

Lancashire County Council

Regulatory Committee

Wednesday, 25th January, 2017 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No. Item

1. Apologies.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

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

3. Minutes of the last meeting. (Pages 1 - 6)

4. Guidance. (Pages 7 - 30)

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

5. Wildlife and Countryside Act 1981 (Pages 31 - 68) **Definitive Map Modification Order Investigation** **Addition of a byway from Main Road to Packet Lane,** **Bolton le Sands, Lancaster District**

6. Wildlife and Countryside Act 1981 (Pages 69 - 90) **Definitive Map Modification Order Investigation** **Deletion of Footpath 339 Rawtenstall, at Turton** **Hollow Road, Rossendale Borough**

7. Wildlife and Countryside Act 1981 (Pages 91 - 128) **Definitive Map Modification Order Investigation** **Addition of Footpath from Higher Road to Wellbrow** **Drive, Longridge, Ribble Valley**

8. Highways Act 1980 Section 119A Rail Crossing Diversion Order and Wildlife and Countryside Act 1981 Section 53A Proposed Diversion of Part of Heath Charnock Footpath 44, Chorley Borough (Pages 129 - 142)

9. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Wiswell Footpath 17, Ribble Valley Borough (Pages 143 - 152)

10. 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.

11. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Wednesday 15th March 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, 16th November, 2016 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

K Snape	P Hayhurst
M Barron	C Henig
I Brown	S Holgate
A Clempson	D Stansfield
D Clifford	D Whipp
G Gooch	B Yates

County Councillors Malcolm Barron and Steven Holgate replaced County Councillors Paul White and Julie Gibson respectively.

1. Apologies

Apologies were received from County Councillor Bernard Dawson, County Councillor Julie Gibson and County Councillor Paul White.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting

Resolved: That the minutes of the meeting held on 28th September 2016 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority 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 Public Bridleway from Clerk Hill Road to Moor Lane,
Wiswell, Ribble Valley
File No. 804-565**

A report was presented on an application for the addition of a public bridleway and upgrading of parts of Public Footpaths 8 and 23 Wiswell, Ribble Valley from Clerk Hill Road to Moor Road, Wiswell, in accordance with File No. 804-565.

Details of the application 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 there was 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 suggested, on balance, that the route had higher public status.

Resolved:

- (i) 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.
- (ii) 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.
- (iii) That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

**6. 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**

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

Details of the application 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 there was sufficient evidence for an Order to be made to add the route A-D, as shown in the papers, to the Definitive Map as being already a footpath in law, and that there was sufficient evidence to delete X-Y from the map by way of an Order.

Resolved:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) That being satisfied that the relevant tests for confirmation can be met the Orders be promoted to confirmation.

**7. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Scarisbrick Footpath 6, West
Lancashire Borough**

A report was presented on an application for the proposed diversion of part of Scarisbrick Footpath 6, West Lancashire Borough.

The Committee noted that a request had 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 footpath proposed to be diverted ran along a driveway to Hooton's Farm and around the curtilage of the property. The proposed diversion would move the footpath to the south of the small field and the garden, providing the applicant with improved privacy and security.

The Committee noted that the necessary consultation with the statutory undertakers had been carried out and no adverse comments on the proposal had been received apart from National Grid and Electricity North West.

National Grid had originally objected on the grounds that it had 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 had commented that the proposals could have had an impact on its infrastructure as there was a high voltage overhead line which crossed the route of the proposed footpath between points E and F. In addition, there was an underground electricity cable on the line of the path to be diverted from point A to B.

An email had been 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 had responded to say they had no objection in principle to the diversion going ahead, but advised that there was an underground cable within the footpath to be diverted. The Committee were 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 had come into operation as it had before.

The Committee noted that there had been no other objections or adverse comments on the proposals.

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

Resolved:

- (i) 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 plan.
- (ii) 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.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 25th January 2017 in Cabinet Room B – The Diamond Jubilee Room, County Hall, Preston.

I Young
Director of Governance, Finance
and Public Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 25th January 2017

Electoral Division affected: All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following “legal events”

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA**Diversion Orders under s119B****Diversion Orders under s119C****Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

Extinguishment Order under s118**TO MAKE AN ORDER**

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 25th January 2017

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

It is advised that consideration needs to be given to whether the diversion is of such little or no real public benefit such that resources should not be allocated to promoting the Order once submitted although where there is no substantial disbenefits to the public the applicants be able to promote the Order themselves.

This is not the same as considering whether the Order can be confirmed as set out in the statute. It is consideration of what actions the Authority should take on submitting the Order. It is not an easy consideration but officers will be able to advise in each particular matter.

Regulatory Committee

Meeting to be held on 25 January 2016

Electoral Division affected: Lancaster Rural North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

**Addition of a byway from Main Road to Packet Lane, Bolton le Sands,
Lancaster District**

File No. 804-578

(Annex 'A' refers)

Contact for further information:

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

Executive Summary

Application for the addition of a public byway open to all traffic from Main Road to Packet Lane, in accordance with file no. 804-578.

Recommendation

1. That the application for the addition of a byway open to all traffic from Main Road to Packet Lane, Bolton le Sands, in accordance with File No. 804-578, be not accepted but instead a route of a different description be added;
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a restricted byway from Main Road to Packet Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A – B;
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 to the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic from Main Road to Packet Lane, Bolton le Sands, across the car park of the former Packet Boat Inn, and shown between points A – B on the Committee plan.

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

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

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

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

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

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

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

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

Consultations

Lancaster City Council

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

Bolton le Sands Parish Council

The parish council are the applicants in this matter.

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	4843 6797	Open junction with Main Road (C486)
B	4845 6796	Open junction with Packet Lane (U18784)

Description of Route

A site inspection was carried out on 18 April 2016.

The route is situated across the car park area of the former Packet Boat Inn which has now closed and is a total length of 16 metres.

When the site was inspected in April 2016 it was not possible to see the route or to walk along it due to the fact that temporary fencing had been erected across the boundary of the car park including the former access points at point A and point B. It was not possible to see through the fencing and along the route and notices on the fencing at point A and point B provided details of the proposed renovation of the public house and car park into a residential property and garden.

Google Street View photographs dated June 2009 are available and show the route prior to it being fenced. They show that access was available at point A and point B and that it provided unrestricted access to the car park. Parking bays are marked out but the route is shown as being a clear, unrestricted route into and through the car park area.

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.



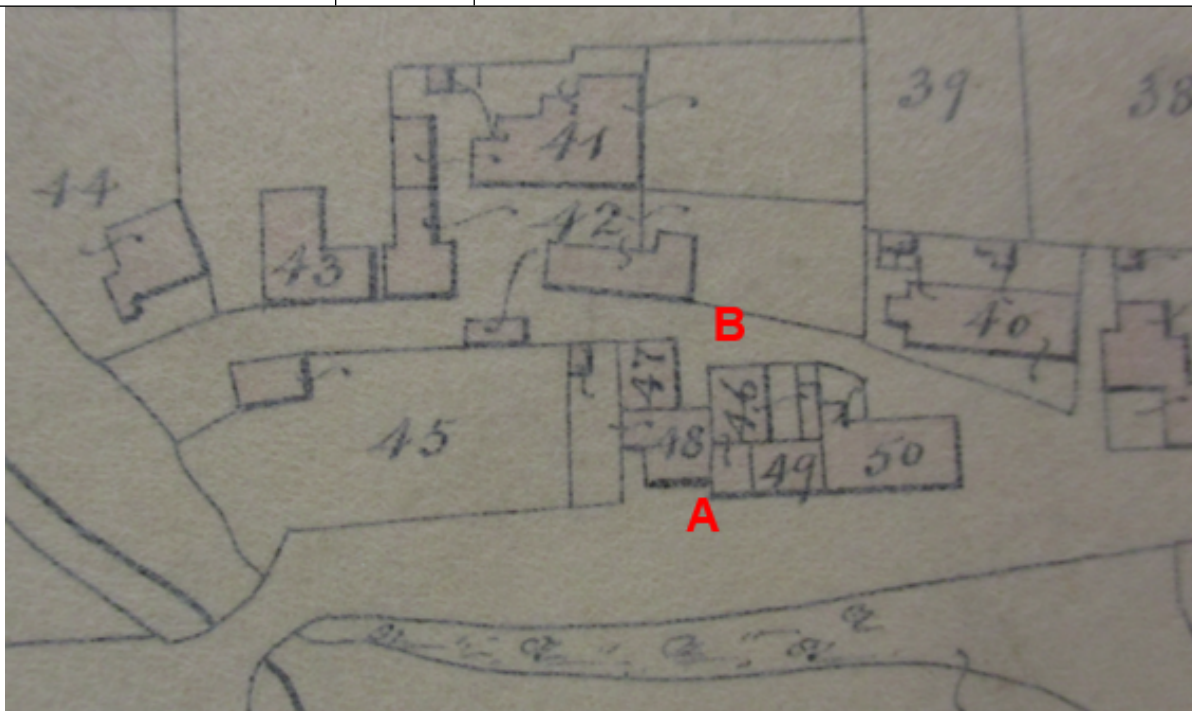
Observations		The route is not shown on Yates' Map.
Investigating Officer's Comments		The map predates the arrival of the section of canal at Bolton le Sands. The route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.



Observations		The route is not shown. The canal is shown and the road through Bolton le Sands (Main Road) is shown crossing the canal via Packet Bridge (not named). Packet Lane appears to be shown with properties along either side.
Investigating Officer's Comments		The route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

		
Observations		Main Road and Packet Lane are shown but the route is not.
Investigating Officer's Comments		The route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route is situated to the east of the Lancaster canal and the original Packet Boat Inn was situated directly opposite a landing area used by packet boats transporting goods and passengers along the canal. Plans and records relating to the Lancaster Canal have been examined in the County Records Office but no reference to the route was found.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or	1846	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land

Apportionment		capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
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Observations		<p>The Tithe Map and Award for Bolton le Sands were inspected in the County Records Office. The Tithe Map includes an insert of a large scale plan of the village. Main Road and Packet Lane are shown but the route is not. Buildings are shown located on and near the route with no access between point A and point B.</p> <p>The Tithe Schedule records numbered plot 48 as being owned and occupied by George Elwood and is described as consisting of a barn and garden. Plot 47 is also owned by George Elwood but is occupied by William Clapham and is described as a cottage. Plot 46 is owned by George Elwood and occupied by Henry Porter and is described as 'cottage, yard and shop' while plot 49 is also owned by George Elwood and is described as a cottage occupied by Robert Gardner. Plot 50 is described as the Packet Boat Inn, owned by George Elwood. There is no</p>
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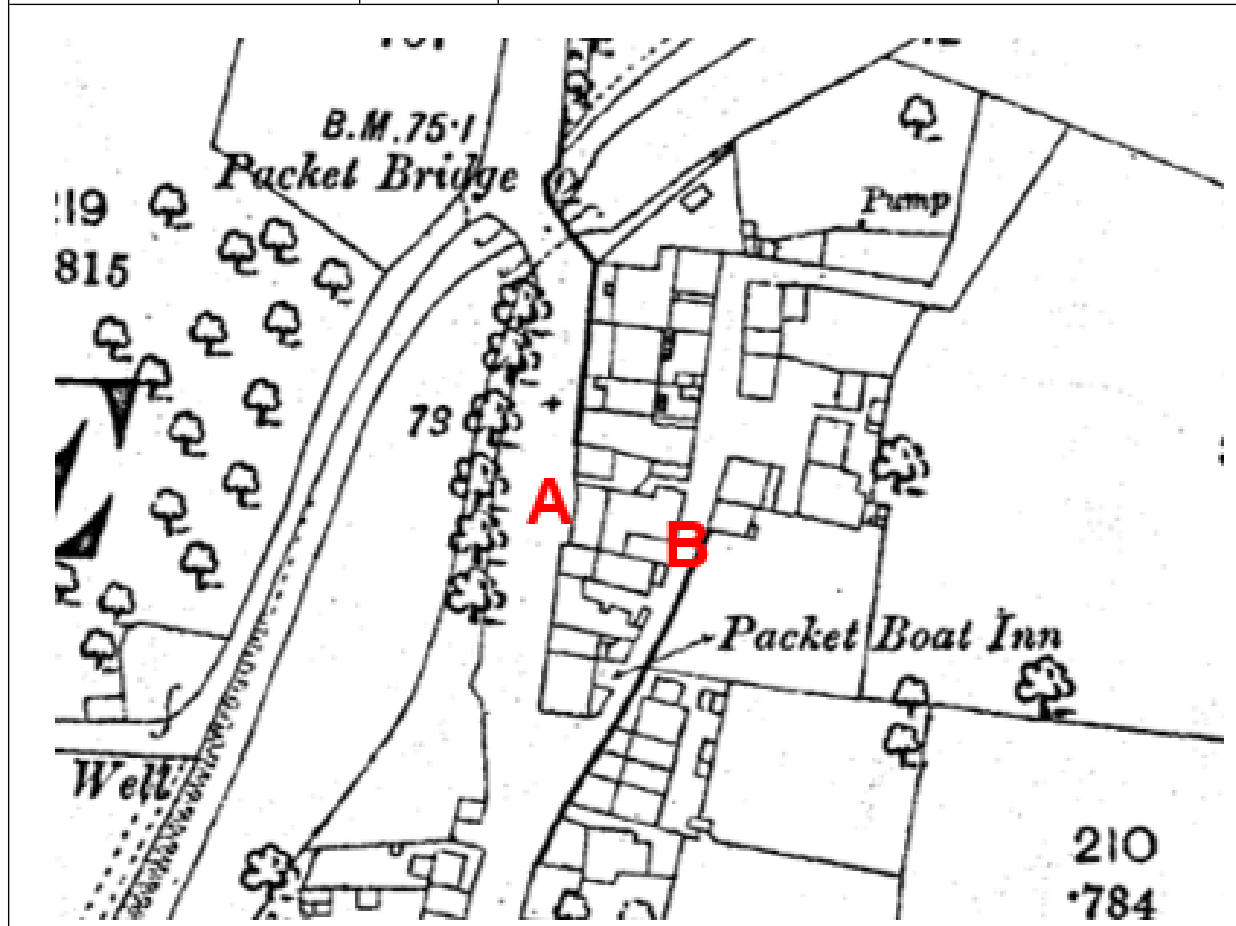
		reference to the route within the Award.
Investigating Officer's Comments		The route did not exist in 1846.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1848. ¹



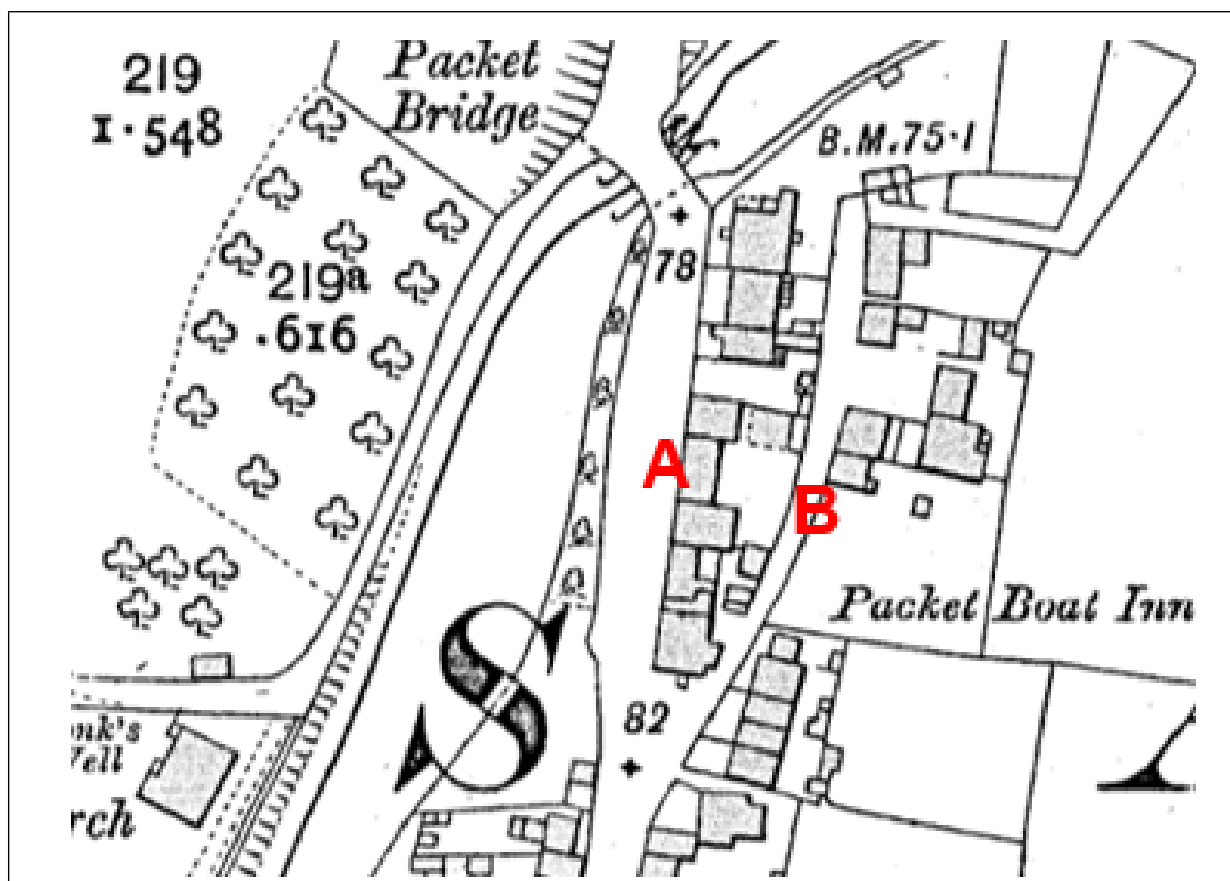
Observations		Main Road and Packet Lane are shown and
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¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile).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

		Packet Boat Inn is named on the map. The route is not shown and buildings are shown on the land crossed by the route.
Investigating Officer's Comments		The route did not exist in 1848.
25 Inch OS Map	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.



Observations		The route is not shown. This large scale map shows in detail the position of buildings and boundaries on land crossed by the route now claimed.
Investigating Officer's Comments		The route did not exist in 1889.
25 inch OS Map	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1910 and published in 1913.



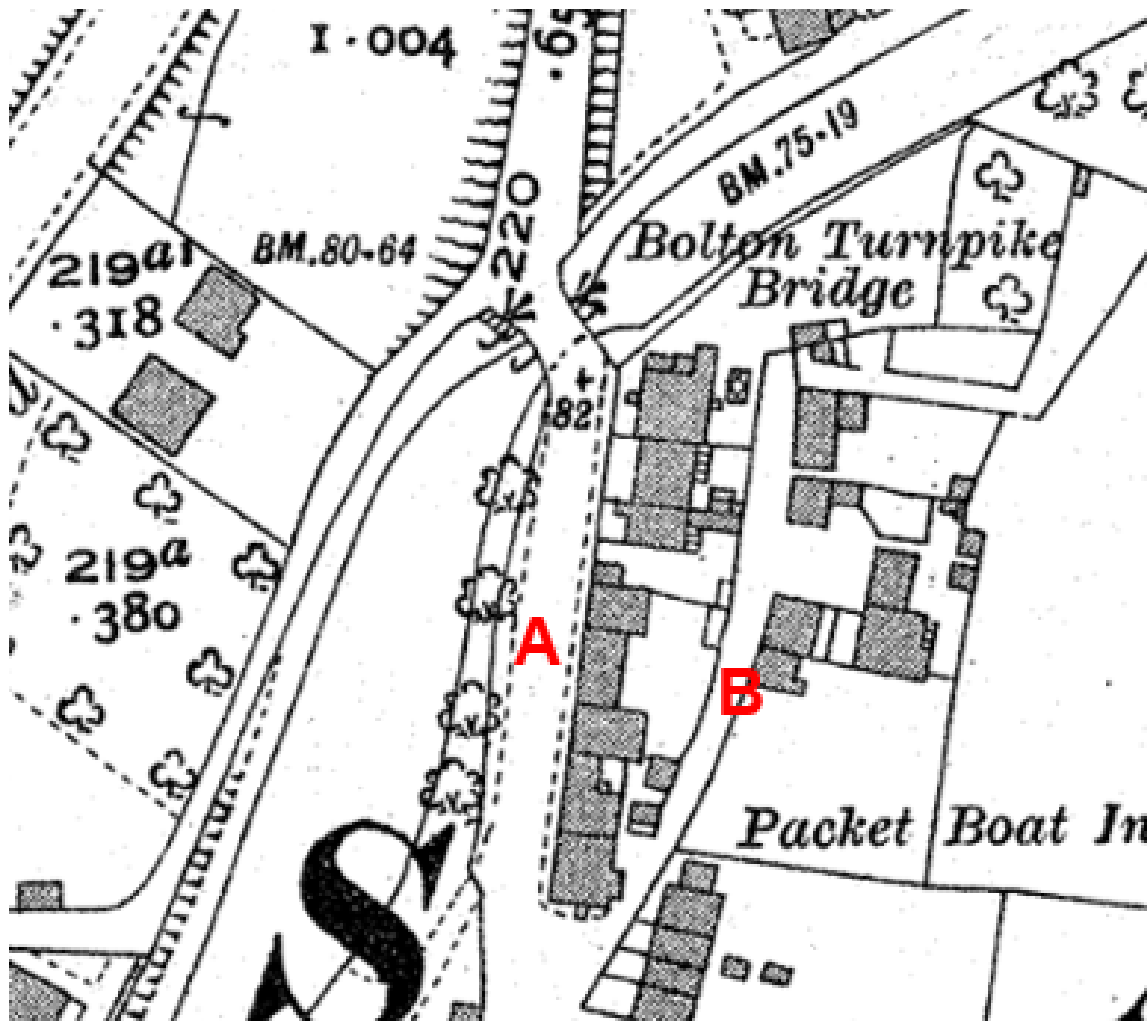
Observations		The route is not shown. A building is shown across the route from point A.
Investigating Officer's Comments		The route did not exist in 1910.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if</p>

		<p>his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Observations		<p>The Valuation Map and Book were inspected in the County Records Office. The route is not shown on the Ordnance Survey base map and is not excluded from the numbered plots. The land crossed by the route is included in plot 146 which was listed in the Valuation Book as being owned by Yates Jackson and occupied by Thomas Fisher. It is described as 'Packet Boat Inn' and there are no deductions listed for public rights of</p>
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		way or user.
Investigating Officer's Comments		The Valuation records do not provide any supporting evidence regarding the existence of the route in 1910.
25 Inch OS Map	1940	Further edition of 25 inch map (surveyed 1889, revised in 1938 and published in 1940.



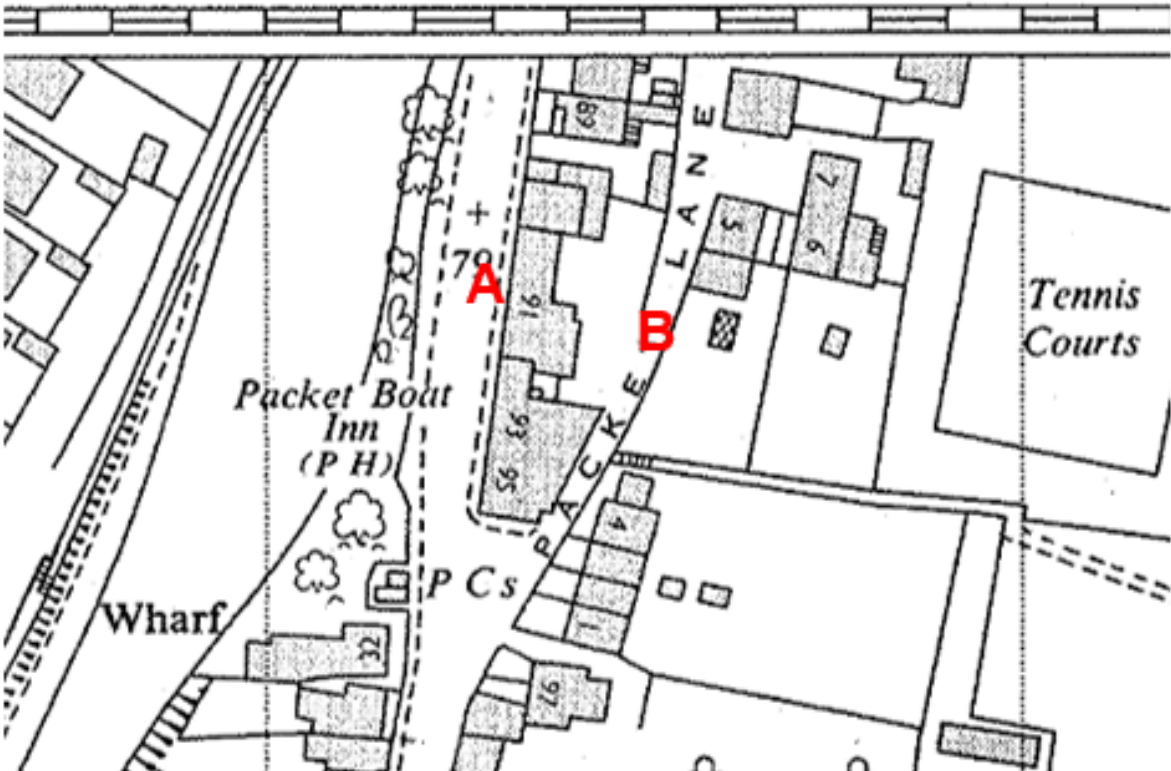
Observations		The route is not shown and access does not appear to be possible as a building is shown across the route east of point A.
Investigating Officer's Comments		The route did not exist when the map was revised in 1938.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is

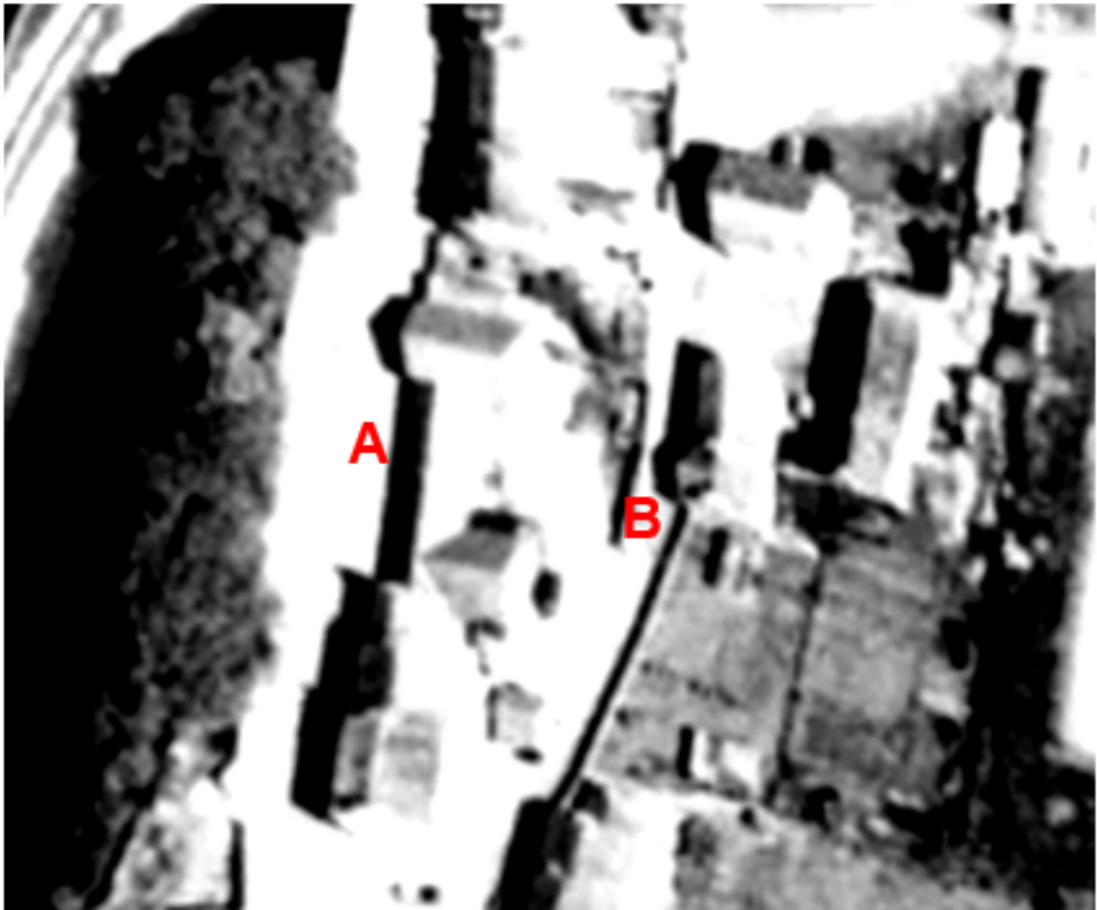
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

		generally very variable.
Observations		There is no aerial photograph of the area available to view from the 1940s.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

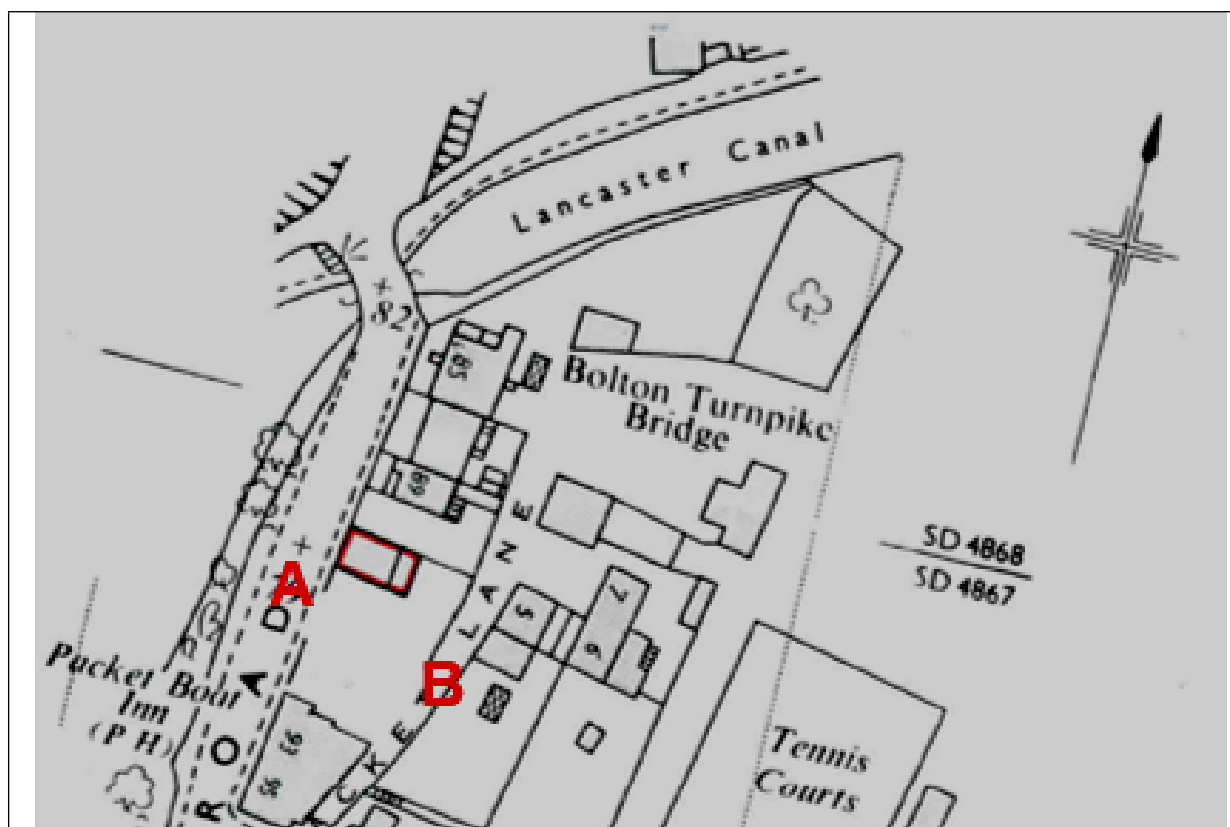


Observations		The route is not shown. Buildings are shown across the route east of point A.
Investigating Officer's Comments		The route did not exist when the map was revised in the 1930s.
1:2500 OS Map	1969	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1969 as national grid series.

		
Observations		The route is not shown. A building – numbered "91" – is shown across the route east of point A.
Investigating Officer's Comments		The route did not exist when the map was revised in 1967.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

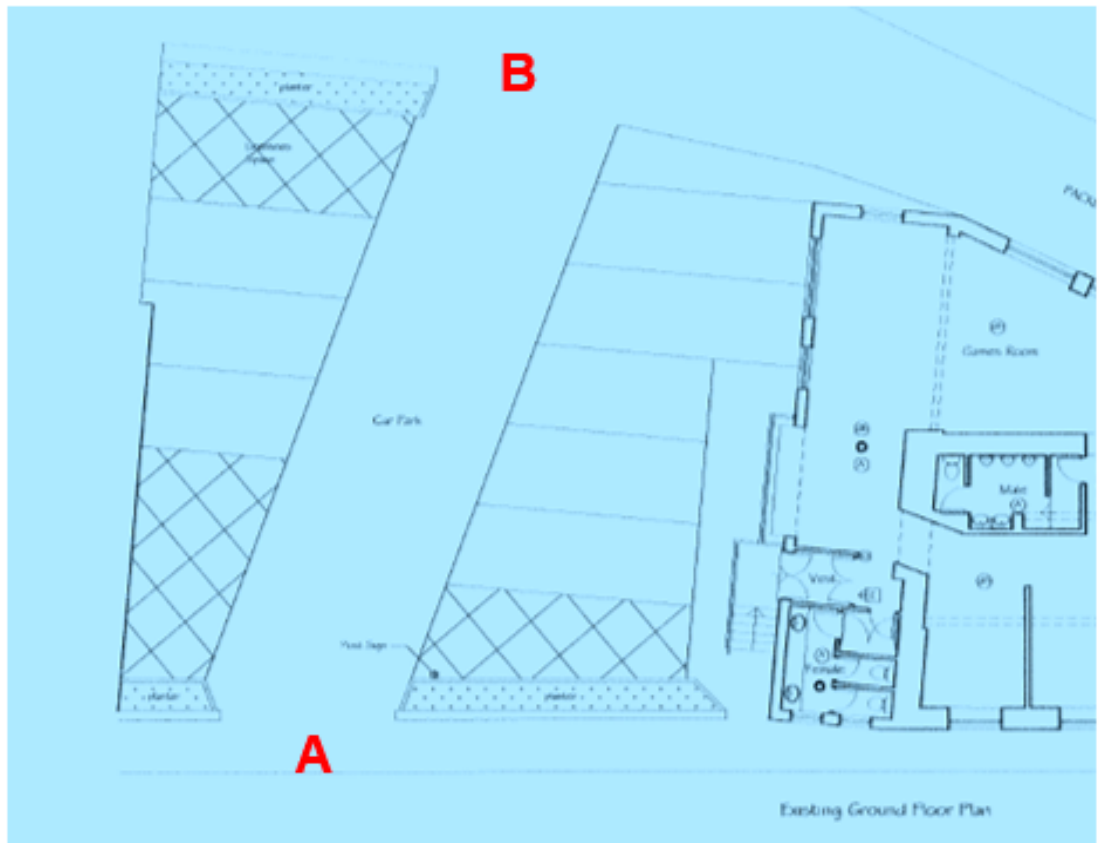


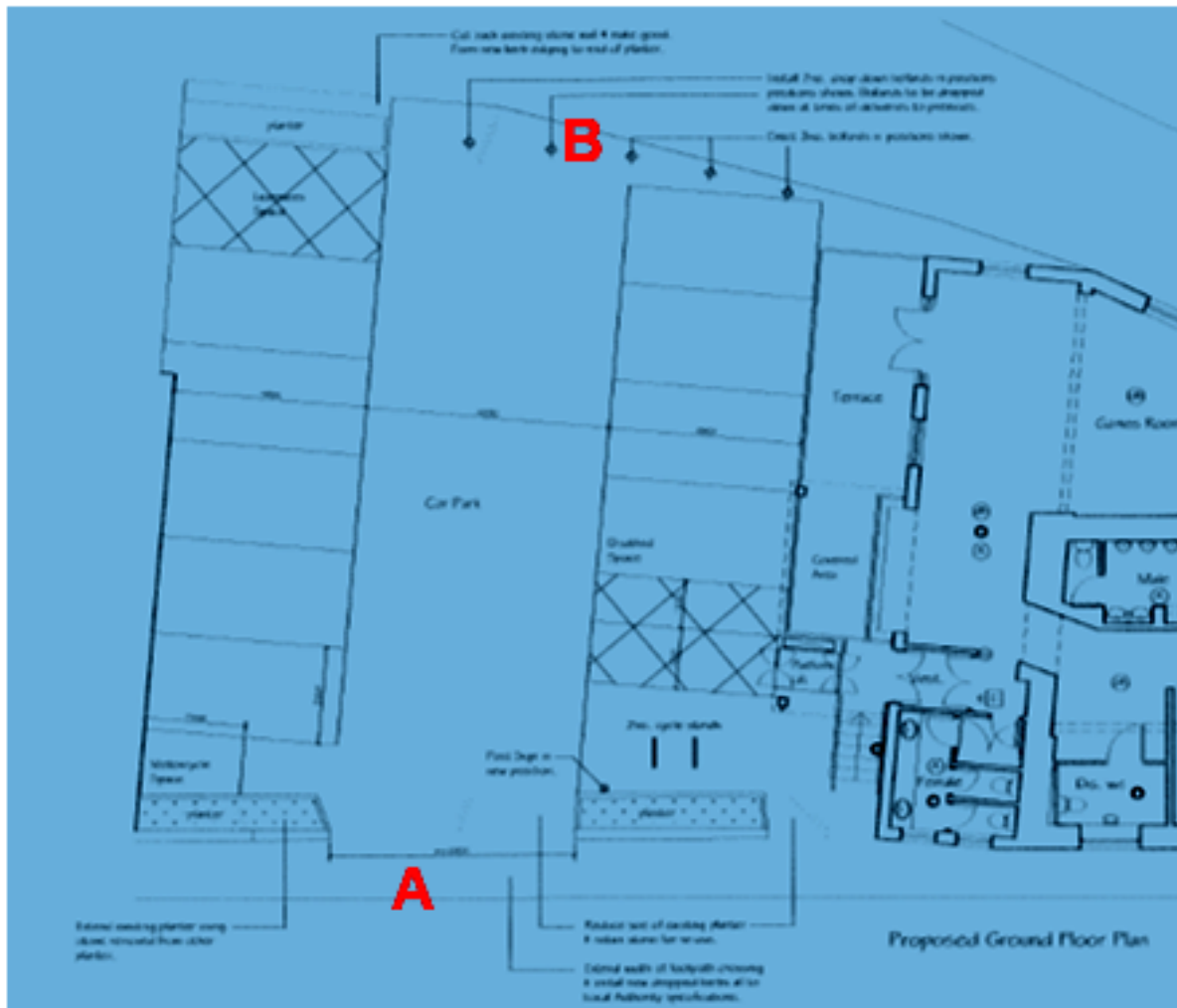
Observations		A building can be seen across the route east of point A consistent with the 1:2500 OS map published in 1969. The route is not shown.
Investigating Officer's Comments		The route did not exist in the 1960s when the photograph was taken.
OS 1:1250 map enlarged from 1:2500	1985	Extract of OS Sheet SD 4867 from Land Registry plan. Published 1985, survey date unknown.



Observations		The property shown on earlier maps examined and numbered 91 on the 1969 1:2500 is no longer shown. A gap is shown in the boundary adjacent to Main Road at point A suggesting that access was available from Main Road onto the route at point A. The route is not shown as a defined physical feature but access appears to be available across an open area between point A and point B to exit onto Packet Lane at point B.
Investigating Officer's Comments		The route appeared to be accessible and may have been in use in 1985.
Aerial Photograph	2000	Aerial photograph available to view on GIS.

		
Observations		Tree cover and shadows make it difficult to see with any clarity whether the route was accessible in 2000 but the area crossed by the route appears to be a car park with parking bays marked out to the north and south of the route.
Investigating Officer's Comments		The route across the car park probably existed in 2000.
Planning Application for alterations to the Packet Boat Inn and car park	2007	Details of a planning application submitted in 2007 for land crossed by the route were viewed online (Lancaster City Council online planning applications).





<p>Observations</p>	<p>In 2007 listed building consent was sought (and granted) for alterations to the Packet Boat public house and existing car park and access. This included alterations to the car park across which the route runs. A plan was submitted as part of the application and shows access to the car park at point A and point B. Designated car parking spaces are shown on the plan to the north and south of the route – but not across it.</p> <p>The proposed alterations show that permission was being sought to widen the access at point A to 6 metres and to install dropped kerbs along the entrance from Main Road. It also shows that it was proposed to erect two drop down bollards across the gap at point B and the plan submitted as part of the application stated that these would be dropped down at times of deliveries to the premises.</p>
<p>Investigating Officer's Comments</p>	<p>In 2007 it appeared that access along the route was available between point A and point B. Cars would have been using the route to access the car parking spaces marked out and it looks like it may</p>

		<p>have been possible for cars (and pedestrians) to pass directly along the route from A to point B. The proposed alterations requiring listed building consent included improvements to the vehicular access to the car park from point A but also included the provision of access restrictions at point B (dropped bollards) which would not have prevented pedestrian use but, if subsequently installed, would have limited use by vehicles. No reference to the existence of any public rights across the car park could be found and there was no reference to any public vehicular rights being restricted or prevented by the erection of dropped bollards.</p>
Google Street View	2009	Images captured on Google Street View in 2009 and submitted by the applicant.






Observations		The photographs available to view on Google Street View show the route as being open and accessible across the pub car park. Work appears to have been carried out following the 2007 grant of listed building consent to provide a dropped kerb at point A. The route across the car park was not marked out with parking spaces but appears to be intended to be kept clear of parked cars. A single bollard can be seen at point B although access onto the route at point B appears to be wide and a vehicle is seen entering onto the car park via point B.
Investigating Officer's Comments		The route existed in 2009 and appeared to be capable of being used by cars and pedestrians.
Definitive Map		The National Parks and Access to the

Records		<p>Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The route was not shown on the Parish survey map.</p>
Draft Map		<p>The parish survey map and cards for Bolton le Sands 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” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The route was not shown on the Draft Map and no representations were made to the County Council.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments</p>

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

		<p>or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The route is not recorded as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Aerial Photograph	2010	Aerial photograph available to view on GIS.
		
Observations		The full length of the route can be seen and appears to be available to use.
Investigating Officer's Comments		The route existed and appeared capable of being used in 2010.
Statutory deposit and declaration made under section 31(6) Highways Act		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

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

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. The former Packet Boat Inn is a Grade II listed building although the listing does not include the car park or later extensions to building.

Landownership

The land crossed by the route is registered as part of 95 Main Road in the freehold ownership of Mr Geoffrey Harris and Mrs Jacqueline Anne Harris.

Summary

The map and documentary evidence examined does not support the existence of the route as an accessible through route from the 1800s through to some point in time between the 1960s and 1985 when the property across the route (and labelled as 91 Main Road on the 1960s 1:2500 OS map) was demolished and the area made into a car park for visitors to the Packet Boat public house.

Access through the car park and along the route appears to have been available from at least 1985 until the public house closed and the property was sold and the car park fenced off, resulting in the submission of this application.

The geography of the area may go some way to explaining why vehicles and pedestrians may have used the route if accessing Packet Lane from travelling south along Main Road as there is a sharp 135 degree turn onto Packet Lane which could be avoided by driving along the route claimed. Packet Lane is a narrow cul de sac vehicular road to several dwellings and the Bolton le Sands Community Centre and the Bolton le Sands Pre-school and also has at a point on its eastern side an access to a pedestrian pathway to the primary school.

The request for listed building consent granted in 2007 includes a request to widen the vehicular access at point A but also to erect bollards which would restrict or limit vehicular access at point B suggesting that the proprietors of the public house at that time were either aware of use of the route as a 'cut through' and wished to control or prevent it or wished to control use of the car park by their customers.

The Natural Environment and Rural Communities Act 2006 (NERC Act)

The claim is that this short claimed route is already a vehicular highway and it is important to consider the effect of the NERC Act on these possible rights. This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public vehicular rights exist on the route it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route was not, at the time of the Act recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expense). The application was made for a byway open to all traffic. There is no evidence of historical use of the route by vehicles but evidence submitted by the applicants refers to modern use by the public in MPVs and if Committee accept the application they are advised that it is necessary to consider whether or not public MPV rights have been extinguished by the Natural Environment and Rural Communities Act 2006. One of the exceptions to the blanket removal of MPV rights is if the way was mainly used by MPVs for the 5 years preceding 2 May 2006.

it is suggested that if highway rights in vehicles were found to exist and the MPV rights would have been extinguished because there is insufficient evidence of the main use 201-6 being in vehicles the correct status to record would be restricted byway.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of their application the Parish Council submitted two google photographs dated 2009 which are considered earlier in the report under the section headed Map and Documentary Evidence.

The Parish Council also submitted a user witness statement, 3 user evidence forms, an e-petition originally submitted to Lancaster City Council and an email. They also stated that a petition of signatures was to be submitted by Mrs Fiona Ryan.

Witness Statement

Statement dated 1st February 2016 whereby a local resident states that he has used the access over the car park to and from Packet Lane on foot and by vehicle without restriction or challenge since 1970. He also makes reference to being a long term customer of the Packet Boat public house.

User evidence forms

User 1: Used the route on foot, bicycle and with a motorised vehicle on an ad hoc basis from 1987 to 2015 (28 years) with more frequent use 2014-2015 as he visited the community centre twice a day. Used route to visit community facilities and to collect children from school. Was never stopped, challenged or given permission to use the route until builder's fence erected in 2015. He refers to the route being through the car park and shows an arrow along main road and along the route and up part of packet lane

User 2: Used the route and refers to passing through on foot or parking 'in one of the spaces' from 1994 to 2015 (21 years). Used the route daily to access the nursery, school, community centre and playing fields. Was never stopped, challenged or given permission to use the route.

User 3: Used the route daily on foot and weekly with vehicles from 1978 – 2015 (37 years). Refers to the route being already in existence and used when she moved to the village in 1978. Use was for pleasure, to collect children from school, to access the playground and to get to work (children's nursery). Was never stopped, challenged or given permission to use the route until 2015 when fence was erected but refers to erection of some removable bollards 'about 5 years ago' at the exit onto Packet Lane 'to deter vehicular use' but states that they were removed within weeks when the difficulty of getting cars down Packet Lane was realised. She refers to the access to the bonfire in november 2015 was made more difficult as they were without the addition of being able to filter through the car park for spectators heading north.

E-Petition

A copy of an e-petition was submitted requesting Lancaster City Council to support 'the Bolton le Sands Community' in registering the application route as a public right of way for both pedestrians and vehicles.

The e-petition appears to have been submitted to the City Council in response to a planning application to close the route and states that the route was an accepted public right of way which had been used on foot and by vehicles since the early 1970s.

32 e-Petition signatures are included on the list as being in agreement with the request but no evidence of use is included.

E-mail

A copy of an email exchange between Bolton le Sands Parish Council and a local resident is also included. The email relates to the resident's concerns about the use of the application route in that it created a dangerous three way traffic situation and is seeking to find out whether, if the route was reopened and accepted as a right of way, whether a crossing control person would be provided at the Packet Boat at the start and end of each school day.

The resident does not support the application.

Letters, additional information and petition of signatures submitted by Mrs Ryan

Mrs Ryan explains that she started the Safer Access Campaign as a result of the closure of the application route in July 2015.

She explains that since the closure of the route the risk to pedestrians has greatly increased and that because only one car can pass at a time through Packet Boat Lane, both cars and pedestrians have used the Packet Boat car park as a right of way for many years. She refers to many people being able to testify to use of the route in excess of 20 years contained in letters and correspondence included with her letter and which are detailed below.

She comments on the high volume of use by pedestrians and vehicles accessing important community amenities including the school, scout hut, playground, bowling and tennis clubs and the community centre and examples of incidents that have occurred regarding the dual use of Packet Lane by pedestrians and vehicles as a result of the closure of the application route. She refers to high volume of cars and pedestrians and that many pupils at the school arrive and are collected by car.

Mrs Ryan also refers to the objections received to the planning application to convert the former public house (Packet Boat) to a residential property and to block the application route and provides details from Lancaster City Councils web site of the 53 comments received in response to the application stating that 50 of those providing comments objected to the closure of the application route. She provides copies of the comments submitted to the City Council regarding the planning application (available to view on the Lancaster City web site) highlighting the frequently repeated comments about the application route being a recognised public right of way, frequent use of the application route by pedestrians and vehicles and concerns about public safety and congestion if the planning application is accepted and the route through the car park blocked off. There is a real sense of concern by a

significant number of people and knowledge of how used the route had been but a lack of detail about dates and type of use

The subject of the petition included with Mrs Ryan's letter is stated to be The application for a public right of way to ensure safer access to school/community resources and the action sought by the petitioners is for the Council to support Bolton le Sands community in registering the commonly accepted right of way across the land of the former packet boat inn.

The petition is submitted to the County Council as part of the Definitive Map Modification application in March 2016 and contains 1382 signatures.

In addition to the petition, Mrs Ryan included 24 letters and emails from local people supporting the application, expressing concern about the safety of pedestrians since the closure of the route and referring to their own use, or use by family members over a long period of time (mostly ranging from 30 -50 years).

The majority of letters refer to frequent use to access the school or nursery, to get to the playground, attend scouts, brownies, etc. and to access the tennis or bowling club. None of the letters refer to being given permission to use the route or to being prevented from using it (until 2015). Much of the use appears to have been on foot but this is not clearly specified in some cases. Frequency of use is not specified either although the main points referred to are listed below:

- For many years (40+) parents and children have been able to use the Packet Boat pub car park as a component of their regular walk to and from school as well as visiting the community centre and other local activities and since its closure in summer 2015 it has created very substantial difficulties since.
- The closure of Packet Boat car park has resulted in considerable congestion on Packet Lane because of manoeuvring cars.
- Access to and from the school is now very poor as children and parents are at greater risk than before when the car park afforded safer access to the school via the 'bottom gate'.
- A public right of way across the car park would ensure that parents, children and all the other community users have safer access from the Main Road to Packet Lane then up to the school.
- The car park has been used on thousands of occasions over many years and access across the piece of land has been a feature of life in Bolton-le-Sands for generations.
- The pre-school support a right of way across the land of the former Packet Boat Hotel, to ensure safe access to the pre-school building and other community resources.
- If an accident were to happen at the school the emergency services would have serious problems reaching the school due to the congested lane.
- Drivers now park on both sides of the road opposite the packet Boat and on Packet Hill, this means the village in general is very congested.
- The right of way has been in existence for over 30 years
- Usual route to cut across the car park to access the school rather than through the village towards Mount Pleasant Lane

- Access was never blocked
- The route was used to access other various activities in the village and the community centre grounds.
- Not able to let children walk to school on their own to gain independence anymore due to congested and manoeuvring cars
- Route has been used in different family generations
- Accidents can be avoided if access was still there
- Congestion is also caused from other activities in the community not just from the school
- A small footpath at the back of the former pub whilst not solving the problem for vehicle access would provide a safer route for children of the village and all others accessing the valuable community resources in the area.
- More people use the area due to the development of the community centre
- No notices or signs suggesting the land was private
- The tenants of the pub have never objected to its use
- Witnessed other using the car park on foot bicycle and by vehicle
- Granddaughter knocked down by a car on Bolton Lane, a front entrance to the school

In addition, letters were also submitted from:

Bolton le Sands Church of England Primary School

A letter from the Headmaster of the school states that the school support the application and that for many years (40 plus) parents and children have been able to use the Packet Boat pub car park as part of their regular walk to and from school and that its closure has resulted in serious safety issues and vehicular congestion on Packet Lane. He says that the car park has been used on thousands of occasions over many years and access across the piece of land has been a feature of life in Bolton le Sands for generations.

Bolton le Sands Pre-School

The Pre-School state that they support the application to alleviate current vehicular congestion and safety concerns.

Mrs Ryan also submitted an extract from the village hall bookings register for February 2016 to illustrate how regularly the centre was used (from 9am onwards most days) and the diversity of groups attending the venue, photographs showing vehicular congestion on Packet Lane and the fences erected to obstruct the application route.

Additional User Evidence

Following an initial assessment of the evidence the applicant (Bolton le Sands Parish Council) was contacted explaining the difficulties associated with assessing user

evidence on the submission of petitions and suggesting the submission of user evidence forms which could be more thoroughly assessed to determine claimed use of the route.

Co-ordinated by Mrs Ryan 30 user evidence forms were subsequently submitted (at the time of writing). Some were from people who had already submitted an earlier form or responded to the planning application. More precise detail of use and dates are given

Evidence of use was submitted from 1962 through to the closure of the route in 2015.

26 users claimed to have used the route on foot and in a vehicle, with two also referring to use on a bicycle.

1 user refers to use on foot only and another user specifies vehicular use only.

23 users state that they have used the route for between 30 and 53 years.

4 users state that they have used the route for between 20 and 30 years.

3 users state they have used the route for between 7 and 20 years.

Users were going to and from the primary school, community centre, children's nursery and play park/playing fields a number of users explained how they would drive along the application route to get to the community centre car park where they would either park or drop off/collect family members.

Many users described how they were going to the community centre, tennis and bowling clubs, recreation ground, playpark, nursery and school formed the hub of the local community and that they were all located at the end of Packet Lane and accessed both on foot and in vehicles along the application route. There is often reference to use on foot on a daily basis and in a vehicle weekly.

An 'informal' but well established one way system was referred to by a number of users who explained that because of the narrowness of Packet Lane and the fact that there was a sharp turn onto it if driving from the north drivers would drive to the school/community centre/play fields etc. along the application route and then use the route along Packet Lane when departing.

The reasons for using the route included picking up and dropping off children at school and nursery, going to the playground or recreational field, to get to the bowling club, tennis club, to watch or to play football, to attend parties at the community centre, attending the village bonfire and firework display, attending scouts and playgroup, for Women's Institute meetings and coffee mornings, attending keep fit sessions and the Mothers Union, for horticultural shows, after school clubs and coffee mornings.

Use made of the route was frequent in almost every case, often with multiple daily use during the years when users were taking children to nursery or school. Although the reasons for use often changed in time – for example taking own children to school and activities such as scouts, football or dance lessons, then later on use was

for visits to community centre, tennis and bowling and more recently taking grandchildren to the park, nursery and school.

The majority of users referred to seeing others using the route.

None of the users refer to being given permission to use the route or having been stopped or prevented until the closure of the route in 2015.

All users completing the forms confirmed that the route had followed the exact same route throughout the time that they had used it and none recalled the existence of any gates, stiles or signs.

Information from Others

Following receipt of the application a letter was received from a local resident who disputed the application and believed that the route was access through the private car park of the Packet Boat Hotel and that use by parents walking through to the school was trespass across a private car park.

Information from the Landowner

Daniel Thwaites PLC responded to the consultation to say that they sold the former Packet Boat Inn on 31 March 2015 and did not provide any information regarding the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

user evidence

Route open and available since 1985

No signs or evidence of use being with permission

Against Making an Order(s)

the different forms of user evidence make evaluation complicated both in terms of possible type of dedication and also the application of the Natural Environment and Rural Communities Act

Conclusion

The claim is that this route has already become a vehicular highway and is of such status that it should be recorded as a Byway Open to All Traffic on the Definitive Map and Statement.

There is no evidence that this is a part of the vehicular highway network dating back to the eighteenth and nineteenth centuries. Buildings were at point A until sometime

between 1969 and 1985. Upon them disappearing however the route appears then to be available as a route across the carpark linking vehicular highway to vehicular highway.

The user evidence would indicate that the route became used by the public as a way through in vehicles from highway to highway rather than a car park for the public house. Many users refer to it being "a cut through" a "a right of way for both pedestrians and vehicles across from Main Road to Packet Lane" Its loss "will create a single track access", indicating that this route was another access. "the only way of relieving serious build ups and blockages is cutting through the packet boat car park". "the car park at the Packet Boat takes the weight off the current chaos and allows access to the walk through to the school"

There are those who mentioning going to the car park to park a vehicle and perhaps wait for children to come out of school and it is advised that this use be discounted as it is not use of the route as a highway such as to evidence dedication as a highway. There is also evidence from a significant number of use as a through route on foot.

User can lead to a deemed dedication under S31 Highways Act 1980 if the criteria are satisfied or can be circumstances from which a dedication by the owner can be inferred at common law.

Looking at common law inference it would appear that the owners took no action to challenge use which said use would have been obvious. Given the amount of user it is suggested that on balance a dedication could be inferred at common law. It is suggested that the dedication would be of a vehicular highway. The use on foot was also evident but this is a lesser right.

Looking also at S31 criteria. Use has to be over the twenty years, in this case 1995-2015 up to the clear calling into question in 2015. There is mention of some earlier bollards but only by one of the users and there is reference to them disappearing. They do not appear to have been sufficient to be an earlier calling into question. The use has to be as of right, be sufficient and be by the public and there has not to be any sufficient evidence of the owner's lack of intention to dedicate.

It is suggested that on balance the criteria of S31 could be satisfied in this matter also inference of dedication at common law. A vehicular highway is of higher status and includes footpath rights and it is therefore suggested that the dedication to be deemed would be a vehicular right of way over the route.

There is then a difficulty as mechanically propelled vehicular rights were arguably extinguished by the NERC Act in 2006. Looking at the provisions of the statute it would appear that the only possible exclusion which would save the rights from being extinguished would be to look at whether the rights were over a way whose main lawful use by the public during the period of 5 years ending with May 2006 was use for mechanically propelled vehicles. If the main use by the public 2001-6 was in mechanically propelled vehicles the extinguishment under S67 NERC Act 2006 would not apply.

The evidence has therefore not only to be considered to look at sufficiency of use from which to deem or infer a dedication but also an exercise carried out to see whether the main use 2001-6 was in vehicles or on foot. This has proved somewhat difficult and detail is lacking but from the evidence on file it would appear that there was much daily use on foot 2001-2005 and more weekly use in mechanically propelled vehicles. This does not undermine the sufficiency of use to advise that the dedication would be vehicular. It is suggested that the mechanically propelled vehicular rights are not saved from extinguishment as the main use by the public were on balance on foot and so instead of the route being recorded as a byway open to all traffic it should be more properly recorded as a restricted byway.

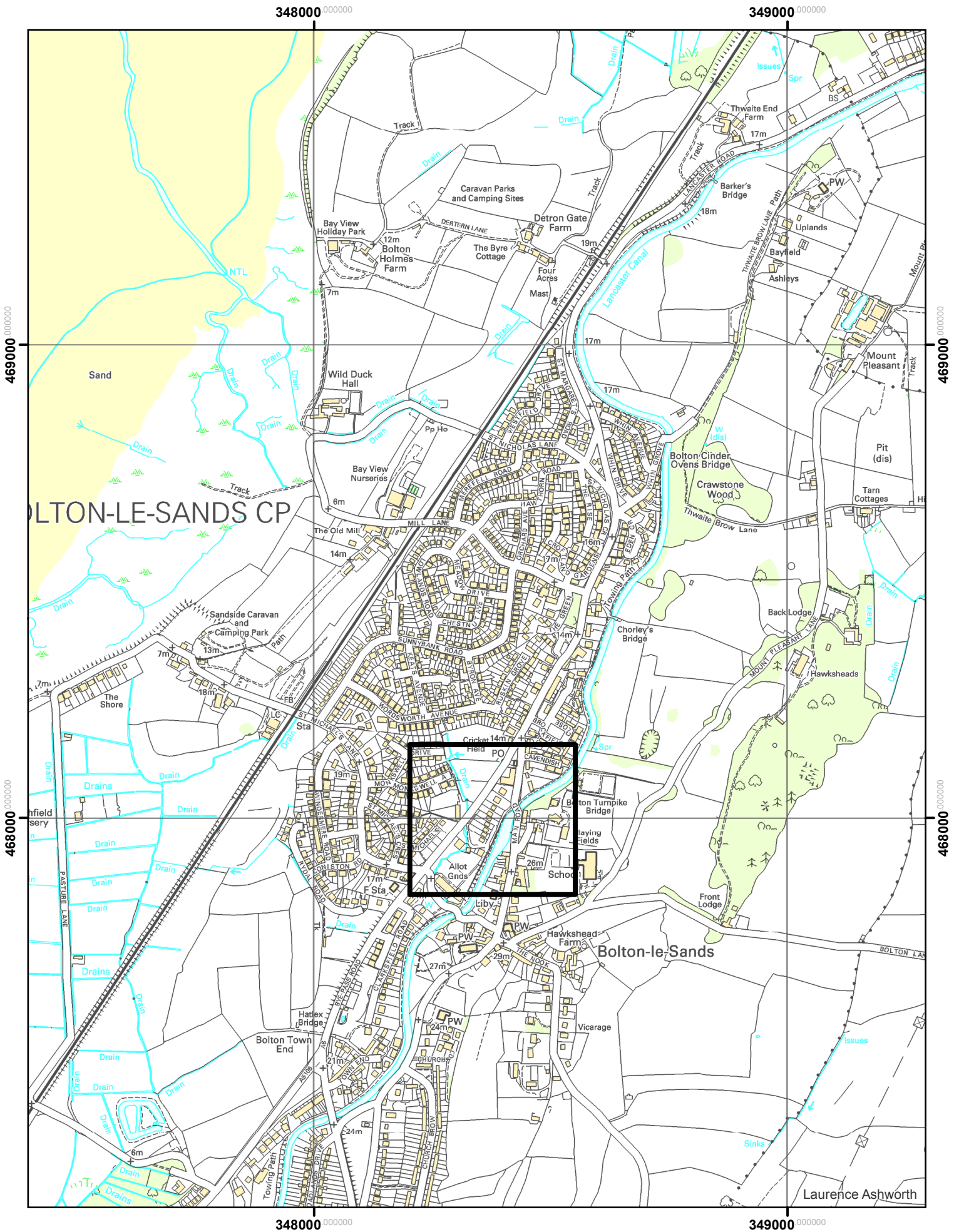
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-578		Jayne Elliott, 07917 836626, Public Rights of Way, Environment and Planning Group

Reason for inclusion in Part II, if appropriate

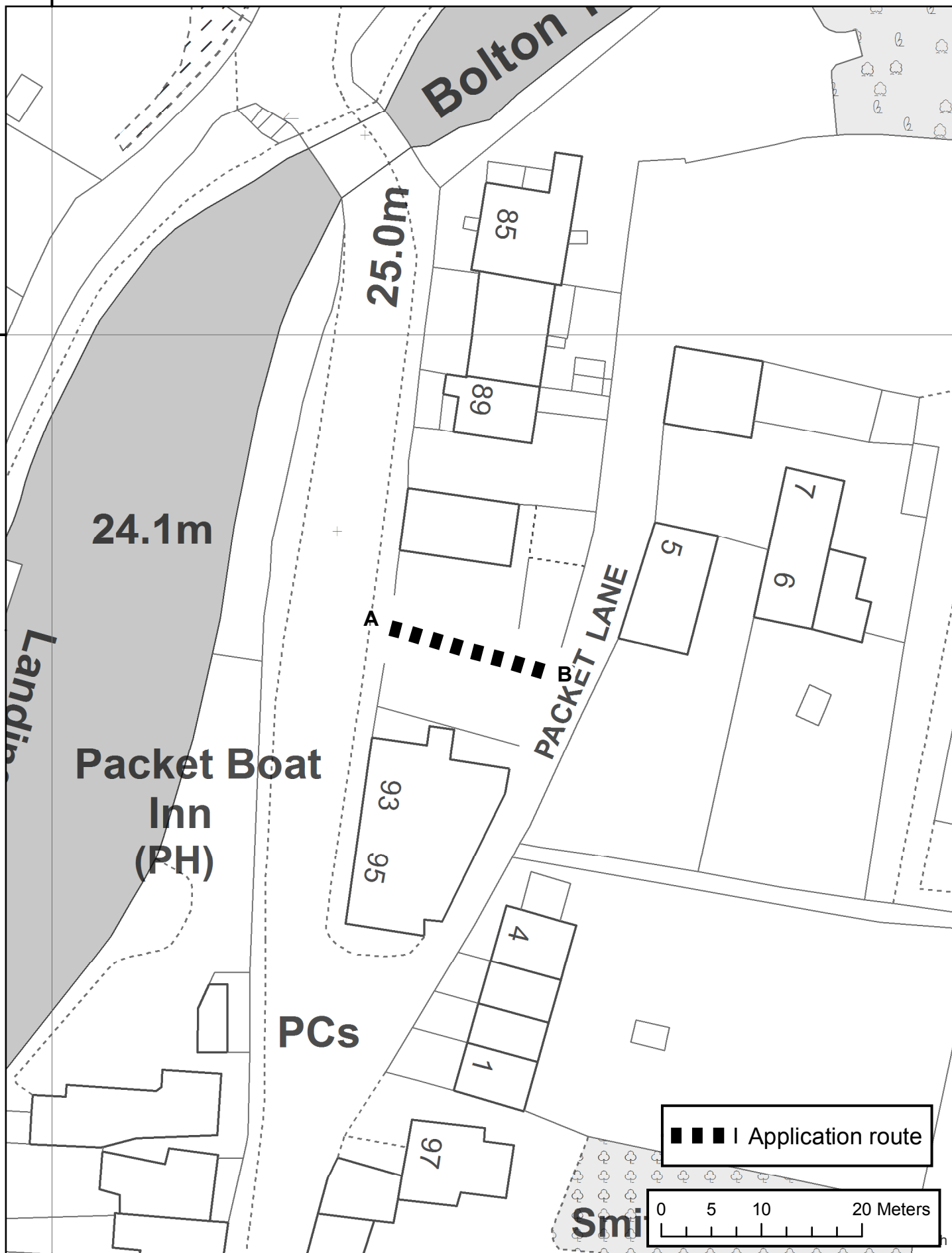
N/A



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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Application to add a byway from Main Road to Packet Lane,
Bolton le Sands, Lancaster City

1:500



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

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Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected: Rossendale North
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough

File No. 804-460

(Annex 'A' refers)

Contact for further information:

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

Executive Summary

Application for the deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough, in accordance with File No. 804-460.

Recommendation

1. That the application for the deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough, in accordance with File No. 804-460, be accepted.
2. 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 part of Footpath 339 Rawtenstall from the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B -C.
3. That being satisfied that the 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 was received in 2007 for the route shown on the Revised Definitive Map (First Review) as Footpath 339 Rawtenstall to be deleted from the Definitive Map and Statement of Public Rights of Way on the grounds that the map incorrectly recorded the route of the footpath as being along a line recorded to the south of Turton Hollow Road.

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

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

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

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

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

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by 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

The Borough Council were consulted but no response was received.

Parish Council

There is no Parish Council for this location.

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	8122 2575	Junction of application route with A682 Burnley Road
B	8120 2574	Edge of footway in front of 16 Turton Hollow Road
C	8108 2571	Junction of application route with U40355 Stoneholme Road (also recorded as FP 101 Rawtenstall)

Description of Route

A site inspection was carried out on 30 November 2016.

Turton Hollow Road is recorded on the County Council's records as a public vehicular highway. It is 2 way, tarmacked road; street lit with an adjacent footway, has a 30 mile per hour speed limit and parking restrictions are in place along part of the road.

The application route commences at the junction of Turton Hollow Road with Burnley Road (Point A on the Committee plan) adjacent to 696 Burnley Road.

The route extends in a general west south westerly direction and is shown following but diverging from Turton Hollow Road onto land to the south of the road behind number 16 North View and then continuing, roughly parallel to Turton Hollow Road through land forming a number of gardens belonging to properties on North View. The land crossed by the application route is steeply sloping and significantly higher than Turton Hollow Road with the application route running along an embankment and substantial retaining wall. As the route passes the last of the properties on North View it then continues through an area of woodland and descends steeply down a slope to cross the stone retaining wall separating the woodland area and Turton Hollow Road. The application route passes through the wall to meet Footpath 101 on Stoneholme Road.

The application route runs roughly parallel to Turton Hollow Road. It is not accessible on the ground and there is no evidence on site that a route has existed, or has been used. Turton Hollow Road has existed for a long time (since at least the 1890s) and it is difficult to imagine a reason why anyone would attempt to walk that route rather than use Turton Hollow Road.

The total length of the route is 145 metres.


Map and Documentary Evidence

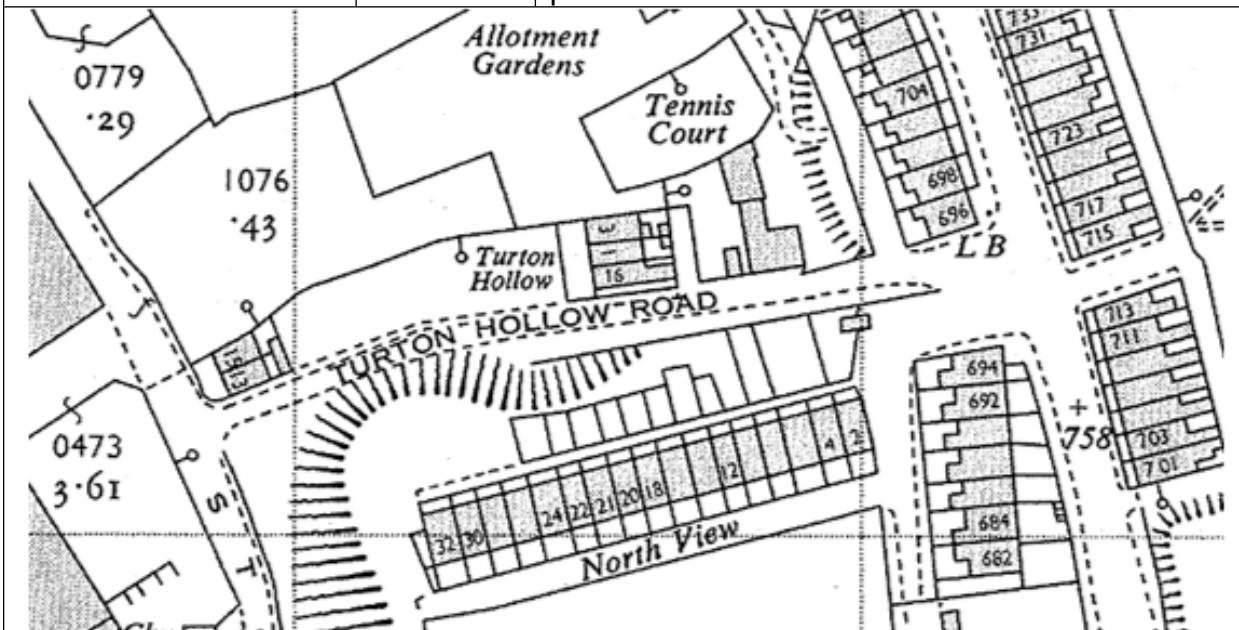
Prior to the application to delete the footpath being received investigations into the correct route of the footpath were carried out by the County Council in response to a report that recorded route of the footpath was blocked. At that time it was the view of the investigating officer that the route of the footpath had been drawn incorrectly on the Revised Definitive Map (First Review) and that the footpath was shown prior to the revision of the map as being along Turton Hollow Road and described in the

Statement as such. In the opinion of the investigating officer there did not appear to be any reason for the route to be shown in the position shown on the Revised Definitive Map (First Review) other than a drafting error and the Statement has not been changed. No legal orders have been found suggesting that Footpath 339 was legally diverted prior to the revision of the Definitive Map or that that it had originally been incorrectly recorded along Turton Hollow Road.

An application was subsequently received to delete Footpath 339 from the Revised Definitive Map (First Review).

In this particular case it is not considered necessary to present the full range of historical map and documentary research associated with Definitive Map Modification investigations predating the inclusion of the route on the First Definitive Map.

Document Title	Date	Brief Description of Document & Nature of Evidence
6 inch OS Map	1955	The Ordnance Survey base map for the Revised Definitive Map (First Review), published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1930 25 inch map.
		
Observations		The route to be deleted is not shown on the map. Turton Hollow Road is shown and named on the map as a through route.
Investigating Officer's Comments		The route to be deleted did not exist in the 1930s.
1:2500 OS Map	1962	Further edition of OS mapping reconstituted from former county series, revised in 1961 and

		published 1962.
		
Observations		Turton Hollow Road is clearly shown as a named through route. The route to be deleted is not shown and crosses land fenced and indicated as being steep terrain on the map.
Investigating Officer's Comments		The route to be deleted did not exist in 1962.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but

		not for unparished areas.
Observations		Rawtenstall was a municipal borough in the early 1950s and so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



	<p>339. ✓ Footpath</p> <p>340. ✓ Footpath</p>	<p>Nocliffe Eaves in S.W. direction along Bottomley Bank Lane to junction with Bonfire Hill Lane. <i>road</i></p> <p>From Stoneholme Road along Turton Hollow Road to Burnley Road.</p> <p>S.E. from F.P. No. 338 to Bonfire Hill</p>	<p>0.48 ✓</p> <p>0.09 ✓</p>
Observations		The Draft Map is the first map in the series of documents prepared under the legal process. A	

		<p>route numbered 339 is clearly shown as being drawn on the map along the road named on the map as Turton Hollow Road. The accompanying statement describes route 339 as a footpath 'From Stoneholme road along Turton Hollow Road to Burnley Road'.</p> <p>The route under investigation was not shown on the Draft Map of Public Rights of Way for Rawtenstall and there were no representations made to the County Council in relation to it.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>

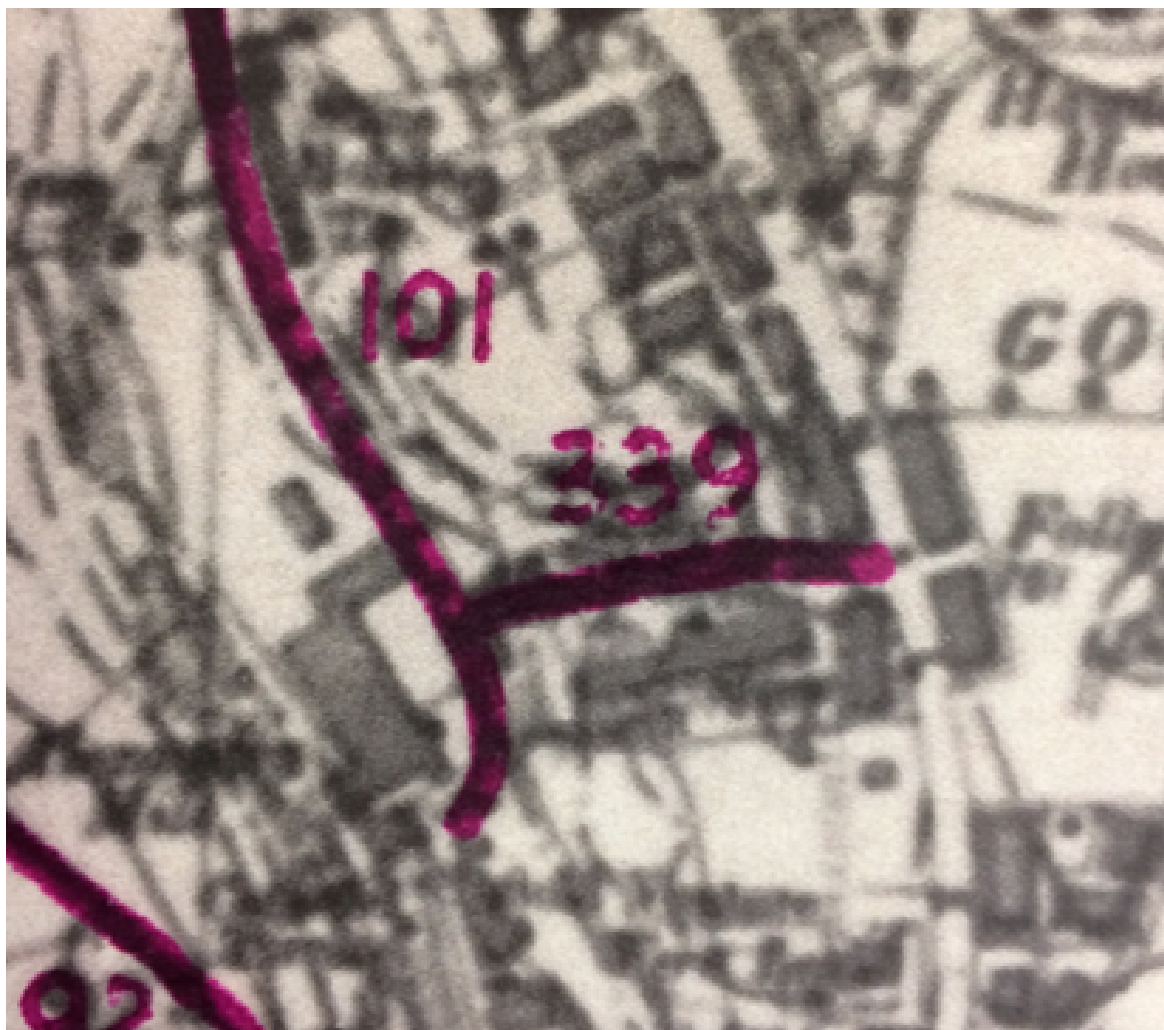


Observations

The route known as Footpath 339 is again shown clearly marked along Turton Hollow Road and is described as being along Turton Hollow Road in the accompanying Statement. The route under investigation was not shown on the Provisional Map and there were no representations made to the County Council in relation to it.

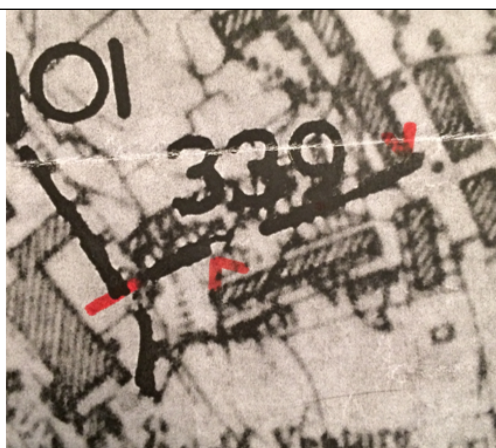
The First Definitive Map and Statement

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



Observations		<p>The clarity of the Ordnance Survey base map used for the First Definitive Map is poor. Lines drawn by hand to show the position of the public rights of way recorded on it were drawn by hand using a thick felt tip pen. The purple line drawn to show the route of Footpath 339 – described in the Definitive Statement as along Turton Hollow Road – is thick and makes it impossible to see the base map underneath. The line appears to follow the alignment (and curve) of Turton Hollow Road as opposed to the route to be deleted. n.b. thick felt tip pens were commonly used in the 1960s but the finer fibre tip pens were invented in 1962 and not widely available until a couple of years later.</p>
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map</p>

		of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
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Observations		<p>The quality of the Ordnance Survey base map used for the Revised Definitive Map (First Review) is of much greater clarity than the map used for the First Definitive Map and the rights of way recorded on it were hand drawn with ink. The Revised Definitive Statement (First Review) described Footpath 339 as being 'along' Turton Hollow Road and a casual look at the map appears to confirm this. However, when routes shown on the Revised</p>
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		<p>Definitive Map were digitised by the County Council, it was necessary to look very closely at the dashed line drawn to record the route of the footpath.</p> <p>The Revised Definitive Map (First Review) Map was drawn at a small scale of 1:10,560 (6 inches to the mile) without the ability to use modern day digital techniques to enlarge and digitise maps.</p> <p>Both the Revised Definitive Map and the OS base map used to compile it have been enlarged and examined and show that whilst the line drawn to record the route of Footpath 339 starts at the junction of Burnley Road with Turton Hollow Road immediately south of 696 Burnley Road it then follows and diverges from Turton Hollow Road and takes a line to the south of the road through to its junction with Footpath 101.</p>
Investigating Officer's Comments		<p>The route of the Footpath is shown in a different location (i.e. diverging from Turton Hollow Road across land to the south) than it is shown on the First Definitive Map.</p> <p>There is no map or documentary evidence suggesting that the alignment of Turton Hollow Road had altered or that the footpath was legally diverted from Turton Hollow Road to a route running parallel but immediately south of the road.</p> <p>The accompanying Definitive Statement still described the route as being along Turton Hollow Road and it appears most likely that a drafting error has occurred.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not</p>

		<p>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>
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Observations		<p>There is no Handover Map for Rawtenstall. A County Council plan of maintainable 'streets' shows Turton Hollow Road as a publicly maintainable highway as recorded on the List of Streets.</p> <p>Details from the Rossendale Street Register compiled in December 1986 states that Turton Hollows Road is adopted from Burnley Road for a length of 146m and an average width of 3 metres but there is no given date for the adoption.</p>
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		The route proposed to be deleted is not recorded in the List of Streets as being publicly maintainable except in as much as it overlaps Turton Hollow Road at the east end.
Investigating Officer's Comments		The route to be deleted, i.e. where it diverges from Turton Hollow Road, is not recorded on the List of Streets as being publicly maintainable. Turton Hollow Road is recorded in the List of Streets confirming that it is a publicly maintainable route.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal Orders have been found regarding the public status of Turton Hollow Road or Footpath 339.
Investigating Officer's Comments		<p>There is no evidence to suggest that Turton Hollow Road was incorrectly recorded as being at least a public footpath in the 1950s or that it had been legally extinguished or diverted onto the route proposed to be deleted.</p> <p>The fact that most of Turton Hollow Road is no longer recorded as a public footpath appears to be a drafting error.</p>

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

Landownership

Part of the land crossed by the application route is unregistered.

Properties affected by this application are:

18 North View, Crawshawbooth
 20 North View, Crawshawbooth
 22 North View, Crawshawbooth
 24 North View, Crawshawbooth
 26 North View, Crawshawbooth
 28 North View, Crawshawbooth
 30 North View, Crawshawbooth
 32 North View, Crawshawbooth
 34 North View, Crawshawbooth

2 North View, Crawshawbooth
4 North View, Crawshawbooth
6 North View, Crawshawbooth
8 North View, Crawshawbooth
10 North View, Crawshawbooth
12 North View, Crawshawbooth
14 North View, Crawshawbooth
16 North View, Crawshawbooth

Summary

Footpath 339 was originally recorded on the Definitive Map and Statement of Public Rights of Way as being along Turton Hollow Road. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the map was redrawn at a small scale and the route, whilst still being described in the Statement as being 'along' Turton Hollow Road it was shown in part along land adjacent to Turton Hollow Road across land where no evidence has been found of a route ever having been available to walk.

There does not appear to be any reason for the route of Footpath 339 being altered other than a drafting error and no legal orders have been found suggesting that it was legally diverted prior to the revision of the Definitive Map.

The route currently recorded as part Footpath 339 between point A and point B is on the County Council's List of Streets as a publicly maintainable highway, i.e. it is recorded consistently with the road network. It is tarmac with a footway and street lights and evidence suggests that it was mostly used by motorised public vehicles (MPVs) in the relevant period prior to the commencement of the Natural Environment and Rural Communities Act 2006. It is not therefore correct to be recorded as a public footpath.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted a letter with the application explaining that she had been in communication with a member of the County Council's Public Rights of Way team prior to submitting the application who had advised her that the application route was shown incorrectly on the Revised Definitive Map (First Review) due to a mapping error.

The applicant also submitted an advice note dated 2006 and copy of the Draft Map for Rawtenstall which had been supplied to her by the County Council showing Footpath 339 along Turton Hollow Road and the draft statement describing the route of the footpath along the road. The author of the note stated that she believed that the Revised Definitive map (First Review) was poorly drawn and that the correct

route of the public footpath was along Turton Hollow Road, as confirmed by the Statement.

The applicant also submitted 3 user evidence forms and a letter detailing evidence of use on foot of Turton Hollow Road and not the route to be deleted covering the period from 1948 to 2006.

Information from Others

None.

Information from the Landowner

Three of the landowners affected by the application have responded to consultations stating that during the time that they lived in the properties affected (6.5, 14 and 25 years respectively) no-one had ever requested use of or attempted to use the route and all three stated that until approximately 2006 they had been unaware of the existence of such a footpath, as it had not been revealed to them at the time of purchase.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Cogent map and documentary evidence of error sufficient to delete
- Acknowledgement from some land owners

Against Making an Order(s)

- Initial presumption that it exists

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted. Committee is advised that in order to remove a route from the Definitive Map, it is necessary to show that on balance it was put on the Definitive Map in error.

In this matter, a footpath along Turton Hollow Road adjacent to the route to be deleted was first shown on the Draft Map with a relevant date of 1 January 1953, although this map only went on deposit on 1 January 1955. However, the route to be deleted (A-B-C) was first shown on the 1966 Definitive Map (the First Review Definitive Map) so the error needs to be shown to have been made in 1966.

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

“Where the Secretary of State or an inspector appointed by him has to

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

The route to be deleted is not shown on the OS map published in 1955 suggesting that the route did not exist in the 1930's. Turton Hollow Road is shown and named on the map as a through route at this time and a footpath numbered 339 first appears on the Draft Map and the accompanying statement to the Draft Map describes it as a footpath from Stoneholme Road along Turton Hollow Road to Burnley Road. The word 'along' in this statement clearly denotes the location of the route and is drawn on the map along Turton Hollow Road, the route under investigation is not shown on the Draft Map and no representations were made at the time. The route is not included in the subsequent Provisional Map and again no representations were made to the County Council. It seems that there has been a drafting error in including a public footpath along Turton Hollow Road, as the map evidence suggests this is a through route and is capable of being used with vehicles and should not have been put onto the map as it was a carriageway. The First Definitive Map and Statement includes a public footpath along Turton Hollow Road which seems to have been the first drafting error, as Turton Hollow Road is recorded on the map of publicly maintainable streets and seems to link up to the highway network and it is reasonable to assert that it is capable of being used by vehicles and should not have been recorded as a public footpath.

The route in question is first shown on the Revised Definitive Map of Public Rights of Way (First Review) however; the accompanying Definitive Statement still describes the route as being along Turton Hollow Road and it appears that a further drafting error has occurred at this point diverging the incorrectly recorded public footpath shown on the First Definitive Map. It is understood there was no map or documentary evidence to suggest the alignment of Turton Hollow Road had altered or that the footpath was legally diverted from Turton Hollow Road to a route running parallel but immediately south to the road. It seems this further drafting error occurred when the Revised Definitive Map was digitised by the County Council due to the small scale nature of the map and without modern day techniques to enlarge and digitise maps, the incorrectly recorded public footpath diverges from the line recorded on the First Definitive Map.

Further weight is added to the map evidence, three user evidence forms have been provided and a letter detailing that the route was not in existence to have been useable for the route under consideration. The users state they had only used Turton Hollow Road on foot as opposed to the route claimed to be deleted during 1948 to

2006. Some of the landowners across the claimed route for deletion have also stated that nobody had ever requested use of or attempted to use the route under consideration and that until approximately 2006 they had been unaware of the existence of such a footpath.

It is suggested to Committee having considered the map and documentary evidence, it may consider that an error in recording a public footpath along Turton Hollow Road had first been made in recording a public footpath initially on the Draft Map and the First Definitive Map and; thereafter a further drafting error occurred when the Revised Definitive Map was prepared, when the incorrectly recorded public footpath diverged along a new line that is the subject of this claim. Committee should note that the length A-B has not diverged and instead this is the section recorded incorrectly from the outset on the Draft Map.

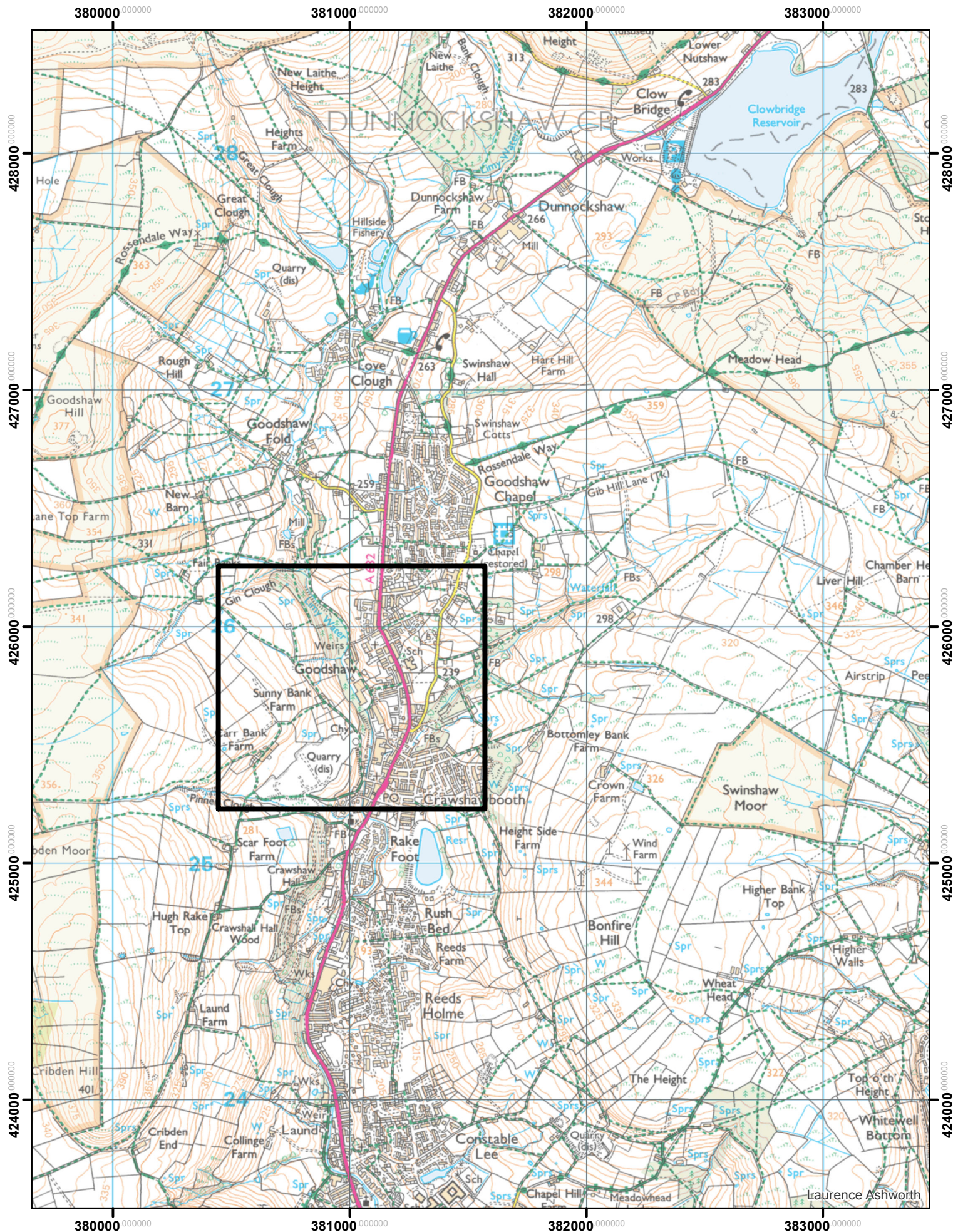
It is suggested that there is cogent evidence on balance of such an error. It is advised that the evidence is sufficient to overcome the presumption that the footpath exists. There is sufficient cogent evidence to satisfy the test to delete the footpath from A-B-C.

Committee is advised that an order be made to delete section A-B-C from the Definitive Map and Statement.

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: 804-460		Jayne Elliott, Environment and Planning Group, 01772 537663
Reason for inclusion in Part II, if appropriate N/A		



Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected:
Longridge with Bowland

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley

File No. 804-582

(Annex 'A' refers)

Contact for further information:

Jayne Elliott, 01772 537663, Environment and Planning,

Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley, in accordance with file no. 804-582.

Recommendation

1. That the application for the addition to the Definitive Map and Statement of a footpath from Higher Road to Wellbrow Drive, Longridge, in accordance with File No. 804-582, be accepted.
2. That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) the Wildlife and Countryside Act 1981 to add a footpath from Higher Road to Wellbrow Drive on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Higher Road to Wellbrow Drive, Longridge on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

Consultations

Ribble Valley Borough Council

Ribble Valley Borough Council have been consulted but no response has been received to date, it is assumed that they have no comments to make.

Longridge Town Council

The Town Council have responded stating that they support the application to record the path.

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	6098 3758	Gated access from Higher Road onto access way between 71 and 71a Higher Road
B	6096 3760	Path passes between the rear boundary fences of 71 and 71a Higher Lane
C	6095 3761	Path narrows between garage and rear garden fence of 20 Wellbrow Drive
D	6093 3763	Open junction of application route with Wellbrow Drive between 18 and 20 Wellbrow Drive

Description of Route

A site inspection was carried out on 4th December 2016.

The route commences at a junction with Higher Road, Longridge between the properties numbered 71 and 71a Higher Road and shown as point A on the plan. 71 Higher Lane is the most northerly of a row of 8 terraced properties in the row of properties dating back to at least the mid 1800s and known originally as 'Cut Thorn'.

From point A the application route leaves the footway to pass through green metal gates which were in the closed position on the day that the path was inspected, but which were not locked. The gates have been erected across the full width of the route which is bounded on either side by the garden fences/walls of 71 and 71a Higher Lane. Once through the gates the route runs in a north westerly direction along a block paved area that appears to be a driveway providing direct access to a side porch from 71 Higher Lane. The route is 3 metres wide and refuse bins belonging to the terraced cottages are position along the south west side of the route.

Adjacent to the side porch of 71 Higher Lane a vehicle was parked on the route. The vehicle did not prevent access but it restricted the width of the route available.

Beyond the parked vehicle the block paving ends and the route continues at a width of 3 metres along a roughly tarmacked route sloping gradually downhill. Washing lines were strung across the route close to the parked vehicle on which washing had been hung making it necessary to weave through it to continue along the route.

Just prior to reaching point B on the Committee plan the bounded area over which the route runs fans out as a hedge separating the garden of 71 Higher Lane curves west. From point B the application route continues in a north westerly direction across a more open area passing an electricity substation situated immediately north

east of the route which it was noted could only be accessed from the application route.

At point C the application route narrows to 1 metre wide as it passes between a garage (accessed from the application route between point A-B) and the rear garden fence of 20 Wellbrow Drive.

The route at point C, and alongside the garage towards point D was accessible on the day the route was inspected although a significant amount of cut down tree branches and other vegetation was piled along it and a long plank of wood had been propped up across the route (which it was possible to walk under).

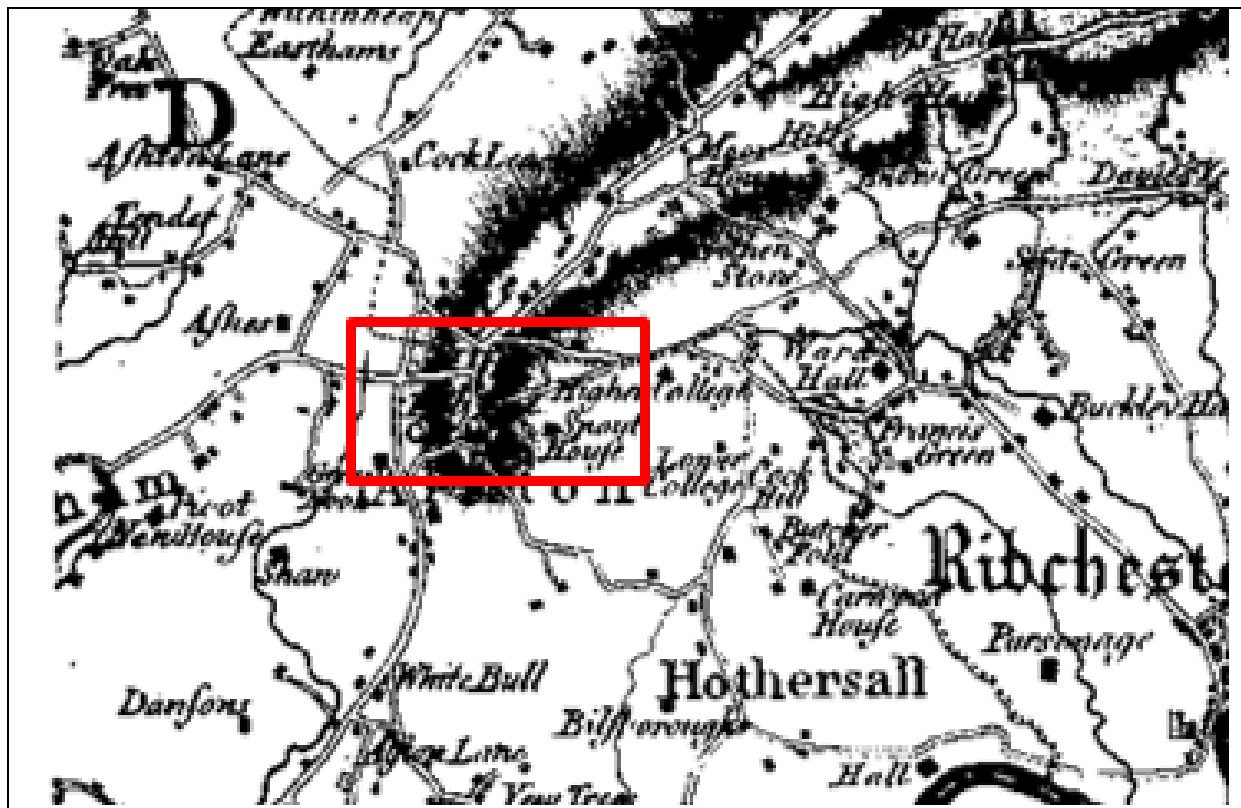
Once past the garage the route continues along a narrow 80cm wide path fenced off between 18 and 20 Wellbrow Drive. The surface of the route was firm, compacted earth with evidence of recent footprints.

At point D the route meets Wellbrow Drive and access is unrestricted.


The total length of the route is 75 metres.

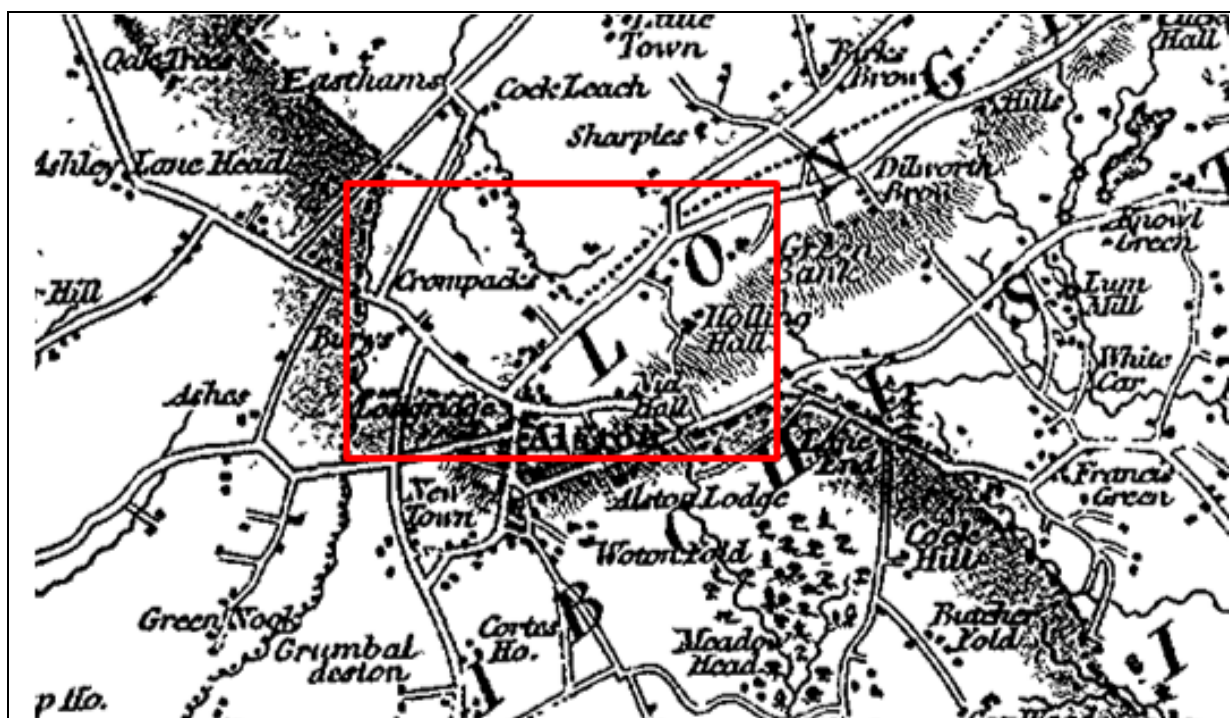
Map and Documentary Evidence

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



Observations		The application route is not shown. Higher Road is shown but Wellbrow Drive is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

		
Observations		The application route is not shown. Higher Road is shown but Wellbrow Drive is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



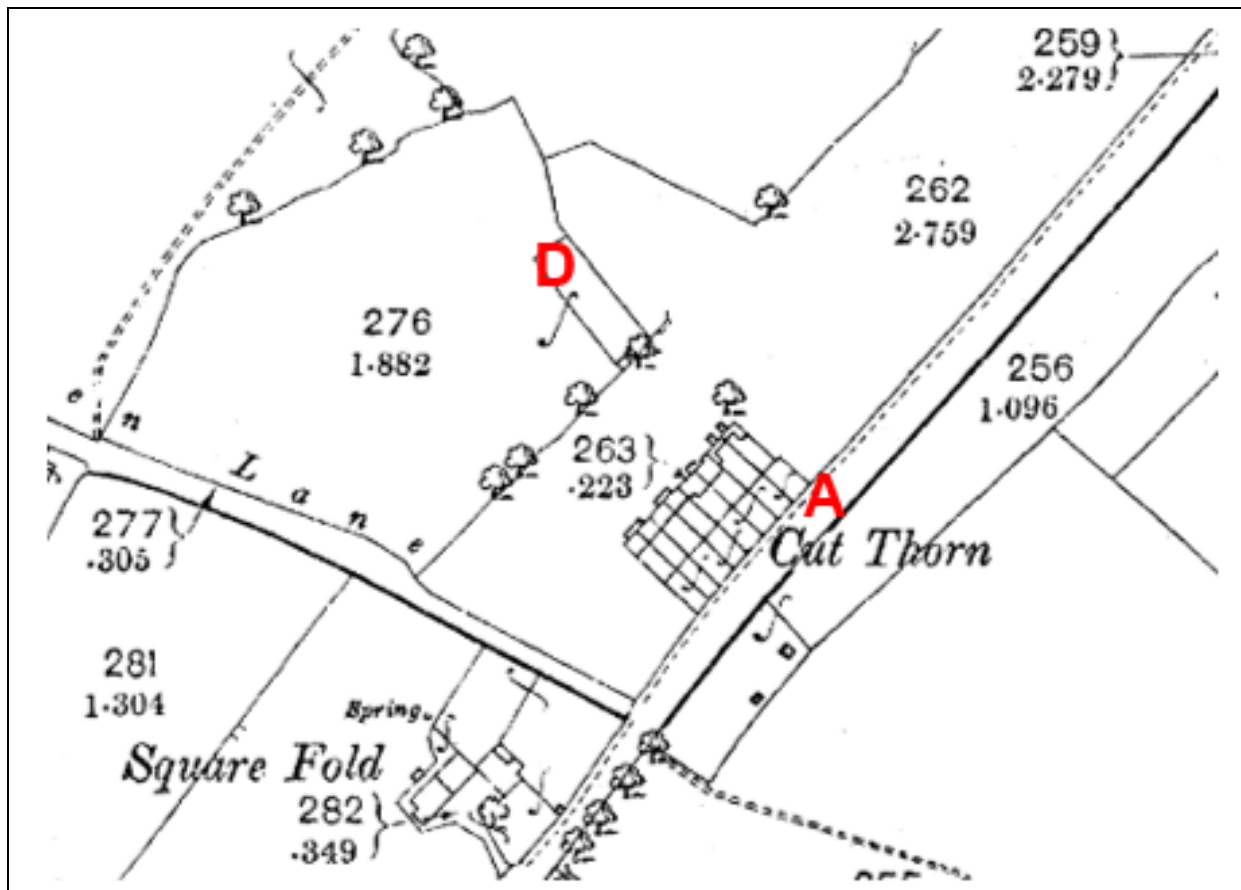
Observations		The application route is not shown. Higher Road is shown but Wellbrow Drive is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The application route does not cross land affected by the planned construction of a canal or railway.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do

		show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Wellbrow Drive and that no part of the route was shown to have existed in the 1800s. For this reason the Tithe Map for the area crossed by the application route has not been examined.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		The Inclosure Awards for Dilworth and Thornley with Wheatley have not been examined to see whether they included the area crossed by the application route because there is no map evidence suggesting that the route existed in the 1800s.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847. ¹

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

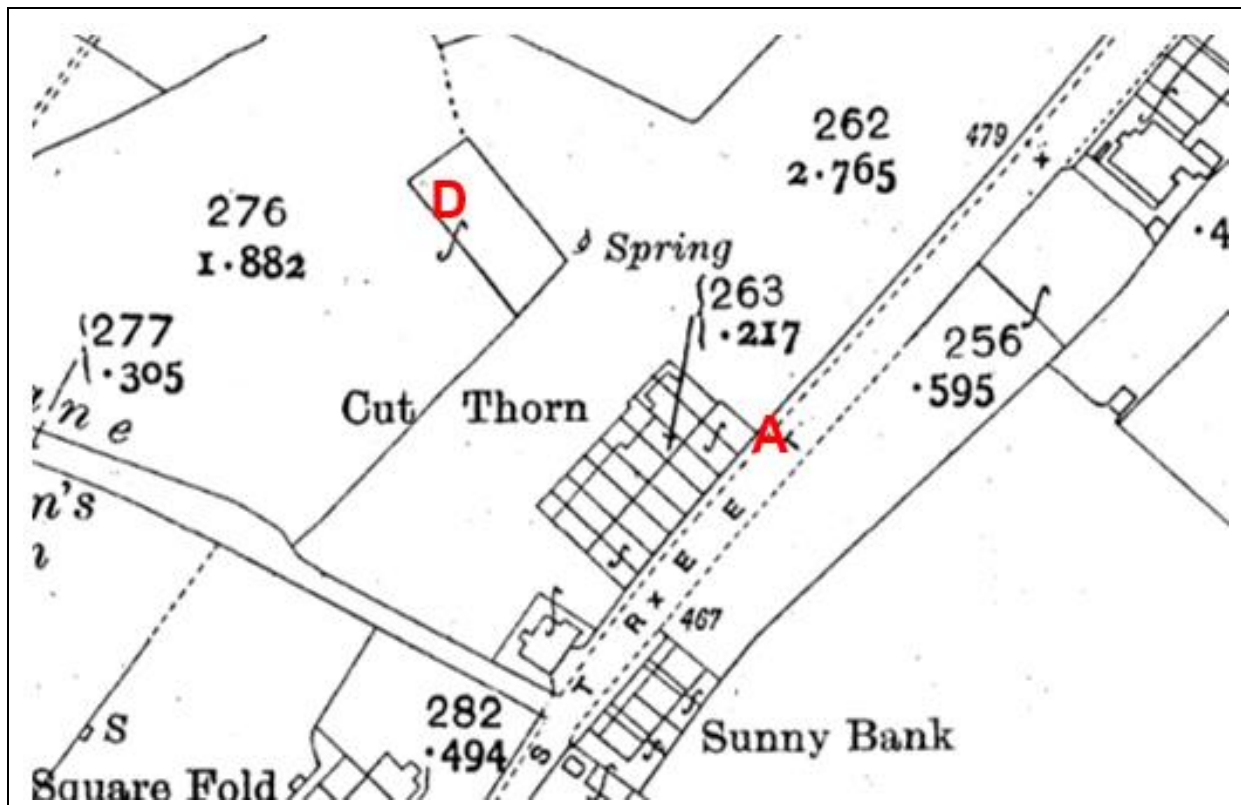


Observations		The application route is not shown. Higher Road is shown (named High Street on the map) but Wellbrow Drive is not shown. Buildings are shown south west of point A which appear to have been known as 'Cut Thorn'. The land over which the application route runs is shown as fields and there is no marked on the map.
Investigating Officer's Comments		The route under investigation probably did not exist in 1844 (date of survey).
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations		<p>The application route is not shown. The 25 inch map shows the area in more detail with a row of terrace houses known as Cut Thorn to the south west of point A.</p> <p>The application route crosses fields and no path is shown. Wellbrow Drive is not shown.</p>
Investigating Officer's Comments		The route under investigation probably did not exist in 1892 (date of survey).
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		The application route is not shown and there are no changes to the map in the vicinity of the route from the date of the first 25 inch OS map survey.
Investigating Officer's Comments		The route under investigation probably did not exist in 1910 (date map revised).
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</p> <p>Making a false claim for a deduction was an offence although a deduction did not have to be claimed so</p>


		<p>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		There are no Finance Act maps available to view in the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1892, revised in 1930 and published in 1932.





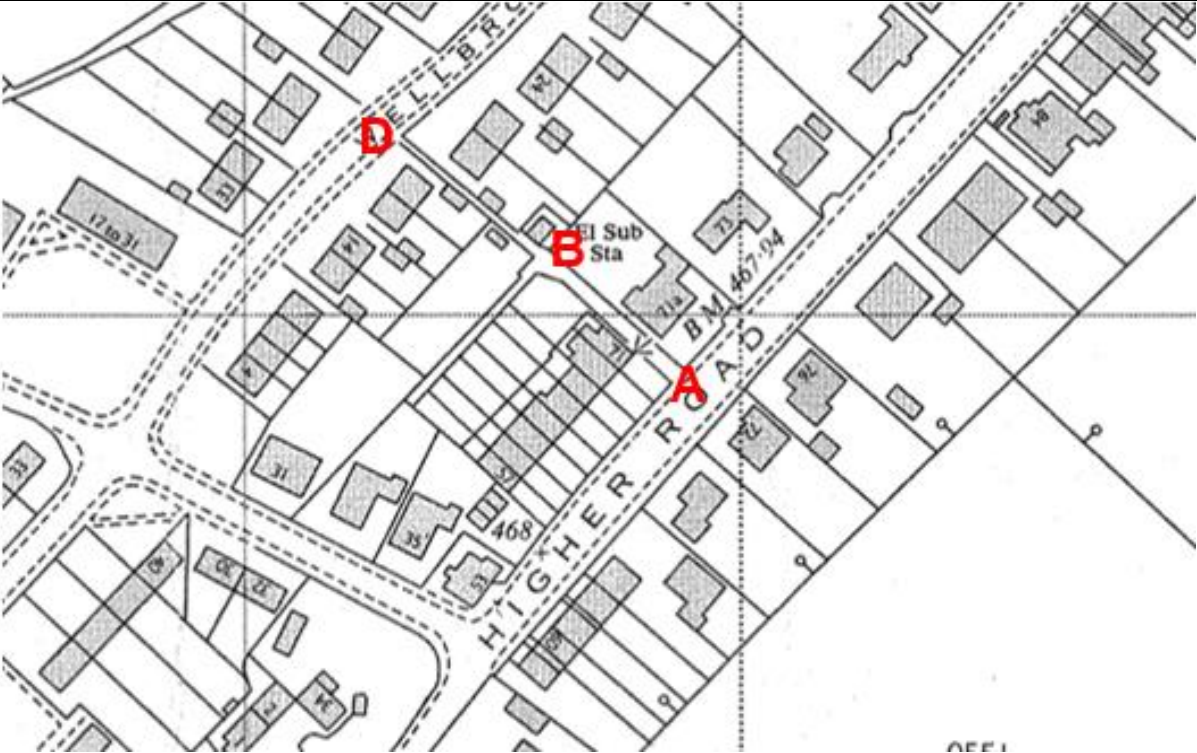
Observations		The application route is not shown. The area crossed by the application route is shown unchanged from how it is shown on the first and second edition 25 inch OS maps.
Investigating Officer's Comments		The route under investigation probably did not exist in 1930 (date of map revision).
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
Observations		The map does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.


Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		The route under investigation is not shown. Some buildings, apparently under construction, are shown to the north east of the route.
Investigating		The route did not exist as a visible track on the


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

Officer's Comments		ground in the 1940s.
1 inch OS Map	C1950	Extract of 1 inch map available to view on LCC website. Date of survey not known but titled as having been published between 1953 and 1955.
		
Observations		The application route is not shown, nor is Wellbrow Drive.
Investigating Officer's Comments		It is unlikely that the application route existed before the revision date for this map, sometime between 1937 and 1951.
6 Inch OS Map	1955	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map is probably based on the same survey as the 1930s 25-inch map with a major revision in 1928-30 and subsequent revision between 1937 and 1951.</p> <p>A copy of the 6 inch 1955 OS map for the area is missing from the CRO but as it was used as the base map for the publication of the Revised Definitive Map (First Review) it is possible to examine that.</p>

		
Observations		<p>The area to the north east of point A appears to have undergone some changes with buildings being shown adjacent to Higher Road around which there is a boundary marked abutting the application route and leaving a strip of land extending from point A along which the application route runs. This strip of land appears to form part of a field which extends around the rear of Cut Thorn. There is no marked route along the strip of land from point A or across the field and access to point D (or beyond) is not shown.</p>
Investigating Officer's Comments		<p>The application route may have existed between point A and point B but there is no evidence that it formed part of a through route.</p>
1:25,000 Ordnance Survey	1958	<p>Compiled from the 6 inch map this map was revised in 1928-30 but incorporates further revisions 1937-51, was published in 1954 and reprinted in 1958.</p> 

Observations		The newer buildings to the north east of the route are shown as a separate block to the terrace and have an enclosure around them which leaves a strip, presumably for access, along part of the route suggesting it was accessible at this time although no form of path or track is shown and it only leads to the field behind the terrace.
Investigating Officer's Comments		Part of the route appears to have been available in the 1950s but if there was use by the public it was not sufficient to be shown on a map of this scale.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s.
Observations		There is no aerial photograph available to view for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
1:2500 OS Map	1967	OS 1:2500 map revised and published in 1967.
		
Observations		The land surrounding the application route has been developed and the application route is shown as an open through route between point A and point D. Access from point A is open and unrestricted between properties 71 and 71a Higher Road. From point B there appears to be access from the application route to the rear of the cottages previously labelled as 'Cut Thorn' but now numbered 57 – 71 Higher Road. An electricity substation is

		shown adjacent to point B which only appears to be accessible from the application route. From point B through to point D the route is shown as being narrower to the section between point A and point B but the full length of the route appears to be open and unrestricted.
Investigating Officer's Comments		The route existed in 1967 and appeared to be capable of being used.
6 inch OS Map	1970	Ordnance Survey 6 inch map revised in 1967 and published in 1970.
		
Observations		The application route is shown as a wide open route between point A and point D.
Investigating Officer's Comments		The route existed in 1970 and appeared capable of being used. The depiction of the width of the route as being uniformly wide is indicative of the style of the map as opposed to an accurate reflection of the width available.
Aerial Photograph	2000	Aerial photograph available to view on GIS.

		
Observations		The application route can be seen on the aerial photograph but it is not possible to see whether there it is accessible along the full width.
Investigating Officer's Comments		The application route existed in 2000 but it is not possible to determine whether it was freely accessible.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey

		cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Longridge was a municipal borough in the early 1950s and a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route was not shown on the Draft Map and no representations were made to the County Council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route was not shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.

Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations		The route is not recorded as being publicly maintainable on the List of Streets.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		A search was made to see whether any record could be found regarding the creation or stopping up of a route between Higher Road and Wellbrow Drive. No reference to the route being legally created or stopped up could be found.
Investigating Officer's Comments		No inference can be drawn.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have

		been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Google Street View	2009	Photographs captured in 2009 by Google Street View.

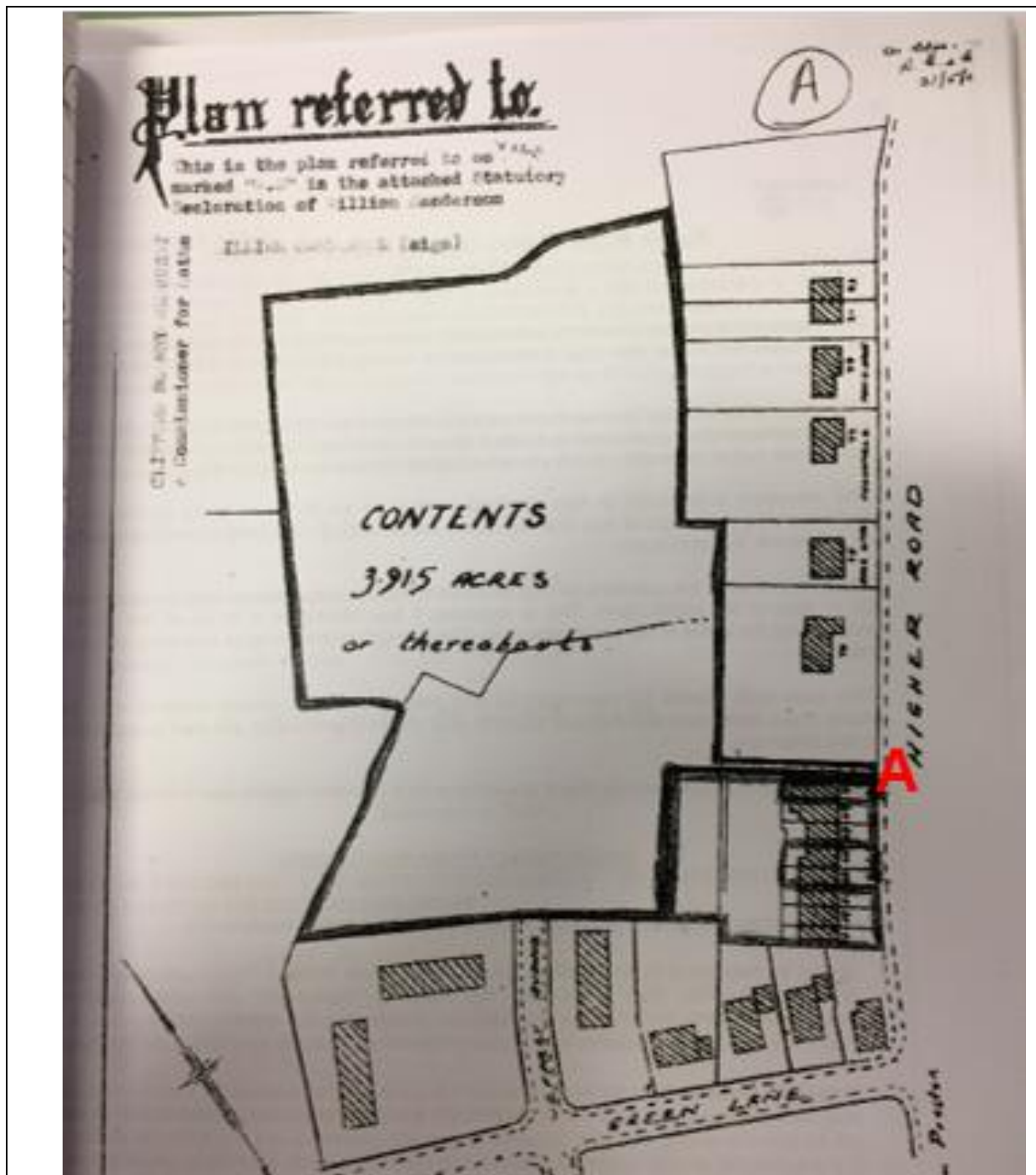
Higher Lane



Wellbrow Drive



Observations		<p>Both photographs were taken in 2009.</p> <p>Access is shown as being open and available onto the route at point A. No signs are visible indicating whether or not the route was considered to be public or private but green gates can be seen at point A which are in the open position. A car can be seen parked on the route close to point B although it appears possible to walk round it.</p> <p>From point D the route, although very narrow, appears to be available between the two properties.</p>
Investigating Officer's Comments		<p>Access onto the route from both ends of the route appeared to be available in 2009. However, it is not possible to see whether access is available along the full length of the route.</p>
Plan submitted by the Applicant	Undated	<p>An undated plan was submitted by the applicant and was attached to the majority of user evidence forms submitted.</p> <p>The applicant was questioned with regards to the plan and he explained that it had been given to him by a local resident but that he could not remember who she was and that he had not been given any additional information with the plan.</p>



Observations		The black and white photocopy of a plan is undated. It contains a north point and scale bar (1:1250) and appears to be a plan that formed part of a Statutory Declaration made by William Sanderson. A plot of land is bounded on the plan which includes the application route from point A to point B between the adjacent properties which appears to provide the only access to the land (field) from Higher Road.
Investigating Officer's Comments		The plan is of limited value as it is undated and it is not known who prepared it or for what purpose. The land bounded, for which an approximate is given,

		appears to be accessed via the application route from point A to point B suggesting that prior to the development of Wellbrow Drive part of the application route already existed as access to a field.
Land Registry documents		Plans and title deeds were obtained from the Land Registry.



Land Registry title plan LA683702 drawn on 1:1250 OS base map published 1985



Observations		<p>The Land Registry plan for 71a Higher Road provides information regarding the physical existence of the route in 1985 (the date of the OS base map) confirming that the route, originally shown on the 1967 OS map still appeared to exist as a through route between point A and point D.</p> <p>None of the land crossed by the application route is registered. However, the current boundaries of the two properties on Wellbrow Drive – believed to have been built at the same time as part of a larger development - are shown on the title plans and appear to show that a strip of unregistered land exists between them which is consistent with the route under investigation.</p>
Investigating Officer's Comments		<p>The two properties on Wellbrow Drive appear to have been built in the early 1960s and are split by the application route. When sold neither property appears to have included the purchase of the land crossed by the application route although for further details of the exact boundaries of the two properties and whether they have altered since the properties were originally constructed it would be necessary to view the deeds to both. These documents have not been made available for inspection.</p> <p>The fact that neither property appears to have been sold to include the application route suggests that the route may have been intended to provide public – or possibly private – access through to Higher Road.</p>
Articles published in the Longridge News	2013	Two articles referring to the application route published in the Longridge News on 24 July 2013 and 7 August 2013.
Observations		<p>A letter was published in the Longridge News on 24 July 2013 from Longridge Town Council. The letter explained that the route of a historical footpath between Higher Road and Wellbrow Drive was not recorded on the Definitive Map and Statement and that the Town Council had been advised by the County Council that they could submit an application under the Wildlife and Countryside Act 1981 to get it recorded. The letter asks for anyone with evidence about the history or use of the route to contact them.</p> <p>On 7 August 2013 the Longridge News published a letter from 'The Maxwell Family' addressed to Longridge Town council. In the letter they explain that they live in the property adjacent to the route (71a Higher Lane) and that they purchased it in 2007. They explain that they were told that the</p>

		<p>(application) route had been closed by temporary agreement with the police because of anger towards an individual who they stated resided on the opposite side of the route to them. They wrote in the letter that they believed that the temporary closure was in 2003 and that the footpath had not been formally closed but had been blocked with rubbish. They also state that in 2011 they cleared a way through the rubbish and recorded themselves walking through. They explained that they had a copy of their recording if anyone would like to see it.</p> <p>They further stated that the previous owner of their property was a gentleman named Mr Cod who could also confirm that the route was a public footpath.</p>
Investigating Officer's Comments		The letter provides information regarding knowledge of the route in 2007 (when the author bought the adjacent property) and indicates that the route was closed off in 2003 as a temporary solution to a separate community issue.
DVD submitted by the applicant		A DVD was submitted by the applicant on which it was written, 'Walking the proposed public footpath in Longridge between Higher Road and Wellbrow Drive. Taken by local resident W. Maxwell in 2008 and in 2014. Submitted as evidence of ongoing usage.'
Observations		<p>The DVD contained two video clips. The earliest was recorded on 26 July 2008. The person filming the route does not inform you of his name but comments on the route as he walks along it. The recording starts on Higher Road and the 'cameraman' starts by passing through the metal gate at point A. He comments that it is difficult to open but not locked although refers to the fact that residents on Higher Road had reported to him that the gate was sometimes locked. The cameraman describes the route as a byway and points to a sign located on the fence adjacent to point A which states 'No Waggon's'. Footage of the route between point A and point B show the route is accessible but that a substantial amount of material is piled up along part of the width, including tyres, wood, vegetation and building rubble.</p> <p>The cameraman shows the route adjacent to the substation and then a shot of the continuation of the path at point C which appears to be completely blocked by cut wood/garden waste and debris. The film then shows a narrow passageway along the back of Cut Thorn cottages explain how difficult it is to access the backs of the properties because of the</p>

		<p>actions of the owner of 71 Higher Road. Further reference is made to the fact that vehicular access along the route between point A and point B and to the rear of the cottages had been prevented by the owner of 71 Higher Road.</p> <p>The second film was recorded on 17 September 2014 and appears to be the filmed by the same person. He starts to film on Wellbrow Drive (point D) and explains that he is filming the route to show that it is still open and useable. The cameraman walks the full length of the route from point D to point A.</p>
Investigating Officer's Comments		The application route existed but was blocked at point C in 2008 but the route was open to use in 2013.

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

Ownership of the land crossed by the application route is not registered with the Land Registry and ownership unknown.

Adjacent properties consulted are:

71 Higher Road, Longridge PR3 3TB
 71a Higher Road, Longridge PR3 3TB
 69 Higher Road, Longridge PR3 3TB
 18 Wellbrow Drive, Longridge PR3 3TB
 20 Wellbrow Drive, Longridge PR3 3TB
 Electricity North West Limited, 304 Bridgewater Place, Birchwood Park, Warrington, WA3 6XG

Investigations into the history of the land crossed by the application route suggest that the land crossed by the route was owned by Mr William Sanderson prior to being sold to a developer in the 1950s or early 1960s who developed the land building the houses off Wellbrow Drive. The developers were Pius A. Baines and Son (Preston) and the company is no longer in existence. The houses built adjacent to the application route on Wellbrow Drive were sold by the developers and the land registry plans show that the application route was not included in the sale of either of the adjacent properties.

It appears that the Limited Company retained ownership and are now dissolved. The land may have passed to the Crown but the owner with the original intention behind constructing the path between points B-C-D is now not available.

The electricity substation was built on land purchased from the developer but the sale did not include the purchase of any part of the application route.

Summary

There is no map or documentary evidence to suggest that the application route existed as a through route before Wellbrow Drive and the associated housing development was built in the early 1960s.

Access from point A to point B appears to have existed at an earlier date – possibly from the 1930s and provided access from Higher Road to fields.

From 1967 onwards there is clear map evidence that the application route existed as a through route from Higher Road to Wellbrow Drive.

Access is shown on the OS maps from 1967 onwards as being unrestricted although the 2009 google street view photograph shows a gate (in open position) at point A.

Although in an urban setting, and apparently created as part of a housing development there is no record of the application route having been adopted. However, the land registry plans available suggest that there is a strip of land between 18 and 20 Wellbrow Drive which was not included as part of the sale of either property which would be consistent with a developer's intention to provide a link through from Wellbrow Drive to Higher Road.

The video evidence supplied by the applicant confirms the existence of the route in 2008 but shows that it was physically blocked at point C at that time. A further video taken in 2014 shows the route open and useable.

The site evidence confirms the existence of a through route which, at the time of inspection was available to use.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has submitted a letter and user evidence form in support of the application.

In the letter he explains that he has researched the history of the application route back to when Cut Thorn Cottages (located on Higher Road) were built. He explains that prior to the houses on Wellbrow Drive being built the land was an open field purchased by a Mr Sanderson (no date provided). The applicant includes an undated plan with the application which formed part of a statutory declaration made by William Sanderson. The plan shows the outline of land said by the applicant to have been bought by Mr Sanderson and includes the land crossed by the application route. It shows the route from point A on Higher Road, between the houses providing access to the field. The applicant states that this part of the route also provided access to the rear of the cottages and for bin collections, coal deliveries and access to 'the old farm'. The applicant states that the application route from point A was kept open for public use after the land to the rear of the houses was sold for development and also that an electricity sub-station was built approximately half way down. He

states that there are two electricity cables underneath the path from the substation to Wellbrow Drive and that prior to the route being blocked off by an adjacent landowner Lancashire County Council sprayed the weeds along the route with weed killer.

A total of 13 user evidence forms were submitted (including one from the applicant). Evidence of use dated back to 1966 through to 2016 although the dates varied considerably 45 years (1955-2000), 38 years (1966-2004), 30 years (1956-1986), 28 years (1972-2000), 20 years (1962-1982), 19 years (1995-2004), 15 years (1998-2008), 15 years (1973-1988), 13 years (1970-1983), 12 years (1955-1968), 8 years (2008-2016), 1 year (2015-2016).

Use was stated as being for recreation, to visit friends, get to the shops, to play, for family walks with the children, to deliver newspapers and as a short cut to the local shop.

One user recounts how he used the route on bicycle as a child/young adult prior to learning to drive (from 1970-83) but all other users refer to use on foot.

Much reference is made to the route being blocked by a resident living adjacent to the path and actions by an adjacent landowner to block the path with vegetation, rubbish and building materials and there are references to a locked gate at point D. The date when the path was blocked is unclear but there are several references to it being around the late 1990s or possibly between 2000 and 2003. Video evidence shows it was blocked in 2008 but open in 2014 and it appears that some use appears to have continued after it was blocked although the frequency of this use is unclear.

In conversation with the applicant he has alleged that the original blocking of the path coincided with criminal proceedings against the adjacent landowner and that use of the path has continued on an intermittent basis since then. In compiling the application the applicant had spoken to a considerable number of local people who had used the route in the past but who were unwilling to complete user evidence forms because their details would be made publicly available and they were concerned about possible repercussions.

Information from Others

A letter was submitted from Longridge walking group as part of the application stating that one of the routes walked recently by the group was an undesignated path used historically as a pedestrian thoroughway. They say there was a former access point to where there was once a farm but which has since been developed for housing.

They state that the route has fallen into disrepair but that they walked it in August 2016.

The group wish to support the recording of the route as a footpath and the letter is signed by 12 signatories.

Information from Landowners

Ownership of the land is not registered. Adjacent landowners were consulted and the following comments received:

71a Higher Road: The house owner stated that he had used the route historically and fully supported it being opened up officially as a public footpath and added to the Definitive Map. (Note: This is a member of the same family who wrote to the Longridge Town Council in 2013 and whose letter was published in the Longridge Times).

Electricity North West: No objection to the proposal but highlighted the fact that there were underground cables located along the full length of the route.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Some user evidence
- Post-1960s OS Map Evidence
- Aerial photographs
- Google Street view images
- Absence of signs and notices along the route
- Absence of actions taken by the landowner to discourage the use of the route

Against Making an Order(s)

- Route not shown on any pre-1960s maps
- References to Gates and barriers along the route and mention by some users to gates being locked
- Interruptions to use limits some of the user evidence although it is unclear when or to what extent
- Use prior to housing estate is not likely to have followed the subsequently enclosed line

Conclusion

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

It is therefore advised that as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on

sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. The first consideration is to determine whether the route is called into question. In this matter the evidence indicates different recollections about when access was prevented by way of the presence of a locked gate at point D and the blockage of the route by an adjacent landowner with such as vegetation, rubbish and building materials. Whilst it would appear that some users have continued to use the route after it was blocked the frequency of this use is unclear and the majority of users state that access was prevented. Looking at the evidence the blocking of the route may possibly have been as early as the late 1990's. However, having looked at the evidence as a whole on balance it seems reasonable that use was prevented from between 2000 and 2003 and it is therefore considered on balance that the period of use from which dedication can be deemed would be 1980-2000.

13 user evidence forms have been submitted of which one has been completed by the applicant. Of the 13 users, 11 have provided evidence of use during the period under consideration. All users claim to have known and used the route on foot on a regular basis "as of right" with one user also recounting having used the route on bicycle as a child between 1970-1983. All users refer to having witnessed other users whilst using the route. None of the users have seen any signs or notices along the route or have asked permission to use the route.

Considering also whether there are circumstances from which dedication could be inferred at common law. The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides evaluation of the documentary evidence. The route is not shown to exist on any of the early commercial maps and there is no documentary evidence to support the existence of the route as a public highway. Whilst it appears that access to the route from point A to B may have possibly existed from the 1930s providing access from Higher Road to the fields there is no clear map or documentary evidence to show that the application route existed as a through route prior to the building of Wellbrow Drive and the associated housing development in the early 1960s. From 1967 there is clear map evidence of the application route having existed as a through route from point A to D.

It is suggested that the way this route is recorded on documentary evidence is not in itself sufficient circumstances from which dedication could be inferred. However, sufficient as of right use may also be circumstances from which dedication can be inferred. The use as corroborated by the documentary evidence outlined above would suggest that it may reasonably be alleged that there are sufficient circumstances to infer at common law.

Taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and that it can also be reasonably alleged that there is sufficient evidence from which to infer dedication at

common law of a footpath in this matter and that the claim can be accepted. Committee is therefore advised to accept the claim.

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 are no significant risks associated with the decision making process.

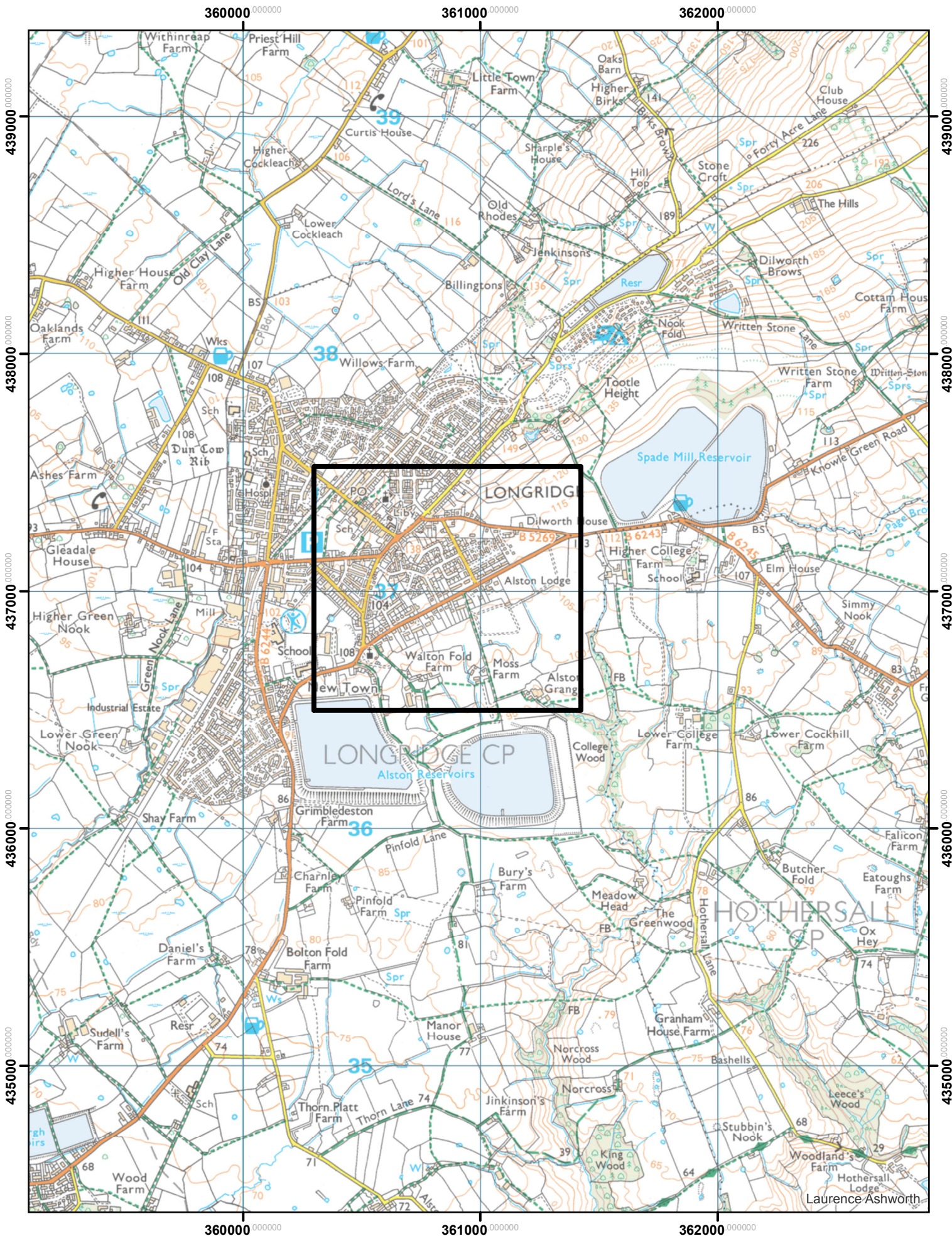
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-582		Jayne Elliott, Planning and Development, Public Rights of Way, Tel 01772 537663

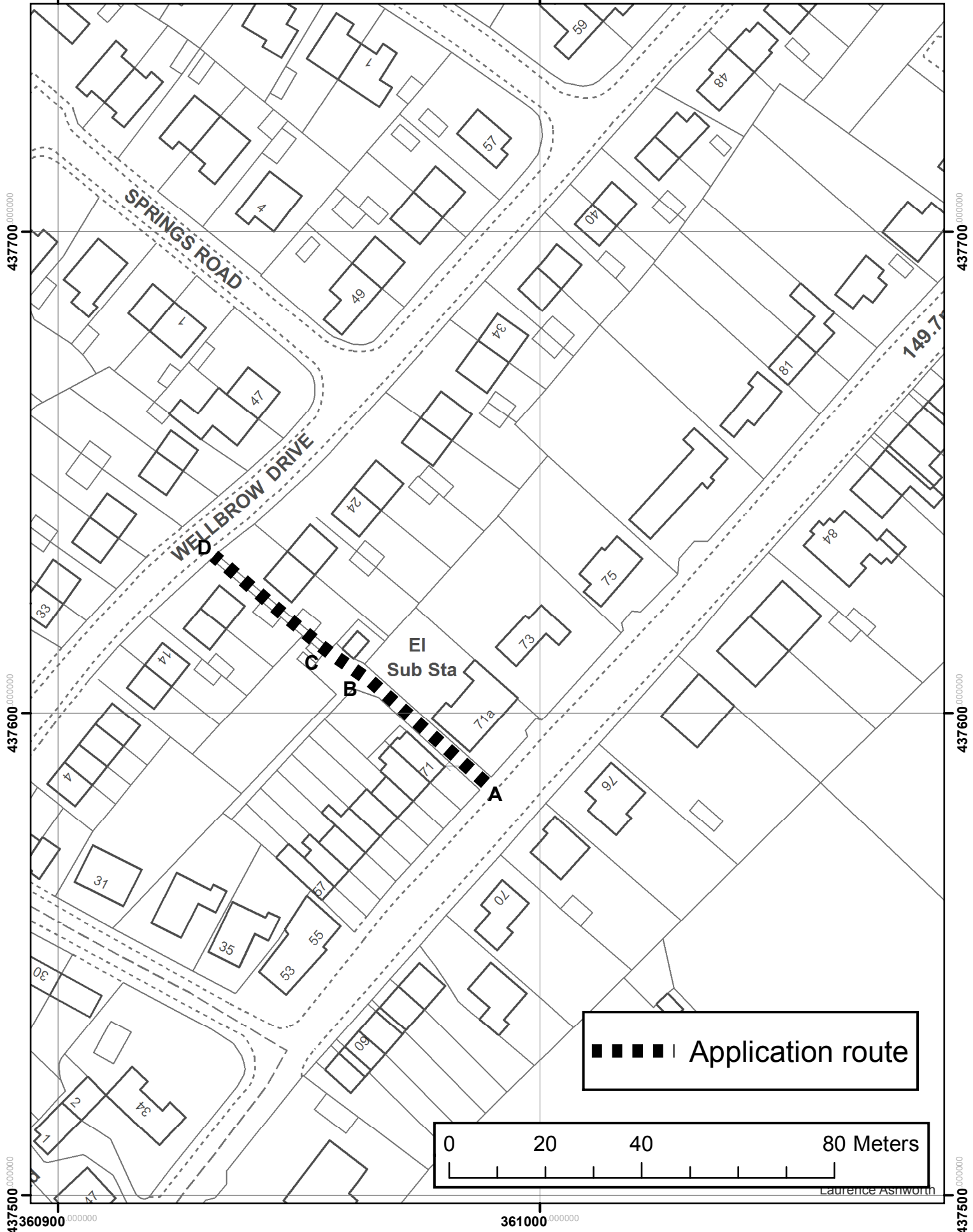
Reason for inclusion in Part II, if appropriate

N/A

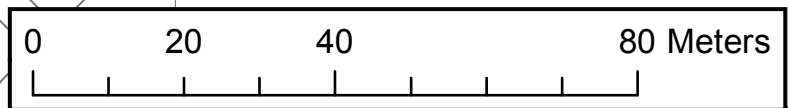


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■■■■ Application route



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpath from Wellbrow Drive to Higher Road,
Longridge, Ribble Valley

1:1,000



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

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Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected: Chorley Rural East
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Highways Act 1980 – Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Heath Charnock Footpath 44, Chorley Borough.
(Annexes 'B' and 'C' refer)

Contact for further information:
Ros Paulson, 01772 532459, Planning and Environment Group
ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Heath Charnock Footpath 44, Chorley Borough.

Recommendation

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Heath Charnock Footpath 44, from the route shown by a bold continuous line and marked A-D on the attached plan, to the route shown by a bold dashed line and marked A-B-C-D.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

Lancashire County Council have received an application from Network Rail to divert part of the above mentioned public footpath in connection with its proposal to replace Heath Charnock Level Crossing with a stepped footbridge.

Heath Charnock Level Crossing is a public footpath railway crossing, located approximately 1.5 miles south of Chorley, on the Bolton to Preston railway.

The operational railway in this area is affected by Network Rail's Northern Hub transport improvement programme which will help meet growing demand for rail

travel across the north. This will lead to an increase in the number of trains and the speed at which they will be travelling.

Network Rail has explored all alternative options for a permanent means by which the risk can be reduced and their preferred option is to provide a new stepped footbridge to ensure that the public can cross the railway safely. Network Rail has applied for a diversion order to change the legal alignment of the footpath to enable the level crossing to be closed when the footbridge is in place.

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

Consultations

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

Chorley Borough Council and Heath Charnock Parish Council have also been consulted and similarly raised no objection to the proposal. The Clerk to Heath Charnock Parish Council has replied to say the Parish Council understand that this proposed change is necessary for health and safety reasons given the increased speed and frequency of trains that will use the line following the electrification works. Under these circumstances the Parish Council has no objection to the closure of the Heath Charnock level crossing and the provision of a new footbridge. The Council noted that Network Rail says that on this occasion it is unable to provide a disabled / ramped access facility due to the nature of the terrain, visual impact and cost grounds.

The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers Association have also been consulted. Peak and Northern Footpaths Society have confirmed that they have no objection to the proposal. The Chorley Ramblers have indicated that they do not have a problem with the proposal but have raised a query regarding the access to either side of the footbridge. On the day of their site visit the west side of the railway the adjacent field was flooded with two or three feet of water and on the east side of the railway, the land falls away steeply. They have asked for reassurance that the access to the flight of steps on each side of the railway will be safe, flat and dry.

Advice

Description of existing footpath to be diverted

The part of Heath Charnock Footpath 44 as described below and shown by a bold continuous line marked A-D on the attached plan (Lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 5973 1567)	D (SD 5970 1566)	Generally WSW	30	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 5973 1567)	B (SD 5972 1570)	Generally NNW	30	2	Compacted stone path on ground level, then a flight of 6 steps in the banking to access base of footbridge, then 2 flights of 16 steps to access point where footbridge turns 90 degrees.
B (SD 5972 1570)	C (SD 5970 1570)	W	20	2	10 steps (5 at each end) to access the upper deck of footbridge
C (SD 5970 1570)	D (SD 5970 1566)	Generally S	35	2	2 flights of 16 steps then compacted stone surface at ground level.
Total distance of new footpath:			85		

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 10 metres from the ground.

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

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Heath Charnock Footpath 44 be amended to read as follows:

The 'Position' column to read: "Junction of footpaths 43 and 45 westwards to SD 5973 1567 then runs generally north north west for 30 metres on a compacted stone path on ground level then a flight of 6 steps in the banking to access base of the railway footbridge then 2 flights of 16 steps to access point where footbridge turns 90 degrees at SD 5972 1570. The footpath continues for 20 metres west ascending 5 steps to the footbridge deck over the railway then descending 5 steps to SD 5970 1570, continuing 35 metres generally south descending 2 flights of 16 steps then running on a compacted stone surface at ground level to SD 5970 1566 then westwards over canal to Parish Boundary (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "0.57 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 5973 1567 and SD 5970 1566 and the width between those points is 2 metres."

Criteria satisfied to make and confirm the Order

To make an Order under S119A of the Highways Act 1980, the County Council must be satisfied that:

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

The railway currently has 72 stopping passenger services and 288 non-stop passenger services in operation per day (total in both directions) with current permissible speeds at this location of 75mph in both directions over the crossing. The transport improvement programme will increase the frequency of trains and the permitted line speed to 100mph.

The increase in line speed requires an increase in the sighting distance that has to be available to users at the level crossing. Following the electrification works the minimum sighting distance will no longer be achieved. As part of the electrification works, stanchions will be erected within Network Rail's operational land to support the overhead power lines. These structures, together with the increase in line speed and frequency of services, means some method of mitigation is required to reduce the risk to users of the level crossing.

Currently there are warning signs either side of the crossing but no telephones or lighting. The train driver sounds the horn as the train approaches the level crossing but there are no other audible or visual warnings. Other measures to mitigate the risks at this level crossing are a kissing gate on either side of the railway and the surface of the crossings consists of proprietary crossing boards with an anti-slip surface.

The crossing is in an isolated area therefore there is the potential for misuse or irresponsible behaviour such as not paying due care and attention or crossing the railway with dogs off the lead.

An added risk factor of the current level crossing is the potential for accidental collisions resulting from an incidence such as a slip or trip, a user of the path not seeing a train approaching or not hearing the train's warning horn. Modern trains are quiet and weather conditions such as high winds or fog can reduce a person's ability to hear or see a train approaching and a warning horn might not be heard if a person has a hearing impediment, is wearing headphones or is talking on a mobile telephone.

Another high risk to users of a level crossing is that on occasions, trains pass each other, going in different directions on or close to the crossing. The risk is that a person might wrongly assume the train they have sighted is the only one to be concerned with, without assessing whether another train is approaching in the other direction.

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

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

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

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

The suitability of this measure was assessed and rejected for this location. Network Rail does not accept that it would afford an adequate level of protection due to remote location of the crossing.

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

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

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

The Diversity Impact Assessment states that ramps require considerable land take both in linear extent and width and are commonly intrusive and unsightly. Therefore, in order to build a structure with ramps over the operational railway, a significant area of land would need to be purchased from adjoining landowners and have an adverse effect on the visual impact of the structure from the surrounding countryside. In addition, a ramped crossing would require adequate lighting throughout the structure and may well require CCTV coverage. There are also other issues that arise with obtaining consents regarding the environmental impact and appropriateness of that type of structure in certain locations. Network Rail also has to justify the higher financial outlay of public funds for the provision of a structure with ramps.

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



Figure 1: An example of a stepped structure



Figure 2: Examples of combined stepped and ramped footbridge structures.

Network Rail has secured the necessary funding to construct and deliver a stepped structure to replace the existing crossing. The proposed site for the footbridge lies immediately to the north of the existing crossing and is in the ownership of Network Rail.

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

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

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

The proposed diversion will not alter the points of termination of Heath Charnock Footpath 44.

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

With regards to the comments made by the Chorley Ramblers about the approaches to the footbridge, Network Rail has confirmed that the steps and compacted surfaced path will be constructed to a suitable standard, with gabion baskets being installed where necessary to stabilise the groundworks. With regards to the flooding in the adjacent field to the existing footpath, it noted that the area that floods is several metres below the railway that is located on an embankment. The field is not owned by Network Rail and this land would not be affected by the footbridge. Therefore Network Rail does not intend to carry out any works to alleviate the flooding of these areas. There are no records to suggest that the flooding in the field has ever affected the footpath or railway in this location, therefore it is not anticipated that it will be a problem in the future. The approach to the flight of steps on each side of the railway will have a safe and convenient surface that is suitable for use in wet weather conditions.

The Committee is advised that so much of the Order as extinguishes part of Heath Charnock Footpath 44 is not to come into force until the County Council has certified the satisfactory physical implementation of the footbridge and the compacted stone and stepped approaches to each side of the bridge.

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

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

It is felt that, if the Order were to be confirmed, the new way will be reasonably convenient to the public.

The level crossing is set in a rural area, forming a link in the network of country paths and does not link any schools, employment or residential areas. It is generally understood that a majority of the use is for leisure purposes such as dog walking and circular walks including the footpaths along the nearby canal towpaths.

The railway is raised up on a large embankment in this location and the approach to both sides of the crossing is by means of unmade footpaths, requiring the user to negotiate a number of steps and gradients, including stepped access up and down the railway embankment. It is proposed that the existing kissing gates remain if they are required for stock control but these are located on parts of the route that are not affected by the diversion proposal.

The construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. It is acknowledged that the new route is longer than the existing route and requires more steps to be negotiated, however given the substantial improvement in the safety of the crossing it is suggested that this is reasonable. In addition, users of the railway crossing that are in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

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

It is advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a Highway Authority under the Equality Act 2010. Although it is the intention that only steps will be provided over the footbridge which may therefore be inaccessible or difficult for some users it is considered that the increased protection from the danger of crossing at grade a high speed railway track makes this a reasonable solution.

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

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

It is considered that, having regard to the above, it would be expedient to confirm the Order.

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

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

Risk Management

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

Alternative options to be considered

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

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

To decide to make an Extinguishment Order: this footpath is well used and there is no convenient alternative route nearby. It is therefore not appropriate to recommend extinguishment of the crossing instead of diversion.

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

To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State and promoted to confirmation by the County Council.

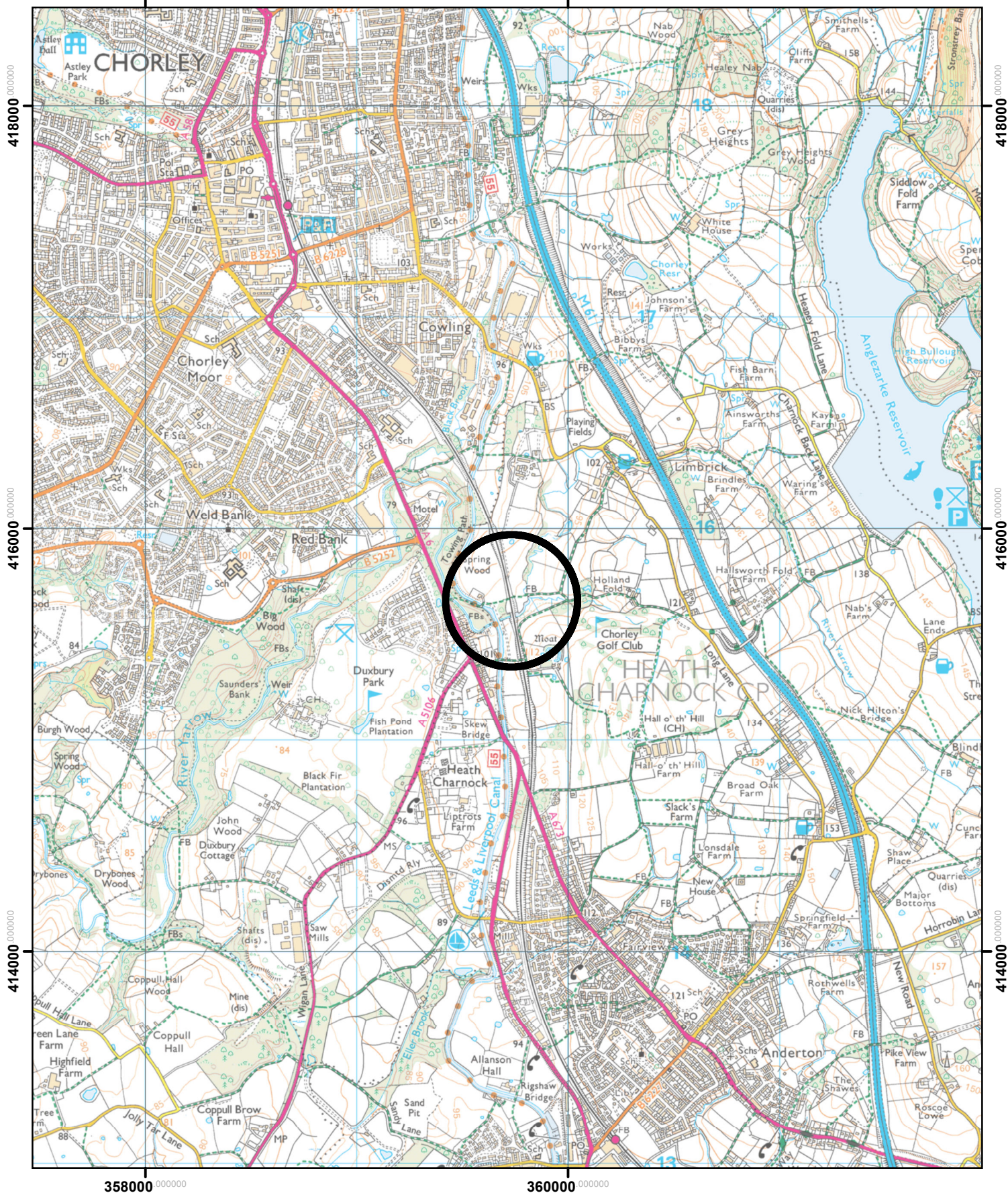
To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

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

Paper	Date	Contact/Tel
File Ref: PRW-09-16-44		Mrs R J Paulson, 01772 532459
File Ref:		
Reason for inclusion in Part II, if appropriate		
N/A		

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Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

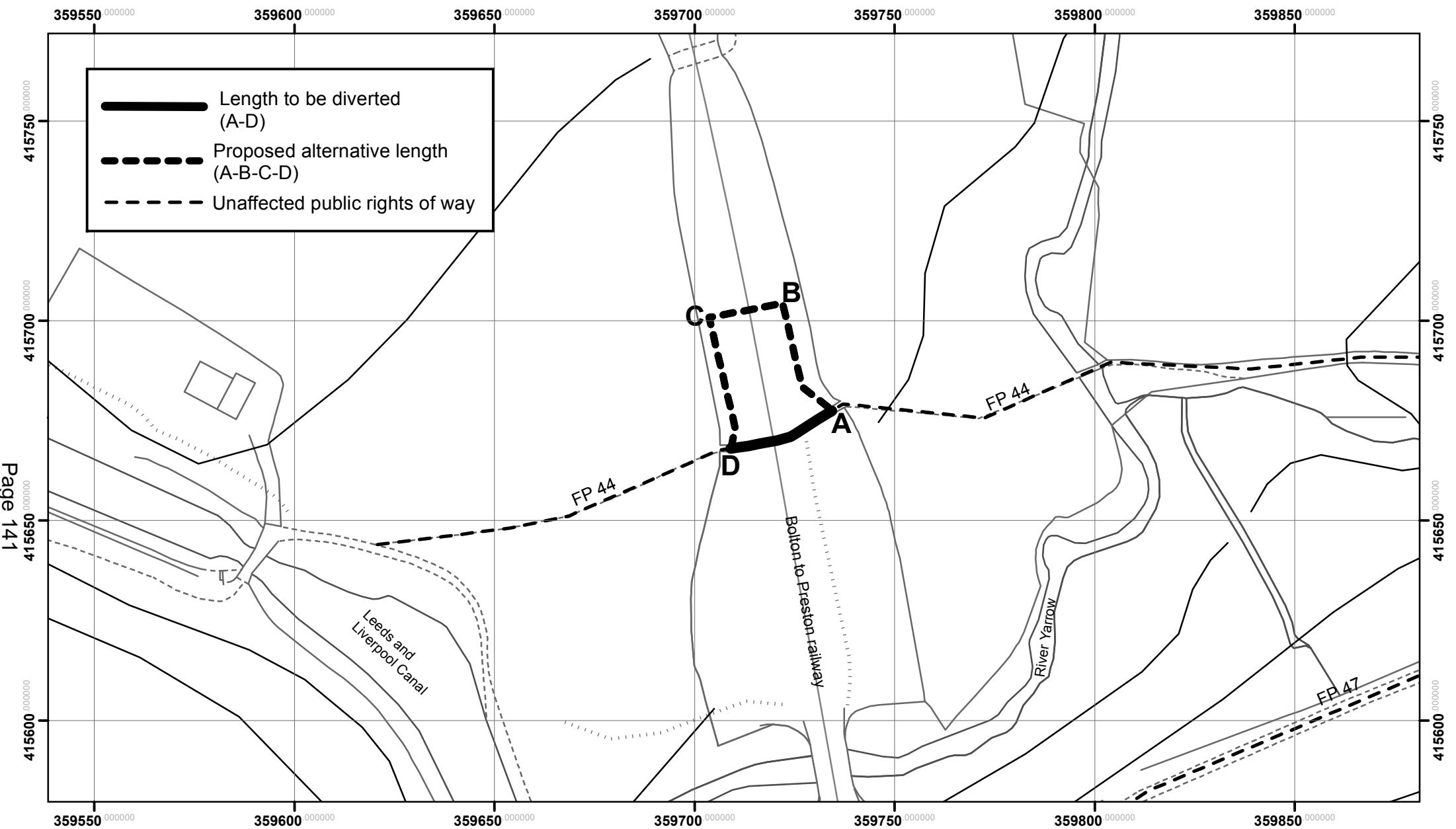
Location Plan
Highways Act 1980 – Section 119A
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Heath Charnock Footpath 44, Ribbles Valley Borough.




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Andrew Mullaney Head of Planning and Environment	Highways Act 1980 Section 119A, Wildlife and Countryside Act 1981 – Section 53A Proposed diversion of part of Heath Charnock Footpath 44, Chorley Borough.	Plan No: 211-668-v2	
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Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected:
Ribble Valley North East

Highways Act 1980 – Section 119

Wildlife and Countryside Act 1981 – Section 53A

Proposed Diversion of Part of Wiswell Footpath 17, Ribble Valley Borough (Annexes B & C refers)

Contact for further information:

Mrs R Paulson, Planning and Environment Group

ros.paulson@lancashire.gov.uk

Executive Summary

The proposed diversion of part of Wiswell Footpath 17, Ribble Valley Borough.

Recommendation

1. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Wiswell Footpath 17, from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked A-C-B on the attached plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

A request has been received from Reilly Developments Ltd, Brockmill Barn, Wingates Road, Wigan WN1 2SJ, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Wiswell Footpath 17 in the vicinity of 112 Clitheroe Road, Barrow, Clitheroe, Lancashire BB7 9AQ.

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

The proposed diversion is in connection with a small scale development of residential properties where the existing route crosses the garden of one of the properties.

Whilst it would be feasible for the footpath to remain in its existing location across the garden the proposal, if successful would provide the owners of the property with an improvement in privacy and security.

Consultations

Ribble Valley Borough Council, Wiswell Parish Council, Whalley Parish Council and Barrow Parish Council have been consulted and have not raised any objection to the proposal.

The Peak and Northern Footpaths Society and the Ribble Valley branch of the Ramblers Association have also been consulted and have not objected to the proposal.

The necessary consultation with the statutory undertakers has been carried out and no adverse comments or objection to the proposal have been received.

Electricity North West Limited (ENWL) have advised that they have a high voltage cable in the area of the proposed footpath diversion and that any ground works in the area of this must be carried out using safe digging practices. This information has been passed onto the applicant.

Advice

Points annotated on the plan

Point	Grid Reference	Description
A	SD 7359 3776	Point where footpath crosses bitmac surfaced path adjacent to the western side of the private estate road.
B	SD 7357 3776	Junction of Wiswell Footpath 17 and Clitheroe Road.
C	SD 7357 3777	Point where footpath turns 90 degrees immediately adjacent to the junction of the private estate road and Clitheroe Road.

Description of existing footpath to be diverted

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

FROM	TO	COMPASS DIRECTION	LENGTH	WIDTH
A	B	WNW	20 metres	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	Generally NW	25	2	Bitmac surfaced path, adjacent to the western side of the private estate road
C	B	Generally S	5	2	Bitmac surfaced path, adjacent to the eastern boundary of Clitheroe Road
Total distance of new footpath			30		

The proposed alternative route will not be subject to any limitations or conditions.

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Wiswell Footpath 17 to be amended to read as follows:

The 'Position' column to read: "Junction of footpath 5 to Clitheroe Trunk Road (A.59) to SD 7359 3776 at the point where footpath crosses bitmac surfaced path adjacent to the western side of the private estate road, continuing in a generally north-westerly direction on the bitmac surfaced path for 25 metres to SD 7357 3777 at the junction of the private estate road and Clitheroe Road then runs on the bitmac surfaced path, adjacent to the eastern boundary of Clitheroe Road for 5 metres to SD 7357 3776. (All lengths and compass directions are approximate)."

The 'length' column be amended to read: "0.51 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 7359 3776 and SD 7357 3776 and the width between those points is 2 metres."

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

The proposed diversion is felt to be expedient in the interests of the owner of the land in that, if the proposal is successful, it will remove the public footpath from the garden of the residential property. This will improve the privacy and security for the residents, enabling them to fence around the garden area.

The proposed diversion will not alter the points of termination of Wiswell Footpath 17, and therefore the criteria concerning the alteration of termination points do not need to be considered.

The Committee are advised that so much of the Order as extinguishes part of Wiswell Footpath 17, is not to come into force until the County Council has certified that the necessary work to the alternative route has been carried out.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, with the exception of ENWL who have advised that they have a high voltage cable in the area of the proposed footpath diversion and that any ground works in the area of this must be carried out using safe digging practices. This information has been passed onto the applicant.

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

The land crossed by the proposed alternative route is in the ownership of the applicant. The land crossed by the existing footpath proposed to be diverted crosses land that is in the joint ownership of the residents of 112 Clitheroe Road, Barrow, Clitheroe, Lancashire BB79AQ and they have confirmed their agreement to the proposed diversion.

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

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

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

It is felt that, if the Order was to be confirmed, there would be no adverse effect with respect to the public enjoyment of the path or ways as a whole. It is suggested that many users might prefer to walk on the new route, because the proposal will divert the footpath around the curtilage of the residential dwelling and as such, some users of the path may feel more comfortable and at ease.

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

It is also advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council under The Equality Act 2010. The alternative routes will be of adequate width and there is no intention to install stiles or gates on the alternative routes.

Further, it is also advised that the effect of the Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In this instance BS5709:2006 has been applied to the alternative routes and the least restrictive option of gaps, rather than gates has been selected, reducing the limiting effect of structures.

It is considered that having regard to the above and all other relevant matters, it would be expedient generally to confirm the Order.

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

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

Risk Management

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

Alternative options to be considered

To not agree that the Order be made.

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

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

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

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

Paper	Date	Contact/Directorate/Tel Planning and Environment Group
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File Ref: PRW-03-47-17

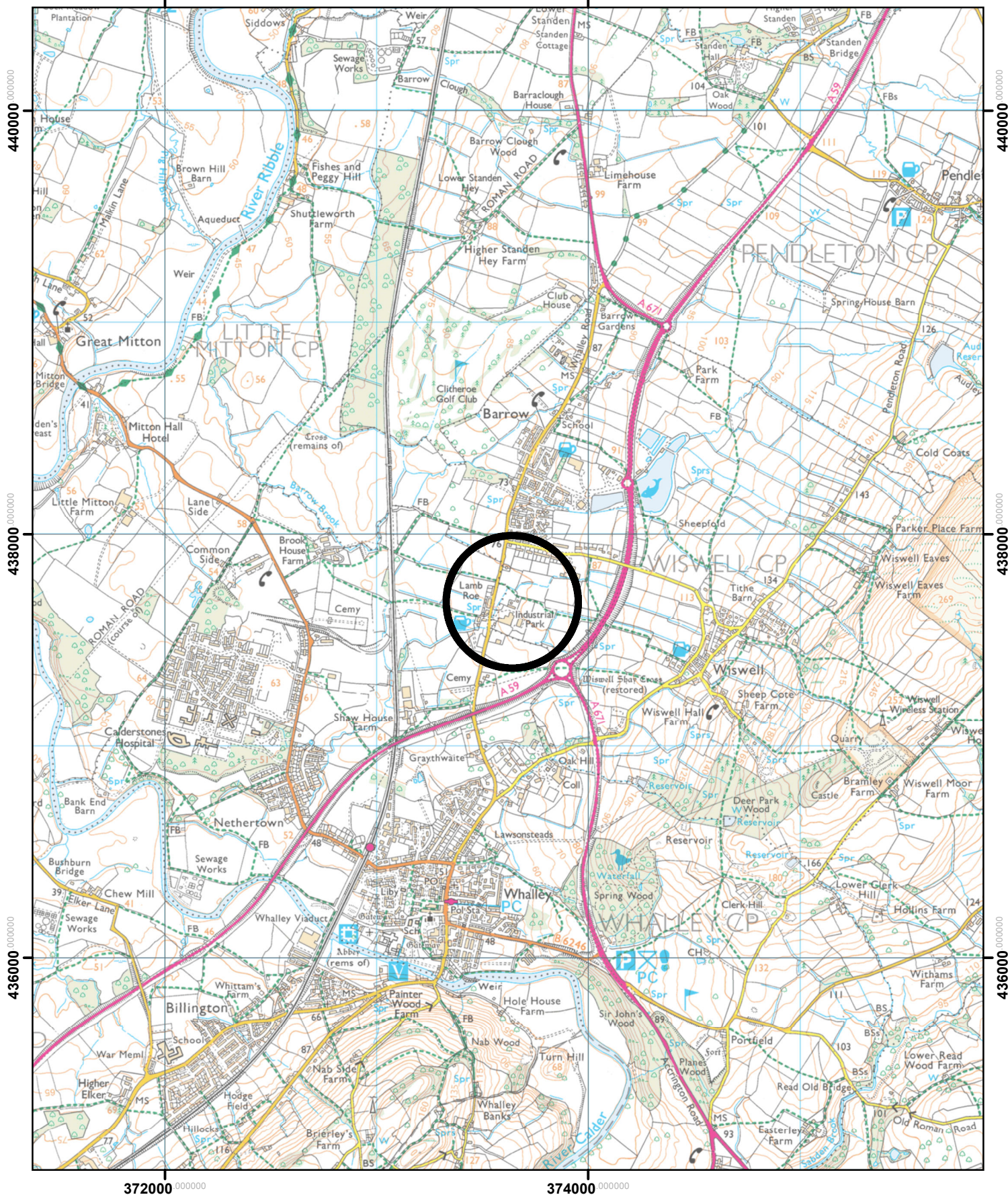
Mrs R J Paulson,
01772 532459

Reason for inclusion in Part II, if appropriate

N/A

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Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

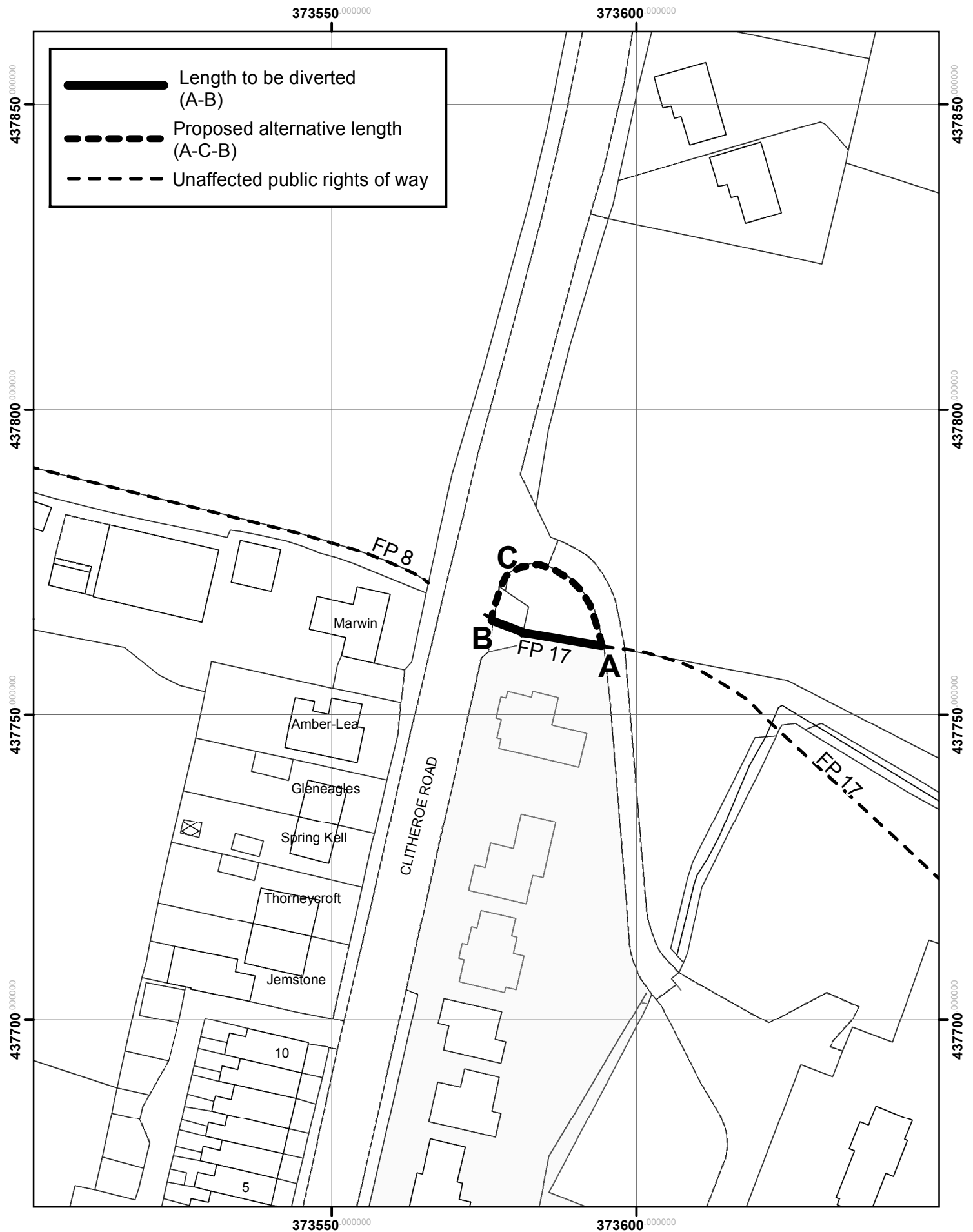
Location Plan.
Highways Act 1980 – Section 119
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Wiswell Footpath 17, Ribble Valley Borough.



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Andrew Mullaney
Head of Planning
and Environment

Highways Act 1980 Section 119
Wildlife and Countryside Act 1981 Section 53A
Proposed diversion of part of Wiswell Footpath 17, Ribbles Valley Borough.

Plan No:
211-670-v3



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