

## Lancashire County Council

### Regulatory Committee

Wednesday, 16th November, 2016 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

### Agenda

#### Part I (Open to Press and Public)

No.	Item	
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1.	<b>Apologies</b>	
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2.	<b>Disclosure of Pecuniary and Non-Pecuniary Interests</b>	
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Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3.	<b>Minutes of the last Meeting</b>	(Pages 1 - 8)
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4.	<b>Guidance</b>	(Pages 9 - 32)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Public Bridleway from Clerk Hill Road to Moor Lane, Wiswell, Ribble Valley File No. 804-565</b>	(Pages 33 - 92)
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6.	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Deletion of part of Public Footpath 4 Rawtenstall at Loveclough and addition of a Public Footpath from Public Footpath No. 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough File No. 804-576 and 804-577</b>	(Pages 93 - 146)
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7. **Highways Act 1980 - Section 119** (Pages 147 - 158)  
**Wildlife and Countryside Act 1981 - Section 53A**  
**Proposed Diversion of Part of Scarisbrick Footpath**  
**6, West Lancashire Borough.**  
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8. **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.

9. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 25<sup>th</sup> January 2017 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, 28th September, 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	D Stansfield
I Brown	D Westley
A Clempson	D Whipp
D Clifford	P White
B Dawson	B Yates
N Penney	

County Councillors Niki Penney and David Westley replaced County Councillors Ron Shewan and Graham Gooch respectively.

**1. Apologies.**

Apologies were received from County Councillors Julie Gibson, Paul Hayhurst and Chris Henig.

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

None were disclosed.

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

**Resolved:** That the minutes of the meeting held on 27 July 2016 be confirmed and signed by the Chair.

**4. Guidance.**

A report was presented in connection with Guidance for members of the Committee regarding the law on the continuous review of the Definitive Map and Statement of Public Rights of Way, certain Orders to be made under the Highways Act, 1980 and the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

**Resolved:** That the Guidance, as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

**5. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of a Byway Open to all Traffic on Highgate Lane, Bryning  
with Warton, Fylde  
File No. 804-580**

A report was presented on an 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.

Details of the claim and the evidence related 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 insufficient evidence for the application to be accepted.

**Resolved:** 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.

**6. 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**

A report was presented on an application of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley, in accordance with File No. 804-559.

Details of the claim and the evidence related 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 an Order be made and promoted to confirmation.

**Resolved:**

1. That the application to 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 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 the Committee Plan between points A-B-C.
3. That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

**7. 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**

A report was presented on an application 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.

Details of the claim and the evidence related 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.

Members were informed that two statements of user evidence had been omitted from the report. Summaries of these two statements were presented at the meeting to Members. A letter from Nigel Evans MP was also presented to Members stating his objections to the proposals.

Under Standing Order 19(1), County Councillor Alan Schofield was permitted to address the Committee.

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

**Resolved:** That the 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, be not accepted.

**8. 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**

.A report was presented on an 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.

Details of the claim and the evidence related 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.

Regulatory Committee had 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 was rejected and copies of both reports were presented at the meeting.

The Committee had to consider all relevant evidence but also the the user and consider the intention of the owner  
Having examined all of the information provided, the Committee agreed that taking all the relevant evidence into account, the decision on the application be deferred. The previous report from 2003, which was appended to the report. referred to more user evidence and to Chorley Borough Council supporting the application at that time as landowners for much of the lane. This time Chorley Borough Council had said nothing. The Committee asked that officers contact Chorley Borough Council again

**Resolved:** That the decision on the application to upgrade to Bridleway parts of Footpaths 1 and 8 Chorley, in accordance with File No. 804-575, be deferred.

**9. 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**

A report was presented on the 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.

Details of the investigation and the evidence related 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 the Orders be made and one be promoted to confirmation but that the other one wait until an earlier Order be determined.

**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. The Officers 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 such as 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 as 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.
- 10. 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.**

A report was presented on an application that Lancashire County Council had received from Network Rail to divert part of Adlington Footpath 5, Chorley Borough, in connection with its proposal to replace the Bradshaw Fields level crossing with a stepped footbridge.

The necessary consultations had been carried out and no objections or adverse comments on the proposal had been received.

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 take a neutral stance in respect to the confirmation.

### **Resolved:**

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 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 no 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.

### **11. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Parts of Rimington Footpath 23, Ribble Valley Borough**

A report was presented on the proposed diversion of parts of Rimington Footpath 23, Ribble Valley Borough. Lancashire County Council had received a request 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 necessary consultations had been carried out and no objections or adverse comments had been received.



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 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 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 the 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.

**12. Urgent Business**

There were no items of Urgent Business.

**13. Date of Next Meeting**

It was noted that the next meeting of the Committee will be held at 10:30am on the Wednesday 16<sup>th</sup> November 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 16<sup>th</sup> November 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 Chief Executive 01772 32813
Reason for inclusion in Part II, if appropriate		
N/A		

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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

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

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

### **Documentary evidence**

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

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

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

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

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

### **Recording vehicular rights**

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

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

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 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 16<sup>th</sup> November 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 16 November 2016

Electoral Division affected: Ribble Valley North East
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**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Addition of Public Bridleway from Clerk Hill Road to Moor Lane, Wiswell, Ribble Valley**  
**File No. 804-565**  
(Annex 'A' refers)

Contact for further information:

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

### **Executive Summary**

Application for addition of a public bridleway and upgrading of parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley from Clerk Hill Road to Moor Road, Wiswell, in accordance with File No. 804-565.

### **Recommendation**

1. That the application for the addition and upgrade to public bridleway, in accordance with File No. 804-565, be accepted as a restricted byway as opposed to a bridleway.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley to restricted byway from Clerk Hill Road to Moor Road, Wiswell on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H-I-J-K.
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 bridleway and upgrading of parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley to bridleway from Clerk Hill Road to Moor Road, Wiswell 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 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”

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

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

## **Consultations**

### Ribble Valley Borough Council

No reply has been received from Ribble Valley Borough Council.

### Wiswell Parish Council

Wiswell Parish Council has responded by stating that they welcome the addition of the public bridleway and upgrades to the condition of the existing public footpaths in the area and that they are pleased that the status of these paths can be clarified.

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.

<b>Point</b>	<b>Grid Reference (SD)</b>	<b>Description</b>
A	7538 3677	Open junction with Clerk Hill Road/Bridleway 21 Sabden
B	7537 3677	Gate across route
C	7531 3685	Open junction with south east end of Footpath 23 Wiswell on bend of track
D	7528 3688	Junction with Footpath 23 Wiswell on bend of track
E	7528 3698	Junction with Footpath 11 Wiswell
F	7520 3698	Junction with north west end of Footpath 23 Wiswell and Footpath 9 Wiswell at field gate
G	7496 3687	Field gate across route
H	7484 3682	Open corner of route adjacent to Deer Park and Manor Wood
I	7471 3706	Junction with Footpath 8 Wiswell
J	7471 3710	Field gate across route
K	7471 3712	Unmarked point on Moor Lane (U22866)

**Description of Route**

A site inspection was carried out in July 2015.

The route commences at a point on the parish boundary on Clerk Hill Lane (also recorded as Bridleway 21 Sabden) and annotated as point A on the Committee plan. It crosses a tarmac area heading in a north westerly direction to a wooden gate at point B.

It then continues in a north westerly direction along a stone surfaced track bounded to the west by a stone wall and fenced from the adjacent field to the east. At point C the route turns to follow the stone surfaced track in a more north easterly direction whilst the route of Footpath 23 Wiswell continues steeply uphill remaining adjacent to the stone wall. The route under investigation follows the clearly defined track uphill through the quarry site (now dormant) through a series of bends and passing

through point D (where it crosses the route of Footpath 23) and continuing uphill to point E where it is joined by Footpath 11.

From point E it continues along a well-defined track in a generally westerly direction to a gate at point F where it is joined by Footpath 23 east of the gateway and Footpath 9 west of the gateway.

From point F the route continues in a generally west south westerly direction in a straight line to the north of a stone wall behind which there is a substantial area of woodland. The surface of the route has grassed over but is quite firm and there appears to be a hard surface underneath. The route is fenced off from the rough pasture north of it to a width of between 4 and 5 metres until close to point G when the fencing on the north side of the route ends and at point G the route is crossed by a wooden field gate.

Beyond the gate at point G the route continues in a straight line, following the stone wall. The surface of the route is grass and although there appears to be a trodden track there is no evidence of recent equestrian or vehicular use.

At point H the route turns to continue in a generally north westerly direction still following a substantial stone wall along the western side and largely open to pasture on the eastern side. It passes between the remains of an old quarry and the wall and gradually descends downhill towards point I. The route follows the wall with small trees and bushes growing alongside which are overgrown making access difficult in places.

At point I the route is joined by Footpath 8 which follows the route under investigation to pass through a metal gate at point J. Beyond point J the route is roughly tarmacked as it continues a short distance to the unmarked junction with Moor Lane at point K.

The total length of the route is 1.14 kilometres.

### Map and Documentary Evidence

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

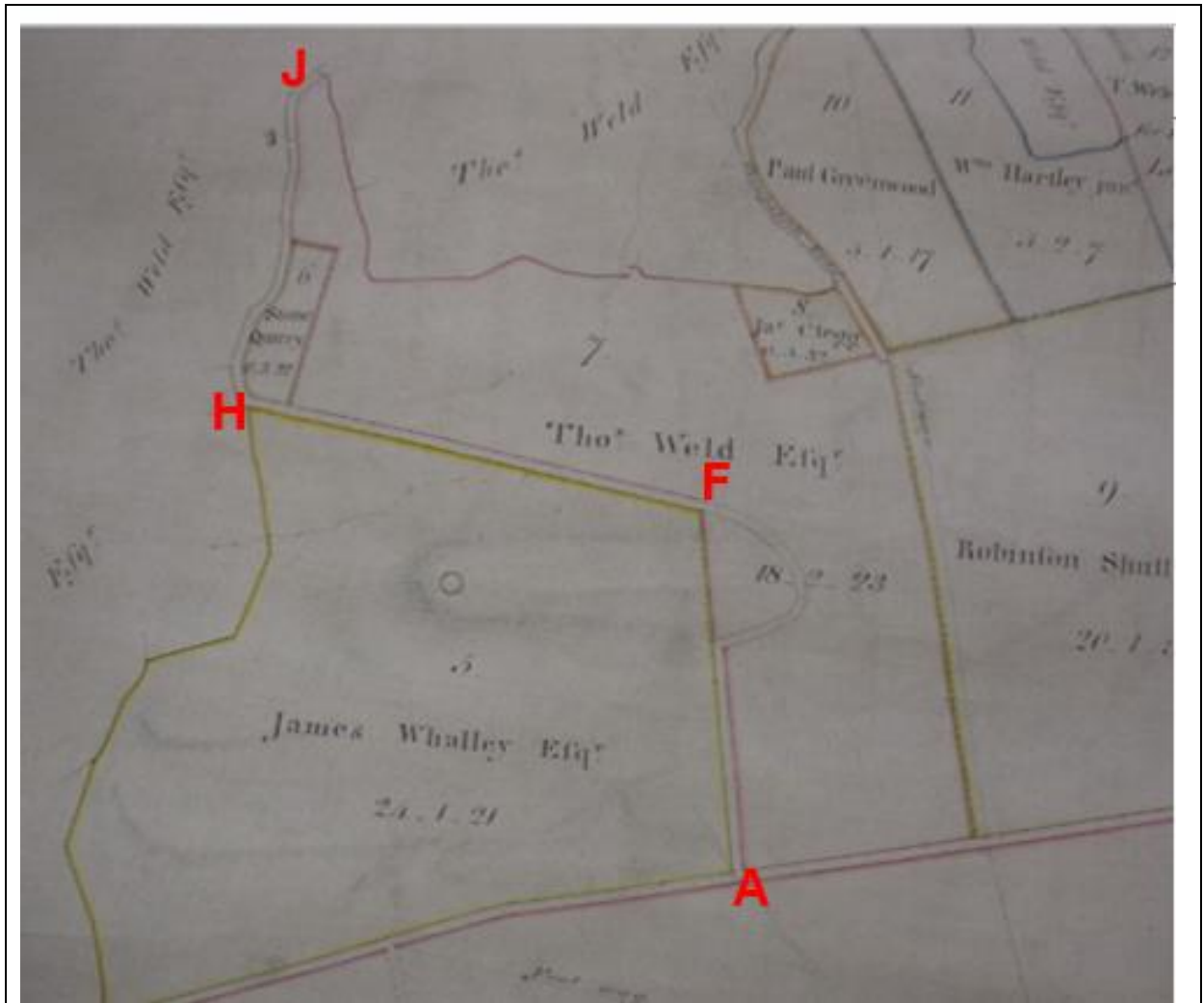


Observations		The route under investigation is not shown. A road which looks to be the first part of Clerk Hill Road is shown extending as far as the dark shading indicating a hill and the land crossed by the route is indicated as being part of the area shaded as upland. The hamlet of Wiswell is shown and a road which may be Moor Road extending from the village of Wiswell towards point K is shown.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in the 1780s.
<b>Private Inclosure Act</b>	1789	Between 1545 and 1880 the old system of farming scattered arable strips and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of the land. The process of Inclosure began by agreement but by the early 18 <sup>th</sup> century a process developed by which a Private Act of parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of 2 main general acts, bringing together the most commonly used

		clauses and applying these to each local act unless otherwise stated.
Observations		<p>The land crossed by the route under investigation was inclosed by a private Act of Parliament made in 1789. The Act is titled, 'An Act for dividing and inclosing a certain Common called Wiswell Moor, in the Township of Wiswell and Parish of Whalley, in the County Palatine of Lancaster' and a copy was obtained from the Parliamentary Archives.</p> <p>The Act specifies the powers given to the Commissioners appointed to administer the inclosure of Wiswell Moor in relation to the setting out, making and alterations which could be made to public and private roads and ways as they considered necessary, convenient or proper.</p> <p>The Act specifies that all public highways and roads to be set out should be forty feet wide (exclusive of ditches) but that private roads or ways should be of such a width as the Commissioners should order. It also specified that any public carriage roads should be fenced out on both sides and that it would not be lawful for any person to erect a gate across a public carriage road.</p> <p>The Act also required the Commissioners to appoint a surveyor of such roads who would be required to ensure that they had been properly formed and completed and that the surveyor must certify that the public carriage roads were fit for the passage of travellers and carriages, in writing and delivered to the Clerk of the Peace at the Quarter Sessions within two years after the execution of the Award and that following certification in the prescribed manner the roads would then be kept in repair in the same manner as the other public roads within the township of Wiswell. It also specified that private roads or ways were to be made and repaired at the expense of such persons as prescribed by the Commissioners.</p>
Investigating Officer's		The Act prescribed the powers available



Comments		to the appointed Commissioners to set out both public and private routes across the land to be inclosed and is quite specific with regards to the widths required to be set out for public highways and roads. However there is no definition section clarifying what was meant by 'public highways and roads' or 'carriage road' but there is a clear distinction between public and private.
<b>Inclosure Award</b>	1780	<p>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.</p> <p>There are two copies of the Inclosure Award for Wiswell Moor deposited in the County Records Office. As part of the research carried out into this application a transcript of the Award has been made with reference to both copies deposited.</p>



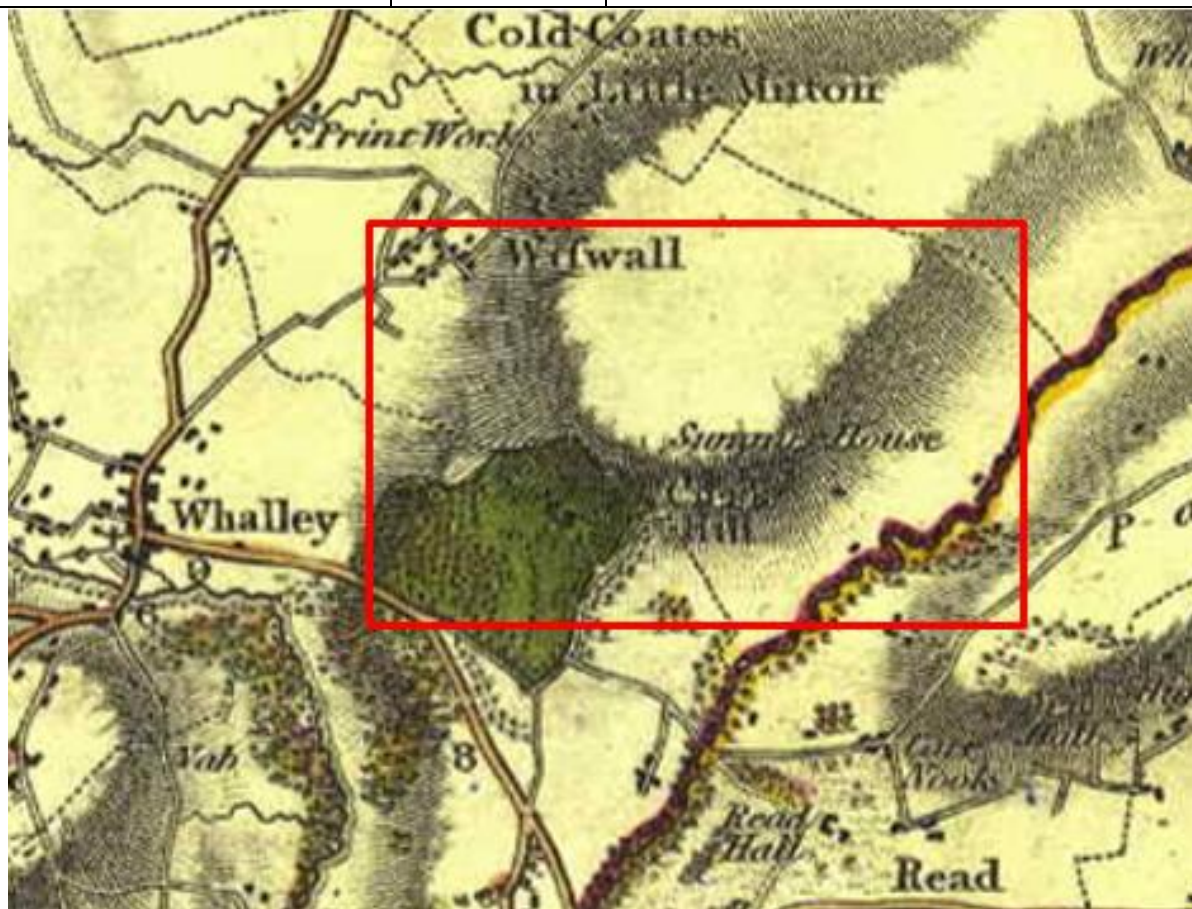
ALLOTMENTS.		2,500 p. Moor A. R. P.
N <sup>o</sup> 1. T. Thomas Weld Esq <sup>r</sup> (for his twentieth part)		18. 2. 36
2 James Whalley Esq <sup>r</sup>		31. 1. 2
3 Thomas Weld Esq <sup>r</sup>		163. 0. 15
4 D <sup>r</sup> (for Margaretta Langford)		4. 3. 24
5 James Whalley Esq <sup>r</sup>		24. 1. 21
6 Stone Quarry		0. 3. 22
7 Thomas Weld Esq <sup>r</sup>		18. 2. 23
8 James Clegg		0. 3. 32
9 Robinson Shuttleworth Esq <sup>r</sup>		20. 1. 33
10 Paul Greenwood		2. 1. 17
11 William Hartley jun <sup>r</sup>		3. 2. 7
12 Thomas Weld Esq <sup>r</sup> (for Adenda Langford)		4. 1. 23
13 D <sup>r</sup>		26. 3. 10
14 James Whalley Esq <sup>r</sup> (in right of exchange with D <sup>r</sup> Clegg)		10. 2. 2
15 D <sup>r</sup>		32. 3. 21
Total		<u>377. 3. 5</u>

\* B. The Terms between the Allotments, are to be made and kept in repair by the owners of the Allotments in which the dotted lines are marked adjoining to the Terms —

Observations	<p>The Inclosure Award is the written record of the appointed Commissioners' decisions and actions in implementing the Inclosure Act.</p> <p>The Inclosure Award for Wiswell Moor is dated 1780. The Award names the three Commissioners appointed to implement the 1789 Inclosure Act and lists the owners and proprietors of the moor. It states that a survey map should be completed by one of the three appointed Commissioners (Matthew Oddie) and both copies of the Award deposited in the County Records Office contain identical Inclosure maps.</p> <p>The Award provides written details of the</p>
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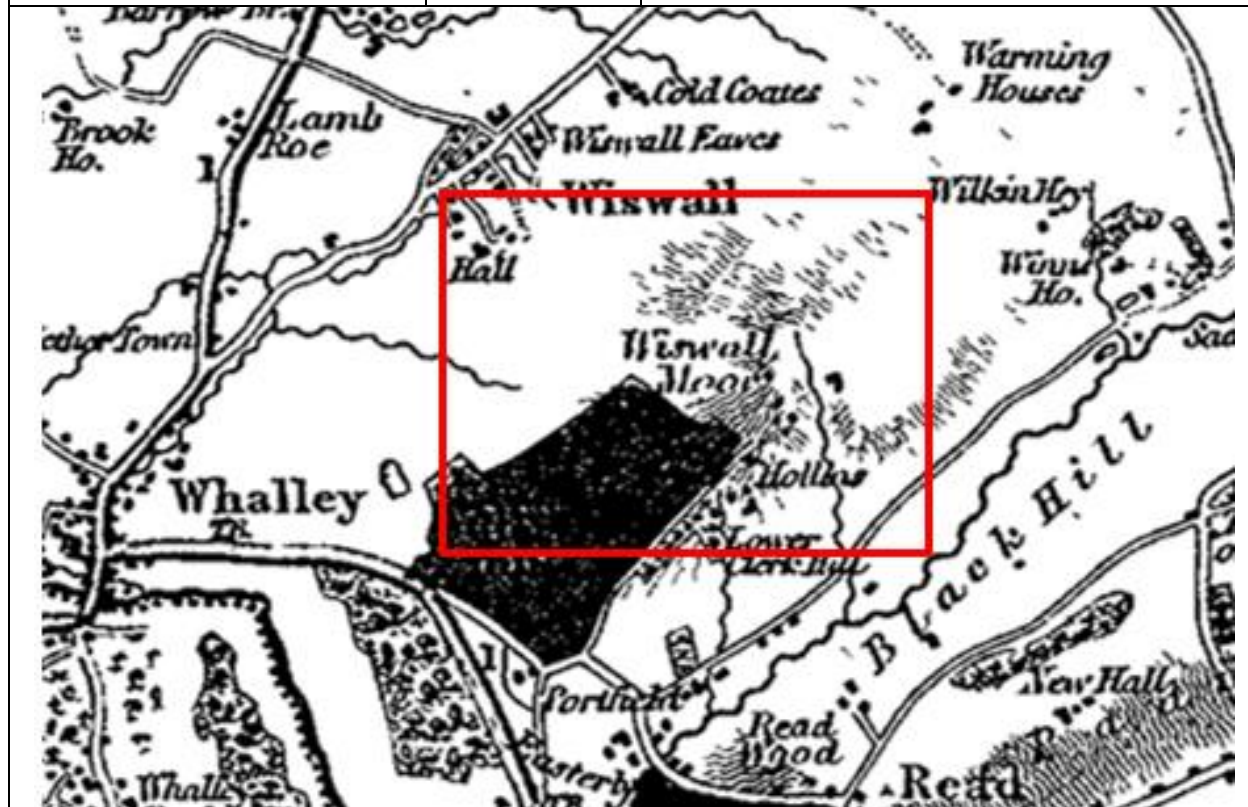
		<p>various roads and ways to be set out across the land to be inclosed. It describes a total of four routes described as 'Private carriage roads'. The first, which is consistent with the description of Clerk Hill Road and Bridleways 21 and 8 Sabden through Wilken Heys is described as a private carriage road 25 feet wide (exclusive of the ditches) and was for the use of persons specified within the Award. It is stated that the route, as well as being a private carriage road should also be a 'Public Bridle Road'.</p> <p>The second route described as a 'Private Carriage Road' is also described as being 25 feet wide (excluding ditches) and is described as being for the use of the respective occupiers leading from the village of Wiswell by the west side of the allotments numbered 6 and 7 to the west corner of allotment 5 and then eastwards by the south east side of allotment 7 as far as the north fence of allotment 5 and from there southwards to 'the last mentioned road' and shown on the Inclosure plan by a dotted line. The description is consistent with the route under investigation from point J through to point A.</p> <p>Two further 'Private Carriage Roads' are detailed in the award in a similar way with only the first of the three routes being described as being a Private Carriage Way and public bridleway. The Award also describes the routes of several 'footpaths' which are not consistent with the route under investigation.</p>
Investigating Officer's Comments		<p>The route under investigation is shown on the Inclosure Award plan (differing slightly to the route under investigation between points C-D-E) and it appears that the route came into existence as part of the Inclosure of Wiswell Moor. The route is described as a private carriage road.</p> <p>It therefore appears that when the route was originally created it was not created as a public carriage road as it was not</p>

		<p>described as such within the schedule and was not stated to be constructed to a width of 40 feet as was specified as a requirement for public highways within the 1789 Act.</p> <p>Evidence from the Inclosure Award therefore suggests that the route under investigation was created as a private carriage route as part of the inclosure of Wiswell Moor. It may have been capable of being used by the public on horseback from that time but there is no evidence to suggest that it was specifically dedicated as one when originally constructed.</p> <p>The route between point J and point K did not form part of the land covered by the Inclosure Award so no inference can be drawn in that respect.</p>
<p><b>Greenwood's Map of Lancashire</b></p>	<p>1818</p>	<p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.</p>



<p>Observations</p>		<p>The route is not shown and the area</p>
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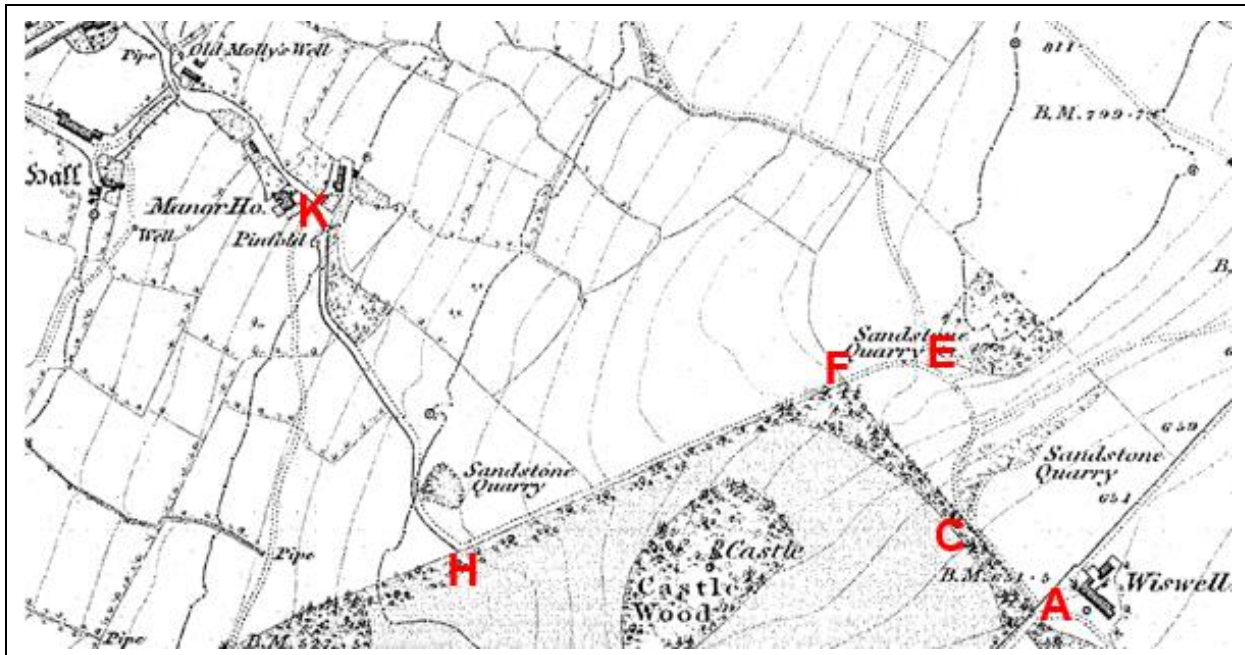
		crossed by the route appears to be open upland.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in the 1818.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George 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.



Observations		The map shows Clerk Hill Road possibly extending as far as point A but does not show the route under investigation. It also shows a road extending south east from Wiswell towards buildings which could be Moor Lane leading to point K or possibly as far as point J.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in 1830.
<b>Canal and Railway Acts</b>		Canals and railways were the vital

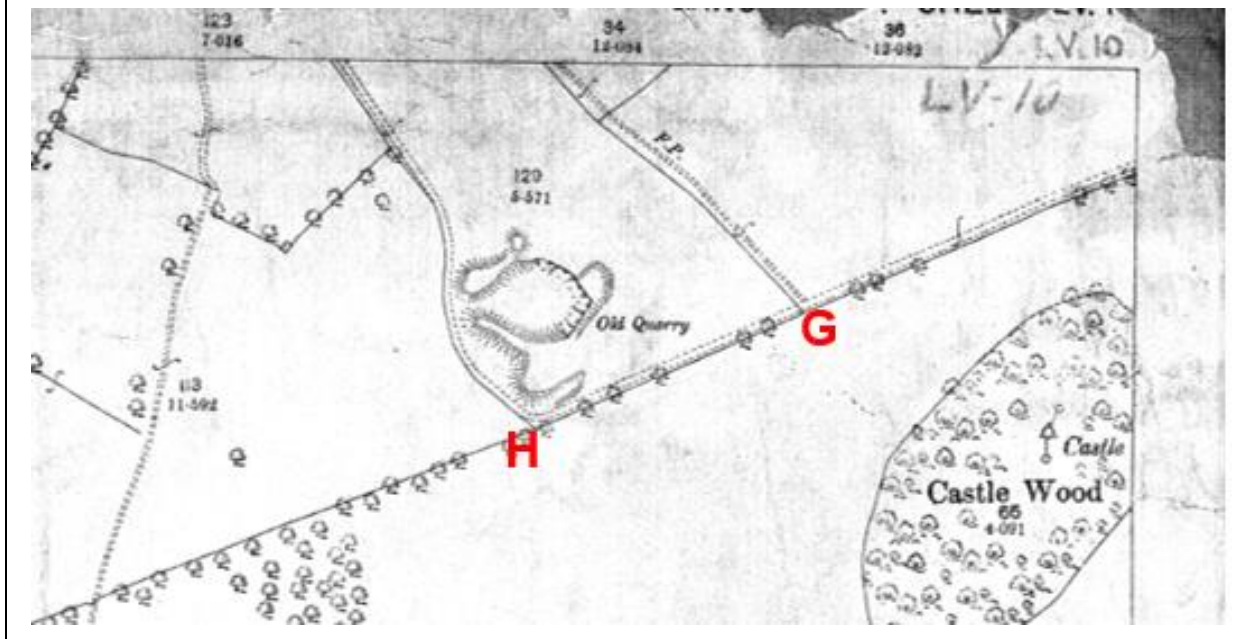
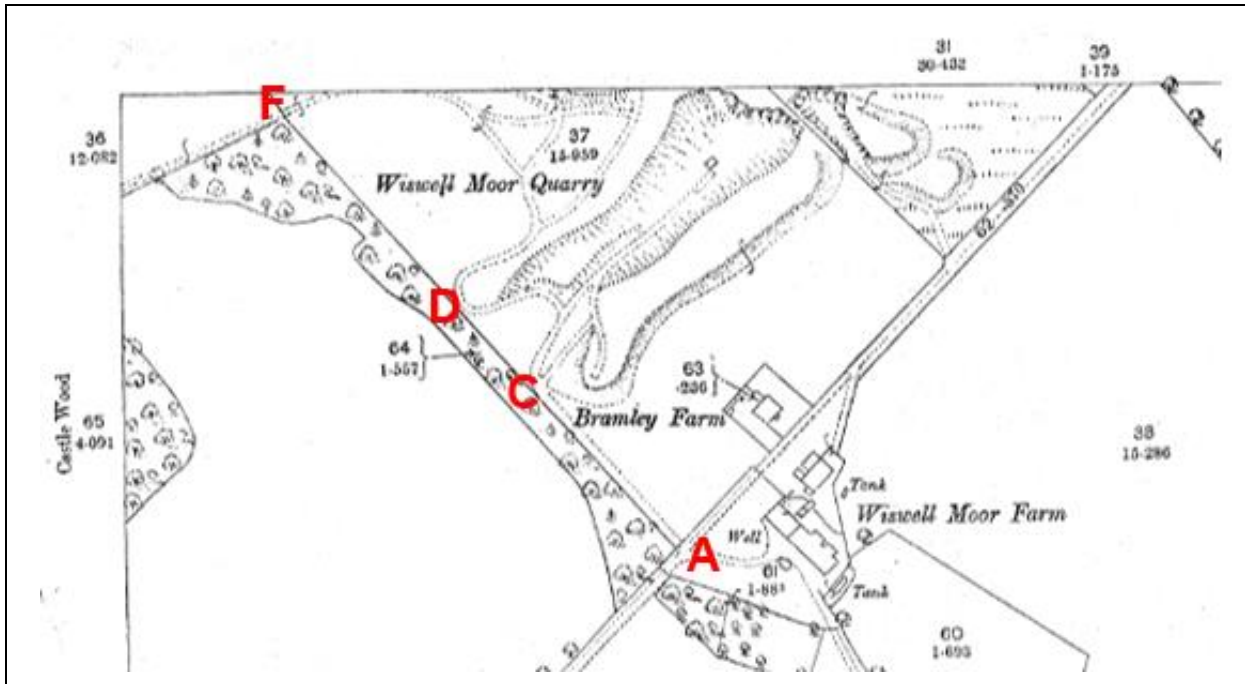
		infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but 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 does not cross land affected by the construction (or proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>		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		There is no Tithe Map for the parish of Wiswell.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>

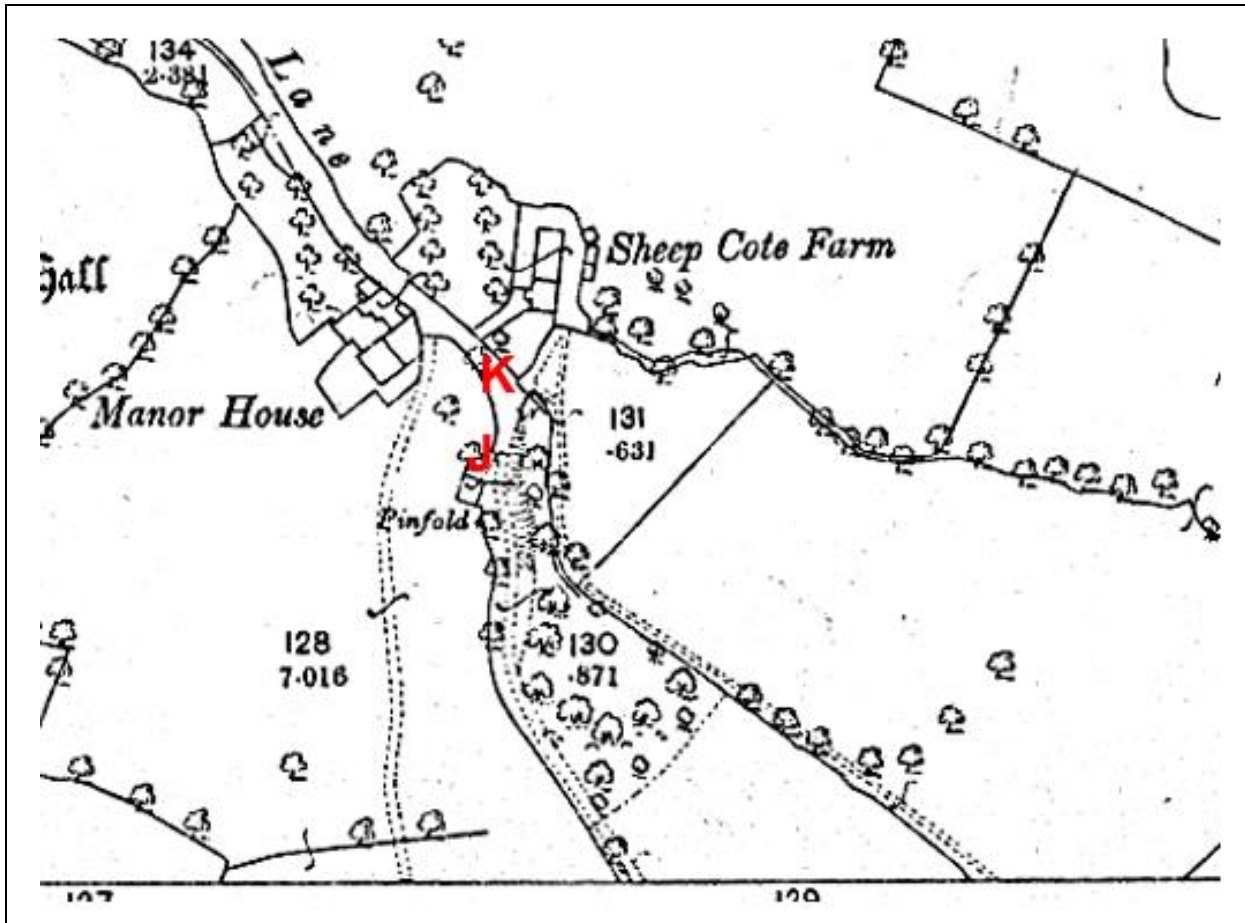
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



Observations		The route under investigation is shown from point A to point C. From point C a track is shown to point E which differs from the route under investigation as it does not curve back round to point D. From point E through to point J and K the route is shown on the same alignment as it is today.
Investigating Officer's Comments		Most of the route existed in 1848 although the alignment of the route through the quarry from point C to point E varied from the modern day alignment.
<b>25 Inch OS Map</b>	1892-93	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1892-93.



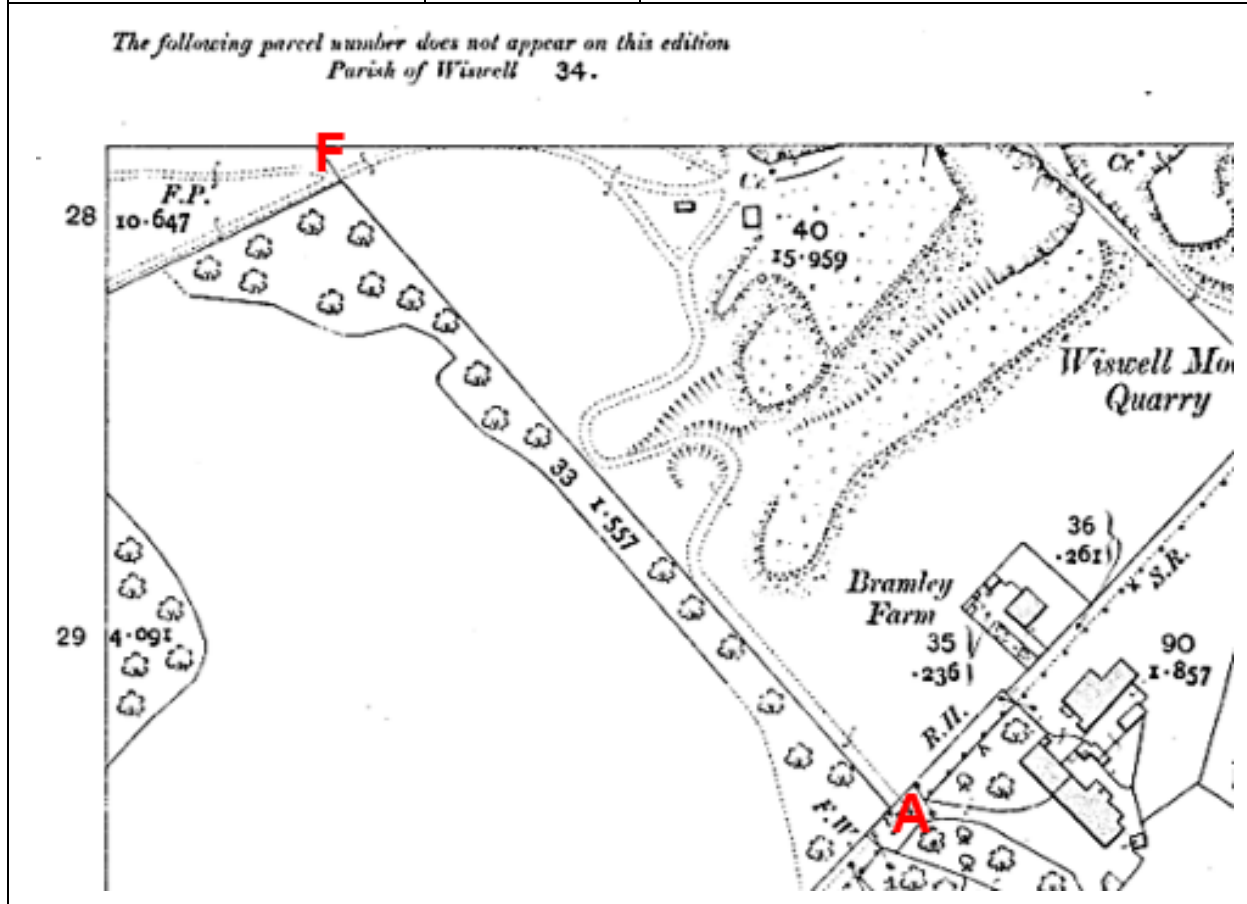


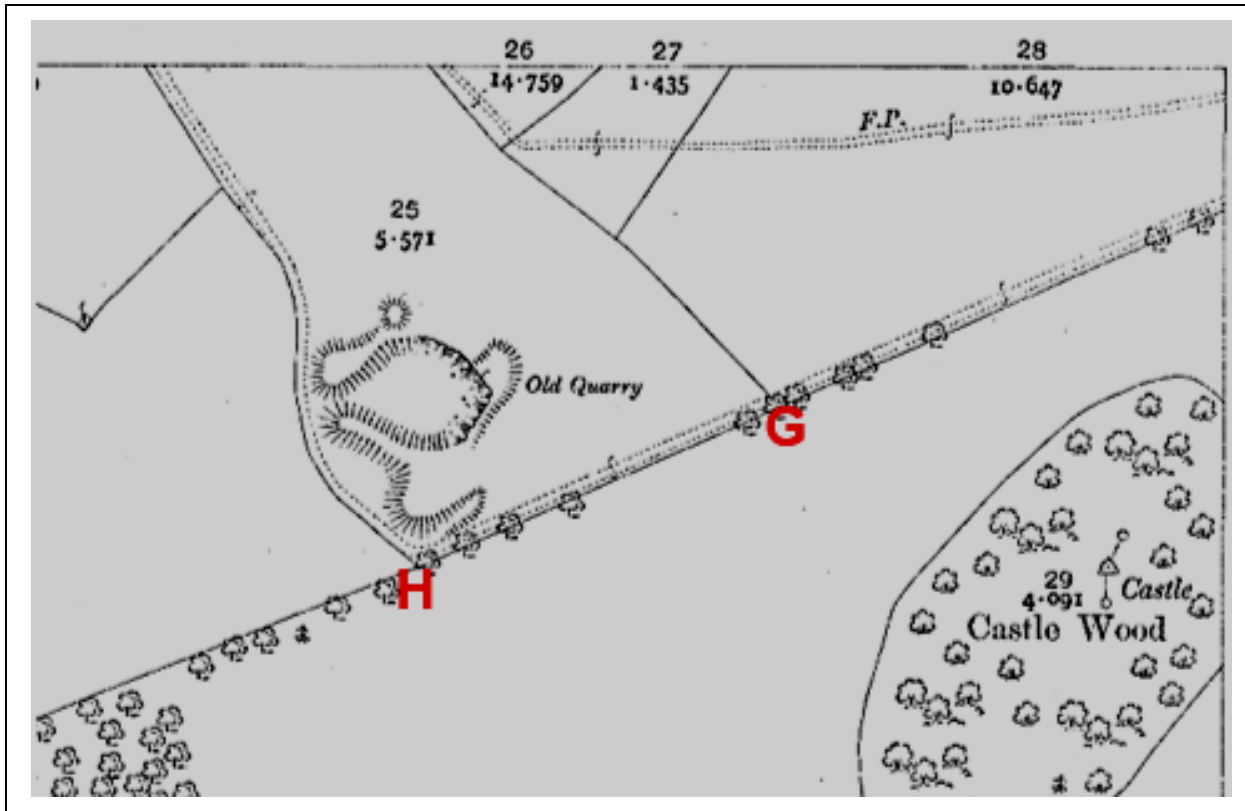


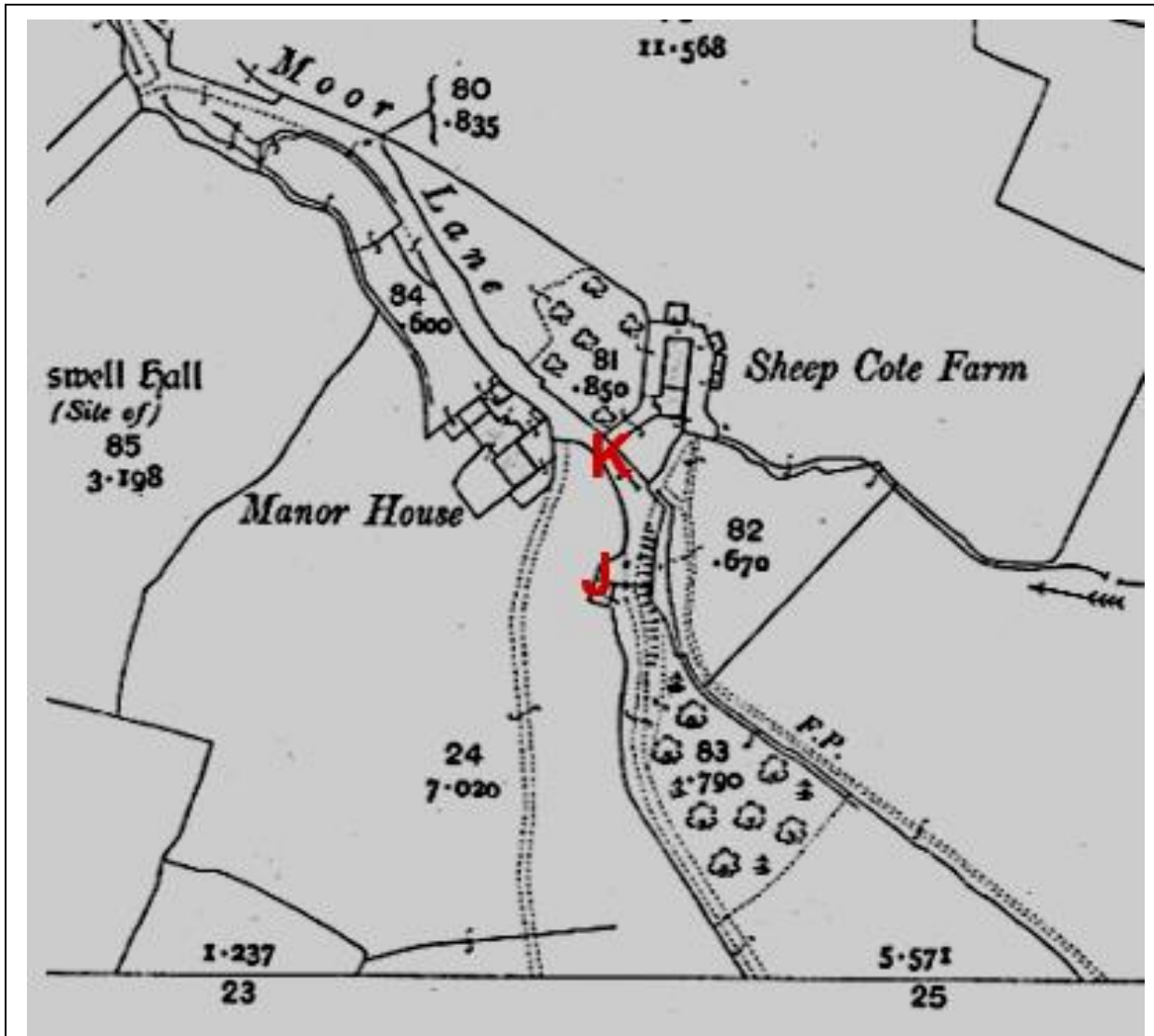
<p>Observations</p>		<p>The first part of the route from point A to point F passed through a quarry and is shown as an unenclosed track (double pecked lines). The extra bend in the route from point C to point D and then to point E is now shown to exist. The route may have been gated at points A, F, G and J as lines are shown across it at these points but is shown as being unenclosed from point A through to point J. The fact that gates existed along the route does not necessarily mean that they would have been locked or that the route was private. Gates were (and still are) a common feature along public rights of way across rural areas.</p> <p>The route between point J and point K is shown as part of Moor Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed on the ground and appeared to be capable of being used by horses. The map post-dates the inclosure of the moor by nearly 100 years. Gates are shown across the route which are not inconsistent with use of</p>

		<p>the route as a bridleway but which would have been unlawful if the route had been created as a public carriage road by the Inclosure Act of 1789.</p> <p>The route between point J and point K appeared to form part of Moot Lane.</p>
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.

*The following parcel number does not appear on this edition  
Parish of Wiswell 34.*

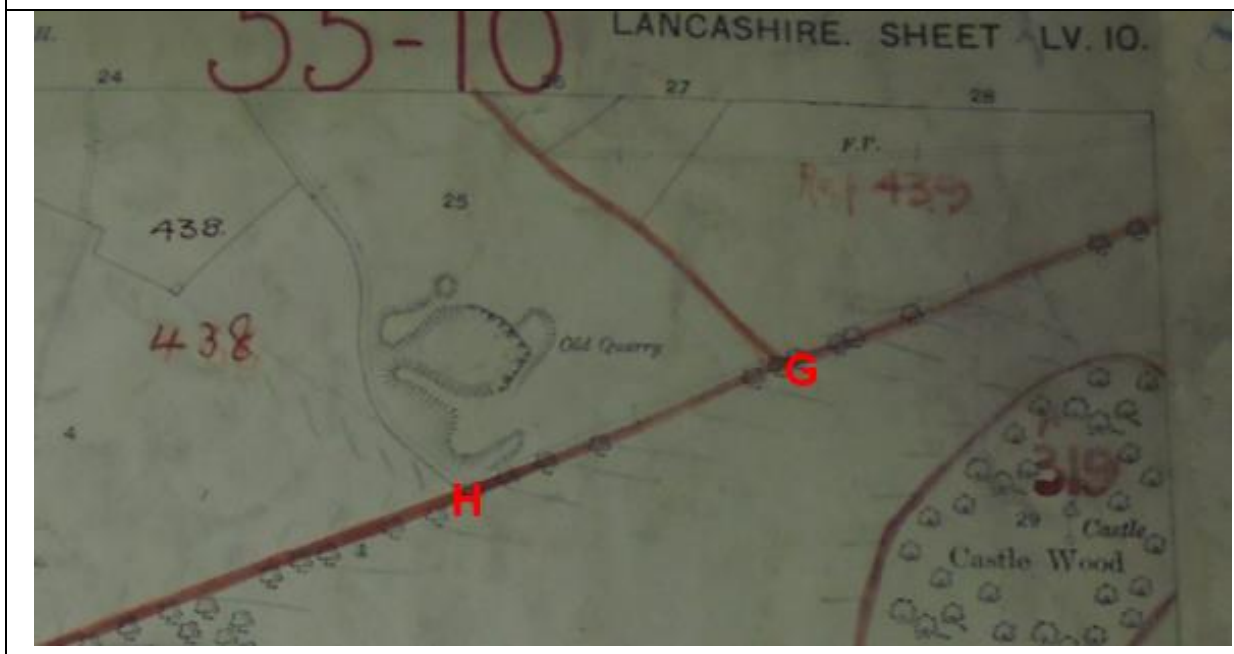
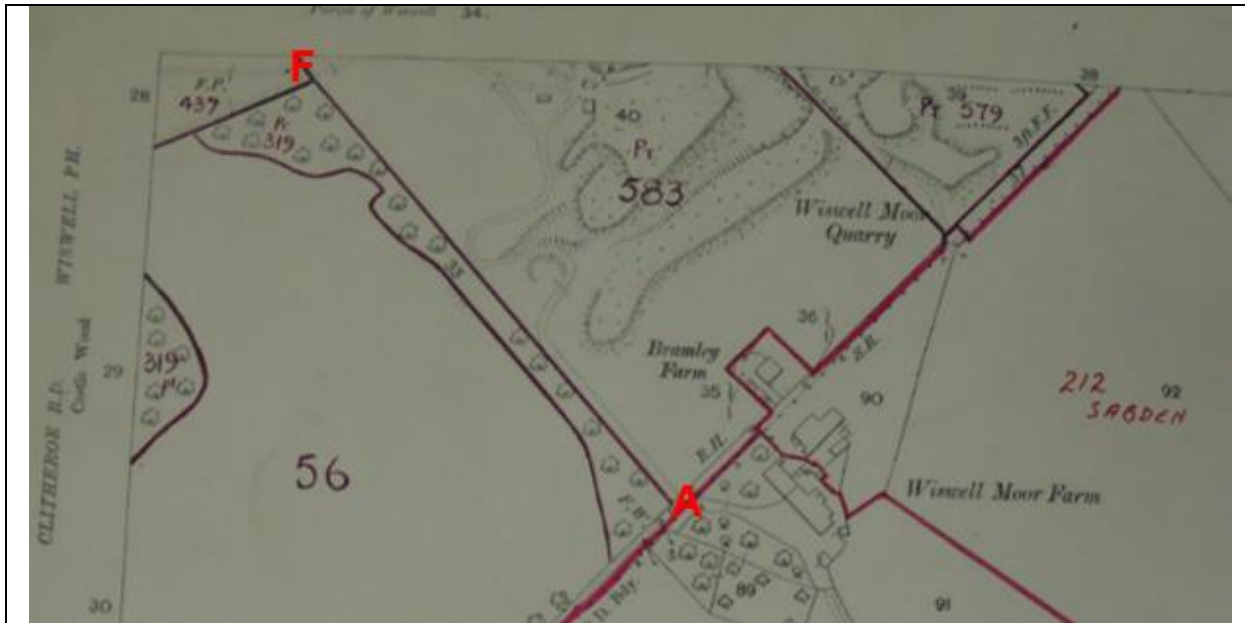






<p>Observations</p>		<p>The full length of the route is shown as it was on the earlier edition of the 25 inch map. It is shown as an unenclosed track (double pecked lines) possibly gated at point A, F, G and J. It is not shown as a named route on the map although Moor Lane is named north of point K and the route between point J and point K appears to form part of Moor Lane. The route now recorded as Footpath 9 Wiswell is annotated as a footpath 'F.P.' on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed in 1912 and it appears capable of being used. The fact that it is shown as a track (double pecked lines) and not marked as a footpath (F.P.) suggests that it may have been of a more substantial nature suitable for use by horses and possibly horse drawn</p>

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





Observations

Finance Act records from The National Archives were obtained.

The route between point A and point F is included in the plot of land numbered 583. The Field Book entry for that plot of land describes the plot as a stone quarry with rough grazing. There are no details listed regarding ownership or tenancy of the land. A £10 deduction is listed with regards to public rights of way or user.

From point F to point G the route is included within plot number 439 which is described as Sheep Coates Farm and buildings. The land is listed as being owned by JR Reddich – Trustee of S Longworth deceased. Under the entry 'Charges, Easements and Restrictions affecting fee simple' it is written that Moor Lane is repaired by the local authority. A deduction of £15 is listed for footpaths and a deduction of £10 is suggested for the highway through pasture which is said to be repaired by the local authority. The total deduction for public rights of way or user for the plot is recorded as being £25.

Reference is also made to plot number 583 (through which the route between point A and point B runs). This too is



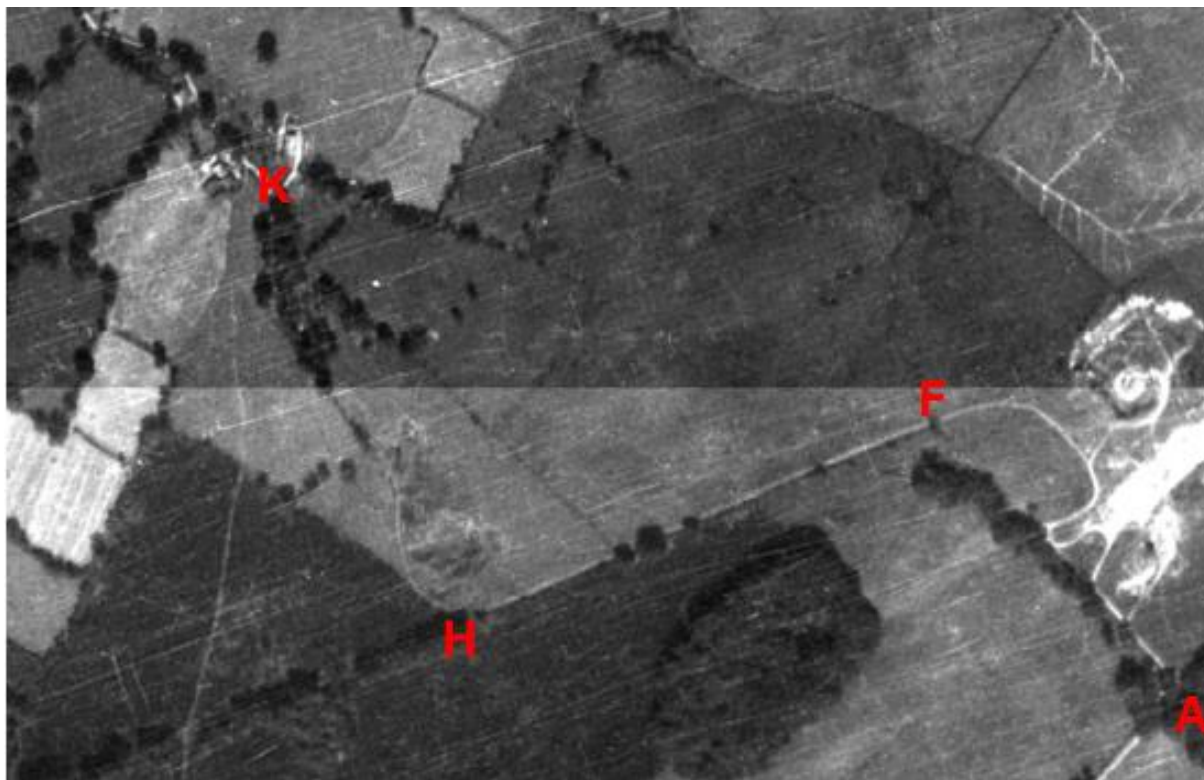
	<p>said to be owned by JR Reddich but is let to the quarry and it is explained that it is therefore not included in this valuation.</p> <p>From point H to point J the route is included in plot 438 described as 'Manor House' – 'buildings and land'. It is owned by JR Reddich, Trustee of S Longworth and occupied by Roger Knowles. Under the section titled 'Charges, easements and restrictions affecting market value' it is stated that there is a wide footpath through the meadow, one through the pasture and a highway – which is not fenced off – passes through the far pasture on the east and is repairable by the local authority. A £30 deduction is listed for public rights of way or user.</p> <p>Between point J and point K the route is excluded from the numbered plots and appears to be considered to be part of Moor Lane.</p>
Investigating Officer's Comments	<p>The land crossed by the route between point A and point J is all in the same ownership but is tenanted by three separate people/companies and for this reason appears to have been split into three different plots.</p> <p>The route between point A and point J is not excluded from the numbered plots but is contained within them.</p> <p>It is often the case that a route considered to carry public vehicular rights was excluded from the numbered plots.</p> <p>In this particular case the only part of the route to be excluded is the section from point J – K which appears to be considered to form part of Moor Lane.</p> <p>The route between point A and point F is included in a numbered plot (583) for which a deduction was claimed in relation to 'public footpaths'. It appears that the valuation details for this plot were not completed by the landowner but that the valuation was undertaken with information provided by the quarry that tenanted the land. The route does not appear to have been fenced off in</p>

		<p>1910 so if it was considered to carry public vehicular rights this may not have been immediately apparent to the valuation officer completing the plan; in addition, because the route was not fenced, and was being grazed it could be that it was considered to be land that should be taxed. There is no indication which routes were considered to be public footpaths for which the deduction was claimed across this plot and if it did include a deduction in relation to the route under investigation it appeared to be considered to be a footpath.</p> <p>Beyond point F to point G the route is within a plot for which two separate deductions were claimed. Again, the route under investigation is not excluded from the numbered plot but it does not appear that the route was fenced off from the pasture land in 1910 and may therefore have been grazed (and considered part of the land subject to taxation), The plot is crossed by the route now recorded as Footpath 9 – which is indicated on the OS base map used as part of the valuation process as well as the track over which the route under investigation runs. A distinction is made in the valuation between 'footpaths' and a route described as a 'highway through pasture' although it is not possible to be certain that the route under investigation is the 'highway' referred to. The fact that the highway referred to is said to be repaired by the local authority does not necessarily imply public vehicular or bridleway rights but the fact that the route is described as a highway – not a footpath or bridleway and that it was publicly maintainable is good evidence that it may have been considered to be a public vehicular highway at that time.</p> <p>The route between point H and point J is also contained within a large numbered plot for which deductions have been claimed. The OS base map used for the valuation shows the route under investigation as an unfenced track</p>
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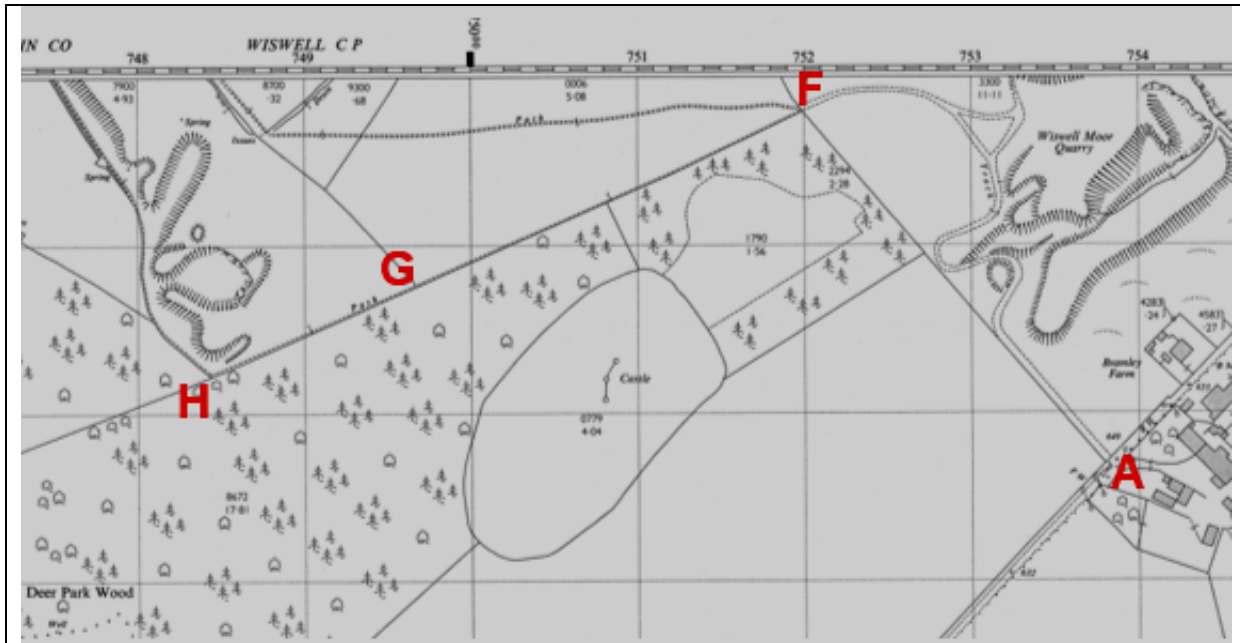
		(adjacent to wall on western side). The description in the Field book of the unfenced highway through the far pasture on the east is consistent with the location of the rout under investigation and is described as being maintained by the local authority. Again, a distinction is made between routes considered to be footpaths and that considered to be a 'highway' suggesting that the route was considered to be of a higher public status than a footpath by the landowner at the time of the valuation.
<b>25 Inch OS Map</b>	1931-32	Further edition of 25 inch map (surveyed 1891-92, revised in 1929 and published in 1931-32.
Observations		The route is shown in the same way as it is shown on the earlier two editions of the 25 inch map.
Investigating Officer's Comments		The route existed when the map was revised in 1929 and may have been capable of being used. The fact that it is shown as a track (double pecked lines) and not marked as a footpath (F.P.) suggests that it may have been of a more substantial nature suitable for use by horses and possibly horse drawn 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.

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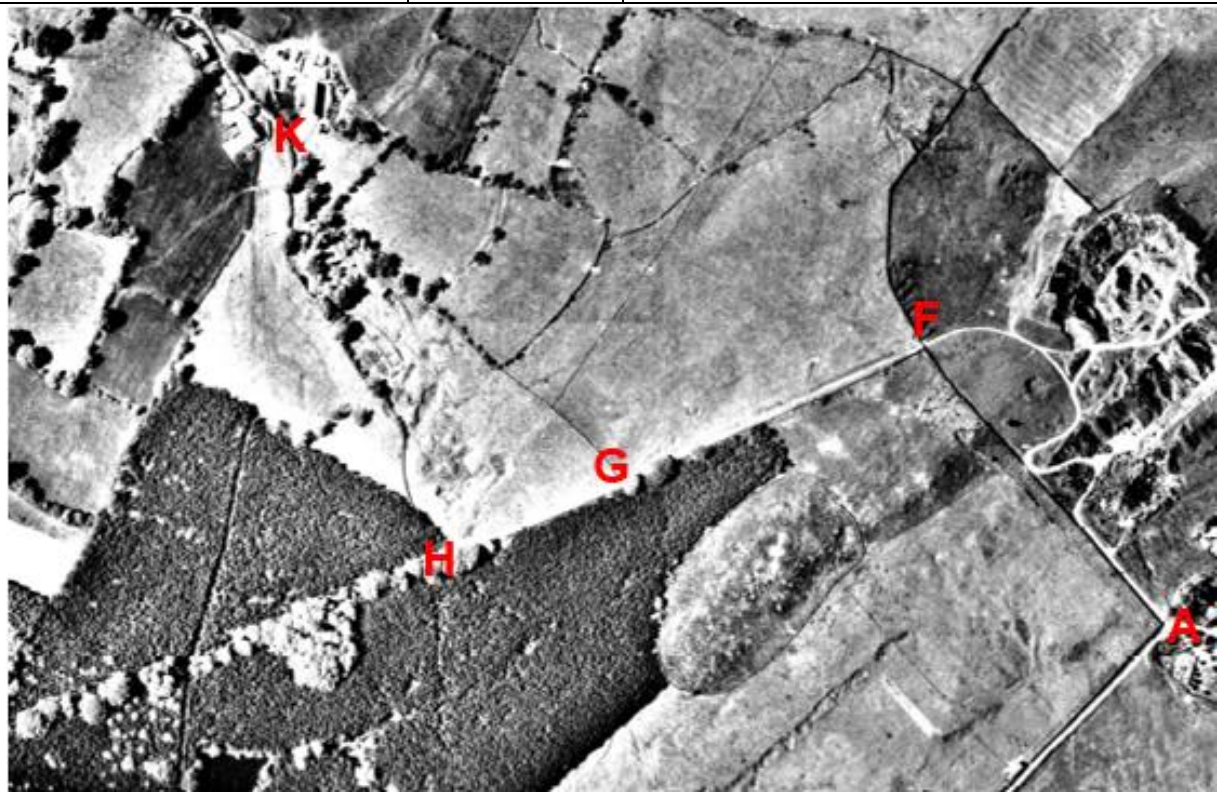
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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



Observations		The route can be clearly seen between point A and point H but is less clear from point H to point K.
Investigating Officer's Comments		The route existed in the 1940s and appeared to be receiving a significant level of use – particularly between point A and point H - consistent with bridleway or possibly vehicular use.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
Observations		The full length of the route is shown on the 6 inch OS map.
Investigating Officer's Comments		The route existed in the 1930s and may have been capable of being used on foot, horseback and possibly with vehicles.
<b>1:2500 OS Map</b>	1969	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1969 as national grid series.



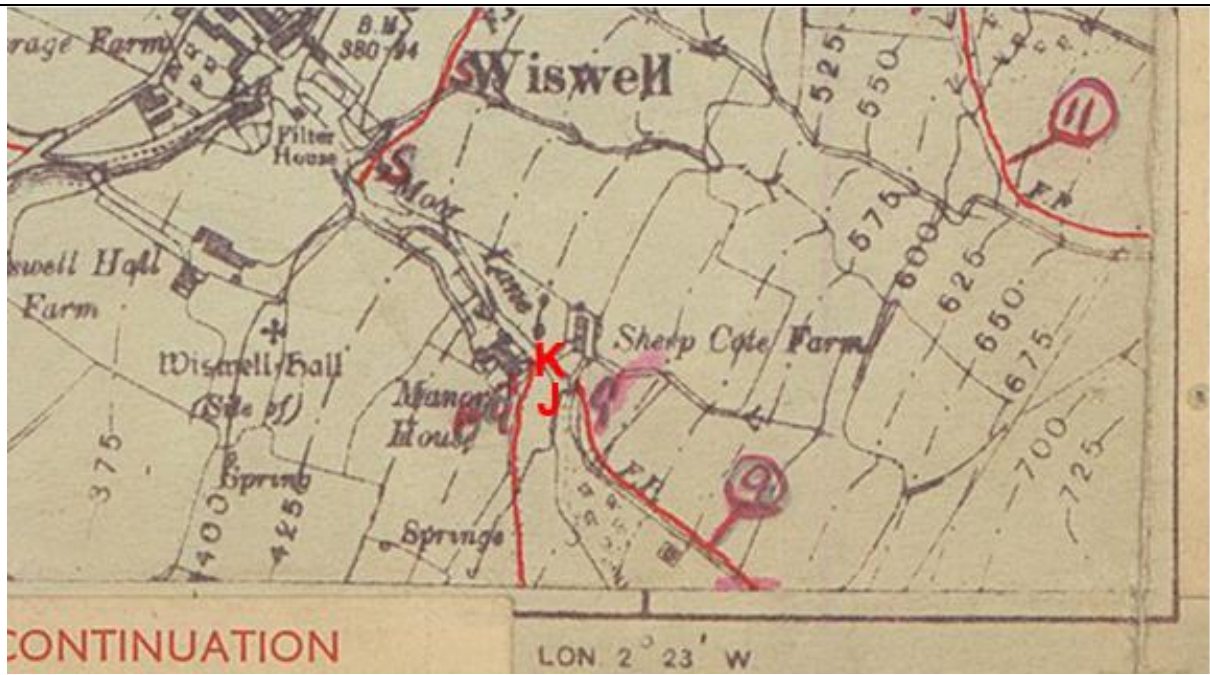
Observations		The route is shown on the map in the same way as on the earlier editions of the 25 inch maps. Between point A and point F it is described on the map as a 'track' and between point F and point J it is described as 'path'. Between point J and point K is appears to form part of Moor Lane.
Investigating Officer's Comments		The route under investigation existed and appeared capable of being used. The fact that it is described as a 'track'

		through the quarry but as a 'path' between point F and point J may indicate that its physical appearance – possibly due to the use it was receiving at that time – was more akin to use of a footpath or bridleway beyond point F.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The route can be seen as a significant physical feature between point A and point F and between point F and point H. The route between point H and point K is not as easy to identify on the photograph.
Investigating Officer's Comments		The route existed and use of it appeared to be a significant feature suggesting vehicles could use the route to at least point H. Beyond point H the route may not be as visible because of tree cover and the proximity to a large stone wall.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		The route between point A and point G is visible but beyond point G it is not possible to see the route.
Investigating Officer's Comments		The fact that the route is not as clearly visible may be because use of the route by vehicles had decreased.
<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

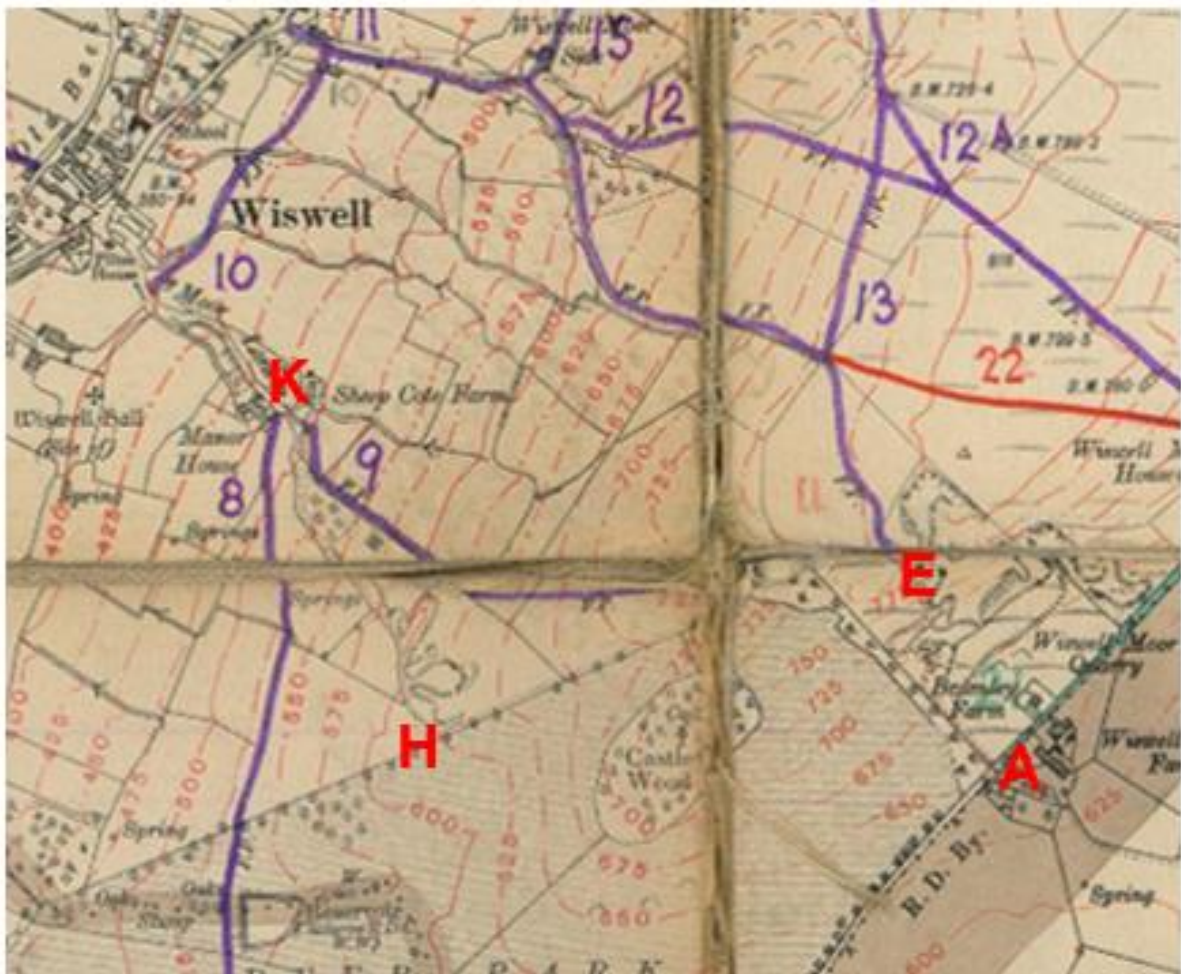
	<p>Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
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<p>Observations</p>	<p>The parish survey was carried out in 1951. The area showing the land</p>
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		<p>crossed by the route is covered on four separate map sheets.</p> <p>The route under investigation was not shown on the parish survey map.</p> <p>Footpaths 8 and 9 Wiswell are shown to start from the route close to points J and K and the parish survey cards describes them as starting at Manor Farm (Footpath 8) on Pearson Lane, and across from Sheep Cote Farm (Footpath 9) from Pearson Lane. The route under investigation is not referred to in either survey card or in the survey card for Footpath 11.</p>
<p><b>Draft Map</b></p>		<p>The parish survey map and cards for Wiswell 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>



Observations

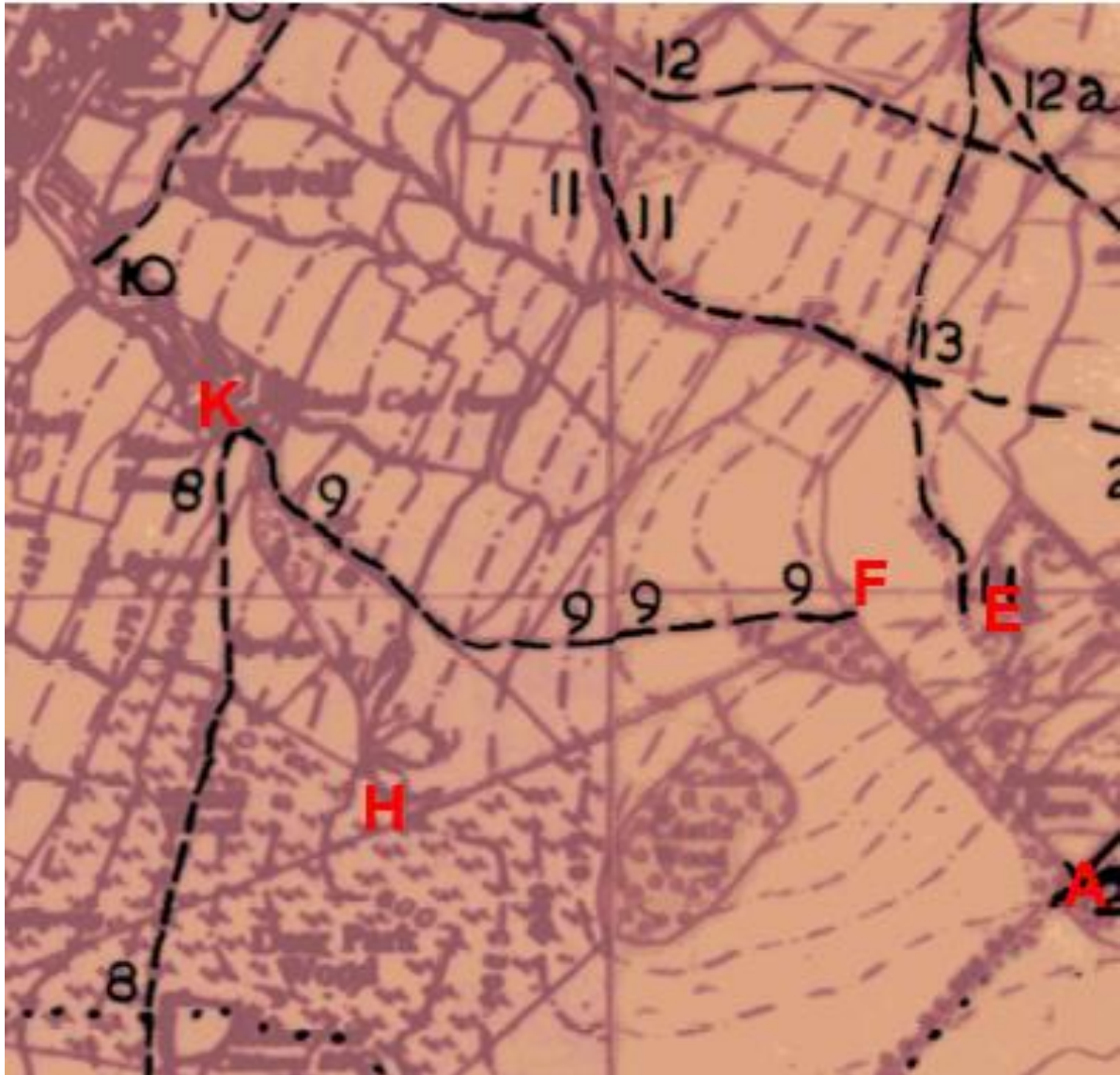
The route under investigation is not shown on the Draft map but a representation was made to the County Council over its omission.

The objection was referenced number 92 and was lodged on the basis that the route had been omitted from the Draft Map and that a public right of way existed along it 'namely on foot, or with animals, or vehicles.' It was noted in the objection that a gate 'in the corner' was now kept locked'.

The objection was lodged by Mr James Leeming, who, as a child (from 1911 to 1917), had lived at the farm adjacent to point A and stated that he still lived in Wiswell in 1953. He explained that he had used the route for many years, had driven cattle over it, and had always known it as a public right of way. He stated that Rural District workmen used to keep the route in repair.

		<p>On receipt of the objection observations were sought from the District and Parish Councils who both agreed that the route be included. A note from the County Surveyor states that the route was unclassified county road no. 4/84 and that the landowners/occupiers (not named) agreed.</p> <p>The investigations concluded by confirming that the route was in fact an unclassified county road and that this was to be communicated to the objector and that the route did not need to be added.</p> <p>The status of the route as an unclassified county road is acknowledged in the Draft statement for Footpath 8 which is described as starting at the side of Manor House Farm with no reference to 'Pearson Lane' and Footpath 9 which is described as starting at the junction with Unclassified County Road 4/84 at Sheep Cote Farm to Unclassified County Road 4/84 north of Castle Wood (point F on the Committee plan). Footpath 11 is described as terminating at the junction of Unclassified County Road 4/84 north of Castle Wood (point E on the Committee plan).</p>
Investigating Officer's Comments		<p>The route under investigation is not shown on the map because it was considered to be a public all purpose road and public paths are described (and shown) as starting/finishing on it and it is described as an unclassified county road to which other public footpaths connect.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown</p>

		Court.
Observations		The route under investigation is not shown and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown and was not considered to be a public right of way required to be recorded 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.



<p>Observations</p>		<p>When the Map and Statement were reviewed the route was not shown on the Revised Definitive Map (First Review).</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1973 it appears that the route was considered to be an unclassified county road and that it was not considered appropriate to include it on the Definitive Map and Statement. Whilst the fact that the route was recorded by the County Council to be an unclassified county road maintainable at public expense implies that the public had a right of access along it is not conclusive that</p>

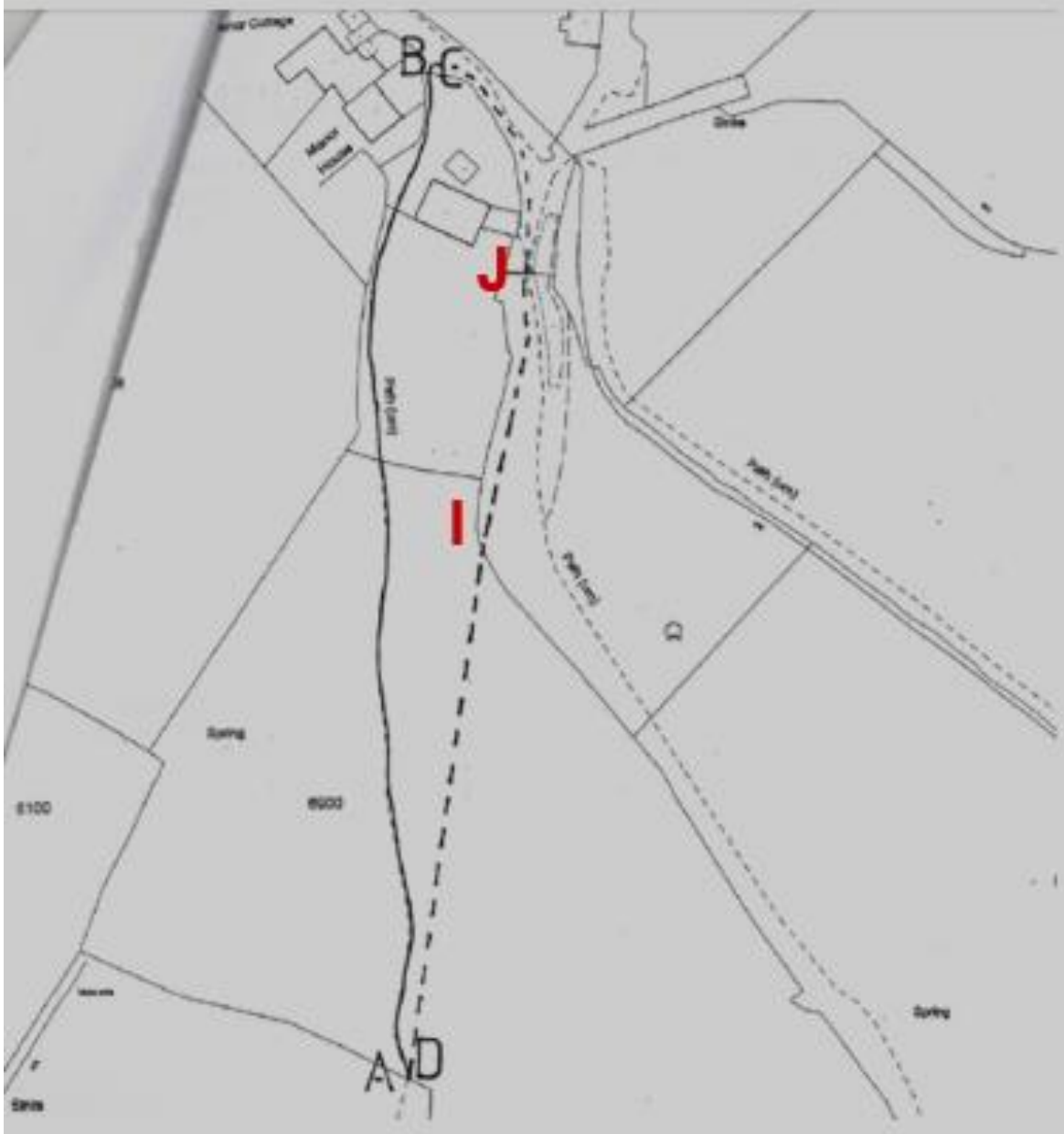
		vehicular rights existed. However, in this particular case, the fact that the inclusion of the route had been considered, and rejected implied that there was a belief that the public rights that existed along the route included vehicular rights. If it had only bridleway rights it would have been included on the Definitive Map and Statement as bridleway.
<b>Wildlife and Countryside Act 1981 application to add a public bridleway to the Definitive Map</b>	1987	Following publication of the Revised Definitive Map (First Review) legislation was enacted which meant that the map and statement was then under a process of continuous review and applications could be made to the County Council to amend the Definitive Map were it was considered necessary.
Observations		<p>Two applications were submitted in 1985 and considered by the County Council in 1987 (Appendix A refers). The first application was to add the route currently under investigation to the Definitive Map as a public bridleway. The report submitted to the Public Rights of Way Sub Committee detailing the application was brief and a description of the route included in the report noted that it was open and accessible but churned up and muddy in places (between points H and J on the 2016 Committee plan). It was also noted that there was evidence that the route was well used by both pedestrians and equestrians, although here was no evidence of vehicular use.</p> <p>The report noted that an un-named landowner had been told by the Highways Department that the route now under investigation was a highway maintained at public expense and as a result the landowner could see no reason for the application as it was already used regularly by horse riders.</p> <p>Observations within the report from the Chief Executive/Clerk's</p>

		<p>Department stated that initial investigations into the claim revealed that it was already an unclassified road no. 4/84 and the recommendation was for the claim not to be accepted on the grounds that the route was already recorded as a highway of higher status, i.e. an unclassified county road.</p> <p>A second claim, submitted at the same time, was for the addition of a public footpath at Wiswell Moor Quarry between two points on the route now under investigation, described in the report as being unclassified county road no 4/84. The claim was based on the submission of user evidence dating back to the 1950s. It was accepted and the route is now recorded as Public Footpath 23 Wiswell and is shown on the Committee plan between point D and point F, i.e. it connected 2 points on the route under investigation..</p> <p>An inspection of the file containing the original applications has been made.</p> <p>The application for a bridleway was supported by a statement made by the applicant who states that he had not observed horses using the route prior to 1984 but since that time had seen 'much evidence of horses using the path'. Ordnance survey maps dating back to 1844 were provided with the application and a statement of use form detailing pedestrian use by 5 individuals. The research carried out by the County Council at that time refers to the fact that the route was already recorded as an unclassified county road.</p> <p>The file contains a letter received by the County Council on 15 August 1985 from Mr D Lees, Manor House, Wiswell who was believed to own part of the land crossed by the route.</p>
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		<p>He states that he had already gone to a lot of trouble to establish that the route was a highway for which the County Council were responsible and that the Highways Department in Whalley had confirmed that they were responsible to maintain it.</p> <p>A letter from Mr H Shaw, Clerk to Wiswell Parish Council dated 2<sup>nd</sup> April 1986 describes the route under investigation as a footpath which, to the best of his knowledge had never been considered as a public bridleway. He refers to the existence in the past of locked gates and stiles providing pedestrian access but that these had fallen into disrepair and that horses were using the route and churning the surface up.</p> <p>Ribble Borough Council, when consulted about the application wrote to confirm that when the matter was discussed by the Council's Planning and Transportation Committee they were supportive and provided evidence as to their recent useage as both public footpaths and bridleways.</p>
Investigating Officer's Comments		<p>The recorded status of the route under investigation as an unclassified county road does not appear to have been challenged in 1987. The application to record the route as a public bridleway was rejected as it was still considered, at that time, that a route recorded as an unclassified county road was a highway of a higher public status. Current guidance says that where a route was recorded as an unclassified county road in the highway records (List of Streets) this provided evidence that the route was publicly maintainable but although these were mainly vehicular roads it did not conclusively mean that it was a route over which public vehicular rights existed although it does imply that at</p>

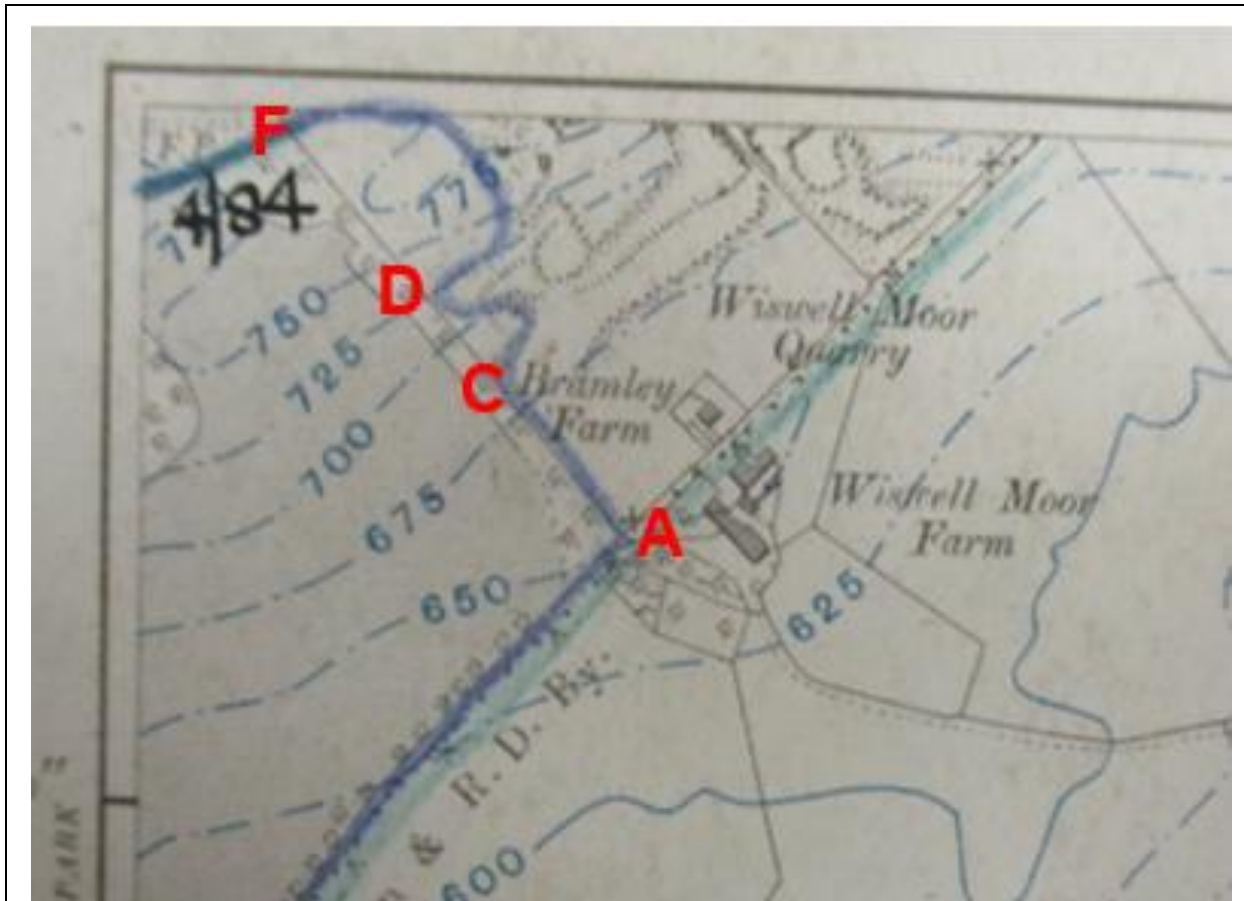


		least a public right of access on foot existed. However, it is clear from the context that it was considered to be vehicular by those dealing with it at the time.
<b>Diversion of part of Footpath 8 Wiswell under the Highways Act 1980</b>	2000	An Order was made on 7 November 2000 by Ribble Valley Borough Council under the Highways Act 1980 to divert part of Footpath 8 onto the route under investigation (between points I-J-K). The Order was confirmed on 14 <sup>th</sup> December 2000.



Observations		The County Council do not have any
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		records relating to the diversion of the footpath but it appears that it was unopposed. The Order diverted part of Footpath 8 onto the route under investigation but as we are unable to find any records relating to the application we do not know whether the issue that either it was unrecorded or that it was recorded on the List of Streets as part of an unclassified county road between points I to J was considered at the time or not.
Investigating Officer's Comments		No inference can be drawn.
<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 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>
<u>1929 Handover Map held by County Records Office</u>		





Highway card index system

**ADOPTED UNCLASSIFIED COUNTY ROAD**

Name MOOR LANE Parish WISWELL-WHARFE L.A. RIBBLE VALE

Road Ref. No.	Description of Adopted Length	Date Adopted	Total Yards	Total Miles	Grid Ref.	Identifying Plan		
						SD	OS	MP
4/84	From 4/80 - III <sup>552</sup> <del>440</del> near Postfield	1929	444 343 987	1.66	45.36 445/373 151/365			
			20384					

LCC 'Adoption' records available on GIS



#### Road Classification

Road Information	
Road Number	U22866
Road Name	Moor Lane : Pendleton Road To Dead End
Responsibility for Maintaining Road	Area East - Ribble Valley
Maintenance Agency	Ribble Valley, Non-Trunk
Maintenance Category	Local Access Road
Road Type	Urban, Cul-de-sac
Footway Type	Local Access Footway
Number of Lanes	2
Speed Limit	30 mph
Length	Measured Length 309 metres
Section Number	00002
Link Code	228660
Start Node	132917
End Node	132966
Safety Inspection Frequency	Once a year
Last Safety Inspection	05-Apr-2016
PEM Road ID	4003228660/00002

### Road Classification

Road Information	
Road Number	U22873
Road Name	Clerk Hill Road : Sabden Road To Clerk Hill Road Cul-De-Sac
Responsibility for Maintaining Road	Area East - Ribble Valley
Maintenance Agency	Ribble Valley, Non-Trunk
Maintenance Category	Local Access Road
Road Type	Rural, Cul-de-sac
Footway Type	Local Access Footway
Number of Lanes	2
Speed Limit	60 mph
Length	Measured Length 1311 metres
Section Number	00002
Link Code	228730
Start Node	132034
End Node	133076
Safety Inspection Frequency	Once a year
Last Safety Inspection	30-Nov-2015
PEM Road ID	4003228730/00002

#### Notes

Original record states  
 Clerk Hill Road from C552 to Wiswell parish boundary adopted 1929 for 772 metres  
 .....

#### Observations

The route under investigation is recorded on the Handover Map from 1929 (or one derived from that) as being publicly maintainable and given the reference 4/84 which is consistent with the information contained within the Definitive Map from the 1950s.

In 2006 a member of the County's Public Rights of Way team queried the status of the route because despite its inclusion on the 1929 records it was not shown on the County Council GIS Highway Information system as a publicly maintainable route.

Records were searched and it was discovered that the (undated) card index system used by the County's Highway Department to record details of publicly maintainable routes included a card for 'Moor Lane 4/84' and the route was described as being from 4/80 (Pendleton

	<p>Road, Wiswell) to Class III road no. 440 (now C552) near Portfield, a total distance of 1.66 miles. This description was consistent with the 1929 map which showed Moor Lane, the route under investigation and the road now known as Clerk Hill Lane as far as Portfield as being numbered 4/84. It was noted on the index card that the adoption date was 1929 and a subsequent date of March 1964 was also included. Two grid references are given; the first (SD 745 373) is approximately at the start of Moor Lane at the junction with Pendleton Road in Wiswell. The second grid reference (SD 751 363) is close to the Wiswell parish boundary on Clerk Hill Road suggesting that the route described extended from the route currently recorded as Moor Lane to point K, continuing along the application route to point A and then along Clerk Hill Road to the parish boundary.</p> <p>The current highway records held by the County Council now record Moor Lane as measuring 309 metres and describe it as a cul de sac. The line digitised on the GIS records shows the publicly maintainable section of Moor Lane ending at point K.</p> <p>The application route from point K through to point A is not shown as being publicly maintainable on the digitised records.</p> <p>At point A the application route is shown to meet Clerk Hill Road – which was originally shown as part of Moor Lane on the 1929 map but which is now recorded as Clerk Hill Road and described as a cul de sac. The digitised notes accompanying the map suggest that Clerk Hill Road was originally recorded only as far as the Wiswell Parish boundary (in 1929) although this is inconsistent with the Handover Map which refers to the whole of Clerk Hill Lane (from the junction at point A) to Sabden Road as being part of the route recorded as 4/84.</p>
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<p>Investigating Officer's Comments</p>	<p>It is not known why or when the route under investigation was removed from the County Council records of routes that are maintainable at public expense.</p> <p>Inquiries have been made with the Highways Section and searches made of records deposited at the County Records Office and London Gazette but no information found.</p> <p>It is thought that the apparent removal of the application route from the List of Streets post-dated the application to record the route as a bridleway in 1987 otherwise the Public Rights of Way Committee would not have rejected the application to record the route as a bridleway on the grounds that it was an unclassified county road but even though the alterations to the records appear to have been made fairly recently no record of when or why can be found.</p> <p>Other than the 1929 Handover Map no paper copy of a map produced as part of the List of Streets detailing the lengths of routes which are publicly maintainable has been found. It is now accepted that being recorded on the list of publicly maintainable streets is not conclusive of vehicular status <i>per se</i> but this was recorded as a class 4 road not a footpath/footway and an inference can be drawn, together with other factors, of vehicular status.</p> <p>One suggestion as to why the application route was removed from the List of Streets is that it is not a tarmacked route. Whilst it is not correct to remove it on this basis there are examples of other routes in the County having been removed for the same reason.</p> <p>The section of the application route between points J-K passes through a gate at point J and descends along what appears to be part of a tarmac carriageway to an unmarked point at</p>
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		<p>point K. This section is currently recorded as part of public footpath 8 Wiswell following confirmation of a Diversion Order made by Ribble Valley Borough Council and is not shown as being part of the publicly maintained section of Moor Lane on the digitised highway records.</p> <p>Moor Lane is now described in the Highway records as measuring 309 metres to a dead end. The accuracy of the measurements and digitised line has been queried with colleagues responsible for the Highway records who responded by stating that the digitised line was only an indication and approximation of extent and that highway measurements were taken from the centre of the highway. The line has not however been altered to extend from point K as far as point J so the inclusion of this part of the route as a proposed upgrade is included.</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already</p>

		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 Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the Route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The affected land is designated as open access land under the Countryside and Rights of Way Act 2000 between points A and F.

The route was recorded as an unclassified county road from 1929 until some time after 1987 but before 2006. The effect of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles (MPV) from carriageways which were not recorded on the List of Streets (subject to other conditions which are not relevant here). The fact that it apparently should have been so recorded and the fact that we can find no legal authority for its removal does not exempt the way from the extinguishment of these rights and hence the correct status is restricted byway and not BOAT (byway open to all traffic). Part of the route is recorded as footpath, again this would appear to have been in error but nonetheless that also would result in the extinguishment of public MPV rights by the Natural Environment and Rural Communities Act 2006. Private carriageway rights are not affected.

### **Landownership**

Properties affected by this application are:

- Bramley Farm House, Clerk Hill Road, Wiswell
- The Old Barn, Wiswell,
- Manor House Farm, Moor Lane, Wiswell,

Landownership of that part of the application route shown between Point J- Point K is unregistered.

### **Summary**

The route under investigation did not exist until 1780 when a way consistent with the route under investigation (with the exception of the section C-D-E through the quarry) was created as a private carriageway as part of the inclosure process.

By the 1890s the full length of the route existed on the alignment now claimed and appears to have remained unaltered since that time.

Although gated in a number of places the route appears to have been wide enough to at that time to be used by horses and vehicles since its construction in the late 1700s and on the modern day alignment since at least the late 1800s.

Finance Act records from the early 1900s suggest that it was considered to be public carriageway at that time.

The 1929 handover records show it as part of a longer route linking (and including) Moor Lane and Clerk Hill Lane for which the County Council were responsible for the maintenance. Its status as an unclassified county road was questioned but confirmed as part of the preparation of the Definitive Map in the 1950s and again in the late 1980s when an application was first made to record it as a public bridleway suggesting that whilst not originally created in the 1780s as a public route that the public had acquired rights along it since that time. The status of unclassified road is not conclusive of vehicular rights but taken in this context is suggestive of carriageway status.

The map and aerial photograph examined all suggests that the route may have been available to be used since the 1800s.

The section of the route between point J and point K is tarmac and appears to form part of Moor Lane but is not recorded as such on the current Highways records and forms part of the route included as the alternative route for Footpath 8 Wiswell in a Diversion Order dated 2000.

The effects of the Natural Environment and Rural Communities Act 2006 and the omission of the route from the List of Streets around the relevant date in 2006 are such that public MPV rights have been extinguished and restricted byway is the correct status.

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

### Information from the Applicant

The applicant submitted 21 user evidence statements in support of the application. The evidence of use on horseback dated back to 1965 through to 2014 when the application was submitted.

One user explained that she owned land over which the route crossed and details of her evidence is contained in the section titled 'evidence from landowners' below.

With regards to the other 20 users use on horseback was for in excess of 30 years (3 users), 20 – 30 years (4 users), 10-20 years (6 users), 5-10 years (3 users) and 1-

5 years (2 users). One user stated that they had used the route for 44 years on foot and within that time had used it on a bicycle over a 17 year period (1990-2007) and another user had used it on foot for three years. Both commented that they had seen horses use the route.

All users confirmed use of the application route as marked on a plan attached to their user forms and stated that route has not changed during the time that they had used it. Most users refer to the fact that they saw others using the route on foot and on horseback.

All users refer to existence of four gates along the route at points B, F, G and H on the Committee plans and state that the gates were never locked but that one gate in particular (at point F) was now so difficult to use on horseback that they had to dismount to open it.

Users also made reference to the deteriorating condition of the surface of the route and the fact that it was partially obstructed by overgrown gorse bushes meant that it was no longer easy to use.

None of the users had been given permission to use the route or had been stopped or challenged when using the route. The only break in use reported was the closure of all routes during the foot and mouth outbreak in 2001. One user reported the existence of signs requesting that gates were closed due to lambing in around 1987.

Use was consistently reported as being for pleasure and to avoid riding on busy roads. One user used it from 1962 – 1977 to visit friends and to lead guided rides from the riding school where she was employed.

In addition to the user evidence statements the applicant submitted a list of names and signatures of people who had used the route 'for many years' and who stabled their horses at New Hall Farm stables in Read. The applicant explained that the route provided a popular link from Read to the villages of Wiswell, Pendleton, Mearly and part of a circular route over Pendle Hill. The list of signatories is described as being people who generally no longer rode the route, primarily because of the poor condition of the track and difficulties associated with opening the gates (described as dangerous) which restricted access but stated that they would all support the application to record the route as a public bridleway as their understanding was that this would make it 'eligible for maintenance'. The list contains 24 signatures.

#### Information from Others

The owners of a property close to point K off Moor Lane have stated that they would prefer the route to remain as a footpath for the safety aspect of cyclists riding recklessly down the tarmac section of Moor Lane. Whilst this is a genuine concern for the residents it is not a relevant consideration to the status under the legislation.

#### Information from the Landowners

One of the user evidence forms submitted by the applicant has been completed by the current owner (since 1996) of part of the land (including Manor House Farm).

She explains in the form that she is the owner of the 'first field' from the top of Moor Lane through which the route runs (between points G-H-I-J) as confirmed by land registry title documents for LA787416. She states that the route is an unadopted highway and that it is well used regularly by horse owners, runners and walkers and that they use it themselves for vehicular access. She also refers to drainage being maintained by Lancashire County Council.

## **Assessment of the Evidence**

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

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

User evidence

Map and documentary evidence

#### Against Making an Order(s)

Map evidence

Conclusion

The application is to add a bridleway and to upgrade sections C-F and I-J-K which are currently recorded as public footpaths to a bridleway. The route claimed is shown between points A-B-C-D-E-F-G-H-I-J-K on the Committee Plan.

There is no express dedication however; evidence of use is provided in 21 user evidence forms claiming the route has been used as a bridleway, therefore S.31 Highways Act 1981 will be considered for this section as well as common law inference of dedication.

Committee will be aware that in order to satisfy the criteria under S.31 Highways Act 1980 for deemed dedication there must be sufficient evidence of use of the claimed route by the public, as of right, without interruption, for a full period of 20 years immediately prior to its status being brought into question, without there being sufficient evidence of a lack of intention to dedicate on the part of the landowner. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. The claim itself was made in May 2015 and this is the event bringing the route into question. The period under consideration would therefore be 1995-2015.

Of the 21 user evidence forms provided, one user evidence form has been discounted, as this has been provided by a landowner. The user evidence forms suggest the route has been used as of right on horseback and foot since 1962 by a sufficient number of people, varying in frequency, use has been without interruption, force, secrecy or permission. The user evidence suggests the gates along the route have never been locked and have not presented a problem for users although it is reported that one of the gates along the route has fallen into disrepair making it a little difficult to use. The break in use whilst the route was closed during the foot and

mouth outbreak in 2001 would not constitute an interruption, the Planning Inspectorate Advice Note 15 suggests the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could not be classified as an "interruption" under section 31(1) therefore it is suggested that on balance deemed dedication under s.31 can be satisfied.

Part of the route is first depicted on the Inclosure Award in 1780 as a private carriageway. The route does not appear on the small scale commercial suggesting the route was not a major route at this time. Most of the route existed by 1848 although the alignment of the route varied at point C-E. By the 1890's the full length of the route following the modern day alignment is shown on the OS map published in 1892-93 and appears to be capable of being used by horses. The gates showing on this map suggest it would have been unlawful had this route been created as a public carriage road by the Inclosure Act 1789. However, the 1912 OS map shows the full length of the route as a track as opposed to a footpath which supports the fact that this route was of a substantial nature and on balance would have been capable of being used on horseback and possibly horse drawn vehicles at that time and is consistent with the Inclosure Award definition of part of this route being a private carriage road. The Finance Act Map 1910 although not conclusive adds weight that the route under consideration may on balance have had public carriageway rights. The 1929 revised OS map mirrors the previous OS map describing the route as a tack. The 1969 OS Map describes the route from point A-F as a track and Point F to Point J as a path, Point J-K forms part of Moor Lane, suggesting use from Point F at this time had declined and was more akin to being used as a footpath or bridleway. The aerial photograph of the 1960's does not show the route beyond point H, the aerial photograph of 2000 does not show the route beyond Point G which may be due to a decline in the use of the route by vehicles at this time.

The query raised at the time the Draft Map was prepared whether to include the route on the Draft Map was rejected and supported by the then landowners suggesting the route was an unclassified county road and the public had rights along the route which may have also included vehicular rights. The route was not included on the Definitive Map and Statement adding further weight on balance the claimed route had a higher public status than a bridleway. The claimed route was considered to be an unclassified road in 1980 when an application to record the route as a public bridleway was made suggesting; in the context that on balance the route had public vehicular rights. The route was also recorded as an unclassified county road on the 1929 Handover Map linking Moor Lane and Clerk Hill Lane which makes it reasonable to assert a public right of way in vehicles may have subsist over the claimed route.

Although the route has evidence of public carriageway rights, it is no longer possible to record the route as a byway open to all traffic due to the introduction of section 67 Natural Environment Rural Communities Act 2006 (NERC Act). The implication of this section means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all the evidence into account and noting how the route was recorded on the old County maps and the investigations of the Executive Director for Environment, it

is suggested to Committee that on a balance of probabilities there is sufficient evidence that the route ought to be shown as a highway of a different description and the claim should be accepted as a restricted byway, as opposed to only a bridleway, as the evidence suggests on balance the route has higher public status.

### **Risk Management**

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

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-565		County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





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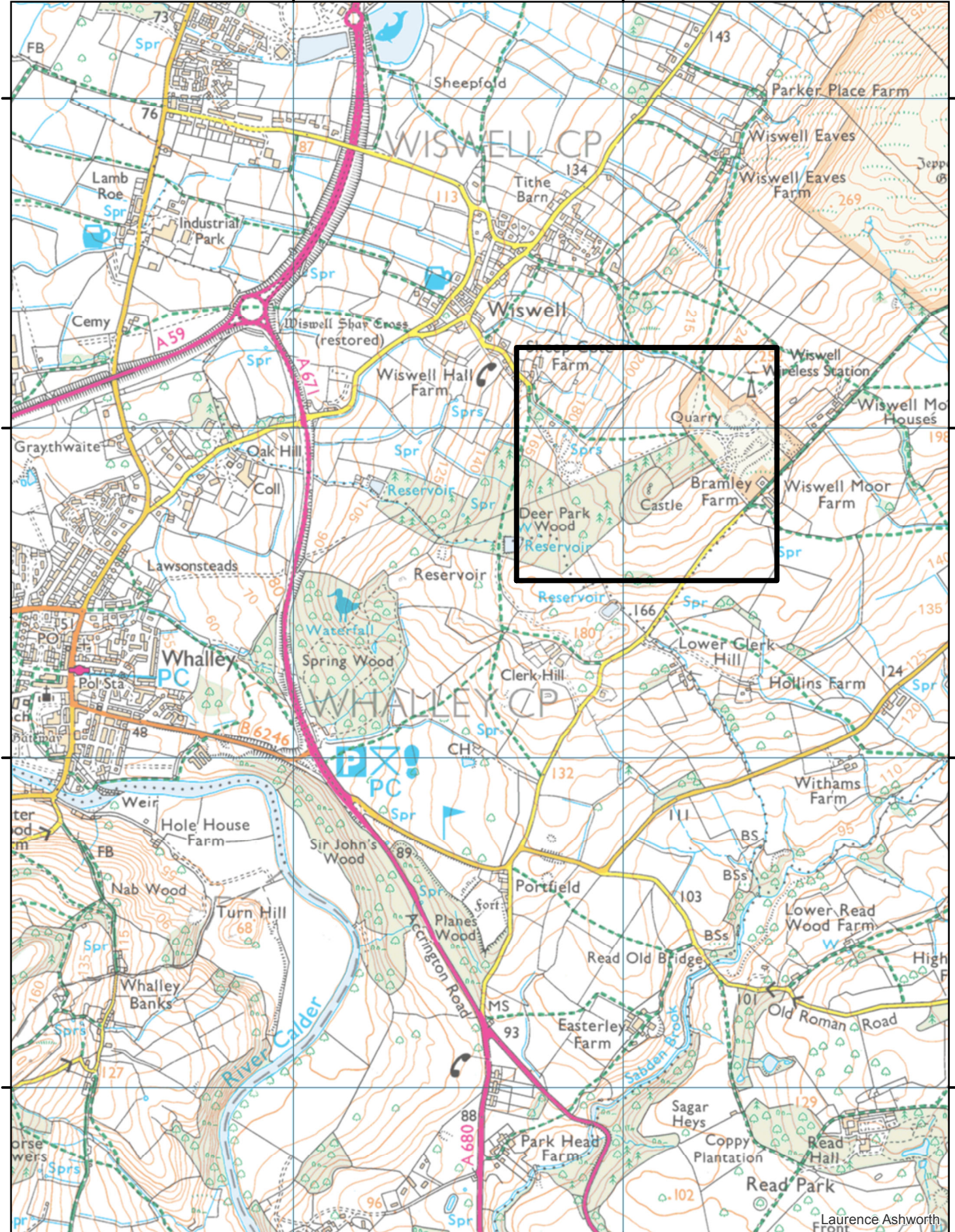
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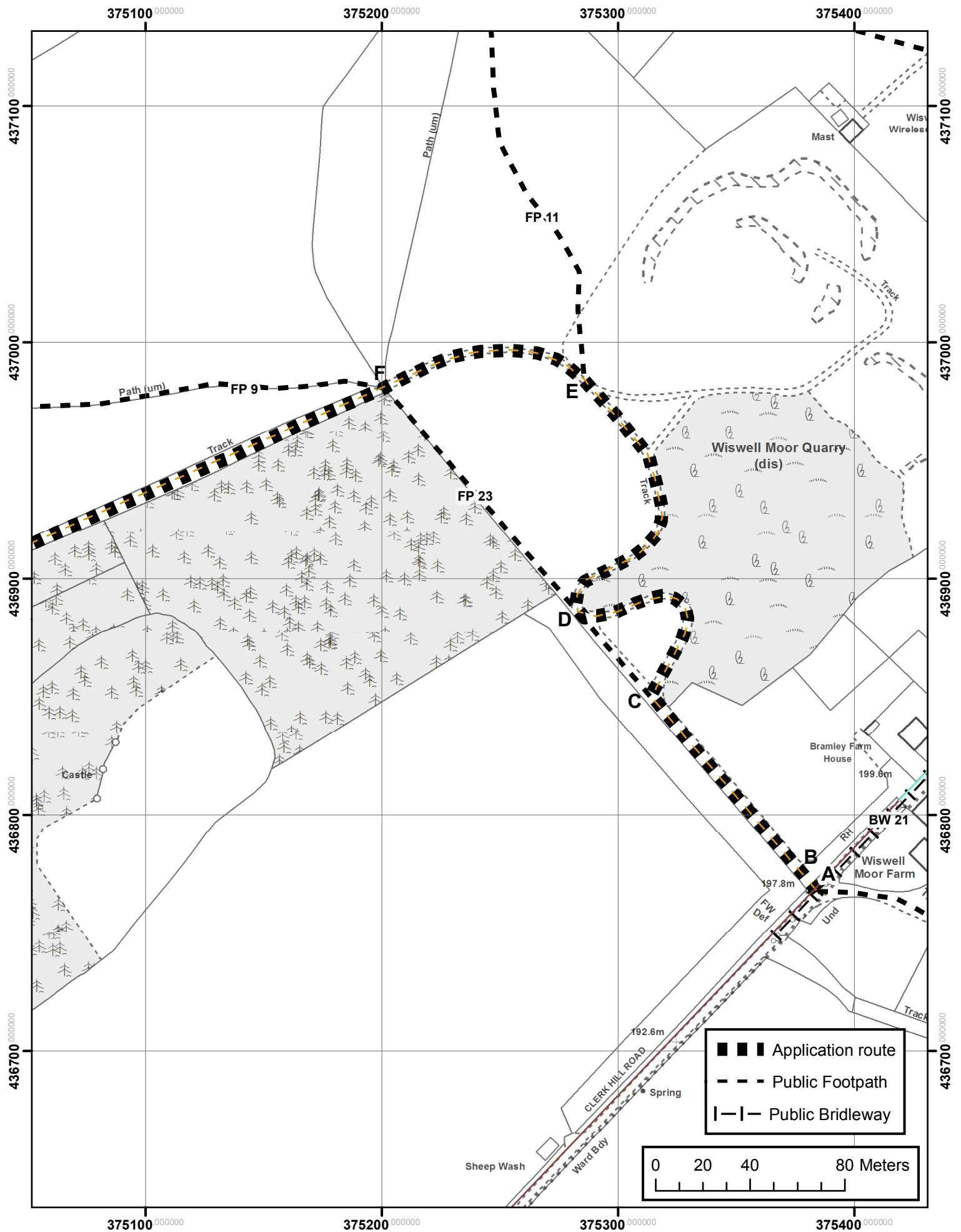
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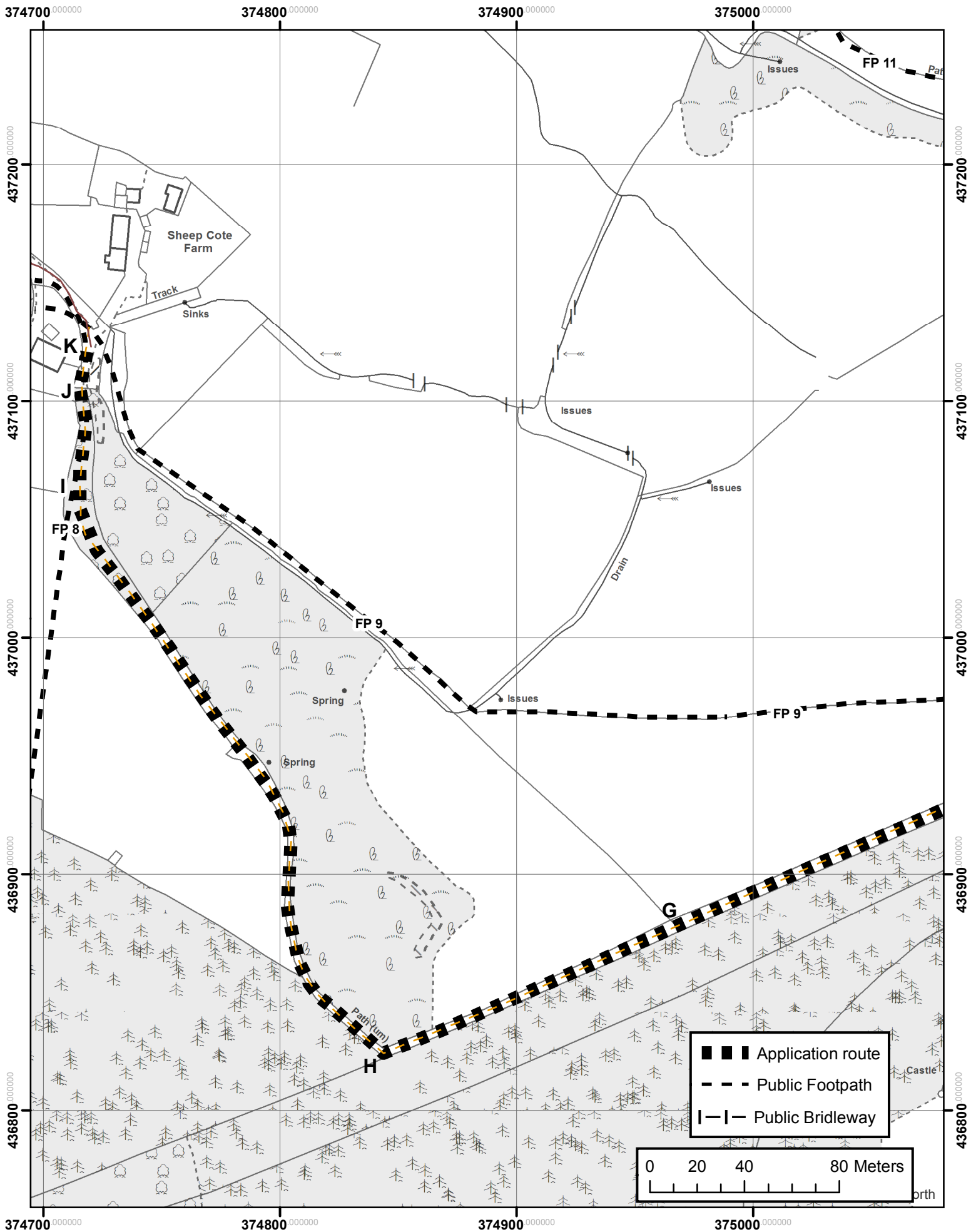







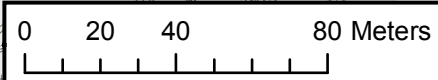


The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.





	Application route
	Public Footpath
	Public Brideway





## Regulatory Committee

Meeting to be held on 16 November 2016

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

#### Definitive Map Modification Order Investigation

**Deletion of part of Public Footpath 4 Rawtenstall at Loveclough and addition of a Public Footpath from Public Footpath No. 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough**

**File No. 804-576 and 804-577**

(Annex 'A' refers)

Contact for further information:

Jayne Elliott, Public Rights of Way, Planning and Environment, 07917 836626

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

#### **Executive Summary**

The deletion of part of Public Footpath 4 Rawtenstall and addition of a public footpath from Public Footpath 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough in accordance with File Nos. 804-576 and 804-577.

#### **Recommendation**

1. That the application to delete part of Public Footpath 4 Rawtenstall from a point at the junction with Public Footpath Nos. 1 and 94 Rawtenstall to a point at the junction with Public Footpath 9 Rawtenstall, in accordance with File No. 804-576, be accepted.
2. That the application to add a public footpath from a point on Public Footpath 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough, in accordance with File No. 804 -577 , be accepted.
3. That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Public Footpath No. 4 Rawtenstall from the junction of Public Footpath Nos. 1 and Nos. 94 Rawtenstall to a point on Public Footpath No. 4 Rawtenstall at the junction with Public Footpath No. 9 Rawtenstall, shown between points X-Y on the Committee plan.
4. 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 to the Definitive Map and Statement of Public Rights of Way a public footpath from a point on Public Footpath No.94 Rawtenstall to a point of Public Footpath 4 Rawtenstall as shown on the Committee Plan between points A-B-C-D.

5. That being satisfied that the relevant tests for confirmation can be met the Orders be promoted to confirmation.

## **Background**

The hamlet of Loveclough in the former Rawtenstall Metropolitan Borough was historically the location of a calico print works which provided work to the majority of local residents. The works were located at the western end of Commercial Street and situated on Limy Water existing on this site from the 1800s until they were demolished in the 1990s and replaced by housing.

Committee Members may already be familiar with the area as an application for a footpath to the north of Limy Water, and passing through the former Loveclough Fold Farm, was originally considered in 2006 and was further considered in 2015. There was also an application to extinguish the recorded footpath within a length of Limy Water west of point X in 2006.

In 2016 two further applications were received under Schedule 14 of the Wildlife and Countryside Act 1981 for:

1. The deletion from the Definitive Map and Statement of Public Rights of Way of part of Public Footpath 4 Rawtenstall from the junction of Public Footpath Nos. 1 and 94 Rawtenstall and running in a general north easterly direction within Limy Water to a point on Public Footpath 4 Rawtenstall at the junction with Public Footpath No. 9 Rawtenstall, and shown on the Committee plan by a thick dashed line between points X-Y.
2. The addition of a public footpath from a point on Public 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall on land to the east of Limy Water, and shown on the Committee plan by a thick dashed line between points A-B-C-D.

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”



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**

### Rossendale Borough Council

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

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – 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	8106 2723	Junction with Public Footpath 94 Rawtenstall in the entrance to Riverbank Mews just east of Penny Lodge Lane
B	8111 2726	Garden fence across the line of the route adjacent to the north east corner of 6 Riverbank Mews
C	8111 2727	Garden fence across the line of the route
D	8114 2731	Unmarked junction with Public Footpath 4 Rawtenstall on south east bank of Limy Water
X	8105 2724	Junction of Footpath 4 Rawtenstall with Footpath 1 and Footpath 94 Rawtenstall on vehicular access bridge known as Loveclough Place Bridge (LCC Structure Reference 9850F1)
Y	8114 2731	Unmarked junction of Footpath 4 Rawtenstall with Footpath 9 Rawtenstall in Limy Water

### **Description of Routes**

Committee is asked to note that references to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-04-04' or 'Rawtenstall Footpath 4' but are referenced below in the abbreviated form 'Footpath 4' for brevity since all those referred to are in Rawtenstall in Rossendale Borough.

A site inspection was carried out on 25 April 2016.

### **Footpath to be deleted**

The footpath proposed to be deleted forms part of Footpath 4 and is shown on the Committee Plan between point X and point Y; a distance of approximately 115 metres.

The route commences at the bridge where Loveclough Place crosses Limy Water north of its junction with Penny Lodge Lane; this is the junction of Footpaths 1, 4 and 94 (point X). There is no convenient access from the bridge at point X or from the adjacent banks into Limy Water. From point X the route follows the watercourse upstream along a man-made channel constructed of stone banks but the bed of the watercourse appears natural and silting has occurred which has resulted in clumps of grassy areas forming around which the water is diverting itself. The water was not deep and it would have been possible to paddle through it in wellingtons on the 3 or 4 dates of site inspections (for the 3 applications at this location). There was no evidence that people were walking in the watercourse or that access from point X was, or had previously been available to the watercourse.

From point X, for approximately 35 metres along the northern side of the route a stone ledge exists just above the water level forming part of the stone banking. It is quite narrow, with no access to it, and it did not appear to form any sort of walkway with no evidence that it was used (or had been used) in such a way. A similar, but

higher, ledge exists within the stone banking on the south side of the watercourse extending from point X to the north west corner of 5 Riverbank Mews.

The route runs in a generally north easterly direction along the watercourse, for approximately 115 metres to point Y on the Committee plan which is an unmarked point within the watercourse immediately south of the junction of Limy Water with a tributary stream flowing down from a small reservoir and is the recorded junction of Footpath 9 and Footpath 4. There is no crossing point and no evidence that the public are using or have used this point to cross. A Lancashire County Council footbridge exists just north of this point and further north are the remains of stepping stones.

### **Footpath to be added**

The route to be added commences at point A on the Committee plan which is a point on Footpath 94 approximately 2m into the entrance to Riverbank Mews (the claimed line of the footpath does not coincide with the recently aligned road (now called Penny Lodge Lane).

From point A the route passes through an opening providing access to a new housing development known as Riverbank Mews and crosses an open tarmac area along the front of properties 1-4 Riverbank Mews. It then continues to the south of 5 and 6 Riverbank Mews to point B where it is crossed by a substantial wooden fence with no access through it. The fence surrounds a newly landscaped garden to the east of 6 Riverbank Mews and contains the route between point B and point C.

Beyond the garden fence at point C the route continues in a north north easterly direction along the edge of a field to the east of Limy Water. No visible trodden route could be seen on the ground.

The route meets the recorded section of Footpath 4 at an unmarked point south west of the junction with Footpath 10.

The total length of the route is approximately 130 metres.

### **Map and Documentary Evidence**

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<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 map shows and names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings but does not show the route to be added or the route to be deleted.
Investigating Officer's Comments		The routes did not exist as major routes at that time although they may have existed as minor routes which, due to the limitations of scale and purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
<b>Honour of Clitheroe Map</b>	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuch and Elizabeth Duchess of Buccleuch. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



Observations		The map shows and names the village of 'Love Clough' but the routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time although they may have existed as minor routes which, due to limitations of scale and the purpose for which the map was drawn meant that they would not be shown so 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.



Observations		The map shows Commercial Street crossing Limy Water, and continuing to the north west. It shows a number of buildings and names them 'Low Booth'. The routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes in 1818 although they may have existed as minor routes which, due to the limitations of scale and the purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
<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.



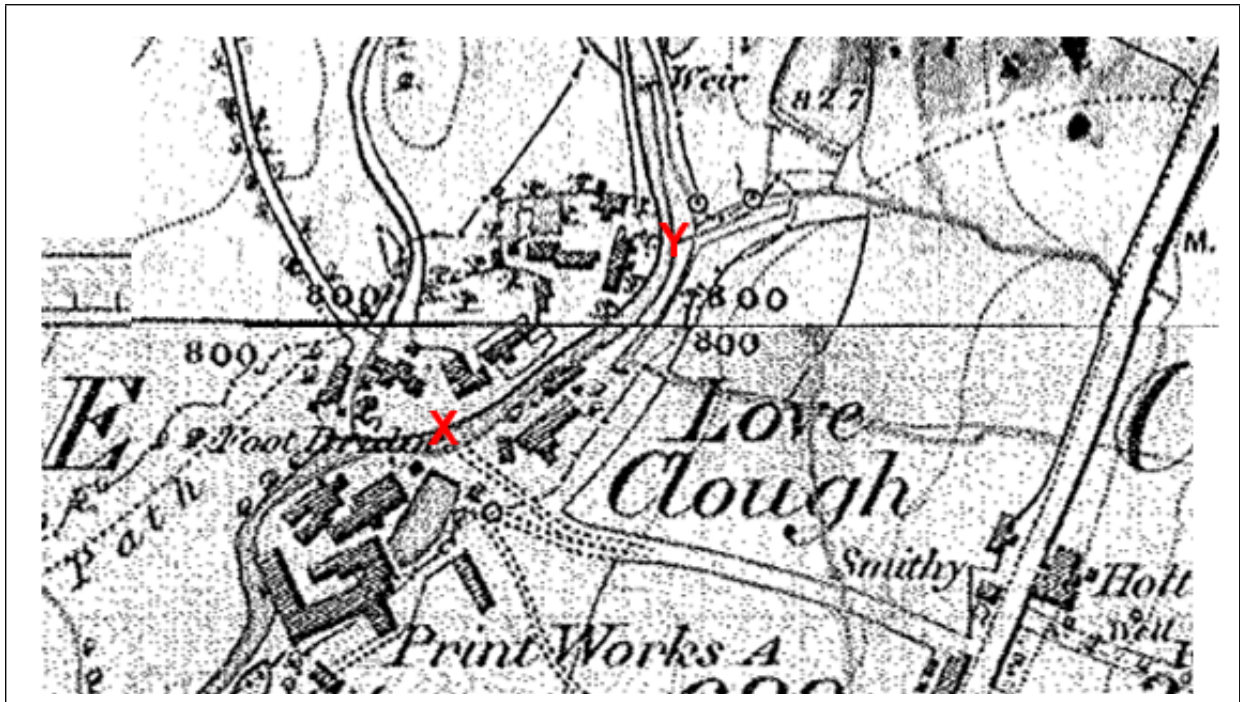
Observations		Love Clough is shown and named but the routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes in 1830 although they may have existed as minor routes which, due to the limitations of scale and the purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
<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 routes under investigation do not cross land affected by the planned construction of a canal or railway.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes

		to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-7 and published in 1849. <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.



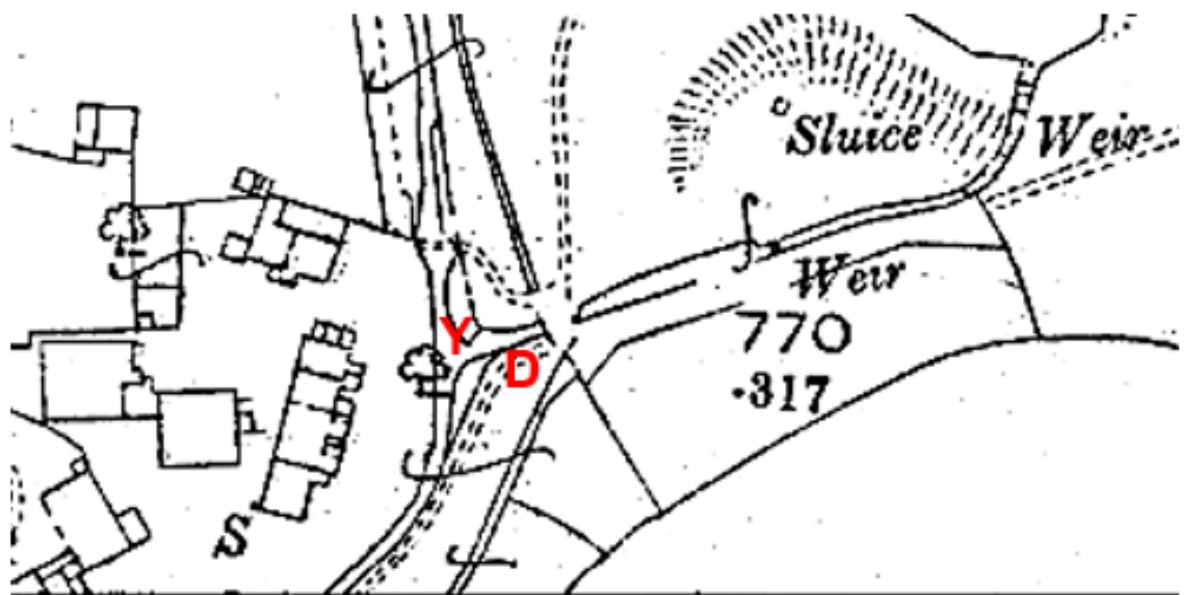
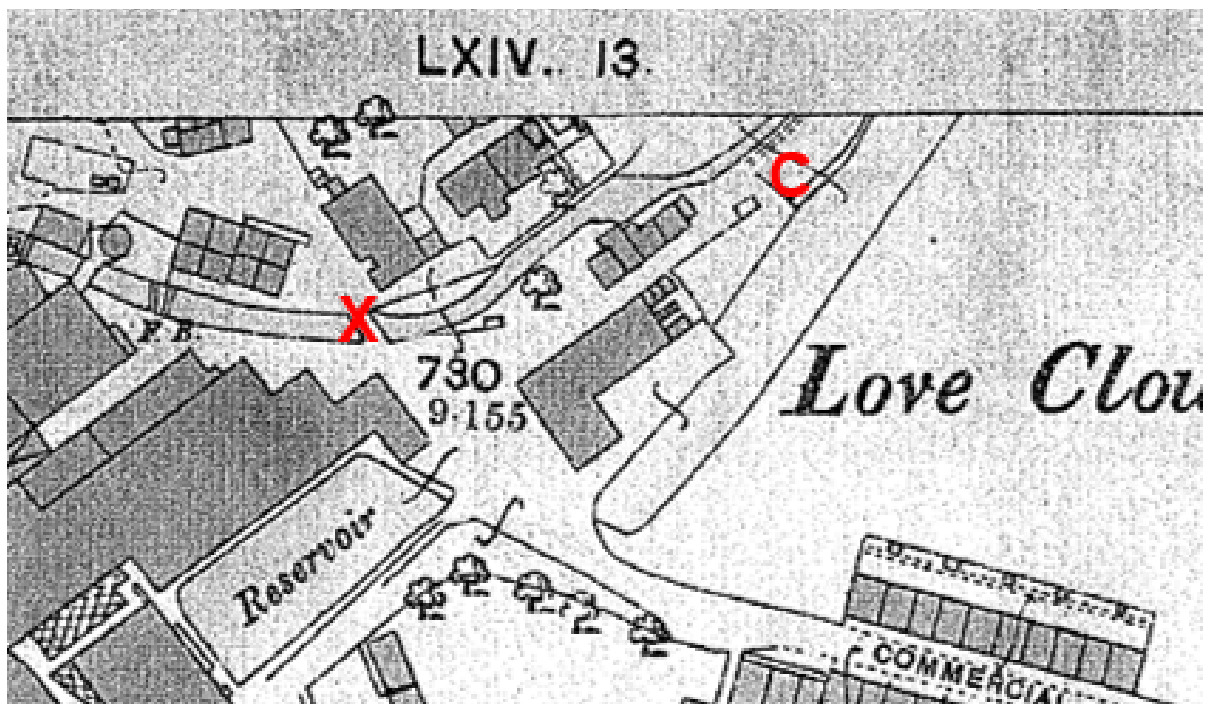


<p>Observations</p>		<p>The area crossed by the two routes can be seen and is labelled as Love Clough. Commercial Street can be seen providing access to the mills (print works) south of Limy Water. A track (double pecked lines) is shown extending from Commercial Street to Limy Water at point X but is not shown to continue north of the watercourse. There is no bridge shown across Limy Water at point X although the word 'Foot Bridge' is written to the west of point X. Limy Water is clearly shown to exist between point X and point Y with no indication that the watercourse would have been used as a public footpath.</p> <p>South of Limy Water buildings are shown to exist in the area now redeveloped as Riverbank Mews. There appears to be access from the track (double pecked lines) which extends from the end of Commercial Street between the buildings and beyond.</p>
<p>Investigating Officer's Comments</p>		<p>The route to be deleted is entirely within the watercourse which is shown without any indication that it was so used and without any access points indicated. It is therefore unlikely that the public footpath existed in 1844-47. The route to be added may have been accessible in 1844-47 although it is not marked as a path of any sort suggesting that there was no visible track on the ground.</p>

25 Inch OS Map

1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-92 and published in 1893.



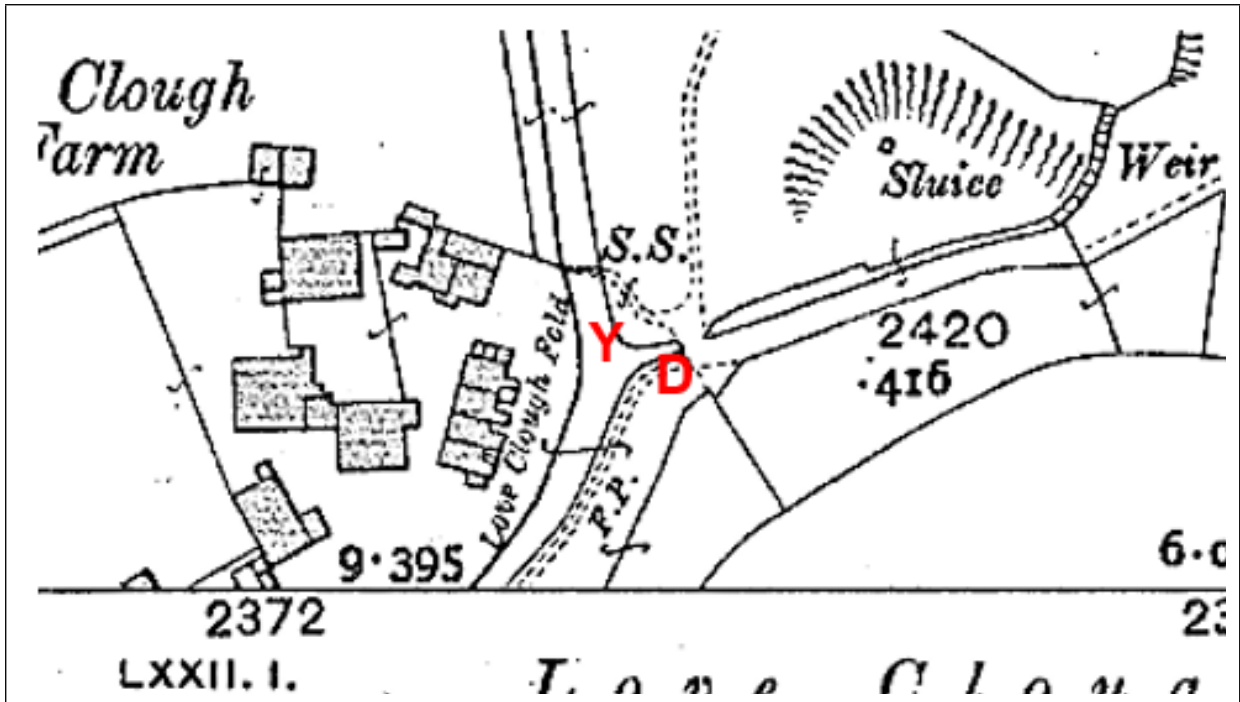
II. I. **MUNL. BORO. (Rawtenstall) 729**

Observations

This first edition large scale OS map shows that a bridge existed at point X and shows the course of Limy Water. The route to be deleted is not shown and there is no indication on the map that the watercourse was used as a public footpath or of access to it.

		The route to be added is not shown between point A and point C but the land crossed by the route is shown as being open and accessible between the buildings and would not normally have been shown if the surface was hard such as a yard. To the north of point C is a wide gap in a boundary and then From near point C (but closer to Limy Water) a track (double peaked lines) is shown through to point D and then continuing onwards from point D.
Investigating Officer's Comments		The route to be deleted did not exist in 1890-92. The route to be added may have existed between point A and point C in 1890-92 and the northern part of the route between a point north west of point C and point D existed as a track on the ground and appeared capable of being used. However, the application route around point C probably did not exist.
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1891-92, revised in 1909 and published in 1911.



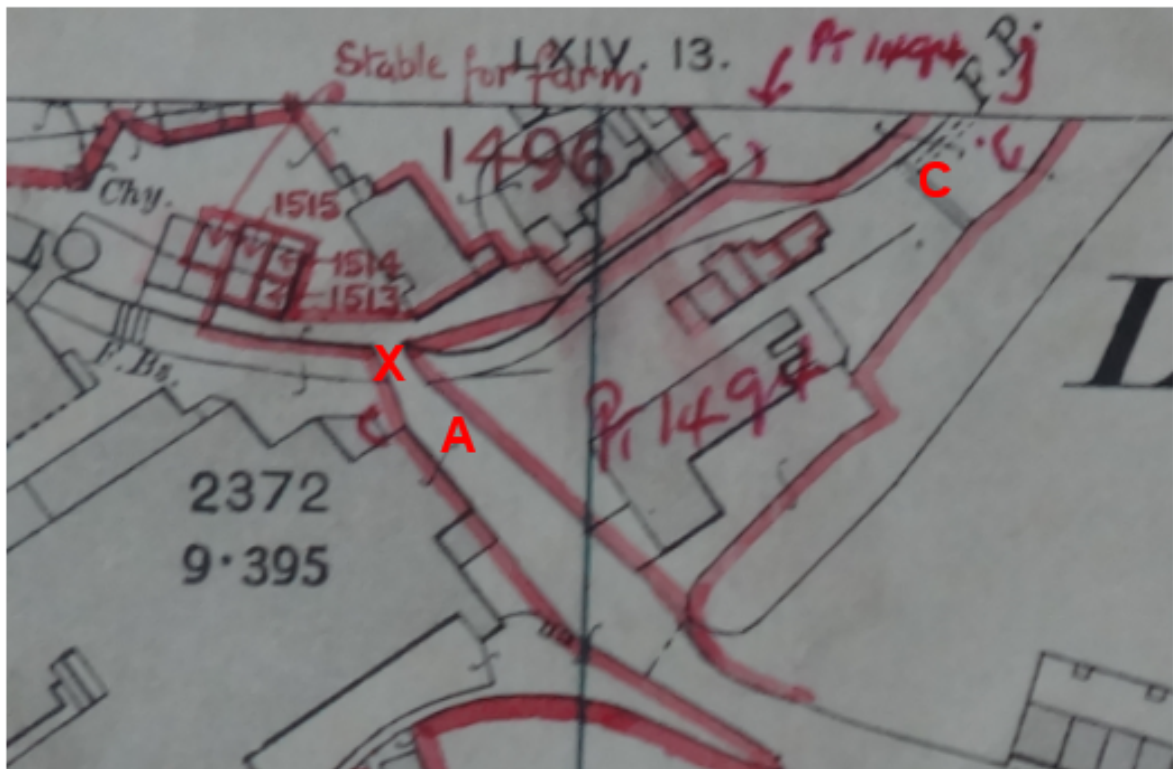


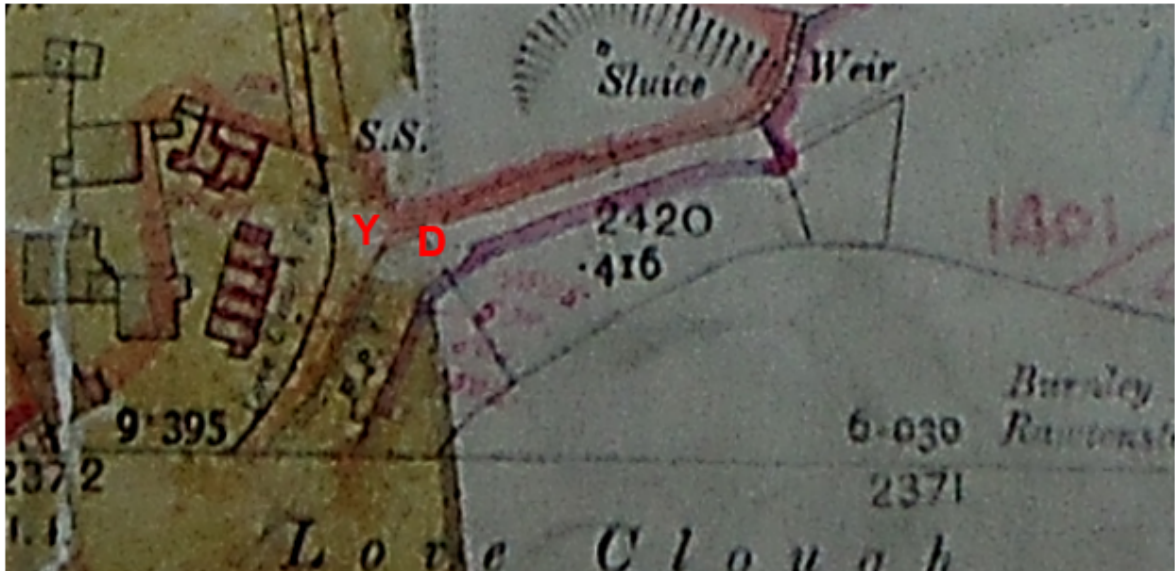
Observations		<p>The route to be deleted is not shown.</p> <p>Access appears to be available from the end of Commercial Street to point A and between the buildings along the route to be added to point C. At point C the route is crossed by a single line south east of which is a double line. This may indicate the existence of some form of boundary and/or ditch. From a point near C but closer to Limy Water a double pecked line is shown along the route to be added and is annotated with the letters 'F.P' (footpath). It extends to point D and then appears to continue across the watercourse to provide access to the route now recorded as Footpath 10.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist in 1909 when the map was revised.</p> <p>The route to be added existed for most of its length in 1909 and appeared capable of being used for most of its length except for around point C. However, the application route around point C probably did not exist.</p>
<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</p>

have to be admitted.

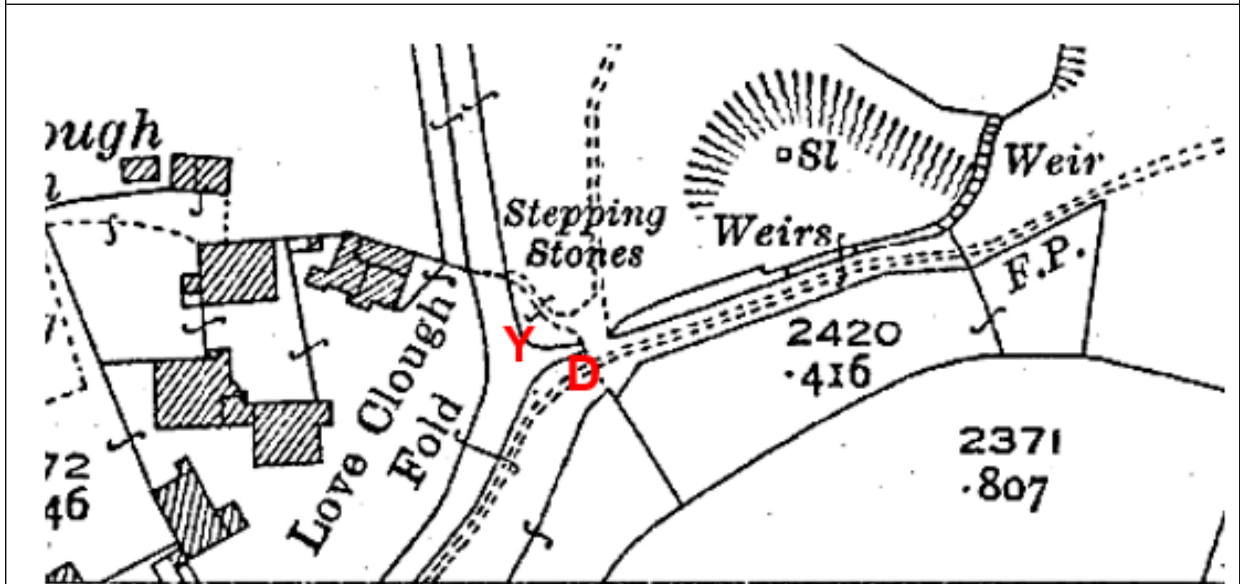
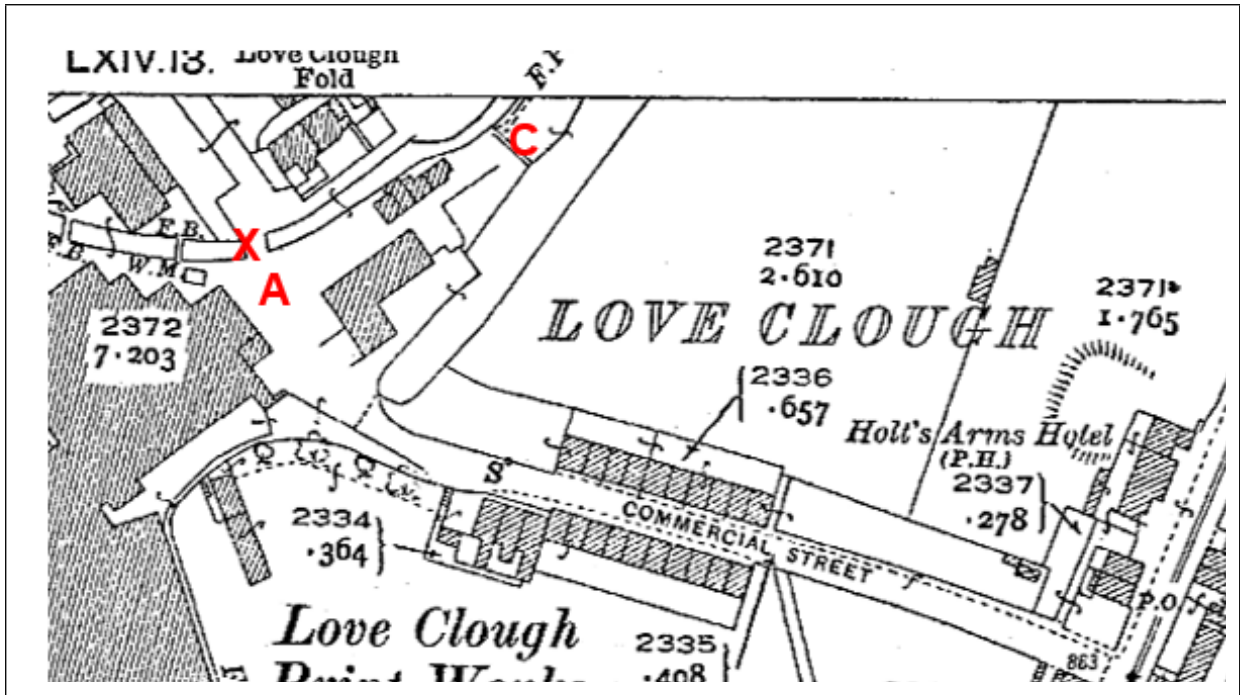
Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).

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



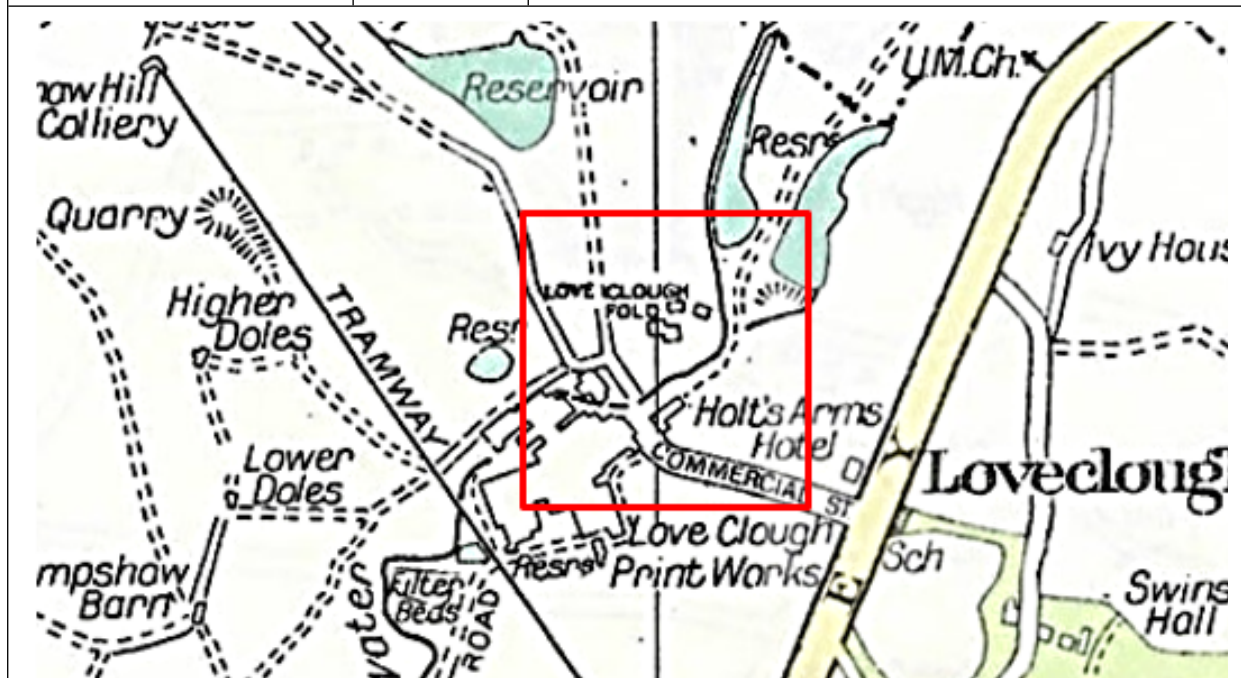


<p>Observations</p>		<p>No Finance Act maps are available in the County Records Office and it has therefore been necessary to request a copy of the map from The National Archives.</p> <p>The routes are shown across two OS 25 inch sheets. The first sheet examined, showing the route to be deleted from point X shows Limy Water as part of a large numbered plot labelled 'pt 1494'. The route to be added from point A to the edge of the map sheet north east of point C is also included in this plot.</p> <p>The quality of the second map sheet is poor and it is difficult to see the lines drawn on it as the map has been damaged. There appears to be a red line drawn along the east bank of Limy Water and the plot number is not evident. The route to be added (from just north of point C to point D is shown within a long narrow plot which included the route. No number can be seen on the map so it is not possible to be certain that this is also part of plot 1494.</p> <p>The Researcher undertaking research at the National Archives was unable to find the relevant field book entry catalogued.</p>
<p>Investigating Officer's Comments</p>		<p>It appears likely that the watercourse and land crossed by the route to be added were included as part of hereditament 1494 but no inference can be drawn with respect to the existence of public rights.</p>
<p><b>25 Inch OS Map</b></p>	<p>1930</p>	<p>Further edition of 25 inch map (surveyed 1891-92, revised in 1928 and published 1930.</p>




Observations		The route to be deleted is not shown. The route to be added is shown in the same way as it was on the earlier edition of the 25 inch map.
Investigating Officer's Comments		The route to be deleted did not exist in 1928 when the map was revised. The route to be added may have existed between point A and point C in 1928 and appeared capable of being used. The route between point C and point D (and beyond) existed and appeared to be capable of being used except in the vicinity around point C as a line closer to Limy Water appears to have been

		used.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the Atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



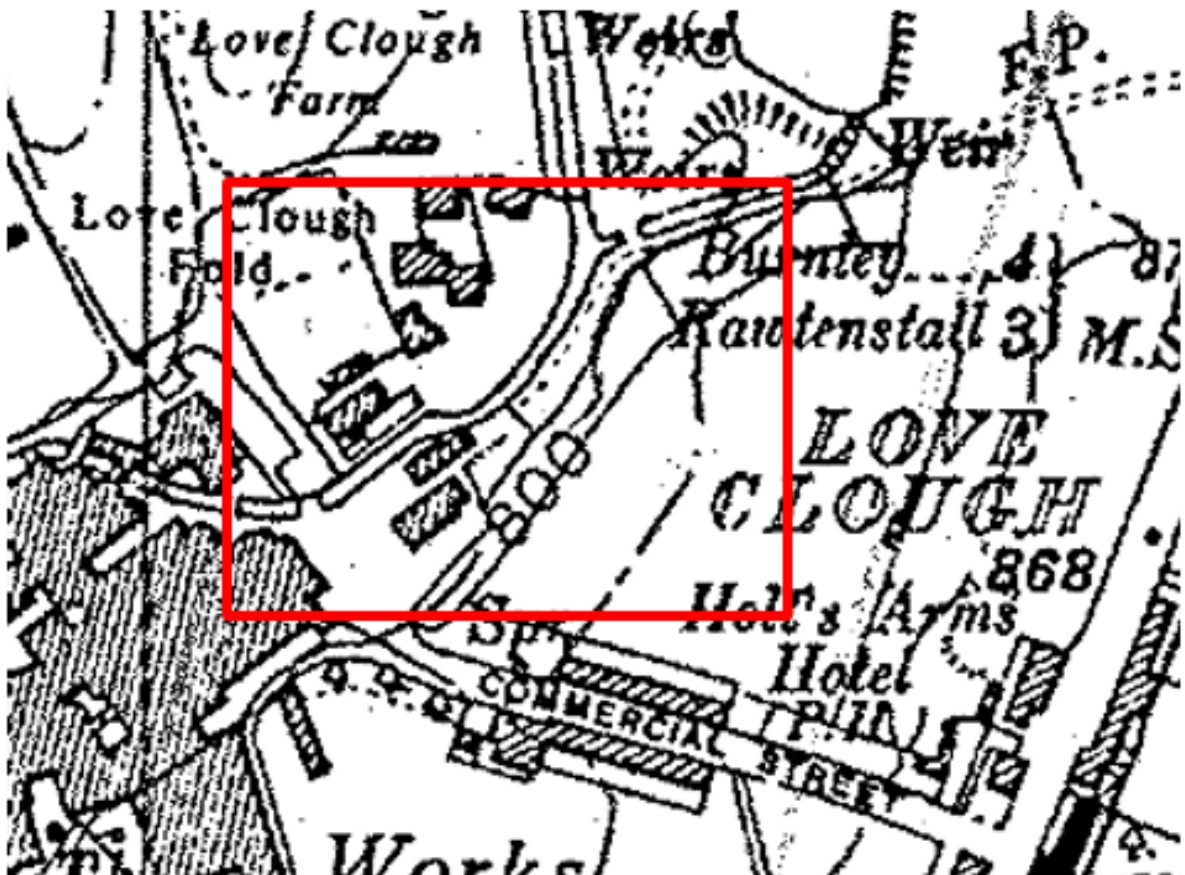
Observations		<p>Limy Water is shown but the route to be deleted is not. A route which is consistent with the route to be added is shown, within the limitations of scale, extending along the south east side of Limy Water to continue as the route now recorded as Footpath 10.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist in the 1930s.</p> <p>The route to be added existed as a substantial physical route extending from the buildings between point A and point C and is shown on a large scale map published primarily as a street atlas.</p>



<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.
		
<b>Observations</b>		<p>The 1940s aerial photographs are of variable quality and often difficult to interpret. In this particular case there appears to be a dark line extending north east from point X which looks to be the line of the watercourse (Limy Water) but there is nothing to indicate it was used as a path.</p> <p>It is not possible to determine the exact location of point A or to see clearly the buildings located between point A and point C but there does appear to be access to point C – indicated by the lighter shading. From point C a track is clearly visible to point D.</p>
<b>Investigating Officer's</b>		The route to be deleted did not exist in the

<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.

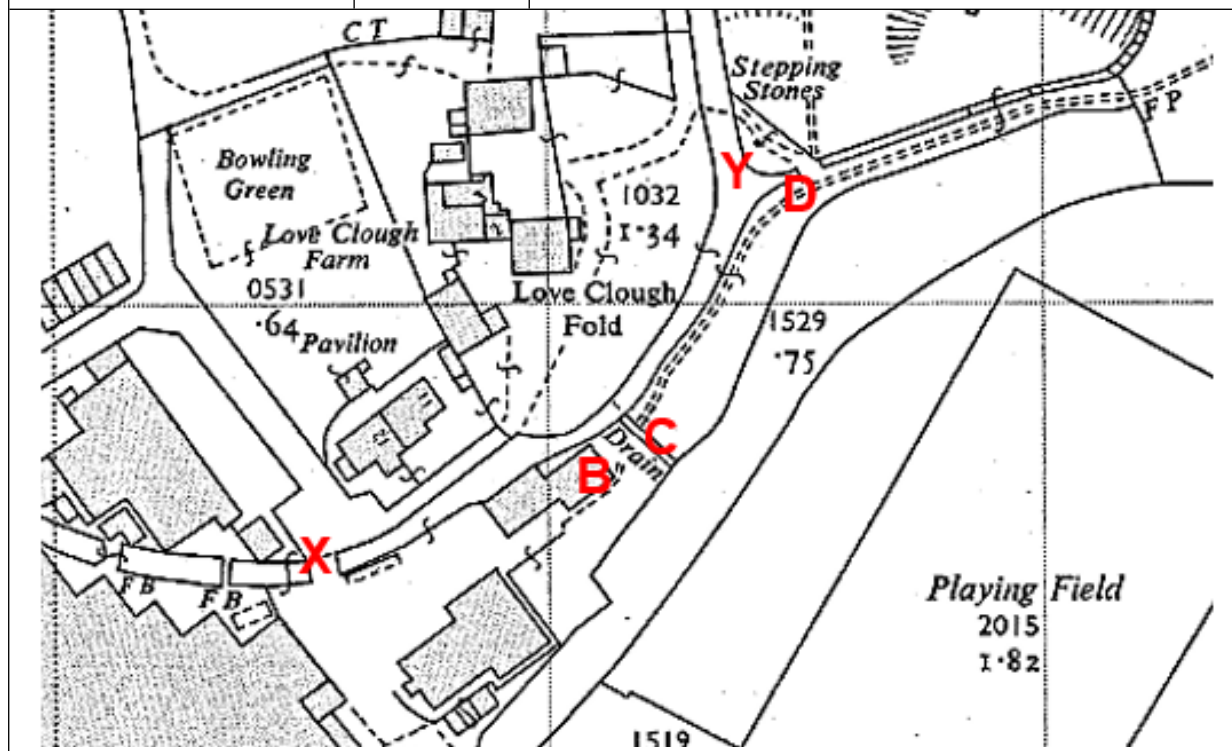
Comments		<p>1940s.</p> <p>The route to be added existed for most of its length and appears to have been in use but whether access was at point C is not clear .</p>
6 Inch OS Map	1956	<p>The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



Observations		<p>The route to be deleted is not shown. Limy Water is shown and there is no suggestion from the map that it was used by pedestrians.</p> <p>With respect to the route to be added, Point A cannot be identified but is situated within an open area between Mill buildings. Access appears to be available between the buildings to point C where a line is shown across the route. Beyond point C a single dotted line is shown denoting the physical existence of a path along the river bank through to point D (and beyond) but not through point C itself.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist when the map was revised in the 1930s.</p>

		The route to be added may have been available between point A and point C and is shown to have existed as a path between point C and point D (and beyond) for much of its length except around point C where it took a route closer to Limy Water. However, the application route around point C probably did not exist in the 1930s.
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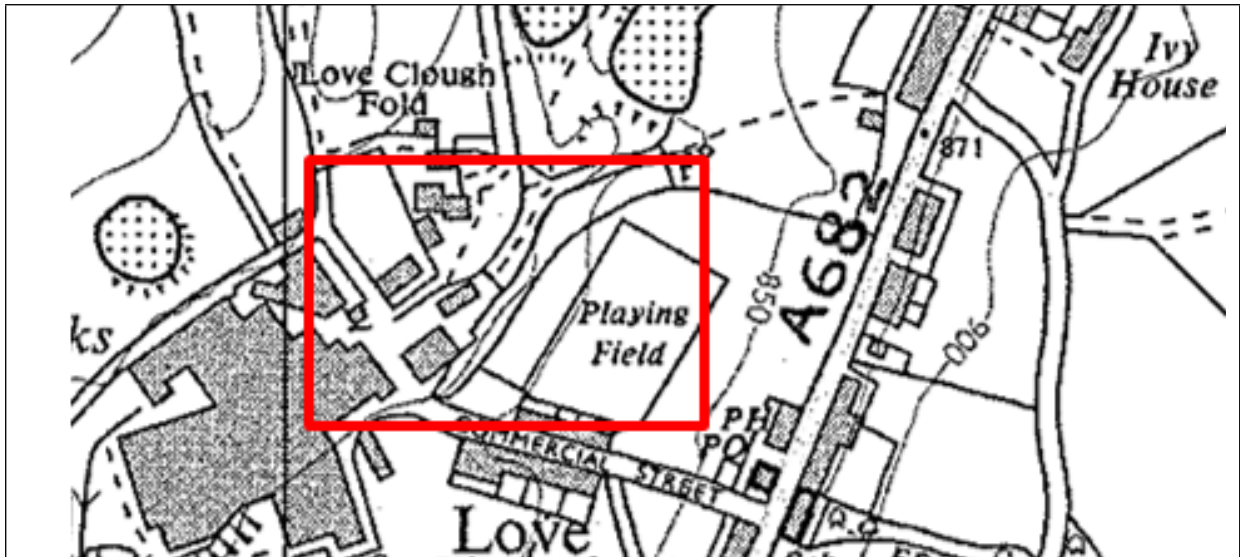
<b>1:2500 OS Map</b>	1962	Further edition of 25 inch map reconstituted from former County Series and revised in 1960 and published 1962 as National Grid Series.
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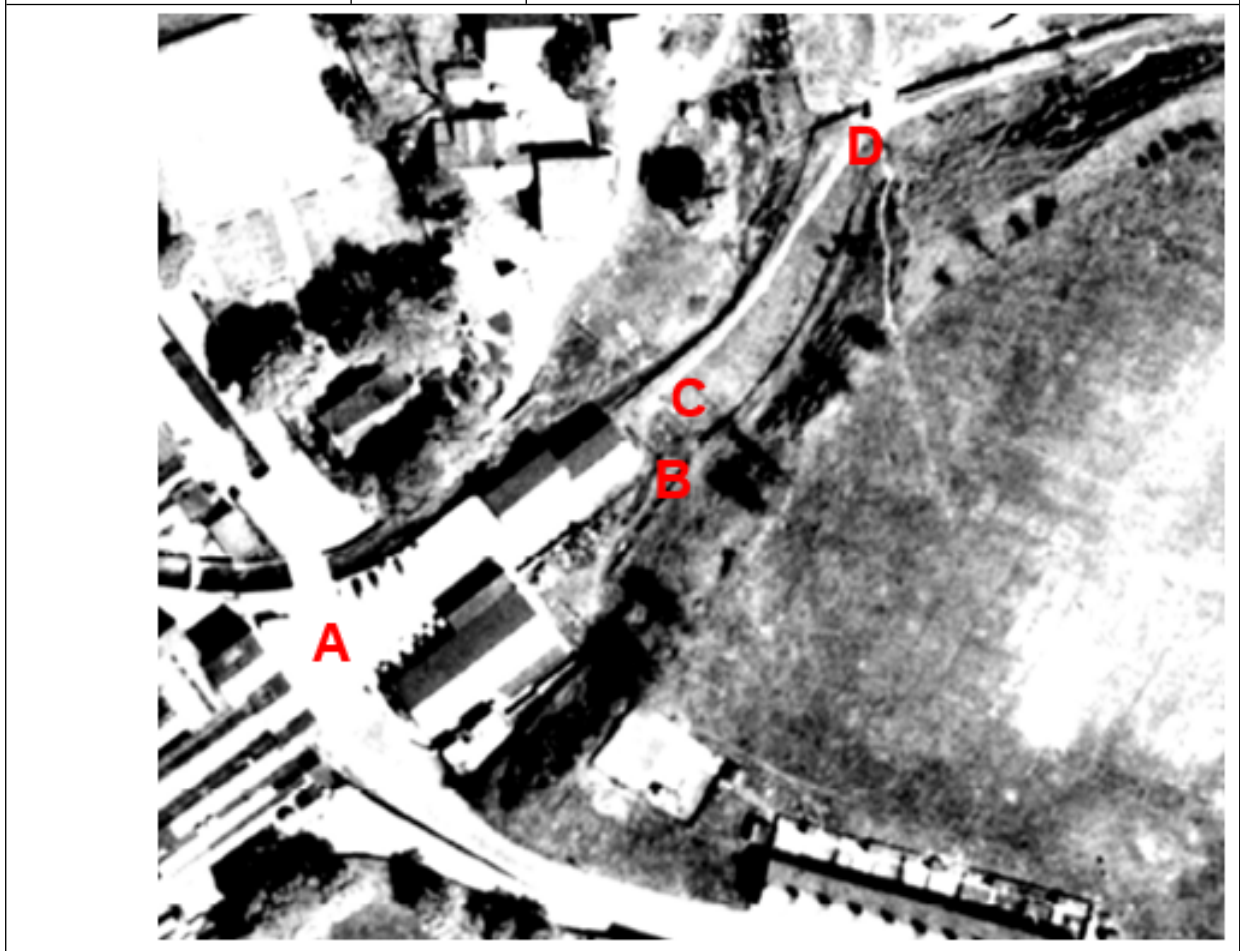
Observations		<p>The route to be deleted is not shown and there is no indication that Limy Water was in any way used by pedestrians between point X and point Y.</p> <p>The route to be added appears to be accessible from point A (unmarked) to point B from where a track is shown to the drain at point C and then from point C to point D (and beyond).</p>
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Investigating Officer's Comments		The route to be deleted did not exist in 1960. The route to be added may have been accessible between point A and point C and is shown to exist as a track which may have been capable of being used between point B and point D (and beyond).
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<b>6 inch OS Map</b>	1965	Further edition of OS 6 inch map revised 1959-61 and published 1965.
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Observations		The route to be deleted is not shown. The route to be added appears to be available from point A (unmarked) to point C and is shown between point C and point D (and beyond).
Investigating Officer's Comments		The route to be deleted did not exist when the map was revised in 1959-61. The route to be added may have existed at that time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>The photograph provides no evidence regarding the existence of the Footpath to be deleted.</p> <p>The aerial photograph clearly shows that a track or path existed on the ground between point C and point D (except that around point C the track appears to have been closer to Limy Water than the application route) although it is not possible to see whether a route was available from point A to point B. However, the application route around point C does not appear to have been in use.</p>
Investigating Officer's Comments		<p>The route to be deleted probably did not exist in 1960. The route to be added appears to have existed except around point C where the used route was closer to Limy Water.</p>
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.
		
Observations		<p>Limy Water can be seen from the bridge at point X through to point Y but the photograph provides no evidence of the existence (or not) of a public footpath along it.</p> <p>There is no visible barrier preventing access from Footpath 94 to the route to be added at point A suggesting that access may have been available onto the route and the route appears</p>

		to be accessible to point B. From point B to point D there is no visible track on the ground although the route may have been accessible along the field.
Investigating Officer's Comments		The route to be deleted probably did not exist in 2000 although a route may have been accessible along the north bank. The route to be added may have been accessible but use along the section between point B and point D was no longer of sufficient quantity to be indicated by a worn track on the ground.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS.
		
Observations		Limy Water can be seen from point X but the route to be deleted is not apparent. Access onto the route to be added may have been available at point B although it appears that some sort of fencing or gate may have been erected across it. The route between point B and point D may have been available but there is no worn track visible on the ground.

Investigating Officer's Comments		<p>The route to be deleted probably did not exist in 2010.</p> <p>It is not possible to see whether access was available along the route to be added in 2010.</p>
<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>Rawtenstall was a municipal borough in the early 1950s and a parish survey map was not compiled.</p>
<b>Draft Map</b>		<p>The Draft Maps were given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



Observations

The Draft Map for Rawtenstall has been enlarged and included in this report. It shows the route of Footpath 4 as having been drawn within the lines denoting the boundaries of Limy Water between point X and point Y and this is also the case for the continuation of Footpath 4 west of point X.

The Route to be added is not shown.

The Draft Statement which accompanies the Map describes Footpath 4 'From Burnley Road across Commercial Street round N. Side of Print Works, via Lower Doles, Hempshaw Barn, Rough Hill, N.W. to Height and then to junction with FP No. 2 on boundary.' No other particulars or limitations are listed.

Footpath 1 is described as being from the 'W. end of Commercial Street W. of Loveclough Fold' and the part along Commercial Street is shown crossed out on the Map.

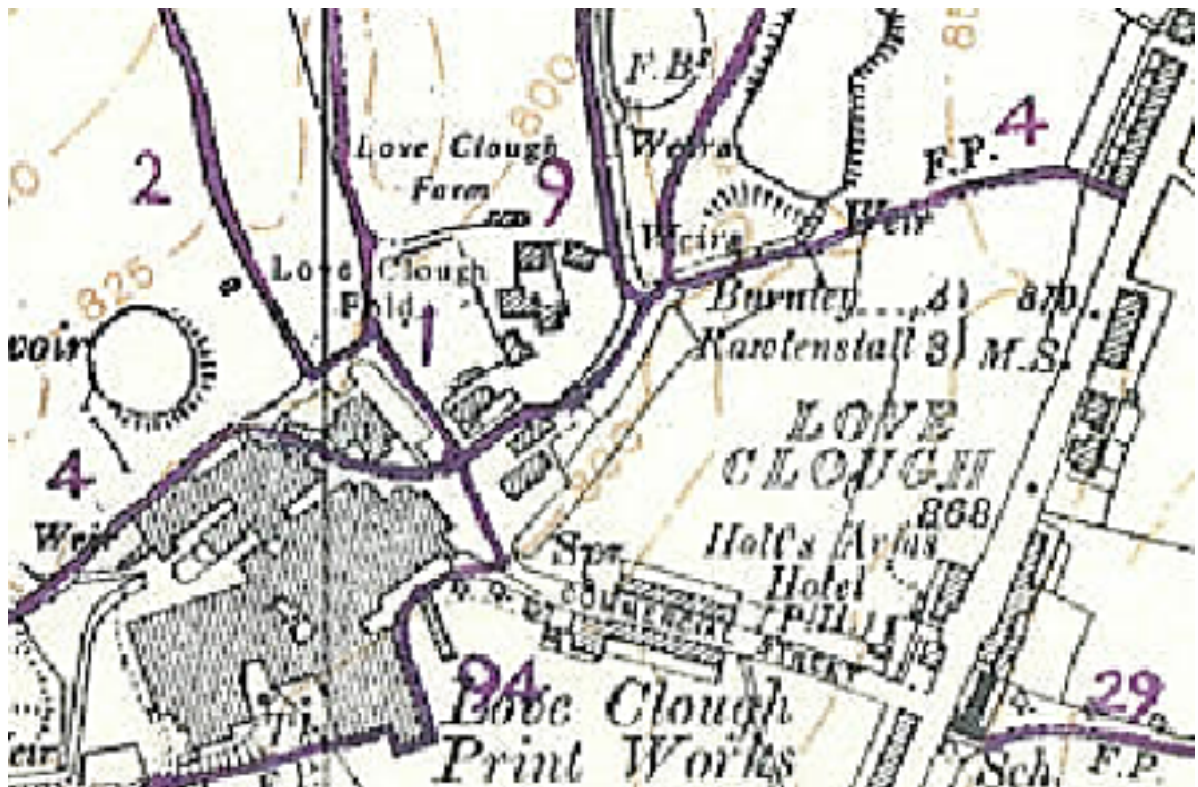
Footpath 9 is described 'From Loveclough Farm up the Limy Water to boundary.' And Footpath 10 as 'From Weir near Loveclough Farm on N.E. side of reservoir to boundary.' Footpath 94 is described as being from 'end of Commercial Street, Loveclough, to south of printworks ...'

No representations were made to the County Council in relation to the depiction of part of Footpath 4 in the watercourse or the fact that



		the route to be added was not shown.
Investigating Officer's Comments		<p>The scale of the OS map used to prepare the Draft Map (6 inch to 1 mile) and thickness of the pen used to draw the lines to denote the routes has resulted in a significant number of drafting errors occurring on maps, particularly in more built up area.</p> <p>The route to be deleted forms part of a long route (FP 4) and the section which includes the part to be deleted is described as being from Burnley Road across Commercial Street round N side of printworks. The map would not necessarily have been drawn by somebody who knew the route, and, even if they knew it, it is suggested that due to the scale of the map and the fact that the watercourse was depicted in the same way that a bounded road or track may be shown (two parallel solid lines) makes it quite likely that a mistake could have been made thinking that the watercourse was in fact a track or road. A route passing through or over such a long stretch of water would be quite uncommon and would, perhaps have been commented on within the draft statement.</p> <p>It is noted that FP 9 is described as 'Up the Limy Water' and although the first part of the route is shown in the watercourse the line is then shown to move to the west side of the watercourse to follow the track and if applying Lancashire use of the phrase it could imply that the route did not go up the actual watercourse but that it followed it upstream on an adjacent bank.</p> <p>The fact that the route to be added is not shown may suggest that it was not considered to be a public right of way or it may, if a drafting error had occurred with respect to the route of Footpath 4 suggest that the route did exist but that it was incorrectly recorded on the map.</p>
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to

be made to the Crown Court.



**Observations**

The Provisional Map was hand-drawn at the same scale as the earlier Draft Map. The routes were drawn in purple to depict public footpaths. From point X the route of Footpath 4 is shown within the watercourse as it passes the buildings on the south side of the watercourse. At approximately point C the route of Footpath 4 then appears to leave the watercourse to continue along the bank consistent with the route to be added between just north east of point C and point D.

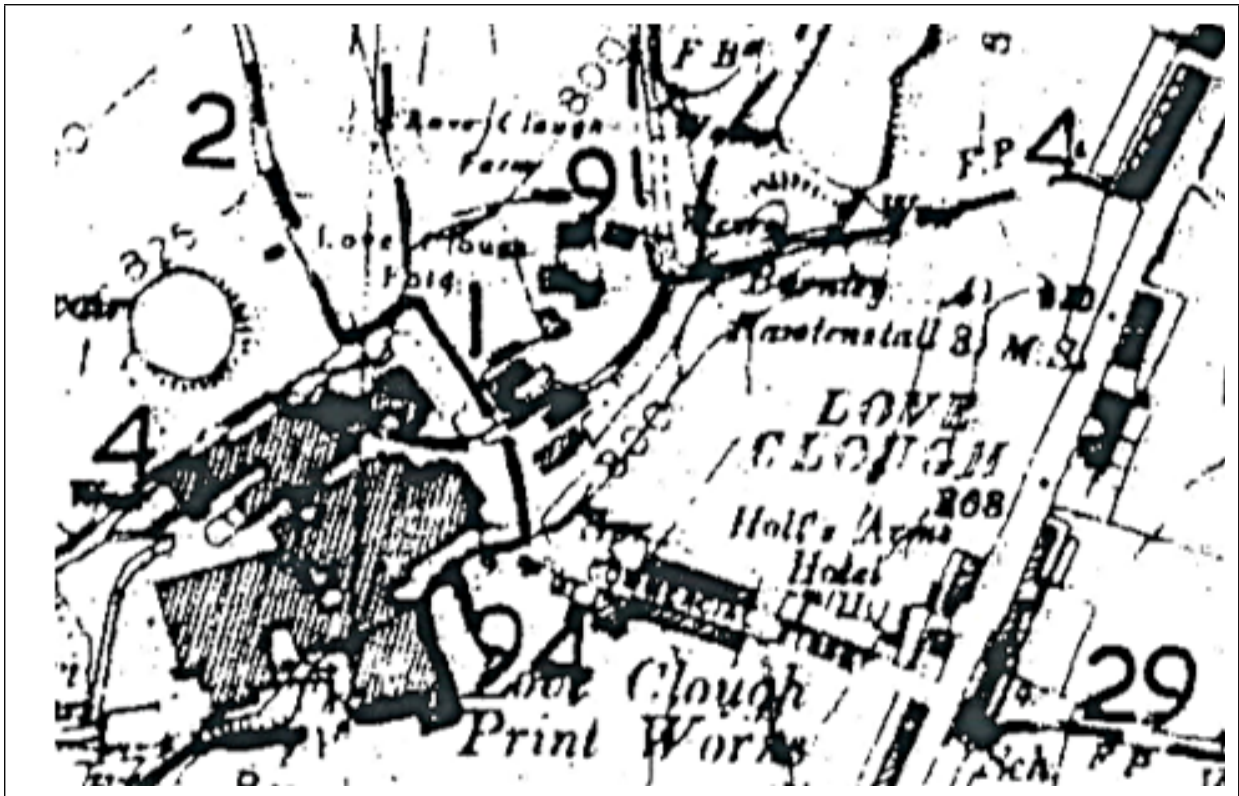
Following publication of the map there were no representations made to the County Council in relation to how Footpath 4 was shown or the fact that the route to be added between point A and north east of point C was not shown.

**The First Definitive Map and Statement**

The Provisional Map, as amended, was published as the Definitive Map in 1962.

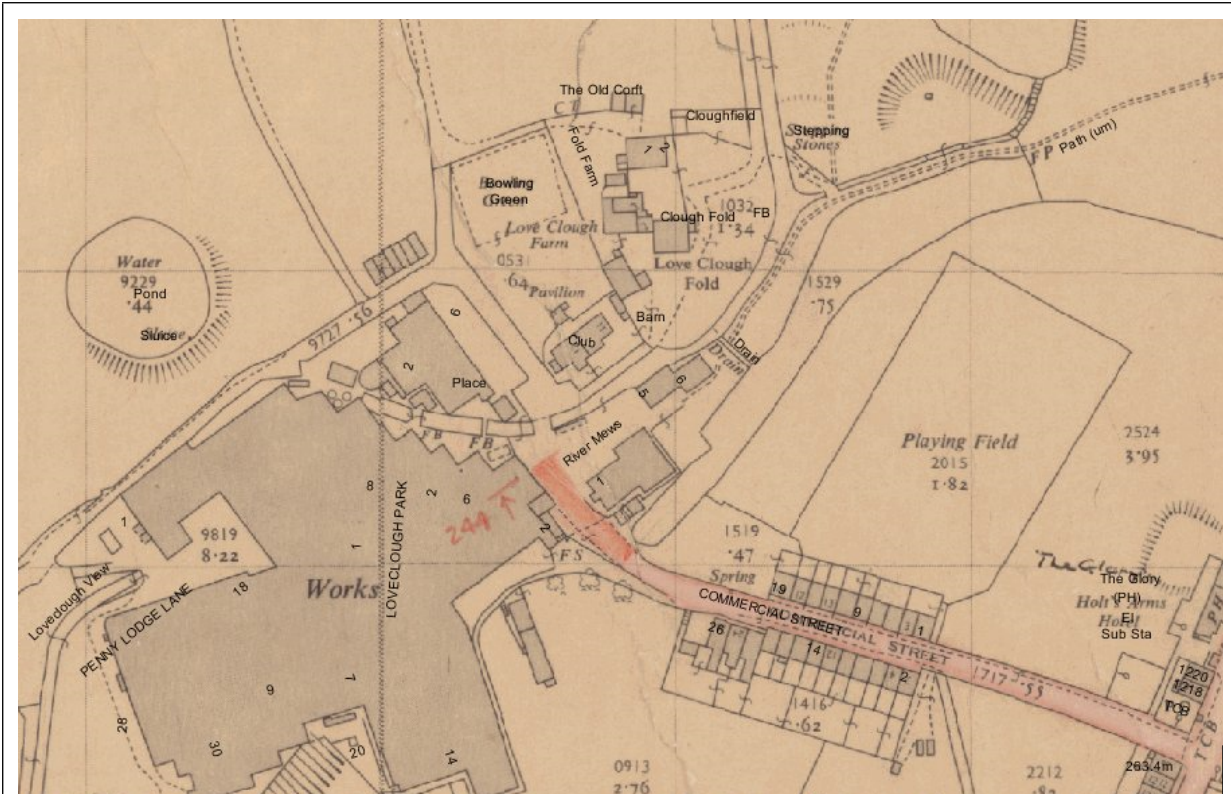


<p>Observations</p>	<p>The First Definitive Map was hand-drawn with information transferred from the Provisional Maps. The OS base maps used were at a scale of 6 inches to the mile. The routes were drawn using a thick pen which often covered up detail of field boundaries and buildings because of the width of the lines drawn. Footpath 4 is shown by a thick line within Limy Water between point X and point Y. The route to be added 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>




<p>Observations</p>		<p>The route of Footpath 4 between point X and point Y is shown by a fine dashed line. The maps were hand-drawn and copied from the First Definitive Maps. The route to be added is not shown. The Revised Definitive Statement (First Review) remained unaltered from the Draft Statement with the exception of the correction to the direction which was originally described as being 'N.W to Height' but was corrected here to read 'N.E. to Height'. Since the publication of the Revised Definitive Map (First Review) part of Footpath 4 immediately west of point X has been legally diverted under the Town and Country Planning Act to allow for development.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there are some slight inconsistencies with how the route of Footpath 4 was shown but the route, as shown within the watercourse between point X and point Y never appears to have been challenged or questioned during that time.</p> <p>The route to be added was not shown – with the exception of the Provisional Map which showed it between just north east of point C and point D and 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</p>

		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 rural 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 rural district. 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 Handover maps formed the basis of further maps of the highway maintained at public expense in the County complementing the ledger books of the List of Streets. These were updated by the District Councils on behalf of the County Council 1974-2006</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, the up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations		Neither route is shown as being publicly maintainable highway on the adoption maps .
Investigating Officer's Comments		No inference can be drawn with reference to public rights.
<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</p>

		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 Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the routes under investigation run.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
<b>Photograph submitted as part of an objection to the Definitive Map Modification Order made in 2007</b>		Photograph submitted as part of an objection to the Definitive Map Modification Order made in 2007 to add a public footpath through Loveclough Fold Farm (north of Limy Water).
		
Observations		<p>An application was originally made in 2005 for the addition of a public footpath on the north side of Limy Water passing through Love Clough Fold Farm. The application was prompted by the fact that the farm had been redeveloped into residential properties and the route claimed had been blocked. An investigation was carried out and an Order made in 2006.</p> <p>The Order received various objections including some which are relevant to the applications now under consideration. There were several submissions claiming that the Order route was</p>

		not a public footpath and that the correct route of Footpath 4 – and the route used by the public – was the route now under investigation on the south side of the watercourse. One of the objectors submitted this undated photograph onto which he has drawn what he states to be the correct route of the footpath and has circled the location of a stile.
Investigating Officer's Comments		<p>The photograph supports the user evidence submitted referring to the existence of a stile in the fence at point C and OS map evidence showing a worn track from this point.</p> <p>The fact that there are several references to existence of route to be added in 2006 suggests that use of the route was occurring during this time.</p>
<b>Information from LCC Public Rights of Way Parish Files</b>	1950 - 2016	The parish files held by the County Council were examined to see if any reference was made to either route.
Observations		<p>Queries regarding the correct alignment and recording of routes through Loveclough appear to have arisen during the early 1990s when the redevelopment of the site was taking place. At this time Rossendale Borough Council had an agreement with the County Council and they carried out public rights of way maintenance and enforcement work. They were (and still are) the relevant planning authority and would have dealt with any planning issues affecting public rights of way. Paper records held by the County Council for this period are therefore quite limited.</p> <p>There is no information on the files regarding the use of the route to be deleted until 2008 when a letter from LCC to a potential purchaser of the buildings now known as Riverbank Mews stated that we believed that Footpath 4 had been incorrectly recorded in the watercourse and could find no evidence to suggest that the watercourse had previously been covered or was used by the public on foot.</p> <p>In 2004 there is a plan and note on file referring to the route to be added being in poor condition and requiring work and that there was a proposal to redevelop the buildings adjacent to point B on the Committee plan which may require a diversion.</p>



		<p>In 2005 there is a letter to the Rossendale Section of the Pennine Paths Protection Society making reference to a claim which they were looking to submit to record a route on the south side of Limy Water connecting to Footpath 10.</p> <p>In 2008 there is further correspondence regarding the sale of the buildings/land between point A and point C. At that time the land was owned by Hurstwoods who had gone into liquidation and it was being sold for redevelopment. The prospective purchasers were informed by the County Council that there was no recorded public footpath through the site but that we were aware that a claim may be submitted.</p>
Investigating Officer's Comments		<p>During the period between 2004 and 2008 there is correspondence relating to use of the route to be added and the fact that evidence was being compiled to submit a claim to record it as a public footpath.</p> <p>There is nothing on the files to support the view that the route to be deleted was correctly recorded as Footpath 4 or that it was used by the public.</p>
<b>Photographs submitted by the Applicant</b>	February 2010	Photographs submitted by the Applicant.







Observations

Three photographs were submitted by the applicant dated February 2010 and labelled as showing the 'first blockage by Dwell Developments'.

The photographs show a wooden step-over stile in a fence line across the route to be added at point C. A yellow waymark arrow is visible on the stile pointing from point C towards point D. The stile does not appear new and the vegetation growing up around it - and through it - has died back due to the fact that the photograph was taken in February but indicates that the stile had been in existence for some time. Temporary fencing can be seen on the photographs which appears to prevent access along the route between point B and point C.

Investigating Officer's Comments		The photographs indicate that access had been provided at point C prior to 2010 and that the stile had been waymarked as a public footpath. The existence of the stile at this location is consistent with the user evidence provided in support of the application.
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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**

Landowners affected by both applications in accordance with File Nos. 804-576 and 804-577 are as follows:

- Foulsyke Farm, Wigton, Cumbria
- Dunnockshaw Farm, Burnley Road, Dunnockshaw
- Clow Farm, Manchester Road, Clowbridge
- Dwell Developments Limited, Apartment 9, 1 Joiner Street, Manchester
- Avonbraid Limited, Moltano House, 302 Regents park Road, London
- Loveclough Fold Farm, Loveclough, Rossendale

Landownership Titles indicate that Tootal Ltd sold the land in 1981. Dwell Developments purchased the land crossed by A-C in 2009. Hurstwood Developments Ltd were involved at the location by 2002 as they sold other land nearby at that time.

### **Summary**

No map or documentary evidence submitted as part of the application, or examined as part of the detailed research carried out by the County Council supports the existence of the route to be deleted.

In addition there is no evidence on site that the route physically existed in the watercourse and it appears most likely that a drafting error occurred when this part of the route numbered as Footpath 4 was recorded (drawn) on the OS base maps used in the preparation of the Definitive Map.

It is considered that the route to be deleted was wrongly recorded and that footpaths on balance existed in 1953 on the southern bank (possibly being the claimed route A-D or more likely a route using another point of access near point C) and also on the north side of limy water (as addressed in a separate application to add a footpath through Clough Fold Farm).

The map and documentary evidence examined as part of this application supports the user evidence for the route to be added between point A-B and C-D and the route through the former printworks appears to have been available from point A to point C since the late 1800s with a path marked on maps along most of the length C-

D (but nearer to Limy Water than point C) from 1893 and the existence of a stile at point C being documented in 2010. The point of time when access from point B to D became actually at point C is difficult to pin point but it would appear on the evidence to be only since 1960s.

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

### Evidence submitted by the applicant regarding the deletion of part of Footpath No.4 Rawtenstall

#### Information supplied by the applicant

A modification Order was made in 2006 on the new residents of the hamlet of Loveclough Fold (file 804421), the applicant states the reason for this was the closure of access which caused a section of the local population to feel aggrieved, believing (wrongly) that they had a full right to walk through the area, although its status as private ground was now implemented by the new owners, and the access previously freely given was now denied, which was the owner's right.

It is stated the history of the footpaths in this area were dominated by the Loveclough Dying and Bleaching Works Circa 1750, these can be seen on maps published from 1849. It can be seen from the maps that the factory and topography of the area has changed over the years, land was acquired when the factory was expanded and this included the land which Loveclough Fold nestles on, this increased water usage and 4 lodges were built and this altered the topography of the area particularly the South East bank of the Limey River. The river bank was built up with a wall some 2 metres high which is still in place today, the original construction was to facilitate the building of the lodges but had the spin-off effect of providing an excellent footpath along the river bank.

The applicant refers to the definitive path line which takes the line up the River Limey from the bridge in Commercial Street to the point marked on the footbridge, but the LCC Mario Map and the 2006 Order Map does not show this.

The applicant has provided copies of maps dated 1849, 1893, 1895, 1913, 1931, 1947 and 1962, these maps have been referred to above in the Planning and Environment Observations.

Reference is made to the drawing of the definitive map, it is stated that the cartographer misunderstood and created a modern path that is at odds with the evidence presented. There can be no doubt that the line of the path placed in the river was not based on any previous line as the situation with the river since the mid-1700s was simply not compatible for anyone to comprehend walking along the river bed.

Obtaining physical evidence that the path in the river existed in the past is simply impossible as there is none.

An extract from an e-mail from the County Council has been provided, the applicant quotes 'There is actually a bridge which, to access the river, would involve an 8 to 10

foot jump from the bridge to get into the river, causing significant injury, even loss of life'. The applicant states it is this evidence along with the fact that during the last 60 years of this path's existence, it has at no time been signposted or any attempt made to create safe access into the river, and warning notices were conspicuous by their absence advising walkers of the risk associated with using the path. That brings this path's validity into question, an extract of the Council's Committee report for the making of the Order of 804/421 has also been provided.

The applicant states that no maintenance has ever taken place by LCC regarding this footpath such as signposting, maintain the surface, maintaining the bridges etc.

The applicant also states it must have been obvious from an early stage that a mistake had been made and yet for over half a century nothing has been done to correct it. And that it is abundantly clear that the placement of the path in the river was an anomaly which clearly should have had attention drawn to it, and action taken to correct the definitive map.

The applicant has supplied copies of the following documents to support his application:

- Selected documentation from LCC Legal Department
- Copies of the relevant Definitive Maps
- Copies of Maps from LCC
- Maps from the years of 1849, 1893, 1895, 1913, 1931, 1947 and 1962
- Photographs of the route

Evidence submitted by the applicant regarding the addition of a Public Footpath from Footpath 10 Rawtenstall to Commercial Street

The applicant states the purpose of this application is to put right a wrong and refers to the Committee report for the 804/421 matter, and states that the evidence extracted from this document must be presumed that, as it originates from LCC's legal department, the facts have been checked and therefore can be taken as accurate and are therefore submitted as evidence.

The 804/421 modification Order was made in 2006 on Loveclough Fold. The reason being the closure of access which caused a section of the local population to feel aggrieved believing (wrongly) that they had a full right to walk through the area, although its status as private ground was now implemented by the new owners, and the access freely given was now denied, which was the owners' right.

Copies of maps from the years of 1893, 1895, 1913, 1931, 1947 and 1962 have been provided with this application, these maps have been referred to above in the Planning and Environment Observations.

Aerial photographs of the years of 1940 and 1960 have also been provided, again these have been referred to above in the Planning and Environment Observations.

The applicant states that the problem with the footpath did not come to prominence until the factory closed in 1980, and the land it occupied was subsequently sold off.

Public access to the North West bank into and through the hamlet had been in use for over 400 years, although strangely no public right of way was ever established. Access would seem to have been on a (very liberal) permissive basis by the main owners (and their predecessors) Tootal Ltd. This came to an end when the factory closed and the whole area was sold to private development. This of course left the path along the South East bank as the only viable path through the area, except for the small matter of its status.

Since the development work started on both banks of the river three attempts have been made to disrupt the customary usage of the footpath. The first by Hurstwood and twice by Dwell Developments, the current owners of the site, of what once was the site of offices and workshops originally belonging to Tootal Ltd, the original owners of the area.

When Hurstwood owned the site, the site manager attempted to close the path by intimidation and blocking the path with an old caravan in such a way as to dissuade people from using it. It did not work as dog walkers and ramblers continued to access the stile from its westerly opening, across the stile – and with it the subterranean drain shown on the OS map – and use the footpath network beyond and vice versa.

The second interruption to the public's right to usage of the path was when Dwell Developments took over the site from Hurstwood. Work began to convert the more northerly set of workshops to semi-detached residential properties. Those buildings have remained in that state since 2011. Also it was during this time that the path was blocked for the second time when ancillary ground work took place to the north east of the building. This resulted in the destruction of the boundary hedgerow and fence, including the stile.

The stile poses a conundrum and is a microcosm of the overall footpath situation in the area. Clearly it did exist and the remains of the stile are in the possession of the LVRA. LCC would not put in a signpost on the path (from Commercial Street) stating "that the footpath was a definitive path". But if the path was not definitive why was it furnished with a stile and footpath markers and not a signpost. The stile gave the impression of the path being the definitive path through the area (which everyone believed).

After removing the screens Dwell Developments later constructed a post and wire fence which was installed in the summer of 2012 and walkers again started to use the path shortly after this time, although the stile had been removed. They just stride over the fence erected by Dwell and the path was put back in regular use. Just prior to completion of this modification order the path was "blocked" by Dwell for the second time (Winter 2015-2016) this time with a substantial wooden fence, Although a "gap" seems to have been left at the end which walkers have taken advantage of and are thus continuing to use the path.

The applicant makes the following points:

- The accompanying modification order clearly shows that the placement of the definitive path Rawtenstall No.4 in the River Limey was a mistake of some magnitude which has been left unattended for far too long. The impact of the

placement of the definitive path in the river has had serious repercussions in the recent past and is still having not only on walkers but also on the lives of the good residents of the hamlet of Loveclough Fold today.

- The section of footpath along the river bank does not stand in isolation. It is part of a group of paths running from Crawshawbooth and the local area to the historic hamlet of Gambleside near Clowbridge and paths to the North, and thus provides vital and historic link along the valley and vice versa. Indeed the path acts as a very important footpath junction connecting (as it always has done) Footpath No.94, 1, 2 and the continuation of Footpath No.4 Rawtenstall to the South at Commercial Street at Loveclough Fold, and Footpaths No. 9, 10 and the continuation of Footpath No.4 Rawtenstall to the north of Loveclough Fold. The path in physical terms may only be short but its importance to the area cannot be emphasised enough.
- For decades walkers have followed the line of the path shown on the OS map of the area which has always shown the path on the South East bank of the river and running through the courtyard of what it is today the property of Dwell Developments. Having this path as the definitive path would marry up with the OS map of the area and bring a settlement to the footpath situation in the area, and finally do away with the situation that has existed for far too long of "definitive path to be or not to be that is the question".
- Indeed the loss of this path would just add to the overall shambles that has prevailed in the area over the footpath situation since 1950, forcing walkers to make a substantive detour via: Footpath No.4 or Commercial Street and along Burnley Road and vice versa, to reach paths to the North or South, causing unnecessary inconvenience, not to mention the loss of an ancient track.
- Having the definitive path running along the bank of the river and through the courtyard of Dwells Development would also help to protect the path's status whatever may happen in future to the area owned currently by Dwell. This path's existence since the 1980s has relied on a wing and a prayer; it is only the dogged determination of local people and walkers that have maintained its use and this should not be the case. As stated in the accompanying modification order the line of the definitive path ultimately belonged to Lancashire County Council who would seem to have been in some neglect of its statutory duties to provide a satisfactory path through the area. This now needs to be addressed.

The extracts i from the committee report of 2006 highlighted by the applicant is said to be evidence for this application:

1. The next map examined was the first edition of the 25-inch map published in 1893 – there is a collection of buildings on the opposite side of the brook (the South East Bank) with a row of double pecked lines signifying a path or track of some sort, leading from the far north-eastern side of the buildings along the side of the brook.
2. Riley Bros. Submit that the Tootal Print Works initially owned the land at Loveclough Fold, along with the dwellings: J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development.



In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes.

3. The Rileys state that Public Footpath No.4 has always been through the factory yard, in-between the two buildings, over a stile along the riverside and turning right up the hillside or between the lodges as per Public Footpath No.10, land owned by Rileys. There are stiles and footpath signs, which were installed by the Council. However these signs are poorly marked from Commercial Street. They are, however clearly marked from the stile to the rear of the buildings, marked as drain on Public Footpath No.4.
4. A map was attached to the gate showing the position of Public Footpath No.4. this too, was thrown into the river, this time by the occupier of the caravan who freely admitted as much. He said "I don't want people walking past my window". He also stated that Hurstwood did not want the footpath through the area where they intended to construct 'expensive houses', as it would reduce the value of the site.
5. On his second visit the Footpath officer confirmed that Loveclough Fold was not a Public footpath, and told the occupier of the caravan to take the fences down as they were blocking Public Footpath No.4. He took the fences down for a short time only, and then re-instated them within a few days.
6. In August 2004 Rossendale Borough Council were contacted regarding the failure to maintain the footpath, even though they were aware that an employee of Hurstwoods had deliberately blocked the access. A representative of Rossendale Borough Council came down to see residents of Loveclough Fold regarding the matter of the footpath access (or lack of it). He viewed the site, returned to the office, checked the relevant maps, and confirmed that the footpath and access is on the opposite side of the river, between the buildings of Hurstwood Developments.
7. It is submitted that around 1997, a sign for the Rossendale Way was put on Public Footpath No.4 on the stile behind the works buildings by Lancashire County Council, though this is not visible from Commercial Street.
8. The search completed by solicitors showed that a footpath existed on the other side of the river (Public Footpath No.4)

The applicant has also provided copies of the following in support of this application:

- An extract from the 804/421 committee report
- A copy of the 804/421 Order plan
- Copies of Aerial Photographs
- Copy of OS First edition
- Copy of OS 6" published 1895
- Copy of OS 6" Published 1913
- Copy of OS 6" Published 1928-1931
- Copy of OS 6" Published 1938-1947
- Copy of OS dated 1962
- Photographs of first blockage by Dwell Developments February 2010
- Various photographs of the route
- Photographs of latest blockage by Dwell Developments 2016

The applicant has also provided 55 user evidence forms in support of the route, 2 of these forms have been discarded as they are incomplete, the information of the other 53 forms is set out below:

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

1.5 years(2) 3 years(19) 5 years(2) 6 years(1) 8.5 years(1) 9 years(1) 14 years(1)  
20 years(2) 27 years(2) 30 years(2) 40 years(3) 45 years(1) 48 years(1) 50 years(1)  
54 years(1) 55 years(3) 59 years(2) 60 years(4) 63 years(1) 67 years(1) 70 years(1)  
80 years(1)

52 users have used this route on foot, 1 user did not provide a response to this question. The years in which the users have used the route varies:

1930-1970(1) 1948-1975(1) 1950s-1960s & 1982-2006(1) 1954-2010(1)  
1954-1967 & 1955-2015(1) 1958-1999(1) 1960-1980(1) 1960-1990(1) 1960-2015(1)  
1960s-1970s & 2010-2015(1) 1961-2002(1) 1970-1980(1) 1972-1990s(1)  
1975-2015(1) 1977-2015(1) 1980s-1990s(1) 1986-2015(1) 1988-2015(2)  
1989-2008(1) 1995-2015(1) 2000-2001(1) 2005-2015(1) 2006-2010(1) 2009-2015(2)  
2011-2012(1) 2012(19) 2013-2015(2) other users stated 'over many years', 'most years since 1990', 'most of the time', 'up until they cut it off' and one user who didn't provide a response. The 19 who used the route in 2012 appear to have done so just in that year.

The main places to users where going to and from include Commercial Street to the countryside, for a local walk, Clowbridge reservoir from Goodshaw Fold, from Loveclough to A682, Rough Hill to various destinations, home to the forestry, home to Hameldon, around the local lodges, to and from the CPA club, to and from Loveclough print works, to the fisheries and home to the moors.

The main purposes for the users using this route are for recreation and leisure, for pleasure, to access various walks, dog walking, for training runs and to get to work.

The times per year in which the users use the route also vary, from once to 2-3 times, 10-40 times, 50+, twice per week, 100+ and daily.

One user has used part of this route on horseback between the years of 1992-1998 and used it once per week. Another user has used the route on a tractor from the farm and they used it from being a child to a teenager very often in the summer.

49 users have seen other walkers / runners on the route, one user has seen others using the route on a tractor. The years in which the users saw others using the route vary but mainly throughout the time they used the route.

42 users agree the route has always run over the same line, 1 user responded with 'pretty much', 4 users never provided a response to this question, 1 user states 'yes although I as well as others have used an alternative route', another user states 'one time on west side of river then changed to east side, stile over fence at north side of refurbished buildings', 1 user states 'I used to use footpath 4 from the main road and then follow the claimed route, over a stile into the factory yard between the offices and the works garage', another user states 'I assume so, I only know of it because it was pointed out to me as an alternative to the path on the north west side of the river which I had used up to 2008 and preferable to walking in the river which was

indicated on the LCC map pinned on the fence', another user states 'not to my knowledge' but doesn't provide any further details.

When asked if there are any stiles/gates/fences along the route, 30 users state there is a stile, 12 other users state 'yes' but didn't provide any details, 3 users mention a fence, 1 user mentions a gate, 1 user refers to general obstructions, 2 users state 'no' to this question and 3 users did not provide a response to this question.

1 user mentions a gate was erected and was blocked by the developer.

20 users were prevented access by the low fence where the stile should have been, 1 user was not prevented access by the low fence, 1 user states the stile was blocked in August 2012 and in October 2012 it was not accessible, another user was only prevented when the houses were built, 1 user was prevented when Hurstwood blocked the footpath, another user was prevented by the developer but does not say who this developer was, 1 user was prevented in 1980, 3 users climbed over the fence, 17 users were not prevented, 2 users were prevented but did not provide details and 4 users did not provide an answer to this question.

Of those users whose use goes back to the 1960s and before into the 1950s or even 1948 most refer to a stile at point C but some do not recall a stile. One user since the 1960s refers to the stile being introduced

2 users worked for John Bridge on Clough Farm, they never received any instructions and one user states 'as kids we were allowed to roam free'. None of the users have ever been a tenant of the land in question.

1 user was stopped by a tenant of the new houses and was told it was not a Public Right of Way, the user did not turn back and continued to use the route. 1 user had heard that Hurstwood blocked the footpath, and other user heard Hurstwood installed a caravan on site, the occupant of which some found intimidating, another user had heard of some acquaintances being stopped from going through, and another users had heard of people being stopped by residents. 1 other user has also heard of others being stopped from using the route but did not provide any further details. 1 user was told by a woman that builder had had the right of way stopped this was in August 2012.

2 users have seen notices or signs along the route but didn't provide any details, another users stated that the stile was marked with LCC way marker signs. None of the users have ever asked permission to use the way, however 1 user has spoken to landowners when crossing the land.

After completing the user evidence forms, user are asked to provide any further information they think is necessary, this information is set out below:

- This path has been used all of my life
- This footpath was in existence along the banks of Limey Water long before the property was constructed

- The alternative route was also used until the owner of the land fenced it off. Though they have installed a gate at each end of the garden, both are padlocked
- Some years ago after someone spotted the poor mapping of the route, (it was shown on the river bed) closed the road erected fences and laid down grass. I have continued to use it as path on other side of river was blocked by Hurstwood building works
- It is obvious that somewhere along the history of this map, that an error has occurred in the ordnance of this map. The footpath has never gone through the middle of the stream (Limey Water)
- The path is part of a fairly easy walking route that is available for all abilities to use and takes in some interesting and varied scenery
- On behalf of Rossendale Roamers we would like the stile to be reinstated and the route made an official right of way thereby completing a route between Crawshawbooth and Clowbridge
- I have used this footpath most often in the 1970s, particularly during the summer to access the bottom lodge for picnics and leisure with friends
- I have used this footpath many times over the years from the 1960s up to the 90s when I haven't used it just as much but still want to access this with family and grandchildren
- I have used this path regularly for many years as a route towards Hameldon Hill and Burnley. It has always been considered a right of way

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 for the deletion

footpath recorded in watercourse where no evidence of point of entry or use

Evidence of alternative route (s) at the time it was first recorded

Likely error following line of watercourse

Against Making an Order to delete

possibility of a footpath up a watercourse

No challenge to how it was recorded in 1953

Evidence of alternative route(s) based on low user evidence numbers and on south side is issue of whether an access north of point C was used or whether stile at point C existed that early

In support of Making an Order for addition of route A-D

User evidence

Corroboration by mapping and documentary evidence

Reported view of Owner of C-D

No action by owners until possibly 1990s or later

## Against Making an Order for addition of route A-D

The corroboration from mapping and documentary evidence may not assist corroborating access at the boundary at point C until possibly 1960s  
Action by developer in possibly 1990s possibly indicates sufficient lack of intention to dedicate – date unclear

## Conclusion

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

### Looking first at the claim to delete a route from the definitive map

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the route to be deleted (X-Y on the plan attached) was first shown on the Definitive Map with a relevant date of 1953 and so the error needs to be shown to have been made in 1953.

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

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

One such evidence of error could be sufficient evidence of a correct route. In caselaw (Leicestershire case) Collins J held that in these circumstances, “it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive 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 considers whether the claimed section A-D is already a footpath at law and should be added to the Definitive Map and then whether this means this or another route was the correct route of the footpath network in 1953 and therefore the actual footpath route was recorded as this route on the Definitive Map in error in 1953.

Committee may find that there is sufficient evidence of A-D being a footpath in law or another footpath exists such that its/their existence is on balance the proof of the error in recording X-Y but if the committee 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 unless there is further sufficient evidence that an error was made.

Committee is there advised to consider whether A-D is already a footpath in law – on balance of probability – satisfying the criteria in S31 Highways Act or dedication able to be inferred at common law?

#### Evidence for A-D being already a footpath in law

Considering first inference of dedication at common law.

There is some indication of a route available in the mapping and documentary evidence although the access was near point C rather than at point C prior to possibly the 1960s. No document available however is sufficient to indicate public use. The circumstances from which to infer dedication therefore will be the user evidence and how landowners took no action such that their intention to dedicate can be inferred. The owners of C-D , the Rileys would seem to have indicated their acquiescence of this being a public route and when the printworks, Tootal Ltd, owned the land where the route ran until the early 1980s they seem to have taken no action and a stile was even provided at some point in time by presumably the printworks or the farm owners.

Evidence of sufficient use for sufficient period of years with no action taken by owners is arguably the evidence from which to indicate inference of dedication at common law by owners prior to the developers' purchase of A-C.

Considering the criteria for deemed dedication from use under S31 Highways Act The deeming of dedication needs to consider 20 years use back from a calling into question of the route. In this matter the removal of the stile and the construction of a post and wire fence in 2012 would be a calling into question and the use considered 1992-2012 but within these twenty years, although use continues, there is the action by Hurstwood Developments Ltd. There is no clear year evidenced for when their employee on site takes some action to block access by fencing and even by a caravan and no clear evidence that this action was authorised by the owners of the land. The Applicant assesses the action as not working to stop public access. It is however referred to and recalled by several users. It may be that this action was sufficient to call the use of the way into question. The difficulty is to establish the year of this calling in. This is not possible on the information to hand but would appear likely to have been in the 1990s. Further interviews with users will need to clarify this.

Whichever year it was and assuming it was on Hurstwood authority it is suggested that on balance this action first brought this route into question. Looking carefully at the user evidence it is clear that there is sufficient user from the 70s 80s and 90s to show the twenty years user required as of right without interruption of whichever years the relevant twenty years are.

Looking at the information and evidence it is suggested that the Committee may consider that the criteria of S31 can be satisfied in this matter on balance in particular with a little more clarity sought for the date of the calling into question and dedication able to be deemed to have occurred of a footpath along the line A-B-C-D

Does the existence of A-D or other evidence sufficiently prove X-Y is a footpath line recorded in error in 1953?

A previous application for an extinguishment and creation order near to this location was considered by Cttee in Feb 2006 it was reported that "the definitive route has been recorded in the watercourse .....and is unwalkable throughout its full length. The watercourse is bounded on either side by man-made banking which appears to date back to the time when the land formed part of a factory site, when the original Definitive Map was being prepared. There is no evidence that the watercourse has changed its alignment since the Definitive Map was drawn.

It is not known why part of Public Footpath No. 4, Rawtenstall, was recorded as running down the water course, but the Environment Director accepts that it is possible that the public historically used a route either to the north or the south of the watercourse and that the route recorded on the Definitive Map was incorrect.

In dealing with this matter, the Environment Director has looked at all of the maps prepared as part of the Definitive Map procedure, together with old Ordnance Survey maps and aerial photographs. It has not been possible to determine where people historically walked and the Environment Director could, therefore, not instigate a Definitive Map Modification Order to be made on the basis that the footpath was recorded incorrectly and should be recorded along a different route." The extinguishment and creation Orders were made and confirmed subsequently

Whilst the Environment Director in February 2006 had not got any user evidence, in September 2006 Committee considered a report regarding a claim for a footpath on the north side of Limy Water at this location. Committee also considered a further report in July 2015 regarding the line of this footpath which was claimed to already exist in law on the northern side of the watercourse and Committee were satisfied that there was sufficient evidence that a footpath on a line to the north of the watercourse did subsist on balance and an Order was to be made. The Order has not yet completed its procedure and is not yet able to be confirmed and may yet not satisfy the test for confirmation.

Committee has therefore already decided that there is sufficient evidence to record a footpath on the northern side and the evidence was largely user evidence with some corroboration from mapping and aerial photographs. The sufficiency of evidence may have come from user in more modern decades but some of that user evidence did date back to 1953 and it is arguable that this route on the northern side

could have been the footpath already in existence and the footpath intended to be recorded when the Definitive Map maker drew the route of FP4 in the watercourse..

In considering the line A-D as claimed it is suggested above that Committee may consider that the evidence is sufficient for it to be a footpath in law. Whether it existed on the line at point C in 1953 is difficult to assess on the information to hand but even if point C was not such a set point of access, in earlier years it is possible that there was access slightly further north and there may have been a public footpath on the south side of the Limy Water also in 1953. There is a small amount of user evidence dating back to 1953.

It seems that there is possible evidence of a route on the northern side and/or also the southern side of the watercourse and the existence of at least one of them in 1953 would explain the wish to record a route at the location. Poor mapping skills seem to have lead to the route being put into the watercourse itself rather than on one or both of the banks. It is advised that Committee may wish to consider that the error is proved on balance by the existence of alternative route or routes.

If unsure that the routes on either side of the watercourse were footpaths by 1953 Committee may consider that there is evidence that there was not physically a footpath in the watercourse and that an error was made to record one there irrespective of the possibility of there already being alternative route or routes already being footpaths in 1953. The section recorded in the water used to extend further south than point X and if walked along the footpath user would have passed under various old footbridges and other bridges at the printworks. This may have been unlikely.

#### Summary

Taking all the relevant evidence into account about line A-B-C-D it is suggested that Committee may be satisfied that there is sufficient evidence for an Order to be made to add the route A-D to the Definitive Map as being already a footpath in law and that there is sufficient evidence to delete X-Y from the map by way of an Order.

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

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

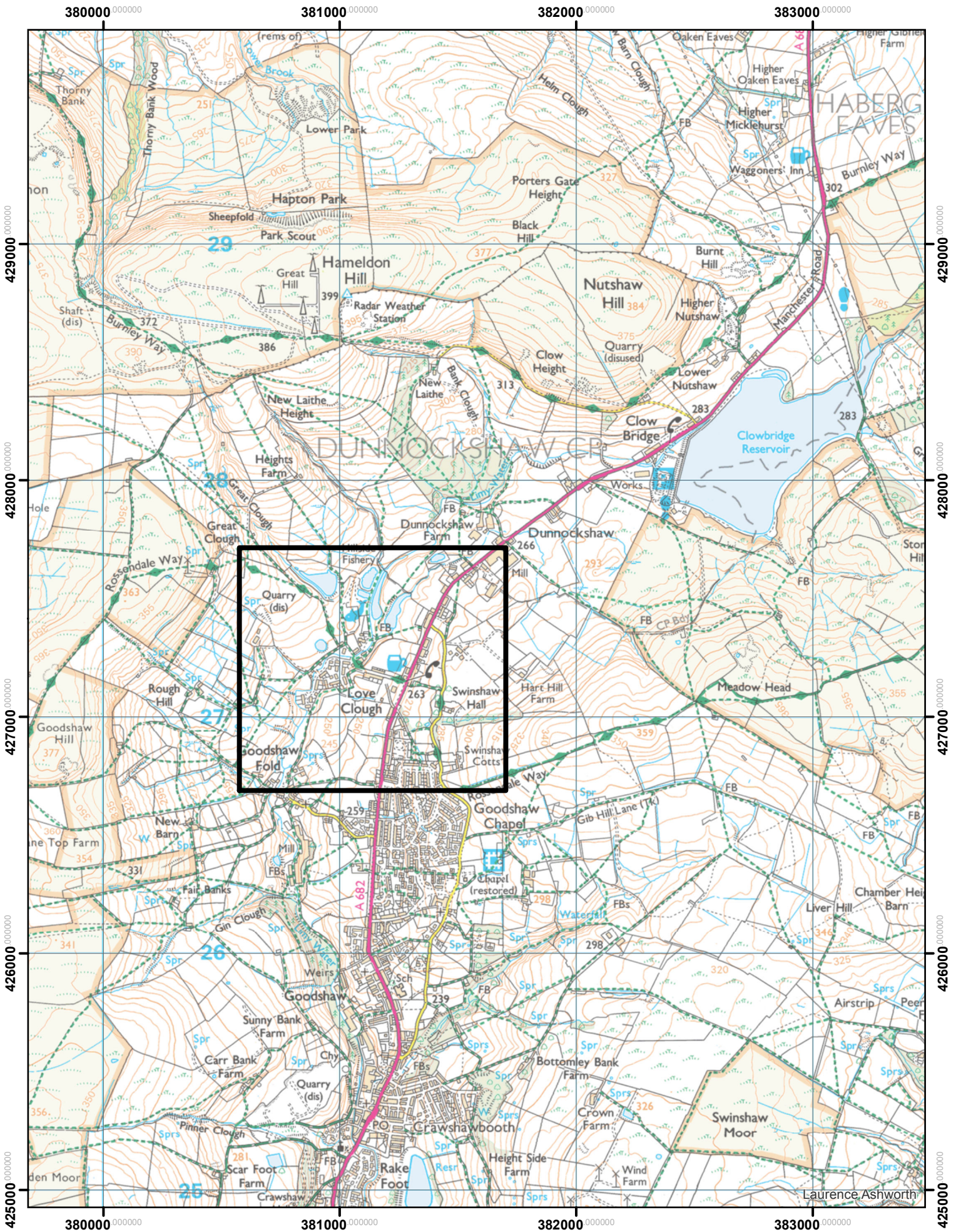
##### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-576 and 804-577	Various	Jane Turner, 01772 532813, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A





**Andrew Mullaney**  
Head of Planning and Environment

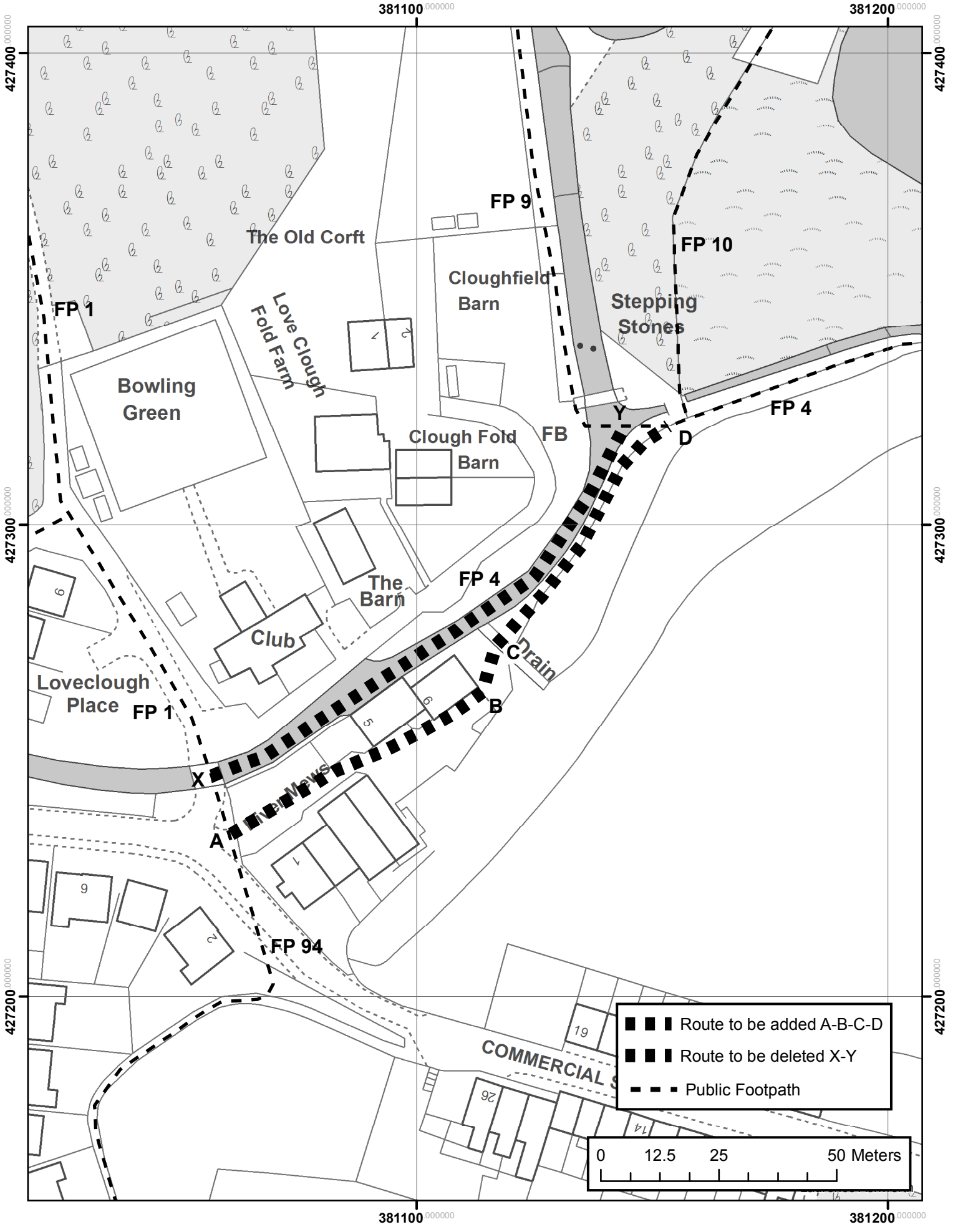
**Wildlife and Countryside Act 1981**  
**Addition and deletion of a public footpath at Loveclough, Rawtenstall LOCATION PLAN**

1:20,000

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## Regulatory Committee

Meeting to be held on 16 November 2016

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

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

### Proposed Diversion of Part of Scarisbrick Footpath 6, West Lancashire Borough.

(Annexes B and C refer)

Contact for further information:

Mrs R Paulson, 07917 836628, Planning and Environment.

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

#### Executive Summary

The proposed diversion of part of Scarisbrick Footpath 6, West Lancashire Borough.

#### Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Scarisbrick Footpath 6, from the route shown by a bold continuous line and marked A-B-C-D to the route shown by a bold dashed line marked E-F-D on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

#### Background

A request has been received from the owner of Hooton's Farm, 95 Jacksmere Lane, Scarisbrick, L40 9RT for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Scarisbrick Footpath 6.

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

The footpath proposed to be diverted runs along a driveway to Hooton's Farm and around the curtilage of the property. The proposed diversion, if successful, would move the footpath to the south of the small field and the garden, providing the applicant 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 apart from National Grid and Electricity North West.

National Grid originally objected on the grounds that it has apparatus in the vicinity of the proposed diversion but it subsequently withdrew its objection on the grounds that its apparatus would be unaffected.

Electricity North West commented that it has considered the proposals and found that they could have an impact on its infrastructure. In this case there is a high voltage overhead line which crosses the route of the proposed footpath between points E and F. There is also an underground electricity cable on the line of the path to be diverted from point A to B. An email was sent to Electricity North West on behalf of the County Council to clarify that no works were planned on the line of the proposed diversion and to explain that the diversion would simply introduce a right for pedestrians to walk beneath the overhead line. Electricity North West have responded that they have no objection in principle to the diversion going ahead, but have advised that there is an underground cable within the footpath to be diverted. It is therefore advised that a clause be included in the proposed Order which would give Electricity North West the same rights in the existing footpath (Section A-B) after the Diversion Order has come into operation as it had before.

West Lancashire Borough Council, Scarisbrick Parish Council, the West Lancashire Footpath Group, West Lancashire Ramblers and the Peak and Northern Footpath Society have also been consulted.

The chairman of the West Lancashire Footpath Group commented that for people travelling east to west or vice versa the proposed diversion is "more convenient and quite pleasant". He also mentioned that for people coming off Jacksmere Lane (i.e. from a point north of the proposals map using the track north from point A which is not recorded as a public right of way) people would be slightly inconvenienced. He indicated that his group does not intend to object if an Order is made.

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

## **Advice**

### **Description of the existing footpath to be diverted**

Part of Scarisbrick Footpath 6 as described below and shown by a bold continuous line A-B-C-D on the attached plan (All lengths and compass points given are approximate).

POINT	GRID REFERENCE	DESCRIPTION
A	SD 3702 1324	Junction of driveway to Jacksmere Barn, Jacksmere Farm and Hooton's Farm
B	SD 3709 1321	Entrance to Hooton's Farm where enclosed grass path leaves tarmac drive
C	SD 3708 1316	Exit from enclosed route outside the western corner of Hooton's Farm garden
D	SD 3713 1314	Adjacent to southern corner of Hooton's Farm garden
E	SD 3696 1319	Adjacent to south-western corner of Jacksmere Farm's garden
F	SD 3697 1313	A few metres to the south-west of the south-west corner of Hooton's Farm front paddock

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A	B	Generally ESE	80	The entire width
B	C	SSW	50	The entire width
C	D	ESE	60	The entire width
Total distance of footpath to be diverted			190	

### Description of new footpath

The new footpath is as described below and shown by the bold dashed line E-F-D on the attached plan (All lengths and compass points given is approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
E	F	Generally SSE	70	3	Stone surface
F	D	Generally E	155	3	Stone and grass surface
Total distance of new footpath			225		

The applicant is not proposing to carry out any surfacing or drainage works on the diverted route of the footpath.

The footpath to be created by the proposed Order will not be subject to any limitations and 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 the Order should also specify that the Definitive Statement for Scarisbrick Footpath 6 be amended to read as follows:

The 'Position' column to read: "Junction of 4 and 5 to SD 3713 1314 then generally west for 155 metres to SD 3697 1313 then generally north north west for 70 metres to Scarisbrick Footpath 7 at SD 3696 1319."

The "Length" column to read 0.51km.

The "Other Particulars" column to read "Between SD 3713 1314 and SD 3696 1319 the footpath has a stone and grass surface, is 3 metres wide and has no limitations".

### **Criteria to be 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.

The applicant is concerned about the security of his property and says that he has experienced a number of problem associated with the public footpath. These include:-

- Being woken in the early hours of the morning by "dog men" who sometimes use the footpath to access the fields near the property.
- Attacks by walkers' dogs on the horses he keeps in the small paddock just west of the section of path between points B and C.
- People removing signs requesting that dogs are kept under control
- A family using a hole in a hedge and walking in front of the applicant's house.
- The applicant's dogs and his neighbour's dogs being woken on a regular basis causing disturbance to the residents of the two properties.

The proposed diversion would have the effect of moving the footpath further away from the applicant's house. This would undoubtedly have a positive effect on reducing any disturbance from footpath users which currently affects his enjoyment of the land. It is therefore reasonable to conclude that the proposed diversion is in the interests of the owner 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. It is advised that the western end of Scarisbrick Footpath 6 terminates at point A on Scarisbrick Footpath 7 and this will be diverted to a new termination point at point E on Scarisbrick Footpath 7. Scarisbrick Footpaths 6 and 7 form a continuous footpath and therefore the altered termination point will not have any negative impact on people following the line of the recorded footpath. In fact the new termination point at E is likely to be more convenient.



It should be noted that the section of Scarisbrick Footpath 7 between points A and E is not due to be diverted as part of these proposals. As a result of the diversion Scarisbrick Footpath 7 would terminate at point A which appears to be a dead-end with no connecting public right of way. The reason for not including this part of Scarisbrick Footpath 7 in the proposed Order is because of the existing access track at point A which leads in a north north easterly direction from point A to Jacksmere Lane. There is some indication that this access track is used by the public as a footpath, and therefore it is possible that the track is deemed to have been dedicated as a highway by virtue of Section 31 of the Highways Act 1980. Section A to E will be retained so that if evidence emerges of a connecting footpath it can be connected to the existing rights of way network. Therefore the applicant was advised not to apply to divert the relevant part Scarisbrick Footpath 7 because it would be prejudicial to any future claim to add a connecting footpath to the Definitive Map. Alternatively it may be that such use is permissive but it is still appropriate that the connection via A-E is retained.

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. A site visit has been carried out and the proposed diversion follows an existing track constructed in stone, which in places has grassed over. This represents a good surface for a new right of way which forms part of a rural rights of way network. Therefore, apart from signposting the new route, it is not expected that any work would be required to provide the new route.

There are currently no stiles, gates or other limitations on the existing footpath and none are proposed on the proposed diversion.

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.

The applicant jointly owns the land crossed by a majority of the existing route. The consent of the joint owner is expected to be forthcoming and at the time of writing this report, their written agreement is awaited. The owners of the remainder of the existing route and all of the alternative route are a large horticultural company and the land is used for growing turf. They have confirmed that they are in agreement with the proposal and would not raise any objection in the event that a Diversion Order is made.

In considering the proposals the County Council has a duty to have regard to agriculture, forestry and nature conservation. The proposed footpath runs along a wide track and does not introduce the footpath to land not already crossed by the same path. 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 applicant has agreed to bear all advertising and administrative charges incurred in the Order making procedures and to defray the costs of any compensation which becomes payable. The applicant has also agreed to pay any costs which are incurred in bringing the new site of the path into a fit condition for use for the public.

With respect to the costs of compensation the proposed diversion crosses land not owned by the applicant. The owner of the land, a large horticultural company, has written to say that it will not object to the proposed Order. The company has given no indication that it will claim compensation for any loss in value of its land, but if it does the Council would be able to recover any compensation costs which become payable from the applicant by virtue of the agreement referred to in the paragraph above.

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 as described in the following paragraphs.

Under the criteria for confirming an Order the Council must be satisfied that the new path is not substantially less convenient to the public. In this case the proposed diversion is more convenient for people following the recorded rights of way because it is a more direct route than the existing.

In addition, the Council must have regard to the effect on public enjoyment of the footpath as a whole before it may confirm an Order. The diversion has the effect of making Scarisbrick Footpath 6 more coherent by following the line of an existing track along its whole length, rather than taking a more circuitous route via Hooton's Farm. There are good views from the proposed diversion over the large fields which are used for growing turf. There appears to be no reason to believe that there will be any loss of public enjoyment as a result of the diversion.

The Council must also consider the effect of confirming an Order on land served by the existing right of way. In this case a property known as The Barn is served by the existing right of way in addition to Hooton's Farm, but it is believed that both properties have private vehicular rights over the section of footpath A-B. These private rights are not affected by the proposed diversion. The owners of The Barn have been consulted and have not raised any objection.

Similarly, before confirming an Order the Council must consider the effect which the proposed would have on the land over which the new footpath is created. Any effect of the new footpath is likely to be negligible because the land is currently used as an access track for horticultural machinery. It is not expected that there will be any conflict between the use of the track for pedestrian traffic, which is likely to be infrequent and the owners vehicular use of the track. There is the possibility that the right of way brings with it some problems such as people allowing their dogs to roam free over the land and dog fouling. However, the unaffected part of Scarisbrick Footpath 6 crosses the field and therefore any negative effects by increasing the length of the path through the field would only be marginal. The proposed footpath could affect alternative uses of the land but the owners have been consulted and have not raised any objection to the existing track being used as a footpath.

It is 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 there will be no gates or stiles installed across the new path.

Further, it is advised that the effect of the proposed Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'.

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

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

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicant, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicant can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

### **Risk Management**

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

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

To not agree that the Order be made.

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

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

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

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

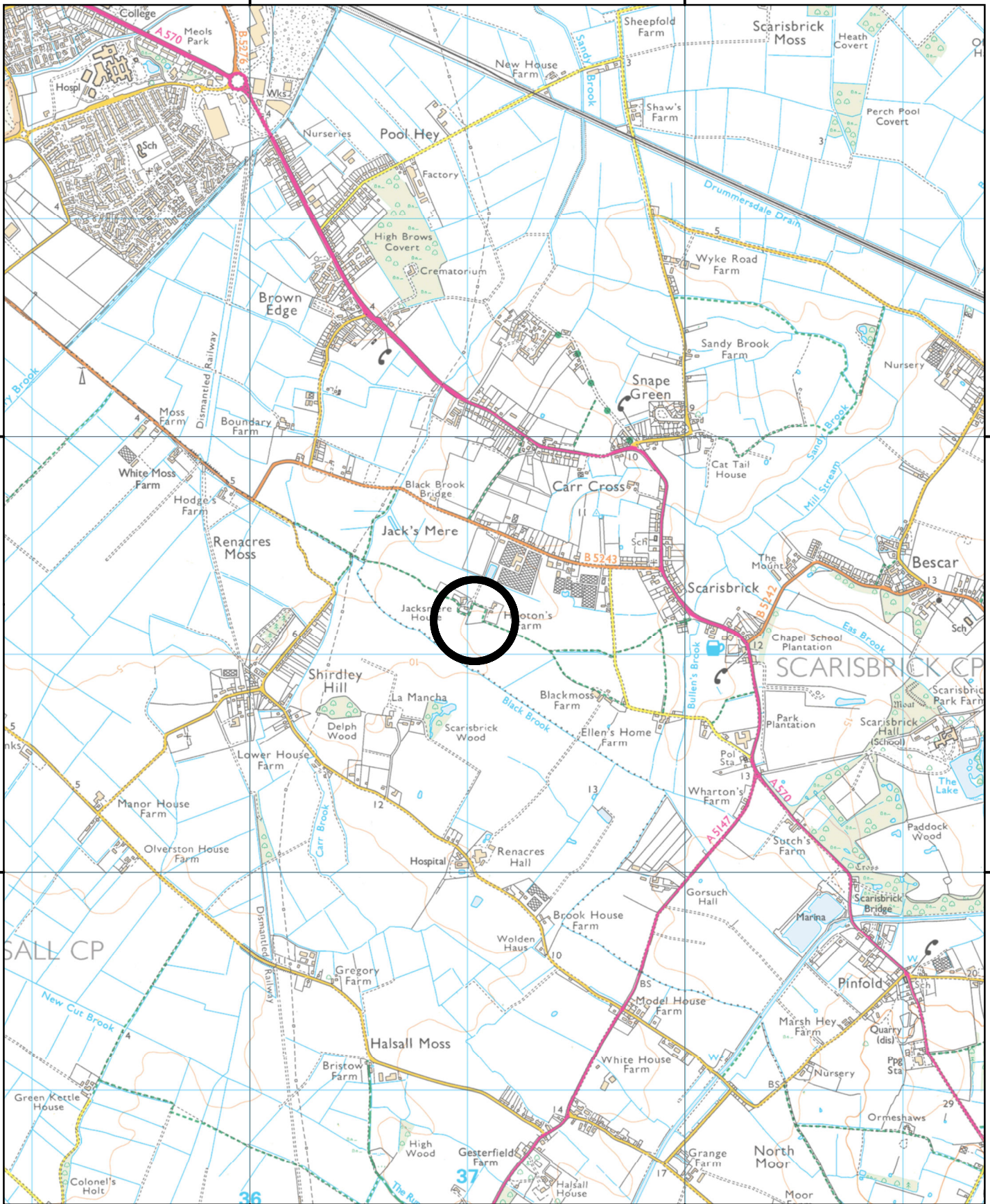
Paper	Date	Contact/Directorate/Tel
File Ref: PRW-08-15-06		Mrs Ros Paulson

Reason for inclusion in Part II, if appropriate

N/A

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Lancashire  
County  
Council

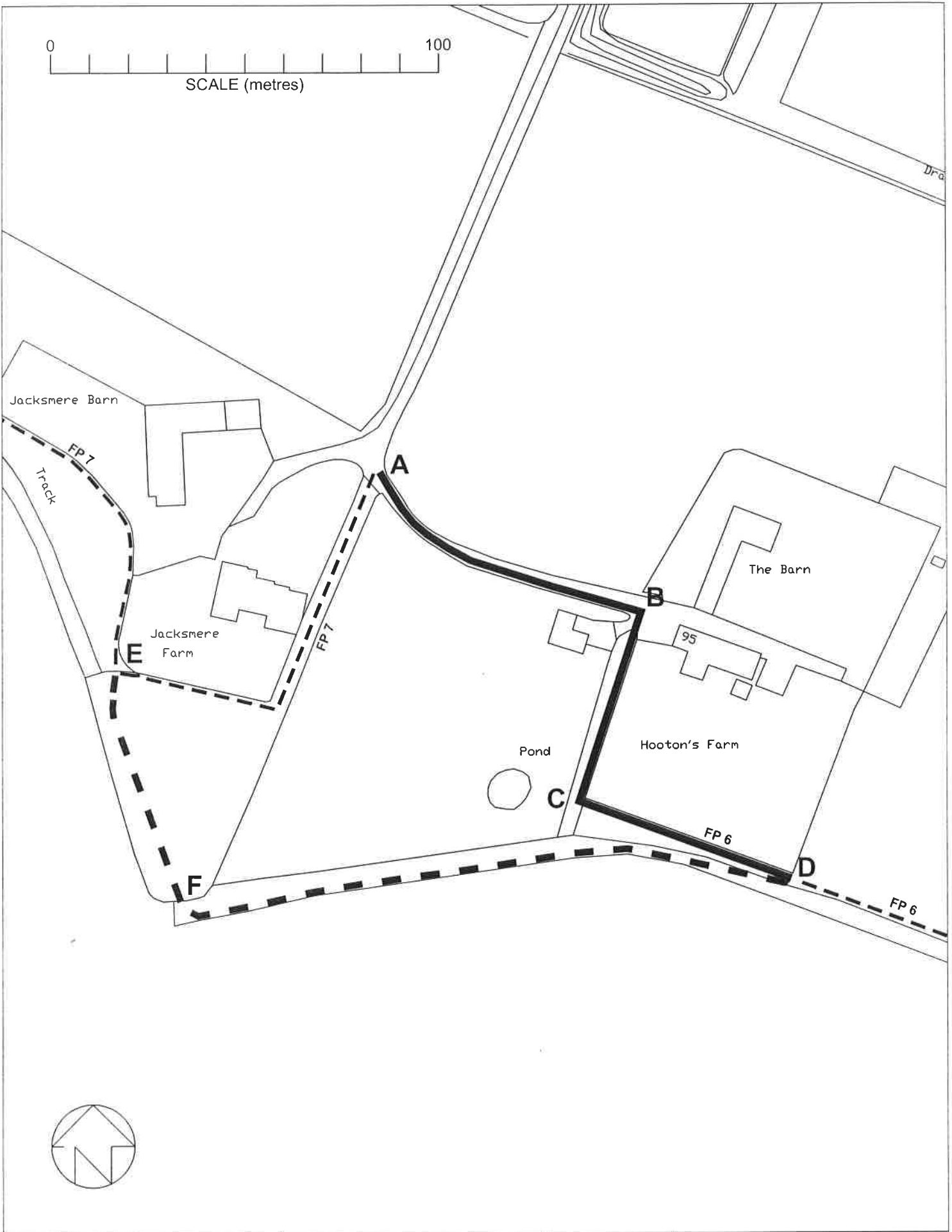
Andrew Mullaney  
Head of Planning  
and Environment

Location Plan.  
Highways Act 1980 – Section 119  
Proposed Diversion of Part of Scarisbrick Footpath 6, West Lancashire Borough.



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**PROJECT:**  
 Proposed Diversion of Public Footpath 6 at  
 Hooton's Farm

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**DRAWN BY:** J H

**DATE:** 27 Sept 2016

**SCALE:** 1:1250 @ A4

**R2/14/170**

**REVISIONS / NOTES**

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

