

Lancashire County Council

Regulatory Committee

Wednesday, 17th January, 2018 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

3.	Minutes of the last meeting held on the 15th November 2017	(Pages 1 - 8)
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4.	Guidance	(Pages 9 - 32)
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Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act 1980 is presented for the information of the Committee.

5.	Highways Act 1980 - Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Staining Footpath 6, Fylde Borough	(Pages 33 - 46)
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6.	Highways Act 1980 - Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 - Section 53A(2) Proposed Diversion of Part of Westby-with-Plumpton Footpath 7, Fylde Borough	(Pages 47 - 64)
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7. **Wildlife and Countryside Act 1981** (Pages 65 - 132)
Definitive Map Modification Order Application
To Record a Bridleway from Burnley Road to Antley
Gate, Trawden, Pendle Borough
File No. 804-581
8. **Wildlife and Countryside Act 1981** (Pages 133 - 170)
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to
Pinewood Avenue, Broughton, Preston City
File No. 804-590
9. **Wildlife and Countryside Act 1981** (Pages 171 - 218)
Definitive Map Modification Order Investigation
Addition of footpath at Calder Vale, Wyre Borough
File No. 804-587

10. Urgent Business

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

11. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on Thursday 15th March 2018 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 15th November, 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	A Clempson
J Cooney	T Burns
I Brown	K Snape
P Steen	L Cox
J Marsh	

1. Apologies

No apologies for absence were received.

County Councillor Loraine Cox replaced County Councillor Bernard Dawson.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 27th September 2017 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority on submission of Public Path Orders to the Secretary of State.

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

5. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application for Recording on the Definitive Map and Statement a Bridleway along Part of Birch Hall Lane, Footpath Earby 38 and Dark

**Lane to County boundary
File No. 804-507**

A report was presented on an application for recording on the Definitive Map and Statement a public bridleway, along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary, in accordance with File No. 804-507.

A previous application under Schedule 14 of the Wildlife and Countryside Act 1981 had been submitted to the County Council in 2009 by Trawden Forest and Border Bridleway Association, for the lane known as Dark Lane, Earby to be recorded on the Definitive Map and Statement as a bridleway.

A corresponding application had also been made to North Yorkshire County Council, comprising the same evidence for the continuation of Dark Lane from the County boundary to be recorded as bridleway, and also for a lane known as Dodgson Lane to be recorded as bridleway. An Order was subsequently made to record Dodgson Lane as a restricted byway but the application for the Yorkshire portion of Dark Lane was rejected. A copy of the report considered by North Yorkshire County Council had been provided with the agenda papers.

Various maps, plans and other documents had been examined with reference to the route under investigation and a site inspection had been carried out on 3rd April 2017.

The site evidence supported the view that the application route could have been used, and probably had been used by the public on horseback, and possibly with horse drawn vehicles and mechanically propelled vehicles between points A-B-C. In addition, the site evidence supported the view that the route between points C-D was a very old (sunken) route which was not currently accessible due to fencing and overgrowth. However, if the overgrowth were to be cleared, the route would be wide enough for use by horses and small carts.

The Committee noted that objections to the proposal by Earby Town Council had been addressed in the summary section of the report and, whilst these objections were acknowledged, it was considered that the concerns raised were not relevant considerations under either S31 Highways Act 1980 or under Common Law.

In response to a query, David Goode confirmed that if the Committee were minded to approve the recommendations, then the County Council would be responsible for clearing the route, once the Order had been confirmed.

Resolved:

(i) That the application to record on the Definitive Map and Statement, a bridleway along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary, in accordance with File No. 804-507, be accepted in part; section C-D shown on the committee plan being accepted as a bridleway and section A-B-C shown on the committee plan being not 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 bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points C-D;

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

6. Wildlife and Countryside Act 1981
Application to upgrade to Bridleway parts of Footpaths Charnock Richard 14 and 15, known as Delph Lane, Chorley Borough

A report was presented on an application to upgrade to public bridleway, parts of Footpaths Charnock Richard 14 and 15, Chorley Borough (known locally as Delph Lane and shown between points A-B-C-D-E-F-G on the Committee plan provided with the agenda papers), on the Definitive Map and Statement, in accordance with File No. 804-586.

The Committee noted that the whole of the application route was currently recorded as a public footpath, and was accessible as such. The route also provided vehicular access to properties from the A49 (Preston Road) between points A and D, and also from Church Lane to properties between points G to F. The middle section of the route, between point D and point F, did not appear to be used by vehicles, and although overgrowth now restricted the available width, it appeared to have been wider in the past and may have been surfaced with stone and/or cobbles. The route would be accessible on horseback or on a bicycle – although the gap adjacent to the gate at point D was quite narrow – but there was no physical evidence of recent use by either.

Whilst the route had physically existed on the ground as a through route since at least the mid-1800s, and appeared to be capable and wide enough to be used by horses (and bicycles), there appeared to be no map and documentary evidence to conclude that the route was considered to be anything other than a private access road carrying public footpath rights.

A site inspection had been carried out on 7th June 2017.

Taking all the evidence into account, it was suggested that the evidence was insufficient to satisfy the criteria of S31, nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter.

Resolved:

That the application to upgrade parts of Footpaths Charnock Richard 14 and 15 to bridleway, on the Definitive Map and Statement of Public Rights of Way for Lancashire, in accordance with File No. 804-586, be not accepted.

**7. Wildlife and Countryside Act 1981
Claimed public footpath around Glasson Canal Basin, Thurnham,
Lancaster
File Ref. Nos. 804/519 and 804/555**

A report was presented on an application for a footpath around Glasson Canal Basin, Thurnham, Lancaster City, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File Nos. 804/519 and 804/555.

The Committee noted that three separate applications comprising a route very similar to that now claimed, had been considered by Committee in 2001, and a copy of this report had been attached to the agenda papers. The Committee had decided that there was insufficient evidence to make a Definitive Map Modification Order to record a route around Glasson Dock Canal Basin as a public footpath. The decision had been appealed by the applicant and subsequently dismissed by the Government Office for the North West stating that, on the balance of probability, there had been insufficient evidence to support the claim.

A further application had been received in 2011 for the addition of a public footpath around part of Glasson Dock canal basin, using a different route to the 1999 application between points A-B and C-E, but followed the exact same route between points B-C-D and points E-F.

After an initial discussion with the applicant about the termination of the application route at point F, it was agreed that the application would not be researched by the County Council until the submission of a second application in 2014, which sought to add a public footpath around the remainder of the canal basin. The additional footpath claimed was identical to the route claimed in 1999, with the exception of the section between points F-G.

It was reported that, whilst both the 1999 and more recent applications consider, to a large extent the same route, there were a few small differences. In addition, the current applicant had submitted evidence not previously considered as part of the previous applications.

The Committee noted that a site inspection had been carried out on 2 May 2017 and that the applicant had submitted a lot of user evidence information in support of the application. The Committee noted that there appeared to be no map and documentary evidence which proved a clear and consistent view that the route around Glasson basin had been created or formally dedicated as a public footpath. Taking all of the evidence into account, the Committee were advised that the dedication of the claimed route as a public footpath should not be accepted.

Resolved: That the application for a footpath around Glasson Canal Basin, Thurnham, in accordance with File Nos. 804-519 and 804-555, be not accepted.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of and Upgrade to Bridleway from Blackwood Road and
Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough**

A report was presented on an application for the addition of a bridleway and upgrade to bridleway of Footpaths Bacup 651 and 527 (part) from Blackwood Road and Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-520.

The Committee noted that substantial user evidence had been provided by the applicant and that some changes had been made to the site since the application had been submitted. The route in question was a very long route with lots of different access points.

A site inspection had been carried out in February 2017. The Committee noted that the application route consisted of a network of paths exiting onto public vehicular highways at 5 separate points, with parts of the route following alongside the River Irwell. The route was signed and promoted as part of Stacksteads Riverside Park and part was also recognised as the Irwell Sculpture trail.

It was reported that part of the route was recorded as a public footpath (between points B-C and points N-O-J-K-L-M, as shown on the Committee plan attached to the agenda papers). The remainder of the route had no publicly recorded status. Part of the route (between points A-B-C-H-I-J-K-L-M) had been identified as part of the East Lancashire Cycleway but was not currently recorded as a cycleway or bridleway.

Resolved:

- (i) That the application for the addition of and upgrade to bridleway, in accordance with File No. 804-565, be accepted in part.
- (ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and upgrade to bridleway Footpaths Bacup 651 and 527 (part) on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-B-C-D-E-G, C-H-I-J-K-L-M and J-ON.
- (iii) That, being satisfied that the test for confirmation can be met the said Order(s) be promoted to confirmation if necessary by submission to the Secretary of State.
- (iv) That the application for sections D-H and E-F be not accepted.

**9. Highways Act 1980 Section 119.
Proposed diversion of part of Lydiate Footpath 4, West Lancashire
Borough.
File Ref: 211-681**

A report was presented on the proposed diversion of part of Lydiate Footpath 4, West Lancashire Borough.

An application had been received from the owners of the land to the east of Green's Lane near to the Leeds and Liverpool Canal Rimmer's Bridge, Lydiate, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Lydiate Footpath 4.

The Committee noted that the path or way would not be substantially less convenient to the public in consequence of the diversion, as the alternative route was of similar length and gradient to the existing footpath. It was suggested that the alternative route would be more convenient, as it would provide a field edge path, rather than the current situation where the footpath crossed the worked, arable land.

The Committee noted that consultation with statutory undertakers had been carried out and that no adverse comments or objections to the proposal had been received.

The proposed diversion was considered to be expedient in the interests of the landowners, assisting with farming operations, enabling the owners to retain the current layout of the fields and to efficiently manage the land. It was suggested that the diversion would be beneficial to the needs of the agriculture as the proposed alternative route would be a field edge footpath, rather than a cross field path, and would enable the applicants to manager their land more efficiently.

Resolved:

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Lydiate Footpath 4, from the route shown by a bold continuous line and marked AB-C-D-E-F, to the route shown by a bold broken line and marked A-C-G on the attached plan.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.

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

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 17th January 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected:

All

Guidance for the members of the Regulatory Committee

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

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

Executive Summary

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

Recommendation

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

Background and Advice

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

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

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

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

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

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

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

Definitions

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

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

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

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

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

Duty of the Surveying Authority

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

Orders following “evidential events”

The prescribed events include –

Sub Section (3)

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

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

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

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

Orders following "legal events"

Other events include

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

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

Government Policy - DEFRA Circular 1/09

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

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

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

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

These are that:

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

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

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

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

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

Definitive Maps

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

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

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

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

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

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

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

Test to be applied when making an Order

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

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

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

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

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

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

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

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

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

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

Recording a “new” route

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

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

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

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

Dedication able to be inferred at Common law

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

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

There is no need to know who a landowner was.

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

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

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

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

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

Dedication deemed to have taken place (Statutory test)

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

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

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

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

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

Guidance on the various elements of the Statutory criteria;-

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

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

Documentary evidence

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

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

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

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

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

Recording vehicular rights

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

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

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

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

Downgrading a route or taking a route off the Definitive Map

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

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

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

Taking one route off and replacing it with an alternative

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

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

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

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

Confirming an Order

An Order is not effective until confirmed.

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

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

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

July 2009

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

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

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

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

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

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

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

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

Diversion Order s119

TO MAKE AN ORDER

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

OR

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

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

OR

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

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

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

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

OR

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

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

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

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

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

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

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

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

Diversion Orders under s119A

TO MAKE AN ORDER

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

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

OR

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

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

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

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

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

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

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

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

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

GUIDANCE

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

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

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

Diversion Orders under s119ZA

Diversion Orders under s119B

Diversion Orders under s119C

Diversion Orders under s119D

Guidance under these specific sections will be made available when required

Extinguishment Order under s118

TO MAKE AN ORDER

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

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

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

To be satisfied that it is expedient to do so.

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

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

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

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

GUIDANCE

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

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

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

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

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

Extinguishment Orders under s118A

TO MAKE AN ORDER

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

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

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

GUIDANCE

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

Extinguishment Orders under s118B

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

TO MAKE THE FIRST TYPE OF S118B ORDER

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

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

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

TO MAKE THE SECOND TYPE OF S118B ORDER

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

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

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

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

That it is expedient having regard to all circumstances

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

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

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

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

GUIDANCE

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

Extinguishment Orders under s118ZA

Guidance under this section will be made available when required

Extinguishment Orders under s118C

Guidance under this section will be made available when required

Creation Order under s26

TO MAKE AN ORDER

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

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

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

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

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

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

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

The same test as above.

GUIDANCE

Again there is convenience to consider.

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

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

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

Regulatory Committee
Meeting to be held on the 17th January 2018

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

Procedural step

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

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

Recovery of Costs from an Applicant

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

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

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

(1) Where—

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

(2) Those charges are—

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

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

Amount of charge

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

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

Refund of charges

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

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

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

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

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

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

Careful consideration of stance

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

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

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

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

Regulatory Committee

Meeting to be held on 17 January 2018

Electoral Division affected: Fylde West
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**Highways Act 1980 – Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Staining Footpath 6, Fylde Borough.**
(Annexes 'B' and 'C' refer)

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Executive Summary

The proposed diversion of part of Staining Footpath 6, Fylde Borough.

Recommendation

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

Background

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

Preese Hall Level Crossing is a public footpath railway crossing, located south of Poulton-Le-Fylde near to Weeton Barracks, on the Preston to Blackpool railway. The approach to both sides of the crossing and the footpaths leading to it on either side are unlit. There are no telephones, or any other audible or visual warnings.

The operational railway in this area is affected by Network Rail's Northern Hub transport improvement programme which will help meet growing demand for rail travel across the north of England. This requires additional infrastructure to be installed on the railway line that may impact sight lines, and will lead to an increase in the number of trains and the speed at which they will be travelling.

There is currently a temporary closure order in place prohibiting use of the crossing whilst works are taking place. This closure has been extended by the Secretary of State until June 2018.

The level crossing is set in a rural area, forming a link in the network of country paths. There are a couple of small industrial units and Weeton Barracks located to the east of the railway. It is understood that the footpath and level crossing is well used by local residents and visitors. A 9 day level crossing census was undertaken in 2016. On the busiest day, there were 30 adult users using the crossing. On the least busy day there were 2 users.

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

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

Consultations

Fylde Borough Council, Staining Parish Council, the Peak and Northern Footpaths Society and the Fylde branch of the Ramblers Association have been consulted and, at the time of writing, their responses are awaited.

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

Advice

Points annotating the routes on the attached plan

(All lengths and compass points given are approximate).

Point	Grid Reference	Description
A	SD 3708 3631	Point immediately west of the kissing gate on the west side of the railway.
B	SD 3710 3631	Point immediately east of the kissing gate on the east side of the railway.
C	SD 3710 3629	90 degree bend where the top step meets the deck of

		the footbridge on west side of the railway.
D	SD 3711 3629	90 degree bend where the top step meets the deck of footbridge on east side of the railway.

Description of existing footpath to be diverted

The part of Staining Footpath 6 as described below and shown by a bold continuous line marked A-B on the attached plan. (Length and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 3708 3631)	B (SD 3710 3631)	Generally ESE	20	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 3708 3631)	C (SD 3710 3629)	Generally SSE	30	2	Compacted stone path on ground level, then 2 flights of 18 steps to access the western end of the deck of the footbridge.
C (SD 3710 3629)	D (SD 3711 3629)	ENE	15	2	Deck of footbridge.
D (SD 3711 3629)	B (SD 3710 3631)	NNW	20	2	Eastern end of the deck of the footbridge, then running down 2 flights of 18 steps then compacted stone surface at ground level.
Total distance of new footpath:			65		

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 8 metres from the ground.

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

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Staining Footpath 6 be amended to read as follows:

The 'Position' column to read: "Footpath from a point approximately 84 metres south of Unclassified County Road No. 3/157, Staining, (GR. 3684 3675), adjacent to the access into the farmyard of Todderstaffe Hall, through a large timber gate between stone gate posts. The track is soil and stone surfaced with many bricks placed in the surface for the first 60-70 metres from the gate.

The track continues as a well-used route approximately 6 metres between hedges to both sides. The route continues with railway fencing to the east and with a hedge on the south-westerly boundary side with an overall width of approximately 8 metres. There are some areas of hollows, although it is possible to walk around these. Approximately 500 metres south of the gate, the route joins the railway at SD 3708 3631. The footpath then runs 30 metres generally south south east, initially on a compacted stone path on ground level, then up 2 flights of 18 steps to access the deck of the railway footbridge at SD 3710 3629. The footpath then runs east north east for 15 metres on the deck of the footbridge to SD 3711 3629, then north north west for 20 metres down 2 flights of 18 steps, then on a compacted stone surface at ground level to SD 3710 3631.

The route continues as a well-worn track between boundary hedges approximately 7 metres wide downhill to the Main Dyke, which is crossed by a brick arch culvert approximately 4.5 metres wide. The route continues as before by a well-worn track, again with hollows.

Approximately 315 metres from the Main Dyke the route ends at the point where Public Footpath No. 6, Weeton-with-Preese, joins this route from the south, where is a timber field gate and a timber stile nearby giving access onto Public Footpath No. 6, (GR. 3754 3623). (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "1.00 km".

The 'Other Particulars' column be amended to read "There are no limitations between SD 3708 3631 and SD 3710 3631 and the width between those points is 2 metres."

Criteria satisfied to make and confirm the Order

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

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

As part of the electrification of the Preston to Blackpool line, supporting structures will need to be installed that may have an impact on sighting distances for users of the crossing. These structures, together with the increase in line speed and frequency of services, means some method of mitigation is required to reduce the risk to users of the level crossing.

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

As the crossing is unattended, there is the potential for misuse or irresponsible behaviour, such as not paying due care and attention, or crossing the railway with dogs off the lead.

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

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

The Preese Hall Footpath Crossing Risk Assessment carried out by Sotera Risk Solutions in 2016, reported that there have been three recorded incidents at this crossing since 2003. The details of each are as follows:

- In 2003 the driver of a train reported a near miss with a member of public. As the train approached, a person crossed the line in front of the train and the driver sounded the warning horn.
- In 2005 the driver of a train reported a near miss with a male and his dog at the crossing. The dog had run onto the track, the man followed and dragged the dog away from the railway line.
- In 2008 the driver of a train reported a near miss with two youths dressed all in black at the crossing.

At some level crossings, Miniature Stop Lights (MSL) are installed to provide a user with a visual warning of approaching trains. However, Network Rail does not support the installation of MSL's at certain locations as they only provide a limited mitigation of risk. This is because it is reliant on the public using them correctly and industry

evidence has shown that when groups of people are at level crossings, then a 'pack' mentality can arise and each individual may not pay attention to their own personal safety, instead just follow the pack.

The suitability of this measure was assessed and rejected for this location. Network Rail does not accept that it would afford an adequate level of protection, as they can be subject to deliberate misuse.

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

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

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

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

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



Figure 1: An example of a stepped structure



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

The Diversity Impact Assessment states that 'due to Preese Hall Level Crossing's very rural location, uneven approach to the crossing and the types of users it is not believed that a stepped only footbridge would adversely affect the crossing users. As well as this, a 1 in 20 ramp and step footbridge solution would require approximately 500m² of land per ramp, plus a further 150 m² for maintenance access.

A majority of the land crossed by the existing public footpath (the current level crossing) is not registered with the Land Registry and is not shown on the digitised record of Network Rail's land and property ownership. It is however part of the operational railway and it has not been possible to identify any other landowner for the unregistered section. It is therefore proposed that Notices will be displayed on site to notify any owner or occupiers when the Order is publicised.

A majority of the land crossed by the alternative route is in the ownership of the applicant, Network Rail. A small part of the existing and alternative route (approximately 4m² in total) is in the ownership of a neighbouring land owner and Network Rail are currently seeking their consent to the proposal.

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

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

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

The proposed diversion will not alter the points of termination of Staining Footpath 6.

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

The Committee is advised that so much of the Order as extinguishes part of Staining Footpath 6 is not to come into force until the County Council has certified the

satisfactory physical installation of the footbridge and the compacted stone approaches to each side of the bridge.

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

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

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

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

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

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

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

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

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

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

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

Risk Management

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

Alternative options to be considered

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

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

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

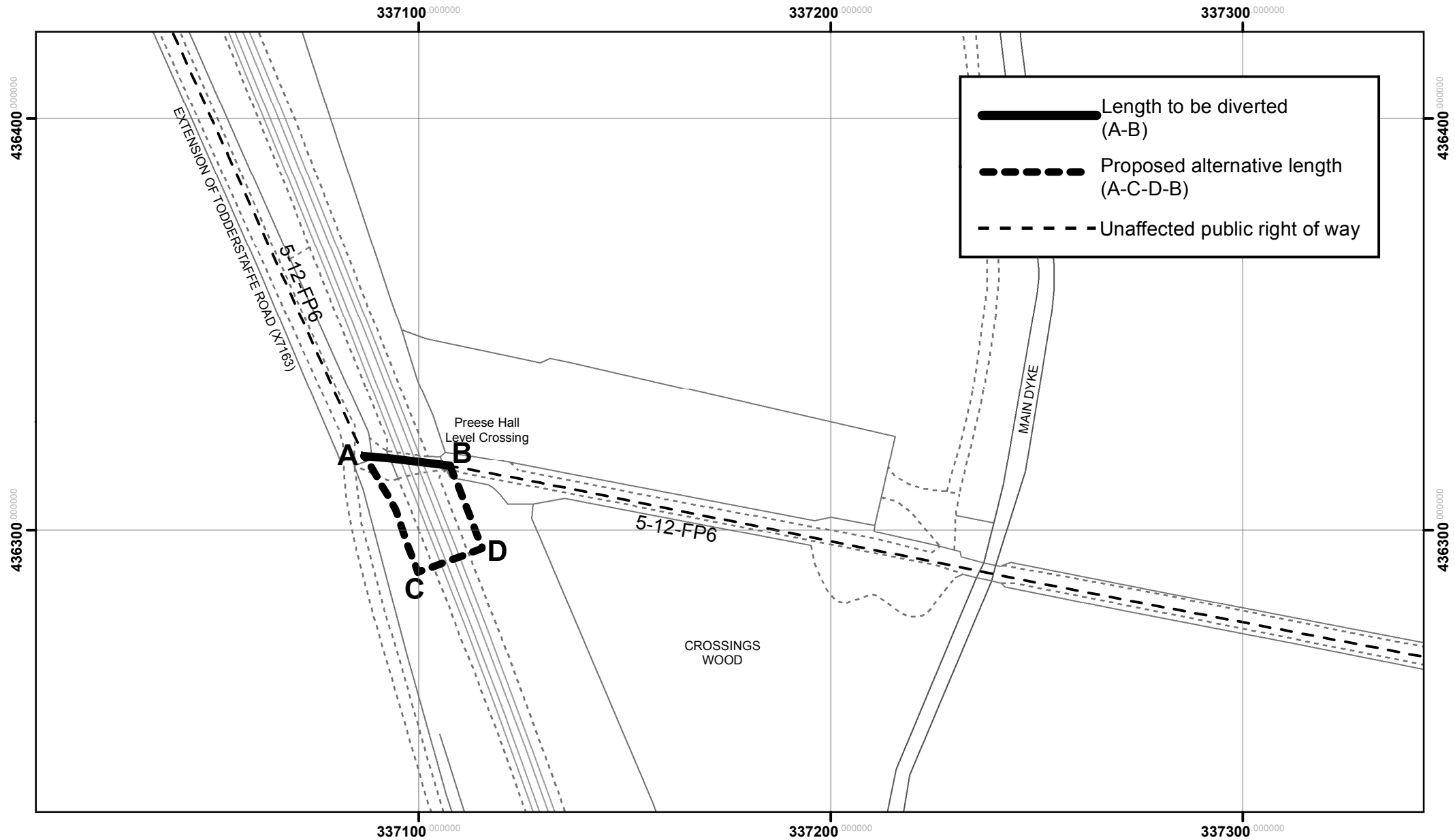
To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

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

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

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

Paper	Date	Contact/Tel
File Ref: PRW-05-12-06		Mrs R J Paulson, 07917 836628
File Ref:		
Reason for inclusion in Part II, if appropriate		
N/A		



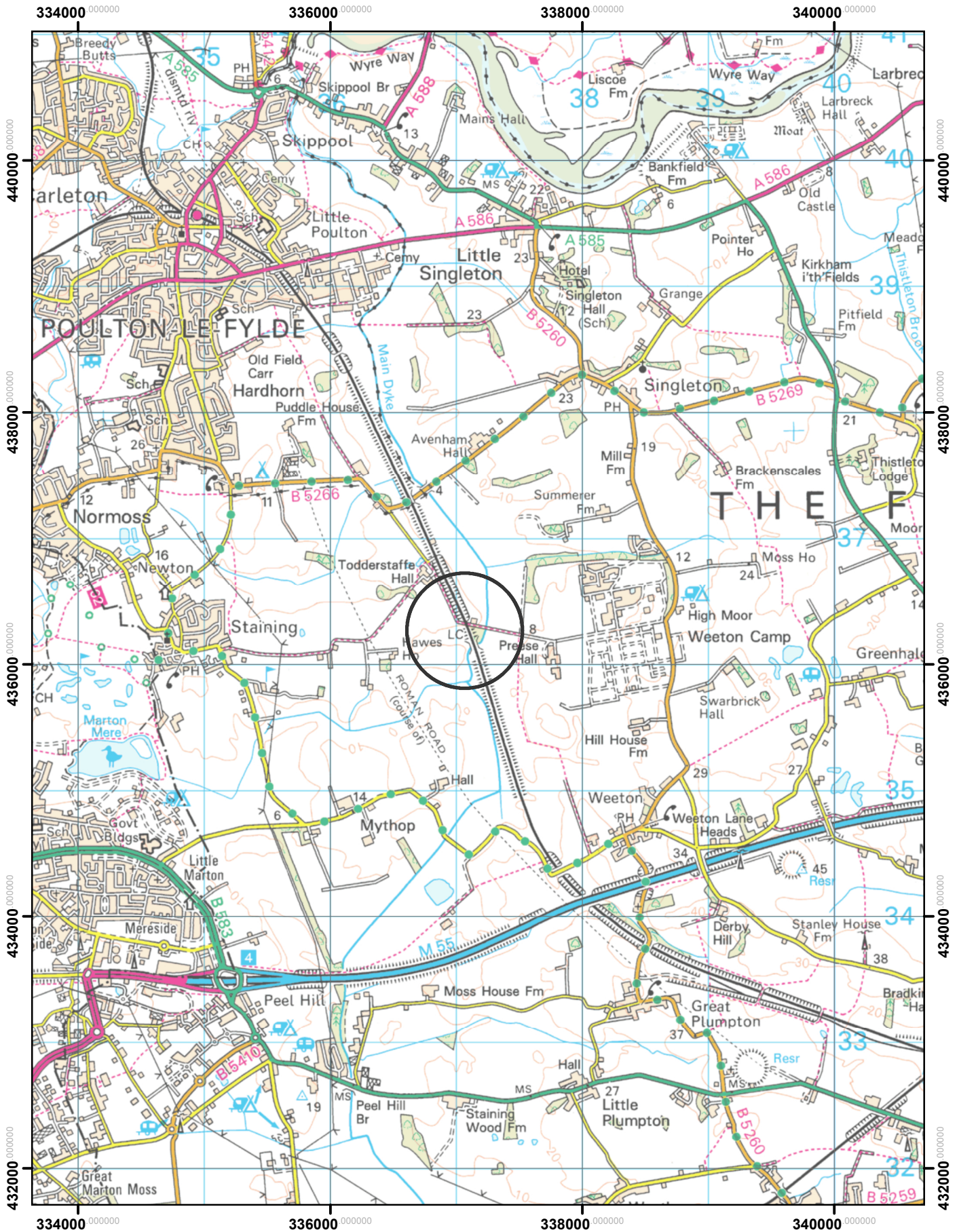
Andrew Mullaney
 Head of Planning
 and Environment

Highways Act 1980 Section 119A, Wildlife and Countryside Act 1981 Section 53A
 Diversion of part of Staining Footpath 6, Fylde Borough.

Plan No:
 211-687-v2



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Lancashire
County
Council

Andrew Mullaney
Head of Planning
and Environment

Location Plan.
Highways Act 1980 Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 - Section 53A(2)
Proposed diversion of part of Staining Footpath 6, Fylde Borough.



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Regulatory Committee

Meeting to be held on 17 January 2018

Electoral Division affected: Fylde West
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**Highways Act 1980 – Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 – Section 53A(2)
Proposed Diversion of Part of Westby-with-Plumpton Footpath 7, Fylde
Borough.**

(Annexes 'B' and 'C' refer)

Contact for further information:

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Executive Summary

The proposed diversion of part of Westby-with-Plumpton Footpath 7, Fylde Borough.

Recommendation

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980 to divert part of Westby-with-Plumpton Footpath 7, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-E-F-B.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

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

Kirkham Tip Level Crossing is a public footpath railway crossing on the Preston to Blackpool line, in a rural location to the north east of the village of Great Plumpton,

positioned between agricultural land to the north and railway land to the south, the footpath continues onto further agricultural land to the south. The railway runs in a cutting and the approach to both sides of the crossing requires steep embankments to be negotiated. The footpaths leading to the crossing on either side are unlit. There are no telephones or visual warnings.

The operational railway in this area is affected by Network Rail's Northern Hub transport improvement programme, which will help meet growing demand for rail travel across the north of England. This requires additional infrastructure to be installed on the railway line, that will impact sight lines, and will lead to an increase in the number of trains and the speed at which they will be travelling.

There is currently a temporary closure order in place, prohibiting use of the crossing whilst works are taking place. This closure has been extended by the Secretary of State until June 2018.

The level crossing is set in a rural area, forming a link in the network of country paths. The site, known as Kirkham Tip is used by Network Rail and their contractors for storage, however there are no industrial units or residential properties in the immediate vicinity of the crossing. It is understood that the footpath and level crossing is regularly used by local residents and visitors to the area. A 9 day level crossing census was undertaken in 2013. On the busiest day, there were 5 pedestrians using the crossing. The census recorded 3 unaccompanied children using the crossing over the 9 day period.

Network Rail has explored all alternative options for a permanent means by which the increased risk to the footpath users can be reduced. Their preferred option is to provide a new stepped footbridge to ensure that the public can cross the railway safely. They have therefore, applied for a Diversion Order to change the legal alignment of the footpath, to enable the level crossing to be closed when the footbridge is in place.

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

Consultations

Fylde Borough Council, Staining Parish Council, the Peak and Northern Footpaths Society and the Fylde branch of the Ramblers Association have been consulted and at the time of writing, their responses are awaited.

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

Advice

Points annotating the routes on the attached plan

(All lengths and compass points given are approximate).

Point	Grid Reference	Description
A	SD 3899 3352	Point immediately north of private access track that runs through the Kirkham Tip site.
B	SD 3897 3358	Point where Westby-with-Plumpton's Footpath 7 crosses the top of the north side of the railway embankment.
C	SD 3896 3355	Northern end of the compacted stone surfaced path, at the foot of the first flight of footbridge steps, on south side of the railway.
D	SD 3897 3356	90 degree bend at the top of the first flight of 19 footbridge, on south side of the railway.
E	SD 3896 3356	90 degree bend at the top of the second flight of 19 footbridge steps, on south side of the railway.
F	SD 3897 3358	90 degree bend where the deck of the footbridge meets the top of the embankment on north side of the railway.

Description of existing footpath to be diverted

The part of Westby-with-Plumpton's Footpath 7 as described below and shown by a bold continuous line marked A-B on the attached plan. (Length and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 3899 3352)	B (SD 3897 3358)	Generally NNW	70	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 3899 3352)	C (SD 3896 3355)	NW	40	2	Compacted stone path on ground level.
C (SD 3896 3355)	D (SD 3897 3356)	NNE	10	2	Flight of 19 steps.
D (SD 3897 3356)	E (SD 3896 3356)	WNW	10	2	Flight of 19 steps.
E (SD 3896 3356)	F (SD 3897 3358)	NNE	25	2	Deck of footbridge
F (SD 3897 3358)	B (SD 3897 3358)	ESE	3	2	Compacted stone path on ground level.
Total distance of new footpath:			88		

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 7 metres from the ground.

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

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

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that the Order should also specify that the Definitive Statement for Westby-with-Plumpton's Footpath 7 be amended to read as follows:

The 'Position' column to read: "From Great Plumpton to SD 3899 3352. The footpath then runs north west for 40 metres on a compacted stone path on ground level to SD 3896 3355, then north north east for 10 metres up a flight of 19 steps to SD 3897 3356, then west north west for 10 metres up a further flight of 19 steps to SD 3896 3356, then north north east for 25 meters on the deck of the footbridge to SD 3897 3358, then east south east for 3 metres on a compacted stone path on ground level to SD 3897 3358 then to Westby." (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "0.68 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 3899 3352 and SD 3897 3358 and the width between those points is 2 metres."

Criteria satisfied to make and confirm the Order

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

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

As part of the electrification of the Preston to Blackpool line, supporting structures will need to be installed that will have an impact on sighting distances for users of the crossing. These structures, together with the increase in line speed and frequency of services, means that some method of mitigation is required to reduce the risk to users of the level crossing.

Currently, there are warning and advisory signs either side of the crossing, but no telephones or lighting. The train driver sounds the horn as the train approaches the level crossing, but there are no other audible or visual warnings. A further measure to mitigate the risks at this level crossing is that the surface of the crossings consists of proprietary crossing boards with an anti-slip surface.

As the crossing is unattended, there is the potential for misuse or irresponsible behaviour, such as not paying due care and attention, or crossing the railway with dogs off the lead.

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

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

The Kirkham Tip Footpath Crossing Risk Assessment carried out by Sotera Risk Solutions in 2016, reported that there have been no recorded incidents at this crossing.

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

The suitability of this measure was assessed and rejected for this location. Network Rail does not accept that it would afford an adequate level of protection, as they can be subject to deliberate misuse.

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

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

Wherever possible, Network Rail provides a ramped access in addition to steps but in this case, ramps are not considered necessary, due to the current need for steps to negotiate the embankments due to the gradient of the land and given consideration to the rural location and lack of amenities in the surrounding area. Furthermore, ramps are considered not to be realistically feasible in this particular location.

None of the land crossed by the existing public footpath or the proposed alternative route is registered with the Land Registry. Both routes are, however, either part of the operational railway, the embankment, or the land occupied by Network Rail and the land is included in the digitised record of Network Rail's land and property ownership. No other landowners or occupiers crossed by the existing or the proposed alternative route have been identified. As the land is unregistered, if Network Rail are unable to provide proof of ownership, Notices will be displayed on site to notify any owner or occupiers when the Order is publicised.

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

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

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

The proposed diversion will not alter the points of termination of Westby-with-Plumpton Footpath 7.

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

The Committee is advised that so much of the Order as extinguishes part of Westby-with-Plumpton's Footpath 7 is not to come into force until the County Council has certified the satisfactory physical installation of the footbridge and the compacted stone approaches to each side of the bridge.

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

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

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

The construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. The new route is approximately marginally longer (13 metres) than the existing route, but it requires an equivalent number of steps to be negotiated as the existing route. Therefore, given the substantial improvement in the safety of the crossing, it is suggested that this is reasonable. In addition, users of the railway crossing that are in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

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

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

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

It is also advised that the effect of the proposed Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In particular policy RMVI2-2 whereby the Local Authority will aspire to meeting the British

Standard for gaps, gates and stiles. In this instance BS5709:2006 has been applied and accordingly, as it is proposed that there will not be any gates or barriers on the stepped access, the proposed alternative route is fully compliant with the British Standard.

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

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

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

Risk Management

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

Alternative options to be considered

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

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

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

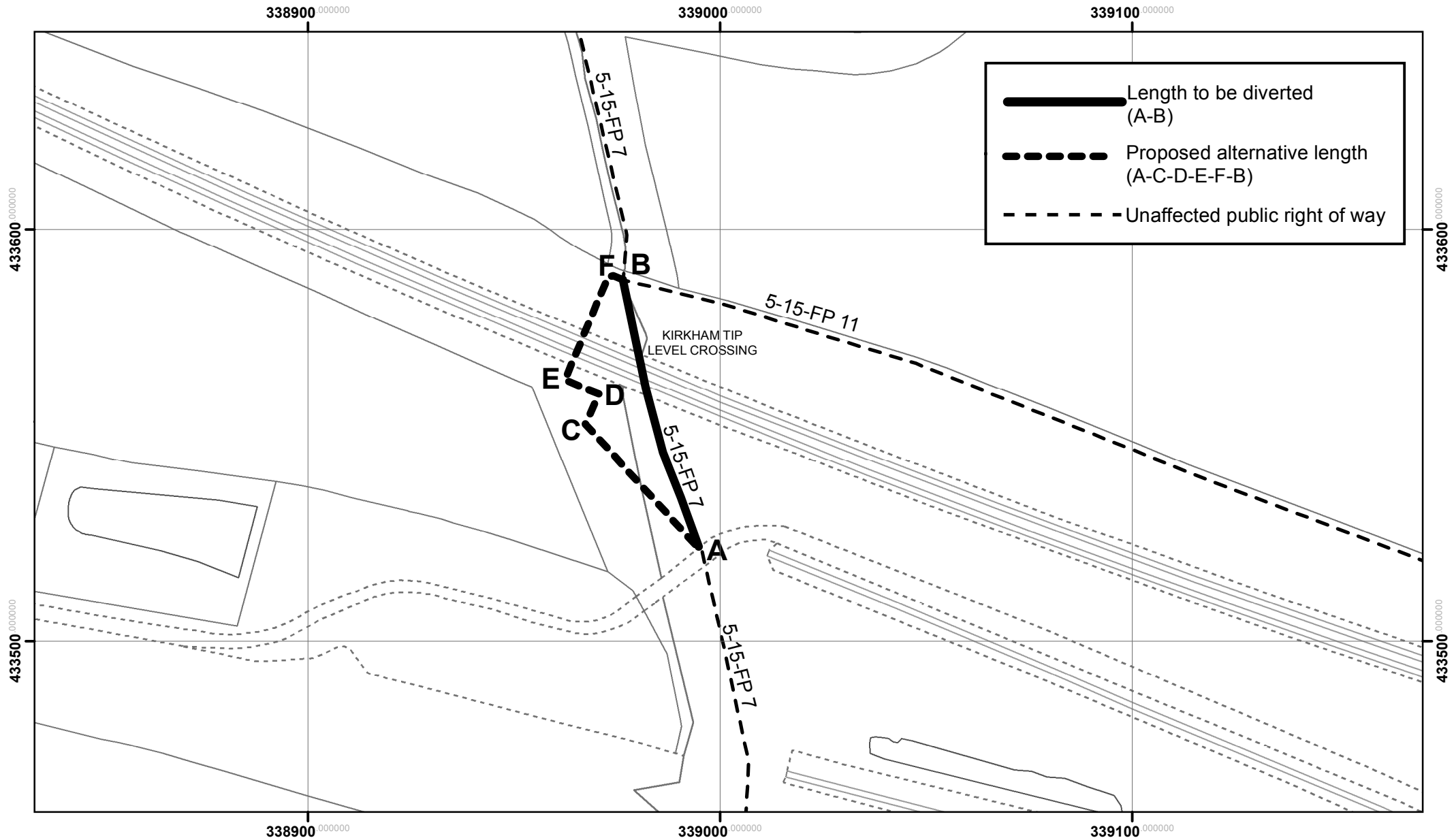
To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

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

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

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

Paper	Date	Contact/Tel
File Ref: PRW-05-15-07		Mrs R J Paulson, 07917 836628
File Ref:		
Reason for inclusion in Part II, if appropriate		
N/A		



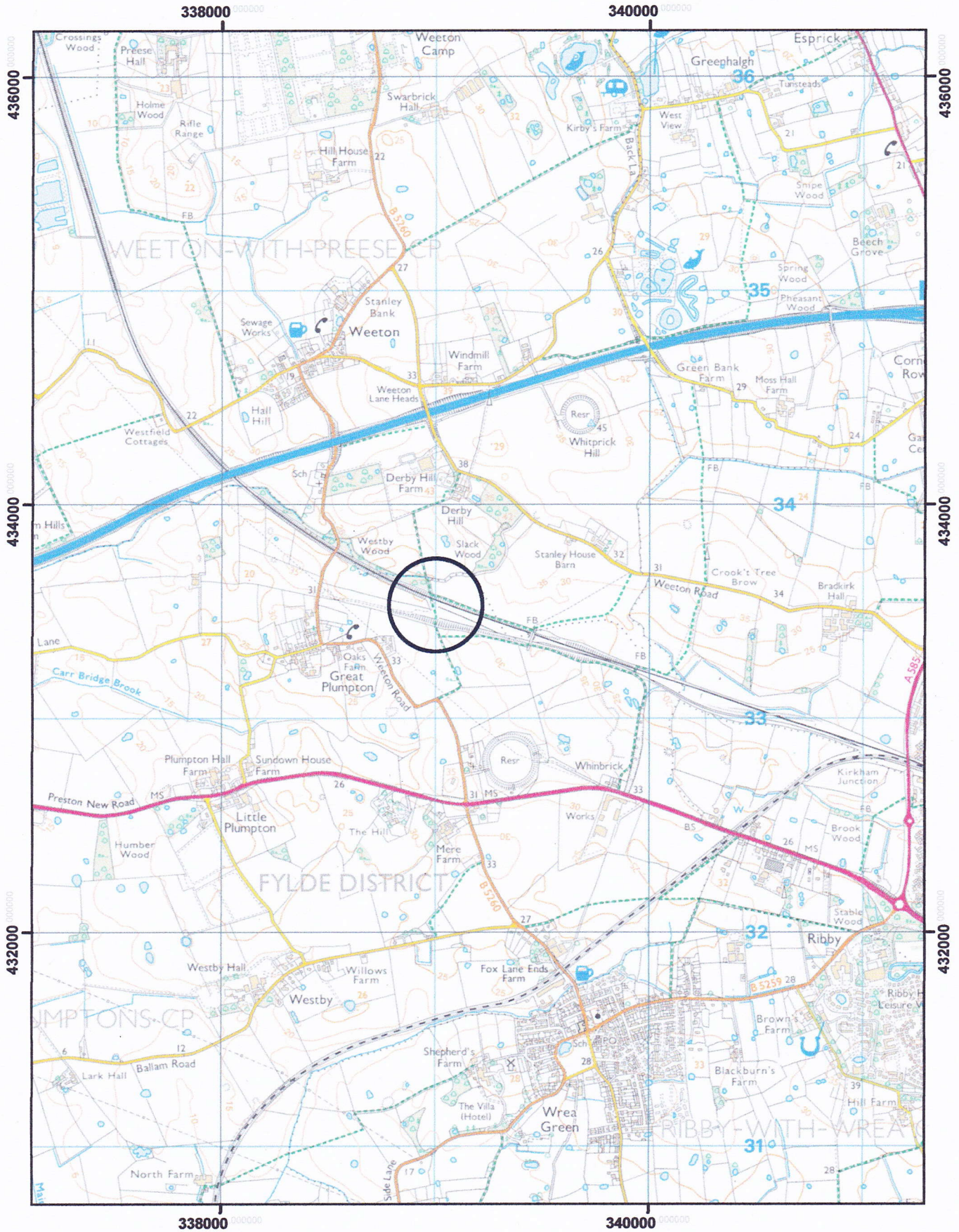
Andrew Mullaney
Head of Planning
and Environment

Highways Act 1980 Section 119A, Wildlife and Countryside Act 1981 Section 53A.
Diversion of part of Westby-with-Plumpton's Footpath 7, Fylde Borough.

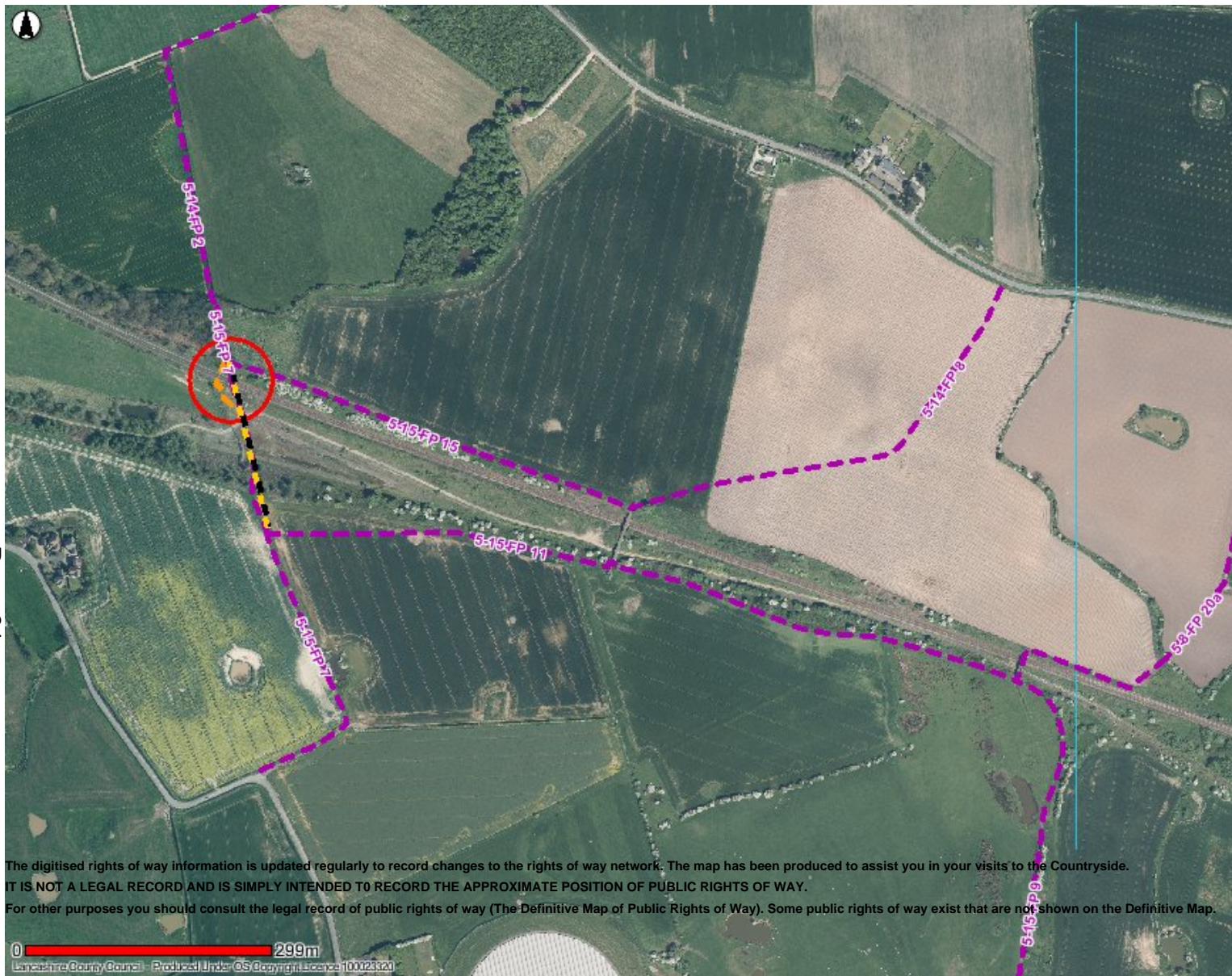
Plan No:
211-691-v1



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



<p>Lancashire County Council</p>	<p>Andrew Mullaney Head of Planning and Environment</p>	<p>Location Plan. Highways Act 1980 Section 119A Diversion of part of Westby-with-Plumpton's Footpath 7, Fylde Borough.</p>	
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- Social Services Establishments
 - Closed Application for Definitive Map Modification Order
 - Public Rights Of Way**
 - Footpath
 - Bridleway
 - Byway Open To All Traffic
 - Application for Public Path Order
 - Restricted Byway
 - Current Application for Definitive Map Modification Order
 - Temporary Closures
 - Other Public Rights Of Way
 - Districts**
 - Other District/Unitary Authority
 - Lancashire Districts
- (cont)

The digitised rights of way information is updated regularly to record changes to the rights of way network. The map has been produced to assist you in your visits to the Countryside. IT IS NOT A LEGAL RECORD AND IS SIMPLY INTENDED TO RECORD THE APPROXIMATE POSITION OF PUBLIC RIGHTS OF WAY. For other purposes you should consult the legal record of public rights of way (The Definitive Map of Public Rights of Way). Some public rights of way exist that are not shown on the Definitive Map.

0 299m
Lancashire County Council - Produced Under OS Geographical Licence 100023320

Aerial photo showing the location of Kirkham Tip Level Crossing circled red and temporary closure black/yellow

Photographs to accompany consultation for proposed Rail Crossing Diversion Order
Part of Westby-with-Plumpton Footpath 7, Fylde Borough.



1) From top of embankment on south side of railway site. Red arrow marks location of Kirkham Tip Level Crossing.



2) From point A, looking north towards level crossing.



3) Level Crossing, looking north towards point B.



4) Looking east from south side of railway.



5) From point B at north side of railway, looking west.



6) From point B at north side of railway, looking east.

Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected:
Pendle East

Wildlife and Countryside Act 1981 Definitive Map Modification Order Application To Record a Bridleway from Burnley Road to Antley Gate, Trawden, Pendle Borough.

File No. 804-581

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Legal and Democratic Services

claire.blundell@lancashire.gov.uk

Hannah Baron, 01772 533478, Environment and Planning

hannah.baron@lancashire.gov.uk

Executive Summary

Application for bridleway to be recorded from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581.

Recommendation

That the application to record a bridleway from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581, be not accepted.

Background

An application was received in October 1984 from the Trail Riders Fellowship to upgrade the footpaths from Burnley Road to Antley Gate, Trawden, to byway open to all traffic. It was considered by the Public Rights of Way Sub-Committee on 9th July 1986 and was rejected on the basis of insufficient evidence. A copy of the report submitted to Committee and minutes resolved are appended to this report as Appendix A.

In October 2016, a further application, under Schedule 14 of the Wildlife and Countryside Act 1981, and from different applicants, was received to upgrade most of the same route but this time to bridleway, with an addition of bridleway close to a short section of the route, as shown between points A-O on the Committee Plan. The application included documentary and user evidence which was not considered when the first application was made.

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

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

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

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

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

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

Consultations

Pendle Borough Council

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

Trawden Parish Council

Trawden Parish Council have been consulted and no response has been received, it is therefore assumed that they have no comments to make. Parish minutes posted on the Trawden Parish Council website show that the matter was discussed and the proposal did not adversely affect the parish, but no official response has been received. The applicant advised that she spoke at a second parish meeting and has submitted information relating to this.

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	9068 3789	Open junction with Burnley Road
B	9069 3775	Corner in track and junction with 2 nd track to Little Moss Farm
C	9115 3742	Higher Draught Gates – track significantly less worn
D	9127 3736	Field Gate
E	9139 3719	Field Gate
F	9143 3717	Junction of Footpaths 95 & 97 Trawden adjacent to Oakenbank Cottages
G	9143 3711	Pedestrian Gate currently obstructed by large boulder before Alderhurst Head Farm
H	9152 3700	Pedestrian Gate and fencing after Alderhurst Head Farm
I	9167 3674	Stile and blocked gap
J	9183 3662	Padlocked Field Gate with bridleway latch and Stile
K	9184 3656	Ruins of Antley Gate
L	9184 3654	Bend in track adjacent to ruins
M	9186 3653	Stream crossing
N	9190 3651	Field Gate and Kissing Gate
O	9190 3650	Junction with the Pennine Bridleway at Antley Gate – Bridleway 253 Trawden

Description of Route

A site inspection was carried out on 24th November 2016.

The route from Burnley Road to Antley Gate is currently recorded on the Definitive Map and Statement as public footpath except for a short section which is used on the ground but is currently unrecorded, straying away from the Definitive Map line. It is available for public use on foot for its entire length, and was of a suitable standard and condition for use on foot for its majority, with an exception of an extremely boggy section south of Alderhurst Head Farm. It was not available for use on horseback or bicycle on the day of inspection, due to locked/tied gates, stiles and an obstructing boulder.

The track from point A at Burnley Road provides the only vehicular access to several adjacent residential properties, outbuildings and farm land. This section of track is unrecorded on the land registry and therefore the landowner is unknown. The remainder of the route has 6 registered landowners who have been consulted and comments received have been included in the report below.

Upgrade to Bridleway

The application route begins at the junction of Burnley Road and Sheffield Lane, point A, where a track leaves the main highway. A public footpath signpost and a dog litter bin are located on the left side of the track. The route, currently recorded as Footpath 61 (*all footpath references in this report are given in the form Footpath X as a shorthand for Footpath Trawden X, the whole of the application route being in the Parish of Trawden*), heads south up a gradual incline along a narrow cutting, approximately 5m below field level enclosed by steep banks, for approximately 115 metres, gradually climbing to field level passing a junction with the track to Little Moss Farm (along which runs Footpath 62) and continuing as Footpath 74 for a further 23 metres to reach the 2nd track, point B, which is at the south east corner of a triangular island formed by the arms of the Little Moss Farm access track. The track along this stretch is heavily potholed but has a good width as a public path. There were no apparent measures to prevent horse riders accessing the track. The width of the track at this section was approximately 3 metres.

From point B the application route turns to continue as Footpath 74 in a south easterly direction for approximately 190 metres, passing a large outbuilding to the left of the track and continuing to meet Footpath 70 at a junction with a track which leads to Moss Barn Farm. The bounded width of the track at this section was approximately 3 metres, which was heavily potholed with a constructed drainage channel in the centre of the track.

From the junction with Footpath 70, the application route continues as Footpath 73 past a junction with Footpath 75, where it becomes Footpath 72, along the track in a south easterly direction passing Footpath 69 to the south and after for approximately 155 metres, to the south east end of Pasture Springs Farm. The width of the track was approximately 3 metres with the above mentioned surface and channel.

From Pasture Springs Farm the route continues in a south easterly direction as Footpath 71 for approximately 470 metres, passing further outbuildings and the property of Higher Draught Gates where the surface becomes a grassed vehicular track at point C. The route then continues to a field gate at point D. The width

(bounded by walls and fences and unbounded after the gate) is approximately 3-4 metres.

The route continues to descend down the track in a south easterly direction to a sharp corner where Footpath 94 joins from the north and the route continues in a south-south easterly direction as Footpath 95 for approximately 120 metres, where it meets a field gate at point E. The width along the track is approximately 3 metres. The route continues across an open tarmac area bending north east to a junction with Footpath 97 (point F) then south-south west for approximately 40 metres to pass in front of Oakenbank Cottages.

From Oakenbank the route heads in a south easterly direction up a steep gradient for approximately 25 metres to a pedestrian gate at point G. The gate is currently inaccessible for equestrians due to a large boulder restricting access to approximately 30cm when the gate is open. The route then continues for a further 145 metres, passing Alderhurst Head Farm and Footpath 100a to a small pedestrian gate and fencing at point H, immediately beyond which is the junction with Footpath 98.

The application route then continues as Footpath 99 for approximately 300 metres over a large open field, following the western side of a fence line and the remains of a sunken lane which is now severely boggy in parts. A trodden route was extremely difficult to follow due to the marsh and bog. It continues until it reaches a stile and blocked off gap at point I.

Addition of Bridleway – Currently unrecorded

This marks the point at which the application route differs from the recorded definitive line of Footpath 99 Trawden. The application route continues from point I at a stile with a large gap (now inaccessible due to a tied gate) and follows a trodden line which weaves over the uneven grassland for approximately 290 metres, to a locked field gate and stile at point J. The route continues south for approximately 75 metres passing the ruins of Antley Gate to re-join Footpath 99 (point L).

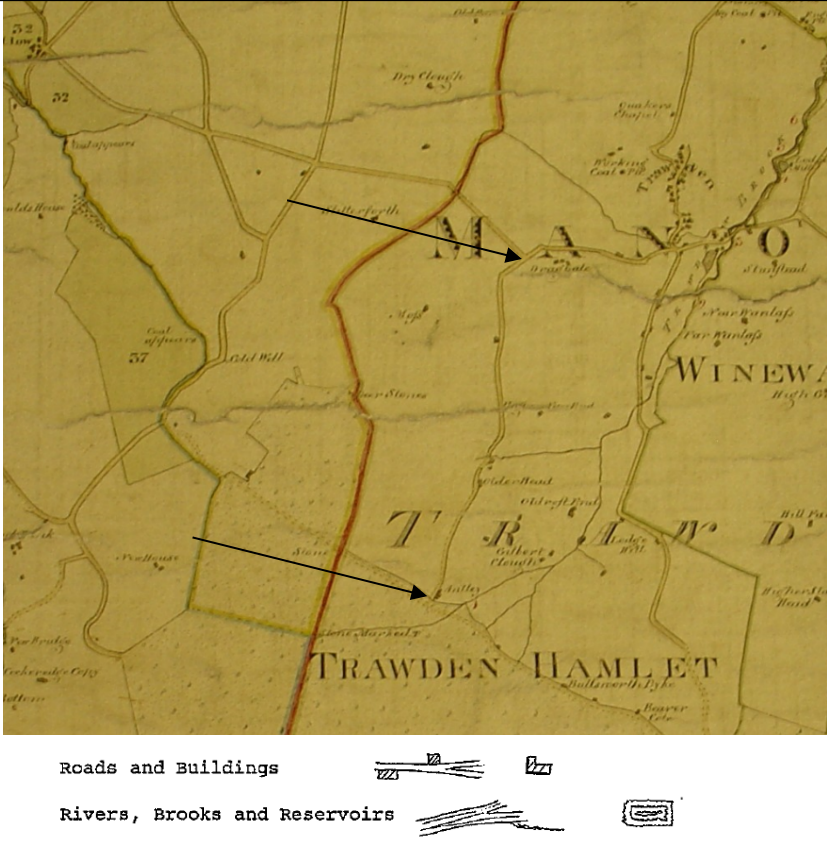
Continuation of Upgrade to Bridleway


The application route then continues as Footpath 99 along a track, passing over a spring at point M, through a kissing gate and locked field gate at point N, and a further 6 metres to join the Pennine Bridleway at point O.

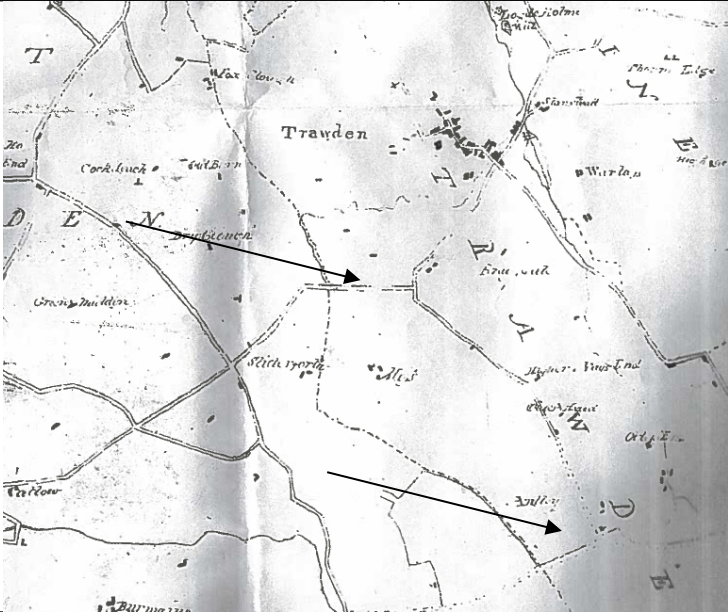
The total length of the application route is approximately 3860 metres.

On the date of inspection the route was waymarked for its entirety as a public footpath, with signposts and waymarkers consistently placed along the full length. Between Burnley Road and Higher Draught Gates (points A to C) there were several 'no cyclists' signs attached to wooden posts.

There were no deterrent notices referring to equestrian use on the full length, although from the site inspection it was apparent that equestrian use was currently denied. A large boulder was situated immediately before a pedestrian gate close to

Officer's Comments		although it may have existed as a smaller route which, due to the limitations of scale and purpose for which the map was drawn, meant that it would not have been shown.
Honor of Clitheroe	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
 <p>The image shows a historical map of the Trawden Hamlet area. A yellow line traces a route from Burnley Road (point A) through Alder Head (Alderhurst Head Farm) to Antley (Antley Gate). The map includes a legend for 'Roads and Buildings' and 'Rivers, Brooks and Reservoirs'.</p>		
Observations		The application route can be seen on the Honor of Clitheroe map from point A at Burnley Road, passing Alder Head (now known as Alderhurst Head Farm) and continuing to conclude at Antley (Antley Gate). The route shown corresponds with a footnote which shows the key for roads and buildings. The track appears to be coloured yellow.
Investigating Officer's Comments		This map shows that a significant route existed and has been drawn in the same way as many other routes which are currently classed as public bridleways or carriageways. It is shown as coloured yellow, like the other roads, but there is no indication of what status these roads are.
Greenwood's Map of	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.

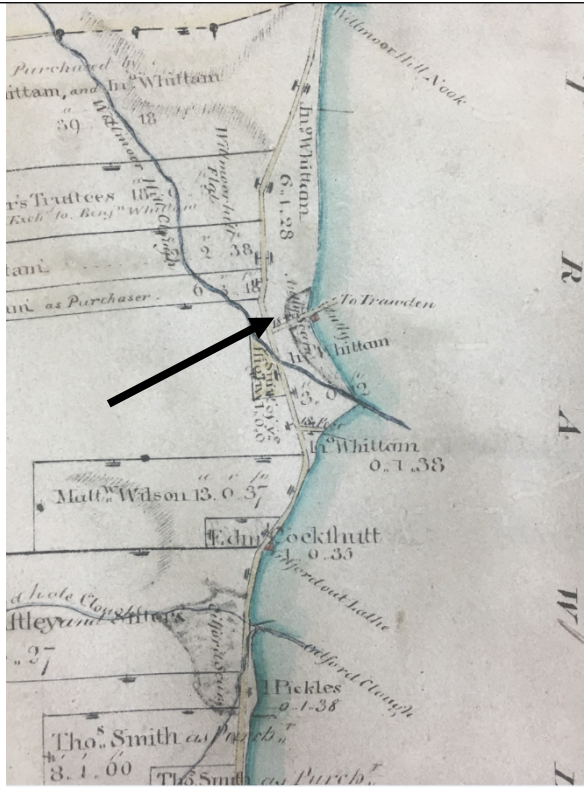
Lancashire		
		
Observations		<p>The application route is shown to exist as a through route on Greenwood's Map. The application route is shown heading from Burnley Road at point A, south passing Alder Head (now Alderhurst Head Farm) and ending at Antley. It joins up to a significant route which was known as Will Moor Hill Road, and is now recorded as the Pennine Bridleway.</p>
Investigating Officer's Comments		<p>The route appears to have existed as a major route at this time from Burnley Road (point A) to Antley Gate (point O). It is consistent with a way which would have been used as a public road or bridleway at this time, and whilst it is probable that equestrians would have been able to use the route its status cannot be inferred.</p>
Chapelry of Colne Map	1818	The Chapelry of Colne Map, submitted by the applicant.

		
<p>Observations</p>		<p>The Chapelry of Colne Map was submitted in the applicant's documentary bundle. It was unavailable to view at Lancashire Archives and therefore officers have only seen the copy submitted. The application route can be seen from Burnley Road at point A as a double solid line to Higher Naze End and just after, which takes it to Alderhurst Head Farm. The route then continues as a double pecked line passing Antley and joining up to Will Moor Hill Road which is now known as the Pennine Bridleway.</p>
<p>Investigating Officer's Comments</p>		<p>There is no available key to the road notation and therefore we are unable to infer road status or that a difference in solid (enclosed) or pecked (unenclosed) lines suggests that there was a difference in significance. The solid lines correspond to the section of the route being enclosed, most likely done so by landowners rather than the Local Authority, as a way of accessing their properties. The pecked and unenclosed section could have been less used as access to fewer properties but still usable as a through route.</p> <p>Like the previous early commercial maps, routes at this time were only likely to be recorded on available maps if they were able to be used. Public footpaths did not tend to be shown. All of the other roads shown on this map are now recorded as public carriageways or bridleways.</p>
<p>Inclosure Act Award and Maps</p>	<p>1821</p>	<p>Inclosure (or enclosure) was the mechanism by which Britain sought to modernise its medieval arrangements of communal agricultural land to achieve the improvements in efficiency desperately needed to feed the nation. Inclosure sought to divide up the open land and convert rights to the open land into exclusive use of smaller parcels. The process was done by passing local acts of</p>

	<p>parliament for each inclosure award, which might only cover part of a parish or hamlet so there were many hundreds of such acts before and throughout the 18th Century. In order to streamline the process to make it less costly and encourage more inclosure, general acts were passed containing all the standard provisions so that they did not have to be repeated in every subsequent local act. The first of these was an Inclosure Consolidating Act in 1801. The local acts generally appointed a commissioner(s) to execute the act subject to the rules of the specified general act.</p> <p>The relevance to public rights of way is that in this reorganisation of land it had to be able to reorganise the transport corridors at the same time or it would have greatly reduced the effectiveness of the process.</p> <p>There were further general acts, notably in 1836 and 1845.</p> <p>The Court of Appeal case generally referred to as Andrews 2¹ found that the 1801 Act does give the power for commissioners to set out public bridleway and footpaths, contrary to the earlier finding in Andrews 1². There has been much dispute about the correct interpretation of 'private carriage roads' (i.e. does private qualify the carriage or the road?) but the Dunlop case, which many consider incorrectly decided in saying that this mean private rights, has not been challenged in court</p> <p>The Inclosure Act for Trawden and Whalley (which referred to the 1801 consolidating Act) enabled an inclosure award to be made in the 57th year of the reign of King George III i.e. 1817. The subsequent Award was for the Inclosing of lands in the Township of Trawden, in the Chapelry of Colne, and Parish of Whalley, in the County of Lancaster and made in 1821.</p> <p>(Ref - UDTR/4/1)</p>
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¹ R v Secretary of State for the Environment, Food and Rural Affairs, ex parte Andrews 2015

² R v Secretary of State for the Environment, ex parte Andrews 1996



<p>Observations</p>	<p>The 1817 Act is founded on the 1801 Inclosure Consolidation Act which stated that the process was to start by setting out any public carriageways. It also gave the power to divert or stop up old carriageways but that required a justices' Order. Public Carriageways had to be at least 30 feet wide and fenced on both sides, with no gates across or plant trees in/near the hedges spaced less than 50 yard intervals. They then had to be certified in order to become publicly maintainable.</p> <p>Footpaths and bridleways could also be set out (including public ones – see Andrews 2). Any which were not set out by the award were automatically extinguished, with the exception of turnpike roads.</p> <p>Mr Thomas Gee, the Commissioner, was appointed in 1819 and determined the local Inclosure Award in 1821, and in particular described the southernmost 50m or so of the application route.</p> <p>Text from the Inclosure Award has been inspected. This provides details of both the public and private rights set out under the Award, and provides details of widths and maintenance responsibilities.</p> <p>The Inclosure Award states:</p> <p><i>'Antley Road – One private carriage and occupation road of the width of eighteen feet as where the same is now marked and staked out branching out of the Will Moor Hill Road in the Hamlet of Trawden opposite Antley House</i></p>
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and extending in a northwestwardly direction to Antley Gate which I distinguish by the name of Antley Road'.

In the text, the application route is referred to as a private carriage and occupation road. In order to compare what was deemed to be public and private officers compared the other routes which were also recorded and specified whether they were public carriage road, public bridle way or private carriageway occupation road, compared to what they are recorded as today.

It was found that:

1. Will Moor Hill Road (public bridle and private carriage and occupation road) currently recorded as bridleway. (Confirmed by a modern Definitive Map Modification Order Order).
2. Saucer Clough Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
3. Slack Head Road (private carriage and occupation road) currently recorded as Public Footpath.
4. Winewall Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
5. Green Wham Road (private carriage and occupation road) not currently recorded as a highway of any description (footpath, bridleway, road).
6. Wycoller Road (public carriage road and highway) currently recorded as byway open to all traffic. (Confirmed by a modern Definitive Map Modification Order Order).
7. Will Moor Clough Road (private carriage and occupation road): officers have been unable to locate it.


Within the award Mr Thomas Gee also stated:

“Which said Private Carriage and Occupational Roads before mentioned I have set out and appointed for the sole and exclusive use of the owners and occupiers of estates and allotments lying adjacent or adjoining any of the said roads..... And I do further order and award that the said private carriage and occupation roads, so set out and appointed, so far only as such roads run through over and upon the said open and common pastures, moor commons, commonable lands and waste grounds but not further or otherwise, shall be for ever here after repaired and maintained and kept in repair by and at the general expense of the owners and occupiers of allotments'.

		<p>The Inclosure Award map above shows only the most southerly 50m or so of the application route at Antley Gate although access is most likely to have been possible as the end of the route is annotated 'To Trawden'. The land is recorded as being in the ownership of Mr John Whittam as purchaser, who had to maintain his allotment and road.</p>
<p>Investigating Officer's Comments</p>		<p>This award only covered a very short section of the application route but this short section is integral to it being a through route. It is described as a 'Private Carriage and Occupation Road'. Taking Dunlop together with the specific wording in this case that it is solely for use of the owners and occupiers of the land it suggests that the short southern section of the application route (at Antley Gate) did not have public rights immediately after the Inclosure Award.</p> <p>No inference can be made about the remainder of the route north of Antley Gate.</p>
<p>Plan of the allotments in the Hamlets of Trawden, Winewall and Wycoller</p>	<p>1821</p>	<p>A plan submitted by the applicant of the allotments in the hamlets of Trawden, Winewall and Wycoller. It was viewed by officers at Lancashire Archives (ref – DDSP/50/8).</p>



<p>Observations</p>	<p>This map was intended to show the (recently enclosed) allotments of Trawden, Winewall and Wycoller, including</p>
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		<p>the size of each allotment with the specified owner at the time. The main road as shown is Will Moor Hill Road (now the Pennine Bridleway). The map above is not facing north as is the current convention, and in fact the top of the map is west south west. There is an annotation 'To Trawden' and Antley is labelled which is shown to have been owned by John Whittam. Interestingly, there are two main routes shown as heading to Trawden on this map, one, which is the application route (currently recorded as a footpath) and the second, Boulsworth Road (currently recorded as a bridleway turning to carriageway).</p>
<p>Investigating Officer's Comments</p>		<p>On the face of it this map seems to show a through route to Trawden from Antley Gate suggestive of public rights but this map is clearly related to, or intended to show the effect of, the Inclosure Award of the same year and hence no different inferences can be drawn. T</p>
<p>John Cary's Map of Lancashire</p>	<p>1825</p>	<p>Cary was a cartographer, engraver and publisher who published a series of atlases, maps, canal plans etc. His 1789 map of Lancashire is a close copy of Yates' map. This document was submitted by the applicant.</p>
		
<p>Observations</p>		<p>The above map was submitted in the applicant's documentary bundle as John Cary's Map of 1825. The application route can be seen from point A at Burnley road, past Alderhurst to Antley. It then joins on to a route which is now the Pennine Bridleway. The above document is not within Lancashire Archives collection and therefore officers have been unable to view it. Therefore the only copy of the above that officers have seen is the submitted scanned copy. However, three prior editions of John Cary's map were available, dated 1789, 1806 and</p>

1814, as shown below.

1789 (ref: DP/187):



1806 (ref: DP/188):



1814 (ref: DP/232):



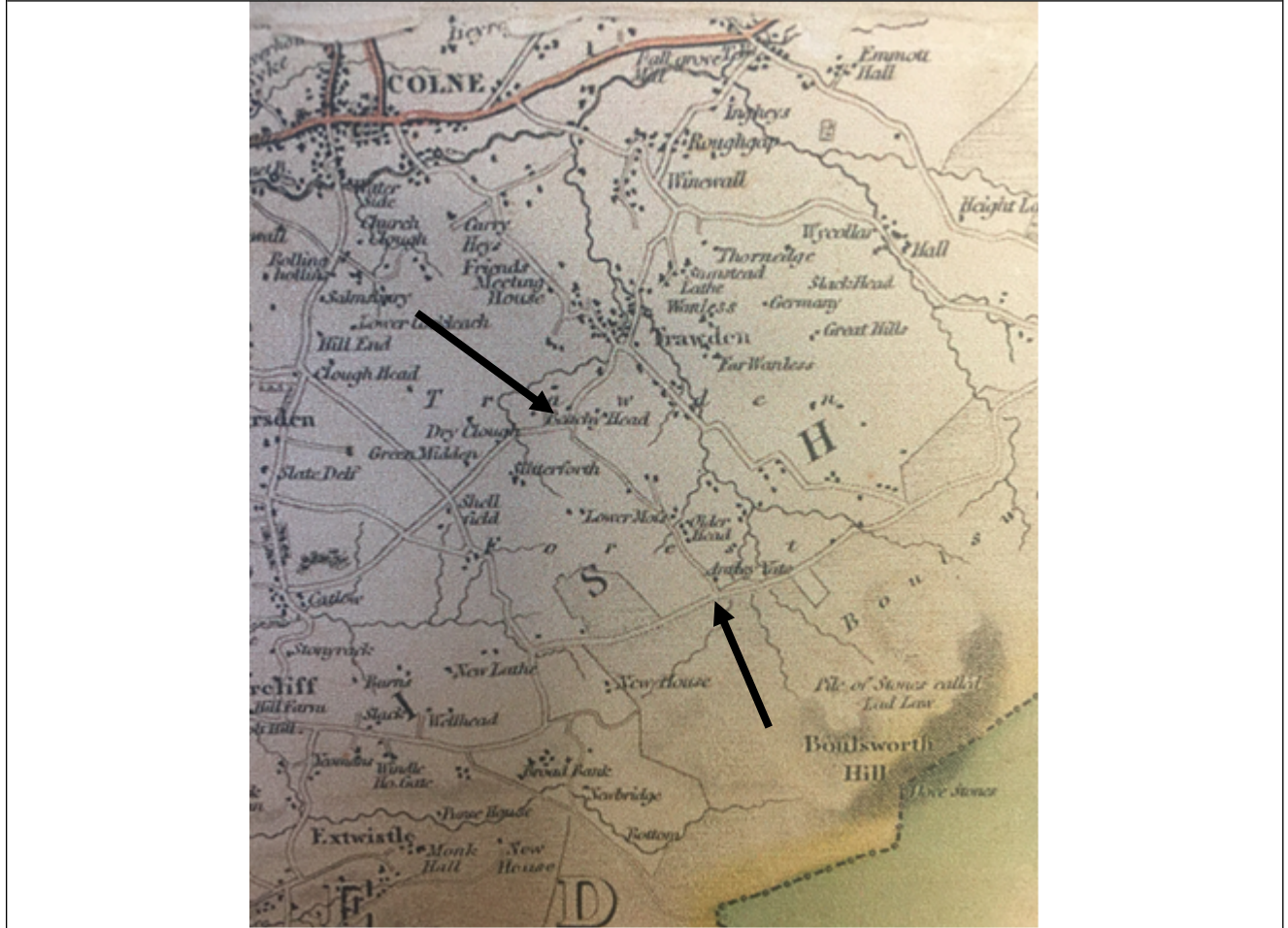
On the three maps above the application route cannot be seen. The most helpful map is dated 1806, where Boulsworth Hill has been annotated. However, the application route cannot be seen.

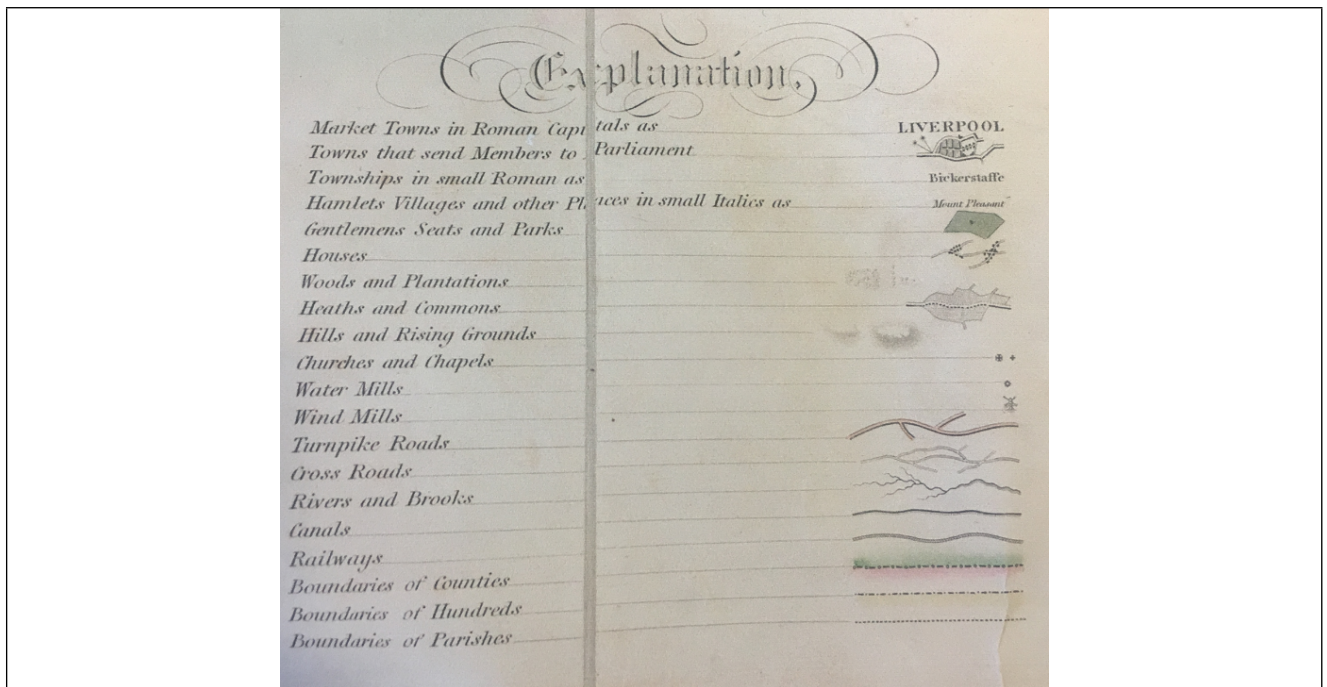
Investigating
Officer's
Comments

On the map provided by the applicant, the route appears to have been of significance at this time as a through route from Burnley Road to Antley. However on earlier

editions the application route cannot be seen and these predate the inclosure to the south; the 1825 map was published soon after the Inclosure Award and may have been surveyed before it. Therefore no further inference can be made.

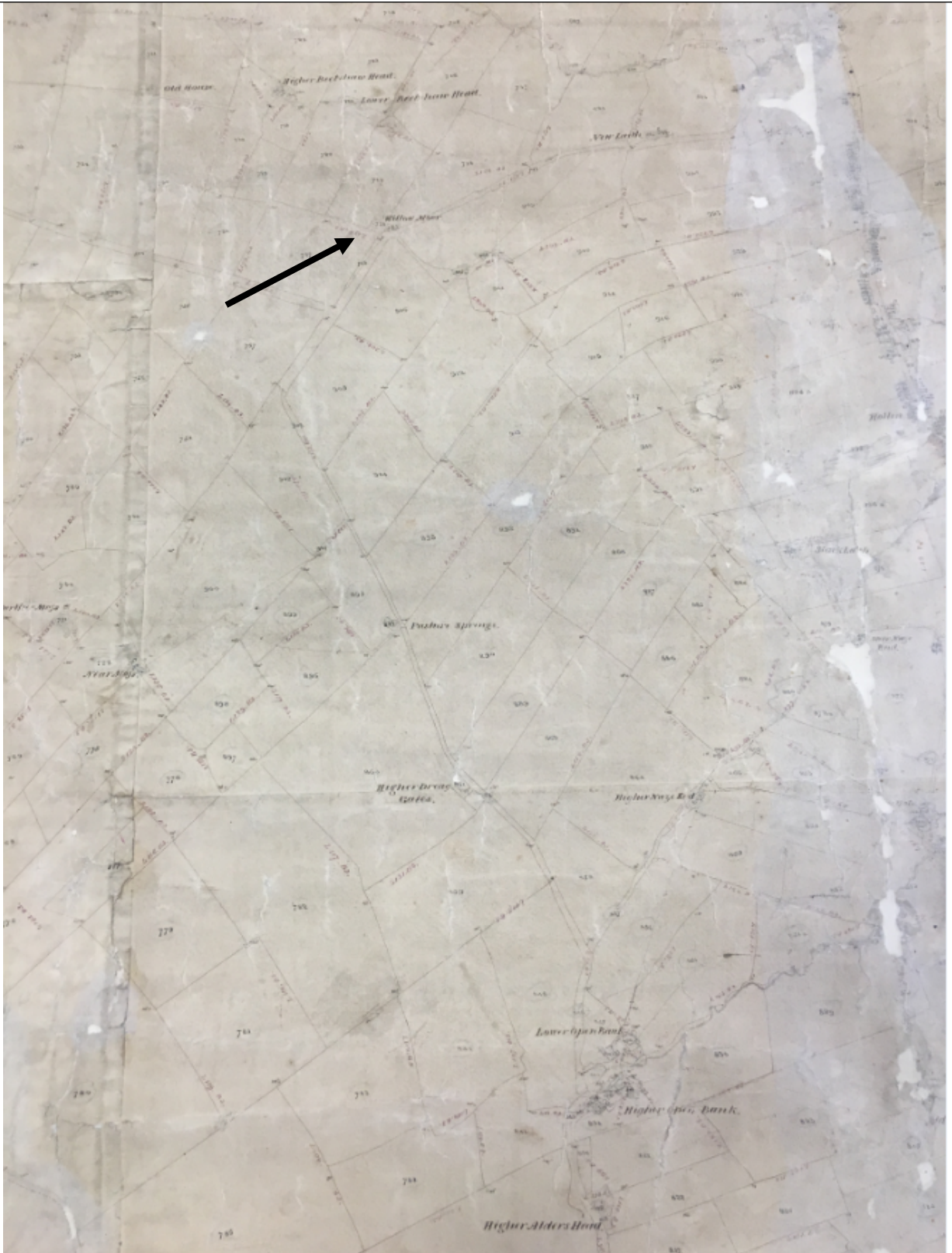
Hennet's Map of Lancashire 1830 Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the County's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





Observations		<p>Similar to Greenwood's map, the application route is shown for the whole length on Hennet's Map. It is shown as a through route from Point A, past Alder Head to Antley Gate to join Will Moor Hill Road (the Pennine Bridleway). The Key to Hennet's Map shows only two types of highway – 'Turnpike Roads' and 'Cross roads'. Hennet showed the full length of the route as a Cross Road (uncoloured).</p>
Investigating Officer's Comments		<p>The route existed as a major through route in 1830 from Burnley Road to Antley Gate, and is shown as a 'Cross Road'.</p> <p>The route is shown connecting to routes that are now recorded as public vehicular highways and also the Pennine Bridleway. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the application route was, by the 1830s, considered to be a public bridleway or carriageway. This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join the application route. This suggests that the route was of a substantial nature and would have been wide enough for people on horseback or with horse drawn vehicles.</p> <p>It is not fully known what is meant by the term cross road, it is possible that it was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale</p>

		<p>would show footpaths.</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was “no point showing a road to a purchaser if he did not have the right to use it.”</i></p> <p>This map was published 9 years after the Inclosure Award which affected the southernmost 50m – whether this was compiled from stale information of whether the declaration of the southern end as private had no practical effect is not known.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The application route does not cross land affected by the planned construction of a canal or railway.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Tithe Map and Tithe Award or Apportionment	1842	<p>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.</p> <p>(Ref – DRB 1/188)</p>

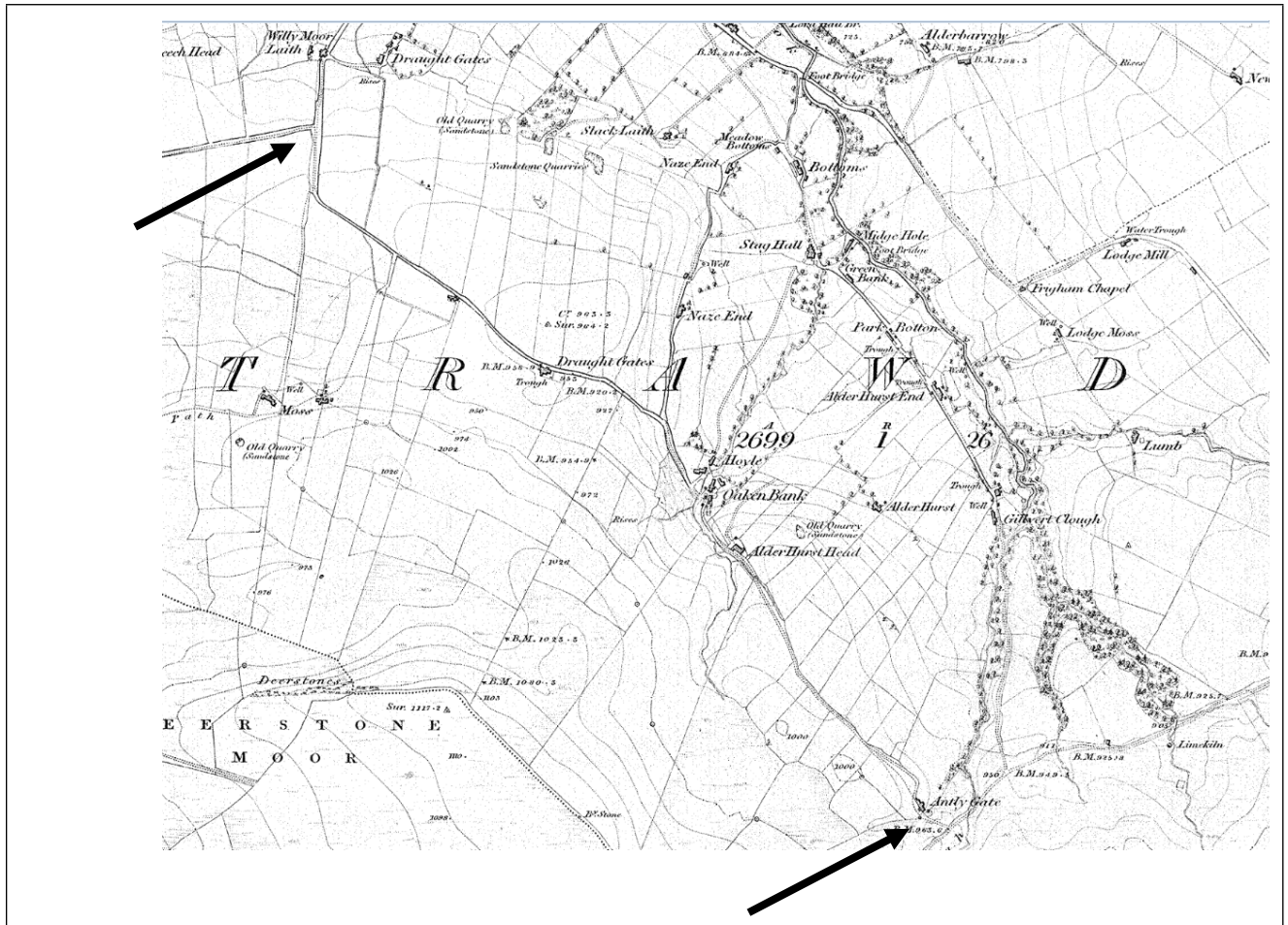




<p>Observations</p>	<p>The Tithe Map shows a bounded track heading from Burnley Road at Point A to Higher Alders Head (now Alderhurst Head Farm) at Point H. There is no route shown continuing to Antley Gate. The track is not coloured as a highway but neither are any of the currently recorded vehicular highways.</p> <p>The track from A to B appears to be part of parcel 743 which is described as 'Highway Road' belonging to and occupied by the Surveyor of Highways.</p> <p>The track between points B and E is numbered 903, 862 and 846, of which 903 and 846 are referred to in the Tithe award as an occupation road. The owner of the land for 903 is named as 'Surveyor of Highways'. 846 is within ownership to Mr Blackburn. The application route connects to Burnley Road (recorded vehicular highway). It</p>
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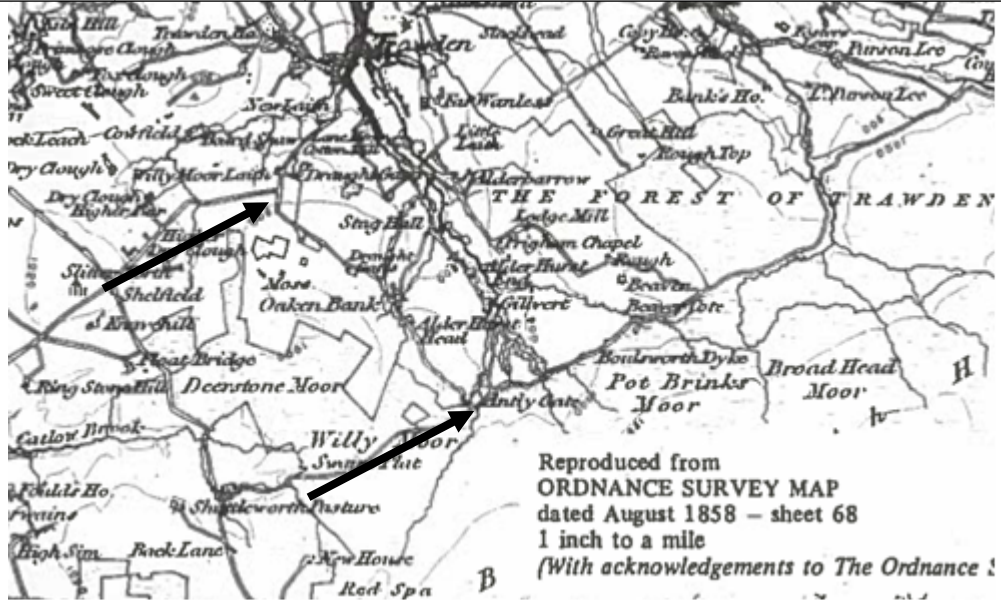
		is not shown connecting to Will Moor Hill Road (the Pennine Bridleway), although this appears in itself to be a substantial track.
Investigating Officer's Comments		<p>The Tithe Map shows the application route from point A to point H. The Schedule also refers to the application route and records it as an Occupation Road. There were several occupation roads recorded in the schedule which stated 'private road'. The route to Antley Gate is not shown or recorded.</p> <p>It is important to look at how other Occupation Roads on the same Tithe Map have been recorded to see whether the route was deemed to be public at the time. 857 is recorded as being an Occupation Road which leads directly off the application route as an access to Higher Naze End Farm. This stretch is currently recorded on the Definitive Map as public footpath.</p> <p>Roads listed under the 'Surveyor of Highways' have been distinguished between occupation and highway, however only one occupation road is recorded under this section, parcel 903.</p>
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. ³ The applicant also included this map in the application bundle.

³ 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.




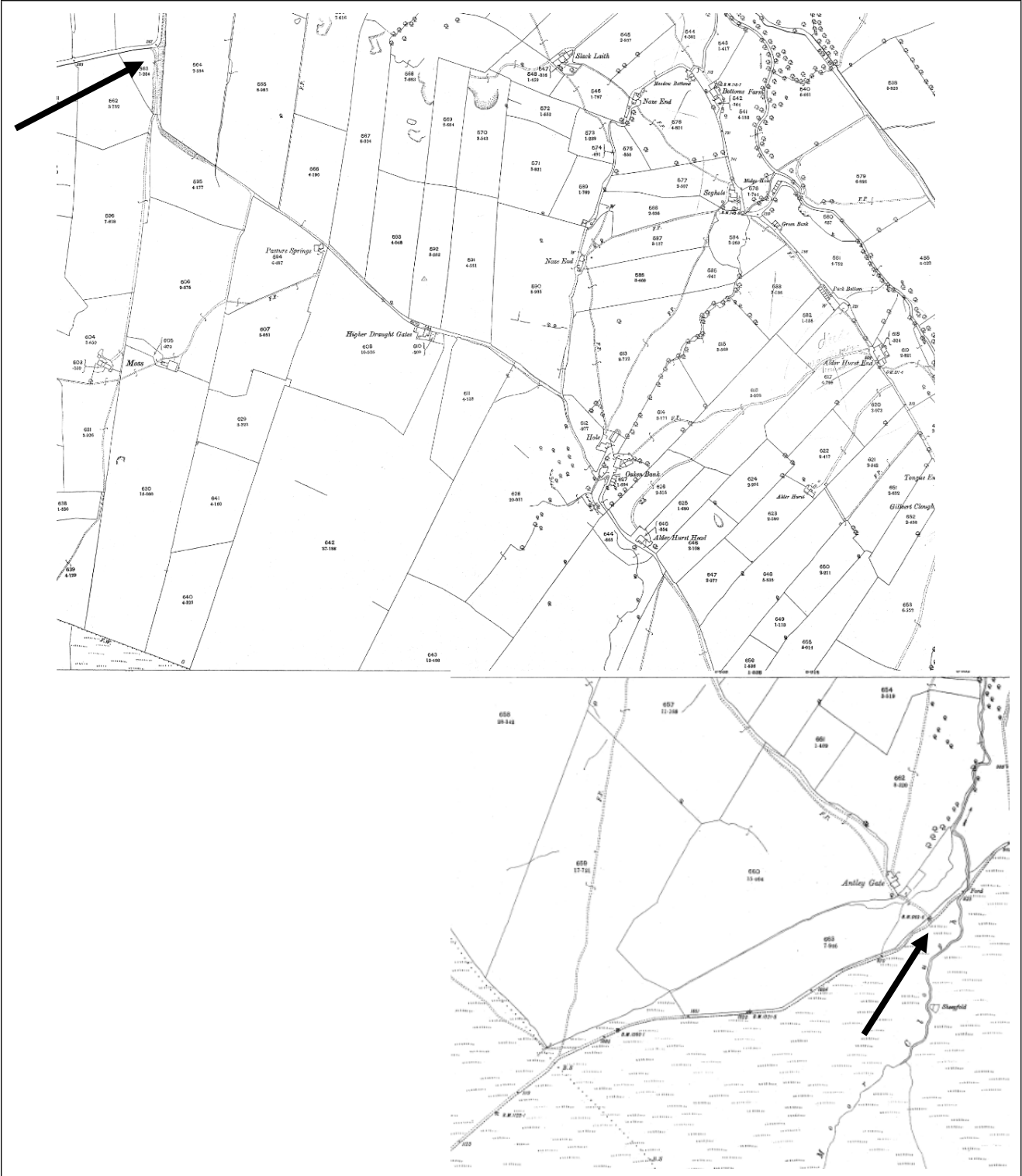
<p>Observations</p>		<p>The application route is shown on the earliest Ordnance Survey map as being available for use for its entirety, from Point A at Burnley Road to Antley Gate at point O.</p> <p>It is shown as an open, unrestricted, substantial track providing access to several properties including Draught Gates, Oakenbank and Alder Hurst Head. From Alder Hurst Head to Antley Gate the route continues as a double pecked line, indicating that a route was in existence on the ground at the time, which continues to Antley Gate via the application route. The route then joins Will Moor Hill Road (the Pennine Bridleway) at Point O.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed on the ground as a significant route in 1848. It appears that the track was open and accessible as it is recorded up to Alder Hurst Head in the same way that the other highway network was recorded. It is reasonable to assume that the enclosed section would have been wide enough for equestrian use. The route would have provided access to and from Pasture Springs Farm, Higher Draught Gates, Oakenbank, Alderhurst Head and Antley Gate. It is presumed that at this time the occupiers of Antley Gate may have used this track to head north to Trawden, thus providing a through route.</p>

<p>First edition Ordnance Survey Maps one inch to the mile</p>	<p>1857/1858</p>	<p>Ordnance Survey maps submitted by the applicant, at a scale of one inch to the mile, dated 1857 and 1858.</p>
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<p>Observations</p>		<p>These two documents were submitted in the applicant's documentation bundle as 'First edition one inch Ordnance Survey Map Skipton & Bradford 1857' and Ordnance Survey Map one inch to the mile 1858'. The scanned image was of poor quality but officers viewed the 1857 Ordnance Survey Map one inch to the mile at Lancashire</p>
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		<p>Archives (pictured below). The maps appeared to be the same with different published dates.</p>  <p>The application route can clearly be seen from Burnley Road, passing Draught Gates and Alderhurst Head to Antley Gate. It then joins Will Moor Hill Road (the Pennine Bridleway) at Point O.</p>
<p>Investigating Officer's Comments</p>		<p>The application route appears to be a significant mostly enclosed track as shown on previous maps, providing access to Trawden for Draught Gates, Alderhurst Head and Antley Gate, which probably could have provided use on horseback.</p>
<p>25 Inch OS Map</p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.</p>

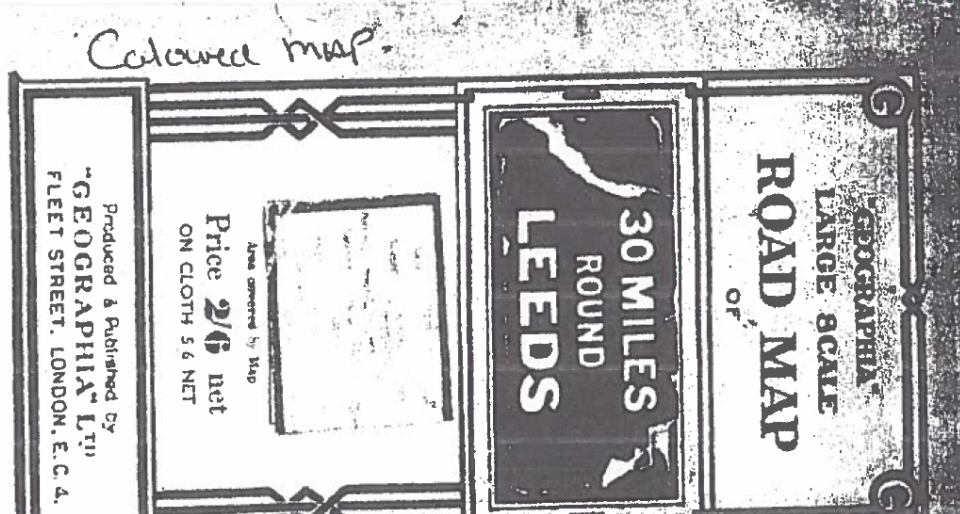
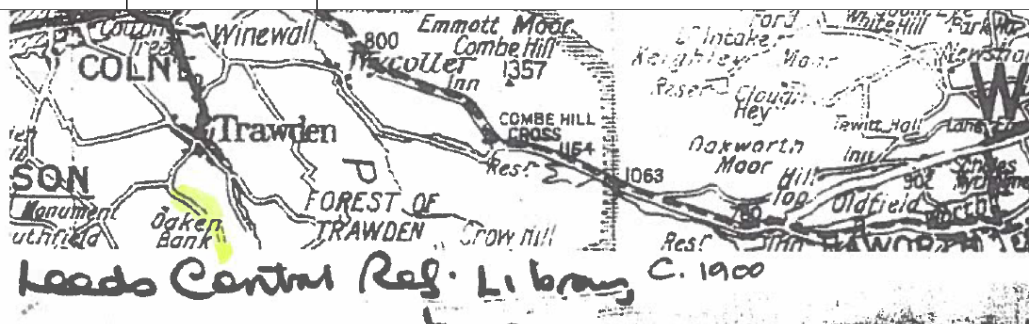


<p>Observations</p>	<p>The full length of the route is shown on the map, from Burnley Road at point A to Antley Gate at point O. The route varies from being unenclosed from Burnley Road, enclosed past Higher Draught Gates to Alderhurst Head, and then unenclosed to Antley Gate.</p> <p>From Burnley Road the route appears to be a substantial track, particularly as it is enclosed in parts. From Alderhurst Head towards Antley Gate the application route</p>
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		<p>is shown as a double pecked track, diverging from another route, which is recorded on the Definitive Map as footpath and annotated on this map as 'FP' in contrast to the application route. These reconverge and the route is shown continuing as double pecked lines to join the track which is now the Pennine Bridleway.</p> <p>Several lines across the route are recorded on the map which coincide with current gateways at points D, E, G, H and N. In addition there are 2 lines across the route at Oakenbank corresponding to the beck which is now culverted.</p> <p>The section of the route between Pasture Springs and point D is given parcel no.609, acreage .544.</p>
Investigating Officer's Comments		<p>The whole application route existed in 1893 and appeared to have been wide enough for all types of traffic up to Alder Hurst Head. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status. The route could have probably been used at this time with a horse. The route between point I and Antley Gate is not annotated "FP" like the direct route, suggesting that the former was more than a footpath.</p>
Harry Speight Upper Wharfedale	Published 1900	<p>Harry Speight was a map-maker, author and genealogist who published maps with inserted illustrations. An illustration of the Upper Wharfedale from Otley to Langstrothdale in his book 'Tramps and Drives' was published by E. Stock in 1900. This is a document submitted by the applicant.</p>



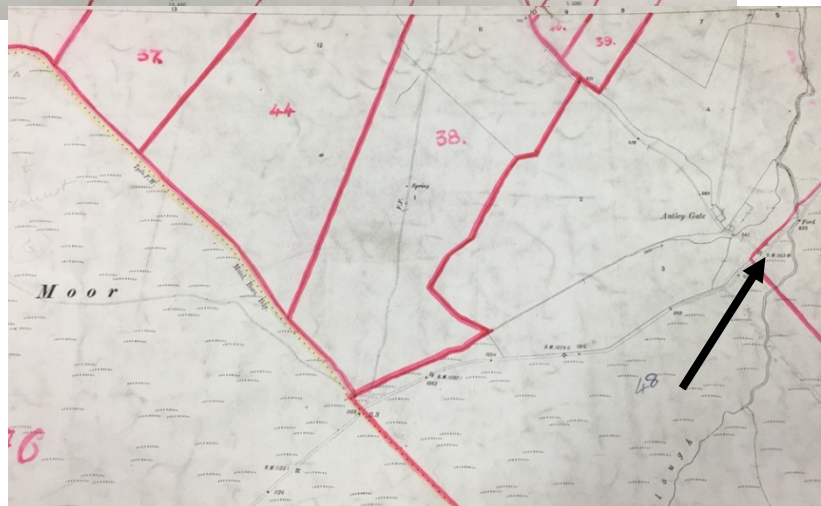
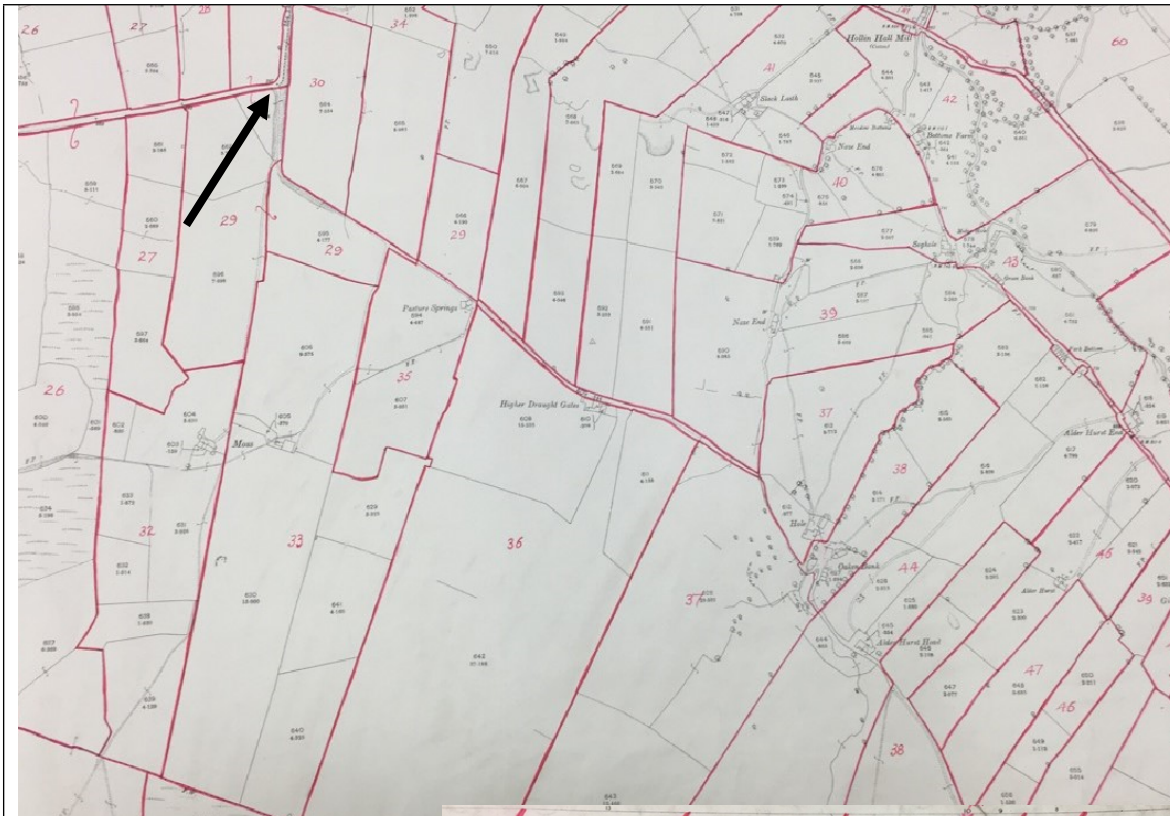
Observations		This document was submitted by the applicant and officers have only seen the scanned copy above. The illustrated map records the application route from Burnley Road to Antley Gate. Oakenbank has also been annotated on the map. It is shown in the same way as other highways.
Investigating Officers Comments		It appears the route was in existence at the time this map was produced, which corresponds with the earlier maps inspected. It was likely to be available at this time.
Geographia large scale road map of 30 miles round Leeds	C1900	A map submitted by the applicant, part of the Geographia road maps. The document has been scanned and route has been highlighted by the applicant.



Observations		On this map, produced to show the roads surrounding Leeds, part of the application route can be seen (as highlighted in yellow by the applicant), starting from Burnley Road at point A, with Oakenbank annotated on the map. This document has not been viewed by officers who therefore were unable to see the whole route on the map.
Investigating Officers Comments		Although unable to see the route as a whole, the northern part was shown to be in existence before 1900 as a road. Due to being produced with the intention of being a road map, with the prime users being motorists (and cyclists), the route being shown suggests that the northern section of the application route was considered to be a public

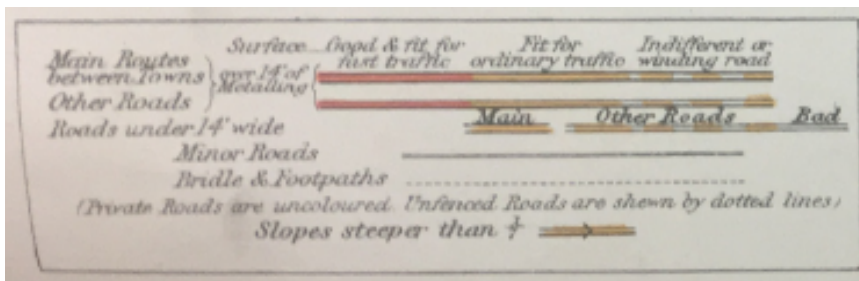
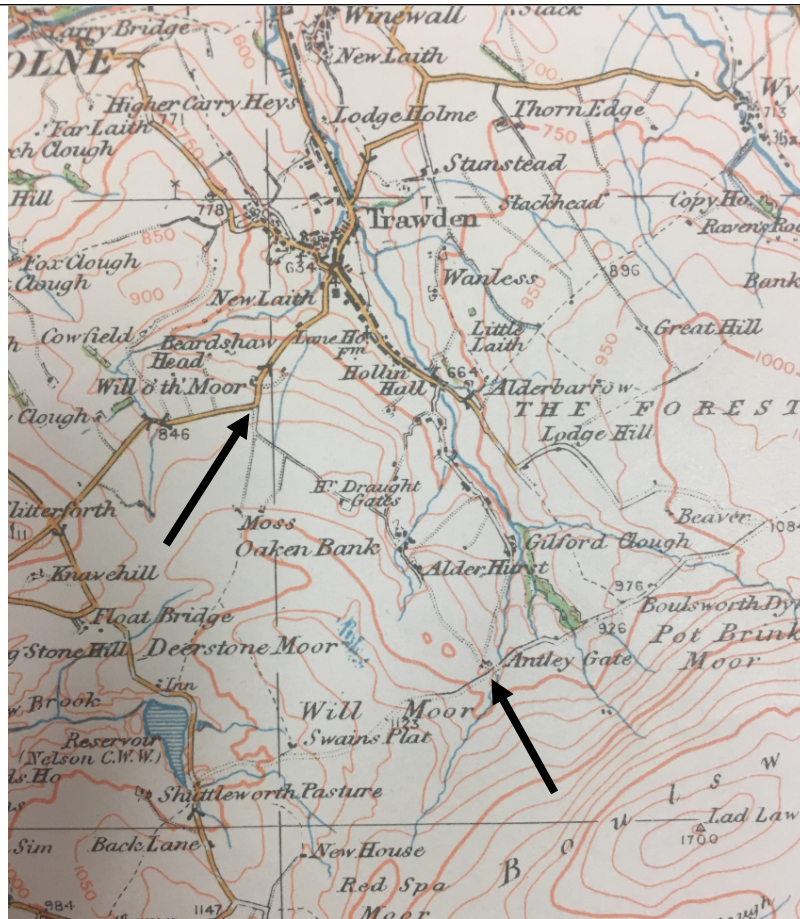
		road. Carriageways included equestrian rights.
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		<p>The 1912 map shows the route as the previous 1893 25 inch map from Burnley Road at point A to the Pennine Bridleway near Antley Gate at point O. Some of the route is shown as enclosed and other parts unenclosed.</p> <p>However, the part of the route proposed for addition of bridleway is not shown on this map, instead only one pecked line, corresponding to the footpath shown on the Definitive Map, is shown leading to Antley Gate although the annotation "FP" has been removed from this line but remains on many other double-pecked paths nearby.</p> <p>A gate is now shown at the start of the route, by Burnley Road and also at Pasture Springs instead of the gap shown on the 1893 edition.</p>
Investigating Officer's Comments		<p>The application route existed in 1912 as a substantial track to Alderhurst Head Farm, and on to Antley Gate. The proposed addition of bridleway is not shown. The route could have probably been used at this time as a bridleway but any use past Alder Hurst Head at point I would have been on the direct route, not the application route, to Antley Gate. It suggests that the section of the application route I-L (i.e. not currently recorded as footpath) had fallen out of use by that time.</p>
Finance Act 1910 Map	1910	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

	<p>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>(Ref: DVBU/1/7/1 DVBU /2/1/ LV11.5 & LV11.9)</p>
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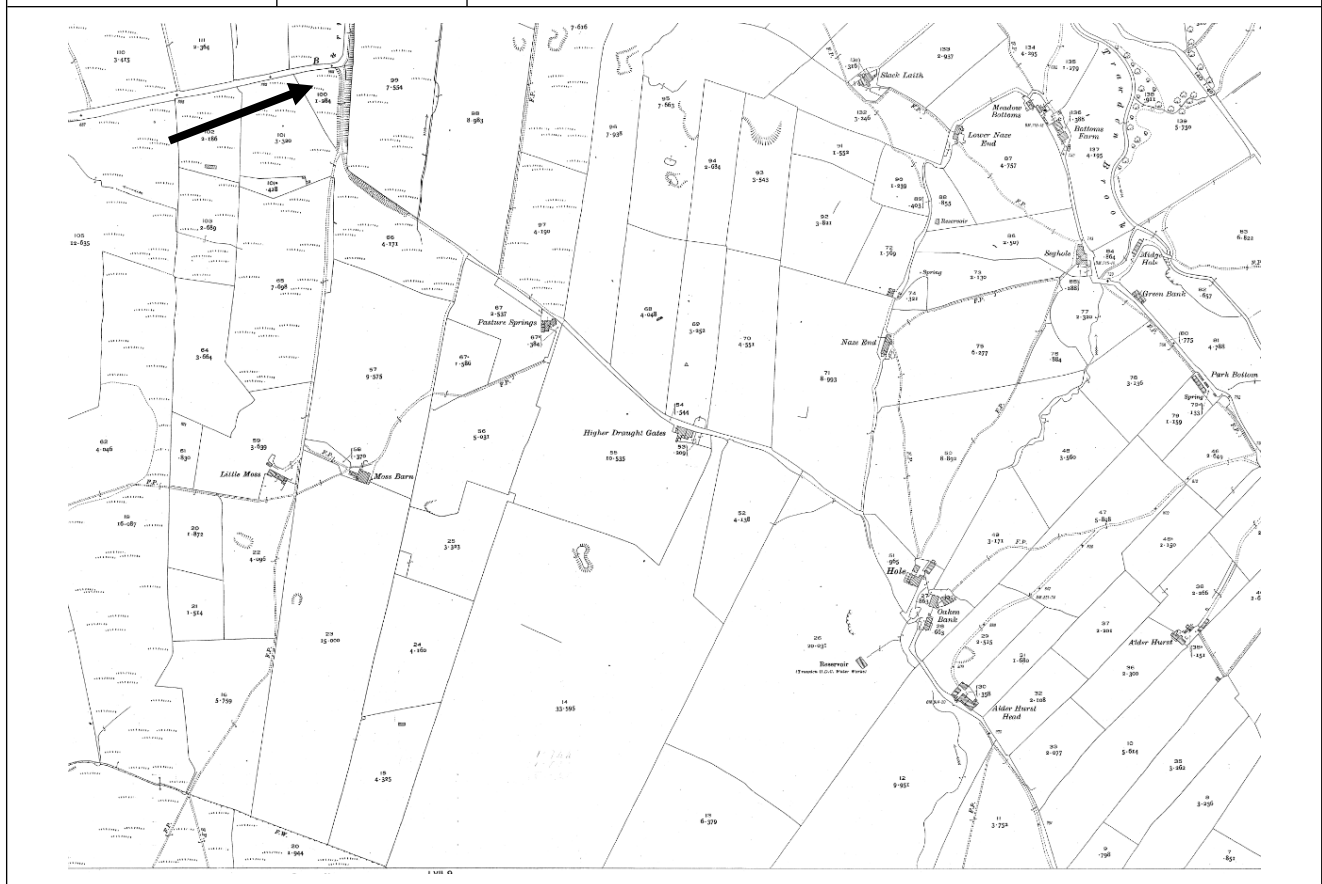
<p>Observations</p>	<p>Records held at Lancashire Archives were examined. The majority of the application route appears to have been in the same ownership as the surrounding larger plots with adjoining fields with the hereditament numbers 29, 35, 37, 44, 38, 48. The only section which is enclosed and is excluded from adjacent hereditaments is in front of Higher Draught Gates, it is also un-numbered.</p> <p>The route near Pasture Springs passed within the north-east boundary of hereditament 35 which was owned by Ernest Greenwood and was tenanted by Holmes Wright at Pasture Springs Farm. A deduction of £10 is claimed for Public Right of way or User. This had another public right of way crossing the land. To understand the deduction, other hereditaments which had a deduction for a right of</p>
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		<p>way were inspected. Plot 24 had the same deduction of £10 as the application route, for what seems to be a track which is then annotated 'FP' on the Finance Act Map. The same route is recorded on the Definitive Map as Public Footpath No 37 Trawden.</p> <p>£10 was the minimum amount deducted for a right of way in the Valuation Book. Other deductions of £30 and £50 have been recorded, but were not included in this area, or on the maps inspected.</p> <p>For all the other land crossed by the application route, hereditaments 29, 37, 44, 38 and 48, there are no deductions listed for Public Rights of Way or User. In all these hereditaments in addition to the application route there are other paths shown on the map in 1910 and still recorded as public rights of way on the Definitive Map and Statement today.</p>
Investigating Officer's Comments		<p>Of importance from this document is that a short section in the middle of the application route was excluded from the adjacent hereditaments, and there was a deduction for land on which the application route passed, along with another recorded right of way. From comparing this to another parcel of land with a right of way passing through, it seems a £10 deduction was for a footpath. This seems to account for the other right of way passing through parcel 35, not the application route.</p> <p>However most of the application route crossed land with different landowners and tenants but none of whom claimed a deduction for public rights of way even though all these hereditaments not only had the application route but at least one other path shown on the maps at the time and now recorded on the Definitive Map and Statement. This suggests that little weight can be given to the fact that no deductions were made for public rights of way. The only landowner to claim a deduction in tax for public rights of way was at Pasture Springs Farm for £10. This hereditament too had another path shown crossing it which is now recorded as a public footpath.</p>
Ordnance Survey Map of England and Wales Blackburn and Burnley, one inch to the mile	1924	A map produced by Ordnance Survey titled 'Popular Edition' one inch to the mile. A document submitted by the applicant.



<p>Observations</p>		<p>A scanned copy of this map was submitted by the applicant. A route can be seen from Burnley Road to Antley Gate, like previous maps. Higher Draught Gates, Oakenbank, Alderhurst and Antley Gate have all been annotated on the map. The key to this particular map gives an indication as to the use at this time. The application route is shown as an uncoloured 'Minor Road' for its majority in the middle section. The northern and southern sections are shown as 'Bridle and Footpaths' but there is no distinction between the two.</p>
<p>Investigating Officer's Comments</p>		<p>As previous maps have shown, a route existed between Burnley Road and Antley Gate at this time. The key indicates that the route at this time was seen as a bridle/footpath and minor private road. This suggests that carriageway rights were private but it is consistent with public bridleway rights.</p>

25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1892, revised in 1930 and published in 1932).
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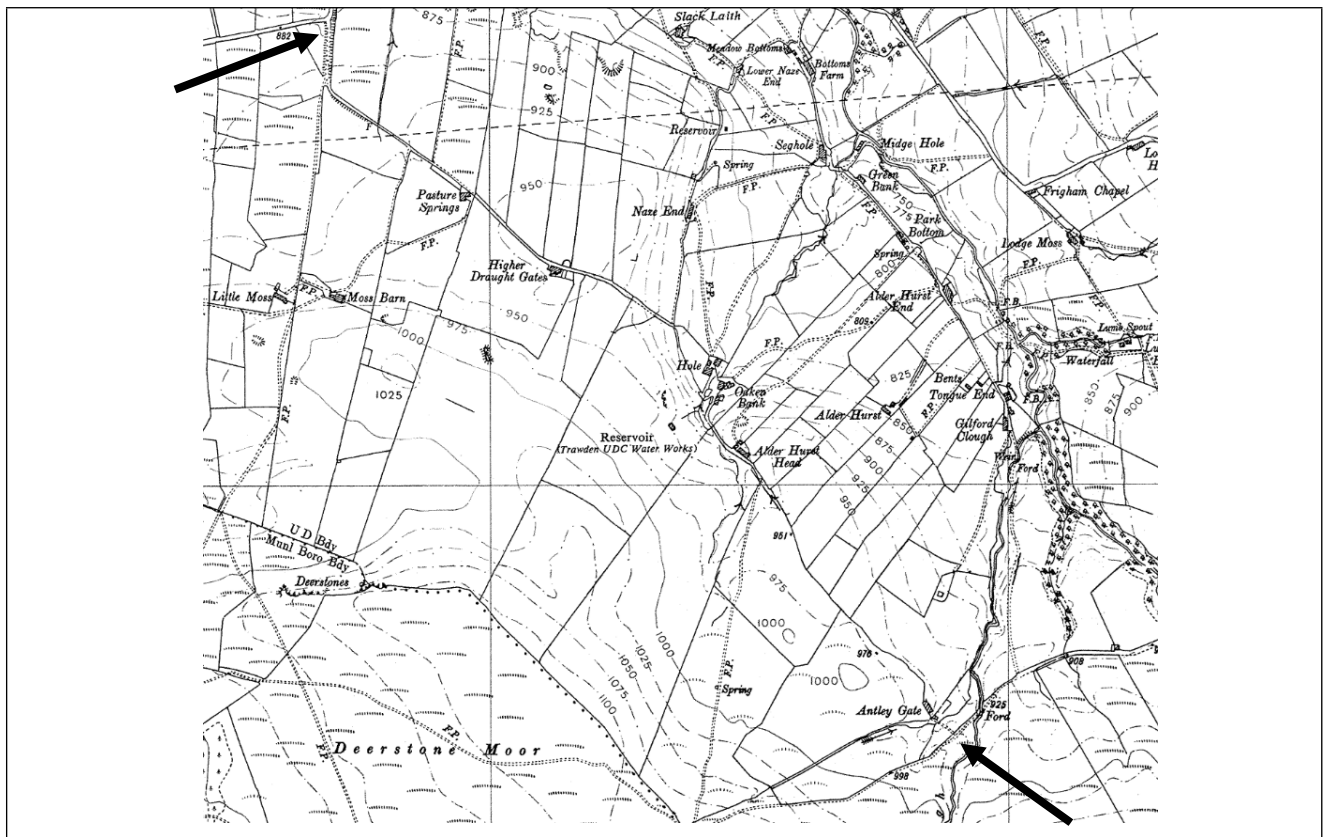


Observations		<p>The application route is again shown as on previous maps, as a track, enclosed in some parts, providing access to several properties up to Alder Hurst Head and a little further to the edge of the sheet.</p> <p>There is no available sheet for the southern section of the route.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1932 as a partially enclosed track from Burnley Road to Alderhurst Head Farm and beyond to the edge of the sheet. There is no reason to suppose the track would end at the sheet boundary, it is likely that the route, as previously shown, continued to Antley Gate. The route could have probably been used on horseback.</p>
Aerial Photograph⁴	1940s	<p>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.</p>

⁴ Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

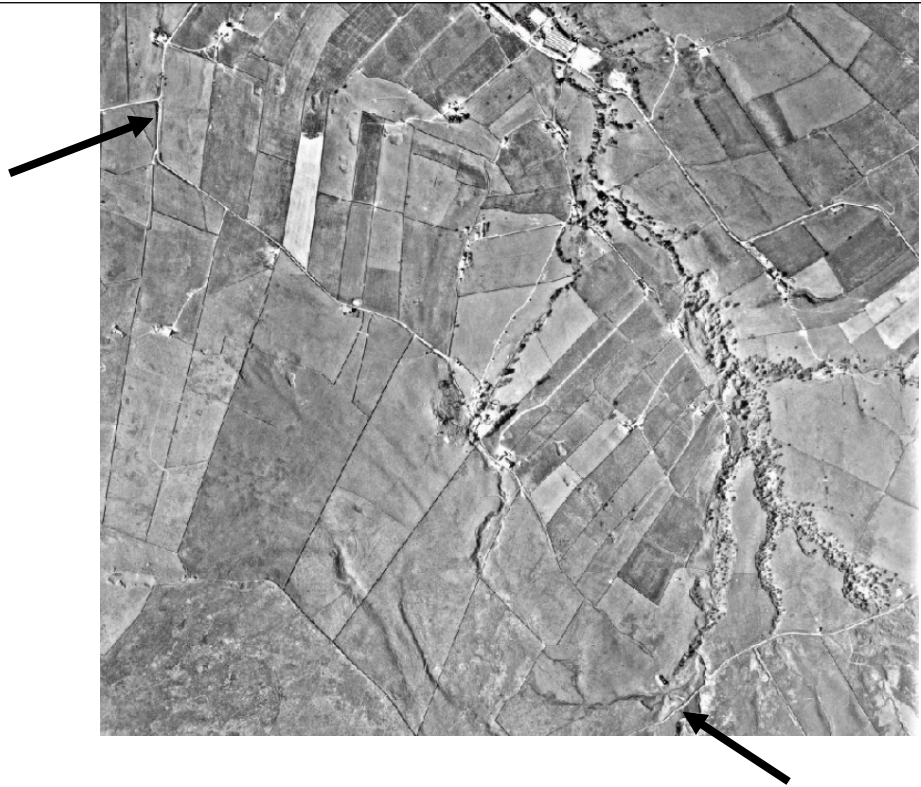


Observations		The route under investigation can be seen as a track from Burnley Road at point A to Oakenbank at point F, and less visible but still in existence from Oakenbank to Antley Gate at point O. The Pennine Bridleway track which it joins up to can clearly be seen.
Investigating Officer's Comments		The route existed as a visible track on the ground in the 1940s from Burnley Road to Antley Gate. It appears as a substantial track at this time to Oakenbank which was being used significantly although it is not possible to distinguish between public and private use.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

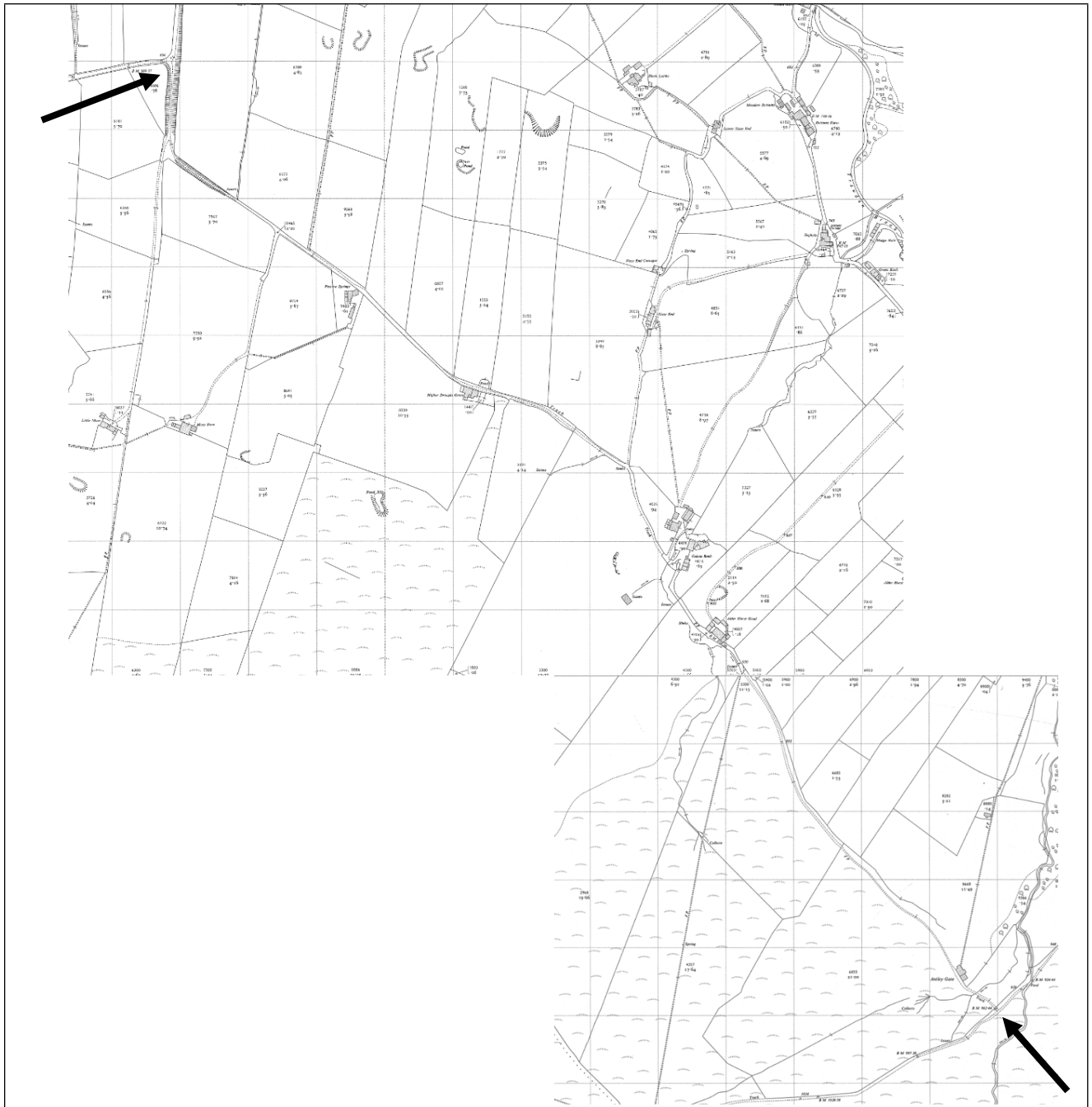


Observations		The application route is shown mostly as being a bounded track from the junction with Burnley Road at point A, with the exception of a short section near point E, passing Alder Hurst Head to point H. The route then is not shown until Antley Gate where it is shown to point O.
Investigating Officer's Comments		The application route existed between points A and point H, with the exception of a short section near point E, as a significant track enclosed in parts. From Alder Hurst Head at point H the route is not shown, suggesting that at this time there was not significant amount of use through to Antley Gate. The route could have probably been used at this time as a bridleway up at least up to Alder Hurst Head at point H.
Aerial Photograph⁵	1960s	The black and white aerial photograph taken in the 1960s.

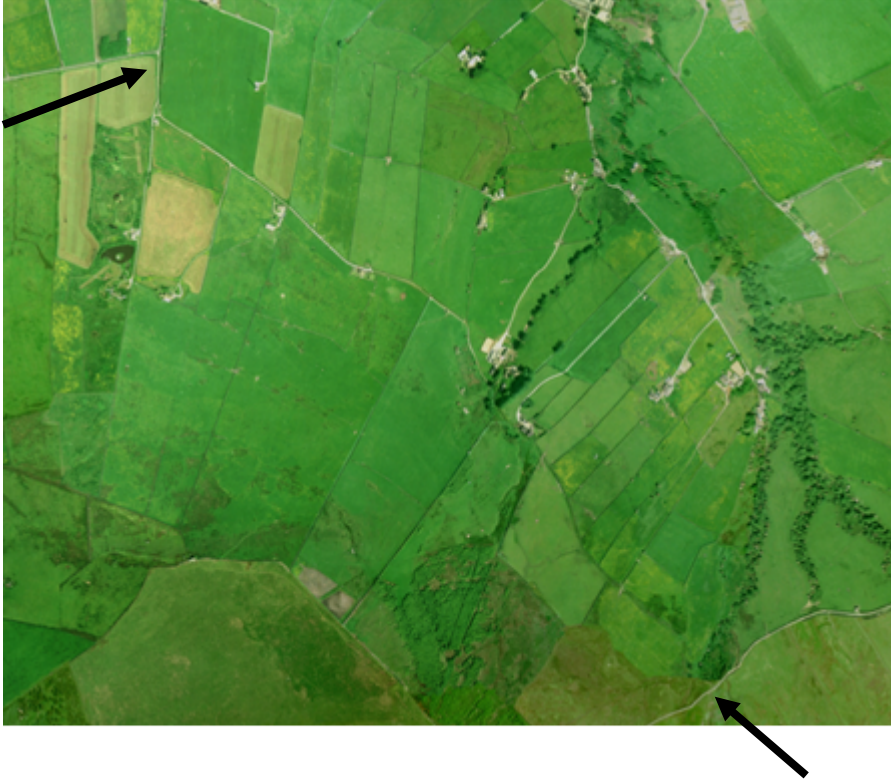
⁵ Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

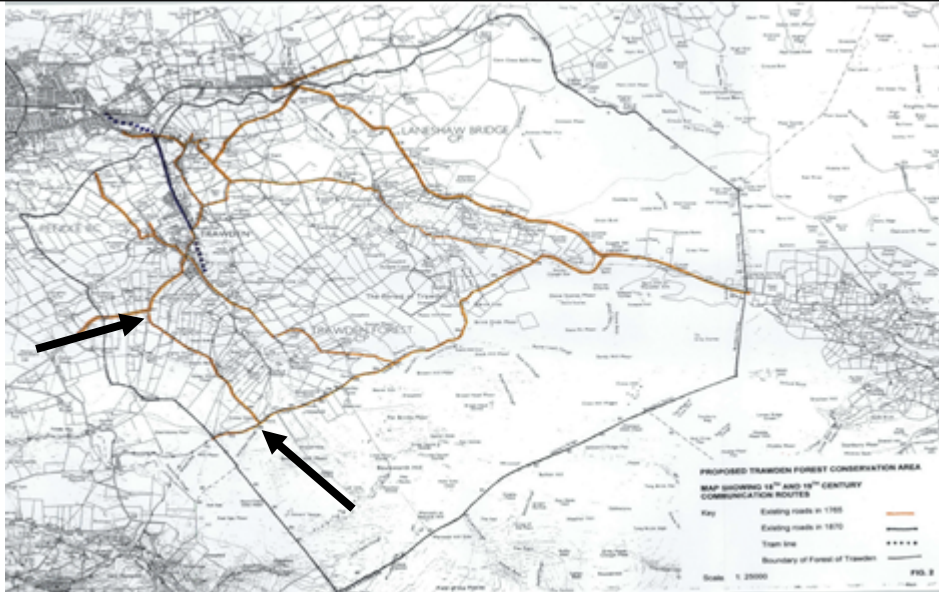


Observations		The application route can clearly be seen from Burnley Road at point A to Alderhurst Head Farm at point H. On close inspection a faint track can be seen onwards crossing fields towards Antley Gate.
Investigating Officer's Comments		The application route is a visible route on the ground from Burnley Road to Alderhurst Head Farm, suggesting that it had significant amount of traffic (public or private) and was probably usable by equestrians. The route onwards to Antley Gate is less defined.
1:2500 OS Map	1962/63	OS 1:2500 map revised 1961 and published in 1962/1963.



Observations		<p>The application route is shown as a substantial bounded, except for a short section near point E, track from Burnley Road at point A to Alder Hurst Head at point H. The section near Alder Hurst Head, although enclosed to a generous width is marked 'FP' unlike previous maps. Gates are shown along the track which concurs with structures in situ today. From point H to Antley Gate the route is partly shown by a double pecked line and partly, where the route diverges from Footpath 99, not shown. Antley Gate is still in situ at this time. The route then joins up to the track which is now the Pennine Bridleway.</p>
Investigating Officer's		<p>The route mostly existed in 1962/63 and appeared to be capable of being used at least to Oakenbank as</p>

Comments		bridleway. The section from Oakenbank to Antley Gate appears to have fallen out of use except as a footpath and following the direct line not the application route between points I and L
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		The application route can be seen from Burnley Road at point A to Oakenbank as a significant track. The route is less visible from Oakenbank to Antley Gate.
Investigating Officer's Comments		The application route existed and was probably wide enough for equestrians to use in 2000 up to Oakenbank. The route which is now recorded as the Pennine Bridleway can clearly be seen at the bottom of the aerial photograph. Antley Gate no longer exists. There appears to be little use between Oakenbank and the Pennine Bridleway.
Trawden Forest Conservation Area document	2005	A document which made an assessment of the special historic and architectural interest, character and appearance of the Trawden Forest Conservation Area for Pendle Borough Council. Produced by the Friends of Pendle Heritage Archaeological Group. Submitted by the applicant and viewed by officers.



The Medieval Vaccaries

(See also Figs. 3 and 4)

31) The vaccary farms are known from medieval documentary sources. However, all knowledge of their location and form has been lost for centuries. The initial thoughts of the archaeological group centred on the idea that little of the vaccaries would have remained, but some remnant might still be extant. It was felt that the present day landscape was a result of the activities of later generations, and it was hoped to place this in a historical context.

32) However, an exhaustive study of the surviving walls and settlements has indicated the opposite. It would appear the farms were large and substantially built; they survived the centuries and, have shaped the activities of subsequent generations. For example, the enclosures of the vaccaries helped define the boundaries of the three "Booths" within the Forest, Wycoller, Winewall and Trawden (Beardshaw) – fig. 3. It is arguable that it was the vaccaries themselves that created these three separate identities within the Forest. Similarly, the straight line created by the Wycoller and Winewall summer pastures is the route of the main footpath between the two valleys and the division between the summer pastures of the two Beardshaw vaccaries. This eventually became the line of the "cutting" linking Burnley Road to Oaken Bank and Antley Gate.

33) The group is confident that it has discovered the boundaries and enclosures of the vaccaries, and is now engaged in researching their internal subdivisions to discover the extent of the medieval landscape. All the vaccaries can clearly be seen from the opposite side of the valley. In summer the contrasting colour of the vegetation can be distinctive, clearly outlining the extent of the winter pasture.

Observations		<p>1) Undated map within the document described as being the proposed Trawden Forest Conservation area, showing the 18th & 19th Century Communication routes. The key describes the application route as an existing road in 1765.</p> <p>2) Insert taken from page 17 of the document which refers to the line of the 'cutting' linking Burnley Road to Oakenbank and Antley Gate.</p>
Investigating Officer's Comments		<p>The map to show the 18th & 19th century communication routes does not have a reference as to its origin, who made it or where it came from. To be included in the document helps support the archaeological group's research into the routes of significance surrounding</p>

		Trawden and the immediate areas. However it is unclear on what basis the 'existing road' is based on. The 'cutting' is described as being an important route at the time, linking the three vaccaries. However, it provides very little evidence for the status of the route in question.
Definitive Map Records		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. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Trawden was an Urban District in the early 1950s and a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was shown on the Draft Map as public footpaths 61, 74, 73, 72, 71, 95, 97 and 99 Trawden. No representations were made to the County Council with regards to the recording of footpaths and their status along the track. The part of the route proposed for addition of bridleway was not shown on the Draft Map.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for

		amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route was shown on the Provisional Map as public footpaths 61, 74, 73, 72, 71, 95, 97 and 99 Trawden, and no representations were made to the County Council. The part of the route proposed for addition of bridleway was not shown on the Provisional Map.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was shown on the First Definitive Map and Statement recorded as public footpaths as the previous Draft and Provisional maps. The part addition of bridleway was not recorded.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is indication that most of the route was considered to be a public right of way on foot by the Surveying Authority. There were no objections or representations made with regards to the route being recorded on the maps as public footpaths when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. There was nothing recorded on the part of the route proposed for addition of bridleway, nor were there any objections or representations made to the County Council for it not being recorded.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced

		<p>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>
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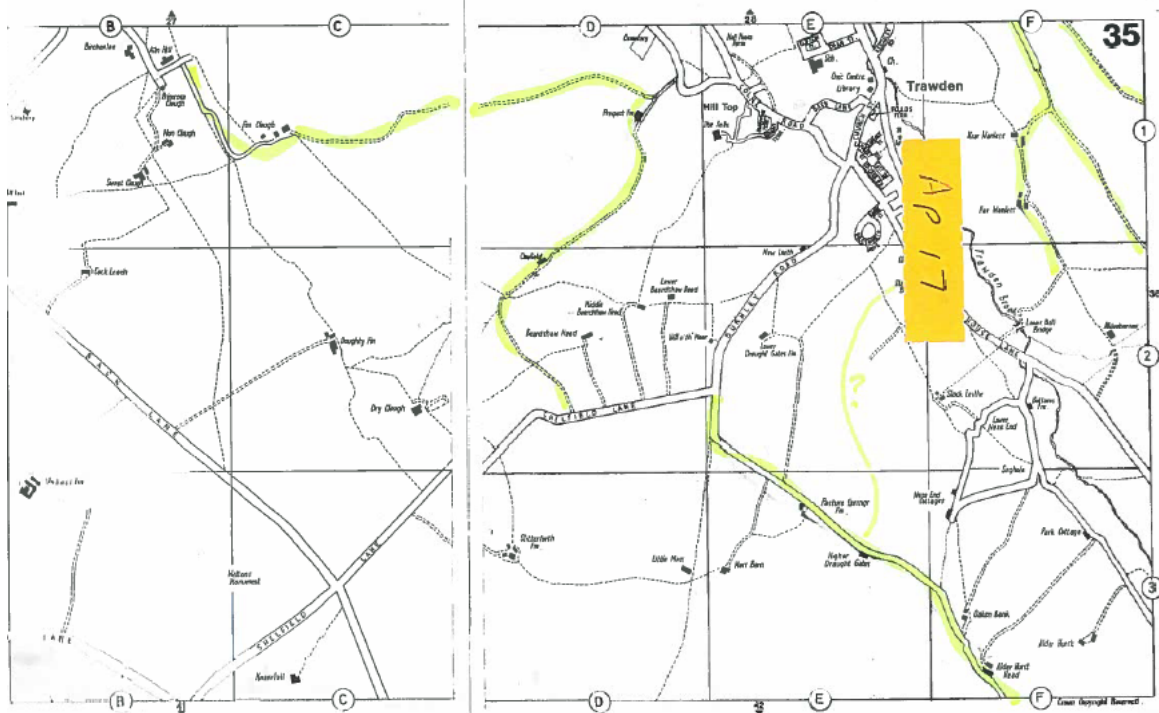
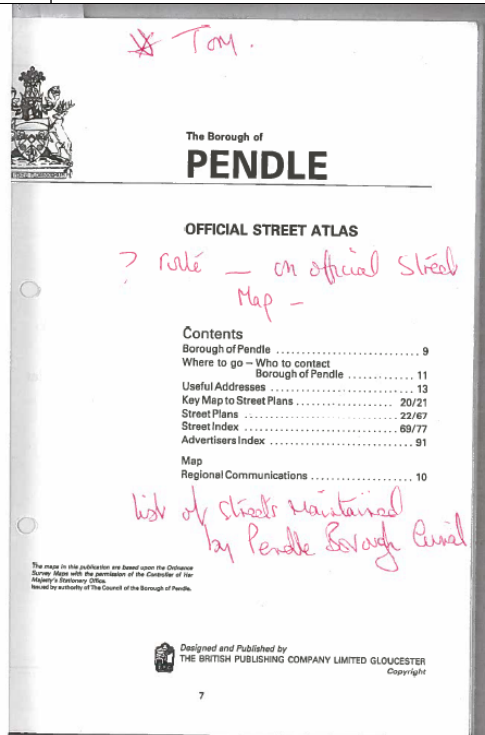
<p>Observations</p>		<p>The 1929 Road Transfer book has been inspected but it did not include an OS sheet for the affected area.</p> <p>The map above is within Lancashire County Council's highway records and shows that the application route is not annotated on the map as being a publically maintainable highway.</p>
<p>Investigating Officer's Comments</p>		<p>The application route was not highlighted as an adopted highway by Trawden Urban District Council in 1929 before highways were transferred to Lancashire County Council as highway authority. It is therefore not recorded as being publicly maintainable on the local authorities List of Streets.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten</p>

1980		<p>years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any landowners under this provision of non-intention to dedicate public rights of way over their land.
Previously considered DMMO Application	October 1984	A rejected Definitive Map Modification Application to upgrade public footpaths to Byway Open to all Traffic (BOAT) from Burnley Road to Antley Gate.
Observations		<p>Lancashire County Council have a record of an application to upgrade the public footpaths to a Byway Open to all Traffic (BOAT). The application was submitted by the Trail Riders Fellowship on 9th October 1984 and went before committee on 9th July 1986.</p> <p>The description of the route at the time coincides with the recent site visit, in that the route is split up into two distinct sections – the first from point A to Alderhurst generally consisted of a reasonable hard stone surfaced track bounded for the majority with stone walls. There was evidence of vehicular use of most of this length, however it was not possible to determine whether this was public use or just for access to properties. There were no deterrent signs or notices and the two field gates across the route were openable. It was stated that the general condition, alignment and character of this section suggests a route of very considerable age.</p> <p>From Alderhurst to Antley gate (the greater section) the route crosses open moorland, and comprises of a barely discernible, very rough, overgrown and often waterlogged track. There is no evidence of any use on the route, and</p>

		<p>the condition would even make pedestrian use difficult. However, it does appear to follow a 2-3 metre wide depression in the moorland which suggests that a more obvious track may have existed at an earlier date which has been neglected and deteriorated. On this section one gate had been wired shut which prevents all but pedestrian use.</p> <p>The description then goes on to state that the full route was probably only used by pedestrians, and that any equestrian or vehicular use would be virtually impossible. However it was also stated that there was a clear definite track which must have existed for many years and that the site indicates that this would have been sufficient width and construction to be used by all types of traffic. It was also stated that the fact that all the properties are distinctively alongside the track suggests that the route provided a continuous through route at one time.</p> <p>After considering the evidence, committee decided that there was insufficient evidence to amend the Definitive Map to show public vehicular rights as a Byway Open to all Traffic.</p>
Investigating Officer's Comments		The application was rejected. To consider a new application there must be the discovery of new evidence which wasn't previously considered. The applicant for this application has provided documents in support of the new application which were not looked at previously. User evidence statements were also submitted which were not previously considered.
Physical Landscape Features		A sunken lane is a good indication of a lot of traffic historically, an old flag culvert or remains of bridge footings, gateposts or stiles can be helpful.
Observations		From Burnley Road to Alderhurst head it appears that the route has been a significant stoned track for a considerable amount of time. From AlderHurst Head Farm it appears that the route followed a sunken lane, which now is only passable on foot and suffers from extremely boggy impassable sections. Gates appear to have been in existence, as shown on Ordnance Survey maps, for some time, and are in situ today.
Investigating Officer's Comments		There is evidence of the route being a substantial stoned track, still available for use for the northern half, which then turns into the remains of a sunken lane indicating that historically it probably had significant traffic as a through route suggestive of public use as more than a footpath.
Pendle Borough	Undated	A document submitted by the applicant which has been

Council Official Street Atlas

annotated with yellow highlighter.



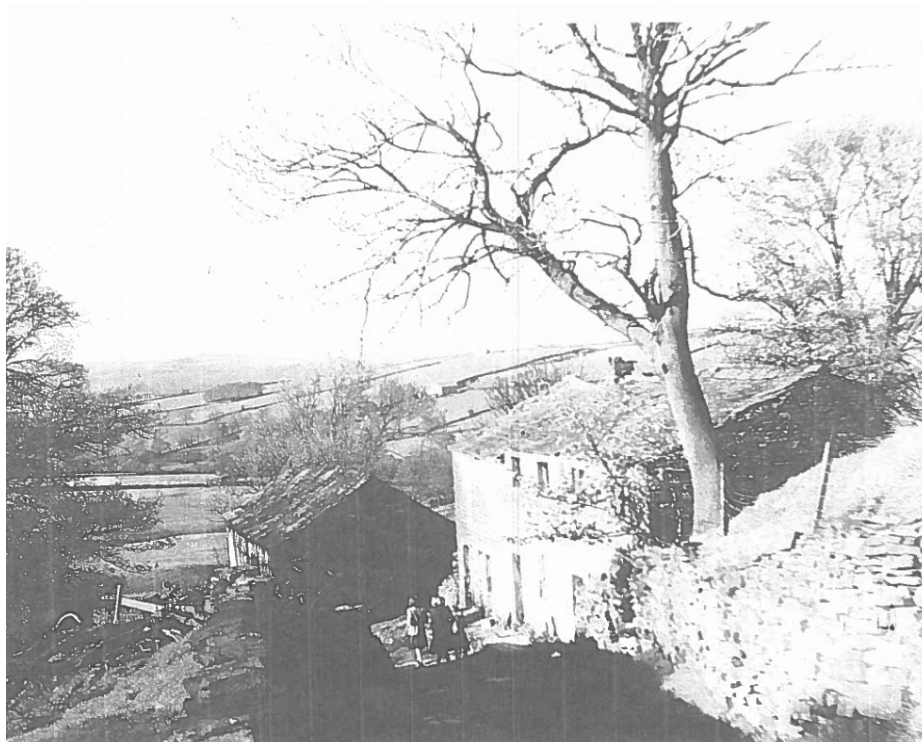
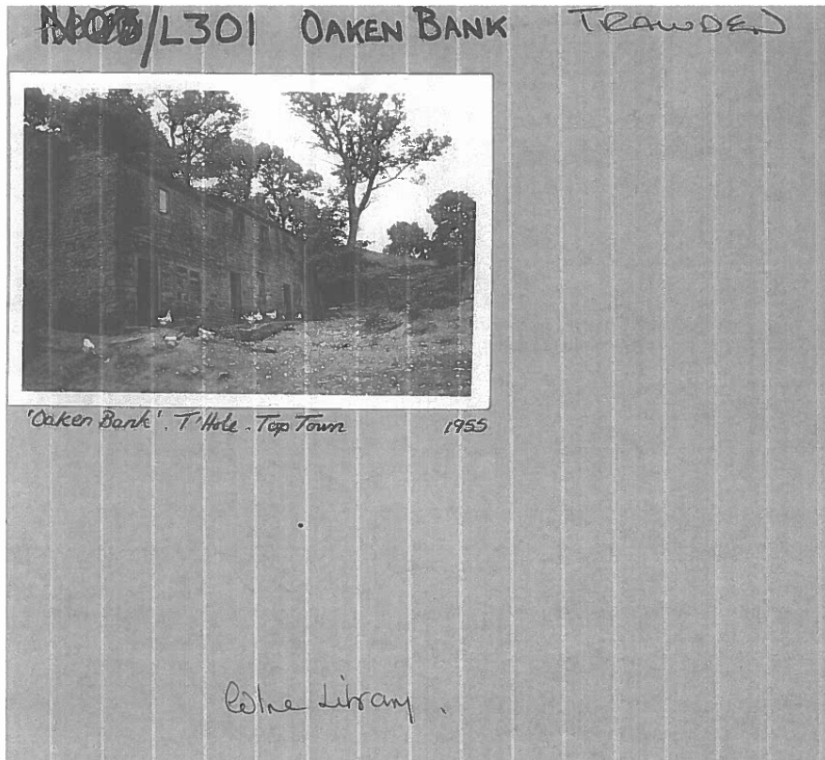
Observations

This document is taken from Pendle Borough Council's Street Atlas (not original document), and has been annotated with yellow highlighter to show the application route (& others). The application route is shown similar to how other highways in the immediate area have been recorded, and appears to be shown as a bounded road.

Investigating

Although showing the route as a substantial track, and

Officer's Comments		similar to how other highways have been recorded, it is unhelpful with determining the status as there is no key and no date. Therefore little inference can be taken from this document.
Historical Photographs of the route	Various	Historical photographs submitted by the applicant, both taken from Colne Library and dated 1940-50, and 1955, showing Oakenbank Cottages.



Observations		The photographs submitted by the applicant give a comparison of the layout surrounding Oakenbank cottages over an approximate 70 year period. A wide bounded track can be seen on the 1940-50 black and white photograph, with two ladies walking side-by-side downhill towards Oakenbank Cottages. The surface of the track is difficult to determine due to the quality of the scanned photograph, but the width of the track shows use on horseback could have been possible.
Investigating Officer's Comments		The photographs show that the route near Oakenbank Cottages was at one time (sometime between 1940-50) a good track (as evidenced by the ladies walking side-by-side rather than following, as tends to happen on a rough surface). There is a likelihood that use on horseback could have been possible.
Book Extracts	Various	Book extracts from various books submitted by the applicant to show the historical background of the area.
Observations		<p>The applicant submitted various extracts from books showing the historical background to Trawden and the surrounding areas. Some, although helpful in describing the local area, do not contribute to determining the status of the application route.</p> <p>One specific point of interest was within 'A Trawdens View' written by Jack Greenwood, a local historian describes the route as 'Here an old carriageway takes you past the farm (Oakenbank) and on to the moors, this area of Trawden is known as the oil'.</p>
Investigating Officer's Comments		The various books share the local knowledge of historians who mentioned specifically the area surrounding the application route. Of interest Jack Greenwood referred to the application route as an 'old carriageway' but although this does not necessarily imply public carriageway it does suggest a level of accessibility compatible with bridleway use.

The affected land is not designated as access land or common land under the Countryside and Rights of Way Act 2000, although it does join up to it on junction with the Pennine Bridleway at points N to O. It also joins up to the same piece of land which is registered as a Site of Scientific Interest, The South Pennine Moors.

Landownership

There are 4 land owners registered with the land registry which the application route affects:

- Alderhurst Head Farm, Hollin Hall, Trawden, BB8 8PS
- Beaver Farm, Boulsworth Road, Trawden, BB8 8ST

- Lower Oakenbank Farm, Hollin Hall, Trawden, BB8 8PS
- Oakenbank, Hollin Hall, Trawden, BB8 8PS

Ownership of the track from point A at Burnley Road to just after Pasture Springs Farm, points C to E, and I to O, are all unregistered on the land registry. The applicant was instructed to erect site notices to notify any existing landowners on these sections. Mr Ian Hartley of Antley Hall Farm responded to the consultation and marked his ownership as being from point I to O on the consultation plan. The landowners remain unknown on the prior sections.

There are also several properties adjacent to the route which this application effects. There are also rights claimed on the land under the Honor of Clitheroe and registered to Ingham and Yorke land agents.

Summary

From the map and documentary evidence, in particular the Ordnance Survey Maps examined, it appears that the route under investigation existed as a substantial route, particularly as a partly bounded track between points A from Burnley Road to point H just after Alderhurst Farm at least since 1800s. This section of the application route could have provided access to horse riders from at least 1804 until 1962/1963, subject to some gates on the route.

From point H the route continues as a less significant track, on some maps annotated 'FP', as it crosses fields towards Antley Gate, as shown on maps from as early as 1848 until 1962/1963. However, the Inclosure Award appears to have set out the southern 50m or so of the route without public rights thereby extinguishing any public rights on that section if they had existed.

The route was recorded on the Definitive Map documentation as public footpath, and their status was not objected to at any stage. The aerial photographs and use on the ground concur with the Ordnance Survey maps, in one section being an accessible substantial track and the other section a less used route.

The route provided, and still does provide, key access to several properties, along with substantial farm land. The track appears to be used for private vehicular access. Residents have taken responsibility for the surface of the track to access their properties via car, and as such have carried out drainage works. Information from the applicant appears to be that access was denied from the erection of the boulder in 2014, and therefore called into question for the purposes of presumed dedication. However information from the landowner appears that fencing in parts was in situ prior to this at other sections of the route, which would have prevented access.

The section of the application route not currently recorded as footpath (near the southern end of route) appears to be used significantly on the ground but does not appear to follow the definitive line of footpath 99 as it descends to Antley Gate. It appears that the field boundaries have changed at some time between 1960 to present day.

In conclusion, a great range of commercial maps and other documents were examined. There is consistent evidence over 200 years that bridleway use as a through route could have taken place, particularly along the wide accessible track from Burnley Road to Alderhurst Head Farm. From this point onwards to Antley Gate the track is less substantial and on some 1960s maps annotated as footpath. The consistent inclusion on early commercial maps strongly suggests a reputation as public bridleway or carriageway and the sunken nature of the landform supports this however the southern 50m or so at antley Gate was known not to have public rights immediately following the Inclosure Award in 1812.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application, the applicant has provided 10 user evidence statements (short statements not LCC's prescribed user evidence forms) to demonstrate usage over 20 years, as well as a bundle of documentation including maps, leaflets and references to several books to try to illustrate that the route was a historical carriageway and that bridleway rights should be recorded.

User Statements

Use has varied between the years 1977-2016.

Out of the 10 user evidence forms submitted, 3 users have used the full length of the route for 3, 4 and 7 years between the years 1985-2016.

3 users stated that they have only ridden the route on horseback once.

4 users stated that they have only ridden part of the route.

2 users stated that they were confronted by a landowner.

Use must be more than trivial and sporadic to be sufficient user evidence to give rise to a deemed dedication, and be without interruption. The user evidence submitted is limited, with some user statements provided showing that the landowner has challenged use in 1985 and 2004.

The applicant stated in her application that there are other known users who have used the route but are reluctant to contribute to the application due to fear of upsetting landowners, despite supporting her in her application. The County Council can only consider the user evidence submitted to them.

Documentary Evidence

The applicant submitted various pieces of documentary evidence to support the application to try and demonstrate that equestrian rights exist and that the route was deemed to be a historical carriageway. Some of the documents which the applicant has submitted are examined by officers as a matter of course and have been

included above. The applicant referred to other documentation which although helpful in understanding the history and 'bigger picture' of the area, do not provide a weighty bearing on the investigation into the status of the route in question. Information relating to Iron Age Evidence on an undated document ' Bonnie Colne' by Peter Wightman demonstrated Iron Age evidence in Trawden and included photographs dated 1959.

The applicant also submitted photographs of a Tractor Run Fundraiser between Burnley Road and Oakenbank but this was by permission to use the track from Oakenbank.

The applicant also referred to bench marks however these are not indicative of a public right of way, it is important to note that they can also be found on rocks in the middle of private land. The Survey Act of 1841 gave Ordnance Survey Surveyors the powers to enter onto both public and private land (PINS Consistency Guidelines).

Information from Landowners and Others

A significant response was received to the consultation letters sent to the landowners and adjacent landowners. In total, 32 responses to the application were received. 10 objected to the proposal and 19 stated that they had never seen any equestrian use of the route (therefore considered as objections). 3 provided comments of either a neutral stance, did not provide reasons as to an objection or only confirmed their land ownership.

There are 4 registered owners of the track. The rest of the route is unregistered with the land registry. There are however several residential properties who live adjacent or close to the track but are not the registered landowners of the route itself. They also provided comments stating that they have never seen any equestrians or cyclists using the application route, nor seen any evidence of use such as hoof prints or manure.

On the majority of the respondent letters, they all mention how the route was and is impossible to have been used by horses due to associated fencing, gates and stiles which allow access on foot as a footpath only.

The 1984 application for Byway Open to All Traffic was mentioned by landowners and other respondents pointing out that a prior investigation had been conducted on the route in question.

The landowners have also referred to the Inclosure Award included above.

Although not relevant to this investigation, concerns have been highlighted from residents with regards to the future maintenance of the track, and particular conflicts in potential increased numbers of horse riders coming into conflict with an oncoming vehicles trying to access properties. There are also fears of an increase in antisocial behaviour. Private rights are assumed to exist although this is not considered relevant to this investigation.

Landowners and adjacent residents expressed objections on the grounds that the route currently was unsuitable for horses, potential conflict with their animals,

increased maintenance costs, disturbance of peace and tranquillity, road safety on Burnley Road approaching the route, no cycling signs and footpath waymarks/signs, risk of abuse by quads and motorbikes, reduced security, other available bridleways nearby. Whilst these are mostly management issues rather than directly related to the evidence for or against existing rights they also emphasised that they had never seen trace of bridleway use except on 1 or 2 occasions which were either private use or challenged by landowners or residents.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Part of present line (A to H) available since mid1800's
Some user evidence

Against Making an Order(s)

Weak user evidence
Lack of historical evidence
Noted on historical maps as "footpath"
Difficulties in proving dedication of bridleway on balance
Inclosure Award notes the southern section of the route as 'Private Carriage and Occupation Road'

Conclusion

The route under consideration is currently nearly all recorded as a public footpath only sections I to L are currently not recorded as public footpath. The application is to upgrade the sections of the footpath from points A-B-C-D-E-F-G-H-I and M-N-O to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of higher rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

It is advised that as there is no express dedication in this matter 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 S31 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.

Looking firstly at 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 does on balance indicate how the route should be recorded. The analysis of the map and

documentary evidence presented in this report would seem to suggest that there is insufficient historical or documentary evidence of the entire claimed route. Historically the section A to H appears to be shown as a substantial route but this is mainly due to such section being used as private access to a number of dwellings. On the whole the claimed route appears to have been historically recorded and used as a footpath, in addition the Inclosure Award appears to show the southern section of the route without public rights, noted as 'Private Carriage and Occupation Road'. Landowners of the route have commented that the route is a public footpath only and used as such and have never seen any use on horseback or cycle, landowners have also stated that use of the route is private for access to their respective properties and any other use has been challenged when witnessed. It is suggested that it is difficult to see sufficient circumstances from which to infer the owners dedicated this route as a bridleway.

Looking secondly at deemed dedication under S31 Highways Act 1980. S31 requires there to be sufficient use of a route for twenty years before the route was called into question. In this matter the date the route was called into question for bridleway use is taken to be 2014 when the boulder was placed on the route prevent access other than that on foot. There is a limited amount of equestrian user evidence presented and no cycle user evidence presented. Out of the 10 user evidence forms submitted in support of this route, two users state that they have been challenged using the route and two users state that they have only ever used the route once, four of the users also confirm that they only used part of the route and none of the users have used the route for a 20 year period.

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

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-581		Claire Blundell , 01772 533196, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

3. WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIMED UPGRADING TO BYWAY OPEN TO ALL TRAFFIC OF
PUBLIC FOOTPATH NOS 61,71,72,73,74,95,97 and 99 TRAWDEN
PENDLE BOROUGH (ANTLEY GATE VIA ALDER HURST HEAD FARM
TO BURNLEY ROAD)
CLAIM NO 804/88/13/7/2

Description and Location of the Claim

The claimed route extends for a total distance of approx. 1945 in a general south easterly direction from Burnley Road (Alder Hurst Lane) to Antley Gate. The claimed route ends at a point south east of Antley Gate on the track known as Will Moor Hill Road which route is also the subject of another byway claim (see claim No 804/87). The entire route is already shown on the Definitive Map as a public footpath ie FP Nos 61,74,73,72, 71, 95, 97,99 in the former Urban District of Trawden.

The route is shown marked 'A' to 'I' on the attached plan and extends between 05 Grid References SD 918365 to SD 906379. (See also Claims Nod 804/87 and 804/89 elsewhere in this Agenda).

Consultations

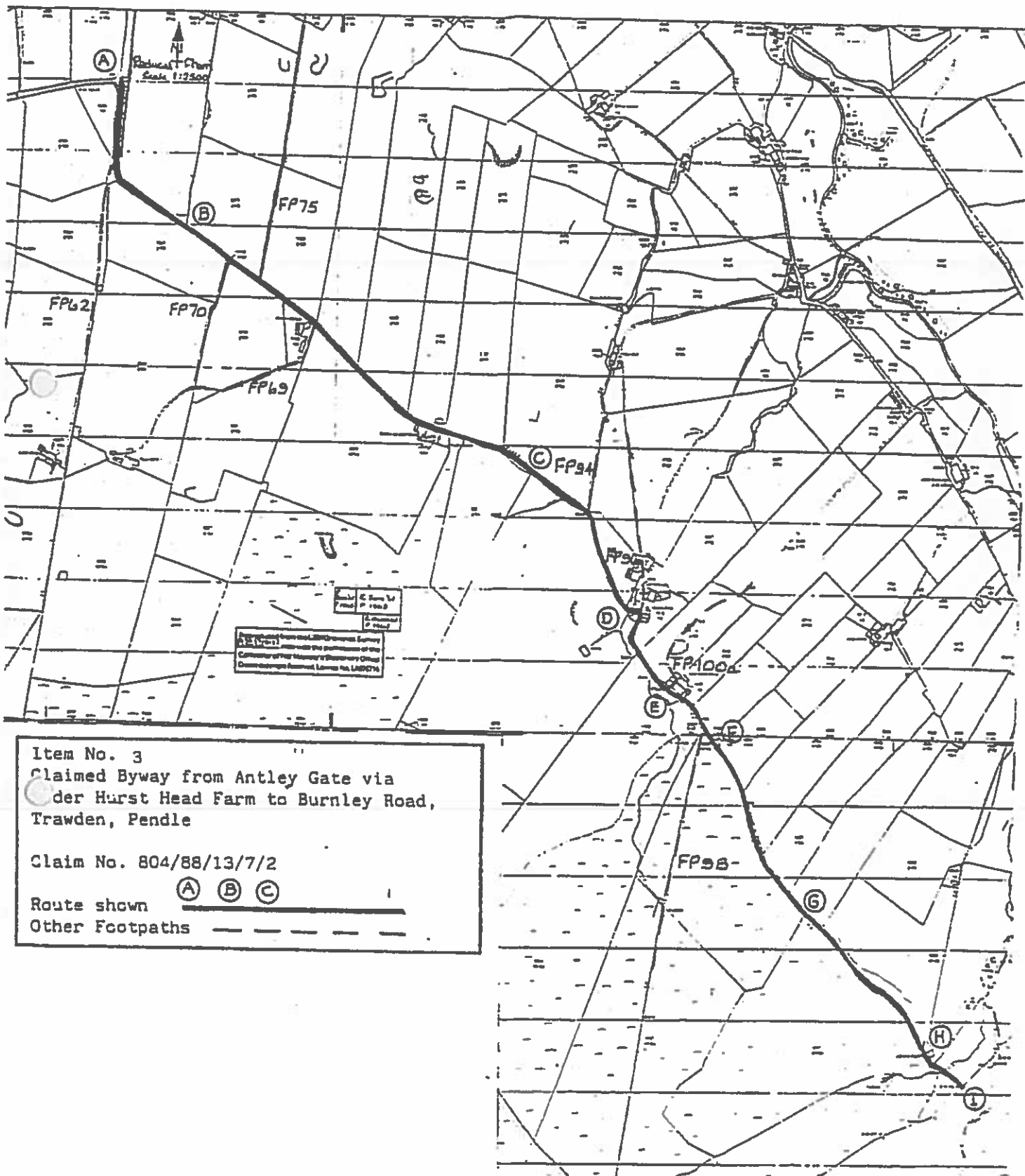
Pendle Borough Council

The claims have been considered by the Borough Council who wish to register its objection to all the claims on the following grounds:-

- (i) serious detriment would occur to the amenities and enjoyment of local residents, walkers, horse riders and cyclists if the routes were open to motor vehicles;
- (ii) the routes have physical limitations which would make their use by motor vehicles difficult and dangerous and, in particular, one of the routes is too narrow to permit the passage of motor vehicles;
- (iii) the Council has been involved, with other organisations, in environmental projects in the areas concerned, particularly the creation of a nature reserve at Coldwell Reservoir, the opening up of access to moorland on Boulsworth Hill and the designation of Boulsworth Hill as a Site of Special Scientific Interest.

Also, Boulsworth Hill is an important breeding ground for birds and a major water catchment area where the Council has a duty to the Water Authority to ensure that pollution does not occur. It is felt that the opening up of the routes to motor vehicles, with the consequent possibility of motor cycle scrambling, etc., taking place, would be detrimental to environmental interests and could result in pollution occurring in this water catchment area.

There is no Parish Council for this area.



County Surveyor's Observations

The route commences at point A on the plan, where there is a notice indicating "Little Moss Farm, and as far as point B, comprises a hard surfaced, stone and earth track approximately 2.5m wide. At A the track is constructed in a cutting, about 5m below field level and gradually climbs to field level at point B. There are grass covered bankings to each side of the track, with fences at the field level giving an overall width of between 15m at A to 4m at B. The track surface is of reasonable condition, with some potholes, and is clearly used by vehicles, though such use is probably mainly to gain access to properties, along the route.

From point B to C the route continues generally as a 2.5m wide track, comprising a hard stone surface, though for considerable lengths, more especially towards point C, the centre width of the track is grassy. The surface is of reasonable condition and the route is clearly in use, providing vehicular access to properties along the route and to fields. The route is mostly at field level though some lengths are a few metres below, indicating a considerable age to the track. The route is well defined between stone walls or fences of overall width between 8 m and 4 m, and there are grassed verges or bankings at either side. At point C there is a 2.5 m wide openable metal field gate across the route.

From point C to D Oaken Bank, the route comprises a 2.5 m wide hard surfaced stone track, with a wall and fence to the east side but open to rough grass land to the west. This section appears to be little used by any form of vehicle as there are grass, and weeds growing up through the surface stones. At point D there is an openable 3 m wide metal field gate.

Beyond point D the route loops through part of the farm yard to Oaken Bank and comprises a reasonable hard surface, though the width of the route varies where it passes through the farm yard. The route leaves the yard by means of an openable metal field gate and then deteriorates to become a rough earth and grass surface track about 2 m wide. The surface is well trodden mainly by animals and appears only to be used, otherwise by pedestrians. A further gate exists between points D and E, being a newish openable wooden gate some 2m wide. Beyond this gate, to point E, at Alder Hurst Head the route comprises a 2m wide grass surfaced track in reasonable condition, though showing evidence only of limited pedestrian use. There are stone walls to either side of this section of route, though some lengths are delapidated, with an overall width of approximately 5 m. This section climbs quite steeply from point D, Oaken Bank, to point E Alder Hurst Head, and for a considerable length is below adjoining field level. At point E a certain amount of fill material has been placed across the route forming an access into the yard of Alder Hurst Head. Though not preventing pedestrian use of the claimed route, the fill would make any attempt at vehicular use more difficult.

The route continues past Alder Hurst Head to point F as a very rough, grass surface track, some 3 to 5 m wide between stone walls. At point F there is an openable metal field gate about 3 m wide. Generally this section is lower than surrounding field levels.

From point F to G the route is only discernable as a depression, 2 or 3 m wide and up to a metre deep, across rough moorland grazing land. The route is bounded to the east by a stone wall but is open to the west. The route is very overgrown, with sections which are boggy and water-logged. There is no obvious evidence of any use of the actual route itself, though there is evidence of some limited pedestrian use of rough sheep tracks which run parallel to, and immediately to the side of the route, but on the slightly higher firmer ground. At point G there is a 2 m wide wooden field gate which is wired shut, with a stone stile alongside. There is some evidence of there having been a wider gateway at this point which is now blocked off.

From G to H the route continues as a barely discernable depression across the moorland. The route is overgrown with rough grasses and reeds and in places is very water-logged and difficult to negotiate even on foot. The route is open to the moorland on either side. From point H, Antley Gate (now in ruins) to point I the route becomes a rough stone surface track, but still open to the moorland at each side. There is a shallow ford where the track crosses a small stream between points H and I and there is evidence of tractor use and pedestrian use. There is an openable wooden field gate, 3 m wide, at point I, which gives access to the track known as Will Moor Hill Road, which is itself the subject of another claim (No. 804/87).

In summary, this route falls into two distinct sections. The first section extends from point A to point D and generally comprises a reasonable hard stone surface track, bounded almost throughout by stone walls. The track width is about 2.5 m and the overall width varies between 4 m and 15 m. There is evidence of pedestrian use of the whole section and there is evidence of vehicular use of most of the length. However, it is not possible to determine whether or not this is public vehicular use or purely private use to gain access to a number of properties along the route. There are no notices or signs deterring use of the route and the two field gates across the route are openable. The general condition, alignment and character of this section suggests a route of a very considerable age.

The greater part of the second section is across open moorland and comprises a barely discernable, very rough, overgrown, and often water-logged track. There is virtually no evidence of any use of the route, and the condition of much of this length would make even pedestrian use difficult, though there are rough sheep tracks immediately to the side of the route which appear to be used by walkers. However, despite the above, the full line of the route is visible throughout as a 2 to 3 m wide depression in the moorland and thus suggests that a more obvious track probably existed at an earlier date which has gradually been neglected and deteriorated. On this section one gate has been wired shut and this now prevents all but pedestrian use.

The site evidence indicates that the full route is probably only used at present by pedestrians and that any equestrian or vehicular use would be virtually impossible. However, it is clear that a definite track must have existed for very many years and all the site indications are that this would have been of sufficient width and construction to be used by all types of traffic. The fact that all the properties along the route are distinctly to the side of the track suggests that the route provided a continuous through route, not merely giving access to one or two properties. However, this does not, in itself, prove that the full route has been used as a public vehicular route.

Chief Executive/Clerk's Observations

The evidence submitted by the applicant in support of the claim consists solely of the assertion that the claimed byway is shown on several early maps, these being cited as Greenwood's Maps of 1818 and 1830, Teesdale Hennes's Map of 1830, 1st Edition OS 6 inch to 1 mile and the reprinted 1st edition OS 1" to 1 mile. This assertion is not disputed but it may be noted that there is no supporting evidence of any usage of the claimed byway as "byway open to all traffic". The route was shown on the original Parish Survey as a series of footpaths and is similarly recorded on the Definitive Map and Statement. There is therefore no suggestion in the mapping process that the route was now regarded as being of a higher status.

Five letters of objection have been received from or on behalf of landowners (only seven landowners are affected by the claim) and in addition one from a local parish councillor and also a letter from the local MP in support of one of the landowners.

The objections raised cover several matters including disturbance which may be caused to adjoining landowners, the possible danger to livestock caused by straying, affects on wildlife, fire risk, damage to trees (a newly planted conifer forest), access problems to properties along the route of the claim, and the possible need for the installation of cattle grids. Similar points are made by the Borough Council about conservation and the unsuitability of the route for motor vehicles. However, whereas the problems which may arise on such an upgrading to byway status are appreciated, it must be borne in mind that such considerations are not relevant in determining the status of the route and similarly, in relation to the County Surveyor's observations the present condition of the route is not material in determining the claim.

As well as the objections outlined, there are further specific objections based on specific evidence.

One letter of objection details that one part of the route of the claim is shown on an Inclosure Award of 1821 as "private carriage and occupation road" and also that other parts are shown on the Tithe Award Map for Trawden of 1844 and the index to this Award refers to these as being again "occupation roads". One of the other letters of objection received similarly refers to the Tithe Map and another to the Inclosure Award.

On consideration of the evidence put for and against the claim it must be said that the map evidence standing alone, though relevant is not conclusive in support of the claim and indeed it has been pointed out by way of objection that the route is not shown on earlier maps. However, the evidence of the Inclosure Award and Tithe Award is very strong if not conclusive evidence that the route was originally a private vehicular access road to the adjoining farms. There is no evidence of usage by the public or any other evidence to suggest that it has changed its status over the years, except for the fact that the present designation of the route as a series of footpaths implies there must have been usage on foot. It is appreciated that only parts of the claimed route are described as "occupation roads" but it is difficult to see how the remainder of the route could be a public highway in these circumstances. It is therefore felt that the weight of the evidence is such that the claim be rejected.

Recommendation

That the claim to upgrade Public Footpaths Nos. 61, 71, 72, 73, 74, 95, 97 and 99, Trawden, Pendle Borough to Byway open to all traffic, in accordance with Claim No. 804/88/13/7/2, be not accepted.

HIGHWAYS AND TRANSPORTATION COMMITTEE

PUBLIC RIGHTS OF WAY SUB-COMMITTEE

Meeting held on Wednesday, 9th July, 1986, at
10.30 a.m. at County Hall, Preston

MINUTES

PRESENT:-

County Councillor S Mercer (Chairman)

County Councillors

J A Bennett
W E Challis
E M Fail
J French
C R Grills
D Lockwood
J McCrae

F R Melling
G L Nickson
G W Roper
G W Slynn
Mrs K Sumner-Clough
F Townend
P H Worrall

County Councillor P P Hall attended under the provisions of S.O. 45.

MINUTES

13. RESOLVED:- That the Minutes of the meeting held on the 21st May, 1986 be confirmed and signed by the Chairman.

WILDLIFE AND COUNTRYSIDE ACT 1981

CLAIMED UPGRADING TO BY-WAY OPEN TO ALL TRAFFIC

OF THE ROUTE FROM COLDWELL RESERVOIR TO COMBE HILL CROSS

(WILL MOOR HILL ROAD) TRAWDEN, PENDLE BOROUGH, CLAIM NO. 804/87/13/7/1

It was reported that the claim was for the upgrading of the route from Coldwell Reservoir to Combe Hill Cross, Trawden, Pendle Borough, to the status of By-way Open to All Traffic in accordance with the procedure laid down in the Wildlife and Countryside Act, 1981.

Details of the claim were presented.

14. RESOLVED:- (a) That the claimed by-way open to all traffic between a point on the Laneshawbridge to Haworth Road near Combe Hill Cross to the junction with Wycoller Road and Bridleway No. 191 Trawden, Pendle Borough a distance of approximately 970 metres (Claim No. 804/87/13/7/1) be accepted and

(b) That an Order be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in accordance with Claim No. 804/87/13/7/1 to add the route from a point on the Laneshawbridge to Haworth Road near Combe Hill Cross to the junction with Wycoller Road and Bridleway No. 191 Trawden, Pendle Borough, a total distance of approximately 970 metres, to the Definitive Map and Statement of Public Rights of Way as a By-Way Open to All Traffic; and

(c) That further investigations be carried out into the length of the claimed by-way near Upper Coldwell Reservoir prior to a determination in respect of the remaining length of the claim being made.

WILDLIFE AND COUNTRYSIDE ACT, 1981
CLAIMED UPGRADING TO BY-WAY OPEN TO ALL TRAFFIC OF
PUBLIC FOOTPATH NOS. 61, 71, 72, 73, 74, 95, 97 AND 99 TRAWDEN,
PENDLE BOROUGH (ANTLEY GATE VIA ALDER HURST HEAD FARM TO
BURNLEY ROAD) CLAIM NO. 804/88/13/7/2

It was reported that the claim was for the upgrading of Public Footpath Nos. 61, 71, 72, 73, 74, 95, 97 and 99, Trawden, Pendle Borough, from Antley Gate via Alder Hurst Head Farm to Burnley Road, to the status of By-way Open to All Traffic in accordance with the procedure laid down in the Wildlife and Countryside Act, 1981.

Details of the claim were presented.

15. RESOLVED:- That the claim to upgrade Public Footpaths Nos. 61, 71, 72, 73, 74, 95, 97 and 99, Trawden, Pendle Borough to By-way Open to All Traffic, in accordance with Claim No. 804/88/13/7/2, be not accepted.

WILDLIFE AND COUNTRYSIDE ACT, 1981
CLAIMED BY-WAY OPEN TO ALL TRAFFIC FROM FRIGHAM'S COTTAGE
PAST MEAN MOSS FARM TO BEAVER GATE (KNOWN AS BOULSWORTH ROAD)
TRAWDEN, PENDLE BOROUGH, CLAIM NO. 804/89/13/7/3

It was reported that the claim was for a By-way Open to All Traffic from Frigham's Cottage past Mean Moss Farm to Beaver Gate, known as Boulsworth Road, Trawden, Pendle Borough, in accordance with the procedure laid down in the Wildlife and Countryside Act, 1981.

Details of the claim were presented.

16. RESOLVED:- (a) That the claim for a by-way open to all traffic from Frigham's Cottage past Mean Moss Farm to Beaver Gate (Boulsworth Road), Trawden, Pendle Borough (Claim No. 804/89/13/7/3) be not accepted; and

(b) That subject to the claimant's right of appeal, an Order be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981, to add the route from Frigham's Cottage past Mean Moss Farm to Beaver Gate (Boulsworth Road) Trawden, Pendle Borough to the Definitive Map and Statement of Public Rights of Way as a Bridleway.

WILDLIFE AND COUNTRYSIDE ACT, 1981
CLAIMED UPGRADING TO BY-WAY OPEN TO ALL TRAFFIC OF BRIDLEWAY NO. 55,
GRINDLETON, RIBBLE VALLEY BOROUGH, CLAIM NO. 804/109/3/21/2

It was reported that the claim was for the upgrading of Bridleway No. 55, Grindleton, Ribble Valley Borough, to By-Way Open to All Traffic, in accordance with the procedure laid down in the Wildlife and Countryside Act 1981.

Details of the claim were presented.

17. RESOLVED:- That the Highways and Transportation Committee be recommended to agree:-

- (a) That the claimed upgrading of Bridleway No. 55 (known as Back Lane, Grindleton) (Ribble Valley Borough) to By-way Open to all Traffic. (Claim No. 804/109/3/21/2) be not accepted on the grounds that it is already a highway of higher status; and
- (b) That there is insufficient evidence to prove that Back Lane, Grindleton is an ancient highway and therefore maintainable at public expense.

HIGHWAYS ACT 1980 - SECTION 119
PROPOSED DIVERSION OF PART OF PUBLIC FOOTPATH NUMBER 12
PARISH OF LONGTON, SOUTH RIBBLE BOROUGH

It was reported that a request had been received for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Public Footpath No. 12 in the Parish of Longton. The length of the existing footpath to be diverted was shown on the plan by a bold black line and marked A-B and the proposed alternative route was shown by a dotted black line and marked B-C-D.

The diversion request was made in the interest of the owner/occupier because of the close proximity of the existing route to the house and other buildings with particular regard to security in this isolated location.

The length of footpath number 12 to be diverted was 95 metres and the length of the proposed alternative was 120 metres.

The proposal was considered acceptable from a highways aspect and met the criteria for a diversion under Section 119 of the Highways Act 1980, i.e. that in the interest of the owner, leasee or occupier of land crossed by the path, or of the public, it was expedient that the path should be diverted. Furthermore, it was considered that the diversion route would not be substantially less convenient to the public than the existing route.

Both the existing and the proposed routes were over land in the ownership of the applicants who had agreed to meet the advertising costs incurred by the County Council in the Order making procedures and all other costs involved in providing the alternative route to the satisfaction of the County Council.

The necessary consultations with the Statutory Undertakers had been carried out and no adverse comment had been received. The Ramblers' Association had also been consulted and had raised no objection to the proposal. The Longton Parish Council did not object to the proposal, but the South Ribble Borough Council, through its Development Services Committee, had indicated opposition to the proposal on the grounds that the alternative route would be too circuitous. The Sub-Committee considered that, as the proposal satisfied the criteria for a diversion, and that as the additional length of walking involved was only approximately 25 m, the order making procedures should be implemented notwithstanding the comments of the Borough Council.

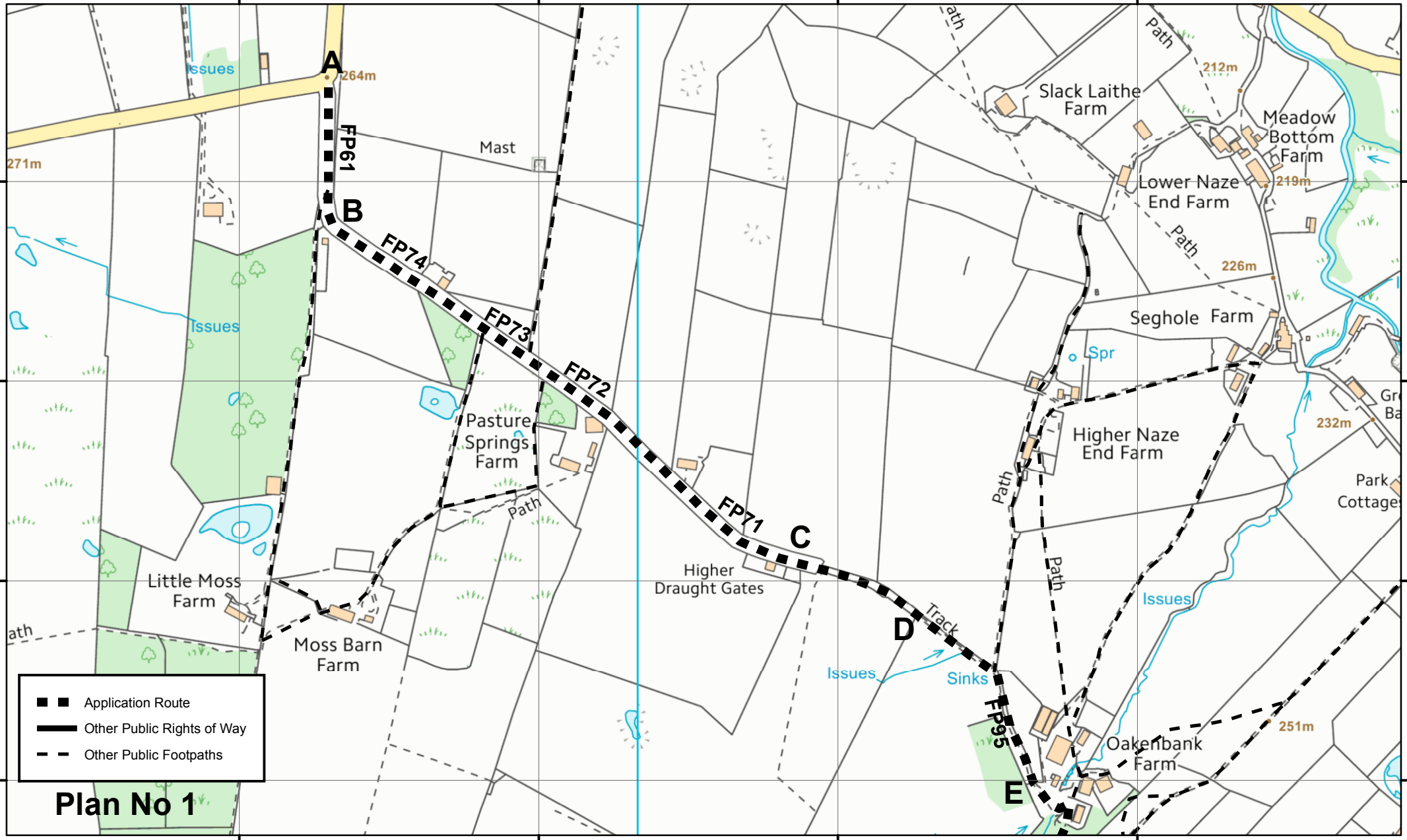
18. RESOLVED:- That an Order be made, under Section 119 of the Highways Act 1980, to divert that part of Footpath No. 12, Parish of Longton, from the route shown by a bold black line and marked A-E on the plan contained in the report to the route shown by a dotted black line B-C-D on that plan, and that in the event of no objection being received, the Order be confirmed.

DATE AND TIME OF NEXT MEETING

It was reported that the next meeting of the Sub-Committee would be held at 10.30 a.m. on Thursday the 4th September 1986.

BRIAN HILL
Chief Executive/Clerk

County Hall
PRESTON



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

Plan No 1

Lancashire
County Council

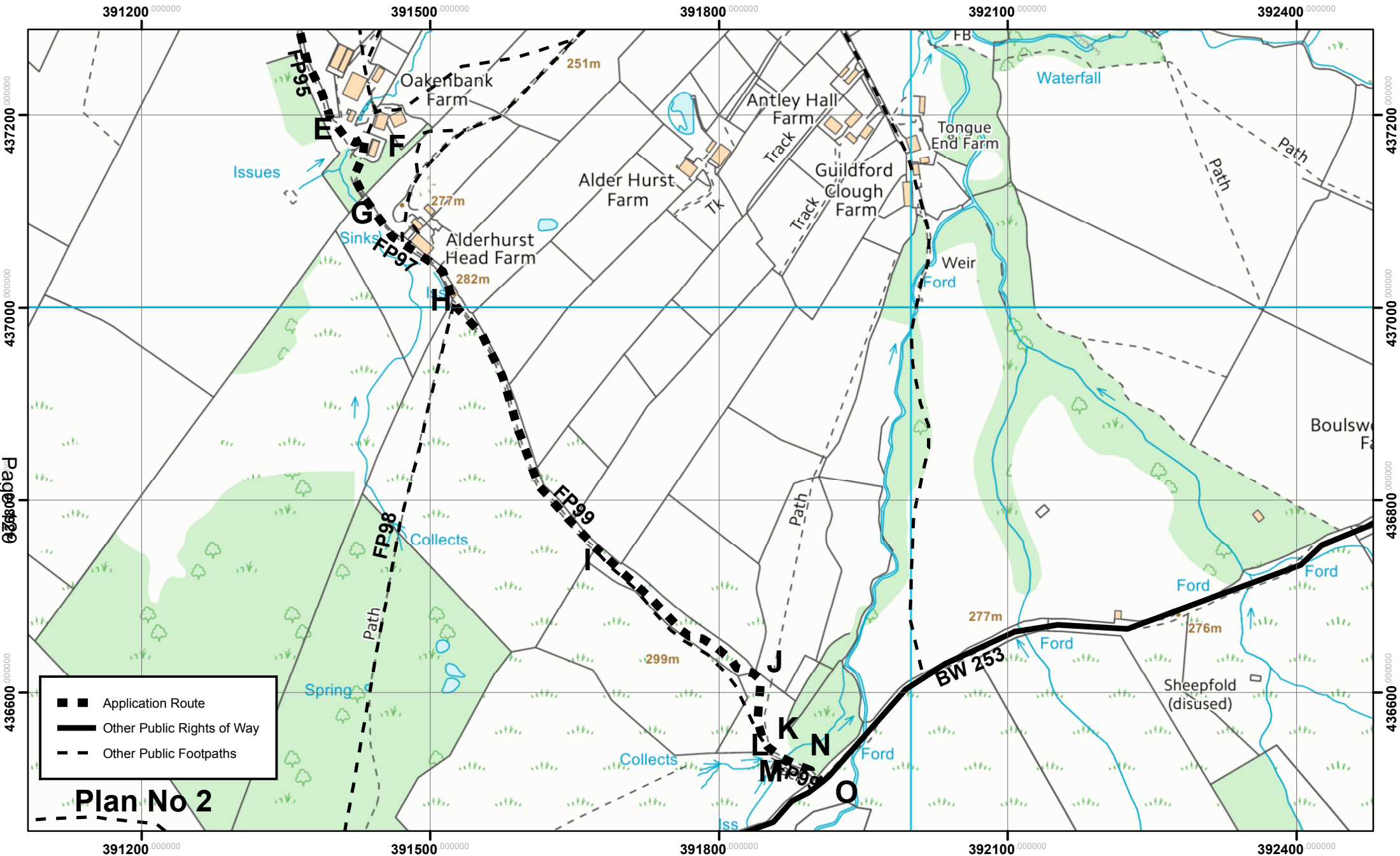
Andrew Mullaney
Head of Planning and Environment

Application to upgrade to Bridleway of Public Footpaths, and part addition of Bridleway, from Burnley Road to Antley Gate, Trawden, Pendle Borough - File No 804-581

1:5,000

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Lancashire
County Council

Andrew Mullaney
Head of Planning and Environment

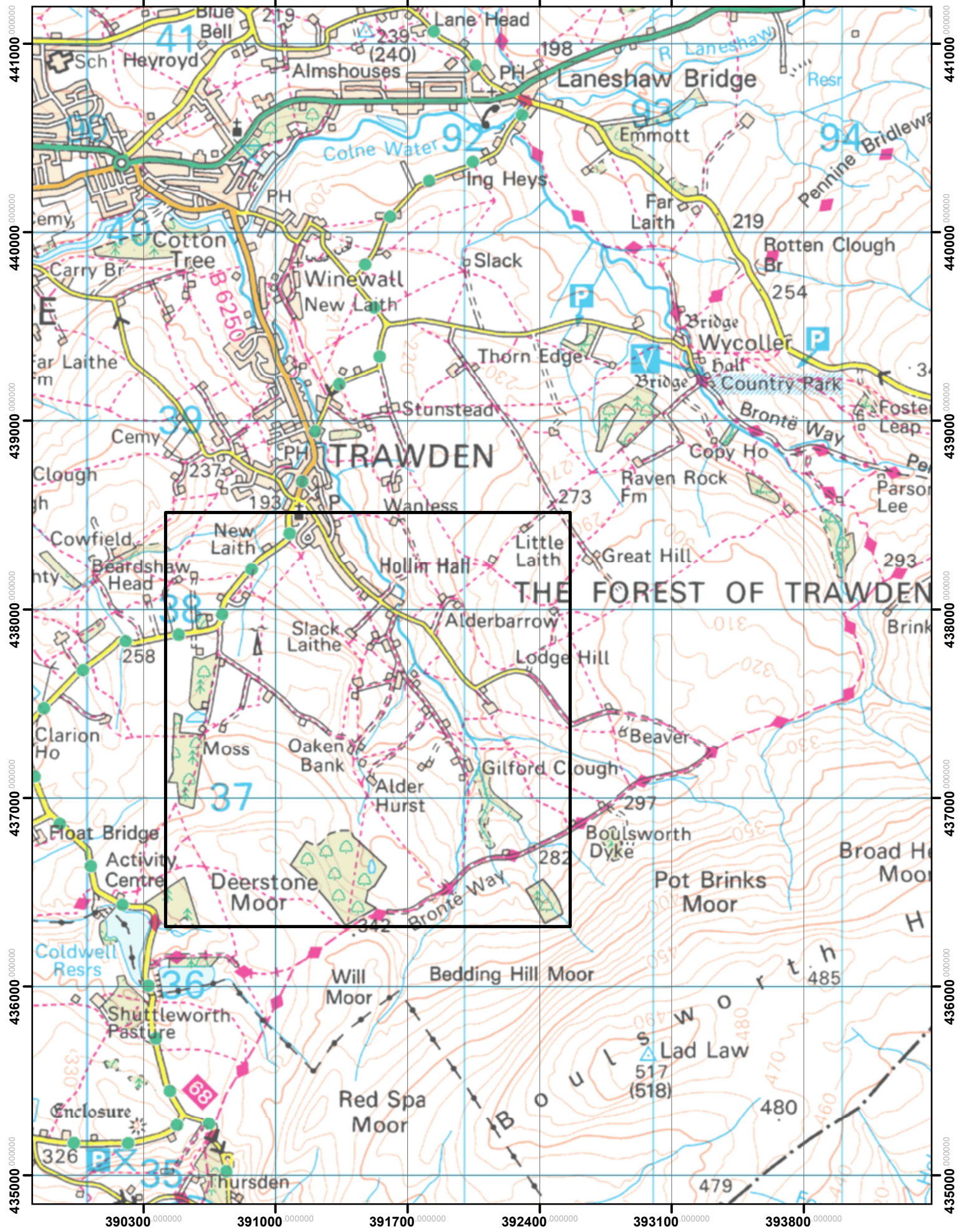
Application to upgrade to Bridleway of Public Footpaths, and part addition of Bridleway, from Burnley Road to Antley Gate, Trawden, Pendle Borough - File No 804-581

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Andrew Mullaney
 Head of Planning and
 Environment

Location Plan - File No 804-581

1:25,000

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Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected: Preston Rural

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Pinewood Avenue,
Broughton, Preston City
File No. 804-590
(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, claire.blundell@lancashire.gov.uk

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

Executive Summary

Application for the addition to the Definitive Map and Statement of a footpath from Garstang Road (A6) to Pinewood Avenue, Broughton, Preston City, in accordance with File No. 804-590.

Recommendation

That the application for the addition of a footpath to the Definitive Map and Statement from Garstang Road to Pinewood Avenue, Broughton, in accordance with File No. 804-590, be not accepted

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Garstang Road to Pinewood Avenue in the parish of Broughton, as shown between points A-B-C-D-E-F on the Committee plan.

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

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

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

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

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

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

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

Consultations

Preston City Council

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

Broughton Parish Council

Broughton Parish Council are the applicants in this matter.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5238 3524	Junction with Garstang Road (A6) north of 518 Garstang Road
B	5241 3525	Route passes through gateposts
C	5243 3527	North west corner of Telephone Exchange building
D	5245 3528	Width of route reduces as it passes ramped access into building
E	5245 3528	Route passes through gateway
F	5246 3529	Junction with Pinewood Avenue

Description of Route

A site inspection was carried out on 13 September 2017.

The route commences at a point on the A6 Garstang Road north of 518 Garstang Road and opposite the entrance to Halshaw Drive. A bus stop is located just north of point A on the same side of the A6 as the application route.

A tarmac entrance from the A6 carriageway exists with dropped kerbs to provide vehicular access onto the application route, which provides access to a telephone exchange (now closed) and to a residential property (522 Garstang Road).

Access onto the route at point A is open and follows a tarmac road bounded by grass verges and fences in an east north easterly direction, for approximately 35 metres to a gateway at point B.

Immediately before reaching point B on the north side of the application route is access to 522 Garstang Road.

The gateway at point B was in an open position when the route was inspected and its condition and surface growth around the base of it suggested that it had not been closed across the route for some time.

Two notices were clearly visible from the application route (if walking from point A) on the fence adjacent to the gate. The most faded notice (undated) stated 'WARNING This is Private Property Unauthorised access is trespass and is not permitted. British Telecommunications plc. (BT) will prosecute unauthorised access to its premises. BT will have no liability to trespassers who enter these premises without BT's permission. Any unauthorised removal of BT property is theft and anyone caught removing BT property without BT's consent will be prosecuted.'

A second, slightly less weathered notice (also undated but appearing to be a little newer than the other sign) stated 'BT Premises unauthorised access is trespass and is not permitted. Only for use by BT vehicles and other vehicles authorised to enter on business. All other vehicles are prohibited. BT will not accept liability for any loss, damage or injury, however caused to persons or vehicles, whether authorised or unauthorised.'

Beyond the gate, the application route continues across the tarmac entrance to the site in a north easterly direction to the north west corner of the telephone exchange building (point C) where there is a door into the building and a sign on the corner of the building stating 'Goods Inwards'.

From point C, the route continues along the northern side of the telephone exchange building along a 3 metre wide tarmac surfaced path covered by a canopy, along the side of the building to a ramped access to some further doors into the building at point D.

From point D a 1.10 metre tarmac path continues past the ramped access to pass through a white pedestrian gate (85cm wide) in the fence line at point E and then continues for a further 6 metres across a maintained grass verge to the footway on Pinewood Avenue (point F) directly opposite 14 Pinewood Avenue.

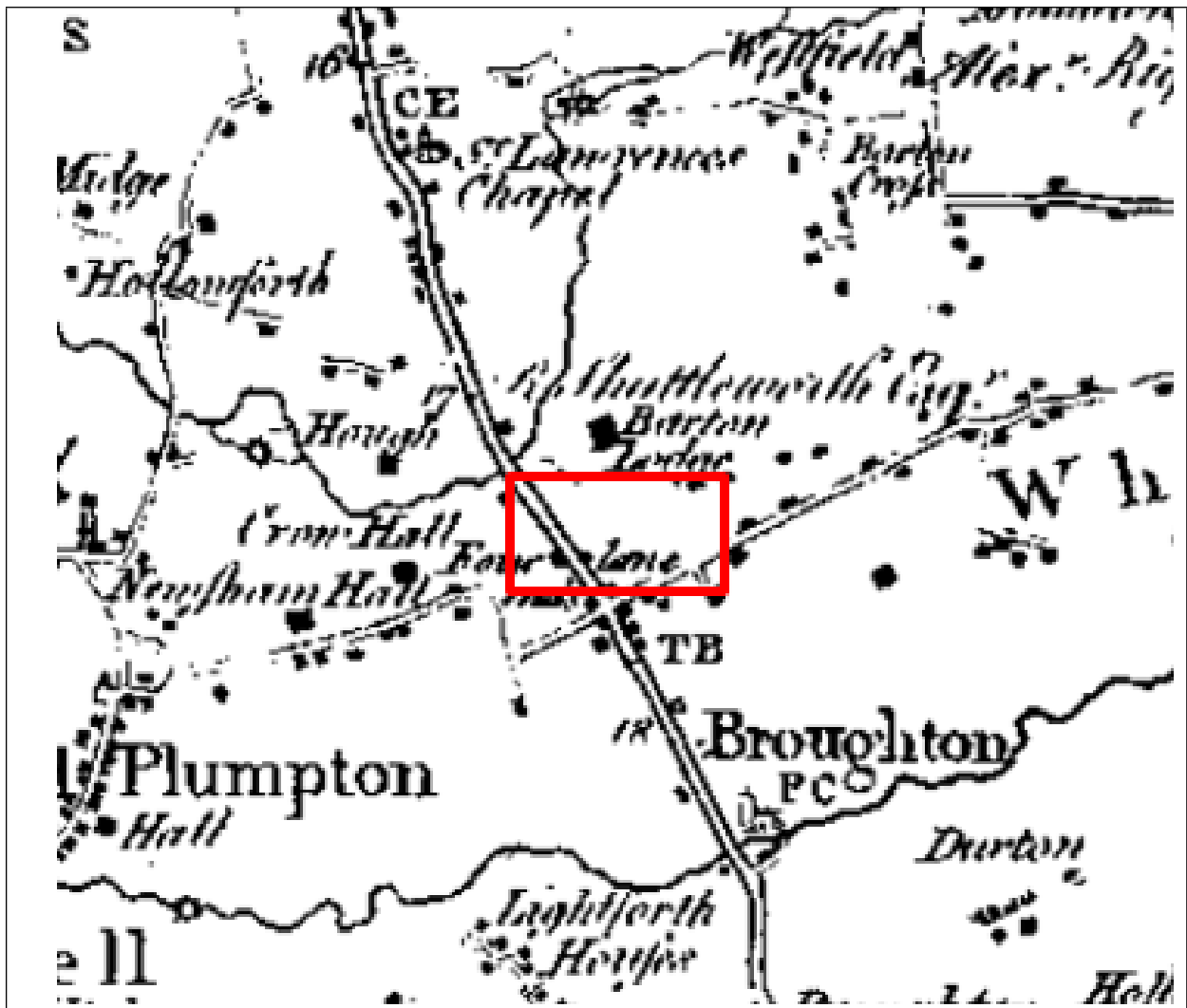
A sign identical to the weathered sign at point B is fastened to the outside of the fence immediately adjacent to the gate at point E which is visible from Pinewood Avenue. The wording is faint and worn but can still be read.

A faint trodden line was visible in the grass verge between point E and point F suggestive of pedestrian use.

The total length of the route is approximately 95 metres.

Map and Documentary Evidence

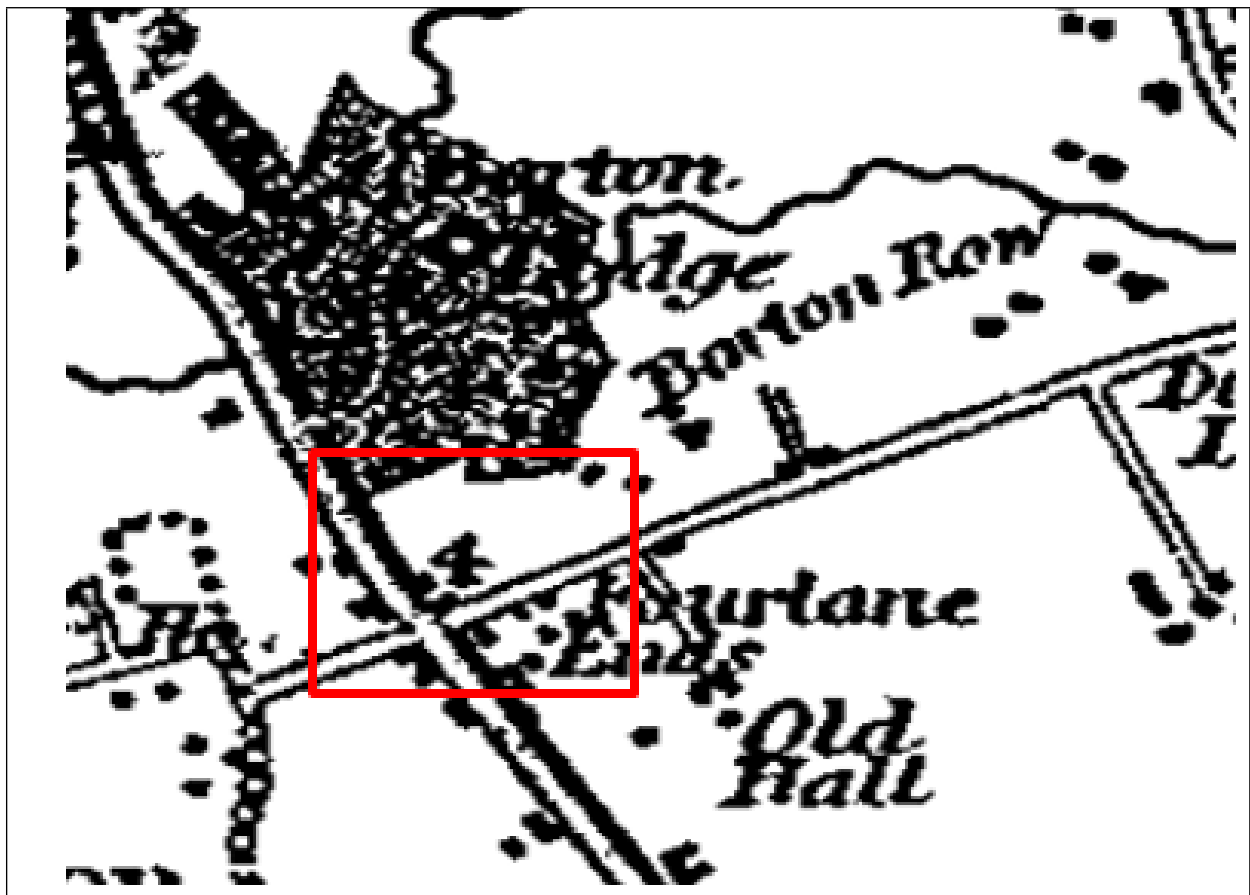
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



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



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



Observations		The application route is not shown. Garstang Road is shown but Pinewood Avenue is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The application route does not cross land affected by the planned construction of a canal or railway.

Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Pinewood Avenue and that no part of the route was shown to have existed in the 1800s. For this reason the Tithe Map for the area crossed by the application route has not been examined.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award in the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1847. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the



Observations		The application route is not shown. Garstang Road is shown but Pinewood Avenue is not shown. The land over which the application route runs is shown as fields and there is no route marked on the map.
Investigating Officer's Comments		The application route probably did not exist in 1844 - 1847 (date of survey).
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.

legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations		The application route is not shown. The application route crosses fields and no path is shown. Pinewood Avenue is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1892 (date of survey).
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.
Observations		The application route is not shown and there are no changes to the map in the vicinity of the route from the date of the first 25 inch OS map survey.
Investigating Officer's Comments		The application route probably did not exist in 1910 (date map revised).
Finance Act 1910 Map	1910	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

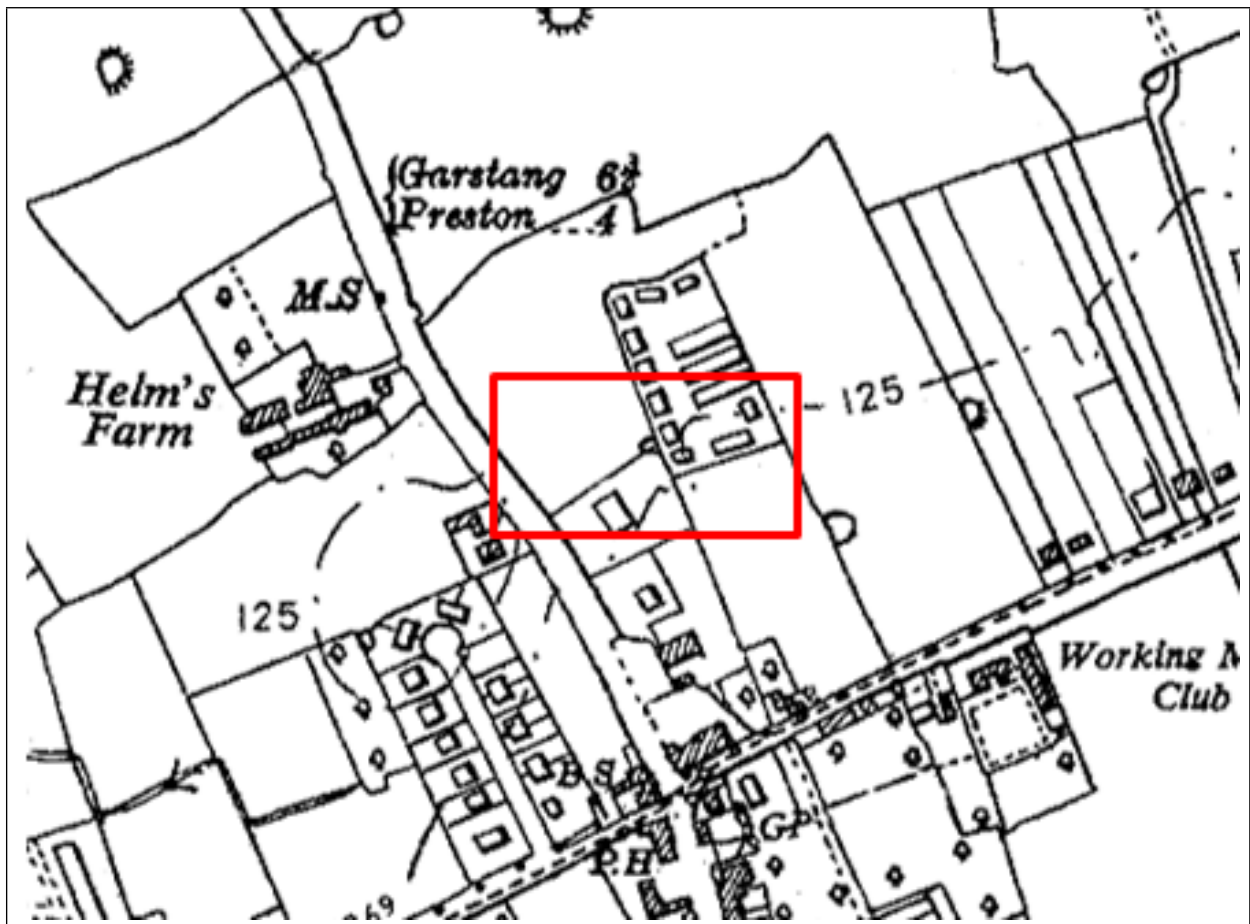
		<p>claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		<p>Ordnance Survey mapping and other map and documentary evidence examined later in the report show that the application route did not come into being as a through route until the construction of Pinewood Avenue and that no part of the route was shown to have existed in the early 1900s. For this reason the Finance Act records for the land crossed by the application route have not been examined.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed

		1982, revised in 1930 and published 1932.
Observations		The application route is not shown. The area crossed by the application route is shown unchanged from how it is shown on the first and second edition 25 inch OS maps.
Investigating Officer's Comments		The application route probably did not exist in 1930 (date map revised).
Authentic Map Directory of South Lancashire by Geographia	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 Map does not cover the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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



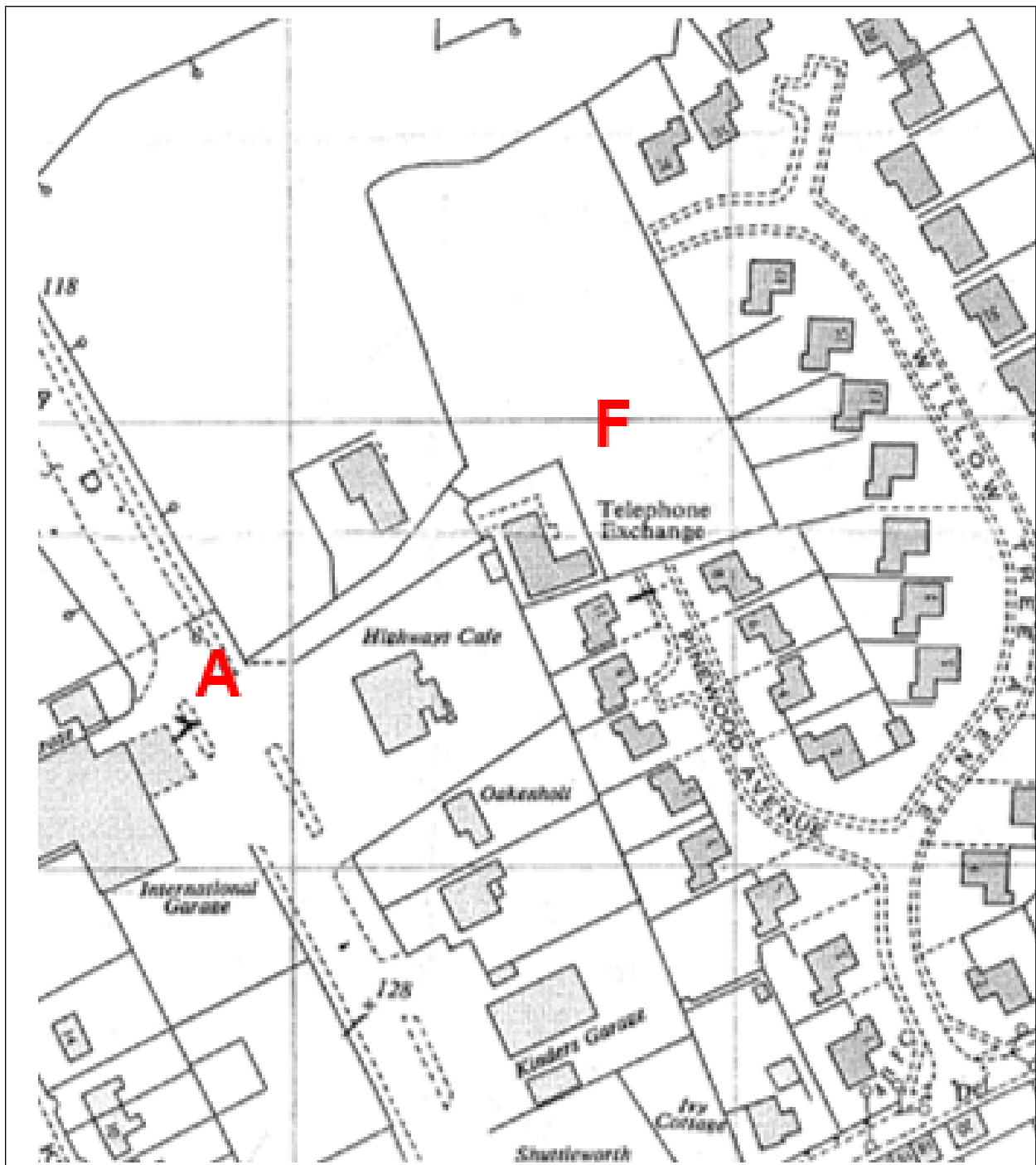
Observations		The quality of the photograph is poor but it appears that a worn area is evident at point A indicating the existence of a possible gateway or access into the field and there are buildings in proximity to point E with no obvious access track to get to them.
Investigating Officer's Comments		Part of the application route may have existed in the 1940s but the route did not exist as a through route.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is not shown on the map and it is unclear whether access would have been available along any part of it. Pinewood Close is not shown.
Investigating Officer's Comments		The application route probably did not exist in the 1930s (date of survey).
1:2500 OS Map	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1961 as national grid series.



Observations		<p>A strip of land is shown extending from point A which appears to be open and accessible along the modern day alignment of the application route. It passes to the north of a building labelled as a highway café and appears to provide (gated) access to a depot.</p> <p>Pinewood Avenue is not shown.</p>
Investigating Officer's Comments		<p>The application route did not exist as a through route but access may have been available along part of it to the depot.</p>
1:2500 OS Map	1966	<p>Further edition of OS map reconstituted from former county series and revised in 1965 and published 1966.</p>

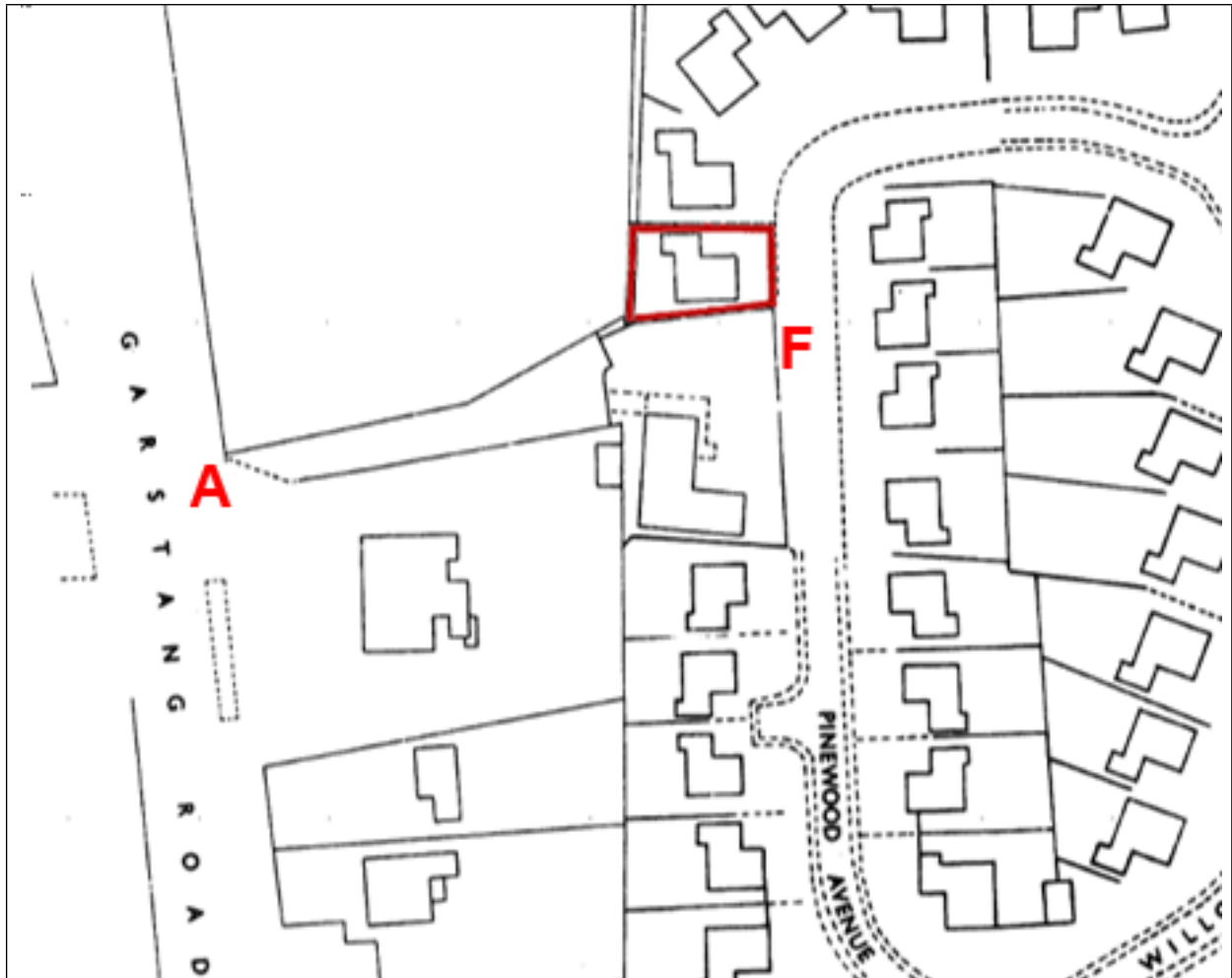


Observations		Access may have been available from point A along a fenced off strip of land to the north of the Highway Café. The depot is no longer shown but a building labelled as telephone exchange is shown. Part of Pinewood Avenue has been constructed but the part connecting to the application route is not shown.
Investigating Officer's Comments		Access may have been available along part of the application route in 1965 but the route did not exist as a through route.
Aerial photograph	1960s	The black and white aerial photograph

		taken in the 1960s and available to view on GIS.
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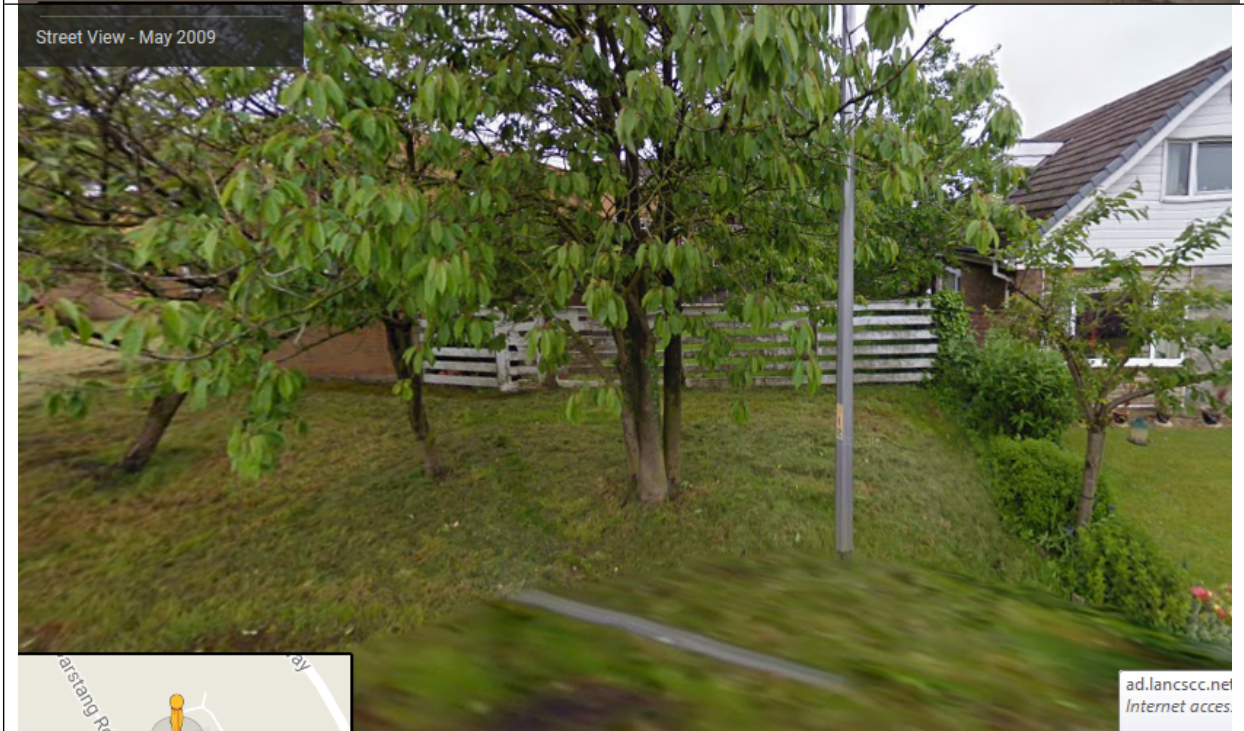
Observations		The quality of the photograph is poor. Access appears to be available and unrestricted at point A leading through to point F. Pinewood Avenue looks to be partially constructed but does not appear to extend through to point F.
Investigating Officer's Comments		Access may have been available along part of the application route in 1960s but the route did not exist as a through route (connecting to Pinewood Avenue).
Land Registry Plan	1967	OS plan published 1967 at a scale of 1:1250



Observations		<p>The OS base map published in 1967 shows further development and the construction of Pinewood Avenue. The route between point A and point B is shown with a line across the route at point B suggesting the possible existence of a gate. Access may have been available between point B and point F but a route is not marked and access onto Pinewood Avenue may have been further south than point F (where there is a break in the solid line). The building shown just south of the route from point B to point F is not labelled so it is not possible to know what this was but it differs from the building now on site and which was the telephone exchange building.</p>
Investigating Officer's Comments		<p>A route may have existed from Garstang Road to Pinewood Avenue in 1967 but the alignment may have been different to the route claimed between point B and point F.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route can be seen between points A-B-C and appears to be available. It is not possible to see the route between point C and point E as it is undercover and it is not possible to see if there is a visible route between point E and point F across the grass verge due to the trees along the grass verge obscuring the view.
Investigating Officer's Comments		The application route existed between points A-B-C but no inference can be drawn regarding the rest of the route.
Google Street View images	2009	Google Street View images of both ends of the route captured in 2009.



<p>Observations</p>	<p>Access onto the route from the A6 (Garstang Road) appears to be available. Notices can be seen on the fence adjacent to point B and although it is not possible to read them they appear to be in the same position as the notices found on site when the route was inspected in 2017. It was not possible to get a clear view of the application route from Pinewood Avenue but the photograph shows the pedestrian gate at point E in a closed position and there appears to be a faint walked line in the grass verge between point E and point F.</p>
<p>Investigating Officer's</p>	<p>The application route may have been</p>

Comments		accessible in 2009 but notices adjacent to point B may have indicated that the telephone exchange was private property.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<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 area crossed by the application route was part of the former parish of Barton in Preston Rural District.</p> <p>The application route was not shown on the Parish Survey Map.</p>
Draft Map		<p>The parish survey map and cards for Barton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other</p>

		mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route was not shown on the Draft Map and no representations were made to the County Council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route was not shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the

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



Observations		The application route is not shown as a publicly maintainable highway on the List of Streets.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.

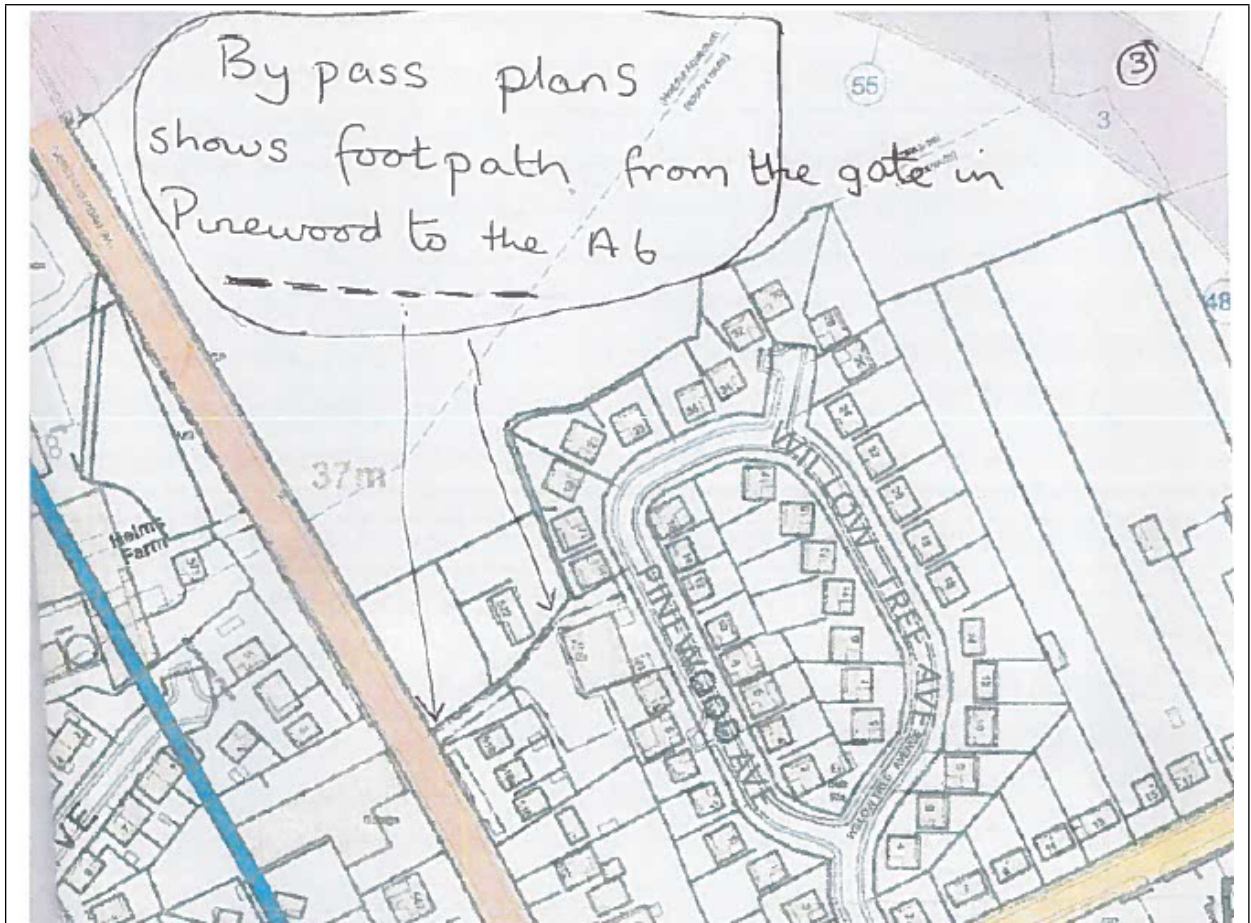
Observations		A search was made to see whether any record could be found regarding the creation or stopping up of a route between Garstang Road and Pinewood Avenue. No reference to the route being legally created or stopped up could be found.
Investigating Officer's Comments		No inference can be drawn.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

Plans submitted by the Applicant

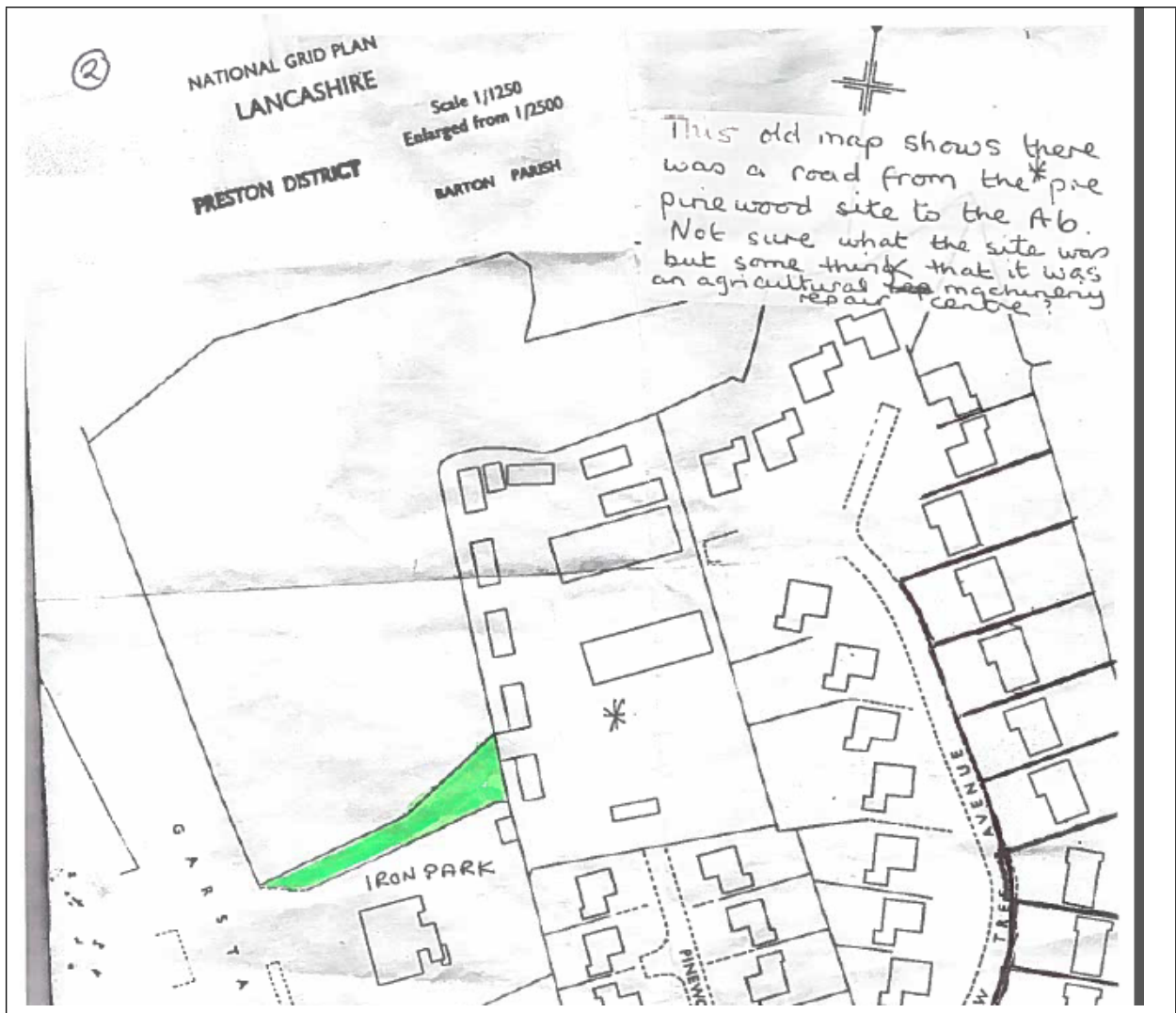
Plan 1



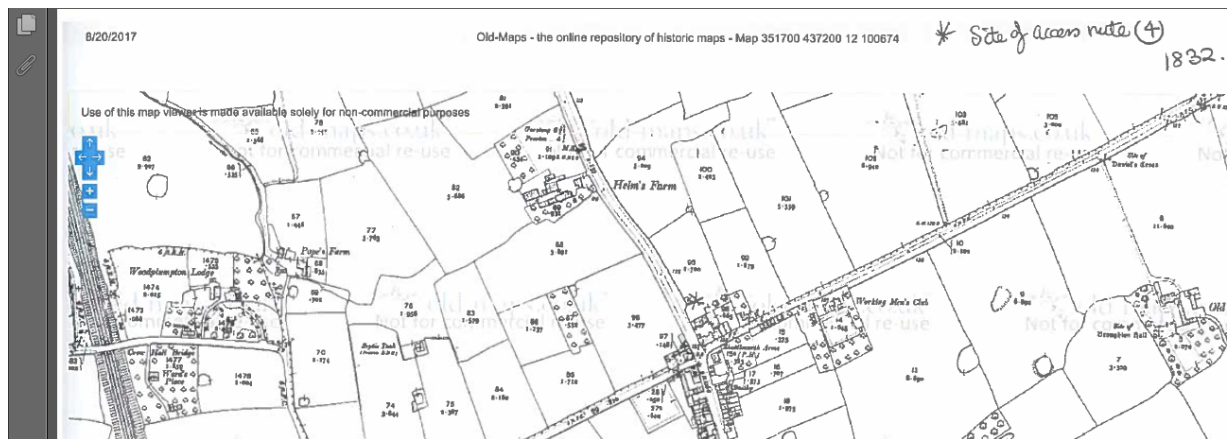
Plan 2



Plan 3



Plan 4



Observations

The four maps supplied by the applicant have been examined.

Plan 1 is undated but is a computer generated map which appears to be reasonably recent. The applicant has drawn a green line on it to indicate the line of the application route. The green line was

		<p>actually drawn along the grass verge adjacent to the route between points A-B-C and was not shown to go under the walkway or exit onto Pinewood Avenue. Photographs were provided to the applicant to confirm that the application route is correctly shown on the Committee plan.</p> <p>Map 2 appears to be an undated extract of a plan showing the proposed Broughton Bypass Road (now constructed). The OS base map is undated but shows the physical layout of the land crossed by the application route and the route itself does appear to exist.</p> <p>Map 3 is an undated OS plan taken from a Land Registry document which has already been considered in the report.</p> <p>Map 4 is an extract of the first edition 25 inch OS map dated 1892 (not 1832 as annotated by the applicant). This map has been considered earlier in this report.</p>
Investigating Officer's Comments		<p>The maps submitted by the applicant do not indicate whether the route – where access was shown – was a public footpath and no further information can be gained from them.</p>

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

Landownership

Ownership of the land crossed by the application route between points A-B-C-D-E-F is registered with the Land Registry as being owned by British Telecommunications PLC (Co. Regn No.1800000) of 81 Newgate Street, London, EC1A 7AJ.

Summary

There is no map or documentary evidence to suggest that the application route existed as a through route before Pinewood Avenue and the associated housing development was built between 1965 and 1967.

Access from point A to point B appears to have been available at an earlier date but looked to provide access from Garstang Road to some buildings and did not form part of a through route until Pinewood Avenue was build.

At some point between the late 1960s and 2000, the original building on the site of the telephone exchange was demolished and the existing building erected with an undercover walkway forming part of the application route between point C and point D, and online research (Wikipedia) suggests that the original telephone exchange – which was built in 1964 – was extended in the 1980s.

The site evidence confirms the existence of a through route which, at the time of inspection, was available to use and appears consistent with the route described in the user evidence forms submitted with the application, but no map or documentary evidence was found to support the dedication of the route by virtue of historical dedication.

Notices were visible on the route, when going from Garstang Road to Pinewood Avenue and in reverse, indicating that the route was not public and the ones at point B appear to have been there since some time before 2009.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application for the addition of a Public Footpath from Pinewood Avenue, between 13/15 to Garstang Road, between 522/518, the applicant has provided 11 user evidence forms, the information provided in these forms is set out below:

All of the users have and do use the route on foot. The years in which the users use and used the route vary from 1984 up to present day:

2002-2017 2005-2017 1996-2017 1989-2017 2004-2017 2010-2017
2014-2017 2012-2017 1989-2017 1984-2017
("when the route was installed")-2017

The main places the users were going to and from include walking to the service station on Garstang Road for such items as newspapers and as a short cut to the bus stop on Garstang Road. Two users use the route when walking their dog. One user walks to the Indian restaurant and Pub on the Garstang Road/Woodplumpton Lane intersection.

The use of the route is mostly on a daily basis, with only one user using the route weekly.

All the users agree that the route has always run over the same line and that the gate opposite 14 pinewood Avenue is always open. When asked whether there were any stiles/gates /fences across the route, all 11 of the users mentioned a gate at the Pinewood Avenue side, 8 of which state that the gate is always open. 2 users also mention a double gate at the A6 end of the route of which one user states that they have never seen it closed. All of the 11 users state that the gates do not and have not prevented them from ever using the route.

All of the users answered 'no' to having ever worked for a landowner/tenant of the affected land. Likewise all the users replied 'no' to having ever been stopped or turned back when using the route. All but 1 user answered 'no' to being told that the application route was not public, they one user that was told this was by a BT employee however they were not stopped or asked to turn back.

At the end of completing the forms, users are asked to provide any further details they feel are relevant to the application, this information is set out below:

- The route is needed for the future developments, the right of way fits in with Broughton Parish Plans. It is an emergency entry to estate, ie ambulance staff with trolley.
- The footpath is very important to one user as her son has limited mobility and they use the footpath to catch buses to Preston for doctors' appointments, shopping etc. He would struggle with walking further and it is very convenient for daily use.
- A lot of elderly people use the route and it would be a major inconvenience for the elderly if they could not use the footpath for shopping and buses. One user's wife also catches the bus using the footpath. She also takes their dog for a walk using the route when he is not available.
- One user and her husband are elderly and would be disappointed if the path was closed. It is a lifeline to them.
- There are many elderly people who live in Pinewood and Willowtree Ave. They use the path as a short cut to the bus stop. Many use it several times a day to go to the garage for a paper, bread etc. Many have difficulty walking. The alternative would make them have to walk a long way round to the bus stop.

In addition to the user evidence details above, the applicant provided the following, which she asserts support the claim for the route to be recorded as a public footpath:

1. Map of area with pathway marked
2. 2nd older map showing access way to site
3. Post-bypass maps
4. Old OS map route not shown
5. Current land registry (20 August 2017)

Information from the Landowner

In response to consultations BT provided that at one side, the route is along a single lane access drive for the fully operational Telephone Exchange and at the other there is a gate which secures the boundary of the property. At this stage this would like to highlight the main objections they have against the proposed public footpath:

- Security: Members of the public regularly entering our private property and therefore negating BT's standard trespass policy.
- Health & Safety: MOP would have to exit the site via the narrow access road and walk in the road to gain access to Garstang Road.

- Wear & Tear: If there are regular MOP's walking through BT's grounds, the entrance gate on Pinewood Avenue and the paths around the exchange will be getting used more frequently and require a significantly higher level of maintenance.

BT have also confirmed they had two notices up at either side of the exchange.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence forms

Against Making an Order

Map evidence

Land owner intention

Use not by the public as a whole

Conclusion

Considering firstly whether dedication can be inferred at common law, the map evidence suggests that the application route did not exist as a through route before Pinewood Avenue and the associated housing development was built in around 1965-1967. The map evidence is not in itself sufficient to infer dedication under common law. The land was in the ownership of BT during the relevant period under consideration. BT objects to the application and have notices up mitigating against dedication. Therefore the mapping and user evidence taken together are insufficient from which to infer dedication under common law.

Turning to see if dedication can be deemed under s.31 Highways Act, Committee will be aware of the criteria, the public must have enjoyed the way "as of right" and use must be sufficient during the twenty year period under consideration. For use to be as of right, it needs to be without force, stealth or permission.

The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question. The submission of the application was the event bringing the route into question and therefore the twenty year period under consideration would be 1997-2017.

Eleven user evidence forms have been submitted by the applicant. Five evidence forms have been completed by people who reside at Pinewood Avenue and five of the evidence forms have been completed by individuals who reside at Willow Tree Close, one evidence form has been completed by someone living on Whittingham Lane. S.31 provides that the route must have been enjoyed by the public as a whole, the user evidence forms suggest use was in fact by local inhabitants mainly residing at Pinewood Avenue and Willow Tree Close and hence it is not possible to demonstrate use by the public as a whole.

It is understood two notices had been put up along the route by the landowner, British Telecommunications (BT) which made it clear that the land was private property and that unauthorised access was trespass and not permitted. The environment officer suggests one of the notices was worn and weathered suggesting it had been in place for some time. The notice appears to be in situ on google maps in 2007, the second notice looks more recent. However, the user evidence forms suggest there were no notices present along the route, one user does state that he was told the land was private.

On balance it seems that during the period under consideration there was likely to have been at least one notice present bearing in mind the officer comments and the fact that BT had a telephone exchange along the route and would most likely wanted to ensure that the property/equipment was protected therefore; on balance it is suggested that s.31 cannot be satisfied as the landowner did not intent to dedicate the land as the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

Taking all the evidence into account, it is suggested to Committee that on balance the provisions of S31 Highways Act cannot be satisfied and that dedication cannot be deemed under s.31 nor inferred under common law and hence it is recommended that the application is not accepted.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-590		Claire Blundell , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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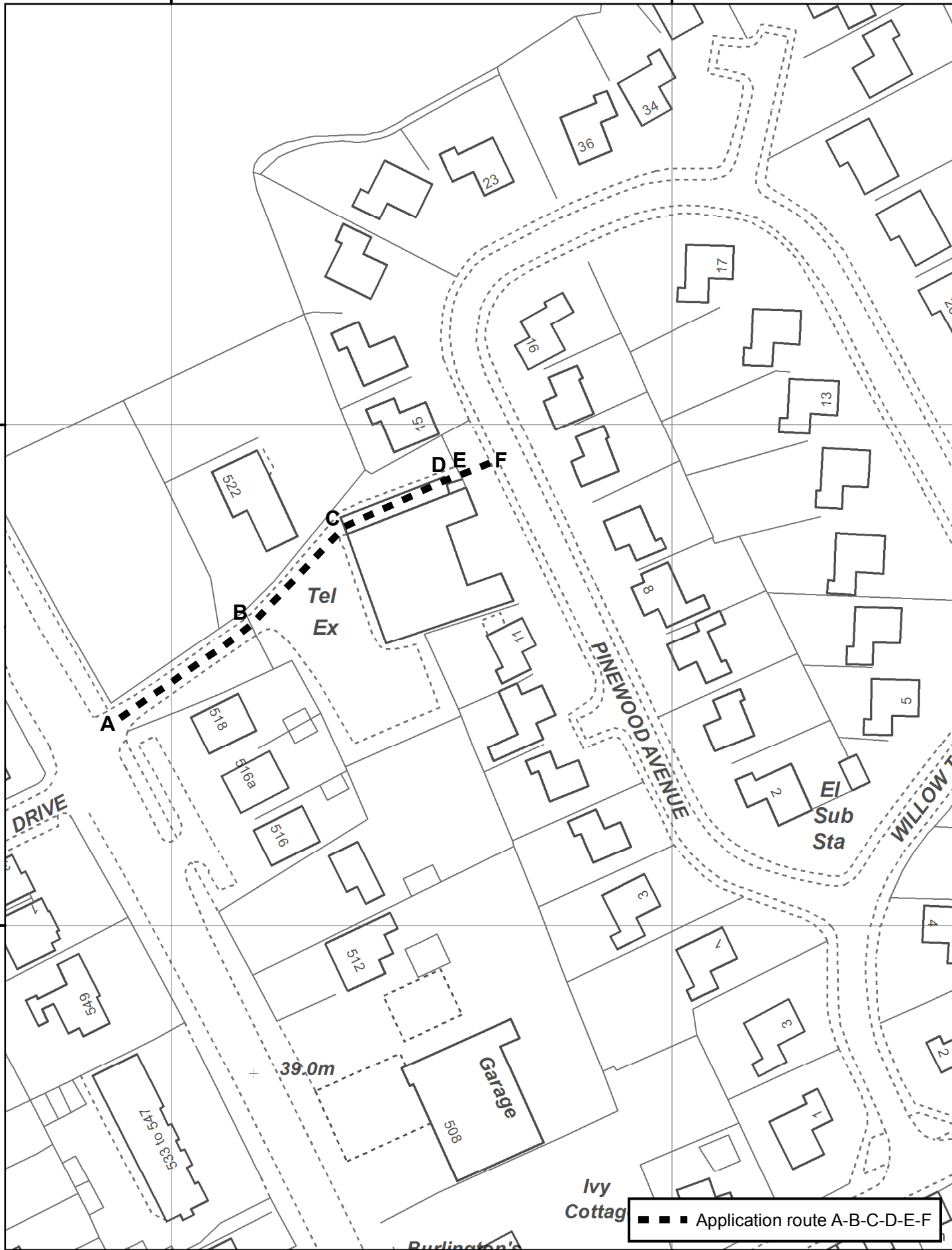
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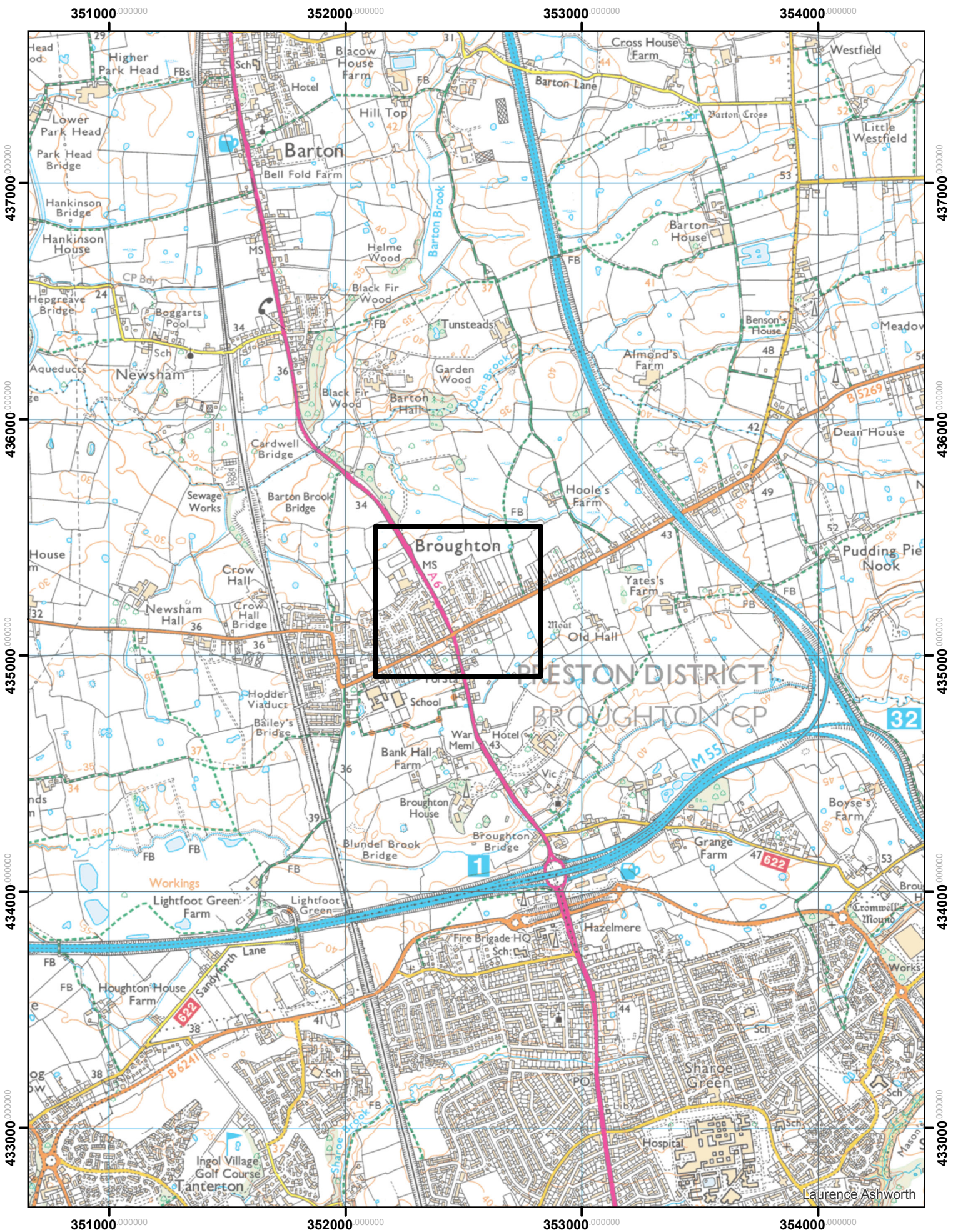
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Regulatory Committee

Meeting to be held on 17th January 2018

Electoral Division affected: Wyre Rural East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpath at Calder Vale, Wyre Borough
File No. 804-587
(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 535604, County Secretary and Solicitors Group,
legalservicesPROW@lancashire.gov.uk

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

Executive Summary

Application for the addition to the Definitive Map and Statement of a footpath from Albert Terrace passing through The Holme and continuing adjacent to a pond to meet Footpath 80 Barnacre with Bonds, Wyre Borough in accordance with File No. 804-587.

Recommendation

- (i) That the application for a public footpath to be added to the Definitive Map and Statement from Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme (Calder Vale) and continuing alongside a pond to rejoin Footpath 80, Barnacre with Bonds, Wyre Borough, in accordance with File No. 804-587, be accepted.
- (ii) 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 of Public Rights of Way a footpath from a point on Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme and continuing adjacent to a pond to rejoin Footpath 80 Barnacre with Bonds as shown on Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way

of a footpath from a point on Footpath 80 Barnacre with Bonds at Albert Terrace passing through The Holme and running adjacent to a pond to rejoin Public Footpath 80 Barnacre with Bonds, Wyre Borough.

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

Wyre Borough Council

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

Barnacre with Bonds Parish Council

A letter written by the Clerk of the Parish Council was submitted as part of the application. The letter stated that the Parish Council fully supported the application, and that the route accessed from land between 9 and 10 The Holme, running along the mill pond to join the public footpath to Primrose Cottages had been used by locals for over 70 years.

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	5320 4571	Junction with Footpath 80 Barnacre with Bonds adjacent to Albert Terrace
B	5321 4562	End of access road west of 1 The Holme
C	5324 4557	Pedestrian gate (blocked)
D	5319 4549	Sluice
E	5314 4545	Junction with Footpath 80 Barnacre with Bonds

Description of Route

A site inspection was carried out on 14 June 2017.

The application route commences on Albert Terrace at an unmarked point on Footpath 80 Barnacre with Bonds, approximately 25 metres from its junction with Calder Vale Road (point A on the Committee plan).

From point A, the route extends in a south south easterly direction past the end of Albert Terrace along a rough tarmac access road, which descends steeply downhill past Calder House towards a cluster of houses known collectively as The Holme.

The route passes directly to the west of 1 The Holme where the access road ends at point B and then continues across a large open tarmac area which provides direct access to the houses built around three sides of it. On the day the route was inspected, a number of cars were parked outside the houses but none were parked directly across the application route.

From point B, the application route takes a direct route across the open area passing in a south easterly direction between 9 and 10 The Holme from where it then continues across an area of rough grass to a blocked off gateway at point C.

Beyond point C the route continues with a trodden path visible in the grass along a strip of land between a pond and the River Calder.

At point D the route crosses a sluice which allows water to drain from the pond into the river although it was not possible to determine whether the sluice was still operational.

Beyond point D the application route continues adjacent to the pond along a more clearly defined trodden path ascending gently uphill as it reaches the southern end of the pond and exiting onto Footpath 80 at point E.

At point E access to and from the application route is open with fencing and wooden rails delineating the line of the application route but not crossing it. A sign at point E states 'Private Land No Public Right of Way'.

The total length of the route is 315 metres.

Map and Documentary Evidence

Calder Vale lies on the River Calder in a deep valley with only a single road providing access to it.

The village was founded by Quakers Jonathan and Richard Jackson and in 1835 a cotton-weaving mill — the Lappet Mill — powered by the River Calder was built to the north of the application route. The Jackson brothers also built many of the terraced houses still in occupation close to the mills.

Prior to the construction to the mill and associated cottages there was no indication on any of the early commercial maps that the village existed and no road is shown leading into the area.

Early commercial maps predating the construction of the mill were checked (Yate's Map 1786, Greenwoods Map 1818, Hennem's Map 1830) but none show the road leading down to the mill, the village itself or the application route so research into the history of the application route has been limited to records dating from the construction of the village (1835) to the current day.

Document Title	Date	Brief Description of Document & Nature of Evidence
Tithe Map and Tithe Award or Apportionment	1839 and 1846	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

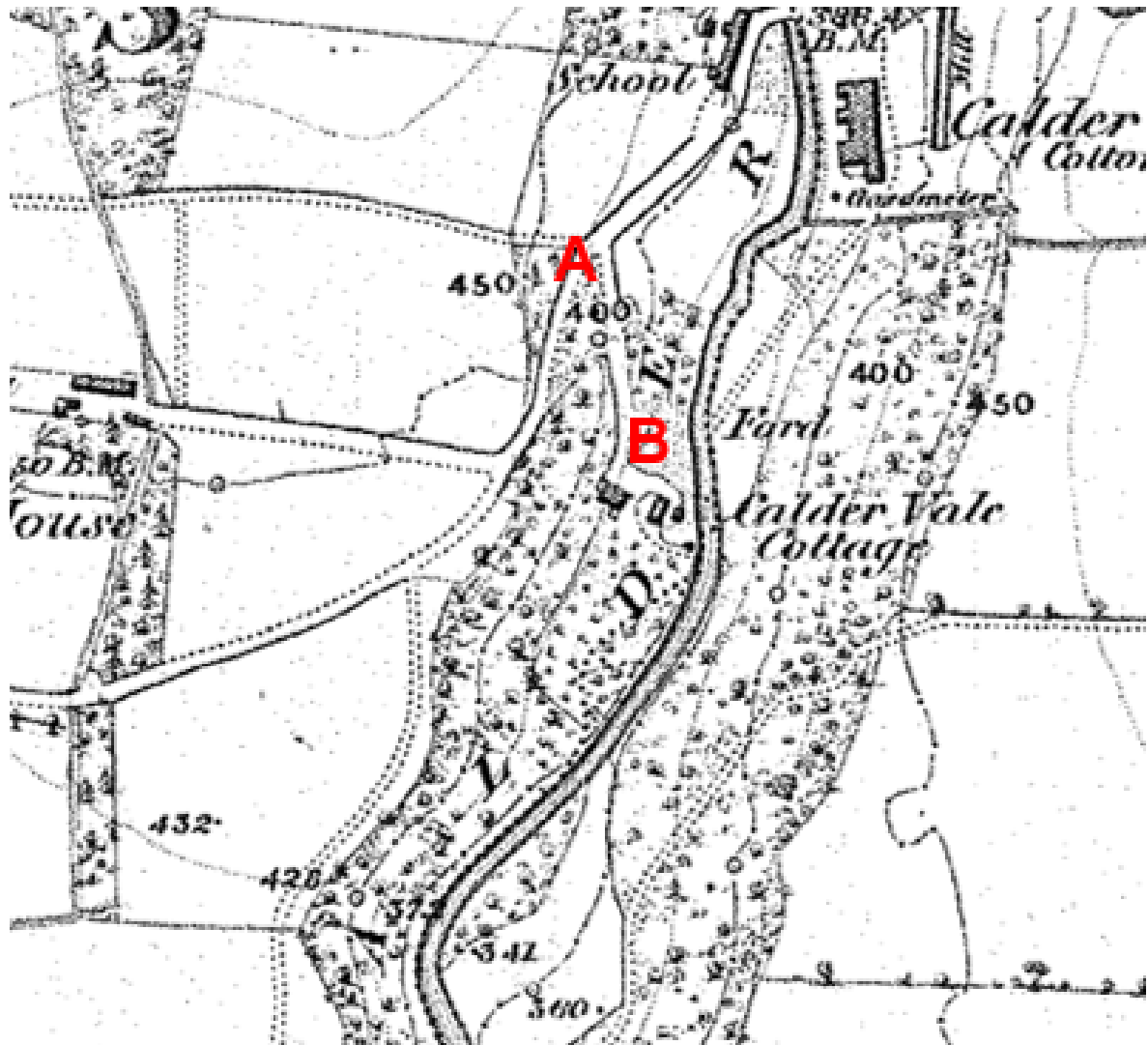
		public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
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1839



Observations		<p>The Tithe Map deposited in the County Records Office was dated 1839. A further reference was listed for a map produced in 1846 but this map could not be found by the archivists.</p> <p>The application route is not shown on the map prepared in 1839 and the cottages forming The Holme and the mill pond are not shown.</p>
Investigating Officer's Comments		The application route did not exist in 1839.
6 Inch Ordnance Survey (OS) Map	1846	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and

published in 1846.¹



Observations

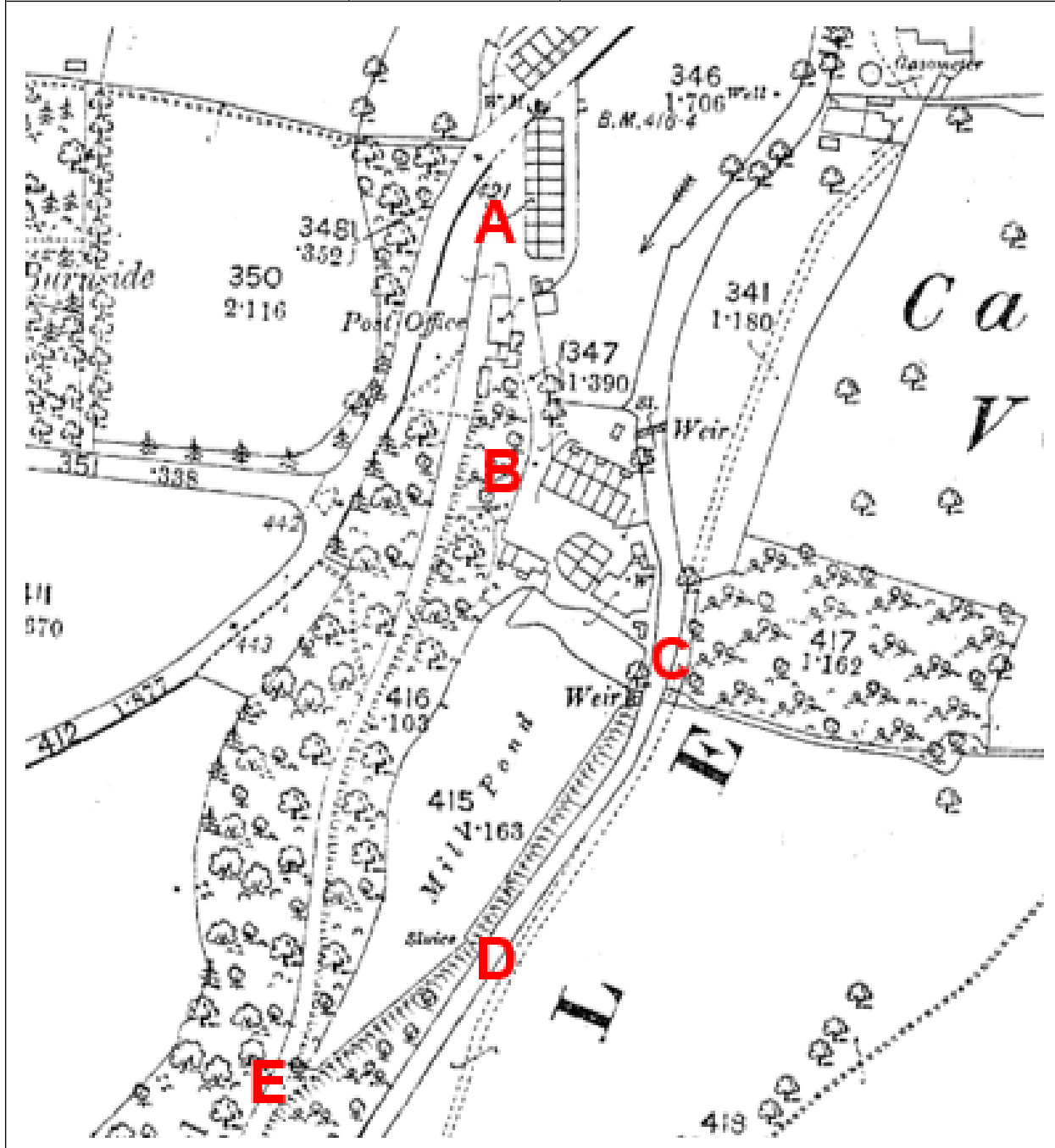
The application route between point A and point B can be seen as a significant route providing access to buildings located where The Holme is now situated. Albert Terrace is not shown and neither is the pond or the route of Footpath 19 Barnacre with Bonds to which the application route joins at point E.

Investigating Officer's Comments

The application route existed in 1844 (date of survey) between point A and

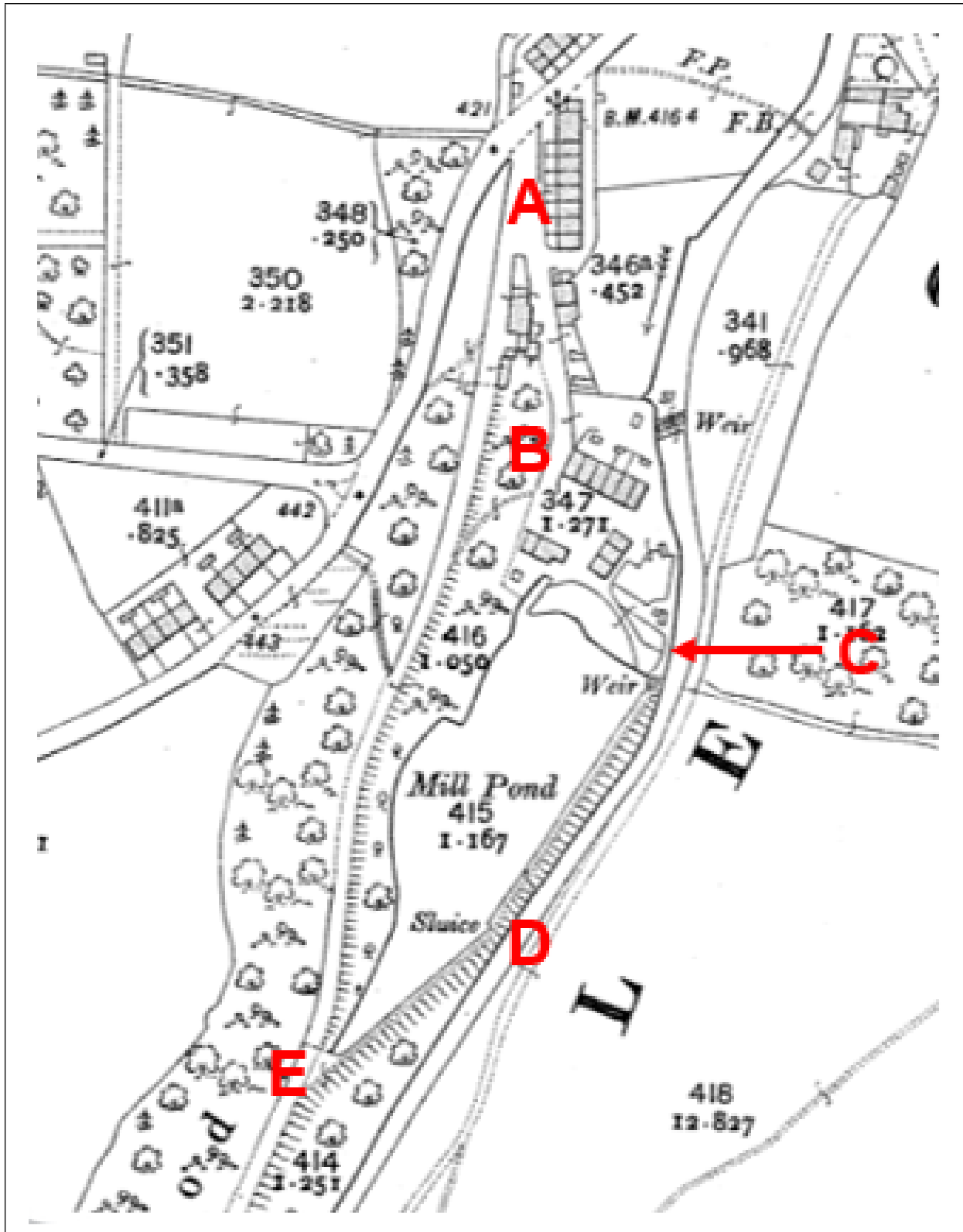
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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

		point B providing access to Calder Vale Cottage but no further.
25 Inch OS Map	1892	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1892.



Observations		Albert Terrace is shown (but not named) and the application route is shown from point A to point B as partly enclosed route open to the general highway network and providing access to The Holme (not named). Between point B and point C the application
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		<p>route is not shown and crosses 2 boundary features but access appears to have been available close to the application route but not along the exact same route. There is a line across the route at the weir but not across the embankment at point C.</p> <p>The pond is shown and labelled as 'Mill Pond'. From the weir down to the sluice at point D the application route is shown as a dashed line along the top of the embankment which separates the pond from the River Calder. The embankment continues from point D with a dashed line along the top to point E where it meets the track now recorded as Footpath 80.</p>
Investigating Officer's Comments		<p>The application route appears to have existed between points A and B and points C and E in 1890-91 although it is not clear how it crossed the weir. A route between point B and point C – linking the two parts of the application route also appears to have been available but along a slightly different route.</p>
25 inch OS Map	1912	<p>Further edition of the 25 inch map surveyed in 1890-91, revised in 1910 and published in 1912.</p>



Observations

The application route between points A and B is shown and the houses comprising The Holme are all shown to exist. The application route between points B and C is not shown and access along the full length of the line claimed does not appear to be

		<p>possible due to fencing that has changed since the 1890s near point C. Two slightly different routes from The Holme to the weir and east side of the mill pond do however appear to exist – one which appears to be defined by fencing and passes between the properties close to the alignment of the application route but slightly to the south of C and the other which runs to the rear of The Holme adjacent to the river bank.</p> <p>From the weir south of point C through to point E a path is shown along the top of the embankment.</p>
Investigating Officer's Comments		<p>Most of the application route appears to have been capable of being used in 1910 except near point C where access differed from the application route.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be</p>

		<p>found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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<p>Observations</p>	<p>There is no Finance Act map available to view at the County Records Office. A poor quality map has been deposited at the National archives but is very difficult to interpret.</p> <p>From looking at the map and trying to enlarge the image it appears that the area immediately around Albert Terrace has been excluded from the numbered hereditaments including a short section of the application route from point A.</p> <p>Most of the route between point A and point C however looks to be included</p>
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		<p>in numbered plots although it is difficult to identify the numbers.</p> <p>From the weir just south of point C through to point E the route is included in hereditament 164 and the Field Book deposited in the National Archives lists the owners as being Caldervale Cotton Mill with no deductions documented for public rights of way or user.</p>
Investigating Officer's Comments		<p>No inference can be drawn regarding the application route between point A and point C.</p> <p>From the weir just south of point C through to point E the owners of the land did not acknowledge the existence of any public rights over the land crossed by the application route at the time of the valuation.</p>
Aerial Photograph²	1940s	<p>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.</p>

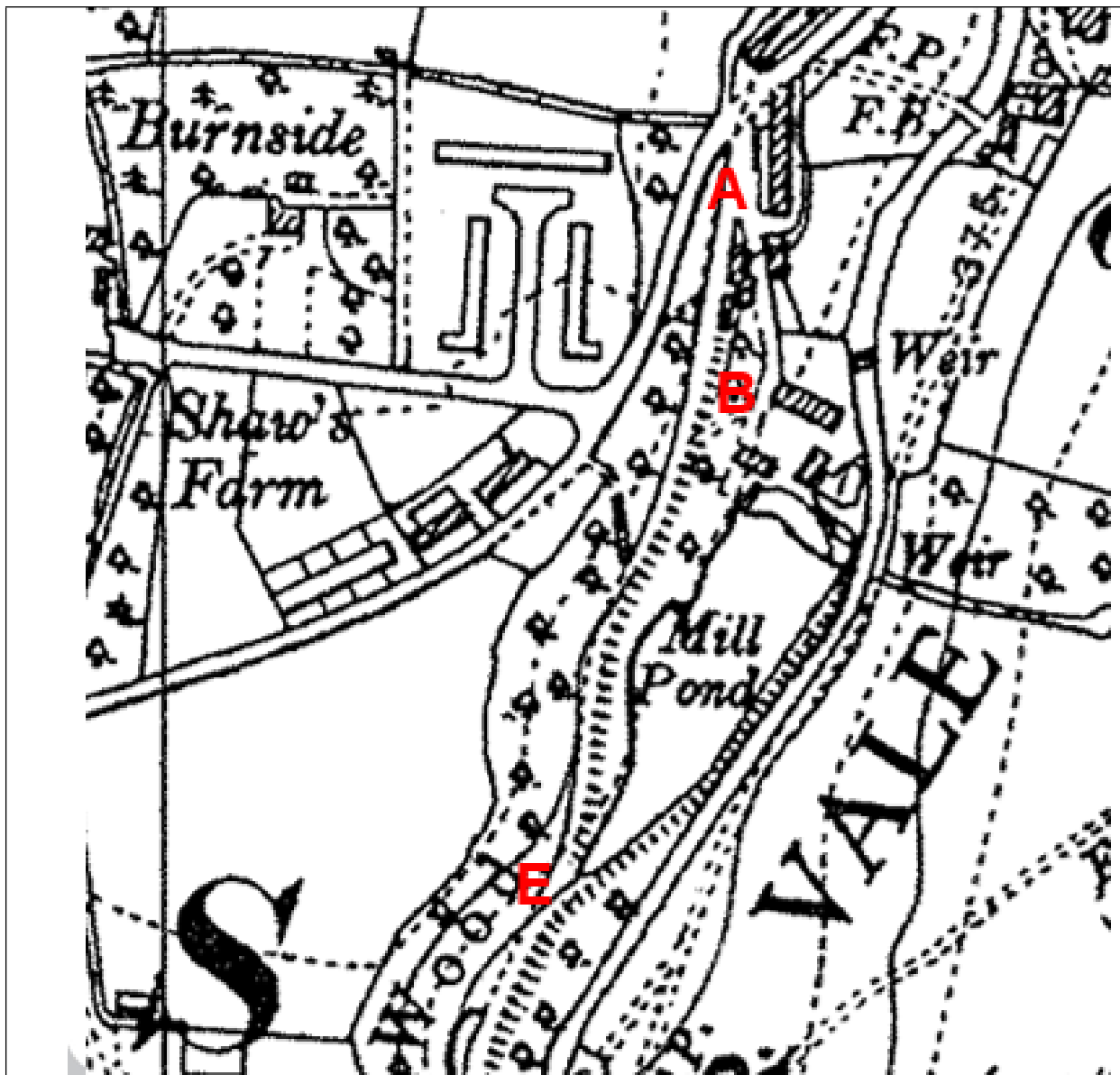
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



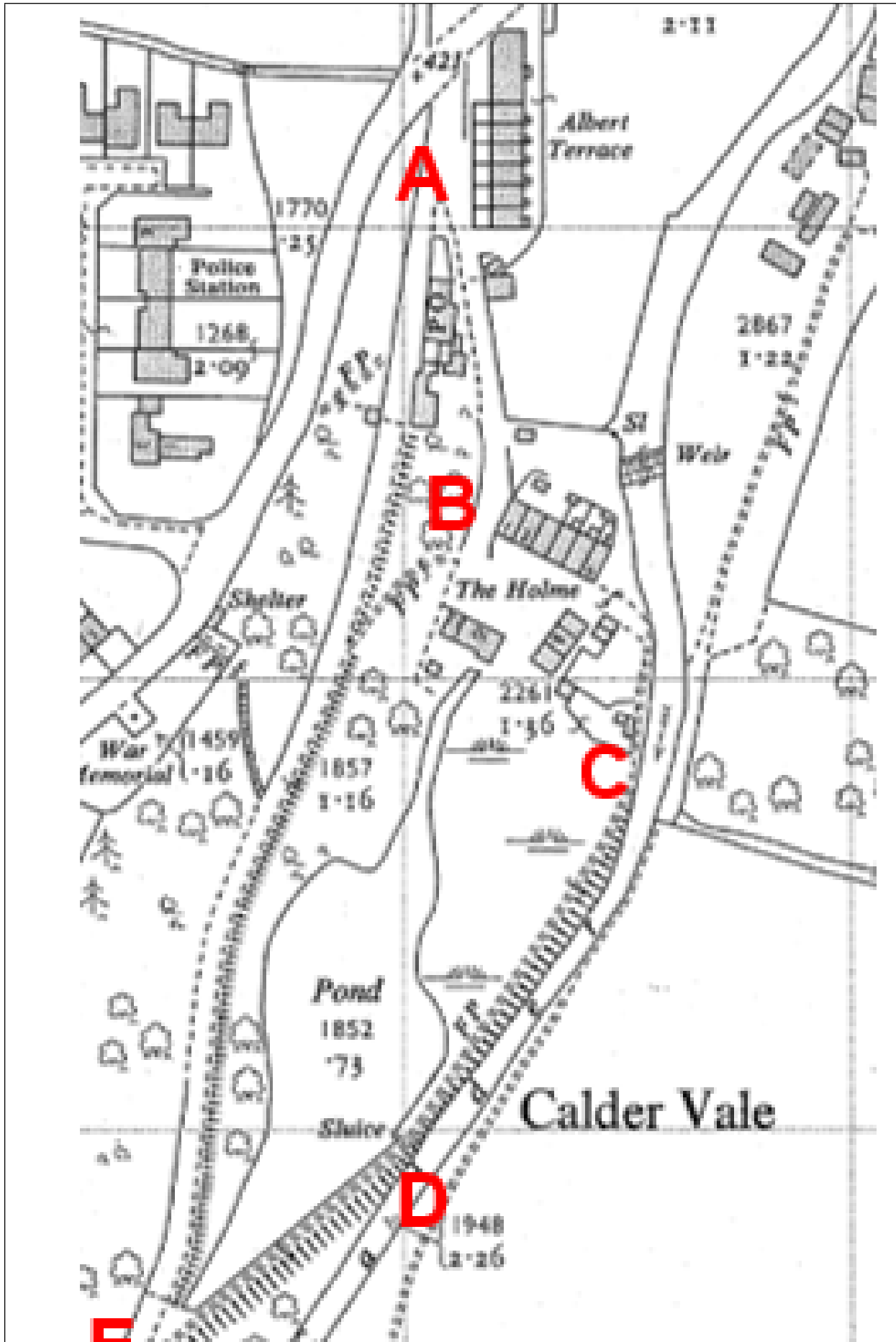
Observations

It is difficult to see whether much of the application route existed due to the scale of the photograph and the presence of trees and vegetation obscuring what may have been present on the ground. Albert Terrace

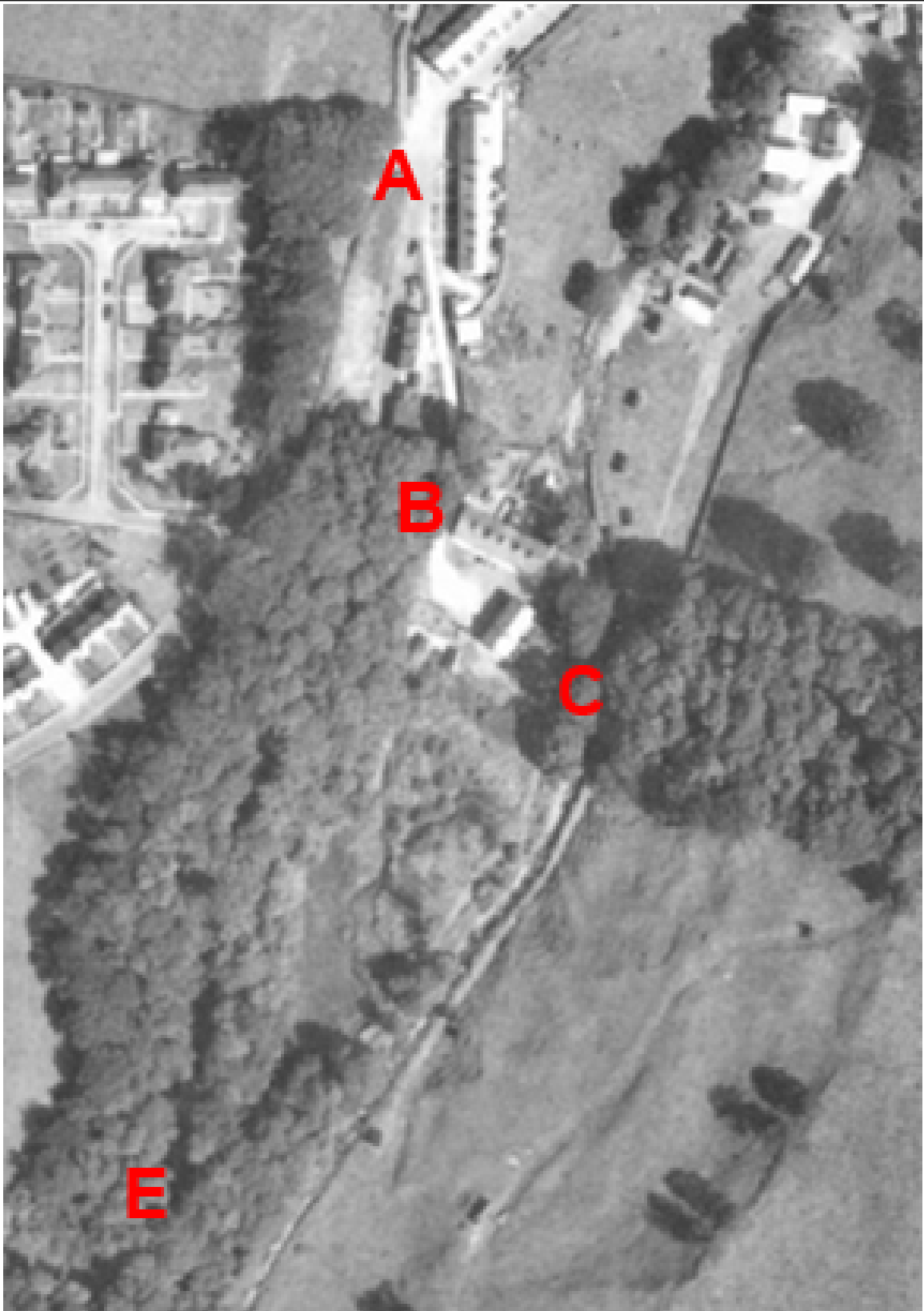
		<p>can be seen and parts of the route between points A and B are visible. From point B a route is visible which is largely consistent with the application route running between the properties and along the south side of 9 The Holme from where two faint lines can be seen – one towards point C and one just south east of point C and both leading towards the application route.</p> <p>The mill pond is not apparent on the photograph and it looks like it may have become overgrown and vegetated in the 1940s. A line can be seen from the east side of the river crossing the river and running towards and past point E but it is not clear whether this is a scratch on the photo rather than a feature on the ground. It is not clear whether the application route from point C to point E existed at this time due to the vegetation cover and poor quality of the photograph.</p>
Investigating Officer's Comments		At least parts of the application route existed in the 1940s but it is not possible to determine whether the whole route was accessible.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



<p>Observations</p>		<p>This small scale map shows the application route providing access to properties between point A and point B but does not show whether access would have been available between points B-C-D-E.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed between point A and point B but the scale of the map means that no inference can be drawn with regards to the existence of the rest of the route in the 1930s.</p>
<p>1:2500 OS Map</p>	<p>1961</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1961 as national grid series.</p>





Observations		<p>The application route between point A and point B can be clearly seen and passes a building midway the two points which is now known as Calder House but which is marked on the 1960s map as a post office (P.O.) although it is not clear whether this would have been accessed from the application route or from Footpath 80.</p> <p>Access looks like it may have been available between point B and point C but a route is not shown suggesting that there was no worn track on the ground.</p> <p>Of significance is the fact that a route is marked from the end terrace – 6 The Holme – leading to the river and then south to the rear of 7,8 and 9 The Holme to point C from where a route is shown as a double pecked line along the embankment annotated 'FP' (footpath) through to point E where it joins the track recorded as Footpath 80.</p> <p>The mill pond is labelled pond and is significantly smaller than it had been in the early 1900s suggesting that significant silting up had taken place leaving a significant part of it as marshy land adjacent to the application route between point C and point D.</p>
Investigating Officer's Comments		<p>The application route existed between points A and B and between points C and E. The route may have been accessible between points B and C along the line claimed but there was also a more clearly defined route to the east of 7,8 and 9 The Holme.</p>
Aerial photograph	1960s	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>

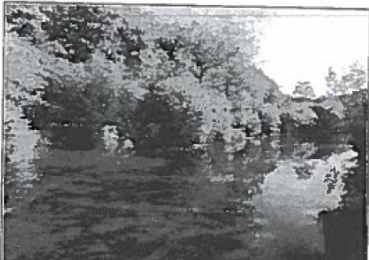


Observations

Tree cover obscures large parts of the route but the photograph appears to show that the main access to the building marked on the 1960s OS as a post office was from the application

		<p>route. The application route can be seen between points A and B and from point B it looks like it may have been possible to walk the application route through to point C.</p> <p>A faint line consistent with part of the route between points C-D-E can be seen but the full length is not evident due to tree cover. The pond cannot be seen and appears to be largely vegetated.</p>
Investigating Officer's Comments		The application route may have existed in the 1960s.
Aerial Photograph	1988	Aerial photograph available to view in the County Records Office
		
Observations		<p>Tree cover again obscures parts of the route and only part of the route between points A and B is visible. From point B across the forecourt of The Holme the route claimed appears available towards point C. The mill pond is visible but appears to be much smaller than it was originally and much smaller than it is currently. A worn route appears to extend from The Holme to the application route between point C and point D but does not appear to be on the same line as claimed. The rest of the application route cannot be seen due to tree</p>

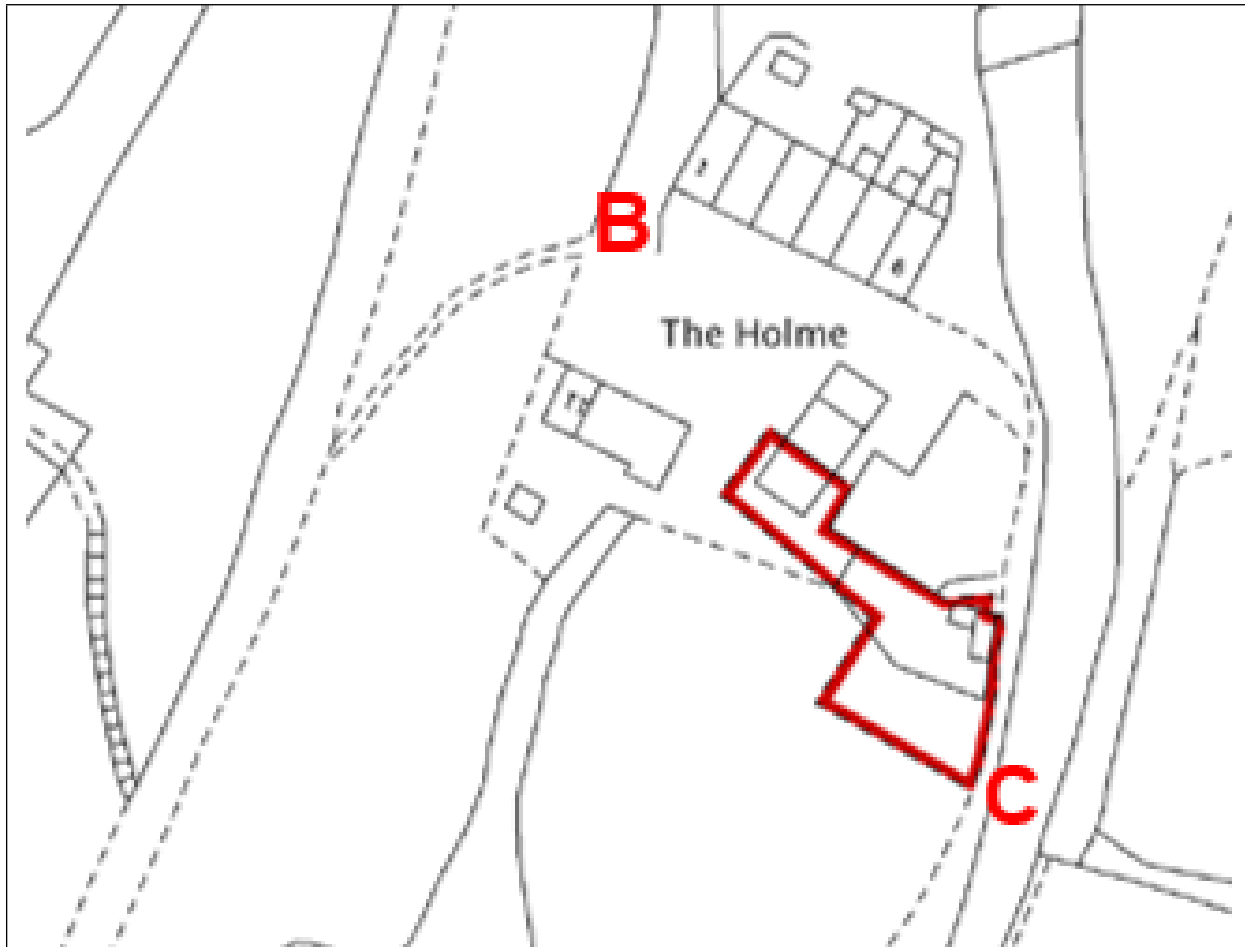
		cover.
Investigating Officer's Comments		The application route between points A and B probably existed in 1988. Between points B and C the route across The Holme appears available but from the northern corner of 9 The Holme the route may have differed from the alignment of the route claimed as the Mill pond appeared to be much smaller and the land south of The Holme did not appear to be fenced or marked out in the same way as it is now.
Google Earth photograph	2000	Photograph submitted by one of the landowners.
		
Observations		The photograph shows a faint line consistent with the application route from the side of 9 The Holme through to the proximity of point C and beyond. The applicant had circled an area

		which he described as the sluice and that there was no access across it. He also referred to the excavation of the pond which accounted for the tracks which could be seen.
Investigating Officer's Comments		The application route may have been accessible at that time and the faint line extending from the Holme to point C and point beyond appears consistent with pedestrian use.
Extract from Sales Particulars for 6 Primrose Cottage	2010	Extract of RightMove Sales particulars for 6 Primrose Cottage attached to one of the user evidence forms submitted as part of the application and dated 2 September 2010.
<p style="text-align: right;"><i>Extract from Sales Particulars 6 Primrose Cottages (continued)</i></p> <p>THE OLD COTTON FACTORY Many years ago the land included the site of a weaving mill, demolished around 1970, the remains of which are still buried here to this day. Most of the fantastic stone, which we believe from owners can still be accessed and would be very much sought after, remains on site. Some of it was used to build the river room in 1990.</p> <p>THE MILL POND The mill pond is situated on the left hand side of the lane leading to the cottages. This is stocked with various species of fish, roach, carp, tench etc. and has been fished for many years by local residents. It is well maintained and has a good well-kept path around it for easy access. The fish in the pond are subject to separate negotiation and are not included in the sale.</p> 		
Observations		A full copy of the Sale Particulars was not provided but from the information provided it appears that the pond – referred to as the Mill Pond – was included in the sale. There is reference to the existence of a well maintained path around the pond 'for easy access' but there is no indication whether this access was regarded as being public or private.
Investigating Officer's Comments		A Land Registry search revealed that 6 Primrose Cottage was last sold in 2012 and that the sale did not include anything other than the cottage and garden. That part of the application route around the mill pond appears to have existed as a well maintained path in 2010 but no inference can be drawn regarding public rights.
Land Registry Plans		Land Registry plans relating to a number of properties at The Holme

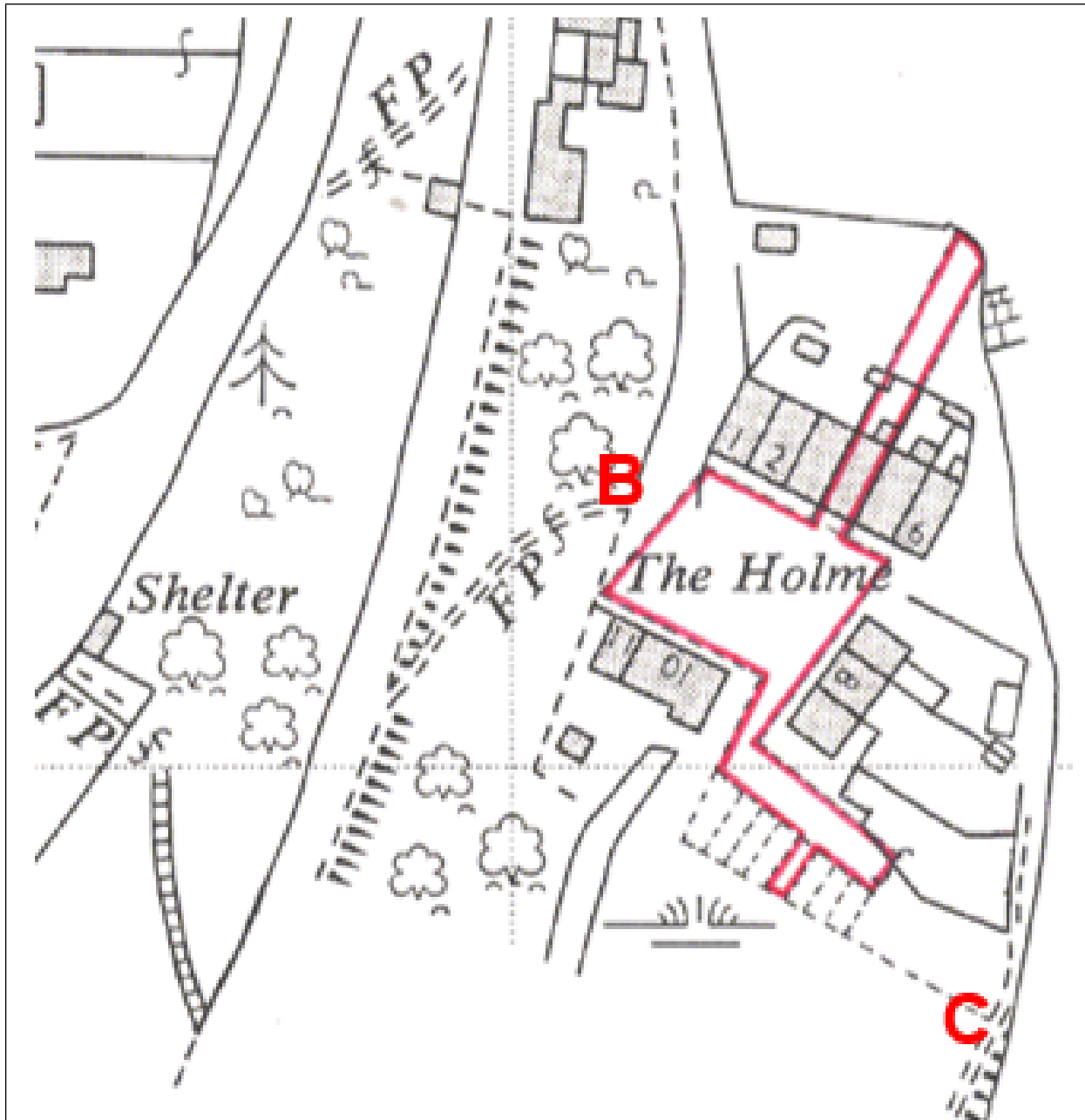
were inspected in relation to comments made concerning the provision of parking spaces.

Title Plans filed under title LA956239





Title Plan LA810907



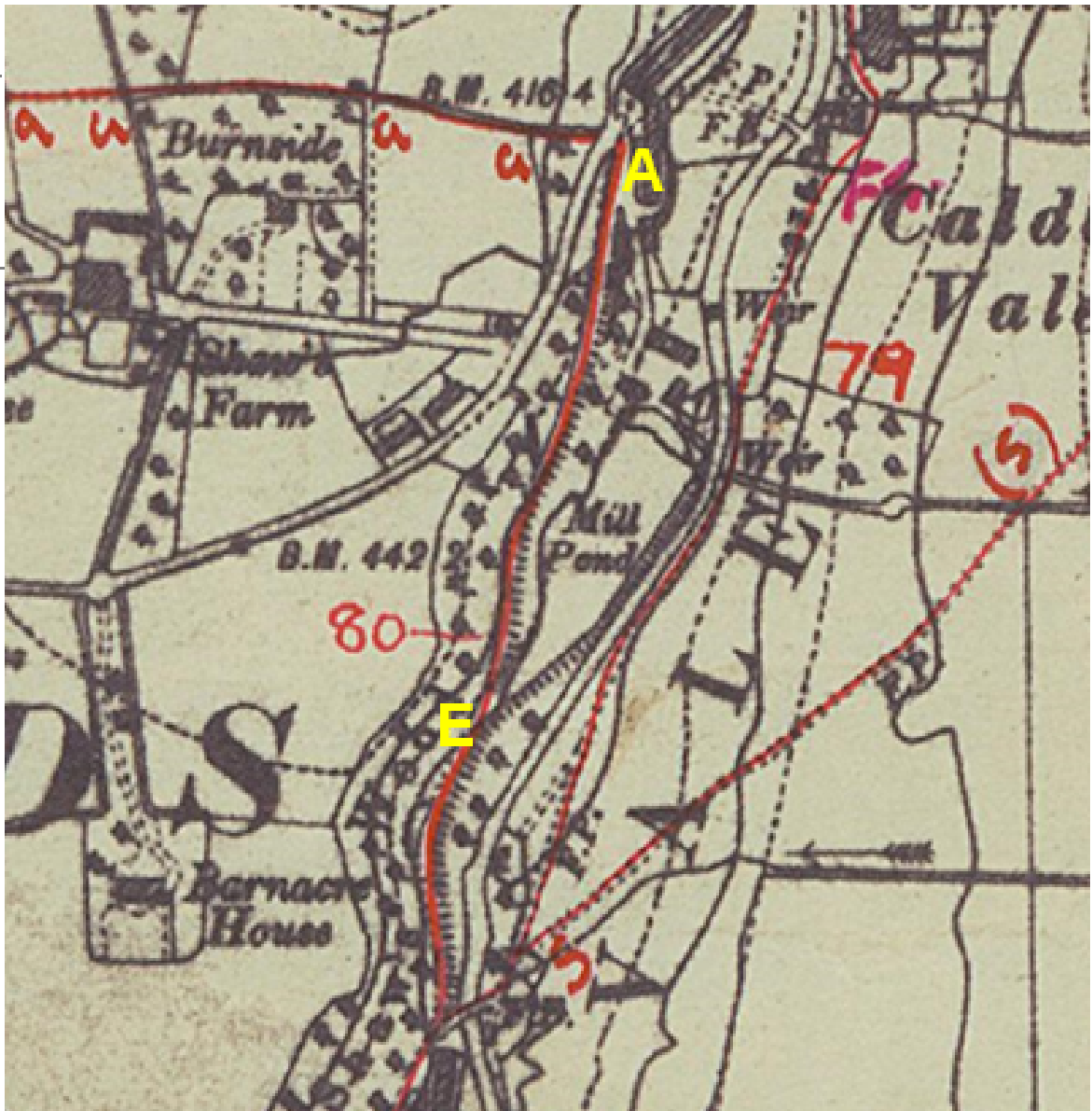
Observations		The title for 9 The Holme (LA956239) provides details that the property was registered to the current owner in 2004. The plan coloured plan shows the marked out car parking spaces which were allocated to the various properties. A further Land Registry plan included in this report also
Investigating Officer's Comments		The plans show the marked out parking areas hand drawn with solid lines on the coloured plan but marked by dashed lines on the OS based plan. It appears that the plots were allocated for parking but were not necessarily physically marked out by fencing/walls

		<p>which would have been indicated by solid lines on the OS plans.</p> <p>It is unlikely that the parking areas existed when the properties were originally constructed but more likely that they have been marked out either physically or on maps in more modern times due to the increase in the use and ownership of vehicles.</p> <p>It appears that pedestrians using the route between points B and C may have passed to the north of the parking spaces although may have been impeded by parked cars at times but that it would have been possible to walk round them.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.



Observations		Most of the route is obscured by tree cover. A route across forecourt of The Holme appears available.
Investigating Officer's Comments		No inference can be drawn with regards to most of the application route.
Definitive Map Records		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. Records were searched in the

		Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



<p>Observations</p>		<p>The Parish Survey map and cards were drawn up by Barnacre with Bonds Parish Council. The application route is not shown on the parish survey map or documented in the parish survey cards.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Barnacre with Bonds were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a</p>

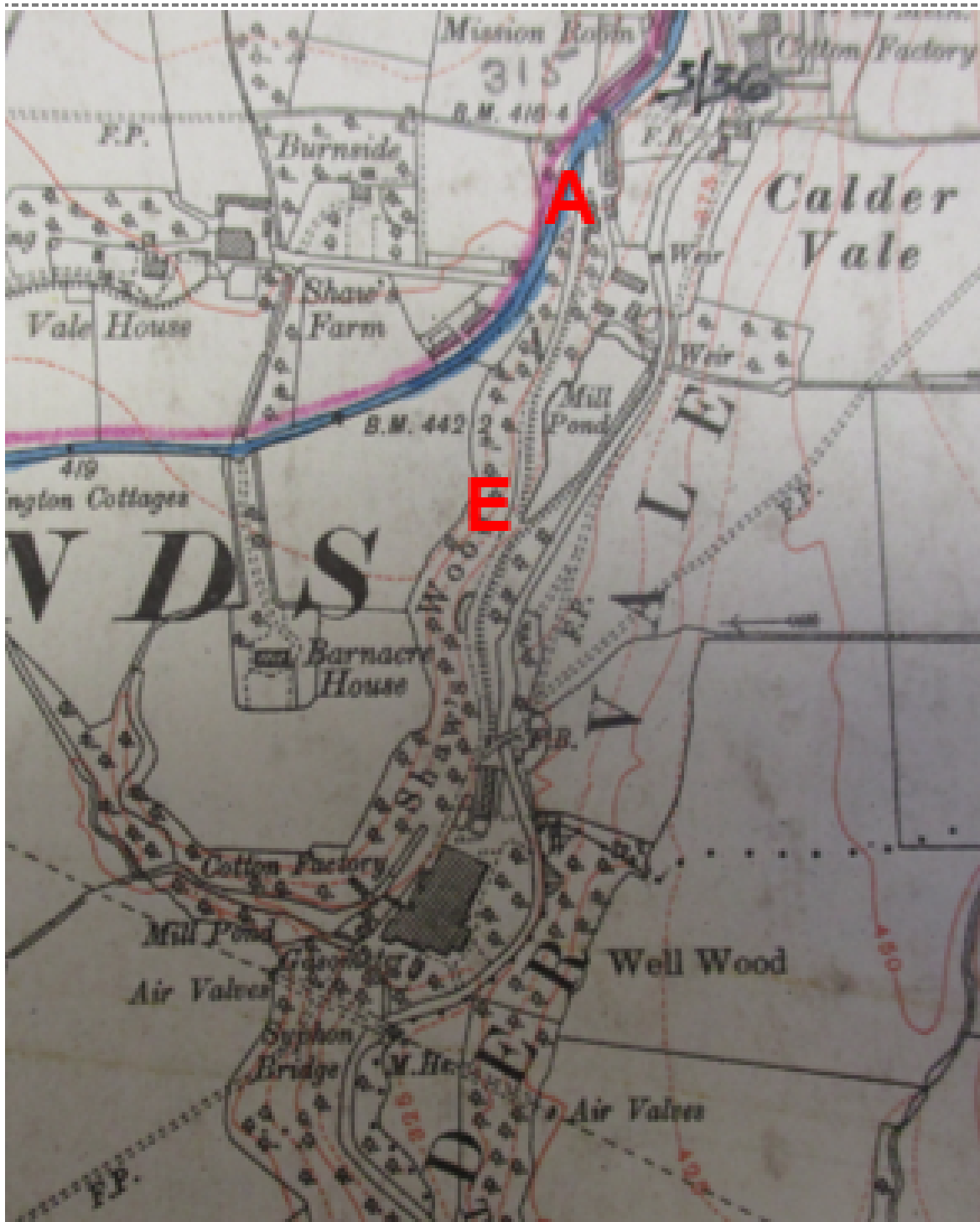
		<p>minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route is not shown on the Provisional Map of Public Rights of Way and there were no objections to the omission of the path.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
Observations		<p>The application route is not shown on the First Definitive Map and Statement Map.</p>
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into</p>

		operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
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Observations		The application route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to be public during the preparation of the 1 st Definitive Map and Statement through to the 1960s.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several

		<p>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>
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<p>Observations</p>		<p>The route under investigation is not recorded as being publicly maintainable in the records originally derived from the 1929 Handover Maps and now held by the County Council.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that it is not recorded as a publicly maintainable highway does not mean that it does not necessarily carry public rights of access.</p>

<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already 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>
<p>Observations</p>		<p>There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area of land over which the route under investigation runs.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.</p>

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

Landownership

The majority of the land between points A and B is registered to Ms Audrey Holden of Calder House, Albert Terrace, Calder Vale, Preston, PR3 1SA, with the lower part (to the north of point B) unregistered.

The land between points B and C is registered to Mr and Mrs McIntosh of 4 The Holme, Calder Vale, Preston, PR3 1SB and Mr Roger Davies of 9 The Holme, Calder Vale, Preston, PR3 1SB.

The majority of the land between Points C and D is owned jointly by Mr Justin Hall of 29 Elmhurst Road, Lytham St Annes, FY8 3JH and Mr Gregson of 149 Preston Road, Lytham St Annes, FY8 5AY. A small parcel of land to the south of point C and to the north of point E is unregistered but is believed to be owned by Mssrs Hall and Gregson.

Summary

There appears to be no map and documentary evidence which provides a clear and consistent view that the application route was created or formally dedicated as a public footpath.

Prior to the construction of the village in the 1830s the application route did not exist.

By 1846 the route between point A and point B existed as access to Calder Vale cottage and by 1896 The Holme is shown to exist together with the mill pond and it appears that by that time access may have been available along the full length of the application route providing access to the Holme and via the Holme to the access road to Lower Mill which is consistent with the view that the route originally provided access to the mill from the cottages provided for the workers on Albert Terrace and The Holme.

From studying subsequent map revisions there appears to have been very little alteration to the land crossed by the application route – or to the application route itself – from the late 1800s to the current day.

However, the route through the Holme – from point B to point C – is not clearly shown or defined on the maps inspected and whilst access appears to have generally been available along the route claimed, neither the maps or aerial photographs inspected are conclusive with regards to the exact route taken, or whether this route may have varied slightly depending on temporary features or parked cars. A clearly defined route is shown on the 1:2500 OS map published in 1961 to the rear of 7,8,9 The Holme which is different to the route claimed although it may have been possible to walk the claimed route at this time.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant originally applied for a route from between 9 and 10 The Holme to point E to be recorded as a public footpath but did not include the section of the route between points A-B or part of the route between points B-C.

Following discussion with the applicant it was understood that she had only claimed the route from The Holme to point E because that was the section of path to which access had been prevented and that she had not realised that it was necessary to claim the full length.

The application was subsequently revised to include the full length between points A-B-C-D-E.

The application was supported by:

1. A brief introduction and photographs showing the site dated 2017.
2. An emailed statement from the previous owners of the Mill Pond stating that they had always been happy to let people use the route.
3. A letter of support from Barnacre with Bonds Parish Council.
4. Various maps showing the footpath marked.
5. 34 user evidence forms.

As part of the application, the applicants provided a copy of an email that they had sent to the former owners of part of the land crossed by the application route - Revered Canon Noel Michell and Mrs Lesley Michell.

Mrs Michell has responded to their request for information explaining that they had owned that part of the valley from sometime in the late 1980s (that parcel was registered to them at the Land Registry on 18.5.1990) until the whole of their land holding was sold by them to Justin Hall (the current landowner).

Mrs Michell wrote, 'We understood from the outset, when we bought 6 Primrose Cottage in 1981, that the path from The Holme, running beside the lodge from Primrose Cottages, was historically a path used by locals, dating from the time of the operation of Low Mill, when workers used it as a route to and from work. Once we had bought that piece of land we were happy to continue that accepted right of way. Neither we nor the people who leased the lodge from us for a number of years ever closed the path or put up notices forbidding access.'

The comments made by the Parish Council in support of the application have already been documented earlier in the report and the various maps submitted have been considered by the Environment and Planning Group Investigating Officer.

The thirty four user evidence statements submitted with the application referred specifically to the route described as running from between 9 and 10 The Holme to point E on the Committee plan. 30 of the users subsequently confirmed – by way of a signed plan on which they had drawn the full length of the route A-E that their evidence related to the full length of the route.

The user evidence provided documented use from 1938 through to 2017, although a significant number of users explained that they had been prevented from using the route between point C and point E. The date of the blocking up of the route varies from some time in 2015 to October 2016.

The application route has been used on foot by the 30 users who have confirmed usage of the full length of the route for the following years:

1938 – 1968(1)	1940-1968 (1)	1940-1978 (1)	1943-1966 (1)
1952 – 1980 (1)	1953 – 2015 (1)	1955 – 2012 (1)	1956 – 2017 (1)
1957 – 2017 (1)	1966 – 2012 (1)	1969 – 2017 (1)	1970 – 2017 (1)
1972 – 2017 (1)	1990 – 2017 (2)	1991 – 2015 (1)	1991 – 2016 (1)
1992 – 2015 (1)	1995 – 2017 (2)	1996 – 2017 (1)	2005 – 2015 (1)
2006 – 2016 (2)	2007 – 2017 (1)	2007 – 2016 (1)	2010 -2016 (1)
2008 – 2017 (1)	2012 – 2017 (1)		

1 user used the route between the years of 1963 -1968 and 2000 – 2016.

None of the users have ever used the route on horseback or leading a horse, although 4 users have used the route on a bicycle between the following years:

1952-1980 (1)	2007-2017 (1)	2012-2017 (1)	1969-2017 (1)
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None of the users have ever used the route on a motorised vehicle.

All 30 users have seen others using the route on foot, 9 users noticed people on bicycles, 1 saw a motorised vehicle (but did not state what type of vehicle) and 3 users saw people on mobility scooters.

29 users agree that others were using the same route as them, 1 user provided that "the wheelchair they had with them was restricted to the footpaths for safety reasons".

Below sets out how often the users used the route:

On foot – daily (9)	On foot – weekly (8)
On foot – monthly (5)	On foot – every few months (2)
On foot – other (occasionally) (1)	On foot – daily, Bicycle - weekly (1)
On foot - weekly, Bicycle - weekly (1)	On foot daily, Bicycle – daily (1)
On bicycle – every few months (1)	Didn't provide an answer (1)

The reasons for using the route included getting to work when the mill was still operational pre 1967, but appeared to be predominantly for pleasure purposes including walking with/without dogs, a cat and goats, for playing down by the river as a child, to feed the ducks, to swim in the river, visit friends, as part of cub scout activities and Duke of Edinburgh group walks. Many referred to seeing others using the route, and to using it as a child and then when they grew up, or being taken there by family members.

The user evidence comprised of a good mix of people from within the village but also from people who were coming to use it from further afield.

Comments included on the user evidence forms included:

- The route was shown on old OS maps as a footpath
- There had always been access until the new landowners blocked it in 2015.
- Stiles and gates had existed at point C and point E but had always been accessible until recently.
- The path appeared to have been used for over 100 years by residents and employees of the mill and the public have used it for at least 45 years.
- A stile was replaced by a gate at the request of Reverend Noel Michell to allow access for a resident of The Holme to access the path on a mobility scooter.
- The path was used by people outside the village i.e. visitors.
- One user stated that she had been informed by her husband that it was private land but that the route had always been used by the public.
- Used it to get the 'the black hole' to swim.
- One user referred to signs at the southern end stating 'residents only' but no dates or specific details were given.
- Another user said that the owner of the fishing rights in 2002 had told him that he was fine to continue to use it. Another user referred to not using it in 2005/05 when the lodge was let for private fishing, but also referred to one of the lessees maintaining the path and installing a stile for the residents to use it.
- Several users stated that the route was known locally as the lodge path.
- 1 user explained that she did an interview with Radio Lancashire in 2007 and walked along the path while being interviewed.
- Several users referred to the route along the lodge being surfaced with cinders from the mill.

1 user worked for a landowner/tenant of the affected land at the now demolished mill.

4 users answered 'yes' to being given permission to use the route. These included:

The owner of fishing rights, Ms Jo Taylor informing the user he could continue using the route; previous owners allowing user to use the route; Reverend Noel Michell in 2001; and the tenants of the disputed area, back in May 1999.

3 users were told by owners and others that the route was not public.

3 users were stopped and turned back by the owner and by the blocked access at point C.

11 users know other users that have been turned back from using the route, these include friends, neighbours and family members.

Information from Others

One resident of The Holme when consulted stated that he believed the route to be a traditional path as mill workers walked from the cottages in The Holme to Lower Mill. He stated that he had walked the path regularly for the past 17 years and that he had completed a user evidence form.

Several owners of property on The Holme (including the one detailed above) refer to the existence of allocated parking spaces on the deeds to the properties, which may be affected by the application and one challenged the line of the application route from the point at which it passes between 9 and 10 The Holme to point C stating that the route was further north closer to the side of 9 The Holme.

Information from the Landowner

One of the landowners of the section of the application route between point C and point E has made reference to the fact that the 1:2500 OS map published in 1961 and used as a base for a number of the Land Registry plans inspected does not show the application route between 9 and 10 The Holme but shows a different route (which has not been claimed) to the rear of 7, 8 and 9 The Holme.

He also submitted an aerial photograph captured from Google Earth in 2000 which he claims shows no evidence of the existence of the claimed route in proximity to point C.

In November 2017, the owners of the land crossed by the application route between point C and point E informed the County Council that they had contacted the applicants for the Definitive Map Modification Order and explained to them that they had now removed the fencing and overgrowth that obstructed the path. They communicated their willingness to dedicate the route as a public footpath but requested that people keep dogs on leads; that dog owners cleared up after their dogs and that people did not stray from the line of the path. Further communication with the County Council confirmed their willingness to accept the footpath and to dedicate it as a public footpath.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Map and other documentary evidence supporting the physical existence of the route between point A and point B since at least 1846
- Absence of evidence of gates/fences/stiles
- Absence of signs and notices along the route
- Absence of action taken by landowners to discourage the use of the route
- Willingness of current landowner to accept the route being public highway from between point C and point E
- User evidence

Against Making an Order(s)

- Lack of map and documentary evidence supporting the existence of the route between point B and point C
- Inconsistencies between users regarding the line of the claimed route between point B and point C

Conclusion

The current owners of the land crossed by the route to the south of point C and to the north of point E have expressed a willingness to dedicate that part of the route as a public footpath. Whilst this is positive, dedication does not extend the full length of the claimed route so Committee must nevertheless consider whether there is sufficient evidence from which a dedication of the entire route between points A-B-C-D-E can be deemed under section 31 of the Highways Act 1980 or inferred at common law. Furthermore, for the purposes of this investigation it is necessary to consider whether the section over which the owners are willing to dedicate has in fact already been dedicated rather than could be.

Considering firstly the criteria for a deemed dedication under s 31 of the Highways Act 1980; use of the route needs to be by the public 'as of right' (without force, secrecy or permission) 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 public's right to use the route was brought into question. The evidence indicates that access to the full length of the route was denied in around October 2016, when the current owners of the land between points C and E erected fencing at point C, preventing access over the stile and through the latched gate. Barbed wire was also installed over the fence. Accordingly, the 20 year period under consideration for the purposes of establishing deemed dedication would be 1996-2016.

30 user evidence forms (UEFs) were submitted in support of the entire length of the application route. These describe use of the route from the 1930s until 2017. 10 of the users confirm their use of the route for the duration of the 20 year period from 1996 to 2016 and 15 for part of it. 5 users' use of the route predates the start of the relevant statutory period under consideration.

There appears to some discrepancy between the exact line taken by the users where the route crosses The Holme, in particular from a point between No 9 and 10 The Holme to point C. However, this is not surprising as this part of the route is across open ground and users would not have an obvious visual point of reference which would make it difficult for them to plot their route on a map with precision. In the circumstances, Committee should be comfortable that all users have generally plotted a very similar route across the Holme.

Of the 25 users who claim to have used the route for either the duration of the 20 year period or for part of it, 7 users are residents of The Holme. It is advisable not to place any weight on their evidence in relation to their personal use of the route between points A and C, as it is suspected that their properties in The Holme benefit from a 'private' right of way over the land either granted expressly or gained by prescription over time, because without the existence of such a private right of way they would be unable to lawfully access their properties. It follows that they cannot be said to be 'public' users of the route between points A and C. Notwithstanding this, their evidence in relation to others' use of the route and their own use of the claimed route between points C and E is still useful.

Even when disregarding the UEFs submitted by residents of The Holme, there is still a reasonable number of users who claim to have used the route (5 for the duration of the 20 year period, 13 for part of it as well as 5 prior to the 20 year period).

Use is consistent with use of a public right of way. This includes visiting friends, walking animals, playing in the river, and participating in organised cub scouts and Duke of Edinburgh activities. The frequency of use claimed generally varies between daily to every few months and users claim not to have been obstructed or challenged regarding their use until the fence was erected at point C in around October 2016.

There is some reference in the UEFs to the route being used for over 100 years by mill workers walking to work at the Low Mill (which was built in 1848 to the south of the claimed route) from the cottages at Albert Terrace and The Holme. This use of the route is unlikely to be classed as 'public' use as the mill workers were employees of the landowner and using the route in order to fulfil their duties. However, it is believed that Low Mill has been demolished for at least 20 years so it is highly unlikely that any use of the route during the relevant statutory period has been for the purpose of walking to work at the mill.

As regards the criteria for use to be 'as of right', there is nothing to suggest that use was with force or by stealth. Further, the majority of users claim not to have been given permission to use the route. There are, however, 3 users who suggest that they had permission to use the route between point C and point E from the previous landowners (Rev. and Mrs Michell who owned the land between points C and E

between 1990 and 2015). Mrs Michell describes believing prior to purchasing that parcel of land that there was a path used by locals and that they were "*happy to continue that accepted right of way*". Some users describe Rev. and Mrs Michell erecting a gate at point C that was wide enough for the mobility scooter of a local resident to pass through. It is advised that the actions of the previous landowners are not necessarily indicative of permissive use of the route, but demonstrates that the previous owners, in the knowledge that the route had been used for some considerable time by locals, were acquiescent of the public use of the route across their land and merely helped facilitate that use by widening the gate.

In conclusion, it is advised that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1996 to 2016.

In relation to the statutory rebuttal, none of the users recollect seeing any signage indicating the route was private or having been prevented from accessing the route until the current landowners of the land between point C and E took action in around 2016. When the fence and barbed wire was erected at point C, the route was still accessible between points E to C and from point A to C. The actions of the previous landowners of the land crossed by point C to E (from 1990 to 2015) is actually consistent with an intention to dedicate the route as a public footpath. The owner of the large parcel of registered land between point A and point B has been the landowner for part of the relevant statutory period (having purchased the land in 2008). She appears not to have done anything to indicate that she did not intend to dedicate the route as highway (e.g. erecting 'private' signs, turning members of the public away, blocking the route, etc.) and neither did the owner(s) before her. It is advised that there is insufficient evidence of a lack of intention on behalf of the landowners to dedicate the claimed route as a public footpath during the 20 year period 1996 to 2016. It follows that, on balance, a public footpath subsists as claimed between points A and E.

Looking next at dedication of a highway at common law; it is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides evaluation of the documentary evidence. As of 1846, the route between point A and B existed to access Calder Vale cottage. By 1896, there is documentary evidence of the existence of The Holme and the mill pond, so access along the full length of the claimed route may have been available. However, there is some discrepancy between users over the line taken through The Holme from between No 9 and 10 The Holme to point C and there is no documentary evidence to confirm the exact route between these points.

Nevertheless, it is advised that the way this route is recorded on documentary evidence is not in itself a sufficient circumstance from which dedication could be

inferred. Sufficient 'as of right' use may also be a relevant circumstance from which dedication can be inferred. The described use of the route as corroborated by the documentary evidence outlined above, as well as the treatment of the route by previous landowners, would suggest that it may reasonably be alleged that there are sufficient circumstances to infer dedication at common law.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

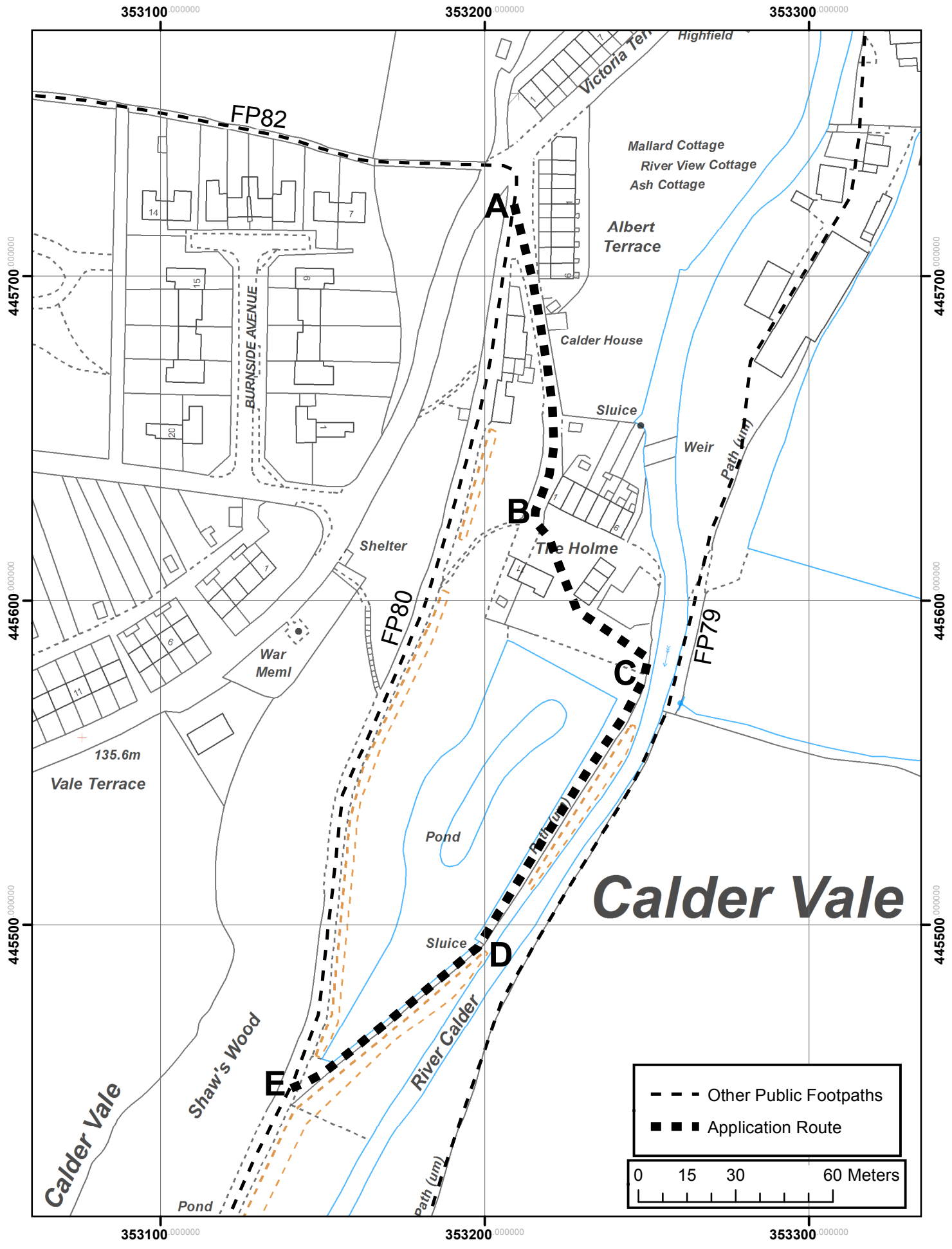
Committee is therefore advised to accept the claim and promote the Order to confirmation.

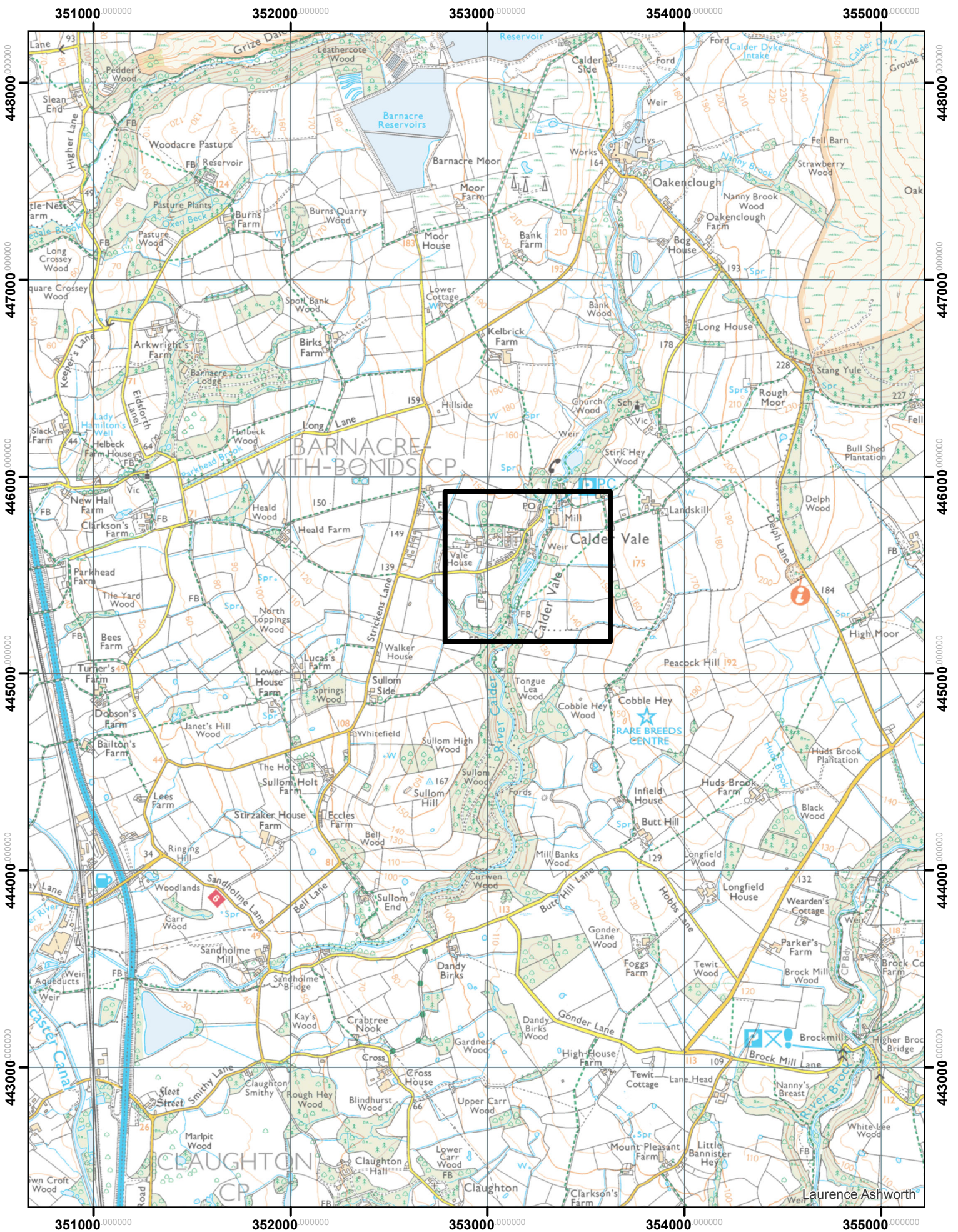
**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-587		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of public footpath at The Holme, Calder Vale, Barnacre with Bonds

1:24,000



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