

# **Lancashire County Council**

## **Regulatory Committee**

**Wednesday, 27th September, 2017 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

### **Agenda**

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

<b>No.</b>	<b>Item</b>
------------	-------------

<b>1.</b>	<b>Apologies</b>
-----------	------------------

<b>2.</b>	<b>Disclosure of Pecuniary and Non-Pecuniary Interests</b>
-----------	--

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.

<b>3.</b>	<b>Minutes of the last meeting held on the 26th July 2017</b>	<b>(Pages 1 - 6)</b>
-----------	---	----------------------

<b>4.</b>	<b>Guidance</b>	<b>(Pages 7 - 30)</b>
	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.	

<b>5.</b>	<b>Terms of Reference</b>	<b>(Pages 31 - 34)</b>
-----------	---------------------------	------------------------

<b>6.</b>	<b>Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Upgrading of Footpaths 54 and 55 Coppull to Public Bridleway from Coppull Moor Lane to Wigan Lane, Chorley Borough File No. 804-583</b>	<b>(Pages 35 - 86)</b>
-----------	--	------------------------

7. **Wildlife and Countryside Act 1981** (Pages 87 - 154)  
**Definitive Map Modification Order Investigation**  
**Addition to Definitive Map and Statement of a**  
**footpath from Ten Row to Bodie Hill via Fishnet**  
**Point, Glasson Dock, Thurnham**  
**File No. 804-562**
8. **Wildlife and Countryside Act 1981** (Pages 155 - 172)  
**Definitive Map Modification Order Investigation**  
**Modification to the Definitive Statements for**  
**Footpaths 37, 38 and 39 Euxton (Culbeck Lane)**  
**File No. 804-585**
9. **Urgent Business**  
An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.
10. **Date of Next Meeting**  
The next scheduled meeting will be held at 10.30am on Wednesday 15<sup>th</sup> November 2017 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

I Young  
Director of Governance,  
Finance and Public Services

County Hall  
Preston

**Lancashire County Council**

**Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 26th July, 2017 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Jimmy Eaton BEM (Chair)

**County Councillors**

M Barron	J Marsh
L Beavers	J Parr
I Brown	K Snape
A Clempson	P Steen
B Dawson	

**1. Appointment of Chair**

The appointment of County Councillor Jimmy Eaton as Chair of the Committee, as agreed by Full Council in May 2017, was noted.

**2. Appointment of Deputy Chair**

The appointment of County Councillor Malcolm Barron as Deputy Chair of the Committee, as agreed by Full Council in May 2017, was noted.

**3. Constitution, Membership, Terms of Reference and Programme of Meetings**

A report was presented setting out the constitution, membership and Terms of Reference of the Regulatory Committee and the programme of meetings for 2017/18.

The Chair welcomed everyone to the first meeting of the Committee, following the County Council elections, and introductions were made.

**Resolved:**

- i. That the constitution/membership of the Committee following the County Council's annual meeting on the 25th May 2017 be noted.
- ii. That the Terms of Reference of the Committee, which will be revised by Full Council at their meeting on 20th July, and will be referred back to Regulatory Committee at their September meeting, be noted.

iii. That the agreed programme of meetings for the Committee be noted.

#### **4. Apologies**

There were no apologies for absence.

#### **5. Disclosure of Pecuniary and Non-Pecuniary Interests**

County Councillor Bernard Dawson declared a non-pecuniary interest in Item 10 and County Councillor Ian Brown declared a non-pecuniary interest in Item 11 due to them having involvement in the respective applications.

#### **6. Minutes of the last meeting held on 15th March 2017**

**Resolved:** That the minutes of the meeting held on 15<sup>th</sup> March 2017 be confirmed and signed by the Chair.

#### **7. 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.

#### **8. Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Upper Brow Top, Quernmore, Lancaster, being entry 1 in the Rights Section of Register Unit CL146**

A report was presented providing details of an application from John Metcalfe for a Declaration of Entitlement to record the rights to graze 22 sheep on Common Land Register Unit CL146.

The Applicant had provided copies of title numbers LA632174 and LA607683, which showed that part of the farm, as shown on the supplemental map and plans contained in the agenda papers, was owned by the applicant. It had been calculated that this land was 15.98% of Upper Brow Top Farm on the supplemental map and that this equated to the right to graze 22.37 sheep. The Committee noted that, mathematically, this produced a fractional quantity but, following guidance from DEFRA, it was advised that a right to graze a fractional animal was not recognised in law, and the fractional right was rounded down. The Applicant had been made aware of this.

Jane Turner informed the Committee that this would be the last application of its' kind to come to Committee as these decisions had now been delegated.

**Resolved:**

That the application be accepted and a Declaration of Entitlement be recorded in the Commons Register, in accordance with The Commons Registration (England) Regulations 2014, that Mr John Metcalfe is entitled to exercise part of the right attached to Upper Brow Top, Quernmore, Lancaster, namely the right to graze 22 sheep over the whole of CL146.

**9. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Public Footpath from Manchester Road to Haworth Park,  
Baxenden, Accrington, Borough of Hyndburn  
File No. 804-584**

A report was presented on an application for the addition of a public footpath from Manchester Road to Haworth Park, Baxenden, Accrington, in accordance with File No. 804-584.

The Committee noted that substantial user evidence had been submitted by the applicant which had been examined, along with map and documentary evidence. It was reported that the route was clearly shown on the 1961 Ordnance Survey map, and its existence as a through route linking to the formal tarmac through the park was further supported by the google street view image captured in 2009.

The Committee noted that the footpath in question was approximately 5 metres long and provided access to Haworth Park and Art Gallery. The Chair and David Goode had carried out a recent site visit. It was reported that the path was on the edge of a plot currently being developed for housing.

Hyndburn Borough Council had been consulted and had confirmed they opposed the application for various reasons as shown in the Committee report, contained within the agenda papers.

Should the application be approved, a query was raised about whether the County Council could instruct the developers to maintain the footpath. Officers confirmed that this was not a decision for the Committee today and that maintenance liability was governed by legislation and would be established subsequently.

**Resolved:**

- (i) That the application for a public footpath from Manchester Road to Haworth Park, Baxenden, Accrington, in accordance with File No. 804-584, be accepted.

(ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Manchester Road to Haworth Park, Accrington on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B.

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

**10. Wildlife and Countryside Act 1981  
Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe Order  
File ref. 804-516**

A report was presented, for the Committee to note, detailing a decision by the Secretary of State not to confirm the Definitive Map Modification Order in relation to the public footpath from St Paul's Terrace to Edisford Road, Clitheroe.

An application, under Schedule 14 of the Wildlife and Countryside Act 1981, had been received in 2011, for the addition to the Definitive Map and Statement of a footpath from St Paul's Terrace to Edisford Road, Clitheroe, Ribble Valley. In 2013, the Regulatory Committee had considered a report of the evidence and had decided to refuse the application and not to make an Order. The applicant had appealed against this decision and the Secretary of State upheld the appeal and directed the County Council to make the Order.

In July 2014, the Regulatory Committee considered a report of the Secretary of State's direction to make an Order, and had decided to accede to the direction and make an Order, but stated that it did not actively support the Order and agreed to take a neutral stance with regards confirmation of the Order, in the event that there were duly made objections.

In October 2014, the Order was made and objections were duly made. The Order was submitted to the Secretary of State to decide whether or not to confirm it. The matter was decided on the basis of evidence submitted by way of written representations. The County Council took a neutral stance.

It was reported that the Secretary of State has now issued a decision not to confirm the Order which justified the Committees decision in 2013.

**Resolved:** That the decision by the Secretary of State not to confirm the Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe Order, be noted.

**11. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Upgrading to Bridleway of Footpaths 1 (part) and 8 (part) Chorley,  
known as Common Bank Lane  
File No. 804-575**

A report was presented on an application for the upgrading to Bridleway of parts of Footpaths 1 and 8 Chorley, known as Common Bank Lane, in accordance with File No. 804-575.

In 2016, Regulatory Committee had considered an application to upgrade the route under investigation. A copy of the 2016 report had been included in the agenda papers, together with reports considered in 2002 and 2003, to upgrade a greater length of public footpath, but including the application route now under investigation.

In 2016, Committee had considered all relevant map and documentary evidence, as well as the user evidence available, and also considered the intention of the landowner, who, in this particular case included part of the route being owned by Chorley Borough Council.

It was reported that Common Bank Lane was a busy access road and, in 2016, a whole range of maps and documentary evidence had been inspected but there had been insufficient evidence to show that this route should be anything other than a public footpath.

Having examined all of the information provided, the Committee had agreed that the decision on the application should be deferred, as the previous reports from 2002 and 2003 referred to user evidence which had not been considered as part of this application, and also because Chorley Borough Council, who had supported the 2002/2003 application - and owned much of the route - had not responded to consultations on the 2016 application.

Further consultations had been carried out with the Borough Council, at the Committee's request, the outcome of which were provided in the agenda papers. The limited information about the pre 2003 user evidence was evaluated.

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

**12. Urgent Business**

There were no items of Urgent Business.

### **13. Date of Next Meeting**

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 27<sup>th</sup> September 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 27<sup>th</sup> September 2017

Electoral Division affected: <u>All</u>
--

**Guidance for the members of the Regulatory Committee**  
(Annexes 'A','B' and 'C' refer)

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

**Executive Summary**

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

**Recommendation**

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

**Background and Advice**

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

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

**Consultations**

N/A

**Implications:**

This item has the following implications, as indicated:

## **Risk management**

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

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

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

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

### **Definitions**

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

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

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

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

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

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

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

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

The prescribed events include –

#### Sub Section (3)

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

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

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

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

#### *Orders following “legal events”*

Other events include

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

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

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

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

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

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

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

These are that:

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

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

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

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

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

## **Definitive Maps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Recording a “new” route**

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

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

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

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

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

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

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

There is no need to know who a landowner was.

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

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

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

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

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

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

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

## **Documentary evidence**

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

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

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

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

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

## **Recording vehicular rights**

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

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

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

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

### **Downgrading a route or taking a route off the Definitive Map**

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

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

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

### **Taking one route off and replacing it with an alternative**

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

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

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

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

## **Confirming an Order**

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

## **Diversion Order s119**

### **TO MAKE AN ORDER**

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

### **GUIDANCE**

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

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

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

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

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

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

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

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

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

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

## **Diversion Orders under s119A**

### **TO MAKE AN ORDER**

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

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

OR

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

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

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

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

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

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

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

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

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

### **GUIDANCE**

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

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

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

## **Diversion Orders under s119ZA**

## **Diversion Orders under s119B**

## **Diversion Orders under s119C**

## **Diversion Orders under s119D**

Guidance under these specific sections will be made available when required

## **Extinguishment Order under s118**

### **TO MAKE AN ORDER**

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

### **GUIDANCE**

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

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

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

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

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

### **Extinguishment Orders under s118A**

#### **TO MAKE AN ORDER**

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

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

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

#### **GUIDANCE**

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

### **Extinguishment Orders under s118B**

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

#### **TO MAKE THE FIRST TYPE OF S118B ORDER**

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

### **Extinguishment Orders under s118ZA**

Guidance under this section will be made available when required

### **Extinguishment Orders under s118C**

Guidance under this section will be made available when required

### **Creation Order under s26**

#### **TO MAKE AN ORDER**

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

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

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

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

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

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

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

The same test as above.

#### **GUIDANCE**

Again there is convenience to consider.

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

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

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

Regulatory Committee  
Meeting to be held on the 27<sup>th</sup> September 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 Wednesday, 27 September 2017

Electoral Division affected: (All Divisions);
--

**Terms of Reference**

(Appendix 'A' refers)

Contact for further information:

Joanne Mansfield, 01772 534284, Legal and Democratic Services

joanne.mansfield@lancashire.gov.uk

**Executive Summary**

This report sets out the revised Terms of Reference of the Committee, as agreed by Full Council at their meeting on 20<sup>th</sup> July 2017.

**Recommendation**

The Committee is asked to note the revised Terms of Reference set out at Appendix 'A'.

**Background and Advice**

It had become apparent that the terms of reference of Council Committees needed to be amended and brought up to date to reflect current legislation. The revised terms of reference of the Regulatory Committee, as agreed by Full Council at their meeting on 20<sup>th</sup> July 2017, are therefore set out at Appendix 'A'. There are no significant or substantive changes proposed.

**Consultations**

N/A

**Implications:**

This item has the following implications, as indicated:

**Risk management**

There are no risk management implications arising from this report.

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

Paper	Date	Contact/Directorate/Tel
Full Council papers	20 <sup>th</sup> July 2017	Joanne Mansfield/Legal & Democratic Services/34284

Reason for inclusion in Part II, if appropriate

N/A

## **The Regulatory Committee**

The Committee comprises twelve County Councillors and deals principally with claims relating to public rights of way and various licensing and registration functions (except registration functions relating to Social Services).

Meetings are open to the public but they may be excluded where information of an exempt or confidential nature is being discussed – see Access to Information Procedure Rules set out at Appendix 'H' to this Constitution.

## **Terms of Reference**

The Committee shall carry out the following functions:

### **Public Rights of Way**

1. To determine applications under S53 of the Wildlife and Countryside Act 1981 and to decide whether to make and promote to confirmation Orders thereunder.
2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
  - (a) to authorise creation of footpaths or bridleways by agreement under Section 25;
  - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths and bridleways under Section 26;
  - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths and bridleways in accordance with Section 118;
  - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
  - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
  - (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
  - (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths and bridleways in accordance with Section 119;
  - (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
  - (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
  - (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;
  - (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4));

3. To decide whether to make orders and promote to confirmation to extinguish certain public rights of way under Section 32 of the Acquisition of Land Act 1981.
4. To decide whether to make orders and promote to confirmation orders to designate a footpath as a cycle track under Section 3 of the Cycle Tracks Act 1984.

### **Other Licensing Registration and Regulatory Functions**

1. To make appointments to outside bodies to which the Council is entitled to have representation in connection with the discharge of any of the Committee's functions.
2. To establish Sub-Committees to undertake any part of the Committee's functions.

### **Common Land and Town and Village Greens**

1. To decide whether to exercise the Council's powers under the Commons Registration Act 1965 to alter the Register in respect of applications.
2. To make recommendations to the Cabinet on matters under the Commons Registration Act 1965 as amended and Regulations thereunder where responsibility lies with the Cabinet.
3. To make decisions on applications and proposals as determining authority under Part 1 Commons Act 2006 save for those under Regulation 43 of the Regulations thereunder.
4. To decide whether to apply to the Secretary of State as owner for de-registration of Common Land or Town or Village Green under S 16 Commons act 2006.
7. To decide whether to take steps and what steps to take to protect unclaimed common land or town or village greens against unlawful interference and whether to institute proceedings under Section 45 of the Commons Act 2006.
6. To decide whether to apply to the Court for orders against unlawful works on common land under Section 41 of the Commons Act 2006.

**Regulatory Committee**

Meeting to be held on 27 September 2017

Electoral Division affected: Chorley South
---

**Wildlife and Countryside Act 1981****Definitive Map Modification Order Investigation****Upgrading of Footpaths 54 and 55 Coppull to Public Bridleway from Coppull Moor Lane to Wigan Lane, Chorley Borough****File No. 804-583**

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal, Legal and Democratic Services,  
 Claire.blundell@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer,  
 Environment and Planning, jayne.elliott@lancashire.gov.uk

**Executive Summary**

Application for the upgrading of Footpaths 54 and 55 Coppull, Chorley Borough from Coppull Moor Lane to Wigan Lane, in accordance with File No. 804-583.

**Recommendation**

That the application for the upgrading of Footpaths Coppull 54 and 55 to bridleway, in accordance with File No. 804-583, be not accepted.

**Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the upgrading of Footpaths Coppull 54 and 55 from Coppull Hall Lane to Wigan Lane to bridleway 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 for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

And 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**

### Chorley Borough Council

A response was received from a Chorley Borough Councillor who wishes the route to be upgraded but there has been no response received by Chorley Council other than to confirm ownership of part of the land over which the claimed upgraded route passes.

### Coppull Parish Council

No comments received.

### 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 and 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	5816 1326	Stile at junction with Coppull Moor Lane
X	5836 1332	Unmarked point on route adjacent to field boundary meeting route from the north where landownership changes
B	5844 1335	Unmarked point on route adjacent to field boundary to the south of route
C	5850 1342	Unmarked point on route
D	5866 1351	Junction of Footpaths Coppull 54, 55 and 56
Y	5869 1350	Unmarked point on route where registered landownership bounds unregistered landownership
E	5872 1347	Junction with Wigan Lane

### Description of Route

A site inspection was carried out in March 2017.

The route commences on a 90 degree bend in Coppull Hall Lane at point A where it is signed (according to its current recorded status) as a public footpath.

At point A access is restricted along the route by wooden post and rail fencing erected across the start of the route into which a wooden step through stile has been inserted.

Beyond point A the route extends in a generally east north easterly direction as a clearly defined bounded track. Open ditches run along the inside of the fence/hedge line on either side of the track.

The surface of the track appears to have been laid with stone which has been compacted and partially overgrown over time. There was no evidence of cobbles or paving.

The route continues as described above for approximately 215 metres to point X where a well-worn track joins it from the north which appears to be used by motorcycles which are accessing the application route at this point.

Beyond point X the application route continues in a north north easterly direction for approximately 80 metres to point B and the surface is very wet and muddy and looks to have been churned up by motorcycles.

At point B a stream emerges from an adjacent pond to run adjacent to the application route. The route continues in a more north easterly direction bounded by steep sided woodland which has become established on the side of the former colliery spoil heap which runs adjacent to the application route. The stream flows along the application route and a deep incised gully has been eroded by the water which has been cut to a depth in excess of 3 metres in places immediately adjacent to a narrow trodden route passing through point C and continuing towards point D.

As the route approaches point D the stream is not as deeply cut into the ground but overflows in places onto the land crossed by the application route making the surface very wet.

As the route approaches point D the water flows into a pond adjacent to the route and at point D Footpath 56 is recorded as joining the application route. There is no evidence on the ground of the route of Footpath 56 which passes through a fence and continues through an overgrown area of woodland where a farm had previously existed (no trace of the remains could be seen).

Beyond point D the application route continues in a south easterly direction as a bounded route along a compacted stone surfaced track which has become quite overgrown but is passable to point E where it passes through a wooden kissing gate to exit onto Wigan Lane. The route at point E is signed as a public footpath and an additional signs warns that motorcycling is not allowed along the route.

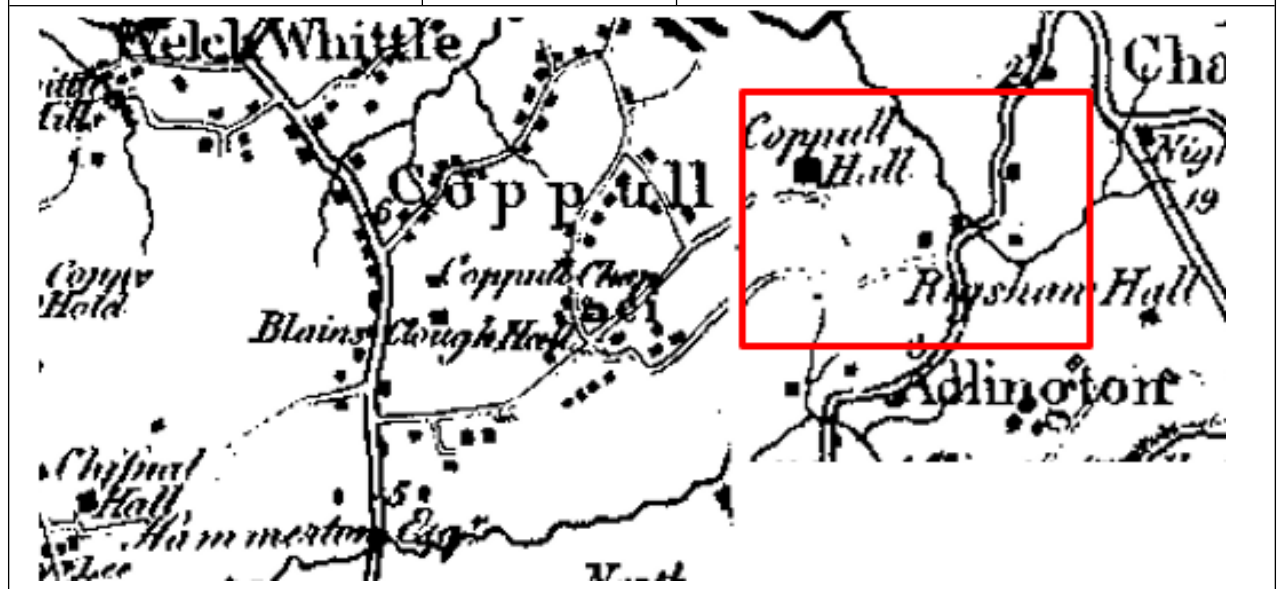
In summary, the total length of the route is 650 metres. There was no evidence of horses using the route when it was inspected in 2017 and access on horseback would have been prevented by the stile at point A and kissing gate at point E.

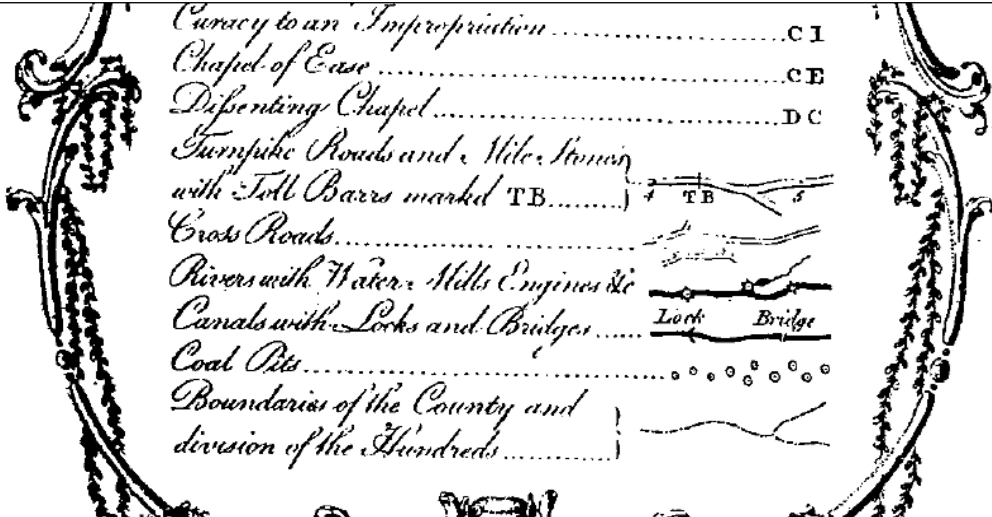
There was evidence that motorcycles were accessing the route from the former colliery site to the north and that they were riding along the route – mainly between point X and point D.

### Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Duxbury Manor Estate Map</b>	c1584	Hand drawn and variously annotated map of unknown provenance submitted by the applicant. This does not cover the area of the application route nor has wider relevance and therefore no inference can be made.
<b>Chorley and Wigan Turnpike Act 1726</b>	1726	The applicant makes reference to information provided in 'Turnpikes & Toll Houses of Lancashire' by Ron Freethy, published in 1986 (page 36) and to other information regarding the Turnpike Trust. No map or detailed description was found. No inference can be made. The Act may be of relevance if it established that the route was a turnpike and the route was a highway before it became a turnpike but the Act has not been found so no conclusions can be drawn.

<b>Certificate of Repair Ormskirk Quarter Sessions</b>	1756	Extract of document obtained from records held in Lancashire Records Office submitted by the applicant.
Observations		The document is dated July 1756 and confirms repair of a half mile stretch of Kings Highway between Coppull Mill Bridge and another un-named bridge, part of the route from Wigan to Chorley. There is no map detailing the location of the route certified.
Investigating Officer's Comments		It appears that it was part of the turnpike road now known as Wigan Lane. The Investigation Officer considered that there is insufficient detail to conclude that the application route formed part of the half mile stretch of 'Kings Highway' referred to and that no inference could be drawn.
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



		
Observations		<p>A road is shown extending from Chorley in a south south westerly direction towards Standish which is consistent with the road known as Wigan Lane and which is shown by Yates as a turnpike road. Coppull Hall is shown (which still exists today) and some dashed lines appear to exist extending south south east to connect to further dashed lines extending north north east past an unnamed property and joining Wigan Lane just above the word 'Runshaw' which appears to be consistent with the position of the application route. Jolly Tar Lane, which links to Coppull Hall Lane from Wigan Lane is not shown on the map.</p> <p>Watercourses are shown to cross the turnpike road to the north and to the south of the land crossed by the application route.</p>
Investigating Officer's Comments		<p>The application route may have existed in 1786 and may have provided access from Wigan Lane to a number of properties and possibly a link through to Coppull.</p> <p>The application route did not appear to form part of the turnpike road in 1786 and the road shown as the turnpike road is aligned consistent with the modern day alignment of Wigan Lane with no pronounced bends to suggest that the application route formed part of it at that time.</p> <p>The map was prepared 30 years after the certificate of repair was issued for</p>

		the length of 'Kings Highway' inspected by the Justice of the Peace as detailed above and there is some suggestion (detailed later in the report) that the original turnpike road was extensively improved and upgraded under parliamentary powers in the 1760s, which, if that was correct, may mean that the route shown on Yate's Map was not the original turnpike road.
<b>Survey of the bounds of the Manor of Coppull detailed in Coppull Manorial Records</b>	1797	Extract of Manorial Court records submitted by the applicant and available to view in the County Records Office.
Observations		<p>In a survey of the bounds of the Manor carried out in 1797 part of the boundary was 'on the East side of the same brook (<i>Ellerbrook</i>) unto the old Turnpike Road now belonging to Mr John Vause of Wigan and running from thence along the west side of the same Brook across the new Turnpike Road thro other Lands of the said John Vause.'</p> <p>In the same volume of the Manor Court books it is stated that 'John Vause hath committed an Encroachment by taking a part of the Waste Land of the said Manor lying along the north side of the said old Turnpike Road and ...setting a Cop (<i>bank or barrier</i>) across the same road whereby the Tenant of Coppull Hall ... is prevented from going from the said Hall to the Turnpike Road from Wigan to Chorley.'</p>
Investigating Officer's Comments		No map is provided but there is specific reference to an alteration to the alignment of the turnpike road in that vicinity. However it is insufficient to infer that part of the application route was part of the old turnpike route.
<b>Extract from Local Gleamings relating to Lancashire and Cheshire edited by JP Earwaker, Reprinted from the 'Manchester Courier' revised and corrected April 1875-December 1876</b>	1876	Newspaper article referred to by the applicant and a copy found online.

AUGUST 18th, 1876.

ORIGINAL DOCUMENTS.

[388]. A LANCASHIRE ITINERARY BY DR. KUERDEN,  
c. 1695.

(Concluded from Nos. 375, 378, 381, 384.)

The series of descriptions of the old roads of Lancashire which have appeared in the last few numbers of *Local Gleanings*, taken from Dr. Kuerden's MSS, are followed by the two short notes which appear below. These supplement in some small degree the description of the roads to Preston which have already been printed, and with them this interesting Lancashire Itinerary abruptly concludes. It is possible that descriptions of other Lancashire roads exist amongst the Doctor's voluminous MSS, but no more have been copied in the transcripts from which we have taken those already printed. We shall be glad to receive any notes on these roads from any of our readers familiar with them in their present state.

EDITOR.

V. THE WAGON ROAD FROM STANDISH TO PRESTON.

Take the left hand way leaving Standish School on the left, soon after which appears Standish Hall, the

family, and passing on a Common in Wrightington you meet with the second oblong Road from Prescott to Preston, *q. vide*.

ANOTHER WAY FROM WIGAN TO PRESTON BY CHORLEY.


Having pass'd a mile from Wigan to the Bear's Head, keeping the right hand road, you pass over a little rill by Jolly Mill, about a quarter of a mile. You leave on the right a road with a Stone Bridge over Dugles Water leading from Standish to Blackrod, and shortly after on the left a road by the parsonage to the Church and Town of Standish, passing by another Mill call'd Worthington Mill, and shortly after by Worthington Hall belonging to Merchant Tho: Clayton. Half a mile further you leave a fair built Fabric also belonging to the sd. Merchant call'd Adlington Hall. Passing by a little bridge over the Forburn Brook having gone thro' the watery lane leaving Copul Hall a little on the left, & going easterly till you meet the oblique road from Manchester to Preston.





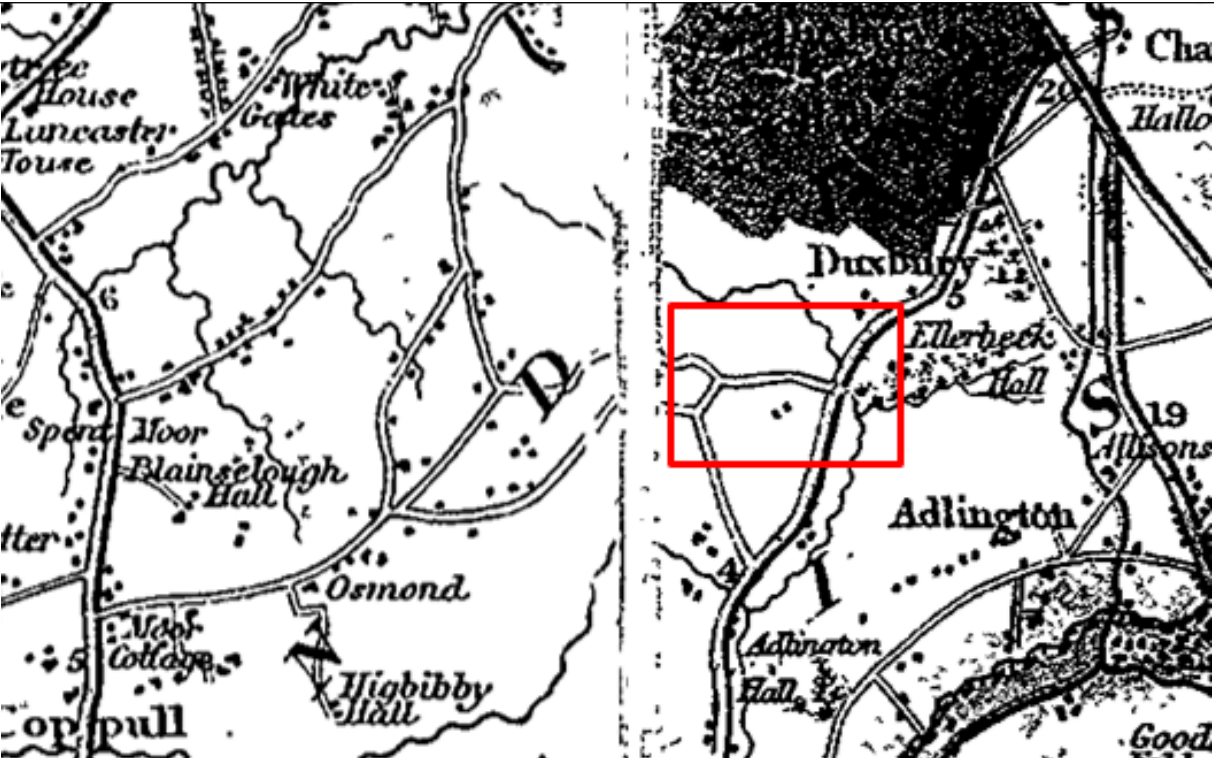
Observations

The article refers to a series of descriptions of Lancashire's roads written by Dr. Kuerden and dating back to 1695. It is not clear whether the descriptions provided in 1876 were part of Dr Kuerden's original observations

		<p>dating back to 1695 or whether they have been written at a later date to describe the routes from Standish to Preston and from Wigan to Preston via Chorley. The route via Chorley is described as starting in Wigan and clearly describes the road which still exists today passing Worthington Mill and Hall and Adlington Hall. It is then described as passing over a little bridge to cross Perburn Brook 'having gone thro' the watery lane leaving Coppull Hall a little on the left' and then easterly until you meet the oblique road from Manchester to Preston.</p>
Investigating Officer's Comments		<p>The suggestion from the applicant is that the route described followed the application route which was known as Watery Lane and that this route pre dated the current alignment of Wigan Lane to which the application route connects to at point E.</p> <p>'Perburn Brook is not named on the OS maps examined but an examination of the first edition 6 inch OS map published in 1848 further south than the application route shows the turnpike road named as Water Lane passing a property known as Watergate in close proximity to Addlington Hall. The brook clearly shown to the east of Watergate is labelled as Bucknow Brook which is crossed by the road by Coppull Mill bridge suggesting that the turnpike road south of the application route may have been known as water or watery lane in the 1700's. This evidence is consistent with the applicant's assertion but whether the application route formed part of the Turnpike Road cannot be inferred from it.</p>
<b>Smith's Map</b>	1804	<p>Small scale commercial map. Smith was a London engraver and map seller. A New Map of the County Palatine of Lancashire appeared in a single sheet in 1801 and between 1804 and 1846 in subsequent editions of his New England Atlas. Smith's and Cary's maps are very similar but one is not a direct copy of the other and there are</p>

		significant differences in detail.
		
Observations		A route consistent with the application route appears to be shown on the map providing a through route with access to a property part way along it.
Investigating Officer's Comments		The route existed in 1804 and is shown consistent with the way that other public roads were shown.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

		
Observations		The application route is not shown on the map except for a short section at the western end.
Investigating Officer's Comments		The route may not have existed as a through route in 1818 as Greenwood was known to have shown both public and private vehicular roads – or, at that time, it may not have been considered by the Surveyor, to be of substantial nature and was therefore not shown on the map.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

		
Observations		A route consistent with the application route is clearly shown as a through route on Hennet's Map.
Investigating Officer's Comments		The route existed in 1834 and appeared to be shown as part of the public vehicular network connecting to the turnpike road.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The application route does not cross land affected by a canal or railway.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1842	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of

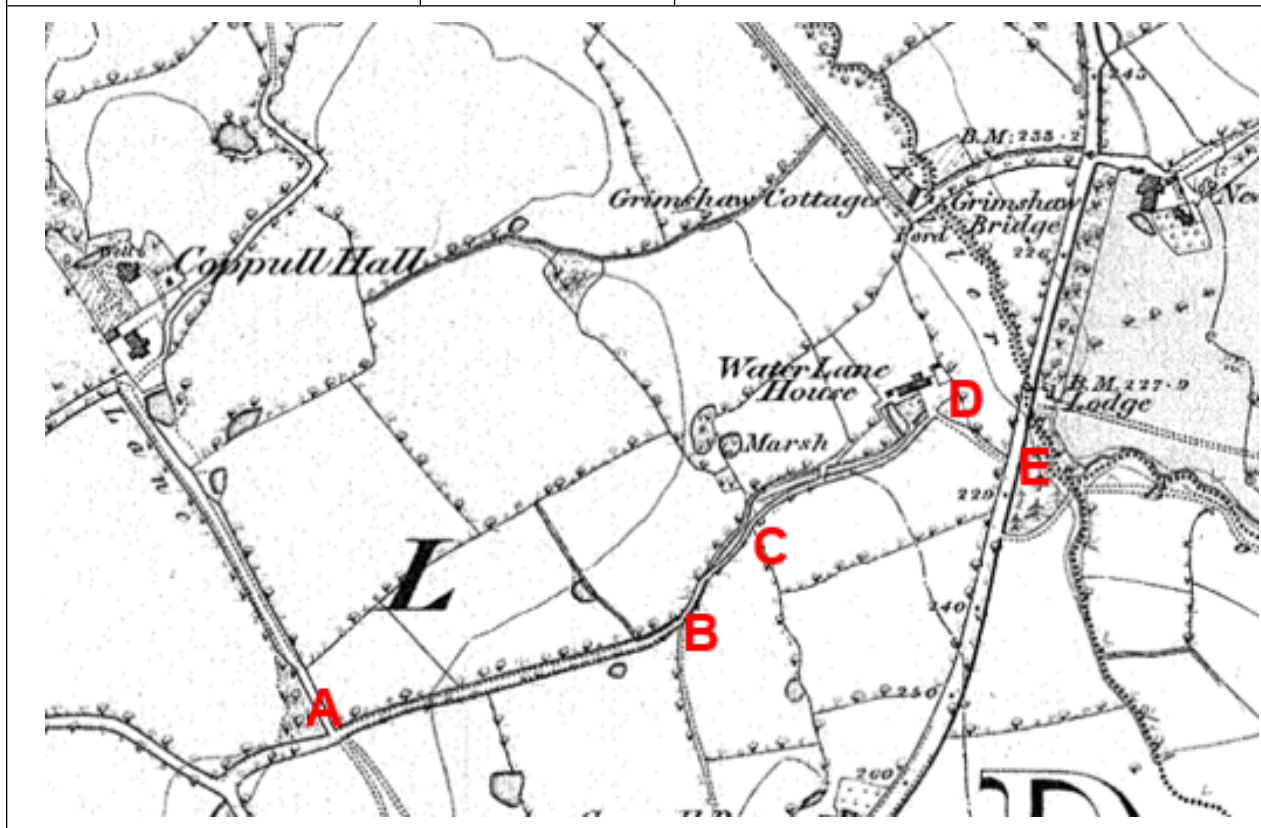
		producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
--	--	---



Observations		<p>The application route is shown and is coloured in the same way as all other roads, tracks and footpaths shown on the map. It is numbered 692 and in the Tithe Schedule is described as 'Lane to House' and as being pasture for which a tithe of 2 shillings was payable to the Rector of Standish.</p> <p>Public and Township roads and Waste are listed at the end of the schedule and the application route is not included.</p>
Investigating Officer's		The application route was not

Comments		considered to be a public road in 1842 but did appear to exist as a through route providing access to a house.
<b>The Law Journal Reports, Volume 12, Part 1</b>	1843	Extract of Law Journal submitted by the applicant.
<p>108 CASES CONNECTED WITH</p> <p>c. xlvii, which enabled the making of the road in question. The first was, "An act for improving and more effectually repairing the roads from the town of Bolton-in-the-Moors to Nightingales, in the township of Heath Charnock, and for making a branch road of Little Bolton aforesaid,) shall be exonerated and discharged from the repairs of such parts of the said roads respectively as lie within the said township of Little Bolton (except as aforesaid), and the same shall from thenceforth cease to belong to the said <b>turnpike</b> roads, or to be under the controul or management of the trustees or commissioners thereof, and shall from time to time thereafter be repaired, maintained, supported, and kept in repair by the trustees for executing this act: Provided always, that such portion of the <b>turnpike</b>-road leading from or near the house, called or known by the sign of the <i>Whitster's Arms</i> in Little Bolton aforesaid, to from Little Bolton to or near the Crown in Harwich; and for enabling the trustees therein named, together with the trustees north and south of Yarrow, and the trustees of the road from West Houghton to <b>Duxbury Stocks</b>, to make a new line of road from Hole House Brow in the said township to the town of Chorley, and a branch road from Rawlinson Bridge to Halliwell Field, in the same township, and another branch road in the township of <b>Duxbury</b>, all in the county palatine of Lancaster." The second act was, "An act for more effectually cleansing, paving, lighting, watching, regulating, and improving the township of Little Bolton in the county palatine of Lancaster." <i>Cur. adv. vult.</i></p>		
Observations		The extract refers to the provision of powers enabling the trustees of the turnpike road to make a new line of road from Hole House Brow and two branch roads. There is no reference to the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence or public status of the application route.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845-6


and published in 1848.<sup>1</sup>



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

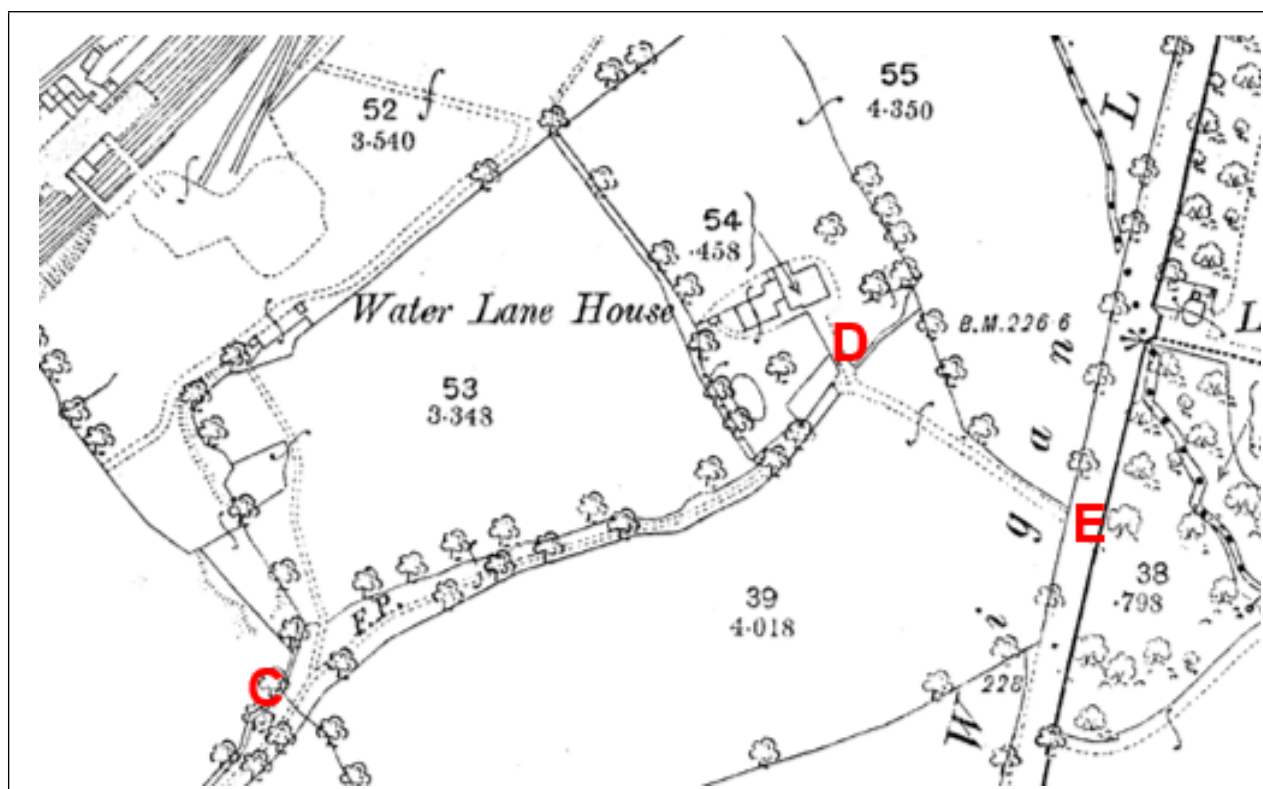


<p>Observations</p>		<p>The full length of the application route is shown. The route is not named but is shown as a wide bounded route between point A and point B before the width decreases and the route continues – still bounded – to point D. From point D the route provides access to Water Lane House. From point D the route continues as an unbounded track to point E where it exits onto the turnpike road (Wigan Lane).</p> <p>Wigan Lane is labelled as being a Turnpike Road - Wigan and Preston South of the Yarrow Trust (Higher Road) - south of where the application route meets it at point E and as Water Lane.</p>
<p>Investigating Officer's</p>		<p>The application route existed in 1848</p>

Comments		<p>but did not appear to form part of the public vehicular network. It provided access to Water Lane House.</p> <p>The route between point A and point B appears to be quite substantial and is shown consistent with the way that Coppull Hall Lane and Jolly Tar Lane (to which it links) are shown suggesting that it may have been of a similar width to them. Beyond point B the application route appears much narrower suggesting possibly, that it was not as significant or possibly that use had declined in favour of using Jolly Tar Road.</p> <p>There is nothing on the OS map to suggest that the turnpike road (Wigan Lane) from the junction with Jolly Tar Lane (south of the application route to the point at which the application route exits onto Wigan Lane at point E had recently been constructed as a 'new' road and the map is consistent with how the route and surrounding area are shown on the Tithe Map and earlier commercial maps.</p>
6 inch OS Map	1892	OS map submitted by the applicant.
		

Observations		The application route is shown and appears largely unaltered from the date of the first OS 6 inch map. Ellerbeck colliery is shown north of the route but does not appear to be accessed from the application route. The turnpike road is now shown named as Wigan Lane.
Investigating Officer's Comments		The application route existed in 1892 and appeared wide enough to have been used on horseback.
<b>25 Inch OS Map</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.





Observations		<p>The application route is shown. A gate, stile or other barrier may have existed across the route at point C and beyond point C the route is annotated as a footpath with another gate, stile or barrier possibly existing close to point D.</p> <p>Just beyond point C a track denoted by double pecked lines leaves the application route to provide access to Ellerbeck Colliery although this is one of many tracks shown accessing the colliery site and does not appear to be a main access route.</p> <p>Access to Water Lane House appears to be predominantly along the application route from E to point D.</p>
Investigating Officer's Comments		<p>The application route existed and may have been accessible although the nature of how the route is depicted suggests that use would be predominantly on foot between point C and point D.</p>
<b>Bartholomew half inch Map</b>	1904	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps</p>

were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



EXPLANATORY NOTE

First Class Roads

Secondary (Good)

Indifferent (Passable)

The uncoloured roads are inferior and not to be recommended to cyclists.

Footpaths & Bridlepaths

N.B. The representation of a road or footpath is no evidence of the existence of a right of way.

Railways

Canals

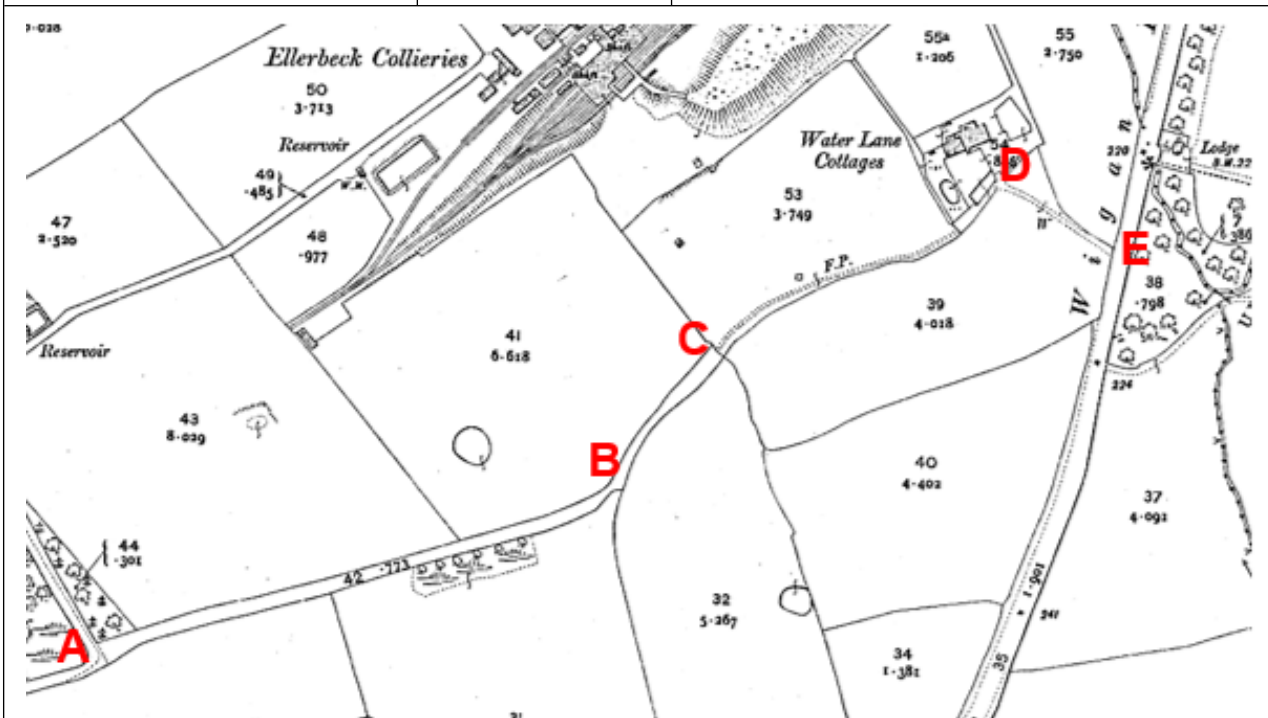
County Boundaries

Station


Station with Refreshment Room

SCALE 1 : 126,720 = 2 MILES TO AN INCH

Observations		The full length of the application route is shown on the map as an uncoloured road.
Investigating Officer's Comments		The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.
25 inch OS Map	1908	Further edition of the 25 inch map re surveyed in 1892, revised in 1907 and published in 1908.



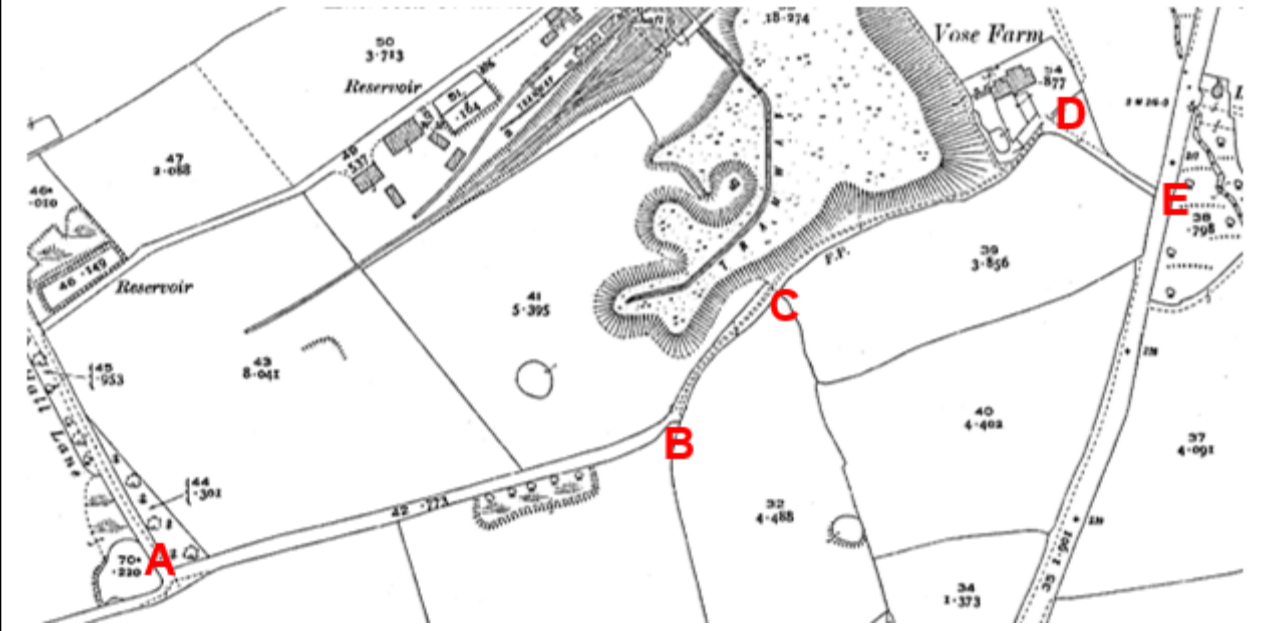
Observations		The full length of the application route is shown. The route between points A-B-C is shown as a substantial bounded track. At point C the route crosses a boundary through which access may have been restricted – possibly by the existence of a gate or stile. Beyond point C the route is shown to continue
--------------	--	--

		as an unbounded track along a field edge notated as 'F.P.' towards point D where it appears to cross another boundary before passing Water Lane Cottages (formerly known as Water Lane House) and then continuing between point D and point E along an unbounded track which provided access to and from the cottages from Wigan Lane. An alternative access to the cottages is also shown north of point D.
Investigating Officer's Comments		The application route existed in 1908 and access may have been possible along all or part of it on foot and possibly on horseback.
6 inch OS Map	1909	Further 6 inch OS map submitted by the applicant; stated to have been published in 1909 but date of revision unknown.
		
Observations		The application route is shown in the same way as it is shown on the 25 inch OS published a year earlier. Access to Water Lane Cottages (formerly Water Lane House) now appears to be from either the application route between point D and point E or from north of the cottages via Grimeshaw Bridge.
Investigating Officer's Comments		The application route existed in 1909 and access may have been possible along all or part of it on foot and

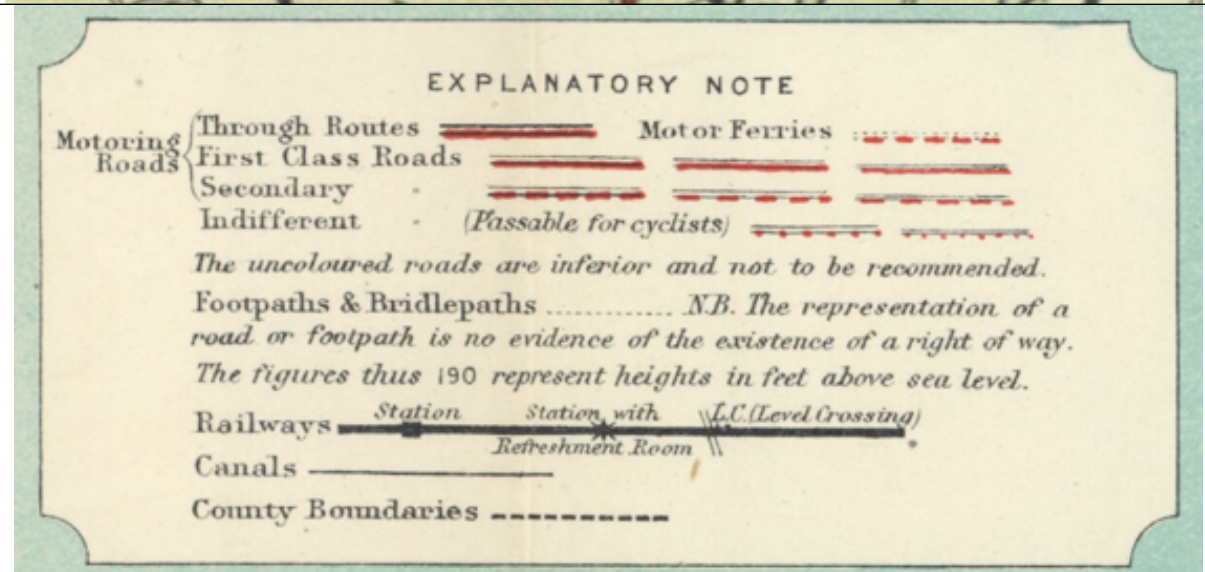
		possibly on horseback.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence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



<p>Observations</p>		<p>The Finance Act Map is not available to view in the County Records Office but the applicant obtained a copy from the National Archives.</p> <p>The application route is not excluded from the numbered hereditaments. Between point A and point D it is included within hereditament 226 which is listed in the Finance Act Schedule (available to view at the County Records Office) as being owned and occupied by Ellerbeck Colliery Ltd. The land is described as railway sidings and no deductions are listed for public rights of way or user.</p> <p>Between point D and point E the route is included as part of hereditament 235, occupied by James Bond and owned by 'Dickinson and Stringfellow'. No deductions are listed for the existence of public rights of way or user.</p> <p>The Field Book entries for both hereditaments have not been examined.</p>
<p>Investigating Officer's Comments</p>		<p>It is normal to see a public vehicular highway excluded from the numbered hereditaments as part of the process of compiling the taxation records and for ways considered to be public footpaths and bridleways at that time to be</p>

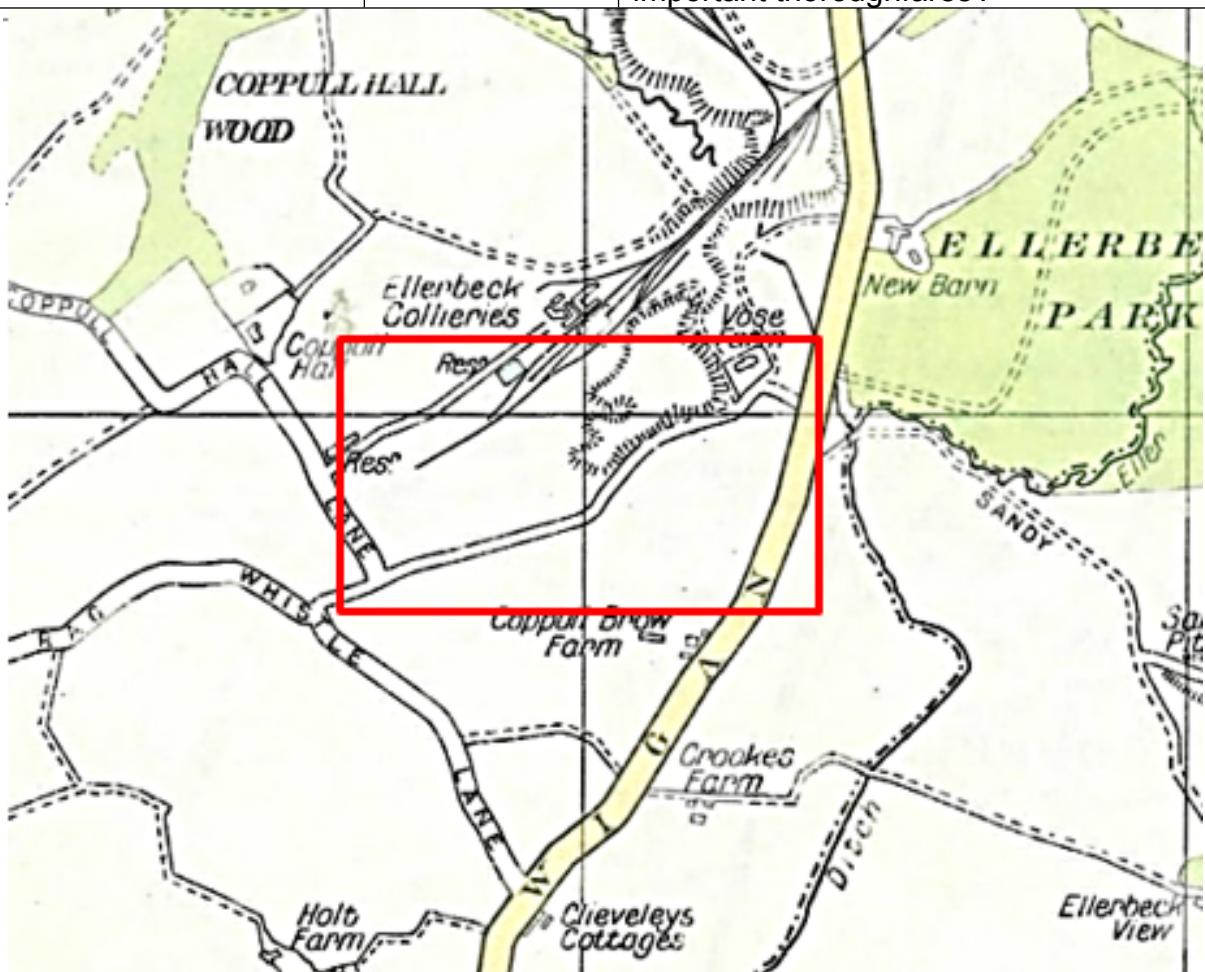
		<p>included in the numbered hereditaments for which a deduction is claimed where the public rights are acknowledged.</p> <p>On balance it is therefore considered that the Finance Act information neither supports nor negates the existence of a public bridleway rights in 1910.</p>
<b>25 Inch OS Map</b>	1928	Further edition of 25 inch map (re surveyed 1892, revised in 1927 and published 1928.
		
Observations		<p>The application route is shown. The mine workings north of the route have extended so that a large spoil heap runs adjacent to the route from point C to the boundary of Water Lane Cottages are now labelled as Vose Farm.</p> <p>The route between point A and point B still appears to be quite a wide bounded track but it appears narrower between point B and point C and looks to be a narrow track along the edge of the spoil heap between point C and point D.</p> <p>The main access to Vose Farm appears to be the application route between point D and point E.</p>
Investigating Officer's Comments		The application route existed in 1928 and access may have been possible on horseback along all or part of it but

		between point C and point D the route looks to be quite narrow and the annotation "F.P." suggests most access on foot. The change of name to the property from Water Lane Cottages to Vose Farm may reflect the fact that neither the application route nor Wigan Lane seem to be known as 'Water Lane' or probably it is named after former owner John Vause.
<b>Bartholomew's half inch Map</b>	1920	Further edition of Bartholomew's Map.



Observations		The application route is shown as an 'uncoloured road'.
--------------	--	---

Investigating Officer's Comments		The application route is shown on the map supporting the view that it physically existed in the 1920s. However, it did not appear to be considered to be passable for motorists or cyclists at that time.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		The full length of the application route is
--------------	--	---

		shown as a substantial through route. It is not named on the map but can be seen to provide access to and past Vose Farm. The spoil heaps abutting the route are shown.
Investigating Officer's Comments		<p>The Directory was an independently produced and very detailed street map which included an index to 'all thoroughfares' on map. Public footpaths and bridleways are not normally shown unless they comprised of substantial tracks.</p> <p>The fact that the route was shown on the map is further evidence that the route physically existed in 1934 and may have been available to use but it does not necessarily provide proof of its status as a public bridleway or public vehicular road.</p>
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

---

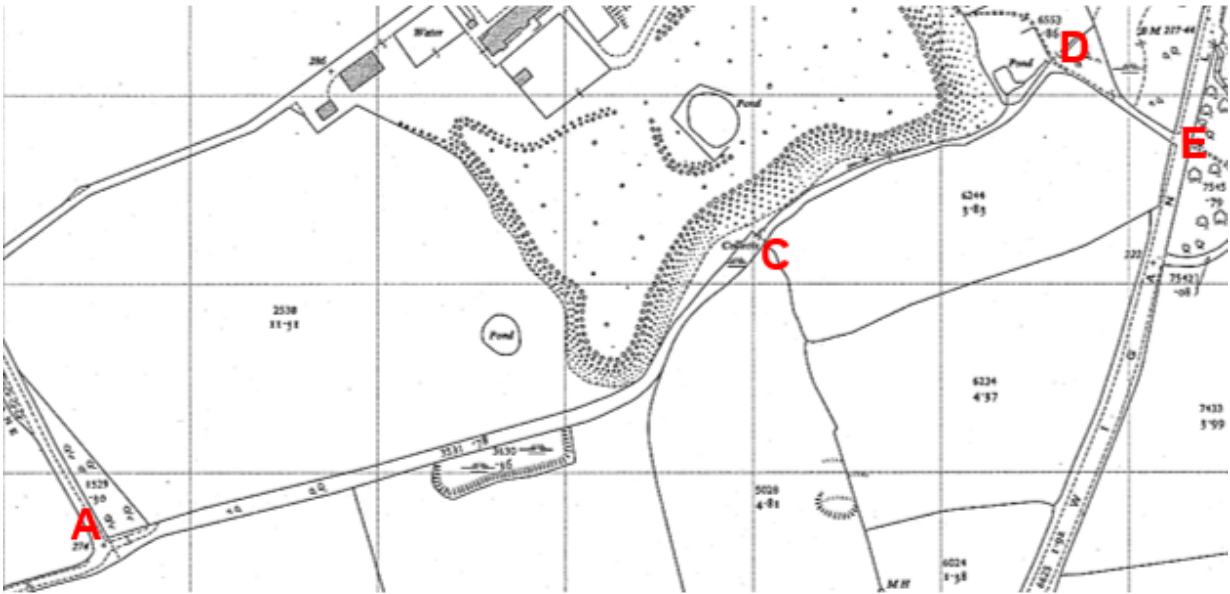
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

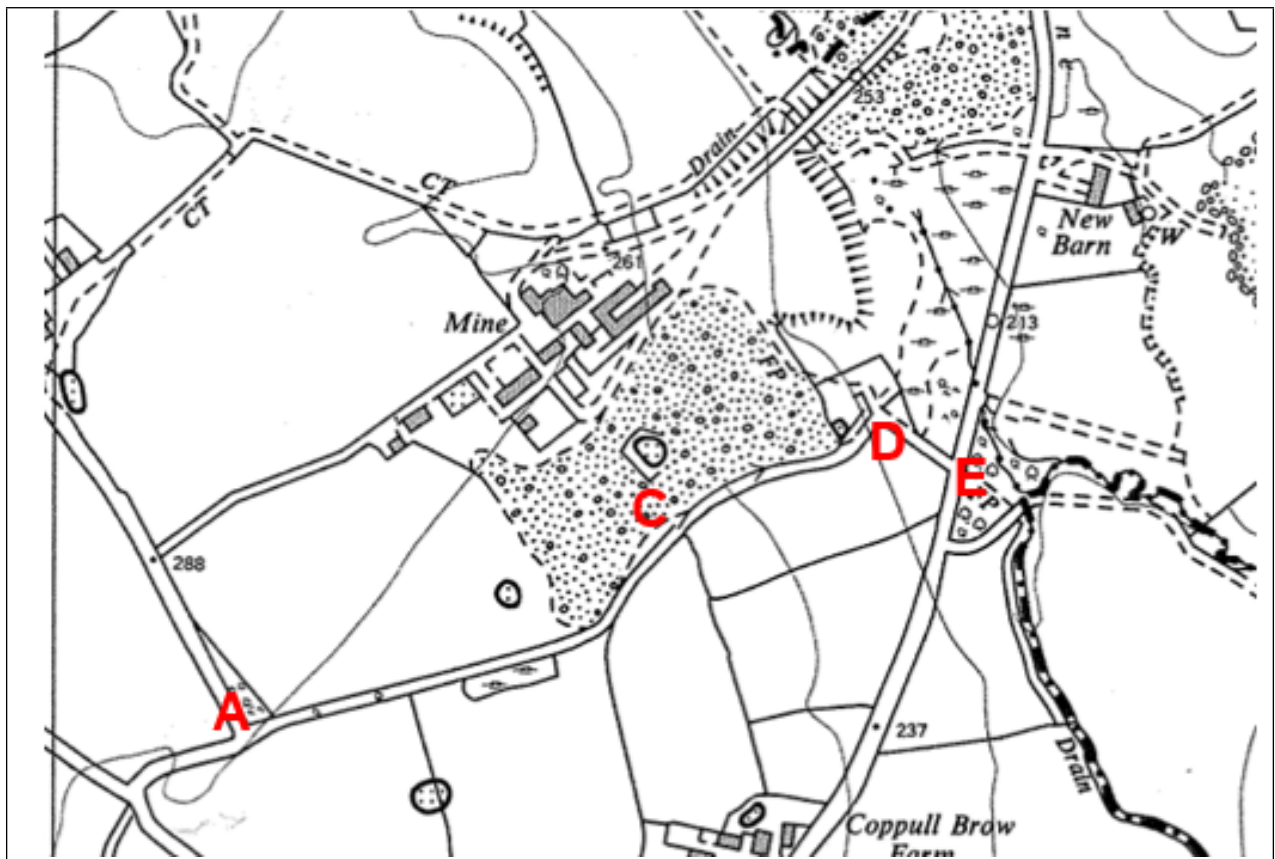


Observations		<p>The application route is visible on the aerial photograph but its appearance does not suggest that it is heavily used and between point D and point E the route shows up quite faintly consistent with pedestrian, and possibly equestrian use. Vose Farm can be seen but it appears that it may no longer be inhabited or a busy working farm/property.</p> <p>The existence of any gates, stiles or structures which may have limited or prevented use cannot be seen on an aerial photograph.</p>
Investigating Officer's Comments		<p>The application route existed in the 1940s and may or may not have been capable of being used on horseback.</p>
<b>6 inch OS Map</b>	1947	<p>Further edition of the 6 inch map published 1947 and submitted by the applicant. Date of revision unknown.</p>



Observations		The application route is shown as a through route and a providing access to Vose Farm. Access to the farm also appears to be available via Grimeshaw Bridge to the north. Part of the route adjacent to the spoil heaps is annotated as a footpath.
Investigating Officer's Comments		The application route existed in the 1940s and access may have been possible along all or part of it but between point C and point D the route looks to be quite narrow and more likely to provide access on foot – and possibly horseback.
<b>1:2500 OS Map</b>	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published in 1961 as National Grid Series.

		
Observations		The application route is shown in a similar way to on earlier editions of the map. A watercourse is shown along the route from point C to point D and Vose Farm is not shown.
Investigating Officer's Comments		The application route existed in the 1950s but no longer provided access to a farm. The section between point C and point D may have been effected by the existence of the watercourse along it making it narrower than previously or possibly wetter underfoot.
6 Inch OS Map	1965	OS map revised in 1959 and published in 1965 at a scale of 6 inches to 1 mile (1:10,560).



Observations		The application route is shown and appears to consist of a substantial track throughout its full length. A watercourse is marked along the route between point C and point D. Vose Farm is mostly not shown on the map.
Investigating Officer's Comments		<p>The application route existed in the late 1950s. The farm which had previously existed close to point D no longer existed.</p> <p>The style of lines used on this edition of the map suggests a substantial track.</p>
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		A route can be seen between point E and point D continuing up to the colliery site and a short section near point A. It is difficult to see the rest of the route due to tree cover.
Investigating Officer's Comments		The application route between point D and point E and entering from point A appears to be heavily used – possibly with vehicles.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.



Observations		It is not possible to see the application
--------------	--	---

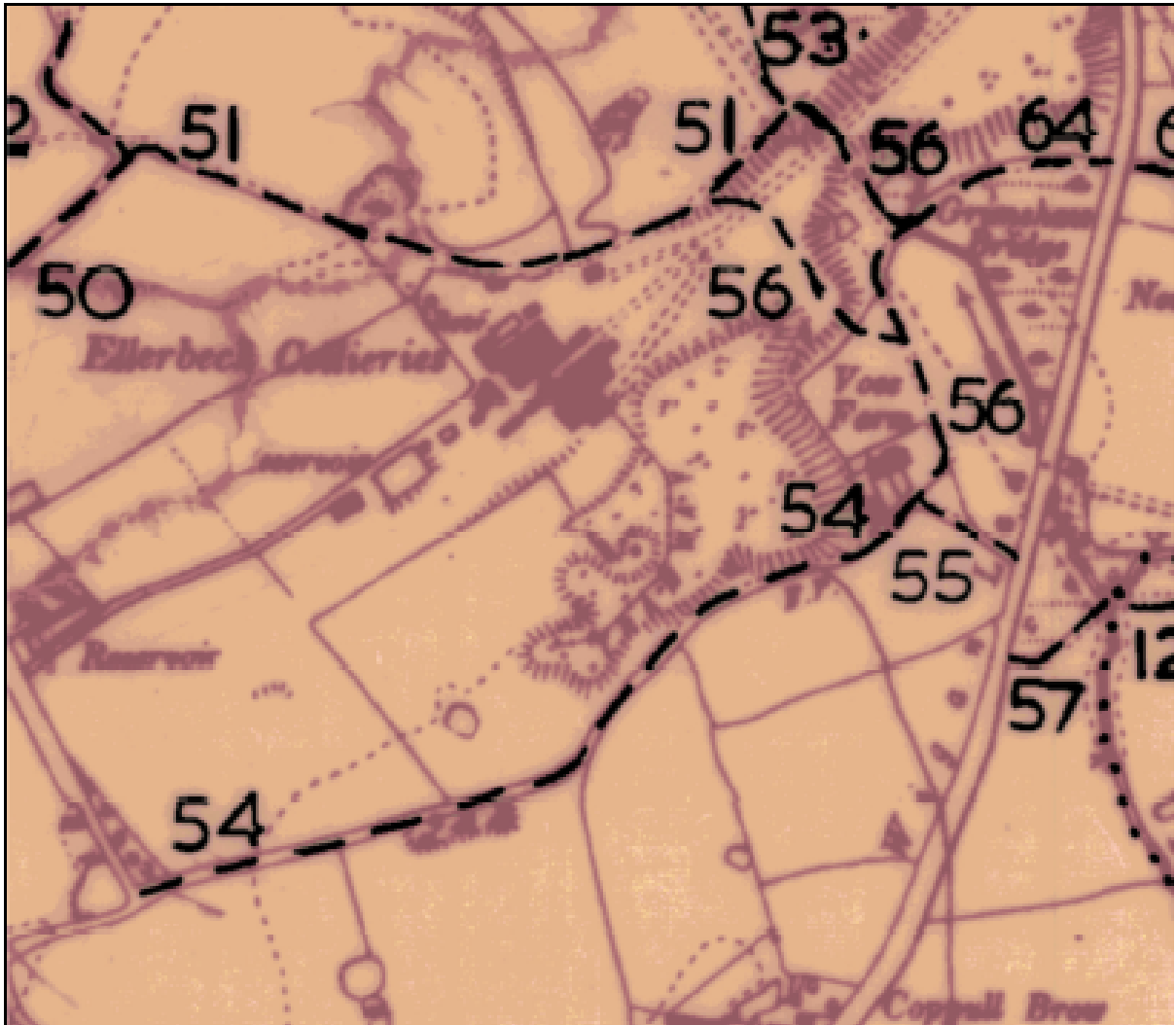
		route due to tree cover.
Investigating Officer's Comments		No inference can be drawn.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



Observations		<p>The Parish Survey map for Coppull was completed by the parish council and shows the application route between point A and point D numbered 54 and as a 'CRF'. Access onto the route at point A is recorded as being a 'Gap'. Between point B and point D a red dotted line is shown along the south side and annotated 'O' which was sometimes used to denote "overgrown" although it was outside the remit of that survey. From point D to point E the route is numbered 55 and access onto Wigan Lane is marked as a 'Gap'. The whole length of the route appears to have been drawn on the map using a red pen which has then been drawn over in blue.</p> <p>The Parish Survey cards were completed in October 1950. Footpath 54 is described as cart road mainly used as footpath – consistent with the annotation 'CRF' (cart road footpath) on the map. It is noted on the survey card that the route was known as Stony Lane. The footpath was described as being from Coppull Hall Lane to Vose Farm with the first part metalled and latter part cobbled and it was noted that the section near the colliery tip was</p>
--------------	--	---

		<p>completely obstructed, overgrown and flooded and that passage was impossible until it cleared again 20 yards in front of Vose farm.</p> <p>Footpath 55 was described as a footpath over an occupation road from Wigan Lane to Vose Farm. It was described as passing through a gap and as being a well-defined cinder carriageway to the cottages marked Vose Farm.</p>
<b>Draft Map</b>		<p>The parish survey map and cards for Coppull were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The route was shown in the same way on the Draft Map as on the Parish Survey and no representations were made to the County Council.</p> <p>The statements recording the position of the routes make no reference to the name 'Stony Lane' as referred to in the parish survey cards and it was noted that 'Vose farm' was spelt 'Vause Farm' in the Statements.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not.</p>

		Objections by this stage had to be made to the Crown Court.
Observations		The route was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was shown in the same way on the First Definitive Map as on the Draft Map and Provisional Maps.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.

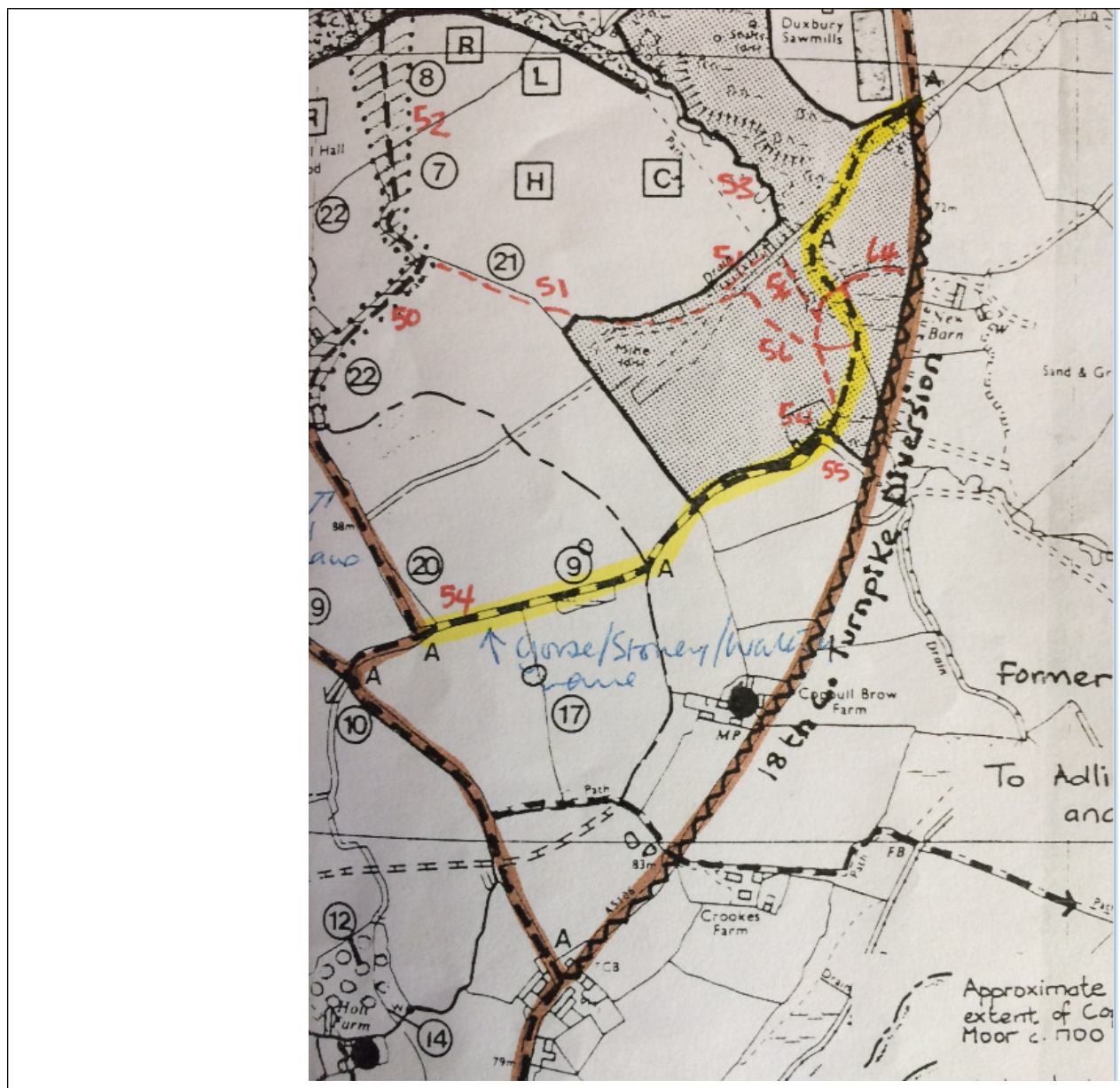


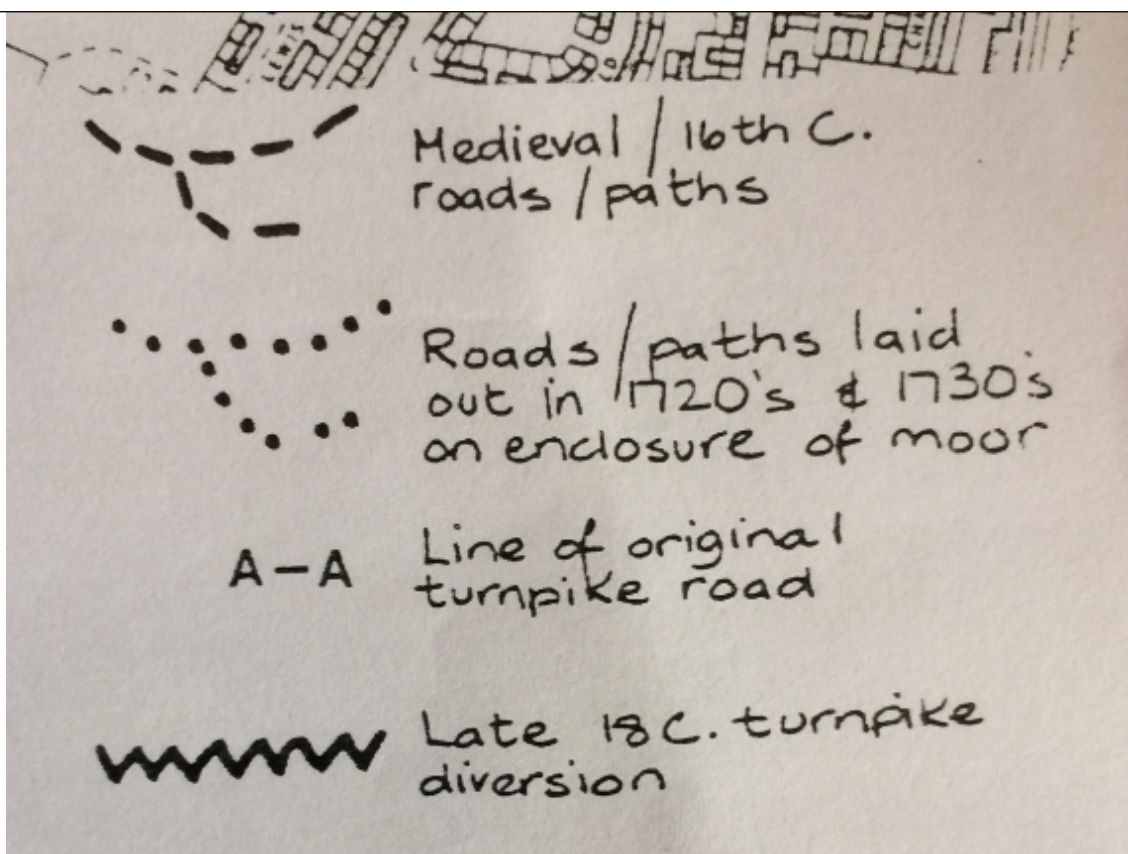
Observations		When the Map and Statement were reviewed the route was shown in the same way as it had been shown on the First Definitive Map.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the route was considered to be of any higher status than public footpath by the Surveying Authority except that part of it was described as CRF, a term which was in practice used ambiguously. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>The Statements produced during the various stages of the Definitive Maps of Public Rights of Way provide no helpful information in determining the status of</p>

		<p>the route.</p> <p>Reference to the route being known locally as 'Stony Lane' in the parish survey is not supported by any other evidence examined.</p>
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The application 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.
<b>Highway Stopping Up Orders</b>	1835 - 2014	<p>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</p>

		made by Districts and the County Council since that date.
Observations		No legal orders relating specifically to the application route have been found.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application 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.

<b>Leading the Way: A History of Lancashire's Roads edited by Alan Crosby</b>	1998	Local history book detailing the history of Lancashire's road network written by Dr Alan Crosby, Freelance local historian and tutor at Lancaster and Liverpool Universities and available to view at Lancashire County Records Office.
Observations		The book explains the origins of Wigan Lane as a turnpike road and explains that the Wigan and Preston Turnpike Trust initially comprised of two routes, one via Euxton and the other from the Boars Head (Standish) to Chorley. The trust was later split into two divisions, north and south of the River Yarrow, and the Chorley route was called the Higher Road and the Euxton route the Lower Road (as labelled on the first edition 6 inch OS map). Dr Crosby reported that extensive changes occurred to the alignment of the Higher Road at Duxbury, to the south of the River Yarrow but did not provide specific details of the route.
Investigating Officer's Comments		No inference can be drawn regarding the assertion that the application route was a historical route forming part of the original turnpike road.
<b>Landscape History of proposed opencast site</b>	1989	Extract from report prepared by Dr Alan Crosby for Lancashire County Council in relation to a public inquiry into Ellerbeck West Proposed Open Cast Coal Site dated 11 December 1989.





#### Observations

Lancashire County Council public rights of way parish files contained a memorandum from the County Planning Officer to the County Surveyor concerning Footpath 54 Coppull (part of the application route).

The memorandum states that the historical investigations undertaken preceding the Ellerbeck West public inquiry (relating to a proposal to re-open the colliery site) raised the issue of the correct legal status of the footpath and made reference to a letter sent to the County Council by County Councillor Richard Toon asking for the route – referred to as Stoney or Gorse Lane to be cleared of vegetation.

Part of a report written by Dr Crosby was attached to the memorandum detailing the road and path network of the Ellerbeck colliery site.

The report concentrates on the significance of the road and path network within the site and explains that the pattern seen today is essentially

		<p>that of a medieval network superimposed with 18<sup>th</sup> and 19<sup>th</sup> century changes.</p> <p>Dr Crosby refers to the ancient sunken routes including one which he refers to as Stony Lane (or Gorse Lane) which is the route of Footpath 54 and 55 Coppull (the application route) and which states that it has effectively been abandoned due to the mine workings. He describes the first part of this route (between point A and point B) as a typical sunken Holloway and refers to evidence of cobbles and large flat setts.</p> <p>Dr Crosby is of the view that the application route was part of the ancient route linking Wigan to Chorley as described by Dr Richard Kuerden in 1686 and believed that Dr Keurden referred to the application route as Watery Lane.</p> <p>He states that the road – including the application route – was turnpike in 1727 but then improved and altered in the 1760s cutting out the application route and straightening the route. A plan attached to the report shows the application route between point A and point D labelled as part of the old road.</p> <p>The memorandum enclosing the report concludes by saying that if planning permission for the open cast coal site is granted British Coal will need to consider whether the route should be reinstated to bridle path standard and that if it is refused it will be necessary to consider what action is required to clear the routes of footpaths 54 and 56 as they are largely impassable due to ground conditions and the tipping of colliery spoil.</p>
Investigating Officer's Comments		<p>Dr Crosby is of the view that the application route between point A and point D formed part of the original turnpike road – which was subsequently diverted but the Investigating Officer has been unable to locate documentary evidence to support this view. It is not</p>

		known whether the old turnpike road was disturnpiked or rights remain on it.
<b>LCC Parish Files</b>	1991-1999	The Investigating Officer working in the Planning and Environment Team was originally employed by the County Council from 1991 as Public Rights of Way Maintenance Officer. She recalled being involved in work to open up, drain and surface the application route soon after commencing her employment and therefore undertook a search of the Lancashire County files to gather further information.
Observations		<p>Letters on file confirm that British Coal (Open Cast) owned much of the land crossed by the application route in the early 1990s and that the whole length of the route was impassable due to overgrowth and poor drainage.</p> <p>With funding from British Coal extensive work was carried out by contractors to clear out ditches, clear vegetation, cut new ditches, surface the route with stone, re channel the water flowing along the route and to provide footbridges across particularly wet areas. Work was completed in December 1991.</p> <p>Further correspondence in 1998 refers to kissing gates being erected at either end of the route due to motorcycles using it.</p>
Investigating Officer's Comments		The route appeared to be impassable prior to 1991 when extensive work was carried out to re-open it. Evidence of the remains of the stone surface and drainage works seen today are likely to date back to the work done in 1991 and may not reflect what the path had looked like historically.

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

### **Landownership**

The land crossed by the route between point A and point X is owned by Messrs James, Timothy, Ivan and Carl Woodcock of Yew Tree House Farm, Coppull Hall Lane, Coppull, Chorley, PR7 4LR.

The land crossed by the route between point X and point D and point Y and point E is owned by Chorley Borough Council, Town Hall, Chorley, Lancashire PR7 1DP.

The land between point D and point Y is unregistered and ownership is not known.

## **Summary**

The applicant has asserted that the route should be recorded as a public bridleway because it formed part of the old road between Wigan and Chorley which became one of the first turnpike trusts in Lancashire in 1727 and that the road was diverted, cutting off the application route, in the 1760s. This assertion appears to have originated from a report prepared by Dr Alan Crosby in 1989 with reference to a public inquiry into the re-opening of Ellerbeck coal mine as an open cast site.

Documentary evidence found which may support this assertion is a description of the road written by Dr Richard Keurden in about 1686 which refers to a route known as Watery Lane near Coppull Hall.

No documentation or maps relating to the 1727 turnpike trust or any alterations to the route in the 1760s was found confirming the existence of the application route or the fact that it formed part of the old road.

Dr Crosby included a modern annotated map in his report on which he indicated that the application route between point A-D formed part of the old turnpike road (but not the section D-E).

The applicant and Dr Crosby both refer to the route being known as Watery Lane, Gorse Lane or Stony Lane. The Parish Survey card from the 1950s refers to it being known as Stony Road but it is not recorded as being named as any of the names listed on any of the OS maps or Commercial maps examined and is not named in the Tithe Schedule or Finance Act documentation.

The earliest commercial map examined which was Yates Map of 1786 – published about 16 years after it is suggested that the turnpike road was altered. The map shows a route consistent with the alignment of the application route but the route is faintly shown and is not depicted in such a way as to suggest that it was considered as a main thoroughway at that time.

A survey of the manor undertaken several years later in 1797 refers to the old turnpike road and the fact that part of it had been blocked by the landowner (John Vause). The description in the manorial records is not clear enough to be certain that the route referred to as the old turnpike road was the application route and it has not been possible to determine whether the turnpike trust had the power to legally stop up the old route as a public highway when an alternative route was created.

The route is not shown as a through route on Greenwoods Map of 1818 suggesting that it was not considered a substantial public road or a private road (as Greenwood is known to have shown public and private roads) but yet on Hennet's Map of 1830 it is clearly shown in a way which is consistent other known vehicular roads.

When the Tithe Map and Award was produced for the parish in 1842 the route was clearly shown to exist but was not listed as a public road. It was described as being a road to a house, was in private ownership and a tithe was payable for it.

From 1848 through to the current day the route is consistently shown to exist on all OS maps published and provided access to a property known originally as Water Lane house, then cottages and finally as Vose Farm. The section between point C and point D appears to have been narrower and possibly affected by the location of the colliery spoil heap in the 1900s. The route may have been wide enough to allow for the passage of horses during that time but this is not supported by other evidence examined.

The Finance Act 1910 documentation does not support nor preclude the existence of a public bridleway and the parish survey carried out in the early 1950s as part of the preparation of the Definitive Map records part of the route as CRF and public footpath in the 1950s.

The track at the west end of the route still has the appearance of a substantial old road but the Investigating Officer's memory of the route in 1991 was of a route that was virtually impassable because it was so overgrown with trees and vegetation and that a substantial amount of clearance, drainage and surfacing work was required to make it useable. Work carried out would, quite possibly have covered over any cobbles or stone sets referred to by Dr Crosby and the cobbles referred to in the parish survey and may have altered the appearance of the route.

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

### Information from the Applicant

The applicant provided photographic, map and documentary evidence which has been considered above in support of the application comprising:

Yates Map 1786

Current photographs showing the 'pronounced' camber of the route between point A and point B

Greenwoods Map 1818

6 inch OS Map published 1848

Extract of certificate of repair obtained from County Records Office (Ref: QSD 1733/10) with transcript

Duxbury Manor Estate plan c1584

Greenwoods Map 1818

Hennets Map 1829

6 inch OS Map published 1892

6 inch OS Map published 1909

6 inch OS map published 1947

Bartholomew's Map published 1926  
Coppull Tithe Map 1842  
1910 Finance Act Map and extract from the relevant Valuation Book  
1843 Law Journal Report, Volume 12, part 1

In addition, the applicant presented his case that the historical documentation provided showed how the application route formed part of the original road (and original Turnpike Road) between Wigan and Chorley.

Three user evidence forms were also submitted;

One of the users states that they have used the route both on foot and on bicycle for 31 years between 1985 and 2016. Use was approximately 4 times a year although it was stated that there may have been 1 or 2 years when the route was not used. The years when the route may not have been used were not specified. Use was for pleasure and always along the exact same route. The user had never asked for permission to use the route and had never been stopped or challenged. Reference was made to the existence of a stile at point A and gate at point E. Reference is also made to the fact that the route was signed as a public footpath but the user considered that the route 'had the feel of a bridleway'.

The other two users both claimed to have used the route from 2015 – 2016 (1 year). They both used the route on bicycles approximately once a month. Use was for pleasure as part of longer journeys. Neither had been given permission to use the route or had been stopped or challenged when using the route. Neither recalled any notices discouraging use and both referred to a stile at point A and gate at point E. Both confirmed that they had always used the exact same route and referred to seeing motorcycle tracks on the route.

#### Information from the Landowners

Carl Woodcock responded on behalf of J & B Woodcock & Sons expressing their concern about the danger of exiting onto Wigan Lane (at point E) as Wigan Lane is a busy road with a 60 mile per hour speed limit and a high accident and fatalities history.

He also states that their land borders both sides of the path and that the fields are used for duck shoots and at other times shoots protecting the crops and that the route would be totally unsuitable for horses.

### **Assessment of the Evidence**

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

In Support of Making an Order(s)

A small amount of User Evidence  
Extensive research and provision of historical maps

Against Making an Order(s)

Inconclusive historical map evidence  
Lack of user evidence

## Conclusion

The application is made under section 53(3)(ii) of the Wildlife and Countryside Act 1981 that the route A-X-B-C-D-Y-E which is shown on the Definitive Map and Statement of Public Rights of Way as Footpaths 54 and 55 Coppull should instead be shown as a highway having a different description, that of bridleway.

The Committee should consider whether on balance, considering the evidence put before it, it concludes that the claim has been established.

Most of the evidence presented relates to the applicant's claim that this route is a historical route, likely to have been a Turnpike Road, and that therefore a status of bridleway would be appropriate.

Schedule 14 paragraph 3 (1) (a) of the Wildlife and Countryside Act 1981 states that as soon as reasonably practical after receiving a certificate as to notification of owners and occupiers 'the authority shall: (a) investigate the matters stated in the application'. Lancashire County Council interprets this as meaning investigating not only the matters stated in the application, but, also looking at records which it may hold that are in addition to those submitted by the applicant.

The applicant refers to information published in 'Turnpikes and Toll Houses of Lancashire' by Ron Freethy published in 1986 and there is a suggestion that this route was a former Turnpike road created under the Chorley and Wigan Turnpike Act 1726 which is supported by the book 'Leading the Way: A History of Lancashire's Roads' edited by Alan Crosby. Guidance issued by the Planning Inspectorate to inspectors emphasises the potential importance of Turnpike roads, but even if a route was a former turnpike it does not necessarily follow that it continues to carry those former rights, or indeed any public rights. In this case a turnpike route was created by the Chorley and Wigan Turnpike Act 1726 but a map of the route is not available, nor has it been possible upon reasonable investigation to find a copy of the Act. Case law states that turnpikes reverted to their original status once a turnpike ceased to operate, but in this case it is not possible to establish what that pre-turnpiking status was. The Survey of the bounds of the Manor of Coppull detailed in Coppull Manorial Records states that in 1797 the old Turnpike Road now belonged to Mr John Vause of Wigan and reference is made to the new turnpike road but this doesn't assist in providing a determination as to the route's status at that time which can be relied on subsequently, with no knowledge of its pre – turnpiking status. Without a copy of the Chorley and Wigan Turnpike Act 1726 the authority is unable to state whether the route had a greater status than that currently given to it.

The applicant has provided a number of maps which show the line of route to be in existence. These date from Smith's Map of 1804 through to the Finance Act 1910. The line of the route is also shown on the earliest Ordnance Survey Map of 1848 to the production of the First and Revised Definitive Map and Statement. Although the

route is shown on a number of historical maps and on maps to the present date, with the exception of the Definitive Map and Statement this is not conclusive of the rights of public user that pertain to this route.

User evidence has been submitted but it is sparse. One user has said that they used the route for over 30 years around 4 times a year and two other users say they have used the route around once a month for a one year period. The user evidence is not considered sufficient to infer a dedication at common law or for a deemed dedication under section 31 of the Highways Act 1980 to have taken place. The evidence put forward by the landowners relates to the route's alleged unsuitability for horse riders given the dangers of the exit onto Wigan Lane and the fact that shoots are held in the adjacent fields. This is of relevance to the landowner but not factors that can be taken into account in determining whether a different status should be shown for this route. No comment has been made about individuals using the route on horseback or by cycle.

The applicant states that Coppull Footpath 54 looks like an old highway and one user states that it has always felt like a bridleway, however evidence on the ground may well have changed over time and no conclusion can be drawn from its physical state now.

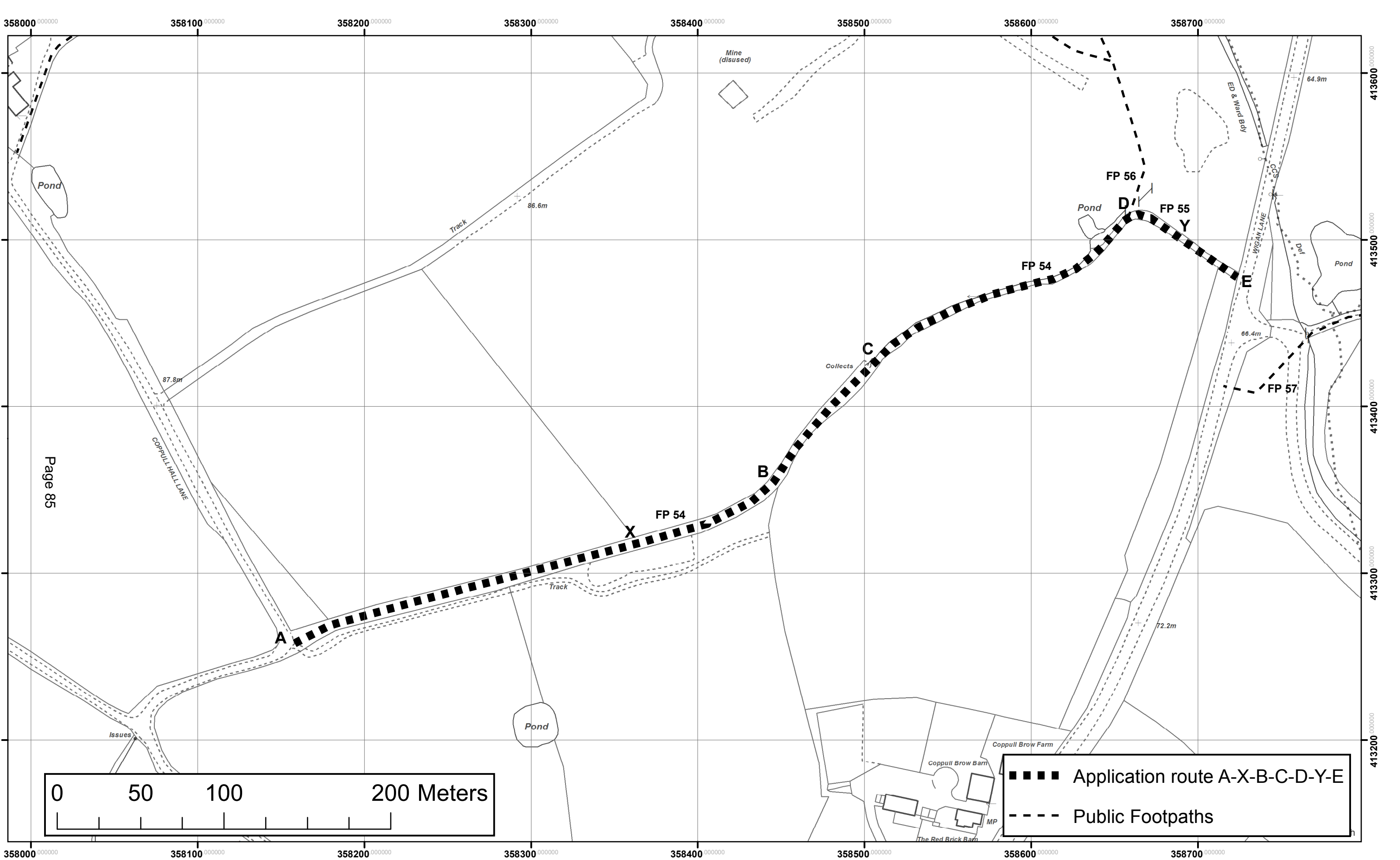
The historical map evidence which is the strongest part of the evidence is still not considered to be adequate to be able to say on balance that the route carries higher status than the footpath status which it has been given on the Definitive Map and Statement.

On balance, taking all the evidence into account, the Committee is recommended not to make the order in this case.

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

### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-583		Jayne Elliott, 01772 537663, Environment and Planning
Reason for inclusion in Part II, if appropriate		
N/A		





**Regulatory Committee**

Meeting to be held on 27<sup>th</sup> September 2017

Electoral Division affected: Lancaster Central
---

**Wildlife and Countryside Act 1981****Definitive Map Modification Order Investigation****Addition to Definitive Map and Statement of a footpath from Ten Row to Bodie Hill via Fishnet Point, Glasson Dock, Thurnham****File No. 804-562**

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal, Legal and Democratic Services,  
[Claire.blundell@lancashire.gov.uk](mailto:Claire.blundell@lancashire.gov.uk)

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

**Executive Summary**

Application for the addition to the Definitive Map and Statement of a footpath from Ten Row to Bodie Hill via Fishnet Point, Glasson Dock in the parish of Thurnham, Lancaster, in accordance with File No. 804-562.

**Recommendation**

1. That the application for the addition to the Definitive Map and Statement of a footpath from Ten Row to Bodie Hill via Fishnet Point, Glasson Dock, in accordance with File No. 804-562, be accepted in part and to a higher status.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement a restricted byway from Ten Row to the Customs House as shown on Committee Plan between points A-B-C-D-E.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of a footpath from Ten Row to Bodie Hill via Fishnet Point, Glasson Dock in the parish of Thurnham as shown between points A-K on the Committee plan.

The County Council previously considered an application to record part of the route under investigation (between points C-D-E on the Committee plan) as part of a byway open to all traffic from a point on Ten Row to the shore (beyond the Customs House), following receipt of an application submitted by Thurnham Parish Council in 1983.

The matter was reported to the Highways and Transportation Public Rights of Way Sub Committee in July 1985 with a further report presented to them on 28 January 1987.

Following receipt of the 1983 application the County Council made an Order to record a route from a point on Ten Row to the Shore (including the application route between points C-D-E) as a byway open to all traffic.

The Order received two objections (one relating to the current use of the route by heavy vehicles meaning that it was unsuitable for public use and the other seeking to ensure that Ten Row remained a cul de sac) and the Parish Council (applicants) withdrew their support for the claim stating that they were content that the area be left as it was because:-

1. There was now a new road to the industrial estate, Bodie Hill;
2. Ten Row had been blocked by bollards;
3. The terminus of Ten Row had been landscaped

A further report was submitted to the Public Rights of Way Sub Committee on 12<sup>th</sup> June 1996 and Committee resolved in the light of the Parish Council's decision, and also in light of the Officer recommendation, that evidence was of a finely balanced nature and because there were doubts as to the actual use of the route, to withdraw support for the Order.

The Order was submitted to the Planning Inspectorate for determination and the Planning Inspectorate determined not to confirm the Order on the basis that both the claimants and the County Council had withdrawn their support.

Although the public status of part of the application route has been considered before the full length of the route now claimed as a public footpath has not been considered.

Furthermore, additional user and documentary evidence which was not considered when the first application was made has now been made available.

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 have been consulted but have not provided any comments.

### Thurnham Parish Council

Thurnham Parish Council object to the application. They share the concerns of Glasson Grain Limited (detailed in the section of the report providing comments received from landowners) regarding health and safety issues which, they consider would result if the application was approved.

They also share the concerns of the Lancaster Port Commission regarding health and safety issues and note that the port authority has stated that there has been a locked gate across the route for at least the last 25 years.

The Parish Council also submitted concerns raised by members of the public at a Parish Council meeting. These included the protection of livestock as the application route would provide a point of access to the salt marsh; concerns about the public crossing the slipway which was used daily and regulated by strict health and safety

procedures; the potential for accidents as part of the route was used for boat storage; concerns about the fact that the route crossed the slipway at the deepest point and would require changes to provide steps; potential financial losses to the owners of the boat park area as the application route would reduce the area available to store boats; public access compromising the safety of children using the privately owned children's play area and the fact that the sailing club's warden's caravan and 4 touring pitches would be affected by the footpath.

#### 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	4437 5613	The north end of the highway known as Ten Row (U3316) adjacent to the Dalton Arms
B	4436 5614	The eastern end of the highway known as Bodie Hill (U11194)
C	4436 5614	The northern edge of the highway known as Bodie Hill (U11194) adjacent to south east corner of building
D	4430 5629	Immediately south of gated access to Glasson Sailing Club
E	4435 5632	Boundary wall near corner of buildings
F	4432 5636	Between static caravan and boundary of Sailing Club
G	4431 5636	Adjacent to north east corner of clubhouse.
H	4429 5638	Route crosses slipway
I	4420 5626	Metal fencing across route
J	4419 5616	Route turns away from floodbank
K	4425 5609	North west boundary of Bodie Hill (U11194)

### **Description of Route**

A site inspection was carried out on 15 December 2016.

The application route commences on Ten Row (vehicular highway U3316) adjacent to the Dalton Arms and shown as point A on the Committee plan.

From point A the route crosses a tarmac area which forms part of the turning area at the northern end of Ten Row and on which is written in large letters 'KEEP CLEAR'. It passes along a short section of tarmac path (approximately 4 metres) to exit onto the eastern end of Bodie Hill (vehicular highway U11194) at point B on the Committee Plan.

The route continues in a north westerly direction across the adopted highway to point C and then for 160 metres in a north north westerly direction along a tarmac and concrete route between large industrial buildings.

Over part of the width a pedestrian walkway was marked on the ground along the eastern side of the road providing direct access to the Port of Lancaster smoke house and offices and on the day that the route was inspected a number of heavy goods vehicles were seen to drive along the route from Bodie Hill, passing over the route between point B and point C and continuing along the route to gain access to factory buildings adjacent to the route between point C and point D.

At point D the route turns to continue in an east north easterly direction immediately before reaching the gated access into land occupied by the Glasson Sailing Club. From point D the application route is crossed by a metal field gate which was locked on the day of inspection. Beyond the gate the route continues bounded on the south side by a factory building and bounded to the north by an old stone retaining wall and hedge. Just before reaching point E the route passes the derelict Customs House and then turns to continue in a north north westerly direction passing through a stone wall into the grounds of the Glasson Sailing Club. Access through the wall is not possible and there is no evidence of a previous gap, gate or stile.

If one was to continue beyond point E (not on the application route) a track exists which turns north north east bounded by a factory wall to the east and the boundary of the Sailing Club to the west to end at a metal security fence which then prevents access down to the shore and a fence and hedge prevent access into the sailing club grounds.

Following completion of the site inspection further clarification of the alignment of the route at point E was sought from the applicant who had previously confirmed that the Committee plan correctly showed the route that they were claiming. The applicant wrote, "historically all routes to the green headland were 'open'. Statements from residents entering the headland (via the Custom House route) indicate that they walked along a path now with trees (at variable distances from one another) and wooden posts and wire fencing (on inside edge of headland) to a crossing point in proximity to the Custom House at the eastern edge of the coast. This route is still closed to the public."

North of point E (on the application route) and within the Sailing Club grounds, the application route continues adjacent to the boundary hedge along a grassed area. There is no visible worn track indicating recent pedestrian use and the route passes to the rear of two trailer tents being stored on the site. Close to point F there is a static caravan inhabited by the Sailing Club warden. The route passes to the rear of the static caravan although access between point F and point G is not available due to the presence of small bushes, a large metal storage container and a collection of wood and building materials.

At point G the route passes to the rear of the club house belonging to the Sailing Club. A grassed strip is available between the club house and a fence on the edge of

the headland although a small wooden building and wooden picnic bench restricts access.

Once past the club house the application route continues west and crosses a slipway at point H on the Committee Plan. There is no access across the slipway on the line of the application route and there are steep drops down to the slipway from either side with no access above, over or through it on the line claimed.

A representative of the Sailing Club on site at the time of the inspection reported that the slipway had been constructed by members of the club in the 1990s.

The applicant was again contacted to confirm the alignment of the route claimed at this point and they confirmed that 'the route being claimed is one across the raised slipway'.

Beyond the slipway at point H the application route continues west and then south west around the headland known as Fishnet Point. It follows a line along the top of the sea wall (marked on the map as 'sloping masonry'). There is no visible walked route on the ground and the route crossed rough grass which sloped down to the sea wall. A fence prevented access down onto the marsh with a wooden stile providing access over the fence and down to the marsh west of point H. In several places it was necessary to traverse around boats or boating equipment stored on the site across the line of the application route.

At point I the application route was crossed by a metal security fence on the boundary of the Sailing Club's land. There was no access through or around the fence and the area on either side of the fence was overgrown with brambles.

Access to the route between points I-J-K was not available and was blocked by security fencing at point I and point K. The area appeared to be quite overgrown and unmaintained with parking areas marked out but no longer in use. At point K there was no access onto or from the route onto Bodie Hill (U11194). A metal post was located on the road side close to point K but it was not known why the post had been erected and there was no evidence of the path.

In summary, the application route is approximately 680 metres long. Access was available from point A to point D but no further and there was a locked gate just to the east of point D, a wall across the route at point E, a caravan, storage container and building material across the route between point F and point G. There was no access across the slipway on the route claimed and further fences across the route at point I and point K all indicated that there was no current use of the full length of the route claimed.


The route from point C to point D formed part of the access into the Sailing Club and the gateway into the sailing club was the one shown on a number of photographs submitted with the user evidence and referred to as being used by a number of users. It was not on the application route.

The exact point at which access was available from the route past the Customs House onto the land now leased by the sailing club appears unclear as it passes

through a stone wall. However the applicant provided a hand drawn map showing this route and confirmed that the route drawn on the Committee plan was correct.

It would appear that use of the route at point H - across the slipway – could only have been available prior to the construction of the slipway by the Sailing Club in the 1990's.

## Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The land crossed by the application route can be seen but the application route is not shown and neither are the port buildings.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in the 1780s.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.



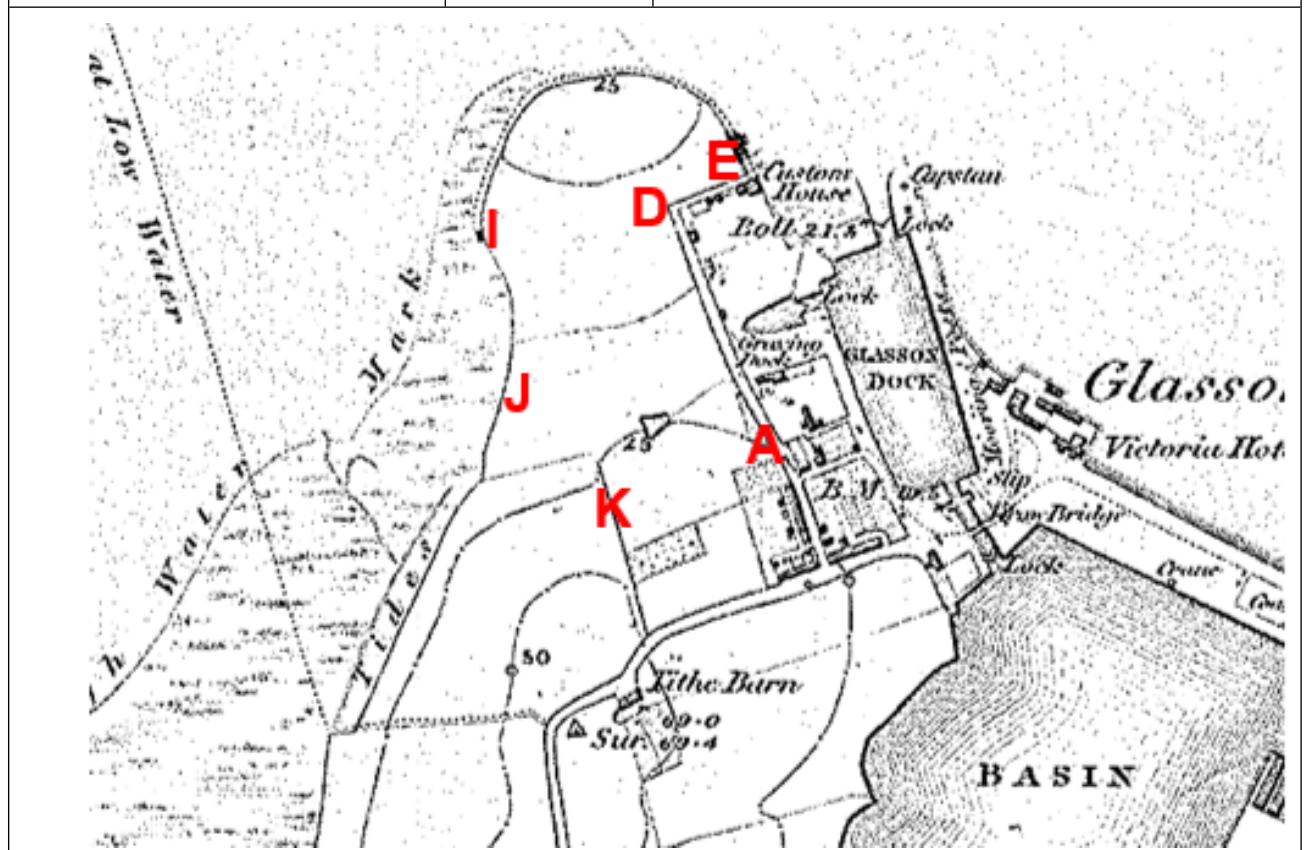
Observations		The application route is not shown and neither are the port buildings.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in 1818.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The application route is not shown. The canal basin to the south east of the land crossed by the application route is marked and there appears to be some development shown in proximity of the western side of the application route but the route itself is not shown.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in the 1830s.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		Records relating to the Lancaster canal and Glasson canal basin have not been searched as they were located south east of the land crossed by the application route.
Investigating Officer's		No inference can be drawn.

Comments		
<b>Agreement of Sale</b>	1827	A copy of an agreement and covenant between the Lancaster Canal Company and John Dalton of Thurnham Hall dated 10 May 1827
Observations		<p>A typed copy of an agreement dated 10 May 1827 was found within the papers relating to the original claim for a byway open to all traffic from Ten Row to the shore. The location of the original agreement is unknown and no plan was attached to it.</p> <p>The agreement details the sale of land the boundaries of which are described within the document. Part of the description has been underlined as it describes land bounded on its north east side by a 'road' adjacent to the Dalton Arms.</p>
Investigating Officer's Comments		The agreement appears to describe Ten Row adjacent to the Dalton arms as a road but does not provide details of whether the road was considered to be public or whether it included any part of the application route so no inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1843	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map of Thurnham dated 1843 does not cover the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also

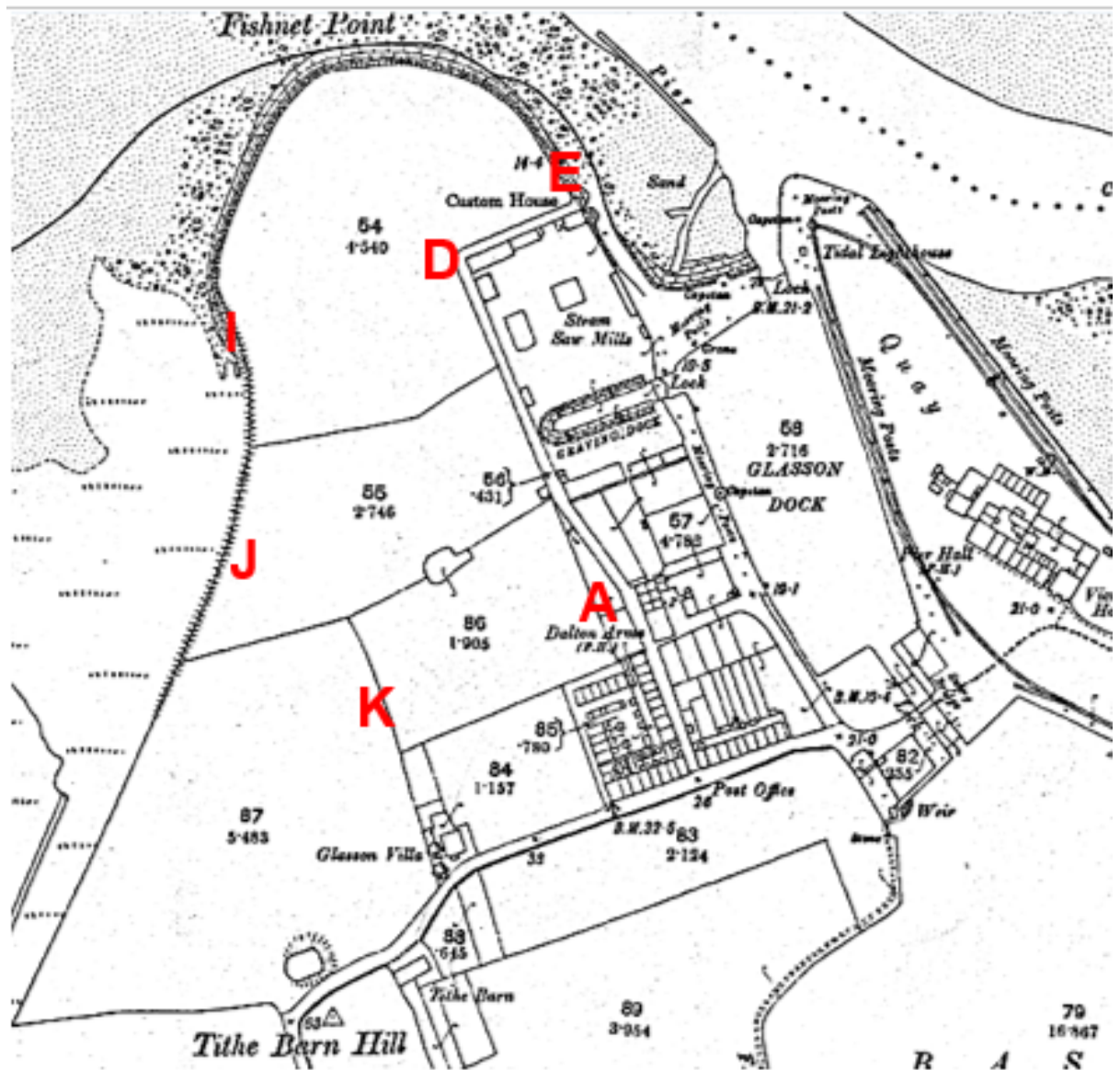
		enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. <sup>1</sup>



Observations		The road now known as Ten Row is shown passing through point A and continuing along the application route. This is clearly shown as a wide bounded route and is the only access to the Custom House (adjacent to point E). Access to the Graving Dock appears to be via a parallel route to the east. From point E (adjacent to the Custom House) a route appears to continue east
--------------	--	--

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

		and then north around the headland (between the solid and broken lines). This route appears to be along the salt marsh and the sea wall and slipway are not marked. The route appears to extend as far as a building at point I but no route is shown between point I to point K and point K. The road known as Bodie Hill does not exist and no route is shown connecting point K to a public highway.
Investigating Officer's Comments		A route existed passing through point A and through to point E as a significant route which appeared capable of being used by all traffic at that time. It provided access to a number of buildings including the Customs House. From point E a route may have existed onto and along the salt marsh around the headland as access to a small building at point I. The application route within the field and between points E-F-G-H-I-J-K probably did not exist.
<b>25 Inch OS Map</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.

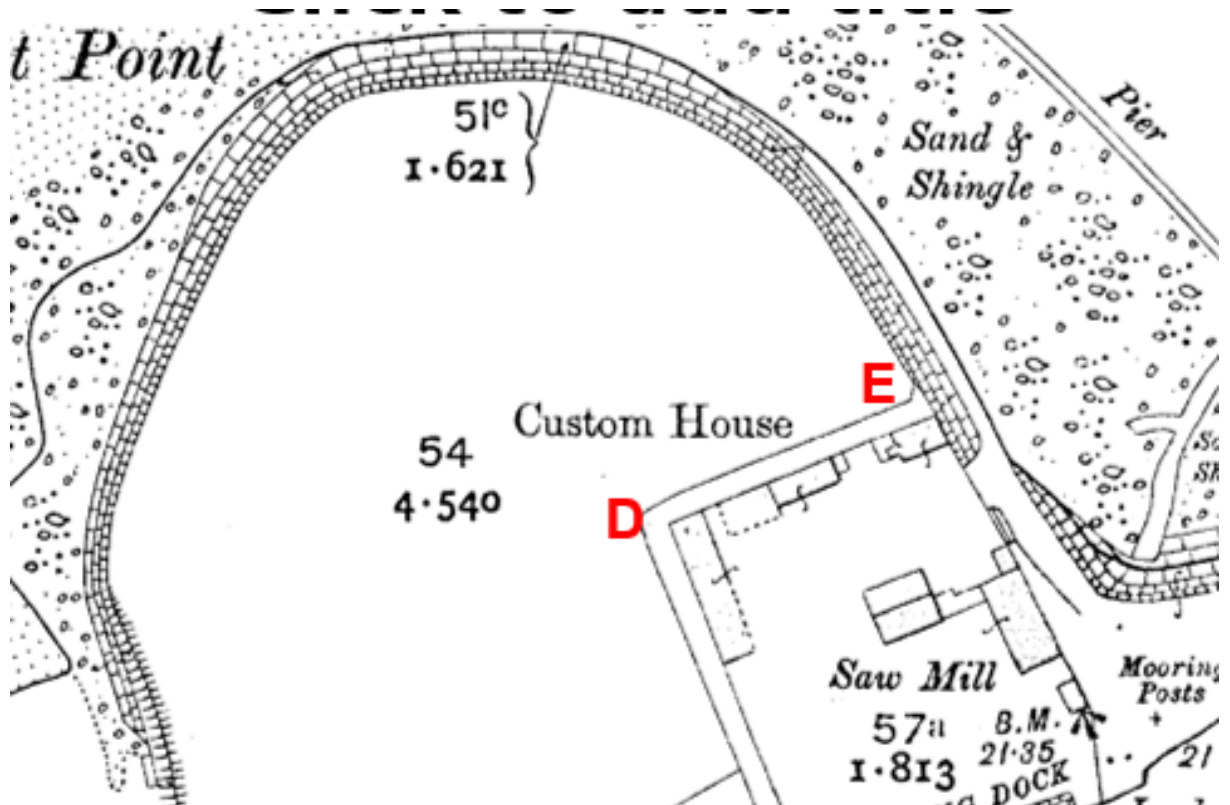


#### Observations

A road is clearly shown as an extension of Ten Row from point A and continuing initially on a different alignment to the application route then through to point D and point E.


From point E there is no route shown through the field boundary and along the route claimed. Continuing east from the Customs House it is not clear whether there was access through the sea wall onto the marsh. The sea wall around Fishnet Point is shown but the application route (which is inland of the sea wall) is not shown. The slipway crossed by the application route at point H is not shown. There is no longer a building shown at point I nor any path leading to it. The application

		route is not shown between points I-J-K and there does not appear to be any access to point K from Tithe Barn Hill.
Investigating Officer's Comments		<p>A route existed in 1891 from point A to point D and then continuing to point E but is not all on the alignment of the application route.</p> <p>This section of the route existed as a significant track which appeared capable of being used by all traffic and may have provided access to the shore. The application route between point E and point K probably did not exist.</p>
25 inch OS Map	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.

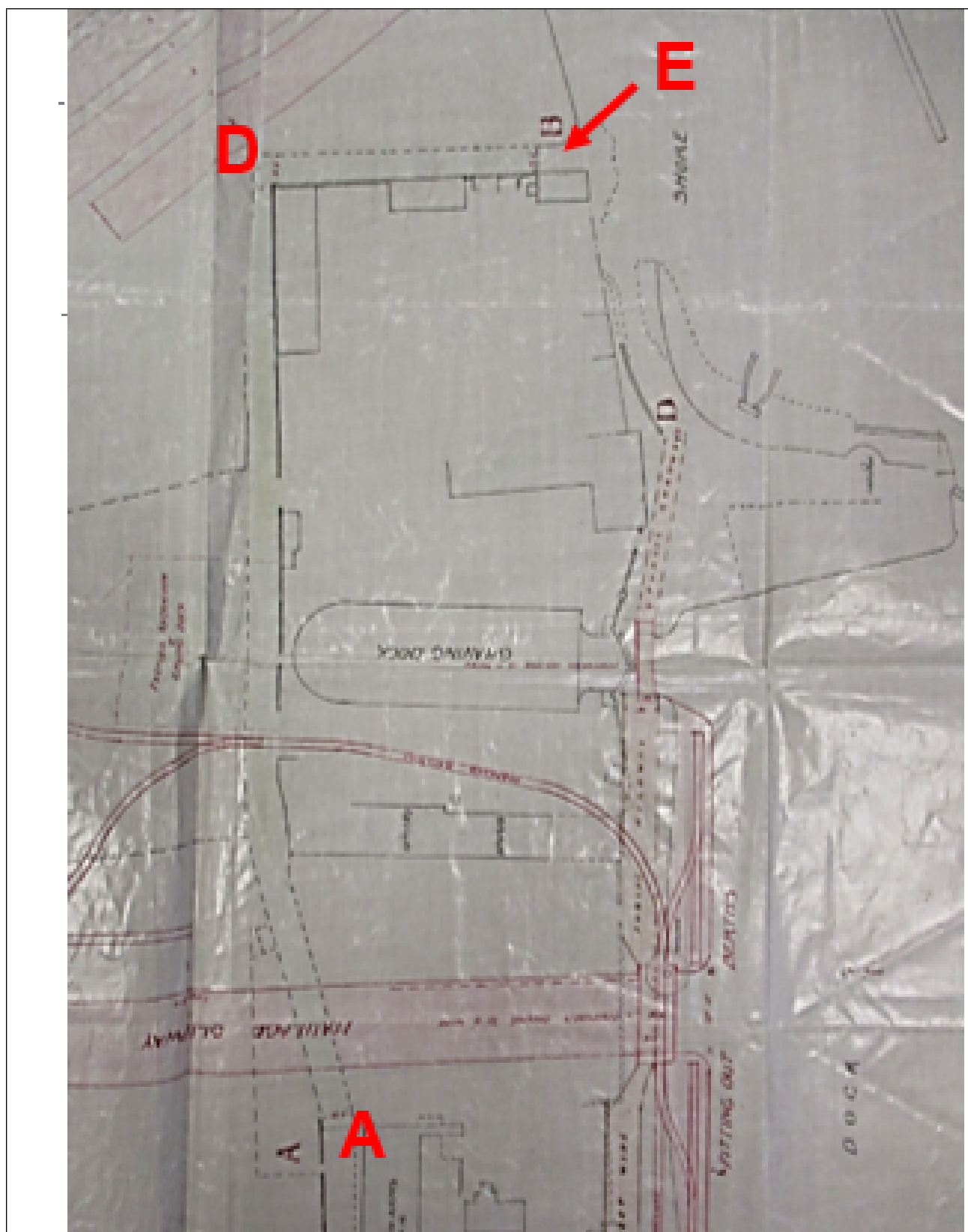


Observations		<p>A route is clearly shown from Ten Row passing through point A to point D but is not all on the alignment of the application route.</p> <p>From point E the application route passes through a boundary and there is no indication that it existed on the ground. Continuing past the Custom House there is no route shown through the sea wall onto</p>
--------------	--	--

		<p>the marsh route. The sea wall around Fishnet Point is shown but the application route (which is inland of the sea wall) is not shown. The slipway crossed by the application route at point H is not shown. The route is not shown between points E-H-I-J-K and there is no access to point K from Tithe Barn Hill shown.</p>
Investigating Officer's Comments		<p>A route existed from point A to point E (but is not on the exact alignment of the application route) as a significant route which appeared capable of being used by all traffic at that time. The application route between point E and point K probably did not exist.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not 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</p>

		<p>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>
		
<p>Observations</p>		<p>The Finance Act Maps in the County Records Office and The National Archives were inspected and show the land crossed by the application route in the same way.</p> <p>A route from point A to point E, although not all on the alignment of the application route, was shown excluded from the numbered hereditaments and was shown consistent with the public highway network.</p> <p>From point E through to point I and midway to point J the route crosses Hereditament 81 which was owned by John Henry Dalton and occupied by George Shaw. It was described in the Field Book as 'land' with no deduction listed for public right of way or</p>

		<p>user.</p> <p>The route then passes through Hereditament 33 which was listed as being owned by John Henry Dalton and occupied by Morris Nicholson. It was described as a field at Glasson Dock and there were no deductions listed for public rights of way or user.</p> <p>The remaining section of the route to point K crossed part of Plot 87 which covers a large area. The land was listed as being owned by John Henry Dalton and occupied by John Lamb and described as 'land' at Glasson farms. A £25 deduction was listed for public rights of way or user but the location of these routes is not known.</p>
Investigating Officer's Comments		<p>A route partly consistent with the application route was shown excluded from the adjacent numbered hereditaments between point A and point E which is good evidence of, but not conclusive of, public carriageway rights. This route appeared to stop at the sea wall and it was not clear whether it would have provided access to the shore.</p> <p>Public footpaths are not normally excluded from numbered plots. The fact that no deductions for Hereditaments 33 or 81 are claimed suggests that either there was no public footpath between points E and J/K – or that the landowners did not wish to claim for and acknowledge its existence at that time. The land crossed by the application route near point K was included in a large plot over which there are a number of recorded public footpaths and the fact that a deduction was claimed for public rights of way within this parcel of land is unlikely to relate to the application route given that there is no apparent access to point K.</p>
<b>Quarter Sessions Diversion Order</b>	1918	<p>Before County Councils came into being the only way that a highway (carriageway, bridleway or footpath) could be diverted or stopped up was by application to the Justices of the Peace at the Courts of Quarter Session.</p>





#### Observations


An order was made at Lancaster Quarter Sessions following an application made by Mr John William Nicholson and Mr James Nicholson to facilitate the development of the shipyard.

The Order sought to divert a route shown on the Order plan and described as being between points A and B (i.e. between Committee Plan points A and E) to a route to the east and shown between points C and D (not shown on Committee Plan).

The route to be diverted is described as a 'public highway' leading from Glasson to the foreshore and the new highway to be created was said to be a more commodious route for the public travelling along the highway with or without horses, carts or carriageways. Both the route to be stopped up and the route to be created were described as providing access to the foreshore.

The route to be diverted is largely consistent with the application route between point A and point E although the colouring on the plan appears to show the route to be diverted only extending as far as the south western end of the Custom

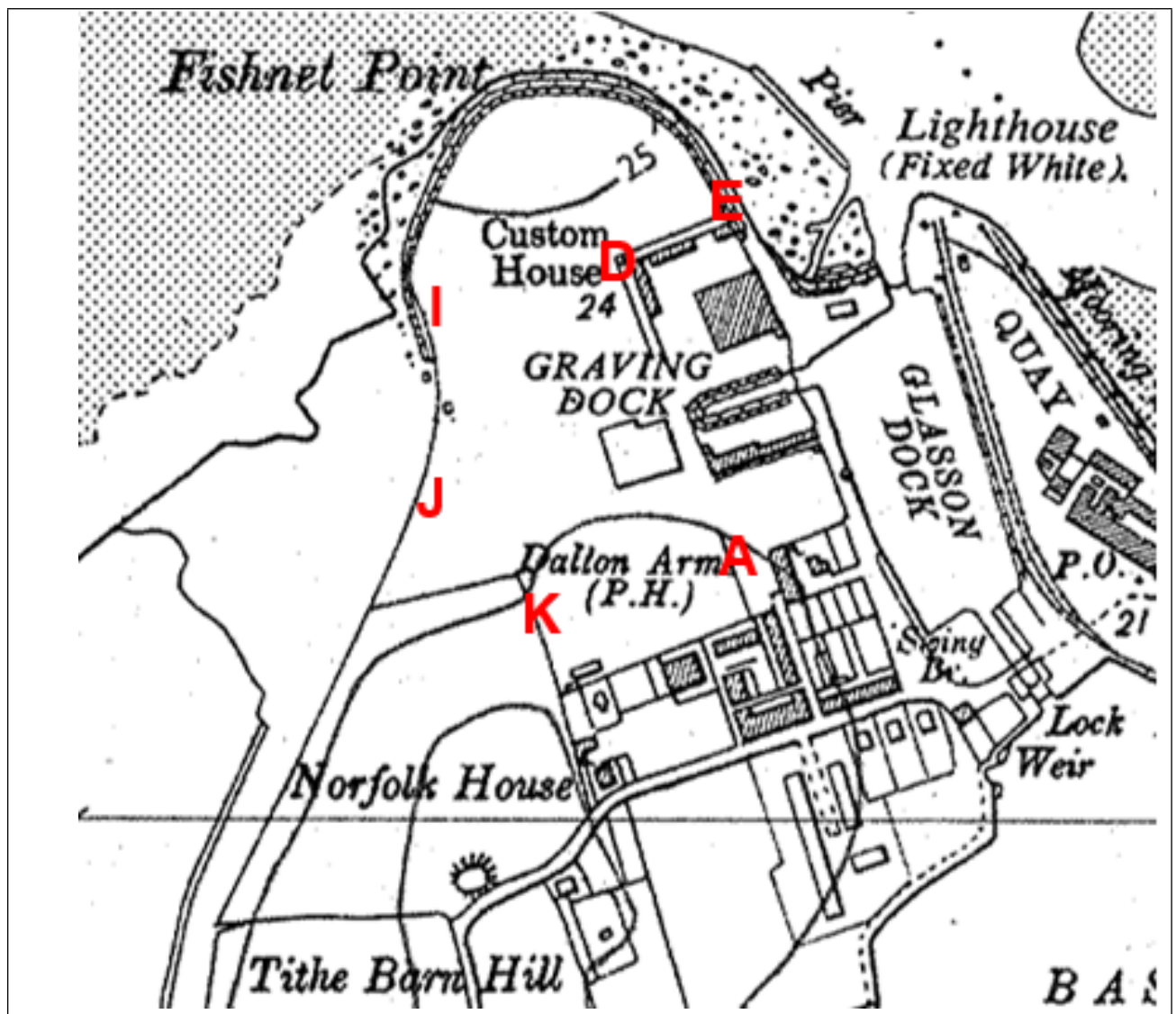
		<p>House rather than through to the shore. There is no reference to the rest of the application route in the order and the remainder of the application route is not marked on the order plan.</p> <p>The Quarter Sessions Order stated that the existing route (i.e. part of the application route) would be stopped up on completion of the new highway.</p>
Investigating Officer's Comments		<p>A route between point A and point E existed in 1918 and appeared to have been considered a public vehicular highway. There is no evidence that the diversion order was implemented (as illustrated in Parish Council Minutes detailed later in this report) suggesting that the order route remained as the public vehicular access route to the foreshore.</p>
<b>1929 Handover Map</b>	1929	<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>

		
Observations		Except for a very short section near point A, and then not exactly the same alignment, the application route is not shown on the 1929 Handover Map including that part of the route between point A and point E which had previously been identified as a highway in the Quarter Sessions records. If the Quarter Session diversion had taken place and the new route to the east constructed it was not shown as a publicly maintainable route.
Investigating Officer's Comments		The 1929 Handover Map provided a record of highways considered to be publicly maintainable by the districts. No inference can be drawn with regards to the existence of public rights along a route by the fact that it was not recorded as being publicly maintainable but it appears that the application route was not considered to be a publicly maintainable highway in 1929.
<b>25 Inch OS Map</b>	c1930	Further edition of 25 inch map published as the third edition in the 1930s.
Observations		A copy of the third edition OS map is not held by the County Council and has not been viewed.
Investigating Officer's Comments		No inference can be drawn.

<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		<p>The 1940s aerial photograph is of poor quality and it is not possible to determine whether the route under investigation existed on the ground.</p> <p>It does however appear that between point E and point K the land crossed by the application route was undeveloped and most probably used for agricultural purposes.</p>
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch OS Map</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

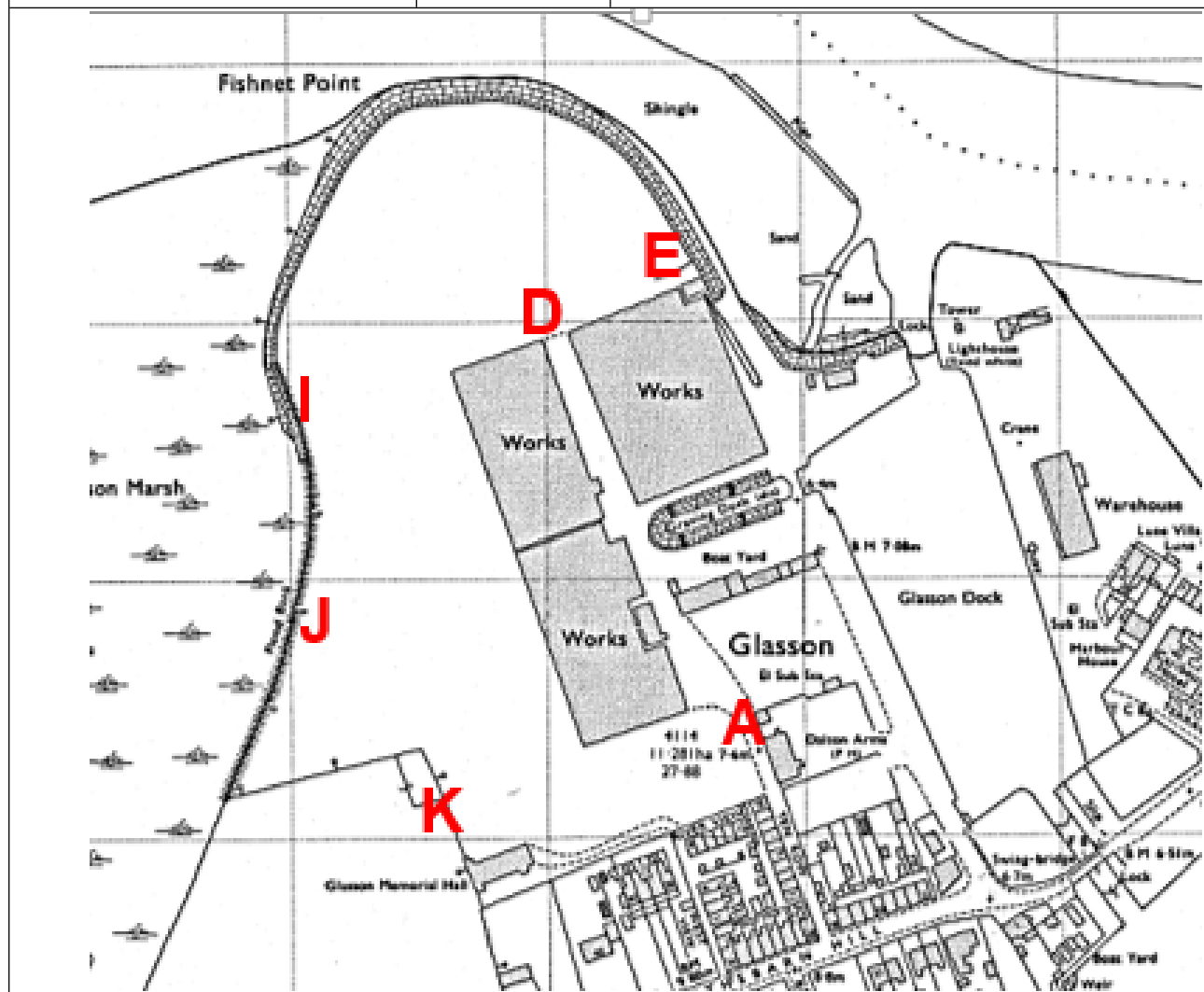
---

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



Observations		The map does not show Ten Row continuing through to point A or a link between point A and point D. A route is shown between point D and point E but the rest of the route through to point K is not shown.
Investigating Officer's Comments		There is uncertainty regarding the route from Ten Row through point A to point E and it may be that the former route to the Customs House, the shore and other buildings had become less significant in the first half of the 20 <sup>th</sup> Century.  The route under investigation probably did not exist from point E to point K at the time.
<b>Aerial photograph</b>	1960s	The black and white aerial photographs taken in the 1960s.
Observations		An aerial photograph of the land crossed by the application route was not available to

		view.
Investigating Officer's Comments		No inference can be drawn.
1:2500 OS Map	1971	Further edition of 25 inch map reconstituted from former county series and revised in 1970 and published 1971 as National Grid series.



Observations	Additional industrial buildings are shown to exist to the west of the application route between point A and point D with access to them shown via Ten Row and through point A. A route between point A and point D appears accessible. At point D a dashed line can be seen across the route which may indicate a change in surface. The route between point D and E appears to be available but is no longer shown as a bounded route and a big industrial works unit has been erected along the southern boundary. The Customs House is shown
--------------	---

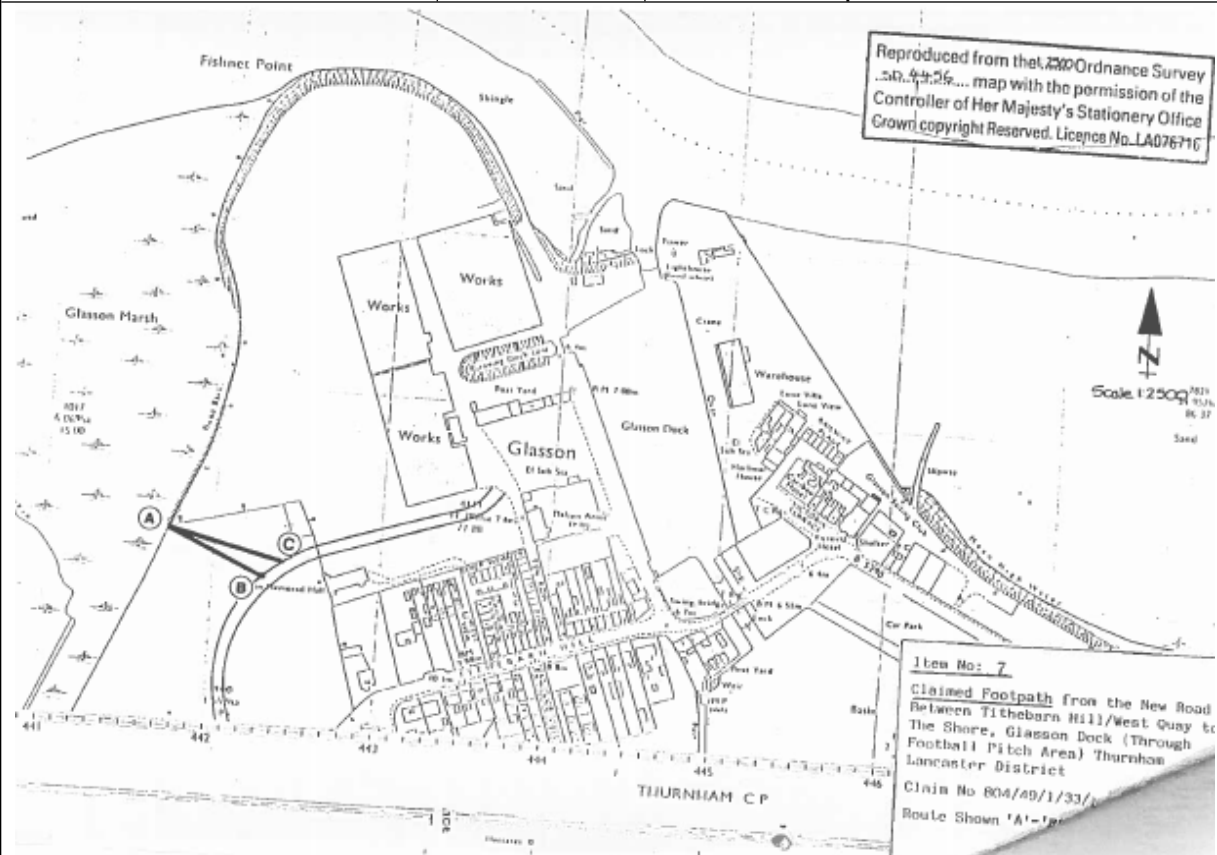
		but is not named on the map. A line is shown across the route at point E suggesting that a boundary still existed along this section. The route between point E and point K is not shown but appeared to cross agricultural land. South east of point K the Memorial Hall is shown.
Investigating Officer's Comments		Access may have been available from point A to point D and possibly to point E. The application route between point E and point K probably did not exist.
<b>The Lancashire County Council (Ten Row, Glasson Dock, Lancaster Rural District) (Prohibition of Driving) Order, 1972</b>	1972	Order made on 26 <sup>th</sup> September 1972 to prohibit the driving of vehicles in that length of Ten Row, Glasson Dock at a point 110 yards north of its junction with Tithebarn Hill. The Order came into force on 3 <sup>rd</sup> October 1972.
Observations		Linked to the creation of a new access road providing access to the industrial estate (Bodie Hill) in the early 1970s was an order made by the County Council to stop vehicles accessing the industrial area along Ten Row. The order provides that "no person shall cause any motor vehicle to proceed in that length of Ten Row...at a point 110 yards north of its junction with Tithebarn Hill." This ties in with the fact that it was intended to divert traffic, and particularly heavy dock traffic, from Ten Row via Tithebarn Hill and the new access road and to this end it was intended to stop vehicles proceeding along Ten Row beyond a point approximately 10 metres north east of point A. No plan was included with the Order.
Investigating Officer's Comments		The Prohibition of Driving Order stops people from exercising the vehicular rights but does not extinguish those rights. It is not quite conclusive proof of public vehicular rights because such an Order can be made in relation to private rights although this would be unusual.
<b>Thurnham Parish Council Minute Books</b>	1894-1938 and 1950-1979	Minute books deposited in the County Records Office were inspected.
Observations		Thurnham Parish Council Minute books were inspected and the following references to the application route between point A and point E were found:

		<p>19 June 1918 – Discussed proposed diversion of 'the road' and adjourned until their next meeting as there was concern about the proposed new access point onto the shore.</p> <p>25 June 1918 – Council met again to discuss proposed diversion but meeting adjourned again until revised plan was submitted by Mr Nicholson.</p> <p>31 July 1918 – Revised plan provided and lengthy discussion was noted. The matter was not settled but was adjourned again.</p> <p>4 September 1918 – Further meeting at which the Parish Council agreed to the diversion as shown on a revised plan. The route to be diverted was described as a 'public highway' and it was agreed that the parish clerk would be instructed to give notice of the resolution as prescribed in the Local Government Act 1894.</p> <p>3 December 1918 – the Parish Council confirm the resolution agreed on 4 September and again refer to the diversion of a public highway 'to the shore'.</p> <p>30 May 1922 – The Minutes refer to an 'old highway' through the docks and the fact that it had been closed and no alternative provided as had been agreed on August 23<sup>rd</sup> 1919. It was agreed that the Parish Council should write to Lancaster Rural District Council to make sure that the old route was retained until the new route was provided.</p> <p>19 August 1922 – Response from Lancaster Rural District Council read out stating that the access through the ship yard was available night and day to gain access to the shore and that the Rural District Council were not pressing for completion of work at present.</p> <p>3 February 1926 – It was proposed that a letter be sent to Lancaster Rural District Council asking if the road which led from the Dalton Arms to the Customs House could be reopened.</p> <p>23 August 1926 – the response from</p>
--	--	---

		<p>Lancaster Rural District Council was read out as follows: "with reference to the diversion of a road at Glasson Dock. I am directed to inform you that from inquiries made it has been ascertained that it is proposed to complete the slipway as soon as the position is favourable, a road has and is being maintained to the shore as promised and the council is not prepared to take any steps in the matter at present."</p> <p>25 March 1929 – It was reported that a letter was to be sent to Lancaster Rural District Council about the bad state of the north end of Ten Row.</p> <p>Further Minutes were checked up until 1938 with no reference to the application route found.</p> <p>Minute books from 1950 up until 1979 were also checked:</p> <p>25 May 1964 – Report that Glasson Dock Ltd were to be asked if vehicles arriving and leaving their works could use West Quay and the car park that they had made on the side of the incomplete slipway instead of Ten Row.</p> <p>27 June 1964 – Glasson Dock Ltd were reported to be prepared to give a stretch of land 20 feet wide from the back of the shipyard offices adjoining Ten Row to the Quayside with the proviso that the road was constructed and maintained by the County Council and that the Court Order of 1919 was not rescinded and that they could close off Ten Row by means of a large gate to be chain fastened and a small gate for the use of pedestrians only, thus precluding vehicles. The Parish Council resolved to pass details of the offer to the County Council.</p> <p>6 January 1970 – The Parish Council reported that they had been consulted about the closure of Ten Row to vehicular traffic at the northern end of the Dalton Arms. Council in general agreement but stated 'The closure should not restrict pedestrian traffic. The right of way along Ten Row to the Customs House must be</p>
--	--	---

		<p>maintained.</p> <p>7 December 1970 – Parish Council agree to request Nicholson's to re-instate road to Customs House to a decent useable condition.</p> <p>2 August 1970 – Parish Council decide to request Lancashire County Council clean up the 'road' from Ten Row to the Custom House and have it made available for the passage of mechanical vehicles.</p> <p>4 October 1971 – Complaints about the condition of the 'road to the Customs House' would be noted and that the Parish Council would await a response from the County Council.</p> <p>8 November 1971 – With reference to the road to the Customs House a letter from Lancashire County Council (Ref F/RAB/A53) was read out. The letter stated that from the evidence available the clerk had formed the view that the road is a public right of way and that "it is not maintainable by the County Council at public expense over its whole length, only from Tithebarn Hill to a point near to the gatepost at the northern end of Dalton Arms Hotel. Beyond that point the public right of way lies over a private occupation road and is privately maintainable. Beyond that point the public right of way may be subject to the private rights of those entitled to use the occupation road as a private road. The position is not however entirely free from doubt.' The Minutes state that the Parish Council decided to request Nicholson's to 'honour promise made'.</p> <p>17 April 1972 – The minutes again make reference to 'Custom House Road' and state that the Council decided to request Nicholson's (G.D.) Ltd. To fulfil Mr Kenyon's promise to re-instate the road.</p> <p>8 May 1972 – Again under the title 'Customs House Road' it was reported that Nicholson's Ltd had sent an apology for not answering previous letters and stated that they were having a slight dispute with the Port Commissioners regarding ownership</p>
--	--	---

		<p>of roads and also in view of the yacht club development it would be inappropriate to reinstate the road at this time. The Parish Council considered that the matter had been going on for too long and decided that a further request should be sent for the route to be reinstated.</p> <p>12 March 1973 – It was reported that Nicholson's were going to resurface the road to the Customs House but had stopped because the Port Commission were claiming the road.</p> <p>1 October 1974 – it was reported that the Parish Council were to ask Lancaster City Council to work on 'Custom House Road' to improve its condition.</p> <p>5 November 1974 – Report that Lancaster City Council had contacted them to ask the location of 'Custom House Road'.</p> <p>7 January 1975 – A letter from Lancaster City Council stated that the Port Commissioners claimed to own the land and didn't agree with the Parish Council's claim on its use. They stated that as the road was not a public highway they could not ask Lancashire County Council to carry out repairs and that they were surprised that the road was not on the Definitive Map. It was reported at the meeting that at the time that the footpath survey was carried out in the 1950s the road was an open road, the continuation of Ten Row and so, like Ten Row (and other roads in the parish) was not claimed. The parish council decided to ask the Port Commission to do the work.</p> <p>4 February 1975 – Receipt of a letter from the Port Commission saying that they would improve the road was discussed.</p> <p>4 March 1975 – It was reported that the Port Commissioners had carried out improvements.</p> <p>Minutes of meetings up to 1980 were inspected and no further reference to the route was found.</p>
Investigating Officer's		With regards to a route from Ten Row to

Comments		<p>the shore (including the application route between point A and point E) the Parish Council Minutes confirm the belief that the route from Ten Row to the Shore was a public right of way and that the diversion route agreed was never implemented following the Quarter Sessions Diversion Order. They also confirm the belief that the route was not a publicly maintainable highway and that the landowners accepted this and maintained the route so that it could be used by the public.</p> <p>No references were found to the application route between point E and point J suggesting that it was probably not considered to be a public right of way during that time.</p>
<b>Agenda Items and Minutes of Reports presented to Lancashire Public Rights of Way Sub Committee</b>	1985	<p>Agenda Item and Minutes of report submitted to the County Council's Public Rights of Way Sub Committee in respect of a further application made by Thurnham Parish Council to record routes to the Definitive Map and Statement.</p>
		
Observations		<p>In addition to the application to record a byway open to all traffic from Ten Row to the Shore Thurnham Parish Council also</p>

		<p>submitted a claim for two other public footpaths across the same land as the application route now under investigation between point I and point J. In July 1985 the County Council's Public Rights of Way Sub Committee considered both the application for the byway open to all traffic and an application for two other routes shown on the plan above.</p> <p>In the description of the route claimed as a byway the route is described as providing access to the foreshore by the old customs house and it is also noted from the end of the claimed byway there was a path along the road to the sailing club and to the flood bank to link with another claimed route (804-49) but that this route was not the subject of any claimed status.</p> <p>Claim 804-49 was for two public footpaths extending from two points on the road now known as 'Bodie Hill' to the shore across land to the south west of the application route between point I and point J.</p> <p>One route is described as descending a set of concrete steps to follow alongside a fence to a stile providing access onto the shore (shown as A-B on the 1985 Committee plan) and it was noted that the landowning company had stated that when Ashley Bending provided the football pitch, the route alongside the fence and the stile were provided for public use. The other route is again described as descending man-made steps and following a surfaced path to the football pitch and continuing to the stile providing access to the salt marsh (shown as A-C on the 1985 Committee plan). Committee accepted the claim for route A-B and rejected A-C and there was no reference to the existence of the current application route between points I-J (on the 2017 Committee plan).</p> <p>An order was made for the route A-C but it received objections. A local public Inquiry was held on 4 May 1994 at which it was reported that the Parish Council had withdrawn support for order as they now considered that the route was originally provided for access to the football pitch which no longer existed. The County</p>
--	--	---

		Council, in light of the Parish Council's decision, also decided to withdraw support for the order. The Order was not confirmed.
Investigating Officer's Comments		Use of a route through the Sailing Club to link to the two claimed footpaths A-B and A-C was referred to as passing along the road to the Sailing Club but does not appear to be the same route as that now claimed suggesting that the application route may not have existed on the alignment claimed between point E and point J in 1985.
<b>Letter from the Lancaster Port Commission to the Chief Executive/Clerk of Lancashire County Council</b>	1986	A search of the County Council's records was made in relation to the application made by Thurnham Parish Council to record a byway open to all traffic along part of the application route.
Observations		In response to a letter consulting the Port Commission about the application to record a byway open to all traffic from Ten Row to the Shore the Chairman of the Commission responded in writing on 10 <sup>th</sup> June 1986 stating, 'We have always understood that Ten Row was constructed by the Lancaster Port Commission as an alternative access to the shore when the dry dock was built and that there is a public right of way for all purposes over this unadopted highway. At one time before Glasson Dock Church was built this would be the public road, via ferry or ford, to Overton Church.'
Investigating Officer's Comments		The Port Commission believed the application route between Ten Row and point E to be a historical public route in the 1980s and confirmed the view expressed elsewhere that it was privately maintainable.
<b>Aerial Photograph</b>	2000	Aerial photograph available to on GIS.



#### Observations


The photograph shows that the link from Ten Row to Bodie Hill existed and that access appeared available from point A to point C.

The route through the industrial area from point C to point D also looked to be open and available with access to the sailing club just beyond point D.

The route between point D and point E cannot be clearly seen but appears to be bounded on the south side by buildings and to the north by a hedge separating it from the sailing club.

Access through the boundary at point E is not visible and the route cannot be seen between point E and point F. A building – possibly the warden's caravan – is visible

		<p>at point F with further buildings between point G and point H with no clearly visible route.</p> <p>The slipway at point H can be seen although it is not possible to see whether access was available across it.</p> <p>Between point H and point I the area is open with what appear to be a few parked cars (or boats) but traces of a walked route can be seen which are consistent with the application route.</p> <p>Access at point I appears to be open with no fencing and a trodden track is visible to point J. The route is not visible between point J and point K although it crosses open grassland. It is not possible to see whether access is available onto the route at point K.</p>
Investigating Officer's Comments		Parts of the route appear to have existed in 2000 but the full length of the application route did not appear to be in existence.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS.

	
Observations	<p>The route from point A to point D can be clearly seen and appeared to be available to use. The route between point D is in shadow and it is not possible to see whether it was available or whether there was a gate at point D or any access at point E. A route around the headland across the sailing club site from point E to point I is not visible on the photograph. Fencing across the route at point I can be seen and there is no worn track visible through it. A worn track can be seen which appears to lead from the track to the pumping station towards point I and then follows a route closely matched to the route of the application route between point I and point J. Access may have been available between point J and point K but it is not possible to see whether access was</p>

		available through the existing fencing at point K.
Investigating Officer's Comments		The application route probably existed between point A and point D and a route close to, but not exactly along the application route may have been in use between points H and point I.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The route under investigation was not shown on the Parish Survey map for Thurnham.
<b>Draft Map</b>		<p>The parish survey map and cards for Thurnham were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the</p>

		public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way and there were no representations made to the County Council in relation to it.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map of Public Rights of Way and there were no representations made to the County Council in relation to it.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not shown on the First Definitive Map of Public Rights of Way.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.

Observations		The route under investigation is not shown on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Lancashire County Council Highway Adoption Records</b>		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.

County Council Highway Records (undated)



Observations		The County Council's records show the publicly maintainable extent of Ten Row. They do not show any part of the application route as being publicly
--------------	--	---

		<p>maintainable with the exception of a very short section where the application route crosses Bodie Hill between point B and point C.</p> <p>The 'adoption' card for a route described as 'un-named road' (Bodie Hill Sept 1994) was found with the reference 2/370. The route is described as "New road from Tithebarn Hill Glasson Dock at 2/150 to Nicholson's Factory and Ten Row." It is noted that the new road does not connect to Ten Row 2/151 but that it connects with "that length of Ten Row extending northwards in front of Ashley Bending Company bldgs and between the buildings on the respective sides of the road &amp; is a 'Public Right of Way' privately maintained by the Ashley Bending Company." It is also noted "see file 2/4 Oct 1971."</p>
Investigating Officer's Comments		<p>This information is consistent with information provided to the Parish Council by the County Council in 1971 which referred to a public highway which was not maintainable at public expense. No inference can be drawn regarding the class of public rights.</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are</p>

		brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highway Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. It is not part of the adjacent Site of Special Scientific Interest (SSSI) but is designated as part of a conservation area.

## Summary

A route from point A on Ten Row to the shore beyond point E is consistently shown on OS maps from the 1800s as a substantial route which appeared to be capable of being used by all types of vehicles.

Parish Council records, the Finance Act records of 1910, the fact that it was the subject of a Diversion Order made in the Quarter Sessions in 1918 and subsequent correspondence and records referring to it as a privately maintainable public rights of way which was maintained by landowners – often following requests made by the Parish Council taken together provide good evidence of the existence of a historical vehicular public highway from Ten Row to the foreshore by the Customs House. The 1929 Handover Map supports the existence of vehicular rights although not private maintainability.

The Order made in 1991 to record this part of the route as a byway open to all traffic was not confirmed by the Planning Inspectorate but the decision letter does not appear to take into account the historical evidence but rather does not confirm it following withdrawal of support.

If there were vehicular rights on A-E consideration would need to be given to whether these have been extinguished by the Natural Environment and Rural Communities Act 2006 and if they have not been extinguished whether or not the main use is by mechanically propelled vehicles.

The Natural Environment and Rural Communities Act 2006 extinguished all public rights for mechanically propelled vehicles except for certain exemptions. The most likely exemptions in this case would be if it was on the List of Streets or if it was mostly used by mechanically propelled vehicles in the relevant 5 year period prior to commencement of the 2006 Act. The Highways records in the form of the map on GIS suggests that it was not recorded – whether it should have been (copied from the 1929 map) or not (because of the evidence that it was not publicly maintainable) is not relevant because the legislation only specified whether it **was** so recorded not whether it should have been. In the absence of evidence with regard the balance of use in the relevant 5 years period the mechanically propelled vehicle rights are taken to be extinguished.

As any mechanically propelled vehicle rights were extinguished by the Natural Environment and Rural Communities Act 2006 it is not necessary to consider the current balance of user.

Despite the amount of information provided there is little map, documentary or photographic evidence to support the existence of the application route from point E through to point K and recent site evidence does not indicate evidence of this route existing beyond point E. There does however appear to be evidence that some access has existed over the site now occupied by the Sailing Club and over the land crossed by the application route between points I-J-K but that there was no consistent use of the application route and that various different routes had been used over and across the land.

### **Information from the applicant**

#### **User evidence submitted by the applicant**

Thirteen user evidence forms were submitted with the application and the salient points from each are summarised below.

Use of the route was for 50 years (1960-2010), 30 years (1980-2010), 29 years (1982-2011), 55 years (1953-2008), 44 years (1964-2010), from 1983 onwards (dates not clearly specified), 50 years (dates not specified), 30 years (1940's – 1970's), 30 years (1970-2000), 41 years (1967-2008), 6 years (1964-1970), 5 years (1982-1987) and 3 times in total during the 1990s.

#### **User 1**

Used from 1960-2010 (50 years) between 20 and 100 times a year.

Use was to get to Fishnet Point.

Use on foot and also use of part of route with vehicles between 1975-2010.

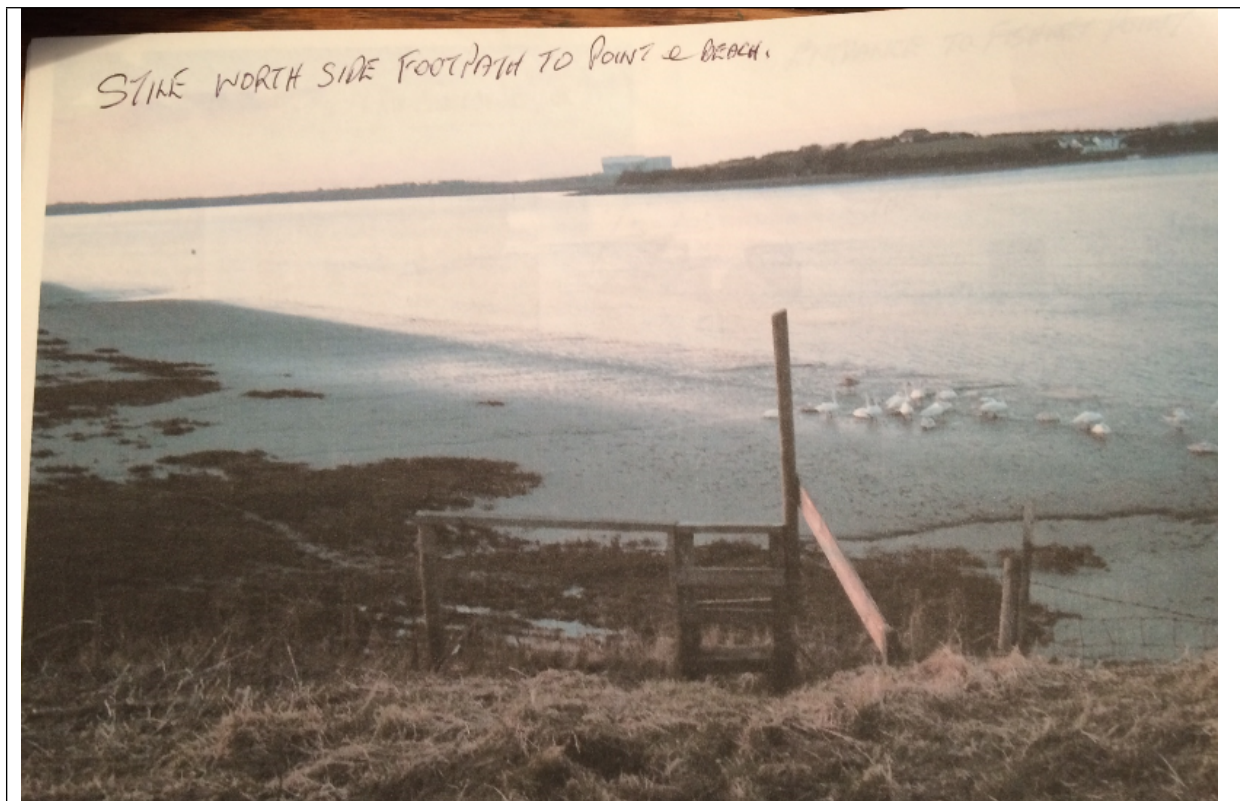
Recalls stile and adjacent gate not locked until 2009 when a lock requiring a £1 coin to open it was put on gate.

Never asked for or been given permission to use the route but challenged verbally on 31 January 2010.

Provided 7 undated photographs, three of which are included below. The first two photographs show a gate north of point D through which it appears that the user

gained access to the Sailing Club and which they appear to have been using as part of the route to which his evidence refers.  
The plan attached to the user evidence form indicates use of parts, but not of all of the application route.





## User 2

Used route 1980 'until present (i.e. when closed off)' – sometimes 7 days a week

Use was on foot to gain access to Sailing Club.

Refers to small gate at entrance to Sailing Club which was fenced off in approximately 2008 and a stile at far end of Fishnet Point – neither of which are on the application route.

Refers to a friend being turned back from using route in 2008 and that he was told by Sailing Club Committee member that there was no public right of way in 2010.

Says that there are private signs at the entrance to the Sailing Club and a coin operated gate.

Refers to slipway historically being for public use.

The plan attached to the user evidence form indicates use of parts, but not of all of the application route.

## User 3

Used route 1982 – 2011 (29 years), often twice a day to walk dogs. Also refers to occasional use of part of route to ride horse to gain access to the shore.

Refers to route altering as a result of Sailing Club erecting fencing.

When the Sailing Club erected fencing says that she was told 'several years ago' by them that there was no rights of way.

Still walks across part of the land to the east of the factories twice a day to walk dogs but unable to use application route since Sailing Club erected gates and signs.

The plan attached to the user evidence form indicates use of only a short section of the application route.

#### **User 4**

Used route on foot between 1953 to 2008 (55 years)  
Used frequently in the summer and less often in winter  
Never stopped or challenged and never given permission to use the route.  
Stopped using the route when a gate was erected and locked behind the Custom House.  
No plan was provided showing the route claimed to have been used.

#### **User 5**

Used from 1964 onwards (44 years)  
Used on foot to walk to Fishnet Point approximately 5 times a year.  
Never stopped or challenged and never sought or given permission to use the route but a family member had been stopped at the entrance to the Sailing Club in approximately 2008.  
Refers to private signs and gate at entrance to Sailing Club.  
The plan attached to the user evidence form indicates use of parts, but not of all of the application route.

#### **User 6**

Used part of the route from point A to the slipway from 1983 'onwards' (28 years?).  
Use was described as 'frequent'  
Refers to being challenged but does not provide dates. States that they were told that they couldn't walk there as it was private land.  
The plan attached to the user evidence form indicates use of parts, but not of all of the application route.

#### **User 7**

Used for 50 years (dates not specified)  
Use described as being on foot and every day when children were young.  
Refers to the existence of a stile providing access to the beach and taking children to the beach and to play on the football pitch before it was made into a car park.  
Never stopped or challenged and never given or sought permission to use the route.  
The plan attached to the user evidence form indicates use of all of the application route.

#### **User 8**

Used between 1940s and 1970s (30 years plus)  
Used every day on foot, in a car or a van.  
Refers to a gate near the Customs House (close to point E) always being unlocked.  
Never stopped or challenged and never given or sought permission to use the route and states that as a person who had lived from birth (1933) in Glasson, that fishermen, boat owners and villagers had free access to the route. Explains that fishermen historically dried their nets between point D and point E on the Committee

plan and that Fishnet Point was used to grow grain by the Lambs during the war years.

The plan attached to the user evidence form indicates use of parts, but not of all of the application route and appears to show access from point D to the sea wall rather than through the wall at point E

#### **User 9**

Used route described as being from Nicholson's, Glasson Dock to Blackpool between 1964 and 1970 (6 years)

Employed as lorry driver and would use land now occupied by Glasson Sailing Club to turn lorry round.

Makes no reference to using the application route on foot or seeing other use it.

No plan is attached to the user evidence form indicating which parts of the application route had been used.

#### **User 10**

Used route from 1970 – 2000 (30 years)

Used route from Customs house to Bodie Hill on foot for pleasure approximately 20-30 times a year but no reference to using route between point A and point D on the Committee plan.

States that route has always run along the same route with the only change being that the wooden slipway was replaced by concrete.

Refers to a stile near the village hall and one providing access onto the marsh.

Never stopped or challenged and never given or sought permission to use the route.

The plan attached to the user evidence form indicates use of parts, but not of all of the application route.

#### **User 11**

Used the route in 1967 and 1968 and 'then occasionally' until c2008. (41 years)

Used on foot for pleasure to walk a circular route.

Refers to existence of stile providing access onto marsh.

Never stopped or challenged and never given or sought permission to use the route but understood that a group of ramblers were challenged in 2010.

Refers to recent fencing and private signs being erected (c. 2008).

The plan attached to the user evidence form indicates use of all of the application route.

#### **User 12**

Used a route to access the shore, football pitch and play area from 1982 – 1987 (5 years) but not clear from form whether he used all of the application route.

Used on foot approximately 5-6 times a year.

Never stopped or challenged and never given or sought permission to use the route and refers to land being used for a football pitch and not private.

The plan attached to the user evidence form indicates use of parts, but not of all of the application route.

## User 13

Used during the 1990s – possibly on 3 occasions

The plan attached to the user evidence form marks a different route to the application route.

### Comments on user evidence submitted

Persons completing the user evidence forms have not been interviewed to clarify the exact route used. However, there are a number of references to the gated access into the Sailing Club (north of point D) through which they gained access to Fishnet Point via a stile which provided access from the Sailing Club land to the foreshore. Whilst the gate and stile could be accessed from the application route neither form part of it.

### Comments on historical evidence submitted by the applicant

A substantial body of information was provided by the applicant regarding the history and management of the land crossed by the route claimed.

The applicant submits a significant amount of information about the designation of the land crossed by the route as a conservation area, its proximity to a Site of Scientific interest (SSSI) and internationally important wildlife area and numerous planning policy guidelines and policies associated with the development of such sites. Designation does not generally imply the existence of a public rights of way and in the majority of cases no specific reference could be found to the existence of the application route in the documentation referred to or supplied. The fact that the land was of environmental and historical interest may be a reason why the public may wish to walk on it or had historically used a route across it but without specific reference to the use or existence of the application route much of this information provides no relevance to the existence of public rights.

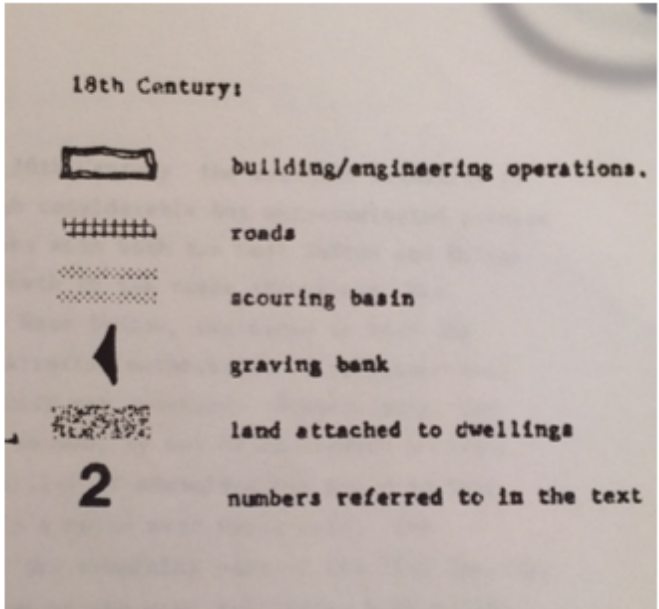
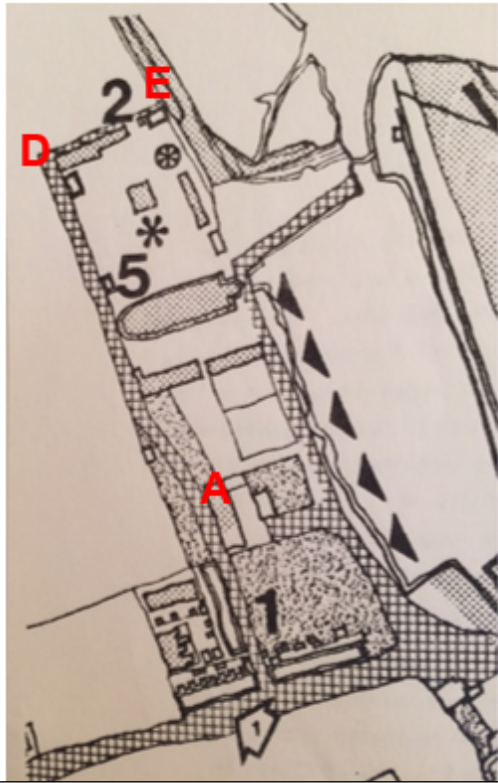
The Ordnance Survey and early commercial maps submitted have already been examined earlier in the report and all documentation submitted as part of the application has been considered with a summary and comments provided below:

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Minutes of Lancaster City Planning Committee meeting</b>	1977	Extract of Minutes of meeting held on 8 August 1977, Part II, Agenda Item 377 and 378
Observations		The Minutes document the approval of the Glasson Village Plan and that the area comprised within the Glasson Village plan be designated as a Conservation Area under the provisions of the Town and Country Planning Act 1971. The Minutes do not refer specifically to the Application route and the approval of the Glasson

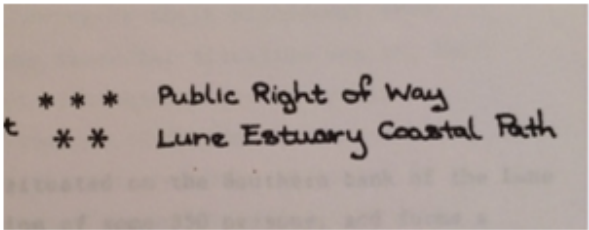
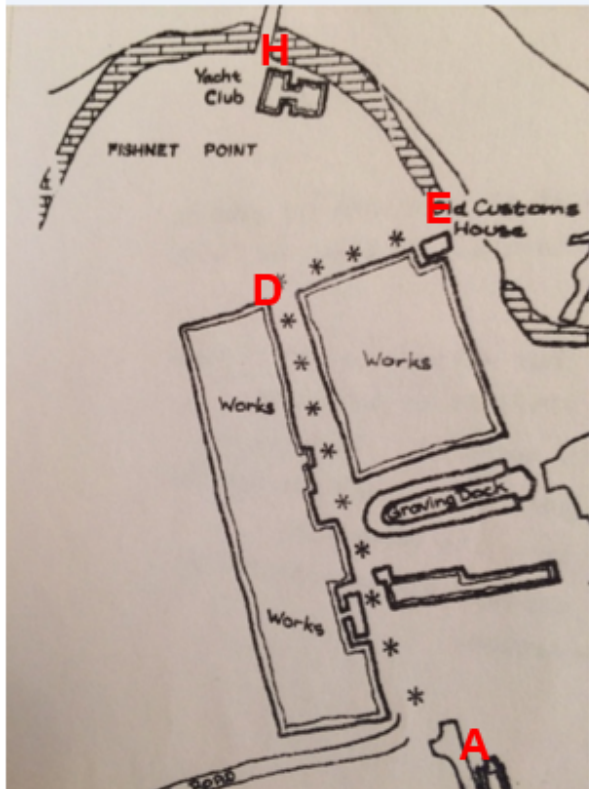
		Village Plan and designation of an area as a Conservation Area does not create, confirm or imply the existence of a public right of way.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights along the application route. .
<b>Minutes of the Lancaster City Finance and Land Sub-Committee</b>	1977	Extract of Minutes of meeting held on 22 <sup>nd</sup> November 1977, Part 1, Agenda Item 752
Observations		No reference was made to the application route within the Minutes Committee discussed the possible financial implications to the City Council in the implementation of various (unspecified) proposals contained within the plan.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights along the application route. .
<b>Digitised plan taken from LCC MARIO maps showing boundary of area designated as a Conservation Area</b>	Undated	Digitised plan available to view on LCC website.
Observations		The plan shows the boundary of the conservation area. It does not show the application route but examination of the plan and the alignment of the application route confirms that the route is within the conservation area.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights along the application route.
<b>Plan showing revised boundary of Glasson Conservation Area</b>	1998	Plan submitted by the applicant to show revision of conservation area site boundary in 1988 and is said by the applicant to show the 'open and unobstructed route to and around the headland'.
Observations		The digitally created OS base map is undated and there is no key confirming the annotation used to show the boundary revision of the conservation area. The application route is not shown as a physical feature although access appears available between point A and point E. At point E a line is shown across the route and at point H the slipway is shown with no visible route across it.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights along the

		application route.
<b>Glasson Village Plan</b>	1977 according to applicant	Final Draft of plan prepared by Lancaster City Council, believed to be circa 1977

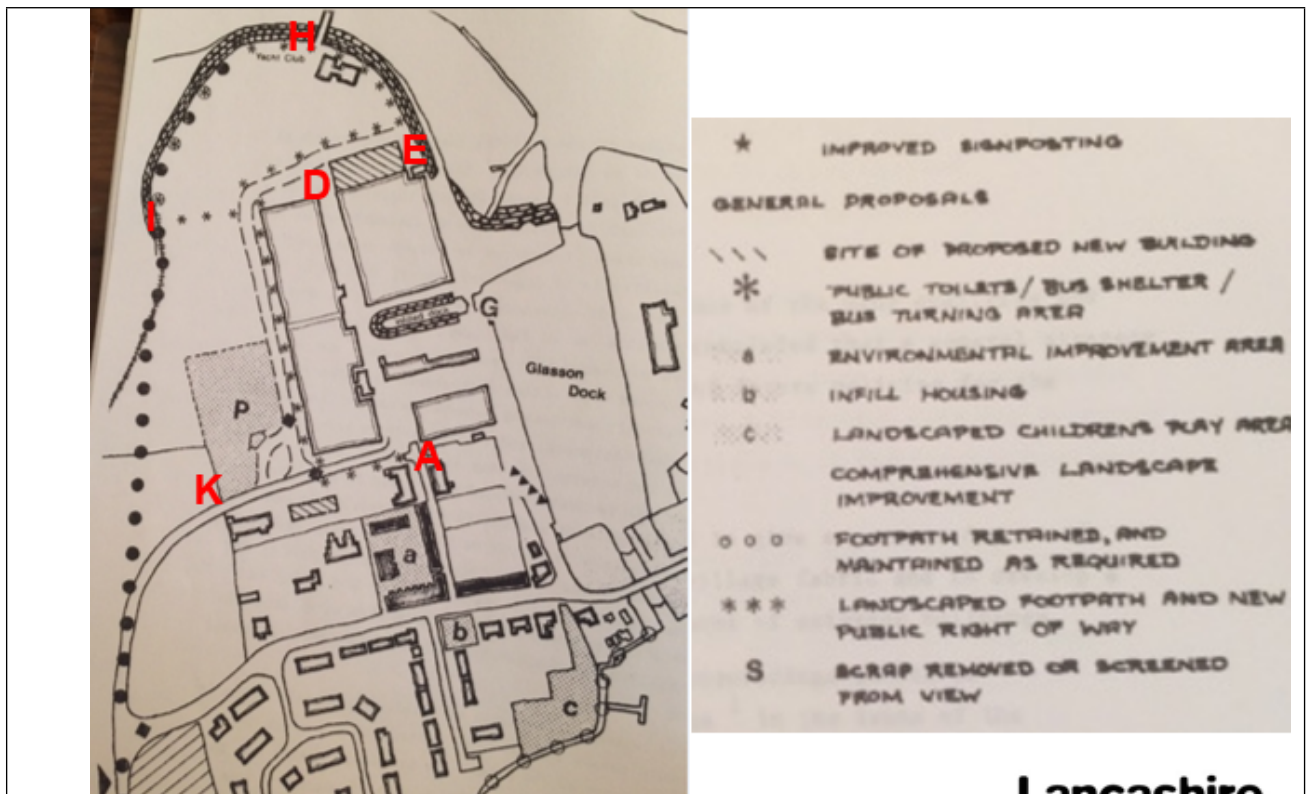
18<sup>th</sup> Century development



Place Map



Proposals map



#### Observations

Various undated hand drawn plans are included in the document.

The plan titled 'Historical 18<sup>th</sup> century view' shows Ten Row and marks the application route through point A to point E, passing the Custom House, as 'road'.

The 'Place map' marks the route between A-D-E as a public right of way but not E-K.

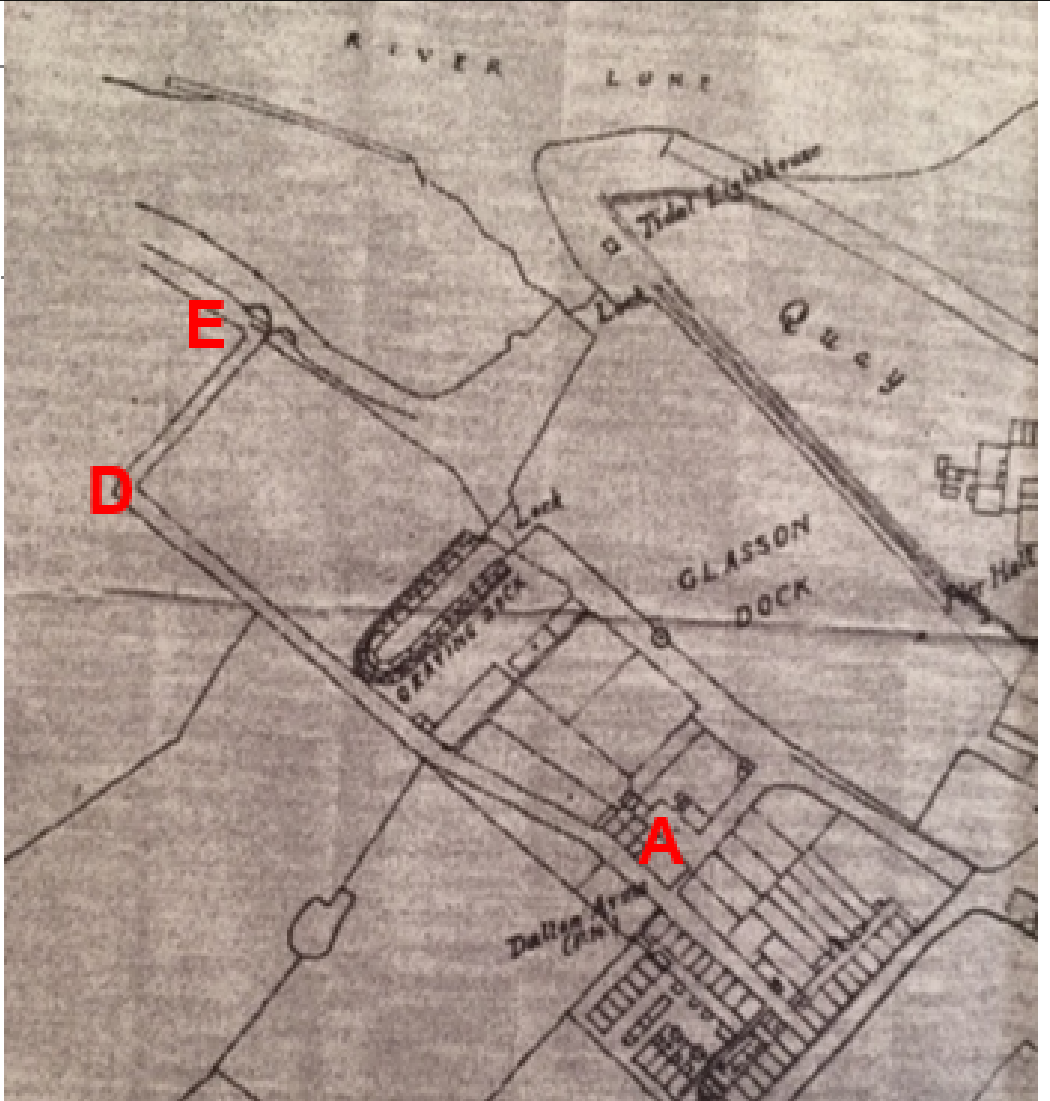
The 'Proposals' plan shows a route described as new public right of way (asterisks) passing west of the buildings then following inside the perimeter of the sailing club to Fishnet Point, plus an east-west link. It also shows a line of asterisks inside circles, not explained in the key (combination of the 2 explained symbols would be contradictory: existing and new public right of way). However, the document states that the existing right of way through Nicholson's' complex, giving access to Fishnet Point, the Customs House and Glasson Sailing Club, should be closed and diverted via the west side of Nicholson's' buildings as shown on the proposal map. Access to the Sailing Club, The Customs House and shore to be obtained from this new right of way.


A new landscaped public footpath to be provided to give access to Fishnet Point.

Investigating Officer's Comments		The plans showing 18 <sup>th</sup> century development reflects the view that the route along Ten Row past the Customs House was a road in the 1800s. The 'Proposals' and 'Place' maps, taken together, suggest that at the time that the Village Plan was prepared the public were using a route to gain access to Fishnet Point through the factory site past the Customs House and either over the Sailing Club land or foreshore some of which (A-E) is consistent with the application route. It also suggests there was no route via I-J-K.
<b>Glasson Conservation Area Appraisal</b>	Undated	Document produced by Lancaster City Council
Observations		Refers to the importance of public open spaces and recognition of the marsh as an important area for birds. It notes that the Custom House is a listed building of historical interest which has been completely surrounded by industrial buildings. There is no mention of the existence of the application route.
Investigating Officer's Comments		Whilst providing good reasons why people may wish to use, or may have used the land crossed by the application route the document provides no evidence of actual use. No inference can be drawn regarding public rights.
Various documents including those listed below were submitted by the Applicant in support of the application. These relate to conservation areas, amenity space, play areas, fencing, plans, policies, law, etc. but do not specifically relate to the application route.		
<b>Glasson Dock Conservation Area</b>	1993	Leaflet produced by Lancaster City Council
<b>Management of Conservation Areas – English Heritage</b>	2007	Information captured from English Heritage website on 20 September 2007.
<b>Design Guidance for properties the subject of the Article 4 Direction – Glasson Dock</b>	1998	Guidance note prepared by Lancaster City Council.
<b>Conservation Areas: A guide for developers and owners</b>	Undated	Undated guidance note prepared by Lancaster City Council.
<b>Extract from 'Planning Application Validation Guide'</b>	2007	Guidance produced by Lancaster City Council.
<b>Thurnham Parish Council Minutes</b>	1981	Extract from Minutes of Meeting held on 3 <sup>rd</sup> February 1981.


<b>Thurnham Parish Council Minutes</b>	1981	Extract from Minutes of Meeting held on 7 <sup>th</sup> April 1981
<b>Thurnham Parish Council Minutes</b>	1981	Extract of Minutes of Meeting held on 7 <sup>th</sup> July 1981.
<b>Thurnham Parish Council Minutes</b>	1981	Extract from minutes of meeting held on 4 August 1981, 6 <sup>th</sup> October 1981, 2 <sup>nd</sup> February 1982, 6 <sup>th</sup> April 1982, 8 <sup>th</sup> June 1982, 6 <sup>th</sup> July 1982, 7 <sup>th</sup> September 1982, 5 <sup>th</sup> October 1982, and 9 <sup>th</sup> November 1982.
<b>Local Authority Services and Biodiversity Guidance</b>		Guidance on Section 40: Natural Environment and Rural Communities Act 2006 published by the Wildlife Trusts
<b>Planning Application 1/81/252</b>		Change of use of land for Sailing Club purposes, Fishnet Point
<b>Lancaster District Draft Local Plan</b>	1996	Extract from Draft plan provided by the applicant.
<b>DEFRA Guidance physical existence or stator Public Authorities on Implementing the Biodiversity Duty</b>	Undated	Extract of guidance note submitted by applicant.
<b>Communities and Local Government Planning Policy Statement 4: Planning for Sustainable Economic Growth</b>	Undated	Planning policy guidance
<b>Extract from Glasson Dock Ecological Survey and Assessment</b>	2007	Section of report highlighted by the applicant.
<b>Extract of Lancaster City Development Management report</b>	2006	Extract of report considering an application for a caravan to be used as a permanent residential accommodation for the Glasson Sailing Club warden.
<b>House of Lords judgement R v. Oxfordshire County Council and Others ex parte Sunningwell Parish Council</b>	1999	A copy of the 'Sunningwell' decision submitted by the applicant.
<b>Extract from Planning (Listed Buildings and Conservation Areas) Act 1990</b>	1990	Extract supplied by applicant refers to the designation of conservation areas and general duties as respects conservation areas in exercise of planning functions.
<b>House of Lords judgement – R v City of Sunderland (Respondents) ex parte Beresford (FC) Appellant</b>	2003	Copy of judgement supplied by applicant.
<b>Lancaster City Council (Glasson Village) Article 4</b>	1981	Details of a direction made by Lancaster City Council to control development to the

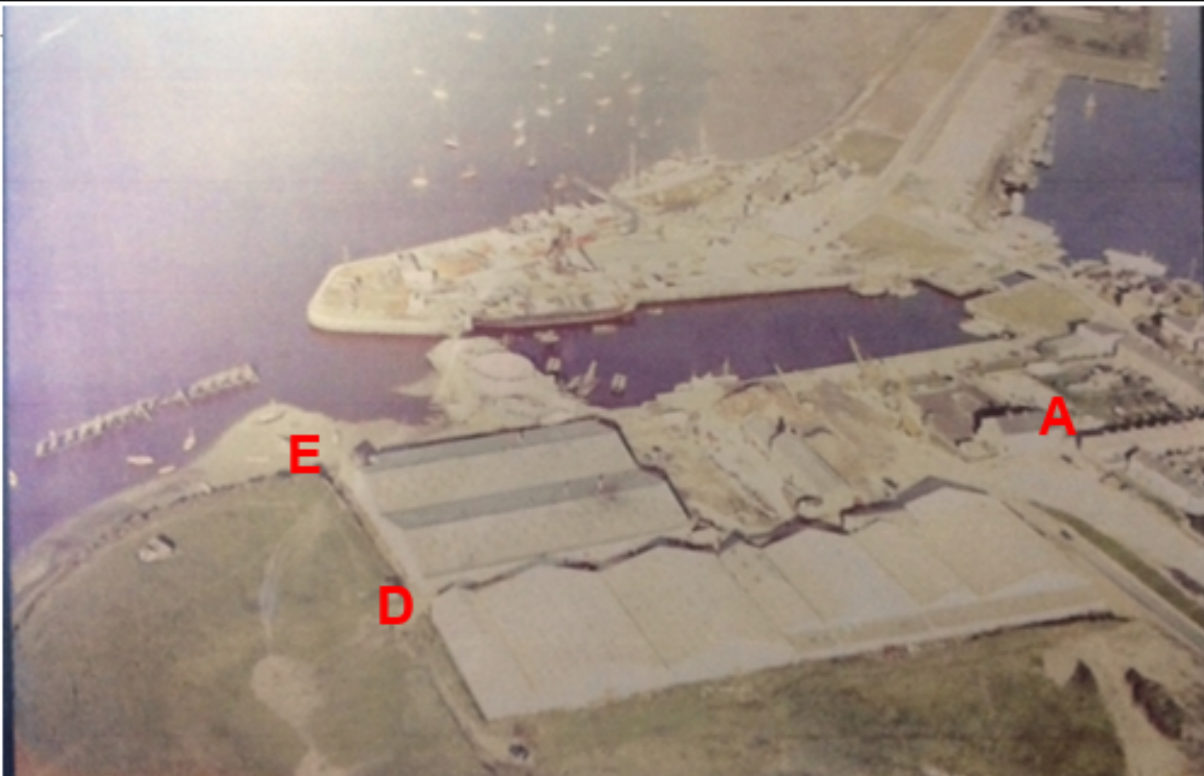
<b>Direction 1981 and associated letters, newspaper notice and plan</b>		historic parts of Glasson Dock.
<b>Extract from Minutes of Lancaster City Council</b>	1965/1966	
<b>Office of the Deputy Prime Minister – Planning Policy Statement 9 – Biodiversity and Geological Conservation</b>	Undated	Extracts of policy guidance.
<b>Lancashire County Council Archaeology Service scheduled monument reports</b>		Copies of the reports for Glasson Dock and the Custom House.
<b>Supreme Court judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents)</b>	2010	Supreme Court judgement regarding the registration of an area of land as a town or village green and the meaning of 'as of right' under the Commons Act 2006.
<b>DoE Circular No. 15/92 – Publicity for Planning Applications</b>	1992	Circular detailing publicity requirements for planning applications
<b>Letter from Thurnham Parish Council to Lancashire County Council</b>	1970	Copy of letter sent to Lancashire County Council regarding public rights of way in Thurnham.
<b>Lancaster Local Development Framework, Development Control Policies – Issues and Options Paper</b>	2004	The applicant highlighted a number of planning development policies relating to development in villages and rural areas.
<b>Extract from National Planning Policy Framework</b>	Undated	Provided by the applicant with highlighted sections.
<b>Extract from Lancashire Life magazine</b>	Undated	Extract of article about Shore Lighthouse showing a gentleman (Mr Parkinson) fishing in the Lune Estuary (photograph undated).
<b>Investigating Officer's Comments</b>		No inference can be drawn from the documents listed above with regards to public rights on the application route.
<b>Thurnham Parish Council Minutes</b>	1983	Extracts of Minutes of Meeting held on 7 <sup>th</sup> June 1983 and 6 <sup>th</sup> September 1983.
<b>Observations</b>		The Clerk to the parish Council reported that he had drawn up a list of routes to be submitted to the County Council with regards to updating the Definitive Rights of Way. The list included the 'extension of

		Ten Row between factory buildings to shore at Custom House' and a footpath from Bodie Hill 'to shore alongside boundary of football pitch area'. Minutes from September 1983 indicate that claims had been submitted but that further evidence was required.
Investigating Officer's Comments		Details of the claims submitted have already been considered in this report.
<b>Hand-drawn plan of Glasson</b>	1957	Hand drawn plan at a scale of 1:2500 titled 'Plan referred to Glasson' submitted by Applicant. Plan is of unknown origin or purpose.
		
Observations		The plan does not show all of the land crossed by the application route but does show a route extending from Ten Row through point A to point D and then turning towards the shore to pass point E and turn north west on the strip above the foreshore. There is no key on the plan.

Investigating Officer's Comments		The application route existed as a through route between point A and passed point E but the plan is undated with no key so provides no evidence of public rights.
<b>'Historic' photograph of stile at north side of footpath on Fishnet Point</b>	unknown	Photograph submitted by the applicant. Undated but described as 'Historic'.
		
Observations		The stile is still in existence today and is located west of point H in the boundary fence separating the land leased by the sailing club and the salt marsh. It is not on the application route but is passed by it and could have been accessed from the route claimed or simply from the sailing club land.
Investigating Officer's Comments		The stile provides access to the salt marsh from the Sailing Club. It does not provide access to land open to the public. It could be accessed from the application route and may explain why the application route was used but such use could have been private.

<b>Photograph of caravan on green area of headland</b>	Undated	Undated photograph described as showing 'green area of headland'
		
Observations		The photograph shows the land crossed by the application route between point E and point F. There is no evidence of a walked route and the caravan and storage units preventing use of the route between point F and G can be seen.
Investigating Officer's Comments		This provides no evidence regarding the existence of the application route and it appears that the route could not have been walked at this (unknown) date.
<b>Department of the Environment Decision letter on appeal against refusal of planning permission</b>	1985	Determination of an appeal against the decision of Lancaster City Council to refuse planning permission for the change of use of land at Fishnet Point for the siting of 8 mobile caravans for a maximum of 42 days per year.
Observations		The decision letter makes reference to a public right of way which according to the council runs along the wall of the factory building adjoining the site'. The decision letter notes that the existence of this right of way is challenged by the Sailing Club. The location of the disputed public right of way 'along the wall of the factory building' is not known. There is no reference to the land on which the caravans were to be sited being crossed by a public right of way.

Investigating Officer's Comments		The reference to the existence of a public right of way may refer to part of the application route – most probably that section between point D and point E.
<b>Aerial Photograph</b>	1954	Aerial photograph submitted by the applicant.
		
Observations		The aerial photograph clearly shows the application route extending from Ten Row to point D but it is not possible to see the route to point E. The headland crossed by the application route from point E to point H is shown as open farmland which may have been accessible but is too far in the distance to see whether a trodden track is visible.
Investigating Officer's Comments		The application route existed between point A and point D in 1954.
<b>Aerial photograph</b>	1972	Aerial photograph submitted by applicant.

		
Observations		<p>The photograph shows that construction of the new access road (Bodie Hill) was underway (if not complete). The application route can be clearly seen from point D and a route appears to be available past point E to the shore. It is not possible to see whether access onto the field was available at point E although there is no worn track coming from that point which would indicate any form of access. West of point E is a gateway from which a faint track can be seen joining part of the application route towards points F and G and the land crossed by the route within that field as far as point G appears open and available at that time.</p>
Investigating Officer's Comments		<p>The application route from point A through to point E appeared to exist in 1972 but appeared to provide access past point E to the shore. Access may have been available through a gateway further west and across the land now leased by the Sailing Club.</p>

### **Landownership**

Ownership of the land crossed by the application route is unregistered between point A and point D on the Committee section with the exception of a length of

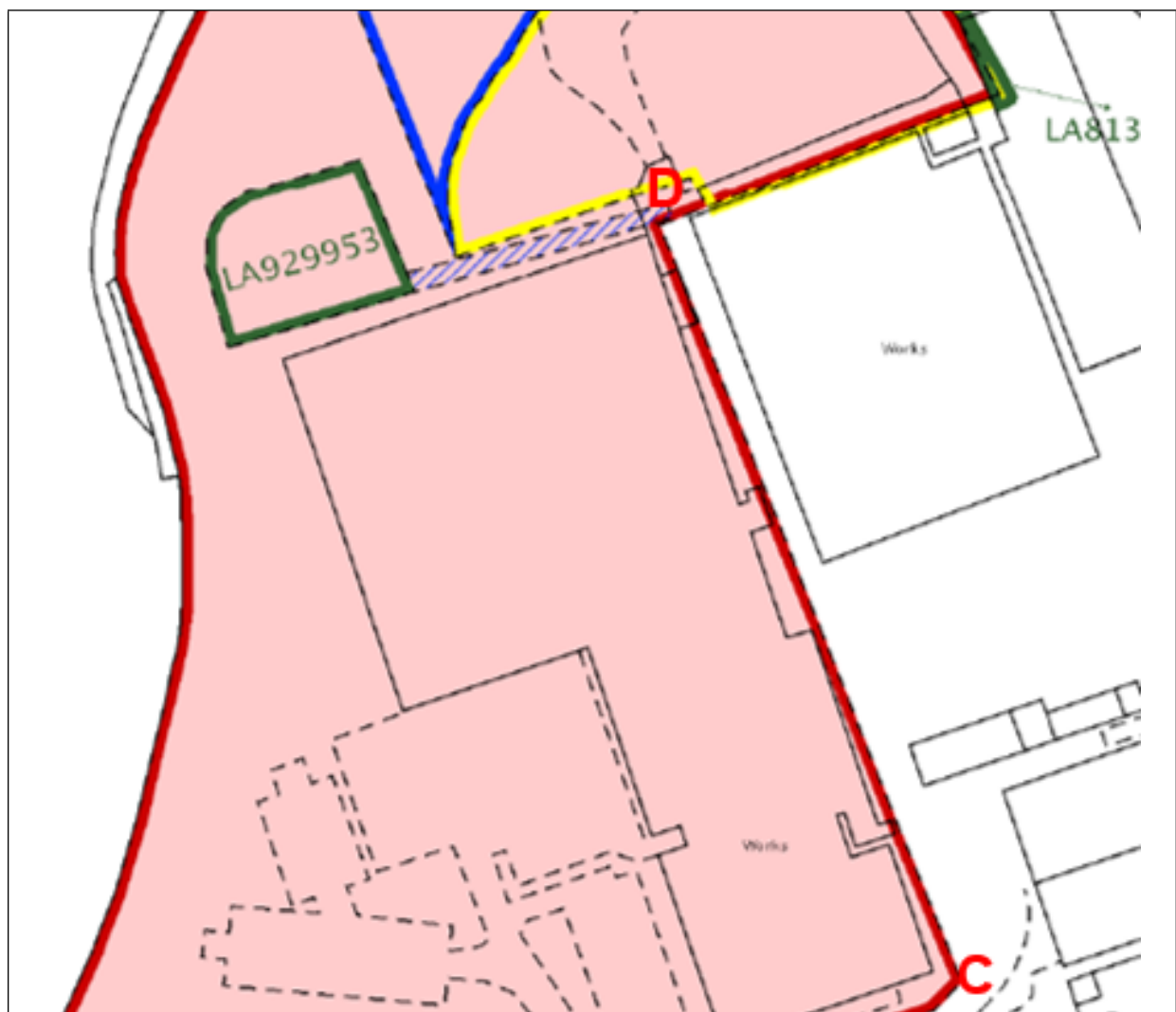
approximately 5 metres of land extending partway across the route 30 metres north north west of point C. This land – which extends east from the application route is owned by The Lancaster Port Commission, West Quay, Glasson Dock.

However, Glasson Estates Limited have indicated in response to informal consultations that they believe that they own the land crossed by the application route between point C and point D.

From point D to point K the land registry plans appear to show the land crossed by the application route owned by Glasson Estates Limited, West Quay, Glasson Dock although the Lancaster Port Commission have indicated in consultations that they own the land between point D and point E.

Deed plans have not been requested or made available to verify the exact boundaries of landownership but all interested parties have been notified about the application.

Title number LA708560 provides details of the land owned by Glasson Estates Limited. The title plan shows the boundary of the land on the eastern side as thus:



Within the register there is reference to rights preserved by a conveyance dated 1918 regarding land forming 'the road abutting upon the easterly side' of the land 'so far as the same is coextensive therewith subject to all existing rights of way there over and to the liability to bear and pay the expense of repairing the said road'. The title refers to a plan showing the road coloured brown but the current title plan does not indicate any road with colour.

### **Information from Others**

#### **Ramblers Association**

The Ramblers Association (Fylde Group) state that they advocate the addition of unrecorded paths to the Definitive Map and Statement and that from experience and from the supporting evidence believe that the application route may have been wrongly excluded in the past.

#### **Open Spaces Society**

The Society support the application made by one of their members (the applicant) and believe that there is historical evidence that supports the modification on the basis of public use.

### **Information from the Landowners**

#### **Glasson Estates Limited**

Glasson Estates Limited responded by providing a plan showing that they believed that they owned all of the land crossed by the application route with the exception of the land between point A and point B and point D and point E. They also provide details regarding the fact that they lease part of the land to Glasson Grain limited and Glasson Sailing Club.

They state that they are strongly opposed to the application and that with regards to historical public use the area has been fenced for a considerable amount of time, restricting public access.

#### **Lancaster Port Commission**

Lancaster Port Commission own a small area of land crossed by the application route 30 metres north north west of point C and state that they own land between point D and point E on the Committee plan and object to the application.

The area between point D and point E on the Committee plan is described as being within the port estate and is secured by a locked gate at point D which they state has been locked for at least 25 years. They also state that there is no access to the shore beyond point E due to the provision of palisade security fencing and the sea defence wall. They explain that under the SOLAS Convention and International Ship and Port Facility Security (ISPS) Code, the Port of Glasson Dock has been assessed by the Department for Transport, Maritime Security, as falling within that code, and subsequently, the Port has carried out an assessment of the port and a (Restricted)

Security Plan has been drawn up and approved by the Department of Transport. The Port Commission state that the Assessment and Plan do not allow for public rights of way through the Port Estate.

They also state that they are concerned about the health and safety risks of pedestrians walking the route between point B and point D on the Committee plan due to heavy use of the route by commercial vehicles. They state that a separate marked out pedestrian route has been provided adjacent to the application route to allow access to the Port of Lancaster Smokehouse.

### **Glasson Grain Limited**

An objection has been received from Glasson Grain Limited who operate on land crossed by the application route between point C and point D and point I and point J and then midway to point K on land which is owned by the Lancaster Port Commission and Glasson Estates Limited. They explain that they use a number of commercial vehicles and machinery for loading and unloading across the whole site which regularly travel between point B and point D on the Committee plan. They also refer to use of the area between point B and point D by heavy vehicles accessing work buildings and travelling to the weighbridge area all of which are constantly moving along and crossing the application route.

They explain that in an attempt to protect the public pedestrian traffic to the Port of Lancaster Smoke House they have already, some time ago, marked out a pedestrian walkway from where the footpath finishes at the end of Ten Row to the start of the footpath along the front of their office building and the route is shown on a map attached to their letter as being to the east of the application route. They explain that this was done to reduce the risk to the general public of clashes with industrial/commercial traffic.

### **Assessment of the Evidence**

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

In Support of Making an Order(s)

User evidence

Route A-E shown on OS maps since 1800s

Other map and documentary evidence mainly for A-E

Against Making an Order(s)

Inconsistency of the application route in the user evidence forms and the application.

Lack of map and documentary evidence supporting the existence of the route between point E and point K

## Conclusion

It is advised 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 1980, that use needs to be by the public as of right and without interruption over a sufficient 20 year period immediately prior to the route being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The first consideration is to determine when the route was called into question. In this matter the evidence indicates that access to the route A -E has at some point been denied with a security fence being erected close to point E preventing access down to the shore and a fence and hedge preventing access to the sailing club grounds, it is not clear when the fence/s and hedge came into existence and the applicant has not provided clarity on this matter stating that historically all routes to the headland were open. Therefore it is suggested on balance that the "calling into question" would therefore be the application date itself being November 2014 and that the 20 year period under consideration would be 1994-2014.

Considering first the section A-E; thirteen user evidence forms have been submitted in support of the claimed route, the user evidence forms suggest the route has been used since as early as 1960 as of right on foot but also that the route has been used on horseback and in vehicles. The user evidence forms vary in frequency of use and there are discrepancies by the users as to the exact route in question. In addition a number of users refer to the sailing club erecting a fence and a coin operated gate and 'private' signs preventing and restricting access in approximately 2008/2010, a few users also indicate that they or people they know have been challenged whilst walking the route preventing and restricting access across the sailing club land beyond point D. It should be noted that access through the fence/gate at point D into the sailing club yard is not part of the claimed route. It is therefore suggested that although there does appear to be some evidence to demonstrate a lack of intention to dedicate by the sailing club such actions relate to the area beyond the gate at point D only not the claimed route.

Of the thirteen users only 6 of the users indicate that they use the route A - E with the other users indicating use of a different route or failing to provide any plan with their user form. Use must be more than trivial and sporadic to be sufficient to give rise to a deemed dedication. The 6 users claim to use the route 20-100 times a year, 5 times a year, frequently, weekly, at the weekends and every day and each of those 6 claim they did so without interruption or permission, they did so for pleasure to walk dogs or gain access to the shore and marsh.

Taking all the user evidence information into account it is suggested there does not appear to be any evidence to demonstrate no intention by the land owner to dedicate over the twenty years prior to 2014.

However, deemed dedication under the Highways Act 1980 S31(1) does not apply where the land is such that use by the public could not give rise at common law to a presumption of dedication. The British Transport Commission Act 1949 S57 could have some bearing on this as it prevents rights by user being deemed after 1949 over land owned by the Commission or its successor bodies. The ownership of part of the land, in particular affecting section D-E, is disputed but if that does, or has belonged to the Lancaster Port Commission during all or part of the relevant period such deemed dedication might not have been possible.

User evidence for the remaining section E-K is inconsistent. Some users' descriptions indicate that they did not use the same route, particularly from point D where they went into the sailing club instead of along the application route. The only witnesses using the full application route appear to be users 4 (possibly), 7 & 11 from which it is not reasonable to deem dedication, nor is it possible to piece together other witnesses' use to make significant addition to this.

Considering whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site and from witness statements/forms does indicate whether it can be reasonably alleged that the route was dedicated in the past by the owner(s) as a public right of way.

For section A-E, the analysis of the map and documentary evidence shows that a substantial route is shown on the OS maps from the 1800s and that such route appears to be capable of being used by all types of vehicles. There is also the evidence of a privately maintainable public right of way being recognised in the early 1900s which again would indicate that historically there was a vehicular public highway from A to E. Consideration should also be given to the order in 1991 which was submitted to the Planning Inspectorate for determination and the Planning Inspectorate determined not to confirm the Order on the basis that both the claimants and the County Council had withdrawn their support, the decision letter does not appear to take into account the historical evidence.

Therefore, for section A-E, it is suggested that it can be reasonably alleged that the criteria of S31 could be satisfied in this matter with respect to a public footpath and also that on balance inference of dedication at common law of a vehicular highway.

As detailed above (in the summary of the Map and Documentary Evidence) the mechanically propelled vehicle rights are believed to have been extinguished. Taking all the evidence into account it is suggested to Committee that on a balance of probabilities there is sufficient evidence that the route ought to be added to the Definitive Map and Statement as a restricted byway between points A-E. A 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.

The historical mapping does not show that there was a path on the ground along the section E-K and the user and other documentary evidence is insufficient to reasonably allege that a right of way subsists.

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

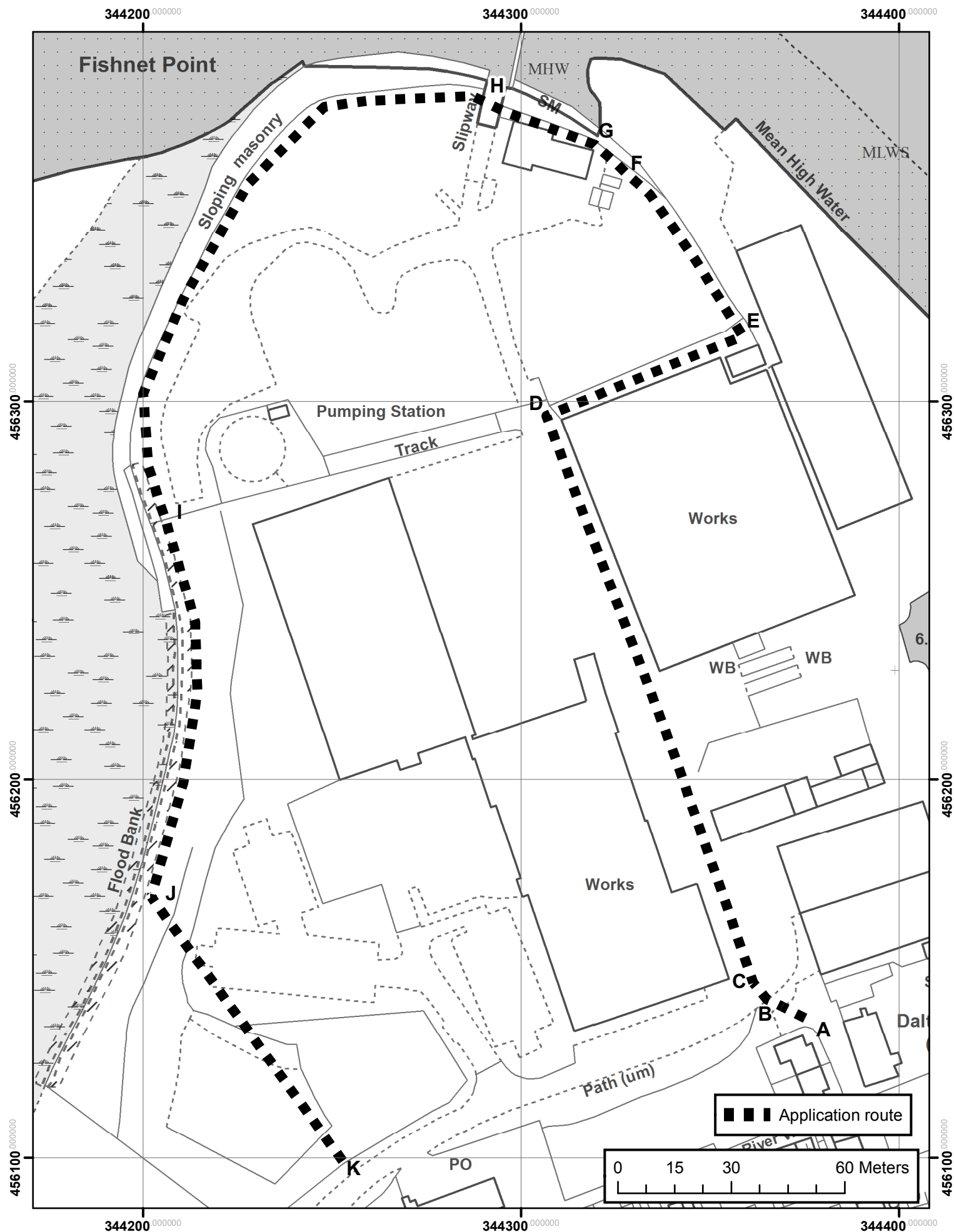
Paper	Date	Contact/Directorate/Tel
-------	------	-------------------------

All documents on File Ref:  
804-562

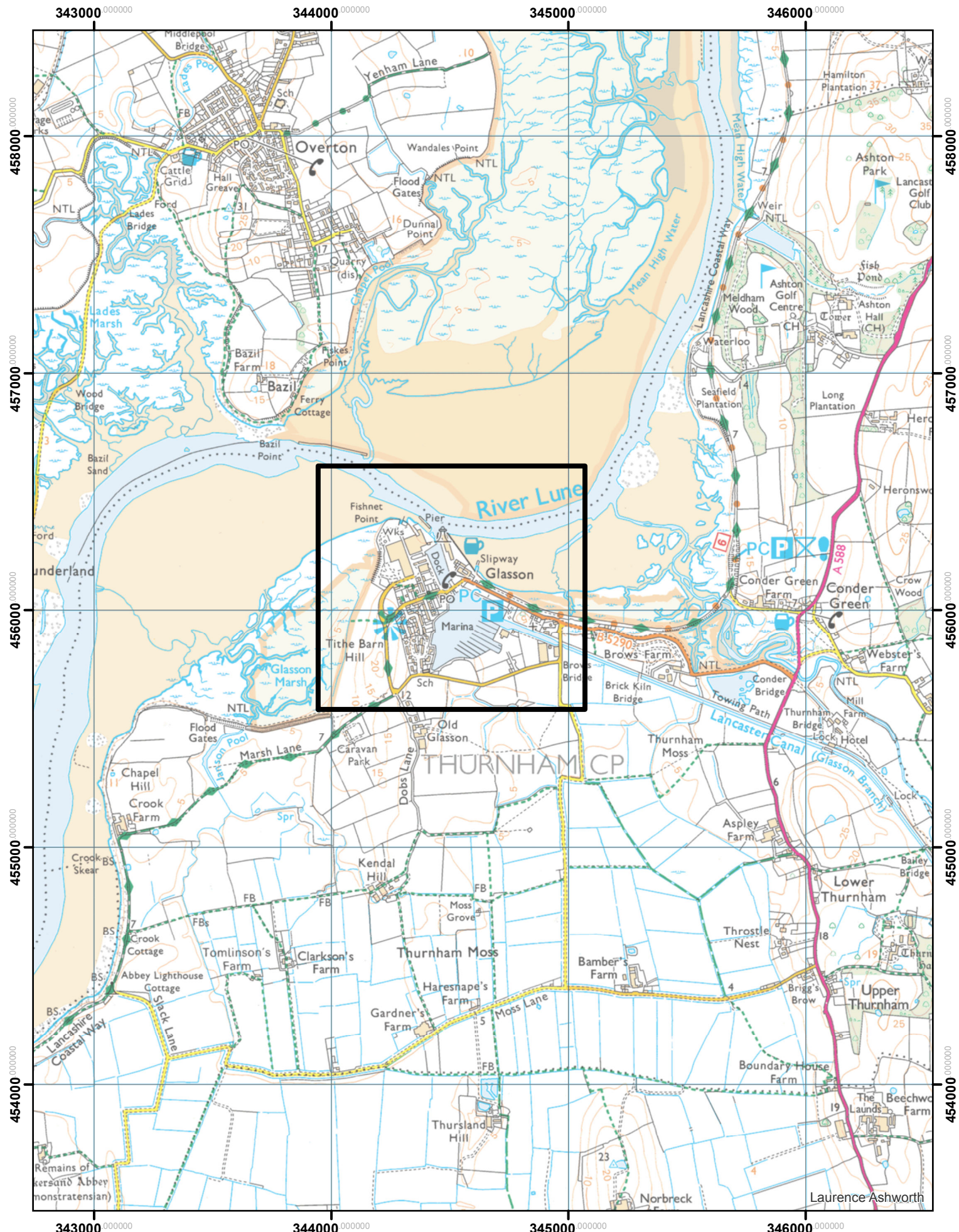
Reason for inclusion in Part II, if appropriate

N/A











**Regulatory Committee**

Meeting to be held on 27 September 2017

Electoral Division affected:  
Euxton, Buckshaw and  
Astley

**Wildlife and Countryside Act 1981****Definitive Map Modification Order Investigation****Modification to the Definitive Statements for Footpaths 37, 38 and 39 Euxton (Culbeck Lane)**

**File No. 804-585**

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal Officer, County Secretary and Solicitors Group, [PROWlegal@lancashire.gov.uk](mailto:PROWlegal@lancashire.gov.uk)

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

**Executive Summary**

Investigation into the particulars which should be recorded in the Definitive Statement of Public Rights of Way for Footpaths 37, 38 and 39 Euxton, known together as Culbeck Lane, including the width of the footpaths and any limitations or conditions along them, in accordance with File no. 804-585.

**Recommendation**

1. 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 modify particulars in the Definitive Statement of Public Rights of Way for Footpaths 37, 38 and 39 Euxton, Chorley Borough and known as Culbeck Lane, to record the width as that shown on the 1894 25 inch Ordnance Survey Lancashire Sheet LXXVII.VI. and record the three locations at which it is considered that there is a legal right for field gates to be erected by the landowner across the route to be at the locations marked as A, B and C on the Committee plan.
2. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

**Background**

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

In 2015, a further application was received to upgrade the same route to Restricted Byway and this was rejected by Regulatory Committee. The decision to reject the 2015 application was appealed by the applicants and the Secretary of State for the Environment Food and Rural Affairs dismissed the appeal. The applicants sought Judicial Review of the rejection of the appeal but this was refused.

The above applications were concerned with the legal status of the route (i.e. the lawful rights of the public to use the route on foot, horseback or with vehicles) but in addition, there have, in recent years been various issues concerning the management and maintenance of the lane which carries significant private vehicular traffic as well as being a public footpath.

In order to resolve these issues, it is advised that it is necessary to consider the evidence about width and limitations and record the width of the way and whether any 'limitations' to the public's right on foot.

Whilst the Definitive Map shows the status of public rights of way recorded on it an accompanying Definitive Statement provides details of position, width, limitations and conditions.

Decades ago, each surveying authority interpreted the guidance relating to the information to include in the Definitive Statements differently leading in some cases to very detailed descriptions of routes about the type of surface, variations in widths and the existence (and location) of any stiles or gates. In other cases very brief details were included – often simply stating the starting point and finishing point of a particular route.

The majority of Statements compiled in Lancashire are brief, providing little assistance when a dispute arises regarding the legal width of a public right of way or whether it is lawful to maintain or erect a gate (or stile) along the way on the basis that it existed at that location when the public rights came into being.

The second part of Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 relates to the discovery by the authority of evidence which shows that any particulars contained in the Map and Statement require modification.

In the case of Culbeck Lane it is advised that the Council are satisfied that the status has been fully investigated and that on the basis of the evidence available the route is correctly recorded as public footpath. However, the Definitive Statement accompanying the Map provides insufficient detail regarding the way to allow officers to resolve various management issues, in particular the width of the way and the existence of legal limitations, notably the right of a landowner to have gates across the way.

An investigation into the historical width of the route and limitations is detailed below together with a recommendation to be considered by Committee for an Order to be made modifying the particulars contained within the Definitive Statement as to the position, width, limitations and conditions.

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

## **Consultations**

### Chorley Borough Council

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

### Euxton Parish Council

Euxton Parish have also been consulted and have not raise any objections to the proposal.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the 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	5356 1851	Junction with Dawbers Lane where historically a gate is shown to have existed although none is currently there
B	5356 1928	Gate across Euxton Footpath 39 at a point shown as boundary of landownership on Tithe Map and Finance Act Plan and location of historical gate.
C	5356 1946	Junction with Runshaw Lane where historically and today a gate is maintained.

Culbeck Lane is recorded as a public footpath and is signposted as such at points A and C. It is available for public use on foot throughout its entire length.

Culbeck Lane also provides private vehicular access from Dawber's Lane (point A) to Culbeck House (a working farm) and three other residential properties.

It currently has gates at:

SD 5361 1886	Adjacent to Culbeck Farm barns
SD 5359 1898	10m north of southern entrance to Lothlorien
SD 5353 1905	Southern end of straight section by Lothlorien
SD 5354 1912	Immediately to the north of Lothlorien
SD 5356 1928	(point B)
SD 5357 1937	Gates into fields either side. One gate can also cross Culbeck Lane
SD 5356 1946	Junction with Runshaw Lane (point C)

Its width today is shown on the Committee Plan and is generally similar to the historical width. The exceptions are:

- (a) where the ditch has been dug alongside Lothlorien the historical boundary is no longer evident nor is it clear how much of the ditch is within the highway
- (b) where Holker Brook has been fenced off from the lane
- (c) where a mound of earth has been created alongside Culbeck Farm.

The section of Culbeck Lane used for daily vehicular access has a compacted stone surface, potholed in places, approximately 3-6 metres wide with a verge and/or ditch on one or both sides.

Beyond the residential properties the lane provides access into adjacent fields. The surface is firm but either grass or muddy depending on recent agricultural use.

The total length of the route is 1 kilometre long.

The existing Definitive Statements for footpaths **37, 38 and 39 Euxton**

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
37	"	Culbeck House southwards along Culbeck Lane to join A.581.	0.22	
38	"	Culbeck House northwards along Culbeck Lane to junction Footpaths 39 and 40.	0.15	
39	"	Junction Footpaths 38 and 40 to Runshaw Moor Lane.	0.27	

## Map and Documentary Evidence

The research detailed below has been carried out to determine the width of Culbeck Lane over which the public have a legal right of access on foot (comprising of Footpaths 37, 38 and 39 Euxton) and the existence of any limitations (such as the right to maintain a gate across the lane) to the public rights.

It is noted that this exercise is seeking to record the width and limitations at the time the footpath came into being and to then look if there has been any extra width dedicated at later date.

The exact date that the public footpath legally came into being is unknown

As previously advised evidence indicates that a substantial gated route existed bounded on both sides in the 1840s. However, on balance, the information provided by the Tithe Map and Award does not support the view that public vehicular rights were acknowledged to have existed along the route in 1847. The Secretary of State in the appeal decision agrees and says that although tithe records confirm the

existence of the route as a road of some sort in 1847 they do not indicate whether there were any public rights over it.

By 1910 however there is stronger evidence of a public status and the secretary of state says that "on balance it is my view that the Finance Act records are consistent with the whole of Culbeck Lane having been regarded as a private access road and a public footpath."

It is suggested that the date of the coming into existence of the footpath rights for the public would be in the late 19<sup>th</sup> century.

## Width

The sufficiently large scale Ordnance Survey map of the late 19<sup>th</sup> century as published is the County Series 1894 sheet which was surveyed in 1893. This map clearly shows the route and adjacent field boundaries as they existed at the time of the survey which is broadly consistent across the subsequent mapping through to the 1960s. It is therefore proposed to modify the particulars by reference to the width of the route as being that shown on the 1894 25 inch Ordnance Survey Lancashire Sheet LXXVII.VI.

This width has been overlaid onto Ordnance Survey MasterMap to produce the Committee Plan.

There is no evidence of original width being made greater through dedication since the late 19<sup>th</sup> century

## Limitations

Any gates which were *in situ* when the public footpath came into being, or subsequent like-for-like replacements, can be retained by the landowner and this right should be recorded as a legal limitation at the corresponding location. The three locations marked as A, B and C on the Committee plan are the locations at which it is considered that there is a legal right for field gates to be erected by the landowner across the route.

The Investigating Officer has come to this conclusion after examining the 1847 Tithe Map and Ordnance Survey maps dating from the 1840s through to 1963. Depiction of lines representing gates across Culbeck Lane has been broadly consistent across this period, as tabulated below. No other gates are shown with the exception on the 1894 25" 1<sup>st</sup> Edition of an additional gate just north of Chapel Brook.

Point on Committee plan	Grid Reference	Limitation recorded on:
A	SD 5356 1851	Tithe Map 1847 1 <sup>st</sup> edition 25 inch OS 2 <sup>nd</sup> edition 25 inch OS 3 <sup>rd</sup> edition 25 inch OS 1955 6 inch OS

B	SD 5357 1927	Tithe Map 1847 1 <sup>st</sup> edition 25 inch OS 2 <sup>nd</sup> edition 25 inch OS 3 <sup>rd</sup> edition 25 inch OS 1955 6 inch OS
C	SD 5356 1946	Tithe Map 1847 2 <sup>nd</sup> edition 25 inch OS 3 <sup>rd</sup> edition 25 inch OS 1955 6 inch OS 1963 1:2500 OS

The maps listed above (spanning over 100 years in time) show lines across the route at points A,B and C. Whilst it is not specifically stated that these lines indicate the existence of a gate it is known that an 'obstruction to a pedestrian', which was over 0.3 metres tall (1 foot) was shown by the Ordnance Survey as a solid line and when shown across a wide enclosed through route such as Culbeck Lane it is reasonable to conclude that the lines indicated the existence of gates. Ordnance Survey instructions to surveyors were that gates were to be shown in the closed position i.e. shown as a line across the route.

The recording of the right to erect gates as legal limitations does not, however mean that gates must now be erected at these locations but if a gate is present it must be convenient to use by the public (on foot) and it is not sufficient to provide a stile, gap or smaller pedestrian gate alongside the larger field gate and to then lock that gate unless evidence is provided suggesting that this was, historically, the situation on the ground. It also means that any gates and/or stiles currently located at any other location along the route would be unlawful (unless subsequently authorised in writing by the highway authority).

## Landownership

Much of Culbeck Lane is unregistered but sections of it are registered as parts of Culbeck Farm and Guest House Farm.

The properties below are all adjoining to the route:

Culbeck House Farm, Lothlorien (Culbeck Nurseries), nos. 1 & 2 Culbeck Lane  
Coplands Barn and Lark Hill Farm, Dawbers Lane,  
Woodcock Barn, Runshaw Lane

## Head of Service – Legal and Democratic Services Observations

Information from the Landowners and others consulted

The following responses have been received at the time of this report being published and any further responses received will be presented to Committee at the meeting.

No responses have been received as of yet. The consultation period runs until 20<sup>th</sup> September 2017.

## **Assessment of the Evidence**

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

In Support of Making an Order as set out in the recommendation

That the Definitive Statements re these 3 footpaths are not sufficiently detailed.  
That the evidence for the footpath coming into existence in late 19<sup>th</sup> century is on balance sufficient.  
That evidence of the route's historical width is strong on balance.  
That the evidence for the position of historical gates is strong.

Against Making an Order in the terms as set out in the recommendation

There is no evidence more persuasive re the width of the route carrying footpath rights than that set out in the recommendation  
There is no evidence more persuasive re the gates which were, on balance, already on the route when it became a footpath than set out in the recommendation

### **Conclusion**

It is advised that it is appropriate in respect of these three footpaths that their width and limitations be recorded. The legislative provisions set out in the report allow such matters to be recorded by way of an Order. The evidence of the width set out in the report indicating the width at the time the footpath came into being is on balance sufficient as is the evidence of where there are rights to maintain gates.

It is suggested that the committee be satisfied that the evidence is on balance sufficient to record the width and limitations as set out in the recommendation

**Alternative options to be considered** - To not make an order  
To make an order to record a different width or different limitation locations

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

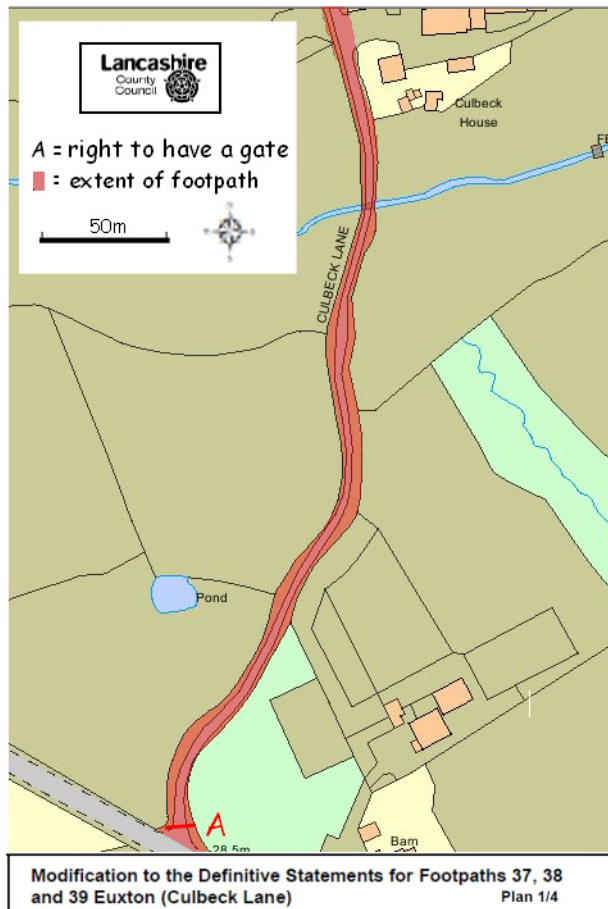
### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-585		Claire Blundell, 01772 533196, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

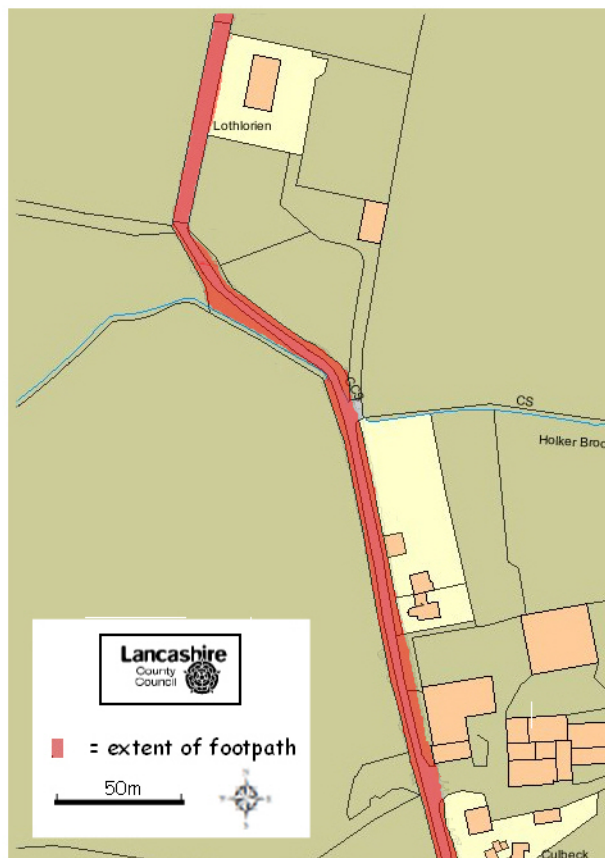




The digital Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (© Crown Copyright).  
Unauthorized reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100022208

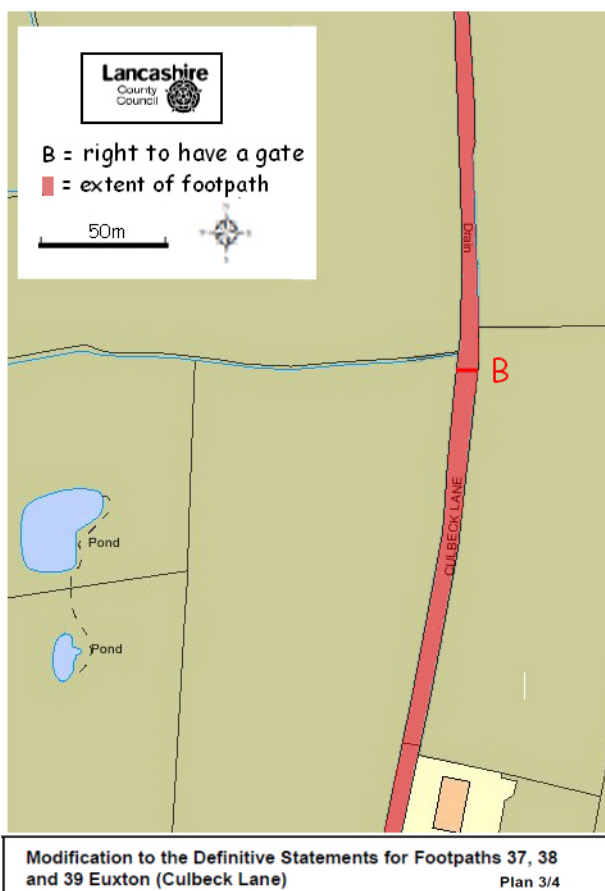




**Modification to the Definitive Statements for Footpaths 37, 38 and 39 Euxton (Culbeck Lane)**  
Plan 2/4

The digital 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.  
This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (© Crown Copyright).  
Unauthorized reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100623208

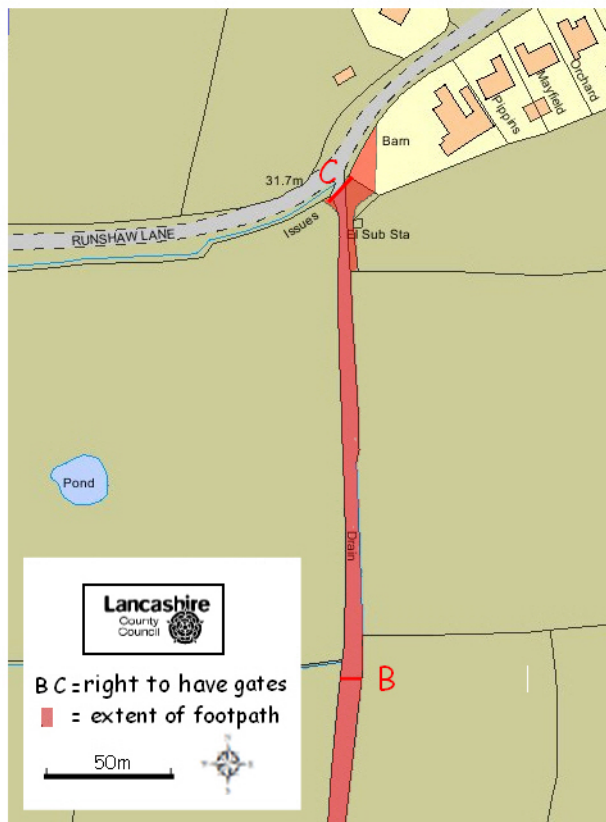




The digital Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (© Crown Copyright).  
Unauthorized reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 10062329

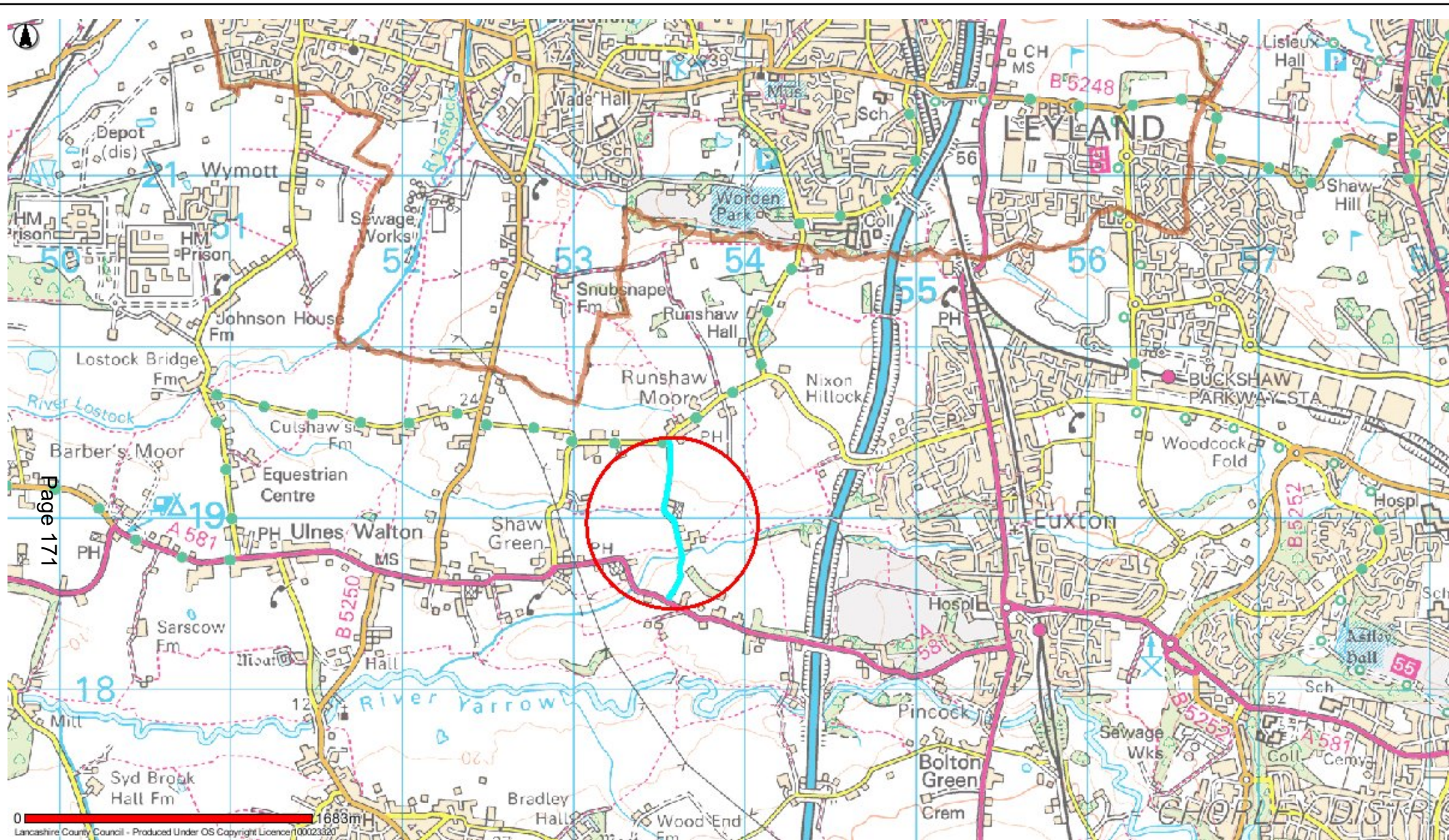




**Modification to the Definitive Statements for Footpaths 37, 38 and 39 Euxton (Culbeck Lane)**  
Plan 4/4

The digital 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.  
This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.  
Unauthorized reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 10062329





Culbeck Lane Location Map

