whole of Haslingden Footpath 388 between point J and point K.

The Committee was informed it would not be correct to add A-1 as bridleway because it was a carriageway but it was not possible to delete it from the Definitive Map and Statement due to a deficiency in the legislation.

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

Resolved:

1. That the application for the addition of and upgrade to public bridleway of route Edenfield to Helmshore Road, Haslingden passing through Irwell Vale, in accordance with File No. 804-548, be accepted save for section A-1 .
2. That Orders be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Sections 53(c)(i), (ii) and (iii) of the Wildlife and Countryside Act 1981 to add and upgrade to public bridleway the route from Edenfield to Helmshore Road, Haslingden passing through Irwell Vale on the Definitive Map and Statement of Public rights of Way as shown on the Committee Plans between points 1-B-C-D, D-E and points D-F-G-H-I-J-K
3. That being satisfied that the higher test for confirmation can be met the Orders be promoted to confirmation.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Application to upgrade Euxton Footpaths 37, 38 and 39 (Culbeck Lane) to Restricted Byway
File No. 804-574**

A report was presented on an application to upgrade Euxton Footpaths 37, 38 and 39, otherwise known as Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574.

The Committee was informed that an application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to byway open to all traffic was considered by the Public Rights of Way Sub-Committee on 15th November 1995 and rejected.

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 provided, it was proposed and seconded that the application to upgrade Euxton Footpaths 37, 38 and 39, known as

Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574 be not accepted, to which the following amendment was proposed and seconded, that the application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574 be accepted. On being put to the vote the amendment was lost. The original proposal was then voted upon and carried and it was therefore:

Resolved: That the application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574 be not accepted.

7. Urgent Business

An item of urgent business relating to an application to record a transfer of a right of common held in gross was presented at the meeting.

The Committee was informed that these rights in gross were determined by the Commons and Town Greens Sub-Committee at its meeting in September 2011.

It was agreed that this matter be determined at the meeting to enable longstanding financial and legal issues to be resolved prior to the next meeting of the Committee which was not until 8 June 2016.

Details of the application and supporting evidence received from the applicant, were presented both as part of the report and at the meeting.

The Committee agreed that the application was well founded and that it be accepted and a transfer of the right of common be recorded in the Commons Register.

Resolved: That the application be accepted and the transfer of rights in gross be recorded in the Commons Register in accordance with the Commons Registration (England) Regulations 2014 that Mr Paul John France and Mr Mark Kelsall France are entitled to the right to graze 79 and a half sheepgates over the whole of CL23.

8. Date of Next Meeting

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 8th June 2016 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 27 July 2016

Electoral Division affected: <u>All</u>
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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 27 July 2016

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

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

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

(1) Where—

- (a) the owner, lessee or occupier of land or the operator of a railway requests an authority to make a public path order under section 26, 118, 118A, 119 or 119A of the 1980 Act, or
- (b) any person requests an authority to make a public path order under section 257 or 261(2) of the 1990 Act, and the authority comply with that request, they may impose on the person making the request any of the charges mentioned in paragraph (2) below.

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there 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 27th July 2016

Electoral Division affected: Brierfield and Nelson North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of public footpath from Railway Street to Cross Street Car Park, Brierfield, Pendle Borough

File No. 804-501

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a public footpath from Railway Street to Cross Street Car Park, Brierfield, in accordance with File No. 804-501.

Recommendation

1. That the application for a public footpath from Railway Street to Cross Street Car Park, Brierfield be accepted in part:
 - a) A-B-C-D-E to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-501, to be accepted; and
 - b) E-F-G to be not accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Railway Street to Cross Street Car Park, Brierfield on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E.
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 onto the Definitive Map and Statement of Public Rights of Way of a public footpath from Railway Street to Cross Street Car Park, Brierfield; a distance of approximately 60 metres and shown between points A-B-C-D-E-F-G on the Committee plan.

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

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

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

An order for 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

Pendle Borough Council

Consultations were initially carried out in 2010 and the Borough Council’s Engineering and Special Projects Department responded on behalf of one of the land owners, Housing Pendle with the following:

“The application is for the footpath marked A-B-C (*A-G on the Committee plan*) on the attached map. The section A-B (*A-E on the Committee plan*) is a section of path surfaced with flagstones. This is evidently fairly well used giving access onto the car park off Cross Street.

From point B-C (*E-G on Committee plan*) there is no existing public access. It is questionable whether the user evidence is valid for this part of the claimed route. Most users use the path A-B (*A-E*) and then gain access to Cross Street across the car park.

Older maps show that houses 2-16 Vine Street previously stood on the site of the car park. It can be seen that there was a back street along 2-16 Vine Street. It is possible that this may have carried highway rights for pedestrians. It is less clear whether there was access along the claimed route at the side of 16 Vine Street to the front of Vine Street.

I have briefly discussed this issue with the Council's parking manager and she had indicated that she would have no objection if a public right of way was dedicated across the car park to provide a convenient route from point B (*point E on Committee plan*) to Cross Street. The applicant may be willing to modify the claim to exclude the section of path B-C (*point E-point G*) if a creation agreement could be used to give access to Cross Street."

In 2016 additional consultations were carried out as time had lapsed. The Borough Council responded outlining their ownership and provided no comments regarding the application.

The dedication of a route from point E on the Committee plan, across the car park to exit onto Cross Street has not been pursued.

Nelson Town Council

Nelson Town Council were consulted in 2010 and no response was received from them. It is assumed that they have no comments to make.

Brierfield Town Council

Brierfield Town Council were consulted in 2016 and no response has been received, it is also assumed they have no comments to make.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – 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	Description
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	(SD)	
A	8456 3643	Open junction of route with Railway Street adjacent to 27 Railway Street
B	8456 3645	Point at which the route appears to narrow on OS maps dating from 1893 (1 st edition 25 inch map) to 1932 (3 rd edition 25 inch OS map)
C	8456 3646	Point at which the route exited onto a back street (no longer in existence) to the rear of a row a terrace houses on Vine Street (now demolished) but shown on OS maps dating from 1893 to 1961.
D	8456 3647	Line across route shown on OS maps from 1893 to 1932 at north eastern end of back street adjacent to a property (now demolished)
E	8456 3647	Point at which the route now exits onto south west corner of car park
F	8456 3647	Line across the route on OS maps dating from 1893 to 1961.
G	8456 3649	Unmarked point on ground

Description of Route

A site inspection was carried out on 25 April 2016.

The route commences on Railway Street immediately to the west of 27 Railway Street (point A on the Committee plan). Access onto the route is open and unrestricted adjacent to the gable end of 27 Railway Street (to the east) and a low stone wall (to the west). From point A the route follows a stone flagged path along the edge of the building open to a flagged area to the west where a metal seat is located. The flagged area is overgrown and in disrepair and does not appear to have been maintained recently.

The flags continue from point A to the rear of 27 Railway Street from where the route continues in a generally northerly direction bounded on either side by fencing at a width approximately 1.2 metres. The route is overgrown and difficult to walk between point B and point E on the Committee plan.

At point E the route exits onto a tarmacked car park and continues along the western perimeter of the car park towards point G.

Just south of point F on the Committee plan the route is crossed by wooden fencing forming perimeter fencing of 13 Vine Street and beyond the fencing the route continues for a short distance across the garden of 13 Vine Street to point G.

The total length of the route claimed is 60 metres. When inspected the route was overgrown and difficult to use between point A and point E. From point E access was available in an easterly direction across the car park to exit onto Cross Street or in a north easterly direction across the carpark to the flagged pathway signed as Vine Street. From point E it was possible to walk the line of the route towards point F along the edge of the carpark but from just south of point F the route was blocked by a wooden fence beyond which it continued to an unmarked point in the garden of 13

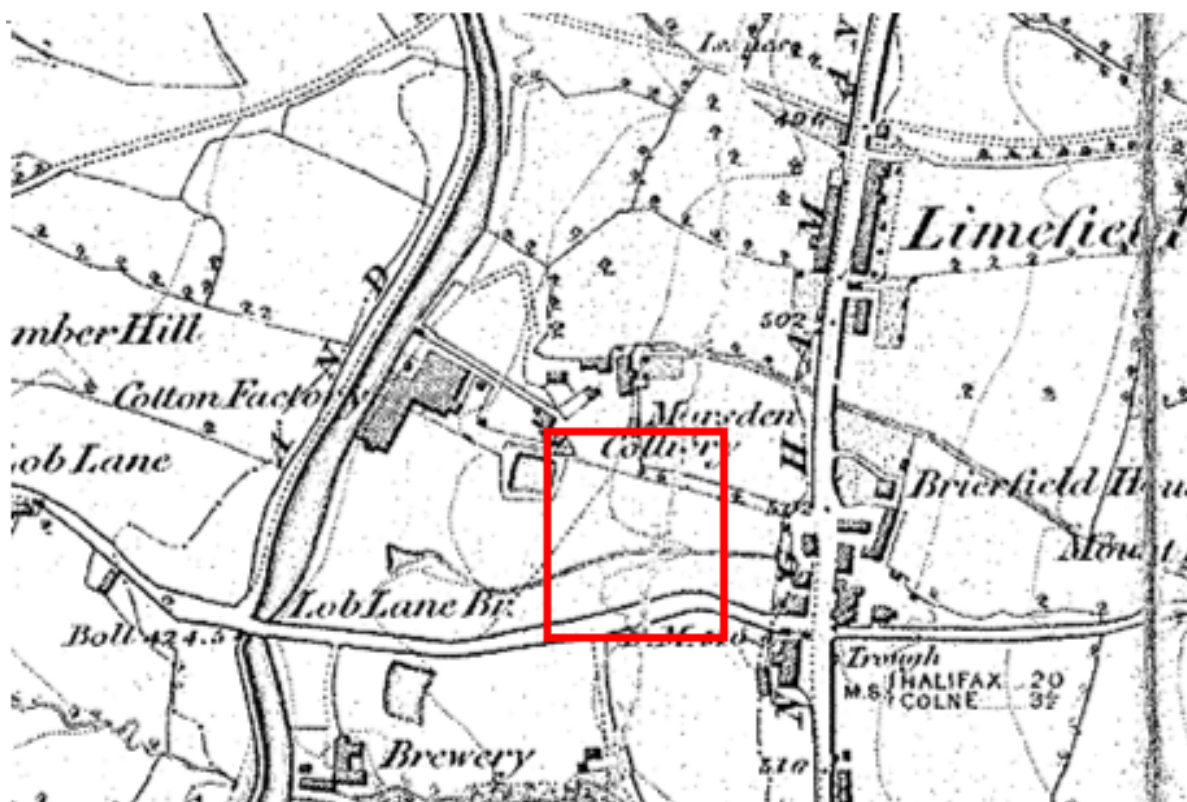
Vine Street. There was no access to point G along the route or from point G to a publicly recorded highway or 'place of public resort'. Point G does not connect to pathway known as Vine Street.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route probably did not exist.
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 and the two were not differentiated between within the key panel.
Observations		The route is not shown.
Investigating Officer's Comments		The route probably did not exist.
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 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route is not shown.
Investigating Officer's Comments		The route probably did not exist.
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

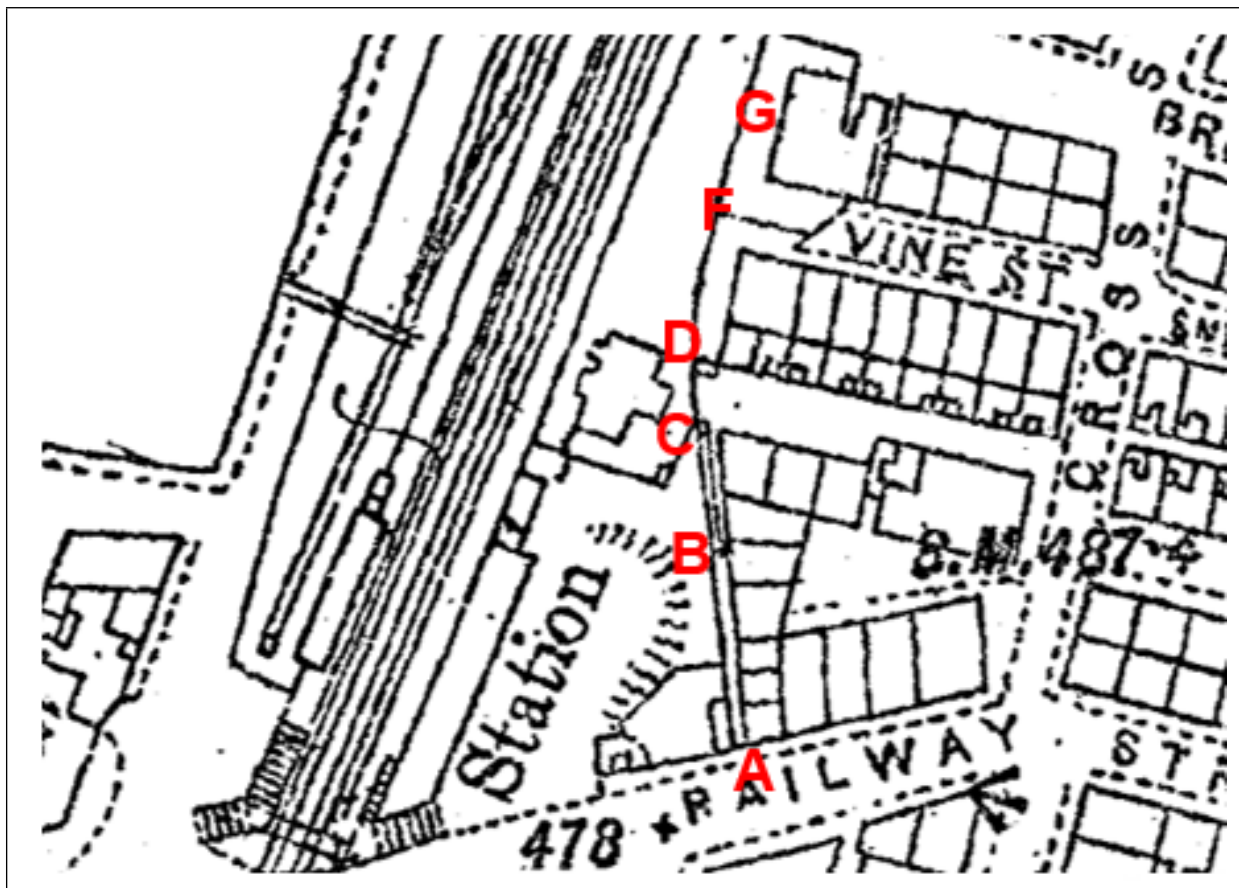
		crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route is located to the east of a railway line originally constructed in the mid 1800's by the Lancashire and Yorkshire Railway and known as the Clifton, Accrington and Colne line. No plans or records relating to the construction of the railway have been found which show the route or the land crossed by the route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Brierfield has not been examined as it pre dated the construction of the railway and adjacent properties.
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 over which the route is found.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 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



Observations		The route is not shown. The road now known as Railway Street can be seen but the railway is not shown and the area crossed by the route is undeveloped.
Investigating Officer's Comments		The route did not exist in 1844.
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.

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 railway is shown, together with the railway station west of the route. Railway Street is shown and named and a bounded strip of land corresponding to the alignment of the route is shown from point A extending in a generally northerly direction to point B. A line is shown across the route at point A and a further line is shown across it at point B beyond which there a line marked along the middle of the enclosed strip of land (the route) to the point at which it exits out onto an unnamed street at point C. The unnamed 'street' is to the rear of a number of terraced properties built along the south side of Vine Street (named). The route crosses the western end of the 'un-named street' to point D where it passes through a small rectangular shaped feature beyond which there is a strip of land consistent with the position of the route between point D and point F. At point F the route is crossed by a further line and continues north to terminate at an unmarked point on a strip of land immediately to the west of a property at the north western end of Vine Street. Vine Street (on its original alignment) is shown and named on the map but ends further

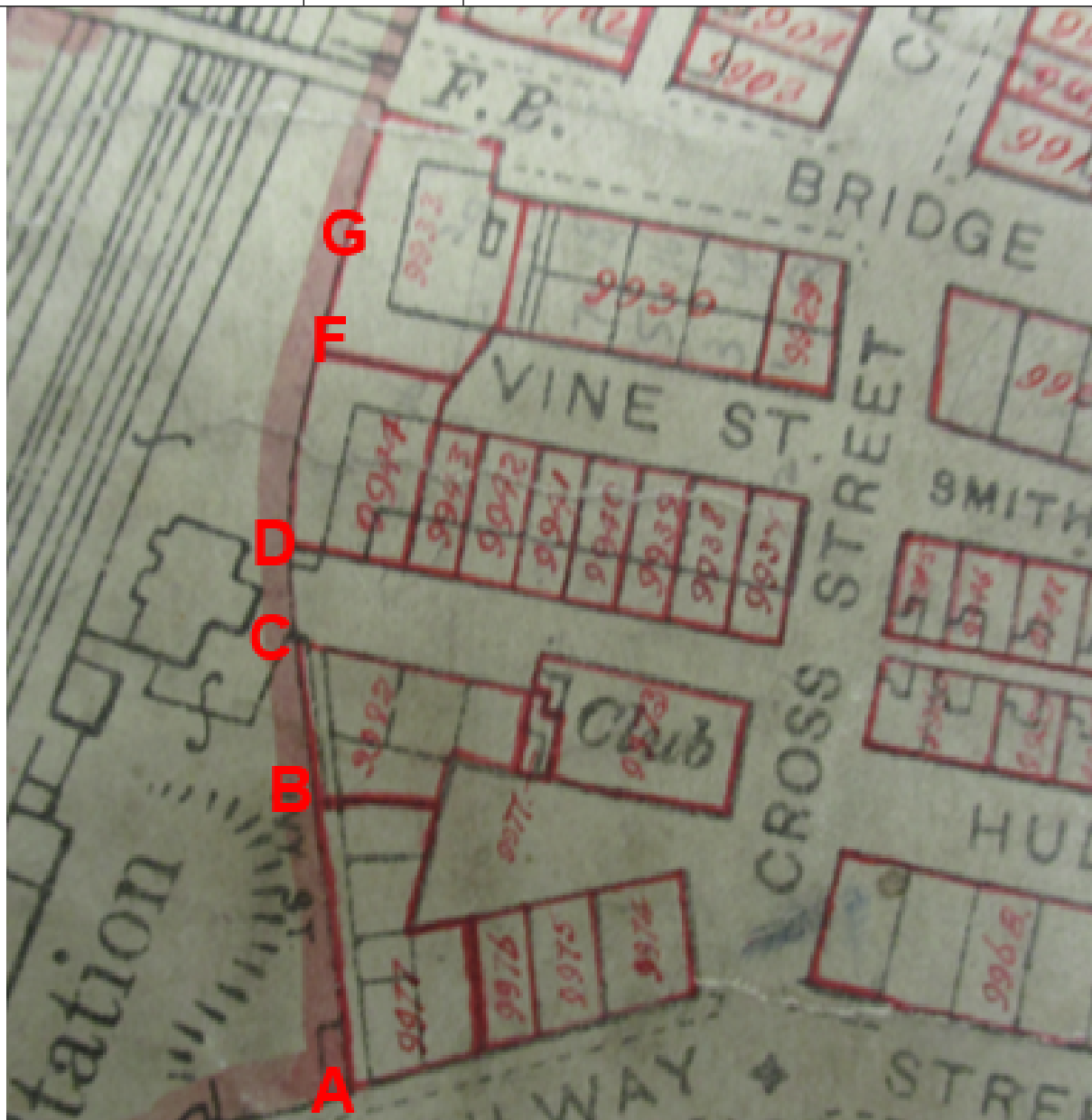
		east than the route and does not connect to it.
Investigating Officer's Comments		Development had taken place in the later part of the 1800s including the construction of the railway, a number of terraced houses and Vine Street. Vine Street did not extend as far as point G. Parts of the route appear to have existed in 1891 but there are a number of lines shown across it suggesting that access may have been restricted and from point D to point G the route appears to have crossed the enclosed gardens of two properties. The route does not appear to have formed a through route from point A to point G when the area was surveyed by the Ordnance Survey in 1891.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1912.



Observations		The route is shown between point A and point C and is named as Ivy Street. Access onto the route is open at point A. The route is shown bounded on either side but from point B the width appears to be reduced by a line running down the middle to point C. From point C the
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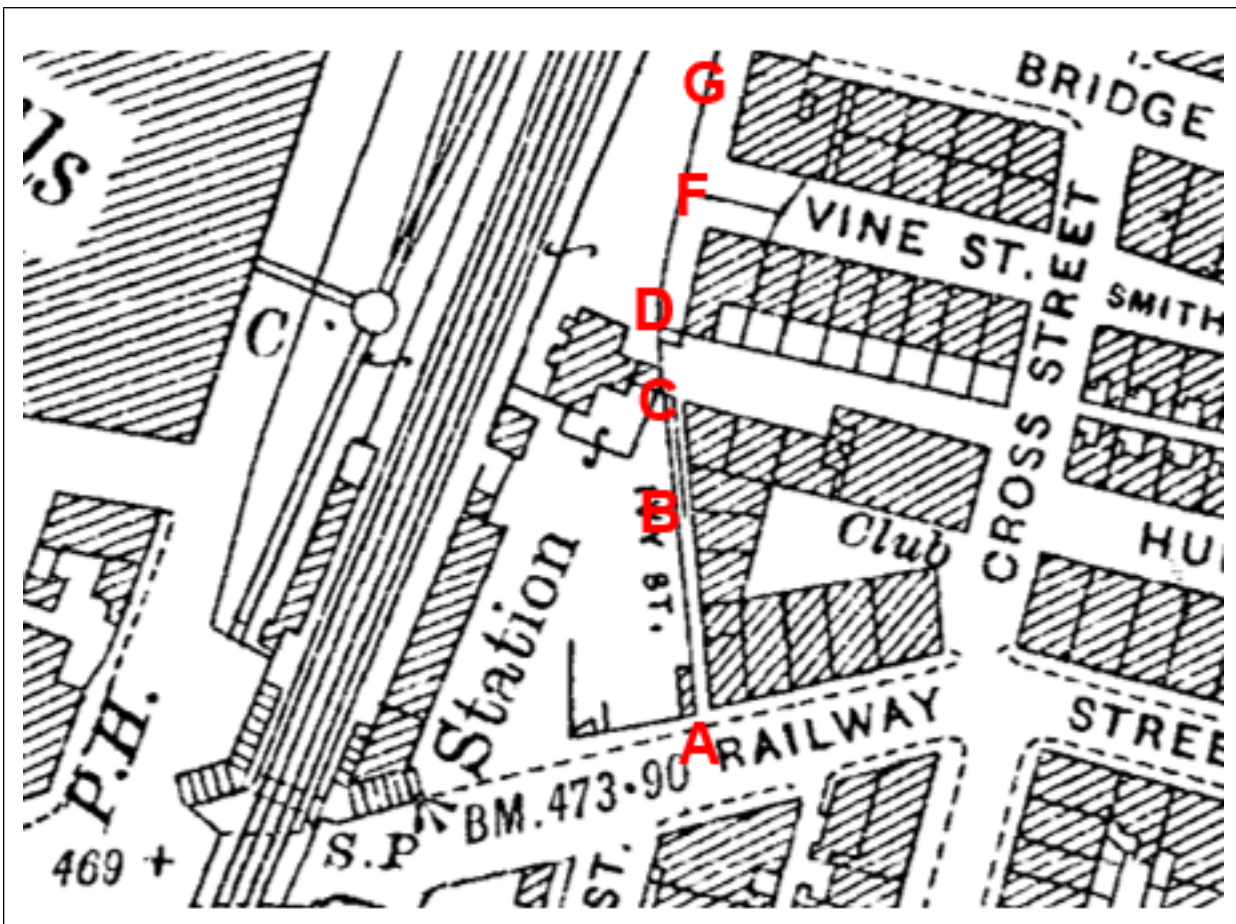
		<p>route continues in a generally northerly direction across the eastern end of an unnamed street to point D. Immediately south of point D there is a small enclosed rectangular area of land which may have prevented or restricted access.</p> <p>Beyond point D to point F the route crosses a piece of land bounded to the east by the gable end of a row of terrace houses and is crossed by a line at point F. It then continues in a generally northerly direction across land to the west of a further property on Vine Street to an unmarked point to the west of a property.</p>
Investigating Officer's Comments		<p>The route existed in 1910 between point A and point C and was named as Ivy Street providing access through to an unnamed street at point C. Access though point D to point G does not appear to have been available and a through route does not appear to have existed connecting Railway Street to Vine Street. The configuration of boundaries on the land crossed by the route between point D and point G is suggestive of the enclosure of garden areas belonging to the two most westerly properties on Vine Street.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of</p>

		<p>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 Valuation Maps and Records held by the County Records Office were examined.</p> <p>Between point A and point B the route was included in plot 9977 and between point B and</p>
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		<p>point C it was included in plot 9982. Both plots were recorded as being privately owned and occupied and no deductions were claimed for public rights of way or user. Between point C and point D the route is not included within any numbered plots but is shown to be part of the un-named street connecting to Cross Street and bounded on either side by numbered plots. Between point D and point F the route is included within plot 9944 and from point F to point G it is within plot 9933 both of which were recorded as being privately owned and occupied properties for which no deductions were listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>The Valuation records do not provide any supporting evidence regarding the existence of the route in 1910. Only the section between point C and point D is excluded from the numbered plots which indicates that it may have been considered to be part of a public vehicular route at that time.</p> <p>Public Footpaths are not normally excluded from numbered plots. The fact that no deductions are claimed suggests that the route between point A-B-C and point D-E-F-G was not considered to be a public footpath – or that the landowners did not wish to claim for and acknowledge its existence at that time.</p>
25 Inch OS Map	1932	<p>Further edition of 25 inch map (surveyed 1891, revised in 1929 and published 1932.</p>



Observations		The map remains unaltered from the earlier edition published in 1912.
Investigating Officer's Comments		<p>The route between point A and point C appears to have existed when the map was revised in 1929 and was known as Ivy Street. It could be accessed from an unnamed back street shown as connecting to Cross Street.</p> <p>The route from point D to point G probably did not exist in 1929.</p>
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



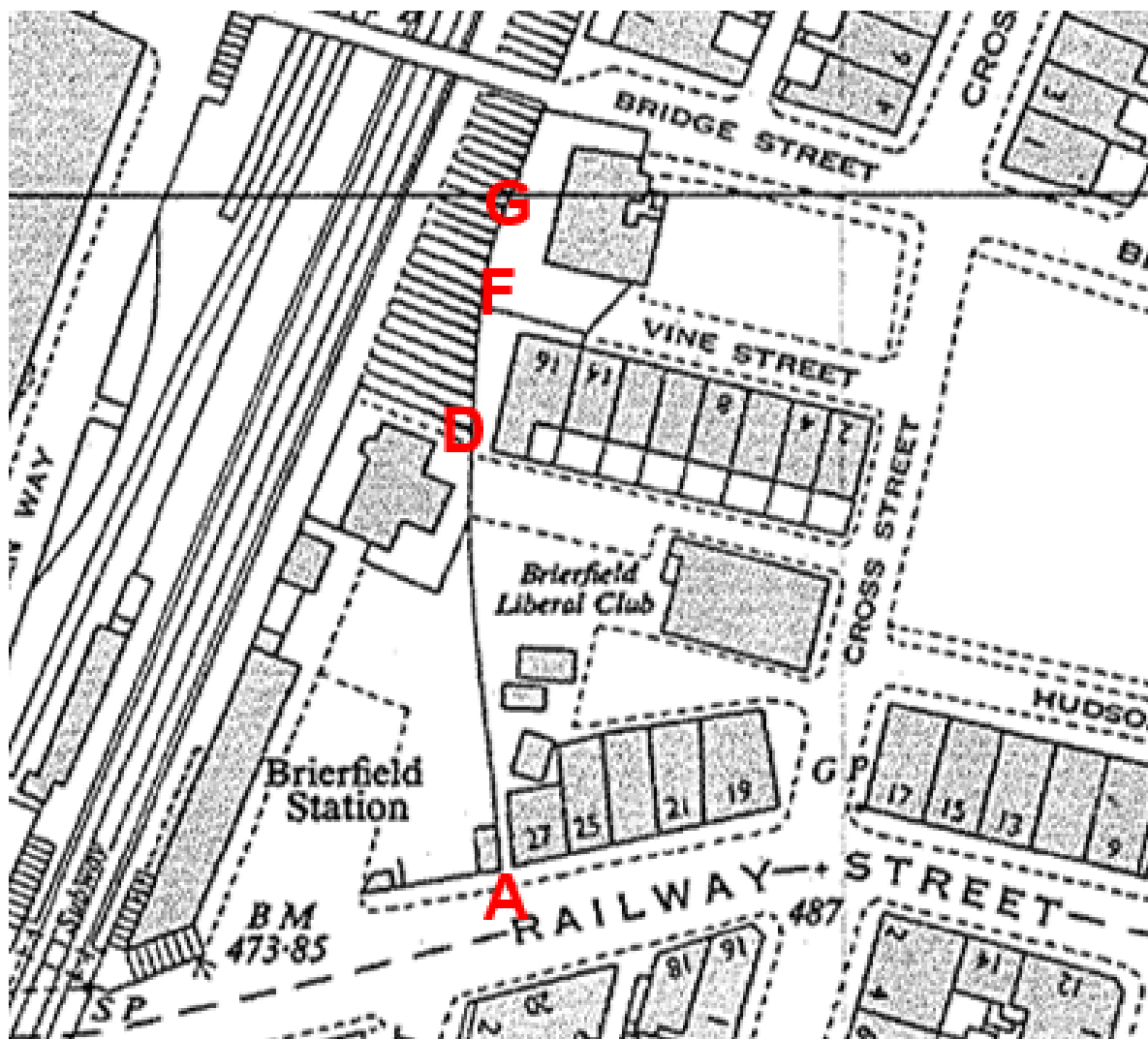
Observations		The route is not shown. Railway Street is shown and the area within which the route is contained is shown bounded by Cross Street, Bridge Street and the railway. None of the houses or roads providing direct access to the houses within this area are shown.
Investigating Officer's Comments		The route (or part of it) may have existed and may have been capable of being used. However, the scale of the map and the purpose for which it was produced means that in built up urban areas in particular, only those routes considered to carry public vehicular rights were likely to be shown.
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 clarity of the photograph makes it impossible to see whether the route was accessible in the 1940s. However, the outline of the buildings appears to be consistent with the 25 inch OS map published in 1932 and a line can be seen from point A to point C suggesting that this part of the route probably existed at that time and that access was available from point C onto the unnamed street linking to Cross Street. It is not possible to see whether access was available through point D to point F and point G. A route can be seen from close to point F passing through point G and continuing in a generally north easterly direction to exit onto Bridge Street.
Investigating Officer's Comments		The aerial photograph is consistent with what is shown on OS mapping around that time but it is not possible to see with any certainty whether the route – or any part of it – was accessible.
1: 2500 OS Map	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1959

and published 1961 as national grid series.

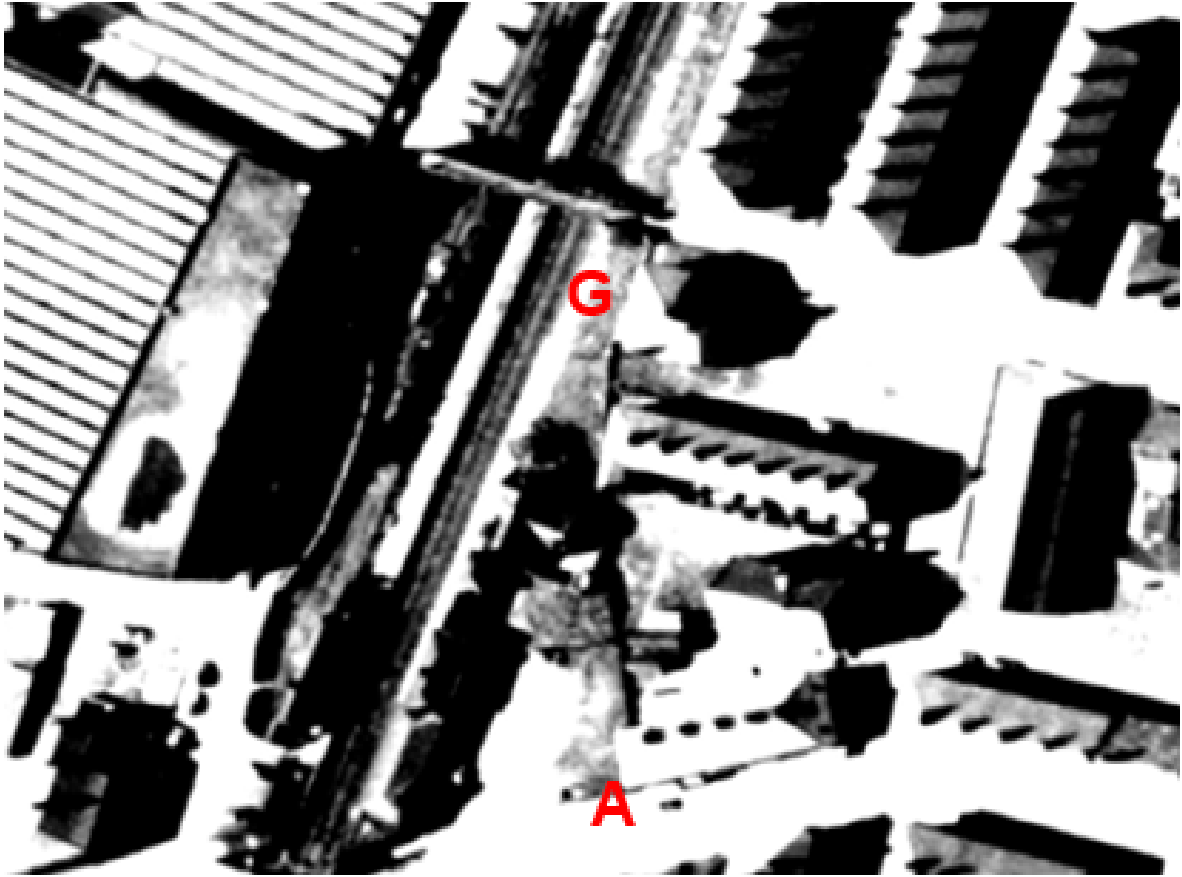


Observations

The area has undergone some changes since the earlier OS mapping detailed above. Access onto the route at point A is open and the route appears to be available through to point C where it connects to the unnamed street providing a link through to Cross Street. Access may have been available from point D alongside 16 Vine Street but the route is then crossed by a line at point F. No route is marked on the map between point D and point G and the land crossed by the route between these two points still appears to form the gardens of two properties at the western end of Vine Street.

Investigating Officer's Comments

The route may have existed between point A and point C connecting to an unnamed street. The route from point C to point D crossed the western end of the unnamed street and from

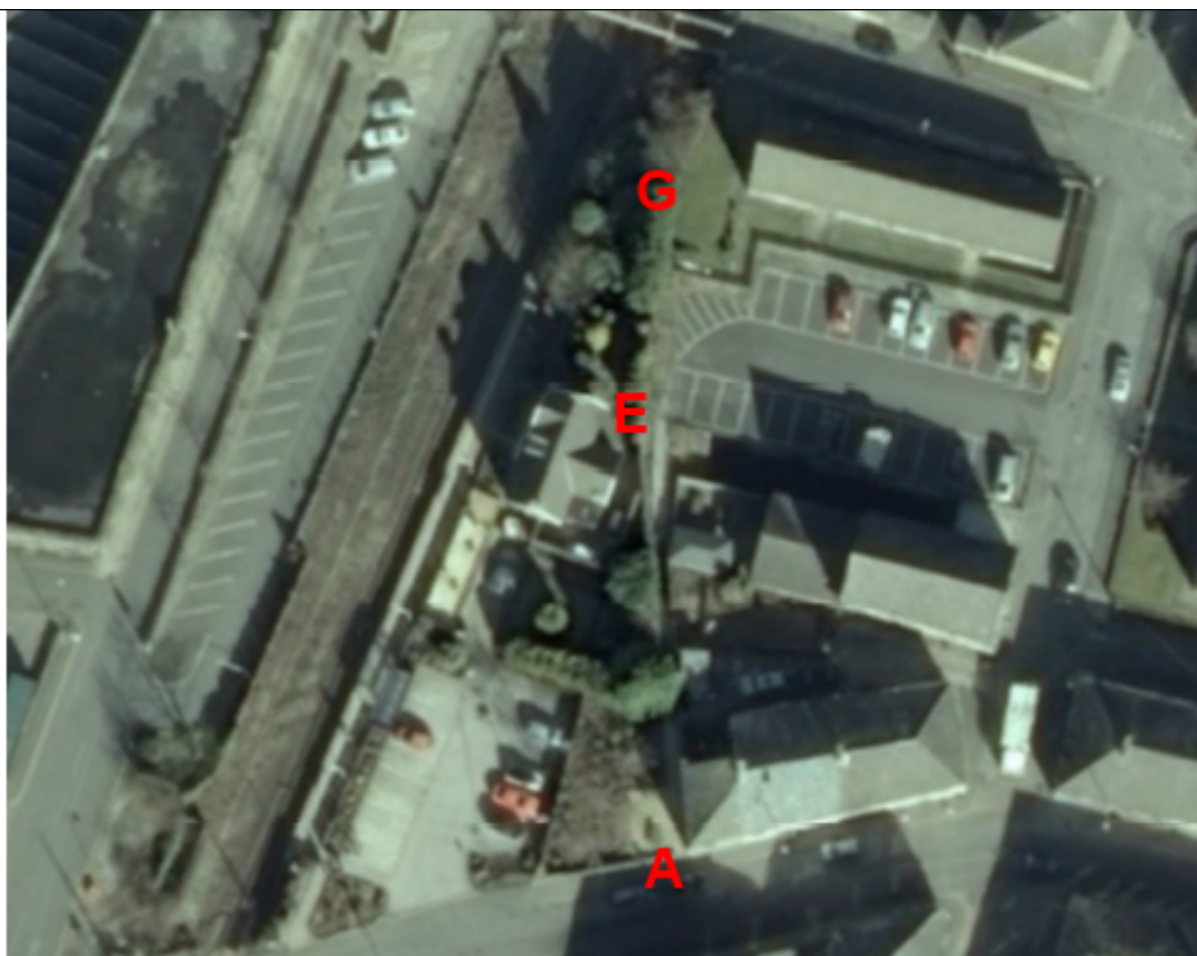
		point D to point G it does not appear that the route existed.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		It is not possible to see whether the route existed on the aerial photograph. A fence appears to exist to the west of the end of Vine Street which, if it did exist, may have prevented or restricted access from the route onto Vine Street at this point.
Investigating Officer's Comments		No inference can be drawn.
OS 1:1250 Map	1979	1:1250 OS plan obtained from land registry, published 1979, date of revision unknown



Observations		<p>By the time that the OS published their 1:1250 map in 1979 properties 2 – 16 Vine Street had been demolished together with the larger property which had previously existed at the north west end of Vine Street. New properties along the north side of Vine Street had been built and Vine Street itself had been shifted to the north.</p> <p>The route is not shown as a defined feature but access appears to be available along the full length. Vine Street is shown extending further west than it is now shown but does not connect to point G.</p>
Investigating Officer's Comments		Access may have been available along the full length of the route in 1979.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		Further changes have taken place since 1979 with the car park area being altered to provide a grassed area in front (south) of 13 Vine Street. The route appears to be accessible between point A and point E and is quite clearly shown on the photograph. From point E it appears that access was available across the car park to exit onto Vine Street or Cross Street. It is not possible to see whether access was available between point E and point G.
Investigating Officer's Comments		Between point A and point E the route appeared capable of being used in and a defined route can be seen. Access across the car park to exit onto Cross Street appears to be available. No inference can be drawn regarding access between point E and point G.
Aerial Photograph	2010	Aerial photograph available to view on GIS.



Observations		On the aerial photograph taken in 2010 it is possible to see the landscaped area and flagging that had been carried out near point A at least a year earlier (see Google street view photographs later in report) and a well-defined route is visible from point A to exit the car park at point E. From point E to point G the route is not visible on the ground and appears to be crossed by fencing close to point F.
Investigating Officer's Comments		The route existed between point A and point E in 2010. Beyond point E it appeared possible to exit onto the car park to continue onto Vine Street or Cross Street. The route between point E and point G did not appear to exist.
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-	The initial survey of public rights of way was

	1952	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		Brierfield was an Urban District Council
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 of Public Rights of Way for Brierfield and there were no representations made to the County Council in relation to it.
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 there were no representations made to the County Council in relation to it.
The First Definitive		The Provisional Map, as amended, was

Map and Statement		published as the Definitive Map in 1962.
Observations		The route under investigation 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.
Observations		The route under investigation is not shown on the Revised Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown from the public 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,</p>

		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.
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Observations		The route is not recorded as being publicly maintainable on the List of Streets and Vine Street, to which the Applicant described the route connecting to, is not shown as being publicly maintainable.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Highway Stopping Up Orders	1835 - 2016	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records

		Office contain highway orders made by Districts and the County Council since that date.
Observations		A search was made to see whether any record could be found of the stopping up or diversion of Ivy Street, Vine Street or the un-named street from the route to Cross Street. No reference to the route or streets listed being stopped up or diverted could be found.
Investigating Officer's Comments		No inference can be drawn.
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 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 available to view online.



Observations

The 2009 photograph shows the landscaping work that had been carried out by the Pendle Borough Council Environmental Action Group. The newly laid flags extend from point A along the route towards point B but do not appear to continue much beyond the rear of the property (27 Railway Street).

The photograph taken in 2015 shows that access onto the route was still available but that it had become overgrown.

		No photographs were available on Google Street View of point G.
Investigating Officer's Comments		The route from point A was available to use in 2009 and work had been carried out to include it as part of a more attractive area to access. The route was still available to access at point A in 2015 but was more overgrown.
Photograph submitted by the Applicant	2010	Photograph submitted to LCC by applicant showing that notice of application had been posted on site.



Observations		The photograph shows the route from point E looking back towards point A and confirms that
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		the full length of the route from point A to point E had been flagged as part of environmental improvement works.
Investigating Officer's Comments		The route existed and was available to use in 2010.

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 landowners affected by the application are as follows:

Jonathan Howard Roberts and Janet Ann Thain, Clungunford House, Clungunford, Craven Arms SY7 0QL – land affects Point A and near Point B shown on the committee plan

The Residential Organisation Limited, Molteno House, Regents Park Road, London N3 2JX – land affects Point C shown on the committee plan

Wendy Michelle Goodall, Station House, Railway Street, Brierfield, Nelson BB9 5PJ – land affects Point C shown on the committee plan

Pendle Borough Council have leases near Points F and G shown on the committee plan

Part of this route is unregistered.

Summary

The route is not shown to exist on any of the early commercial maps or the First Edition 6 inch map published in 1848 and the area it crossed was shown as being undeveloped.

By 1891 the railway had been built together with the houses adjacent to the start of the route at point A and the houses on Vine Street. The route may have existed in 1891 between point A and point C at which point it exited onto an un-named street providing access to the rear of the properties on Vine Street. No record of the un-named street being recorded as a public highway could be found and it no longer physically exists since the demolition of the houses on Vine Street sometime between the 1960s and 1979.

The 1912 edition of the 25 inch OS clearly shows the route between point A and point C and it is named on the map as Ivy Street. It appears to provide access between Railway Street and the western end of the un-named back street and all OS maps examined through to the current day support the existence of this part of the route.

Between point D and point G the route did not appear to exist prior to the demolition of Vine Street and the houses along either side of it and appears to have crossed private gardens/yards and looks unlikely to have been accessible as a public footpath.

When the houses on Vine Street were demolished and the area redeveloped it appears that access along the route between point A-B-C was unaffected and that a route between point C-D-E came into being providing a link through to the car park area.

From point E-F-G no supporting map or documentary evidence has been found regarding the use or existence of the route.

In conclusion, a route appears to have physically existed since at least 1910 (and possibly from the 1890s) between point A-B-C although no documentary evidence was found supporting the existence of the route as a public highway.

In addition, since at least 1979, following the redevelopment of part of the land crossed by the route it appears that access has also been available from point C to the car park at point E although no documentary evidence was found supporting the existence of this part of route as a public highway.

Work to resurface the route from point A to point E was carried out sometime around 2009 by an Environmental Project team working with Pendle Borough Council suggesting use was being made of the route by the public at that time and supporting the user evidence submitted as part of the application.

Head of Service – Legal and Democratic Services Observations

In support of the application the applicant has provided copies of 6 user evidence forms, the information provided on these forms is summarised below.

5 users stated that they have known the route for 20, 22, 25, 30 & 55 years and one user did not provide a response to this question. All 6 users have used the route on foot and have not provided any details of using the route by any other means. The years in which the users have used the route varies from 1970s – present time, 1986-1999, to 'periodically', 'donkey's years' and all the 55 years that specific user has known the route.

The main places the users were going to and from include Brierfield shopping centre, Railway Street, bus stop, shops, Town Hall, King Street and Veevers Street. The main purposes for using this route are for visiting shops, hairdressers, to catch a bus, to reach home and to visit friends.

4 users agree the route has always run along the same line and all the users agree that there are not stiles / gates / fences along the route and none of the users have ever worked for a landowner or have been a tenant for any of the land over which the route crosses. None of the users have ever been stopped or turned back when using the route, nor have they heard of anyone else being stopped or turning back, they have never been told that the route they were using was not a Public Right of Way and have never seen any signs along the route and never asked permission to use the route.

At the end of completing the user evidence form, users are asked to provide any additional information they have, this information is set out below.

- "The Brierfield group who looks after the railway station and surrounding garden round the car park re-flagged the beginning of the footpath and an extended part of the area on the left side of the footpath to make a picnic area. Who gave them the permission to do this? No one so it's not private land."
- "Remember houses and street (Ivy Street?) and a way out onto Railway Street for Mill Workers. Was a short cut, was a house, made meals for workers a long time ago. Pathway had old York stone slabs down. Stolen in recent years??"
- "Around 1989 the Council did the path up. Lots of people used it then. Well it wasn't long before. Someone came along and took up lots of flags so we can't use the path now. Council car park. Was easy to get to catch a train using the path."
- "This path has been there for as long as I can remember by me and lots of friends over many years as a short cut. I have lived in Brierfield all my life."

In addition to the 6 user evidence forms the applicant has provided copies of the 1940's & 1960's Aerial Photographs.

Responses from others and landowners

Consultations were carried out in 2010 and 2016 with the landowners and no responses have been received apart from the response received from Pendle Borough Council on behalf of Pendle Housing Limited in 2010 as above.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Ordnance Survey Maps
- Aerial Photographs
- Google Images
- Photograph submitted by the Applicant
- Absence of gates/fences/stiles along the route
- Absence of signs and notices along the route
- Absence of action taken by landowners to discourage the use of the route

Against Making an Order(s)

- Relatively low user numbers if considering user evidence
- Route not shown on any of the early commercial maps

Conclusion

The claim is that the route A-B-C-D-E-F-G is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore 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. All evidence would appear to relate to the route A-B-C-D-E only and therefore the evaluation is on this basis.

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. The first consideration is to determine whether the route is called into question. In this matter the evidence indicates that access to the route has never been questioned or denied and therefore it is suggested on balance that the "calling into question" would be the application itself in 2009 and that the 20 year period under consideration would therefore be 1989-2009.

Six user evidence forms have been submitted of which one has been completed by the applicant. All six users claim to have known and used the route on foot "as of right". The six users indicate knowledge and use of part of the claimed route A-B-C-D-E for a continuous period of 20 years or more without interruption suggesting good user evidence for the sufficient period. None of the users confirm to have knowledge of any stiles, gates or fences across the route neither have they ever been stopped or turned back whilst using the route on foot or have knowledge of others having been stopped or turned back. None of the users have seen any signs or notices along the route, have asked permission to use the route or been told that the route that they were using was a Public Right of Way. It is therefore suggested that there does not appear to be any evidence to demonstrate a lack of intention to dedicate over the twenty years prior to 2009.

The main purposes for using the route claimed by the users is for access to local amenities including going to and from the Brierfield shopping centre, the bus stop, shops, Town Hall and the hairdressers. Users also claim to have used the route to go to and from Railway Street, King Street and Veevers Street and to reach home and visit friends supporting a route from A-B-C-D-E.

In response to the consultations carried out in 2010 a response was received from Pendle Borough Council on behalf of one of the landowners providing further evidence with regards to the use of the route A-B-C-D-E. However, the response questions the validity of any user evidence relating to the route E-F-G.

Considering also whether there are circumstances from which dedication could be inferred at common law. Whilst the route is not shown to exist on any of the early commercial maps and there is no documentary evidence to support the existence of the route as a public highway the map evidence does suggest that it is possible that part of the route between

points A-B-C may have existed in 1891. Further evidence of the existence of the route A-B-C is provided by the 1912 25 inch OS map and on all subsequent OS maps to the current day.

The evidence examined in respect of the claimed route D-E-F-G appears to show that this section of the route could not have come into existence until the re-alignment of Vine Street and the redevelopment of the surrounding area first noted by the time that the OS published their 1:1250 OS map in 1979. Prior to this it is considered unlikely that the route D-E-F-G would have been accessible as a public footpath due to it having crossed the gardens of private residential properties.

It would appear that the route between points C-D-E providing a link through to the car park area also came into existence as a result of the changes at Vine Street. The route between points A-B-C-D-E is quite clearly shown on the 2000 and 2010 aerial photographs. However, beyond point E the route appears to exit across the car park to continue to Vine Street or Cross Street. The Google Street View photographs provide further evidence of the access to the route from point A and the 2010 photograph provided by the applicant provides evidence of the existence of the route between points A-B-C-D-E.

Further to this, it is suggested that the resurfacing work carried out to the route between points A-B-C-D-E in or around 2009 provides additional evidence to support the user evidence submitted in support of the application.

No supporting map evidence has been found showing the existence of the route between points E-F-G.

It is suggested that the way this 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 1989 to 2009, in acquiescing in the use and taking no overt actions actually intended dedicating the route as a footpath and it had become a footpath accepted by the public.

Taking all of 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 the claim can be accepted in part.

Risk Management

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

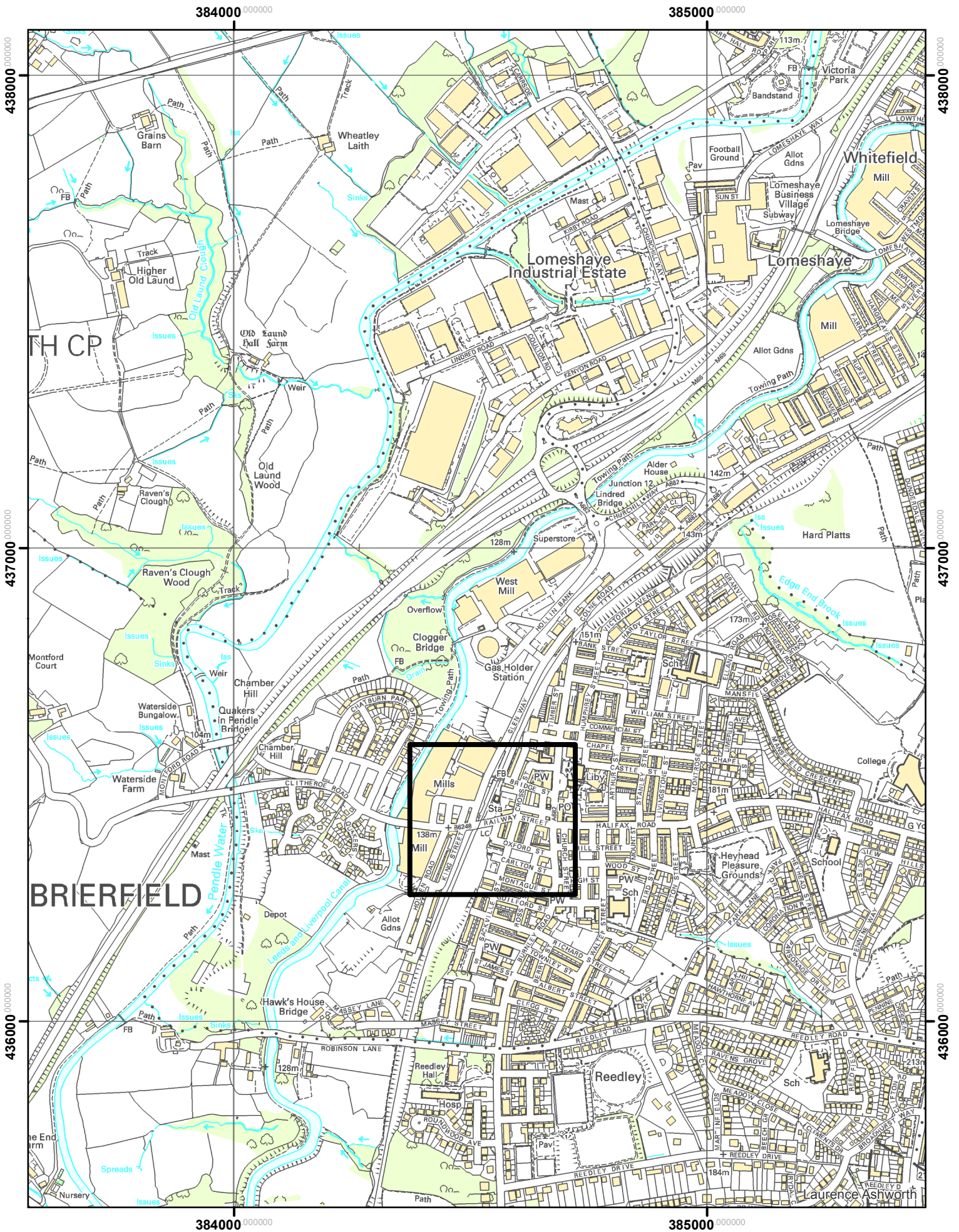
Alternative options to be considered - N/A

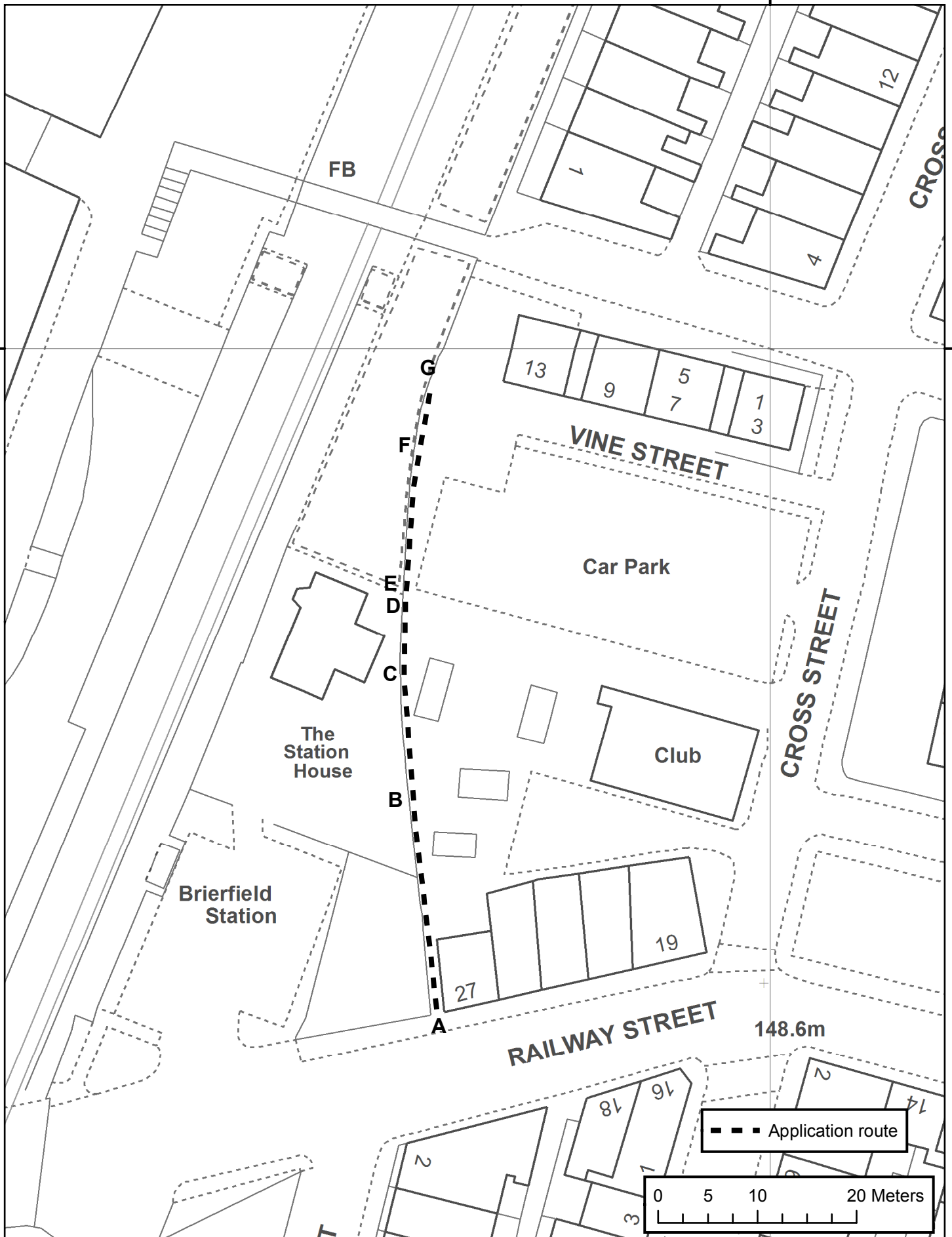
**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-501	Various	Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A





Regulatory Committee

Meeting to be held on 27 July 2016

Electoral Division affected: Great Harwood

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Great Harwood Footpath 1, Hyndburn Borough. (Annexes B & 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 Great Harwood Footpath 1, Hyndburn Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Great Harwood Footpath 1, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked A-C-B on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

A request has been received from Mr Andrew Thompson of Squires Farm, Allsprings Plantation, Great Harwood, Lancashire, BB6 7UL, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Great Harwood Footpath 1 in the vicinity of Squires Farm, Great Harwood.

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 and the proposed alternative route is shown by a bold dashed line and marked A-C-B.

The applicants' property, Squires Farm, is a residential property. The proposal, if successful would provide the owners of the property with an improvement in privacy and security.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received except from National Grid who initially objected to the proposals.

National Grid have a gas pipeline which crosses beneath the line of the proposed diversion near point A. Their initial objection was on the grounds that "the level of protection currently afforded to the apparatus it has in the subject land may be diminished notwithstanding Paragraph 4, Schedule 12, Part II of the Highways Act, 1980". The organisation subsequently withdrew its objection because "it has identified that it has no record of apparatus in the immediate vicinity of your enquiry". This reply was sent together with a map showing the line of a gas pipe crossing under the proposed diversion.

Hyndburn Borough Council has been consulted and has not raised any objection to the proposal.

The following organisations have also been consulted: Peak and Northern Footpath Society, the Hyndburn branch of the Ramblers Association and the North West regional branch of the British Horse Society. None of these have objected to the proposal.

Advice

Description of existing footpath to be diverted

That part of Great Harwood Footpath 1 as described below and shown by a bold continuous line A-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH	WIDTH
A (SD 7374 3326)	B (SD 7373 3339)	NNW for 85 metres then NNE for 55 metres	140 metres	The entire width

Description of new footpath

A footpath as described below and shown by a bold dashed line A-C-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 7374 3326)	C (SD 7376 3333)	NNE	75	2	Grass surface
C (SD 7376 3333)	B (SD 7373 3339)	NNW	70	3	Grass and compacted stone surface
Total distance of new footpath			145		

The applicant has agreed to provide a partially compacted stone surfaced path between C-B and also in the vicinity of the gateway at point B. It is the intention for the width of the stone surface between C-B to be 1.2 metres with the remaining width to be a grass verge on either side.

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

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 7374 3326 (Point A)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2006	Grid Reference SD 7376 3333 (Point C)

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 Great Harwood Footpath 1 to be amended to read as follows:

The 'Position' column to read: "Starts at F.G. and K.G. to SD 7374 3326 then:

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
SD 7374 3326	SD 7376 3333	NNE	75	2	Grass surface
SD 7376 3333	SD 7373 3339	NNW	70	3	Grass and compacted stone surface

Then to junction of paths 2 and 94. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.38 km"

The 'Other Particulars' column be amended to read "The width of the footpath between SD 7374 3326 and SD 7376 3333 is 2 metres and the width of the footpath between SD 7376 3333 and SD 7373 3339 is 3 metres. The only limitations on the section of footpath between SD 7374 3326 and SD 7373 3339 are the right of the owner of the soil to erect and maintain gates that conform to BS 5709:2006 at SD 7374 3326 and SD 7376 3333."

Officers' assessment of the proposal against the legislative criteria for making and confirming an Order.

The proposed diversion would have the effect of making a significant length of the access drive to the farm house and yard area private to the residents. This will improve privacy and will enable the residents to improve the security of their property, for example by installing lockable gates.

The applicants say they have been broken into twice and have provided details of police crime reference numbers. On one of the burglaries they reported that a roller shutter door was jammed up, resulting in a vast amount of property being stolen and major damage to a barn, where thieves attempted to drive a vehicle out.

The applicants are also concerned for the safety of footpath users because the footpath is shared with private vehicular use.

The applicants say that their privacy is affected by the public footpath because the area crossed by the footpath "is essentially our garden". Members of the public are not confined by fences on either side of the footpath and sometimes people, or their dogs, go onto the adjoining garden land which surrounds the property.

On a related theme, there are some occasions when the applicants report having been disturbed when the footpath is used by rowdy youths returning from the river which lies north of Squires Farm.

The issues which have been mentioned by the applicants provide suitable reasons which can be seen to satisfy the criteria that the proposed diversion is expedient in the interests of the owners of the land.

The proposed diversion will not alter the points of termination of Great Harwood Footpath 1, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Great Harwood Footpath 1, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus belonging to or used by Statutory Undertakers under, in, upon, over, along or across the land crossed by the present definitive route, with the exception of apparatus belonging to National Grid, who have provided a map showing

an underground gas pipeline which crosses beneath the existing path and beneath the proposed new footpath near point A. However, National Grid have now withdrawn their initial objection stating “National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry. National Grid therefore has no objection to these proposed activities”.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features.

The applicants own a majority of the land crossed by the existing footpath proposed to be diverted, and all of the land crossed by the proposed alternative route. The Land Registry do not hold any documents that confirm the ownership of an approximately 50 metre length of the existing route. It is therefore proposed that additional notices will be posted on site and advertisements will be placed in the newspaper to publish the making and if appropriate, the confirmation of the Order to notify any unknown owners or occupiers, so they have the opportunity to submit representations to the Order.

It is advised however that the unregistered land comprises part of the driveway to Squires Farm and is included within the curtilage of the applicant's property. Therefore, it is not expected that any unknown owners or occupiers of this land will be forthcoming.

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.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the alternative route is of similar gradient and length.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path or ways as a whole. It is suggested that many users might find a walk on the new route to be more enjoyable, because the existing footpath runs through the curtilage of the residential property. The proposal will divert the footpath to the east of the residential dwelling and as such, some users of the path may feel more comfortable and at ease. Furthermore, it will reduce the potential conflict between the public footpath and the vehicles on site.

The views which can be seen from the new route are little different from the views which can be seen from the existing route.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it.

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width and where necessary gates will be provided, rather than stiles.

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 gates has been selected, reducing the limiting effect of structures.

It is suggested that all the points raised in the consultation to date have been addressed above, therefore having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Stance on Submitting the Order 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 Authority take a neutral stance.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in 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

To not agree that the Order be made.

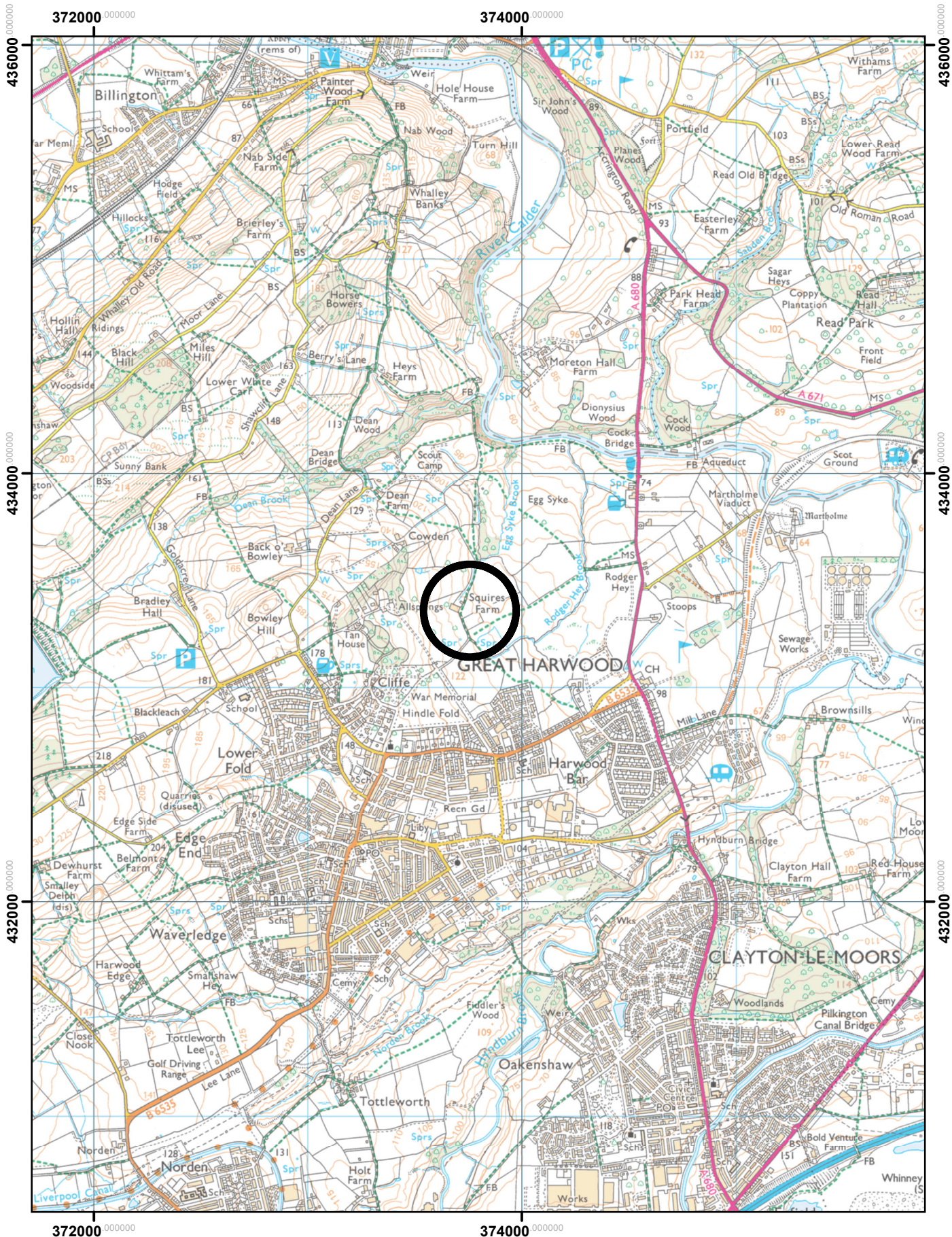
To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and promoted to confirmation by the County Council.

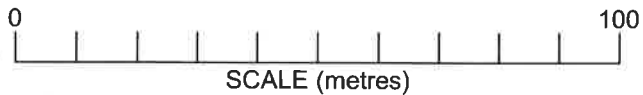
To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

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

Paper	Date	Contact/Directorate/Tel
File Ref: PRW-11-04-01		Mrs Ros Paulson Environment Directorate, 01332 533438
Reason for inclusion in Part II, if appropriate		
N/A		



Lancashire County Council	Andrew Mullaney Head of Planning and Environment	<p>Location Plan.</p> <p>Highways Act 1980 Section 119.</p> <p>Proposed diversion of part of Great Harwood 1, Hyndburn Borough.</p>	
<p>The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.</p> <p>Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.</p> <p>This Map is reproduced from the 1:24,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.</p> <p>Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p>			

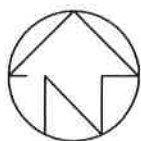


Squires Farm

Issues

Spring

Spring



FP 1

B

C

A

FP 92

FP 89



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PROJECT:
 Proposed Diversion of Public Footpath 1
 Great Harwood, Hyndburn District

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DRAWN BY: N Y

DATE: 07 May 2015

SCALE: 1:1250 @ A4

FILE REF: R2/14/173

REVISIONS / NOTES

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

Regulatory Committee

Meeting to be held on 27 July 2016

Electoral Division affected: Rossendale East

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Bacup Footpath 640, Rossendale 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 Bacup Footpath 640, Rossendale Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert Bacup Footpath 640, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked C-B 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 promote it to confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

A request has been received from a number of residents in Anderton Close and Hardman Close in Cowpe, near Bacup, Rossendale, for an Order to be made under Section 119 of the Highways Act 1980 to divert Bacup Footpath 640.

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 and the proposed alternative route is shown by a bold dashed line and marked C-B.

The application has been received from the owners of 5 properties whose land is adjacent to the line of the existing footpath, namely 8 Anderton Close, 10 Anderton Close, 12 Anderton Close, 14 Anderton Close, and 7 Hardman Close. The applicants

have applied for the diversion so that they can extend their gardens into the land currently crossed by the existing footpath.

Consultations

The necessary consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. Local rights of way user groups have also been consulted.

The footpath secretary of Rossendale Ramblers wrote to say that the footpath was obstructed by rubbish which had been thrown over the walls by the residents of Anderton Close and Hardman Close. Nevertheless, he indicated that he would not object to the proposals on condition that the footpath is properly signposted at each end.

The Chair of Rossendale Access wrote to say that she had researched some old maps which appeared to show that the existing path was part of the old road to Rochdale, inferring that the existing path carried higher rights than those recorded on the Definitive Map and Statement. She says the route appeared on the Yates map of 1786 and the Hennetts map of 1830 but suggests the route went out of use following the construction of the turnpike road through “the Glen” in 1826. Nevertheless, the route appears on the Cassini map of 1903-04 and on the old Finance Act maps.

Lancashire County Council’s Definitive Map Officer has looked very carefully at the historical mapping information which was available to her. She has concluded that whilst the route appears to have previously been used to give access to Tenter Heads (on the site of the current 9 and 11 Hardman Close) with a through route to Royds Road on foot, any vehicular rights are likely to have been private. It would appear that there is insufficient information to argue the case for A-B to carry public bridleway rights. The Chair of Rossendale Access subsequently indicated that they would be unlikely to object on these grounds in the event of an Order being made.

Advice

Description of existing footpath to be diverted

The whole length of Bacup Footpath 640 as described below and shown by a bold continuous line A-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 8367 2145)	B (SD 8376 2140)	ESE	95	The entire width

Description of new footpath

A footpath as described below and shown by a bold dashed line C-B on the attached plan (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
C (SD 8368 2146)	B (SD 8376 2140)	Generally ESE	100	2	Grass surface
Total distance of new footpath			100		

There are no surfacing works or drainage works proposed on the diverted route of the footpath.

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

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the landowner to maintain a 1 metre wide gap that conforms to BS 5709:2006	Grid Reference SD 8368 2146 (Point C)

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 Bacup Footpath 640 be amended to read as follows:

The 'Position' column to read: "Footpath commencing at its junction with Bacup Footpath 640 at SD 8368 2146. It passes through a gap in a stone wall and runs as a grassed surfaced footpath in a generally east south easterly direction for a distance of 100 metres to its junction with Bacup Footpaths 641 and 637 at SD 8376 2140. (The length and compass direction are approximate)."

The 'length' column be amended to read: "0.1 km"

The 'Other Particulars' column be amended to read "The width of the path is 2 metres wide. The only limitation is the right of the owner of the soil to maintain a 1 metre wide gap that conform to BS 5709:2006 at SD 8368 2146."

Criteria satisfied to make and confirm the Order

The County Council may make an Order under Section 119 of the Highways Act 1980 if it appears to the Committee that, in the interests of the owner, lessee or occupier of the land crossed by the path or of the public, it is expedient that the line of the path is diverted, subject to certain conditions.

In this case the application has been made by the owners of five properties on the adjoining land, not the recorded owner, lessee or occupier of the land crossed by the path. This means that the test of whether or not the diversion is expedient should not look at whether the proposed diversion is in the interests of the applicants, but whether it is expedient in the interests of the owner, occupier or lessee of the land. In other words the legislation does not allow us to make an Order in the interests of the applicants, because in this case they do not own the land.

The land is in fact owned by four registered owners who have not objected to the proposed diversion and it is apparent that there is an understanding between the landowners and the applicants that if the diversion takes place then the applicants will purchase the land crossed by the existing footpath in order to extend their gardens. Therefore, whilst it might be argued that the diversion would be in the interests of the owners of the land that the footpath is diverted so that the land can be sold at a price which exceeds its value as agricultural land, it conflicts with the current agricultural land use. This is because it would move a field edge path (as it is until the fence is moved and the gardens are extended), approximately 10 metres into the field, potentially having an adverse effect on farming operations.

The land is currently leased by a tenant farmer who also has not objected to the proposed diversion. There is no indication that it is expedient in his interests that the path be diverted.

It is however, suggested that an Order could be instead made on the grounds that it is expedient in the interests of the public,. The existing footpath runs up a wide gully with poor views, and it is poorly drained with the result that it is often very wet under foot. These natural problems are compounded by rubbish and rubble which have apparently been dumped on the land crossed by the path from some of the neighbouring properties but this could be addressed more appropriately by other means and is not a consideration for the merits of the proposed diversion. The proposed route runs along a ridge just above the gully, which by contrast it is well drained and offers excellent views across the Irwell Valley. It is advised that the public benefit of the proposed diversion, compared to the existing path, satisfies the expediency test outlined in Section 119(1) of the Highways Act 1980.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make a Diversion Order if the new termination point is on the same path or a path connected to it and is substantially as convenient to the public.

The proposed diversion will alter the western point of termination of Bacup Footpath 640 (point A) and place it at another point on Bacup Footpath 642 (point C) being the same highway. It is suggested that the proposed termination point is substantially as convenient to the public. The short distance between points A and C relative to the length of the path makes the latter point substantially as convenient as the former. It is advised that the proposal therefore satisfies the criteria in Section 119(2) of the 1980 Act.

The work which appears to be necessary to bring the site of the new footpath into a fit condition for use by the public is the formation of a 1 metre wide gap in the wall at

point C, which the applicants will arrange with the farmer. Otherwise, the land crossed by the proposed diversion was in an acceptable condition for use by the public on the last occasion a site inspection was carried out. However, if during the diversion process, the condition of the surface of the new route is found to have deteriorated then the applicants will arrange for remedial works and the extinguishment of the existing path will not come into force until the County Council has certified that any work necessary to bring the alternative route into a fit condition for public use has been carried out.

The proposed diversion follows the line of an overhead power cable. Neither the existing, nor the proposed footpath will interfere with the power cable but it should be noted that the owners of the cable did not respond to the consultation on the proposals.

It is advised that the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features.

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.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the Order, or should the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is considered that the criteria for confirming the Order can be satisfied.

It is felt that the path or way will not be substantially less convenient to the public in consequence of the diversion. The alternative route is of a similar length to the existing and whilst the western part of the new path would climb a slightly steeper slope for a few metres, it is in keeping with the terrain of a walk in this location and would not cause inconvenience to the user of the path.

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path as a whole. As already mentioned, the proposed diversion runs over land that is better drained and allows much better views of the surrounding area than the existing path.

It is felt that there would be no adverse effect on the land served by the existing route or the land over which the new path is to be created, together with any land held with it.

It is also advised that the needs of people who are elderly or disabled have been considered and as such, the proposal is compatible with the duty of the County Council, as a highway authority, under The Equality Act 2010 – formerly the Disability Discrimination Act 1995 (DDA). The alternative route will be of adequate width, passing over a better surface than the existing route and no gates or stiles will be installed across, only a gap that conforms to the minimum requirement suggested in the BS5709:2006.

Further, it is also advised that the effect of the proposed 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 gap has been selected, reducing the limiting effect of structures.

It is suggested that all the points raised in the consultation to date have been addressed above, therefore having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not agree that the Order be made.

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

To agree that the Order be made and rather than promoting it a different stance be taken regarding confirmation.

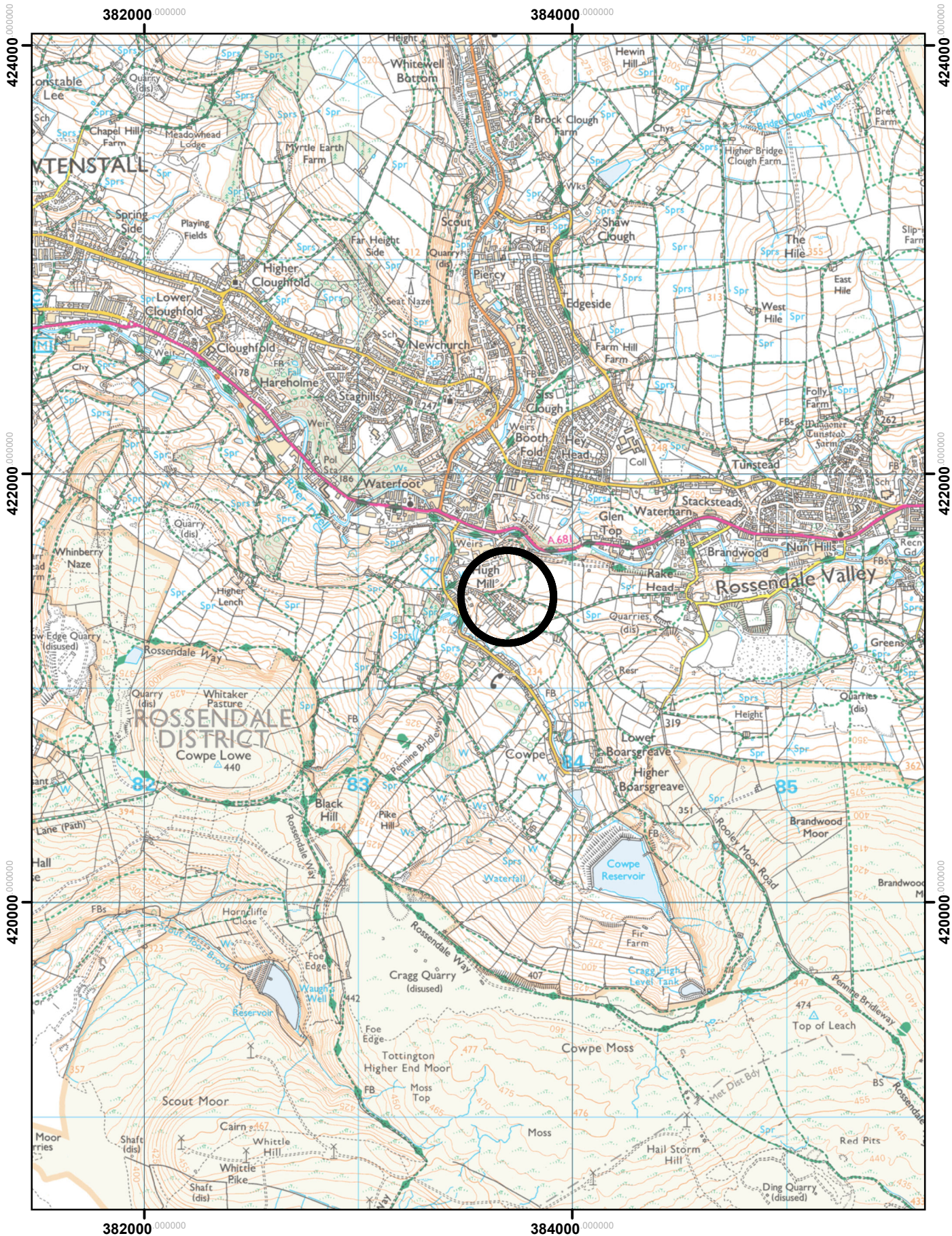
Local Government (Access to Information) Act 1985

List of Background Papers

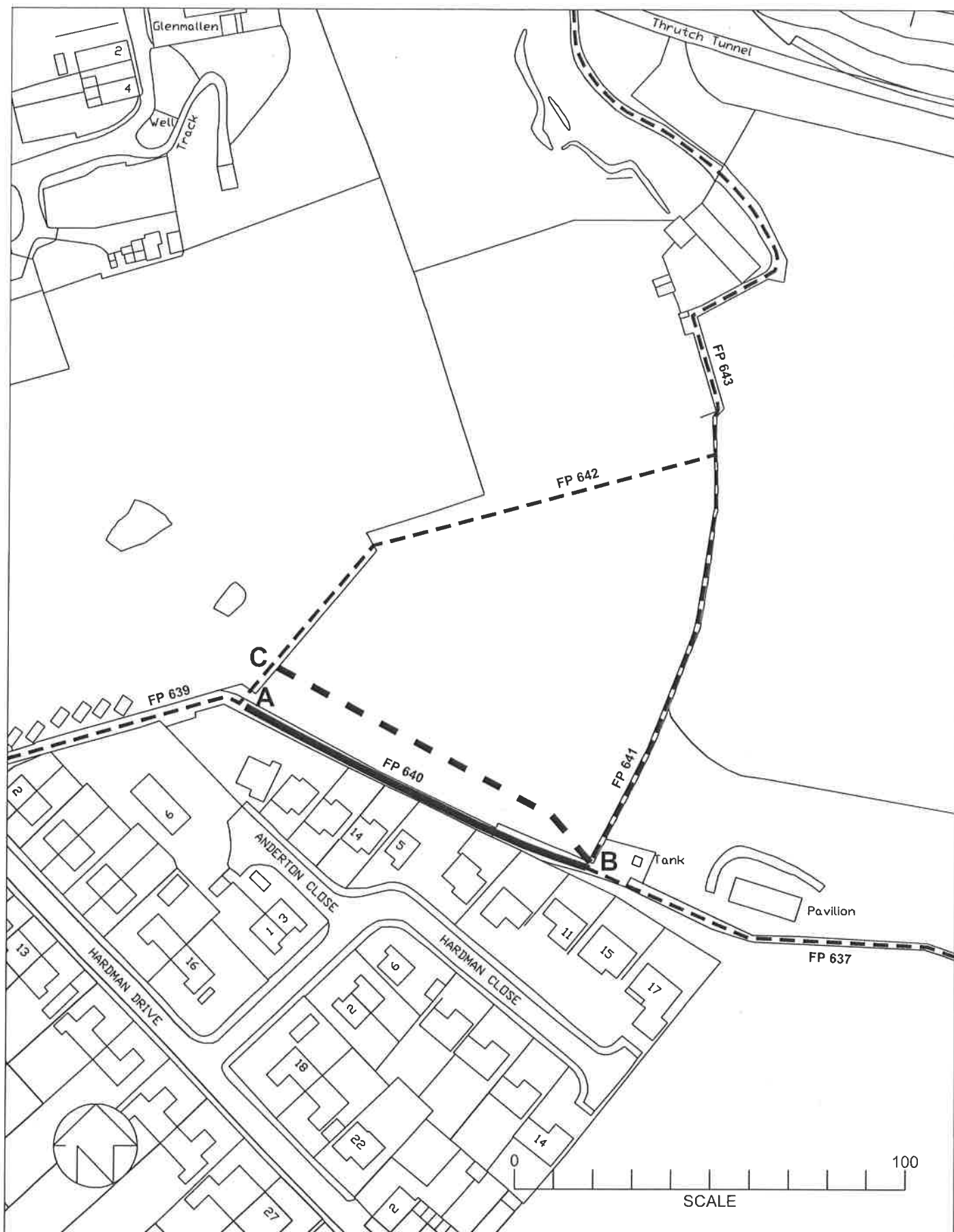
Paper	Date	Contact/Directorate/Tel
File Ref: PRW-14-01-640	07-07-2016	Mrs Ros Paulson Environment Directorate, 01772 533438

Reason for inclusion in Part II, if appropriate

N/A



Lancashire County Council	Andrew Mullaney Head of Planning and Environment	<p>Location Plan.</p> <p>Highways Act 1980 Section 119.</p> <p>Proposed diversion of Bacup 640, Rossendale Borough.</p>	
<p>The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed.</p> <p>Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.</p> <p>This Map is reproduced from the 1:24,000 Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.</p> <p>Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p>			



Borough of Pendle
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PROJECT:
 Proposed Diversion of Public Footpath 640 at
 Anderton Close, Cowpe, Bacup,
 Rossendale District

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DRAWN BY: N Y

DATE: 27 June 2016

SCALE: 1:1250 @ A4

FILE REF: R2/14/168

REVISIONS / NOTES

- Footpath to be diverted
- Proposed diversion
- Other public footpaths

Regulatory Committee

Meeting to be held on 27th July 2016

Electoral Division affected: Lancaster Rural East
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Commons Act 2006

The Commons Registration (England) Regulations 2014

Regulation 43

(Appendices 'A' and 'B') refer

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 Ireby Green, Ireby, being entry 4 in the Rights Section of Register

Contact for further information:

Danielle Jay, (01772) 535526, Legal and Democratic Services

danielle.jay@lancashire.gov.uk

Executive Summary

An application from John Douglas James Welbank and Sylvia Margaret Welbank for a Declaration of Entitlement to record the rights to graze 45 Sheep on CL23, rights entry 4.

Recommendation

That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with The Commons Registration (England) Regulations 2014 and that Mr John Douglas James Welbank and Mrs Sylvia Margaret Welbank are entitled to exercise the part of the right attached to Ireby Green, Ireby, namely the right to graze 45 sheep gaits over CL23.

Background and Advice

The 2006 Act makes provisions by Regulations for commons registration authorities to record in their registers of common land that a person is entitled to exercise some or all of the rights attached to a particular piece of land. The rights remain attached to the land but can at the moment be exercised by the owner and the application in this matter is that this is the case and should now be registered.

Regulation 43(1) states 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 is attached or leasehold owner in any such land.

In this matter the rights are attached to Ireby Green, Ireby, shown edged red on the supplemental map in Appendix 'A', the rights attached to this land are to graze 101 sheep gait over register unit CL23, 1 sheep gait representing a right to graze 1 sheep or 4 lambs, 10 sheep gait representing a right to graze 1 horse.

The Applicants have provided a copy of title number LA941525. This shows that part of the farm, as shown on the supplemental map is owned by John Douglas James Welbank and Sylvia Margaret Welbank, as shown on the plan marked Appendix 'B'. It has been calculated that this land is approximately 44.7% of the Ireby Green land on the supplemental map.

44.7% of the grazing rights is calculated as the right to graze 45 Sheep. Mathematically, it actually produces a fractional quantity but, following guidance from DEFRA it is advised that a right to graze a fractional animal is not recognised in law, and the fractional right has been rounded down. The Applicants are aware of this.

Notice of the application has been duly given according to the regulations and no response has been received.

It is advised that if the application is well founded the appropriate amendment to the register shall be made. Here it is advised that although the application was to record 44 sheep the correct entitlement is the rounded down figure of 45 Sheep. It is advised that the Application be accepted in part.

Consultations

Notice of the application was given on the County Council web site and also to all parties who have requested to be notified of applications under the 2006 Act.

Implications:

This item has the following implications, as indicated:

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 given, and is based upon relevant information contained in the report there are no significant risks associated with the decision-making process.

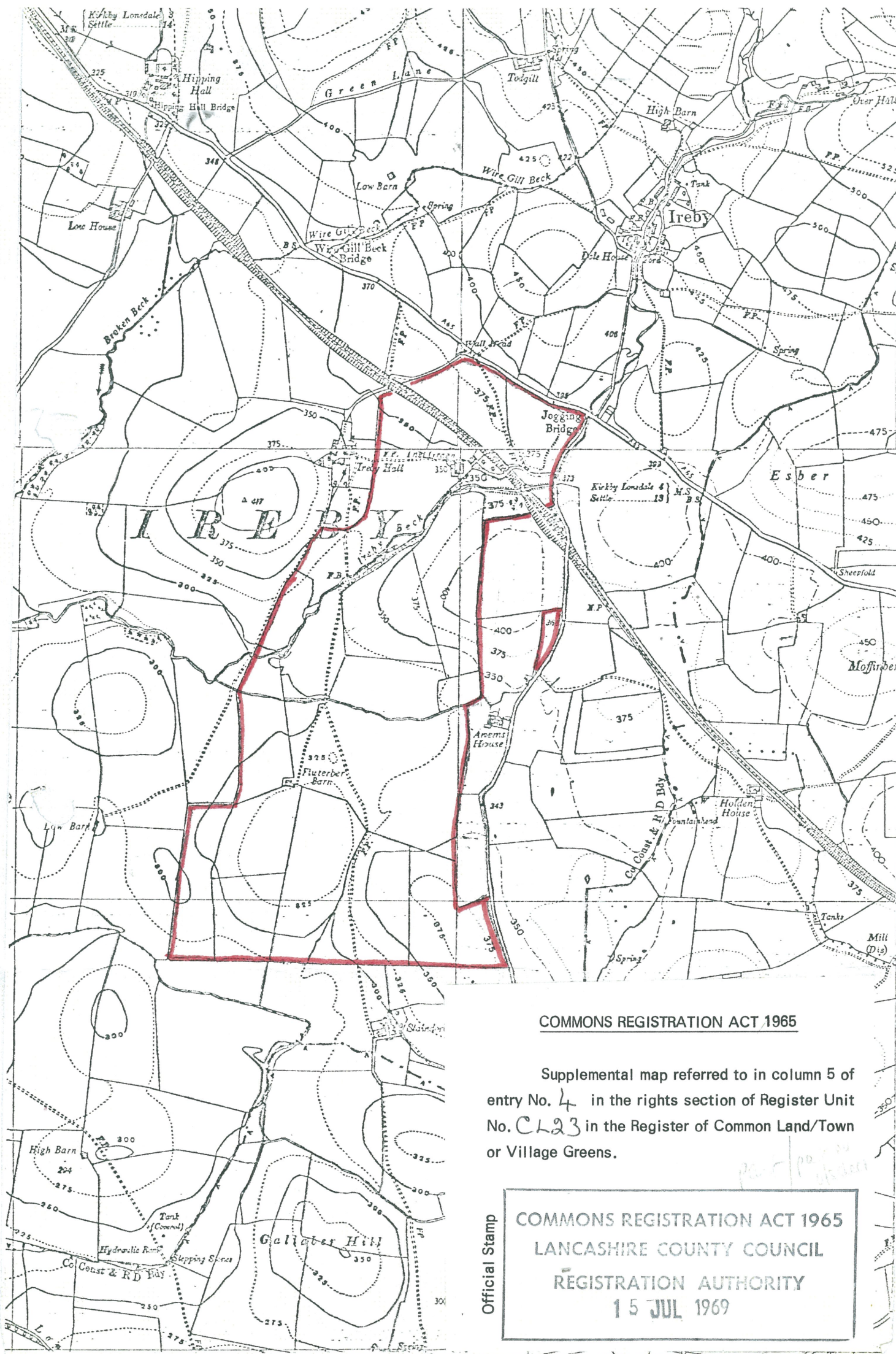
Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Tel
File of papers denoted 3.750		Danielle Jay Legal and Democratic Services Ext 535526

Reason for inclusion in Part II, if appropriate

N/A

Appendix A



Appendix B

Land Registry Official copy of title plan

Title number **LA941525**
Ordnance Survey map reference **SD6474NE**
Scale **1:5000** reduced from 1:2500
Administrative area **Lancashire: Lancaster**



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