

## Lancashire County Council

### Regulatory Committee

Wednesday, 28th September, 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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|    |                   |
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| 1. | <b>Apologies.</b> |
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| 2. | <b>Disclosure of Pecuniary and Non-Pecuniary Interests.</b> |
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

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| 3. | <b>Minutes of the last meeting.</b> | (Pages 1 - 4) |
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| 4. | <b>Guidance.</b> | (Pages 5 - 28) |
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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.

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|----|--|-----------------|
| 5. | <b>Wildlife and Countryside Act 1981<br/>Definitive Map Modification Order Investigation<br/>Addition of a Byway Open to all Traffic on Highgate Lane, Bryning with Warton, Fylde<br/>File No. 804-580</b> | (Pages 29 - 36) |
|----|--|-----------------|

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| 6. | <b>Wildlife and Countryside Act 1981<br/>Definitive Map Modification Order Investigation<br/>Addition of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley<br/>File No. 804-579</b> | (Pages 37 - 72) |
|----|---|-----------------|

7. **Wildlife and Countryside Act 1981** (Pages 73 - 134)  
**Definitive Map Modification Order Investigation**  
**Addition of a public footpath from two points on**  
**Public Footpath 5 Wilpshire to a junction with**  
**Longsight Road/A59, Wilpshire, Ribble Valley**  
**File No. 804-567**
8. **Wildlife and Countryside Act 1981** (Pages 135 - 186)  
**Definitive Map Modification Order Investigation**  
**Upgrading to Bridleway of Footpaths 1 (part) and 8**  
**(part) Chorley, known as Common Bank Lane**  
**File No. 804-575**
9. **Wildlife and Countryside Act 1981** (Pages 187 - 204)  
**Definitive Map Modification Order Investigation**  
**Deletion of part of Footpath 130 Ramsbottom at**  
**Irwell Vale**  
**Addition of Footpath across Irwell Vale Bridge at**  
**Irwell Vale**  
**File No. 804-548b**
10. **Highways Act 1980 - Section 119A Rail Crossing** (Pages 205 - 220)  
**Diversion Order**  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Adlington Footpath 5,**  
**Chorley Borough.**
11. **Highways Act 1980 - Section 119** (Pages 221 - 232)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Parts of Rimington Footpath**  
**23, Ribble Valley Borough**
12. **Urgent Business**

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

**13. Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 16<sup>th</sup> November 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, 27th July, 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    | C Henig      |
| I Brown    | R Shewan     |
| A Clempson | D Stansfield |
| B Dawson   | D Whipp      |
| G Gooch    | P White      |
| P Hayhurst | B Yates      |

**1. Apologies.**

Apologies were received from County Councillor Julie Gibson.

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

County Councillors David Whipp and Paul White declared a non-pecuniary interest in Item 5 as they were both members of Pendle Borough Council.

**3. Minutes of the last meeting.**

**Resolved:** That the minutes of the meeting held on 6 April 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. Definitive Map Modification Order Investigation Addition of public footpath from Railway Street to Cross Street Car Park, Brierfield, Pendle Borough**

A report was presented on an application for the addition on to the Definitive Map and Statement of Public Rights of Way of a public footpath from Railway Street to Cross Street Car Park, Brierfield, in accordance with File No. 804-501.

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 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 the 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.

**6. Proposed Diversion of Part of Great Harwood Footpath 1, Hyndburn Borough**

A report was presented on the proposed diversion of part of Great Harwood Footpath 1, Hyndburn Borough.

Consultations had been carried out and no adverse comments on the proposal had been received apart from one from National Grid who initially objected to the proposals. National Grid had a gas pipeline which crossed beneath the line of the proposed diversion. Its initial objection was on the grounds that the level of protection currently afforded to the apparatus it had in the subject land might be

diminished notwithstanding Paragraph 4, Schedule 12, Part II of the Highways Act 1980. National Grid subsequently withdrew its objection because it had identified that it had no record of apparatus in the immediate vicinity of the enquiry.

Having considered all of the information set out in the report and presented at the meeting, it was agreed that an Order should be made but taking advice in Annex 'C' into account that the Authority took a neutral stance with respect to confirmation.

**Resolved:**

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 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.

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

A report was presented on the proposed diversion of Bacup Footpath 640, Rossendale Borough.

The necessary consultations had been carried out and no adverse comments had been received. Local rights of way user groups had also been consulted.

Having considered all the information set out in the report and presented at the meeting, it was agreed that an Order should be made but taking advice in Annex 'C' into account that the Authority promoted it to confirmation.

**Resolved:**

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.

## **8. Commons Act 2006, The Commons Registration (England) Regulations 2014, Regulation 43**

A report was presented on 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.

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

The Committee agreed that the application was well founded, the appropriate amendment to the register be made and the application be made.

**Resolved:** That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with The Commons Registration 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.

## **9. Urgent Business**

There were no items of Urgent Business.

## **10. Date of Next Meeting**

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 28<sup>th</sup> September 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 Wednesday 28<sup>th</sup> September 2016

Electoral Division affected:

All

## Guidance for the members of the Regulatory Committee

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

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

### Executive Summary

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

### Recommendation

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

### Background and Advice

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

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

### Consultations

N/A

### Implications:

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

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

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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



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

### **Documentary evidence**

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

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

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

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

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

### **Recording vehicular rights**

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 6<sup>th</sup> 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 Wednesday 28<sup>th</sup> September 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 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 28 September 2016

|   |
|---|
| Electoral Division affected:<br>Fylde South |
|---|

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of a Byway Open to all Traffic on Highgate Lane, Bryning with Warton, Fylde

File No. 804-580 (Annex 'A' refers)

Contact for further information:

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### Executive Summary

Application for the addition of a byway open to all traffic on part of Highgate Lane, Bryning with Warton, Fylde, in accordance with file no. 804-580.

### Recommendation

1. That the application for a byway open to all traffic on part of Highgate Lane, Bryning with Warton, Fylde, to be shown on the Definitive Map and Statement of Public Rights of Way and shown on the Committee plan between points A - B, in accordance with File No. 804-580, be not accepted.

### Background

Highgate Lane is situated off Lytham Road (A584) in the parish of Bryning with Warton, Fylde District and provides access to BAE Systems at Warton.

In June 2016 an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a byway open to all traffic on part of Highgate Lane on the Definitive Map and Statement of Public Rights of Way.

The application was made by solicitors acting on behalf of BAE Systems because the County Council List of Streets (legal record of publicly maintainable highways) recorded only the first 41 metres of Highgate Lane from the junction with Lytham Road as a publicly maintainable highway and did not record the route shown on the Committee plan between point A and point B as a public vehicular highway.

The application was supported by the submission of The Stopping of Highways (County of Lancaster) (No. 5) Order, 1959 and having examined the Order it appears

that Highgate Lane was accepted to be a public vehicular highway in the 1950s and that part was stopped up in relation to the development of the BAE site at Warton.

The Order did not stop up the first 80 yards (73 metres) of Highgate Lane from the junction with the Lytham Road (the A584) and no subsequent orders have been found stopping up any additional parts. It is therefore considered that the first 73 metres (including the route between point A and point B) is still a public vehicular highway.

On the basis of the evidence and considering the Order referred to above the County Council's highway record known as the List of Streets has subsequently been amended to show the first 73 metres (80 yards) of Highgate Lane from the junction with Lytham Road (A584) as a public vehicular highway i.e. so as to now include the section of Highgate Lane that is the subject of this Definitive Map Modification Order application.

On site the application route is indistinguishable in appearance and use from the rest of Highgate Lane and from other tarmacked highways carrying vehicular traffic nearby.

## **Consultations**

Fylde Borough Council and Bryning-with-Warton Parish Council have been consulted and to date no response has been received it is assumed they have no comments to make.

## **Head of Service – Legal and Democratic Services Observations**

Information from the Applicant

In support of the application the applicant has provided a copy of the Ordnance Survey Map dated 1909 and a copy of the Stopping up Order (No.5) 1959 No.542.

They have also provided the following information:

## **History of the Road**

Highgate Lane has been in existence since at least 1909 as shown on the Ordnance Survey Map/ Prior to 1959 Highgate Lane ran approximately 300 metres south-east from Lytham Road to the junction at what formerly comprised the southern part of Mill Lane.

On 19 March 1959, the southern part of Highgate Lane was stopped up by the Stopping Up of Highways (County of Lancaster) (No.5) Order 1959 No. 542. The plans show that Highgate Lane was stopped up approximately up to the point where the entrance gate to the BAE site is now located. The plans clearly show the remaining part of Highgate Lane was not stopped up by the Order and therefore it continued to exist as a highway.

The case of Dawes Hawkins [1860] 141 ER 1399 established the legal maxim of "once a highway always a highway". This means that once a highway comes into existence, it exists in perpetuity and cannot be extinguished nor diminished by disuse unless and until it is formally and legally stopped up.

We have not been able to find any evidence which shows that the Road was ever formally / legally stopped up as a highway. Unless it can be proven otherwise, the Road must still continue to exist as a highway.

### **Use of the Road**

In addition the BAE Site has been owned by BAE (and its predecessors) for over 60 years. It is commonly known that a public right of way over the Road has always been exercised by the general public and also by the employees and visitors of BAE as a means of accessing the BAE Site.

The entrance gate to the BAE site records in the region of 3,000 vehicle movements per day on the Road. Therefore, there is clearly sufficient use of the Road by the public in order to establish that on the balance of probabilities a public right of way subsists on the Road.

### **Amending the Definitive Map and Statement**

As the Road never ceased to exist as a highway and because and because a public right of way has been exercised on the Road for an extensively historic period, LCC's Definitive Map and Statement is required to be amended to show that a public right of way subsists on the Road.

No other responses have been received.

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

In Support of Making an Order(s)

It is considered that there is insufficient evidence in favour of making the Order sought

Against Making an Order(s)

That the route is unable to fit the description of a Byway Open to All Traffic

Conclusion

It is considered that Highgate Lane is now correctly recorded on the List of Streets as a publicly maintainable highway, i.e. is recorded consistently with the vehicular highway network.

It is the case that highways recorded on the record held pursuant to Section 36 Highways Act – the List of Streets - can also be recorded on the Definitive Map. The List of Streets records public maintainability. The Definitive Map records status of

the routes which are recordable as footpath, bridleway restricted byway or Byway Open to All Traffic. Byways Open to All Traffic are a particular type of vehicular highway of a particular character such that they can be included in the Definitive Map and Statement. Vehicular highways which cannot be classed as Byways Open to All Traffic cannot therefore be recorded on the Definitive Map but can, if publicly maintainable, be recorded on the List of Streets.

This claimed route is now recorded on the List of Streets and Committee is advised to consider whether this section of route should also be recorded as a Byway Open to All Traffic on the Definitive Map and Statement.

It is advised that as it is a tarmac public carriageway mostly used by mechanically propelled vehicles, with an adjacent footway it does not appear to meet the definition of a byway open to all traffic in section 66 of the Wildlife and Countryside Act 1981, "... but which is used by the public mainly for the purposes for which footpaths and bridleways are so used" and the Planning Inspectorate Rights of Way Section Advice Note 8 says "The test for a carriageway to be recorded on the Definitive Map and Statement as a BOAT relates to its character or type." It is suggested that this section of Highgate Lane is not of the character of a public path – it is indistinguishable in appearance and use from the rest of Highgate Lane and from other tarmac all traffic streets nearby.

It is advised that given the nature of this route it would be incorrect to record the route as a byway open to all traffic and it is therefore recommended that the application to change the Definitive Map and Statement be not accepted.

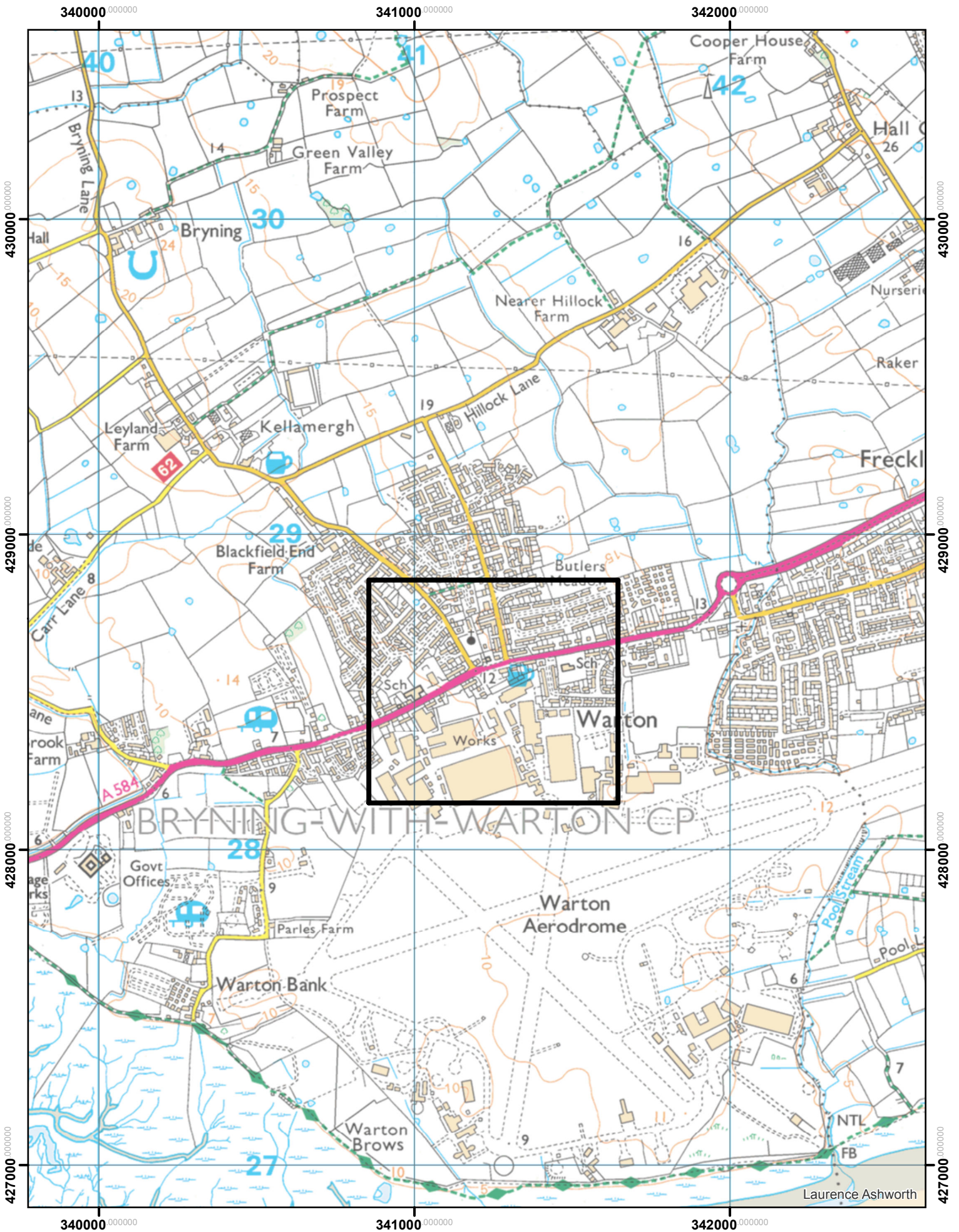
**Alternative options to be considered - N/A**

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

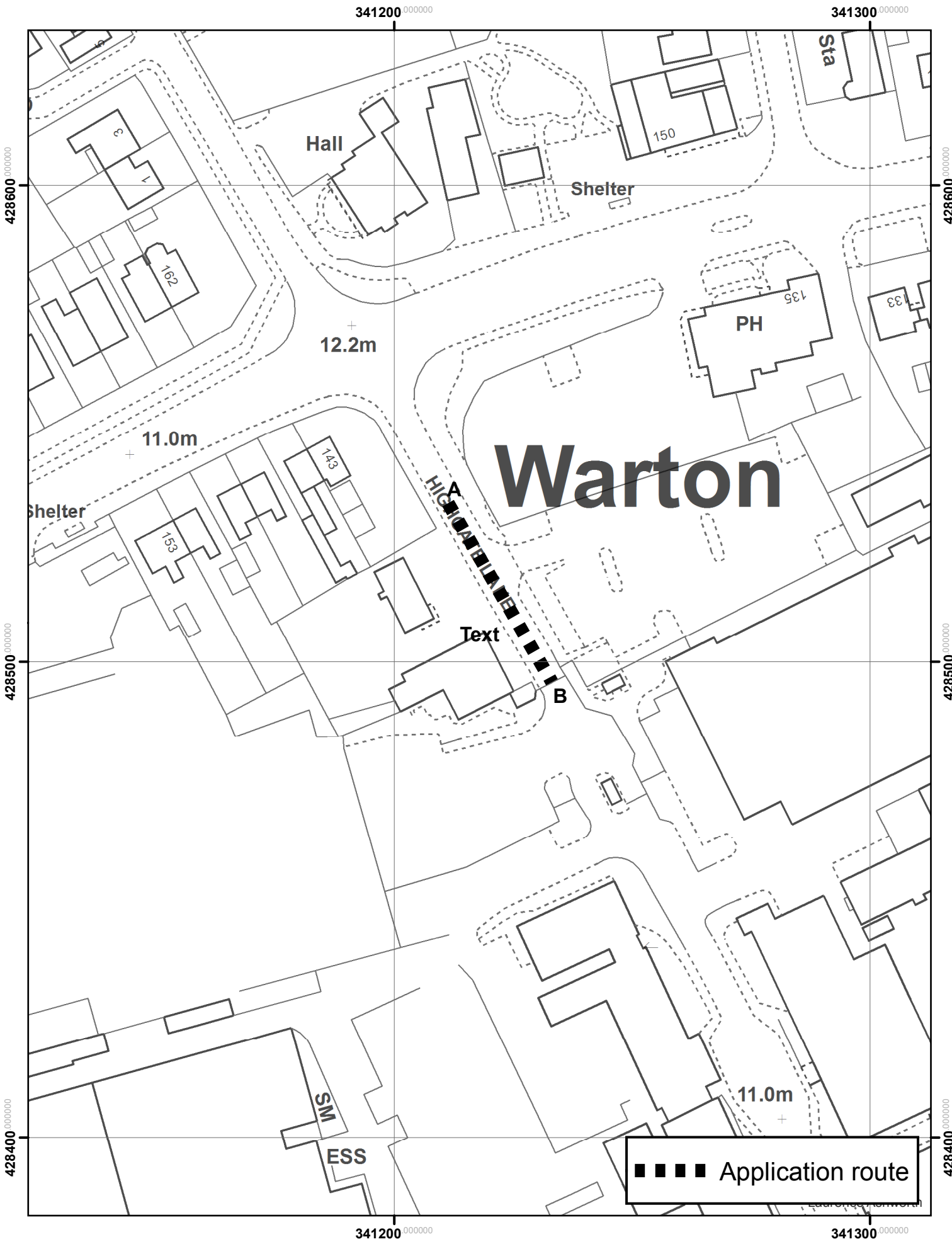
| Paper                              | Date    | Contact/Directorate/Tel                                    |
|------------------------------------|---------|--|
| All documents on File Ref: 804-580 | Various | Megan Brindle, 01772 535604, Legal and Democratic Services |

Reason for inclusion in Part II, if appropriate

N/A











## Regulatory Committee

Meeting to be held on 28<sup>th</sup> September 2016

|  |
|--|
| Electoral Division affected:<br>Padiham and Burnley West |
|--|

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley

File No. 804-579

(Annex 'A' refers)

Contact for further information:

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

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

### Executive Summary

Application for the addition of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley, in accordance with File No. 804-559.

### Recommendation

1. That the application for the addition of a public footpath from Clitheroe Street to Guy Street, in accordance with File No. 804-559, be accepted
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Clitheroe Street to Guy Street, Padiham on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Clitheroe Street to Guy Street, Padiham, as shown between point A and point C on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

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

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

An order for adding a way 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**

### **Burnley Borough Council**

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

### **Padiham Town Council**

The Town Council are the applicants for the application.

### Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

| Point | Grid Reference (SD) | Description   |
|-------|---------------------|---|
| A     | 7947 3408           | Route crossed by locked gate on junction with the northern end of Clitheroe Street. |
| B     | 7947 3409           | Route crossed by locked gate on landownership boundary                              |
| C     | 7947 3409           | Open junction with Guy Street   |

### Description of Route

A site inspection was carried out on 16 May 2016.

The route commences at the northern end of Clitheroe Street, Padiham adjacent to the Kingdom Hall.

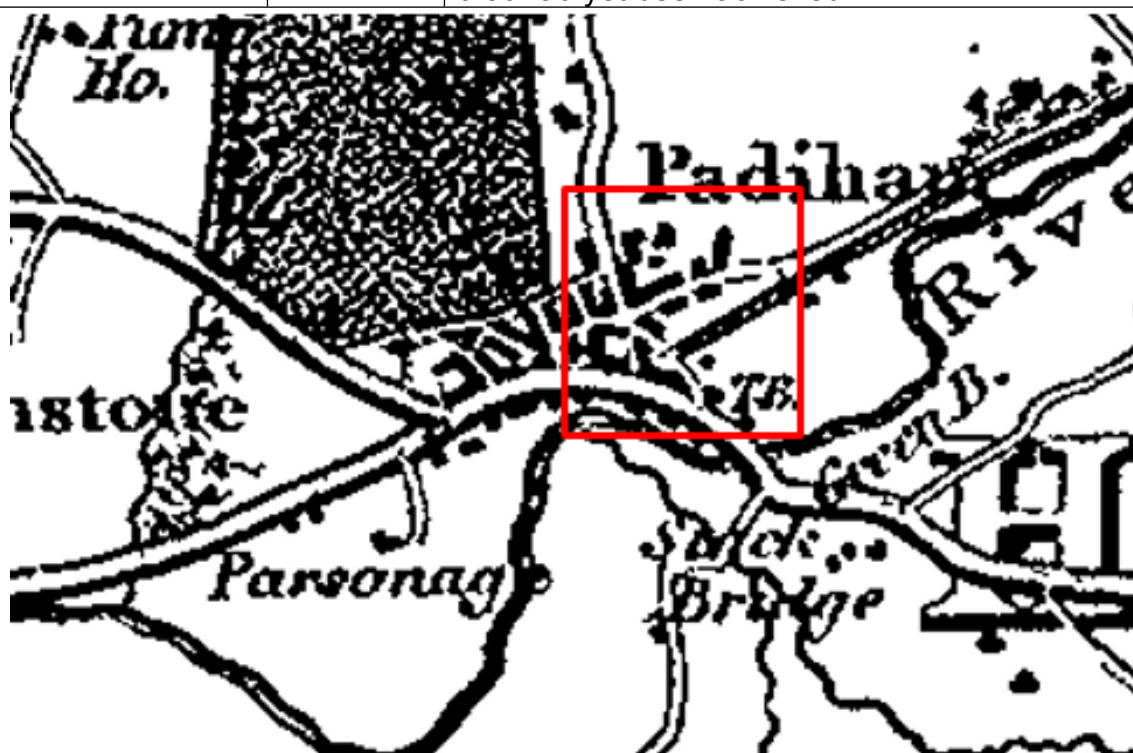
From the start of the route at point A on the Committee plan access along the route is prevented by a locked pedestrian gate. Beyond the gate the route extends in a northerly direction ascending five stone steps and then crossing an area over which bins are being stored along the eastern side of a private car park. The bins are located over and along the route but it is possible to see that a stone flagged pathway exists along the length of the route to point B marking it out separate to the tarmac car park immediately to the west and bin storage area to the east. At point B the route ascends a further 5 stone steps contained within a substantial wall. At the top of the steps, in line with the wall there is a further locked metal gate preventing access along the route. From point B the route continues across a flagged pathway to the tarmac footway adjacent to Guy Street at point C.

The total length of the route is 13 metres.

### Map and Documentary Evidence


| Document Title                  | Date | Brief Description of Document & Nature of Evidence   |
|---------------------------------|------|--|
| <b>Yates' Map of Lancashire</b> | 1786 | Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. |
| Observations                    |      | The route under investigation is not shown and   |

|                                      |      |  |
|--------------------------------------|------|--|
|                                      |      | the area where Clitheroe Street now lies appears to be undeveloped.  |
| Investigating Officer's Comments     |      | The route probably did not exist.  |
| <b>Greenwood's Map of Lancashire</b> | 1818 | Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.   |
| Observations                         |      | The route under investigation is not shown and the area where Clitheroe Street now lies appears undeveloped.   |
| Investigating Officer's Comments     |      | The route probably did not exist.  |
| <b>Hennet's Map of Lancashire</b>    | 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. |



|                                  |  |  |
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| Observations                     |  | The area crossed by the route under investigation is undeveloped and Clitheroe Street not shown. The route is not shown. |
| Investigating Officer's Comments |  | The route was very unlikely to have existed in 1830.   |

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| <b>Canal and Railway Acts</b>                     |      | Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.                    |
| Observations                                      |      | The route is not located in close proximity to any canals or railways.   |
| Investigating Officer's Comments                  |      | No inference can be drawn.   |
| <b>Tithe Map and Tithe Award or Apportionment</b> | 1839 | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. |
| Observations                                      |      | The Tithe Map for Padiham was produced in 1839 and has not been examined as the route is not shown on the early commercial maps or the OS First Edition 6 inch map (see below) and is not believed to have existed at that time.   |
| Investigating Officer's Comments                  |      | No inference can be drawn.   |
| <b>Inclosure Act Award and Maps</b>               | 1839 | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.  |
| Observations                                      |      | There is no Inclosure Award for the area crossed by the route under investigation.   |
| Investigating Officer's Comments                  |      | No inference can be drawn.   |

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| 6 Inch Ordnance Survey (OS) Map   | 1848 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>  |
|  |      |  |
| Observations  |      | The route is not shown. Buildings are shown along the southern side of Guy Street and an overlay of the alignment of the route on the 1848 6 inch OS shows that it would have passed through the buildings to right of gap within the red box imposed on the map extract. Ightenhill Street is shown on the map but Clitheroe Street is not. |
| Investigating Officer's Comments  |      | The route did not exist when the OS survey was carried out in 1844-46.   |

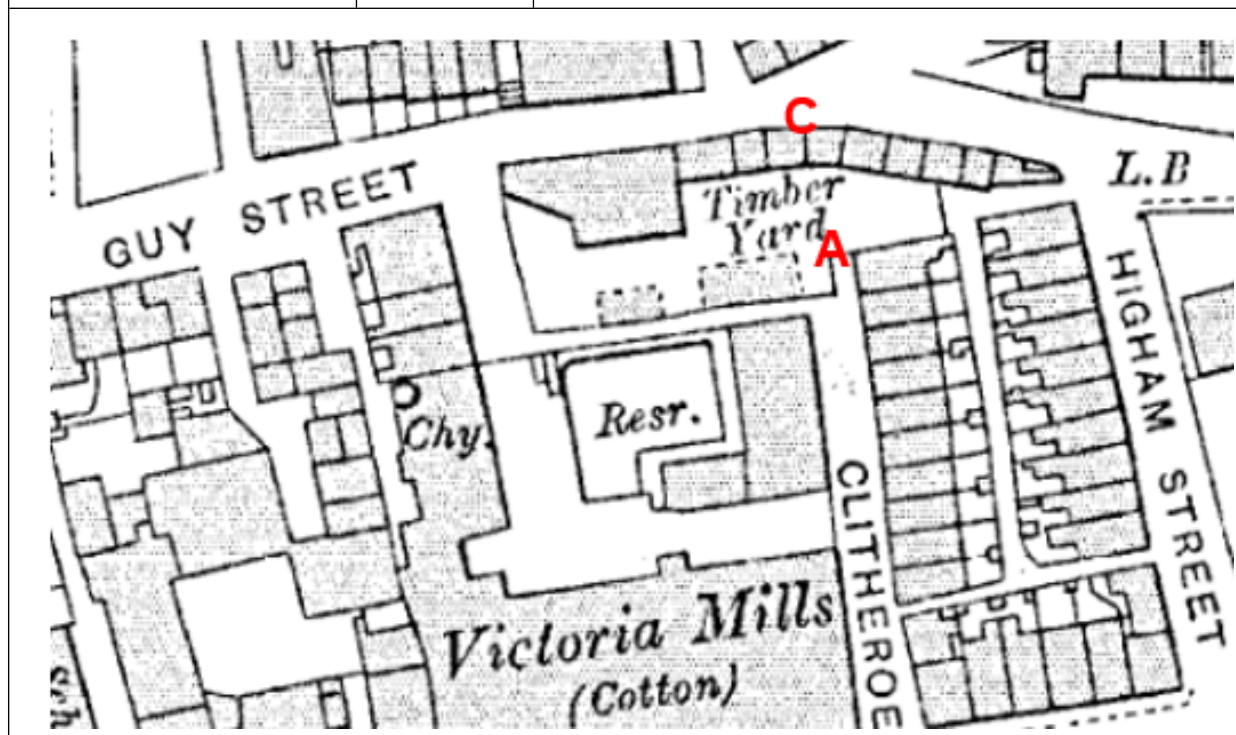
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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

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| 25 Inch OS Map | 1893 | The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1893. |
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| Observations                     |  | <p>The route is not shown. Significant development has taken place since the 1840s in the area between Ightenhill Street and Guy Street. Clitheroe Street is shown to exist as far as the start of the route at point A with Victoria Mills to the east and terraced housing to the west.</p> <p>Clitheroe Street is shown terminating at point A with access available to Guy Street west of point A.</p> <p>The route under investigation is not shown and there appears to be no access to the route from point A. Buildings are shown to exist on the land crossed by the route between point B and point C.</p> <p>Access from Clitheroe Street to Guy Street appears to exist to the west of point A along the north side of Victoria Mills.</p> |
| Investigating Officer's Comments |  | The route did not exist in 1890-91.  |

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| 25 inch OS Map | 1912 | Further edition of the 25 inch map surveyed in 1890-91, revised in 1909-10 and published in 1912. |
|----------------|------|---|



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| Observations |  | The route is not shown. Access along the route does not appear possible as it passed through buildings between point B and point C and the area from point A to point B is labelled as being a timber yard. The only open access from Clitheroe Street to Guy Street appears to be west of point A. |
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| Investigating Officer's Comments |  | The route did not exist in 1909-10. |
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| <b>Finance Act 1910 Map</b> | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently</p> |
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|  | <p>sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p> |
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| <p>Observations</p> | <p>Finance Act Records were inspected in the County Records Office.</p> <p>The route is not shown excluded from the numbered plots and between point A and point B is included within plot 3372. This plot is listed</p> |
|---------------------|--|

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|                                  |      | as being owned by Lord Shuttleworth, Gawthorpe, Burnley and occupied by Elijah Waddington. It is described as a 'workshop' on Guy Street and no deduction is claimed for public right of way or user. The land between point B and point C was not numbered. It was included within an area coloured red and green and what appears to be a letter 'S' is written in green. No reference could be found in the Valuation Book to what this meant but a number of other plots were coloured in a similar way – some of which referred to a road improvement scheme. |
| Investigating Officer's Comments |      | It is considered that the Finance Act information does not support the existence of a public footpath in 1910.   |
| <b>25 Inch OS Map</b>            | 1931 | Further edition of 25 inch map (surveyed 1890-91, revised in 1929 and published in 1931.   |




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| Observations                     |  | The route is not shown.<br>The area appears to be unchanged from the earlier edition of the 25 inch OS map. |
| Investigating Officer's Comments |  | The route did not exist when the map was revised in 1929.   |

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| <p><b>Authentic Map<br/>Directory of South<br/>Lancashire by<br/>Geographia</b></p> | <p>Circa 1934</p> | <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <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> |
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| <p>Observations</p>                         |  | <p>The route is not shown and the mills and houses within the area between Ightenhill Road and Guy Street are not shown either.</p>   |
| <p>Investigating Officer's<br/>Comments</p> |  | <p>The route probably did not exist in the 1930s. The route, if it did exist, is unlikely to have been shown on the map due to its scale and the purpose for which it was produced.</p> |

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| OS 1 inch Map  | 1947 | Revised 1938 and published 1947.  |
|  |      |   |
| Observations   |      | The route is not shown. The land crossed by the route from point A is shown as being open with no buildings between point B and point C suggesting that there may have been some alterations including the demolition of buildings since the 1929 survey. |
| Investigating Officer's Comments   |      | The route may have been accessible in 1938.   |

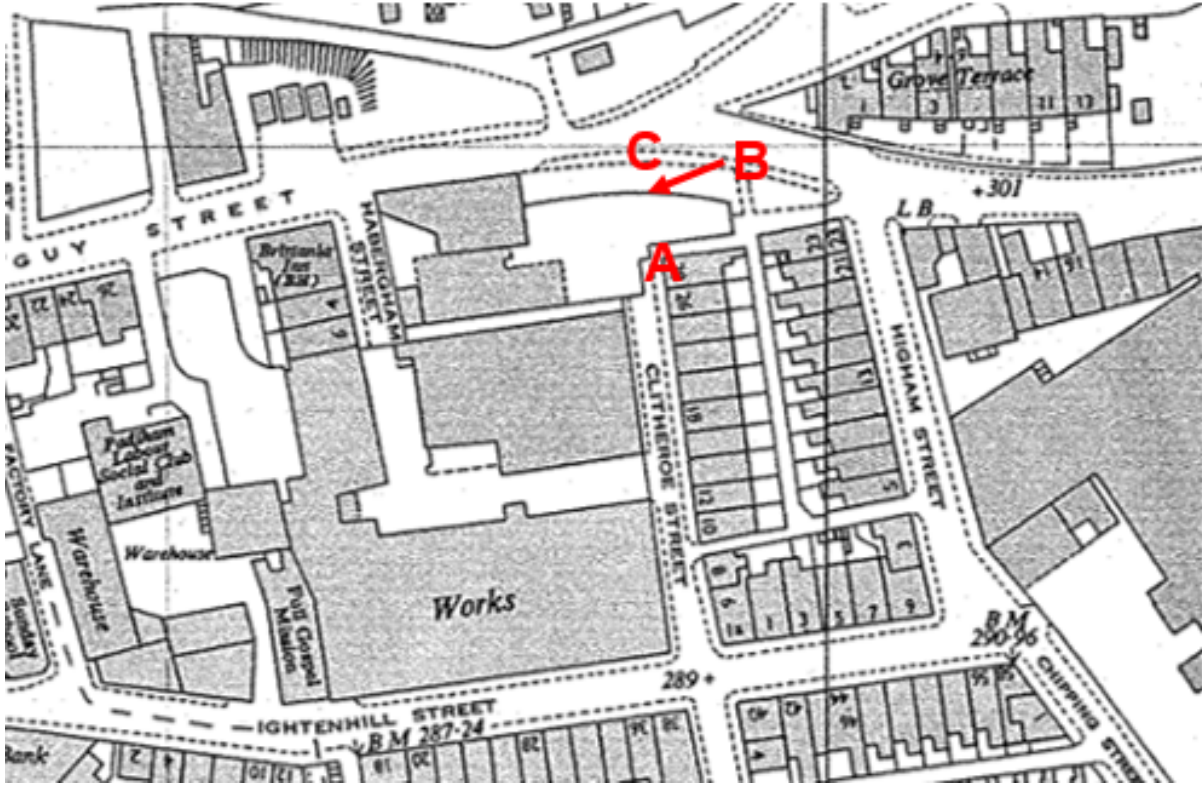
|                                      |       |   |
|--------------------------------------|-------|---|
| <b>Aerial Photograph<sup>2</sup></b> | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable. |
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| Observations |  | Clitheroe Street can be seen terminating at point A. It is not possible to see whether there was access to the route at point A but beyond point A to point B the area crossed by the route appears open. At point B there appears to be a line across the route which may indicate the existence of a wall or a fence. The buildings |
|--------------|--|---|

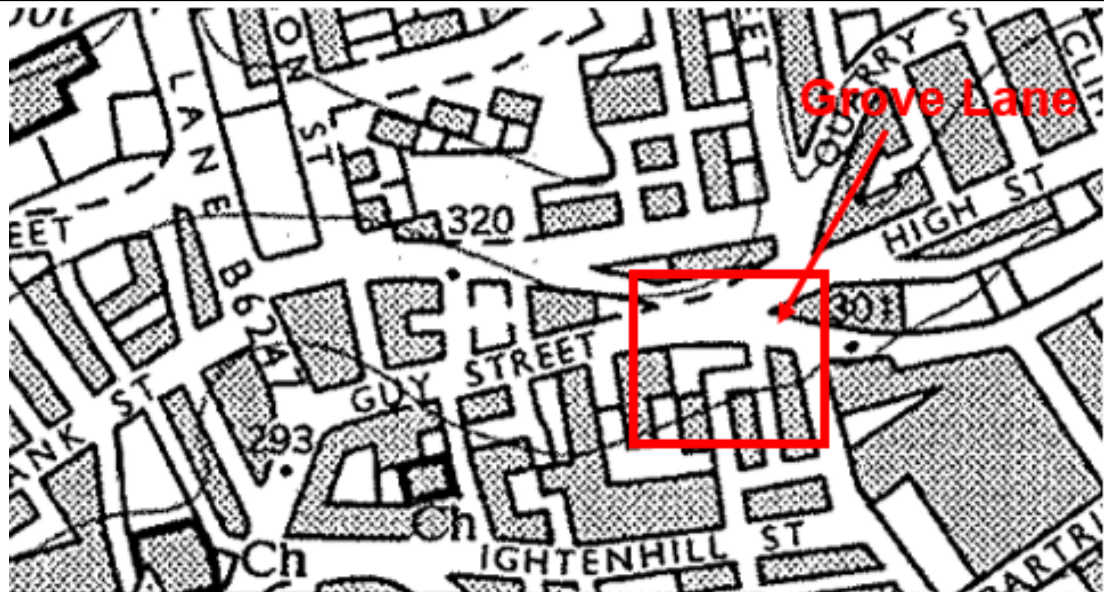
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

|                                  |      |   |
|----------------------------------|------|---|
|                                  |      | shown on the earlier OS maps between point B and point C no longer appear to exist. |
| Investigating Officer's Comments |      | No inference can be drawn.  |
| <b>25 inch OS Map</b>            | 1960 | OS map part revised 1957 and published 1960.  |

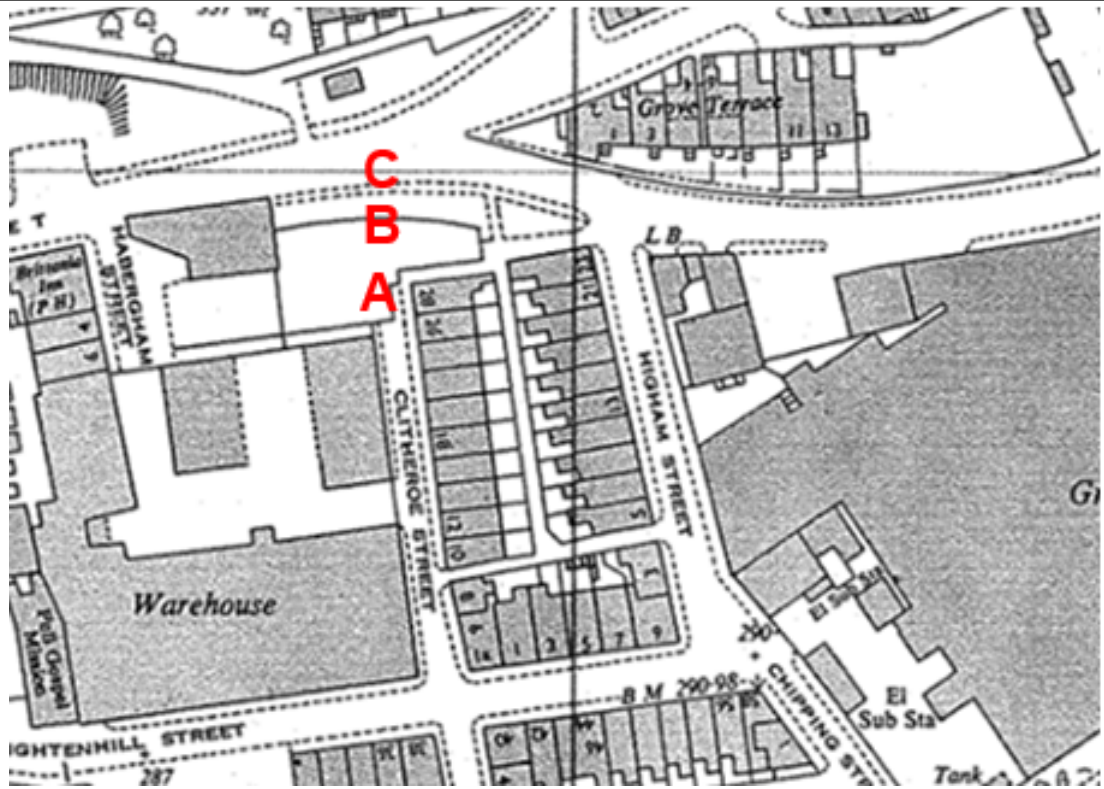


|                                  |  |  |
|----------------------------------|--|--|
| Observations                     |  | The route is not shown. Lines are shown across the route at point A and point B. Access to Guy Street still appears to exist west of point A via Habergham Street although two lines are shown across the end of Clitheroe Street and one at the junction with Habergham Street. Access through to Guy Street is also shown east from point A via Higham Street. |
| Investigating Officer's Comments |  | The route probably did not exist in 1957.  |

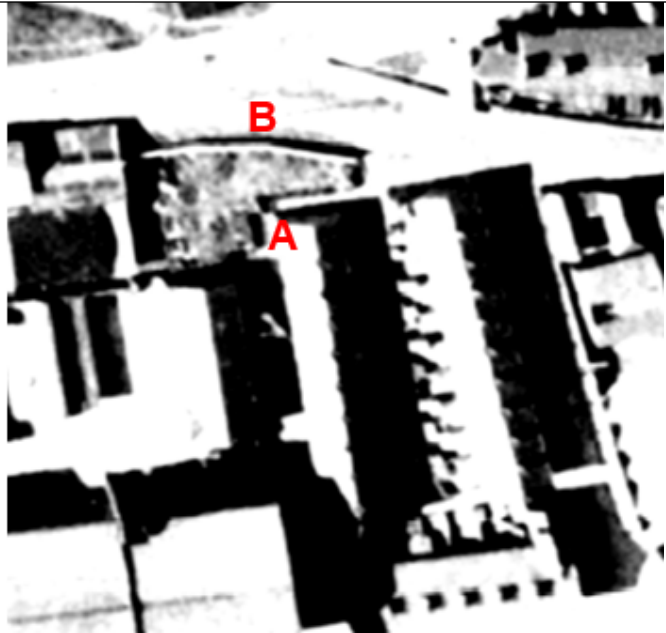
|               |      |  |
|---------------|------|--|
| 6 Inch OS Map | 1965 | Ordnance Survey 6 inch to 1 mile (1:10,560) map revised 1957 and published 1965. |
|---------------|------|--|



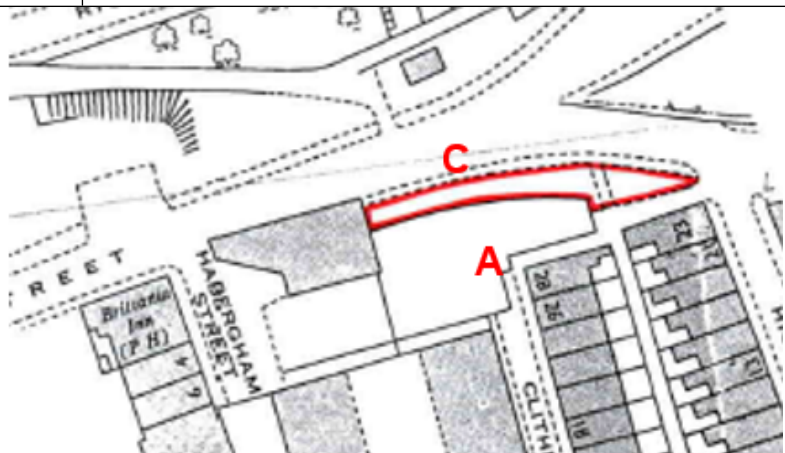
|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The route is not shown. Access appears to exist from point A east to exist onto Grove Lane.  |
| Investigating Officer's Comments |      | The route probably did not exist when the map was revised in 1957.   |
| 1:2500 OS Map                    | 1968 | Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series. |



|                                  |       |   |
|----------------------------------|-------|---|
| Observations                     |       | The route is not shown. Access along the route may have been prevented or restricted at point A and point B. A route leading through to the junction of Grove Lane and Higham Street is shown to exist east of point A. |
| Investigating Officer's Comments |       | The route did not exist when the map was revised in 1967.   |
| <b>Aerial photograph</b>         | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS.  |



|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The aerial photograph taken in the 1960s was enlarged to see whether it was possible to see the route. No worn track is visible and it is not possible to see whether access was available through point A or point B. |
| Investigating Officer's Comments |      | No inference can be drawn.   |
| <b>OS 1:1250 Map</b>             | 1983 | OS Map at a scale of 1:1250 published 1983 taken from land registry plan. Date of revision unknown.  |

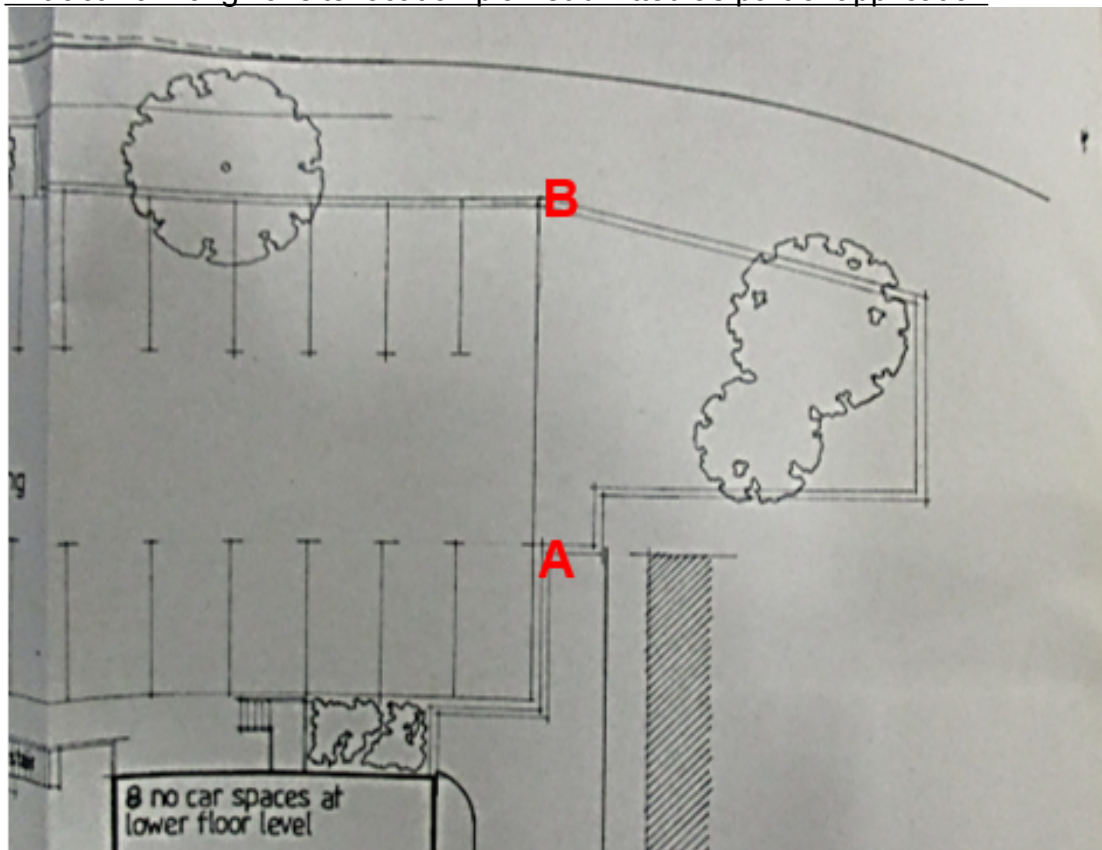




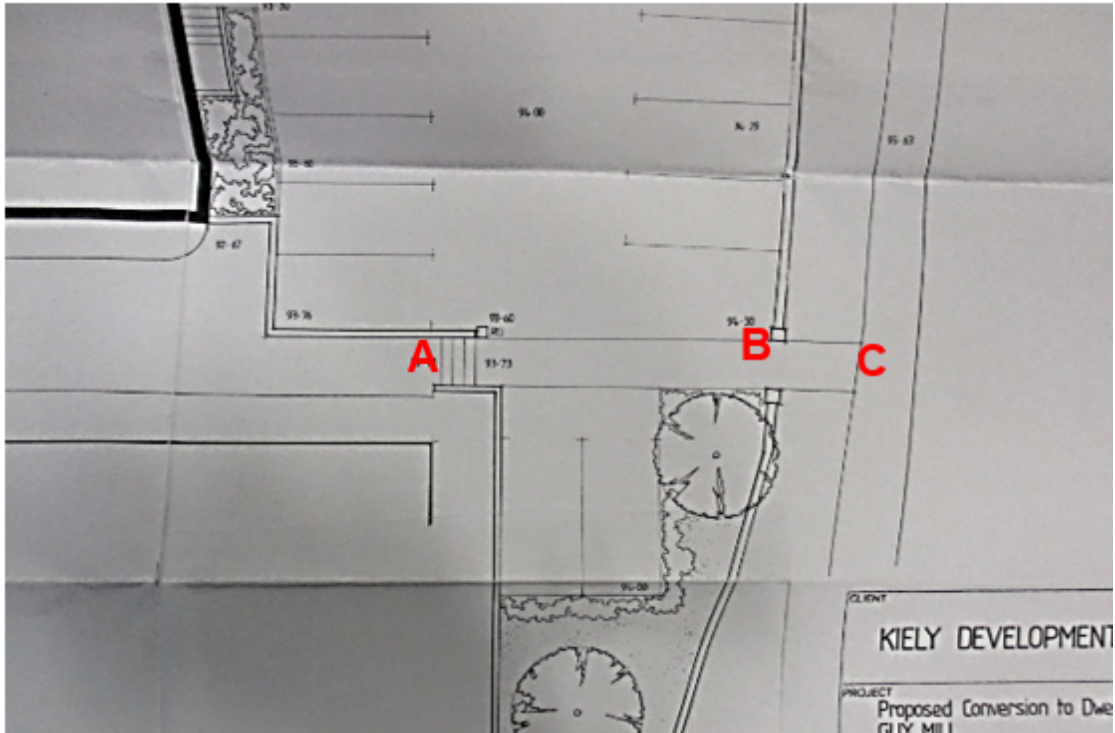
|  |           |   |
|--|-----------|---|
| Observations   |           | The route under investigation is not shown and the land crossed by the route appears unaltered from when the OS published earlier editions of the 1:2500 OS in 1960s. An open route appears to exist from point A east to the junction of Grove Lane and Higham Street. The red line shown on the OS plan has been added to the plan by the land registry and is not relevant with regards to its inclusion in this section of the report.  |
| Investigating Officer's Comments   |           | The route probably did not exist in 1983.   |
| <b>Religious Meeting Hall – Planning Application 12/91/0393 and associated correspondence submitted by the applicant</b> | 1991-1992 | Two letters received by Councillor Ingham from Burnley Borough Council Planning Department were submitted as part of the application and referred to a planning application for the construction of the Religious Meeting Hall located adjacent to point A.<br>The Planning Application was referenced 12/91/0393.  |
| Observations   |           | <p>The letter submitted as part of the DMMO application was addressed to Councillor Ingham from Burnley Borough Council and dated 23<sup>rd</sup> March 1992. It referred to the fact that prior to the commencement of building works a path had existed across the site. The location of the path was not specified but was said to have been provided as part of an environmental scheme and was not recorded as a public footpath but was to be blocked off as part of the development. Reference was also made to the fact that the planning application had included a 6 foot wide strip to provide an alternative pedestrian route across the land from Grove Lane into Clitheroe Street.</p> <p>It appears that no alternative path was provided by the developer and that the unrecorded route that had existed east of point A through to the junction of Grove Lane and Higham Street was built over when the Kingdom Hall was constructed.</p> <p>On 11<sup>th</sup> May 1992 Councillor Ingham received a second letter from Burnley Borough Council explaining that the potential developer of land adjacent to the Kingdom Hall had included a footpath running between Grove Lane and Clitheroe Street in his proposals which would be surfaced, lit and adopted by the Council. No planning application reference number or further details were provided.</p> |

|   |      |   |
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| Investigating Officer's Comments  |      | It appears that the access which had previously existed from Clitheroe Street, adjacent to point A and extending east out onto Grove Lane/Higham street was affected by the construction of the Kingdom Hall and that even though an alternative route was originally suggested, this was never implemented. The fact that the issue of access from Clitheroe Street to Grove Lane/Higham Street was raised in 1991-92 suggests that the public had been making use of a route from the end of Clitheroe Street and that there was a desire for some form of access to be retained. |
| <b>Planning application 12/95/0543<br/>Redevelopment of Guy Mill (Victoria Mill) and outbuildings</b> | 1995 | An application was received by Burnley Borough Council to redevelop Guy Mill (Victoria Mills) into residential housing in 1995. Planning Application reference APP/1995/0543 was submitted by Kiely Developments limited and permission was granted on 30 November 1995.  |

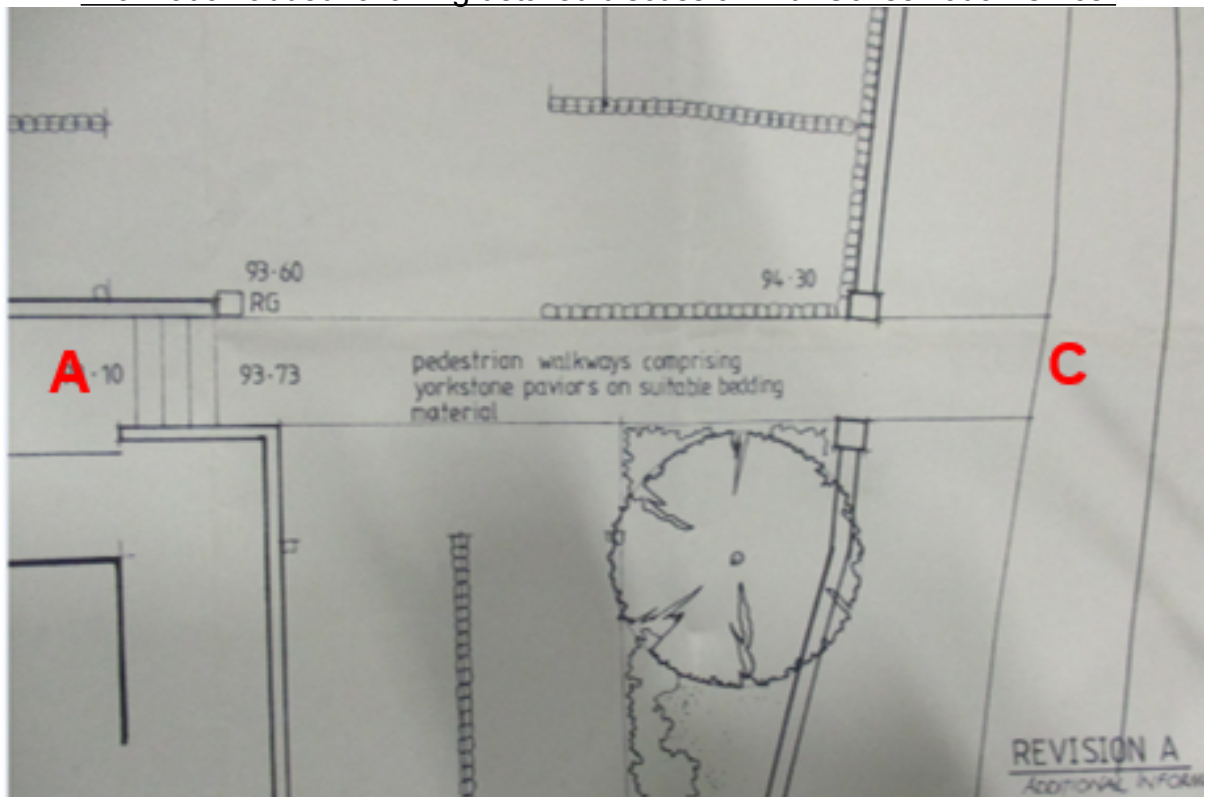
Extract from original site location plan submitted as part of application



Revised plan forming part of application approved by Burnley Borough Council dated November 1995





Further revised plan dated 30 December 1995 and titled Revision A – Additional information added following detailed discussion with Conservation Officer



|              |   |
|--------------|---|
| Observations | The original application submitted stated that there were no public rights of way within the site and did not show the route under investigation. |
|--------------|---|

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|  |  | <p>As part of the consultations carried out by Burnley Borough Council prior to the granting of planning permission the issue of a pedestrian link from Clitheroe Street to Guy Street was raised. A handwritten internal note on the planning file between two colleagues in the planning department notes concern about the fact that there are only 60 parking spaces included in the application for 50 units and also states that the issue of the provision of a footpath had been raised and accommodated. This is borne out by the fact that although the original plan submitted with the application did not show the route the plan approved as part of the application (dated November 1995) did show it.</p> <p>Prior to planning permission being granted a note from the Borough Surveyor to the Borough Planning Officer refers to the fact that the developer would be required to enter into an agreement for the construction of the 'footway' to the south of Guy Street although it is not clear whether this is a reference to the route under investigation or not.</p> <p>A further letter on the planning file, predating the granting of planning permission, was addressed to Councillor J Greenwood JP from Burnley Borough Council Planning Department. It is dated 23 November 1995 and explains that it was the intention that the route from Clitheroe Street to Guy Street to be provided by the developers as a new pedestrian access with ramped access. It was noted however, that this would require the loss of two parking spaces. The letter explained that a £20,000 grant was to be offered towards the work and that the developers intended to apply for a road closure (Clitheroe Street) and adoption of the footway. Planning permission was granted on 30 November 1995 and in the Notes section at the end of the decision notice it states at point 6 that 'The Council are keen to see a pedestrian link between Guy Street and Clitheroe Street. The link should preferably include a ramp to enable access by prams, wheelchairs and persons with mobility problems. This would entail the formal closure of Clitheroe Street which should be undertaken at an early stage.'</p> <p>Following the granting of planning permission a further plan of the site was prepared dated 30</p> |
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|                                  | <p>December 1995 and titled Revision A – Additional information added after discussion with Conservation Officer. It shows the route with steps from point A (but no steps at point B) and between point A and point B it has been annotated with the words, 'Pedestrian walkways comprising Yorkshire paviers on suitable bedding material'.</p> <p>No further information was found on file regarding the route or the development until November 2014 when an email was sent to the Borough Council by the owners of the site asking about the status of the route under investigation as they were looking to submit an application to re-site the bin storage area associated with the site and to allow them to do this they would be required to close the path. They were advised to contact Lancashire County Council to check its status.</p>  |
| Investigating Officer's Comments | <p>The route under investigation did not exist prior to 1995. The developers looking to redevelop the mill site which included land between point A and point B agreed to include a pedestrian link and included it on their plans.</p> <p>No specific reference to it being dedicated as a public footpath could be found but it appears that the developers were in agreement with the provision of the route through the site. The Borough Council had asked that the route include the provision of ramped access to enable access by prams, wheelchairs and people with mobility problems and there is reference to the possibility of a grant being available towards the work. The revised plan dated 30 December shows steps at point A but no ramp, and does not show any reduction in car parking spaces.</p> <p>No records regarding an application to close all or part of Clitheroe Street could be found and there are no records concerning the adoption of the route under investigation as a footway.</p> |

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| <b>Aerial Photograph</b>   | 2000  | Aerial photograph available to view on GIS.   |
|  |  |   |
| Observations   |   | This aerial photograph, taken in 2000, clearly shows that the area had been redeveloped by 2000. The houses to the east of Clitheroe Street had been demolished and Kingdom Hall constructed. The route under investigation can be clearly seen as having been constructed between point A and point C. |
| Investigating Officer's Comments   |   | The route existed and appeared to be capable of being used in 2000.   |
| <b>Google Street View</b>  | 2009  | Google Street Views. Images captured 2009 (Clitheroe Street) and 2009 and 2011 (Guy Street).  |
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| <p>Observations</p> | <p>The route is clearly shown from both ends as having been constructed and as being available to use. Steps existed at point A and point B with no evidence of ramped access having been provided.</p> |
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| Investigating Officer's Comments |      | The route existed and was available to use in 2009 and 2011. |
| <b>2014 aerial photograph</b>    | 2010 | Photograph available to view on GIS.                         |



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| Observations                    |      | The full length of the route can be clearly seen on the photograph. |
| Investigating Officers Comments |      | The route existed and appeared capable of being used in 2010.       |
| <b>Aerial photograph</b>        | 2014 | Aerial photograph available to view on GIS.                         |





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| Observations   |      | The route is visible from point A extending towards point B but the view is obscured by vegetation through to point C.  |
| Investigating Officer's Comments   |      | The route existed in 2014.  |
| <b>Planning Application submitted to Burnley Borough Council - Ref APP/2015/0189</b> | 2015 | An application was submitted in 2015 by Victoria Apartments Limited to erect security fencing and gates on the perimeter to the apartment block (former mill) and to re-located the bin storage area associated with the apartments.  |
| Observations   |      | <p>The application included a request to erect gates at point A and point B on the route under investigation and for these gates to remain locked.</p> <p>Comments received by the Borough Council with regards to the application made reference to use of the 'cut through' route from Guy Street to Clitheroe Street but the applicant was said to have regarded it as essential to close the access points for site security and to avoid liability for personal injury due to the difficult nature of the steps, lack of handrails and the need to manoeuvre vehicles in connection with the adjacent bin storage.</p> <p>A petition bearing 57 signatures was received by the Borough Council objecting to the closure of the route now under investigation.</p> <p>Planning permission was granted although, at the request of the highway authority, the applicants were made aware that there could be unrecorded public rights along the route now claimed, and that an application may be made to record those rights.</p> <p>Since planning permission was granted the route has been gated and the gates have been locked.</p> |
| Investigating Officer's Comments   |      | The application to erect and lock gates on the route under investigation appears to have brought into question the public status of the route.  |
| <b>Definitive Map Records</b>  |      | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>   |

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| <b>Parish Survey Map</b> | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas. |
| Observations             |           | Padiham was an Urban District Council.  |
| <b>Draft Map</b>         |           | The Draft Maps were given a "relevant date" (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.  |
| Observations             |           | The route under investigation was not shown on the Draft Map of Public Rights of Way for Padiham and there no representations made to the County Council in relation to it.   |
| <b>Provisional Map</b>   |           | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.   |
| Observations             |           | The route under investigation was not shown on the Provisional Map of Public Rights of Way for Padiham and there no representations made to the County Council in relation to it.   |

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| <b>The First Definitive Map and Statement</b>  |                     | The Provisional Map, as amended, was published as the Definitive Map in 1962.  |
| Observations   |                     | The route under investigation was not shown on the First Definitive Map and Statement.   |
| <b>Revised Definitive Map of Public Rights of Way (First Review)</b>                 |                     | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.  |
| Observations   |                     | The route under investigation 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.  |
| <b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b> | 1929 to present day | 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.<br><br>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. |

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|  | <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p> |
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| <p>Observations</p>  | <p>The route is not recorded as being publicly maintainable on the List of Streets.</p>  |
| <p>Investigating Officer's Comments</p>  | <p>No inference can be drawn regarding public rights.</p>  |
| <p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p> | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence</p> |

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|                                  |  | of an intention to dedicate a public right of way).<br>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). |
| Observations                     |  | No Highway 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.   |

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**

Points A-B as shown on the committee plan is owned by Freehold Managers, 135 Bishopsgate, London, EC2M 3UR

Points B-C as shown on the committee plan is owned by Burnley Borough Council, Town Hall, Manchester Road, Burnley, Lancs, BB11 1JA

### **Summary**

There is no map or documentary evidence supporting the existence of the route prior to 1995.

In 1995 it appears that the developers converting Guy Mill (Victoria Mill) and the associated outbuildings agreed to the request from Burnley Borough Council for a pedestrian link to be provided from Clitheroe Street to Guy Street along the route now under investigation.

There is no reference to this link being private and the fact that there is discussion about it being provided with ramped access, grant funding being available towards its construction and it ultimately being adopted by the council suggests that it was intended to create a public route.

Planning permission was granted at the end of 1995 and work to redevelop the site would not commence until 1996. The exact date that the path was constructed is not known although by 1999/2000 (Google Street View) the path was in existence and appeared to have been in existence for several years.

Site and photographic evidence confirms that a route was constructed – by at least 2000 and that it appeared to be capable of being used until it was blocked by locked gates in 2015.

## **Head of Service – Legal and Democratic Services Observations**

### Information from the Applicant

In support of the application the applicant has submitted the following documentation:

1. A copy of the planning application report approved for the erection of security fencing and gates for the Victoria Apartments, Guy Street, Padiham, Burnley Borough  
A consultation response was received from a neighbouring resident who objected on the grounds that the route across the site from Guy Street to Clitheroe Street would be closed.  
A petition was received holding 57 signatures making objections to the blocking of the passage from Guy Street to Clitheroe Street.  
A Councillor made the comment that the present route from Guy Street to Clitheroe Street was agreed in 1992 to replace a slightly different path which was closed due to the building of the Kingdom Hall on Higham Street.  
Another Councillor made comment that the new fence would block off a cut through which has been used for generations.
2. A letter from a Planning Officer to a Borough Councillor dated 23 March 1993. The letter states "Prior to commencement of building works, a path existed crossing the site, which I understand had been provided as part of an environmental scheme. The planning application included a 6" wide strip to provide an alternative pedestrian route across the land from Grove Lane into Clitheroe Street. The applicants have made enquiries regarding the status of the footpath in order to follow the correct procedures for diversion. The pathway is not, however, a definitive footpath and no right of way seems to exist."
3. A letter from a Planning Officer to a Borough Councillor dated 11 May 1992 which states "I can advise you that the potential developer of the site immediately adjoining the Kingdom Hall site has included a footpath running between Grove Lane and Clitheroe Street, which would be surfaced, lit and adopted by the Council. It would provide a more attractive and safer route than that originally proposed to run through the Kingdom Hall site."
4. Email dated 13 August 2015 from a Borough Councillor to Padiham Town Council explaining that although the path was built the adoption didn't take place.
5. A petition including 57 signatures who "object to the planning permission for railing and gates at Victoria Apartments, Guy Street, Padiham. They have

already been installed and have blocked a passway from Guy Street to Clitheroe Street which has been open for over 15 years."

6. An extract of the OS Map First Edition 1:2500 circa 1890 showing the previous route from Guy Street / Grove Lane to Clitheroe Street.
7. An extract of the OS Map 6" 1947 showing the previous route from Guy Street / Grove Lane to Clitheroe Street.
8. Photograph of access to route from Guy Street / Grove Lane before fencing was constructed.
9. Photograph of access to route from Clitheroe Street before fencing was constructed.

#### Information from Others and Landowners

After carrying out the necessary consultations no responses have been received.

### **Assessment of the Evidence**

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

In Support of Making an Order(s)

References by owners to their intentions  
Construction of the route  
Acceptance through use

Against Making an Order(s)

Difficulties in proving intention of owner rather than having deemed dedication to consider

Conclusion

This is a claim that this route is already a public footpath in law. There is no express dedication and so Committee is asked to consider

It would seem that twenty years sufficient use going back the full twenty years before the route was blocked in 2015 is difficult to evidence. Sufficient user would need to be sufficiently clearly evidenced 1995-2015 It is suggested that the provisions of S31 would be difficult to satisfy in this matter as the planning permission leading to this route being constructed was very late 1995 with construction likely to have been 1996. The route was on balance not available at the start of the twenty year period the law requires under this statutory provision.

It is therefore suggested that Committee consider whether there is enough evidence of the owner's intention to dedicate and there being acceptance by the public such at dedication can on balance be inferred at common law. In a claim for dedication at common law, the burden of proving the owner's intentions lies with the claimant. It is advised that this is a heavy burden and, in practice, even quite a formidable body of evidence may not suffice.

A highway stems from dedication by an owner and acceptance of the route by the public. Here there is no evidence of this route on this line until probably 1996 when constructed by the company Kiely Developments Ltd. This company owned the site. This Company is no longer in existence. Information about what this pathway was intended to be is on balance shown in their planning application plans and their discussions with the Borough Council. The plan approved as part of the planning permission shows the path as a pedestrian walkway and the documents indicate that it was intended as a public pedestrian link. The documents themselves would arguably not be sufficient but in this case the route was constructed on site by the owner. It has then been used by the public. It is suggested that dedication and acceptance may be inferred on balance and the Committee may consider that an Order should be made.

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

**Local Government (Access to Information) Act 1985**

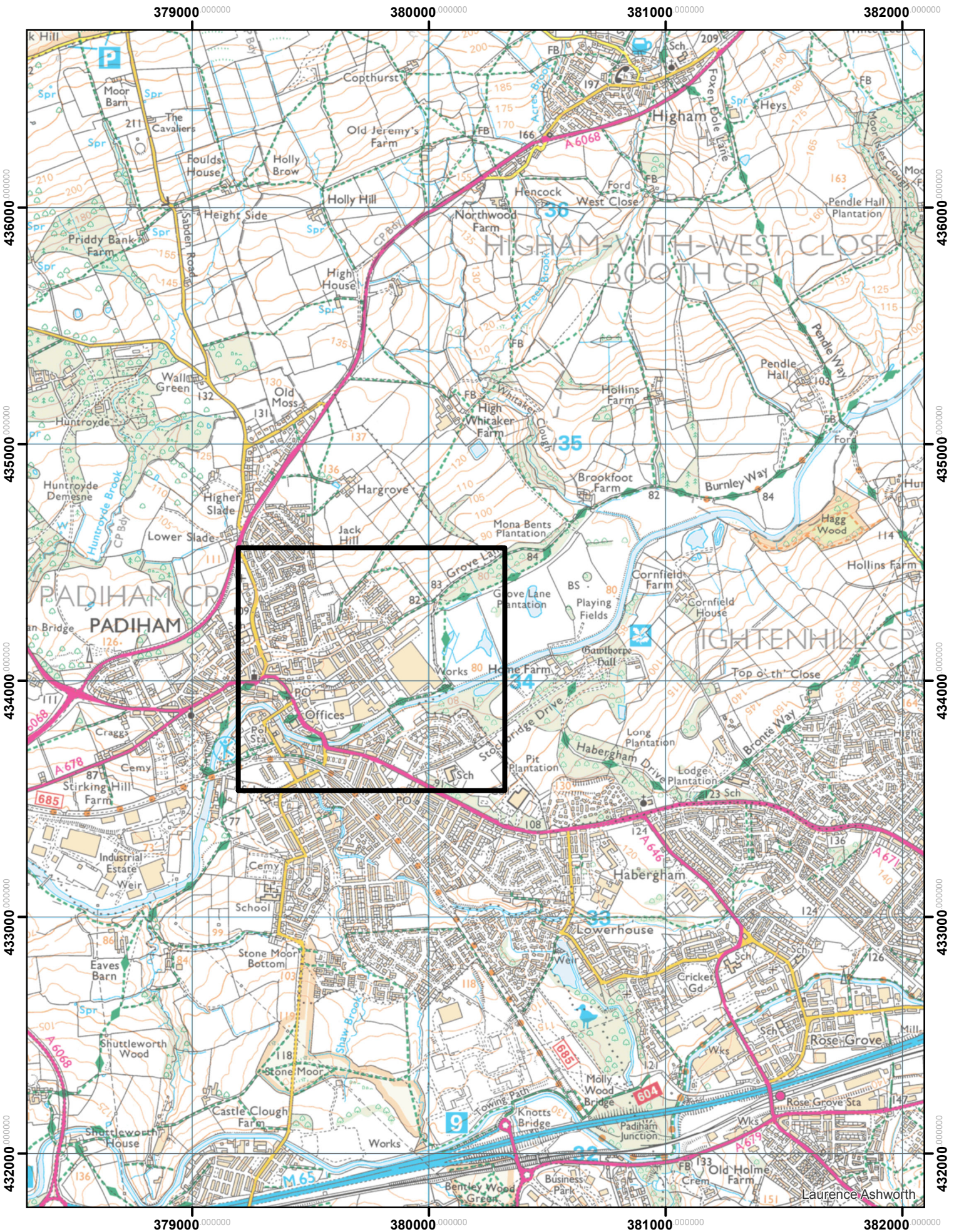
**List of Background Papers**

| Paper                                 | Date    | Contact/Directorate/Tel  |
|---------------------------------------|---------|--|
| All documents on File Ref:<br>804-579 | Various | Megan Brindle, 01772<br>535604, Legal and<br>Democratic Services |

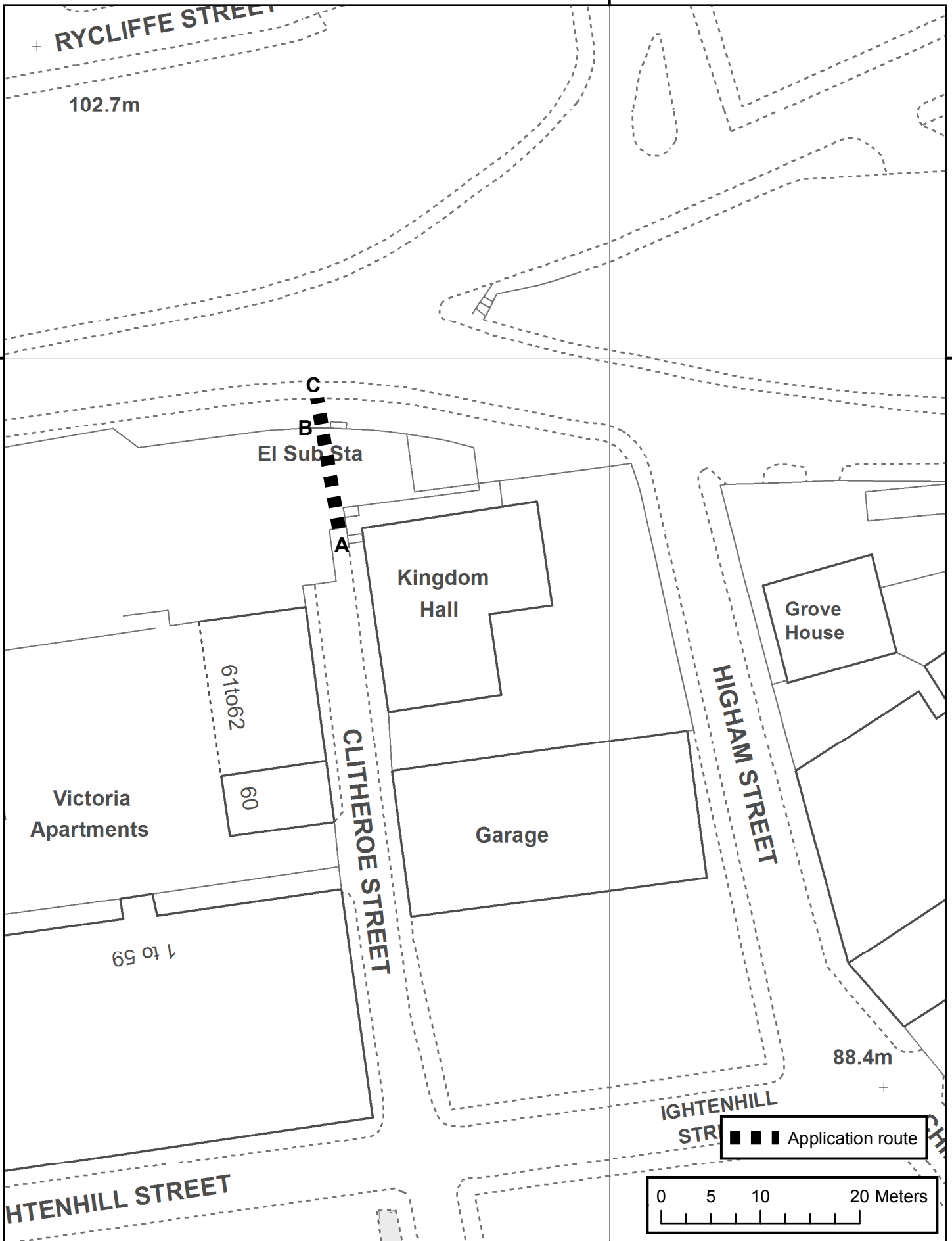
Reason for inclusion in Part II, if appropriate

N/A











## Regulatory Committee

Meeting to be held on 28th September 2016

|  |
|--|
| Electoral Division affected:<br>Ribble Valley South West |
|--|

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

**Addition of a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley**

**File No. 804-567**

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 (5)35604, Paralegal Officer, Legal and Democratic Services

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Hannah Baron, 01772 (5)33478, Planning & Environment, Public Rights of Way

[Hannah.baron@lancashire.gov.uk](mailto:Hannah.baron@lancashire.gov.uk)

### Executive Summary

Application for the addition of a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley in accordance with File No. 804-567.

### Recommendation

- I. That the application for a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley in accordance with File No. 804-567, be rejected.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath extending from two points on Public Footpath 5 Wilpshire to the junction of Longsight Road/A59, for a distance of approximately 1560 metres and shown between points A to R on the Committee Plan, to be recorded on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

## **Consultations**

### Ribble Valley Borough Council

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

### Wilpshire Parish Council

Wilpshire Parish Council has also been consulted and no response has been received, therefore it is assumed they have no comments to make. The applicant has made the application as a councillor for the Parish Council and therefore it appears that the council support it.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments is 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.

| <b>Point</b> | <b>Grid Reference (SD)</b> | <b>Description</b>   |
|--------------|----------------------------|--|
| <b>A</b>     | 6871 3320                  | Junction of application route with public footpath 5 Wilpshire near to Vicarage Lane               |
| <b>B</b>     | 6871 3320                  | Padlocked gate near to the property of 'The Glen'  |
| <b>C</b>     | 6875 3332                  | Newly erected fence line near to the derelict water tower and associated building                  |
| <b>D</b>     | 6876 3332                  | Junction immediately after the fence line with second application route branch                     |
| <b>E</b>     | 6869 3332                  | Junction of application route with public footpath 5 Wilpshire                                     |
| <b>F</b>     | 6884 3346                  | Newly erected fence line between two old large trees   |
| <b>G</b>     | 6888 3352                  | Remains of old field gate  |
| <b>H</b>     | 6890 3361                  | Field Gate in fence line   |
| <b>I</b>     | 6896 3372                  | Gap in fence line  |
| <b>J</b>     | 6896 3372                  | Stile (since taken out to be a fence line)   |
| <b>K</b>     | 6897 3378                  | Boundary fence on entrance to hospital grounds   |
| <b>L</b>     | 6896 3381                  | Fencing around buildings of hospital grounds   |
| <b>M</b>     | 6895 3384                  | Junction with tarmac road within hospital grounds  |
| <b>N</b>     | 6908 3390                  | Junction with private housing fencing boundary of The Dales  |
| <b>O</b>     | 6914 3393                  | Unmarked point between the garage and house of 24 The Dales  |
| <b>P</b>     | 6909 3404                  | Unmarked point on The Dales which was formerly the start of access track from the Epileptic Colony |
| <b>Q</b>     | 6909 3407                  | Junction of The Dales with Dewhurst Road   |
| <b>R</b>     | 6906 4343                  | Kissing gate at A59 Longsight Road   |

## Description of Route

A site inspection was carried out on 7<sup>th</sup> January 2016 and 5<sup>th</sup> July 2016.

The route begins at a junction with public footpath 5 Wilpshire, Point A, which is located off Vicarage Lane, Wilpshire. The route immediately, at point B, passes through or over a large padlocked field gate which is currently restricting access. The gate has an old rusty chain on it which appears to have been on there for some time, along with a newer chain. Attached to the front of the gate (from Vicarage Lane) there is a Private Property Sign which also states 'No Public Rights of Way'. Next to that is a police warning sign with regards to no toleration to damage and vandalism in the area. Three Lancashire County Council S31 (6) notices were also attached to the gate (please see further in report under Map and Documentary evidence – S31 (6) deposits).

The route continues following the railway line. There appears to be a trodden line, 1 metre in width, in the overgrown grass leading past the water tank and building proceeding for approximately 130 metres to a newly erected wire fence at point C. Attached to the back of the building was a 'Private Property' sign and another stating 'No Public Right of Way'. The new fencing has two strands of barbed wire on the upper section of the fence. On the section between the first and second fence post the barbed wire spikes have been removed and the wire has been twisted. Immediately after the fence line the application route meets the second application route, a branch which heads directly in a westerly direction following the line of the fence line for approximately 70 metres to join public footpath 5 Wilpshire at point E. There was no indication of any trodden lines between points D and E.

From point D the application route continues in a north easterly direction following the boundary of the railway for approximately 160 metres until it meets a newly erected fence line and passes between two large trees at point F. The route then continues approximately 75 metres towards a derelict fence line. At this point on the eastern side close to the railway were the remains of an old wooden gate post and latch. The latch was extremely rusty indicating that it had been there for some time.

The application route then heads in a northerly direction following a well-trodden line approximately 1m wide which curves and negotiates around the woodland and stream in the bank of the field to the east, it continues for approximately 90 metres to pass through a field gate at point H.

The route then continues along the same well-trodden line in a north easterly direction across an open field for approximately 120 metres to reach point I where it passes through a gap in the fence line. Immediately after this on the north western side, point J, there used to be a stile, it has since been removed and barricaded with strips of wooden fencing, along with a second fence.

The route continues over a well maintained grassed area for approximately 45 metres to reach the boundary fence of Kemple View Psychiatric Hospital at point K. There is no trodden line to follow and the route is impassable due to security fencing at point K. The route continues in a north north westerly direction for approximately



45 metres passing over the hospital staff car park and through the extended hospital buildings. The hospital site has been built over and expanded upon over the years, including the housing development to the east, The Dales and The Rydings. The application route is currently impassable at the hospital due to fencing at point L. The route continues along the west side of the building for approximately 30 metres to join the junction of a tarmacked road within the hospital complex at point M.

The route after this point heads east north east along the tarmac track between the buildings of the hospital for approximately 140 metres to reach a wooden fence on the boundary of the hospital complex and the housing estate at point N. At this point, the application route continues over a series of houses and private gardens at The Dales, which was once open and accessible ground within the hospital before the housing estate was built. This continues to point O, where there was formerly a junction of tracks within the hospital. Here the route changes direction and heads north north west, through further houses and gardens of The Dales to reach point P at the junction with the vehicular highway (also known as 'The Dales'.)

The route continues along The Dales for approximately 30 metres to point Q at the junction of Dewhurst Road at the southern corner of the triangular island. The route continues along a wide private tarmacked track for approximately 425 metres, which passes Langho Sports and Social club on the East, The Sanctuary of Healing on the West, curving past The Conkers Nursery on the West and continues to exit through a kissing gate onto the A59 at Longsight Road at point R. The route at this point is temporarily inaccessible due to temporary fencing.

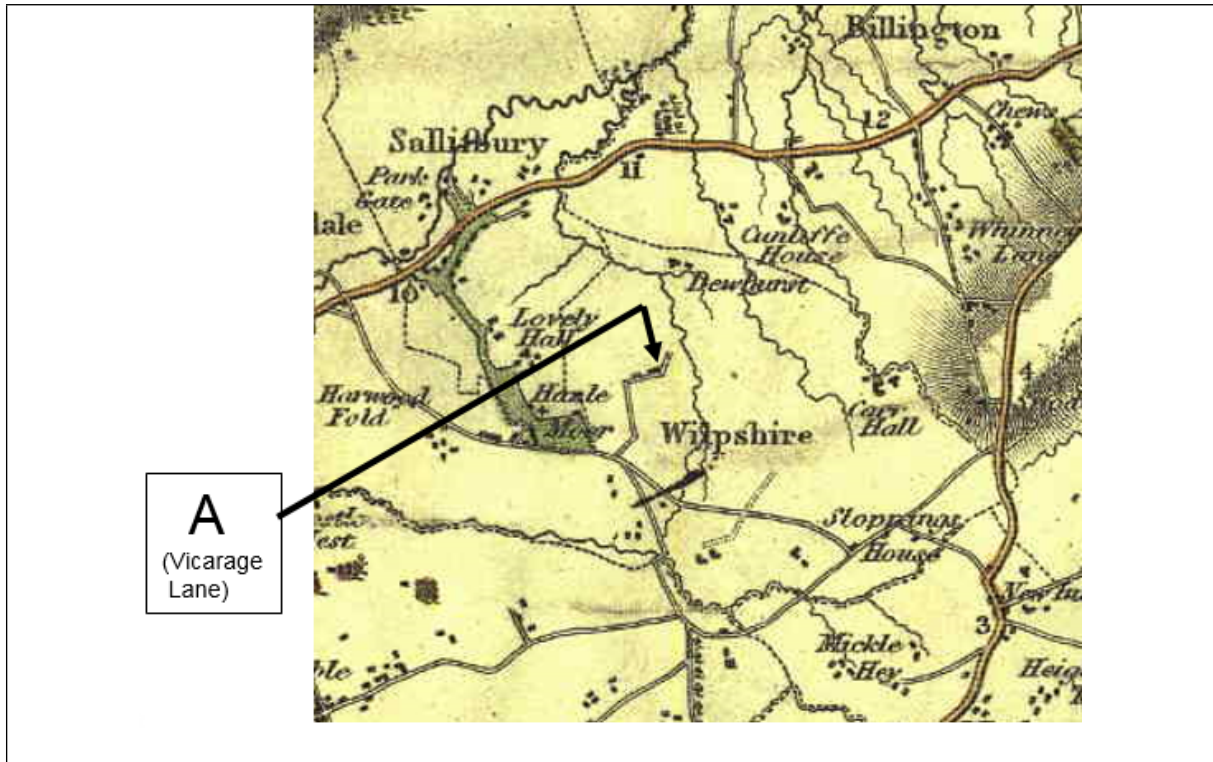
The total length of the application route is approximately 1560 metres.

### Map and Documentary Evidence

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



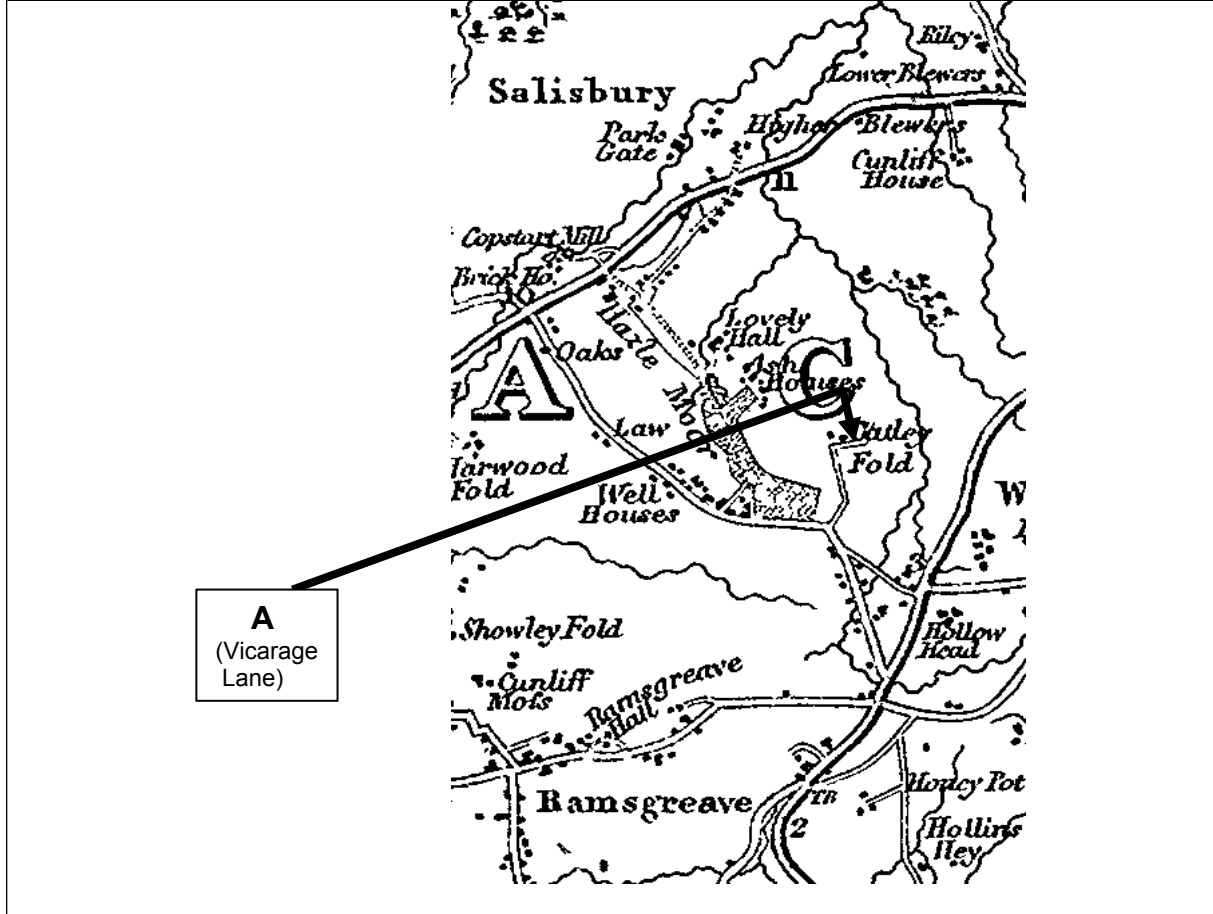
|                                      |      |  |
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| Observations                         |      | The application route is not shown. Vicarage Lane and other main roads can be seen on the map in close vicinity. Cunliffe House and Dewhurst are annotated on the map which are located in close proximity to the application route. |
| Investigating Officer's Comments     |      | A route shown as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. No inference can be drawn.   |
| <b>Greenwood's Map of Lancashire</b> | 1818 | Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.         |



**A**  
(Vicarage Lane)

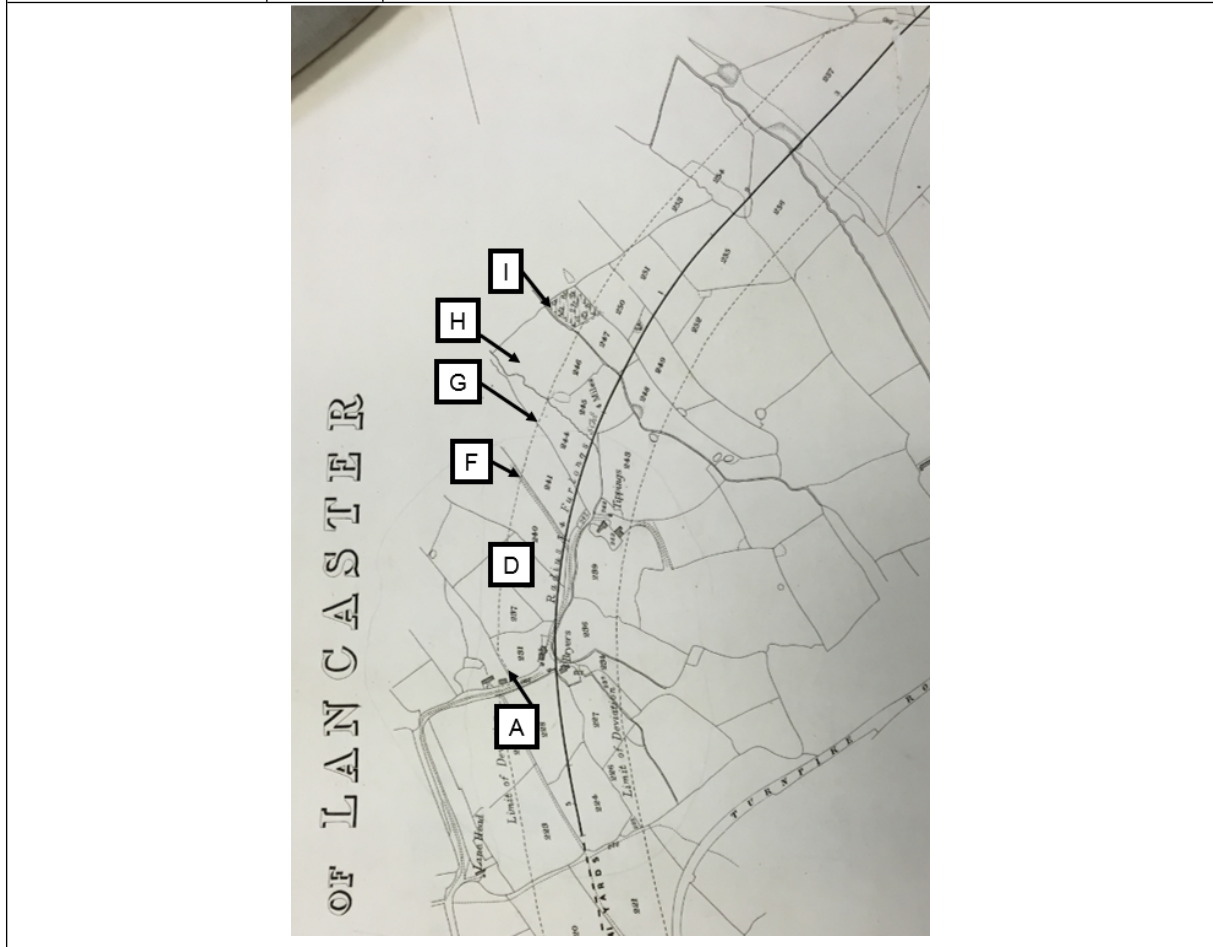
|                                  |  |  |
|----------------------------------|--|--|
| Observations                     |  | The application route is not shown. Vicarage Lane and the A59 are both shown on the map as roads. Cunliffe House and Dewhurst are again both annotated on the map, which the application route is in close proximity to.   |
| Investigating Officer's Comments |  | The application route did not exist as a major route at this time. It is unlikely that the application route alongside the railway existed as the railway was not built at the time but if it had done it is unlikely to have been shown on this map due to limitations of scale, therefore no inference can be drawn. |

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| <p><b>Hennet's Map of Lancashire</b></p> | <p>1830</p> | <p>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.</p> |
|--|-------------|---|



|   |  |   |
|---|--|---|
| <p>Observations</p>                     |  | <p>The application route is not shown. Vicarage Lane and the A59 are shown again as roads. Cunliffe House is annotated.</p>   |
| <p>Investigating Officer's Comments</p> |  | <p>The application route did not exist as a major route at this time. It is again unlikely that the route alongside the railway existed as the railway was not built at the time but due to the limitations of the scale of the map they may have not been recorded, therefore no inference can be drawn.</p>   |
| <p><b>Canal and Railway Acts</b></p>    |  | <p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless</p> |

they really were public rights of way. This information is also often available for proposed canals and railways which were never built.



**Observations**

The Ribble Valley line which runs through Wilpshire is located in close proximity to the application route. Part of the application route runs in parallel to the railway.

The above is taken from a plan of the Blackburn to Clitheroe Railway 1846. It shows the proposal of the railway line, along with annotating nearby roads and tracks. Nothing is shown for the application route, although Vicarage Lane and nearby properties such as Tippings Farm and The Glen (formerly Sharples Farm) are shown.

(Ref: PDR/489 – QDB/1/31)

**Investigating Officer's Comments**

The plan of the railway does not provide any evidence of the application route being in existence on the ground at the time of when the railway was being constructed. The Bill does not give any mention to any affected public footpaths in the creation of the line.

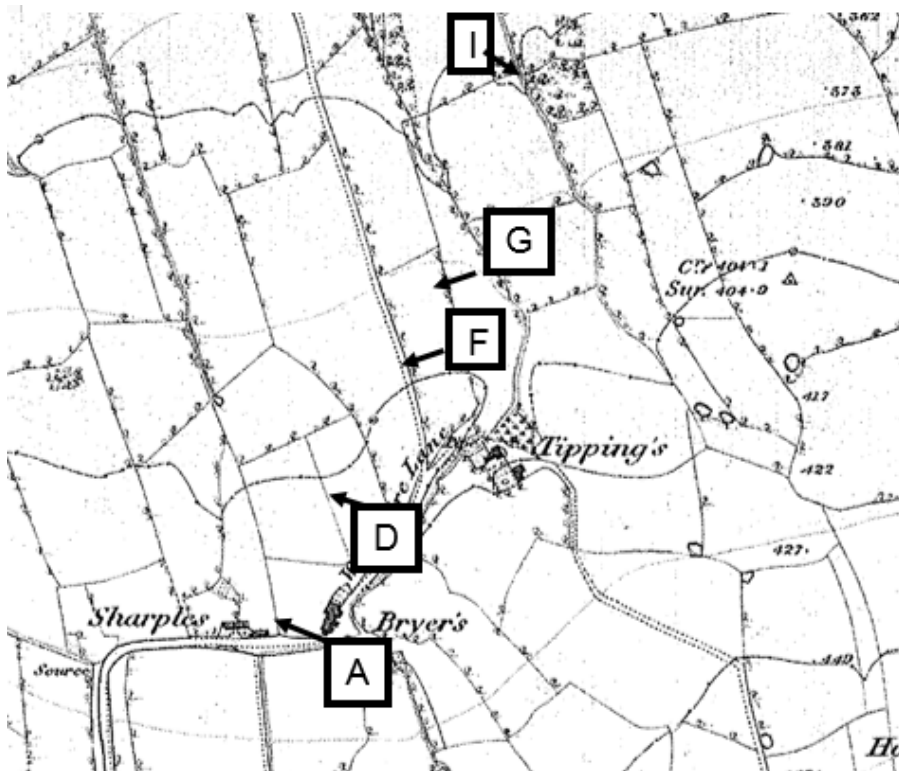
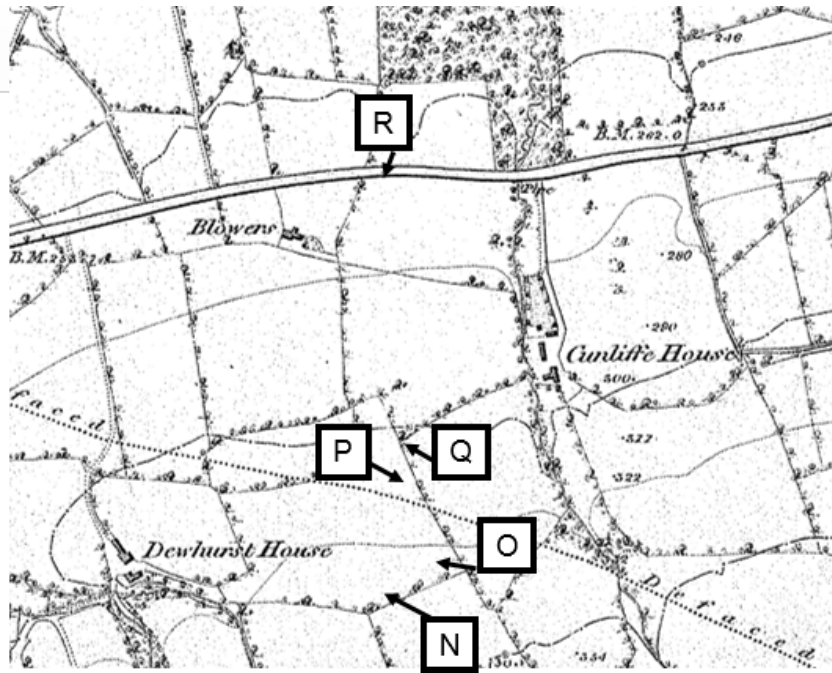
**Tithe Map and Tithe Award or**

Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of

|  |      |   |
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| <b>Apportionment</b>                   |      | 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                           |      | There was no Tithe Map available to view at Lancashire Archives for the townships of Wilpshire, Langho or Billington.   |
| Investigating Officer's Comments       |      | No inference can be made.   |
| <b>Inclosure Act Award and Maps</b>    | 1835 | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.   |
| Observations                           |      | There is no Inclosure Act Award or Map available to view at Lancashire Archives for the area of Wilpshire, Langho or Billington.  |
| Investigating Officer's Comments       |      | No inference can be made.   |
| <b>6 Inch Ordnance Survey (OS) Map</b> | 1848 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>   |

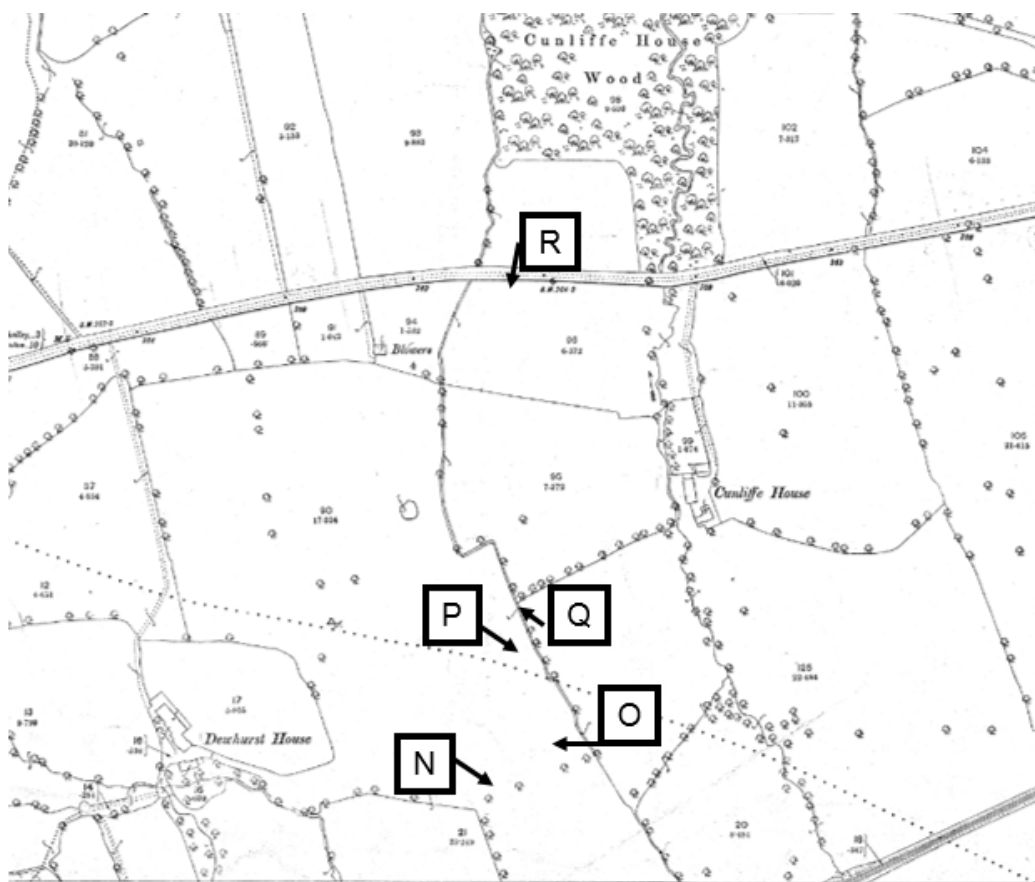
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire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

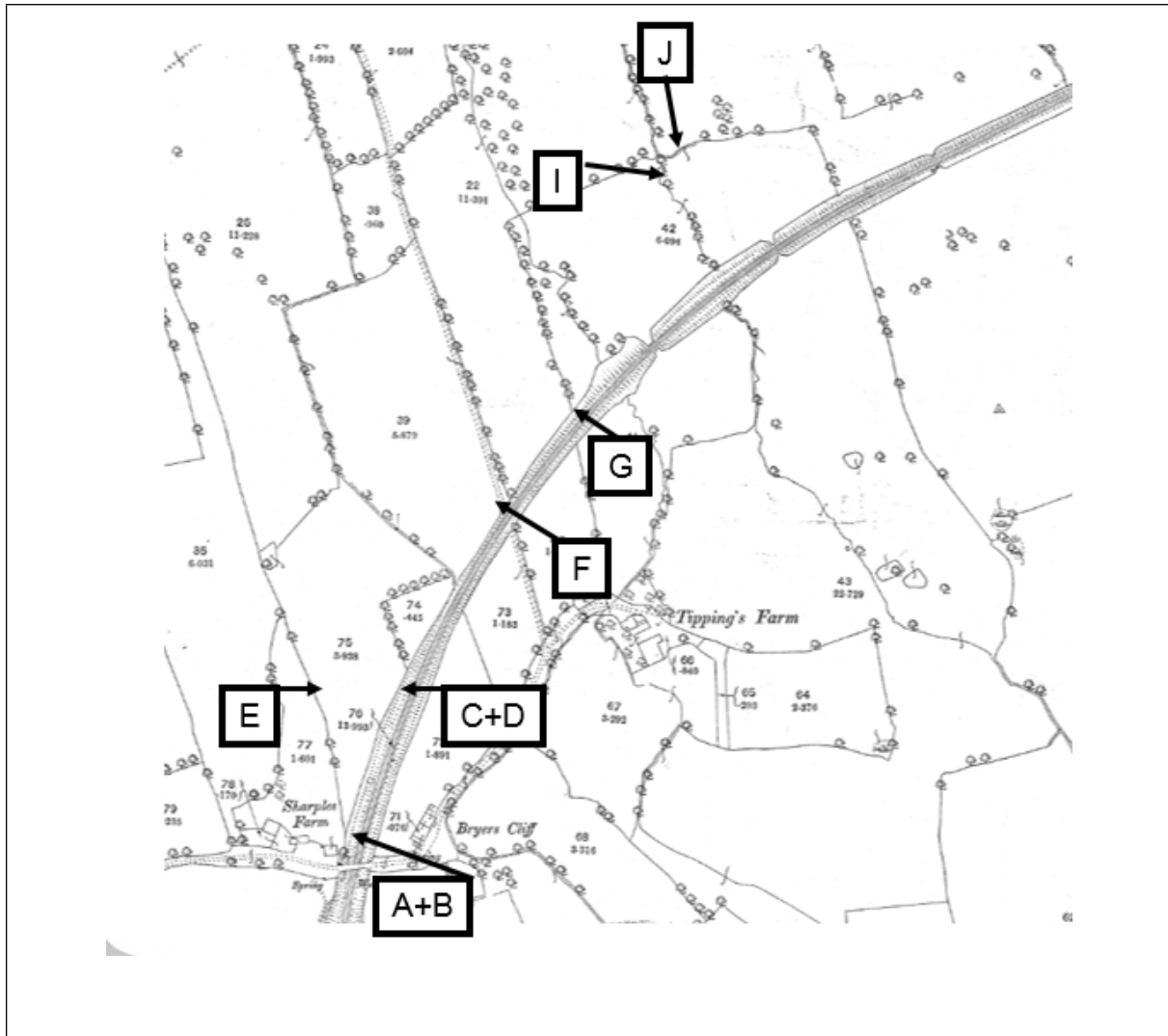


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|---------------------|--|
| <p>Observations</p> | <p>The application route is not shown.</p> <p>Wilpshire Lane (now Vicarage Lane) has been recorded as an extended route of what was previously shown on the early commercial maps. Sharples Farm is recorded where 'The Glen' is now situated. The railway line has not been constructed at this time, and there is no indication of a track along the application route.</p> <p>Little of the land has been developed at this time. There</p> |
|---------------------|--|

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|                                  |      | is no housing, the hospital has not yet been built and the access road has not yet been constructed. The A59 itself is shown as on the previous commercial maps.<br><br>(sheet no. 54 & 62) |
| Investigating Officer's Comments |      | It appears that the application route did not exist at this time.   |
| <b>25 Inch OS Map</b>            | 1893 | The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1893. (Sheet no.62-04 & 54-16)  |





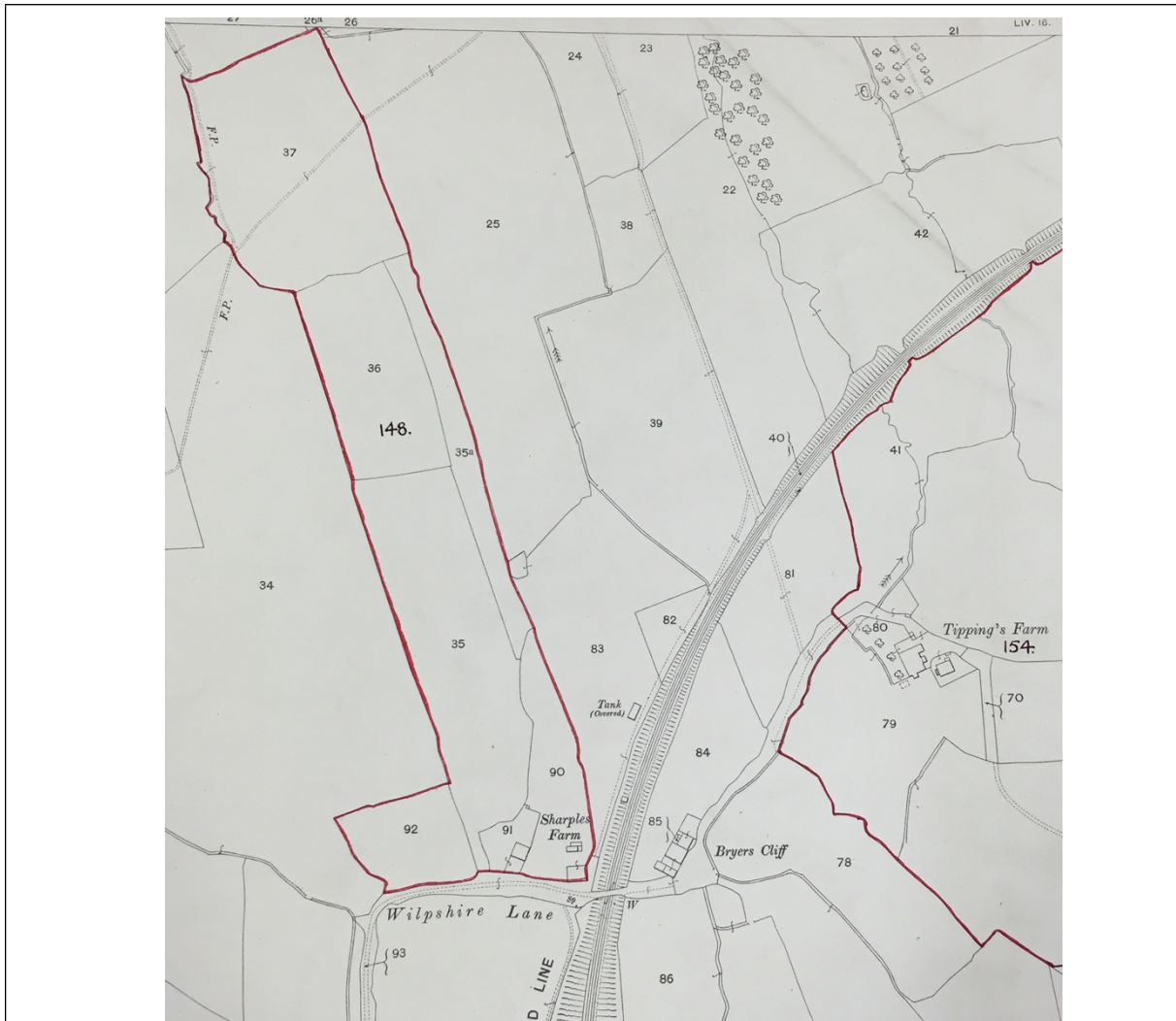


|                                  |      |  |
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| Observations                     |      | The application route is not shown on the map. The fields on which the application route runs remain as open fields but the railway line has since been constructed. Sharples Farm (The Glen) is shown. The housing development, the hospital and the access road have not yet been constructed.   |
| Investigating Officer's Comments |      | The application route is not shown on the 1893 OS Map therefore it is presumed that it did not exist at this time.   |
| <b>Finance Act 1910 Map</b>      | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership</p> |

to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).

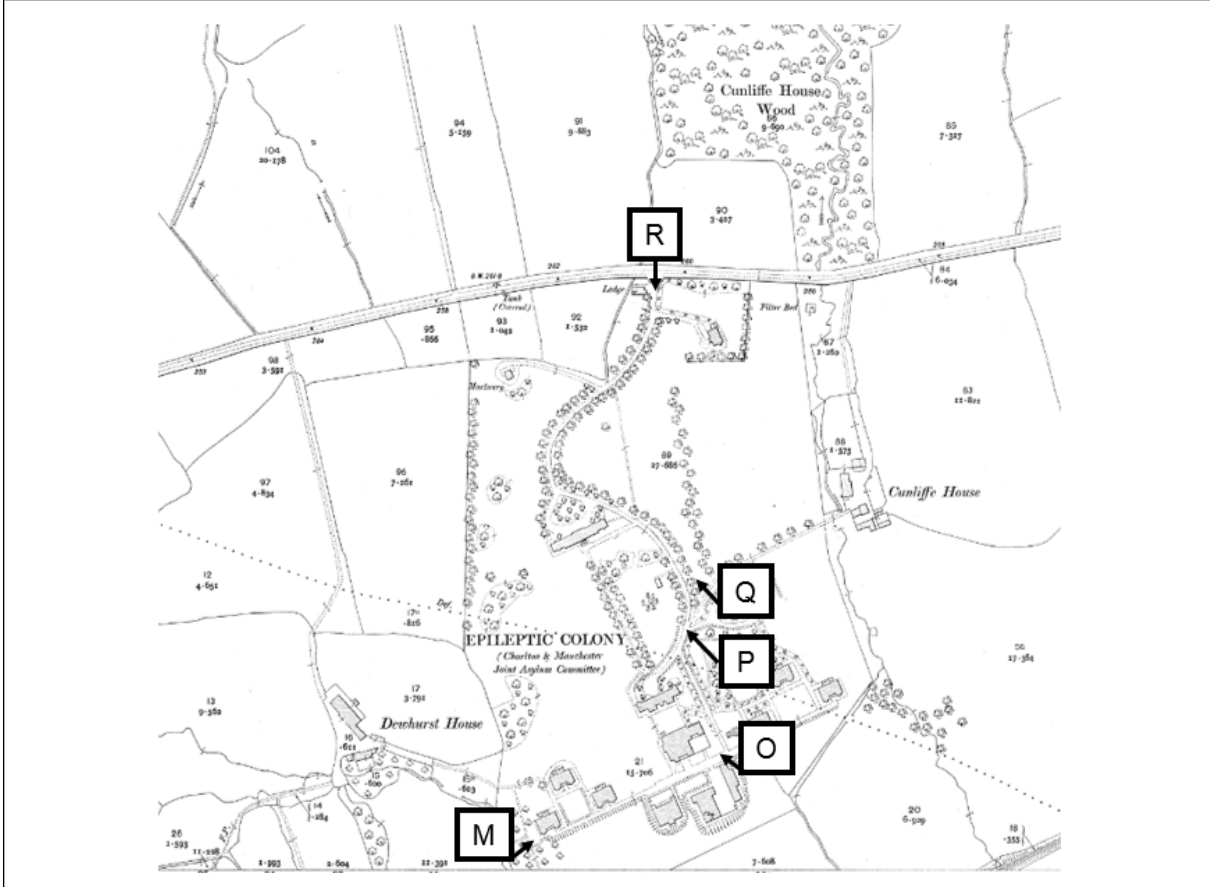
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey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

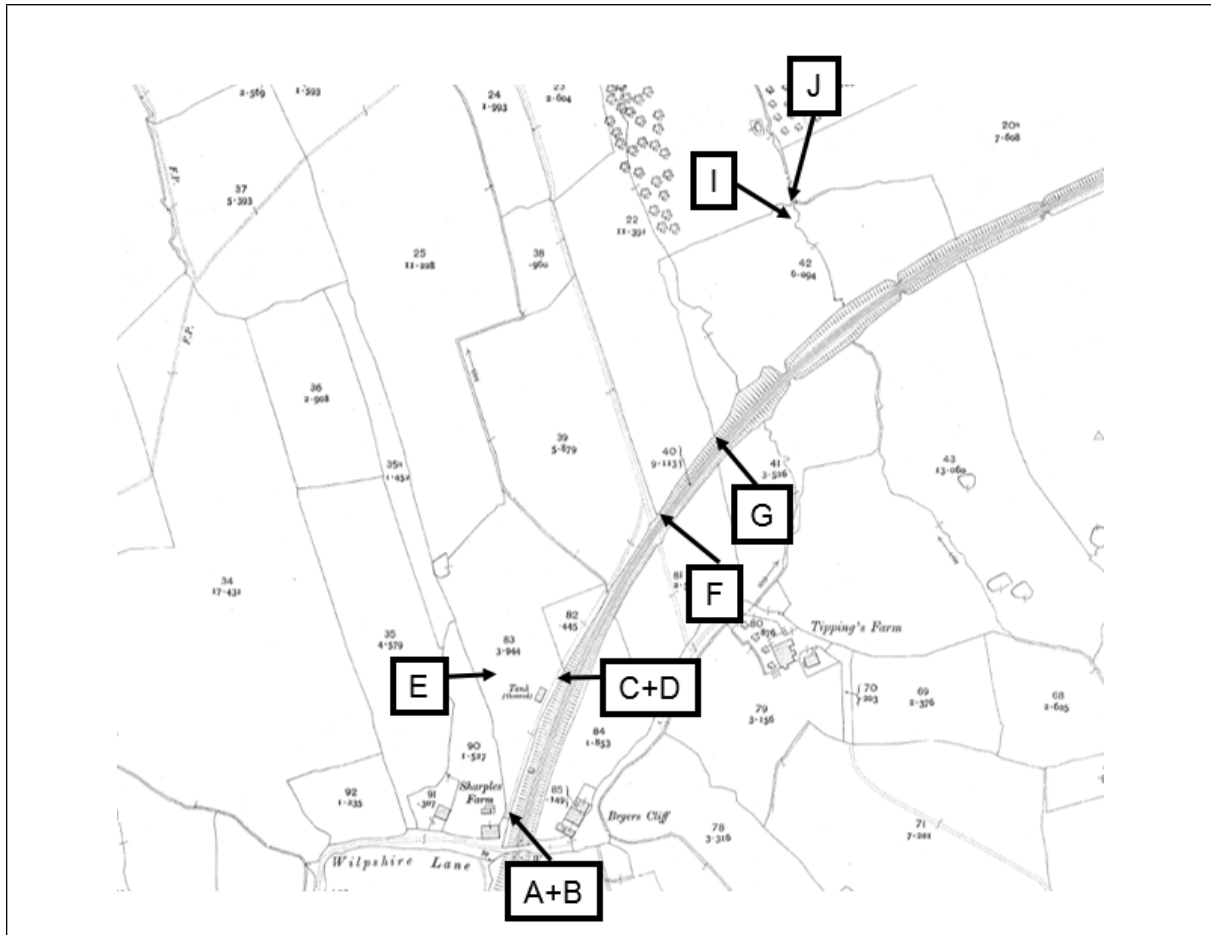




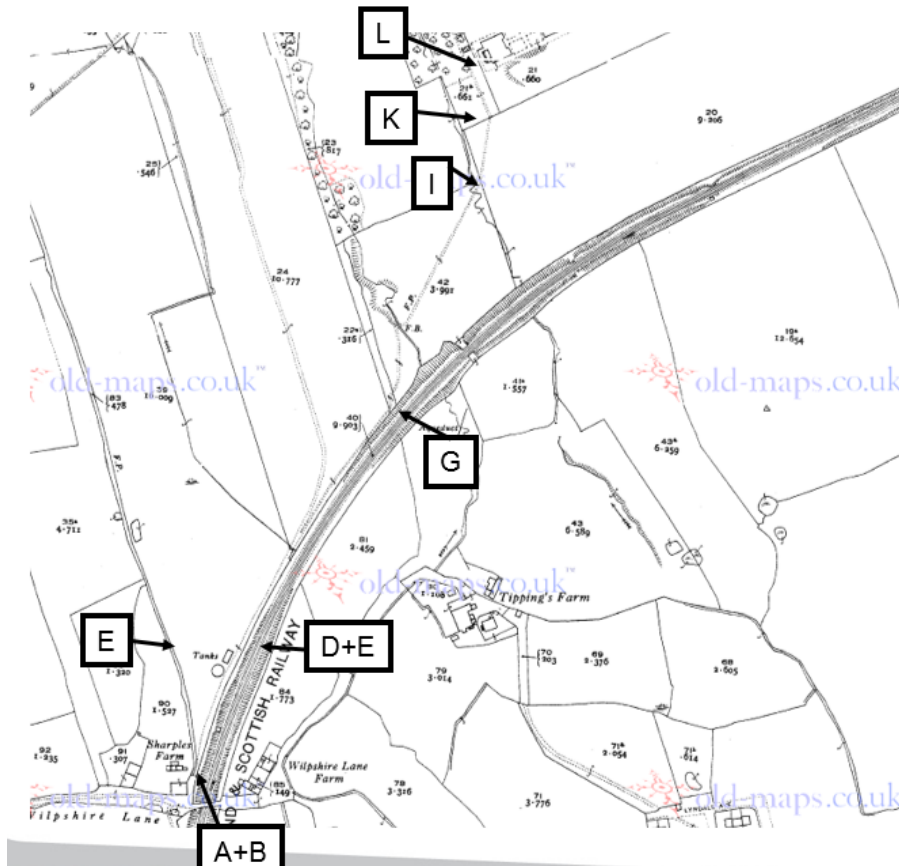
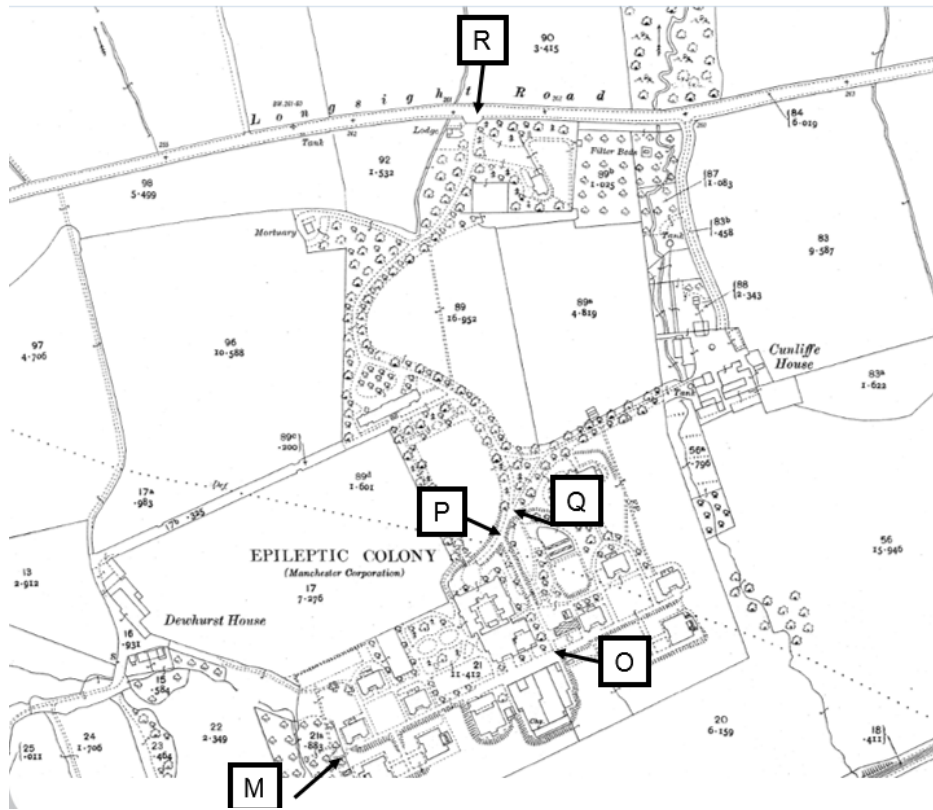
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| <p>Observations</p>                     | <p>The Finance Act Map does not record the parcels of land affected by the application on the southern section of the application route. In close proximity, Sharples Farm and northern fields are recorded in 148. The Finance Act Valuation Book has a reduction for a right of way crossing this land, but this is not the land relevant to the application.</p> <p>On the northern part of the application route, the Finance Act Map records the parcel of land which includes the route through the Epileptic Colony between points M and R at the junction with the A59. This land is numbered 207. The Finance Act Valuation Book records this land as owned or occupied by 'Lancashire and Yorkshire Railway' and 'Limes Station'. There was no reduction for a right of way crossing this land.</p> <p>(ref: (DVBK/1/3/6 – Map - DVBK/2/1 (sheet LXII.4) &amp; DVBK/1/3/2 – Map – DVBK/2/1 sheet LIV.16)</p> |
| <p>Investigating Officer's Comments</p> | <p>The Finance Act 1910 Map and Valuation Book do not support a public right of way on the application route.</p>  |

|                              |             |   |
|------------------------------|-------------|---|
| <p><b>25 Inch OS Map</b></p> | <p>1912</p> | <p>Further edition of 25 inch map, re-surveyed 1892, revised in 1910 and published 1912. (sheet no.62-04 &amp; 54-16)</p> |
|------------------------------|-------------|---|





|                                  |      |   |
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| Observations                     |      | A track can be seen (faintly on map) following the application route from point A through to point F. Sharples Farm (The Glen) and the water tower (tank) are shown, with no track shown between point D to E. There is no continuation of the track after point F to point G-H-I-J. The Epileptic Colony has been built since the 1 <sup>st</sup> Edition and access seems to be open between the Colony building, leading to an access track, passing what subsequently became the 'Sanctuary of Healing' and continuing to the A59. It is clear that this road is the main access for the Colony from the A59. |
| Investigating Officer's Comments |      | A path coinciding with the part of the application route through the fields did exist in 1912. A track between the buildings of the Epileptic Colony is in existence from point M to P, with the access track providing open access from the Colony to the A59 at point R. Therefore it is suggested that use could have occurred at this time, although the route taken between F and M is speculative.  |
| 1:2500 OS Map                    | 1931 | Further edition of 25 inch map published in 1931.   |



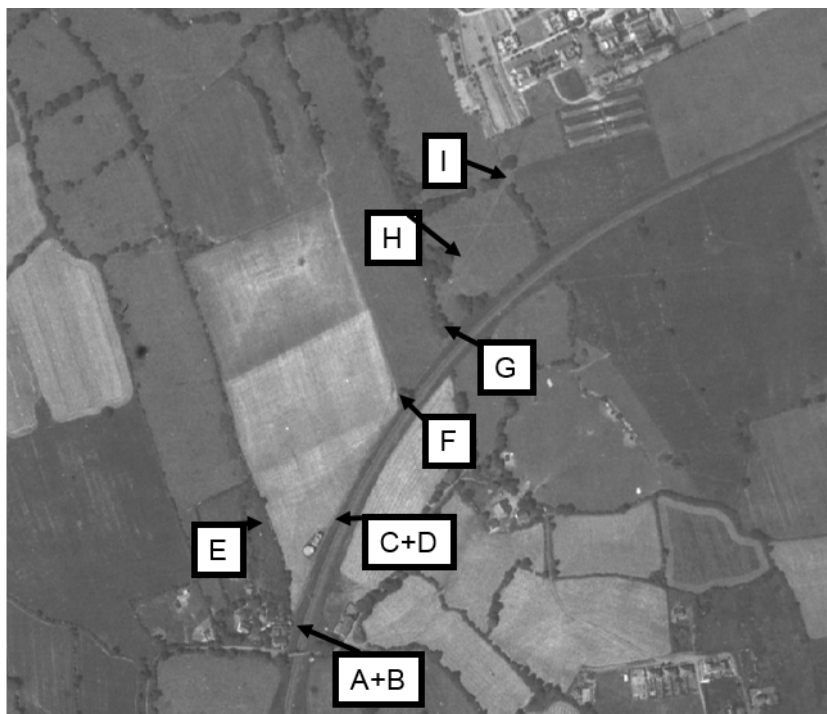
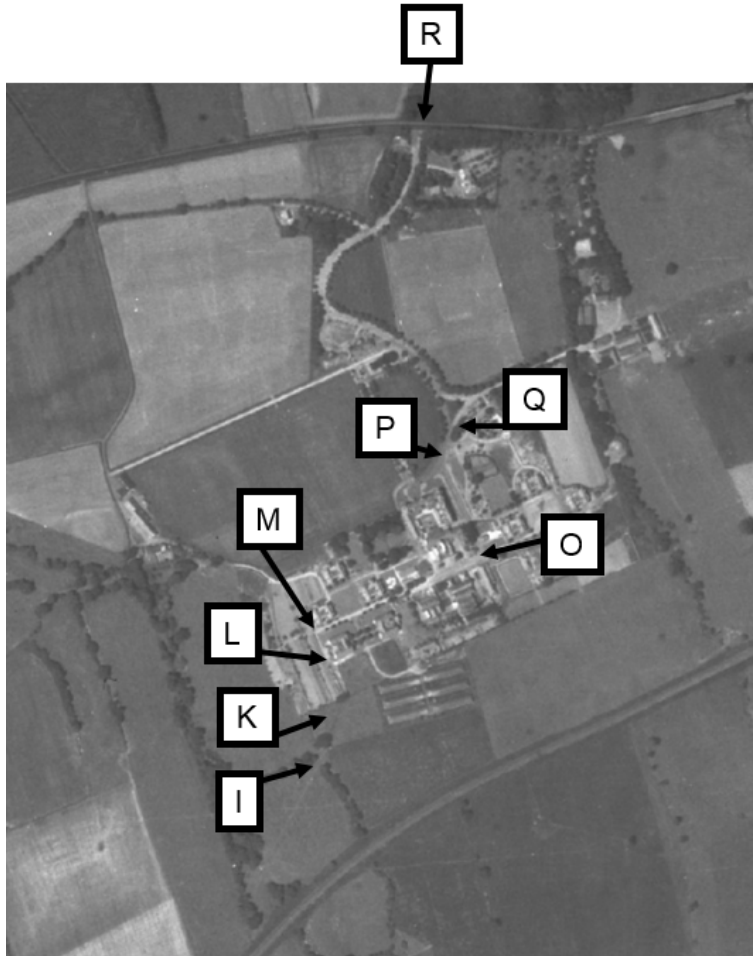
Observations

The application route is shown as a continuous track between points A to L. The route has been annotated

|                                      |       |  |
|--------------------------------------|-------|--|
|                                      |       | with 'FP' indicating it was seen as a footpath at the time the map was surveyed. The route leads directly to the Epileptic Colony. Between the buildings of the colony there appears to be a route, as identified previously, which could have been used to navigate through the hospital and lead to the main access track, winding north to meet Longsight Road at Point R. The housing development of The Rydings and The Dales has not been constructed at this point. |
| Investigating Officer's Comments     |       | The application route between point A-L existed as a footpath at this time leading to the Epileptic Hospital. The access track is in existence leading from the hospital to Longsight Road/A59. Nothing is shown on the map for the application route between points D and E.  |
| <b>Aerial Photograph<sup>2</sup></b> | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.  |

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

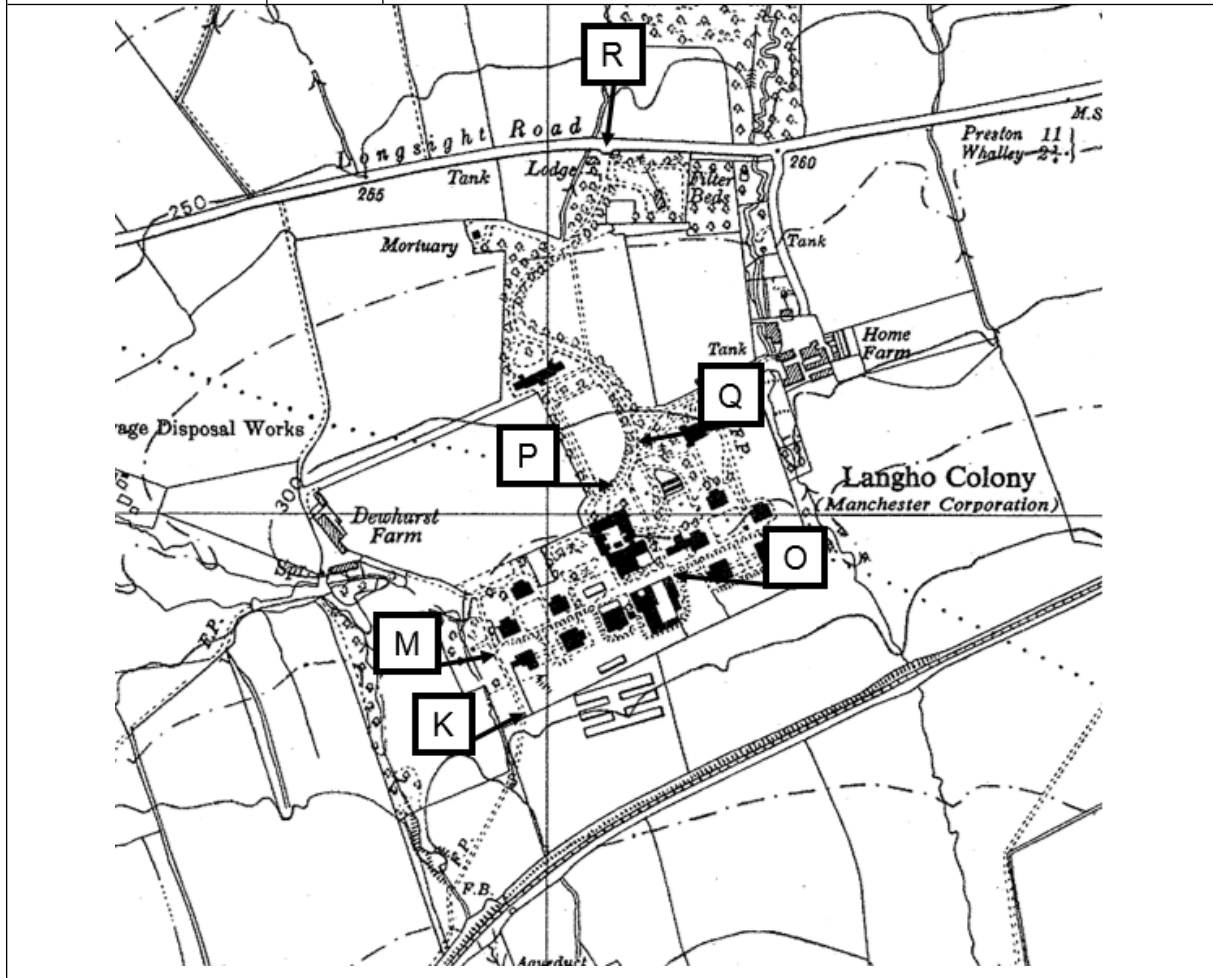


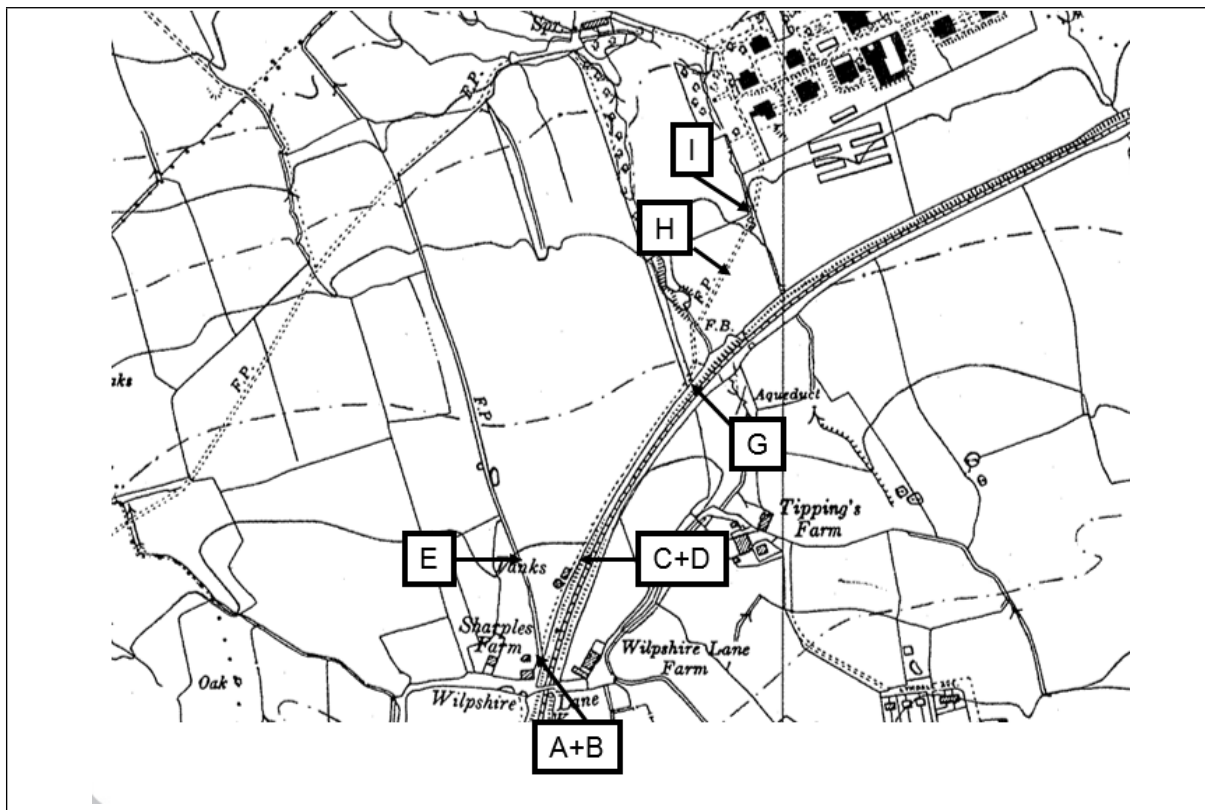
Observations

The quality of the 1940 aerial is not great although a slight trodden track can be seen in parts, particularly between parts G to K. There is a visible track through

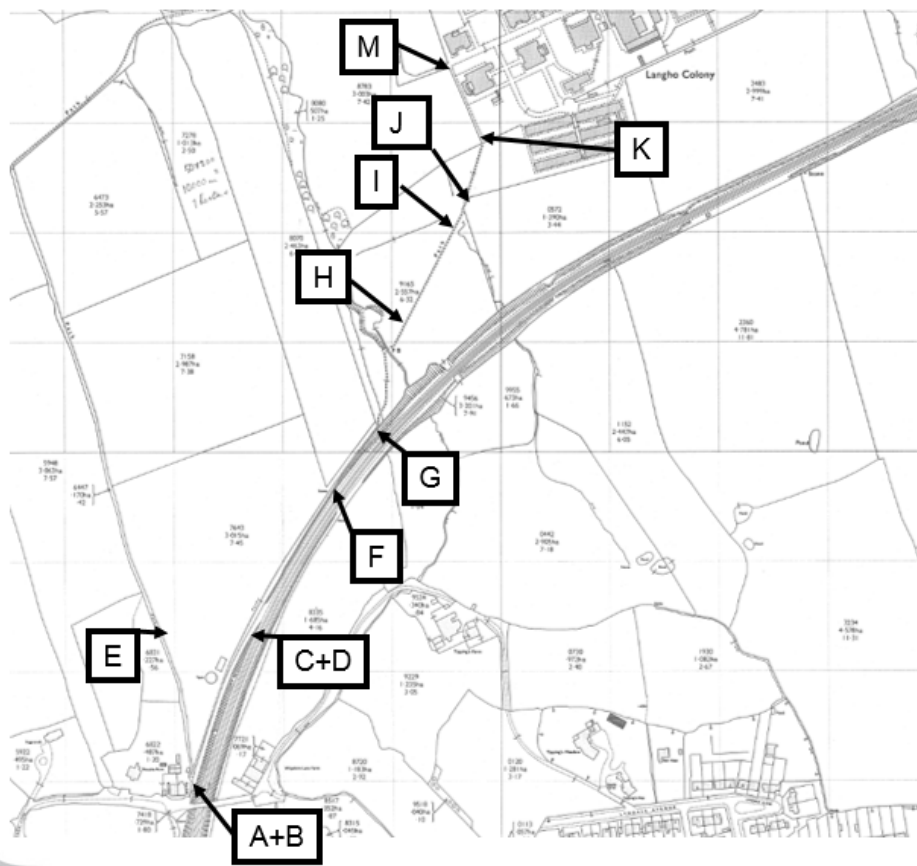
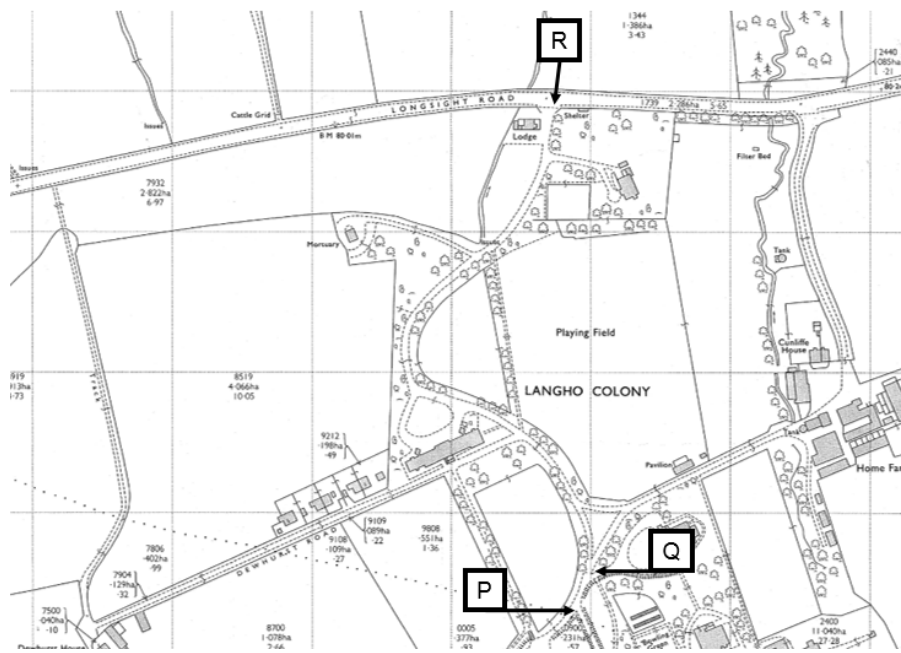


|                                  |      |   |
|----------------------------------|------|---|
|                                  |      | the hospital buildings and leading down the access road to Point R.   |
| Investigating Officer's Comments |      | The 1940 aerial photograph supports the application in that use of part of the route was occurring on the ground at the time. Trodden tracks can be seen between points G to K which is in the middle of the application route, therefore it can be presumed that the whole length of the route from Vicarage Lane was being used also, up to the Hospital. It is clear from the hospital heading north that there was an intended access route, with a defined way through the buildings and a constructed road leading to Longsight Road/A59. |
| 6 Inch OS Map                    | 1956 | The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised 1930-45 and is probably based on the same survey as the 1930s 25-inch map.  |



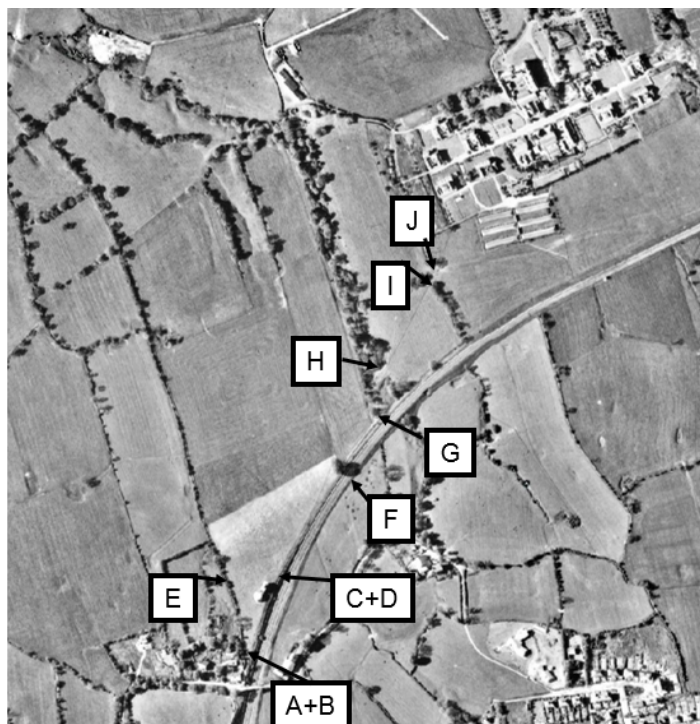
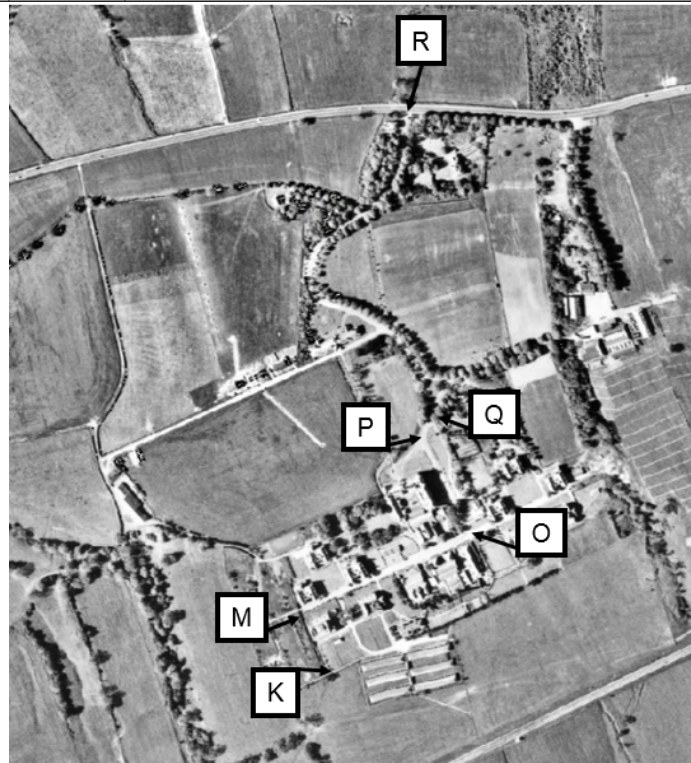


|                                  |      |   |
|----------------------------------|------|---|
| Observations                     |      | <p>The application route is clearly shown on the map from point A close to Sharples Farm (The Glen) to point M at Langho Colony. The route has been annotated with 'FP' indicating the route appeared on the ground to be a footpath at the time the map was surveyed. As on previous maps there is a route leading through the hospital buildings leading towards the access track, and following the road down to reach Longsight Road/A59 at Point R.</p> <p>The Rydings and The Dales housing estate does still not exist at this time.</p> |
| Investigating Officer's Comments |      | <p>The majority of the application route did exist as a physical footpath and access road at this time. It is presumed that the route did not exist between points D and E which is neither shown nor followed or connected any physical features.</p>  |
| 1:2500 OS Map                    | 1973 | <p>Further edition of 25 inch map reconstituted from former county series and revised in 1971 and published in 1970 and 1973 as national grid series.</p>   |

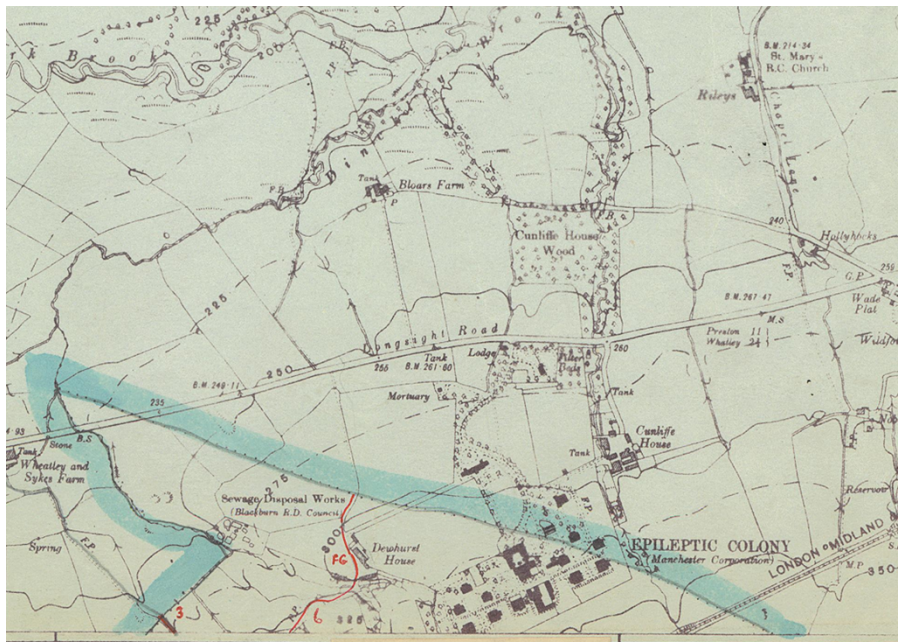
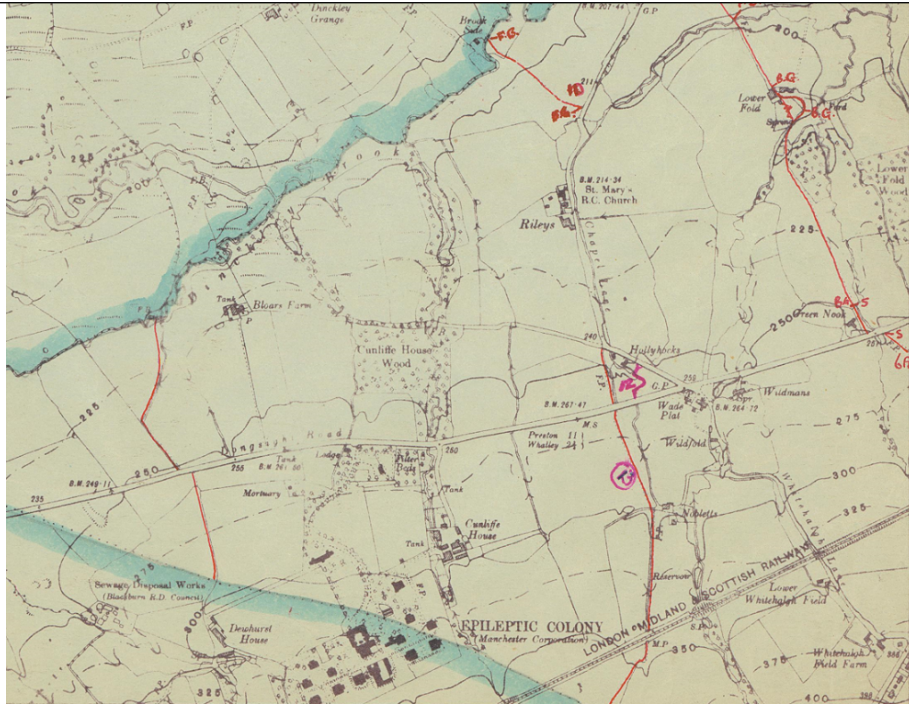


|              |   |
|--------------|---|
| Observations | As on the previous map, a track is shown and is labelled as 'path'. It is shown between points A and point M. The route continues to Langho Colony (previously the Epileptic Hospital). The Rydings and The Dales housing development has still not been built at this time. The route continues as previously through the Colony |
|--------------|---|

|                                  |       |   |
|----------------------------------|-------|---|
|                                  |       | buildings and along the access road leading to Longsight Road/A59 at Point R. Nothing is shown on the map for the application route between points D and E. |
| Investigating Officer's Comments |       | All of the application route A-R existed as a physical path at this time. It is presumed the routes did not exist between points D and E.                   |
| <b>Aerial photograph</b>         | 1960s | The black and white aerial photograph was taken in the 1960s and is available to view on GIS.   |



|                                  |           |  |
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| Observations                     |           | A trodden line can be seen on the 1960s aerial photograph from point A to point K. The Rydings and The Dales housing development has still not been built but a trodden line continues towards the hospital. A route as shown previously can be seen between the hospital buildings, and the access road can be seen leading to Longsight Road/A59 at point R. There is no trodden line shown for the application route between point D to E.  |
| Investigating Officer's Comments |           | The application route existed on the ground in the 1960s, particularly as a trodden track between points A to K and an access road from the hospital to point R. There is no evidence to show that the route between points D to E was used however.   |
| <b>Definitive Map Records</b>    |           | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>  |
| <b>Parish Survey Map</b>         | 1950-1952 | <p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p> |
|                                  |           |  |





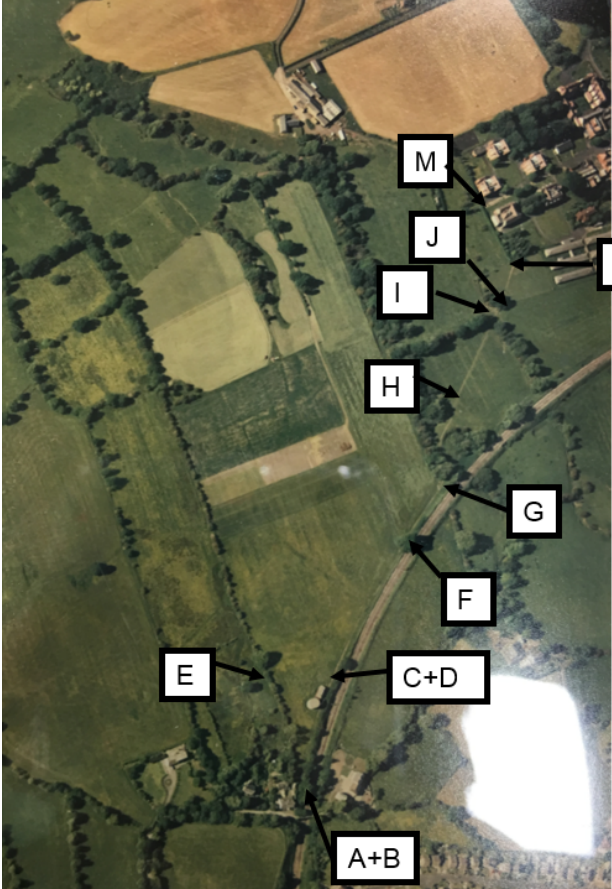
|                            |   |
|----------------------------|---|
| <p><b>Observations</b></p> | <p>The parishes of Wilpshire and Billington were within Blackburn Rural District and produced a Parish Survey Map. The application route is not included on the map as being a public footpath, although it is shown as pecked lines and marked 'FP' on the base map (1956 6 Inch Ordnance Survey Map). Footpath 5 Wilpshire has been recorded on the Parish Survey Map in close proximity to the application route.</p>  |
| <p><b>Draft Map</b></p>    | <p>The parish survey map and cards for the rural districts were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p> |

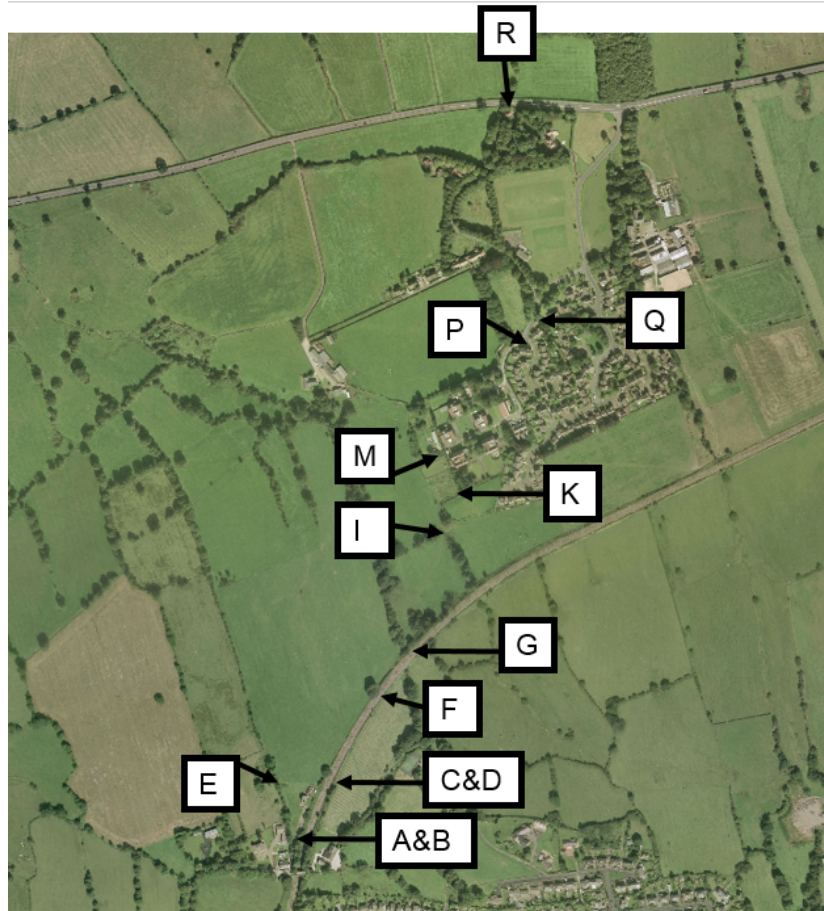


|                        |  |   |
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| Observations           |  | The application route is not recorded on the Draft Map even though pecked lines are shown on the base map between points A to K and the access track is seen from the Colony to Longsight Road/A59 at point R. Other public footpaths in close proximity have been recorded, in particular Public Footpath 5 Wilpshire.   |
| <b>Provisional Map</b> |  | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court. |
| Observations           |  | The Provisional Map does not differ from the Draft Map, and does not record the application route.  |

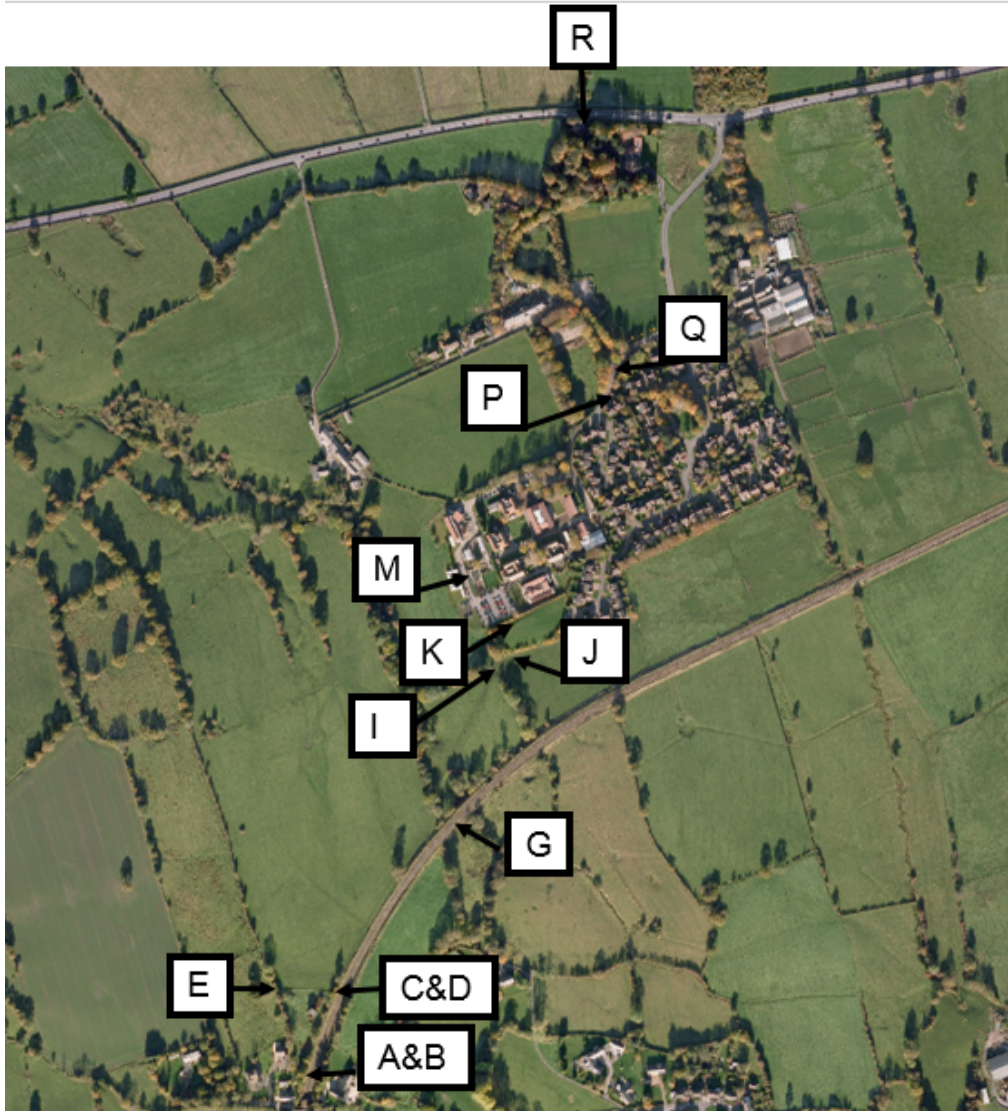


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|--|--|---|
| <b>The First Definitive Map and Statement</b>                        |  | The Provisional Map, as amended, was published as the Definitive Map in 1962.   |
| Observations   |  | The application route is not recorded on the Definitive Map and Statement. The route is however shown as a pecked line and annotated with 'FP' on the base map between points A to M, and the access road can be seen from the Colony to Longsight Road/A59 at point R.   |
| <b>Revised Definitive Map of Public Rights of Way (First Review)</b> |  | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. |
| Observations   |  | The application route is not recorded on the Definitive Map. The route is however shown as a pecked line and annotated with 'FP' on the base map between points A to M, and the access road can be seen from the Colony to Longsight Road/A59 at point R.   |
| Investigating Officer's Comments                                     |  | The application routes are not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. They were probably not considered to be public at the time, even though a path and road appear to have existed for access to the hospital.  |


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| <b>Aerial Photograph</b>  | 1980 | Colour Aerial photograph taken in 1980  |
|  |      |   |
| Observations  |      | A clearly defined trodden line can be seen leading from point A to point K as shown on the previous Ordnance Survey maps. There is no trodden line shown for the application route between point D to E.  |
| Investigating Officer's Comments  |      | The application route appears to have existed in the 1980s as trodden lines can clearly be seen between points A and point K (from where the hospital access roads could lead to the Longsight Road but any pedestrian use would not show).. There is no evidence of use between points D to E. |
| <b>Aerial Photograph</b>  | 2003 | Colour aerial photograph taken in 2003 available on the GIS.  |



|                                  |      |   |
|----------------------------------|------|---|
| Observations                     |      | The housing development at The Rydings and The Dales has been built since. A trodden line can be seen on the application route between points C to J, showing that use on the ground was still occurring at this time. There are no trodden lines visible between A to C, D to E - although a fence line has now appeared or J to K. The route through the hospital appears to be tarmacked, and becomes obstructed by the housing development at point N. At point P, the route continues along the former access road to exit at Longsight Road/A59 at point R. |
| Investigating Officer's Comments |      | The majority of the application route exists as a trodden or available route at this time, particularly between points C to J. There is no evidence of the route between points A to C, D to E or J to K.   |
| <b>Aerial Photograph</b>         | 2006 | Colour Aerial photograph taken in 2006 available on the GIS   |



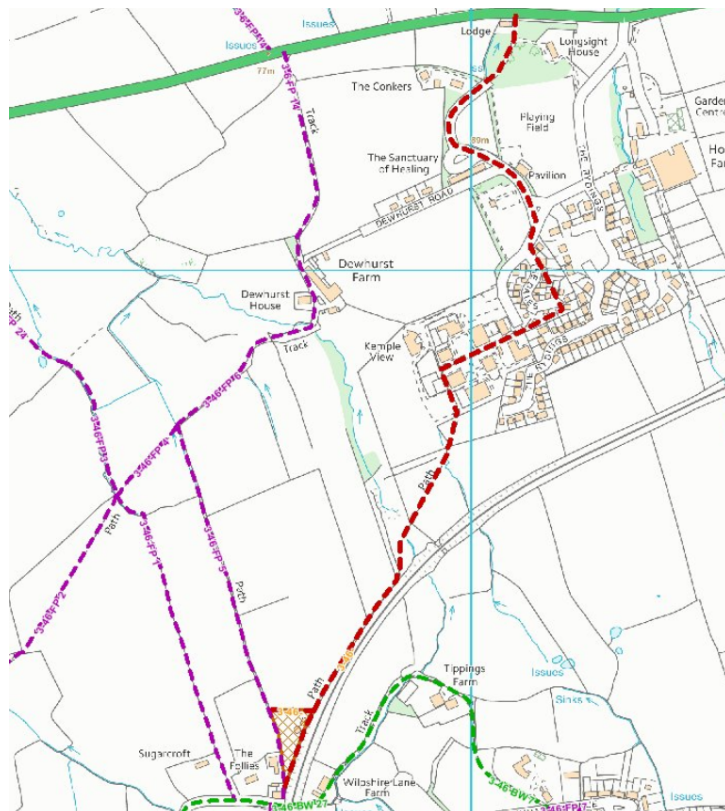
|   |   |
|---|---|
| <p>Observations</p>                     | <p>A trodden line can be seen from point C to J. A car park has since been constructed on the hospital grounds and the route appears to now be impassable to point M. At point M the tarmac track continues to reach the housing estate which is impassable. From point P the route follows the access road to Longsight Road/A59 at point R. A trodden line is not visible between points A-C and D-E.</p> |
| <p>Investigating Officer's Comments</p> | <p>The land is continuing to be developed with the newly constructed car park. It seems that the route is becoming more impassable due to development, but a trodden line can still be seen for the majority of the route, and the access road leading from the hospital to Longsight Road/A59 appears to remain available.</p>   |

|   |      |   |
|---|------|---|
| Aerial Photograph   | 2010 | Colour aerial photograph taken in 2010.   |
|  |      |   |
| Observations  |      | <p>Some of the route is difficult to determine because of the blocked view from the trees, particularly between points A-B-C-D and G-H. However traces of the route can be seen between points C to G. A route cannot be seen between points D to E but the triangle of land to the south is shown to be overgrown and full of shrubs. Wheel tracks, presumably from a tractor are apparent around G-I-J. The access road leading from the hospital to Longsight Road/A59 still appears to be a main route.</p> |
| Investigating Officer's Comments  |      | <p>The 2010 aerial photograph supports some of the route still being used on the ground, particularly between points C to G, P to R and most likely G to J. It is difficult to determine for the rest of the route due to the quality of the photograph and the trees.</p>  |

**Statutory deposit and declaration made under section 31(6) Highways Act 1980**

The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being 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).

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).



**Observations**

A statutory deposit was made by Mr and Mrs Murray in relation to Land north of Vicarage Lane, Wilshire, BB1

|                                  |  |  |
|----------------------------------|--|--|
|                                  |  | 9HY, as shown on the land shaded by orange hashes on the southern section of the application route, to prevent dedication of public rights over their land. The deposit was submitted on 26 <sup>th</sup> March 2014. This does not affect any dedication prior to this date but from this date there is a clear statement that this landowner did not intend to dedicate a public footpath. |
| Investigating Officer's Comments |  | There has been an indication by one of the landowners affected by this application under this provision of non-intention to dedicate public rights of way over their land from 26 <sup>th</sup> March 2014.  |

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

The affected land is not registered common land.

## Summary

Historically part of the application route A-B-C-D-F-G-H-I-J appeared to provide a link from Vicarage Lane to the Epileptic Hospital, then Langho Colony. The site is still currently in use as a Psychiatric Hospital. There is a series of documents consistently supporting the existence of this route as a physical footpath, including 80 years of a track shown on the Ordnance Survey maps from at least 1893 through to 1973, where it has also been annotated with 'FP' and 'path', aerial photographs from 1940 to 2010, and particularly trodden lines on site between points G to I. The route has not been used in parts in recent years due to restrictions made along the route including locked gates and erected fencing.

The application route from point D to E appears to provide a link to Public Footpath 5 Wilpshire which connects to a series of other public footpaths in the Wilpshire Parish. There is no documentary evidence for this branch of route, there was no sign of any trodden lines of use on the aerial photographs inspected, or indeed when on the site visit.

The application route from point J to K provides a link to the hospital grounds. The existence of a stile (now barricaded) at Point J, mentioned in the user evidence, does indicate that at some point in time use could have been possible, although this is not particularly supported by the documentation inspected.

There is no trodden route on site between points J and K. Since the housing estate at The Rydings and The Dales was built, they have created an open access/exit at the cul-de-sac which does not follow the application route, but does provide an alternative exit as the access is denied at point K due to fencing.

The application route from point K-L-M-N-O-P winds through the hospital grounds and is shown as open and accessible on the majority of the Ordnance Survey maps inspected from 1912 to 1973, and on the aerial photographs until the land started to be developed around 1980. It appears to have been a wide track and is presently on a tarmacked surface. Currently the application route is inaccessible at points K and L due to security fencing around the complex, it is also inaccessible at points M, N, O, P due to the housing development of The Rydings and The Dales which built over the site and on the application route. The route currently is restricted by residential fencing, properties and gardens.

The application route from point P-Q-R follows a historical access road which gave private vehicular access to the hospital grounds from 1912 to present day. The road is known as Longsight Road and has no recorded highway status, but appears to have been the main private access road from the A59 to the hospital before The Rydings was constructed. Currently the track is a privately maintained tarmac road with a substantial width leading to a number of properties. There is currently a kissing gate and hedgerow located at point P although access is denied by fencing.

## **Landownership**

The application route affects the following landowners:

- Ribble Valley Borough Council
- Partnerships In Care Property 9 Limited, 2 Imperial Place, Maxwell Road, Borehamwood, Hertfordshire
- Dewhurst Farm, Longsight Road
- The Glen, Vicarage Lane
- 1, 3, 5, 7, 9, 15, 19, 20, 21, 22, 23, 24, 25 The Dales, Langho,
- Fairclough Homes Limited, Meirion House, 18-28 Guildford Street, Woking
- 10 Linkside Avenue, Winwick, Warrington
- 6 Gleneagles Drive, Brockhall Village, Old Langho
- Longsight House, Longsight Road
- The Lodge, Longsight Road
- Highways England
- 1 other private owner

## **Head of Service – Legal and Democratic Services Observations**

### Information from the Applicant

The applicant has provided 31 user evidence forms, 19 of these forms provide evidence of use of the route from Footpath 5 through to The Rydings and 12 of the forms provide evidence from Footpath 5 through to the A59, the evidence is set out below:



## Footpath 5 to The Rydings

The years in which the users have known the route is as follows:

|               |              |              |              |
|---------------|--------------|--------------|--------------|
| 1964-2014(1)  | 1965-2014(1) | 1974-2014(1) | 1975-2014(1) |
| 1982-2014(1)  | 1984-2014(3) | 1986-2014(2) | 1988-2014(1) |
| summer1990(1) | 1995-2014(1) | 1997-2015(1) | 1999-2014(2) |
| 2002-2014(1)  | 2004-2014(1) | 2012-2014(1) |              |

All 20 users have used the route on foot, the years in which the users have used the route are as follows:

|              |                          |              |              |
|--------------|--------------------------|--------------|--------------|
| 1949-1954(1) | 1956-1962 & 1982-1984(1) | 1974-2014(1) |              |
| 1975-2014(1) | 1982-2014(1)             | 1984-1999(2) | 1984-2002(1) |
| 1986-2010(1) | 1987-2014(1)             | 1988-2009(1) | from 1990(1) |
| 1995-2005(1) | 1997-2014(1)             | 1999-2014(1) | 2000-2014(1) |
| 2002-2014(1) | 2004-2014(1)             | 2012-2014(1) |              |

The main places the users where going to and from include for a walk, from The Dales to Wilpshire, to the A59, the cricket club, Clayton-le-Dale, Salesbury, Somerset Avenue to Langho Colony and Wilpshire to Langho. And the main purposes for using the route are for exercise, pleasure, dog walking, enjoyment, to visit friends, watch cricket, to get to work and for social reasons.

The times per year that the users used the route varies from 120, 5 times per week, daily, several, 3-6, 10-15 and 20-40.

2 users have also used this route on horseback one between the years of 1975-2014 and the other between 1986-1992.

10 users agree that the route has always run along the same line, 4 users mention the water tower being built and that they made slight diversion, one of these users mentioned this water tower was built in around 2002. 1 user mention they took a light diversion via the footpath to the west, another user mentioned the route was blocked in around 1999 and they stopped using it then, another user also mentions the route changed in 1999. 2 users mention a fence was erected, 1 user stopped using the route when the fence went up and the other user would climb the fence, they mentioned the fence was erected around 2001/2002.

6 users mention the erection of a fence across the path, the dates of the fence vary from either 1999, 2001, 2002. 8 users mention there was a gate and some users mention this gate became locked in recent years. 2 users also mention a stile. 2 users mention seeing a stile/gate/fence along the route but did not provide details, and 4 users did not know or could not remember. 8 users mention a gate was locked but only recently in around 2013.

6 users have never been prevented from using the route, 1 user mentions they just climbed over the fence, 2 users mention being prevented in 1999 when the fence was erected, 1 user was prevented by the water tower in 1999, another user couldn't use the route when the fence was erected but could when it was removed, 1 user climbed over a locked gate, 1 user was prevented by a locked gate, 2 users mention

wire on the stile in recent years and another user mentioned in 2014 the stile was removed and barbed wire prevented access.

Most of the users have never worked for a landowner, 1 user however used to cut Mr Turners grass at his bungalow and received a telephone call from Mr Turner in February 2014 telling him not to take his dogs on the field owned by Kemple View. Another user used to work for Langho Colony but received any instructions about the route.

1 user mentions being stopped when using the route around the time the stile was removed near Christmas time, but none of the other users have ever been challenged. 1 user had heard of someone else being stopped when the gate was locked, and another user refers to a time that they had heard from someone else that someone had been challenged.

1 user was told by Mr Turner in Summer 2013 that the route they were using was not a Public Right of Way, another user mentioned that Mr Turner regularly chatted to them and knew they lived on The Rydings and never objected to them using the walkway, none of the other users have ever been told the route they were using was not a Public Right of Way.

14 users have never seen any notices or signs along the route, 3 users saw a sign in 2014 but didn't provide any details, 1 user mentions a sign on the railway fence saying trespassers will be prosecuted in 2014, and another user refers to a 'no footpath' sign on Mr Turner's land and 2 signs were erected by the new landowner at either end of the water tower during 2014, saying 'private property' and 'no public right of way'. None of the users have asked permission to use the route and 2 users stated they thought it was a right of way.

- After completing the user evidence forms, users are asked to provide any additional information they might have, this information is set out below:
- I walked to point I and returned the same way
- It was an important link between Langho and Wilpshire during the time I lived on The Dales between 1995-2005 I used it to visit relatives and friends in Wilpshire
- At the age I was I only walked from Somerset Avenue down to the boundary of the hospital I was too young to go any further
- I walked from Point A -The Rydings and return after the Rydings was built. I do not remember not walking through the colony grounds
- Its always been available to walk, ride or cycle, why he wants to close it is beyond me. Used to ride horses down the path round Langho Colony to Cunliffe Moss Farm Longsight Road - never refused access to any part of the path, didn't walk or right through the colony grounds
- It is over 60 years since I walked this route and I have no recollection of it going through the Colony but of course that's not to say it didn't
- until recently had always thought that it was a public right of way
- walking along this path I would walk to point J and then return. After the estate was built I still walked to point J then returned. There was no particular reason for me to go passed point J.

The applicant has provided a further written statement attached to his user evidence form, the information contained in this statement is set out below.

He states the application is supported by Wilpshire Parish Council, Wilpshire Borough Councillors Stuart Hirst (leader of Ribble Valley Borough Council) and Sue Bibby and many other local residents.

The applicant then mentions the origins of this footpath stem from the founding of Langho Epileptic Colony in 1906 by Manchester Corporation. People would get off the train or tram or bus at Wilpshire (A666) and take this, the direct route to the hospital to visit patients as family members, or to visit friends or workers there. Over time the path was used more by people just enjoying going for a walk for leisure or recreational purposes and now provides a vital and safe pedestrian connection between the Rydings estate and the rest of Wilpshire and vice versa.

The applicant mentions that the reason that this application has been made is because a resident of the Rydings Mr Fred Holland (Clerk to Whalley Parish Council) complained that a gate on the route was found to be chained up in early November 2013 making progress difficult (and then subsequently in December 2013 a substantial stile was removed near to the Rydings. Mr Turner a local landowner and tenant of the land owned by Kemple View Hospital, had locked the gate. He subsequently removed the stile and an originally white / red painted marker post (the paint mostly wore off over time) at the Rydings end and on 5/2/14 (13:39 hours) he called the applicant to discuss the footpath and told him that he 'had put the stile in for walkers to replace a damaged one and that he now decided to remove it' he said that he had put it in so he could take it out as he chose.

The applicant states that Wilpshire Parish Council discussed the path in November 2013 and decided to 'seek to achieve definitive status' for this historic footpath.

On advice from PROW Council County Council (Steve Williams November 2013) the applicant mentions that visits were made to Mr Turner, the first in company (19/11/13), the applicant asked Mr Turner whether he would 'Dedicate' the route under 'Section 30 of The Highways Act' provided that Wilpshire Parish Council or Lancashire County Council provide and maintain any gates required (for disability purposes) along the route. The applicant further states that local people believe they have 'a right to walk along the footpath'. The applicant states that although Mr Turner had concerns regarding dogs he would consider the proposal and states 'I want to be fair but don't want to decide now – I'll think about it first'.

About a week later (27/11/13) the applicant visited Mr Turner again who had decided to turn down the proposal of a 'Dedication' and cited 'dog owners interfering with his sheep', he stated he 'never minded the people its them who let their dogs off their leads – I hate them', and mentions that there is already an unfenced definitive footpath running in a different direction through the main field within which the historic route runs.

The landowner(s) have not at any time sought a declaration under the Highways Act 1980 section 31(6) – stating non acceptance of the historic footpath on their land (i.e. prior to the deposit by Mr & Mrs Murray in 2014).

The applicant then goes on to mention that without this 'historic footpath' the Rydings residents accessing the central part of Wilpshire would have to cross the busy A59 twice to access the definitive path to Dewhurst Farm and Wilpshire. (There is no footpath heading West on the South side of the A59. Also access along the safe route to Dewhurst Farm along Dewhurst Lane is denied to local people by Mr Turner of Dewhurst Farm). Historically recreational walkers could enter or exit the original hospital grounds to the A59 via Dewhurst Lane (on the Eastern side of what is now the 'Sanctuary of Healing'), and in fact people still do use this route now to the A59. The evidence of long use can be seen on the Lancashire County Council 'Maps and related information online' – 'Mario Maps' – on the schematic map as 'Path (un)' and historic 1950's and 1960's aerial photos and other maps – additional 'Google Earth' can be used to see the line of the path.

It is mentioned by the applicant that there are 7 landowners on this historic route of this path, Wilpshire Parish Council would obviously prefer the original historic path for use by the public but if necessary would accept a compromise solution to establish a route that is suitable for landowners and the public, if this was possible and therefore negate the possibility of an expensive public inquiry.

The applicant has also spoken to Kemple View solicitors (represented by Aarti Vadera) in regard to land owned by them through which the path runs and they accepted that the path has been used 'historically for 40 years or more' and (in early 2014) had no objections to it becoming a definitive path.

In regard to the date the fence was constructed across the footpath near to the water tower, the applicant states that no one could exactly remember when and basically people gave their best estimate, the dates varied from 1998-2002. It was only during the latter part of 2014 that the applicant came across photos in his possession with the date on the back of October 2001 that he knew for certain that the fence was erected after that date as the fence across the way is certainly not on the photographs.

As well as the statement, the applicant has supplied 7 photographs of the route and the following information from them has been provided:

Photograph 1 – Footpath viewed from near Vicarage Lane, no fence erected across at this time (photo dated October 2001)

Photograph 2 – Water tower, no fence erected at this time (photo dated October 2001)

Photograph 3 – Taken Spring 2014 from Vicarage Lane end showing an obvious path

Photograph 4 – Taken Spring 2014 looking towards Vicarage Lane showing an obvious path

Photograph 5 – Looking north down the field from the Definitive Footpath 5 (2014)

Photograph 6 – Taken from position 6 on the map looking down the footpath towards Kemple View / Rydings (no date)

Photograph 7 – Stile near to 'The Rydings' / Kemple View. (Now removed December 2013) this stile replaced a previous one that was in the same approximate area, NOTE: The originally white and red painted marker post to indicate the route.

### Footpath 5 to The A59

The years in which the users have known the route is as follows:

|              |              |              |              |
|--------------|--------------|--------------|--------------|
| 1957-2014(1) | 1962-2014(1) | 1964-2014(1) | 1971-2014(2) |
| 1972-2014(1) | 1973-2002(1) | 1974-2014(1) | 1976-2016(1) |
| 1978-2014(1) | 1981-2014(1) | 1988-2014(1) |              |

All the users have used the route on foot, and the years in which the users have used the route varies:

|              |              |              |              |
|--------------|--------------|--------------|--------------|
| 1957-1985(1) | 1964-2014(1) | 1970-2014(1) | 1971-2002(1) |
| 1971-2003(1) | 1971-2014(2) | 1972-2014(1) | 1973-2002(1) |
| 1978-2914(1) | 1981-2014(1) | 1988-1998(1) |              |

The main places the users were going to and from include fishing at Dinckley, visitng friends, to Langho from Clayton-le-Dale, to Langho Colony or The Rydings, The Rydings to Vicarage Lane, to work or a walk for pleasure.

The main purpose for using the route are for social and pleasure, exercise, dog walking, fishing, enjoyment, to visit friends, shopping, blackberry picking, visiting the nursing centre, for work and recreation.

The amount of use of the route per year varies between:

In earlier years (1970s-1990s) users used the route more frequently, some twice per week and some 'several times', 1 user used it every night as a teenager but now every weekend with children, other users use the route 3-4 times per week, 5-7 times per year and 10-20 times per year.

2 of the users have used this route on bicycle one the users used it on bicycle between the years of 1957-1969 and the other user did not specify any years.

4 users agree the route has always run over the same line, 7 users state they had to make a slight diversion / detour was the water tower was installed, 1 user mentioned the route has always run along the railway line.

7 users refer to seeing gates on the route, some users state these were at the start and finish of the route, other users mention the gate either being a kissing or a swing gate, 5 of these users mention the gate(s) being locked in later years and only mentions they were prevented access. 3 users also refer to a stile being on the route and 2 users mention a fence being erected on the route.

1 user worked for Langho Nursing Centre between the years of 1987-1997 but they were never given any instruction regarding the route. None of the users have ever heard of anyone ever being stopped when using the route nor have they ever been told it was not a Public Right of Way.

3 users have seen notices, 2 users refer to seeing the notices in March 2014 and one 1 user states 2014, no further information regarding the notices was received. None of the users have ever asked permission to use the route.

Additional information has been provided by the users and this information is set out below:

- At the time a double fence was in position the definitive route, I climbed over to access route. Prior to The Rydings being built I walked through various routes in hospital grounds to A59. After The Rydings built, I used the I,J,K route while the hospital was still there I returned via Dewhurst Farm.
- During 1970s and 1980s I would walk with my parents through the Colony from Wilpshire to Dinckley, but I do not remember any details of the route. From 1990s I would occasionally walk the A-K route and the A-E-D to The Rydings to present time.
- The path has always been used with free access to Wilpshire. Walked through the hospital various routes from A59 to Wilpshire - no issues and no permission was required when passing the Colony route and returning. I used to get the bus to Colony Bus stop on the A59, I used the Lodge and main entrance through Langho Colony passing the then cricket field, onwards to Wilpshire, I do not recall route through the colony buildings.
- The path has always been used in both directions before the hospital sold the land for houses (The Rydings) and I have walked it regular ever since. Before The Rydings were built in 1990 I walked from Bryers Croft A-J through Colony to the Lodge entrance many onto paths to Dinckley return from various pathways home at no point do I ever recall being challenged on the journey through the Colony. After coming to live in The Rydings in October 1991 I regularly walk K-J-I route.
- I have not walked on The Rydings end of this path for many years, however during the 1970s - 1980s I used to walk the route through the hospital on a circular walk to Dinckley and never had any problem. I used various ways through the grounds of the hospital and got onto the A59 via the main entrance or the lodge. I can't remember the exact path I took through the hospital grounds it is such a long time ago.
- I have not completed the route into the Rydings for several years, but use the path regularly to view steam trains running between Clitheroe and Blackburn. In the past I have walked the route through Langho Colony onto the A59 and onwards to Dinckley. I took various routes through the centre of the hospital and exited onto the A59 via either the main entrance of the Lodge route. I cannot remember the exact routes through the hospital.
- I have walked occasionally in the past through the Colony to the A59 by various routes via Dewhurst Farm or The Lodge. I was never challenged whilst walking in this area. These walks were whilst walking to Dinckley / Old Langho, I am unable to recall the exact route.
- Over the years I and my family used various routes through Langho Colony onto the A59. We then went on to Hurst Green or back through Dewhurst Farm. Our route changed as the colony became a housing development. At first we would exit onto A59 via the Lodge entrance later we would use the new entrance for the housing. Nobody ever challenged us over 30 years ago this was a very popular path.

- After The Rydings was built I used the I,J,K route, prior to The Rydings being built I used to walk through the hospital grounds and come out on the A59 by the main hospital entrance.

Information from Others - responses received for part of the route (Footpath 5 to The Rydings) (initial application)

A letter of objection from Forbes Solicitors on behalf of the owner of Dewhurst Farm Barn

A letter has been received from Forbes Solicitors on behalf of John Turner (part landowner) who formally objects to the application.

Mr Turner is the owner of Dewhurst Farm Barn and he is also a tenant of the land which was acquired by the local hospital adjoining it which was formally his land.

Forbes Solicitors carried out examination of the title documents that reveal a footpath was in existence between the hospital and near to the bottom of the land upon which the water tower sits. They mention that the line of the path does run approximately the same route as shown on the committee plan, but state that this footpath is not a public footpath and was a private path.

It is mentioned that Mr Turner's title was created following the conveyance by the Council of the City of Manchester of land comprising Dewhurst Farm to Mr and Mrs E Wearden pursuant to a conveyance dated the 15 October 1980. At the time of this conveyance a right was reserved for the benefit of the then sellers. The provision in the conveyance states "the full right and liberty from time to time and at all times hereafter and for all purposes of occupation of the Langho Centre for the vendor its certence and licences to pass and repass with or without animals and vehicles over and along the track or road of 12 feet wide indicated by the broken yellow and black line on the said plan between the points marked "E" and "H". (A copy of the plan was submitted with the response)

Forbes Solicitors state that until recently the footpath should only have been used by the hospital to read meters which were situated at the water tower. They understand that their client Mr Turner has taken steps on numerous occasions to tell users of the footpath who were general members of the public that they did not have authority to do so and that it is was private land. It is noted that in some of the user evidence forms submitted with the application that a number of the parties had indicated that they had been stopped.

In the circumstances, Forbes Solicitors consider that the footpath is a private right of way only and is not open to the members of the public and that those persons that had not been authorised to use the path by the parties having the benefit of it are not entitled to do so and indeed are strictly speaking trespassing.

A letter of objection from Partnerships in Care

Partnerships in Care own part of the land used by this route and object to the application and state they are presently considering their position, which will take into account not only all the available evidence, but also the framework for the healthcare facilities that they operate and their statutory duties, no further response has been received to date.

A letter of objection from a private owner of part of the route where it joins Footpath 5 with supporting documents

The objectors own some of the land in connection with this application.

They have received copies of the application documents submitted by the applicant including the seven photographs and the 28 user evidence forms, it is stated that some forms omit information requested and from reviewing the forms they find substantial discrepancies in the evidence given and known and verifiable interruptions are curiously omitted from many forms. There appears to be confusion between the old private footpath to Langho Colony (which was closed and permanently interrupted from 1984) and the application route.

They do not consider that the application gives evidence of sufficient use of the route. The documentary evidence shows that successive objections to planning applications relating to their property did not refer to use of the route, including an objection from the applicant himself in 1998, which brings into question both the use and knowledge of the application route.

They refer to the date when 'The Rydings' was completed and established, and there appears no evidence that the application route has been used 'as of right for not less than twenty years'.

They also refer to the evidence given on the User Evidence Forms regarding interruptions to the application route, they state in many cases, to be unreliable and often evidence can be shown to conflict with clear documentary evidence of known interruptions. Additionally they mention that expected proof that the use of the application route has been without interruption is confused where users openly admit that they climbed over fences and locked gates to use the route.

They also state that there appears to be insufficient evidence for presuming implied or express dedication by any owner of any part of the application route. However, reliable documentary evidence can be given to support the lack of intention on behalf of landowners on the application route to dedicate the way to the public. They then refer to the CA16 form under Section 31 of the Highways Act that they submitted to Lancashire County Council on 26 March 2014.

The objectors bought the property on 24 March 2014 and in the last 17 months since then, they have seen only one person walking the route on their property and this was Mr Gaffney, the applicant on 25 March 2014.



They have made the following comments on The application, Documentary Evidence in the Application, User evidence of a footpath, User Evidence Form No.25 (the applicants form), User Evidence of a Bridleway and Other Documentary Evidence.

### The Application

Reference is made to the map attached to the application that shows 2 routes from Vicarage Lane, Wilpshire to 'The Rydings', Langho. One of the routes is through their property in Wilpshire along the fence of the railway line and to 'The Rydings', Langho; and the other route is via Wilpshire footpath No.5 until it crosses into land owned by Dewhurst Farm, where it turns eastwards to the railway fence before joining and following the first route until it reaches 'The Rydings' and they cannot find any reason given in the application to explain why the application is for 2 routes.

Reference is made to the Wilpshire Parish Council minutes of its meeting on 21 January 2014 that states "Should the proposal regarding the making of a public footpath from Vicarage (sic) Lane to the Rydings fail then funds could be used for the purchase of a strip of land to provide (sic) a public footpath by walking down FP 5 then turning right following the railway up to The Rydings".

They mention it is not clear for the reason of the application and what the act(s) have constituted the 'bringing into question' of the right to use the 2 routes as a public footpath, and the date of the act(s). It is stated that this is important because under section 31 of the Act the 20 year period is counted back from the date when the right of the public to use the path was brought into question. Reference is then made to the applicant's user form and the extra information he provided and the part that states the reason "is that a resident of the Rydings Mr Fred Holland (clerk to Whalley Parish Council) complained to me that the gate on the route was found to be chained up in early November 2013 making progress difficult (and then subsequently in December 2013 a substantial stile was removed near to the Rydings..." Mr and Mrs Murray comment that Wilpshire Parish Council minutes of its meeting held on 6 March 2013 months before Mr Holland complaints state that "Cllr Gaffney reported that he had been in contact with Anne Taylor (LCC Definitive Map Officer) who had given some options... Cllr Gaffney also spoke with Nick Bass, RVBC, who suggested that nothing be done at present". And it was resolved "to leave it as it is and try to gather evidence of its use over the past 20 years". Mr and Mrs Murray confirm they have spoken with Nick Bass on several occasions when he was with RVBC and have regard for his judgement and for his knowledge on footpaths.

The objectors have had sight of the user evidence forms submitted with the application and submit the following the comments.

It is mentioned that 22 of the UEFs claim use of the route in the period 8 October 1990 and 11 September 1997 (the construction period of The Rydings as stated by NHBC).

Mr and Mrs Wearden sold Dewhurst Farm on 28 April 1992, but retained the Water Tower property. It is most likely that by the date of sale they had erected the fence between the Water Tower and Dewhurst Farm. Before they erected the fence, a gate

or fence would have been required at the start of the route on Vicarage Lane to prevent livestock from straying onto Vicarage Lane and refers to the committee plan and the Conveyance Plan dated 28 April 1992. 19 UEFs that claim use of the application route before 1992 fail to mention a gate or fence at the start of the route on Vicarage Lane.

They mention there is currently a locked steel gate at the start of the route on Vicarage Lane and when the Water Tower property was surveyed in May 2014, the surveyors needed vehicular access to the property. It was very difficult to open the gate, for soil and debris that had built up at the bottom of the gate, and it had clearly not been opened for many years.

A copy of a letter from F Brewer & Son Ltd dated 27 July 2015 has been provided which states "The fence was installed between Dewhurst Farm and the plot of land of the redundant Water Tower at Vicarage Lane, Wilpshire. The new fence was installed between the existing stile on the public footpath and the fence to the railway line and replaced an old fence. I understand that the then owner of the Water Tower, Mr Colin Hooper was in agreement for the existing old fence to be removed and replaced by the fence which I installed."

They make the comment that a stock fence at Dewhurst Farm & the Water Tower was erected in January 2001 shortly after Mr Turner bought Dewhurst Farm and that the letter states his new fence 'replaced an old fence' supporting the estimated date of the original fence as pre-dating 2001 to an extent consistent with the fact that the fence required renewal.

Photographs have been submitted as part of the evidence by the objectors and they state that the photos show little trace of the path and refer to their photograph dated 23 September 2013 which they state gives a fair indication of how the Water Tower property can get overgrown and the second photograph shows no indication of the application route 1 or 2.

Photographs showing signs erected at the property dated 25 March 2014 taken at the south boundary show the sign on the gate, but also allows visual comparison with the well-beaten Wilpshire public footpath No.5 which runs immediately to the West of the gate.

Reference is made to the UEF that was completed by Mr Hill on 15 February 2014 who was the Chair of Wilpshire Parish Council when their letter dated 15 March 1998 was sent objecting to planning application (a copy of this application has been submitted as evidence with this objection.) Mr and Mrs Murray state he is listed as attending the planning appeal held on 12 August 1998 and there is no reason to believe that he was unaware of the letters of objection from Mrs Cunliffe (describing the application route as a "private footpath") and Mr Blundell which enclosed the photographs of the fence at the start of the route on Vicarage Lane. Mr and Mrs Murray refer to Mr Hill's comment of "I always thought it was a right of way" and state that if this was true, it is reasonable to expect the Wilpshire Parish Council letter of 15 March 1998 to object to the planning application because it would obstruct a public footpath, but it doesn't refer to this path.

User Evidence Form No.25 (applicant's form)

They make the following comments regarding the UEF provided by the applicant.

They state that Mr Gaffney claims that the fence at D was not erected until late 2001-2002 contrary to the evidence given in the letter from F Brewer & Son Ltd. They also state that Mr Gaffney claims to have never been told that the route he was using was not a right of way.

The objector had just erected 2 signs on the Water Tower Property in March 2014 when Mr Gaffney apparently climbed over the fence on the north boundary where the sign had just been erected. Mr Murray spoke to Mr Gaffney advising him that the route was not a public right of way. Mr Gaffney complained about the signs and Mr Murray also briefly described the history of Wilpshire Footpath No. 5 and how it had been moved early in the twentieth century.

They refer back to the Wilpshire Parish Council minutes of the meeting that show Mr Gaffney knew he was trespassing by 6 March 2013 and makes it clear that the gates and fences did not stop him continuing to trespass.

They refer to the text in Mr Gaffney's UEF "people would get off the train... at Wilpshire and take this... route to the hospital...", they refer to the chronology they submitted as part of their evidence and state that the closure of Langho and Wilpshire stations in 1965 and 1962 respectively and how LCC re-opened both stations in 1984. Jean Barclay is referred to, the author of Langho Colony / Langho Centre 1906-1984: A contextual Study of Manchester's Public Institute for people with Epilepsy' wrote recently on this:

"... from interviews with former residents that in the early days they used Langho Station and had to walk from there to the Colony... I don't think the path would have been used by the public in the early days as Langho Colony was very much a closed community."

#### Other Documentary Evidence

Comments are then made about other documentary evidence in connection with this application.

Wilpshire Parish Council has written letters of objection to planning applications to convert the Water Tower to a single dwelling. No letter seen refers to a footpath on the application route or objects to a planning application on the basis of the loss of amenity of the path. This reasonably suggests that the path was little used and was not known to the Parish Councillors. Letters written refer to the planning applications have been included as part of the objectors submission.

They state that there is evidence that there was no intention on behalf of landowners on the application route to dedicate the way to the public. Known documentary evidence includes:

The private footpath described by Mrs Cunliffe in her letter dated 10 March 1998 and Jean Barclay may well have been used by staff and the occasionally visitors going to Langho Colony, but its main use was probably a service path. The two buildings on

their property often described otherwise, are a concrete sprinkler tank and a water storage building which supported Braithwaite tanks. The brick water storage building was built at the same time as the first buildings at Langho Colony, but the sprinkler tank was added in 1921. Both buildings would require frequent maintenance inspections, and it is not surprising that soon after the time the sprinkler tank was in operation, the OS map indicated a (private) footpath from the Colony to these buildings.

They then state that because the land around these buildings was used by Dewhurst Farm dairy herd, an enclosure would have been required at Vicarage Lane, to prevent livestock exiting on to Vicarage Lane. Corroboration is given by Mr Blundell's letter dated 11 March 1998 and states that during all the time Mr Blundell lived at 'The Glen' "Langho Colony never used this access for vehicles". Mr Blundell, she stated had lived had lived at 'The Glen' for 43 years.

When Mr and Mrs Wearden sold the most part of Dewhurst Farm, the conveyance dated 28 April 1992 required the Purchasers to erect a fence over the application route, this requirement is clear documentary evidence that there was no intention to dedicate the application route.

They have submitted the following to support their objection:

1. Land Registry title plan that outlines their property
2. A table indicating the application documents received as of 3<sup>rd</sup> September 2015
3. A copy of LCC consultation plan with an added route referred with grid references used by the applicant (GR 692338 & 688333)
4. Chronology timeline table about the route in question
5. A plan of the application route with A, B, C, D, E, F, G, H and I marked on referring to:
6. A – Gate to Water Tower  
B – Stile on FP 5  
C – Double-fence to field 7843 & 7158  
D – Fence between Dewhurst Farm and Water Tower  
E – Field fence at 2 trees  
F – Fence and gate  
G – Fence to field 0572  
H – Stock fence and wood fence  
I – Secure fence & gate to Kemple View
7. An extract of The Rydings new build completion and sales dates
8. A copy of the letter from Wilpshire Parish Council to Ribble Valley Borough Council objecting to the Planning Application 3/90/0773 Land at Vicarage lane.
9. A copy of the letter from Wilpshire Parish Council objecting to residential development of the conversion of the sprinkler tank to and valve house to the Secretary of State Ref APP/L2350/A/91/195145
10. A copy of the letter from Ribble Valley Borough Council informing residents of the application to convert the sprinkler and valve house into a single dwelling
11. A copy of the letter from Margaret Cunliffe objecting to the conversion of the sprinkler and valve house into a single dwelling

12. A copy of the letter and photographs from Leslie Blundell to Ribble Valley Borough Council
13. A copy of the letter from Wilpshire Parish Council to Ribble Valley Parish Council objecting to the planning application for a proposed detached garage and front porch at former Barn adjacent to the hollies
14. Copies of letters from Mr Gaffney (applicant), Wilpshire Parish Council, Mr Ken McNeill, Mrs Margaret Cunliffe, Sugarcroft, Mrs Blundell, 22 Vicarage Lane objecting to the sprinkler tank and valve house conversion
15. A copy of a letter from F Brewer & Son Ltd
16. Photographs of the Water Tower Property
17. Photographs of fences, stiles and gates along the route
18. Plan of Conveyance dated 28 April 1992

Information from Others additional responses received for the Footpath 5 to The A59 (re-consultation)

A letter from the owners of 5 The Dales.

They state they are unable to provide evidence to support a modification to the Definitive Map although they understand from others that the Public Footpath was blocked by the owner of The Lodge after purchase.

A letter of objection from Longsight House

The owner of Longsight House object to the application for the following reasons:

The final part of the proposed footpath is actually down a road that they own and was purchased from the Council by the previous owner of their house a number of years ago. When they purchased the house 2 years ago, owning this road and therefore the rights as to who can use it and have access to it was a large part of the reason the property was purchased.

Security and privacy to their property is another reason for their objection. If a footpath was opened at the back of their house it would totally expose them to having all manner of people legally walking past and looking at their house. They have 3 young children and currently are happy for them to play in the garden knowing that only their neighbours at The Lodge will be using the road. They also own the piece of land on the other side of their road which their children play in and it would therefore be potentially crossing the footpath to get to. This is potentially a worrying situation where their children would not even be allowed to play in their own back garden for the fear of who knows who will be walking down their road and coming into contact with them.

The above concern also applies to the fact that there is a nursery just up the lane where the children play outside for large parts of the day, and this proposed footpath would enable anyone to come into contact with these children. The high security hospital (Kemple View) is also along the proposed route, from looking at the plan it seems to cut right through the hospital, and it amazes them on this fact alone that this proposal hasn't been immediately rejected.

Another reason for their objection is that the road in question has suffered very badly over the last few years with flooding partly due to poor drainage of the football pitches and during the bad weather this past winter the road was like a small river running rapidly. As a result the road from the football pitch onwards has very bad pot holes which would be a huge hazard for people who were not aware of their existence. The road has a large number of trees and leaves regularly cover the uneven road surface making this more hazardous.

The proposed route ends on the A59 which is a very fast road and at that particular junction it doesn't lead to anywhere, which makes them question as to whether there aren't better routes available for the people who have made this application. There is currently an existing footpath which is shown on the map as Fp14 which is a very short distance from the proposed route, and also the main road through the housing estate which also comes onto the A59. They think 3 points of access onto the A59 within a roughly 500 metre stretch is totally unnecessary. The new route could easily go around the other side of the football pitch, on an existing pavement and walkway and therefore totally avoid the back road past the nursery and across their land which is in essence right across their back garden.

#### A letter of objection from 21 The Dales

They have noticed the route cuts directly through their property. Their property was built 25 years ago by Fairclough Homes, it is part of a residential development of small to medium sized detached private residences. They have lived at this address since March 2000 and can confirm that at no time since that date has any group or individual attempted to follow the application route. They have also contacted the previous owner and he has similarly been able to confirm that at no time during his 5 year ownership of the same address did any group or individual attempt to follow the application route. Their initial objection is therefore on the grounds of usage as there has been no user evidence on this part of the route for the past 20 years.

From the consultation plan they have observed an alternative route which connects the 2 points (A59 and footpath 5) which starts on A59 and continues down Fp14 and Fp6 and then reaches Fp5. This route is the recognised and widely used alternative route to connect from the A59 Langho to Wilpshire and note this proposed route runs almost parallel. They have also used the existing public rights of way as they connect to their family in Wilpshire.

They also refer to another alternative route from A59 through The Rydings across the fields and meeting up with Fp5. They mention that this route has been commonly used for many years, much of it follows existing pavements and it does not cross any boundaries of residential dwellings or gardens and much of it is still part of the application route. They as well as their neighbours have used this route for approximately 16 years.

They also mention issues of privacy and security for themselves as well as their neighbours from the proposed route.

#### A letter of objection from the owners of The Lodge

The owners object to the application that runs through their property. They firstly object to the fact there is already a route from the A59 via Fp14 and can't understand why another access has been applied for.

They purchased the property under a year ago and one of the main reasons is the seclusion of the property and its surrounding land / garden, they have 2 young children and like them to play freely, safely and securely around their property, and if there is an open access to the A59 for a footpath then the safety of their children playing out in the garden will be compromised. They also mention flooding issues they have experienced.

They refer to when the Council owned the road they erected the fence on the A59 for safety purposes, the surrounding bushes, overgrown trees, and blind bend compromise driver's vision from seeing any pedestrians, there isn't a footway on their side of the road which is very dangerous and they would not like any accidents taking place outside their property.

They are currently having renovation works on their property and will be for the foreseeable future they wouldn't like anyone to fall on the drainage pipes or have an accident on their land that they would be responsible for, they have also bought electric gates they wish to erect across their land before they knew anything about this application.

They make the following comments regarding some of the user evidence forms:

1 user has not walked to the A59 via The Lodge since The Rydings were built, she would have been refused access after 2007 when it was purchased by the previous owner of The Lodge.

1 user hasn't confirmed that they have walked to the A59 via The Lodge in recent years, only mentions in their statement 'No permission when passing the Colony' again they would have been denied access after 2007.

Another user refers to walking via The Lodge between 1988-1998 but again after 2007 would have been denied access.

1 user doesn't mention walking through The Lodge after 2007 and they used a different route after 1991 – The Rydings.

Another user used access via The Lodge between 1976-1981 but again if used after 2007 he would have been denied access.

Another user can't remember the routes and walked through the Lodge 1971-2003.

1 user used the A59 access via The Lodge, but stopped using it when The Rydings were built.

#### An e-mail of objection from 11 The Dales

They state they would like to object to the proposal as the route passes directly through their garden and will impact their personal and privacy lives.

#### An e-mail of objection from County Councillor Alan Schofield

It is of concern that the proposed route not only goes through dwellings on The Dales but especially goes through Kemple View psychiatric services establishment facilities. Cllr Schofield suggest an alternative part of the route would be to use The Rydings, from the pavilion, southward to the end of The Rydings and thence westward across land south of Kemple View buildings.

#### Comments received from Nigel Evans MP

Mr Evans is writing on behalf of the private owner of part of the route where it joins Footpath 5. He states the land belonging to the owners has always been fenced and gated as such, to walk the route would require climbing over these obstacles. Therefore doubt that this has actually been done. There are claims by local residents that they have used the route for a long time but there is no way to verify this. Mr Evans adds his own objections as it seems that the route is ill-thought out and there are many obstructions and points which have not been taken into account.

#### A letter of objection from Wansbroughs Solicitors on behalf of Partnerships in Care Limited

The route as referred to on the consultation plan is not supported by the evidence provided by the initial application in 2015, no evidence has been provided at all that supports the route indicated on the map.

No request was ever received by the owners or Wansbroughs Solicitors or their client requesting for copies of the updated evidence.

#### An additional letter of objection from a private owner of the part of the route where it joins Footpath 5

They object that LCC have not consulted or provided them with any information on the progress of the application which was for a route from Vicarage Lane to The Rydings since their original objection of 3 September 2015. They received a new consultation letter which shows the amended proposal going through to the A59 at Longsight Road, they state this new route appears to pass through Kemple View Psychiatric Hospital and through houses and garages in The Dales, the letter provided no reason(s) for the change of route or any documentary evidence in support of the new application route.

A request was made for copies of the additional evidence submitted by the applicant, the objector has received copies of these.

A letter containing comments regarding the application received from 7 The Dales

They explain that the route goes straight through the middle of their property, and they make the following additional comments:

1. Until recently about 12-18 months ago they could access the A59 through The Lodge, this was through a public 'access' gate at the end of the lane next to The Lodge.
2. Following the purchase of The Lodge the gate was locked and a fence was erected preventing the right of way – they assume this was temporary whilst building work was in progress but now believe it to be permanent.



3. The route shown on the map that passes through The Dales goes directly through the middle of their property which is just one of a number of houses built in the mid-1990s as part of The Rydings and Dales development by Fairclough Homes – they bought the house new in 1996 and there was no evidence of a path; nor were they notified of a path.
4. Part of the route goes through Kemple View and whilst they have no information as to whether this was ever a path, there is clearly a route through for some or all of this distance

## **Assessment of the Evidence**

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

#### In Support of the Claim

- User evidence
- Ordnance Survey Maps
- Aerial Photographs

#### Against Accepting the Claim

- References to locked gates, stiles and erected fencing along the route
- Inaccessibility of sections of the route due to housing development
- Restrictions by residential fencing, properties and gardens
- Signage along the route
- S31(6) Notices
- Absence of trodden lines along sections of the route
- Infrequency of use
- Different recollections by users as to the exact route followed
- Responses/objections received following consultation

#### Conclusion

The claim is that the route A-R 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 twenty years "as of right" use to have taken place ending with this use being called into question.

Looking firstly at whether there are circumstances from which dedication could be inferred at common law. The analysis of the map and documentary evidence by the

Head of Service – Planning and Environment provides evaluation of the documentary evidence. There is also the evidence of private rights being granted along the route on the sales of properties and more recently, on 26<sup>th</sup> March 2014 a statutory deposit under section 31(6) Highways Act 1980 was made by Mr and Mrs Murray in relation to land on the southern section of the application route making a clear statement that from this date they, as landowners had no intention to dedicate.

On balance, it is suggested that the map and other documentary evidence provided is not sufficient to be the circumstances from which dedication may be inferred at common law.

Turning to user, Committee will be aware that in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter it appears that the route was called into question in 1990, as this is when users suggest that they were prevented from using the full line of the claimed route following the development of the housing estate at The Rydings. Therefore, on balance it is suggested that it is reasonable to conclude the 20 year period under consideration to be from 1970 – 1990.

Looking at the twenty years 1970-1990. In support of this application 31 user evidence forms were submitted. However, of the users who claim to have used the application route during the years 1970-1990, only 12 of the user's evidence includes use of the section of the route from the Rydings Estate through to the A59 marked J-R on the Committee Plan and therefore the evaluation is based on the same.

The users provide evidence of use of the route on foot, cycling, for blackberry picking and watching steam engines. From the user evidence provided whilst one user claims to have used the route 'every night as a teenager', one 3-4 times per week, one twice a week, one twice monthly and another monthly, there would however appear to be a relatively low frequency of use, with other users claiming to have used the route only 'several times a year', 'occasionally' or 'odd times.' It is advised that this low use in the relevant years may be insufficient to prove use by the public throughout the twenty year period over and above trivial and sporadic use.

Of the 12 users who's use also includes use of the application route J-R only 1 user claims to have used the whole of the application route during the period under consideration. One other user also claims to have used the whole route during the relevant period, however this is not backed up by the route marked on the map attached to the user evidence form. Whilst some other users claim to have used the route for the majority of the relevant period this is not supported by the evidence provided, for example; there is reference to users having used various routes to reach the A59 and some have not indicated use of the route J-R on the map

provided, some not being able to do so due to being unable to recall the exact route taken.

In recent years, there is evidence of obstructions along the route, namely locked gates and fencing at various points along the route together with the signage/notices seen on the buildings between points B and C on the application route from Spring 2014 stating 'No Public Right of Way' and 'Private Property' and most notably the fence that was erected across the route near to the water tower at some point in or around 2002 preventing many users from using the line of the claimed route.

Taking all of the information and evidence into account, it is suggested that the Committee may on balance consider the evidence insufficient from which to satisfy deemed dedication under section 31 Highways Act 1980 or from which to infer dedication at common law of a footpath in this matter and therefore that the application be not accepted.

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**

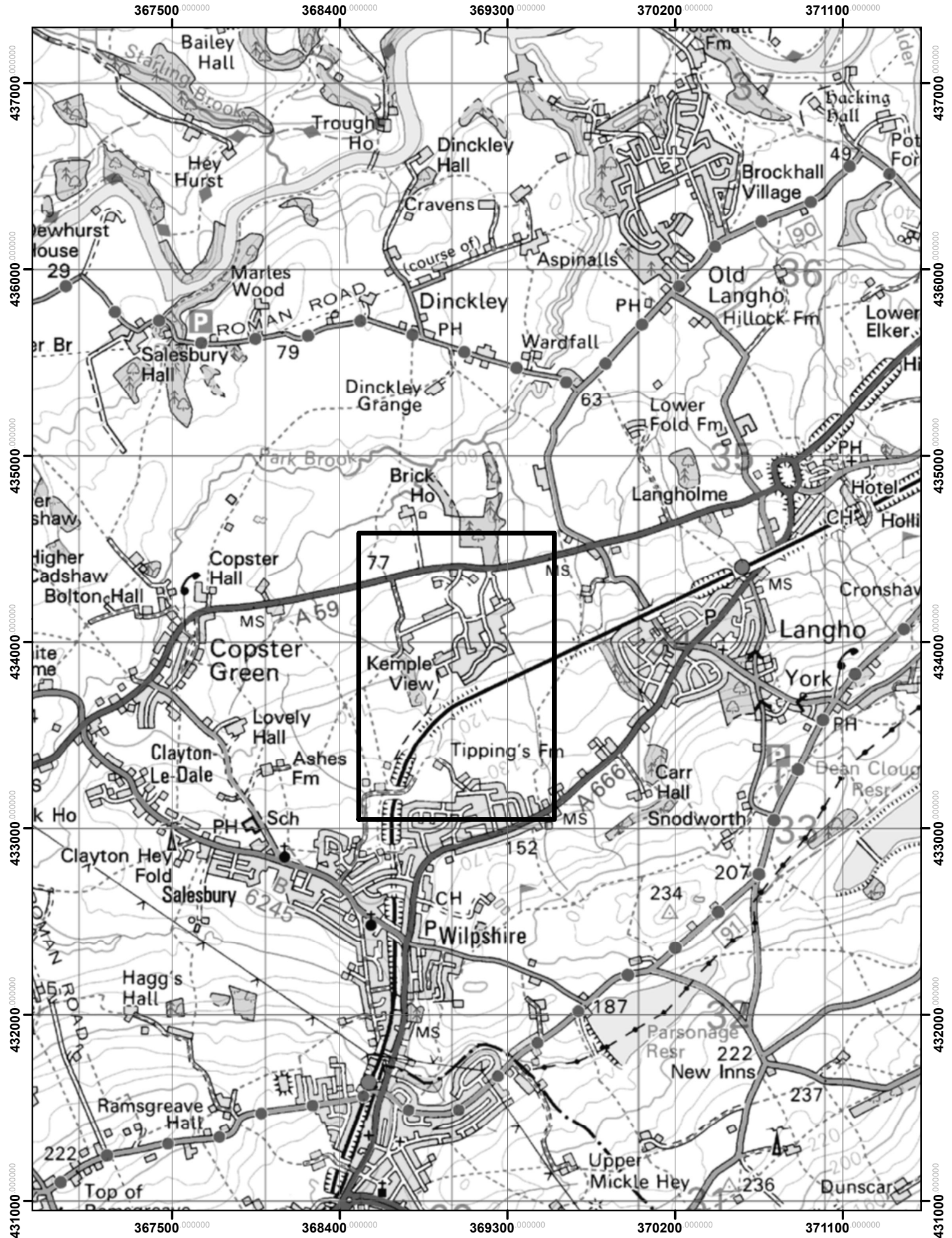
**Local Government (Access to Information) Act 1985  
List of Background Papers**

| Paper                                       | Date    | Contact/Tel  |
|---|---------|--|
| All documents on Claim File<br>Ref: 804/567 | Various | Megan Brindle, Legal and<br>Democratic Services,<br>01772 (5)35604 |

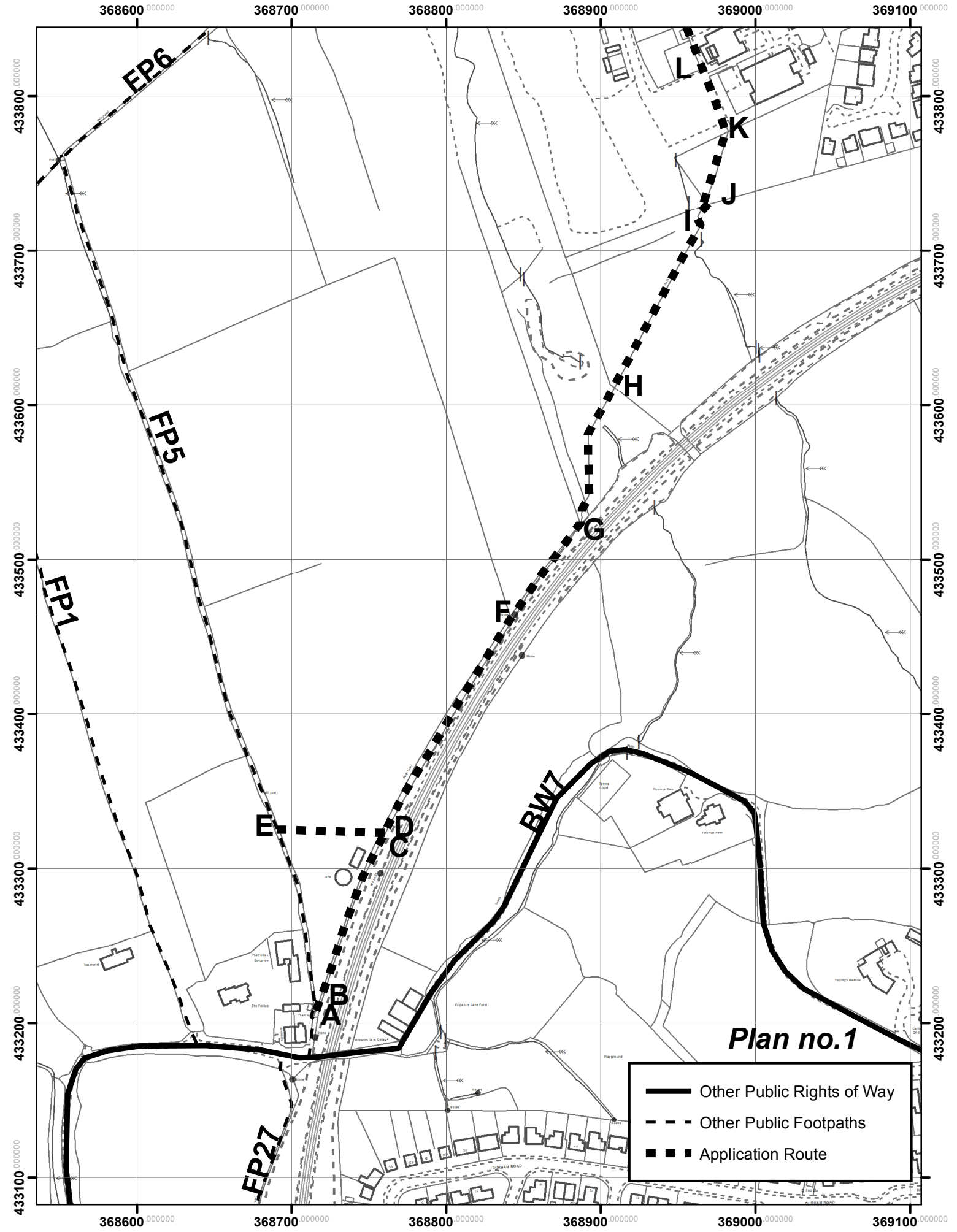
Reason for inclusion in Part II, if appropriate

N/A









**Andrew Mullaney**  
 Head of Planning and  
 Environment

Addition of a public footpath from two points on Public Footpath 5 Wilpshire to the junction with Longsight Road/A59, Wilpshire, Ribble Valley - Application No. 804-567

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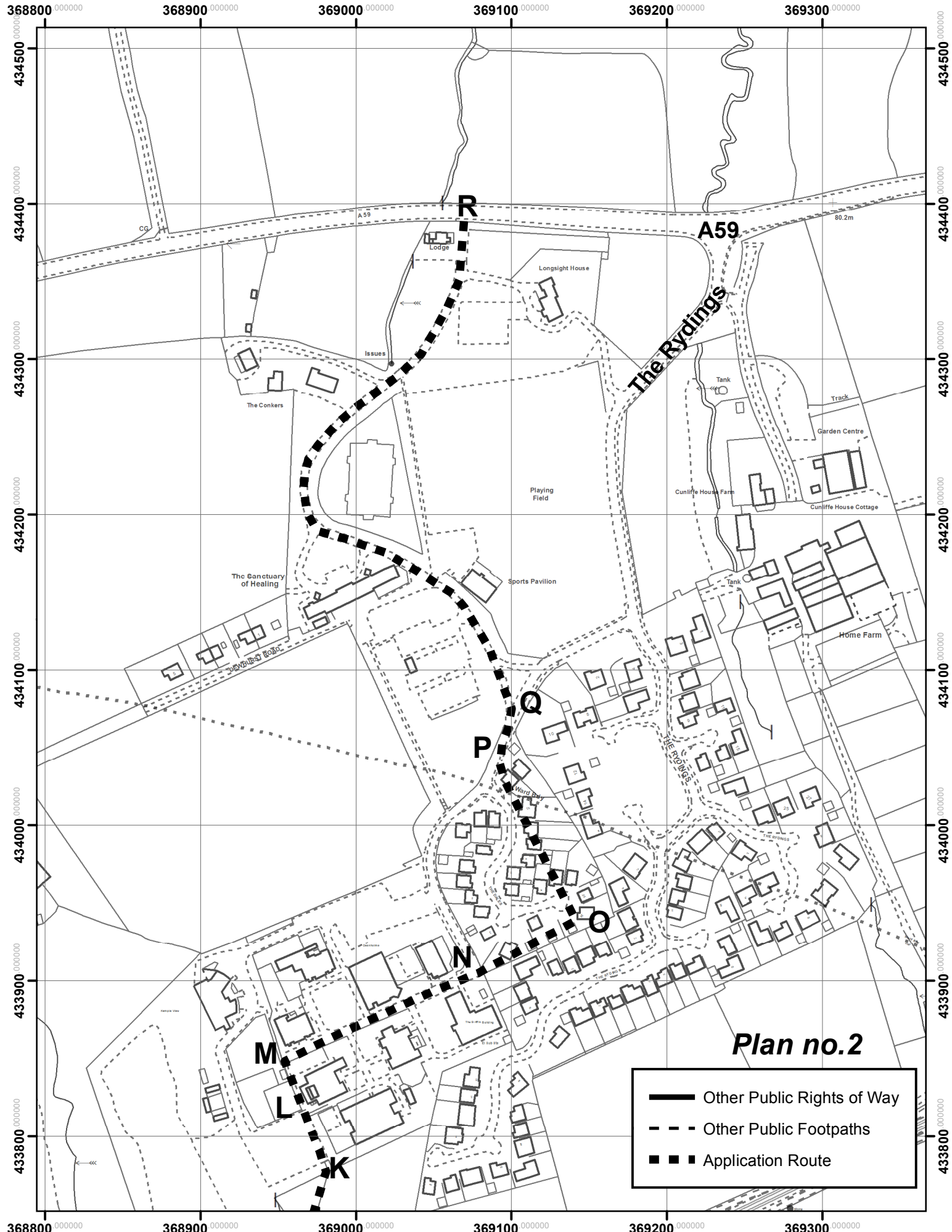


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**Plan no.2**

-  Other Public Rights of Way
-  Other Public Footpaths
-  Application Route



**Andrew Mullaney**  
**Head of Planning and Environment**

Addition of a public footpath from two points on Public Footpath 5 Wilpshire to the junction with Longsight Road/A59, Wilpshire, Ribble Valley - Application No. 804-567

1:3,000



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## Regulatory Committee

Meeting to be held on 28 September 2016

|   |
|---|
| Electoral Division affected:<br>Chorley North |
|---|

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Upgrading to Bridleway of Footpaths 1 (part) and 8 (part) Chorley, known as Common Bank Lane

File No. 804-575

(Annex 'A' refers)

Contact for further information:

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### Executive Summary

Application for the upgrading to Bridleway of parts of Footpaths 1 and 8 Chorley, known as Common Bank Lane, in accordance with File No. 804-575.

### Recommendation

1. That the application to upgrade to Bridleway parts of Footpaths 1 and 8 Chorley, in accordance with File No. 804-575, be not accepted

### Background

Regulatory Committee considered an application to upgrade part of the route under investigation in 2002 with further evidence considered in 2003 together with an application to upgrade a greater length of Public Footpath 1. The application rejected and copies of both reports are included as Appendix 1 of this report.

In 2016 a further application was submitted for part of the route previously investigated, providing additional map and documentary evidence.

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

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

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

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

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

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"

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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

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

## **Consultations**

### Chorley Borough Council

Chorley Borough Council have been consulted as the local authority affected by the application and as a landowner. They have responded outlining their ownership and make a comment that the southern end of their ownership was sold to Ruttle Plant Hire in November 2005.

There is no Parish Council for this area.

#### Applicant/Landowners/Supporters/Objectors

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

#### **Advice**

#### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

| Point | Grid Reference (SD) | Description  |
|-------|---------------------|--|
| A     | 5628 1729           | Unmarked parish boundary in River Yarrow situated part way across ford adjacent to Bark House Bridge at eastern end of German Lane (U8880)                                 |
| B     | 5635 1733           | Kissing gate across the route at junction of two parts of Footpath 1 Chorley   |
| C     | 5640 1740           | Junction of Footpaths 1 and 8 Chorley  |
| D     | 5668 1756           | Entrance into Chorley Sewage Works from Footpath 8 (Common Bank Lane)  |
| E     | 5681 1765           | Further entrance into Chorley Sewage Works from Footpath 8 (common Bank Lane) at the point from which Common Bank Road is recorded as an unclassified county road (U60050) |
| F     | 5686 1773           | Junction of Common Bank Road (U60050)/Footpath 8 with Ackhurst Road  |
| X     | 5635 1737           | Point on Common Bank Road where route changes from being recorded as part of FP 1 to part of FP 8 Chorley  |

#### **Description of Route**

The route under investigation is currently recorded as part of Footpath 1 and Footpath 8 Chorley and is fully accessible on foot.

The route starts on the parish boundary between Charnock Richard and Chorley which is located along the centre of the River Yarrow midway across the ford crossing at the eastern end of German Lane. It crosses the river by means of a cobbled ford at point A on the map. Adjacent to the ford crossing is a pedestrian footbridge.

As the route leaves the watercourse there is evidence of a cobbled surface which is now becoming covered over and damaged. The route continues in a north easterly direction rising gradually uphill. Again there is evidence of a cobbled surface which

has now fallen into disrepair. The route is bounded by an old metal railing fence on the south side and the remains of a metal fence can also be seen in places on the north side suggesting that it was once bounded from the adjacent land on either side. As you approach point B the route is overgrown and an alternative trodden path has developed to the north which circumnavigates the overgrown section and connects back to the route under investigation before reaching point B.

At point B the route passes through a metal kissing gate which is positioned between the fencing around an electricity sub-station and large stone boulder which is known to have been positioned in a 'gap' in 2014 –. When inspected, it was, however possible to gain access on foot or on horse to and from the section of the route between point A and point B through a gap on the other side of the electricity sub-station.

A footpath signpost is located at point B pointing down towards point A.

From point B the route joins a wide surfaced track which is currently heavily used by lorries accessing a quarry on the site of the old bleach works south of the route under investigation.

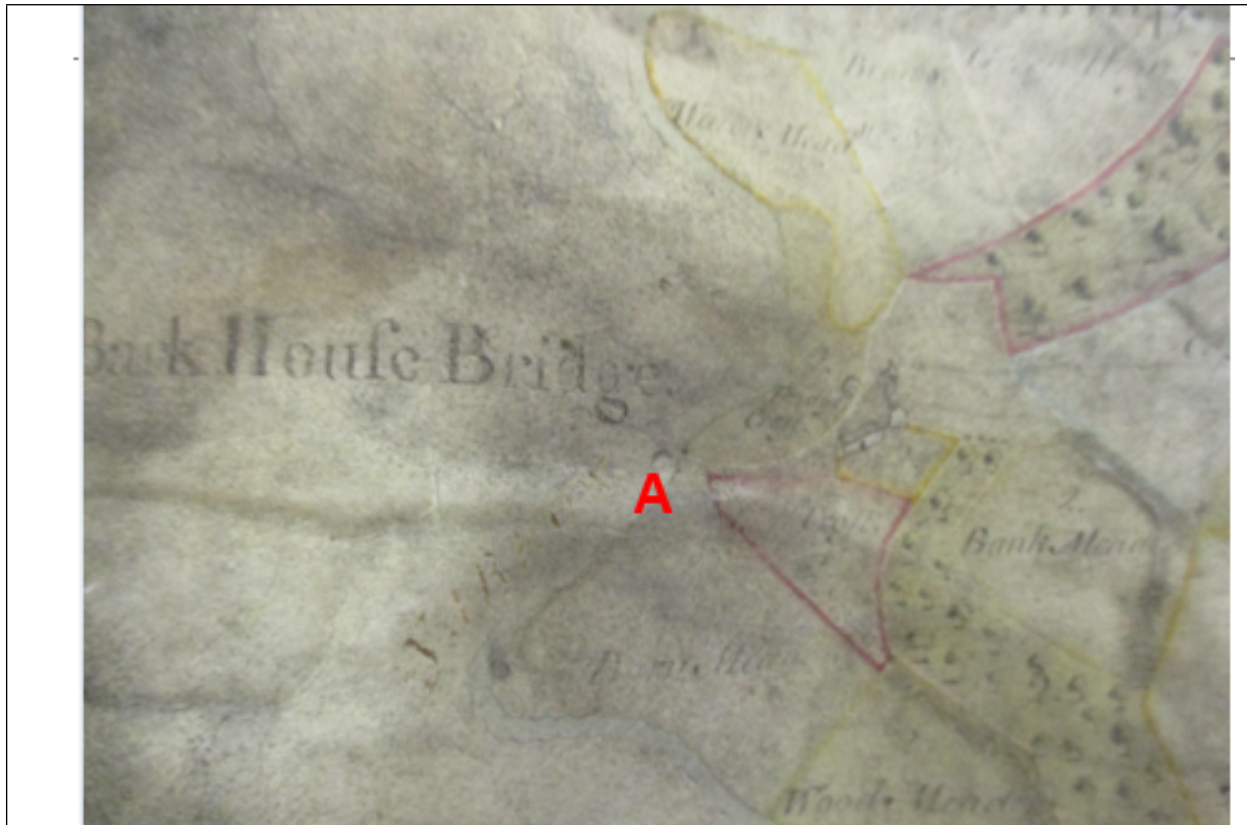
The route continues north from point B passing the house and buildings at Common Bank and then curving round to continue east and then north east along a bounded tarmac road along which the lorries are travelling at regular frequency to and from the sand quarry. North of the route is the sewage works which are currently undergoing further development work with access to them available at point D and point E.

The route ends at the open junction with Ackhurst Road at point F.

The total length of the route is 770 metres.

### **Map and Documentary Evidence**

| <b>Document Title</b>     | <b>Date</b> | <b>Brief Description of Document &amp; Nature of Evidence</b>  |
|---------------------------|-------------|--|
| <b>Private Estate Map</b> | 1769        | Private Estate Map drawn to show the lands owned by Thomas Gillibrand in 1769 and deposited in Lancashire Records Office (Ref: DDX 986/1). |



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| <p>Observations</p>                     |             | <p>The map is described as showing lands lying within the several townships of Adlington, Blackrod, Chorley, Duxbury and Euxton in the County of Lancaster belonging to Thomas Gillibrand Esq. The map is quite faded with no key and no information regarding the status of any roads shown. The existence of a bridge at point A on the boundary of the land mapped is shown and labelled as Bark House Bridge. Buildings can be seen at Common Bank and a route appears to exist from Bark House Bridge to the buildings. The route under investigation does not appear to be shown from Common Bank (point B) through to point F (or beyond).</p> |
| <p>Investigating Officer's Comments</p> |             | <p>The earliest map of the area available to view appears to show that access existed at point A via a bridge known as Bark House Bridge although no reference is made to the ford with access through to Common Bank at point B. The rest of the route is not shown suggesting that it did not exist as either a public or private route in 1769.</p>  |
| <p><b>Yates' Map of Lancashire</b></p>  | <p>1786</p> | <p>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</p>   |

of scale also limited the routes that could be shown.



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| Observations            | <p>The route under investigation is not shown (it would be located to the south of an area that was darkly shaded (Fox Hole Wood). German Lane is shown extending east from the main road through Charnock Richard (now known as the A49 between Wigan and Preston) but is not shown extending as far as the river at point A. The River Yarrow is shown and the name 'Gillibrand Esquire' is written on the map south of the shaded area containing the land crossed by the route under investigation. Yate's marks the location of a number of Hall's in the area (for example Astley Hall, Old Hall and Park Hall) and also names a number of large estate owners (Gillibrand Esq, Anderton Esq, Hoghton Esquire) illustrating that he mapped the large landowning estates at that time.</p> |
| Investigating Officer's | The route, if it did exist in 1786, was not   |



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| Comments          |      | considered by Yate's to be a public vehicular route. It may, however, have existed but not be shown due to limitations of scale or because it was considered to be private so no inference can be drawn in that respect.   |
| <b>Cary's Map</b> | 1789 | John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.<br>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence. |



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| Observations                         |      | The route under investigation is not shown.   |
| Investigating Officer's Comments     |      | The route may not have existed in 1789 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map. |
| <b>Greenwood's Map of Lancashire</b> | 1818 | Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not   |

differentiated between within the key panel.



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| <p>Observations</p>   |             | <p>A route which approximates to the route under investigation is clearly shown on Greenwood's Map as part of a longer route leaving the main north-south route shown as a Turnpike Road (now known as the A49), along the route now known as German Lane, crossing the River Yarrow and continuing towards Astley Hall to exit onto the road now known as Southport Road.</p> <p>It is shown on the map as a 'cross road'.</p> |
| <p>Investigating Officer's Comments</p>                       |             | <p>The depiction of the route on this commercially produced small scale map suggests that a route existed as a through route in 1818 and may have been capable of being used on horseback or horse-drawn vehicle but no inference can be drawn regarding its public status. The scale is insufficient to distinguish between the alignment of the modern route and that of the older route.</p>                                 |
| <p><b>Stockdale's Map of the country round Manchester</b></p> | <p>1818</p> | <p>A further early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of the map as the book was originally published in 1795. There is no key to the map.</p>  |



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| Observations                      |      | The route under investigation is not shown.  |
| Investigating Officer's Comments  |      | The route is not shown on a map believed to have been published around the same time as Greenwoods Map which clearly shows it, suggesting that the route may have existed at this time and may have been capable of being used but was not considered to be a public vehicular highway.  |
| <b>Hennet's Map of Lancashire</b> | 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. |



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| Observations                     | <p>A route which approximates to the route under investigation is clearly shown on Hennet's Map as part of a longer route leaving the main north-south route shown as a Turnpike Road (now known as the A49), along the route now known as German Lane, crossing the River Yarrow and continuing towards Astley Hall to exit onto the road now known as Southport Road.</p>   |
| Investigating Officer's Comments | <p>A route appears to have existed in the approximate location of the route under investigation and is shown in the same way as routes that now exist as public vehicular routes indicating that it may have been capable of being used on horseback and possibly horse drawn vehicles. It is not possible to distinguish between the alignment of the route under investigation and the historical alignment at this scale but the route does form part of a longer route connecting at either end to the existing highway network. The route is shown as a through route on this and other small scale commercial maps but these maps do not show every bend and any width variations. Better</p> |

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|   |      | detail of alignment, widths and existence of gates for example is not available until what is considered to be the same route is considered on maps produced at higher scale   |
| <b>Canal and Railway Acts</b>                     |      | Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.                    |
| Observations                                      |      | The route under investigation is not crossed by a canal or railway and is not across land over which it was proposed to construct either.  |
| Investigating Officer's Comments                  |      | No inference can be drawn.   |
| <b>Tithe Map and Tithe Award or Apportionment</b> | 1842 | Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred. |

Chorley Tithe Map 1839



Charnock Richard Tithe Map 1842



Observations

A route is shown on the Chorley Tithe Map extending from point A (on the parish boundary) to buildings numbered 449 and then continuing to point F. There is a line across the route immediately to the east of the buildings marked 449 and the route marked ends at point F and is not shown to connect to Southport Road.

The crossing at point A appears to consist of a ford with no bridge shown.

The route shown is shaded and bounded and follows the approximate, but not precisely the modern, alignment of the route under investigation. It is not numbered on the Tithe Map. The Tithe Award details plot 449 as being owned by Henry Fazakerley and occupied by George Brown. It is described as 'House, buildings and garden' with no reference to the route. Township Roads and Streets are listed at the back of the Award and are numbered 2821.

The Tithe Award for Charnock Richard dated 1842 shows German Lane extending as far as the river (parish boundary) at point A. The river crossing is shown forked suggesting the existence of a ford and bridge. German Lane is numbered 244 and is listed as being owned and occupied and described as 'Road and Waste'.

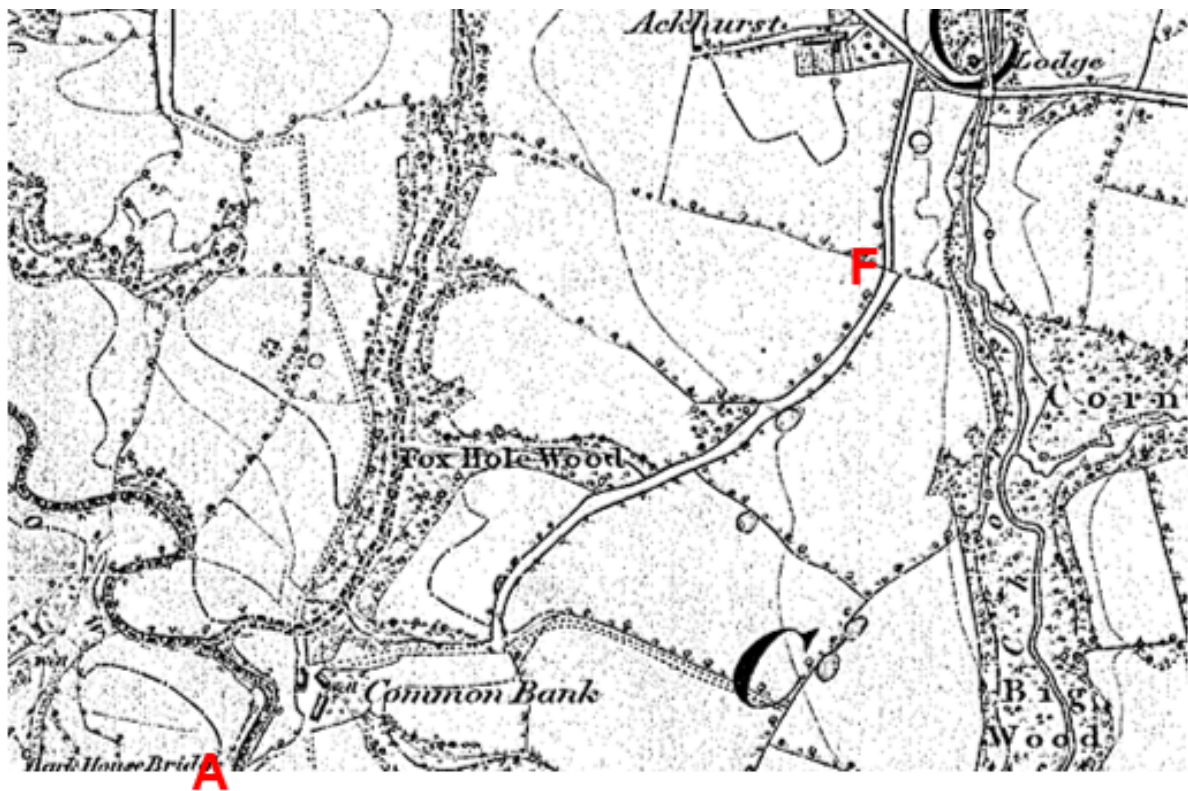
|  |         |   |
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| Investigating Officer's Comments           |         | A route similar to but not precisely the route under investigation is shown as a cul de sac route and it appears to be gated. Although coloured it is not numbered or described in the Award as a public road suggesting that it was not a public road  |
| <b>Inclosure Act Award and Maps</b>        |         | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.   |
| Observations                               |         | There is no Inclosure Award for the area over which the route is found.   |
| Investigating Officer's Comments           |         | No inference can be drawn.  |
| <b>Cassini Map, Series 108 - Liverpool</b> | 1840-43 | Reproduction extract of Map sheet 108 (Liverpool) originally published 1840-43. The Cassini publishing company produced maps based on Ordnance Survey one inch maps. These early maps have more recently been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase. |



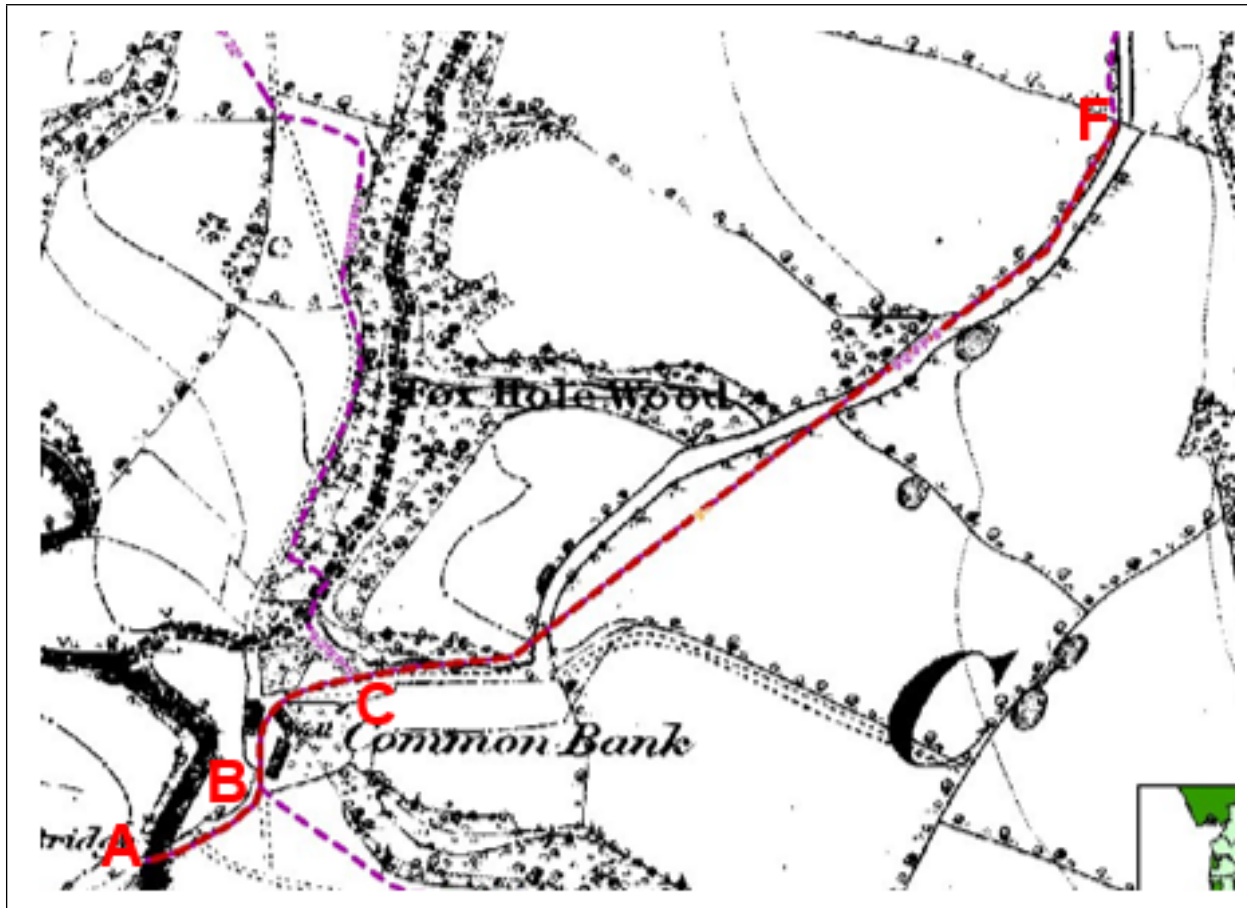
|              |  |  |
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| Observations |  | A route is clearly shown as part of a longer route extending from the eastern end of German Lane and across the river at point A. It can be seen |
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|  |      | extending to buildings known as Common Bank and then beyond Common Bank, passing through point F to continue to exit onto Southport Road (historically known as Ackhurst Lane). However this route depicted does not correspond precisely with the route under investigation which is the modern straighter alignment. |
| Investigating Officer's Comments       |      | Although a substantial through route existed on a similar alignment between point A and point F in the 1840s which may have been accessible to travellers on horses or vehicles at that time this was on a different line from the route under investigation.  |
| <b>6 Inch Ordnance Survey (OS) Map</b> | 1849 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849 <sup>1</sup>   |



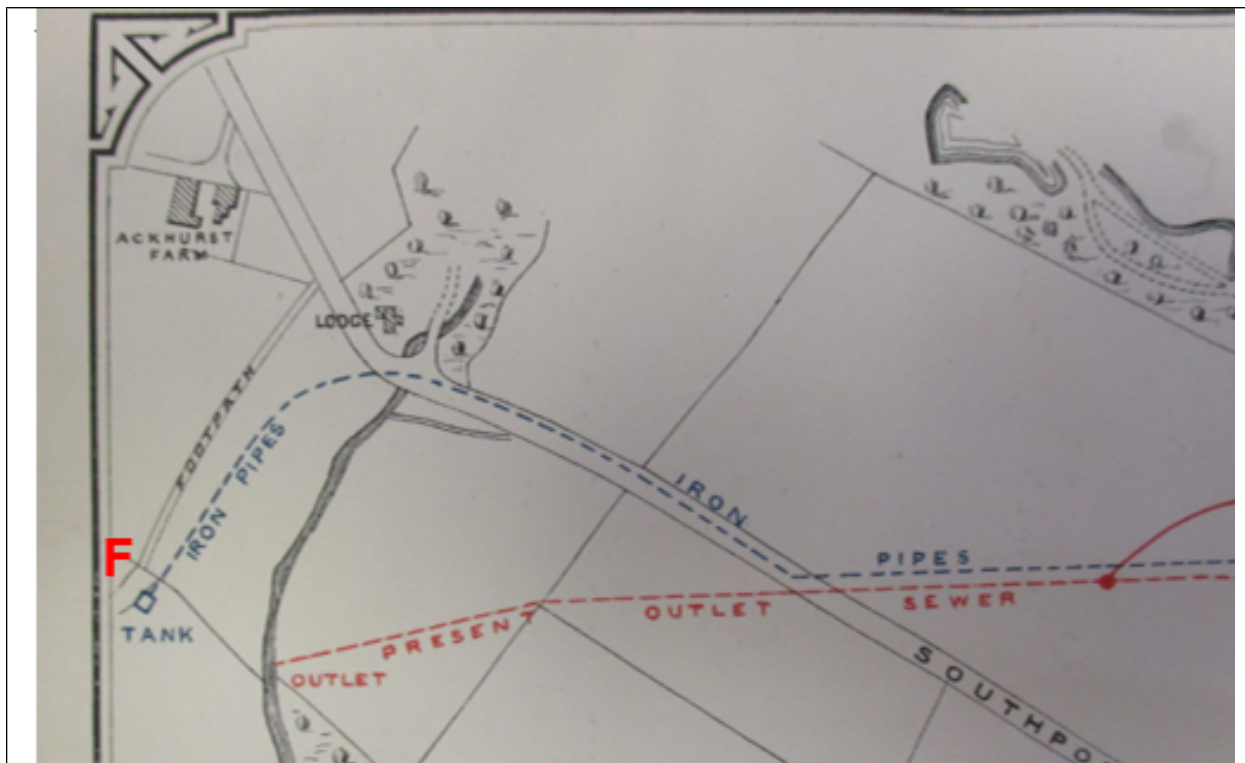
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



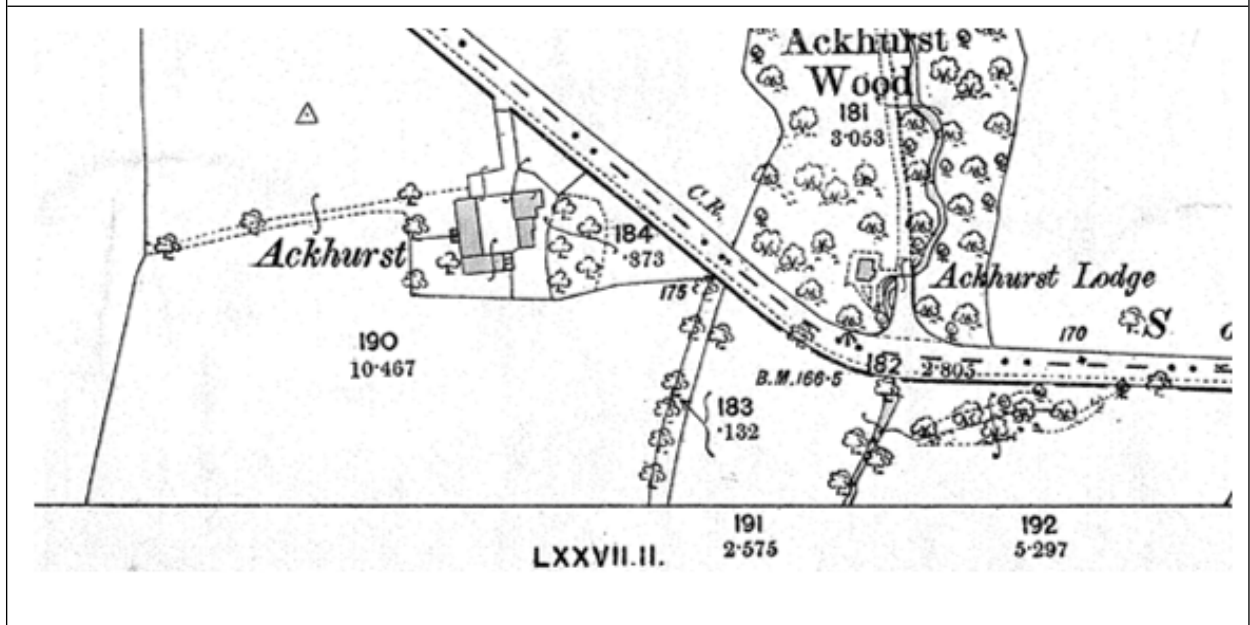
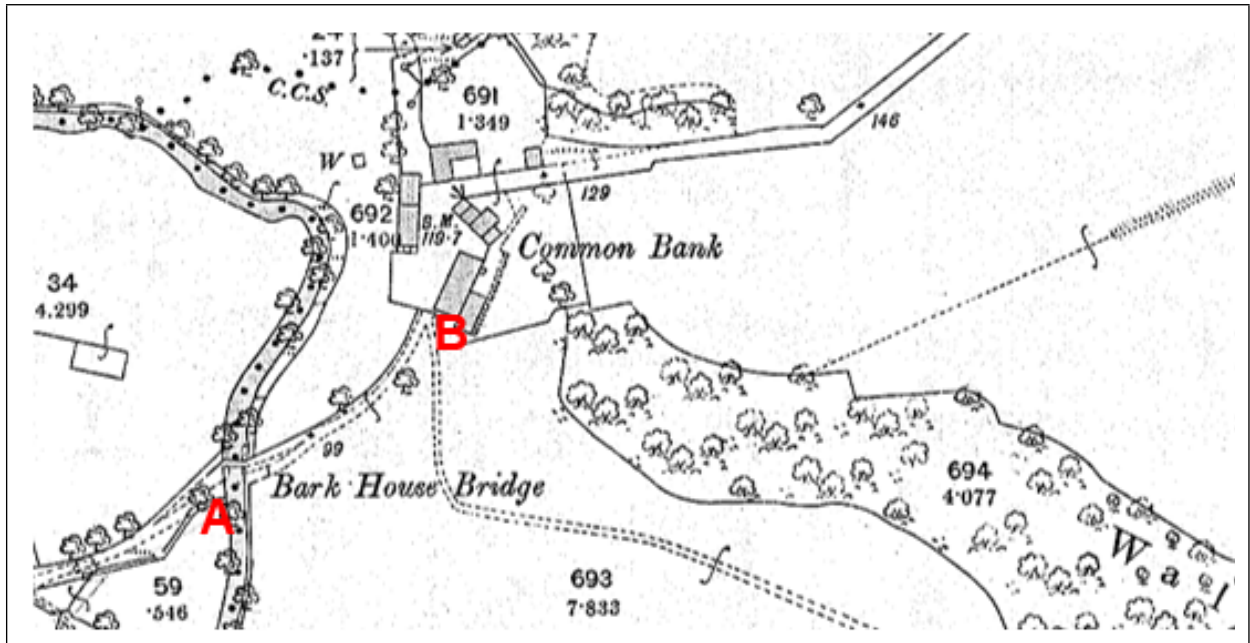
|   |  |  |
|---|--|--|
| <p>Observations</p>                     |  | <p>Bark House Bridge is named on the map at point A and the route is shown between point A and point B providing access to Common Bank. The route appears accessible between point B and point C as it passes through Common Bank and then continues towards point F as largely a bounded route but its alignment does differ slightly to the modern day alignment (as can be seen from the map extract with the route overlaid). The 1849 route appears to be gated near point F and then continues as a much narrower bounded track to exit onto Southport Road (named on the 6 inch map as Ackhurst Lane).</p> <p>Just west of point A (and not shown on the map extract included in the report) is Bark House which presumably gave its name to Bark House bridge adjacent to point A.</p> |
| <p>Investigating Officer's Comments</p> |  | <p>A route from point A to point F existed in 1848 and may have been part of a longer through route from the road now known as the A49 (Wigan-Preston Road) to Southport Road although the NE end section of this through route was much narrower and gated from the</p>   |

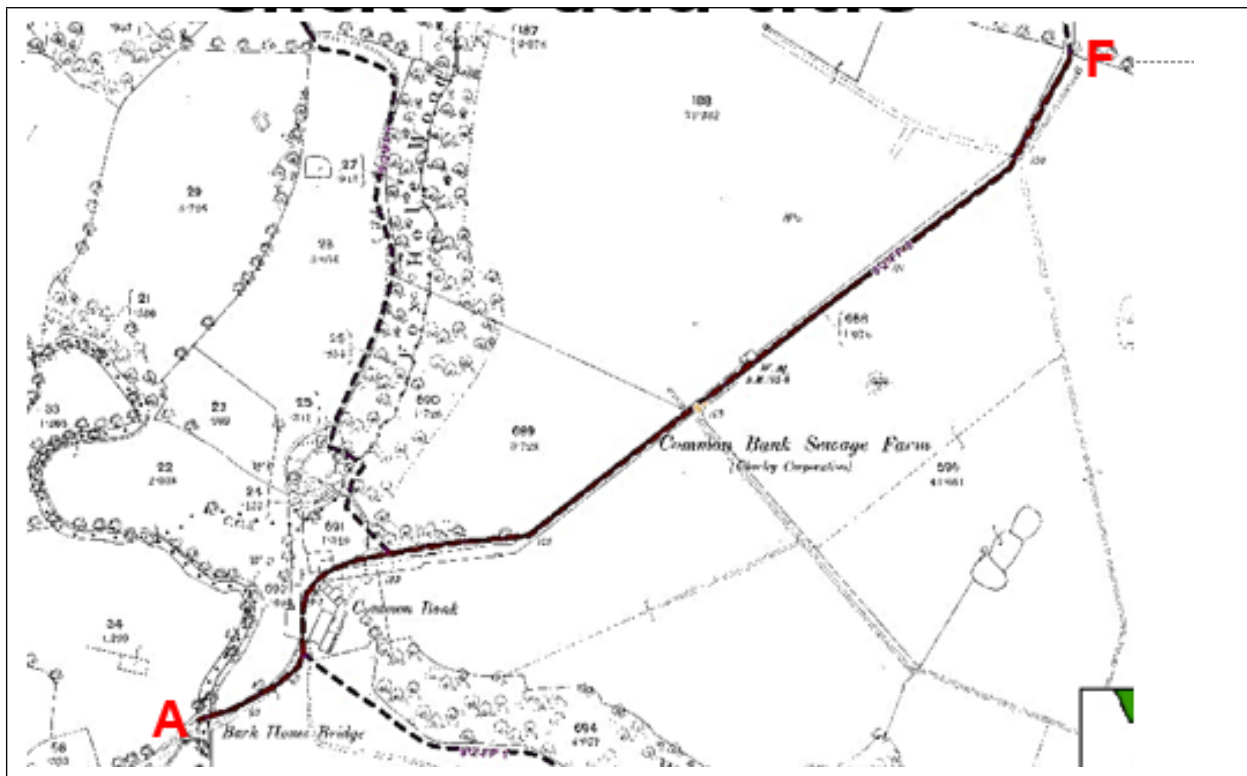
|  |      |  |
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|  |      | claimed route. The route existed on a slightly different alignment between point C and point F and was gated near point F. It appeared wide enough to be capable of being used by horses and possibly horse drawn vehicles until point F when the through route was much more narrow . |
| <b>Plans relating to Sewage Scheme</b> | 1886 | Plans included within a report by the Borough Surveyor with reference to making new sewers for the efficient drainage of the Borough and deposited in the County Records Office (Ref MBCH 6/11)  |





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| <p>Observations</p>                     |             | <p>Two of the plans included within the report show the north easterly end of the route under investigation (point F) and the second one included in this report shows the route continuing from point F to Southport Road (the modern day route of part of Footpath 8). Both plans label the route as a footpath. The route connecting the claimed route to the vehicular highway is also labelled as footpath. n.b. the annotation 'A' on the first of the above plans is in connection with the proposed pipe and does not coincide with point A on the Committee Plan.</p> |
| <p>Investigating Officer's Comments</p> |             | <p>The document is prepared by the Borough surveyor and the route was shown as a footpath in 1886. The connection to the vehicular highway was also by a footpath section it seems unlikely that the route under investigation was a public bridleway or vehicular highway.</p>  |
| <p><b>25 Inch OS Map</b></p>            | <p>1894</p> | <p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.</p>  |





Observations

This larger scale OS map provides more detail than the earlier 6 inch map.

Bark House Bridge is shown and named and the ford crossing is also clearly shown. The route is shown between point A and point B as an unenclosed track and appears to be gated at the entrance to Common Bank at point B.

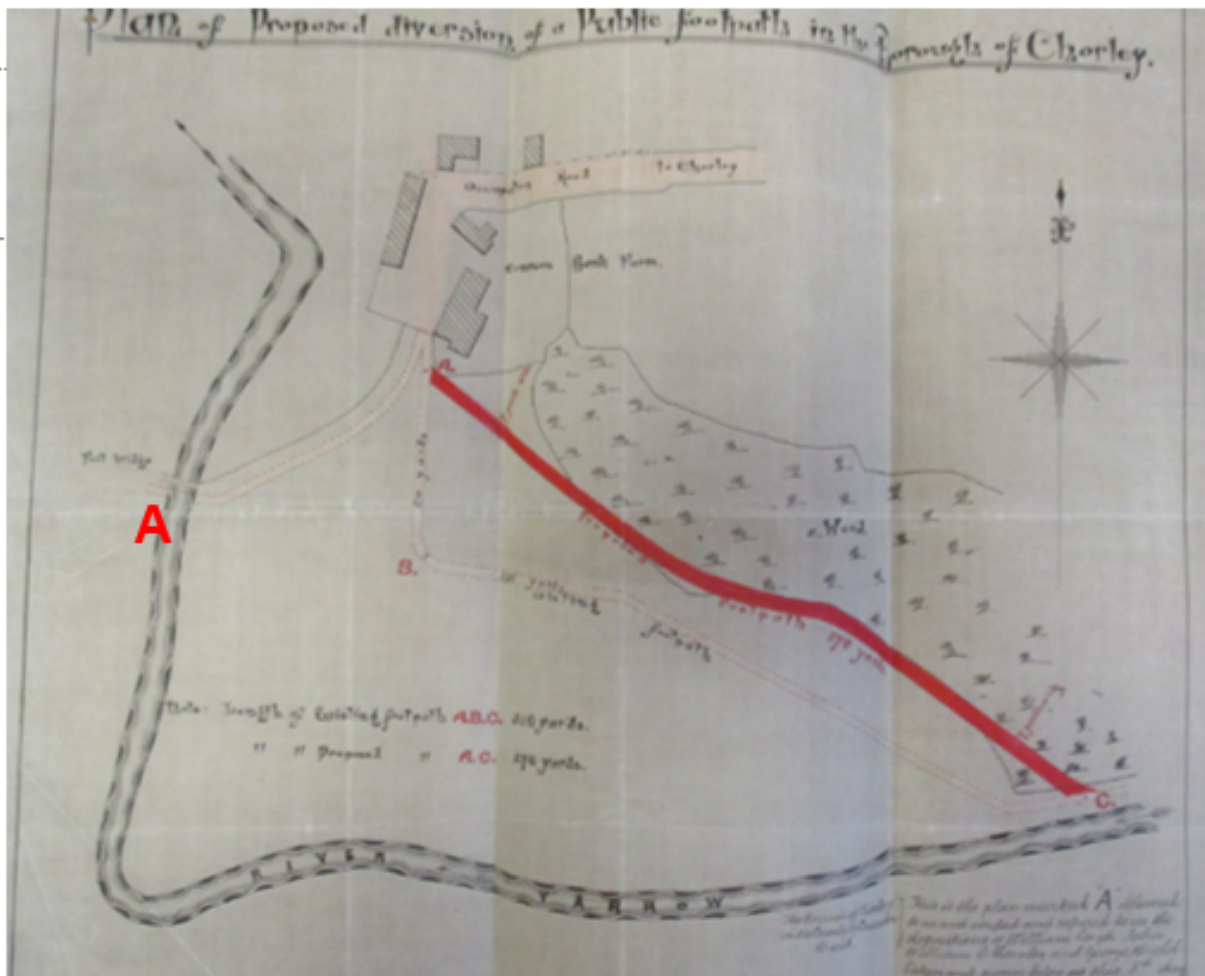
From point B the route appears accessible through the buildings at Common Bank and is then shown as a substantial enclosed route (not named) through Common Bank and continuing to point F. The route has been straightened on the approach to point F since the publication of the 6 inch map and Common Bank sewage farm (Chorley Corporation) is marked on the map just south of the route. A line is shown across the route at point F suggesting the existence of a gate and the route then continues in a north easterly direction to exit onto Southport Road (possibly gated) at Ackhurst.

The main access to Common Bank appears to be from Southport Road via point F and is gated.

Investigating Officer's Comments

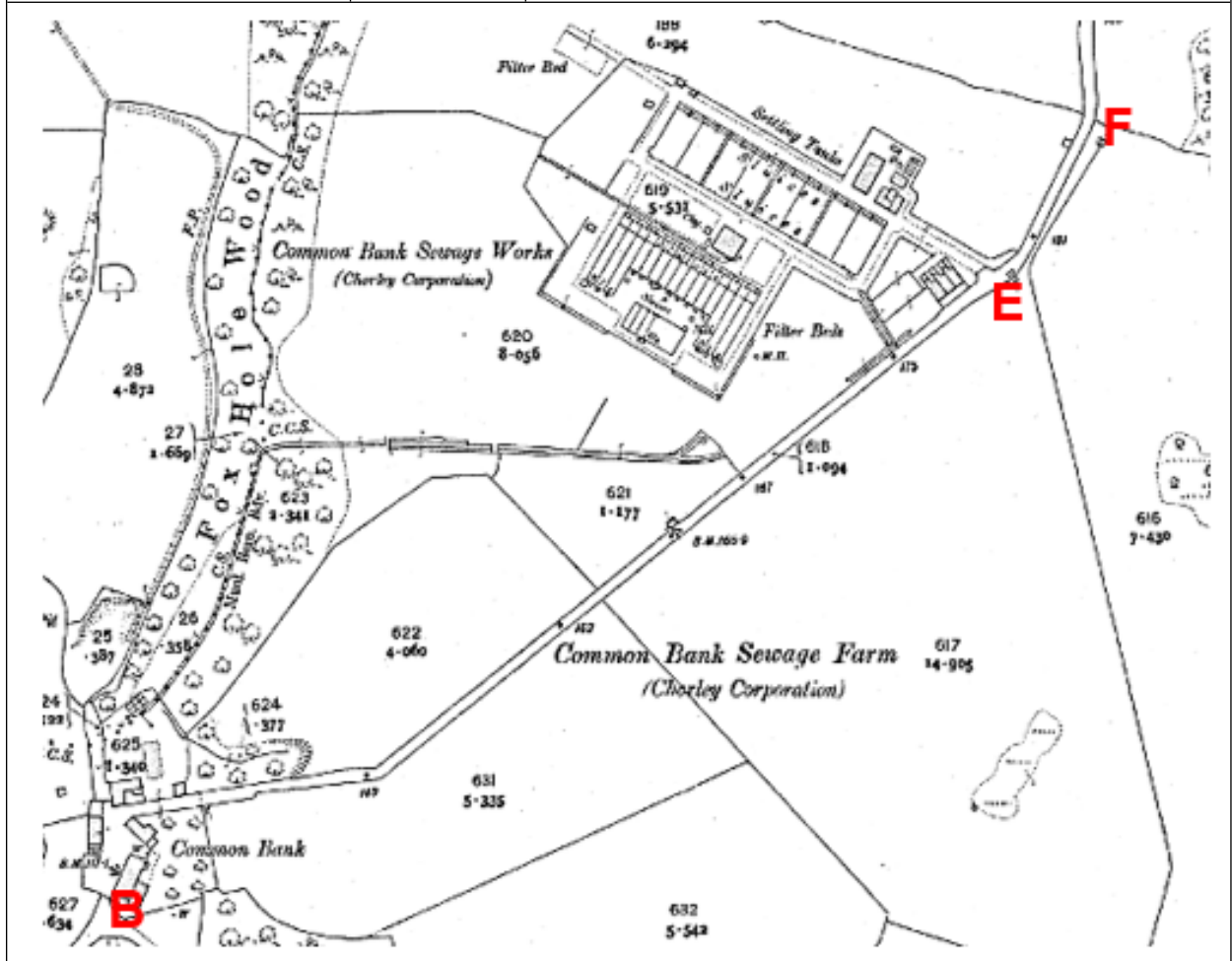
The route under investigation existed on its modern alignment in 1893 and appeared wide enough to be used by horses and possibly by horse drawn vehicles via the ford crossing. The

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|   | <p>ford crossing is shown alongside the footbridge indicating that use was made of it by horses and possibly horse drawn vehicles (as opposed to just providing pedestrian access via the bridge). The fact that the route appeared to be gated does not necessarily indicate that use was private but the fact that the north eastern end is gated at the junction with Southport Road suggests that the route was possibly not used as a public vehicular highway at that time. It is not known when and why the alignment of the route was straightened but no reference to a legal diversion has been found which may suggest that it was not considered necessary to divert it as it was not a public highway. . The straightening of the route is thought likely to be linked to the sewage farm</p> |
| <p><b>Quarter Session Diversion Order</b></p> | <p>Before County Councils came into being the only way that a highway (carriageway, bridleway or footpath) could be diverted or stopped up was by application to the Justices of the Peace at the Courts of Quarter Session.</p>   |

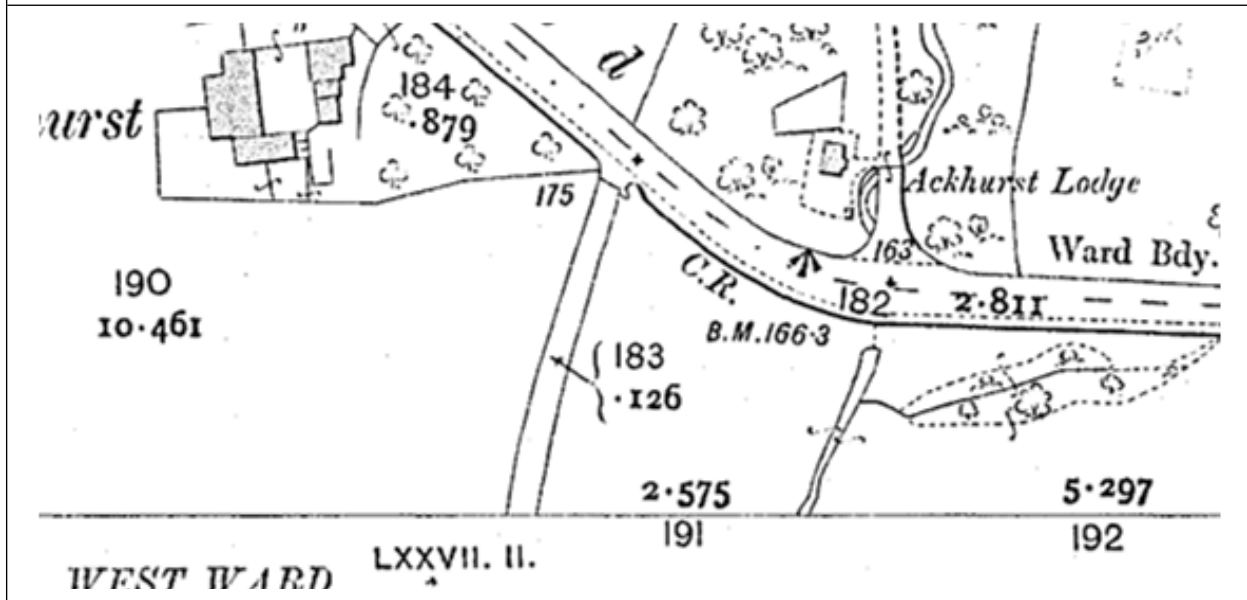
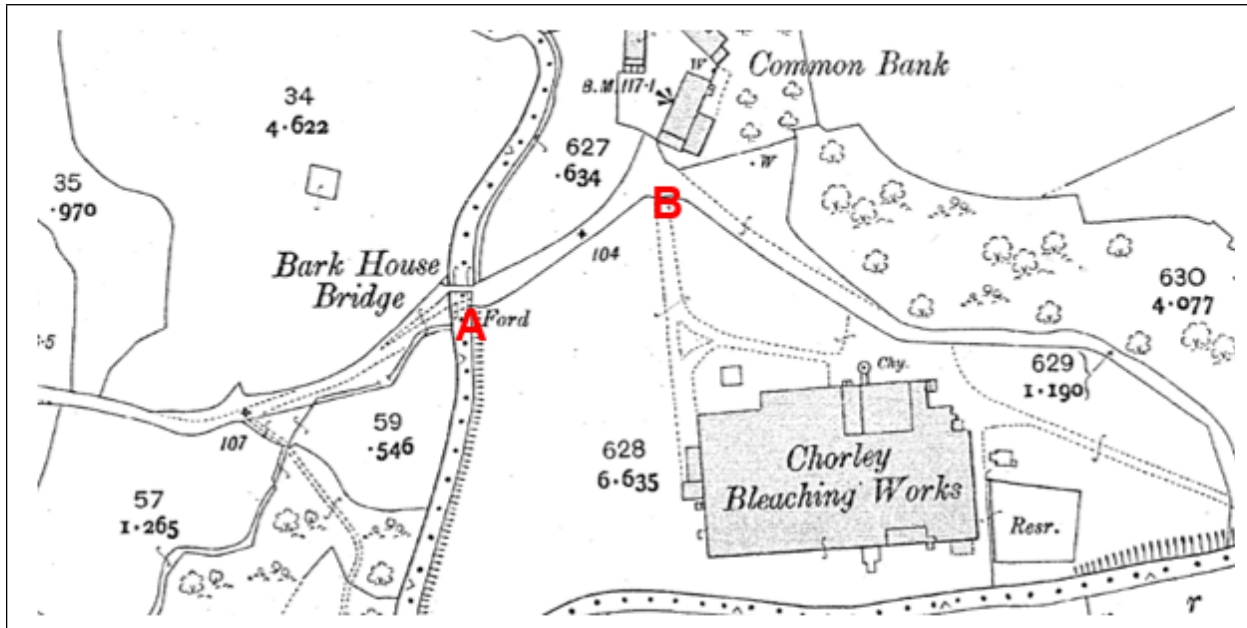


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| <p>Observations</p> | <p>A route described as a public footpath which</p> |
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|                                  |      | joined the route under investigation south of Common Bank farm was diverted at the Magistrates Quarter Sessions in 1900. Both the route to be extinguished and the new route were described as public footpaths. The plan accompanying the Order shows part of the route currently under investigation described as an occupation road to Chorley (from point X through point C). The route from point A to point B and on to Common Bank Farm is shown with the footbridge and ford at point A. this section is not labelled but leads to what appears to be the gated access to Common Bank Farm. |
| Investigating Officer's Comments |      | The route from point A through Common Bank Farm existed in 1900 and appears to have been considered as a footpath and occupation road.  |
| 25 inch OS Map                   | 1910 | Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1910.   |







Observations

By the early 1900s there appears to have been some significant development with Chorley Bleach works existing to the east of the route between point A and point B. Access to the bleach works appears to have been via the route between points A and point B although it may also have been available through Common Bank and via point F.

Entrance to Common Bank just north of point B appears to be gated although it appears that the route was open between the buildings and up to point F.

Common Bank Sewage Works are shown and are accessed via the route. Access at point F is no longer gated but the junction of the route north of point F with Southport Road is still

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|  |      | gated.  |
| Investigating Officer's Comments         |      | The route existed in 1909 and appeared wide enough to be used on horseback and by vehicles. It provided access to the bleaching works and to the sewage works together with Common Bank and a number of other properties and may have been used as a through route by the public.   |
| <b>Ordnance Survey Object Names Book</b> |      | When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.   |
| Observations                             |      | Entries made into the Object Names Book were checked at the National Archives but there was no reference to the route under investigation.  |
| Investigating Officer's Comments         |      | No inference can be drawn.  |
| <b>Finance Act 1910 Map</b>              | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way</p> |

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

Finance Act Map deposited in The National Archives



Finance Act Map deposited in County Records Office



Finance Act Map deposited in County Records Office



Observations

The Valuation Maps deposited in both the County Records Office and National Archives were inspected.

The route is not shown excluded from the numbered hereditaments.

On the Maps deposited in the County Records office German Lane to the west of point A is shown excluded from the adjacent hereditament (122) but on the map deposited in the National Archives it is included in hereditament 122. The Valuation book entry for plot 122 describes it as 'land and buildings' situated at German Lane for which no deductions are claimed for public rights of way or user.

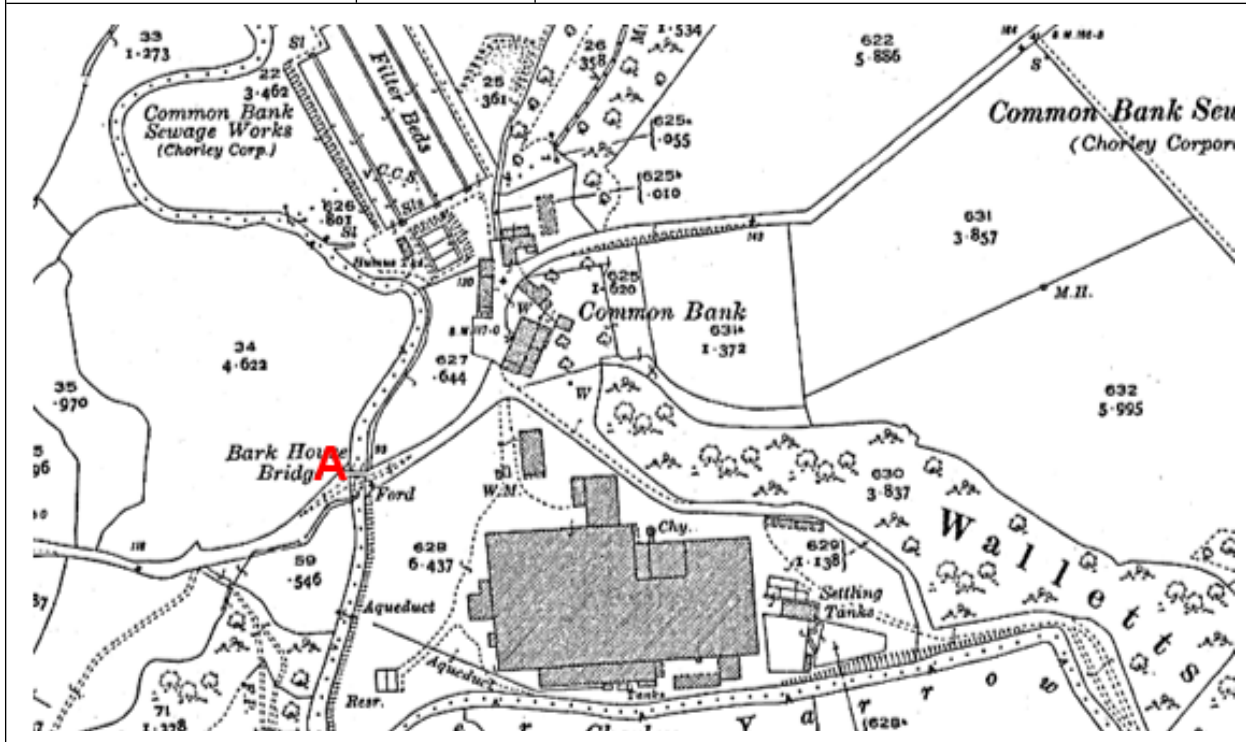
From the river at point A to the gated entrance to Common Bank north of point B the route under investigation is shown included within hereditament 6966 described in the Valuation Book as Chorley Bleaching Works and for which no deductions are claimed for public right of way or user.

The Field Book deposited at The National

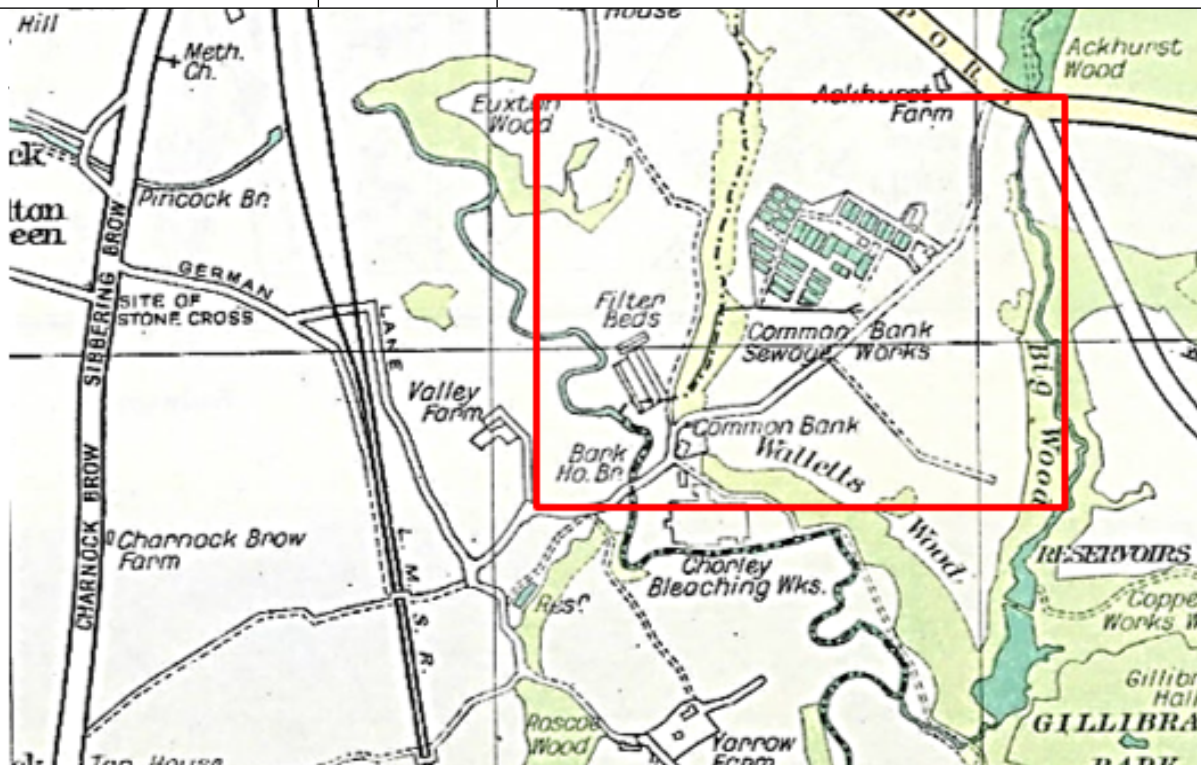
|  |      |   |
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|  |      | <p>Archives provides little additional information. It is described as being owned and occupied by Chorley Bleaching Co. Ltd and the Valuation is stated to have been 'dealt with by Superintending Valuer'. The rest of the field book had not been completed.</p> <p>From Common Bank through to point F the route runs through part of hereditament 6921.</p> <p>The Valuation Book entry for plot 6921 states that the land was owned and occupied by Chorley Corporation and no deduction listed for public right of way or user. The Field Book entry contains the same information.</p>  |
| Investigating Officer's Comments                                     |      | <p>The Finance Act information does not support the existence of a public bridleway in 1910. It is normal to see an acknowledged public vehicular highway excluded from the numbered hereditaments as part of the process of compiling the taxation records and for ways considered to be public footpaths or bridleways at that time to be included in the numbered hereditaments for which a deduction is claimed.</p> <p>The maps showed the land crossed by the route in private ownership for which no deductions are claimed for public rights of way or user suggesting that if they did exist, the landowners did not acknowledge any public rights of user over the routes at that time.</p> |
| <b>Bartholomew's 1 inch Map, Liverpool &amp; Manchester, Sheet 8</b> | 1920 | <p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists</p>         |



|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The full length of the route is shown as part of a longer route connecting public vehicular highways.  |
| Investigating Officer's Comments |      | The route existed and was of sufficient width and character to be shown on a small scale map used primarily by the public travelling on horseback and by vehicle suggesting that it was accessible at that time. |
| <b>25 Inch OS Map</b>            | 1928 | Further edition of 25 inch map (surveyed 1893, revised in 1927 and published 1928).  |



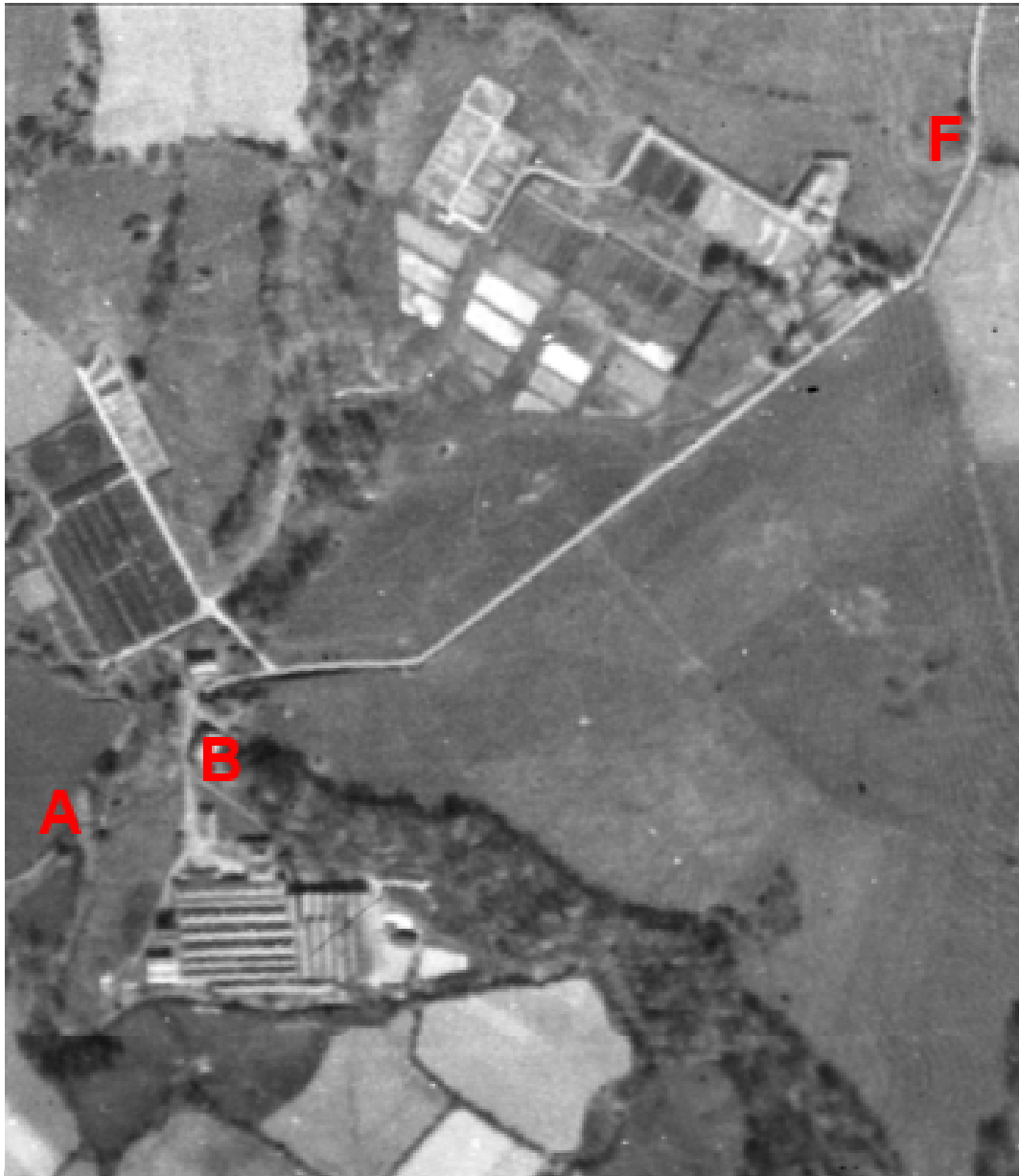
|  |            |  |
|--|------------|--|
| Observations   |            | The full length of the route is shown as part of a longer route extending as far as Southport Road. The bleach works and sewage works had both expanded in size and both were accessed from the route. Common Bank was still shown gated north of point B.   |
| Investigating Officer's Comments                                 |            | The route existed and appeared to be wide enough to be used by horses and vehicles.  |
| <b>Authentic Map Directory of South Lancashire by Geographia</b> | Circa 1934 | An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.<br>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'. |



|              |  |  |
|--------------|--|--|
| Observations |  | The full length of the route is shown as part of a longer route connecting to public vehicular highways but is not named. It is shown as being the same width as German Lane (a public vehicular route) and as a bounded route and |
|--------------|--|--|



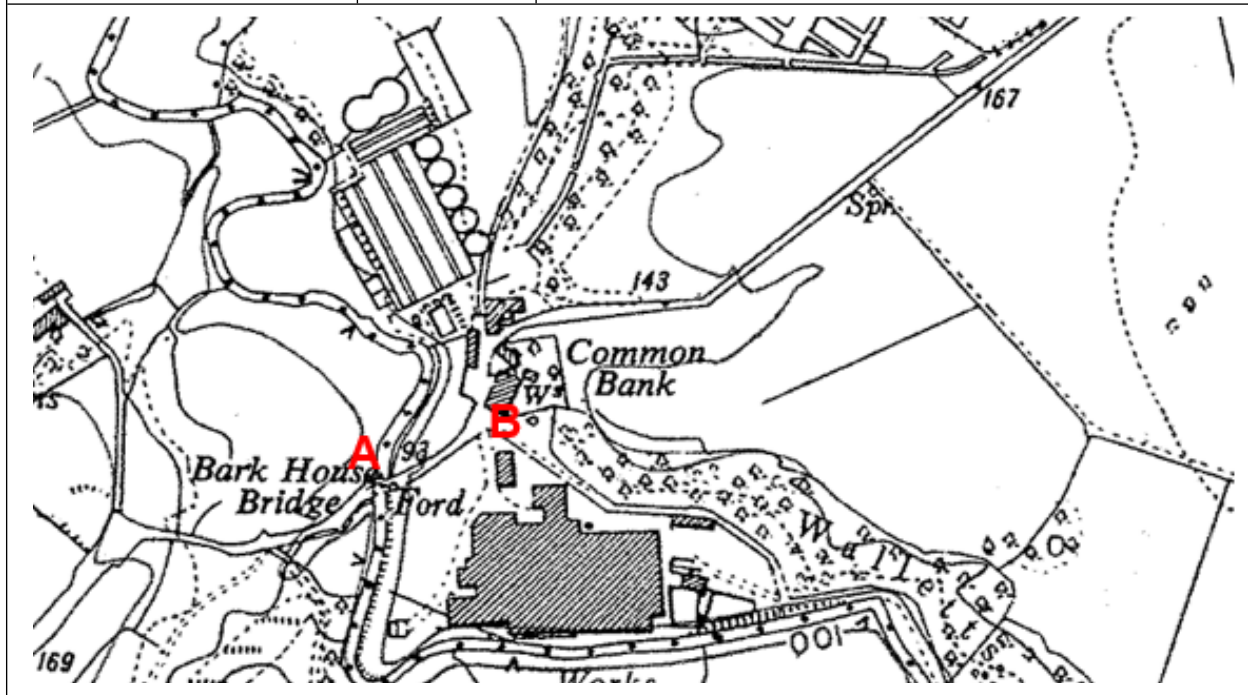
|                                      |       |   |
|--------------------------------------|-------|---|
|                                      |       | consistent with how other public vehicular routes are shown.  |
| Investigating Officer's Comments     |       | The route existed in the 1920s and appeared to be accessible for use by horses and possibly vehicles.   |
| <b>Aerial Photograph<sup>2</sup></b> | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable. |

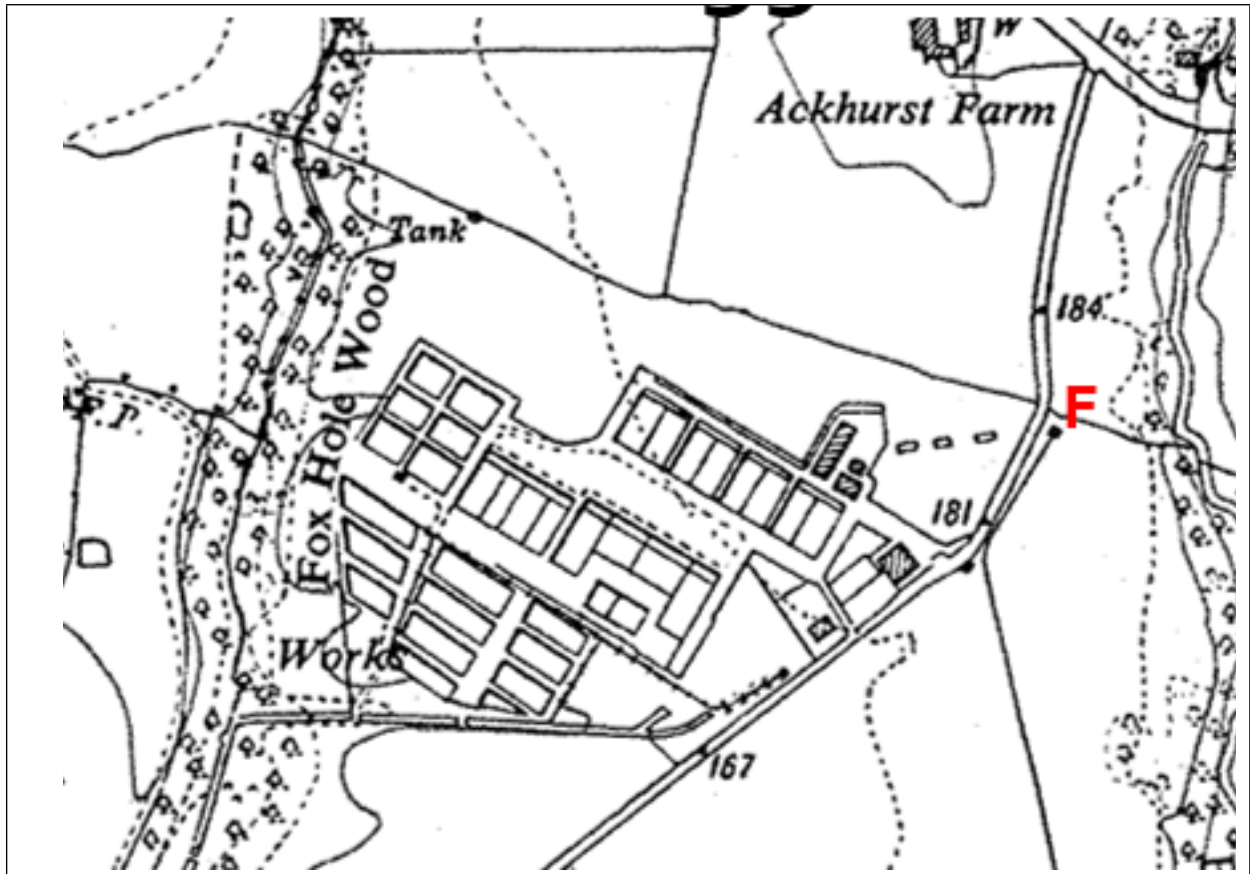


|              |  |   |
|--------------|--|---|
| Observations |  | German Lane terminating at point A can be |
|--------------|--|---|

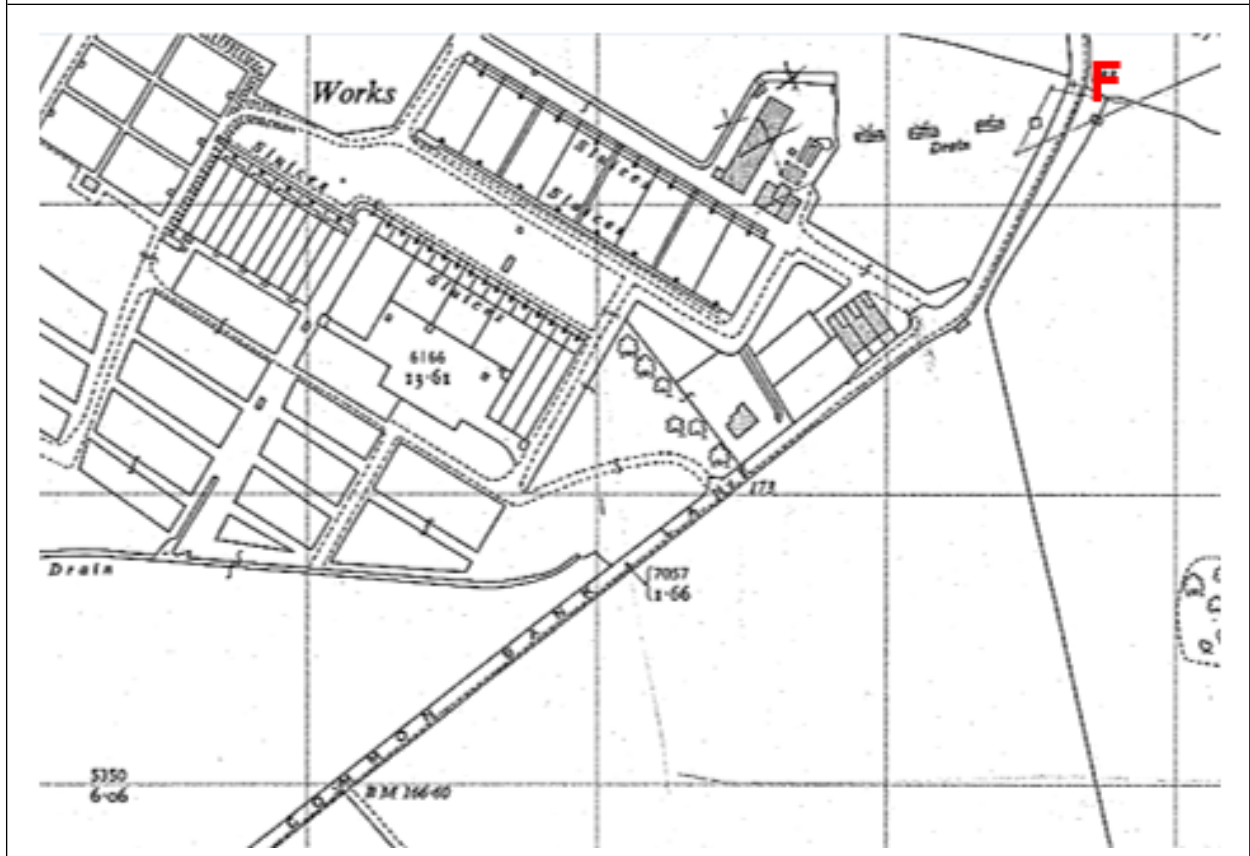
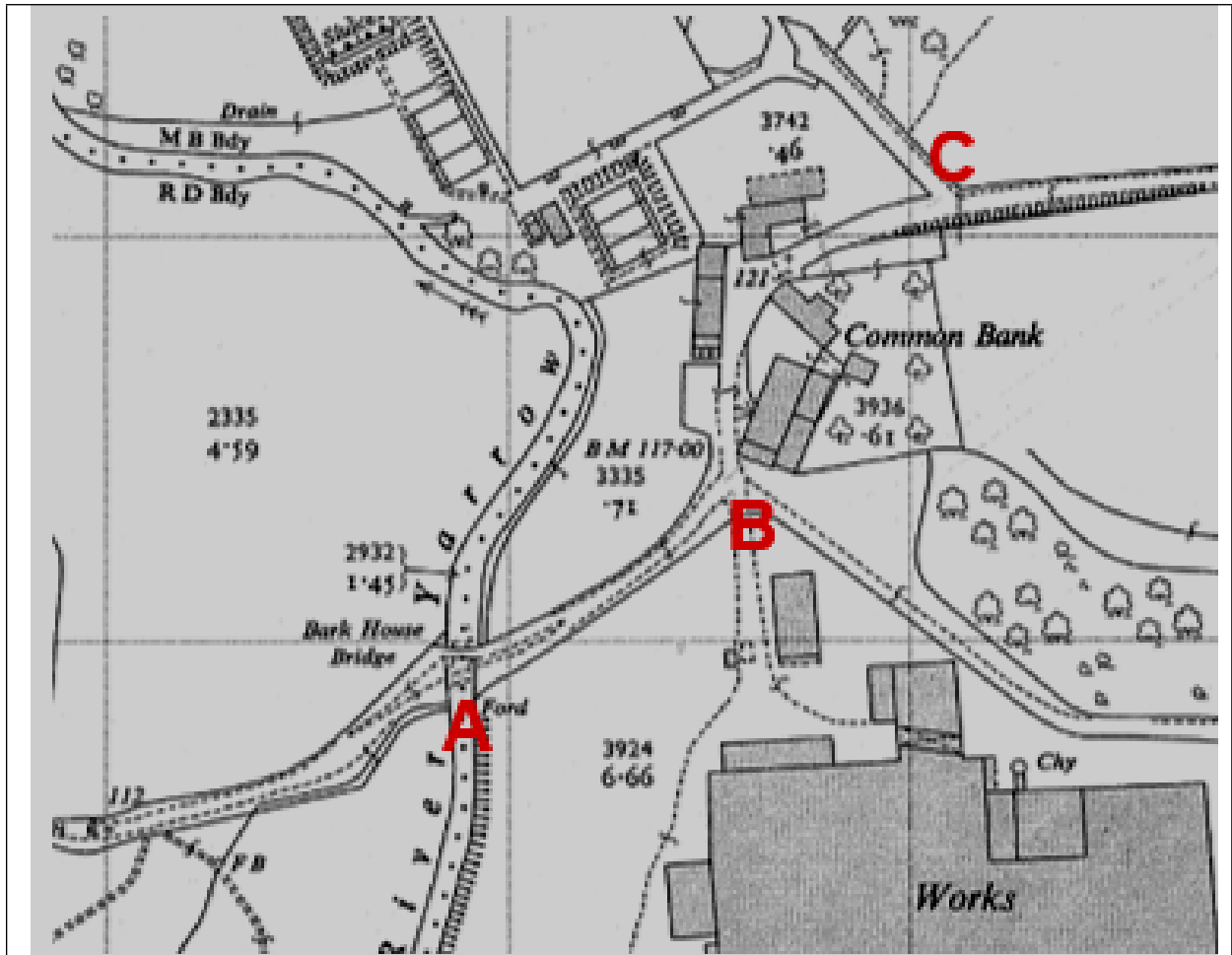
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

|   |             |   |
|---|-------------|---|
|   |             | <p>seen but the route under investigation, between point A and point B can only faintly be seen on the photograph. The route between point B and point F (and beyond) can be clearly seen with the access to the bleach works looking to be predominantly from the north (from point F) rather than from the route between point A and point B.</p> |
| <p>Investigating Officer's Comments</p> |             | <p>The route existed in the 1940s and the way it shows up on the photograph is consistent with vehicular use over the length B-F. The route between point A and point B can be seen as a faint track more consistent with use on foot or possibly on horseback at that time.</p>  |
| <p><b>6 Inch OS Map</b></p>             | <p>1956</p> | <p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930-45 and is probably based on the same survey as the 1930s 25-inch map.</p>   |

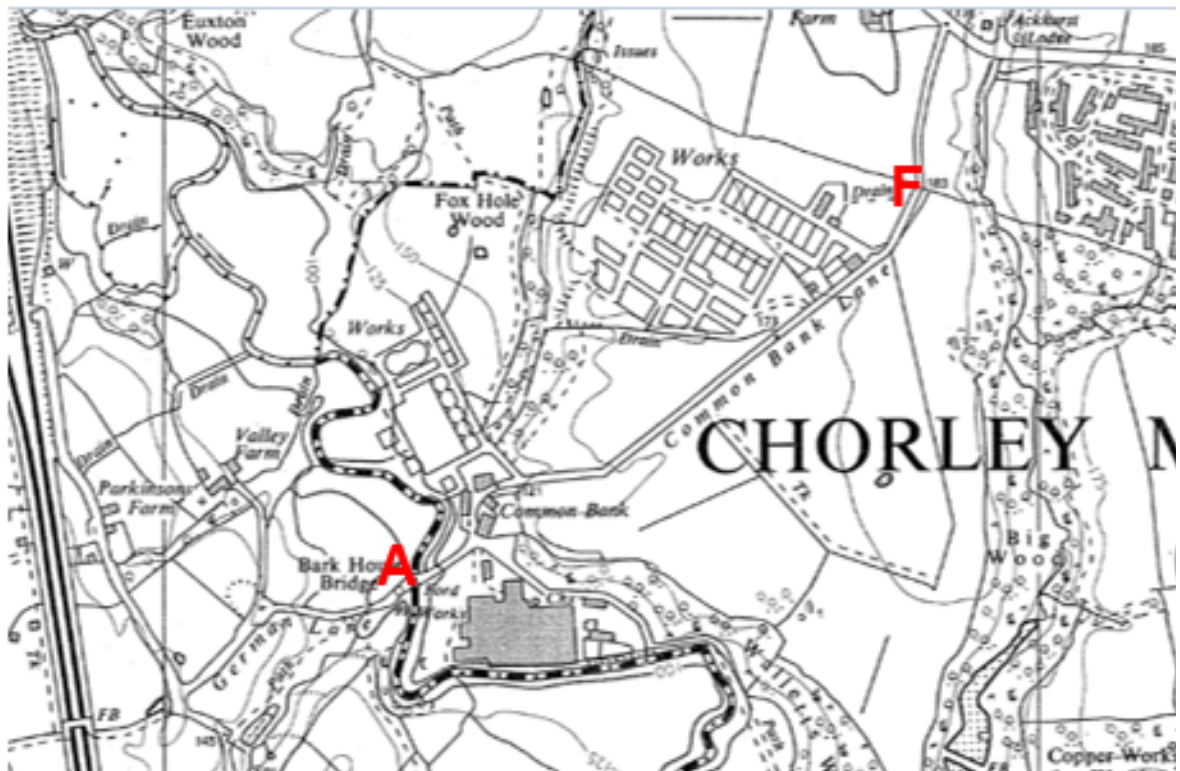




|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The full length of the route is shown and may have been gated at the junction with Southport Road (beyond point F).                    |
| Investigating Officer's Comments |      | The route existed in the 1940s and appeared to be capable of being used.   |
| <b>1:2500 OS Map</b>             | 1960 | Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1960 as national grid series. |



|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The full length of the route is shown and for the first time on an OS sheet the route is named (Common Bank Lane). |
| Investigating Officer's Comments |      | The route existed in the 1960s and appeared wide enough to be used by horses and vehicles.                         |
| <b>6 inch OS Map</b>             | 1968 | Further edition of the 6 inch OS map revised 1954-63 and published 1968.   |



|                                  |       |  |
|----------------------------------|-------|--|
| Observations                     |       | The full length of the route is shown and is named on the map as Common Bank Lane.     |
| Investigating Officer's Comments |       | The route existed and appeared capable of being used.                                  |
| <b>Aerial photograph</b>         | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |



|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | Only part of the route can be viewed on the photographs available. The route from Southport road to point F and then down to the entrance of the sewage works at point E is clearly visible and the route from point E heading in a south westerly direction past point D and towards point C can be seen. |
| Investigating Officer's Comments |      | The route between point D and point F existed as a substantial bounded route.  |
| <b>Aerial Photograph</b>         | 2000 | Aerial photograph available to view on GIS.  |



|                                  |           |   |
|----------------------------------|-----------|---|
| Observations                     |           | The route from Common Bank to point F can be seen. Tree cover obscures the view of the route between point A and point B although two lines consistent with pedestrian use and possibly equestrian use can be seen from point A.  |
| Investigating Officer's Comments |           | The route existed in 2000 and appeared capable of being used.   |
| <b>Definitive Map Records</b>    |           | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| <b>Parish Survey Map</b>         | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County     |

|                             |  |  |
|-----------------------------|--|--|
|                             |  | Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.                                    |
| Observations                |  | The route is within the former county borough of Chorley for which no parish survey map or cards were produced.  |
| <b>Draft Map</b>            |  | The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations                |  | The route under investigation was recorded as part of Footpath 1 between point A and point B and point B and point X and as part of Footpath 8 between point X and point F. No representations were made to the County Council regarding its inclusion on the map as a public footpath.  |
| <b>Provisional Map</b>      |  | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.  |
| Observations                |  | The route under investigation was shown as a public footpath (unaltered from the Draft Map) and no representations were made to the County Council regarding its inclusion on the Provisional Map as a public footpath.  |
| <b>The First Definitive</b> |  | The Provisional Map, as amended, was   |



|  |                     |  |
|--|---------------------|--|
| <b>Map and Statement</b>   |                     | published as the Definitive Map in 1962.   |
| Observations   |                     | The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map.   |
| <b>Revised Definitive Map of Public Rights of Way (First Review)</b>                 |                     | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.  |
| Investigating Officer's Comments   |                     | From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.   |
| <b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b> | 1929 to present day | <p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an</p> |

up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense is not synonymous with whether it is a highway or not. In the 1990s Foxhole Road and Ackhurst Road were added to the records. Point F connects to them..





|   |  |  |
|---|--|--|
| <p>Observations</p>                     |  | <p>The 1929 Handover Map for Chorley Rural District shows German Lane as a publicly maintainable highway to point A. It does not indicate the status of the route under investigation because this was within Chorley Urban District for which no Handover maps were compiled.</p> <p>The County Council's current list of publicly maintainable streets records the route under investigation between point E and point F as part of the general vehicular public highway network. This may have been a change at the time Foxhole Road and Ackhurst Road were created.</p> |
| <p>Investigating Officer's Comments</p> |  | <p>The route between point A and point E is not recorded as a publicly maintainable vehicular highway although no inference can be drawn with respect to public rights to use the route.</p> <p>The section of the route between point E and point F is recorded as a public vehicular highway maintained by the County Council. It is</p>   |

|   |      |  |
|---|------|--|
|   |      | tarmacked and primarily used by motorised vehicles. This would infer that this section is known to the county council as being publicly maintainable as a vehicular highway as the County council is unlikely to take on this liability lightly.   |
| <b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b> |      | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations  |      | There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the route under investigation runs.   |
| Investigating Officer's Comments  |      | There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.   |
| <b>'Follow Any Stream' by Geoff Birtell</b>   | 1968 | Local history book written by Geoff Birtell and published 1968. The book was referred to by the Applicant and a copy examined in Ecclestone library.   |
| Observations  |      | The book gives an account of the local history of the area. It explains that the 'Charnocks'   |

|                                  |  |   |
|----------------------------------|--|---|
|                                  |  | owned both the Charnock Richard Estate and Astley Estate in the 1500s and suggests that when the Charnocks rode from Charnock Richard to Astley they would most likely have taken the route along German Lane to cross the River Yarrow at the ford at Common Bank.                                   |
| Investigating Officer's Comments |  | No inference can be drawn.<br>The earliest maps examined as part of this investigation which show the route are from the 1800s. It is not known when the ford crossing or the route came into being and the Tithe Map of Chorley suggests that there was no link through to Astley Hall in the 1830s. |

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 southern end of the route starting from the River Yarrow to the junction with Public Footpath No.1 Chorley is in the ownership of Ruttle Plant Holdings Limited, Lancaster House, Ackhurst Road, Chorley, Lancs PR7 1NH.

The middle part of the route starting from the junction with Public Footpath No.1 Chorley to the junction of the entrance to Chorley Sewage Treatment Works is in the ownership Chorley Borough Council, Town Hall, Chorley, Lancs, PR7 1DP.

The northern end of the route starting from the entrance to Chorley Sewage Treatments Works to the junction of Ackhurst Road is unregistered.

### **Summary**

The application is for the route to be recorded as a public bridleway.

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In this instance it appears that a route existed as a continuation of German Lane via Common Bank Farm to Southport Road shown on commercial maps since at least the early 1800s and most of its length shown on the Tithe Map. However prior to the 1890s the alignment of the route was not that of the route now known as Common Bank Lane and to which the application relates. From the 1890s it is consistently shown on Ordnance Survey maps as a bounded track. A gate originally appears to have existed across the route north of point B where it entered into Common Bank Farm and also at point F. This northern end was considered to be a footpath in the 1886 Borough Surveyor report.

The physical characteristics of the route show that it would have been possible, prior to the modern obstruction at point B, to ride or drive the full length of the route. The cobbled ford and cobbled surface of the route leading from point A suggest that the crossing would have received substantial use in the past by horses and vehicles in addition to pedestrian use which was specifically catered for by the provision of a footbridge (Bark House Bridge).

Although the early maps suggest that the original route may have been a vehicular highway to apply the presumption of regularity with respect to a legal diversion to the post-1890s alignment is difficult given that there is other documentation available from that time concerning the sewage works but no mention of a diversion.

Since 1890s and still today the current route has provided access to a number of businesses including the bleach works, sand quarry and sewage works and vehicular access along the route could have been private access to these rather than or as well as public use as a through route. This limits the inference that can be made about public rights from the substantial nature and connectivity of the way.

None of the various pieces of post-1890s documentary evidence examined including the Sewage Works proposals, Quarter Session records and Finance Act maps and records suggest that the route was historically considered to be a public bridleway or carriageway. It is referred to as occupation road in the Quarter Sessions record which whilst it does not preclude public bridleway in addition to occupation road for vehicular access did not provide any supporting evidence for bridleway rights.

The depiction of the route on Bartholomew and Geographia supports at least bridleway status but is insufficient evidence on their own.

The section of the route currently recorded as part of Footpath 8 Chorley between point E and point F is on the County Council's List of Streets as a publicly maintainable highway and appears to have become a publicly maintainable carriageway in 1992 when the new road passing by point F was constructed. It is tarmac and it appears that it was mostly used by mechanically propelled vehicles (MPVs) in the relevant period prior to the commencement of the Natural Environment and Rural Communities Act 2006 to access a number of residential properties as well as the quarry and sewage works. For this reason it is not correct to seek to record this section of the route as bridleway or byway but due to a deficiency in the legislation it is not possible to delete the incorrect status of footpath from the Definitive Map and Statement.

## **Head of Service – Legal and Democratic Services Observations**

Information from the Applicant

The applicant has submitted 3 user evidence forms in support of his application, the information supplied in these forms is set out below.

All 3 users have used the route on foot and on bicycle, 1 of the users has also used the route on a motorised vehicle. The user that used the route by all three means

used it between the years of 1985-1995 but did not use the route on a mountain bike between 1987-present day. 1 user used the route on foot between the years of 1984-1987 and by bicycle between 1989-present day and the other user used it on foot and on bicycle between 1989-present day.

1 user has seen others using the route on foot and 2 users have seen others using the route by bicycle, all 3 user agree the other users they saw were using the same route they use.

1 user used this route on foot about once a month but used is on a bicycle weekly, and other user used it on foot and by bicycle both monthly. 1 user did not provide a response to this question.

The main reasons for using this route were to visit places on the route, use the route as part of a longer journey, use the route as part of a circular route and to visit friends and to use it for other appointments.

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

None of the users provided any information about being / knowing any landowners, tenants, employees or family members of the land affected by the route.

1 user has not been given permission to use this, the other 2 users did not provide a response to this question. 2 users confirm they have never been asked to turn back when using the route.

All 3 users never provided a response when asked if they had ever seen any notices along the route, if there are any stiles / gates / fences / bridges along the route or if there has ever been an obstruction along the route.

As well as the 3 user forms the applicant has also provided a document that refers to historical evidence about the route, the documents the applicant refers to have been examined by the Environment team in detail above and are listed below:

- Ordnance Survey 6" First Edition
- Yates 1786
- Greenwood 1818
- Hennet 1829
- Ordnance Survey 6" – 1 mile First Edition
- Photograph showing cobbles at Bark House Ford
- Photograph showing a stretch a cobbles on the brow of Bark House
- Ordnance Survey 25" – 1 mile First Edition 1890's
- Lancashire Archives plot numbers for the Tithes of Chorley
- 1840 Tithe Map
- Finance Act 1910
- Photo of Plot 6966 Chorley Bleaching Works
- Photo of Plot 122 indicates land and buildings
- Photo belonging to Chorley Corporation which is marked as Refutation Works

- Cassini Historical Map 1923-1924 Edition
- Cassini Historical Map 1947 Edition

#### Information from others

An objection has been received from Ruttle Plant Holdings Ltd who object on the grounds that the lane is unsuitable for bridleway use in view of the private vehicular traffic. Whilst this is a concern for management of the way it is not a material consideration for deciding whether the way is already a bridleway.

### **Assessment of the Evidence**

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

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

Present line available since 1890s  
 user evidence on pedal cycle  
 Probably available route for several decades

##### Against Making an Order(s)

weak user evidence  
 difficulties re modern line not existing until after 1845  
 noted in contemporaneous document as footpath in 1886  
 shown within taxable hereditament plots in 1910  
 difficulties in proving dedication of more than footpath by owners in twentieth century  
 from all the circumstances

#### Conclusion

]The claim is that this route on this line of bounded track is already a bridleway in law and should therefore be recorded on the Definitive Map as such..

As there is no express dedication Committee must consider whether there is sufficient user from which the deemed dedication provided for under S31 Highways Act might be satisfied or such circumstances from which dedication might be inferred at common law.

Looking firstly at circumstances from which dedication might be properly inferred at common law.

There may be user which the owner has acquiesced in for such time to indicate that they intended a dedication or other historic map and documentary evidence pointing to their intention.

In this matter it seems there is no such sufficient historic or documentary evidence. The route firmed up to take the line as claimed by 1890s. The owner of much of the route was the local authority. Gates seem to be in place at point F Even in 1910



they showed the route within their taxable plot and at the time of the Definitive Map were content to see the route recorded as footpath. There is no equestrian user evidence presented. It is suggested that it is difficult to see sufficient circumstances from which to infer the owners who still own much of the route today dedicated this route as a bridleway.

Looking secondly at deemed dedication under S31 Highways Act 1980.

S31 requires there to be sufficient use of a route for twenty years before the route was called into question. In this matter the date the route was called into question for bridleway use would be when the boulder was placed on the route at point B in 2014 or possibly the application itself. To deem dedication of bridleway it would be usual to see that use being on horseback.

In the *Whitworth* case it was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. The use on pedal cycle would have to show earlier acceptance of the route as bridleway for the cycle use to be supporting use to evidence bridleway.

It is suggested that the limited pedal cycle use evidenced in this matter is not sufficient evidence of use from which dedication of a bridleway could be deemed just from that use and no other evidence of a historical or long-standing bridleway that subsequently becomes used by cyclists.

Section 31, Highways Act 1980, as amended by section 68 of NERC 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. Committee is therefore asked to also look at whether the use by three users on pedal cycles, one using it weekly and one monthly and one with unknown frequency of use and one user ceasing in 1995 would be sufficient to deem dedication by the owner as a route for non mechanically propelled vehicles. It is suggested that the use is insufficient in this matter.

Taking all the evidence into account it is suggested that the evidence is insufficient to satisfy the criteria of S31 nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter. Committee may therefore feel that the application be not accepted and no Order be made.

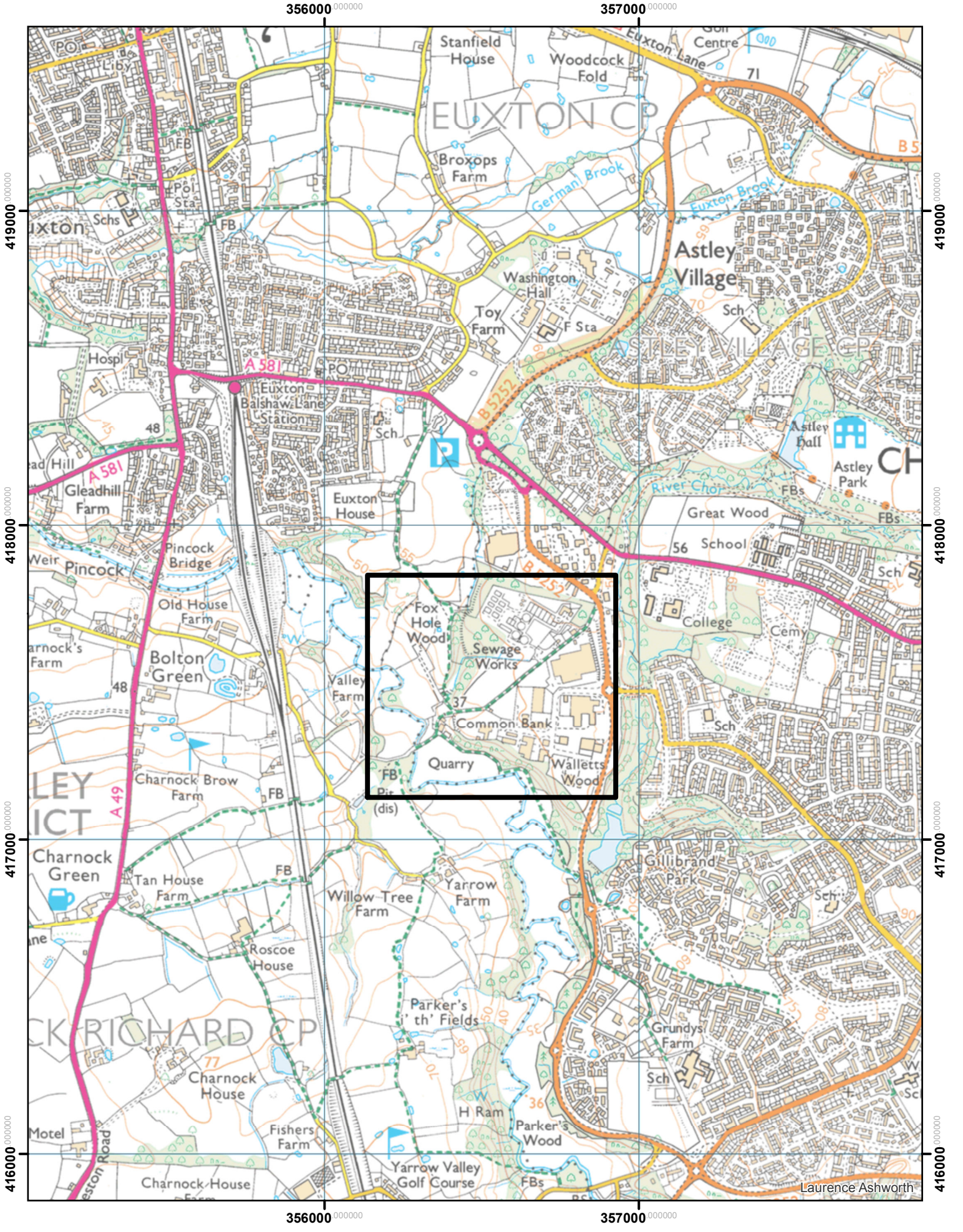
**Alternative options to be considered - N/A**

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

| Paper                                 | Date | Contact/Directorate/Tel  |
|---------------------------------------|------|--|
| All documents on File Ref:<br>804-575 |      | Megan Brindle, 01772<br>535604, Legal and<br>Democratic Services |

Reason for inclusion in Part II, if appropriate

N/A



**Andrew Mullaney**  
Head of Planning and Environment

**Wildlife and Countryside Act 1981 LOCATION PLAN**  
**Upgrading to Public Bridleway - Common Bank Lane, Chorley**

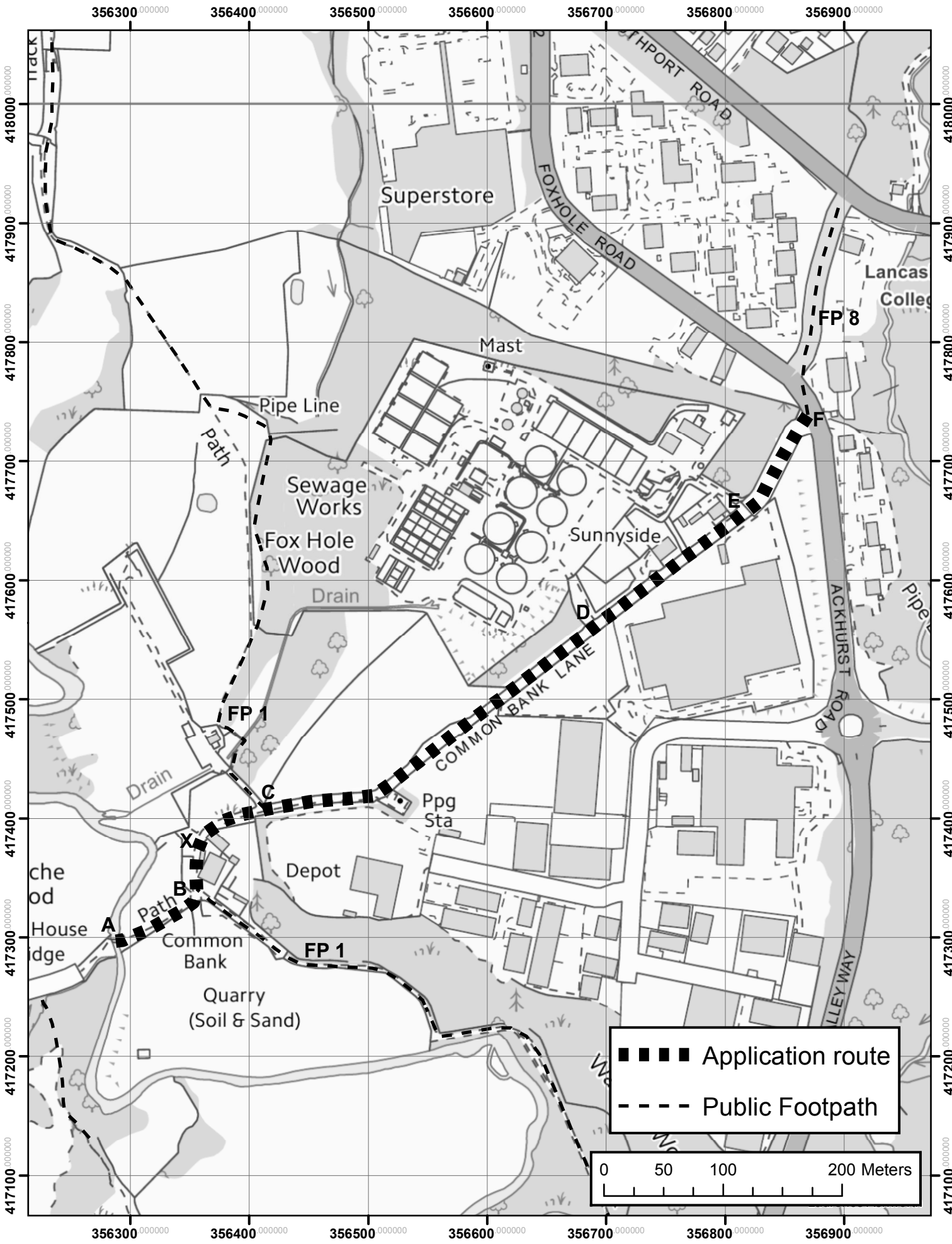
1:15,000



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Andrew Mullaney  
Head of Planning and Environment

**Wildlife and Countryside act 1981**  
**Application for a public bridleway along Common Bank Lane, Chorley**

1:4,000



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## Regulatory Committee

Meeting to be held on 28 September 2016

Electoral Division affected:  
Rossendale South

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Deletion of part of Footpath 130 Ramsbottom at Irwell Vale**  
**Addition of Footpath across Irwell Vale Bridge at Irwell Vale**  
**File No. 804-548b**  
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services,  
[megan.brindle@lancashire.gov.uk](mailto:megan.brindle@lancashire.gov.uk)

Jayne Elliott, 07917 836626, Public Rights of Way, Planning & Environment Group,  
[jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

### Executive Summary

Investigation into the deletion of part of Footpath 130 Ramsbottom at Irwell Vale from the Definitive Map and Statement in accordance with File No. 804-548b

### Recommendation

#### Resolved:

1. That an Order be made pursuant to section 53 (2) (b) and section 53 (3) (c) (iii) to delete from the Definitive Map and Statement of Public Rights of Way the footpath from a point on Footpath 130 Ramsbottom at grid reference SD 7923 2021 for a distance of approximately 30 metres to SD 7922 2024 in the River Irwell and shown between points A- B on the plan referred to in the report.
2. That an Order be made pursuant to section 53 (2) (b) and Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Footpath 130 Ramsbottom (SD 7923 2021) for a distance of approximately 30 metres north westerly across the surface of Irwell Vale Bridge (SD 7920 2023) and shown between points A-C on the plan referred to in the report.
3. That, being satisfied that the tests for confirming said Order at 1 above could be satisfied, the said Order be promoted to confirmation.
4. To await the outcome of the confirmation decision on the Order made to add a bridleway on the line A-C ("the Bridleway Order") and, should the Bridleway Order not be confirmed or confirmed such that a bridleway is not added to the Definitive Map and Statement between points A and C the Order at 2 above be promoted to confirmation. If the Bridleway Order is confirmed such that a bridleway is added to

the Definitive Map and Statement between points A and C the Order at 2 above be processed for non-confirmation

## **Background**

On 6<sup>th</sup> April 2016 Regulatory Committee considered an application for the addition of and upgrade to Bridleway a route extending from Edenfield to Helmshore Road, passing through Irwell Vale. A copy of the report is attached as Appendix 1.

Regulatory Committee decided to make a legal Order to record the route as a bridleway on the Definitive Map and Statement including part of what is currently recorded as Footpath 130 Ramsbottom.

Whilst drafting the Order to be made Officers have identified a drafting error on the Revised Definitive Map (First Review) which could be addressed and rectified as part of the Order making process in respect of another part of Footpath 130; shown between point A and point B on the Committee plan.

The purpose of this report is therefore to explain the drafting error to Members and seek the necessary approval to make an order to correct the error and record the deletion of part of Footpath 130 Ramsbottom, shown between point A and point B on the Committee plan.

The correcting of the error should also entail the addition of a footpath across the surface of Irwell Vale Bridge shown A-C. The crossing of Irwell Vale Bridge from point A was already considered as part of the application dealt with on 6<sup>th</sup> April and is to be included in the Definitive Map Modification Order adding and upgrading a bridleway through Irwell Vale. For that reason it is suggested that the outcome of that Order is awaited before the Order adding a footpath is promoted to confirmation.

On the discovery of a drafting error the County Council are required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists along the route recorded as a public footpath or whether it has been recorded in error. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners



cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

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

District Council

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

Parish Council

There is not Parish Council for this area.

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

| Point | Grid Reference (SD) | Description   |
|-------|---------------------|---|
| A     | 7923 2021           | Point on Footpath 130 by the south east end of Irwell Vale Bridge |
| B     | 7922 2024           | Unmarked point in the River Irwell                                |
| C     | 7920 2023           | North west end of Irwell Vale Bridge                              |

## Description of Route

The route to be deleted commences immediately south east of Irwell Vale Bridge and extends in a northerly direction through the railings on the north east side of the river bank adjacent to Irwell Vale bridge and is then shown to extend north across the river to terminate in the river at point B on the plan.

The route is not readily accessible and there is no evidence that it is used, could be used or that it has ever been used in the past.

The total length of the route 30 metres.

## Map and Documentary Evidence

Footpath 130 was originally recorded on the Definitive Map and Statement of Public Rights of Way crossing the existing Irwell Vale Bridge and terminating at the former urban district boundary. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the route was not shown crossing the bridge but in the River Irwell north east of the bridge. There does not appear to be any reason for it to be shown in this way other than a drafting error and no legal orders have been found suggesting that this part of the route was legally diverted or extinguished prior to the revision of the Definitive Map or that its status as a public footpath had been challenged. Footpath 130's inclusion on the First Definitive Map and Statement crossing Irwell Vale Bridge is conclusive evidence that it existed at the relevant date (1<sup>st</sup> January 1953). For these reasons it is not considered necessary to carry out the full range of historical map and documentary research associated with Definitive Map Modification investigations predating the inclusion of the routes on the First Definitive Map.

| Document Title                | Date      | Brief Description of Document & Nature of Evidence   |
|-------------------------------|-----------|--|
| <b>Definitive Map Records</b> |           | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>  |
| <b>Parish Survey Map</b>      | 1950-1952 | <p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p> |
| Observations                  |           | <p>The route under investigation is within Ramsbottom which was a former urban district in the 1950s so a parish survey map was not compiled.</p>  |

|                         |  |   |
|-------------------------|--|---|
| <p><b>Draft Map</b></p> |  | <p>Maps and Statements were prepared for Ramsbottom by the district borough council and used by the County Council as the Draft Maps for those areas.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p> |
|-------------------------|--|---|

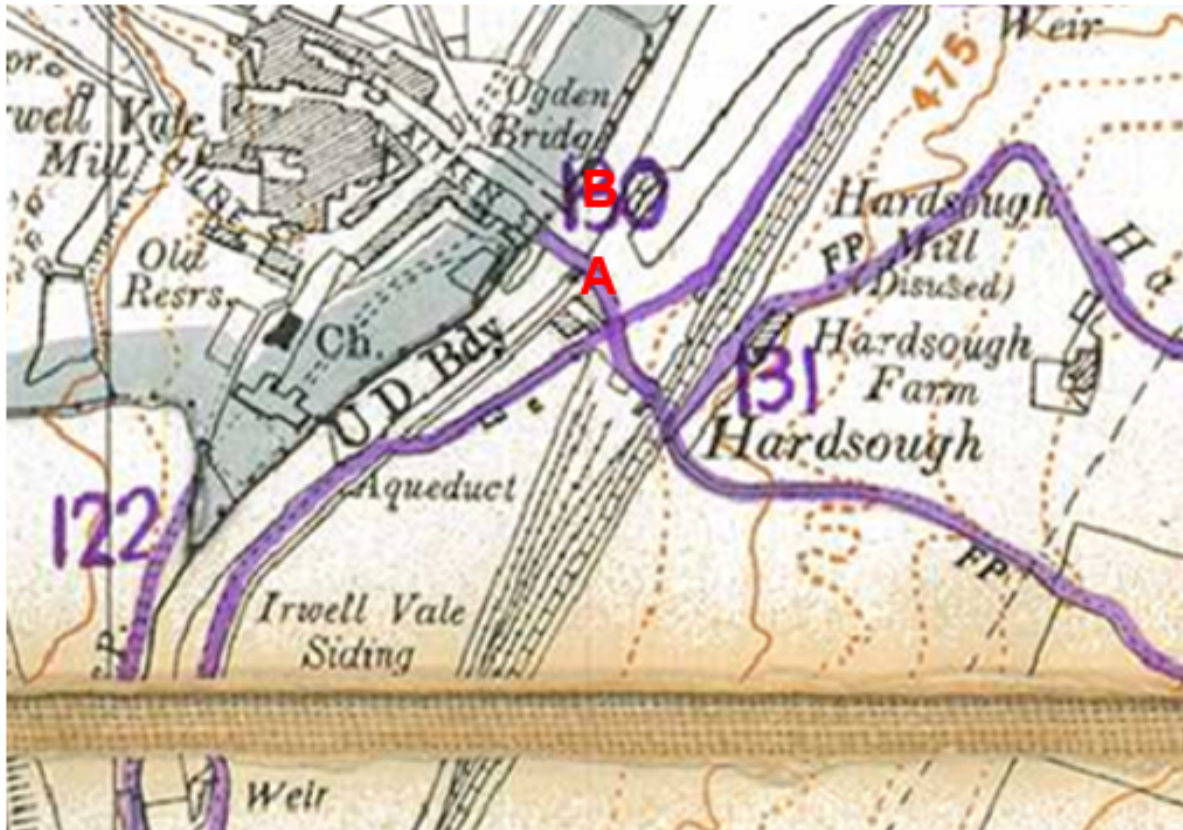


|      |   |  |      |     |
|------|---|--|------|-----|
| 129. | " | Path No. 125 eastwards to path No. 128.  | 0.17 | " " |
| 130. | " | Path No. 128 north-westwards under Railway across path No. 125 to Haslingden boundary. | 0.44 | " " |
| 131. | " | Blackburn Road westwards to path No. 130. (Hardsough Road).                            | 0.44 | " " |

|                     |  |  |
|---------------------|--|--|
| <p>Observations</p> |  | <p>Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown.</p> |
|---------------------|--|--|

|                               |  |   |
|-------------------------------|--|---|
| <p><b>Provisional Map</b></p> |  | <p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was</p> |
|-------------------------------|--|---|

|  |  |  |
|--|--|--|
|  |  | 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 |  | Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown. |
|--------------|--|---|

|   |  |   |
|---|--|---|
| <b>The First Definitive Map and Statement</b> |  | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
|---|--|---|



|   |  |  |
|---|--|--|
| <p>Observations</p>   |  | <p>Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown.</p>   |
| <p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p> |  | <p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p> |



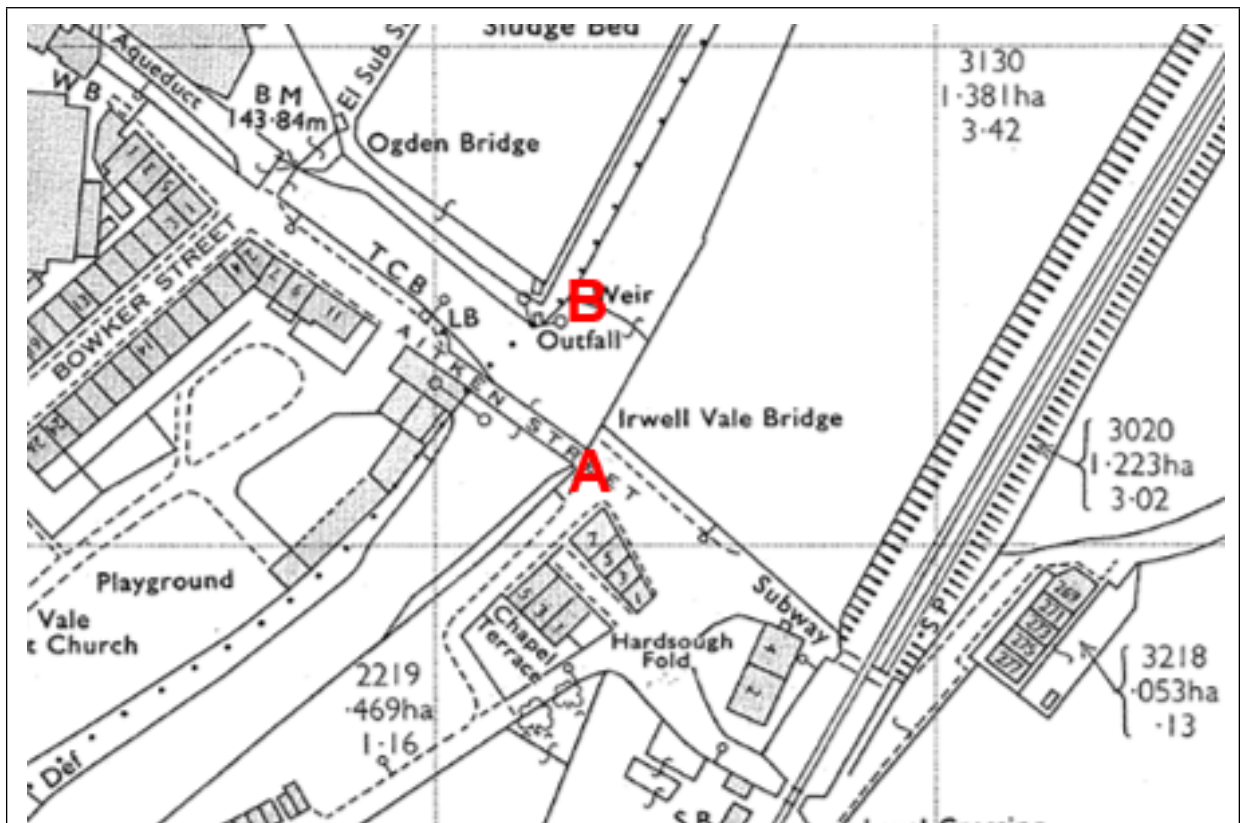
|                                   |             |   |
|-----------------------------------|-------------|---|
| Observations                      |             | The enlarged extract of the Revised Definitive Map (First Review) does not show Footpath 130 crossing Irwell Vale Bridge but shows the final dashed line representing the route of Footpath 130 passing through point A and continuing in a northerly direction into the River Irwell.  |
| Investigating Officer's Comments  |             | There is nothing in the County Council records to explain why the route of Footpath 130 is not shown crossing Irwell Vale Bridge on the Revised Definitive Map (First Review). The scale of the map (1:10,560) and the fact that it was hand drawn and difficult to interpret, even by someone who knows the location, suggests that the fact that the route is shown in the river and not crossing the bridge is a drafting error. |
| <b>Highway Stopping Up Orders</b> | 1835 - 2014 | 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                      |             | No record of the route of Footpath 130 between point A and point B ever being diverted or extinguished has been found.  |
| Investigating Officer's           |             | The route under investigation was erroneously   |

|                |               |  |
|----------------|---------------|--|
| Comments       |               | drawn along the line A-B on the Revised Definitive Map (First Review).   |
| OS 1:2500 maps | 1961 and 1971 | OS maps dating from the time that the Revised Definitive Map (First Review) was being prepared were inspected. |

OS map revised 1960 and published 1963



OS map revised 1970 and published 1971



|                                  |  |  |
|----------------------------------|--|--|
| Observations                     |  | Both maps show Irwell Vale bridge in the same location as it has been on all OS maps inspected from the mid 1800's to the present day. The route to be deleted is not shown as being accessible on maps which were revised and published around the same time that the Revised Definitive Map (First Review) was prepared. |
| Investigating Officer's comments |  | The route under investigation did not exist and an error was made in drawing the route of Footpath 130 along the length A-B.   |

Map and documentary evidence both before and after the publication of the Revised Definitive Map (First Review) supports the view that a drafting error was made when the First Definitive Map was reviewed and there is no evidence that the position of the bridge moved or that the river was accessible (or used) between point A and point B as shown by the yellow line below.





### **Landownership**

The only registered landowner is Tilerock Limited, 81 Chorley Old Road, Bolton BL1 3AJ who is affected by the path at Point A.

### **Summary**

The northern end of Footpath 130 was originally recorded on the Definitive Map and Statement of Public Rights of Way as crossing Irwell Vale Bridge from point A to terminate at the former county borough boundary. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the route was shown terminating in the river at point B instead of crossing the bridge. There does not appear to be any reason for it to have been shown on this different alignment other than a drafting error and no legal orders have been found suggesting that the route was legally diverted prior to the revision of the Definitive Map. The 'original' route across Irwell Vale Bridge remains unaltered and is in regular use and such use does not appear to ever have been challenged.

### **Head of Service – Legal and Democratic Services Observations**

As there is no applicant for this matter and the landowner didn't provide a response to this consultation, no further evidence has been received.

### **Assessment of the Evidence**

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

In Support of Making an Order to delete (s)

Lack of Historical and Documentary evidence of any footpath on this line in the river  
This line impossible to use because of sheer drop into river  
Alternative route available since 1966 and was the route of a footpath section shown on First Definitive Map

Described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original Statements when it was shown on a different line.

Against Making an Order to delete

Initial presumption that it exists

The evidence needed to remove a public right from such an authoritative record will need to be cogent

No objections to it being shown on the Definitive Map (First Review)

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted and another section be added.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the line of the route to be deleted (A-B) was first shown on the Definitive Map (first review) dated 1975 but with a relevant date of 1966 and so the error needs to be shown to have been made in 1966.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

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

One such evidence of error could be sufficient evidence of a correct route. In Case law (Leicestershire case) Collins J held that in these circumstances,

*“it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed”*

He went on:

*“if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone*

*that the map is to be treated as definitive M where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.*

It is therefore suggested that the Committee first consider whether the claimed section A-C is already a footpath at law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 and therefore the route A-B was recorded as on the Definitive Map in error in 1966.

The claimed route A-C crosses a bridge which has been there since at least 1845. The bridge is shown on the Ordnance Survey maps dated 1845 onwards. Whilst the bridge may not have originally been a public bridge, a public footpath was in existence across the bridge surface by 1953. This was the route then recorded in the Definitive Map process.

The route to be added was shown as a right of way on the various forms of the Definitive Map produced between 1953 and 1962 and received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line. The Statement relating to the footpath said "Path No.128 north-westwards under Railway across path No,125 to Haslingden boundary."

In contrast the route claimed for deletion A-B is not shown on any map as a footpath until the Definitive Map (First Revision) of 1966. In this particular matter there is evidence on balance that errors were made in 1966 with regards to recording the line of Footpath 130 Ramsbottom on the Definitive Map.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route claimed for deletion A-B on balance was recorded in error from 1966 onwards and should have continued to be recorded on the line A-C. Committee will be aware that even if the line A-C can be considered to subsist as a footpath this does not necessarily prove that the line nearby A-B was recorded in error. The Committee should consider whether it is possible that two paths existed so close to each other. The Committee is asked to consider the geography of this location and the presence of a bridge. Where the line A-B is drawn is a dangerous route and access into the river would be treacherous.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest that the route A-B was recorded in error and that A- B should be removed from the Definitive Map and the footpath on line A-C be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

There is a complication here as an Order is already to be made to record a bridleway on the bridge rather than a footpath and so it is suggested that the outcome of that

Order be awaited before dealing with this Order to confirmation/ non confirmation stage as set out in the recommendation..

**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:<br>804-[548b] | Various | Megan Brindle , 01772<br>535604, Legal and<br>Democratic Services |

Reason for inclusion in Part II, if appropriate

N/A

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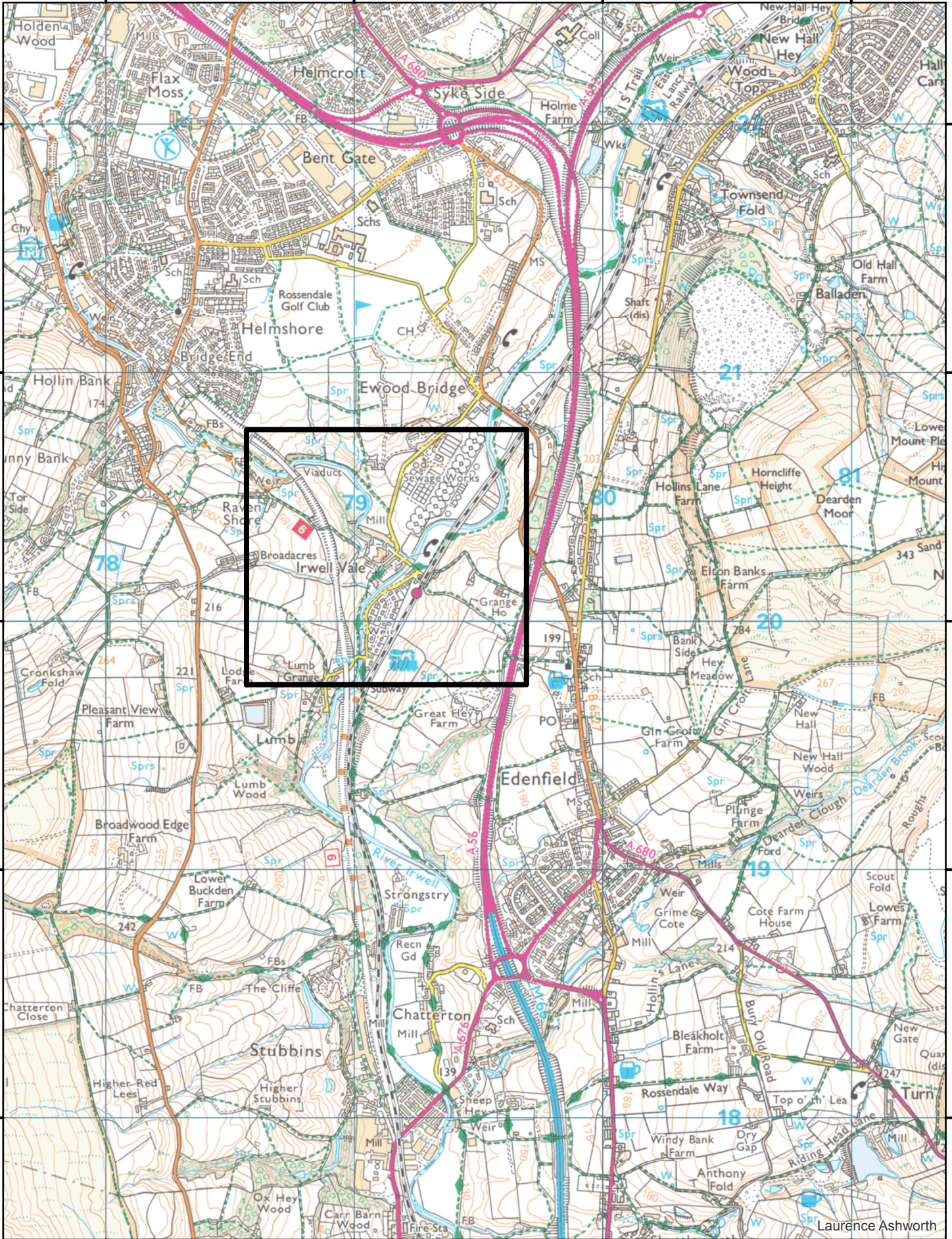
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**Andrew Mullaney**  
Head of Planning and Environment

**Wildlife and Countryside Act 1981**  
**Deletion of part of Public Footpath 130 Ramsbottom LOCATION PLAN**

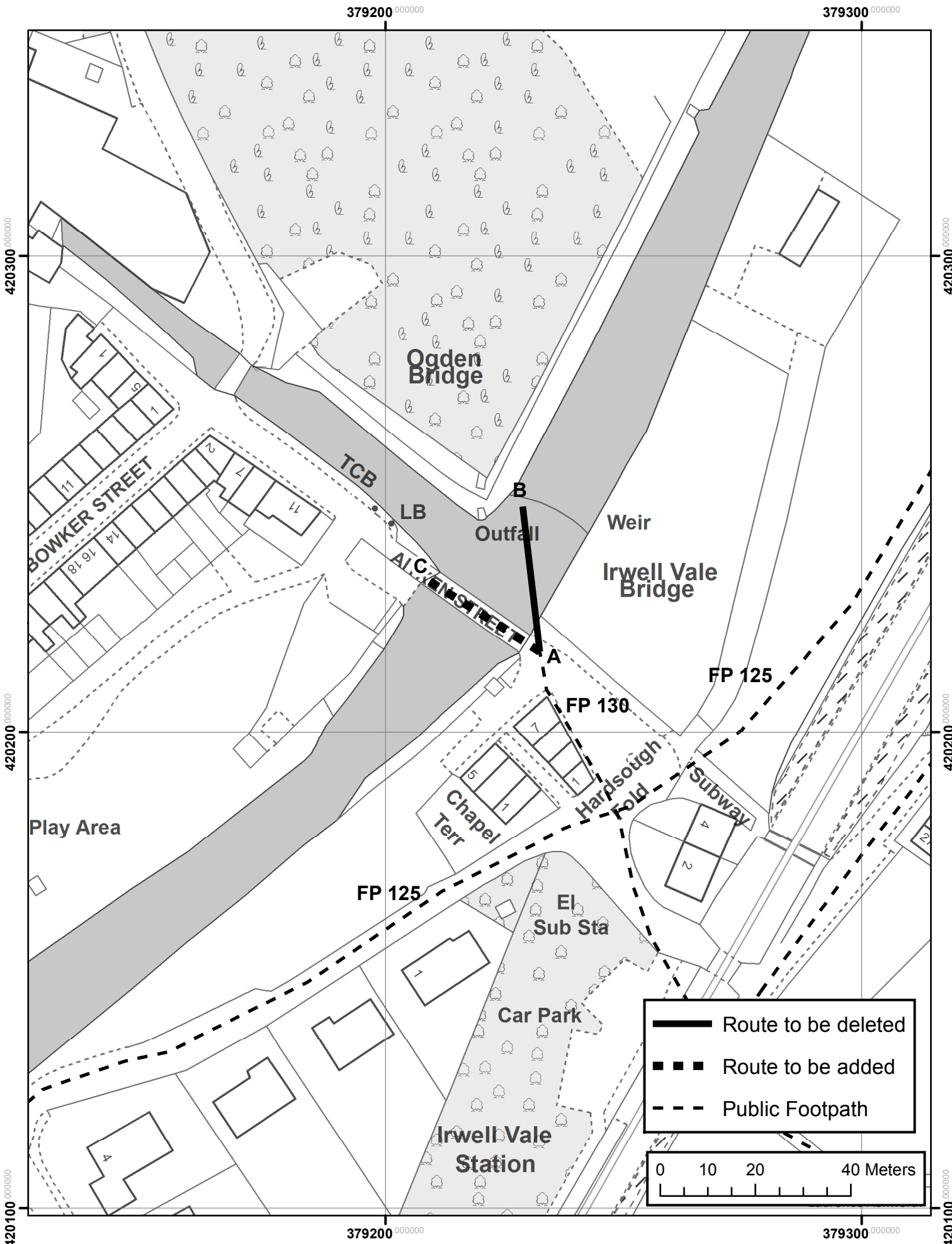
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The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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## Regulatory Committee

Meeting to be held on 28 September 2016

|  |
|--|
| Electoral Division affected:<br>Chorley Rural East |
|--|

**Highways Act 1980 – Section 119A Rail Crossing Diversion Order  
Wildlife and Countryside Act 1981 – Section 53A  
Proposed Diversion of Part of Adlington Footpath 5, Chorley Borough.**  
(Annexes 'B' and 'C' refer)

Contact for further information:  
Ros Paulson, 01772 532459, Planning and Environment  
[ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

### Executive Summary

The proposed diversion of part of Adlington Footpath 5, Chorley Borough.

### Recommendation

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Adlington Footpath 5, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-B.
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

Lancashire County Council have received an application from Network Rail to divert part of the above mentioned public footpath in connection with their proposal to replace the Bradshaw Fields level crossing with a stepped footbridge.

Bradshaw Fields level crossing is a footpath railway crossing, located approximately 500 metres north of Adlington Station on the line between Bolton and Euxton Junction. The footpath provides a popular connection between upper and lower Adlington, linking residential areas and local businesses on Westhoughton Road (A6) with the residential areas, the Fairview Youth and Community Centre and

children's play area on Highfield Road North with the majority of the town to the east of the railway.

The operational railway in this area is affected by Network Rail's Northern Hub transport improvement programme which will help meet growing demand for rail travel across the north. This will lead to an increase in the number of trains and the speed at which they will be travelling.

The crossing has kissing gates (opened by the user) on either side of the operational railway.

Network Rail have explored all alternative options for a permanent means of reducing the risk that the railway crossing presents and their preferred option is to close the level crossing and provide a new footbridge. This will ensure that the public can cross the railway safely and they have applied for an Order to change the legal alignment of the footpath to enable the level crossing to be closed when the new footbridge is in place.

The length of the existing path proposed to be diverted is shown by a bold continuous line marked on the plan as A-B. The proposed alternative route is shown on the plan by a bold dashed line and marked A-C-D-B.

## **Consultations**

Consultation with the statutory undertakers has been carried out and no objections or adverse comments on the proposal have been received.

Electricity North West Limited have advised that they have a Low Voltage Mains Cable in the vicinity of the proposed diversion and that great care should be taken at all times to protect both the electrical apparatus and any personnel working in the vicinity. These comments have been passed onto the applicant to ensure that they are taken into consideration when any works are carried out on the crossing, or in connection with the installation of the footbridge.

Chorley Borough Council and Adlington Town Council have also been consulted and similarly raised no objection to the proposal.

The Clerk to Adlington Town Council has commented 'the Town Council welcomes this minor footpath diversion which is required to facilitate the replacement of the unmanned railway foot crossing with a stepped footbridge.'

A consultation was carried out with the Fairview Youth and Community Association that occupy the building that is located adjacent to the open area to the east of the crossing. The Secretary has commented 'Having discussed the proposal with the committee of Fairview Youth & Community Association, we have no objection to it. We welcome the building of the footbridge across the railway line, which will be a long waited asset to the village. We note that there will not be any disabled access which is a pity, but understand the reasons for this.'

With regards to the local rights of way user groups, as a justification for providing a stepped footbridge, without the provision of ramps, they were also provided with a copy of Network Rail's Diversity Impact Assessment which included photographs of the grassed area to the east of the crossing.

Neither the Chorley Ramblers or the Peak and Northern Footpath Society have indicated that they would object to the Order but they have raised concerns about the absence of any provision for people with limited mobility and those with prams.

The Chorley Ramblers have commented that the photographs of FP5 east of the railway crossing that Network Rail have provided are misleading. They say that 'FP5 immediately after the railway crossing on the east of the railway turns north along a tarmaced path towards Fairview Drive. Some pedestrians will inevitably cross the playing fields but it is wrong to imply that FP5 crosses this field and therefore people with limited mobility and possibly prams cannot make use of the railway crossing.'

They go on to say that 'there are steps at the start of FP5 on the A6. However, the land immediately to the north of the footpath is open, very wide and is an access road to the business with infrequent use. As a user there is no indication that you are trespassing. The length of the footpath from the A6 (steps) to the railway crossing is long enough to be converted to a gentle decline. The railway crossing links Lower Adlington to Upper Adlington where most of the village facilities eg schools, churches, Community Centre (includes Youth Club), Library, doctor's surgeries etc It also links Lower Adlington to the eastern side of Heath Charnock through Fairview Drive.'

The Peak and Northern Footpath Society have questioned 'whether this this really a popular connecting path, when it completely ignores and marginalises two immobile groups of the public, namely wheelchair users and babies/small children in prams or pushchairs.' They go on to say that 'they have serious reservations about marginalising two groups of the public who have limited mobility and a better outcome would be one that includes and improves access for the marginalised'.

## Advice

### Description of existing footpath to be diverted

The part of Adlington Footpath 5 as described below and shown by a bold continuous line marked A-B on the attached plan (Lengths and compass points given are approximate).

| FROM                | TO                  | COMPASS DIRECTION | LENGTH (metres) | WIDTH            |
|---------------------|---------------------|-------------------|-----------------|------------------|
| A<br>(SD 5994 1355) | B<br>(SD 5992 1355) | WSW               | 15              | The entire width |

### Description of new footpath

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

| FROM                            | TO                  | COMPASS DIRECTION | LENGTH (metres) | WIDTH (metres) | OTHER INFORMATION   |
|---------------------------------|---------------------|-------------------|-----------------|----------------|---|
| A<br>(SD 5994 1355)             | C<br>(SD 5994 1354) | SSE               | 15              | 2              | Compacted stone path on ground level at point A then 30 steps to access footbridge. |
| C<br>(SD 5994 1354)             | D<br>(SD 5993 1353) | WSW               | 15              | 2              | 10 steps (5 at each end) onto the upper deck of footbridge                          |
| D<br>(SD 5993 1353)             | B<br>(SD 5992 1355) | NNW               | 20              | 2              | 30 steps to access footbridge and tarmac surface on ground level at point B.        |
| Total distance of new footpath: |                     |                   | 50              |                |   |

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 8.5 metres from the ground.

It is proposed that the right of way to be created by the proposed Order will not be subject to any limitations or conditions.

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Adlington Footpath 5 be amended to read as follows:

The 'Position' column to read: "Chorley Road to SD 5994 1355 then runs 15 metres south south east on a compacted stone path on ground level then ascends 30 steps onto the footbridge to SD 5994 1354. The footpath continues for 15 metres west south west ascending 5 steps to access the footbridge deck then descends 5 steps to SD 5993 1353, continuing 20 metres north north west descending 30 steps and a tarmac surface at ground level to SD 5992 1355 then to Westhoughton Road, known as Bradshaw Lane footpath (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "0.82 km"

The 'Other Particulars' column be amended to read "The width of the section of footpath between SD 5994 1355 and SD 5992 1355 is 2 metres. There are no limitations on the section of footpath between SD 5994 1355 and SD 5992 1355."

### **Criteria satisfied to make and confirm the Order**

To make an Order under Section 119A of the Highways Act 1980, the County Council must be satisfied that:

it appears expedient in the interests of the safety of members of the public using it or likely to use it to divert a footpath which crosses a railway, other than by tunnel or bridge (whether on to land of the same or of another owner, lessee or occupier.

The surrounding area consists of open space and residential areas, with local businesses operating close by and the footpath is possibly providing access to work for a number of their employees. There is a community centre and a children's recreational park to the east of the crossing.

The approach to the footpath from the east is either over a grassed area of unlit public space, or on an unlit, unsurfaced path running on the edge of the public open space, alongside the railway fence. The footpath approaching from the west from Westhoughton Road is down a flight of 5 steps, then on a surfaced track that runs between two businesses and up to the crossing.

It is generally understood that a majority of the use is for leisure purposes and as a link between two residential areas. It is also recognised that the crossing has vulnerable users, which are the young (under 18), unaccompanied children and members of the public with restricted mobility.

Network Rail undertook a detailed surveillance camera survey at the crossing over a 9 day period, to capture not just the amount of use being made, but also the type of user. These results were broken down to identify that the average daily count of pedestrian use was 157 per day, with 91 pedestrians on the quietest day and 198 people on the busiest day.

Weather conditions during that period and verified by the Met Office were generally warm with light showers. The census was carried out during the summer school holidays and is generally considered to be an underestimate of midweek usage, with the footpath thought to form part of the route normally used by school children.

During site inspections carried out by representatives of Network Rail, numerous vulnerable people were identified at this crossing including unaccompanied children, people with dogs off the lead; pedestrians with headphones and using mobile telephones whilst crossing. As a result of known vulnerable usage the traverse time was estimated to have been increased by 50%.

An added risk factor of the current level crossing is that modern trains are quiet and weather conditions such as high winds or fog can reduce a pedestrian's ability to hear or see a train approaching.

Currently there is the potential for accidental collisions resulting from an incidence such as a slip or trip, a user of the path not seeing a train approaching or not hearing the train's warning horn. Another high risk to users is that on occasions, trains pass each other, going in different direction on or close to the crossing. This is an extremely high risk to users of the crossing, as they can wrongly assume the train they have sighted is the only one to be concerned with, without assessing whether another train is approaching in the other direction.

Although there is no evidence or reports of any incidents of misuse of the crossing as a point of access onto the railway at this particular location, there is always that risk and a footbridge would prevent such an incident occurring.

The following photographs illustrate the available sightlines from the crossing:

The following photographs are taken from the potential decision point at 2m:



Figure 1. Sightlines from Andlington Footpath 5.

In this instance, the level crossing is sited on double tracks within a curvature of the track. This means there is limited sighting distance for users to see approaching

trains in both directions, which warrants the installation of additional mitigation measures to address this risk. These additional measures include the installation of whistle boards, whereby the train driver is instructed to sound the train's horn when approaching the crossing.

There are however instance where a user of the crossing might not hear the warning. The crossing is sited close to the busy A6 Westhoughton Road, the noise from the road traffic might make it difficult to hear the warning. Other risk factors where a warning horn might not be heard would be the wearing of headphones, talking on a mobile telephone or a hearing impediment.

Other measures to mitigate the risks at this level crossing is a kissing gate on either side of the operational railway and warning signs advising the pedestrian to stop, look and listen. The surface of the crossings consists of proprietary crossing boards with an anti-slip surface.

The operational railway currently has permissible speeds at this location of 75mph in both directions over the crossing. There is a total of 127 passenger, freight and engineering trains operating over this line, 24hrs a day, seven days a week. The crossing is affected by Phase 4 of the North West Electrification Project (NWEF), which will increase the line speed to 100mph. There will also be an increase in the frequency of services up to 360 passenger, freight and engineering trains a day.

As a result of the line speed increase, the required 398m sighting distance will no longer be achievable. Sighting distance is the minimum distance that the public need to see approaching trains that will give them enough time to cross the operational tracks safely. In addition, the project to electrify this section of railway will require steel stanchions to be erected within the operational corridor to support the overhead power lines. These stanchions have a limited distance of separation between each stanchion which will further restrict the sighting distance available for users at the crossing.

Due to the increase in the frequency of services, this also increases the risk to the public when using the crossing.

Network Rail regularly undertakes a risk assessment at each level crossing on the rail network. This is continually reviewed and updated. A risk tool known as ALCRM (All Level Crossing Risk Model) is used to identify and collate all the specific risks at each crossing. This model examines a number of factors, including use, train frequency, speed and crossing conditions (sight visibility) to establish a quantitative risk assessment. A score is produced following this assessment and a FWI (Fatality Weighted Index), is calculated that shows the probability of a fatality happening at a crossing.

In this particular location with the current frequency and speed of the trains, the crossing has a risk score of C2 and FWI of 0.010810716 and is considered high risk. Given that there are considered to be vulnerable users of the crossing, a safety mitigation measure has been put in place that allows the traverse time over the crossing to be increased by 50%. That measure is a temporary speed restriction, which severely affects the efficiency of the operational railway.

In addition to the inherent risks currently at this crossing, the significant increase in the speed and frequency of trains and further restriction of sighting distances due to the installation of electrification equipment means there will be a significant increase in the already high risk to the public using the level crossing.

At some level crossings, Miniature Stop Lights (MSL) are installed to provide a user with a visual warning of approaching trains. However, Network Rail does not support the installation of MSL's at certain locations as they only provide a limited mitigation of risk. This is because they are reliant on the public using them correctly and industry evidence has shown that when groups of people are at level crossings, then a 'pack' mentality can arise and each individual may not pay attention to their own personal safety, instead just follow the pack.

The suitability of this measure was assessed and rejected for this location. Network Rail does not accept that it would afford a suitable level of protection due to vulnerable users regularly using this footpath.

Network Rail have explored all alternatives and as it is accepted that some means of crossing the railway at this location is necessary.

Bearing in mind that the frequency and speed of the trains is planned to increase, coupled with the assessment that it is not reasonably practicable to make the crossing safe by any other means, it is suggested that there is a justifiable case for constructing a stepped footbridge providing the crossing is closed and removed.

Network Rail have carried out a Diversity Impact Assessment in order to determine the type of footbridge that would be appropriate in this instance. The assessment looked in detail the considerations given into the different types of user and why some options were not considered feasible.

Wherever possible Network Rail provides a ramped access in addition to steps but the Diversity Impact Assessment explains why ramps are not considered feasible in this location.

The Diversity Impact Assessment states that a 1 in 20 ramped and stepped footbridge structure would require approximately 500sqm of land take per ramp plus a further 150sqm for maintenance access. This would affect the public open space and adjoining businesses properties including a small commercial outbuilding. It is advised that it is not feasible to locate the footbridge further north due to the presence of other commercial buildings, or south due to the presence of residential properties.

Therefore, in order to build a structure with ramps over the operational railway, a significant area of land would need to be purchased from adjoining landowners. This would directly impact adjoining business properties bordering the railway and the area of well used public open space. In addition, the site is overlooked by several residential properties that back onto the public open space and a large ramped structure would have a negative impact on their views.

There are also other issues that arise with obtaining consents regarding the appropriateness of that type of structure in certain locations. Network Rail also has to



justify the higher financial outlay of public funds for the provision of a structure with ramps.

An example of the two differing types of structures is provided below to visually demonstrate the scale of a bridge with ramps in comparison to a stepped structure.



Figure 2: An example of a stepped structure



Figure 3: Examples of combined stepped and ramped footbridge structures.

Overall, the local representatives of the community that have been consulted including Adlington Town Council and Fairview Youth and Community Centre welcome the provision of a footbridge and accept the reasons why Network Rail do not propose to provide disabled access. In particular the views of Fairview Youth and Community Centre are considered to be relevant in this instance as they occupy the building that is located adjacent to the open area to the east of the crossing, and as such they are ideally placed to have a good idea of the typical usage of the current crossing and assess the likely impact of the proposal on the local residents.

In this instance, therefore it is the intention that only steps will be provided. Currently there are steps on the western end of the footpath and it is not possible to get a pushchair or wheelchair through the kissing gates that are in situ each side of the railway line.

The Ramblers comments to the consultation indicate that there is an alternative route that can be used to access Westhoughton Road that avoids the steps. This is a private track with no recorded public rights of way even though it appears that access for pedestrians is permitted at the current time. With regards to their comments about a surfaced path to the east of the railway, it's advised that whilst the path might have been surfaced at some time in the past but no evidence of that now it is an unmade path that is muddy in places following a period of wet weather.

Network Rail have secured the necessary funding to construct and deliver a stepped structure to replace the existing crossing. The proposed site for the footbridge lies immediately to the south of the existing crossing. This land consisting predominantly of Network Rail's operational land and a small area (approx.95sqm) of the adjoining business and a small area of grassed land (approx.105sqm), comprised of dense hedging and trees. The affected landowners have consented to the proposal and it is the intention that the ownership of the land will transfer to Network Rail before the construction of the footbridge commences.

In the event that the Order is successful, Network Rail will ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they have given their consent.

It is advised that the effect of the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The proposed diversion will not alter the points of termination of Adlington Footpath 5.

The applicant, Network Rail, have agreed to defray any compensation, and has also agreed to bear all advertising and administrative charges incurred by the County Council in the order-making procedures and also to provide and maintain the alternative route to the satisfaction of the County Council.

The Committee is advised that so much of the Order as extinguishes part of Adlington Footpath 5 is not to come into force until the County Council has certified the satisfactory physical implementation of the footbridge.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that it is expedient to confirm the Order having regard to all the circumstances and in particular to:

- (a) whether it is reasonably practicable to make the crossing safe for use by the public ; and
- (b) what arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

It is felt that, if the Order were to be confirmed, the new way will be reasonably convenient to the public. The construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. It is acknowledged that the new route is longer than the existing route and requires steps to be negotiated, however given the substantial improvement in the safety of the crossing it is

suggested that this is reasonable. In addition, users of the railway crossing that are in a hurry (and would be inconvenienced by waiting for a train to pass), or prefer to proceed without negotiating kissing gates may find a footbridge to be the preferred option.

It is suggested that there will be no adverse effect on the rights of way network as a whole or on the land served by the existing route or on land over which the new path or way is to be created.

It is 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. Although it is the intention that only steps will be provided over the footbridge which may therefore be inaccessible or difficult for some users it is considered that the absence of gates to be negotiated and the increased protection to those and other users from the danger of crossing at grade a high speed railway track makes this a reasonable solution.

The provision of a footbridge will enable a safer means of crossing the railway for persons with a hearing impairment as the warnings sounded by the train's horn might not be as effective. Furthermore, the footbridge would be safer means of crossing for those with a visual impairment.

It is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In particular policy RMVI2-2 whereby the Local Authority will aspire to meeting the British Standard for gaps, gates and stiles. In this instance BS5709:2006 has been applied and accordingly, as it is proposed that there will not be any gates or barriers on the stepped access the proposed alternative route is fully compliant with the British Standard.

It is considered that, having regard to the above, it would be expedient 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 applicants, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicants can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

### **Risk Management**

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in

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

### **Alternative options to be considered**

To not decide to make an Order: Insist on a ramped footbridge

To not decide to make an Order: Requiring Network Rail to improve the current crossing and implement further safety measures such as further speed restrictions of the trains. It's suggested that this is not be feasible given the imminent implementation of the Network Rail's Northern Hub transport improvement programme.

To decide to make an Extinguishment Order: this footpath is well used and it is therefore not appropriate to recommend extinguishment of the crossing instead of diversion.

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 if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State 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/Tel  |
|------------------------|------|--|
| File Ref: PRW-09-01-05 |      | Mrs Ros Paulson<br>Planning and Environment,<br>07917 836628 |
| File Ref:              |      |  |

Reason for inclusion in Part II, if appropriate

N/A

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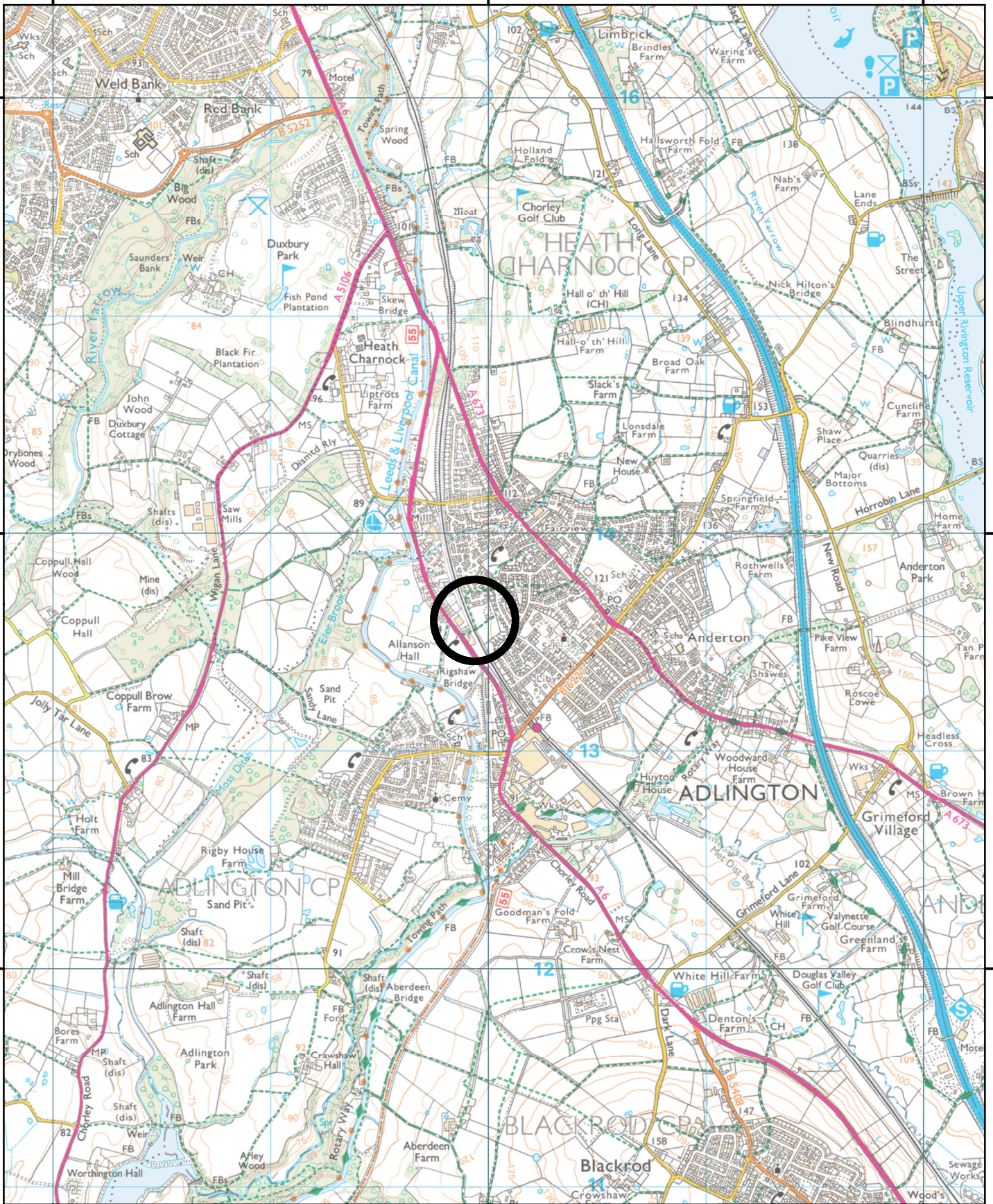
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Council

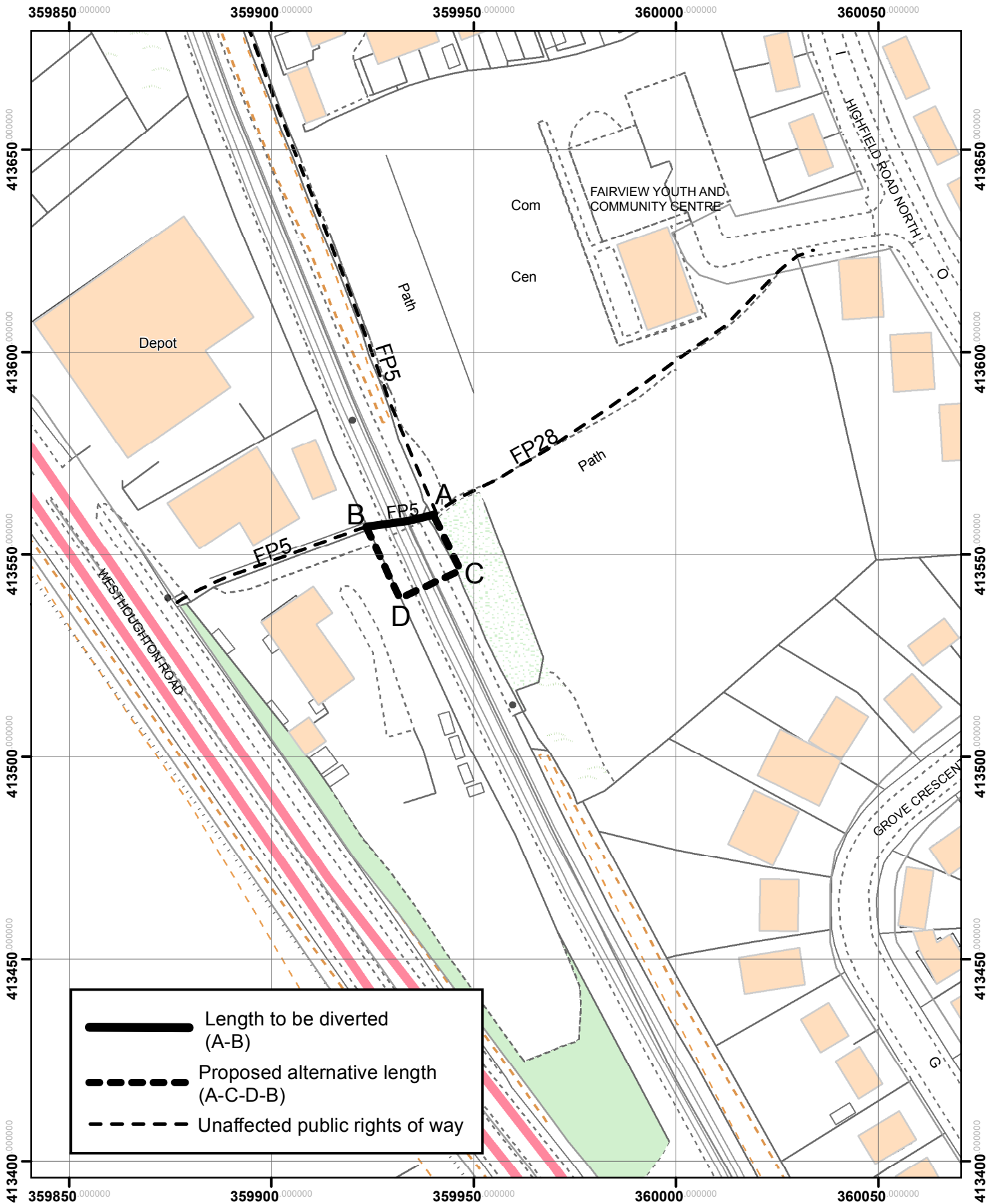
Andrew Mullaney  
Head of Planning  
and Environment

Location Plan.  
Highways Act 1980 – Section 119A  
Proposed Diversion of Part of Adlington Footpath 5, Chorley Borough.



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Andrew Mullaney  
Head of Planning  
and Environment

Highways Act 1980 Section 119A  
Diversion of part of Adlington Footpath 5, Chorley Borough



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## Regulatory Committee

Meeting to be held on 28 September 2016

|  |
|--|
| Electoral Division affected:<br>Ribble Valley North East |
|--|

### Highways Act 1980 – Section 119

### Wildlife and Countryside Act 1981 – Section 53A

**Proposed Diversion of Parts of Rimington Footpath 23, Ribble Valley Borough.**  
(Annexes B and C refer)

Contact for further information:

Mrs R Paulson, 01772 532459, Planning and Environment.

[ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

### Executive Summary

The proposed diversion of parts of Rimington Footpath 23, Ribble Valley Borough.

### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert parts of Rimington Footpath 23, from the routes shown by bold continuous lines and marked A-B and C-D-E-F to the routes shown by bold dashed lines marked A-G and H-J-K-F on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

### Background

A request has been received from the owners of Rimington Hall, Rimington Lane, Rimington, Clitheroe, BB7 4DP for an Order to be made under Section 119 of the Highways Act 1980 to divert parts of Rimington Footpath 23.

The lengths of the existing paths proposed to be diverted are shown by bold continuous lines marked on the plan as A-B on the south side of Rimington Lane and C-D-E-F on the north side of Rimington Lane. The proposed alternative routes are shown by bold dashed lines and marked A-G on the south side of the lane and H-J-K-F on the north side of the lane.

The footpath proposed to be diverted runs across a field, crosses Rimington Lane then runs along a driveway and crosses the garden of the residential dwelling of Rimington Hall. The proposed diversion, if successful, would move the footpath to the west of the residential property, providing the applicants 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.

Ribble Valley Borough Council, Rimington Parish Council, Ribble Valley and Clitheroe Ramblers and Peak and Northern Footpath Society have also been consulted.

The footpath secretary of the Clitheroe Ramblers has commented that they were generally in support of the proposal, provided the new route is properly gated and surfaced. Initially he expressed concerns about the section of path between point J and K, suggesting that there might be a spring or watercourse which makes the ground waterlogged in poor weather. The group has subsequently revisited the site and confirmed that they have no objection to the proposal as the ground condition of the proposed diversion is comparable to other paths in wet weather. They are satisfied that if the Order is successful, the County Council need not insist on changes to the drainage.

There have been no other objections or adverse comments to the proposals.

## Advice

### Description of existing footpaths to be diverted

The parts of Rimington Footpath 23 as described below and shown by bold continuous lines A-B and C-D-E-F on the attached plan (All lengths and compass points given are approximate).

| FROM                       | TO                         | COMPASS DIRECTION | LENGTH (metres) | WIDTH            |
|----------------------------|----------------------------|-------------------|-----------------|------------------|
| <b>A</b><br>(SD 7942 4525) | <b>B</b><br>(SD 7945 4539) | NNE               | 150             | The entire width |
| <b>C</b><br>(SD 7946 4540) | <b>D</b><br>(SD 7942 4546) | NNW               | 75              | The entire width |
| <b>D</b><br>(SD 7942 4546) | <b>E</b><br>(SD 7947 4556) | NE                | 105             | The entire width |
| <b>E</b><br>(SD 7947 4556) | <b>F</b><br>(SD 7942 4566) | Generally<br>NNW  | 125             | The entire width |

|                                      |     |  |
|--------------------------------------|-----|--|
| Total distance of existing footpaths | 455 |  |
|--------------------------------------|-----|--|

It will be noted from the plan that approximately 5 metres of Rimington Footpath 23, located between points B and C, extends across the tarmac carriageway of Rimington Lane. As this section is within the highway boundary, the footpath rights have effectively been subsumed within the vehicular highway. This section of Rimington Footpath 23 does not therefore have footpath status and is not therefore proposed to be included in this Order. In the future, this recorded section of Rimington Footpath 23 will be deleted from the definitive map by a Legal Order recognising that it ceased to be a public footpath on becoming part of the vehicular highway.

### Description of new footpaths

Footpaths as described below and shown by bold dashed lines A-G and H-J-K-F on the attached plan (All lengths and compass points given are approximate).

| FROM                            | TO                  | COMPASS DIRECTION | LENGTH (metres) | WIDTH (metres) | OTHER INFORMATION |
|---------------------------------|---------------------|-------------------|-----------------|----------------|-------------------|
| A<br>(SD 7942 4525)             | G<br>(SD 7938 4537) | NNW               | 120             | 3              | Tarmac            |
| H<br>(SD 7938 4537)             | J<br>(SD 7934 4546) | NNW               | 85              | 2              | Grass             |
| J<br>(SD 7934 4546)             | K<br>(SD 7930 4562) | Generally<br>NNW  | 210             | 2              | Grass             |
| K<br>(SD 7930 4562)             | F<br>(SD 7942 4566) | ENE               | 130             | 2              | Grass             |
| Total distance of new footpaths |                     |                   | 545             |                |                   |

The applicants are not proposing to carry out any surfacing or drainage works on the diverted route of the footpath, apart from works in connection with providing a kissing gate at point H.

It is proposed that the footpaths 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 kissing gate that conforms to BS 5709:2006 | Grid Reference SD 7938 4537 (Point H) |

## **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 Rimington Footpath 23 be amended to read as follows:

The 'Description of Route' column to read: "Footpath commencing at Lancashire County Boundary at Hell Hole Plantation and proceeding in a westerly direction to the Wood thence northward to SD 7942 4525 then north north west for 120 metres on a tarmac surface to Rimington Lane at SD 7938 4537. The footpath continues on the north side of Rimington Lane at SD 7938 4537 passing through a kissing gate then skirts round the outside of the boundary of Rimington Hall initially north north west on a grass surface for 85 metres to SD 7934 4546. The footpath then runs generally north north west on a grass surface for 210 metres to SD 7930 4562, and continues in an east north easterly direction for 130 metres on a grass surface to SD 7942 4566 from where the footpath runs north eastward towards Rimington Station."

The "Nature of Surface" Column to read "Pasture, meadow and tarmac".

The "Approximate Length" column to read "2.23km."

The "Approximate Width" Column to read: "4' 0" with the exception of SD 7942 4525 to SD 7938 4537 where the width is 3 metres, and SD 7938 4537 to SD 7942 4566 where the width is 2 metres.

The "General." Column to read "No.1 Footbridge, No.1 Stile, No.1 Field Gate, No.2 Fences (No.2 barbed wire obstructed). The only limitation between SD 7942 4525 and SD 7942 4566 is the right of the owner of the soil to maintain a kissing gate that conforms to BS 5709:2006 at SD 7938 4537."

## **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.

Rimington Hall is a large residential dwelling surrounded by gardens and a wooded copse. The entrance to the property is currently controlled by a pair of electronically operated gates. The public footpath to the north of Rimington Lane runs through the gated entrance and along the main driveway close to the house. It then crosses the garden, running through the copse of trees and continuing within the eastern boundary of the property.

In this case, the diversion proposal appears to be expedient in the interests of the owners of the land in that, if the proposal is successful, it will remove the public footpath away from Rimington Hall and enable the electronic gates to be retained in their current position, providing the owners with an improvement in privacy and security.

The proposed diversion of the section of path on the south side of Rimington Lane between points A and B is not thought to be in the interests of the applicants, but its inclusion makes the diversion proposals as a whole more cohesive (i.e. by making the proposed diversion more direct). Nevertheless this element of the diversion is expedient in the interests of the owners of the land to the south of Rimington Lane who are not objecting to same.. This land is in separate ownership. The existing path crosses a meadow, and it is reasonable to conclude that the right of way may have some negative impact on agricultural use of the land. The diversion would remove all public access from the field in question which would be in the interests of the owners and occupiers of the land.

The legislation requires that if the termination point of a footpath is proposed to be altered then the authority may only make an 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.

In this case it is suggested that the proposed diversion will alter the points at which Rimington Footpath 23 terminates either side of Rimington Lane (points B and C) and place them at other points on Rimington Lane (points G and H) being the same highway. There is good visibility of the traffic coming in both directions from the proposed points of access and it is suggested therefore, that the proposed termination point is substantially as convenient to the public.

A matter which the County Council must consider is whether work needs to be done to bring the site of the new footpath into a fit condition for use by the public. At point H the site of the new footpath is currently blocked by a section of hedgerow. This would need to be removed, and a kissing gate installed in accordance with BS 5709:2006 in its place. In addition stone surfacing in the immediate vicinity of the kissing gate would be required.

With regards to the surface of the section of new footpath between points J and K, this can be muddy during the winter months and was observed as such during an officer site visit in December 2015. The comments made by the representative of the Ribble Valley Ramblers Association mentioned this and they initially suggested that the path should be surfaced. The issue to consider is whether it is reasonable and proportionate to require extensive footpath construction work on a footpath across farmland which is unlikely to be used more than any more than a minimal amount during the wet winter months.

The path is only used infrequently because the continuation of the path to the north of the proposed diversion stops just short of what was once Rimington Station. Passenger services stopped running from the site of the station many years ago, and now Rimington Footpath 23 finishes at a dead end with no onward access rights at its northern end. There is however thought to be some residual use of the footpath because it offers excellent views, and this makes it a valuable location for rail enthusiasts who come to photograph the steam trains which occasionally use the line.

Based on present information and on this particular location it is advised that the only work which is reasonably proposed to be carried out to bring the site of the new path

into a fit condition is the work needed in connection with the proposed kissing gate at point H. The Committee are advised that so much of the Order as extinguishes parts of Rimington Footpath 23, 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.

The applicants own the land crossed by the existing route to the north of Rimington Lane, that being land that is within the curtilage of Rimington Hall. The owners of the land crossed by the existing route south of Rimington Lane and the land crossed by the proposed footpaths have, together with the tenant of the land confirmed that they are in agreement with the proposal and would not raise any objection in the event that an Order is made.

In considering the proposals the County Council has a duty to have regard to agriculture, forestry and nature conservation. With regards to agriculture the proposals introduce a public right of way to a field which is used for grazing livestock (i.e. the section of path H-J-K-F). Rights of way can affect grazing land as a result of dogs which accompany pedestrians but which are not kept under proper control and thereby are allowed to worry livestock. Similarly, some livestock can pose a risk to pedestrians and therefore the tenant farmer would be ill advised to keep animals which are known to have dangerous characteristics on the land. However, given the information about use and its location it is not anticipated that there would be any particular issues between the use of the footpaths and agricultural use of the land. Furthermore, the diversion of the public footpath to the south of Rimington Lane would remove a section of cross field footpath, enabling better land use by the tenant. It is therefore advised that the proposed Order, if confirmed, would not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiological features.

The applicants have agreed to bear all advertising and administrative charges incurred 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 suggested that the new path would not be substantially less convenient to the public in consequence of the diversion. The gates on the existing route should be disregarded in considering this. The alternative route is slightly longer, and in places, the terrain across farm land may be slightly less convenient underfoot than the existing footpath, but the route of the new footpath would be easier to follow because it runs down a tarmac path, from point A to G and then around the edge of a field, from point H-J-K-F.

It is advised that that it would be expedient for the proposed Order to be confirmed having regard to public enjoyment of the path as a whole. Rimington Hall has no historical interest, as it is a recent development on the site of a previous dwelling known as Denis Field. The proposed routes are of similar length and gradient to the existing and the proposed diversion enjoys excellent views of the surroundings, better than those which can be seen from 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. The existing routes do not serve as vehicular access to the adjacent land.

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, and no gates or stiles will be installed across, only a gate 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.

### **Stance on Submitting the Order for Confirmation (Annex C refers)**

The above tests are relevant to the making or confirmation of the Order but Committee is also asked to consider the overall balance of advantages and disadvantages of this change to the network to assess whether resources should be put into the promotion to confirmation.

The Committee is aware that the County Council does not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit.

It is suggested that in this instance, looking at the proposal as a whole and the relative comparison of the present and alternative routes there is no or only slight public benefit and the Committee may therefore consider that the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicants, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicants can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is therefore suggested that the Authority take a neutral stance.

## **Risk Management**

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

### **Alternative options to be considered**

To not agree that the Order be made.

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

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

To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicants 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-03-36-023 |      | Mrs Ros Paulson<br>Planning and Environment,<br>07917 836628 |

Reason for inclusion in Part II, if appropriate

N/A



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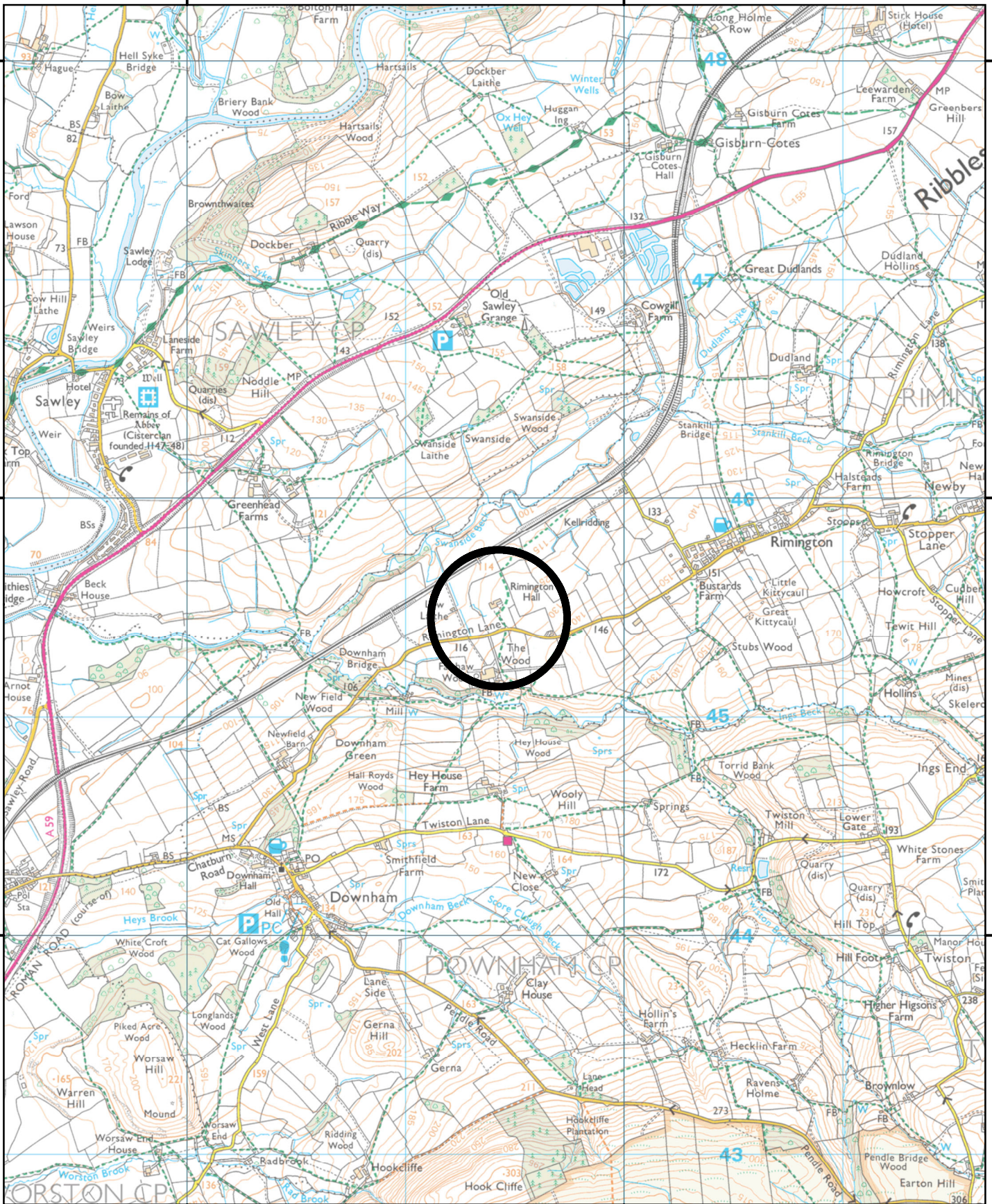
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Lancashire  
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Council

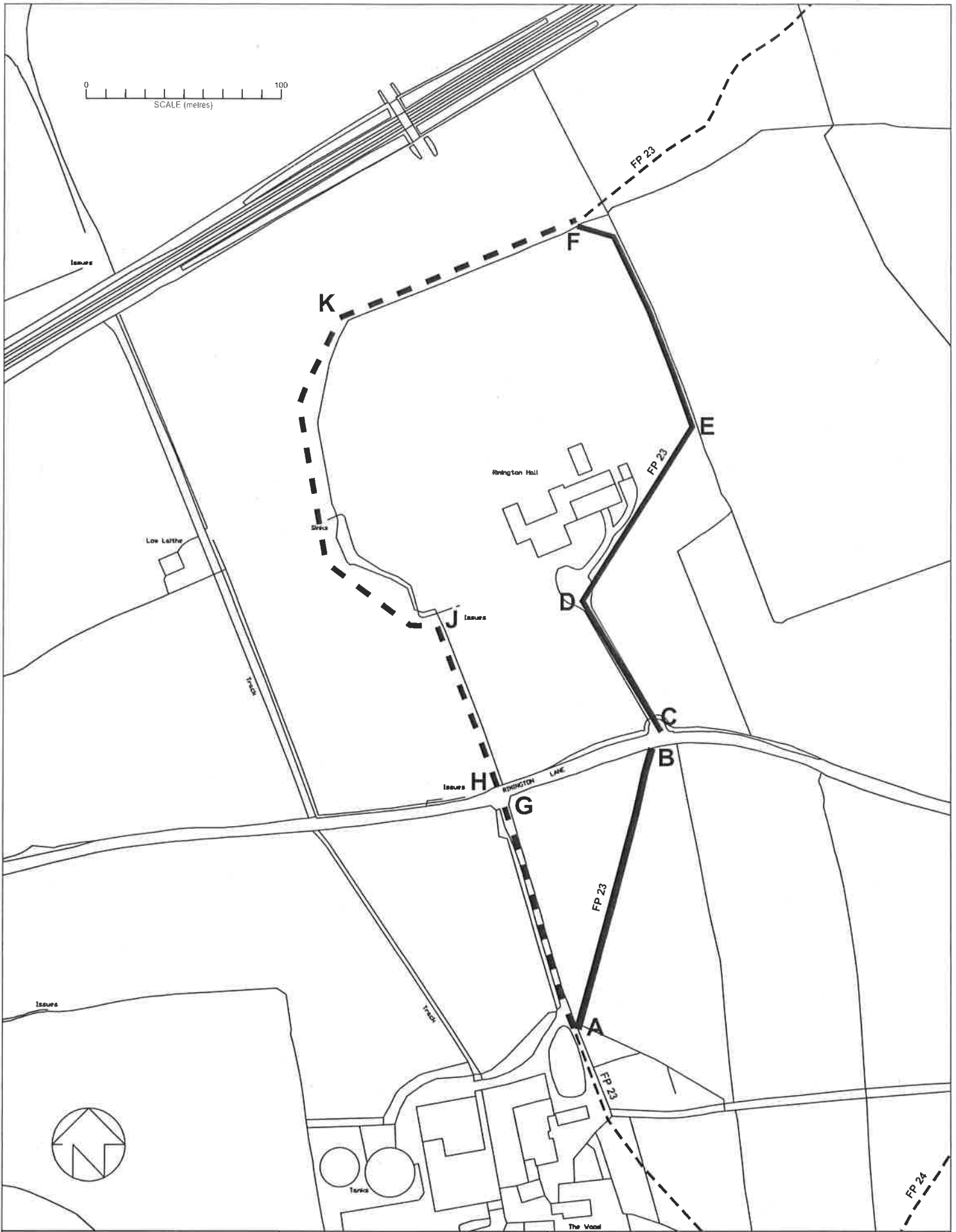
Andrew Mullaney  
Head of Planning  
and Environment

Location Plan.  
Highways Act 1980 – Section 119  
Proposed Diversion of Parts of Rimington Footpath 23, Ribble Valley Borough.



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**PROJECT:**  
 Proposed Diversion of Public Footpath 23  
 Rimington

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**DRAWN BY:** N Y

**DATE:** 22 Dec 2015

**SCALE:** 1:2500 @ A4

**FILE REF:**

**REVISIONS / NOTES**

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

